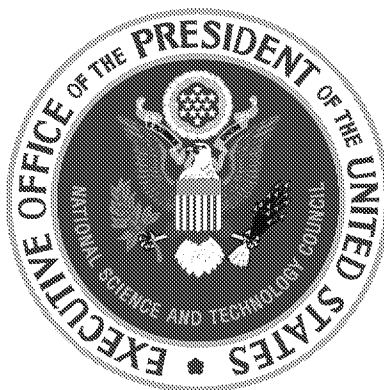


ADVANCING OPEN SCIENCE TO ACCELERATE RESEARCH, DEVELOPMENT, AND INNOVATION FOR AMERICAN PROSPERITY

A Report by the
Interagency Working Group on Open Science
Committee on Science
NATIONAL SCIENCE AND TECHNOLOGY COUNCIL



May 2018

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About the Interagency Working Group on Open Science

The Interagency Working Group on Open Science (IWGOS) advances Federal efforts to support open science by increasing access to and use of the results of federally-funded research and development, including but not limited to scholarly publications and digital data. Among its responsibilities, the IWGOS aims to improve implementation of policies to increase access to the results of federally-funded scientific research and to identify additional steps that Federal departments and agencies can take to enhance the preservation, discoverability, accessibility, quality, and utility of the outputs of federally-funded scientific research.¹

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¹ See https://www.whitehouse.gov/sites/whitehouse.gov/files/ostp/IWGOS_Charter.pdf

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List of Acronyms

ACL	Administration for Community Living (DHHS)
AHRQ	Agency for Healthcare Research and Quality (DHHS)
ASPR	Assistant Secretary for Preparedness and Response (DHHS)
CDC	Centers for Disease Control and Prevention (DHHS)
DHHS	Department of Health and Human Services
DHS	Department of Homeland Security
DOC	Department of Commerce
DOD	Department of Defense
DOE	Department of Energy
DOT	Department of Transportation
ED	Department of Education
EPA	Environmental Protection Agency
FDA	Food and Drug Administration (DHHS)
IARPA	Intelligence Advanced Research Projects Activity (ODNI)
IWGOS	Interagency Working Group on Open Science
ODNI	Office of the Director of National Intelligence
NASA	National Aeronautics and Space Administration
NIH	National Institutes of Health (DHHS)
NIST	National Institute of Standards and Technology (DOC)
NOAA	National Oceanic and Atmospheric Administration (DOC)
NSF	National Science Foundation
NSTC	National Science and Technology Council
OMB	Office of Management and Budget
OSTP	Office of Science and Technology Policy
PAGES	Public Access Gateway for Energy and Science
PMC	PubMed Central
SI	Smithsonian Institution
USAID	United States Agency for International Development
USDA	United States Department of Agriculture
USGS	United States Geological Survey
VA	Department of Veterans Affairs

Executive Summary

Open science is the principle and practice of making the results of scientific research available, accessible, and usable. By removing barriers to the access and use of scientific information, open science can accelerate scientific progress, improve research rigor and reproducibility, spur innovation, and strengthen the economy, increasing the return on investments in research and development.

In recent years, Federal departments and agencies have made considerable progress in advancing open science through policies to increase public access to scientific publications and digital data resulting from federally-funded research. This work has highlighted two key lessons that can apply more generally to efforts to advance open science: First, implementation needs to be tailored to the specific missions, organizations, and fields of science that individual agencies support. While agencies can pursue common objectives, the specific ways they achieve them may differ. Second, interagency cooperation can significantly improve the efficiency and effectiveness of open science implementation, through the sharing of knowledge, infrastructure, best practices, solutions to common challenges, and more.

This report was prepared by the Interagency Working Group on Open Science (IWGOS), which was established to advance Federal efforts to support open science by increasing access to, and use of the results of, federally-funded research and development, including but not limited to scholarly publications and digital data.

The IWGOS identified several opportunities for advancing open science, taking into account agency missions, operational contexts, and resources. These include:

1. Increasing the availability and timeliness of narrative research products;
2. Improving the availability and timeliness of access to scientific data;
3. Increasing access to other products resulting from federally-funded research, such as software and scientific collections;
4. Improving systems for making research products public and more usable;
5. Lowering barriers to effective use of open science content; and
6. Developing better metrics for measuring advances in open science and its impacts.

To realize the benefits of open science, the IWGOS recommends that Federal agencies take steps to incentivize open science; facilitate interagency development of best practices, guidance, and standards for open science, with a focus on data access; and promote interagency and public-private collaborations to further realize the benefits of open science. Such collaboration would include partnerships with other Federal working groups; public, nonprofit, and academic partners; and international partners, many of which are also pursuing the objective of advancing open science.

I. Introduction

Open science is the principle and practice that makes the results of scientific research available, accessible, and usable. It accelerates progress in science, improves research rigor and reproducibility, spurs innovation, and strengthens the economy. By making the results of scientific research accessible to the largest possible audience – including other scientists, business innovators, entrepreneurs, students, and American citizens – open science can boost the returns from Federal investments in research and development (R&D). It can drive advances in areas as diverse as agriculture, energy, health, and national security, and catalyze innovation that drives economic growth and prosperity.

The goals of open science are reflected in the public access plans developed by federal agencies.² Open science is essential to achieving the compelling R&D priorities outlined by the Director of the Office of Management and Budget, Mick Mulvaney, and Deputy Assistant to the President, Office of Science and Technology Policy, Michael Kratsios, in Memorandum M-17-30 entitled “FY 2019 Administration Research and Development Budget Priorities.” Specifically, open science can further administration priorities by advancing American Security, American Prosperity, American Energy Dominance, and American Health.³

Accelerating dissemination of research results advances knowledge and leads to broader application of American scientific contributions. Fundamentally, communicating research results is central to scientific progress, allowing others to test the validity of findings and to build upon these results. Open science allows research to be more easily applied to a range of national priorities, including:

- *Protecting American interests.* Making federally-supported science more open and accessible helps to establish American leadership in scientific research and in areas such as international data standards, which can directly impact American scientific and economic interests.
- *Advancing American health.* Making medical research accessible in real time improves patient diagnoses and treatment. Providing access to literature search through clinical decision support systems affords statistically significant improvements in the accuracy of making evidence-based clinical decisions in a physician’s everyday clinical practice. In one study, access to online literature was found to boost the accuracy of clinical decision making from 45 percent to 72 percent.⁴
- *Protecting American security.* The Departments of Defense (DOD) and Homeland Security (DHS) maintain robust research portfolios to keep Americans safe, both at home and abroad. Public access to the unclassified results of this research helps to encourage and focus innovation on technologies that, in time, will become integral to our nation’s security.

² Agency public access plans are available online at: <https://www.science.gov/publicAccess.html>

³ OMB Memorandum M-17-30, *FY 2019 Administration Research and Development Budget Priorities* (Aug. 17, 2017), available at <https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/memoranda/2017/m-17-30.pdf>.

⁴ Tennant, J. P., Waldner, F., Jacques, D. C., Masuzzo, P., Collister, L. B., & Hartgerink, C. H. J. (2016). The academic, economic and societal impacts of Open Access: an evidence-based review. *F1000Research*, 5, 632. <http://doi.org/10.12688/f1000research.8460.3>.

- *Ensuring American energy dominance.* Making the latest scientific evidence available to private sector energy pioneers helps bring Department of Energy (DOE) research to the market faster. For example, through the Gateway for Accelerated Innovation in Nuclear, DOE makes information, data, and R&D infrastructure available to public and private sector stakeholders to speed the development of innovative nuclear energy technologies toward commercial readiness.⁵
- *Increasing government accountability and efficiency.* Making the results of federally-funded research easily available to researchers avoids unnecessary duplication of research, facilitates measurement of the return-on-investment in research, enables needed replication of experiments to improve reliability of results, and permits collected data to be reused for further experimentation and analysis.
- *Maximizing interagency coordination.* By working together, federal agencies have been able to improve the efficiency and effectiveness of their public access policies. For example, eleven agencies use the National Institutes of Health's (NIH) PubMed Central (PMC) to provide public access to scholarly publications, and DOE has partnered with three other agencies further leverage and customize its Public Access Gateway for Energy and Science (PAGES).
- *Supporting Innovative Early Stage Research.* Effective management of early stage research products, including making these products more accessible, has the potential to increase the pace of scientific discovery, accelerate innovation, and promote more efficient and effective use of government and private-sector funding and resources.

Advancing American prosperity through open science. Open science grows the American economy and creates American jobs. Science has more impact, and Federal investments yield better returns, when results are easily accessible and reusable.

- The open flow of ideas, technologies, and people between the U.S. academic sector (funded by Federal investments) and industry have introduced entirely new categories of products and services that have ultimately become billion-dollar industries. In the area of information technology, the “tire tracks diagram”⁶ illustrates how companies that create products using the open ideas that result from federally-sponsored research “repay the nation in jobs, taxes, productivity increases and world leadership.”
- Sharing data from new technologies in a common format can create a whole new economic sector. Data from the U.S.-developed Global Positioning System (GPS) provide positioning, navigation, and timing information to all parts of the economy, and serve as

⁵ For additional information, see <https://gain.inl.gov/SitePages/Home.aspx>.

⁶ Computer Science and Telecommunications Board, National Research Council, *Continuing Innovation in Information Technology*, National Academies Press, 2016.

a time and frequency standard for the world.⁷ Without such a standard, companies would have to use multiple systems, and the world's economy would be less efficient.

- For every \$1 invested by the Federal government, the Human Genome Project's open research data have resulted in the return of \$141 to the U.S. economy. Between 1988 and 2010, human genomics generated an economic output of \$796 billion, personal income exceeding \$244 billion, and 310,000 jobs. The benefits of the Human Genome Project have been widespread and continue to increase over time.⁸
- Publicly available genomic data has also been used to minimize the economic damage from invasive species and support the rapid identification of invasive species.⁹ In one example, locating key genes involved in insecticide resistance, mating behavior, and sterility of the Mediterranean Fruit Fly, a highly invasive, economically disastrous crop pest.¹⁰
- The use of freely available government satellite imagery from the Landsat satellite missions of the U.S. Geological Survey (USGS) generated annual economic activity more than double the agency's annual budget.¹¹
- The National Animal Nutrition Program makes data on more than 1.5 million feed ingredients openly accessible online. Previously isolated information is now routinely used by researchers, extension staff, producers, regulators, and industry professionals in more than 30 countries to improve livestock feeding strategies.¹²

Barriers to scientific information decrease scientific impact and increase costs. Closed science can inhibit creative and entrepreneurial reuse of research results, reducing the return on investment. This is especially true of interdisciplinary research or research that requires knowledge from beyond a single discipline. Sharing scientific advances broadly across disciplines can lead to novel applications. For example, the National Aeronautics and Space Administration (NASA) has a long history of analyzing weak radio signals to identify seismic activity or minor alterations in a satellite's trajectory around another planet. NASA technology was adapted for use in picking out the faint heart beat and breathing of victims trapped under a

⁷ Leveson, I., "GPS Civilian Economic Value to the U.S., Report prepared for the National Executive Committee for Space-Based Positioning, Navigation and Timing, 2015.

⁸ Simon Tripp and Martin Greuber, "Economic Impact of the Human Genome Project," Battelle Memorial Institute, May 2011.

⁹ Lyal, C. Capacity of United States Federal Government and its partners to rapidly and accurately report the identity (taxonomy) of non-native organisms intercepted in early detection programs.

https://www.doi.gov/sites/doi.gov/files/uploads/lyal_federal_capacity_taxonomy_draft_8march2018.pdf

¹⁰ Papanicolaou, A., Schetelig, M. F., Arensburger, P., Atkinson, P. W., Benoit, J. B., Bourtzis, K., Handler, A. M. (2016). The whole genome sequence of the Mediterranean fruit fly, *Ceratitis capitata* (Wiedemann), reveals insights into the biology and adaptive evolution of a highly invasive pest species. *Genome Biology*.

<http://doi.org/10.1186/s13059-016-1049-2>.

¹¹ H. Miller, L. Richardson, S. Koontz, J. Loomis, L. Koontz, "Users, Uses, and Value of Landsat Satellite Imagery—Results from the 2012 Survey of Users," U.S. Geological Survey Open-File Report 2013–1269, 2012.

¹² The State Agricultural Experiment Stations, and Hatch Funds provided by the National Institute of Food and Agriculture, U.S. Department of Agriculture, animalnutrition.org.

pile of rubble and spun off into the FINDER device that is being used by the Federal Emergency Management Agency and DHS to locate victims of natural disasters, such as the earthquake in Nepal in 2015.¹³

The United States is particularly well positioned to reap the benefits of open science. While open science is a global phenomenon,¹⁴ the strong connections between American industry, universities, and government enable the United States to be at the forefront of innovation with its ability to translate new scientific knowledge into products and services. Open science strengthens these relationships by providing another channel for industry to access the latest research findings and data stemming from both, U.S. universities and Federal government laboratories.

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The IWGOS was charged to prepare a report that recommends “additional objectives for Federal open science policies that further enhance access to a broad range of results of federally-funded scientific research, consistent with agency capabilities and missions” and outlines “effective strategies for improving preservation, discoverability, and accessibility of scientific data, taking into account the capabilities and activities of Federal departments and agencies, as well as the private sector.”¹⁵

The IWGOS views open science as a principle and practice that can help guide Federal investment in science. If Federal research results in publications, those publications should be as easy to access as possible. If the Federal government invests in data production, those data should be shared as broadly as possible. Investments in openness amplifies the value of research investment. The IWGOS recognizes that important practical considerations must inform the degree of openness for any research product. These include, but may not be limited to: law; agency mission; resource constraints; U.S. national, homeland, and economic security; research participant privacy; and proprietary interests.

This report provides appropriate next steps the Federal government can take to further open science, incorporating these important considerations.

The report is structured as follows:

- Section II reviews U.S. Federal government activities taken to date to promote access to the results of federally-funded research and identifies the most important lessons learned.

¹³ Howard, C. B. “NASA Technology Finds Nepal Survivors by Their Heartbeats,” *National Geographic*, May, 7 (2015).

¹⁴ For example, see OECD (2017), “Business models for sustainable research data repositories”, *OECD Science, Technology and Industry Policy Papers*, No. 47, OECD, Paris. <http://dx.doi.org/10.1787/302b12bb-en>.

¹⁵ National Science and Technology Council, “Charter of the Interagency Working Group on Open Science,” October 2016. See https://www.whitehouse.gov/sites/whitehouse.gov/files/ostp/IWGOS_Charter.pdf.

- Section III identifies opportunities for further increasing access to publications and data resulting from federally-funded research and options for expanding the reach of open science to include other research products.
- Section IV recommends steps that the Federal Government might consider in pursuit of the identified opportunities, consistent with agency missions, capabilities, and resources.

II. Accomplishments and Lessons Learned

The U.S. government is making considerable progress in increasing public access to scientific publications and data. As of May 2018, twenty-two Federal departments and agencies (accounting for 99% of the Federal R&D budget) had completed development of public access plans for publications and data resulting from funded research: U.S. Department of Agriculture (USDA), DOD, DOE, DHS, Department of Transportation (DOT), Department of Education (ED), Department of Veterans Affairs (VA), Environmental Protection Agency (EPA), NASA, National Institute of Standards and Technology (NIST), National Oceanic and Atmospheric Administration (NOAA), National Science Foundation (NSF), Office of the Director of National Intelligence (ODNI), Smithsonian Institution (SI), USGS, U.S. Agency for International Development (USAID), and five operating divisions within the Department of Health and Human Services (DHHS): Administration for Community Living (ACL), Agency for Healthcare Research and Quality (AHRQ), Office of the Assistant Secretary for Preparedness and Response (ASPR), Centers for Disease Control and Prevention (CDC), Food and Drug Administration (FDA), and National Institutes of Health (NIH).¹⁶

Agency public access plans describe how the agencies will implement policies to ensure that publications are freely available not more than 12 months after publication and that data management plans are prepared and evaluated for new research projects. The policies aim to maximize the sharing of data while respecting privacy, security, and other legal limits. Development of these plans and implementation of resulting policies was informed by numerous public consultations.

The benefits associated with public access policies are already coming to fruition. As of May 2018, agency systems were making more than 5 million research articles and 250,000 agency data sets publicly available, including research data that are available on Data.gov.¹⁷ Millions of Americans were making use of these resources every day.

Federal agencies continue to improve upon their public access efforts.

- DOE, for example, added scientific software to its public access efforts with the November 2017 launch of DOE CODE, an open source platform that makes it easy for DOE-funded researchers and scientific software developers to share scientific software and for the public to discover DOE-funded code. The alpha release contained roughly 700 open source

¹⁶ See department and agency public access plans at <https://www.science.gov/publicAccess.html> 2017

¹⁷ Estimates based on information available at designated agency public access repositories and at Data.gov.

software projects, a volume which is expected to increase significantly over the next 12 months.

- USGS put in place a process for certifying USGS Public Access data servers as Trusted Digital Repositories for data, and three USGS repositories have been so certified. Additional USGS systems providing public access to scholarly publications and data have initiated or are exploring the possibility of certification under this process.
- NIH launched in autumn 2017 its Data Commons Pilot Phase, an initiative to test the feasibility of, and develop best practices for, making NIH-funded data sets and computational tools available through communal, collaborative platforms on public clouds. The Data Commons Pilot Phase made nine awards using a special type of funding mechanisms.

Federal agencies continue to gain considerable experience through the development and implementation of their public access plans – lessons that inform future Federal efforts to advance open science. Two of these experiences transcend efforts to increase access to both publications and data:

- **Agencies need flexibility in implementing policy solutions.** Flexibility is necessary because of differences in agency missions, capabilities, and authorities, as well as the mechanisms they use to support R&D, the balance of intramural versus extramural research, and the different types of publications and data that result from their funded research. While they can adhere to common principles, they should also be able to tailor the specific details of implementation in a way that is relevant to their agencies.
- **Interagency cooperation has broadened the understanding of the challenges involved in developing public access policies and continues to improve the efficiency and effectiveness of public access implementations.** Through shared knowledge and services departments and agencies continue to overcome challenges. A number of agencies are using shared infrastructure and common procedures for providing public access to publications and, consistent with the M-17-30 R&D priorities memo, which notes that “agencies should maximize the coordination, promotion, and planning of their R&D programs through the National Science and Technology Council (NSTC).”

Increasing Access to Publications

In terms of increasing public access to scholarly publications resulting from federally-funded research, agency efforts to date demonstrate the following:

- **Interagency collaboration can improve implementation.** Collaboration allows agencies to establish joint solutions (see sidebar “Implementing Public Access to Publications: The Value of Interagency Collaboration”). Although agencies and scientific communities have different needs with regard to the necessary infrastructure, there is enough commonality that a relatively small set of platforms is being used to preserve and provide access to publications, maintaining simplicity and usability for researchers and end users.

- **Successful implementation of public access policies leverages public-private partnerships.**

Private sector publishers are actively supporting public access policies in a number of ways:

- DOE PAGES complements author and institutional deposits of metadata and accepted manuscripts with publisher-supplied metadata and links to full text publications on publisher websites.
- NIH's PMC has agreements with more than 2,000 journals to submit all of their final published content, or in some cases only NIH-funded content, directly to PMC. More than 70% of papers collected are submitted with active support from the publisher.
- SI developed blanket contract addenda with its major publishers for all published journal articles that are authored by one or more SI employees, expediting review and execution of publishing agreements for a large portion of articles.

- **Public access can be accomplished without disrupting existing avenues for scientific communication.**

For example, in May 2008, NIH's Public Access Policy began to require peer-reviewed scientific papers to be available without charge on the Internet 12 not later than months after publication. Concerns that this policy would undermine scientific publishing proved unfounded – from 2007 to 2011, the number of biological sciences and agriculture journals as well as medicine and health journals grew by 15% and 19%, respectively.¹⁸ Instead, publishers created new services around public access, such as a system that aggregates article metadata from participating publishers. This system is used by several agencies, including DOD, DOE, IARPA, NIST, NSF, SI, USDA, and USGS.

- **Interoperability with existing systems can streamline procedures and minimize burden.** A number of agencies (e.g., NIH, NSF, SI) have successfully tied deposition of publications into a public access repository with their existing award management and other systems. In some cases, integrating a public access repository with existing systems can reduce data entry and tracking burdens for investigators, and oversight burdens for agencies. Many functions can even be automated.

Implementing Public Access to Publications: The Value of Interagency Collaboration

While more than 22 Federal agencies have developed public access plans, agencies are sharing infrastructure where possible and collaborating on a handful of systems. For example, 11 agencies make use of the NIH's PubMed Central (PMC).¹⁸ DOE has partnered with the NSF, ODNI's Intelligence Advanced Research Projects Activity (IARPA), and DOD to further leverage and customize its Public Access Gateway for Energy and Science (PAGES) infrastructure for use by those agencies. These agencies are developing a multi-agency portal for submitting articles to their systems. Both NOAA and DOT are making use of CDC's Stacks system. This experience indicates that a small set of platforms can support a large number of agencies with common approaches and needs.

¹⁸ Those making use of PMC include six agencies and offices within DHHS--ACL, AHRQ, ASPR, CDC, FDA, and NIH—and five other departments and agencies--DHS, VA, EPA, NASA, and NIST

¹⁹ National Institutes of Health, "The NIH Public Access Policy," April 2012. Available online at: https://publicaccess.nih.gov/public_access_policy_implications_2012.pdf

- **Public access to publications can be achieved without major costs.** Agencies are implementing public access within “existing budgetary resources.” For example, DOE, USGS, and SI rely on existing infrastructures that collect other forms of scientific and technical information and made the incremental change of collecting final accepted manuscripts. In other cases, (e.g., NSF) public access implementation costs were minimized by leveraging existing infrastructure at DOE (see sidebar). While there are costs involved, for some agencies, those costs have not been large, especially when measured against the investment in research.
- **Researchers can comply with agency policies.** NSF requires the deposit of journal and juried conference publications as part of a Principal Investigator’s annual/final report, making compliance follow naturally from existing business processes. The NIH experience with public access to publications, wherein publications are required to be publicly available on the internet within 12 months, has a compliance rate of 88% over its more than 10-year history, suggesting that post-award compliance is a reasonable expectation. One reason for this behavior is that compliance is public, and scientists must cite these works in applications for new NIH funding.

Increasing Access to Data

With respect to data and the preparation of data management plans, agency experience to date demonstrates that:

- **Data management plans are an important tool for agency stewardship of data resulting from Federal research funding.** Agencies that began receiving data management plans for new research projects²⁰ have found that researchers are starting to submit stronger data management and sharing plans over time. Additionally, those agencies are finding that the plans improve communication between the researcher and the Federal funding agency about the disposition, planning, and support for data arising from a project. A plan that includes components for both management and sharing of data requires investigators to think through issues such as long-term preservation of data, data distribution, and limitations (if any) on data access and use.
- **Data management plans must balance common elements against discipline-specific needs.** Expectations for the specific content of data management plans vary across disciplines and across agencies. The NSF and DOE experience with data management plans, dating back to 2011 and 2015, respectively, demonstrates that practices of the various scientific disciplines differ considerably. Specifically, plan evaluation by scientific domain experts during the proposal review process is critically important. Nevertheless, agencies identify similar categories of content to be included in data management plans and make use of good practices and materials developed by other agencies to improve consistency across agencies. Some, such as the NSF, developed agency-wide guidance that individual directorates and divisions (within directorates) then interpret and implement, while adding their own discipline-specific guidance, to meet the specific needs of their research communities.

²⁰ For information on the implementation dates of Federal agency policies for data management plans, see <https://www.science.gov/publicAccess.html#AwardDates>

- **Sharing interim data is beneficial in some circumstances.** Accessible, quality interim data, in addition to final data, are essential to rapid response in emergencies. Particularly in health crises where time is a valuable resource, the sharing of interim-data can save the lives of Americans and people globally. Two examples from the CDC are the outbreak of *Elizabethkingia anopheles*,²¹ and the sharing of provisional of data on the Zika outbreak.²² Similarly, preliminary, near-real time data from the USGS associated with earthquake intensity, location of volcanic ash plumes, and flooding of rivers and streams are essential to public health and safety when associated natural disasters occur.
- **Privacy and confidentiality can be protected, while allowing for meaningful sharing of data.** Even in situations involving personally identifiable data where privacy and confidentiality must be protected, meaningful sharing of data is still possible. For example, NIH developed effective approaches for allowing researchers to reuse individual level genomic data while protecting patient privacy.²³ Likewise, in 2005, CDC developed an early warning system for potential tuberculosis outbreaks based on research from actual case reports. This system is useful in identifying outbreaks and tracking trends, while maintaining privacy and confidentiality.²⁴
- **A combination of public and private-sector repositories can support data preservation and access.** Data preservation and access makes use of a diverse set of publicly- and privately- supported data repositories. Many Federal agencies created or contracted with (or externally funded the creation of) effective data repositories that store data resulting from their funded research. Many private sector solutions (institutional, for-profit and nonprofit; discipline-specific and multidisciplinary) also exist and can provide long-term data preservation, access, and discovery capabilities. Given the diversity of data types generated by federally-funded research, a combination of public and private-sector repositories will likely become part of the solution to data preservation and access needs.
- **Data can be preserved and made accessible over the long-term with time-limited funding.** Many repositories ensure long-term preservation with a one-time deposit fee, which is reimbursable from a Federal research grant. Nevertheless, there is still great diversity among agencies about how researchers should address the need to provide for long-term data preservation and which repositories are most suitable. Some agencies offer explicit guidance about particular repositories to be used, while others provide more general guidance to assist awardees in selecting repositories. Federal agencies should consider offering guidance to awardees for including provisions in data management

²¹ Figueroa Castro CE, et al, *Elizabethkingia anopheles*: Clinical Experience of an Academic Health System in Southeastern Wisconsin, *Open Forum Infectious Diseases* 5(4), April 2018.

²² *Statement on Data Sharing in Public Health Emergencies*, *The Lancet*. Available online at <http://www.thelancet.com/campaigns/zika/statement>

²³ See <https://federalregister.gov/a/2014-2038>; <https://grants.nih.gov/grants/guide/notice-files/NOT-OD-14-124.html>

²⁴ Mindra G, Wortham JM, Haddad MB, and Powell KM, "Tuberculosis outbreaks in the United States, 2009-2015," *Public Health Reports*. 2017;132(2), 157-163.

plans regarding necessary standards for repositories and addressing compliance challenges associated with data meant to be long-lived.

- **Public access to data is more challenging than for publications.** Digital data sets are much more heterogeneous than publications, and therefore more technically difficult to curate and share. A number of important remaining challenges are noted here:
 - *Appropriate incentives are needed to promote culture change.* Datasets are standalone research products that are valuable in their own right and which researchers are accustomed to retaining. Federal agencies are encouraging a new norm, that this scientific data should be shared as consistent with agency mission. This cultural change requires incentives that help credit and reward investigators for sharing their data. Clear incentives will simplify implementation, improve compliance, and reduce oversight efforts.
 - *Cost-effective approaches are needed to provide long-term preservation of, and access to, data.* Most successful models for data repositories depend directly or indirectly on Federal funding. The ability of agencies to document, clean, preserve, and curate research data is therefore limited by agency budgets. Implementing long-term preservation, discovery, access, and curation for data is likely to be costlier than for publications and will demand cost-effective approaches to identify valuable data and support its preservation and accessibility.
 - *Standards must be developed and widely adopted to improve the consistency of data collection, description, and preservation.* Data sharing could become much easier with the development of consistent common data elements for data collection, standard formats for representing specific data types, standard metadata to improve discoverability of data. Standards are also needed to assist with quality assurance and quality control, and protect against misuse of published data (i.e., intentional falsification or fabrication).
 - *Data sharing and usage expertise vary among disciplines.* Disciplines vary in their experience with data sharing, and not all disciplines are yet prepared to manage or share their data effectively. Departments and agencies may need to facilitate resource and tool development, training, interdisciplinary collaboration, and other efforts to foster a culture change and bridge the expertise gap.
 - *Data discoverability remains a challenge.* Even as agencies and non-Federal entities establish data repositories, tools for data discovery are lacking in many scientific disciplines. A number of disciplines have capable tools for data discovery, while others are actively engaged in improving resources in this area.

III. Opportunities to Advance Open Science

Federal agencies are making significant strides with public access. Despite this, open science continues to offer new opportunities to increase the impact of Federal investments in research. While it is essential that Federal agencies work together, individual agencies need to determine which specific objectives to pursue, taking into account their different missions, operational contexts, available resources, and stakeholders' needs. Additionally, there are opportunities for coordinating efforts among Federal agencies and collaborating with the private sector.

1. **Increase the Availability and Timeliness of Narrative Research Products**

Recent efforts to provide public access to peer-reviewed publications resulting from federally-funded research, not more than 12 months after the date of publication, are making considerable contributions to the scientific community. Agencies can build upon these efforts by accelerating the timetable for making publications available to the public and by enhancing access to a wider range of written, narrative research products resulting from federally-funded research. Opportunities to consider include:

- Reducing the embargo period for peer-reviewed publications authored solely by Federal employees to be less than 12 months.
- Identifying scenarios where publications may warrant shorter embargo periods (e.g., to facilitate responsiveness to public health epidemics or other national emergencies).
- Identifying opportunities to increase public access to peer-reviewed publications that were published before Federal agency public access policies went into effect.
- Enhancing access to Federal agencies' technical reports and narrative research products other than peer-reviewed publications.
- Exploring opportunities for the responsible sharing of preprints to speed research dissemination, recognizing that preprints are not been peer reviewed, that their use varies considerably across scientific disciplines, and that they may need internal agency clearance before being made publicly available.²⁵

2. **Increase the Availability and Timeliness of Access to Scientific Data**

Agencies continue to make progress in implementing policies for data management plans. Many opportunities remain to improve the availability and timeliness of access to scientific data, including:

- Working together and with non-Federal partners (in the public and private sectors) to develop the infrastructure needed to provide long-term preservation of, discoverability of, and access to scientific data.

²⁵ Preprints are complete drafts of written research reports in the format of articles which have not yet been peer reviewed, increasingly made publicly available through established preprint repositories. See <https://www.nature.com/search?q=preprints> and <http://search.sciencemag.org/?q=preprints> for additional information.

- Strengthening incentives--and removing disincentives--for effective data management practices to help instill a culture that rewards and recognizes broader use of scientific data. Agency mandates to researchers regarding data management and sharing are a necessary, but not sufficient, condition for success.
- Developing and promulgating methods for mitigating risks associated with privacy, security, and confidentiality when sharing scientific data.
- Assisting researchers in identifying suitable repositories for storing data arising from their work (e.g., by identifying best practices for repositories that store data resulting from federally-funded research).
- Continuing to improve access to Federal data sets that can be used in research (in addition to those resulting from research), such as data from Federal statistical agencies, scientific collections, and monitoring and instrument programs.
- Promoting the release of interim data during national emergencies to spur collaborations and innovative solutions (e.g., releasing interim public health data to advance American health).

3. Increase Access to Other Research Products

Open science efforts to date have focused largely on increasing access to scholarly publications and scientific data. Other research outputs could also be made more accessible, such as:

- Providing access to research protocols (i.e., documents that describe the methods to be used in specific research studies, such as clinical trials) before studies are completed can reduce unintended duplication of research and increase rigor. Access to protocols after the studies are completed can enable further interpretation of the results, provide contexts for secondary use of the scientific data resulting from the studies, and enable systematic replication.
- Increasing access to software and code developed through federally-funded research, and/or other outputs that are necessary to use, analyze, or interpret shared data.

4. Improve the Systems for Making Research Products Public

Federal agencies have developed a number of systems to provide access to publications and data resulting from its funded research. By improving those systems, agencies could simplify procedures for researchers to make their publications, data, and other research outputs more accessible, while also allowing users to more easily find, access, and use those materials. Efforts could include:

- Identifying and implementing technical and administrative approaches to simplify procedures for researchers to provide public access to manuscripts/articles and to scientific data in different systems and under different Federal agency policies.

- Improving user interfaces and providing documentation that will enable better understanding and use/re-use of research products.
- Using effective approaches to link narrative research products and associated data sets, as well as different data repositories, in order to: facilitate search, access, and citation of data; improve research reproducibility; and assess the success and value of data openness.
- Improving both machine- and human-driven discovery across agency-designated publication and data repositories via application programming interfaces (APIs), federated search tools (e.g., Data.gov, Science.gov), and other innovative approaches.
- Creating metadata more efficiently to enable faster throughput in processing materials and better discovery. Robust metadata are essential for discovery and usability of the product, especially for non-textual materials, such as data sets, software, and artifacts.
- Offering guidance to researchers on how make their research products easier to use through techniques such as documentation standards, repository selection criteria, and use of persistent identifiers.

5. Lower Barriers to Effective Use of Open Science Content

Federal agencies can take steps, individually, collectively, and in collaboration with other stakeholders, to make open science content more usable and to unlock its full potential to contribute to economic and societal objectives. Agencies could consider:

- Identifying innovative strategies to fuel open science initiatives, including approaches like crowdsourcing, citizen science, and challenge and prize mechanisms, as well as partnerships with the scientific community, publishers, libraries, and other organizations.
- Supporting community-based efforts to develop standards for data and metadata, adopting community-based standards in Federal systems, and promoting their use by funded researchers.
- Encouraging use of unique persistent identifiers for publications, data, scientific collections, specialized equipment, labs, and facilities, and other resources utilized for research projects to enhance metadata, enable linking, and provide history of studies and analyses.
- Converting narrative research products into machine-readable formats so that computers can help facilitate dissemination of science and increase the impact of federally-funded science.
- Broadening access to peer-reviewed publications through different licensing approaches, investigator incentives, and/or partnership with publishers.

- Promoting approaches to improve data quality and data documentation (e.g., community standards, open metadata, training, and workforce development).
- Encouraging the private sector to leverage open science content and their downstream application in science and other sectors of the economy. Federal agencies could open opportunities for the private sector to apply new technologies to research outputs and develop value-added services to build on existing Federal resources.

6. **Develop Better Metrics and Measures**

Agencies are working to improve ways to measure the impacts of Federal public access efforts. Opportunities to enhance these efforts include:

- Identifying approaches to measure progress in increasing access to narrative research products, scientific data, and other research products.
- Identifying approaches to enable, encourage, and characterize compliance with agency public access requirements for peer-reviewed publications and data.
- Supporting research to improve evaluation of open science across Federal agencies and the institutions and infrastructure that they fund, as well as on the research enterprise, entrepreneurship, and the economy.
- Identifying approaches to use persistent identifiers to enable measurement of the use and impact of research outputs.

IV. Recommendations

Many opportunities exist to advance open science in ways that support the missions of Federal agencies and national R&D priorities. The IWGOS recommends that priority be given to three areas: (1) creating incentives to foster a culture change that recognizes and rewards open science practice; (2) developing interagency best practices, guidance and standards for open science, with a particular focus on data access; and (3) facilitating interagency and public-private collaborations to further realize the benefits of open science. More specific approaches for addressing these priorities are outlined below.

1. **Agencies should help incentivize open science practices.** Open science is a relatively new concept for the Federal government and many of the scientists it funds and supports. Federal agencies should collaborate with other stakeholders to identify and strengthen incentives for practicing open science and making the results of federally-funded scientific research more easily accessible and usable. The IWGOS recommends that Federal agencies:

- *Identify ways to incentivize culture change for open science among federally-funded researchers (e.g., requiring data management and sharing plans, incentivizing the research community to understand the benefits of open science and receive credit/attribution for open science activities).* Incentivizing a culture change that promotes open science practices may include recognizing data sets as

important, standalone scientific products and as evidence of scientific excellence; rewarding openness in the evaluation of individual scientists' performance; and identifying metrics to measure the impact of shared data on work by other scientists.

- *Identify ways to incentivize the private sector to develop tools that support open science.* Such tools could improve data discoverability and sharing, facilitate text mining, and provide information infrastructure for data storage and access. The private sector is making tremendous strides in data science and agencies can help focus some of that effort on scientific research data. Incentives like public-private partnerships, prizes, and challenges may help publishers, innovators in machine learning and artificial intelligence, and research funders to contribute toward more effective and open science. These incentives could promote the use of, for example, common APIs to publications, data, and software collections. These interoperable APIs could then be used to create virtual, compatible, aggregated collections amenable to large-scale text and data mining applications.

2. **Agencies should facilitate the interagency development of best practices, guidance and standards on open science, with a particular focus on data access.** Agencies are making substantial progress in advancing open science by enabling public access to both publications and data. There are still numerous opportunities ahead to improve public access to publications and other types of research outputs (e.g., software and protocols), but the primary near- and medium-term challenges lie in sharing data.

Agencies have many opportunities to work together to increase the benefits and reduce the burden of data preservation and access. Agencies should continue to work together to: 1) refine expectations and guidance for data management and the selection of data repositories; 2) improve and refine approaches to protecting privacy; and 3) improve consistency of policies and practices across Federal funding agencies, philanthropic organizations, and international funders. In addition, agencies should encourage continued improvement in the quality, documentation, versioning, and provenance of shared data. The IWGOS recommends that Federal agencies:

- *Accelerate efforts to create joint solutions for common data sharing challenges.* By connecting agencies working on same or similar research areas or disciplines, seeking consistent approaches to the development of data repositories, discovery tools, and compliance monitoring public access becomes more uniform and thereby easier to navigate and use by both investigators and the end user.
- *Coordinate their efforts to provide guidance to researchers for selecting suitable repositories for federally-funded research data.*
- *Recognize the importance of data standards and coordinate efforts to work with relevant communities to identify, develop, promulgate, and encourage the use of standards for data and metadata that facilitate data connectivity, interoperability, and reuse across agencies.*

- *Improve efforts to make digital data more discoverable and accessible via the use of persistent identifiers for research objects, researchers, and research organizations.* Such identifiers are key to interlinking related research objects and to supporting open science and reproducibility.

3. Agencies should facilitate interagency and public-private collaborations to further realize the benefits of open science.

- *Federal agencies should continue to formally meet to discuss open science.* To bolster efforts toward open science, Federal agencies must address issues of research culture, incentives, infrastructure, policy, and more. IWGOS agencies are addressing these challenges through their open science policies, while pursuing common objectives tailored to their specific missions and research communities. Some challenges are common to all disciplines and shared approaches can reduce training and administrative burden. IWGOS recommends Federal agencies continue to meet regularly to address issues such as policy harmonization, burden reduction, implementation, measurement, infrastructure, and emerging opportunities to promote open science. IWGOS also recommends stronger collaboration with other Federal working groups addressing related topics. These include working groups that coordinate Federal-wide research initiatives in specific domains of science (e.g., materials science, microbiome research, and arctic research) and working groups on cross-disciplinary topics such as open data, data science, scientific collections, and technology transfer.
- *Engage all stakeholders to fully realize economic and social benefits of open science.* Successful implementation of open science policies and practices will require close collaboration with stakeholders outside the Federal government. Important partners include the academic and non-profit sectors, businesses and entrepreneurs, and international partners.
 - *Public, nonprofit, and academic partners.* Federal agencies should work closely with the academic community to ensure that open science policies and practices are understood by the research community and practical to implement. Universities also have ambitions related to open science and are developing supporting infrastructure and policies. Such efforts should be coordinated as much as possible with Federal efforts. Federal agencies will need to partner with universities, scientific societies, and other stakeholders in the scientific community to help establish incentives for open science that recognize and reward the practice of open science.
 - *Businesses and entrepreneurs.* Realizing the full economic and societal potential of open science requires participation beyond the scientific research community. Other sectors of the economy have made great strides in pushing knowledge to targeted audiences, data mining, and collaboration and networking tools. Commercial investment in these areas often dwarfs Federal investment. Federal science agencies could enhance their impact by engaging knowledge management solutions, and their associated private investment, to focus on

research products. Agencies could also work on the standards, infrastructure, and other technical details to ensure federally-funded open science products are attractive resources for the private sector.

- *International partners.* Because scientific communities span national borders, international engagement can advance open science. Open science in other countries can help U.S.-based researchers gain better access to global knowledge. Many countries are seeking innovative solutions for data preservation and access, incentive systems that reward open science practices, and approaches for developing needed skills in the scientific workforce. Federal agencies can promote the international adoption of open science practices that support American interests. Federal agencies should continue to participate in international fora to help identify good practices, standards, and opportunities to align initiatives around American policies, and leverage the solutions (e.g., technical, operational) that emerge from these efforts.

Steps such as those outlined above can help achieve the promise open science offers to accelerate research, development, and innovation for American prosperity.

Appointment

From: Gomez, Laura [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=575BA24FC19D429C8302A05102353238-LGOMEZ]
Sent: 1/26/2018 6:11:29 PM
To: Gomez, Laura [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=575ba24fc19d429c8302a05102353238-lgomez]; Yamada, Richard (Yujiro) [yamada.richard@epa.gov]; Orme-Zavaleta, Jennifer [Orme-Zavaleta.Jennifer@epa.gov]; Bahadori, Tina [Bahadori.Tina@epa.gov]; Vandenberg, John [Vandenberg.John@epa.gov]; Rodan, Bruce [rodan.bruce@epa.gov]; Linkins, Samantha [Linkins.Samantha@epa.gov]; Davis, Matthew [Davis.Matthew@epa.gov]; Lubetsky, Jonathan [Lubetsky.Jonathan@epa.gov]; Schwab, Justin [Schwab.Justin@epa.gov]; Fotouhi, David [Fotouhi.David@epa.gov]; Ringel, Aaron [ringel.aaron@epa.gov]; Rodrick, Christian [rodrick.christian@epa.gov]; Christina Moody [Moody.Christina@epa.gov]; Woods, Clint [woods.clint@epa.gov]; Shoaff, John [Shoaff.John@epa.gov]; Feeley, Drew (Robert) [Feeley.Drew@epa.gov]; Bolen, Brittany [bolen.brittany@epa.gov]; Sinks, Tom [Sinks.Tom@epa.gov]; Blancato, Jerry [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=232de363dadb4cd9961900e10f56fddf-Blancato, Jerry]; Teichman, Kevin [Teichman.Kevin@epa.gov]
Subject: CONFIRMED: EPA PRE-INTERNAL CALL : HONEST ACT IMPLEMENTATION
Attachments: BILLS-115hr1430rfs.pdf
Location: DIAL IN: 1-202-991-0477 CONFERENCE ID: 2720374
Start: 1/26/2018 7:00:00 PM
End: 1/26/2018 8:30:00 PM
Show Time As: Tentative

Purpose: To internally discuss EPA implementation of HR 1430 (ATTACHED)

This is an internal call in preparation for a briefing with Committee on House Science, Space and Technology (HSST). DAA Ringel (OCIR) will lead a discussion with respective program offices regarding the agency's implementation efforts of the HONEST ACT.

115TH CONGRESS
1ST SESSION

H. R. 1430

IN THE SENATE OF THE UNITED STATES

MARCH 30, 2017

Received; read twice and referred to the Committee on Environment and
Public Works

AN ACT

To prohibit the Environmental Protection Agency from proposing, finalizing, or disseminating regulations or assessments based upon science that is not transparent or reproducible.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Honest and Open New
3 EPA Science Treatment Act of 2017” or the “HONEST
4 Act”.

5 **SEC. 2. DATA TRANSPARENCY.**

6 Section 6(b) of the Environmental Research, Devel-
7 opment, and Demonstration Authorization Act of 1978
8 (42 U.S.C. 4363 note) is amended to read as follows:

9 “(b)(1) The Administrator shall not propose, finalize,
10 or disseminate a covered action unless all scientific and
11 technical information relied on to support such covered ac-
12 tion is—

13 “(A) the best available science;

14 “(B) specifically identified; and

15 “(C) publicly available online in a manner that
16 is sufficient for independent analysis and substantial
17 reproduction of research results, except that any
18 personally identifiable information, trade secrets, or
19 commercial or financial information obtained from a
20 person and privileged or confidential, shall be re-
21 dacted prior to public availability.

22 “(2) The redacted information described in para-
23 graph (1)(C) shall be disclosed to a person only after such
24 person signs a written confidentiality agreement with the
25 Administrator, subject to guidance to be developed by the
26 Administrator.

1 “(3) Nothing in the subsection shall be construed
2 as—

3 “(A) requiring the Administrator to disseminate
4 scientific and technical information;

5 “(B) superseding any nondiscretionary statu-
6 tory requirement; or

7 “(C) requiring the Administrator to repeal, re-
8 issue, or modify a regulation in effect on the date of
9 enactment of the Honest and Open New EPA
10 Science Treatment Act of 2017.

11 “(4) In this subsection—

12 “(A) the term ‘covered action’ means a risk, ex-
13 posure, or hazard assessment, criteria document,
14 standard, limitation, regulation, regulatory impact
15 analysis, or guidance; and

16 “(B) the term ‘scientific and technical informa-
17 tion’ includes—

18 “(i) materials, data, and associated proto-
19 cols necessary to understand, assess, and ex-
20 tend conclusions;

21 “(ii) computer codes and models involved
22 in the creation and analysis of such informa-
23 tion;

24 “(iii) recorded factual materials; and

1 “(iv) detailed descriptions of how to access
2 and use such information.
3 “(5) The Administrator shall carry out this sub-
4 section in a manner that does not exceed \$1,000,000 per
5 fiscal year, to be derived from amounts otherwise author-
6 ized to be appropriated.”.

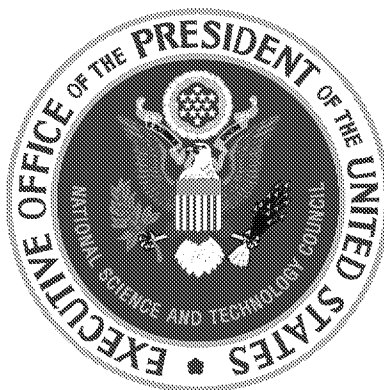
Passed the House of Representatives March 29,
2017.

Attest:

KAREN L. HAAS,
Clerk.

ADVANCING OPEN SCIENCE TO ACCELERATE RESEARCH, DEVELOPMENT, AND INNOVATION FOR AMERICAN PROSPERITY

A Report by the
Interagency Working Group on Open Science
Committee on Science
NATIONAL SCIENCE AND TECHNOLOGY COUNCIL



April 2018

About the National Science and Technology Council

The National Science and Technology Council (NSTC) is the principal means by which the Executive Branch coordinates science and technology policy across the diverse entities that make up the Federal research and development enterprise. A primary objective of the NSTC is to ensure science and technology policy decisions and programs are consistent with the President's stated goals. The NSTC prepares research and development strategies that are coordinated across Federal agencies aimed at accomplishing multiple national goals. The work of the NSTC is organized under committees that oversee subcommittees and working groups focused on different aspects of science and technology. More information is available at <http://www.whitehouse.gov/ostp/nstc>.

About the Office of Science and Technology Policy

The Office of Science and Technology Policy (OSTP) was established by the National Science and Technology Policy, Organization, and Priorities Act of 1976 to provide the President and others within the Executive Office of the President with advice on the scientific, engineering, and technological aspects of the economy, national security, homeland security, health, foreign relations, the environment, and the technological recovery and use of resources, among other topics. OSTP leads interagency science and technology policy coordination efforts, assists the Office of Management and Budget with an annual review and analysis of Federal research and development in budgets, and serves as a source of scientific and technological analysis and judgment for the President with respect to major policies, plans, and programs of the Federal Government. More information is available at <http://www.whitehouse.gov/ostp>

About the Interagency Working Group on Open Science

The Interagency Working Group on Open Science (IWGOS) advances Federal efforts to support open science by increasing access to and use of the results of federally-funded research and development, including but not limited to scholarly publications and digital data. Among its responsibilities, the IWGOS aims to improve implementation of policies to increase access to the results of federally-funded scientific research and to identify additional steps that Federal departments and agencies can take to enhance the preservation, discoverability, accessibility, quality, and utility of the outputs of federally-funded scientific research.¹

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Printed in the United States of America, 201X.

¹ See https://www.whitehouse.gov/sites/whitehouse.gov/files/ostp/IWGOS_Charter.pdf

NATIONAL SCIENCE & TECHNOLOGY COUNCIL

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INTERAGENCY WORKING GROUP ON OPEN SCIENCE

INTERAGENCY WORKING GROUP ON OPEN SCIENCE

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Members

List of Acronyms

CDC	Centers for Disease Control and Prevention
DHS	Department of Homeland Security
DOC	Department of Commerce
DOD	Department of Defense
DOE	Department of Energy
DOI	Department of the Interior
DOT	Department of Transportation
EPA	Environmental Protection Agency
FDA	Food and Drug Administration
IARPA	Intelligence Advanced Research Projects Activity
IWGOS	Interagency Working Group on Open Science
NASA	National Aeronautics and Space Administration
NIH	National Institutes of Health
NIST	National Institute of Standards and Technology
NOAA	National Oceanic and Atmospheric Administration
NSF	National Science Foundation
NSTC	National Science and Technology Council
OMB	Office of Management and Budget
OSTP	Office of Science and Technology Policy
PAGES	Public Access Gateway for Energy and Science
PMC	PubMed Central
SI	Smithsonian Institution
USDA	United States Department of Agriculture
USGS	United States Geological Survey

Executive Summary

Open science is the principle and practice of making the results of scientific research available, accessible, and usable. By removing barriers to the access and use of scientific information, open science can accelerate scientific progress, improve research rigor and reproducibility, spur innovation, and strengthen the economy, increasing the return on investments in research and development.

In recent years, Federal departments and agencies have made considerable progress in advancing open science through policies to increase public access to scientific publications and digital data resulting from federally-funded research. This work has highlighted two key lessons that can apply more generally to efforts to advance open science: First, implementation needs to be tailored to the specific missions, organizations, and fields of science that individual agencies support. While agencies can pursue common objectives, the specific ways they achieve them may differ. Second, interagency cooperation can significantly improve the efficiency and effectiveness of open science implementation, through the sharing of knowledge, infrastructure, best practices, solutions to common challenges, and more.

This report was prepared by the Interagency Working Group on Open Science (IWGOS), which was established to advance Federal efforts to support open science by increasing access to, and use of the results of, federally-funded research and development, including but not limited to scholarly publications and digital data.

The IWGOS identified several opportunities for advancing open science, taking into account agency missions, operational contexts, and resources. These include:

1. Increasing the availability and timeliness of narrative research products;
2. Improving the availability and timeliness of access to scientific data;
3. Increasing access to other products resulting from federally-funded research, such as software and scientific collections;
4. Improving systems for making research products public and more usable;
5. Lowering barriers to effective use of open science content; and
6. Developing better metrics for measuring advances in open science and its impacts.

To realize the benefits of open science, the IWGOS recommends that Federal agencies take steps to incentivize open science; facilitate interagency development of best practices, guidance, and standards for open science, with a focus on data access; and promote interagency and public-private collaborations to further realize the benefits of open science. Such collaboration would include partnerships with other Federal working groups; public, nonprofit, and academic partners; and international partners, many of which are also pursuing the objective of advancing open science.

I. Introduction

Open science is the principle and practice that makes the results of scientific research available, accessible, and usable. It accelerates progress in science, improves research rigor and reproducibility, spurs innovation, and strengthens the economy. By making the results of scientific research accessible to the largest possible audience – other scientists, business innovators, entrepreneurs, students, and American citizens – open science can boost the returns from Federal investments in research and development (R&D). It can drive advances in areas as diverse as agriculture, energy, health, and national security, and catalyze innovation that drives economic growth and prosperity.

The goals of open science are reflected in the public access plans developed by federal agencies.² Open science is essential to achieving the compelling R&D priorities outlined by the Director of the Office of Management and Budget, Mick Mulvaney, and Deputy Assistant to the President, Office of Science and Technology Policy, Michael Kratsios, in the M-17-30 Memorandum entitled “FY 2019 Administration Research and Development Budget Priorities.” Specifically, open science can further administration priorities by advancing American Security, American Prosperity, American Energy Dominance, and American Health.³

Accelerating dissemination of research results advances knowledge and leads to broader application of American scientific contributions. Fundamentally, communicating research results is central to scientific progress, allowing others to test the validity of findings and to build upon these results. Open science allows research to be more easily applied to a range of national priorities, including:

- *Protecting American interests.* Making federally-supported science more open and accessible helps to establish American leadership in scientific research and in areas such as international data standards, which can directly impact American scientific and economic interests.
- *Advancing American health.* Making medical research accessible in real time improves patient diagnoses and treatment. Six out of ten physicians report having changed an initial diagnosis based on new information accessed via online resources/support tools. Nearly nine in ten physicians feel that improved access to online medical information and resources has improved the quality of care at their practices.⁴
- *Protecting American security.* The Departments of Defense (DOD) and Homeland Security (DHS) maintain robust research portfolios to keep Americans safe, both at home and abroad. Public access to the unclassified results of this research helps to encourage and focus innovation on technologies that, in time, will become integral to our nation’s security.

² <https://www.science.gov/publicAccess.html>

³ OMB Memorandum M-17-30, *FY 2019 Administration Research and Development Budget Priorities* (Aug. 17, 2017), available at <https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/memoranda/2017/m-17-30.pdf>

⁴ Wolters Kluwer Health 2011 Point-of-Care Survey, 2011. [UPDATE REFERENCE]

- *Ensuring American energy dominance.* Making the latest scientific evidence available to private sector energy pioneers helps bring Department of Energy (DOE) research to the market faster. For example, through the Gateway for Accelerated Innovation in Nuclear, DOE makes information, data, and R&D infrastructure available to public and private sector stakeholders to speed the development of innovative nuclear energy technologies toward commercial readiness.⁵
- *Increasing government accountability and efficiency.* Making the results of federally-funded research easily available to researchers avoids unnecessary duplication of research, facilitates measurement of the return-on-investment in research, enables needed replication of experiments to improve reliability of results, and permits collected data to be reused for further experimentation and analysis.
- *Maximizing interagency coordination.* By working together, federal agencies have been able to improve the efficiency and effectiveness of their public access policies. For example, eleven agencies use the National Institutes of Health's (NIH) PubMed Central (PMC) to provide public access to scholarly publications, and DOE has partnered with three other agencies further leverage and customize its Public Access Gateway for Energy and Science (PAGES).
- *Supporting Innovative Early Stage Research.* Effective management of early stage research products, including making these products more accessible, has the potential to increase the pace of scientific discovery, accelerate innovation, and promote more efficient and effective use of government and private-sector funding and resources.

Advancing American prosperity through open science. Open science grows the American economy and creates American jobs. Science has more impact, and Federal investments yield better returns, when results are easily accessible and reusable.

- The open flow of ideas, technologies, and people between the U.S. academic sector (funded by Federal investments) and industry have introduced entirely new categories of products and services that have ultimately become billion-dollar industries. In the area of information technology, the "tire tracks diagram"⁶ illustrates how companies that create products using the open ideas that result from federally-sponsored research "repay the nation in jobs, taxes, productivity increases and world leadership."

⁵ <https://gain.inl.gov/SitePages/Home.aspx>.

⁶ Computer Science and Telecommunications Board, National Research Council, *Continuing Innovation in Information Technology*, National Academies Press, 2016.

- Sharing data from new technologies in a common format can create a whole new economic sector. Data from the U.S.-developed Global Positioning System (GPS) provide positioning, navigation, and timing information to all parts of the economy, and serve as a time and frequency standard for the world.⁷ Without such a standard, companies would have to use multiple systems, and the world's economy would be less efficient.
- For every \$1 invested by the Federal government, the Human Genome Project's open research data have resulted in the return of \$141 to the U.S. economy. Between 1988 and 2010, human genomics generated an economic output of \$796 billion, personal income exceeding \$244 billion, and 310,000 jobs.⁸
- Another example is the U.S. Geological Survey (USGS). The budget for the entire USGS in fiscal year 2011 was \$1.1 billion. Meanwhile, for the same fiscal year, the use of freely available government satellite imagery from its Landsat satellite missions generated \$2.19 billion in economic activity.⁹

Barriers to scientific information decrease scientific impact and increase costs. Closed science can inhibit creative and entrepreneurial reuse of research results, reducing the return on investment. This is especially true of interdisciplinary research or research that requires knowledge from beyond a single discipline. Sharing scientific advances broadly across disciplines can lead to novel applications. For example, image-processing technology first used to improve images from the Hubble Space Telescope was later used to help advance digital mammography.¹⁰

The United States is particularly well positioned to reap the benefits of open science. While open science is a global phenomenon,¹¹ the strong connections between American industry, universities, and government enable the United States to be at the forefront of innovation with its ability to translate new scientific knowledge into products and services. Open science strengthens these relationships by providing another channel for industry to access the latest research findings and data stemming from both, U.S. universities and Federal government laboratories.

The IWGOS was charged to prepare a report that recommends “additional objectives for Federal open science policies that further enhance access to a broad range of results of federally-funded scientific research, consistent with agency capabilities and missions” and

⁷ I. Leveson, “GPS Civilian Economic Value to the U.S.,” Report prepared for the National Executive Committee for Space-Based Positioning, Navigation and Timing, 2015.

⁸ Simon Tripp and Martin Greuber, “Economic Impact of the Human Genome Project,” Battelle Memorial Institute, May 2011. [UPDATE]

⁹ H. Miller, L. Richardson, S. Koontz, J. Loomis, L. Koontz, “Users, Uses, and Value of Landsat Satellite Imagery—Results from the 2012 Survey of Users,” U.S. Geological Survey Open-File Report 2013–1269, 2012.

¹⁰ Lubkin, G.B. “Astronomical Image Processing May Improve Breast Cancer Diagnostics,” *Physics Today*, 48(6), 21 (1995). [UPDATE]

¹¹ For example, see OECD (2017), “Business models for sustainable research data repositories”, *OECD Science, Technology and Industry Policy Papers*, No. 47, OECD, Paris. <http://dx.doi.org/10.1787/302b12bb-en>. Or for a list of international funder policies, see <http://v2.sherpa.ac.uk/juliet/>.

outlines “effective strategies for improving preservation, discoverability, and accessibility of scientific data, taking into account the capabilities and activities of Federal departments and agencies, as well as the private sector.”¹²

The IWGOS views open science as a principle and practice that can help guide Federal investment in science. If Federal research results in publications, those publications should be as easy to access as possible. If the Federal government invests in data production, those data should be shared as broadly as possible. Investments in openness amplifies the value of research investment.

The IWGOS recognizes that important practical considerations must inform the degree of openness for any research product. These include, but may not be limited to: law; agency mission; resource constraints; U.S. national, homeland, and economic security; research participant privacy; and proprietary interests. This report provides appropriate next steps the Federal government can take to further open science, incorporating these important considerations.

The report is structured as follows:

- Section II reviews U.S. Federal government activities taken to date to promote access to the results of federally-funded research and identifies the most important lessons learned.
- Section III identifies opportunities for further increasing access to publications and data resulting from federally-funded research and options for expanding the reach of open science to include other research products.
- Section IV recommends steps that the Federal Government might consider in pursuit of the identified opportunities, consistent with agency missions, capabilities, and resources.

II. Accomplishments and Lessons Learned

The U.S. government is making considerable progress in increasing public access to scientific publications and data. As of early 2018, twenty-two Federal departments and agencies (accounting for 99% of the Federal R&D budget) had completed development of public access plans for publications and data resulting from funded research.¹³ The plans describe how agencies will implement policies to ensure that publications are freely available not more than 12 months after publication and that data management plans are prepared and evaluated for new research projects. The policies aim to maximize the sharing of data while respecting privacy, security, and other legal limits. Development of these plans and implementation of resulting policies was informed by numerous public consultations.

¹² National Science and Technology Council, “Charter of the Interagency Working Group on Open Science,” October 2016. See https://www.whitehouse.gov/sites/whitehouse.gov/files/ostp/IWGOS_Charter.pdf.

¹³ See department and agency public access plans at <https://www.science.gov/publicAccess.html> 2017

The benefits associated with public access policies are already coming to fruition. As of early 2018, agency systems were making more than 4.7 million research articles and 200,000 agency data sets publicly available, including research data that are available on Data.gov.¹⁴ Millions of Americans were making use of these resources every day.

In addition, federal agencies continue to improve upon their public access efforts. The DOE, for example, added scientific software to its public access efforts with the November 2017 launch of DOE CODE, an open source platform that makes it easy for DOE-funded researchers and scientific software developers to share scientific software and for the public to discover DOE-funded code. The alpha release contained roughly 700 open source software projects, a volume which is expected to increase significantly over the next 12 months. The U.S. Geological Survey put in place a process for certifying USGS Public Access data servers as Trusted Digital Repositories for data, and three USGS repositories have been so certified. Additional USGS systems providing public access to scholarly publications and data have initiated or are exploring the possibility of TDR certification under this process. The NIH launched in autumn 2017 its Data Commons Pilot Phase, an initiative to test the feasibility of, and develop best practices for, making NIH-funded data sets and computational tools available through communal, collaborative platforms on public clouds. The Data Commons Pilot Phase made nine awards using a special type of funding mechanisms.

Federal agencies continue to gain considerable experience through the development and implementation of their public access plans – lessons that inform future Federal efforts to advance open science. Two of these experiences transcend efforts to increase access to both publications and data:

- **Agencies need flexibility in implementing policy solutions.** Flexibility is necessary because of differences in agency missions, capabilities, and authorities, as well as the mechanisms they use to support R&D, the balance of intramural versus extramural research, and the different types of publications and data that result from their funded research. While they can adhere to common principles, they should also be able to tailor the specific details of implementation in a way that is relevant to their agencies.
- **Interagency cooperation has broadened the understanding of the challenges involved in developing public access policies and continues to improve the efficiency and effectiveness of public access implementations.** Through shared knowledge and services departments and agencies continue to overcome challenges. A number of agencies are using shared infrastructure and common procedures for providing public access to publications and, consistent with the M-17-30 R&D priorities memo, which notes that “agencies should maximize the coordination, promotion, and planning of their R&D programs through the National Science and Technology Council (NSTC).”

Increasing Access to Publications

¹⁴ ADD CITATION

In terms of increasing public access to scholarly publications resulting from federally-funded research, agency efforts to date demonstrate the following:

- **Interagency collaboration can improve implementation.** Collaboration allows agencies to establish joint solutions (see sidebar “Implementing Public Access to Publications: The Value of Interagency Collaboration”). Although agencies and scientific communities have different needs with regard to the necessary infrastructure, there is enough commonality that a relatively small set of platforms is being used to preserve and provide access to publications, maintaining simplicity and usability for researchers and end users.
- **Successful implementation of public access policies leverages public-private partnerships.** Private sector publishers are actively supporting public access policies in a number of ways:
 - DOE PAGES complements author and institutional deposits of metadata and accepted manuscripts with publisher-supplied metadata and links to full text publications on publisher websites.
 - NIH’s PMC has agreements with more than 2,000 journals to submit all of their final published content, or in some cases only NIH-funded content, directly to PMC. More than 70% of papers collected are done with active support from the publisher.
 - The Smithsonian Institution (SI) developed blanket contract addenda with its major publishers for all published journal articles that are authored by one or more SI employees, expediting review and execution of publishing agreements for a large portion of articles.
- **Public access can be accomplished without disrupting existing avenues for scientific communication.** For example, in May 2008, NIH’s Public Access Policy began to require peer-reviewed scientific papers to be available without charge on the Internet 12 months after publication. Concerns that this policy would undermine scientific publishing proved unfounded – from 2007 to 2011, the number of biological sciences and agriculture journals as well as medicine and health journals grew by 15% and 19%, respectively.¹⁵ Instead, publishers created new services around public access, such as a system that aggregates article metadata from participating publishers -- this system is used by several agencies, including DOD, DOE, IARPA, the National Institute

Implementing Public Access to Publications: The Value of Interagency Collaboration

While more than 22 Federal agencies have developed public access plans, agencies are sharing infrastructure where possible and collaborating on a handful of systems. For example, 11 agencies make use of the National Institutes of Health’s (NIH) PubMed Central (PMC). DOE has partnered with the National Science Foundation (NSF), Intelligence Advanced Research Projects Activity (IARPA), and DOD to further leverage and customize its Public Access Gateway for Energy and Science (PAGES) infrastructure for use by those agencies. These agencies are developing a multi-agency portal for submitting articles to their systems. Both the National Oceanic and Atmospheric Administration (NOAA) and the Department of Transportation (DOT) are making use of the Centers for Disease Control and Prevention’s (CDC) Stacks system. This experience indicates that a small set of platforms can support a large number of agencies with common approaches and needs.

¹⁵ NIH Public Access Policy, 2012.

for Standards and Technology (NIST), NSF, SI, United States Department of Agriculture (USDA), and USGS.

- **Interoperability with existing systems can streamline procedures and minimize burden.** A number of agencies (e.g., NIH, NSF, SI) have successfully tied deposition of publications into a public access repository with their existing award management and other systems. In some cases, integrating a public access repository with existing systems can reduce data entry and tracking burdens for investigators, and oversight burdens for agencies. Many functions can even be automated.
- **Public access to publications can be achieved without major costs.** Agencies are implementing public access within “existing budgetary resources.” For example, DOE, USGS, and SI rely on existing infrastructures that collect other forms of scientific and technical information and made the incremental change of collecting final accepted manuscripts. In other cases, (e.g., NSF) public access implementation costs were minimized by leveraging existing infrastructure at DOE (see sidebar). While there are costs involved, for some agencies, those costs have not been large, especially when measured against the investment in research.
- **Researchers can comply with agency policies.** NSF requires the deposit of journal and juried conference publications as part of a Principal Investigator’s annual/final report, making compliance follow naturally from existing business processes. The NIH experience with public access to publications, wherein publications are required to be publicly available on the internet within 12 months, has a compliance rate of 88% over its more than 10-year history, suggesting that post-award compliance is a reasonable expectation. One reason for this behavior is that compliance is public, and scientists must cite these works in applications for new NIH funding.

Increasing Access to Data

With respect to data and the preparation of data management plans, agency experience to date demonstrates that:

- **Data management plans are an important tool for agency stewardship of data resulting from Federal research funding.** Agencies that began receiving data management plans for new research projects¹⁶ have found that researchers are starting to submit stronger data management and sharing plans over time. Additionally, those agencies are finding that the plans improve communication between the researcher and the Federal funding agency about the disposition, planning, and support for data arising from a project. A plan that includes components for both management and sharing of data requires investigators to think through issues such as long-term preservation of data, data distribution, and limitations (if any) on data access and use.
- **Data management plans must balance common elements against discipline-specific needs.** Expectations for the specific content of data management plans vary across

¹⁶ For information on the implementation dates of Federal agency policies for data management plans, see <https://www.science.gov/publicAccess.html#AwardDates>

disciplines and across agencies. The NSF and DOE experience with data management plans, dating back to 2011 and 2015, respectively, demonstrates that practices of the various scientific disciplines differ considerably. Specifically, plan evaluation by scientific domain experts during the proposal review process is critically important. Nevertheless, agencies identify similar categories of content to be included in data management plans and make use of good practices and materials developed by other agencies to improve consistency across agencies. Some, such as the NSF, developed agency-wide guidance that individual directorates and divisions (within directorates) then interpret and implement, while adding their own discipline-specific guidance, to meet the specific needs of their research communities.

- **Sharing interim data is beneficial in some circumstances.** Accessible, quality interim data, in addition to final data, are essential to rapid response in emergencies. Particularly in health crises where time is a valuable resource, the sharing of interim-data can save the lives of Americans and people globally. Two examples from the CDC are the outbreak of *Elizabethkingia anophelis*,¹⁷ and the sharing of provisional of data on the Zika outbreak.¹⁸ Similarly, preliminary, near-real time data from the USGS associated with earthquake intensity, location of volcanic ash plumes, and flooding of rivers and streams are essential to public health and safety when associated natural disasters occur.
- **Privacy and confidentiality can be protected, while allowing for meaningful sharing of data.** Even in situations involving personally identifiable data where privacy and confidentiality must be protected, meaningful sharing of data is still possible. For example, NIH developed effective approaches for allowing researchers to reuse individual level genomic data while protecting patient privacy.¹⁹ Likewise, in 2005, CDC developed an early warning system for potential tuberculosis outbreaks based on research from actual case reports. This system is useful in identifying outbreaks and tracking trends, while maintaining privacy and confidentiality.²⁰
- **A combination of public and private-sector repositories can support data preservation and access.** Data preservation and access makes use of a diverse set of publicly- and privately- supported data repositories. Many Federal agencies created or contracted with (or externally funded the creation of) effective data repositories that store data resulting from their funded research. Many private sector solutions (institutional, for-profit and nonprofit; discipline-specific and multidisciplinary) also exist and can provide long-term data preservation, access, and discovery capabilities. Given the diversity of data types generated by federally-funded research, a combination of public and private-sector repositories will likely become part of the solution to data preservation and access needs.

¹⁷CE Figueroa Castro, et al, *Elizabethkingia anophelis*: Clinical Experience of an Academic Health System in Southeastern Wisconsin, *Open Forum Infectious Diseases* 5(4), April 2018.

¹⁸ *Statement on Data Sharing in Public Health Emergencies*, *The Lancet*. Available online at <http://www.thelancet.com/campaigns/zika/statement>

¹⁹ See <https://federalregister.gov/a/2014-2038>; <https://grants.nih.gov/grants/guide/notice-files/NOT-OD-14-124.html>

²⁰ GMindra, JM Wortham, MB Haddad, and KM Powell, "Tuberculosis outbreaks in the United States, 2009-2015," *Public Health Reports*. 2017;132(2),157-163.

- **Data can be preserved and made accessible over the long-term with time-limited funding.** Many repositories ensure long-term preservation with a one-time deposit fee, which is reimbursable from a Federal research grant. Nevertheless, there is still great diversity among agencies about how researchers should address the need to provide for long-term data preservation and which repositories are most suitable. Some agencies offer explicit guidance about particular repositories to be used, while others provide more general guidance to assist awardees in selecting repositories. Federal agencies should consider offering guidance to awardees for including provisions in data management plans regarding necessary standards for repositories and addressing compliance challenges associated with data meant to be long-lived.
- **Public access to data is more challenging than for publications.** Digital data sets are much more heterogeneous than publications, and therefore more technically difficult to curate and share. A number of important remaining challenges are noted here:
 - *Appropriate incentives are needed to promote culture change.* Datasets are standalone research products that are valuable in their own right and which researchers are accustomed to retaining. Federal agencies are encouraging a new norm, that this scientific data should be shared as consistent with agency mission. This cultural change requires incentives that help credit and reward investigators for sharing their data. Clear incentives will simplify implementation, improve compliance, and reduce oversight efforts.
 - *Cost-effective approaches are needed to provide long-term preservation of, and access to, data.* Most successful models for data repositories depend directly or indirectly on Federal funding. The ability of agencies to document, clean, preserve, and curate research data is therefore limited by agency budgets. Implementing long-term preservation, discovery, access, and curation for data is likely to be costlier than for publications and will demand cost-effective approaches to identify valuable data and support its preservation and accessibility.
 - *standards must be developed and widely adopted to improve the consistency of data collection, description, and preservation.* Data sharing could become much easier with the development of consistent common data elements for data collection, standard formats for representing specific data types, standard metadata to improve discoverability of data. Standards are also needed to assist with quality assurance and quality control, and protect against misuse of published data (i.e., intentional falsification or fabrication).
 - *Data sharing and usage expertise vary among disciplines.* Disciplines vary in their experience with data sharing, and not all disciplines are yet prepared to manage or share their data effectively. Departments and agencies may need to facilitate resource and tool development, training, interdisciplinary collaboration, and other efforts to foster a culture change and bridge the expertise gap.

- *Data discoverability remains a challenge.* Even as agencies and non-Federal entities establish data repositories, tools for data discovery are lacking in many scientific disciplines. A number of disciplines have capable tools for data discovery, while others are actively engaged in improving resources in this area.

III. Opportunities to Advance Open Science

Federal agencies are making significant strides with public access. Despite this, open science continues to offer new opportunities to increase the impact of Federal investments in research. While it is essential that Federal agencies work together, individual agencies need to determine which specific objectives to pursue, taking into account their different missions, operational contexts, available resources, and stakeholders' needs. Additionally, there are opportunities for coordinating efforts among Federal agencies and collaborating with the private sector.

1. **Increase the Availability and Timeliness of Narrative Research Products**

Recent efforts to provide public access to peer-reviewed publications resulting from federally-funded research, not more than 12 months after the date of publication, are making considerable contributions to the scientific community. Agencies can build upon these efforts by accelerating the timetable for making publications available to the public and by enhancing access to a wider range of written, narrative research products resulting from federally-funded research. Opportunities to consider include:

- Reducing the embargo period for peer-reviewed publications authored solely by Federal employees to be less than 12 months.
- Identifying scenarios where publications may warrant shorter embargo periods (e.g., to facilitate responsiveness to public health epidemics or other national emergencies).
- Identifying opportunities to increase public access to peer-reviewed publications that were published before Federal agency public access policies went into effect.
- Enhancing access to Federal agencies' technical reports and narrative research products other than peer-reviewed publications.
- Exploring opportunities for the responsible sharing of preprints to speed research dissemination, recognizing that preprints are not been peer reviewed, that their use varies considerably across scientific disciplines, and that they may need internal agency clearance before being made publicly available.²¹

2. **Increase the Availability and Timeliness of Access to Scientific Data**

²¹ Preprints are complete drafts of written research reports in the format of articles which have not yet been peer reviewed, increasingly made publicly available through established preprint repositories. See <https://www.nature.com/search?q=preprints> and <http://search.sciencemag.org/?q=preprints> for additional information.

Agencies continue to make progress in implementing policies for data management plans. Many opportunities remain to improve the availability and timeliness of access to scientific data, including:

- Working together and with non-Federal partners (in the public and private sectors) to develop the infrastructure needed to provide long-term preservation of, discoverability of, and access to scientific data.
- Strengthening incentives-and removing disincentives-for effective data management practices to help instill a culture that rewards and recognizes broader use of scientific data. Agency mandates to researchers regarding data management and sharing are a necessary, but insufficient, condition for success.
- Developing and promulgating methods for mitigating risks associated with privacy, security, and confidentiality when sharing scientific data.
- Assisting researchers in identifying suitable repositories for storing data arising from their work (e.g., by identifying best practices for repositories that store data resulting from federally-funded research).
- Continuing to improve access to Federal data sets that can be used in research (in addition to those resulting from research), such as data from Federal statistical agencies, scientific collections, and monitoring and instrument programs.

3. Increase Access to Other Research Products

Open science efforts to date have focused largely on increasing access to scholarly publications and scientific data. Other research outputs could also be made more accessible, such as:

- Providing access to research protocols (i.e., documents that describe the methods to be used in specific research studies, such as clinical trials) before studies are completed can reduce unintended duplication of research and increase rigor. Access to protocols after the studies are completed can enable further interpretation of the results, provide contexts for secondary use of the scientific data resulting from the studies, and enable systematic replication.
- Increasing access to software and code developed through federally-funded research, and/or other outputs that are necessary to use, analyze, or interpret shared data.

4. Improve the Systems for Making Research Products Public

Federal agencies have developed a number of systems to provide access to publications and data resulting from its funded research. By improving those systems, agencies could simplify procedures for researchers to make their publications, data, and other research outputs more accessible, while also allowing users to more easily find, access, and use those materials. Efforts could include:

- Identifying and implementing technical and administrative approaches to simplify procedures for researchers to provide public access to manuscripts/articles and to scientific data in different systems and under different Federal agency policies.
- Improving user interfaces and providing documentation that will enable better understanding and use/re-use of research products.
- Using effective approaches to link narrative research products and associated data sets, as well as different data repositories, in order to: facilitate search, access, and citation of data; improve research reproducibility; and assess the success and value of data openness.
- Improving both machine- and human-driven discovery across agency-designated publication and data repositories via application programming interfaces (APIs), federated search tools (e.g., Data.gov, Science.gov), and other innovative approaches.
- Creating metadata more efficiently to enable faster throughput in processing materials and better discovery. Robust metadata are essential for discovery and usability of the product, especially for non-textual materials, such as data sets, software, and artifacts.
- Offering guidance to researchers on how make their research products easier to use through techniques such as documentation standards, repository selection criteria, and use of persistent identifiers.

5. **Lower Barriers to Effective Use of Open Science Content**

Federal agencies can take steps, individually, collectively, and in collaboration with other stakeholders, to make open science content more usable and to unlock its full potential to contribute to economic and societal objectives. Agencies could consider:

- Identifying innovative strategies to fuel open science initiatives, including approaches like crowdsourcing, citizen science, and challenge and prize mechanisms, as well as partnerships with the scientific community, publishers, libraries, and other organizations.
- Supporting community-based efforts to develop standards for data and metadata, adopting community-based standards in Federal systems, and promoting their use by funded researchers.
- Encouraging use of persistent identifiers for publications, data, scientific collections, specialized equipment, labs, and facilities, and other resources utilized for research projects to enhance metadata, enable linking, and provide history of studies and analyses. Converting narrative research products into machine-readable formats so that computers can help facilitate dissemination of science and increase the impact of federally-funded science.
- Broadening access to peer-reviewed publications through different licensing approaches, investigator incentives, and/or partnership with publishers.

- Promoting approaches to improve data quality and data documentation (e.g., community standards, open metadata, training, and workforce development).
- Promoting the release of interim data during national emergencies to spur collaborations and innovative solutions (e.g., releasing interim public health data to advance American health).
- Encouraging the private sector to leverage open science content and their downstream application in science and other sectors of the economy. Federal agencies could open opportunities for the private sector to apply new technologies to research outputs and develop value-added services to build on existing Federal resources.

6. Develop Better Metrics and Measures

Agencies are working to improve ways to measure the impacts of Federal public access efforts. Opportunities to enhance these efforts include:

- Identifying approaches to measure progress in increasing access to narrative research products, scientific data, and other research products.
- Identifying approaches to enable, encourage, and characterize compliance with agency public access requirements for peer-reviewed publications and data.
- Supporting research to improve evaluation of open science across Federal agencies and the institutions and infrastructure that they fund, as well as on the research enterprise, entrepreneurship, and the economy.
- Identifying approaches to use persistent identifiers to enable measurement of the use and impact of research outputs.

IV. Recommendations

Many opportunities exist to advance open science in ways that support the missions of Federal agencies and national R&D priorities. The IWGOS recommends that priority be given to three areas: (1) creating incentives to foster a culture change that recognizes and rewards open science practice; (2) developing interagency best practices, guidance and standards for open science, with a particular focus on data access; and (3) facilitating interagency and public-private collaborations to further realize the benefits of open science. More specific approaches for addressing these priorities are outlined below.

- 1. Agencies should help incentivize open science practices.** Open science is a relatively new concept for the Federal government and many of the scientists it funds and supports. Federal agencies should collaborate with other stakeholders to identify and strengthen incentives for practicing open science and making the results of federally-funded scientific research more easily accessible and usable. The IWGOS recommends that Federal agencies:

- *Identify ways to incentivize culture change for open science among federally-funded researchers (e.g., requiring data management and sharing plans, incentivizing the research community to understand the benefits of open science and receive credit/attribution for open science activities).* Incentivizing a culture change that promotes open science practices may include recognizing data sets as important, standalone scientific products and as evidence of scientific excellence; rewarding openness in the evaluation of individual scientists' performance; and identifying metrics to measure the impact of shared data on work by other scientists.
- *Identify ways to incentivize the private sector to develop tools that support open science.* Such tools could improve data discoverability and sharing, facilitate text mining, and provide information infrastructure for data storage and access. The private sector is making tremendous strides in data science and agencies can help focus some of that effort on scientific research data. Incentives like public-private partnerships, prizes, and challenges may help publishers, innovators in machine learning and artificial intelligence, and research funders to contribute toward more effective and open science. These incentives could promote the use of, for example, common APIs to publications, data, and software collections. These interoperable APIs could then be used to create virtual, compatible, aggregated collections amenable to large-scale text and data mining applications.

2. Agencies should facilitate the interagency development of best practices, guidance and standards on open science, with a particular focus on data access. Agencies are making substantial progress in advancing open science by enabling public access to both publications and data. There are still numerous opportunities ahead to improve public access to publications and other types of research outputs (e.g., software and protocols), but the primary near- and medium-term challenges lie in sharing data.

Agencies have many opportunities to work together to increase the benefits and reduce the burden of data preservation and access. Agencies should continue to work together to: 1) refine expectations and guidance for data management and the selection of data repositories; 2) improve and refine approaches to protecting privacy; and 3) improve consistency of policies and practices across Federal funding agencies, philanthropic organizations, and international funders. In addition, agencies should encourage continued improvement in the quality, documentation, versioning, and provenance of shared data. The IWGOS recommends that Federal agencies:

- *Accelerate efforts to create joint solutions for common data sharing challenges.* By connecting agencies working on same or similar research areas or disciplines, seeking consistent approaches to the development of data repositories, discovery tools, and compliance monitoring public access becomes more uniform and thereby easier to navigate and use by both investigators and the end user.
- *Coordinate their efforts to provide guidance to researchers for selecting suitable repositories for federally-funded research data.*

- *Recognize the importance of data standards and coordinate efforts to work with relevant communities to identify, develop, promulgate, and encourage the use of standards for data and metadata that facilitate data connectivity, interoperability, and reuse across agencies.*
- *Improve efforts to make digital data more discoverable and accessible via the use of persistent identifiers for research objects, researchers, and research organizations.* Such identifiers are key to interlinking related research objects and to supporting open science and reproducibility.

3. Agencies should facilitate interagency and public-private collaborations to further realize the benefits of open science.

- *Federal agencies should continue to formally meet to discuss open science.* To bolster efforts toward open science, Federal agencies must address issues of research culture, incentives, infrastructure, policy, and more. IWGOS agencies are addressing these challenges through their open science policies, while pursuing common objectives tailored to their specific missions and research communities. Some challenges are common to all disciplines and shared approaches can reduce training and administrative burden. IWGOS recommends Federal agencies continue to meet regularly to address issues such as policy harmonization, burden reduction, implementation, measurement, infrastructure, and emerging opportunities to promote open science. IWGOS also recommends stronger collaboration with other Federal working groups addressing related topics. These include working groups that coordinate Federal-wide research initiatives in specific domains of science (e.g., materials science, microbiome research, and arctic research) and working groups on cross-disciplinary topics such as open data, data science, scientific collections, and technology transfer.
- *Engage all stakeholders to fully realize economic and social benefits of open science.* Successful implementation of open science policies and practices will require close collaboration with stakeholders outside the Federal government. Important partners include the academic and non-profit sectors, businesses and entrepreneurs, and international partners.
 - *Public, nonprofit, and academic partners.* Federal agencies should work closely with the academic community to ensure that open science policies and practices are understood by the research community and practical to implement. Universities also have ambitions related to open science and are developing supporting infrastructure and policies. Such efforts should be coordinated as much as possible with Federal efforts. Federal agencies will need to partner with universities, scientific societies, and other stakeholders in the scientific community to help establish incentives for open science that recognize and reward the practice of open science.
 - *Businesses and entrepreneurs.* Realizing the full economic and societal potential of open science requires participation beyond the scientific research community.

Other sectors of the economy have made great strides in pushing knowledge to targeted audiences, data mining, and collaboration and networking tools. Commercial investment in these areas often dwarfs Federal investment. Federal science agencies could enhance their impact by engaging knowledge management solutions, and their associated private investment, to focus on research products. Agencies could also work on the standards, infrastructure, and other technical details to ensure federally-funded open science products are attractive resources for the private sector.

- *International partners.* Because scientific communities span national borders, international engagement can advance open science. Open science in other countries can help U.S.-based researchers gain better access to global knowledge. Many countries are seeking innovative solutions for data preservation and access, incentive systems that reward open science practices, and approaches for developing needed skills in the scientific workforce. Federal agencies can promote the international adoption of open science practices that support American interests. Federal agencies should continue to participate in international fora to help identify good practices, standards, and opportunities to align initiatives around American policies, and leverage the solutions (e.g., technical, operational) that emerge from these efforts.

Steps such as those outlined above can help achieve the promise open science offers to accelerate research, development, and innovation for American prosperity.



FY 2017 ANNUAL REPORT TO
CONGRESS:

E-GOVERNMENT ACT IMPLEMENTATION

OFFICE OF MANAGEMENT AND BUDGET

March 2018

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INTRODUCTION

Since the passage of the E-Government Act of 2002 (E-Gov Act) 44 U.S.C. § 3601, Federal agencies have made significant progress in using the internet and other technologies to enhance citizen access to Government information and services, thereby improving Government transparency, data-driven decision making and the customer experience. The E-Gov Act requires Federal agencies and the Office of Management and Budget (OMB) to report annually on their progress implementing the various provisions of the E-Gov Act, as described in more detail below.

OMB developed this report in accordance with 44 U.S.C. § 3606, which requires OMB to provide a summary of the information reported by Federal agencies and a description of compliance by the Federal Government with the provisions of the E-Gov Act. The E-Gov Act includes numerous requirements for OMB and Federal agencies to ensure effective implementation. For example, the E-Gov Act requires agencies to provide OMB links to various websites including the agency's Freedom of Information Act (FOIA) information and agency activities on www.USA.gov. This report provides a summary of OMB and agency compliance with these requirements. Additionally, in an effort to streamline this year's report, OMB has utilized the Federal IT Dashboard (IT Dashboard) to provide agency implementation data. The information on the IT Dashboard reflects agency submissions provided to OMB.

Additionally, consistent with previous E-Gov Act reports, this report includes information required under the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. No. 109-282, codified at 31 U.S.C. § 6101 note). Under this Act, OMB is required to oversee and report to Congress on the development of a website through which the public can readily access information about grants and contracts provided by the Federal agencies.¹

This report is structured in numerical order according to the required sections of the E-Gov Act. For a description of reporting requirements and the corresponding report sections, please see Appendix I. This report is organized as follows:

- **Section I – Office of E-Government Initiatives**

In accordance with Section 101 of the E-Gov Act (44 U.S.C. §§ 3604 and 3606), this section describes the status of the E-Government Fund (E-Gov Fund) in Fiscal Year (FY) 2017. Since FY 2015, appropriations for the E-Gov Fund have been appropriated to the General Services Administration's (GSA) Federal Citizen Services Fund (FCSF). Any remaining balances in the E-Gov Fund were authorized to be transferred to the FCSF. This section describes some of the initiatives that the Office of the Federal Chief Information Officer (OFCIO) (formerly the Office of Electronic Government and IT)

¹ Federal Funding Accountability and Transparency Act of 2006, 31 U.S.C. § 6101 note provides:

REPORT.— (1) IN GENERAL.—The Director of the Office of Management and Budget shall submit to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Government Reform of the House of Representatives an annual report regarding the implementation of the website established under this section. (2) CONTENTS.—Each report submitted under paragraph (1) shall include—(A) data regarding the usage and public feedback on the utility of the site (including recommendations for improving data quality and collection); (B) an assessment of the reporting burden placed on Federal award and subaward recipients; and (C) an explanation of any extension of the subaward reporting deadline under subsection (d)(2)(B), if applicable. (3) PUBLICATION.—The Director of the Office of Management and Budget shall make each report submitted under paragraph (1) publicly available on the website established under this section.

leads to improve the transparency, efficiency, and effectiveness of Federal operations, and increase citizen participation in Government.

- **Section II – Government-wide Information Technology (IT) Workforce and Training Policies**

In accordance with Section 209 of the E-Gov Act (44 U.S.C. § 3501 note), this section provides a summary of activities related to IT workforce policies, evaluation, training, and competency assessments.

- **Section III – Disaster Preparedness**

In accordance with Section 214 of the E-Gov Act (44 U.S.C. § 3501 note), this section provides a summary of how IT is used to further the goal of maximizing the utility of IT in disaster management.

- **Section IV – Geospatial**

In accordance with Section 216 of the E-Gov Act (44 U.S.C. § 3501 note), this section provides a summary of activities on geospatial information systems and initiatives and an overview of the Geospatial Platform.

- **Appendices – Compliance with Other Goals and Provisions of the E-Gov Act**

The appendices contain broad overviews of activities agencies are undertaking to comply with the goals of the E-Gov Act, including highlights of some agency-specific efforts. Full agency descriptions of compliance with each provision of the Act can be found on the IT Dashboard. As part of the broader OMB effort to eliminate duplicative data collections and reduce reporting burden placed on Federal agencies, OMB did not request information for several appendices in its annual E-Gov Act implementation data collection this year. Specifically, information was not collected from agencies that in past reports would have been included in Appendix D, Appendix E, Appendix F, and Appendix G. Please read explanations in each of these sections noting primary sources where this information can be found.

- *Appendix A - Enhanced Delivery of Information and Services to the Public:* In accordance with Section 101 of the E-Gov Act, (44 U.S.C. § 3602(f)(9)), this appendix describes agency activities that enhance delivery of information and services to the public.
- *Appendix B - Performance Integration:* In accordance with Section 202(b) of the E-Gov Act (44 U.S.C. § 3501 note), this appendix describes performance metrics being used and tracked for IT investments, and how these metrics support agencies' strategic goals and statutory mandates.
- *Appendix C - Government-Public Collaboration:* In accordance with Section 202(e) of the E-Gov Act (44 U.S.C. § 3501 note), this appendix describes how agencies utilize technology to initiate Government-public collaboration in the development and implementation of policies and programs.

- *Appendix D - Credentialing:* In accordance with Section 203 of the E-Gov Act (44 U.S.C. § 3501 note), this appendix describes current activities agencies are undertaking to achieve interoperable implementation of electronic credential authentication for Federal Government transactions. In an effort to eliminate duplicative data collections and reduce reporting burden on agencies, information for this appendix was not collected this year. For information on agency initiatives in implementing security standards, including the adoption of PIV cards, please see OMB's [FY17 FISMA Report](#).
- *Appendix E - E-Rulemaking:* In accordance with Section 206 of the E-Gov Act (44 U.S.C. § 3501 note), this appendix describes agencies' online electronic regulatory submission capabilities, specifically the usage of www.Regulations.gov and the Federal Docket Management System. In an effort to eliminate duplicative data collections and reduce reporting burden on agencies, information for this appendix was not collected this year. To view proposed rules, requests for information, or other documents that Federal agencies have issued for public feedback, please view the Regulations.gov or FDMS websites.
- *Appendix F - National Archives Records Administration Recordkeeping:* In accordance with Section 207(d) and (e) of the E-Gov Act (44 U.S.C. § 3501 note), this appendix describes agencies' adherence to the National Archives and Records Administration's recordkeeping policies and procedures for electronic information online and other electronic records. In an effort to eliminate duplicative data collections and reduce reporting burden on agencies, information for this appendix was not collected this year. To view NARA's record of agency inspections, records management program reviews, surveys and assessments, and annual reporting, please review the [Records Management Oversight and Reporting Program](#)'s website.
- *Appendix G - Privacy Policy and Privacy Impact Assessments:* In accordance with Section 208(b) of the E-Gov Act (44 U.S.C. § 3501 note), this appendix provides information regarding agencies' privacy impact assessments and privacy policies. In an effort to eliminate duplicative data collections and reduce reporting burden on agencies, information for this appendix was not collected this year. For information on agency privacy initiatives, please see OMB's [FY17 FISMA Report](#).
- *Appendix H - Agency Information Technology Training Programs:* In accordance with Section 209(b) of the E-Gov Act (44 U.S.C. § 3501 note), the appendix describes agency training programs for the IT workforce.
- *Appendix I - Description of E-Gov Act Reporting Requirements and Corresponding Report Sections.*

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SECTION I: OFFICE OF E-GOVERNMENT INITIATIVES**The E-Government Fund**

The E-Gov Act established an E-Gov Fund to provide financial support for the innovative use of IT in the Federal Government (44 U.S.C. § 3604). Projects supported by the E-Gov Fund included efforts to:

- Make Federal Government information and services more readily available to members of the public;
- Make it easier for the public to apply for benefits, receive services, pursue business opportunities, submit information, and otherwise conduct transactions with the Federal Government; and
- Enable Federal agencies to take advantage of IT in sharing information and conducting transactions with each other and with state and local governments.

Pursuant to the Act, OMB was required to report annually to Congress on the operation of the Fund, including which projects the Director of OMB approved for funding from the Fund, and the results those funded projects that achieved.

Since FY 2015, as first specified in the Consolidated and Further Continuing Appropriations Act 2015, Pub. L. No. 113-235, funding for E-Gov Act projects has been appropriated to the GSA Federal Citizen Services Fund (FCSF) rather than to the E-Gov Fund. Therefore, GSA's FCSF now manages the allocation of funds to support E-Gov Act IT initiatives. The 2015 Appropriations Act also permitted transfer of any funds in the E-Gov Fund from fiscal years prior to FY 2015 that remained unobligated as of September 30, 2014, to the FCSF.²

² Consolidated and Further Continuing Appropriations Act 2015, Pub. L. No. 113-235
<https://www.gpo.gov/fdsys/pkg/PLAW-113publ235/html/PLAW-113publ235.htm>

Select Highlights of OFCIO Initiatives for FY 17

The Office of E-Gov (OFCIO) at OMB continues to drive innovation in Government operations, using IT to improve the transparency, efficiency and effectiveness of Federal operations, and increase citizen participation in Government.

Data Center Optimization Initiative & Cloud Strategy

In 2010, OMB launched the Federal Data Center Consolidation Initiative (FDCCI) to reduce the number of Federal data centers and associated costs. Even with those initial efforts, by 2014 more than 9,000 data centers remained in the Federal inventory. As a result, Congress passed the Federal Information Technology Acquisition Reform Act (FITARA) in 2014, which required OMB to release updated guidance for agencies on data center optimization. OMB issued FITARA implementation guidance for agencies in OMB memorandum M-15-14: *Management and Oversight of Federal Information Technology* (listed on management.cio.gov). OMB also released a new data center strategy, M-16-19: *Data Center Optimization Initiative* (DCOI) on August 1, 2016, which set a goal of closing approximately 52% of the remaining 9,000 data centers in the Federal inventory. The initiative also seeks to optimize remaining data centers across five metrics, develop a shared services marketplace in conjunction with the General Services Administration (GSA), and reduce data center spending by \$2.7 billion by the end of FY 2018. OMB then worked with the CIO Council to set up a management.cio.gov page to provide additional information to assist agencies in meeting their closure goals. Since implementation of DCOI, agencies have closed an additional 2,926 data centers, resulting in more than \$3 billion in report cost savings and avoidances across the Federal Government. OMB continues to assist agencies with oversight and implementation support for the DCOI goals. The latest DCOI cost-savings, closures, and optimization figures are all available on the IT Dashboard.

DCOI will sunset at the end of the FY 2018, thus requiring a new policy to update agency metrics, milestones, and reporting requirements. The IT Modernization Report, a document created in response to Executive Order (EO) 13,800 also includes a milestone to update OMB's Cloud First policy. More information will be included in the next annual report to describe progress made towards this initiative.

Cybersecurity Efforts

In accordance with the Federal Information Security Modernization Act of 2014 (FISMA), OMB is responsible for overseeing Federal agencies' information security practices and developing and implementing related policies and guidelines. The Federal Chief Information Security Officer (CISO) leads the OMB Cyber and National Security Unit (OMB Cyber), which serves as the dedicated team within OFCIO that works with Federal agency leadership to address information security priorities. OMB Cyber collaborates with partners across the Government to develop cybersecurity policies, conduct data-driven oversight of agency cybersecurity programs, and coordinate the Federal response to cyber incidents.

During FY 2017, Federal agencies made considerable progress in strengthening their

defenses and enhancing their workforces to combat cyber threats. In particular, agencies worked to enforce the use of multi-factor Personal Identity Verification (PIV) cards, with 88% of Government users now using this credential to access Federal networks. Additionally, all civilian CFO Act agencies now meet Federal anti-phishing targets, with 19 also meeting Federal malware defense targets. Agencies have also made significant progress toward safeguarding their high value IT assets and employing capabilities to identify, detect, and protect hardware and software assets on their networks.

OMB also worked to implement Executive Order 13800, *Strengthening the Cybersecurity of Federal Networks and Critical Infrastructure*. Pursuant to this effort, OMB assessed 96 agencies to determine the level to which they were actively managing their cybersecurity risk. Not only was this the largest assessment of Federal agencies to have been undertaken, the use of over 70 metrics also marks the most in-depth assessment of Federal cybersecurity thus far carried out. This information informed the Federal Cybersecurity Risk Determination Report and Action Plan to the President of the United States, which set forth OMB's findings and provided recommendations to the President for improving the state of Federal cybersecurity.

The Executive Order 13800 also tasked the Director of the American Technology Council (ATC) to coordinate a report to the President regarding the modernization of Federal IT. The resulting Report to the President on Federal IT Modernization describes the need to embrace the broader use of cloud and shared services, while collecting agency data to help inform the actions described in the report.

Additional information about these efforts can be found in the FY 2017 Annual FISMA Report³

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Open Government and Federal Source Code

In FY 2017, the Interagency Open Data Working Group continued to responsibly present the power of data for the benefit of the American public and maximize the nation's return on its investment in data. Led by OMB and the Data.gov team at the GSA, this community of practice hosts monthly implementation meetings on Project Open Data for Federal employees and contractors. It connects over 900 Federal data professionals who develop open data tools share best practices, and ensure the adoption of best practices related to data governance, data policy, and the hiring and training of data science professionals. These U.S. Government Open Data meetings are open to public stakeholders on a quarterly basis.

Also in FY 2017, OFCIO led OMB initiatives to prioritize agile development with users and emerging technologies to further facilitate the release of open data. OMB, GSA Data.gov, and GSA DigitalGov teams worked with Federal agencies to promote consistent, customer-friendly feedback mechanisms on opening new datasets and improving existing datasets to fuel innovation and real-world impact through data-driven government. Data.gov is home to the Federal Government's open data, where the public can search nearly 200,000 Government

³ Link to FY17 FISMA Report

datasets, tools, and resources to conduct research, develop web and mobile applications, design data visualizations, which helps fuel American innovation, entrepreneurship, businesses, and more. Project Open Data provides agencies with tools and best practices to make their data publicly available. [Project Open Data Dashboard](#) provides publicly accessible evaluations of agency progress in implementation of [OMB memorandum M-13-13: Open Data Policy—Managing Information as an Asset](#). OMB continues to update the agency evaluations on a quarterly basis.

In May 2017 the Treasury Department, in a collaboration with OMB to advance Open Government/Data, released the new version of the [USAspending.gov](#) site in accordance with the Digital Accountability and Transparency Act (DATA Act) requirements. The “Beta” site will run concurrently with the previous version of the [Beta.USAspending.gov](#) website over the summer to minimize disruptions to users' data access and provide more time to add user-centered enhancements. The new [Beta.USAspending.gov](#) site tracks agency expenditures and for the first time, links relevant agency expenditure data with awards distributed by the Government.

In the FY16 E-Gov Act Report, OMB first described its successful release of OMB memorandum M-16-21: *Federal Source Code Policy: Achieving Efficiency, Transparency, and Innovation through Reusable and Open Source Software*. This policy aimed to mitigate wasteful spending associated with duplicative software acquisitions, ultimately reducing the \$6 billion that the Federal Government spends each year on new software transactions. Following this policy, new custom software developed specifically for or by the Federal Government must be made available for sharing and reuse across all Federal agencies. This has the potential to save significant taxpayer dollars by trimming duplicative acquisitions and avoiding vendor lock-in. In addition, agencies are required to take part in an open source pilot program. Agencies will share 20 percent of new federally funded custom code as open source software as part of a three-year pilot program designed to maximize the economic benefits associated with code sharing and reuse. This portion of the policy will sunset after three years.

In November 2016, OMB launched [Code.gov](#) to facilitate the effective implementation of the Federal Source Code Policy. This platform enables agencies to identify whether their software needs can be satisfied via an existing Federal Government solution prior to procuring new software, thereby cutting wasteful spending and avoiding duplicative acquisitions. When the platform was launched in 2016, it represented 45 software projects. Today, the platform represents over 3,000 projects across the federal government.

Growth and engagement across [Code.gov](#) has been steadily increasing throughout FY17. Many projects that are represented on the platform have been reused several times, enabling agencies to realize substantial time and cost savings by avoiding duplicative software development. For example, [analytics.usa.gov](#) – a website built by GSA that tracks real-time traffic to government websites – has seen reuse not only by other federal agencies, but also by several city and state governments. [Code.gov](#) continues to engage with federal agencies to facilitate effective code sharing and collaboration across the government. By emphasizing code reuse, the government will continue fulfilling its objective to cut wasteful spending, save taxpayer dollars, and improve the fidelity of government source code across the country.

SECTION II: GOVERNMENTWIDE IT WORKFORCE AND TRAINING POLICIES

Section 209 of the E-Gov Act (44 U.S.C. § 3501 note) requires OPM, in coordination with OMB, the Chief Information Officers (CIO) Council, and GSA to analyze the personnel needs of the Federal Government related to IT and information resource management. The E-Gov Act further states that this group must identify where current training does not satisfy current personnel needs, and that it must issue policies to promote development of performance standards for training. In accordance with Section 209 of the E-Gov Act, this section provides a summary of FY 2017 activities related to IT workforce policies, evaluation, training, and competency assessments. Appendix H of this report provides examples of agency-specific training initiatives.

OPM continues to be actively engaged in Government-wide cybersecurity work. In 2015, Congress passed the Cybersecurity Workforce Assessment Act, which focused on improving cybersecurity in the U.S. through enhanced sharing of information about cybersecurity threats and other purposes. It covered four components, including the development of a Federal Cybersecurity Workforce Assessment, which included, among other things, common definitions, a national cybersecurity workforce measurement initiative, identification of cyber-related roles of critical need through the NICE framework, and Government Accountability Office (GAO) status reports.

In February 2016, the Cybersecurity National Action Plan (CNAP) was published, which identified near-term actions and puts in place a long-term strategy to enhance cybersecurity awareness and protections, protect privacy, maintain public safety as well as economic and national security, and empower Americans to take better control of their digital security. In July 2016, OPM and OMB issued the Federal Cybersecurity Workforce Strategy. This strategy, as required by CNAP, was the result of hundreds of federal and private sector inputs. OPM, in partnership with OMB, has achieved the following implementation goals since the release of the Federal Cybersecurity Workforce Strategy:

- **Goal 1: Workforce Needs/Workforce Planning**
OPM is leading the Government-wide adoption of a new coding structure aligned to the National Initiative for Cybersecurity Education (NICE) Cybersecurity Workforce Framework and will continue to actively provide guidance, training, and technical assistance to all agencies. By April 2018, agencies will complete coding all cybersecurity positions under the NICE Framework as required by the Federal Cybersecurity Assessment Act of 2015.
- **Goal 2: Expand the Federal Pipeline through Education and Training**
OPM briefed students from 146 (68% of the total 214) Centers of Academic Excellence, as well as 60 of the 69 Scholarships for Service schools, and students from 116 other colleges and universities with cybersecurity programs. Briefings included: “Pathways Programs for Students and Recent Graduates,” “Finding and Applying for Federal Jobs/Navigating USAJOBS,” and “Writing Your Federal Resume.”

- Goal 3: Recruit and Hire Highly-Skilled Talent

OPM established a Government-wide Cybersecurity Human Resources (HR) Cadre comprised of representatives from each Chief Financial Officer (CFO) Act agencies to improve HR delivery to Chief Information Officers (CIOs). OPM released a Strategic Recruitment for Cybersecurity Model on July 25, 2017, which provides guidance to agencies on how to secure top cybersecurity talent through building talent pipelines, cultivating and maintaining partnerships, monitoring recruitment activities, and sharing accountability. OPM issued Direct Hire authority for Information Technology (Information Security) GS-2210 positions and is exploring Direct Hire for additional Qualifying Cybersecurity Occupations.

- Goal 4: Retain and Develop Highly Skilled Talent

On July 12, 2017, OPM hosted the 2nd Government-wide Cybersecurity Orientation with over 200 participants. OPM also drafted legislation on Cybersecurity Skills and Education Incentives to obtain and retain credentials. Cybercareers.gov was launched as a Government portal aimed to support a “one stop shop” for Hiring Managers and Job Seekers. The site is being further tailored to for students and universities, as well as current Federal employees. OPM expanded the Presidential Management Council (PMC) Rotation program to include a dedicated participant from each agency’s CIO community. OPM coordinated a cybersecurity training for non-cyber professionals to increase foundational cybersecurity knowledge to career fields outside of the cyber workforce. The training, Federal Executive Cybersecurity Seminar, was offered September 12, 2017 at Department of Homeland Security.

In May 2017, the President signed Executive Order (EO) 13800: Strengthening the Cybersecurity of Federal Networks and Critical Infrastructure. The E.O. sets forth policy for management of cybersecurity risk executive-branch-wide and requires agency heads to lead integrated teams of senior executives with expertise in IT, security, budgeting, acquisition, law, privacy, and human resources. Specifically, the E.O. requires the Department of Commerce (DOC), the Department of Homeland Security (DHS), the Department of Defense (DOD), the Department of Labor (DOL), and OPM to assess the scope and adequacy of efforts to educate and train the American cybersecurity workforce of the future. These agency partners have drafted the IT Modernization Report to the President summarizing their findings and providing in-depth recommendations aimed at supporting the growth of the Nation’s public and private sector cybersecurity workforce.

SECTION III: DISASTER PREPAREDNESS

Consistent with Section 214 of the E-Gov Act (44 U.S.C. § 3501 note), this section was developed in consultation with DHS and the Federal Emergency Management Agency (FEMA) to provide a summary of activities that maximize the use of IT for disaster management, including use of IT to enhance and support crisis preparedness and response.

The Disaster Assistance Improvement Program

The Disaster Assistance Improvement Program (DAIP) maintains a Government-wide, single portal for disaster survivors to submit electronic applications for assistance. DAIP's mission is to ease the burden on disaster survivors by providing them with a mechanism to request and access disaster assistance through the collaborative efforts of Federal, state, local, tribal, and nonprofit partners.

Following a presidentially declared disaster for individual assistance, survivors in need of assistance can register online at DAIP's DisasterAssistance.gov. The *DisasterAssistance.gov* portal provides disaster survivors with a single source for potential assistance programs, easy access to the application, application updates, and disaster-related information. The secure portal ensures that disaster survivors, who may be displaced or otherwise out of contact, have access all Federal agencies that offer forms of disaster assistance, and continue to receive benefits from non-disaster related assistance programs.

In FY 2017, DAIP provided Registration Intake (RI) for 54 presidentially declared Individual Assistance (IA) disasters. It hosted 33,182,231 *DisasterAssistance.gov* site visits. It also registered 3,125,579 registrations for disaster assistance via call center support and internet transactions (1,676,127 using Desktops, 1,180,486 using Mobile Devices, 268,966 using FEMA Call Centers). The program continues to receive high customer satisfaction scores from survivors using the site. The program achieved "green" ratings from the DHS Office of Accessible Systems and Technology and the DHS Office of the Chief Information Officer Program Health Assessment.

[OpenFEMA](#) is the vehicle used to share high level DAIP metrics. Through OpenFEMA, Housing Assistance and Registration information statistics are shared at the zip code level along with over 30 other datasets. This information provides a detailed recovery snapshot to Government, non-profits and other community partners. Overall, the OpenFEMA API received approximately 2 million hits per week and continues to be a central source for public FEMA data.

SECTION IV: GEOSPATIAL

In accordance with Section 216 of the E-Gov Act (44 U.S.C. § 3501 note) this section provides a summary of activities related to the development, acquisition, maintenance, distribution, and application of geographic information. This includes common protocols that improve the compatibility and accessibility of unclassified geographic information and promote the development of interoperable information systems technologies that allow widespread, low-cost use, and sharing of geographic data by Federal agencies, state, local, and tribal Governments, and the public.

The Department of the Interior (DOI), as the managing partner, plays an important role in helping to facilitate the Government's efforts for the Geospatial Platform Shared Services initiative, which is led by the Executive Secretariat for the Federal Geographic Data Committee. In its third full year of development and operations under a technical development team, DOI made important improvements to enhance the National Geospatial Platform (GeoPlatform.gov, also known as GeoPlatform). DOI greatly improved productivity, integration, interoperability, lifecycle management, availability, utility, robustness, reliability, efficiency, and mission effectiveness. Improvements focused on geospatial data and service search, discovery, access, and use across the GeoPlatform's well-integrated, yet diverse ecosystem of Federal geospatial assets. In keeping with the NSDI and Open Data visions, these efforts greatly lowered the barrier for government, public, and commercial users to share and exploit national data and service assets through a common, harmonized framework. The GeoPlatform also made substantial progress advancing digital community experiences, improving the means for Federal agencies and partners to better collaborate on national challenges, while enhancing productivity in building new communities, and enhancing end-user functional and content experiences.

In 2017, the *GeoPlatform.gov* also served as a collaboration and information delivery resource for DOI, DHS, and the National Geospatial Agency during critical response efforts for national disasters. In response to Hurricane Harvey, Irma, and Maria, Homeland Infrastructure Foundation-Level Data (HIFLD) inter-agency members developed a common centralized open site on the GeoPlatform to host and publish unclassified publicly available geospatial data. Both HIFLD4Harvey and HIFLD4Irma, which were also used to support Hurricane Maria, registered over 12,850 users with over 2,920 downloads in a little over 30 days. This first-of-its-kind operational response was received with great enthusiasm and garnered direct positive feedback from Federal agencies and on-the-ground first responders.

FEMA and the Civil Air Patrol (CAP) also used the GeoPlatform shared service to launch a new CAP image browser. The tool allows aircrews to identify the aerial image collection for the day and to focus on particular areas in Puerto Rico and the neighboring U.S. Virgin Islands. This new tool will help expedite the aerial damage assessment process for aircrews, ensuring that each photo taken is processed, tabulated, and tagged as quickly as possible and ready for a timely review by FEMA, the US Air Force, and other Government entities involved in the response to Hurricane Maria. CAP aircrews flew over 131 sorties and provided more than 36,000 images in support of the response to Hurricane Maria.

Additionally, the GeoPlatform continued to evolve in the DOI cloud environment, as a cohesive national geospatial system-of-systems that provides a seamless, secure gateway to national geospatial assets. The GeoPlatform continued to improve the ability for stakeholders to manage their diverse portfolios through enhanced data, metadata, and service lifecycle management. This improvement in the platform and its toolsets supported improved transparency, cost avoidance, and Open Data sharing. In addition, these platform enhancements support the implementation of OMB Circular A-16, “Supplemental Guidance,” which directs Federal agencies to manage their National Geospatial Digital Archive (NGDA) as a single portfolio for use across Federal agencies, their partners and the public, while making it available through the GeoPlatform.

CONCLUSION

In 2002, Congress passed the E-Gov Act in response to the growing use of computers and the internet by the public, rapidly transforming societal interactions and the relationships between citizens, private business, and all levels of Government. In an effort to provide effective leadership and streamline Federal initiatives, OMB was tasked to spearhead efforts to develop and promote electronic Government services across the Federal Government. One of the key initiatives of this legislation was to improve the ability of the Government to achieve agency missions and program performance goals by promoting the use of emerging technologies across the Federal agencies to provide citizen-centric services and increase public access to Government information and data. Building on the objectives of this legislation, the OFCIO within OMB has undertaken three broad goals for IT in the Federal Government: (1) to reduce waste and duplication, and ensure that IT investments stay within their budgets and deliver on time; (2) to help agencies deliver IT investments that maximize the Government's productivity and customer satisfaction; and (3) to expand the use of data and analytics to support agency IT portfolio management.

Since the passage of the E-Gov Act, Federal agencies have made significant progress in using emerging technologies to enhance citizen-facing services and grow citizens' access to Government information. This report highlights many of these innovative activities that will improve Government efficiency and delivery of services to the public, as required by the E-Gov Act.

APPENDICES: COMPLIANCE WITH OTHER GOALS AND PROVISIONS OF THE E-GOV ACT

This section provides a description of highlights of Federal agency compliance with other goals and provisions of the E-Gov Act. The subsections below are listed in order according to the corresponding sections of the E-Gov Act. The information contains broad overviews of what agencies are doing to comply with the goals of the E-Gov Act, and also includes some agency-specific illustrations of approaches to complying with the provisions of the Act. To view additional agency descriptions of compliance with provisions of the E-Gov Act, please visit the [IT Dashboard E-Gov Act Reports Page](#).

As part of the broader OMB effort to eliminate duplicative data collections and reduce reporting burden placed on Federal agencies, OMB did not request information for several appendices in its annual E-Gov Act implementation data collection this year. Specifically, information was not collected from agencies that in past reports would have been included in Appendix D, Appendix E, Appendix F, and Appendix G. Please read explanations in each of these sections noting primary sources where this information can be found.

Furthermore, several of the requirements set forth in the E-Gov Act require the provision of web addresses to specific content on agency websites. Due to the nature of these requirements, summaries of the following submissions are not included in the appendices but are included on the [IT Dashboard](#):

- Accessibility: In accordance with Section 202(d) of the E-Gov Act, this section provides URLs for agency websites describing the actions taken by agencies in accordance with section 508 of the Rehabilitation Act of 1973, as amended by the Workforce Investment Act of 1998, Pub. L. No. 105-220.
- Internet-Based Government Services: In accordance with Section 204 of the E-Gov Act, www.USA.gov serves as an integrated internet-based system for providing the public with access to Government information and services. In accordance with Section 207(f)(3), this section provides URLs for agency activities on www.USA.gov.
- Freedom of Information Act: In accordance with Section 207(f)(1)(A)(ii) of the E-Gov Act, this section provides the URLs for agencies' FOIA websites.
- Information Resources Management Strategic Plan: In accordance with Section 207(f)(1)(A)(iv) of the E-Gov Act, this section provides the URLs for agencies' Information Resources Management strategic plans.
- Public Access to Electronic Information: In accordance with Section 207(f)(1)(B) of the E-Gov Act, this section provides URLs that contain agency customer service goals and describe activities that assist public users in providing improved access to agency websites and information, aid in the speed of retrieval and relevance of search results, and use of innovative technologies to improve customer service at lower costs.

- Research and Development (R&D): In accordance with Section 207(g) of the E-Gov Act, this section provides URLs for publicly accessible information related to R&D activities and/the results of Federal research.

APPENDIX A: ENHANCED DELIVERY OF INFORMATION AND SERVICES TO THE PUBLIC

The E-Gov Act requires OMB to oversee the implementation of a number of programs relating to capital planning and investment control for information technology; the development of enterprise architectures; information security; privacy; access to, dissemination of, and preservation of Government information; accessibility of information technology for persons with disabilities; and other areas of electronic Government.⁴ The Act requires OMB to sponsor ongoing dialogue to encourage collaboration and enhance understanding of best practices and innovative approaches in acquiring, managing, and using information resources to improve the delivery of Government information and services to the public.⁵ This appendix describes agency activities that enhance delivery of information and services to the public, improve or enable more data-driven decision-making in Government operations, and enhance interoperability between different public and private sector entities. The full list of activities can be found on the [IT Dashboard](#).

Agencies are undertaking numerous initiatives to provide the public with increased transparency and availability to Government data. In May 2017 the Treasury Department in collaboration with OMB, released an innovative new public display of Federal financial information on [Beta.USAspending.gov](#). A crucial element of the new website is a standardization of key data elements promoting transparency and enabling the agencies, Congress, and taxpayers to track spending from appropriations all the way to final recipient. OMB and partner agencies continue to seek feedback from key stakeholders driving continuous iterations and improvement to ensure a transparent and open government approach. The “beta” site will continue to run concurrently with the previous version of *USAspending.gov* to minimize disruptions to users’ data access and provide more time to add user-centered enhancements until the beta site is production ready.

Similarly, NASA made improvements to its [Open NASA.gov](#) platform, which serves as a gateway to NASA’s Open Government activities, providing interactivity for users inside and outside NASA who want to engage with NASA’s data, code, application program interfaces (APIs) and tools. At the heart of the site is the main NASA data registry that allows users to search metadata records of NASA data that exist on NASA authoritative sources, view and interact with hosted data through APIs, gain insight and developer details on NASA API’s, and collaborate and create visualizations with NASA data. In addition, the site allows users to maintain profiles, which enable the creation of data communities. The newly created Research Access page provides citizens and researchers access to NASA’s Data Management Plan with instructions for NASA-funded researchers receiving grants, cooperative agreements, and contracts for research.

At the Department of Education (ED), the InformedED platform was established to increase the availability of ED’s public data, ensuring universal access, and catalyzing the data’s reuse. In

⁴ See 44 U.S.C. § 3602(e).

⁵ See 44 U.S.C. § 3602(f)(9).

FY 2017, InformED invested in new technologies and approaches that simplified access to information and empowered citizen innovators, including acquiring autoAPI, an open source CSV-to-API engine used to create several APIs on top of the Civil Rights Data Collection. In addition, InformED awarded a contract for an open data investment feasibility study, which has brought in critical expertise to assess the agency's barriers to open data. InformED also developed and applied a mobile-friendly data story template that strengthens the Department's ability to deliver rich and accessible data narratives. Every new data story expands a code base that ED can return to repeatedly to build effective data visualizations. Finally, ED launched its first [developer hub](#) and an official account on GitHub to increase engagement with developers.

The Department of Health and Human Services (HHS) continued to utilize [HealthData.gov](#) to make appropriate datasets available to the public to fuel solutions in health and human services. After remodeling the website in FY 2016, stronger administrative services are in place for data curators, as well as an enhanced facilitation data cataloging and management process that builds catalog integrity and supports better metadata management. In FY 2017, the HHS Office of the Chief Information Officer (CTO) is creating a comprehensive dataset of HHS, state, private, and Federal data in reference to the opioid epidemic.

Similarly, in FY 2017 the National Archives and Records Administration (NARA) implemented enhancements to the [National Archives Catalog API](#) to improve the delivery of Catalog data to the public, making access to the large volumes of data in the Catalog more efficient for the user. In addition, these enhancements improved the ability of NARA staff to develop a more robust web search engine and web pages using Catalog data, which will become a more effective presentation of Catalog data. The enhancements include deep paging, exact search, with/without field value search, and including comment IDs in the data.

The US Agency for International Development (USAID) in FY 2017 continued to expand the breadth of data it makes available to the public via its [Development Data Library](#) (DDL). For example, in April of 2017, USAID Colombia hosted a data jam to challenge participants to analyze data sets and devise solutions to problems affecting rural development in the country. Participants used advanced statistical and machine learning methods to create new approaches to increase supply chain productivity, generate employment, and encourage youth participation in rural economies. In August of 2017 the [International Food Policy Research Institute](#) (IFPRI), an USAID partner, hosted a data-thon showcasing findings from the Feed the Future Initiative based on data generated in Bangladesh. The data spanned four key food security-relevant domains (climate, agriculture, nutrition, and gender) which enabled analysts and visualization specialists to generate new insights related to climate shocks and female empowerment in the agricultural sector.

Agencies are furthermore addressing public needs through targeted services, like those that connect recipients and providers of services. For example, the DHS Digital Service team partnered with the US Customs and Border Protection (CBP) to launch a new online application for [Global Entry](#), and other CBP [Trusted Traveler](#) programs. The new system, with a focus on usability, created a simpler interface for users to quickly join and renew their Trusted Traveler membership, integrating [Login.gov](#) to provide a secure, two-factor login and authentication process. This was also the first major application CBP has moved to the cloud, and it is serving

as the template for future cloud adoption. The new application launched on October 1st, 2017 after about nine months of development – half the amount of time originally projected—and has already had over 500,000 accounts created.

Another initiative is DOI's Recreation One Stop (RIS) which is an interagency partnership that provides reservation services, sharable data, and recreation trip-planning tools for people who wish to visit federal lands and waters across the United States. Currently, Recreation.gov provides information regarding more than 3,400 individual facilities, with more than 90,000 campsites, 46 ticketed tours or events, and 54 high-demand locations accessed by permit or lottery. In 2017, there were more than 37 million sessions, 19 million visitors, and 344 million page views to *Recreation.gov*, which represents a 26 percent increase in visitation to the website, compared to 2016.

Working with industry partners, the Department of Transportation (DOT) and the Federal Aviation Administration (FAA) created a simple online tool that enables operators to register their Unmanned Aircraft Systems (UAS). As of October of 2017, 923,443 people have registered online to fly. In addition, the FAA is currently developing the "FAA DroneZone" to make a "one-stop-shop" for all things UAS in the FAA – registration, accident reporting, waiver and authorization requests, training, and special alerts or notifications. Currently the FAA is developing the modules and expects the DroneZone be available to the public by March of 2018.

The Department of State's (State) ForeignAssistance.gov (FA.gov) application enhances the delivery of information and services to the public. *ForeignAssistance.gov* specifically tracks U.S. Government assistance provided to more than 100 countries around the world. In addition to raising public awareness for U.S. foreign assistance around the world, *FA.gov* will help recipient governments manage aid and inform budgeting and planning decisions, empower citizens to hold their governments accountable for the aid they receive, and support data-driven development. The site currently contains data on planning, obligations, and disbursements on a transactional level, with performance data and descriptive narrative data also available for State and USAID. In addition, *FA.gov* recently launched the "Analyze" feature, a custom data visualization tool that enables users to overlay foreign assistance data with other open data and development indicators to investigate trends over time or across countries, regions, and income groups. Soon all 22 agencies with foreign assistance funding in their portfolio will be reporting to *FA.gov*.

The Social Security Administration (SSA) has made significant improvements to its "my Social Security" program, an online portal that provides the public the ability to access personalized services and perform online transactions via a secure account. Originally launched in 2012, the site was expanded in 2015 to include non-beneficiary services and to include the ability to request a replacement SSN card and retrieve a machine-readable version of the Social Security Statement. As of October 2017, over 32.4 million customers have registered for a mySocialSecurity account. In FY 2017, customers conducted over 155 million online transactions. In addition, the internet Social Security Number Replacement Card (iSSNRC) application became available in 10 new states in FY 2017 including California, Texas, and Florida. Over 600,000 cards have been issued via iSSNRC, with the application now available in

24 states and Washington, DC. SSA plans in 2018 to further enhance its new wage reporting tool (myWageReport) and expand access to SSI recipients.

Government-wide, agencies are also diversifying their information resource capabilities, with some providing data in both navigator formats and in Application Program Interfaces (APIs), and working to improve the usability of data and websites by leveraging public feedback mechanisms. For example, the Department of Justice (DOJ) is improving the user experience of [FOIA.gov](https://www.foia.gov) through the introduction of augmented and enhanced functionality aimed at public users and federal agencies. With an average of over 730,000 FOIA requests submitted annually over the last four years, it is essential that the system for collecting requests be user friendly and the underlying processes efficient. The new iteration of *FOIA.gov* will assist public users in identifying agencies of interest through a series of controlled questions, as well as, allow the user to submit a structured FOIA request without navigating to another site or launching an email application. As a part of this effort, DOJ solicited public input and research, as well as, collaborated with multiple federal agencies in order to deliver functionality with the greatest benefit to all. DOJ is planning to launch this new functionality for public use in early 2018 with additional features further improving the user experience provided in the future.

In FY 2017, the [USA.gov](https://www.usa.gov) platform connected people more than 200 million times with Government information through its websites, social media, publications, email, and phone calls through the USA.gov Contact Center. Managed by GSA, the site has the goal to make it easier for the public to find and consume U.S. Government information and services on the web. USA.gov makes content accessible to the broadest audience possible, and recently implemented a responsive design approach on its websites to ensure consistent user experience on any device, leading to 25 percent growth in both mobile and tablet usage. The landing page and navigation features of USA.gov were also redesigned to improve user engagement. Additionally, USA.gov integrated BusinessUSA content and developed a unique faceted search tool to help small businesses find business opportunities and grants.

In FY 2017, OPM worked to transform USAJOBS from a job board to a Federal career portal through the implementation of seven production releases. A number of enhancements were made to the site, including: (1) enhancement of the collection of demographics collected at the time of application, (2) redesign of the Agency Talent Portal resume mining feature, (3) upgrades to the search architecture, (4) implementation of a new search user interface that introduced hiring paths to address eligibility, as well as, assisted authoring to address keyword nomenclature issues, (5) redesign of the job announcement (6) implementation of campaigns and events in the Agency Talent Portal and (7) development of new structural changes to the Staffing Integration Framework to improve job announcement fields that are submitted by Talent Acquisition System providers to display on *USAJOBS*. The program office conducted extensive user research and usability testing throughout the design and implementation phases to ensure the products meet user needs. Lastly, the program acquired a new product, Open Opportunities, a platform originally built by GSA to provide an opportunity board for short-term, micro-detail tasks. This product will expand *USAJOBS*' offering for the federal workforce to find and apply to developmental opportunities.

APPENDIX B: PERFORMANCE INTEGRATION

In accordance with Section 202(b) of the E-Gov Act (44 U.S.C. § 3501 note), this appendix describes what performance metrics are used and tracked for IT investments, and how these metrics support agency strategic goals and statutory mandates. Agencies provide a variety of performance metrics, including those that focus on cost and schedule of projects, risk factors, customer service, and innovative technology adoption and best practices. Select efforts are described in further detail below. The full list of activities and many of the aforementioned OMB metrics can be found on the [IT Dashboard](#).

Performance metrics are an essential tool for determining the health, risks, and future needs of agencies' IT projects. These metrics are a product of both the project teams and agency CIOs designing and tracking performance metrics that support the strategic goals and statutory mandates of the agency. To strengthen links to departmental priorities, major IT investments are mapped to specific elements of the agencies' strategic plans and performance measures are required elements of each Business Case. Particular focus is paid to FITARA implementation requirements, as outline in OMB memorandum [M-15-14: Management and Oversight of Federal Information Technology](#). OMB is responsible for ensuring FITARA's many IT governance, transparency, and risk-management provisions are successfully implemented by agencies. One useful tool OMB utilizes is the [FITARA Scorecard](#), which assigns 24 agencies grades from A to F in several implementation categories. The Government Accountability Office (GAO) and House Oversight and Government Reform Committee issue scorecards twice a year, with grades released in June and November for 2017. The November 2017 scorecard saw three agencies increase their overall scores from the June 2017 report (ED, OPM, SBA), with six agencies receiving a decrease in rating, and fifteen agencies with no change.

Agencies continue to develop and utilize IT governance and management processes, ensuring that senior agency officials, including the agency CIO, play an active role in reviewing performance metrics for agency IT portfolios. For example DOC has its own Commerce IT Review Board (CITRB), which periodically evaluate agency IT investments during its program/project lifecycle. The CITRB is co-chaired by DOC's CIO and CFO, and holistically evaluates IT Project/Program and Portfolio performance, progress risk and health. Finally, ED uses a similar department entity, the Planning and Investment Review Working Group (PIRWG) to select, control and evaluate the IT investments that go into the Department's IT portfolio.

Effective IT governance involves a holistic approach, where the agency updates its strategic plans (such as IRM & TBM strategic plans) focusing on deliverable defined in its business cases and programs, outcome metrics and an effective governance process with the right level of executives with authority to come to the table. Many agencies have created their own multi-year strategic plans for management of their IT portfolios. For example, DOJ performance goals for enterprise IT are set forth in the [DOJ Strategic Plan for Information Services and Technology 2015-2018](#). This plan defines key goals, strategies and objectives for the department's IT organization. DOJ is in the process of updating its Strategic Plan for Information Services and Technology early in FY 2018, identifying goals and objectives for the 2018-2020 timeframe. Likewise, Treasury in FY 2017 refined its own investment risk rating process and

algorithm to apply more rigors in its review of the IT investment portfolio toward agency objectives, strategic goals, and statutory mandates to complement existing operations and performance metrics.

In a similar effort, the Small Business Administration (SBA) took steps to link performance goals to key stakeholders, private sector, Federal agencies, and international operations through strategic goals and objectives. The SBA 2014-2018 Strategic Plan, includes IT investment management in its strategic objective 3.1 (Program Operations). The SBA tracks IT performance through a customer satisfaction survey and security incidents reported through US CERT (United States Computer Emergency Readiness Team). As the SBA develops its FY 2018-2022 Strategic Plan, a strategic objective for information technology has been established with a new performance goal that tracks IT costs savings. Finally, Department of State (DOS) has its own IT Strategic Plan for FY 2017 – 2019, which defines goals, objectives, and performance measures for enterprise IT in support of the State's missions and strategies, and will be updated based on specific recommendations and objectives from the Department of State's Redesign Initiative.

Many Federal agencies have used these performance metrics and oversight activities to identify initiatives ripe for improvement and modernization. For example, the Federal Motor Carrier Safety Administration (FMCSA) within DOT implemented the first two phases of a multi-year program to modernize the registration process for commercial motor vehicles. This initiative provides a new streamlined online system that simplified the FMCSA registration process. Phase I helped clean more than 360,000 inactive carriers from the registration system. This effort also saves time, money, and lives by allowing inspectors to focus on the most dangerous carriers. An estimated 11,500 hours of annual investigation time will be saved each year, resulting in 547 additional investigations that can be performed; potentially preventing up to 65 crashes, 40 injuries, and saving 2 lives. Phase II launched a single, online application system for all new applicants, replacing multiple forms. New applicants only include those never assigned a USDOT or MC number. This effort saves applicants and industry service providers over one hour per application, with cost savings of \$1.6M realized in just the first 6 months. In addition, this new online application system, utilizing the Utility for Risk Based Screening and Assessment (URSA) tool, facilitates vetting operations by automatically screening applications for carriers attempting to become a "reincarnated" version of a previous or existing high-risk operator. The URSA tool, to date, has screened over 75,000 new applications for operating authority, flagged over 7,000 of them for further investigation, resulting in 175 carriers being rejected due to high risk behavior. These rejections are projected to prevent 12 crashes and save 4 lives per year. The final phase will combine multiple registration processes, consolidate information technology systems, and consolidate as many as 15 forms into a single registration online platform.

OMB IT Efforts on Performance Integration--TBM

Since the passage of the Clinger-Cohen Act in 1996, OMB has been tasked with conducting oversight around Agency IT spending and ensuring the effective application of Congressional funding for IT. Each year, OMB requires agencies to manually report IT budget formulation and execution data to be captured, analyzed, and displayed to the public on the IT

Dashboard. In addition, agencies provide performance, risk, and project management data for each major IT Investment in their respective portfolios to be displayed as well. To address persisting data quality concerns and achieve burden reduction for agency reporting, OMB is actively collaborating with agencies to leverage all available authoritative data and implement automation wherever possible.

Agencies develop unique performance measures for each project in their respective IT portfolios, focusing on mission and business results, customer service, and improvements to business processes and technical goals for operational IT systems. Every major IT investment must contain results-specific metrics to measure their effectiveness in delivering the desired service or support level required to enable successful mission outcomes. OMB's Capital Planning and Investment Control (CPIC) establishes the processes and tools for selecting, controlling, and evaluating IT projects that comprise the IT portfolio.

In FY 2017, OMB began implementation of a long-term strategic paradigm shift and made a significant update to the annual CPIC reporting process for FY 2019 agency budget submissions through introducing the Technology Business Management (TBM) Framework to categorize IT spending. Leveraging a taxonomy that is proactively managed by a non-profit organization alleviates some of the need for the Federal Government to identify, define, and achieve consensus on the standards and terms used to report IT costs, thereby ensuring the viability and long-term sustainability of this system. In the future, Federal IT budget data aligned with the taxonomy will become the basis for the IT CPIC process and OMB oversight of agency's IT portfolios.

As OMB continues its implementation plan through the FY 2020 guidance, it is partnering with Agencies to promote maturation in reporting processes and data quality while introducing the last remaining Part 3 Infrastructure Standard Investment Reports. Simultaneously, OMB is introducing a new Standard Investment Report for Part 2 Support Services Standard Investment Reports to support the gradual implementation of the TBM taxonomy's Services layer. Long-term implementation remains on schedule to complete the CPIC transition to TBM reporting by the FY 2021 reporting cycle.

Aligning Federal IT management with TBM industry standards will allow more effective management and oversight of agency IT investments. Full implementation of the TBM taxonomy will enable the Federal Government to 1) benchmark its IT performance and cost data against industry to more effectively identify and leverage best practices; 2) locate instances of over or under-funding for IT services and infrastructure to more efficiently allocate funding across Agencies; and 3) enable Government decision-makers to tie Agency mission priorities to specific IT funding decisions by providing unprecedented transparency into their organizations' spending on technology and innovation. This granularity will help gradually align the categorization of costs with policies around IT modernization, CIO authorities, commodity IT management, category management, and data center optimization, among others.

APPENDIX C. GOVERNMENT-PUBLIC COLLABORATION

In accordance with Section 202(e) of the E-Gov Act (44 U.S.C. § 3501 note), this appendix describes how agencies utilize technology to initiate Government-public collaboration in the development and implementation of policies and programs. They do so through a variety of approaches, including using public meetings on agency websites, engaging with the public through website comments and email lists, and using online portals to facilitate public participation in regular agency processes. Select efforts are described in further detail below. The full list of activities can be found on the [IT Dashboard](#).

Federal agencies continue to leverage technology to initiate Government-public collaboration in the development and implementation of policies and programs. For instance, the DOD used the Federal eRulemaking portal (discussed more in Appendix E) to facilitate public participation in its regulatory process. During FY 2017, DOD used this portal to elicit comments from the public on which of its existing regulations should be considered for repeal, replacement, or modification. The identification and elimination of unnecessary, outdated, or ineffective regulations will alleviate unnecessary burden on the public and ensure the Department continues to meet its fiduciary responsibilities to the American people.

In a similar effort, DHS sought to solicit input and foster an online conversation revolving around the [2018 Quadrennial Homeland Security Review \(QHSR\)](#). To accomplish this, DHS utilized Ideascale, a crowd-sourcing collaboration platform. During FY 2017, DHS posted topics related to its strategic development work, moderated and contributed to discussions, and incorporated key ideas into its strategy review process, as appropriate. Some of the many topics that were posted and discussed on Ideascale include border and aviation security, terrorism, immigration, and cyber security. DHS will present their Quadrennial Homeland Security Review to Congress at the end of 2017 as required by law.

In FY 2017 NARA also sought input from the public on its draft [2018-2022 Strategic Plan](#), making the draft available to the public on GitHub. NARA sought feedback through posting issues on GitHub or sending comments by email. By publishing the Draft Strategic Plan on GitHub, NARA offered a transparent way for stakeholders to comment and to view revisions. The open source approach also makes it easy for other organizations to reuse the framework for their own plans. The code and all contributions to this project will be released in the public domain under the [CC0 dedication](#). A revised plan was published on September 15.

Finally, DOJ also sought public comments on regulatory matters. In February 2017, the President issued [Executive Order 13771: Enforcing the Regulatory Reform Agenda](#), which set forth principles and requirements for each agency to evaluate and implement measures to lessen the regulatory burden on the American people. In response, the DOJ established a Regulatory Reform Task Force that sought [public comments](#) on the various kinds of actions taken by DOJ components that the public perceives to be regulatory in nature. The DOJ Regulatory Reform Task Force is considering these public comments as it conducts its own evaluation of the Department's regulations, in order to identify candidate regulations for repeal, replacement, or modification.

Many agencies also developed online hubs to better provide information to the public and foster public engagement on various agency initiatives. For example, in FY 2017 [Benefits.gov](#), managed by DOL, received almost 9.4 million site visits and reached a record of more than 1.2 million site visits in August. [Benefits.gov](#) is the official benefits website of the U.S. Government, providing citizens with information and eligibility pre-screening services for more than 1,200 Federal and State benefit programs across 17 Federal agencies. In addition, [Benefits.gov](#) completed the procurement of Microsoft Azure in FY 2017, a commercial cloud-hosting provider which will better position [Benefits.gov](#) to shift to emerging technologies in the future. To mark the 15th anniversary of the site, there was an increased focus on customer engagement and outreach, resulting in 3,100 new followers on its Facebook and Twitter pages, a 191% increase in referral traffic to the [benefits.gov](#) website, and a 48% increase in Compass eNewsletter subscribers.

In addition, State also rebranded its Virtual Student Foreign Service program to the [Virtual Student Federal Service \(VSFS\)](#) program to recognize the advancement of the program as it now supports over 30 Federal agencies. The VSFS is supported by an innovative, cloud-based information technology application that facilitates all aspects of the initiative, including project submission by agencies, as well as the student application and selection processes. The program had a record year in FY 2017 with more than 4,600 U.S. college undergraduate and graduate students applying for 1,300 position available this cycle to work on 525 projects for various Federal agencies.

Similarly, in March 2017 the Nuclear Regulatory Commission's (NRC) Office of Administration deployed a centralized rulemaking tracking and reporting [tool](#). The web-based system provides internal and external stakeholders with consistent, accurate, and up-to-date information on all of the agency's planned rulemaking and petition for rulemaking (PRM) activities. The information from this system is available to the public on NRC's public website, under the "Public Meetings & Involvement" tab.

Finally, the Intelligence Advanced Research Projects Activity (IARPA), an office within the Office of the Director of National Intelligence (ODNI), continued to utilize the [Federal Business Opportunities \(FBO\)](#) portal as its primary vehicle to initiate collaboration with the public for research. During FY 2017, IARPA posted more than 24 announcements on FBO for new program Broad Agency Announcements (BAA) and Requests for Information (RFI). More than 230 abstracts and proposals were received from industry and academia in response to the announcements, and more than 500 people attended the resulting 8 public collaboration events IARPA hosted.

One final way many agencies worked to increased Government-public collaboration was by funding research projects. For example, in FY 2017 USAID's [U.S. Global Development Lab](#) announced \$10 million for 49 new research projects to address evidence gaps and advance technical capacity in critical areas of development. The 49 new projects span 23 USAID partner countries and are funded through the Partnerships for Enhanced Engagement in Research (PEER) program, an initiative designed to foster collaborative global research. These new

awards will allow Government-public collaboration on a variety of crucial research areas, such as wildlife protection, biodiversity conservation, water resource sustainability, satellite monitoring of natural resources, fisheries management, food security, disaster mitigation, and others.

APPENDIX D. CREDENTIALING

Section 203 of the E-Gov Act (44 U.S.C. § 3501 note) requires the Federal Government to describe current activities agencies are undertaking to achieve the interoperable implementation of electronic credential authentication for transactions with the Federal Government.

An important part of the Federal Government's information security standards is Identity, Credential, and Access Management (ICAM). The goal of ICAM is to implement a set of capabilities that ensure network users use strong authentication to access Federal IT resources and to limit users' access to the resources and data required for their job functions. Mature ICAM programs enable agencies to monitor users' access and implement secure capabilities such as single sign-on, which provide trusted users with efficient access to applications and data.

The Federal Government has sought to implement these security standards through the issuance of Personal Identity Verification (PIV) cards. The establishment of the PIV credential as part of a broader enterprise solution enables common service capabilities in secure and reliable transactions. The ICAM goal consists of PIV enforcement targets for privileged users (100%) and unprivileged users (85%). Many Federal agencies have made significant progress in implementing and adopting the use of PIV cards, with agency implementation progress collected and monitored as part of the annual Federal Information Security Management Act (FISMA) metrics. For FY17, civilian CFO Act agencies reported 87% for unprivileged users (up from 81% reported in FY16) and 98% for privilege users (up from 89% reported in FY16).

As part of the broader OMB effort to reduce reporting burden places on Federal agencies, OMB did not request this information in its annual E-Gov Act implementation data collection this year. For information on agency initiatives in implementing security standards, including the adoption of PIV cards, please see OMB's FY17 FISMA Report.

Commented [MZTE(4)]: Link once the FY17 report is released.

APPENDIX E. E-RULEMAKING

One of the goals of the E-Gov Act (44 U.S.C. § 3501 note) is to assist the public, including the regulatory community, in obtaining access and electronically submitting comments on rulemakings by Federal agencies. Specifically, Section 206 of the E-Gov Act lays out requirements designed to not only increase engagement with the public, but to increase collaboration between Government agencies. This appendix describes the general efforts being undertaken by the Federal Government to utilize online electronic regulatory docket capabilities, specifically the usage of www.Regulations.gov (Regulations.gov) and the Federal Docket Management System (FDMS) at www.FDMS.gov.

The central eRulemaking tool for Federal agencies is Regulations.gov. Launched in 2003, the website provides agencies with a platform to post final rules, proposed rules, requests for information, and other public documents in order to give the public an opportunity to review and comment on regulatory actions. There is a commenting feature on FederalRegister.gov which is integrated with existing MyFR and social media capabilities on the website to allow for more public interaction with the agency. The eRulemaking Program Management Office is hosted by the Department of Environmental Protection (EPA). The eRulemaking program offers an application programming interface (API) which connects outside applications to FDMS so interested individuals can both read regulatory information and write comments to be processed through FDMS. FDMS is the Government-wide system that provides agencies the ability to search, view, download, and review comments on rulemaking and non-rulemaking initiatives. FDMS also enables agency users to manage docket materials through the use of role-based access controls, workflow and collaboration processes, and comment management tools. Many departments and agencies have extensively used these tools to facilitate their regulatory activities. Many Federal agencies have used the system to great effect, posting large amounts of content and receiving tremendous input from the public on proposed regulatory action.

As part of the broader OMB effort to reduce reporting burden places on Federal agencies, OMB did not request this information in its annual E-Gov Act implementation data collection this year. To view proposed rules, requests for information, or other documents that Federal agencies have issued for public feedback, please view the Regulations.gov or FDMS websites.

**APPENDIX F. NATIONAL ARCHIVES AND RECORDS ADMINISTRATION (NARA)
RECORDKEEPING**

Sections 207 (e) of the E-Gov Act (44 U.S.C. § 3501 note) requires agencies to adopt policies and procedures to ensure that chapters 21, 25, 27, 29, and 31 of title 44, United States Code, are applied effectively and comprehensively to Government information on the Internet and to other electronic records. NARA coordinates with OMB to implement OMB memorandum M-12-18: *Management Government Records Directive*, which requires that to the fullest extent possible, agencies eliminate paper and use electronic recordkeeping. Senior Agency Officials for Records Management are required by M-12-18 to report to NARA on agency progress in meeting the Directive goals, as well as on other significant records and information initiatives as defined by NARA.

NARA's process for overseeing agency compliance with recordkeeping procedures is through its the Records Management Oversight and Reporting Program, under the Office of the Chief Records Officer for the Federal Government. This program is responsible for monitoring compliance with records management regulations and implementation of NARA policies, guidance and other records management best practices by federal agencies. Under 44 U.S.C. 2904(c)(7) and 2906, NARA has the authority to conduct inspections or surveys of the records and records management practices of Federal agencies for the purpose of providing recommendations for improvements. The criteria for selecting agencies for inspection or records management program review include, but are not limited to, the results of an agency's annual records management self-assessment, the significance of certain records and the related business processes, the risk of improper management of records, and the presence of important issues that are relevant to management of Federal records in general.

As part of the broader OMB effort to reduce reporting burden places on Federal agencies, OMB did not request this information in its annual E-Gov Act implementation data collection this year. To view NARA's record of agency inspections, records management program reviews, surveys and assessments, and annual reporting, please view the program's website.

APPENDIX G. PRIVACY POLICY AND PRIVACY IMPACT ASSESSMENTS

Section 208(b) of the E-Gov Act (44 U.S.C. § 3501 note) requires agencies to conduct a privacy impact assessment before (1) developing or procuring IT systems or projects that collect, maintain or disseminate information in identifiable form from or about members of the public, or (2) initiating, consistent with the Paperwork Reduction Act, a new electronic collection of information in identifiable form for 10 or more persons. In addition, and if practicable the E-Gov Act requires that agencies make the privacy impact assessment publicly available through the website of the agency, publication in the Federal Register, or other means. Individuals interested in reviewing agencies' compliance with the privacy provisions of the E-Gov Act should reference the privacy section of the annual FISMA report.

APPENDIX H. AGENCY IT TRAINING PROGRAMS

Section 209(b)(2) of the E-Gov Act (44 U.S.C. § 3501 note) requires agencies to establish and operate IT training programs. The Act states that such programs shall have curricula covering a broad range of information technology disciplines corresponding to the specific information technology and information resource management needs of the agency involved; be developed and applied according to rigorous standards; and be designed to maximize efficiency, through the use of self-paced courses, online courses, on-the-job training, and the use of remote instructors, wherever such features can be applied without reducing the effectiveness of the training or negatively impacting academic standards. This appendix describes select agency training programs for IT workforce. Agency IT workforce training is described below, with one paragraph highlighting a specific agency's accomplishments. The full list of activities can be found on the [IT Dashboard](#).

DOD, DHS, and NIST collaborated to create the NIST Special Publication 800-18: *National Initiative for Cybersecurity Education Cybersecurity Workforce Framework*, which was published in August 2017. The document includes core elements of the DOD Cyber Workforce Framework (DCWF). DCWF qualification standards were internally matured and defined for the majority of the 53 cyber work roles. The remaining research will be completed in 2018. DCWF will enhance current cyber training and education in Military and Agency technical schoolhouses and online offerings. DCWF will also improve training effectiveness and cyber personnel readiness through innovative performance assessments.

DOC also focused on enhancing its cybersecurity awareness and training program in FY 2017. DOC implemented role-based Cyber Security Assessment and Management (CSAM) training to help standardize and increase CSAM usage within the agency. As part of DOC's goal to be a leader in cybersecurity training across the Federal Government, the agency hosted three quarterly cybersecurity technical workshops, which were attended by representatives of over 44 Governmental agencies. DOC also enhanced the authorizing official and system owner-training curriculum, and updated its cybersecurity workforce development policy to integrate training concepts identified in NIST SP 800-16. Finally, DOC expanded its security awareness campaign by delivering 21 cybersecurity instructor-led awareness training sessions addressing techniques to prevent phishing, social engineering and identity theft.

The National Science Foundation (NSF) required all staff to complete the 2017 Security and Privacy Awareness Training, which was developed internally to address IT security threats specific to NSF. The content includes relevant topics such as phishing prevention, personally identifiable information (PII) protection and safe file storage and transfer. The completion rate in 2017 was 99.97%. Additionally, all employees and managers who have elevated cyber security roles are assigned Insider Threat Awareness Training, utilizing content provided by the Defense Security Service.

In FY 2017, NARA offered its revamped Tier I Computer Based Training to better address emerging threats. As other emergent threats are recognized, the agency reviews and updates its multi-level Tier II training program for users with elevated security responsibilities

and other staff involved in Risk Management activities. Classroom instructions, along with on-site delivery of awareness training, were offered in the FY 2017 training cycle. Finally, FISMA-compliant IT security training is required at the time of on boarding and annually for all NARA staff (employees and contractors), along with training on protections for privacy-related information.

DOJ utilized its IT workforce training in FY 2017 to bring together IT professionals from across divisions to break down organizational silos and share knowledge. DOJ also successfully implemented standard frameworks, such as the NICE framework for cybersecurity, to better benchmark and coordinate IT employee development, and continued to implement the requirements of the Federal Cybersecurity Workforce Assessment Act. In addition, DOJ passed a 2017 GAO audit and created a Department-wide working group to identify and code all of its employee positions against the NICE 2.0 standard. The DOJ IT Flash Mentoring series continued to grow providing development and networking opportunities for the Department IT Community. Finally, DOJ's Office of the CIO continued to pilot a Skills Incentive Program that maps desired certifications and competencies to specific job functions and General Schedule grades. The objective is to regularly review and iterate the framework so that it evolves with the changing skill-type demands within the IT field. The end goal is for this to serve as a model for DOJ-wide IT workforce development.

ED on the other hand, in FY 2017 continued its efforts to deliver training and development opportunities to a more mobile workforce. Employees were provided access to virtual books through ED's learning management system. The books included a wide range of IT related training topics, including: IT security, project management, databases, operating systems, and networking. To enhance training efforts with remote staff, ED continued to use WebEx and remote presence software (video/audio broadcast). In addition, the agency modified its IT Security Role Base Training to encourage IT professionals to take training courses related to obtaining cyber security certifications. IT Security Role Based Training was assigned to 771 employees and 100% of the employees completed it. Cybersecurity and Privacy Awareness training was required of all ED employees and 100% of employees completed this training.

In FY 2017, the Department of Housing and Urban Development (HUD) completed its Enterprise-Wide Information Security Workforce Training Program Plan. This plan serves as HUD's solution to meet the advanced training needs of its security staff. HUD also conducted Information Security Continuous Monitoring training for all Information System Security Officer's (ISSO's). In addition, HUD administered an IT Specialist Skills Assessment as part of a Department-wide initiative to evaluate the skills of HUD's workforce. Also in 2017, the results of the FY 2016 Skills Assessment were published, which identified the skills that are considered to be most important and have the largest proficiency gaps. The objectives of the assessment included: (a) identifying skill gaps within the HUD IT workforce; (b) identifying training needs and providing recommendations on future trainings to be included in the HUD LEARN curriculum; and (c) comparing the results of the FY 2014 and FY 2016 IT Skills Assessment results to assess progress toward gap closure and the success of existing training.

The Environmental Protection Agency's (EPA) IT training program hosted 295 Instructor-led trainings in FY 2017. EPA has also partnered with an eLearning service provider

to provide 24/7 access to state-of-the art IT, project management, contracts management, leadership, compliance, and core competency learning assets across the enterprise. The eLearning provider recently added live simulations, real-time coaching and other enhancements to their learning programs for IT professionals. The EPA Office of Environmental Information also provided IT training programs that are delivered in both classroom settings and via virtual delivery methods. Finally, the EPA provided access to mandatory IT training for all contractors, grantees and students who have access to the Agency systems

The Office of the CIO at GSA (now GSA IT) provides in-person and online enterprise-wide training to GSA's 17,000+ staff to help improve their technical skills. In FY 2017, GSA held 80 instructor-led IT training courses. GSA also overhauled its privacy training offerings this year. Its mandatory privacy awareness training was designed for adult learning and focused on the concept of Controlled Unclassified Information (CUI) and the categories of personally identifiable information (PII) commonly collected, maintained or disseminated by GSA; three key aspects of the Privacy Act; five ways that employees can protect PII; and instructions on how to report a breach. In addition, GSA IT conducted an organization-wide introductory agile training and established a Leadership & Development steering committee to provide oversight for all training-related policies and processes. GSA IT also created in-house development opportunities by establishing an IT-specific rotational program, formalized a governance process for participating in external leadership programs and conferences, and began piloting different Massive Open Online Courses (MOOCs) for enterprise-wide use. Other agencies have consulted GSA to learn about migrating their e-mail to the cloud and implementing Software as a Service (SaaS) collaboration tools. GSA holds quarterly Interagency Center of Excellence meetings about these tools to discuss topics across agencies, including new features, demonstrations of applications, and upcoming conferences/events.

In FY 2017, employees at OPM took a wide range of IT courses via the OPM Learning Connection, which makes over 300 IT-related courses available to employees. Of these, 272 unique IT courses were completed throughout FY 2017. OPM's Office of the CIO acquired IT Infrastructure Library (ITIL) Foundation framework training classes, which were attended by OPM staff in FY 2017. The ITIL framework is designed to standardize the selection, planning, delivery, and support of IT services within OPM, which aligns IT services with agency needs. Class attendees were required to pass an ITIL Foundation certification test in order demonstrate their understanding of ITIL Foundation concepts. OPM's Office of the CIO also acquired Agile training classes "Agile and Scrum in a Day" and "Certified Scrum Product Owner." OPM staff attended these Agile and Scrum classes in FY 2017, which provide the foundation for OPM staff in understanding and putting into practice the Agile Scrum process from the perspective of the OPM Program Office organization responsibilities.

APPENDIX I. CROSSWALK OF E-GOV ACT REPORTING REQUIREMENTS

E-Government Act of 2002 Requirement	Location in E-Government Act Report to Congress
Sec. 101 (44 U.S.C. § 3606) – Provide a description of projects receiving E-Gov Funds in FY 2016, including funding allocations and results achieved.	Section I – E-Government Fund
Sec. 209 (44 U.S.C. § 3501 note) – Provide a summary of activities related to IT workforce policies, evaluation, training, and competency assessments.	Section II – Government-wide IT Workforce and Training Policies
Sec. 214 (44 U.S.C. § 3501 note) – Provide a summary of how IT is used to further the goal of maximizing the utility of IT in disaster management.	Section III – Disaster Preparedness
Sec. 216 (44 U.S.C. § 3501 note) – Provide a summary of activities on geographic information systems and initiatives, and an overview of the Geospatial Platform.	Section IV – Geospatial
Sec. 101 (44 U.S.C. § 3602(f)(9)) – Sponsor ongoing dialogue to encourage collaboration and enhance understanding of best practices and innovative approaches in acquiring, managing, and using information resources to improve the delivery of Government information and services to the public.	Appendix A - Enhanced Delivery of Information and Services to the Public
Sec. 202(b) (44 U.S.C. § 3501 note) – Develop performance measures.	Appendix B – Performance Integration
Sec. 202(d) (44 U.S.C. § 3501 note) – Ensure comparable accessibility to people with disabilities.	<u>IT Dashboard</u>
Sec. 202(e) (44 U.S.C. § 3501 note) – Engage the public in development and implementation of policies.	Appendix C – Government-Public Collaboration

E-Government Act of 2002 Requirement	Location in E-Government Act Report to Congress
Sec. 203 (44 U.S.C. § 3501 note) – Implement electronic signatures.	Appendix D – Credentialing Note: In an effort to reduce reporting burden on agencies, information for this appendix was not collected this year.
Sec. 204 (44 U.S.C. § 3501 note) – Oversee the development of a Federal Internet Portal.	<u>IT Dashboard</u>
Sec. 206 (44 U.S.C. § 3501 note) – Report to Congress agency compliance with electronic dockets for regulatory agencies. Ensure public websites contain electronic dockets for rulemaking.	Appendix E – E-Rulemaking Note: In an effort to reduce reporting burden on agencies, information for this appendix was not collected this year.
Sec. 207 (e) (44 U.S.C. § 3501 note) – Report on agency compliance with policies pertain to the organization and categorization of Government information, and agency compliance with establishing policies and procedures regarding recordkeeping.	Appendix F – National Archives Records Administration Recordkeeping Note: In an effort to reduce reporting burden on agencies, information for this appendix was not collected this year.
Sec. 207(f)(1)A(ii) (44 U.S.C. § 3501 note) – Report on agency compliance with requirements to make information available to the public under the Freedom of Information Act.	<u>IT Dashboard</u>
Sec. 207(f)(1)(A)(iv) (44 U.S.C. § 3501 note) – Report on agency compliance with requirements to provide an information resources strategic plan.	<u>IT Dashboard</u>
Sec. 207(f)(1)(B) (44 U.S.C. § 3501 note) – Report on agency compliance with developing goals to assist the public with navigating agency websites.	<u>IT Dashboard</u>

E-Government Act of 2002 Requirement	Location in E-Government Act Report to Congress
Sec. 207(g) (44 U.S.C. § 3501 note) – Develop a Government-wide repository and website for all Federally funded research and development.	<u>IT Dashboard</u>
Sec. 208(b) (44 U.S.C. § 3501 note) – Report on agency compliance with developing a privacy policy and conducting privacy impact assessments.	Appendix G – Privacy Policy and Privacy Impact Assessments Note: In an effort to reduce reporting burden on agencies, information for this appendix was not collected this year.
Sec. 209(b)(2) (44 U.S.C. § 3501 note) – Report on agency compliance with establishing information technology training programs.	Appendix H – Agency Information Technology Training Programs

Message

From: Doa, Maria [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=99E502A905374B0B890DB9B22E18D92E-MDOA02]
Sent: 7/17/2018 10:02:59 PM
To: Blancato, Jerry [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=232de363dadb4cd9961900e10f56fddf-Blancato, Jerry]
CC: Updike, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=0920571ed9264c93b7bc670b0a498d04-Updike, David]; Noel, Glenda [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b4b623a1613b46af874225422c979326-Noel, Glenda]
Subject: RE: strengthening transparency in science rulemaking

Thanks Jerry.

Hi David and Glenda,

We are still pulling the team together. Once we get everyone, I will follow up with the group.

I am looking forward to working with you on this.

-Maria

From: Blancato, Jerry
Sent: Tuesday, July 17, 2018 5:18 PM
To: Doa, Maria <Doa.Maria@epa.gov>
Cc: Updike, David <Updike.David@epa.gov>; Noel, Glenda <Noel.Glenda@epa.gov>
Subject: RE: strengthening transparency in science rulemaking

Maria,

Good folks from OSIM for this are:

David Updike, my deputy – very knowledgeable and expert on infrastructure issues
Glenda Noel – knowledgeable on data public access, especially the ORD process and status.

They can back each other up.

Thanks,

Jerry
919-541-2854

From: Doa, Maria
Sent: Monday, July 16, 2018 10:53 AM
To: Blancato, Jerry <Blancato.Jerry@epa.gov>
Subject: strengthening transparency in science rulemaking

Hi Jerry,

As I mentioned on Friday on the call on the impacts to ORD of the science transparency rule, we are pulling together an internal team to address public comments submitted in response to the science issues raised in the proposed rule. One of the areas we need support on is the infrastructure for housing and accessing the raw data for studies considered to

be “pivotal regulatory science”. Could we get someone from OSIM to participate on this group? It would be helpful to have someone with a broad view.

This internal team will help us identify issues and draft responses to comments. This would be a collaborative effort with us in OSP and to some extent OGC. We would ask that if needed they participate in one or more Agency workgroup meetings. We are conscious of their time and would only ask them to participate in these meetings when necessary. The participation would start in mid-August and would continue for about 7 months.

Please let me know if you have any questions or need additional information.

Maria J. Doa, Ph.D.
Office of Science Policy
Office of Research and Development
Environmental Protection Agency
Tel. 202.566.0718

Science Advisor Briefing

May 1, 2018

TOPICS

1. Scientific Integrity and Strengthening Transparency in Regulations
2. Best Practices for Clearance
3. Language for Grants Terms and Conditions
4. Annual Report
5. Allegations Procedures
6. Management Dialogues and Manager Survey

ATTACHMENTS

1. Briefing deck and Grants Language
2. Annual Report Table of Contents
3. FY 2018 Projects

Appointment

From: Science and Technology Policy Council Staff [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C07FB189ABD94262B3BB92A42905193E-SCIENCE AND]
Sent: 12/21/2017 3:28:05 PM
To: Science and Technology Policy Council Staff [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c07fb189abd94262b3bb92a42905193e-Science and]; STPC Members [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c497e744905d44f1a172223b48521e08-STPC Members]
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 Schumacher, Alessandra [Alessandria.Schumacher@icf.com]

Subject: STPC September Meeting

Attachments: 1_Agenda Sep 12 STPC Meeting_0905.docx; 2a_ Strengthening Transparency in Regulatory Science presentation v4.pptx; 2c_STPC_Pbslides_09-12-18mtg_HH-VZ_DraftInternal.pptx; 3_EPA_NTAA-Coordination_20170310.pdf; 3_NTAA_CoP-Roster_by-AAship-Region_2018.pdf; 3_NTAA_VCS-Participants_20180116.pdf; 3_Standards Participation Guidance - 1-page summary - 20180723.pdf; 3_STPC - NTAA Participation Guidance - 20180827.pptx; 4_epaig_20180905-18-P-0240_cert.pdf; 4_STPC meeting Citizen Science 9-04-2018.pptx; 4_Draft Charge for Citizen Science workgroup under STPC_081518.docx

Location: DC Location - Ronald Reagan Building Room 41213

Start: 9/12/2018 6:00:00 PM

End: 9/12/2018 8:00:00 PM

Show Time As: Busy

AGENDA

SCIENCE & TECHNOLOGY POLICY COUNCIL MEETING

Wednesday, September 12, 2018

2:00 – 4:00 PM ET

Conference Room (DC): Ronald Reagan Building 4th Floor Room 41213

Personal Phone / Ex. 6

1. Introductory Remarks and Roll Call (10 minutes, to 2:10)

Lead: Jennifer Orme-Zavaleta (Science Advisor)
Roll Call: Anand Mudambi, STPC Coordinator (OSA)

2. Updates: (40 minutes, to 2:50)

- a. Strengthening Transparency Rule (Response to comment and rulemaking): Maria Doa (ORD)
- b. PFAS Coordination : OW
- c. Pb Coordination : Hayley Hughes and Valerie Zartarian (ORD)
- d. Contaminants of Emerging Concern Project : Jeff Frithsen (ORD)
- e. Standing Groups Status : Anand Mudambi (OSA)

3. Voluntary Consensus Standard (VCS) Development - Draft EPA Guidance (20 minutes to 3:10)

Lead: Elise Owen (EPA Standards Executive, housed in OCSPP)
Purpose: Brief the STPC on the development of Agency guidance regarding EPA personnel participation in private sector Voluntary Consensus Standards (VCS) development
Outcome: Inform STPC input on the draft guidance

4. Citizen Science (25 minutes, to 3:35)

Lead: Jay Benforado (OSA)
Purpose: Discussion of Draft Charge to Implement NACEPT and OIG Recommendations
Outcome: Get STPC input on the charge activities

5. RAF Cumulative Risk Assessment (CRA) Technical Panel Products (20 minutes, to 3:55)

Lead: Lawrence Martin (OSA)
Purpose: Inform STPC about the CRA Guidelines on Planning and Problem Formulation, and the Document updating Chemical Mixtures Additivity
Outcome: Preparation for STPC concurrence on the RAF's CRA products for external peer review

6. Summary of Action Items (5 minutes, to 4:00)

Report: Anand Mudambi (OSA)

Next STPC Meeting: Wednesday, December 5, 2018

CLIMATE RESEARCH ELIMINATION

BACKGROUND: Per the President's FY 2019 budget, the Agency is eliminating climate change research within its Research and Development Program. EPA's Research and Development Program will continue to support clean air and energy research, and will be prioritizing limited resources to focus on these issues.

KEY POINTS:

- States, local governments, and communities actively request information and tools to prepare for the impacts of climate change. Researchers in the Air and Energy (A&E) research program answered the public need by developing user-friendly tools for communities.
- This research focused on adaptation and community resiliency.
 - *Assessing impacts* – assess human and ecosystem exposures and effects associated with air pollutants and climate change.
 - *Preventing and reducing emissions* – provide data and innovative tools to prevent and reduce air pollution emissions in environmentally sustainable and cost-effective ways.
 - *Responding to changes in climate and air quality* – provide modeling, monitoring, metrics, and information needed to prepare for climate change and make public health decisions regarding air quality.

TALKING POINTS:

- The President's FY19 budget eliminates climate change research.
- EPA's climate research focused on adaptation and community resiliency.
- Going forward EPA's Air & Energy research program will continue to support clean air and energy research.

TALKING POINTS RE CLIMATE WEBSITE:

- We are constantly updating our website to reflect new initiatives and projects of the Agency.
- Of course, the website will be reflective of the current administration's priorities.
- With that said, all the content from the previous administration is still easily accessible and publicly available. It's right at the top of the main page of the site.

RESOURCES (Dollars in Millions):

Approp.	FY 2017 Enacted		FY 2018 Enacted		FY 2019 Pres Bud		Delta FY 2018ENA v. FY 2019 Pres Bud	
	\$	FTE	\$	FTE	\$	FTE	\$	FTE
S&T	\$18.9M	48.5	\$19.0M	47.3	\$0.0M	0.0	-\$19.0M	-47.3
Total	\$18.9M	48.5	\$19.0M	47.3	\$0.0M	0.0	-\$19.0M	-47.3

EPA'S INTEGRATED RISK INFORMATION SYSTEM (IRIS)

BACKGROUND:

IRIS was created in 1985 to provide high quality, publicly available information on the toxicity of chemicals to which the public might be exposed. The goal of IRIS is to foster consistency in the evaluation of chemical toxicity across the Agency.

KEY POINTS:

- House Science members recently proposed a bill to move the functions of IRIS, which supports the ORD Human Health Risk Assessment Research Program, into the EPA program offices.
- Over the past 1.5 years, ORD has been responding to NAS and GAO comments and recommendations about the IRIS program. These actions were presented to the NAS this past winter. NAS concluded that EPA made substantial progress. GAO has noted significant improvement in their high-risk criteria ratings.
- EPA's FY 2019 budget request supports IRIS with \$11.9M and 47.0 FTE. This is a reduction of \$10.0M and 36.7 FTE from FY 2018 Enacted levels.

TALKING POINTS:

- I recognize the importance of conducting assessments on sound science – and of conducting them in a timely and transparent manner.
- That's why I'm happy with the improvements in the IRIS program, and it's on a good track for future assessments.
- Since January 2017, IRIS has introduced a number of changes to improve the program.
- Some of these are in response to comments by the National Academy of Science and the GAO. Both NAS and GAO have commended IRIS for these changes.
- For example, IRIS increased transparency by engaging with stakeholders earlier in assessment development, and by fully implementing the principles of systematic review, which creates a clearer evaluation of the underlying science.
- We are also instituting a process where EPA programs and regions will request specific assessments - outlining exactly what they need and why, plus a timeline.
- This is because IRIS assessments are expensive and take a lot of time to do. So, we need to know exactly why the assessment is needed, who the end-user is, and when they need the assessment by. This will ensure greater accountability from both ORD and program and regional offices.
- These changes will bring further stability, confidence, and accountability to the IRIS program in the long term.

FORMALDEHYDE IRIS ASSESSMENT

BACKGROUND: EPA is conducting an IRIS assessment on formaldehyde. There has been congressional interest in the assessment's status.

TALKING POINTS OPTION 1:

- The IRIS assessment of formaldehyde will soon be ready to proceed to Agency review.
- After this, it will undergo the 7-step process negotiated with OMB that all IRIS assessments must go through.
- This process includes engagement across the Agency, the federal government, with the public, and through independent, scientific peer review.
- Both the NAS and SAB will be reviewing the formaldehyde assessment.

TALKING POINTS OPTION 2:

- ORD is currently developing a new approach of soliciting program and regional office input on current and future IRIS assessments, to ensure IRIS assessment activities are focused on the highest priority needs of the Agency.
- The formaldehyde assessment will be included in this activity, and inform our next steps.

ORD SUPPORTS TSCA

BACKGROUND:

In June 2016, Congress passed the Frank R. Lautenberg Chemical Safety for the 21st Century Act. The Lautenberg Act amends TSCA, which is the Nation's primary chemical management law. The new law, which received bipartisan Congressional support, includes much needed improvements to protect American families from the potential health effects of chemicals, including: mandatory requirements for EPA to evaluate existing chemicals with clear and enforceable deadlines, risk-based chemical assessments, increased public transparency for chemical information, and a consistent source of funding for EPA to carry out the responsibilities of the new law. EPA's research is providing critical chemical data, information, tools, and approaches to support the agency's implementation of the amended TSCA.

KEY POINTS:

- TSCA section 6 describes a new approach for evaluating the safety of existing chemicals, which includes chemical prioritization, risk evaluation, and risk management. EPA researchers are developing innovative ways to prioritize chemical substances and complete timely risk evaluations, including:
 - Creating tools to generate, compile and manage data associated with approximately 40,000 chemical substances on the TSCA Active Inventory;
 - Developing approaches for prioritizing chemicals and completing detailed chemical evaluations of existing chemicals; and
 - Providing technical support and expertise for chemical-specific risk evaluations.
- EPA researchers have responded to requests from Congress regarding the Lautenberg Act. Rising to the challenge of reducing the use of vertebrate animals in chemical testing, EPA scientists developed a Strategic Plan for promoting the development of new approach methodologies (TSCA section 4) and strategies to reduce, refine or replace vertebrate animal testing. The Strategic Plan was released on June 22, 2018 (the second anniversary of the signing of the Lautenberg Act), and is now being implemented to develop, test, and adopt chemical testing approaches that broaden understanding of chemical impacts on biological systems, expedite testing, decrease overall testing costs, and provide support for risk evaluations

TALKING POINTS:

- EPA's research is providing critical chemical data, information, tools, and approaches to support the agency's implementation of the amended TSCA.
- Our scientists developed a Strategic Plan that will help reduce animal testing.
- They have also provided the tools for EPA regulators to meet each of the deadlines outlined in the Lautenberg Act.
- EPA science is leading the world in the development of new approaches for improving and expediting chemical testing and evaluation, saving money for industry, and protecting consumers.

HARMFUL ALGAL BLOOMS (HABS) RESEARCH

BACKGROUND: HABs are overgrowths of toxin-producing algae (including cyanobacteria) in fresh or marine waters that can cause a variety of negative ecological, economic, and health impacts. Excessive concentrations of nutrients exacerbate the frequency and severity of blooms. The frequency, intensity, and duration of HABs can negatively impact drinking and recreational waters.

KEY POINTS:

- EPA research is focused on providing decision makers, including states, municipalities, water treatment facilities, and tribes, with improved scientific information and tools to more effectively identify and predict HABs events, and to manage the health and ecological risks associated with them.
- Research also focuses on developing methods to predict and characterize blooms with innovative technology.
- An example of a recent accomplishment is the *Cyanobacteria Assessment Network (CyAN) mobile application*.
 - The CyAN app is the first platform for immediate HABs decision support for U.S. freshwater systems.
 - CyAN is operational and providing weekly data to collaborators. It is currently available to any state regulatory agency or health department for beta testing.
- EPA develops drinking water methods for use in monitoring hazardous algal blooms. EPA was a key player in the Toledo, OH drinking water crisis a few years ago.

TALKING POINTS:

- Harmful algal blooms, or HABs, can impact American's drinking water and recreational water, such as lakes, rivers, and beaches.
- This can negatively affect the ecosystem, the local economy, and, most importantly, our citizens' health.
- That's why EPA researchers are working closely with states and communities, including water treatment facilities and tribes, to provide the tools and scientific information they need to identify and predict HABs events, and to manage the health and ecological risks associated with them.
- Our research also focuses on developing methods to predict and characterize blooms with innovative technology.
- For example, we recently developed an app, called CyAN, that provides weekly data that our federal, state, and local partners can use to monitor their efforts to assess water quality.
- If a community is affected by a harmful bloom, EPA researchers can work directly with the community to manage potentially negative effects, such as helping treat drinking water.

ANIMAL TESTING AT EPA

BACKGROUND: EPA has taken many steps to drastically reduce animal testing. However, currently there are no good cellular or computational models that can accurately represent all the effects of pollutants on all organs. Studies on the health effects of pollutants using animals are critical to provide biological plausibility to observations of human health impacts of pollutants. These studies are needed to achieve EPA's core mission of protecting human health.

KEY POINTS:

- In June, the Agency released a "Strategic Plan to Promote the Development and Implementation of Alternative Test Methods Within the TSCA Program." EPA is working hard on developing these alternative testing methods.
- As a federal research institution, EPA adheres to the US Government Principles for the Utilization and Care of Vertebrate Animals Used in Testing, Research, and Training. EPA is accredited by the Association for Assessment and Accreditation of Laboratory Animal Care International and assured by the Public Health Service. All of EPA's animal studies are carefully reviewed to ensure they meet the highest standards of the Institutional Animal Care and Use Committee.
- A recent article in the Daily Caller highlighted a letter sent to EPA by six members (3 Republican, 3 Democrat) about the money spent on animal testing in Research Triangle Park.

TALKING POINTS:

- Animal testing is a wide-spread practice used by industry, academia and government scientists.
- Prior to and consistent with direction in the Lautenberg legislation, EPA has taken many steps to drastically reduce animal testing.
- However, animal testing is still needed to help us protect human health.
- This is because there are currently no adequate cellular or computational models that can accurately represent all the effects of pollutants on all organs.
- When we do have to use animal studies, EPA follows the highest possible ethical standards.
- We adhere to the US Government Principles for the Utilization and Care of Vertebrate Animals Used in Testing, Research, and Training.
- EPA is also accredited by the Association for Assessment and Accreditation of Laboratory Animal Care International.
- EPA has certified animal care facilities, and all animal testing protocols are reviewed and approved by an Institutional Animal Care and Use Committee.

PROPOSED RULE TO STRENGTHENING TRANSPARENCY IN REGULATORY SCIENCE

BACKGROUND: On April 30, 2018, EPA announced a proposed rule to strengthen transparency in regulatory science. The comment period on the proposed rule is currently open and will close on August 16, 2018.

KEY POINTS:

- This action seeks to ensure that the regulatory science underlying EPA's actions is publicly available in a manner sufficient for independent validation. Where available and appropriate, EPA will use peer-reviewed information, standardized test methods, consistent data evaluation procedures, and good laboratory practices to ensure transparent, understandable, and reproducible scientific assessments.
- The public comment period originally closed on May 30, but after requests from the public and from House and Senate Democrats (including Sens. Carper and Whitehouse), the comment period was extended to August 16, and EPA decided to hold a public hearing.
- On July 17, EPA held a public hearing on the proposed rule. Congress Members Tonko, Bonamici, and Lipinski testified.

TALKING POINTS:

- I am here to protect two competing interests - access to science and data, while at the same time protecting confidential and personal information.
- These two interests are not mutually exclusive. I am committed to ensuring both and by doing so will strengthen the confidence in the work that EPA produces.
- The proposed rule to Strengthen Transparency in Regulatory Science seeks to ensure that the regulatory science underlying EPA's actions is publicly available in a manner sufficient for independent validation.
- The comment period for the proposed rule is open until August 16, 2018. We encourage people to submit their comments at [regulations.gov](https://www.regulations.gov).
- We also recently held a public hearing to get feedback on the proposed rule.
- As of July 25, 2018, EPA has received over 217,000 public comments.
- EPA will address all public comments before moving forward with the final rule. An Action Development Workgroup will handle this process.
- In implementing this rule, we will ensure that all private data is protected.
- EPA supports increasing access to scientific information and has made strides in making its federally-funded data available to the public. You can see EPA's plan to do this at epa.gov/open.

SCIENCE BOARDS

BACKGROUND: EPA has 22 advisory committees that fall under the Federal Advisory Committee Act (FACA). These committees provide advice to the agency on issues that range from science and economics to air quality. Earlier this year, Former Administrator Pruitt appointed new leadership and several new members to three important and independent advisory committees: the Clean Air Scientific Advisory Committee (CASAC), the Science Advisory Board (SAB), and the Board of Scientific Counselors (BOSC – this happened in 2017). The Former Administrator also issued a new directive to ensure that any advisors serving on an EPA Federal Advisory Committee (FAC) are independent and free from any real, apparent, or potential interference with their ability to fairly and objectively serve as a committee member.

TALKING POINTS:

- These committees help ensure that we are doing our best as an Agency by giving independent scientific advice to inform sound decision-making.
- Each year the Agency has the opportunity to appoint new members to these committees. In a fair and transparent fashion, EPA reviews the qualifications of hundreds of new individuals nominated for these committees.
- Currently there are 36 nominations for membership to the Clean Air Scientific Advisory Committee (CASAC). The Agency expects to have final decisions on who will be serving on the CASAC by October 1, 2018.
- The Science Advisory Board (SAB) is currently in the process of soliciting membership for the Board and four of its Standing Committees. Decisions are expected in the Fall of 2018.
- Last year, EPA appointed 43 new members to the Board of Scientific Counselors.
- Opening the competitive nomination process to ensure fair consideration of nominees has resulted in appointments that increase diversity of scientific views and increase membership from different geographic areas, states, tribes, and other sectors.
- Members include those from the entire environmental stakeholder community – NGOs, academia, industry, and state, tribal and local officials. The makeup of the membership speaks to my commitment to science and willingness to listen to thoughtful expertise from all perspectives.
- Consistent with the directive on strengthening and improving membership on EPA's federal advisory committees, moving forward, non-governmental and non-tribal members will be independent from EPA, meaning that members of EPA's federal advisory committees should not be currently in receipt of EPA grants, or in a position that otherwise would reap substantial direct benefit from an EPA grant.
- As is stated in the directive, I reserve my right to exercise my discretion to look at appointments on a case by case basis.
- I look forward to working with these impressive committee members, who will bring their expertise and varied perspectives as they work and advise the Agency on complex science issues that EPA and our state, tribal, local and community partners face every day.

VIEQUES, PUERTO RICO

BACKGROUND: The former Vieques Naval installation is a 23,000-acre facility located on Vieques Island, Puerto Rico. From the mid-1940s until 2003, significant amounts of munitions items were fired during military training. In 2005, large portions of Vieques and the surrounding waters were placed on the National Priorities List (NPL). The site has unique challenges such as unexploded ordnance across thousands of acres of land and sea floor, abundant ecologically and culturally sensitive resources, and the sometimes-differing viewpoints and objectives of numerous stakeholders.

KEY POINTS:

- Senator Wicker recently spoke with former Administrator Pruitt about the issue in Vieques, and if EPA could give a grant to Mississippi State University to assist.
- EPA does not have block-grant authority, and ORD's grant authority does not allow for non-competitive research grants as described in the request from the Mayor of Vieques.
- ORD supports the goal and has been working with OCFO on funding and to determine the best legally-available avenue for assisting Vieques and coordinating with Mississippi State University.
- The best approach appears to be providing technical assistance via an EPA support contract. ORD is working to gather additional information and identify a contract that could be used for this effort. However, given contracting requirements, it is highly unlikely the work under the contract could be sole-sourced to Mississippi State University.

TALKING POINTS:

- Providing assistance to Vieques is a priority for EPA.
- Our research grant authority does not allow for non-competitive research grants, as requested for Mississippi State University.
- However, we are currently exploring options to determine the best legally-available avenue for assisting Vieques and coordinating with Mississippi State University.
- This could be a competitive research grant, but we are still working on figuring out the best way to help.
- We hope to have this assistance mechanism in place as soon as possible.

TITLE 42

BACKGROUND: The Title 42 authority provides EPA with an important tool to make the critical workforce investments needed to accomplish its mission to protect human health and the environment. It allows EPA's Office of Research and Development (ORD) to nimbly respond to changing priorities and organizational needs of EPA programs and regions, as well as its state partners.

KEY POINTS:

- Representative Burgess recently sent EPA a letter criticizing EPA's use of Title 42.

TALKING POINTS:

- The Title 42 authority allows EPA to make the critical workforce investments needed to accomplish its mission to protect human health and the environment.
- It allows EPA's Office of Research and Development (ORD) to nimbly respond to changing priorities and organizational needs of EPA programs and regions, as well as its state partners.
- These needs include areas such as TSCA reform and lead and water infrastructure.
- Without Title 42, ORD would have trouble competing for pre-eminent talent, would likely lose essential scientific experts to other organizations, and would lose the flexibility in the workforce needed to quickly address the nation's most pressing environmental concerns.
- EPA's use of the Title 42 authority allows flexibility in EPA's scientific workforce to address the nation's various pressing environmental problems.
- It also increases EPA's ability to provide state, tribal, and local partners with the high quality scientific tools and information needed to protect air, land, and water.

TIRE CRUMB

BACKGROUND: On February 12, 2016, the U.S. Environmental Protection Agency (EPA), the Centers for Disease Control and Prevention/Agency for Toxic Substances and Disease Registry (ATSDR), and the Consumer Product Safety Commission (CPSC) launched a multi-agency Federal Research Action Plan on Recycled Tire Crumb Used on Playing Fields and Playgrounds to study key environmental and human health questions.

KEY POINTS:

- Staffers from House, particularly HEC, regularly ask for updated on the report.

TALKING POINTS:

- Concerns have been raised by the public about the safety of recycled rubber tire crumb used in synthetic turf fields and playgrounds in the United States.
- We know people are concerned and players and their families want answers.
- Limited studies have not shown an elevated health risk from playing on fields with tire crumb, but the existing studies do not comprehensively evaluate the concerns about health risks from exposure to tire crumb.
- We are committed to supporting more comprehensive efforts to assess risks from tire crumb, and are working with the Centers for Disease Control and the Consumer Product Safety Commission.
- We are currently working on a report that fills important data and knowledge gaps, characterizes constituents of recycled tire crumb, and identifies ways in which people may be exposed to tire crumb based on their activities on fields.
- The report will provide a better understanding of potential exposures that athletes and others may experience and will help answer some of the key questions that have been raised.
- While this effort won't provide all the answers about whether synthetic turf fields are safe, it represents the first time that such a large study is being conducted across the U.S.
- The draft report was sent for external peer review in May 2018. EPA and CDC continue to work together on this report. We have received peer review comments and are currently reviewing them. We expect to release the report for public comment in late summer/early fall.

ADDITIONAL INFORMATION

EPA RESEARCH SUPPORT FOR STATES

BACKGROUND: ORD provides vital scientific and technical resources to states and their communities, including technical support and training, science-based tools, and innovative approaches and methods, which helps them meet environmental and public health challenges.

KEY POINTS:

- Examples of ORD work to support states include: algal toxin management support (Ohio); technical assistance in chemical facility (LaPlace, LA) and water distribution (Corpus Christi, TX) matters, and technical and data support in making PFAS management decisions for drinking water issues in multiple regions and states (NC, NH, NJ, WV, etc.)
- Example activities to strengthen ORD's partnership with states include:
 - Providing regular calls and monthly public webinars on topics of interest to states, including bimonthly calls with ECOS/states to share information on PFAS toxicity, methods and treatment work. This will make EPA research and applied science tools more accessible to states.
 - Inviting state environmental agency leaders and staff to ORD laboratories to discuss topics of interest and connect them with EPA research and expertise, and for ORD to learn more about environmental challenges states are confronting in the field. Recent meetings include: Region 4 Southeastern and neighboring states' visit to EPA RTP (August 2017); R5 Midwest and neighboring states' visit to EPA Cincinnati (February 2018); and R1 New England states' visit to ORD's Narragansett, RI lab (June 2018).
 - Increasing interactions with state media associations, including air (AAPCA and NACAA), water (ACWA and ASDWA) and waste (ASTSWMO) to ensure EPA research addresses state needs.
- ORD collaborates with the Interstate Technology & Regulatory Council on stormwater, per- and poly-fluorinated alkyl substances (PFAS) and remediation technical issues.
- ORD sponsors the Regional Applied Research Effort (RARE) program to respond to the high priority applied research needs of EPA regions, state and local governments, and tribes.

TALKING POINTS:

- ORD has a strong partnership with the states and works closely with state associations like ECOS and ASTHO.
- ORD provides important science and technical information to states to help meet their immediate and long-term needs so that they can protect their health and environment.
- EPA ORD has developed critical partnerships with state environmental and health agencies to ensure its work is relevant to real-world environmental challenges, and that ORD's scientific findings and tools are delivered and translated to decision makers.
- ORD has partnered with the Environmental Council of the States (ECOS) to ensure EPA research is useful and practical for states to help address their on-the-ground problems.

ADDITIONAL INFORMATION

SCIENCE TO ACHIEVE RESULTS (STAR) GRANTS PROGRAM ELIMINATION

BACKGROUND: Beginning in 1995, the STAR program has funded research grants in numerous environmental science and engineering disciplines through a competitive solicitation process and independent peer review. More than 100 institutions utilized this program in recent years.

KEY POINTS:

- Per the FY 2019 President's Budget, EPA is eliminating the STAR grants program. EPA's Research and Development Program is focused on EPA's core mission of supporting human health and environment.
- Two House members (Ellison and Grijalva) recently sent a letter criticizing plans to eliminate the STAR program.
- STAR grants were offered through 4 of EPA's national research programs:
 - Sustainable and Healthy Communities Program - Provided funding for the NIEHS/EPA Children's Centers, advanced knowledge of how children's health is impacted by the environment, genetics and other factors.
 - Chemical Safety and Sustainability Program - Advanced scientific understanding of the impacts of manufactured chemicals on ecosystem health.
 - Air and Energy (A&E) Program - Provided funding for A&E centers to inform state and local policy makers regarding effective air pollution control strategies to reduce air pollution exposure.
 - Safe and Sustainable Water Resources Program - Provided funding for Green Infrastructure research which identified solutions for stormwater runoff prevention and contamination of local waterways.

TALKING POINTS:

- STAR is EPA's primary competitive, peer-reviewed, extramural grants program.
- Since its inception, the program has awarded more than 7,600 research grants throughout the nation.
- STAR stimulates and supports scientific and engineering research that advances the agency's mission to protect human health and the environment. It also provides access to the nation's best scientists and engineers in academic and other nonprofit research institutions.

RESOURCES
(Dollars in Millions):

Approp.	FY 2017 Enacted	FY 2018 Enacted	FY 2019 Pres Bud	Delta FY 2018 ENA v. FY 2019 Pres Bud
S&T	\$28.4M	\$28.5M	\$0.0M	-\$28.4M
Total	\$28.4M	\$28.5M	\$0.0M	-\$28.4M

ADDITIONAL INFORMATION
HOMELAND SECURITY RESEARCH PROGRAM

BACKGROUND: EPA's Homeland Security Research Program provides critical science to fulfill statutory emergency response and bioterrorism responsibilities, and supports EPA's efforts to help communities prepare for and respond to disasters.

KEY POINTS:

- The Homeland Security Research Program sustained reductions in FY 19 in the following areas:
 - o Strategies and methods for cleanup of chemical and radiological agents;
 - o Computational tools and contamination sensors to enhance water systems' ability to prepare for and respond to environmental disasters; and
 - o Research to inform voluntary standards and guidelines to reduce cyber risks to water infrastructure.
- Homeland Security Research Program will continue to strive to protect human health and the environment by prioritizing the following research activities:
 - o Developing higher-throughput sampling approaches and analytical methods, decontamination technologies, and decision support tools for expedient and effective bio-agent remediation; and
 - o Developing methods to decontaminate water infrastructure to bring water systems back online quickly, including cleanup of household plumbing and management of the associated contaminated water.

TALKING POINTS:

- EPA has responsibilities for protection of the Nation's drinking water infrastructure and supply, and for coordinating remediation of nationally-significant environmental incidents.
- EPA's Homeland Security Research Program provides critical science to fulfill these statutory emergency response and bioterrorism responsibilities.
- Our Homeland Security Research Program also supports EPA's efforts to help communities prepare for and respond to disasters.
- For example, the homeland security researchers are advancing wide-area decontamination approaches such as those needed for large-scale incidents like the Fukushima Daiichi Nuclear Power Plant Accident.
- EPA's Homeland Security Research Program works collaboratively with internal and external stakeholders to improve drinking water utilities' ability to respond to contamination, as demonstrated during water emergencies in Charleston, WV, and Corpus Christi, TX.

RESOURCES (Dollars in Millions):

Approp.	FY 2017 Enacted		FY 2018 Enacted		FY 2019 Pres Bud		Delta FY 2018 ENA v. FY 2019 Pres Bud	
	\$	FTE	\$	FTE	\$	FTE	\$	FTE
S&T	\$19.0M	49.8	\$18.5M	50.8	\$17.3M	45.5	-\$1.2M	-5.3
SF	\$1.2M	1.7	\$1.2M	1.9	\$1.5M	1.7	+\$0.3M	-0.2
Total*	\$20.2M	51.5	\$19.7M	52.7	\$18.8M	47.2	-\$0.9M	-5.5

*Totals may not add due to rounding; this accounts for ONLY the EPA Research and Development Program's Homeland Security funds

ADDITIONAL INFORMATION

EPA's COMPUTATIONAL TOXICOLOGY RESEARCH

BACKGROUND: EPA's Computational Toxicology Research Center develops methods to efficiently screen large numbers of chemicals in a short amount of time, using fewer research dollars than conventional toxicity testing and exposure methods.

KEY POINTS:

- EPA's FY 2019 budget request supports the computational toxicology and exposure research (CompTox) program with \$17.2M and 46.3 FTE. This represents a reduction of \$4.2M and 6.1 FTE from FY 2018 Enacted levels.
- In FY 2019, The Program will provide essential support to the Agency in:
 - Fulfilling requirements for chemical prioritization under the revised Toxic Substances Control Act (TSCA).
 - Implementation of the Strategic Plan for Alternative Test Methods and Strategies to Reduce Vertebrate Animal Testing under TSCA.
 - Developing screening-level risk assessments for data-poor chemicals (e.g., per- and polyfluoroalkyl substances, or PFAS).
 - Releasing on-line dashboards to disseminate integrated, publicly available chemical safety data (<https://comptox.epa.gov/dashboard>).
 - Developing decision support tools that help program offices and states with chemical safety decisions (e.g., prioritization).
- One of EPA's main contributions to Tox21 collaboration is ToxCast – a state-of-the-art screening tool for environmental chemicals.

TALKING POINTS:

- EPA's CompTox research is making chemical screening faster and cheaper than traditional methods.
- The CompTox research is also developing methods that reduce animal testing.
- EPA's CompTox research supports TSCA by providing critical chemical safety data.

RESOURCES (Dollars in Millions):

Approp.	FY 2017 Enacted		FY 2018 Enacted		FY 2019 Pres Bud		Delta FY 2018 ENA v. FY 2019 Pres Bud	
	\$	FTE	\$	FTE	\$	FTE	\$	FTE
S&T	\$21.4M	59.4	\$21.4M	52.4	\$17.2M	46.3	-\$4.2M	-6.1
Total	\$21.4M	59.4	\$21.4M	52.4	\$17.2M	46.3	-\$4.2M	-6.1

Message

From: Hubbard, Carolyn [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=2A93CE3245494318B109E87F7D826284-HUBBARD, CAROLYN]
Sent: 3/28/2018 2:30:47 PM
To: Radzikowski, Mary Ellen [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=2ac0a54e43bb4ac08276b57c5563c725-Radzikowski, Mary Ellen]; Orme-Zavaleta, Jennifer [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3c5a111dc377411595e5b24b5d96146b-Orme-Zavaleta, Jennifer]; Blackburn, Elizabeth [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a080eb90549a453aaa6a357f5257c0b7-Blackburn, Elizabeth]; Robbins, Chris [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=958b4b78eb42457eacf53514e428efd6-Robbins, Chris]; Rodan, Bruce [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=Rodan, Bruce]
Subject: Fwd: Ban On "Secret Science" In EPA Regulation Makes Sense

Carolyn Hubbard
Communications Director
EPA Office of Research and Development
202-564-2189
202-379-6744

Begin forwarded message:

From: "Daguillard, Robert" <Daguillard.Robert@epa.gov>
Date: March 28, 2018 at 10:27:11 AM EDT
To: AO-OCIR Everyone <AEOCIR_Everyone@epa.gov>, AO OPA Internal Communications <AO_OPA_Internal_Communications@epa.gov>, Comm Directors and Alternates <Comm_Directors_and_Alternates@epa.gov>, Regional Public Affairs Directors <Regional_Public_Affairs_Directors@epa.gov>
Subject: FW: Ban On "Secret Science" In EPA Regulation Makes Sense

And in the newsroom:

<https://www.epa.gov/newsreleases/oklahoman-ban-secret-science-epa-regulation-makes-sense>

Cheers, R.

Robert Daguillard
Office of Media Relations
U.S. Environmental Protection Agency
Washington, DC
+1 (202) 564-6618 (O)
+1 (202) 360-0476 (M)

From: EPA Press Office [<mailto:press=epa.gov@cmail19.com>] **On Behalf Of** EPA Press Office
Sent: Monday, March 26, 2018 10:50 AM
To: Daguillard, Robert <Daguillard.Robert@epa.gov>
Subject: Ban On "Secret Science" In EPA Regulation Makes Sense



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THE OKLAHOMAN

Ban On “Secret Science” In EPA Regulation Makes Sense

Editorial

March 26, 2018

<http://newsok.com/article/5588210/ban-on-secret-science-in-epa-regulation-makes-sense>

The Environmental Protection Agency has announced it will now base new regulations only on the findings of scientific studies whose data and methodology are made public so they can be subjected to independent review. That's a sound move in line with basic scientific transparency and professionalism.

Yet it's being treated as a sign of impending apocalypse by some on the left, which says much about the questionable validity of that group's policy prescriptions.

In an interview with The Daily Caller News Foundation, Administrator Scott Pruitt said the EPA will end its use of studies that do not publish underlying data, only conclusions. “Otherwise, it's not transparent. It's not objectively measured, and that's important,” Pruitt said.

In the past, the EPA has advanced air-quality regulations that imposed massive costs based primarily on the findings of two studies done in the 1990s that linked fine particulate pollution to premature death. Neither study made associated data public.

U.S. Rep. Lamar Smith, R-Texas and chairman of the House Committee on Science, Space and Technology, has long criticized the use of “secret science” and authored legislation to curtail its use by regulators. Last year, Smith said the EPA had “routinely relied on questionable science based on nonpublic information that could not be reproduced, a basic requirement of the scientific method.”

“Americans deserve to see the science for themselves,” Smith said. “If the EPA has nothing to hide, why not make the scientific data it uses for its regulations publicly available? What was the EPA hiding?”

That will strike most people as a fair question. But to some activists, the idea that science should involve review and scrutiny is apparently anathema. In response to a prior effort to ban “secret science” at the EPA, Andrew Rosenberg, director of the Union of Concerned Scientists’ Center for Science and Democracy, said transparency would “gut the EPA at the expense of public health and safety.”

That same group has claimed release of data would require publicizing the confidential patient data of individuals. But Steve Milloy, publisher of JunkScience.com and a senior fellow at the Energy and Environmental Legal Institute, notes that California already makes similar data available in its “Public Use Death Files,” and that has been accomplished without violating patient privacy.

Other critics object that there are costs involved in scrubbing data sets so patient privacy is protected. Perhaps, but that doesn’t mean the public should be kept in the dark about the data and methods used to justify literally billions in new regulatory burden.

Scientific studies are as susceptible to human error and even outright fraud as any other endeavor — particularly when such studies are used in the political realm. Facilitating transparency and independent review will reduce the chances of bad science harming Americans with half-baked regulations, and should enhance the case for regulations when the underlying science has withstood independent scrutiny.

Given the stakes for public health and the national economy, Americans must be assured government regulations are based on sound science, not someone’s “trust me” assurances.

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Weekly with DAS/SA

January 24, 2018

- Jennifer Items?
- Tom items
 - Scientific Integrity - SIC meeting
 - Issues – Allegations, training, external stakeholders, FOIA
 - Actions – + clarification to the SIC?
 - PFAS
 - Follow-up to MF call
 - Regional network
 - DOD, ACC, ECOS meetings
 - other
 - Congressional briefings
 - SI
 - Honest Act
 - OMB follow-up strategy
 - IWGOS
 - Business review tomorrow

Message

From: Hubbard, Carolyn [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=2A93CE3245494318B109E87F7D826284-HUBBARD, CAROLYN]
Sent: 3/28/2018 12:03:38 PM
To: Radzikowski, Mary Ellen [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=2ac0a54e43bb4ac08276b57c5563c725-Radzikowski, Mary Ellen]; Orme-Zavaleta, Jennifer [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3c5a111dc377411595e5b24b5d96146b-Orme-Zavaleta, Jennifer]; Blackburn, Elizabeth [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a080eb90549a453aaa6a357f5257c0b7-Blackburn, Elizabeth]; Robbins, Chris [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=958b4b78eb42457eacf53514e428efd6-Robbins, Chris]; Rodan, Bruce [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=Rodan, Bruce]
Subject: Fwd: The EPA Cleans Up Its Science

Carolyn Hubbard
Communications Director
EPA Office of Research and Development
202-564-2189
202-379-6744

Begin forwarded message:

From: "Jones, Enesta" <Jones.Enesta@epa.gov>
Date: March 28, 2018 at 7:21:37 AM EDT
To: Press <Press@epa.gov>, Regional Public Affairs Directors <Regional_Public_Affairs_Directors@epa.gov>, AO OPA Internal Communications <AO_OPA_Internal_Communications@epa.gov>, AO-OCIR Everyone <AEOCIR_Everyone@epa.gov>, "Owens, Denise" <Owens.Denise@epa.gov>, Comm Directors and Alternates <Comm_Directors_and_Alternates@epa.gov>
Subject: Fwd: The EPA Cleans Up Its Science

And in the newsroom.

<!--[if !supportLineBreakNewLine]-->
<!--[endif]-->

From: "EPA Press Office" <press@epa.gov>
Date: March 27, 2018 at 7:05:01 AM EDT
To: "Jones.Enesta@epa.gov" <Jones.Enesta@epa.gov>
Subject: The EPA Cleans Up Its Science
Reply-To: press@epa.gov

No Images? [Click here](#)

THE WALL STREET JOURNAL

The EPA Cleans Up Its Science

Now Congress Should Act To Lock In Place Data Transparency

Steve Milloy

March 26, 2018

The Environmental Protection Agency will no longer rely on “secret” scientific data to justify regulations, Administrator Scott Pruitt announced last week. EPA regulators and agency-funded researchers have become accustomed to producing unaccountable, dodgy science to advance a political agenda.

The saga began in the early 1990s, when the EPA sought to regulate fine particulate matter known as PM_{2.5}—dust and soot smaller than 2.5 microns in diameter. PM_{2.5} was not known to cause death, but by 1994 EPA-supported scientists had developed two lines of research purporting to show that it did. When the studies were run past the EPA’s Clean Air Science Advisory Committee, it balked. It believed the studies relied on dubious statistical analysis and asked for the underlying data. The EPA ignored the request.

As the EPA prepared to issue its proposal for PM_{2.5} regulation in 1996, Congress stepped in. Rep. Thomas Bliley, chairman of the House Commerce Committee, sent a sharply written letter to Administrator Carol Browner asking for the data underlying studies. Ms. Browner delegated the response to a subordinate, who told Mr. Bliley the EPA saw “no useful purpose” in obtaining the data. Congress responded by inserting a provision in a 1998 bill requiring that data used to support federal regulation must be made available to the public via the Freedom of Information Act. But it was hastily written, and a federal appellate court held the law unenforceable in 2003.

The controversy went dormant until 2011, when a newly Republican Congress took exception to the Obama EPA’s antioal rules, which relied on the same PM_{2.5} studies. Again the EPA was defiant. Administrator Gina McCarthy refused requests for the data sets and defied a congressional subpoena.

Bills to resolve the problem died in the Senate. Democrats argued that requiring data for study replication is a threat to intellectual property and an invasion of medical privacy. In fact, the legislation would protect property by requiring a confidentiality agreement, and no personal medical data or information would have been released.


This sort of data is already routinely made public for research use. In 2012 I was desperate for a way around the Obama EPA’s secrecy on the PM_{2.5} issue, I found out in 2012 that I could get California death-certificate data in electronic form. The state’s Health Department calls this sort of data “Death Public Use Files.” They are scrubbed of

all personal identifying and private medical information. Some of my colleagues used this data to prepare a 2017 study, which found PM2.5 was not associated with death.

The best part is that if you don't believe the result, you can get the same data for yourself from California and run your own analysis. Then we'll compare, contrast and debate. That's how science is supposed to work.

It would be better if Congress would pass a law requiring data transparency. A future administrator may backslide on the steps Mr. Pruitt is taking. In the meantime, we have science in the sunshine.

[To Read The Full Article Click Here](#)

<!--[if !vml]-->A rectangular button with a dark gray background and a fine grid pattern. The text "Visit The EPA's Newsroom" is centered in white. The button is flanked by conditional comments: "<!--[if !vml]-->" on the left and "<!--[endif]-->" on the right. <!--[endif]-->

U.S. Environmental Protection Agency
1200 Pennsylvania Avenue Northwest
Washington, D.C. 20004

[Unsubscribe](#)

Message

From: Zartarian, Valerie [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=81096FE8DD024BDF935DEC292BF44F9D-ZARTARIAN, VALERIE]
Sent: 5/3/2018 6:37:59 PM
To: Orme-Zavaleta, Jennifer [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3c5a111dc377411595e5b24b5d96146b-Orme-Zavaleta, Jennifer]; Rodan, Bruce [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=Rodan, Bruce]; Watkins, Tim [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4cbd1c572f584fd7b0a3b5945f118558-Watkins, Tim]; Guiseppi-Elie, Annette [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=63d3e2eae9c4acba2609baa90b0f735-Guiseppi-El]; Garland, Jay [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8344688361ec4461b89037afbf43f5aa-Garland, Jay]; Stanek, Lindsay [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=14f7d5e8253a415385c88745a88fd6ee-Stanek, Lindsay]; Xue, Jianping [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=0a06bb7bb0a64633b7c68d6cae665b5a-Xue, Jianping]; Tornero-Velez, Rogelio [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4b901224c53043089da5fc3b792be3f7-Tornero-Velez, Rogelio]; Brown, James [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bb956ec2491e4620b3eef990a38a57b8-Brown, James_667f44daa6]
Subject: Fwd: Article in Bloomberg - links to Zartarian paper...

FYI

Begin forwarded message:

From: "Flowers, Lynn" <Flowers.Lynn@epa.gov>
Date: May 3, 2018 at 2:23:41 PM EDT
To: "Zartarian, Valerie" <Zartarian.Valerie@epa.gov>, "Hiscock, Michael" <Hiscock.Michael@epa.gov>
Subject: FW: Article in Bloomberg - links to Zartarian paper...

Just sharing. The link to the childhood lead exposure ifs your paper Valerie. They are using it as an example of a paper that might not pass the test with the new proposed rule.

From: Deener, Kathleen
Sent: Thursday, May 03, 2018 2:20 PM
To: Hauchman, Fred <hauchman.fred@epa.gov>; Burden, Susan <Burden.Susan@epa.gov>; Flowers, Lynn <Flowers.Lynn@epa.gov>; Doa, Maria <Doa.Maria@epa.gov>
Subject: Fwd: Article in Bloomberg - please forward to anyone I didn't catch

FYI

Sent from my iPhone

Begin forwarded message:

From: "Stone, Susan" <Stone.Susan@epa.gov>
Date: May 3, 2018 at 2:17:17 PM EDT
To: "Linnenbrink, Monica" <Linnenbrink.Monica@epa.gov>, "Stearns, Bailey" <stearns.bailey@epa.gov>, "Katz, Stacey" <Katz.Stacey@epa.gov>, "Robarge, Gail" <Robarge.Gail@epa.gov>, "Strine, Lora" <Strine.Lora@epa.gov>, "Deener, Kathleen" <Deener.Kathleen@epa.gov>, "Brown, Ann" <Brown.Ann@epa.gov>, "Baghdikian,

Christina" <Baghdikian.Christina@epa.gov>

Subject: Article in Bloomberg - please forward to anyone I didn't catch

News

EPA Cites Studies That Might Run Afoul of Pruitt's Proposed Rule

Posted May 2, 2018, 8:07 AM

By Eric Roston

- Air Quality Awareness Week outreach may cause conflict
- Rule proposal would aim for more 'transparency' in science

It's [Air Quality Awareness Week](#) and the Environmental Protection Agency is taking the opportunity to share some important medical advice.

In a series of tweets and elsewhere online, the agency is drawing attention to the impact of air pollution on health by citing scientific studies and other material.

But critics were quick to point out that some of the very studies being highlighted might not be allowed under proposed guidelines to restrict studies used in policy making.

On April 24, EPA Administrator Scott Pruitt proposed the "Strengthening Transparency in Regulatory Science" rule that would break with decades of federal practice by limiting the science available to regulators. Pruitt said the proposal was designed to enhance transparency in rulemaking, but critics say it could preclude the use of studies that rely on data that has been anonymized, with information that could identify the participants removed.

That's why otherwise innocuous Twitter posts from several EPA accounts—including the [EPA Office of Research and Development](#); [EPA Region 6](#), which covers the south-central U.S.; and [EPA Indoor Air Plus](#)—on air quality have become noteworthy.

Air Pollution and Lead Exposure

The posts link to a range of materials, from news articles, such as an April 17 Reuters [story](#) about links between heart disease and air pollution, to a peer-reviewed article about [child lead exposure](#) science and policy making. The latter

study was published in the September issue of Environmental Health Perspectives, a journal supported by the National Institute of Environmental Health Sciences.

John Walke, a senior attorney and clean-air director at the Natural Resources Defense Council, said some of those studies wouldn't pass muster under Pruitt's proposal.

"If enacted, Pruitt's plan could bar the agency from relying on important studies like these when setting health standards," Walke said by email.

The administration and conservative activists commonly label the practice of granting confidentiality to people included in some of those studies "secret science." Environmentalists say Pruitt's move is censoring science.

"The administrator is absolutely right to want to make sure the basis for federal policy is strong and relies on research that is reproducible," said Michael Greenstone, the Milton Friedman professor of economics at the University of Chicago. "Where I find it difficult to follow the logic is assigning zero weight to research that has been peer-reviewed and complies with the disclosure regulations of federal agencies that have collected the data,"

The EPA press office did not respond to emails requesting comment.

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To contact the reporter on this story: Eric Roston in New York at eroston@bloomberg.net

To contact the editor responsible for this story: Jon Morgan at jmorgan97@bloomberg.net

Susan Lyon Stone, Senior Environmental Health Scientist
Ambient Standards Group | US EPA (C504-06) | 109 TW Alexander Drive | RTP NC
27711
919-541-1146



Appointment

From: Gomez, Laura [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=575BA24FC19D429C8302A05102353238-LGOMEZ]
Sent: 1/23/2018 9:01:12 PM
To: Feeley, Drew (Robert) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=abae82aa36da4d3383eae19a8efa683c-Feeley, Rob]; Bolen, Brittany [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31e872a691114372b5a6a88482a66e48-Bolen, Brit]; Linkins, Samantha [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b7a94aa2975d4933981a8a9bf12aaa40-Linkins, Samantha]; Orme-Zavaleta, Jennifer [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3c5a111dc377411595e5b24b5d96146b-Orme-Zavaleta, Jennifer]; Rodan, Bruce [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=Rodan, Bruce]; Bahadori, Tina [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7da7967dcafb4c5bbc39c666fee31ec3-Bahadori, Tina]; Vandenberg, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=dcae2b98a04540fb8d099f9d4dead690-Vandenberg, John]; Albores, Richard [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ce14f8709a5e4ac383af9d0b767fd8af-Ralbor02]; Moody, Christina [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=813eb7f985c845eaa91edc10c6e9a914-CMoody]; Yamada, Richard (Yujiro) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4c34a1e0345e4d26b361b5031430639d-Yamada, Yuj]; Schmit, Ryan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7077ecbac4914a00ad465398f92bbe78-Schmit, Ryan]; Nguyen, Quoc [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=dd07feb4da3343a885b9ed60ee5a8bd2-Nguyen, Quoc]; Davis, Matthew [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=84111ec08c504b6baae0510b2d2ce46a-Davis, Matthew]; Lubetsky, Jonathan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e125d09a658e48119789ccae5712b4a5-JLUBETSK]; Saltman, Tamara [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9901d215c1e0496698e33501bac501d6-TSALTMAN]
CC: Simons, Andrew [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=652da36feb75460da864ef6504ae0f42-ASIMONS]; Koslow, Karin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d00aa4f4fead4a3fa02f0cafe57ed221-Koslow, Karin]; Siciliano, CarolAnn [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a0e84b7f6ddd4d92b99b2dba90aa86b1-CSICILIA]; Sinks, Tom [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=001007b7d256453a8a19b91df704e22c-Sinks, Tom]

Subject: Canceled: PENDING: EPA PRE-PLANNING CALL: HONEST ACT -BRIEFING WITH HSST

Location: **Personal Phone / Ex. 6**

Start: 1/26/2018 4:30:00 PM

End: 1/26/2018 5:00:00 PM

Show Time As: Free

Importance: High

All-

Appreciate your patience. Working out the logistics on everyone's calendars. Materials will be attached soon.

Best,

Laura

Message

From: Hubbard, Carolyn [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=2A93CE3245494318B109E87F7D826284-HUBBARD, CAROLYN]
Sent: 5/2/2018 2:07:54 PM
To: Blackburn, Elizabeth [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a080eb90549a453aaa6a357f5257c0b7-Blackburn, Elizabeth]; Orme-Zavaleta, Jennifer [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3c5a111dc377411595e5b24b5d96146b-Orme-Zavaleta, Jennifer]
Subject: FW: science reform talkers

Carolyn Hubbard
Communications Director
EPA Office of Research and Development
202-564-2189
202-379-6744

From: Grantham, Nancy
Sent: Wednesday, May 02, 2018 10:06 AM
To: Hubbard, Carolyn <Hubbard.Carolyn@epa.gov>
Subject: FW: science reform talkers

Nancy Grantham
Office of Public Affairs
US Environmental Protection Agency
202-564-6879 (desk)
202-253-7056 (mobile)

From: Grantham, Nancy
Sent: Wednesday, May 02, 2018 10:05 AM
To: Regional Public Affairs Directors <Regional_Public_Affairs_Directors@epa.gov>
Subject: science reform talkers

Nancy Grantham
Office of Public Affairs
US Environmental Protection Agency
202-564-6879 (desk)
202-253-7056 (mobile)

Science Reforms Talkers

- New rule will end to the era of secret science at EPA by requiring the agency to ensure that the regulatory science underlying its actions is fully transparent. EPA will only rely on science that is publicly available. This allows for third-parties to test, authenticate, and reproduce scientific findings.
- This proposed rule is part of a larger effort to reform how EPA conducts its own science.
 - Last October, Scott Pruitt issued a new directive today to ensure that any advisors serving on an EPA Federal Advisory Committee (FAC) are independent and free from any real, apparent, or potential interference with their ability to objectively serve as a committee member.
 - The directive explains that: members shall be independent from EPA, which shall include a requirement that no member of any of EPA's federal advisory committees be currently in receipt of EPA grants, either as principal investigator or co-investigator, or in a position that otherwise would reap substantial direct benefit from an EPA grant. This principle would not apply to state, tribal or local government agency recipients of EPA grants. An accompanying memorandum issued by EPA Administrator Pruitt explains the directives to improve the independence and integrity of EPA's FACs in ways that advance the Agency's mission.
 - More here:
<https://www.epa.gov/newsreleases/administrator-pruitt-issues-directive-ensure-independence-geographic-diversity>
- EPA Scientific Integrity Policy, February 2012: "Scientific research and analysis comprise the foundation of all major EPA policy decisions. Therefore, the Agency should maintain vigilance toward ensuring that scientific research and results are presented openly and with integrity, accuracy, timeliness, and the full public scrutiny demanded when developing sound, high-quality environmental science."
- This proposed rule is in line with the scientific community's moves toward increased data sharing to address the "replication crisis," in which a significant proportion of published research may be false or not reproducible. Examples of the current data access provisions for authors publishing in major scientific journals:
 - Science: "All data used in the analysis must be available to any researcher for purposes of reproducing or extending the analysis."
 - Nature: "This policy builds upon our long-standing policy on data availability, which requires that authors make materials, data, code, and associated protocols promptly available to readers without undue qualifications. The preferred way to share large data sets is via public repositories."
 - Proceedings of the National Academy of Sciences: "To allow others to replicate and build on work published in PNAS, authors must make materials, data, and associated protocols, including code and scripts, available to readers."

Sandy Germann
US EPA Office of Policy
202-631-0272
germann.sandy@epa.gov

Message

From: Grantham, Nancy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=12A3C2ED7158417FB0BB1B1B72A8CFB0-GRANTHAM, NANCY]
Sent: 8/8/2018 5:11:54 PM
To: Orme-Zavaleta, Jennifer [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3c5a111dc377411595e5b24b5d96146b-Orme-Zavaleta, Jennifer]
Subject: FW: invitation to Jennifer Orme-Zavaleta for SEJ panel

Let's discuss thanks ng

Nancy Grantham
Office of Public Affairs
US Environmental Protection Agency
202-564-6879 (desk)
202-253-7056 (mobile)

From: Elizabeth Shogren [mailto:eshogren@revealnews.org]
Sent: Wednesday, August 08, 2018 1:08 PM
To: Carpenter, Thomas <Carpenter.Thomas@epa.gov>
Cc: Grantham, Nancy <Grantham.Nancy@epa.gov>
Subject: Re: invitation to Jennifer Orme-Zavaleta for SEJ panel

Nancy,

I'm writing to reiterate my invitation to Jennifer Orme-Zavaleta to participate in the panel discussion about science in the Trump administration? The panel is scheduled for 2pm on Friday Oct. 5 during the Society for Environmental Journalists conference.

I have a deadline to provide names of participants by Aug. 15, so I would be grateful for a reply by then. Of course if she would like to participate but needs more time to confirm, I can definitely tell conference organizers that.

The conference will be in Flint Michigan. Each panelist will be asked to give a brief opening statement and then we will field questions from the audience.

Perhaps Orme-Zavaleta could speak briefly about why the Trump administration proposed its secret science rule: <https://www.epa.gov/newsreleases/epa-administrator-pruitt-proposes-rule-strengthen-science-used-epa-regulations>.

Sincerely,
Elizabeth Shogren

On Fri, Aug 3, 2018 at 11:13 AM, Elizabeth Shogren <eshogren@revealnews.org> wrote:

Hi Nancy,
I hope this email finds you well and enjoying your summer.
Tomas Carpenter tells me you are the contact person who can help me secure participation in my SEJ panel about the Trump administration's approach to science.
Please let me know if there's something else I should do to properly invite Ms. Orme-Zavaleta to participate.
Sincerely,
Elizabeth Shogren

On Tue, Jul 31, 2018 at 9:44 AM, Carpenter, Thomas <Carpenter.Thomas@epa.gov> wrote:

Ms. Shogren,

I forwarded your request to our staff in the Office of Public Affairs as well as the staff you mentioned in your email. I understand there are several SEJ requests and the OPA staff are the point of contact. Ms. Grantham's staff are the best point of contact for your panel request.

Best Regards,

Thomas Carpenter

Designated Federal Officer / Sr. Biologist

US EPA Science Advisory Board, MC 1400R

1200 Pennsylvania Avenue, NW

Washington DC 20460

ph 202 564 4885 Fax 202 565 2098

From: Elizabeth Shogren [mailto:eshogren@revealnews.org]

Sent: Monday, July 30, 2018 5:50 PM

To: Carpenter, Thomas <Carpenter.Thomas@epa.gov>

Subject: invitation to SEJ panel

Mr. Carpenter.

Thank you for speaking with me.

I'm moderating a panel on October 5 about science in Trump administration as part of the Society of Environmental Journalism's annual conference, which this year will be in Flint, Michigan.

I would greatly appreciate if Jennifer Orme-Zavaleta would participate in the panel.

The conference will be in Flint Michigan. Each panelist will be asked to give a brief opening statement and then we will field questions from the audience and I will likely ask some questions as well. Panelists will be encouraged to engage each other as well. Perhaps Orme-Zavaleta could speak briefly about why the Trump administration proposed its secret science rule: <https://www.epa.gov/newsreleases/epa-administrator-pruitt-proposes-rule-strengthen-science-used-epa-regulations>.

I would be very grateful if you would relay the invitation.

Thank you.

Best wishes,

Elizabeth Shogren

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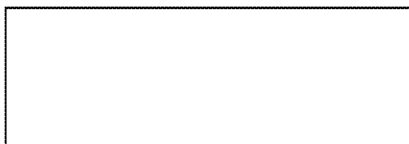
Elizabeth Shogren

Science Reporter

+1 202 744 1498 @ShogrenE

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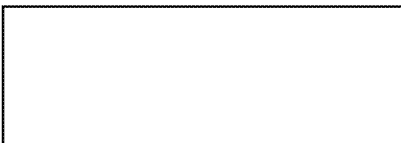
--
Elizabeth Shogren
Science Reporter
[+1 202 744 1498](tel:+12027441498) [@ShogrenE](https://twitter.com/ShogrenE)
[Revealnews.org](https://www.Revealnews.org)

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--
Elizabeth Shogren
Science Reporter
[+1 202 744 1498](tel:+12027441498) [@ShogrenE](https://twitter.com/ShogrenE)
[Revealnews.org](https://www.Revealnews.org)

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Message

From: Blackburn, Elizabeth [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=A080EB90549A453AAA6A357F5257C0B7-BLACKBURN, ELIZABETH]
Sent: 7/17/2018 11:09:50 PM
To: Orme-Zavaleta, Jennifer [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3c5a111dc377411595e5b24b5d96146b-Orme-Zavaleta, Jennifer]; Robbins, Chris [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=958b4b78eb42457eacf53514e428efd6-Robbins, Chris]; Rodan, Bruce [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=Rodan, Bruce]; Radzikowski, Mary Ellen [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=2ac0a54e43bb4ac08276b57c5563c725-Radzikowski, Mary Ellen]; D'Amico, Louis [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=78a91f83c4414910be286efe02004dbc-D'Amico, Louis J.]
Subject: Fwd: Science Transparency Hearing News Coverage

Liz Blackburn
Chief of Staff
EPA Office of Research and Development
202-564-2192
Cell 202-436-2453

Sent from my iPhone

Begin forwarded message:

From: "McGuinness, Moira" <McGuinness.Moira@epa.gov>
Date: July 17, 2018 at 5:55:39 PM EDT
To: "Hubbard, Carolyn" <Hubbard.Carolyn@epa.gov>, "Blackburn, Elizabeth" <Blackburn.Elizabeth@epa.gov>
Subject: Science Transparency Hearing News Coverage

[Even Geologists Hate the EPA's New Science Rule](#) The Atlantic

[EPA's 'secret science' rule faces outpouring of opposition during emotionally-charged hearing](#) ThinkProgress

Moira

Moira McGuinness
EPA Research Editor in Chief
202-590-0010—cell (M, W)
202-564-1507—desk (T, Th, F)
mcguinness.moira@epa.gov

Message

From: Blackburn, Elizabeth [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=A080EB90549A453AAA6A357F5257C0B7-BLACKBURN, ELIZABETH]
Sent: 5/8/2018 5:51:40 PM
To: Orme-Zavaleta, Jennifer [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3c5a111dc377411595e5b24b5d96146b-Orme-Zavaleta, Jennifer]; Robbins, Chris [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=958b4b78eb42457eacf53514e428efd6-Robbins, Chris]; Rodan, Bruce [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=Rodan, Bruce]; Radzikowski, Mary Ellen [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=2ac0a54e43bb4ac08276b57c5563c725-Radzikowski, Mary Ellen]; Hubbard, Carolyn [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=2a93ce3245494318b109e87f7d826284-Hubbard, Carolyn]
Subject: More groups demand wider scrutiny of Pruitt's science rule

More groups demand wider scrutiny of Pruitt's science rule

Sean Reilly, E&E News reporter

Published: Tuesday, May 8, 2018



EPA is legally bound to run its "secret science" proposal before the Clean Air Scientific Advisory Committee, according to former agency employees. Robin Bravender/E&E News

Not only must EPA hold a public hearing on a controversial proposal to overhaul its handling of scientific research, but it must also run the plan past two key advisory committees, an advocacy group made up mainly of former agency employees argues in newly filed comments.

Under a 1978 law that applies to any proposed "criteria document," EPA must submit the draft rule to the Science Advisory Board for review, according to the [filing](#) released late yesterday by the Environmental Protection Network.

And because the [proposed rule](#) would amend air quality criteria for lead and particulate matter, EPA must also give the Clean Air Scientific Advisory Committee the opportunity to weigh in, two of the group's leaders said in the comments.

If the committee recommends any changes, EPA Administrator Scott Pruitt must consider those recommendations and offer "a reasonable explanation" if he opts against adopting them.

"EPA cannot proceed with this action until these requirements are satisfied," they added in citing the need for the committee's review.

EPA press aides did not reply to an emailed request for comment this morning on that score.

The draft rule, published early last week in the *Federal Register*, would effectively bar EPA from using scientific studies in crafting significant new regulations unless the underlying data and models are "publicly available in a manner sufficient for validation and analysis."

While Pruitt has touted the proposal as a means of boosting public confidence in EPA regulatory decisions, critics say it's intended to block the agency from tapping valid research that might justify the need for stronger rules to protect public health and the environment.

Dozens of advocacy groups and Democratic elected officials have also called for an extension of the current 30-day public comment period by anywhere from two to five months.

The existing timetable will make it difficult to fully analyze and address "these far-reaching and long-lasting adverse impacts of this rule on the nation's air quality," the American Lung Association said in one such request last week.

In its own missive, the Environmental Protection Network sought a 90-day comment period, adding that EPA must also hold a public hearing in light of the potential ramifications for the Clean Air Act.

The group, founded early last year, is made primarily of ex-EPA staffers but also includes former state government employees, a spokeswoman said this morning. It has already released two critical analyses of the draft rule.

In arguing that two prominent EPA advisory panels also have a statutory role to play in evaluating the proposal, it has added to a growing chorus of objections.

The Clean Air Scientific Advisory Committee is a seven-member panel that provides outside expertise to EPA during statutorily required reviews of the air quality standards for a half-dozen "criteria" pollutants named in the Clean Air Act.

Its input is needed in the case because EPA wants to bypass two court rulings that previously upheld the agency's prerogative to tap "non-public data" in setting standards for airborne lead and particulate matter.

The agency is now "proposing to exercise its discretionary authority to establish a policy that would preclude it from using such data in future regulatory actions," according to a footnote in the proposed rule that cites those two rulings, both by the U.S. Court of Appeals for the District of Columbia Circuit.

The Science Advisory Board, which currently has 44 members, offers advice to EPA on a variety of topics. Under the 1978 law, known as the Environmental Research, Development and Demonstration Authorization Act, Pruitt must give the board the chance to assess "any proposed criteria document, standard, limitation, or regulation," the Environmental Protection Network said in its comments.

While the board can provide feedback on the proposal, however, Pruitt doesn't need its approval to move forward, the network said.

Liz Blackburn
Chief of Staff
EPA Office of Research and Development
202-564-2192
Mobile: 202-436-2453

Message

From: Blackburn, Elizabeth [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=A080EB90549A453AAA6A357F5257C0B7-BLACKBURN, ELIZABETH]
Sent: 5/8/2018 5:49:28 PM
To: Orme-Zavaleta, Jennifer [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3c5a111dc377411595e5b24b5d96146b-Orme-Zavaleta, Jennifer]; Robbins, Chris [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=958b4b78eb42457eacf53514e428efd6-Robbins, Chris]; Rodan, Bruce [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=Rodan, Bruce]; Radzikowski, Mary Ellen [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=2ac0a54e43bb4ac08276b57c5563c725-Radzikowski, Mary Ellen]; Hubbard, Carolyn [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=2a93ce3245494318b109e87f7d826284-Hubbard, Carolyn]
Subject: Pruitt science rule seen undermining EPA's 'war on lead'

Pruitt science rule seen undermining EPA's 'war on lead'

Ariel Wittenberg, E&E News reporter

Published: Tuesday, May 8, 2018



EPA Administrator Scott Pruitt may be the biggest deterrent to his "war on lead." Evan Vucci/Associated Press

EPA Administrator Scott Pruitt has declared a "war on lead," and is also leading an assault on so-called "secret science."

His critics say the two initiatives are at war with each other.

Last month, Pruitt proposed a science transparency rule that would effectively bar EPA from using studies in crafting significant regulations unless the underlying data "are publicly available in a manner sufficient for independent validation."

If that rule is finalized, health advocates say, it could bar EPA from considering many studies that prove threats posed by lead.

"This is waging war on the war on lead," said Erik Olson, who directs the Natural Resources Defense Council's health program.

Advertisement

Pruitt proposed the science proposal as EPA is working to rewrite standards for lead in dust, paint and drinking water. It's unclear whether the proposed "transparency" rule would be finalized in time to be in effect for current lead rewrites, but it could still come into play for future decisions about Superfund sites contaminated with lead, as well as future lead air standards that must be rewritten every five years.

Lead is a potent neurotoxin that can be especially harmful to children. Long-term exposure can damage brain development, impair muscle coordination, and affect nervous systems, kidneys and hearing.

But much of the research on lead's health effects is decades old and involved studying children with extremely high lead levels in their blood. Independently validating those studies would be unethical and therefore impossible, advocates say, because it would require exposing kids to higher doses of the toxin than they currently encounter.

"If this is retrospective, it would be a disaster," said Ronnie Levin, a former EPA staffer who manages the water and health program at Harvard University's T.H. Chan School of Public Health.

"They could end up saying, 'We don't have to eliminate exposure because we don't have evidence that lead is bad.'"

Bruce Lanphear, a researcher at Simon Fraser University who authored many pivotal lead studies in the 1990s, called the science rule "insane."

"If this is retroactive," he said, "it would be a clear attempt to roll back regulations by knocking out the vast majority of research."

EPA failed to respond to requests for comment. But Pruitt has made reducing lead risk a priority for his agency in 2018, telling Congress multiple times he wants to wage a "war on lead."



Erik Olson, Natural Resources Defense Council

The science proposal asks the public to weigh in on whether older studies should be grandfathered in, and whether certain types of regulations should be exempt from the requirements.

NRDC's Olson said he's skeptical EPA would exempt lead regulations or older studies from the rule, noting that the Trump administration is industry-friendly.

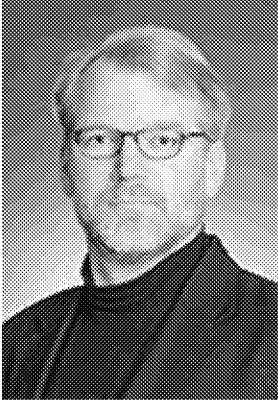
"A lot of these studies about the health effects of lead, the chemical industry has been targeting for a long time," he said. "Pruitt continues to do the bidding of industry in other actions, so I'm skeptical that this would be any different."

Even if older studies could still be considered under the "transparency" rule, proposed data-sharing requirements in the rule also raise questions about how many researchers could comply.

Epidemiological studies about lead often rely on personal data that researchers might be uncomfortable sharing with the public or might be prohibited from sharing under the Health Insurance Portability and Accountability Act.

In its proposal, EPA asks for comment about how it could implement a final rule that would be "consistent with statutory requirements for protection of privacy and confidentiality of research participants."

Lanphear said there is nothing wrong, on its face, with increasing data transparency. The National Institutes of Health already requires recipients of grants larger than \$500,000 to share data with the agency.



Bruce Lanphear, Simon Fraser University

But, he notes, researchers know going into those grants that they'll need to set aside time and funds to go through data and remove any identifying information about study subjects. EPA's proposal, by contrast, would amount to an unfunded mandate targeting any number of studies, he said.

He also said he is skeptical of EPA's intentions, in part because the agency is not considering requiring similar transparency from chemical companies about, for example, the science proving pesticides are safe to use.

"In a less insane world, there is nothing wrong with data sharing," he said. "As it is, I can only see the reasoning behind this as meaning to gum up the system so you can't write new regulations and might have to undo old ones."

Could computer models be trashed?

The proposed science rule wouldn't just have the potential to remove studies from EPA consideration; it could also eliminate computer models the agency uses to determine childhood lead exposure.

Computer models integrate multiple studies at one time, and if any individual study did not comply with the regulation, the whole model could be thrown out, warned Doreen Cantor Paster, former branch chief for EPA's lead paint program.

Models determining how much lead dust toddlers typically ingest are based on studies of how many hours toddlers are awake, how much of that time they would be crawling, how often they stick a hand in their mouth, how much lead dust might be on their hands and how that might affect their health.

The entire model would be "interrupted," Paster said, "if any given study for any given step was ruled out of bounds."

"These models are important for almost everything EPA does on lead," she said.

While those studying the health impacts of lead might be willing to comply with new transparency standards to allow EPA to use their data, the same might not be the case for those working in other fields, like behavioral science, said Betsy Southerland, who resigned in protest last year from her post leading EPA's Office of Water's Office of Science and Technology.

Researchers from other countries or working in other fields may not be aware of new EPA requirements or willing to tailor their work to them.

"There are researchers that wouldn't be dependent on EPA to use their science that wouldn't want to take the added time and effort," she said.

Ultimately, the proposed transparency rule could result in different federal standards for lead at different agencies.

A few years ago, the Centers for Disease Control and Prevention lowered its "reference level" for when lead in blood is considered elevated to 5 micrograms per deciliter.

In response, the Department of Housing and Urban Development rewrote its regulation for lead paint in public housing to bring it in line with the CDC's recommendation.

But EPA is still catching up. The agency is working to rewrite its standard for lead paint in private homes, which has not yet been proposed. If the science transparency rule is finalized first, Paster said, EPA and HUD might rely on completely different data to regulate the same kind of lead exposure.

"You could conceivably get different hazard levels for two different types of housing," she said

Liz Blackburn
Chief of Staff
EPA Office of Research and Development
202-564-2192
Mobile: 202-436-2453

Message

From: D'Amico, Louis [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=78A91F83C4414910BE286EFE02004DBC-D'AMICO, LOUIS J.]
Sent: 9/10/2018 10:04:30 PM
To: Blackburn, Elizabeth [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a080eb90549a453aaa6a357f5257c0b7-Blackburn, Elizabeth]; Orme-Zavaleta, Jennifer [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3c5a111dc377411595e5b24b5d96146b-Orme-Zavaleta, Jennifer]
Subject: Latest (clean) copy of science transparency 2-pager.
Attachments: Transparency briefer_091018.docx

Attached.

Message

From: D'Amico, Louis [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=78A91F83C4414910BE286EFE02004DBC-D'AMICO, LOUIS J.]
Sent: 8/21/2018 1:22:55 PM
To: Orme-Zavaleta, Jennifer [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3c5a111dc377411595e5b24b5d96146b-Orme-Zavaleta, Jennifer]; Kuhn, Kevin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=be20941b4c1144b8b3635e4df015924a-Kuhn, Kevin]; Christian, Megan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=64a0f5e0e9d94271b23cad28db653851-Lizotte, Me]
Subject: New version of transparency backgrounder
Attachments: Transparency briefer_081518 mjd v2.docx

Hi Jennifer,

Maria and I talked yesterday about the transparency background document and how to update it to reflect the closing of the public comment period. The attached version in track changes is updated, with some light editing to keep it to two pages with the added content. Let me know what you think.

-Lou

Louis D'Amico, Ph.D.
Senior Science Advisor
Office of Research and Development
U.S. Environmental Protection Agency
Mail Code 8101R | 1200 Pennsylvania Ave, NW | Washington, DC 20460

Office: 202-564-4605 | Personal Phone / Ex. 6 | email: damico.louis@epa.gov

Message

From: Lavoie, Emma [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=86AC7844F12646C095E4E9093A941623-LAVOIE, EMMA]
Sent: 12/18/2017 8:03:13 PM
To: Orme-Zavaleta, Jennifer [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3c5a111dc377411595e5b24b5d96146b-Orme-Zavaleta, Jennifer]; Thayer, Kris [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3ce4ae3f107749c6815f243260df98c3-Thayer, Kri]; Bateson, Thomas [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=29bfdde020bf4e93b431b9a72d9d230f-Bateson, Thomas]; Bahadori, Tina [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7da7967dcafb4c5bbc39c666fee31ec3-Bahadori, Tina]
Subject: RE: Prep for IRIS meeting

All,

Some definitions you may want at hand for discussion today or for tomorrow.

Risk eval rule is [here](#).

SR definition from preamble is:

11. Systematic Review. EPA requested comment on the need for regulatory text prescribing a specific systematic review approach for hazard identification, including the appropriateness of elements that might be included or concerns about codifying an approach. Commenters both supported and opposed the inclusion of systematic review in the rule text. Those opposing the codification of systematic review argued that EPA should retain flexibility and the ability to change the process as improved methods for systematic review are developed. Some commenters did encourage a description of the intended approach in the preamble, but suggested that EPA reserve the specific process for guidance. Those in support of codifying a description of systematic review in the rule text stated that inclusion would increase transparency and would provide the public with an indication of how the statutory requirement of weight of the scientific evidence, requirements of sections 6 and 26, and an integral component of systematic review, will be applied. EPA intends to use the systematic review approach, described in the proposed rule, but is not codifying a definition in the regulatory text. To be clear, although EPA asked for comment on the need for regulatory text for systematic review on hazard identification specifically, EPA will not limit the use of this approach solely to the hazard assessment, but will use it throughout the risk evaluation process. The inclusion of a description of systematic 33 review in the preamble is the most appropriate approach in light of public comment and the requirements of the statute. First, systematic review is not required under the statute, only a weight of the scientific evidence analysis. The definition the Agency is adopting for “weight of the scientific evidence” uses the phrase “systematic review,” which addresses to some extent the commenters who favored including the concept in this regulation. EPA sees weight of the scientific evidence approach as an interrelated part of systematic review, and further believes that integrating systematic review into the TSCA risk evaluations is critical to meet the statutory requirements of TSCA. Although, as EPA discusses elsewhere in this preamble, there are universal components of systematic review that EPA intends to apply in conducting risk evaluations, this is one area where EPA concluded it would be premature to codify specific methods and criteria that may change as the Agency gains more experience conducting TSCA risk evaluations. As requested by commenters, EPA does believe the addition of discussion of the systematic review approach the Agency intends on utilizing is necessary for transparency, and so provides the description herein. Section 26(l) also requires EPA to develop and revise Agency guidance. The Agency intends to provide further details on systematic review and weight of scientific evidence approaches under TSCA in future guidance documents. As defined by the Institute of Medicine (Ref. 11) systematic review “is a scientific investigation that focuses on a specific question and uses explicit, pre-specified scientific methods to identify, select, assess, and summarize the findings of similar but separate studies. The goal of systematic review methods is to ensure that the review is complete, unbiased, reproducible, and transparent” (Ref. 11). The principles of systematic review have been well developed in the context of 34 evidence-based medicine (e.g., evaluating efficacy of medical interventions tested in multiple clinical trials) (Ref. 12) and are being adapted for use across a more diverse array of systematic review questions, through the use of a variety of computational tools. For instance, the National Academies’ National Research

Council (NRC) has encouraged EPA to move towards systematic review processes to enhance the transparency of scientific literature review that support chemical-specific risk assessments to inform regulatory decision making (Ref. 13). Key elements of systematic review include: - A clearly stated set of objectives (defining the question); - Developing a protocol which describes the specific criteria and approaches that will be used throughout the process; - Applying the search strategy criteria in a literature search; - Selecting the relevant papers using predefined criteria; - Assessing the quality of the studies using predefined criteria; - Analyzing and synthesizing the data using the predefined methodology; - Interpreting the results and presenting a summary of findings (Ref. 14)

And taken from the draft TSCA SR approach document, other key definitions:

1 SCIENTIFIC STANDARDS FOR TSCA RISK EVALUATIONS

TSCA requires that, to the extent that EPA makes a decision based on science under TSCA sections 4, 5, or 6, EPA must use certain scientific standards and make those decisions consistent with the best available science and based on the weight of the scientific evidence [15 U.S.C. 2625(h) and (i)]. In addition, TSCA section 6(b)(4) establishes specific substantive requirements for EPA-conducted risk evaluations [15 U.S.C 2605 (b)(4)].

1.1 Best Available Science

EPA will prepare TSCA risk evaluations using the best available science as described in TSCA [15 U.S.C. 2625(h)] and the final rule establishing the procedures for chemical risk evaluation (40 CFR Part 702.33).

In determining that best available science is an integral component of section 6 risk evaluations, EPA defined, by rulemaking, best available science as “*science that is reliable and unbiased. Use of best available science involves the use of supporting studies conducted in accordance with sound and objective science practices, including, when available, peer reviewed science and supporting studies and data collected by accepted methods or best available methods (if the reliability of the method and the nature of the decision justifies use of the data).*”

As defined in 40 CFR Part 702.33, implementing the best available science also means “*...to consider, as applicable:*

- *The extent to which the scientific information, technical procedures, measures, methods, protocols, methodologies, or models employed to generate the information are reasonable for and consistent with the intended use of the information;*
- *The extent to which the information is relevant for the Administrator’s use in making a decision about a chemical substance or mixture;*
- *The degree of clarity and completeness with which the data, assumptions, methods, quality assurance, and analyses employed to generate the information are documented;*
- *The extent to which the variability and uncertainty in the information, or in the procedures, measures, methods, protocols, methodologies, or models, are evaluated and characterized; and*
- *The extent of independent verification or peer review of the information or of the procedures, measures, methods, protocols, methodologies or models.”*

1.2 .Weight of the Scientific Evidence

TSCA risk evaluations are required to rely on the weight of the scientific evidence [15 U.S.C. 2625 (i)]. In accordance with the final rule (40 CFR Part 702.33), the weight of the scientific evidence is defined as “*a systematic review method, applied in a fit-for-purpose manner, that uses a pre-established protocol to comprehensively, objectively, transparently, and consistently, identify and evaluate each stream of evidence,*

including strengths, limitations, and relevance of each study and to integrate evidence as necessary and appropriate based upon strengths, limitations, and relevance."

1.3 Data Quality

EPA will implement a data quality system that ensures that the TSCA risk evaluation uses quality data intended for risk assessment purposes consistent with the requirements of TSCA [15 U.S.C. 2625(h) and (i); 2605 (b)(4)]. EPA will use the approaches set forth in the rule at 40 CFR Part 702 and the accompanying preamble to prepare the various sections of TSCA risk evaluations. Moreover, EPA will disclose and make publicly available raw data used to support the draft risk evaluation, if not previously reported in the literature, with the exception of confidential business information (CBI) that may be considered in the preparation of the risk evaluation.

-Emma

Tel: 202 564 7091

-----Original Appointment-----

From: Orme-Zavaleta, Jennifer

Sent: Monday, December 18, 2017 2:00 PM

To: Orme-Zavaleta, Jennifer; Lavoie, Emma; Thayer, Kris; Bateson, Thomas; Bahadori, Tina

Subject: FW: Prep for IRIS meeting

When: Monday, December 18, 2017 4:00 PM-4:30 PM (UTC-05:00) Eastern Time (US & Canada).

Where: 41209 RRB

-----Original Appointment-----

From: Orme-Zavaleta, Jennifer

Sent: Monday, December 18, 2017 10:42 AM

To: Orme-Zavaleta, Jennifer; Bahadori, Tina

Subject: Prep for IRIS meeting

When: Monday, December 18, 2017 4:00 PM-4:30 PM (UTC-05:00) Eastern Time (US & Canada).

Where: 41209 RRB

Prep for meeting with Nancy Beck tomorrow

Message

From: Dan Greenbaum [DGreenbaum@healtheffects.org]
Sent: 8/20/2018 1:08:19 PM
To: Bailey, Chad [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=f6b66ada36614176b58df1b570bb01f5-Bailey, Chad]; 'bloomer.bryan@epa.gov'; 'charmley.william@epa.gov'; Cascio, Wayne [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a1bd931ca2f84ea8ac2f4c44538f3589-Cascio, Wayne]; 'dunham.sarah@epa.gov'; 'grundler.christoper@epa.gov'; 'haeuber.richard@epa.gov'; 'hoyer.marion@epa.gov'; 'cook.leila@epa.gov'; Hubbell, Bryan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ae08e950e7e045b3974389d1c34fbc5d-BHUBBELL]; Hunt, Sherri [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=20781e40790644eca78c9e6c86d4eda8-Hunt, Sherri]; Gentry, James [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3aecc141db1e402f9b33295563c142ca-Gentry, James]; 'kasman.mark@epa.gov'; Keating, Terry [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9d77c38855314d139e5d07bbc9934995-TKeating]; 'kolb.laura@epa.gov'; Orme-Zavaleta, Jennifer [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3c5a111dc377411595e5b24b5d96146b-Orme-Zavaleta, Jennifer]; 'owen.russell@epamail.epa.gov'; 'harvey.reid@epa.gov'; 'robarge.gail@epamail.epa.gov'; Robbins, Chris [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=958b4b78eb42457eacf53514e428efd6-Robbins, Chris]; Rodan, Bruce [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=Rodan, Bruce]; 'sargeant.kathryn@epa.gov'; 'sasser.erika@epa.gov'; Shoaff, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ac16fb09cf2c44adb34a7405dc331532-JShoaff]; 'simon.karl@epa.gov'; Shaw, Betsy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31ca1476a7674825a131cb2c0d6c88c8-BShaw03]; 'teichman.kevin@epa.gov'; 'trovato.ramona@epa.gov'; Peter Tsirigiotis (tsirigiotis.peter@epa.gov) [tsirigiotis.peter@epa.gov]; 'vandenbergh.john@epa.gov'; Vette, Alan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b327c9db99da43a691a6e68ea28f6d66-Vette, Alan]; Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]; 'winner.darrell@epa.gov'; Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clint]; Yamada, Richard (Yujiro) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4c34a1e0345e4d26b361b5031430639d-Yamada, Yuj]; 'bcroes@arb.ca.gov'; Steve Cliff (steve.cliff@arb.ca.gov) [steve.cliff@arb.ca.gov]; 'mnichols@arb.ca.gov'; 'michael.claggett@fhwa.dot.gov'; 'cecilia.ho@dot.gov'; 'april.marchese@fhwa.dot.gov'; 'victoria.martinez@fhwa.dot.gov'
CC: Robert O'Keefe [ROKeefe@healtheffects.org]; Rashid Shaikh [RShaikh@healtheffects.org]; Lindy Raso [lraso@healtheffects.org]
Subject: HEI Comments Submitted On Proposed Rule on Regulatory Science...
Attachments: Health Effects Institute Comments on the EPA Transparency Rule Docket Number EPA-HQ-OA-2018-0259.pdf

Dear HEI Sponsors:

We write to let you know that HEI last week submitted the attached comments on the EPA Proposed "Transparency in Regulatory Science" rule. As many of you know, HEI has a longstanding commitment to producing science of the highest integrity, quality, and transparency, built on a foundation of: rigorous research and statistical design – subject to continuous oversight, data quality assurance audits, and more; extensive efforts to test all findings against a wide range of different statistical techniques and assumptions; intensive independent peer review, with *all* results published; and an active *Data Access Policy* for over 20 years to facilitate access to underlying data for all HEI-funded studies. In that spirit we have submitted these comments to suggest ways in which transparency and data access can be enhanced, without in the process compromising the privacy of study subjects.

Please let us know if you have any comments or questions...

And thanks again for your interest and support of the work of HEI!

Best
Dan



Dan Greenbaum, President
Health Effects Institute
75 Federal Street Suite 1400
Boston, MA 02110
O: +1 617 488 2331
C: +1 617 283 5904
www.healtheffects.org

**Comments of the Health Effects Institute
on
“Strengthening Transparency in Regulatory Science”
(Proposed Rule Docket Number: EPA–HQ–OA–2018–0259]**

August 16, 2018

The Health Effects Institute (HEI) is pleased to present these comments on Proposed Rule “Strengthening Transparency in Regulatory Science.” (Docket No: EPA–HQ–OA–2018–0259)

HEI has a longstanding commitment to producing science of the highest integrity, quality, and transparency, built on a foundation of:

- Rigorous research and statistical design – subject to continuous oversight, data quality assurance audits, and more;
- Extensive efforts to test all findings against a wide range of different statistical techniques and assumptions,
- Intensive independent peer review, with *all* results published, and
- An active *Data Access Policy* for over 20 years to ensure access to underlying data for all HEI-funded studies.

Based on our extensive experience in producing, reviewing, reanalyzing, and interpreting science, we submit the following specific comments for your consideration:

Action to improve transparency should begin with review of the many existing efforts already in place.

In HEI’s work to provide the highest quality, impartial and relevant science to inform decisions, we have seen reproducibility as a critical challenge for science: *can the results of important studies be reproduced?* But we would note that these issues are not new, and have been addressed now for over 15 years by administrations from both parties and by the scientific community. This has included the Guidelines for the Information Quality Act adopted by the Office of Information and Regulatory Affairs (OIRA) in 2002 (Federal Register / Vol. 67, No. 36 / Friday, February 22, 2002); numerous actions by the scientific community and journals to

enhance access to data and methods; and most recently the requirements for enhanced data access across the Federal Government promulgated by the Office of Science and Technology Policy (OSTP) in February 2013.

We would recommend that EPA carefully review the progress already made under these major initiatives prior to determining what if any additional action is needed to enhance transparency.

EPA should have the broadest possible range of science available for making decisions on risk, causality, and other important policy.

Based on our detailed knowledge of the underlying science, and our experience conducting rigorous systematic reviews of the scientific literature, HEI would recommend that EPA reconsider and not go forward with the provision in the proposed rule that would appear to in effect prohibit the use of otherwise high-quality and rigorously peer-reviewed studies if the data and models are not “publicly available in a manner sufficient for independent validation.” Although HEI strongly supports making data and models available as widely as possible, and EPA can and has in the past made efforts to access data for important studies, there are several reasons why a blanket prohibition may interfere with EPA’s ability to draw on and interpret the fullest range of scientific evidence for important decisions.

- First, EPA already has the ability and duty to assess the quality and robustness of results of a study even in cases where the data are not available, both by careful review of all of the methods and supplemental information presented, and by expert review by EPA scientific staff and scientific advisors. These steps can identify both the strengths and weaknesses of any such study in a manner that allows the proper weighing of that study in consideration of the weight of evidence for or against a specific health effect. To arbitrarily prevent the use of any such study has the potential to significantly weaken EPA’s ability to make high quality judgments based on the full range of the available science.
- Second, in HEI’s view the most effective way to test the reproducibility and validity of scientific results is not necessarily to simply reproduce the same results in the same data sets but rather to answer the question: Can the original results hold up when tested in new studies:
 - that use new and separate data bases not affiliated with the original studies?
 - have different investigators applying the same and/or different statistical techniques?
 - and test the sensitivity of the results against a wide range of possible other explanation, e.g. smoking behavior, socioeconomic status, and more?

This broader assessment of the literature allows for an open and rigorous evaluation of an original study without the need for the data necessarily being available.

As there are multiple paths to assessing the integrity and validity of a study, we would recommend that EPA continue to fully evaluate *all available studies* for their strengths and weaknesses as it considers the weight of evidence for or against a specific health or policy decision.

Detailed and rigorous reanalysis may be appropriate in some cases, but it is costly if done correctly and reduces resources available for new, better-designed studies.

In a limited number of cases there may not be comparable studies available in other datasets, and it could be useful to gain access to the original study data and statistical approaches to allow for independent reanalysis that asks: Can the original results be replicated? And are they robust to a wide range of alternative assumptions, models and potential confounders? If such detailed, independent reanalysis has already been undertaken, it can significantly reduce the need for further independent validation of a specific study.

This is of course the approach that HEI applied in its independent, rigorous reanalysis of the Harvard Six Cities and American Cancer Society Studies. We have attached a summary description of the Reanalysis; the full reanalysis – which involved data audits, replication of the original results, and extensive testing of those results against a wide variety of alternate data, assumptions, and models, can be found at: <https://www.healtheffects.org/publication/reanalysis-harvard-six-cities-study-and-american-cancer-society-study-particulate-air>.

While this approach can – and did – provide comprehensive assurance of the integrity and validity of the original results, it is also a highly cost-intensive undertaking and should be considered only in those cases where there is not an ability to otherwise evaluate the results of a study.

“Depersonalized” data sets can be created, but in many instances they will not allow for full replication and reanalysis.

HEI has extensive experience with the careful and protected use of private medical information, which is critical to conducting high quality and reproducible air quality and health research. There are of course longstanding federal rules for protecting the privacy of individual medical information of the subjects of studies (e.g. the “Common Rule” mandating Institutional Review Board review of any use of personal data; confidentiality assurances provided to study participants; non-disclosure of personal information through HIPPA, and others) and it is important to adhere to these even as the valuable information contained in such records is applied in scientific research.

Fortunately, there *are* means available through a number of government agencies to make some such data available in detail to qualified researchers, conditional on their agreeing to a data use agreement that enables access to the data – but prohibits public disclosure of individual data. Many investigators have for example accessed the Medicare data set through application to the Center for Medicare Services (CMS). Alternatively, many agencies make the data available

through Federal Research Data Centers. While each of these options – and others – do contain some restrictions on the public disclosures, and will result in the incurring of costs, they can and have been used for an increasing number of air pollution and health studies. HEI does believe that there are improvements that could be made to those access options, e.g. easier access provisions for Federal Research Data Centers, and would urge EPA to work with its federal agency counterparts to accomplish that.

Some have argued that it should be possible to create a “depersonalized” data set by stripping all personal identifiers such as address, date of birth, etc. and making such a data set widely available. However, it is not possible to conduct a high-quality air pollution and health study without knowing the locations of those being studied, i.e. where they live, and what are the sources and levels of their air pollution exposure. And unfortunately, once that information is available at smaller spatial scale, it is possible to disclose extensive medical information for individual study subjects.

Since the goal should be to find ways to share data which enables full replication and sensitivity analysis of original studies, it is valuable to consider several aspects of large population air pollution studies that have moved them towards using data at smaller spatial scales:

- First, in response to valid criticisms that the earlier air pollution studies relied only on central air quality monitoring data to estimate exposure, investigators have increasingly sought to better estimate exposure employing land use regression models and other methods that can account for the distance of a subject’s home from roadways, industrial facilities, and other sources of air pollution. They have also applied increasingly finer-grained community-level covariates (e.g. at the zip code level). While in the largest locations the application of these finer-grained data would likely not allow for identification of individual subjects, the national analyses in some of these studies include subjects from a wide range of community sizes, including smaller communities where identification could be possible.
- Second, as these types of studies have been reviewed intensively by the HEI Review Committee, the Committee has identified two potentially significant sources of uncertainty in their results: so-called “ecological confounding”¹ and “spatial autocorrelation.”² To address both of these issues, one of the first steps that investigators have taken has been to use data at smaller scales which, while enhancing their ability to test for these two sources of uncertainties, also poses the potential in smaller communities for individuals and their personal information to be identified.

¹ Ecological confounding arises when some community-level variables, which are themselves risk factors for mortality, are also associated with air pollution levels

² Spatial autocorrelation is the tendency for variables to have similar values for people or areas that are geographically close, which can suggest that there are other mortality causes which are unaccounted for in the analysis or can distort the precision of risk estimates.

Taken together, these characteristics – which have in general enhanced the quality and the sensitivity of the studies – increase the difficulty of providing a fully “de-identified” data set while *also* enabling a different investigator to conduct a full replication and sensitivity analysis of the original study results. The other mechanisms discussed above – e.g. data use agreements, research data centers – fortunately would allow access to the more detailed data necessary to conduct such full new analyses while protecting the confidentiality of study subjects.

In closing we appreciate the opportunity to present these comments. We firmly believe that there is ample opportunity to enhance transparency and reproducibility in science to inform decisions, in many respects taking advantage of existing rules and methods and would welcome the opportunity to assist EPA in making these improvements. Should the Agency have any further questions, please feel free to contact Dan Greenbaum, President, Health Effects Institute, dgreenbaum@healtheffects.org, (617) 488-2331.



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STATEMENT

Synopsis of the Particle Epidemiology Reanalysis Project

BACKGROUND

Epidemiologic work conducted over several decades has suggested that long-term residence in cities with elevated ambient levels of air pollution from combustion sources is associated with increased mortality. Subsequently, two prospective cohort studies, the Six Cities Study (as reported in Dockery et al 1993) and the American Cancer Society (ACS) Study (as reported in Pope et al 1995) estimated that annual average all-cause mortality increased in association with an increase in fine particles (all particles less than 2.5 μm in median aerodynamic diameter [$\text{PM}_{2.5}$]).

As part of the Six Cities Study, Dockery and colleagues (1993) had prospectively followed a cohort of 8,111 adult subjects in northeast and midwest United States for 14 to 16 years beginning in the mid-1970s. The authors found that higher ambient levels of fine particles and sulfate (SO_4^{2-}) were associated with a 26% increase in mortality from all causes when comparing the most polluted to the least polluted city, and that an increase in fine particles was also associated with increased mortality from cardiopulmonary disease. The relative risks in all-cause mortality were associated with a difference (or range) in ambient fine particle concentrations of 18.6 $\mu\text{g}/\text{m}^3$ and a difference of ambient sulfate concentrations of 8.0 $\mu\text{g}/\text{m}^3$, comparing the least polluted city to the most polluted city.

In the much larger ACS Study, Pope and colleagues (1995) followed 552,138 adult subjects in 154 US cities beginning in 1982 and ending in 1989 (3 cities did not overlap between the 151 and 50 cities studied, resulting in a total of 154 cities). Again, higher ambient levels of fine particles were associated with increased mortality from all causes and from cardiopulmonary disease in the 50 cities for which fine particle data were available (sampled from 1979 to 1983). Higher ambient sulfate levels were associated with increased mortality

from all causes, cardiopulmonary disease, and lung cancer in the 151 cities for which sulfate data were available (sampled from 1980 to 1982). The difference between all-cause mortality in the most-polluted city and the least-polluted city was 17% and 15% for fine particles and sulfate, respectively (with a range of 24.5 $\mu\text{g}/\text{m}^3$ for fine particles and of 19.9 $\mu\text{g}/\text{m}^3$ for sulfate).

Both of these studies came under intense scrutiny in 1997 when the EPA used the results to support new National Ambient Air Quality Standards for fine particles and to maintain the standards for particles less than 10 μm in median aerodynamic diameter (PM_{10}) already in effect. Members of Congress and industry, the scientific community and others interested in regulation of air quality scrutinized the studies' methods and their results. Some insisted that any data generated using federal funding should be made public. Others argued that these data had been gathered with assurances of confidentiality for the individuals who had agreed to participate and that the concept of public access to federally funded data did not take into account the intellectual property rights of the investigators and their supporting institutions. To address the public controversy, Harvard University and the ACS requested that the Health Effects Institute organize an independent reanalysis of the data from these studies. Both institutions agreed to provide access to their data to a team of analysts to be selected by HEI through a competitive process.

APPROACH

To conduct the reanalysis, the HEI Board of Directors, with support from the EPA, industry, Congress, and other stakeholders, appointed an Expert Panel chaired by Dr Arthur Upton from the University of Medicine and Dentistry of New Jersey and former Director of the National Cancer

This Statement, prepared by the Health Effects Institute, is a summary of a research project conducted by the Reanalysis Team, led by Dr Daniel Krewski at the University of Ottawa. The following Special Report contains the detailed Investigators' Report (Summary, Introduction, and Parts I and II), Commentary on the project prepared by a special panel of the Institute's Health Review Committee, and Comments on the Reanalysis Project by the Original Investigators (Drs Douglas W Dockery, C Arden Pope III et al).

Particle Epidemiology Reanalysis Project

Institute. The Expert Panel selected competitively a Reanalysis Team—led by Dr Daniel Krewski of the University of Ottawa—and oversaw all aspects of the team's work. They were assisted in their oversight efforts by a broad-based Advisory Board of knowledgeable stakeholders and scientists who, in the project's early stages, provided extensive advice to the Expert Panel on the key questions to be analyzed. The final results of the Reanalysis Team were intensively and independently peer reviewed by a Special Panel of the HEI Health Review Committee, which was chaired by Dr Millicent Higgins of the University of Michigan.

The overall objective of what became the Particle Epidemiology Reanalysis Project was to conduct a rigorous and independent assessment of the findings of the Six Cities and ACS Studies of air pollution and mortality. This objective was met in two parts. In *Part I: Replication and Validation*, the Reanalysis Team sought to replicate the original studies via a quality assurance audit of a sample of the original data and to validate the original numeric results. In *Part II: Sensitivity Analyses*, they tested the robustness of the original analyses to alternate risk models and analytic approaches.

RESULTS AND IMPLICATIONS

PART I: REPLICATION AND VALIDATION

- An extensive audit of the study population data for both the Six Cities and ACS Studies and of the air quality data in the Six Cities Study revealed the data to be of generally high quality with a few exceptions. In both studies, a few errors were found in the coding and inclusion of certain subjects; when those subjects were included in the analyses, they did not materially change the results as originally reported. Because the air quality data used in the ACS Study could not be audited, a separate air quality database was constructed for the sensitivity analyses described in Part II.
- The Reanalysis Team was able to replicate the original results in both studies using the same data and statistical methods as used by the Original Investigators. The Reanalysis Team confirmed the original point estimates: For the Six

Cities Study, they reported the relative risk of mortality from all causes associated with an increase in fine particles of $18.6 \mu\text{g}/\text{m}^3$ as 1.28, close to the 1.26 reported by the Original Investigators. For the ACS Study, the relative risk of mortality from all causes associated with an increase in fine particles of $24.5 \mu\text{g}/\text{m}^3$ was 1.18 in the reanalysis, close to the 1.17 reported by the Original Investigators.

PART II: SENSITIVITY ANALYSES

Once the original results of the studies had been validated, the Reanalysis Team sought to test an array of different models and variables to determine whether the original results would remain robust to different analytic assumptions.

- First, the Reanalysis Team used the standard Cox model used by the Original Investigators and included variables in the model for which data were available from both original studies but had not been used in the published analyses (eg, physical activity, lung function, marital status). The Reanalysis Team also designed models to include interactions between variables. None of these alternative models produced results that materially altered the original findings.
- Next, for both the Six Cities and ACS Studies, the Reanalysis Team sought to test the possible effects of fine particles and sulfate on a range of potentially susceptible subgroups of the population. Although different subgroups did show some variation in their estimated effects, the results were not statistically significant with one exception. The estimated effects of fine particles did appear to vary with educational level; the association between an increase in fine particles and mortality tended to be higher for individuals without a high school education than for those who had completed high school or for those with more than a high school education.
- In the ACS study, the Reanalysis Team tested whether the relationship between ambient concentrations and mortality was linear. They found some indications of both linear and nonlinear relationships, depending upon the analytic technique used, suggesting that the

Particle Epidemiology Reanalysis Project

issue of concentration-response relationships deserves additional analysis.

- In the Six Cities Study where data were available, the Reanalysis Team tested whether effect estimates changed when certain key risk factors (smoking, body mass index, and air pollution) were allowed to vary over time. One of the criticisms of both original studies has been that neither analyzed the effects of change in pollutant levels over time. In general, the reanalysis results did not change when smoking and body mass index were allowed to vary over time. The Reanalysis Team did find for the Six Cities Study, however, that when the general decline in fine particle levels over the monitoring period was included as a time-dependent variable, the association between fine particles and all-cause mortality dropped substantially, but the effect continued to be positive and statistically significant.
- Using its own air quality dataset constructed from historical data to test the validity of the original ACS air quality data, the Reanalysis Team found essentially the same results.
- Any future analyses using the sulfate data should take into account the impact of artifactual sulfate. Sulfate levels with and without adjustment differed by about 10% for the Six Cities Study. Both the original ACS Study air quality data and the newly constructed dataset contained sulfate levels inflated by approximately 50% due to artifactual sulfate. For the Six Cities Study, the relative risks of mortality were essentially unchanged with adjusted or unadjusted sulfate. For the ACS Study, adjusting for artifactual sulfate resulted in slightly higher relative risks of mortality from all causes and cardiopulmonary disease compared with unadjusted data. The relative risk of mortality from lung cancer was lower after the data had been adjusted.
- Because of the limited statistical power to conduct most sensitivity analyses for the Six Cities Study, the Reanalysis Team conducted the majority of its sensitivity analyses using only the ACS Study dataset with 154 cities. In that dataset, when a range of city-level (ecologic) variables (eg, population change, measures of income, maximum temperature, number of hospital beds, water hardness) were included in the analyses, the results generally did not change. Two exceptions were that associations for both fine particles and sulfate were reduced when city-level measures of population change or sulfur dioxide were included in the model.
- A major contribution of the Reanalysis Project is the recognition that both pollutant variables and mortality appear to be spatially correlated in the ACS Study dataset. If not identified and modeled correctly, spatial correlation could cause substantial errors in both the regression coefficients and their standard errors. The Reanalysis Team identified several methods for dealing with this, all of which resulted in some reduction in the estimated regression coefficients. The full implications and interpretations of spatial correlations in these analyses have not been resolved and appear to be an important subject for future research.
- When the Reanalysis Team sought to take into account both the underlying variation from city to city (random effects) and the spatial correlation between cities, only sulfur dioxide as a city-level variable continued to decrease the originally reported associations between mortality and fine particles or sulfate. This effect was more pronounced for sulfate.
- When the Reanalysis Team conducted spatial analyses of sulfur dioxide, the association between sulfur dioxide and mortality persisted after adjusting for sulfate, fine particles, and other variables.
- As a result of these extensive analyses, the Reanalysis Team was able to explain much of the variation between cities, but some unexplained city-to-city variation remained.

CONCLUSIONS

The Reanalysis Team designed and implemented an extensive and sophisticated series of analyses that included a set of new variables, all the gaseous copollutants, and the first attempts to apply spatial analytic methods to test the validity of the data and the results from the Six Cities Study and the ACS Study. Overall, the reanalyses assured the quality of the original data, replicated

Particle Epidemiology Reanalysis Project

the original results, and tested those results against alternative risk models and analytic approaches without substantively altering the original findings of an association between indicators of particulate matter air pollution and mortality.

At the same time, the reanalyses did extend and challenge our understanding of the original results in several important ways.

- The Reanalysis Team identified a possible modifying effect of education on the relation between air quality and mortality in that estimated mortality effects increased in the subgroup with less than high school education.
- The use of spatial analytic methods suggested that, when the analyses controlled for correlations among cities located near one another, the associations between mortality and fine particles or sulfate remained but were diminished.
- An association between sulfur dioxide and mortality was observed and persisted when other possible confounding variables were included; furthermore, when sulfur dioxide was included in models with fine particles or sulfate, the associations between these pollutants (fine particles and sulfate) and mortality diminished.

In reviewing these results, the Special Panel of the HEI Health Review Committee identified the following factors to consider when interpreting the results from the Reanalysis Team.

- The inherent limitations of using only six cities, understood by the Original Investigators, should be taken into account when interpreting results of the Six Cities Study.
- The Reanalysis Team did not use data adjusted for artifactual sulfate for most alternative analyses. When they did use adjusted

sulfate data, relative risks of mortality from all causes and cardiopulmonary disease increased. This result suggests that more analyses with adjusted sulfate might result in somewhat higher relative risks associated with sulfate.

- Findings from spatial analyses applied to the ACS Study data need to be interpreted with caution; the spatial adjustment may have overadjusted the estimated effect for regional pollutants such as fine particles and sulfate compared with the effect estimates for more local pollutants such as sulfur dioxide.
- After the Reanalysis Team completed its spatial analyses, residual spatial variation was still noticeable; this finding suggests that additional studies might further refine our understanding of the spatial patterns in both air pollution and mortality.
- No single epidemiologic study can be the basis for determining a causal relation between air pollution and mortality.

In conclusion, the Reanalysis Team interpreted their findings to suggest that increased relative risk of “mortality may be attributed to more than one component of the complex mix of ambient air pollutants in urban areas in the United States”. The Review Panel concurs. In the alternative analyses of the ACS Study cohort data, the Reanalysis Team identified relatively robust associations of mortality with fine particles, sulfate, and sulfur dioxide, and they tested these associations in nearly every possible manner within the limitations of the datasets. Future investigations of these issues will enhance our understanding of the effect of combustion-source air pollutants (eg, fine particles, sulfate, and sulfur dioxide) on public health.

Message

From: Blackburn, Elizabeth [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=A080EB90549A453AAA6A357F5257C0B7-BLACKBURN, ELIZABETH]
Sent: 8/27/2018 10:53:52 PM
To: Orme-Zavaleta, Jennifer [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3c5a111dc377411595e5b24b5d96146b-Orme-Zavaleta, Jennifer]; Robbins, Chris [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=958b4b78eb42457eacf53514e428efd6-Robbins, Chris]; Rodan, Bruce [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=Rodan, Bruce]; Radzikowski, Mary Ellen [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=2ac0a54e43bb4ac08276b57c5563c725-Radzikowski, Mary Ellen]; Yamada, Richard (Yujiro) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4c34a1e0345e4d26b361b5031430639d-Yamada, Yuj]; Hubbard, Carolyn [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=2a93ce3245494318b109e87f7d826284-Hubbard, Carolyn]; D'Amico, Louis [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=78a91f83c4414910be286efe02004dbc-D'Amico, Louis J.]
CC: Christian, Megan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=64a0f5e0e9d94271b23cad28db653851-Lizotte, Me]; McPherson, Mark [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=useraf3de097]; Fleming, Megan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=14b4c2e10bf84f1fa9a3f91f5ca1c4c0-Fleming, Megan]; Branch, Danielle [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=642b26a0fe0c45eb86cfd504b2d0b195-Branch, Dan]; Kuhn, Kevin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=be20941b4c1144b8b3635e4df015924a-Kuhn, Kevin]; Matney, Rachel [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bea4f49a79c44d47b1672554e9068296-Matney, Rac]; Perry, Dale [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=f8d297f23ce449d0b3f20780c9f94583-DPerry02]
Subject: CBO questions on H.R. 6468
Attachments: CBO Questions on H.R. 6468 2602 7.25.2018.docx

All,

Please see attached questions and starting CBO assumptions about the draft "Improving Science in Chemical Assessment Act". As discussed, Jennifer, Richard, and Sam are currently scheduled to discuss this with OCIR staff (Aaron Ringel, Christian Rodrick, Thea Williams, and Christina Moody) on Thursday from 2:30 – 3. OCIR wants to speak with ORD before reaching out to the programs.

Liz

Liz Blackburn
Chief of Staff
EPA Office of Research and Development
202-564-2192

Personal Phone / Ex. 6

Message

From: Rodan, Bruce [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=RODAN, BRUCE]
Sent: 7/12/2018 5:25:53 PM
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Subject: ORD's Fall 2018 Regulatory Agenda: Submission to OP
Attachments: Fall 2018 Reg Agenda Submission 1-pager FINAL 071218.docx

Fred,

I have read and am OK with the attached Regulatory Agenda submission of two ORD actions: 1. Common Rule alignment and 2. Science Transparency. Since the clearance is to be: "approved through each AAsip's senior management," I hereby clear and cc. ORD's leadership for their awareness.

Bruce Rodan
Associate Director for Science
EPA Office of Research and Development

Purpose: To request IOAA approval to send ORD's Fall 2018 Regulatory Agenda submission to OP.

Background

- The Unified Agenda of Federal Regulatory and Deregulatory Actions, or Regulatory Agenda, is a semiannual compilation of information about regulations under development by federal agencies.
- Under Executive Order 12866, all agencies are required to publish their regulatory agendas, and EPA publishes its agenda as part of the Unified Agenda in both the spring and fall.
- OP is collecting EPA's entries for the Fall 2018 Regulatory Agenda. Entries are due to OP on July 13.
 - Regulatory Agenda entries include an external abstract and estimated dates for proposed and final rules.

ORD Regulatory Actions

- ORD has two regulatory actions that are responsive to this request:
 - "Harmonize 40 CFR Part 26 Subparts C, D and K with Subpart A (the Common Rule)" (SAN 5935, Tier 3)
 - ORD lead: Tom Sinks
 - "Strengthening Transparency in Regulatory Science" (SAN 6781, Tier 1)
 - ORD lead: Maria Doa
- To be responsive to OP's request, OSP:
 - Worked with the ORD leads for the actions to review and revise the estimated schedules and external abstracts for each action, and
 - Shared the revised external abstracts with OP and OGC for policy and legal review, respectively, and incorporated their comments.
- The draft final submissions for IOAA review are attached.

OSP Recommendation

- **Deliberative Process / Ex. 5**

Attachment: “Harmonize 40 CFR Part 26 Subparts C, D and K with Subpart A (the Common Rule)” (SAN 5935, Tier 3)Estimated Milestones

NPRM (notice of proposed rulemaking): September 2018

FRM (final rulemaking): January 2019

External Abstract

In 1991, several federal departments and agencies that conduct or support research involving human subjects adopted a common “Federal Policy for Protection of Human Subjects” into each of their own respective regulations. This policy is known as the “Common Rule,” by virtue of being shared currently by all these departments and agencies. The Common Rule was revised through the Federal rulemaking process and a final revised rule was jointly published in the Federal Register on January 19, 2017. Implementation of the Common Rule will occur on January 21, 2019.

The Common Rule was codified by EPA in 40 CFR 26. Beyond the Common Rule language, which is located in subpart A of part 26, 40 CFR 26 also contains several additional subparts that are unique to EPA, added in 2006 in response to a Congressional mandate. In particular, EPA created subparts K through Q to regulate third-party pesticide research. Subpart K borrowed heavily from the provisions of the Common Rule. In this rulemaking, EPA is updating subpart K for consistency with the recent updates to the Common Rule. Without appropriate updates, once the new Common Rule becomes effective, there will be a disconnect between policies and procedures in subpart K, which will be based on the previous version of the Common Rule, and the revised version of the Common Rule. In addition to the textual issues in subpart K, subparts C and D contain minor numerical citations (i.e., regulatory reference numbers) that are no longer accurate and should also be updated. Failure to resolve these internal discrepancies will create confusion and, more seriously, potential compliance and/or legal liabilities for researchers, institutions and sponsors who must follow EPA regulations. These updates are solely intended to resolve discrepancies created by the recent revision to the Common Rule, and will not alter the fundamental protections for human subjects, including vulnerable populations.

Attachment: “Strengthening Transparency in Regulatory Science” (SAN 6781, Tier 1)Estimated Milestones

FRM (final rulemaking): January 2020

External Abstract

This action is intended to strengthen the transparency of EPA regulatory science. As a result of this action, EPA would ensure that the data underlying the final significant regulations it promulgates are publicly available in a manner sufficient for independent validation. This action would increase transparency of the assumptions underlying dose-response data and models that support these EPA regulatory decisions. The Agency proposes to take this action under authority of the statutes it administers, including provisions providing general authority to promulgate regulations necessary to carry out the Agency's functions.

Message

From: Sinks, Tom [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=001007B7D256453A8A19B91DF704E22C-SINKS, TOM]
Sent: 8/16/2018 8:37:38 PM
To: Doa, Maria [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=99e502a905374b0b890db9b22e18d92e-MDoa02]; Orme-Zavaleta, Jennifer [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3c5a111dc377411595e5b24b5d96146b-Orme-Zavaleta, Jennifer]
Subject: FW: ACC Comments on Strengthening Transparency in Regulatory Science
Attachments: ACC Comments on Strengthening Transparency in Regulatory Science Comment Final 2018 08 16.pdf

From: Staff_OSA
Sent: Thursday, August 16, 2018 3:16 PM
To: Sinks, Tom <Sinks.Tom@epa.gov>
Subject: FW: ACC Comments on Strengthening Transparency in Regulatory Science

I will send it over to the docket just in case.

Cheryl A. Hawkins, Ph.D.
US EPA/ORD/Office of the Science Advisor
RRB 41259
(202)564-7307
hawkins.cheryla@epa.gov

From: Franz, Christina [mailto:Christina_Franz@americanchemistry.com]
Sent: Thursday, August 16, 2018 3:03 PM
To: Staff_OSA <Staff_OSA@epa.gov>
Cc: Bertrand, Charlotte <Bertrand.Charlotte@epa.gov>
Subject: ACC Comments on Strengthening Transparency in Regulatory Science

Dr. Sinks:

I have attached comments submitted today on behalf of the American Chemistry Council to the docket for the Strengthening Transparency in Regulatory Science proposed rule. I know it often takes a number of days before comments filed are accessible in the docket and we wanted the comments to be readily available to you and your staff.

Please let us know if you have any questions regarding our comments.

Regards,

Christina Franz

Senior Director, Regulatory & Technical Affairs
American Chemistry Council
700 Second St., NE
Washington, D.C. 20002
202-249-6406
Christina_Franz@americanchemistry.com

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Message

From: Kuhn, Kevin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BE20941B4C1144B8B3635E4DF015924A-KUHN, KEVIN]
Sent: 7/11/2018 4:29:50 PM
To: Orme-Zavaleta, Jennifer [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3c5a111dc377411595e5b24b5d96146b-Orme-Zavaleta, Jennifer]
CC: Christian, Megan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=64a0f5e0e9d94271b23cad28db653851-Lizotte, Me]; Blackburn, Elizabeth [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a080eb90549a453aaa6a357f5257c0b7-Blackburn, Elizabeth]; D'Amico, Louis [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=78a91f83c4414910be286efe02004dbc-D'Amico, Louis J.]
Subject: FW: Senate Question for the Record related to Censored Science
Attachments: UDA - 017 Censored Science.docx

Sensitivity: Company Confidential

Hi Jennifer,

OCFO referred a QFR from Udall on the transparency rule (attached).

Richard took the lead on the response below (one answer to the multi-part question):

--

Deliberative Process / Ex. 5

Please let me know if you have any edits or if you are okay with this moving forward.

Thanks,

Kevin

Kevin Kuhn
ORD/EPA
(202) 564-4835
Mobile: (202) 309-3969

From: Lang, Jamie
Sent: Tuesday, July 10, 2018 4:44 PM
To: Christian, Megan <Christian.Megan@epa.gov>; Fleming, Megan <Fleming.Megan@epa.gov>; Kuhn, Kevin <Kuhn.Kevin@epa.gov>; Branch, Danielle <branch.danielle@epa.gov>; Blackburn, Elizabeth <Blackburn.Elizabeth@epa.gov>; Linkins, Samantha <Linkins.Samantha@epa.gov>
Cc: Silzer, Stefan <Silzer.Stefan@epa.gov>; Heckman, Deborah <Heckman.Deborah@epa.gov>; Burman, Eric

<Burman.Eric@epa.gov>

Subject: Senate Question for the Record related to Censored Science

Sensitivity: Confidential

Hello all,

We received the email below from OCFO regarding the attached question related to Censored Science. OPARM would happy to usher the final draft to OCFO once it is completed if that would be helpful.

If not, please send us the final version for our records.

Thanks!

Jamie

Jamie A. Lang
Branch Chief, Planning, Budget, and Performance Analysis Branch
Office of Program Accountability and Resource Management
Office Of Research and Development, US EPA
303-462-9063 (W)
303-416-0965 (C)
202-564-8347 (DC office)

From: Grams, Bradley

Sent: Tuesday, July 10, 2018 11:36 AM

To: Lang, Jamie <Lang.Jamie@epa.gov>

Cc: Beg, Gul <Gul.Beg@epa.gov>; Cuscino, Glen <Cuscino.Glen@epa.gov>; Ripley, Laura <Ripley.Laura@epa.gov>;
Matthews, Demond <matthews.demond@epa.gov>; Bailey, JosephE <Bailey.JosephE@epa.gov>

Subject: UDA - 017

Sensitivity: Confidential

Hi Jamie:

Per our phone call, AO (Helena Wooden-Aguilar & Nancy Grantham) spoke with Richard Yamada, and apparently ORD IO (Richard?) has agreed to take the pen to UDA-017. To that end, Lance asked Laura, Glen and I to send to you.

If you have any questions, feel free to let us know.

Thanks!

Cheers,

Bradley R. Grams, Senior Media Analyst
Multi-Media Analysis Staff, Office of Budget
Office of the Chief Financial Officer

U.S. Environmental Protection Agency
1200 Pennsylvania Ave NW (Mail Code: 2732A)
Washington, D.C. 20460

P: +1 (202) 564-2692

F: +1 (202) 564-1842

E: grams.bradley@epa.gov

From: Blackburn, Elizabeth [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=A080EB90549A453AAA6A357F5257C0B7-BLACKBURN, ELIZABETH]
Sent: 4/20/2018 12:42:18 PM
To: Orme-Zavaleta, Jennifer [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3c5a111dc377411595e5b24b5d96146b-Orme-Zavaleta, Jennifer]; Robbins, Chris [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=958b4b78eb42457eacf53514e428efd6-Robbins, Chris]; Rodan, Bruce [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=Rodan, Bruce]; Radzikowski, Mary Ellen [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=2ac0a54e43bb4ac08276b57c5563c725-Radzikowski, Mary Ellen]
CC: Hubbard, Carolyn [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=2a93ce3245494318b109e87f7d826284-Hubbard, Carolyn]
Subject: Smith pitched Pruitt on 'secret science.' Now it's happening

EPA

Smith pitched Pruitt on 'secret science.' Now it's happening

Scott Waldman and Niina Heikkinen, E&E News reporters

Published: Friday, April 20, 2018



Rep. Lamar Smith (R-Texas) has been slamming EPA's use of "secret science" for years. @LamarSmithTX21/Twitter

EPA coordinated with House Republicans about their plans to restrict the science used in crafting regulations, newly released emails show.

In early January, EPA chief Scott Pruitt met with Rep. Lamar Smith (R-Texas), chairman of the House Science, Space and Technology Committee, to discuss one of Smith's pet projects — overhauling how EPA uses science. Smith hasn't been able to get legislation to do so through Congress, so he pitched Pruitt to do so internally, according to **emails** obtained through a Freedom of Information Act request. The emails were obtained by the Union of Concerned Scientists and shared with E&E News.

In March, Pruitt announced that he would follow through. He said EPA plans to require that data and methodology from studies used to craft regulations be made public (*Climatewire*, March 16). The topic has long been contentious. Smith and others describe the effort as a way to ensure science used to craft regulations can

be properly scrutinized. Critics have said it is an effort to limit air pollution research and other studies that have been cited as reasons for regulations.

EPA has said little about its plans to make science more transparent, other than Pruitt's brief interview with a conservative news outlet to say the plan was coming at some point.

The new emails reveal how Pruitt's staffers have worked behind the scenes with Smith's office.

On Jan. 16, a few days after Pruitt met with Smith at EPA headquarters, a Smith staffer followed up with Pruitt's shop.

"It was great to see you last week and appreciate the Administrator's time. Chairman Smith is very keen for our staff to get together to discuss further transparent science-based regulations at the EPA," Smith's aide Joe Brazauskas wrote to EPA congressional affairs staffer Aaron Ringel. "We can meet at your earliest convenience with the appropriate EPA staff to discuss this matter further."

Within an hour of receiving Brazauskas' email, Ringel circulated the message to colleagues at EPA.

"All, see below follow up from Chairman Smith's meeting with the administrator," he wrote. "Want to check on who would be the most appropriate [for] them to speak to. In short, this is in regards to his pitch that EPA internally implement the HONEST Act (no regulation can go into effect unless the scientific data is publicly available for review)."

One of the aides copied on Ringel's email was Richard Yamada, the deputy assistant administrator of EPA's Office of Research and Development. Yamada previously worked for years on the Republican staff of the House Science Committee led by Smith.

The emails also show that EPA staffers wanted to have the program rolled out by the end of February.

Brittany Bolen, who works in EPA's policy office, sent an email dated Feb. 12 saying that Pruitt's chief of staff Ryan Jackson "asked to have this rolled out by the end of the month."

Timing for the rollout of the policy is still unclear.

EPA spokeswoman Liz Bowman said yesterday, "These discussions are part of the deliberative process; the policy is still being developed."

The Union of Concerned Scientists said the emails show the plan was crafted by political staff with little input from scientists. They also show that EPA's political appointees are mostly concerned about industry, rather than environmental or health protections, said USC spokesman Yogin Kothari.

"This idea to restrict the use of science at EPA was hatched solely and worked on almost exclusively by political appointees who are doing everything they can to ensure that independent science doesn't get in the way of policy decisions at the agency," he said. "It's an effort to stack the deck in favor of industry that EPA is supposed to regulate."

'This directive needs to be revised'

The emails also reveal that an EPA political appointee — a former chemical industry executive — raised concerns about the science overhaul.

Nancy Beck, deputy assistant administrator of EPA's chemicals office, raised pointed concerns about what a secret science policy would mean for both pesticide registration and for chemical companies and regulating chemicals under the Toxic Substances Control Act (TSCA).

In an email sent on Jan. 31, Beck warned Yamada; Erik Baptist, EPA's senior deputy general counsel; and Justin Schwab, deputy general counsel, that requiring underlying data to be public would affect pesticide registrations and TSCA implementation.

"This directive needs to be revised. Without change it will jeopardize our entire pesticide registration/re-registration review process and likely all TSCA risk evaluations," she wrote. "Let me know what more you may need from me to facilitate a change."

Beck noted that under EPA regulations, pesticide registration requires companies to submit studies that include a "huge amount of data" and cost the companies millions of dollars to conduct. "Guideline studies of this type are never put in journal publications — there is no audience for them, thus in IARC's eyes they are not published," she wrote.

The World Health Organization's International Agency for Research on Cancer, or IARC, develops an international database of chemicals that could potentially cause cancer. Beck notes that most of the data in this process are considered confidential business information, but the "CBI" tag can be waived to make the data available in many instances.

"Making data available is very different than requiring a publication requirement. Such a requirement would be incredibly burdensome, not practical and you would need to create a whole new arm of the publishing industry to publish these types of studies that nobody is interested in," she wrote.

Beck added that there would be a similar problem under TSCA, where data for many existing chemicals aren't published because there is "no incentive for anyone, anywhere to publish them."

"Yes, thanks this is helpful — didn't know about the intricacies of CBI — ok, we will need to thread this one real tight! Thanks Nancy!" Yamada wrote in response to Beck's warning.

Richard Denison, a senior scientist at the Environmental Defense Fund, noted that EPA staff and members of Congress had previously objected to Smith's "Honest and Open New EPA Science Treatment Act" — the basis for the potential EPA policy — for the data collection burden it would put on researchers, who would have to go back and identify which data could be made public.

Critics also warned at the time that the impact would be to significantly reduce the number of studies that could be used to develop research, and many suspected this was the real purpose of the bill.

"What Nancy Beck is ironically pointing to is the same set of issues would fall on the industry, because it is not only whether the information would be made public or not, it's the cost and burden associated with doing so," Denison said.

EPA spokeswoman Bowman did not comment on whether EPA planned to follow Beck's suggestion to revise its proposal. "It's important to understand, however, that any standards for protecting CBI would be the same for all stakeholders," she said.

At least one "secret science" policy proponent said he was open to requiring researchers and companies to make data available when they are requested by "legitimate researchers" rather than publishing all underlying data.

"This data has to be somewhere, and if someone needs to see it then arrangements have to be made," said Steve Milloy, former EPA transition team member. "You can't attack this stuff with a broad brush."

In another email from March, months after the process had started, Beck found a passage from documents the agency's pesticide program released in December 2016 saying EPA "does not believe that it is appropriate to refuse to consider published studies in the absence of the underlying data."

The document Beck referred to also said, "The EPA frequently relies on peer reviewed studies in the public literature across agency programs without possessing underlying data and the federal courts have made clear that the EPA is not required to obtain or analyze the raw data in order to rely on such studies."

Beck wrote in the email, "I'm sharing for awareness, particularly regarding court cases that are cited."

Liz Blackburn
Chief of Staff
EPA Office of Research and Development
202-564-2192
Cell 202-436-2453

Sent from my iPhone



August 16, 2018

Docket ID No. EPA-HQ-OA-2018-0259
Environmental Protection Agency
1200 Pennsylvania Ave., NW.
Washington, DC 20460

Re: Strengthening Transparency in Regulatory Science

To Whom it May Concern:

The Association of State Drinking Water Administrators (ASDWA) appreciates the opportunity to offer comments on the notice for “Strengthening Transparency in Regulatory Science” as published in the April 30th *Federal Register* (Volume 83 Number 83). ASDWA is the independent, nonpartisan, national organization representing the collective interests of the drinking water program administrators in the 50 states, five territories, the District of Columbia, and the Navajo Nation who implement the Safe Drinking Water Act (SDWA) every day to ensure the protection of public health and the economy. ASDWA supports and represents the collective interests of the states, territories, and the Navajo Nation in their administration of national drinking water program requirements within their states or territories. The following ASDWA comments are intended to broadly address the proposed rule, but they do not necessarily reflect the concerns of individual states.

Federal regulations are the basis for the actions of state drinking water programs in protecting public health. These regulations must be based on sound science to appropriately protect public health. The Safe Drinking Water Act (SDWA) has clear statutory language on the use of sound science, and states support the use of sound science in the SDWA regulatory development process. While states may disagree at times with details of the final regulations, states are generally comfortable with the transparency of the regulatory development process as practiced by the Office of Ground Water and Drinking Water (OGWDW). ASDWA does not recommend making significant changes in that process. In fact, if other environmental programs do not currently have a robust science-based regulatory development process, the process used by OGWDW would be a good model.

The SDWA statutory language in Section §1412(b)(3) requires the use of “best peer reviewed science and supporting studies conducted in accordance with sound and objective scientific practices”. Therefore, a statutory requirement that the drinking water regulations have a strong scientific basis already exists. This section of the SDWA also outlines the way this information must be shared with the public, so the process is currently transparent. EPA has followed this statutory mandate since the 1996 SDWA Amendments and has relied not only on peer reviewed scientific studies but has also directly involved the scientific community in supporting rule

1401 WILSON BLVD · SUITE 1225 · ARLINGTON, VA 22209
PHONE (703) 812-9505 · FAX (703) 812-9506 · info@asdwa.org · www.asdwa.org

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development. States have also been active participants in this science-based process. The rule development currently underway for perchlorate is a good example of the process at work. Recommendations from the Science Advisory Board (SAB) helped guide the methodology to develop the Maximum Contaminant Level Goal (MCLG). EPA has held two peer reviews to help refine the models and determine how best to apply the modeling to determine the appropriate MCLG. The SAB and the peer review process are all open and the recommendations are public, providing full transparency to the deliberations and decisions.

The references listed at the end of the preamble of any proposed drinking water regulation, and any other supporting documentation, is currently shared on the Water Docket, and the Docket provides open access and transparency now for states to examine the basis for new rules. States can review what scientific studies were used in the preparation of the proposed rule and enough detail is provided to judge whether these studies support EPA's conclusions. Since only peer reviewed studies are used, states already have assurances that the results are valid.

Regardless of the pivotal regulatory science used to support a proposed rule, states can openly question the validity of these studies during the comment period for the proposed rule. During this time, states can also recommend additional studies that they believe EPA should consider in developing the final regulations. In the future, EPA can enhance the opportunity for input by consistently allowing a minimum 90-day comment period for new/revised rules. Early involvement by states, as co-regulators, in the early stages of the regulatory development process (pre-proposal) will allow states even more opportunity to provide input on the science used to support the new rules. Beyond the science, involving states as early as possible in the regulatory development process means the resulting regulations can be effectively implemented and public health protection enhanced.

Thank you for considering these comments. As always, ASDWA is willing to continue to work with EPA to develop the best possible drinking water regulations. We encourage EPA to continue the current open and science-based development process and continue to actively involve states. While ASDWA's comments are intended to capture the diverse perspectives of states and state drinking water programs, EPA should also consider the comments/recommendations that may come directly from individual states and territories.

If you have questions or would like to discuss these comments in more detail, please contact me at ldaniels@pa.gov or contact Alan Roberson, ASDWA's Executive Director at aroberson@asdwa.org.

Sincerely,

A handwritten signature in dark ink, appearing to read "Lisa Daniels", with a stylized flourish at the end.

Lisa Daniels, ASDWA President and Director, Bureau of Safe Drinking Water Director,
Pennsylvania Department of Environmental Protection

Cc: Jennifer Orme-Zavaleta, EPA ORD
David Ross, EPA OW
Peter Grevatt, EPA OGWDW
Betsy Behl, EPA OST

Message

From: Sinks, Tom [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=001007B7D256453A8A19B91DF704E22C-SINKS, TOM]
Sent: 8/16/2018 2:25:16 PM
To: Orme-Zavaleta, Jennifer [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3c5a111dc377411595e5b24b5d96146b-Orme-Zavaleta, Jennifer]; Doa, Maria [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=99e502a905374b0b890db9b22e18d92e-MDoa02]
Subject: FW: "Strengthening Transparency in Regulatory Science," 83 Fed. Reg. 18,768 (April 30, 2018), Docket ID No. EPA-HQ-OA-2018-0259
Attachments: NRDC Comments on Pruitt Censoring Science Proposal.pdf; NRDC Index of Attachments.pdf

FYI - another set of comments sent to the administrator yesterday.

From: Staff_OSA
Sent: Thursday, August 16, 2018 8:20 AM
To: Sinks, Tom <Sinks.Tom@epa.gov>
Subject: FW: "Strengthening Transparency in Regulatory Science," 83 Fed. Reg. 18,768 (April 30, 2018), Docket ID No. EPA-HQ-OA-2018-0259

FYI – I'm going to forward to the docket manager but not reply to the email.

Cheryl A. Hawkins, Ph.D.
US EPA/ORD/Office of the Science Advisor
RRB 41259
(202)564-7307
hawkins.cheryla@epa.gov

From: Fisher, Ian [<mailto:ifisher@nrdc.org>]
Sent: Wednesday, August 15, 2018 11:42 PM
To: Staff_OSA <Staff_OSA@epa.gov>
Cc: Walke, John <jwalke@nrdc.org>; Prange, Jackie <jprange@nrdc.org>; Davis, Emily <edavis@nrdc.org>
Subject: "Strengthening Transparency in Regulatory Science," 83 Fed. Reg. 18,768 (April 30, 2018), Docket ID No. EPA-HQ-OA-2018-0259

Dear Mr. Sinks,

Attached please find Comments of Natural Resources Defense Council on "Strengthening Transparency in Regulatory Science," 83 Fed. Reg. 18,768 (April 30, 2018), Docket ID No. EPA-HQ-OA-2018-0259. Please also find NRDC's Index of Attachments. All attachments have been uploaded at regulations.gov. Thank you.

IAN FISHER
Litigation Fellow

NATURAL RESOURCES DEFENSE COUNCIL

20 N. WACKER DR. STE 1600
CHICAGO, IL 60606
T 312.995 5903
ifisher@nrdc.org

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ED_002389_00015390-00001



August 15, 2018

Acting Administrator Andrew Wheeler
& Office of the Science Advisor
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460
Via Regulations.gov to docket EPA-HQ-OA-2018-0259

Tom Sinks
Office of the Science Advisor
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, D.C. 20460
Via email to staff_osa@epa.gov

RE: Comments of Natural Resources Defense Council on “Strengthening
Transparency in Regulatory Science,” 83 Fed. Reg. 18,768 (April 30, 2018),
Docket ID No. EPA-HQ-OA-2018-0259

I. Introduction

Natural Resources Defense Council (NRDC) is a national, not-for-profit public-health and environmental advocacy organization whose purpose is to safeguard the Earth: its people, its plants and animals, and the natural systems on which all life depends. NRDC has hundreds of thousands of members, all of whom depend on the U.S. Environmental Protection Agency (EPA) to protect them from the harms of pollution. EPA’s proposed rule, “Strengthening Transparency in Regulatory Science,” 83 Fed. Reg. 18,768 (Apr. 30, 2018) (the “Proposal”) would harm these members by limiting the types of science that EPA could use to protect the environment and public health. As described in detail below, the Proposal is an attack on science and violates the law. EPA should withdraw it immediately.

The Proposal would bar EPA from considering science based on dose response data and models that could not be made “publicly available in a manner sufficient for independent validation.” 83 Fed. Reg. at 18,773. EPA asserts that “[e]nhancing the transparency and validity of the scientific information relied upon by EPA strengthens the integrity of EPA’s regulatory actions and its obligation to ensure the Agency is not arbitrary in its conclusions.” 83 Fed. Reg. at 18,769. Notably, as described in detail below, neither the Proposal nor docket contains any factual, scientific, technical, logical, or legal support for the suggestion that science and data that are “publicly available in a manner sufficient for independent validation” are necessary elements for the “validity,” “reliability,” or “transparency” of scientific information. *Id.* EPA provides no basis for its assumption that science or studies for which data are publicly available yield more valid or reliable results than the best available, peer-reviewed, independent, credible science, for

NATURAL RESOURCES DEFENSE COUNCIL

1152 15TH STREET NW | SUITE 300 | WASHINGTON, DC | 20005 | T 202.289.6868 | NRDC.ORG

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which the underlying data are not publicly available. Similarly, the Proposal arbitrarily fails to address, much less explain, why prior EPA regulatory actions that relied upon studies, data, or other information did not reflect the “best available science” or why they were otherwise unreliable, despite failing to meet the Proposal’s standards.

To the contrary, EPA, other federal agencies, EPA scientific advisory bodies, the National Academy of Science (NAS), and EPA’s Science Advisory Board (SAB) have repeatedly and consistently relied upon the best available, peer-reviewed, independent, credible scientific studies—for which the underlying data are not publicly available—and found that science to be valid, reliable, trustworthy, and a reflection of the “best available science” that EPA claims as its concern in the Proposal. The Proposal arbitrarily excludes prior research, studies, and data that do not meet its applicability criteria based on concerns that were never announced to researchers or the public, or deemed necessary by any government agency, at the time the research, studies, or data-gathering were undertaken. The Proposal is strikingly at odds with those scientific practices and their history, with *nothing* in the rulemaking docket to support casting aspersions on the practices or history sufficient to prohibit EPA from considering such science.

EPA has unsurprisingly failed to cite a single statute that provides any basis for the Proposal. What statutes EPA does cite conflict with the Proposal, because they require EPA either to consider the best available science (which may be based on data that cannot be made public) or to regulate to protect public health and the environment (which cannot be done if critical science is ignored simply because the underlying data cannot be made public). Similarly, none of the other sources EPA cites provide legal or logical support for the Proposal.

The Proposal also suffers from a host of other problems: its definitions are vague; it is an unexplained reversal from prior agency policy; it handles confidential business information in a capricious manner; it treats other types of agency actions inconsistently; it applies retroactively to studies completed before the rule goes into effect; it fails to analyze the disproportionate effect of the rule on people of color, low-income people, and children; and it contains a cryptic peer review provision.

As explained throughout these comments, EPA’s agenda, as reflected in the Proposal, is not greater public trust or understanding; rather, the Proposal’s goal is censorship of science and studies whose underlying data are not publicly available and may not be made publicly available as a matter of law or other agreement. The Proposal should be withdrawn.

II. The Proposal is a flawed solution in search of a problem

The Proposal represents an unworkable, ill-explained, unjustified, and thoroughly unlawful approach to address a problem that does not exist. EPA does not explain why the data sharing requirements outlined in the Proposal are suddenly so urgent. This missing argument is especially significant given the decades of peer-reviewed data and models that EPA has justifiably relied on for regulatory actions. There is no “crisis in replicability” for the types of data and models that the Proposal purports to address; as an indication of this, EPA has not cited *any* sources for its assumptions presented in the Proposal.

The governing, harmful conceit of the Proposal—to censor the best available, peer-reviewed health science that EPA may consider, in order to prevent adoption of protective health and environmental safeguards—is a thinly disguised version of anti-science legislation that Republican members of Congress have introduced, repeatedly, but have been unable to enact into federal law, repeatedly.¹ NRDC opposed those bills strongly, and still does. We raised many of the identical objections to those bills that we raise to the Proposal in these comments.² Indeed, it is striking that one of the primary EPA co-authors of the Proposal was a Committee staff person for the leading congressional co-sponsor of the legislation in question when the failed bill was being shepherded through the House of Representatives.³

Members of Congress understood that new legislation was required to censor EPA consideration of high quality, peer-reviewed science, and yet EPA barreled ahead with a Proposal based on the same legislative approach while pretending, suddenly, that multiple federal laws have authorized that approach, magically, all along. For the reasons discussed in these comments, the Proposal is not authorized by any federal laws. Moreover, the Proposal violates numerous federal laws entrusted to EPA, in addition to being arbitrary and capricious and an abuse of EPA’s discretion.

A leading medical researcher notes that, if the Proposal is approved, “science will be practically eliminated from all decision-making processes” at the agency because so few studies meet (or could be expected to meet, on time scales appropriate for regulatory actions and associated public comment periods) the Proposal’s requirements for data availability.⁴ Instead of restricting the pool of available science by instituting an unworkable requirement for a broad category of scientific inquiry, EPA should focus on identifying particular weaknesses in the available evidence and targeting future investigations towards addressing specific deficiencies.

Moreover, assessing whether any particular study is reliable is not contingent on whether its underlying data can be made public, a fundamental point made clear in a report that EPA itself cited in the Proposal.⁵ The assessment of study credibility depends on a number of factors, including “how large and rigorous studies are, how well researchers have contained conflicts of interest (financial or other), and how successfully the study design and analysis have limited bias, properly accounting for the complexity inherent in each scientific question.”⁶

¹ See, e.g., H.R. 4012, “Secret Science Reform Act of 2014,” 113th Congress, 2d Session, <https://www.congress.gov/113/bills/hr4012/BILLS-113hr4012rfs.pdf>.

² See Letter from John Walke, NRDC, to Honorable Lamar Smith, Chairman, Committee on Science, Space, and Technology, *et al.* (Feb. 11, 2014), available at https://www.nrdc.org/sites/default/files/air_14021101a.pdf.

³ Scott Waldman, “Meet the man helping Pruitt reshape science,” *Climatewire*, (May 23, 2018), <https://www.eenews.net/stories/1060082467>.

⁴ Ioannidis, J. P., “All science should inform policy and regulation,” *PLoS Medicine* 15(5) (May 3, 2018), <http://journals.plos.org/plosmedicine/article?id=10.1371/journal.pmed.1002576>. (Hereinafter “All Science”)

⁵ 83 Fed. Reg. at 18,769, n.6 (citing 67 Fed. Reg. 8452, 8453, Office of Management and Budget, “Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies (February 22, 2002), available at <https://www.federalregister.gov/documents/2002/02/22/R2-59/guidelines-for-ensuring-andmaximizing-the-quality-objectivity-utility-andintegrity-of-information>. (Hereinafter “OMB Guidance”).

⁶ See All Science, *supra*, n. 4.

With respect to one area of dose response data and models considered by EPA, decades of quantitative, peer-reviewed investigation into the premature mortality risks caused by PM_{2.5} have replicated study findings across different geographic settings and time periods. EPA's own 2009 Integrated Science Assessment (ISA) for PM_{2.5} considered many scientific studies that do not meet the data transparency requirements of the proposed rule. The ISA concluded, based on a wealth of epidemiologic evidence, that a causal relationship exists between short-term PM_{2.5} exposures and cardiovascular effects and mortality, and is likely to exist for respiratory effects. The ISA also found that the scientific evidence is sufficient to conclude that the relationship between long-term PM_{2.5} exposure and respiratory effects is likely to be causal, and is causal for mortality. The Agency has not explained why the scientific evidence underlying these determinations is now insufficient for regulatory decision making. Its proposal to exclude scientific data based on questionable transparency requirements is arbitrary and in direct contradiction with prior Agency determinations.

As the ISA demonstrates, no Agency regulatory action is predicated on the results of any single scientific study; rather, the continual accumulation of quantitative evidence with respect to the dose-response relationships for particular environmental contaminants informs decision making. The causal criteria outlined in the ISA demonstrate the iterative process by which dose-response relationships are assessed over time as evidence is gathered and published in peer-reviewed journals. In assessing the reliability of scientific findings, "it is essential to examine evidence in its totality, recognize its relative strengths and weaknesses, and make the best judgment based on what is available."⁷

A. According to information cited in the Proposal, publicly available data is not needed to ensure reproducibility

Importantly, one of the documents that EPA relies upon in the Proposal in footnote 6 fatally undermines the Proposal's pretense that underlying data protected by confidentiality concerns must be made publicly available in order to be considered valid and reliable, and meet the "reproducibility standard." 83 Fed. Reg. at 18,769. A 2002 Office of Management and Budget report, "Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies," (OMB Guidance)⁸ notes that data need not be publicly available in order to meet the reproducibility standard:

Even in a situation where the original and supporting data are protected by confidentiality concerns, or the analytic computer models or other research methods may be kept confidential to protect intellectual property, it may still be feasible to have the analytic results subject to the reproducibility standard. For example, a qualified party, operating under the same confidentiality protections as the original analysts, may be asked to use the same data, computer model or statistical methods to replicate the analytic results reported in the original study.⁹

⁷ *Id.*

⁸ See *supra*, n. 5, OMB Guidance.

⁹ *Id.* (citing Krewski, D., Burnett, R. T., Goldberg, M. S., Hoover, K., Siemiatycki, J., Abrahamowicz, M., & White, W. H., Reanalysis of the Harvard Six Cities Study and the American Cancer Society Study of Particulate Air

The OMB Guidance directly undermines the notion that the only way for research to meet the reproducibility standard is by making all underlying data available for public inspection. As the document further notes,

[t]he primary benefit of public transparency is not necessarily that errors in analytic results will be detected, although error correction is clearly valuable. The more important benefit of transparency is that the public will be able to assess how much an agency's analytic result hinges on the specific analytic choices made by the agency. Concreteness about analytic choices allows, for example, the implications of alternative technical choices to be readily assessed. This type of sensitivity analysis is widely regarded as an essential feature of high quality analysis, yet sensitivity analysis cannot be undertaken by outside parties unless a high degree of transparency is achieved. The OMB guidelines do not compel such sensitivity analysis as a necessary dimension of quality, but the transparency achieved by reproducibility will allow the public to undertake sensitivity studies of interest.¹⁰

Lastly, the OMB Guidance indicates that publicly accessible data is an unworkable requirement in some situations due to sensitive data that cannot be legally or ethically released to the public: "We acknowledge that confidentiality concerns will sometimes preclude public access as an approach to reproducibility."¹¹

The Proposal is arbitrary and capricious and an abuse of EPA discretion by creating a framework in which it is very clear its real concerns are not "actual verification" of studies and data or "best available science," but prohibiting EPA from considering and basing protective regulations on relevant, peer-reviewed science whose underlying data or elements *may not* be made publicly available, due to various legal obligations such as confidentiality agreements, laws, or regulations. The Proposal's real aims are not verification or "best available science"; instead, its aims are censoring science and obstructing evidence of the need for greater health and environmental safeguards.

B. Independent validation is already occurring

The Proposal does not require that any information *actually* be *independently validated* before EPA may consider it or base regulatory decisions on such verification. Accordingly, there is an irrational disconnect between EPA's insistence that information be "publicly available for independent validation" and the Proposal's claim that this ensures EPA will consider and use the "best available science." See 83 Fed. Reg. at 18,769. EPA itself has not outlined a process by which "dose response data and models" would be validated, and the Proposal does not seriously consider the methodological complications of partial redaction of underlying study data.

Pollution and Mortality," A Special Report of the Health Effects Institute's Particle Epidemiology Reanalysis Project, Cambridge, MA, Health Effects Institute (2000). (Hereinafter "Reanalysis of Harvard Six Cities Study").

¹⁰ *Id.* at 8456.

¹¹ *Id.*

The Proposal claims that its data release requirements are vital for “independent validation,” but the truth is that independent validation is happening now. As an example, consider the independent validation of the Harvard Six Cities study by the Health Effects Institute (HEI), which is characteristic of the types of complex epidemiologic investigations that could be subject to the unworkable provisions of this Proposal.¹² The Clean Air Act requires EPA to consider the best available evidence in setting and revising the National Ambient Air Quality Standards (NAAQS) to protect health within an adequate margin of safety. 42 U.S.C. § 7409(b)(1). Fine particulate matter, an air pollution category encompassing solid particles and condensed liquid droplets with a diameter of 2.5 microns or smaller (PM_{2.5}), is by far the most dangerous type of air pollution because it can penetrate deep into the lung and enter the bloodstream.¹³ The 1993 Harvard Six Cities Study, a groundbreaking study into the link between air pollution exposures and health, examined the health effects of PM_{2.5} air pollution over 16 years on more than 8,000 adults and 14,000 children relying on private medical records and air pollution monitors deployed near study volunteers.¹⁴ The study found a significant relationship between air pollution exposure and risk of early death, but the raw data could not be released publicly because researchers were obligated to ensure study participant confidentiality.

Still, relying on that data, more than 100 peer-reviewed studies have confirmed the basic results of that initial study. Because the study and others like it advanced through the rigorous peer-review process characteristic of the world’s leading scientific journals (whose editors have rejected the proposed rule¹⁵), EPA relied on the results of this study and others in 1997 when it promulgated the first-ever NAAQS for fine particulate matter.¹⁶ Since then, hundreds of additional studies into the health effects of air pollution (conducted across the country¹⁷ and internationally,¹⁸ for both short-¹⁹ and long-term²⁰ impacts of exposure) and independent re-analyses of existing datasets have affirmed the air pollution-mortality and morbidity links with increasing precision. In 2000, the Health Effects Institute published

¹² See *supra*, n. 9.

¹³ World Health Organization. *Air Quality Guidelines: Global Update 2005. Particulate Matter, Ozone, Nitrogen Dioxide and Sulfur Dioxide*. World Health Organization (2006).

¹⁴ Dockery, D. W., Pope, C. A., Xu, X., Spengler, J. D., Ware, J. H., Fay, M. E., ... & Speizer, F. E. (1993). An association between air pollution and mortality in six US cities. *New England journal of medicine*, 329(24), 1753–59 (Hereinafter “Harvard Six Cities Study”).

¹⁵ Jeremy Berg, et al., Letter, “Joint statement on EPA proposed rule and public availability of data,” *Science*, Vol. 360, Issue 6388, 4 May 2018, available at <http://science.sciencemag.org/content/360/6388/eaau0116>.

¹⁶ 62 Fed. Reg 38,652 *et seq.*, “National Ambient Air Quality Standards for Particulate Matter”: Final Rule (July 18, 1997), available at <https://www.epa.gov/pm-pollution/table-historical-particulate-matter-pm-national-ambient-air-quality-standards-naaqs>.

¹⁷ Hoek, G., Krishnan, R. M., Beelen, R., Peters, A., Ostro, B., Brunekreef, B., & Kaufman, J. D. (2013). Long-term air pollution exposure and cardio-respiratory mortality: a review. *Environmental Health*, 12(1), 43.

¹⁸ Katsouyanni, K., Samet, J. M., Anderson, H. R., Atkinson, R., Le, A. T., Medina, S., ... & Ramsay, T. (2009). Air pollution and health: a European and North American approach (APHENA). Research report (Health Effects Institute), (142), 5–90.

¹⁹ Brook, R. D., Brook, J. R., Urch, B., Vincent, R., Rajagopalan, S., & Silverman, F. (2002). Inhalation of fine particulate air pollution and ozone causes acute arterial vasoconstriction in healthy adults. *Circulation*, 105(13), 1534–36.

²⁰ Pope, C. A., Burnett, R. T., Thurston, G. D., Thun, M. J., Calle, E. E., Krewski, D., & Godleski, J. J. (2004). Cardiovascular mortality and long-term exposure to particulate air pollution: epidemiological evidence of general pathophysiological pathways of disease. *Circulation*, 109(1), 71–77.

its independent re-analysis²¹ of the Harvard Six Cities study, which confirmed the original findings. When HEI was tasked with re-analyzing the study data in February 1997, it required a major investment of time and analytical resources on a scale far beyond that envisioned by the Proposal. In fact, the HEI re-analysis, which validated the original study findings, took three years to complete.²² The fact that the original Six Cities study stood up strongly to the scrutiny of independent researchers and sensitivity analyses speaks to the methodological rigor that the peer-review system demands. Indeed, the field of air pollution epidemiology in particular already has a high reproducibility standard.²³

Clearly, the Proposal arbitrarily ignores the significant amounts of time, effort and expense associated with “independent verification” of studies and data, especially given the wide scope of peer-reviewed science that would be subject to data sharing requirements. 83 Fed. Reg. at 18,774.²⁴ Given how long it took a team of researchers to independently re-analyze a single study, and the relatively short public comment periods associated with EPA regulatory actions,²⁵ the Proposal is doubly arbitrary: it ignores the significant amounts of time, effort and expense associated with “independent verification” of studies and data. Moreover, it is possible (even likely) that studies or data submitted by the public during comment periods would need to be independently assessed before consideration by EPA. Against the backdrop of EPA rulemakings with public comment periods and open rulemaking time periods and the voluminous amounts of data that would need to be de-identified, shared, and re-analyzed, it would be impossible to achieve independent verification of relevant dose-response information.

EPA has rightly continued to rely on the robust peer-reviewed literature to inform the air quality standard-setting process year after year, incorporating the best available scientific evidence in epidemiology, toxicology, and exposure assessment to set the outdoor air quality standards at levels that protect public health and the environment. It has also (until recently) agreed with leading scientists who have spent their careers studying air pollution and health that no safe threshold of fine particulate air pollution exists. The National Ambient Air Quality Standards and Clean Air Act’s designations process have helped to clean up our nation’s air in

²¹ Reanalysis of Harvard Six Cities Study, *supra* n.9.

²² Elaine Appleton Grant, “Prevailing Winds: A decades-long fight to bring clean air standards in line with environmental health science offers lessons for today,” Harvard Public Health Magazine, Fall 2012 *available at* <https://www.hsph.harvard.edu/news/magazine/f12-six-cities-environmental-health-air-pollution/>. (Hereinafter “Prevailing Winds”).

²³ See All Science, *supra*, n. 4.

²⁴ Regarding proposed § 30.7, the Proposal states that “EPA shall conduct independent peer review on *all* pivotal regulatory science used to justify regulatory decisions . . .” (emphasis added). EPA, in its Proposal and accompanying administrative record, does not begin to grapple with the impossible, burdensome obligation the Proposal creates to conduct new and independent peer review of “all pivotal regulatory science,” especially against the backdrop of the real-world experience with the three-year, costly, resource-intensive HEI re-analysis of just *one* study. See *supra*, Prevailing Winds, at n. 22.

²⁵ Environmental statutes and the Administrative Procedure Act sometimes allow public comment periods to be as short as 30 days. This period of time is wildly out of sync with the Proposal’s conceits that making data or models underlying regulatory science publicly available will allow for independent validation. See, e.g., 83 Fed. Reg. at 18,773 (proposed § 30.1). EPA has no response to this disconnect in the Proposal or the administrative record accompanying the Proposal.

substantial ways since 1970, and have protected millions of Americans, young and old, from breathing polluted air that would harm their health.

When analyzing the HONEST Act, the previously introduced legislation aimed at achieving the same end as the Proposal, the Congressional Budget Office predicted that the yearly tab could top \$100 million to upgrade the format and availability of those studies' data to the level required if EPA continues to rely on the same volume of scientific research as in the recent past.²⁶ In part, the money would go toward obtaining all of the underlying data for specific studies, formatting the information for public use, and providing access to the needed computer codes and models, the analysis said.

The Proposal also fundamentally ignores the real-world constraints, as well as moral barriers in some cases, to replicating studies due to the impossibility or offensiveness of reproducing conditions that underlay the studies. For example, researchers cannot replicate the poor air quality conditions experienced in the past and, correspondingly, the peer-reviewed investigations of the health effects cannot be reproduced. As one leading researcher notes, “researchers cannot ethically randomize people to harmful exposures in order to tackle confounding, nor violate informed consent agreements that prohibit open sharing of private data from past studies.”²⁷

Finally, the EPA chemical assessment program, called the Integration Risk Information System (IRIS) already uses credible transparent methods to provide the public with reliable, transparent, credible chemical hazard assessments and toxicity values. The program received high praise from its last two reviews by the National Academies of Sciences (NAS 2014 and NAS 2018), as well as from the Scientific Advisory Board (SAB 2017) for its continuous improvements and successes in its methods for evaluating and integrating scientific evidence from various streams including human studies, animal studies, and mechanistic studies. This Proposal would undermine decades of expert work to advance successful data evaluation methods described in the systematic review approach now underway in the EPA IRIS program.

C. Health Insurance Portability and Accountability Act

Many of the studies that EPA has relied on to set and revise the NAAQS are epidemiological prospective cohort investigations encompassing thousands of individuals over several decades. The Proposal's provisions concerning the public sharing of underlying data from these studies directly contradict both the legal protections for private medical data under the Health Insurance Portability and Accountability Act (HIPAA)²⁸ and the requirements researchers adhere to under the purview of Institutional Review Boards (IRBs),²⁹ which typically require

²⁶ Congressional Budget Office, Cost Estimate, Honest and Open New EPA Science Treatment Act of 2017, March 29, 2017 *available at* <https://www.cbo.gov/system/files/115th-congress-2017-2018/costestimate/hr1430.pdf>.

²⁷ See All Science, *supra*, n. 4.

²⁸ U.S. Department of Health & Human Services, “The HIPAA Privacy Rule,” *available at* <https://www.hhs.gov/hipaa/for-professionals/privacy/index.html>.

²⁹ National Institute of Environmental Health Science, “Institutional Review Board,” *available at* <https://www.niehs.nih.gov/about/boards/irb/index.cfm>.

investigators to ensure study participant confidentiality and data security. The foundational research in air pollution epidemiology demonstrating a causal link between pollution exposures and adverse health outcomes (including early death,³⁰ heart disease,³¹ lung cancer,³² stroke,³³ and asthma exacerbations³⁴) would be put at risk if the Proposal were finalized. Underlying sensitive health data cannot be released without obtaining individual patient consent, or consent from the next responsible party³⁵ for study participants who have died.

Importantly, the Proposal does not consider the negative effects it would have on recruitment for future epidemiological studies if members of the public had to permit access to sensitive personal and health information as a condition for study participation. Many of the peer-reviewed studies EPA uses to set and revise National Ambient Air Quality Standards through the Clean Air Act analyze the relationship between exposure to polluted air over many years and a range of adverse health effects. These comprehensive studies have enrolled thousands of American volunteers over periods ranging from several years to decades, in order to understand exactly how pollution harms us. The Proposal would have a chilling effect on the study recruitment process because of the onerous data release requirements. EPA's actual creation of these harmful consequences, and failure to consider and account for these harmful consequences, render the Proposal arbitrary and capricious and an abuse of agency discretion.

The Proposal would stand in stark contrast to the protective, guiding principles of the Health Insurance Portability and Accountability Act,³⁶ known as HIPAA. HIPAA was enacted nationally in 1996 as Public Law 104-191 and has served as a foundation for the protection of individual patients' privacy in research and in healthcare settings, setting boundaries on the appropriate use and release of health records.

According to the Department of Health and Human Services, HIPAA "establishes appropriate safeguards that health care providers and others must achieve to protect the privacy of health information; . . . holds violators accountable, with civil and criminal penalties that can be imposed if they violate patients' privacy rights; and it strikes a balance when public

³⁰ Pope III, C. A., R. T. Burnett, M. J. Thun, E. E. Calle, D. Krewski, K. Ito, and G. D. Thurston. 2002. "Lung Cancer, Cardiopulmonary Mortality, and Long-Term Exposure to Fine Particulate Air Pollution." *JAMA: The Journal of the American Medical Association* 287 (9): 1132–1141.

³¹ Pope, C. A., Muhlestein, J. B., May, H. T., Renlund, D. G., Anderson, J. L., & Horne, B. D. (2006). Ischemic heart disease events triggered by short-term exposure to fine particulate air pollution. *Circulation*, 114(23), 2443–48.

³² Turner, M. C., Krewski, D., Pope III, C. A., Chen, Y., Gapstur, S. M., & Thun, M. J. (2011). Long-term ambient fine particulate matter air pollution and lung cancer in a large cohort of never-smokers. *American journal of respiratory and critical care medicine*, 184(12), 1374–81.

³³ Hong, Y. C., Lee, J. T., Kim, H., & Kwon, H. J. (2002). Air pollution: a new risk factor in ischemic stroke mortality. *Stroke*, 33(9), 2165–69.

³⁴ Ostro, B., Lipsett, M., Mann, J., Braxton-Owens, H., & White, M. (2001). Air pollution and exacerbation of asthma in African-American children in Los Angeles. *Epidemiology*, 12(2), 200–08.

³⁵ U.S. Department of Health & Human Services, "Personal Representatives," *available at* <https://www.hhs.gov/hipaa/for-professionals/privacy/guidance/personal-representatives/index.html>.

³⁶ U.S. Department of Health & Human Services (HHS). 2013. "Health Information Privacy: What Does the HIPAA Rule Do?," December 19, 2002; *available at* <https://www.hhs.gov/hipaa/for-individuals/faq/187/what-does-the-hipaa-privacy-rule-do/index.html>.

responsibility supports disclosure of some forms of data – for example, to protect public health.”³⁷

With the shift away from paper to electronic medical records in recent decades, “the potential for individuals to access, use, and disclose sensitive personal health data” has increased.³⁸ While protecting individual patient privacy is a long-standing tradition among health-care and public health practitioners, previous legal protections were afforded by a patchwork of inconsistent and often inadequate laws and regulations. In 2003, pursuant to HIPAA, rules were enacted to expressly protect the privacy of certain individually identifiable health data, or “protected health information” (PHI). The HIPAA Privacy Rule (Standards for Privacy of Individually Identifiable Health Information) offered the first national standards for protecting the privacy of health information.³⁹

For researchers at American universities and teaching hospitals, HIPAA and the Privacy Rule are part of life, especially in the health sciences. Any proposed research project must submit a complete description of its planned use, protection, and storage of PHI before the university’s Institutional Review Boards (IRB), before any research project may proceed. Each researcher needs to annually renew their familiarity and expertise with the terms of HIPAA and the Privacy Rule, by taking a test to certify compliance. It is eminently obvious to those involved in research that protecting study subjects’ personal data is of the utmost importance, from an ethical and a legal viewpoint.

The Proposal, on the other hand, would disallow use of an enormous body of carefully-protected, de-identified health data from epidemiological studies large and small, for which IRBs have approved collection because patient privacy has been protected. The rule would effectively demand that study subjects’ private health information be made publicly available, or else not be usable in regulatory efforts. This measure would hamstring the research community’s ability to continue to produce foundational, health-protective research. Not only would the rule destroy society’s collective ability to benefit from studies of the causes of and potential cures for ill health, it also would veer dangerously toward compromised privacy during an era in which electronic data security is a nationwide crisis. In short, the Proposal flies in the face of decades of statutory, regulatory and institutional progress to simultaneously protect public health and privacy.

D. Anonymization or partial redaction of data is unworkable

Proponents of the Proposal have suggested that privacy concerns surrounding the sharing of health data can be mitigated by anonymizing the individual-level health data that researchers collect. This overlooks the serious problem that anonymizing data (through techniques such as data masking, coding, and de-identification techniques) might not adequately protect confidentiality or privacy. Various studies have documented that de-identification techniques to

³⁷ *Id.*

³⁸ Thacker SB. “HIPAA Privacy Rule and Public Health: Guidance from CDC and U.S. Department of Health and Human Services.” *MMWR* 52:1–12 (April 11, 2003).

³⁹ *Id.*

render data anonymous is not “simple,” despite what the Proposal suggests, and can lead to the publication of protected confidential or private data. One study explained that “[b]y linking demographics to public records such as voter lists, and mining for names hidden in attached documents, we correctly identified 84 to 97 percent of the profiles for which we provided names.”⁴⁰ Another explained “87% (216 million of 248 million) of the population in the United States had reported characteristics that likely made them unique based only on [5-digit ZIP, gender, date of birth].”⁴¹ Finally, another explains that “any data that is even minutely useful can never be perfectly anonymous.”⁴² The Proposal does not acknowledge these issues.

The claim that publicly available dose response data and models would allow for independent validation stands in direct contradiction to the legal privacy protections that apply to key data necessary for re-analysis. The proposed partial redaction of sensitive information poses a cascading set of problems, because the statistical models characteristic of epidemiologic investigations rely on the inclusion of potentially confounding variables (*e.g.*, age, sex, home address, health status, diet and alcohol consumption, smoking history) in order to properly isolate the pollution-health relationship with precision.⁴³ To understand the dose-response connection, these studies analyze detailed health, demographic, spatial, and behavioral information from thousands of people. This information is extremely sensitive and collected at the individual level. As such, our nation’s health privacy laws and Institutional Review Board (IRB) protocols require researchers to keep the data secure and confidential to prevent misuse. Collectively, these data points help researchers understand and isolate the cause-effect relationship between exposure to air pollution and risks for various health problems. It would be extremely difficult if not impossible for anyone using partially-redacted data sets derived from epidemiologic cohort studies to “validate” the results of the original studies, because such investigators would not be working with complete data sets.

As further demonstration, the 2009 Integrated Science Assessment for PM_{2.5} notes that “[a]ppropriate statistical adjustment for confounders requires identifying and measuring all reasonably expected confounders.”⁴⁴ Therefore, exclusion of some potentially sensitive confounding variables from an underlying dataset likely would lead a different team of investigators to a different result. Causing this wrongheaded and indefensible outcome results from the core approach and conceit in the Proposal, revealing it to be yet again, arbitrary and capricious and an abuse of EPA discretion. Put another way, the quantitative findings of dose-response relationships would almost certainly differ—not as a result of any true difference in the quantitative exposure-effect relationship, but because the original work relied on complete data

⁴⁰ Sweeney, L., Abu, A., & Winn, J. Identifying Participants in the Personal Genome Project by Name, Harvard University, Data Privacy Lab White Paper at 1, Cambridge 2013, *available at* <https://dataprivacylab.org/projects/pgp/1021-1.pdf>.

⁴¹ Sweeney, L., Simple Demographics Often Identify People Uniquely, Carnegie Mellon University, Data Privacy Working Paper 3 at 2. Pittsburgh 2000, *available at* <https://dataprivacylab.org/projects/identifiability/paper1.pdf>.

⁴² Paul Ohm, *Broken Promises of Privacy: Responding to the Surprising Failure of Anonymization*, 57 UCLA L. Rev. 1701, 1755 (2010).

⁴³ For example, see confounding variable adjustment in Pope III, C. A., Burnett, R. T., Thun, M. J., Calle, E. E., Krewski, D., Ito, K., & Thurston, G. D. (2002). Lung cancer, cardiopulmonary mortality, and long-term exposure to fine particulate air pollution. *Jama*, 287(9), 1132–41.

⁴⁴ U.S. EPA, Integrated Science Assessment (ISA) for Particulate Matter (Final Report, Dec 2009), 1–16, Washington, DC, EPA/600/R-08/139F, 2009.

sets and the new analyses would not—due to the Proposal. The resulting discrepancies in quantitative findings could serve as motivation to call the original study results into question due to faulty and incomplete re-analyses.

In any case, such an undertaking would be immensely costly, complicated, and slow—and deliver no net benefit to EPA or the American public. The cost projections are staggering: when EPA staffers in 2017 considered the potential effects of the failed HONEST Act⁴⁵ that mirrors the approach of the Proposal, they calculated⁴⁶ that efforts to anonymize health data and confidential business information could top \$250 million annually⁴⁷ (and potentially up to \$1 million **per study**) for the already strained agency workforce—huge amounts of taxpayer money and staff time that would be much better spent on implementing our nation’s environmental laws.

Despite this significant cost estimate, EPA does not confront the financial dimensions or the need for financial incentives to support the unprecedented data release requirements in the rule.⁴⁸ It also does not consider the fact that scientists do not typically receive funding to make the data underlying peer-reviewed studies available for public inspection. The Proposal would likely “significantly reduce” the evidence base that the EPA considers for air quality/health analyses (according to a Congressional Budget Office evaluation of the HONEST Act⁴⁹), a dramatic reduction that excludes the best available scientific studies that the agency has relied on for more than 20 years to set and revise the NAAQS.

Under the Proposal, EPA would not be able to rely on the best available science for its Integrated Science Assessments of air pollution that inform the NAAQS-setting process. Meanwhile, industry-funded research calling into question the air pollution-health link would not be subject to similar data release requirements, or even peer-review and independent reevaluation. This approach is asymmetric and favors selective, opaque, and questionable research methods over the consensus of robust peer-reviewed scientific investigation. Transparency in scientific data is an important topic, but one that needs to be balanced against the privacy concerns of study participants and legal and ethical restrictions on the sharing of sensitive data.

EPA identifies no indication under federal laws that Congress intended to create or authorize a lose-lose dynamic, in which EPA could exercise its authority either by excluding the best available, peer-reviewed science to inform health and environmental protections, *or* force researchers or ordinary Americans to cast aside privacy concerns, as well as legal and ethical

⁴⁵ H.R. 1430, “Honest and Open New EPA Science Treatment Act of 2017,” 115th Congress, *available at* <https://www.congress.gov/bill/115th-congress/house-bill/1430>.

⁴⁶ EPA Internal Analysis of HONEST Act (2017), *available at* <https://www.scribd.com/document/344731162/EPA-analysis-of-Honest-Act-to-CBO>.

⁴⁷ *Id.*; see also Union of Concerned Scientists, Administrator Pruitt Ignores EPA Staff Analysis of HONEST Act Costs, *available at* https://www.ucsusa.org/center-science-and-democracy/attacks-on-science/administrator-pruitt-ignores-epa-staff-analysis#.W3I-_dJKjIW.

⁴⁸ See All Science, *supra*, n. 4.

⁴⁹ Congressional Budget Office, Cost Estimate, Honest and Open New EPA Science Treatment Act of 2017, March 29, 2017 *available at* <https://www.cbo.gov/system/files/115th-congress-2017-2018/costestimate/hr1430.pdf>.

restrictions on the sharing of sensitive data. That false choice is entirely a creation of the agency's misguided policy preferences in the Proposal. The rule is arbitrary and capricious and an abuse of EPA discretion, with its selective application of data release requirements and disregard for the quantitative complexities of epidemiologic research.

E. EPA misrepresents data sharing policies at scientific journals

The Proposal identifies data sharing policies at a number of peer-reviewed scientific journals and claims that these policies support the Proposal's underlying public access requirements for dose response data and models. This is false. In fact, these various journal policies are more flexible in their terms for data sharing and nuanced in their practical approaches than what EPA fundamentally misrepresents in the Proposal. *See, e.g.*, 83 Fed. Reg. at 18,771/1, nn.20–22. An examination of these sources indicates, in fact, that the language of the Proposal is not consistent with best practices and is unworkable in practice.

The Proposal is not, as it claims, “consistent with requirements for many scientific journals.” 83 Fed. Reg. at 18,771. Specifically, the Taylor and Frances journal policy for data transparency⁵⁰ is much more nuanced than EPA claims and offers a range of options for data submission, demonstrating the need for flexibility and discipline-specific concerns with respect to the public sharing of sensitive data. The Springer Nature Research Data Policy⁵¹ cited in the proposed rule is similarly flexible, describing requirements across a spectrum for four types of underlying research data. For only one of four types of research data is data sharing required as a condition for publication. The frequently asked questions document for the Springer Nature Data Policy⁵² notes that “[t]he policies apply to all research that support publications but *reasonable restrictions on data availability are permitted to protect human privacy, biosafety or respect reasonable terms of use for data obtained under license from third parties.*”⁵³ The Proposal's categorical exclusion and prohibition are thus flatly inconsistent with the Springer Nature Research Data policy cited in the Proposal. *See* 83 Fed. Reg. at 18,771/1, n.20.

Furthermore, Elsevier's corresponding policy⁵⁴ is optional for authors, and states that the journal: “will . . . [e]ncourage and support researchers to share research data *where appropriate* and at the earliest opportunity, for example by enhancing our submission processes to make this easier.”⁵⁵ A frequently asked questions page further explaining this policy says that the “policy is clear in that *we encourage and support authors to share their research data rather than mandating them to do so* and provide tools and services to enable them to do this effectively.

⁵⁰ Taylor & Frances Group, “Author Services: Data Sharing Policies,” *available at* <http://authorservices.taylorandfrancis.com/wp-content/uploads/2018/01/Data-sharing-policies.pdf>.

⁵¹ Springer Nature, “Research Data: Research Data Policy Types,” *available at* <https://www.springernature.com/gp/authors/research-data-policy/data-policy-types/12327096>.

⁵² Springer Nature, “Research Data: Research Data Policies FAQ,” *available at* <https://www.springernature.com/gp/authors/research-data-policy/faqs/12327154> (and see Question 5: “5. Do the policies apply to sensitive or personal data and data subject to third party restrictions?”).

⁵³ *Id.* (emphasis added).

⁵⁴ Elsevier, “Research Data,” *available at* <https://www.elsevier.com/about/our-business/policies/research-data>.

⁵⁵ *Id.* (emphasis added); *see also* Elsevier, “Research Data FAQs,” *available at* <https://www.elsevier.com/about/policies/research-data/research-data-faqs>.

Where there is community support for (often discipline-specific) mandates regarding data deposit, submission and sharing, some of our journals may reflect this with their own mandatory data sharing policies.”⁵⁶ This same supporting frequently asked questions resource from Elsevier says that Elsevier “respect[s] authors who need to keep research data under embargo.”⁵⁷ The Proposal, by contrast, does not allow researchers to keep their research data under embargo. Nor does the Proposal offer such discipline-specific flexibility and, as a result, is neither practically workable nor consistent with the policies of the world’s leading scientific journals.

The Elsevier policy does not apply strict data release requirements to include publicly accessible information. It says that “[r]esearch data should be made available free of charge to all researchers *wherever possible* and with minimal reuse restrictions.”⁵⁸ It further states that “[r]esearchers should remain in control of how and when their research data is accessed and used, and should be recognised and valued for the investments they make in creating their research data and making it available.”⁵⁹ Under the Proposal, researchers retain no such control over their data; the Proposal ignores these harmful ramifications.

The PLOS Data Availability policy notes that, for studies involving human participants, “data must be handled so as to not compromise study participants’ privacy.”⁶⁰ The PLOS Policy itself links to the National Institutes of Health Data Sharing Workbook, which states that:

It is rarely sufficient to simply remove names, addresses, telephone numbers, Social Security Numbers, and the like. Deductive disclosure of individual subjects becomes more likely when there are unusual characteristics or the joint occurrence of several unusual variables. Samples drawn from small geographic areas, rare populations, and linked datasets can present particular challenges to the protection of subjects’ identities.⁶¹

Similarly, the NIH Data Sharing Workbook specifies that “[s]ome investigators withhold parts of the sample; others block access to specific variables, especially items with low prevalence rates that make it easier to identify participants with unusual characteristics.”⁶² Within this policy, the “measures used to minimize the risk of breaching the confidentiality of data” are unworkable given the depth and breadth of peer-reviewed research that would fall under the rule.⁶³ The Proposal identifies no plan for EPA to manage mandatory agreements to maintain confidentiality, data encryption, electronic firewalls and locked storage facilities, password authentication of users, audit trails, disaster prevention and recovery plans, or security measures for backup tapes.

⁵⁶ *Id.* (See “Is it compulsory to share my research data?”) (emphasis added).

⁵⁷ *Id.* (See “Do I have to my share research data straight away?”).

⁵⁸ See *supra*, n. 54, Elsevier, “Research Data,” (emphasis added).

⁵⁹ *Id.*

⁶⁰ PLOS One, “Data Availability,” available at <http://journals.plos.org/plosone/s/data-availability>.

⁶¹ National Institutes of Health, “Data Sharing Workbook,” Feb. 13, 2004, available at https://grants.nih.gov/grants/policy/data_sharing/data_sharing_workbook.pdf.

⁶² *Id.*

⁶³ *Id.*

To the extent data availability, even broadly defined, is contemplated in the Proposal, it is done so prospectively, not retroactively. Unlike the Proposal, the PLOS policy does not apply retroactively to all relevant studies: “[t]he data policy was implemented on March 3, 2014. Any paper submitted before that date will not have a data availability statement. However, for all manuscripts submitted or published before this date, data must be available upon reasonable request.”⁶⁴ Similarly, the Springer Nature policies began during the first quarter of 2016 but did not apply retroactively, as the Proposal would.⁶⁵

The NIH policy cited in footnote 21 of the Proposal also states that “[t]he investigator must be a tenure-track professor, senior scientist, or equivalent, to be able to submit” a data access request.⁶⁶ This fatally undermines the notion in the Proposal that data must be available to all members of the public in order to meet the reproducibility threshold. Furthermore, the Census Bureau resource,⁶⁷ also cited in footnote 21 of the Proposal, describes the Federal Research Data Centers. These centers restrict access to certain individuals, who “must obtain Census Bureau Special Sworn Status – passing a moderate risk background check and swearing to protect respondent confidentiality for life, facing significant financial and legal penalties under Title 13 and Title 26 for failure to do so.”⁶⁸ Again, this fatally undermines the notion in the Proposal that data must be available to all members of the public. While the Proposal simply says that members of the “public” can access these centers, the reality is that access to such controlled spaces is carefully restricted and *not* accessible to all members of the public. EPA does not seriously confront the significant challenges involved in enabling access.

Finally, there is no evidence in the record that the Federal Statistical Research Data Centers have the capacity to handle the substantial amounts of data that would be required to be submitted under the Proposal. But the massive increase in data-handling responsibilities propelled by the Proposal indicates strongly that EPA must first investigate and document what those resource capacities are, and whether the Centers believe they can handle increased responsibilities. If EPA fails to undertake such investigations and fails to demonstrate adequate resources and data-handling capacities, finalizing any rule based on the Proposal would be arbitrary and capricious and an abuse of EPA discretion.

The report cited in footnote 22 of the Proposal⁶⁹ suggests that strategies for data transparency “should be cost-effective,” yet no consideration of the cost repercussions of the Proposal is given in the Proposal or accompanying administrative record. This is extraordinary,

⁶⁴ See *supra*, n. 60.

⁶⁵ See *supra*, n. 52, Question 7: “Is data sharing mandatory for every article?”

⁶⁶ National Institutes of Health, Office of Science Policy, “Requesting Access to Controlled-Access Data Maintained in NIH-Designated Data Repositories,” available at <https://osp.od.nih.gov/scientific-sharing/requesting-access-to-controlled-access-data-maintained-in-nih-designated-data-repositories-e-g-dbgap/>.

⁶⁷ United States Census Bureau, “Federal Statistical Research Data Centers,” available at <https://www.census.gov/fsrdc>.

⁶⁸ United States Census Bureau, “Federal Statistical Research Data Centers; Secure Data Environment,” available at https://www.census.gov/about/adrm/fsrdc/about/secure_rdc.html.

⁶⁹ Randall Lutter and David Zorn, “On the Benefits and Costs of Public Access to Data Used to Support Federal Policy Making,” Mercatus Working Paper, Mercatus Center, George Mason University, September 2016, available at <https://www.mercatus.org/system/files/Mercatus-Lutter-Public-Access-Data-v3.pdf>.

and independent evidence that the Proposal and supporting materials are arbitrary and capricious and an abuse of EPA discretion. As just one example of the costs associated with data transparency requirements of this nature, the report cited by EPA itself quantified cost of compliance at \$46 million.⁷⁰ This amount represents more than two-thirds of the *entire* annual budget of the EPA office responsible for writing all clean air safeguards and standards under the Clean Air Act, the Office of Air Quality Planning and Standards.⁷¹ This amount equals over 90% of the budgeted amount for *every* EPA employee working in OAQPS.⁷² Neither the Proposal nor the accompanying administrative record remotely addresses, much less explains, how these data transparency compliance costs will be met. Moreover, the options for data sharing listed within footnote 22 are more expansive than those listed in the Proposal. They include requiring applications for access; restricting access to data for the purposes of replication, validation, and sensitivity evaluation; establishing physical controls on data storage; online training for researchers; and nondisclosure agreements.

F. The Proposal will not enhance public understanding

The Proposal claims that it “will help ensure that EPA is pursuing its mission of protecting public health and the environment in a manner that the public can trust and understand.” 83 Fed. Reg. at 18,769/1. This is false and unsupported in multiple respects. As these comments explain, the Proposal would prohibit EPA from considering information that will be the best available, peer-reviewed, independent, credible science—on the arbitrary and irrelevant grounds that underlying data are not publicly available. In this fashion, as these comments discuss, the Proposal would obstruct and thwart EPA from its mission and responsibility to protect public health and the environment.

Moreover, the Proposal would do so in a manner that the public cannot and would not trust and understand: the Proposal utterly fails to demonstrate or even support the claim that its approach ensures the information relied upon by EPA would be more trustworthy. EPA establishes no logical nexus or evidence-based link between the Proposal and its insinuations that studies or information lacking publicly available data are unreliable, invalid, irrelevant or untrustworthy. Additionally, the Proposal utterly fails to demonstrate or even support the claim that its approach ensures the information relied upon by EPA would be more understandable to the public.

First, EPA fails to establish or even support the premise of its wrongheaded belief: that the best available, peer-reviewed, independent, credible science is not understandable already to the public, or the informed, knowledgeable members of the public versed in the scientific, technical, legal, economic or policy matters relevant to EPA’s regulations, actions and mission.

⁷⁰ *Id.* at 25.

⁷¹ U.S. EPA, Fiscal Year 2019: Justification of Appropriation Estimates for the Committee on Appropriations, 837, *available at* <https://www.epa.gov/sites/production/files/2018-02/documents/fy-2019-congressional-justification-all-tabs.pdf>.

⁷² *Id.*

Second, the Proposal's claim about enhanced public understanding suffers from a fundamental internal contradiction and logical failing inherent to its approach: nothing in the Proposal requires that (1) publicly available data be actually considered, addressed, verified or replicated by EPA prior to the agency being allowed to consider the study based on that data; (2) publicly available data be actually considered, addressed, verified or replicated by any other person or party prior to EPA being allowed to consider the study based on that data; and (3) publicly available data be actually considered, addressed, verified or replicated by EPA, any person, or any party *ever*, before or after EPA is allowed to consider the study based on that data. Accordingly, it is false and unsupported to suggest that the Proposal ensures greater public "understanding" than the longstanding regulatory landscape where the Proposal's prescriptions and proscriptions do not exist.

III. The Proposal would devastate EPA's ability to protect people from hazardous substances with well-known harmful effects

A. Lead in drinking water, soil, and paint

The damaging effects of early childhood lead exposure can last a lifetime, so prevention is the only effective and meaningful solution. Lead-contaminated soil, food, drinking water, and dust from leaded paint can all be inhaled or ingested by children, and from there be circulated through the bloodstream into all the organs, bones, and brain. Adverse effects include brain damage, kidney damage and disease, infertility in men and women, elevated blood pressure and strokes in adults, and neurological damage that can cause pain in the muscles and joints.⁷³ Exposures during pre-natal and early life development are especially devastating.

The lead regulations and reduction measures resulting from the implementation of science-based EPA regulations are essential for reducing lead poisoning effects in the U.S. population. Since 2001, life-saving EPA standards under the Toxic Substances Control Act (TSCA) have protected children and families from exposure to lead in paint, dust, and soil, in and around homes and childcare facilities.⁷⁴ This regulation supports existing regulations regarding worker training and certification, lead hazard disclosure in real estate transactions, requirements for lead cleanup under state authorities, and lead hazard evaluation and control in Federally-owned housing. In addition, it establishes authority under TSCA to set residential lead dust cleanup levels.

The EPA Lead and Copper Rule (LCR) of 1991 established drinking water protections by requiring tap water monitoring and triggering a public alert and some protective action such as corrosion prevention measures or service line replacement if lead levels exceed 15 ppb. 40 C.F.R. Part 141 Subpart I. Revisions to the LCR in the 2007 rule update requirements for monitoring, treatment, and customer notification.⁷⁵ The LCR rule applies to water utilities, and

⁷³ U.S. Department of Health and Human Services, Agency for Toxic Substances and Disease Registry, Toxicological profile for lead, August 2007, *available at* <https://www.atsdr.cdc.gov/toxprofiles/tp13.pdf>.

⁷⁴ *Lead: Identification of Dangerous Levels of Lead*, 66 Fed. Reg. 1206 (Jan. 5, 2001).

⁷⁵ U.S. EPA, Economic and Supporting Analyses: Short-Term Regulatory Changes to the Lead and Copper Rule, Office of Water, 2007, EPA-815-R0-7022.

the companion Reduction of Lead in Drinking Water Act sets standards for pipes, solder, and other plumbing fittings.

The lead rules are based on risk analyses conducted by EPA using epidemiology studies published in the 1990s that correlate childhood blood lead levels with impaired brain function and adverse behavioral effects.⁷⁶ Many of the published studies are longitudinal cohort studies that include measurements of lead in blood from children decades ago, and then follow them out over time to observe lasting effects. Thanks to important EPA regulations and effective lead-reduction measures in gasoline and paint, overall blood lead levels have been reduced in many people. This makes it impossible to replicate the exposure conditions at the time the original children in the study cohort had their blood lead levels measured, such as the Port Pirie cohort study population living near a lead smelter in the 1980s.⁷⁷ Studies like these—longitudinal cohort studies, particularly those that capture exposures that may no longer occur—are not reproducible.

B. Vinyl chloride

Vinyl chloride (VC) is an industrial chemical that is manufactured as a monomer, and then polymerized into polyvinyl chloride (PVC) plastic, used in a wide variety of industrial and consumer plastic products including home siding, pipes, wire and cable coatings, packaging, furniture, household products, and automotive parts.⁷⁸ The VC monomer was first reported to cause cancer in 1969 based on animal laboratory studies.⁷⁹ This was followed almost immediately by evidence in VC workers of cancer. In addition, workplace epidemiology studies identified a link between VC exposure and a very rare degenerative bone disease called acroosteolysis that was cripplingly painful; it was not identified in the rodent studies.^{80, 81}

Vinyl chloride is regulated in workplaces, and in drinking water, food, and air:⁸²

- OSHA issued workplace regulations in 1974, forcing a reduction in the allowable level of the VC monomer by 500-times, from 500 ppm to 1 ppm averaged over an 8-hour workday.⁸³ Despite predictions of dire job losses, virtually all U.S. manufacturing

⁷⁶ Needleman HL, Gunnoe C, Leviton A, Reed R, Peresie H, Maher C, Barrett P. Deficits in psychologic and classroom performance of children with elevated dentine lead levels. *N Engl J Med.* 1979 Mar 29;300(13):689–95. Erratum in: *N Engl J Med.* 1994 Sep 1;331(9):616–7.

⁷⁷ Baghurst PA, Robertson EF, McMichael AJ, Vimpani GV, Wigg NR, Roberts RR. The Port Pirie Cohort Study: lead effects on pregnancy outcome and early childhood development. *Neurotoxicology.* 1987 Fall;8(3):395–401.

⁷⁸ U.S. Department of Health and Human Services, Public Health Service, Agency for Toxic Substances and Disease Registry, Toxicological profile for Vinyl Chloride, 2006, Atlanta, GA, *available at* <https://www.atsdr.cdc.gov/ToxProfiles/tp20.pdf> (Hereinafter “Vinyl Chloride”).

⁷⁹ Viola PL, Bigotti A, Caputo A. Oncogenic response of rat skin, lungs, and bones to vinyl chloride. *Cancer Res.* 1971 May;31(5):516–22.

⁸⁰ Creech JL Jr, Johnson MN. Angiosarcoma of liver in the manufacture of polyvinyl chloride. *J Occup Med.* 1974 Mar;16(3):150–51.

⁸¹ *Supra* n.78.

⁸² *Id.*

⁸³ United States Department of Labor, Occupational Safety and Health Administration, Regulations for Vinyl Chloride, *available at*

facilities met the new standard within a few years while reducing costs, largely through better containment of the unpolymerized monomer and improved exposure monitoring.⁸⁴

- EPA regulates VC pollution under the Safe Drinking Water Act (MCL=0.02 mg/L based on increased risk of cancer), and under EPA's Ambient Water Quality Criteria (0.025 ug/L).^{85, 86}
- FDA regulations limit vinyl chloride in food contact materials and packaging.⁸⁷

The studies that support these EPA safeguards, and particularly the identification of diseases in workers like acroosteolysis that were not identified in rodent studies, are critical to protecting human health and preventing adverse environmental impacts. Thanks to effective health-protective regulatory actions by EPA, OSHA and other federal agencies the elevated exposure conditions suffered by industrial workers in the 1970s and earlier are no longer the industry norm. Thus, these studies cannot meet the standards of transparency and replicability set out in the Proposal.

C. Pyrethroids

Pyrethroids are a class of insecticides that includes deltamethrin and permethrin, used on food crops including vegetables, fruit, and corn.⁸⁸ Permethrin is also used as a spray in homes and public spaces like hotels, theaters, restaurants, and hospitals.⁸⁹ It is also used to impregnate clothing, shoes, bed nets, and camping gear advertised to repel mosquitoes and ticks.⁹⁰ Pyrethroid pesticides are classified by EPA as a "likely human carcinogen," and is linked in

https://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=STANDARDS&p_id=10021; 29 C.F.R. 1910.1017 *et seq.*

⁸⁴ Sass JB, Castleman B, Wallinga D. Vinyl Chloride: A Case Study of Data Suppression and Misrepresentation. *Environmental Health Perspectives*. 2005;113(7):809-812. doi:10.1289/ehp.7716.

⁸⁵ U.S. EPA, "National Primary Drinking Water Regulations," available at <https://www.epa.gov/ground-water-and-drinking-water/national-primary-drinking-water-regulations>.

⁸⁶ *Supra* n.78.

⁸⁷ *Id.*

⁸⁸ U.S. Geological Survey, Pesticide National Synthesis Project: Estimated Annual Agricultural Pesticide Use, Pesticide Use Maps – Permethrin, 2015, available at https://water.usgs.gov/nawqa/pnsp/usage/maps/show_map.php?year=2015&map=PERMETHRIN&hilo=L&disp=P permethrin (Hereinafter "Pesticide Maps").

⁸⁹ U.S. EPA, Office of Pesticide Programs' Review of the Status of Six PBPK Models in Preparation for the FIFRA SAP for the October 24-27, 2017 Physiologically Based Pharmacokinetic Modeling to Address Pharmacokinetic Differences Between and Within Species, August 3, 2017 available at https://www.epa.gov/sites/production/files/2017-08/documents/epa_opp_review_of_status_of_pbpk_models.pdf (Hereinafter "Review of Six PBPK Models")

⁹⁰ Interlandi, Jeneen, Consumer Reports, "Can Permethrin Treated Clothing Help You Avoid Mosquito Bites? We tested L.L.Bean and ExOfficio insect-repellent clothing," (May 26, 2016) available at <https://www.consumerreports.org/insect-repellents/permethrin-treated-clothing-mosquito-bites/>.

published studies to Parkinson's Disease and adverse behavioral problems in prenatally exposed children.^{91, 92}

EPA convened a FIFRA Scientific Advisory Panel in October 2017 to assess its use of a Physiologically Based Pharmacokinetic Model (PBPk) used in its risk assessment for the pyrethroid pesticides. The PBPk model was sponsored and submitted to EPA by the Council for the Advancement of Pyrethroid Human Risk Assessment, L.L.C. (CAPHRA).⁹³ CAPHRA identifies its participating parties as chemical and agrochemical manufacturers.^{94, 95} CAPHRA describes its intentions as follows: "The general area of CAPHRA's planned activity is to generate and submit to the [U.S. EPA] studies necessary to address EPA's concerns for the potential for age-dependent sensitivity to Pyrethroids."⁹⁶

Despite the central role of the pyrethroid PBPk model in EPA's regulatory approval for pyrethroid pesticides, it appears that scientific peer reviewers on the FIFRA Scientific Advisory Panel were unable to obtain the raw data necessary to provide a robust peer review of the model. SAP Panelist Dr. Dale Hattis requested these data from EPA on September 6 and September 12 without receiving them, including "key data" for "evaluating the uncertainty in the modeling" and "data needed for assessment of the calibration of the PBPk models."⁹⁷

At this point, the EPA Scientific Advisory Panel meeting is postponed indefinitely.⁹⁸ The stated reason is "due to the unavailability of experts," but the more likely reason is to bias the

⁹¹ See *supra*, n.88. Pesticide Maps.

⁹² Furlong MA, Barr DB, Wolff MS, Engel SM. Prenatal exposure to pyrethroid pesticides and childhood behavior and executive functioning. *Neurotoxicology*. 2017 Sep;62:231–38; Viel JF, Rouget F, Warembourg C, Monfort C, Limon G, Cordier S, Chevrier C. Behavioural disorders in 6-year-old children and pyrethroid insecticide exposure: the PELAGIE mother-child cohort. *Occup Environ Med*. 2017 Mar;74(4):275–81.

⁹³ See *supra*, n.89; U.S. EPA, Background materials on the Physiologically Based Pharmacokinetic (PBPk) models on deltamethrin and cis-permethrin to the Panel for the October 24-27, 2017 session of the FIFRA Scientific Advisory Panel (FIFRA SAP) reviewing PBPk modeling to address pharmacokinetic differences between and within species. July 25, 2017. EPA-HQ-OPP-2017-0180-0009; U.S. EPA, Meeting Minutes of the FIFRA Scientific Advisory Panel Meeting held on "Research to Evaluate the Potential for Juvenile Sensitivity to Pyrethroids." ID: EPA-HQ-OPP-2015-0130-0019.

⁹⁴ Including AMVAC Chemical Corporation, Commerce, CA; BASF Corporation, Durham, NC; Bayer Animal Science, Pittsburgh, PA; Bayer CropScience, Research Triangle Park, NC; Botanical Resources Australia, Sandy Bay, Tasmania, Australia; Cheminova Inc., Arlington, VA; DuPont Crop Protection, Newark, DE; FMC Corporation, Philadelphia, PA; LG Life Sciences, Ltd., Clifton, VA; McLaughlin Gormley King Company, Minneapolis, MN; Meghmani, c/o Chemical Consultants International, Inc., Stilwell, KS; S.C. Johnson & Son, Inc., Racine, WI; Sumitomo Chemical Co., Ltd., Tokyo, Japan; Syngenta Crop Protection, LLC, Greensboro, NC; Valent BioSciences Corporation, Libertyville, IL; and Wellmark International (Central Life Sciences), Schaumburg, IL.

⁹⁵ 76 Fed. Reg. 60,530, et seq. Notice Pursuant to the National Cooperative Research and Production Act of 1993; Council for the Advancement of Pyrethroid Human Risk Assessment, L.L.C. (Sept. 29, 2011) *available at* <https://www.federalregister.gov/documents/2011/09/29/2011-24874/notice-pursuant-to-the-national-cooperative-research-and-production-act-of-1993-council-for-the>.

⁹⁶ *Id.*

⁹⁷ See Attachment 27: Email from D. Hattis to EPA DFO M. King, Sept 6, 2017; Email from D. Hattis to EPA DFO M. King, Sept 12, 2017; Email from D. Hattis to SAP Chair J McManaman, Oct 3, 2017.

⁹⁸ U.S. EPA, Meeting Materials for the October 24-27, 2017 Scientific Advisory Panel. Physiologically-based Pharmacokinetic Modeling, *available at* <https://www.epa.gov/sap/meeting-materials-october-24-27-2017-scientific-advisory-panel>.

panel with the addition of industry experts, as EPA has done recently with its Scientific Advisory Boards.⁹⁹ A model that underestimates exposures and health risks will lead to regulations that fail to protect Americans from harmful exposures to pyrethroid pesticides.

D. Organophosphates, including chlorpyrifos

Congress recognized that pesticides are designed to be poisonous, and thus requires them to be registered by EPA, under the Federal Insecticide, Fungicide, and Rodenticide Act. FIFRA requires that when used according to the label, a pesticide will not cause unreasonable adverse effects on the environment or human health, which is commonly referred to as FIFRA's safety standard. FIFRA was amended by the Food Quality Protection Act, which passed Congress unanimously in 1996. Under FQPA, the agency must prohibit any pesticide use for which the registrant has failed to demonstrate that there is a reasonable certainty of no harm to vulnerable populations including infants and children from cumulative and aggregate exposure (from the diet and all other sources).

Organophosphate pesticides like chlorpyrifos are widely used in agriculture, with over 5 million pounds of the insecticide applied annually across the U.S. to a variety of crops including apples, oranges, broccoli, and berries.¹⁰⁰ Symptoms of acute poisoning include nausea and vomiting, headaches, dizziness, seizures, paralysis, and, in extreme cases, even death.

Due to risks to children's health, in 2000 EPA banned household use of chlorpyrifos and most other organophosphate pesticides.¹⁰¹ Residential uses prior to the ban were causing very high exposures to pregnant women and young children. Scientists have since learned that even much lower levels may be harmful to children.

However, scientists have since shown in longitudinal cohort epidemiologic studies, that even low levels of exposure—too low to poison a pregnant mother—can disrupt brain development in their prenatally exposed children, leading to developmental delays, lower IQ, learning disabilities, and ADHD-like behaviors.¹⁰²

To protect these children, in October 2015, the Obama Administration EPA proposed to ban chlorpyrifos because agency scientists found contamination of drinking water. A year later, EPA found that chlorpyrifos residues on food, including fruits and vegetables, are unsafe for

⁹⁹ EPA unveils new industry-friendlier science advisory boards. Science magazine. By Sean Reilly, E&E News, Kevin Bogardus, E&E News, Nov. 3, 2017, *available at* <http://www.sciencemag.org/news/2017/11/epa-unveils-new-industry-friendlier-science-advisory-boards>.

¹⁰⁰ U.S. EPA, Ingredients Used in Pesticide Products: Chlorpyrifos, *available at* <https://www.epa.gov/ingredients-used-pesticide-products/chlorpyrifos>.

¹⁰¹ *Id.*

¹⁰² Rauh VA, Garfinkel R, Perera FP, Andrews HF, Hoepner L, Barr DB, Whitehead R, Tang D, Whyatt RW. Impact of prenatal chlorpyrifos exposure on neurodevelopment in the first 3 years of life among inner-city children. *Pediatrics*. 2006 Dec;118(6):e1845–59. Epub 2006 Nov 20; Bouchard MF, Chevrier J, Harley KG, et al. Prenatal Exposure to Organophosphate Pesticides and IQ in 7-Year Old Children. *Environ Health Perspect*. 2011;1003185(April); Rauh VA, Garcia WE, Whyatt RM, Horton MK, Barr DB, Louis ED. Prenatal exposure to the organophosphate pesticide chlorpyrifos and childhood tremor. *Neurotoxicology*. 2015;51:80–86.

pregnant women and children; residue levels were far above their target risk level—in some cases, by up to 140 times.¹⁰³

These epidemiologic studies can no longer be reproduced because—thanks to FQPA and the ban on residential uses—pregnant women and young children are no longer poisoned by indoor use of organophosphate pesticides at such high levels. Banning the use of chlorpyrifos would reduce human risk, leading to a healthier future for our children.

E. Mercury

Mercury is a powerful neurotoxic agent capable of adversely affecting fetus and childhood development in low concentrations. EPA maintains a series of web pages describing the health effects of mercury.¹⁰⁴ EPA has also summarized the health and environmental effects of mercury in previous TSCA rulemakings.¹⁰⁵ Mercury is a highly neurotoxic contaminant that is most toxic when methylated. Biological processes in the watershed convert the mercury to methylmercury which accumulates in the food chain resulting in elevated levels in fish, other wildlife, and ultimately in humans.¹⁰⁶ Commonly consumed fish may have methylmercury levels 100,000 times that of the ambient water.¹⁰⁷ Mercury contamination of fish stocks is widespread in the United States.^{108, 109} Studies of mercury levels in fish in rivers, lakes, and streams across the United States found mercury levels exceeding the level for human health concern for a significant portion of the sites sampled.¹¹⁰

Newly deposited mercury has been shown to be more bioavailable and more rapidly converted to methylmercury and represents a greater fraction of the methylmercury which is

¹⁰³ U.S. EPA, Memorandum: Chlorpyrifos: Revised Human Health Risk Assessment for Registration Review, Nov. 3, 2016, Docket ID No. EPA-HQ-OPP-2015-0653-0454.

¹⁰⁴ U.S. EPA, Health Effects of Exposures to Mercury, *available at* <https://www.epa.gov/mercury/health-effects-exposures-mercury>.

¹⁰⁵ *See, e.g.*, 71 Fed. Reg. 39,035 *et seq.*, Mercury Switches in Motor Vehicles; Proposed Significant New Use Rule, at 39,040–41, (July 11, 2006).

¹⁰⁶ U.S. EPA, How People are Exposed to Mercury, *available at* <https://www.epa.gov/mercury/how-people-are-exposed-mercury>.

¹⁰⁷ 79 Fed. Reg. 63,258 *et seq.*, Effluent Limitations Guidelines and Standards for the Dental Category, at 63,277, (Oct. 22, 2014).

¹⁰⁸ U.S. Geological Survey, Recent Findings from the National Water-Quality Assessment (NAWQA) and Toxic Substances Hydrology Programs (as presented to the NAWQA National Liaison Committee, Aug. 21, 2009).

¹⁰⁹ U.S. EPA, 2017 EPA-FDA Advice about Eating Fish and Shellfish, *available at* <https://www.epa.gov/fish-tech/2017-epa-fda-advice-about-eating-fish-and-shellfish>.

¹¹⁰ Scudder, B.C., Chasar, L.C., Wentz, D.A., Bauch, N.J., Brigham, M.E., Moran, P.W., and Krabbenhoft, D.P., 2009, Mercury in fish, bed sediment, and water from streams across the United States, 1998–2005: U.S. Geological Survey Scientific Investigations Report 2009–5109, *available at* <https://pubs.usgs.gov/sir/2009/5109/pdf/sir20095109.pdf> (Hereinafter “Mercury in streams”); Wathen, J. B., Lazorchak, J. M., Olsen, A. R., & Batt, A. (2015). A national statistical survey assessment of mercury concentrations in fillets of fish collected in the US EPA national rivers and streams assessment of the continental USA. *Chemosphere*, 122, 52–61., *abstract available at* <http://www.sciencedirect.com/science/article/pii/S0045653514012636>.

incorporated into food chains and ultimately into fish.¹¹¹ Local sources have been implicated in elevated levels of mercury measured in ambient air,¹¹² precipitation,^{113, 114} soils,¹¹⁵ and methylmercury levels in biota, including fish.¹¹⁶ Reductions in local mercury emissions levels have been tied to decreasing levels measured in the environment and biota.^{117, 118, 119} Therefore, to achieve the National Academy of Sciences' public-health goal of reducing mercury concentrations in fish,¹²⁰ current mercury emissions should be ratcheted down, thereby decreasing the amount of mercury cycling through aquatic systems and reducing contamination of fish and people.

Some populations may face even greater risks: Asians, Pacific Islanders, and Native Americans are all more likely to have elevated blood mercury levels, as are women living in the Northeast and other coastal areas, or consuming a lot of fish.^{121, 122} A 2011 study of 1,465 newborns in Minnesota's Lake Superior Basin found eight percent of the newborns had blood mercury levels above 5.8 µg/l.¹²³

¹¹¹ Hintelmann H, Harris R, Heyes A, Hurley JP, Kelly CA, Krabbenhoft DP, Lindberg S, Rudd JW, Scott KJ, St Louis VL. Reactivity and mobility of new and old mercury deposition in a boreal forest ecosystem during the first year of the METAALICUS study. Mercury Experiment to Assess Atmospheric Loading In Canada and the US. *Environmental Science & Technology*, 2002 Dec 1;36(23):5034–40.

¹¹² Manolopoulos H, Snyder DC, Schauer JJ, Hill JS, Turner JR, Olson ML, Krabbenhoft DP, Sources of speciated atmospheric mercury at a residential neighborhood impacted by industrial sources, *Environmental Science & Technology*, 2007 Aug. 15;41(16):5626–33.

¹¹³ Dvonch, J. T., Graney, J. R., Keeler, G. J., & Stevens, R. K. (1999). Use of elemental tracers to source apportion mercury in south Florida precipitation. *Environmental Science & Technology*, 33(24), 4522–27.

¹¹⁴ White, E. M., Keeler, G. J., & Landis, M. S. (2009). Spatial variability of mercury wet deposition in eastern Ohio: summertime meteorological case study analysis of local source influences. *Environmental Science & Technology*, 43(13), 4946–53.

¹¹⁵ Biester, H., Müller, G., & Schöler, H. F. (2002). Estimating distribution and retention of mercury in three different soils contaminated by emissions from chlor-alkali plants: part I. *Science of the Total Environment*, 284(1), 177–89.

¹¹⁶ Evers, D. C., Han, Y. J., Driscoll, C. T., Kamman, N. C., Goodale, M. W., Lambert, K. F., Holsen, T.M., Chen, C.Y., Clair, T.A., & Butler, T. (2007). Biological mercury hotspots in the northeastern United States and southeastern Canada. *Bioscience*, 57(1), 29–43.

¹¹⁷ Frederick, P. C., Hylton, B., Heath, J. A., & Spalding, M. G. (2004). A historical record of mercury contamination in southern Florida (USA) as inferred from avian feather tissue: Contribution R-09888 of the Journal Series, Florida Agricultural Experiment Station. *Environmental Toxicology and Chemistry*, 23(6), 1474–78.

¹¹⁸ Driscoll, C. T., Han, Y. J., Chen, C. Y., Evers, D. C., Lambert, K. F., Holsen, T. M., Kamman, N.C., & Munson, R. K. (2007). Mercury contamination in forest and freshwater ecosystems in the northeastern United States. *BioScience*, 57(1), 17–28, available at <https://surface.syr.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1003&context=cie>.

¹¹⁹ See *supra* n.110, Mercury in Streams.

¹²⁰ National Research Council. 2000. Toxicological Effects of Methylmercury. Washington, DC: The National Academies Press, available at <https://doi.org/10.17226/9899>.

¹²¹ Hightower, J. M., O'Hare, A., & Hernandez, G. T. (2006). Blood mercury reporting in NHANES: identifying Asian, Pacific Islander, Native American, and multiracial groups. *Environmental Health Perspectives*, 114(2), 173–75.

¹²² Mahaffey KR, Clickner RP, Jeffries RA. Adult women's blood mercury concentrations vary regionally in the United States: association with patterns of fish consumption (NHANES 1999-2004). *Environ Health Perspect*. 2009 Jan; 117(1):47–53. doi: 10.1289/ehp.11674.

¹²³ Patricia McCann, Minnesota Department of Health, Mercury Levels in Blood from Newborns in the Lake Superior Basin, GLNPO ID 2007-942, Final Report, November 30, 2011.

Researchers have estimated that in the United States methylmercury toxicity is associated with between 376 and 14,293 excess cases per year of a level of cognitive impairment that would be considered mental retardation. The cost of caring for these children has been estimated between \$500 million and \$17.9 billion annually, and this cost will be incurred every year until mercury emissions are reduced.^{124, 125} Mercury releases associated with mercury uses in products and processes contribute “significantly” to this mercury pollution.¹²⁶

EPA’s activities to protect from and minimize exposure to mercury begins with its fish advisories, since the consumption of fish is the largest exposure pathway for the general population.¹²⁷ EPA also promotes state and local fish advisories. As of 2011, all 50 states have fish advisories for mercury, and mercury accounted for 81% of all state and local fish advisories, in whole or in part.¹²⁸

This concern about mercury exposure has led EPA to restrict intentional uses of mercury in products. For example, EPA promulgated a Significant New Use Rule (SNUR) under TSCA section 5(a) for elemental mercury used in certain “convenience light switches, anti-lock braking system (ABS) switches, and active ride control system switches.”¹²⁹ Similarly, EPA promulgated a SNUR covering mercury-added flow meters, natural gas manometers, and pyrometers, because of the risk of human exposure to mercury during the products’ manufacture, use, and disposal at the products’ end of life.¹³⁰ About two years later, EPA promulgated a SNUR covering mercury-added barometers, manometers, hygrometers, and psychrometers, essentially for the same reasons.¹³¹

EPA also regulates mercury dischargers to surface waters under the Clean Water Act. This Administration recently finalized effluent guidelines for dental offices.¹³² In addition to the Clean Water Act, other environmental laws that limit mercury exposures include the Clean Air Act (CAA), Safe Drinking Water Act (SDWA), Resource Conservation and Recovery Act (RCRA), and the Emergency Planning and Community Right to Know Act (EPCRA).¹³³

¹²⁴ Trasande, L., Schechter, C. B., Haynes, K. A., & Landrigan, P. J. (2006). Mental retardation and prenatal methylmercury toxicity. *American Journal of Industrial Medicine*, 49(3), 153–58.

¹²⁵ Trasande, L., Schechter, C., Haynes, K. A., & Landrigan, P. J. (2006). Applying cost analyses to drive policy that protects children: mercury as a case study. *Annals of the New York Academy of Sciences*, 1076: 911–923, abstract available at <http://www.ncbi.nlm.nih.gov/pubmed/17119266>.

¹²⁶ Great Lakes Regional Collaboration, *Mercury in Products Phase-Down Strategy 1* (June 2008).

¹²⁷ U.S. EPA, Guidelines for Eating Fish that Contain Mercury, available at <https://www.epa.gov/mercury/guidelines-eating-fish-contain-mercury>.

¹²⁸ U.S. EPA, 2011 National Listing of Fish Advisories, (December 2013), EPA-820-F-13-058, available at <https://www.epa.gov/sites/production/files/2015-06/documents/technical-factsheet-2011.pdf>.

¹²⁹ 72 Fed. Reg. 56,903 *et seq.*, Mercury Switches in Motor Vehicles; Significant New Use Rule (Nov. 5, 2007).

¹³⁰ 75 Fed. Reg. 42,330 *et seq.*, Elemental Mercury Used in Flow Meters, Natural Gas Manometers, and Pyrometers (July 21, 2010).

¹³¹ 77 Fed. Reg. at 31,728 *et seq.*, Elemental Mercury Used in Barometers, Manometers, Hygrometers, and Psychrometers; Significant New Use Rule (May 30, 2012).

¹³² 82 Fed. Reg. 27,154 *et seq.*, Effluent Limitations Guidelines and Standards for the Dental Category: Final Rule, (June 14, 2017).

¹³³ U.S. EPA, Environmental Laws that Apply to Mercury, available at <https://www.epa.gov/mercury/environmental-laws-apply-mercury>.

EPA very conservatively estimates that more than 75,000 newborns each year may have increased risk of learning disabilities associated with in-utero exposure to methylmercury, based on maternal blood levels exceeding the EPA Reference Dose (RfD) of 5.8 µg/L.¹³⁴ Even the EPA RfD likely underestimates the extent of risks to newborns due to bio-concentration of methylmercury across the placenta.¹³⁵ Three times more women of childbearing age—7.3%—have blood mercury levels exceeding 3.5 µg/L, indicating that up to 265,000 or more infants are born each year facing cognitive impacts from mercury exposure based on maternal blood levels.¹³⁶

The RfD is based on recommendations of the National Research Council (NRC) of the National Academy of Sciences (NAS), that conducted an extensive analysis and calculations derived from three longitudinal epidemiologic studies: the Seychelles Islands, the Faroe Islands, and the New Zealand studies.¹³⁷ The studies measured neuropsychological effects in children that were exposed prenatally to methylmercury as a result of pregnant mother's consuming contaminated seafood. The use of these studies to set EPA exposure limits was the result of a years-long transparent process of expert scrutiny, public engagement, inter-agency cooperation, and publication in scientific journals.

However, the studies can no longer be reproduced, particularly the Faroe Islands study in which the exposure to the community was a result of eating whales, a practice that has since declined due to public alerts about the hazards of eating the mercury-tainted meat particularly for children and pregnant and breastfeeding women. In addition, it would take decades to repeat the studies, which took decades to conduct in the first place.

F. Air pollution

Since the Clean Air Act became law in 1970, it has helped to dramatically improve air quality across the country and deliver substantial, measurable health gains. A peer-reviewed EPA study issued in 2011 found that the Clean Air Act Amendments of 1990 achieved enormous health benefits (including avoidance of 160,000 premature deaths in adults by 2010) that will increase as programs take full effect.¹³⁸ In 2009, leading air pollution epidemiologists published

¹³⁴ Birch RJ, Bigler J, Rogers JW, Zhuang Y, Clickner RP. Trends in blood mercury concentrations and fish consumption among U.S. women of reproductive age, NHANES, 1999-2010. *Environ Res.* 2014 Aug;133:431–38.

¹³⁵ Mahaffey KR, Clickner RP, Jeffries RA. Adult women's blood mercury concentrations vary regionally in the United States: association with patterns of fish consumption (NHANES 1999-2004). *Environ Health Perspect.* 2009 Jan;117(1):47–53. doi: 10.1289/ehp.11674.

¹³⁶ Based on data from the U.S. EPA Trends study of 2013 provided via personal communication to David Lennett, NRDC, from Jeffrey Bigler, USEPA, Bigler.Jeff@epa.gov, January 2014.

¹³⁷ Rice DC. The US EPA reference dose for methylmercury: sources of uncertainty. *Environ Res.* 2004 Jul;95(3):406–13. <https://www.ncbi.nlm.nih.gov/pubmed/15220074>.

¹³⁸ U.S. EPA, Benefits and Costs of the Clean Air Act 1990-2020, the Second Prospective Study, *available at* <https://www.epa.gov/clean-air-act-overview/benefits-and-costs-clean-air-act-1990-2020-second-prospective-study>.

a study demonstrating that, from 1980 to 2000, reductions in exposure to PM_{2.5} pollution had increased the average American life span by 1.6 years (more than 19 months).¹³⁹

The Clean Air Act requires EPA to consider the best available evidence in setting and revising the National Ambient Air Quality Standards (NAAQS) to protect health within an adequate margin of safety. 42 U.S.C. § 7409. Fine particulate matter, an air pollution category encompassing solid particles and condensed liquid droplets with a diameter of 2.5 microns or smaller (PM_{2.5}), is one of the most dangerous types of air pollution because it can penetrate deep into the lung and enter the bloodstream.¹⁴⁰ Groundbreaking studies into the link between air pollution exposures and health like the 1993 Harvard Six Cities Study¹⁴¹ examined the health effects of PM_{2.5} air pollution over 16 years on more than 8,000 adults and 14,000 children relying on private medical records and air pollution monitors deployed near study volunteers. The study found a significant relationship between air pollution exposure and risk of early death, but the raw data could not be released publicly because researchers were obligated to ensure study participant confidentiality.

As explained in section II.B., more than 100 peer-reviewed studies have confirmed the basic results of that initial study relying on that data. Because the study and others like it went through the rigorous peer-review process characteristic of the world's leading scientific journals (whose editors have rejected the Proposal¹⁴²), EPA relied on the results of the Harvard Six Cities study and others in 1997 when it promulgated the NAAQS for fine particulate matter.¹⁴³ Hundreds of additional studies into the health effects of air pollution have been conducted since then across the country¹⁴⁴ and internationally,¹⁴⁵ for both short-¹⁴⁶ and long-term¹⁴⁷ impacts of exposure, and independent re-analyses of existing datasets have affirmed the air pollution-

¹³⁹ Pope III, C. A., Ezzati, M., & Dockery, D. W. (2009). Fine-particulate air pollution and life expectancy in the United States. *New England Journal of Medicine*, 360(4), 376–86.

¹⁴⁰ World Health Organization. *Air Quality Guidelines: Global Update 2005. Particulate Matter, Ozone, Nitrogen Dioxide and Sulfur Dioxide*. World Health Organization (2006).

¹⁴¹ Dockery, D. W., Pope, C. A., Xu, X., Spengler, J. D., Ware, J. H., Fay, M. E., ... & Speizer, F. E. (1993). An association between air pollution and mortality in six US cities. *New England journal of medicine*, 329(24), 1753–59.

¹⁴² See *supra* n.15, <http://science.sciencemag.org/content/360/6388/eaau0116>.

¹⁴³ See 62 Fed. Reg 38,652 *et seq.*, “National Ambient Air Quality Standards for Particulate Matter”: Final Rule (July 18, 1997), available at <https://www.epa.gov/pm-pollution/table-historical-particulate-matter-pm-national-ambient-air-quality-standards-naaqs>.

¹⁴⁴ Hoek, G., Krishnan, R. M., Beelen, R., Peters, A., Ostro, B., Brunekreef, B., & Kaufman, J. D. (2013). Long-term air pollution exposure and cardio-respiratory mortality: a review. *Environmental Health*, 12(1), 43.

¹⁴⁵ Katsouyanni, K., Samet, J. M., Anderson, H. R., Atkinson, R., Le, A. T., Medina, S., ... & Ramsay, T. (2009). Air pollution and health: a European and North American approach (APHENA). *Research report (Health Effects Institute)*, (142), 5–90.

¹⁴⁶ Brook, R. D., Brook, J. R., Urch, B., Vincent, R., Rajagopalan, S., & Silverman, F. (2002). Inhalation of fine particulate air pollution and ozone causes acute arterial vasoconstriction in healthy adults. *Circulation*, 105(13), 1534–36.

¹⁴⁷ Pope, C. A., Burnett, R. T., Thurston, G. D., Thun, M. J., Calle, E. E., Krewski, D., & Godleski, J. J. (2004). Cardiovascular mortality and long-term exposure to particulate air pollution: epidemiological evidence of general pathophysiological pathways of disease. *Circulation*, 109(1), 71–77.

mortality and morbidity links with increasing precision. In 2000, the Health Effects Institute published its independent re-analysis¹⁴⁸ of the study, which confirmed the original findings.

As explained in section II.C., many of the studies that EPA has relied on to set and revise the NAAQS are epidemiological prospective cohort investigations encompassing thousands of individuals over several decades. The Proposal's requirement for the public sharing of underlying data of these studies contradicts HIPAA's legal protections for private medical data¹⁴⁹ and requirements researchers adhere to under Institutional Review Boards (IRBs),¹⁵⁰ which typically require investigators to ensure participant confidentiality and data security. Underlying sensitive health data cannot be released without obtaining individual patient consent, or consent from the next responsible party for study participants who have died. The foundational research in air pollution epidemiology demonstrating a causal link between pollution exposures and adverse health outcomes—including early death,¹⁵¹ heart disease,¹⁵² lung cancer,¹⁵³ stroke,¹⁵⁴ and asthma exacerbations¹⁵⁵—is therefore at risk if the Proposal is finalized.

While the NAAQS have strengthened over time, epidemiologic evidence indicates that even greater health gains could be achieved if our nation's air quality standards were stronger.¹⁵⁶ The unprecedented requirements of the Proposal threaten to undermine this progress by allowing EPA to rely on weaker science that could stall or reverse historical strengthening of the NAAQS. Under the Proposal, EPA would not be able to rely on the best available science for its Integrated Science Assessments of air pollution which inform the NAAQS-setting process, while industry-funded research calling into question the air pollution-health link, would not be subject to similar data release requirements, or even peer-review and independent reevaluation. This approach is asymmetric and favors selective, opaque, and questionable research methods over the consensus of robust peer-reviewed scientific investigation. Transparency in scientific data is an important topic, but one that needs to also balance the privacy concerns of study participants and legal and ethical restrictions on the sharing of sensitive data. The rule is arbitrary in its selective

¹⁴⁸ See *supra*, n.9, Reanalysis of Harvard Six Cities Study.

¹⁴⁹ U.S. Department of Health and Human Services, The HIPAA Privacy Rule, *available at* <https://www.hhs.gov/hipaa/for-professionals/privacy/index.html>.

¹⁵⁰ See, e.g., National Institute of Environmental Health Sciences: Institutional Review Board, *available at* <https://www.niehs.nih.gov/about/boards/irb/index.cfm>.

¹⁵¹ Pope III, C. A., R. T. Burnett, M. J. Thun, E. E. Calle, D. Krewski, K. Ito, and G. D. Thurston. 2002. "Lung Cancer, Cardiopulmonary Mortality, and Long-Term Exposure to Fine Particulate Air Pollution." *JAMA: The Journal of the American Medical Association* 287 (9): 1132–1141.

¹⁵² Pope, C. A., Muhlestein, J. B., May, H. T., Renlund, D. G., Anderson, J. L., & Horne, B. D. (2006). Ischemic heart disease events triggered by short-term exposure to fine particulate air pollution. *Circulation*, 114(23), 2443–48.

¹⁵³ Turner, M. C., Krewski, D., Pope III, C. A., Chen, Y., Gapstur, S. M., & Thun, M. J. (2011). Long-term ambient fine particulate matter air pollution and lung cancer in a large cohort of never-smokers. *American Journal of Respiratory and Critical Care Medicine*, 184(12), 1374–81.

¹⁵⁴ Hong, Y. C., Lee, J. T., Kim, H., & Kwon, H. J. (2002). Air pollution: a new risk factor in ischemic stroke mortality. *Stroke*, 33(9), 2165–69.

¹⁵⁵ Ostro, B., Lipsett, M., Mann, J., Braxton-Owens, H., & White, M. (2001). Air pollution and exacerbation of asthma in African-American children in Los Angeles. *Epidemiology*, 12(2), 200–08.

¹⁵⁶ Di, Q., Wang, Y., Zanobetti, A., Wang, Y., Koutrakis, P., Choirat, C., ... & Schwartz, J. D. (2017). Air pollution and mortality in the Medicare population. *New England Journal of Medicine*, 376(26), 2513–22.

application of data release requirements and disregard for the quantitative complexities of epidemiologic research.

The Proposal also has clear adverse consequences for cost-benefit analyses that consider the substantial costs of health effects caused by exposure to air pollution. This area of work includes efforts to address carbon dioxide (CO₂) pollution and climate change, such as the Clean Power Plan. Health and air quality-related monetized benefits from reducing PM_{2.5} pollution, a co-benefit of CO₂ reductions, would be substantially reduced if EPA is unable to rely on the best available science for pollution-health impacts. In its proposed rule repealing the Clean Power Plan, EPA signaled this approach: the economic health benefits of PM_{2.5} reduction were zeroed-out¹⁵⁷ by EPA after levels reached the current annual NAAQS (12 µg/m³) or the lowest measured level (LML) of PM_{2.5} in two key peer-reviewed studies that EPA has historically relied on, including an expanded re-analysis of the Harvard Six Cities data.^{158, 159} This approach of using the NAAQS or LML as a safe threshold directly contradicts the best available science^{160, 161} and EPA's own stance on the pollution threshold issue as recently as 2012.¹⁶² The Proposal is designed to support the indefensible notion that a safe threshold of air pollution like PM_{2.5} could exist, despite the opinions of the world's leading experts on this issue and emerging evidence indicating that relatively low levels of exposure to air pollution may actually confer *more* risk¹⁶³ than even the current EPA dose-response approach for PM_{2.5} exposure assumes.

G. Radiation

1. EPA's Radiation Standards

Three federal agencies have overlapping and differing responsibilities to protect the public from radiation. The Department of Energy (DOE), which among other tasks runs the U.S. nuclear weapons program, has for decades been attempting to clean up dozens of nuclear

¹⁵⁷ U.S. EPA, Regulatory Impact Analysis for the Review of the Clean Power Plan: Proposal, Oct. 2017, at 10, available at https://www.epa.gov/sites/production/files/2017-10/documents/ria_proposed-cpp-repeal_2017-10.pdf.

¹⁵⁸ Krewski, D., Jerrett, M., Burnett, R. T., Ma, R., Hughes, E., Shi, Y., ... & Thun, M. J. (2009). *Extended follow-up and spatial analysis of the American Cancer Society study linking particulate air pollution and mortality* (No. 140). Boston, MA: Health Effects Institute.

¹⁵⁹ Lepeule, J., Laden, F., Dockery, D., & Schwartz, J. (2012). Chronic exposure to fine particles and mortality: an extended follow-up of the Harvard Six Cities study from 1974 to 2009. *Environmental health perspectives*, 120(7), 965.

¹⁶⁰ U.S. EPA, Summary of Expert Opinions on the Existence of a Threshold in the Concentration-Response Function for PM_{2.5}-related Mortality, Technical Support Document, June 2010, available at <https://www3.epa.gov/ttnecas1/regdata/Benefits/thresholdstd.pdf>.

¹⁶¹ Crouse DL, Peters PA, van Donkelaar A, Goldberg MS, Villeneuve PJ, Brion O, et al. (2012). Risk of nonaccidental and cardiovascular mortality in relation to long-term exposure to low concentrations of fine particulate matter: a Canadian national-level cohort study. *Environ Health Perspect* 120:708–714.; 10.1289/ehp.110404.

¹⁶² Letter from Gina McCarthy to the Hon. Fred Upton, Chairman, Committee on Energy and Commerce, U.S. House of Representatives, Feb. 3, 2012, available at <https://www.nrdc.org/sites/default/files/epa-letter-upton-pm-benefits-20120203.pdf>.

¹⁶³ Burnett, R. T., Pope III, C. A., Ezzati, M., Olives, C., Lim, S. S., Mehta, S., ... & Anderson, H. R. (2014). An integrated risk function for estimating the global burden of disease attributable to ambient fine particulate matter exposure. *Environmental health perspectives*, 122(4), 397.

weapons production sites around the country in an essentially self-regulating fashion (with respect to radioactivity). The Nuclear Regulatory Commission (NRC) regulates the nation's commercial nuclear power industry of approximately 100 commercial nuclear reactors located in 31 states. The NRC implements standards as part of its regulation of civilian sources of nuclear radiation, and it oversees the decommissioning of commercial nuclear facilities. EPA, via authority granted under the Atomic Energy Act, 42 U.S.C. §§ 2011-2296; Reorganization Plan No. 3. of 1970, 5 U.S.C. app. 1; the Nuclear Waste Policy Act of 1982, as amended, 42 U.S.C. §§ 10101-10270; and the Waste Isolation Pilot Plant Land Withdrawal Act, Pub. L. 102-579, 106 Stat. 4777., issues generally applicable radiation standards for protection of the public, as well as standards for nuclear power operations, protection from radon, administering radiation cleanup standards under Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (Superfund) which governs aspects of a host of cleanups of federal and nonfederal facilities, health, and environmental standards for uranium and thorium mill tailings, and for the Waste Isolation Pilot Plant in New Mexico and the proposed Yucca Mountain nuclear waste repository in Nevada.

Specifically,

In forming EPA, the authors of Reorganization Plan No. 3 created a new national approach for protecting the general public from the harmful exposure to radiation. Two key radiation protection functions would now be housed in a single agency – the promulgation of generally applicable environmental standards to limit man-made radioactive materials in the environment, and the development of national radiation protection guidance for Federal and State agencies to follow in the development of their radiation protection programs and regulations. Along with these responsibilities, EPA was provided extensive research and surveillance capabilities to support the development of national guidance and standards, as well as the authority to provide technical assistance to the States.¹⁶⁴

Essentially, the radiation standard-setting functions for protection of the general public (not at the weapons production sites) of the Atomic Energy Commission, administered through its Division of Radiation Protection Standards, were transferred to EPA to the extent that such functions “consist of establishing generally applicable environmental standards for the protection of the general environment from radioactive material.”¹⁶⁵ Under the authority of the Atomic Energy Act, these standards were defined as “limits on radiation exposures or levels, or concentrations or quantities of radioactive material, in the general environment outside the boundaries of locations under the control of persons possessing or using radioactive material.”¹⁶⁶

And as is generally understood, EPA's and NRC's authorities are overlapping and, theoretically, work together to meet an objective of protecting the general public and radiation

¹⁶⁴ *Radiation Protection at EPA, The First 30 Years*, U.S. EPA, Office of Radiation and Indoor Air, EPA 402-B-00-001, August 2000, <http://www2.epa.gov/sites/production/files/2015-05/documents/402-b-00-001.pdf>.

¹⁶⁵ Reorganization Plan No. 3 of 1970 (July 9, 1970), <https://archive.epa.gov/epa/aboutepa/reorganization-plan-no-3-1970.html>.

¹⁶⁶ *Id.*

workers from exposures to ionizing radiation, EPA sets regulatory limits and guidelines on radionuclide concentration in air, water, and soil. *See* 40 C.F.R. §§ 190-197, *Subchapter F – Radiation Protection Programs* (*cf.*, EPA sets standards for “radiation doses received by members of the public in the general environment and to radioactive materials introduced into the general environment as the result of operations which are part of a nuclear fuel cycle.” 40 C.F.R. § 190.01.). NRC’s regulatory structures are supposed to be consistent with those set by EPA. Indeed, NRC rules, when addressing dose limits for individual members of the public, state that “[i]n addition to the requirements of this part, a licensee subject to the provisions of EPA’s generally applicable environmental radiation standards in 40 C.F.R. part 190 shall comply with those standards.” 10 C.F.R. § 20.1301(e).

2. The Linear No-Threshold (LNT) dose-response model

As it does in every other instance and under every other environmental statute, EPA relies on independent, authoritative scientific bodies to provide analyses and evaluations of scientific evidence in support of its radiation standard-setting policies. EPA bases its regulatory limits and nonregulatory guidelines for population exposures to low-level ionizing radiation on the linear no-threshold (LNT) dose-response model.¹⁶⁷ EPA’s radiation protection standards are based on the premise that any radiation dose carries some risk, and that risk increases directly with dose. This method of estimating risk is called the “linear no-threshold dose-response model (LNT).”

This longstanding and well-supported assumption presumes that the risk of cancer due to a low dose exposure is proportional to dose, with no threshold. For over 40 years the LNT dose-response model has been commonly utilized when developing practical and prudent guidance on ways to protect workers and members of the public from the potential for harmful effects from radiation in balance with the commercially justified and optimized uses of radiation. EPA derives the LNT model from reports by authoritative scientific bodies including the U.S. National Academy of Sciences (NAS), the National Council on Radiation Protection and Measurements (NCRP), and the International Commission on Radiological Protection (ICRP). There is strong scientific consistency by these authoritative groups that an LNT model is the best at the current time (and has been for the past half century).^{168, 169} Indeed, EPA noted as recently as late 2015, “[o]ver the last half century, numerous authoritative national and international bodies have convened committees of experts to examine the issue of LNT as a tool for radiation regulation and risk assessment . . . Again and again, these bodies have endorsed LNT as a reasonable approach to regulating exposures to low dose radiation.”¹⁷⁰

¹⁶⁷ *See, e.g.*, <https://www.epa.gov/radiation/radiation-health-effects>.

¹⁶⁸ Puskin, Jerome S., "Perspective on the use of LNT for radiation protection and risk assessment by the US Environmental Protection Agency." Dose-Response 7.4 (2009): dose-response.

¹⁶⁹ Valentin, Jack, *The 2007 recommendations of the international commission on radiological protection*. Oxford: Elsevier, 2007.

¹⁷⁰ *See* <https://www.nrc.gov/docs/ML1530/ML15301A820.pdf>.

3. Studies in support of the LNT dose-response model

The NAS Biological Effects of Ionizing Radiation (BEIR) VII committee has studied and published its report on risk models for estimating the relationship between exposure to low levels of ionizing radiation and harmful health effects.¹⁷¹ The data used in the BEIR VII study are: atomic bomb survivor studies, medical radiation studies, occupational radiation studies, and environmental radiation studies. The committee judged that the LNT model provided the most reasonable description of the relation between low dose exposure to ionizing radiation and the incidence of solid cancers that are induced by ionizing radiation.

The NCRP published its latest commentary on the LNT issue only months ago, in April 2018.¹⁷² The specific purpose of its commentary is to provide a review of recent epidemiologic data from studies with low doses or low dose rates and the Life Span Study (LSS) of atomic-bomb survivors to determine whether these epidemiologic studies broadly support the LNT dose-response model as a reasonable basis for radiation protection. Epidemiologic studies of humans provide evidence that is critically important in establishing potentially causal associations of environmental factors with the disease. The studies were selected by a consensus of experts who have a broad purview of the recent radiation epidemiology literature, and they ensured that the largest and most important eligible studies were included.

Examples of studies of radiation-exposed populations evaluated are:

1. Japanese atomic-bomb survivors

The LSS is a research program investigating life-long health effects based on epidemiologic studies. The study being conducted by the Radiation Effects Research Foundation (RERF)¹⁷³ is used by standard-setting bodies in establishing a recommendation for radiation protection. The LSS cohort¹⁷⁴ includes both a large proportion of survivors who were within 2.5 km of the hypocenters at the time of the bombings and a similar-sized sample of survivors who were between 3 and 10 km from the hypocenters whose radiation doses were negligible.

The major objective of the study is to investigate the long-term effects of atomic-bomb radiation on causes of death and incidence of cancer. The atomic-bomb survivors of Hiroshima and Nagasaki are subject to follow-up study^{175, 176} for their remaining lives, starting from 1950. The LSS cohort of atomic-bomb survivors has provided important data because it is a large cohort (~87,000 survivors of all ages) with relatively accurate dosimetry,

¹⁷¹ National Research Council. *Health risks from exposure to low levels of ionizing radiation: BEIR VII phase 2*. Vol. 7. National Academies Press, 2006.

¹⁷² NCRP Commentary 27. "Implications of Recent Epidemiologic Studies for the Linear-Nonthreshold Model and Radiation Protection." NCRP, 2018.

¹⁷³ See <http://rerf.or.jp/en>.

¹⁷⁴ National Research Council. *Health risks from exposure to low levels of ionizing radiation: BEIR VII phase 2*. Vol. 7. National Academies Press, 2006.

¹⁷⁵ Grant, Eric J., et al. "Solid cancer incidence among the Life Span Study of atomic bomb survivors: 1958–2009." *Radiation research* 187.5 (2017): 513–37.

¹⁷⁶ Ozasa, Kotaro, et al. "Studies of the mortality of atomic bomb survivors, Report 14, 1950–2003: an overview of cancer and noncancer diseases." *Radiation research* 177.3 (2012): 229–243.

a wide dose range over 60 years of high-quality follow-up for mortality and over 50 years of follow-up for cancer incidence, and nearly 1,000 excess solid-cancer cases, besides excess leukemias. The study provides strong indirect support for the use of an LNT model.

2. Worker exposure studies

Radiation worker studies assess risks in worker groups exposed largely to many low doses received at a low dose rate, providing direct evidence regarding the validity of the LNT model. INWORKS is an example of these studies.¹⁷⁷ INWORKS is the latest international collaboration for examining the health of workers in more than one country who were exposed occupationally to ionizing radiation. INWORKS included dosimetry for 20 different nuclear sites/organizations in three countries. Dosimetry was based on individual personal dosimeter readings at the start of the workers beginning their radiation work (at earliest, between 1944 and 1952) through 2005. The U.S. cohort of INWORKS consisted of 119,195 nuclear workers at four Department of Energy nuclear weapons facilities (Hanford site, Idaho National Laboratory, Oak Ridge National Laboratory, and Savannah River site) and at the Portsmouth Naval Shipyard. This large study¹⁷⁸ provides one of the strongest pieces of epidemiologic evidence that the LNT quantitative model is useful for radiation protection.

3. Environmental exposure studies

An example of environmental exposure studies for low doses and low dose rate is the Chernobyl resident cohorts.^{179, 180} The 1986 accident at the Chornobyl nuclear power plant in northern Ukraine resulted in the exposure of substantial proportion of Belarus, Ukraine, and the Russian Federation to radioactive fallout. The most notable apparent health consequence of the accident has been the large increase in thyroid cancer among those exposed as children or teenagers starting 4-5 years after the accident. Studies of cohorts of children in Ukraine and Belarus who had thyroid measurements of iodine activity shortly after the Chernobyl accident and systematic thyroid screenings were conducted. The data on exposure to radioactive iodine have added considerable information relative to the dose-response relationship. The thyroid cancer experienced by children in exposed areas of the Ukraine, Belarus, and Russia conforms to the LNT model.

4. Medical exposure studies

Patients treated with lung collapse for TB in the 1930s to 1960s are one of the few medically exposed populations that provide consistent evidence for dose-response relationships. Patients on average would receive on the order of 100 chest fluoroscopies over several years.

¹⁷⁷ Leuraud, Klervi, et al. "Ionising radiation and risk of death from leukaemia and lymphoma in radiation-monitored workers (INWORKS): an international cohort study." *The Lancet Haematology* 2.7 (2015): e276–e281.

¹⁷⁸ Schubauer-Berigan, Mary K., et al. "Cancer mortality through 2005 among a pooled cohort of US nuclear workers exposed to external ionizing radiation." *Radiation research* 183.6 (2015): 620–31.

¹⁷⁹ Brenner, Alina V., et al. "I-131 dose response for incident thyroid cancers in Ukraine related to the Chornobyl accident." *Environmental health perspectives* 119.7 (2011): 933.

¹⁸⁰ Tronko, Mykola D., et al. "A cohort study of thyroid cancer and other thyroid diseases after the Chornobyl accident: thyroid cancer in Ukraine detected during first screening." *Journal of the National Cancer Institute* 98.13 (2006): 897–903.

Since the 1970s, studies¹⁸¹ of TB patients who received repeated chest x-ray fluoroscopies to monitor lung collapse have provided valuable information relevant to the LNT hypothesis. The TB fluoroscopy studies provide strong support for the LNT model for breast cancer.

NCRP commentary in conclusion of its epidemiology studies states that, based on current epidemiologic data, the LNT model should continue to be used for radiation protection purposes, and “no alternative dose-response relationship appears more pragmatic or prudent for radiation protection purposes than the LNT model.”¹⁸²

4. How the Proposal jeopardizes health protections

Because it does not cite or even note the statutory sources of EPA’s radiation standard setting authority, EPA fails to reference to the proper legal authority to address radiation protection standards and the underlying science and dose estimations, and thus fails to present the terms or substance of the proposed action or a description of the subjects and issues involved. Thus, the public has been denied a reasonable and meaningful opportunity to participate in the rulemaking process.¹⁸³

Despite the failure to precisely name radiation standards or cite the EPA’s authority under the Atomic Energy Act, the Proposal is susceptible to a reading that EPA intends to attack the underlying science for radiation standards, and the LNT in particular, just as the agency is attacking standards for the air, water, and health protections. Indeed, Dr. Edward J. Calabrese of the University of Massachusetts, longtime promoter of the radiation hormesis idea that low doses of radiation are beneficial for humans, stated in support of this draft rule, “[t]he [P]roposal represents a major scientific step forward by recognizing the widespread occurrence of non-

¹⁸¹ Howe, Geoffrey R. “Lung cancer mortality between 1950 and 1987 after exposure to fractionated moderate-dose-rate ionizing radiation in the Canadian fluoroscopy cohort study and a comparison with lung cancer mortality in the atomic bomb survivors study.” *Radiation research* 142.3 (1995): 295–304.

¹⁸² NCRP Commentary 27. “Implications of Recent Epidemiologic Studies for the Linear-Nonthreshold Model and Radiation Protection.” NCRP, 2018, at 139.

¹⁸³ In order to preserve objections in the administrative record, we submit comments directed at any wrongheaded and unlawful attack on an LNT for radiation, notwithstanding EPA’s failure to mention radiation—or any other substance or pollutant—in the “non-linearity” section of the Proposal. 83 Fed. Reg. at 18,770. The Proposal’s cursory suggestion of “non-linearity in the concentration-response function for specific pollutants and health effects,” 83 Fed. Reg. at 18,770/3, fails to provide fair notice or any justification that would allow any final rule to assert “non-linearity in the concentration-response function” for *any* specific pollutants or *any* health effects. There is *no* information, evidence, or regulatory text in the Proposal or regulatory docket supporting or even addressing the suggestion of non-linearity in the concentration-response function for *any* specific pollutants or *any* health effects. Nor is there any discussion or material in the Proposal or accompanying docket supporting or even addressing EPA’s cursory suggestion of non-linearity. The Proposal conclusorily references “growing empirical evidence of non-linearity,” *id.*, but then fails to identify *any* such empirical evidence in the Proposal or docket. Before EPA may adopt any final rule addressing “non-linearity in the concentration-response function” for *any* specific pollutants or *any* health effects, EPA would be required to re-issue a new proposed rule with actual regulatory text and supporting legal, factual, scientific, and technical information providing fair notice to the public concerning any suggestion of “non-linearity in the concentration-response function” for *any* specific pollutants or *any* health effects.

linear dose responses in toxicology and epidemiology for chemicals and radiation and the need to incorporate such data in the risk assessment process.”¹⁸⁴

EPA’s Proposal states only that “this proposed regulation is designed to increase transparency of the assumptions underlying dose-response models. As a case in point, there is growing empirical evidence of non-linearity in the concentration response function for specific pollutants and health effects.” 83 Fed. Reg. at 18,770/3. The Proposal fails to provide a citation or single shred of empirical evidence to support the statement. By contrast, the science in radiation epidemiological studies has repeatedly demonstrated, over decades, *the precise opposite conclusion*—to wit, that the LNT dose-response model provides the most reasonable description of the relation between low dose exposure to ionizing radiation and the incidence of solid cancers that are induced by ionizing radiation.

The epidemiologic science and associated studies that are the basis of adherence to the LNT and decades of protective radiation standards are likely to be expressly excluded from consideration by EPA by the terms of this Proposal. NAS and other studies that EPA has long relied upon in the radiation standards setting process are epidemiological human cohort studies. EPA’s Proposal, if implemented, would limit EPA staff from basing regulatory actions on precisely these types of studies by requiring that the underlying data of these studies be publicly shared. This would be a nearly impossible task for the agency. Data for some of the radiation epidemiological studies are accessible to users^{185, 186} with a detailed description of how a user can access the information. However, public sharing of personally identifiable information (PII) is restricted because the studies rely on confidential health data. To become an authorized user of the data sets and to reduce misuse of that data, users are barred from linking data from the database with any other source of information that leads to PII of an individual with records in the database.

These are profoundly important studies that have been peer reviewed for decades and the science that has emerged from them has been validated multiple times. But these are not studies where the entirety of the public data can be shared or independently replicated. There are no other radiation epidemiologic studies of health and longevity on a large size population (example: more than 120,000 individuals in the atomic-bomb survivor studies) that have continued for more than 60 years. Thus, replication of the studies is impossible as this data comes from individuals exposed to significant acute and protracted dose of radiation. Implementation of the rule would effectively block the use of such key scientific studies and allow for radiation standards to be either wholly weakened or made functionally meaningless.

Specifically, EPA relied on the LNT dose-response model to develop the following reports and regulations to protect the general public and radiation workers from the potential for harmful effects from radiation:

¹⁸⁴ See <https://www.epa.gov/newsreleases/epa-administrator-pruitt-proposes-rule-strengthen-science-used-epa-regulations>.

¹⁸⁵ See <https://apps.ornl.gov/cedr/#.Wv73Y-4vxEY>.

¹⁸⁶ See <http://rerf.or.jp/en>.

Federal guidance reports (FGRs) for radiation protection that provide technical information and policy recommendations for radiation dose and risk assessment:

- FGR 11 (1988)¹⁸⁷—Limiting Values of Radionuclide Intake and Air Concentration and Dose Conversion Factors for Inhalation, Submersion, and Ingestion
- FGR 12 (1993)¹⁸⁸—External Exposure to Radionuclides in Air, Water, and Soil
- FGR 13 (1999)¹⁸⁹—Cancer Risk Coefficients for Environmental Exposure to Radionuclides
- EPA Radiogenic Cancer Risk Models and Projections for the U.S. Population (the “Blue Book”)¹⁹⁰

Nuclear fuel cycle standards and regulations addressing environmental issues for all phases of the uranium fuel cycle, including uranium milling; chemical conversion; fuel fabrication and reprocessing; power plant operations; waste management, storage, and disposal; and site cleanup for milling operations.

- The Uranium Fuel Cycle (40 C.F.R. Part 190)¹⁹¹—a standard that sets generally applicable environmental limits for the entire uranium fuel cycle
- Uranium and Thorium Mill Tailings (40 C.F.R. Parts 192)¹⁹²—health and environmental standards for uranium and thorium mill tailings

Examples of areas that might be impacted by this rule include:

1. Maximum allowed concentrations of radionuclides in drinking water
2. Soil cleanup levels for Superfund sites
3. Monitoring around radiation-producing equipment used for medical purposes
4. Radioactive waste disposal
5. The concept of ALARA (As Low As Reasonably Achievable) in radiation protection

Abandoning the LNT dose-response model and replacing it with either a threshold model or a concept that low doses of radiation are safe will have an adverse effect on radiation workers and the general public by allowing radiation protection regulations to be relaxed, reinterpreted and then weakened.

¹⁸⁷ Eckerman, Keith F., Anthony B. Wolbarst, and Allan CB Richardson. “Federal Guidance Report No. 11: Limiting values of radionuclide intake and air concentration and dose conversion factors for inhalation, submersion, and ingestion.” *Oak Ridge, TN: Oak Ridge National Laboratory* (1988).

¹⁸⁸ Eckerman, Keith F., and J. C. Ryman. “Federal Guidance Report No. 12: External Exposures to Radionuclides in Air, Water, and Soil Exposure-to-Dose Coefficients for General Application,” *U.S. Environmental Protection Agency, Washington, DC* (1993).

¹⁸⁹ Eckerman, Keith F., et al. “Cancer risk coefficients for environmental exposure to radionuclides.” *Federal Guidance Report 13* (1999).

¹⁹⁰ See <https://www.epa.gov/sites/production/files/2015-05/documents/bbfinalversion.pdf>.

¹⁹¹ See <https://www.epa.gov/radiation/environmental-radiation-protection-standards-nuclear-power-operations-40-cfr-part-190>.

¹⁹² See <https://www.epa.gov/radiation/health-and-environmental-protection-standards-uranium-and-thorium-mill-tailings-40-cfr>.

IV. There is no statutory authority for the Proposal

The law is clear that EPA may adopt rules only if those rules are based on statutory authority delegated by Congress. EPA may not invent statutory authority where none exists, nor adopt regulations lacking statutory authority merely because EPA believes that to be better policy. *See, e.g., Massachusetts v. EPA*, 549 U.S. 497, 535, 127 S. Ct. 1438, 1463 (2007) (“EPA must ground its reasons for action or inaction in the statute.”); *La. Pub. Serv. Comm’n v. FCC*, 476 U.S. 355, 374 (1986) (stating “agency power to act” is shaped by how “Congress confers power upon it”). Agencies need especially clear congressional delegations of authority to create regulatory exemptions. *See New York v. U.S. EPA*, 413 F.3d 3, 41 (D.C. Cir. 2005) (stating that the agency needs “clear congressional delegation” to support an exemption). EPA identifies no such delegations, certainly not the clear delegations required by law, for the Proposal.

EPA lists seven statutes as the basis for the Proposal. But none of the various statutes cited provides support for the rule’s provisions, definitions, requirements, or exemptions. Rather, EPA invents statutory authority where none exists, and creates proposed regulatory text out of thin air. In most cases, EPA simply cites its general authority for rulemaking under the statutes. But that general authority alone cannot provide a basis for the rule, especially when, as explained in section V, the rule would *conflict* with the requirements of each of the statutes. *See New York v. U.S. EPA*, 413 F.3d 3, 40–42 (D.C. Cir. 2005). In other instances, it appears that EPA just searched the statutes for the word “research” and then cited those sections without any further analysis. The cited provisions do not support the proposed rule:

A. Clean Air Act sections 103, 301(a); 42 U.S.C. §§ 7403, 7601(a)

EPA cites 42 U.S.C. § 7601(a) of the Clean Air Act as one basis for the Proposal. But that section merely authorizes the Administrator to “prescribe such regulations as are necessary to carry out his functions under this chapter.” The courts have made clear that “EPA cannot rely on its gap-filling authority to supplement the Clean Air Act’s provisions when Congress has not left the agency a gap to fill.” *NRDC v. EPA*, 749 F.3d 1055, 1064 (D.C. Cir. 2014); *see also American Petroleum Institute v. EPA*, 52 F.3d 1113, 1119 (D.C. Cir. 1995) (“the general grant of rulemaking power to EPA cannot trump specific portions of the CAA”); *NRDC v. Reilly*, 976 F.2d 36, 41 (D.C. Cir. 1992) (EPA cannot use its general rulemaking authority as justification for adding to a statutorily specified list); *Sierra Club v. EPA*, 719 F.2d 436, 453 (D.C. Cir. 1983) (same); *Gonzales v. Oregon*, 546 U.S. 243, 264–65 (2006) (“It would go . . . against the plain language of the text to treat a delegation for the ‘execution’ of [the Attorney General’s] functions as a further delegation to define other functions well beyond the statute’s specific grants of authority.”). Here, not only is there no statutory gap to fill, as explained further below, the Proposal is in direct conflict with other provisions of the Act. EPA cannot rely on 42 U.S.C. § 7601(a) to support this rule.

EPA also cites 42 U.S.C. § 7403, which requires the Administrator to establish a national research and development program for air pollution, among other things. EPA does not state specifically which of the many subsections it believes authorizes this proposed rule. Thus, the citation fails to provide sufficient notice for the public to comment on the proposed rule.

Nothing in the Proposal establishes or even purports to establish the type of national research and development program for air pollution discussed in subsection (a). But that subsection is nonetheless revealing about congressional intent concerning “studies relating to the causes, effects (including health and welfare effects) extent, prevention, and control of air pollution.” 42 U.S.C. § 7403(a)(1). There is no indication that Congress intended to allow EPA to ignore or refuse to consider studies on the health and welfare effects of air pollution only if raw data or ‘regulatory science underlying EPA’s actions [were] publicly available in a manner sufficient for independent validation.’ See 83 Fed. Reg. at 18,773 (proposed §§ 30.1–30.3). Indeed, the absence of any such congressional conditions or criteria makes it all the more obvious that EPA invented and added those criteria and conditions as a matter of its own policy preferences, contrary to the Act. This EPA may not do.

Subsection (b) authorizes EPA to collect and make available information about such research, but nothing in that subsection allows EPA to *restrict* which types of data it considers in regulatory decisions. Nor does subsection (b) draw any distinction between dose-response data and other types of data. Again, the absence of any such congressional distinction makes it all the more obvious that EPA invented and added that distinction as a matter of its own policy preferences, contrary to the Act. This EPA may not do. None of the other subsections in 42 U.S.C. § 7403 address this issue either. There is no support in the Clean Air Act for the Proposal.

B. Clean Water Act sections 104, 501; 33 U.S.C. §§ 1254, 1361

EPA cites sections 104, 33 U.S.C. § 1254, and 501, 33 U.S.C. § 1361, of the Clean Water Act as putative authority for the Proposal. Nothing in these sections authorize the Proposal’s limitations on scientific evidence.

With respect to section 104, the Proposal tellingly fails to specify which of its 22 subsections supposedly supports the restrictions EPA has proposed. This deficiency reflects a lack of authority for the Proposal in section 104. And even if EPA thinks that it can cobble together language in section 104 to support the Proposal, the agency’s complete failure to identify in the Proposal how section 104 authorizes this rulemaking means that EPA did not provide sufficient notice for the public to comment on the Proposal.

None of the subsections in section 104 states or suggests that, in promulgating regulations under the Clean Water Act, EPA may limit its consideration of “regulatory science underlying its actions” only to studies or analyses “are publicly available in a manner sufficient for independent validation.” See 83 Fed. Reg. at 18,773 (proposed § 30.5). To the contrary, several subsections indicate that Congress intended EPA to consider available scientific evidence in order to carry out the Act.

First, subsection (b) authorizes EPA to collect and publicize results and information related to studies about water pollution but does not say anything about *limiting* consideration of science simply because data cannot be made public, either as part of rulemakings or otherwise. Nor does it draw any distinction between dose-response data and other types of data.

Second, subsection (c) directs EPA to “conduct research on, and survey the results of other scientific studies on, the harmful effects on the health or welfare of persons caused by pollutants.” It provides no authority whatsoever for *limiting* consideration of studies, models or data, dose-response or otherwise, during rulemakings; indeed, by directing EPA to “survey the *results of other scientific studies*,” rather than the publicly-available dose-response data underlying those results, this subsection contradicts the Proposal’s limitations and conditions.

Third, subsection (l)(1) indicates that EPA should be inclusive with respect to considering evidence, as it directs EPA to “develop and issue to the States for the purpose of carrying out this Act *the latest scientific knowledge available* in indicating the kind and extent of effects on health and welfare which may be expected from the presence of pesticides in the water in varying quantities. He shall revise and add to such information whenever necessary to reflect developing scientific knowledge.”

Fourth, subsection (n) directs EPA to cooperate with various entities to “conduct and promote, encourage contributions to, continuing comprehensive studies of the effects of pollution, including sedimentation, in the estuaries and estuarine zones of the United States on fish and wildlife, on sport and commercial fishing, on recreation, on water supply and water power, and on other beneficial purposes.” Importantly, subsection (n)(2) reveals Congress’s intention that EPA will consider information broadly, by instructing the agency to “assemble, coordinate, and organize *all existing pertinent information* on the Nation’s estuaries and estuarine zones”

EPA also cites 33 U.S.C. § 1361 as a basis for the Proposal, but it does not provide the agency with the authority it desires. Subsection (a) merely states that the “Administrator is authorized to prescribe such regulations as are necessary to carry out his functions under this chapter.” As explained above, that general grant of authority cannot support the rule, especially when the rule conflicts with the Act. Moreover, EPA casually invokes this provision, but does not make any effort to justify the proposed restrictions as necessary to any particular CWA statutory function, so it has not made the case that this provision provides authority to adopt the Proposal’s limits.

Finally, the Act contains other indications that Congress intended EPA’s consideration of science to be inclusive. In particular, section 304(a)(1) of the Act states:

The Administrator, after consultation with appropriate Federal and State agencies and other interested persons, shall develop and publish, within one year after the date of enactment of this title (and from time to time thereafter revise) criteria for water quality *accurately reflecting the latest scientific knowledge* (A) on the kind and extent of all identifiable effects on health and welfare including, but not limited to, plankton, fish, shellfish, wildlife, plant life, shorelines, beaches, esthetics, and recreation which may be expected from the presence of pollutants in any body of water, including ground water; (B) on the concentration and dispersal of pollutants, or their byproducts, through biological, physical, and chemical processes; and (C) on the effects of pollutants on biological community diversity, productivity, and stability, including information on the

factors affecting rates of eutrophication and rates of organic and inorganic sedimentation for varying types of receiving waters.

Although water quality criteria EPA develops are not issued as regulations, such that the Proposal as written would likely not apply to them, the salient point—illustrated by the italicized language above—is that Congress refused to limit EPA’s consideration of available evidence in discharging one of its core functions aimed at protecting the nation’s waters. EPA provides no reason in the Proposal why the regulations the Proposal targets should be any different.

Accordingly, the Clean Water Act does not authorize the Proposal.

C. Safe Drinking Water Act sections 1442, 1450(a)(1); 42 U.S.C. §§ 300j–1, 300j–9(a)(1)

EPA cites 42 U.S.C. § 300j–1 of the Safe Drinking Water Act as authority for the rule. Subsection (a) of that section allows EPA to conduct some types of research on drinking water contamination and requires it to conduct other studies. But it says nothing about which types of studies EPA may consider in rulemakings and does not distinguish between dose-response studies and other types of studies. The absence of any such congressional distinction or restriction makes it all the more obvious that EPA invented and added the distinction and restrictions in the Proposal as a matter of its own policy preferences, contrary to the Act. This EPA may not do. The remainder of the subsections have nothing to do with data or research. At any rate, EPA does not state specifically which of the subsections in 42 U.S.C. § 300j–1 it believes authorizes this proposed rule. Thus, the citation fails to provide sufficient notice for the public to comment on the proposed rule.

EPA also cites 42 U.S.C. § 300j–9(a)(1), but that says only that the “Administrator is authorized to prescribe such regulations as are necessary or appropriate to carry out his functions under this subchapter.” As explained above, that general grant of authority cannot support the rule, especially when the rule conflicts with the Act. The Safe Water Drinking Act does not authorize the proposed rule.

D. Resource Conservation and Recovery Act sections 2002(a)(1), 7009; 42 U.S.C. §§ 6912(a)(1), 6979

EPA also claims that 42 U.S.C. § 6912(a)(1) of the Resource Conservation and Recovery Act provides authority for the rule. But 42 U.S.C. § 6912(a)(1) merely states that the Administrator is authorized to “prescribe, in consultation with Federal, State, and regional authorities, such regulations as are necessary to carry out his functions under this chapter.” As explained above, that general grant of authority cannot support the rule, especially when the rule conflicts with the Act. There is no support in RCRA for the Proposal.

It appears that EPA’s citation to 42 U.S.C. § 6979 is a mistake. That section deals with labor standards for construction and says nothing about research, data, or science. At any rate, EPA does not state specifically which provision of 42 U.S.C. § 6979 it believes authorizes the

Proposal. Thus, the citation fails to provide sufficient notice for the public to comment on the proposed rule.

E. Comprehensive Environmental Response, Compensation, and Liability Act (as delegated to the Administrator via Executive Order 12580) sections 115, 311; 42 U.S.C. §§ 9616, 9660

Under the Comprehensive Environmental Response, Compensation, and Liability Act, EPA cites 42 U.S.C. § 9616 as authority, but that section merely provides a schedule for the assessment and remediation of Superfund sites. It is entirely unclear what this has to do with the subject matter of the Proposal. EPA does not state specifically which provision of 42 U.S.C. § 9616 it believes authorizes the Proposal, nor does the Proposal even explain the reference. Thus, the citation fails to provide sufficient notice for the public to comment on the proposed rule.

EPA also cites 42 U.S.C. § 9660, which has many subsections. This broad citation also fails to provide sufficient notice for the public to comment on the proposed rule. Subsections (a), (b), and (c) require the Secretary of Health and Human Services and the Administrator of EPA to establish research programs on the effects of hazardous substances on human health. But nothing in those sections limits EPA's consideration of studies in which the data can be made public or draws a line between dose-response data and other types of data. The absence of any such congressional distinction or restriction makes it all the more obvious that EPA invented and added the distinction and restrictions in the Proposal as a matter of its own policy preferences, contrary to the Act. This EPA may not do. CERCLA does not authorize the Proposal.

F. Emergency Planning and Community Right-To-Know Act section 328; 42 U.S.C. § 11048

The only authority EPA cites under the Emergency Planning and Community Right-To-Know Act is 42 U.S.C. § 11048, which states that the "Administrator may prescribe such regulations as may be necessary to carry out this chapter." The citation fails to provide sufficient notice for the public to comment on the Proposal. EPA does not identify any statutory authority for why the proposed rule is necessary to carry out the chapter. As explained above, that general grant of authority cannot support the rule, especially when the rule conflicts with the Act. EPCRA does not authorize the proposed rule.

G. Federal Insecticide, Fungicide, and Rodenticide Act sections 25(a)(1), 136r(a); 7 U.S.C. §§ 136r(a), 136w

Under the Federal Insecticide, Fungicide, and Rodenticide Act, EPA cites 7 U.S.C. § 136r(a), which authorizes the Administrator to "undertake research." That section does not allow the *restriction* of what types of research EPA may consider in rulemakings or otherwise. Nor does it draw any distinction between dose-response data and other types of data. The absence of any such congressional distinction or restriction makes it all the more obvious that EPA invented and added the distinction and restrictions in the Proposal as a matter of its own policy preferences, contrary to the Act. This EPA may not do.

EPA also cites 7 U.S.C. § 136w, which is the general rulemaking authority that allows the Administrator to carry out the provisions of FIFRA. As explained above, that general grant of authority cannot support the rule, especially when the rule conflicts with the Act. Moreover, the citation fails to provide sufficient notice for the public to comment on the Proposal. FIFRA does not authorize the proposed rule.

H. Toxic Substances Control Act, as amended, section 10; 15 U.S.C. § 2609

EPA cites 15 U.S.C. § 2609 under the Toxic Substances Control Act as support for this rule. But that section states only that the “Administrator shall, in consultation and cooperation with the Secretary of Health and Human Services and with other heads of appropriate departments and agencies, conduct such research, development, and monitoring as is necessary to carry out the purposes of this chapter.” It does not allow EPA to *limit* the type of data considered in regulatory decisions, nor does it draw a distinction between dose-response data and other types of data. TSCA does not support the proposed rule. The absence of any such congressional distinction or restriction makes it all the more obvious that EPA invented and added the distinction and restrictions in the Proposal as a matter of its own policy preferences, contrary to the Act. This EPA may not do.

I. No other federal statute supports the Proposal

As EPA is aware, when an agency drafts a proposed rule pursuant to congressionally delegated authority, the exercise of that authority is governed by the informal rulemaking procedures outlined in the Administrative Procedure Act (APA), 5 U.S.C. § 553.5. EPA is required to provide the public with adequate notice of a proposed rule, followed by a meaningful opportunity to comment on the rule’s content. 5 U.S.C. § 553 (b)-(c).

The requirement under § 553 to provide the public with adequate notice of a proposed rule is generally achieved through the publication of a notice of proposed rulemaking in the Federal Register, and the APA requires that the notice of proposed rulemaking include “(1) the time, place, and nature of public rulemaking proceedings; (2) reference to the legal authority under which the rule is proposed; and (3) either the terms or substance of the proposed rule or a description of the subjects and issues involved.” 5 U.S.C. § 553(b)1-3. Generally speaking, the notice requirement of § 553 is satisfied when the agency “affords interested persons a reasonable and meaningful opportunity to participate in the rulemaking process.” *Forester v. Consumer Prod. Safety Comm’n*, 559 F.2d 774, 787 (D.C. Cir. 1977).

The Proposal fails to reference any other legal authority to support its adoption. The agency claims its Proposal is “consistent with” Administrative Procedure Act provisions to ensure public participation in the rulemaking process, 83 Fed. Reg. at 18,769/2, but this faint “consistent with” falls far short of any legal authority for the Proposal, or even any claim of such authority. The Administrative Procedure Act provides no authority for the Proposal and, tellingly, EPA does not and cannot identify any authority therein. Even were this “consistent with” claim an attempt by EPA to claim any legal authority for the Proposal, the throw-away

statement fails to provide sufficient notice for the public to comment on the proposed rule or any asserted legal authority in the APA.

Finally, the Proposal's solicitation of comment—"on whether additional or alternative sources of authority are appropriate bases for this proposed regulation"—does not and cannot itself provide any justification for EPA finalizing a rule based on additional or alternative sources of legal authority. This fails to provide sufficient notice for the public to comment on the proposed rule or any other possible legal authorities. For all these reasons, EPA lacks any basis to finalize a rule invoking any other legal authorities to support its adoption.

J. No case law supports the Proposal

The Proposal "directs EPA to ensure that the regulatory science underlying its actions is publicly available in a manner sufficient for independent validation." 83 Fed. Reg. at 18,773. However, the Proposal fails to identify a single court decision supporting an agency's decision to bar itself from considering relevant studies or information on the grounds that underlying data are not "publicly available in a manner sufficient for independent validation," where such a requirement is not statutorily imposed. Indeed, EPA in the entire Proposal only cites two cases related to this question, and EPA admits, as it must, that *both* cases "upheld EPA's use (sic) non-public data in support of its regulatory actions." *Id.* at 18,769 n.3 (citing *Coal. of Battery Recyclers Ass'n v. EPA*, 604 F.3d 613, 623 (D.C. Cir. 2010) & *Am. Trucking Ass'ns v. EPA*, 283 F.3d 355, 372 (D.C. Cir. 2002)).

Footnote 3 in the Proposal contains two noteworthy, albeit unintended, indictments of the approach proposed by EPA. First, footnote 3 states that "[h]istorically, EPA has not consistently observed the policies underlying this proposal." Tellingly, EPA does not and cannot identify even *one* example in which EPA *has observed* the policies underlying the Proposal. Our research, to the contrary, has identified no instance in which EPA has followed the policies underlying the Proposal, to bar EPA from considering relevant studies or science submitted by the public or gathered by EPA, on the grounds that the underlying data are not "publicly available in a manner sufficient for independent validation."

Second, footnote 3 implies that there are instances where EPA's use of non-public data in support of its regulatory actions was rejected by a court. *See id.* ("courts have *at times* upheld EPA's use (sic) non-public data in support of its regulatory actions.") (emphasis added). Again, the Proposal does not and cannot cite a *single* court decision that failed to uphold use of non-public, relevant science or studies relied on by EPA or any other federal or state agency in support of its regulatory actions. *Id.* Our research also failed to identify a single instance in which a court failed to uphold an agency's use of non-public, relevant science or studies by an agency, after that practice was challenged by commenters or petitioners in court.

Of course, in both the cases that the Proposal cites in footnote 3, the D.C. Circuit Court of Appeals refused to prohibit EPA from considering non-public data. In *American Trucking*, the court declined to "impose a general requirement that EPA obtain and publicize the data underlying published studies on which the Agency relies," holding that the "Clean Air Act

imposes no such obligation.” 283 F.3d at 372.¹⁹³ The court agreed with EPA that “requiring agencies to obtain and publicize the data underlying all studies on which they rely would be impractical and unnecessary.” *Id.* (quoting EPA in Particulate Matter NAAQS, 62 Fed. Reg. at 38,689).

The D.C. Circuit reaffirmed this holding in its 2010 decision, *Coalition of Battery Recyclers*, in which the court reiterated that requiring publication of all data underlying studies would be impractical and unnecessary, and was not required by the Clean Air Act. 604 F.3d at 623. EPA in the Proposal utterly fails to explain or demonstrate why its proposed, self-imposed restriction would be any less impractical or unnecessary than those it previously opposed on these grounds. This failure to explain, failure to offer any convincing counter-proof, and failure to explain the agency’s reversal of its positions in *American Trucking* and *Coal. Of Battery Recyclers Ass’n* provide independent grounds for finding EPA’s Proposal arbitrary and capricious and an abuse of discretion.

Similarly, the Proposal does not identify *any* case law supporting EPA’s claimed ability to “exercise its discretionary authority to establish a policy that would preclude it from using such [non-public] data in future regulatory actions.” 83 Fed. Reg. at 18,769 n.3. Our research failed to identify any case in which the courts allowed an agency to categorically bind itself from considering relevant, peer-reviewed science, or otherwise valid studies or evidence, because the underlying data was not made publicly available. *Cf., e.g., Southwest Airlines Co. v. Tr. Sec. Admin.*, 554 F.3d 1065, 1074 (D.C. Cir. 2009) (holding TSA was not required to disclose to airline companies the underlying data file used in a GAO report that informed TSA’s calculation of security fees given the nature of the decision—which was industry-wide rather than an adjudicative decision—and the deference given to agency denials of discovery); *Pharm. Research and Mfrs. v. FTC*, 790 F.3d 198, 210–11 (D.C. Cir. 2015) (holding the FTC was not required to disclose the 66 individual filings underlying its decision to target only the pharmaceutical industry in a new rule because the filings were confidential, were used as a general source of background in the rulemaking process, and were exempted from disclosure by statute); *State Corp. Comm’n of Kan. v. FERC*, 876 F.3d 332, 335–36 (D.C. Cir. 2017) (holding FERC was justified in relying on a study used by the agency to assess the benefits of a power facilities merger, even though the study was objected to by Kansas on the grounds that the study was performed by a third party and its results could not be verified by Kansas. The court rejected Kansas’s objections to the study because Kansas had access to a redacted electronic version of the study, though not the underlying data; Kansas did not pinpoint a specific reason to question the study, and the study’s assumptions and results had been reviewed for reasonability.)

Under some circumstances, the D.C. Circuit has upheld an agency’s decision to exclude an individual piece of evidence from the decision-making process. In *API v. EPA*, the D.C. Circuit upheld the EPA’s decision to discount a published meta-analysis that ran counter to the rule ultimately adopted. 684 F.3d 1342, 1350 (D.C. Cir. 2012). There, EPA considered the study

¹⁹³ As we discuss elsewhere in these comments, *infra* sections IV.A. & V.A., the Clean Air Act also contains no *authorization* for EPA to refuse to consider published studies submitted by commenters, or gathered by the agency, unless the data underlying the studies have been published and made available. Certainly, there is no suggestion of any such authorization in the *American Trucking* decision or any other court opinion.

but discounted its results after “[finding] its methodology wanting.” The court found the EPA decision to *discount* the study was not arbitrary and capricious because EPA had not “entirely failed to consider an important aspect of the problem [or] offered an explanation for its decision that runs counter to the evidence before the agency.” *Id.* (quoting *North Carolina v. EPA*, 531 F.3d 896, 906 (D.C. Cir. 2008)). Critically, EPA *did* consider the study (unlike the censorship approach in the instant Proposal). Moreover, following consideration, the agency offered specific reasons for not relying on the study, including its disagreements with the methodology. *Id.*

Likewise, the D.C. Circuit found in *Intercollegiate Broadcasting System v. Copyright Royalty Board*, that the Copyright Royalty Board had “properly excluded” from evidence a reference to a survey because the survey itself was not entered into evidence and could not be verified. 796 F.3d 111, 129 (D.C. Cir. 2015). In both cases, the court yielded to an agency’s discretion to exclude a particular piece of information where the agency had made an individualized determination about the source. None of these cases support the Proposal’s categorical ban on EPA considering relevant data, science, or studies (where data are not “publicly available in a manner sufficient for independent validation”), that have been submitted to the agency and that have not been the subject of any individualized determination that the studies or information are flawed or erroneous.

In its Proposal, EPA proposed to *categorically* ignore and exclude all peer-reviewed research with non-public underlying data, without individually considering each study or offering specific reasons for not relying on that study. The Proposal, by barring consideration of foundational scientific research premised upon non-public data, would result in EPA “fail[ing] to consider an important aspect of the problem.” *API*, 684 F.3d at 1350. There is no evidence of a court supporting an agency’s decision to exclude entire categories of evidence, or studies or information based on categorical prohibitions like the ones in the Proposal, without considering the source and offering specific reasons for not relying on the study. Instead, both EPA and the Courts have indicated already in *API* and *Coalition of Battery Recyclers*, that a rule like the one EPA is currently proposing is not required by the Clean Air Act and would be both impractical and unnecessary. This Proposal runs counter to the D.C. Circuit’s decision in *API* and would render EPA’s regulatory actions based on the Proposal arbitrary and capricious and an abuse of EPA’s discretion. The Proposal’s blanket rule would represent a significant and unlawful departure from D.C. Circuit rulings on agencies’ limited discretion to choose the sources it will consider and ignore.

V. The Proposal conflicts with the statutes that EPA administers

The Proposal unlawfully restricts EPA’s consideration and use of “dose response data and models that underlie” what the Proposal calls “pivotal regulatory science.” 83 Fed. Reg. at 18,770/2. The Proposal goes on to state:

“Pivotal regulatory science” is the studies, models, and analyses that drive the magnitude of the benefit-cost calculation, the level of a standard, or point-of-departure from which a reference value is calculated. In other words, they are critical to the calculation of a final regulatory standard or level, or to the quantified costs, benefits, risks and other impacts on which a final regulation is based.

Id. By restricting EPA’s implementation of its federal organic statutes and the Administrative Procedures Act in this fashion, and by defining “pivotal regulatory science” in this manner, the Proposal violates federal laws. The Proposal does so by requiring EPA to implement federal laws based on the Proposal’s criteria and conception of “pivotal regulatory science,” rather than on the congressional criteria and requirements in federal statutes that contradict, disallow, or fail to include those criteria and concepts in the Proposal.

A. Clean Air Act

1. Clean Air Act section 101

In Clean Air Act section 101(b), Congress directs EPA “to protect and enhance the quality of the Nation’s air resources so as to promote the public health and welfare and the productive capacity of its population.” 42 U.S.C. § 7401(b). The Proposal prevents EPA from doing so by blocking the agency from considering information that also is the best available, peer-reviewed, independent, credible science that could persuade or cause the agency to better protect the “public health and welfare and the productive capacity of [the Nation’s] population.” In this way, the Proposal thwarts the leading purpose of the Clean Air Act. Clean Air Act section 101 shows the Proposal is arbitrary and capricious and an abuse of EPA’s discretion.

2. Clean Air Act section 103

Clean Air Act section 103(a)(1) directs EPA to “conduct, and promote the coordination and acceleration of, research, investigations, experiments, demonstrations, surveys, and studies relating to the causes, effects (including health and welfare effects), extent, prevention, and control of air pollution.” 42 U.S.C. § 7403(a)(1). There is nothing in these congressional directives restricting these tasks (“research, investigations, experiments, demonstrations, surveys, and studies”) to materials based only on data that are “publicly available in a manner sufficient for independent validation.” 83 Fed. Reg. at 18,773/2 (proposed § 30.1). Nor is there any authorization in these congressional directives to distinguish between “research, investigations, experiments, demonstrations, surveys, and studies” that involves “dose response data and models,” and science that does not, for imposing regulatory restrictions on what science EPA must consider. The absence of any such congressional restrictions, authorizations or distinctions makes it clear that EPA invented and added the Proposal’s limitations and conditions as a matter of its own policy preferences, contrary to the Act. This EPA may not do. Clean Air Act section 103(a)(1) shows that the Proposal is arbitrary and capricious and an abuse of EPA’s discretion.

Clean Air Act subsection 103(a)(4) directs EPA to “establish technical advisory committees composed of recognized experts in various aspects of air pollution to assist in the examination and evaluation of research progress and proposals and to avoid duplication of research.” 42 U.S.C. § 7403(a)(4). Clean Air Act section 103(a)(5) directs EPA to “conduct and promote coordination and acceleration of training for individuals relating to the causes, effects, extent, prevention, and control of air pollution.” *Id.* § 7403(a)(5). There is nothing in these congressional directives restricting these tasks to materials based only on data that are “publicly available in a manner sufficient for independent validation.” 83 Fed. Reg. at 18,773/2 (proposed § 30.1). Nor is there any authorization in these congressional directives to distinguish between

research or science that involves “dose response data and models” on the one hand, and science that does not, on the other hand, for imposing regulatory restrictions on what science EPA must consider. The absence of any such congressional restrictions, authorizations, or distinctions makes it clear that EPA invented and added the Proposal’s limitations and conditions as a matter of its own policy preferences, contrary to the Act. This EPA may not do. Clean Air Act subsections 103(a)(4) & (5) show that the Proposal is arbitrary and capricious and an abuse of EPA’s discretion.

Clean Air Act section 103(b) is significantly titled “*Authorized Activities of Administrator in Establishing Research and Development Program.*” 42 U.S.C. § 7403(b) (emphasis added). It states that:

In carrying out the provisions of the preceding subsection the Administrator is authorized to—

- (1) collect and make available, through publications and other appropriate means, the results of and other information, including appropriate recommendations by him in connection therewith, pertaining to such research and other activities;
- (2) cooperate with other Federal departments and agencies, with air pollution control agencies, with other public and private agencies, institutions, and organizations, and with any industries involved, in the preparation and conduct of such research and other activities;
- (3) make grants to air pollution control agencies, to other public or nonprofit private agencies, institutions, and organizations, and to individuals, for purposes stated in subsection (a)(1) of this section;
- (4) contract with public or private agencies, institutions, and organizations, and with individuals, without regard to section 3324(a) and (b) of title 31 and section 6101 of title 41;
- (5) establish and maintain research fellowships, in the Environmental Protection Agency and at public or nonprofit private educational institutions or research organizations;
- (6) collect and disseminate, in cooperation with other Federal departments and agencies, and with other public or private agencies, institutions, and organizations having related responsibilities, basic data on chemical, physical, and biological effects of varying air quality and other information pertaining to air pollution and the prevention and control thereof;
- (7) develop effective and practical processes, methods, and prototype devices for the prevention or control of air pollution; and
- (8)

construct facilities, provide equipment, and employ staff as necessary to carry out this chapter.

Id. There is nothing in these congressional directives restricting these tasks, research or data to materials based only on data that are “publicly available in a manner sufficient for independent validation.” 83 Fed. Reg. at 18,773/2 (proposed § 30.1). Nor is there any authorization in these congressional directives to distinguish between research, science, data, or models that involves “dose response data and models” on the one hand, and science that does not, on the other hand, for imposing regulatory restrictions on what science EPA must consider. The absence of any such congressional restrictions, authorizations or distinctions makes it clear that EPA invented and added the Proposal’s limitations and conditions as a matter of its own policy preferences, contrary to the Act. This EPA may not do. Clean Air Act subsection 103(b) shows that the Proposal is arbitrary and capricious and an abuse of EPA’s discretion.

Clean Air Act section 103(d) addresses Environmental Health Effects Research:

(1) The Administrator, in consultation with the Secretary of Health and Human Services, shall conduct a research program on the short-term and long-term effects of air pollutants, including wood smoke, on human health. In conducting such research program the Administrator—

(A)

shall conduct studies, including epidemiological, clinical, and laboratory and field studies, as necessary to identify and evaluate exposure to and effects of air pollutants on human health;

(B)

may utilize, on a reimbursable basis, the facilities of existing Federal scientific laboratories and research centers; and

(C)

shall consult with other Federal agencies to ensure that similar research being conducted in other agencies is coordinated to avoid duplication.

42 U.S.C. § 7403(d). There is nothing in these congressional directives restricting these tasks, research, studies or data to materials based only on data that are “publicly available in a manner sufficient for independent validation.” 83 Fed. Reg. at 18,773/2 (proposed § 30.1). Nor is there any authorization in these congressional directives to distinguish between research, science, data or models that involves “dose response data and models” on the one hand, and science that does not, on the other hand, for imposing regulatory restrictions on what science EPA must consider. The absence of any such congressional restrictions, authorizations, or distinctions makes it clear that EPA invented and added the Proposal’s limitations and conditions as a matter of its own policy preferences, contrary to the Act. This EPA may not do. Clean Air Act subsection 103(d) shows that the Proposal is arbitrary and capricious and an abuse of EPA’s discretion.

Clean Air Act subsection 103(d)(2) directs “[i]n conducting the research program under this subsection, the Administrator shall develop methods and techniques necessary to identify and assess the risks to human health from both routine and accidental exposures to individual air pollutants and combinations thereof.” 42 U.S.C. § 7403(d)(2). Subsection 103(d)(2) then says,

“such research program shall include the following elements,” listing subsections (A)-(C). *Id.* Subsection 103(d)(2)(B) & (C) are especially relevant and revealing:

(B) An evaluation, within 12 months after November 15, 1990, of each of the hazardous air pollutants listed under section 7412(b) of this title, to decide, *on the basis of available information*, their relative priority for preparation of environmental health assessments pursuant to subparagraph (C). The evaluation *shall be based on reasonably anticipated toxicity to humans and exposure factors* such as frequency of occurrence as an air pollutant and volume of emissions in populated areas. Such evaluation shall be reviewed by the Interagency Task Force established pursuant to subparagraph (A).

(C) Preparation of environmental health assessments for each of the hazardous air pollutants referred to in subparagraph (B), beginning 6 months after the first meeting of the Interagency Task Force and to be completed within 96 months thereafter. *No fewer than 24 assessments shall be completed and published annually.* The assessments shall be prepared in accordance with guidelines developed by the Administrator in consultation with the Interagency Task Force and the Science Advisory Board of the Environmental Protection Agency. Each such assessment shall include—

- (i) an examination, summary, and evaluation of *available toxicological and epidemiological information for the pollutant to ascertain the levels of human exposure which pose a significant threat to human health and the associated acute, subacute, and chronic adverse health effects*;
- (ii) a determination of gaps in *available information related to human health effects and exposure levels*; and
- (iii) where appropriate, an identification of additional activities, including toxicological and inhalation testing, needed to identify the types or levels of exposure which may present significant risk of adverse health effects in humans.

42 U.S.C. § 7403(d)(2)(B) & (C) (emphases added).

There is nothing in these congressional directives restricting these tasks, research, studies or data to materials based only on data that are “publicly available in a manner sufficient for independent validation.” 83 Fed. Reg. at 18,773/2 (proposed § 30.1). Nor is there any authorization in these congressional directives to distinguish between research, science, data, or models that involves “dose response data and models” on the one hand, and science that does not, on the other hand, for imposing regulatory restrictions on what science EPA must consider. The absence of any such congressional restrictions, authorizations, or distinctions makes it clear that EPA invented and added the Proposal’s limitations and conditions as a matter of its own policy preferences, contrary to the Act. This EPA may not do. Clean Air Act subsection 103(d)(2) shows that the Proposal is arbitrary and capricious and an abuse of EPA’s discretion.

Equally damning for the Proposal, when Congress directs EPA to evaluate pollutants and their health effects, Congress uses broad and capacious terms:

- “on the basis of available information” (§ 103(d)(2)(B), 42 U.S.C. § 7403(d)(2)(B));

- “available toxicological and epidemiological information for the pollutant to ascertain the levels of human exposure which pose a significant threat to human health and the associated acute, subacute, and chronic adverse health effects” (§ 103(d)(2)(C)(i), 42 U.S.C. § 7403(d)(2)(C)(i)); and
- “available information related to human health effects and exposure levels” (§ 103(d)(2)(C)(ii), 42 U.S.C. § 7403(d)(2)(C)(ii)).

These instructions to EPA are prefaced with the mandatory language, “[s]uch research program *shall include* the following elements.” (§ 103(d)(2), 42 U.S.C. § 7403(d)(2)). Congress went out of its way *not* to authorize EPA to ignore “available toxicological and epidemiological information” to ensure that the agency would be “ascertain[ing] the levels of human exposure which pose a significant threat to human health and the associated acute, subacute, and chronic adverse health effects.” (§ 103(d)(2)(C)(i), 42 U.S.C. § 7403(d)(2)(C)(i)).

This shows clear congressional concern with all available science related to human health effects from air pollution—not some restricted, politicized subset of science where underlying, confidential data are “publicly available in a manner sufficient for independent validation.” Clean Air Act subsection 103(d)(2) shows that the Proposal is arbitrary and capricious and an abuse of EPA’s discretion.

When Congress directs EPA to conduct an ecosystem research program in subsection 103(e), Congress says that such program “shall include” “[e]valuation of risks to ecosystems exposed to air pollutants, including characterization of the causes and effects of chronic and episodic exposures to air pollutants and determination of the reversibility of those effects.” 42 U.S.C. § 7403(e). Subsections (e)(3)-(e)(6) address other effects on water quality, crops, soils, and other elements of ecosystems.

There is nothing in these congressional directives restricting these tasks, research, studies, or data to materials based only on data that are “publicly available in a manner sufficient for independent validation.” 83 Fed. Reg. at 18,773/2 (proposed § 30.1). Nor is there any authorization in these congressional directives to distinguish between research, science, data, or models that involves “dose response data and models” on the one hand, and science that does not, on the other hand, for imposing regulatory restrictions on what science EPA must consider. The absence of any such congressional restrictions, authorizations, or distinctions makes it clear that EPA invented and added the Proposal’s limitations and conditions as a matter of its own policy preferences, contrary to the Act. This EPA may not do. Clean Air Act subsection 103(e) shows that the Proposal is arbitrary and capricious and an abuse of EPA’s discretion.

3. Clean Air Act section 108

In section 108(a)(2), Congress required air quality criteria for air pollutants to “*accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects* on public health or welfare which may be expected from the presence of such pollutant in the ambient air,” CAA § 108(a)(2), 42 U.S.C. § 7408(a)(2) (emphases added). In *American Trucking v. Whitman*, 531 U.S. at 457, the Supreme Court said that NAAQS must be based on “published air quality criteria that reflect the latest scientific knowledge.”

The Proposal violates these statutory requirements by prohibiting EPA from considering available science to discharge the agency's statutory responsibility to "protect the public health," with "an adequate margin of safety." CAA § 109(b)(1), 42 U.S.C. § 7409(b)(1). The Proposal does this by subverting and supplanting the congressional criteria in CAA § 108(a)(2), 42 U.S.C. § 7408(a)(2) with a restrictive standard driven by whether raw data are "publicly available in a manner sufficient for independent validation," 83 Fed. Reg. at 18,773/2 (proposed § 30.1).

With this unlawful maneuver, the Proposal prevents EPA from adopting air quality criteria that "*accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare.*" CAA § 108(a)(2), 42 U.S.C. § 7408(a)(2) (emphases added). First, the Proposal thwarts the congressional directives for "accurate[] reflection" of the "latest scientific knowledge." It does so by compelling or allowing EPA to ignore the "latest scientific knowledge," and to fail to "accurately reflect" that science, if raw data are not "publicly available in a manner sufficient for independent validation." 83 Fed. Reg. at 18,773/2 (proposed § 30.1).

Moreover, the Proposal thwarts the congressional directives for science that is "*useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of such pollutant in the ambient air.*" CAA § 108(a)(2), 42 U.S.C. § 7408(a)(2) (emphases added). It does so, again, by compelling or allowing EPA to ignore the "latest scientific knowledge," and to fail to accurately reflect that science, if raw data are not "publicly available in a manner sufficient for independent validation." 83 Fed. Reg. at 18,773/2 (proposed § 30.1).

Further, section 208 contains the mandatory term "shall"—which does not give the agency latitude. It does not matter if that "scientific knowledge" is "publicly available" in the way EPA contemplates in the Proposal, it must simply inform the effects of air pollution on public health or welfare. Further, *American Trucking* considered the requirements of this section and specifically concluded that "the Clean Air Act imposes no" "general requirement that EPA obtain and publicize the data underlying published studies on which the Agency relies." 283 F.3d at 372.

In these statutory provisions, obviously there is no mention of the necessity, or even relevance, of raw data being "publicly available in a manner sufficient for independent validation" before EPA must consider studies based on that data. Equally plain, there is no authorization for EPA to fail to "accurately reflect" that science when issuing air quality criteria.

There is nothing in these congressional directives restricting EPA's responsibilities, or the research, studies, or data it must consider, to materials based only on data that are "publicly available in a manner sufficient for independent validation." 83 Fed. Reg. at 18,773/2 (proposed § 30.1). Nor is there any authorization in these congressional directives to distinguish between research, science, data, or models that involve "dose response data and models" on the one hand, and science that does not, on the other hand, for imposing regulatory restrictions on what science EPA must consider. The absence of any such congressional restrictions, authorizations, or distinctions makes it clear that EPA invented and added the Proposal's limitations and conditions

as a matter of its own policy preferences, contrary to the Act. This EPA may not do. Clean Air Act subsection 108(a) shows that the Proposal is arbitrary and capricious and an abuse of EPA's discretion.

4. Clean Air Act section 109

The Proposal also violates section 109 of the Clean Air Act and contravenes the Supreme Court decision in *American Trucking v. Whitman*. The Proposal's conception of "pivotal regulatory science" turns on, among other things, "analyses that drive the magnitude of the benefit-cost calculation," and "studies, models and analyses" that are "critical to the calculation of a final regulatory standard or level, or to the quantified costs, benefits, risks and other impacts on which a final regulation is based." 83 Fed. Reg. at 18,770/2; *id.* at 18,773/2 (proposed § 30.2 (*dose response data and models*)). Clean Air Act section 109(b)(1) requires EPA to promulgate or revise health-based national ambient air quality standards that are "requisite to protect the public health," "allowing an adequate margin of safety." 42 U.S.C. § 7409(b)(1).

As noted, in *American Trucking v. Whitman*, a unanimous Supreme Court said that NAAQS must be based on "published air quality criteria that reflect the latest scientific knowledge." 531 U.S. at 457. Moreover, the Court held that Clean Air Act section "109(b), interpreted in its statutory and historical context and with appreciation for its importance to the CAA as a whole, unambiguously bars cost considerations from the NAAQS-setting process." 531 U.S. at 471. The Court also squarely rejected arguments appealing to statutory language concerning "adverse public health, welfare, social, economic, or energy effects which may result from various strategies for attainment and maintenance" of NAAQS. The justices made clear such language and concerns have "no bearing upon whether cost considerations are to be taken into account in formulating the standards." *Id.*

The Proposal violates Clean Air Act section 109(b)(1) and the governing Supreme Court interpretation in *American Trucking* by purporting to allow the "magnitude of a benefit-cost calculation" and "quantified costs and benefits" to impact or govern (1) EPA's consideration of peer-reviewed science relevant to reviewing, setting or revising health-based NAAQS; and (2) EPA's review, revision or establishment of health-based NAAQS. This is unlawful.

Clean Air Act sections 109(b)(1), (2), & (c) require EPA to protect Americans' "public health" with an adequate margin of safety, and America's "welfare" from "any known or anticipated adverse effect." 42 U.S.C. § 7409(b)(1), (2) & (c). The Proposal prevents EPA from doing so by blocking the agency from considering information that also is the best available, peer-reviewed, independent, credible science that could persuade or cause the agency to better protect Americans' public health and welfare, based on the statutory criteria in section 109. In this way, the Proposal thwarts the central role and fundamental right to health-based air quality standards under the Clean Air Act. Clean Air Act section 109 shows the Proposal is arbitrary and capricious and an abuse of EPA's discretion.

5. Clean Air Act section 111

Clean Air Act section 111(a)(1) defines a standard of performance as:

a standard for emissions of air pollutants which reflects the degree of emission limitation *achievable* through the application of the *best system of emission reduction* which (taking into account the cost of achieving such reduction and any nonair quality *health and environmental* impact and energy requirements) the Administrator determines has been *adequately demonstrated*.

42 U.S.C. 7411(a)(1) (emphases added). There is nothing in these congressional directives restricting EPA's establishment of "standards of performance," or its determinations of "achievability" or "best system of emission reduction" or "adequate demonstration," to information based only on data that are "publicly available in a manner sufficient for independent validation." 83 Fed. Reg. at 18,773/2 (proposed § 30.1). Nor is there any authorization in these congressional directives to distinguish between research, science, data, or models involving "dose response data and models" on one hand, and science that does not, on the other hand, for imposing regulatory restrictions on what science EPA must consider.

EPA cannot fulfill the congressional directive to establish the "best system of emission reduction" if EPA is artificially and unlawfully restricting its consideration of data and information to those that are "publicly available in a manner sufficient for independent validation." *Id.* Nor may EPA fulfill the "adequately demonstrated" directive if systems of emission reduction that have been adequately demonstrated require EPA to consider data, science, or information that are not "publicly available in a manner sufficient for independent validation." *Id.*

Clean Air Act section 111(b)(1)(A) requires EPA to establish a list of stationary sources to be subject to section 111 standards of performance:

[The Administrator] shall include a category of sources in such list if in his judgment it causes, or contributes significantly to, air pollution *which may reasonably be anticipated to endanger public health or welfare*.

42 U.S.C. 7411(b)(1)(A) (emphasis added). There is nothing in the Act restricting EPA's consideration of which categories of sources "may reasonably be anticipated to endanger public health or welfare" to information based only on data that are "publicly available in a manner sufficient for independent validation." 83 Fed. Reg. at 18,773/2 (proposed § 30.1). There is no indication of congressional intent that what "may reasonably be anticipated to endanger public health or welfare" may be modified or constrained by ignoring science and data concerning endangerment if that information is not "publicly available in a manner sufficient for independent validation."

The absence of any such congressional restrictions, authorizations, or distinctions concerning what EPA may consider makes it clear that EPA invented and added the Proposal's limitations and conditions as a matter of its own policy preferences, contrary to the Act. This EPA may not do. Clean Air Act subsections 111(a)(1) and 111(b)(1)(A) show that the Proposal is arbitrary and capricious and an abuse of EPA's discretion.

6. Clean Air Act Section 112

Clean Air Act Section 112(b) provides a list of toxic air pollutants for which industrial sources must limit their emissions. The statute then directs the Administrator to periodically review that list of hazardous air pollutants and, where appropriate, revise this list by rule. In particular, the Administrator is directed to add pollutants which:

present, or may present, through inhalation or other routes of exposure, a threat of adverse human health effects (including, but not limited to, substances which are known to be, or may reasonably be anticipated to be, carcinogenic, mutagenic, teratogenic, neurotoxic, which cause reproductive dysfunction, or which are acutely or chronically toxic) or adverse environmental effects whether through ambient concentrations, bioaccumulation, deposition, or otherwise, but not including releases subject to regulation under subsection (r) as a result of emissions to the air.

42 U.S.C. § 7412(b)(2). There is nothing in these congressional directives restricting EPA's establishment of this list nor of the pollutants that should be added to it based only on data that are "publicly available in a manner sufficient for independent validation." 83 Fed. Reg. at 18,773/2 (proposed § 30.1). Nor is there any authorization in these congressional directives to distinguish between research, science, data, or models involving "dose response data and models" on one hand, and science that does not, on the other hand, for imposing regulatory restrictions on what science EPA must consider.

EPA cannot fulfill the congressional directive to establish section 112(b)(2)'s pollutant list if the agency is artificially and unlawfully restricting its consideration of data and information to those that are "publicly available in a manner sufficient for independent validation." *Id.* Nor will EPA be able to fully analyze pollutants for inclusion on this list if determining inclusion would require EPA to consider data, science or information that are not "publicly available in a manner sufficient for independent validation." *Id.*

Similarly, Section 112(b)(3) lays out a petition process to add chemicals to the Section 112 list that similarly require the petitioner to submit to EPA proof that "the substance is an air pollutant and that emissions, ambient concentrations, bioaccumulation or deposition of the substance are known to cause or may reasonably be anticipated to cause adverse effects to human health or adverse environmental effects." 42 U.S.C. § 7412(b)(3)(B). Here, the straightjacket that the Proposal would place on this statutory language would similarly prevent the agency from carrying out its statutory directive.

Section 112(b)(3)(C) provides criteria for *delisting* pollutants from the list. This section would nonetheless be hamstrung if the agency were limited exclusively to data that are "publicly available in a manner sufficient for independent validation." 83 Fed. Reg. at 18,773/2 (proposed § 30.1). Nor is there any authorization in the section's congressional directives to distinguish between research, science, data, or models involving "dose response data and models" on one hand, and science that does not, on the other hand, for purposes of listing or delisting pollutants from section 112's hazardous pollutant list.

Nearly every subsection of Section 112, including standards for major and area sources, reporting requirements, and accidental release provisions, touch on protecting “public health,” weighing “risks,” or assessing how “hazardous” a “substance” or “pollutant” may be. EPA cannot fulfill the congressional directives of any of these sections if the agency is artificially and unlawfully restricting its consideration of data and information to those that are “publicly available in a manner sufficient for independent validation.” *Id.* Nor will EPA be able to fully analyze risks to or impacts on human health and set section 112 standards accordingly if making such determinations would require EPA to consider data, science, or information that are not “publicly available in a manner sufficient for independent validation.” *Id.*

The absence of any such congressional restrictions, authorizations, or distinctions concerning what EPA may consider makes it clear that EPA invented and added the Proposal’s limitations and conditions as a matter of its own policy preferences, contrary to the Act. This EPA may not do. Clean Air Act section 112 makes exceedingly clear that the Proposal is arbitrary and capricious and an abuse of EPA’s discretion.

The sections listed above merely represent a sampling of some examples in Title 1 of the Act that exemplify the extent to which the Proposal is arbitrary, capricious, an abuse of EPA’s discretion, and a violation of clear congressional directives. The Act’s five other Titles are no different, and the list provided here is not exhaustive—the Clean Air Act is rife with examples of statutory language that the Proposal would distort with its adherence to data that are “publicly available in a manner sufficient for independent validation” 83 Fed. Reg. at 18,773/2 (proposed § 30.1) and research, science, data, or models involving “dose response data and models.”

B. Clean Water Act

The Proposal, if adopted, would imperil the effective implementation of the Clean Water Act. Several provisions of the Act direct EPA to consider a range of data in promulgating regulations to effectuate its goals, and the development of these regulations would be hamstrung by the Proposal’s restrictions on considering valid scientific evidence. As discussed in these comments, identifying and excluding valid scientific evidence is time- and resource-intensive and has not been demonstrated to improve the quality of the science EPA considers or its science-based decisions. Accordingly, applying the proposed limitations to the myriad of regulatory decisions the agency is supposed to make would be a recipe for complete paralysis on multiple fronts under the Clean Water Act. Some examples of the water regulations that could be adversely affected by the far-reaching the Proposal follow.

Under sections 301 and 304, EPA must develop effluent limitation guidelines, setting out nationally-applicable pollution discharge standards for various industries. These ELGs “identify, in terms of amounts of constituents and chemical, physical, and biological characteristics of pollutants, the degree of effluent reduction attainable through the application of [particular levels of pollution control stringency] for classes and categories of point sources” 33 U.S.C. § 1314(b)(1)(A). EPA is to specify the factors used to determine the controls to be used, including “the age of equipment and facilities involved, the process employed, the engineering aspects of the application of various types of control techniques, process changes, the cost of achieving such effluent reduction, non-water quality environmental impact (including energy

requirements), and such other factors as the Administrator deems appropriate” *Id.* § 1314(b)(1)(B). Making these judgments and formulating the proper control levels that industrial dischargers must meet will obviously depend on data collected about the processes used in a given industry, control technology performance, cost, and energy use, among other things.

Under section 303, the Act charges EPA with issuing initial water quality standards for states that fail to submit their own, and with developing such standards if EPA determines submitted standards are not consistent with the Act. *Id.* § 1313(b). Congress required these standards to take account of a wide range of evidence, and the Proposal would therefore curtail EPA’s actions pursuant to the Act. Specifically, standards:

shall be such as to protect the public health or welfare, enhance the quality of water and serve the purposes of this chapter. Such standards shall be established taking into consideration their use and value for public water supplies, propagation of fish and wildlife, recreational purposes, and agricultural, industrial, and other purposes, and also taking into consideration their use and value for navigation.

Id. § 1313(c)(2)(A).

In addition, section 303’s water quality standards process illustrates a hypocritical element of the Proposal. When states develop water quality standards, they must submit to EPA “[g]eneral information which will aid the Agency in determining the adequacy of the scientific basis of the standards,” 40 C.F.R. § 131.6(f), and EPA’s review of such a submission considers “[w]hether the State standards . . . are based upon appropriate technical and scientific data and analyses,” *id.* § 131.5(a)(4), such that states can consider a wide range of information in establishing standards and EPA’s review of the states’ standards looks simply to whether the information on which they are based is “appropriate.” By contrast, if EPA were obliged to develop standards for a state (either because of a failure to submit or an inadequate submission), the Proposal would require EPA to consider a much more limited universe of information.

Pursuant to section 307 of the Act, EPA may issue category-wide effluent standards for listed toxic pollutants that go beyond the minimum level of control the Act mandates. These more stringent standards “shall take into account the toxicity of the pollutant, its persistence, degradability, the usual or potential presence of the affected organisms in any waters, the importance of the affected organisms, the nature and extent of the effect of the toxic pollutant on such organisms, and the extent to which effective control is being or may be achieved under other regulatory authority.” Further, “[a]ny effluent standard promulgated under this section shall be at that level which the Administrator determines provides an ample margin of safety.” 33 U.S.C. § 1317(a)(4). Obviously, it takes a substantial effort for EPA to assess these various factors and determine what level of pollution is acceptable, with an “ample margin of safety,” and to do so for numerous categories of dischargers (multiplied by numerous different toxic pollutants). If EPA adopts the Proposal, it would make each element of this analysis that much more cumbersome and difficult, and thus make it harder for EPA to effectively protect the public from toxic pollution.

Section 311 includes a further example of the kinds of regulatory analyses into which the Proposal would inject confusion and administrative burden. That section charges EPA with issuing “regulations designating as hazardous substances, other than oil as defined in this section, such elements and compounds which, when discharged in any quantity into . . . [various water resources] present an imminent and substantial danger to the public health or welfare, including, but not limited to, fish, shellfish, wildlife, shorelines, and beaches.” 33 U.S.C. § 1321(b)(2)(A). Indeed, answering these kinds of questions seems particularly likely to be undermined by the Proposal, as data relevant to determining the conditions under which hazardous substances may be an “imminent and substantial danger” could well come from prior accidental releases that could fail the Proposal’s “reproducibility” trigger.

The foregoing examples are merely illustrative. The Clean Water Act imposes numerous regulatory duties on EPA, and the Proposal threatens to make carrying out those obligations harder. The Act’s foundational purpose—“to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters,” 33 U.S.C. § 1251(a)—would thus be ill-served by finalizing the Proposal.

C. Safe Drinking Water Act

The Safe Drinking Water Act (SDWA) protects the nation’s public drinking water supplies. The Act generally applies to “each public water system in each State,” 42 U.S.C. § 300g, and requires EPA to set standards for drinking water contaminants that may have an adverse effect on human health and are known or anticipated to occur in such systems, *id.* § 300g-1(b)(1)(A).

For a given contaminant, the SDWA requires that EPA first establish a Maximum Contaminant Level Goal (MCLG), which is “the level at which no known or anticipated adverse effects on the health of persons occur and which allows an adequate margin of safety.” *Id.* § 300g-1(b)(4)(A). EPA must then set a Maximum Contaminant Level (MCL) “as close to the [MCLG] as is feasible.” *Id.* § 300g-1(b)(4)(B).

EPA also must, every five years, “publish a list of contaminants” that “are not subject to any proposed or promulgated national primary drinking water regulation, which are known or anticipated to occur in public water systems, and which may require regulation” *Id.* § 300g-1(b)(1)(B)(i). The SDWA requires EPA to prioritize that list based on vulnerable subpopulations that are at risk and other factors. *Id.* § 300g-1(b)(1)(C). EPA must then decide whether to regulate at least five contaminants on the list based on the “best available public health information.” *Id.* § 300g-1(b)(1)(B)(ii).

In making these determinations, the SDWA requires EPA to use “the best available, peer-reviewed science and supporting studies conducted in accordance with sound and objective scientific practices,” and “data collected by accepted methods or best available methods (if the reliability of the method and the nature of the decision justifies use of the data).” *Id.* § 300g-1(b)(3)(A); *see also id.* § 300g-1(b)(12), (13) (similar); *id.* § 300j-19 (referring to best available science standard for risk assessment of algal toxins).

The Proposal would conflict with the SDWA by prohibiting EPA from using the “best available” science and “data collected by acceptable or best available methods” solely because that data could not be made public. Indeed, courts interpreting these requirements have already rejected this proposed limitation on dose-response studies, making clear that they can indeed be the “best available” science regardless of whether the underlying data are publicly available. In *City of Waukesha v. EPA*, the court approved EPA’s use of “studies of Hiroshima and Nagasaki atomic bomb survivors” in setting limits for radium and uranium in drinking water. 320 F.3d 228, 248, 252 (D.C. Cir. 2003). But of course, these and similar studies would likely be excluded under the Proposal because the underlying data are not available.¹⁹⁴ The court also upheld the agency’s use of the linear, non-threshold (LNT) model used by EPA for both radium and uranium, *id.* at 249–50, 252, which is precisely the model that EPA now implies—without citing any evidence—is not scientifically justified.

Additionally, in carrying out its obligations to establish drinking water standards, the Act directs the agency to discuss “peer-reviewed studies known to the Administrator that support, are directly relevant to, or fail to support any estimate of public health effects and the methodology used to reconcile inconsistencies in the scientific data.” 42 U.S.C. § 300g-1(b)(3)(b)(v). Moreover, the agency must identify the “[q]uantifiable and non-quantifiable benefits for which there is a factual basis in the rulemaking record” in establishing a drinking water standard. Thus, under the express provisions of the SDWA, the agency cannot simply ignore peer-reviewed studies or other factual information in the record that the Proposed Rule would disallow from consideration, simply because the underlying data may be unavailable. *Id.* § 300g-1(b)(3)(c)(i).

If Congress had intended for the data targeted by the Proposal to be excluded, it could have said so. Instead, Congress directed EPA to use “the best available, peer-reviewed science and supporting studies conducted in accordance with sound and objective scientific practices,” and “data collected by accepted methods or best available methods.” 42 U.S.C. § 300g-1(b)(3)(A). EPA cannot ignore these commands to achieve its political goal of rolling back public health protections.

D. Resource Conservation and Recovery Act

Under the Resource Conservation and Recovery Act (RCRA), EPA regulates the generation, transportation, treatment, storage, and disposal of hazardous waste. EPA must develop, and revise from time to time, “criteria for identifying the characteristics of hazardous waste” and “for listing hazardous waste” that should be subject to regulation, “taking into account toxicity, persistence, and degradability in nature, potential for accumulation in tissue, and other related factors such as flammability, corrosiveness, and other hazardous characteristics.” 42 U.S.C. § 6921(a). EPA also must, in cooperation with Agency for Toxic Substances and Disease Registry (ATSDR) and the National Toxicology Program, “identify or list those hazardous wastes” which must be subject to regulation because they contain “certain constituents (such as identified carcinogens, mutagens, or terat[o]gens) at levels in excess of

¹⁹⁴ For a description of the studies, see Kotaro Ozasa, *Epidemiological research on radiation-induced cancer in atomic bomb survivors*, *Journal of Radiation Research*, Volume 57, Issue S1, 1 August 2016, Pages i112–i117, <https://academic.oup.com/jrr/article/57/S1/i112/2580473>.

levels which endanger human health.” *Id.* § 6921(b)(1). Likewise, EPA must promulgate regulations establishing standards applicable to generators and transporters of hazardous waste, and owners and operators of hazardous waste treatment, storage, and disposal facilities, “as may be necessary to protect human health and the environment.” *Id.* §§ 6922(a), 6923(a), 6924(a); *see also id.* § 6924(b), (d), (g).

The Proposal conflicts with RCRA’s statutory mandate. RCRA requires EPA to evaluate and regulate hazardous waste based on whether it will endanger human health and the environment, while the Proposal allows EPA to disregard relevant science simply because the underlying data cannot be made public. Under RCRA, EPA cannot ignore studies for that reason. Thus, the Proposal violates RCRA.

E. Comprehensive Environmental Response, Compensation, and Liability Act

Under CERCLA, EPA has power to clean up sites that are contaminated with hazardous substances, and to assure that responsible parties pay for such clean up. CERCLA requires EPA to issue regulations that identify hazardous substances that “present substantial danger to the public health or welfare or the environment,” and that specify the quantities of such substances that trigger the Act’s notification requirements. 42 U.S.C. § 9602(a). The Proposal contradicts this statutory mandate because it allows EPA to arbitrarily exclude some studies solely because the underlying data cannot be made public. Under the statute, EPA is required to use *all* relevant studies in determining whether a substance presents a substantial danger to people or the environment.

CERCLA also requires the President to promulgate and revise the National Contingency Plan for the removal of hazardous substances. *Id.* § 9605(a), (b). The President has delegated that authority to EPA. Exec. Order No. 12580, 52 Fed. Reg. 2923 (1987); Exec. Order No. 12777, 56 Fed. Reg. 54757. The Plan must include criteria for determining priorities “based upon relative risk or danger to public health or welfare or the environment,” taking into account enumerated factors. 42 U.S.C. § 9605(a)(8)(A). The Proposal conflicts with this section because it would direct EPA to disregard relevant studies solely because the underlying data could not be made public, even if those studies shed light on the enumerated factors.

CERCLA’s non-rulemaking provisions also show that Congress did not intend for studies to be excluded from consideration simply because the underlying data cannot be made public. For example, CERCLA authorizes the President to address hazardous substance releases that pose an “imminent and substantial danger to the public health or welfare,” and to “undertake such investigations, monitoring, surveys, testing, and other information gathering” as necessary to determine “the extent of danger to the public health or welfare or to the environment.” *Id.* § 9604(a), (b). This shows that Congress’s purpose in enacting CERCLA was to address the serious public health and environmental threats of hazardous substance releases. That purpose would be undermined if EPA could refuse to consider relevant studies only because the underlying data cannot be made public.

EPA also has co-responsibility with the ATSDR to establish a registry of diseases relating to toxic substance exposure, as well as to create a list of hazardous substances found at

Superfund sites, prepare a toxicological profile of those substances, and determine whether adequate information on the health effects of those substances exists. *Id.* § 9604(i). The statute specifically lists the types of studies and data that should be considered in determining whether adequate information exists and assessing the need for further research. *Id.* § 9604(i)(5); *see also id.* § 9604(i)(13). The statute does not exclude studies whose underlying data cannot be made public. In short, the Proposal contradicts both the statutory language and the purpose of CERCLA.

F. Emergency Planning and Community Right-to-Know Act

EPCRA establishes requirements for state and local emergency planning and reporting on hazardous chemicals. It requires EPA to publish a list of extremely hazardous substances and set, by regulation, a threshold planning quantity for each substance on the list. 42 U.S.C. § 11002(a). “Any revisions to the list shall take into account the toxicity, reactivity, volatility, dispersability, combustability, or flammability of a substance.” *Id.* § 11002(a)(4). Notably, in defining the criteria that EPA must consider for the list, EPCRA affirmatively directs EPA to consider the toxicity of the substance, among other things, and says nothing about excluding relevant studies for the reasons stated in the Proposal.

EPCRA also contains reporting requirements for owners or operators who manufacture, process, or use hazardous chemicals. *Id.* § 11023. EPA “may by rule add or delete a chemical from the list” of covered chemicals if there is sufficient evidence that the “chemical is known to cause or can reasonably be anticipated to cause significant adverse acute human health effects” or if the “chemical is known to cause or can reasonably be anticipated to cause in humans . . . cancer or teratogenic effects, or . . . serious or irreversible . . . reproductive dysfunctions[,] neurological disorders[,] heritable genetic mutations[,] other chronic health effects.” *Id.* § 11023(d). A chemical can also be added if it “is known to cause or can reasonably be anticipated to cause . . . a significant adverse effect on the environment of sufficient seriousness” due to its toxicity. *Id.* Of critical importance here, this determination “shall be based on generally accepted scientific principles or laboratory tests, or appropriately designed and conducted epidemiological or other population studies, available to the Administrator.” *Id.*

The Proposal directly conflicts with EPCRA’s requirement to use “generally accepted scientific principles or laboratory tests,” or “appropriately designed and conducted epidemiological or other population studies.” *See id.* § 11023(d). As explained throughout these comments, there is no reason the underlying data must be public for these tests and studies to be “generally accepted” or “appropriated designed and conducted.” Thus, the Proposal is—on its face—contrary to EPCRA’s mandate that EPA use these tests and studies when making determinations under the statute.

G. Federal Insecticide, Fungicide, and Rodenticide Act

FIFRA requires that all pesticides distributed or sold in the United States be registered by EPA. EPA cannot register pesticides that would cause “unreasonable adverse effects on the environment.” 7 U.S.C. § 136a. Likewise it may “by regulation” limit the distribution, sale or use of a pesticide to prevent “unreasonable adverse effects on the environment,” *id.* § 136a(a), and

must cancel the registration of pesticides that cause such “unreasonable adverse effects.” *Id.* § 136d. The term “unreasonable adverse effects on the environment” is defined to include unreasonable risks to human health, and dietary risks that violate the standard for pesticide residues under the Food, Drug and Cosmetic Act. *Id.* § 136(bb). Given that registration decisions often depend heavily on dose-response data and models, EPA must clarify whether the Proposal will apply to registration and registration review decisions. If so, the Proposal conflicts with FIFRA’s requirement that EPA determine whether pesticides proposed for registration would have unreasonable adverse effects on the environment. In light of that language, EPA cannot exclude relevant studies bearing on a pesticide’s effect on human health or the environment simply because the underlying data cannot be made public.

The potential applicability of the Proposal to exclude consideration of epidemiological studies of the health impacts of pesticides where the underlying data cannot be made public also highlights the logical inconsistency and arbitrary approach in the embodied proposed rule. On the one hand, the Proposal appears to be intended to prohibit consideration of such public health studies, but on the other hand seems to envision that industry-conducted studies and models claimed to include confidential business information would be allowed to be considered. This highlights the arbitrary and one-sided nature of the Proposal, and the clear underlying intent, which is to undermine public health protections for the benefit of industry.

Regardless of whether the Proposal applies to registration decisions, it conflicts with FIFRA in other ways. FIFRA directs EPA, when promulgating rules, to “take into account the difference in concept and usage between various classes of pesticides, including public health pesticides, and differences in environmental risk and the *appropriate data for evaluating such* risk between agricultural, nonagricultural, and public health pesticides.” *Id.* § 136w(a) (emphasis added); *see also id.* § 136w(c) (setting forth some examples of rules EPA may promulgate under FIFRA). EPA may not exclude “appropriate data” in these regulatory decisions simply because those data cannot be made public. Thus, the Proposal conflicts with FIFRA.

Finally, EPA has violated FIFRA’s procedural requirements. FIFRA requires EPA to provide the Scientific Advisory Panel and the Secretary of Agriculture with a copy of the Proposal at least 60 days before publication in the Federal Register. *Id.* § 136w(a)(2), (d). Any notification to the Secretary must be published in the Federal Register. *Id.* § 136w(a)(2)(D). There is no evidence in the Proposal that EPA followed these procedural requirements. (EPA also must provide the Panel and the Secretary a copy of the final rule 30 days before publication in the Federal Register. *Id.* § 136w(a)(2), (d).) Similarly, EPA must furnish a copy of the proposed and final regulation to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate. *Id.* § 136w(a)(3). Again, there is no evidence this occurred.

H. Toxic Substances Control Act

Under TSCA, EPA has broad authority to protect the public from harm from chemical substances and mixtures. TSCA authorizes EPA to issue regulations designed to gather information on, require testing of, and control exposure to chemical substances and mixtures.

EPA must restrict or ban any chemical substance that presents an unreasonable risk of injury to human health or the environment. *See, e.g.*, 15 U.S.C. §§ 2603, 2604, 2605.

TSCA contains specific provisions regarding EPA's use and consideration of science in rulemakings. "In carrying out sections 2603, 2604, and 2605," EPA must "use scientific information, technical procedures, measures, methods, protocols, methodologies, or models, employed in a manner consistent with the best available science." *Id.* § 2625(h). EPA must further consider the following:

- (1) the extent to which the scientific information, technical procedures, measures, methods, protocols, methodologies, or models employed to generate the information are reasonable for and consistent with the intended use of the information;
- (2) the extent to which the information is relevant for the Administrator's use in making a decision about a chemical substance or mixture;
- (3) the degree of clarity and completeness with which the data, assumptions, methods, quality assurance, and analyses employed to generate the information are documented;
- (4) the extent to which the variability and uncertainty in the information, or in the procedures, measures, methods, protocols, methodologies, or models, are evaluated and characterized; and
- (5) the extent of independent verification or peer review of the information or of the procedures, measures, methods, protocols, methodologies, or models.

Id. After consideration of these matters, EPA must make decisions "based on the weight of the scientific evidence." *Id.*

In short, EPA must examine the reliability of a study on a case-by-case basis by weighing several indicators of scientific validity. Noticeably absent from Congress's enumerated factors in § 2625(h) is whether the underlying data can be made available to the public. While § 2625(h)(4) provides that EPA should take into account "the extent of independent verification or peer review" of scientific information, this language indicates that peer review of a study could provide sufficient assurance of its reliability even without additional verification.

TSCA further directs EPA to make available to the public, among other things, "a list of the studies considered by the Administrator in carrying out each such risk evaluation, along with the results of those studies" and "each designation of a chemical substance . . . along with an identification of the information, analysis, and basis used to make the designations." *Id.* § 2625(i). Again, the statute, despite calling out specific information to be made publicly available, does not state that the *underlying data* for these studies must be made publicly available. Thus, the rule is flatly inconsistent with TSCA.

Finally, even if it were not already clear from the above provisions that EPA cannot bar consideration of studies as provided in the Proposal, TSCA also states that EPA “shall take into consideration information relating to a chemical substance or mixture, including hazard and exposure information, under the conditions of use, that is reasonably available to the Administrator.” *Id.* § 2625(k). EPA has defined “reasonably available” to mean “information that EPA possesses or can reasonably generate, obtain and synthesize for use . . . for prioritization and risk evaluation. Information that meets such terms is reasonably available information whether or not the information is confidential business information that is protected from public disclosure under 15 U.S.C. 2613.” 40 C.F.R. § 702.3. Thus, if the studies covered by the rule are “reasonably available” to EPA, the agency must consider them, regardless of whether the raw data can be made public. EPA cannot create a double standard where studies withheld from the public as confidential business information must be considered but studies for which the underlying data cannot be made publicly available cannot be considered. *See infra* section X. The Proposal is unlawful under TSCA and cannot be promulgated.

I. Food Quality Protection Act (or Food, Drug, and Cosmetics Act)

The Food Quality Protection Act (also known as the Food, Drug, and Cosmetics Act or FFDCA) governs pesticide tolerances. Section 408 of the FFDCA requires EPA to set tolerances, which are maximum residue limits, for pesticide residues on foods. In setting tolerances, EPA must find that the tolerance is “safe.” 21 U.S.C. § 346a. Safe is defined as meaning that there is a “reasonable certainty that no harm will result from aggregate exposure to the pesticide residue.” *Id.* § 346a(b)(2)(a)(ii). To make this finding, EPA considers, among other things: the toxicity of the pesticide and its break-down products, aggregate exposure to the pesticide in foods and from other sources of exposure, and any special risks posed to infants and children. *Id.* § 346a(b). For threshold effects, EPA is required to add an additional tenfold margin of safety to protect infants and children, unless the administrator finds based on reliable data that a different safety factor will ensure the pesticide is safe. *Id.* § 346a(b)(2)(C)(ii). The statute contains specific provisions regarding the type and availability of data that must be considered. *Id.* § 346a(b)(2)(D), (E), (F).

The Proposal does not cite to the FFDCA, and apparently EPA never considered whether the Proposal is consistent with the law. It is not. First, the Act defines “safe” to mean that “there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.” *Id.* § 346a(b)(2)(A)(ii). As part of this determination, EPA must “ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure.” *Id.* § 346a(b)(2)(C). EPA cannot do this if it excludes relevant studies solely because the underlying data cannot be made public.

The FFDCA specifically speaks to how threshold and non-threshold effects shall be considered. *Id.* § 346a(b)(2)(B). The Proposal cannot override the specific Congressional mandates in the FFDCA for how to conduct a tolerance assessment. In determining whether there is a reasonable certainty of no harm to infants and children, EPA must consider “available information” on consumption patterns among infants and children, special susceptibility of infants and children (including for example neurological and in utero effects), cumulative effects on infants and children. *Id.* § 346a(b)(2)(C). Likewise, the Act specifies numerous scientific

factors that must be considered in evaluating safety, including considering “available data” on these factors. *Id.* § 346a(b)(2)(D). The Proposal plainly contradicts these mandates. Obviously, published, peer-reviewed literature is “available” and must be considered. As with studies considered under other statutes, EPA fails to explain the arbitrariness of excluding published peer-reviewed studies while allowing industry studies considered confidential business information to be considered.

Finally, the FFDCA contains certain procedural requirements for “establishing general procedures and requirements to implement this section.” *Id.* § 346a(e). Yet EPA failed to cite the FFDCA—either its substantive or procedural requirements—at all in its Proposal.

J. Atomic Energy Act

The AEA, 42 U.S.C. § 2011 *et seq.*, is not a typical environmental law, as the original act established the Atomic Energy Commission (AEC) just after World War II to promote the “utilization of atomic energy for peaceful purposes to the maximum extent consistent with the common defense and security and with the health and safety of the public.” The concern found in the final clause of its original organic act, “the health and safety of the public,” has at no point disappeared in subsequent iterations of the act and this Proposal runs contrary to its clearly stated intent.

The AEC was abolished in the 1970s, and since that then, most of the functions of the AEA are carried out by the Nuclear Regulatory Commission and the U.S. Department of Energy. However, when EPA was formed in the early 1970s, it assumed the AEC’s authority to issue generally applicable environmental radiation standards to protect the health and safety of the public. Other federal and state organizations must follow these standards when developing requirements for their areas of radiation protection. EPA also implements the Federal Radiation Council’s authority under the AEA, developing guidance for federal and state agencies containing recommendations for their use in developing radiation protection requirements and working with states that have radiation protection programs.

There are several specific statutory requirements that EPA executes under the AEA, which states that “the purpose of this [Act is] to effectuate the policies set forth above by providing for – (d) a program to encourage widespread participation in the development and utilization of atomic energy for peaceful purposes to the maximum extent consistent with the common defense and security *and with the health and safety of the public.*” 42 U.S.C. § 2013(d) (emphasis added).

The following regulations are health-based standards, and as we discuss *supra* section III.G., EPA bases its regulatory limits and nonregulatory guidelines for population exposures to low-level ionizing radiation on the linear no-threshold (LNT) dose-response model, which uses the premise that any radiation dose carries some risk, and that risk increases directly with dose. The viability of each of these longstanding health-based protections will be undercut by promulgation of a final rule that resembles this draft for the reasons discussed *supra* section III.G., and in direct conflict with the AEA’s requirement that the utilization of atomic

energy for peaceful purposes be “to the maximum extent consistent with the common defense and security *and with the health and safety of the public.*”

- Environmental Radiation Protection Standards for Nuclear Power Operations (40 C.F.R. Part 190); these standards limit radiation releases and doses to the public from the normal operation (non-emergency) of nuclear power plants and other uranium fuel cycle facilities.
- Environmental Radiation Protection Standards for Management and Disposal of Spent Fuel, High Level and Transuranic Wastes (40 C.F.R. Part 191); this regulation sets environmental standards for the disposal of highly radioactive spent nuclear fuel and certain kinds of highly toxic and radioactive wastes produced from the nuclear weapons program that must ultimately be disposed of in a deep geologic repository.
- Health and Environmental Protection Standards for Health and Environmental Protection Standards for Uranium and Thorium Mill Tailings (40 C.F.R. Part 192); this regulation sets standards for the protection of the public health, safety, and the environment from radiological and non-radiological hazards associated with uranium and thorium ore processing, and disposal of associated wastes. In May of 2015, EPA proposed revisions to 40 C.F.R. 192 that would establish groundwater restoration and monitoring requirements at in-situ recovery facilities, and then in January 2017, EPA re-proposed those revisions. We await final agency action on the matter.
- Criteria for the Certification and Recertification of the Waste Isolation Pilot Plant’s Compliance with the 40 C.F.R. Part 191 Disposal Regulations (40 C.F.R. 194); these criteria apply to the certification and recertification of compliance with the radioactive waste disposal standards at the Waste Isolation Pilot Plant (WIPP) in New Mexico, the world’s only deep geologic repository, which is operated by the U.S. Department of Energy (DOE) for permanent disposal of transuranic waste from the nation’s nuclear defense program.
- Public Health and Environmental Radiation Protection Standards for Yucca Mountain, Nevada (40 C.F.R. Part 197); these regulations, last promulgated in 2008 (after a Federal Appeals Court found an earlier version unlawful, *see, e.g., Nuclear Energy Inst., Inc. v. EPA*, 373 F.3d 1251 (D.C. Cir. 2004)), establish public health and environmental standards for storage and disposal of spent nuclear fuel at the proposed repository at Yucca Mountain, Nevada. The U.S. Nuclear Regulatory Commission would implement these regulations at Yucca Mountain if a repository were to be established there.
- As discussed above, the Clean Air Act requires EPA to regulate airborne emissions of hazardous air pollutants (HAPs) from a specific list of industrial sources called “source categories.” Standards known as the “National Emission Standards for Hazardous Air Pollutants” (NESHAPs) dictate specific regulatory limits for source categories that emit radionuclides. In 40 C.F.R. Part 61: the *National Emission Standards For Hazardous Air Pollutants*, EPA sets health based standards in a number of settings, such as Subpart B: *Radon Emissions from Underground Uranium Mines*; Subpart H: *Emissions of Radionuclides Other than Radon from Department of Energy Facilities*; Subpart I: *Radionuclide Emissions from Federal Facilities Other than Nuclear Regulatory Commission Licensees and Not Covered by Subpart H*; Subpart K: *Radionuclide Emissions from Elemental Phosphorus Plants*; Q: *Radon Emissions from Department of Energy Facilities*; R: *Radon Emissions from Phosphogypsum Stacks*; Subpart T: *Radon*

Emissions from the Disposal of Uranium Mill Tailings; and Subpart W: *Radon Emissions from Operating Mill Tailings*.

- And last, under the Safe Drinking Water Act (SDWA), discussed above, EPA sets health-based standards on the levels of certain radionuclides in drinking water. After much litigation, in 2000 EPA revised an outdated set of standards that had been in place since the late 1970s and set new monitoring provisions for community water systems (CWS). The current standards are: Combined radium 226/228 of 5 pCi/L; a gross alpha standard for all alphas of 15 pCi/L (not including radon and uranium); a combined standard of 4 mrem/year for beta emitters; and a the MCL for uranium at 30 µg/L.

In short, the Proposal could seriously damage EPA's ability to administer the AEA and protect the public from radiation. Yet the Proposal fails to cite the statute at all.

VI. The cited sources do not support—and in fact contradict—the Proposal

These comments have discussed the failure of statutory authorities cited by EPA to provide any legal support or authorization whatsoever for the Proposal and its approaches. The Proposal also cites various executive orders, memoranda, reports, guidelines and the like with the suggestion or implication that these materials somehow provide support for the Proposal. They do not, and thus the Proposal violates the law. *See, e.g., Public Citizen Health Research Group v. Tyson*, 796 F.2d 1479 (D.C. Cir. 1986) (reversing and remanding agency decision to carry out last-minute directive by White House Office of Management and Budget without any apparent justification in the administrative record).

First, of course, EPA's proposed rulemakings must be authorized by federal statutes. Executive orders provide no legal authority for agency rulemakings. Nor may executive orders contradict or alter legal responsibilities an agency has under federal statutes or justify arbitrary and capricious agency action. Equally obvious, memoranda, reports, guidelines and the like provide no legal authority for agency rulemakings, nor may they justify arbitrary and capricious agency action. *See, e.g., Medellin v. Texas*, 552 U.S. 491, 524 (2008) ("The President's authority to act, as with the exercise of any governmental power, 'must stem either from an act of Congress or from the Constitution itself.'" (citation omitted)); *Chrysler Corp. v. Brown*, 441 U.S. 281, 302 (1979) ("The legislative power of the United States is vested in the Congress, and the exercise of quasi-legislative authority by governmental departments and agencies must be rooted in a grant of such power by the Congress and subject to limitations which that body imposes."). Second, an agency's proposed rulemaking may not be at odds with federal statutes, may not be creatures of the agency's imagination or policy preferences, and may not be otherwise arbitrary, capricious or inconsistent with law. The Proposal fails on all of these scores.

This section of our comments explains how these additional materials cited by EPA in the Proposal (1) fail to provide any support for the Proposal, on scientific, technical, policy, logical or legal grounds; and (2) actually undermine the Proposal—contradicting its approaches and assumptions, directly or indirectly—and demonstrate further that the Proposal is unsupported, arbitrary, capricious and otherwise inconsistent with law.

A. Footnote 1

The Proposal states, “The best available science must serve as the foundation of EPA’s regulatory actions.” 83 Fed. Reg. at 18,769. It cites and quotes from Executive Order 13,563, 76 Fed. Reg. 3,821 (Jan. 21, 2011): “Our regulatory system must protect public health, welfare, safety, and our environment while promoting economic growth, innovation, competitiveness, and job creation. It must be based on the best available science.” 83 Fed. Reg. at 18,769 n.1.

The executive order, issued by President Obama, not only does not support the Proposal, it directly undermines the Proposal. There is no suggestion in the cited Obama Executive Order, or in any contemporaneous or subsequent actions by Obama administration federal agencies, that “best available science” means or meant that science underlying an agency’s actions must be publicly available in a manner sufficient for independent validation, nor that “pivotal regulatory science” has any meaning akin to the proposed uses in proposed § 30.3 *See* 83 Fed. Reg. at 18,773 (“dose response data and models” and “pivotal regulatory science”).

To the contrary, no previous administration has conditioned any notion of “best available science” on the public availability of underlying data, or on the concepts behind the invented term, “pivotal regulatory science.” EPA previously routinely used and considered science and studies for which the underlying data was not publicly available as examples of the “best available science.” EPA did so for proposed and final regulations, along with other final agency actions, reports, studies and the like. EPA’s use and consideration of such science was validated by EPA’s science advisory bodies, the National Academy of Science, the Science Advisory Board, and other scientific organizations. *See supra* II.B. And explained in section IX, the Proposal does not provide sufficient explanation for its departure from this past practice.

Moreover, the Executive Order also says that “before issuing a notice of proposed rulemaking,” the “agency shall seek the views of those who are likely to be affected.” 76 Fed. Reg. 3,821. This Proposal failed to do so, despite its wide-reaching effect. A May 12, 2018, Memorandum to Members of the Chartered Science Advisory Board (SAB) and SAB Liaisons from the Chair of SAB Work Group explains: “The proposed rule deals with issues of scientific practice and proposes constraints that the agency may apply to the use of scientific studies in particular contexts. As such, this rule deals with a myriad of scientific issues for which the Agency should seek expert advice from the Science Advisory Board.” *Preparations for Chartered Science Advisory Board (SAB) Discussions of Proposed Rule: Strengthening Transparency in Regulatory Science RIN (2080-AA14)*, May 12, 2018.¹⁹⁵ The Memorandum further explains that “the precise design of the rule appears to have been developed without a public process for soliciting input from the scientific community.”¹⁹⁶ This is contrary to Executive Order 13,563.

¹⁹⁵ *Preparations for Chartered Science Advisory Board (SAB) Discussions of Proposed Rule: Strengthening Transparency in Regulatory Science RIN (2080-AA14)*, May 12, 2018, [https://yosemite.epa.gov/sab/sabproduct.nsf/E21FFAE956B548258525828C00808BB7/\\$File/WkGrp_memo_2080-AA14_final_05132018.pdf](https://yosemite.epa.gov/sab/sabproduct.nsf/E21FFAE956B548258525828C00808BB7/$File/WkGrp_memo_2080-AA14_final_05132018.pdf).

¹⁹⁶ *Id.* at 3.

A June 28, 2018, letter from the Chair of the SAB Board, Dr. Michael Honeycutt, on behalf of the SAB, furthers this point.¹⁹⁷ That letter explains that on May 31, 2018, “the full SAB agreed with the Work Group that the proposed rule merits review by the Board and discussed the scientific issues that should be considered.”¹⁹⁸ The letter reiterates that “the precise design of the proposed rule appears to have been developed without a public process for soliciting input specifically from the scientific community.”¹⁹⁹ This letter underscores that the Proposal is inconsistent with Executive Order 13,563.

B. Footnote 2

The Proposal cites the 2009 Presidential Memorandum for the Heads of Executive Departments and Agencies on Scientific Integrity in support of the proposition that “[e]nhancing the transparency and validity of the scientific information relied upon by EPA strengthens the integrity of EPA’s regulatory actions and its obligation to ensure the Agency is not arbitrary in its conclusions. By better informing the public, the Agency is enhancing the public’s ability to understand and meaningfully participate in the regulatory process.” 83 Fed. Reg. at 18,769 (citing Memorandum for the Heads of Executive Departments and Agencies, Mar. 9, 2009). The Proposal points to the section of the 2009 Memo that states, “If scientific and technological information is developed and used by the Federal Government, it should ordinarily be made available to the public. To the extent permitted by law, there should be transparency in the preparation, identification, and use of scientific and technological information in policymaking.” *Id.* n.2.

First, the cited sentence refers to information developed and used by the federal government, but EPA has long held that it may use published scientific studies without obtaining the underlying raw data. *See, e.g.*, Initial Brief of Respondent United States Environmental Protection Agency at 47–48, *Coalition of Battery Recyclers Ass’n v. EPA*, No. 09-1011 (D.C. Cir. January 19, 2010), ECF No. 1226234 (explaining that EPA does not have an obligation to obtain and docket raw data from scientific studies it uses). The Proposal has pointed to no instances where the EPA was not transparent in the preparation, identification, and use of scientific information, including published peer reviewed scientific studies. Second, the cited sentence takes a more nuanced approach than the Proposal and recognizes exceptions even for the information developed and used by the federal government.

Importantly, the 2009 Presidential Memo also states in the sentence immediately preceding the quotation singled out by EPA, “Political officials should not suppress or alter scientific or technological findings and conclusions.” Memorandum for the Heads of Executive Department and Agencies on Scientific Integrity, 74 Fed. Reg. 10,671 (Mar. 9, 2009). The

¹⁹⁷June 28, 2018, Letter to Scott Pruitt re Science Advisory Board (SAB) Consideration of EPA Proposed Rule: Strengthening Transparency in Regulatory Science, [https://yosemite.epa.gov/sab/sabproduct.nsf/LookupWebReportsLastMonthBOARD/4ECB44CA28936083852582BB004ADE54/\\$File/EPA-SAB-18-003+Unsigned.pdf](https://yosemite.epa.gov/sab/sabproduct.nsf/LookupWebReportsLastMonthBOARD/4ECB44CA28936083852582BB004ADE54/$File/EPA-SAB-18-003+Unsigned.pdf).

¹⁹⁸ *Id.* at 2.

¹⁹⁹ *Id.* at 3.

Proposal, far from preserving the integrity of science, attempts to suppress established scientific findings and conclusions in the name of transparency.

The Proposal's citation to the 2009 Presidential Memo misconstrues the Memo's aims by cherry-picking a single sentence and ignoring the remainder. While the Memo emphasizes the importance of transparency and validity of scientific information, it in no way supports the Proposal's use of transparency to justify the suppression of scientific findings. Unlike the Proposal, the 2009 Presidential Memo adopts a nuanced view of scientific integrity that balances transparency with other considerations, such as privacy and avoiding scientific censorship. To this end, several statements in the 2009 Presidential Memo on Scientific Integrity directly undercut the Proposal:

(c) When scientific or technological information is considered in policy decisions, the information should be subject to well-established scientific processes, including peer review where appropriate, and each agency should appropriately and accurately reflect that information in complying with and applying relevant statutory standards . . .

Id. The Proposal seeks to preclude scientific information that has been subject to well-established scientific processes, including peer review. The Proposal also seeks to upend compliance and application of the relevant statutory standards. *See* section III.

(d) Except for information that is properly restricted from disclosure under procedures established in accordance with statute, regulation, Executive Order, or Presidential Memorandum, each agency should make available to the public the scientific or technological findings or conclusions considered or relied on in policy decisions . . .

Id. The Memorandum requires agencies to make available the scientific findings or conclusions, and even that requirement has exceptions. The Proposal would arbitrarily exclude consideration of relevant scientific findings and conclusions if the underlying data is not publicly available.

The 2009 Presidential Memorandum for the Heads of Executive Departments and Agencies on Scientific Integrity does not support EPA's proposed actions. The Proposal does not enhance transparency and validity of scientific information relied upon by EPA. It requires the agency to ignore valid scientific studies in its decision making and thus will lead to arbitrary results and weaken the integrity of EPA's actions.

C. Footnote 3

The Proposal states that it is consistent "with the principles underlying the Administrative Procedure Act and programmatic statutes that EPA administers to disclose to the public the bases for agency rules and to rationally execute and adequately explain agency actions." 83 Fed. Reg. at 18,769. In a footnote to this sentence the Proposal states:

EPA has the authority to establish policies governing its reliance on science in the administration of its regulatory functions. Historically, EPA has not consistently observed the policies underlying this Proposal, and courts have at times upheld EPA's use non-public data in support of its regulatory actions. *See Coalition of Battery Recyclers Ass'n v. EPA*, 604 F.3d 613, 623 (D.C. Cir. 2010); *American Trucking Ass'ns v. EPA*, 283 F.3d

355, 372 (D.C. Cir. 2002). EPA is proposing to exercise its discretionary authority to establish a policy that would preclude it from using such data in future regulatory actions.

83 Fed. Reg. at 18,769 n.3.

EPA recognizes the cited cases contradict the proposed rule but attempts to waive them away and asserting it has discretionary authority to do the opposite of what the D.C. Circuit decided. EPA's consideration of peer reviewed scientific studies that do not have public data is the norm, required by the Administrative Procedure Act and the programmatic statutes that EPA administers. *See* sections II, IV, & V. The proposed departure from this norm to preclude the use of such data, which the Proposal makes explicit in this footnote, is not within EPA's discretion and would violate the programmatic statutes. As explained above, nothing the Proposal provides EPA with authority to do so. The Proposal's citations to two cases that contradict its proposed actions does not support the unexplained assertion of authority.

The court in *American Trucking* stated:

More generally, we agree with EPA that requiring agencies to obtain and publicize the data underlying all studies on which they rely "would be impractical and unnecessary." Particulate Matter NAAQS, 62 Fed. Reg. at 38,689. As EPA persuasively stated in denying Petitioners' original request for the information:

If EPA and other governmental agencies could not rely on published studies without conducting an independent analysis of the enormous volume of raw data underlying them, then much plainly relevant scientific information would become unavailable to EPA for use in setting standards to protect public health and the environment.... [S]uch data are often the property of scientific investigators and are often not readily available because of ... proprietary interests ... or because of [confidentiality] arrangements [with study participants].

Am. Trucking Associations, Inc., 283 F.3d at 372.

In *Coalition of Battery Recyclers*, the D.C. Circuit cited *American Trucking*, explaining that the court had "rejected the notion that EPA had improperly failed to obtain and make public data underlying studies on which it had relied during a NAAQS rulemaking, holding that '[t]he Clean Air Act imposes no such obligation' and that 'requiring agencies to obtain and publicize the data underlying all studies on which they rely would be impractical and unnecessary.'" 604 F.3d at 623 (citations omitted). The court noted "that raw data often is unavailable due to proprietary interests of a study's scientific investigators or confidentiality agreements with study participants." *Id.*

The Proposal at least concedes that D.C. Circuit law does not support its actions. Yet EPA not explain how the Proposal is consistent with the principles underlying the Administrative Procedure Act and programmatic statutes that EPA administers. To the extent EPA believes this to be true, it should withdraw the Proposal and explain its belief.

D. Footnotes 4 & 5

The Proposal states that it is consistent with Executive Orders 13,777 and 13,783. 83 Fed. Reg. at 18,769.

The Proposal states that “[r]egulatory reform efforts shall attempt to identify ‘those regulations that rely in whole or in part on data, information, or methods that are not publicly available or that are insufficiently transparent to meet the standard for reproducibility.’” 83 Fed. Reg. at 18,769 n.4 (quoting Exec. Order No. 13,777, 82 Fed. Reg. 12,285, 12,286 (Mar. 1, 2017)). President Trump’s Executive Order No. 13,777 requires Regulatory Reform Task Forces to evaluate existing regulations and “make recommendations to the agency head regarding their repeal, replacement, or modification, consistent with applicable law.” 82 Fed. Reg. at 12,286. The Executive Order requires the task force to identify regulations that, among other things, “impose costs that exceed benefits,” and “create a serious inconsistency or otherwise interfere with regulatory reform initiatives and policies.” *Id.* The Proposal does not identify any regulations that it believes should be repealed, replaced, or modified, consistent with applicable law. Instead, the Proposal creates a new burdensome regulation. Notwithstanding EPA’s unsupported assertion that it “believes the benefits of this proposed rule justify the costs,” 83 Fed. Reg. at 18,772, the proposed rule will impose costs that exceed benefits, *see* section II.D & E. The inconsistencies within the Proposal are overwhelming (for one of the many examples, the unexplained willingness to consider certain scientific studies in some contexts while excluding the consideration of those same studies in other contexts, *see* section XI). And the Proposal, as explained in sections IV. & V., is not consistent with applicable laws. Rather than being consistent with President Trump’s Executive Order, the proposed rule contradicts it.

Regarding President Trump’s Executive Order 13,783, the Proposal quotes, “It is also the policy of the United States that necessary and appropriate environmental regulations comply with the law, are of greater benefit than cost, when permissible, achieve environmental improvements for the American people, and are developed through transparent processes that employ the best available peer-reviewed science and economics.” 83 Fed. Reg. at 18,769 n.5 (quoting Exec. Order No. 13,783, 82 Fed. Reg. 16,093 (Mar. 31, 2017)). EPA presumably believes the proposed rule is consistent with the language “transparent processes that employ the best available peer-reviewed science and economics.” But that language, and the rest of the quotation, contradicts the Proposal. As explained throughout these comments, the Proposal would prevent EPA from promulgating regulations that comply with the law, would cost more than any benefit it could achieve, and would preclude the use of the best available peer-reviewed science.

E. Footnote 6 & 15

The Proposal cites to the 2002 OMB Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies to justify the Proposal’s focus on transparency, 83 Fed. Reg. at 18,769 n.6, and to support its contention that the guidelines “require” that “regulators to ensure that key findings are valid and credible,” *id.* at 18,770 n.15. Despite these citations, the Guidelines do not support EPA’s proposal to preclude the consideration of peer-reviewed scientific studies. *See Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information*

Disseminated by Federal Agencies, 67 Fed. Reg. 8,452, 8,454 (Feb. 22, 2002). The Proposal points to no agency finding that it believes is invalid and not credible. Rather, the Proposal will cause EPA to reach findings that are invalid and not credible because the agency will make these findings without consideration of the best available science. The Proposal contradicts the Guidelines.

The 2002 OMB Guidelines contain many statements that undercut the Proposal on their face.

Text of 2002 OMB Guidelines
“As a general matter, in the scientific and research context, we regard technical information that has been subjected to formal, independent, external peer review as presumptively objective. . . . An example of a formal, independent, external peer review is the review process used by scientific journals.” 67 Fed. Reg. at 8,454. ²⁰⁰
Analysis
While the 2002 OMB Guidelines recognize technical information that has been subjected to formal, independent, external peer review as “presumptively objective,” the Proposal upends this idea and forces the EPA to regard such technical information as invalid and not worthy of consideration.
Text of 2002 OMB Guidelines
“‘Agencies may identify, in consultation with the relevant scientific and technical communities, those particular types of data that can practicably be subjected to a reproducibility requirement, given ethical, feasibility, or confidentiality constraints.’ Further, as we state in our expanded definition of ‘reproducibility’ . . . ‘If agencies apply the reproducibility test to specific types of original or supporting data, the associated guidelines shall provide relevant definitions of reproducibility (e.g., standards for replication of laboratory data).’ OMB urges caution in the treatment of original and supporting data because it may often be impractical or even impermissible or unethical to apply the reproducibility standard to such data. For example, it may not be ethical to repeat a ‘negative’ (ineffective) clinical (therapeutic) experiment and it may not be feasible to replicate the radiation exposures studied after the Chernobyl accident. When agencies submit their draft agency guidelines for OMB review, agencies should include a description of the extent to which the reproducibility standard is applicable and reflect consultations with relevant scientific and technical communities that

²⁰⁰ This statement is qualified by a section on the sufficiency of peer review: “Some comments argued that journal peer review should be adequate to demonstrate quality, even for influential information that can be expected to have major effects on public policy. OMB believes that this position overstates the effectiveness of journal peer review as a quality-control mechanism. Although journal peer review is clearly valuable, there are cases where flawed science has been published in respected journals.” *Id.* at 8,455. Nonetheless, nothing in the guidelines suggest that peer-reviewed science can be wholesale ignored simply because the underlying data cannot be made public.

<p>were used in developing guidelines related to applicability of the reproducibility standard to original and supporting data.” <i>Id.</i> at 8,456.</p>
<p>Analysis</p>
<p>The OMB Guidelines emphasize the ethical, feasibility, and confidentiality constraints associated with reproducing particular types of studies, and underscore the importance of consultation with relevant scientific and technical communities in the development of reproducibility requirements. The Proposal recklessly ignores these precautions, subjecting “regulatory science” to requirements that the underlying data be made publicly available in a manner sufficient for independent validation. The Proposal does so without consultation of relevant scientific communities and without concern as to whether such data can practicably be subjected to such requirements. As explained in section II, the data underlying many scientific studies affected by the Proposal cannot be made publicly available given the ethical, feasibility, and confidentiality concerns addressed by the OMB Guidelines.</p>
<p>Text of 2002 OMB Guidelines</p>
<p>“With regard to original and supporting data related thereto, agency guidelines shall not require that all disseminated data be subjected to a reproducibility requirement. Agencies may identify, in consultation with the relevant scientific and technical communities, those particular types of data that can practicable [sic] be subjected to a reproducibility requirement, given ethical, feasibility, or confidentiality constraints. It is understood that reproducibility of data is an indication of transparency about research design and methods and thus a replication exercise (i.e., a new experiment, test, or sample) shall not be required prior to each dissemination.” <i>Id.</i> at 8,460.</p>
<p>Analysis</p>
<p>The Guidelines state that reproducibility of data is one indication of transparency but does not suggest that reproducibility is the <i>only</i> indication of transparency, nor does it suggest that agencies should preclude non-reproducible, non-publicly available scientific studies from agency consideration, as the Proposal envisions. Contrary to the Proposal, the Guidelines state that agencies should not require data to be subjected to a reproducibility requirement.</p>
<p>Text of 2002 OMB Guidelines</p>
<p>“With regard to analysis of risks to human health, safety and the environment maintained or disseminated by the agencies, agencies shall either adopt or adapt the quality principles applied by Congress to risk information used and disseminated pursuant to the Safe Drinking Water Act Amendments of 1996 (42 U.S.C. 300g– 1(b)(3)(A) & (B)). Agencies responsible for dissemination of vital health and medical information shall interpret the reproducibility and peer-review standards in a manner appropriate to assuring the timely flow of vital information from agencies to medical providers, patients, health agencies, and the public. Information quality standards may be waived temporarily by agencies under urgent situations</p>

(e.g., imminent threats to public health or homeland security) in accordance with the latitude specified in agency-specific guidelines.” <i>Id.</i>
Analysis
The Guidelines recognize the ethical, feasibility, and confidentiality constraints of reproducing certain types of data. The Proposal ignores these issues. Furthermore, the Guidelines recommends that risk assessments related to human health, safety, and the environment are subject to quality principle standards established by Congress through the SDWA, which differ from the Proposal.
Text of 2002 OMB Guidelines
“Even in a situation where the original and supporting data are protected by confidentiality concerns, or the analytic computer models or other research methods may be kept confidential to protect intellectual property, it may still be feasible to have the analytic results subject to the reproducibility standard. For example, a qualified party, operating under the same confidentiality protections as the original analysts, may be asked to use the same data, computer model or statistical methods to replicate the analytic results reported in the original study. <i>See, e.g., ‘Reanalysis of the Harvard Six Cities Study and the American Cancer Society Study of Particulate Air Pollution and Mortality,’ A Special Report of the Health Effects Institute’s Particle Epidemiology Reanalysis Project, Cambridge, MA, 2000.</i> ” <i>Id.</i> at 8,456.
Analysis
Unlike the Proposal, the OMB Guidelines recognize that studies have been able to be reproduced even without publicly disclosing all their data. Although the OMB Guidelines positively discuss this option, the Proposal would preclude EPA from considering both the initial study and the reanalysis study from consideration in regulatory decision making.

The Proposal’s concerns about transparency are addressed by the Guidelines and do not justify precluding consideration of the best available science. The 2002 OMB Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies does not support the Proposal. *See also* section II.A.

F. Footnote 7

The Proposal claims that it is consistent with the OMB Memorandum 13-13: Open Data Policy—Managing Information as an Asset, which

requires agencies to collect or create information in a way that supports downstream information processing dissemination activities. This includes using machine-readable and open formats, data standards, and common core and extensible metadata for all new information creation and collection efforts. It also includes agencies ensuring information stewardship through the use of open licenses and review of information for privacy, confidentiality, security, or other restrictions to release.

83 Fed. Reg. at 18,770 n.7. However, the Open Data Policy required that agencies balance the “value of openness against the cost of making those data public.” 2013 OMB Memorandum for the Heads of Executive Departments and Agencies on Open Data Policy at 6. Included in the costs of making those data public is an individual’s right to privacy, which the agencies are required to consider when releasing data. *Id.* at 10. The EPA’s Proposal does not balance these values, and instead pursues public availability of data in the realm of dose response data at all costs.

The Open Data Policy Memorandum contains a number of passages that conflict with, rather than support, the Proposal:

Nothing in this Memorandum shall be construed to affect existing requirements for review and clearance of pre-decisional information by OMB relating to legislative, budgetary, administrative, and regulatory materials. Moreover, nothing in this Memorandum shall be construed to reduce the protection of information whose release would threaten national security, invade personal privacy, breach confidentiality or contractual terms, violate the Trade Secrets Act, violate other statutory confidentiality requirements, or damage other compelling interests.

Id. at 12. The Open Data Policy Memorandum specifically called out the problem of exposing personally identifiable information:

As defined in OMB Memorandum M-1 0-23, ‘personally identifiable information’ (PII) refers to information that can be used to distinguish or trace an individual’s identity, either alone or when combined with other personal or identifying information that is linked or linkable to a specific individual. The definition of PII is not anchored to any single category of information or technology. Rather, it requires a case-by-case assessment of the specific risk that an individual can be identified. In performing this assessment, it is important for an agency to recognize that non-PII can become PII whenever additional information is made publicly available (in any medium and from any source) that, when combined with other available information, could be used to identify an individual.

Id. at 4. The Memorandum expresses concern for individual privacy and notes the ease with which non-personally identifiable information can be used to identify an individual when combined with other publicly available information. The Proposal attempts to wave away these concerns with assertions that confidential information can be de-identified. 83 Fed. Reg. at 18,770–71. The problems with the Proposal’s emphasis of such “de-identification” techniques are explored further in section II.D. Far from weighing considerations of privacy, the Proposal would simply bar the use of studies based on confidential information that could not be de-identified.

Again, while the Memorandum makes clear that agencies must consider privacy, it says nothing about barring agency consideration of documents based on that analysis. Rather, the thrust of the Memorandum is ensuring that private information is not inadvertently publicly disclosed, and balancing that obligation with the presumption of government openness:

Agencies must incorporate privacy analyses into each stage of the information's life cycle. In particular, agencies must review the information collected or created for valid restrictions to release to determine whether it can be made publicly available, consistent with the *Open Government Directive's* presumption in favor of openness, and to the extent permitted by law and subject to privacy, confidentiality pledge, security, trade secret, contractual, or other valid restrictions to release. If the agency determines that information should not be made publicly available on one of these grounds, the agency must document this determination in consultation with its Office of General Counsel or equivalent.

Id. at 9.

It is not clear to what extent EPA believes the Proposal is consistent with the Memorandum. But given the Memorandum's recognition of the various constraints on, and nuanced approach to, the release of data publicly, EPA's reliance on the Memorandum is misplaced. The Proposal's attempt to preclude consideration of peer reviewed science from regulatory review is not consistent with the Memorandum.

G. Footnotes 8 & 9

The Proposal states that it "builds upon prior EPA actions in response to government wide data access and sharing policies, as well as the experience of other federal agencies in this space." 83 Fed. Reg. at 18,770 (footnotes omitted). A footnote to this sentence generally lists the following, without any explanation of how the Proposal builds upon them:

Plan to Increase Access to Results of EPA-Funded Scientific Research; EPA Open Government Plan 4.0; Open Data Implementation Plan; EPA's Scientific Integrity Policy; Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Environmental Protection Agency.

83 Fed. Reg. at 18,769 n.8. Another footnote generally lists the following agencies, again without any explanation of how the Proposal builds upon their experience:

For example, see related policies from the National Science Foundation, National Institute of Science and Technology, the National Institutes of Health; and the U.S. Census Bureau, which provides secure access to data from several agencies in an environment that protects against unauthorized disclosure (<https://www.census.gov/fsrdc>).

Id. n.9. First, EPA does not explain what it means by "builds upon." The EPA's own Science Advisory Board Work Group states that the preamble to the rule does not "describe precisely how the [P]roposal builds on previous efforts to promote transparency such as the Information Quality Act and EPA's Information Quality Guidelines." May 12, 2018 Memorandum to Members of the Chartered Science Advisory Board (SAB). The citations are to large documents and policies and it is not clear what, if any, parts EPA believes the Proposal "builds upon." Second, none of these documents or agency policies bar, or recommend barring, the use of

studies in regulatory decision making, as the Proposal seeks to do. Third, many of these documents contradict, and support the withdrawal of, the Proposal.

The Proposal cites the 2016 EPA Plan to Increase Access to Results of EPA-Funded Scientific Research (“2016 EPA Plan”). 83 Fed. Reg. at 18,770 n.8. But the Proposal is a significant departure from the policy advanced in the 2016 EPA Plan. The Plan recognized that some data could not be made publicly available due to privacy and confidentiality concerns, acknowledged that peer-reviewed publications based on such data were no less scientifically valid, and specifically excluded this data from the purview of the plan to increase access. 2016 EPA Plan, at 4–6, 19. In contrast, the Proposal would prevent the EPA from considering a peer-reviewed publication related to dose response if its underlying data could not be made publicly available.

In fact, statements in the 2016 EPA Plan undercut the Proposal:

While the Agency strives to increase access to its research results, it recognizes, consistent with the OSTP Memo, that Federal agencies have a responsibility to protect confidentiality and personal privacy, respect proprietary interests and property rights, and balance between the value of providing long-term access and its associated costs. It is important to recognize that some research data cannot be made fully available to the public but instead may need to be made available in more limited ways, e.g., establishing data use agreements with researchers that respect necessary protections. *Whether research data are fully available to the public or available to researchers through other means does not affect the validity of the scientific conclusions from peer-reviewed research publications.*

Id. at 4–5 (emphasis added). The Proposal ignores the 2016 EPA Plan’s express acknowledgment that the validity of peer-reviewed scientific research does not depend on the public availability of the underlying data. Though the 2016 EPA Plan clearly states that research can be valid even if its data are not publicly available, the Proposal requires EPA to disregard this valid research.

The 2016 EPA Plan also makes clear that it does not restrict EPA’s ability to consider conclusions or data:

Nothing in this Plan shall be construed to impair or otherwise affect the authority granted by law to EPA. The validity of scientific conclusions drawn from research publications or their associated research data, or EPA’s ability to consider those conclusions and data in its actions, does not depend on compliance with this Plan.

Id. at 6. In contrast, the Proposal requires that EPA ignore certain conclusions or data that is not publicly available.

The 2016 EPA Plan also contains definitions that EPA claims to include in the Proposal, but, in reality, does not:

Scientific research data are defined, consistent with the OSTP Memo and 2 C.F.R. 200.315 as the digital recorded factual material commonly accepted in the scientific

community as necessary to validate research findings. *Research data* as used in this Plan are the digital scientific research data resulting from EPA-funded scientific research.

Id. at 19.

Consistent with the definition in 2 C.F.R. § 200.315(e)(3), research data does not include:

- Preliminary analyses, drafts of scientific papers, plans for future research, peer reviews, or communications with colleagues;
- Physical objects (e.g., laboratory samples);
- Trade secrets and commercial information;
- Materials necessary to be held confidential by a researcher until publication of results in a peer-reviewed journal; and
- *Personnel, medical, and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, such as information that could be used to identify a particular person in a research study.*

The following specific examples of scientific research are excluded from this Plan:

- Interim results or other preliminary scientific research data not used to generate the results in the final peer-reviewed publication;
- Preliminary scientific research documentation beyond the article, supplementary materials, and metadata regarding preliminary research plans, including preliminary study protocols and other preliminary *a priori* decisions (recognizing that preliminary plans may have changed during the research project);
- Information that may disclose intellectual property rights;
- National security and other classified information.

2016 EPA Plan, at 19 n.8 (emphasis added).

The Proposal purports to define Research Data in the same way as the 2016 EPA Plan, as that term is defined in the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, or at 2 C.F.R. § 200.315(e)(3). 83 Fed. Reg. at 18,773 (to be codified at 40 C.F.R. § 30.2). As explained above, in the 2016 EPA Plan, Research Data does not include, among other things, personnel and medical information, and similar information which would constitute an unwarranted invasion of personal privacy, such as information that could be used to identify a particular person in a research study. *See* 2 C.F.R. § 200.315(e)(3); 2016 EPA Plan, at 19 n.8. But puzzlingly, the Proposal does not apply this definition in the Proposal's text, instead creating a new term "dose response data and models" and only excluding from that definition "physical objects (like laboratory samples), drafts, and preliminary analyses." 83

Fed. Reg. at 18,773 (to be codified at 40 C.F.R. § 30.2). Not only is the Proposal inconsistent with the 2016 EPA Plan, but its definitions and application of those definitions conflict with the regulations it purports to apply.

The Proposal also ignores an important distinction between future EPA-funded research, which the agency presumably has more control over, and research funded by other entities or generated in the past, which EPA cannot control:

This Plan prospectively covers peer-reviewed scientific research publications in scholarly journals and digital research data that result from EPA-funded research. The Plan does not apply to research publications or research data generated from scientific research conducted prior to the implementation of the Plan.

2016 EPA Plan at 5. The Proposal, which overlooks this distinction and creates a conflicting definition of research data to preclude consideration of peer reviewed science in regulatory decision making, does not “build upon” the 2016 EPA Plan.

In short, there are key differences between the 2016 EPA Plan and the Proposal:

- The Plan in no way restricts the materials the EPA can consider in its decision-making, *id.* at 5, whereas the Proposal categorically prohibits the EPA from considering certain scientific publications.
- The Plan focuses on making EPA-funded research publications and data available to the public, *id.*, whereas the Proposal applies to research used by the EPA, no matter how it is funded.
- The Plan is forward-looking and does not apply to research conducted prior to implementation, *id.*, whereas the Proposal will, in practice, apply retroactively.
- The Plan applies broadly to EPA-funded publications and data that could be made publicly available, *id.*, with exceptions for sensitive data, while the Proposal specifically targets “dose response data and models” underlying “pivotal regulatory science.”

The Proposal also cites the Open Data Implementation Plan, but again it is not clear how EPA believes the Proposal builds upon that plan. The Open Data Implementation Plan notes exceptions that the Proposal does not adequately address:

The Open Data Policy requires agencies to develop and strengthen policies and processes to ensure that only appropriate data are released to the public and made available online. EPA must designate one of three ‘access levels’ for each data asset (public, restricted public and non-public). Exceptions to publicizing data may result from law, regulation or policy, which address privacy, confidentiality, security or other valid restrictions.

Open Data Implementation Plan, February 11, 2015, at 4. The Open Data Policy recognizes not all data can be made publicly available; it does not suggest that EPA disregard studies based on such data.

The Proposal then cites the Scientific Integrity Policy, which similarly does not support the Proposal. First, the Scientific Integrity Policy “describes the scope and role of a standing committee of Agency-wide scientific integrity officials,” which would presumably include issues the Proposal seeks to address. U.S. Environmental Protection Agency Scientific Integrity Policy, at 1. The Proposal makes no mention of this committee and does not suggest the committee was consulted in developing the Proposal. The Policy states, “To operate an effective science and regulatory agency like the EPA, it is also essential that political or other officials not suppress or alter scientific findings,” *id.*, and “policy makers shall not knowingly misrepresent, exaggerate, or downplay areas of scientific uncertainty associated with policy decisions,” *id.* at 5. Yet this is precisely what political officials at EPA are doing—the Proposal seeks to suppress well-established and peer-reviewed science from consideration by the agency. As explained in section III.G.4, the Proposal’s assertion, without any citations or support, that “there is growing empirical evidence of non-linearity in the concentration-response function for specific pollutants and health effects,” 83 Fed. Reg. at 18,770, is precisely the type of activity the Policy warned against.

The Proposal also cites EPA’s 2002 Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the EPA (OMB Guidance) to support its claim that the Proposal “builds upon prior EPA actions.” 83 Fed. Reg. at 18,770 n.8. Like many of the sources cited, the OMB Guidance does not support the Proposal and contradicts the Proposal’s aims:

When evaluating environmental problems or establishing standards, EPA must comply with statutory requirements and mandates set by Congress based on media (air, water, solid, and hazardous waste) or other environmental interests (pesticides and chemicals). Consistent with EPA’s current practices, application of these principles involves a “weight-of-evidence” approach that *considers all relevant information and its quality, consistent with the level of effort and complexity of detail appropriate to a particular risk assessment.*

OMB Guidance, at 21 (emphasis added). The Proposal’s categorical exclusion of non-publicly available “dose response data” is a departure from EPA’s previous practice, as described in the OMB Guidance, of weighing all relevant information. EPA reiterated this in exacting detail in other places in the OMB Guidance:

In the Agency’s development of “influential” scientific risk assessments, *we intend to use all relevant information*, including peer reviewed studies, studies that have not been peer reviewed, and incident information; evaluate that information based on sound scientific practices as described in our risk assessment guidelines and policies; and *reach a position based on careful consideration of all such information (i.e., a process typically referred to as the ‘weight-of-evidence’ approach).* In this approach, *a well-developed, peer-reviewed study would generally be accorded greater weight than information from a less well-developed study that had not been peer-reviewed, but both studies would be considered.* Thus the Agency uses a “weight-of-evidence” process when evaluating peer-reviewed studies along with all other information.

Id. at 26 (emphases added). The OMB Guidance consistently make clear that the agency will consider all scientific information (even non-peer reviewed science). Contrary to the OMB Guidance, the Proposal seeks to disseminate information that excludes consideration of relevant peer-reviewed science. The Proposal does not “build upon,” but rather directly conflicts with, the 2002 OMB Guidance.

H. Footnote 10

The Proposal states that it “takes into consideration the policies or recommendations of third party organizations who advocated for open science.” 83 Fed. Reg. at 18,770. It states that “These include policies and recommendations from: The Administrative Conference of the United States’ Science in the Administrative Process Project; National Academies’ reports on Improving Access to and Confidentiality of Research Data, Expanding Access to Research Data, and Access to Research Data in the 21st Century; the Health Effects Institute; Center for Open Science; members of the Risk Assessment Specialty Section of the Society of Toxicology, the Dose Response Section of the Society for Risk Analysis, and the International Society for Regulatory Toxicology and Pharmacology; and the Bipartisan Policy Center’s Science for Policy Project.” 83 Fed. Reg. at 18,770 n.10.

The Proposal does not explain what it means by “takes into consideration.” To the extent EPA is relying on these policies or recommendations, it has not provided enough information to evaluate that reliance and it must withdraw the Proposal. And consistent with the Proposal’s other citations, EPA points to nothing in the policies or recommendations from these third-party organizations that supports the Proposal’s preclusion of peer-reviewed science from consideration in regulatory decision making.

The Bipartisan Policy Center (BPC) states that “*the proposed rule is not consistent with the BPC report in substance or intent.*”²⁰¹ The BPC further explained that the Science for Policy Project “report never suggested excluding studies from consideration in developing regulation if data from those studies were not publicly available.”²⁰² The BPC concludes “EPA must use the best available science in the most effective way to truly fulfill its mission of protecting human health and the environment.”²⁰³

The Proposal’s “consideration” of these works can be summed up by the author of the Administrative Conference of the United States’ Science in the Administrative Process Project Report, and member of the seven-author panel that produced the Bipartisan Policy Center’s Science for Policy Project:

“I really don’t know what the problem is that they think they’re fixing,” she said, adding that many of her co-authors “would laugh and hoot” at some of the scientific ideas expressed in the rule.

²⁰¹ Grumet, J. 2018. Bipartisan Policy Center comments on “Strengthening Transparency in Regulatory Science,” Docket ID No. EPA-HQ-OA-2018-0259, May 22, <https://www.regulations.gov/document?D=EPA-HQ-OA-2018-0259-0670>.

²⁰² *Id.*

²⁰³ *Id.*

“They don’t adopt any of our recommendations, and they go in a direction that’s completely opposite, completely different,” she told me after reading the rule. “They don’t adopt any of the recommendations of any of the sources they cite. I’m not sure why they cited them.”²⁰⁴

The Proposal *rejects* the policies or recommendations of these third-party organizations. The policies and recommendations of these third-party organizations do not support the EPA’s proposal to preclude the consideration of peer-reviewed studies in regulatory decision making. *See also* section II.E.

I. Footnotes 11 & 12

The Proposal states, “These policies are informed by the policies recently adopted by some major scientific journals, spurred in some part by the ‘replication crisis.’” 83 Fed. Reg. at 18,770 (footnotes omitted). The Proposal cites, as examples “related policies from the Proceedings of the National Academy of Sciences, PLOS ONE, Science, and Nature,” *id.* n.11, as well as articles from three of those journals, plus the Economist, a magazine-format newspaper, *id.* n.12.

It’s not clear to what extent, if any, the Proposal considered or relied on the cited policies. The scientific journal policies appear to have been considered secondarily, to the extent they informed the other organizations’ policies. As explained throughout these comments, the third-party organizations’ policies offer no support for the Proposal. Importantly, all the cited scientific journal policies are for prospective publication, do not suggest disregarding consideration of studies without public data, and have exceptions to protect confidential or private information. *See also* section II & II.E.

The Editors-in-Chief of the Science family of journals and Nature, the Executive Editor of Public Library of Science (PLOS) Journals, the Interim Editor-in-Chief of Proceedings of the National Academy of Sciences, and the Vice President of Editorial/Acting Editor-in-Chief of Cell Press/Cell issued a joint statement on the Proposal:

We are writing in response to a proposed rule announced by the Environmental Protection Agency (EPA) in a 24 April 2018 press release (1). The release reads, “The rule will ensure that the regulatory science underlying Agency actions is fully transparent, and that underlying scientific information is publicly available in a manner sufficient for independent validation.”

Data sharing is a feature that contributes to the robustness of published scientific results. Many peer-reviewed scientific journals have recently adopted policies that support data sharing, consistent with the Transparency and Openness Promotion (TOP) standards. These standards, however, recognize the array of workflows across scientific fields and make the case for data sharing at different levels of stringency; in not every case can all

²⁰⁴ Robinson Meyer, *Scott Pruitt’s New Rule Could Completely Transform the EPA*, The Atlantic, April 25, 2018, <https://www.theatlantic.com/science/archive/2018/04/how-the-epas-new-secret-science-rule/558878/>.

data be fully shared. Exceptional circumstances, where data cannot be shared openly with all, include data sets featuring personal identifiers.

We support maintaining the rigor of research published in our journals and increasing transparency regarding the evidence on which conclusions are based. As part of these goals, we require that all data used in the analysis must be available to any researcher for purposes of reproducing or extending the analysis. Importantly, the merits of studies relying on data that cannot be made publicly available can still be judged. Reviewers can have confidential access to key data and as a core skill, scientists are trained in assessing research publications by judging the articulation and logic of the research design, the clarity of the description of the methods used for data collection and analysis, and appropriate citation of previous results.

*It does not strengthen policies based on scientific evidence to limit the scientific evidence that can inform them; rather, it is paramount that the full suite of relevant science vetted through peer review, which includes ever more rigorous features, inform the landscape of decision making. Excluding relevant studies simply because they do not meet rigid transparency standards will adversely affect decision-making processes.*²⁰⁵

And John P.A. Ioannidis, the author of one of the articles the Proposal cites regarding the alleged “replication crisis” that the Proposal mentions but does not explain, *see* section II., published an editorial in response to the Proposal.²⁰⁶ The article is informatively titled: “All science should inform policy and regulation,” and not surprisingly, it does not support the Proposal. Ioannidis states “[i]f the proposed rule is approved, science will be practically eliminated from all decision-making processes. Regulation would then depend uniquely on opinion and whim.” *Id.* Ioannidis explains that “we should recognize that most of the raw data from past studies are not publicly available,” and

[s]ome deficiencies may be unavoidable. For example, researchers cannot ethically randomize people to harmful exposures in order to tackle confounding, nor violate informed consent agreements that prohibit open sharing of private data from past studies.

*Id.*²⁰⁷ Ioannidis goes on to say that “simply ignoring science that has not yet attained such standards, is a nightmare,” and “we would see governments discarding science at massive scale because of perceived imperfections and impurities.” *Id.*

²⁰⁵ Jeremy Berg, et al., Letter, “Joint statement on EPA proposed rule and public availability of data,” *Science*, Vol. 360, Issue 6388, 4 May 2018, available at <http://science.sciencemag.org/content/360/6388/eaau0116> (emphasis added).

²⁰⁶ Ioannidis, J. P., “All science should inform policy and regulation,” *PLoS Medicine* 15(5) (May 3, 2018), <http://journals.plos.org/plosmedicine/article?id=10.1371/journal.pmed.1002576>.

²⁰⁷ As explained in section III., the Proposal would preclude the consideration of many past studies whose raw data are not and cannot be made available. This issue is also described in the May 12, 2018 SAB Memo discussed above: “For studies published many years ago, it may not be feasible to deliver public access to data and analytic methods.” Whatever strategies the Proposal suggests EPA consider in the future to address confidential and personal information (and the flaws with a proposed rule suggesting a key issue will be solved sometime in the future

Ioannidis also notes that “we have extremely strong evidence that the tobacco pandemic is devastating; that the MMR vaccine is generally safe; that climate change is happening; and that air pollution is a major health hazard,” in contrast to “most dietary advice one might hope to give about specific nutrients.” *Id.* The subjects that Ioannidis explains have strong evidence are the issues EPA is responsible for addressing that the Proposal seeks to discredit. Ioannidis further notes:

For example, the pivotal research on the health effects of air pollution is particularly strong. The Six Cities and American Cancer Society studies are exemplary large-scale investigations, with careful application of methods, detailed scrutiny of measurements, replication of findings, and, importantly, detailed re-analysis of results and assessment of their robustness by entirely independent investigators. The re-analysis and sensitivity analyses were conducted by the Health Effects Institute that was funded by stakeholders some of whom may have desired to see opposite conclusions. It would be wonderful, if in the future the same rigorous re-analysis and replication standards could become the standard for all important areas of research that can inform policy.

Id. (footnotes omitted).

The Proposal does not explain how it takes into consideration the sources cited in footnotes 10–12. Nevertheless, these major scientific journal policies and articles offer no support for EPA’s Proposal to preclude consideration of scientific studies from regulatory decision making.

J. Footnote 13

When seeking comment on how to ensure that more data is available over time for public validation, the Proposal states “EPA has not consistently followed previous EPA policy (e.g., EPA’s Scientific Integrity Guidance, referenced above) that encouraged the use of non-proprietary data and models.” 83 Fed. Reg. at 18,770 n.13. The Proposal provides no support for the idea that EPA has not consistently followed previous EPA policy that encouraged the use of non-proprietary data and models. To the extent EPA believes this is a problem, EPA should withdraw the Proposal and explain what policies it has not followed and how it has not followed those policies. EPA should present options to address those alleged shortcomings. At all events, this general reference to previous EPA policy, just like the references in Footnote 8 discussed above, does not support the Proposal. *See also* sections IV.J & VI.C.

K. Footnote 14

The Proposal states that “EPA’s regulatory science should be consistent with the Office of Management and Budget’s Final Information Quality Bulletin for Peer Review.” 83 Fed. Reg. at 18,770. For this proposition, the Proposal links to a one-page Memorandum on the “Issuance of OMB’s ‘Final Information Quality Bulletin for Peer Review.’” *Id.* n.14 (citing

described below), EPA does not present any strategies for dealing with past studies. This is another reason why the Proposal should be withdrawn.

<https://www.whitehouse.gov/wp-content/uploads/2017/11/2005-M-05-03-Issuance-of-OMB's-Final-Information-Quality-Bulletin-for-Peer-Review-December-16-2004.pdf>). This Memorandum does not contain enough information to determine whether or how the Proposal is consistent with it. The Memorandum merely states that the Bulletin “establishes government-wide guidance aimed at enhancing the practice of peer review of government science documents,” and that “[p]eer review is an important procedure used by the scientific community to ensure that the quality of published information. Peer review can increase the quality and credibility of the scientific information generated across the federal government.” Memorandum on the “Issuance of OMB’s ‘Final Information Quality Bulletin for Peer Review.’” Nothing in the Memorandum or EPA’s description of it supports the Proposal to exclude peer reviewed science from consideration in regulatory decision making.

Similarly, nothing in the Bulletin supports the Proposal either. The Proposal does not point to any peer-reviewed studies without publicly available data that reached incorrect conclusions. The Proposal also does not explain how the current peer review process EPA uses for disseminating information conflicts with the Bulletin. And the Bulletin says nothing about standardized test methods, consistent data evaluation procedures, or good laboratory practices, which the EPA proposes to use in the prior sentence. As explained in throughout these comments and in sections VII., VII, & XV, EPA does not provide enough information on what EPA’s regulatory science would look like under the Proposal to determine if it would be consistent with the Bulletin. If EPA has a plan for how it intends to make its regulatory science consistent with the Bulletin, the agency has not included it in the Proposal. The Proposal should be withdrawn.

The Proposal’s regulatory text states, “EPA shall conduct independent peer review on all pivotal regulatory science used to justify regulatory decisions, consistent with the requirements of the OMB Final Information Quality Bulletin for Peer Review (70 FR 2664) and the exemptions described therein.” 83 Fed. Reg. at 18,774. As explained in section XV, this section is far too vague for the reader to understand what EPA intends and the Proposal provides no justification for why this vague requirement is necessary. The Proposal fails to provide fair notice or justification for its “independent peer review” requirement and before EPA could adopt any final rule with this requirement, EPA must propose a new rule with regulatory text and supporting legal, factual, scientific, and technical information providing fair notice to the public.

L. Footnotes 16-22

The Proposal recognizes that there are concerns about access to confidential or private information. The Proposal cites to various agencies and documents to support its general and unexplained, belief “that concerns about access to confidential or private information can, in many cases, be addressed through the application of solutions commonly in use across some parts of the Federal government.” 83 Fed. Reg. at 18,770. Tellingly, EPA concedes that concerns about access to confidential or private information cannot always be addressed, but says nothing about these instances or how it intends to evaluate them. For the times that EPA believes concerns about access to confidential or private information can be addressed, the Proposal does not explain how it plans to do so nor address the costs. The Proposal merely directs readers to general and vague statements from different contexts. The Proposal fails to provide fair notice or justification of what EPA would do to address issues with confidential or private information.

The Proposal merely says to “See examples from the U.S. Department of Health and Human Services, National Institute of Standards and Technology, U.S. Department of Education, and the U.S. Census Bureau,” *id.* n.16, and points generally to Health and Human Services “Guidance Regarding Methods for De-identification of Protected Health Information in Accordance with the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule,” *id.* n.17. The Proposal does not say what actions from these examples EPA proposes to use.

The Proposal states that the National Academies have noted that in the past, restricted data products were created by relatively simple data masking, coding, and de-identification techniques, and notes that “Nothing in the past suggests that increasing access to research data without damage to privacy and confidentiality rights is beyond scientific reach.” 83 Fed. Reg. at 18,771 (citing *Expanding Access to Research Data Reconciling Risks and Opportunities*, The National Academies Press, 2005, <https://www.nap.edu/catalog/11434/expanding-access-to-research-data-reconciling-risks-and-opportunities> at 27, 36). First, this is not fully supported as experience shows increasing access to data can damage privacy and confidentiality rights. See section II.D. Again, the Proposal does not say which, if any of these techniques the EPA will use, or how the EPA will use them. And while the National Academies may believe that increasing access to data without damage to privacy and confidentiality is not beyond scientific reach, the Proposal does not explain how this belief translates to past, present, and future scientific studies EPA considers in regulatory decision making. This document does not explain how EPA will address concerns about confidential or private information and does not support EPA’s Proposal to preclude consideration of those studies that do not make public underlying data for those, or other reasons.

The Proposal next cites to two National Academies documents and a document from the Bipartisan Commission on Evidence Based Policy. 83 Fed. Reg. at 18,771 & n.19. But the Proposal fails to explain how these documents support its proposed actions or explain how EPA intends to protect confidential information. The Proposal merely states that they “have discussed the challenges and opportunities for facilitating to secure access to confidential data for non-government analysts.” 83 Fed. Reg. at 18,771. The Proposal does not address those challenges or describe the opportunities it intends the EPA to use. Again, these documents do not support the vague Proposal.

The Proposal states that “the requirements for availability may differ,” and “may range from deposition in public data repositories, consistent with requirements for many scientific journals, to, for certain types of information, controlled access in federal research data centers that facilitate secondary research use by the public.” *Id.* (footnotes omitted). The Proposal again cites to journal policies or recommendations generally and the policies for access to data from National Institute of Health and Census Bureau. *Id.* nn.20 & 21. Section II.E. explains how the Proposal misrepresents these policies and that the Proposal is inconsistent with best practices and unworkable in reality.²⁰⁸ Importantly, the Proposal does not say how the requirements would

²⁰⁸ Contrary to the Proposal, the journals cited have exceptions to their data sharing policies and some do not require, but merely encourage, data sharing (<https://authorservices.taylorandfrancis.com/data-sharing-faqs/>, <https://www.elsevier.com/about/our-business/policies/research-data/research-data-faqs>, <http://journals.plos.org/plosone/s/data-availability>, <https://www.springernature.com/gp/authors/research-data->

differ, what studies would be required to deposit what data into what repositories, and what studies would be required to allow controlled access to what data in what federal research data centers. Moreover, the Proposal does not address the costs that these actions would entail. Again, if EPA intends to use these different ways to provide data that meet concerns about confidential and private information, the agency must withdraw the rule and issue a new proposed rule that explains the methods it proposes to use.

The Proposal generally wraps up this section with:

EPA should collaborate with other federal agencies to identify strategies to protect confidential and private information in any circumstance in which it is making information publicly available. These strategies should be cost-effective and may also include: Requiring applications for access; restricting access to data for the purposes of replication, validation, and sensitivity evaluation; establishing physical controls on data storage; online training for researchers; and nondisclosure agreements.

83 Fed. Reg. at 18,771 (footnote omitted). The Proposal's many flaws are clear in these sentences. EPA does not know what the Proposal entails. The Proposal suggests that EPA *should* identify strategies in the future and that these strategies *should be* cost-effective. The Proposal does not say what cost-effective means, nor what EPA should do if it does not identify any cost-effective strategies, yet it still seeks to alter legal obligations and regulatory decision making in reliance on this unexplained suggestion. The EPA also does not point to any authority for the proposition that the agency's consideration of peer reviewed scientific studies depends on the cost-effectiveness of some strategy the agency develops for publicizing and protecting the underlying data.

And listing options EPA can use does not help. The Proposal fails to explain why EPA has not already identified the strategies or options and in what circumstances it would use them. The Proposal suggests that it will exclude a large class of scientific studies from regulatory decision making but contains a vague assertion that it will look for "cost effective" ways in the future to exclude less them.

The corresponding footnote to these sentences offers no further explanation or support: "These recommendations are consistent with those of Lutter and Zorn (2016). <https://www.mercatus.org/system/files/Mercatus-Lutter-Public-Access-Data-v3.pdf>.we re." The document cited is a Working Paper from the Mercatus Center, which advertises itself as "world's premier university source for market-oriented ideas."²⁰⁹ The Working Paper does not provide concrete strategies or regulatory text. Nor does it analyze any strategies' application by EPA and

policy/faqs/12327154). And the National Institute of Health and Census Bureau repositories referenced do not provide access to the repositories to the public but a more limited subset of researchers (e.g., "tenure-track professor, senior scientist, or equivalent," for NIH access, <https://osp.od.nih.gov/scientific-sharing/requesting-access-to-controlled-access-data-maintained-in-nih-designated-data-repositories-e-g-dbgap/>). See also section II.V.

²⁰⁹ <https://www.mercatus.org/about>.

their cost-effectiveness. It similarly states, “the range of potential measures includes . . .” and lists thirteen options.²¹⁰ Contrary to the Proposal, the Working Paper recommends that:

In the event that authors do not supply their underlying data and an agency still believes that relying on the results of a study is warranted, the agency ought to explain why it has sufficient confidence to use the study. For example, the agency might note that other researchers have already reproduced the study results or that the data are available to third parties who sign nondisclosure agreements but that the data cannot be posted publicly.²¹¹

When discussing concerns about access to confidential or private information, the Proposal ignores an important aspect of the problem that it creates: the data masking, coding, and de-identification techniques might not adequately protect confidentiality or privacy. Research has documented that de-identification techniques to render data anonymous is not “simple” as the Proposal characterizes and can lead to the publication of protected confidential or private data. One study explained “[b]y linking demographics to public records such as voter lists, and mining for names hidden in attached documents, we correctly identified 84 to 97 percent of the profiles for which we provided names.”²¹² Another explained that “87% (216 million of 248 million) of the population in the United States had reported characteristics that likely made them unique based only on {5-digit ZIP, gender, date of birth}.”²¹³ Finally, another explains that “any data that is even minutely useful can never be perfectly anonymous.”²¹⁴ The Proposal does not address these difficulties and should be withdrawn. *See also* section II.D.

EPA’s belief that concerns about access to confidential or private information caused by the Proposal should be addressed in the future is problematic by itself. The cited materials—describing ways different organizations can address concerns in different contexts—do not support this belief. The Proposal does not propose or analyze any strategies it notes EPA should consider, even though it seeks to implement a binding legal change. The Proposal also does not consider important limitations of making underlying data publicly available. This is not surprising given that the Proposal sent for the Office of Information and Regulatory Affairs four-day Executive Order 12,866 review stated that “EPA believes that concerns about access to confidential or private information are without merit.”²¹⁵ While at least EPA recognized the merit to concerns about confidential or private information, in the four days since sending the

²¹⁰ Randall Lutter and David Zorn, *On the Benefits and Costs of Public Access to Data Used to Support Federal Policy Making*, Mercatus Working Paper, September 2016, at 31.

²¹¹ *Id.* at 32–33.

²¹² Sweeney, L., Abu, A., & Winn, J. Identifying Participants in the Personal Genome Project by Name, Harvard University, Data Privacy Lab White Paper at 1, Cambridge 2013, <https://dataprivacylab.org/projects/pgp/1021-1.pdf>.

²¹³ Sweeney, L., Simple Demographics Often Identify People Uniquely, Carnegie Mellon University, Data Privacy Working Paper 3 at 2, Pittsburgh 2000, <https://dataprivacylab.org/projects/identifiability/paper1.pdf>.

²¹⁴ Paul Ohm, *Broken Promises of Privacy: Responding to the Surprising Failure of Anonymization*, 57 UCLA L. Rev. 1701, 1755 (2010).

²¹⁵ EO 12866 Proposal 2080-AA14 OIRA Review Start Document, Docket ID No. EPA-HQ-OA-2018-0259, at 6, April 17, 2018, <https://www.regulations.gov/document?D=EPA-HQ-OA-2018-0259-0007>; OIRA Conclusion of EO 12866 Regulatory Review, <https://www.reginfo.gov/public/do/eoDetails?rrid=128014>.

version for review the agency clearly did not perform the analysis necessary to figure out how those concerns would be addressed.

The impact and costs of the Proposal are dependent on such strategies and cannot be measured or analyzed without proposed regulatory text. EPA cannot publish a final rule without first proposing what it will do about confidential and private information and analyzing the option it proposes. EPA should withdraw the Proposal.

M. Footnote 23

The Proposal states:

The benefits of EPA ensuring that dose response data and models underlying pivotal regulatory science are publicly available in a manner sufficient for independent validation are that it will improve the data and scientific quality of the Agency's actions and facilitate expanded data sharing and exploration of key data sets; *this is consistent with the conclusions of the National Academies.*

83 Fed. Reg. at 18,772 (emphasis added, footnote omitted). The last statement links to a 120-page document titled *Expanding Access to Research Data Reconciling Risks and Opportunities*, by the Panel on Data Access for Research Purposes, Committee on National Statistics, Division of Behavioral and Social Sciences and Education of the National Research Council of the National Academies Press. *Id.* (citing <https://www.nap.edu/catalog/11434/expanding-access-to-research-data-reconciling-risks-and-opportunities>).

The Proposal does not suggest that its plan to preclude the use of scientific studies from regulatory decision making is consistent or supported by the National Academies. Rather, the Proposal generally states that benefits of data availability the Proposal seeks is consistent with conclusions of the National Academies. The Proposal does not say what the conclusions of the National Academies are or how they support the Proposal. The charge to the Panel in the cited document was “to assess competing approaches to promoting exploitation of the research potential of microdata—particularly linked longitudinal microdata—while preserving respondent confidentiality.”²¹⁶ The panel was asked to consider the tradeoffs between the benefits and risks of data access and to make recommendations about “how microdata should optimally (from a societal standpoint) be made available to researchers.”²¹⁷ The panel offered various recommendations, focused on agencies that have data-collection responsibilities providing data to researchers. This is a different context than EPA's proposal to preclude the consideration scientific studies when undertaking its statutorily required decision making to protect human health and the environment. EPA's general citation to this 120-page document for consistent conclusions does not support the Proposal.

²¹⁶ *Expanding Access to Research Data Reconciling Risks and Opportunities*, The National Academies Press, 2005, at 1-2.

²¹⁷ *Id.*

N. Footnote 24

The cost-benefits analysis for the Proposal is non-existent, violates Executive Orders 12,866 and 13,563, and on its own requires that the Proposal be withdrawn. *See also* section II.D. Without support, the Proposal states that “EPA believes the benefits of this proposed rule justify the costs.” 83 Fed. Reg. at 18,772. The most discussion of costs occurs when the Proposal quotes the Mercatus Center free-market think-tank Working Paper discussed above:

One recent analysis found that: “Improvements in reproducibility can be thought of as increasing the net benefits of regulation because they would avoid situations in which costs or benefits are wrongly estimated to occur or in which regulatory costs are imposed without corresponding benefits. . . .” They concluded that “an increase in existing net benefits from greater reproducibility, which, if it occurred, would cover the costs of obtaining the data and making the data available.”

Id. (quoting Randall Lutter and David Zorn, *On the Benefits and Costs of Public Access to Data Used to Support Federal Policy Making*, Mercatus Working Paper, September 2016).

This quote is not close to a sufficient cost-benefit analysis. First, the Working Paper’s plausibility analysis is dubious. Among other problems, the analysis examines the time it takes for chemical manufactures, processors, and distributors to identify and provide *studies* in their possession related to a specific chemical and equates that to the time it would take EPA to obtain, review, process, redact, and publicly maintain *data* for any study it considers. Lutter and Zorn, at 21–22 (citing (40 C.F.R. pt. 716)). The chemical study Health and Safety Data Reporting Rule and the cost estimate the Working Paper’s analysis is based on does not require submission of underlying data unless requested by EPA. 40 C.F.R. § 716.10(a)(4). The analysis also does not include time or costs to the researchers outside of the agency. Lutter and Zorn, at 21–22. Further, the Working Paper assumes that EPA would only receive the underlying data for 20% of the requested scientific studies EPA relies on. *Id.* at 25. Therefore, the Working Paper lowers the already questionable cost estimate by eliminating costs associated with collecting and preparing data for the other 80% of studies. *Id.* The Working Paper does not explain what the authors expect EPA to do about 80% of studies EPA currently relies on for which it does not receive the underlying data, but the Proposal would require the agency to unlawfully ignore those studies in regulatory decision making.

Importantly, even the partial quote the Proposal presents does not provide results of a cost-benefit analysis nor conclude the costs outweigh the benefits. Instead it says that *if* an increase in benefits occurred, the costs would be covered. The same article states this point explicitly:

Of course, our estimates of the benefits of public access to data supporting federal regulatory decisions fall short of proving that the benefits outweigh the associated costs. They do show, however, the plausibility of such a claim.

Lutter and Zorn, at 29. The Proposal does nothing to address this or try to determine how plausible such a claim is. EPA has not provided a defined Proposal, nor done any cost analysis of its Proposal, that could be analyzed. The fact that this is the best support the EPA could provide

for its baseless belief that the Proposal's benefits justify its costs further shows that EPA must withdraw the Proposal.

The additional materials cited by EPA do not provide any support for the Proposal, on scientific, technical, policy, logical, or legal grounds, and in fact, the materials actually undermine the Proposal. The cited materials demonstrate that the Proposal is unsupported, arbitrary, capricious, and otherwise inconsistent with law. The fact that EPA cites many of these materials because they contain, from different contexts, options EPA could enact as part of the proposed rule further demonstrates that the Proposal must be withdrawn as it fails to provide fair notice to the public of what is being proposed.

VII. The proposed rule's definitions are vague, arbitrary, and capricious, and fail to provide fair notice to the public of how EPA would implement any final rule

The Administrative Procedure Act requires notices of proposed rulemakings to include "the terms or substance of the proposed rule or a description of the subjects and issues involved." 5 U.S.C. § 553(b)(3). Proposals must "provide sufficient factual detail and rationale for the rule to permit interested parties to comment meaningfully." *Honeywell International, Inc. v. EPA*, 372 F.3d 441, 445 (D.C. Cir. 2004).

The instant Proposal lacks any statutory authority for regulatory terms and text, concepts, and other inventions that make up its foundation. Moreover, many of these regulatory terms and text are vague, unexplained, internally inconsistent, and otherwise arbitrary and capricious.

A. "pivotal regulatory science" (§§ 30.2, 30.3)

The term "pivotal regulatory science" is perhaps the most vague, unexplained and internally inconsistent term used in the Proposal. The term has no statutory basis in any statute cited by EPA, or otherwise. Beyond having no statutory underpinning, the meaning of the phrase is neither self-evident nor adequately defined in the Proposal.

EPA's choice to modify "regulatory science" with the adjective "pivotal" does nothing to clarify the scope of scientific studies and information encompassed by the Proposal. "Pivotal regulatory science" is defined within the regulation as "the specific scientific studies or analyses that drive the requirements and/or quantitative analysis of EPA final significant regulatory decisions." 83 Fed. Reg. at 18,773/3 (proposed § 30.2). This definition is as unclear and unsupported as the term itself.

The use of the phrase "drive the requirements" within the C.F.R. definition is particularly incoherent. What does "drive the requirements" mean? The Proposal nowhere says. Does the definition apply only to scientific studies that were outcome determinative? Does it encompass any scientific study that was considered in making the requirements? What about studies that were useful but not determinative? Something else entirely? Can more than one study be "pivotal" to the regulatory decision, or does the term "drive the requirements" imply that only one study could be "pivotal" to a given decision? Furthermore, are most of the studies used by EPA considered to "drive the requirements" or is this term limited in some fashion, unrevealed to the public? Will EPA "know it when it sees it," making it up as the agency goes along?

It is arbitrarily, vague, and unexplained under the Proposal which science would be considered “pivotal,” and under what conditions. Because the term was created out of thin air to serve EPA’s purposes and has no statutory grounding or intuitive meaning, this ambiguity-ridden definition is woefully inadequate. It is also arbitrary and capricious and an abuse of EPA’s discretion. EPA is well aware of the insufficiency of the definition, as is evident in the agency’s solicitation of comments on the definitions of “pivotal regulatory science” and “dose response data and models” within the Proposal. *See* 83 Fed. Reg. at 18,771.

Notably, the proposed C.F.R. definition also differs substantially from a definition of “pivotal regulatory science” appearing earlier in the Proposal, which defines the term as “the studies, models, and analyses that drive the magnitude of the benefit-cost calculation, the level of a standard, or point-of departure from which a reference value is calculated. In other words, they are critical to the calculation of a final regulatory standard or level, or to the quantified costs, benefits, or risks and other impacts on which a final regulation is based.” 83 Fed. Reg. at 18,770.

Next, it bears repeating that EPA does not and cannot identify any statutory basis—in federal environmental statutes, the Administrative Procedures Act or otherwise—to apply the Proposal’s approach “to the calculation of a final regulatory standard or level, or to the quantified costs, benefits, or risks and other impacts on which a final regulation is based.” 83 Fed. Reg. at 18,770. EPA simply makes this up.

EPA’s separate explanation here suffers from additional defects, namely an internal inconsistency, incoherency and unbounded reach that do not accord with the proposed C.F.R. definition. EPA’s preambular explanation says that “pivotal regulatory science” is “critical to the calculation of a final regulatory standard or level, or to the quantified costs, benefits, or risks *and other impacts* on which a final regulation is based.” 83 Fed. Reg. at 18,770 (emphasis added). The Proposal nowhere explains what these “other impacts” are. Nor does the Proposal limit or bound these “other impacts,” nor link them to the sentence’s incoherent notion of what is “critical” and what is not. Moreover, the preambular gloss is inconsistent with the proposed C.F.R. definition. The former says “pivotal regulatory science” is critical to hopelessly vague “other impacts” on which a final rule is based. *Id.* The proposed C.F.R. definition, by contrast, says “pivotal regulatory science” “drive[s] the requirements and/or quantitative analysis of EPA final significant regulatory decisions.” 83 Fed. Reg. at 18,773/3 (proposed § 30.2). The Proposal does not square the contradictions between science that drives a final rule’s requirements and science that is “critical” to “other impacts” in a final rule.

Furthermore, EPA not only fails to provide a passable definition for its invented term, “pivotal regulatory science,” the agency fails to provide its rationale for limiting the scope of the rule to so-called “pivotal regulatory science.” Within the unlawful, arbitrary, and capricious worldview reflected in the Proposal, why is the “public availability of science and data in a manner sufficient for independent validation” any less important or necessary or justified when the science is not “pivotal” or “critical” to a regulatory decision? Why should not all science, studies, data and information considered by EPA meet the standards for transparency, verifiability, independent validation, and trustworthiness that are the abiding concerns of the Proposal? Why is it not arbitrary and capricious for EPA to continue to consider science and data

that are unavailable and insufficient for independent validation in areas outside the reach of the Proposal? EPA offers no explanation for this disparate treatment; the agency's reasoning, such as it is, is entirely conclusory.

By way of explanation for the limitation, EPA only suggests that the imposed standards “are of paramount importance when the government relies on science to inform its significant regulatory decisions.” 83 Fed. Reg. at 18,769. This explanation is hopelessly circular and ultimately incoherent. For starters, EPA does not explain why it believes this explanation to be true. Next, the Proposal just substitutes the word, ‘paramount,’ for the word, ‘critical,’ that it substitutes for the word, ‘pivotal.’ (The Proposal’s drafters evidently were just flipping through a thesaurus.) This failure to thoroughly explain both the term “pivotal regulatory science” in a way that meaningfully defines the scope of the regulation, and the rationale behind limiting the application only to pivotal (critical, paramount) science, makes it impossible for interested parties to comment fully and meaningfully on the Proposal. Should EPA intend to finalize this unlawful proposal, EPA first must withdraw the Proposal, then issue a supplemental proposal with the necessary definitions and explanations. Better yet, EPA should abandon this illegal and harmful proposal altogether.

B. “regulatory science” (§ 30.1)

Amazingly, the key regulatory purpose of the Proposal, addressed in proposed section 30.1, does not even use the term “pivotal regulatory science” (or critical or paramount regulatory science, for that matter). Instead, section 30.1 uses the altogether different term, “regulatory science.” 83 Fed. Reg. at 18,773/2.

The Proposal makes no attempt to clarify how “pivotal regulatory science” is distinct from the separately defined, “regulatory science,” a term integral to proposed section 30.1, which states the Proposal’s very purpose. “Regulatory science” is defined to mean “scientific information, including assessments, models, criteria documents, and regulatory impact analyses, that provide the basis for EPA final significant regulatory decisions.” *Id.* (proposed § 30.2). This definition is almost identical to that of pivotal regulatory science, with the exception that “regulatory science” encompasses information that “provide the basis for EPA final significant regulatory decisions,” while “pivotal regulatory science” “drives the requirements.”

The phrase “provides the basis” does nothing to illustrate the meaning of regulatory science, or to limit or particularize its scope, because it is equally vague and unexplained. *All* science, data, and information considered by EPA, and relied upon by EPA, “provides the basis” for final EPA regulatory decisions, insofar as EPA includes those materials in its administrative record, certifies that record for judicial review, and may cite and rely upon that information in explaining and defending its final regulatory decisions. Accordingly, the proposed “regulatory science” definition is capacious and unbounded, so long as EPA considered it, making the definition very far afield from the narrower, undefined, and no less incoherent, “pivotal regulatory science.”

Alternatively, the phrase “provides the basis” in the proposed “regulatory science” (§ 30.2) definition could mean that science was one of many studies considered, that it was the

bedrock study upon which regulation was grounded, that EPA relied on the study, or that the study was critical to EPA's determination. The Proposal nowhere addresses or explains whether or how these possible meanings are distinct from the possible meanings of the "drive the requirements" phrase of the "pivotal" definition. Therefore, it is entirely unclear from these definitions what makes science that "provides the basis" distinct from science that "drive the requirements." Neither of these terms meaningfully distinguishes "pivotal" regulatory science from ordinary regulatory science.

The Proposal goes on to exacerbate all of this internal confusion through the workings of its proposed regulatory text. There, EPA alternates between explaining the Proposal in terms of "regulatory science" and "pivotal regulatory science." For example, in proposed § 30.1, the Proposal "directs EPA to ensure that the *regulatory science* underlying its actions is publicly available" 83 Fed. Reg. at 18,773/2 (emphasis added). Later, in proposed § 30.3, the Proposal indicates that the provisions apply "to dose response data and models underlying *pivotal regulatory science* that are used to justify significant regulatory decisions." *Id.* at 18,773/3 (emphasis added). In the subsequent section, proposed § 30.4, the Proposal references "all studies (or regulatory science) relied upon" *Id.* The Proposal is arbitrarily vague and incoherent concerning whether "regulatory science" that is relied upon is the same as "pivotal regulatory science," or whether it is a new category of science entirely. Does this phrasing imply that the definition of "regulatory science" does not already include science that is "relied upon"? If so, does EPA mean that the phrase, "provides the basis," is not synonymous with "relied upon"? The Proposal provides no answers to these questions.

Taken together, this demonstrates that "regulatory science" and "pivotal regulatory science" are vague, even incoherent terms with definitions that lend no assistance to commenters in understanding the Proposal. The terms lack statutory authority, are vague, inconsistent, unexplained, and otherwise arbitrary and capricious.

C. "in a manner sufficient for independent validation" (§ 30.1)

Although the phrase, "in a manner sufficient for independent validation," is repeated frequently throughout the Proposal, and is integral to its very operation, the phrase is not defined in the proposed definitional section (§ 30.2). Later in proposed regulatory text, the Proposal does specify that "[i]nformation is considered 'publicly available in a manner sufficient for independent validation' when it includes the information necessary for the public to understand, assess, and replicate findings." 83 Fed. Reg. at 18,773–74 (proposed § 30.5). Proposed section 30.5 goes on to list categories of information that "may" be included in this concept. The explanation provided by proposed § 30.5 is a non-definition; it provides no additional clarification. How much information is sufficient for the public to understand, assess and replicate findings? Can this standard sometimes be met by releasing methodology but not raw data?

Critically, and fatally to the enterprise behind the Proposal, there is nothing in the proposed regulatory text or preambular language that requires information, science or data to be independently validated or replicated before EPA may consider it. EPA does not base the Proposal upon any requirement or expectation that the information, science or data be shown to

be accurate, trustworthy, reliable or correct before EPA may consider it. This portion of the Proposal reveals EPA's unlawful agenda to be one concerned with prohibiting EPA from considering relevant, peer-reviewed, quality science, *not* one concerned with actual replication or validation. The Proposal's condition that science and information be "publicly available in a manner sufficient for independent validation and replication" is revealed to be mere smokescreen for an EPA enterprise to censor the best available science that would support adoption of more protective health and environmental safeguards.

The Proposal fails to explain how the term, "in a manner sufficient for independent validation," and the proposed § 30.5 definition will increase transparency in science or why it is necessary to ensure that EPA will consider the best available science. To the contrary, as explained elsewhere in these comments, *supra* sections II. & III., the Proposal's approach would *preclude* EPA from considering the best available science that is relevant to EPA's responsibilities. EPA also fails to explain why data underlying peer-reviewed studies must be publicly available "in a manner sufficient for independent validation" when independent researchers can verify science without making the underlying data, which is often confidential, publicly available.

D. "all terms not defined herein shall have the meaning given them in the Act or in Subpart A" (§ 30.2)

Proposed § 30.2 specifies that "all terms not defined herein shall have the meaning given them in the Act or in subpart A." The Proposal nowhere says to what "Act" it is referring. The Proposal purports to implement multiple Acts administered by EPA, with different terms and definitions and court interpretations that may contradict one another. Nowhere does the Proposal square this factual and legal reality with structure of its unlawful approach, and the language in proposed § 30.2. It seems clear that the Proposal's drafters just cut-and-paste boilerplate language from other EPA regulations that do, in fact, implement just one of the federal environmental statutes that EPA administers; in those other regulations, such an approach makes sense. In the Proposal at issue here, it is incoherent and internally inconsistent across the different statutes that EPA administers.

It also is not clear to what "subpart A" EPA is referring, because there is no citation to the Code of Federal Regulations. If this is intended to reference 40 C.F.R. Part 30, Subpart A, that Subpart was removed from the C.F.R. in 2014. *See* 79 Fed. Reg. 75,871; *see also* 80 Fed. Reg. 61,087.

E. "dose response data and models" (§ 30.2)

Dose response data and models is defined as "the data and models used to characterize the quantitative relationship between the amount of dose or exposure to a pollutant, contaminant, or substance and the magnitude of a predicted health or environmental impact. Such functions typically underlie pivotal regulatory science that drives the size of benefit-cost calculations, the level of a standard and/or the points of departure from which reference values (reference doses or reference calculations) are calculated." (§ 30.2). Despite being an important phrase repeated through the Proposal and the proposed text, this compound definition is vague and arbitrary. It

also is circular—the very terms being defined are used in the definition. It’s unclear what data EPA is referring to in this phrase and definition. Moreover, it’s unclear what EPA means by “[s]uch functions typically under pivotal regulatory science . . .” And the problems with “pivotal regulatory science” have already been discussed. As explained in section XII, the definition does not adequately describe what the proposal covers. This definition, along with the rest of the Proposal, is arbitrary and capricious and must be withdrawn.

F. “case-by-case basis” (§ 30.6; § 30.9)

In proposed § 30.6, EPA proposes to “evaluate the appropriateness of using default assumptions, including assumptions of a linear, no-threshold dose response, on a case-by-case basis.” 83 Fed. Reg. at 18,774. In proposed § 30.9, the Proposal grants the Administrator the ability to “grant an exemption to this subpart on a case-by-case basis if he or she determines that compliance is impracticable” for a number of enumerated reasons. Both of these provisions inject additional arbitrariness into the rule, in that they ensure that the Proposal may be applied unevenly—for certain rulemakings the “rules” of the Proposal can be discarded or ignored where desired. This, in addition to and with other sections of the Proposal, underscores that it is arbitrary and capricious and must be withdrawn.

VIII. The Proposal is vague and misleading regarding which types of regulatory actions will be covered

EPA is proposing to apply the Proposal to regulatory actions defined by an unenforceable Executive Order that has few, if any, limiting principles. The Proposal states that it applies to “*dose response data and models underlying pivotal regulatory science* that are used to justify significant *regulatory decisions*.” 83 Fed. Reg. at 18,773. Section § 30.2 then defines “regulatory decisions” as “final regulations determined to be ‘significant regulatory actions’ by the Office of Management and Budget pursuant to Executive Order 12866.” 83 Fed. Reg. at 18,773. According to Executive Order 12866,

- (f) “Significant regulatory action” means any regulatory action that is likely to result in a rule that may:
- (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
 - (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
 - (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
 - (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive order

Regulatory Planning and Review, 58 Fed. Reg. 51,735, 51,735 (Sept. 30, 1993).

EPA suggests in some places that the Proposal applies only to final rulemakings. *See* 83 Fed. Reg. at 18,771 (“EPA solicits comment on whether and to what extent these requirements, or other provisions and policies, should apply to other stages of the rulemaking process . . .”). However, OMB guidance on Executive Order 12,866 states that the definition is intended to cover “any policy document of general applicability and future effect, which the agency intends to have the force and effect of law, such as guidance, funding notices, manuals, implementation strategies, or other public announcements, designed to implement, interpret, or prescribe law or policy or to describe the procedure or practice requirements of an agency.” OMB, *Memorandum for Heads of Executive Departments and Agencies, and Independent Regulatory Agencies*, at 5 n.3 (Oct. 12, 1993). Therefore, there is an inconsistency between what EPA says it is doing, and what it is really proposing.

Indeed, under the OMB guidance and past agency practice, what qualifies as a “significant regulatory action” is a fluid and ad-hoc determination. It is impossible to truly know what effect—and how large an effect—the Proposal would have on rulemakings because it is impossible to know, at this point, what agency actions might be covered. Whether an action is deemed a “significant regulatory action” by OMB can only be determined after the regulation has been proposed and is subject to apparently unbridled discretion by OMB, and there is an infinite universe of rulemakings that EPA could propose in the future. Without knowing what types of agency actions would be covered, the public is left in the dark about the Proposal’s true impact. By using the amorphous definition of “significant regulatory actions,” EPA ensures that the Proposal would have sweeping effects.

IX. The proposed rule is a reversal of EPA’s position without sufficient justification

When an agency reverses course, it must “provide reasoned explanation for its action.” *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009); *Motor Vehicle Mfrs. Ass’n of U.S., v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983). And when that reversal “rests upon factual findings that contradict those which underlay [the agency’s] prior policy,” a “more detailed justification” is needed. *Fox*, 556 U.S. at 515. Indeed, “an agency’s decision to change course may be arbitrary and capricious if the agency ignores or countermands its earlier factual findings without reasoned explanation for doing so.” *Id.* at 537 (Kennedy, J., concurring).

As the Supreme Court explained in its 2016 *Encino Motorcars* decision, an agency must supply “good reasons” for a policy revision, cannot leave “unexplained inconsistency,” and must address “serious reliance interests.” *Encino Motorcars, LLC v. Navarro*, 136 S. Ct. 2117, 2126 (2016). In *Encino*, the Department of Labor reversed its decades-long practice of treating service advisors at automobile dealerships as exempt from the Fair Labor Standards Act’s overtime provisions, offering minimal explanation for the policy change. *Id.* at 2123. The Court overturned the rule, holding that the Department had not met its obligation to offer a “reasoned explanation,” especially given the decades of reliance on the policy. *Id.* at 2126. It was not enough that the Department included conclusory statements declaring its new policy to be a reasonable interpretation of the statute because the Department failed to provide any good reasons for the new policy. *Id.* at 2127. As explained by the Court, “[t]his lack of reasoned explication for a regulation that is inconsistent with the Department’s longstanding earlier position results in a rule that cannot carry the force of law.” *Id.*

In *Organized Village of Kake v. United States Department of Agriculture*, the Department of Agriculture, relying on a detailed factual record, decided not to exempt the Tongass National Forest from a rule that would limit road construction and timber harvesting in national forests, explaining that the benefits would outweigh the potential economic loss. 795 F.3d 956, 959–61, 967–68 (9th Cir. 2015) (*en banc*). Just two years later, on “precisely the same record,” the agency issued a new decision reversing course. *Id.* at 968. The court concluded that the “absence of a reasoned explanation for disregarding previous factual findings violate[d] the APA.” *Id.* at 969. The court also recognized that “[e]lections have policy consequences,” but even when reversing a policy after an election, “an agency may not simply discard prior factual findings without a reasoned explanation.” *Id.* at 968.

EPA previously routinely used and considered science and studies for which the underlying data was not publicly available in regulatory actions. As explained above, EPA has not identified even *one* example in which EPA *has observed* the policies underlying the Proposal, and our research has likewise uncovered no such instance. The Proposal essentially admits as much, stating:

Historically, EPA has not consistently observed the policies underlying this Proposal, and courts have at times upheld EPA’s use non-public data in support of its regulatory actions. *See Coalition of Battery Recyclers Ass’n v. EPA*, 604 F.3d 613, 623 (D.C. Cir. 2010); *American Trucking Ass’ns v. EPA*, 283 F.3d 355, 372 (D.C. Cir. 2002).

83 Fed. Reg. at 18,769, n.3. The Proposal then goes on to say that “EPA is proposing to exercise its discretionary authority to establish a policy that would preclude it from using such data in future regulatory actions.” *Id.* The Proposal’s categorical exclusion of non-publicly available “dose response data” is also departure from EPA’s previous practice, as described in the 2002 EPA Guidelines, of weighing all relevant information.

In short, EPA provide no basis for changing course on this issue, especially when EPA has enshrined the previous policy in agency guidelines and litigation. EPA’s failure to explain this change in course violates the law.

X. The proposed rule’s handling of Confidential Business Information (CBI) is unlawfully vague and arbitrary and capricious

EPA’s Proposal states that “where the Agency is making data or models publicly available, it shall do so in a fashion that is consistent with law, protects privacy, confidentiality, [and] confidential business information.” 83 Fed. Reg. at 18,773. In crafting the Proposal, EPA has created a vague, double-edged sword that favors industry in some situations, and in others, creates barriers for industry groups submitting CBI. In both situations, the public could be harmed by the Proposal.

In an April 26, 2018 House hearing, then-Administrator Scott Pruitt suggested that CBI may be redacted and submitted to EPA under the Proposal, much like confidential health information:

Rep. Cramer: Maybe you could elaborate a little bit, how personal data can be protected and is protected. Nobody's asking for the names of every victim of every, you know, of every pollution source that's ever happened in the world, or that's been sourced in any study. They're not asking for personal data. We're asking simply for the science to be revealed. You can protect the data, right?

Administrator Pruitt: Both the personal data, Congressman, as well as confidential business information, both CBI and personal information can be redacted and can be addressed and still serve the purposes of the proposed rule.

As others have noted, however, this is not always the case. "Industry-conducted studies could contain confidential business information required to be withheld by law. In addition, companies may have intellectual property rights that would be violated if access to underlying data allowed competitors to rely on a study without replicating it."²¹⁸ In certain cases, this will work to the detriment of regulated entities.

For example, industry stakeholders may submit studies, data or information for which CBI redactions would prevent EPA from considering those materials, because the information is not "publicly available in a manner sufficient for independent validation." 83 Fed. Reg. at 18,768. This could prevent EPA from adopting standards, exclusions, or other regulatory provisions informed by that information. Similarly, other industry stakeholders opposed to the appeals and demands sought by the first set of stakeholders, would be harmed if EPA nonetheless considers the latter industry's submissions, notwithstanding redacted CBI that is not "publicly available in a manner sufficient for independent validation"—while at the same time EPA refuses to consider confidential non-business information submitted by the opponent-stakeholders. *Id.*

In other cases, CBI exclusions will create a double standard, where the public, including adversarial industry stakeholders, will not have access to industry-funded studies or other information relevant to the rulemaking process, because EPA has designated that information CBI and refused to make it "publicly available in a manner sufficient for independent validation." *Id.* The Proposal nonetheless indicates that some or all of that CBI-redacted studies and information will be considered by EPA. This double standard, and unexplained, differential treatment of submissions relevant and even integral to EPA's rulemakings, is the essence of arbitrary and capricious action.

Industry groups themselves will be impacted by this double standard. During, or prior to, a rulemaking, industry groups sometimes appeal to EPA to loosen the rigor of agency regulations, accord industry operational flexibilities, extend compliance deadlines, or take other actions to reduce alleged regulatory burdens. Frequently industry accomplishes this by submitting information particular to a specific company or industry sector; a particular chemical or product formulation; or a particular process unit or manufacturing process. These submissions

²¹⁸ Bloomberg News, Energy & Environment Report, "Practitioner Insights: EPA's Flawed 'Secret Science' Plan Puts Good Science at Risk," May 21, 2018, *available at* <https://www.bna.com/practitioner-insights-epas-n57982092715/>.

frequently are accompanied by claims that information is CBI, due to the company-specific or industry-specific nature of information that may be proprietary, confidential or the subject of trade secrets. Industry parties may also submit health studies or risk assessments they have conducted that may contain confidential clinical data or other information that they do not wish to make publicly available, or that they are barred from making publicly available due to confidentiality agreements, the death of study participants or other reasons.

The Agency itself is aware that its misguided Proposal works at odds with CBI. In a recent email exchange, an EPA staffer working on the rule, Richard Yamada, was informed of industry concerns by a colleague. Yamada

included the concerns of the chemical industry when crafting the plan. Earlier this year, Nancy Beck, deputy assistant administrator of EPA's chemicals office, raised pointed concerns to Yamada and other EPA staffers about what a "secret science" policy would mean for regulating chemicals under the Toxic Substances Control Act (TSCA). Beck, a former senior director at the American Chemistry Council, wrote that requiring underlying data to be public would affect pesticide registrations and TSCA implementation, particularly if it did not account for confidential business information, or CBI.

"Yes, thanks this is helpful – didn't know about the intricacies of CBI – ok, we will need to thread this one real tight! Thanks Nancy!" Yamada wrote in response to Beck's warning.²¹⁹

Section 30.3, described below, may be the agency's attempt at such a "thread," but in attempting to carve out certain agency actions for special treatment, the Proposal again underscores just how arbitrary and capricious it is. The Proposal would create a dynamic in which EPA is unable to consider that CBI or otherwise confidential health or risk data in deciding whether to adopt regulations or issue guidance that grants industry the requested regulatory flexibilities.

When EPA exercises its regulatory authorities, the Proposal may constrain the agency's ability to be flexible or relieve regulatory obligations, precisely where and when it might be needed most: by being responsive to particular demonstrations made by specific companies based on persuasive information that also happens to be CBI. Former Administrator Pruitt appeared to sanction this outcome in his responses, above, to Rep. Cramer, where he suggested that any CBI could be redacted, much like health information.

The Proposal fails to address CBI in a coherent way, and in so doing furthers the problems inherent in its present use at the agency, while also creating a new set of obstacles for both industries and the public to deal with as it relates to business information and EPA's regulatory responsibilities.

²¹⁹ Scott Waldman, "Meet the man helping Pruitt reshape science," *Climatewire*, (May 23, 2018), <https://www.eenews.net/stories/1060082467>.

XI. The Proposal arbitrarily and capriciously allows EPA to treat individual party adjudications, enforcement activities, and permit proceedings differently than “significant regulatory actions”

The Proposal at section 30.3 states that:

Except where explicitly stated otherwise, the provisions of this subpart do not apply to any other type of agency action, including individual party adjudications, enforcement activities, or permit proceedings.

83 Fed. Reg. at 18,773. This provision most clearly highlights one of the arbitrary and capricious advantages that industry stakeholders enjoy under the Proposal: it exempts from its censoring coverage EPA activities where industry is the primary party likely to submit confidential information that EPA may consider and rely upon. This, notwithstanding that the submitted information is not “publicly available in a manner sufficient for independent validation,” while still being highly relevant and even integral to EPA’s legal responsibilities. *Id.* at 18,768.

Permitting activities are one key example. For permitting actions taken under the CAA, RCRA, CWA, etc., the Proposal arbitrarily and capriciously allows EPA to continue to rely on highly relevant regulatory science and other information supplied by industry that is not “publicly available in a manner sufficient for independent validation.” *Id.* at 18,771–73. A company seeking a permit or permit revision may submit regulatory science, confidential business information or other non-confidential information that is not “publicly available in a manner sufficient for independent validation.” *Id.* EPA could consider non-peer reviewed, non-transparent industry science or information to conclude that a non-transparent industry model demonstrates no adverse air quality impact on a neighboring national park or wilderness area. This, despite the inputs and assumptions behind the model being unavailable to the public. An applicant could assert that there are safe exposure levels for PM_{2.5} or lead, and therefore EPA need not require any mitigation measures at concentrations below NAAQS levels in attainment areas. Industry applicants could rely upon hidden CBI to project no emissions increases for purposes of NSR permitting under the so-called “demand growth” exclusion, notwithstanding the unavailability of information critical to industry’s claim and EPA’s acceptance of that claim. Considering this and other non-transparent information, EPA could conclude that permits or permit revisions may be granted in situations where they should not lawfully be granted, notwithstanding that the non-transparent, unavailable information is scientifically erroneous and even absurd.

A second example is public information submitted during enforcement proceedings. The Proposal arbitrarily and capriciously allows EPA to continue to rely on highly relevant regulatory science and other information supplied to the agency by industry during enforcement proceedings, even when that information is not “publicly available in a manner sufficient for independent validation.” *Id.* at 18,771–73. Consider, for example, a company that receives a notice of violation from EPA and meets with the agency to make the case that EPA and the Department of Justice should not file a complaint. The company may submit regulatory science, confidential business information, or other non-confidential information that is not “publicly available in a manner sufficient for independent validation.” *Id.* at 18,768. EPA could consider

non-peer reviewed, non-transparent, erroneous industry science to conclude that formaldehyde or asbestos are not carcinogens, or that PM_{2.5} or lead have safe exposure levels, or that CO₂ does not endanger public health or welfare. Considering this and other non-transparent information, EPA could conclude that prosecution is not warranted, or that the information represents mitigating factors for penalties or injunctive relief, notwithstanding that the non-transparent, unavailable information is scientifically erroneous and even absurd.

The third case is public information submitted during individual party adjudications. *Id.* at 18,771–73. The Proposal arbitrarily and capriciously allows EPA to continue to rely on highly relevant regulatory science and other information supplied to the agency by industry during individual party adjudications, even when that information is not “publicly available in a manner sufficient for independent validation.” *Id.* at 18,768. Consider, for example, a company facing an EPA order or applicability determination that qualifies as an adjudication under the APA or one of the federal statutes that the agency administers.

The company may submit regulatory science, confidential business information or other non-confidential information that is not “publicly available in a manner sufficient for independent validation.” EPA could consider non-peer reviewed, non-transparent industry science to conclude that formaldehyde or asbestos are not carcinogens, or that PM_{2.5} or lead have safe exposure levels, or that CO₂ does not endanger public health or welfare. Considering this and other non-transparent information during the individual party adjudication, EPA could conclude that adoption of the order is not warranted, or that agency regulations should be interpreted in a way that does not apply to that company’s actions. Indeed, EPA could conclude, after considering the non-transparent, unavailable information, that the regulations should not apply in ways that would affect an entire industrial sector favorably, while harming the public meant to be protected by those regulations. Under proposed section 30.3, EPA could consider the non-transparent, unavailable information to reach these objectionable outcomes, notwithstanding that the information is scientifically erroneous and even absurd.

The Proposal nowhere explains why it is valid and consistent with EPA’s statutory authorities and responsibilities to consider information that is not “publicly available in a manner sufficient for independent validation” under the situations allowed in proposed section 30.3 (individual party adjudications, enforcement activities, or permit proceedings), while prohibiting EPA consideration of that information in situations covered by the Proposal’s prohibitions. Indeed, it is striking that the Proposal does not even *attempt* any such explanation or justification. *Id.* at 18,771–73. This is undoubtedly because there is no coherent, lawful justification or explanation that the agency could muster; it is unsurprising that the Proposal cannot overcome this.

Indeed, it is a hallmark of the Proposal’s inherent arbitrariness and capriciousness that the Proposal prohibits EPA from considering the *identical regulatory science, studies, and information* in some regulatory situations, while allowing EPA to consider the *identical regulatory science, studies, and information* in other regulatory situations—based merely upon the *type of situation*, rather than any differences in availability, replicability, verifiability, or validation concerning the information. Proposed section 30.3 prohibits EPA from considering information that is not “publicly available in a manner sufficient for independent validation”

during so-called “significant regulatory decisions,” while prohibiting EPA from considering that *identical regulatory science, studies, or information* during “any other type of agency action, including individual party adjudications, enforcement activities, or permit proceedings.” 83 Fed. Reg. at 18,768, 18,771. The Proposal does not and cannot explain or justify this differential treatment, so the Proposal does not even try.²²⁰

Finally, proposed section 30.3 is unlawfully vague, open-ended and arbitrary due to the capacious and unlimited way that EPA has drafted the exclusion from the Proposal’s prohibitions. Section 30.3 indicates that “the provisions of this subpart do not apply to any other type of agency action.” This grants EPA capacious and effectively unlimited discretion and authority to decide what “any other type of agency action” is and is not, without providing the public or regulated entities any criteria, understanding or advance notice as to how EPA will exercise that discretion and authority. That is the essence of arbitrary and capricious agency action. Indeed, the Proposal is structured in such a way that EPA will be exercising that discretion and authority—to decide what “any other type of agency action” does and does not cover—in secret, with no public input and no public awareness, concerning the situations in which EPA will and will not consider non-transparent, unavailable information. In addition to this being perversely ironic, considering the “transparency” title of the Proposal, this fact renders the Proposal even more arbitrary and capricious and unlawful.

XII. The Proposal treats studies, models and analyses that are integral to the functioning of EPA regulatory programs and the implementation of statutes in an arbitrary and capricious manner

In the Proposal, EPA professes concern with transparency, clarity, and independence; using the best available information; making sure that information is replicable and verifiable, and ensuring the public is able to participate meaningfully in the regulatory process. The Proposal says this will help EPA carry out its mission in a manner the public can trust and understand:

The proposed regulation provides that, for the science pivotal to its significant regulatory actions, EPA will ensure that the data and models underlying the science is publicly available in a manner sufficient for validation and analysis.

83 Fed. Reg. at 18,769/1.

The best available science must serve as the foundation of EPA’s regulatory actions. Enhancing the transparency and validity of the scientific information relied upon by EPA strengthens the integrity of EPA’s regulatory actions and its obligation to ensure the Agency is not arbitrary in its conclusions. By better informing the public, the Agency in enhancing the public’s ability to understand and meaningfully participate in the regulatory process.

²²⁰ Should EPA realize and conclude that it must explain and justify this differential treatment in any final rule, EPA first must issue a supplemental proposal with these explanations and justifications for public review and opportunity for comment prior to issuing any final rule.

Id. at 18,769/2.

When EPA develops significant regulations using public resources, including regulations for which the public is likely to bear the cost of compliance, EPA should ensure that the data and models underlying scientific studies that are pivotal to the regulatory action are available to the public. This proposed rule is designed to increase transparency in the preparation, identification, and use of science in policymaking.

Id. at 18,769/3.

Regulatory determinations based on science should describe and document any assumptions and methods used, and should address variability and uncertainty.

Id. at 18,770/2.

“Pivotal regulatory science” is the studies, models, and analyses that drive the magnitude of the benefit-cost calculation, the level of a standard, or point-of-departure from which a reference value is calculated. In other words, they are critical to the calculation of a final regulatory standard or level, or to the quantified costs, benefits, risks and other impacts on which a final regulation is based.

Id.

This [P]roposal will help ensure that EPA is pursuing its mission of protecting public health and the environment in a manner that the public can trust and understand.

Id. at 18,769/1.

In this section of our comments, we make the following points opposing the Proposal and supporting its withdrawal:

- First, the Proposal as written sweeps broadly to capture—and thereby to prohibit EPA from considering—studies, models, and analyses that are integral to the functioning of EPA regulatory programs, implementation of statutes like the Clean Air Act, and protection of public health and the environment. It is both destructive and unlawful for EPA to refuse or fail to consider these additional studies, models, and analyses. We discuss numerous examples below.
- Second, to the extent that the Proposal does capture one or more of the studies, models, or analyses below, the Proposal would require EPA to conduct independent peer review of these materials before considering or using them, or before continuing to make them available for public use and awareness. *See* 83 Fed. Reg. at 18,774 (proposed § 30.7). This is objectionable and absurd. It is also unlawful for the same reasons that the Proposal is unlawful, as detailed in these comments and others.
- Third, to the extent that EPA disagrees that one or more of these studies, models, and analyses are captured by the Proposal, continuing to consider these materials while

prohibiting EPA from considering other materials would be arbitrary and capricious. This is because these studies, models and analyses have the same hallmarks as “pivotal regulatory science” that the Proposal would exclude, as discussed in greater detail below. We emphasize that we do not believe EPA *should* or that EPA *may* fail to consider these other studies, models, or data, for the reasons set forth in these comments. Rather, our point is that continuing to consider these materials demonstrates additionally that the Proposal is arbitrary, capricious, and an abuse of discretion.

The Proposal states that “[t]he provisions of this subpart apply to dose response data and models underlying pivotal regulatory science that are used to justify significant regulatory decisions regardless of the source of funding or identity of the party conducting the regulatory science.” 83 Fed. Reg. at 18,773/3 (proposed § 30.3). Next, the Proposal defines “dose response data and models” to mean:

the data and models used to characterize the quantitative relationship between the amount of dose or exposure to a pollutant, contaminant, or substance and the magnitude of a predicted health or environmental impact. Such functions typically underlie pivotal regulatory science that drives the size of benefit-cost calculations, the level of a standard, and/or the points of departure from which reference values (reference doses or reference concentrations) are calculated.

Id. at 18,773/2 (proposed § 30.2). Then, the Proposal defines “pivotal regulatory science” to mean “the specific scientific studies or analyses that drive the requirements and/or quantitative analysis of EPA final significant regulatory decisions.” *Id.* Finally, the Proposal defines “regulatory science” to mean “scientific information, including assessments, models, criteria documents, and regulatory impact analyses, that provide the basis for EPA final significant regulatory decisions.” *Id.*

The Proposal either covers on its face, or appears to cover, the following examples of studies, models, and analyses that are integral to the functioning of EPA regulatory programs, implementation of statutes like the Clean Air Act, and protection of public health and the environment. It would be harmful, unlawful, arbitrary and capricious, and an abuse of EPA’s discretion to include these materials within the sweep of the Proposal’s prohibitions.

Alternatively, if EPA disagrees that the following examples are covered by the Proposal, then continuing to consider these materials that have the same hallmarks as the prohibited materials, and that raise the same issues and concerns that cause EPA to prohibit their consideration, demonstrates that the Proposal is arbitrary and capricious, biased, and internally inconsistent and contradictory.²²¹ Moreover, in this case, the Proposal would suffer from fatal failures to explain why EPA may consider these materials, while the Proposal would prohibit EPA from considering other materials.

²²¹ See, e.g., *Air Transport Ass’n of Am. v. DOT*, 119 F.3d 38, 43 (D.C. Cir. 1997) (vacating regulation: “the most serious logical problem with [the] regulation—which we simply cannot accept,” is that the agency’s explanation “is internally inconsistent”).

A. Integrated Planning Model

EPA uses the Integrated Planning Model (IPM) to analyze the projected impact of environmental policies on the electric power sector in the lower 48 contiguous states and the District of Columbia. The IPM is a proprietary multi-regional, dynamic, deterministic linear programming model of the U.S. electricity sector developed by ICF International, and is used to support public and private sector clients

The IPM provides forecasts of least-cost capacity expansion, electricity dispatch, and emission control strategies for meeting energy demand and environmental, transmission, dispatch, and reliability constraints. The IPM can and has been used by the EPA to evaluate the costs and emissions impacts of policies to limit emissions of SO₂, NO_x, CO₂, HCl, and Hg from the electric power sector, including the following:

- the Clean Air Mercury Rule;
- Clean Air Interstate Rule;
- Clear Skies legislation;
- Mercury and Air Toxics Standards;
- Cross State Air Pollution Rule;
- Notice of Availability of the Environmental Protection Agency's Preliminary Interstate Ozone Transport Modeling Data for the 2015 Ozone National Ambient Air Quality Standard, 82 Fed. Reg. 1733 (Jan. 6, 2017);
- EPA's Power Sector Modeling in Support of the Notice of Data Availability – Preliminary Interstate Ozone Transport Modeling Data for the 2015 Ozone NAAQS;²²²
- New Source Performance Standards for the electric power sector;
- Clean Power Plan, Clean Power Plan repeal, and proposed Clean Power Plan replacement.

As a proprietary model, the IPM is not “publicly available in a manner sufficient for validation and analysis.” 83 Fed. Reg. at 18,769/1. The model's inputs, assumptions, methodologies, and operation are not “transparent” in the manner described in the Proposal, notwithstanding the model being pivotal to EPA regulatory actions. *Id.* at 18,770/3. EPA has used the IPM regularly to “drive the magnitude of the benefit-cost calculation and the level of standards” in Clean Air Act regulations. *Id.* at 18,770/2. “The use of default models, without consideration of alternatives or model uncertainty, can obscure the scientific justification for EPA actions.” *Id.* at 18,770/3. The public lacks access to the IPM's “[c]omputer codes and models involved in the creation and analysis of such information.” 83 Fed. Reg. at 18,774/1 (proposed § 30.5(c)).

²²² <https://www.epa.gov/airmarkets/epas-power-sector-modeling-support-notice-data-availability-preliminary-interstate-ozone>.

B. National Electric Energy Data System

The National Electric Energy Data System (NEEDS) database contains the generation unit records used to construct the model plants that represent existing and planned/committed units in EPA modeling applications of the IPM. The NEEDS includes geographic, operating, air emissions, pollution control, planned retirement dates, and other information on generating units. The NEEDS is customarily updated simultaneously with IPM updates. Data contained in NEEDS are taken from EIA forms, EIA AEO, NERC ES&D database, Ventyx new entrants' database (subscription required), EPA's emission tracking system (EPA Emissions Collection and Monitoring Plan System, ECMPS), and utility and regional EPA comments.

Similar to the IPM, with which NEEDS is integrated by EPA, NEEDS contains information that is not "publicly available in a manner sufficient for validation and analysis." 83 Fed. Reg. at 18,769/1. The inputs, assumptions, methodologies, and operation are not "transparent" in the manner described in the Proposal, notwithstanding the database being pivotal to EPA regulatory actions. *Id.* at 18,770/3. The Ventyx database requires a paid subscription that prevents NEEDS data from being transparent and publicly available in a manner sufficient for validation and analysis. EPA has used the NEEDS regularly (with the IPM) to "drive the magnitude of the benefit-cost calculation and the level of standards" in Clean Air Act regulations. *Id.* at 18,770/2.

C. The National Energy Modeling System

The National Energy Modeling System (NEMS), developed by Energy Information Administration (EIA), generates the Annual Energy Outlook (AEO) forecasts. EPA relies on NEMS forecasts for power sector modeling inputs and assumptions in IPM, including electricity demand and fuel prices.

Similar to the IPM, with which NEMS is also integrated by EPA, NEMS contains information and assumptions that are not "publicly available in a manner sufficient for validation and analysis." 83 Fed. Reg. at 18,769/1. The inputs, assumptions, methodologies, and operation are not "transparent" in the manner described in the Proposal, notwithstanding the database being pivotal to EPA regulatory actions. *Id.* at 18,770/3. EPA has used the NEMS regularly (with the IPM) to "drive the magnitude of the benefit-cost calculation and the level of standards" in Clean Air Act regulations. *Id.* at 18,770/2.

D. Co-Benefits Risk Assessment

COBRA is a tool available for download from EPA that helps state and local governments: (1) evaluate how changes in air pollution from clean energy policies and programs affect human health at the county, state, regional, or national levels; (2) estimate the economic value of health benefits associated with clean energy policies and programs to compare against program costs; (3) map and visually represent the air quality, human health, and health-related economic benefits from reductions in emissions of PM_{2.5}, SO₂, NO_x, NH₃, VOCs resulting from clean energy policies and programs.

COBRA is intended to be a preliminary screening tool that state and local policymakers can use to identify health benefits associated with clean energy policy approaches. It provides preliminary estimates of the impact of air pollution emission changes on ambient particulate matter (PM) air pollution concentrations, translates this into health effect impacts, and then monetizes these impacts. It was developed by Abt Associates and it is copyrighted. EPA's website lists multiple analyses that have used COBRA.²²³

COBRA contains information and assumptions that are not “publicly available in a manner sufficient for validation and analysis.” 83 Fed. Reg. at 18,769/1. The inputs, assumptions, methodologies and operation are not “transparent” in the manner described in the Proposal, notwithstanding the database being pivotal to EPA regulatory actions. *Id.* at 18,770/3. COBRA was developed by Abt based upon taking models from the very same epidemiological studies that the Proposal would prohibit EPA from considering and converting them into health impact functions.²²⁴ Accordingly, COBRA would be “tainted” and unusable by EPA or other parties based on the same (unlawful, arbitrary) prohibitions reflected in the Proposal. EPA and other parties have used the COBRA to “drive the magnitude of the benefit-cost calculation and the level of standards” in Clean Air Act regulations. 83 Fed. Reg. at 18,770/2.

E. Avoided Emissions and Generation Tool

The Avoided Emissions and Generation Tool, developed by Synapse, estimates the emissions benefits of energy efficiency and renewable energy policies and programs. The AVERT quantifies the particulate matter (PM_{2.5}), nitrogen oxides (NO_x), sulfur dioxide (SO₂), and carbon dioxide (CO₂) emissions benefits of state and multi-state EE/RE policies and programs. The target audience for this tool is state air quality planners evaluating county, state, and regional emissions displaced at electric power plants by energy efficiency and renewable energy programs. It enables state and local authorities to include AVERT-calculated emission impacts of EE/RE policies and programs in air quality modeling and Clean Air Act plans used to meet the National Ambient Air Quality Standards, with the concurrence of the appropriate EPA regional office.

²²³ See, e.g., Analysis of the Public Health Impacts of the Regional Greenhouse Gas Initiative (Abt Associates, 2017); Change is in the Air: How States Can Harness Energy Efficiency to Strengthen the Economy and Reduce Pollution (ACEEE, 2014); Comments on B21-0650 –Renewable Portfolio Standard Expansion Amendment Act of 2016 (Chesapeake Climate Action Network testimony to the DC Transportation and Environment Committee, 2016); Health Impact and Economic Costs of Volkswagen's Lack of Compliance with the United States' Emission Standards (International Journal of Environmental Resources and Public Health. 13(9): 891. 2016), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5036724/>; Minneapolis Climate Action Plan: Public Health and Environmental Justice; Plug-In Vehicles in California (UC- Berkeley Transportation Sustainability Research Center, 2012); A Retrospective Analysis of the Benefits and Impacts of U.S. Renewable Portfolio Standards (National Renewable Energy Laboratory and Lawrence Berkeley National Laboratory, January 2016); Staff White Paper on Benefit-Cost Analysis in the Reforming Energy Vision Proceeding (New York Department of Public Service, July 2015); Standardized Regulatory Impact Assessment: Computers, Computer Monitors, and Signage Displays (Prepared for California Energy Commission, June 2016).

²²⁴ See U.S. EPA, User's Manual for the Co-Benefits Risk Assessment Health Impacts Screening and Mapping Tool (COBRA), Version 3.2 (May 2018), https://www.epa.gov/sites/production/files/2018-05/documents/cobra_user_manual_may2018_508.pdf.

The AVERT contains information and assumptions that are not “publicly available in a manner sufficient for validation and analysis.” 83 Fed. Reg. at 18,769/1. The inputs, assumptions, methodologies and operation are not “transparent” in the manner described in the Proposal, notwithstanding the database being pivotal to EPA regulatory actions. *Id.* at 18,770/3. AVERT was developed by Synapse based upon taking models from the very same epidemiological studies that the Proposal would prohibit EPA from considering.²²⁵ Accordingly, AVERT would be “tainted” and unusable by EPA or other parties based on the same (unlawful, arbitrary) prohibitions reflected in the Proposal. EPA and other parties have used AVERT to “drive the magnitude of the benefit-cost calculation and the level of standards” in Clean Air Act regulations, including State Implementation Plans for energy efficiency and renewable energy measures. 83 Fed. Reg. at 18,770/2.

F. Community Multi-scale Air Quality Modeling System

The Community Multi-scale Air Quality Modeling System simultaneously models multiple air pollutants, including ozone, PM, and air toxics, to help regulators determine the best air quality management scenarios for their communities, states and countries. Using data about land use, meteorology, and emissions, CMAQ provides detailed information about the concentrations of air pollutants in a given area for any specified emissions or climate scenario. It combines three types of models—meteorological models, emissions models, and air-chemistry transport models.

EPA and states have used CMAQ for more than a decade. The National Weather Service also uses CMAQ to produce daily U.S. forecasts for ozone air quality. States use CMAQ to develop and assess implementation actions needed to attain National Ambient Air Quality Standards. EPA has used CMAQ to support the development of NAAQS; provide guidance on NAAQS implementation to State environmental agencies and EPA Regional Offices; assess impacts of changing air pollution levels on human health by EPA and the Centers for Disease Control and Prevention; and assess impacts of polluted rainfall to sensitive ecosystems such as the Chesapeake Bay.²²⁶ EPA has said, bluntly, that “[t]he loss or stagnation of [CMAQ] would jeopardize protection of public health and adequate assessment of Clean Air Act compliance.” *Id.*

The CMAQ contains information and assumptions that are not “publicly available in a manner sufficient for validation and analysis.” 83 Fed. Reg. at 18,769/1. The inputs, assumptions, methodologies, and operation are not “transparent” in the manner described in the Proposal, notwithstanding the database being pivotal to EPA regulatory actions. *Id.* at 18,770/3. The CMAQ relies, in part, on the very same epidemiological studies that the Proposal would

²²⁵ See U.S. EPA, User’s Manual for the Co-Benefits Risk Assessment Health Impacts Screening and Mapping Tool (COBRA), Version 3.2 (May 2018), https://www.epa.gov/sites/production/files/2018-05/documents/cobra_user_manual_may2018_508.pdf.

²²⁶ U.S. EPA, Community Multiscale Air Quality (CMAQ) Model Impact Statement, https://www.epa.gov/sites/production/files/2017-08/documents/cmaq_impact_statement_29aug2017.pdf.

prohibit EPA from considering.²²⁷ Accordingly, CMAQ would be “tainted” and unusable by EPA or other parties based on the same (unlawful, arbitrary) prohibitions reflected in the Proposal. EPA and other parties have used CMAQ to “drive the magnitude of the benefit-cost calculation and the level of standards” in Clean Air Act regulations. *Id.* at 18,770/2.

G. EPA U.S. Nine-region MARKAL Database.

The EPA MARKet ALlocation (MARKAL) model is a data-driven, bottom-up energy systems economic optimization model. A census region representation of U.S. energy system, it was developed by EPA researchers for use with MARKAL model, an energy system optimization model used by local and federal governments and academic researchers. It is used in more than 35 countries. “The EPAUS9r is a distinct representation of the U.S. energy system designed to be used within the MARKAL model structure. The database characterizes the flow of energy associated with the extraction or import of resources, the conversion of these resources into useful energy, and the use of the energy in meeting end-use demands within and between the nine census regions of the United States.”²²⁸

The MARKAL contains information and assumptions, and is based on commercial software, that are not “publicly available in a manner sufficient for validation and analysis.” 83 Fed. Reg. at 18,769/1. The software is not open source.²²⁹ The inputs, assumptions, methodologies, and operation are not “transparent” in the manner described in the Proposal, notwithstanding the database being pivotal to EPA regulatory actions. *Id.* at 18,770/3. EPA and other parties have used MARKAL to “drive the magnitude of the benefit-cost calculation and the level of standards” in Clean Air Act regulations. *Id.* at 18,770/2.

H. Emissions & Generation Resource Integrated Database.

eGRID is a comprehensive source of data on the environmental characteristics, including emissions and resource mix data, for almost every power plant and company that generates electricity in the U.S. eGRID data can be used for: GHG registries and inventories, carbon footprints, consumer information disclosure, emission inventories and standards, power market changes, and avoided emission estimates. It was developed with Abt Associates.

eGRID data are used in the following applications and programs: “Power Profiler web application, Climate Leaders protocols, ENERGYSTAR’s Portfolio Manager and Target Finder, Waste Wise Office Carbon Footprint Tool, the Personal Greenhouse Gas Emissions Calculator, the Greenhouse Gas Equivalencies Calculator, and the Green Power Equivalency Calculator.”²³⁰

²²⁷ See U.S. EPA, User’s Manual for the Co-Benefits Risk Assessment Health Impacts Screening and Mapping Tool (COBRA), Version 3.2 (May 2018), https://www.epa.gov/sites/production/files/2018-05/documents/cobra_user_manual_may2018_508.pdf.

²²⁸ U.S. EPA, EPA U.S. Nine-region MARKAL DATABASE, Database Documentation, <https://nepis.epa.gov/Adobe/PDF/P100I4RX.pdf>.

²²⁹ Database Documentation, *supra* n.228.

²³⁰ U.S. EPA, The Emissions and Generation Resource Integrated Database: Technical Support Document for eGrid With Year 2016 Data, https://www.epa.gov/sites/production/files/2018-02/documents/egrid2016_technicalsupportdocument_0.pdf.

“eGRID is also used by other Federal Government agencies such as Oak Ridge National Laboratory (ORNL) for their Combined Heat and Power Calculator, the National Energy Technology Laboratory (NETL) for their sponsored distributed National Carbon Sequestration Database and Geographic Information System (NATCARB), and the National Renewable Energy Laboratory (NREL) for their micropower distributed generation optimization model named HOMER.”²³¹

eGRID contains information and assumptions that are not “publicly available in a manner sufficient for validation and analysis.” 83 Fed. Reg. at 18,769/1. The inputs, assumptions, methodologies, and operation are not “transparent” in the manner described in the Proposal, notwithstanding the database being pivotal to EPA regulatory actions. *Id.* at 18,770/3. eGRID relies, in part, on the very same epidemiological studies that the Proposal would prohibit EPA from considering.²³² Accordingly, eGRID would be “tainted” and unusable by EPA or other parties based on the same (unlawful, arbitrary) prohibitions reflected in the Proposal. EPA and other parties have used eGRID to “drive the magnitude of the benefit-cost calculation and the level of standards” in Clean Air Act regulations. *Id.* at 18,770/2.

I. National Emissions Inventory (NEI)

The National Emissions Inventory is a comprehensive and detailed estimates of air emissions of criteria pollutants, criteria precursors, and hazardous air pollutants from air emissions sources, released every three years and based on data provided by state, local, and tribal air agencies for sources in their jurisdictions and supplemented by data developed by EPA. There is data for point sources, nonpoint sources, onroad sources, nonroad sources, and “event” sources.

The NEI contains information and assumptions that are not “publicly available in a manner sufficient for validation and analysis.” 83 Fed. Reg. at 18,769/1. The inputs, assumptions, methodologies and operation are not “transparent” in the manner described in the Proposal, notwithstanding the database being pivotal to EPA regulatory actions. *Id.* at 18,770/3. “Raw input datasets” underlying the NEI, for example, are available to “all EPA staff, EIS data submitters (*i.e.*, the S/L/T air agency staff), Regional Planning Organization staff that support state, local and tribal agencies, and contractors working for the EPA on emissions related work”—but not available to the public.²³³ Facility-level identification is also hidden from the public, while only some supporting material is publicly available.²³⁴ EPA and other parties have used the NEI to “drive the magnitude of the benefit-cost calculation and the level of standards” in Clean Air Act regulations. *Id.* at 18,770/2.

²³¹ Technical Support Document for eGrid, *supra* n.230.

²³² See U.S. EPA, User’s Manual for the Co-Benefits Risk Assessment Health Impacts Screening and Mapping Tool (COBRA), Version 3.2 (May 2018), https://www.epa.gov/sites/production/files/2018-05/documents/cobra_user_manual_may2018_508.pdf.

²³³ U.S. EPA, 2014 National Emissions Inventory, version 2 Technical Support Document (July 2018), https://www.epa.gov/sites/production/files/2018-07/documents/nei2014v2_tsd_05jul2018.pdf.

²³⁴ 2014 National Emissions Inventory, version 2 Technical Support Document, *supra* n.233, at 1–2.

XIII. The Proposal's retroactivity provisions are arbitrary and capricious

In the Proposal, EPA states that the proposed regulation “is intended to apply prospectively.” 83 Fed. Reg. at 18,771. However, a few pages later, the agency “solicits comments on how the prospective or retrospective application of the provisions for dose response data and models or pivotal regulatory science could inadvertently introduce bias regarding the timeliness and quality of the scientific information available.” Also, the Proposal states that “for regulatory programs . . . in which future significant regulatory actions may be based on the administrative record from previous reviews . . . , EPA seeks comment on the manner in which this proposed rule should apply to that previous record.” *Id.* at 18,772.

In short, despite its assertion that the rulemaking is “intended” to apply prospectively, the Proposal contemplates prohibiting EPA—or will prohibit EPA—from relying on studies generated *prior* to rulemakings that fail to meet the Proposal’s ill-defined criteria for “publicly available data.” This approach is arbitrary and capricious, runs counter to the specific language of many statutes the agency is tasked with administering, and would destroy the agency’s ability to promulgate health-based standards to protect the American public using the best available science.

The Proposal ignores an entire body of case law that has considered and roundly rejected both retroactivity in rulemakings and limiting data that underlies rulemakings to “publicly available data.” In so doing, the Proposal is arbitrary and capricious, and should be rejected.

The Supreme Court strongly disfavors retroactive application of rules. The Court has stated that:

Retroactivity is not favored in the law. Thus, congressional enactments and administrative rules will not be construed to have retroactive effect unless their language requires this result. [] By the same principle, a statutory grant of legislative rulemaking authority will not, as a general matter, be understood to encompass the power to promulgate retroactive rules unless that power is conveyed by Congress in express terms. [] Even where some substantial justification for retroactive rulemaking is presented, courts should be reluctant to find such authority absent an express statutory grant.

Bowen v. Georgetown Univ. Hosp., 488 U.S. 204, 208–09 (1988) (internal citations omitted). Notably, the Proposal does not identify a single provision in a single statute that EPA administers, or any other federal law, that requires or even authorizes any final rule based on the Proposal to have retroactive effect. *See generally* 83 Fed. Reg. at 18,768–74. There has been no power conveyed by Congress in express terms to promulgate retroactive rules related to any element of the Proposal; it is unsurprising that the Proposal does not and cannot identify *any* express or even implied grant of authority. *See Bowen*, 488 U.S. at 208–09.

The Proposal claims prospective application, while nonetheless noting that in some circumstances EPA may desire to apply the rule retroactively. 83 Fed. Reg. at 18,771. This, too, is unlawful and fails to meet the high burden in the Supreme Court’s *Bowen* decision and its progeny concerning retroactive application of agency rules. The suggestion in the Proposal, for

example, that EPA may invoke the Proposal's approach to review all prior health and scientific studies underlying the NAAQS is illegitimate, arbitrary and capricious, and contrary to caselaw.²³⁵ *Bowen* and its progeny do not permit agency rules to have retroactive effect to disallow health studies and regulatory science generated prior to, or relied upon by EPA prior to, adoption of any final rule based on the Proposal. This caselaw does not entertain any such exception and accepting any such exception for these circumstances would circumvent the holdings and reasoning of this case law.

XIV. The Proposal fails to address environmental justice concerns and harms to children, as required by Executive Order 12,898 and Executive Order 13,045

EPA claims that it need not address Executive Order 12,898 (Environmental Justice in Minority Populations) nor Executive Order 13,045 (protecting children) because “this action does not concern an environmental health risk or safety risk” 83 Fed. Reg. at 18,773. This is an unsupported and inaccurate claim. The implementation of this rule would impact the rules and guidelines that are set to protect children, people of color, the elderly, low-income, and other underserved populations.

A. Executive Order 12,898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12,898 applies to agency “programs, policies and activities” and directs agencies such as the EPA, “[t]o the greatest extent practicable and permitted by law” to “identify[] and address[], as appropriate, disproportionately high and adverse human health or environmental effects” of agency programs, policies and actions on minority populations and low-income populations.” Executive Order 12,898, Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 Fed. Reg. 7629 (Feb. 16, 1995). Because minority and low-income populations have historically been underrepresented in agency decision making, Executive Order 12,898 also aims to improve public participation of these populations in the decision-making process. *Id.* at 7630–32. Moreover, Executive Order 12898 aims to “improve research and data collection relating to the health of and environment of minority populations and low-income populations.” *Id.* at 7630.

In keeping with these and other principles, EPA created a Guidance document for determining when environmental justice should be considered when developing regulations titled “Guidance on Considering Environmental Justice During the Development of Regulatory Actions.” To achieve Executive Order 12,898's goals, the Guidance directs rule-writers and decision-makers to respond to three core Environmental Justice questions throughout the process:

²³⁵ See 83 Fed. Reg. at 18,772/1 (“For regulatory programs, like the National Ambient Air Quality Standards program, in which future significant regulatory actions may be based on the administrative record from previous reviews—particularly where the governing statute requires repeated review on a fixed, date-certain cycle—EPA seeks comment on the manner in which this proposed rule should apply to that previous record.”)

1. How did the public participation process provide transparency and meaningful participation for minority populations, low-income populations, tribes, and indigenous peoples?
2. How did the rule-writers identify and address existing and/or new disproportionate environmental and public health impacts on minority populations, low-income populations, and/or indigenous peoples?
3. How did actions taken under #1 and #2 impact the outcome or final decision?

Guidance on Considering Environmental Justice During the Development of Regulatory Actions, May 2015, at ii, <https://www.epa.gov/sites/production/files/2015-06/documents/considering-ej-in-rulemaking-guide-final.pdf> (footnote omitted). It is important to note that a regulatory action may involve a potential environmental justice concern if it could:

- Create new disproportionate impacts on minority populations, low-income populations, and/or indigenous peoples;
- Exacerbate existing disproportionate impacts on minority populations, low-income populations, and/or indigenous peoples; or
- Present opportunities to address existing disproportionate impacts on minority populations, low-income populations, and/or indigenous peoples through the action under development.

Id. at 10. And “[i]n determining whether potential EJ concerns may be at issue in regulatory actions, some level of analysis is needed, be it qualitative, quantitative, or some combination of both.” *Id.* at 15.

The Proposal improperly ignores Executive Order 12,898 and the agency’s obligations to address Environmental Justice in minority and low-income populations. EPA does not appear to have considered the Proposals effect on minority and low-income populations at all or performed any analysis, let alone attempt to address the Environmental Justice concerns. Instead, the Proposal states “The EPA believes that this action is not subject to Executive Order 12898 (59 FR 7629, February 16, 1994) because it does not establish an environmental health or safety standard.” 83 Fed. Reg. at 18,773. But Executive Order 12,898 is not limited to actions that “establish an environmental health or safety standard,” and EPA does not explain the basis for its conclusion that the Proposal is exempt. This is arbitrary and capricious.

The Proposal makes no mention of the Guidance on Considering Environmental Justice During the Development of Regulatory Actions, and the Proposal directly conflicts with many of the Executive Order’s, and the Guidance document’s provisions. With the single English language hearing EPA held in Washington DC, EPA has not provided for meaningful participation of minority populations, low-income populations, tribes, and indigenous peoples. Given that EPA has decided without explanation that the Proposal is categorically exempt from Environmental Justice considerations, the agency has not identified or addressed any existing or

new disproportionate environmental and public health impacts on minority populations, low-income populations, and/or indigenous peoples. And the Proposal's preclusion of agency consideration of peer reviewed studies in regulatory decision making unless the underlying data are made publicly available, will weaken research and data collection relating to the health of and environment of minority populations and low-income populations.

If EPA had fulfilled its obligations under Executive Order 12,898, the agency would have concluded that the Proposal does disproportionately harm minority and low-income populations that are most in need of protection. It is well established that minority and low-income populations are most likely to experience disproportionate exposure to harmful pollutants and chemicals. The Proposal seeks to preclude the use of scientific research critical to establishing safeguards against this disproportionate exposure.

Lastly, the Proposal will reduce research and data collection needed to protect the health of minority and low-income populations as individuals are deterred based on the fear their personal information will be released and researchers avoid seeking such information. EPA has not addressed this issue.

The Proposal does not comply with Executive Order 12,898 related to Environmental Justice or any EPA guidance implementing the Executive Order. It is arbitrary and capricious and should be withdrawn.

B. Executive Order 13,045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13,045 requires that every agency:

- (a) shall make it a high priority to identify and assess environmental health risks and safety risks that may disproportionately affect children; and
- (b) shall ensure that its policies, programs, activities, and standards address disproportionate risks to children that result from environmental health risks or safety risks.

Executive Order 13,045, Protection of Children From Environmental Health Risks and Safety Risks, 62 Fed. Reg. 19,885 (Apr. 21, 1997). The Executive Order requires that

For each covered regulatory action submitted to OMB's Office of Information and Regulatory Affairs (OIRA) for review pursuant to Executive Order 12866, the issuing agency shall provide to OIRA the following information developed as part of the agency's decisionmaking process, unless prohibited by law:

- (a) an evaluation of the environmental health or safety effects of the planned regulation on children; and

(b) an explanation of why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the agency.

Id. at 19,887. The Executive Order covers regulatory actions that are likely to result in a rule that may be economically significant under Executive Order 12,866 (which the EPA concluded applies to the Proposal, *see* 83 Fed. Reg. at 18,772) and “concern an environmental health risk or safety risk that an agency has reason to believe may disproportionately affect children.” 62 Fed. Reg. at 19,885.

EPA created a Guide to help Agency staff involved in developing actions determine whether Executive Order 13,045 applies to an Agency action and, if so, how to implement the Executive Order. Guide to Considering Children’s Health When Developing EPA Actions, at 1 Oct. 2006, https://www.epa.gov/sites/production/files/2014-05/documents/epa_adp_guide_childrenhealth.pdf. The Guide includes “a set of questions EPA staff involved in action development can ask risk assessors to ensure that the various types of information relevant to the assessment of risks to children are considered and may be useful in addressing the issue of disproportionate risks.” *Id.* at 8. And, the Guide explains: “If a rulemaking is not covered by EO 13045, but it discusses environmental health or safety, it is advisable to characterize children’s risk to the extent the data are available.” *Id.* at 7.

EPA asserts that the Proposal is not subject to Executive Order 13,045 because it does not concern an environmental health risk or safety risk. 83 Fed. Reg. at 18,773. EPA does not explain how it reached this conclusion. EPA also does not characterize children’s risk to the extent data are available. The Proposal applies to “Pivotal regulatory science,” which it defines as “the specific scientific studies or analyses that drive the requirements and/or quantitative analysis of EPA final significant regulatory decisions.” *Id.* And the Proposal defines Regulatory science as “scientific information, including assessments, models, criteria documents, and regulatory impact analyses, that provide the basis for EPA final significant regulatory decisions.” *Id.* The Proposal explains that “‘Pivotal regulatory science’ is the studies, models, and analyses that drive the magnitude of the benefit-cost calculation, the level of a standard, or point-of-departure from which a reference value is calculated. In other words, they are critical to the calculation of a final regulatory standard or level, or to the quantified costs, benefits, risks and other impacts on which a final regulation is based.” *Id.* at 18770. By its terms, the Proposal will impact (and therefore concern) all environmental health and safety risks, including many that EPA knows disproportionately affect children.

EPA failed its obligation to evaluate the environmental health or safety effects of the Proposal on children and explain why the Proposal is preferable to other potentially effective and reasonably feasible alternatives considered by the agency. The Proposal is arbitrary and capricious and should be withdrawn.

C. Examples of how the Proposal could disproportionately affect minority populations, low-income populations, and children

As explained in section III.F. and elsewhere, the Proposal would preclude the use of many of the studies that EPA has relied on to set and revise the NAAQS for fine particulate

matter (PM_{2.5}). The regulatory impact assessment from the initial decision to set the PM_{2.5} NAAQS explained that “benefits from these standards will likely be concentrated in urban areas with high concentrations of minority and low-income populations.” Regulatory Impact Analyses for the Particulate Matter and National Ambient Air Quality Standards and Proposed Regional Haze Rule, at 11–31 (July 17, 1997). When EPA revised the PM_{2.5} NAAQS in 2013, the agency confirmed:

The EPA has identified potential disproportionately high and adverse effects on minority and/or low-income populations related to PM_{2.5} exposures. In addition, the EPA has identified persons from lower socioeconomic strata as an at-risk population for PM-related health effects.

National Ambient Air Quality Standards for Particulate Matter, 78 Fed. Reg. 3085, 3267 (Jan. 15, 2013). EPA also stated that “[t]he protection offered by these standards is especially important for children because childhood represents a lifestage associated with increased susceptibility to PM-related health effects.” *Id.* at 3266. EPA has not explained how its Proposal to preclude from consideration the foundational scientific studies for fine particulate matter protections that disproportionately benefit children, minority, and low-income populations will not affect those same children, minority, and low-income populations.

Similarly, as explained in section III.A., the Proposal would preclude the consideration of epidemiology studies published in the 1990’s that correlate childhood blood lead levels with impaired brain function and adverse behavioral effects, which important EPA lead-reduction regulations are based on. A 2001 lead regulation under the Toxic Substances Control Act has been essential in helping to reduce lead poisoning among children, *see* section III.A. Lead; Identification of Dangerous Levels of Lead, 66 Fed. Reg. 1206 (Jan. 5, 2001). That rule explains “Young children are especially vulnerable to the toxic effects of lead because their nervous systems are still developing and they absorb more of the lead to which they are exposed.” *Id.* at 1207. “Moreover, the standards selected by EPA are designed first and foremost to protect children from lead in residential paint, dust, and soil.” *Id.* at 1237. Additionally, EPA explained:

The Agency’s standards will protect children in minority and low-income communities from disproportionate burdens. This is based on the findings of the Agency’s economic analysis which shows that non-white populations receive more of the public health benefit associated with the standards.

Id. EPA has not explained how its Proposal to preclude from consideration the foundational scientific studies for lead protections that disproportionately benefit children, minority, and low-income populations will not affect those same children, minority, and low-income populations.

XV. The Proposal’s peer review provision lacks any statutory basis, is vague and contrary to existing requirements for peer review

In addition to addressing how and whether the agency will consider science, the Proposal also contains a seemingly unrelated provision regarding agency peer review. The Proposal, in § 30.7, reads:

What role does independent peer review in this section?

EPA shall conduct independent peer review on all pivotal regulatory science used to justify regulatory decisions, consistent with the requirements of the OMB Final Information Quality Bulletin for Peer Review (70 FR 2664) and the exemptions described therein.

Because transparency in regulatory science includes addressing issues associated with assumptions used in models, EPA shall ask peer reviewers to articulate the strengths and weaknesses of EPA's justification for the assumptions applied and the implications of those assumptions for the results.

83 Fed. Reg. at 18,774.

There is no statutory authority for EPA to “conduct independent peer review on all pivotal regulatory science used to justify regulatory decisions, consistent with the requirements of the OMB Final Information Quality Bulletin for Peer Review (70 FR 2664) and the exemptions described therein.” The federal statutes that EPA lists as putative authority for the Proposal provide no authority for proposed § 30.7. *See* 83 Fed. Reg. at 18,769/2 (citing Clean Air Act sections 103, 301(a), 42 U.S.C. 7403, 7601(a); Clean Water Act sections 104, 501, 33 U.S.C. 1254, 1361; Safe Drinking Water Act sections 1442, 1450(a)(1), 42 U.S.C. 300j–1, 300j–9(a)(1); Resource Conservation and Recovery Act sections 2002(a)(1), 7009, 42 U.S.C. 6912(a)(1), 6979; Comprehensive Environmental Response, Compensation, and Liability Act (as delegated to the Administrator via Executive Order 12580) sections 115, 311, 42 U.S.C. 9616, 9660; Emergency Planning and Community Right-To-Know Act section 328, 42 U.S.C. 11048; Federal Insecticide, Fungicide, and Rodenticide Act sections 25(a)(1), 136r(a), 7 U.S.C. 136r(a), 136w; and Toxic Substances Control Act, as amended, section 10, 15 U.S.C. 2609, and the Administrative Procedures Act). The claimed authorities that EPA lists do not mention peer review or even allude to the concept. *Id.* Neither the Proposal nor accompanying docket materials identify *any* provision of any federal statute that authorizes EPA to promulgate proposed § 30.7. Our own research revealed no provision of any federal statute that authorizes EPA to promulgate proposed § 30.7.

When Congress writes federal statutes, Congress knows how to create legal authority for peer review, who shall conduct that peer review, what role, if any, that EPA or other parties will play, and how that peer review may be conducted. None of the provision in the law authorize EPA's Proposal in § 30.7. Instead, the statutes *require* that EPA use peer-reviewed science, regardless of whether it would meet EPA's definition of the term in § 30.7. And in cases where the law requires *EPA* to conduct the review, the statutes often spell out specifically how that should happen.

Statute	Provisions on Peer Review
CAA	<p data-bbox="358 239 786 271"><u>§ 7511b. Federal ozone measures</u></p> <p data-bbox="358 310 1409 642">(g) Ozone design value study The Administrator shall conduct a study of whether the methodology in use by the Environmental Protection Agency as of November 15, 1990, for establishing a design value for ozone provides a reasonable indicator of the ozone air quality of ozone nonattainment areas. The Administrator shall obtain input from States, local subdivisions thereof, and others. The study shall be completed and a report submitted to Congress not later than 3 years after November 15, 1990. The results of the study shall be subject to <i>peer and public review</i> before submitting it to Congress.</p> <p data-bbox="358 681 834 713">42 U.S.C. § 7511b (emphasis added).</p> <p data-bbox="358 752 776 784"><u>§ 7412. Hazardous air pollutants</u></p> <p data-bbox="358 823 1393 1231">(p) Mickey Leland National Urban Air Toxics Research Center (3) Scientific Advisory Panel The Board of Directors shall be advised by a Scientific Advisory Panel, the 13 members of which shall be appointed by the Board, and to include eminent members of the scientific and medical communities. The Panel membership may include scientists with relevant experience from the National Institute of Environmental Health Sciences, the Center for Disease Control, the Environmental Protection Agency, the National Cancer Institute, and others, and the Panel shall conduct <i>peer review</i> and evaluate research results. The Panel shall assist the Board in developing the research agenda, reviewing proposals and applications, and advise on the awarding of research grants.</p> <p data-bbox="358 1269 818 1302">42 U.S.C. § 7412 (emphasis added).</p>
CWA	<p data-bbox="358 1345 932 1377"><u>§ 1321. Oil and hazardous substance liability</u></p> <p data-bbox="358 1416 1354 1673">(a) Definitions (27) the term “best available science” means science that-- (A) maximizes the quality, objectivity, and integrity of information, including statistical information; (B) uses <i>peer-reviewed</i> and publicly available data; and (C) clearly documents and communicates risks and uncertainties in the scientific basis for such projects;</p> <p data-bbox="358 1711 818 1744">33 U.S.C. § 1321 (emphasis added).</p>
SDWA	<p data-bbox="358 1791 943 1823"><u>§ 300g-1. National drinking water regulations</u></p> <p data-bbox="358 1862 529 1895">(b) Standards</p>

	<p>(3) Risk assessment, management, and communication</p> <p>(A) Use of science in decisionmaking</p> <p>In carrying out this section, and, to the degree that an Agency action is based on science, the Administrator shall use--</p> <ul style="list-style-type: none"> (i) the best available, <i>peer-reviewed science</i> and supporting studies conducted in accordance with sound and objective scientific practices; and (ii) data collected by accepted methods or best available methods (if the reliability of the method and the nature of the decision justifies use of the data). <p>(B) Public information</p> <p>In carrying out this section, the Administrator shall ensure that the presentation of information on public health effects is comprehensive, informative, and understandable. The Administrator shall, in a document made available to the public in support of a regulation promulgated under this section, specify, to the extent practicable--</p> <ul style="list-style-type: none"> (i) each population addressed by any estimate of public health effects; (ii) the expected risk or central estimate of risk for the specific populations; (iii) each appropriate upper-bound or lower-bound estimate of risk; (iv) each significant uncertainty identified in the process of the assessment of public health effects and studies that would assist in resolving the uncertainty; and (v) <i>peer-reviewed studies</i> known to the Administrator that support, are directly relevant to, or fail to support any estimate of public health effects and the methodology used to reconcile inconsistencies in the scientific data. <p>...</p> <p>(12) Certain contaminants</p> <p>(B) Sulfate</p> <p>(i) Additional study</p> <p>Prior to promulgating a national primary drinking water regulation for sulfate, the Administrator and the Director of the Centers for Disease Control and Prevention shall jointly conduct an additional study to establish a reliable dose-response relationship for the adverse human health effects that may result from exposure to sulfate in drinking water, including the health effects that may be experienced by groups within the general population (including infants and travelers) that are potentially at greater risk of adverse health effects as the result of such exposure. The study shall be conducted in consultation with interested States, shall be based on the best available, <i>peer-reviewed science</i> and supporting studies conducted in accordance with sound and objective scientific practices, and shall be completed not later than 30 months after August 6, 1996.</p> <p>42 U.S.C. § 300g-1 (emphasis added).</p>
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	<p><u>§ 300j-2. Grants for State programs</u></p> <p>(d) New York City watershed protection program</p> <p>(1) In general</p> <p>The Administrator is authorized to provide financial assistance to the State of New York for demonstration projects implemented as part of the watershed program for the protection and enhancement of the quality of source waters of the New York City water supply system, including projects that demonstrate, assess, or provide for comprehensive monitoring and surveillance and projects necessary to comply with the criteria for avoiding filtration contained in 40 C.F.R. 141.71.</p> <p>Demonstration projects which shall be eligible for financial assistance shall be certified to the Administrator by the State of New York as satisfying the purposes of this subsection. In certifying projects to the Administrator, the State of New York shall give priority to monitoring projects that have undergone <i>peer review</i>.</p> <p>42 U.S.C. § 300j-2 (emphasis added).</p>
RCRA	<p><u>§ 6939a. Exposure information and health assessments</u></p> <p>(b) Health assessments</p> <p>(2) Whenever in the judgment of the Administrator, or the State (in the case of a State with an authorized program), a landfill or a surface impoundment poses a substantial potential risk to human health, due to the existence of releases of hazardous constituents, the magnitude of contamination with hazardous constituents which may be the result of a release, or the magnitude of the population exposed to such release or contamination, the Administrator or the State (with the concurrence of the Administrator) may request the Administrator of the Agency for Toxic Substances and Disease Registry to conduct a health assessment in connection with such facility and take other appropriate action with respect to such risks as authorized by section 9604(b) and (i) of this title. If funds are provided in connection with such request the Administrator of such Agency shall conduct such health assessment.</p> <p>...</p> <p>(e) Periodic reports</p> <p>The Administrator of such Agency shall issue periodic reports which include the results of all the assessments carried out under this section. Such assessments or other activities shall be reported after appropriate <i>peer review</i>.</p> <p>42 U.S.C. § 6939a (emphasis added).</p>
CERCLA	<p><u>§ 9604. Response authorities</u></p> <p>(i) Agency for Toxic Substances and Disease Registry; establishment, functions, etc.</p>

...

Any toxicological profile or revision thereof shall reflect the Administrator of ATSDR's assessment of all relevant toxicological testing which has been *peer reviewed*. The profiles required to be prepared under this paragraph for those hazardous substances listed under subparagraph (A) of paragraph (2) shall be completed, at a rate of no fewer than 25 per year, within 4 years after October 17, 1986. A profile required on a substance listed pursuant to subparagraph (B) of paragraph (2) shall be completed within 3 years after addition to the list. The profiles prepared under this paragraph shall be of those substances highest on the list of priorities under paragraph (2) for which profiles have not previously been prepared. Profiles required under this paragraph shall be revised and republished as necessary, but no less often than once every 3 years. Such profiles shall be provided to the States and made available to other interested parties.

...

(7)(A) Whenever in the judgment of the Administrator of ATSDR it is appropriate on the basis of the results of a health assessment, the Administrator of ATSDR shall conduct a pilot study of health effects for selected groups of exposed individuals in order to determine the desirability of conducting full scale epidemiological or other health studies of the entire exposed population.

(B) Whenever in the judgment of the Administrator of ATSDR it is appropriate on the basis of the results of such pilot study or other study or health assessment, the Administrator of ATSDR shall conduct such full scale epidemiological or other health studies as may be necessary to determine the health effects on the population exposed to hazardous substances from a release or threatened release. If a significant excess of disease in a population is identified, the letter of transmittal of such study shall include an assessment of other risk factors, other than a release, that may, in the judgment of the *peer review* group, be associated with such disease, if such risk factors were not taken into account in the design or conduct of the study.

...

(13) All studies and results of research conducted under this subsection (other than health assessments) shall be reported or adopted only after appropriate *peer review*. Such *peer review* shall be completed, to the maximum extent practicable, within a period of 60 days. In the case of research conducted under the National Toxicology Program, such *peer review* may be conducted by the Board of Scientific Counselors. In the case of other research, such *peer review* shall be conducted by panels consisting of no less than three nor more than seven members, who shall be disinterested scientific experts selected for such purpose by the Administrator of ATSDR or the Administrator of EPA, as appropriate, on the basis of their reputation for scientific objectivity and the lack of institutional ties

	<p>with any person involved in the conduct of the study or research under review. Support services for such panels shall be provided by the Agency for Toxic Substances and Disease Registry, or by the Environmental Protection Agency, as appropriate.</p> <p>42 U.S.C. § 9604 (emphasis added).</p>
EPCRA	No mentions of peer review
FIFRA	<p><u>§ 136w. Authority of Administrator</u></p> <p>(e) Peer review The Administrator shall, by written procedures, provide for <i>peer review</i> with respect to the design, protocols, and conduct of major scientific studies conducted under this subchapter by the Environmental Protection Agency or by any other Federal agency, any State or political subdivision thereof, or any institution or individual under grant, contract, or cooperative agreement from or with the Environmental Protection Agency. In such procedures, the Administrator shall also provide for <i>peer review</i>, using the advisory panel established under subsection (d) of this section or appropriate experts appointed by the Administrator from a current list of nominees maintained by such panel, with respect to the results of any such scientific studies relied upon by the Administrator with respect to actions the Administrator may take relating to the change in classification, suspension, or cancellation of a pesticide. Whenever the Administrator determines that circumstances do not permit the <i>peer review</i> of the results of any such scientific study prior to the Administrator's exercising authority under section 136d(c) of this title to immediately suspend the registration of any pesticide to prevent an imminent hazard, the Administrator shall promptly thereafter provide for the conduct of <i>peer review</i> as provided in this sentence. The evaluations and relevant documentation constituting the <i>peer review</i> that relate to the proposed scientific studies and the results of the completed scientific studies shall be included in the submission for comment forwarded by the Administrator to the advisory panel as provided in subsection (d). As used in this subsection, the term “<i>peer review</i>” shall mean an independent evaluation by scientific experts, either within or outside the Environmental Protection Agency, in the appropriate disciplines.</p> <p>7 U.S.C. § 136w (emphasis added).</p> <p><u>§ 136w-8. Pesticide registration service fees</u></p> <p>(a) Definition of costs In this section, the term “costs”, when used with respect to review and decisionmaking pertaining to an application for which registration service fees are paid under this section, means-- (1) costs to the extent that--</p>

	<p>(A) officers and employees provide direct support for the review and decisionmaking for covered pesticide applications, associated tolerances, and corresponding risk and benefits information and analyses;</p> <p>(B) persons and organizations under contract with the Administrator engage in the review of the applications, and corresponding risk and benefits information and assessments; and</p> <p>(C) advisory committees and other accredited persons or organizations, on the request of the Administrator, engage in the <i>peer review</i> of risk or benefits information associated with covered pesticide applications;</p> <p>(2) costs of management of information, and the acquisition, maintenance, and repair of computer and telecommunication resources (including software), used to support review of pesticide applications, associated tolerances, and corresponding risk and benefits information and analyses; and</p> <p>(3) costs of collecting registration service fees under subsections (b) and (c) and reporting, auditing, and accounting under this section.</p> <p>7 U.S.C. § 136w-8 (emphasis added).</p>
TSCA	<p><u>§ 2625. Administration</u></p> <p>(h) Scientific standards In carrying out sections 2603, 2604, and 2605 of this title, to the extent that the Administrator makes a decision based on science, the Administrator shall use scientific information, technical procedures, measures, methods, protocols, methodologies, or models, employed in a manner consistent with the best available science, and shall consider as applicable--</p> <p>(1) the extent to which the scientific information, technical procedures, measures, methods, protocols, methodologies, or models employed to generate the information are reasonable for and consistent with the intended use of the information;</p> <p>(2) the extent to which the information is relevant for the Administrator's use in making a decision about a chemical substance or mixture;</p> <p>(3) the degree of clarity and completeness with which the data, assumptions, methods, quality assurance, and analyses employed to generate the information are documented;</p> <p>(4) the extent to which the variability and uncertainty in the information, or in the procedures, measures, methods, protocols, methodologies, or models, are evaluated and characterized; and</p> <p>(5) the extent of independent verification or <i>peer review</i> of the information or of the procedures, measures, methods, protocols, methodologies, or models.</p> <p>15 U.S.C. § 2625 (emphasis added).</p>

§ 2617. Preemption

(b) New statutes, criminal penalties, or administrative actions creating prohibitions or other restrictions

(1) In general

Except as provided in subsections (c), (d), (e), (f), and (g), beginning on the date on which the Administrator defines the scope of a risk evaluation for a chemical substance under section 2605(b)(4)(D) of this title and ending on the date on which the deadline established pursuant to section 2605(b)(4)(G) of this title for completion of the risk evaluation expires, or on the date on which the Administrator publishes the risk evaluation under section 2605(b)(4)(C) of this title, whichever is earlier, no State or political subdivision of a State may establish a statute, criminal penalty, or administrative action prohibiting or otherwise restricting the manufacture, processing, distribution in commerce, or use of such chemical substance that is a high-priority substance designated under section 2605(b)(1)(B)(i) of this title.

...

(f) Waivers

(2) Required exemptions

Upon application of a State or political subdivision of a State, the Administrator shall exempt from subsection (b) a statute or administrative action of a State or political subdivision of a State that relates to the effects of exposure to a chemical substance under the conditions of use if the Administrator determines that--

(A)(i) compliance with the proposed requirement of the State or political subdivision of the State would not unduly burden interstate commerce in the manufacture, processing, distribution in commerce, or use of a chemical substance;

(ii) compliance with the proposed requirement of the State or political subdivision of the State would not cause a violation of any applicable Federal law, rule, or order; and

(iii) the State or political subdivision of the State has a concern about the chemical substance or use of the chemical substance based in *peer-reviewed science*; or

(B) no later than the date that is 18 months after the date on which the Administrator has initiated the prioritization process for a chemical substance under the rule promulgated pursuant to section 2605(b)(1)(A) of this title, or the date on which the Administrator publishes the scope of the risk evaluation for a chemical substance under section 2605(b)(4)(D) of this title, whichever is sooner, the State or political subdivision of the State has enacted a statute or proposed or finalized an administrative action intended to prohibit or otherwise restrict the manufacture, processing, distribution in commerce, or use of the chemical substance.

15 U.S.C. § 2617 (emphasis added).

	<p><u>§ 2605. Prioritization, risk evaluation, and regulation of chemical substances and mixtures</u></p> <p>(b) Risk evaluations (E) Metals and metal compounds In identifying priorities for risk evaluation and conducting risk evaluations of metals and metal compounds, the Administrator shall use the Framework for Metals Risk Assessment of the Office of the Science Advisor, Risk Assessment Forum, and dated March 2007, or a successor document that addresses metals risk assessment and is <i>peer reviewed</i> by the Science Advisory Board.</p> <p>15 U.S.C. § 2605 (emphasis added).</p>
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Under longstanding federal case law, when Congress authorizes an approach in one section of a statute using specific language but does not do the same in other sections of a statute, courts presume that Congress acted purposefully and did not mean to address or authorize that approach in those other statutory sections. *See, e.g., Dean v. United States*, 556 U.S. 568 (2009) (“It is generally presumed that Congress acts intentionally when including particular language in one section of a statute but not in another.” (citing *Russello v. United States*, 464 U.S. 16, 23 (1983))). Not only are there no implied grants of authority to an agency in the other statutory sections, but the congressional decisions to authorize the approach elsewhere in the statute give even *greater* force to the conclusion that the agency has *not* been given authority where Congress did not use the same or similar authorizing language.

The EPA approach proposed in § 30.7 is even more unlawful than would be the case, independently, under this case law. Proposed § 30.7 says “EPA *shall* conduct independent peer review on all pivotal regulatory science used to justify regulatory decisions, *consistent with the requirements of* the OMB Final Information Quality Bulletin for Peer Review (70 FR 2664) and the exemptions described therein.” 83 Fed. Reg. at 18,774/2 (emphasis added). EPA proposes to bind itself (“shall”) to conduct a particular form of peer review on “*all* pivotal regulatory science” based on an *unenforceable, non-binding* OMB bulletin that has never been the subject of notice and comment rulemaking and that itself is not authorized by any federal law. To the contrary, treating the content of the unenforceable bulletin as a binding regulation would itself violate the federal statutes that EPA implements, because those statutes do not codify the bulletin, and EPA would be unlawfully codifying a mere policy preference. This EPA may not do.

This Proposal is unlawful, arbitrary and capricious, and an abuse of EPA discretion. To reiterate, the Proposal identifies *no* statutory authority for EPA to conduct independent peer review for any, much less all, “pivotal regulatory science” consistent with the dense content (and exceptions) of the OMB bulletin. The Proposal identifies *no* statutory authority for EPA to bind itself, and future administrations, to conduct peer review only in this fashion, unless and until future notice-and-comment rulemaking is undertaken. The Proposal identifies no suggestion in statutory language or legislative history that Congress intended EPA to conduct binding peer review consistent with this OMB bulletin, notwithstanding that Congress has known about this

bulletin since 2005. EPA has simply made up proposed § 30.7—with its the link to the OMB bulletin, and the putative authority for the Proposal—out of whole cloth. This EPA may not do.

The Proposal suffers additionally from unlawful vagueness. Proposed § 30.7 say that “EPA shall conduct independent peer review” without providing any coherent explanation or accompanying regulatory text about what that *means*: how will that peer review be conducted? By whom? Who will select the peer reviewers? How many will there be? Who will assure their independence and expertise? Will peer reviewers be subject to federal conflict of interest rules and policies? Will peer reviewers be anonymous? Where will the funds come from to conduct EPA peer reviews for “all pivotal regulatory science”? Has EPA estimated how many instances of “pivotal regulatory science” it anticipates conducting peer review for in one year? In prior years? Will the peer review be conducted openly and publicly? Will it be conducted in accordance with the Federal Advisory Committee Act? What will the duration of any peer review be? What purpose will that peer review serve? How will it affect future regulatory decisions? Or will it? Will there be an administrative docket? Will any product of the peer review be included in the administrative dockets for rulemaking? Will peer reviewer comments be part of the certified record for judicial review? Will the agency seek deference from future reviewing courts for the views expressed by peer reviewers? Does EPA not believe that peer review conducted by professional journals and societies is valid? Or sufficient? On what basis does EPA think professional peer review is invalid or insufficient, considering there is not one iota of evidence or support for that belief in the Proposal or the accompanying docket? What is the basic *justification* for proposed § 30.7? The Proposal provides no answers to these questions.

One obvious and serious objection to the proposed peer review mechanism is that it will be time-consuming, and it will necessarily slow EPA’s responsibilities to meet statutory deadlines and/or protect Americans by issuing timely health and environmental safeguards. The Proposal ignores this serious concern. Indeed, the Proposal contains no indication that EPA has given any thought to this serious concern, and how it will impact EPA’s statutory responsibilities and legal duty to meet congressional deadlines. EPA already misses an unacceptably high number of congressional deadlines in the statutes it administers, and the Proposal to apply peer review to “*all* pivotal regulatory science” will only exacerbate that endemic problem and the unlawfulness that it represents.

Finally, the final paragraph of § 30.7 appears to suggest that EPA should conduct peer review of the proposed agency action itself, rather than of the science underlying that action. 83 Fed. Reg. at 18,774 (stating that “EPA shall ask peer reviewers to articulate the strengths and weaknesses of *EPA*’s justification for the assumptions applied and the implications of those assumptions for the results.” (emphasis added)). It is entirely unclear how “peer review” could be applied to EPA’s reasoning itself, rather than the cited science, and the Proposal contains no further clarification.

EPA should abandon the unlawful Proposal altogether but, if EPA does finalize any rule based on the Proposal, EPA still should abandon the unlawful approach reflected in proposed § 30.7.

XVI. Conclusion

It is clear from the above that the Proposal violates the law and must be withdrawn. There is no support for the Proposal in any the statutes EPA cites, and in fact, those statutes conflict with the Proposal, as do other statutes that EPA failed to mention at all. Further, none of the other sources cited provide legal or logical support for the Proposal. The Proposal also suffers from a host of other problems: its definitions are vague; it is an unexplained reversal from prior agency policy; it handles confidential business information in a capricious manner; it treats other types of agency actions inconsistently; and it fails to analyze disproportionate impacts on communities of color, low-income communities, and children.

In the alternative, if EPA decides to move ahead with this reckless, unjustified, and unlawful effort to censor the science that EPA may consider, and must consider, to protect Americans' health and environment, the agency must first issue a supplemental proposal and actual administrative record to cover the multitude of issues, evidence, and specific regulatory text for which EPA fails to provide fair notice. The Proposal fails to provide fair notice or justifications addressing numerous issues that our comments detail—from an absence of any statutory authority, to failures to address statutory authorities that the Proposal squarely contravenes, to failures to provide reasoned explanations, including basic justifications for EPA's numerous departures from past practices. The Proposal fails to propose specific regulatory text addressing numerous implementation elements, as well as issues that are touched upon only in passing in the preamble (*e.g.*, non-linearity and LNT). Apart from all of the significant substantive and procedural defects from which the Proposal suffers, it still manages to be a shockingly shoddy effort missing actual regulatory text and supporting legal, factual, scientific, and technical information that would provide fair notice to the public.

Index of Attachments to
Comments of Natural Resources Defense Council on “Strengthening Transparency in Regulatory
Science,” 83 Fed. Reg. 18,768 (April 30, 2018), Docket ID No. EPA-HQ-OA-2018-0259

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Message

From: Christian, Megan [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=64A0F5E0E9D94271B23CAD28DB653851-LIZOTTE, ME]
Sent: 8/24/2018 6:27:11 PM
To: Orme-Zavaleta, Jennifer [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3c5a111dc377411595e5b24b5d96146b-Orme-Zavaleta, Jennifer]
Subject: FOR REVIEW: Another Docket Letter About the Proposed Rule
Attachments: AL-18-001-0082-Gov Inslee ltr to EPA re Transparency Rule w Attachments (002).pdf; Transparency Rule Docket Comments Gov Inslee 8-22-18.doc

Jennifer,

Sam sent forward another draft response for ORD to use for a letter Admin Wheeler received from Washington State's Governor Inslee regarding the science transparency rule. The draft response is the same one we have used for other state and congressional comments on the rule.

Richard reviewed and had no comments.

Please let me know if you're ok with this moving forward.

Thanks,
Megan

Megan Christian, MPH
Office of Research and Development
U.S. Environmental Protection Agency
Christian.Megan@epa.gov
202-564-6184

From: Linkins, Samantha
Sent: Wednesday, August 22, 2018 5:53 PM
To: Christian, Megan <Christian.Megan@epa.gov>; Kuhn, Kevin <Kuhn.Kevin@epa.gov>
Cc: Blackburn, Elizabeth <Blackburn.Elizabeth@epa.gov>
Subject: For Review: Another Docket Letter About the Proposed Rule

Hi friends – can you get clearance on the attached response please? Should be easy as it's identical to the others we've sent. The letter is from Governor Inslee of Washington.

Samantha Linkins
Science Communication
Office of Research and Development, US EPA
Washington, DC
Office: 202-564-1834
Cell: 202-604-5742



STATE OF WASHINGTON
Office of the Governor

August 16, 2018

The Honorable Andrew Wheeler
Acting Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20460

Dear Acting Administrator Wheeler:

Several Washington state agencies charged with protecting human health and the environment have recently commented on your agency's proposed rule known as the "transparency" rule (Strengthening Transparency in Regulatory Science - Docket ID No. EPA-HQ-OA-2018-0259). I am writing in support of those comments and the request to withdraw the rule.

I find your rule to be a solution in search of a problem. Since its creation, the U.S. Environmental Protection Agency (EPA) has used science for the betterment of the country in ways that are indisputable. Starting with the successful implementation of the Clean Air Act that eliminated the problem of acid rain and checked the choking impacts of smog in our cities, scientific rigor has been the bedrock for action. Turning peer-reviewed academic research into comprehensive assessments often followed by advisory panel review and ultimately an open, public rule-making is a long and painstaking process. Despite the slow development of even the most obvious of scientific findings into positive action, I have supported the rigor of this process that allows for detailed scrutiny from all stakeholders.

The proposed rule cites the need for increased transparency but provides little evidence that this need is not being met. EPA models, for example, that serve as the basis for predicting cancer risk and blood lead levels in children are well presented, explained and supported. It is quite true that debate continues on the accuracy of such models but there is little debate that they are transparent. It appears that the only thing left for more transparency is the raw data itself, an approach that dismisses the value of the peer-review process. Setting aside the unsupported cynicism that such an attitude implies toward peer-review as a foundational piece of the scientific process, the ramifications of requiring raw data beyond what is in the peer-reviewed literature are unacceptable.

Disclosure of human data from epidemiology studies violates the integrity of that hugely important tool necessary for the protection of human health. Participants are rightly guaranteed confidentiality when they participate in such studies. Epidemiology should be welcomed by those who question modeling, often based on animal studies, as it looks at the impacts of real



world exposure in the very people that regulations are designed to protect. Redacting personal information as a solution proposed by the previous administrator shows a lack of understanding and appreciation for how these studies are approved and executed. Simply stated, risking the future use of the critical public health tool that is epidemiology is a fool's errand.

I also must question the intent here. The agency shows little stomach for increasing transparency for the thousands of chemicals in the millions of products we buy everyday citing the need for business to keep trade secrets confidential. A legitimate concern but with valid solutions. I find it hypocritical for the administration to push for unsubstantiated and unnecessary increases in transparency that could threaten public health while failing to share information on toxics in products with states.

Finally, more and more we find that science has become a political target attacked not because of its substance but because of who is delivering it or what it might mean to our way of life. These attacks are not rooted in the necessary skepticism of scientific inquiry but instead are born of a distaste for the answer itself. Sir Austin Bradford Hill, who is credited with drawing the link between smoking and cancer, famously wrote in his seminal paper on biostatistics that:

"All scientific work is incomplete - whether it be observational or experimental. All scientific work is liable to be upset or modified by advancing knowledge. That does not confer upon us a freedom to ignore the knowledge we already have, or to postpone the action that it appears to demand at a given time."

I hope that you will reconsider the detrimental effect that your proposed rule could have on advancing science so that we continue to heed new science while rejecting the easy temptation to hide behind the uncertainty that inevitably comes with it.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jay Inslee", written in a cursive style.

Jay Inslee
Governor

Enclosures



August 15, 2018

The Honorable Andrew Wheeler, Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Mail Code: 28221T
Washington, DC 20460

Re: Strengthening Transparency in Regulatory Science (Docket ID No. EPA-HQ-OA-2018-0259)

Dear Administrator Wheeler:

The Washington State Departments of Ecology, Fish and Wildlife, Natural Resources, and the Recreation and Conservation Office, respectfully submit comments on the proposed rule Strengthening Transparency in Regulatory Science (40 CFR Part 30).

We urge the U.S. Environmental Protection Agency (EPA) to withdraw the proposed rule for the following reasons:

- The proposed rule lacks detail and EPA has provided no supporting information to justify why the rule is beneficial. EPA did not evaluate the costs and benefits of the rule or provide any information on rule implementation.
- We have significant concerns that the proposed rule would impede EPA's ability to use established, peer-reviewed scientific evidence to set standards that protect the health of Washington State citizens and our environment.
- The proposed rule would hinder important research by requiring EPA only consider scientific studies where the underlying data, models, and methodologies are made publicly available and sufficient for independent validation. We have deep concerns about EPA's ability to implement the rule in a manner that allows the use of the best scientific information, while ensuring scientific progress and adequately protecting patient, business, and citizen privacy.

The Honorable Andrew Wheeler
August 15, 2018
Page 2

Thank you for the opportunity to provide our perspective on this important issue.



Maia D. Bellon, Director
Washington State Department of Ecology



Kelly Susewind, Director
Washington Department of Fish and Wildlife



Hilary S. Franz, Commissioner of Public Lands
Washington Department of Natural Resources



Kaleen Cottingham, Director
Washington State Recreation and Conservation Office

Enclosure (1) Pages 1-5

Comments

I. Introduction

We have significant concerns that the proposed rule would impede EPA's ability to use established, peer-reviewed scientific evidence to set standards that protect the health of the citizens of Washington State and our environment, and urge EPA to withdraw the proposed rule. We appreciate EPA's decision to extend the public comment period and hold a public hearing to allow states, researchers, and other interested parties sufficient time to evaluate and comment on the proposed rule.

The proposed rule would require that EPA only consider scientific studies where the underlying data, models, and methodologies are made publicly available and sufficient for independent validation. Dose-response data and models involving human subjects are the gold standard for assessment of direct human health effects. These studies typically rely on patient data that is protected by the Health Insurance Portability and Accountability Act (HIPAA) law that safeguards and protects privacy of personal patient medical information. Further, environmental studies often require sensitive information about private citizens, companies and private properties. Federal and state agencies and academic institutions have robust processes in place and human subjects review boards to safeguard confidential information and meet high ethical standards. As long as these studies meet appropriate standards for data quality and scientific peer review they should be an integral part of the setting of environmental standards.

We have deep concerns about EPA's ability to implement the rule in a manner which allows the use of the best scientific information, while ensuring scientific progress and adequately protecting patient privacy. It is unclear how research efforts will be hindered by the requirement that de-identified health data on individual study subject be shared publically. For example, the U.S. Department of Health and Human Services *Guidance Regarding Methods for De-identification of Protected Health Information in Accordance with the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule*¹ Safe Harbor method requires deletion of all geographic subdivisions smaller than a state in order to de-identify healthcare data. This information loss would render analysis of spatial variability of health information in air pollution epidemiology research impossible.

II. The current process is adequate

The EPA currently uses robust, transparent processes to evaluate the best available scientific research, characterize the health hazards of chemicals and air pollution, and set standards to protect public health and the environment. It is a standard practice for EPA to conduct comprehensive reviews of the best available scientific research when evaluating air and water quality standards. EPA relies on peer-

¹ U.S. Department of Health and Human Services, *Guidance Regarding Methods for De-identification of Protected Health Information in Accordance with the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule*, <https://www.hhs.gov/hipaa/for-professionals/privacy/special-topics/de-identification/index.html>.

Enclosure (1) page 2

reviewed studies that describe the underlying data, methods, assumptions, sensitivity, and uncertainty of the results. These studies are cited and are published and available for public review. Reproducibility and independent validation are critical aspects of the scientific method, and have resulted in significant advancements in our understanding of the health effects of air pollutants at different exposures and thresholds.

EPA relies on independent advisory panels comprised of nationally-recognized experts, such as the Scientific Advisory Board (SAB), and the Clean Air Scientific Advisory Committee (CASAC), to review and evaluate the state of the research and to provide an additional layer of independent peer-review. EPA has existing policies and procedures in place to prevent conflicts of interest and ensure that the boards and committees are well-balanced, and comprised of independent members with the appropriate expertise. The processes for developing human health assessment and setting and reviewing standards by EPA have been routinely scrutinized by organizations such as the National Academy of Sciences (NAS) and the Government Accountability Office (GAO). EPA has incorporated their recommendations and improved its approach over time.²

Several of the landmark studies on the health effects of air pollution, such as the Harvard Six Cities and American Cancer Society studies, have been peer-reviewed and re-analyzed by multi-disciplinary expert panels from the Health Effects Institute (HEI).³ HEI is an independent non-profit research institute that receives funding from both EPA and industry to provide impartial credible science on the health effects of air pollution. In testimony before a Congressional committee, the President of HEI stated that "US EPA and other agencies have established procedures to produce and review science for decisions, and in many cases those procedures work to enhance the quality and credibility of the science."

The proposed rule uses the phrase "*best available science*", but calls into question established processes such as EPA's integrated risk assessment system (IRIS) review program and National Ambient Air Quality Standards (NAAQS) program. In fact, EPA routinely makes the 'best' use of scientific information in these programs. That includes study-by-study evaluation of strengths and weaknesses of all relevant research. Also EPA more-than-adequately explains its decisions and analyses both in recommending NAAQS revisions and in quantifying chemical toxicities in IRIS.

IRIS is not a regulatory program, but it provides essential scientific information for decisions made by Washington State Department of Ecology. In a recent review of the IRIS program, the National Academy of Sciences reported that EPA has made "substantial progress" in implementing the recommendations outlined in previous NAS reports, improving the program's overall scientific and technical performance.⁴

² See for example National Academy of Sciences (NAS), 2018, Progress Toward Transforming the Integrated Risk Information System (IRIS) Program: A 2018 Evaluation, <https://www.nap.edu/catalog/25086/progress-toward-transforming-the-integrated-risk-information-system-iris-program>; National Research Council, 2000, Strengthening Science at the U.S. Environmental Protection Agency: Research Management and Peer-Review Practices, <https://www.ncbi.nlm.nih.gov/books/NBK225708/>.

³ See Health Effects Institute, 2000, Reanalysis of the Harvard Six Cities Study and the American Cancer Society Study of Particulate Air Pollution and Mortality, <https://www.healtheffects.org/publication/reanalysis-harvard-six-cities-study-and-american-cancer-society-study-particulate-air>.

⁴ National Academy of Science, April 11, 2018, EPA's IRIS program has made substantial progress, says new report, <http://www8.nationalacademies.org/onpinews/newsitem.aspx?RecordID=25086>.

IRIS uses a rational weight-of-evidence method to assess available research, and provide access to a comprehensive source of toxicity data. It increases our capacity to evaluate chemical hazards, and to quantify risk magnitudes and uncertainties, but it does not tell us how to manage risks. The proposed exclusion of research lacking all underlying data from IRIS would be an unnecessary waste of information.

The NAAQS review process is a model of scientific transparency. Its reviews are renowned for their high quality. In regard to the studies on which they are based, the costs of publication as well as requirements for the privacy of study subjects have prohibited making all the data obtained publically available. We strongly disagree that this diminishes the value of such epidemiology and toxicology studies to regulatory science. Exclusion of such studies would significantly reduce the amount of scientific data available to establish appropriate standards to protect public health and the environment.

The proposed rule offers very little in the way of examples of non-transparent science. Instead it asserts “[a]s a case in point, there is growing empirical evidence of non-linearity in the concentration-response function for specific pollutants and health effects”. That is true, however it has nothing to do with lack of public access of underlying research data. Instead, it calls for increased federal funding of research on non-linearity of pollution health impacts.

III. Recent actions by EPA undermine independent, scientific research

We have concerns that this proposed rule, and other recent actions by EPA will undermine scientifically robust, well established, existing processes. For example, EPA announced in 2017 that it would prohibit participation in CASAC of scientists from leading research institutions that receive EPA research grants.⁵ EPA filled a number of the vacancies with researchers funded by the industries that EPA is responsible for regulating.⁶

EPA has also reduced or eliminated funding for critical scientific research programs such as the Science to Achieve Results (STAR) grants.⁷ EPA should focus its efforts on improving existing processes and restoring funding for scientific research rather than establishing arbitrary, costly requirements that would further delay and diminish environmental research and potentially delay or weaken health-based standards.

⁵ U.S. EPA, Oct. 31, 2017, Administrator Pruitt Issues Directive to Ensure Independence, Geographic Diversity & Integrity in EPA Science Committees, <https://www.epa.gov/newsreleases/administrator-pruitt-issues-directive-ensure-independence-geographic-diversity>.

⁶ See *Science*, Nov. 3, 2017, EPA unveils new industry-friendlier science advisory boards, <http://www.sciencemag.org/news/2017/11/epa-unveils-new-industry-friendlier-science-advisory-boards>.

⁷ See U.S. EPA, 2018, FY 2019 Budget in Brief, <https://www.epa.gov/sites/production/files/2018-02/documents/fy-2019-epa-bib.pdf>

IV. The proposed rule would weaken our ability to protect public health and environment

We are concerned that the proposed rule would limit scientific research available for setting air quality standards to protect public health, and that EPA could use this rule to justify delaying new or weakening existing standards that protect the most vulnerable citizens from adverse health effects. The State of Washington relies on the scientific research and standards set by EPA to protect the health of our citizens and the environment.

Children are at greater risk from air pollution because they are physically developing and because they have higher inhalation rates than adults do. We disagree with part IV, Statutory and Executive Orders Reviews, section H, of the proposed rule. The claim that this action "is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk" to children is not supported by scientific evidence. In fact, there is substantial body of research showing children are more sensitive than adults to environmental pollution.

We also disagree with part IV, section K., which claims that this action is not subject to Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations. According to EPA, the purpose of Executive Order 12898 is to "focus federal attention on the environmental and human health effects of federal actions on minority and low-income populations with the goal of achieving environmental protection for all communities."⁸ There is a large and growing body of evidence that minority and low-income populations face greater exposures to environmental pollution and are more susceptible to its effects. Efforts to delay or weaken air quality standards would disproportionately impact these communities. We urge EPA to consider the environmental justice implications of the rule and examine ways to further protect vulnerable people and disadvantaged communities, in accordance with Executive Order 12898.

The last sentence in section II of the preamble to the proposed rule says "The Agency's offices should be guided by this policy to the maximum extent practicable during ongoing regulatory action, even where such research has already been generated, solicited, or obtained." Previously published studies that followed Institutional Review Board protocols to protect participant privacy could not retroactively release their underlying data because to do so would be a gross violation of both ethical norms and institutional rules. Many of these studies are the bedrock of our understanding of human health effects of air pollution exposure.

Exclusion of existing research reports from regulatory actions just because the reports do not present all their underlying data would be a huge and unnecessary waste of information and the funding used to develop it. We urge EPA to focus their efforts on future improvements rather than undertaking a costly, process to vet and review the comprehensive body of knowledge on the health hazards of air pollution.

⁸ U.S. EPA, Summary of Executive Order 12898 – Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, <https://www.epa.gov/laws-regulations/summary-executive-order-12898-federal-actions-address-environmental-justice>.

V. Procedural concerns

The proposed rule is lacking in detail and EPA has not provided any supporting information to justify why the rule is beneficial. Moreover, EPA has not fully evaluated the costs and benefits of the rule. The costs of the rule could be significant, especially if EPA decides to apply the rule retrospectively, and use the rule as a tool to revise existing health-based air quality standards. We urge EPA to provide additional clarification on the proposal, including evaluating the costs and benefits, and clarifying how the rule would be implemented. EPA should also evaluate what data would be available for setting health-based air quality standards if the rule was applied retroactively and prospectively, and consider how it would impact EPA's ability to protect public health and the environment.

VI. Recommended revisions to Part 30 - Transparency in Regulatory Decision Making

§ 30.6 Additional requirements pertaining to the use of dose response data and models underlying pivotal regulatory science.

We agree with the first sentence of this section ("*EPA shall describe and document any assumptions and methods used, and should describe variability and uncertainty.*"), and if a rule is finalized we would find this language acceptable. However, the remainder of the language in this section, if still desired after further evaluation, would be better placed in policy or guidance documents.

VII. Conclusion

In summary, we request that EPA withdraw the proposed rule. We recommend that EPA work with states, research institutions, and organizations such as the National Academy of Sciences to identify improvements to existing processes designed to increase transparency and advance scientific research.



STATE OF WASHINGTON
DEPARTMENT OF HEALTH

*PO Box 47890 • Olympia, Washington 98504-7890
Tel: 360-236-4030 • TDD Relay Service: 800-833-6388*

August 16, 2018

The Honorable Andrew Wheeler
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Administrator Wheeler:

Re: Strengthening Transparency in Regulatory Science, Docket ID No. EPA-HQ-OA-2018-0259

The Washington State Department of Health (DOH) writes to express our serious concerns with the proposed rule, "Strengthening Transparency in Regulatory Science," printed in the Federal Register on June 25, 2018 (83 Fed. Reg. 24255). We urge you to withdraw this rule because it will compromise the protection of public health by reducing the amount of credible science available for decision making.

The rule proposes unreasonable procedural barriers to environmental public health scientific inquiry and policy development and limits the scope of scientific information available to inform policy. For example, published epidemiological information about changing hospital admissions for respiratory illness before, during and after the shutdown of a steel mill (Pope, 1989) appears to be excluded from consideration because this sort of "natural experiment" is not practicably reproducible. In other cases, the original studies cannot be replicated because the exposure conditions no longer exist, thanks to regulation. Since the rule is retroactive it may overturn existing policies that are based on studies where the original raw data is no longer accessible or must be withheld to comply with ethical and legal requirements of epidemiological research (e.g., requirements of an Institutional Review Boards and/ or the Health Insurance Portability and Accountability Act of 1996 (HIPAA)). By disqualifying high quality longitudinal epidemiological and clinical studies - often the most direct and relevant evidence of chemical impacts on humans - the proposed rule would diminish not strengthen the science underlying regulations.

In addition, the proposed rule establishes increased protections for confidential business information, diminishing the amount of information available to the public to inform policy, whether from the scientific community or from the business community. These provisions reduce rather than increase public transparency.

The Washington State Department of Health depends on the EPA for timely scientific research, assessments and policy to inform our efforts to protect our residents from environmental hazards, such as those associated with contamination of drinking water with perfluorinated compounds (PFAS). The added administrative barriers resulting from this rule are likely to significantly delay the development of EPA guidelines and policies. Such delays and the resulting reduced health protection are expected due to decreased access to industry claimed confidential business information, exclusion of relevant peer

reviewed scientific studies, and the need for researchers to prepare publically disclosable datasets. Such delays will result in prolonged public exposure to environmental hazards, increased costs to researchers, and increased societal costs due to unmitigated harm to the environment and to the health of our population.

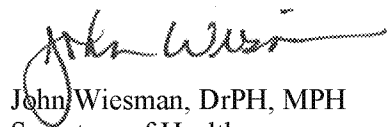
In the background section of this proposed rule, the cost of compliance with “significant regulations” is provided as justification for the proposed rule. Subsequently, it is suggested that dose response modeling used by EPA scientists for “pivotal regulatory science” is overly protective of health and the environment and therefore places unnecessary regulatory and financial burdens on industry. This justification for the proposed rule does not account for the short and long-term costs to individuals and communities from environmental degradation and the resulting population health impacts. The comprehensive dose response modelling that takes into account all available peer reviewed scientific studies provides reasonable though imperfect protection. Increasingly and across a wide range of chemicals and exposure pathways, we are learning about adverse environmental and public health effects from exposure levels much lower than ones previously thought to be safe. Approximately 13 percent of the total burden of disease in the United States has been attributed to environmental exposures. These diseases contribute to more than 398,000 deaths annually (Pugh & Gregory, 2012). Refinement of EPA dose-response models would likely improve public health. This refinement would be more likely accomplished by *increased* disclosure of confidential business information, not by the increased protection of confidential business information and decreased availability of scientific information.

In section IV, Statutory and Executive Orders Reviews, it is stated that this proposed rule does not have implications relevant to Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments). This assertion does not seem to be adequately supported, and we urge additional analysis of the probable impacts of the proposed rule on Tribal Nations.

We disagree with part IV, Statutory and Executive Orders Reviews, section H, of the proposed rule. The claim that this action "is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk" to children is not supported by scientific evidence. In fact, there is a substantial body of research showing children are more sensitive than adults to environmental pollution

This proposed rule will reduce credible science related to environmental public health, and as a result prolong public exposure to environmental hazards and increase societal costs from unmitigated harm to the environment and the health of our population. I respectfully urge you to withdraw this rule.

Sincerely,



John Wiesman, DrPH, MPH
Secretary of Health

Message

From: Hubbard, Carolyn [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=2A93CE3245494318B109E87F7D826284-HUBBARD, CAROLYN]
Sent: 6/26/2018 5:28:33 PM
To: Orme-Zavaleta, Jennifer [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3c5a111dc377411595e5b24b5d96146b-Orme-Zavaleta, Jennifer]; Blackburn, Elizabeth [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a080eb90549a453aaa6a357f5257c0b7-Blackburn, Elizabeth]; Rodan, Bruce [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=Rodan, Bruce]; Robbins, Chris [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=958b4b78eb42457eacf53514e428efd6-Robbins, Chris]; Radzikowski, Mary Ellen [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=2ac0a54e43bb4ac08276b57c5563c725-Radzikowski, Mary Ellen]
Subject: FW: Release of Report to Congress: Implementation of EPA's Plan to Increase Access to Results of EPA-Funded Research

FYI

Carolyn Hubbard
Communications Director
EPA Office of Research and Development
202-564-2189
202-379-6744

From: McMichael, Nate
Sent: Tuesday, June 26, 2018 12:42 PM
To: Grantham, Nancy <Grantham.Nancy@epa.gov>; Gibbons, Dayna <Gibbons.Dayna@epa.gov>
Cc: Hubbard, Carolyn <Hubbard.Carolyn@epa.gov>; Block, Molly <block.molly@epa.gov>; Sauerhage, Maggie <Sauerhage.Maggie@epa.gov>; Maguire, Megan <Maguire.Megan@epa.gov>
Subject: RE: Release of Report to Congress: Implementation of EPA's Plan to Increase Access to Results of EPA-Funded Research

Quick update on this one. I heard this morning that this is with Holly for signature. Barring any questions or edits from her, it should be signed later today or tomorrow. I will give you a heads up once I hear that it has been signed.

Thanks,
-Nate

From: Grantham, Nancy
Sent: Tuesday, June 19, 2018 6:00 PM
To: McMichael, Nate <McMichael.Nate@epa.gov>; Gibbons, Dayna <Gibbons.Dayna@epa.gov>
Cc: Hubbard, Carolyn <Hubbard.Carolyn@epa.gov>; Block, Molly <block.molly@epa.gov>; Sauerhage, Maggie <Sauerhage.Maggie@epa.gov>; Maguire, Megan <Maguire.Megan@epa.gov>
Subject: RE: Release of Report to Congress: Implementation of EPA's Plan to Increase Access to Results of EPA-Funded Research

Thanks

Nancy Grantham
Office of Public Affairs
US Environmental Protection Agency
202-564-6879 (desk)

202-253-7056 (mobile)

From: McMichael, Nate

Sent: Tuesday, June 19, 2018 2:22 PM

To: Grantham, Nancy <Grantham.Nancy@epa.gov>; Gibbons, Dayna <Gibbons.Dayna@epa.gov>

Cc: Hubbard, Carolyn <Hubbard.Carolyn@epa.gov>; Block, Molly <block.molly@epa.gov>; Sauerhage, Maggie <Sauerhage.Maggie@epa.gov>; Maguire, Megan <Maguire.Megan@epa.gov>

Subject: RE: Release of Report to Congress: Implementation of EPA's Plan to Increase Access to Results of EPA-Funded Research

Hi Everyone – Here is a quick update. As Dayna noted below, this came back from OMB a little while ago. It is currently with our (OCFO's) front office. I haven't heard back yet on when they expect to get it out, but I can confirm that it's being tee'd up for Holly. I will let you know once I find out more.

From: McMichael, Nate

Sent: Tuesday, June 19, 2018 9:39 AM

To: Grantham, Nancy <Grantham.Nancy@epa.gov>; Gibbons, Dayna <Gibbons.Dayna@epa.gov>

Cc: Hubbard, Carolyn <Hubbard.Carolyn@epa.gov>; Block, Molly <block.molly@epa.gov>; Sauerhage, Maggie <Sauerhage.Maggie@epa.gov>; Maguire, Megan <Maguire.Megan@epa.gov>

Subject: RE: Release of Report to Congress: Implementation of EPA's Plan to Increase Access to Results of EPA-Funded Research

Thanks, Nancy. I'll get an update.

From: Grantham, Nancy

Sent: Tuesday, June 19, 2018 9:28 AM

To: Gibbons, Dayna <Gibbons.Dayna@epa.gov>

Cc: Hubbard, Carolyn <Hubbard.Carolyn@epa.gov>; Block, Molly <block.molly@epa.gov>; Sauerhage, Maggie <Sauerhage.Maggie@epa.gov>; Maguire, Megan <Maguire.Megan@epa.gov>; McMichael, Nate <McMichael.Nate@epa.gov>

Subject: RE: Release of Report to Congress: Implementation of EPA's Plan to Increase Access to Results of EPA-Funded Research

Looping in nate mcmichael – ocfo comms .. to track it for us thanks ng

Nancy Grantham
Office of Public Affairs
US Environmental Protection Agency
202-564-6879 (desk)
202-253-7056 (mobile)

From: Gibbons, Dayna

Sent: Tuesday, June 19, 2018 9:27 AM

To: Grantham, Nancy <Grantham.Nancy@epa.gov>

Cc: Hubbard, Carolyn <Hubbard.Carolyn@epa.gov>; Block, Molly <block.molly@epa.gov>; Sauerhage, Maggie <Sauerhage.Maggie@epa.gov>; Maguire, Megan <Maguire.Megan@epa.gov>

Subject: RE: Release of Report to Congress: Implementation of EPA's Plan to Increase Access to Results of EPA-Funded Research

Hi there—Apparently it's over in OCFO going through their final clearance (OMB sent it back to them w no comments). We expect they will release it to Congress. We were told it might happen Friday, but that's not guaranteed.

I can get you the name of the person over there who is tracking it for us if you'd like....

Thanks!

US EPA
Office of Research and Development
Communications
202-564-7983

From: Grantham, Nancy
Sent: Tuesday, June 19, 2018 8:24 AM
To: Gibbons, Dayna <Gibbons.Dayna@epa.gov>
Cc: Hubbard, Carolyn <Hubbard.Carolyn@epa.gov>; Block, Molly <block.molly@epa.gov>; Sauerhage, Maggie <Sauerhage.Maggie@epa.gov>; Maguire, Megan <Maguire.Megan@epa.gov>
Subject: RE: Release of Report to Congress: Implementation of EPA's Plan to Increase Access to Results of EPA-Funded Research

Thanks

Nancy Grantham
Office of Public Affairs
US Environmental Protection Agency
202-564-6879 (desk)
202-253-7056 (mobile)

From: Gibbons, Dayna
Sent: Tuesday, June 19, 2018 8:23 AM
To: Grantham, Nancy <Grantham.Nancy@epa.gov>
Cc: Hubbard, Carolyn <Hubbard.Carolyn@epa.gov>; Block, Molly <block.molly@epa.gov>; Sauerhage, Maggie <Sauerhage.Maggie@epa.gov>; Maguire, Megan <Maguire.Megan@epa.gov>
Subject: Re: Release of Report to Congress: Implementation of EPA's Plan to Increase Access to Results of EPA-Funded Research

Checking!

Sent from my iPhone

On Jun 19, 2018, at 8:04 AM, Grantham, Nancy <Grantham.Nancy@epa.gov> wrote:

Hi – what is the estimated timing on this? thanks ng

Nancy Grantham
Office of Public Affairs
US Environmental Protection Agency
202-564-6879 (desk)
202-253-7056 (mobile)

From: Hubbard, Carolyn
Sent: Thursday, June 14, 2018 10:21 AM
To: Grantham, Nancy <Grantham.Nancy@epa.gov>; Block, Molly <block.molly@epa.gov>; Sauerhage, Maggie <Sauerhage.Maggie@epa.gov>
Cc: Maguire, Megan <Maguire.Megan@epa.gov>; Gibbons, Dayna <Gibbons.Dayna@epa.gov>

Subject: Release of Report to Congress: Implementation of EPA's Plan to Increase Access to Results of EPA-Funded Research

Hi- please see statement and Q/A below about the Release of, *Implementation of EPA's Plan to Increase Access to Results of EPA-Funded Scientific Research: A Report to Congress – 2018:*

Next week, EPA is releasing a report to congress in response to the 2018 Omnibus Appropriations. EPA is continuing to implement its *Plan to Increase Access to Results of EPA-Funded Scientific Research*. The plan establishes how EPA will increase availability of EPA-funded research publications and underlying data. So far, more than 368 eligible datasets associated with EPA scientific publications have been made available to the public.

Background:

On February 22, 2013, the White House Office of Science and Technology Policy (OSTP) issued a memorandum entitled "Increasing Access to the Results of Federally Funded Scientific Research". In response, the EPA released its plan in November 2016. The plan describes the steps the Agency will take to further increase access to the results of EPA-funded scientific research, consistent with the objectives of the OSTP Memo.

Questions and Answers:

1. Why is EPA implementing this plan?

On February 22, 2013, the White House Office of Science and Technology Policy (OSTP) issued a memorandum entitled "Increasing Access to the Results of Federally Funded Scientific Research" (OSTP Memo). The memorandum directs Federal departments and agencies that spend more than \$100 million per year on research and development (which includes EPA) "to develop...a plan...to increase public access to peer-reviewed, scientific research publications and research data resulting from agency-funded scientific research." The fundamental notion underlying this memorandum is that the results of Federally funded scientific research should be available to the public, the scientific community, and industry to the greatest extent feasible consistent with applicable law and policy; agency mission; resource constraints; U.S. national, homeland, and economic security; and the specific objectives of the memorandum.

2. What aspects of the EPA plan have been implemented?

Implementation of the plan will occur in phases. Phase 1 was implemented on January 1, 2016 and included all publications and underlying data from intramural scientists within the Agency's Office of Research and Development (ORD). ORD has actively worked to ensure that its journal publications or author manuscripts are accessible on PubMed Central (PMC). ORD is using the EPA's *ScienceHub* as the catalog and repository for datasets underlying these publications. During the period metrics were available, 72% of datasets associated with publications (368 out of 508) were made available. That percentage has been increasing over time with 85% (62 out of 73) made available in the second quarter of FY 2018.

To implement phases 2 and 3 of the Plan, EPA established an Agency-wide forum. The Forum on Increasing Public Access to EPA Research was chartered as a standing group of the EPA Science Technology Policy Council on April 17, 2017. Phase 2, the implementation of public access to publications of non-ORD intramural scientists began January 1, 2018.

3. What aspects of the plan have yet to be implemented? When will they be implemented?

The target date for implementation of access to non-ORD intramural datasets underlying peer-reviewed publications is 2018. The Public Access Forum Data Working Group has drafted its implementation plan,

which is currently under review by the STPC. The data implementation plan will likely be completed and distributed across EPA during the fourth quarter of Fiscal Year 2018.

The target date for implementation of extramural peer-reviewed publications and underlying data is also 2018. The data and publications working groups are considering requirements for future extramural agreements. In addition, the Public Access Forum Extramural Scientific Research Working Group is developing language for new contracts, cooperative agreements, and grants that will be inserted into extramural agreements. Once completed, standard language will appear in new extramural funding announcements. Public access to the scientific peer-reviewed publications and underlying data sets generated from these new extramural agreements will be covered by the new language.

4. How does this plan relate to the NPRM Transparency in Regulatory Science?

On April 30, 2018, the Federal Register published a proposed rule by EPA titled: Strengthening Transparency in Regulatory Science. EPA is soliciting comments on the Notice of Proposed Rulemaking. The summary of the proposed rule states ...

...when EPA develops regulations, including regulations for which the public is likely to bear the cost of compliance, with regard to those scientific studies that are pivotal to the action being taken, EPA should ensure that the data underlying those are publically available in a manner sufficient for independent validation.

This proposed rule is related to, but distinct from, the EPA Plan to Increase Access to Results of EPA-funded Scientific Research. The proposed rule applies to making publicly available research data related to “pivotal regulatory science” informing EPA regulations, including third party data. The approved Public Access Plan prospectively makes publicly available research data funded wholly or in part by EPA.

Carolyn Hubbard
Communications Director
EPA Office of Research and Development
202-564-2189
202-379-6744

Message

From: Sinks, Tom [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=001007B7D256453A8A19B91DF704E22C-SINKS, TOM]
Sent: 8/15/2018 6:50:39 PM
To: Orme-Zavaleta, Jennifer [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3c5a111dc377411595e5b24b5d96146b-Orme-Zavaleta, Jennifer]; Doa, Maria [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=99e502a905374b0b890db9b22e18d92e-MDoa02]; Hauchman, Fred [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=f8bf9785f32048ccad5f60b25a72017d-Hauchman, Fred]
CC: Sinks, Tom [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=001007b7d256453a8a19b91df704e22c-Sinks, Tom]
Subject: FW: Comment of 11 State Attorneys General ISO EPA's Proposal to Strengthen Transparency in Regulatory Science
Attachments: 2018.08.15 Comment Letter re Transparency in Science (FINAL FOR FILING).pdf

FYI – a counter-point set of comments from a different set of state AGs. We will see that this is included in the docket.

From: Staff_OSA
Sent: Wednesday, August 15, 2018 2:39 PM
To: Sinks, Tom <Sinks.Tom@epa.gov>
Subject: FW: Comment of 11 State Attorneys General ISO EPA's Proposal to Strengthen Transparency in Regulatory Science

Hi Tom,

See the message below. Since the AG indicated that it was already submitted, I won't forward the message to the docket manager.

I'm not sure if Brittany Bolan will be responding, but let me know if you would like to reply in any way.

Cheryl A. Hawkins, Ph.D.
US EPA/ORD/Office of the Science Advisor
RRB 41259
(202)564-7307
hawkins.cheryla@epa.gov

From: St. John, Joseph [<mailto:StJohnJ@ag.louisiana.gov>]
Sent: Wednesday, August 15, 2018 10:30 AM
To: Bolen, Brittany <bolen.brittany@epa.gov>; Staff_OSA <Staff_OSA@epa.gov>
Subject: Comment of 11 State Attorneys General ISO EPA's Proposal to Strengthen Transparency in Regulatory Science

Ms. Bolen and Mr. Sinks:

On behalf of the Attorneys General of Louisiana, Alabama, Arkansas, Indiana, Kansas, Nebraska, Oklahoma, South Carolina, Texas, Utah, and Wisconsin, please see the attached comment in support of EPA's Proposal to Strengthen Transparency in Regulatory Science. An electronic copy was submitted on regulations.gov, and a hardcopy with attached exhibits is being sent to EPA's docket center.

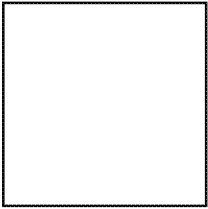
Best regards,
Scott St. John



Joseph Scott St. John

Deputy Solicitor General
Office of Attorney General Jeff Landry
Tel: (225) 485-2458
stjohnj@ag.louisiana.gov
www.AGJeffLandry.com

From: no-reply@regulations.gov [<mailto:no-reply@regulations.gov>]
Sent: Wednesday, August 15, 2018 9:24 AM
To: St. John, Joseph
Subject: Your Comment Submitted on Regulations.gov (ID: EPA-HQ-OA-2018-0259-0001)



Please do not reply to this message. This email is from a notification only address that cannot accept incoming email.

Your comment was submitted successfully!

Comment Tracking Number: 1k2-94v2-zrbz

Your comment may be viewable on Regulations.gov once the agency has reviewed it. This process is dependent on agency public submission policies/procedures and processing times. Use your tracking number to find out the status of your comment.

Agency: Environmental Protection Agency (EPA)
Document Type: Rulemaking
Title: Strengthening Transparency in Regulatory Science
Document ID: EPA-HQ-OA-2018-0259-0001

Comment:

On behalf of the Attorneys General of Louisiana, Alabama, Arkansas, Indiana, Kansas, Nebraska, Oklahoma, South Carolina, Texas, Utah, and Wisconsin, please see the attached comment in support of EPA's Proposal to Strengthen Transparency in Regulatory Science. A hardcopy with attached exhibits is being sent to EPA's docket center.

Uploaded File(s):

- 2018.08.15 Comment Letter re Transparency in Science (FINAL FOR FILING).pdf

This information will appear on Regulations.gov:

None of the information will appear on Regulations.gov

This information will not appear on Regulations.gov:

Submitter's Representative: Jeff Landry
Government Agency Type: State
Government Agency: Office of the Louisiana Attorney General

For further information about the Regulations.gov commenting process, please visit
<https://www.regulations.gov/faqs>.

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The information contained in this transmission may contain privileged and confidential information. It is intended only for the use of the person(s) named above. If you are not the intended recipient, you are hereby notified that any review, dissemination, distribution or duplication of this communication is strictly prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message. To reply to our e-mail administrator directly, please send an e-mail to postmaster@ag.state.la.us.

Message

From: Grantham, Nancy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=12A3C2ED7158417FB0BB1B1B72A8CFB0-GRANTHAM, NANCY]
Sent: 5/24/2018 12:04:07 PM
To: Regional Public Affairs Directors [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=df2f9cc7475345c9897ecec6e434647d-PADs]
CC: Richardson, RobinH [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=2fa5c9eb65dc497c81a8dc9ccdb1ffa7-Richardson, RobinH]; Hubbard, Carolyn [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=2a93ce3245494318b109e87f7d826284-Hubbard, Carolyn]; Orme-Zavaleta, Jennifer [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3c5a111dc377411595e5b24b5d96146b-Orme-Zavaleta, Jennifer]; Sauerhage, Maggie [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=0b13c7152d704546b40a91220914d3cc-Sauerhage,]; Maguire, Megan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=6a013c79651d4a86afd93dfc45128ebb-maguire, Megan]
Subject: FW: EPA Announces Extended Comment Period and Public Hearing on Proposed Rule to Strengthen Science Transparency in EPA Regulations

Nancy Grantham
Office of Public Affairs
US Environmental Protection Agency
202-564-6879 (desk)
202-253-7056 (mobile)

From: EPA Press Office [mailto:press=epa.gov@cmail20.com] **On Behalf Of** EPA Press Office
Sent: Thursday, May 24, 2018 8:00 AM
To: Grantham, Nancy <Grantham.Nancy@epa.gov>
Subject: EPA Announces Extended Comment Period and Public Hearing on Proposed Rule to Strengthen Science Transparency in EPA Regulations

EPA Announces Extended Comment Period and Public Hearing on Proposed Rule to Strengthen Science Transparency in EPA Regulations

WASHINGTON (May 24, 2018) - Today, the U.S. Environmental Protection Agency (EPA) announced an extension of the comment period on the proposed rule, "Strengthening Transparency in Regulatory Science." EPA is also announcing a public hearing for the proposed rule, which will be held on July 17, 2018, in Washington, D.C.

"EPA is committed to public participation and transparency in the rulemaking process," said EPA Administrator Scott Pruitt. **"By extending the comment period for this rule and holding a public hearing, we are giving stakeholders the opportunity to provide valuable input about how EPA can improve the science underlying its rules."**

On April 30, 2018, EPA announced the proposed rule with a 30-day comment period that was scheduled to close on May 30. With today's extension, the comment period will now close on August 17. EPA is soliciting comments on all aspects of the proposal and specifically on the issues identified in Section III. The public hearing will provide a forum for interested parties to present data, views, and arguments regarding EPA's proposed rule.

The proposed rule will strengthen the science used in regulations issued by EPA. It will require that underlying scientific information be publicly available. Also, this rule is consistent with data access requirements for major scientific journals and builds upon Executive Orders 13777 and 13783.

Comments should be identified by Docket ID No. is EPA-HQ-OA-2018-0259 and submitted through the Federal eRulemaking Portal: <http://www.regulations.gov>.

The public hearing will be held at the U.S. Environmental Protection Agency Headquarters, William Jefferson Clinton East Building, Main Floor Room 1153, 1201 Constitution Avenue NW, in Washington, D.C. 20460. The public hearing will convene at 8:00 a.m. EST and continue until 8:00 p.m. EST. Parties interested in presenting oral testimony at the public hearing should register online by July 15, 2018, at <https://www.epa.gov/osa/strengthening-transparency-regulatory-science>.

While we have taken steps to ensure the accuracy of this [Internet version of the rule](#), it is not the official version of the rule for purposes of public comment. Please refer to the official version in a forthcoming *Federal Register* publication.

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U.S. Environmental Protection Agency
1200 Pennsylvania Avenue Northwest
Washington, D.C. 20004



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Message

From: Hubbard, Carolyn [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=2A93CE3245494318B109E87F7D826284-HUBBARD, CAROLYN]
Sent: 4/26/2018 4:48:32 PM
To: Orme-Zavaleta, Jennifer [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3c5a111dc377411595e5b24b5d96146b-Orme-Zavaleta, Jennifer]
CC: Maguire, Megan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=6a013c79651d4a86afd93dfc45128ebb-maguire, Megan]; Blackburn, Elizabeth [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a080eb90549a453aaa6a357f5257c0b7-Blackburn, Elizabeth]; Rodan, Bruce [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=Rodan, Bruce]; Robbins, Chris [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=958b4b78eb42457eacf53514e428efd6-Robbins, Chris]; Radzikowski, Mary Ellen [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=2ac0a54e43bb4ac08276b57c5563c725-Radzikowski, Mary Ellen]; Christian, Megan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=64a0f5e0e9d94271b23cad28db653851-Lizotte, Me]
Subject: RE: NowThis Inquiry: New EPA research rule

Right I knew you hadn't signed it. We meet with OPA at 2, will share this.

Carolyn Hubbard
Communications Director
EPA Office of Research and Development
202-564-2189
202-379-6744

From: Orme-Zavaleta, Jennifer
Sent: Thursday, April 26, 2018 12:47 PM
To: Hubbard, Carolyn <Hubbard.Carolyn@epa.gov>
Cc: Maguire, Megan <Maguire.Megan@epa.gov>; Blackburn, Elizabeth <Blackburn.Elizabeth@epa.gov>; Rodan, Bruce <rodan.bruce@epa.gov>; Robbins, Chris <Robbins.Chris@epa.gov>; Radzikowski, Mary Ellen <Radzikowski.Maryellen@epa.gov>; Christian, Megan <Christian.Megan@epa.gov>
Subject: RE: NowThis Inquiry: New EPA research rule

Have not heard of this individual and no I did not sign a letter – was cc'd on it.

Suggest he contact OP for an interview

Jennifer Orme-Zavaleta, PhD
Principal Deputy Assistant Administrator for Science
USEPA Office of Research and Development

Personal Phone / Ex. 6

orme-zavaleta.jennifer@epa.gov

From: Hubbard, Carolyn
Sent: Thursday, April 26, 2018 12:14 PM
To: Orme-Zavaleta, Jennifer <Orme-Zavaleta.Jennifer@epa.gov>

Cc: Maguire, Megan <Maguire.Megan@epa.gov>; Blackburn, Elizabeth <Blackburn.Elizabeth@epa.gov>; Rodan, Bruce <rodan.bruce@epa.gov>; Robbins, Chris <Robbins.Chris@epa.gov>; Radzikowski, Mary Ellen <Radzikowski.Maryellen@epa.gov>; Christian, Megan <Christian.Megan@epa.gov>
Subject: FW: NowThis Inquiry: New EPA research rule

Hi Jennifer- see below. This came in via our website. Did they reach out to you directly too?

Carolyn Hubbard
Communications Director
EPA Office of Research and Development
202-564-2189
202-379-6744

From: Kavish Harjai [<mailto:kavish@nowthismedia.com>]
Sent: Thursday, April 26, 2018 12:10 PM
To: ORD Webmaster <ORD_Webmaster@epa.gov>
Subject: NowThis Inquiry: New EPA research rule

Hello,

My name is Kavish and I am a producer with NowThis Future where I cover science and tech news.

I'm reaching out to see if Dr. Jennifer Orme-Zavaleta would be willing to do an interview over Skype regarding Scott Pruitt's rule [proposal](#) regarding transparency in research.

I saw that Dr. Orme-Zavaleta, among many other scientists, signed a [letter](#) urging Pruitt to reconsider the rule.

An example of our Skype interview can be seen [here](#).

Let me know if this is a possibility. Looking to do this on Monday, April 30.

Thank you!

Best,
kavish harjai
associate producer
NowThis Future

Personal Phone / Ex. 6

From: Blackburn, Elizabeth [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=A080EB90549A453AAA6A357F5257C0B7-BLACKBURN, ELIZABETH]
Sent: 4/26/2018 12:28:18 PM
To: Radzikowski, Mary Ellen [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=2ac0a54e43bb4ac08276b57c5563c725-Radzikowski, Mary Ellen]; Orme-Zavaleta, Jennifer [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3c5a111dc377411595e5b24b5d96146b-Orme-Zavaleta, Jennifer]; Robbins, Chris [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=958b4b78eb42457eacf53514e428efd6-Robbins, Chris]; Hubbard, Carolyn [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=2a93ce3245494318b109e87f7d826284-Hubbard, Carolyn]; Rodan, Bruce [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=Rodan, Bruce]
Subject: Here are 3 studies that might be hit by Pruitt's rule

Here are 3 studies that might be hit by Pruitt's rule

Scott Waldman, E&E News reporter

Published: Thursday, April 26, 2018



Rep. Lamar Smith (R-Texas) urged EPA Administrator Scott Pruitt to reform the science that underpins regulations. @EPAScottPruitt/Twitter

Scott Pruitt's proposed "secret science" rule could be one of the most consequential actions taken by the EPA administrator since sweeping into the agency with a stunning agenda to deconstruct key safeguards on the environment, according to his critics and supporters.

The rule announced Tuesday could require agency officials to omit credible studies that scientists say justify limits on air pollution. As Pruitt's adversaries gaped at what they described as an audacious attack on environmental rulemaking, some of his ardent supporters applauded the administrator for boldly addressing what they see as liberal bias in scientific circles.

Joseph Bast, CEO of the conservative Heartland Institute, which rejects mainstream climate science, called it the "most consequential decision made by EPA since the election of Donald Trump."

The move is seen as a sweeping change in part because the studies being targeted tend to focus on the health impacts of conventional air pollution, like smog. Reducing those effects on people can amount to billions of dollars in avoided health costs, which helps justify EPA rules to clean up power plants in addressing climate change.

Major regulations, including the Clean Power Plan, rely on dozens of studies. Many of those include personal health information, which researchers are not willing or able to release. Pruitt's rule focuses on the kind of research that relies on private databases.

Advertisement

Researchers say they're not sure what specific studies could be affected by the rule because Pruitt's proposal is indeterminate. It appears to give leeway to industry research, they said. It would also allow Pruitt or his successor to "exempt significant regulatory decisions on a case-by-case basis if he or she determines that compliance is impracticable because it is not feasible," according to the proposed rule.

Some older studies that didn't find a link between air pollution and human health may also be precluded, said Dan Greenbaum of the Health Effects Institute. An example is a recent EPA decision not to tighten air quality standards for nitrogen dioxide, a decision supported by research that didn't find causation.

"Overall, this language is still pretty vague, and exactly what will and won't be allowed is not clear," Greenbaum said.

Researchers and legal experts who read the proposed rule closely say it's hard to predict which research will be targeted. Nonetheless, here are some possible targets for exclusion.

Harvard 'Six Cities' study

This 1993 study has influenced federal air pollution regulations and laws. It's also been attacked by industry and its allies ever since it was released.

It tracked more than 20,000 people in six American cities for two years and connected air pollution to serious health effects, including mortality. It found that people in dirtier cities died faster than those in clean cities. The study's findings were independently verified, and it has been used as part of the Clean Air Act.

The Congressional Budget Office estimated benefits of \$20 billion to \$170 billion per year due to reduction of fine particulate matter, which the study first connected to mortality. Because the study uses private health data, which researchers have refused to make public, it might not be eligible for use in future EPA regulations under Pruitt's plan. The study was instrumental in the crafting of the national ambient air quality standards in 1997, which added a category for fine particulate matter.

Pruitt's proposed rule was crafted with the Harvard study in mind. Steve Milloy, a former coal executive and Trump EPA transition team member, was instrumental in pushing the proposed rule and has repeatedly criticized the Harvard study.

1995 American Cancer Society study

Another groundbreaking body of research, this study found a link between air pollution and cardiovascular disease, respiratory disease and lung cancer. It has been used in regulations over the years and has been attacked by industry. The American Cancer Society study has been backed up by dozens of independent studies that found similar results.

Arden Pope, an economics professor at Brigham Young University and co-author of the study, said researchers can't disclose all of their data when human subjects are involved. Institutions typically require researchers to agree to an Institutional Review Board, or IRB, that guarantees data privacy in any study with medical records, where blood is drawn and where sensitive health information is recorded.

"You have an ethical and institutional obligation to maintain the confidentiality of that data," Pope said. "And then some people might say, 'But ah, all you have to do is take off the names and de-identify it,' but in most cases, your IRB won't let you get away with this."

He said the research has been replicated already and that it has been public for years.

"Look at where we publish these results. They're all getting published in very high-quality, peer-reviewed journals; it's hardly secret," Pope said.

'Air Pollution and Mortality in the Medicare Population'

This major study, published in 2017 found that levels of air pollution permitted by EPA killed thousands of people every year. African-Americans and the poor are disproportionately affected by air pollution, it found. Reducing fine particulate pollution, even slightly, would save the lives of 12,000 people annually, the study says.

"The study showed that black men and persons eligible to receive Medicaid had a much higher risk of death associated with exposure to air pollution than other subgroups," the researchers wrote. "These findings suggest that lowering the annual NAAQS may produce important public health benefits overall, especially among self-identified racial minorities and people with low income."

The groundbreaking study may or may not be blocked under the proposed rule, said Greenbaum of the Health Effects Institute, which funded the research. It relies on health data from 60 million Medicare patients from 2002 to 2012; the researchers are making their codes and methodology available.

Under Pruitt's proposed rule, the study may not be used in the formation of future air pollution regulations, which have to be updated under the Clean Air Act every few years.

Liz Blackburn
Chief of Staff
EPA Office of Research and Development
202-564-2192
Personal Phone / Ex. 6

Sent from my iPhone

Message

From: Sinks, Tom [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=001007B7D256453A8A19B91DF704E22C-SINKS, TOM]
Sent: 6/7/2018 3:11:39 PM
To: Peffers, Mel [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1b6116fbb41448b38b3caefc882165fe-Peffers, Melissa]
CC: Linkins, Samantha [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b7a94aa2975d4933981a8a9bf12aaa40-Linkins, Samantha]; Hubbard, Carolyn [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=2a93ce3245494318b109e87f7d826284-Hubbard, Carolyn]; Hauchman, Fred [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=f8bf9785f32048ccad5f60b25a72017d-Hauchman, Fred]; Greene, Mary [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9aaa7190f96e4bfca7b06f8be3f35d45-Greene, Mary]; Yamada, Richard (Yujiro) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4c34a1e0345e4d26b361b5031430639d-Yamada, Yuj]; Orme-Zavaleta, Jennifer [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3c5a111dc377411595e5b24b5d96146b-Orme-Zavaleta, Jennifer]
Subject: Re: Transp. in Science Congressional letter?

Mel. I'm out this week on a family matter. I haven't seen this letter. These are routed to us via OPA or controlled correspondence. We would discuss any response to this internally and with with op and ocr before responding.

Sent from my iPhone

On Jun 7, 2018, at 10:49 AM, Peffers, Mel <Peffers.Mel@epa.gov> wrote:

<image001.gif>
Hi Tom,

Nice work last week at SAB speaking about the Transparency in Science Rule.

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

I'm the OP person assigned to this action and noticed this in my news feed. I can't get behind a paywall. Do you have the letter mentioned? If so, can you share that, please.

Politico ME: BIPARTISAN LETTER ASKS PRUITT TO DROP 'SECRET SCIENCE': More than 100 lawmakers — including Republican Reps. Brian Fitzpatrick, Carlos Curbelo, Ryan Costello and Ileana Ros-Lehtinen — signed onto a letter to Pruitt today, asking him to withdraw EPA's so-called secret science proposal to bar EPA from using studies that don't make public all their data.

Best,
Mel

**House E&C Members and ORD Issues
In Prep for Administrator's April 26 Hearing**

Minority

Greg Walden (Oregon-02), Chairman

- did not vote to slash EPA budget by 1.9billion in 2017 (House Roll Call Vote 492 Slashing EPA Funding)
- he has raised concerns about the Portland Harbor Superfund site in a few hearings, though this is not in his district
- sent EPA a letter in late November 2017 about SBIR data reporting with Pallone, we responded in early January, Jennifer signed the letter

Joe Barton (Texas-02), Vice Chairman

- did not vote to slash EPA budget by 1.9billion (House Roll Call Vote 492 Slashing EPA Funding)
- does not like wind energy (quoted something about wind being finite)
- does not believe in climate change, asked about red team/blue team in 12.7.17 hearing

Fred Upton (Michigan-06)

- did not vote to slash EPA budget by 1.9billion (House Roll Call Vote 492 Slashing EPA Funding)
- works to protect the Great Lakes, including actions to protect against invasive species, pollutants, and microbeads
- sent us a letter re tire crumb in 2015

John Shimkus (Illinois-15), Chairs the Environment Subcommittee

- did not vote to slash EPA budget by 1.9billion (House Roll Call Vote 492 Slashing EPA Funding)
- helped lead efforts to update TSCA
- pro WOTUS withdrawal
- suggested EPA workload/force analysis in 12.7.17 hearing
- interested in tire crumb - one of his staffers requested a briefing in summer 2017 (we gave written info as a phone briefing wasn't appropriate at the time)

Michael Burgess (Texas-26)

- he *did* vote to slash EPA's budget by 1.9b (House Roll Call vote 492)
- pro alternative energy sources (many turbine and solar manufacturers in his district)
- asked about Title 42 in the 12.7.17 QFRs, has previously said that EPA's use of Title 42 is 'unbridled exploitation'
- toured Gold King Mine with David Piantanida in 2015

Marsha Blackburn (Tennessee-07)

- she *did* vote to slash EPA's budget by 1.9b (House Roll Call vote 492)
- climate change is "unproven science" "not settled science" (interesting note: got in argument with Bill Nye the Science Guy about this)

Steve Scalise (Louisiana-01)

- (abstained from voting on 368 or 492)
- Denka is just outside his district

Robert Latta (Ohio-05)

- he *did* vote to slash EPA's budget by 1.9b (House Roll Call vote 492)
- district just outside of Toledo (does not include the city), so he might care about HABs

Cathy McMorris Rodgers (Washington-05)

- she *did* vote to slash EPA's budget by 1.9b (House Roll Call vote 492)
- climate skeptic, was in the running to run Trump's Interior

Gregg Harper (Mississippi-03)

- he *did* vote to slash EPA's budget by 1.9b (House Roll Call vote 492)
- retiring this year

Leonard Lance (New Jersey-07)

- did not vote to slash EPA budget by 1.9billion (House Roll Call Vote 492 Slashing EPA Funding)
- Edison lab is not in his district, but close (about 15 miles away).

Brett Guthrie (Kentucky-02)

- he *did* vote to slash EPA's budget by 1.9b (House Roll Call vote 492)

Pete Olson (Texas-22)

- he *did* vote to slash EPA's budget by 1.9b (House Roll Call vote 492)
- interested in San Jacinto superfund (praised cleanup plan)
- asked about impact of RFS study at 12.7.17 hearing
- met with Pruitt in June 2017 to discuss air compliance and other things
(<https://www.epa.gov/newsreleases/epa-administrator-scott-pruitt-and-us-representative-pete-olson-discuss-issues-facing>)

David McKinley (West Virginia-01)

- he *did* vote to slash EPA's budget by 1.9b (House Roll Call vote 492)

Adam Kinzinger (Illinois-16)

- he *did* vote to slash EPA's budget by 1.9b (House Roll Call vote 492)

- pro WOTUS repeal (put out press release praising Pruitt's actions to repeal)

Morgan Griffith (Virginia-09)

- he *did* vote to slash EPA's budget by 1.9b (House Roll Call vote 492)
- introduced legislation in 2013 to reduce EPA staff by 15% over 3-4 years

Gus Bilirakis (Florida-12)

- he *did* vote to slash EPA's budget by 1.9b (House Roll Call vote 492)

Bill Johnson (Ohio-06)

- he *did* vote to slash EPA's budget by 1.9b (House Roll Call vote 492)

Billy Long (Missouri-07)

- he *did* vote to slash EPA's budget by 1.9b (House Roll Call vote 492)
- Stella, Missouri is in his district – we did a sustainable development plan for them a long time ago

Larry Buchson (Indiana-08)

- did not vote to slash EPA's budget by 1.9b (House Roll Call vote 492)

Bill Flores (Texas-17)

- he *did* vote to slash EPA's budget by 1.9b (House Roll Call vote 492)
- happy that Trump withdrew from Paris Climate Agreement
- issued press release against RFS mandate
<https://flores.house.gov/news/documentsingle.aspx?DocumentID=398808>
- issued press release in support of HONEST Act and the SAB Reform act
<https://flores.house.gov/news/documentsingle.aspx?DocumentID=398969>

Susan Brooks (Indiana-05)

- did not vote to slash EPA's budget by 1.9b (House Roll Call vote 492)

Markwayne Mullin (Oklahoma-02)

- he *did* vote to slash EPA's budget by 1.9b (House Roll Call vote 492)
- has said that he ran for office because EPA was a threat to his private company

Richard Hudson (North Carolina-08)

- he *did* vote to slash EPA's budget by 1.9b (House Roll Call vote 492)
- met with Pruitt in May 2017 <https://www.epa.gov/newsreleases/epa-administrator-pruitt-and-congressman-hudson-discuss-environmental-and-economic>

Chris Collins (New York-27)

- did not vote to slash EPA's budget by 1.9b (House Roll Call vote 492)
- happy about Pruitt's steps to repeal WOTUS
- district borders Lake Ontario and Lake Erie, so likely cares about Great Lakes efforts

Kevin Cramer (North Dakota-00)

- he *did* vote to slash EPA's budget by 1.9b (House Roll Call vote 492)
- issued press releases in support of HONEST Act and SAB Reform Act
- proposed merger of EPA and DOE in 2016

Tim Walberg (Michigan-07)

- he *did* vote to slash EPA's budget by 1.9b (House Roll Call vote 492)
- cares about Great Lakes Restoration Initiative <https://walberg.house.gov/media/press-releases/walberg-presses-epa-administrator-protecting-great-lakes>

Mimi Walters (California-45)

- she *did* vote to slash EPA's budget by 1.9b (House Roll Call vote 492)

Ryan Costello (Pennsylvania-06)

- did NOT vote for the HONEST Act or the SAB Reform Act
- did not vote to slash EPA's budget by 1.9b (House Roll Call vote 492)
- has expressed concerns over EPA budget cuts <https://costello.house.gov/media-center/press-releases/costello-responds-budget-blueprint>
- not running for reelection

Buddy Carter (Georgia-01)

- he *did* vote to slash EPA's budget by 1.9b (House Roll Call vote 492)
- very vocal against CPP
- concern about delays at Brunswick superfund site, has criticized EPA in 2018 for this

Jeff Duncan (South Carolina-03)

- he *did* vote to slash EPA's budget by 1.9b (House Roll Call vote 492)

MINORITY**Frank Pallone (New Jersey-06), Ranking Member**

- has been vocal about Pruitt's recent ethics issues
- generally pro-EPA, particularly about how we are responsive to extreme events like hurricanes

- Edison lab is in his district
- one of four E&C members who sent letter to EPA IG to investigate “intimidation of ethics officials and additional costs to taxpayers due to Pruitt’s time spent outside DC”
- sent EPA a letter in late November 2017 about SBIR data reporting with Walden, we responded in early January, Jennifer signed the letter
- in 12.7.17 hearing spoke about the attack on science, SAB, critical of altered TSCA framework rules

Bobby Rush (Illinois-01)

- Interested in biofuels as he’s on the Energy and Power subcommittee
- District touches Lake Michigan (but not much) so likely interested in Great Lakes issues

Anna Eshoo (California-18)

- Concerned about drought, climate change, and transportation issues

Eliot Engel (New York-16)

- Called for Pruitt to resign on April 6
- Concerned about fracking, flooding and hurricanes (his district hit by Sandy)

Gene Green (Texas-29)

- Applauds efforts to clean up San Jacinto superfund site
- District affected by Hurricane Harvey and criticized EPA’s slow response
- Asked Pruitt to commit to lowered RFS in 12.7.17 hearing

Diana Degette (Colorado-01)

- has been vocal about Pruitt’s recent ethics issues and spending
- wants to expand National Parks access
- has issued several press releases praising actions or taking actions to reduce methane emissions
- one of four E&C members who sent letter to EPA IG to investigate “intimidation of ethics officials and additional costs to taxpayers due to Pruitt’s time spent outside DC”

Michael Doyle (Pennsylvania-14)

Janice Schakowsky (Illinois-09)

- district borders Lake Michigan so cares about Great Lakes, invasive species
- introduced legislation to reduce mercury emissions

G.K. Butterfield (North Carolina-01)

- toured an Energy Star Habitat for Humanity home in Durham with Gina McCarthy in 2014 as part of EPA's "Energy Efficiency Action Week"

Doris Matsui (California-06)

- issued press release condemning weakening the clean vehicle standards
- coauthored legislation that led to EPA implementing rules to protect consumers from formaldehyde in wood

Kathy Castor (Florida-14)

- one of four E&C members who sent April 5 letter to EPA IG to investigate "intimidation of ethics officials and additional costs to taxpayers due to Pruitt's time spent outside DC"
- district used to border Gulf of Mexico (until 2012) and was affected by BP spill, she still works to help families recover and fights against big oil

John Sarbanes (Maryland-03)

- vocal about Pruitt's ethics and spending
- cares about protecting Chesapeake Bay

Jerry McNerney (California-09)

- cares about perchlorate

Peter Welch (Vermont-00)

- concerned about three clusters of chemicals in flame retardants that can harm first responders
- cares about Lake Champlain restoration/preservation

Ben Ray Lujan (New Mexico-03)

- district affected by Gold King Mine
- promotes renewable energy
- vocal about Pruitt and ethics

Paul Tonko (New York-20)

- one of four E&C members who sent April 5 letter to EPA IG to investigate "intimidation of ethics officials and additional costs to taxpayers due to Pruitt's time spent outside DC"
- vocal about BOSC dismissals/nonrenewals
- district near Hoosick Falls (but Hoosick not in district 20)
- sent QFR about IRIS for 12.7.17 Pruitt hearing, "How do you view the role of IRIS relative to ensuring full implementation of the TSCA program?" and "Will you commit to fully supporting the IRIS program?"
- Spoke about how science and scientific integrity must be protected during the 12.7.17 hearing

- Very concerned about changes to science advisory boards, spoke about it during 12.7.17 hearing

Yvette Clarke (New York-09)

David Loebsack (Iowa-02)

- cares about RFS

Kurt Schrader (Oregon-05)

- issued press release opposing freezing grants in early 2017
- district very close to Corvallis lab

Joseph Kennedy (Massachusetts-04)

Tony Cardenas (California-29)

- vocal against efforts to dismantle EPA
- EJ and drought are issues in his district

Raul Ruiz (California-36)

- One of biggest issues in district is Salton Sea and asthma rates, EJ
- Concerned about fine PM (talked about it during 12.7.17 hearing)

Scott Peters (California-52)

- Strong supporter of methane rule

Debbie Dingell (Michigan-12)

- Cares about HABs in Lake Erie
- District includes Ann Arbor and Grosse Ile, and her staffers have asked us a few times about closing the Grosse Ile lab
- Participated in "Save the US EPA Day" in Sept 2017

Message

From: Carolyn Hanson [chanson@ecos.org]
Sent: 5/23/2018 3:45:48 PM
To: Orme-Zavaleta, Jennifer [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3c5a111dc377411595e5b24b5d96146b-Orme-Zavaleta, Jennifer]
Subject: Fwd: Comment Deadline Extension Request on Proposed "Strengthening Transparency in Regulatory Science" Rule
Attachments: Science Comment Extension v2.pdf

FYI.

----- Forwarded message -----

From: **Katie Foreman** <kforeman@acwa-us.org>
Date: Wed, May 23, 2018 at 11:44 AM
Subject: Comment Deadline Extension Request on Proposed "Strengthening Transparency in Regulatory Science" Rule
To: "staff_osa@epa.gov" <staff_osa@epa.gov>, "Sinks.tom@Epa.gov" <Sinks.tom@epa.gov>
Cc: Julia Anastasio <janastasio@acwa-us.org>, "chanson@ecos.org" <chanson@ecos.org>, "ssankar@ecos.org" <ssankar@ecos.org>, "jsloan@csg.org" <jsloan@csg.org>, "daniar@astswmo.org" <daniar@astswmo.org>, "ASchaefer@NGA.ORG" <ASchaefer@nga.org>, "aroberson@asdwa.org" <aroberson@asdwa.org>, "ross.davidp@epa.gov" <ross.davidp@epa.gov>

Good Afternoon,

Please see the attached letter outlining a comment deadline extension request for the Strengthening Transparency in Regulatory Science Proposed Rule from seven associations, on behalf of the states. Should you have questions regarding this request, please feel free to contact Julia Anastasio (janastasio@acwa-us.org, 202-756-0600).

Thank you,

Katie Foreman

Environmental Program Associate
Association of Clean Water Administrators
1634 I Street NW, Suite 750
Washington, DC 20006
kforeman@acwa-us.org

--

Carolyn Hanson
Deputy Executive Director
Environmental Council of the States
202-266-4924 (p); 202-266-4937 (f)
chanson@ecos.org
Twitter: @ECOStates

Learn about ECOS' Research arm ERIS at www.ecos.org/eris

Message

From: Christian, Megan [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=64A0F5E0E9D94271B23CAD28DB653851-LIZOTTE, ME]
Sent: 8/9/2018 12:51:05 PM
To: Orme-Zavaleta, Jennifer [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3c5a111dc377411595e5b24b5d96146b-Orme-Zavaleta, Jennifer]
Subject: FW: For your review and comment: Revisions to UDA-017 on Censored Science
Attachments: UDA - 017_OMBsuggestedlanguage.docx

Importance: High

Per our conversation.

Megan Christian, MPH
Office of Research and Development
U.S. Environmental Protection Agency
Christian.Megan@epa.gov
202-564-6184

From: Lang, Jamie
Sent: Wednesday, August 08, 2018 1:28 PM
To: Yamada, Richard (Yujiro) <yamada.richard@epa.gov>; Orme-Zavaleta, Jennifer <Orme-Zavaleta.Jennifer@epa.gov>; Robbins, Chris <Robbins.Chris@epa.gov>; Radzikowski, Mary Ellen <Radzikowski.Maryellen@epa.gov>
Cc: Kuhn, Kevin <Kuhn.Kevin@epa.gov>; Christian, Megan <Christian.Megan@epa.gov>; Fleming, Megan <Fleming.Megan@epa.gov>; McPherson, Mark <McPherson.Mark@epa.gov>; Branch, Danielle <branch.danielle@epa.gov>; D'Amico, Louis <DAmico.Louis@epa.gov>; Blackburn, Elizabeth <Blackburn.Elizabeth@epa.gov>; Perry, Dale <Perry.Dale@epa.gov>; Silzer, Stefan <Silzer.Stefan@epa.gov>; Heckman, Deborah <Heckman.Deborah@epa.gov>; Burman, Eric <Burman.Eric@epa.gov>
Subject: For your review and comment: Revisions to UDA-017 on Censored Science
Importance: High

Hi all,

We received comments from OMB on the QFR that ORD drafted on censored science. While the suggested language is for after August 16th, OCFO would like to respond to OMB before that date. If for any reason our responses do not go out before August 16th, OMB suggested the language in the document to be included which is what needs to be reviewed. Please let us know your thoughts and comments by August 15th if possible.

Thank you!

Jamie

Jamie A. Lang
Branch Chief, Planning, Budget, and Performance Analysis Branch
Office of Program Accountability and Resource Management
Office Of Research and Development, US EPA
303-462-9063 (W)
303-416-0965 (C)
202-564-8347 (DC office)

Message

From: Blackburn, Elizabeth [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=A080EB90549A453AAA6A357F5257C0B7-BLACKBURN, ELIZABETH]
Sent: 4/25/2018 12:49:20 PM
To: Bahadori, Tina [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7da7967dcafb4c5bbc39c666fee31ec3-Bahadori, Tina]
CC: Orme-Zavaleta, Jennifer [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3c5a111dc377411595e5b24b5d96146b-Orme-Zavaleta, Jennifer]; Robbins, Chris [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=958b4b78eb42457eacf53514e428efd6-Robbins, Chris]; Rodan, Bruce [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=Rodan, Bruce]; D'Amico, Louis [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=78a91f83c4414910be286efe02004dbc-D'Amico, Louis J.]
Subject: Re: one question : U.S. environment agency proposes limits to science used in rulemaking

We're discussing this morning. Thanks for sending this along.

Liz Blackburn
Chief of Staff
EPA Office of Research and Development
202-564-2192

Personal Phone / Ex. 6

Sent from my iPhone

On Apr 25, 2018, at 8:38 AM, Bahadori, Tina <Bahadori.Tina@epa.gov> wrote:

Good morning,

What advice do you have on how to handle questions coming from other agencies. This one is from the European Food Safety Agency. Answer or punt elsewhere?

Thanks,

Tina

Begin forwarded message:

From: DE LUCA Lucia <Lucia.DELUCA@efsa.europa.eu>
Date: April 25, 2018 at 8:35:02 AM EDT
To: "Bahadori, Tina" <Bahadori.Tina@epa.gov>
Cc: LIEM Djien <Djien.LIEM@efsa.europa.eu>
Subject: one question : U.S. environment agency proposes limits to science used in rulemaking

Hi Tina I hope you are doing well.

Such a shame you did not attend the toxicology conference in Belgrade, it was interesting!

I am writing you to for a piece of information.

We came across this article in Reuters which I am sure you are fully aware of:
U.S. environment agency proposes limits to science used in rulemaking

<https://www.reuters.com/article/us-usa-epa-science/u-s-epa-set-to-unveil-policy-barring-secret-science-sources-idUSKBN1HV2DJ>

The article points out that scientists and media said that this proposal result in „excluding all data where confidential patient information cannot be revealed“ but are not patient data anyway always anonymized? Would this indeed have a huge impact on your work?

Let me know if I am right in asking this question to you or if shall I re-direct my question to a colleague of yours.

Regards,

Lucia

Lucia de Luca

Global Scientific Cooperation

Engagement and Cooperation Unit
Communications, Engagement and Cooperation Department

Office 07-B03
Via Carlo Magno 1/A
I-43100 Parma,
Tel: + 39 0521 036 287
Fax: + 39 0521 036 0287
Email: lucia.deluca@efsa.europa.eu

 **Follow @efsa_eu**

Message

From: Blackburn, Elizabeth [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=A080EB90549A453AAA6A357F5257C0B7-BLACKBURN, ELIZABETH]
Sent: 1/18/2018 1:43:36 AM
To: Orme-Zavaleta, Jennifer [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3c5a111dc377411595e5b24b5d96146b-Orme-Zavaleta, Jennifer]; Robbins, Chris [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=958b4b78eb42457eacf53514e428efd6-Robbins, Chris]; Rodan, Bruce [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=Rodan, Bruce]; Radzikowski, Mary Ellen [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=2ac0a54e43bb4ac08276b57c5563c725-Radzikowski, Mary Ellen]; Hubbard, Carolyn [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=2a93ce3245494318b109e87f7d826284-Hubbard, Carolyn]; Yamada, Richard (Yujiro) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4c34a1e0345e4d26b361b5031430639d-Yamada, Yuj]
CC: Fleming, Megan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=14b4c2e10bf84f1fa9a3f91f5ca1c4c0-Fleming, Megan]; Kuhn, Kevin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=be20941b4c1144b8b3635e4df015924a-Kuhn, Kevin]; Branch, Danielle [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=642b26a0fe0c45eb86cfd504b2d0b195-Branch, Dan]; McPherson, Mark [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=useraf3de097]
Subject: Thursday Check in
Attachments: Response to CBO Questions about the HONEST Act - ORD Draft Answers 3-21-....doc; 1.18.18.tps managers call 1.17v2.docx

Agenda

1. Managers call (see attached draft)
2. Honest Act meeting with HSST staff (response to CBO questions attached)
 - a. Attendance at Friday, January 19th pre-meeting?
 - b. Any other prep needed?
3. SEPW (minority) briefing request - what re-organization/budget options are being contemplated for IRIS and why, and how the NAS review process is going?
 - a. Timeframe – after the NAS meeting?
4. FYI – Senator Kamala Harris phone briefing on Scientific integrity Committee, how the SIO works with the OIG, and tracking data for the annual reports.
 - a. Francesca, Vince, and Jennifer
5. Does Mike/hybrid committee need support?
6. Guidance on implementation for Implementation of EO 13812 (see email below from Krysti Corbett, director LER)
7. Round Robin

HRO, PMO and LER Communities,

As you are aware, on December 13, 2017, OPM issued [Guidance for Implementation of Executive Order 13812](#) regarding the status of union forums and councils. Consistent with this guidance, the agency must take the following actions:

- Rescind all agency-wide and local labor-management partnership councils, committees, and labor-management forums, irrespective of whether they were formed pursuant to E.O. 13522 or a different authority.

- If your organization has issued “orders, rules, regulations, guidelines, or policies” in connection with the creation of the forums, you should rescind those instruments and documents that are associated with these forums and which may create legal impediments to abolishment of the forums.
- If a forum or associated guidelines, rules, or policies have imbedded into a collective bargaining agreement or other memorandum of understanding with a collective bargaining agent for employees at the agency, you must seek to renegotiate those terms at the earliest practicable juncture.

If you have any future forum or council meetings scheduled (that are not covered by a collective bargaining agreement or other enforceable MOU), you must cancel all associated meetings.

The sequencing of this is as follows:

- 1/12/2018 – Notice to LER and HR Communities
- 1/16/2018 – Notice to Stephanie Doolan, EPA union council national representative, and EPA national union representatives
- 1/17/2018 – Briefing for ARA community
- 1/26/2018 – Confirmation of compliance due to LERD (see below)

Please respond to me and Bob Coomber no later January 26, 2018, confirming your compliance with this guidance. If you have a forum or council that is covered by a CBA or MOU, please respond with a copy of the relevant agreement, and the earliest date at which it can be reopened.

Thank you for your patience, understanding and compliance with this guidance. Please contact either me or Bob Coomber at 202-564-0955 if you have any questions.

Liz Blackburn
 Chief of Staff
 EPA Office of Research and Development
 202-564-2192
 Mobile: 202-436-2453

Message

From: Orme-Zavaleta, Jennifer [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=3C5A111DC377411595E5B24B5D96146B-ORME-ZAVALITA, JENNIFER]
Sent: 4/23/2018 9:34:34 PM
To: Yamada, Richard (Yujiro) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4c34a1e0345e4d26b361b5031430639d-Yamada, Yuj]
Subject: Fwd: Letter from 985 scientists to Administrator Pruitt
Attachments: Letter from 985 scientists to Administrator Scott Pruitt opposing policy to restrict science.pdf; ATT00001.htm

Jennifer Orme-Zavaleta, PhD
Principal Deputy Assistant Administrator for Science
Office of Research and Development
US EPA

Personal Phone / Ex. 6

Begin forwarded message:

From: Gretchen Goldman <GGoldman@ucsusa.org>
Date: April 23, 2018 at 5:28:26 PM EDT
To: "pruitt.scott@epa.gov" <pruitt.scott@epa.gov>, "adm14pruitt@epa.gov" <adm14pruitt@epa.gov>
Cc: "Leopold.matt@Epa.gov" <Leopold.matt@Epa.gov>, "wehrum.bill@epa.gov" <wehrum.bill@epa.gov>, "Jackson.ryan@epa.gov" <Jackson.ryan@epa.gov>, "bolen.brittany@epa.gov" <bolen.brittany@epa.gov>, "orme-zavaleta.jennifer@epa.gov" <orme-zavaleta.jennifer@epa.gov>, "Neomi.Rao@omb.eop.gov" <IMCEAINVALID-Neomi+2ERao+40omb+2Eeop+2Egov@namprd03.prod.outlook.com>, "Yogin Kothari" <YKothari@ucsusa.org>, Emily Berman <EBerman@ucsusa.org>
Subject: Letter from 985 scientists to Administrator Pruitt

Dear Administrator Pruitt,

Please find the attached letter from 985 scientists and technical experts urging you to stop any plans to restrict the use of best available science at the Environmental Protection Agency.

Best,

Gretchen T. Goldman, Ph.D.
Research Director, The Center for Science and Democracy
Office: 202-331-6942
Union of Concerned Scientists | 1825 K Street NW, Suite 800 | Washington, DC 20006
Subscribe to my [blog](#) | Follow me on [Twitter](#)

Message

From: Orme-Zavaleta, Jennifer [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=3C5A111DC377411595E5B24B5D96146B-ORME-ZAVALITA, JENNIFER]
Sent: 5/16/2018 6:20:38 PM
To: Ifediora, Byron [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=56d1b327176447f0ac21785f770add71-Ifediora, B]
Subject: FW: Pruitt's advisers question 'secret science' plan

Could you print off the letter on the link? thanks

Jennifer Orme-Zavaleta, PhD
Principal Deputy Assistant Administrator for Science
Office of Research and Development
US Environmental Protection Agency

Personal Phone / Ex. 6

From: Blackburn, Elizabeth
Sent: Wednesday, May 16, 2018 2:08 PM
To: Orme-Zavaleta, Jennifer <Orme-Zavaleta.Jennifer@epa.gov>; Robbins, Chris <Robbins.Chris@epa.gov>; Rodan, Bruce <rodan.bruce@epa.gov>; Yamada, Richard (Yujiro) <yamada.richard@epa.gov>; Radzikowski, Mary Ellen <Radzikowski.Maryellen@epa.gov>; Hubbard, Carolyn <Hubbard.Carolyn@epa.gov>
Subject: RE: Pruitt's advisers question 'secret science' plan

Here's the link to the May 12 memo -

[https://yosemite.epa.gov/sab/sabproduct.nsf//E21FFAE956B548258525828C00808BB7/\\$File/WkGrp_memo_2080-AA14_final_05132018.pdf](https://yosemite.epa.gov/sab/sabproduct.nsf//E21FFAE956B548258525828C00808BB7/$File/WkGrp_memo_2080-AA14_final_05132018.pdf)

Liz Blackburn
Chief of Staff
EPA Office of Research and Development
202-564-2192

Personal Phone / Ex. 6

From: Blackburn, Elizabeth
Sent: Wednesday, May 16, 2018 9:36 AM
To: Orme-Zavaleta, Jennifer <Orme-Zavaleta.Jennifer@epa.gov>; Robbins, Chris <Robbins.Chris@epa.gov>; Rodan, Bruce <rodan.bruce@epa.gov>; Yamada, Richard (Yujiro) <yamada.richard@epa.gov>; Radzikowski, Mary Ellen <Radzikowski.Maryellen@epa.gov>; Hubbard, Carolyn <Hubbard.Carolyn@epa.gov>
Subject: Pruitt's advisers question 'secret science' plan

Pruitt's advisers question 'secret science' plan

Scott Waldman, E&E News reporter

Published: Wednesday, May 16, 2018

EPA's Science Advisory Board wants to review Administrator Scott Pruitt's plan to restrict studies the agency uses when crafting regulations.

The board is now led by a Pruitt appointee, Michael Honeycutt, who signed off on the request for more discussion on Pruitt's plan to limit the agency's use of scientific studies to those that use public data.

In a May 12 memo, members of an SAB working group flagged potential problems with the rule and determined that it could affect regulations by making them more or less stringent. They wrote that they learned of the proposed rule from news articles and the *Federal Register* and noted that EPA did not provide a description of the proposed action.

EPA is required by law to provide the SAB with "proposed criteria documents, standards, limitations, or regulations provided to any other Federal agency for formal review and comment, together with relevant scientific and technical information on which the proposed action is based," the group said in the memo.

Among the criticisms was that the agency appears to have developed the rule without consulting actual researchers.

Advertisement

"The precise design of the rule appears to have been developed without a public process for soliciting input from the scientific community," the group wrote. "Nor does the preamble to the rule describe precisely how the proposal builds on previous efforts to promote transparency such as the Information Quality Act and EPA's Information Quality Guidelines."

The proposed rule is based on legislation by Rep. Lamar Smith (R-Texas), chairman of the House Science, Space and Technology Committee. Pruitt adopted Smith's legislation, once known as the "Secret Science" bill, after it passed the House multiple times but failed to make it through the Senate. Smith and other proponents of the legislation say it's necessary to increase accountability in science used in regulations that can have an economic impact.

Critics say it's designed to eliminate consideration of major health studies that form the backbone of the Clean Air Act and air pollution provisions. One of the targets of the proposed rule is widely considered to be the Harvard Six Cities Study, a groundbreaking body of research that connected air pollution to significant health problems.

The researchers wrote in their memo that the Harvard study has been reviewed multiple times, by researchers who did not have access to its underlying data but came to similar conclusions.

"EPA's Science Advisory Board plays an important role in informing EPA actions on policy and regulatory matters," an EPA spokesman said. "We value the Board's expertise, and we welcome feedback from the chartered panel on areas in which they are interested in getting additional scientific information that is relevant to the rulemaking process."

The SAB working group found that the proposed rule did not ascertain the effect of data restrictions on existing regulations, nor did it consider the costs of imposing such a program. The researchers acknowledged that some scientific disciplines need more transparency but said the field has already been moving in that direction. They noted that many human health studies are conducted with the condition and agreement that the subject's confidentiality will be protected. They wrote that the proposed rule might be better applied to future studies, rather than those that are already in use at the agency.

"The Work Group also found that the rule is highly controversial (indeed a similar legislative effort in the House has been stalled in Congress for several years) and could have long-term implications," they wrote. "Furthermore, the rule could have the effect of removing legal, ethical, and peer-reviewed studies of health effects as sources to support the agency's regulatory efforts."

The researchers noted that EPA already has "mechanisms for vetting science through several expert panels," including the SAB itself. They also requested that EPA provide a scientific and technological basis for its proposed actions.

Liz Blackburn
Chief of Staff
EPA Office of Research and Development

202-564-2192

Personal Phone / Ex. 6

Message

From: Orme-Zavaleta, Jennifer [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=3C5A111DC377411595E5B24B5D96146B-ORME-ZAVALITA, JENNIFER]
Sent: 8/8/2018 3:49:33 PM
To: Christian, Megan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=64a0f5e0e9d94271b23cad28db653851-Lizotte, Me]
Subject: FW: FYI - Science Transparency EDF FOIA Lawsuit, Harvard Letter, and JAMA Forum
Attachments: JAMA_SecretScience_2018.pdf; Harvard_secretscience_Aug2018.pdf; EDF_FOIA_Lawsuit_Aug2018.pdf

Could you print these off for me

Jennifer Orme-Zavaleta, PhD
Principal Deputy Assistant Administrator for Science
Office of Research and Development
US Environmental Protection Agency

Personal Phone / Ex. 6

From: D'Amico, Louis
Sent: Wednesday, August 8, 2018 9:20 AM
To: Orme-Zavaleta, Jennifer <Orme-Zavaleta.Jennifer@epa.gov>
Subject: FW: FYI - Science Transparency EDF FOIA Lawsuit, Harvard Letter, and JAMA Forum

For your awareness

Louis D'Amico, Ph.D.
Senior Science Advisor
Office of Research and Development
U.S. Environmental Protection Agency
Mail Code 8101R | 1200 Pennsylvania Ave, NW | Washington, DC 20460

Office: 202-564-4605 | Personal Phone / Ex. 6 | email: damico.louis@epa.gov

From: Flowers, Lynn
Sent: Wednesday, August 8, 2018 8:07 AM
To: D'Amico, Louis <DAmico.Louis@epa.gov>; Teichman, Kevin <Teichman.Kevin@epa.gov>; Vandenberg, John <Vandenberg.John@epa.gov>; Bussard, David <Bussard.David@epa.gov>; Blancato, Jerry <Blancato.Jerry@epa.gov>; Doa, Maria <Doa.Maria@epa.gov>; Bahadori, Tina <Bahadori.Tina@epa.gov>; Sinks, Tom <Sinks.Tom@epa.gov>; Grifo, Francesca <Grifo.Francesca@epa.gov>; Hauchman, Fred <hauchman.fred@epa.gov>; Zartarian, Valerie <Zartarian.Valerie@epa.gov>; Kuhn, Kevin <Kuhn.Kevin@epa.gov>; Christian, Megan <Christian.Megan@epa.gov>
Subject: FYI - Science Transparency EDF FOIA Lawsuit, Harvard Letter, and JAMA Forum

<https://www.eenews.net/eenewspm/2018/08/07/stories/1060092961>

Harvard researchers — secret science plan 'irrational at best'

EPA



EPA headquarters in Washington. EPA/Flickr

An EPA plan to limit the types of studies that can be used in drafting new environmental regulations would spawn "chaos and confusion detrimental to the protection of public health," dozens of Harvard University researchers and physicians warned in comments filed today.

Not only could EPA's approach disqualify numerous studies that have already helped build the case for key safeguards, but it contains "significant ambiguities," they wrote.

Among them: Will EPA "arbitrarily exclude" studies for which the underlying raw data are not available? How will the agency use its authority to grant exemptions from the proposed data availability requirements? And how will the proposal affect measures taken by other agencies that rely on EPA findings or decisions?

The draft rule "is irrational at best and detrimental to public health and safety at worst," the approximately 90 signers said in calling for it to be scrapped.

The proposal, "Strengthening Transparency in Regulatory Science," would effectively bar EPA from using specific studies for developing new regulations unless the underlying data "are publicly available in a manner sufficient for independent validation," according to the text. Since its release this spring, the proposal has met with a torrent of opposition from scientific and public health groups. Industry organizations have been more supportive.

Some observers views the proposal's genesis as rooted in a 2013 bid by House Science, Space and Technology Chairman Lamar Smith (R-Texas) to obtain the underlying data for studies by Harvard and American Cancer Society researchers that led to first-ever air quality standards for fine particulates.

When Smith's attempt to subpoena the data from EPA fell short, he and other GOP lawmakers introduced legislation, initially known as the "Secret Science Reform Act," to block the agency from crafting new regulations based on science "that is not transparent or reproducible."

After several versions of the bill repeatedly failed to pass Congress, Smith early this year pitched then-EPA Administrator Scott Pruitt on implementing the restrictions administratively, according to records obtained by the Union of Concerned Scientists under the Freedom of Information Act (*Climatewire*, April 20).

Pruitt, dogged by ethics and spending controversies, resigned last month. His successor, acting EPA chief Andrew Wheeler, recently told E&E News that he would take "a hard look" at the proposal but wanted to move forward with it (*E&E News PM*, July 13).

With a FOIA lawsuit filed today, the Environmental Defense Fund is seeking to force EPA to release more records related to the "consideration and implementation of ideas" derived from the House legislation.

The advocacy group, which had sought the records in two requests made in March and May, said EPA's failure thus far to respond runs afoul of a statutory deadline and "deprives the public of important information that could reveal the impetus for the proposed rule, and, thus, offer significant insight into EPA's decision-making process," according to the suit, filed in the U.S. District Court for the Southern District of New York.

Given that the deadline for written comments on the proposal is Aug. 16, the suit added, "any further delay could prevent EDF and other interested parties from thoroughly evaluating and responding to subsequent actions" related to the proposal.

Lynn Flowers, PhD, DABT
Associate Director for Science
Office of Science Policy/ORD
US EPA
Washington, DC
202-564-6293

-----Original Appointment-----

From: D'Amico, Louis

Sent: Thursday, August 02, 2018 2:20 PM

To: D'Amico, Louis; Teichman, Kevin; Vandenberg, John; Bussard, David; Blancato, Jerry; Flowers, Lynn; Doa, Maria; Bahadori, Tina; Sinks, Tom; Grifo, Francesca; Hauchman, Fred; Zartarian, Valerie; Kuhn, Kevin; Christian, Megan

Subject: General Discussion - Small Group

When: Tuesday, August 07, 2018 9:30 AM-10:30 AM (UTC-05:00) Eastern Time (US & Canada).

Where: DCRoomRRB41107-1; DCRoomRRB41107-2; **Personal Phone / Ex. 6**

Please find relevant materials for the conversation at the following SharePoint site:

Personal Phone / Ex. 6

Message

From: Orme-Zavaleta, Jennifer [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=3C5A111DC377411595E5B24B5D96146B-ORME-ZAVALITA, JENNIFER]
Sent: 3/17/2018 6:12:58 PM
To: Sinks, Tom [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=001007b7d256453a8a19b91df704e22c-Sinks, Tom]
Subject: Re: More on HONEST ACT

Let's talk

Prefer you consult me first before taking things to Richard

Thanks

Jennifer Orme-Zavaleta, PhD
Principal Deputy Assistant Administrator for Science
Office of Research and Development
US EPA

Personal Phone / Ex. 6

On Mar 17, 2018, at 1:45 PM, Sinks, Tom <Sinks.Tom@epa.gov> wrote:

Hi Richard. I imagine you saw this. I'm happy to work with you to develop something that supports our efforts to embrace public access to epa funded research publications and data. I've mentioned before my concerns about the HONEST ACT. **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5 Happy to discuss further if you want.

Sent from my iPhone

Begin forwarded message:

From: "Teichman, Kevin" <Teichman.Kevin@epa.gov>
Date: March 16, 2018 at 11:24:19 AM EDT
To: "Sinks, Tom" <Sinks.Tom@epa.gov>, "Leopard, Matthew" <Leopard.Matthew@epa.gov>, "Hawkins, CherylA" <Hawkins.CherylA@epa.gov>, "Greene, Ana" <Greene.ana@epa.gov>, "Pendleton, Michael" <Pendleton.Michael@epa.gov>
Subject: Fw: More on HONEST ACT

FYI.

Kevin Teichman
Senior Science Advisor
Office of Research and Development (8101R)
U.S. Environmental Protection Agency

1200 Pennsylvania Ave., NW
Washington, DC 20460

Phone: (301) 975-6421
Fax: (301) 975-4409

From: Bahadori, Tina
Sent: Friday, March 16, 2018 10:27 AM
To: Orme-Zavaleta, Jennifer; Robbins, Chris; Rodan, Bruce; Blackburn, Elizabeth; Blancato, Jerry; Teichman, Kevin
Cc: Vandenberg, John
Subject: More on HONEST ACT

As we have been discussing – and ‘Administrator’s Executive Memorandum’ is likely imminent – this will effectively put the HONEST Act in action:

=====

Pruitt is expected to restrict science. Here's what it means

Scott Waldman and Robin Bravender, E&E News reporters Climatewire: Friday, March 16, 2018

U.S. EPA Administrator Scott Pruitt is planning to restrict which science the agency can use, something conservative lawmakers have been pushing for years. [EPA](#)

U.S. EPA chief Scott Pruitt is expected to roll out plans soon to restrict the agency's use of science in rulemakings, pitting him against critics who say it would threaten public health and environmental protections.

In a closed-door meeting at the Heritage Foundation on Monday, Pruitt told a group of conservatives that he has plans for additional science reform at the agency, according to multiple attendees. EPA hasn't formally shared details of the plan, but it's widely expected to resemble an effort that Republican lawmakers and conservative groups have been pushing for years. It's been met with staunch resistance from Democrats and many scientists.

The plan could come "sooner rather than later," said Steve Milloy, who served on Trump's EPA transition team and attended the meeting at the Heritage Foundation.

EPA did not respond to a request for comment. And Milloy cautioned that he did not know the specifics of the plan and said he was not authorized to discuss the meeting.

The initiative is expected to require EPA — when issuing rules — to rely only on scientific studies where the underlying data are made public. It's an idea that House Science, Space and Technology Chairman Lamar Smith (R-Texas) has been championing for years. He and others argue that EPA has been crafting regulations based on "secret science" to advance its regulatory agenda.

Smith, one of the leading opponents of mainstream climate science in Congress, has repeatedly accused federal climate scientists of engaging in a massive conspiracy to

falsify climate data. And he has repeatedly introduced bills that would require EPA to publicize data it uses when crafting regulations.

Those efforts died when President Obama was in the White House, and Smith's newest legislative push doesn't appear to be moving even though Republicans control both chambers of Congress. The House passed a bill dubbed the "Honest and Open New EPA Science Treatment (HONEST) Act" — requiring that EPA rules be based on science for which underlying data is publicly available and reproducible — last March. But the measure has gone nowhere since it was referred to the Senate Environment and Public Works Committee.

Smith has tried to push the idea elsewhere, too. In comments on the 2019 budget proposal, the GOP majority on the Science panel led by Smith suggested that EPA's funding should be contingent on the administrator's "requiring that all scientific and technical information and data relied on to support a risk, exposure, or hazard assessment; criteria document; standard; limitation; regulation; regulatory impact analysis; or guidance issued by the EPA is made publicly available."

Smith did not respond to a request for comment.

Critics on the left and in the scientific community see the effort as an attempt to hinder EPA from issuing rules.

"A lot of the data that EPA uses to protect public health and ensure that we have clean air and clean water relies on data that cannot be publicly released," said Yogin Kothari with the Union of Concerned Scientists.

Many scientific studies rely on data that can't be made public for reasons like patient privacy concerns or industry confidentiality.

"If EPA doesn't have data to move forward with a public protection for a safeguard, it doesn't have to do that at all," said Kothari. "It really hamstring the ability of the EPA to do anything, to fulfill its mission."

Publishing raw data also opens scientists up to attacks from industry, which can twist or distort data to shape a deregulatory agenda, said Betsy Southerland, a former senior EPA official in the Office of Water who worked on a staff analysis of the "HONEST Act."

Southerland, who left EPA last summer, said the effort is deceptive and is not about transparency, but about sidelining peer-reviewed science that supports regulation of pollution. She said there are numerous examples of groundbreaking studies that are not replicable, such as human health studies after the dropping of atomic bombs in Hiroshima or the ecological effects of the BP PLC Gulf of Mexico oil spill. In many of the older studies, there are a plethora of people, including some who are dead, who could no longer be tracked down.

"This is just done to paralyze rulemaking," she said. "It's another obstacle that would make it so hard and so difficult to go forward with rulemaking that in the end, the only thing that would happen — in the best case you would greatly delay rulemaking; in the worst case you would just prevent it. It would be such an obstacle you couldn't overcome it."

Publicizing the data in some EPA actions, which often come after years of research, could be extensive. For example, risk assessments for certain chemicals sometimes cite hundreds or even thousands of studies, all of which would have to be tracked down for data collection, according to the EPA analysis of the "HONEST Act."

Requiring data transparency would cost hundreds of millions of dollars because it would require EPA staff to track down data from study authors and create an online management system to store and present those data, the analysis found. In addition,

EPA staff would have to spend time redacting personally identifiable information in the studies, and study authors would likely require payments for preparing and sending their data.

EPA career staff estimated that Smith's legislation would add \$250 million in costs annually for the first few years after it was implemented, Southerland said. That estimate was dismissed by senior EPA officials who said those costs were inflated and that the agency would not use many studies to which the rule would apply, but they did not provide evidence, she said. EPA's analysis of Smith's bill was published by the radio program "Marketplace."

Milloy, who has long pushed for EPA to stop issuing regulations unless the underlying scientific data are made public, said the science reform effort could be done through a directive, in the same way that Pruitt reshaped EPA's science advisory panels.

The overhaul of those committees is another area where Pruitt came through on one of Smith's longtime priorities.

In October, Smith was seated front and center at an event where Pruitt announced that he would reform the advisory panels to bar researchers who take government funding. Critics said that move skewed the advice EPA is getting by making it tough for researchers who rely on public funding to participate, but keeping industry-funded scientists on board.

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"Pruitt did a great job in cleaning up the science advisory boards, and if he does that kind of work on this, that's fantastic," Milloy said of the expected science data reform effort. "My goal is to make sure EPA does not rely on scientific studies unless the data is made available for replication by somebody."

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Twitter: [@scottpwaldman](https://twitter.com/scottpwaldman) Email: swaldman@eenews.net

Message

From: Orme-Zavaleta, Jennifer [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=3C5A111DC377411595E5B24B5D96146B-ORME-ZAVALITA, JENNIFER]
Sent: 1/26/2018 4:21:28 PM
To: Blackburn, Elizabeth [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a080eb90549a453aaa6a357f5257c0b7-Blackburn, Elizabeth]
Subject: RE: Jerry is calling into the Honest Act briefing

Great, thanks!

Jennifer Orme-Zavaleta, PhD
Principal Deputy Assistant Administrator for Science
USEPA Office of Research and Development

Personal Phone / Ex. 6

orme-zavaleta.jennifer@epa.gov

From: Blackburn, Elizabeth
Sent: Friday, January 26, 2018 11:17 AM
To: Orme-Zavaleta, Jennifer <Orme-Zavaleta.Jennifer@epa.gov>
Subject: Jerry is calling into the Honest Act briefing

Sam is having a pre-brief with him at 1

Liz Blackburn
Chief of Staff
EPA Office of Research and Development
202-564-2192

Personal Phone / Ex. 6

Message

From: Orme-Zavaleta, Jennifer [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=3C5A111DC377411595E5B24B5D96146B-ORME-ZAVALITA, JENNIFER]
Sent: 4/25/2018 4:31:02 PM
To: Blackburn, Elizabeth [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a080eb90549a453aaa6a357f5257c0b7-Blackburn, Elizabeth]
CC: Robbins, Chris [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=958b4b78eb42457eacf53514e428efd6-Robbins, Chris]; Rodan, Bruce [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=Rodan, Bruce]
Subject: RE: Scientists say they want open data — but not Pruitt's plan

I have asked Megan to set up a mtg w Fred, Tina and Bruce so we can begin thinking of how we would implement this w/in ORD

Jennifer Orme-Zavaleta, PhD
Principal Deputy Assistant Administrator for Science
USEPA Office of Research and Development

Personal Phone / Ex. 6

orme-zavaleta.jennifer@epa.gov

From: Blackburn, Elizabeth
Sent: Wednesday, April 25, 2018 8:14 AM
To: Radzikowski, Mary Ellen <Radzikowski.Maryellen@epa.gov>; Orme-Zavaleta, Jennifer <Orme-Zavaleta.Jennifer@epa.gov>; Robbins, Chris <Robbins.Chris@epa.gov>; Hubbard, Carolyn <Hubbard.Carolyn@epa.gov>; Rodan, Bruce <rodan.bruce@epa.gov>
Subject: Scientists say they want open data — but not Pruitt's plan

Scientists say they want open data — but not Pruitt's plan

Scott Waldman, E&E News reporter
Published: Wednesday, April 25, 2018



EPA Administrator Scott Pruitt spoke at agency headquarters earlier this month. Andrew Harnik/Associated Press

Scientists are worried that EPA's new plan to increase transparency will undermine it instead.

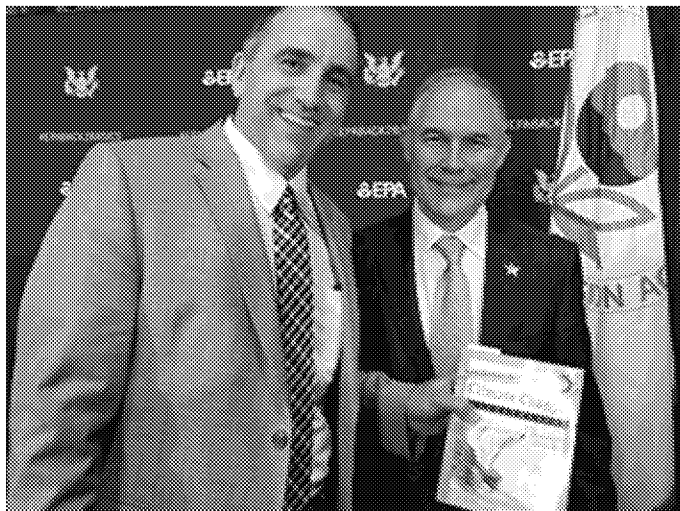
EPA Administrator Scott Pruitt yesterday unveiled a long-awaited plan to require that EPA studies used in future regulations must have open and transparent data. Pruitt said the proposed rule is part of his larger effort to dramatically reform the way science is used at the agency, which also included the removal of Science Advisory Board members who received EPA grants and were replaced with industry-friendly researchers.

"The science we use is going to be transparent, it's going to be reproducible, it's going to be able to be analyzed by those in the marketplace, and those that watch what we do can make informed decisions about whether we've drawn the proper conclusions or not," Pruitt said yesterday at EPA headquarters.

But some of the biggest critics of Pruitt's plans are scientists who say they've already been working to boost transparency for years.

Researchers have long grappled with how to make the peer-review process more accessible, how to make more research replicable and how to better share data, said Gretchen Goldman, research director for the Center for Science and Democracy at the Union of Concerned Scientists.

Scientists are always discussing ways to make their work more transparent, accessible and instructive for the community at large, Goldman added. The proposed EPA rule establishes a set of political hoops for researchers that will take more of their time, she said. And many won't be able or willing to devote more effort to the additional red tape put up by Pruitt.



Blogger Marc Morano presented his book, "The Politically Incorrect Guide to Climate Change," to Pruitt yesterday. Morano/Twitter

"This is not about all of the details that scientists need to scrutinize each other's work. That information is already widely available, and scientists spend a tremendous amount of time disclosing all of their data and methods to get their work published," she said. "This is adding additional burdens; it's not the information that is required for appropriate peer review and reproducibility of studies. This is clearly just a political move."

Scientists and leading scientific organizations were largely excluded from EPA's process in formulating the proposed rule. EPA also shut out reporters from its transparency announcement yesterday as it welcomed industry allies who have long pushed for deregulation in Washington, D.C. The audience allowed into the event, visible on a livestream of the 15-minute presentation, included a core group of those who deny mainstream climate science and who have worked to tear down climate regulations. In addition to House Science, Space and

Technology Chairman Lamar Smith (R-Texas), the audience included Will Happer, an emeritus physics professor at Princeton University and possible candidate to be Trump's science adviser; Marc Morano, who runs a climate science denial website; Steve Milloy, a Trump EPA transition team member; and Myron Ebell of the Competitive Enterprise Institute.

Richard Shiffrin, a professor of cognitive science at Indiana University, Bloomington, thinks what's needed is just minor tuning to the scientific research process, not a full-scale overhaul, he said recently at the National Academy of Sciences. There is an entire cottage industry that focuses on the problems of science, which creates the false public impression that much needs to be fixed, he said.

"The fact that we're talking about solutions still puts the focus on problems that we're trying to solve," he said in an interview with E&E News. "It's as if science is broken, so the public and Congress and the president and everyone else gets the impression that things are falling apart because scientists themselves keep talking about how bad things are and how things need to be fixed. Well, that's not true; things are going incredibly well, so I think that we have to change the narrative and make it clear to the public that science is advancing so rapidly that we can't even keep up."

In a press release yesterday, EPA cited the editorial policies of *Nature* and *Science* magazines as a justification for its proposed rule. Rush Holt, CEO of the American Association for the Advancement of Science and publisher of the *Science* family of journals, said it is dedicated to having as much peer-reviewed information as possible, while the proposed rule is just the opposite. He said EPA's effort is in the name of transparency but will shut out invaluable and necessary research that informs regulations that save lives.

"Its effect will be and maybe its intention is to be able to exclude inconvenient scientific evidence without acknowledging that it has been excluded," he said. "In other words, they'll say, 'We didn't exclude that because it doesn't qualify' so they don't have to explain that they ever excluded it, so that's just the opposite of transparency."

Advertisement

Pruitt allies warn of 'crisis' in science

Critics argue that Pruitt's plan would prevent the use of groundbreaking studies, including those that draw on decades of research that links air pollution to human health. At the same time, it would allow the use of studies, including those conducted by Science Advisory Board members selected by Pruitt and funded by the American Petroleum Institute, that downplay health risks of air pollution (*Climatewire*, April 11).

The proposed rule would allow some data to avoid public scrutiny, as it carved out an exemption for industry data that is considered confidential business information, something the chemical industry has sought.

Rep. Eddie Bernice Johnson of Texas, ranking Democrat on the Science, Space and Technology Committee, called Pruitt's proposal an "insidious plan" designed to hamstring the ability of EPA to protect public health. She has fought efforts by her GOP colleague Smith to get a version of the proposed rule passed into law for years.

"Republicans weren't able to get their 'secret science' bills signed into law, but now they have Administrator Pruitt to do the bidding of industry at the EPA," she said in a statement. "This rule isn't about 'scientific transparency.' It's about undermining public health and the environment."

Smith has pushed such legislation for years, arguing that it would make EPA's work more transparent. Smith has alleged that EPA uses "secret science," and he has accused government researchers of fraud. At the agency headquarters yesterday, he said the new regulation is in response to a larger scientific discussion.

"Many in the scientific community agree that increased access to data is essential for reproducibility and objective analysis," he said. "Open access to scientific data fosters good policymaking. The American people have a right to understand how and why regulatory decisions are made."

In a House office building last week, Smith feted a group of researchers from the National Association of Scholars who routinely attack climate science and who say in a new report that there is a "crisis" in science because too much of it cannot be reproduced. The authors of its new report, titled "The Irreproducibility Crisis of Modern Science," say government agencies should establish review commissions to determine which existing regulations are based on reproducible research and to rescind those that are not, a process that could affect key provisions of the Clean Air Act, among other regulations.

"A reproducibility crisis afflicts a wide range of scientific and social-scientific disciplines, from epidemiology to social psychology," they wrote. "Improper research techniques, lack of accountability, disciplinary and political groupthink, and a scientific culture biased toward producing positive results together have produced a critical state of affairs."

The group has long cast doubt on established and mainstream climate science. The National Association of Scholars, tax filings show, has received hundreds of thousands of dollars in funding from the Charles Koch Foundation as well as the Sarah Scaife Foundation, both of which have supported attacks on climate science. The afterword of the report was written by Happer of Princeton.

Liz Blackburn
Chief of Staff
EPA Office of Research and Development
202-564-2192

Personal Phone / Ex. 6

Sent from my iPhone

Message

From: Orme-Zavaleta, Jennifer [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=3C5A111DC377411595E5B24B5D96146B-ORME-ZAVALITA, JENNIFER]
Sent: 1/31/2018 5:29:04 PM
To: Christian, Megan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=64a0f5e0e9d94271b23cad28db653851-Lizotte, Me]
Subject: Fwd: ORD and HONEST Act JJV_kmk.docx
Attachments: ORD and HONEST Act JJV_kmk.docx; ATT00001.htm

PLS PRINT

Sent from my iPad

Begin forwarded message:

From: "Sinks, Tom" <Sinks.Tom@epa.gov>
Date: January 31, 2018 at 11:48:53 AM EST
To: "Yamada, Richard (Yujiro)" <yamada.richard@epa.gov>, "Orme-Zavaleta, Jennifer" <Orme-Zavaleta.Jennifer@epa.gov>, "Rodan, Bruce" <rodan.bruce@epa.gov>
Cc: "Sinks, Tom" <Sinks.Tom@epa.gov>, "Kuhn, Kevin" <Kuhn.Kevin@epa.gov>, "Blancato, Jerry" <Blancato.Jerry@epa.gov>, "Vandenberg, John" <Vandenberg.John@epa.gov>, "Sinks, Tom" <Sinks.Tom@epa.gov>
Subject: ORD and HONEST Act JJV_kmk.docx

Nice job Richard – see some suggested edits in this version.

Message

From: Robbins, Chris [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=958B4B78EB42457EACF53514E428EFD6-ROBBINS, CHRIS]
Sent: 3/16/2018 6:25:06 PM
To: Watkins, Tim [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4cbd1c572f584fd7b0a3b5945f118558-Watkins, Tim]; Cascio, Wayne [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a1bd931ca2f84ea8ac2f4c44538f3589-Cascio, Wayne]; Sonich-Mullin, Cynthia [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e634d93d2e0741aaaba1a04e14b347a6-Sonich-Mullin, Cynthia]
Subject: Fwd: More on HONEST ACT

FYI and please do not share at this point...thx

Sent from my iPad

Begin forwarded message:

From: "Bahadori, Tina" <Bahadori.Tina@epa.gov>
Date: March 16, 2018 at 10:27:08 AM EDT
To: "Orme-Zavaleta, Jennifer" <Orme-Zavaleta.Jennifer@epa.gov>, "Robbins, Chris" <Robbins.Chris@epa.gov>, "Rodan, Bruce" <rodan.bruce@epa.gov>, "Blackburn, Elizabeth" <Blackburn.Elizabeth@epa.gov>, "Blancato, Jerry" <Blancato.Jerry@epa.gov>, "Teichman, Kevin" <Teichman.Kevin@epa.gov>
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EPA did not respond to a request for comment. And Milloy cautioned that he did not know the specifics of the plan and said he was not authorized to discuss the meeting.

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Those efforts died when President Obama was in the White House, and Smith's newest legislative push doesn't appear to be moving even though Republicans control both chambers of Congress. The House passed a [bill](#) dubbed the "Honest and Open New EPA Science Treatment (HONEST) Act" — requiring that EPA rules be based on science for which underlying data is publicly available and reproducible — last March. But the measure has gone nowhere since it was referred to the Senate Environment and Public Works Committee.

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Twitter: [@scottpwaldman](https://twitter.com/scottpwaldman) Email: swaldman@eenews.net

Message

From: Robbins, Chris [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=958B4B78EB42457EACF53514E428EFD6-ROBBINS, CHRIS]
Sent: 5/9/2018 2:14:17 PM
To: davidpaylor@cs.com
Subject: Response to CBO Questions about the HONEST Act - ORD Draft Answers 3-21-....doc - Sent from MaaS360
Attachments: Response to CBO Questions about the HONEST Act - ORD Draft Answers 3-21-....doc; ATT00001.txt

Biweekly Update on Strengthening Transparency in Regulatory Science Rulemaking
Agenda
October 4, 2018

- I. SAB
- II. Draft document: *Comparison Between the Strengthening Transparency in Regulatory Science Proposed Rule and the Scientific Integrity Policy*
- III. Staff Recommendations
 - a. Secure repositories for PII
 - b. Where to address dose-response models and issues of reproducibility (e.g., in guidance)
 - c. Whether applicability of regulation to availability of data and computer code can be made prospectively
 - d. Other issues?
- IV. Status of organizing public comments and evaluation of issues
 - a. Legal issues
 - i. OGC review
 - b. Relationship of proposed rule to environmental statutes
 - c. Meetings Scheduled with 1) OW and OGC; 2) OAR and OGC
 - i. OCSP
 - d. Replication and reproducibility
 - e. PII
 - f. Dose-response models
- V. ADP workgroup
- VI. Briefing status

Biweekly Update on Strengthening Transparency in Regulatory Science Rulemaking
Agenda
November 1, 2018

- I. Acting Administrator briefing (draft attached)
- II. OGC Briefing on Legal Issues for IOAA – November 1, 2018
- III. ADP Workgroup meeting held October 23, 2018. Next meeting November 20, 2018
- IV. SAB
- V. Status of organizing public comments and evaluation of issues
 - a. Relationship of proposed rule to environmental statutes
 - b. Controlled access data - PII, CBI and National Security data
 - c. Dose-response models and issues of reproducibility
 - d. Requirements on availability of data and computer code prospectively

Attachment

Biweekly Update on Strengthening Transparency in Regulatory Science Rulemaking
Agenda
November 29, 2018

- I. Acting Administrator briefing
- II. ADP Workgroup meeting held November 20, 2018. Next meeting mid-January 2019
- III. Evaluation of issues
 - a. Relationship of proposed rule to environmental statutes
 - b. Controlled access data - PII, CBI and National Security data
 - c. Dose-response modeling; different offices' approach to the use of defaults in dose-response modeling and model assumptions
 - d. Issues of replicability and reproducibility
 - e. Issues associated with how costs and benefits are characterized in the proposed rule

Monthly Update on Strengthening Transparency in Regulatory Science Rulemaking
Agenda
February 14, 2019

- I. Regulatory Agenda Update
- II. Acting Administrator briefing
 - a. Briefing paper
 - b. Background materials

FYI

- I. Next ADP Workgroup meeting March 6, 2019.
- II. Background briefings for IOAA
 - a. Issues associated with replicability and reproducibility – February 21, 2019
 - b. Dose-response modeling – February 28, 2019
 - c. Characterization of costs and benefits in the proposed rule – March 7, 2019
- III. Workgroup contact group meetings
 - a. Relationship of proposed rule to environmental statutes
 - b. Dose-response modeling; different offices' approach to the use of defaults in dose-response modeling
 - c. Issues associated with how costs and benefits are characterized in the proposed rule

View Rule

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EPA/ORD

RIN: 2080-AA14

Publication ID: Fall 2018

Title: Strengthening Transparency in Regulatory Science**Abstract:** This action is intended to strengthen the transparency of EPA regulatory science. As a result of this action, EPA would ensure that the regulatory science underlying its actions is publicly available in a manner sufficient for independent validation. This action would increase transparency of the assumptions underlying dose-response data and models that support these EPA regulatory decisions. The Agency proposes to take this action under the authority of the statutes it administers, including provisions providing general authority to promulgate regulations necessary to carry out the Agency's functions.**Agency:** Environmental Protection Agency(EPA)**Priority:** Other Significant**RIN Status:** Previously published in the Unified Agenda**Agenda Stage of Rulemaking:** Long-Term Actions**Major:** No**Unfunded Mandates:** No**EO 13771 Designation:** Other**CFR Citation:** 40 CFR 30**Legal Authority:** [15 U.S.C. 2609](#) [7 U.S.C. 136w](#) [7 U.S.C. 136\(a\)](#) [42 U.S.C. 11048](#) [42 U.S.C. 9660](#) [42 U.S.C. 9616](#) [42 U.S.C. 6979](#) [42 U.S.C. 6912\(a\)\(1\)](#) [42 U.S.C. 300j-9\(a\)\(1\)](#) [42 U.S.C. 300j-1](#) [33 U.S.C. 1361](#) [33 U.S.C. 1254](#) [42 U.S.C. 7601\(a\)](#) [42 U.S.C. 7403](#)**Legal Deadline:**

Action	Source	Description	Date
None			

Timetable:

Action	Date	FR Cite
NPRM	04/30/2018	83 FR 18768
NPRM Comment Period Extended	05/25/2018	83 FR 24255
Final Rule	01/00/2020	

Regulatory Flexibility Analysis Required: No**Government Levels Affected:** None**Small Entities Affected:** No**Federalism:** No**Included in the Regulatory Plan:** No**RIN Data Printed in the FR:** No**Agency Contact:**

Maria Doa
 Environmental Protection Agency
 Office of Research and Development
 Washington, DC 20460
 Phone:202 566-0718
 Email: doa.maria@epa.gov

Nicole Shao
 Environmental Protection Agency
 Office of Research and Development
 1200 Pennsylvania Ave NW,
 Washington, DC 20460
 Phone:202 564-6779
 Email: shao.nicole@epa.gov



Rodan/Teichman Update
25 October 2018, 2:00-2:30p

Agenda

0. Things Bruce needs to tell Kevin
1. Schedule for Kevin's PARS
2. Georgetown/NIST/EPA MOU
3. Public Access
 - ❖ Data memo with JOZ
 - ❖ Embargo periods > 12 months
4. Strengthening Transparency Proposed Rule
 - ❖ OGC briefing for JOZ, October 31
 - Significant rule w/o cost/benefit analysis
 - Best available science in TSCA, CAA
 - ❖ Briefing for Acting Administrator, TBD

Rodan/Teichman Biweekly

8 November 2018

Agenda

1. Items Bruce needs to share with Kevin
2. KYT FY 2018 Performance Review/ FY 2019 Performance Plan
3. Public Access Forum
 - Data Plan to STPC
 - Rate-determining next step: Extramural Order
 - D² request
4. Strengthening Transparency Proposed Rule – I/O Report to D²
5. UOG – NM White Paper
6. GU/NIST/EPA M.S. program
7. IOAA Futures effort

Bruce/Kevin Meeting

19 December 2018

Agenda

1. Items Bruce need to share with Kevin
2. Public Access Forum
 - ScienceHub “build out”
 - Intramural dataset training
 - Extramural metadata record editor
 - Meeting with OGC re Extramural
3. Strengthening Transparency Rule
 - Briefing for Acting Administrator TBD
 - The Hill article
4. GU/NIST/EPA MOU
 - Tuesdays starting 15 January 2019
 - Continuously updating lectures (e.g., TSCA in 2019, climate change reports, methane)

EPA to pursue final 'science transparency' rule in 2019

BY TIMOTHY CAMA - 12/14/18 05:15 PM EST

The Environmental Protection Agency (EPA) plans to pursue next year a final version of its much-criticized rule that would restrict the scientific studies it can use to justify regulations.

In a Friday interview with The Hill, acting EPA chief Andrew Wheeler dismissed the idea that the science transparency regulation was on the “back burner” since the administration recently listed it as a “long-term” regulatory action.

“It is not a back-burner issue. I feel strongly about that,” Wheeler said. “And we will move forward to finalize that next year.”

The transparency rule was a key priority of Wheeler’s predecessor, Scott Pruitt, before he resigned from the agency in July under a slew of ethics and spending scandals.

But Wheeler made it clear that he isn’t letting it fall by the wayside.

“I’ve worked on those issues for over 20 years. So I feel very strongly about science transparency,” said Wheeler, who has previously served as a career EPA employee, a GOP Senate aide and an energy industry lobbyist.

Under the proposal, the EPA would only be able to use scientific data and studies if they are reproducible and the underlying data can be made public, among other factors, with some exceptions, including for personal health data.

Republicans and regulated industries have been pushing similar proposals for years, arguing that the EPA previously relied too much on “secret” science that could not be fully scrutinized.

“I fundamentally believe that the more information that we put out as an agency, the better our decisions will be and the more confidence the public will have in what we’re doing,” Wheeler said.

“And I think if we’re going forward with a regulation, particularly a major regulation, we need to tell the American public, what are we using for basis? How did we decide what we’re deciding? We need to put that information out there.”

Wheeler rejected the main criticism from opponents of the rule, that it is meant to restrict the agency’s ability to regulate by putting out of reach large bodies of valuable science, such as many epidemiological studies that by their nature cannot be reproduced.

“I don’t think it’s designed to restrict what we use. It’s designed to get the information out to the public. The critics look at it as ‘oh, you’re trying to get rid of a lot of the studies, you’re trying to restrict what the agency can use.’ No,” he said.

“And part of it is to send a signal to the research community that you need to make your data available to the public. Particularly if the United States government is paying for it. But we need to make the data available to the public.”

Wheeler's opponents had read as a positive sign an October report by the White House Office of Management and Budget that the proposal was either dead or not a priority for the EPA, since it was listed in "long-term" actions that wouldn't be finalized before 2020 at the earliest.

For those critics, Wheeler's dedication to the rule is concerning.

California Attorney General Xavier Becerra, who has sued the Trump administration's EPA numerous times — frequently with success — said if the science rule moves forward, he'll fight it.

Bruce/Kevin Meeting

5 March 2019

Agenda

1. Items Bruce needs to share with Kevin
2. Public Access Forum
 - Metrics due 15 March
 - 5 March Forum Meeting
 - ScienceHub “build out”
 - Intramural dataset and SDMP training
 - Extramural metadata record editor
 - Extramural matrix (attached) being reviewed by OGC
3. Strengthening Transparency Rule
 - Briefing for Acting Administrator
 - Workgroup meetings
4. AE NPD SME
5. UOG (a.k.a. HF)
 - **Deliberative Process / Ex. 5**
 - EPA/State/Tribal – HEI presentation postponed
6. GU/NIST/EPA MOU
 - Every Wednesday (4-6 pm Lecture; 2-3 pm Office Hours)
 - Continuously updating lectures

Message

From: Francesca Grifo **Personal Address / Ex. 6**
Sent: 4/23/2018 9:26:59 PM
To: Rodan, Bruce [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=Rodan, Bruce]
Subject: Secret Science

You might have heard - but FYI - secret science memo is being dropped tomorrow at 2 pm.

FTG
Francesca T. Grifo
Sent from my iPhone - please forgive my brevity!

Message

From: Sinks, Tom [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=001007B7D256453A8A19B91DF704E22C-SINKS, TOM]
Sent: 1/22/2018 2:09:47 PM
To: Rodan, Bruce [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=Rodan, Bruce]
Subject: so far I've heard nothing about congressional inquiry re HONEST ACT.

Thomas Sinks, Ph.D.
Director, Office of the Science Advisor
Environmental Protection Agency
1200 Pennsylvania Ave NW
Room 41251 RRB, MC 8105 R
Washington DC, 20460
office: (202) 564-3099 r. Personal Phone / Ex. 6
email: sinks.tom@epa.gov

Message

From: Blackburn, Elizabeth [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=A080EB90549A453AAA6A357F5257C0B7-BLACKBURN, ELIZABETH]
Sent: 4/22/2018 11:47:07 PM
To: Rodan, Bruce [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=Rodan, Bruce]
Subject: Re: Monday 9:30

Sure. **Deliberative Process / Ex. 5**

Liz Blackburn
Chief of Staff
EPA Office of Research and Development
202-564-2192

Personal Phone / Ex. 6

Sent from my iPhone

> On Apr 22, 2018, at 7:43 PM, Rodan, Bruce <rodan.bruce@epa.gov> wrote:
>
> Liz,
>
> Can you please add biofuels to the conversation.
>
> Thx
>
> Bruce Rodan

Message

From: Linkins, Samantha [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=B7A94AA2975D4933981A8A9BF12AAA40-LINKINS, SAMANTHA]
Sent: 1/22/2018 2:56:06 PM
To: Rodan, Bruce [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=Rodan, Bruce]
Subject: Re: Sam, I added Tom Sinks to HONEST Act, since he was central in responses

Ok thanks. I asked OCIR to include him but maybe they missed his name on the invite.

Sent from my iPhone

On Jan 22, 2018, at 9:28 AM, Rodan, Bruce <rodan.bruce@epa.gov> wrote:

Bruce D. Rodan
Associate Director for Science
U.S. EPA, Office of Research and Development

Message

From: Blackburn, Elizabeth [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=A080EB90549A453AAA6A357F5257C0B7-BLACKBURN, ELIZABETH]
Sent: 5/12/2018 6:39:14 PM
To: Orme-Zavaleta, Jennifer [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3c5a111dc377411595e5b24b5d96146b-Orme-Zavaleta, Jennifer]
CC: Rodan, Bruce [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=Rodan, Bruce]; Hubbard, Carolyn [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=2a93ce3245494318b109e87f7d826284-Hubbard, Carolyn]
Subject: Re: one-two punch

Agree that's it's a clearly written article. Don't know anything about the publication or the writer.

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Liz Blackburn
Chief of Staff
EPA Office of Research and Development
202-564-2192

Personal Phone / Ex. 6

Sent from my iPhone

On May 12, 2018, at 12:05 PM, Orme-Zavaleta, Jennifer <Orme-Zavaleta.Jennifer@epa.gov> wrote:

Jennifer Orme-Zavaleta, PhD
Principal Deputy Assistant Administrator for Science
Office of Research and Development
US EPA

Personal Phone / Ex. 6

Begin forwarded message:

From: "Bahadori, Tina" <Bahadori.Tina@epa.gov>
Date: May 12, 2018 at 8:19:22 AM EDT
To: "Orme-Zavaleta, Jennifer" <Orme-Zavaleta.Jennifer@epa.gov>, "Robbins, Chris" <Robbins.Chris@epa.gov>, "Teichman, Kevin" <Teichman.Kevin@epa.gov>
Subject: one-two punch

This article does a good job of showcasing the one-two punch of the 'secret science rule' and the 'back to basics NAAQS':

<https://www.utilitydive.com/news/pruitt-naaqs-memo-part-of-broad-strategy-to-weaken-air-regs-lawyers-say/523358/>

Message

From: Doa, Maria [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=99E502A905374B0B890DB9B22E18D92E-MDOA02]
Sent: 8/30/2018 6:29:30 PM
To: Rodan, Bruce [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=Rodan, Bruce]
CC: Hauchman, Fred [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=f8bf9785f32048ccad5f60b25a72017d-Hauchman, Fred]
Subject: Comments on legal basis of the transparency rule
Attachments: NY AG et al.pdf; Louisiana AG et al.pdf; ACC Coments.pdf; Earthjustice Comment (7).pdf; NRDC Commentsl.pdf

Hi Bruce,

Attached are a few of the comments on the legal basis. Also attached are the ACC comments. I am pulling together summaries, but in the interim wanted to share them as a follow-up to the request at the meeting this morning.

Thanks,
Maria

Maria J. Doa, Ph.D.
Office of Science Policy
Office of Research and Development
Environmental Protection Agency
Tel. 202.566.0718



August 16, 2018

Dr. Thomas Sinks
Director, Office of the Science Advisor
Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20460-0001

Submitted electronically to www.regulations.gov

**Re: EPA Docket EPA-HQ-OA-2018-0259;
Comments of the American Chemistry Council on EPA's Strengthening
Transparency in Regulatory Science Proposed Rule**

Dear Dr. Sinks:

The American Chemistry Council is pleased to submit the attached comments on the Environmental Protection Agency's proposed rule, Strengthening Transparency in Regulatory Science.

Please contact me should you have any questions regarding these comments at 202-249-6406 or Christina_Franz@americanchemistry.com.

Sincerely,

A handwritten signature in cursive script that reads "Christina Franz".

Christina Franz
Senior Director, Regulatory & Technical Affairs
American Chemistry Council



**Comments of the American Chemistry Council on EPA's Strengthening
Transparency in Regulatory Science Proposed Rule**

EPA Docket EPA-HQ-OA-2018-0259

August 16, 2018

Christina Franz
Senior Director, Regulatory & Technical Affairs
American Chemistry Council
700 Second Street, NE
Washington DC 20002
(202) 249-6406
Christina_Franz@americanchemistry.com



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Executive Summary

The American Chemistry Council (ACC) is pleased to provide the following comments on the Environmental Protection Agency's (EPA) proposed rule, Strengthening Transparency in Regulatory Science (Strengthening Transparency), published in the Federal Register on April 30, 2018.¹ ACC and its members are directly impacted by the science-based regulatory actions of EPA under a myriad of federal environmental statutes. As such, ACC has a keen interest in EPA's adoption and implementation of a proposal as important as this one, which will reach across the breadth of the Agency's authority.

In the following comments, ACC offers its support for the proposed rule; responds to a number of questions posed by EPA in its preamble; and provides a number of specific recommendations regarding how the proposed rule can be improved and strengthened. Specifically, ACC suggests the following:

- Implementation of the rule would benefit from policy and/or guidance regarding the weight to be accorded the science informing significant regulatory decisions
- EPA should provide better historical context and applicability to the proposed rule
- EPA has not in all circumstances properly identified from where its authority is derived under the various federal environmental statutes cited in the proposed rule
- The regulation should apply to Executive Order 12866 significant regulatory actions at the proposal stage
- Key regulatory definitions and regulatory text require greater clarity
- Clarifications to the preamble are needed
- Implementation of the rule should be statute specific
- The proposed rule should apply to enforcement and permit proceedings
- EPA should incorporate stronger data and model access requirements into its Cooperative Agreements and Grants while complying with privacy and confidentiality requirements and laws
- The rule should apply to all EPA programs, including its IRIS program
- Methodologies and technologies providing protected access to confidential and sensitive data should be employed

¹ 83 FR 18768 (April 30, 2018).



- The rule should generally apply prospectively to EPA decision making
- Bias should not be presumed
- EPA should work with entities where scientific data are not publicly available in a manner sufficient for independent evaluation

I. Introduction and Background

ACC strongly supports EPA’s demonstrated commitment in this proposal to build upon the principles underlying the Administrative Procedure Act (APA), Executive Orders 12866, 13777, and 13783, and guidance of Office of Management and Budget (OMB). In addition, ACC supports the proposal’s expansion of the 2013 “Increasing Access to the Results of Federally Funded Scientific Research” memorandum directing federal agencies and offices to develop and submit plans to the White House Office of Science and Technology (OSTP) that ensure peer-reviewed publications and digital scientific data resulting from federally-funded scientific research are accessible to the public, the scientific community, and industry—to the extent practicable.

The OSTP directive required each agency to develop a public access plan that maximizes access to federally-funded “digitally formatted scientific data”² while also protecting confidentiality, personal privacy, confidential business information (CBI), intellectual property rights, and U.S. competitiveness.³ In 2016, EPA issued its Plan to Increase Access to Results of EPA-funded Scientific Research in response to the OSTP directive.⁴ Importantly, EPA’s Strengthening Transparency proposal appears to extend such commitments beyond the government-funded requirement of the OSTP directive to “dose response data and models underlying pivotal regulatory science regardless of the source of funding or identity of the party conducting the regulatory science.”⁵

ACC believes that EPA’s proposal correctly codifies an important good governance principle—that government agencies should be as transparent as possible, within the bounds of the law, about scientific information relied upon and the justifications for the significant regulatory decisions they make.

² As defined in OMB circular 110 as “the digital recorded factual material commonly accepted in the scientific community as necessary to validate research findings, including data sets used to support scholarly publications. . .” It is a definition consistent with that of “research data” in the regulatory text of EPA’s proposal.

³ More than 20 federal agencies have developed and implemented Data Access Plans, including EPA, the National Institutes of Health (NIH), the Center for Disease Control (CDC), and the Food and Drug Administration (FDA).

⁴ Plan to Increase Access to Results of EPA-Funded Scientific Research (USEPA, November 29, 2016) <https://www.epa.gov/sites/production/files/2016-12/documents/epascientificresearchtransparencyplan.pdf>

⁵ ACC suggests improvements to EPA’s terminology in the preamble that are described later in these comments in sections VI and VII.



The Agency's focus on dose-response data and models appropriately reflects the evolution of toxicology from a largely observational science to a discipline that applies advanced scientific techniques and knowledge. Research programs within academia, government, and private sector labs have greatly improved our ability to investigate and understand the underlying biological mechanisms, modes of action, and dose responses of toxicants. We can now evaluate biological events leading to toxicity and consider how (in a dose-response manner) these biological events relate to potential risks to human health. This was not possible 10-to-20 years ago. This improvement should directly translate to the application of transparent weight-of-the-evidence approaches to the assessment of human relevance; the development of points of departure; and the derivation of protective human health equivalent dosages that minimize the use of uncertainty factors and variability. A goal has been to apply this knowledge to improve the scientific basis of government regulatory policies and industry product stewardship.

For environmental concerns, exposure-response is the more appropriate relationship to evaluate because most of the environmental test guidelines require quantifying concentrations in media external to the organism for use as the exposure metric. Toxicity information and—when available—knowledge of mechanisms, are integrated with exposure-response models for risk-based environmental safety decision making.

Despite significant scientific progress in the understanding of mechanisms of action (MOA) and adverse outcome pathways (AOP), the movement away from default precautionary assumptions has been slow to occur, particularly in certain EPA programs. Significant investments by government, academia, and the private sector into toxicological research are counteracted by the failure to move away from default assumptions toward science-based decisions.

ACC encourages EPA to implement best available scientific procedures under this rulemaking. The Agency should move away from the outdated linear concept of how biology operates toward biologically-based mechanisms, i.e., mode of action (MOA) and adverse outcome pathways (AOP) for both cancer and non-cancer effects, that clearly establish the threshold nature of toxicological endpoints for derivation of points of departure for establishing regulatory values and making regulatory decisions.^{6 7}

In the following discussion, ACC offers its comments to help clarify and strengthen the proposed rule.

⁶ Critics of this proposed policy appear to overlook the fact that the call to evaluate different dose response models is entirely consistent with the Agency's Cancer Guidelines, which have been in place since 2005. See Guidelines for Carcinogen Risk Assessment https://www.epa.gov/sites/production/files/2013-09/documents/cancer_guidelines_final_3-25-05.pdf

⁷ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3038594/>



II. Implementation of the Rule Would Benefit from Policy and/or Guidance Regarding Weight Accorded the Science Informing Significant Regulatory Decisions

As EPA has noted, the proposed rule is consistent with and builds upon the EPA policies implemented by previous administrations. Implementation would be aided by a policy statement or guidance that indicates greater weight will be given to studies using validated test methods and procedures, models, and approaches when and where those data are based on publicly accessible data, and transparent computer algorithms.

Other scientifically relevant and reliable studies and data should not be eliminated from consideration, but rather, accorded less weight when integrating evidence from multiple studies within and across different lines of evidence. Any guidance and other relevant documents developed to assist EPA staff to comply with this rule should include specific examples and/or case studies, perhaps drawing from recent EPA rulemakings, to demonstrate what constitutes regulatory science that is material to EPA's significant regulatory decisions.

III. EPA Should Provide Better Historical Context and Applicability to the Proposed Rule

EPA is proposing to add this rule to 40 C.F.R. 30, contained in Chapter 1, Subchapter B, dedicated to "Grants and Other Federal Assistance," without explaining how or why this rule fits within this subchapter, thereby creating potential confusion regarding its applicability. The potential for confusion was enhanced by the fact that EPA's public website currently contains information regarding the content that was formerly within 40 C.F.R. 30 but was repealed on December 19, 2014, i.e., general terms and conditions applicable to grant recipient and sub-recipients.⁸ In addition, a number of questions on which EPA seeks comment relate solely to EPA cooperative agreements and grants or access to EPA-funded data.

In contrast, Section 30.3 of the proposed regulatory text state that "the provisions of this section apply to dose-response data and models underlying pivotal regulatory science regardless of who funded or conducted the underlying data, models, or other regulatory science." Stakeholders would benefit greatly from EPA providing clarification regarding the applicability of Subchapter B and whether and to what extent this rule applies to government-funded and/or beyond government-funded scientific research. We believe the broader approach is warranted.

⁸ <https://www.epa.gov/grants/epa-general-terms-and-conditions-applicable-40-cfr-part-30-and-31-recipients-effective> and see, 79 Fed. Reg. 244 at 76054 (Dec. 19, 2014).



IV. EPA Authority under Federal Environmental Statutes

The provisions cited by EPA under the Clean Air Act (CAA), the Clean Water Act (CWA), the Safe Drinking Water Act (SDWA), the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), and the Emergency Planning and Community Right-To-Know Act (EPCRA) in support of its authority to develop and implement its proposed rule all provide broad regulatory authority to promulgate regulations “as are necessary to carry out [the Administrator’s] functions” under the statute. The citation to the Resource Conservation and Recovery Act (RCRA) speaks to Labor Standards in the issuance of grants, and does not appear applicable to this rulemaking authority. EPA cites Section 25(a)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), which does provide the Agency with broad authority to “prescribe regulations to carry out the provisions of this subchapter [FIFRA].” It should be noted, however, that the statutory language is a bit different from the other cited statutes and does not read as “as are necessary to carry out...”. In addition, FIFRA Section 136r(a) does not relate to rulemaking and instead provides the Agency broad authority to undertake research necessary to carry out the purposes of FIFRA. As such, EPA may mistakenly have included Section 136r(a) to support the proposal as cited on 83 Fed. Reg. 18769. EPA’s reference to section 10 under the Toxic Substances Control Act (TSCA) also does not appear on-point. ACC believes EPA’s authority to implement this rule is derived from TSCA Section 26(h), which speaks directly to scientific information and standards to which the Agency must adhere in the administration of its work under TSCA Sections 4, 5, and 6.

V. The Regulation Should Apply to E.O. 12866 Significant Regulatory Actions at the Proposal Stage

A. Definitions in E.O. 12866 Are Well-Established, Understood, and Applied.

The proposed rule would apply to significant regulatory actions as defined by E.O. 12866 at Section 3(f) as:

(f) “Significant regulatory action” means any regulatory action that is likely to result in a rule that may:

- (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
- (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- (4) Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in this Executive order.

This definition has been applied by the Executive Branch since the Clinton Administration promulgated E.O. 12866 in 1993. Its meaning is well-established with more than twenty-



five years of use. The underlying principles, however, precede its adoption. For example, the E.O. carried over the threshold of an annual \$100 million effect on the economy that had been in place since 1978. This (3)(f)(1) threshold for economically significant regulatory actions is the same threshold that requires cost-benefit review for proposed and final regulations considered by OIRA.

A significant benefit of using the E.O. 12866 definition in the final rule is that EPA can easily apply it, against substantial practice and precedent, in a reliable, consistent, and predictable manner. This reduces the burden on the agency, and importantly, provides greater predictability to stakeholders and the public so they can understand to which agency actions the regulation will apply.

B. Conformity with E.O. 12866 Definitions Promotes Efficient OIRA Review.

Similarly, the process by which significant regulatory actions are identified under E.O. 12866 is also well-established. Here, with respect to application of the proposed rule, EPA would retain primary responsibility to identify the significant regulatory actions to which the rule should apply. OIRA would assess EPA's identification against the criteria set out in E.O. 12866. Neither EPA nor OIRA would be charged with applying a new or unfamiliar definition, nor a new process for review.

C. The Range of Agency Actions to Which the Rule Will Apply Should Not be Narrowed.

The significant regulatory elements of E.O. 12866 already require OIRA review and have for the past 25 years of established practice. The proposed rule respects that principle, and indeed, leverages it for maximum efficiency.

EPA specifically invites comment on whether a narrower definition might be appropriate, such as final regulations that are determined to be "major" under the Congressional Review Act, or "economically significant" under E.O. 12866. Either of these approaches would lose the efficiency and predictability benefits of using the E.O. 12866 definition—and would increase work for both EPA and OIRA. Further, many significant and precedential agency actions do not meet the "economically significant" threshold. For example, many federal agencies administer environmental, health and safety requirements for workers, consumer products, and environmental media—air, water, soil. It should never be the case that EPA, or EPA and other agencies, establish and/or enforce conflicting and irreconcilable health values for the same compound; require the use of different personal protective equipment; or simultaneously prohibit and permit use or discharge of a particular compound. The same rigorous scientific standards, best available science and weight-of-the-evidence approaches should be applied across programs and media to protect human health and the environment. Adoption of the E.O. 12866 definition of significant regulatory action helps avoid inconsistent regulatory decisions by federal agencies that might interfere with policies designed to protect human health and the environment, unfairly burden businesses, and impede the protection of human health and the environment.



D. The Final Rule Should Apply to Significant Guidance Documents.

OMB's Final Bulletin for Agency Good Guidance Practices defines a "significant guidance document" as a guidance document disseminated to regulated entities or the general public that may reasonably be anticipated to:

- (i) Lead to an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities;
- (ii) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- (iii) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- (iv) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in EO 12866, as further amended.

EPA already maintains and publishes a list of significant guidance documents that meet the OMB definition.^{9 10} Applying the rule to EPA's significant guidance allows for greater parity and consistency with respect to the application of scientific principles in regulatory and guidance contexts. It ensures that the same quality and rigor will underpin decision making. It also helps ensure that EPA will apply the same principles to both regulatory requirements and implementing guidance, which provides greater certainty to the regulated community and the public.

VI. Key Regulatory Definitions and Regulatory Text Require Greater Clarity

EPA's terminology and regulatory definitions should be more concise and applied consistently to achieve greater clarity regarding the meaning and proposed application of the rule. For example, proposed section 30.2 refers to "**pivotal** regulatory science as the studies or analyses that **drive** the requirements and/or quantitative analysis of EPA final significant regulatory decisions." [Emphasis added]. This definition is distinguished from "regulatory science," defined as "scientific information, including assessments, models, criteria documents, and regulatory impact analyses, that provide the basis for EPA final significant regulatory decisions." These two definitions can be interpreted as simultaneously referencing something identical as well as one being a subset of the other. Therefore, the definitions are vague and need clarification.

⁹ See <https://www.epa.gov/laws-regulations/significant-guidance-documents>

¹⁰ Notably, EPA's list of significant guidance documents include guidance that applies directly to the regulated community, such as the agency's *2017 Guidance To Assist Interested Persons in Developing and Submitting Draft Risk Evaluations Under the Toxic Substances Control Act* (EPA-HQ-OPPT-2017-0341-0002) and *Interpretive Guidance for the Real Estate Community on the Requirements for Disclosure of Information Concerning Lead-Based Paint in Housing, Part I* (EPA-HQ-OPPT-2007-0765-0001).



Assuming the intent is to define and distinguish the subset of scientific studies and analyses that form the scientific foundation for EPA's regulatory decisions from the larger universe of *all* the scientific information reviewed and considered by the agency, a more precise word than "pivotal" would be "material." In other words, those scientific studies and analyses that are material to its regulatory decision must be or be made publicly available in a manner sufficient for independent validation.

The regulatory text in 30.4 and 30.5 should be clarified. Section 30.4 appears to apply to EPA's use of studies (or other regulatory science) relied upon when EPA takes *any* final agency action (emphasis added). In those instances, EPA should make all such studies available to the public to the "extent practicable." Section 30.5 refers specifically to the requirements that apply when "EPA uses dose response data and models underlying "pivotal" (which ACC believes is more aptly expressed as "material") regulatory science." ACC interprets this to mean that in these specific circumstances, the dose response data and models must be "publicly available in a manner sufficient for independent validation," which EPA defines as in a manner "consistent with law, protects privacy, confidentiality, confidential business information, and is sensitive to national and homeland security." Information considered "publicly available in a manner sufficient for independent validation" when it includes the information "necessary for the public to understand, assess, and replicate findings." As noted above, for environmental safety, exposure-response is the more appropriate relationship to evaluate because most of the environmental test guidelines require quantifying concentrations in media external to the organism for use as the exposure metric. EPA should provide greater clarity regarding what it intends to do in circumstances where raw data cannot be made publicly available.

EPA should include a discussion in the final rule regarding how it proposes to address exposure assessments and risk characterization data and models in the future extensions of related rules on Transparency in Regulatory Science.

Section 30.7 appears to be missing one or more words in the header to the section. It states: "What role does independent peer review in this section?" ACC believes the missing word is likely "have," but EPA should clarify and correct this section in the final rule.

EPA uses the word "justify" frequently throughout the various sections of proposed regulatory text when referencing the use of regulatory science to make its decisions. For example, section 30.7 states: "EPA shall conduct independent peer review on all *pivotal regulatory science* used to justify *regulatory decisions*." ACC suggests that there are more precise words that EPA should use to link "pivotal regulatory science" with "regulatory decisions," such as "underpin" or constitute the "foundation" of the "scientific basis" of its regulatory decisions.

ACC has offered some additional, specific language suggestions in a redline version of the proposed regulatory text that is included in these comments in Appendix A.



VII. Clarifications to the Preamble are Needed

A. Definition of “Pivotal Regulatory Science” is needed.

The definition in the proposed regulatory text and may lead to confusion among stakeholders. We recommend consistency between the preamble and the regulatory text and that EPA clarify its terminology.

Importantly, in footnote three on page 18769 of the preamble, EPA states:

EPA has the authority to establish policies governing its reliance on science in the administration of its regulatory functions. Historically, EPA has not consistently observed the policies underlying this proposal, and courts have at times upheld EPA’s use [of] non-public data in support of its regulatory actions. *See Coalition of Battery Recyclers Ass’n v. EPA*, 604 F.3d 613, 623 (D.C. Cir. 2010); *American Trucking Ass’n v. EPA*, 283 F.3d 355, 372 (D.C. Cir.2002). EPA is proposing to exercise its discretionary authority to establish a policy that would preclude it from using such data in future regulatory actions.

ACC believes that this footnote should be clarified to be consistent with the regulatory text that provides that there are exemptions to this policy outlined in sections 30.5 and 30.9. EPA’s preamble should not be at odds with the regulatory text.

Invariably there will be circumstances where underlying data no longer exist for studies and/or models that are high quality and reliable. For example, most organizations have data retention policies that have resulted in the disposal of underlying data. Furthermore, Good Laboratory Practices (GLP) regulations include defined periods of time to retain data and study records.¹¹ EPA should address how it will continue to use those studies and models in light of these policies.

B. Assertions about proposal not “directly regulating entities outside of federal government” and not having “substantial direct effects” on the states.

On page 18769 under section A, EPA states that the proposed regulation does not “directly regulate any entity outside the federal government” and on page 18772, EPA states under section E that “this action imposes no enforceable duty on any state, local or tribal governments or the private sector.” Under Section F, EPA asserts that this action does not have federalism implications and will not have “substantial direct effects on the states.” ACC is not certain that these statements are accurate. Consider, for example, the establishment of water quality standards (WQS).

¹¹ 40 C.F.R. 160.



Under Section 303(c) of the CWA, states and authorized tribes must develop WQS and submit them to EPA for its approval or disapproval. To help them develop the standards, EPA provides scientific guidance through its “Section 304(a) National Criteria Recommendations,” which specify quantitative concentrations/level and qualitative measures of pollutants that, if not exceeded, generally will ensure acceptable water quality. In developing these recommendations, EPA evaluates acceptable water quality. When developing these recommendations, EPA evaluates available scientific data on a pollutant’s effects on public health and welfare, aquatic life, and recreation. EPA recommends that states and tribes consider the Agency’s water quality criteria when developing their WQS, though states and tribes may also consider other scientific criteria that differ from EPA’s recommendations.

While EPA’s national water quality criteria recommendations are not regulations and do not impose binding requirements, they do serve as the scientific basis for the development of water quality standards and WQS are the foundation of a number of CWA programs. As EPA states in its Water Quality Standards Handbook, these standards “establish the baseline used for measuring the success of the CWA programs, so adequate protection of aquatic life and wildlife, recreational uses, and sources of drinking water, for example, depends on developing and adopting well-crafted WQS.”¹²

C. Publications should be cited.

ACC suggests that EPA revise its statement that the proposed rule “takes into consideration the policies or recommendations of third-party organizations who [sic] advocated for open science.” The recommendations referenced by EPA actually emanate from a survey of the members of three professional organizations whose memberships represent repositories of knowledge and experience in regulatory assessment.¹³ As such, reference 10 in EPA’s proposal should also be revised to cite the publication, Expert Opinion on Regulatory Risk Assessment, A Survey by the Center for Media and Public Affairs (CMPA) and Center for Health and Risk Communication (CHRC) at George Mason University” (December 6, 2013).¹⁴

D. Definition of “reproducibility” is needed.

EPA uses the term “reproducibility” in the preamble, but never defines the term and does not include the term in the definitions in the proposed regulatory text. It is unclear what constitutes a reproducible versus non-reproducible finding. It is important to consider that there are different types of reproducibility, such as methods reproducibility, results reproducibility, and reproducibility of conclusions.

¹²Water Quality Standards Handbook, Office of Water, EPA 820-B-14-008, September 2014, at p. 2.

¹³ The Risk Assessment Specialty Section of the Society of Toxicology (SOT-RASS), the Dose Response Section of the Society for Risk Analysis (SRADRS), and the International Society for Regulatory Toxicology and Pharmacology (ISTRP).

¹⁴ <https://cmpa.gmu.edu/wp-content/uploads/2013/12/GMU-Study-Report.pdf>.



For example, OMB's Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies defines "capable of being substantially reproduced" as "independent reanalysis of the original or supporting data using the same methods would generate similar analytical results, subject to an acceptable degree of imprecision."¹⁵ However, the inability to reproduce research studies can be related to issues of study design, variability or differences in biological test systems, data integrity, data analyses, and in some cases, scientific misconduct. As Carl Sagan stated, "extraordinary claims require extraordinary evidence." Accordingly, new or novel findings that purport to indicate effects that have little or no biological basis, based on the weight of the evidence coupled to first principles of relevant scientific disciplines, should be subjected to suitable reproducibility requirements, which could include causal analytics.

E. Definition of "publicly available" is needed.

EPA does not define what it means by its use of the term, "publicly available." There is more than one definition of the term currently in use by federal agencies.¹⁶ EPA should clarify the level of access and disclosure to the public that is intended. If it intends to determine this on a case-by-case basis, that also should be made clear.

F. Greater clarity on data refinement issues is needed.

Another important aspect relevant to "public availability" is the level of data refinement EPA will require. The National Academies of Science, Engineering, and Medicine (NAS) held a workshop in 2016 to discuss obstacles for sharing data.¹⁷ The NAS defined several key terms to ensure clarity at the workshop. EPA should consider adopting a similar lexicon to increase the clarity of its regulation. (See Table 1 in Appendix B). In addition, the NAS Report suggests a "cleaned dataset" would be acceptable to use for all routine analyses and verification. (See Table 2 in Appendix B). EPA should establish clear standards on the acceptability of "*cleaned datasets*." This will help to standardize data reporting and formatting. It will also prevent over- and under-reporting.

¹⁵ https://obamawhitehouse.archives.gov/omb/fedreg_final_information_quality_guidelines/

¹⁶ Publicly available information means "any information that you reasonably believe is lawfully made available to the general public from: (i) Federal, state or local government records; (ii) Widely distributed media; or (iii) Disclosures to the general public that are required to be made by federal, state or local law." 17 CFR 160.3 [Title 17 -- Commodity and Securities Exchanges; Chapter I -- Commodity Futures Trading Commission; Part 160 -- Privacy of Consumer Financial Information]. Publicly available information is information that has been published or broadcast for public consumption, is available on request to the public, is accessible on-line or otherwise to the public, is available to the public by subscription or purchase, could lawfully be seen or heard by any casual observer, is made available at a meeting open to the public, or is obtained by visiting any place or attending any event that is open to the public. Office of the Director of National Intelligence & Office of the Director of National Intelligence, National Counterintelligence and Security Center, CI Glossary 2011.

¹⁷ National Academies of Sciences, Engineering, and Medicine. 2016. Principles and obstacles for sharing data from environmental health research: Workshop summary. Washington, DC: The National Academies Press. doi: 10.17226/21703.



VIII. Implementation of the Rule Should be Statute-Specific

EPA requested comment on the effect this proposed rule may have on individual EPA programs. Each of the federal environmental statutes referenced by EPA as a source for its authority to propose this rule, was enacted and designed to achieve a specific environmental goal and purpose (e.g., TSCA regulates new and existing chemicals, CAA controls air pollution on a national level, and SDWA regulates public drinking water supplies across the nation). Each statute confers its unique authority upon the agency, requiring agency review according to different scientific standards; each has its own regulations designed to effectuate the specific corresponding program's mission; and, in many cases, each statute relies on different and variable scientific disciplines. As such, ACC believes that this rule, while applicable to all the statutes identified, should be implemented by regulations specific to the objectives and scientific disciplines of each statute. ACC believes that just as the Freedom of Information Act (FOIA), which is overseen by the US Department of Justice (DOJ), is implemented by each agency with specific and separate regulations relevant to the requirements of each statute, this policy rule should be implemented by each EPA program office charged with implementing a given statute in a manner consistent with the authorities granted and requirements unique to that statute.¹⁸

IX. The Proposed Rule Should Apply to Enforcement and Permit Proceedings

EPA should apply the final rule to both "... enforcement activities or permit proceedings (including site-specific permitting actions) ..." 83 Fed. Reg. 18768, 18771. In both these areas, EPA staff routinely use scientific evidence to make case-specific policy decisions that raise the same type of problems that occur when EPA promulgates regulations; therefore, this proposed regulation should apply to those to ensure that decisions in those areas are made appropriately.

For example, in both administrative and civil judicial enforcement programs, EPA routinely makes discretionary decisions targeting cases to pursue on the basis of scientific data on exposure of humans and ecological resources to pollutants. To do so, EPA relies on data regarding the inherent hazards of the chemical pollutants, and then estimates exposure potential and risks in a manner essentially the same as the approach EPA used to craft the regulations under the applicable environmental statute. Then, on an enforcement case-specific basis, EPA enforcement staff routinely use exposure/risk information to determine whether violations of the law (for regulatory enforcement under the CAA, CWA, RCRA, FIFRA, etc.) or releases to the environment (CERCLA, RCRA corrective action, OPA) have occurred warranting enforcement and determining the extent of sanctions and relief EPA will seek in an enforcement proceeding.

¹⁸ See, for example, the discussion of CWA criteria earlier in these comments under section VII. B., which is a good example of why it is important that EPA consider each statute it regulates when applying this proposed rule.



In CAA New Source Review enforcement cases, EPA must decide whether a violation of the program occurred by constructing a “major modification” to a source by assessing whether the pollutant-specific regulatory thresholds were exceeded; analyze emissions calculations using emission factors and/or test data collected from engineering studies; and then extrapolate to the specific plant. To identify the remedial action to impose, EPA must decide which Best Available Control Technology (BACT) limits are for the modifications and that decision, in turn, requires a complex analysis of data regarding costs and efficacies of various control technologies.

In a CWA enforcement case, EPA must decide whether a facility is subject to CWA jurisdiction by determining if a discharge into a jurisdictional “waters of the United States” is subject to the National Pollutant Discharge Elimination System (NPDES) permitting and then whether the discharge violates effluent discharge requirements. If so, EPA must analyze what remedial measures are necessary, including to the receiving waters. In both the CAA and CWA cases, EPA must also prepare proposed civil penalty and pollution “mitigation” assessments, each of which require the analysis of complex economic and environmental data. This policy will require EPA to be more transparent regarding its assessment and analysis of this complex data, which is much needed.

In a CERCLA enforcement case, EPA has to decide what the removal or remedial action should be, which necessitates among other things, a site-specific risk assessment and remedial technologies selection, using a wide variety of environmental and engineering data, which should be publicly available to be verified and replicated.

Similarly, for permitting purposes under environmental statutes, EPA must routinely analyze scientific studies to decide whether to grant a permit and, if so, what conditions to impose in the permit to mitigate environmental impacts to acceptable levels. For example, in a CWA NPDES permit review, EPA determines the level of each pollutant that would be discharged to waters of the United States, whether the proposed discharge will comply with effluent limits required by technology-based effluent guidelines and water-quality standards (including Total Maximum Daily Load programs), and whether control technologies will ensure that the effluent limits will be achieved consistently. Each of those decisions requires analyzing complex environmental/engineering data on a case-specific basis.

X. Incorporate Stronger Data and Model Access Requirements into Cooperative Agreements and Grants while Complying with Privacy and Confidentiality Requirements and Laws

EPA requested comment on how EPA can incorporate stronger data and model access requirements into the terms and conditions of Cooperative Agreements and Grants. ACC believes EPA can accomplish this by implementing requirements that all models and results developed under EPA Cooperative Agreements and Grants be open access and not proprietary. EPA should also require all grant proposal applicants to include as part of any



grant proposal a data management plan, similar to those required by the National Institutes of Health (NIH).¹⁹ EPA may elect to exclude from these requirements grants/agreements of some specified annual amount, but that annual amount should be reasonable and ensure that the vast majority of models and results developed under grants/agreements is shared.

EPA should adopt model evaluation criteria to apply the greatest weight and credibility to models that are open access, describe the endpoint predicted clearly, are based on unambiguous open access computer algorithms, have a defined domain of applicability, have been transparently verified with publicly available datasets, and are shown to be robust and scientifically sound for the intended use.

In addition, EPA should develop common data templates and digital platforms for the most common types of research studies to be used by entities subject to Cooperative Agreements and Grants to facilitate public use and validation.

XI. The Rule Should Apply to all EPA Programs, including its IRIS Program

EPA established the Integrated Risk Information System (IRIS) in 1985 to develop and maintain a database of human health hazard assessments for chemicals. EPA's website states: "The goal of the IRIS Program was to foster consistency in the evaluation of chemical toxicity across the Agency."²⁰ However, the IRIS Program has been plagued for years by its slow pace generating IRIS assessments and lack of scientific transparency and reproducibility, among other deficiencies. The U.S. Government Accountability Office included IRIS in its High Risk Report, which noted that EPA has not "developed sufficient chemicals assessment information under these programs to limit exposure to many chemicals that may pose substantial health risks"²¹ Although the IRIS Program has initiated changes to address some of these deficiencies, no final IRIS assessment to date reflects the full panoply of recommendations issued by the NAS in its review of the IRIS program in 2011.

Appendix C offers several specific examples of IRIS assessment that failed to reflect the best available science. We strongly recommend that the Agency apply this rule to any IRIS assessment that could be used as the basis for significant regulation.

XII. Methodologies and Technologies Providing Protected Access to Sensitive or Confidential Data

In circumstances where company CBI and other intellectual property may be implicated, EPA should confer with the CBI data owner to determine how to make that data available to the greatest extent possible without disclosing the CBI within that data, study, or model. How this is handled will likely be impacted by the type of

¹⁹ https://grants.nih.gov/grants/policy/data_sharing/data_sharing_guidance.htm

²⁰ See <https://www.epa.gov/iris/basic-information-about-integrated-risk-information-system>

²¹ https://www.gao.gov/highrisk/transforming_epa_and_toxic_chemicals/why_did_study#t=0



regulatory decision and statute involved.

For example, under TSCA, while the summarized study results, analysis, and final report may be publicly available, the underlying data in a health and safety study may qualify as CBI when the underlying data are not in the public domain and that data provides a commercial value to its owner.²² In such circumstance, it is the availability of the underlying data that determines whether or not an unpublished study can be used by a competitor to support its notification or registration of a substance overseas without obtaining ownership or citation rights to use such data, depriving the data owner of the value of its investment in the underlying data. Current EPA regulations require chemical manufacturers to submit health and safety studies under some circumstances. However, it is noteworthy that none of these regulations routinely require study submitters to submit underlying data along with a final report. This indicates that the final report likely communicates sufficient information about the potential health and environmental effects to the public when a company has submitted health and safety studies in which it has a commercial interest in protecting.²³

ACC believes that making a final study report publicly available where the underlying data are CBI would, in most circumstances, be an effective way to make relevant information publicly available about studies and data EPA may rely on, but which must be protected as CBI in circumstances triggering this policy. In these situations, EPA can access the underlying data to confirm the methods, models, and approaches are based on validated procedures, accessible data, etc. If necessary, when specialized expertise is needed, EPA could contract with an independent third-party science reviewer to confirm those findings, although we believe this would likely only be necessary in unusual circumstances. In addition, EPA might also consider an approach followed under FIFRA where Data Evaluation Records of studies are made publicly available, but not full studies.²⁴ Another approach is that of the European Union's REACH program, which makes Robust Study Summaries (RSS) publicly available, while protecting from disclosure the competitively sensitive underlying data of health and safety studies.

When protecting data while also promoting data access, NIH guidelines should be consulted.²⁵ ACC believes many of these guidelines could be applied in EPA's implementation of this proposed policy under each of the statutory programs EPA administers to ensure the guidelines adopted suit the specific needs of each statute.

²² See, e.g., *Cohen v. Kessler*, No. 95-6140 (D.N.J. Nov. 25, 1996).

²³ 40 C.F.R. §720.50(a)(3)(i) requires that if data do not appear in the open scientific literature, the submitter must provide a full study report, including the experimental methods and materials, results, discussion and data analysis, conclusions, references, and the name and address of the laboratory that developed the data.

²⁴ See, e.g., <https://archive.epa.gov/pesticides/chemicalsearch/chemical/foia/web/pdf/010501/010501-050.pdf>

²⁵ See <https://osp.od.nih.gov/2016/05/02/protecting-data-promoting-access-improving-our-toolbox/>; <https://www.niaid.nih.gov/research/data-security>; and <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5302472/>



EPA should ensure that it implements its final rule in a manner that enables it to use confidential health records that may exist with certain kinds of studies, such as long-term air pollution and workplace exposure studies that involve confidential health records. Several agencies and organizations, in addition to NIH, have successfully addressed the issue of data access while maintaining confidentiality that should be considered by EPA. For example:

- The existing rule requiring federally funded research to be made available to other researchers. This standard could be adopted and applied to third-party funded researchers.
- Health care claims and related data are now being made available to researchers in de-identified form by some health insurance companies, such as Optum, which offers a “proprietary research database of health care and administrative data that links patient, physician, and treatment attributes from millions of geographically diverse individuals in the U.S.” Optum appears to have developed methods and procedures to appropriately address confidentiality concerns.
- Medicare claims data are already available to researchers in de-identified form. Algorithms and methods developed by the Center for Medical Services should be examined by the EPA.
- Several professional societies have guidance on the protection of health data and de-identification, such as the Institute of Electrical and Electronic Engineers and the International Association of Privacy Professionals.²⁶

EPA should develop clear guidance on protecting privacy, de-identifying data, and settling disputes should a breach occur. It may also want to consider establishing an office similar to that of NIH’s Office of Research Integrity to adjudicate any issues that may arise in the administration of its practices under this rule.²⁷

XIII. The Rule Should Generally Apply Prospectively to EPA Decision Making

ACC does not support retrospective application of the final rule in cases where the Agency follows a periodic review schedule for updating regulations, which includes review of underlying scientific assessments. Retrospective application of any regulation (and its underlying scientific evaluations) is rife with complication, confusion, and significant ambiguity for EPA and stakeholders alike. For example, each NAAQS review under the CAA is based on a substantial amount of scientific and policy information used to inform EPA’s determinations of appropriate levels for each standard. The retroactive application of this proposal to those administrative records would only serve to confuse, distress, and impede a NAAQS review process that is already severely overburdened. For example, it is unclear which administrative NAAQS records would be covered by the proposal and how far back it would apply.

²⁶ <http://www.ehainformation.ca/wp-content/uploads/2014/08/2010-Risk-based-de-identification-of-health-data.pdf> and https://iapp.org/media/pdf/knowledge_center/Perspectives_on_Health_Data_De-Identification_final.pdf

²⁷ <https://ori.hhs.gov/>



Without a clear statement, the proposal could potentially cover more than a decades' worth of NAAQS administrative records and scientific analyses. The value of such an application is similarly uncertain. While ACC remains supportive of increased transparency in significant regulatory actions in the future, we encourage EPA to avoid the creation of unnecessary ambiguity and burdens and refrain from the application of this proposal to previous administrative NAAQS records. ACC recommends the final rule be applied prospectively in a manner that integrates its application within the periodic review schedule established for each criteria air pollutant.

However, in cases where EPA has developed analytical tools and models, e.g., ECOSAR, in the past that incorporate dose response data, it may be valuable to apply this rule retrospectively. In other cases, such as IRIS assessments, where the Agency has yet to articulate a periodic review schedule for updating scientific assessments dating back 10-20 years or longer, EPA should develop appropriate mechanisms for application of the rule.²⁸

XIV. Bias Should not be Presumed

EPA requested comment on how application of the proposal might inadvertently introduce bias regarding the timeliness and quality of the scientific information available. If EPA uses a weight-of-the-evidence approach (as required under TSCA)²⁹ and EPA has concerns about bias having been introduced, it can evaluate this using a sensitivity analysis by evaluating the impact of each study and/or model on the overall outcome of the analysis.³⁰ That said, bias should not be inferred if newer, more scientifically robust studies based on modern, up to date knowledge of biology and dose response are determined to be of better quality, relevance, and evidentiary value.

XV. EPA Should Work with Entities Where Scientific Data are not Publicly Available in a Manner Sufficient for Independent Evaluation

Where data are not available in a manner sufficient for independent evaluation, EPA should attempt to work with data owners to reach an agreement to make the information available to the public to the greatest extent practicable without

²⁸ In addition, stakeholders who seek to urge EPA to undertake a retrospective review do have options at their disposal, e.g., they can develop a voluntary new evaluation under TSCA, petition EPA, or file an Information Quality Request (IQA) requesting a correction.

²⁹ The TSCA Risk Evaluation rule provides an excellent definition of “weight-of-the-scientific-evidence” that should be adopted across the federal government, but certainly across EPA, at a minimum. That definition is: “a systematic review method, applied in a manner suited to the nature of the evidence or decision, that uses a pre-established protocol to comprehensively, objectively, transparently, and consistently identify and evaluate each stream of evidence, including strengths, limitations, and relevance of each study and to integrate evidence as necessary and appropriate based upon strengths, limitations, and relevance.” See 82 Fed. Reg. 33726, 33733 (July 20, 2017).

³⁰ EPA’s implementation and adherence to systematic review in the implementation of this proposal as it has committed under TSCA, will serve to guard against the introduction of bias. See EP’s *Application of Systematic Review in TSCA Risk Evaluations* at https://www.epa.gov/sites/production/files/2018-06/documents/final_application_of_sr_in_tscra_05-31-18.pdf



jeopardizing the privacy, confidentiality, or the proprietary interests that deserve protection. In circumstances where there is significant difficulty making data available in a meaningful way, EPA should consider contracting with external experts in the scientific discipline at issue, have them sign confidentiality agreements, analyze the data, and prepare a confidential report with a non-confidential summary for EPA to share publicly.



APPENDIX A: Proposed Regulatory Text

Section 30.1 What is the purpose of this subpart?

This subpart directs EPA to ensure that the regulatory science underlying its actions is publicly available in a manner sufficient for independent validation.

Section 30.2 What definitions apply to this subpart?

As used in this subpart, all terms not defined herein shall have the meaning given them in the Act or in subpart A; and the following terms shall have the specific meaning given them.

- **Dose Response data and models** – the data and models used to characterize the quantitative relationship between the amount of dose or exposure to a pollutant, contaminant, or substance and the magnitude of a measured or predicted response or health or environmental impact.

A dose response and concentration response can be empirical, e.g., it can describe the measured relationship from experimental measurements. A response can be just a response and not an actual “impact.”

- **Material Regulatory Science** – specific scientific studies and analyses that represent the best available science that, based on weight-of-the-evidence, are material to and represent the scientific basis of the requirements and/or quantitative analyses of EPA final significant regulatory decisions.
- **Regulatory decisions** – final regulations determined to be “significant regulatory actions” by OMB per EO 12866, which is defined as any regulatory action that is likely to result in a rule that may:
 - Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health, or safety, or state, local, or tribal governments or communities;
 - Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
 - Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
 - Raise novel legal or policy issues arising out of legal mandates, the president’s priorities, or the principles set forth in the Executive Order 12866.
- **Regulatory science** – scientific information, including assessments, models, criteria documents, and regulatory impact analyses that provide the basis for EPA’s policies, procedures, guidance, proposed and final significant regulatory decisions.



- **Research data** – as defined by UAR is: the recorded factual material commonly accepted in the scientific community as necessary to validate research findings, but not any of the following: preliminary analyses, drafts of scientific papers, plans for future research, peer reviews, or communications with colleagues. This “recorded” material excludes physical objects (e.g., laboratory samples).

“Research data” do not include:

- (i) Trade secrets, commercial information, materials necessary to be held confidential by a researcher until they are published, or similar information which is protected under law; and
- (ii) Personnel and medical information and similar information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, such as information that could be used to identify a particular person in a research study.

Section 30.3 How do the provisions of this subpart apply?

“To dose response data and models underlying pivotal regulatory science that are used to justify significant regulatory decisions regardless of who funded it or the identity of the party conducting the regulatory science.” These provisions do not apply to “physical objects (like laboratory samples), drafts, and preliminary analyses.” Except where explicitly stated otherwise, the provisions of this subpart do not apply to any other type of regulatory action, including enforcement actions and permit proceedings, etc.

Section 30.4 What requirements apply to EPA’s use of studies when taking final action?

EPA shall clearly identify all studies or other regulatory science relied upon when it takes any agency action and make all studies available to the public to the “extent practicable.”

Section 30.5 What requirements apply to use of dose response data and models?

When promulgating significant regulatory actions, the Agency shall ensure that the dose response data and models underlying pivotal regulatory science are publicly available in a manner sufficient for independent validation, **verification**, and analysis.

This may include:

- Data (where necessary, could be subject to access and use restrictions)
- Associated protocols
- Computer algorithms and models³¹
- Recorded factual materials
- Detailed descriptions of how to access and use such information

But in a manner consistent with law, protects privacy, confidentiality, CBI, and is sensitive to national and homeland security.

³¹ We suggest substituting “algorithms” in place of “codes” because specific computer codes can be proprietary.



Information is “publicly available in a manner sufficient for independent evaluation” when it includes the information necessary for the public to “understand, assess, and replicate findings.”

Section 30.6 What additional requirements pertain to the use of dose response and models underlying pivotal science?

EPA shall describe and document any assumptions and methods used and should describe variability and uncertainty. EPA shall evaluate the appropriateness of using default assumptions, including assumptions of a linear, no-threshold response, on a case-by-case basis. EPA shall clearly explain scientific basis for each model assumption used and present analyses showing the sensitivity of the modeled results to alternative assumptions. When available, EPA shall give explicit consideration to high-quality studies that explore: a broad class of parametric dose-response or concentration-response models; a robust set of potential confounding variables; nonparametric models that incorporate fewer assumptions; various threshold models across the dose or exposure range; and models that investigate factors that might account for spatial heterogeneity.

Section 30.7 What role does independent peer review [have] in this section?

EPA shall conduct independent peer review on all pivotal regulatory science used to justify regulatory decisions, consistent with OMB Final Information Quality Bulletin for Peer Review (70 FR 2664) and the exemptions therein apply. EPA will ask peer reviewers to articulate the strengths/weaknesses of EPA’s justification for assumptions applies and the implications of those assumptions for the results.

Section 30.8 How is EPA to account for cost under this subpart?

EPA shall implement the provisions of this subpart in a manner that minimizes costs.

Section 30.9 May the EPA Administrator grant exemptions to this subpart?

Yes. The Administrator may grant an exemption to this subpart on a case-by-case basis if he or she determines that compliance is impracticable because:

- (a) It is not feasible to ensure that all dose response data and models underlying pivotal regulatory science is publicly available in a manner sufficient for independent validation, in a fashion that is consistent with law, protects privacy, confidentiality, confidential business information, and is sensitive to national and homeland security; or
- (b) It is not feasible to conduct independent peer review on all pivotal regulatory science used to justify regulatory decisions for reasons outlined in OMB Final Information Quality Bulletin for Peer Review (70 FR 2664), Section IX.

Section 30.10 What other requirements apply under this subpart?

EPA shall implement the provisions of this section consistent with the definition of “research data” in Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, exemptions in Public Law 89–487, and other applicable federal laws. Where appropriate, data sharing agreements and state-of-the-art data-masking techniques may be employed to facilitate access to information.



ACC notes here its support for the text of Public Law 89-487, which is incorporated by reference in Section 30.10 provides the following exemptions are applicable to this proposed regulation:

- 1) Specifically required by Executive Order to be kept secret in the interest of national defense or foreign policy;
- 2) Related solely to the internal personnel rules and practices of any agency;
- 3) Specifically exempted from disclosure by statute;
- 4) Trade secrets and commercial or financial information obtained from any person and privileged or confidential;
- 5) Inter- or intra-agency memorandums or letters which would not be available by law to a private party in litigation with the agency;
- 6) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;
- 7) Investigatory files compiled for law enforcement purposes except to the extent available by law to a private party;
- 8) Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions; and
- 9) Geological and geophysical information and data (including maps) concerning wells.

Where appropriate, data-sharing agreements and data-masking techniques may be used.



APPENDIX B: Definitions of NAS Principles

Definitions in NAS Principles and obstacles for sharing data from environmental health research: Workshop summary.
<p>Definition: meta-analysis</p> <p><i>Meta-analysis</i> is a way of quantitatively combining data from many different studies using a statistical process.</p>
<p>Definition: reanalysis</p> <p>The term “<i>reanalysis</i>” is defined as conducting further analyses of the exact same data to determine if the same results are obtained and may include use of the same programs and statistical methodologies that were originally used to analyze the data or may use alternative methodologies.</p>
<p>Definition: replication</p> <p>The term “<i>replication</i>” is the repetition of a scientific experiment or a trial using exactly the same protocols and statistical programs but with data from a different population to determine if consistent results are obtained with data from a different population.</p>
<p>Definitions: reproduction</p> <p>The term research “<i>reproduction</i>” refers to an experiment conducted to addresses the same research question as the original work, but examines the question from a different angle.</p>
<p>Definition: raw data</p> <p>The term “raw data” is defined as the unmodified or unprocessed data that is obtained directly from a survey or experiment (modified from NAS, 2016 P6)</p>
<p>Definition: cleaned-up data</p> <p><i>Cleaned-up data</i> consist of the raw data modified to remove obvious errors.</p>
<p>Definition: processed data</p> <p>The term “processed data” refers to information that has been computed and analyzed to extract relevant information (NAS, 2016), and may include:</p> <ul style="list-style-type: none"> • Aggregation – combining multiple pieces of data. • Analysis – collection, organization, analysis, interpretation and presentation of data • Classification – separation of data into various categories. • Reporting – list detail or summary data or computed information. • Sorting – the arrangement of items in some sequence and/or in different sets. • Summarization – reducing detail data to its main points. • Validation – Ensuring that supplied data is correct and relevant. <p>(wiki https://en.wikipedia.org/wiki/Data_processing)</p>
<p>Definition: final clean data set</p>



The term “*final clean data set*” is the information provided with a scientific publication (modified IOM, 2016 P6)

Definition: metadata

Metadata is a set of data that describes other data

TABLE 2 – Data flow from NAS Report

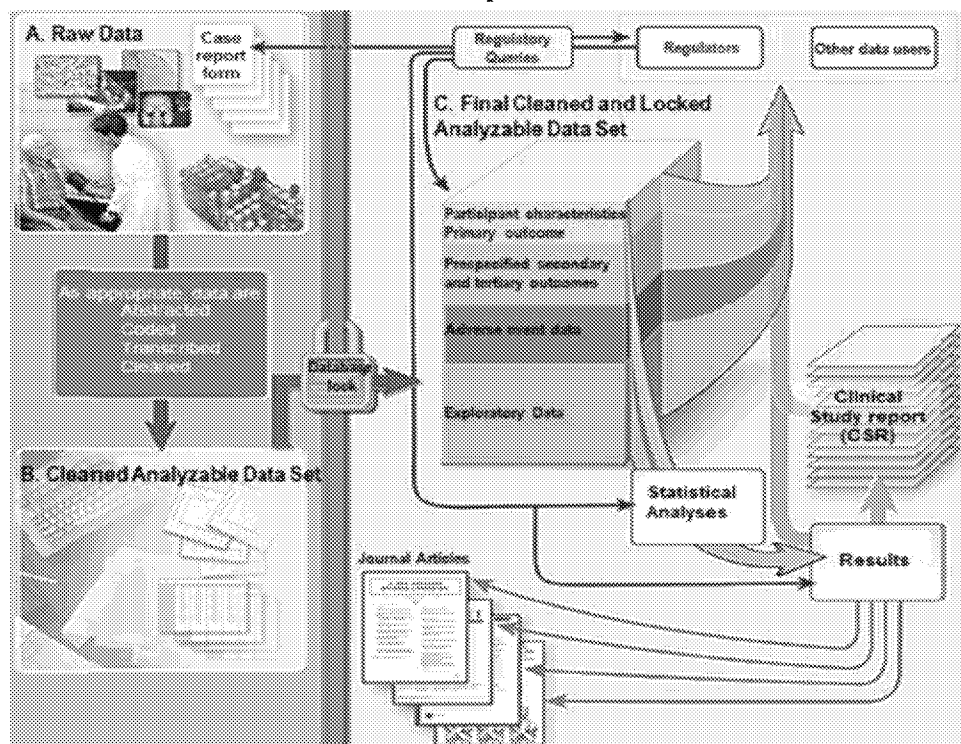


FIGURE 2-1 Data flow from participant to analyzed data and reporting.
SOURCE: IOM, 2014.



APPENDIX C: Chemical-Specific Case Studies

Case Study 1: Trimethylbenzenes (TMBs)

On September 9, 2016, EPA issued its final report on the IRIS assessment of Trimethylbenzenes (TMBs), which addresses the potential non-cancer and cancer human health effects from long-term exposure to TMBs. Humans are not exposed to individual TMB compounds, but to complex mixtures. According to EPA, the primary uses for TMBs are: as a blending agent in gasoline formulations (C9 aromatic fraction); solvents; and paint thinner.

In its review of TMBs, the EPA fell far short in meeting its obligations to improve its IRIS processes and assessment reports. Without explanation, EPA failed to respond to public comments on the draft TMBs assessment, even though the IRIS process for developing assessments explicitly includes a response to comments element.

The IRIS assessment of TMBs does not accurately represent the health effects associated with exposure to TMBs because it failed to utilize a consistent and transparent data evaluation procedure for evaluating and weighing the full body of evidence. In particular, EPA failed to rely on available guideline studies on commercial complex C9 aromatic mixtures that industry conducted under EPA's TSCA program. The entire commercial C9 aromatic blend, which contains a high percentage of TMBs, has similar toxicological properties and health effects as the individual isomers of TMB. Thus, guideline studies on the commercial complex of aromatic mixtures are highly relevant to assessing the toxicology of TMBs.

EPA's Office of Pesticide Programs (OPP) has also reviewed the toxicology of TMBs and determined that the health effects of TMBs can be efficiently assessed by relying on C9 aromatic mixture studies. OPP reached different scientific conclusions, including different quantitative health effect numbers, than that of EPA's IRIS Program. EPA, however, did not resolve these differences during the IRIS assessment of TMBs.

Case Study 2: Formaldehyde

Formaldehyde occurs naturally in every living system – from plants to animals to humans – all of which produce formaldehyde as a normal part of metabolism. In addition, its unique and versatile chemical properties make it a common and beneficial part of modern life. Formaldehyde has been the subject of extensive and robust scientific inquiry. EPA has been involved in assessing the human health risk of formaldehyde since the late 1970s. Large numbers of epidemiology, toxicology and biomechanical studies have informed the science surrounding formaldehyde, so that there a rich body of data exists.

The most recent draft Integrated Risk Information System (IRIS) formaldehyde assessment (2010) proposed exposure limits so low that the trace levels of formaldehyde found in human breath would present a cancer risk. The 2010 draft assessment also noted that: *“Human epidemiological evidence is sufficient to conclude a causal association between formaldehyde exposure and nasopharyngeal cancer, nasal and paranasal cancer, all*



leukemias, myeloid leukemia and lymphohematopoietic (LPH) cancers as a group.” The National Academy of Sciences (NAS) then conducted a peer review of this draft and issued its final report in April 2011. The NAS report was critical of the draft IRIS assessment---an assessment that the IRIS program took 12 years to develop.

The NAS stated that EPA’s claims regarding all leukemias, myeloid leukemia or related hematopoietic cancers were not supported. It noted that EPA’s preliminary conclusions appeared subjective and that no clear scientific framework had been used by EPA to reach its conclusion. The NAS recommended that EPA revisit its determination of causality for specific LHP cancers, using methodology that integrates lines of evidence and addresses the specific criticisms in the NAS report. The NAS also made numerous recommendations for the improving the overall process and application of science used in all assessments generated by the IRIS program. Now, seven years since that NAS report was published, EPA continues to revise its assessment while not disclosing how emerging scientific evidence or modern risk assessment methods are being employed.

Meanwhile, newly published research based on the recommendations in the NAS report has advanced the state of the science. Raw data (made available after multiple years of FOIA requests) from studies conducted by the Federal government ---and upon which EPA relied on for its previous assessment conclusions--- were re-analyzed and the findings contradicted the original study conclusions. Today our knowledge regarding formaldehyde is much greater; yet it does not appear that this new knowledge has been applied in the EPA’s assessment of formaldehyde risk. Published research demonstrates that inhaled formaldehyde cannot reach the bone marrow where leukemia occurs and that safe thresholds for formaldehyde exposure exist. This formaldehyde case study is an example of the long-term problems with the lack of consistent, transparent application of modern scientific knowledge regarding chemical exposures and human health risk.

Case Study 3: Ethylene Oxide

The Integrated Risk Information System (IRIS) assessment of ethylene oxide (EO) originated with a carcinogenicity assessment in 1985. The first comprehensive draft was published in 1998. An external review draft was issued in 2006, followed by a Science Advisory Board (SAB) review in 2007. Revisions of the EO assessment were made in 2011 and 2013, and an additional SAB review was conducted in 2014-2015. The final IRIS assessment for EO was posted in December 2016.

Using unsupportable and un-reviewed conservative risk assessment modeling, the IRIS assessment concludes that the one-in-a-million lifetime cancer risk value associated with exposure to EO is less than 1 part per trillion (ppt). This value is far below both EO background levels in the environment and EO levels naturally converted from ethylene in humans through breathing. This conclusion is not plausible and not scientifically supportable. It is based on an inadequate evaluation of a body of evidence from human studies that include historical exposure levels to EO that are far higher than current occupational exposure limits. Other, more accurate data sources are available, and alternative scientific risk assessment modeling approaches could have been used, but the



IRIS Program did not systematically integrate all of the evidence. Public comments on the EO IRIS assessment can be found in Docket No. EPA-HQ-ORD-2006-0756.

EO has dozens of important applications, including the manufacture of ethylene glycol based antifreeze, aircraft deicers, and PET plastics. EO is also used to produce higher-value derivatives such as ethoxylates, ethanolamines, glycol ethers, and polyether polyols. A small but critical use of EO is for the sterilization of medical equipment.

EPA's SAB 2007 review concluded that substantial revisions were needed to the draft IRIS assessment including:

- Acquiring and using individual data for modeling rather than grouping populations, which results in overly conservative estimated cancer risks;
- Considering using both linear and non-linear approaches to estimate cancer risk due to the distribution of and questionable association with certain cancer types; and
- Providing more transparency and correcting flaws associated with inappropriately grouping lymphohematopoietic cancers and combining genders for the dose-response analysis.

Meeting materials, including public comments, can be found at

<https://yosemite.epa.gov/sab/sabproduct.nsf/MeetingCal/7E3E313F627541D78525711400470D01>.

The 2015 SAB Committee that reviewed the revised 2013 EO draft IRIS assessment did not conduct an independent, unbiased review. Problems included:

- Several SAB members made inaccurate public statements indicating industry produced scientific studies should not be considered due to potential industry influence, although no evidence of biased data sponsored by industry was ever presented.
- SAB members did not understand new evidence-based medicine concepts regarding mutagenicity of cancer cells and the contribution of naturally occurring EO in DNA repair mechanisms.
- The SAB recommended using epidemiology data sets with questionable or scientifically unsound characteristics to estimate cancer risk and rejected alternative data sets that are as or more robust than those selected.

EPA still did not use individual data for modeling as recommended by the SAB in 2007, and did not adequately explore alternatives to the linear low dose modeling approach.

Meeting materials, including public comments, can be found at

<https://yosemite.epa.gov/sab/sabproduct.nsf/MeetingCal/17F305EC43EB1A6585257E2D0050255F>.

The IRIS Program used a spline approach (piecewise linear model that was not presented during either SAB review) for exposure-response analyses for each of the lymphoid and breast cancer endpoints and ultimately combined the results. This approach results in higher risk at lower exposure levels and leads to proposed regulatory levels that are orders of magnitude lower than what the epidemiologic and genotoxicity scientific evidence would support.



Further, the IRIS Program did not fully consider all available evidence in finalizing the EO assessment. Scientific evidence clearly indicates that EO is a weak mutagen and a unit risk factor of less than 1 ppt is not realistic or reliably measurable, and is orders of magnitude lower than levels of EO in ambient air and the normal, endogenous levels of EO present in human bodies. Moreover, the assessment fails to consider the difference between exposures to EO produced outside the human body and exposure to EO produced within the human body as a normal metabolic product.



August 15, 2018

Acting Administrator Andrew Wheeler
& Office of the Science Advisor
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

RE: Comments of 88 Environmental, Farmworker, Environmental Justice, Public Health, and Animal Protection Organizations on Proposed Regulations on “Transparency” in Regulatory Science, 83 Fed. Reg. 18,768 (April 30, 2018), Docket ID No. EPA-HQ-OA-2018-0259.

Earthjustice submits these Comments on behalf of the 88 undersigned environmental, farmworker, environmental justice, public health, and animal protection organizations that represent millions of people who live and work in this country. We breathe the air, drink the water, eat the food, and work in the factories, farms, and elsewhere. In every way, we depend on public health safeguards established by the U.S. Environmental Protection Agency (“EPA” or “Agency”). Our lives and our health depend on EPA’s limiting pollution and toxic chemical exposure to amounts that will not cause harm. We strongly oppose the Proposed Rule, “Strengthening Transparency in Regulatory Science,” 83 Fed. Reg. 18,768 (Apr. 30, 2018) (“Proposed Rule” or “Proposal”) because of its clear intent and impact to weaken, or prevent the necessary strengthening of, these vital public health safeguards.

I. INTRODUCTION AND SUMMARY

Though EPA, former Administrator Scott Pruitt, and industry supporters of the Proposed Rule present it as one that will strengthen public confidence in science by insisting that the data underlying scientific studies are available to the public, as well as to industry itself, this superficial gloss conceals the pernicious purpose and impact of the Proposal. As demonstrated below, the true intent and effect of the Proposed Rule are not to strengthen science, but to exclude critical public health scientific studies – the very studies that have been instrumental in setting pollution limits that save hundreds of thousands of lives and prevent millions of diseases each year, and that protect against harmful and sometimes lethal exposure to toxic chemicals. Even EPA’s own Scientific Advisory Board (“SAB”) has expressed its concern with and opposition to this Proposal for this very reason. By excluding scientific studies that examine the health impacts of environmental contamination and toxic chemicals that meet all standards of scientific validity and rigor simply because they rely upon non-public data such as confidential medical information, EPA’s Proposal would weaken, not improve, its decision-making. Analysis of the actual text, the preamble, and history of the Proposed Rule make clear that this exclusion of important sound public health science is indeed the intent of the Proposed Rule. It is not an incidental consequence of some other laudable goal, but rather is, in fact, the goal itself.

EPA did not arrive at this Proposal on science following careful analysis and discussion with scientific bodies. Rather, this Proposal follows numerous meetings between EPA staff and representatives of industries that sought to weaken rules and regulations necessary to protect public health. In fact, the text of the Proposed Rule comes not from any scientific source or career or expert staff within EPA, but rather from partisan bill language introduced years ago by members of Congress. *See infra* at Section II.C. And although the preamble to the Proposed Rule asserts that it was “informed” by the policies of major scientific journals, the policy is counter to sound scientific review policies and has been expressly repudiated by many of those journals. *See infra*, Section VI.B.1. Instead, the Proposal follows the tobacco industry playbook, using as a defense against limitations on harmful chemicals an attack on the science on process grounds. And, lest there be doubt about the true intent of the Proposed Rule, the fact that it does not act even-handedly but rather would favor inaction or removing protections over imposing or strengthening safeguards makes eminently clear the intent to protect polluters and not the public.

The problems with EPA’s Proposal are put in stark relief when compared to basic principles of scientific and health-based decision-making. Indeed, if the restrictions EPA proposes here were applied to the Food and Drug Administration (“FDA”) or the Centers for Disease Control and Prevention (“CDC”), it is unclear how many pharmaceuticals, vaccinations, or cures for diseases would ever have been approved or used as drug trial information, as underlying data frequently relies on epidemiological evidence and private medical information that cannot be released.¹ Even if EPA had authority to restrict the consideration of health-based information otherwise, it could have no scientific or rational basis to ignore health information that health professionals recognize is both relevant and often essential to consider when determining what health protections are needed.

Not only does the Proposed Rule threaten both public health and the integrity of decision-making, but it likewise is illegal, for many reasons.

- **First**, EPA lacks the authority to issue the rule. EPA asserts authority under the Clean Air Act (“CAA”), Clean Water Act (“CWA”), Safe Drinking Water Act (“SDWA”), Comprehensive Environmental Response Compensation and Liability Act (“CERCLA”), Emergency Planning and Community Right to Know Act (“EPCRA”), Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA”), Toxic Substances Control Act (“TSCA”), and the Resource Conservation and Control Act (“RCRA”). Yet in virtually every case, EPA refers to sections that authorize or mandate the Agency to undertake research, not to impose unfounded limitations on the scientific information that informs public health decisions. EPA also cites provisions authorizing it to promulgate rules “necessary” to achieve the goals of the statute, but restricting sound science is neither

¹ See, e.g., FDA, *Step 3: Clinical Research*, (last updated Jan. 4, 2018), <https://www.fda.gov/ForPatients/Approvals/Drugs/ucm405622.htm>; Nat’l Institutes of Health, *Finding a Clinical Trial* (last updated on Mar. 13, 2017), <https://www.nih.gov/health-information/nih-clinical-research-trials-you/finding-clinical-trial>; CDC, *Clinical Trials* (last updated Nov. 29, 2017), https://www.cdc.gov/epilepsy/managing-epilepsy/clinical_trials.htm.

necessary nor consistent with the statutory goals – as EPA has previously determined – for moving the country toward clean air, water, workplaces, farms, and the environment.

- ***Second***, not only is the Proposed Rule not authorized by law, but it directly contravenes the specific mandate of numerous statutes, such as the SDWA and TSCA, that require EPA to use the “best available” science or all “reasonably available” science and information. It also undermines the public health objectives of the very statutes upon which EPA mistakenly relies as authority for the rule. A rule that deliberately excludes this best science cannot be reconciled with these firm Congressional mandates and public health purposes.
- ***Third***, EPA’s process in proposing this rule, to date, violates procedural requirements of the Administrative Procedure Act (“APA”), as well as of the CAA, FIFRA, and TSCA. These requirements are designed to promote reasoned decision-making by ensuring the relevant documents underlying the decision are in the record and that the Proposal has sufficient specificity to permit a sound response. The Proposal does not meet those requirements. In addition, the Proposal also fails to comply with the procedures required by a number of Executive Orders, particularly the performance of an environmental justice analysis.
- ***Fourth***, EPA’s Proposed Rule is arbitrary and capricious for a farrago of reasons. The Proposal is irrational and unsupported by facts, reason, history, scientific evidence, or even any reasoned explanation. EPA has failed to show that the purported benefits of the Proposed Rule – which are largely inflated or imagined – justify the burdens imposed on public health and the environment. The Proposal represents a significant change in a long-standing EPA policy without the requisite acknowledgment or justification for such a departure. Many definitions are vague and can easily be implemented in arbitrary or politically driven ways. And the Proposed Rule would allow the Administrator to make an exception for any of a wide variety of reasons, again, not cabining at all the exercise of discretion. Any one of these failures would render the rule fatally arbitrary and thus invalid; together they demonstrate that it would be extreme arrogance for EPA to continue this rulemaking to conclusion.
- ***Fifth***, in addition to its overall effect, many specific provisions of the Proposed Rule are independently illegal or improper. Among other things, as currently designed, the rule would likely apply in an uneven manner, for example, only to a decision to restrict the use of a pesticide, not to allow the use of such a chemical. It is a one-way street. Yet sound science must be followed wherever it leads. This rule puts a thumb on the scale toward regulation that ignores evidence of harm to human health. In addition, the Proposed Rule aims to undermine certain peer-reviewed science by injecting industry-manufactured uncertainty regarding science into the rulemaking process. The Proposal would cast doubt on science that has gone through independent peer-review by adding a second round of agency-required peer-review. And by injecting a mandate to “minimize

costs” into the rule, even where Congress has specifically forbidden consideration of costs in determining health standards, the Proposed Rule sows confusion, doubt, and delay, and weakens our public health.

- *Finally*, EPA seeks comment on a number of ways it might make this rule even more destructive and deadly through possibilities like retroactive application or application in enforcement or permitting decisions. There is no reasoned or scientific basis for the Proposed Rule and certainly no such basis to extend it further.

EPA should end this rulemaking promptly, withdraw this Proposal, and base its decisions on the best science available. The lives and health of millions of people living in America depend on this and deserve nothing less.

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II. THE PROPOSED RULE WOULD EXCLUDE CRITICAL SCIENTIFIC STUDIES, HARMING THE PUBLIC SIMPLY TO FURTHER A POLITICAL AGENDA

A. The Proposed Rule Would Exclude Critical Scientific Studies.

Although the Proposed Rule is couched in terms of increasing transparency, its effect – and indeed its true purpose as made evident by emails, press statements, and other documents – would be to “preclude” EPA from using critical human health studies that rely on confidential medical information. 83 Fed. Reg. at 18,769, n.3. The rule would require that “the regulatory science underlying [a proposed EPA action] is publicly available in a manner sufficient for independent validation.” *Id.* at 18,773 (proposed 40 C.F.R. § 30.1). Using terms that are vague, unsupported, and easily susceptible of manipulation, the Proposal would apply this public availability requirement to the “dose response data and models” underlying “pivotal regulatory science” used to justify “significant” “regulatory decisions.” *Id.* (proposed 40 C.F.R. §§ 30.2, 30.3, 30.5).

In practice, the “data” underlying studies used to set quantitative limits and tolerances to protect public health and the environment often consists of confidential medical or other personal data gathered in epidemiological studies. Both the law and medical research ethics prohibit the disclosure of this data.² As EPA’s own Science Advisory Board (“SAB”) warned:

For studies published many years ago, it may not be feasible to deliver public access to data and analytic methods. There are also sensitive situations where public access may infringe on legitimate confidentiality and privacy interests, and where exceptions from complete public access may be appropriate.

Furthermore, the rule could have the effect of removing legal, ethical, and peer-reviewed studies of health effects as sources to support the agency’s regulatory efforts. The proposed rule does not acknowledge that the epidemiologic science community, for example, has been making significant efforts to make data available where possible and to develop studies based on publicly available data where appropriate.

See Memorandum from Alison Cullen, Chair, SAB Work Group, to Members of the Chartered SAB and SAB Liaisons, “Preparations for Chartered Science Advisory Board (SAB) Discussions of Proposed Rule: Strengthening Transparency in Regulatory Science RIN (2080-AA14),” 3 (May 12, 2018), [https://yosemite.epa.gov/sab/sabproduct.nsf/E21FFAE956B548258525828C00808BB7/\\$File/W](https://yosemite.epa.gov/sab/sabproduct.nsf/E21FFAE956B548258525828C00808BB7/$File/W)

² For example, as discussed *infra*, Section IV.E, under the Common Rule For Research Involving Human Subjects, 45 C.F.R. Part 46, in order to gain approval from an Institutional Research Board to conduct federally funded research, “when appropriate, there [must be] adequate provisions to protect the privacy of subjects and to maintain the confidentiality of data.” 45 C.F.R. § 46.111(a)(7). This usually requires obtaining informed consent from the research subjects, including a description of how the researchers will preserve the confidentiality of identifiable records. *Id.* § 46.116(a)(5).

[kGrp_memo_2080-AA14_final_05132018.pdf](#) (“SAB Comment”).³ Thus, by imposing a requirement that certain data that cannot legally or ethically be made public be disclosed for the study to be used, EPA is effectively preventing the use of such studies.

In an effort to minimize the effect of the Proposed Rule, EPA asserts that “concerns about access to confidential or private information can, in many cases, be addressed through the application of solutions commonly in use across some parts of the Federal government.” 83 Fed. Reg. at 18,770. As support for this assertion, EPA merely says, “[s]ee examples from the U.S. Department of Health and Human Services, National Institute of Standards and Technology, U.S. Department of Education, and the U.S. Census Bureau.” *Id.* n.16. But EPA ignores the fact that removing confidential information from the underlying data in such studies is impractical, ineffective, and unnecessary. For example, in the last ozone NAAQS review, EPA reviewed more than 4,000 studies and references, and cited more than 2,200 in the final Integrated Science Assessment. Anonymizing the confidential information in all of the data underlying over 2,000 studies would be overly burdensome in terms of effort and cost.⁴

³ Given these potential impacts, at its May 31, 2018, meeting, the SAB voted to independently review this rule. See Doug Obey, “SAB Votes To Review EPA’s Science, Emissions Rules In Sign Of ‘Rebuke,’” *Inside EPA* (May 31, 2018), <https://insideepa.com/daily-news/sab-votes-review-epas-science-emissions-rules-sign-rebuke>. At this meeting, several members of the scientific and medical communities testified about the deleterious impact of the Proposed Rule. EPA, Meeting: Chartered Science Advisory Board (May 31 to June 1, 2018), <https://yosemite.epa.gov/sab/sabproduct.nsf/MeetingCal/7D239353BCECF85B852582600058B716?OpenDocument>; Written Statement from Ms. Genna Reed, Union of Concerned Scientists, [https://yosemite.epa.gov/sab/sabproduct.nsf/3B1AE8935A26E56C852582940075D516/\\$File/UCS+SAB+written+comment+5.31+v2.pdf](https://yosemite.epa.gov/sab/sabproduct.nsf/3B1AE8935A26E56C852582940075D516/$File/UCS+SAB+written+comment+5.31+v2.pdf); Written Statement from Dr. David McCabe, Clean Air Task Force, [https://yosemite.epa.gov/sab/sabproduct.nsf/A4979E2FDC1153A7852582A600787981/\\$File/34697863.pdf](https://yosemite.epa.gov/sab/sabproduct.nsf/A4979E2FDC1153A7852582A600787981/$File/34697863.pdf); Written Statement from Lynn Goldman, The George Washington University, [https://yosemite.epa.gov/sab/sabproduct.nsf/112CC313B0FB652D852582A6007BA0DA/\\$File/Goldman+Oral.pdf](https://yosemite.epa.gov/sab/sabproduct.nsf/112CC313B0FB652D852582A6007BA0DA/$File/Goldman+Oral.pdf); Written Statement from Mary Rice, American Thoracic Society, [https://yosemite.epa.gov/sab/sabproduct.nsf/6E8D2B56375A3FE5852582A600781D7E/\\$File/70258076.pdf](https://yosemite.epa.gov/sab/sabproduct.nsf/6E8D2B56375A3FE5852582A600781D7E/$File/70258076.pdf); Written Statement from Liz Borkowski, Jacobs Institute of Women’s Health, [https://yosemite.epa.gov/sab/sabproduct.nsf/69E37E4047D5208A8525829E00601B26/\\$File/26246226.pdf](https://yosemite.epa.gov/sab/sabproduct.nsf/69E37E4047D5208A8525829E00601B26/$File/26246226.pdf); Written Statement from Dr. George Thurston, NYU School of Medicine, [https://yosemite.epa.gov/sab/sabproduct.nsf/1A46C31B5E4BFFBF852582A60078E00A/\\$File/89488078.pdf](https://yosemite.epa.gov/sab/sabproduct.nsf/1A46C31B5E4BFFBF852582A60078E00A/$File/89488078.pdf).

⁴ For example, in response to proposed legislation that would have required removal of all confidential information in all studies used by EPA, the Congressional Budget Office (“CBO”) stated: “If the EPA continued to rely on as many scientific studies as it has used in recent years to support its covered actions, then CBO estimates that the agency would need to spend at least \$100 million dollars per year to upgrade the format and availability of those studies’ data to the level required by H.R. 1430.” CBO, *Cost Estimate: H.R. 1430 Honest and Open New EPA Science Treatment (HONEST) Act of 2017* at 3 (Mar. 29, 2017), <https://www.cbo.gov/system/files/115th-congress-2017-2018/costestimate/hr1430.pdf>.

Moreover, de-identifying personal information has thus far proven to be ineffective.⁵ In 2000, the U.S. Department of Health and Human Services adopted Standards for the Privacy of Individually Identifiable Health Information (commonly known as the “Privacy Rule”), pursuant to its authority under HIPAA. *See* 45 C.F.R. Pts. 160 and 164. The Privacy Rule protects all individually identifiable health information held or transmitted by certain covered entities – that is, health plans, health care clearinghouses, or health care providers – and their business associates. *Id.* §§ 160.103, 164.502(a). Under the Privacy Rule, two methods have been used to de-identify individually identifiable health information so that the data may be disclosed. *First*, the entity may rely on the judgment of a qualified individual who determines, with documentation, “that the risk is very small that the information could be used, alone or in combination with other reasonably available information, by an anticipated recipient to identify an individual who is a subject of the information.” *Id.* § 164.514(b)(1). *Second*, the entity may remove multiple enumerated categories of information, including patient names, social security numbers, full face photographs, and biometric identifiers (such as fingerprints). *Id.* § 164.514(b)(2). An entity following this approach must generalize each patient’s birth date to the relevant year and may include only the first three digits of a patient’s zip code. *Id.* § 164.514(b)(2)(i)(B), (C). Despite these seemingly thorough requirements for de-identification, the Privacy Rule is significantly less protective than it appears. In the years since its adoption, publicly available personal information has proliferated, and new databases are created every day.⁶ To “reidentify” de-identified data, an adversary need only discover an individual’s “data fingerprint”—that is, the combination of values shared by nobody else in an anonymized data set.⁷ The adversary can then link this fingerprint to publicly available, non-anonymized information to discover the individual’s identity.⁸

⁵ Even if it were effective – which it is not – as the Seventh Circuit has explained, people may have privacy interests in unidentifiable personal information: “Imagine if nude pictures of a woman, uploaded to the Internet without her consent though without identifying her by name, were downloaded in a foreign country by people who will never meet her. She would still feel her privacy had been invaded.” *Nw. Mem’l Hosp. v. Ashcroft*, 362 F.3d 923, 929 (7th Cir. 2004). Indeed, according to a 1993 study, more than 60 percent of Americans want hospitals, pharmaceutical companies, and researchers to obtain patient consent before using medical information—even if that information has been de-identified. N. Nina Zivanovic, *Medical Information as a Hot Commodity: The Need for Stronger Protection of Patient Health Information*, 19 *Intell. Prop. L. Bull.* 183, 201 (2015).

⁶ Zivanovic at 201; Paul Ohm, *Broken Promises of Privacy: Responding to the Surprising Failure of Anonymization*, 57 *UCLA L. Rev.* 1701, 1724 (2010).

⁷ Ohm at 1723. Indeed, 87 percent of the population can be identified based only on their 5-digit ZIP code, gender, and date of birth. Latanya Sweeney, *Simple Demographics Often Identify People Uniquely*, Carnegie Mellon University, Data Privacy Working Paper 3 at 2 (2000), <https://dataprivacylab.org/projects/identifiability/paper1.pdf>. More than half the population can be identified by their gender, data of birth, and city, town, or municipality, while nearly 20 percent can be identified by their gender, date of birth, and county. *Id.*

⁸ Ohm at 1724. Of course, adversaries need not resort to such sophisticated methods. As the Seventh Circuit explained in the context of medical records relating to abortion, once a patients’ de-identified records are made available, “persons of their acquaintance, or skillful ‘Googlers,’ sifting the information

Removing confidential information so that it can be publicly disclosed is also wholly unnecessary, as studies can be validated without demanding access to confidential data. As the SAB explained,

The proposed rule fails to mention that there are various ways to assess the validity of prior epidemiologic studies *without public access to data and analytic methods*. For example, the Health Effects Institute (HEI) conducted a re-analysis of the influential Harvard Six Cities and American Cancer Society (ACS) epidemiologic studies and was able to replicate its findings and to assess the robustness of the findings via sensitivity analysis.

SAB Comment at 4 (emphasis added). Yet these are some of the very studies EPA would exclude under the Proposed Rule. 83 Fed. Reg. at 18,769, n.3.

EPA then claims that the Proposal would not “compel[] the disclosure of any confidential or private information.” *Id.* at 18,770–71. While technically, true, this is misleading, because the Proposal would force decision-makers to ignore important and relevant science precisely to avoid unnecessary and illegal disclosure.⁹

The exclusionary intent of the Proposed Rule is likewise demonstrated by proposed 40 C.F.R. § 30.8, which requires that the rule be implemented so as to “minimize costs.” As the SAB explained, “[i]n addition, there are considerations associated with the cost and effort that would be involved in making large and complex existing datasets available within Institutional Review Board requirements, including the issue of who would be responsible for shouldering this burden.” SAB Comment at 3. In other words, if EPA must minimize costs, the exclusion of science, rather than taking complicated and expensive steps to hide confidential medical data, is likely to be the approach followed.

B. EPA Inexcusably Ignores the Fact that by Excluding Critical Human Health Studies, the Proposed Rule Significantly Harms Public Health.

The harm this Proposed Rule is likely to cause cannot be overstated. Restricting science in the manner proposed by EPA would result in significant public health failures.

contained in the medical records concerning each patient’s medical and sex history, will put two and two together, ‘out’ the . . . women, and thereby expose them to threats, humiliation, and obloquy.” *Nw. Mem’l Hosp.* 362 F.3d. at 929.

⁹ In his testimony before the House of Representatives Subcommittee on Environment, Committee on Energy and Commerce, former Administrator Pruitt expressly stated that EPA would only consider studies where the underlying data and methodology were made public. *See* U.S. House of Representatives, Transcript of Hearing: The Fiscal Year 2019 Environmental Protection Agency Budget (Apr. 26, 2018), <https://docs.house.gov/meetings/IF/IF18/20180426/108218/HHRG-115-IF18-Transcript-20180426.pdf>.

Epidemiological studies have been foundational to understanding critical connections between exposure to toxic chemicals and public health harms — connections that will be severed under EPA’s Proposed Rule. For example, links between certain occupations and incidences of cancer were discovered through the precursors to epidemiological studies.¹⁰ “Historically, much of what was known about the causes of cancer was derived from studies of workers,” as the work environment offered critical characteristics allowing for the occurrence of cancer to be studied, namely “well-defined populations that are exposed, often at high levels, to agents that can be quantitatively characterized.”¹¹ The methods used in these studies linking exposure to chemicals to the risk of disease “contributed importantly to the development of modern epidemiology.”¹² Just as “[i]dentifying occupational carcinogens is an important research endeavor with broad relevance to science and public health,” with “[k]nowledge of cancer hazards from occupational exposure support[ing] prevention and surveillance activities, as well as compensation of exposed workers,”¹³ so too are epidemiological studies critical to protecting the public health from exposure to toxins in our air, water, and food. EPA’s Proposal – which would remove most of these crucial studies from consideration when setting safety standards – poses a clear and present danger to our health and the environment.

Another example of toxic harm documented through epidemiological studies is airborne lead. General aviation aircraft emit the majority of airborne lead in the nation. Multiple studies have found an association between airborne lead exposure and elevated blood lead levels in children. But the Proposed Rule would, in effect, prohibit EPA from considering one of the key studies that directly links high childhood blood lead levels and living in proximity to general aviation airports. This study, M.L. Miranda et al., *A Geospatial Analysis of the Effects of Aviation Gasoline on Childhood Blood Lead Levels*, *Envtl. Health Persp.* 119(10): 1513–1516 (Oct. 2011), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3230438/> (“Miranda Study”), a copy of which is submitted herewith, found a significant association between living in close proximity to a general aviation airport where non-commercial piston jets that use leaded aviation fuel (or “leaded avgas”) are common, and elevated blood lead levels in children. The Miranda Study relies on state blood lead surveillance data for over 125,000 children between the ages of 9 months and 7 years in six North Carolina counties who had been tested for lead between 1995 and 2003, as well as GIS mapping of the locations of the children’s homes relative to the locations of airports where aircraft use avgas, and estimates of lead emissions from aircraft. The data relied on by the Miranda Study would likely be characterized as “dose response data and models” under the Proposed Rule as the study links exposure to nearby emissions of lead with blood lead levels. Thus, EPA could refuse to rely on the Miranda Study in taking a significant regulatory action – such as regulating the use of leaded avgas – unless obvious personal identifiers of the 125,000 children whose blood lead levels were studied were made publicly available. Because North Carolina collected that data as part of a mandatory statewide registry

¹⁰ Dana Loomis et al., *Identifying occupational carcinogens: an update from the IARC Monographs*, *Occup. & Env'tl. Med.* (2018), <http://oem.bmj.com/content/early/2018/05/16/oemed-2017-104944>.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

of blood lead surveillance data – undoubtedly with assurances of strict confidentiality to the participants – it would be impossible for the Miranda Study authors to make these “dose response data and models” “publicly available in a manner sufficient for independent validation,” as section 30.5 of the Proposed Rule would require as a condition for relying on the study. Moreover, the location data are fundamental to the analysis, and these data could not be redacted in a way that still permits reproduction of the results. The authors took special care when presenting their results to preserve the privacy of the child participants, as required by their institutional review board.

The Miranda Study found that living within 1,000 meters of an airport where avgas is used may have a significant effect on blood lead levels in children, and that the impacts of avgas are highest among those children living closest to the airport. Excluding the Miranda Study from consideration of the impact of the ongoing use of leaded avgas could lead EPA to underestimate the risks posed by leaded avgas by ignoring the association found in the Miranda Study between continued use of leaded avgas and children’s exposure to lead. This could result in EPA’s wrongly deciding that leaded avgas does not endanger public health, undercutting the basis for moving forward with a ban on leaded avgas despite the fact that leaded automobile gas was banned as a danger to public health decades ago.

EPA’s exclusionary rule would also gravely limit EPA’s ability to protect the public from the health hazards associated with perfluorooctanoic acid (“PFOA,” also known as “C8”) and perfluorooctane sulfonate (“PFOS”). As the result of a settlement of a lawsuit brought against a DuPont Washington Works facility near Parkersburg, West Virginia, related to contamination of drinking water, researchers conducted exposure and health epidemiological studies consisting of nearly 70,000 participants to examine the health impacts of exposure to these chemicals. These studies looked at “demographic data, medical diagnoses (both self-report and medical records review), clinical laboratory testing, and determination of serum concentrations of 10 perfluorocarbons (PFCs),”¹⁴ information that is both sensitive and confidential. Through this work, the researchers identified probable links between exposure to these chemicals and six specific diseases: diagnosed high cholesterol, ulcerative colitis, thyroid disease, testicular cancer, kidney cancer, and pregnancy-induced hypertension.¹⁵ The results of these studies have been published in numerous articles in scientific journals. Yet, under EPA’s Proposed Rule, this research would be excluded from consideration when determining health-based standards for PFOA under a number of environmental statutes, despite the clear evidence of harm these chemicals pose. Turning a blind eye to this data would have dramatic public health consequences, as it would preclude evaluation of valuable evidence of harm from exposure that could and should form the foundation of protections under the statutes EPA is charged with executing for the benefit of the public and the environment.

¹⁴ Stephanie J. Frisbee et al., *The C8 Health Project: Design, Methods, and Participants*, *Envtl. Health Persp* 117:1873, 1873 (2009), <https://ehp.niehs.nih.gov/wp-content/uploads/117/12/ehp.0800379.pdf>.

¹⁵ C8 Science Panel, *The Science Panel Website* (last updated Jan. 4, 2017), <http://www.c8sciencepanel.org/index.html>.

Many other studies would likewise be excluded from consideration under the Proposed Rule either because the data is confidential and not publicly available, or because the data is old and thus the results can no longer be replicated as required by the Proposed Rule. This includes, but is not limited to, the following:

- Early studies on the neurological effects of low-dose lead exposure on children's health have been foundational to setting lead levels for air and water, as well as for certain products such as paint.¹⁶ The underlying data is confidential and not subject to public exposure. And it is likewise nearly 40 years old and thus likely no longer available.
- Studies demonstrating the link between exposure to arsenic and developing cancer depend upon confidential clinical examinations of the patients that served as research subjects,¹⁷ and thus the sensitive health data underlying the studies cannot be publicly exposed.
- Studies on the impact of air pollution and mortality rates that have been used by EPA for decades to set air quality standards rely on confidential data that may not be lawfully disclosed.¹⁸
- EPA's toxicological reports in its Integrated Risk Information System ("IRIS") program, which create health reference values that the Agency uses under various statutes to assess health risks from different chemicals.¹⁹

¹⁶ Herbert L. Needleman et al., *Deficits in Psychologic and Classroom Performance of Children with Elevated Dentine Lead Levels*, 300 New England J. Medicine 689 (1979); EPA, Air Quality Criteria for Lead 12-86 to 12-88, 12-95 (1986), <https://cfpub.epa.gov/ncea/risk/recordisplay.cfm?deid=32647>; Maximum Contaminant Level Goals and National Primary Drinking Water Regulations for Lead and Copper, 56 Fed. Reg. 26,460, 26,468–69 (June 7, 1991); Lead; Identification of Dangerous Levels of Lead, 63 Fed. Reg. 30,302, 30,316–30,317 (June 3, 1998). The final rule was published at 66 Fed. Reg. 1206 (Jan. 5, 2001); National Ambient Air Quality Standards for Lead, 73 Fed. Reg. 66,964 (Nov. 12, 2008).

¹⁷ National Primary Drinking Water Regulations; Arsenic and Clarifications to Compliance and New Source Contaminants Monitoring, 65 Fed. Reg. 38,888, 38,902 (June 22, 2000).

¹⁸ Douglas W. Dockery et al., *An Association between Air Pollution and Mortality in Six U.S. Cities*, 329 New England J. Med. 1753 (1993).

¹⁹ Industry has sought to stall and undermine these assessments using language strikingly similar to what is in the Proposed Rule. See, e.g., Valerie Volcovici, "Pressured by industry, U.S. EPA slows formaldehyde study release: documents," *Reuters* (May 24, 2018), <https://www.reuters.com/article/us-usa-epa-formaldehyde/pressured-by-industry-u-s-epa-slows-formaldehyde-study-release-documents-idUSKCN1IP3EX>; see also Jennifer Sass, "Toxic Chemical Industry and House R's Attack on Science," NRDC (Sept. 27, 2017), <https://www.nrdc.org/experts/jennifer-sass/toxic-chemical-industry-and-house-rs-attack-science>; Written Testimony of Kenneth A. Mundt, Ramboll Environ, *The Iris Review Process: Chloroprene and the criticality of good science*, <https://science.house.gov/sites/republicans.science.house.gov/files/documents/HHRG-115-SY18-WState-KMundt-20170906.pdf>; Oral Presentation of James S. Bus, Exponent, Inc. (support provided by the

EPA's Proposal would exclude these pivotal epidemiological studies and IRIS assessments that rely on such studies, as well as other critical research merely because the underlying data cannot be made public.

Compounding this problem, many public health protections are predicated upon coincidental benefits – or “co-benefits” – defined as “favorable impact[s] of [a rule] . . . that [are] typically unrelated or secondary to the purpose of the action.”²⁰ It has long been the practice of federal agencies to include co-benefits of regulatory action when studying a proposed rule.²¹ For example, EPA includes PM2.5 reductions as a co-benefit for additional regulations, including, but not limited to, the National Emissions Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers and Process Heaters,²² and the Petroleum Refinery NSPS.²³ In light of the interconnectedness of many of EPA's rules, a restriction on the science supporting one will have a domino effect, weakening support for all rules that rely on the undermined rule. By way of illustration, should the Proposed Rule's restriction on the science EPA can consider in its rulemaking processes impact the PM2.5 reductions, it will, in turn, severely undercut the support provided for all other environmental programs for which PM2.5 reductions serve as a co-benefit.²⁴

American Chemistry Council),

<https://science.house.gov/sites/republicans.science.house.gov/files/documents/HHRG-115-SY18-WState-JBus-2070906.pdf>; Am. Chemistry Council, <https://www.americanchemistry.com/Policy/Regulatory-Reform/ACC-CEO-Makes-the-Case-for-Fixing-EPA's-IRIS-Program-Improved-Risk-Assessments.pdf>. A repeated industry criticism of IRIS assessments focuses on “transparency,” as a code to try to attack science (just as this Proposed Rule does) even though IRIS follows peer-reviewed, scientific protocols affirmed by the National Academies of Sciences. See, e.g., “ACC: National Academies Missed a Critical Opportunity with IRIS Review,” Am. Chemistry Council (Apr. 13, 2018), <https://www.americanchemistry.com/Media/PressReleasesTranscripts/ACC-news-releases/National-Academies-Missed-Critical-Opportunity-With-IRIS-Review.html>.

²⁰ OIRA, OMB, Exec. Office of the President, *Regulatory Impact Analysis: A Primer* at 7 (Aug. 15, 2011), https://obamawhitehouse.archives.gov/sites/default/files/omb/inforeg/regpol/circular-a-4_regulatory-impact-analysis-a-primer.pdf.

²¹ See, e.g., *The Case for Co-Benefits: Regulatory Impact Analyses, Michigan v. EPA, and the Environmental Protection Agency's Mercury and Air Toxic Standards* (Feb. 2016), <https://www-cdn.law.stanford.edu/wp-content/uploads/2016/09/The-Case-for-Co-Benefits-Regulatory-Impact-Analyses-Michigan-v.-EPA-and-the-Environmental-Protection-Agency's-Mercury-and-Air-Toxics-Standards.pdf>.

²² EPA, *Regulatory Impact Analysis: National Emissions Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers and Process Heaters* at 1-2 (Feb. 2011), <https://www.regulations.gov/document?D=EPA-HQ-OAR-2002-0058-3290>.

²³ EPA, *Regulatory Impact Analysis for the Petroleum Refineries NSPS* at 7-1, EPA-452/R-08-002, (Apr. 2008), https://www3.epa.gov/ttnecas1/docs/ria/refineries_ria_final-nsps_2008-04.pdf.

²⁴ Simultaneous with the Proposed Rule's attack on science, EPA issued an Advanced Notice of Proposed Rulemaking that aims to eliminate its ability to rely on co-benefits in the public health rulemaking process. See *Increasing Consistency and Transparency in Considering Costs and Benefits in the Rulemaking Process*, 83 Fed. Reg. 27,524 (June 13, 2018).

For all of these reasons, the Proposed Rule will have far-reaching and damaging consequences on public health protections. In a world in which EPA cannot consider critical studies demonstrating the deleterious impacts of toxic chemicals, pollutants, and pesticides when developing rules governing exposure levels, acceptable uses, and safety measures, there will be little to no available evidence to support the imposition of public health protections. Absent such evidence, EPA will be unable to implement rules that protect our air and water from harmful pollution, our farmworkers from toxic pesticides, and the public from overall exposure to chemicals, as EPA will have no science to point to as justification for such measures. Simply put, removal of this science from consideration in the rulemaking process will cause the very foundation upon which many of our public health standards depend to crumble.

C. The Proposed Rule Results Not from Any Scientific Principles or Justification but Rather from Industry Pressure to Weaken Public Health Protections and Follows the Tobacco Playbook.

While described as a measure to “better inform[] the public,” “enhance[] the public’s ability to understand and meaningfully participate in the regulatory process,” and to ensure that “[t]he best available science must serve as the foundation of EPA’s regulatory actions,” 83 Fed. Reg. at 18,769, the Proposed Rule does nothing of the sort. Indeed, it was not intended to do so. Multiple documents indicate that the true purpose of this rule is to restrict EPA’s ability to use relevant and credible – and frequently the best available – science that underlies strict and fully protective public health protections.

The genesis of the Proposed Rule is politically-driven legislation previously introduced by the House that would prohibit EPA from relying in its rulemaking on any science where the underlying research is not made publicly available.²⁵ Industry lobbied Congress in an effort to gut environmental and health laws by attacking the science upon which they are based. For example, both the Secret Science Reform Act of 2014 and the Secret Science Reform Act of 2015 provided that EPA may not take action “unless all scientific and technical information relied on to support such covered action is . . . *publicly available online in a manner that is sufficient for independent analysis and substantial reproduction of research results.*”²⁶ Two years later, after its prior unsuccessful attempts, the House passed the HONEST Act in March 2017, which again would have limited EPA’s ability to perform any assessment or analysis based

²⁵ See, e.g., Juliet Eilperin and Brady Dennis, “Pruitt unveils controversial ‘transparency’ rule limiting what research EPA can use,” *Washington Post* (Apr. 24, 2018), <https://www.washingtonpost.com/news/energy-environment/wp/2018/04/24/pruitt-to-unveil-controversial-transparency-rule-limiting-what-research-epa-can-use/> (noting that, during a meeting between the then-EPA Administrator and Representative Lamar Smith, who introduced the House legislation, “Smith made ‘his pitch that EPA internally implement the HONEST Act [so that] no regulation can go into effect unless the scientific data is publicly available for review.’”).

²⁶ H.R. 4012, Secret Science Reform Act of 2014 (introduced Feb. 6, 2014), <https://www.congress.gov/bill/113th-congress/house-bill/4012/text>; H.R. 1030 - Secret Science Reform Act (introduced Feb. 24, 2015), <https://www.congress.gov/bill/114th-congress/house-bill/1030/text>.

on science if the public does not have complete access to the underlying data.²⁷ When these bills did not succeed, industry looked to a new audience to try put in place what Congress failed to enact: a ban on consideration of science when making regulatory decisions critical to public health and the environment if the underlying data is not made publicly available.

Industry pitched EPA hard, and found a willing ear, complaining that air pollution limits and toxin tolerances were being set at levels that were too stringent. Given that the strong Congressional mandate expressed in numerous statutes for strict health protections would require EPA to act if the science demonstrated a risk to public health, industry saw that their best bet was to knock out the science, this time through EPA itself.²⁸ Industry groups, including the National Association of Manufacturers and American Petroleum Institute, “pitched EPA a Proposal last spring that closely resembled what became Administrator Scott Pruitt’s ‘secret science’ plan,” according to EPA internal documents.²⁹ This plan closely tracks the longstanding attacks on EPA science from these groups.³⁰ EPA was responsive to the industry pitch and met with industry groups dozens of time, while repeatedly canceling the few scheduled meetings with public health advocates.³¹

Similarly, pesticide manufacturers, such as Dow Chemical Company, have long opposed the use of epidemiological studies that collect human health data that must be kept confidential. For example, they vigorously challenged EPA’s proposal to revoke tolerances for chlorpyrifos, one of the country’s most widely used pesticides, which in effect would have prohibited the use of chlorpyrifos on food crops. EPA had found that it could not conclude that exposure to this pesticide in food and drinking water was safe based on a risk assessment that included a safety factor mandated under the Food Quality Protection Act to protect the health of infants and children whose developing bodies are uniquely vulnerable to toxic pesticides. *See* 80 Fed. Reg. 69,079, 69,090 (Nov. 6, 2015); *see also* National Academy of Science (“NAS”), *Pesticides in the*

²⁷ *See also* H.R. 1430 - Honest and Open New EPA Science Treatment Act (introduced Mar. 8, 2017), <https://www.congress.gov/bill/115th-congress/house-bill/1430/text>; *see also*, Brian Resnick, “The House Just Passed Two Bills That Would Stifle Science at the EPA,” *Vox* (Mar. 30, 2017), <https://www.vox.com/science-and-health/2017/3/30/15112704/transparency-epa-bills-not>. Also in March 2017, Republicans on the Senate Committee on Environmental and Public Works (“EPW”) “made transparency, including data access, a priority” throughout the confirmation process for Gina McCarthy. *See* U.S. Senate Comm. on Env’t and Pub. Works, *Minority Staff Rep., EPA’s Playbook Unveiled: A Story of Fraud, Deceit, and Secret Science* at v, 48, 55 (2014) (*hereinafter* “Minority Staff Report”), https://www.epw.senate.gov/public/_cache/files/2d30f39e-2fde-4b37-8810-32fa21b6e6bd/epaplaybookunveiled.pdf (describing how the “EPW Republicans sought the Agency’s secret science used to justify nearly all regulations issued under the Clean Air Act,” and they “boycotted the Committee nomination vote of McCarthy” in protest of “the lack of transparency at” EPA).

²⁸ *See, e.g.*, Maxine Joselow, “Emails: EPA All Ears as Industry Pitched ‘Secret Science,’” *E&E News* (May 17, 2018), <https://www.eenews.net/stories/1060081997>.

²⁹ *Id.*

³⁰ *See, e.g.*, Minority Staff Report.

³¹ *See id.*; *see also* Sharon Lerner, “Scott Pruitt’s Policy Director at EPA Met with Hundreds of Industry Representatives, Emails Show,” *The Intercept* (May 16, 2018), <https://theintercept.com/2018/05/16/scott-pruitt-epa-industry-lobbyists/>.

Diets of Infants and Children (1993). EPA retained the safety factor over industry objections because epidemiologic studies indicate that prenatal exposure to chlorpyrifos can harm the developing nervous system. So the industry attacked those studies, claiming they needed to see the underlying medical information³², even though the studies – conducted by highly reputable institutions including Columbia University, University of California-Berkeley, and Mt. Sinai School of Medicine – were all published peer-reviewed articles in scientific journals. While the Columbia scientists who authored the study have allowed EPA scientists to analyze the data in a secure setting on Columbia’s campus, they have refused to make the raw data publicly available in order to protect the privacy of the mothers and children who participated in the research.³³ Not satisfied, the pesticide industry is pressing EPA to exclude the study so that it can continue to sell a pesticide known to cause severe harm to children. And EPA is playing along.

This attack on supposedly “secret science” is not new or unique to this EPA and cannot be viewed in a vacuum. Attacking the underlying science has been a key strategy for decades, most notably in the tobacco industry’s effort to limit evidence of the enormous public health harms caused by tobacco. After EPA published its final Risk Assessment for Environmental Tobacco Smoke (secondhand smoke) in 1992, which concluded that secondhand smoke “is a human carcinogen, responsible for approximately 3,000 lung cancer deaths annually in U.S. nonsmokers,”³⁴ the tobacco industry went on the attack. The Risk Assessment had been based in part on a meta-analysis of “31 epidemiologic studies from 8 different countries” which showed a significant risk of harm.³⁵ Recognizing that “[v]igorous denial is not a satisfactory defensive strategy” and that “the most significant [secondhand smoke] problem facing the Industry is the result of epidemiological studies which indicate” a risk from exposure, the tobacco industry decided to attack epidemiological science.³⁶ Industry lawyers candidly noted that “there is virtually no chance of affecting change on this issue if the focus is” secondhand smoke so “our approach is one of addressing process as opposed to scientific substance, and global applicability

³² CropLife, *Petition EPA to halt regulatory decisions that are highly influenced/determined by results of epidemiological studies that do not meet well-defined data quality standards, and that are not integrated into the health risk assessment in a transparent, well-defined manner* (Nov. 29, 2016), <http://191hmt1pr08amfq62276etw2.wpengine.netdna-cdn.com/wp-content/uploads/2016/01/FINAL-CLA-Petition-Regulatory-Decision-Making-11-29-16.pdf>; CropLife, *Comments Re: Chlorpyrifos; Tolerance Revocations*; 80 FR 69080, November 6, 2015; Docket ID: EPA-HQ-OPP-2015-0653 (Jan. 25, 2015), <https://www.regulations.gov/document?D=EPA-HQ-OPP-2015-0653-0342>.

³³ Letter from Linda P. Fried, Columbia University Medical Center, to Jack E. Housenger, EPA OPP Director, *Re: Columbia Center for Children’s Environmental Health Epidemiology Study Data* (May 18, 2016), <https://www.regulations.gov/document?D=EPA-HQ-OPP-2008-0850-0928>.

³⁴ EPA, *Respiratory Health Effects of Passive Smoking (Also Known As Exposure to Secondhand Smoke or Environmental Tobacco Smoke – ETS) – Overview* (last updated Jan. 4, 2010), <https://cfpub.epa.gov/ncea/risk/recordisplay.cfm?deid=2835>.

³⁵ EPA, *Respiratory Health Effects of Passive Smoking (Also Known As Exposure to Secondhand Smoke or Environmental Tobacco Smoke – ETS)*, EPA/600/6-90/006F at 1-9, 2-8 (1992).

³⁶ Amended Final Opinion, *United States of America et al. v. Phillip Morris USA, Inc., et al.*, Civ. Action No. 99-2496 at 185-86 (D.D.C. Aug. 17, 2006), <http://www.publichealthlawcenter.org/sites/default/files/resources/doj-final-opinion.pdf>.

to industry rather than focusing on any single industrial sector.”³⁷ Shortly thereafter, one of RJ Reynolds’ lobbying firms organized a “Secret Science” Work Group to “[f]ocus public attention on the importance of requiring disclosure of taxpayer-funded analytical data.”³⁸

This Proposed Rule follows suit. It is just another effort to hide evidence of the public health harm of toxic chemicals, given that there is no way to change the research results showing the deleterious effects.³⁹ And this time, the effort is much broader, as it is not hiding evidence related to just one industry or one product. Indeed, when describing the hearing on the Secret Science Reform Act of 2015 – a predecessor of the Proposed Rule – Representative Eddie Bernice Johnson noted that “[w]hen the Majority held a hearing on this legislation last Congress, every Majority witness at the hearing had significant ties to the tobacco industry. . . . Judging from the groups that have endorsed this bill, it might be more accurate to state that H.R. 1030 is the polluting industries’ attempt to prevent EPA from using the best available science.” See Minority Staff Report at 48. The same holds true for the Proposed Rule. EPA should not be permitted to “deliberately misle[a]d the public about the risks of” certain pollutants or other chemicals by hiding evidence of their harms.⁴⁰ As several courts have found, the best available *politics* does not equate to the “*best available science*,”⁴¹ so while this Proposed Rule may serve EPA’s political ends, it does not meet the mandates of sound science.

III. EPA LACKS LEGAL AUTHORITY TO ADOPT THE PROPOSED RULE, AND THEREFORE THE RULE IS UNLAWFUL

EPA has no authority to limit what scientific information may be considered in making regulatory decisions. No statute authorizes this rule, and EPA lacks any inherent authority to regulate absent a statutory basis. Thus, should EPA proceed to promulgate the Proposed Rule or otherwise limit what science can be considered in regulatory decisions, it will be acting in violation of the law. See 5 U.S.C. § 706(2)(C) (requiring a reviewing court to “hold unlawful and set aside agency action . . . found to be . . . in excess of statutory jurisdiction, authority, or limitations, or short of statutory right.”).

³⁷ Memorandum re Background and Proposed Program to Address Federal Agency Science from Christopher C. Horner, Bracewell & Patterson LLP, to Tim Hyde and Randy Johnson, RJ Reynolds Tobacco Company (Dec. 23, 1996), <https://www.industrydocumentslibrary.ucsf.edu/tobacco/docs/#id=jfww0019>.

³⁸ Memorandum re Tasks to “Secret Science” Work Group from Leslie Gianelli, Powell Tate (April 10, 1998), <https://www.industrydocumentslibrary.ucsf.edu/tobacco/docs/#id=klvc0069>.

³⁹ See Sharon Lerner, “Republicans Are Using Big Tobacco’s Secret Science Playbook to Gut Health Rules,” *The Intercept* (Feb. 5, 2017), <https://theintercept.com/2017/02/05/republicans-want-to-make-the-epa-great-again-by-gutting-health-regulations/>.

⁴⁰ *Id.*

⁴¹ *Ecology Ctr., Inc. v. U.S. Forest Serv.*, 451 F.3d 1183, 1194 n.4 (10th Cir. 2006) (emphasis added).

A. The Stated Statutory Provisions Upon Which EPA Relies Do Not Provide Authority for the Proposed Rule.

EPA lists a number of statutes it administers as purported authority for this rule, including “provisions providing general authority to promulgate regulations necessary to carry out the Agency’s functions under these statutes and provisions specifically addressing the Agency’s conducting of and reliance on scientific activity to inform those functions.” *See* 83 Fed. Reg. 18,769. As discussed in detail below, none of the statutes cited by EPA authorizes this proposed action.⁴² EPA thus lacks authority to promulgate this rule under any statutory regime administered by the Agency, rendering the rule invalid.

i. Clean Air Act (“CAA”)

EPA cites two provisions of the Clean Air Act (“CAA”) as authority for the Proposed Rule. As further detailed below, neither provision provides such authority.

First, EPA cites Clean Air Act § 103, 42 U.S.C. § 7403, as authority for the Proposed Rule. 83 Fed. Reg. at 18,769. However, this section provides no authority for such a rule. Instead, the section requires EPA to create a research and development program for prevention and control of air pollution and to conduct research on health effects, among other issues. Specifically:

- Section 7403(a) requires EPA to “establish a national research and development program for the prevention and control of air pollution,” which includes funding or conducting studies, establishing technical advisory committees, and related activities.
- Section 7403(b) provides a list of specific “[a]uthorized activities” that EPA may take in establishing the “research and development program” under subsection (a), including, for example, collecting and making available information pertaining to the program, cooperating with other agencies, and making grants and contracts for research. *Id.* § 7403(b)(6).
- Section 7403(c) requires EPA to “conduct a program of research, testing, and development of methods for sampling, measurement, monitoring, analysis, and modeling of air pollutants.”
- Section 7403(d) requires EPA to “conduct a research program on the short-term and long-term effects of air pollutants, including wood smoke, on human health.”
- Section 7403(e) requires EPA to conduct ecosystem research.

⁴² Even assuming any of the statutory provisions upon which EPA relies provided authority to restrict science – which they do not – at best, the provisions could authorize EPA’s proposed policy only with respect to activities under the particular statute. The provisions could not authorize an across-the-board restriction on science for rulemakings under all statutes.

- Section 7403(f) requires EPA to oversee an “experimental and analytical research effort, with the experimental research to be carried out at the Liquefied Gaseous Fuels Spill Test Facility.”
- Section 7403(g) requires that, in carrying out purpose of subsection (a), EPA shall “conduct a basic engineering research and technology program to develop, evaluate, and demonstrate nonregulatory strategies and technologies for air pollution prevention.”
- Section 7403(h) authorizes certain research by the National Institute of Environmental Health Sciences.
- Section 7403(i) discusses coordination of research with “other Federal ecological and air pollution research efforts.”
- Section 7403(j) discusses acid rain research.
- Section 7403(k) discusses air pollution conferences.

Notably absent from this long list of explicit requirements and responsibilities is rulemaking authority, much less authority to exclude scientific studies from consideration by EPA in any “regulatory decisions” for any reason, including whether or not the underlying data is, or can be made publicly available. *See* 83 Fed. Reg. at 18,773-74 (proposed 40 C.F.R. §§ 30.2, 30.3, 30.5) (indicating application of Proposed Rule only to use of studies and data in “significant regulatory decisions”). Indeed, the authorized activities included in Section 7403(b) are quite specific, including actions such as collecting and disseminating information, making grants and contracts, and even “construct[ing] facilities, provid[ing] equipment, and employ[ing] staff as necessary to carry out this chapter.”

Congress knew how to authorize EPA rulemaking activities elsewhere in the Clean Air Act. That § 7403 does not include such authority, much less authority to restrict science in particular, shows a clear intent not to grant such authority. *Meghrig v. KFC W., Inc.*, 516 U.S. 479, 485 (1996). Rather, the purpose of § 7403 is plainly to promote research and to advance and increase the use and consideration of data, not to restrict it.⁴³

Equally problematic, EPA’s proposed action serves none of the goals and meets none of the requirements of § 7403. The Proposed Rule is not a “research and development program” and does not include the requisite components of such a program necessary for EPA to act pursuant to its authority under this provision. EPA is not proposing any grants or research fellowships, *see* § 7403(b), or any air pollutant monitoring, analysis, modeling, and inventory

⁴³ *See, e.g.*, § 7403(b), (c)(2), (d)(1)(A) (“collect and make available, through publications and other appropriate means . . . information . . . pertaining to [EPA’s] research and other activities”; “collect and disseminate . . . basic data on chemical, physical, and biological effects of varying air quality . . .”; “establish[] a national network to monitor, collect, and compile data . . . of air emissions, deposition, air quality . . .”; “conduct studies, including epidemiological, clinical, and laboratory and field studies, as necessary to identify and evaluate exposure to and effects of air pollutants on human health”).

research, *see* § 7403(c), or any “basic engineering research and technology program to develop, evaluate, and demonstrate nonregulatory strategies and technologies for air pollution prevention,” *see* § 7403(g). Nor is EPA proposing to conduct any epidemiological studies on air pollution or to develop any methods or techniques for human health risk assessment, *see* § 7403(d).⁴⁴

In addition, even if EPA could otherwise act pursuant to this provision, EPA may not develop health risk assessment methods and techniques applicable to air pollutants without including the following requisite statutory elements:

- The creation of an Interagency Task Force, *id.* § 7403(d)(2)(A);
- An evaluation of each of the listed hazardous air pollutants (“HAPs”) under § 7412(b)(1) “based on reasonably anticipated toxicity to humans and exposure factors” listed therein, and which “shall be reviewed by the Interagency Task Force,” *id.* § 7403(d)(2)(B);
- Preparation of environmental health assessments for each of the HAPs, with specific deadlines, that “shall be prepared in accordance with guidelines developed by the Administrator in consultation with the Interagency Task Force and the Science Advisory Board,” including a specific list of scientific elements that includes “available toxicological and epidemiological information,” “a determination of gaps in available information,” and “where appropriate, an identification of additional activities . . . needed to identify the types or levels of exposure which may present significant risk of adverse health effects in humans.” *Id.* § 7403(d)(2)(C).

EPA’s Proposal does not include any, much less each, of these required components for an exercise of § 7403 authority. Thus, even if EPA otherwise had authority to act pursuant to this provision, the Proposed Rule is inconsistent with and contravenes the very provision which EPA itself cites.

For each and all of these reasons, § 7403 does not give EPA authority to regulate science or to exclude from EPA regulatory decisions the consideration of a subset of scientific studies.

Second, EPA cites section 301(a) of the Clean Air Act, 42 U.S.C. § 7601(a), as authority for the Proposed Rule. 83 Fed. Reg. at 18,769. This section of the Clean Air Act authorizes only “such regulations as are necessary to carry out [the Administrator’s] functions under [the Clean Air Act].” 42 U.S.C. § 7601(a)(1). As discussed below, this provision does not authorize the Proposed Rule.

⁴⁴ Moreover, and as discussed in great detail *infra*, Section V, for EPA to perform any of these tasks, it would have to meet the procedural requirements constraining its research and development authority. For example, 42 U.S.C. § 7403(d) sets specific directions that ensure that EPA may not conduct a research program on the effects of air pollution on its own pursuant to this provision, but rather, for such “environmental health effects research,” EPA must consult with the Secretary of Health and Human Services, generally. *Id.* § 7403(d)(1). EPA failed to follow these requisite procedures.

It is beyond cavil that general rulemaking provisions do not “provide [EPA] Carte blanche authority to promulgate any rules, on any matter relating to the Clean Air Act, in any manner that the [EPA] wishes.” *North Carolina v. EPA* 531 F.3d 896, 922 (D.C. Cir. 2008), *on reh’g in part*, 550 F.3d 1176 (D.C. Cir. 2008) (citing *Citizens to Save Spencer County v. EPA*, 600 F.2d 844, 873 (D.C. Cir. 1979)). Rather, such regulations must be “necessary” to carry out another statutory duty. *See, e.g., id.* (“EPA cannot claim retiring excess Title IV allowances is ‘necessary’ for EPA to ensure SIPs comply with section 110(a)(2)(D)(i)(I).”); 42 U.S.C. § 7601(a). And “‘EPA cannot rely on its gap-filling authority to supplement the Clean Air Act’s provisions when Congress has not left the agency a gap to fill’—i.e., ‘when there is statutory language on point.’” *WildEarth Guardians v. EPA*, 830 F.3d 529, 539 (D.C. Cir. 2016) (citing *Nat. Res. Def. Council v. EPA*, 749 F.3d 1055, 1063–64 (D.C. Cir. 2014)); *see also Nat. Res. Def. Council v. EPA*, 749 F.3d 1055, 1063–64 (D.C. Cir. 2014) (“[W]e have consistently held that EPA’s authority to issue ancillary regulations is not open-ended, particularly when there is statutory language on point.” (citing *Am. Petroleum Inst. v. EPA*, 52 F.3d 1113, 1119 (D.C. Cir. 1995))).⁴⁵

EPA has not argued, nor could it, that the Proposed Rule is “necessary” for fulfilling the agency’s rulemaking duties under the CAA. Rather, as discussed *infra*, Section IV.A, EPA’s proposed exclusion of scientific data that is not publicly available is antithetical to the purposes of the CAA. Moreover, EPA itself has repeatedly determined, and the D.C. Circuit has affirmed, that disclosure of the data underlying studies on which the agency relies is **not** necessary to fulfill the Agency’s transparency and public comment obligations under the Clean Air Act, 42 U.S.C. § 7607(d).

For example, when EPA set the 1997 Particulate Matter National Ambient Air Quality Standards (“NAAQS”), “[s]everal commenters questioned EPA’s ability to rely on studies demonstrating an association between PM and excess mortality without obtaining and disclosing the raw ‘data’ underlying these studies for public review and comment.” 62 Fed. Reg. 38,652, 38,689 (July 18, 1997); *see also EPA, Responses to Comments on the 1996 Proposed Rule on the Nat’l Ambient Air Quality Standards for Particulate Matter* (July 1997), https://www3.epa.gov/ttn/naaqs/standards/pm/data/rtc_pm.pdf. EPA responded that “[i]t would be impractical and unnecessary for EPA to review underlying data for every study upon which it relies as support for every proposed rule or standard.” 62 Fed. at 38,689. EPA made clear that disclosing such data was not its general practice, in part because EPA was not relying on the underlying data but rather on the study results themselves. *Id.* EPA recognized that “[i]f EPA and other governmental agencies could not rely on published studies without conducting an independent analysis of the enormous volume of raw data underlying them, then much plainly relevant scientific information would become unavailable to EPA for use in setting standards to protect public health and the environment.” *Id.* EPA explained:

⁴⁵ *See also Nat. Res. Def. Council v. Reilly*, 976 F.2d 36, 41 (D.C. Cir. 1992) (EPA cannot use its general rulemaking authority as justification for adding to a statutorily specified list); *Sierra Club v. EPA*, 719 F.2d 436, 453 (D.C. Cir.1983) (same); *see also Gonzales v. Oregon*, 546 U.S. 243, 264–65 (2006) (“It would go . . . against the plain language of the text to treat a delegation for the ‘execution’ of [the Attorney General’s] functions as a further delegation to define other functions well beyond the statute’s specific grants of authority.”).

[S]uch data are often the property of scientific investigators and are often not readily available because of the proprietary interests of the investigators or because of arrangements made to maintain confidentiality regarding personal health status and lifestyle information of individuals included in such data. Without provisions of confidentiality, the possibility of conducting such studies could be severely compromised.

Id. And when the 1997 PM NAAQS was challenged, the D.C. Circuit affirmed EPA's consideration of relevant scientific epidemiological evidence without disclosure of all of the raw data. *See Am. Trucking Ass'n v. EPA*, 283 F.3d 355, 372 (D.C. Cir. 2002) (The court "agree[d] with EPA that requiring agencies to obtain and publicize the data underlying all studies on which they rely 'would be **impractical and unnecessary**.'" (quoting 62 Fed. Reg. at 38,689) (emphasis added)).

In *Coalition of Battery Recyclers Association v. EPA*, 604 F.3d 613, 623 (D.C. Cir. 2010), petitioners again challenged EPA's failure to disclose underlying data for a study on the health effects of lead exposure, on which it relied to issue the 2008 Lead NAAQS. Specifically, the petitioners contended "the *Lanphear* study [on which EPA relied] contained such errors that EPA acted arbitrarily and capriciously in relying on results from the study without first obtaining and making public the underlying data for the study." *Battery Recyclers*, 604 F.3d at 622-23. EPA reiterated in its briefing that it would be "**impractical and unnecessary**" to disclose such data. *See* EPA Respondent Brief (Doc. No. 1230237) at 47 (Feb. 16, 2010) (citation and quotation marks omitted; emphasis added), *Battery Recyclers*, 604 F.3d at 623. The D.C. Circuit again agreed with and upheld EPA's determination that disclosure of underlying data is not necessary to consider the results of a health study to be relevant to a clean air rulemaking pursuant to 42 U.S.C. § 7607(d). The court applied its prior holding in *American Trucking*, that "[t]he Clean Air Act imposes no such obligation" and that "requiring agencies to obtain and publicize the data underlying all studies on which they rely would be impractical and unnecessary." *Battery Recyclers*, 604 F.3d at 623 (quoting *American Trucking*, 283 F.3d at 372). Though petitioners "attempt[ed] to distinguish their request on the ground that in *American Trucking* the court was addressing requests for data underlying several studies, while they request only that EPA obtain and make public the data underlying the *Lanphear* study," *id.* at 623, the court found that argument unpersuasive, again "noting that raw data often is unavailable due to proprietary interests of a study's scientific investigators or confidentiality agreements with study participants." *Id.* at 623 (citing *American Trucking*, 283 F.3d at 372).

EPA also cannot argue that excluding studies from the Agency's consideration when the underlying data cannot be publicly disclosed is "necessary" for ensuring the Agency relies on the best available science. As an initial matter, nowhere in the Proposed Rule does EPA find that particular studies, much less all studies that rely in part on the collection of confidential raw data (such as people's names and health records), are bad science, or even less reliable science. Nowhere does EPA show how health studies that rely in part on confidential personal information can never be relevant in any way to CAA rulemakings. Nor could it, as EPA has found such studies relevant and has relied on such studies for decades, and they are commonly accepted and valued as important scientific information of health effects within the scientific community. *See* Section IV.A. EPA cites no examples of situations where unsound, unlawful or

arbitrary decision-making resulted from an agency's reliance on studies that do not fit its newfound notions of "transparency" and "integrity." Rather, courts have repeatedly upheld actions that have relied on such studies, as cited above.

Moreover, EPA has not demonstrated that it is consistent with scientific principles to categorically *exclude* peer-reviewed scientific information from all consideration in a rulemaking, as EPA proposes to do. If EPA has any doubts or concerns regarding the merits of a particular study, it must address those doubts or concerns for that particular study in the context of a given rulemaking, where agency staff, internal scientific experts, scientific advisory committees, or commenters contend that study is relevant. EPA has provided no scientific justification for ignoring an entire class of health science simply because the underlying data has not been disclosed. Whether underlying data on which a study relies is made public or not simply has no bearing on whether a scientific study is good science, is accurate, is reliable, and is relevant to a scientific question (such as the health effects of air pollution). And to the extent EPA requires additional verification of a study, there are myriad ways it can do so without disclosing confidential data (for example, requesting an independent scientific body to conduct a confidential review). *See* Section IV.A, *infra*.

Furthermore, there is no statutory gap with respect to what studies EPA should consider (nor does EPA attempt to identify any). As further discussed below, sections of the Clean Air Act that govern air standards and rulemakings specify the applicable standards and generally require consideration of all available science. EPA has been adopting rules under most of these provisions for decades without finding any need for restrictions of the sort EPA proposes here. The Agency provides no explanation, and none exists, for suddenly finding "gaps" in these provisions.

Finally, EPA fails to acknowledge that it has had a longstanding policy of considering health studies without requiring disclosure of all underlying raw data. Indeed, it tries to minimize its prior position in a footnote, stating that: "Historically, EPA has not consistently observed the policies underlying this proposal, and courts have at times upheld EPA's use [of] non-public data in support of its regulatory actions." 83 Fed. Reg. at 18,769, n.3. It ignores the fact that EPA itself has *consistently* considered and used health studies dependent on non-public information for clean air rulemakings. Further, the Agency's longstanding policy has been that "EPA does not generally undertake evaluations of raw, unanalyzed scientific data as part of its public health standard setting process." 62 Fed. Reg. at 38,689. Only in "extreme cases – for example where there are credible allegations of fraud, abuse or misconduct – would a review of raw data be warranted." *Id.* That EPA now finds this data so important that it must be publicly disclosed before the Agency will even consider a study represents a monumental shift in course.

EPA is not working on a blank slate. Therefore, it must do more than just explain the change. Rather, EPA must provide "a more detailed justification," *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009); *see also Motor Vehicles Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 41-42 (1983), because its new policy directly contradicts the Agency's prior findings that such studies are relevant to clean air rulemakings and provide evidence of health effects that the Agency can and must consider. EPA has not provided any reasoned explanation for its departure, much less an explanation with the requisite detail to justify its about-face.

ii. *Clean Water Act (“CWA”)*

EPA cites sections 104 and 501 of the Clean Water Act, 33 U.S.C. §§ 1254, 1361, as statutory authority for its Proposed Rule. Upon examination, these sections do not provide the authority EPA suggests.

Section 104, 33 U.S.C. § 1254, entitled “Research, investigations, training, and information,” addresses the Administrator’s authority as it relates to the establishment of national programs, cooperation, investigations, water quality surveillance system, and reports. It requires the Administrator to, among other things: “conduct and promote the coordination and acceleration of, research, investigations, experiments, training, demonstrations, surveys, and studies relating to the causes, effects, extent, prevention, reduction, and elimination of pollution”; and to “initiate and promote the coordination and acceleration of research designed to develop the most effective practicable tools and techniques for measuring the social and economic costs and benefits of activities which are subject to regulation under this chapter.” 33 U.S.C. § 1254(a)(1), (6).

Toward that end, the provision authorizes the Administrator to: “collect and make available, through publications and other appropriate means, the results of and other information, including appropriate recommendations by him in connection therewith, pertaining to such research and other activities referred to in” 1254(a)(1); and “cooperate with other Federal departments and agencies, State water pollution control agencies, interstate agencies, other public and private agencies, institutions, organizations, industries involved, and individuals, in the preparation and conduct of such research and other activities referred to in” 1254(a)(1). *Id.* § 1254(b)(1), (2). It also requires the Administrator to “conduct research on, and survey the results of other scientific studies on, the harmful effects on the health or welfare of persons caused by pollutants.” *Id.* § 1254(c). And it requires the Administrator to conduct and update a variety of studies, including, but not limited to, studies on oil pollution controls, *id.* § 1254(i), effects and control of pesticides in water, *id.* § 1254(l), waste oil disposal, *id.* § 1254(m), effects of pollution on estuaries and estuarine zones, *id.* § 1254(n), pollution from agriculture, *id.* § 1254(p), and effects and methods of controlling thermal discharges, *id.* § 1254(t).

Thus, section 1254 discusses research and studies in great detail, but it does so by setting forth requirements for ***cooperation and promotion of research***. This section does not grant EPA any rulemaking authority at all, nor does it say anything about the Administrator’s ability to screen or otherwise define the parameters for research that EPA can rely on for regulatory purposes. Instead, it describes the different areas for research and study and requires the Administrator to conduct research and studies in these areas.

The second CWA provision upon which EPA relies fares no better. EPA cites to section 501, 33 U.S.C. § 1361, as additional statutory authority for this rule. This is the provision generally authorizing the Administrator to “prescribe such regulations ***as are necessary to carry out his functions under this chapter***.” 33 U.S.C. § 1361(a) (emphasis added). Such authority only exists if the regulation is, in fact, “necessary to carry out” the provisions under the CWA. *Mourning v. Family Publ’n Serv., Inc.*, 411 U.S. 356, 369 (1973) (“[w]here the

empowering provision of a statute states simply that the agency may ‘make . . . such rules and regulations as may be necessary to carry out the provisions of [an] Act,’ . . . the validity of a regulation promulgated thereunder will be sustained [only] so long as it is ‘reasonably related to the purposes of the enabling legislation.’” (citation omitted)). The Proposed Rule is decidedly not necessary at all. As with the CAA discussed *supra*, the CWA regulatory authority enables the Agency to carry out its functions and fill any statutory gaps. The Proposed Rule is not needed to fill any “gaps” in the CWA, as Congress has already provided – in great detail – the Administrator’s regulatory authority as it relates to research, emphasizing the need for the use and promotion of inclusive research. *See* § 1254. Moreover, a rule “devised pursuant to Congress’ directive to issue regulations ‘necessary to carry out’ [an] Act . . . cannot stand if it is ‘arbitrary, capricious, or manifestly contrary to the statute.’” *Ragsdale v. Wolverine World Wide, Inc.*, 535 U.S. 81, 86 (2002) (citations omitted); *see also Am. Petroleum Inst.*, 52 F.3d at 1119 (“EPA cannot rely on its general authority to make rules necessary to carry out its functions when a specific statutory directive defines the relevant functions of EPA in a particular area.”). As discussed below in Section IV.A and elsewhere herein, not only is the regulation unnecessary to carry out EPA’s functions under the CWA or to fill any gaps, but it is arbitrary and antithetical to the objectives of the CWA. Thus, the Proposed Rule is not authorized under this general rulemaking provision.

iii. Safe Drinking Water Act (“SDWA”)

Despite EPA’s contrary contentions, the Safe Drinking Water Act (“SDWA”), 42 U.S.C. § 300f *et seq.*, does not provide any authority for the adoption of a policy that would “preclude” EPA from considering all relevant scientific evidence in carrying out its duty to protect the quality of drinking water in the United States. *See* 83 Fed. Reg. at 18,769, n.3. In the Proposal, EPA points to two specific provisions of the SDWA as authorizing the rule, neither of which provides the necessary authority.

First, EPA points to 42 U.S.C. § 300j-1, but its reliance on this section is misplaced. Rather than authorizing the Administrator’s selective exclusion of science and research, this section simply describes the Agency’s responsibility to gather information—that is, “[to] conduct research, studies, and demonstrations relating to the causes, diagnosis, treatment, control, and prevention of physical and mental diseases and other impairments of man resulting directly or indirectly from contaminants in water, or to the provision of a dependably safe supply of drinking water.” 42 U.S.C. § 300j-1(a)(1). This section also directs EPA to study certain serious threats to drinking water, including “polychlorinated biphenyl contamination,” “disposal of waste (including residential waste),” “surface spills of contaminants,” “virus contamination,” “abandoned injection or extraction wells,” “intensive application of pesticides and fertilizers in underground water recharge areas,” “surface disposal of contaminants in underground water recharge areas,” and “the nature, extent, sources of and means of control of contamination by chemicals or other substances suspected of being carcinogenic.” *Id.* § 300j-1(a)(3)–(9). It therefore provides no legitimate basis for a rule that aims to limit the data that EPA can consider in executing the purposes of the SDWA.

Second, EPA cites the general grant of rulemaking authority in 42 U.S.C. § 300j-9(a)(1) as authorizing the Proposed Rule. However, this section likewise does not offer authorization. While this section empowers EPA “to prescribe such regulations as are necessary or appropriate to carry out [its] functions under this subchapter,” the Proposed Rule is neither necessary nor appropriate to effectuate the SDWA.

The SDWA requires EPA to protect the public by limiting contaminants in public water systems. Specifically, the Act directs EPA to establish a “maximum contaminant level goal” for each contaminant “at the level at which no known or anticipated adverse effects on the health of persons occur and which allows an adequate margin of safety.” 42 U.S.C. § 300g-1(b)(4)(A). EPA must then set an enforceable “maximum contaminant level” as close to this goal as is feasible. *Id.* § 300g-1(b)(4).

To accomplish these goals, in 1996, Congress amended the SDWA to ensure that EPA’s regulatory decisions were scientifically sound and adequately protective of public health. As amended, the SDWA directs EPA to base its determination about whether to regulate any particular contaminant “on the **best available public health information.**” *Id.* § 300g-1(b)(1)(B)(ii)(II) (emphasis added). In addition, the amended SDWA expressly requires that, “to the degree that an Agency action is based on science, [EPA] shall use . . . **the best available, peer-reviewed science and supporting studies** conducted in accordance with sound and objective scientific practices[] and . . . data collected by accepted methods or best available methods (if the reliability of the method and the nature of the decision justifies use of the data).” *Id.* § 300g-1(b)(3)(A) (emphasis added). “Best available” means precisely what it says – the best of all that is available, not the best of some subset of what is available. The only qualifiers the SDWA places on what is “best available” are that the science be “peer-reviewed,” and that the “supporting studies” be “conducted in accordance with sound and objective scientific practices.” *Id.* Disclosure of confidential data underlying the studies plays no role in determining whether the science is the best available and is in no way required by the rule (but rather is expressly rejected by the scientific community, *see infra*). Any rule proposing to disregard reliable scientific information relevant to the regulation of drinking water contaminants directly conflicts with the SDWA’s sound science mandate.

Given that the Proposed Rule is manifestly contrary to the SDWA, which expressly requires use of the best science available, it is not authorized by the general rulemaking authority in § 300j-9(a)(1). *Mourning*, 411 U.S. at 369; *Ragsdale*, 535 U.S. at 86. EPA is thus left without an appropriate authorizing provision under the SDWA.

iv. *Comprehensive Environmental Response, Compensation, and Liability Act*
(“CERCLA”)

EPA also cites to provisions under the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”) as authority for its Proposed Rule. However, upon examination, these provisions likewise provide no legal support for the Proposal.

The first provision upon which EPA relies – Section 115 – is inapposite. It merely sets out goal dates for EPA to begin assessment and remediation of facilities on the National

Priorities List, and is entirely irrelevant to the issues of the Proposed Rule. *See* 42 U.S.C. § 9616. While the second provision upon which EPA relies – Section 311 – is at least relevant to the issues of the Proposed Rule, it nonetheless conflicts with the proposition that the Proposed Rule espouses. It requires the Department of Health and Human Services, in consultation with EPA, to establish and support a research program consisting of:

Basic research (including epidemiologic and ecologic studies) which may include each of the following:

- (i) Advanced techniques for the detection, assessment, and evaluation of the effects on human health of hazardous substances.
- (ii) Methods to assess the risks to human health presented by hazardous substances.
- (iii) Methods and technologies to detect hazardous substances in the environment and basic biological, chemical, and physical methods to reduce the amount and toxicity of hazardous substances.

42 U.S.C. § 9660(a)(1)(A); *see also id.* § 9660(c) (authorizing EPA to conduct research on the “detection, assessment, and evaluation of the effects on and risks to human health of hazardous substances and detection of hazardous substances in the environment”). These provisions say nothing about authorizing EPA to adopt rules at all, much less rules limiting reliance on studies that do not meet the criteria of the Proposed Rule. Section 311(a) merely provides for the Department of Health and Human Services to establish and support certain research programs. It does not give EPA any authority at all, much less authority to limit the type of studies that can be relied upon for purposes of implementing CERCLA’s operative provisions. Accordingly, CERCLA provides no support for EPA’s actions here.

v. *Emergency Planning and Community Right to Know Act (“EPCRA”)*

EPA likewise relies upon a provision in the Emergency Planning and Community Right to Know Act (“EPCRA”) that in no way authorizes this Proposed Rule. Specifically, Section 328 of EPCRA – upon which EPA relies – merely authorizes EPA to “prescribe such regulations as may be necessary to carry out” the statute. 42 U.S.C. § 11048. But this provision does not “empower[] [EPA] to establish regulations which run far afield from the substance of the Act.” *Kaw Valley, Inc. v. EPA* 844 F. Supp. 705, 708 (D. Kan. 1994) (citing *Central Forwarding, Inc. v. Interstate Commerce Comm’n*, 698 F.2d 1266, 1277 (5th Cir. 1983)). Given that the Proposed Rule is contrary to the purposes of EPCRA, *see infra*, Section IV.A, this general rulemaking provision cannot be considered “necessary,” and thus does not do the work that EPA ascribes to it. *See Mourning*, 411 U.S. at 369; *Ragsdale*, 535 U.S. at 86.

vi. *Federal Insecticide, Fungicide, Rodenticide Act (“FIFRA”)*

EPA also cites to two specific provisions in the Federal Insecticide, Fungicide, Rodenticide Act (“FIFRA”) as statutory support for the Proposed Rule. Upon closer examination, these provisions do not provide the necessary authority for this Rule.

First, EPA points to Section 20(a), 7 U.S.C. § 136r(a), which provides:

(a) Research

The Administrator shall undertake research including research by grant or contract with other Federal agencies, universities, or others as may be necessary to carry out the purposes of this subchapter, and the Administrator shall conduct research into integrated pest management in coordination with the Secretary of Agriculture. The Administrator shall also take care to ensure that such research does not duplicate research being undertaken by any other Federal agency.

By its plain language, this provision authorizes research, not the use of scientific studies in regulating pesticides. Thus, EPA’s reliance on this provision as support for this rule is misplaced.

Second, the Proposed Rule cites Section 25(a)(1), 7 U.S.C. § 136w, which authorizes the EPA Administrator “to prescribe regulations to carry out the provisions of this subchapter.” However, this broad authority is expressly limited to regulating “in accordance with the procedure[]” prescribed in FIFRA itself. *Id.* Yet, as discussed more fully in Section V, EPA failed to comply with these requisite procedures. Accordingly, this provision provides no authority for EPA’s issuance of this rule.

vii. *Toxic Substances Control Act (“TSCA”)*

EPA’s reliance on the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2609, as authority for the Proposed Rule, fares no better. Indeed, much like many of the other statutory provisions upon which EPA relies, this provision governs EPA’s authority to conduct and support research, and does not address EPA’s authority to use scientific data or research in support of regulatory decisions.

Specifically, section 2609 grants EPA authority to “conduct such research, development, and monitoring as is necessary to carry out the purposes of this chapter. [EPA] may enter into contracts and may make grants for research, development, and monitoring under this subsection.” 15 U.S.C. § 2609(a). Section 2609 grants EPA additional related authorities, including authority to:

- Create and operate information systems to store data relevant to chemical substances, *id.* § 2609(b);

- Develop “screening techniques for carcinogenic, mutagenic, teratogenic, and ecological effects of chemical[s],” *id.* § 2609(c);
- Establish a research program to develop chemical “monitoring techniques and instruments,” *id.* § 2609(d);
- Conduct “basic research” on chemical screening and monitoring, *id.* § 2609(e), and train federal scientists on chemical screening and monitoring, *id.* § 2609(f); and
- Develop systems for information sharing among “Federal, state, and local authorities,” *id.* § 2609(g).

Notably absent from the list of authorities under section 2609 is EPA’s authority to determine what science it can consider when making regulatory decisions. Instead, the provision solely focuses on EPA’s ability to conduct research or to fund research, independent of whether that research will or may be used by EPA to make regulatory decisions. Thus, section 2609 does not provide any basis for the authority claimed in the Proposed Rule.

Moreover, § 2625 of TSCA governs how EPA uses science when exercising its main regulatory powers under the statute, and establishes detailed criteria that EPA must use when “the Administrator makes a decision based on science” when carrying out its regulatory powers. 15 U.S.C. § 2625(h). Thus, this provision, and not those cited by EPA, would theoretically govern a rule related to the use of science. *See Bennett v. Islamic Republic of Iran*, 618 F.3d 19, 25 (D.C. Cir. 2010) (“where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposefully in the disparate inclusion or exclusion.” (quoting *Russello v. United States*, 464 U.S. 16, 23 (1983))). However, and as discussed more fully *infra*, Section IV.A, the Proposed Rule contravenes the requirements of § 2625 that EPA consider all “reasonably available information” when making regulatory decisions, and thus is not authorized by this provision either.

viii. Resource Conservation and Recovery Act (“RCRA”)

The Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 6901 *et seq.*, gives EPA the authority and responsibility to manage and control solid and hazardous waste, including the generation, transportation, treatment, storage, and disposal of the waste. EPA points to two provisions in RCRA for support of this Proposed Rule, neither of which authorizes this action.

The first provision of RCRA cited as authority for this rule, § 6912(a)(1), provides the Administrator with the general authority to “prescribe, in consultation with Federal, State, and regional authorities, such regulations as are necessary to carry out his functions under this chapter.” 42 U.S.C. § 6912(a)(1). RCRA defines the functions of EPA in the area covered by RCRA, and therefore, EPA cannot rely upon the general authority to make rules provided by the statute. *Am. Petroleum Inst.*, 52 F.3d at 1119 (“EPA cannot rely on its general authority to make rules necessary to carry out its functions when a specific statutory directive defines the relevant

functions of EPA in a particular area.”). Moreover, limiting the consideration of reliable health science when promulgating regulations that have significant health and environmental impacts is in no way “necessary” for the Administrator to carry out his functions under RCRA, and thus, for this reason too, the general rulemaking provision does not authorize this rule. *See Mourning*, 411 U.S. at 369.

The second provision of RCRA upon which EPA relies, § 6979, is inapposite. This provision pertains to labor standards related to wages for laborers and mechanics. 42 U.S.C. § 6979. This provision has no relevance to the Proposed Rule whatsoever and certainly does not provide the authority for it. Thus, nothing that EPA cites to in RCRA provides the requisite authority for this Proposed Rule.

ix. 5 U.S.C. § 301

In its notice extending the comment period and adding a public hearing, as an implicit admission that it has not cited sufficient authority for the Proposed Rule, EPA adds a new source of alleged authority, stating that “EPA is proposing this rule under authority of 5 U.S.C. 301, in addition to the authorities listed in the April 30th document.” *See* 83 Fed. Reg. 24,255, 24,256 (May 25, 2018). Just like with the other statutory provisions upon which it relies, EPA is trying to fit a square peg in a round hole.

Section 301 of Title 5 provides “[t]he head of an Executive department or military department” authority to “prescribe regulations for the government of his department, the conduct of its employees, the distribution and performance of its business, and the custody, use, and preservation of its records, papers, and property.” This provision governs internal organizational and bureaucratic steps required for operations. It allows all agencies to issue regulations to preserve and use their own papers and property. This section is plainly focused on allowing executive agencies to issue rules necessary to carry out the performance of their agencies’ internal workings, not to allow EPA to regulate scientific material in rulemakings.

Indeed, the “purpose” of this section, “which originated in 1789 as a law ‘to enable General Washington to get his administration underway by spelling out the authority of Government officers to set up offices and to file Government documents’ . . . is to set up merely internal guidelines for a given governmental agency” to perform its job. *United States v. Lewis*, No. C-CR-89-114-01, 1990 WL 11111, *5 (W.D. N.C. Feb. 5, 1990) (citation omitted). That is why it is known as the “Housekeeping Statute,” to literally allow the federal government to set up and keep house. *U.S. ex. Rel. O’Keefe v. McDonnell Douglas Corp.*, 132 F.3d 1252, 1254 (8th Cir. 1998) (citing H.R. Rep. No. 85-1461 (1958), *reprinted in* 1958 U.S.C.C.A.N. 3352). The Act was amended in 1966 as “codifying the general and permanent laws relating to the organization of the Government of the United States and to its civilian officers and employees.” Pub. L. No. 89-554, 80 Stat. 378 (Sept. 6, 1966).

In *Chrysler Corp. v. Brown*, 441 U.S. 281, 310 (1979), the Supreme Court evaluated the Housekeeping Statute and held that it does not provide statutory authority for substantive regulations. After a brief historical analysis of the provision, the Court wrote:

Given this long and relatively uncontroversial history, and the terms of the statute itself, it seems to be simply a grant of authority to the agency to regulate its own affairs. . . It is indeed a “housekeeping statute,” authorizing what the APA terms “rules of agency organization procedure or practice” as opposed to “substantive rules.”

Id. at 309–10. Multiple courts have agreed and limited rulemaking under this provision to non-substantive rules. *See, e.g., McDonnell Douglas Corp.*, 132 F.3d at 1256 (citing examples).⁴⁶

Based on this long line of authority, EPA’s reliance on this authority is sorely misplaced. EPA’s attempt to “construe [this provision] as something more” is a “misuse” that “twist[s]” the statute beyond its intended purpose; EPA may not “twist this simple administrative statute into an authorization for the promulgation of substantive rules.” *Id.* at 1255 (citing and quoting *Chrysler Corp.*, 441 U.S. at 310 n.41 (quoting H.R. Rep. No. 85–1461 at 7 (1958))).

The Proposed Rule does not relate to the organization of EPA or how it preserves its papers or keeps house. EPA’s exclusion of critical health studies is such a far cry from being necessary to “set up offices” and to “file Government documents,” that reliance on this provision hardly passes the laugh test. As discussed extensively in these Comments, the Proposed Rule is by no means necessary for EPA to perform its job but rather is antithetical to the very statutes it is responsible for effectuating. Accordingly, for the same reasons the general rulemaking authority provisions under all of the environmental statutes EPA cites do not authorize this rule, § 301 likewise does not permit EPA to issue a rule that undermines scientific integrity as well as all of the public health and environmental protections EPA is charged with enforcing.

B. EPA Has No Inherent Authority to Issue This Proposed Rule.

EPA’s lack of statutory authority to propose this rule is fatal, as it has no inherent power to act. Indeed, it is well settled that a federal agency “literally has no power to act . . . unless and until Congress confers power upon it.” *La. Pub. Serv. Comm’n v. FCC*, 476 U.S. 355, 374 (1986); *see also Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 208 (1988) (“It is axiomatic that an administrative agency’s power to promulgate legislative regulations is limited to the authority delegated by Congress.”); *Clean Air Council v. Pruitt*, 862 F.3d 1, 9 (D.C. Cir. 2017) (“[I]t is ‘axiomatic’ that ‘administrative agencies may act only pursuant to authority delegated to them by Congress’” (citation omitted)); *Ohio Dep’t of Medicaid v. Price*, 864 F.3d 469, 476 (6th

⁴⁶ *See, e.g., In re Bankers Tr. Co.*, 61 F.3d 465, 470 (6th Cir. 1995) (Federal Reserve Board regulation requiring subpoenaed party to refuse production of confidential Federal Reserve Board information, contrary to Federal Rule of Civil Procedure 34, was not authorized by the Housekeeping Statute and “exceed[ed] the congressional delegation of authority”); *Exxon Shipping Co. v. U.S. Dep’t of Interior*, 34 F.3d 774, 776–78 (9th Cir. 1994) (Housekeeping Statute did not authorize regulations allowing agency to withhold deposition testimony of federal employees); *In re Cincinnati Radiation Litig.*, 874 F. Supp. 796, 826–27 (S.D. Ohio 1995) (Housekeeping Statute did not authorize 1953 Defense Department directive on the use of human volunteers in experimental research); *McElya v. Sterling Med., Inc.*, 129 F.R.D. 510, 514 (W.D. Tenn. 1990) (Housekeeping Statute did not give Department of Navy authority to create general discovery privilege for persons under its jurisdiction).

Cir. 2017) (“Agencies, after all, are creatures of statutory authority.” (citation and internal quotations omitted)). This is because, under the Constitution, Congress is the branch of government with lawmaking power. *City of Arlington, Tex. v. FCC*, 569 U.S. 290, 317 (2013) (noting that an agency has no lawmaking power unless Congress delegates that power to it). “The legislative power of the United States is vested in the Congress, and the exercise of quasi-legislative authority by governmental departments and agencies must be rooted in a grant of such power by the Congress and subject to limitations which that body imposes.” *Chrysler Corp.*, 441 U.S. at 302. Thus, EPA only has rulemaking power to the extent that Congress delegated it such power. *Lyng v. Payne*, 476 U.S. 926, 937 (1986) (“an agency’s power is no greater than that delegated to it by Congress.”).

Moreover, the fact that Congress has given EPA the authority to regulate in a certain area does not mean that it has general authority to make any rule within that area. This argument has been squarely rejected:

The [agency’s] position in this case amounts to the bare suggestion that it possesses *plenary* authority to act within a given area simply because Congress has endowed it with *some* authority to act in that area. We categorically reject that suggestion. Agencies owe their capacity to act to the delegation of authority from Congress.

Am. Library Ass’n v. FCC, 406 F.3d 689, 708 (D.C. Cir. 2005) (quoting *Ry. Labor Executives’ Ass’n v. Nat’l Mediation Bd.*, 29 F.3d 655, 670 (D.C. Cir. 1994)) (internal quotations omitted; emphasis in original); see also *Liberty Mut. Ins. Co. v. Friedman*, 639 F.2d 164, 169 (4th Cir. 1981) (“a court must reasonably be able to conclude that the grant of authority contemplates the regulations issued.” (citation and internal quotation marks omitted)). “[T]he power to issue regulations is not the power to issue any regulations.” *Nat’l Mining Ass’n v. U.S. Dep’t of the Interior*, 105 F.3d 691, 694 (D.C. Cir. 1997). In light of the statutory limitation on EPA’s authority to restrict science in the way it proposes to do, see *infra*, Section IV, any general rulemaking authority on which it might otherwise try to rely does not authorize the Proposed Rule. See, e.g., *Nat. Res. Def. Council, Inc. v. Reilly*, 976 F.2d 36, 40-41 (D.C. Cir. 1992) (refusing to allow EPA to rely on general rulemaking authority to trump specific limitations on its authority because a vague “open-ended power” does not “trump the specific provisions of the [Clean Air] Act”; and “EPA’s construction of the statute is condemned by the general rule that when a statute lists several specific exceptions to the general purpose, others should not be implied.” (citation and internal quotation marks omitted)).

Accordingly, EPA has no general or inherent authority permitting it to lawfully adopt the Proposed Rule or otherwise limit what science may be considered in the rulemaking process. It, therefore, must be acting pursuant to some grant of authority by Congress for the Proposed Rule to be lawful. Yet none of the stated authorities upon which EPA relies provides the necessary

authority to promulgate this rule.⁴⁷ Given that EPA has no statutory authority to issue the Proposed Rule, its action is *ultra vires*. See, e.g., *McDonnell Douglas Corp.*, 132 F.3d at 1257 (“An agency’s promulgation of rules without valid statutory authority implicates core notions of the separation of powers, and we are required by Congress to set these regulations aside.” (citing cases finding *ultra vires* agency action)). The Proposed Rule is therefore unlawful.

IV. THE PROPOSED RULE VIOLATES PROVISIONS OF THE LISTED AUTHORIZING STATUTES, AS WELL AS NUMEROUS OTHER STATUTES, POLICIES, AND EXECUTIVE ORDERS, AND IS THEREFORE UNLAWFUL.

A. The Proposed Rule Violates the Purported Authorizing Statutes.

Agency “regulations, in order to be valid, must be consistent with the statute under which they are promulgated.” *Decker v. Nw. Envtl. Def. Ctr.*, 568 U.S. 597, 609 (2013) (quoting *United States v. Larionoff*, 431 U.S. 864, 873 (1977)). As discussed below, the Proposed Rule violates a number of provisions in the statutes upon which EPA relies as statutory authority. For this reason, too, the Proposed Rule is invalid.

i. CAA

The Clean Air Act’s specific rulemaking provisions do not allow EPA to create the restrictions on the consideration or use of health science that EPA proposes. Rather, these provisions govern each type of CAA rulemaking, and to the extent science can and must be considered under these provisions, EPA may not lawfully restrict the use of such science.⁴⁸ The Proposed Rule contravenes a number of CAA provisions and is thus unlawful.

First, sections 108 and 109 of the Clean Air Act do not allow EPA to restrict science as proposed and demonstrate that the Proposed Rule cannot lawfully be applied to any NAAQS rulemakings. These provisions specify that EPA’s air quality criteria (on which the NAAQS are based) must “accurately reflect the latest scientific knowledge.” 42 U.S.C. § 7408(a)(2); *id.* § 7409(b) (requiring those “criteria” be used to set NAAQS). This language unambiguously requires EPA to consider “all identifiable effects on public health,” not just some. *Id.* § 7408(a)(2). The criteria “shall include information” on defined factors, “to the extent practicable.” *Id.* This provision leaves no room for EPA to ignore or exclude studies because underlying data is not disclosed.

EPA cannot possibly ensure its air quality criteria “accurately reflect the latest scientific knowledge” if it refuses to even read certain studies based on an arbitrary public disclosure test. EPA’s past practice illustrates this: for decades, the Agency’s practice has been to review *all* available scientific studies, including those relying on non-public data. See, e.g., *Battery Recyclers*, 604 F.3d at 616; see also EPA, *Integrated Science Assessment (ISA) for Particulate*

⁴⁷ EPA may not now add any new authority (if any exists) to try to save this action, as doing so would violate public notice-and-comment requirements under the statutes cited herein, as well as under the Administrative Procedure Act.

⁴⁸ Commenters do not concede that the Proposed Rule would necessarily apply to every action under these provisions.

Matter (Final Report, Dec 2009) (2009), <https://cfpub.epa.gov/ncea/risk/recordisplay.cfm?deid=216546>; EPA, *Air Quality Criteria for Particulate Matter*, Vols. II-III (1996), <https://cfpub.epa.gov/ncea/risk/recordisplay.cfm?deid=2832>. The legislative history of § 108 confirms that Congress’s intent was for EPA to “establish such national goals on the basis of *the best information available*,” not to sit idly by until industry representatives no longer dispute questions regarding health effects. S. Rep. No. 91-1196 (Sept. 17, 1970), CAA70 Leg. Hist. 19, 110 (emphasis added).

In addition, the Proposed Rule would direct EPA to violate the statutory procedures that must be followed when the Agency sets NAAQS. This includes EPA’s appointment of an independent scientific review committee, including certain defined members, *see* 42 U.S.C. § 7409(d)(2)(A), and consideration of the recommendations of that committee when setting the NAAQS, *id.* § 7409(d)(2)(B)-(C); *see also, e.g., Mississippi v. EPA*, 744 F.3d 1334, 1346 (D.C. Cir. 2013) (explaining NAAQS development process). That committee shall advise EPA regarding whether there are “areas in which additional knowledge is required.” 42 U.S.C. § 7409(d)(2)(C). In promulgating NAAQS in the past, EPA has recognized that the CAA requires it to consider scientific advice and recommendations from such experts, including those that rely on health studies where underlying data is not disclosed.⁴⁹ Directing the Agency to ignore scientific studies presented by CASAC, just because the underlying data is not public, contravenes these statutory requirements.

Second, section 7409 of the Act requires EPA to adopt NAAQS based on the criteria, at levels requisite to protect public health with an adequate margin of safety. “[T]he Act requires [a] . . . preventative and precautionary” approach to setting NAAQS, whereby EPA must protect public health from “not just known adverse effects, but those of scientific uncertainty or that research has not yet uncovered.” *Am. Lung Ass’n v. EPA*, 134 F.3d 388, 389 (D.C. Cir. 1998) (citation and quotation marks omitted). Congress “specifically directed” EPA “to protect against . . . effects whose medical significance is a matter of disagreement.” *Lead Indus. Ass’n v. EPA*, 647 F.2d 1130, 1154 (D.C. Cir. 1980); *accord Nat. Res. Def. Council, Inc. v. EPA*, 824 F.2d 1146, 1152 (D.C. Cir. 1987) (*en banc*) (discussing legislative history). EPA’s proposal would

⁴⁹ *See, e.g., EPA, Integrated Science Assessment (ISA) of Ozone and Related Photochemical Oxidants (Final Report, Feb 2013)*, EPA/600/R-10/076F (2013), <http://cfpub.epa.gov/ncea/isa/recordisplay.cfm?deid=247492>; EPA, *Integrated Science Assessment (ISA) for Particulate Matter (Final Report, Dec 2009)*, EPA/600/R-08/139F (2009), <https://cfpub.epa.gov/ncea/risk/recordisplay.cfm?deid=216546>; *see also* EPA, *Integrated Science Assessment (ISA) for Lead (Final Report, Jul 2013)* (July 2013), <https://cfpub.epa.gov/ncea/isa/recordisplay.cfm?deid=255721>; EPA, CASAC Review of the EPA’s Integrated Science Assessment for Lead (Third External Review Draft – November 2012) (June 4, 2013), [https://yosemite.epa.gov/sab/sabproduct.nsf/264cb1227d55e02c85257402007446a4/39A3C8177D869EA085257B80006C7684/\\$File/EPA-CASAC-13-004+unsigned.pdf](https://yosemite.epa.gov/sab/sabproduct.nsf/264cb1227d55e02c85257402007446a4/39A3C8177D869EA085257B80006C7684/$File/EPA-CASAC-13-004+unsigned.pdf); *see also* EPA, EPA Clean Air Scientific Advisory Committee (CASAC) (last updated Aug. 3, 2018), <https://yosemite.epa.gov/sab/sabproduct.nsf/WebProjectsbyTopicCASAC!OpenView> (NAAQS assessments and criteria document).

flout these precedents by refusing to consider scientific studies – even those published in peer-reviewed journals by reputable scientists – based on an arbitrary data transparency policy.

To the extent the CAA allows EPA to weigh particular studies based on its expert judgment, this does not authorize EPA to categorically exclude an entire class of studies from being considered when performing a rulemaking to fulfill the Agency’s statutory directive to protect public health and welfare. 42 U.S.C. § 7409(b)(1) (requiring primary NAAQS to be standards “the attainment and maintenance of which in the judgment of the Administrator, based on such criteria and allowing an adequate margin of safety, are requisite to protect the public health”). EPA cannot rationally engage in its task of determining an appropriate level for the NAAQS if it entirely excludes relevant health studies from its consideration simply because underlying data has not been publicly released. Under the Proposed Rule, EPA would refuse to consider studies indicating that adverse health effects occur at a specific pollutant level—even where multiple studies reach the same results—where the studies fail to meet the agency’s arbitrary disclosure tests. This would contradict the statutory requirement to assure public health protection by ignoring some of the most important health science relevant to that question and is the epitome of irrational agency action.

Third, the Proposed Rule violates section 7412 of the CAA, which includes myriad provisions that require EPA to evaluate health risks and effects of hazardous air pollutants (“HAPs” or “air toxics”) and to set emission standards to reduce these risks and effects, based on certain science-based legal tests applicable to particular § 7412 rulemakings. *See, e.g.*, 42 U.S.C. § 7412(a), (b)(1)-(4), (f)(1)-(2). In no place does the statute limit EPA’s consideration of scientific studies on health effects or risks to those studies where underlying data is publicly disclosed, nor does it authorize EPA to so limit its consideration of such scientific information. Instead, § 7412 includes language repeatedly indicating the requirement, embodying Congressional intent, for EPA to consider *all* relevant scientific information regarding health risks and effects, actual or potential, of hazardous air pollutants.

For example, § 7412(f) requires EPA to investigate and report, among other things, on “the actual health effects with respect to persons living in the vicinity of sources,” and “*any available epidemiological or other health studies*” regarding the effects of HAPs, as part of the residual risk requirements. *Id.* § 7412(f)(1)(C) (emphasis added); *id.* § 7412(f)(1) (also providing other requirements for EPA’s investigation and report to Congress). EPA submitted that report to Congress in 1999.⁵⁰ Section 7412(f) further provides that, in the absence of Congressional action on recommendations provided in EPA’s Residual Risk Report to Congress, EPA “shall . . . promulgate standards for [each air toxics] category or subcategory if promulgation of such standards is required in order to provide an ample margin of safety to protect public health in accordance with this section (as in effect before November 15, 1990).” *Id.* § 7412(f)(2)(A). This provision also directs that:

Emission standards promulgated under this subsection shall provide an ample margin of safety to protect public health in accordance with this section (as in effect before November 15,

⁵⁰ EPA, *Residual Risk Report to Congress*, EPA-453/R-99-001 (Mar. 1999), <https://www.epa.gov/fera/residual-risk-report-congress-1999>.

1990), unless the Administrator determines that a more stringent standard is necessary to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect. If standards promulgated pursuant to subsection (d) and applicable to a category or subcategory of sources emitting a pollutant (or pollutants) classified as a known, probable or possible human carcinogen do not reduce lifetime excess cancer risks to the individual most exposed to emissions from a source in the category or subcategory to less than one in one million, the Administrator shall promulgate standards under this subsection for such source category.

Id. § 7412(f)(2)(A). It would not be possible for EPA to fulfill its statutory directives under § 7412(f) to ensure that air toxics emissions standards “provide an ample margin of safety to protect public health,” and to assess and remove any unacceptable health risks, unless EPA considered all relevant scientific studies in assessing such health risks. *Id.* § 7412(f)(2).

Further, § 7412(f)(2) also explicitly refers to EPA’s Benzene Rule, which interpreted the prior version of this provision and which itself relied on certain studies and guidelines for which underlying data was not disclosed. *Id.* § 7412(f)(2)(B) (citing 54 Fed. Reg. 38,044 (Sept. 14, 1989)).⁵¹ As EPA determined, and Congress, the D.C. Circuit, and EPA have affirmed through citation and reliance on that rule, § 7412(f) standards must be “based on the most current scientific knowledge,” and on risk assessment guidelines and methods developed by EPA scientists and expert independent scientists. 54 Fed. Reg. at 38,062-63.⁵² EPA has repeatedly recognized this reliance on an expansive array of scientific support that includes information that relies on epidemiological and other health studies for which the underlying data is not published in later § 7412(f) rulemakings as well.

Indeed, EPA itself has interpreted its legal responsibility pursuant to this provision as “incorporating into our assessments the best available science with respect to dose-response information.”⁵³ To achieve that, EPA has followed scientific recommendations by the Office of

⁵¹ In that rule, among other studies, “the Agency compiled and presented a ‘Survey of Societal Risk’ in its July 1988 proposal (53 FR 28512-28513).” 54 Fed. Reg. at 38,046. The underlying data for that survey was not disclosed, yet the Agency both considered and relied on it. *Id.*

⁵² In that rule, EPA explained that risk assessments and § 7412(f) rules must be based on “the most current scientific knowledge and on sound scientific judgment”; EPA stated that it had based that rule on “an evaluation of the currently available information and on the regulatory mission of EPA to protect public health”; EPA also relied on the then-applicable Cancer Guidelines, and Guidelines for Exposure Assessment, explaining that “these guidelines were developed by scientists in EPA, and were extensively reviewed by the public and by expert scientists in industry, academia, environmental groups, and other governmental agencies.” 54 Fed. Reg. at 38,062-63.

⁵³ See, e.g., EPA, *Residual Risk Assessment for the Portland Cement Manufacturing Source Category in Support of the Sept. 2017 Risk and Technology Review Proposed Rule* at 23 (July 2017), <https://www.regulations.gov/document?D=EPA-HQ-OAR-2016-0442-0153> (describing the Agency’s current policy and scientific methodology for this type of health risk assessment); see also e.g., EPA, *Residual Risk Assessment for Pulp Mill Combustion Sources in Support of the October, 2017 Risk and*

Air Quality Planning and Standards, and has prioritized certain sources of such dose-response information according, in part, to “level of peer review received.”⁵⁴ These guidelines direct EPA to consult dose-response assessments such as a reference concentration (RfC, for inhalation), reference dose (RfD, for ingestion), and a unit risk estimate (URE, for cancer risk) and/or slope factor (SF, for cancer risk).⁵⁵ EPA’s scientific method is to consult and rely on IRIS (an EPA database containing peer-reviewed scientific health assessment information) as a top priority source of such information, due in part to the high level of peer review. As EPA’s guidelines explain: “IRIS is a critical resource for risk assessors because the database contains toxicity information that reflects a consensus among EPA program offices.”⁵⁶ EPA also prioritizes dose-response information from the U.S. Agency for Toxic Substances and Disease Registry (“ATSDR”), and the California EPA Office of Environmental Health Hazard Assessment.⁵⁷

Technology Review Final Rule at 6, 18-19 (July 2017), <https://www.regulations.gov/document?D=EPA-HQ-OAR-2014-0741-0266> (same). In citing these examples, Commenters do not contend that EPA’s approach is the most health-protective or that it fully incorporates the extent of current scientific knowledge, as they have repeatedly urged EPA to follow the more conservative and more scientifically up-to-date approach of the NAS Silver Book, as the Agency is well aware from submitted comments and from reviewing that report. See, e.g., NAS, *Science & Decisions: Advancing Risk Assessment* (2009), <https://www.nap.edu/catalog/12209/science-and-decisions-advancing-risk-assessment>; Nat. Res. Def. Council, *Strengthening Toxic Chemical Risk Assessments to Protect Human Health* (Feb. 2012), <https://www.nrdc.org/sites/default/files/strengthening-toxic-chemical-risk-assessments-report.pdf> (describing ways EPA needs to strengthen, not weaken, risk assessments based on NAS recommendations). However, refusing to look at IRIS or other health reference values that rely in any way on non-public data as EPA proposes would represent a significant backward step by EPA, away from current science, as well as an about-face from its well-developed scientific policy and current methods which are based on years of evaluation and have gone through extensive peer review by the Science Advisory Board. See, e.g., SAB, *Risk and Technology Review (RTR) Risk Assessment Methodologies* (May 2010) (supporting EPA’s approach and urging EPA to take a more protective scientific approach on certain issues).

⁵⁴ EPA, *Cement Kilns Risk Assessment*, *supra* n.53, at 23 (citing EPA, 2014a. Table 1); EPA, Table 1: Prioritized Chronic Dose-Response Values for Screening Risk Assessments (June 18, 2018), <https://www.epa.gov/sites/production/files/2014-05/documents/table1.pdf>.

⁵⁵ EPA, *Cement Kilns Risk Assessment*, *supra* n.53, at 23 (The RfC is defined as an “estimate (with uncertainty spanning perhaps an order of magnitude) of a continuous inhalation exposure to the human population (including sensitive subgroups) that is likely to be without an appreciable risk of deleterious effects during a lifetime.” The RfD is “an estimate (with uncertainty spanning perhaps an order of magnitude) of a daily oral exposure to the human population (including sensitive subgroups) that is likely to be without an appreciable risk of deleterious effects during a lifetime.” The URE is defined as “the upper-bound excess cancer risk estimated to result from continuous lifetime exposure to an agent at a concentration of 1 µg/m³ in air.” The SF is “an upper bound, approximating a 95 percent confidence limit, on the increased cancer risk from a lifetime exposure to an agent. This estimate, [is] usually expressed in units of proportion (of a population) affected per mg/kgday . . .”).

⁵⁶ EPA, *Air Toxics Risk Assessment Reference Library*, Vol. 1 Tech. Res. Manual, EPA-453-K-04-001A at 3-9 (April 2004), https://www.epa.gov/sites/production/files/2013-08/documents/volume_1_reflibrary.pdf, *id.* at 12-25 (“Dose-response assessments that have achieved full intra-agency consensus are incorporated in the Integrated Risk Information System (IRIS), which is regularly updated and available on-line (www.epa.gov/iris).”).

⁵⁷ EPA, *Cement Kilns Risk Assessment*, *supra* n.53, at 24.

Each of these recognizes the value of relevant scientific information without regard to whether full underlying data can be or has been publicly disclosed.⁵⁸

Section 7412(a)(11) likewise illustrates the constraints the CAA imposes on limiting consideration of science when establishing cancer risk. This provision defines “carcinogenic effect” as having “the meaning provided by the Administrator under Guidelines for Carcinogenic Risk Assessment as of the date of enactment.” 42 U.S.C. § 7412(a)(11). These Guidelines for Carcinogenic Risk Assessment (“Cancer Guidelines”), in turn, direct that EPA shall rely on “established scientific peer review processes,” and state that “[t]he cancer guidelines incorporate basic principles and science policies based on evaluation of the currently available information.”⁵⁹ The Cancer Guidelines also provide that EPA’s Supplemental Guidance for Assessing Susceptibility from Early-Life Exposure to Carcinogens (“Supplemental Guidance”) should be considered along with the Guidelines.⁶⁰ Both the Cancer Guidelines and Supplemental Guidance cite as relevant and in some instances important some of the very types of scientific studies that EPA’s Proposed Rule would categorically exclude: epidemiological studies which rely on private or confidential medical information, or assessments such as IRIS, California Environmental Protection Agency’s (“Cal. EPA”) assessments, and other health reference concentration information that rely on such studies.⁶¹ The Cancer Guidelines do not preclude the

⁵⁸ As IRIS values show, IRIS considers relevant and often essential epidemiological evidence for which underlying private confidential or medical information is not released. *See, e.g.,* EPA, *EPA’s Reanalysis of Key Issues Related to Dioxin Toxicity and Response to NAS Comments, Vol. 1*, CAS No. 1746-01-06, EPA/600/R-10/038F, at 1-7 (Feb. 2012), https://cfpub.epa.gov/ncea/iris/iris_documents/documents/supdocs/dioxinv1sup.pdf (discussing the use of two human epidemiological studies “as co-critical studies” to derive the reference dose in the IRIS assessment, and the SAB’s agreement with EPA that these represent best available science); EPA, *Toxicological Review of Hexavalent Chromium* (Aug. 1998), https://cfpub.epa.gov/ncea/iris/iris_documents/documents/toxreviews/0144tr.pdf (relying on human epidemiologic studies); EPA, *Toxicological Review of Formaldehyde-Inhalation Assessment* (June 2010), http://ofmpub.epa.gov/eims/eimscomm.getfile?p_download_id=497038 (relying on epidemiologic studies).

⁵⁹ EPA, *Guidelines for Carcinogen Risk Assessment* (hereinafter “Cancer Guidelines”) at 1-2 (Mar. 2005), https://www.epa.gov/sites/production/files/2013-09/documents/cancer_guidelines_final_3-25-05.pdf.

⁶⁰ EPA, *Supplemental Guidance for Assessing Susceptibility from Early-Life Exposure to Carcinogens*, EPA/630/R-03/003F (Mar. 2005), https://www3.epa.gov/airtoxics/childrens_supplement_final.pdf.

⁶¹ For example, the Supplemental Guidance states: “[The] critical data are either human epidemiological data on childhood exposures resulting in adult cancer or research studies with rodents involving early postnatal exposures. The major human data available are from radiation exposures . . . with very limited data available for humans exposed during childhood to chemicals.” Suppl. Guidance at 13. The Cancer Guidelines and later EPA policy state that “[a]ll studies that are considered to be of acceptable quality, whether yielding positive or null results, or even suggesting protective carcinogenic effects, *should be considered in assessing the totality of the human evidence*. Conclusions about the overall evidence for carcinogenicity *from available studies in humans* should be summarized along with a discussion of uncertainties and gaps in knowledge.” Cancer Guidelines, *supra* n.59, at 2-4 (emphasis added). They further provide that “[h]uman data may come from epidemiologic studies or case reports . . . The most common sources of human data for cancer risk assessment are epidemiologic investigations . . .

consideration of any “one kind of data” as relevant, but instead “cover the assessment of available data,” explaining that “[i]t is very important that all analyses consider the basic standards of quality, including objectivity, utility, and integrity.”⁶²

Thus, EPA’s Proposal to ignore studies because underlying data is not disclosed is antithetical to the Guidelines upon which EPA relies when determining carcinogenic effects in § 7412(a)(11). The statute’s text and incorporation of EPA’s science guidelines on cancer risk are unambiguous and leave no gap to fill regarding what “carcinogenic” means. Thus, in regulating carcinogens EPA may not apply the Proposed Rule’s exclusion of any relevant health science regarding carcinogens and carcinogenic risk from air pollutants in rulemakings.

Consistent with the reliance on all relevant health science to determine carcinogenic effects, for cancer and other health risks under § 7412(f), EPA has an existing policy of what it describes as using the “the best available science with respect to dose-response information. The recommendations are based on the following sources, in order of priority”: (1) EPA IRIS values which have all gone through independent, external peer-review; (2) ATSDR values, which follow an approach similar to EPA’s IRIS program; and (3) Cal. EPA values for which “[t]he process for developing these assessments is similar to that used by EPA to develop IRIS values and incorporates significant external scientific peer review.”⁶³ Likewise, for non-cancer health risks from air pollution, EPA’s guidelines do not exclude science that is relevant, even if underlying data is not disclosed.⁶⁴ Notably, the vast majority of health reference values that EPA uses in § 7412(f) come from EPA’s IRIS program, which includes a scientific literature review of all available relevant studies, without excluding any due to a lack of disclosure of underlying data.⁶⁵

Epidemiologic data are extremely valuable in risk assessment because they provide direct evidence on whether a substance is likely to produce cancer in humans, thereby avoiding issues such as: species-to-species inference, extrapolation to exposures relevant to people, effects of concomitant exposures due to lifestyles. Thus, epidemiologic studies typically evaluate agents under more relevant conditions. When human data of high quality and adequate statistical power are available, they are generally preferable over animal data and should be given greater weight in hazard characterization and dose-response assessment, although both can be used.” *Id.* at 2-3.

⁶² *Id.* at 1-5.

⁶³ See, e.g., EPA, *Final Residual Risk Assessment for the Petroleum Refining Source Sector* at 15-16 (Sept., 2015), <https://www.regulations.gov/document?D=EPA-HQ-OAR-2010-0682-0800>.

⁶⁴ EPA, *Risk Assessment for Other Effects* (last updated Jan. 31, 2017), <https://www.epa.gov/fera/risk-assessment-other-effects>. See also, EPA, *Guidelines for Mutagenicity Risk Assessment* (1986), <http://www2.epa.gov/risk/guidelines-mutagenicity-risk-assessment>; EPA, *Guidelines for Developmental Toxicity Risk Assessment* (1991), <http://www2.epa.gov/risk/guidelines-developmental-toxicity-risk-assessment>; EPA, *Guidelines for Neurotoxicity Risk Assessment* (1998), <http://www2.epa.gov/risk/guidelines-neurotoxicity-risk-assessment>; EPA, *Guidelines for Reproductive Toxicity Risk Assessment* (1996), <http://www2.epa.gov/risk/guidelines-reproductive-toxicity-risk-assessment>; EPA et al., *Methods for Derivation of Inhalation Reference Concentrations and Application of Inhalation Dosimetry* (1994), <http://www2.epa.gov/risk/methods-derivation-inhalation-reference-concentrations-and-application-inhalation-dosimetry>.

⁶⁵ EPA, *IRIS Process for Developing Human Health Assessments* (last updated March 7, 2018), <https://www.epa.gov/iris/basic-information-about-integrated-risk-information-system#process>.

Fourth, the Proposed Rule is unlawful because EPA is considering costs and is relying on implementation costs as a basis for the Rule, in direct violation of § 7409, § 7412(f)(2), and other provisions of the Clean Air Act where cost is not a relevant or permissible factor in determining health and environmental impacts. *See, e.g.*, 83 Fed. Reg. at 18,768 (indicating that Proposed Rule would apply to “regulations for which the public is likely to bear the cost of compliance”); *see also id.* at 18,774 (proposed § 30.8) (requiring agency to implement the Proposed Rule “in a manner that minimizes costs”). Section 7412(f)(2) prohibits consideration of economic costs in assessing and determining whether the health risks that a major air toxics source causes are “unacceptable,” as it requires a determination of what is required to provide an “ample margin of safety to protect the public health.” *Nat. Res. Def. Council, Inc.*, 824 F.2d at 1164-65 (quotation marks omitted); Benzene Rule, 54 Fed. Reg. at 38,048-49 (citing Vinyl Chloride decision as prohibiting consideration of costs when determining a “safe” or “acceptable” emission level).⁶⁶ Similarly, as EPA explained in the Cancer Guidelines: “Risk assessments may be used to support decisions, but in order to maintain their integrity as decision-making tools, they are not influenced by consideration of the social or economic consequences of regulatory action.” Cancer Guidelines, *supra* n.59, at 1-5 to 1-6. It is therefore both unlawful and arbitrary to use cost as a justification to ignore and exclude health science from residual risk air toxics assessments, and thus as part of the determination of whether risk is acceptable or unacceptable, pursuant to § 7412(f)(2).

Fifth, section 7412(n) directs EPA to “perform a study of the hazards to public health reasonably anticipated to occur as a result of emissions by electric utility steam generating units of pollutants listed under subsection (b) after imposition of the requirements of this chapter,” and to list such sources “after considering the results of [this] study.” 42 U.S.C. § 7412(n)(1). This provision includes no limitation on the data EPA can or must consider for this question, based on EPA’s own interpretation. Thus, previously, in fulfilling its duty pursuant to this provision, EPA considered a wide array of scientific studies as relevant, regardless whether underlying data was disclosed.⁶⁷ Excluding consideration of relevant scientific material addressing such hazards

⁶⁶ *See also, e.g.*, NESHAP Proposed Rule, Pulp Mills, 81 Fed. Reg. 97,046, 97,064 (Dec. 30, 2016) (citing Benzene Rule and vinyl chloride decision) (“If risks are unacceptable, the EPA must determine the emissions standards necessary to bring risks to an acceptable level without considering costs.”); NESHAP Proposed Rule, Friction Materials Mfg., 83 Fed. Reg. 19,499, 19,502 (May 3, 2018) (same); *see also Whitman v. Am. Trucking Ass’n*, 531 U.S. 457, 468-71 (2001) (EPA is prohibited from considering costs in adopting national ambient air quality standards under the Clean Air Act rules).

⁶⁷ *See, e.g.*, EPA, Supplemental Finding That It Is Appropriate and Necessary To Regulate Hazardous Air Pollutants From Coal- and Oil-Fired Electric Utility Steam Generating Units; Final Rule, 81 Fed. Reg. 24,420, 24,421-23, 24,438, nn.1, 10, 11 (Apr. 25, 2016) (citing peer-reviewed risk assessments on human health effects and additional peer review of the Mercury Risk Assessment as well as evaluation of the non-mercury HAP risk assessment and co-benefits from reductions in PM_{2.5} and SO₂ emissions in the MATS Regulatory Impact Analysis) (U.S. EPA. 2011. *Revised Technical Support Document: National-Scale Assessment of Mercury Risk to Populations with High Consumption of Self-caught Freshwater Fish In Support of the Appropriate and Necessary Finding for Coal- and Oil-Fired Electric Generating Units*. Office of Air Quality Planning and Standards. November. EPA- 452/R-11-009. Docket ID No. EPA-HQ-OAR-2009-0234-19913; U.S. EPA. 2011. *Supplement to Non-mercury Case Study Chronic Inhalation Risk Assessment for the Utility MACT Appropriate and Necessary Analysis*. Office of Air Quality Planning and Standards. November. Docket ID No. EPA-HQ-OAR-2009-0234-19912; U.S.

solely because underlying data is not available would arbitrarily lead to an incomplete assessment of relevant information and flout the statute's preventative and health-protective intent. EPA may not apply the Proposed Rule under this provision, as EPA has already recognized – for example, in acting pursuant to § 7412(n)(1) to reach the determination that it is “appropriate and necessary” to regulate power plants due to their health hazards⁶⁸ – but rather must consider the types of studies the Proposed Rule would ignore. EPA cannot depart from its decision to consider such studies relevant without meeting the *State Farm* and *Fox* tests, *see supra* at 23, which it unquestionably has not done here.

In addition, the listing and delisting provisions for HAPs and source categories, and the requirements for the urban air toxics program, require EPA to assess particular and potential health effects and risks from HAPs. *See, e.g.*, 42 U.S.C. § 7412(b)(2)-(3), (c)(9), (k). EPA's Proposal to ignore relevant scientific information due to the lack of public disclosure violates these requirements.

Sixth, CAA § 7429 requires EPA to evaluate health risks and does not allow the exclusion of relevant scientific information. For example:

- § 7429(a)(3) – standards must include new unit siting requirements that, on a site specific basis, minimize potential risks to public health or the environment;
- § 7429(e) requires permits to include site-specific provisions “if the Administrator or the State determines that emissions in the absence of such limitations or measures may reasonably be anticipated to endanger public health or the environment”;
- § 7429 (h)(3) requires residual risk review under § 112(f), and § 129(b)(1) requires the inclusion of any residual risk standards in the guidelines for existing units.

Seventh, the Proposed Rule is antithetical to the very purpose of the Clean Air Act, which is “to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population.” 42 U.S.C. § 7401(b)(1). A “primary goal” is “pollution prevention.” *Id.* § 7401(c). Each of the above provisions must be read in a way that advances that goal; the Proposed Rule would do the contrary and is thus inconsistent with the statute and unlawful. EPA's Proposal runs directly counter to these goals and objectives by arbitrarily excluding consideration of science that discloses health impacts of air pollution. The Proposal is not neutral. It only excludes health-based science (dose-response studies, epidemiological studies) where underlying data is not disclosed, generally because it cannot or should not be disclosed to protect individual participants' privacy and confidentiality. EPA cannot exclude whole categories of scientific data untethered from a specific context or study, but rather must assess each health study on a case-by-case basis to determine whether or not it should be considered in a particular rulemaking, under EPA's long-standing scientific guidelines and policies and its regular approach in CAA rulemakings. Instead, this Proposed Rule excludes health studies from consideration as a class, up front, before EPA is even in the rulemaking stage

EPA. 2011. *Regulatory Impact Analysis for the Final Mercury and Air Toxics Standards*. EPA-452/R-11-011. Docket ID No. EPA-HQ-OAR-2009-0234-20131.).

⁶⁸ 81 Fed. Reg. at 24,422-23.

under its authority. And it does so not for scientific reasons, but simply due to industry preferences – most notably because industry cannot pick them apart by replicating decades of air pollution health effects, or by contacting individuals who shared private medical information to replicate the collection of data.

While the CAA provides for protection of “public health and welfare,” the Proposed Rule favors excluding science even if it is the most relevant and important evidence regarding how to protect public health. While the CAA aims for “pollution prevention” to protect public health, the Proposed Rule would prevent consideration of science relevant to these very goals. Therefore, EPA’s Proposed Rule is unlawful and arbitrary. Thus, EPA cannot lawfully satisfy § 7429 for similar reasons as described above, unless it evaluates relevant information on risks.

Eighth, a number of important CAA provisions require EPA to act based on a finding that air pollution is reasonably anticipated to endanger health or the environment. *See, e.g.*, 42 U.S.C. §§ 7415, 7422, 7521. The D.C. Circuit has ruled that such language “requires a precautionary, forward-looking scientific judgment about the risks of a particular air pollutant, consistent with the CAA’s ‘precautionary and preventative orientation.’” *Coal. for Responsible Regulation v. EPA*, 684 F.3d 102, 122 (D.C. Cir. 2012) (citation omitted). Such a precautionary approach does not require scientific certainty. “If a statute is ‘precautionary in nature’ and ‘designed to protect public health,’ and the relevant evidence is ‘difficult to come by, uncertain, or conflicting because it is on the frontiers of scientific knowledge,’ EPA need not provide ‘rigorous step-by-step proof of cause and effect’ to support an endangerment finding.” *Id.* at 121 (citation omitted). Thus, the court expressly rejected the notion that EPA can or should disregard uncertain or “difficult to come by” evidence under “endangerment” statutes. Indeed, the court rejected the notion that EPA could not rely on studies that synthesized the research of others:

It makes no difference that much of the scientific evidence in large part consisted of “syntheses” of individual studies and research. Even individual studies and research papers often synthesize past work in an area and then build upon it. This is how science works. EPA is not required to re-prove the existence of the atom every time it approaches a scientific question.

Id. at 120. Thus, in making endangerment determinations, there is no lawful or rational basis for EPA to automatically exclude reliance on any studies that synthesize and evaluate research by others.

The Courts have also rejected EPA’s attempts to avoid endangerment determinations based on considerations other than the specific endangerment criteria. In *Massachusetts v. EPA*, the Court held that the endangerment language in section 7521(a)(1) required EPA to assess whether motor vehicle emissions cause or contribute to air pollution which may reasonably be anticipated to endanger public health and welfare due to climate change, and to so determine exclusive of any other policy considerations. *Massachusetts v. EPA*, 549 U.S. 497, 532-34 (2007). Likewise, here, EPA cannot avoid its duty to make endangerment findings by arbitrarily rejecting scientific studies to serve vague and disingenuous policy interests such as allegedly fostering greater public trust and greater transparency in agency decisions.

The Proposed Rule also conflicts with specific language in § 7415 requiring an endangerment finding notification,

[w]henver the Administrator, upon receipt of reports, surveys or studies from any duly constituted international agency has reason to believe that any air pollutant or pollutants emitted in the United States cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare in a foreign country or whenever the Secretary of State requests him to do so with respect to such pollution which the Secretary of State alleges is of such a nature, the Administrator shall give formal notification thereof to the Governor of the State in which such emissions originate.

42 U.S.C. § 7415(a). This provision does not allow EPA to ignore any such “reports, surveys or studies,” if they show “reason to believe” that an air pollutant endangers public health. *Id.*

Similarly, § 7422 directs that EPA “shall review *all available relevant information*,” to determine whether to make an endangerment finding for certain radioactive pollutants (including source material, special nuclear material, and byproduct material), cadmium, arsenic and polycyclic organic matter. 42 U.S.C. § 7422(a) (emphasis added). This language expressly forecloses EPA’s refusal to consider available studies based on an arbitrary transparency screen. *See also* 42 U.S.C. § 7521(a)(1)-(a)(3)(B) (providing for EPA to promulgate revised standards for heavy duty trucks “[o]n the basis of information available to the Administrator concerning the effects of air pollutants emitted from heavy-duty vehicles or engines and from other sources of mobile source related pollutants on the public health and welfare, and taking costs into account”).

Finally, the CAA’s rulemaking provision for air standards and limitations does not allow EPA to ignore relevant scientific information, including information provided by Commenters, and likewise may not direct a court to ignore this data. Section 7607 of the CAA – which provides for judicial review of air rulemakings – prescribes more detailed rulemaking procedures than those provided by the Administrative Procedure Act for a designated list of air emission standards and rules. 42 U.S.C. § 7607(d)(1). These procedures protect the public’s right to notice and comment, in part, by requiring EPA to place into the docket and to consider and respond to all such comments. *Id.* § 7607(d)(4)(B)(i) (“Promptly upon receipt by the agency, all written comments and documentary information on the proposed rule received from any person for inclusion in the docket during the comment period shall be placed in the docket.”); *id.* § 7607(d)(5) (“In promulgating a rule to which this subsection applies (i) the Administrator shall allow any person to submit written comments, data, or documentary information; (ii) the Administrator shall give interested persons an opportunity for the oral presentation of data, views, or arguments, in addition to an opportunity to make written submissions . . .”); *id.* § 7607(d)(6)(B) (“The promulgated rule shall also be accompanied by a response to each of the significant comments, criticisms, and new data submitted in written or oral presentations during the comment period.”).

EPA's Proposed Rule contravenes these requirements and is therefore unlawful because it allows EPA to decide, before even receiving comments, that it will not consider or respond through regulatory action to any comments that submit scientific material for which underlying information is not disclosed. Under § 7607(d), EPA may not lawfully decide to ignore an entire class of science; if submitted by commenters as relevant, EPA must consider and respond in the context of the statutory test that applies to its rulemaking. Failure to do so is unlawful and arbitrary. *Id.* § 7607(d)(9).⁶⁹

Relatedly, for certain rules where recommendations are provided from scientific experts, § 7607 requires additional material to be placed into the docket, without EPA discretion. *Id.* § 7607(d)(3) (requiring a "statement" that "shall also set forth or summarize and provide a reference to any pertinent findings, recommendations, and comments by the Scientific Review Committee established under section 7409(d) of this title and the National Academy of Sciences, and, if the proposal differs in any important respect from any of these recommendations, an explanation of the reasons for such differences."). EPA's Proposed Rule unlawfully violates this provision because it would direct EPA to refuse to consider or discuss such information if based on studies for which underlying data were not disclosed.

More generally, EPA may not attempt to restrict, before a rulemaking has even begun, the type of information it will consider in that rulemaking. Doing so impinges on the federal courts' authority to determine what scientific evidence is relevant to application of CAA requirements in rulemakings. Pursuant to § 7607, the relevant court of appeals, and most frequently the D.C. Circuit, has jurisdiction to consider a petition for review of an EPA air rule. 42 U.S.C. § 7607(b). This grant of jurisdiction includes a grant allowing the court to decide what record material is relevant. *Id.*; *see also id.* § 7607(c). Notably, the court rules provide that the record on review of an agency order or regulation must include, *inter alia*, "the pleadings, evidence, and other parts of the proceedings before the agency." D.C. Cir. R. 16 ("If necessary, the court may direct that a supplemental record be prepared and filed."); *see also* Fed. R. App. P. 16. Similarly, the Federal Rules of Evidence require courts, not EPA or any other federal agency, to determine what evidence is "relevant" and "admissible." *See, e.g.*, Fed. R. Evid. 401-402 (allowing courts, and Congress by statute, but not federal agencies, to prescribe rules of evidence and determine admissibility of evidence and expert testimony).⁷⁰ Scientific information

⁶⁹ Ignoring an entire class of science is also unlawful under the APA – which applies to all EPA rulemaking – as the APA likewise requires notice and comment and requires EPA to respond to all submitted comments. *See* 5 U.S.C. § 553. EPA has also promulgated rules specific to certain statutes that likewise require notice and comment as well as consideration of and responses to those comments by EPA. *See, e.g.*, 40 C.F.R. § 25.3 (rulemaking under the CWA, SDWA, and RCRA require "public participation," including "providing access to the decision-making process, seeking input from and conducting dialogue with the public, assimilating public viewpoints and preferences, and demonstrating that those viewpoints and preferences have been considered by the decision-making official"). Thus, for the same reason the Proposed Rule violates the CAA's rulemaking provision, so too does it violate the APA and a number of other statutes that EPA is responsible for implementing.

⁷⁰ "Relevant evidence is admissible unless any of the following provides otherwise: the United States Constitution; a federal statute; these rules; or other rules prescribed by the Supreme Court." Fed. R. Evid. 402. "A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if: (a) the expert's scientific, technical, or other specialized

submitted by commenters undoubtedly qualifies as “evidence” that the court must consider, even if EPA refuses to do so.⁷¹ EPA may not lawfully prevent submission of such evidence, or attempt to exclude it from a rulemaking record. *Id.*⁷²

Where EPA previously attempted to restrict or change the statutory test and authority granted to courts to evaluate CAA cases, the D.C. Circuit rejected that as unlawful and outside of the bounds of EPA’s authority. *Nat. Res. Def. Council v. EPA*, 749 F.3d 1055, 1062 (D.C. Cir. 2014) (vacating affirmative defense to civil penalties because it changed the standard set by statute for court’s discretion in enforcement cases, and thus violated § 7604 and § 7413). For this reason, too, the Proposed Rule is invalid.

ii. CWA

The Proposed Rule violates the Clean Water Act in two ways: *first*, it runs afoul of its requirement to use all relevant science and the best technology available; and *second*, it undermines its mandate to protect public health. For each of these reasons, the rule cannot stand.

First, pursuant to Section 1251 of the Clean Water Act, the primary objective of the CWA is “to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.” 33 U.S.C. § 1251(a). Toward that end, a fundamental policy underlying the CWA is “to support and aid research relating to the prevention, reduction, and elimination of pollution.” *Id.* § 1251(b). The CWA thus promotes the use of good science. The Proposed Rule handicaps EPA from accomplishing these broad goals and objectives by limiting the available science and research.

For example, section 1313(c) of the CWA governs the establishment and modification of water quality standards. Pursuant to this provision, these standards “shall be such as to protect the public health or welfare, enhance the quality of water and serve the purposes of” the CWA. *Id.* § 1313(c)(2)(A). In setting these standards, EPA must “tak[e] into consideration their use and value for public water supplies, propagation of fish and wildlife, recreational purposes, and agricultural, industrial, and other purposes, and also taking into consideration their use and value for navigation.” *Id.* If EPA limits the type of science acceptable for these purposes, it is not fulfilling this obligation of the CWA as it is not using all means to accomplish this requirement.

knowledge will help the trier of fact to understand the evidence or to determine a fact in issue; (b) the testimony is based on sufficient facts or data; (c) the testimony is the product of reliable principles and methods; and (d) the expert has reliably applied the principles and methods to the facts of the case.” Fed. R. Evid. 702; *See also, Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579 (1993).

⁷¹ Courts have repeatedly allowed the use of certain health studies as proof of harm from air pollution even though their underlying data are not publicly disclosed. *See, e.g., Battery Recyclers*, 604 F.3d at 623.

⁷² Not only does this apply to appeals of decisions under the Clean Air Act, but it also applies more generally to any agency rulemaking decision arising out of any statute under EPA’s authority that is appealed to an appellate court where the Federal Rules of Appellate Procedure and Federal Rules of Evidence apply.

Similarly, section 1313(d) requires states to establish “the total maximum daily load” for certain identified pollutants, and it must do so “at a level necessary to implement the applicable water quality standards with seasonal variations and a margin of safety which takes into account any lack of knowledge concerning the relationship between effluent limitations and water quality.” *Id.* § 1313(d)(1)(C). As with Section 1313(c), if EPA is required to do this without all available science, it is not fulfilling its obligations under this provision.

Not only do the limitations on science undermine the Agency’s ability to most effectively fulfill the obligations of the Clean Water Act, but they likewise contradict provisions in the Act that require use of the best technology available. For example, section 1311(p)(1) requires that any modified requirements of effluent limitations in certain permits apply “the best available technology economically achievable.” Failure to do so will render the effluent limitations invalid. *See, e.g., Nat. Res. Def. Council v. EPA*, 808 F.3d 556, 564 (2d Cir. 2015). Several other provisions likewise require the use of the best technology to carry out the purpose of the Act. *See, e.g.,* 33 U.S.C. § 1314(b)(1) (regulations establishing or revising effluent limitations must apply “the best practicable control technology currently available” to identify “the degree of effluent reduction attainable”); *id.* § 1314(b)(2)(A) (regulations establishing or revising effluent limitations must apply “the best control measures and practices achievable” to identify “the degree of effluent reduction attainable . . . including treatment techniques, process and procedure innovations, operating methods, and other alternatives for classes and categories of point sources”); *id.* § 1314(b)(4)(A) (regulations establishing or revising effluent limitations must apply “the best conventional pollutant control technology” to identify “the degree of effluent reduction attainable . . . for classes and categories of point sources”).

Second, the CWA also contains several additional provisions that demonstrate its overarching goal of protecting the public health. For example, one of the provisions in section 1254 – one of the two sections cited by EPA as authorizing this Proposed Rule – addresses the “collection and dissemination of scientific knowledge on the effects and control of pesticides in water.” 33 U.S.C. § 1254(l). Pursuant to this provision, the Administrator is charged with developing and issuing to the States for the purpose of carrying out the CWA “the latest scientific knowledge available in indicating the kind and extent of effects on health and welfare which may be expected from the presence of pesticides in the water in varying quantities,” and updating that information “whenever necessary to reflect developing scientific knowledge.” *Id.* There are no qualifications or other limiting factors in the type of scientific knowledge that must be considered. Rather, the provision contemplates inclusiveness to most effectively accomplish the CWA’s objectives.

Several other provisions likewise address science and research as they relate to the public health goals of the CWA. For example, section 1254a requires the Administrator to “conduct research on the harmful effects on the health and welfare of persons caused by pollutants in water.” A provision addressing protection of the Great Lakes states, in part, that “[t]he Administrator may not carry out a project under this paragraph for remediation of contaminated sediments located in an area of concern— (i) if an evaluation of remedial alternatives for the area of concern has not been conducted, including a review of the short-term and long-term effects of

the alternatives on human health and the environment.” See 33 U.S.C. § 1268(c)(11)(D). Section 1311(g)(2), which addresses requirements for modifications to effluent limitations, requires that such modifications not result in “the discharge of pollutants in quantities which may reasonably be anticipated to pose an unacceptable risk to human health or the environment.” And section 1314(a)(9) provides that the Administrator “shall publish new or revised water quality criteria for pathogens and pathogen indicators (including a revised list of testing methods, as appropriate), based on the results of the studies conducted under section 1254(v),” for the purpose of protecting human health in coastal recreation waters, and that at least once every five years, the Administrator must review and if necessary revise the water quality criteria. And EPA has long recognized that the NPDES (§ 402 permit) and fill discharges (§ 404 permit) programs require protection of public health. See, e.g., 33 U.S.C. §§ 1342, 1344 (authorizing EPA to prohibit, withdraw, or veto a discharge that “will have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas . . . wildlife, or recreational areas”) and implementing regulations, including Section 404(b)(1) Guidelines (40 C.F.R. Part 230).⁷³

Taken together, these provisions demonstrate that the overall focus of the CWA is to promote and protect the public health and water quality in the most comprehensive way possible. Thus, any measure that could limit science or research supporting these objectives is antithetical to the Act. For these reasons, EPA’s reliance on the CWA to support its restrictions on science is entirely misplaced.

iii. SDWA

EPA’s proposal to exclude reliable, accessible, and relevant science is antithetical to the requirements of the SDWA and thus is unlawful. The SDWA was established to protect the quality of the drinking water in the United States. To accomplish this, the SDWA requires EPA to limit contaminants in public water systems. As discussed *supra*, it does this by establishing a “maximum contaminant level goal” for each contaminant “at the level at which no known or anticipated adverse effects on the health of persons occur and which allows an adequate margin of safety.” 42 U.S.C. § 300g-1(b)(4)(A). And in deciding whether to regulate any particular contaminant to protect public health, EPA must rely on “the **best available public health information**.” *Id.* § 300g-1(b)(1)(B)(ii)(II) (emphasis added). And to the extent EPA relies on science, it must use “**the best available, peer-reviewed science and supporting studies**” available. *Id.* § 300g-1(b)(3)(A) (emphasis added). Thus, any decision to categorically ignore or otherwise fail to consider relevant scientific information when regulating drinking water would be unlawful under the SWDA.

⁷³ See, e.g., 40 C.F.R. Part 122 (requiring permits to implement water quality standards and protect public health); 40 C.F.R. § 230.10(c)(1), § 230.11 (prohibiting discharge of dredged or fill material which will cause or contribute to significant degradation of the waters of the United States, which includes: “[s]ignificantly adverse effects of the discharge of pollutants on human health or welfare, including but not limited to effects on municipal water supplies, plankton, fish, shellfish, wildlife, and special aquatic sites.”); see also § 230.50 (municipal and private water supplies).

iv. CERCLA

Under CERCLA, Congress created a hazardous substance research and classification regime based largely on studies that “determine relationships between exposure to toxic substances and illness”—the very dose response studies that the Proposed Rule would stifle. 42 U.S.C. § 9604(i)(1). The statute requires EPA and ATSDR to annually update a list of hazardous substances commonly found at facilities on the National Priorities List that the agencies determine “pos[e] the most significant potential threat to human health due to their known or suspected toxicity to humans and the potential for human exposure to such substances . . .” *Id.* § 9604(i)(2)(A), (B). EPA must also develop guidelines for ATSDR’s toxicological profiles of each listed substance, which must include “available toxicological information and epidemiologic evaluations . . . to ascertain the levels of significant human exposure for the substance and the associated acute, subacute, and chronic health effects.” *Id.* § 9604(i)(3)(A). For any substance for which adequate information is unavailable, EPA and ATSDR must create a program of toxicological and epidemiological research to develop that information. *Id.* § 9604(i)(5).

Congress specified that CERCLA health assessments include:

preliminary assessments of the potential risk to human health posed by individual sites and facilities, based on such factors as the nature and extent of contamination, the existence of potential pathways of human exposure (including ground or surface water contamination, air emissions, and food chain contamination), the size and potential susceptibility of the community within the likely pathways of exposure, the comparison of expected human exposure levels to the short-term and long-term health effects associated with identified hazardous substances and any available recommended exposure or tolerance limits for such hazardous substances, and the comparison of existing morbidity and mortality data on diseases that may be associated with the observed levels of exposure.

42 U.S.C. § 9604(i)(6)(F). And when assessing alternate remedial actions under CERCLA, EPA must “at a minimum, take into account . . . the persistence, toxicity, mobility, and propensity to bioaccumulate of such hazardous substances and their constituents [and] short- and long-term potential for adverse health effects from human exposure.” *Id.* § 9621(b)(1).

EPA’s Proposed Rule would prevent the Agency from using the very types of health assessments that Congress mandates. It undermines both the letter and spirit of the statute, and is therefore unlawful.

v. EPCRA

The Proposed Rule also violates EPCRA. EPCRA requires EPA to make determinations about whether to list new chemicals in the statute’s Toxic Release Inventory program “based on

generally accepted scientific principles or laboratory tests, or appropriately designed and conducted epidemiological or other population studies, available to [EPA].” 42 U.S.C. § 11023(d)(2). Specifically, Congress instructs EPA to add a chemical to the Toxic Release Inventory list when:

(A) The chemical is known to cause or can reasonably be anticipated to cause significant adverse acute human health effects at concentration levels that are reasonably likely to exist beyond facility site boundaries as a result of continuous, or frequently recurring, releases.

(B) The chemical is known to cause or can reasonably be anticipated to cause in humans—

(i) cancer or teratogenic effects, or

(ii) serious or irreversible—

(I) reproductive dysfunctions,

(II) neurological disorders,

(III) heritable genetic mutations, or

(IV) other chronic health effects.

(C) The chemical is known to cause or can reasonably be anticipated to cause, because of—

(i) its toxicity,

(ii) its toxicity and persistence in the environment, or

(iii) its toxicity and tendency to bioaccumulate in the environment,

a significant adverse effect on the environment of sufficient seriousness, in the judgment of the Administrator, to warrant reporting under this section.

Id. EPA thus has a mandate from Congress to consider the types of toxicological studies that EPA’s Proposed Rule would prevent the Agency from considering. For this reason, the Proposed Rule cannot withstand scrutiny.

vi. *FIFRA*

Not only does FIFRA not provide authority for the Proposed Rule, but it likewise contains provisions directly at odds with the purpose and effect of the Rule.

Under FIFRA, EPA must register a pesticide (with rare exceptions) before it may be sold or used in the United States. 7 U.S.C. § 136a(a). To register or re-register a pesticide, EPA must

determine that its use “will not generally cause unreasonable adverse effects on the environment.” *Id.* § 136a(c)(5)(D); *see id.* § 136(bb) (definition of “unreasonable adverse effects”). FIFRA defines “unreasonable adverse effects” as “any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide.” *Id.* § 136(bb).

EPA requires a company seeking establishment or retention of a pesticide registration to submit data and information to enable EPA to make its unreasonable adverse effects determination. In addition to a standard set of data, EPA can issue data call-in notices requiring additional testing and information. Often, EPA requires the registrant to conduct particular laboratory tests to assess the pesticide’s toxicity. As Nancy Beck noted during the drafting of the rule, pesticide regulations require manufacturers to submit to EPA “a huge amount of data,” and that the studies come to EPA as Confidential Business Information (“CBI”). *See* Maria Hegstad, “Absent ORD Chief, Trump’s Toxics Pick Expands Reach Across EPA Science,” *Inside EPA* (May 10, 2018), <https://insideepa.com/weekly-focus/absent-ord-chief-trumps-toxics-pick-expands-reach-across-epa-science>. The raw data underlying the industry laboratory studies is rarely made available to the public, and the registrants would almost certainly oppose such disclosure on CBI grounds. Nor are such studies typically peer reviewed.

In addition, after a pesticide has been registered, the registrant must provide EPA all factual information regarding the pesticide’s unreasonable adverse effects. 7 U.S.C. § 136d(a)(2). Such information comes in a variety of forms – from academic studies, poisoning incident reports, or studies conducted for other regulatory authorities at the state, federal, or international level. Often, the raw data are unavailable.

The Proposed Rule thus conflicts with FIFRA’s pesticide registration requirements as it eliminates from consideration important studies used to show the unreasonable adverse effects of the pesticide toxins. As Beck herself acknowledged of an early version of the rule, the directive would “‘jeopardize our entire pesticide registration/re-registration process.’” Maria Hegstad, “Absent ORD Chief, Trump’s Toxics Pick Expands Reach Across EPA Science,” *Inside EPA* (May 10, 2018). Accordingly, the Proposed Rule cannot stand.

vii. TSCA

EPA’s proposed refusal to consider or use science relevant to decisions that will affect public health directly contravenes the newly enacted revisions to TSCA. Numerous provisions of TSCA make clear that EPA may not prohibit the consideration of non-public data in regulatory decision-making under TSCA. Indeed, when viewed as a whole, TSCA establishes a comprehensive scheme for how EPA is to evaluate and use science in making regulatory decisions that forecloses the Proposed Rule.

First, TSCA requires EPA to consider all “**reasonably available information**” when making any regulatory decisions under sections 2603, 2604, and 2605. 15 U.S.C. § 2625(k) (emphasis added) (EPA “shall take into consideration information relating to a chemical . . . that

is reasonably available to [the Agency]”); *also id.* § 2605(c)(2)(A).⁷⁴ Thus, the statute mandates that if a study is reasonably available to EPA, EPA must consider it when making a significant regulatory decision under these provisions of the statute. Whether the data underlying a scientific study is publicly available has no bearing on whether the study itself is reasonably available to EPA. Because the Proposed Rule purports to apply to all significant regulatory decisions made by EPA under TSCA – including those made under these provisions – it is unlawful.

Second, when making any regulatory decision under sections 2603, 2604, and 2605, TSCA requires EPA to make an individualized evaluation of any information reasonably available to the Agency, and thus, prohibits the blanket ban erected in the Proposed Rule. Section 2625(h) establishes five statutory factors that EPA must consider when “mak[ing] a decision based on science.” 15 U.S.C. § 2625(h)(1)–(5). One of these statutory factors expressly addresses situations in which non-public scientific data is before the Agency, and requires the Agency to “consider . . . the extent of independent verification or peer review of the information or of the procedures, measures, methods, protocols, methodologies, or models.” *Id.* § 2625(h)(5). In addition, EPA must consider whether the methodologies used to collect the data are “reasonable,” *id.* § 2625(h)(1), and the “degree of clarity and completeness” with which the methods used were documented, *id.* § 2625(h)(3). In sum, Section 2625(h) requires EPA to review each scientific study on a case-by-case basis to determine whether and how to use it. This case-by-case evaluation requires EPA to consider the public or non-public nature of the underlying data as one of many factors and prohibits EPA from implementing a blanket ban on the use of non-public data in significant regulatory decisions under TSCA.

Third, the Proposed Rule is at odds with the requirement that EPA act “**consistent with the best available science**.” *Id.* § 2625(h) (emphasis added). Although Congress did not define the term in TSCA, it is clear from other statutes that an agency cannot lawfully act consistent with the best available science when it categorically bars consideration of any science based on non-public data. For example, the Endangered Species Act requires federal agencies to consider the “best scientific and commercial data available,” *see* 16 U.S.C. § 1536(a)(2), and courts have held that this provision requires an agency to consider “**all** relevant data . . . even when it is imperfect, weak, and not necessarily dispositive.” *League of Wilderness Defenders/Blue Mountains Biodiversity Project v. Connaughton*, 752 F.3d 755, 763–64 (9th Cir. 2014) (emphasis added); *see also Bldg. Indus. Ass’n of Superior Cal. v. Norton*, 247 F.3d 1241, 1246 (D.C. Cir. 2001) (an agency “must utilize the ‘best scientific . . . data **available**,’ not the best scientific data **possible**”) (emphasis in original). EPA itself acknowledged that this sort of restriction on

⁷⁴ “In proposing and promulgating a rule under subsection (a) with respect to a chemical substance or mixture, the Administrator shall consider and publish a statement based on **reasonably available information** with respect to—(i) the effects of the chemical substance or mixture on health and the magnitude of the exposure of human beings to the chemical substance or mixture; (ii) the effects of the chemical substance or mixture on the environment and the magnitude of the exposure of the environment to such substance or mixture; (iii) the benefits of the chemical substance or mixture for various uses; and (iv) the reasonably ascertainable economic consequences of the rule . . .” 15 U.S.C. § 2605(c)(2)(A) (emphasis added).

science is contrary to the requirements of TSCA; when analyzing the same restrictions proposed in the HONEST Act, EPA recognized:

Provisions under the newly amended Toxic Substance Control Act (TSCA) . . . would be significantly impacted by the HONEST Act. First, a number of provisions in section 26 could not be upheld under the HONEST Act. Section 26(h) requires the Agency to “use scientific information, technical procedures, measures, methods, protocols, methodologies, or models, employed in a manner consistent with best available science.” . . . *[T]he HONEST Act would not allow EPA to use the best available science. Section 26(i) requires the Agency to use the “weight of scientific evidence” in making decisions under TSCA, and EPA believes this would not be possible given that the provisions of the HONEST Act would prohibit the use of some data.* Finally, section 26(k) requires the Agency to “take into consideration information relating to a chemical substance or mixture, including hazard and exposure information, under the conditions of use, that is reasonable available.” EPA would be in violation of the HONEST Act when upholding these provisions under TSCA, namely *instead of using the best available science and all reasonable available data for chemical regulations, EPA would be restricted to selecting information based on availability.* This approach would introduce research bias that would compromise the quality of the Agency’s work.

EPA, EPA Analysis of HONEST Act to CBO at 3-4 (2016), <https://www.scribd.com/document/344731162/EPA-analysis-of-Honest-Act-to-CBO> (emphasis added).

Indeed, where Congress has sought to qualify a best available science requirement by implementing a total bar on particular types of science, it has done so expressly. For example, in the Consumer Product Safety Improvement Act of 2008, Congress directed a panel studying phthalates to use “the most recent, best-available, *peer-reviewed*, scientific studies.” 15 U.S.C. § 2057c(b)(2)(B) (emphasis added). The absence of any such prohibition in TSCA is further proof that the Proposed Rule is prohibited by the statute’s best-available-science requirement.

Fourth, the Proposed Rule is inconsistent with the TSCA requirement that EPA make regulatory decisions using a “weight of the scientific evidence” approach. *Id.* § 2625(i). As EPA has itself recognized, this approach requires the Agency to individually evaluate the strengths and weakness of any study reasonably available to the Agency. 40 C.F.R. § 702.33 (defining “weight of scientific evidence” as “comprehensively, objectively, transparently, and consistently, identify[ing] and evaluat[ing] *each stream of evidence*, including strengths, limitations, and relevance of *each study* and [] integrat[ing] evidence as necessary and appropriate based upon strengths, limitations, and relevance” for purposes of risk evaluations under 15 U.S.C. § 2605 (emphasis added)). Thus, the Proposed Rule’s outright ban on

consideration of scientific studies that rely on non-public data is prohibited by the weight of the scientific evidence approach required under TSCA.

In sum, these provisions – considered together and in light of other provisions of the statute – establish a comprehensive scheme for how EPA is to consider scientific data, and this scheme prohibits the Proposed Rule’s ban on the consideration of non-public data. Together, they require EPA to: consider *all* reasonably available scientific information; evaluate each piece of information, including the methods by which it was acquired and analyzed; use each piece of information in a manner consistent with the best available science; and give each piece of information its due weight.

In addition, in deciding whether or not “there may be a reasonable basis to conclude that a chemical substance or mixture presents a significant risk of serious or widespread harm to human beings,” EPA must consider “any . . . information available to the Administrator.” 15 U.S.C. § 2603(f). And other provisions of TSCA expressly address certain types of non-public data and authorize EPA to consider it in making regulatory decisions. *See* 15 U.S.C. §§ 2604(b), 2613.

In light of the numerous provisions of TSCA addressing the consideration of scientific data, it is evident that if Congress had intended to allow EPA to bar the consideration of non-public data, it surely would have said so expressly. Given the comprehensiveness of these provisions providing otherwise, there is simply no room for a blanket ban on science that relies on non-public data. The Proposed Rule is therefore unlawful.

viii. RCRA

Not only do the provisions of RCRA upon which EPA relies not provide the requisite statutory authority, but other provisions of RCRA render the Proposed Rule unlawful. Specifically, section 8001 of RCRA provides that the Administrator shall conduct or otherwise assist in research, investigations, experiments, and other studies without limitation on what studies or data can be considered. 42 U.S.C. § 6981. The law mandates a broad and inclusionary role for science, requiring EPA to consider studies without limitation. The Proposed Rule’s elimination from consideration of entire categories of scientific data conflicts with the requirements of this section of RCRA, and thus cannot stand. *See Decker v. Nw. Envtl. Def. Ctr.*, 568 U.S. 597 (2013).

B. The Limitations on Science Also Contradict Other Environmental Statutes.

Not only does the Proposed Rule contravene the statutes upon which EPA relies as statutory authority, but its limitations on science likewise conflict with core provisions of other environmental statutes. For example, the Food Quality Protection Act (“FQPA”), which regulates pesticide residue in conjunction with FIFRA, sets safety standards based on the consideration of *all available data*. Limiting the data available to conduct studies necessary to evaluate the harmful effects of pesticides runs counter to this mandate.

Specifically, Congress overhauled our food safety laws when it unanimously passed the FQPA, amending both the Federal Food, Drug, and Cosmetics Act (“FFDCA”)⁷⁵ and FIFRA. The overhaul responded to a seminal 1993 National Academy of Sciences (“NAS”) report criticizing EPA for treating children like “little adults” by failing to address the unique susceptibility of children to pesticide exposures based on the foods they eat, their play, metabolism, and sensitive stages of their development. NAS, *Pesticides in the Diets of Infants and Children* (1993). The NAS recommended that EPA revamp and strengthen its pesticide regulations to account for children’s vulnerabilities, consumption patterns, and exposures. Because it would take time to fill gaps in knowledge, safeguards and methodologies, the NAS recommended that additional protection be afforded in the form of “uncertainty” or “safety factors.” The NAS first described how EPA has regularly used uncertainty factors and then proposed an additional uncertainty factor for fetal developmental toxicity and where data are incomplete: “In the absence of data to the contrary, there should be a presumption of greater toxicity to infants and children. To validate this presumption, the sensitivity of mature and immature individuals should be studied systematically to expand the current limited data base on relative sensitivity.” *Id.*

The FQPA strengthened the food safety standard in several ways. **First**, under the FQPA, the EPA Administrator “may establish or leave in effect a tolerance for a pesticide chemical residue in or on food only if the Administrator determines that the tolerance is safe. The Administrator shall modify or revoke a tolerance if the Administrator determines it is not safe.” 21 U.S.C. § 346a(b)(2)(A)(i). In other words, the absence of sufficient information to find a pesticide safe means it cannot be allowed in or on our food.

Second, safe “means the Administrator has determined there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.” *Id.* § 346a(b)(2)(A)(ii). The FQPA, therefore, requires that EPA conduct an assessment based on aggregation of all exposures to a pesticide whether from eating foods, drinking water with residues of the pesticide, or uses of the pesticide in and around the home or other places where people can be exposed. 21 U.S.C. § 346a(b)(2)(A)(ii), (C)(i)(I) & (ii). The FQPA also requires EPA to assess and protect against unsafe risks posed by cumulative exposures to pesticides that share a “common mechanism of toxicity,” as is the case with pesticides in the organophosphate, carbamate, and pyrethroid families. *See* 21 U.S.C. § 346a(b)(2)(C)-(D).

Third, EPA must make specific safety determinations for infants and children. *Id.* § 346a(b)(2)(C)(ii)(I) & (II). It must consider available information concerning “the special susceptibility of infants and children,” including “neurological differences between infants and children and adults, and effects of in utero exposure to pesticide chemicals.” *Id.*

⁷⁵ Under the FFDCA, EPA must establish the maximum residue of a pesticide allowed on food, called a “tolerance,” in order for a pesticide to be permitted on food that is imported or sold in interstate commerce. 21 U.S.C. § 346a(b) & (c). EPA may “establish or leave in effect a tolerance for a pesticide chemical residue in or on a food only if the Administrator determines that the tolerance is safe.” *Id.* § 346a(b)(2)(A)(i). If it finds a pesticide residue would not be safe, EPA must revoke a tolerance. *Id.*

§ 346a(b)(2)(C)(i)(II). EPA must also base its tolerance decisions on available information about food “consumption patterns among infants and children.” *Id.* § 346a(b)(2)(C)(i)(I) & (III).

Fourth, EPA must account for children’s sensitivities, scientific uncertainty, and gaps in available data. The statute requires that “an additional tenfold margin of safety for the pesticide chemical residue and other sources of exposure shall be applied for infants and children to take into account potential pre -and post-natal toxicity and completeness of the data with respect to exposure and toxicity to infants and children.” *Id.* § 346a(b)(2)(C). EPA can depart from this requirement and use a different margin of safety “only if, on the basis of reliable data, such margin will be safe for infants and children.” *Id.*; see *Nw. Coal. for Alts. to Pesticides v. EPA*, 544 F.3d 1043, 1046 (9th Cir. 2008) (reversing EPA’s shrinkage of the safety factor in the absence of supporting data).

As an over-arching mandate, the FQPA directs EPA to make its tolerance determinations based on its assessment of the pesticide’s risk. 21 U.S.C. § 346a(b)(2)(C)(i). And throughout its mandates to assess the full effects of a pesticide, the FQPA directs EPA to base its risk assessment on “available information” about consumption patterns, special susceptibility of infants and children, and cumulative effects. *Id.* The FQPA also expressly directs EPA to consider the validity, completeness, and reliability of the available data from studies, the nature of the toxic effect, available information about the relationship between study results and human risk, and available information about aggregate and cumulative effects. *Id.* § 346a(b)(2)(C)(ii).

The Proposed Rule upends these mandates by requiring EPA to put on blinders and ignore a huge and important subset of the available data. It collides squarely with the congressional direction to consider all available data and information in order to protect our food and children in particular. It also conflicts with the congressional mandate to afford greater protection to children and our food when gaps in data prevent a full quantitative assessment and establishment of a dose-response. It thus undermines EPA’s ability to carry out its obligations under the FQPA.⁷⁶

C. Administrative Statutes Prohibit the Proposed Prohibitions.

EPA’s Proposed Rule likewise ignores requirements set forth in two administrative statutes that govern its rulemaking: the Regulatory Flexibility Act and the Data Quality Act. Under the Regulatory Flexibility Act, 5 U.S.C. § 601 *et seq.*, federal agencies must consider the impacts their regulations will have on small entities and must consider less burdensome alternatives. In developing a new regulation, an agency must take one of two actions: certify that a proposed rule will not have a significant economic impact on a substantial number of small

⁷⁶ The FQPA also amended FIFRA’s “unreasonable adverse effects” definition to include “a human dietary risk from residues that result from a use of a pesticide in or on any food inconsistent with the [FQPA] standard.” 7 U.S.C. § 136(bb)(2). Accordingly, EPA can register or re-register a pesticide only if there is a reasonable certainty of no harm from aggregate and cumulative exposures to the pesticide under the FQPA standard. The FQPA’s science standards therefore extend to EPA’s FIFRA determinations. Accordingly, just as the Proposed Rule runs afoul of the FQPA’s standards, so too does it violate FIFRA’s mandates, as amended by the FQPA.

entities, or prepare an initial regulatory flexibility analysis. EPA must publish its initial regulatory flexibility analysis or a summary of it in the Federal Register along with the proposed rule. Here, EPA includes a certification with the Proposed Rule stating that it will not have a significant economic impact on a substantial number of small entities. However, it provides no support for this certification.

Pursuant to the Data Quality Act, also known as the Information Quality Act, Treasury and General Government Appropriation Act for Fiscal Year 2001, Pub. L. No. 106-554, § 515 Appendix C, 114 Stat. 2763A-153 (2000), the Office of Management and Budget (“OMB”) issued government-wide guidelines that “provide policy and procedural guidance to Federal agencies for ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by Federal agencies. . . .” The OMB guidelines directed each federal agency to issue its own information quality guidelines to “ensure and maximize the quality, objectivity, utility, and integrity of information, including statistical information, disseminated by the agency.” 67 Fed. Reg. 8451, 8459 (Feb. 22, 2002). Following OMB’s instructions, EPA issued its own guidelines that apply to information it disseminates to the public. EPA, *Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity, or Information Disseminated by the Environmental Protection Agency* (Oct. 2002), <https://www.epa.gov/sites/production/files/2017-03/documents/epa-info-quality-guidelines.pdf>. According to these guidelines, EPA uses a “weight-of-evidence” approach that “considers *all relevant information* and its quality, consistent with the level of effort and complexity of detail appropriate to a particular risk assessment.” EPA Guidelines 6.4 (emphasis added). The Proposed Rule contravenes these requirements, as it will prevent EPA from considering all relevant information by precluding consideration of certain data.

Moreover, pursuant to EPA’s guidelines, EPA must ensure that the information it disseminates “is accurate, reliable and unbiased.” EPA Guidelines 6.4(A). To do so, it uses:

the best available science and supporting studies conducted in accordance with sound and objective scientific practices, including, when available, peer reviewed science and supporting studies; and (ii) data collected by accepted methods or best available methods (if the reliability of the method and the nature of the decision justifies the use of the data).

Id. (emphasis added). Given that the Proposed Rule eliminates from consideration any scientific study where the underlying data cannot be made publicly available, it undoubtedly precludes the use of the best available science in certain situations. Thus, the Proposed Rule is inconsistent with EPA’s implementation of the Data Quality Act.

D. The Proposed Rule is Entirely Inconsistent with the Executive Orders Upon Which EPA Relies for Support.

EPA also cites to a number of Executive Orders as support for the Proposed Rule. However, upon examination, it is eminently clear that these orders are wholly inconsistent with the intent and effect of the Proposed Rule. Regardless, Executive Orders cannot lawfully or

constitutionally substitute for statutorily granted authority or contradict statutory requirements; thus, the Executive Orders provide no support or authority for the Proposed Rule.

i. Exec. Order No. 13,777, 82 Fed. Reg. 12,285

EPA asserts that the Proposed Rule is consistent with Executive Order 13,777, 82 Fed. Reg. 12,285 (Mar. 1, 2017), titled “Enforcing the Regulatory Reform Agenda.” It is not. This Executive Order establishes a task force to “evaluate existing regulations . . . and make recommendations to the agency head regarding their repeal, replacement, or modification.” It thus seeks to *reduce* regulation, and in no way authorizes EPA to promulgate new rules.⁷⁷

Additionally, the Proposed Rule is contrary to the stated purpose and policy of Executive Order 13,777, which is to “lower regulatory burdens on the American people by implementing and enforcing regulatory reform.” The Proposed Rule will do just the opposite. It will preclude EPA from considering certain data regarding health and environmental impacts of pollutants, contaminants, and other substances in its rulemaking process. The overall impact of such limitations on rulemaking aimed at protecting public health and the environment will be increased burdens on the American people.

ii. Exec. Order No. 13,783, 82 Fed. Reg. 16,093

EPA also asserts that the Proposed Rule is consistent with Executive Order 13,783, 82 Fed. Reg. 16,093 (Mar. 31, 2017), titled “Promoting Energy Independence and Economic Growth.” Yet again, EPA is wrong.

In an effort to show the Proposed Rule’s consistency with this Executive Order, EPA quotes the following part of the Order: “It is also the policy of the United States that necessary and appropriate environmental regulations comply with the law, are of greater benefit than cost, when permissible, achieve environmental improvements for the American people, and are developed through transparent processes that employ the best available peer-reviewed science and economics.” 83 Fed. Reg. at 18,769, n.5. However, as these Comments reveal, the Proposed Rule contravenes this policy in a number of ways: it fails to comply with a number of statutes and executive orders; the costs of the rule far outweigh the benefits; it will cause substantial and far-reaching harm to public health and the environment; and it has been developed through a process that lacks transparency. *See* Sections II, III, IV, V. Moreover, if implemented, the Proposed Rule will lead to future rulemakings that likewise will be inconsistent with this Executive Order, as it will preclude EPA from considering the best available peer-reviewed science and economics, which in turn will impact the cost-benefit analysis, and may violate notice-and-comment and judicial review procedures. *See* Section V.A. Thus, the Proposed Rule is entirely *inconsistent* with Executive Order 13,783.

⁷⁷ That EPA would say that the Proposed Rule is consistent with an Executive Order focused on deregulation is tantamount to an admission that the Rule’s purpose and effect is to limit the development of rules that are critical to the protection of public health and the environment.

Executive Order 13,783 also provides that greenhouse gas impact estimates should be consistent with guidance in OMB Circular A-4 (Sept. 17, 2003), which specifically requires that this analysis be based on “the best reasonably obtainable scientific, technical, and economic information available.” Though the Circular states that, where available, peer-reviewed, transparent, and reproducible studies should be used, it neither requires nor authorizes the preclusion of consideration of scientific studies based on data that cannot be made publically available. Instead, it recognizes that there will be circumstances “[w]here other compelling interests (such as privacy, intellectual property, trade secrets, etc.) prevent the public release of data or key elements of the analysis,” and provides in those cases that, rather than precluding the data, the use of “especially rigorous robustness checks to analytic results” should be applied and documented. Accordingly, for this reason too, the Proposed Rule is inconsistent with Executive Order 13,783.

iii. Exec. Order No. 13,563, 76 Fed. Reg. 3821

Executive Order 13,563 states that “[o]ur regulatory system must protect public health, welfare, safety, and our environment while promoting economic growth, innovation, competitiveness, and job creation. ***It must be based on the best available science.*** . . .” 76 Fed. Reg. 3821, 3821 (Jan. 18, 2011) (emphasis added). EPA’s reliance on this Executive Order cannot be taken seriously.

While EPA states in the preamble that “[t]he best available science must serve as the foundation of EPA’s regulatory actions,” 83 Fed. Reg. at 18,769 & n.1, the Proposed Rule undermines this foundational requirement. It has the purpose and effect of precluding the use of some of the best available science, that is, all science based on non-public data, simply because the underlying data is not publicly available. Best available science means “all existing scientific evidence relevant to the decision,” and agencies simply “cannot ignore existing data.” *Ecology Ctr., Inc. v. U.S. Forest Serv.*, 451 F.3d 1183, 1194 n.4 (10th Cir. 2006) (quoting *Heartwood Inc. v. U.S. Forest Serv.*, 380 F.3d 428, 436 (8th Cir. 2004)). Yet the Proposed Rule requires EPA to ignore existing data if it is not available for public release. Therefore, the Proposed Rule is inconsistent with Executive Order 13,563, as well as those statutes or principles that requires EPA to consider the best available science. *See* Section IV.

iv. No Executive Order Can Authorize or Contradict Enacted Statutory Restrictions on EPA’s Authority.

EPA cannot lawfully or rationally rely on an executive order to authorize the Proposed Rule, and cannot allow any cited order to influence development of the final rule. As detailed in other parts of these comments, the Clean Air Act and other statutes provide specific requirements for rulemakings with which EPA’s Proposal conflicts, and which do not authorize this Proposal.

An executive order cannot override a statute, limit the delegated authority and the legal responsibilities provided to the EPA Administrator by federal law, add factors that are impermissible under the statute, or delay statutorily required agency action. *See, e.g., In re: United Mine Workers of Am. Int’l Union*, 190 F.3d 545, 551 (D.C. Cir. 1999). In addition,

weakening or delaying public health protections based on an executive order would be unconstitutional, violating separation of powers and the requirement to follow duly enacted laws passed by Congress and signed by the President. It would likewise be unlawful, contrary to the public health obligations and rulemaking requirements of EPA's governing statutes. And EPA cannot consider or apply any other executive order in any way in this rulemaking without providing the requisite public notice and opportunity for comment that the Clean Air Act and APA require, as further discussed elsewhere in these comments.⁷⁸

E. The Proposed Rule Violates Public Law 95-622 and the Common Rule for Research Involving Human Subjects.

EPA's Proposed Rule also conflicts with Public Law 95-622 and the interagency regulations on testing of human subjects required by that law. In 1978, Congress created a President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research (the "Commission") and directed the Commission to study the "protection of human subjects," defined to include the "health, safety, and *privacy* of individuals." 42 U.S.C. § 300v-1(b)(2), (f)(2) (emphasis added). This included a study of and issuance of recommendations concerning, among other subjects, procedures and mechanisms "to safeguard the *privacy* of human subjects of behavioral and biomedical research, [and] to ensure the *confidentiality* of individually identifiable patient records." *Id.* § 300v-1(a)(1)(E), (a)(4) (emphasis added).

In response to this charge, in 1981, the Commission recommended that all federal agencies adopt uniform regulations concerning the protection of human research subjects. *See* 47 Fed. Reg. 13,272 (March 29, 1982). Accordingly, in 1991, EPA and 13 other federal departments and agencies adopted uniform regulations on this issue (the "Common Rule"), *see* 56 Fed. Reg. 28,003 (June 18, 1991), requiring that all research involving human subjects that is "conducted, supported or otherwise subject to regulation by any Federal department or agency" be reviewed and approved by an institutional review board ("IRB"). 40 C.F.R. § 26.101(a). In order to approve research involving human subjects, an IRB must ensure that "there are adequate provisions to protect the privacy of subjects and to maintain the confidentiality of data." *Id.* § 26.111(a)(7).

In particular, the Common Rule prohibits EPA from relying on research that is "deficient relative to the ethical standards prevailing at the time the research was conducted in a way that placed participants at increased risk of harm . . . or impaired their informed consent." *Id.* §§ 26.1704(b)(2), 26.1705(b). It recognizes that the protection of private information of the subject is central to a subject's ability to provide informed consent. *See generally id.* § 26.116. And the protection of private information is central to the Common Rule more broadly – one of only two situations under which IRBs may waive the requirement to obtain written consent is if the release of the consent form risks linking the subject to the research. *Id.* § 26.117(c)(1).

EPA's Proposed Rule is thus antithetical to the confidentiality requirements of the Common Rule. It would ignore relevant health science absent publication of personal data that is

⁷⁸ *See, e.g.*, 42 U.S.C. § 7607(d)(3)-(7), (h).

required to be kept confidential under the Common Rule. To enable EPA to consider their studies in a relevant rulemaking, IRBs would have to make the underlying data publicly available, which would place them at risk of termination of federal funding, termination of ongoing studies, denial of approval for new studies, or disqualification of the IRB or its parent institution. 40 C.F.R. Part 26 subpart O & §§ 26.103, 26.123, 26.1123.

V. EPA FAILED TO FOLLOW PROPER PROCEDURES

A. EPA Failed to Follow the Administrative Procedure Act as Required for Meaningful Public Participation and Judicial Review.

The Administrative Procedure Act (“APA”) establishes rulemaking procedures and judicial review requirements for agency rules that EPA has failed to follow here. 5 U.S.C. §§ 553, 706. These requirements – which EPA entirely and unlawfully ignores – are central both to ensure an opportunity for the affected public to comment, and to ensure an adequate record for judicial review. This includes:

- Providing a meaningful opportunity for notice-and-comment;
- Ensuring that the docket contains all documents on which EPA relies;
- Providing additional information regarding what the public is being asked to comment on, and adding details that are missing from the proposal, before taking further comment.

EPA has failed to comply with these mandates, rendering this rulemaking unlawful under the APA, for several reasons.

First, in issuing this Proposed Rule, EPA violated the APA by failing to place in the administrative record all of the documents on which it purports to rely. The preamble to the Proposed Rule cites more than thirty specific documents on which EPA purportedly relies. *See, e.g.*, 83 Fed. Reg. at 18,769-72 & nn.1-2, 4-24. Of the specifically cited and relied upon documents, only about 12 are included in the docket, available at www.regulations.gov, Docket ID: EPA-HQ-OA-2018-0259, as of the date of publication of the Proposed Rule. In addition, EPA provides no support for its proposed conclusion that “EPA believes the benefits of this proposed rule justify the costs.” 83 Fed. Reg. at 18,772. Nothing in the record demonstrates what costs or benefits EPA considered to reach this determination, or whether it evaluated at all the harm to public health and to privacy that this Proposed Rule would cause.

Absent the ability to review such documents, the public is deprived of adequate notice or an ability to provide informed comments regarding the Proposal and EPA’s rationale for issuing the Proposed Rule. EPA’s failure to put the documents on which it relies into the record violates notice-and-comment under the APA and other statutes that supplement such notice requirements. *See, e.g., Am. Radio Relay League v. FCC*, 524 F.3d 227 (D.C. Cir. 2008) (agency may not cherry-pick documents on which it relies for public review; it is a violation of public notice and comment to refuse to put the documents in full on which the agency relied into the record).

Second, failing to place all of the documents on which EPA relies into the record also violates the judicial review provision of the APA by making it impossible for commenters to provide adequate comments or a complete record for judicial review of any final action EPA takes. 5 U.S.C. § 706 (“In making the foregoing determinations, the court shall **review the whole record** or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.” (emphasis added)); *Am. Radio Relay League*, 524 F.3d at 242-43 (Tatel, J., concurring) (reiterating importance of the requirement for agency to place unredacted studies into the docket because not doing so “undermines this court’s ability to perform the review function APA section 706 demands”); *see also Walter O. Boswell Mem’l Hosp. v. Heckler*, 749 F.2d 788, 792 (D.C. Cir. 1984) (citing *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 420 (1971)) (“[R]eview is to be based on the **full** administrative record that was before the Secretary **at the time** he made his decision.” (emphasis in original)).

Not only is EPA’s failure to include in the regulatory docket all of the documents upon which it relies a violation of the APA, but it likewise contravenes procedural requirements in Title 28 of the U.S. Code that govern judicial review of agency action. *See, e.g.*, 28 U.S.C. § 2112(b) (“The record to be filed in the court of appeals . . . shall consist of the order sought to be reviewed or enforced, **the findings or report upon which it is based**, and the pleadings, **evidence**, and proceedings before the agency . . . concerned.” (emphasis added)); Fed. R. App. P. 16 (“The record on review or enforcement of an agency order consists of . . . **any** findings or report on which it is based.” (emphasis added)); *see also* 28 U.S.C. §§ 2071-77 (providing federal courts with authority to establish binding rules of procedure and evidence). Thus, EPA’s slipshod creation of the regulatory docket for the Proposed Rule cannot withstand scrutiny under either the APA or the judicial review provisions for Title 28.

Third, EPA has violated the APA (and all statutes that track its notice-and-comment requirements) by failing to provide sufficient specificity regarding the Proposed Rule. Under the APA, notice is only sufficient “‘if it affords interested parties a reasonable opportunity to participate in the rulemaking process,’ and if the parties have not been ‘deprived of the opportunity to present relevant information by lack of notice that the issue was there.’” *WJG Tel. Co., Inc. v. FCC*, 675 F.2d 386, 389 (D.C. Cir. 1982) (citations omitted); *see Fla. Power & Light Co. v. Nuclear Regulatory Comm’n*, 846 F.2d 765, 771 (D.C. Cir. 1988). The Proposed Rule is plagued by a lack of detail as to how EPA will interpret the broad and vague terms it creates, how it will use the Rule in connection with particular rulemakings, and how it will implement the new “independent peer review” and “exemption” provisions, and these shortcomings undermine the sufficiency of the notice provided by the Proposal. For example:

- The new definitions of “dose response data and models,” “pivotal regulatory science,” “regulatory decisions,” “regulatory science,” and “research data,” in § 30.2 are extremely broad and impermissibly vague. EPA provides no specific examples of what these terms mean or how they will actually be implemented under the long list of statutes implicated by this rule.

- Sections 30.1, 30.2, 30.3 – discussing the purpose of the Proposed Rule, the applicable definitions, and how the Proposed Rule will apply – provide broad requirements for EPA without giving any information regarding how or when EPA will implement them in connection with any given proposed or final rule.
- EPA states in § 30.5 that the Proposal will require EPA to “ensure that dose response data and models underlying pivotal regulatory science are publicly available in a manner sufficient for independent validation . . .” Yet EPA provides no indication of what this means, how it will so “ensure,” or what it will do if it is not possible to ensure this, among other shortcomings.
- Section 30.6 addresses the “additional requirements” related to the use of dose response data and models underlying “pivotal regulatory science,” but it is devoid of details necessary to assure meaningful public review and comment on how, when, or in what way EPA will implement this. It also cites no specific science and gives no indication of how or why EPA is attempting to redefine scientific information on dose response differently than it has done in the past to allow for informed consideration of why EPA is even attempting to address this issue.
- Sections 30.7 and 30.9 describe the “role” of “independent peer review” in the Proposal and permissible “exemptions” under the Rule, yet these descriptions fail to provide the process that will be used to inform the public of when a given document or study impacted by this rule does or does not qualify for an exemption. There is no indication of whether EPA will provide notice or comment, or any steps allowing for public participation, when deciding whether or not to exclude a given study from consideration.
- The preamble to the Proposed Rule is replete with broad (and unsubstantiated) statements regarding limits on EPA’s ability to consider and use science in rulemakings, as well as environmental issues EPA envisions being impacted by the Proposed Rule – for example, the NAAQs – but EPA fails to provide any specific information to inform public notice and comment on the purported impact of Proposed Rule. Commenters have done their best in view of this to provide comment on all of the likely harm that EPA’s vague and general statements would cause if fully implemented in regulatory language, but they are severely prejudiced due to EPA’s refusal to provide specific notice as required by the APA.

In sum, EPA has failed to satisfy the requirements for specific public notice that can assure meaningful comment, falling far short of the fundamental threshold requirements for notice and comment. This shortcoming is fatal to its ability to finalize this Proposed Rule.

In addition, it is especially problematic that EPA’s Proposal states that EPA will apply the Proposed Rule to “regulatory decisions” which it defines as “final regulations determined to be ‘significant regulatory actions’ by [OMB].” 83 Fed. Reg. at 18,773 (proposed § 30.2). Under

this definition, EPA can exclude and ignore science in future rulemakings without specifying where or how it will do so and without providing any public notice or comment in a future rulemaking that would be impacted by this Rule. EPA's attempt to limit the rulemaking process for undefined other rules in this manner is a violation of the APA for all of the reasons described above.

Finally, EPA's APA violations would cause significant harm to Commenters and the public if the Rule were finalized without correcting these problems. The inability to review and attempt to understand the documents on which EPA relies and thus to comment meaningfully and receive effective judicial review cause severe prejudice to the affected public. *See* 5 U.S.C. § 706(2). Even if EPA were to add documents to the docket at a later date, that would not cure this fatal flaw. Given the sweeping scope of this Proposed Rule – which would restrict the consideration and use of important health science in rulemakings which, in turn, would likely lead to a weakening of air, water, waste, chemical, pesticide and other protections – the failure to publish the documents for review for an adequate time period has undermined the public's ability to comment meaningfully, and impermissibly prevented the affected public from being able to seek and receive effective judicial review based on the record.

B. EPA Failed to Follow Procedural Requirements Under FIFRA.

EPA likewise failed to follow the specific procedures required by the Federal Insecticide, Fungicide, and Insecticide Act ("FIFRA") when issuing the Proposed Rule. Specifically, section 25w of FIFRA requires, among other things, that EPA provide a copy of any proposed rule or regulation to the Secretary of Agriculture for review and comment 60 days before a proposed rule is published in the Federal Register. 7 U.S.C. § 136w(a)(2)(A). EPA must then provide the Secretary a copy of the rule EPA intends to publish as a final rule no later than 30 days before publication. *Id.* § 136w(a)(2)(B). EPA must also consult with its own Scientific Advisory Panel in an effort to receive comments from it regarding the impact the proposed rule will have on health and the environment. *Id.* § 136w(d).⁷⁹ Such consultation must occur under the same timelines sets forth for consulting with the Secretary of Agriculture. *Id.* § 136w(d)(1). Lastly, before a final rule can take effect, EPA is required to submit the rule to Congress and "the rule or

⁷⁹ Indeed, FIFRA sets forth a specific role for its Scientific Advisory Panel, yet EPA entirely ignored them in this process:

[t]he Administrator shall also solicit from the advisory panel comments, evaluations, and recommendations for operating guidelines to improve the effectiveness and quality of scientific analyses made by personnel of the Environmental Protection Agency that lead to decisions by the Administrator in carrying out the provisions of this subchapter. The comments, evaluations, and recommendations of the advisory panel submitted under this subsection and the response of the Administrator shall be published in the Federal Register in the same manner as provided for publication of the comments of the Secretary of Agriculture under such sections.

7 U.S.C. § 136w(d)(1).

regulation shall not become effective until the passage of 60 calendar days after the rule or regulation is so transmitted.” *Id.* § 136w(a)(4).

Thus, FIFRA sets forth a clear process in which EPA must consult with a number of entities, including both the U.S. Department of Agriculture and a Scientific Advisory Panel when issuing rules impacting pesticides. *See, e.g., Nat’l Coal. Against the Misuse of Pesticides v. EPA*, 867 F.2d 636 (D.C. Cir. 1989) (noting that “FIFRA generally requires the Administrator [of EPA] to consult with the Secretary of Agriculture . . . and a seven member Scientific Advisory Panel (on environmental health questions) prior to making public any notice of intent to cancel,” in context of pesticide registration cancellation). Yet it is indisputable that EPA utterly failed to take these necessary steps. For this reason, too, EPA’s Proposal cannot stand.

C. EPA Failed to Follow the Procedural Requirements Under TSCA.

Pursuant to section 2609 of TSCA, prior to promulgating any rules, EPA must “consult[] and cooperate[] with the Secretary of Health and Human Services and with other heads of appropriate departments and agencies.” 15 U.S.C. § 2609(a); *see also id.* § 2609(b)(2)(A), (c), (d), (e), (g). Therefore, to the extent EPA relies on TSCA as authority for the Proposed Rule, it must consult and cooperate with the Secretary of Health and Human Services. Yet nowhere in the Proposed Rule does EPA indicate that it has done so. Failure to comply with this requirement would render any final rule unlawful. *See* 5 U.S.C. § 706(2)(D) (a reviewing court “shall . . . hold unlawful and set aside agency action . . . found to be . . . without observance of procedure required by law”).

D. EPA Failed to Follow the Procedural Requirements Under the CAA.

EPA’s Proposal is also deficient because it fails to follow particular procedural requirements under the CAA that are legally required for EPA to issue certain types of rules. Specifically, the CAA requires that the Clean Air Scientific Advisory Committee (“CASAC”) complete a review of air quality criteria and the NAAQS every five years. 42 U.S.C. § 7409(d)(2)(B). Because the Proposed Rule aims to “preclude [the Agency] from using [non-public] data in future regulatory actions,” it would impact the CASAC’s review of air quality criteria. 83 Fed. Reg. at 18,769, n.3. Accordingly, EPA was required to follow the path prescribed by the CAA – including submission of the proposed rule to CASAC for review, allowing CASAC to provide recommendations to the Administrator, and then requiring the Administrator to include a statement regarding the recommendations made by CASAC in the Proposed Rule. 42 U.S.C. §§ 7409(d)(2)(B), 7607(d)(3); *see also* 42 U.S.C. § 7607(b), (d). Yet, there can be no dispute that none of these steps were taken before issuance of the Proposed Rule.

E. EPA Failed to Perform the Analysis Required by EO 12,898.

EPA’s Proposed Rule also violates the environmental justice requirements of Executive Order 12,898, 59 Fed. Reg. 7629 (Feb. 16, 1994). By its own admission, EPA entirely ignored its obligation to assess the environmental justice impact of this rule prior to issuing the Proposal, dismissively stating – without any justification – that “this action is not subject to Executive Order 12,898 (59 Fed. Reg. 7629, February 16, 1994) because it does not establish an

environmental health or safety standard.” 83 Fed. Reg. at 18,773. EPA’s rationale is inconsistent with the Order, contrary to EPA’s own environmental justice plan, inconsistent with EPA’s prior positions and practices, and results in the very harms the Order is designed to protect against.

First, by its own terms, and despite EPA’s mischaracterization, Executive Order 12,898 applies to more than just “standards.” Indeed, the Order applies to all agency “programs, policies, and activities.” *See, e.g.*, 59 Fed. Reg. at 7629 (agencies must make “achieving environmental justice part of its mission by identifying and addressing as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations”). Toward that end, when promulgating rules “that substantially affect human health or the environment” – which this Proposed Rule indisputably does – EPA must ensure that the rule does not have a disproportionate impact on minorities, and it must “provide minority populations and low-income populations the opportunity to comment on the development and design of research strategies undertaken pursuant to this order.” *Id.* at 7631. EPA’s novel and unsupported interpretation is wholly untethered from both the spirit and the text of the Order.

Second, EPA’s limiting interpretation ignores EPA’s own environmental justice plan – promulgated pursuant to Executive Order 12,898 – the ultimate vision of which is for EPA to “integrate[] environmental justice into everything” it does. EJ2020 Action Agenda at iii. To accomplish this vision, EPA sets forth eight different priority areas, the first of which is “rulemaking.” *Id.* Specifically, EPA aims to “institutionalize environmental justice in rulemaking,” including performance of “rigorous assessments of environmental justice analyses in rules,” in order to “deepen environmental justice practice within EPA programs to improve the health and environment of overburdened communities.” *Id.* Recognizing that “[r]ulemaking is an important function used by the EPA to protect human health and the environment for all communities,” EPA devotes the second chapter of the plan to “Rulemaking,” and through this chapter, aims to “ensure environmental justice is appropriately analyzed, considered, and addressed in EPA rules with potential environmental justice concerns, to the extent practicable and supported by relevant information and law.” *Id.* at 13. Consistent with its environmental justice plan and with Executive Order 12,898, EPA issued its own *Guidance on Considering Environmental Justice During the Development of Regulatory Actions*, recognizing how “vital” it is “that Agency rule-writers identify and address potentially disproportionate environmental and public health impacts experienced by minority populations, low-income populations, and/or indigenous peoples,” *Guidance* at 1 (May 2015), <https://www.epa.gov/sites/production/files/2015-06/documents/considering-ej-in-rulemaking-guide-final.pdf>, as well as a *Technical Guidance for Assessing Environmental Justice in Regulatory Analysis*. *Technical Guidance* (June 2016), https://www.epa.gov/sites/production/files/2016-06/documents/ejtg_5_6_16_v5.1.pdf. Thus, EPA has regularly and purposefully focused on the need for environmental justice assessments of its rulemakings. EPA’s blithe claim that this Proposed Rule does not require an environmental justice assessment is clearly at odds with what the Agency itself recognizes it must do to comply both with Executive Order 12,898, as well as its own policies.

Third, EPA’s failure to perform an environmental justice impact analysis is entirely inconsistent with EPA’s regular practice. Indeed, EPA consistently performs this sort of assessment when acting under the CAA, CWA, and other statutes.⁸⁰ This information unquestionably has been relevant to public health rulemakings in the past. EPA’s refusal to consider the environmental justice consequences of the Proposed Rule – consequences that are certainly “relevant” under *State Farm* – and its departure from its long-standing pattern and practice of considering such data without a reasoned explanation for changing course are therefore arbitrary and capricious.

Fourth, and as discussed more fully below, *see infra* Section VIII, EPA’s Proposed Rule will result in the very kind of disproportionate impact on low-income and minority communities that the Executive Order was designed to protect against. As EPA itself recognizes, minority, low-income, and tribal communities “may face greater risks” to public health and the environment “because of proximity to a contaminated sites or because fewer resources are available to avoid exposure to pollution.” *Env’tl. Justice FY2017 Progress Report* at 8, https://www.epa.gov/sites/production/files/2018-04/documents/usepa_fy17_environmental_justice_progress_report.pdf. Examples include disproportionate exposure to lead, particulate matter, and other hazardous air pollutants. *See, e.g., id.* at 8 (“reduction in lead exposure has not been realized equally across the United States and it remains a top childhood environmental health problem, disproportionately impacting minority and/or low-income populations”); *id.* at 9 (“[l]ow-income populations are among the populations that are most at-risk for adverse health effects from exposure to [particulate matter]”). Indeed, study after study has confirmed that communities of color and economically disadvantaged communities are disproportionately located near toxic waste and other sources of pollution, and that these communities disproportionately suffer adverse public health and environmental impacts.⁸¹ It is also the case that these discrete communities are frequently the

⁸⁰ *See, e.g.*, 78 Fed. Reg. 3086, 3267 (2013) (describing the goal of Executive Order 12,898 and EPA’s actions to comply with these goals, noting that it “conducted an outreach and information call with environmental justice organizations” and “identified potential disproportionately high and adverse effects on minority and/or low-income populations related to PM_{2.5} exposures,” and “identified persons from lower socioeconomic strata as an at-risk population for PM-related health effects,” and noting that “the EPA has carefully evaluated the potential impacts on low-income and minority populations. . . .”); *see also* EC/R Inc., *Risk and Technology Review - Final Analysis of Socio-Economic Factors for Populations Living Near Secondary Lead Smelting Facilities*, prepared by EC/R Inc. for EPA (Dec. 2011), <http://earthjustice.org/sites/default/files/Leadsmeltersocioeconomicanalysis.pdf>; EC/R Inc., *Risk and Technology Review - Analysis of Socio-Economic Factors for Populations Living Near Petroleum Refineries*, prepared by EC/R Inc. for EPA (Jan. 2014).

⁸¹ These studies include, but are not limited to: Mohai, P. et al., *Racial and Socioeconomic Disparities in Residential Proximity to Polluting Industrial*; Zwickl, K. et al., *Regional Variation in Environmental Inequality: Industrial air toxics exposure in U.S. Cities*, Political Economy Research Institute Working Paper Series No. 342 at 20 (Feb. 2014); Cal. EPA, OEHHA, *Cumulative Impacts: Building a Scientific Foundation* at 5-17 (Dec. 2010), <http://oehha.ca.gov/media/downloads/calenviroscreen/report/cireport123110.pdf> (citing numerous research studies showing that exposure to pollution-emitting facilities, hazardous waste facilities and disposal, toxic releases, non-attainment air areas, high motor vehicle air pollution areas, and other types

subjects of epidemiological studies that measure the health impacts of environmental and public health programs. Indeed, EPA previously recognized the importance of “strengthen[ing] the foundational link between EPA science and the needs of underserved and overburdened communities, in areas of air, water, land, health disparities, and in tribal science grants.” *2017 Progress Report* at 6. Yet now, with no explanation or need, EPA does an about-face and attempts to destroy this link. EPA’s Proposal to eliminate reliance on epidemiological health studies will thus have the effect of excluding critical and available evidence of adverse harms particular to these discrete groups, thereby removing from consideration the very science that has historically led to much-needed protections for the most vulnerable communities.

In sum, EPA was required under Executive Order 12,898 – as well as its own environmental justice plan and guidance – to conduct an assessment of the environmental justice impact of the Proposed Rule, but admittedly failed to so do. Its blatant (and acknowledged) failure to comply with its obligations is yet another reason why the Proposed Rule cannot stand.

VI. THE PROPOSED RULE IS ARBITRARY

Not only is EPA’s Proposed Rule unlawful both substantively and procedurally, but it is also impermissibly arbitrary. Indeed, the Proposed Rule is the epitome of arbitrary rulemaking: in crafting the rule, EPA

relie[s] on factors which Congress has not intended it to consider, entirely fail[s] to consider an important aspect of the problem, offer[s] an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.

State Farm, 463 U.S. at 43 (defining “arbitrary and capricious” agency action). EPA wholly fails to “examine the relevant data and articulate a satisfactory explanation for its action including a ‘rational connection between the facts found and the choice made.’” *Id.* (quoting *Burlington Truck Lines v. United States*, 371 U.S. 156, 168 (1962)). To the contrary, as described below, EPA has mischaracterized its prior policy, relied on authorities that undermine its reasoning and conclusions, failed to adequately account for the Proposed Rule’s costs and benefits, granted itself unfettered discretion to decide whether and how the Rule will apply, and created an unjustified inequity between what science can be used to support a decision *not* to

of pollution is more likely to be concentrated in communities with higher minority and lower income populations); Boyce, J.K. et al., *Measuring environmental inequality*, Political Economy Research Institute Working Paper Series No. 409 at 14-16 (Dec. 2015); Hicken, M.T. et al., *A novel look at racial health disparities: the interaction between social disadvantage and environmental health*, 102:12 Am. J. of Pub. Health 2344, 2346-47 (Dec. 2012); Vipputuri, S. et al., *Blood lead level is associated with elevated blood pressure in blacks*, 41:3 Hypertension 463, 464-65 (Mar. 2003); deFur, P.L. et al., *Vulnerability as a Function of Individual and Group Resources in Cumulative Risk Assessment*, 115:5 Env’tl. Health Persp. 817, 820-21 (2007).

regulate dangerous chemicals as compared to what can be used to support a decision to regulate. For all of these reasons, the Proposed Rule cannot stand.

A. The Proposed Rule Conflicts with Existing Government Policies and EPA's Prior Positions, and EPA Has Not Adequately Explained this Inconsistency.

Although each new administration has some authority to change course, changes “cannot be solely a matter of political winds and currents.” *N.C. Growers Ass’n v. United Farm Workers*, 702 F.3d 755, 772 (4th Cir. 2012) (Wilkinson, J. concurring). Instead, an agency must at least “display awareness that it *is* changing position” and “show that there are good reasons for the new policy.” *FCC v. Fox Television Stations, Inc.*, 556 U.S. at 515. If the new policy “rests upon factual findings that contradict those which underlay its prior policy[] or when [the] prior policy has engendered serious reliance interests that must be taken into account,” the agency must provide “a reasoned explanation . . . for disregarding those facts and circumstances.” *Id.* at 516; *see also Encino Motorcars, LLC v. Navarro*, 136 S. Ct. 2117, 2126 (2016) (“An unexplained inconsistency in agency policy is a reason for holding an interpretation to be an arbitrary and capricious change from agency practice.” (internal quotation marks omitted) (quoting *Nat’l Cable & Tele. Commc’ns Ass’n v. Brand X Internet Servs.*, 545 U.S. 967, 981 (2005))). Without “some fidelity to law and legal process, . . . government becomes a matter of the whim and caprice of the bureaucracy.” *N.C. Growers Ass’n*, 702 F.3d at 772.

In stark contrast to these principles, EPA has done an about-face here, proposing a rule contrary to prior policy and based entirely on partisan politics and bureaucratic impulse. Though EPA asserts that the Rule “builds upon prior EPA actions in response to government wide data access and sharing policies,” and corrects the Agency’s failure to “consistently follow[] previous EPA policy (*e.g.*, EPA’s Scientific Integrity Guidance . . .) that encouraged the use of non-proprietary data and models,” 83 Fed. Reg. at 18,770, n.13, this is entirely untrue. Rather, as the prior policies and actions identified in the Proposed Rule demonstrate – and as summarized above (*see, e.g.*, Section IV.A (CAA)) – EPA has long been committed to sound science, including reliance on the best available science regardless of the nonpublic nature of the underlying data. For example, EPA’s Scientific Integrity Policy states that the dissemination of scientific information should be “uncompromised by political and other interference” and expressly “[p]rohibits all EPA employees, including scientists, managers, and other Agency leadership, from suppressing, altering, or otherwise impeding the timely release of scientific findings or conclusions.” EPA, *U.S. Environmental Protection Agency Scientific Integrity Policy* at 4–5 (Feb. 2012), https://www.epa.gov/sites/production/files/2014-02/documents/scientific_integrity_policy_2012.pdf. The Proposed Rule clearly contravenes this policy.

The Proposed Rule is also inconsistent with EPA’s Plan to Increase Access to Results of EPA-Funded Scientific Research. This Plan acknowledges that “[f]ederal agencies have a responsibility to protect confidentiality and personal privacy” and cautions that “some research data cannot be made fully available to the public but instead may need to be made available in more limited ways, *e.g.*, establishing data use agreements with researchers that respect necessary

protections.” EPA, *Plan to Increase Access to Results of EPA-Funded Scientific Research* at 4 (Nov. 29, 2016), <https://www.epa.gov/open/plan-increase-access-results-epa-funded-scientific-research>. The Plan expressly concludes that “[w]hether research data are fully available to the public or available to researchers through other means does not affect the validity of the scientific conclusions from peer-reviewed research publications.” *Id.* at 4–5 (emphasis added); see also OMB, 67 Fed. Reg., 8452, 8456 (Feb. 22, 2002) (explaining that “the reproducibility standard does not apply to all original and supporting data disseminated by agencies” and, in any case, “[e]ven in a situation where the original and supporting data are protected by confidentiality concerns, or the analytic computer models or other research methods may be kept confidential to protect intellectual property, it may still be feasible to have the analytic results subject to the reproducibility standard”). EPA’s Proposal to exclude reliable science based solely on consideration of whether the underlying data is fully available to the public is a complete reversal in position from its own prior Plan, with no legitimate explanation for the change.

Equally problematic, the Proposed Rule is entirely inconsistent with prior positions EPA has taken on this very issue. Most notably, in March 2017 – just one year before issuance of this Proposed Rule – EPA responded to questions from Congress on the proposed HONEST Act of 2017, and took a position that is squarely at odds with the Proposed Rule. See EPA, *CBO Questions for EPA Regarding H.R. xxxx, The HONEST Act of 2017* at 1 (2017), <https://www.scribd.com/document/344731162/EPA-analysis-of-Honest-Act-to-CBO> (“HONEST Act Q&A”). For example, in noting its opposition to the HONEST Act, EPA stated:

EPA supports access to data and is already on a path to make data public and transparent. EPA will do this at no additional cost to the taxpayer. EPA will do this while protecting [Personally Identifiable Information] and CBI. EPA will do this while preserving its ability to use the best available science. And EPA will do this while retaining its ability to respond quickly to emergency events. EPA strongly opposes the HONEST Act because it does none of these things and ***will significantly impede EPA’s ability to protect the health and the environment of Americans.***

Id. at 4 (emphasis added). The Agency further explained that:

The HONEST Act would not protect [Personally Identifiable Information] and CBI, and this would strongly discourage industry and academia from working with EPA. Many scientists, including those from the private sector, would not be willing to provide their data because EPA could not guarantee to protect their information, such as their trade secrets, intellectual property, or their study participants’ medical records. Scientific research is a competitive field, and it is likely that not all investigators from the private sector, or academia, will be willing to make their underlying data available – at least not immediately. ***In some instances, EPA might be***

precluded from using the best available science if the underlying data is not made available or is embargoed for a period of time. Therefore, in accordance with the HONEST Act, EPA could not use these studies to help protect health and the environment. *This would impede EPA's ability to use the best available science, because it is presumptively not the best available science if you cannot access all the science.*

Id. at 2-3 (emphasis added). It further explained that limiting science in the way proposed by the HONEST Act – and thus as proposed in the Proposed Rule –

would mean that *EPA would be unable to develop policies, guidance or regulations using the best available science.* Instead of using the best-available research for their assessments, EPA would be restricted to selecting studies based on their data availability. This approach would introduce potential research bias that could compromise the quality of the agency's work.

Id. at 4-5 (emphasis added). EPA recognized that the HONEST Act would restrict the use of reliable science, noting that the proposed legislation

would certainly limit access to the majority of studies currently in the peer reviewed literature. It's not just the number of studies but the type of studies and the integration of the results of these different types of studies with that inform the underlying scientific basis of EPA's decisions. The most informative studies include large comprehensive datasets, such as epidemiology studies, and animal toxicology studies from the open scientific literature, generally do not have all necessary information available on publication. With no new resources, the number of studies that EPA would be able to draw from would be greatly reduced – *EPA roughly estimates it could be reduced by approximately 95% given the stated data-availability requirements and processes in this bill.* And for industry-sponsored data submitted for pesticide registration, little to no data may be publicly available prior to a new registration . . .

Few peer-reviewed studies published in scientific journals meet the requirements described in this bill. Therefore, EPA roughly estimates that less than perhaps 5% would have all of the information publicly available to independently confirm the study details as required under this bill.

Id. at 6 (emphasis added).

EPA's current stance on the category of health studies it now seeks to ban is likewise an about-face from the position it took in 2011 in response to a request by CropLife America for

EPA to establish “firm criteria for quality assessment of epidemiological studies to be used in risk assessment.” In response to CropLife America’s effort – which, like EPA’s Proposed Rule, was allegedly aimed at increasing transparency in the rulemaking process – EPA emphasized its view that mandating requirements around science would stifle scientific development and would be antithetical to the need to weigh various considerations when resolving science questions.⁸² Specifically, EPA stated:

EPA’s general practice is to address issues through non-binding guidance documents rather than by mandatory regulations. There are several reasons for this approach. First, and probably most important, *science questions usually cannot be reduced to a rigid decisional framework; rather science questions invariably involve the weighing of multiple considerations and the use of scientific judgment.* As the SAP report on EPA’s Draft Framework noted in its recommendations on criteria to be used in EPA decision-making: “Inevitably, it will be necessary to exercise some degree of scientific judgment in this assessment.” Second, encasing science decision-making in a rigid rule structure is inconsistent with the fluid and developing nature of science. Thus, *EPA is concerned that writing science decision-making rules will stultify or freeze the science underlying the rule making scientific advances less likely.* Finally, the nature of science issues is not easily compatible with the timeframes associated with formal rulemaking. Given the extended time often required to promulgate or amend a rule, the science underlying science-based criteria may well have significantly advanced between the time of the proposal and the time of the final rule. EPA may then be forced into restarting the rulemaking process or may end up being locked into outdated science decision-making until a rule can be amended. There are numerous examples of EPA appropriately addressing important science questions through guidance, not rules, at both the Agency and the program-specific (pesticide) level.

[CropLife America] has offered no compelling reason to follow a different course with regard to epidemiological data. Epidemiological data are no more “important” to pesticide risk assessments than many other data or inputs or science-related issues. . . . [T]here are many ways to insure a transparent process for science decision-making guidelines other than through rulemaking. Finally, *there is nothing unique about*

⁸² Letter from Steven P. Bradbury, Director, Office of Pesticide Programs, EPA, to Dr. Wendelyn Jones, CropLife America, re: *Petition for Rulemaking To Establish Criteria For Acceptance Of Epidemiological Evidence Into the Pesticide Risk Assessment Process for Human Health Effects* at 2 (April 15, 2011) (attached).

epidemiological data that would indicate that EPA could not craft non-binding guidelines for incorporating epidemiological data in risk assessments, including non-binding guidance on specific criteria to be considered in weighing the value of particular epidemiological data.

EPA agrees that transparency is a critical part of its science decision making. Our decisions on important policies and guidance documents always follow a transparent process with numerous opportunities for public comment.⁸³

And as discussed *supra*, Section IV.A, EPA's position contradicts the stance it took when setting the Particulate Matter NAAQS in 1997, where it noted that "[i]t would be impractical and unnecessary for EPA to review underlying data for every study upon which it relies as support for every proposed rule or standard." 62 Fed. Reg. 38,652, 38,689 (July 18, 1997). EPA now ignores what it acknowledged before, namely that "[i]f EPA and other governmental agencies could not rely on published studies without conducting an independent analysis of the enormous volume of raw data underlying them, *then much plainly relevant scientific information would become unavailable to EPA for use in setting standards to protect public health and the environment.*" *Id.* (emphasis added).

In the current rulemaking, EPA seems to have conveniently forgotten these prior inconsistent positions. Instead, EPA implausibly characterizes the Proposed Rule as a mere extension of existing policies, ignores its prior positions on landmark scientific studies, and contradicts its approach to considering science in the rulemaking process. EPA fails to demonstrate any awareness that it is dramatically changing course with respect to the use and consideration of scientific information, and fails to provide an adequate reason for the change. The Proposed Rule is arbitrary and capricious as a result.

B. The Proposed Rule is Based on Irrational, Unsupported Conclusions.

Not only is the Proposed Rule a drastic departure from EPA's prior policies, positions, and procedures, but it likewise is predicated on irrational and unsupported conclusions. Indeed, a close examination of generally applicable data access policies and guidelines – including policies and recommendations of third party organizations and major scientific journals upon which EPA allegedly relies – reveals that EPA's Proposed Rule is not based on a reasoned explanation and has no rational connection to facts in the record, but rather is entirely baseless.

1. EPA's Proposal is inconsistent with generally applicable data access policies and guidelines.

According to EPA, "[t]he proposed rule takes into consideration the policies or recommendations of third party organizations who advocated for open science" and "the policies recently adopted by some major scientific journals, spurred in some part by the 'replication crisis.'" 83 Fed. Reg. at 18,770. However, a review of the websites of these organizations and

⁸³ *Id.* at 2-3 (emphasis added).

journals, and statements made by journal editors regarding the Proposed Rule, indicate that the policies and guidelines on which EPA allegedly relies do not provide any support. Instead, they are wholly inconsistent with what EPA is attempting to do with this Rule.

i. EPA's Proposal is inconsistent with policies and recommendations of third party organizations upon which it relies.

Though EPA cites “the policies or recommendations of third party organizations who advocated for open science” as support for the Proposed Rule, 83 Fed. Reg. at 18,770, many of the policies and recommendations do nothing of the sort. Instead, they acknowledge that: there are numerous barriers to the disclosure of data, such as requirements to protect personal privacy; disclosure of data necessarily varies among scientific fields based on these barriers; flexibility in data access policies and guidelines is essential; and the best available science is inclusive and not exclusive in nature. EPA’s Proposal to exclude studies solely because the studies include nonpublic data contradicts these principles.

For example, the Administrative Conference of the United States (“ACUS”) Science in the Administrative Process Project, which EPA listed, recommends that agencies take a flexible approach to data disclosure: “To the extent practicable and in compliance with applicable legal restrictions, privileges, protections, and authorities, agencies should seek to provide disclosure of data underlying scientific research[.]” 78 Fed. Reg. 41,352, 41,358 (July 10, 2013). This recommendation thus states only that agencies should “seek to provide disclosure” of data “to the extent practicable” and acknowledges that many legitimate barriers to disclosure of data may exist. *Id.* Furthermore, ACUS contemplates scenarios where “data are not subject to legal or other protections” but where “the data’s owners nonetheless will not provide such access.” *Id.* In these cases, ACUS does not recommend that agencies deprive themselves of data. Rather, ACUS writes, “agencies should note [that the data’s owner did not provide access] and explain why they used the results if they chose to do so.” *Id.* Thus, the ACUS’s policy in no way supports exclusion of studies simply because the underlying data is not publicly available.

The Bipartisan Policy Center’s (“BPC”) Science for Policy Project, another organization upon which EPA relies, emphasizes similar flexibility. Rather than rejecting science when the underlying data have not been made public, the BPC encourages online publication of methods and data but notes that “[t]he extent to which data and methods should be made public will vary by field[.]”⁸⁴ In fact, in its comments requesting an extension of the deadline for filing comments in this rulemaking, BPC expressly states that it

never suggested excluding studies from consideration in developing regulation if data from those studies were not publicly available. Indeed, the panel’s overarching recommendation for assembling the “best available science” reads: “Agencies and their scientific advisory committees should **cast a wide net** (emphasis added) in reviewing studies relevant to regulatory policy, and

⁸⁴ BPC, *Improving the Use of Science in Regulatory Policy* at 46 (2009), <http://bipartisanpolicy.org/wp-content/uploads/sites/default/files/BPC%20Science%20Report%20fnl.pdf>.

should make their methods for filtering and evaluating those studies more transparent.”⁸⁵

Its policies in no way support the exclusion of relevant science.

The Center for Open Science likewise does not advocate for excluding science merely because the underlying data is not public, but rather counsels flexibility in determining what level of transparency is appropriate for a given study. Its Transparency and Openness Promotion (“TOP”) Guidelines for journals⁸⁶ “recognize[] that not all of the standards are applicable to all journals or all disciplines. Therefore, rather than advocating for a single set of guidelines, the TOP Committee defined three levels for each standard.”⁸⁷ These levels “provide flexibility for adoption depending on disciplinary variation.”⁸⁸ The Center for Open Science has invited journals to “suggest revisions that improve the guidelines or make them more flexible or adaptable for the needs of particular subdisciplines.”⁸⁹ Like the other organizations upon which EPA relies, it too has adopted a flexible approach to transparency and thus provides no support for EPA’s rigid exclusion.

EPA also cites “policies and recommendations from . . . members of the Risk Assessment Specialty Section of the Society of Toxicology, the Dose Response Section of the Society for Risk Analysis, and the International Society for Regulatory Toxicology and Pharmacology[.]” 83 Fed. Reg. at 18,770, n.10. In reality, these “policies and recommendations” are merely responses to an online questionnaire by a limited number of members of the three societies.⁹⁰ A report on the questionnaire’s methodology and results acknowledged extremely low response rates ranging from 23 to 27 percent across the three groups surveyed.⁹¹ Furthermore, the report stated that nearly two-thirds of people who responded to the survey worked in industry or were consultants who may perform work for industry clients.⁹² No more than 13 percent of respondents were based in academia.⁹³ If the survey attempted to ascertain any potential conflicts of interest among industry and consultant respondents, such results were not included in the report. EPA should not rely on a limited set of responses to an online poll, especially when the Agency does not possess information about conflicts of interest among respondents.

⁸⁵ BPC, *Bipartisan Policy Center comments on “Strengthening Transparency in Regulatory Science”*, Docket ID No. EPA-HQ-OA-2018-0259-0670 (May 22, 2018), <https://www.regulations.gov/document?D=EPA-HQ-OA-2018-0259-0670>.

⁸⁶ Center for Open Science, TOP Guidelines, <https://cos.io/our-services/top-guidelines> (accessed July 2, 2018).

⁸⁷ Nosek B.A. et al., *Promoting an open research culture*, *Science*, 348, 1422-1425, 1423-1424 (2015).

⁸⁸ Center for Open Science, TOP Guidelines, <https://cos.io/our-services/top-guidelines> (accessed July 2, 2018).

⁸⁹ Nosek B.A. et al., *Promoting an open research culture*, *Science*, 348, 1422-1425, 1423-1424 (2015).

⁹⁰ See Center for Media and Public Affairs and Center for Health and Risk Communication at George Mason University, *Expert Opinion on Regulatory Risk Assessment* (Dec. 6, 2013), http://www.isrtp.org/GMU%20WEBINAR_DEC_2013/GMU%20Study%20Document4.pdf.

⁹¹ *Id.* at 5.

⁹² *Id.* at 6.

⁹³ The report states that “13 percent [were] based in academia or non-profit organizations.” *Id.*

ii. EPA's Proposal is inconsistent with policies adopted by major scientific journals.

As additional support for its ill-advised rule, EPA claims that “policies recently adopted by some major academic journals” informed the data access guidelines and policies that EPA allegedly considered as it developed the Proposed Rule. 83 Fed. Reg. at 18,770. In particular, it cites “related policies from the *Proceedings of the National Academy of Sciences*, *PLOS ONE*, *Science*, and *Nature*.” *Id.* But EPA provides no information as to how these journals’ policies supposedly informed the data access guidelines and policies. Despite this lack of transparency by EPA, one thing is clear: the Proposed Rule is decidedly inconsistent with the policies these journals have adopted, as stated by the journals themselves.

Indeed, a joint statement by the editors of *Proceedings of the National Academy of Sciences* (PNAS), *PLOS*, *Science*, *Nature*, and *Cell* indicates that their journals follow the TOP Guidelines and provide necessary flexibility in how data are shared. The editors write that the TOP Guidelines “recognize the array of workflows across scientific fields and make the case for data sharing at different levels of stringency; ***in not every case can all data be fully shared.***”⁹⁴ The editors cite “data sets featuring personal identifiers” as an important example of “data that cannot be shared openly with all.”⁹⁵ Ultimately, the editors conclude that the Proposed Rule would jeopardize the development of science-based policies:

It does not strengthen policies based on scientific evidence to limit the scientific evidence that can inform them; rather, it is paramount that the full suite of relevant science vetted through peer review, which includes ever more rigorous features, inform the landscape of decision making. ***Excluding relevant studies simply because they do not meet rigid transparency standards will adversely affect decision-making processes.***⁹⁶

EPA’s reliance on these journals’ policies is thus sorely misplaced.

iii. EPA has not shown the existence of a replication crisis or its potential relevance to dose-response data and models.

EPA also premises the Proposed Rule on a so-called “replication crisis.” It claims – with no support – that the policies of major scientific journals that purportedly informed the development of the Proposed Rule were “spurred in some part by the ‘replication crisis.’” 83 Fed. Reg. at 18,770. This alleged crisis is a complete fabrication. The term “replication crisis” does not occur in any of the sources cited by EPA in support of this clause. *Id.* at 18,770, n.12.

⁹⁴ Jeremy Berg et al., “Joint statement on EPA proposed rule and public availability of data,” *Science* (Apr. 30, 2018), <http://science.sciencemag.org/content/early/2018/04/30/science.aau01116> (emphasis added).

⁹⁵ *Id.*

⁹⁶ *Id.* (emphasis added).

Indeed, the word “crisis” only appears in one of the sources, which refers to a “reproducibility crisis” and then notes that it is “debatable” whether this term is appropriate.⁹⁷

Nonetheless, EPA asserts without support that such a crisis exists and implies that its existence supports imposing the rigid requirements of the Proposed Rule. This is untrue. While there are discussions within certain scientific fields, such as clinical psychology, about inconsistent results that have been obtained when experiments conducted in those fields are repeated,⁹⁸ EPA has not explained why these discussions should cast doubt on the dose-response data or models used by the Agency. In support of the “replication crisis” clause, EPA provides web addresses to three commentaries authored by Dr. John Ioannidis of Stanford University,⁹⁹ an editorial in the journal *Science*,¹⁰⁰ and an editorial by *The Economist* newspaper.¹⁰¹ 83 Fed. Reg. at 18,770, n.12. EPA does not explain why any of the observations made in these commentaries or editorials are relevant to dose-response data and models. Perhaps that is because they are not.

In fact, the authors cited by EPA have sharply criticized the Proposed Rule. Dr. Ioannidis wrote, “If the proposed rule is approved, science will be practically eliminated from all decision-making processes. Regulation would then depend uniquely on opinion and whim.”¹⁰² *Science* editorialized, “Here, a push for transparency appears actually to be a mechanism for suppressing important scientific evidence in policy-making, thereby threatening the public’s well-being.”¹⁰³ *The Economist* has described the proposal as part of “a campaign to stifle science at the EPA.”¹⁰⁴ As they put it, “[a]ir-quality rules and pesticide limits rely on analyses of confidential medical records—which Mr Pruitt may now label suspect and try to undo.”¹⁰⁵ Once again, EPA’s cited support undermine, rather than support, the Proposed Rule.

2. There is no evidence that the benefits justify the costs much less a rational finding of that; instead, available evidence shows the opposite.

In the preamble to the Proposed Rule, EPA states – with no evidence or justification – that “the benefits of this proposed rule justify the costs.” 83 Fed. Reg. at 18,772. This conclusory statement is the very definition of arbitrary and capricious. *State Farm*, 463 U.S. at 42-43. EPA provides no evidence of what it considered to reach this statement, much less why

⁹⁷ Munafò M.R. et al., *A manifesto for reproducible science*, Nature Human Behavior 1, 1 (2017).

⁹⁸ See, e.g., Open Science Collaboration, *Estimating the reproducibility of psychological science*, Science, 349, aac4716 (2015).

⁹⁹ Munafò M.R. et al., *A manifesto for reproducible science*, Nature Human Behavior 1, 1 (2017); Goodman S.N. et al., *What does research reproducibility mean?*, Science Translational Medicine 8, 1-6 (2016); Ioannidis J.P.A., *Why Most Published Research Findings Are False*, PLoS Medicine 2, e124 (2005).

¹⁰⁰ McNutt M., *Reproducibility*, Science 490, 229 (2012).

¹⁰¹ “How science goes wrong,” *The Economist* (2013).

¹⁰² Ioannidis J.P.A., *All science should inform policy and regulation*, PLoS Medicine 15 at 2 (2018).

¹⁰³ Berg J., *Obfuscating with transparency*, Science 360, 133 (2018).

¹⁰⁴ “Scott Pruitt embarks on a campaign to stifle science at the EPA,” *The Economist* (Apr. 26 2018), <https://www.economist.com/united-states/2018/04/26/scott-pruitt-embarks-on-a-campaign-to-stifle-science-at-the-epa>.

¹⁰⁵ *Id.*

its conclusion is rational. Indeed, EPA provides no information at all about what the “benefits” or “costs” of the Proposed Rule are, or what it evaluated to reach its conclusion. There is simply nothing in the record to support EPA’s conclusory statement.

Despite the lack of evidence in the regulatory docket, as these and other comments make clear, the costs of this Proposed Rule are far-reaching and substantial, while EPA has failed to identify any alleged benefits at all, other than vague and unsupported references to improved transparency. EPA’s Proposal to undermine, exclude, and ignore important and relevant health science in rulemaking proceedings will have serious implications on public health, privacy, the environment, and the judicial review process, and thus the costs will be significant. EPA cannot ignore these harms in its cost-benefit analysis,¹⁰⁶ even if the costs are not readily quantifiable. *See, e.g., Michigan v. EPA*, 135 S. Ct. 2699, 2707 (2015) (costs include “harms that regulation might do to human health or the environment”); Executive Order 12,866, 58 Fed. Reg. 51,735, 51,735 (Oct. 4, 1993) (it is “essential to consider” the “qualitative measures of costs and benefits that are difficult to quantify”); *see also* Food Labeling: Nutrition Labeling of Standard Menu Items in restaurants and Similar Retail Food Establishments; Extension of Compliance Date; Request for Comments, 82 Fed. Reg. 20,825, 20,828 (May 4, 2017) (acknowledging that delaying a nutrition labeling requirement would lead to millions of dollars in lost health benefits). Yet there is no evidence that EPA evaluated any of these adverse impacts, quantitatively or qualitatively.¹⁰⁷ Moreover, EPA itself estimated that the economic cost of this type of restriction on science would cost “considerably more” than \$250 million.¹⁰⁸

In addition, in performing certain CAA and other rulemakings, EPA may not consider the economic implications of considering or excluding certain science *at all*. *See* Section IV.A. Yet

¹⁰⁶ Not only does EPA provide no support for its claim that the benefits justify the costs for this Proposed Rule, but it likewise failed to follow the procedures ordinarily used to obtain confirmation of its cost-benefit analysis. In fact, EPA entirely sidestepped the procedures set forth in Executive Order 12,866 pursuant to which the Office of Information and Regulatory Affairs reviews regulatory actions to ensure the Agency’s analysis of costs and benefits is accurate, to provide time for interagency review and stakeholder meetings, and to provide the agency with any necessary changes to the proposed rule. For this Proposed Rule, OIRA completed its review *only four days after receiving it*. And these four days fell over the weekend, meaning that OIRA spent roughly two working days reviewing a rule that will have significant and far-reaching consequences across multiple statutes.

¹⁰⁷ Indeed, in a recent report on rulemakings related to health – the very type of rulemakings most impacted by the Proposed Rule – EPA and OMB quantified some of the benefits of various regulations that would be dramatically weakened under the new rule. *See, e.g., OMB, 2017 Draft Report to Congress on the Benefits and Costs of Federal Regulations*, https://www.whitehouse.gov/wp-content/uploads/2017/12/draft_2017_cost_benefit_report.pdf; EPA, *Benefits & Costs of the Clean Air Act from 1990 to 2020, the Second Prospective Study* (Apr. 2011), <https://www.epa.gov/clean-air-act-overview/benefits-and-costs-clean-air-act-1990-2020-second-prospective-study>, https://www.epa.gov/sites/production/files/2015-07/documents/fullreport_rev_a.pdf. These recent studies show health rulemakings, particularly air rulemakings, create significant benefits (including health and protection of life, reductions in the need for health care and health care costs, as well as job creation, and other economic values in avoiding days lost at work and school) that are quantitatively larger and more qualitatively valuable than the costs of pollution controls or other economic costs of the regulations.

¹⁰⁸ EPA, *CBO Questions for EPA Regarding H.R. xxxx, the HONEST Act of 2017* at 1, 2, 8, 10 (2017), <https://www.scribd.com/document/344731162/EPA-analysis-of-Honest-Act-to-CBO>.

EPA's failure to provide any lawful or rational justification for its costs/benefits statement for the Proposed Rule suggests that economic cost may have impermissibly played a role in its analysis. Had EPA focused on health rather than cost, EPA could not possibly find that the benefits of ignoring health science outweigh the costs for public health rulemakings.

C. Section 30.9 Allows Standardless and Arbitrary Application of the Rule.

The Proposed Rule is arbitrary and capricious because its standardless provisions give EPA unfettered discretion in deciding whether and how the Rule applies. It has long been held that regulations must contain "narrow, objective, and definite standards to guide the [decisionmaking] authority," . . . thereby to guard against the danger of arbitrary action." *United States v. Abney*, 534 F.2d 984, 986 (D.C. Cir. 1976) (quoting *Shuttlesworth v. City of Birmingham, Ala.*, 394 U.S. 147, 149 (1969)). "When administrators provide a framework for principled decision-making" by "articulat[ing] the standards and principles that govern their discretionary decisions in as much detail as possible," "the result will be to . . . enhanc[e] the integrity of the administrative process." *Env'tl. Def. Fund, Inc. v. Ruckelshaus*, 439 F.2d 584, 598 (D.C. Cir. 1971). But where a regulation is "wholly silent as to what factors the agency is to consider in granting exceptions . . . [a]gency discretion is unfettered," and the regulation is "arbitrary, capricious and contrary to law." *Nat. Res. Def. Council, Inc. v. EPA*, 863 F.2d 1420, 1432 (9th Cir. 1988).

EPA's Proposed Rule lacks the requisite standards and principles that are the hallmark of lawful agency decision-making. The vague definitions proposed in 40 C.F.R. § 30.2 invite limitless agency discretion to decide when the Rule's requirements apply. For example, the Proposed Rule defines "regulatory science" as "scientific information . . . that provide the basis for EPA final significant regulatory decisions." 83 Fed. Reg. at 18,773. But this definition lacks any discernible meaning. There is no standard or definition for determining when scientific information does or does not "provide the basis" for a regulatory decision, nor are there any standards or definitions for what subset of "regulatory decisions" should be deemed "significant." Likewise, the Proposed Rule defines "pivotal regulatory science" as studies that "drive the requirements and/or quantitative analysis" of EPA's action, *id.*, but this too lacks any understandable meaning. There is no standard governing what science does or does not "drive" the regulatory action. The lack of regulatory standards here means that EPA staff will impermissibly determine applicability of the rule "based upon their own unwritten personal standards." *White v. Roughton*, 530 F.2d 750, 754 (7th Cir. 1976).

In contrast to the definitions of proposed section 30.2 – which lack any meaning or standards at all – proposed section 30.9 provides a veritable grab bag of reasons the Administrator may use in his discretion to decide when not to apply the Rule. It allows the Administrator to grant a case-by-case exemption to the Rule's requirements if the Administrator determines it is not "feasible" to ensure that data may be made publicly available "in a manner sufficient for independent validation, in a fashion that is consistent with law, protects privacy, confidentiality, confidential business information, and is sensitive to national and homeland security." 83 Fed. Reg. at 18,774. It also authorizes the Administrator to exempt application of the Rule if it is not "feasible" to conduct peer review for the multiple reasons outlined in OMB

guidance. *Id.* Here, the many vague and discretionary “exception[s] . . . threaten[] to swallow the rule,” *Nat. Res. Def. Council, Inc.*, 863 F.2d at 1432, empowering the Administrator to pick and choose the preferred scientific studies he wants considered or excluded from consideration in any given rulemaking procedure with no clear standards or principles to keep this discretion in check.

Proposed sections 30.2 and 30.9 thus give EPA unfettered discretion to be a case-by-case arbiter of scientific information, without notice-and-comment, any oversight, or any stated standards or principles limiting this discretion. These provisions allow for arbitrary application of the Rule, rendering the Proposed Rule arbitrary and thus unlawful.

D. The Proposed Rule Impermissibly Favors So-Called “Secret Science” That Supports a Decision *Not* to Regulate a Chemical While Disfavoring Public Health Research that Supports a Decision to Regulate a Chemical.

Under the terms of the Proposed Rule, EPA must ensure that underlying data is publicly available only “[w]hen promulgating significant regulatory actions.” 83 Fed. Reg. at 18,773 (proposed to be codified as 40 C.F.R. § 30.5). But as defined in the Proposed Rule, a significant regulatory action refers only to the *promulgation* of a new rule or regulation.¹⁰⁹ Accordingly, as written, the Proposed Rule arguably allows EPA to utilize non-public studies or studies that rely on non-public data to justify a decision not to regulate at all. This creates a lopsided and inequitable playing field whereby EPA can rely upon studies that it prohibits others to use when it decides not to issue a new regulation.

An example highlights the dangerousness of this inequity. Under TSCA, many provisions involve go/no-go decisions about whether to promulgate regulations at all. Thus, upon consideration of whether to regulate a chemical, EPA could arguably utilize non-public studies or studies that rely on non-public data to justify a decision not to regulate. For example, EPA could use non-public data to justify a finding that a chemical does not pose an unreasonable risk to health or the environment under Section 2605 and thus does not require regulation. Pursuant to the definitions in the Proposed Rule, such a decision does not qualify as a significant regulatory action, because a finding of no unreasonable risk does not trigger any new rule or regulation. By contrast, EPA would not be able to rely on non-public studies or studies that rely on non-public data to justify a decision to regulate a chemical.

The Proposed Rule thus creates a regulatory regime in which EPA *can* consider science based on non-public data if it shows that a chemical is not harmful (or minimizes the harmful

¹⁰⁹ In the Proposed Rule, a significant regulatory action means “final regulations determined to be ‘significant regulatory actions’ by the Office of Management and Budget pursuant to Executive Order 12866.” 83 Fed. Reg. at 18,773 (proposed to be codified as 40 C.F.R. § 30.2). In turn, Executive Order 12,866 defines a significant regulatory action, in relevant part, as “any regulatory action that is *likely to result in a rule* that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency . . .” Exec. Order 12,866, 58 Fed. Reg. 51,735 (emphasis added).

effects of a chemical) and supports not regulating the chemical, but **cannot** consider science that shows that a chemical has harmful effects if it is similarly based on non-public data but supports a decision to regulate the chemical. EPA has not, and indeed cannot, provide any explanation or basis for this differential treatment. For this reason, too, the Proposed Rule is arbitrary and capricious and cannot stand.

Equally problematic, the Proposed Rule could lead to absurd results. For example, when determining whether a chemical poses an unreasonable risk of harm under TSCA, EPA has to consider all relevant scientific studies. If EPA finds that a chemical poses an unreasonable risk and that it must issue a regulation on that basis, the Proposed Rule mandates exclusion of studies based on non-public data from consideration, even if those same studies provide the basis for the unreasonable risk finding. Absent these particular studies, the remaining research may show no unreasonable risk of harm, obviating the need for regulation, and in turn, eliminating the Proposed Rule's requirement that EPA not consider the excluded studies. Instead, when determining no unreasonable risk of harm, EPA **must** consider the excluded studies because such a finding does not result in a significant regulatory action and thus the Proposed Rule's ban on non-public data would not apply. But because the excluded study demonstrates that the chemical **is** unreasonably risky, EPA could not go forward with an unreasonable-risk determination. This could create an endless cycle of review and re-review with certain studies included, then excluded, and then included again, *ad infinitum*. In such situations, application of the Proposed Rule creates a catch-22 in which EPA cannot make **any** determination that complies with both the APA's requirement of reasoned decision-making and the requirements of the Proposed Rule.

These flaws would plague any decision made under any provision of the statute in which EPA is required to choose between issuing or not issuing a regulation and, therefore, renders the Proposed Rule arbitrary and capricious. *See e.g.* 15 U.S.C. § 2603(a) (EPA must require testing if it finds that a chemical "may present an unreasonable risk").

E. EPA Has Failed to Show Any Need or Reasoned Basis for the Proposed Rule.

EPA's stated justifications for the Proposed Rule consist of vague platitudes such as a purported desire to strengthen the transparency and integrity of EPA regulatory science and to enhance the public's ability to understand and meaningfully participate in the regulatory process. 83 Fed. Reg. at 18,769. Yet the Proposal does not show how or why EPA's existing practices fail to adequately achieve these purposes, or how the proposed new procedures would do a better job. In reality, EPA's historic practices in adopting health and welfare standards are extraordinarily transparent, public, and accessible to interested persons.

By way of example, EPA's NAAQS process begins with preparation of an Integrated Science Assessment ("ISA"), an extensive review of available science relevant to the development of NAAQS. *See* EPA, *Integrated Science Assessment for Ozone and Related Photochemical Oxidants*, EPA 600/R-10/076F, at li-liv (Feb. 2013). Preparation of the ISA is preceded by a public workshop and call for information. *Id.* EPA collects and screens studies (with a heavy focus on studies that have been peer reviewed), prepares an initial characterization of evidence, and then provides a peer review process of the initial draft materials for scientific

quality of “building blocks” from scientists from both outside and within EPA. *Id.* at 1vii. There is then preparation of draft syntheses of the studies and draft conclusions and causal determinations, followed by CASAC input and an opportunity for public comment before preparation of the final ISA. After that, EPA staff prepares a Policy Assessment (“PA”) based on integration and interpretation of the findings of the ISA and a separate risk and exposure assessment (“REA”). Both the PA and REA are themselves subject to separate rounds of public comment. And there is yet another round of public comment after EPA proposes its action on the NAAQS. *Id.*

All of the foregoing comprises one of the most open, publicly accessible processes ever devised for the development of health standards. There are multiple layers of peer review and more than ample opportunity for the public to raise questions about the adequacy and accuracy of the studies and models presented. EPA does not and cannot rationally explain why this system requires yet another layer of complexity to provide adequate transparency, integrity, and public understanding of the process.

EPA’s process for revising ambient water criteria for the protection of human health provides another example of the transparency afforded to its rulemaking, as it provides open access to information for interested persons. In 1998, EPA “improved” this process “to provide expanded opportunities for public input, and to make the process more efficient.” 63 Fed. Reg. 68,354, 68,355 (Dec. 10, 1998). To revise its ambient water criteria, EPA must follow a multi-step process. *First*, EPA must “undertake a comprehensive review of available data and information” before developing draft criteria. *Id.* *Second*, EPA must “publish a notice in the Federal Register and on the Internet announcing its assessment . . . of the pollutant” which “describe[s] the data available to the Agency,” and solicits “scientific views as to the application of the relevant Agency methodology.” *Id.* *Third*, EPA must “utilize information obtained from both the Agency’s literature review and [from] the public [comments] to develop draft recommended water quality criteria.” *Id.* *Fourth*, and concurrent with the development of the draft criteria, EPA must publish in the Federal Register a notice soliciting the public’s “scientific views on the draft criteria,” and must “initiate . . . a documented critical review by qualified independent experts.” *Id.* *Fifth*, EPA must then evaluate and respond on the record to all “[m]ajor scientific issues” (if any) raised during the peer review or public comment period. *Id.* *Finally*, EPA must “revise the draft criteria as necessary, and announce the availability of the final water quality criteria in the Federal Register and on the Internet.” *Id.* Like the NAAQS process, this process too is fully open and transparent.

Moreover, it would be irrational and impracticable to require EPA to seek out the underlying data for, and demand separate peer review of, all data and models the Agency uses for purposes of characterizing the quantitative relationship between dose or exposure and magnitude of a predicted health or environmental impact. For instance, in the last ozone NAAQS review, EPA reviewed more than 4,000 studies and references for the ISA, and cited more than 2,200 in the final ISA. *See* EPA, Health and Environmental Research Online, ISA-Ozone (2013) (last updated July 2, 2018), https://hero.epa.gov/hero/index.cfm/project/page/project_id/1628. It is neither practicable nor

necessary for EPA to demand production of underlying data from thousands or even hundreds of studies, and to require new peer reviews of each. EPA cannot construe the statute in a way that would render it impossible to complete the review and revision of the NAAQS that Congress mandated.

EPA further tries to justify the Proposed Rule as a way to ensure the Agency is not arbitrary and capricious in its conclusions. But as previously noted, the D.C. Circuit has twice rejected the notion that EPA must obtain and disclose data underlying the studies it relies on in NAAQS development.

VII. OTHER PROVISIONS OF THE RULE ARE UNLAWFUL

A. EPA's Requirement in Proposed 30.6 to Give Explicit Consideration to Studies that Explore Threshold Models Is Arbitrary.

EPA's Proposed Rule requires the Agency to "give explicit consideration to high quality studies that explore . . . various threshold models across the dose or exposure range[.]" 83 Fed. Reg. at 18,774 (proposed 40 CFR § 30.6). A "threshold" is a dose or exposure "below which effects do not occur or are extremely unlikely."¹¹⁰ A "threshold model" – a type of "non-linear" model¹¹¹ – is a dose-response model in which there is no response below the threshold dose or exposure.¹¹² EPA's proposed prioritization of threshold models is arbitrary, for at least three reasons.

First, EPA provides no evidence to justify the proposed requirement that it consider threshold models in dose-response assessments. EPA baldly asserts that "there is growing empirical evidence of non-linearity [*i.e.*, a threshold¹¹³] in the concentration-response function for specific pollutants and health effects[.]" but provides not a single example or citation for this unsubstantiated claim.¹¹⁴ *Id.* at 18,770. By contrast, EPA has found strong empirical evidence of no-threshold concentration-response functions for lead and reduced IQ, and particulate matter and increased mortality, following extensive reviews of the relevant literature to inform the

¹¹⁰ National Research Council, *Science and Decisions: Advancing Risk Assessment* at 128 (2009), <https://www.nap.edu/catalog/12209/science-and-decisions-advancing-risk-assessment>.

¹¹¹ EPA uses the terms "threshold" and "nonlinear" repeatedly but does not define them in the Proposed Rule. According to EPA Risk Assessment Guidelines, "the term 'nonlinear' refers to threshold models (which show no response over a range of low doses that include zero) and some nonthreshold models[.]" EPA, *Guidelines for Carcinogen Risk Assessment* at 1-11, n.3 (2005), https://www.epa.gov/sites/production/files/2013-09/documents/cancer_guidelines_final_3-25-05.pdf.

¹¹² A threshold model "show[s] no response over a range of low doses that include zero[.]" *Id.*

¹¹³ EPA appears to use the terms "non-linearity" and "threshold" interchangeably. If so, then EPA has asserted that there is growing evidence of thresholds in unspecified concentration-response functions but has failed to provide a supporting example or citation. If not, then EPA has not even asserted that there is growing evidence of such thresholds and has failed to state, let alone support, any scientific rationale for the proposed requirement to give explicit consideration to studies that explore threshold models.

¹¹⁴ A "concentration-response function" is a dose-response model in which the "dose" is the concentration of an air pollutant.

Agency's national ambient air quality standards.¹¹⁵ EPA's failure to provide any support for its claim is telling.

Second, the proposed requirement to consider threshold models ignores essential science, namely the approach to dose-response assessment recommended by the NAS in *Science and Decisions: Advancing Risk Assessment*. Historically, researchers applied no-threshold dose-response models to carcinogens and threshold models to non-carcinogens.¹¹⁶ But in *Science and Decisions*, NAS determined that, due to the variability in susceptibility and exposures to other chemicals (background exposures) within populations, the effects of non-carcinogens may lack thresholds in **populations** even when these effects have thresholds in certain **individuals** who are less susceptible and/or have lower background exposures.¹¹⁷ In other words, thresholds vary by individual; for some, effects have high thresholds, while for others, effects have practically no threshold due to increased susceptibility or background exposures,¹¹⁸ and this latter group may develop disease when a population is exposed, even at very low levels.¹¹⁹ Based on these findings, NAS concluded that no-threshold models should be applied to **both** carcinogens and non-carcinogens unless reliable data affirmatively support a threshold model based on detailed assessments of mode of action (how a chemical causes disease), susceptibility, and background exposures.¹²⁰ EPA's Proposed Rule entirely ignores *Science and Decisions*, its recommended approach to dose-response assessment, and the need for a detailed assessment before concluding that a threshold model is appropriate.

The "explicit consideration" of "studies that explore . . . various threshold models" required under the Proposed Rule does not qualify as a "detailed assessment" of the type recommended by NAS. While NAS recommends consideration of the available data on mode of action, susceptibility, and background exposure **before** deciding whether dose-response models are appropriate,¹²¹ the Proposed Rule requires consideration of threshold models regardless of this data. EPA provides no justification for ignoring NAS' researched approach to dose-response data.

Third, EPA's proposed requirement also disregards the Agency's own Guidelines for Carcinogen Risk Assessment, which expressly state that, in cancer risk assessments, no threshold should be assumed unless the mode of action is known and the chemical does not cause cancer

¹¹⁵ EPA, *Integrated Science Assessment for Lead* at lxxxviii (2013), http://ofmpub.epa.gov/eims/eimscomm.getfile?p_download_id=518908 ("[T]here is no evidence of a threshold below which there are no harmful effects on cognition from [lead] exposure."). EPA, *Integrated Science Assessment for Particulate Matter* at 2-25 (Dec. 2009), http://ofmpub.epa.gov/eims/eimscomm.getfile?p_download_id=494959 ("Overall, the studies evaluated further support the use of a no-threshold log-linear model[.]").

¹¹⁶ NAS, *Science and Decisions*, *supra* n.110, at 127-128.

¹¹⁷ *Id.* at 131.

¹¹⁸ *See id.*

¹¹⁹ *See id.*

¹²⁰ *See id.* at 148.

¹²¹ *Id.* The sequence of steps recommended by NAS, including the assessment of mode of action, susceptibility of vulnerable populations, and background exposure **before** model selection is depicted by Figure 5-8. *Id.* at 144.

by inducing DNA mutations that initiate tumor development.¹²² Like *Science and Decisions*, the Cancer Guidelines state that it is necessary to assess mode of action to determine whether a threshold or no-threshold model is appropriate.¹²³ EPA has historically followed this approach to ensure that its cancer risk assessments are adequately health-protective.¹²⁴ The Proposed Rule breaks from this prior practice and instead disregards science that the Cancer Guidelines say should be considered. EPA's reversal of longstanding policy is unjustified and arbitrary, and should not be permitted.

B. The Requirement in Proposed 30.7 that EPA Independently Peer-Review All Pivotal Regulatory Science Used to Make Regulatory Decisions is Arbitrary.

As part of the Proposed Rule, EPA injects a new requirement – without justification – that EPA “conduct independent peer review on all *pivotal regulatory science* used to justify *regulatory decisions* consistent with the requirements of the OMB Final Information Quality Bulletin for Peer Review (70 FR 2664) and the exemptions described therein.” 83 Fed. Reg. at 18,774. Once again, a review of the support upon which EPA relies demonstrates that this peer review obligation is contrary to current policy. It is also unnecessary, costly, and unrealistic. It seems the only things this new peer review process would accomplish is the exclusion of reliable science, increased cost and time for effective reviews, and delay of regulatory decisions that impact public health.

1. Independent Peer Review by EPA Is Unnecessary.

There is no dispute that independent peer review plays a pivotal role in the regulatory development process, subjecting original research methods and outcomes to a panel of experts in the same field.¹²⁵ Independent peer review “is a process for enhancing a scientific or technical work product so that the decision or position taken by the Agency, based on that product, has a sound, credible basis”.¹²⁶ Peer reviewers are individuals with technical expertise in the area of the work or product under review. Independent peer review processes eliminate issues arising due to conflicts of interest between the reviewer and the developers of the product/scientific work.¹²⁷ When conducted properly, independent peer review provides validation for original research and ensures that basic scientific integrity practices are employed to aid decision makers

¹²² Specifically, the Guidelines say that a linear model is used as a default approach unless these conditions apply. See EPA, *Guidelines for Carcinogen Risk Assessment*, *supra* n.111, at 3-21. A linear model, known more fully as a low-dose-linear model, is a model “whose slope is greater than zero at a dose of zero[,]” which implies no threshold. *Id.* at 1-11, n.3.

¹²³ *Id.* at 3-21.

¹²⁴ *Id.*

¹²⁵ See, e.g., Bruce P. Dancik, *Importance of Peer Review*, *The Serials Librarian* 19:3-4, 91-94 (1991), https://www.tandfonline.com/doi/pdf/10.1300/J123v19n03_11; Frank Gannon, *The essential role of peer review*, *EMBO Rep.* 2(9): 743 (Sept. 2001), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1084042/>; see also NAS, *Strengthening Science at the U.S. Environmental Protection Agency: Research-Management and Peer-Review Practices* (2000), <http://www.nap.edu/catalog/9882.html>.

¹²⁶ *Id.*

¹²⁷ EPA, *EPA Science Policy Council HANDBOOK – Peer Review – 2nd Edition*.

in making sound policy decisions. OMB's Final Information Quality Bulletin for Peer Review ("OMB Bulletin") confirms these principles: "Peer review can increase the quality and credibility of the scientific information generated across the federal government."¹²⁸ Overall, it is well understood that peer review is an essential element of the regulatory process.

While it is certainly a best practice to consider only science that has been independently peer reviewed when making regulatory decisions, that does not necessitate independent peer review *by EPA*. Rather, most scientific bodies – including *Nature*, *Science*, the Bipartisan Policy Center, and *Proceedings of the National Academies of Sciences* – employ some of the most robust peer review practices that they already apply to the types of studies for which the Proposed Rule will require EPA review. Thus, as the OMB Bulletin recognizes, "[p]ublication in a refereed scientific journal may mean that adequate peer review has been performed."¹²⁹ Thus, additional review by EPA is duplicative and wholly unnecessary.

More importantly, EPA's Proposal is antithetical to the science communities' policies. Rather than strengthening science, the independent peer review process would serve to exclude reliable and tested science that has been foundational to protecting public health and the environment. Indeed, despite EPA's reliance on the policies of several major scientific journals, the Editors-in-Chief of *Science*, *Nature*, *Proceedings of the National Academy of Sciences*, and several other highly revered scientific journals and members of the scientific community released a joint statement in response to the Proposed Rule, making clear that the Rule itself "does not strengthen policies based on scientific evidence to limit the scientific evidence that can inform them; rather, it is paramount that the full suite of relevant science vetted through peer review, which concludes ever more rigorous features, inform the landscape of decision making."¹³⁰ The joint statement concludes: "[e]xcluding relevant studies simply because they do not meet rigid transparency standards will adversely affect decision-making processes."¹³¹

2. EPA's Independent Peer Review Requirement Will Lead to Unnecessary Delay and Increased Costs.

Not only is independent peer review by EPA unnecessary, but it is also impractical and irrational for EPA to conduct its own independent peer review of the underlying data for studies that already have undergone a rigorous scientific review process, which is the case for those studies published in scientific journals or independently evaluated by a scientific body. It would also lead to undue delay. The standard time taken to review scientific manuscripts in the fields of medicine, public health, and natural sciences is, on average, 12-14 weeks.¹³² If EPA were to follow a comparably rigorous independent peer review on all pivotal science utilized in the regulatory decision making process, such an action would result in untimely delays in

¹²⁸ OMB, *Final Information Quality Bulletin for Peer Review* at 1 (Dec. 16, 2004), http://www.cio.noaa.gov/services_programs/pdfs/OMB_Peer_Review_Bulletin_m05-03.pdf.

¹²⁹ *Id.* at 22.

¹³⁰ Jeremy Berg et al., "Joint statement on EPA proposed rule and public availability of data," *Science* (Apr. 30, 2018), <http://science.sciencemag.org/content/early/2018/04/30/science.aau0116>.

¹³¹ *Id.*

¹³² Janine Huisman & Jeroen Smits, *Duration and quality of the peer review process: the author's perspective*, *Scientometrics* 113:633 (2017), <https://doi.org/10.1007/s11192-017-2310-5>.

implementation of public health protections. For example, the NAAQS Integrated Science Assessment and Risk and Exposure Assessments regularly include the review of thousands of scientific studies. It would be enormously inefficient and costly (if even possible) for EPA to re-review all of these studies.

Moreover, as clearly outlined in the OMB Bulletin, the independent peer review guidelines “do[] not cover time-sensitive health and safety disseminations, for example, a dissemination based primarily on data from a recent clinical trial that was adequately peer reviewed before the trial began. For this purpose, ‘health’ includes public health, or plant or animal infectious diseases”.¹³³ This encompasses most of the studies that EPA intends to review, including but not limited to, the Integrated Risk Information System (“IRIS”) assessments, TSCA risk evaluations, and National Emissions Standards for Hazardous Air Pollutants risk assessments.¹³⁴ In each case, EPA utilizes scientific data to make safety determinations for chemical pollutants and impacts on human health and the environment, and thus, timely review is tantamount to protecting public health. The Proposal to add another layer of review – one that is wholly unnecessary and duplicative – is antithetical to the time sensitive nature of these reviews.

Furthermore, the Bulletin makes clear that agencies should “ensure peer review does not unduly delay the release of urgent findings.”¹³⁵ Thus, if EPA wants to independently peer review all pivotal science, then it must clearly outline how it will ensure the process will not lead to undue delay. It has failed to do so. For example, there is nothing in the Proposed Rule outlining how EPA will conduct an independent review of the studies underlying the NAAQS standard, which will require review of hundreds if not thousands of science documents, within the NAAQS review cycle. The standard review period in the independent peer review process (*i.e.*, from submission of a manuscript to final review) is time intensive. If it can take months to review one manuscript,¹³⁶ it is difficult to envisage how EPA could subject every piece of pivotal regulatory science to the same standard of review and still complete scientific assessments in a timely manner.

Equally problematic, the proposed independent EPA review will lead to undue costs in terms of the time and resources required to review the relevant data. In *Strengthening Science at the U.S. Environmental Protection Agency: Research-Management and Peer Review Practice* (“NAS Review”), the National Academy of Sciences states that “[t]he cost of a peer review

¹³³ *Id.*

¹³⁴ EPA, Basic Information about the Integrated Risk Information System (last updated March 7, 2018), <https://www.epa.gov/iris/basic-information-about-integrated-risk-information-system>; EPA, Risk Evaluations for Existing Chemicals under TSCA (last updated June 11, 2018), <https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/risk-evaluations-existing-chemicals-under-tsca>; EPA, Risk and Technology Review (last updated June 22, 2018), <https://www3.epa.gov/airtoxics/rtrpg/rtrpg.html>.

¹³⁵ OMB, *Final Information Quality Bulletin for Peer Review* at 1 (Dec. 16, 2004), http://www.cio.noaa.gov/services_programs/pdfs/OMB_Peer_Review_Bulletin_m05-03.pdf.

¹³⁶ Janine Huisman & Jeroen Smits, *Duration and quality of the peer review process: the author's perspective*, *Scientometrics* 113:633 (2017), <https://doi.org/10.1007/s11192-017-2310-5>.

effort should be carefully considered in terms of in-house staff time and resources, as well as the limited time and energy of busy experts who must take time from other worthwhile endeavors.”¹³⁷ EPA ignores this aspect in its cost-benefit analysis of the Proposed Rule, rendering the resulting rule arbitrary.

C. Section 30.8’s Requirement to Consider and Minimize Costs is Unlawful.

Proposed Section 30.8, which would require EPA to implement the provisions of the Rule “in a manner that minimizes cost,” is unlawful and arbitrary, for several reasons.

First, because EPA has only the authority conferred to it by statute, the Agency must identify the statutory authority upon which it bases its regulatory decisions about what data and models to consider on the minimization of cost. *Clean Air Council v. Pruitt*, 862 F.3d 1, 9 (D.C. Cir. 2017) (quoting *Verizon v. FCC*, 740 F.3d 623, 632 (D.C. Cir. 2014) (“It is ‘axiomatic’ that ‘administrative agencies may act only pursuant to authority delegated to them by Congress.’”)) (alteration and citations omitted)). The Agency has failed to do so here.

Second, EPA’s proposal to base these decisions on cost is inconsistent with statutory mandates requiring the Agency to base regulatory decisions on the best available science. *See, e.g.*, 42 U.S.C. § 300g-1(b)(1)(B)(ii)(II) (directing EPA to base its determination about whether to regulate any particular contaminant “on the best available public health information”); 15 U.S.C. § 2625(h) (requiring EPA to act “consistent with the best available science”). Plain meaning and common usage confirm that “best available science” does not refer to whatever science is least costly. *See also supra*, Section IV.A.

Third, EPA’s proposal to base its data quality decisions on cost is inconsistent with applicable statutory mandates requiring EPA to make regulatory decisions based on considerations of public health. *Whitman v. Am. Trucking Ass’ns*, 531 U.S. 457, 469 (2001) (cost “is **both** so indirectly related to public health **and** so full of potential for canceling the conclusions drawn from direct health effects that it would surely have been expressly mentioned . . . had Congress meant it to be considered.” (emphasis in original)).¹³⁸

Fourth, section 30.8 is also unlawfully vague. As the Supreme Court has explained, “‘cost’ includes more than the expense of complying with regulations; any disadvantage could be termed a cost.” *Michigan v. EPA*, 135 S. Ct. at 2707. Yet the provision does not specify to what types of costs it refers. And despite the fact that various types of costs would necessarily need to be weighed against one another when applying this provision, the Proposed Rule is notably silent as to how that will be done. As proposed, it appears to confer nearly limitless discretion on EPA

¹³⁷ NAS, *Strengthening Science at the U.S. Environmental Protection Agency: Research-Management and Peer-Review Practices* (2000), <http://www.nap.edu/catalog/9882.html>.

¹³⁸ If anything, EPA’s proposal to base decisions on consideration of cost here is even more irrational than it was in *Whitman*, because in this case, decision-making about the science used to inform EPA’s regulatory decisions will result in a proliferation of costs and benefits that resist quantification, monetization, and comparison. These include substantial and important non-market values, including privacy, transparency, health and environmental considerations, and even the value of scientific knowledge itself.

to decline to collect and utilize relevant science on grounds of cost, in contravention of applicable statutory mandates and reasoned decision-making. *See U.S. Sugar v. EPA*, 830 F.3d 579, 644 (D.C. Cir. 2016) (“in light of the unambiguous statutory command [to regulate toxic pollution sources] . . . [t]he Agency was obligated to collect the data it needed”).

Finally, even if EPA had authority to base its data quality decisions on cost, it would be irrational and arbitrary for EPA to ignore all the costs and benefits to the public – including public health and environmental costs and benefits and privacy-related costs and benefits – that may flow from its decisions. EPA must treat costs and benefits alike, and may not “put a thumb on the scale by undervaluing the benefits and overvaluing the costs of more stringent standards.” *Ctr. for Biological Diversity v. Nat’l Highway Traffic Safety Admin.*, 538 F.3d 1172, 1198 (9th Cir. 2008). And it may not ignore the public health, environmental, and privacy-related costs of its action or inaction of its decision just because they are not quantified. *See, e.g.*, Exec. Order No. 13,563 § 1, 76 Fed. Reg. at 3821; Exec. Order No. 12,866 § 1, 58 Fed. Reg. at 51,735 (it is “essential to consider” the “qualitative measures of costs and benefits that are difficult to quantify”). OMB Circular A-4 cautions agencies against ignoring the potential magnitude of unquantified benefits, because the approach with the “largest quantified and monetized . . . estimate” is not necessarily the most cost-justified. Under all of these authorities, a “full accounting” of the costs and benefits of a rule requires that indirect benefits be counted “equivalently” with other costs and benefits.¹³⁹

For all of these reasons, section 30.8 is arbitrary and capricious and thus invalid.

VIII. EPA’S PROPOSAL WOULD DISPROPORTIONATELY HARM LOW-INCOME COMMUNITIES AND MINORITY COMMUNITIES

Not only is EPA’s elimination of its use of critical human health research and studies that serve to protect and promote public health and the environment unlawful, but it is also discriminatory. The Proposed Rule has a disproportionately deleterious impact on low-income communities and minority communities – the overburdened populations that benefit most from the epidemiological studies used to set limits on air and water pollutants and to set safe exposure levels for pesticides and other toxics. By removing this critical category of studies from consideration when setting limits on pollutant and toxic exposure as well as standards for safe air and water, EPA is turning a blind eye to accessible and illuminating evidence that provides much-needed safeguards to the vulnerable communities most impacted by the laws EPA is charged with enforcing. These communities will disproportionately suffer as a result.

Since the 1987 landmark report *Toxic Wastes and Race in the United States*,¹⁴⁰ studies have confirmed again and again that communities of color and also economically disadvantaged

¹³⁹ Cass R. Sunstein, *The Real World of Cost-Benefit Analysis: Thirty-Six Questions (and Almost as Many Answers)*, 114 Colum. L. Rev. 167, 190 (2014).

¹⁴⁰ Dr. Benjamin F. Chavis, Jr. & Charles Lee, *Toxic Wastes and Race in the United States*, Commission for Racial Justice, United Church of Christ (1987),

populations are disproportionately located near toxic waste sites and other sources of pollution. And research has also found that overall air pollution exposure is more strongly concentrated in communities of color.¹⁴¹ Pesticide exposure likewise disproportionately impacts low-income and minority communities: farmworkers tend to be poor,¹⁴² and the vast majority are of Latin American origin,¹⁴³ and they have a higher incidence of pesticide poisoning than other workers.¹⁴⁴ For example, in California, the counties with the greatest use of the highly toxic pesticide chlorpyrifos are the counties with the highest poverty levels and largest Latino populations.¹⁴⁵ In April 2014, the California Department of Public Health issued a report showing that thousands of children, disproportionately people of color, attend school in close proximity to pesticide use.¹⁴⁶ Overall, the disproportionate burden of environmental exposure among these low-income communities and communities of color cannot be disputed.¹⁴⁷

Fundamental to the research revealing the disproportionate impact of environmental harms on low-income and minority communities and the need to set appropriate standards is epidemiological data. Indeed, this category of science that EPA wants to eliminate has been foundational to establishing disparate harms from a variety of toxics in air, water, pesticides, and other environmental sources. For example:

- Epidemiological studies have shown that there is a persistent disparity in the blood lead levels measured in children of color compared to white children. These studies revealed that in 2011-2012, the mean level was almost 40 percent higher in black children 1-5 years old than in white children of the same age.¹⁴⁸

<https://www.csu.edu/cerc/researchreports/documents/ToxicWasteandRace-TOXICWASTESANDRACE.pdf>.

¹⁴¹ Zwickl, *Regional Variation in Environmental Inequality* at 9-10; Ash, M. et al., *Is environmental justice good for white folks? Industrial air toxics exposure in Urban America*, 94:3 Soc. Sci. Q. 616, 616 (2013); Morello-Frosch, R. et al., *Separate and unequal: residential segregation and estimated cancer risks associated with ambient air toxics in U.S. metropolitan areas*, 114:3 Env'tl. Health Persp. 386, 390-92 (2006).

¹⁴² U.S. Department of Labor, *National Agricultural Workers Survey* (2011-2012), <http://www.doleta.gov/agworker/naws.cfm> (on average, a farmworker family earns an annual income ranging from \$17,500-\$19,999).

¹⁴³ *Id.*

¹⁴⁴ Geoffrey M. Calvert et al., *Acute Pesticide Poisoning Among Agricultural Workers in the United States, 1998-2005*, 51 Am. J. Indus. Med. 883, 890 (2008).

¹⁴⁵ Letter from Environmental Justice Organizations to Cal. EPA Assistant Secretary for Environmental Justice and Tribal Affairs Arsenio Mataka at 2-3 (Aug. 26, 2014).

¹⁴⁶ Cal. Dep't of Public Health, *California Environmental Health Tracking Program: Agriculture Pesticide Use Near Public Schools in California* (April 2014), http://cehtp.org/file/pesticides_schools_report_april2014.pdf.

¹⁴⁷ Mohai, P. et al., *Racial and Socioeconomic Disparities in Residential Proximity to Polluting Industrial*; Zwickl, K. et al., *Regional Variation in Environmental Inequality* at 20.

¹⁴⁸ Jain R.B., *Trends and Variability in Blood Lead Concentrations Among US Children and Adolescents*, Env'tl. Science and Pollution Research, 23, 7880-7889 at 7884 (2016).

- While studies have shown that the mean blood lead level in black children is much lower than it was several decades ago, epidemiological studies have shown that even low levels of lead in the blood are harmful.¹⁴⁹
- A 2011 peer-reviewed epidemiological study found that urine samples of children ages 6 to 24 months were more likely to have six organophosphate metabolites the closer the child lived to a pesticide application site.¹⁵⁰
- Longitudinal cohort epidemiologic studies have shown that even low levels of exposure to the highly toxic pesticide chlorpyrifos can disrupt brain development in prenatally exposed children, leading to developmental delays, lower IQ, learning disabilities, and ADHD-like behaviors.¹⁵¹
- Epidemiological studies demonstrate that farmworkers have a higher rate of pesticide poisoning than any other workers¹⁵²

Thus, it is clear that epidemiological studies have provided a consistent source of reliable data that has been critical to demonstrating disproportionate exposure to toxic chemicals. These studies in turn have been pivotal to setting air, water, and pesticide standards necessary to protect low-income and minority populations from harmful levels of exposure.

EPA's proposal to eliminate use of epidemiological studies will have a disparate impact on the most overburdened and vulnerable communities, eliminating the very source of data relied upon to provide protections crucial to their health and wellbeing. This Proposed Rule will perpetuate the environmental injustices that low-income and minority communities already face, as it will remove the primary tool used to study and address the inequitable environmental harms suffered by these populations.

IX. ADDITIONAL TOPICS FOR COMMENTS

A. Retroactive Application of the Law Would Be Unlawful.

EPA also requested "comment on how the prospective or retrospective application of the provisions for dose response data and models or pivotal regulatory science could inadvertently

¹⁴⁹ Lanphear B.P. et al., *Low-Level Lead Exposure and Children's Intellectual Function: An International Pooled Analysis*, *Envtl. Health Persp.* 113, 894-899 at 898 (2005).

¹⁵⁰ Asa Bradman et al., *Determinants of Organophosphorus Pesticide Urinary Metabolite Levels in Young Children Living in an Agricultural Community*, 8 *Int. J. Env'tl. Res. Public Health* 1061 (2011).

¹⁵¹ Rauh V.A., Garfinkel R., Perera F.P. et al., *Impact of prenatal chlorpyrifos exposure on neurodevelopment in the first 3 years of life among inner-city children*, *Pediatrics* 118(6):e1845-59 (2006); Bouchard M.F., Chevrier J., Harley K.G. et al., *Prenatal Exposure to Organophosphate Pesticides and IQ in 7-Year Old Children*, *Env'tl. Health Persp.* 21003185 (Apr. 2011); Rauh V.A. et al., *Prenatal exposure to the organophosphate pesticide chlorpyrifos and childhood tremor*, *Neurotoxicology* 51:80-86 (2015).

¹⁵² Geoffrey M. Calvert et al., *Acute Pesticide Poisoning Among Agricultural Workers in the United States, 1998-2005*, 51 *Am. J. Indus. Med.* 883, 890 (2008).

introduce bias regarding the timeliness and quality of the scientific information available.” 83 Fed. Reg. at 18,772. Like much of the rest of the Proposal, it is unclear what exactly EPA is asking or suggesting. Certainly, to the extent EPA uses the Proposed Rule to exclude important, valid scientific information, it will bias the quality of the scientific information available.

To the extent EPA suggests the Rule may be applied retroactively, there is simply no basis for doing so. It is well-established that an agency cannot apply a rule retroactively absent clear congressional intention for such application. *E.g.*, *Sierra Club v. Whitman*, 285 F.3d 63, 68 (D.C. Cir. 2002) (referring to “unusual ability to implement rules retroactively”); *Bowen v. Georgetown Univ. Hospital*, 488 U.S. 204, 208 (1988) (“Retroactivity is not favored in the law. Thus, congressional enactments and administrative rules will not be construed to have retroactive effect unless their language requires this result. By the same principle, a statutory grant of legislative rulemaking authority will not, as a general matter, be understood to encompass the power to promulgate retroactive rules unless that power is conveyed by Congress in express terms.” (citations omitted)). EPA has not identified any such congressional intention in any of the statutes at issue, and thus retroactive application of the Rule would be unlawful.

Nor would the statutes upon which EPA relies support such an application. For example, as explained above, the Clean Air Act does not allow—and, as the D.C. Circuit has held, certainly does not require, *e.g.*, *American Trucking*, 283 F.3d at 372—applying the so-called transparency provisions of the Proposed Rule at all in rules subject to the procedural requirements of Clean Air Act § 307(d). Such rules include NAAQS. Further, far from suggesting that EPA could lawfully reopen long-settled NAAQS to apply a new and novel standard of review, the Clean Air Act requires EPA to review and revise air quality criteria and NAAQS at least every five years and to “promulgate such *new* standards as may be appropriate.” 42 U.S.C. § 7409(d)(1) (emphasis added). This carefully chosen language confirms that Congress did not intend for EPA to apply rules like the Proposed Rule to undo existing NAAQS, but instead intended for regular reviews of scientific information to result in new NAAQS.

Even if EPA had statutory authority to apply the Proposed Rule retroactively, it could not do so rationally. *See Sierra Club*, 285 F.3d at 68 (if EPA had authority to implement a rule retroactively, “retroactivity must be ‘reasonable.’”). Indeed, retroactive application of the Proposed Rule would undo well-settled rules in a tremendously unfair and irrational way, and would lead to widespread confusion about countless environmental and public health policies and protections.

B. Application of the Proposed Rule to Enforcement Actions, Individual Party Adjudications, or Permit Proceedings Would Be Unlawful.

EPA also seeks comment on whether provisions of the Proposed Rule should apply to enforcement activities, individual party adjudications, or permit proceedings. It should not. Application of the proposed provisions to such matters would be illegal and arbitrary for all the reasons set forth above, as well as for the following additional reasons.

First, with respect to enforcement actions, EPA has no authority to bar the courts or administrative adjudicators from considering relevant evidence merely because that evidence

hasn't passed an arbitrary test for transparency and peer review. The Clean Air Act, for example, vests authority over judicial enforcement actions to the courts, not EPA, and EPA has no authority to dictate to the courts what evidence they can and can't consider, or what weight to give such evidence. *See Nat. Res. Def. Council v. EPA*, 749 F.3d 1055, 1063-64 (D.C. Cir. 2014). Indeed, courts and administrative law judges are equipped with tools to separate out credible and non-credible scientific evidence, *see, e.g.*, Fed. R. Evid. 702; *Daubert*, 509 U.S. 579. Relatedly, whether a scientific study is sufficiently transparent or has been peer reviewed provides no bearing on administrative enforcement of these statutes, which provide enforcement authority over whether there has been a violation of specified requirements and prohibitions, *see, e.g.*, 42 U.S.C. § 7413(a)(1)-(5). It also is wholly irrelevant to determining administrative civil penalties. *See, e.g., id.* § 7413(e). Though the Clean Air Act does allow consideration of "such other factors as justice may require" in setting civil penalties, EPA does not and cannot explain how its transparency and peer review tests could possibly be relevant to whether "justice" requires a different penalty for violation of a prohibition or requirement. If a defendant feels that a standard is unjust because of a lack of data transparency or peer review in supporting studies, the sole remedy is to seek review in the Court of Appeals within 60 days of the standard's publication. The validity of standards cannot be questioned in an enforcement proceeding. *See, e.g.*, 42 U.S.C. § 7607(b)(2).

Second, EPA does not explain how or where its Proposed Rule could be relevant in individual party adjudications. Though the administrative penalty provisions of the Clean Air Act provide for individual party adjudications, *see, e.g.*, 42 U.S.C. § 7413(d)(3)-(4), EPA's proposed procedures bear no relevance or applicability to such adjudications.

Third, the proposed procedures cannot lawfully or rationally be required in the context of EPA decisions to abate "imminent and substantial endangerments" ("ISEs") to human health and the environment. *See, e.g.*, 42 U.S.C. §§ 300(i)(a) (SDWA § 1431(a)), 6973(a) (RCRA § 7003(a)), 7603 (CAA § 303), and 9606(a) (CERCLA § 106(a)). None of these provisions set or authorize limitations on the studies that can be relied upon in identifying ISEs. To the contrary, both courts and the EPA have interpreted these statutes as precautionary in nature, allowing abatement action where there is only a risk of harm. *See, e.g.*, EPA, *Guidance On the Use of Section 303 of the Clean Air Act*, EPA-R08-OAR-2013-0556-0015, at 2-4 (1991) ("Section 303 Guidance"); *see also United States v. Vertac Chemical Corp.*, 453 F.3d 1031, 1045 (8th Cir. 2006) (describing § 9606(a)'s ISE standard as "cautionary" in sanctioning EPA's decision to issue a unilateral administrative order requiring cleanup of former manufacturing site). ISE authorities are so precautionary in nature that they may be used even when the risk of harm is uncertain. *See United States v. Conservation Chem. Co.*, 619 F. Supp. 162, 194 (W.D. Mo. 1985) ("Both the courts and Congress have recognized that the evaluation of a risk of harm involves medical and scientific conclusions that clearly lie on the frontiers of scientific knowledge, such that proof with certainty is impossible."). EPA guidelines state that "[i]f the Agency can show a 'reasonable medical concern' created by the suspect emissions, it will have met the 'imminent and substantial endangerment' test of Section 303." Section 303 Guidance at 4.

EPA may be required to make an endangerment finding despite “some residual uncertainty.” *Massachusetts v. EPA*, 549 U.S. at 534 (holding that EPA could not avoid its statutory obligation to regulate greenhouse gases by noting the uncertainty surrounding climate change unless the scientific uncertainty was so profound as to preclude EPA from making a reasoned judgment about the risk of harm); *see also Coal. for Responsible Regulation v. EPA*, 684 F.3d 102, 121 (D.C. Cir. 2012) (“existence of some uncertainty does not, without more, warrant invalidation of an endangerment finding. If a statute is ‘precautionary in nature’ and ‘designed to protect the public health,’ and the relevant evidence is ‘difficult to come by, uncertain, or conflicting because it is on the frontiers of scientific knowledge,’ EPA need not provide ‘rigorous step-by-step proof of cause and effect’ to support an endangerment finding.” (quoting *Ethyl Corp. v. EPA*, 541 F.2d 1, 28 (D.C. Cir. 1976), a case regarding endangerment findings under § 211(c)(1)(A) of the Clean Air Act). For all the foregoing reasons, the language and purpose of the endangerment provisions would be flouted by a requirement that EPA be barred from (or forced to delay) relying on available peer reviewed studies to decide whether and how to remedy a hazardous substance release, contamination of drinking water, or other immediate threat.

Finally, to the extent EPA decides to apply this Proposed Rule in the context of enforcement, adjudicatory, and permit actions – which it should not – it must first issue a proposal setting out its basis for such a rule and provide opportunity for comment under the Administrative Procedure Act and Clean Air Act § 307(d). EPA cannot rely on the comment opportunity provided by its April 30, 2018 Proposal, as the Proposal provides no notice whatsoever of the substance of what EPA might or might not include in a rule applying to enforcement and other actions excluded from the regulatory text of the proposal. *See* 83 Fed. Reg. at 18,773 (proposed 40 C.F.R. § 30.3).

On Behalf Of:

Alaska Community Action on Toxics	Little River Waterkeeper
Alianza Nacional de Campesinas, Inc.	Living Rivers & Colorado Riverkeeper
Altamaha Riverkeeper	Lower Susquehanna Riverkeeper Association
Animas Riverkeeper	Matanzas Riverkeeper
Appalachian Mountain Advocates	Miami Waterkeeper
Atchafalaya Basinkeeper	Milwaukee Riverkeeper
Bayou City Waterkeeper	Missouri Coalition for the Environment
Boulder Waterkeeper	Missouri Confluence Waterkeeper
Breast Cancer Prevention Partners	Mountain Watershed Association
Buffalo River Watershed Alliance	MountainTrue
Cahaba Riverkeeper	National Black Justice Coalition

California Communities Against Toxics	National Family Farm Coalition
California Safe Schools	Neighbors for Clean Air
CATA - The Farmworker Support Committee	OVEC-Ohio Valley Environmental Coalition
Center for Food Safety	Partnership for Policy Integrity
Central Maryland Beekeepers Association	PCUN
Clean Air Council	Peace Roots Alliance
Clean Air Task Force	Pesticide Action Network North America
Community Alliance for Global Justice	Physicians for Social Responsibility
Coosa Riverkeeper	Pollinate Minnesota
CRLA Foundation	Potomac Riverkeeper Network
Defenders of Wildlife	Rural Empowerment Association for
Downwinders at Risk	Community Help
Earthjustice	Santa Barbara Channelkeeper
Environmental Health Strategy Center	Save The Poudre: Poudre Waterkeeper
Environmental Integrity Project	Save The River, Upper St Lawrence
Environmental Stewardship	Riverkeeper
Family Farm Defenders	Save The Sound - Long Island Soundkeeper
Farms Not Arms	Secular Coalition for America
Farmworker Association of Florida	Sierra Club
Farmworker Justice	Snake River Waterkeeper
Food & Water Watch	Suncoast Waterkeeper
Friends of the Earth	Tennessee Riverkeeper
Government Accountability Project	Tri-Valley CAREs (Communities Against a
Green Riverkeeper	Radioactive Environment)
Greenpeace USA	UFW Foundation
Hip Hop Caucus	Union of Concerned Scientists
Humane Society of the United States	United Farm Workers
Humboldt Baykeeper	Upper Missouri Waterkeeper
Huron Environmental Activist League	Waterkeeper Alliance
International Society for Children's Health	Waterkeepers Chesapeake
and the Environment	Wayne Action for Racial Equality

Iowa Citizens for Community Improvement
Johns Hopkins Center for a Livable Future
Kids To The Country
Kootenai Environmental Alliance

Winyah Rivers Foundation, Inc.
Women's Environment and Development
Organization (WEDO)
Worker Justice Center of NY
Yadkin Riverkeeper



State of Louisiana
DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL
P.O. BOX 94005
BATON ROUGE
70804-9005

Jeff Landry
Attorney General

August 15, 2018

Via Electronic Submission and Federal Express

Andrew Wheeler, Acting Administrator
Environmental Protection Agency
EPA Docket Center
WJC West Building, Room 3334
1301 Constitution Avenue, NW
Washington, DC 20004

Re: **Comments of the Attorneys General of Louisiana, Alabama, Arkansas, Indiana, Kansas, Nebraska, Oklahoma, South Carolina, Texas, Utah, and Wisconsin on EPA's Proposal to Strengthen Transparency in Regulatory Science; 83 Fed. Reg. 18,768 (April 30, 2018);
Docket ID No. EPA-HQ-OA-2018-0259**

Dear Administrator Wheeler:

The undersigned Attorneys General, as the chief legal officers of our States, write to express support for the Environmental Protection Agency's ("EPA") April 30, 2018, proposal to adopt a regulation to provide much-needed transparency regarding the scientific research and data on which the agency bases its regulatory actions ("the Proposed Rule").*

GENERAL COMMENT

The citizens of our States and the industry stakeholders so crucial to our States' economies bear the cost of regulatory compliance. Accordingly, the science on which those regulations are based should be high quality and available to the public. Public disclosures should be sufficient to permit independent validation and analysis of the data, methodology, computational code, and conclusions. Transparency of this sort not only comports most fully with the public participation in rulemaking contemplated by the Administrative Procedure Act, but is a bedrock principle for establishing public confidence in actions taken by the EPA.

The Proposed Rule addresses the troubling erosion of credibility of published scientific literature. EPA is obliged to rely upon the best available science in its regulatory actions. *See, e.g.*, Exec. Order No. 13,783, 82 Fed. Reg. 16,093 (Mar. 31, 2017); Exec. Order No. 13,563, 76 Fed. Reg. 3,821 (Jan. 21, 2011). However, absent open sharing of underlying data, methodology, and computational code, the credibility of the science is open to question. Moreover, reproducibility can be rendered impossible, further crippling the credibility of the research.

As reported in *Science*, reproducibility in scientific work is important to providing confidence in the conclusions reached, but a “troubling proportion” of peer-reviewed studies are not reproducible.¹ *Science* thus revisited the criteria for publication with the aim of increasing confidence in the studies it publishes. Similarly, a recent article in *Nature* identified lack of replication and lack of data sharing as “threats” to reproducible science.² Open and transparent sharing of the methodology applied, the data acquired, and the process of methodology implementation, data analysis and outcome interpretation was identified as the remedy. The type of open science called for in these publications—laying bare both content and process—is precisely what is achieved through the Proposed Rule.

SPECIFIC COMMENT 1: There is strong evidence that publication in a peer reviewed journal is not sufficient to ensure a study reflects valid, reproducible science.

Concern with the quality of published science goes back to at least 2005, when a study of 45 highly-cited articles in *New England Journal of Medicine*, *JAMA*, and *Lancet* concluded that at least 7 articles (16%) were contradicted by subsequent research and another 7 articles (16%) claimed stronger effects than were supported by subsequent research.³ A widely-read essay published later that year suggested that most published research findings are false.⁴ Consistent with that suggestion, Bayer Healthcare disclosed in 2011 that 43 (65%) of the company’s attempts to reproduce 67 published studies resulted in inconsistent data.⁵ In 2012, Amgen, Inc., similarly disclosed that it was only able to reproduce 6 (11%) of 53 studies that the company attempted to confirm.⁶

Consistent with the Bayer and Amgen disclosures, recent estimates for irreproducibility in preclinical and biomedical research range as high as 90% of that research, even for articles published in high-quality journals.^{7, 8, 9} The problem does not appear to be limited to particular fields. For example, a recent survey of 804 ecologists and evolutionary biologists found that questionable research practices were widespread, with 64% of surveyed researchers reporting they had at least once failed to report results because they were not statistically significant (“cherry picking”); 42% reporting they had collected more data after inspecting whether results were statistically significant (a form of “p-hacking”); and 51% acknowledging they had reported an unexpected finding as though it was hypothesized from the start.¹⁰ In short, a large fraction of the surveyed researchers admitted to manipulating their results. Not surprisingly, a 2016 survey by the journal *Nature* found that lack of reproducibility is a widespread concern among scientists.^{11, 12}

SPECIFIC COMMENT 2: There is strong evidence of widespread, outcome-altering errors in the computational code underlying many scientific studies.

* Each publication cited herein is attached as an exhibit to the hardcopy of this comment.

¹ M. McNutt, *Editorial: Reproducibility*, 343 *SCIENCE* 229 (2014).

² M. R. Munafo et al., *A Manifesto for Reproducible Science*, 1 *NATURE HUM. BEHAVIOR* 21 (2017).

³ J. P. A. Ioannidis, *Contradicted and Initially Stronger Effects in Highly Cited Clinical Research*, 294(2) *JAMA* 218 (2005).

⁴ J. P. A. Ioannidis, *Why Most Published Research Findings Are False*, 2(8) *PLOS MED.* e124 (2005).

⁵ F. Prinz et al., *Correspondence: Believe It or Not: How Much Can We Rely on Published Data on Potential Drug Targets*, 10 *NATURE REV. DRUG DISCOV.* 712 (2011).

⁶ C. G. Begley & L. M. Ellis, *Comment: Drug Development: Raise Standards for Preclinical Cancer Research*, 483 *NATURE* 531 (2012).

⁷ C. G. Begley & J. P. A. Ioannidis, *Reproducibility in Science*, 116 *CIRC. RES.* 126 (2015).

⁸ L. P. Freedman et al., *The Economics of Reproducibility in Preclinical Research*, 13(6) *PLOS BIOLOGY* e1002165 (2015).

⁹ V. E. Johnson, *Revised Standards for Statistical Evidence*, 110(48) *PNAS* 19313 (2013).

¹⁰ H. Fraser et al., *Questionable Research Practices in Ecology and Evolution*, Open Science Framework (Preprint March 21, 2018).

¹¹ M. Baker, *Is There a Reproducibility Crisis?*, 533 *NATURE* 452 (2016).

¹² Editorial, *Reality Check on Reproducibility*, 533 *NATURE* 437 (2016).

Outcome-altering errors in computational code have been suggested as a significant contributor to the replication crisis.¹³ High profile retractions, technical comments, and corrections because of coding errors include papers in prominent journals such as *Science*, *PNAS*, the *Journal of Molecular Biology*, *Ecology Letters*, *Journal of Mammalogy*, *Journal of the American College of Cardiology*, *Hypertension*, and *American Economic Review*.¹⁴ Such outcome-altering errors can arise from the simplest mistakes. For example, five retractions were based on a flipped minus sign.¹⁵ Perhaps most famously, a 2010 study by Harvard University economists Carmen Reinhart and Kenneth Rogoff was undermined by errors in the authors' spreadsheet.¹⁶ ¹⁷ The Reinhart-Rogoff study had significant public policy consequences, yet the errors went undetected until a graduate student sought and reviewed the authors' working spreadsheet.^{18, 19}

SPECIFIC COMMENT 3: The Proposed Rule is consistent with the publication requirements of major scientific journals, which were adopted specifically to address the reproducibility crisis.

In its commentary accompanying the Proposed Rule, the EPA noted that its policies and the policies of open-science advocates “are informed by the policies recently adopted by some major scientific journals, spurred in some part by the ‘replication crisis.’” 83 Fed. Reg. at 18770. The EPA cited the policies of *PNAS*, *PLOS One*, *Science*, and *Nature* as examples. *Id.* at 18770 & n.11. Those policies were specifically intended to address the inability of researchers to properly assess results in the absence of underlying data and methodology. The journal *Nature* explained:

Over the past year, *Nature* has published a string of articles that highlight failures in the reliability and reproducibility of published research The problems arise in laboratories, but journals such as this one compound them when they fail to exert sufficient scrutiny over the results that they publish, and ***when they do not publish enough information for other researchers to assess results properly.***

From next month, *Nature* and the *Nature* research journals will introduce editorial measures to address the problem by improving the consistency and quality of reporting in life-sciences articles. ***To ease the interpretation and improve the reliability of published results we will more systematically ensure that key methodological details are reported,*** and we will give more space to methods sections. We will examine statistics more closely and ***encourage authors to be transparent, for example by including their raw data.***²⁰

More recently, the editors of *Nature* recognized that—despite the adoption of transparency policies—resolution of the reproducibility crisis “is far from complete.”²¹ They accordingly encouraged “funders, researchers and journals to keep up the pressure towards the openness of complete data sets and any source code required to use them.”²² Although public disclosure of data, methodology, and computational code

¹³ D. A. W. Soergel, *Rampant Software Errors May Undermine Scientific Results*, 3 F1000RESEARCH 303 (2015).

¹⁴ G. Wilson et al., *Best Practices for Scientific Computing*, 12(1) PLOS BIOLOGY e1001745 (2014).

¹⁵ Z. Merali, *Why Scientific Programming Does Not Compute*, 467 NATURE 775 (2010).

¹⁶ C. M. Reinhart & K. Rogoff, *Growth in a Time of Debt*, *American Economic Review: Papers and Proceedings* 100 (2010) at 573.

¹⁷ T. Herndon et al., *Does High Public Debt Consistently Stifle Economic Growth? A Critique of Reinhart and Rogoff*, Political Economy Working Paper Series No. 322 (2013).

¹⁸ R. Alexander, *Reinhart, Rogoff . . . and Herndon: The Student Who Caught Out the Profs*, BBC News (Apr. 20, 2013).

¹⁹ P. Coy, *FAQ: Reinhart, Rogoff, and the Excel Error that Changed History*, Bloomberg News (Apr. 18, 2013).

²⁰ Announcement, *Reducing Our Irreproducibility*, 496 NATURE 398 (2013).

²¹ Announcement, *Transparency Upgrade for Nature Journals*, 543 NATURE 288 (2017).

²² Editorial, *Not-So-Open Data*, 546 NATURE 327 (2017).

may not be *sufficient* to ensure that scientific claims are valid, public disclosure is absolutely *necessary* for confidence in the validity those claims.^{23, 24, 25, 26}

SPECIFIC COMMENT 4: Pre-publication peer review is not an adequate substitute for public availability of data, methodology, and computational code.

In response to the Proposed Rule, some commenters have suggested the Proposed Rule is an attempt to remove valid and relevant scientific evidence from the rule-making process. But that begs the question: in the light of overwhelming evidence that a significant portion of studies published in prominent peer reviewed journals are not reproducible, it is dubious to claim that any particular research is valid and relevant unless—at a minimum—other researchers and the public have access to the underlying data, methodology, and computational code.

More to the point, empirical evidence indicates that peer reviewers routinely fail to identify even major errors.²⁷ And peer review in less prominent journals may often occur in name only.²⁸ In short, the best available metascience—science about science—indicates that pre-publication peer review is not adequate to ensure the validity of published scientific claims.

SPECIFIC COMMENT 5: Promises to share data with qualified researchers are not an adequate substitute for public disclosure of data, methodology, and computational code.

Promises to provide other researchers with access to data, methodology, or computational code are not an adequate substitute for public availability. Such promises often go unfulfilled.²⁹ In an attempt to quantify the problem, researchers from Memorial Sloan-Kettering Cancer Center sought data from the corresponding authors of ten articles that were subject to a data sharing requirement.³⁰ Two of the authors could not be contacted. Of the remaining eight authors, four replied that sharing their data was not possible, three did not respond, and one asked for further details regarding the request. Despite a follow-up contact reminding the authors of their data sharing obligation, the Sloan-Kettering researchers received only a single data set of the ten originally sought.

Significantly, many uncredentialed members of the public are capable of reviewing and identifying errors in data, methodology, and computational code. The Reinhart-Rogoff errors, *supra*, were identified by a graduate student. Other serious, basic errors in high-profile studies have been identified by undergraduates.³¹ If undoubtedly qualified Sloan-Kettering researchers were generally unable to obtain data, there is little reason to believe other researchers—formally qualified or otherwise—will be able to do so. When the EPA decides to regulate, the public is entitled to more than empty promises that data supports that decision.

²³ G. Santori, *Correspondence: Journals Should Drive Data Reproducibility*, 535 NATURE 355 (2017).

²⁴ S. M. Easterbrook, *Open Code for Open Science?*, 7 NATURE GEOSCI. 779 (2014).

²⁵ G. J. Lithgow et al., *Comment: A Long Journey to Reproducible Results*, 548 NATURE 387 (2017).

²⁶ J. S. Mogil & M. R. Macleod, *Comment: No Publication Without Replication*, 542 NATURE 409 (2017).

²⁷ S. Schroter et al., *What Errors Do Peer Reviewers Detect, and Does Training Improve Their Ability to Detect Them?*, 101 J. R. SOC. MED. 507 (2008).

²⁸ J. Bohannon, *Who's Afraid of Peer Review?*, 342 SCIENCE 60 (2013).

²⁹ D. G. Roche, *Evaluating Science's Open Data Policy*, 357 SCIENCE 654 (2017).

³⁰ C. J. Savage & A. J. Vickers, *Empirical Study of Data Sharing by Authors Publishing in PLoS Journals*, 4(9) PLOS ONE e7078 (2009).

³¹ R. Nuzzo, *Fooling Ourselves*, 526 NATURE 182 (2015).

SPECIFIC COMMENT 6: The Proposed Rule is supported by and arguably required by the Administrative Procedure Act.

The Administrative Procedure Act (“APA”), 5 U.S.C. § 500 et seq., prohibits agency action, findings, and conclusions that are arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. *See* 5 U.S.C. § 706(1). In view of the overwhelming evidence that (i) a very high percentage of published studies are not reproducible, (ii) pre-publication peer review is not sufficient to ensure that a study lacks major errors, and (iii) pre-publication peer review is not sufficient to ensure that the computational code underlying a study lacks major errors, we respectfully submit that the Proposed Rule is *necessary* and arguably *required* by the APA. Indeed, an agency action based on a study without fully disclosed data, methodology, and computational code is arguably so lacking in reasoned foundation as to be arbitrary and capricious.

SPECIFIC COMMENT 7: The Proposed Rule should apply to all agency actions that are based on science.

The replication crisis and public confidence rationales that underlie the Proposed Rule suggest that data, methodology, and computational code should be disclosed for all science relied upon to support agency actions. As a first step, the phrase “dose response data and models” should be replaced with “data and models, including dose response data and models” throughout the Proposed Rule.

SPECIFIC COMMENT 8: EPA should identify all studies (or other regulatory science) it will rely upon at the time it proposes any regulation.

In order to meaningfully comment on proposed agency action, the public should be informed of the detailed scientific basis for that action when the action is proposed. Accordingly, Proposed Section 30.4 should be amended to provide:

EPA shall clearly identify all studies (or other regulatory science) relied upon to support ~~when it takes any final~~ agency action. When EPA proposes any agency action, EPA should ~~shall~~ make all such studies (or other regulatory science) available to the public to the extent practicable.

SPECIFIC COMMENT 9: The proposed rule should not include exceptions that are not required by statute or the Executive Branch’s inherent powers.

In view of the widespread problems with replicating even peer-reviewed studies published in prominent journals, the EPA should minimize exceptions to the disclosure requirements set forth in the Proposed Rule. Courts have frequently rejected attempts to withhold information based on claims to privacy, etc., unless protections are specifically provided by law. *See, e.g., Johnson v. Dovey*, 2011 U.S. Dist. LEXIS 128577, at *6-7 (E.D. Cal. Nov. 7, 2011) (rejecting vague assertion of privacy rights: “CDCR’s objections are not specific in any way, and are thus insufficient to assert a privilege.”); *see also Donovan v. Nat’l Bank of Alaska*, 696 F.2d 678 (9th Cir. 1983) (“The bank cannot refuse to comply with the subpoena as a whole on the basis of its vague allegations that it might be required . . . to produce records in violation of the Financial Privacy Act.”). EPA should similarly reject such claims to “privacy, confidentiality, [and] confidential business information” vis-à-vis data and models, unless those claims are clearly supported by law or the Executive Branch’s inherent powers. Accordingly:

(a) EPA should amend the second sentence of Section 30.5 to provide that

Where the Agency is making data or models publicly available, it shall do so in a fashion that is consistent with law, ~~protects privacy, confidentiality, confidential business information,~~ and is sensitive to national and homeland security.

(b) EPA should amend the penultimate sentence of Section 30.5 to provide that

The agency shall make all reasonable efforts to explore methodologies, technologies, and institutional arrangements for making such data available before it concludes that doing so in a manner consistent with law and ~~protection of privacy, confidentiality,~~ national and homeland security is not possible.

Further, in view of the evidence that even studies published in prominent journals are often false or overstate results, the EPA should carefully consider the weight given to studies, data, and models that are not disclosed for review by the public and other researchers, even where non-disclosure is required by law.

SPECIFIC COMMENT 10: In view of the replication crisis, the EPA should re-evaluate existing regulations using the standards set forth in the Proposed Rule.

In the commentary accompanying the Proposed Rule, the EPA states that the Proposed Rule “is intended to apply prospectively . . .” 83 Fed. Reg. at 18771. In view of the overwhelming evidence that (i) a very high percentage of published studies are not reproducible, (ii) peer review is not sufficient to ensure that a study lacks major errors, and (iii) peer review is not sufficient to ensure that the computational code underlying many studies lacks major errors, we submit that the EPA should establish a plan to review the scientific basis for existing regulations under the standards of the Proposed Rule.

SPECIFIC COMMENT 11: The EPA should not delay implementation of this rule unless required to do so by statute.

Certain commenters claim the EPA has not complied with specific statutory obligations. We take no position on the EPA’s statutory obligations, but we encourage the EPA to carefully comply with applicable procedural requirements so as to minimize the risk of dilatory litigation.

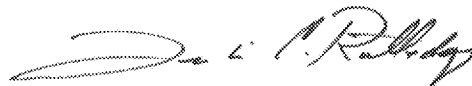
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The Proposed Rule makes great inroads towards the EPA’s ensuring public confidence in the regulations it enacts. We support making critical scientific data available in a way that is both timely and transparent to stakeholders and the public at large. To that end, we fully support the Proposed Rule. We appreciate your consideration of this comment and look forward to the prompt enactment of this important regulation.

Sincerely,



Jeff Landry
Louisiana Attorney General



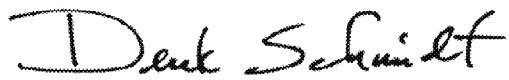
Leslie Rutledge
Arkansas Attorney General



Steve Marshall
Alabama Attorney General



Curtis T. Hill, Jr.
Indiana Attorney General



Derek Schmidt
Kansas Attorney General



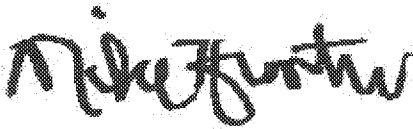
Alan Wilson
South Carolina Attorney General



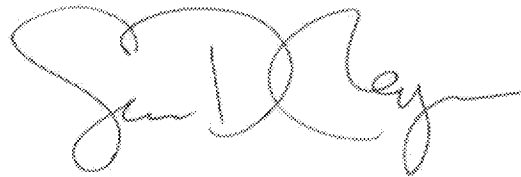
Douglas J. Peterson
Nebraska Attorney General



Ken Paxton
Texas Attorney General



Mike Hunter
Oklahoma Attorney General



Sean Reyes
Utah Attorney General



Brad D. Schimel
Wisconsin Attorney General

cc: Brittany Bolen, Office of Policy (via email)
Tom Sinks, Office of the Science Advisor (via email)



August 15, 2018

Acting Administrator Andrew Wheeler
& Office of the Science Advisor
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460
Via Regulations.gov to docket EPA-HQ-OA-2018-0259

Tom Sinks
Office of the Science Advisor
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, D.C. 20460
Via email to staff_osa@epa.gov

RE: Comments of Natural Resources Defense Council on “Strengthening
Transparency in Regulatory Science,” 83 Fed. Reg. 18,768 (April 30, 2018),
Docket ID No. EPA-HQ-OA-2018-0259

I. Introduction

Natural Resources Defense Council (NRDC) is a national, not-for-profit public-health and environmental advocacy organization whose purpose is to safeguard the Earth: its people, its plants and animals, and the natural systems on which all life depends. NRDC has hundreds of thousands of members, all of whom depend on the U.S. Environmental Protection Agency (EPA) to protect them from the harms of pollution. EPA’s proposed rule, “Strengthening Transparency in Regulatory Science,” 83 Fed. Reg. 18,768 (Apr. 30, 2018) (the “Proposal”) would harm these members by limiting the types of science that EPA could use to protect the environment and public health. As described in detail below, the Proposal is an attack on science and violates the law. EPA should withdraw it immediately.

The Proposal would bar EPA from considering science based on dose response data and models that could not be made “publicly available in a manner sufficient for independent validation.” 83 Fed. Reg. at 18,773. EPA asserts that “[e]nhancing the transparency and validity of the scientific information relied upon by EPA strengthens the integrity of EPA’s regulatory actions and its obligation to ensure the Agency is not arbitrary in its conclusions.” 83 Fed. Reg. at 18,769. Notably, as described in detail below, neither the Proposal nor docket contains any factual, scientific, technical, logical, or legal support for the suggestion that science and data that are “publicly available in a manner sufficient for independent validation” are necessary elements for the “validity,” “reliability,” or “transparency” of scientific information. *Id.* EPA provides no basis for its assumption that science or studies for which data are publicly available yield more valid or reliable results than the best available, peer-reviewed, independent, credible science, for

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which the underlying data are not publicly available. Similarly, the Proposal arbitrarily fails to address, much less explain, why prior EPA regulatory actions that relied upon studies, data, or other information did not reflect the “best available science” or why they were otherwise unreliable, despite failing to meet the Proposal’s standards.

To the contrary, EPA, other federal agencies, EPA scientific advisory bodies, the National Academy of Science (NAS), and EPA’s Science Advisory Board (SAB) have repeatedly and consistently relied upon the best available, peer-reviewed, independent, credible scientific studies—for which the underlying data are not publicly available—and found that science to be valid, reliable, trustworthy, and a reflection of the “best available science” that EPA claims as its concern in the Proposal. The Proposal arbitrarily excludes prior research, studies, and data that do not meet its applicability criteria based on concerns that were never announced to researchers or the public, or deemed necessary by any government agency, at the time the research, studies, or data-gathering were undertaken. The Proposal is strikingly at odds with those scientific practices and their history, with *nothing* in the rulemaking docket to support casting aspersions on the practices or history sufficient to prohibit EPA from considering such science.

EPA has unsurprisingly failed to cite a single statute that provides any basis for the Proposal. What statutes EPA does cite conflict with the Proposal, because they require EPA either to consider the best available science (which may be based on data that cannot be made public) or to regulate to protect public health and the environment (which cannot be done if critical science is ignored simply because the underlying data cannot be made public). Similarly, none of the other sources EPA cites provide legal or logical support for the Proposal.

The Proposal also suffers from a host of other problems: its definitions are vague; it is an unexplained reversal from prior agency policy; it handles confidential business information in a capricious manner; it treats other types of agency actions inconsistently; it applies retroactively to studies completed before the rule goes into effect; it fails to analyze the disproportionate effect of the rule on people of color, low-income people, and children; and it contains a cryptic peer review provision.

As explained throughout these comments, EPA’s agenda, as reflected in the Proposal, is not greater public trust or understanding; rather, the Proposal’s goal is censorship of science and studies whose underlying data are not publicly available and may not be made publicly available as a matter of law or other agreement. The Proposal should be withdrawn.

II. The Proposal is a flawed solution in search of a problem

The Proposal represents an unworkable, ill-explained, unjustified, and thoroughly unlawful approach to address a problem that does not exist. EPA does not explain why the data sharing requirements outlined in the Proposal are suddenly so urgent. This missing argument is especially significant given the decades of peer-reviewed data and models that EPA has justifiably relied on for regulatory actions. There is no “crisis in replicability” for the types of data and models that the Proposal purports to address; as an indication of this, EPA has not cited *any* sources for its assumptions presented in the Proposal.

The governing, harmful conceit of the Proposal—to censor the best available, peer-reviewed health science that EPA may consider, in order to prevent adoption of protective health and environmental safeguards—is a thinly disguised version of anti-science legislation that Republican members of Congress have introduced, repeatedly, but have been unable to enact into federal law, repeatedly.¹ NRDC opposed those bills strongly, and still does. We raised many of the identical objections to those bills that we raise to the Proposal in these comments.² Indeed, it is striking that one of the primary EPA co-authors of the Proposal was a Committee staff person for the leading congressional co-sponsor of the legislation in question when the failed bill was being shepherded through the House of Representatives.³

Members of Congress understood that new legislation was required to censor EPA consideration of high quality, peer-reviewed science, and yet EPA barreled ahead with a Proposal based on the same legislative approach while pretending, suddenly, that multiple federal laws have authorized that approach, magically, all along. For the reasons discussed in these comments, the Proposal is not authorized by any federal laws. Moreover, the Proposal violates numerous federal laws entrusted to EPA, in addition to being arbitrary and capricious and an abuse of EPA's discretion.

A leading medical researcher notes that, if the Proposal is approved, “science will be practically eliminated from all decision-making processes” at the agency because so few studies meet (or could be expected to meet, on time scales appropriate for regulatory actions and associated public comment periods) the Proposal's requirements for data availability.⁴ Instead of restricting the pool of available science by instituting an unworkable requirement for a broad category of scientific inquiry, EPA should focus on identifying particular weaknesses in the available evidence and targeting future investigations towards addressing specific deficiencies.

Moreover, assessing whether any particular study is reliable is not contingent on whether its underlying data can be made public, a fundamental point made clear in a report that EPA itself cited in the Proposal.⁵ The assessment of study credibility depends on a number of factors, including “how large and rigorous studies are, how well researchers have contained conflicts of interest (financial or other), and how successfully the study design and analysis have limited bias, properly accounting for the complexity inherent in each scientific question.”⁶

¹ See, e.g., H.R. 4012, “Secret Science Reform Act of 2014,” 113th Congress, 2d Session, <https://www.congress.gov/113/bills/hr4012/BILLS-113hr4012rfs.pdf>.

² See Letter from John Walke, NRDC, to Honorable Lamar Smith, Chairman, Committee on Science, Space, and Technology, *et al.* (Feb. 11, 2014), available at https://www.nrdc.org/sites/default/files/air_14021101a.pdf.

³ Scott Waldman, “Meet the man helping Pruitt reshape science,” *Climatewire*, (May 23, 2018), <https://www.eenews.net/stories/1060082467>.

⁴ Ioannidis, J. P., “All science should inform policy and regulation,” *PLoS Medicine* 15(5) (May 3, 2018), <http://journals.plos.org/plosmedicine/article?id=10.1371/journal.pmed.1002576>. (Hereinafter “All Science”)

⁵ 83 Fed. Reg. at 18,769, n.6 (citing 67 Fed. Reg. 8452, 8453, Office of Management and Budget, “Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies (February 22, 2002), available at <https://www.federalregister.gov/documents/2002/02/22/R2-59/guidelines-for-ensuring-andmaximizing-the-quality-objectivity-utility-andintegrity-of-information>. (Hereinafter “OMB Guidance”).

⁶ See All Science, *supra*, n. 4.

With respect to one area of dose response data and models considered by EPA, decades of quantitative, peer-reviewed investigation into the premature mortality risks caused by PM_{2.5} have replicated study findings across different geographic settings and time periods. EPA's own 2009 Integrated Science Assessment (ISA) for PM_{2.5} considered many scientific studies that do not meet the data transparency requirements of the proposed rule. The ISA concluded, based on a wealth of epidemiologic evidence, that a causal relationship exists between short-term PM_{2.5} exposures and cardiovascular effects and mortality, and is likely to exist for respiratory effects. The ISA also found that the scientific evidence is sufficient to conclude that the relationship between long-term PM_{2.5} exposure and respiratory effects is likely to be causal, and is causal for mortality. The Agency has not explained why the scientific evidence underlying these determinations is now insufficient for regulatory decision making. Its proposal to exclude scientific data based on questionable transparency requirements is arbitrary and in direct contradiction with prior Agency determinations.

As the ISA demonstrates, no Agency regulatory action is predicated on the results of any single scientific study; rather, the continual accumulation of quantitative evidence with respect to the dose-response relationships for particular environmental contaminants informs decision making. The causal criteria outlined in the ISA demonstrate the iterative process by which dose-response relationships are assessed over time as evidence is gathered and published in peer-reviewed journals. In assessing the reliability of scientific findings, "it is essential to examine evidence in its totality, recognize its relative strengths and weaknesses, and make the best judgment based on what is available."⁷

A. According to information cited in the Proposal, publicly available data is not needed to ensure reproducibility

Importantly, one of the documents that EPA relies upon in the Proposal in footnote 6 fatally undermines the Proposal's pretense that underlying data protected by confidentiality concerns must be made publicly available in order to be considered valid and reliable, and meet the "reproducibility standard." 83 Fed. Reg. at 18,769. A 2002 Office of Management and Budget report, "Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies," (OMB Guidance)⁸ notes that data need not be publicly available in order to meet the reproducibility standard:

Even in a situation where the original and supporting data are protected by confidentiality concerns, or the analytic computer models or other research methods may be kept confidential to protect intellectual property, it may still be feasible to have the analytic results subject to the reproducibility standard. For example, a qualified party, operating under the same confidentiality protections as the original analysts, may be asked to use the same data, computer model or statistical methods to replicate the analytic results reported in the original study.⁹

⁷ *Id.*

⁸ See *supra*, n. 5, OMB Guidance.

⁹ *Id.* (citing Krewski, D., Burnett, R. T., Goldberg, M. S., Hoover, K., Siemiatycki, J., Abrahamowicz, M., & White, W. H., Reanalysis of the Harvard Six Cities Study and the American Cancer Society Study of Particulate Air

The OMB Guidance directly undermines the notion that the only way for research to meet the reproducibility standard is by making all underlying data available for public inspection. As the document further notes,

[t]he primary benefit of public transparency is not necessarily that errors in analytic results will be detected, although error correction is clearly valuable. The more important benefit of transparency is that the public will be able to assess how much an agency's analytic result hinges on the specific analytic choices made by the agency. Concreteness about analytic choices allows, for example, the implications of alternative technical choices to be readily assessed. This type of sensitivity analysis is widely regarded as an essential feature of high quality analysis, yet sensitivity analysis cannot be undertaken by outside parties unless a high degree of transparency is achieved. The OMB guidelines do not compel such sensitivity analysis as a necessary dimension of quality, but the transparency achieved by reproducibility will allow the public to undertake sensitivity studies of interest.¹⁰

Lastly, the OMB Guidance indicates that publicly accessible data is an unworkable requirement in some situations due to sensitive data that cannot be legally or ethically released to the public: "We acknowledge that confidentiality concerns will sometimes preclude public access as an approach to reproducibility."¹¹

The Proposal is arbitrary and capricious and an abuse of EPA discretion by creating a framework in which it is very clear its real concerns are not "actual verification" of studies and data or "best available science," but prohibiting EPA from considering and basing protective regulations on relevant, peer-reviewed science whose underlying data or elements *may not* be made publicly available, due to various legal obligations such as confidentiality agreements, laws, or regulations. The Proposal's real aims are not verification or "best available science"; instead, its aims are censoring science and obstructing evidence of the need for greater health and environmental safeguards.

B. Independent validation is already occurring

The Proposal does not require that any information *actually* be *independently validated* before EPA may consider it or base regulatory decisions on such verification. Accordingly, there is an irrational disconnect between EPA's insistence that information be "publicly available for independent validation" and the Proposal's claim that this ensures EPA will consider and use the "best available science." See 83 Fed. Reg. at 18,769. EPA itself has not outlined a process by which "dose response data and models" would be validated, and the Proposal does not seriously consider the methodological complications of partial redaction of underlying study data.

Pollution and Mortality," A Special Report of the Health Effects Institute's Particle Epidemiology Reanalysis Project, Cambridge, MA, Health Effects Institute (2000). (Hereinafter "Reanalysis of Harvard Six Cities Study").

¹⁰ *Id.* at 8456.

¹¹ *Id.*

The Proposal claims that its data release requirements are vital for “independent validation,” but the truth is that independent validation is happening now. As an example, consider the independent validation of the Harvard Six Cities study by the Health Effects Institute (HEI), which is characteristic of the types of complex epidemiologic investigations that could be subject to the unworkable provisions of this Proposal.¹² The Clean Air Act requires EPA to consider the best available evidence in setting and revising the National Ambient Air Quality Standards (NAAQS) to protect health within an adequate margin of safety. 42 U.S.C. § 7409(b)(1). Fine particulate matter, an air pollution category encompassing solid particles and condensed liquid droplets with a diameter of 2.5 microns or smaller (PM_{2.5}), is by far the most dangerous type of air pollution because it can penetrate deep into the lung and enter the bloodstream.¹³ The 1993 Harvard Six Cities Study, a groundbreaking study into the link between air pollution exposures and health, examined the health effects of PM_{2.5} air pollution over 16 years on more than 8,000 adults and 14,000 children relying on private medical records and air pollution monitors deployed near study volunteers.¹⁴ The study found a significant relationship between air pollution exposure and risk of early death, but the raw data could not be released publicly because researchers were obligated to ensure study participant confidentiality.

Still, relying on that data, more than 100 peer-reviewed studies have confirmed the basic results of that initial study. Because the study and others like it advanced through the rigorous peer-review process characteristic of the world’s leading scientific journals (whose editors have rejected the proposed rule¹⁵), EPA relied on the results of this study and others in 1997 when it promulgated the first-ever NAAQS for fine particulate matter.¹⁶ Since then, hundreds of additional studies into the health effects of air pollution (conducted across the country¹⁷ and internationally,¹⁸ for both short-¹⁹ and long-term²⁰ impacts of exposure) and independent re-analyses of existing datasets have affirmed the air pollution-mortality and morbidity links with increasing precision. In 2000, the Health Effects Institute published

¹² See *supra*, n. 9.

¹³ World Health Organization. *Air Quality Guidelines: Global Update 2005. Particulate Matter, Ozone, Nitrogen Dioxide and Sulfur Dioxide*. World Health Organization (2006).

¹⁴ Dockery, D. W., Pope, C. A., Xu, X., Spengler, J. D., Ware, J. H., Fay, M. E., ... & Speizer, F. E. (1993). An association between air pollution and mortality in six US cities. *New England journal of medicine*, 329(24), 1753–59 (Hereinafter “Harvard Six Cities Study”).

¹⁵ Jeremy Berg, et al., Letter, “Joint statement on EPA proposed rule and public availability of data,” *Science*, Vol. 360, Issue 6388, 4 May 2018, available at <http://science.sciencemag.org/content/360/6388/eaau0116>.

¹⁶ 62 Fed. Reg 38,652 *et seq.*, “National Ambient Air Quality Standards for Particulate Matter”: Final Rule (July 18, 1997), available at <https://www.epa.gov/pm-pollution/table-historical-particulate-matter-pm-national-ambient-air-quality-standards-naaqs>.

¹⁷ Hoek, G., Krishnan, R. M., Beelen, R., Peters, A., Ostro, B., Brunekreef, B., & Kaufman, J. D. (2013). Long-term air pollution exposure and cardio-respiratory mortality: a review. *Environmental Health*, 12(1), 43.

¹⁸ Katsouyanni, K., Samet, J. M., Anderson, H. R., Atkinson, R., Le, A. T., Medina, S., ... & Ramsay, T. (2009). Air pollution and health: a European and North American approach (APHENA). Research report (Health Effects Institute), (142), 5–90.

¹⁹ Brook, R. D., Brook, J. R., Urch, B., Vincent, R., Rajagopalan, S., & Silverman, F. (2002). Inhalation of fine particulate air pollution and ozone causes acute arterial vasoconstriction in healthy adults. *Circulation*, 105(13), 1534–36.

²⁰ Pope, C. A., Burnett, R. T., Thurston, G. D., Thun, M. J., Calle, E. E., Krewski, D., & Godleski, J. J. (2004). Cardiovascular mortality and long-term exposure to particulate air pollution: epidemiological evidence of general pathophysiological pathways of disease. *Circulation*, 109(1), 71–77.

its independent re-analysis²¹ of the Harvard Six Cities study, which confirmed the original findings. When HEI was tasked with re-analyzing the study data in February 1997, it required a major investment of time and analytical resources on a scale far beyond that envisioned by the Proposal. In fact, the HEI re-analysis, which validated the original study findings, took three years to complete.²² The fact that the original Six Cities study stood up strongly to the scrutiny of independent researchers and sensitivity analyses speaks to the methodological rigor that the peer-review system demands. Indeed, the field of air pollution epidemiology in particular already has a high reproducibility standard.²³

Clearly, the Proposal arbitrarily ignores the significant amounts of time, effort and expense associated with “independent verification” of studies and data, especially given the wide scope of peer-reviewed science that would be subject to data sharing requirements. 83 Fed. Reg. at 18,774.²⁴ Given how long it took a team of researchers to independently re-analyze a single study, and the relatively short public comment periods associated with EPA regulatory actions,²⁵ the Proposal is doubly arbitrary: it ignores the significant amounts of time, effort and expense associated with “independent verification” of studies and data. Moreover, it is possible (even likely) that studies or data submitted by the public during comment periods would need to be independently assessed before consideration by EPA. Against the backdrop of EPA rulemakings with public comment periods and open rulemaking time periods and the voluminous amounts of data that would need to be de-identified, shared, and re-analyzed, it would be impossible to achieve independent verification of relevant dose-response information.

EPA has rightly continued to rely on the robust peer-reviewed literature to inform the air quality standard-setting process year after year, incorporating the best available scientific evidence in epidemiology, toxicology, and exposure assessment to set the outdoor air quality standards at levels that protect public health and the environment. It has also (until recently) agreed with leading scientists who have spent their careers studying air pollution and health that no safe threshold of fine particulate air pollution exists. The National Ambient Air Quality Standards and Clean Air Act’s designations process have helped to clean up our nation’s air in

²¹ Reanalysis of Harvard Six Cities Study, *supra* n.9.

²² Elaine Appleton Grant, “Prevailing Winds: A decades-long fight to bring clean air standards in line with environmental health science offers lessons for today,” Harvard Public Health Magazine, Fall 2012 *available at* <https://www.hsph.harvard.edu/news/magazine/f12-six-cities-environmental-health-air-pollution/>. (Hereinafter “Prevailing Winds”).

²³ See All Science, *supra*, n. 4.

²⁴ Regarding proposed § 30.7, the Proposal states that “EPA shall conduct independent peer review on *all* pivotal regulatory science used to justify regulatory decisions . . .” (emphasis added). EPA, in its Proposal and accompanying administrative record, does not begin to grapple with the impossible, burdensome obligation the Proposal creates to conduct new and independent peer review of “all pivotal regulatory science,” especially against the backdrop of the real-world experience with the three-year, costly, resource-intensive HEI re-analysis of just *one* study. See *supra*, Prevailing Winds, at n. 22.

²⁵ Environmental statutes and the Administrative Procedure Act sometimes allow public comment periods to be as short as 30 days. This period of time is wildly out of sync with the Proposal’s conceits that making data or models underlying regulatory science publicly available will allow for independent validation. See, e.g., 83 Fed. Reg. at 18,773 (proposed § 30.1). EPA has no response to this disconnect in the Proposal or the administrative record accompanying the Proposal.

substantial ways since 1970, and have protected millions of Americans, young and old, from breathing polluted air that would harm their health.

When analyzing the HONEST Act, the previously introduced legislation aimed at achieving the same end as the Proposal, the Congressional Budget Office predicted that the yearly tab could top \$100 million to upgrade the format and availability of those studies' data to the level required if EPA continues to rely on the same volume of scientific research as in the recent past.²⁶ In part, the money would go toward obtaining all of the underlying data for specific studies, formatting the information for public use, and providing access to the needed computer codes and models, the analysis said.

The Proposal also fundamentally ignores the real-world constraints, as well as moral barriers in some cases, to replicating studies due to the impossibility or offensiveness of reproducing conditions that underlay the studies. For example, researchers cannot replicate the poor air quality conditions experienced in the past and, correspondingly, the peer-reviewed investigations of the health effects cannot be reproduced. As one leading researcher notes, "researchers cannot ethically randomize people to harmful exposures in order to tackle confounding, nor violate informed consent agreements that prohibit open sharing of private data from past studies."²⁷

Finally, the EPA chemical assessment program, called the Integration Risk Information System (IRIS) already uses credible transparent methods to provide the public with reliable, transparent, credible chemical hazard assessments and toxicity values. The program received high praise from its last two reviews by the National Academies of Sciences (NAS 2014 and NAS 2018), as well as from the Scientific Advisory Board (SAB 2017) for its continuous improvements and successes in its methods for evaluating and integrating scientific evidence from various streams including human studies, animal studies, and mechanistic studies. This Proposal would undermine decades of expert work to advance successful data evaluation methods described in the systematic review approach now underway in the EPA IRIS program.

C. Health Insurance Portability and Accountability Act

Many of the studies that EPA has relied on to set and revise the NAAQS are epidemiological prospective cohort investigations encompassing thousands of individuals over several decades. The Proposal's provisions concerning the public sharing of underlying data from these studies directly contradict both the legal protections for private medical data under the Health Insurance Portability and Accountability Act (HIPAA)²⁸ and the requirements researchers adhere to under the purview of Institutional Review Boards (IRBs),²⁹ which typically require

²⁶ Congressional Budget Office, Cost Estimate, Honest and Open New EPA Science Treatment Act of 2017, March 29, 2017 *available at* <https://www.cbo.gov/system/files/115th-congress-2017-2018/costestimate/hr1430.pdf>.

²⁷ See All Science, *supra*, n. 4.

²⁸ U.S. Department of Health & Human Services, "The HIPAA Privacy Rule," *available at* <https://www.hhs.gov/hipaa/for-professionals/privacy/index.html>.

²⁹ National Institute of Environmental Health Science, "Institutional Review Board," *available at* <https://www.niehs.nih.gov/about/boards/irb/index.cfm>.

investigators to ensure study participant confidentiality and data security. The foundational research in air pollution epidemiology demonstrating a causal link between pollution exposures and adverse health outcomes (including early death,³⁰ heart disease,³¹ lung cancer,³² stroke,³³ and asthma exacerbations³⁴) would be put at risk if the Proposal were finalized. Underlying sensitive health data cannot be released without obtaining individual patient consent, or consent from the next responsible party³⁵ for study participants who have died.

Importantly, the Proposal does not consider the negative effects it would have on recruitment for future epidemiological studies if members of the public had to permit access to sensitive personal and health information as a condition for study participation. Many of the peer-reviewed studies EPA uses to set and revise National Ambient Air Quality Standards through the Clean Air Act analyze the relationship between exposure to polluted air over many years and a range of adverse health effects. These comprehensive studies have enrolled thousands of American volunteers over periods ranging from several years to decades, in order to understand exactly how pollution harms us. The Proposal would have a chilling effect on the study recruitment process because of the onerous data release requirements. EPA's actual creation of these harmful consequences, and failure to consider and account for these harmful consequences, render the Proposal arbitrary and capricious and an abuse of agency discretion.

The Proposal would stand in stark contrast to the protective, guiding principles of the Health Insurance Portability and Accountability Act,³⁶ known as HIPAA. HIPAA was enacted nationally in 1996 as Public Law 104-191 and has served as a foundation for the protection of individual patients' privacy in research and in healthcare settings, setting boundaries on the appropriate use and release of health records.

According to the Department of Health and Human Services, HIPAA "establishes appropriate safeguards that health care providers and others must achieve to protect the privacy of health information; . . . holds violators accountable, with civil and criminal penalties that can be imposed if they violate patients' privacy rights; and it strikes a balance when public

³⁰ Pope III, C. A., R. T. Burnett, M. J. Thun, E. E. Calle, D. Krewski, K. Ito, and G. D. Thurston. 2002. "Lung Cancer, Cardiopulmonary Mortality, and Long-Term Exposure to Fine Particulate Air Pollution." *JAMA: The Journal of the American Medical Association* 287 (9): 1132–1141.

³¹ Pope, C. A., Muhlestein, J. B., May, H. T., Renlund, D. G., Anderson, J. L., & Horne, B. D. (2006). Ischemic heart disease events triggered by short-term exposure to fine particulate air pollution. *Circulation*, 114(23), 2443–48.

³² Turner, M. C., Krewski, D., Pope III, C. A., Chen, Y., Gapstur, S. M., & Thun, M. J. (2011). Long-term ambient fine particulate matter air pollution and lung cancer in a large cohort of never-smokers. *American journal of respiratory and critical care medicine*, 184(12), 1374–81.

³³ Hong, Y. C., Lee, J. T., Kim, H., & Kwon, H. J. (2002). Air pollution: a new risk factor in ischemic stroke mortality. *Stroke*, 33(9), 2165–69.

³⁴ Ostro, B., Lipsett, M., Mann, J., Braxton-Owens, H., & White, M. (2001). Air pollution and exacerbation of asthma in African-American children in Los Angeles. *Epidemiology*, 12(2), 200–08.

³⁵ U.S. Department of Health & Human Services, "Personal Representatives," *available at* <https://www.hhs.gov/hipaa/for-professionals/privacy/guidance/personal-representatives/index.html>.

³⁶ U.S. Department of Health & Human Services (HHS). 2013. "Health Information Privacy: What Does the HIPAA Rule Do?," December 19, 2002; *available at* <https://www.hhs.gov/hipaa/for-individuals/faq/187/what-does-the-hipaa-privacy-rule-do/index.html>.

responsibility supports disclosure of some forms of data – for example, to protect public health.”³⁷

With the shift away from paper to electronic medical records in recent decades, “the potential for individuals to access, use, and disclose sensitive personal health data” has increased.³⁸ While protecting individual patient privacy is a long-standing tradition among health-care and public health practitioners, previous legal protections were afforded by a patchwork of inconsistent and often inadequate laws and regulations. In 2003, pursuant to HIPAA, rules were enacted to expressly protect the privacy of certain individually identifiable health data, or “protected health information” (PHI). The HIPAA Privacy Rule (Standards for Privacy of Individually Identifiable Health Information) offered the first national standards for protecting the privacy of health information.³⁹

For researchers at American universities and teaching hospitals, HIPAA and the Privacy Rule are part of life, especially in the health sciences. Any proposed research project must submit a complete description of its planned use, protection, and storage of PHI before the university’s Institutional Review Boards (IRB), before any research project may proceed. Each researcher needs to annually renew their familiarity and expertise with the terms of HIPAA and the Privacy Rule, by taking a test to certify compliance. It is eminently obvious to those involved in research that protecting study subjects’ personal data is of the utmost importance, from an ethical and a legal viewpoint.

The Proposal, on the other hand, would disallow use of an enormous body of carefully-protected, de-identified health data from epidemiological studies large and small, for which IRBs have approved collection because patient privacy has been protected. The rule would effectively demand that study subjects’ private health information be made publicly available, or else not be usable in regulatory efforts. This measure would hamstring the research community’s ability to continue to produce foundational, health-protective research. Not only would the rule destroy society’s collective ability to benefit from studies of the causes of and potential cures for ill health, it also would veer dangerously toward compromised privacy during an era in which electronic data security is a nationwide crisis. In short, the Proposal flies in the face of decades of statutory, regulatory and institutional progress to simultaneously protect public health and privacy.

D. Anonymization or partial redaction of data is unworkable

Proponents of the Proposal have suggested that privacy concerns surrounding the sharing of health data can be mitigated by anonymizing the individual-level health data that researchers collect. This overlooks the serious problem that anonymizing data (through techniques such as data masking, coding, and de-identification techniques) might not adequately protect confidentiality or privacy. Various studies have documented that de-identification techniques to

³⁷ *Id.*

³⁸ Thacker SB. “HIPAA Privacy Rule and Public Health: Guidance from CDC and U.S. Department of Health and Human Services.” *MMWR* 52:1–12 (April 11, 2003).

³⁹ *Id.*

render data anonymous is not “simple,” despite what the Proposal suggests, and can lead to the publication of protected confidential or private data. One study explained that “[b]y linking demographics to public records such as voter lists, and mining for names hidden in attached documents, we correctly identified 84 to 97 percent of the profiles for which we provided names.”⁴⁰ Another explained “87% (216 million of 248 million) of the population in the United States had reported characteristics that likely made them unique based only on [5-digit ZIP, gender, date of birth].”⁴¹ Finally, another explains that “any data that is even minutely useful can never be perfectly anonymous.”⁴² The Proposal does not acknowledge these issues.

The claim that publicly available dose response data and models would allow for independent validation stands in direct contradiction to the legal privacy protections that apply to key data necessary for re-analysis. The proposed partial redaction of sensitive information poses a cascading set of problems, because the statistical models characteristic of epidemiologic investigations rely on the inclusion of potentially confounding variables (*e.g.*, age, sex, home address, health status, diet and alcohol consumption, smoking history) in order to properly isolate the pollution-health relationship with precision.⁴³ To understand the dose-response connection, these studies analyze detailed health, demographic, spatial, and behavioral information from thousands of people. This information is extremely sensitive and collected at the individual level. As such, our nation’s health privacy laws and Institutional Review Board (IRB) protocols require researchers to keep the data secure and confidential to prevent misuse. Collectively, these data points help researchers understand and isolate the cause-effect relationship between exposure to air pollution and risks for various health problems. It would be extremely difficult if not impossible for anyone using partially-redacted data sets derived from epidemiologic cohort studies to “validate” the results of the original studies, because such investigators would not be working with complete data sets.

As further demonstration, the 2009 Integrated Science Assessment for PM_{2.5} notes that “[a]ppropriate statistical adjustment for confounders requires identifying and measuring all reasonably expected confounders.”⁴⁴ Therefore, exclusion of some potentially sensitive confounding variables from an underlying dataset likely would lead a different team of investigators to a different result. Causing this wrongheaded and indefensible outcome results from the core approach and conceit in the Proposal, revealing it to be yet again, arbitrary and capricious and an abuse of EPA discretion. Put another way, the quantitative findings of dose-response relationships would almost certainly differ—not as a result of any true difference in the quantitative exposure-effect relationship, but because the original work relied on complete data

⁴⁰ Sweeney, L., Abu, A., & Winn, J. Identifying Participants in the Personal Genome Project by Name, Harvard University, Data Privacy Lab White Paper at 1, Cambridge 2013, *available at* <https://dataprivacylab.org/projects/pgp/1021-1.pdf>.

⁴¹ Sweeney, L., Simple Demographics Often Identify People Uniquely, Carnegie Mellon University, Data Privacy Working Paper 3 at 2. Pittsburgh 2000, *available at* <https://dataprivacylab.org/projects/identifiability/paper1.pdf>.

⁴² Paul Ohm, *Broken Promises of Privacy: Responding to the Surprising Failure of Anonymization*, 57 UCLA L. Rev. 1701, 1755 (2010).

⁴³ For example, see confounding variable adjustment in Pope III, C. A., Burnett, R. T., Thun, M. J., Calle, E. E., Krewski, D., Ito, K., & Thurston, G. D. (2002). Lung cancer, cardiopulmonary mortality, and long-term exposure to fine particulate air pollution. *Jama*, 287(9), 1132–41.

⁴⁴ U.S. EPA, Integrated Science Assessment (ISA) for Particulate Matter (Final Report, Dec 2009), 1–16, Washington, DC, EPA/600/R-08/139F, 2009.

sets and the new analyses would not—due to the Proposal. The resulting discrepancies in quantitative findings could serve as motivation to call the original study results into question due to faulty and incomplete re-analyses.

In any case, such an undertaking would be immensely costly, complicated, and slow—and deliver no net benefit to EPA or the American public. The cost projections are staggering: when EPA staffers in 2017 considered the potential effects of the failed HONEST Act⁴⁵ that mirrors the approach of the Proposal, they calculated⁴⁶ that efforts to anonymize health data and confidential business information could top \$250 million annually⁴⁷ (and potentially up to \$1 million **per study**) for the already strained agency workforce—huge amounts of taxpayer money and staff time that would be much better spent on implementing our nation’s environmental laws.

Despite this significant cost estimate, EPA does not confront the financial dimensions or the need for financial incentives to support the unprecedented data release requirements in the rule.⁴⁸ It also does not consider the fact that scientists do not typically receive funding to make the data underlying peer-reviewed studies available for public inspection. The Proposal would likely “significantly reduce” the evidence base that the EPA considers for air quality/health analyses (according to a Congressional Budget Office evaluation of the HONEST Act⁴⁹), a dramatic reduction that excludes the best available scientific studies that the agency has relied on for more than 20 years to set and revise the NAAQS.

Under the Proposal, EPA would not be able to rely on the best available science for its Integrated Science Assessments of air pollution that inform the NAAQS-setting process. Meanwhile, industry-funded research calling into question the air pollution-health link would not be subject to similar data release requirements, or even peer-review and independent reevaluation. This approach is asymmetric and favors selective, opaque, and questionable research methods over the consensus of robust peer-reviewed scientific investigation. Transparency in scientific data is an important topic, but one that needs to be balanced against the privacy concerns of study participants and legal and ethical restrictions on the sharing of sensitive data.

EPA identifies no indication under federal laws that Congress intended to create or authorize a lose-lose dynamic, in which EPA could exercise its authority either by excluding the best available, peer-reviewed science to inform health and environmental protections, *or* force researchers or ordinary Americans to cast aside privacy concerns, as well as legal and ethical

⁴⁵ H.R. 1430, “Honest and Open New EPA Science Treatment Act of 2017,” 115th Congress, *available at* <https://www.congress.gov/bill/115th-congress/house-bill/1430>.

⁴⁶ EPA Internal Analysis of HONEST Act (2017), *available at* <https://www.scribd.com/document/344731162/EPA-analysis-of-Honest-Act-to-CBO>.

⁴⁷ *Id.*; see also Union of Concerned Scientists, Administrator Pruitt Ignores EPA Staff Analysis of HONEST Act Costs, *available at* https://www.ucsusa.org/center-science-and-democracy/attacks-on-science/administrator-pruitt-ignores-epa-staff-analysis#.W3I-_dJKjIW.

⁴⁸ See All Science, *supra*, n. 4.

⁴⁹ Congressional Budget Office, Cost Estimate, Honest and Open New EPA Science Treatment Act of 2017, March 29, 2017 *available at* <https://www.cbo.gov/system/files/115th-congress-2017-2018/costestimate/hr1430.pdf>.

restrictions on the sharing of sensitive data. That false choice is entirely a creation of the agency's misguided policy preferences in the Proposal. The rule is arbitrary and capricious and an abuse of EPA discretion, with its selective application of data release requirements and disregard for the quantitative complexities of epidemiologic research.

E. EPA misrepresents data sharing policies at scientific journals

The Proposal identifies data sharing policies at a number of peer-reviewed scientific journals and claims that these policies support the Proposal's underlying public access requirements for dose response data and models. This is false. In fact, these various journal policies are more flexible in their terms for data sharing and nuanced in their practical approaches than what EPA fundamentally misrepresents in the Proposal. *See, e.g.*, 83 Fed. Reg. at 18,771/1, nn.20–22. An examination of these sources indicates, in fact, that the language of the Proposal is not consistent with best practices and is unworkable in practice.

The Proposal is not, as it claims, “consistent with requirements for many scientific journals.” 83 Fed. Reg. at 18,771. Specifically, the Taylor and Frances journal policy for data transparency⁵⁰ is much more nuanced than EPA claims and offers a range of options for data submission, demonstrating the need for flexibility and discipline-specific concerns with respect to the public sharing of sensitive data. The Springer Nature Research Data Policy⁵¹ cited in the proposed rule is similarly flexible, describing requirements across a spectrum for four types of underlying research data. For only one of four types of research data is data sharing required as a condition for publication. The frequently asked questions document for the Springer Nature Data Policy⁵² notes that “[t]he policies apply to all research that support publications but *reasonable restrictions on data availability are permitted to protect human privacy, biosafety or respect reasonable terms of use for data obtained under license from third parties.*”⁵³ The Proposal's categorical exclusion and prohibition are thus flatly inconsistent with the Springer Nature Research Data policy cited in the Proposal. *See* 83 Fed. Reg. at 18,771/1, n.20.

Furthermore, Elsevier's corresponding policy⁵⁴ is optional for authors, and states that the journal: “will . . . [e]ncourage and support researchers to share research data *where appropriate* and at the earliest opportunity, for example by enhancing our submission processes to make this easier.”⁵⁵ A frequently asked questions page further explaining this policy says that the “policy is clear in that *we encourage and support authors to share their research data rather than mandating them to do so* and provide tools and services to enable them to do this effectively.

⁵⁰ Taylor & Frances Group, “Author Services: Data Sharing Policies,” *available at* <http://authorservices.taylorandfrancis.com/wp-content/uploads/2018/01/Data-sharing-policies.pdf>.

⁵¹ Springer Nature, “Research Data: Research Data Policy Types,” *available at* <https://www.springernature.com/gp/authors/research-data-policy/data-policy-types/12327096>.

⁵² Springer Nature, “Research Data: Research Data Policies FAQ,” *available at* <https://www.springernature.com/gp/authors/research-data-policy/faqs/12327154> (and see Question 5: “5. Do the policies apply to sensitive or personal data and data subject to third party restrictions?”).

⁵³ *Id.* (emphasis added).

⁵⁴ Elsevier, “Research Data,” *available at* <https://www.elsevier.com/about/our-business/policies/research-data>.

⁵⁵ *Id.* (emphasis added); *see also* Elsevier, “Research Data FAQs,” *available at* <https://www.elsevier.com/about/policies/research-data/research-data-faqs>.

Where there is community support for (often discipline-specific) mandates regarding data deposit, submission and sharing, some of our journals may reflect this with their own mandatory data sharing policies.”⁵⁶ This same supporting frequently asked questions resource from Elsevier says that Elsevier “respect[s] authors who need to keep research data under embargo.”⁵⁷ The Proposal, by contrast, does not allow researchers to keep their research data under embargo. Nor does the Proposal offer such discipline-specific flexibility and, as a result, is neither practically workable nor consistent with the policies of the world’s leading scientific journals.

The Elsevier policy does not apply strict data release requirements to include publicly accessible information. It says that “[r]esearch data should be made available free of charge to all researchers *wherever possible* and with minimal reuse restrictions.”⁵⁸ It further states that “[r]esearchers should remain in control of how and when their research data is accessed and used, and should be recognised and valued for the investments they make in creating their research data and making it available.”⁵⁹ Under the Proposal, researchers retain no such control over their data; the Proposal ignores these harmful ramifications.

The PLOS Data Availability policy notes that, for studies involving human participants, “data must be handled so as to not compromise study participants’ privacy.”⁶⁰ The PLOS Policy itself links to the National Institutes of Health Data Sharing Workbook, which states that:

It is rarely sufficient to simply remove names, addresses, telephone numbers, Social Security Numbers, and the like. Deductive disclosure of individual subjects becomes more likely when there are unusual characteristics or the joint occurrence of several unusual variables. Samples drawn from small geographic areas, rare populations, and linked datasets can present particular challenges to the protection of subjects’ identities.⁶¹

Similarly, the NIH Data Sharing Workbook specifies that “[s]ome investigators withhold parts of the sample; others block access to specific variables, especially items with low prevalence rates that make it easier to identify participants with unusual characteristics.”⁶² Within this policy, the “measures used to minimize the risk of breaching the confidentiality of data” are unworkable given the depth and breadth of peer-reviewed research that would fall under the rule.⁶³ The Proposal identifies no plan for EPA to manage mandatory agreements to maintain confidentiality, data encryption, electronic firewalls and locked storage facilities, password authentication of users, audit trails, disaster prevention and recovery plans, or security measures for backup tapes.

⁵⁶ *Id.* (See “Is it compulsory to share my research data?”) (emphasis added).

⁵⁷ *Id.* (See “Do I have to my share research data straight away?”).

⁵⁸ See *supra*, n. 54, Elsevier, “Research Data,” (emphasis added).

⁵⁹ *Id.*

⁶⁰ PLOS One, “Data Availability,” available at <http://journals.plos.org/plosone/s/data-availability>.

⁶¹ National Institutes of Health, “Data Sharing Workbook,” Feb. 13, 2004, available at https://grants.nih.gov/grants/policy/data_sharing/data_sharing_workbook.pdf.

⁶² *Id.*

⁶³ *Id.*

To the extent data availability, even broadly defined, is contemplated in the Proposal, it is done so prospectively, not retroactively. Unlike the Proposal, the PLOS policy does not apply retroactively to all relevant studies: “[t]he data policy was implemented on March 3, 2014. Any paper submitted before that date will not have a data availability statement. However, for all manuscripts submitted or published before this date, data must be available upon reasonable request.”⁶⁴ Similarly, the Springer Nature policies began during the first quarter of 2016 but did not apply retroactively, as the Proposal would.⁶⁵

The NIH policy cited in footnote 21 of the Proposal also states that “[t]he investigator must be a tenure-track professor, senior scientist, or equivalent, to be able to submit” a data access request.⁶⁶ This fatally undermines the notion in the Proposal that data must be available to all members of the public in order to meet the reproducibility threshold. Furthermore, the Census Bureau resource,⁶⁷ also cited in footnote 21 of the Proposal, describes the Federal Research Data Centers. These centers restrict access to certain individuals, who “must obtain Census Bureau Special Sworn Status – passing a moderate risk background check and swearing to protect respondent confidentiality for life, facing significant financial and legal penalties under Title 13 and Title 26 for failure to do so.”⁶⁸ Again, this fatally undermines the notion in the Proposal that data must be available to all members of the public. While the Proposal simply says that members of the “public” can access these centers, the reality is that access to such controlled spaces is carefully restricted and *not* accessible to all members of the public. EPA does not seriously confront the significant challenges involved in enabling access.

Finally, there is no evidence in the record that the Federal Statistical Research Data Centers have the capacity to handle the substantial amounts of data that would be required to be submitted under the Proposal. But the massive increase in data-handling responsibilities propelled by the Proposal indicates strongly that EPA must first investigate and document what those resource capacities are, and whether the Centers believe they can handle increased responsibilities. If EPA fails to undertake such investigations and fails to demonstrate adequate resources and data-handling capacities, finalizing any rule based on the Proposal would be arbitrary and capricious and an abuse of EPA discretion.

The report cited in footnote 22 of the Proposal⁶⁹ suggests that strategies for data transparency “should be cost-effective,” yet no consideration of the cost repercussions of the Proposal is given in the Proposal or accompanying administrative record. This is extraordinary,

⁶⁴ See *supra*, n. 60.

⁶⁵ See *supra*, n. 52, Question 7: “Is data sharing mandatory for every article?”

⁶⁶ National Institutes of Health, Office of Science Policy, “Requesting Access to Controlled-Access Data Maintained in NIH-Designated Data Repositories,” available at <https://osp.od.nih.gov/scientific-sharing/requesting-access-to-controlled-access-data-maintained-in-nih-designated-data-repositories-e-g-dbgap/>.

⁶⁷ United States Census Bureau, “Federal Statistical Research Data Centers,” available at <https://www.census.gov/fsrdc>.

⁶⁸ United States Census Bureau, “Federal Statistical Research Data Centers; Secure Data Environment,” available at https://www.census.gov/about/adrm/fsrdc/about/secure_rdc.html.

⁶⁹ Randall Lutter and David Zorn, “On the Benefits and Costs of Public Access to Data Used to Support Federal Policy Making,” Mercatus Working Paper, Mercatus Center, George Mason University, September 2016, available at <https://www.mercatus.org/system/files/Mercatus-Lutter-Public-Access-Data-v3.pdf>.

and independent evidence that the Proposal and supporting materials are arbitrary and capricious and an abuse of EPA discretion. As just one example of the costs associated with data transparency requirements of this nature, the report cited by EPA itself quantified cost of compliance at \$46 million.⁷⁰ This amount represents more than two-thirds of the *entire* annual budget of the EPA office responsible for writing all clean air safeguards and standards under the Clean Air Act, the Office of Air Quality Planning and Standards.⁷¹ This amount equals over 90% of the budgeted amount for *every* EPA employee working in OAQPS.⁷² Neither the Proposal nor the accompanying administrative record remotely addresses, much less explains, how these data transparency compliance costs will be met. Moreover, the options for data sharing listed within footnote 22 are more expansive than those listed in the Proposal. They include requiring applications for access; restricting access to data for the purposes of replication, validation, and sensitivity evaluation; establishing physical controls on data storage; online training for researchers; and nondisclosure agreements.

F. The Proposal will not enhance public understanding

The Proposal claims that it “will help ensure that EPA is pursuing its mission of protecting public health and the environment in a manner that the public can trust and understand.” 83 Fed. Reg. at 18,769/1. This is false and unsupported in multiple respects. As these comments explain, the Proposal would prohibit EPA from considering information that will be the best available, peer-reviewed, independent, credible science—on the arbitrary and irrelevant grounds that underlying data are not publicly available. In this fashion, as these comments discuss, the Proposal would obstruct and thwart EPA from its mission and responsibility to protect public health and the environment.

Moreover, the Proposal would do so in a manner that the public cannot and would not trust and understand: the Proposal utterly fails to demonstrate or even support the claim that its approach ensures the information relied upon by EPA would be more trustworthy. EPA establishes no logical nexus or evidence-based link between the Proposal and its insinuations that studies or information lacking publicly available data are unreliable, invalid, irrelevant or untrustworthy. Additionally, the Proposal utterly fails to demonstrate or even support the claim that its approach ensures the information relied upon by EPA would be more understandable to the public.

First, EPA fails to establish or even support the premise of its wrongheaded belief: that the best available, peer-reviewed, independent, credible science is not understandable already to the public, or the informed, knowledgeable members of the public versed in the scientific, technical, legal, economic or policy matters relevant to EPA’s regulations, actions and mission.

⁷⁰ *Id.* at 25.

⁷¹ U.S. EPA, Fiscal Year 2019: Justification of Appropriation Estimates for the Committee on Appropriations, 837, *available at* <https://www.epa.gov/sites/production/files/2018-02/documents/fy-2019-congressional-justification-all-tabs.pdf>.

⁷² *Id.*

Second, the Proposal's claim about enhanced public understanding suffers from a fundamental internal contradiction and logical failing inherent to its approach: nothing in the Proposal requires that (1) publicly available data be actually considered, addressed, verified or replicated by EPA prior to the agency being allowed to consider the study based on that data; (2) publicly available data be actually considered, addressed, verified or replicated by any other person or party prior to EPA being allowed to consider the study based on that data; and (3) publicly available data be actually considered, addressed, verified or replicated by EPA, any person, or any party *ever*, before or after EPA is allowed to consider the study based on that data. Accordingly, it is false and unsupported to suggest that the Proposal ensures greater public "understanding" than the longstanding regulatory landscape where the Proposal's prescriptions and proscriptions do not exist.

III. The Proposal would devastate EPA's ability to protect people from hazardous substances with well-known harmful effects

A. Lead in drinking water, soil, and paint

The damaging effects of early childhood lead exposure can last a lifetime, so prevention is the only effective and meaningful solution. Lead-contaminated soil, food, drinking water, and dust from leaded paint can all be inhaled or ingested by children, and from there be circulated through the bloodstream into all the organs, bones, and brain. Adverse effects include brain damage, kidney damage and disease, infertility in men and women, elevated blood pressure and strokes in adults, and neurological damage that can cause pain in the muscles and joints.⁷³ Exposures during pre-natal and early life development are especially devastating.

The lead regulations and reduction measures resulting from the implementation of science-based EPA regulations are essential for reducing lead poisoning effects in the U.S. population. Since 2001, life-saving EPA standards under the Toxic Substances Control Act (TSCA) have protected children and families from exposure to lead in paint, dust, and soil, in and around homes and childcare facilities.⁷⁴ This regulation supports existing regulations regarding worker training and certification, lead hazard disclosure in real estate transactions, requirements for lead cleanup under state authorities, and lead hazard evaluation and control in Federally-owned housing. In addition, it establishes authority under TSCA to set residential lead dust cleanup levels.

The EPA Lead and Copper Rule (LCR) of 1991 established drinking water protections by requiring tap water monitoring and triggering a public alert and some protective action such as corrosion prevention measures or service line replacement if lead levels exceed 15 ppb. 40 C.F.R. Part 141 Subpart I. Revisions to the LCR in the 2007 rule update requirements for monitoring, treatment, and customer notification.⁷⁵ The LCR rule applies to water utilities, and

⁷³ U.S. Department of Health and Human Services, Agency for Toxic Substances and Disease Registry, Toxicological profile for lead, August 2007, *available at* <https://www.atsdr.cdc.gov/toxprofiles/tp13.pdf>.

⁷⁴ *Lead: Identification of Dangerous Levels of Lead*, 66 Fed. Reg. 1206 (Jan. 5, 2001).

⁷⁵ U.S. EPA, Economic and Supporting Analyses: Short-Term Regulatory Changes to the Lead and Copper Rule, Office of Water, 2007, EPA-815-R0-7022.

the companion Reduction of Lead in Drinking Water Act sets standards for pipes, solder, and other plumbing fittings.

The lead rules are based on risk analyses conducted by EPA using epidemiology studies published in the 1990s that correlate childhood blood lead levels with impaired brain function and adverse behavioral effects.⁷⁶ Many of the published studies are longitudinal cohort studies that include measurements of lead in blood from children decades ago, and then follow them out over time to observe lasting effects. Thanks to important EPA regulations and effective lead-reduction measures in gasoline and paint, overall blood lead levels have been reduced in many people. This makes it impossible to replicate the exposure conditions at the time the original children in the study cohort had their blood lead levels measured, such as the Port Pirie cohort study population living near a lead smelter in the 1980s.⁷⁷ Studies like these—longitudinal cohort studies, particularly those that capture exposures that may no longer occur—are not reproducible.

B. Vinyl chloride

Vinyl chloride (VC) is an industrial chemical that is manufactured as a monomer, and then polymerized into polyvinyl chloride (PVC) plastic, used in a wide variety of industrial and consumer plastic products including home siding, pipes, wire and cable coatings, packaging, furniture, household products, and automotive parts.⁷⁸ The VC monomer was first reported to cause cancer in 1969 based on animal laboratory studies.⁷⁹ This was followed almost immediately by evidence in VC workers of cancer. In addition, workplace epidemiology studies identified a link between VC exposure and a very rare degenerative bone disease called acroosteolysis that was cripplingly painful; it was not identified in the rodent studies.^{80, 81}

Vinyl chloride is regulated in workplaces, and in drinking water, food, and air:⁸²

- OSHA issued workplace regulations in 1974, forcing a reduction in the allowable level of the VC monomer by 500-times, from 500 ppm to 1 ppm averaged over an 8-hour workday.⁸³ Despite predictions of dire job losses, virtually all U.S. manufacturing

⁷⁶ Needleman HL, Gunnoe C, Leviton A, Reed R, Peresie H, Maher C, Barrett P. Deficits in psychologic and classroom performance of children with elevated dentine lead levels. *N Engl J Med*. 1979 Mar 29;300(13):689–95. Erratum in: *N Engl J Med*. 1994 Sep 1;331(9):616–7.

⁷⁷ Baghurst PA, Robertson EF, McMichael AJ, Vimpani GV, Wigg NR, Roberts RR. The Port Pirie Cohort Study: lead effects on pregnancy outcome and early childhood development. *Neurotoxicology*. 1987 Fall;8(3):395–401.

⁷⁸ U.S. Department of Health and Human Services, Public Health Service, Agency for Toxic Substances and Disease Registry, Toxicological profile for Vinyl Chloride, 2006, Atlanta, GA, *available at* <https://www.atsdr.cdc.gov/ToxProfiles/tp20.pdf> (Hereinafter “Vinyl Chloride”).

⁷⁹ Viola PL, Bigotti A, Caputo A. Oncogenic response of rat skin, lungs, and bones to vinyl chloride. *Cancer Res*. 1971 May;31(5):516–22.

⁸⁰ Creech JL Jr, Johnson MN. Angiosarcoma of liver in the manufacture of polyvinyl chloride. *J Occup Med*. 1974 Mar;16(3):150–51.

⁸¹ *Supra* n.78.

⁸² *Id.*

⁸³ United States Department of Labor, Occupational Safety and Health Administration, Regulations for Vinyl Chloride, *available at*

facilities met the new standard within a few years while reducing costs, largely through better containment of the unpolymerized monomer and improved exposure monitoring.⁸⁴

- EPA regulates VC pollution under the Safe Drinking Water Act (MCL=0.02 mg/L based on increased risk of cancer), and under EPA's Ambient Water Quality Criteria (0.025 ug/L).^{85, 86}
- FDA regulations limit vinyl chloride in food contact materials and packaging.⁸⁷

The studies that support these EPA safeguards, and particularly the identification of diseases in workers like acroosteolysis that were not identified in rodent studies, are critical to protecting human health and preventing adverse environmental impacts. Thanks to effective health-protective regulatory actions by EPA, OSHA and other federal agencies the elevated exposure conditions suffered by industrial workers in the 1970s and earlier are no longer the industry norm. Thus, these studies cannot meet the standards of transparency and replicability set out in the Proposal.

C. Pyrethroids

Pyrethroids are a class of insecticides that includes deltamethrin and permethrin, used on food crops including vegetables, fruit, and corn.⁸⁸ Permethrin is also used as a spray in homes and public spaces like hotels, theaters, restaurants, and hospitals.⁸⁹ It is also used to impregnate clothing, shoes, bed nets, and camping gear advertised to repel mosquitoes and ticks.⁹⁰ Pyrethroid pesticides are classified by EPA as a "likely human carcinogen," and is linked in

https://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=STANDARDS&p_id=10021; 29 C.F.R. 1910.1017 *et seq.*

⁸⁴ Sass JB, Castleman B, Wallinga D. Vinyl Chloride: A Case Study of Data Suppression and Misrepresentation. *Environmental Health Perspectives*. 2005;113(7):809-812. doi:10.1289/ehp.7716.

⁸⁵ U.S. EPA, "National Primary Drinking Water Regulations," available at <https://www.epa.gov/ground-water-and-drinking-water/national-primary-drinking-water-regulations>.

⁸⁶ *Supra* n.78.

⁸⁷ *Id.*

⁸⁸ U.S. Geological Survey, Pesticide National Synthesis Project: Estimated Annual Agricultural Pesticide Use, Pesticide Use Maps – Permethrin, 2015, available at https://water.usgs.gov/nawqa/pnsp/usage/maps/show_map.php?year=2015&map=PERMETHRIN&hilo=L&disp=P permethrin (Hereinafter "Pesticide Maps").

⁸⁹ U.S. EPA, Office of Pesticide Programs' Review of the Status of Six PBPK Models in Preparation for the FIFRA SAP for the October 24-27, 2017 Physiologically Based Pharmacokinetic Modeling to Address Pharmacokinetic Differences Between and Within Species, August 3, 2017 available at https://www.epa.gov/sites/production/files/2017-08/documents/epa_opp_review_of_status_of_pbpk_models.pdf (Hereinafter "Review of Six PBPK Models")

⁹⁰ Interlandi, Jeneen, Consumer Reports, "Can Permethrin Treated Clothing Help You Avoid Mosquito Bites? We tested L.L.Bean and ExOfficio insect-repellent clothing," (May 26, 2016) available at <https://www.consumerreports.org/insect-repellents/permethrin-treated-clothing-mosquito-bites/>.

published studies to Parkinson's Disease and adverse behavioral problems in prenatally exposed children.^{91, 92}

EPA convened a FIFRA Scientific Advisory Panel in October 2017 to assess its use of a Physiologically Based Pharmacokinetic Model (PBPk) used in its risk assessment for the pyrethroid pesticides. The PBPk model was sponsored and submitted to EPA by the Council for the Advancement of Pyrethroid Human Risk Assessment, L.L.C. (CAPHRA).⁹³ CAPHRA identifies its participating parties as chemical and agrochemical manufacturers.^{94, 95} CAPHRA describes its intentions as follows: "The general area of CAPHRA's planned activity is to generate and submit to the [U.S. EPA] studies necessary to address EPA's concerns for the potential for age-dependent sensitivity to Pyrethroids."⁹⁶

Despite the central role of the pyrethroid PBPk model in EPA's regulatory approval for pyrethroid pesticides, it appears that scientific peer reviewers on the FIFRA Scientific Advisory Panel were unable to obtain the raw data necessary to provide a robust peer review of the model. SAP Panelist Dr. Dale Hattis requested these data from EPA on September 6 and September 12 without receiving them, including "key data" for "evaluating the uncertainty in the modeling" and "data needed for assessment of the calibration of the PBPk models."⁹⁷

At this point, the EPA Scientific Advisory Panel meeting is postponed indefinitely.⁹⁸ The stated reason is "due to the unavailability of experts," but the more likely reason is to bias the

⁹¹ See *supra*, n.88. Pesticide Maps.

⁹² Furlong MA, Barr DB, Wolff MS, Engel SM. Prenatal exposure to pyrethroid pesticides and childhood behavior and executive functioning. *Neurotoxicology*. 2017 Sep;62:231–38; Viel JF, Rouget F, Warembourg C, Monfort C, Limon G, Cordier S, Chevrier C. Behavioural disorders in 6-year-old children and pyrethroid insecticide exposure: the PELAGIE mother-child cohort. *Occup Environ Med*. 2017 Mar;74(4):275–81.

⁹³ See *supra*, n.89; U.S. EPA, Background materials on the Physiologically Based Pharmacokinetic (PBPk) models on deltamethrin and cis-permethrin to the Panel for the October 24-27, 2017 session of the FIFRA Scientific Advisory Panel (FIFRA SAP) reviewing PBPk modeling to address pharmacokinetic differences between and within species. July 25, 2017. EPA-HQ-OPP-2017-0180-0009; U.S. EPA, Meeting Minutes of the FIFRA Scientific Advisory Panel Meeting held on "Research to Evaluate the Potential for Juvenile Sensitivity to Pyrethroids." ID: EPA-HQ-OPP-2015-0130-0019.

⁹⁴ Including AMVAC Chemical Corporation, Commerce, CA; BASF Corporation, Durham, NC; Bayer Animal Science, Pittsburgh, PA; Bayer CropScience, Research Triangle Park, NC; Botanical Resources Australia, Sandy Bay, Tasmania, Australia; Cheminova Inc., Arlington, VA; DuPont Crop Protection, Newark, DE; FMC Corporation, Philadelphia, PA; LG Life Sciences, Ltd., Clifton, VA; McLaughlin Gormley King Company, Minneapolis, MN; Meghmani, c/o Chemical Consultants International, Inc., Stilwell, KS; S.C. Johnson & Son, Inc., Racine, WI; Sumitomo Chemical Co., Ltd., Tokyo, Japan; Syngenta Crop Protection, LLC, Greensboro, NC; Valent BioSciences Corporation, Libertyville, IL; and Wellmark International (Central Life Sciences), Schaumburg, IL.

⁹⁵ 76 Fed. Reg. 60,530, et seq. Notice Pursuant to the National Cooperative Research and Production Act of 1993; Council for the Advancement of Pyrethroid Human Risk Assessment, L.L.C. (Sept. 29, 2011) *available at* <https://www.federalregister.gov/documents/2011/09/29/2011-24874/notice-pursuant-to-the-national-cooperative-research-and-production-act-of-1993-council-for-the>.

⁹⁶ *Id.*

⁹⁷ See Attachment 27: Email from D. Hattis to EPA DFO M. King, Sept 6, 2017; Email from D. Hattis to EPA DFO M. King, Sept 12, 2017; Email from D. Hattis to SAP Chair J McManaman, Oct 3, 2017.

⁹⁸ U.S. EPA, Meeting Materials for the October 24-27, 2017 Scientific Advisory Panel. Physiologically-based Pharmacokinetic Modeling, *available at* <https://www.epa.gov/sap/meeting-materials-october-24-27-2017-scientific-advisory-panel>.

panel with the addition of industry experts, as EPA has done recently with its Scientific Advisory Boards.⁹⁹ A model that underestimates exposures and health risks will lead to regulations that fail to protect Americans from harmful exposures to pyrethroid pesticides.

D. Organophosphates, including chlorpyrifos

Congress recognized that pesticides are designed to be poisonous, and thus requires them to be registered by EPA, under the Federal Insecticide, Fungicide, and Rodenticide Act. FIFRA requires that when used according to the label, a pesticide will not cause unreasonable adverse effects on the environment or human health, which is commonly referred to as FIFRA's safety standard. FIFRA was amended by the Food Quality Protection Act, which passed Congress unanimously in 1996. Under FQPA, the agency must prohibit any pesticide use for which the registrant has failed to demonstrate that there is a reasonable certainty of no harm to vulnerable populations including infants and children from cumulative and aggregate exposure (from the diet and all other sources).

Organophosphate pesticides like chlorpyrifos are widely used in agriculture, with over 5 million pounds of the insecticide applied annually across the U.S. to a variety of crops including apples, oranges, broccoli, and berries.¹⁰⁰ Symptoms of acute poisoning include nausea and vomiting, headaches, dizziness, seizures, paralysis, and, in extreme cases, even death.

Due to risks to children's health, in 2000 EPA banned household use of chlorpyrifos and most other organophosphate pesticides.¹⁰¹ Residential uses prior to the ban were causing very high exposures to pregnant women and young children. Scientists have since learned that even much lower levels may be harmful to children.

However, scientists have since shown in longitudinal cohort epidemiologic studies, that even low levels of exposure—too low to poison a pregnant mother—can disrupt brain development in their prenatally exposed children, leading to developmental delays, lower IQ, learning disabilities, and ADHD-like behaviors.¹⁰²

To protect these children, in October 2015, the Obama Administration EPA proposed to ban chlorpyrifos because agency scientists found contamination of drinking water. A year later, EPA found that chlorpyrifos residues on food, including fruits and vegetables, are unsafe for

⁹⁹ EPA unveils new industry-friendlier science advisory boards. Science magazine. By Sean Reilly, E&E News, Kevin Bogardus, E&E News, Nov. 3, 2017, *available at* <http://www.sciencemag.org/news/2017/11/epa-unveils-new-industry-friendlier-science-advisory-boards>.

¹⁰⁰ U.S. EPA, Ingredients Used in Pesticide Products: Chlorpyrifos, *available at* <https://www.epa.gov/ingredients-used-pesticide-products/chlorpyrifos>.

¹⁰¹ *Id.*

¹⁰² Rauh VA, Garfinkel R, Perera FP, Andrews HF, Hoepner L, Barr DB, Whitehead R, Tang D, Whyatt RW. Impact of prenatal chlorpyrifos exposure on neurodevelopment in the first 3 years of life among inner-city children. *Pediatrics*. 2006 Dec;118(6):e1845–59. Epub 2006 Nov 20; Bouchard MF, Chevrier J, Harley KG, et al. Prenatal Exposure to Organophosphate Pesticides and IQ in 7-Year Old Children. *Environ Health Perspect*. 2011;1003185(April); Rauh VA, Garcia WE, Whyatt RM, Horton MK, Barr DB, Louis ED. Prenatal exposure to the organophosphate pesticide chlorpyrifos and childhood tremor. *Neurotoxicology*. 2015;51:80–86.

pregnant women and children; residue levels were far above their target risk level—in some cases, by up to 140 times.¹⁰³

These epidemiologic studies can no longer be reproduced because—thanks to FQPA and the ban on residential uses—pregnant women and young children are no longer poisoned by indoor use of organophosphate pesticides at such high levels. Banning the use of chlorpyrifos would reduce human risk, leading to a healthier future for our children.

E. Mercury

Mercury is a powerful neurotoxic agent capable of adversely affecting fetus and childhood development in low concentrations. EPA maintains a series of web pages describing the health effects of mercury.¹⁰⁴ EPA has also summarized the health and environmental effects of mercury in previous TSCA rulemakings.¹⁰⁵ Mercury is a highly neurotoxic contaminant that is most toxic when methylated. Biological processes in the watershed convert the mercury to methylmercury which accumulates in the food chain resulting in elevated levels in fish, other wildlife, and ultimately in humans.¹⁰⁶ Commonly consumed fish may have methylmercury levels 100,000 times that of the ambient water.¹⁰⁷ Mercury contamination of fish stocks is widespread in the United States.^{108, 109} Studies of mercury levels in fish in rivers, lakes, and streams across the United States found mercury levels exceeding the level for human health concern for a significant portion of the sites sampled.¹¹⁰

Newly deposited mercury has been shown to be more bioavailable and more rapidly converted to methylmercury and represents a greater fraction of the methylmercury which is

¹⁰³ U.S. EPA, Memorandum: Chlorpyrifos: Revised Human Health Risk Assessment for Registration Review, Nov. 3, 2016, Docket ID No. EPA-HQ-OPP-2015-0653-0454.

¹⁰⁴ U.S. EPA, Health Effects of Exposures to Mercury, *available at* <https://www.epa.gov/mercury/health-effects-exposures-mercury>.

¹⁰⁵ *See, e.g.*, 71 Fed. Reg. 39,035 *et seq.*, Mercury Switches in Motor Vehicles; Proposed Significant New Use Rule, at 39,040–41, (July 11, 2006).

¹⁰⁶ U.S. EPA, How People are Exposed to Mercury, *available at* <https://www.epa.gov/mercury/how-people-are-exposed-mercury>.

¹⁰⁷ 79 Fed. Reg. 63,258 *et seq.*, Effluent Limitations Guidelines and Standards for the Dental Category, at 63,277, (Oct. 22, 2014).

¹⁰⁸ U.S. Geological Survey, Recent Findings from the National Water-Quality Assessment (NAWQA) and Toxic Substances Hydrology Programs (as presented to the NAWQA National Liaison Committee, Aug. 21, 2009).

¹⁰⁹ U.S. EPA, 2017 EPA-FDA Advice about Eating Fish and Shellfish, *available at* <https://www.epa.gov/fish-tech/2017-epa-fda-advice-about-eating-fish-and-shellfish>.

¹¹⁰ Scudder, B.C., Chasar, L.C., Wentz, D.A., Bauch, N.J., Brigham, M.E., Moran, P.W., and Krabbenhoft, D.P., 2009, Mercury in fish, bed sediment, and water from streams across the United States, 1998–2005: U.S. Geological Survey Scientific Investigations Report 2009–5109, *available at* <https://pubs.usgs.gov/sir/2009/5109/pdf/sir20095109.pdf> (Hereinafter “Mercury in streams”); Wathen, J. B., Lazorchak, J. M., Olsen, A. R., & Batt, A. (2015). A national statistical survey assessment of mercury concentrations in fillets of fish collected in the US EPA national rivers and streams assessment of the continental USA. *Chemosphere*, 122, 52–61., *abstract available at* <http://www.sciencedirect.com/science/article/pii/S0045653514012636>.

incorporated into food chains and ultimately into fish.¹¹¹ Local sources have been implicated in elevated levels of mercury measured in ambient air,¹¹² precipitation,^{113, 114} soils,¹¹⁵ and methylmercury levels in biota, including fish.¹¹⁶ Reductions in local mercury emissions levels have been tied to decreasing levels measured in the environment and biota.^{117, 118, 119} Therefore, to achieve the National Academy of Sciences' public-health goal of reducing mercury concentrations in fish,¹²⁰ current mercury emissions should be ratcheted down, thereby decreasing the amount of mercury cycling through aquatic systems and reducing contamination of fish and people.

Some populations may face even greater risks: Asians, Pacific Islanders, and Native Americans are all more likely to have elevated blood mercury levels, as are women living in the Northeast and other coastal areas, or consuming a lot of fish.^{121, 122} A 2011 study of 1,465 newborns in Minnesota's Lake Superior Basin found eight percent of the newborns had blood mercury levels above 5.8 µg/l.¹²³

¹¹¹ Hintelmann H, Harris R, Heyes A, Hurley JP, Kelly CA, Krabbenhoft DP, Lindberg S, Rudd JW, Scott KJ, St Louis VL. Reactivity and mobility of new and old mercury deposition in a boreal forest ecosystem during the first year of the METAALICUS study. Mercury Experiment to Assess Atmospheric Loading In Canada and the US. *Environmental Science & Technology*, 2002 Dec 1;36(23):5034–40.

¹¹² Manolopoulos H, Snyder DC, Schauer JJ, Hill JS, Turner JR, Olson ML, Krabbenhoft DP, Sources of speciated atmospheric mercury at a residential neighborhood impacted by industrial sources, *Environmental Science & Technology*, 2007 Aug. 15;41(16):5626–33.

¹¹³ Dvonch, J. T., Graney, J. R., Keeler, G. J., & Stevens, R. K. (1999). Use of elemental tracers to source apportion mercury in south Florida precipitation. *Environmental Science & Technology*, 33(24), 4522–27.

¹¹⁴ White, E. M., Keeler, G. J., & Landis, M. S. (2009). Spatial variability of mercury wet deposition in eastern Ohio: summertime meteorological case study analysis of local source influences. *Environmental Science & Technology*, 43(13), 4946–53.

¹¹⁵ Biester, H., Müller, G., & Schöler, H. F. (2002). Estimating distribution and retention of mercury in three different soils contaminated by emissions from chlor-alkali plants: part I. *Science of the Total Environment*, 284(1), 177–89.

¹¹⁶ Evers, D. C., Han, Y. J., Driscoll, C. T., Kamman, N. C., Goodale, M. W., Lambert, K. F., Holsen, T.M., Chen, C.Y., Clair, T.A., & Butler, T. (2007). Biological mercury hotspots in the northeastern United States and southeastern Canada. *Bioscience*, 57(1), 29–43.

¹¹⁷ Frederick, P. C., Hylton, B., Heath, J. A., & Spalding, M. G. (2004). A historical record of mercury contamination in southern Florida (USA) as inferred from avian feather tissue: Contribution R-09888 of the Journal Series, Florida Agricultural Experiment Station. *Environmental Toxicology and Chemistry*, 23(6), 1474–78.

¹¹⁸ Driscoll, C. T., Han, Y. J., Chen, C. Y., Evers, D. C., Lambert, K. F., Holsen, T. M., Kamman, N.C., & Munson, R. K. (2007). Mercury contamination in forest and freshwater ecosystems in the northeastern United States. *BioScience*, 57(1), 17–28, available at <https://surface.syr.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1003&context=cie>.

¹¹⁹ See *supra* n.110, Mercury in Streams.

¹²⁰ National Research Council. 2000. Toxicological Effects of Methylmercury. Washington, DC: The National Academies Press, available at <https://doi.org/10.17226/9899>.

¹²¹ Hightower, J. M., O'Hare, A., & Hernandez, G. T. (2006). Blood mercury reporting in NHANES: identifying Asian, Pacific Islander, Native American, and multiracial groups. *Environmental Health Perspectives*, 114(2), 173–75.

¹²² Mahaffey KR, Clickner RP, Jeffries RA. Adult women's blood mercury concentrations vary regionally in the United States: association with patterns of fish consumption (NHANES 1999-2004). *Environ Health Perspect*. 2009 Jan; 117(1):47–53. doi: 10.1289/ehp.11674.

¹²³ Patricia McCann, Minnesota Department of Health, Mercury Levels in Blood from Newborns in the Lake Superior Basin, GLNPO ID 2007-942, Final Report, November 30, 2011.

Researchers have estimated that in the United States methylmercury toxicity is associated with between 376 and 14,293 excess cases per year of a level of cognitive impairment that would be considered mental retardation. The cost of caring for these children has been estimated between \$500 million and \$17.9 billion annually, and this cost will be incurred every year until mercury emissions are reduced.^{124, 125} Mercury releases associated with mercury uses in products and processes contribute “significantly” to this mercury pollution.¹²⁶

EPA’s activities to protect from and minimize exposure to mercury begins with its fish advisories, since the consumption of fish is the largest exposure pathway for the general population.¹²⁷ EPA also promotes state and local fish advisories. As of 2011, all 50 states have fish advisories for mercury, and mercury accounted for 81% of all state and local fish advisories, in whole or in part.¹²⁸

This concern about mercury exposure has led EPA to restrict intentional uses of mercury in products. For example, EPA promulgated a Significant New Use Rule (SNUR) under TSCA section 5(a) for elemental mercury used in certain “convenience light switches, anti-lock braking system (ABS) switches, and active ride control system switches.”¹²⁹ Similarly, EPA promulgated a SNUR covering mercury-added flow meters, natural gas manometers, and pyrometers, because of the risk of human exposure to mercury during the products’ manufacture, use, and disposal at the products’ end of life.¹³⁰ About two years later, EPA promulgated a SNUR covering mercury-added barometers, manometers, hygrometers, and psychrometers, essentially for the same reasons.¹³¹

EPA also regulates mercury dischargers to surface waters under the Clean Water Act. This Administration recently finalized effluent guidelines for dental offices.¹³² In addition to the Clean Water Act, other environmental laws that limit mercury exposures include the Clean Air Act (CAA), Safe Drinking Water Act (SDWA), Resource Conservation and Recovery Act (RCRA), and the Emergency Planning and Community Right to Know Act (EPCRA).¹³³

¹²⁴ Trasande, L., Schechter, C. B., Haynes, K. A., & Landrigan, P. J. (2006). Mental retardation and prenatal methylmercury toxicity. *American Journal of Industrial Medicine*, 49(3), 153–58.

¹²⁵ Trasande, L., Schechter, C., Haynes, K. A., & Landrigan, P. J. (2006). Applying cost analyses to drive policy that protects children: mercury as a case study. *Annals of the New York Academy of Sciences*, 1076: 911–923, abstract available at <http://www.ncbi.nlm.nih.gov/pubmed/17119266>.

¹²⁶ Great Lakes Regional Collaboration, *Mercury in Products Phase-Down Strategy 1* (June 2008).

¹²⁷ U.S. EPA, Guidelines for Eating Fish that Contain Mercury, available at <https://www.epa.gov/mercury/guidelines-eating-fish-contain-mercury>.

¹²⁸ U.S. EPA, 2011 National Listing of Fish Advisories, (December 2013), EPA-820-F-13-058, available at <https://www.epa.gov/sites/production/files/2015-06/documents/technical-factsheet-2011.pdf>.

¹²⁹ 72 Fed. Reg. 56,903 *et seq.*, Mercury Switches in Motor Vehicles; Significant New Use Rule (Nov. 5, 2007).

¹³⁰ 75 Fed. Reg. 42,330 *et seq.*, Elemental Mercury Used in Flow Meters, Natural Gas Manometers, and Pyrometers (July 21, 2010).

¹³¹ 77 Fed. Reg. at 31,728 *et seq.*, Elemental Mercury Used in Barometers, Manometers, Hygrometers, and Psychrometers; Significant New Use Rule (May 30, 2012).

¹³² 82 Fed. Reg. 27,154 *et seq.*, Effluent Limitations Guidelines and Standards for the Dental Category: Final Rule, (June 14, 2017).

¹³³ U.S. EPA, Environmental Laws that Apply to Mercury, available at <https://www.epa.gov/mercury/environmental-laws-apply-mercury>.

EPA very conservatively estimates that more than 75,000 newborns each year may have increased risk of learning disabilities associated with in-utero exposure to methylmercury, based on maternal blood levels exceeding the EPA Reference Dose (RfD) of 5.8 µg/L.¹³⁴ Even the EPA RfD likely underestimates the extent of risks to newborns due to bio-concentration of methylmercury across the placenta.¹³⁵ Three times more women of childbearing age—7.3%—have blood mercury levels exceeding 3.5 µg/L, indicating that up to 265,000 or more infants are born each year facing cognitive impacts from mercury exposure based on maternal blood levels.¹³⁶

The RfD is based on recommendations of the National Research Council (NRC) of the National Academy of Sciences (NAS), that conducted an extensive analysis and calculations derived from three longitudinal epidemiologic studies: the Seychelles Islands, the Faroe Islands, and the New Zealand studies.¹³⁷ The studies measured neuropsychological effects in children that were exposed prenatally to methylmercury as a result of pregnant mother's consuming contaminated seafood. The use of these studies to set EPA exposure limits was the result of a years-long transparent process of expert scrutiny, public engagement, inter-agency cooperation, and publication in scientific journals.

However, the studies can no longer be reproduced, particularly the Faroe Islands study in which the exposure to the community was a result of eating whales, a practice that has since declined due to public alerts about the hazards of eating the mercury-tainted meat particularly for children and pregnant and breastfeeding women. In addition, it would take decades to repeat the studies, which took decades to conduct in the first place.

F. Air pollution

Since the Clean Air Act became law in 1970, it has helped to dramatically improve air quality across the country and deliver substantial, measurable health gains. A peer-reviewed EPA study issued in 2011 found that the Clean Air Act Amendments of 1990 achieved enormous health benefits (including avoidance of 160,000 premature deaths in adults by 2010) that will increase as programs take full effect.¹³⁸ In 2009, leading air pollution epidemiologists published

¹³⁴ Birch RJ, Bigler J, Rogers JW, Zhuang Y, Clickner RP. Trends in blood mercury concentrations and fish consumption among U.S. women of reproductive age, NHANES, 1999-2010. *Environ Res.* 2014 Aug;133:431–38.

¹³⁵ Mahaffey KR, Clickner RP, Jeffries RA. Adult women's blood mercury concentrations vary regionally in the United States: association with patterns of fish consumption (NHANES 1999-2004). *Environ Health Perspect.* 2009 Jan;117(1):47–53. doi: 10.1289/ehp.11674.

¹³⁶ Based on data from the U.S. EPA Trends study of 2013 provided via personal communication to David Lennett, NRDC, from Jeffrey Bigler, USEPA, Bigler.Jeff@epa.gov, January 2014.

¹³⁷ Rice DC. The US EPA reference dose for methylmercury: sources of uncertainty. *Environ Res.* 2004 Jul;95(3):406–13. <https://www.ncbi.nlm.nih.gov/pubmed/15220074>.

¹³⁸ U.S. EPA, Benefits and Costs of the Clean Air Act 1990-2020, the Second Prospective Study, *available at* <https://www.epa.gov/clean-air-act-overview/benefits-and-costs-clean-air-act-1990-2020-second-prospective-study>.

a study demonstrating that, from 1980 to 2000, reductions in exposure to PM_{2.5} pollution had increased the average American life span by 1.6 years (more than 19 months).¹³⁹

The Clean Air Act requires EPA to consider the best available evidence in setting and revising the National Ambient Air Quality Standards (NAAQS) to protect health within an adequate margin of safety. 42 U.S.C. § 7409. Fine particulate matter, an air pollution category encompassing solid particles and condensed liquid droplets with a diameter of 2.5 microns or smaller (PM_{2.5}), is one of the most dangerous types of air pollution because it can penetrate deep into the lung and enter the bloodstream.¹⁴⁰ Groundbreaking studies into the link between air pollution exposures and health like the 1993 Harvard Six Cities Study¹⁴¹ examined the health effects of PM_{2.5} air pollution over 16 years on more than 8,000 adults and 14,000 children relying on private medical records and air pollution monitors deployed near study volunteers. The study found a significant relationship between air pollution exposure and risk of early death, but the raw data could not be released publicly because researchers were obligated to ensure study participant confidentiality.

As explained in section II.B., more than 100 peer-reviewed studies have confirmed the basic results of that initial study relying on that data. Because the study and others like it went through the rigorous peer-review process characteristic of the world's leading scientific journals (whose editors have rejected the Proposal¹⁴²), EPA relied on the results of the Harvard Six Cities study and others in 1997 when it promulgated the NAAQS for fine particulate matter.¹⁴³ Hundreds of additional studies into the health effects of air pollution have been conducted since then across the country¹⁴⁴ and internationally,¹⁴⁵ for both short-¹⁴⁶ and long-term¹⁴⁷ impacts of exposure, and independent re-analyses of existing datasets have affirmed the air pollution-

¹³⁹ Pope III, C. A., Ezzati, M., & Dockery, D. W. (2009). Fine-particulate air pollution and life expectancy in the United States. *New England Journal of Medicine*, 360(4), 376–86.

¹⁴⁰ World Health Organization. *Air Quality Guidelines: Global Update 2005. Particulate Matter, Ozone, Nitrogen Dioxide and Sulfur Dioxide*. World Health Organization (2006).

¹⁴¹ Dockery, D. W., Pope, C. A., Xu, X., Spengler, J. D., Ware, J. H., Fay, M. E., ... & Speizer, F. E. (1993). An association between air pollution and mortality in six US cities. *New England journal of medicine*, 329(24), 1753–59.

¹⁴² See *supra* n.15, <http://science.sciencemag.org/content/360/6388/eaau0116>.

¹⁴³ See 62 Fed. Reg 38,652 *et seq.*, “National Ambient Air Quality Standards for Particulate Matter”: Final Rule (July 18, 1997), available at <https://www.epa.gov/pm-pollution/table-historical-particulate-matter-pm-national-ambient-air-quality-standards-naaqs>.

¹⁴⁴ Hoek, G., Krishnan, R. M., Beelen, R., Peters, A., Ostro, B., Brunekreef, B., & Kaufman, J. D. (2013). Long-term air pollution exposure and cardio-respiratory mortality: a review. *Environmental Health*, 12(1), 43.

¹⁴⁵ Katsouyanni, K., Samet, J. M., Anderson, H. R., Atkinson, R., Le, A. T., Medina, S., ... & Ramsay, T. (2009). Air pollution and health: a European and North American approach (APHENA). *Research report (Health Effects Institute)*, (142), 5–90.

¹⁴⁶ Brook, R. D., Brook, J. R., Urch, B., Vincent, R., Rajagopalan, S., & Silverman, F. (2002). Inhalation of fine particulate air pollution and ozone causes acute arterial vasoconstriction in healthy adults. *Circulation*, 105(13), 1534–36.

¹⁴⁷ Pope, C. A., Burnett, R. T., Thurston, G. D., Thun, M. J., Calle, E. E., Krewski, D., & Godleski, J. J. (2004). Cardiovascular mortality and long-term exposure to particulate air pollution: epidemiological evidence of general pathophysiological pathways of disease. *Circulation*, 109(1), 71–77.

mortality and morbidity links with increasing precision. In 2000, the Health Effects Institute published its independent re-analysis¹⁴⁸ of the study, which confirmed the original findings.

As explained in section II.C., many of the studies that EPA has relied on to set and revise the NAAQS are epidemiological prospective cohort investigations encompassing thousands of individuals over several decades. The Proposal's requirement for the public sharing of underlying data of these studies contradicts HIPAA's legal protections for private medical data¹⁴⁹ and requirements researchers adhere to under Institutional Review Boards (IRBs),¹⁵⁰ which typically require investigators to ensure participant confidentiality and data security. Underlying sensitive health data cannot be released without obtaining individual patient consent, or consent from the next responsible party for study participants who have died. The foundational research in air pollution epidemiology demonstrating a causal link between pollution exposures and adverse health outcomes—including early death,¹⁵¹ heart disease,¹⁵² lung cancer,¹⁵³ stroke,¹⁵⁴ and asthma exacerbations¹⁵⁵—is therefore at risk if the Proposal is finalized.

While the NAAQS have strengthened over time, epidemiologic evidence indicates that even greater health gains could be achieved if our nation's air quality standards were stronger.¹⁵⁶ The unprecedented requirements of the Proposal threaten to undermine this progress by allowing EPA to rely on weaker science that could stall or reverse historical strengthening of the NAAQS. Under the Proposal, EPA would not be able to rely on the best available science for its Integrated Science Assessments of air pollution which inform the NAAQS-setting process, while industry-funded research calling into question the air pollution-health link, would not be subject to similar data release requirements, or even peer-review and independent reevaluation. This approach is asymmetric and favors selective, opaque, and questionable research methods over the consensus of robust peer-reviewed scientific investigation. Transparency in scientific data is an important topic, but one that needs to also balance the privacy concerns of study participants and legal and ethical restrictions on the sharing of sensitive data. The rule is arbitrary in its selective

¹⁴⁸ See *supra*, n.9, Reanalysis of Harvard Six Cities Study.

¹⁴⁹ U.S. Department of Health and Human Services, The HIPAA Privacy Rule, *available at* <https://www.hhs.gov/hipaa/for-professionals/privacy/index.html>.

¹⁵⁰ See, e.g., National Institute of Environmental Health Sciences: Institutional Review Board, *available at* <https://www.niehs.nih.gov/about/boards/irb/index.cfm>.

¹⁵¹ Pope III, C. A., R. T. Burnett, M. J. Thun, E. E. Calle, D. Krewski, K. Ito, and G. D. Thurston. 2002. "Lung Cancer, Cardiopulmonary Mortality, and Long-Term Exposure to Fine Particulate Air Pollution." *JAMA: The Journal of the American Medical Association* 287 (9): 1132–1141.

¹⁵² Pope, C. A., Muhlestein, J. B., May, H. T., Renlund, D. G., Anderson, J. L., & Horne, B. D. (2006). Ischemic heart disease events triggered by short-term exposure to fine particulate air pollution. *Circulation*, 114(23), 2443–48.

¹⁵³ Turner, M. C., Krewski, D., Pope III, C. A., Chen, Y., Gapstur, S. M., & Thun, M. J. (2011). Long-term ambient fine particulate matter air pollution and lung cancer in a large cohort of never-smokers. *American Journal of Respiratory and Critical Care Medicine*, 184(12), 1374–81.

¹⁵⁴ Hong, Y. C., Lee, J. T., Kim, H., & Kwon, H. J. (2002). Air pollution: a new risk factor in ischemic stroke mortality. *Stroke*, 33(9), 2165–69.

¹⁵⁵ Ostro, B., Lipsett, M., Mann, J., Braxton-Owens, H., & White, M. (2001). Air pollution and exacerbation of asthma in African-American children in Los Angeles. *Epidemiology*, 12(2), 200–08.

¹⁵⁶ Di, Q., Wang, Y., Zanobetti, A., Wang, Y., Koutrakis, P., Choirat, C., ... & Schwartz, J. D. (2017). Air pollution and mortality in the Medicare population. *New England Journal of Medicine*, 376(26), 2513–22.

application of data release requirements and disregard for the quantitative complexities of epidemiologic research.

The Proposal also has clear adverse consequences for cost-benefit analyses that consider the substantial costs of health effects caused by exposure to air pollution. This area of work includes efforts to address carbon dioxide (CO₂) pollution and climate change, such as the Clean Power Plan. Health and air quality-related monetized benefits from reducing PM_{2.5} pollution, a co-benefit of CO₂ reductions, would be substantially reduced if EPA is unable to rely on the best available science for pollution-health impacts. In its proposed rule repealing the Clean Power Plan, EPA signaled this approach: the economic health benefits of PM_{2.5} reduction were zeroed-out¹⁵⁷ by EPA after levels reached the current annual NAAQS (12 µg/m³) or the lowest measured level (LML) of PM_{2.5} in two key peer-reviewed studies that EPA has historically relied on, including an expanded re-analysis of the Harvard Six Cities data.^{158, 159} This approach of using the NAAQS or LML as a safe threshold directly contradicts the best available science^{160, 161} and EPA's own stance on the pollution threshold issue as recently as 2012.¹⁶² The Proposal is designed to support the indefensible notion that a safe threshold of air pollution like PM_{2.5} could exist, despite the opinions of the world's leading experts on this issue and emerging evidence indicating that relatively low levels of exposure to air pollution may actually confer *more* risk¹⁶³ than even the current EPA dose-response approach for PM_{2.5} exposure assumes.

G. Radiation

1. EPA's Radiation Standards

Three federal agencies have overlapping and differing responsibilities to protect the public from radiation. The Department of Energy (DOE), which among other tasks runs the U.S. nuclear weapons program, has for decades been attempting to clean up dozens of nuclear

¹⁵⁷ U.S. EPA, Regulatory Impact Analysis for the Review of the Clean Power Plan: Proposal, Oct. 2017, at 10, available at https://www.epa.gov/sites/production/files/2017-10/documents/ria_proposed-cpp-repeal_2017-10.pdf.

¹⁵⁸ Krewski, D., Jerrett, M., Burnett, R. T., Ma, R., Hughes, E., Shi, Y., ... & Thun, M. J. (2009). *Extended follow-up and spatial analysis of the American Cancer Society study linking particulate air pollution and mortality* (No. 140). Boston, MA: Health Effects Institute.

¹⁵⁹ Lepeule, J., Laden, F., Dockery, D., & Schwartz, J. (2012). Chronic exposure to fine particles and mortality: an extended follow-up of the Harvard Six Cities study from 1974 to 2009. *Environmental health perspectives*, 120(7), 965.

¹⁶⁰ U.S. EPA, Summary of Expert Opinions on the Existence of a Threshold in the Concentration-Response Function for PM_{2.5}-related Mortality, Technical Support Document, June 2010, available at <https://www3.epa.gov/ttnecas1/regdata/Benefits/thresholdstd.pdf>.

¹⁶¹ Crouse DL, Peters PA, van Donkelaar A, Goldberg MS, Villeneuve PJ, Brion O, et al. (2012). Risk of nonaccidental and cardiovascular mortality in relation to long-term exposure to low concentrations of fine particulate matter: a Canadian national-level cohort study. *Environ Health Perspect* 120:708–714.; 10.1289/ehp.110404.

¹⁶² Letter from Gina McCarthy to the Hon. Fred Upton, Chairman, Committee on Energy and Commerce, U.S. House of Representatives, Feb. 3, 2012, available at <https://www.nrdc.org/sites/default/files/epa-letter-upton-pm-benefits-20120203.pdf>.

¹⁶³ Burnett, R. T., Pope III, C. A., Ezzati, M., Olives, C., Lim, S. S., Mehta, S., ... & Anderson, H. R. (2014). An integrated risk function for estimating the global burden of disease attributable to ambient fine particulate matter exposure. *Environmental health perspectives*, 122(4), 397.

weapons production sites around the country in an essentially self-regulating fashion (with respect to radioactivity). The Nuclear Regulatory Commission (NRC) regulates the nation's commercial nuclear power industry of approximately 100 commercial nuclear reactors located in 31 states. The NRC implements standards as part of its regulation of civilian sources of nuclear radiation, and it oversees the decommissioning of commercial nuclear facilities. EPA, via authority granted under the Atomic Energy Act, 42 U.S.C. §§ 2011-2296; Reorganization Plan No. 3. of 1970, 5 U.S.C. app. 1; the Nuclear Waste Policy Act of 1982, as amended, 42 U.S.C. §§ 10101-10270; and the Waste Isolation Pilot Plant Land Withdrawal Act, Pub. L. 102-579, 106 Stat. 4777., issues generally applicable radiation standards for protection of the public, as well as standards for nuclear power operations, protection from radon, administering radiation cleanup standards under Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (Superfund) which governs aspects of a host of cleanups of federal and nonfederal facilities, health, and environmental standards for uranium and thorium mill tailings, and for the Waste Isolation Pilot Plant in New Mexico and the proposed Yucca Mountain nuclear waste repository in Nevada.

Specifically,

In forming EPA, the authors of Reorganization Plan No. 3 created a new national approach for protecting the general public from the harmful exposure to radiation. Two key radiation protection functions would now be housed in a single agency – the promulgation of generally applicable environmental standards to limit man-made radioactive materials in the environment, and the development of national radiation protection guidance for Federal and State agencies to follow in the development of their radiation protection programs and regulations. Along with these responsibilities, EPA was provided extensive research and surveillance capabilities to support the development of national guidance and standards, as well as the authority to provide technical assistance to the States.¹⁶⁴

Essentially, the radiation standard-setting functions for protection of the general public (not at the weapons production sites) of the Atomic Energy Commission, administered through its Division of Radiation Protection Standards, were transferred to EPA to the extent that such functions “consist of establishing generally applicable environmental standards for the protection of the general environment from radioactive material.”¹⁶⁵ Under the authority of the Atomic Energy Act, these standards were defined as “limits on radiation exposures or levels, or concentrations or quantities of radioactive material, in the general environment outside the boundaries of locations under the control of persons possessing or using radioactive material.”¹⁶⁶

And as is generally understood, EPA's and NRC's authorities are overlapping and, theoretically, work together to meet an objective of protecting the general public and radiation

¹⁶⁴ *Radiation Protection at EPA, The First 30 Years*, U.S. EPA, Office of Radiation and Indoor Air, EPA 402-B-00-001, August 2000, <http://www2.epa.gov/sites/production/files/2015-05/documents/402-b-00-001.pdf>.

¹⁶⁵ Reorganization Plan No. 3 of 1970 (July 9, 1970), <https://archive.epa.gov/epa/aboutepa/reorganization-plan-no-3-1970.html>.

¹⁶⁶ *Id.*

workers from exposures to ionizing radiation, EPA sets regulatory limits and guidelines on radionuclide concentration in air, water, and soil. *See* 40 C.F.R. §§ 190-197, *Subchapter F – Radiation Protection Programs* (*cf.*, EPA sets standards for “radiation doses received by members of the public in the general environment and to radioactive materials introduced into the general environment as the result of operations which are part of a nuclear fuel cycle.” 40 C.F.R. § 190.01.). NRC’s regulatory structures are supposed to be consistent with those set by EPA. Indeed, NRC rules, when addressing dose limits for individual members of the public, state that “[i]n addition to the requirements of this part, a licensee subject to the provisions of EPA’s generally applicable environmental radiation standards in 40 C.F.R. part 190 shall comply with those standards.” 10 C.F.R. § 20.1301(e).

2. The Linear No-Threshold (LNT) dose-response model

As it does in every other instance and under every other environmental statute, EPA relies on independent, authoritative scientific bodies to provide analyses and evaluations of scientific evidence in support of its radiation standard-setting policies. EPA bases its regulatory limits and nonregulatory guidelines for population exposures to low-level ionizing radiation on the linear no-threshold (LNT) dose-response model.¹⁶⁷ EPA’s radiation protection standards are based on the premise that any radiation dose carries some risk, and that risk increases directly with dose. This method of estimating risk is called the “linear no-threshold dose-response model (LNT).”

This longstanding and well-supported assumption presumes that the risk of cancer due to a low dose exposure is proportional to dose, with no threshold. For over 40 years the LNT dose-response model has been commonly utilized when developing practical and prudent guidance on ways to protect workers and members of the public from the potential for harmful effects from radiation in balance with the commercially justified and optimized uses of radiation. EPA derives the LNT model from reports by authoritative scientific bodies including the U.S. National Academy of Sciences (NAS), the National Council on Radiation Protection and Measurements (NCRP), and the International Commission on Radiological Protection (ICRP). There is strong scientific consistency by these authoritative groups that an LNT model is the best at the current time (and has been for the past half century).^{168, 169} Indeed, EPA noted as recently as late 2015, “[o]ver the last half century, numerous authoritative national and international bodies have convened committees of experts to examine the issue of LNT as a tool for radiation regulation and risk assessment . . . Again and again, these bodies have endorsed LNT as a reasonable approach to regulating exposures to low dose radiation.”¹⁷⁰

¹⁶⁷ *See, e.g.*, <https://www.epa.gov/radiation/radiation-health-effects>.

¹⁶⁸ Puskin, Jerome S., "Perspective on the use of LNT for radiation protection and risk assessment by the US Environmental Protection Agency." Dose-Response 7.4 (2009): dose-response.

¹⁶⁹ Valentin, Jack, *The 2007 recommendations of the international commission on radiological protection*. Oxford: Elsevier, 2007.

¹⁷⁰ *See* <https://www.nrc.gov/docs/ML1530/ML15301A820.pdf>.

3. Studies in support of the LNT dose-response model

The NAS Biological Effects of Ionizing Radiation (BEIR) VII committee has studied and published its report on risk models for estimating the relationship between exposure to low levels of ionizing radiation and harmful health effects.¹⁷¹ The data used in the BEIR VII study are: atomic bomb survivor studies, medical radiation studies, occupational radiation studies, and environmental radiation studies. The committee judged that the LNT model provided the most reasonable description of the relation between low dose exposure to ionizing radiation and the incidence of solid cancers that are induced by ionizing radiation.

The NCRP published its latest commentary on the LNT issue only months ago, in April 2018.¹⁷² The specific purpose of its commentary is to provide a review of recent epidemiologic data from studies with low doses or low dose rates and the Life Span Study (LSS) of atomic-bomb survivors to determine whether these epidemiologic studies broadly support the LNT dose-response model as a reasonable basis for radiation protection. Epidemiologic studies of humans provide evidence that is critically important in establishing potentially causal associations of environmental factors with the disease. The studies were selected by a consensus of experts who have a broad purview of the recent radiation epidemiology literature, and they ensured that the largest and most important eligible studies were included.

Examples of studies of radiation-exposed populations evaluated are:

1. Japanese atomic-bomb survivors

The LSS is a research program investigating life-long health effects based on epidemiologic studies. The study being conducted by the Radiation Effects Research Foundation (RERF)¹⁷³ is used by standard-setting bodies in establishing a recommendation for radiation protection. The LSS cohort¹⁷⁴ includes both a large proportion of survivors who were within 2.5 km of the hypocenters at the time of the bombings and a similar-sized sample of survivors who were between 3 and 10 km from the hypocenters whose radiation doses were negligible.

The major objective of the study is to investigate the long-term effects of atomic-bomb radiation on causes of death and incidence of cancer. The atomic-bomb survivors of Hiroshima and Nagasaki are subject to follow-up study^{175, 176} for their remaining lives, starting from 1950. The LSS cohort of atomic-bomb survivors has provided important data because it is a large cohort (~87,000 survivors of all ages) with relatively accurate dosimetry,

¹⁷¹ National Research Council. *Health risks from exposure to low levels of ionizing radiation: BEIR VII phase 2*. Vol. 7. National Academies Press, 2006.

¹⁷² NCRP Commentary 27. "Implications of Recent Epidemiologic Studies for the Linear-Nonthreshold Model and Radiation Protection." NCRP, 2018.

¹⁷³ See <http://rerf.or.jp/en>.

¹⁷⁴ National Research Council. *Health risks from exposure to low levels of ionizing radiation: BEIR VII phase 2*. Vol. 7. National Academies Press, 2006.

¹⁷⁵ Grant, Eric J., et al. "Solid cancer incidence among the Life Span Study of atomic bomb survivors: 1958–2009." *Radiation research* 187.5 (2017): 513–37.

¹⁷⁶ Ozasa, Kotaro, et al. "Studies of the mortality of atomic bomb survivors, Report 14, 1950–2003: an overview of cancer and noncancer diseases." *Radiation research* 177.3 (2012): 229–243.

a wide dose range over 60 years of high-quality follow-up for mortality and over 50 years of follow-up for cancer incidence, and nearly 1,000 excess solid-cancer cases, besides excess leukemias. The study provides strong indirect support for the use of an LNT model.

2. Worker exposure studies

Radiation worker studies assess risks in worker groups exposed largely to many low doses received at a low dose rate, providing direct evidence regarding the validity of the LNT model. INWORKS is an example of these studies.¹⁷⁷ INWORKS is the latest international collaboration for examining the health of workers in more than one country who were exposed occupationally to ionizing radiation. INWORKS included dosimetry for 20 different nuclear sites/organizations in three countries. Dosimetry was based on individual personal dosimeter readings at the start of the workers beginning their radiation work (at earliest, between 1944 and 1952) through 2005. The U.S. cohort of INWORKS consisted of 119,195 nuclear workers at four Department of Energy nuclear weapons facilities (Hanford site, Idaho National Laboratory, Oak Ridge National Laboratory, and Savannah River site) and at the Portsmouth Naval Shipyard. This large study¹⁷⁸ provides one of the strongest pieces of epidemiologic evidence that the LNT quantitative model is useful for radiation protection.

3. Environmental exposure studies

An example of environmental exposure studies for low doses and low dose rate is the Chernobyl resident cohorts.^{179, 180} The 1986 accident at the Chornobyl nuclear power plant in northern Ukraine resulted in the exposure of substantial proportion of Belarus, Ukraine, and the Russian Federation to radioactive fallout. The most notable apparent health consequence of the accident has been the large increase in thyroid cancer among those exposed as children or teenagers starting 4-5 years after the accident. Studies of cohorts of children in Ukraine and Belarus who had thyroid measurements of iodine activity shortly after the Chernobyl accident and systematic thyroid screenings were conducted. The data on exposure to radioactive iodine have added considerable information relative to the dose-response relationship. The thyroid cancer experienced by children in exposed areas of the Ukraine, Belarus, and Russia conforms to the LNT model.

4. Medical exposure studies

Patients treated with lung collapse for TB in the 1930s to 1960s are one of the few medically exposed populations that provide consistent evidence for dose-response relationships. Patients on average would receive on the order of 100 chest fluoroscopies over several years.

¹⁷⁷ Leuraud, Klervi, et al. "Ionising radiation and risk of death from leukaemia and lymphoma in radiation-monitored workers (INWORKS): an international cohort study." *The Lancet Haematology* 2.7 (2015): e276–e281.

¹⁷⁸ Schubauer-Berigan, Mary K., et al. "Cancer mortality through 2005 among a pooled cohort of US nuclear workers exposed to external ionizing radiation." *Radiation research* 183.6 (2015): 620–31.

¹⁷⁹ Brenner, Alina V., et al. "I-131 dose response for incident thyroid cancers in Ukraine related to the Chornobyl accident." *Environmental health perspectives* 119.7 (2011): 933.

¹⁸⁰ Tronko, Mykola D., et al. "A cohort study of thyroid cancer and other thyroid diseases after the Chornobyl accident: thyroid cancer in Ukraine detected during first screening." *Journal of the National Cancer Institute* 98.13 (2006): 897–903.

Since the 1970s, studies¹⁸¹ of TB patients who received repeated chest x-ray fluoroscopies to monitor lung collapse have provided valuable information relevant to the LNT hypothesis. The TB fluoroscopy studies provide strong support for the LNT model for breast cancer.

NCRP commentary in conclusion of its epidemiology studies states that, based on current epidemiologic data, the LNT model should continue to be used for radiation protection purposes, and “no alternative dose-response relationship appears more pragmatic or prudent for radiation protection purposes than the LNT model.”¹⁸²

4. How the Proposal jeopardizes health protections

Because it does not cite or even note the statutory sources of EPA’s radiation standard setting authority, EPA fails to reference to the proper legal authority to address radiation protection standards and the underlying science and dose estimations, and thus fails to present the terms or substance of the proposed action or a description of the subjects and issues involved. Thus, the public has been denied a reasonable and meaningful opportunity to participate in the rulemaking process.¹⁸³

Despite the failure to precisely name radiation standards or cite the EPA’s authority under the Atomic Energy Act, the Proposal is susceptible to a reading that EPA intends to attack the underlying science for radiation standards, and the LNT in particular, just as the agency is attacking standards for the air, water, and health protections. Indeed, Dr. Edward J. Calabrese of the University of Massachusetts, longtime promoter of the radiation hormesis idea that low doses of radiation are beneficial for humans, stated in support of this draft rule, “[t]he [P]roposal represents a major scientific step forward by recognizing the widespread occurrence of non-

¹⁸¹ Howe, Geoffrey R. “Lung cancer mortality between 1950 and 1987 after exposure to fractionated moderate-dose-rate ionizing radiation in the Canadian fluoroscopy cohort study and a comparison with lung cancer mortality in the atomic bomb survivors study.” *Radiation research* 142.3 (1995): 295–304.

¹⁸² NCRP Commentary 27. “Implications of Recent Epidemiologic Studies for the Linear-Nonthreshold Model and Radiation Protection.” NCRP, 2018, at 139.

¹⁸³ In order to preserve objections in the administrative record, we submit comments directed at any wrongheaded and unlawful attack on an LNT for radiation, notwithstanding EPA’s failure to mention radiation—or any other substance or pollutant—in the “non-linearity” section of the Proposal. 83 Fed. Reg. at 18,770. The Proposal’s cursory suggestion of “non-linearity in the concentration-response function for specific pollutants and health effects,” 83 Fed. Reg. at 18,770/3, fails to provide fair notice or any justification that would allow any final rule to assert “non-linearity in the concentration-response function” for *any* specific pollutants or *any* health effects. There is *no* information, evidence, or regulatory text in the Proposal or regulatory docket supporting or even addressing the suggestion of non-linearity in the concentration-response function for *any* specific pollutants or *any* health effects. Nor is there any discussion or material in the Proposal or accompanying docket supporting or even addressing EPA’s cursory suggestion of non-linearity. The Proposal conclusorily references “growing empirical evidence of non-linearity,” *id.*, but then fails to identify *any* such empirical evidence in the Proposal or docket. Before EPA may adopt any final rule addressing “non-linearity in the concentration-response function” for *any* specific pollutants or *any* health effects, EPA would be required to re-issue a new proposed rule with actual regulatory text and supporting legal, factual, scientific, and technical information providing fair notice to the public concerning any suggestion of “non-linearity in the concentration-response function” for *any* specific pollutants or *any* health effects.

linear dose responses in toxicology and epidemiology for chemicals and radiation and the need to incorporate such data in the risk assessment process.”¹⁸⁴

EPA’s Proposal states only that “this proposed regulation is designed to increase transparency of the assumptions underlying dose-response models. As a case in point, there is growing empirical evidence of non-linearity in the concentration response function for specific pollutants and health effects.” 83 Fed. Reg. at 18,770/3. The Proposal fails to provide a citation or single shred of empirical evidence to support the statement. By contrast, the science in radiation epidemiological studies has repeatedly demonstrated, over decades, *the precise opposite conclusion*—to wit, that the LNT dose-response model provides the most reasonable description of the relation between low dose exposure to ionizing radiation and the incidence of solid cancers that are induced by ionizing radiation.

The epidemiologic science and associated studies that are the basis of adherence to the LNT and decades of protective radiation standards are likely to be expressly excluded from consideration by EPA by the terms of this Proposal. NAS and other studies that EPA has long relied upon in the radiation standards setting process are epidemiological human cohort studies. EPA’s Proposal, if implemented, would limit EPA staff from basing regulatory actions on precisely these types of studies by requiring that the underlying data of these studies be publicly shared. This would be a nearly impossible task for the agency. Data for some of the radiation epidemiological studies are accessible to users^{185, 186} with a detailed description of how a user can access the information. However, public sharing of personally identifiable information (PII) is restricted because the studies rely on confidential health data. To become an authorized user of the data sets and to reduce misuse of that data, users are barred from linking data from the database with any other source of information that leads to PII of an individual with records in the database.

These are profoundly important studies that have been peer reviewed for decades and the science that has emerged from them has been validated multiple times. But these are not studies where the entirety of the public data can be shared or independently replicated. There are no other radiation epidemiologic studies of health and longevity on a large size population (example: more than 120,000 individuals in the atomic-bomb survivor studies) that have continued for more than 60 years. Thus, replication of the studies is impossible as this data comes from individuals exposed to significant acute and protracted dose of radiation. Implementation of the rule would effectively block the use of such key scientific studies and allow for radiation standards to be either wholly weakened or made functionally meaningless.

Specifically, EPA relied on the LNT dose-response model to develop the following reports and regulations to protect the general public and radiation workers from the potential for harmful effects from radiation:

¹⁸⁴ See <https://www.epa.gov/newsreleases/epa-administrator-pruitt-proposes-rule-strengthen-science-used-epa-regulations>.

¹⁸⁵ See <https://apps.ornl.gov/cedr/#.Wv73Y-4vxEY>.

¹⁸⁶ See <http://rerf.or.jp/en>.

Federal guidance reports (FGRs) for radiation protection that provide technical information and policy recommendations for radiation dose and risk assessment:

- FGR 11 (1988)¹⁸⁷—Limiting Values of Radionuclide Intake and Air Concentration and Dose Conversion Factors for Inhalation, Submersion, and Ingestion
- FGR 12 (1993)¹⁸⁸—External Exposure to Radionuclides in Air, Water, and Soil
- FGR 13 (1999)¹⁸⁹—Cancer Risk Coefficients for Environmental Exposure to Radionuclides
- EPA Radiogenic Cancer Risk Models and Projections for the U.S. Population (the “Blue Book”)¹⁹⁰

Nuclear fuel cycle standards and regulations addressing environmental issues for all phases of the uranium fuel cycle, including uranium milling; chemical conversion; fuel fabrication and reprocessing; power plant operations; waste management, storage, and disposal; and site cleanup for milling operations.

- The Uranium Fuel Cycle (40 C.F.R. Part 190)¹⁹¹—a standard that sets generally applicable environmental limits for the entire uranium fuel cycle
- Uranium and Thorium Mill Tailings (40 C.F.R. Parts 192)¹⁹²—health and environmental standards for uranium and thorium mill tailings

Examples of areas that might be impacted by this rule include:

1. Maximum allowed concentrations of radionuclides in drinking water
2. Soil cleanup levels for Superfund sites
3. Monitoring around radiation-producing equipment used for medical purposes
4. Radioactive waste disposal
5. The concept of ALARA (As Low As Reasonably Achievable) in radiation protection

Abandoning the LNT dose-response model and replacing it with either a threshold model or a concept that low doses of radiation are safe will have an adverse effect on radiation workers and the general public by allowing radiation protection regulations to be relaxed, reinterpreted and then weakened.

¹⁸⁷ Eckerman, Keith F., Anthony B. Wolbarst, and Allan CB Richardson. “Federal Guidance Report No. 11: Limiting values of radionuclide intake and air concentration and dose conversion factors for inhalation, submersion, and ingestion.” *Oak Ridge, TN: Oak Ridge National Laboratory* (1988).

¹⁸⁸ Eckerman, Keith F., and J. C. Ryman. “Federal Guidance Report No. 12: External Exposures to Radionuclides in Air, Water, and Soil Exposure-to-Dose Coefficients for General Application,” *U.S. Environmental Protection Agency, Washington, DC* (1993).

¹⁸⁹ Eckerman, Keith F., et al. “Cancer risk coefficients for environmental exposure to radionuclides.” *Federal Guidance Report 13* (1999).

¹⁹⁰ See <https://www.epa.gov/sites/production/files/2015-05/documents/bbfinalversion.pdf>.

¹⁹¹ See <https://www.epa.gov/radiation/environmental-radiation-protection-standards-nuclear-power-operations-40-cfr-part-190>.

¹⁹² See <https://www.epa.gov/radiation/health-and-environmental-protection-standards-uranium-and-thorium-mill-tailings-40-cfr>.

IV. There is no statutory authority for the Proposal

The law is clear that EPA may adopt rules only if those rules are based on statutory authority delegated by Congress. EPA may not invent statutory authority where none exists, nor adopt regulations lacking statutory authority merely because EPA believes that to be better policy. *See, e.g., Massachusetts v. EPA*, 549 U.S. 497, 535, 127 S. Ct. 1438, 1463 (2007) (“EPA must ground its reasons for action or inaction in the statute.”); *La. Pub. Serv. Comm’n v. FCC*, 476 U.S. 355, 374 (1986) (stating “agency power to act” is shaped by how “Congress confers power upon it”). Agencies need especially clear congressional delegations of authority to create regulatory exemptions. *See New York v. U.S. EPA*, 413 F.3d 3, 41 (D.C. Cir. 2005) (stating that the agency needs “clear congressional delegation” to support an exemption). EPA identifies no such delegations, certainly not the clear delegations required by law, for the Proposal.

EPA lists seven statutes as the basis for the Proposal. But none of the various statutes cited provides support for the rule’s provisions, definitions, requirements, or exemptions. Rather, EPA invents statutory authority where none exists, and creates proposed regulatory text out of thin air. In most cases, EPA simply cites its general authority for rulemaking under the statutes. But that general authority alone cannot provide a basis for the rule, especially when, as explained in section V, the rule would *conflict* with the requirements of each of the statutes. *See New York v. U.S. EPA*, 413 F.3d 3, 40–42 (D.C. Cir. 2005). In other instances, it appears that EPA just searched the statutes for the word “research” and then cited those sections without any further analysis. The cited provisions do not support the proposed rule:

A. Clean Air Act sections 103, 301(a); 42 U.S.C. §§ 7403, 7601(a)

EPA cites 42 U.S.C. § 7601(a) of the Clean Air Act as one basis for the Proposal. But that section merely authorizes the Administrator to “prescribe such regulations as are necessary to carry out his functions under this chapter.” The courts have made clear that “EPA cannot rely on its gap-filling authority to supplement the Clean Air Act’s provisions when Congress has not left the agency a gap to fill.” *NRDC v. EPA*, 749 F.3d 1055, 1064 (D.C. Cir. 2014); *see also American Petroleum Institute v. EPA*, 52 F.3d 1113, 1119 (D.C. Cir. 1995) (“the general grant of rulemaking power to EPA cannot trump specific portions of the CAA”); *NRDC v. Reilly*, 976 F.2d 36, 41 (D.C. Cir. 1992) (EPA cannot use its general rulemaking authority as justification for adding to a statutorily specified list); *Sierra Club v. EPA*, 719 F.2d 436, 453 (D.C. Cir. 1983) (same); *Gonzales v. Oregon*, 546 U.S. 243, 264–65 (2006) (“It would go . . . against the plain language of the text to treat a delegation for the ‘execution’ of [the Attorney General’s] functions as a further delegation to define other functions well beyond the statute’s specific grants of authority.”). Here, not only is there no statutory gap to fill, as explained further below, the Proposal is in direct conflict with other provisions of the Act. EPA cannot rely on 42 U.S.C. § 7601(a) to support this rule.

EPA also cites 42 U.S.C. § 7403, which requires the Administrator to establish a national research and development program for air pollution, among other things. EPA does not state specifically which of the many subsections it believes authorizes this proposed rule. Thus, the citation fails to provide sufficient notice for the public to comment on the proposed rule.

Nothing in the Proposal establishes or even purports to establish the type of national research and development program for air pollution discussed in subsection (a). But that subsection is nonetheless revealing about congressional intent concerning “studies relating to the causes, effects (including health and welfare effects) extent, prevention, and control of air pollution.” 42 U.S.C. § 7403(a)(1). There is no indication that Congress intended to allow EPA to ignore or refuse to consider studies on the health and welfare effects of air pollution only if raw data or ‘regulatory science underlying EPA’s actions [were] publicly available in a manner sufficient for independent validation.’ See 83 Fed. Reg. at 18,773 (proposed §§ 30.1–30.3). Indeed, the absence of any such congressional conditions or criteria makes it all the more obvious that EPA invented and added those criteria and conditions as a matter of its own policy preferences, contrary to the Act. This EPA may not do.

Subsection (b) authorizes EPA to collect and make available information about such research, but nothing in that subsection allows EPA to *restrict* which types of data it considers in regulatory decisions. Nor does subsection (b) draw any distinction between dose-response data and other types of data. Again, the absence of any such congressional distinction makes it all the more obvious that EPA invented and added that distinction as a matter of its own policy preferences, contrary to the Act. This EPA may not do. None of the other subsections in 42 U.S.C. § 7403 address this issue either. There is no support in the Clean Air Act for the Proposal.

B. Clean Water Act sections 104, 501; 33 U.S.C. §§ 1254, 1361

EPA cites sections 104, 33 U.S.C. § 1254, and 501, 33 U.S.C. § 1361, of the Clean Water Act as putative authority for the Proposal. Nothing in these sections authorize the Proposal’s limitations on scientific evidence.

With respect to section 104, the Proposal tellingly fails to specify which of its 22 subsections supposedly supports the restrictions EPA has proposed. This deficiency reflects a lack of authority for the Proposal in section 104. And even if EPA thinks that it can cobble together language in section 104 to support the Proposal, the agency’s complete failure to identify in the Proposal how section 104 authorizes this rulemaking means that EPA did not provide sufficient notice for the public to comment on the Proposal.

None of the subsections in section 104 states or suggests that, in promulgating regulations under the Clean Water Act, EPA may limit its consideration of “regulatory science underlying its actions” only to studies or analyses “are publicly available in a manner sufficient for independent validation.” See 83 Fed. Reg. at 18,773 (proposed § 30.5). To the contrary, several subsections indicate that Congress intended EPA to consider available scientific evidence in order to carry out the Act.

First, subsection (b) authorizes EPA to collect and publicize results and information related to studies about water pollution but does not say anything about *limiting* consideration of science simply because data cannot be made public, either as part of rulemakings or otherwise. Nor does it draw any distinction between dose-response data and other types of data.

Second, subsection (c) directs EPA to “conduct research on, and survey the results of other scientific studies on, the harmful effects on the health or welfare of persons caused by pollutants.” It provides no authority whatsoever for *limiting* consideration of studies, models or data, dose-response or otherwise, during rulemakings; indeed, by directing EPA to “survey the *results of other scientific studies*,” rather than the publicly-available dose-response data underlying those results, this subsection contradicts the Proposal’s limitations and conditions.

Third, subsection (l)(1) indicates that EPA should be inclusive with respect to considering evidence, as it directs EPA to “develop and issue to the States for the purpose of carrying out this Act *the latest scientific knowledge available* in indicating the kind and extent of effects on health and welfare which may be expected from the presence of pesticides in the water in varying quantities. He shall revise and add to such information whenever necessary to reflect developing scientific knowledge.”

Fourth, subsection (n) directs EPA to cooperate with various entities to “conduct and promote, encourage contributions to, continuing comprehensive studies of the effects of pollution, including sedimentation, in the estuaries and estuarine zones of the United States on fish and wildlife, on sport and commercial fishing, on recreation, on water supply and water power, and on other beneficial purposes.” Importantly, subsection (n)(2) reveals Congress’s intention that EPA will consider information broadly, by instructing the agency to “assemble, coordinate, and organize *all existing pertinent information* on the Nation’s estuaries and estuarine zones”

EPA also cites 33 U.S.C. § 1361 as a basis for the Proposal, but it does not provide the agency with the authority it desires. Subsection (a) merely states that the “Administrator is authorized to prescribe such regulations as are necessary to carry out his functions under this chapter.” As explained above, that general grant of authority cannot support the rule, especially when the rule conflicts with the Act. Moreover, EPA casually invokes this provision, but does not make any effort to justify the proposed restrictions as necessary to any particular CWA statutory function, so it has not made the case that this provision provides authority to adopt the Proposal’s limits.

Finally, the Act contains other indications that Congress intended EPA’s consideration of science to be inclusive. In particular, section 304(a)(1) of the Act states:

The Administrator, after consultation with appropriate Federal and State agencies and other interested persons, shall develop and publish, within one year after the date of enactment of this title (and from time to time thereafter revise) criteria for water quality *accurately reflecting the latest scientific knowledge* (A) on the kind and extent of all identifiable effects on health and welfare including, but not limited to, plankton, fish, shellfish, wildlife, plant life, shorelines, beaches, esthetics, and recreation which may be expected from the presence of pollutants in any body of water, including ground water; (B) on the concentration and dispersal of pollutants, or their byproducts, through biological, physical, and chemical processes; and (C) on the effects of pollutants on biological community diversity, productivity, and stability, including information on the

factors affecting rates of eutrophication and rates of organic and inorganic sedimentation for varying types of receiving waters.

Although water quality criteria EPA develops are not issued as regulations, such that the Proposal as written would likely not apply to them, the salient point—illustrated by the italicized language above—is that Congress refused to limit EPA’s consideration of available evidence in discharging one of its core functions aimed at protecting the nation’s waters. EPA provides no reason in the Proposal why the regulations the Proposal targets should be any different.

Accordingly, the Clean Water Act does not authorize the Proposal.

C. Safe Drinking Water Act sections 1442, 1450(a)(1); 42 U.S.C. §§ 300j–1, 300j–9(a)(1)

EPA cites 42 U.S.C. § 300j–1 of the Safe Drinking Water Act as authority for the rule. Subsection (a) of that section allows EPA to conduct some types of research on drinking water contamination and requires it to conduct other studies. But it says nothing about which types of studies EPA may consider in rulemakings and does not distinguish between dose-response studies and other types of studies. The absence of any such congressional distinction or restriction makes it all the more obvious that EPA invented and added the distinction and restrictions in the Proposal as a matter of its own policy preferences, contrary to the Act. This EPA may not do. The remainder of the subsections have nothing to do with data or research. At any rate, EPA does not state specifically which of the subsections in 42 U.S.C. § 300j–1 it believes authorizes this proposed rule. Thus, the citation fails to provide sufficient notice for the public to comment on the proposed rule.

EPA also cites 42 U.S.C. § 300j–9(a)(1), but that says only that the “Administrator is authorized to prescribe such regulations as are necessary or appropriate to carry out his functions under this subchapter.” As explained above, that general grant of authority cannot support the rule, especially when the rule conflicts with the Act. The Safe Water Drinking Act does not authorize the proposed rule.

D. Resource Conservation and Recovery Act sections 2002(a)(1), 7009; 42 U.S.C. §§ 6912(a)(1), 6979

EPA also claims that 42 U.S.C. § 6912(a)(1) of the Resource Conservation and Recovery Act provides authority for the rule. But 42 U.S.C. § 6912(a)(1) merely states that the Administrator is authorized to “prescribe, in consultation with Federal, State, and regional authorities, such regulations as are necessary to carry out his functions under this chapter.” As explained above, that general grant of authority cannot support the rule, especially when the rule conflicts with the Act. There is no support in RCRA for the Proposal.

It appears that EPA’s citation to 42 U.S.C. § 6979 is a mistake. That section deals with labor standards for construction and says nothing about research, data, or science. At any rate, EPA does not state specifically which provision of 42 U.S.C. § 6979 it believes authorizes the

Proposal. Thus, the citation fails to provide sufficient notice for the public to comment on the proposed rule.

E. Comprehensive Environmental Response, Compensation, and Liability Act (as delegated to the Administrator via Executive Order 12580) sections 115, 311; 42 U.S.C. §§ 9616, 9660

Under the Comprehensive Environmental Response, Compensation, and Liability Act, EPA cites 42 U.S.C. § 9616 as authority, but that section merely provides a schedule for the assessment and remediation of Superfund sites. It is entirely unclear what this has to do with the subject matter of the Proposal. EPA does not state specifically which provision of 42 U.S.C. § 9616 it believes authorizes the Proposal, nor does the Proposal even explain the reference. Thus, the citation fails to provide sufficient notice for the public to comment on the proposed rule.

EPA also cites 42 U.S.C. § 9660, which has many subsections. This broad citation also fails to provide sufficient notice for the public to comment on the proposed rule. Subsections (a), (b), and (c) require the Secretary of Health and Human Services and the Administrator of EPA to establish research programs on the effects of hazardous substances on human health. But nothing in those sections limits EPA's consideration of studies in which the data can be made public or draws a line between dose-response data and other types of data. The absence of any such congressional distinction or restriction makes it all the more obvious that EPA invented and added the distinction and restrictions in the Proposal as a matter of its own policy preferences, contrary to the Act. This EPA may not do. CERCLA does not authorize the Proposal.

F. Emergency Planning and Community Right-To-Know Act section 328; 42 U.S.C. § 11048

The only authority EPA cites under the Emergency Planning and Community Right-To-Know Act is 42 U.S.C. § 11048, which states that the "Administrator may prescribe such regulations as may be necessary to carry out this chapter." The citation fails to provide sufficient notice for the public to comment on the Proposal. EPA does not identify any statutory authority for why the proposed rule is necessary to carry out the chapter. As explained above, that general grant of authority cannot support the rule, especially when the rule conflicts with the Act. EPCRA does not authorize the proposed rule.

G. Federal Insecticide, Fungicide, and Rodenticide Act sections 25(a)(1), 136r(a); 7 U.S.C. §§ 136r(a), 136w

Under the Federal Insecticide, Fungicide, and Rodenticide Act, EPA cites 7 U.S.C. § 136r(a), which authorizes the Administrator to "undertake research." That section does not allow the *restriction* of what types of research EPA may consider in rulemakings or otherwise. Nor does it draw any distinction between dose-response data and other types of data. The absence of any such congressional distinction or restriction makes it all the more obvious that EPA invented and added the distinction and restrictions in the Proposal as a matter of its own policy preferences, contrary to the Act. This EPA may not do.

EPA also cites 7 U.S.C. § 136w, which is the general rulemaking authority that allows the Administrator to carry out the provisions of FIFRA. As explained above, that general grant of authority cannot support the rule, especially when the rule conflicts with the Act. Moreover, the citation fails to provide sufficient notice for the public to comment on the Proposal. FIFRA does not authorize the proposed rule.

H. Toxic Substances Control Act, as amended, section 10; 15 U.S.C. § 2609

EPA cites 15 U.S.C. § 2609 under the Toxic Substances Control Act as support for this rule. But that section states only that the “Administrator shall, in consultation and cooperation with the Secretary of Health and Human Services and with other heads of appropriate departments and agencies, conduct such research, development, and monitoring as is necessary to carry out the purposes of this chapter.” It does not allow EPA to *limit* the type of data considered in regulatory decisions, nor does it draw a distinction between dose-response data and other types of data. TSCA does not support the proposed rule. The absence of any such congressional distinction or restriction makes it all the more obvious that EPA invented and added the distinction and restrictions in the Proposal as a matter of its own policy preferences, contrary to the Act. This EPA may not do.

I. No other federal statute supports the Proposal

As EPA is aware, when an agency drafts a proposed rule pursuant to congressionally delegated authority, the exercise of that authority is governed by the informal rulemaking procedures outlined in the Administrative Procedure Act (APA), 5 U.S.C. § 553.5. EPA is required to provide the public with adequate notice of a proposed rule, followed by a meaningful opportunity to comment on the rule’s content. 5 U.S.C. § 553 (b)-(c).

The requirement under § 553 to provide the public with adequate notice of a proposed rule is generally achieved through the publication of a notice of proposed rulemaking in the Federal Register, and the APA requires that the notice of proposed rulemaking include “(1) the time, place, and nature of public rulemaking proceedings; (2) reference to the legal authority under which the rule is proposed; and (3) either the terms or substance of the proposed rule or a description of the subjects and issues involved.” 5 U.S.C. § 553(b)1-3. Generally speaking, the notice requirement of § 553 is satisfied when the agency “affords interested persons a reasonable and meaningful opportunity to participate in the rulemaking process.” *Forester v. Consumer Prod. Safety Comm’n*, 559 F.2d 774, 787 (D.C. Cir. 1977).

The Proposal fails to reference any other legal authority to support its adoption. The agency claims its Proposal is “consistent with” Administrative Procedure Act provisions to ensure public participation in the rulemaking process, 83 Fed. Reg. at 18,769/2, but this faint “consistent with” falls far short of any legal authority for the Proposal, or even any claim of such authority. The Administrative Procedure Act provides no authority for the Proposal and, tellingly, EPA does not and cannot identify any authority therein. Even were this “consistent with” claim an attempt by EPA to claim any legal authority for the Proposal, the throw-away

statement fails to provide sufficient notice for the public to comment on the proposed rule or any asserted legal authority in the APA.

Finally, the Proposal's solicitation of comment—"on whether additional or alternative sources of authority are appropriate bases for this proposed regulation"—does not and cannot itself provide any justification for EPA finalizing a rule based on additional or alternative sources of legal authority. This fails to provide sufficient notice for the public to comment on the proposed rule or any other possible legal authorities. For all these reasons, EPA lacks any basis to finalize a rule invoking any other legal authorities to support its adoption.

J. No case law supports the Proposal

The Proposal "directs EPA to ensure that the regulatory science underlying its actions is publicly available in a manner sufficient for independent validation." 83 Fed. Reg. at 18,773. However, the Proposal fails to identify a single court decision supporting an agency's decision to bar itself from considering relevant studies or information on the grounds that underlying data are not "publicly available in a manner sufficient for independent validation," where such a requirement is not statutorily imposed. Indeed, EPA in the entire Proposal only cites two cases related to this question, and EPA admits, as it must, that *both* cases "upheld EPA's use (sic) non-public data in support of its regulatory actions." *Id.* at 18,769 n.3 (citing *Coal. of Battery Recyclers Ass'n v. EPA*, 604 F.3d 613, 623 (D.C. Cir. 2010) & *Am. Trucking Ass'ns v. EPA*, 283 F.3d 355, 372 (D.C. Cir. 2002)).

Footnote 3 in the Proposal contains two noteworthy, albeit unintended, indictments of the approach proposed by EPA. First, footnote 3 states that "[h]istorically, EPA has not consistently observed the policies underlying this proposal." Tellingly, EPA does not and cannot identify even *one* example in which EPA *has observed* the policies underlying the Proposal. Our research, to the contrary, has identified no instance in which EPA has followed the policies underlying the Proposal, to bar EPA from considering relevant studies or science submitted by the public or gathered by EPA, on the grounds that the underlying data are not "publicly available in a manner sufficient for independent validation."

Second, footnote 3 implies that there are instances where EPA's use of non-public data in support of its regulatory actions was rejected by a court. *See id.* ("courts have *at times* upheld EPA's use (sic) non-public data in support of its regulatory actions.") (emphasis added). Again, the Proposal does not and cannot cite a *single* court decision that failed to uphold use of non-public, relevant science or studies relied on by EPA or any other federal or state agency in support of its regulatory actions. *Id.* Our research also failed to identify a single instance in which a court failed to uphold an agency's use of non-public, relevant science or studies by an agency, after that practice was challenged by commenters or petitioners in court.

Of course, in both the cases that the Proposal cites in footnote 3, the D.C. Circuit Court of Appeals refused to prohibit EPA from considering non-public data. In *American Trucking*, the court declined to "impose a general requirement that EPA obtain and publicize the data underlying published studies on which the Agency relies," holding that the "Clean Air Act

imposes no such obligation.” 283 F.3d at 372.¹⁹³ The court agreed with EPA that “requiring agencies to obtain and publicize the data underlying all studies on which they rely would be impractical and unnecessary.” *Id.* (quoting EPA in Particulate Matter NAAQS, 62 Fed. Reg. at 38,689).

The D.C. Circuit reaffirmed this holding in its 2010 decision, *Coalition of Battery Recyclers*, in which the court reiterated that requiring publication of all data underlying studies would be impractical and unnecessary, and was not required by the Clean Air Act. 604 F.3d at 623. EPA in the Proposal utterly fails to explain or demonstrate why its proposed, self-imposed restriction would be any less impractical or unnecessary than those it previously opposed on these grounds. This failure to explain, failure to offer any convincing counter-proof, and failure to explain the agency’s reversal of its positions in *American Trucking* and *Coal. Of Battery Recyclers Ass’n* provide independent grounds for finding EPA’s Proposal arbitrary and capricious and an abuse of discretion.

Similarly, the Proposal does not identify *any* case law supporting EPA’s claimed ability to “exercise its discretionary authority to establish a policy that would preclude it from using such [non-public] data in future regulatory actions.” 83 Fed. Reg. at 18,769 n.3. Our research failed to identify any case in which the courts allowed an agency to categorically bind itself from considering relevant, peer-reviewed science, or otherwise valid studies or evidence, because the underlying data was not made publicly available. *Cf., e.g., Southwest Airlines Co. v. Tr. Sec. Admin.*, 554 F.3d 1065, 1074 (D.C. Cir. 2009) (holding TSA was not required to disclose to airline companies the underlying data file used in a GAO report that informed TSA’s calculation of security fees given the nature of the decision—which was industry-wide rather than an adjudicative decision—and the deference given to agency denials of discovery); *Pharm. Research and Mfrs. v. FTC*, 790 F.3d 198, 210–11 (D.C. Cir. 2015) (holding the FTC was not required to disclose the 66 individual filings underlying its decision to target only the pharmaceutical industry in a new rule because the filings were confidential, were used as a general source of background in the rulemaking process, and were exempted from disclosure by statute); *State Corp. Comm’n of Kan. v. FERC*, 876 F.3d 332, 335–36 (D.C. Cir. 2017) (holding FERC was justified in relying on a study used by the agency to assess the benefits of a power facilities merger, even though the study was objected to by Kansas on the grounds that the study was performed by a third party and its results could not be verified by Kansas. The court rejected Kansas’s objections to the study because Kansas had access to a redacted electronic version of the study, though not the underlying data; Kansas did not pinpoint a specific reason to question the study, and the study’s assumptions and results had been reviewed for reasonability.)

Under some circumstances, the D.C. Circuit has upheld an agency’s decision to exclude an individual piece of evidence from the decision-making process. In *API v. EPA*, the D.C. Circuit upheld the EPA’s decision to discount a published meta-analysis that ran counter to the rule ultimately adopted. 684 F.3d 1342, 1350 (D.C. Cir. 2012). There, EPA considered the study

¹⁹³ As we discuss elsewhere in these comments, *infra* sections IV.A. & V.A., the Clean Air Act also contains no *authorization* for EPA to refuse to consider published studies submitted by commenters, or gathered by the agency, unless the data underlying the studies have been published and made available. Certainly, there is no suggestion of any such authorization in the *American Trucking* decision or any other court opinion.

but discounted its results after “[finding] its methodology wanting.” The court found the EPA decision to *discount* the study was not arbitrary and capricious because EPA had not “entirely failed to consider an important aspect of the problem [or] offered an explanation for its decision that runs counter to the evidence before the agency.” *Id.* (quoting *North Carolina v. EPA*, 531 F.3d 896, 906 (D.C. Cir. 2008)). Critically, EPA *did* consider the study (unlike the censorship approach in the instant Proposal). Moreover, following consideration, the agency offered specific reasons for not relying on the study, including its disagreements with the methodology. *Id.*

Likewise, the D.C. Circuit found in *Intercollegiate Broadcasting System v. Copyright Royalty Board*, that the Copyright Royalty Board had “properly excluded” from evidence a reference to a survey because the survey itself was not entered into evidence and could not be verified. 796 F.3d 111, 129 (D.C. Cir. 2015). In both cases, the court yielded to an agency’s discretion to exclude a particular piece of information where the agency had made an individualized determination about the source. None of these cases support the Proposal’s categorical ban on EPA considering relevant data, science, or studies (where data are not “publicly available in a manner sufficient for independent validation”), that have been submitted to the agency and that have not been the subject of any individualized determination that the studies or information are flawed or erroneous.

In its Proposal, EPA proposed to *categorically* ignore and exclude all peer-reviewed research with non-public underlying data, without individually considering each study or offering specific reasons for not relying on that study. The Proposal, by barring consideration of foundational scientific research premised upon non-public data, would result in EPA “fail[ing] to consider an important aspect of the problem.” *API*, 684 F.3d at 1350. There is no evidence of a court supporting an agency’s decision to exclude entire categories of evidence, or studies or information based on categorical prohibitions like the ones in the Proposal, without considering the source and offering specific reasons for not relying on the study. Instead, both EPA and the Courts have indicated already in *API* and *Coalition of Battery Recyclers*, that a rule like the one EPA is currently proposing is not required by the Clean Air Act and would be both impractical and unnecessary. This Proposal runs counter to the D.C. Circuit’s decision in *API* and would render EPA’s regulatory actions based on the Proposal arbitrary and capricious and an abuse of EPA’s discretion. The Proposal’s blanket rule would represent a significant and unlawful departure from D.C. Circuit rulings on agencies’ limited discretion to choose the sources it will consider and ignore.

V. The Proposal conflicts with the statutes that EPA administers

The Proposal unlawfully restricts EPA’s consideration and use of “dose response data and models that underlie” what the Proposal calls “pivotal regulatory science.” 83 Fed. Reg. at 18,770/2. The Proposal goes on to state:

“Pivotal regulatory science” is the studies, models, and analyses that drive the magnitude of the benefit-cost calculation, the level of a standard, or point-of-departure from which a reference value is calculated. In other words, they are critical to the calculation of a final regulatory standard or level, or to the quantified costs, benefits, risks and other impacts on which a final regulation is based.

Id. By restricting EPA’s implementation of its federal organic statutes and the Administrative Procedures Act in this fashion, and by defining “pivotal regulatory science” in this manner, the Proposal violates federal laws. The Proposal does so by requiring EPA to implement federal laws based on the Proposal’s criteria and conception of “pivotal regulatory science,” rather than on the congressional criteria and requirements in federal statutes that contradict, disallow, or fail to include those criteria and concepts in the Proposal.

A. Clean Air Act

1. Clean Air Act section 101

In Clean Air Act section 101(b), Congress directs EPA “to protect and enhance the quality of the Nation’s air resources so as to promote the public health and welfare and the productive capacity of its population.” 42 U.S.C. § 7401(b). The Proposal prevents EPA from doing so by blocking the agency from considering information that also is the best available, peer-reviewed, independent, credible science that could persuade or cause the agency to better protect the “public health and welfare and the productive capacity of [the Nation’s] population.” In this way, the Proposal thwarts the leading purpose of the Clean Air Act. Clean Air Act section 101 shows the Proposal is arbitrary and capricious and an abuse of EPA’s discretion.

2. Clean Air Act section 103

Clean Air Act section 103(a)(1) directs EPA to “conduct, and promote the coordination and acceleration of, research, investigations, experiments, demonstrations, surveys, and studies relating to the causes, effects (including health and welfare effects), extent, prevention, and control of air pollution.” 42 U.S.C. § 7403(a)(1). There is nothing in these congressional directives restricting these tasks (“research, investigations, experiments, demonstrations, surveys, and studies”) to materials based only on data that are “publicly available in a manner sufficient for independent validation.” 83 Fed. Reg. at 18,773/2 (proposed § 30.1). Nor is there any authorization in these congressional directives to distinguish between “research, investigations, experiments, demonstrations, surveys, and studies” that involves “dose response data and models,” and science that does not, for imposing regulatory restrictions on what science EPA must consider. The absence of any such congressional restrictions, authorizations or distinctions makes it clear that EPA invented and added the Proposal’s limitations and conditions as a matter of its own policy preferences, contrary to the Act. This EPA may not do. Clean Air Act section 103(a)(1) shows that the Proposal is arbitrary and capricious and an abuse of EPA’s discretion.

Clean Air Act subsection 103(a)(4) directs EPA to “establish technical advisory committees composed of recognized experts in various aspects of air pollution to assist in the examination and evaluation of research progress and proposals and to avoid duplication of research.” 42 U.S.C. § 7403(a)(4). Clean Air Act section 103(a)(5) directs EPA to “conduct and promote coordination and acceleration of training for individuals relating to the causes, effects, extent, prevention, and control of air pollution.” *Id.* § 7403(a)(5). There is nothing in these congressional directives restricting these tasks to materials based only on data that are “publicly available in a manner sufficient for independent validation.” 83 Fed. Reg. at 18,773/2 (proposed § 30.1). Nor is there any authorization in these congressional directives to distinguish between

research or science that involves “dose response data and models” on the one hand, and science that does not, on the other hand, for imposing regulatory restrictions on what science EPA must consider. The absence of any such congressional restrictions, authorizations, or distinctions makes it clear that EPA invented and added the Proposal’s limitations and conditions as a matter of its own policy preferences, contrary to the Act. This EPA may not do. Clean Air Act subsections 103(a)(4) & (5) show that the Proposal is arbitrary and capricious and an abuse of EPA’s discretion.

Clean Air Act section 103(b) is significantly titled “*Authorized Activities of Administrator in Establishing Research and Development Program.*” 42 U.S.C. § 7403(b) (emphasis added). It states that:

In carrying out the provisions of the preceding subsection the Administrator is authorized to—

- (1) collect and make available, through publications and other appropriate means, the results of and other information, including appropriate recommendations by him in connection therewith, pertaining to such research and other activities;
- (2) cooperate with other Federal departments and agencies, with air pollution control agencies, with other public and private agencies, institutions, and organizations, and with any industries involved, in the preparation and conduct of such research and other activities;
- (3) make grants to air pollution control agencies, to other public or nonprofit private agencies, institutions, and organizations, and to individuals, for purposes stated in subsection (a)(1) of this section;
- (4) contract with public or private agencies, institutions, and organizations, and with individuals, without regard to section 3324(a) and (b) of title 31 and section 6101 of title 41;
- (5) establish and maintain research fellowships, in the Environmental Protection Agency and at public or nonprofit private educational institutions or research organizations;
- (6) collect and disseminate, in cooperation with other Federal departments and agencies, and with other public or private agencies, institutions, and organizations having related responsibilities, basic data on chemical, physical, and biological effects of varying air quality and other information pertaining to air pollution and the prevention and control thereof;
- (7) develop effective and practical processes, methods, and prototype devices for the prevention or control of air pollution; and
- (8)

construct facilities, provide equipment, and employ staff as necessary to carry out this chapter.

Id. There is nothing in these congressional directives restricting these tasks, research or data to materials based only on data that are “publicly available in a manner sufficient for independent validation.” 83 Fed. Reg. at 18,773/2 (proposed § 30.1). Nor is there any authorization in these congressional directives to distinguish between research, science, data, or models that involves “dose response data and models” on the one hand, and science that does not, on the other hand, for imposing regulatory restrictions on what science EPA must consider. The absence of any such congressional restrictions, authorizations or distinctions makes it clear that EPA invented and added the Proposal’s limitations and conditions as a matter of its own policy preferences, contrary to the Act. This EPA may not do. Clean Air Act subsection 103(b) shows that the Proposal is arbitrary and capricious and an abuse of EPA’s discretion.

Clean Air Act section 103(d) addresses Environmental Health Effects Research:

(1) The Administrator, in consultation with the Secretary of Health and Human Services, shall conduct a research program on the short-term and long-term effects of air pollutants, including wood smoke, on human health. In conducting such research program the Administrator—

(A)

shall conduct studies, including epidemiological, clinical, and laboratory and field studies, as necessary to identify and evaluate exposure to and effects of air pollutants on human health;

(B)

may utilize, on a reimbursable basis, the facilities of existing Federal scientific laboratories and research centers; and

(C)

shall consult with other Federal agencies to ensure that similar research being conducted in other agencies is coordinated to avoid duplication.

42 U.S.C. § 7403(d). There is nothing in these congressional directives restricting these tasks, research, studies or data to materials based only on data that are “publicly available in a manner sufficient for independent validation.” 83 Fed. Reg. at 18,773/2 (proposed § 30.1). Nor is there any authorization in these congressional directives to distinguish between research, science, data or models that involves “dose response data and models” on the one hand, and science that does not, on the other hand, for imposing regulatory restrictions on what science EPA must consider. The absence of any such congressional restrictions, authorizations, or distinctions makes it clear that EPA invented and added the Proposal’s limitations and conditions as a matter of its own policy preferences, contrary to the Act. This EPA may not do. Clean Air Act subsection 103(d) shows that the Proposal is arbitrary and capricious and an abuse of EPA’s discretion.

Clean Air Act subsection 103(d)(2) directs “[i]n conducting the research program under this subsection, the Administrator shall develop methods and techniques necessary to identify and assess the risks to human health from both routine and accidental exposures to individual air pollutants and combinations thereof.” 42 U.S.C. § 7403(d)(2). Subsection 103(d)(2) then says,

“such research program shall include the following elements,” listing subsections (A)-(C). *Id.* Subsection 103(d)(2)(B) & (C) are especially relevant and revealing:

(B) An evaluation, within 12 months after November 15, 1990, of each of the hazardous air pollutants listed under section 7412(b) of this title, to decide, *on the basis of available information*, their relative priority for preparation of environmental health assessments pursuant to subparagraph (C). The evaluation *shall be based on reasonably anticipated toxicity to humans and exposure factors* such as frequency of occurrence as an air pollutant and volume of emissions in populated areas. Such evaluation shall be reviewed by the Interagency Task Force established pursuant to subparagraph (A).

(C) Preparation of environmental health assessments for each of the hazardous air pollutants referred to in subparagraph (B), beginning 6 months after the first meeting of the Interagency Task Force and to be completed within 96 months thereafter. *No fewer than 24 assessments shall be completed and published annually.* The assessments shall be prepared in accordance with guidelines developed by the Administrator in consultation with the Interagency Task Force and the Science Advisory Board of the Environmental Protection Agency. Each such assessment shall include—

- (i) an examination, summary, and evaluation of *available toxicological and epidemiological information for the pollutant to ascertain the levels of human exposure which pose a significant threat to human health and the associated acute, subacute, and chronic adverse health effects*;
- (ii) a determination of gaps in *available information related to human health effects and exposure levels*; and
- (iii) where appropriate, an identification of additional activities, including toxicological and inhalation testing, needed to identify the types or levels of exposure which may present significant risk of adverse health effects in humans.

42 U.S.C. § 7403(d)(2)(B) & (C) (emphases added).

There is nothing in these congressional directives restricting these tasks, research, studies or data to materials based only on data that are “publicly available in a manner sufficient for independent validation.” 83 Fed. Reg. at 18,773/2 (proposed § 30.1). Nor is there any authorization in these congressional directives to distinguish between research, science, data, or models that involves “dose response data and models” on the one hand, and science that does not, on the other hand, for imposing regulatory restrictions on what science EPA must consider. The absence of any such congressional restrictions, authorizations, or distinctions makes it clear that EPA invented and added the Proposal’s limitations and conditions as a matter of its own policy preferences, contrary to the Act. This EPA may not do. Clean Air Act subsection 103(d)(2) shows that the Proposal is arbitrary and capricious and an abuse of EPA’s discretion.

Equally damning for the Proposal, when Congress directs EPA to evaluate pollutants and their health effects, Congress uses broad and capacious terms:

- “on the basis of available information” (§ 103(d)(2)(B), 42 U.S.C. § 7403(d)(2)(B));

- “available toxicological and epidemiological information for the pollutant to ascertain the levels of human exposure which pose a significant threat to human health and the associated acute, subacute, and chronic adverse health effects” (§ 103(d)(2)(C)(i), 42 U.S.C. § 7403(d)(2)(C)(i)); and
- “available information related to human health effects and exposure levels” (§ 103(d)(2)(C)(ii), 42 U.S.C. § 7403(d)(2)(C)(ii)).

These instructions to EPA are prefaced with the mandatory language, “[s]uch research program *shall include* the following elements.” (§ 103(d)(2), 42 U.S.C. § 7403(d)(2)). Congress went out of its way *not* to authorize EPA to ignore “available toxicological and epidemiological information” to ensure that the agency would be “ascertain[ing] the levels of human exposure which pose a significant threat to human health and the associated acute, subacute, and chronic adverse health effects.” (§ 103(d)(2)(C)(i), 42 U.S.C. § 7403(d)(2)(C)(i)).

This shows clear congressional concern with all available science related to human health effects from air pollution—not some restricted, politicized subset of science where underlying, confidential data are “publicly available in a manner sufficient for independent validation.” Clean Air Act subsection 103(d)(2) shows that the Proposal is arbitrary and capricious and an abuse of EPA’s discretion.

When Congress directs EPA to conduct an ecosystem research program in subsection 103(e), Congress says that such program “shall include” “[e]valuation of risks to ecosystems exposed to air pollutants, including characterization of the causes and effects of chronic and episodic exposures to air pollutants and determination of the reversibility of those effects.” 42 U.S.C. § 7403(e). Subsections (e)(3)-(e)(6) address other effects on water quality, crops, soils, and other elements of ecosystems.

There is nothing in these congressional directives restricting these tasks, research, studies, or data to materials based only on data that are “publicly available in a manner sufficient for independent validation.” 83 Fed. Reg. at 18,773/2 (proposed § 30.1). Nor is there any authorization in these congressional directives to distinguish between research, science, data, or models that involves “dose response data and models” on the one hand, and science that does not, on the other hand, for imposing regulatory restrictions on what science EPA must consider. The absence of any such congressional restrictions, authorizations, or distinctions makes it clear that EPA invented and added the Proposal’s limitations and conditions as a matter of its own policy preferences, contrary to the Act. This EPA may not do. Clean Air Act subsection 103(e) shows that the Proposal is arbitrary and capricious and an abuse of EPA’s discretion.

3. Clean Air Act section 108

In section 108(a)(2), Congress required air quality criteria for air pollutants to “*accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects* on public health or welfare which may be expected from the presence of such pollutant in the ambient air,” CAA § 108(a)(2), 42 U.S.C. § 7408(a)(2) (emphases added). In *American Trucking v. Whitman*, 531 U.S. at 457, the Supreme Court said that NAAQS must be based on “published air quality criteria that reflect the latest scientific knowledge.”

The Proposal violates these statutory requirements by prohibiting EPA from considering available science to discharge the agency's statutory responsibility to "protect the public health," with "an adequate margin of safety." CAA § 109(b)(1), 42 U.S.C. § 7409(b)(1). The Proposal does this by subverting and supplanting the congressional criteria in CAA § 108(a)(2), 42 U.S.C. § 7408(a)(2) with a restrictive standard driven by whether raw data are "publicly available in a manner sufficient for independent validation," 83 Fed. Reg. at 18,773/2 (proposed § 30.1).

With this unlawful maneuver, the Proposal prevents EPA from adopting air quality criteria that "*accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare.*" CAA § 108(a)(2), 42 U.S.C. § 7408(a)(2) (emphases added). First, the Proposal thwarts the congressional directives for "accurate[] reflection" of the "latest scientific knowledge." It does so by compelling or allowing EPA to ignore the "latest scientific knowledge," and to fail to "accurately reflect" that science, if raw data are not "publicly available in a manner sufficient for independent validation." 83 Fed. Reg. at 18,773/2 (proposed § 30.1).

Moreover, the Proposal thwarts the congressional directives for science that is "*useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of such pollutant in the ambient air.*" CAA § 108(a)(2), 42 U.S.C. § 7408(a)(2) (emphases added). It does so, again, by compelling or allowing EPA to ignore the "latest scientific knowledge," and to fail to accurately reflect that science, if raw data are not "publicly available in a manner sufficient for independent validation." 83 Fed. Reg. at 18,773/2 (proposed § 30.1).

Further, section 208 contains the mandatory term "shall"—which does not give the agency latitude. It does not matter if that "scientific knowledge" is "publicly available" in the way EPA contemplates in the Proposal, it must simply inform the effects of air pollution on public health or welfare. Further, *American Trucking* considered the requirements of this section and specifically concluded that "the Clean Air Act imposes no" "general requirement that EPA obtain and publicize the data underlying published studies on which the Agency relies." 283 F.3d at 372.

In these statutory provisions, obviously there is no mention of the necessity, or even relevance, of raw data being "publicly available in a manner sufficient for independent validation" before EPA must consider studies based on that data. Equally plain, there is no authorization for EPA to fail to "accurately reflect" that science when issuing air quality criteria.

There is nothing in these congressional directives restricting EPA's responsibilities, or the research, studies, or data it must consider, to materials based only on data that are "publicly available in a manner sufficient for independent validation." 83 Fed. Reg. at 18,773/2 (proposed § 30.1). Nor is there any authorization in these congressional directives to distinguish between research, science, data, or models that involve "dose response data and models" on the one hand, and science that does not, on the other hand, for imposing regulatory restrictions on what science EPA must consider. The absence of any such congressional restrictions, authorizations, or distinctions makes it clear that EPA invented and added the Proposal's limitations and conditions

as a matter of its own policy preferences, contrary to the Act. This EPA may not do. Clean Air Act subsection 108(a) shows that the Proposal is arbitrary and capricious and an abuse of EPA's discretion.

4. Clean Air Act section 109

The Proposal also violates section 109 of the Clean Air Act and contravenes the Supreme Court decision in *American Trucking v. Whitman*. The Proposal's conception of "pivotal regulatory science" turns on, among other things, "analyses that drive the magnitude of the benefit-cost calculation," and "studies, models and analyses" that are "critical to the calculation of a final regulatory standard or level, or to the quantified costs, benefits, risks and other impacts on which a final regulation is based." 83 Fed. Reg. at 18,770/2; *id.* at 18,773/2 (proposed § 30.2 (*dose response data and models*)). Clean Air Act section 109(b)(1) requires EPA to promulgate or revise health-based national ambient air quality standards that are "requisite to protect the public health," "allowing an adequate margin of safety." 42 U.S.C. § 7409(b)(1).

As noted, in *American Trucking v. Whitman*, a unanimous Supreme Court said that NAAQS must be based on "published air quality criteria that reflect the latest scientific knowledge." 531 U.S. at 457. Moreover, the Court held that Clean Air Act section "109(b), interpreted in its statutory and historical context and with appreciation for its importance to the CAA as a whole, unambiguously bars cost considerations from the NAAQS-setting process." 531 U.S. at 471. The Court also squarely rejected arguments appealing to statutory language concerning "adverse public health, welfare, social, economic, or energy effects which may result from various strategies for attainment and maintenance" of NAAQS. The justices made clear such language and concerns have "no bearing upon whether cost considerations are to be taken into account in formulating the standards." *Id.*

The Proposal violates Clean Air Act section 109(b)(1) and the governing Supreme Court interpretation in *American Trucking* by purporting to allow the "magnitude of a benefit-cost calculation" and "quantified costs and benefits" to impact or govern (1) EPA's consideration of peer-reviewed science relevant to reviewing, setting or revising health-based NAAQS; and (2) EPA's review, revision or establishment of health-based NAAQS. This is unlawful.

Clean Air Act sections 109(b)(1), (2), & (c) require EPA to protect Americans' "public health" with an adequate margin of safety, and America's "welfare" from "any known or anticipated adverse effect." 42 U.S.C. § 7409(b)(1), (2) & (c). The Proposal prevents EPA from doing so by blocking the agency from considering information that also is the best available, peer-reviewed, independent, credible science that could persuade or cause the agency to better protect Americans' public health and welfare, based on the statutory criteria in section 109. In this way, the Proposal thwarts the central role and fundamental right to health-based air quality standards under the Clean Air Act. Clean Air Act section 109 shows the Proposal is arbitrary and capricious and an abuse of EPA's discretion.

5. Clean Air Act section 111

Clean Air Act section 111(a)(1) defines a standard of performance as:

a standard for emissions of air pollutants which reflects the degree of emission limitation *achievable* through the application of the *best system of emission reduction* which (taking into account the cost of achieving such reduction and any nonair quality *health and environmental* impact and energy requirements) the Administrator determines has been *adequately demonstrated*.

42 U.S.C. 7411(a)(1) (emphases added). There is nothing in these congressional directives restricting EPA's establishment of "standards of performance," or its determinations of "achievability" or "best system of emission reduction" or "adequate demonstration," to information based only on data that are "publicly available in a manner sufficient for independent validation." 83 Fed. Reg. at 18,773/2 (proposed § 30.1). Nor is there any authorization in these congressional directives to distinguish between research, science, data, or models involving "dose response data and models" on one hand, and science that does not, on the other hand, for imposing regulatory restrictions on what science EPA must consider.

EPA cannot fulfill the congressional directive to establish the "best system of emission reduction" if EPA is artificially and unlawfully restricting its consideration of data and information to those that are "publicly available in a manner sufficient for independent validation." *Id.* Nor may EPA fulfill the "adequately demonstrated" directive if systems of emission reduction that have been adequately demonstrated require EPA to consider data, science, or information that are not "publicly available in a manner sufficient for independent validation." *Id.*

Clean Air Act section 111(b)(1)(A) requires EPA to establish a list of stationary sources to be subject to section 111 standards of performance:

[The Administrator] shall include a category of sources in such list if in his judgment it causes, or contributes significantly to, air pollution *which may reasonably be anticipated to endanger public health or welfare*.

42 U.S.C. 7411(b)(1)(A) (emphasis added). There is nothing in the Act restricting EPA's consideration of which categories of sources "may reasonably be anticipated to endanger public health or welfare" to information based only on data that are "publicly available in a manner sufficient for independent validation." 83 Fed. Reg. at 18,773/2 (proposed § 30.1). There is no indication of congressional intent that what "may reasonably be anticipated to endanger public health or welfare" may be modified or constrained by ignoring science and data concerning endangerment if that information is not "publicly available in a manner sufficient for independent validation."

The absence of any such congressional restrictions, authorizations, or distinctions concerning what EPA may consider makes it clear that EPA invented and added the Proposal's limitations and conditions as a matter of its own policy preferences, contrary to the Act. This EPA may not do. Clean Air Act subsections 111(a)(1) and 111(b)(1)(A) show that the Proposal is arbitrary and capricious and an abuse of EPA's discretion.

6. Clean Air Act Section 112

Clean Air Act Section 112(b) provides a list of toxic air pollutants for which industrial sources must limit their emissions. The statute then directs the Administrator to periodically review that list of hazardous air pollutants and, where appropriate, revise this list by rule. In particular, the Administrator is directed to add pollutants which:

present, or may present, through inhalation or other routes of exposure, a threat of adverse human health effects (including, but not limited to, substances which are known to be, or may reasonably be anticipated to be, carcinogenic, mutagenic, teratogenic, neurotoxic, which cause reproductive dysfunction, or which are acutely or chronically toxic) or adverse environmental effects whether through ambient concentrations, bioaccumulation, deposition, or otherwise, but not including releases subject to regulation under subsection (r) as a result of emissions to the air.

42 U.S.C. § 7412(b)(2). There is nothing in these congressional directives restricting EPA's establishment of this list nor of the pollutants that should be added to it based only on data that are "publicly available in a manner sufficient for independent validation." 83 Fed. Reg. at 18,773/2 (proposed § 30.1). Nor is there any authorization in these congressional directives to distinguish between research, science, data, or models involving "dose response data and models" on one hand, and science that does not, on the other hand, for imposing regulatory restrictions on what science EPA must consider.

EPA cannot fulfill the congressional directive to establish section 112(b)(2)'s pollutant list if the agency is artificially and unlawfully restricting its consideration of data and information to those that are "publicly available in a manner sufficient for independent validation." *Id.* Nor will EPA be able to fully analyze pollutants for inclusion on this list if determining inclusion would require EPA to consider data, science or information that are not "publicly available in a manner sufficient for independent validation." *Id.*

Similarly, Section 112(b)(3) lays out a petition process to add chemicals to the Section 112 list that similarly require the petitioner to submit to EPA proof that "the substance is an air pollutant and that emissions, ambient concentrations, bioaccumulation or deposition of the substance are known to cause or may reasonably be anticipated to cause adverse effects to human health or adverse environmental effects." 42 U.S.C. § 7412(b)(3)(B). Here, the straightjacket that the Proposal would place on this statutory language would similarly prevent the agency from carrying out its statutory directive.

Section 112(b)(3)(C) provides criteria for *delisting* pollutants from the list. This section would nonetheless be hamstrung if the agency were limited exclusively to data that are "publicly available in a manner sufficient for independent validation." 83 Fed. Reg. at 18,773/2 (proposed § 30.1). Nor is there any authorization in the section's congressional directives to distinguish between research, science, data, or models involving "dose response data and models" on one hand, and science that does not, on the other hand, for purposes of listing or delisting pollutants from section 112's hazardous pollutant list.

Nearly every subsection of Section 112, including standards for major and area sources, reporting requirements, and accidental release provisions, touch on protecting “public health,” weighing “risks,” or assessing how “hazardous” a “substance” or “pollutant” may be. EPA cannot fulfill the congressional directives of any of these sections if the agency is artificially and unlawfully restricting its consideration of data and information to those that are “publicly available in a manner sufficient for independent validation.” *Id.* Nor will EPA be able to fully analyze risks to or impacts on human health and set section 112 standards accordingly if making such determinations would require EPA to consider data, science, or information that are not “publicly available in a manner sufficient for independent validation.” *Id.*

The absence of any such congressional restrictions, authorizations, or distinctions concerning what EPA may consider makes it clear that EPA invented and added the Proposal’s limitations and conditions as a matter of its own policy preferences, contrary to the Act. This EPA may not do. Clean Air Act section 112 makes exceedingly clear that the Proposal is arbitrary and capricious and an abuse of EPA’s discretion.

The sections listed above merely represent a sampling of some examples in Title 1 of the Act that exemplify the extent to which the Proposal is arbitrary, capricious, an abuse of EPA’s discretion, and a violation of clear congressional directives. The Act’s five other Titles are no different, and the list provided here is not exhaustive—the Clean Air Act is rife with examples of statutory language that the Proposal would distort with its adherence to data that are “publicly available in a manner sufficient for independent validation” 83 Fed. Reg. at 18,773/2 (proposed § 30.1) and research, science, data, or models involving “dose response data and models.”

B. Clean Water Act

The Proposal, if adopted, would imperil the effective implementation of the Clean Water Act. Several provisions of the Act direct EPA to consider a range of data in promulgating regulations to effectuate its goals, and the development of these regulations would be hamstrung by the Proposal’s restrictions on considering valid scientific evidence. As discussed in these comments, identifying and excluding valid scientific evidence is time- and resource-intensive and has not been demonstrated to improve the quality of the science EPA considers or its science-based decisions. Accordingly, applying the proposed limitations to the myriad of regulatory decisions the agency is supposed to make would be a recipe for complete paralysis on multiple fronts under the Clean Water Act. Some examples of the water regulations that could be adversely affected by the far-reaching the Proposal follow.

Under sections 301 and 304, EPA must develop effluent limitation guidelines, setting out nationally-applicable pollution discharge standards for various industries. These ELGs “identify, in terms of amounts of constituents and chemical, physical, and biological characteristics of pollutants, the degree of effluent reduction attainable through the application of [particular levels of pollution control stringency] for classes and categories of point sources” 33 U.S.C. § 1314(b)(1)(A). EPA is to specify the factors used to determine the controls to be used, including “the age of equipment and facilities involved, the process employed, the engineering aspects of the application of various types of control techniques, process changes, the cost of achieving such effluent reduction, non-water quality environmental impact (including energy

requirements), and such other factors as the Administrator deems appropriate” *Id.* § 1314(b)(1)(B). Making these judgments and formulating the proper control levels that industrial dischargers must meet will obviously depend on data collected about the processes used in a given industry, control technology performance, cost, and energy use, among other things.

Under section 303, the Act charges EPA with issuing initial water quality standards for states that fail to submit their own, and with developing such standards if EPA determines submitted standards are not consistent with the Act. *Id.* § 1313(b). Congress required these standards to take account of a wide range of evidence, and the Proposal would therefore curtail EPA’s actions pursuant to the Act. Specifically, standards:

shall be such as to protect the public health or welfare, enhance the quality of water and serve the purposes of this chapter. Such standards shall be established taking into consideration their use and value for public water supplies, propagation of fish and wildlife, recreational purposes, and agricultural, industrial, and other purposes, and also taking into consideration their use and value for navigation.

Id. § 1313(c)(2)(A).

In addition, section 303’s water quality standards process illustrates a hypocritical element of the Proposal. When states develop water quality standards, they must submit to EPA “[g]eneral information which will aid the Agency in determining the adequacy of the scientific basis of the standards,” 40 C.F.R. § 131.6(f), and EPA’s review of such a submission considers “[w]hether the State standards . . . are based upon appropriate technical and scientific data and analyses,” *id.* § 131.5(a)(4), such that states can consider a wide range of information in establishing standards and EPA’s review of the states’ standards looks simply to whether the information on which they are based is “appropriate.” By contrast, if EPA were obliged to develop standards for a state (either because of a failure to submit or an inadequate submission), the Proposal would require EPA to consider a much more limited universe of information.

Pursuant to section 307 of the Act, EPA may issue category-wide effluent standards for listed toxic pollutants that go beyond the minimum level of control the Act mandates. These more stringent standards “shall take into account the toxicity of the pollutant, its persistence, degradability, the usual or potential presence of the affected organisms in any waters, the importance of the affected organisms, the nature and extent of the effect of the toxic pollutant on such organisms, and the extent to which effective control is being or may be achieved under other regulatory authority.” Further, “[a]ny effluent standard promulgated under this section shall be at that level which the Administrator determines provides an ample margin of safety.” 33 U.S.C. § 1317(a)(4). Obviously, it takes a substantial effort for EPA to assess these various factors and determine what level of pollution is acceptable, with an “ample margin of safety,” and to do so for numerous categories of dischargers (multiplied by numerous different toxic pollutants). If EPA adopts the Proposal, it would make each element of this analysis that much more cumbersome and difficult, and thus make it harder for EPA to effectively protect the public from toxic pollution.

Section 311 includes a further example of the kinds of regulatory analyses into which the Proposal would inject confusion and administrative burden. That section charges EPA with issuing “regulations designating as hazardous substances, other than oil as defined in this section, such elements and compounds which, when discharged in any quantity into . . . [various water resources] present an imminent and substantial danger to the public health or welfare, including, but not limited to, fish, shellfish, wildlife, shorelines, and beaches.” 33 U.S.C. § 1321(b)(2)(A). Indeed, answering these kinds of questions seems particularly likely to be undermined by the Proposal, as data relevant to determining the conditions under which hazardous substances may be an “imminent and substantial danger” could well come from prior accidental releases that could fail the Proposal’s “reproducibility” trigger.

The foregoing examples are merely illustrative. The Clean Water Act imposes numerous regulatory duties on EPA, and the Proposal threatens to make carrying out those obligations harder. The Act’s foundational purpose—“to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters,” 33 U.S.C. § 1251(a)—would thus be ill-served by finalizing the Proposal.

C. Safe Drinking Water Act

The Safe Drinking Water Act (SDWA) protects the nation’s public drinking water supplies. The Act generally applies to “each public water system in each State,” 42 U.S.C. § 300g, and requires EPA to set standards for drinking water contaminants that may have an adverse effect on human health and are known or anticipated to occur in such systems, *id.* § 300g-1(b)(1)(A).

For a given contaminant, the SDWA requires that EPA first establish a Maximum Contaminant Level Goal (MCLG), which is “the level at which no known or anticipated adverse effects on the health of persons occur and which allows an adequate margin of safety.” *Id.* § 300g-1(b)(4)(A). EPA must then set a Maximum Contaminant Level (MCL) “as close to the [MCLG] as is feasible.” *Id.* § 300g-1(b)(4)(B).

EPA also must, every five years, “publish a list of contaminants” that “are not subject to any proposed or promulgated national primary drinking water regulation, which are known or anticipated to occur in public water systems, and which may require regulation” *Id.* § 300g-1(b)(1)(B)(i). The SDWA requires EPA to prioritize that list based on vulnerable subpopulations that are at risk and other factors. *Id.* § 300g-1(b)(1)(C). EPA must then decide whether to regulate at least five contaminants on the list based on the “best available public health information.” *Id.* § 300g-1(b)(1)(B)(ii).

In making these determinations, the SDWA requires EPA to use “the best available, peer-reviewed science and supporting studies conducted in accordance with sound and objective scientific practices,” and “data collected by accepted methods or best available methods (if the reliability of the method and the nature of the decision justifies use of the data).” *Id.* § 300g-1(b)(3)(A); *see also id.* § 300g-1(b)(12), (13) (similar); *id.* § 300j-19 (referring to best available science standard for risk assessment of algal toxins).

The Proposal would conflict with the SDWA by prohibiting EPA from using the “best available” science and “data collected by acceptable or best available methods” solely because that data could not be made public. Indeed, courts interpreting these requirements have already rejected this proposed limitation on dose-response studies, making clear that they can indeed be the “best available” science regardless of whether the underlying data are publicly available. In *City of Waukesha v. EPA*, the court approved EPA’s use of “studies of Hiroshima and Nagasaki atomic bomb survivors” in setting limits for radium and uranium in drinking water. 320 F.3d 228, 248, 252 (D.C. Cir. 2003). But of course, these and similar studies would likely be excluded under the Proposal because the underlying data are not available.¹⁹⁴ The court also upheld the agency’s use of the linear, non-threshold (LNT) model used by EPA for both radium and uranium, *id.* at 249–50, 252, which is precisely the model that EPA now implies—without citing any evidence—is not scientifically justified.

Additionally, in carrying out its obligations to establish drinking water standards, the Act directs the agency to discuss “peer-reviewed studies known to the Administrator that support, are directly relevant to, or fail to support any estimate of public health effects and the methodology used to reconcile inconsistencies in the scientific data.” 42 U.S.C. § 300g-1(b)(3)(b)(v). Moreover, the agency must identify the “[q]uantifiable and non-quantifiable benefits for which there is a factual basis in the rulemaking record” in establishing a drinking water standard. Thus, under the express provisions of the SDWA, the agency cannot simply ignore peer-reviewed studies or other factual information in the record that the Proposed Rule would disallow from consideration, simply because the underlying data may be unavailable. *Id.* § 300g-1(b)(3)(c)(i).

If Congress had intended for the data targeted by the Proposal to be excluded, it could have said so. Instead, Congress directed EPA to use “the best available, peer-reviewed science and supporting studies conducted in accordance with sound and objective scientific practices,” and “data collected by accepted methods or best available methods.” 42 U.S.C. § 300g-1(b)(3)(A). EPA cannot ignore these commands to achieve its political goal of rolling back public health protections.

D. Resource Conservation and Recovery Act

Under the Resource Conservation and Recovery Act (RCRA), EPA regulates the generation, transportation, treatment, storage, and disposal of hazardous waste. EPA must develop, and revise from time to time, “criteria for identifying the characteristics of hazardous waste” and “for listing hazardous waste” that should be subject to regulation, “taking into account toxicity, persistence, and degradability in nature, potential for accumulation in tissue, and other related factors such as flammability, corrosiveness, and other hazardous characteristics.” 42 U.S.C. § 6921(a). EPA also must, in cooperation with Agency for Toxic Substances and Disease Registry (ATSDR) and the National Toxicology Program, “identify or list those hazardous wastes” which must be subject to regulation because they contain “certain constituents (such as identified carcinogens, mutagens, or terat[olog]ens) at levels in excess of

¹⁹⁴ For a description of the studies, see Kotaro Ozasa, *Epidemiological research on radiation-induced cancer in atomic bomb survivors*, *Journal of Radiation Research*, Volume 57, Issue S1, 1 August 2016, Pages i112–i117, <https://academic.oup.com/jrr/article/57/S1/i112/2580473>.

levels which endanger human health.” *Id.* § 6921(b)(1). Likewise, EPA must promulgate regulations establishing standards applicable to generators and transporters of hazardous waste, and owners and operators of hazardous waste treatment, storage, and disposal facilities, “as may be necessary to protect human health and the environment.” *Id.* §§ 6922(a), 6923(a), 6924(a); *see also id.* § 6924(b), (d), (g).

The Proposal conflicts with RCRA’s statutory mandate. RCRA requires EPA to evaluate and regulate hazardous waste based on whether it will endanger human health and the environment, while the Proposal allows EPA to disregard relevant science simply because the underlying data cannot be made public. Under RCRA, EPA cannot ignore studies for that reason. Thus, the Proposal violates RCRA.

E. Comprehensive Environmental Response, Compensation, and Liability Act

Under CERCLA, EPA has power to clean up sites that are contaminated with hazardous substances, and to assure that responsible parties pay for such clean up. CERCLA requires EPA to issue regulations that identify hazardous substances that “present substantial danger to the public health or welfare or the environment,” and that specify the quantities of such substances that trigger the Act’s notification requirements. 42 U.S.C. § 9602(a). The Proposal contradicts this statutory mandate because it allows EPA to arbitrarily exclude some studies solely because the underlying data cannot be made public. Under the statute, EPA is required to use *all* relevant studies in determining whether a substance presents a substantial danger to people or the environment.

CERCLA also requires the President to promulgate and revise the National Contingency Plan for the removal of hazardous substances. *Id.* § 9605(a), (b). The President has delegated that authority to EPA. Exec. Order No. 12580, 52 Fed. Reg. 2923 (1987); Exec. Order No. 12777, 56 Fed. Reg. 54757. The Plan must include criteria for determining priorities “based upon relative risk or danger to public health or welfare or the environment,” taking into account enumerated factors. 42 U.S.C. § 9605(a)(8)(A). The Proposal conflicts with this section because it would direct EPA to disregard relevant studies solely because the underlying data could not be made public, even if those studies shed light on the enumerated factors.

CERCLA’s non-rulemaking provisions also show that Congress did not intend for studies to be excluded from consideration simply because the underlying data cannot be made public. For example, CERCLA authorizes the President to address hazardous substance releases that pose an “imminent and substantial danger to the public health or welfare,” and to “undertake such investigations, monitoring, surveys, testing, and other information gathering” as necessary to determine “the extent of danger to the public health or welfare or to the environment.” *Id.* § 9604(a), (b). This shows that Congress’s purpose in enacting CERCLA was to address the serious public health and environmental threats of hazardous substance releases. That purpose would be undermined if EPA could refuse to consider relevant studies only because the underlying data cannot be made public.

EPA also has co-responsibility with the ATSDR to establish a registry of diseases relating to toxic substance exposure, as well as to create a list of hazardous substances found at

Superfund sites, prepare a toxicological profile of those substances, and determine whether adequate information on the health effects of those substances exists. *Id.* § 9604(i). The statute specifically lists the types of studies and data that should be considered in determining whether adequate information exists and assessing the need for further research. *Id.* § 9604(i)(5); *see also id.* § 9604(i)(13). The statute does not exclude studies whose underlying data cannot be made public. In short, the Proposal contradicts both the statutory language and the purpose of CERCLA.

F. Emergency Planning and Community Right-to-Know Act

EPCRA establishes requirements for state and local emergency planning and reporting on hazardous chemicals. It requires EPA to publish a list of extremely hazardous substances and set, by regulation, a threshold planning quantity for each substance on the list. 42 U.S.C. § 11002(a). “Any revisions to the list shall take into account the toxicity, reactivity, volatility, dispersability, combustability, or flammability of a substance.” *Id.* § 11002(a)(4). Notably, in defining the criteria that EPA must consider for the list, EPCRA affirmatively directs EPA to consider the toxicity of the substance, among other things, and says nothing about excluding relevant studies for the reasons stated in the Proposal.

EPCRA also contains reporting requirements for owners or operators who manufacture, process, or use hazardous chemicals. *Id.* § 11023. EPA “may by rule add or delete a chemical from the list” of covered chemicals if there is sufficient evidence that the “chemical is known to cause or can reasonably be anticipated to cause significant adverse acute human health effects” or if the “chemical is known to cause or can reasonably be anticipated to cause in humans . . . cancer or teratogenic effects, or . . . serious or irreversible . . . reproductive dysfunctions[,] neurological disorders[,] heritable genetic mutations[,] other chronic health effects.” *Id.* § 11023(d). A chemical can also be added if it “is known to cause or can reasonably be anticipated to cause . . . a significant adverse effect on the environment of sufficient seriousness” due to its toxicity. *Id.* Of critical importance here, this determination “shall be based on generally accepted scientific principles or laboratory tests, or appropriately designed and conducted epidemiological or other population studies, available to the Administrator.” *Id.*

The Proposal directly conflicts with EPCRA’s requirement to use “generally accepted scientific principles or laboratory tests,” or “appropriately designed and conducted epidemiological or other population studies.” *See id.* § 11023(d). As explained throughout these comments, there is no reason the underlying data must be public for these tests and studies to be “generally accepted” or “appropriately designed and conducted.” Thus, the Proposal is—on its face—contrary to EPCRA’s mandate that EPA use these tests and studies when making determinations under the statute.

G. Federal Insecticide, Fungicide, and Rodenticide Act

FIFRA requires that all pesticides distributed or sold in the United States be registered by EPA. EPA cannot register pesticides that would cause “unreasonable adverse effects on the environment.” 7 U.S.C. § 136a. Likewise it may “by regulation” limit the distribution, sale or use of a pesticide to prevent “unreasonable adverse effects on the environment,” *id.* § 136a(a), and

must cancel the registration of pesticides that cause such “unreasonable adverse effects.” *Id.* § 136d. The term “unreasonable adverse effects on the environment” is defined to include unreasonable risks to human health, and dietary risks that violate the standard for pesticide residues under the Food, Drug and Cosmetic Act. *Id.* § 136(bb). Given that registration decisions often depend heavily on dose-response data and models, EPA must clarify whether the Proposal will apply to registration and registration review decisions. If so, the Proposal conflicts with FIFRA’s requirement that EPA determine whether pesticides proposed for registration would have unreasonable adverse effects on the environment. In light of that language, EPA cannot exclude relevant studies bearing on a pesticide’s effect on human health or the environment simply because the underlying data cannot be made public.

The potential applicability of the Proposal to exclude consideration of epidemiological studies of the health impacts of pesticides where the underlying data cannot be made public also highlights the logical inconsistency and arbitrary approach in the embodied proposed rule. On the one hand, the Proposal appears to be intended to prohibit consideration of such public health studies, but on the other hand seems to envision that industry-conducted studies and models claimed to include confidential business information would be allowed to be considered. This highlights the arbitrary and one-sided nature of the Proposal, and the clear underlying intent, which is to undermine public health protections for the benefit of industry.

Regardless of whether the Proposal applies to registration decisions, it conflicts with FIFRA in other ways. FIFRA directs EPA, when promulgating rules, to “take into account the difference in concept and usage between various classes of pesticides, including public health pesticides, and differences in environmental risk and the *appropriate data for evaluating such* risk between agricultural, nonagricultural, and public health pesticides.” *Id.* § 136w(a) (emphasis added); *see also id.* § 136w(c) (setting forth some examples of rules EPA may promulgate under FIFRA). EPA may not exclude “appropriate data” in these regulatory decisions simply because those data cannot be made public. Thus, the Proposal conflicts with FIFRA.

Finally, EPA has violated FIFRA’s procedural requirements. FIFRA requires EPA to provide the Scientific Advisory Panel and the Secretary of Agriculture with a copy of the Proposal at least 60 days before publication in the Federal Register. *Id.* § 136w(a)(2), (d). Any notification to the Secretary must be published in the Federal Register. *Id.* § 136w(a)(2)(D). There is no evidence in the Proposal that EPA followed these procedural requirements. (EPA also must provide the Panel and the Secretary a copy of the final rule 30 days before publication in the Federal Register. *Id.* § 136w(a)(2), (d).) Similarly, EPA must furnish a copy of the proposed and final regulation to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate. *Id.* § 136w(a)(3). Again, there is no evidence this occurred.

H. Toxic Substances Control Act

Under TSCA, EPA has broad authority to protect the public from harm from chemical substances and mixtures. TSCA authorizes EPA to issue regulations designed to gather information on, require testing of, and control exposure to chemical substances and mixtures.

EPA must restrict or ban any chemical substance that presents an unreasonable risk of injury to human health or the environment. *See, e.g.*, 15 U.S.C. §§ 2603, 2604, 2605.

TSCA contains specific provisions regarding EPA's use and consideration of science in rulemakings. "In carrying out sections 2603, 2604, and 2605," EPA must "use scientific information, technical procedures, measures, methods, protocols, methodologies, or models, employed in a manner consistent with the best available science." *Id.* § 2625(h). EPA must further consider the following:

- (1) the extent to which the scientific information, technical procedures, measures, methods, protocols, methodologies, or models employed to generate the information are reasonable for and consistent with the intended use of the information;
- (2) the extent to which the information is relevant for the Administrator's use in making a decision about a chemical substance or mixture;
- (3) the degree of clarity and completeness with which the data, assumptions, methods, quality assurance, and analyses employed to generate the information are documented;
- (4) the extent to which the variability and uncertainty in the information, or in the procedures, measures, methods, protocols, methodologies, or models, are evaluated and characterized; and
- (5) the extent of independent verification or peer review of the information or of the procedures, measures, methods, protocols, methodologies, or models.

Id. After consideration of these matters, EPA must make decisions "based on the weight of the scientific evidence." *Id.*

In short, EPA must examine the reliability of a study on a case-by-case basis by weighing several indicators of scientific validity. Noticeably absent from Congress's enumerated factors in § 2625(h) is whether the underlying data can be made available to the public. While § 2625(h)(4) provides that EPA should take into account "the extent of independent verification or peer review" of scientific information, this language indicates that peer review of a study could provide sufficient assurance of its reliability even without additional verification.

TSCA further directs EPA to make available to the public, among other things, "a list of the studies considered by the Administrator in carrying out each such risk evaluation, along with the results of those studies" and "each designation of a chemical substance . . . along with an identification of the information, analysis, and basis used to make the designations." *Id.* § 2625(i). Again, the statute, despite calling out specific information to be made publicly available, does not state that the *underlying data* for these studies must be made publicly available. Thus, the rule is flatly inconsistent with TSCA.

Finally, even if it were not already clear from the above provisions that EPA cannot bar consideration of studies as provided in the Proposal, TSCA also states that EPA “shall take into consideration information relating to a chemical substance or mixture, including hazard and exposure information, under the conditions of use, that is reasonably available to the Administrator.” *Id.* § 2625(k). EPA has defined “reasonably available” to mean “information that EPA possesses or can reasonably generate, obtain and synthesize for use . . . for prioritization and risk evaluation. Information that meets such terms is reasonably available information whether or not the information is confidential business information that is protected from public disclosure under 15 U.S.C. 2613.” 40 C.F.R. § 702.3. Thus, if the studies covered by the rule are “reasonably available” to EPA, the agency must consider them, regardless of whether the raw data can be made public. EPA cannot create a double standard where studies withheld from the public as confidential business information must be considered but studies for which the underlying data cannot be made publicly available cannot be considered. *See infra* section X. The Proposal is unlawful under TSCA and cannot be promulgated.

I. Food Quality Protection Act (or Food, Drug, and Cosmetics Act)

The Food Quality Protection Act (also known as the Food, Drug, and Cosmetics Act or FFDCA) governs pesticide tolerances. Section 408 of the FFDCA requires EPA to set tolerances, which are maximum residue limits, for pesticide residues on foods. In setting tolerances, EPA must find that the tolerance is “safe.” 21 U.S.C. § 346a. Safe is defined as meaning that there is a “reasonable certainty that no harm will result from aggregate exposure to the pesticide residue.” *Id.* § 346a(b)(2)(a)(ii). To make this finding, EPA considers, among other things: the toxicity of the pesticide and its break-down products, aggregate exposure to the pesticide in foods and from other sources of exposure, and any special risks posed to infants and children. *Id.* § 346a(b). For threshold effects, EPA is required to add an additional tenfold margin of safety to protect infants and children, unless the administrator finds based on reliable data that a different safety factor will ensure the pesticide is safe. *Id.* § 346a(b)(2)(C)(ii). The statute contains specific provisions regarding the type and availability of data that must be considered. *Id.* § 346a(b)(2)(D), (E), (F).

The Proposal does not cite to the FFDCA, and apparently EPA never considered whether the Proposal is consistent with the law. It is not. First, the Act defines “safe” to mean that “there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.” *Id.* § 346a(b)(2)(A)(ii). As part of this determination, EPA must “ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure.” *Id.* § 346a(b)(2)(C). EPA cannot do this if it excludes relevant studies solely because the underlying data cannot be made public.

The FFDCA specifically speaks to how threshold and non-threshold effects shall be considered. *Id.* § 346a(b)(2)(B). The Proposal cannot override the specific Congressional mandates in the FFDCA for how to conduct a tolerance assessment. In determining whether there is a reasonable certainty of no harm to infants and children, EPA must consider “available information” on consumption patterns among infants and children, special susceptibility of infants and children (including for example neurological and in utero effects), cumulative effects on infants and children. *Id.* § 346a(b)(2)(C). Likewise, the Act specifies numerous scientific

factors that must be considered in evaluating safety, including considering “available data” on these factors. *Id.* § 346a(b)(2)(D). The Proposal plainly contradicts these mandates. Obviously, published, peer-reviewed literature is “available” and must be considered. As with studies considered under other statutes, EPA fails to explain the arbitrariness of excluding published peer-reviewed studies while allowing industry studies considered confidential business information to be considered.

Finally, the FFDCA contains certain procedural requirements for “establishing general procedures and requirements to implement this section.” *Id.* § 346a(e). Yet EPA failed to cite the FFDCA—either its substantive or procedural requirements—at all in its Proposal.

J. Atomic Energy Act

The AEA, 42 U.S.C. § 2011 *et seq.*, is not a typical environmental law, as the original act established the Atomic Energy Commission (AEC) just after World War II to promote the “utilization of atomic energy for peaceful purposes to the maximum extent consistent with the common defense and security and with the health and safety of the public.” The concern found in the final clause of its original organic act, “the health and safety of the public,” has at no point disappeared in subsequent iterations of the act and this Proposal runs contrary to its clearly stated intent.

The AEC was abolished in the 1970s, and since that then, most of the functions of the AEA are carried out by the Nuclear Regulatory Commission and the U.S. Department of Energy. However, when EPA was formed in the early 1970s, it assumed the AEC’s authority to issue generally applicable environmental radiation standards to protect the health and safety of the public. Other federal and state organizations must follow these standards when developing requirements for their areas of radiation protection. EPA also implements the Federal Radiation Council’s authority under the AEA, developing guidance for federal and state agencies containing recommendations for their use in developing radiation protection requirements and working with states that have radiation protection programs.

There are several specific statutory requirements that EPA executes under the AEA, which states that “the purpose of this [Act is] to effectuate the policies set forth above by providing for – (d) a program to encourage widespread participation in the development and utilization of atomic energy for peaceful purposes to the maximum extent consistent with the common defense and security *and with the health and safety of the public.*” 42 U.S.C. § 2013(d) (emphasis added).

The following regulations are health-based standards, and as we discuss *supra* section III.G., EPA bases its regulatory limits and nonregulatory guidelines for population exposures to low-level ionizing radiation on the linear no-threshold (LNT) dose-response model, which uses the premise that any radiation dose carries some risk, and that risk increases directly with dose. The viability of each of these longstanding health-based protections will be undercut by promulgation of a final rule that resembles this draft for the reasons discussed *supra* section III.G., and in direct conflict with the AEA’s requirement that the utilization of atomic

energy for peaceful purposes be “to the maximum extent consistent with the common defense and security *and with the health and safety of the public.*”

- Environmental Radiation Protection Standards for Nuclear Power Operations (40 C.F.R. Part 190); these standards limit radiation releases and doses to the public from the normal operation (non-emergency) of nuclear power plants and other uranium fuel cycle facilities.
- Environmental Radiation Protection Standards for Management and Disposal of Spent Fuel, High Level and Transuranic Wastes (40 C.F.R. Part 191); this regulation sets environmental standards for the disposal of highly radioactive spent nuclear fuel and certain kinds of highly toxic and radioactive wastes produced from the nuclear weapons program that must ultimately be disposed of in a deep geologic repository.
- Health and Environmental Protection Standards for Health and Environmental Protection Standards for Uranium and Thorium Mill Tailings (40 C.F.R. Part 192); this regulation sets standards for the protection of the public health, safety, and the environment from radiological and non-radiological hazards associated with uranium and thorium ore processing, and disposal of associated wastes. In May of 2015, EPA proposed revisions to 40 C.F.R. 192 that would establish groundwater restoration and monitoring requirements at in-situ recovery facilities, and then in January 2017, EPA re-proposed those revisions. We await final agency action on the matter.
- Criteria for the Certification and Recertification of the Waste Isolation Pilot Plant’s Compliance with the 40 C.F.R. Part 191 Disposal Regulations (40 C.F.R. 194); these criteria apply to the certification and recertification of compliance with the radioactive waste disposal standards at the Waste Isolation Pilot Plant (WIPP) in New Mexico, the world’s only deep geologic repository, which is operated by the U.S. Department of Energy (DOE) for permanent disposal of transuranic waste from the nation’s nuclear defense program.
- Public Health and Environmental Radiation Protection Standards for Yucca Mountain, Nevada (40 C.F.R. Part 197); these regulations, last promulgated in 2008 (after a Federal Appeals Court found an earlier version unlawful, *see, e.g., Nuclear Energy Inst., Inc. v. EPA*, 373 F.3d 1251 (D.C. Cir. 2004)), establish public health and environmental standards for storage and disposal of spent nuclear fuel at the proposed repository at Yucca Mountain, Nevada. The U.S. Nuclear Regulatory Commission would implement these regulations at Yucca Mountain if a repository were to be established there.
- As discussed above, the Clean Air Act requires EPA to regulate airborne emissions of hazardous air pollutants (HAPs) from a specific list of industrial sources called “source categories.” Standards known as the “National Emission Standards for Hazardous Air Pollutants” (NESHAPs) dictate specific regulatory limits for source categories that emit radionuclides. In 40 C.F.R. Part 61: the *National Emission Standards For Hazardous Air Pollutants*, EPA sets health based standards in a number of settings, such as Subpart B: *Radon Emissions from Underground Uranium Mines*; Subpart H: *Emissions of Radionuclides Other than Radon from Department of Energy Facilities*; Subpart I: *Radionuclide Emissions from Federal Facilities Other than Nuclear Regulatory Commission Licensees and Not Covered by Subpart H*; Subpart K: *Radionuclide Emissions from Elemental Phosphorus Plants*; Q: *Radon Emissions from Department of Energy Facilities*; R: *Radon Emissions from Phosphogypsum Stacks*; Subpart T: *Radon*

Emissions from the Disposal of Uranium Mill Tailings; and Subpart W: *Radon Emissions from Operating Mill Tailings*.

- And last, under the Safe Drinking Water Act (SDWA), discussed above, EPA sets health-based standards on the levels of certain radionuclides in drinking water. After much litigation, in 2000 EPA revised an outdated set of standards that had been in place since the late 1970s and set new monitoring provisions for community water systems (CWS). The current standards are: Combined radium 226/228 of 5 pCi/L; a gross alpha standard for all alphas of 15 pCi/L (not including radon and uranium); a combined standard of 4 mrem/year for beta emitters; and a the MCL for uranium at 30 µg/L.

In short, the Proposal could seriously damage EPA's ability to administer the AEA and protect the public from radiation. Yet the Proposal fails to cite the statute at all.

VI. The cited sources do not support—and in fact contradict—the Proposal

These comments have discussed the failure of statutory authorities cited by EPA to provide any legal support or authorization whatsoever for the Proposal and its approaches. The Proposal also cites various executive orders, memoranda, reports, guidelines and the like with the suggestion or implication that these materials somehow provide support for the Proposal. They do not, and thus the Proposal violates the law. *See, e.g., Public Citizen Health Research Group v. Tyson*, 796 F.2d 1479 (D.C. Cir. 1986) (reversing and remanding agency decision to carry out last-minute directive by White House Office of Management and Budget without any apparent justification in the administrative record).

First, of course, EPA's proposed rulemakings must be authorized by federal statutes. Executive orders provide no legal authority for agency rulemakings. Nor may executive orders contradict or alter legal responsibilities an agency has under federal statutes or justify arbitrary and capricious agency action. Equally obvious, memoranda, reports, guidelines and the like provide no legal authority for agency rulemakings, nor may they justify arbitrary and capricious agency action. *See, e.g., Medellin v. Texas*, 552 U.S. 491, 524 (2008) ("The President's authority to act, as with the exercise of any governmental power, 'must stem either from an act of Congress or from the Constitution itself.'" (citation omitted)); *Chrysler Corp. v. Brown*, 441 U.S. 281, 302 (1979) ("The legislative power of the United States is vested in the Congress, and the exercise of quasi-legislative authority by governmental departments and agencies must be rooted in a grant of such power by the Congress and subject to limitations which that body imposes."). Second, an agency's proposed rulemaking may not be at odds with federal statutes, may not be creatures of the agency's imagination or policy preferences, and may not be otherwise arbitrary, capricious or inconsistent with law. The Proposal fails on all of these scores.

This section of our comments explains how these additional materials cited by EPA in the Proposal (1) fail to provide any support for the Proposal, on scientific, technical, policy, logical or legal grounds; and (2) actually undermine the Proposal—contradicting its approaches and assumptions, directly or indirectly—and demonstrate further that the Proposal is unsupported, arbitrary, capricious and otherwise inconsistent with law.

A. Footnote 1

The Proposal states, “The best available science must serve as the foundation of EPA’s regulatory actions.” 83 Fed. Reg. at 18,769. It cites and quotes from Executive Order 13,563, 76 Fed. Reg. 3,821 (Jan. 21, 2011): “Our regulatory system must protect public health, welfare, safety, and our environment while promoting economic growth, innovation, competitiveness, and job creation. It must be based on the best available science.” 83 Fed. Reg. at 18,769 n.1.

The executive order, issued by President Obama, not only does not support the Proposal, it directly undermines the Proposal. There is no suggestion in the cited Obama Executive Order, or in any contemporaneous or subsequent actions by Obama administration federal agencies, that “best available science” means or meant that science underlying an agency’s actions must be publicly available in a manner sufficient for independent validation, nor that “pivotal regulatory science” has any meaning akin to the proposed uses in proposed § 30.3 *See* 83 Fed. Reg. at 18,773 (“dose response data and models” and “pivotal regulatory science”).

To the contrary, no previous administration has conditioned any notion of “best available science” on the public availability of underlying data, or on the concepts behind the invented term, “pivotal regulatory science.” EPA previously routinely used and considered science and studies for which the underlying data was not publicly available as examples of the “best available science.” EPA did so for proposed and final regulations, along with other final agency actions, reports, studies and the like. EPA’s use and consideration of such science was validated by EPA’s science advisory bodies, the National Academy of Science, the Science Advisory Board, and other scientific organizations. *See supra* II.B. And explained in section IX, the Proposal does not provide sufficient explanation for its departure from this past practice.

Moreover, the Executive Order also says that “before issuing a notice of proposed rulemaking,” the “agency shall seek the views of those who are likely to be affected.” 76 Fed. Reg. 3,821. This Proposal failed to do so, despite its wide-reaching effect. A May 12, 2018, Memorandum to Members of the Chartered Science Advisory Board (SAB) and SAB Liaisons from the Chair of SAB Work Group explains: “The proposed rule deals with issues of scientific practice and proposes constraints that the agency may apply to the use of scientific studies in particular contexts. As such, this rule deals with a myriad of scientific issues for which the Agency should seek expert advice from the Science Advisory Board.” *Preparations for Chartered Science Advisory Board (SAB) Discussions of Proposed Rule: Strengthening Transparency in Regulatory Science RIN (2080-AA14)*, May 12, 2018.¹⁹⁵ The Memorandum further explains that “the precise design of the rule appears to have been developed without a public process for soliciting input from the scientific community.”¹⁹⁶ This is contrary to Executive Order 13,563.

¹⁹⁵ *Preparations for Chartered Science Advisory Board (SAB) Discussions of Proposed Rule: Strengthening Transparency in Regulatory Science RIN (2080-AA14)*, May 12, 2018, [https://yosemite.epa.gov/sab/sabproduct.nsf/E21FFAE956B548258525828C00808BB7/\\$File/WkGrp_memo_2080-AA14_final_05132018.pdf](https://yosemite.epa.gov/sab/sabproduct.nsf/E21FFAE956B548258525828C00808BB7/$File/WkGrp_memo_2080-AA14_final_05132018.pdf).

¹⁹⁶ *Id.* at 3.

A June 28, 2018, letter from the Chair of the SAB Board, Dr. Michael Honeycutt, on behalf of the SAB, furthers this point.¹⁹⁷ That letter explains that on May 31, 2018, “the full SAB agreed with the Work Group that the proposed rule merits review by the Board and discussed the scientific issues that should be considered.”¹⁹⁸ The letter reiterates that “the precise design of the proposed rule appears to have been developed without a public process for soliciting input specifically from the scientific community.”¹⁹⁹ This letter underscores that the Proposal is inconsistent with Executive Order 13,563.

B. Footnote 2

The Proposal cites the 2009 Presidential Memorandum for the Heads of Executive Departments and Agencies on Scientific Integrity in support of the proposition that “[e]nhancing the transparency and validity of the scientific information relied upon by EPA strengthens the integrity of EPA’s regulatory actions and its obligation to ensure the Agency is not arbitrary in its conclusions. By better informing the public, the Agency is enhancing the public’s ability to understand and meaningfully participate in the regulatory process.” 83 Fed. Reg. at 18,769 (citing Memorandum for the Heads of Executive Departments and Agencies, Mar. 9, 2009). The Proposal points to the section of the 2009 Memo that states, “If scientific and technological information is developed and used by the Federal Government, it should ordinarily be made available to the public. To the extent permitted by law, there should be transparency in the preparation, identification, and use of scientific and technological information in policymaking.” *Id.* n.2.

First, the cited sentence refers to information developed and used by the federal government, but EPA has long held that it may use published scientific studies without obtaining the underlying raw data. *See, e.g.*, Initial Brief of Respondent United States Environmental Protection Agency at 47–48, *Coalition of Battery Recyclers Ass’n v. EPA*, No. 09-1011 (D.C. Cir. January 19, 2010), ECF No. 1226234 (explaining that EPA does not have an obligation to obtain and docket raw data from scientific studies it uses). The Proposal has pointed to no instances where the EPA was not transparent in the preparation, identification, and use of scientific information, including published peer reviewed scientific studies. Second, the cited sentence takes a more nuanced approach than the Proposal and recognizes exceptions even for the information developed and used by the federal government.

Importantly, the 2009 Presidential Memo also states in the sentence immediately preceding the quotation singled out by EPA, “Political officials should not suppress or alter scientific or technological findings and conclusions.” Memorandum for the Heads of Executive Department and Agencies on Scientific Integrity, 74 Fed. Reg. 10,671 (Mar. 9, 2009). The

¹⁹⁷June 28, 2018, Letter to Scott Pruitt re Science Advisory Board (SAB) Consideration of EPA Proposed Rule: Strengthening Transparency in Regulatory Science, [https://yosemite.epa.gov/sab/sabproduct.nsf/LookupWebReportsLastMonthBOARD/4ECB44CA28936083852582BB004ADE54/\\$File/EPA-SAB-18-003+Unsigned.pdf](https://yosemite.epa.gov/sab/sabproduct.nsf/LookupWebReportsLastMonthBOARD/4ECB44CA28936083852582BB004ADE54/$File/EPA-SAB-18-003+Unsigned.pdf).

¹⁹⁸ *Id.* at 2.

¹⁹⁹ *Id.* at 3.

Proposal, far from preserving the integrity of science, attempts to suppress established scientific findings and conclusions in the name of transparency.

The Proposal's citation to the 2009 Presidential Memo misconstrues the Memo's aims by cherry-picking a single sentence and ignoring the remainder. While the Memo emphasizes the importance of transparency and validity of scientific information, it in no way supports the Proposal's use of transparency to justify the suppression of scientific findings. Unlike the Proposal, the 2009 Presidential Memo adopts a nuanced view of scientific integrity that balances transparency with other considerations, such as privacy and avoiding scientific censorship. To this end, several statements in the 2009 Presidential Memo on Scientific Integrity directly undercut the Proposal:

(c) When scientific or technological information is considered in policy decisions, the information should be subject to well-established scientific processes, including peer review where appropriate, and each agency should appropriately and accurately reflect that information in complying with and applying relevant statutory standards . . .

Id. The Proposal seeks to preclude scientific information that has been subject to well-established scientific processes, including peer review. The Proposal also seeks to upend compliance and application of the relevant statutory standards. *See* section III.

(d) Except for information that is properly restricted from disclosure under procedures established in accordance with statute, regulation, Executive Order, or Presidential Memorandum, each agency should make available to the public the scientific or technological findings or conclusions considered or relied on in policy decisions . . .

Id. The Memorandum requires agencies to make available the scientific findings or conclusions, and even that requirement has exceptions. The Proposal would arbitrarily exclude consideration of relevant scientific findings and conclusions if the underlying data is not publicly available.

The 2009 Presidential Memorandum for the Heads of Executive Departments and Agencies on Scientific Integrity does not support EPA's proposed actions. The Proposal does not enhance transparency and validity of scientific information relied upon by EPA. It requires the agency to ignore valid scientific studies in its decision making and thus will lead to arbitrary results and weaken the integrity of EPA's actions.

C. Footnote 3

The Proposal states that it is consistent "with the principles underlying the Administrative Procedure Act and programmatic statutes that EPA administers to disclose to the public the bases for agency rules and to rationally execute and adequately explain agency actions." 83 Fed. Reg. at 18,769. In a footnote to this sentence the Proposal states:

EPA has the authority to establish policies governing its reliance on science in the administration of its regulatory functions. Historically, EPA has not consistently observed the policies underlying this Proposal, and courts have at times upheld EPA's use non-public data in support of its regulatory actions. *See Coalition of Battery Recyclers Ass'n v. EPA*, 604 F.3d 613, 623 (D.C. Cir. 2010); *American Trucking Ass'ns v. EPA*, 283 F.3d

355, 372 (D.C. Cir. 2002). EPA is proposing to exercise its discretionary authority to establish a policy that would preclude it from using such data in future regulatory actions.

83 Fed. Reg. at 18,769 n.3.

EPA recognizes the cited cases contradict the proposed rule but attempts to waive them away and asserting it has discretionary authority to do the opposite of what the D.C. Circuit decided. EPA's consideration of peer reviewed scientific studies that do not have public data is the norm, required by the Administrative Procedure Act and the programmatic statutes that EPA administers. *See* sections II, IV, & V. The proposed departure from this norm to preclude the use of such data, which the Proposal makes explicit in this footnote, is not within EPA's discretion and would violate the programmatic statutes. As explained above, nothing the Proposal provides EPA with authority to do so. The Proposal's citations to two cases that contradict its proposed actions does not support the unexplained assertion of authority.

The court in *American Trucking* stated:

More generally, we agree with EPA that requiring agencies to obtain and publicize the data underlying all studies on which they rely "would be impractical and unnecessary." Particulate Matter NAAQS, 62 Fed. Reg. at 38,689. As EPA persuasively stated in denying Petitioners' original request for the information:

If EPA and other governmental agencies could not rely on published studies without conducting an independent analysis of the enormous volume of raw data underlying them, then much plainly relevant scientific information would become unavailable to EPA for use in setting standards to protect public health and the environment.... [S]uch data are often the property of scientific investigators and are often not readily available because of ... proprietary interests ... or because of [confidentiality] arrangements [with study participants].

Am. Trucking Associations, Inc., 283 F.3d at 372.

In *Coalition of Battery Recyclers*, the D.C. Circuit cited *American Trucking*, explaining that the court had "rejected the notion that EPA had improperly failed to obtain and make public data underlying studies on which it had relied during a NAAQS rulemaking, holding that '[t]he Clean Air Act imposes no such obligation' and that 'requiring agencies to obtain and publicize the data underlying all studies on which they rely would be impractical and unnecessary.'" 604 F.3d at 623 (citations omitted). The court noted "that raw data often is unavailable due to proprietary interests of a study's scientific investigators or confidentiality agreements with study participants." *Id.*

The Proposal at least concedes that D.C. Circuit law does not support its actions. Yet EPA not explain how the Proposal is consistent with the principles underlying the Administrative Procedure Act and programmatic statutes that EPA administers. To the extent EPA believes this to be true, it should withdraw the Proposal and explain its belief.

D. Footnotes 4 & 5

The Proposal states that it is consistent with Executive Orders 13,777 and 13,783. 83 Fed. Reg. at 18,769.

The Proposal states that “[r]egulatory reform efforts shall attempt to identify ‘those regulations that rely in whole or in part on data, information, or methods that are not publicly available or that are insufficiently transparent to meet the standard for reproducibility.’” 83 Fed. Reg. at 18,769 n.4 (quoting Exec. Order No. 13,777, 82 Fed. Reg. 12,285, 12,286 (Mar. 1, 2017)). President Trump’s Executive Order No. 13,777 requires Regulatory Reform Task Forces to evaluate existing regulations and “make recommendations to the agency head regarding their repeal, replacement, or modification, consistent with applicable law.” 82 Fed. Reg. at 12,286. The Executive Order requires the task force to identify regulations that, among other things, “impose costs that exceed benefits,” and “create a serious inconsistency or otherwise interfere with regulatory reform initiatives and policies.” *Id.* The Proposal does not identify any regulations that it believes should be repealed, replaced, or modified, consistent with applicable law. Instead, the Proposal creates a new burdensome regulation. Notwithstanding EPA’s unsupported assertion that it “believes the benefits of this proposed rule justify the costs,” 83 Fed. Reg. at 18,772, the proposed rule will impose costs that exceed benefits, *see* section II.D & E. The inconsistencies within the Proposal are overwhelming (for one of the many examples, the unexplained willingness to consider certain scientific studies in some contexts while excluding the consideration of those same studies in other contexts, *see* section XI). And the Proposal, as explained in sections IV. & V., is not consistent with applicable laws. Rather than being consistent with President Trump’s Executive Order, the proposed rule contradicts it.

Regarding President Trump’s Executive Order 13,783, the Proposal quotes, “It is also the policy of the United States that necessary and appropriate environmental regulations comply with the law, are of greater benefit than cost, when permissible, achieve environmental improvements for the American people, and are developed through transparent processes that employ the best available peer-reviewed science and economics.” 83 Fed. Reg. at 18,769 n.5 (quoting Exec. Order No. 13,783, 82 Fed. Reg. 16,093 (Mar. 31, 2017)). EPA presumably believes the proposed rule is consistent with the language “transparent processes that employ the best available peer-reviewed science and economics.” But that language, and the rest of the quotation, contradicts the Proposal. As explained throughout these comments, the Proposal would prevent EPA from promulgating regulations that comply with the law, would cost more than any benefit it could achieve, and would preclude the use of the best available peer-reviewed science.

E. Footnote 6 & 15

The Proposal cites to the 2002 OMB Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies to justify the Proposal’s focus on transparency, 83 Fed. Reg. at 18,769 n.6, and to support its contention that the guidelines “require” that “regulators to ensure that key findings are valid and credible,” *id.* at 18,770 n.15. Despite these citations, the Guidelines do not support EPA’s proposal to preclude the consideration of peer-reviewed scientific studies. *See Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information*

Disseminated by Federal Agencies, 67 Fed. Reg. 8,452, 8,454 (Feb. 22, 2002). The Proposal points to no agency finding that it believes is invalid and not credible. Rather, the Proposal will cause EPA to reach findings that are invalid and not credible because the agency will make these findings without consideration of the best available science. The Proposal contradicts the Guidelines.

The 2002 OMB Guidelines contain many statements that undercut the Proposal on their face.

Text of 2002 OMB Guidelines
“As a general matter, in the scientific and research context, we regard technical information that has been subjected to formal, independent, external peer review as presumptively objective. . . . An example of a formal, independent, external peer review is the review process used by scientific journals.” 67 Fed. Reg. at 8,454. ²⁰⁰
Analysis
While the 2002 OMB Guidelines recognize technical information that has been subjected to formal, independent, external peer review as “presumptively objective,” the Proposal upends this idea and forces the EPA to regard such technical information as invalid and not worthy of consideration.
Text of 2002 OMB Guidelines
“‘Agencies may identify, in consultation with the relevant scientific and technical communities, those particular types of data that can practicably be subjected to a reproducibility requirement, given ethical, feasibility, or confidentiality constraints.’ Further, as we state in our expanded definition of ‘reproducibility’ . . . ‘If agencies apply the reproducibility test to specific types of original or supporting data, the associated guidelines shall provide relevant definitions of reproducibility (e.g., standards for replication of laboratory data).’ OMB urges caution in the treatment of original and supporting data because it may often be impractical or even impermissible or unethical to apply the reproducibility standard to such data. For example, it may not be ethical to repeat a ‘negative’ (ineffective) clinical (therapeutic) experiment and it may not be feasible to replicate the radiation exposures studied after the Chernobyl accident. When agencies submit their draft agency guidelines for OMB review, agencies should include a description of the extent to which the reproducibility standard is applicable and reflect consultations with relevant scientific and technical communities that

²⁰⁰ This statement is qualified by a section on the sufficiency of peer review: “Some comments argued that journal peer review should be adequate to demonstrate quality, even for influential information that can be expected to have major effects on public policy. OMB believes that this position overstates the effectiveness of journal peer review as a quality-control mechanism. Although journal peer review is clearly valuable, there are cases where flawed science has been published in respected journals.” *Id.* at 8,455. Nonetheless, nothing in the guidelines suggest that peer-reviewed science can be wholesale ignored simply because the underlying data cannot be made public.

<p>were used in developing guidelines related to applicability of the reproducibility standard to original and supporting data.” <i>Id.</i> at 8,456.</p>
<p>Analysis</p>
<p>The OMB Guidelines emphasize the ethical, feasibility, and confidentiality constraints associated with reproducing particular types of studies, and underscore the importance of consultation with relevant scientific and technical communities in the development of reproducibility requirements. The Proposal recklessly ignores these precautions, subjecting “regulatory science” to requirements that the underlying data be made publicly available in a manner sufficient for independent validation. The Proposal does so without consultation of relevant scientific communities and without concern as to whether such data can practicably be subjected to such requirements. As explained in section II, the data underlying many scientific studies affected by the Proposal cannot be made publicly available given the ethical, feasibility, and confidentiality concerns addressed by the OMB Guidelines.</p>
<p>Text of 2002 OMB Guidelines</p>
<p>“With regard to original and supporting data related thereto, agency guidelines shall not require that all disseminated data be subjected to a reproducibility requirement. Agencies may identify, in consultation with the relevant scientific and technical communities, those particular types of data that can practicable [sic] be subjected to a reproducibility requirement, given ethical, feasibility, or confidentiality constraints. It is understood that reproducibility of data is an indication of transparency about research design and methods and thus a replication exercise (i.e., a new experiment, test, or sample) shall not be required prior to each dissemination.” <i>Id.</i> at 8,460.</p>
<p>Analysis</p>
<p>The Guidelines state that reproducibility of data is one indication of transparency but does not suggest that reproducibility is the <i>only</i> indication of transparency, nor does it suggest that agencies should preclude non-reproducible, non-publicly available scientific studies from agency consideration, as the Proposal envisions. Contrary to the Proposal, the Guidelines state that agencies should not require data to be subjected to a reproducibility requirement.</p>
<p>Text of 2002 OMB Guidelines</p>
<p>“With regard to analysis of risks to human health, safety and the environment maintained or disseminated by the agencies, agencies shall either adopt or adapt the quality principles applied by Congress to risk information used and disseminated pursuant to the Safe Drinking Water Act Amendments of 1996 (42 U.S.C. 300g– 1(b)(3)(A) & (B)). Agencies responsible for dissemination of vital health and medical information shall interpret the reproducibility and peer-review standards in a manner appropriate to assuring the timely flow of vital information from agencies to medical providers, patients, health agencies, and the public. Information quality standards may be waived temporarily by agencies under urgent situations</p>

(e.g., imminent threats to public health or homeland security) in accordance with the latitude specified in agency-specific guidelines.” <i>Id.</i>
Analysis
The Guidelines recognize the ethical, feasibility, and confidentiality constraints of reproducing certain types of data. The Proposal ignores these issues. Furthermore, the Guidelines recommends that risk assessments related to human health, safety, and the environment are subject to quality principle standards established by Congress through the SDWA, which differ from the Proposal.
Text of 2002 OMB Guidelines
“Even in a situation where the original and supporting data are protected by confidentiality concerns, or the analytic computer models or other research methods may be kept confidential to protect intellectual property, it may still be feasible to have the analytic results subject to the reproducibility standard. For example, a qualified party, operating under the same confidentiality protections as the original analysts, may be asked to use the same data, computer model or statistical methods to replicate the analytic results reported in the original study. <i>See, e.g., ‘Reanalysis of the Harvard Six Cities Study and the American Cancer Society Study of Particulate Air Pollution and Mortality,’ A Special Report of the Health Effects Institute’s Particle Epidemiology Reanalysis Project, Cambridge, MA, 2000.</i> ” <i>Id.</i> at 8,456.
Analysis
Unlike the Proposal, the OMB Guidelines recognize that studies have been able to be reproduced even without publicly disclosing all their data. Although the OMB Guidelines positively discuss this option, the Proposal would preclude EPA from considering both the initial study and the reanalysis study from consideration in regulatory decision making.

The Proposal’s concerns about transparency are addressed by the Guidelines and do not justify precluding consideration of the best available science. The 2002 OMB Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies does not support the Proposal. *See also* section II.A.

F. Footnote 7

The Proposal claims that it is consistent with the OMB Memorandum 13-13: Open Data Policy—Managing Information as an Asset, which

requires agencies to collect or create information in a way that supports downstream information processing dissemination activities. This includes using machine-readable and open formats, data standards, and common core and extensible metadata for all new information creation and collection efforts. It also includes agencies ensuring information stewardship through the use of open licenses and review of information for privacy, confidentiality, security, or other restrictions to release.

83 Fed. Reg. at 18,770 n.7. However, the Open Data Policy required that agencies balance the “value of openness against the cost of making those data public.” 2013 OMB Memorandum for the Heads of Executive Departments and Agencies on Open Data Policy at 6. Included in the costs of making those data public is an individual’s right to privacy, which the agencies are required to consider when releasing data. *Id.* at 10. The EPA’s Proposal does not balance these values, and instead pursues public availability of data in the realm of dose response data at all costs.

The Open Data Policy Memorandum contains a number of passages that conflict with, rather than support, the Proposal:

Nothing in this Memorandum shall be construed to affect existing requirements for review and clearance of pre-decisional information by OMB relating to legislative, budgetary, administrative, and regulatory materials. Moreover, nothing in this Memorandum shall be construed to reduce the protection of information whose release would threaten national security, invade personal privacy, breach confidentiality or contractual terms, violate the Trade Secrets Act, violate other statutory confidentiality requirements, or damage other compelling interests.

Id. at 12. The Open Data Policy Memorandum specifically called out the problem of exposing personally identifiable information:

As defined in OMB Memorandum M-1 0-23, ‘personally identifiable information’ (PII) refers to information that can be used to distinguish or trace an individual’s identity, either alone or when combined with other personal or identifying information that is linked or linkable to a specific individual. The definition of PII is not anchored to any single category of information or technology. Rather, it requires a case-by-case assessment of the specific risk that an individual can be identified. In performing this assessment, it is important for an agency to recognize that non-PII can become PII whenever additional information is made publicly available (in any medium and from any source) that, when combined with other available information, could be used to identify an individual.

Id. at 4. The Memorandum expresses concern for individual privacy and notes the ease with which non-personally identifiable information can be used to identify an individual when combined with other publicly available information. The Proposal attempts to wave away these concerns with assertions that confidential information can be de-identified. 83 Fed. Reg. at 18,770–71. The problems with the Proposal’s emphasis of such “de-identification” techniques are explored further in section II.D. Far from weighing considerations of privacy, the Proposal would simply bar the use of studies based on confidential information that could not be de-identified.

Again, while the Memorandum makes clear that agencies must consider privacy, it says nothing about barring agency consideration of documents based on that analysis. Rather, the thrust of the Memorandum is ensuring that private information is not inadvertently publicly disclosed, and balancing that obligation with the presumption of government openness:

Agencies must incorporate privacy analyses into each stage of the information's life cycle. In particular, agencies must review the information collected or created for valid restrictions to release to determine whether it can be made publicly available, consistent with the *Open Government Directive*'s presumption in favor of openness, and to the extent permitted by law and subject to privacy, confidentiality pledge, security, trade secret, contractual, or other valid restrictions to release. If the agency determines that information should not be made publicly available on one of these grounds, the agency must document this determination in consultation with its Office of General Counsel or equivalent.

Id. at 9.

It is not clear to what extent EPA believes the Proposal is consistent with the Memorandum. But given the Memorandum's recognition of the various constraints on, and nuanced approach to, the release of data publicly, EPA's reliance on the Memorandum is misplaced. The Proposal's attempt to preclude consideration of peer reviewed science from regulatory review is not consistent with the Memorandum.

G. Footnotes 8 & 9

The Proposal states that it "builds upon prior EPA actions in response to government wide data access and sharing policies, as well as the experience of other federal agencies in this space." 83 Fed. Reg. at 18,770 (footnotes omitted). A footnote to this sentence generally lists the following, without any explanation of how the Proposal builds upon them:

Plan to Increase Access to Results of EPA-Funded Scientific Research; EPA Open Government Plan 4.0; Open Data Implementation Plan; EPA's Scientific Integrity Policy; Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Environmental Protection Agency.

83 Fed. Reg. at 18,769 n.8. Another footnote generally lists the following agencies, again without any explanation of how the Proposal builds upon their experience:

For example, see related policies from the National Science Foundation, National Institute of Science and Technology, the National Institutes of Health; and the U.S. Census Bureau, which provides secure access to data from several agencies in an environment that protects against unauthorized disclosure (<https://www.census.gov/fsrdc>).

Id. n.9. First, EPA does not explain what it means by "builds upon." The EPA's own Science Advisory Board Work Group states that the preamble to the rule does not "describe precisely how the [P]roposal builds on previous efforts to promote transparency such as the Information Quality Act and EPA's Information Quality Guidelines." May 12, 2018 Memorandum to Members of the Chartered Science Advisory Board (SAB). The citations are to large documents and policies and it is not clear what, if any, parts EPA believes the Proposal "builds upon." Second, none of these documents or agency policies bar, or recommend barring, the use of

studies in regulatory decision making, as the Proposal seeks to do. Third, many of these documents contradict, and support the withdrawal of, the Proposal.

The Proposal cites the 2016 EPA Plan to Increase Access to Results of EPA-Funded Scientific Research (“2016 EPA Plan”). 83 Fed. Reg. at 18,770 n.8. But the Proposal is a significant departure from the policy advanced in the 2016 EPA Plan. The Plan recognized that some data could not be made publicly available due to privacy and confidentiality concerns, acknowledged that peer-reviewed publications based on such data were no less scientifically valid, and specifically excluded this data from the purview of the plan to increase access. 2016 EPA Plan, at 4–6, 19. In contrast, the Proposal would prevent the EPA from considering a peer-reviewed publication related to dose response if its underlying data could not be made publicly available.

In fact, statements in the 2016 EPA Plan undercut the Proposal:

While the Agency strives to increase access to its research results, it recognizes, consistent with the OSTP Memo, that Federal agencies have a responsibility to protect confidentiality and personal privacy, respect proprietary interests and property rights, and balance between the value of providing long-term access and its associated costs. It is important to recognize that some research data cannot be made fully available to the public but instead may need to be made available in more limited ways, e.g., establishing data use agreements with researchers that respect necessary protections. *Whether research data are fully available to the public or available to researchers through other means does not affect the validity of the scientific conclusions from peer-reviewed research publications.*

Id. at 4–5 (emphasis added). The Proposal ignores the 2016 EPA Plan’s express acknowledgment that the validity of peer-reviewed scientific research does not depend on the public availability of the underlying data. Though the 2016 EPA Plan clearly states that research can be valid even if its data are not publicly available, the Proposal requires EPA to disregard this valid research.

The 2016 EPA Plan also makes clear that it does not restrict EPA’s ability to consider conclusions or data:

Nothing in this Plan shall be construed to impair or otherwise affect the authority granted by law to EPA. The validity of scientific conclusions drawn from research publications or their associated research data, or EPA’s ability to consider those conclusions and data in its actions, does not depend on compliance with this Plan.

Id. at 6. In contrast, the Proposal requires that EPA ignore certain conclusions or data that is not publicly available.

The 2016 EPA Plan also contains definitions that EPA claims to include in the Proposal, but, in reality, does not:

Scientific research data are defined, consistent with the OSTP Memo and 2 C.F.R. 200.315 as the digital recorded factual material commonly accepted in the scientific

community as necessary to validate research findings. *Research data* as used in this Plan are the digital scientific research data resulting from EPA-funded scientific research.

Id. at 19.

Consistent with the definition in 2 C.F.R. § 200.315(e)(3), research data does not include:

- Preliminary analyses, drafts of scientific papers, plans for future research, peer reviews, or communications with colleagues;
- Physical objects (e.g., laboratory samples);
- Trade secrets and commercial information;
- Materials necessary to be held confidential by a researcher until publication of results in a peer-reviewed journal; and
- *Personnel, medical, and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, such as information that could be used to identify a particular person in a research study.*

The following specific examples of scientific research are excluded from this Plan:

- Interim results or other preliminary scientific research data not used to generate the results in the final peer-reviewed publication;
- Preliminary scientific research documentation beyond the article, supplementary materials, and metadata regarding preliminary research plans, including preliminary study protocols and other preliminary *a priori* decisions (recognizing that preliminary plans may have changed during the research project);
- Information that may disclose intellectual property rights;
- National security and other classified information.

2016 EPA Plan, at 19 n.8 (emphasis added).

The Proposal purports to define Research Data in the same way as the 2016 EPA Plan, as that term is defined in the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, or at 2 C.F.R. § 200.315(e)(3). 83 Fed. Reg. at 18,773 (to be codified at 40 C.F.R. § 30.2). As explained above, in the 2016 EPA Plan, Research Data does not include, among other things, personnel and medical information, and similar information which would constitute an unwarranted invasion of personal privacy, such as information that could be used to identify a particular person in a research study. *See* 2 C.F.R. § 200.315(e)(3); 2016 EPA Plan, at 19 n.8. But puzzlingly, the Proposal does not apply this definition in the Proposal's text, instead creating a new term "dose response data and models" and only excluding from that definition "physical objects (like laboratory samples), drafts, and preliminary analyses." 83

Fed. Reg. at 18,773 (to be codified at 40 C.F.R. § 30.2). Not only is the Proposal inconsistent with the 2016 EPA Plan, but its definitions and application of those definitions conflict with the regulations it purports to apply.

The Proposal also ignores an important distinction between future EPA-funded research, which the agency presumably has more control over, and research funded by other entities or generated in the past, which EPA cannot control:

This Plan prospectively covers peer-reviewed scientific research publications in scholarly journals and digital research data that result from EPA-funded research. The Plan does not apply to research publications or research data generated from scientific research conducted prior to the implementation of the Plan.

2016 EPA Plan at 5. The Proposal, which overlooks this distinction and creates a conflicting definition of research data to preclude consideration of peer reviewed science in regulatory decision making, does not “build upon” the 2016 EPA Plan.

In short, there are key differences between the 2016 EPA Plan and the Proposal:

- The Plan in no way restricts the materials the EPA can consider in its decision-making, *id.* at 5, whereas the Proposal categorically prohibits the EPA from considering certain scientific publications.
- The Plan focuses on making EPA-funded research publications and data available to the public, *id.*, whereas the Proposal applies to research used by the EPA, no matter how it is funded.
- The Plan is forward-looking and does not apply to research conducted prior to implementation, *id.*, whereas the Proposal will, in practice, apply retroactively.
- The Plan applies broadly to EPA-funded publications and data that could be made publicly available, *id.*, with exceptions for sensitive data, while the Proposal specifically targets “dose response data and models” underlying “pivotal regulatory science.”

The Proposal also cites the Open Data Implementation Plan, but again it is not clear how EPA believes the Proposal builds upon that plan. The Open Data Implementation Plan notes exceptions that the Proposal does not adequately address:

The Open Data Policy requires agencies to develop and strengthen policies and processes to ensure that only appropriate data are released to the public and made available online. EPA must designate one of three ‘access levels’ for each data asset (public, restricted public and non-public). Exceptions to publicizing data may result from law, regulation or policy, which address privacy, confidentiality, security or other valid restrictions.

Open Data Implementation Plan, February 11, 2015, at 4. The Open Data Policy recognizes not all data can be made publicly available; it does not suggest that EPA disregard studies based on such data.

The Proposal then cites the Scientific Integrity Policy, which similarly does not support the Proposal. First, the Scientific Integrity Policy “describes the scope and role of a standing committee of Agency-wide scientific integrity officials,” which would presumably include issues the Proposal seeks to address. U.S. Environmental Protection Agency Scientific Integrity Policy, at 1. The Proposal makes no mention of this committee and does not suggest the committee was consulted in developing the Proposal. The Policy states, “To operate an effective science and regulatory agency like the EPA, it is also essential that political or other officials not suppress or alter scientific findings,” *id.*, and “policy makers shall not knowingly misrepresent, exaggerate, or downplay areas of scientific uncertainty associated with policy decisions,” *id.* at 5. Yet this is precisely what political officials at EPA are doing—the Proposal seeks to suppress well-established and peer-reviewed science from consideration by the agency. As explained in section III.G.4, the Proposal’s assertion, without any citations or support, that “there is growing empirical evidence of non-linearity in the concentration-response function for specific pollutants and health effects,” 83 Fed. Reg. at 18,770, is precisely the type of activity the Policy warned against.

The Proposal also cites EPA’s 2002 Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the EPA (OMB Guidance) to support its claim that the Proposal “builds upon prior EPA actions.” 83 Fed. Reg. at 18,770 n.8. Like many of the sources cited, the OMB Guidance does not support the Proposal and contradicts the Proposal’s aims:

When evaluating environmental problems or establishing standards, EPA must comply with statutory requirements and mandates set by Congress based on media (air, water, solid, and hazardous waste) or other environmental interests (pesticides and chemicals). Consistent with EPA’s current practices, application of these principles involves a “weight-of-evidence” approach that *considers all relevant information and its quality, consistent with the level of effort and complexity of detail appropriate to a particular risk assessment.*

OMB Guidance, at 21 (emphasis added). The Proposal’s categorical exclusion of non-publicly available “dose response data” is a departure from EPA’s previous practice, as described in the OMB Guidance, of weighing all relevant information. EPA reiterated this in exacting detail in other places in the OMB Guidance:

In the Agency’s development of “influential” scientific risk assessments, *we intend to use all relevant information*, including peer reviewed studies, studies that have not been peer reviewed, and incident information; evaluate that information based on sound scientific practices as described in our risk assessment guidelines and policies; and *reach a position based on careful consideration of all such information (i.e., a process typically referred to as the ‘weight-of-evidence’ approach).* In this approach, *a well-developed, peer-reviewed study would generally be accorded greater weight than information from a less well-developed study that had not been peer-reviewed, but both studies would be considered.* Thus the Agency uses a “weight-of-evidence” process when evaluating peer-reviewed studies along with all other information.

Id. at 26 (emphases added). The OMB Guidance consistently make clear that the agency will consider all scientific information (even non-peer reviewed science). Contrary to the OMB Guidance, the Proposal seeks to disseminate information that excludes consideration of relevant peer-reviewed science. The Proposal does not “build upon,” but rather directly conflicts with, the 2002 OMB Guidance.

H. Footnote 10

The Proposal states that it “takes into consideration the policies or recommendations of third party organizations who advocated for open science.” 83 Fed. Reg. at 18,770. It states that “These include policies and recommendations from: The Administrative Conference of the United States’ Science in the Administrative Process Project; National Academies’ reports on Improving Access to and Confidentiality of Research Data, Expanding Access to Research Data, and Access to Research Data in the 21st Century; the Health Effects Institute; Center for Open Science; members of the Risk Assessment Specialty Section of the Society of Toxicology, the Dose Response Section of the Society for Risk Analysis, and the International Society for Regulatory Toxicology and Pharmacology; and the Bipartisan Policy Center’s Science for Policy Project.” 83 Fed. Reg. at 18,770 n.10.

The Proposal does not explain what it means by “takes into consideration.” To the extent EPA is relying on these policies or recommendations, it has not provided enough information to evaluate that reliance and it must withdraw the Proposal. And consistent with the Proposal’s other citations, EPA points to nothing in the policies or recommendations from these third-party organizations that supports the Proposal’s preclusion of peer-reviewed science from consideration in regulatory decision making.

The Bipartisan Policy Center (BPC) states that “*the proposed rule is not consistent with the BPC report in substance or intent.*”²⁰¹ The BPC further explained that the Science for Policy Project “report never suggested excluding studies from consideration in developing regulation if data from those studies were not publicly available.”²⁰² The BPC concludes “EPA must use the best available science in the most effective way to truly fulfill its mission of protecting human health and the environment.”²⁰³

The Proposal’s “consideration” of these works can be summed up by the author of the Administrative Conference of the United States’ Science in the Administrative Process Project Report, and member of the seven-author panel that produced the Bipartisan Policy Center’s Science for Policy Project:

“I really don’t know what the problem is that they think they’re fixing,” she said, adding that many of her co-authors “would laugh and hoot” at some of the scientific ideas expressed in the rule.

²⁰¹ Grumet, J. 2018. Bipartisan Policy Center comments on “Strengthening Transparency in Regulatory Science,” Docket ID No. EPA-HQ-OA-2018-0259, May 22, <https://www.regulations.gov/document?D=EPA-HQ-OA-2018-0259-0670>.

²⁰² *Id.*

²⁰³ *Id.*

“They don’t adopt any of our recommendations, and they go in a direction that’s completely opposite, completely different,” she told me after reading the rule. “They don’t adopt any of the recommendations of any of the sources they cite. I’m not sure why they cited them.”²⁰⁴

The Proposal *rejects* the policies or recommendations of these third-party organizations. The policies and recommendations of these third-party organizations do not support the EPA’s proposal to preclude the consideration of peer-reviewed studies in regulatory decision making. *See also* section II.E.

I. Footnotes 11 & 12

The Proposal states, “These policies are informed by the policies recently adopted by some major scientific journals, spurred in some part by the ‘replication crisis.’” 83 Fed. Reg. at 18,770 (footnotes omitted). The Proposal cites, as examples “related policies from the Proceedings of the National Academy of Sciences, PLOS ONE, Science, and Nature,” *id.* n.11, as well as articles from three of those journals, plus the Economist, a magazine-format newspaper, *id.* n.12.

It’s not clear to what extent, if any, the Proposal considered or relied on the cited policies. The scientific journal policies appear to have been considered secondarily, to the extent they informed the other organizations’ policies. As explained throughout these comments, the third-party organizations’ policies offer no support for the Proposal. Importantly, all the cited scientific journal policies are for prospective publication, do not suggest disregarding consideration of studies without public data, and have exceptions to protect confidential or private information. *See also* section II & II.E.

The Editors-in-Chief of the Science family of journals and Nature, the Executive Editor of Public Library of Science (PLOS) Journals, the Interim Editor-in-Chief of Proceedings of the National Academy of Sciences, and the Vice President of Editorial/Acting Editor-in-Chief of Cell Press/Cell issued a joint statement on the Proposal:

We are writing in response to a proposed rule announced by the Environmental Protection Agency (EPA) in a 24 April 2018 press release (1). The release reads, “The rule will ensure that the regulatory science underlying Agency actions is fully transparent, and that underlying scientific information is publicly available in a manner sufficient for independent validation.”

Data sharing is a feature that contributes to the robustness of published scientific results. Many peer-reviewed scientific journals have recently adopted policies that support data sharing, consistent with the Transparency and Openness Promotion (TOP) standards. These standards, however, recognize the array of workflows across scientific fields and make the case for data sharing at different levels of stringency; in not every case can all

²⁰⁴ Robinson Meyer, *Scott Pruitt’s New Rule Could Completely Transform the EPA*, The Atlantic, April 25, 2018, <https://www.theatlantic.com/science/archive/2018/04/how-the-epas-new-secret-science-rule/558878/>.

data be fully shared. Exceptional circumstances, where data cannot be shared openly with all, include data sets featuring personal identifiers.

We support maintaining the rigor of research published in our journals and increasing transparency regarding the evidence on which conclusions are based. As part of these goals, we require that all data used in the analysis must be available to any researcher for purposes of reproducing or extending the analysis. Importantly, the merits of studies relying on data that cannot be made publicly available can still be judged. Reviewers can have confidential access to key data and as a core skill, scientists are trained in assessing research publications by judging the articulation and logic of the research design, the clarity of the description of the methods used for data collection and analysis, and appropriate citation of previous results.

*It does not strengthen policies based on scientific evidence to limit the scientific evidence that can inform them; rather, it is paramount that the full suite of relevant science vetted through peer review, which includes ever more rigorous features, inform the landscape of decision making. Excluding relevant studies simply because they do not meet rigid transparency standards will adversely affect decision-making processes.*²⁰⁵

And John P.A. Ioannidis, the author of one of the articles the Proposal cites regarding the alleged “replication crisis” that the Proposal mentions but does not explain, *see* section II., published an editorial in response to the Proposal.²⁰⁶ The article is informatively titled: “All science should inform policy and regulation,” and not surprisingly, it does not support the Proposal. Ioannidis states “[i]f the proposed rule is approved, science will be practically eliminated from all decision-making processes. Regulation would then depend uniquely on opinion and whim.” *Id.* Ioannidis explains that “we should recognize that most of the raw data from past studies are not publicly available,” and

[s]ome deficiencies may be unavoidable. For example, researchers cannot ethically randomize people to harmful exposures in order to tackle confounding, nor violate informed consent agreements that prohibit open sharing of private data from past studies.

*Id.*²⁰⁷ Ioannidis goes on to say that “simply ignoring science that has not yet attained such standards, is a nightmare,” and “we would see governments discarding science at massive scale because of perceived imperfections and impurities.” *Id.*

²⁰⁵ Jeremy Berg, et al., Letter, “Joint statement on EPA proposed rule and public availability of data,” *Science*, Vol. 360, Issue 6388, 4 May 2018, available at <http://science.sciencemag.org/content/360/6388/eaau0116> (emphasis added).

²⁰⁶ Ioannidis, J. P., “All science should inform policy and regulation,” *PLoS Medicine* 15(5) (May 3, 2018), <http://journals.plos.org/plosmedicine/article?id=10.1371/journal.pmed.1002576>.

²⁰⁷ As explained in section III., the Proposal would preclude the consideration of many past studies whose raw data are not and cannot be made available. This issue is also described in the May 12, 2018 SAB Memo discussed above: “For studies published many years ago, it may not be feasible to deliver public access to data and analytic methods.” Whatever strategies the Proposal suggests EPA consider in the future to address confidential and personal information (and the flaws with a proposed rule suggesting a key issue will be solved sometime in the future

Ioannidis also notes that “we have extremely strong evidence that the tobacco pandemic is devastating; that the MMR vaccine is generally safe; that climate change is happening; and that air pollution is a major health hazard,” in contrast to “most dietary advice one might hope to give about specific nutrients.” *Id.* The subjects that Ioannidis explains have strong evidence are the issues EPA is responsible for addressing that the Proposal seeks to discredit. Ioannidis further notes:

For example, the pivotal research on the health effects of air pollution is particularly strong. The Six Cities and American Cancer Society studies are exemplary large-scale investigations, with careful application of methods, detailed scrutiny of measurements, replication of findings, and, importantly, detailed re-analysis of results and assessment of their robustness by entirely independent investigators. The re-analysis and sensitivity analyses were conducted by the Health Effects Institute that was funded by stakeholders some of whom may have desired to see opposite conclusions. It would be wonderful, if in the future the same rigorous re-analysis and replication standards could become the standard for all important areas of research that can inform policy.

Id. (footnotes omitted).

The Proposal does not explain how it takes into consideration the sources cited in footnotes 10–12. Nevertheless, these major scientific journal policies and articles offer no support for EPA’s Proposal to preclude consideration of scientific studies from regulatory decision making.

J. Footnote 13

When seeking comment on how to ensure that more data is available over time for public validation, the Proposal states “EPA has not consistently followed previous EPA policy (e.g., EPA’s Scientific Integrity Guidance, referenced above) that encouraged the use of non-proprietary data and models.” 83 Fed. Reg. at 18,770 n.13. The Proposal provides no support for the idea that EPA has not consistently followed previous EPA policy that encouraged the use of non-proprietary data and models. To the extent EPA believes this is a problem, EPA should withdraw the Proposal and explain what policies it has not followed and how it has not followed those policies. EPA should present options to address those alleged shortcomings. At all events, this general reference to previous EPA policy, just like the references in Footnote 8 discussed above, does not support the Proposal. *See also* sections IV.J & VI.C.

K. Footnote 14

The Proposal states that “EPA’s regulatory science should be consistent with the Office of Management and Budget’s Final Information Quality Bulletin for Peer Review.” 83 Fed. Reg. at 18,770. For this proposition, the Proposal links to a one-page Memorandum on the “Issuance of OMB’s ‘Final Information Quality Bulletin for Peer Review.’” *Id.* n.14 (citing

described below), EPA does not present any strategies for dealing with past studies. This is another reason why the Proposal should be withdrawn.

<https://www.whitehouse.gov/wp-content/uploads/2017/11/2005-M-05-03-Issuance-of-OMB's-Final-Information-Quality-Bulletin-for-Peer-Review-December-16-2004.pdf>). This Memorandum does not contain enough information to determine whether or how the Proposal is consistent with it. The Memorandum merely states that the Bulletin “establishes government-wide guidance aimed at enhancing the practice of peer review of government science documents,” and that “[p]eer review is an important procedure used by the scientific community to ensure that the quality of published information. Peer review can increase the quality and credibility of the scientific information generated across the federal government.” Memorandum on the “Issuance of OMB’s ‘Final Information Quality Bulletin for Peer Review.’” Nothing in the Memorandum or EPA’s description of it supports the Proposal to exclude peer reviewed science from consideration in regulatory decision making.

Similarly, nothing in the Bulletin supports the Proposal either. The Proposal does not point to any peer-reviewed studies without publicly available data that reached incorrect conclusions. The Proposal also does not explain how the current peer review process EPA uses for disseminating information conflicts with the Bulletin. And the Bulletin says nothing about standardized test methods, consistent data evaluation procedures, or good laboratory practices, which the EPA proposes to use in the prior sentence. As explained in throughout these comments and in sections VII., VII, & XV, EPA does not provide enough information on what EPA’s regulatory science would look like under the Proposal to determine if it would be consistent with the Bulletin. If EPA has a plan for how it intends to make its regulatory science consistent with the Bulletin, the agency has not included it in the Proposal. The Proposal should be withdrawn.

The Proposal’s regulatory text states, “EPA shall conduct independent peer review on all pivotal regulatory science used to justify regulatory decisions, consistent with the requirements of the OMB Final Information Quality Bulletin for Peer Review (70 FR 2664) and the exemptions described therein.” 83 Fed. Reg. at 18,774. As explained in section XV, this section is far too vague for the reader to understand what EPA intends and the Proposal provides no justification for why this vague requirement is necessary. The Proposal fails to provide fair notice or justification for its “independent peer review” requirement and before EPA could adopt any final rule with this requirement, EPA must propose a new rule with regulatory text and supporting legal, factual, scientific, and technical information providing fair notice to the public.

L. Footnotes 16-22

The Proposal recognizes that there are concerns about access to confidential or private information. The Proposal cites to various agencies and documents to support its general and unexplained, belief “that concerns about access to confidential or private information can, in many cases, be addressed through the application of solutions commonly in use across some parts of the Federal government.” 83 Fed. Reg. at 18,770. Tellingly, EPA concedes that concerns about access to confidential or private information cannot always be addressed, but says nothing about these instances or how it intends to evaluate them. For the times that EPA believes concerns about access to confidential or private information can be addressed, the Proposal does not explain how it plans to do so nor address the costs. The Proposal merely directs readers to general and vague statements from different contexts. The Proposal fails to provide fair notice or justification of what EPA would do to address issues with confidential or private information.

The Proposal merely says to “See examples from the U.S. Department of Health and Human Services, National Institute of Standards and Technology, U.S. Department of Education, and the U.S. Census Bureau,” *id.* n.16, and points generally to Health and Human Services “Guidance Regarding Methods for De-identification of Protected Health Information in Accordance with the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule,” *id.* n.17. The Proposal does not say what actions from these examples EPA proposes to use.

The Proposal states that the National Academies have noted that in the past, restricted data products were created by relatively simple data masking, coding, and de-identification techniques, and notes that “Nothing in the past suggests that increasing access to research data without damage to privacy and confidentiality rights is beyond scientific reach.” 83 Fed. Reg. at 18,771 (citing *Expanding Access to Research Data Reconciling Risks and Opportunities*, The National Academies Press, 2005, <https://www.nap.edu/catalog/11434/expanding-access-to-research-data-reconciling-risks-and-opportunities> at 27, 36). First, this is not fully supported as experience shows increasing access to data can damage privacy and confidentiality rights. See section II.D. Again, the Proposal does not say which, if any of these techniques the EPA will use, or how the EPA will use them. And while the National Academies may believe that increasing access to data without damage to privacy and confidentiality is not beyond scientific reach, the Proposal does not explain how this belief translates to past, present, and future scientific studies EPA considers in regulatory decision making. This document does not explain how EPA will address concerns about confidential or private information and does not support EPA’s Proposal to preclude consideration of those studies that do not make public underlying data for those, or other reasons.

The Proposal next cites to two National Academies documents and a document from the Bipartisan Commission on Evidence Based Policy. 83 Fed. Reg. at 18,771 & n.19. But the Proposal fails to explain how these documents support its proposed actions or explain how EPA intends to protect confidential information. The Proposal merely states that they “have discussed the challenges and opportunities for facilitating to secure access to confidential data for non-government analysts.” 83 Fed. Reg. at 18,771. The Proposal does not address those challenges or describe the opportunities it intends the EPA to use. Again, these documents do not support the vague Proposal.

The Proposal states that “the requirements for availability may differ,” and “may range from deposition in public data repositories, consistent with requirements for many scientific journals, to, for certain types of information, controlled access in federal research data centers that facilitate secondary research use by the public.” *Id.* (footnotes omitted). The Proposal again cites to journal policies or recommendations generally and the policies for access to data from National Institute of Health and Census Bureau. *Id.* nn.20 & 21. Section II.E. explains how the Proposal misrepresents these policies and that the Proposal is inconsistent with best practices and unworkable in reality.²⁰⁸ Importantly, the Proposal does not say how the requirements would

²⁰⁸ Contrary to the Proposal, the journals cited have exceptions to their data sharing policies and some do not require, but merely encourage, data sharing (<https://authorservices.taylorandfrancis.com/data-sharing-faqs/>, <https://www.elsevier.com/about/our-business/policies/research-data/research-data-faqs>, <http://journals.plos.org/plosone/s/data-availability>, <https://www.springernature.com/gp/authors/research-data->

differ, what studies would be required to deposit what data into what repositories, and what studies would be required to allow controlled access to what data in what federal research data centers. Moreover, the Proposal does not address the costs that these actions would entail. Again, if EPA intends to use these different ways to provide data that meet concerns about confidential and private information, the agency must withdraw the rule and issue a new proposed rule that explains the methods it proposes to use.

The Proposal generally wraps up this section with:

EPA should collaborate with other federal agencies to identify strategies to protect confidential and private information in any circumstance in which it is making information publicly available. These strategies should be cost-effective and may also include: Requiring applications for access; restricting access to data for the purposes of replication, validation, and sensitivity evaluation; establishing physical controls on data storage; online training for researchers; and nondisclosure agreements.

83 Fed. Reg. at 18,771 (footnote omitted). The Proposal's many flaws are clear in these sentences. EPA does not know what the Proposal entails. The Proposal suggests that EPA *should* identify strategies in the future and that these strategies *should be* cost-effective. The Proposal does not say what cost-effective means, nor what EPA should do if it does not identify any cost-effective strategies, yet it still seeks to alter legal obligations and regulatory decision making in reliance on this unexplained suggestion. The EPA also does not point to any authority for the proposition that the agency's consideration of peer reviewed scientific studies depends on the cost-effectiveness of some strategy the agency develops for publicizing and protecting the underlying data.

And listing options EPA can use does not help. The Proposal fails to explain why EPA has not already identified the strategies or options and in what circumstances it would use them. The Proposal suggests that it will exclude a large class of scientific studies from regulatory decision making but contains a vague assertion that it will look for "cost effective" ways in the future to exclude less them.

The corresponding footnote to these sentences offers no further explanation or support: "These recommendations are consistent with those of Lutter and Zorn (2016). <https://www.mercatus.org/system/files/Mercatus-Lutter-Public-Access-Data-v3.pdf>.we re." The document cited is a Working Paper from the Mercatus Center, which advertises itself as "world's premier university source for market-oriented ideas."²⁰⁹ The Working Paper does not provide concrete strategies or regulatory text. Nor does it analyze any strategies' application by EPA and

policy/faqs/12327154). And the National Institute of Health and Census Bureau repositories referenced do not provide access to the repositories to the public but a more limited subset of researchers (e.g., "tenure-track professor, senior scientist, or equivalent," for NIH access, <https://osp.od.nih.gov/scientific-sharing/requesting-access-to-controlled-access-data-maintained-in-nih-designated-data-repositories-e-g-dbgap/>). See also section II.V.

²⁰⁹ <https://www.mercatus.org/about>.

their cost-effectiveness. It similarly states, “the range of potential measures includes . . .” and lists thirteen options.²¹⁰ Contrary to the Proposal, the Working Paper recommends that:

In the event that authors do not supply their underlying data and an agency still believes that relying on the results of a study is warranted, the agency ought to explain why it has sufficient confidence to use the study. For example, the agency might note that other researchers have already reproduced the study results or that the data are available to third parties who sign nondisclosure agreements but that the data cannot be posted publicly.²¹¹

When discussing concerns about access to confidential or private information, the Proposal ignores an important aspect of the problem that it creates: the data masking, coding, and de-identification techniques might not adequately protect confidentiality or privacy. Research has documented that de-identification techniques to render data anonymous is not “simple” as the Proposal characterizes and can lead to the publication of protected confidential or private data. One study explained “[b]y linking demographics to public records such as voter lists, and mining for names hidden in attached documents, we correctly identified 84 to 97 percent of the profiles for which we provided names.”²¹² Another explained that “87% (216 million of 248 million) of the population in the United States had reported characteristics that likely made them unique based only on {5-digit ZIP, gender, date of birth}.”²¹³ Finally, another explains that “any data that is even minutely useful can never be perfectly anonymous.”²¹⁴ The Proposal does not address these difficulties and should be withdrawn. *See also* section II.D.

EPA’s belief that concerns about access to confidential or private information caused by the Proposal should be addressed in the future is problematic by itself. The cited materials—describing ways different organizations can address concerns in different contexts—do not support this belief. The Proposal does not propose or analyze any strategies it notes EPA should consider, even though it seeks to implement a binding legal change. The Proposal also does not consider important limitations of making underlying data publicly available. This is not surprising given that the Proposal sent for the Office of Information and Regulatory Affairs four-day Executive Order 12,866 review stated that “EPA believes that concerns about access to confidential or private information are without merit.”²¹⁵ While at least EPA recognized the merit to concerns about confidential or private information, in the four days since sending the

²¹⁰ Randall Lutter and David Zorn, *On the Benefits and Costs of Public Access to Data Used to Support Federal Policy Making*, Mercatus Working Paper, September 2016, at 31.

²¹¹ *Id.* at 32–33.

²¹² Sweeney, L., Abu, A., & Winn, J. Identifying Participants in the Personal Genome Project by Name, Harvard University, Data Privacy Lab White Paper at 1, Cambridge 2013, <https://dataprivacylab.org/projects/pgp/1021-1.pdf>.

²¹³ Sweeney, L., Simple Demographics Often Identify People Uniquely, Carnegie Mellon University, Data Privacy Working Paper 3 at 2, Pittsburgh 2000, <https://dataprivacylab.org/projects/identifiability/paper1.pdf>.

²¹⁴ Paul Ohm, *Broken Promises of Privacy: Responding to the Surprising Failure of Anonymization*, 57 UCLA L. Rev. 1701, 1755 (2010).

²¹⁵ EO 12866 Proposal 2080-AA14 OIRA Review Start Document, Docket ID No. EPA-HQ-OA-2018-0259, at 6, April 17, 2018, <https://www.regulations.gov/document?D=EPA-HQ-OA-2018-0259-0007>; OIRA Conclusion of EO 12866 Regulatory Review, <https://www.reginfo.gov/public/do/eoDetails?rrid=128014>.

version for review the agency clearly did not perform the analysis necessary to figure out how those concerns would be addressed.

The impact and costs of the Proposal are dependent on such strategies and cannot be measured or analyzed without proposed regulatory text. EPA cannot publish a final rule without first proposing what it will do about confidential and private information and analyzing the option it proposes. EPA should withdraw the Proposal.

M. Footnote 23

The Proposal states:

The benefits of EPA ensuring that dose response data and models underlying pivotal regulatory science are publicly available in a manner sufficient for independent validation are that it will improve the data and scientific quality of the Agency's actions and facilitate expanded data sharing and exploration of key data sets; *this is consistent with the conclusions of the National Academies.*

83 Fed. Reg. at 18,772 (emphasis added, footnote omitted). The last statement links to a 120-page document titled *Expanding Access to Research Data Reconciling Risks and Opportunities*, by the Panel on Data Access for Research Purposes, Committee on National Statistics, Division of Behavioral and Social Sciences and Education of the National Research Council of the National Academies Press. *Id.* (citing <https://www.nap.edu/catalog/11434/expanding-access-to-research-data-reconciling-risks-and-opportunities>).

The Proposal does not suggest that its plan to preclude the use of scientific studies from regulatory decision making is consistent or supported by the National Academies. Rather, the Proposal generally states that benefits of data availability the Proposal seeks is consistent with conclusions of the National Academies. The Proposal does not say what the conclusions of the National Academies are or how they support the Proposal. The charge to the Panel in the cited document was “to assess competing approaches to promoting exploitation of the research potential of microdata—particularly linked longitudinal microdata—while preserving respondent confidentiality.”²¹⁶ The panel was asked to consider the tradeoffs between the benefits and risks of data access and to make recommendations about “how microdata should optimally (from a societal standpoint) be made available to researchers.”²¹⁷ The panel offered various recommendations, focused on agencies that have data-collection responsibilities providing data to researchers. This is a different context than EPA's proposal to preclude the consideration scientific studies when undertaking its statutorily required decision making to protect human health and the environment. EPA's general citation to this 120-page document for consistent conclusions does not support the Proposal.

²¹⁶ *Expanding Access to Research Data Reconciling Risks and Opportunities*, The National Academies Press, 2005, at 1-2.

²¹⁷ *Id.*

N. Footnote 24

The cost-benefits analysis for the Proposal is non-existent, violates Executive Orders 12,866 and 13,563, and on its own requires that the Proposal be withdrawn. *See also* section II.D. Without support, the Proposal states that “EPA believes the benefits of this proposed rule justify the costs.” 83 Fed. Reg. at 18,772. The most discussion of costs occurs when the Proposal quotes the Mercatus Center free-market think-tank Working Paper discussed above:

One recent analysis found that: “Improvements in reproducibility can be thought of as increasing the net benefits of regulation because they would avoid situations in which costs or benefits are wrongly estimated to occur or in which regulatory costs are imposed without corresponding benefits. . . .” They concluded that “an increase in existing net benefits from greater reproducibility, which, if it occurred, would cover the costs of obtaining the data and making the data available.”

Id. (quoting Randall Lutter and David Zorn, *On the Benefits and Costs of Public Access to Data Used to Support Federal Policy Making*, Mercatus Working Paper, September 2016).

This quote is not close to a sufficient cost-benefit analysis. First, the Working Paper’s plausibility analysis is dubious. Among other problems, the analysis examines the time it takes for chemical manufactures, processors, and distributors to identify and provide *studies* in their possession related to a specific chemical and equates that to the time it would take EPA to obtain, review, process, redact, and publicly maintain *data* for any study it considers. Lutter and Zorn, at 21–22 (citing (40 C.F.R. pt. 716)). The chemical study Health and Safety Data Reporting Rule and the cost estimate the Working Paper’s analysis is based on does not require submission of underlying data unless requested by EPA. 40 C.F.R. § 716.10(a)(4). The analysis also does not include time or costs to the researchers outside of the agency. Lutter and Zorn, at 21–22. Further, the Working Paper assumes that EPA would only receive the underlying data for 20% of the requested scientific studies EPA relies on. *Id.* at 25. Therefore, the Working Paper lowers the already questionable cost estimate by eliminating costs associated with collecting and preparing data for the other 80% of studies. *Id.* The Working Paper does not explain what the authors expect EPA to do about 80% of studies EPA currently relies on for which it does not receive the underlying data, but the Proposal would require the agency to unlawfully ignore those studies in regulatory decision making.

Importantly, even the partial quote the Proposal presents does not provide results of a cost-benefit analysis nor conclude the costs outweigh the benefits. Instead it says that *if* an increase in benefits occurred, the costs would be covered. The same article states this point explicitly:

Of course, our estimates of the benefits of public access to data supporting federal regulatory decisions fall short of proving that the benefits outweigh the associated costs. They do show, however, the plausibility of such a claim.

Lutter and Zorn, at 29. The Proposal does nothing to address this or try to determine how plausible such a claim is. EPA has not provided a defined Proposal, nor done any cost analysis of its Proposal, that could be analyzed. The fact that this is the best support the EPA could provide

for its baseless belief that the Proposal's benefits justify its costs further shows that EPA must withdraw the Proposal.

The additional materials cited by EPA do not provide any support for the Proposal, on scientific, technical, policy, logical, or legal grounds, and in fact, the materials actually undermine the Proposal. The cited materials demonstrate that the Proposal is unsupported, arbitrary, capricious, and otherwise inconsistent with law. The fact that EPA cites many of these materials because they contain, from different contexts, options EPA could enact as part of the proposed rule further demonstrates that the Proposal must be withdrawn as it fails to provide fair notice to the public of what is being proposed.

VII. The proposed rule's definitions are vague, arbitrary, and capricious, and fail to provide fair notice to the public of how EPA would implement any final rule

The Administrative Procedure Act requires notices of proposed rulemakings to include "the terms or substance of the proposed rule or a description of the subjects and issues involved." 5 U.S.C. § 553(b)(3). Proposals must "provide sufficient factual detail and rationale for the rule to permit interested parties to comment meaningfully." *Honeywell International, Inc. v. EPA*, 372 F.3d 441, 445 (D.C. Cir. 2004).

The instant Proposal lacks any statutory authority for regulatory terms and text, concepts, and other inventions that make up its foundation. Moreover, many of these regulatory terms and text are vague, unexplained, internally inconsistent, and otherwise arbitrary and capricious.

A. "pivotal regulatory science" (§§ 30.2, 30.3)

The term "pivotal regulatory science" is perhaps the most vague, unexplained and internally inconsistent term used in the Proposal. The term has no statutory basis in any statute cited by EPA, or otherwise. Beyond having no statutory underpinning, the meaning of the phrase is neither self-evident nor adequately defined in the Proposal.

EPA's choice to modify "regulatory science" with the adjective "pivotal" does nothing to clarify the scope of scientific studies and information encompassed by the Proposal. "Pivotal regulatory science" is defined within the regulation as "the specific scientific studies or analyses that drive the requirements and/or quantitative analysis of EPA final significant regulatory decisions." 83 Fed. Reg. at 18,773/3 (proposed § 30.2). This definition is as unclear and unsupported as the term itself.

The use of the phrase "drive the requirements" within the C.F.R. definition is particularly incoherent. What does "drive the requirements" mean? The Proposal nowhere says. Does the definition apply only to scientific studies that were outcome determinative? Does it encompass any scientific study that was considered in making the requirements? What about studies that were useful but not determinative? Something else entirely? Can more than one study be "pivotal" to the regulatory decision, or does the term "drive the requirements" imply that only one study could be "pivotal" to a given decision? Furthermore, are most of the studies used by EPA considered to "drive the requirements" or is this term limited in some fashion, unrevealed to the public? Will EPA "know it when it sees it," making it up as the agency goes along?

It is arbitrarily, vague, and unexplained under the Proposal which science would be considered “pivotal,” and under what conditions. Because the term was created out of thin air to serve EPA’s purposes and has no statutory grounding or intuitive meaning, this ambiguity-ridden definition is woefully inadequate. It is also arbitrary and capricious and an abuse of EPA’s discretion. EPA is well aware of the insufficiency of the definition, as is evident in the agency’s solicitation of comments on the definitions of “pivotal regulatory science” and “dose response data and models” within the Proposal. *See* 83 Fed. Reg. at 18,771.

Notably, the proposed C.F.R. definition also differs substantially from a definition of “pivotal regulatory science” appearing earlier in the Proposal, which defines the term as “the studies, models, and analyses that drive the magnitude of the benefit-cost calculation, the level of a standard, or point-of departure from which a reference value is calculated. In other words, they are critical to the calculation of a final regulatory standard or level, or to the quantified costs, benefits, or risks and other impacts on which a final regulation is based.” 83 Fed. Reg. at 18,770.

Next, it bears repeating that EPA does not and cannot identify any statutory basis—in federal environmental statutes, the Administrative Procedures Act or otherwise—to apply the Proposal’s approach “to the calculation of a final regulatory standard or level, or to the quantified costs, benefits, or risks and other impacts on which a final regulation is based.” 83 Fed. Reg. at 18,770. EPA simply makes this up.

EPA’s separate explanation here suffers from additional defects, namely an internal inconsistency, incoherency and unbounded reach that do not accord with the proposed C.F.R. definition. EPA’s preambular explanation says that “pivotal regulatory science” is “critical to the calculation of a final regulatory standard or level, or to the quantified costs, benefits, or risks *and other impacts* on which a final regulation is based.” 83 Fed. Reg. at 18,770 (emphasis added). The Proposal nowhere explains what these “other impacts” are. Nor does the Proposal limit or bound these “other impacts,” nor link them to the sentence’s incoherent notion of what is “critical” and what is not. Moreover, the preambular gloss is inconsistent with the proposed C.F.R. definition. The former says “pivotal regulatory science” is critical to hopelessly vague “other impacts” on which a final rule is based. *Id.* The proposed C.F.R. definition, by contrast, says “pivotal regulatory science” “drive[s] the requirements and/or quantitative analysis of EPA final significant regulatory decisions.” 83 Fed. Reg. at 18,773/3 (proposed § 30.2). The Proposal does not square the contradictions between science that drives a final rule’s requirements and science that is “critical” to “other impacts” in a final rule.

Furthermore, EPA not only fails to provide a passable definition for its invented term, “pivotal regulatory science,” the agency fails to provide its rationale for limiting the scope of the rule to so-called “pivotal regulatory science.” Within the unlawful, arbitrary, and capricious worldview reflected in the Proposal, why is the “public availability of science and data in a manner sufficient for independent validation” any less important or necessary or justified when the science is not “pivotal” or “critical” to a regulatory decision? Why should not all science, studies, data and information considered by EPA meet the standards for transparency, verifiability, independent validation, and trustworthiness that are the abiding concerns of the Proposal? Why is it not arbitrary and capricious for EPA to continue to consider science and data

that are unavailable and insufficient for independent validation in areas outside the reach of the Proposal? EPA offers no explanation for this disparate treatment; the agency's reasoning, such as it is, is entirely conclusory.

By way of explanation for the limitation, EPA only suggests that the imposed standards “are of paramount importance when the government relies on science to inform its significant regulatory decisions.” 83 Fed. Reg. at 18,769. This explanation is hopelessly circular and ultimately incoherent. For starters, EPA does not explain why it believes this explanation to be true. Next, the Proposal just substitutes the word, ‘paramount,’ for the word, ‘critical,’ that it substitutes for the word, ‘pivotal.’ (The Proposal’s drafters evidently were just flipping through a thesaurus.) This failure to thoroughly explain both the term “pivotal regulatory science” in a way that meaningfully defines the scope of the regulation, and the rationale behind limiting the application only to pivotal (critical, paramount) science, makes it impossible for interested parties to comment fully and meaningfully on the Proposal. Should EPA intend to finalize this unlawful proposal, EPA first must withdraw the Proposal, then issue a supplemental proposal with the necessary definitions and explanations. Better yet, EPA should abandon this illegal and harmful proposal altogether.

B. “regulatory science” (§ 30.1)

Amazingly, the key regulatory purpose of the Proposal, addressed in proposed section 30.1, does not even use the term “pivotal regulatory science” (or critical or paramount regulatory science, for that matter). Instead, section 30.1 uses the altogether different term, “regulatory science.” 83 Fed. Reg. at 18,773/2.

The Proposal makes no attempt to clarify how “pivotal regulatory science” is distinct from the separately defined, “regulatory science,” a term integral to proposed section 30.1, which states the Proposal’s very purpose. “Regulatory science” is defined to mean “scientific information, including assessments, models, criteria documents, and regulatory impact analyses, that provide the basis for EPA final significant regulatory decisions.” *Id.* (proposed § 30.2). This definition is almost identical to that of pivotal regulatory science, with the exception that “regulatory science” encompasses information that “provide the basis for EPA final significant regulatory decisions,” while “pivotal regulatory science” “drives the requirements.”

The phrase “provides the basis” does nothing to illustrate the meaning of regulatory science, or to limit or particularize its scope, because it is equally vague and unexplained. *All* science, data, and information considered by EPA, and relied upon by EPA, “provides the basis” for final EPA regulatory decisions, insofar as EPA includes those materials in its administrative record, certifies that record for judicial review, and may cite and rely upon that information in explaining and defending its final regulatory decisions. Accordingly, the proposed “regulatory science” definition is capacious and unbounded, so long as EPA considered it, making the definition very far afield from the narrower, undefined, and no less incoherent, “pivotal regulatory science.”

Alternatively, the phrase “provides the basis” in the proposed “regulatory science” (§ 30.2) definition could mean that science was one of many studies considered, that it was the

bedrock study upon which regulation was grounded, that EPA relied on the study, or that the study was critical to EPA's determination. The Proposal nowhere addresses or explains whether or how these possible meanings are distinct from the possible meanings of the "drive the requirements" phrase of the "pivotal" definition. Therefore, it is entirely unclear from these definitions what makes science that "provides the basis" distinct from science that "drive the requirements." Neither of these terms meaningfully distinguishes "pivotal" regulatory science from ordinary regulatory science.

The Proposal goes on to exacerbate all of this internal confusion through the workings of its proposed regulatory text. There, EPA alternates between explaining the Proposal in terms of "regulatory science" and "pivotal regulatory science." For example, in proposed § 30.1, the Proposal "directs EPA to ensure that the *regulatory science* underlying its actions is publicly available" 83 Fed. Reg. at 18,773/2 (emphasis added). Later, in proposed § 30.3, the Proposal indicates that the provisions apply "to dose response data and models underlying *pivotal regulatory science* that are used to justify significant regulatory decisions." *Id.* at 18,773/3 (emphasis added). In the subsequent section, proposed § 30.4, the Proposal references "all studies (or regulatory science) relied upon" *Id.* The Proposal is arbitrarily vague and incoherent concerning whether "regulatory science" that is relied upon is the same as "pivotal regulatory science," or whether it is a new category of science entirely. Does this phrasing imply that the definition of "regulatory science" does not already include science that is "relied upon"? If so, does EPA mean that the phrase, "provides the basis," is not synonymous with "relied upon"? The Proposal provides no answers to these questions.

Taken together, this demonstrates that "regulatory science" and "pivotal regulatory science" are vague, even incoherent terms with definitions that lend no assistance to commenters in understanding the Proposal. The terms lack statutory authority, are vague, inconsistent, unexplained, and otherwise arbitrary and capricious.

C. "in a manner sufficient for independent validation" (§ 30.1)

Although the phrase, "in a manner sufficient for independent validation," is repeated frequently throughout the Proposal, and is integral to its very operation, the phrase is not defined in the proposed definitional section (§ 30.2). Later in proposed regulatory text, the Proposal does specify that "[i]nformation is considered 'publicly available in a manner sufficient for independent validation' when it includes the information necessary for the public to understand, assess, and replicate findings." 83 Fed. Reg. at 18,773–74 (proposed § 30.5). Proposed section 30.5 goes on to list categories of information that "may" be included in this concept. The explanation provided by proposed § 30.5 is a non-definition; it provides no additional clarification. How much information is sufficient for the public to understand, assess and replicate findings? Can this standard sometimes be met by releasing methodology but not raw data?

Critically, and fatally to the enterprise behind the Proposal, there is nothing in the proposed regulatory text or preambular language that requires information, science or data to be independently validated or replicated before EPA may consider it. EPA does not base the Proposal upon any requirement or expectation that the information, science or data be shown to

be accurate, trustworthy, reliable or correct before EPA may consider it. This portion of the Proposal reveals EPA's unlawful agenda to be one concerned with prohibiting EPA from considering relevant, peer-reviewed, quality science, *not* one concerned with actual replication or validation. The Proposal's condition that science and information be "publicly available in a manner sufficient for independent validation and replication" is revealed to be mere smokescreen for an EPA enterprise to censor the best available science that would support adoption of more protective health and environmental safeguards.

The Proposal fails to explain how the term, "in a manner sufficient for independent validation," and the proposed § 30.5 definition will increase transparency in science or why it is necessary to ensure that EPA will consider the best available science. To the contrary, as explained elsewhere in these comments, *supra* sections II. & III., the Proposal's approach would *preclude* EPA from considering the best available science that is relevant to EPA's responsibilities. EPA also fails to explain why data underlying peer-reviewed studies must be publicly available "in a manner sufficient for independent validation" when independent researchers can verify science without making the underlying data, which is often confidential, publicly available.

D. "all terms not defined herein shall have the meaning given them in the Act or in Subpart A" (§ 30.2)

Proposed § 30.2 specifies that "all terms not defined herein shall have the meaning given them in the Act or in subpart A." The Proposal nowhere says to what "Act" it is referring. The Proposal purports to implement multiple Acts administered by EPA, with different terms and definitions and court interpretations that may contradict one another. Nowhere does the Proposal square this factual and legal reality with structure of its unlawful approach, and the language in proposed § 30.2. It seems clear that the Proposal's drafters just cut-and-paste boilerplate language from other EPA regulations that do, in fact, implement just one of the federal environmental statutes that EPA administers; in those other regulations, such an approach makes sense. In the Proposal at issue here, it is incoherent and internally inconsistent across the different statutes that EPA administers.

It also is not clear to what "subpart A" EPA is referring, because there is no citation to the Code of Federal Regulations. If this is intended to reference 40 C.F.R. Part 30, Subpart A, that Subpart was removed from the C.F.R. in 2014. *See* 79 Fed. Reg. 75,871; *see also* 80 Fed. Reg. 61,087.

E. "dose response data and models" (§ 30.2)

Dose response data and models is defined as "the data and models used to characterize the quantitative relationship between the amount of dose or exposure to a pollutant, contaminant, or substance and the magnitude of a predicted health or environmental impact. Such functions typically underlie pivotal regulatory science that drives the size of benefit-cost calculations, the level of a standard and/or the points of departure from which reference values (reference doses or reference calculations) are calculated." (§ 30.2). Despite being an important phrase repeated through the Proposal and the proposed text, this compound definition is vague and arbitrary. It

also is circular—the very terms being defined are used in the definition. It’s unclear what data EPA is referring to in this phrase and definition. Moreover, it’s unclear what EPA means by “[s]uch functions typically under pivotal regulatory science . . .” And the problems with “pivotal regulatory science” have already been discussed. As explained in section XII, the definition does not adequately describe what the proposal covers. This definition, along with the rest of the Proposal, is arbitrary and capricious and must be withdrawn.

F. “case-by-case basis” (§ 30.6; § 30.9)

In proposed § 30.6, EPA proposes to “evaluate the appropriateness of using default assumptions, including assumptions of a linear, no-threshold dose response, on a case-by-case basis.” 83 Fed. Reg. at 18,774. In proposed § 30.9, the Proposal grants the Administrator the ability to “grant an exemption to this subpart on a case-by-case basis if he or she determines that compliance is impracticable” for a number of enumerated reasons. Both of these provisions inject additional arbitrariness into the rule, in that they ensure that the Proposal may be applied unevenly—for certain rulemakings the “rules” of the Proposal can be discarded or ignored where desired. This, in addition to and with other sections of the Proposal, underscores that it is arbitrary and capricious and must be withdrawn.

VIII. The Proposal is vague and misleading regarding which types of regulatory actions will be covered

EPA is proposing to apply the Proposal to regulatory actions defined by an unenforceable Executive Order that has few, if any, limiting principles. The Proposal states that it applies to “*dose response data and models underlying pivotal regulatory science* that are used to justify significant *regulatory decisions*.” 83 Fed. Reg. at 18,773. Section § 30.2 then defines “regulatory decisions” as “final regulations determined to be ‘significant regulatory actions’ by the Office of Management and Budget pursuant to Executive Order 12866.” 83 Fed. Reg. at 18,773. According to Executive Order 12866,

- (f) “Significant regulatory action” means any regulatory action that is likely to result in a rule that may:
- (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
 - (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
 - (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
 - (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive order

Regulatory Planning and Review, 58 Fed. Reg. 51,735, 51,735 (Sept. 30, 1993).

EPA suggests in some places that the Proposal applies only to final rulemakings. *See* 83 Fed. Reg. at 18,771 (“EPA solicits comment on whether and to what extent these requirements, or other provisions and policies, should apply to other stages of the rulemaking process . . .”). However, OMB guidance on Executive Order 12,866 states that the definition is intended to cover “any policy document of general applicability and future effect, which the agency intends to have the force and effect of law, such as guidance, funding notices, manuals, implementation strategies, or other public announcements, designed to implement, interpret, or prescribe law or policy or to describe the procedure or practice requirements of an agency.” OMB, *Memorandum for Heads of Executive Departments and Agencies, and Independent Regulatory Agencies*, at 5 n.3 (Oct. 12, 1993). Therefore, there is an inconsistency between what EPA says it is doing, and what it is really proposing.

Indeed, under the OMB guidance and past agency practice, what qualifies as a “significant regulatory action” is a fluid and ad-hoc determination. It is impossible to truly know what effect—and how large an effect—the Proposal would have on rulemakings because it is impossible to know, at this point, what agency actions might be covered. Whether an action is deemed a “significant regulatory action” by OMB can only be determined after the regulation has been proposed and is subject to apparently unbridled discretion by OMB, and there is an infinite universe of rulemakings that EPA could propose in the future. Without knowing what types of agency actions would be covered, the public is left in the dark about the Proposal’s true impact. By using the amorphous definition of “significant regulatory actions,” EPA ensures that the Proposal would have sweeping effects.

IX. The proposed rule is a reversal of EPA’s position without sufficient justification

When an agency reverses course, it must “provide reasoned explanation for its action.” *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009); *Motor Vehicle Mfrs. Ass’n of U.S., v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983). And when that reversal “rests upon factual findings that contradict those which underlay [the agency’s] prior policy,” a “more detailed justification” is needed. *Fox*, 556 U.S. at 515. Indeed, “an agency’s decision to change course may be arbitrary and capricious if the agency ignores or countermands its earlier factual findings without reasoned explanation for doing so.” *Id.* at 537 (Kennedy, J., concurring).

As the Supreme Court explained in its 2016 *Encino Motorcars* decision, an agency must supply “good reasons” for a policy revision, cannot leave “unexplained inconsistency,” and must address “serious reliance interests.” *Encino Motorcars, LLC v. Navarro*, 136 S. Ct. 2117, 2126 (2016). In *Encino*, the Department of Labor reversed its decades-long practice of treating service advisors at automobile dealerships as exempt from the Fair Labor Standards Act’s overtime provisions, offering minimal explanation for the policy change. *Id.* at 2123. The Court overturned the rule, holding that the Department had not met its obligation to offer a “reasoned explanation,” especially given the decades of reliance on the policy. *Id.* at 2126. It was not enough that the Department included conclusory statements declaring its new policy to be a reasonable interpretation of the statute because the Department failed to provide any good reasons for the new policy. *Id.* at 2127. As explained by the Court, “[t]his lack of reasoned explication for a regulation that is inconsistent with the Department’s longstanding earlier position results in a rule that cannot carry the force of law.” *Id.*

In *Organized Village of Kake v. United States Department of Agriculture*, the Department of Agriculture, relying on a detailed factual record, decided not to exempt the Tongass National Forest from a rule that would limit road construction and timber harvesting in national forests, explaining that the benefits would outweigh the potential economic loss. 795 F.3d 956, 959–61, 967–68 (9th Cir. 2015) (*en banc*). Just two years later, on “precisely the same record,” the agency issued a new decision reversing course. *Id.* at 968. The court concluded that the “absence of a reasoned explanation for disregarding previous factual findings violate[d] the APA.” *Id.* at 969. The court also recognized that “[e]lections have policy consequences,” but even when reversing a policy after an election, “an agency may not simply discard prior factual findings without a reasoned explanation.” *Id.* at 968.

EPA previously routinely used and considered science and studies for which the underlying data was not publicly available in regulatory actions. As explained above, EPA has not identified even *one* example in which EPA *has observed* the policies underlying the Proposal, and our research has likewise uncovered no such instance. The Proposal essentially admits as much, stating:

Historically, EPA has not consistently observed the policies underlying this Proposal, and courts have at times upheld EPA’s use non-public data in support of its regulatory actions. *See Coalition of Battery Recyclers Ass’n v. EPA*, 604 F.3d 613, 623 (D.C. Cir. 2010); *American Trucking Ass’ns v. EPA*, 283 F.3d 355, 372 (D.C. Cir. 2002).

83 Fed. Reg. at 18,769, n.3. The Proposal then goes on to say that “EPA is proposing to exercise its discretionary authority to establish a policy that would preclude it from using such data in future regulatory actions.” *Id.* The Proposal’s categorical exclusion of non-publicly available “dose response data” is also departure from EPA’s previous practice, as described in the 2002 EPA Guidelines, of weighing all relevant information.

In short, EPA provide no basis for changing course on this issue, especially when EPA has enshrined the previous policy in agency guidelines and litigation. EPA’s failure to explain this change in course violates the law.

X. The proposed rule’s handling of Confidential Business Information (CBI) is unlawfully vague and arbitrary and capricious

EPA’s Proposal states that “where the Agency is making data or models publicly available, it shall do so in a fashion that is consistent with law, protects privacy, confidentiality, [and] confidential business information.” 83 Fed. Reg. at 18,773. In crafting the Proposal, EPA has created a vague, double-edged sword that favors industry in some situations, and in others, creates barriers for industry groups submitting CBI. In both situations, the public could be harmed by the Proposal.

In an April 26, 2018 House hearing, then-Administrator Scott Pruitt suggested that CBI may be redacted and submitted to EPA under the Proposal, much like confidential health information:

Rep. Cramer: Maybe you could elaborate a little bit, how personal data can be protected and is protected. Nobody's asking for the names of every victim of every, you know, of every pollution source that's ever happened in the world, or that's been sourced in any study. They're not asking for personal data. We're asking simply for the science to be revealed. You can protect the data, right?

Administrator Pruitt: Both the personal data, Congressman, as well as confidential business information, both CBI and personal information can be redacted and can be addressed and still serve the purposes of the proposed rule.

As others have noted, however, this is not always the case. "Industry-conducted studies could contain confidential business information required to be withheld by law. In addition, companies may have intellectual property rights that would be violated if access to underlying data allowed competitors to rely on a study without replicating it."²¹⁸ In certain cases, this will work to the detriment of regulated entities.

For example, industry stakeholders may submit studies, data or information for which CBI redactions would prevent EPA from considering those materials, because the information is not "publicly available in a manner sufficient for independent validation." 83 Fed. Reg. at 18,768. This could prevent EPA from adopting standards, exclusions, or other regulatory provisions informed by that information. Similarly, other industry stakeholders opposed to the appeals and demands sought by the first set of stakeholders, would be harmed if EPA nonetheless considers the latter industry's submissions, notwithstanding redacted CBI that is not "publicly available in a manner sufficient for independent validation"—while at the same time EPA refuses to consider confidential non-business information submitted by the opponent-stakeholders. *Id.*

In other cases, CBI exclusions will create a double standard, where the public, including adversarial industry stakeholders, will not have access to industry-funded studies or other information relevant to the rulemaking process, because EPA has designated that information CBI and refused to make it "publicly available in a manner sufficient for independent validation." *Id.* The Proposal nonetheless indicates that some or all of that CBI-redacted studies and information will be considered by EPA. This double standard, and unexplained, differential treatment of submissions relevant and even integral to EPA's rulemakings, is the essence of arbitrary and capricious action.

Industry groups themselves will be impacted by this double standard. During, or prior to, a rulemaking, industry groups sometimes appeal to EPA to loosen the rigor of agency regulations, accord industry operational flexibilities, extend compliance deadlines, or take other actions to reduce alleged regulatory burdens. Frequently industry accomplishes this by submitting information particular to a specific company or industry sector; a particular chemical or product formulation; or a particular process unit or manufacturing process. These submissions

²¹⁸ Bloomberg News, Energy & Environment Report, "Practitioner Insights: EPA's Flawed 'Secret Science' Plan Puts Good Science at Risk," May 21, 2018, *available at* <https://www.bna.com/practitioner-insights-epas-n57982092715/>.

frequently are accompanied by claims that information is CBI, due to the company-specific or industry-specific nature of information that may be proprietary, confidential or the subject of trade secrets. Industry parties may also submit health studies or risk assessments they have conducted that may contain confidential clinical data or other information that they do not wish to make publicly available, or that they are barred from making publicly available due to confidentiality agreements, the death of study participants or other reasons.

The Agency itself is aware that its misguided Proposal works at odds with CBI. In a recent email exchange, an EPA staffer working on the rule, Richard Yamada, was informed of industry concerns by a colleague. Yamada

included the concerns of the chemical industry when crafting the plan. Earlier this year, Nancy Beck, deputy assistant administrator of EPA's chemicals office, raised pointed concerns to Yamada and other EPA staffers about what a "secret science" policy would mean for regulating chemicals under the Toxic Substances Control Act (TSCA). Beck, a former senior director at the American Chemistry Council, wrote that requiring underlying data to be public would affect pesticide registrations and TSCA implementation, particularly if it did not account for confidential business information, or CBI.

"Yes, thanks this is helpful – didn't know about the intricacies of CBI – ok, we will need to thread this one real tight! Thanks Nancy!" Yamada wrote in response to Beck's warning.²¹⁹

Section 30.3, described below, may be the agency's attempt at such a "thread," but in attempting to carve out certain agency actions for special treatment, the Proposal again underscores just how arbitrary and capricious it is. The Proposal would create a dynamic in which EPA is unable to consider that CBI or otherwise confidential health or risk data in deciding whether to adopt regulations or issue guidance that grants industry the requested regulatory flexibilities.

When EPA exercises its regulatory authorities, the Proposal may constrain the agency's ability to be flexible or relieve regulatory obligations, precisely where and when it might be needed most: by being responsive to particular demonstrations made by specific companies based on persuasive information that also happens to be CBI. Former Administrator Pruitt appeared to sanction this outcome in his responses, above, to Rep. Cramer, where he suggested that any CBI could be redacted, much like health information.

The Proposal fails to address CBI in a coherent way, and in so doing furthers the problems inherent in its present use at the agency, while also creating a new set of obstacles for both industries and the public to deal with as it relates to business information and EPA's regulatory responsibilities.

²¹⁹ Scott Waldman, "Meet the man helping Pruitt reshape science," *Climatewire*, (May 23, 2018), <https://www.eenews.net/stories/1060082467>.

XI. The Proposal arbitrarily and capriciously allows EPA to treat individual party adjudications, enforcement activities, and permit proceedings differently than “significant regulatory actions”

The Proposal at section 30.3 states that:

Except where explicitly stated otherwise, the provisions of this subpart do not apply to any other type of agency action, including individual party adjudications, enforcement activities, or permit proceedings.

83 Fed. Reg. at 18,773. This provision most clearly highlights one of the arbitrary and capricious advantages that industry stakeholders enjoy under the Proposal: it exempts from its censoring coverage EPA activities where industry is the primary party likely to submit confidential information that EPA may consider and rely upon. This, notwithstanding that the submitted information is not “publicly available in a manner sufficient for independent validation,” while still being highly relevant and even integral to EPA’s legal responsibilities. *Id.* at 18,768.

Permitting activities are one key example. For permitting actions taken under the CAA, RCRA, CWA, etc., the Proposal arbitrarily and capriciously allows EPA to continue to rely on highly relevant regulatory science and other information supplied by industry that is not “publicly available in a manner sufficient for independent validation.” *Id.* at 18,771–73. A company seeking a permit or permit revision may submit regulatory science, confidential business information or other non-confidential information that is not “publicly available in a manner sufficient for independent validation.” *Id.* EPA could consider non-peer reviewed, non-transparent industry science or information to conclude that a non-transparent industry model demonstrates no adverse air quality impact on a neighboring national park or wilderness area. This, despite the inputs and assumptions behind the model being unavailable to the public. An applicant could assert that there are safe exposure levels for PM_{2.5} or lead, and therefore EPA need not require any mitigation measures at concentrations below NAAQS levels in attainment areas. Industry applicants could rely upon hidden CBI to project no emissions increases for purposes of NSR permitting under the so-called “demand growth” exclusion, notwithstanding the unavailability of information critical to industry’s claim and EPA’s acceptance of that claim. Considering this and other non-transparent information, EPA could conclude that permits or permit revisions may be granted in situations where they should not lawfully be granted, notwithstanding that the non-transparent, unavailable information is scientifically erroneous and even absurd.

A second example is public information submitted during enforcement proceedings. The Proposal arbitrarily and capriciously allows EPA to continue to rely on highly relevant regulatory science and other information supplied to the agency by industry during enforcement proceedings, even when that information is not “publicly available in a manner sufficient for independent validation.” *Id.* at 18,771–73. Consider, for example, a company that receives a notice of violation from EPA and meets with the agency to make the case that EPA and the Department of Justice should not file a complaint. The company may submit regulatory science, confidential business information, or other non-confidential information that is not “publicly available in a manner sufficient for independent validation.” *Id.* at 18,768. EPA could consider

non-peer reviewed, non-transparent, erroneous industry science to conclude that formaldehyde or asbestos are not carcinogens, or that PM_{2.5} or lead have safe exposure levels, or that CO₂ does not endanger public health or welfare. Considering this and other non-transparent information, EPA could conclude that prosecution is not warranted, or that the information represents mitigating factors for penalties or injunctive relief, notwithstanding that the non-transparent, unavailable information is scientifically erroneous and even absurd.

The third case is public information submitted during individual party adjudications. *Id.* at 18,771–73. The Proposal arbitrarily and capriciously allows EPA to continue to rely on highly relevant regulatory science and other information supplied to the agency by industry during individual party adjudications, even when that information is not “publicly available in a manner sufficient for independent validation.” *Id.* at 18,768. Consider, for example, a company facing an EPA order or applicability determination that qualifies as an adjudication under the APA or one of the federal statutes that the agency administers.

The company may submit regulatory science, confidential business information or other non-confidential information that is not “publicly available in a manner sufficient for independent validation.” EPA could consider non-peer reviewed, non-transparent industry science to conclude that formaldehyde or asbestos are not carcinogens, or that PM_{2.5} or lead have safe exposure levels, or that CO₂ does not endanger public health or welfare. Considering this and other non-transparent information during the individual party adjudication, EPA could conclude that adoption of the order is not warranted, or that agency regulations should be interpreted in a way that does not apply to that company’s actions. Indeed, EPA could conclude, after considering the non-transparent, unavailable information, that the regulations should not apply in ways that would affect an entire industrial sector favorably, while harming the public meant to be protected by those regulations. Under proposed section 30.3, EPA could consider the non-transparent, unavailable information to reach these objectionable outcomes, notwithstanding that the information is scientifically erroneous and even absurd.

The Proposal nowhere explains why it is valid and consistent with EPA’s statutory authorities and responsibilities to consider information that is not “publicly available in a manner sufficient for independent validation” under the situations allowed in proposed section 30.3 (individual party adjudications, enforcement activities, or permit proceedings), while prohibiting EPA consideration of that information in situations covered by the Proposal’s prohibitions. Indeed, it is striking that the Proposal does not even *attempt* any such explanation or justification. *Id.* at 18,771–73. This is undoubtedly because there is no coherent, lawful justification or explanation that the agency could muster; it is unsurprising that the Proposal cannot overcome this.

Indeed, it is a hallmark of the Proposal’s inherent arbitrariness and capriciousness that the Proposal prohibits EPA from considering the *identical regulatory science, studies, and information* in some regulatory situations, while allowing EPA to consider the *identical regulatory science, studies, and information* in other regulatory situations—based merely upon the *type of situation*, rather than any differences in availability, replicability, verifiability, or validation concerning the information. Proposed section 30.3 prohibits EPA from considering information that is not “publicly available in a manner sufficient for independent validation”

during so-called “significant regulatory decisions,” while prohibiting EPA from considering that *identical regulatory science, studies, or information* during “any other type of agency action, including individual party adjudications, enforcement activities, or permit proceedings.” 83 Fed. Reg. at 18,768, 18,771. The Proposal does not and cannot explain or justify this differential treatment, so the Proposal does not even try.²²⁰

Finally, proposed section 30.3 is unlawfully vague, open-ended and arbitrary due to the capacious and unlimited way that EPA has drafted the exclusion from the Proposal’s prohibitions. Section 30.3 indicates that “the provisions of this subpart do not apply to any other type of agency action.” This grants EPA capacious and effectively unlimited discretion and authority to decide what “any other type of agency action” is and is not, without providing the public or regulated entities any criteria, understanding or advance notice as to how EPA will exercise that discretion and authority. That is the essence of arbitrary and capricious agency action. Indeed, the Proposal is structured in such a way that EPA will be exercising that discretion and authority—to decide what “any other type of agency action” does and does not cover—in secret, with no public input and no public awareness, concerning the situations in which EPA will and will not consider non-transparent, unavailable information. In addition to this being perversely ironic, considering the “transparency” title of the Proposal, this fact renders the Proposal even more arbitrary and capricious and unlawful.

XII. The Proposal treats studies, models and analyses that are integral to the functioning of EPA regulatory programs and the implementation of statutes in an arbitrary and capricious manner

In the Proposal, EPA professes concern with transparency, clarity, and independence; using the best available information; making sure that information is replicable and verifiable, and ensuring the public is able to participate meaningfully in the regulatory process. The Proposal says this will help EPA carry out its mission in a manner the public can trust and understand:

The proposed regulation provides that, for the science pivotal to its significant regulatory actions, EPA will ensure that the data and models underlying the science is publicly available in a manner sufficient for validation and analysis.

83 Fed. Reg. at 18,769/1.

The best available science must serve as the foundation of EPA’s regulatory actions. Enhancing the transparency and validity of the scientific information relied upon by EPA strengthens the integrity of EPA’s regulatory actions and its obligation to ensure the Agency is not arbitrary in its conclusions. By better informing the public, the Agency in enhancing the public’s ability to understand and meaningfully participate in the regulatory process.

²²⁰ Should EPA realize and conclude that it must explain and justify this differential treatment in any final rule, EPA first must issue a supplemental proposal with these explanations and justifications for public review and opportunity for comment prior to issuing any final rule.

Id. at 18,769/2.

When EPA develops significant regulations using public resources, including regulations for which the public is likely to bear the cost of compliance, EPA should ensure that the data and models underlying scientific studies that are pivotal to the regulatory action are available to the public. This proposed rule is designed to increase transparency in the preparation, identification, and use of science in policymaking.

Id. at 18,769/3.

Regulatory determinations based on science should describe and document any assumptions and methods used, and should address variability and uncertainty.

Id. at 18,770/2.

“Pivotal regulatory science” is the studies, models, and analyses that drive the magnitude of the benefit-cost calculation, the level of a standard, or point-of-departure from which a reference value is calculated. In other words, they are critical to the calculation of a final regulatory standard or level, or to the quantified costs, benefits, risks and other impacts on which a final regulation is based.

Id.

This [P]roposal will help ensure that EPA is pursuing its mission of protecting public health and the environment in a manner that the public can trust and understand.

Id. at 18,769/1.

In this section of our comments, we make the following points opposing the Proposal and supporting its withdrawal:

- First, the Proposal as written sweeps broadly to capture—and thereby to prohibit EPA from considering—studies, models, and analyses that are integral to the functioning of EPA regulatory programs, implementation of statutes like the Clean Air Act, and protection of public health and the environment. It is both destructive and unlawful for EPA to refuse or fail to consider these additional studies, models, and analyses. We discuss numerous examples below.
- Second, to the extent that the Proposal does capture one or more of the studies, models, or analyses below, the Proposal would require EPA to conduct independent peer review of these materials before considering or using them, or before continuing to make them available for public use and awareness. *See* 83 Fed. Reg. at 18,774 (proposed § 30.7). This is objectionable and absurd. It is also unlawful for the same reasons that the Proposal is unlawful, as detailed in these comments and others.
- Third, to the extent that EPA disagrees that one or more of these studies, models, and analyses are captured by the Proposal, continuing to consider these materials while

prohibiting EPA from considering other materials would be arbitrary and capricious. This is because these studies, models and analyses have the same hallmarks as “pivotal regulatory science” that the Proposal would exclude, as discussed in greater detail below. We emphasize that we do not believe EPA *should* or that EPA *may* fail to consider these other studies, models, or data, for the reasons set forth in these comments. Rather, our point is that continuing to consider these materials demonstrates additionally that the Proposal is arbitrary, capricious, and an abuse of discretion.

The Proposal states that “[t]he provisions of this subpart apply to dose response data and models underlying pivotal regulatory science that are used to justify significant regulatory decisions regardless of the source of funding or identity of the party conducting the regulatory science.” 83 Fed. Reg. at 18,773/3 (proposed § 30.3). Next, the Proposal defines “dose response data and models” to mean:

the data and models used to characterize the quantitative relationship between the amount of dose or exposure to a pollutant, contaminant, or substance and the magnitude of a predicted health or environmental impact. Such functions typically underlie pivotal regulatory science that drives the size of benefit-cost calculations, the level of a standard, and/or the points of departure from which reference values (reference doses or reference concentrations) are calculated.

Id. at 18,773/2 (proposed § 30.2). Then, the Proposal defines “pivotal regulatory science” to mean “the specific scientific studies or analyses that drive the requirements and/or quantitative analysis of EPA final significant regulatory decisions.” *Id.* Finally, the Proposal defines “regulatory science” to mean “scientific information, including assessments, models, criteria documents, and regulatory impact analyses, that provide the basis for EPA final significant regulatory decisions.” *Id.*

The Proposal either covers on its face, or appears to cover, the following examples of studies, models, and analyses that are integral to the functioning of EPA regulatory programs, implementation of statutes like the Clean Air Act, and protection of public health and the environment. It would be harmful, unlawful, arbitrary and capricious, and an abuse of EPA’s discretion to include these materials within the sweep of the Proposal’s prohibitions.

Alternatively, if EPA disagrees that the following examples are covered by the Proposal, then continuing to consider these materials that have the same hallmarks as the prohibited materials, and that raise the same issues and concerns that cause EPA to prohibit their consideration, demonstrates that the Proposal is arbitrary and capricious, biased, and internally inconsistent and contradictory.²²¹ Moreover, in this case, the Proposal would suffer from fatal failures to explain why EPA may consider these materials, while the Proposal would prohibit EPA from considering other materials.

²²¹ See, e.g., *Air Transport Ass’n of Am. v. DOT*, 119 F.3d 38, 43 (D.C. Cir. 1997) (vacating regulation: “the most serious logical problem with [the] regulation—which we simply cannot accept,” is that the agency’s explanation “is internally inconsistent”).

A. Integrated Planning Model

EPA uses the Integrated Planning Model (IPM) to analyze the projected impact of environmental policies on the electric power sector in the lower 48 contiguous states and the District of Columbia. The IPM is a proprietary multi-regional, dynamic, deterministic linear programming model of the U.S. electricity sector developed by ICF International, and is used to support public and private sector clients

The IPM provides forecasts of least-cost capacity expansion, electricity dispatch, and emission control strategies for meeting energy demand and environmental, transmission, dispatch, and reliability constraints. The IPM can and has been used by the EPA to evaluate the costs and emissions impacts of policies to limit emissions of SO₂, NO_x, CO₂, HCl, and Hg from the electric power sector, including the following:

- the Clean Air Mercury Rule;
- Clean Air Interstate Rule;
- Clear Skies legislation;
- Mercury and Air Toxics Standards;
- Cross State Air Pollution Rule;
- Notice of Availability of the Environmental Protection Agency's Preliminary Interstate Ozone Transport Modeling Data for the 2015 Ozone National Ambient Air Quality Standard, 82 Fed. Reg. 1733 (Jan. 6, 2017);
- EPA's Power Sector Modeling in Support of the Notice of Data Availability – Preliminary Interstate Ozone Transport Modeling Data for the 2015 Ozone NAAQS;²²²
- New Source Performance Standards for the electric power sector;
- Clean Power Plan, Clean Power Plan repeal, and proposed Clean Power Plan replacement.

As a proprietary model, the IPM is not “publicly available in a manner sufficient for validation and analysis.” 83 Fed. Reg. at 18,769/1. The model's inputs, assumptions, methodologies, and operation are not “transparent” in the manner described in the Proposal, notwithstanding the model being pivotal to EPA regulatory actions. *Id.* at 18,770/3. EPA has used the IPM regularly to “drive the magnitude of the benefit-cost calculation and the level of standards” in Clean Air Act regulations. *Id.* at 18,770/2. “The use of default models, without consideration of alternatives or model uncertainty, can obscure the scientific justification for EPA actions.” *Id.* at 18,770/3. The public lacks access to the IPM's “[c]omputer codes and models involved in the creation and analysis of such information.” 83 Fed. Reg. at 18,774/1 (proposed § 30.5(c)).

²²² <https://www.epa.gov/airmarkets/epas-power-sector-modeling-support-notice-data-availability-preliminary-interstate-ozone>.

B. National Electric Energy Data System

The National Electric Energy Data System (NEEDS) database contains the generation unit records used to construct the model plants that represent existing and planned/committed units in EPA modeling applications of the IPM. The NEEDS includes geographic, operating, air emissions, pollution control, planned retirement dates, and other information on generating units. The NEEDS is customarily updated simultaneously with IPM updates. Data contained in NEEDS are taken from EIA forms, EIA AEO, NERC ES&D database, Ventyx new entrants' database (subscription required), EPA's emission tracking system (EPA Emissions Collection and Monitoring Plan System, ECMPS), and utility and regional EPA comments.

Similar to the IPM, with which NEEDS is integrated by EPA, NEEDS contains information that is not "publicly available in a manner sufficient for validation and analysis." 83 Fed. Reg. at 18,769/1. The inputs, assumptions, methodologies, and operation are not "transparent" in the manner described in the Proposal, notwithstanding the database being pivotal to EPA regulatory actions. *Id.* at 18,770/3. The Ventyx database requires a paid subscription that prevents NEEDS data from being transparent and publicly available in a manner sufficient for validation and analysis. EPA has used the NEEDS regularly (with the IPM) to "drive the magnitude of the benefit-cost calculation and the level of standards" in Clean Air Act regulations. *Id.* at 18,770/2.

C. The National Energy Modeling System

The National Energy Modeling System (NEMS), developed by Energy Information Administration (EIA), generates the Annual Energy Outlook (AEO) forecasts. EPA relies on NEMS forecasts for power sector modeling inputs and assumptions in IPM, including electricity demand and fuel prices.

Similar to the IPM, with which NEMS is also integrated by EPA, NEMS contains information and assumptions that are not "publicly available in a manner sufficient for validation and analysis." 83 Fed. Reg. at 18,769/1. The inputs, assumptions, methodologies, and operation are not "transparent" in the manner described in the Proposal, notwithstanding the database being pivotal to EPA regulatory actions. *Id.* at 18,770/3. EPA has used the NEMS regularly (with the IPM) to "drive the magnitude of the benefit-cost calculation and the level of standards" in Clean Air Act regulations. *Id.* at 18,770/2.

D. Co-Benefits Risk Assessment

COBRA is a tool available for download from EPA that helps state and local governments: (1) evaluate how changes in air pollution from clean energy policies and programs affect human health at the county, state, regional, or national levels; (2) estimate the economic value of health benefits associated with clean energy policies and programs to compare against program costs; (3) map and visually represent the air quality, human health, and health-related economic benefits from reductions in emissions of PM_{2.5}, SO₂, NO_x, NH₃, VOCs resulting from clean energy policies and programs.

COBRA is intended to be a preliminary screening tool that state and local policymakers can use to identify health benefits associated with clean energy policy approaches. It provides preliminary estimates of the impact of air pollution emission changes on ambient particulate matter (PM) air pollution concentrations, translates this into health effect impacts, and then monetizes these impacts. It was developed by Abt Associates and it is copyrighted. EPA's website lists multiple analyses that have used COBRA.²²³

COBRA contains information and assumptions that are not “publicly available in a manner sufficient for validation and analysis.” 83 Fed. Reg. at 18,769/1. The inputs, assumptions, methodologies and operation are not “transparent” in the manner described in the Proposal, notwithstanding the database being pivotal to EPA regulatory actions. *Id.* at 18,770/3. COBRA was developed by Abt based upon taking models from the very same epidemiological studies that the Proposal would prohibit EPA from considering and converting them into health impact functions.²²⁴ Accordingly, COBRA would be “tainted” and unusable by EPA or other parties based on the same (unlawful, arbitrary) prohibitions reflected in the Proposal. EPA and other parties have used the COBRA to “drive the magnitude of the benefit-cost calculation and the level of standards” in Clean Air Act regulations. 83 Fed. Reg. at 18,770/2.

E. Avoided Emissions and Generation Tool

The Avoided Emissions and Generation Tool, developed by Synapse, estimates the emissions benefits of energy efficiency and renewable energy policies and programs. The AVERT quantifies the particulate matter (PM_{2.5}), nitrogen oxides (NO_x), sulfur dioxide (SO₂), and carbon dioxide (CO₂) emissions benefits of state and multi-state EE/RE policies and programs. The target audience for this tool is state air quality planners evaluating county, state, and regional emissions displaced at electric power plants by energy efficiency and renewable energy programs. It enables state and local authorities to include AVERT-calculated emission impacts of EE/RE policies and programs in air quality modeling and Clean Air Act plans used to meet the National Ambient Air Quality Standards, with the concurrence of the appropriate EPA regional office.

²²³ See, e.g., Analysis of the Public Health Impacts of the Regional Greenhouse Gas Initiative (Abt Associates, 2017); Change is in the Air: How States Can Harness Energy Efficiency to Strengthen the Economy and Reduce Pollution (ACEEE, 2014); Comments on B21-0650 –Renewable Portfolio Standard Expansion Amendment Act of 2016 (Chesapeake Climate Action Network testimony to the DC Transportation and Environment Committee, 2016); Health Impact and Economic Costs of Volkswagen's Lack of Compliance with the United States' Emission Standards (International Journal of Environmental Resources and Public Health. 13(9): 891. 2016), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5036724/>; Minneapolis Climate Action Plan: Public Health and Environmental Justice; Plug-In Vehicles in California (UC- Berkeley Transportation Sustainability Research Center, 2012); A Retrospective Analysis of the Benefits and Impacts of U.S. Renewable Portfolio Standards (National Renewable Energy Laboratory and Lawrence Berkeley National Laboratory, January 2016); Staff White Paper on Benefit-Cost Analysis in the Reforming Energy Vision Proceeding (New York Department of Public Service, July 2015); Standardized Regulatory Impact Assessment: Computers, Computer Monitors, and Signage Displays (Prepared for California Energy Commission, June 2016).

²²⁴ See U.S. EPA, User's Manual for the Co-Benefits Risk Assessment Health Impacts Screening and Mapping Tool (COBRA), Version 3.2 (May 2018), https://www.epa.gov/sites/production/files/2018-05/documents/cobra_user_manual_may2018_508.pdf.

The AVERT contains information and assumptions that are not “publicly available in a manner sufficient for validation and analysis.” 83 Fed. Reg. at 18,769/1. The inputs, assumptions, methodologies and operation are not “transparent” in the manner described in the Proposal, notwithstanding the database being pivotal to EPA regulatory actions. *Id.* at 18,770/3. AVERT was developed by Synapse based upon taking models from the very same epidemiological studies that the Proposal would prohibit EPA from considering.²²⁵ Accordingly, AVERT would be “tainted” and unusable by EPA or other parties based on the same (unlawful, arbitrary) prohibitions reflected in the Proposal. EPA and other parties have used AVERT to “drive the magnitude of the benefit-cost calculation and the level of standards” in Clean Air Act regulations, including State Implementation Plans for energy efficiency and renewable energy measures. 83 Fed. Reg. at 18,770/2.

F. Community Multi-scale Air Quality Modeling System

The Community Multi-scale Air Quality Modeling System simultaneously models multiple air pollutants, including ozone, PM, and air toxics, to help regulators determine the best air quality management scenarios for their communities, states and countries. Using data about land use, meteorology, and emissions, CMAQ provides detailed information about the concentrations of air pollutants in a given area for any specified emissions or climate scenario. It combines three types of models—meteorological models, emissions models, and air-chemistry transport models.

EPA and states have used CMAQ for more than a decade. The National Weather Service also uses CMAQ to produce daily U.S. forecasts for ozone air quality. States use CMAQ to develop and assess implementation actions needed to attain National Ambient Air Quality Standards. EPA has used CMAQ to support the development of NAAQS; provide guidance on NAAQS implementation to State environmental agencies and EPA Regional Offices; assess impacts of changing air pollution levels on human health by EPA and the Centers for Disease Control and Prevention; and assess impacts of polluted rainfall to sensitive ecosystems such as the Chesapeake Bay.²²⁶ EPA has said, bluntly, that “[t]he loss or stagnation of [CMAQ] would jeopardize protection of public health and adequate assessment of Clean Air Act compliance.” *Id.*

The CMAQ contains information and assumptions that are not “publicly available in a manner sufficient for validation and analysis.” 83 Fed. Reg. at 18,769/1. The inputs, assumptions, methodologies, and operation are not “transparent” in the manner described in the Proposal, notwithstanding the database being pivotal to EPA regulatory actions. *Id.* at 18,770/3. The CMAQ relies, in part, on the very same epidemiological studies that the Proposal would

²²⁵ See U.S. EPA, User’s Manual for the Co-Benefits Risk Assessment Health Impacts Screening and Mapping Tool (COBRA), Version 3.2 (May 2018), https://www.epa.gov/sites/production/files/2018-05/documents/cobra_user_manual_may2018_508.pdf.

²²⁶ U.S. EPA, Community Multiscale Air Quality (CMAQ) Model Impact Statement, https://www.epa.gov/sites/production/files/2017-08/documents/cmaq_impact_statement_29aug2017.pdf.

prohibit EPA from considering.²²⁷ Accordingly, CMAQ would be “tainted” and unusable by EPA or other parties based on the same (unlawful, arbitrary) prohibitions reflected in the Proposal. EPA and other parties have used CMAQ to “drive the magnitude of the benefit-cost calculation and the level of standards” in Clean Air Act regulations. *Id.* at 18,770/2.

G. EPA U.S. Nine-region MARKAL Database.

The EPA MARKet ALlocation (MARKAL) model is a data-driven, bottom-up energy systems economic optimization model. A census region representation of U.S. energy system, it was developed by EPA researchers for use with MARKAL model, an energy system optimization model used by local and federal governments and academic researchers. It is used in more than 35 countries. “The EPAUS9r is a distinct representation of the U.S. energy system designed to be used within the MARKAL model structure. The database characterizes the flow of energy associated with the extraction or import of resources, the conversion of these resources into useful energy, and the use of the energy in meeting end-use demands within and between the nine census regions of the United States.”²²⁸

The MARKAL contains information and assumptions, and is based on commercial software, that are not “publicly available in a manner sufficient for validation and analysis.” 83 Fed. Reg. at 18,769/1. The software is not open source.²²⁹ The inputs, assumptions, methodologies, and operation are not “transparent” in the manner described in the Proposal, notwithstanding the database being pivotal to EPA regulatory actions. *Id.* at 18,770/3. EPA and other parties have used MARKAL to “drive the magnitude of the benefit-cost calculation and the level of standards” in Clean Air Act regulations. *Id.* at 18,770/2.

H. Emissions & Generation Resource Integrated Database.

eGRID is a comprehensive source of data on the environmental characteristics, including emissions and resource mix data, for almost every power plant and company that generates electricity in the U.S. eGRID data can be used for: GHG registries and inventories, carbon footprints, consumer information disclosure, emission inventories and standards, power market changes, and avoided emission estimates. It was developed with Abt Associates.

eGRID data are used in the following applications and programs: “Power Profiler web application, Climate Leaders protocols, ENERGYSTAR’s Portfolio Manager and Target Finder, Waste Wise Office Carbon Footprint Tool, the Personal Greenhouse Gas Emissions Calculator, the Greenhouse Gas Equivalencies Calculator, and the Green Power Equivalency Calculator.”²³⁰

²²⁷ See U.S. EPA, User’s Manual for the Co-Benefits Risk Assessment Health Impacts Screening and Mapping Tool (COBRA), Version 3.2 (May 2018), https://www.epa.gov/sites/production/files/2018-05/documents/cobra_user_manual_may2018_508.pdf.

²²⁸ U.S. EPA, EPA U.S. Nine-region MARKAL DATABASE, Database Documentation, <https://nepis.epa.gov/Adobe/PDF/P100I4RX.pdf>.

²²⁹ Database Documentation, *supra* n.228.

²³⁰ U.S. EPA, The Emissions and Generation Resource Integrated Database: Technical Support Document for eGrid With Year 2016 Data, https://www.epa.gov/sites/production/files/2018-02/documents/egrid2016_technicalsupportdocument_0.pdf.

“eGRID is also used by other Federal Government agencies such as Oak Ridge National Laboratory (ORNL) for their Combined Heat and Power Calculator, the National Energy Technology Laboratory (NETL) for their sponsored distributed National Carbon Sequestration Database and Geographic Information System (NATCARB), and the National Renewable Energy Laboratory (NREL) for their micropower distributed generation optimization model named HOMER.”²³¹

eGRID contains information and assumptions that are not “publicly available in a manner sufficient for validation and analysis.” 83 Fed. Reg. at 18,769/1. The inputs, assumptions, methodologies, and operation are not “transparent” in the manner described in the Proposal, notwithstanding the database being pivotal to EPA regulatory actions. *Id.* at 18,770/3. eGRID relies, in part, on the very same epidemiological studies that the Proposal would prohibit EPA from considering.²³² Accordingly, eGRID would be “tainted” and unusable by EPA or other parties based on the same (unlawful, arbitrary) prohibitions reflected in the Proposal. EPA and other parties have used eGRID to “drive the magnitude of the benefit-cost calculation and the level of standards” in Clean Air Act regulations. *Id.* at 18,770/2.

I. National Emissions Inventory (NEI)

The National Emissions Inventory is a comprehensive and detailed estimates of air emissions of criteria pollutants, criteria precursors, and hazardous air pollutants from air emissions sources, released every three years and based on data provided by state, local, and tribal air agencies for sources in their jurisdictions and supplemented by data developed by EPA. There is data for point sources, nonpoint sources, onroad sources, nonroad sources, and “event” sources.

The NEI contains information and assumptions that are not “publicly available in a manner sufficient for validation and analysis.” 83 Fed. Reg. at 18,769/1. The inputs, assumptions, methodologies and operation are not “transparent” in the manner described in the Proposal, notwithstanding the database being pivotal to EPA regulatory actions. *Id.* at 18,770/3. “Raw input datasets” underlying the NEI, for example, are available to “all EPA staff, EIS data submitters (*i.e.*, the S/L/T air agency staff), Regional Planning Organization staff that support state, local and tribal agencies, and contractors working for the EPA on emissions related work”—but not available to the public.²³³ Facility-level identification is also hidden from the public, while only some supporting material is publicly available.²³⁴ EPA and other parties have used the NEI to “drive the magnitude of the benefit-cost calculation and the level of standards” in Clean Air Act regulations. *Id.* at 18,770/2.

²³¹ Technical Support Document for eGrid, *supra* n.230.

²³² See U.S. EPA, User’s Manual for the Co-Benefits Risk Assessment Health Impacts Screening and Mapping Tool (COBRA), Version 3.2 (May 2018), https://www.epa.gov/sites/production/files/2018-05/documents/cobra_user_manual_may2018_508.pdf.

²³³ U.S. EPA, 2014 National Emissions Inventory, version 2 Technical Support Document (July 2018), https://www.epa.gov/sites/production/files/2018-07/documents/nei2014v2_tsd_05jul2018.pdf.

²³⁴ 2014 National Emissions Inventory, version 2 Technical Support Document, *supra* n.233, at 1–2.

XIII. The Proposal's retroactivity provisions are arbitrary and capricious

In the Proposal, EPA states that the proposed regulation “is intended to apply prospectively.” 83 Fed. Reg. at 18,771. However, a few pages later, the agency “solicits comments on how the prospective or retrospective application of the provisions for dose response data and models or pivotal regulatory science could inadvertently introduce bias regarding the timeliness and quality of the scientific information available.” Also, the Proposal states that “for regulatory programs . . . in which future significant regulatory actions may be based on the administrative record from previous reviews . . . , EPA seeks comment on the manner in which this proposed rule should apply to that previous record.” *Id.* at 18,772.

In short, despite its assertion that the rulemaking is “intended” to apply prospectively, the Proposal contemplates prohibiting EPA—or will prohibit EPA—from relying on studies generated *prior* to rulemakings that fail to meet the Proposal’s ill-defined criteria for “publicly available data.” This approach is arbitrary and capricious, runs counter to the specific language of many statutes the agency is tasked with administering, and would destroy the agency’s ability to promulgate health-based standards to protect the American public using the best available science.

The Proposal ignores an entire body of case law that has considered and roundly rejected both retroactivity in rulemakings and limiting data that underlies rulemakings to “publicly available data.” In so doing, the Proposal is arbitrary and capricious, and should be rejected.

The Supreme Court strongly disfavors retroactive application of rules. The Court has stated that:

Retroactivity is not favored in the law. Thus, congressional enactments and administrative rules will not be construed to have retroactive effect unless their language requires this result. [] By the same principle, a statutory grant of legislative rulemaking authority will not, as a general matter, be understood to encompass the power to promulgate retroactive rules unless that power is conveyed by Congress in express terms. [] Even where some substantial justification for retroactive rulemaking is presented, courts should be reluctant to find such authority absent an express statutory grant.

Bowen v. Georgetown Univ. Hosp., 488 U.S. 204, 208–09 (1988) (internal citations omitted). Notably, the Proposal does not identify a single provision in a single statute that EPA administers, or any other federal law, that requires or even authorizes any final rule based on the Proposal to have retroactive effect. *See generally* 83 Fed. Reg. at 18,768–74. There has been no power conveyed by Congress in express terms to promulgate retroactive rules related to any element of the Proposal; it is unsurprising that the Proposal does not and cannot identify *any* express or even implied grant of authority. *See Bowen*, 488 U.S. at 208–09.

The Proposal claims prospective application, while nonetheless noting that in some circumstances EPA may desire to apply the rule retroactively. 83 Fed. Reg. at 18,771. This, too, is unlawful and fails to meet the high burden in the Supreme Court’s *Bowen* decision and its progeny concerning retroactive application of agency rules. The suggestion in the Proposal, for

example, that EPA may invoke the Proposal's approach to review all prior health and scientific studies underlying the NAAQS is illegitimate, arbitrary and capricious, and contrary to caselaw.²³⁵ *Bowen* and its progeny do not permit agency rules to have retroactive effect to disallow health studies and regulatory science generated prior to, or relied upon by EPA prior to, adoption of any final rule based on the Proposal. This caselaw does not entertain any such exception and accepting any such exception for these circumstances would circumvent the holdings and reasoning of this case law.

XIV. The Proposal fails to address environmental justice concerns and harms to children, as required by Executive Order 12,898 and Executive Order 13,045

EPA claims that it need not address Executive Order 12,898 (Environmental Justice in Minority Populations) nor Executive Order 13,045 (protecting children) because “this action does not concern an environmental health risk or safety risk” 83 Fed. Reg. at 18,773. This is an unsupported and inaccurate claim. The implementation of this rule would impact the rules and guidelines that are set to protect children, people of color, the elderly, low-income, and other underserved populations.

A. Executive Order 12,898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12,898 applies to agency “programs, policies and activities” and directs agencies such as the EPA, “[t]o the greatest extent practicable and permitted by law” to “identify[] and address[], as appropriate, disproportionately high and adverse human health or environmental effects” of agency programs, policies and actions on minority populations and low-income populations.” Executive Order 12,898, Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 Fed. Reg. 7629 (Feb. 16, 1995). Because minority and low-income populations have historically been underrepresented in agency decision making, Executive Order 12,898 also aims to improve public participation of these populations in the decision-making process. *Id.* at 7630–32. Moreover, Executive Order 12898 aims to “improve research and data collection relating to the health of and environment of minority populations and low-income populations.” *Id.* at 7630.

In keeping with these and other principles, EPA created a Guidance document for determining when environmental justice should be considered when developing regulations titled “Guidance on Considering Environmental Justice During the Development of Regulatory Actions.” To achieve Executive Order 12,898's goals, the Guidance directs rule-writers and decision-makers to respond to three core Environmental Justice questions throughout the process:

²³⁵ See 83 Fed. Reg. at 18,772/1 (“For regulatory programs, like the National Ambient Air Quality Standards program, in which future significant regulatory actions may be based on the administrative record from previous reviews—particularly where the governing statute requires repeated review on a fixed, date-certain cycle—EPA seeks comment on the manner in which this proposed rule should apply to that previous record.”)

1. How did the public participation process provide transparency and meaningful participation for minority populations, low-income populations, tribes, and indigenous peoples?
2. How did the rule-writers identify and address existing and/or new disproportionate environmental and public health impacts on minority populations, low-income populations, and/or indigenous peoples?
3. How did actions taken under #1 and #2 impact the outcome or final decision?

Guidance on Considering Environmental Justice During the Development of Regulatory Actions, May 2015, at ii, <https://www.epa.gov/sites/production/files/2015-06/documents/considering-ej-in-rulemaking-guide-final.pdf> (footnote omitted). It is important to note that a regulatory action may involve a potential environmental justice concern if it could:

- Create new disproportionate impacts on minority populations, low-income populations, and/or indigenous peoples;
- Exacerbate existing disproportionate impacts on minority populations, low-income populations, and/or indigenous peoples; or
- Present opportunities to address existing disproportionate impacts on minority populations, low-income populations, and/or indigenous peoples through the action under development.

Id. at 10. And “[i]n determining whether potential EJ concerns may be at issue in regulatory actions, some level of analysis is needed, be it qualitative, quantitative, or some combination of both.” *Id.* at 15.

The Proposal improperly ignores Executive Order 12,898 and the agency’s obligations to address Environmental Justice in minority and low-income populations. EPA does not appear to have considered the Proposals effect on minority and low-income populations at all or performed any analysis, let alone attempt to address the Environmental Justice concerns. Instead, the Proposal states “The EPA believes that this action is not subject to Executive Order 12898 (59 FR 7629, February 16, 1994) because it does not establish an environmental health or safety standard.” 83 Fed. Reg. at 18,773. But Executive Order 12,898 is not limited to actions that “establish an environmental health or safety standard,” and EPA does not explain the basis for its conclusion that the Proposal is exempt. This is arbitrary and capricious.

The Proposal makes no mention of the Guidance on Considering Environmental Justice During the Development of Regulatory Actions, and the Proposal directly conflicts with many of the Executive Order’s, and the Guidance document’s provisions. With the single English language hearing EPA held in Washington DC, EPA has not provided for meaningful participation of minority populations, low-income populations, tribes, and indigenous peoples. Given that EPA has decided without explanation that the Proposal is categorically exempt from Environmental Justice considerations, the agency has not identified or addressed any existing or

new disproportionate environmental and public health impacts on minority populations, low-income populations, and/or indigenous peoples. And the Proposal's preclusion of agency consideration of peer reviewed studies in regulatory decision making unless the underlying data are made publicly available, will weaken research and data collection relating to the health of and environment of minority populations and low-income populations.

If EPA had fulfilled its obligations under Executive Order 12,898, the agency would have concluded that the Proposal does disproportionately harm minority and low-income populations that are most in need of protection. It is well established that minority and low-income populations are most likely to experience disproportionate exposure to harmful pollutants and chemicals. The Proposal seeks to preclude the use of scientific research critical to establishing safeguards against this disproportionate exposure.

Lastly, the Proposal will reduce research and data collection needed to protect the health of minority and low-income populations as individuals are deterred based on the fear their personal information will be released and researchers avoid seeking such information. EPA has not addressed this issue.

The Proposal does not comply with Executive Order 12,898 related to Environmental Justice or any EPA guidance implementing the Executive Order. It is arbitrary and capricious and should be withdrawn.

B. Executive Order 13,045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13,045 requires that every agency:

- (a) shall make it a high priority to identify and assess environmental health risks and safety risks that may disproportionately affect children; and
- (b) shall ensure that its policies, programs, activities, and standards address disproportionate risks to children that result from environmental health risks or safety risks.

Executive Order 13,045, Protection of Children From Environmental Health Risks and Safety Risks, 62 Fed. Reg. 19,885 (Apr. 21, 1997). The Executive Order requires that

For each covered regulatory action submitted to OMB's Office of Information and Regulatory Affairs (OIRA) for review pursuant to Executive Order 12866, the issuing agency shall provide to OIRA the following information developed as part of the agency's decisionmaking process, unless prohibited by law:

- (a) an evaluation of the environmental health or safety effects of the planned regulation on children; and

(b) an explanation of why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the agency.

Id. at 19,887. The Executive Order covers regulatory actions that are likely to result in a rule that may be economically significant under Executive Order 12,866 (which the EPA concluded applies to the Proposal, *see* 83 Fed. Reg. at 18,772) and “concern an environmental health risk or safety risk that an agency has reason to believe may disproportionately affect children.” 62 Fed. Reg. at 19,885.

EPA created a Guide to help Agency staff involved in developing actions determine whether Executive Order 13,045 applies to an Agency action and, if so, how to implement the Executive Order. Guide to Considering Children’s Health When Developing EPA Actions, at 1 Oct. 2006, https://www.epa.gov/sites/production/files/2014-05/documents/epa_adp_guide_childrenhealth.pdf. The Guide includes “a set of questions EPA staff involved in action development can ask risk assessors to ensure that the various types of information relevant to the assessment of risks to children are considered and may be useful in addressing the issue of disproportionate risks.” *Id.* at 8. And, the Guide explains: “If a rulemaking is not covered by EO 13045, but it discusses environmental health or safety, it is advisable to characterize children’s risk to the extent the data are available.” *Id.* at 7.

EPA asserts that the Proposal is not subject to Executive Order 13,045 because it does not concern an environmental health risk or safety risk. 83 Fed. Reg. at 18,773. EPA does not explain how it reached this conclusion. EPA also does not characterize children’s risk to the extent data are available. The Proposal applies to “Pivotal regulatory science,” which it defines as “the specific scientific studies or analyses that drive the requirements and/or quantitative analysis of EPA final significant regulatory decisions.” *Id.* And the Proposal defines Regulatory science as “scientific information, including assessments, models, criteria documents, and regulatory impact analyses, that provide the basis for EPA final significant regulatory decisions.” *Id.* The Proposal explains that “‘Pivotal regulatory science’ is the studies, models, and analyses that drive the magnitude of the benefit-cost calculation, the level of a standard, or point-of-departure from which a reference value is calculated. In other words, they are critical to the calculation of a final regulatory standard or level, or to the quantified costs, benefits, risks and other impacts on which a final regulation is based.” *Id.* at 18770. By its terms, the Proposal will impact (and therefore concern) all environmental health and safety risks, including many that EPA knows disproportionately affect children.

EPA failed its obligation to evaluate the environmental health or safety effects of the Proposal on children and explain why the Proposal is preferable to other potentially effective and reasonably feasible alternatives considered by the agency. The Proposal is arbitrary and capricious and should be withdrawn.

C. Examples of how the Proposal could disproportionately affect minority populations, low-income populations, and children

As explained in section III.F. and elsewhere, the Proposal would preclude the use of many of the studies that EPA has relied on to set and revise the NAAQS for fine particulate

matter (PM_{2.5}). The regulatory impact assessment from the initial decision to set the PM_{2.5} NAAQS explained that “benefits from these standards will likely be concentrated in urban areas with high concentrations of minority and low-income populations.” Regulatory Impact Analyses for the Particulate Matter and National Ambient Air Quality Standards and Proposed Regional Haze Rule, at 11–31 (July 17, 1997). When EPA revised the PM_{2.5} NAAQS in 2013, the agency confirmed:

The EPA has identified potential disproportionately high and adverse effects on minority and/or low-income populations related to PM_{2.5} exposures. In addition, the EPA has identified persons from lower socioeconomic strata as an at-risk population for PM-related health effects.

National Ambient Air Quality Standards for Particulate Matter, 78 Fed. Reg. 3085, 3267 (Jan. 15, 2013). EPA also stated that “[t]he protection offered by these standards is especially important for children because childhood represents a lifestage associated with increased susceptibility to PM-related health effects.” *Id.* at 3266. EPA has not explained how its Proposal to preclude from consideration the foundational scientific studies for fine particulate matter protections that disproportionately benefit children, minority, and low-income populations will not affect those same children, minority, and low-income populations.

Similarly, as explained in section III.A., the Proposal would preclude the consideration of epidemiology studies published in the 1990’s that correlate childhood blood lead levels with impaired brain function and adverse behavioral effects, which important EPA lead-reduction regulations are based on. A 2001 lead regulation under the Toxic Substances Control Act has been essential in helping to reduce lead poisoning among children, *see* section III.A. Lead; Identification of Dangerous Levels of Lead, 66 Fed. Reg. 1206 (Jan. 5, 2001). That rule explains “Young children are especially vulnerable to the toxic effects of lead because their nervous systems are still developing and they absorb more of the lead to which they are exposed.” *Id.* at 1207. “Moreover, the standards selected by EPA are designed first and foremost to protect children from lead in residential paint, dust, and soil.” *Id.* at 1237. Additionally, EPA explained:

The Agency’s standards will protect children in minority and low-income communities from disproportionate burdens. This is based on the findings of the Agency’s economic analysis which shows that non-white populations receive more of the public health benefit associated with the standards.

Id. EPA has not explained how its Proposal to preclude from consideration the foundational scientific studies for lead protections that disproportionately benefit children, minority, and low-income populations will not affect those same children, minority, and low-income populations.

XV. The Proposal’s peer review provision lacks any statutory basis, is vague and contrary to existing requirements for peer review

In addition to addressing how and whether the agency will consider science, the Proposal also contains a seemingly unrelated provision regarding agency peer review. The Proposal, in § 30.7, reads:

What role does independent peer review in this section?

EPA shall conduct independent peer review on all pivotal regulatory science used to justify regulatory decisions, consistent with the requirements of the OMB Final Information Quality Bulletin for Peer Review (70 FR 2664) and the exemptions described therein.

Because transparency in regulatory science includes addressing issues associated with assumptions used in models, EPA shall ask peer reviewers to articulate the strengths and weaknesses of EPA's justification for the assumptions applied and the implications of those assumptions for the results.

83 Fed. Reg. at 18,774.

There is no statutory authority for EPA to “conduct independent peer review on all pivotal regulatory science used to justify regulatory decisions, consistent with the requirements of the OMB Final Information Quality Bulletin for Peer Review (70 FR 2664) and the exemptions described therein.” The federal statutes that EPA lists as putative authority for the Proposal provide no authority for proposed § 30.7. *See* 83 Fed. Reg. at 18,769/2 (citing Clean Air Act sections 103, 301(a), 42 U.S.C. 7403, 7601(a); Clean Water Act sections 104, 501, 33 U.S.C. 1254, 1361; Safe Drinking Water Act sections 1442, 1450(a)(1), 42 U.S.C. 300j–1, 300j–9(a)(1); Resource Conservation and Recovery Act sections 2002(a)(1), 7009, 42 U.S.C. 6912(a)(1), 6979; Comprehensive Environmental Response, Compensation, and Liability Act (as delegated to the Administrator via Executive Order 12580) sections 115, 311, 42 U.S.C. 9616, 9660; Emergency Planning and Community Right-To-Know Act section 328, 42 U.S.C. 11048; Federal Insecticide, Fungicide, and Rodenticide Act sections 25(a)(1), 136r(a), 7 U.S.C. 136r(a), 136w; and Toxic Substances Control Act, as amended, section 10, 15 U.S.C. 2609, and the Administrative Procedures Act). The claimed authorities that EPA lists do not mention peer review or even allude to the concept. *Id.* Neither the Proposal nor accompanying docket materials identify *any* provision of any federal statute that authorizes EPA to promulgate proposed § 30.7. Our own research revealed no provision of any federal statute that authorizes EPA to promulgate proposed § 30.7.

When Congress writes federal statutes, Congress knows how to create legal authority for peer review, who shall conduct that peer review, what role, if any, that EPA or other parties will play, and how that peer review may be conducted. None of the provision in the law authorize EPA's Proposal in § 30.7. Instead, the statutes *require* that EPA use peer-reviewed science, regardless of whether it would meet EPA's definition of the term in § 30.7. And in cases where the law requires *EPA* to conduct the review, the statutes often spell out specifically how that should happen.

Statute	Provisions on Peer Review
CAA	<p data-bbox="358 239 786 271"><u>§ 7511b. Federal ozone measures</u></p> <p data-bbox="358 310 1421 642">(g) Ozone design value study The Administrator shall conduct a study of whether the methodology in use by the Environmental Protection Agency as of November 15, 1990, for establishing a design value for ozone provides a reasonable indicator of the ozone air quality of ozone nonattainment areas. The Administrator shall obtain input from States, local subdivisions thereof, and others. The study shall be completed and a report submitted to Congress not later than 3 years after November 15, 1990. The results of the study shall be subject to <i>peer and public review</i> before submitting it to Congress.</p> <p data-bbox="358 681 834 713">42 U.S.C. § 7511b (emphasis added).</p> <p data-bbox="358 752 776 784"><u>§ 7412. Hazardous air pollutants</u></p> <p data-bbox="358 823 1421 1231">(p) Mickey Leland National Urban Air Toxics Research Center (3) Scientific Advisory Panel The Board of Directors shall be advised by a Scientific Advisory Panel, the 13 members of which shall be appointed by the Board, and to include eminent members of the scientific and medical communities. The Panel membership may include scientists with relevant experience from the National Institute of Environmental Health Sciences, the Center for Disease Control, the Environmental Protection Agency, the National Cancer Institute, and others, and the Panel shall conduct <i>peer review</i> and evaluate research results. The Panel shall assist the Board in developing the research agenda, reviewing proposals and applications, and advise on the awarding of research grants.</p> <p data-bbox="358 1269 818 1302">42 U.S.C. § 7412 (emphasis added).</p>
CWA	<p data-bbox="358 1349 935 1381"><u>§ 1321. Oil and hazardous substance liability</u></p> <p data-bbox="358 1420 1421 1677">(a) Definitions (27) the term “best available science” means science that-- (A) maximizes the quality, objectivity, and integrity of information, including statistical information; (B) uses <i>peer-reviewed</i> and publicly available data; and (C) clearly documents and communicates risks and uncertainties in the scientific basis for such projects;</p> <p data-bbox="358 1716 818 1748">33 U.S.C. § 1321 (emphasis added).</p>
SDWA	<p data-bbox="358 1791 943 1823"><u>§ 300g-1. National drinking water regulations</u></p> <p data-bbox="358 1862 532 1895">(b) Standards</p>

	<p>(3) Risk assessment, management, and communication</p> <p>(A) Use of science in decisionmaking</p> <p>In carrying out this section, and, to the degree that an Agency action is based on science, the Administrator shall use--</p> <ul style="list-style-type: none"> (i) the best available, <i>peer-reviewed science</i> and supporting studies conducted in accordance with sound and objective scientific practices; and (ii) data collected by accepted methods or best available methods (if the reliability of the method and the nature of the decision justifies use of the data). <p>(B) Public information</p> <p>In carrying out this section, the Administrator shall ensure that the presentation of information on public health effects is comprehensive, informative, and understandable. The Administrator shall, in a document made available to the public in support of a regulation promulgated under this section, specify, to the extent practicable--</p> <ul style="list-style-type: none"> (i) each population addressed by any estimate of public health effects; (ii) the expected risk or central estimate of risk for the specific populations; (iii) each appropriate upper-bound or lower-bound estimate of risk; (iv) each significant uncertainty identified in the process of the assessment of public health effects and studies that would assist in resolving the uncertainty; and (v) <i>peer-reviewed studies</i> known to the Administrator that support, are directly relevant to, or fail to support any estimate of public health effects and the methodology used to reconcile inconsistencies in the scientific data. <p>...</p> <p>(12) Certain contaminants</p> <p>(B) Sulfate</p> <p>(i) Additional study</p> <p>Prior to promulgating a national primary drinking water regulation for sulfate, the Administrator and the Director of the Centers for Disease Control and Prevention shall jointly conduct an additional study to establish a reliable dose-response relationship for the adverse human health effects that may result from exposure to sulfate in drinking water, including the health effects that may be experienced by groups within the general population (including infants and travelers) that are potentially at greater risk of adverse health effects as the result of such exposure. The study shall be conducted in consultation with interested States, shall be based on the best available, <i>peer-reviewed science</i> and supporting studies conducted in accordance with sound and objective scientific practices, and shall be completed not later than 30 months after August 6, 1996.</p> <p>42 U.S.C. § 300g-1 (emphasis added).</p>
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	<p><u>§ 300j-2. Grants for State programs</u></p> <p>(d) New York City watershed protection program</p> <p>(1) In general</p> <p>The Administrator is authorized to provide financial assistance to the State of New York for demonstration projects implemented as part of the watershed program for the protection and enhancement of the quality of source waters of the New York City water supply system, including projects that demonstrate, assess, or provide for comprehensive monitoring and surveillance and projects necessary to comply with the criteria for avoiding filtration contained in 40 C.F.R. 141.71.</p> <p>Demonstration projects which shall be eligible for financial assistance shall be certified to the Administrator by the State of New York as satisfying the purposes of this subsection. In certifying projects to the Administrator, the State of New York shall give priority to monitoring projects that have undergone <i>peer review</i>.</p> <p>42 U.S.C. § 300j-2 (emphasis added).</p>
RCRA	<p><u>§ 6939a. Exposure information and health assessments</u></p> <p>(b) Health assessments</p> <p>(2) Whenever in the judgment of the Administrator, or the State (in the case of a State with an authorized program), a landfill or a surface impoundment poses a substantial potential risk to human health, due to the existence of releases of hazardous constituents, the magnitude of contamination with hazardous constituents which may be the result of a release, or the magnitude of the population exposed to such release or contamination, the Administrator or the State (with the concurrence of the Administrator) may request the Administrator of the Agency for Toxic Substances and Disease Registry to conduct a health assessment in connection with such facility and take other appropriate action with respect to such risks as authorized by section 9604(b) and (i) of this title. If funds are provided in connection with such request the Administrator of such Agency shall conduct such health assessment.</p> <p>...</p> <p>(e) Periodic reports</p> <p>The Administrator of such Agency shall issue periodic reports which include the results of all the assessments carried out under this section. Such assessments or other activities shall be reported after appropriate <i>peer review</i>.</p> <p>42 U.S.C. § 6939a (emphasis added).</p>
CERCLA	<p><u>§ 9604. Response authorities</u></p> <p>(i) Agency for Toxic Substances and Disease Registry; establishment, functions, etc.</p>

...

Any toxicological profile or revision thereof shall reflect the Administrator of ATSDR's assessment of all relevant toxicological testing which has been *peer reviewed*. The profiles required to be prepared under this paragraph for those hazardous substances listed under subparagraph (A) of paragraph (2) shall be completed, at a rate of no fewer than 25 per year, within 4 years after October 17, 1986. A profile required on a substance listed pursuant to subparagraph (B) of paragraph (2) shall be completed within 3 years after addition to the list. The profiles prepared under this paragraph shall be of those substances highest on the list of priorities under paragraph (2) for which profiles have not previously been prepared. Profiles required under this paragraph shall be revised and republished as necessary, but no less often than once every 3 years. Such profiles shall be provided to the States and made available to other interested parties.

...

(7)(A) Whenever in the judgment of the Administrator of ATSDR it is appropriate on the basis of the results of a health assessment, the Administrator of ATSDR shall conduct a pilot study of health effects for selected groups of exposed individuals in order to determine the desirability of conducting full scale epidemiological or other health studies of the entire exposed population.

(B) Whenever in the judgment of the Administrator of ATSDR it is appropriate on the basis of the results of such pilot study or other study or health assessment, the Administrator of ATSDR shall conduct such full scale epidemiological or other health studies as may be necessary to determine the health effects on the population exposed to hazardous substances from a release or threatened release. If a significant excess of disease in a population is identified, the letter of transmittal of such study shall include an assessment of other risk factors, other than a release, that may, in the judgment of the *peer review* group, be associated with such disease, if such risk factors were not taken into account in the design or conduct of the study.

...

(13) All studies and results of research conducted under this subsection (other than health assessments) shall be reported or adopted only after appropriate *peer review*. Such *peer review* shall be completed, to the maximum extent practicable, within a period of 60 days. In the case of research conducted under the National Toxicology Program, such *peer review* may be conducted by the Board of Scientific Counselors. In the case of other research, such *peer review* shall be conducted by panels consisting of no less than three nor more than seven members, who shall be disinterested scientific experts selected for such purpose by the Administrator of ATSDR or the Administrator of EPA, as appropriate, on the basis of their reputation for scientific objectivity and the lack of institutional ties

	<p>with any person involved in the conduct of the study or research under review. Support services for such panels shall be provided by the Agency for Toxic Substances and Disease Registry, or by the Environmental Protection Agency, as appropriate.</p> <p>42 U.S.C. § 9604 (emphasis added).</p>
EPCRA	No mentions of peer review
FIFRA	<p><u>§ 136w. Authority of Administrator</u></p> <p>(e) Peer review The Administrator shall, by written procedures, provide for <i>peer review</i> with respect to the design, protocols, and conduct of major scientific studies conducted under this subchapter by the Environmental Protection Agency or by any other Federal agency, any State or political subdivision thereof, or any institution or individual under grant, contract, or cooperative agreement from or with the Environmental Protection Agency. In such procedures, the Administrator shall also provide for <i>peer review</i>, using the advisory panel established under subsection (d) of this section or appropriate experts appointed by the Administrator from a current list of nominees maintained by such panel, with respect to the results of any such scientific studies relied upon by the Administrator with respect to actions the Administrator may take relating to the change in classification, suspension, or cancellation of a pesticide. Whenever the Administrator determines that circumstances do not permit the <i>peer review</i> of the results of any such scientific study prior to the Administrator's exercising authority under section 136d(c) of this title to immediately suspend the registration of any pesticide to prevent an imminent hazard, the Administrator shall promptly thereafter provide for the conduct of <i>peer review</i> as provided in this sentence. The evaluations and relevant documentation constituting the <i>peer review</i> that relate to the proposed scientific studies and the results of the completed scientific studies shall be included in the submission for comment forwarded by the Administrator to the advisory panel as provided in subsection (d). As used in this subsection, the term “<i>peer review</i>” shall mean an independent evaluation by scientific experts, either within or outside the Environmental Protection Agency, in the appropriate disciplines.</p> <p>7 U.S.C. § 136w (emphasis added).</p> <p><u>§ 136w-8. Pesticide registration service fees</u></p> <p>(a) Definition of costs In this section, the term “costs”, when used with respect to review and decisionmaking pertaining to an application for which registration service fees are paid under this section, means-- (1) costs to the extent that--</p>

	<p>(A) officers and employees provide direct support for the review and decisionmaking for covered pesticide applications, associated tolerances, and corresponding risk and benefits information and analyses;</p> <p>(B) persons and organizations under contract with the Administrator engage in the review of the applications, and corresponding risk and benefits information and assessments; and</p> <p>(C) advisory committees and other accredited persons or organizations, on the request of the Administrator, engage in the <i>peer review</i> of risk or benefits information associated with covered pesticide applications;</p> <p>(2) costs of management of information, and the acquisition, maintenance, and repair of computer and telecommunication resources (including software), used to support review of pesticide applications, associated tolerances, and corresponding risk and benefits information and analyses; and</p> <p>(3) costs of collecting registration service fees under subsections (b) and (c) and reporting, auditing, and accounting under this section.</p> <p>7 U.S.C. § 136w-8 (emphasis added).</p>
TSCA	<p><u>§ 2625. Administration</u></p> <p>(h) Scientific standards In carrying out sections 2603, 2604, and 2605 of this title, to the extent that the Administrator makes a decision based on science, the Administrator shall use scientific information, technical procedures, measures, methods, protocols, methodologies, or models, employed in a manner consistent with the best available science, and shall consider as applicable--</p> <p>(1) the extent to which the scientific information, technical procedures, measures, methods, protocols, methodologies, or models employed to generate the information are reasonable for and consistent with the intended use of the information;</p> <p>(2) the extent to which the information is relevant for the Administrator's use in making a decision about a chemical substance or mixture;</p> <p>(3) the degree of clarity and completeness with which the data, assumptions, methods, quality assurance, and analyses employed to generate the information are documented;</p> <p>(4) the extent to which the variability and uncertainty in the information, or in the procedures, measures, methods, protocols, methodologies, or models, are evaluated and characterized; and</p> <p>(5) the extent of independent verification or <i>peer review</i> of the information or of the procedures, measures, methods, protocols, methodologies, or models.</p> <p>15 U.S.C. § 2625 (emphasis added).</p>

§ 2617. Preemption

(b) New statutes, criminal penalties, or administrative actions creating prohibitions or other restrictions

(1) In general

Except as provided in subsections (c), (d), (e), (f), and (g), beginning on the date on which the Administrator defines the scope of a risk evaluation for a chemical substance under section 2605(b)(4)(D) of this title and ending on the date on which the deadline established pursuant to section 2605(b)(4)(G) of this title for completion of the risk evaluation expires, or on the date on which the Administrator publishes the risk evaluation under section 2605(b)(4)(C) of this title, whichever is earlier, no State or political subdivision of a State may establish a statute, criminal penalty, or administrative action prohibiting or otherwise restricting the manufacture, processing, distribution in commerce, or use of such chemical substance that is a high-priority substance designated under section 2605(b)(1)(B)(i) of this title.

...

(f) Waivers

(2) Required exemptions

Upon application of a State or political subdivision of a State, the Administrator shall exempt from subsection (b) a statute or administrative action of a State or political subdivision of a State that relates to the effects of exposure to a chemical substance under the conditions of use if the Administrator determines that--

(A)(i) compliance with the proposed requirement of the State or political subdivision of the State would not unduly burden interstate commerce in the manufacture, processing, distribution in commerce, or use of a chemical substance;

(ii) compliance with the proposed requirement of the State or political subdivision of the State would not cause a violation of any applicable Federal law, rule, or order; and

(iii) the State or political subdivision of the State has a concern about the chemical substance or use of the chemical substance based in *peer-reviewed science*; or

(B) no later than the date that is 18 months after the date on which the Administrator has initiated the prioritization process for a chemical substance under the rule promulgated pursuant to section 2605(b)(1)(A) of this title, or the date on which the Administrator publishes the scope of the risk evaluation for a chemical substance under section 2605(b)(4)(D) of this title, whichever is sooner, the State or political subdivision of the State has enacted a statute or proposed or finalized an administrative action intended to prohibit or otherwise restrict the manufacture, processing, distribution in commerce, or use of the chemical substance.

15 U.S.C. § 2617 (emphasis added).

	<p><u>§ 2605. Prioritization, risk evaluation, and regulation of chemical substances and mixtures</u></p> <p>(b) Risk evaluations (E) Metals and metal compounds In identifying priorities for risk evaluation and conducting risk evaluations of metals and metal compounds, the Administrator shall use the Framework for Metals Risk Assessment of the Office of the Science Advisor, Risk Assessment Forum, and dated March 2007, or a successor document that addresses metals risk assessment and is <i>peer reviewed</i> by the Science Advisory Board.</p> <p>15 U.S.C. § 2605 (emphasis added).</p>
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Under longstanding federal case law, when Congress authorizes an approach in one section of a statute using specific language but does not do the same in other sections of a statute, courts presume that Congress acted purposefully and did not mean to address or authorize that approach in those other statutory sections. *See, e.g., Dean v. United States*, 556 U.S. 568 (2009) (“It is generally presumed that Congress acts intentionally when including particular language in one section of a statute but not in another.” (citing *Russello v. United States*, 464 U.S. 16, 23 (1983))). Not only are there no implied grants of authority to an agency in the other statutory sections, but the congressional decisions to authorize the approach elsewhere in the statute give even *greater* force to the conclusion that the agency has *not* been given authority where Congress did not use the same or similar authorizing language.

The EPA approach proposed in § 30.7 is even more unlawful than would be the case, independently, under this case law. Proposed § 30.7 says “EPA *shall* conduct independent peer review on all pivotal regulatory science used to justify regulatory decisions, *consistent with the requirements of* the OMB Final Information Quality Bulletin for Peer Review (70 FR 2664) and the exemptions described therein.” 83 Fed. Reg. at 18,774/2 (emphasis added). EPA proposes to bind itself (“shall”) to conduct a particular form of peer review on “*all* pivotal regulatory science” based on an *unenforceable, non-binding* OMB bulletin that has never been the subject of notice and comment rulemaking and that itself is not authorized by any federal law. To the contrary, treating the content of the unenforceable bulletin as a binding regulation would itself violate the federal statutes that EPA implements, because those statutes do not codify the bulletin, and EPA would be unlawfully codifying a mere policy preference. This EPA may not do.

This Proposal is unlawful, arbitrary and capricious, and an abuse of EPA discretion. To reiterate, the Proposal identifies *no* statutory authority for EPA to conduct independent peer review for any, much less all, “pivotal regulatory science” consistent with the dense content (and exceptions) of the OMB bulletin. The Proposal identifies *no* statutory authority for EPA to bind itself, and future administrations, to conduct peer review only in this fashion, unless and until future notice-and-comment rulemaking is undertaken. The Proposal identifies no suggestion in statutory language or legislative history that Congress intended EPA to conduct binding peer review consistent with this OMB bulletin, notwithstanding that Congress has known about this

bulletin since 2005. EPA has simply made up proposed § 30.7—with its the link to the OMB bulletin, and the putative authority for the Proposal—out of whole cloth. This EPA may not do.

The Proposal suffers additionally from unlawful vagueness. Proposed § 30.7 say that “EPA shall conduct independent peer review” without providing any coherent explanation or accompanying regulatory text about what that *means*: how will that peer review be conducted? By whom? Who will select the peer reviewers? How many will there be? Who will assure their independence and expertise? Will peer reviewers be subject to federal conflict of interest rules and policies? Will peer reviewers be anonymous? Where will the funds come from to conduct EPA peer reviews for “all pivotal regulatory science”? Has EPA estimated how many instances of “pivotal regulatory science” it anticipates conducting peer review for in one year? In prior years? Will the peer review be conducted openly and publicly? Will it be conducted in accordance with the Federal Advisory Committee Act? What will the duration of any peer review be? What purpose will that peer review serve? How will it affect future regulatory decisions? Or will it? Will there be an administrative docket? Will any product of the peer review be included in the administrative dockets for rulemaking? Will peer reviewer comments be part of the certified record for judicial review? Will the agency seek deference from future reviewing courts for the views expressed by peer reviewers? Does EPA not believe that peer review conducted by professional journals and societies is valid? Or sufficient? On what basis does EPA think professional peer review is invalid or insufficient, considering there is not one iota of evidence or support for that belief in the Proposal or the accompanying docket? What is the basic *justification* for proposed § 30.7? The Proposal provides no answers to these questions.

One obvious and serious objection to the proposed peer review mechanism is that it will be time-consuming, and it will necessarily slow EPA’s responsibilities to meet statutory deadlines and/or protect Americans by issuing timely health and environmental safeguards. The Proposal ignores this serious concern. Indeed, the Proposal contains no indication that EPA has given any thought to this serious concern, and how it will impact EPA’s statutory responsibilities and legal duty to meet congressional deadlines. EPA already misses an unacceptably high number of congressional deadlines in the statutes it administers, and the Proposal to apply peer review to “*all* pivotal regulatory science” will only exacerbate that endemic problem and the unlawfulness that it represents.

Finally, the final paragraph of § 30.7 appears to suggest that EPA should conduct peer review of the proposed agency action itself, rather than of the science underlying that action. 83 Fed. Reg. at 18,774 (stating that “EPA shall ask peer reviewers to articulate the strengths and weaknesses of *EPA*’s justification for the assumptions applied and the implications of those assumptions for the results.” (emphasis added)). It is entirely unclear how “peer review” could be applied to EPA’s reasoning itself, rather than the cited science, and the Proposal contains no further clarification.

EPA should abandon the unlawful Proposal altogether but, if EPA does finalize any rule based on the Proposal, EPA still should abandon the unlawful approach reflected in proposed § 30.7.

XVI. Conclusion

It is clear from the above that the Proposal violates the law and must be withdrawn. There is no support for the Proposal in any the statutes EPA cites, and in fact, those statutes conflict with the Proposal, as do other statutes that EPA failed to mention at all. Further, none of the other sources cited provide legal or logical support for the Proposal. The Proposal also suffers from a host of other problems: its definitions are vague; it is an unexplained reversal from prior agency policy; it handles confidential business information in a capricious manner; it treats other types of agency actions inconsistently; and it fails to analyze disproportionate impacts on communities of color, low-income communities, and children.

In the alternative, if EPA decides to move ahead with this reckless, unjustified, and unlawful effort to censor the science that EPA may consider, and must consider, to protect Americans' health and environment, the agency must first issue a supplemental proposal and actual administrative record to cover the multitude of issues, evidence, and specific regulatory text for which EPA fails to provide fair notice. The Proposal fails to provide fair notice or justifications addressing numerous issues that our comments detail—from an absence of any statutory authority, to failures to address statutory authorities that the Proposal squarely contravenes, to failures to provide reasoned explanations, including basic justifications for EPA's numerous departures from past practices. The Proposal fails to propose specific regulatory text addressing numerous implementation elements, as well as issues that are touched upon only in passing in the preamble (*e.g.*, non-linearity and LNT). Apart from all of the significant substantive and procedural defects from which the Proposal suffers, it still manages to be a shockingly shoddy effort missing actual regulatory text and supporting legal, factual, scientific, and technical information that would provide fair notice to the public.

**COMMENTS OF ATTORNEYS GENERAL OF NEW YORK, NEW JERSEY,
CALIFORNIA, CONNECTICUT, DELAWARE, ILLINOIS, IOWA, MAINE,
MARYLAND, MASSACHUSETTS, MINNESOTA, NORTH CAROLINA,
OREGON, PENNSYLVANIA, WASHINGTON, AND THE DISTRICT OF
COLUMBIA, THE SECRETARY OF THE PENNSYLVANIA DEPARTMENT
OF ENVIRONMENTAL PROTECTION, AND THE ATTORNEYS OF KING
COUNTY, WASHINGTON AND THE CITIES OF CHICAGO, LOS ANGELES,
NEW YORK, OAKLAND, PHILADELPHIA AND SAN FRANCISCO**

August 16, 2018

By Electronic Submission to www.regulations.gov

Andrew Wheeler
Acting Administrator
U.S. Environmental Protection Agency
Washington, DC 20460

Re: Docket ID No. EPA-HQ-OA-2018-0259, Proposal to Limit Use of Scientific
Evidence in Rulemaking, 83 Fed. Reg. 18,768 (April 30, 2018).

Dear Acting Administrator Wheeler:

The undersigned twenty-three State Attorneys General and County and City Attorneys respectfully submit the following comments on the U.S. Environmental Protection Agency's (EPA) April 30, 2018 proposal to limit the use of scientific evidence in rulemaking, 83 Fed. Reg. 18,768. The proposed rule would severely limit the scientific evidence that EPA can consider when adopting rules and standards to protect human health and the environment. It violates controlling federal law, is arbitrary and capricious, and contains clear errors in reasoning. The proposed rule was also issued without adequate review, most notably without *any* review from EPA's own science advisors. It will not "improve" the science relied upon by EPA, but will instead exclude much, if not most, of the science underpinning EPA action to protect the environment and our citizens from harm. Coupled with the former Administrator's directive prohibiting EPA grant recipients from serving on scientific advisory panels, the proposal reflects an effort to subvert well-founded agency practices for developing science-based regulations. This proposal is particularly troubling given EPA's critical mission and its significant responsibilities to the American people. EPA's change in leadership provides a unique opportunity to hit the reset button; we urge you to withdraw this harmful and deeply flawed proposal.

EXECUTIVE SUMMARY

While the proposal is worded vaguely, the intent is clear—in developing future regulations to protect human health and the environment, EPA would be precluded from considering relevant, probative scientific studies, models, or other information that have been

validated through peer review, on the sole basis that the underlying data are not publicly available.

It is equally clear that the proposed rule would violate the very federal laws EPA is required to uphold. To cite just a few examples, in performing its duties, EPA must rely on “the best available, peer-reviewed science and supporting studies conducted in accordance with sound and objective scientific practices,” 42 U.S.C. § 300g-1(b)(3)(A)(i) (Safe Drinking Water Act); on the “best available science,” 15 U.S.C. § 2625(h) (Toxic Substances Control Act); on “the latest scientific knowledge,” 33 U.S.C. § 1314(a)(1) (Clean Water Act) and 42 U.S.C. § 7408(a)(2) (Clean Air Act); and on “generally accepted scientific principles or laboratory tests, or appropriately designed and conducted epidemiological or other population studies,” 42 U.S.C. § 11023(d)(2) (Emergency Planning and Community Right-to-Know Act). Indeed, no federal environmental law so much as suggests that, in setting standards, EPA can ignore the “latest” or “best” or “appropriately designed and conducted” scientific studies whenever any portion of the underlying data is not public—which is often the case for important privacy reasons. The scientific community has made clear that such a limitation is *not* in accordance with best practices. This anti-science approach has stalled in Congress and been rejected by the courts; it has no place at EPA. Indeed, in rejecting an industry effort to impose the same strictures imposed here, the D.C. Circuit was persuaded by EPA’s position that “requiring agencies to obtain and publicize the data underlying all studies on which they rely ‘would be impractical and unnecessary,’” and agreed with EPA that such a requirement would mean “‘much plainly relevant scientific information would become unavailable to EPA for use in setting standards to protect public health and the environment.’” *Am. Trucking Ass’ns, Inc. v. EPA*, 283 F.3d 355, 372 (D.C. Cir. 2002).

EPA’s proposal would also violate the Administrative Procedure Act (APA), 5 U.S.C. § 501 *et seq.*, both because it is arbitrary and capricious, and because it flouts that Act’s important procedural requirements. EPA claims that the entire basis for the proposed rule is to ensure that the “pivotal regulatory science” underlying EPA regulations is transparent. But EPA ignores existing laws and policies that already do exactly that and which also take into account the need to protect medical data and other confidential information. This proposed rule would promote transparency in name only; in truth, it would mean that EPA’s important decisions would no longer be informed by the latest, best available, and generally accepted science. Disturbingly, the proposed rule’s only failsafe is the EPA Administrator’s sole discretion to determine on a case-by-case basis that compliance is “impracticable” when making data publicly available is “not feasible.” But the proposal provides no standards to govern the Administrator’s exercise of discretion in determining “impracticability or “feasibility”—a recipe for the very arbitrariness that the APA prohibits.

With respect to EPA’s process, this proposal has been rushed, is vague, and creates more questions than it answers. it does not clearly state the actual parameters of the proposed rule, it is open-ended in terms of alternatives under consideration, and it fails to provide critical information such as projected costs. It is also completely unclear—or worse, contradictory—whether and how this proposed rule would apply to EPA’s cost-benefit analyses. Still more troubling, EPA has failed to consult its own Science Advisory Board (SAB) about this proposed rule despite the SAB’s assessment that “this rule deals with a myriad of scientific issues for

which the Agency should seek expert advice.”¹ Proposing a rule that limits the use of scientific data without even notifying, let alone consulting, the Agency’s own expert scientific advisors is a text book example of an arbitrary and capricious failure to consider “relevant factors.” *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 42-43 (1983).

In light of these substantive and procedural infirmities, it is unsurprising that the proposed rule also makes little sense as a matter of science. Although EPA now claims that science is “better” only when both the underlying information is publicly available and the results reproducible, that position is contrary to the scientific consensus, and EPA provides no support for its assertion. The downsides of this proposal are significant: critical studies already designed and published on virtually all aspects of public health and environmental protection have relied on information for which complete disclosure is impossible for various reasons, including legally mandated confidentiality protections. This is particularly true of seminal and long-standing epidemiological studies that EPA has relied upon in setting air and other health-based standards. Therefore, the proposal would force EPA to ignore important peer-reviewed studies of health effects in future regulatory efforts. As our nation’s leading scientists at the National Academies of Sciences, Engineering, and Medicine (NAS) warned in a July 16, 2018 letter to EPA, the proposal’s overly stringent transparency requirements “pose a threat to the credibility of regulatory science.”²

Although EPA stated in its proposal that this rule would not affect any states, and therefore has no federalism implications, nothing could be further from the truth. The adoption of this proposed rule would very likely affect the protectiveness of the standards that EPA sets, which would significantly impact federal and state efforts to protect the quality of our air, water, and land, and the health and welfare of the American people. Some states’ environmental laws and regulations explicitly adopt EPA standards in all or some instances, or at the very least require an express justification for any deviation. So it is clear that a fundamental change in how EPA develops standards would most certainly affect state standards, and therefore would affect the health of our residents and our natural resources.

¹ Memorandum from Alison Cullen, Chair, SAB Work Group on EPA Planned Actions for SAB Consideration of the Underlying Science to Members of the Chartered SAB and SAB Liaisons, *Preparations for Chartered Science Advisory Board (SAB) Discussions of Proposed Rule: Strengthening Transparency in Regulatory Science RIN (2080-AA14) 2* (May 12, 2018) [hereinafter SAB Work Group Memo], available at [https://yosemite.epa.gov/sab/sabproduct.nsf/E21FFAE956B548258525828C00808BB7/\\$File/WkGrp_memo_2080-AA14_final_05132018.pdf](https://yosemite.epa.gov/sab/sabproduct.nsf/E21FFAE956B548258525828C00808BB7/$File/WkGrp_memo_2080-AA14_final_05132018.pdf).

² Letter from Marcia McNutt, President, Nat’l Acad. of Sciences, C.D. Mote, Jr., President, Nat’l Acad. of Eng. & Victor J. Dzau, President, Nat’l Acad. of Med., to Andrew Wheeler, Acting Administrator, U.S. Env’tl. Prot. Agency (July 16, 2018) [hereinafter NAS Letter], available at <http://www.nationalacademies.org/includes/EPA%20Proposed%20Rule%20Docket%20EPA-HQ-OA-2018-0259%20NASEM%20Comment.pdf>.

For all these reasons, as discussed in detail below, we oppose this misguided proposal to limit the science on which EPA relies. EPA should withdraw this flawed proposal and return to its core mission of protecting human health and the environment.

LEGAL COMMENTS

I. EPA Lacks Statutory Authority to Promulgate the Proposed Rule, Which Conflicts with Statutory Requirements Regarding EPA's Consideration of Scientific Information

Agencies may not adopt or implement regulations that conflict with the statutes under which they are promulgated, and an agency's interpretation of those statutes must always at least be reasonable. *See Chevron, U.S.A., Inc. v. Natural Res. Defense Council, Inc.*, 467 U.S. 837, 842-44 (1984). Accordingly, an agency's regulations cannot be "arbitrary, capricious, or manifestly contrary to the statute," *id.*, or "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right," 5 U.S.C. § 706. Further, agencies may not rely on general statutory grants of rulemaking authority to promulgate regulations that are otherwise inconsistent with more specific statutory directives. *Global Van Lines, Inc. v. Interstate Commerce Comm'n*, 714 F.2d 1290, 1293-97 (5th Cir. 1983).

In this case, the proposed rule is at odds with provisions of multiple statutes EPA is charged with implementing. For example:

- The Clean Air Act (CAA) requires that air quality criteria "accurately reflect *the latest scientific knowledge* useful in indicating the kind and extent of *all identifiable effects on public health or welfare*." § 108(a)(2), 42 U.S.C. § 7408(a)(2) (emphases added).
- The Safe Drinking Water Act (SDWA) requires that findings which support a determination to regulate a contaminant "be based on *the best available public health information*," and that, in developing the National Primary Drinking Water Regulations, "to the degree that an Agency action is based on science, the Administrator shall use *the best available, peer-reviewed science and supporting studies conducted in accordance with sound and objective scientific practices*." §§ 1412(b)(1)(B)(ii)(II), 1412(b)(3)(A)(i), 42 U.S.C. §§ 300g-1(b)(1)(B)(ii)(II), 300g-1(b)(3)(A)(i) (emphases added).
- The Clean Water Act (CWA) requires that water quality criteria "accurately reflect[] *the latest scientific knowledge*." § 304(a)(1), 33 U.S.C. § 1314(a)(1) (emphasis added).
- The Toxic Substances Control Act (TSCA) requires the Administrator, in decisions based on science, to "use scientific information, technical procedures, measures, methods, protocols, methodologies, or models, employed *in a manner consistent with the best available science*," and, in carrying out certain sections of the Act, to "take into consideration information relating to a chemical substance or mixture . . . that is

reasonably available to [him or her].” § 26(h), (k), 15 U.S.C. § 2625(h), (k) (emphases added).

- The Emergency Planning and Community Right-to-Know Act (EPCRA) requires that a determination to add a chemical to the Toxics Release Inventory “be based on *generally accepted scientific principles or laboratory tests, or appropriately designed and conducted epidemiological or other population studies, available to the Administrator.*” § 313(d)(2), 42 U.S.C. § 11023(d)(2) (emphasis added).

Even statutory provisions that EPA chose to cite as authority for the proposed action prohibit the Agency from promulgating the proposed rule. For example, CWA § 104(l) explicitly requires that “[t]he Administrator shall . . . develop and issue . . . *the latest scientific knowledge available* in indicating the kind and extent of effects on health and welfare which may be expected from the presence of pesticides in water.” 33 U.S.C. § 1254(l) (emphasis added). It strains credulity to believe that a directive to issue the “latest scientific knowledge available” somehow imposes a requirement that the Administrator only issue knowledge based on publicly available data, and EPA has not supplied any substantive argument that it does. Similarly, although Section 25 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) directs that regulations “take into account . . . *the appropriate data* for evaluating [] risk,” 7 U.S.C. § 136w (emphasis added), it would be arbitrary and capricious to define “appropriate” to exclude from consideration relevant and valid scientific studies, as EPA proposes to do in this rulemaking. Requirements to review the “latest” and “appropriate” scientific data are not carte blanche to impose new, unscientific limits on that data.

Because the proposed rule would run afoul of these provisions and potentially others,³ EPA’s citation to general rulemaking authorities such as CAA § 301(a), 42 U.S.C. § 7601(a), and CWA § 501, 33 U.S.C. § 1361, is unavailing. Such general provisions of rulemaking authority cannot override more specific statutory directives. *Global Van Lines*, 714 F.2d at 1293-97. Nor can EPA’s reliance on 5 U.S.C. § 301 in the notice extending the comment period save its *ultra vires* proposal. 83 Fed. Reg. at 24,256. Known as the “housekeeping statute,” 5 U.S.C. § 301 is “simply a grant of authority to the agency to regulate its own affairs,” not a general, independent basis for deviating from a specific statutory directive or limiting the scope of other statutes. *See Chrysler Corp. v. Brown*, 441 U.S. 281, 308-12 (1979).

Thus, as a general matter, EPA’s obligation is clear: it must base its decisions on such criteria as the latest scientific knowledge, the best available, peer-reviewed science, and/or generally accepted scientific principles or laboratory tests. No statute suggests that EPA, in setting standards, can reject scientific evidence that meets those criteria solely because the underlying data are not public or because the evidence is based on models that otherwise follow long-accepted scientific guidelines. In short, EPA lacks sufficient legal authority to either adopt or implement the proposed rule, and its proposed action conflicts with the statutes it must follow.

³ For example, CAA § 184(d), 42 U.S.C. § 7511c(d), “require[s] that the best available air quality monitoring and modeling techniques be used” in setting the criteria for determining ozone contributions in nonattainment areas.

II. The Proposal Does Not Meet Baseline Rulemaking Requirements and Should Be Withdrawn

a. EPA Failed to Obtain Input from Scientists in Developing a Proposal with Sweeping Impacts on Agency Use of Science

Common sense, good government, and the APA's fundamental requirement for informed decision-making all dictate that an agency developing a proposed rule should consult with persons having expertise regarding the subject matter of the proposal. EPA's Scientific Integrity Policy makes clear that these principles apply with great force here: "it is essential that the EPA's policymakers involve science experts on scientific issues and that the scientific information and processes relied upon in policymaking manifest scientific integrity, quality, rigor, and objectivity."⁴ Indeed, Congress mandated in the Environmental Research, Development and Demonstration Authorization Act of 1978 that when EPA provides a proposed rule such as the one at issue here to another federal agency for formal review and comment, it must also provide that same proposal to the SAB: "the Administrator . . . shall make available to the [SAB] such proposed criteria document, standard, limitation, or regulation, together with relevant scientific and technical information in the possession of the Environmental Protection Agency on which the proposed action is based." 42 U.S.C. § 4365(c)(1). Yet, as revealed in a June 28, 2018 letter from the SAB Chair to former Administrator Pruitt, EPA violated this fundamental requirement: although EPA provided the proposed rule to the Office of Management and Budget (OMB) for review on April 18, 2018, the SAB never had the opportunity to review it and instead learned of the proposal only from subsequent news reports and the April 30, 2018 *Federal Register* notice.⁵

Nor did EPA obtain input from the NAS or any other external science organizations or experts in developing the proposal. As the SAB work group noted: "Although the proposed rule cites several valuable publications that support enhanced transparency, the precise design of the rule appears to have been developed without a public process for soliciting input from the scientific community." SAB Work Group Memo at 3.

EPA offers no explanation for its inexplicable failure to consult with science experts, including the SAB, on this proposal, and it is beyond question that this highly consequential proposal demanded such consultation. Not only is this statutorily required, *see* 42 U.S.C. § 4365(c)(1), but as the SAB Work Group Memo states, "[t]he proposed rule deals with issues of scientific practice and proposes constraints that the [A]gency may apply to the use of scientific studies in particular contexts. As such, this rule deals with a myriad of scientific issues for

⁴ U.S. Env'tl. Prot. Agency, *Scientific Integrity Policy* 3, available at https://www.epa.gov/sites/production/files/2014-02/documents/scientific_integrity_policy_2012.pdf.

⁵ Letter from Michael Honeycutt, Chair, Science Advisory Bd., to E. Scott Pruitt, Administrator, U.S. Env'tl. Prot. Agency 2 (June 28, 2018) [hereinafter SAB June 28 Letter], available at [https://yosemite.epa.gov/sab/sabproduct.nsf/LookupWebReportsLastMonthBOARD/4ECB44CA28936083852582BB004ADE54/\\$File/EPA-SAB-18-003+Unsigned.pdf](https://yosemite.epa.gov/sab/sabproduct.nsf/LookupWebReportsLastMonthBOARD/4ECB44CA28936083852582BB004ADE54/$File/EPA-SAB-18-003+Unsigned.pdf).

which the Agency should seek expert advice from the [SAB].” SAB Work Group Memo at 2. Underscoring the importance of the issue, the full 44-member SAB followed up on the Work Group’s Memo with a unanimous vote to review the proposal and urged EPA to proceed no further until EPA does what it should have done in the first place: “request, receive and review scientific advice from the SAB.” SAB June 28 Letter at 1.

Put simply, EPA’s effort to rush this proposed rule out the door without any input from the SAB or other scientists violates basic principles of good government and policy-making as well as EPA’s legal duty. We urge EPA to withdraw this ill-conceived proposal and to consult with the SAB, the National Academy of Sciences, and the broader scientific community before determining if any rule is needed.

b. The Proposal is Too Vague, Conclusory, and Conditional to Allow for Meaningful Public Participation

EPA’s failure to solicit input from the SAB and other scientific groups is exacerbated by its failure to meet the fundamental legal requirements for a valid rulemaking proposal under the APA. The APA requires that “general notice of proposed rulemaking shall be published in the Federal Register,” including the “terms or substance of the proposed rule.” 5 U.S.C. § 553(b). The straightforward purpose of this requirement is to give the affected public an opportunity to provide meaningfully informed comment on an agency’s proposal. *See Home Box Office, Inc. v. Fed. Comm’n Comm’n*, 567 F.2d 9, 35-36 (D.C. Cir. 1977). But here, EPA’s notice of proposed rulemaking is vague as to the actual parameters of the proposed rule, is open-ended in terms of the alternatives under consideration, and fails to provide key information such as projected costs. Courts will not hesitate to strike down final rules based on proposals so lacking in specificity. *See, e.g., Horsehead Res. Dev. Co. v. Browner*, 16 F.3d 1246, 1268 (D.C. Cir. 1994) (noting that “general notice that a new standard will be adopted affords the parties scant opportunity for comment”).

Far from meeting the requirement to “disclose in detail the thinking that has animated the form of a proposed rule and the data upon which that rule is based,” *Home Box Office*, 567 F.2d at 35–36, the proposal at issue here creates far more questions than it answers. Most fundamentally, the proposal fails to provide a rationale for EPA to act contrary to accepted scientific practice, i.e., to preclude consideration of probative scientific information that has been subject to rigorous peer review for the sole reason that underlying data are confidential and therefore not publicly available. The proposal states that “EPA believes the benefits of this proposed rule justify the costs,” 83 Fed. Reg. at 18,772, but fails to provide any specific information, quantification, or analysis as to what EPA believes are the proposed rule’s purported benefits or expected costs, including the significant costs from the loss of probative information that the proposed rule would work to exclude. For example, Section 30.7 of the proposed rule could be read to require EPA to undertake very costly independent review of “pivotal” science on which it relies, but Section 30.8, entitled “How is EPA to account for cost under this subpart?” states only that EPA will “minimize costs.” *Id.* at 18,774. The absence of data and analysis in support of EPA’s cost-benefit conclusion deprives the public of a meaningful opportunity to evaluate the proposal and thus violates EPA’s duty under the APA.

Further, the proposal says the rule is intended to apply prospectively, but also states that EPA “should be guided by this policy to the maximum extent practicable during ongoing regulatory action.” *Id.* at 18,771. Yet it never explains how or why ongoing EPA actions would be subject to the proposed rule and which existing scientific studies are implicated by the proposed rule. It also fails to acknowledge the costs from delays in rulemaking proceedings while EPA performs the additional review called for above and beyond the extensive scientific peer review to which scientific studies have already been subjected. Other open-ended aspects of the proposal similarly fail to provide commenters with a sufficient guide as to what any final rule would look like or how it would operate if adopted. For example:

- The proposal defines “pivotal regulatory science” as “the specific scientific studies or analyses that drive the requirements and/or quantitative analysis of EPA final significant regulatory decisions.” *Id.* at 18,773. However, the proposal does not specify to what extent studies must support regulatory decisions to be considered a “driver,” who will determine what qualifies as pivotal regulatory science, or at what stage of the rulemaking process such determinations will be made. The proposal is also unduly vague in its use of undefined terms that are subject to interpretation, such as the use of the term “uncertainty” in Section 30.6 of the proposed rule. *Id.* at 18,774.
- The proposal says EPA “should collaborate” with other agencies to identify strategies to protect private information (such as patient health records) when it is making information publicly available. *Id.* at 18,771. However, there is no timeframe for this process, no explanation of what will happen until such strategies are formed, and no indication of what these strategies will be.
- EPA asks “whether alternative or additional regulatory or other policy vehicles are appropriate to establish and implement these policies, and whether further regulatory or other policy vehicles on the programmatic or statutory level would be appropriate as alternative or additional steps.” *Id.* It is EPA’s job to identify and describe these alternatives, and to explain why it has put forward its particular proposal: it may not, at this late stage, ask amorphous questions on policy design.
- EPA seeks comment on criteria it should use to establish exemptions, whether case-by-case exemptions may be appropriate, whether the proposed rule should apply to a broader or narrower set of regulatory proceedings, and whether certain categories of regulatory actions should be exempt. *Id.* at 18,772. As written, the proposed rule would allow the Administrator to grant exemptions based solely on his or her own determination of what is “feasible” without offering any definition or bounds on that term. *Id.*
- EPA asserts that the proposed rule is generally consistent with a number of policies or reports by scientific groups or scientific journals, but it does not specify in what respects those documents support its proposal, nor does it identify any groups or reports that advocate precluding consideration of non-public data in regulatory decision-making. In fact, contrary to EPA’s assertion, the Bipartisan Policy Center, a

group with which EPA claims consistency, clarified that the proposed rule “is not consistent” with the Center’s position “in substance or intent.”⁶ EPA’s false assertion of consistency with the policies and positions of leading science groups thus misleads the public and inhibits their informed participation.

- EPA seeks comment as to “whether the disclosure requirements . . . should be *expanded* to cover other types of data and information, such as, for example, economic and environmental impact *data and models that are designed to predict the costs, benefits*, market impacts and/or environmental impacts of specific regulatory interventions.” 83 Fed. Reg. at 18,772 (emphasis added). However, EPA also states that the “pivotal regulatory science” to which the proposed rule would already apply includes “studies, models, and analyses that drive the magnitude of the benefit-cost calculation.” *Id.* at 18,770. It is thus unclear whether and how EPA intends the proposed rule to apply to the cost-benefit determinations that it performs.
- The proposal provides no analysis of its environmental impacts and fails to explain how EPA has addressed the requirements of the National Environmental Policy Act, 42 U.S.C. § 4321 *et seq.*
- The proposal fails to meet EPA’s obligations under Executive Order 12898, which requires the Agency to address the proposal’s “disproportionately high and adverse human health or environmental effects” on “minority and low-income populations.” 59 Fed. Reg. 7629 (Feb. 16, 1994). Section IV.K of the proposal incorrectly asserts that Executive Order 12898 does not apply since the proposal “does not establish an environmental health or safety standard,” 83 Fed. Reg. at 18,773. But the Executive Order by its own terms applies to the “effects of” all federal agency “programs, policies, and activities,” 59 Fed. Reg. at 7629, and thus plainly applies here. While the proposal would jeopardize the health of all Americans, it would have increased impacts upon the nation’s most sensitive populations—such as children, those with chronic illnesses, and environmental justice communities.
- The proposal likewise fails to meet EPA’s obligations under Executive Order 13045, which requires the Agency to identify and assess environmental health risks that may disproportionately affect children. 62 Fed. Reg. 19,885 (Apr. 23, 1997). That Executive Order also requires each federal agency to “ensure that its policies, programs, activities, and standards address disproportionate risks to children that result from environmental health risks,” *id.* at 19,885, and thus applies here.
- EPA states in conclusory fashion that the proposed rule “does not have federalism implications” and “will not have substantial direct effects on the states.” 83 Fed. Reg. at 18,772-73. However, the proposal fails to explain whether or how the proposed rule would apply to EPA’s review and approval of state standards, and, accordingly,

⁶ Letter from Jason Grumet, President, Bipartisan Policy Center, to E. Scott Pruitt, Administrator, U.S. Env’tl. Prot. Agency (May 22, 2018), *available at* https://www.eenews.net/assets/2018/05/31/document_gw_01.pdf.

deprives commenters of a full and fair opportunity to assess and comment on the proposal's federalism implications.

In sum, EPA's skeletal outline falls far short of the APA's notice requirements and fails entirely to "examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made." *Natural Res. Defense Council, Inc. v. U.S. Env'tl. Prot. Agency*, 859 F.2d 156, 209 (D.C. Cir. 1988). EPA should withdraw the proposal on these grounds alone.

c. EPA Failed to Identify Legal Authority for the Proposed Rule

The APA further requires that a notice of proposed rulemaking contain "reference to the legal authority under which the rule is proposed." 5 U.S.C. § 553(b)(2). "[T]he required specification of legal authority must be done *with particularity*," and "must be sufficiently precise to apprise interested persons of the agency's legal authority to issue the proposed rule." *Global Van Lines*, 714 F.2d at 1298 (quoting H.R. Rep. No. 1980, at 24 (1946) and U.S. Dept. of Justice, *Attorney General's Manual on the Administrative Procedure Act* 29 (1947)). EPA has also failed to meet this requirement.

In both the April 30, 2018 notice of proposed rulemaking and the May 25, 2018 notice extending the comment period, EPA discusses statutory authority for the proposed rule, citing to a number of provisions, largely from statutes it implements. 83 Fed. Reg. at 18,769; 83 Fed. Reg. 24,255, 24,256 (May 25, 2018). In particular, EPA invokes the CAA, CWA, SDWA, EPCRA, FIFRA, TSCA, Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), and Resource Conservation and Recovery Act (RCRA). 83 Fed. Reg. at 18,769.

But rather than identify legal authority with particularity, the cited statutory provisions mainly set forth EPA's broader authorities to conduct research and promulgate regulations. Few of the cited provisions actually address EPA's ability to pick and choose amongst valid scientific information, studies, and techniques in its formation of environmental standards and modeling, and none authorize the wholesale preclusion of probative, relevant studies, as EPA proposes here. Tellingly, in the proposal itself, EPA requests assistance to determine "whether additional or alternative sources of authority are appropriate bases for the proposed regulation." *Id.* at 18,771. EPA's inability to identify specific statutory authority for its proposed action falls far short of the APA's standard for notice and comment rulemaking, as would any ultimate reliance on statutory authority EPA has failed to cite. *See Global Van Lines*, 714 F.2d at 1297-99.

III. The Proposed Rule Arbitrarily and Capriciously Requires EPA to Exclude Relevant Studies and Models, and is not Saved by Exemption Provisions

The proposed rule opens the door for arbitrariness, bias, and selectivity in its application, in contravention of the factors that Congress has required EPA to consider in setting standards, such as the best available science or latest scientific knowledge.

The proposed rule disregards the APA's bedrock requirement that an agency's decision-making be based on a consideration of the relevant factors and data. *See Motor Vehicle*

Mfrs., 463 U.S. at 42-43 (articulating standard and citing numerous cases). An agency's action is arbitrary and capricious not only if the agency "entirely fail[s] to consider an important aspect of the problem," but also if it "relie[s] on factors which Congress has not intended it to consider." *Id.* at 43. The proposed rule would call for EPA to do both. First, in excluding studies and models from its consideration based only on whether the underlying data are publicly available or have been subject to additional independent review by EPA, EPA would be excluding studies and models that Congress has instructed it to consider by requiring it to use, for example, the "best available science" or "latest scientific knowledge." Second, because none of the statutes EPA administers specify that, in setting standards, it shall consider whether the studies and models it uses have publicly available data or have been independently reviewed by EPA, EPA would be using factors that Congress did not intend it to rely on in deciding to exclude studies and models based on the proposed rule. *See Am. Trucking*, 283 F.3d at 372 (finding that the CAA does not require EPA to "obtain and publicize the data underlying the studies on which the Agency relies"). EPA's failure to consider otherwise relevant studies and models that do not meet the proposed rule's requirements would therefore be arbitrary and capricious. *See Motor Vehicle Mfrs.*, 463 U.S. at 42-43.

In apparent recognition of the overly limiting nature of the proposed rule's requirements, the proposal also includes a provision that would allow the Administrator to grant case-by-case exemptions based on his or her subjective determination that compliance is "impracticable" because making data publicly available or conducting independent peer review is "not feasible." 83 Fed. Reg. at 18,774. However, allowing the Administrator to make ad-hoc exemptions for specific studies or models does not cure the proposed rule's fatal defect of requiring EPA to consider factors other than those specified by Congress. *See Alltel Corp. v. Fed. Comm'n Comm'n*, 838 F.2d 551, 561 (D.C. Cir. 1988) (holding that an agency "cannot save an irrational rule by tacking on a waiver procedure" because the "essence of waiver is the assumed validity of the general rule"). Rather, because the proposed rule contains no standards requiring the exemptions to be based on the relevance, importance, or scientific validity of the study or model at issue, the Administrator's ability to arbitrarily include certain studies at his or her discretion simply compounds the extent to which the proposed rule would allow EPA to deviate from the requirements of the statutes it is charged with implementing.

In addition, because the proposed rule offers no definition or standards to guide the Administrator's determination of what is "practicable" or "feasible," the exemption provision gives the Administrator broad discretion in making such determinations.⁷ Without any

⁷ The exception to the proposed rule's requirement of additional independent peer review, unlike the exception to the transparency requirement, does instruct the Administrator to look at Section IX of the OMB Final Information Quality Bulletin for Peer Review, 70 Fed. Reg. 2664 (Jan. 14, 2005), when making those determinations. *See* 83 Fed. Reg. at 18,774. However, this direction makes little sense because Section IX of the Bulletin primarily discusses situations in which peer review is not *needed* rather than not feasible. *See* 70 Fed. Reg. at 2667 (providing exceptions for individual adjudications, agency regulatory impact analyses, routine information, and accounting and other financial information). The use of Section IX as a guidepost is not only inappropriate but is also unhelpful because almost all of the situations described therein are outside the category of "pivotal regulatory science" that the proposed rule addresses. Notably, although

standardized and objective criteria, the exemption process could, for example, allow biased determinations by the Administrator that provide an exception for confidential business information in studies submitted by chemical and pesticide manufacturers, while excluding academic toxicology or epidemiology studies. The NAS also highlighted this concern, noting that “[d]ecisions about exemptions should be based on formal agency guidance and not according to criteria established by a single EPA employee.” NAS Letter at 3. Given how severely the proposed rule would limit the scientific evidence available for EPA’s use, the proposed exemption provisions could become the basis upon which *most* of the science relied on by EPA in its rulemaking is admitted. The exceptions could thus largely swallow the rule, resulting in greater arbitrariness in EPA regulatory actions rather than greater transparency.

IV. Existing Statutes, Policies, and Procedures Already Provide for Transparency and Ensure Scientific Reliability, Rendering the Proposed Rule Unnecessary

a. Existing Laws and Policies Promote Transparency

EPA’s proposal is unnecessary because existing laws and policies already fulfill its stated purpose. EPA claims that the rule will ensure that the “pivotal regulatory science” underlying “significant” EPA regulations is fully transparent, and will ensure that underlying data and models are publicly available in a manner sufficient for independent validation. 83 Fed. Reg. at 18,770. Notwithstanding its stated purpose, the proposed rule would not add anything useful to the existing body of policies and laws already in place, which include mechanisms to provide for maximum transparency while taking into account the need to protect the privacy of medical data, confidential business information, and the like. These existing laws and policies include the following:

- A directive issued on February 22, 2013, by the White House Office of Science and Technology Policy directing federal agencies with more than \$100 million in annual research and development expenditures (which includes EPA) to develop plans for increasing public access to the results of the research they support, specifically scholarly publications and digital data.⁸
- OMB Memorandum 13-13,⁹ which mandates, among other things, broader public access to federal and federally funded data and information, and provides that

there is an exemption for time-sensitive disseminations when the findings of a study have already been adequately peer-reviewed, there is no general exception for situations in which independent EPA review would be duplicative of external peer review that has already been performed.

⁸ Memorandum from John P. Holden, Director, Executive Office of the President, Office of Science and Technology Policy, to Heads of Executive Departments and Agencies, *Increasing Access to the Results of Federally Funded Scientific Research* (Feb. 22, 2013), available at https://obamawhitehouse.archives.gov/sites/default/files/microsites/ostp/ostp_public_access_memo_2013.pdf.

⁹ Memorandum from Sylvia M. Burwell, Dir., Steve VanRoekel, Fed. Chief Info. Officer, Todd Park, U.S. Chief Tech. Officer & Dominic J. Mancini, Acting Administrator of the Office of Info.

information collection should be done in a way to support information dissemination. This includes building redaction, slicing, and exporting into how data are collected to reduce the cost of public access later on. The memorandum also requires agencies to create data catalogs to include datasets “that can be made publicly available but have not yet been released.” *Id.*

- The Data Quality Act, also known as the Information Quality Act, which is designed to improve the quality, objectivity, utility, and integrity of data released by the federal government. 44 U.S.C. § 3501. Pursuant to this act, EPA issued *Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Environmental Protection Agency*.¹⁰ These Guidelines, which apply to rulemaking, among other things, provide that “EPA intends to ensure reproducibility according to commonly accepted scientific, financial, or statistical standards. . . . [I]f access to data and methods cannot occur due to compelling interests such as privacy, trade secrets, intellectual property, and other confidentiality protections, EPA should, to the extent practicable, apply especially rigorous robustness checks to analytic results and carefully document all checks that were undertaken.” *Id.* at 21.
- The Data Access Act (attached as a rider to the Omnibus Appropriations Act of fiscal year 1999, P.L. 105-277), which requires federal agencies, including EPA, to ensure that all research data produced under a federal award be made available to the public under the Freedom of Information Act. The law promotes public access while protecting privacy by excluding medical and business-related confidential data from disclosure. *See* 2 C.F.R. § 200.315 (which superseded OMB Circular A-110).
- EPA’s November 2016 public access plan,¹¹ which covers publications and digital data and requires those seeking EPA research and development funding to develop data management plans that describe the data to be collected in their studies and approaches for preserving and providing access to that data. For publications, the plan requires researchers to make peer-reviewed journal articles resulting from federally funded research publicly accessible in designated repositories no later than a year after the official date of publication.

& Regulatory Affairs, Exec. Office of the President, Office of Mgmt. and Budget, *Open Data Policy—Managing Information as an Asset* (May 9, 2013), available at <https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/memoranda/2013/m-13-13.pdf>.

¹⁰ U.S. Env’tl. Prot. Agency, *Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Environmental Protection Agency* (Oct. 2002) [hereinafter *Information Quality Guidelines*], available at <https://www.epa.gov/sites/production/files/2017-03/documents/epa-info-quality-guidelines.pdf>.

¹¹ U.S. Env’tl. Prot. Agency, *Plan to Increase Access to Results of EPA-Funded Scientific Research* (Nov. 29, 2016), available at <https://www.epa.gov/sites/production/files/2016-12/documents/epascientificresearchtransparencyplan.pdf>.

In sum, while EPA should encourage making data available to researchers and the public where lawful and appropriate, existing laws and policies applicable to federal agencies already do that, while protecting the scientific integrity of the “pivotal regulatory science” considered by EPA in promulgating standards and weighing the various factors that impact those standards. EPA’s proposal ignores these established transparency laws and policies in service of excluding relevant science, thereby undercutting the environmental laws that EPA enforces by limiting the use of best available science.

b. Existing Policies and Procedures Provide for a Robust and Transparent Peer Review Process That Ensures the Validity of Scientific Information Relied Upon by EPA, and EPA Provides No Explanation for Why an Additional Level of Review Is Required

EPA has a long history of peer review of scientific studies supporting its regulations, relying on independent analyses of studies while also giving respect to those privacy protections required by law or non-disclosure agreements. As the NAS has pointed out, the National Academies “have developed a long-standing body of work that demonstrates scientific literature can be evaluated in a transparent and objective manner without complete disclosure of the underlying data.” NAS Letter at 2. And as several scientific journal editors have noted, scientists conducting peer review “are trained in assessing research publications by judging the articulation and logic of the research design, the clarity of the description of the methods used for data collection and analysis, and appropriate citation of previous results.”¹² This peer review process ensures the reliability and validity of the scientific information relied upon by EPA in the regulatory process.

Existing policies and procedures for peer review include the following:

- EPA’s *Peer Review Handbook* provides that if a regulation is supported by a scientific and technical work product, the underlying work product should be peer reviewed unless it meets listed exemption criteria.¹³ The Handbook explains that a critical element in ensuring that decisions are based on sound and defensible science is to have an open and transparent peer review process. *Id.* at xiii.
- EPA vets scientific studies through several independent expert panels, including the SAB, the EPA Clean Air Scientific Advisory Committee, the EPA FIFRA Scientific Advisory Panel, and the EPA Chemical Assessment Advisory Committee. The Clean Air Scientific Advisory Committee routinely reviews and

¹² Jeremy Berg, Philip Campbell, Veronique Kiermer, Natasha Raikhel & Deborah Sweet, *Joint Statement on EPA Proposed Rule and Public Availability of Data*, Science, Apr. 30, 2018 [hereinafter *Joint Statement*], available at <http://science.sciencemag.org/content/early/2018/04/30/science.aau0116.full.pdf>.

¹³ U.S. Env’tl. Prot. Agency, *Peer Review Handbook* 28, 44-45 (4th ed. 2015), available at https://www.epa.gov/sites/production/files/2016-03/documents/epa_peer_review_handbook_4th_edition.pdf.

evaluates epidemiological and toxicological studies that are the basis for dose response relationships used in risk and exposure assessments for air pollutants regulated under the National Ambient Air Quality Standards (NAAQS); the Chemical Assessment Advisory Committee reviews toxicological assessments of various chemicals for inclusion in EPA's Integrated Risk Information System database;¹⁴ and the NAS has reviewed EPA risk assessment practices numerous times.¹⁵

- Each of these independent committees or panels is required to be staffed by a “fairly balanced” mix of regulators, academics, and industry/consultant representatives who bring a well-balanced perspective to the process. *See* Federal Advisory Committee Act, 5 U.S.C. App. 2 § (5)(b)(2), (c).
- OMB bulletin entitled “Final Information Quality Bulletin for Peer Review,” 70 Fed. Reg. 2664-02 (Jan. 14, 2005), is applicable to all federal agencies, including EPA, and establishes government-wide guidance aimed at enhancing the practice of peer review of government science documents. The bulletin was subject to extensive public and agency comment on two prior draft versions. It includes guidance to federal agencies on what information is subject to peer review, the selection of appropriate peer reviewers, opportunities for public participation, and related issues. The bulletin also defines a peer review planning process that provides for public participation whenever possible and permits the public and scientific societies to comment about which scientific reports and studies merit especially rigorous peer review.

The proposed rule ignores this existing robust peer review process and its role in independently validating scientific information and ensuring that published information meets the standards of the scientific community.

In addition, despite the existing peer review process, EPA apparently proposes to require that EPA itself conduct an additional “independent” review. *See* 83 Fed. Reg. at 18,774. Yet the proposal nowhere discusses how EPA would vet reviewers to identify persons who are purportedly more competent than those already used in past or current peer review processes, or the level of EPA staffing and associated costs that would be needed for additional review—only stating that EPA will implement the proposed rule in a manner “that minimizes costs.” *Id.* at 18,774. But any requirement for EPA to conduct additional review would entail additional significant costs, contrary to the proposal's assertion. *Id.* at 18,772. The practical outcome of

¹⁴ *See, e.g.*, U.S. Env'tl. Prot. Agency, *IRIS Assessment Development Process (2015)*, available at https://www.epa.gov/sites/production/files/2015-09/iris_process_figure_2015.jpg (providing a graphical listing of all the rounds of review in the existing IRIS process, which includes internal review, intra-agency review, external review (public comments), and peer-review (SAB)).

¹⁵ *See, e.g.*, Nat'l Research Council, *Science and Decisions: Advancing Risk Assessment* (2009), available at <https://www.nap.edu/catalog/12209/science-and-decisions-advancing-risk-assessment>.

the proposal is that EPA may end up relying on a much smaller number of studies and/or on a less robust subset of relevant available studies, thus undermining the regulatory decision-making process.

In sum, EPA fails to acknowledge the rigor of existing processes in statutes, policies and federal procedures, or to explain how its proposal would provide any added value and minimize costs. EPA should abandon this unnecessary and counterproductive exercise.

V. Obtaining Private Data May Not Be Practically Possible and, Even When it is Possible to Make Data Available, the Proposed Rule Would Unnecessarily Impose Substantial Costs to Do So

The proposal's suggestion that concerns about access to confidential or private data can simply be addressed through the application of tools used by other federal agencies, *id.* at 18,770-71, will be unworkable or impracticable for many past and even future studies. For example, the proposal cites to guidance regarding methods to de-identify protected health information under the privacy rules of the 1996 Health Insurance Portability and Accountability Act (HIPAA), Pub. L. No. 104-191, 110 Stat. 1936. *Id.* at 18,771 n.17. That guidance document is 28 pages, contains detailed instructions for de-identification, including how experts are to assess the risk of identification of information, and emphasizes the importance of data-sorting systems to manage protected health information for the de-identification process, including use of a one-way cryptographic function to obscure personally identifiable information.¹⁶ Among other things, the guidance provides that various identifiers of individuals—including all names, geographic subdivisions smaller than a state (with one exception), dates directly related to an individual, telephone numbers, biometric identifiers, and so forth—must be de-identified. *HIPAA Guidance* at 4-5. The guidance thus highlights that, in fact, it is not easy to address confidentiality concerns: the de-identification process is complex and must be designed into the overall study process, something that cannot be done for historic studies. Moreover, to the extent that one of the purposes of the proposal is to enable persons to replicate studies, this may not be possible where the de-identified data is critical to the studies' findings and conclusions.

And even if it were possible, EPA's proposal ignores the large costs that would be associated with the complex process of de-identifying data and fails to identify who would pay for these procedures. As scientists from the Union of Concerned Scientists have pointed out, redacting confidential data from large studies "isn't just blocking out a line," it is a huge job that can take thousands of hours, at commensurately high cost.¹⁷ Similarly, a Work Group of the SAB, EPA's external scientific advisors charged with evaluating EPA's science and regulatory

¹⁶ See U.S. Dept. of Health & Human Servs., *Guidance Regarding Methods for De-Identification of Protected Health Information in Accordance with the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule 6* (Nov. 26, 2012) [hereinafter *HIPAA Guidance*], <https://www.hhs.gov/hipaa/for-professionals/privacy/special-topics/de-identification/index.html>.

¹⁷ See Ed Yong, *The Transparency Bills That Would Gut the EPA*, *The Atlantic*, March 15, 2017, <https://www.theatlantic.com/science/archive/2017/03/how-to-gut-the-epa-in-the-name-of-honesty/519462/>.

actions, explained that there are considerations associated with the cost and effort that would be involved in making large and complex existing datasets available within Institutional Review Board (IRB)¹⁸ requirements, including the issue of who would be responsible for shouldering this burden. *See* SAB Work Group Memo at 3.

Indeed, those anticipated costs are well-documented, albeit not in EPA's proposal. In 2017, Congress proposed the Honest and Open New EPA Science Treatment Act, H.R. 1430, 115th Cong. (2017), which, like the proposed rule, provided that EPA could only rely on studies whose data were open and accessible. In assessing that legislation, the Congressional Budget Office (CBO) estimated that costs to EPA associated with redacting confidential information to comply with this act would be at least \$100 million per year.¹⁹ These costs would encompass obtaining the underlying data, review of the data to address confidentiality concerns, formatting the data for public access, providing computer codes and models used, and providing directions for accessibility of the data. And the CBO did not include in its cost estimate the additional costs related to the potential need for contractors due to EPA staffing issues to assist with this work. Similar costs can be expected with the proposal as drafted, undermining the proposal's assertion that it does not amount to an Executive Order 13771 regulatory action. *See* 83 Fed. Reg. at 18,772. Rather than acknowledging those costs, however, the only place where the proposed rule even mentions costs is in Section 30.8, which states that "EPA shall implement the provisions of this subpart in a manner that minimizes costs"—a misleading and fatally vague projection of the impacts of the proposed rule. 83 Fed. Reg. at 18,774.

Because EPA's existing processes, including peer review, already help ensure that studies used by EPA are scientifically sound, the proposed rule is not needed to add credibility or reliability to the development of EPA models and standards. Instead, it will burden EPA and the public with unnecessary delays and expense, and result in the unnecessary exclusion of important scientific evidence that is critical to the development of standards that are protective of human health and the environment.

¹⁸ An IRB is a committee that applies research ethics to review the methods proposed for research to make sure they are ethical. Membership generally consists of individuals with varying backgrounds and affiliations, knowledgeable not only about a specific research activity, but also applicable law, institutional regulations, and standards of professional conduct. *See, e.g.*, 45 C.F.R. § 46.107; 21 C.F.R. § 56.107.

¹⁹ Cong. Budget Office, *Cost Estimate: H.R. 1430 Honest and Open New EPA Science Treatment (HONEST) Act of 2017* 3 (Mar. 29, 2017), available at <https://www.cbo.gov/system/files/115th-congress-2017-2018/costestimate/hr1430.pdf>. The predecessor to the HONEST Act was the so-called Secret Science Reform Act, H.R. 1030, 114th Cong. (2015). The CBO estimated that costs associated with redacting confidential information to comply with the latter act would be even higher--around \$250 million per year initially. *See Cost Estimate: H.R. 1030 Secret Science Reform Act of 2015* 1-3 (Mar. 11, 2015), available at <https://www.cbo.gov/sites/default/files/114th-congress-2015-2016/costestimate/hr1030.pdf>.

VI. EPA Has Not Considered the Substantial Direct Effects the Proposed Rule Would Have on the States

States, as sovereign entities, have an interest in protecting the natural resources within their borders, and the health and well-being of their residents. *See Alfred L. Snapp & Son, Inc. v. Puerto Rico, ex rel., Barez*, 458 U.S. 592, 607 (1982). EPA states that the proposed rule “does not have federalism implications” and “will not have substantial direct effects on the states.” 83 Fed. Reg. at 18,772-73. This is simply incorrect because states are often statutorily required to adopt EPA standards, sometimes lack resources to deviate from EPA standards, frequently are required to obtain EPA approval of state-set standards, and may feel the effects of EPA decisions far beyond the environmental sphere.

Most obviously, some states’ environmental laws and regulations explicitly adopt the standards set by EPA or require an express justification for any deviation. For example, under state law, Pennsylvania’s Department of Environmental Protection may not promulgate air quality control measures to implement a NAAQS if the control measures are more stringent than federal measures unless it demonstrates that the higher standard is necessary to attain or maintain a NAAQS, to satisfy related CAA requirements, to prevent assessment or imposition of CAA sanctions, or to comply with a final federal court decree. *See 35 Pa. Consol. Stat. § 4004.2*. Similarly, New Jersey’s Department of Environmental Protection must justify any deviation from federal standards pursuant to Executive Order 27 (Whitman 1994). Changes to federal standards resulting from the application of an arbitrary subset of the available science will either change the standards applicable at the state level or require states to initiate proceedings to impose and justify the imposition of different standards based on rigorous, comprehensive science. Therefore, any change to EPA’s process for developing its standards will necessarily impact state standards as well.

Even those states that are not statutorily required to apply federal standards may not have the institutional capacity to develop their own standards and therefore, for practical reasons, often rely on the standards set by EPA. For example, because of lack of institutional capacity, and in acknowledgement of EPA’s expertise, Washington D.C. has traditionally relied on EPA to set air quality standards. Further, even more states rely on the publicly available models created by EPA in determining appropriate state standards. For all the reasons discussed in the technical comments that follow, the adoption of this proposed rule would very likely affect the protectiveness of the standards that EPA sets and limit the models that EPA makes available to the public. The regulatory programs of all states that rely on EPA standards or models, including all the signatories of this letter, would therefore be affected by the proposed rule, and states’ ability to protect their environment and the health of their citizens would be undermined by its adoption.

Still more, under some programs, standards set by the states must be approved by EPA. *See, e.g.*, 40 C.F.R. §§ 131.20, 131.21 (Water Quality Standards). If the proposed rule were applied to EPA’s review and approval of state standards (and it is unclear whether that would be so—another fatal flaw in the proposal), then the rule would also affect the states in this context—further altering the balance of cooperative federalism in the implementation of these programs. Needless to say, if the proposed rule applies to EPA’s review and approval of state standards, the

federalism implications could not be any clearer—and EPA’s failure to grapple with them or even recognize that they exist is arbitrary and capricious. The proposal’s lack of clarity on this issue impairs the states’ ability to provide meaningful comment.

Finally, the proposed rule would also impact the states through the incorporation of EPA standards into the regulations or programs of other federal agencies that rely on EPA standards and/or modeling. Should EPA adopt a deficient standard due to the arbitrary exclusion of available scientific information, other federal agencies relying on EPA standards as a basis for action would be affected, as would be the states that interface with those federal programs. As such, the impacts of the proposed rule are likely to impact states in areas far beyond the environmental field.

Based on EPA’s complete failure to consider or discuss the effects of its action on state programs, the proposal should be withdrawn so that EPA can adequately consult with state officials to analyze these important impacts. *See* Exec. Order 13132 § 6(a) (instructing agencies to “ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications”); *Chem. Mfrs. Ass’n v. U.S. Env’tl. Prot. Agency*, 870 F.2d 177, 203 (5th Cir. 1989).

TECHNICAL COMMENTS

I. Consideration of Valid Scientific Studies Most Relevant for Regulatory Standards Would Be Severely Limited

For reasons discussed below, the proposed rule would severely limit EPA’s ability to consider valid and important scientific studies and data, including many that are most relevant for use as the basis for regulatory standards.

a. The Proposed Rule Would Exclude the Use of Studies That Were Based on Confidential Data

The proposed rule fails to recognize or acknowledge the existence of many studies already designed and published with terms that make complete transparency difficult or impossible because of IRB requirements and other important confidentiality protections. The proposal thus could have the effect of excluding important peer-reviewed studies of health effects from use as sources to support EPA’s past and future regulatory efforts simply because they do not meet excessively rigid transparency standards. This is particularly true for long-standing confidential epidemiological studies that EPA has relied upon in setting air quality and other health-based standards.

In general, and specifically in EPA’s 2005 *Guidelines for Carcinogen Risk Assessment*, human (i.e., epidemiology) data are preferred to animal data as the basis for risk assessment toxicity factors (e.g., cancer potency factors or reference doses for non-carcinogenic effects) when they are of sufficient quality and are amenable to dose response modeling.²⁰ This is

²⁰ U.S. Env’tl. Prot. Agency, *Guidelines for Carcinogen Risk Assessment* 2-3 (Mar. 2005),

because animal data always carry inherent uncertainties in regard to their relevance to humans. *Id.* Epidemiology data collected over at least the last 40 years, however, have been generated under the auspices of IRBs working to protect the patient or participant information obtained by academic institutions, government entities, hospitals, and other organizations, and thus disclosure of that data would be difficult, if not impossible.

Generally accepted professional practice for the collection of human data requires IRB review and informed consent from the individuals from whom the data are collected. Although the proposal states that “concerns about access to confidential or private information can, in many cases, be addressed through the application of solutions commonly in use across some parts of the Federal government,” 83 Fed. Reg. at 18,770, this will not be possible for many studies because IRBs dictate the specific terms of this informed consent, including that the conditions of collection and analysis of human data be specified *before* initiation of the study. These *a priori* conditions include the types of analyses that will be performed, how the data will be used, and whether and how the data can be shared. In general, *a priori* conditions preclude sharing raw data with entities not included in the original IRB approval and performing analyses not specified in the original IRB approval, even if portions of the data are redacted. Furthermore, clinical data collected from physicians, hospitals, clinics, etc., may also be subject to restrictions under HIPAA, over and above IRB restrictions.

These factors would all preclude EPA’s or researchers’ ability to provide raw, unpublished data for re-analysis as required under the proposed EPA rule. Thus, the provisions of the proposed rule would essentially prohibit the use of such epidemiology data in human health risk-based assessment despite their clear superiority over animal data for use in risk assessment. For older epidemiology data, such as data from studies on occupational exposures to workers in factories before the advent of strict IRB requirements, raw data are seldom if ever still available. Therefore, such data, including high quality data generated by major corporations in conjunction with academic institutions, would also not be available to EPA under the proposed rule. Thus, effectively, the proposed rule would restrict the epidemiology data available for use by EPA, even where the weight of the evidence clearly supports a finding of causality and risk.

Two examples of studies that could be impacted by EPA’s proposed rule are the Harvard Six Cities Study and the American Cancer Society Cancer Prevention Study II.²¹ These studies followed thousands of people over nearly two decades, and linked personal medical histories, occupational histories, and home locations to detailed air quality data to show that people exposed to more particulate matter are more likely to die prematurely. In order to collect all the

available at https://www.epa.gov/sites/production/files/2013-09/documents/cancer_guidelines_final_3-25-05.pdf.

²¹ Douglas W. Dockery, C. Arden Pope, Xiping Xu, John D. Spengler, James H. Ware, Martha E. Fay, Benjamin G. Ferris, Jr., and Frank E. Speizer, *An Association Between Air Pollution and Mortality in Six U.S. Cities*, 329 New Eng. J. Med. 1753, 1753-59 (1993), available at <https://www.nejm.org/doi/10.1056/NEJM199312093292401>; *Cancer Prevention Study II*, Am. Cancer Soc’y, <https://www.cancer.org/research/we-conduct-cancer-research/epidemiology/cancer-prevention-study-2.html>.

information, researchers entered into confidentiality agreements with the study participants, agreeing that their private information would not be made public. These promises of confidentiality (wholly apart from the difficulty and cost of redacting personal information) would render the studies “non-transparent” under the proposed rule, enabling or requiring EPA to ignore them. This is so even though the studies have been thoroughly peer-reviewed and their results have been re-analyzed by the Health Effects Institute, which confirmed the robustness of the studies’ findings with respect to air pollution and mortality.²² Under the proposed rule, EPA could ignore these two foundational studies and other peer-reviewed studies built upon them in setting health-based air quality standards for particulate matter and other pollutants.²³ The effect could be devastating and deadly, as these standards save lives. EPA estimates that reductions in ambient particulate matter under the 1990 Clean Air Act Amendments will prevent 230,000 adult deaths by 2020.²⁴

b. The Proposed Rule Would Also Exclude Studies That Cannot Be Reproduced

“Reproducibility,” “replication,” and “validation” of scientific studies are mentioned throughout the proposed rule, but these terms are not defined. *See, e.g.*, 83 Fed. Reg. at 18,773-74. These terms could be interpreted to mean that studies used as the basis for regulations must be replicated. It would clearly be impossible to replicate many key studies based on data on human or ecological effects resulting from unintentional adverse events and disasters. Some extreme examples are data on the effects of radiation from atomic bomb survivors, data on wildlife toxicity from the Exxon Valdez oil spill, and data on the human health impacts of the September 11, 2001 World Trade Center disaster.²⁵ Other important data may come from older studies of human volunteers that could not be replicated under current ethical standards.

²² Daniel Krewski, Richard T. Burnett, Mark S. Goldberg, Kristin Hoover, Jack Siemiatycki, Michael Jerrett, Michael Abrahamowicz, & Warren H. White, Health Effects Institute, *Reanalysis of the Harvard Six Cities Study and the American Cancer Society Study of Particulate Air Pollution and Mortality* (2000), available at <https://www.healtheffects.org/publication/reanalysis-harvard-six-cities-study-and-american-cancer-society-study-particulate-air>; Daniel Krewski, Richard T. Burnett, Mark S. Goldberg, Kristin Hoover, Jack Siemiatycki & Warren H. White, *Validation of the Harvard Six Cities Study of Particulate Air Pollution and Mortality*, 350 New Eng. J. Med. 198, 198-99 (2004), available at <https://www.nejm.org/doi/full/10.1056/NEJM200401083500225>.

²³ *See Changing What Science the EPA Will Consider—Part I*, Environmental Law at Harvard (2018), <http://environment.law.harvard.edu/2018/04/changing-science-epa-will-consider/>.

²⁴ *Benefits and Costs of the Clean Air Act 1990-2020, the Second Prospective Study*, U.S. Env’tl. Prot. Agency (Jan. 4, 2017), <https://www.epa.gov/clean-air-act-overview/benefits-and-costs-clean-air-act-1990-2020-second-prospective-study>.

²⁵ Comm. to Assess Health Risks from Exposure to Low Levels of Ionizing Radiation, Nat’l Research Council, *Health Risks From Exposure to Low Levels of Ionizing Radiation, Beir VII Phase 2* (2006), available at <https://www.nap.edu/read/11340/chapter/1>; Charles H. Peterson, Stanley D. Rice, Jeffrey W. Short, Daniel Esler, James L. Bodkin, Brenda E. Ballachey & David B. Irons, *Long-Term Ecosystem Response to the Exxon Valdez Oil Spill*, 302 Sci. 2082, 2082-

Laboratory animal studies are controlled studies which use genetically similar test subjects maintained under identical conditions, with the only difference between the control and treated groups being exposure to the chemical being tested. Although such studies are expected to give the same results if they are reproduced, scientists do not routinely perform laboratory experiments that are identical to previously reported studies, but rather, use results from the scientific literature as the basis for design of different studies that will add to the body of knowledge on the topic being studied. In contrast to the controlled conditions of animal studies, there is more variability among humans than the strains of lab animals utilized. Additionally, the exact underlying conditions of human studies can rarely be exactly replicated (i.e., under the same circumstances of exposure and other factors) even when the same protocols are followed. Thus even a contradictory result in a “reproduced” epidemiological study would not necessarily invalidate an observation from an earlier study, provided that the first study followed valid methods and conducted appropriate statistical analyses.

In addition, although it would depend on the specifics of the study and the nature of the endpoint investigated, a single human study would not generally be considered definitive by itself. Rather, all such well-conducted studies contribute to the weight of evidence supporting a scientific conclusion. Reliance on the weight of the evidence, rather than on any one individual study, is a safeguard that helps to ensure validity of the overall conclusions. Therefore, even if such studies could be replicated, their replication is not necessary for making a conclusion based on the overall weight of the evidence.

To the extent the proposal seeks to enable third parties to “re-run” an analysis using the same supporting data and the same models, this may not be possible where proprietary models, methods, designs, and/or data were used in the study. But, as EPA points out in its Information Quality Guidelines, in cases where the Agency relies on proprietary models that cannot be made publicly available, the model applications are subject to EPA’s peer review policy and other validation checks. *Information Quality Guidelines* at 47. The Guidelines indicate that “[t]hese steps, along with transparency about the sources of data used, various assumptions employed, analytic methods applied, and statistical procedures employed should assure that analytic results are ‘capable of being substantially reproduced.’” *Id.*

c. The Proposed Rule Would Favor Industry Contract Laboratory Toxicology Studies, Which May Not Evaluate the Most Sensitive and Relevant Effects

The proposed rule would also favor consideration of industry toxicology studies over equally valid peer reviewed studies from other institutions. It states that “where available and appropriate, EPA will use . . . standardized test methods, consistent data evaluation procedures, and good laboratory practices.” 83 Fed. Reg. at 18,770. Under current EPA risk assessment approaches, all relevant scientific data are considered.²⁶ In contrast, this language indicates the

2086 (2003); available at https://www.afsc.noaa.gov/Publications/misc_pdf/peterson.pdf; City of New York, Dept. of Health & Mental Hygiene, *World Trade Center Health Registry*, <https://www1.nyc.gov/site/911health/about/wtc-health-registry.page>.

²⁶ See, e.g., Integrated Risk Info. System, Nat’l Ctr. for Env’tl. Assessment, Office of Research &

proposed rule is significantly more restrictive than current EPA guidance as far as the types of valid peer-reviewed scientific data that can be considered.

It is critical to note that the phrase “good laboratory practices” (GLP) referenced by EPA is not a value descriptor. Rather, it is a technical term referring to a specific category of study conduct and reporting that is intended for specific regulatory purposes. GLP/standardized test method studies are typically conducted by industrial or contract laboratories, and test for limited parameters in order to meet specific regulatory requirements, such as for registration of pesticides, drugs, and other products. These protocols often have not been updated to incorporate recent approaches in toxicology, and they may not look at the most sensitive and relevant toxicological effects of the product being studied. In contrast, other equally scientifically valid studies, typically conducted in research laboratories in academic, industrial, or government institutions, use specialized approaches to evaluate specific toxicological effects of the chemical under study, and may not follow the standardized protocols specified in regulatory requirements. The use of GLP protocols does not necessarily mean that the study is of higher quality, and there is no scientific reason that the data generated under the highly circumscribed regulatory requirements for product registration should receive greater weight than any other valid scientific data. Rather, all studies should be evaluated on their own merits.

d. The Proposed Rule Would Exclude Studies for Which Underlying Data Are Not and May Not Be Available

The proposed rule would preclude consideration of studies – old and new – for which data are not and may not be available. Many of the standards that are developed or updated by EPA are for chemicals that have an extensive, older body of scientific literature on their effects, but that are not currently being actively researched. Thus, the vast majority of studies considered for standard-setting are not new and were not conducted, designed, or published with the goal of ensuring data availability. Accordingly, their data are likely unavailable and, even if data were kept, the formats in which older data are stored may not be accessible from currently available computers, potentially invalidating the use of those studies as the basis for future regulatory standards. Processes for additional data availability are currently being developed and will likely increasingly be incorporated into research protocols in the future; however, it is unknown whether these forthcoming protocols will meet the transparency requirements of the proposed rule.

In addition, even going forward, many academic scientists whose research is relevant to EPA regulations may not conduct and report their studies in a way that satisfies the requirements of the proposed rule. The proposed rule’s provisions would require significant additional resources and could impose unreasonable and impractical requirements beyond those included in current protocols. Academic researchers, who often study sensitive and relevant health effects that are not evaluated in industry-sponsored GLP studies, typically focus on publishing their studies in peer-reviewed journals and obtaining research funding; they may not be concerned about or even consider whether their studies would qualify for use in establishing EPA

Dev., U.S. Env'tl. Prot. Agency, *Toxicological Review of Benzo[a]pyrene*, xxxiii-xxxvi (2017), available at https://cfpub.epa.gov/ncea/iris/iris_documents/documents/toxreviews/0136tr.pdf.

regulations, and/or may not have the resources to reshape their approach to maintaining data. Additionally, many researchers, particularly in other nations but also in the United States, may not even be aware of EPA requirements for a study's use in regulations. For those researchers who do attempt to comply with the proposed rule's requirements, the extent and nature of the data that must be maintained and made publicly available is vague and unclear, making compliance virtually impossible.

II. The Proposed Rule is Wrongly Premised on Unsupported Assumptions Regarding Scientific Studies

a. The Proposed Rule Assumes Erroneously and Without Explanation that Only Studies for Which the Underlying Data Are Publicly Available Are Valid

A fundamental premise of the proposed rule is that only studies for which the underlying data are publicly available are valid for decision-making. This premise is inconsistent with generally accepted practices for conducting and evaluating scientific research. Furthermore, the rationale for the premise is not provided: EPA presents no evidence for the conclusion that its current criteria for selecting studies result in scientifically invalid conclusions or overly stringent regulations. Indeed, the D.C. Circuit has already rejected EPA's proposed approach of excluding studies relying on non-public data as "impractical and unnecessary" when raised by a trade association as part of a challenge to an air quality standard. *Am. Trucking*, 283 F.3d at 372.

b. The Proposed Rule Incorrectly Assumes that the Studies and Data Upon Which EPA Relies Are of Questionable Validity

The proposed rule also assumes that the studies and data used in EPA's decision-making are of questionable validity. However, this assumption is unsupported. It is not the case that the studies and data EPA uses to establish regulations are selected simply because they report effects at the lowest levels. Rather, EPA performs an extensive hazard identification process prior to selecting key studies and specific health endpoints. This process evaluates the relevant human epidemiology, animal toxicology, and mode of action studies to ensure that the studies and endpoints ultimately chosen are supported by the overall body of scientific literature. Recently, a rigorous systematic review process has been developed and implemented by EPA's Integrated Risk Information System program to ensure even greater thoroughness and objectivity in hazard identification.²⁷ Thus, EPA already ensures that the studies and data upon which it relies are valid.

²⁷ Integrated Risk Info. System, Nat'l Ctr. for Env'tl. Assessment, Office of Research & Dev., U.S. Env'tl. Prot. Agency, *National Academy of Sciences Committee to Review Advances Made to the IRIS Process: A Workshop* (Feb. 1-2, 2018), available at <https://www.epa.gov/sites/production/files/2018-02/documents/nas020118final.pdf>.

III. The Proposed Rule's Data Availability Requirements Are Unnecessary and Unclear

a. EPA's Proposed Data Availability Requirements Are Not Necessary to Improve or Ensure the Scientific Basis of Regulations

Studies and associated data do not have to be publicly available or reproducible to ensure that they are scientifically valid. This point has already been made in statements of concern about the proposed rule by authoritative scientists, including the editors of the most prestigious scientific journals (Science, Nature, PLOS, PNAS, Cell) and the members of a Work Group of the SAB itself. See *Joint Statement* and SAB Work Group Memo. As stated by the journal editors, “scientists, including peer reviewers, are trained in assessing research publications by judging the articulation and logic of the research design, the clarity of the description of the methods used for data collection and analysis, and appropriate citation of previous results [I]t does not strengthen policies based on scientific evidence to limit the scientific evidence that can inform them Excluding relevant studies simply because they do not meet rigid transparency standards will adversely affect decision-making processes.” *Joint Statement*.

In fact, there are longstanding methodologies for evaluating the strength of epidemiology findings that are commonly used to draw conclusions about causality.²⁸ The SAB Work Group notes that “the proposed rule fails to mention that there are various ways to assess the validity of prior epidemiologic studies without public access to data and analytic methods,” using as an example the Health Effects Institute’s well-known re-analysis of the Harvard Six Cities and American Cancer Society air quality studies, which successfully replicated those studies’ findings. SAB Work Group Memo at 4.

b. EPA's Proposed Data Availability Requirements Are Not Clearly Defined and Do Not Ensure Validity of Data

The extent and nature of the data that would be required to be made publicly available is not clearly defined in the proposed rule. The proposed rule states that information is considered “publicly available in a manner sufficient for independent validation” when it includes the “information necessary for the public to understand, assess, and replicate findings. This may include, for example: (a) Data (where necessary, data would be made available subject to access and use restrictions); (b) Associated protocols necessary to understand, assess, and extend conclusions; (c) Computer codes and models involved in the creation and analysis of such information; (d) Recorded factual materials; and (e) Detailed descriptions of how to access and use such information.” 83 Fed. Reg. at 18,774.

This could be interpreted to require maintenance of data down to the most basic level, verging on the absurd, and could impose unreasonable and impractical requirements that go well beyond those already included in current protocols. For example, it could require maintenance of records that are not routinely archived by academic research labs, such as printouts of data from all calibration curves and analyses from instruments that measure clinical parameters in

²⁸ See, e.g., Sir Austin Bradford Hill, *The Environment and Disease: Association or Causation?* 58(5) Proc. Royal Soc’y Med. 295, 295-300 (1965) (“The Hill Criteria for Causality”).

blood or other similar endpoints in animal and human studies, or photos of each individual organ as it is evaluated for gross pathology in toxicology studies. Even if such data are maintained for a period after a study is completed, it is not feasible for such records to be maintained indefinitely by research laboratories, which would then make the study that the data supports unavailable for use in future regulations.

For toxicology studies, such data availability requirements would result in favoring studies performed under GLP protocols, which typically retain more raw data than research studies. But, as discussed in more detail above, GLP studies may not evaluate the most sensitive and relevant toxicological effects of the chemical being studied and are not inherently of higher quality than studies conducted under other protocols.

IV. Provisions of the Proposed Rule Related to Modeling Conflict with Scientific Guidelines

The proposed rule would flout long-accepted scientific modeling methods and require undue justification and explanation of assumptions and uncertainty.

a. The Proposed Rule Encourages Deviation from Linear Dose Response Modeling, the Generally Accepted Choice for Modeling in Carcinogen Risk Assessment

The proposed rule would favor less protective threshold modeling, contrary to EPA's own guidance and generally accepted toxicology practice. It states that "EPA shall evaluate the appropriateness of using default assumptions, including assumptions of a linear, no-threshold dose response, on a case-by-case basis" and that "EPA shall give explicit consideration to high quality studies that explore . . . various threshold models across the dose or exposure range." 83 Fed. Reg. at 18,774. These requirements are inconsistent with EPA guidance, specifically the 2005 *Guidelines for Carcinogen Risk Assessment*. These guidelines state that EPA's default dose response modeling approach for carcinogenic substances is linear extrapolation from the point-of-departure (essentially the lower limit of the range of the experimental data) to the origin (zero exposure, zero risk). This default no-threshold approach assumes that any dose of a carcinogen results in some level of risk, making it the most protective of human health. Threshold models, by contrast, assume that there is some dose of a carcinogen at which there is no cancer risk, an assumption that is less health protective and that has not been conclusively established in most cases. It is unclear what EPA means by "explicit consideration," or what EPA would consider to be "high quality studies," but insofar as those terms are intended to mean that EPA will give preference to studies utilizing threshold models, such a preference would be inconsistent with EPA's 2005 *Guidelines for Carcinogen Risk Assessment* as well as generally accepted practice in the field of toxicology.

In most cancer risk assessments, dose response data within the low risk range, which is the range of interest for regulatory purposes, are lacking. Thus, low-dose extrapolation is used to estimate risks in the lower dose range where data are unavailable. For estimation of risks below the range of the data, there are an infinite number of possible threshold and non-threshold assumptions regarding the shape of the dose response curve that can be envisioned, with no substantive basis for assuming the general superiority of one assumption over another. To

deviate from the default assumption that any dose of a carcinogen results in some risk in the absence of chemical-specific data that demonstrate a threshold mode-of-action of carcinogenicity²⁹ would be mere speculation and would assume, with no scientific support, that Americans can be safely exposed to those substances. To “evaluate the appropriateness” of the linear, non-threshold approach for low-dose extrapolation by also considering non-linear and threshold models would provide no cognizable benefit in modeling accuracy or clarity, but instead could result in the manipulation of results, delay, and obfuscation.

In the limited circumstances where the data support threshold modeling, EPA’s 2005 *Guidelines for Carcinogen Risk Assessment* already provide for departure from the default linear extrapolation in risk assessment and instead allow for the use of threshold modeling. *Id.* at A-8. In fact, EPA has used a threshold approach for carcinogen risk assessment when there is clear, chemical-specific, empirical evidence of a threshold mode of action.³⁰ This careful, well-founded approach is generally considered both scientifically supportable and protective of public health, as opposed to the proposed rule’s requirement for justification of the default linear approach on a case-by-case basis and “explicit consideration [of] high quality studies that explore various threshold models across the dose or exposure range.” 83 Fed. Reg. at 18,774. Without a well-founded and substantiated scientific basis, EPA should not entertain such a fundamental departure from accepted, public-health protective risk assessment practices.

b. The Proposed Rule Would Unreasonably Require Consideration of Nonparametric Models

The proposed rule would require that “when available, EPA shall give explicit consideration to high quality studies that explore . . . [a] broad class of parametric dose response or concentration response models” and “nonparametric models that incorporate fewer assumptions.” 83 Fed. Reg. at 18,774. Parametric models are those in which the number and nature of the parameters (i.e., assumptions) are fixed in advance, while nonparametric models are those in which the assumptions are determined from the data. For approximately 20 years, EPA has employed parametric modeling in risk assessment by providing and using benchmark dose response modeling software. Although the proposal implies that this is not the case, this software already allows investigation of the most appropriate parametric model(s) for risk assessment and currently provides “a broad class of parametric dose response, concentration-response models.” *Id.*

There is no obvious benefit to adding an additional layer of analysis—nonparametric modeling—on top of this longstanding approach. Nonparametric models are useful only when the quantity and quality of the data are sufficient to infer a clear and plausible estimate of the overall pattern. But when there are few data and/or data are of poor quality, as is often the case

²⁹ Mode of action is defined by EPA as the “sequence of key events and processes, starting with interaction of an agent with a cell, proceeding through operational and anatomical changes, and resulting in cancer formation.” *Guidelines for Carcinogen Risk Assessment* at 1-10 n.2.

³⁰ See, e.g., U.S. Env’tl. Prot. Agency, *Toxicological Review of Chloroform* (2001), available at https://cfpub.epa.gov/ncea/iris/iris_documents/documents/toxreviews/0025tr.pdf.

in situations to which the proposed rule would apply, nonparametric models can produce a wide variation of results with few, if any, constraints on plausibility. In such cases, the use of nonparametric models is not scientifically supportable, and moving forward, little would be gained from considering them in terms of accuracy and clarity of the predictions, while the potential for delay and obfuscation would again multiply. The proposed rule's requirement that nonparametric models be explicitly considered, without regard to the applicability of a particular model, is therefore misguided and scientifically unsound.

c. The Proposed Rule Would Unreasonably Require Justification of All Default Assumptions

The proposed rule would require EPA to “evaluate the appropriateness of using default assumptions” and “clearly explain the scientific basis for each model assumption used and present analyses showing the sensitivity of the modeled results to alternative assumptions.” 83 Fed. Reg. at 18,774. This would effectively foreclose the important use of default assumptions, requiring a detailed justification for each of the many assumptions included in any given model—an inefficient, time-intensive, and unnecessary task.

Default assumptions are selected from a range of possible values based on both scientific considerations (e.g., whether they are supportable based on available data) and policy considerations (e.g., whether the upper or lower percentile, rather than the mean or median value, should be used to protect most of the population). In cases of significant variability and/or uncertainty in the available data, there are essentially an infinite number of alternative assumptions that can be chosen. The use of default assumptions thus provides a straightforward way to manage the complexity presented by variability and uncertainty.

And, while default assumptions do need to be justified when initially selected, EPA uses a well characterized set of default assumptions in risk assessment and updates them when indicated by newer scientific information.³¹ Accordingly, the rationales and limitations underlying these assumptions are well documented, including (as would be required by the proposed rule) discussion of variability, as well as sensitivity analyses that evaluate the impact on the model results of changing the default value to a range of non-default alternative values. Default values have been selected as both scientifically valid and protective of human health; if alternative values are selected, they are likely to be less health-protective than existing defaults. There is thus little benefit to be gained at this point by reinventing the wheel each time a default assumption is employed. To forego these well-established default assumptions and require

³¹ See, e.g., Memorandum from Dana Stalcup, Acting Director, Assessment and Remediation Division, Office of Superfund Remediation and Technology Innovation to Superfund National Policy Managers, Regions 1-10, *Human Health Evaluation Manual, Supplemental Guidance: Update of Standard Default Exposure Factors* (Feb. 6, 2014), available at https://www.epa.gov/sites/production/files/2015-11/documents/oswer_directive_9200.1-120_exposurefactors_corrected2.pdf; Office of Water, U.S. Env'tl. Prot. Agency, *Human Health Ambient Water Quality Criteria: 2015 Update* (2015), available at <https://www.epa.gov/sites/production/files/2015-10/documents/human-health-2015-update-factsheet.pdf>.

justification of each assumption chosen from a long list of potentially less health-protective assumptions would only give rise to prolonged debate, obfuscation, and manipulation of model outcomes, not improvement of the scientific basis of the risk assessment. The delay this would cause, for no supportable reason, can only lead to the conclusion that it is EPA's intent to inhibit, rather than improve, regulation.

d. The Proposed Rule Would Require a Description of, But Fails to Define, Uncertainty

The proposed rule would also require that EPA “describe and document any assumptions and methods used . . . and uncertainty.” 83 Fed. Reg. at 18,774. However, uncertainty is not defined in the proposed rule, and it is unclear what type of uncertainty is implied. Uncertainty could mean discussion of the magnitude of the statistically based range of model predictions. There could also be uncertainties unrelated to the model, such as qualitative uncertainty about the human relevance of the animal toxicity endpoint used as the basis for the risk assessment. EPA's failure to define the type of uncertainty at issue makes the proposed rule impermissibly vague and deprives the public of a meaningful opportunity to comment on its impacts.

V. The Proposed Rule Would Undermine Protection of Human Health and the Environment, in Contradiction to EPA's Mission

Overall, the requirements of the proposed rule discussed above would lead EPA to adopt less protective standards across many regulatory programs, which is contrary to EPA's mission to protect human health and the environment. The proposed rule would allow for the use of less protective dose response models and assumptions in human health risk assessment. It would also preclude consideration of scientifically valid human and animal studies reporting sensitive and relevant toxic effects based on unjustified requirements for public availability of data, and instead favor consideration of studies that do not assess the most sensitive and relevant health effects endpoints.

For example, EPA is required to review its air quality standards (NAAQS) for criteria pollutants every five years and, if necessary, revise them to protect public health and the environment. *See* 42 U.S.C. § 7409(d). The NAAQS review process builds on the administrative record from prior rulemakings, including historic studies that are part of that record. Under the proposed rule, EPA may refuse to consider these studies and others because they rely on data pertaining to the personal medical histories of participants that cannot, by the studies' terms or by law, be divulged. Restricting the use of such studies would significantly undermine current and future NAAQS reviews.

And, indeed, the proposed rule appears to be especially aimed at such a restriction. EPA's April 30, 2018 rule proposal follows an April 12, 2018 memorandum issued by President Trump to former EPA Administrator Pruitt directing him to “examine the current NAAQS review process and develop criteria to ensure transparency in the evaluation, assessment, and characterization of scientific evidence in such reviews.”³² But, as explained above, it would be

³² Memorandum from Donald J. Trump, President of the United States, to the Administrator of the U.S. Env'tl. Prot. Agency, *Presidential Memorandum for the Administrator of the*

illegal for EPA, in setting standards, to ignore peer-reviewed, relevant science on the grounds that confidential, private patient data underlying a study have not been made public.

Relatedly, EPA's proposal may also restrict the health and welfare benefits tied to the NAAQS that support other rulemakings. For example, in calculating the costs and benefits of rules to reduce air emissions, in some cases the majority of the benefit estimates are attributable to reductions in one or more criteria pollutants that are not the primary objective of the rule. These reductions are referred to as co-benefits, and the health impacts and monetized benefits are based on studies used in the air quality standards-setting process for criteria pollutants. For example, in promulgating the Mercury and Air Toxics Standard rule governing air emission standards for hazardous air pollutants (including mercury) from power plants, EPA states "[i]t is important to note that the monetized benefits include many but not all health effects associated with PM_{2.5} exposure." 77 Fed. Reg. 9304, 9431 (Feb. 16, 2012); *see also id.* at 9305. Thus, restricting the use of studies that underlie emission standards for criteria pollutants could significantly impact the cost-benefit analyses for various other health-related rules by failing to account for all the benefits, making it far more likely that the costs will be predicted to exceed the benefits and that the regulatory standards will, accordingly, be lowered.

Further, in developing regulations EPA uses other types of models in addition to dose response models. These include toxicokinetic models that predict a chemical's absorption, distribution, metabolism, and excretion, as well as fate and transport models that predict a chemical's movement in the environment and distribution to environmental media. The proposed rule's provisions that could decrease protectiveness of dose response analysis (e.g., requiring justification of default assumptions and precluding consideration of relevant studies due to data disclosure requirements) could similarly result in decreased protectiveness of these other types of models. In regulations based on dose response analysis combined with toxicokinetic and/or fate and transport analyses, the overall decrease in protectiveness would be magnified.

The proposed rule also does not differentiate between standards set to protect human health, and standards and models used to protect the environment, such as the CWA's aquatic life criteria and standards used in ecological risk assessments under CERCLA.³³ Many of the same serious concerns raised in these comments are equally applicable to such standards and models, including: EPA's lack of consultation with the SAB, the National Academy of Sciences, and the broader scientific community; the requirement that EPA conduct its own review of all pivotal regulatory science; and the proposed rule's potential to impose unreasonable data maintenance requirements. Also, the use of GLP protocols is inappropriate for studies involving ecosystems and associated biota. Consequently, the problems concerning EPA's ability to rely

Environmental Protection Agency (Apr. 12, 2018), <https://www.whitehouse.gov/presidential-actions/presidential-memorandum-administrator-environmental-protection-agency/>.

³³ *National Recommended Water Quality Criteria*, U.S. Env'tl. Prot. Agency (Apr. 2, 2018), <https://www.epa.gov/wqc/national-recommended-water-quality-criteria>; *Superfund Risk Assessment: Ecological Risk Topics*, U.S. Env'tl. Prot. Agency (Feb. 16, 2018), <https://www.epa.gov/ris/superfund-ris-assessment-ecological-risk-topics>.

on the best available scientific studies would also limit EPA's ability to protect ecosystems and wildlife in a scientifically robust manner.

CONCLUSION

As the comments above demonstrate, the proposed rule is antithetical to EPA's mission to protect human health and the environment. The proposed rule is riddled with substantive and procedural infirmities and would achieve the opposite of its purported purpose. EPA's failure to consult with its own internal science experts when developing the proposal is, at best, gross malfeasance and, at worst, a conscious effort to subvert the Agency's statutorily mandated practice of using the best available science. We urge EPA to jettison this tainted vestige of the prior leadership and restore public confidence in the Agency's commitment to its core mission, and we stand ready to pursue legal remedies should EPA persist in this misguided effort.

Sincerely,



BARBARA D. UNDERWOOD
Attorney General of New York



GURBIR S. GREWAL
Attorney General of New Jersey



XAVIER BECERRA
Attorney General of California



GEORGE JEPSEN
Attorney General of Connecticut



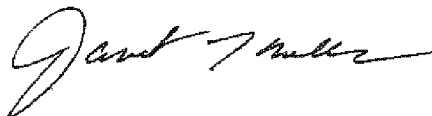
MATTHEW P. DENN
Attorney General of Delaware



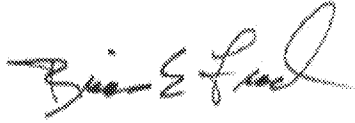
LISA MADIGAN
Attorney General of Illinois



THOMAS J. MILLER
Attorney General of Iowa



JANET T. MILLS
Attorney General of Maine



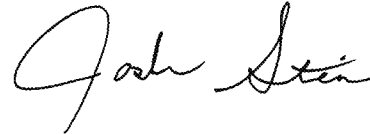
BRIAN E. FROSH
Attorney General of Maryland



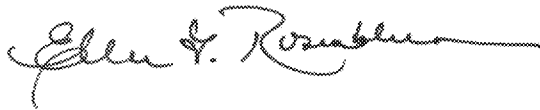
MAURA HEALEY
Attorney General of Massachusetts



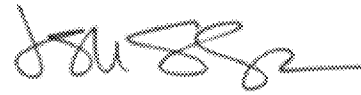
LORI SWANSON
Attorney General of Minnesota



JOSHUA H. STEIN
Attorney General of North Carolina



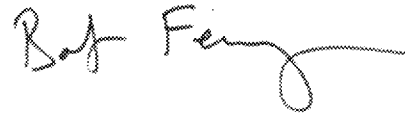
ELLEN ROSENBLUM
Attorney General of Oregon



JOSH SHAPIRO
Attorney General of the Commonwealth
of Pennsylvania



PATRICK MCDONNELL
Secretary of the Pennsylvania Department
of Environmental Protection



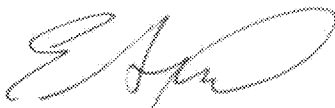
BOB FERGUSON
Attorney General of Washington State



KARL A. RACINE
Attorney General of the
District of Columbia



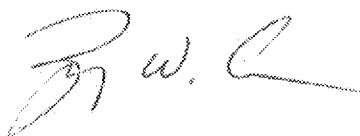
DANIEL T. SATTERBERG
King County (WA) Prosecuting Attorney



EDWARD N. SISKEL
Corporation Counsel
City of Chicago



MICHAEL N. FEUER
Los Angeles City Attorney



ZACHARY W. CARTER
Corporation Counsel
City of New York

/s/

MARCEL S. PRATT
City Solicitor
City of Philadelphia



BARBARA J. PARKER
City Attorney
City of Oakland



DENNIS J. HERRERA
City Attorney
City of San Francisco

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Friday recap:

- 10:30-11:30 am – Call with Senator Kamala Harris’ staff – Science Integrity Committee
- 12:30 pm – General: Rodan/Shaw
- 1 pm – Biweekly with Alan Vette
- 2 pm – 3:30 pm – EPA Pre-Internal Call: HONEST Act Implementation
- 3:30 pm – Biweekly with Bryan Hubbell

Monday/Tuesday:

- Executive Leadership Conference – Omni Shoreham Hotel – near National Zoo

Message

Sent: 8/22/2018 2:35:15 PM
To: Doa, Maria [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=99e502a905374b0b890db9b22e18d92e-MDoa02]
Subject: + selected comments
Attachments: Comment (1).pdf; ACC Comments on Strengthening Transparency in Regulatory Science Comment Final 2018 08 16.pdf; ASDWA Comments on Regulatory Transparency 08152018 Final.docx; Letter to EPA re proposed science rule.pdf; 2018.08.15 Comment Letter re Transparency in Science (FINAL FOR FILING).pdf; Coons_Comment_EPA_Transparency_Rule.pdf

Maria here are some additional comments you might consider posting on the share point site. Chlorine Institute, ACC, ASDWA, UCS, 11 attorneys general letter, Senate letter.

Thomas Sinks, Ph.D.
Director, Office of the Science Advisor
Environmental Protection Agency
1200 Pennsylvania Ave NW
Room 41251 RRB, MC 8105 R
Washington DC, 20460

email: sinks.tom@epa.gov



THE CHLORINE INSTITUTE

1300 Wilson Boulevard, Suite 525, Arlington, VA 22209

Phone: 703-894-4140 Fax: 703-894-4130

www.chlorineinstitute.org

Environmental Protection Agency
Office of the Science Advisor
1200 Pennsylvania Ave. NW.
Washington, DC 20460-0001

August 10, 2018

RE: Strengthening Transparency in Regulatory Science, Docket Number: EPA-HQ-OA-2018-0259

Dear Sir or Madam:

The Chlorine Institute ("CI" or the "Institute") is a 190 member, not-for-profit trade association of chlor-alkali producers worldwide, as well as packagers, distributors, users, and suppliers. The Institute's North American Producer members account for more than 93 percent of the total chlorine production capacity of the U.S., Canada, and Mexico. The Institute's mission chemicals, namely chlorine, sodium hydroxide and potassium hydroxide, hydrogen chloride, sodium hypochlorite, and vinyl chloride monomer, are used throughout the U.S. economy and are paramount to the protection of public health.

With reference to the April 30, 2018 Federal Register Notice "Strengthening Transparency in Regulatory Science" (83 FR 18768), CI members recognize and applaud EPA's efforts to increase transparency in rulemaking. CI agrees with the statement in the Federal Register, "the best available science must serve as the foundation of EPA's regulatory actions." Environmental stewardship is a shared responsibility among industry, EPA, local authorities, and the general public. In order for industry and EPA to work together to steward America's land, water, and air, scientific rigor must guide each party's actions. How EPA writes its regulations will affect the health and wellbeing of Americans and our global neighbors. To prudently regulate the many domestic stewards of the environment, EPA must effectively use the best available science, including reputable peer-reviewed science and commercially available modeling software. However, the proposed rule may have the unintended consequence of excluding sound, peer-reviewed science in the rulemaking process. EPA's jurisdiction covers many complex, highly detailed areas – from determining safe contaminant levels in drinking water to regulating hazardous waste to air emissions.

Data Supporting Commissioned, Non-Peer Reviewed Studies Should be Transparent

There are instances when interested parties commission a laboratory or other research organization to perform a study. This third party does the scientific study and may draw conclusions, but does not solicit other peers (a "fourth" party) to review the findings. For non-peer reviewed commissioned studies such as these, the underlying data should be made available to the public, along with the

conclusions, assumptions, methods used, and a discussion of limits of extrapolation. Because such studies lack the layers of review that accompany peer-reviewed science, they should be held to a higher standard of transparency if relied upon in rulemaking decisions.

Peer-Reviewed Studies Are Acceptable for Rulemaking

For policy decisions based upon peer-reviewed journals and literature, the articles should be available to the public (for a nominal fee, if necessary), but it is not necessary to provide every underlying data point for public inspection in rulemaking. Requiring every individual data point from such studies to be made available will greatly reduce the number of sound, scientific articles available for rulemaking. The peer-review process is widely accepted in the scientific community. Journals that publish peer-reviewed articles have ethical guidelines for reviewers^{1,2}. Reputable publishers use a robust peer-review process that has a series of quality controls.

If EPA has concerns about whether to use a particular study because it appears that the conclusions are based on faulty science, it is the EPA's duty to investigate the study further and make its concerns known in the rulemaking process. Similarly, if the public has concerns on a study used by the EPA, those concerns and any counter studies may be raised in the rulemaking process.

Commercially Available Computer Software is Acceptable for Rulemaking

Industry often uses commercially available computer code and software to design, build, and operate chemical facilities, and to predict emissions. For example, EPA's RMP rule allows the use of EPA's own RMP*COMP software for worst-case scenario modeling estimations. Another example of a widely used, commercially available tool in engineering is Aspen Plus® modeling software. When tools like these are used within the applicable limits of the software, they are very useful. The key is to use the computer code and/or software within its intended applicability range and with appropriate assumptions.

In this instance, "commercially available" is defined as published software or code with a sound scientific basis, available for use by the public or government. Any commercially available models or computer codes that are used in rulemaking decisions should include a disclosure about the basis, applicability limits, and assumptions of the parameters used with the computer code/software. However, CI believes that making the complete computer code or software code available for review is not necessary.

Commercially available computer code and software often contains intellectual property. It is easy to imagine a scenario where widely accepted, commercially available computer modeling software was used to estimate emissions to determine potential dosages of surrounding populations as a part of rulemaking. The scientific study that used commercially available software named all the assumptions

¹ Science publication Peer Review Ethical Guidelines - <http://www.sciencemag.org/authors/peer-review-science-publications>

² Wiley's Best Practice Guidelines on Publishing Ethics A Publisher's Perspective, Second Edition - <https://authorservices.wiley.com/ethics-guidelines/index.html>

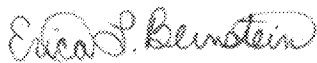
and modeling parameters it used and was then peer reviewed. Such a study would surely qualify as scientifically rigorous and worthy of inclusion in rulemaking decisions. It's unlikely that commercial software makers would be willing to surrender their extensive code, as that could give competing software companies an advantage.

If, however, similar to aforementioned commissioned studies computer code is used in a novel way specific only to the commissioned study at hand, such code should be made public.


CI members believe both in data transparency in rulemaking and scientific rigor. While we are in agreement with the spirit of the *Strengthening Transparency in Regulatory Science* proposed rule, we believe that, with changes to allow peer-reviewed science and eliminating the requirement to disclose computer code from commercially-available software, EPA and the chlor-alkali industry can work together to achieve true environmentalism.

Thank you for your time and attention.

Best Regards,

Handwritten signature of Erica Bernstein in cursive script.

Erica Bernstein
Director - Outreach

Handwritten signature of Robyn Brooks in cursive script.

Robyn Brooks
Senior Director - Health,
Environment, Safety and Security

August 15, 2018

The Honorable Andrew Wheeler
Acting Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Ave, NW
Washington, D.C. 20460

Re: Rescinding EPA's Proposed Rule, "Strengthening Transparency in Regulatory Science"

Dear Acting Administrator Wheeler:

The undersigned public health, science, labor, transparency, accountability, and environmental organizations urge you to withdraw the proposed rule entitled "Strengthening Transparency in Regulatory Science," issued by former EPA Administrator Scott Pruitt on April 30, 2018.¹ The ill-conceived, badly written, and unlawful proposal is flawed beyond repair and should be rescinded. Further, this proposed rule runs counter to your stated commitment to "robust and civil dialogue with the public."² Any further time and money spent on this proposal would be a waste of valuable public resources. EPA and OMB should focus their limited resources on protecting public health and the environment rather than continuing to consider such a flawed proposal.

In your first address to EPA staff, you emphasized that you "will seek the facts" and aim to carry out "the vital mission of protecting human health and the environment."³ To extend the benefits of science to all people, including those communities that already bear a disproportionate burden of environmental pollution, EPA must preserve the role of science as a key input for crafting public policy.

Unfortunately, the implementation of this rule would do just the opposite, undermining the ability of the Agency to use the best available science to protect public health and the environment. The proposal will not improve the use of science at EPA, but instead would restrict the types of science the Agency may use in regulatory decisionmaking. This includes, but is not limited to, studies that rely on personal health data, confidential business information, intellectual property, or older studies where the authors or data sources may not be accessible. Restricting the use of robust and well-established scientific information prevents EPA from meeting its mission.

¹ Federal Register. 2018. Strengthening Transparency in Regulatory Science, April 30. Vol 83, No. 83. Online at <https://www.gpo.gov/fdsys/pkg/FR-2018-04-30/pdf/2018-09078.pdf>. Accessed July 31, 2018.

² Wheeler, A.R. 2018. Message from the Acting Administrator: Public Participation and Transparency in EPA Operations, July 30. Online at https://www.eenews.net/assets/2018/07/30/document_pm_02.pdf. Accessed July 31, 2018.

³ Environmental Protection Agency (EPA). 2018. Acting Administrator Wheeler Addresses EPA Staff (News Release), July 11. Online at <https://www.epa.gov/newsreleases/acting-administrator-wheeler-addresses-epa-staff>. Accessed July 31, 2018.

Equally problematic, the proposed rule is not authorized by any authority delegated to EPA by Congress and is contrary to a number of statutes under EPA's authority. This includes, but is not limited to, the Clean Air Act; Clean Water Act; Toxic Substances Control Act; Lautenberg Chemical Safety Act; Safe Drinking Water Act; Federal Insecticide, Fungicide, and Rodenticide Act; and more. Substantively, the rule violates numerous public health and environmental provisions contained in these laws, as well as requirements to use the best available science or to consider all available information, while procedurally, it violates the Administrative Procedure Act and a number of other laws that set forth specific procedures EPA must follow during its rulemaking process. It also lacks an environmental justice analysis even though the rule will have the greatest impact on low-income and minority communities that benefit from protections based on the very studies the rule restricts from consideration when setting exposure limitations for pollution and toxic chemicals. Simply put, the proposal cannot withstand legal scrutiny.

The proposed rule also lacks justification and has little information on what implementation would mean for external researchers or how it would affect EPA's work to protect public health and the environment. It was developed without meaningful input from the scientific community. EPA's Science Advisory Board (SAB), tasked with reviewing the Agency's regulatory agenda and recommending actions that merit independent review, only learned about the rulemaking after it was already proposed. As a result, an SAB workgroup recommended that the advisory body review the merits of the rule because "it deals with a myriad of scientific issues for which the Agency should seek expert advice from the Science Advisory Board."⁴ After a nearly unanimous vote concurring with the memo, the SAB wrote in a June 28 letter to former Administrator Scott Pruitt that "[t]he SAB urges the Agency to ... request, receive, and review scientific advice from the SAB before revising the proposed rule."⁵

Numerous scientific voices have spoken out in opposition to the proposed rule, including those with standards EPA claimed were consistent with the proposed rule. For example, the editors of leading peer-reviewed scientific journals, *Science*, *Nature*, *Public Library of Science (PLOS)*, *Proceedings of the National Academy of Sciences*, and *Cell* wrote:

"[I]t does not strengthen policies based on scientific evidence to limit the scientific evidence that can inform them; rather, it is paramount that the full suite of relevant science vetted through peer review, which includes ever more rigorous features, inform the landscape of decision making. Excluding relevant studies simply because they do not meet rigid transparency standards will adversely affect decision-making processes."⁶

⁴ Cullen, A. EPA Science Advisory Board, SAB Work Group on EPA Planned Actions for SAB Consideration of the Underlying Science. 2018. Preparations for Chartered Science Advisory Board (SAB) Discussions of Proposed Rule: Strengthening Transparency in Regulatory Science RIN (2080-AA14), May 12. Online at [https://yosemite.epa.gov/sab/sabproduct.nsf/E21FFAE956B548258525828C00808BB7/\\$File/WkGrp_memo_2080-AA14_final_05132018.pdf](https://yosemite.epa.gov/sab/sabproduct.nsf/E21FFAE956B548258525828C00808BB7/$File/WkGrp_memo_2080-AA14_final_05132018.pdf). Accessed May 14, 2018.

⁵ Honeycutt, M. 2018. Letter Re: Science Advisory Board (SAB) Consideration of EPA Proposed Rule: Strengthening Transparency in Regulatory Science, June 28. Online at [https://yosemite.epa.gov/sab/sabproduct.nsf/4ECB44CA28936083852582BB004ADE54/\\$File/EPA-SAB-18-003+Unsigned.pdf](https://yosemite.epa.gov/sab/sabproduct.nsf/4ECB44CA28936083852582BB004ADE54/$File/EPA-SAB-18-003+Unsigned.pdf). Accessed July 18, 2018.

⁶ Berg, J., P. Campbell, V. Kiermer, N. Raikhel, and D. Sweet. 2018. Joint statement on EPA proposed rule and public availability of data. *Science*, April 30. DOI: 10.1126/science.aau0116. Online at <http://science.sciencemag.org/content/early/2018/04/30/science.aau0116/>. Accessed July 30, 2018.

Among those not consulted in the crafting of this rule were the National Academies of Sciences, Engineering, and Medicine (NASEM), though EPA nonetheless frequently cited the NASEM in the proposed rule. EPA's reliance on the NASEM is misrepresented, as the Academies have held several committee meetings and carried out a series of reports detailing how scientific literature can be evaluated transparently without the full disclosure of underlying datasets.⁷ In a comment on the rule, the NASEM urged EPA to seek objective and expert guidance in evaluating scientific standards at EPA and offered itself as an independent review body.⁸

Likewise, the Bipartisan Policy Center (BPC) clarified in a comment to the agency that "the proposed rule is not consistent" with its report on the use of science in policymaking that EPA cited in "substance or intent."⁹ BPC supports enhanced transparency, but "the report never suggested excluding studies from consideration in developing regulation if data from those studies were not publicly available."¹⁰

The damage inflicted by this rule would have far-reaching consequences beyond undermining EPA's scientific research processes. It would weaken public health and environmental protections that keep people safe from toxic chemicals and hazardous pollution, and would ultimately mean less protection for communities who already bear the brunt of environmental contamination and associated health impacts.

Decision makers and the public need access to the best-available scientific evidence, and our health and safety depend on using that valuable information to make regulatory decisions. It is critical that as acting Administrator you follow through on your pledge to "seek the facts," by withdrawing this flawed proposal that would politicize science and prevent the agency from fulfilling its mission.

⁷ National Academies of Science, Engineering, and Medicine. 2017. *Application of Systematic Review Methods in an Overall Strategy for Evaluating Low-Dose Toxicity from Endocrine Active Chemicals*. Washington, DC: The National Academies Press. DOI: 10.17226/24758; National Academies of Science, Engineering, and Medicine. 2014. *Review of EPA's Integrated Risk Information System (IRIS) Process*. Washington, DC: The National Academies Press. DOI: 10.17226/18764.; Institute of Medicine. 2011. *Finding What Works in Health Care: Standards for Systematic Reviews*. Washington, DC: The National Academies Press. DOI: 10.17226/13059; National Research Council. 2009. *Science and Decisions: Advancing Risk Assessment*. Washington, DC: The National Academies Press. DOI: 10.17226/12209.; National Research Council. 2007. *Models in Environmental Regulatory Decision Making*. Washington, DC: The National Academies Press. DOI: 10.17226/11972.; National Academies of Science, Engineering, and Medicine. 2017. *Innovations in Federal Statistics: Combining Data While Protecting Privacy*. Washington, DC: The National Academies Press. DOI: 10.17226/24652.; National Academies of Science, Engineering, and Medicine. 2017. *Federal Statistics, Multiple Data Sources, and Privacy Protections: Next Steps*. Washington, DC: The National Academies Press. DOI: 10.17226/24893.

⁸ McNutt, M., C.D.Mote, Jr., and V.J. Dzau. 2018. Comment Re: Strengthening Transparency in Regulatory Science (Docket ID No. EPA-HQ-OA-2018-0259), July 16. Online at <http://www.nationalacademies.org/includes/EPA%20Proposed%20Rule%20Docket%20EPA-HQ-OA-2018-0259%20NASEM%20Comment.pdf>, Accessed July 23, 2018.

⁹ Grumet, J. 2018. Bipartisan Policy Center comments on "Strengthening Transparency in Regulatory Science," Docket ID No. EPA-HQ-OA-2018-0259, May 22. Online at <https://www.regulations.gov/document?D=EPA-HQ-OA-2018-0259-0670>, Accessed July 30, 2018.

¹⁰ *Id.*

Signed,

AFGE Local 704
Alaska Community Action on Toxics
American Medical Student Association
American Rivers
Anacostia Watershed Society
Association of Reproductive Health Professionals (ARHP)
Association of Research Libraries
Blackwater Nottoway RiverGuard
Breast Cancer Prevention Partners
Buffalo River Watershed Alliance
Cahaba River Society
CATA - The Farmworker Support Committee
Center for Biological Diversity
Center for Food Safety
Center for Inquiry
Center for Progressive Reform
Clean Water Action
ClimateTruth.org
Coming Clean
Concerned Citizen
CRLA Foundation
Des Moines County Farmers and Neighbors for Optimal Health
Earthjustice
Endangered Species Coalition
Environmental Defense Fund
Environmental Law & Policy Center
Environmental Protection Network
Farmworker Association of Florida
Farmworker Justice
Friends of the Earth
Gasp
Government Accountability Project
Government Information Watch
Green Science Policy Institute
Greenpeace USA
Gulf Restoration Network
Harpeth Conservancy
Helping Others Maintain Environmental Standards (HOMES)
Jacobs Institute of Women's Health
Kentucky Resources Council, Inc.
Kentucky Waterways Alliance
League of Conservation Voters
Massachusetts Rivers Alliance
Mississippi River Collaborative

Moms Clean Air Force
National Equality Action Team (NEAT)
National Family Farm Coalition
National Health Law Program
National LGBTQ Task Force
National Organization for Women
National Parks Conservation Association
National Partnership for Women & Families
Natural Resources Defense Council
New Hampshire Rivers Council
Northwest Watershed Institute
Ohio River Foundation
Pequabuck River Watershed Association
Pesticide Action Network
Pesticide Action Network North America
Physicians for Social Responsibility
Pollinate Minnesota
Poweshiek CARES
Public Justice
Rivanna Conservation Alliance
River Network
Save EPA
Schuylkill Pipeline Awareness
Science and Environmental Health Network
Sciencecorps
Sierra Club
Union of Concerned Scientists
United Steelworkers
US PIRG
Waterkeeper Alliance
West Virginia Rivers Coalition
Women's Voices for the Earth
Yukon River Inter-Tribal Watershed Council

Cc: Acting Deputy Administrator Henry Darwin
Principal Deputy Assistant Administrator for Science for the Office of Research and
Development and EPA Science Advisor Jennifer Orme-Zavaleta
Deputy Assistant Administrator for the Office of Research and Development Richard Yamada

Appointment

From: Atkinson, Emily [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BB2155ADEF6A44AEA9410741F0C01D27-ATKINSON, EMILY]
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Subject: SAB Meeting Discussion
Attachments: draft+SAB+meeting+agenda_5_16_18.pdf; SABWkGrpSpring2017Att+ABC.PDF; WG_Memo_Fall17_RegRevAttsABC.PDF; WkGrp_memo_2080-AA14_final_05132018.pdf; Best Practices for EPA Engagement with the Science Advisory Board Marchpdf; SAB Mtg Prep
Location: WJC-N 5400 + Video with RTP + **Conference phone and code /Ex. 6**
Start: 5/24/2018 8:15:00 PM
End: 5/24/2018 9:00:00 PM
Show Time As: Busy

Materials Attached

To: Wehrum, Bill; Woods, Clint; Shoaff, John; Tsirigotis, Peter; Koerber, Mike; Grundler, Christopher; Cook, Leila; Hengst, Benjamin; Dunham, Sarah; Harlow, David; Gunasekara, Mandy; Bolen, Brittany; Schwab, Justin



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EPA Engagemen...



SAB Mtg Prep

From: Shoaff, John [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=AC16FB09CF2C44ADB34A7405DC331532-JSHOAFF]
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CC: Hockstad, Leif [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5a4fb1f8930645efa34fdfa7485bc6da-LHOCKSTA]; Mazza, Carl [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=0ef03c34ecaf4e219c037be57464ecf9-CMazza]
Subject: SAB Mtg Prep
Attachments: draft+SAB+meeting+agenda_5_16_18.pdf; SABWkGrpSpring2017Att+ABC.pdf; WG_Memo_Fall17_RegRevAttsABC.pdf; WkGrp_memo_2080-AA14_final_05132018.pdf; Best Practices for EPA Engagement with the Science Advisory Board March 2015.pdf

Emily,

Could you add this to the meeting invitation for the SAB prep discussion tomorrow at 4:15. Thank you!

Draft agenda

1. Preparation & Coverage

- a. Scene Setting & Review of Regulatory Actions (Thurs. 5/31, 3:15-5:00)(see tables of actions below & recommendations from SAB WG in 3rd column)

SAB Discussions about EPA Planned Actions and their Supporting Science

- Public Comments
- Presentation from the Work Group Chair

- Discussion
- Disposition of the Planned Actions

Dr. Michael Honeycutt

Registered speakers

Dr. Alison Cullen,
Chair, SAB Work Group on EPA Planned Actions for SAB Consideration of the Underlying Science
SAB Members

- b. Coverage options and possible supplementation of prior Q&As

2. Review/Planning as it relates to other Agenda sessions

3. Next steps

Tables – Summary of Proposed Actions that the SAB WG Considered for Additional SAB Comment on the Supporting Science

Spring 2017

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Attachments/Background (for purposes of discussion, focus is mostly with the SAB Agenda though other items below include detailed background for which we also have some original materials in Word files)

1. SAB Agenda
2. Spring 2017 SAB WG Memo (including recommendations for SAB review of actions & associated background – templates on each action, SAB WG Qs & Answers in response at attachments B & C)
3. Fall 2017 SAB WG Memo (& associated background)
4. SAB WG Memo on Scientific Transparency action
5. SAB Best Practices

Note FYI that public comments are also being posted to the SAB Meeting site:

<https://yosemite.epa.gov/sab/sabproduct.nsf//MeetingCalBOARD/7D239353BCECF85B852582600058B716?OpenDocument>

JOHN SHOAF | DIRECTOR

OFFICE OF AIR POLICY & PROGRAM SUPPORT (OAPPS)

OFFICE OF AIR & RADIATION | U.S. EPA | WJC NORTH 5442-B

1200 PENNSYLVANIA AVE. NW | MC 6103A | WASHINGTON, D.C. | 20460 | USA

Shoaff.john@epa.gov | 1-202-564-0531 DIRECT | 1-202-257-1755 MOBILE

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Subject: May 24 -- Greenwire is ready

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GREENWIRE

AN E&E NEWS PUBLICATION

GREENWIRE — Thu., May 24, 2018



READ FULL EDITION

1. LAW:

Clean Water Act 'ambulance chasers'? Firm raises eyebrows

The Trump administration is taking rare action against a Pennsylvania law firm for filing Clean Water Act citizen suits.

TOP STORIES

2. EPA:

Agency wanted 'war room' press coverage

3. SCIENCE:

GOP lawmakers, industry had EPA's ear on advisory panels

4. DRINKING WATER:

Science proposal muddies reviews of toxic nonstick chemicals

POLITICS

5. EPA:

Comment period extended for 'secret science' proposal

6. AUTOS:

Global confusion as Trump floats tariffs on car imports

7. PEOPLE:

Ex-Interior appointee turns to government relations

CONGRESS

8. DEFENSE:

House OKs Pentagon bill with sage grouse, mining provisions

9. NUCLEAR:

White House keeps Congress, advocates guessing about review

NATURAL RESOURCES

10. INTERIOR:

Award-winning FWS official has 'had a blast'

11. POLLINATORS:

Beekeepers coming to terms with increased winter losses

12. EXTREME WEATHER:

NOAA predicts 'near- or above-normal' hurricane season

13. WILDLIFE:

Wyo. approves trophy hunt of Yellowstone-area grizzlies

14. PEOPLE:

Air Force general who oversaw disaster response retires

15. WILDLIFE:

USDA cyanide devices killed 164 Wyo. coyotes last year

16. MARINE MAMMALS:

Humans caused 2 Calif. whale deaths — officials

LAW

17. WILDLIFE:

Greens sue Interior over migratory bird law revisions

18. COAL:

Greens sue over water permit for power plant

AIR AND WATER

19. AGRICULTURE:

'Takes your breath away': N.C. residents fight manure pools

BUSINESS

20. SPORTS:

Stadiums score high on green architecture

TRANSPORTATION

21. SELF-DRIVING CARS:

Uber halts testing in Ariz. in wake of fatal crash

STATES

22. CALIFORNIA:

Companies draw fire for ballot bid to duck lead paint costs

23. HAWAII:

Volcano creates blue flames; man describes harrowing injury

24. MARYLAND:

Some worry pumped-up Ocean City beaches threaten swimmers

25. WEST VIRGINIA:

Mishandled flood relief money draws scrutiny

26. NEW JERSEY:

Shore town bans plastics, foam takeout boxes

INTERNATIONAL

27. AUSTRALIA:

World's longest cat-proof fence to guard marsupials

28. INDIA:

Authorities pull plug on smelter after deadly protests

29. YEMEN:

Cyclone pounds island with winds, rain

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GREENWIRE

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GREENWIRE — Fri., April 27, 2018

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1. WHITE HOUSE:

OMB backdates completion date for 'secret science' review

The White House has altered an official timeline to show that a required review of a proposed EPA science rule was finished one day before agency Administrator Scott Pruitt signed it this past Tuesday.

TOP STORIES

2. INTERIOR:

Indian Affairs head resigns, but agency won't say why

3. SCIENCE:

'Gamechanger' earthquake linked to geothermal power

4. OFF TOPIC:

On this Dem's 2020 platform: Rising seas, robot apocalypse

POLITICS

5. AIR POLLUTION:

New Source Review rulemaking possible — Pruitt

6. LAW:

Red-state AGs vow to fight climate lawsuits

CONGRESS

7. SENATE:

Energy and environment bills roll out before recess

NATURAL RESOURCES

8. MINING:

Army Corps advances massive Alaska gold project

9. EXTREME WEATHER:

Trump declares disaster area in Ala. tornado path

10. HURRICANE HARVEY:

Houston housing market tries to prepare for future floods

11. MINING:

Colo. regulators reject gravel pit in key habitat

12. PUBLIC LANDS:

Utah activists will face jury for closing cattle gate

13. ENDANGERED SPECIES:

Albino orangutan gets her own island for protection

LAW

14. COAL:

Court won't revive suit challenging black lung claims

ENERGY

15. NUCLEAR:

DOE announces \$60M in grants, agreement with France

16. SOLAR:

In win for Trump, First Solar boosts manufacturing

17. OIL AND GAS:

Fire extinguished at Wis. refinery rocked by explosion

18. UTILITIES:

PG&E fined nearly \$100M for improper talks with regulators

AIR AND WATER

19. AGRICULTURE:

Minn. bails on rule to protect wild rice

BUSINESS

20. PEOPLE:

Watchdogs fret that Perry's son owns energy investment firm

21. COAL:

Arch slashes production amid poor market

TRANSPORTATION

22. ELECTRIC VEHICLES:

Proposal calls for independent Tesla chairman — not Elon Musk

23. ELECTRIC VEHICLES:

Tesla, utilities duke it out over rebates

24. CALIFORNIA:

Billions from gas tax to pay for transit upgrades

STATES

25. CALIFORNIA:

LA ends free trips for solo drivers in zero-emission cars

26. COLORADO:

City receives \$500k for wildfire mitigation

27. WYOMING:

Hunting gear raffle used to boost elk disease reporting

INTERNATIONAL

28. EUROPEAN UNION:

Member states agree to neonicotinoids ban

29. AUSTRALIA:

All of nation's packaging will be sustainable by 2025

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E&E NEWS PM

AN E&E NEWS PUBLICATION

E&E NEWS PM — Mon., July 16, 2018



[READ FULL EDITION](#)

1. CLIMATE:

Kochs rally lawmakers for anti-carbon-tax resolution

Koch Industries Inc. today wrote lawmakers urging support for an anti-carbon-tax resolution set for a vote in the House, as outside groups gird for a fight over the proposal.

THIS AFTERNOON'S STORIES

2. EPA:

Lineups set for marathon 'secret science' hearing

3. PEOPLE:

Former Clinton White House official joins EDF

4. FEDERAL AGENCIES:

USGS not liable for fatal helicopter crash

UPCOMING HEARINGS AND MARKUPS

5. CALENDAR:

Activity for July 16 - July 22, 2018

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Message

From: Woods, Clint [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BC65010F5C2E48F4BC2AA050DB50D198-WOODS, CLIN]
Sent: 4/11/2018 3:50:39 PM
To: Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]; Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]; Harlow, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b5a9a34e31fc4fe6b2beaddda2affa44-Harlow, Dav]
Subject: Data Access Draft
Attachments: Data Access DRAFT NPRM 04-11-2018.docx

FYI – Attached is latest draft on data access, which OP intends to share with OMB this week. Thanks!

Message

From: POLITICO Pro Energy [politicoemail@politicopro.com]
Sent: 5/10/2018 10:09:29 AM
To: Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]
Subject: Morning Energy, presented by Anheuser-Busch: Zinke's turn on the Hill — EPA watchdog: Aides slow to turn over docs — House to take up Yucca bill today

By Kelsey Tamborrino | 05/10/2018 06:01 AM EDT

With help from Eric Wolff, Alex Guillén, Anthony Adragna and Jennifer Haberkorn

ZINKE HEADS TO THE HILL: Interior Secretary Ryan Zinke faces his Senate appropriators today to discuss his department's budget request for fiscal 2019. Expect Democrats to bring up familiar topics, such as his plans to reorganize the department and last year's decision to shrink national monuments in Utah. Subcommittee ranking member Tom Udall plans to tell Zinke that until courts weigh in on whether his move was legal, "I believe that moving forward with land management plans that will open these iconic areas to development is reckless."

Subcommittee Chair Lisa Murkowski may be interested in hearing more about Zinke's plans for oil and gas development in Alaska, after Interior kicked off its environmental review of potential drilling in part of the Arctic National Wildlife Refuge thanks to language she got included in last year's tax bill. And Sen. Lamar Alexander, another member of the subcommittee, can follow up on the maintenance backlog for the national parks, an issue the two discussed when Zinke visited Tennessee last week.

Ahead of the hearing, the Coalition to Protect America's National Parks is sending a letter to Zinke, with signatures from current and former employees of the National Park Service, calling on him to support permanent reauthorization of the Land and Water Conservation Fund, an issue with support in both parties.

If you go: The Senate Appropriations Interior-Environment Subcommittee hearing begins at 9:30 a.m. in 138 Dirksen.

— **But first:** Zinke will join Agriculture Secretary Sonny Perdue at USDA headquarters for an 8 a.m. briefing on the forecast for this year's wildfire season.

WATCHDOG: EPA AIDES SLOW TO SEND DOCS: EPA's internal watchdog complained last year that Administrator Scott Pruitt's aides were taking their sweet time handing over documents related to a probe into their boss' travels, new emails show. Although the standoff between the inspector general's office and Pruitt's staff was resolved a month later, the incident illustrates tensions between political appointees and career oversight officials that developed early on. The IG's office is in the process of conducting multiple reviews into Pruitt's actions.

The new emails, released under a FOIA request from California's Justice Department, show the IG's office was seeking information for its probe of Pruitt's frequent travel to Oklahoma on EPA business, Pro's Alex Guillén reports. That same probe was later expanded to include a wider swath of Pruitt's travel practices, including his first-class flights that cost more than \$100,000. (The investigation is slated to be completed this summer.)

At the time, the agency's assistant inspector general for audits, Kevin Christensen, wrote to a top career official in EPA's finance office to warn of a "potential situation" with the travel audit just two weeks after it began, the emails show. Christensen flagged messages showing Pruitt's chief of staff Ryan Jackson was

"screening" documents before releasing them to the Office of Inspector General. "This does not fit the definition of unfettered access or comply with the Administrator memo on access and providing information to the OIG," Christensen wrote to Jeanne Conklin, EPA's controller who oversees financial management and reporting. "When we are denied access to information until approved for release, it raises the question as to what is being withheld and approved for release."

The emails spotlight concerns about the lack of transparency atop the agency since Pruitt joined. And other emails released to California's Department of Justice also show career ethics officials warning Pruitt's aides about accepting industry awards and attending political events, further exemplifying internal tensions as Pruitt's external problems grow. Read more from Alex [here](#).

— **Related reporting:** Amid ongoing scrutiny, Pruitt met with industry representatives Wednesday, where a reporter asked if he still had the confidence of the White House. Pruitt said: "I think they've spoken very clearly," Bloomberg [reports](#).

WELCOME TO THURSDAY! I'm your host Kelsey Tamborrino. Bracewell's Frank Maisano was the first to correctly identify Detroit as home to the first paved roadway. Woodward Avenue carries the designation M-1 for its status as the first place to pour a 1-mile patch of concrete roadway. For today: Name the state first lady who simultaneously served as a member of the House. Send your tips, energy gossip and comments to ktamborrino@politico.com, or follow us on Twitter [@kelseytam](#), [@Morning_Energy](#) and [@POLITICOPro](#).

TRUMP EXTENDS OLIVE BRANCH: President Donald Trump called coal baron Don Blankenship Wednesday to exchange pleasantries and offer up congratulations for waging his campaign, POLITICO's Alex Isenstadt reports. The conversation was described as straightforward, polite and cordial, and comes days after Trump tweeted that voters shouldn't vote for Blankenship in the West Virginia Republican primary. Blankenship also published an [open letter](#) to Trump on Wednesday that in part blamed the president for his loss. "Your interference in the West Virginia election displayed a lack of understanding of the likely outcome of the upcoming general election," Blankenship wrote. But he ended with a note of optimism: "I look forward to meeting with you in the near future." Alex reported the president had also reached out to Rep. [Evan Jenkins](#), who also lost in Tuesday's primary, but had yet to connect with the Republican party's winner, Patrick Morrisey, as of Wednesday evening. Read [more](#).

**** A message from Anheuser-Busch:** Anheuser-Busch announced that America's leading brewer has placed an order for up to 800 hydrogen-electric powered semi-trucks. The zero-emission trucks will be able to travel between 500 and 1,200 miles. Anheuser-Busch aims to convert its entire long-haul dedicated fleet to renewable powered trucks by 2025. [Learn more](#). **

HOUSE GOES NUCLEAR: The House will take up the long-awaited [H.R. 3053 \(115\)](#), the "Nuclear Waste Policy Amendments Act of 2018," for consideration today, with votes expected between 10:45 a.m. and 11:45 a.m. The bipartisan legislation would update how the U.S. handles nuclear waste and promote development of the Yucca Mountain repository in Nevada, among other provisions. The legislation is expected to pass, although it will face a much shakier Senate reception with Sen. [Dean Heller](#) facing a tough re-election race this year. Rep. [John Shimkus](#), who introduced the comprehensive nuclear waste package, previously said he hadn't had any recent talks with Senate counterparts about potentially moving the bill across the Capitol. Still, its appearance today is a victory for Shimkus: [Greg Walden](#) told reporters this week that Shimkus had sent handwritten letters to the homes of every member of leadership during recess encouraging the bill to come up, praising his tenacity.

COURT SAYS CRA IS A-OK: A federal judge in Alaska yesterday [dismissed](#) an environmental group's lawsuit that called the Congressional Review Act unconstitutional. The Center for Biological Diversity specifically challenged the CRA [resolution](#) successfully passed by Congress last spring that nullified an Interior Department rule regarding hunting in Alaska wildlife refuges.

Judge Sharon Gleason of the U.S. District Court for Alaska, an Obama appointee, noted that both the CRA itself and this specific resolution were passed by both chambers and signed by the president, fulfilling the constitutional requirements for creating laws. Other parts of CBD's argument similarly failed to hold water. "The Court finds that even construing all the facts in favor of CBD, CBD's constitutional claims fail to adequately allege a plausible basis for relief," Gleason wrote.

SUNNY CALIFORNIA: The California Energy Commission voted unanimously Wednesday to require solar panels be installed for all newly built single-family homes and multifamily buildings less than three stories starting in 2020. A CEC study found that installing solar would increase home prices, but that would be more than offset by lower utility bills, according to the Los Angeles Times. The move has been anticipated for years and was supported by much of the home building industry. More from the LAT [here](#).

STEELWORKERS SAY YES TO RFS: The United Steelworkers are supporting Trump's recent decisions on the Renewable Fuel Standard, which include expanding sales of 15 percent ethanol fuels and having EPA and USDA workout some kind of program for biofuel credits on exported ethanol. "While it will continue to review the details, [USW] supports a deal brokered by the President that appears to address the long-running conflict between ethanol producers and oil refiners over federal biofuels mandates," the union said in a press release.

HOUSE GOP DROPS RESCISSIONS PACKAGE: House Majority Leader [Kevin McCarthy](#) unveiled the chamber's batch of [spending cuts](#) Wednesday. Similar to the White House's [request](#), the package makes cuts to Energy Department loan guarantee programs for clean energy and vehicle technologies. The bill is expected to [go directly to the House floor for a vote](#), Pro's Sarah Ferris [reports](#). Senate GOP leaders have said they will consider the bill if and when it passes the House.

MEANWHILE IN BONN: Things aren't going as planned for the second week of climate talks in Bonn, Germany, punting further discussions to another meeting in September. The U.N. Framework Convention on Climate Change [said](#) Wednesday that there would be an additional meeting from Sept. 3-8 in Bangkok amid a stalemate centered in part around clarity on climate finance between developed and developing countries. The new date underscores the pressure negotiators are under to advance talks enough for ministers to strike a deal later this year at the COP24 in Katowice, Poland. "We need to resolve differences on finance, accounting and transparency," Alden Meyer of the Union of Concerned Scientists [told POLITICO Europe's](#) Kalina Oroschakoff.

CALVERT: EPA-INTERIOR COMING SHORTLY: Rep. [Ken Calvert](#), who oversees EPA and Interior on the Appropriations Committee, told ME to expect their fiscal 2019 bill "pretty soon" as work's going well. "We're working on final details now," he said. As for the perennial question, yes, Calvert expects policy riders to be in play: "There's always riders," he quipped.

AUTOMAKERS WANT MORE FUEL EFFICIENCY: The Alliance of Automobile Manufacturers and the Global Automakers, trade associations which together represent most of the automakers who sell cars in the U.S., will tell Trump that they most definitely want increases in fuel efficiency standards, contra that zero increase preference of the Department of Transportation. They also want the federal government to work out a single national standard with California, rather than face either a bifurcated market or a long legal battle. "Automakers are deeply committed to increased fuel economy and safety measures that meet the needs of our customers, and we expect to share the importance of government policies that provide certainty to the auto sector, continue to reduce greenhouse gas emissions, reflect what consumers will buy and result in a national policy that includes California," the two groups said in a statement.

FOLLOW THE MONEY: The Environmental Integrity Project released a database Wednesday of political contributions from companies and conservative organizations that met with Pruitt between Feb. 21, 2017, and April 13 of this year. The database was compiled via EPA calendars, FEC reports and data from the Center for Responsive Politics. See it [here](#).

SAVE THE DATE: BLM scheduled meetings to discuss its plans for an environmental review of planned oil and gas leases in ANWR. Several will be held in Alaska, including one each in Fairbanks and Anchorage on May 29 and May 30, respectively. Another meeting is scheduled for Washington D.C. on June 15. For those who can't make the hearings, BLM plans to live stream the Fairbanks and Anchorage dates.

MAIL CALL! ISN'T IT IRONIC? Six Democratic senators wrote to Office of Information and Regulatory Affairs Administrator Neomi Rao on the office's review and evaluation process for EPA's proposed "secret science" proposal to ban the use of studies that don't publicly disclose all their data. "The review process and rollout of this rule appears to have been rushed and secretive — which is particularly ironic for a proposal that purportedly aims to improve agency transparency and decision-making processes," they write.

Separately, bipartisan Reps. Ryan Costello and Paul Tonko sent a letter to the National Academy of Sciences asking for its input on the proposed rule, which was discussed when Pruitt testified before the House E&C Committee. Read the letter here.

Of course, Pruitt seems pleased with the proposal: Bloomberg's Ari Natter snapped a photo of new signs at EPA that tout the agency's "Strengthening Transparency in Regulatory Science."

ROCK STARS: Access Fund and American Alpine Club are sponsoring their annual "Climb the Hill" event today with professional rock climbers and outdoor recreation advocacy groups, who will hit the Hill today to talk outdoor recreation and public lands. Sen. Maria Cantwell will attend a reception with the group at 3 p.m. in 385 Russell. High-profile members of the rock-climbing community and executives from REI, Patagonia and The North Face will attend.

QUICK HITS

— Pair of investor-pushed resolutions pass at Kinder Morgan, Axios.

— Saudis pledge to "mitigate" loss of Iranian oil exports from U.S. sanctions. But crude prices rise anyway, The Washington Post.

— Emails: Perdue's donors, agency coordinated on biomass, E&E News.

— Hugh Hewitt used his MSNBC gig to praise efforts to weaken a law that his firm's client is accused of violating, Media Matters.

— Emails show Heritage Foundation offered Pruitt flights, hotel, and talking points for its conference, ThinkProgress.

HAPPENING TODAY

8:00 a.m. — The Women's Council on Energy and the Environment discussion on "Congressional Energy and Environmental Priorities: 2018 and Beyond," 400 North Capitol Street NW

8:30 a.m. — The International Trade Administration meeting of the Renewable Energy and Energy Efficiency Advisory Committee, 1401 Constitution Avenue NW

8:45 a.m. — Peter G. Peterson Foundation holds "the 2018 Fiscal Summit: Debt Matters," 1301 Constitution Ave NW

9:00 a.m. — House Appropriations Interior-Environment Subcommittee two-part hearing on "American Indian/Alaska Native Public Witnesses," 2007 Rayburn

9:00 a.m. — The Environmental Law Institute conference on "Infrastructure Review and Permitting: Is Change in the Wind?" 601 Massachusetts Avenue NW

9:00 a.m. — The Washington Post discussion on "The Energy 202 Live," 1301 K Street NW

9:30 a.m. — Senate Appropriations Interior-Environment Subcommittee hearing on Interior's FY 2019 budget request, 138 Dirksen

10:00 a.m. — House Energy and Commerce Energy Subcommittee hearing examining the state of electric transmission infrastructure investment, planning, construction and alternatives, 2123 Rayburn

1:00 p.m. — The United States Energy Association forum on "Chemical Looping Prospective: An Advanced Approach to Coal Utilization," 1300 Pennsylvania Avenue NW

2:00 p.m. — Center for Climate and Energy Solutions webinar on "City-Utility Partnerships for a Cleaner Energy Future."

THAT'S ALL FOR ME!

**** A message from Anheuser-Busch:** Anheuser-Busch announced that America's leading brewer has placed an order for up to 800 hydrogen-electric powered semi-trucks from the pioneer in hydrogen-electric renewable technology, Nikola Motor Company. The zero-emission trucks — which will be able to travel between 500 and 1,200 miles and be refilled within 20 minutes, reducing idle time — are expected to be integrated into Anheuser-Busch's dedicated fleet beginning in 2020.

Through this agreement Anheuser-Busch aims to convert its entire long-haul dedicated fleet to renewable powered trucks by 2025.

"At Anheuser-Busch we're continuously searching for ways to improve sustainability across our entire value chain and drive our industry forward," said Michel Doukeris, CEO of Anheuser-Busch. "The transport industry is one that is ripe for innovative solutions and Nikola is leading the way with hydrogen-electric, zero-emission capabilities. We are very excited by the possibilities our partnership with them can offer."

Learn more. **

To view online:

<https://subscriber.politicopro.com/newsletters/morning-energy/2018/05/zinkes-turn-on-the-hill-209472>

Stories from POLITICO Pro

EPA watchdog knocked Pruitt aides for slowing probe Back

By Alex Guillén | 05/09/2018 06:43 PM EDT

EPA's internal watchdog complained last year that Scott Pruitt's top aides were delaying handing over documents to auditors probing the administrator's travel practices, according to newly released emails.

That standoff between the EPA inspector general's office and Pruitt's team was resolved a month after the IG's staff flagged the issue and warned that the reticence to release the documents came close to impeding their probe, the emails show. But the incident highlights early tension between EPA's political appointees and the internal watchdog, which is now conducting multiple reviews of Pruitt's actions.

And it shows that concerns about the lack of transparency atop the agency since Pruitt joined have rankled people inside the agency as well as outside. POLITICO reported last week that Pruitt's political appointees were screening documents produced for public records requests related to the embattled administrator, slowing the release of information.

The new emails, released under a Freedom of Information Act request from California's Justice Department, show the IG's office was seeking information for its probe of Pruitt's frequent travel to Oklahoma on EPA business, enabling him to spend numerous weekends at his home in Tulsa.

That probe was later expanded to look at Pruitt's other travel practices, including his first-class flights that cost more than \$100,000, and it is expected to be completed by this summer. The watchdog has since opened additional probes into Pruitt's security spending, condo rental, soundproof phone booth, large raises for aides and allegations of retaliation against staff who questioned him.

Kevin Christensen, EPA's assistant inspector general for audits, wrote in September to a top career official in EPA's finance office to warn of a "potential situation" with the travel audit just two weeks after it began, the emails show. He flagged messages showing Pruitt's chief of staff Ryan Jackson was "screening" documents before releasing them to the Office of Inspector General.

"This does not fit the definition of unfettered access or comply with the Administrator memo on access and providing information to the OIG," Christensen wrote to Jeanne Conklin, EPA's controller who oversees financial management and reporting. "When we are denied access to information until approved for release, it raises the question as to what is being withheld and approved for release."

The auditors were able to obtain the documents on Pruitt's flights from the EPA's finance office in Cincinnati, even as Pruitt's staff continued to withhold them, Conklin wrote to Kevin Minoli, a career official who at that time served as EPA's acting general counsel.

"Do they not understand in the [Office of the Administrator]," Conklin asked Minoli. "Perhaps someone can speak to them and make them understand that the OIG has the documents already and they appear close to impeding the audit."

Both Minoli and Conklin stated in their email exchange that neither of them advised Pruitt's staff that they had the power to delay or withhold handing over documents to the OIG.

Minoli said in an email a week later that Jackson had delayed providing the records over concerns the audit might make public some previously redacted information, such as Pruitt's calendar and flight records. Minoli said he discussed the matter with the deputy inspector general, Chuck Sheehan, and noted the IG's office "has a long-standing practice of not using privileged information in their published work unless absolutely necessary."

An EPA spokesman on Wednesday declined to comment on the incident.

Other emails released to California's Department of Justice under the FOIA request also show career ethics officials warning Pruitt's aides about accepting industry awards and attending political events.

In March 2017, the Oklahoma-based National Stripper Well Association told Pruitt it would award him its "Industry Leader Award" at an annual gala, which was sponsored by Koch Industries. The group represents the

owners of the hundreds of thousands of small wells that produce less than 15 barrels of oil or 90,000 cubic feet of natural gas per day.

But EPA ethics official Justina Fugh noted in an email to Pruitt's schedulers, Sydney Hupp and Millan Hupp, that NSWA was registered to lobby the federal government and Pruitt would violate his ethics agreement if he accepted the honor.

The group had praised Pruitt's decision that month to halt the Obama EPA's request for oil and gas companies to provide the agency with information about methane emissions, a possible first step toward regulating pollution in those existing wells. "NSWA Got a Win at EPA Already!" touted an early March [blog post](#) by the group. It is unclear whether Pruitt's award was directly connected to that decision.

Fugh warned the Hupps that Pruitt would have to walk a fine line in accepting anything from a lobbying entity. Items with "no other intrinsic value" like a plaque may be OK, she said, but "an ashtray or coffee table book" would not be.

Pruitt ultimately appears to have accepted a plaque from the NSWA, according to a [photo](#) posted on the group's site and his own internal calendars. Another photo posted on the NSWA's Facebook page shows Pruitt [posing](#) with Koch executives.

Pruitt's Outlook calendar, released in response to public records requests, lists the topic of the speaking engagement as "acceptance of award, thank you."

EPA did not say whether Pruitt officially accepted the award from the group along with the plaque, despite Fugh's advice.

"We gave the plaque to [the Office of the Executive Secretariat] who confirmed that we could keep it," EPA spokesman Jahan Wilcox said. NSWA did not say Wednesday why it honored Pruitt.

Pruitt aides hinted to ethics officials last fall that he expected to be invited to increasing numbers of political events, which ethics officials warned raises a host of Hatch Act concerns about mixing political activities with his official duties.

Earlier in his tenure, Pruitt had decided not to attend an Oklahoma GOP fundraiser after reports revealed the event would feature a speech on EPA issues.

Last fall, Ronna McDaniel, the head of the Republican National Committee, invited Pruitt to attend an Oct. 25 fundraiser in Dallas for Trump Victory, a joint fundraising committee that funnels money to the RNC and Trump's reelection campaign.

"We will get more and more of these" invites as "political season" approaches, Jackson wrote to an ethics official.

Hatch Act restrictions would allow Pruitt to attend, but he would be barred from mentioning his EPA affiliation or asking for donations, Fugh replied. EPA could not cover his travel costs, although the agency could pay for his security detail's travel, Fugh added. Event organizers could not specifically invite guests with issues before the agency and would need to rescind invitations to anyone with business before EPA.

Pruitt ultimately appears to have skipped that fundraiser.

Emily Holden contributed to this report.

To view online [click here](#).

[Back](#)

Trump calls Blankenship after pushing for his loss in West Virginia [Back](#)

By Alex Isenstadt | 05/09/2018 10:55 PM EDT

President Donald Trump connected by phone on Wednesday with Don Blankenship, the former coal baron and ex-con whose Senate candidacy he helped sink.

Trump and Blankenship spoke briefly, according to three people familiar with the discussion. The conversation was described as straightforward, polite and cordial, with the president calling to exchange pleasantries and offer his congratulations on waging the campaign.

The call came two days after Trump took to Twitter to urge West Virginia Republicans to reject Blankenship's candidacy. In the tweet, Trump argued that Blankenship, who spent a year in jail following a 2010 explosion at his Upper Big Branch Mine that killed 29 workers, would be unable to defeat Democratic Sen. Joe Manchin in November.

Trump's intervention undermined Blankenship, who had aligned himself closely with the president — so much so that he described himself as "Trumpier than Trump."

Blankenship would go on to lose the primary decisively, finishing a distant third behind state Attorney General Patrick Morrisey and Rep. Evan Jenkins.

In his remarks to supporters on Tuesday evening, Blankenship attributed his loss to the president's last-minute intervention in the contest, saying that it had halted his momentum.

"I think if there was any single factor based on the polling at different times, the debates, and all the things I saw, it was probably President Trump's lack of endorsement — I don't know what to call it, but 'Don't vote for Don' tweet," he said. "I don't know what else it would have been."

In the final hours of the race, he said he was convinced that Trump had been pushed into the intervention by Senate Majority Leader Mitch McConnell, who had aggressively opposed Blankenship.

Blankenship on Wednesday released an "open letter" to Trump in which he accused the president of spreading "fake news against me."

"Your interference in the West Virginia election displayed a lack of understanding of the likely outcome of the upcoming general election," Blankenship added. "Patrick Morrisey will likely lose the general election. It's too late to change that, but it's not helpful to do to me what others are doing to you."

The president also connected briefly with Jenkins, but as of Wednesday evening had yet to connect with Morrisey, the winner of the primary. On Tuesday, though, Morrisey spoke with Donald Trump Jr. During the call, the president's eldest son promised to be helpful.

Trump's calls on Wednesday, several Republicans said, were partly aimed at healing the wounds following a deeply divisive primary. Blankenship has yet to endorse Morrissey, who aggressively attacked him during the final days of the race.

Some in the party are concerned that the deep-pocketed Blankenship, who spent more than \$2.5 million of his own funds in the primary, could wage an effort to damage Morrissey in the general election.

To view online [click here](#).

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DOE loan guarantee programs hit hard in White House rescissions package [Back](#)

By Anthony Adragna | 05/08/2018 11:08 AM EDT

More than \$5 billion in Energy Department loan guarantee programs for clean energy and vehicle technologies would be cut under a \$15 billion rescissions [request](#) unveiled today by the White House.

The proposal would cut \$684 million from clean energy loan guarantee programs, on top of the \$4.33 billion in proposed cuts to Advanced Technology Vehicles Manufacturing loan program [already announced](#) by the Trump administration.

"This proposed rescission would eliminate subsidy amounts that are inconsistent with the President's policies," the proposal says of cutting from the loan guarantee programs.

In addition, the package would cut \$10 million in water quality research grants, which the proposal says "are duplicative with other Federal programs."

WHAT'S NEXT: The package is expected to easily pass the House but faces a less certain fate in the Senate.

To view online [click here](#).

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Trump spending cut package to head directly to House floor [Back](#)

By Sarah Ferris | 05/09/2018 01:03 PM EDT

House Republican leaders are moving quickly to tee up the White House's \$15 billion package of proposed spending cutbacks.

GOP leaders plan to release legislative text of [the White House's proposal](#) as early as today, a House GOP aide confirmed.

The package is expected to closely mirror the Trump administration's request, which targeted unspent dollars from years-old accounts.

It will not go through the House Appropriations Committee, another GOP aide confirmed. That sets up the bill directly for a floor vote.

Most Republicans have embraced the proposed cuts, even as some budget hawks complained that most of the savings are only on paper.

But some, like GOP Rep. Vern Buchanan of Florida, have rejected the idea of cutting \$7 billion of budget authority from the Children's Health Insurance Program.

White House officials have argued that most of the funding has technically expired and can't be used, so it would have zero impact on the program.

The CBO confirmed that point today, saying that there would be no actual cuts or coverage reductions for CHIP.

To view online [click here](#).

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House GOP leaders unveil rescissions bill [Back](#)

By Sarah Ferris | 05/09/2018 08:28 PM EDT

House Republican leaders today unveiled a package of spending cuts, following a request from President Donald Trump this week.

The House GOP bill contains \$10.45 billion in specific cuts, including roughly \$7 billion to the Children's Health Insurance Program.

Other cutbacks in the GOP bill — including one targeting an energy program in the 2009 Obama-era stimulus bill — do not provide specific dollar amounts.

House GOP leaders will now begin whipping support for the bill, which is expected to go directly to the House floor for a vote. Senate GOP leaders have said they will consider the bill if and when it passes the House.

Under a decades-old law, presidential rescissions requests can pass the Senate with a simple majority, instead of the usual 60-vote threshold for procedural votes.

Democrats argue that Trump's bill would require the full 60 votes, however, because it targets mandatory funding, and not solely discretionary.

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Subject: Morning Energy: Did Pruitt skate by? — EPA prepping Oversight docs — McConnell tries for West Virginia redemption

By Kelsey Tamborrino | 04/27/2018 06:01 AM EDT

With help from Anthony Adragna

DID PRUITT SKATE BY? EPA Administrator Scott Pruitt had a simple task Thursday: Keep his conservative backers happy — and in turn, keep the president happy. And he may have managed to do just that. While Democrats and environmentalists panned Pruitt's performance, the EPA chief, who is facing a heavy stack of ethical and spending quandaries, left most Republicans pleased enough with his performance that he's probably salvaged his job for now.

But of course, President Donald Trump has yet to weigh in on Pruitt's performance. And on a day that saw Trump's nominee for Veterans Affairs withdraw, triggering a long Trump rant on "Fox & Friends," that could be good news for the EPA chief, POLITICO's Nancy Cook reports. "As long as [Pruitt's] explanations hold and there are no crazy discrepancies or smoking gun or anything like that, I don't think that creates any red flags for Pruitt," said one Republican close to the White House, who predicted Pruitt would survive the scrutiny.

Still, Pruitt's shifting answers about what he knew about controversial raises for two close aides raised a lot of concerns that he hadn't been completely forthright during his interview with Fox News earlier this month. Under lawmakers' questioning, he acknowledged that he had authorized his chief of staff to award pay increases to his aides — but said he did not know how high they would be or that they would circumvent the White House's disapproval. That's different than what he told Fox's Ed Henry when he said he hadn't known about the raises until after the fact and that he did not know who authorized them.

Pruitt used the two hearings to blame his torrent of scandals on career staff, as POLITICO's Anthony Adragna, Annie Snider and Alex Guillén reported, while maintaining the headlines surrounding him aren't painting an accurate picture. "Let me be very clear: I have nothing to hide as it relates to how I've run the agency for the past 16 months," Pruitt said. (In case you missed it, POLITICO's Energy team has the full recap of the key moments here.)

But all in all, his critical audience of House Republicans exited two separate hearings Thursday believing that Pruitt fared well. "I found his responses credible," said Rep. Mike Simpson, a House appropriator. Meanwhile, Rep. Ken Calvert, the chairman of the House Appropriations Interior-Environment subcommittee, said Pruitt did "fine." "He answered our questions," he said. "... He's doing well, he's very professional, he's doing his job." And Illinois' John Shimkus, who chaired Pruitt's first hearing, said he thought Pruitt handled himself well and that Republican members were tough in their questions, Anthony recaps. "Some of it was accountability for policy, so I don't know what more [critics] want," Shimkus said. "I think that he answered the questions in the best way that he could answer them."

Of course, Pruitt's performance did not please everyone. "I think the opprobrium that you've generated on some of these spending decisions is actually warranted," GOP Rep. Ryan Costello, who is retiring from Congress, told Pruitt. Ana Unruh Cohen, managing director of government affairs at the Natural Resources Defense Council said the EPA administrator "demonstrated beyond any doubt that he is unqualified" to lead his

agency. "He should be fired before sundown," she said. And Rep. Marcy Kaptur, ranking member of the Appropriations subcommittee that questioned Pruitt, used the term "evasive" to describe the performance. "For someone who has been in the job a year and a half, he didn't seem to command a lot of the details," she said. "... I don't think we know the full extent of what he's done yet."

WHAT COMES NEXT? Keep in mind: Pruitt's under multiple investigations that have yet to fully play out. "We have a committee that's looking into these charges and we'll have a resolution," Calvert said of Pruitt's ongoing scandals. "We'll see what comes of it." Today, for one, marks the deadline set by House Oversight Chairman Trey Gowdy in his expanded probe into the embattled EPA chief's activities. He's called for a host of documents to be delivered and interviews to be scheduled by today. An EPA official said the agency is currently in the process of providing the documents, Anthony reports. The official said the documents will respond to the allegations of lavish spending and unethical conduct and may negate the need for several aides to appear for interviews.

WELCOME TO FRIDAY! I'm your host Kelsey Tamborrino, and no one guessed Alabama — the home state of the first officially designated Democratic floor leader, Oscar Underwood. For today: Name the only senator to be preceded by both of his or her parents. Send your tips, energy gossip and comments to ktamborrino@politico.com, or follow us on Twitter [@kelseytam](https://twitter.com/kelseytam), [@Morning_Energy](https://twitter.com/Morning_Energy) and [@POLITICOPro](https://twitter.com/POLITICOPro).

POLITICO's Ben White is bringing Morning Money to the Milken Institute Global Conference to provide coverage of the day's events and evening happenings. The newsletter will run April 29 - May 2. **Sign up to keep up with your daily conference coverage.**

PRUITT RAISES UNDONE AFTER FOX INTERVIEW: Amid the deluge of news coming out of the hearings, Pro's Emily Holden and Nick Juliano reported via documents released by EPA that the agency reversed raises for the two top aides to Pruitt the day after his interview with Fox News. Pruitt told Fox he had "corrected them" after finding out about them. A day later, on April 5, Pruitt's chief of staff Ryan Jackson signed personnel forms reverting the aides to their previous pay grades, according to copies of the forms reviewed by POLITICO. Read more here.

McCONNELL'S WEST VIRGINIA REDEMPTION: Amid an increasingly tense GOP primary battle for Democratic Sen. Joe Manchin's seat, coal baron Don Blankenship has focused his efforts into a relentless slash-and-burn campaign targeting Majority Leader Mitch McConnell. Blankenship — who spent a year in prison following the deadly 2010 Upper Big Branch mine disaster — compared his current battle against the McConnell-led Republican establishment to his past legal fight against the federal government, POLITICO's Alex Isenstadt writes. But as the May 8 primary inches closer, McConnell is fighting back with an avalanche of attacks from a super PAC aligned with the Senate leader, among other efforts.

Blankenship's attacks have grown intensely personal. During an interview with POLITICO, Blankenship said that McConnell "has a lot of connections in China," adding that the GOP leader's wife is Transportation Secretary Elaine Chao. And during an appearance on a local radio show, Blankenship described Chao's father as a "wealthy Chinaperson," who was "well-connected in China." Read more.

DOE TO ANNOUNCE FUNDS FOR ADVANCED NUCLEAR: Energy Secretary Rick Perry will announce today the selection of 13 projects that will receive about \$60 million in funding to support cost-shared research and development in advanced nuclear technologies. The selections — broken down into categories pertaining to nuclear demonstration readiness, advanced reactor development, and regulatory assistance grants — are the first under the Office of Nuclear Energy's "U.S. Industry Opportunities for Advanced Nuclear Technology Development" funding opportunity announcement. "Making these new investments is an important step to reviving and revitalizing nuclear energy, and ensuring that our nation continues to benefit from this clean, reliable, resilient source of electricity," Perry said in a statement.

ALL IN THE TIMING: The Office of Management and Budget completed its review of EPA's proposed "secret science" rule Wednesday, E&E News' Sean Reilly reports, even though Pruitt had already signed it by then. The policy that bars the agency from relying on studies that don't publicly disclose all their data got Pruitt's signature on Tuesday, but the Reginfo.gov site showed the review completion date as Wednesday. "While OMB is sometimes slow to update the site, it was unclear why Pruitt would have signed a rule before the review was completed," Reilly writes. EPA spokeswoman Liz Bowman suggested to E&E the fault lay with OMB. "Interagency review concluded before this proposal was signed," she said in a statement. Reilly later tweeted: "[@OMBPress](https://twitter.com/OMBPress) has now changed the date on the <http://Reginfo.gov> site to show that the review of this proposed [#EPA](#) rule was completed on April 23, not April 25. A [#OMB](#) spokesman won't discuss the reason for the change on the record."

TESTER TESTS TRUMP: The president is coming after Democratic Sen. Jon Tester, in what could be a problematic move for the Montanan as he fights to win reelection. Trump was enraged over Tester's work documenting allegations of malfeasance by Rear Adm. Ronny Jackson, provoking a series of inquiries that ultimately led to Jackson withdrawing his nomination to be VA secretary. POLITICO's Burgess Everett reports Tester is now at a turning point in his relationship with Trump, who railed against him on Thursday morning. "The incident and its fallout underscores how the burly, plain-spoken Tester hasn't exactly tacked to the center in an election year," Burgess writes. "Perhaps he feels emboldened after dodging a big-name opponent; after Ryan Zinke was drafted into the Trump administration and the state attorney general passed on the race, Tester's opposition is made up of lesser known opponents that will compete in a June primary." Read more.

SENATE MAKES POMPEO OFFICIAL: The Senate narrowly confirmed Mike Pompeo on Thursday, shifting him from CIA director to secretary of State. Pompeo was confirmed 57-42, ultimately winning support from Democrats Heidi Heitkamp, Manchin, Joe Donnelly, Bill Nelson, Claire McCaskill and Doug Jones. Supreme Court Justice Samuel Alito swore in Pompeo shortly after the vote Thursday, formally installing Pompeo, who has previously doubted climate science — a point greens jumped onto ahead of the vote. "There's some who think we're warming, there's some who think we're cooling," Pompeo said in 2013.

"Democrats that jumped ship to support this dangerous climate denier must and will be held accountable by the people," Food & Water Watch Executive Director Wenonah Hauter said in a statement. But others cheered the move: Competitive Enterprise Institute director of the Center for Energy and Environment, Myron Ebell, said in a statement he was "pleased." Pompeo, he said, "understands the importance of affordable, reliable energy to Americans' health and ability to provide for our families." Pompeo will be a "forceful advocate" of Trump's decision to remove the U.S. from the Paris climate agreement, Ebell said.

MANCHIN TRIES AGAIN: Manchin sent another letter this week urging Perry and Defense Secretary Jim Mattis to examine use of the Defense Production Act to protect coal-fired power plants. "The ability to produce reliable electricity and to recover from disruptions to our grid are critical to ensuring our nation's security against the various threats facing our nation today — whether those threats be extreme weather events or adversarial foreign actors," he writes. Earlier this month, Manchin similarly wrote to the president on the issue, although, as Pro's Eric Wolff reported, it faces an uphill battle on many fronts. Read the letter.

WATCH: House Speaker Paul Ryan was asked about climate change Thursday — by the 7-year-old daughter of E&E News' Scott Walden. See it here.

PRUITT FOCUS OF NEW AD: The opposition research firm American Bridge is scheduled to air an ad this morning on "Fox and Friends" focusing on Pruitt's swirling scandals and his previous criticism of the president. Watch it here.

DEMOCRATS COME OUT IN FULL FORCE FOR CPP: Ahead of the comment deadline, eight Democratic senators signed onto a letter led by EPW ranking member Tom Carper opposing EPA's proposal to repeal the Clean Power Plan. The senators write that the law is instrumental in fighting climate change and say

that rescinding it "ignores scientific evidence on the risks of climate change and puts generations of Americans at grave health and economic risk."

— **A coalition of 16 attorneys general and municipalities** submitted a supplemental comment letter to EPA with evidence of what they say are due process violations and ethical issues due to Pruitt's involvement. The group previously wrote to EPA, claiming Pruitt had not had an open mind on CPP. "Since then, the evidence continues to grow that Administrator Pruitt should have been disqualified from participating in this rulemaking before it began," they write. "His involvement has irreparably tainted the current administrative process, and as a result, EPA must withdraw the proposed CPP repeal." Read it [here](#).

MAIL CALL! WE NEED AN EXTENSION: Sens. [Ron Wyden](#) and [Jeff Merkley](#) and Reps. [Peter DeFazio](#) and [Jared Huffman](#) wrote to Interior Secretary Ryan Zinke and Agriculture Secretary Sonny Perdue on Thursday, urging an extension on interim mineral withdrawal protections for the Chetco River in southwest Oregon. Read it [here](#).

— **Sixteen senators, led by Democratic Sen. [Tom Udall](#)**, sent [this letter](#) to Zinke asking him to pause any plans for the management of Bears Ears and Grand Staircase-Escalante national monuments until legal challenges related to the president are resolved.

— **The House Biofuel Caucus sent a letter** to Pruitt objecting to Renewable Fuel Standard waivers issued by EPA, demanding Pruitt "immediately cease all waiver activity" and provide lawmakers a "full list" with further details. Read it [here](#).

CSB TO INVESTIGATE HUSKY EXPLOSION: The Chemical Safety Board said Thursday it is sending a four-person investigative team to Superior, Wis., to the scene of the Husky Energy explosion that injured several Thursday morning. The refinery was shutting down in preparation for a five-week turnaround, CSB said, when the explosion occurred. The Superior Police Department [evacuated](#) areas within miles of the explosion, including a small hospital nearby as a precaution. As of the latest count, at least 11 people were injured in the explosion, the Associated Press [reports](#).

CHA-CHING: Following a House Natural Resources hearing Thursday on offshore energy revenue sharing for Gulf-producing states, Interior announced it would disburse nearly \$188 million to four states: Alabama, Louisiana, Mississippi and Texas, as well as their coastal political subdivisions. It is the first disbursement of funds under Phase II of the Gulf of Mexico Energy Security Act of 2006, which comes from oil and gas leasing revenues on the Outer Continental Shelf, according to DOI. See the **massive** check [here](#).

QUICK HITS

— As climate change zaps their snow, winter sports fans seek to change Washington, [McClatchy](#).

— Skinny and sweet: U.S. refiner earnings depend on the oil diet, [Reuters](#).

— India nears power success, but millions are still in the dark, [Bloomberg](#).

— Coal producer Peabody Energy doubles down on share buyback program, [S&P Global](#).

— How Oman's rocks could help save the planet, [The New York Times](#).

HAPPENING TODAY

8:30 a.m. — Administrative Law and Regulatory Practice Institute hosts Daniel Cohen, assistant general counsel for legislation, regulation and energy efficiency at the Energy Department, 1201 24th Street NW

11:15 a.m. — Agriculture Secretary Sonny Perdue discussion with former Agriculture Secretary Tom Vilsack on agriculture and water conservation, Denver, Colo.

12:00 p.m. — Women's Council on Energy and the Environment discussion on wholesale electricity pricing, 888 First Street NE

12:00 p.m. — The Nuclear Information and Resource Service, and U.S. Climate Action Network discussion on "Climate Justice and Nuclear Power in South Africa," 1200 G Street NW

THAT'S ALL FOR ME!

To view online:

<https://www.politicopro.com/newsletters/morning-energy/2018/04/did-pruitt-skate-by-187652>

Stories from POLITICO Pro

Ronny Jackson drama overshadows Pompeo success for White House Back

By Nancy Cook | 04/26/2018 06:05 PM EDT

White House aides were reveling in the pomp of French President Emmanuel Macron's state visit, viewing it as a welcome reprieve from the chaos of Cabinet confirmations, an intensifying Russia probe and a boss with a short fuse. Then reality hit.

President Donald Trump's pick for Veterans Affairs Secretary Ronny Jackson finally withdrew from the confirmation process amid escalating allegations of misconduct, and Trump called into the TV show *Fox and Friends* to deliver an unscripted interview touching on everything from the Russia probe and the investigation of his personal attorney Michael Cohen to fan-tweets from Kanye West—all before 10 a.m.

The day also included the confirmation of Mike Pompeo, previously Trump's CIA director, as secretary of state—an unexpectedly hard-fought victory that was overshadowed by routine House hearings featuring testimony from EPA Administrator Scott Pruitt, who has been accused of a string of ethics violations.

"The state visit was cool for folks in the White House and fun distraction for one hour from stories about Scott Pruitt or Michael Cohen before everyone got back to the shitshow," said one former White House official.

The president often publicly frames these hectic junctures as a White House unduly under siege from the press or other opponents. About Jackson's nomination, Trump said on Thursday: "He's a great man, and he got treated very, very unfairly. He got treated really unfairly. And he's a hell of a man."

The lack of vetting and Trump's tendency to name top-level nominees with little scrutiny dates back to the presidential transition in the fall of 2016. It's a pattern that surprises few insiders, even as it creates headaches for the White House and the nominees.

"Generally, White House aides are blaming the president from shooting from the hip and without giving it any thought, but this is how every decision he has made has gone," said the former White House official.

On Wednesday, the night before Jackson dropped out of consideration, a number of administration aides and Republicans close to the White House gathered at the Trump International Hotel for after-work drinks—and a few aides kept hoping aloud that Jackson would announce he was dropping out on TV, so no one would have to run back to the White House and everyone could keep drinking, according to one attendee.

The biggest beneficiary of this week's chaos was Pruitt, who started out the week under great scrutiny and disdain from several disparate circles of White House staffers and then ultimately skated through his two Capitol Hill hearings with little incident. Earlier in the week, those hearings were seen as a make-or-break moment for the EPA Administrator and ones that the president would pay attention to.

"As long as his explanations hold and there are no crazy discrepancies or smoking gun or anything like that, I don't think that creates any red flags for Pruitt," said one Republican close to the White House, who predicted Pruitt would survive the scrutiny.

What helps Pruitt and other Cabinet nominees who frustrate the White House or Trump is the math in the Senate. The Republicans do not have a large or cohesive enough majority to easily confirm new Cabinet secretaries, and the drama surrounding Jackson's departure puts a damper on creating any new vacancies to fill.

"In the ideal situation, the only headlines coming out of the agencies are the policy decisions advancing the president's agenda," said one senior administration aide, speaking about the spate of bad headlines surrounding Pruitt's leadership at the EPA. "That is the clear direction from the top, and we've communicated that."

But many White House officials—and the president himself—have adopted the view that the administration is unfairly maligned, no matter what it does.

Many aides were surprised that Pompeo's confirmation process seemed so shaky at certain points, given the White House's huge, upcoming foreign policy decisions on meeting with North Korea, keeping troops in Syria, and deciding the fate of the U.S.'s role in the Iran deal. The White House's Director of Legislative Affairs Marc Short devoted most of his time over the past few weeks to ensuring Pompeo got confirmed.

"We can only pick so many battles, and Pompeo has got to get done as quickly as possible," said one White House official.

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Pruitt dodges blame [Back](#)

By Anthony Adragna, Annie Snider and Alex Guillén | 04/26/2018 10:46 AM EDT

Scott Pruitt may have handled his daylong congressional grilling well enough to salvage his job for now — but only after he blamed his torrent of scandals on staff, disavowed one of his top advisers and raised new questions about what he knew about massive raises awarded to some of his closest aides.

The Environmental Protection Agency administrator shrugged off responsibility Thursday for a \$43,000 privacy booth and more than \$100,000 in first-class flights, and even said he has no idea whether his chief policy adviser showed up for work at all during a three-month stretch.

But the former Oklahoma attorney general stayed calm throughout the nearly six hours of questioning. And his televised performance brought no immediate complaints from the one person whose opinion matters — the media-obsessed president who has so far stuck with Pruitt despite a multitude of investigations and the exasperation of key White House staff.

"Let me be very clear: I have nothing to hide as it relates to how I've run the agency for the past 16 months," Pruitt told a House Energy and Commerce subcommittee, the first of two panels to subject him to hours of questioning Thursday.

But he also didn't offer enough specifics to satisfy Democratic lawmakers — and a few Republicans — who criticized the lavish spending, cozy relations with lobbyists and other controversies that have taken root on his watch. He pointedly refused to apologize, instead accusing his critics of trying to "derail" President Donald Trump's policies.

Several Republican lawmakers who defended him during the hearings said he'd held his own against a barrage of Democratic complaints.

"I think he did well," said Rep. Tom Cole (R-Okla.), adding, "I know him well enough to not believe that he's deliberately done anything wrong or that he's made decisions in an inappropriate or unethical manner."

Still, Cole admitted any decision on Pruitt's fate is in Trump's hands.

Rep. Betty McCollum (D-Minn.) said Pruitt merely tried to dodge accountability for actions such as a massive expansion of his personal security team, while sidestepping accusations that he had punished staffers who questioned whether he faces serious threats to his safety.

"He could have taken personal responsibility and really meant it," McCollum told reporters after an afternoon hearing by a House Appropriations subcommittee, where she had told Pruitt he should resign. "Instead he messed up in that he got caught up in thinking he needed more security than he needed, and that when employees pushed back on him, he did retaliate."

One aspect of Thursday's testimony drew a notable amount of attention — Pruitt's shifting explanations for what he knew, and when, about raises as high as 72 percent that went to some of his key aides.

Weeks ago, Pruitt told Fox News that he hadn't known about the raises until after the fact, that he did not know who authorized them and that the aides should not have received them. But under lawmakers' questioning Thursday, he acknowledged that he had authorized his chief of staff to award pay increases to the aides — but said he did not know how high they would be or that they would circumvent the White House's disapproval.

"I was not aware of the amount, nor was I aware of the bypassing or the [Presidential Personnel Office] process not being respected," Pruitt said, responding to a question from Rep. Paul Tonko of New York, the top Democrat on the Energy and Commerce Environment Subcommittee.

An EPA spokesman later said Pruitt had given his chief of staff, Ryan Jackson, blanket authorization to handle hiring and raises using the EPA's power under a water law that didn't require the White House's sign-off.

Lawmakers didn't ask — and Pruitt didn't say — whether he would discipline Jackson for his handling of the raises.

A preliminary report from EPA's inspector general has found that Jackson signed off on the pay hikes to Sarah Greenwalt, a Pruitt adviser who previously worked as his general counsel in the Oklahoma attorney general's

office, and Millan Hupp, a former "Team Pruitt Operations Director" who is now his director of scheduling and advance.

Pruitt also said he didn't know whether one of his top aides, Samantha Dravis, had failed to show up for work for much or all of November through January, as Sen. Tom Carper (D-Del.) has alleged. His answer essentially abandoned a past statement by an EPA spokesman, who called the accusations "baseless and absurd."

"I'm not aware that she did or did not appear for work. So that's something that is being reviewed at this point," Pruitt told lawmakers Thursday, referring to an inspector general decision to review her attendance.

Dravis, EPA's associate administrator in charge of EPA's Office of Policy until last week, was such a senior aide that she had traveled with Pruitt on official business in Morocco as recently as December. She also appears with him in a meeting photo that Pruitt's EPA Twitter account tweeted Dec. 6.

Pruitt also blamed his staff for the controversial purchase and installation of the privacy booth in his office, and said he would have stopped it if he knew the cost. He said the installation came after he'd received a phone call "of a sensitive nature" and requested "access to secure communication."

"I gave direction to my staff to address that, and out of that came a \$43,000 expenditure that I did not approve," he said. "If I'd known about it, I would have refused it."

Pruitt did not single out the staff members he was blaming for the phone booth installation, but agency staffers have told POLITICO that those and other pricey expenditures were overseen by Pasquale "Nino" Perrotta, the career employee who heads his security detail.

Even after surviving Thursday's gauntlet, Pruitt is still facing numerous investigations from Congress, the White House and government watchdogs into his taxpayer-funded first-class travel; unprecedented, 24-hour security detail; and sweetheart rental deal with the wife of a lobbyist who sought to influence his agency. A senior EPA official said Thursday that high-level staffers including Jackson, Greenwalt and Perrotta are willing to sit for interviews with staff of the House Oversight Committee, which is carrying out one of the probes of Pruitt's actions.

Ahead of Thursday's hearing, EPA distributed a 23-page document responding to various allegations.

Democrats ripped into him from the start, charging that Pruitt had put his own interests and political ambitions over the job of protecting the environment and human health, and he had shown he didn't deserve the public trust.

"I think your actions are an embarrassment to President Trump and distract from the EPA's ability to effectively carry out the president's mission, and if I were the president I wouldn't want your help," said Frank Pallone (D-N.J.). "I'd get rid of you."

Sitting in front of protesters wearing "Impeach Pruitt" T-shirts and a sign calling him "Mr. Corruption" on Thursday morning, Pruitt dismissed the wave of criticism as an attempt to undercut "transformational change" happening at the agency.

"Let's have no illusions about what's really going on here: Those who have attacked the EPA and attacked me are doing so because they want to attack and derail the president's agenda and undermine this administration's priorities," he said. "I'm simply not going to let that happen."

Rep. John Shimkus (R-Ill.), who chaired the morning hearing, said afterward that he thought Pruitt had acquitted himself well.

"I think that he answered the questions in the best way that he could answer them," Shimkus said.

Shimkus wouldn't speculate about potential next steps by the Energy and Commerce panel, saying the decision was up to full committee Chairman Greg Walden (R-Ore.). He also declined say whether he thought questions remain unanswered.

"I'm just glad he showed up," Shimkus said.

Pruitt's defenders, like Rep. David McKinley (R-W.Va.), who has praised Pruitt's rollback of climate change and water regulations, dismissed the Democrats' complaints as political posturing.

"To the public, I think this has been a lot of classic display of innuendo and McCarthyism that we're seeing too often here in Washington that I think unfortunately works against civility and respect for people in public office," he said. "Some can't resist the limelight, the opportunity to grandstand."

Rep. Joe Barton (R-Texas) said the focus on the controversies was an attempt to undermine Pruitt's, and Trump's, policies.

"If you can't debate the policies in Washington, you attack the personality, and that's what's happening to you," Barton told Pruitt. "Republicans do it when it's a Democratic president. Democrats do it when it's a Republican president. And in my opinion, it's just my opinion, that's what's happening to you."

Not every Republican came to Pruitt's defense, though. Rep. Ryan Costello of Pennsylvania offered the harshest criticism from the GOP, saying his activities deserved the anger they had provoked.

"I think the opprobrium that you've generated on some of these spending decisions is actually warranted," Costello, who is retiring from Congress, told Pruitt. "I've reviewed your answers, and I find some of them lacking or insufficient. And I believe you've not demonstrated the requisite good judgment required of an appointed executive branch official on some of these spending items."

Trump has so far stood by Pruitt, praising his work to pare back environmental rules and remaining wary of upsetting conservatives who strongly support the administrator.

The administration's desire to avoid another tough confirmation fight also appears to be weighing in Pruitt's favor. While new Secretary of State Mike Pompeo narrowly won Senate confirmation and was sworn in Thursday, Rear Adm. Ronny Jackson's nomination to head the Department of Veterans Affairs crashed and burned, and Trump also needs to win approval for a controversial pick to head the CIA.

Democrats suggested that Pruitt's controversies were the result of his penchant for abusing the perks of his position and rewarding his political backers.

"Only in recent weeks have we come to understand the extent of your political ambitions, your tendency to abuse your position for personal gain and to advance the agendas of your political benefactors in what appears to be a propensity for grift," Tonko said.

Under questioning from Rep. Anna Eshoo (D-Calif.), Pruitt declined multiple times to answer whether he felt any remorse for wasteful spending at the agency,

"I think there are changes I've made already," he said. But he deflected several questions about his first-class flights, saying his security detail decides where he sits on airplanes, and that he now plans to fly coach.

Eshoo didn't buy it.

"With all due respect, I may be elected, but I'm not a fool," she said. "That's really a lousy answer from someone that has a high position in the federal government."

Emily Holden contributed to this report.

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'Embarrassment' or 'McCarthyism': Key moments as Pruitt faces lawmakers [Back](#)

By Quint Forgey, Anthony Adragna, Alex Guillén and Annie Snider | 04/26/2018 01:40 PM EDT

Scott Pruitt, the scandal-ridden administrator of the Environmental Protection Agency, appeared on Capitol Hill on Thursday for back-to-back House committee hearings on his agency's budget request.

But the only spending most lawmakers wanted to discuss were reports of Pruitt's taxpayer-funded air travel, the sweetheart condo lease he secured from a lobbyist, and the numerous other allegations of misappropriating funds and unethical management that have tarred his tenure at the EPA.

Here are key moments from the contentious hearings, held by subcommittees of the House Energy and Commerce and House Appropriations committees:

A defiant Pruitt says he has nothing to hide. The former Oklahoma attorney general argued his critics were simply attempting to undercut the "transformational change" he's making at the agency on behalf of President Donald Trump. "Let's have no illusions about what's really going on here: Those who have attacked the EPA and attacked me are doing so because they want to attack and derail the president's agenda and undermine this administration's priorities," he said at the outside of the day's first hearing, in front of a House Energy and Commerce subcommittee. "I'm simply not going to let that happen." Pruitt maintained had "nothing to hide," and suggested some of the reports regarding his behavior were inaccurate. "Facts are facts and fiction are fiction," he said. "And a lie doesn't become truth just because it appears on the front page of a newspaper."

Pruitt acknowledged he authorized pay raises for his key aides. But he said he didn't know how much they were, or that his chief of staff — who took the blame for signing off on the salary hikes — circumvented the White House to award them. "I was not aware of the amount, nor was I aware of the bypassing or the [Presidential Personnel Office] process not being respected," Pruitt told lawmakers. Pruitt had earlier said on Fox News that he hadn't known about the raises and that the aides should not have received them. A preliminary report from EPA's inspector general found that chief of staff Ryan Jackson signed off on multiple large raises using Safe Drinking Water Act authority, which allows the agency to move forward without White House sign-off. The raises totaled as much as 72.3 percent.

But he blamed EPA's career staff for his \$43,000 privacy booth. He said career employees signed off on the expensive soundproof phone booth installed in his office — and maintained he would have refused it if he'd known about the cost. "I did have a phone call that came in of a sensitive nature and I did not have access to

secure communication," he said. "I gave direction to my staff to address that and out of that came a \$43,000 expenditure that I did not approve." The Government Accountability Office has said the agency violated spending laws by not informing Congress about the booth beforehand. To Pruitt's critics, the booth has come a prominent symbol of his reputation for high-spending and extreme secrecy. Pruitt later said he uses the booth only "rarely," and that "it depends on the nature of the call and how urgent the call is."

Pruitt also had trouble explaining the expensive biometric locks recently installed in his office. They require a code for him to enter, but he wouldn't say whether the locks feature fingerprint scanners or some other type of identification system. When Pruitt said career staffers made the decision to install the locks, Rep. Peter Welch (D-Vt.) wasn't impressed. "It's really starting to seem like there's something on the desk with a motto, 'The buck stops nowhere,'" he quipped.

It's still not clear whether one of Pruitt's top aides came to work for three months. "I'm not aware that she did or did not appear for work. So that's something that is being reviewed at this point," Pruitt said of Samantha Dravis, the associate administrator in charge of EPA's Office of Policy. Sen. Tom Carper (D-Del.) has alleged that Dravis largely did not work the months of November through January, and EPA's inspector general has agreed to review her attendance. Dravis said several weeks ago that she planned to resign, and her last day was reportedly April 20. Pruitt's comments Thursday were a shift from EPA's past statements that the no-show accusation is "completely baseless and absurd."

Democrats pounded him early and often. Those included top Energy and Commerce Democrat Frank Pallone of New Jersey, who said the scandals enveloping Pruitt are "an embarrassment to President Trump and distract from the EPA's ability to effectively carry out the president's mission. And if I were the president, I wouldn't want your help. I'd get rid of you."

Some Republicans also warned Pruitt he needs to answer questions. Environment subcommittee Chairman John Shimkus (R-Ill.) said he considered much of the media narrative surrounding the EPA chief's scandals to be "a distraction," but the committee "cannot ignore" reports of Pruitt's impropriety. "As public servants, our jobs are not based solely on the things we do, or the things we have done, but also on the way we conduct our business," Shimkus said in his opening statement. "It is no secret that there have been many stories in the press about the management and operations of the agency and your dealings with potentially regulated sectors." And full Energy and Commerce Chairman Greg Walden (R-Ore.) expressed concerns that Pruitt's progress on policy is being "undercut" by the allegations. "These issues are too persistent to ignore," said Walden, a member of House Republican leadership.

But other GOP lawmakers came to his rescue, and one likened the criticism to "McCarthyism." Rep. Joe Barton, a former Energy and Commerce chairman, and Rep. David McKinley (R-W.Va.), a staunch Pruitt ally, blamed Democrats and toxic partisanship for Pruitt's precarious professional standing. "If you can't debate the policies in Washington, you attack the personality, and that's what's happening to you," Barton lamented. McKinley accused Democrats on the panel of not being able to "resist the limelight" and said Pruitt's detractors were simply grandstanding. "I think this has been a lot of classic display of innuendo and McCarthyism that we're seeing too often here in Washington, that I think unfortunately works against civility and respect for people in public office," McKinley said.

Rep. Bill Johnson (R-Ohio) also jumped to shield Pruitt. "I think it's shameful today that this hearing has turned into a personal attack hearing and a shameful attempt to denigrate the work that's being done at the EPA and with this administration," he said. Public officials should have ethical standards "beyond reproach," Johnson said, "but so should members of Congress."

Staffers moved or dismissed under Pruitt weren't being punished, he said. "There's no truth to the assertion that decisions have been made about reassignments or otherwise as far as employment status based upon the things you reference. I'm not aware of that ever happening, and it's something I want to make very, very clear,"

Pruitt said, vowing he would not retaliate against civil servants who flag wrongdoing. The New York Times reported this month that several top staffers were reassigned or demoted after questioning Pruitt, and POLITICO reported that the agency's deputy homeland security chief was dismissed after signing off on a report questioning Pruitt's security spending.

One Republican ripped into Pruitt with particular gusto. "I think the opprobrium that you've generated on some of these spending decisions is actually warranted," Ryan Costello (R-Pa.), who is retiring from Congress, told the EPA chief. "I've reviewed your answers and I find some of them lacking or insufficient. And I believe you've not demonstrated the requisite good judgment required of an appointed executive branch official on some of these spending items." He went on to ask specifically about reports of retaliation against employees who questioned Pruitt, as well as whether security threats against him were "warranted or credible."

Pruitt: I only took that controversial trip to Morocco because the country's ambassador invited me.

"There was a free trade agreement that is in existence with Morocco and the ambassador of Morocco invited me to Morocco to negotiate the environmental chapter on that free trade agreement," Pruitt told lawmakers. The EPA administrator's December jaunt to the North African nation came under intense scrutiny when the agency, in a news release after the fact, described the trip as dual-purpose: to discuss updates to a U.S.-Morocco Free Trade Agreement "and the potential benefit of liquified [sic] natural gas (LNG) imports on Morocco's economy." Later on Thursday, Pruitt attempted to downplay his role in promoting American natural gas exports. "There was a lot of reference made to LNG only because the ambassador [of Morocco] asked me to share that with individuals when I was in country," he said.

Pruitt the leaker? After facing questions about the severity of the threats the EPA chief has faced in office — which the agency has cited to justify his pricey security budget — Pruitt read part of a report from the inspector general's office that documented threats directed at him and his family. Asked whether EPA Inspector General Arthur Elkins Jr. had written the report he cited, Pruitt replied, "I'm looking at the document that says inspector general." But a spokeswoman for the IG's office said Thursday that it came from another official, not Elkins himself. "It was an internal memo from Assistant IG for Investigations Patrick Sullivan," OIG spokeswoman Tia Elbaum said in an email. "It was leaked without authorization. It will be released in the near future as part of an OIG FOIA response."

By the time Pruitt was finished, Shimkus was "just glad he showed up." The Illinois Republican, who chaired Pruitt's first hearing, said he thought the administrator handled himself well and that GOP members were suitably tough in their questioning. "Some of it was accountability for policy, so I don't know what more [critics] want," Shimkus told POLITICO of Pruitt's performance. "I think that he answered the questions in the best way that he could answer them." Shimkus declined to speculate about potential next steps the House Energy and Commerce Committee or the Environment subcommittee would take, and didn't specifically state whether he thought questions remain unanswered after today's grilling. "I knew it would be painful," he said.

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Shimkus praises Pruitt performance in first hearing [Back](#)

By Anthony Adragna | 04/26/2018 02:39 PM EDT

Rep. [John Shimkus](#) (R-Ill.), who chaired EPA Administrator Scott Pruitt's first hearing today, said he thought Pruitt handled himself well and that Republican members were tough in their questions.

Shimkus pointed to questions from Reps. Ryan Costello (R-Pa.), Leonard Lance (R-N.J.) and Billy Long (R-Mo.) at the Energy and Commerce environment subcommittee hearing this morning.

"Some of it was accountability for policy, so I don't know what more [critics] want," Shimkus told POLITICO of Pruitt's performance. "I think that he answered the questions in the best way that he could answer them."

Shimkus declined to speculate about potential next steps, saying that decision was up to full committee Chairman Greg Walden (R-Ore.). And he declined to specifically state whether he thought questions remain unanswered.

"I'm just glad he showed up," he said. "I knew it would be painful. There would be policy and politics."

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Gowdy expands probe into EPA's Pruitt [Back](#)

By Anthony Adragna and Alex Guillén | 04/13/2018 05:45 PM EDT

House Oversight Chairman Trey Gowdy (R-S.C.) said Friday he's expanding his probe into the alleged ethical and spending abuses by EPA Administrator Scott Pruitt one day after his staff met for several hours with a former EPA aide who was pushed out of the agency.

Gowdy's latest letter is a further sign of the deepening bipartisan scrutiny facing President Donald Trump's environmental chief, whose critics accuse him of excessive spending on travel, vehicles, staff raises and luxe security features such as a \$43,000 soundproof phone booth.

The committee's new request focuses on the decision to increase Pruitt's security to round-the-clock protection, contracts to sweep Pruitt's office for electronic surveillance, his trips to Italy and Morocco, the hiring of an Italian security firm, and travel by Pruitt's security chief, Pasquale "Nino" Perrotta.

The letter comes after the committee interviewed ousted EPA employee and former Trump campaign aide Kevin Chmielewski, who is being treated as a whistleblower. A committee spokeswoman said the information he provided is consistent with allegations laid out in a letter released Thursday by House and Senate Democrats who had also spoken to him.

The committee also asked for sit-down interviews with four senior EPA officials: Perrotta; Ryan Jackson, Pruitt's chief of staff; Millan Hupp, a scheduling and advance aide; and Sarah Greenwalt, a senior counsel to Pruitt. Gowdy requested the agency schedule those interviews and provide a litany of documents by April 27. Gowdy also requested an on-the-record interview with Chmielewski, who spoke more informally with lawmakers this week.

Hupp and Greenwalt, both of whom have worked for Pruitt since he was Oklahoma's attorney general, are the two staffers who received raises via a special authority granted Pruitt under the Safe Drinking Water Act. Pruitt told Fox News last week he was not aware of the raises, although Chmielewski told Democrats this week that the raises were "100 percent Pruitt himself."

EPA spokesman Jahan Wilcox said the agency had "responded to Chairman Gowdy's inquiries and we will continue to work with him."

EPA's inspector general is also investigating complaints about Pruitt's travel spending and other practices. The inspector general's office said it will release an interim report Monday afternoon on one of its probes, which involves whether Pruitt misused special hiring authority provided by the Safe Drinking Water Act to bring some key aides into the agency.

It's unclear whether the IG has expanded that probe to include a recent controversy around EPA's use of the same water law to grant raises to the two Pruitt aides despite the White House's disapproval.

Chmielewski told Democrats this week that EPA fired him after he refused to sign off retroactively on first-class travel for one of Pruitt's closest aides, Samantha Dravis. Gowdy's letter does not request an interview with Dravis, who has announced her intent to leave the agency.

During congressional interviews earlier this week, Chmielewski outlined a detailed litany of seemingly unethical behavior against Pruitt. He said the EPA chief insisted on staying at expensive hotels while traveling even if they exceeded permissible federal spending limits, directed staff to book him on Delta Air Lines so he could accrue frequent flier miles, made a close aide "act as a personal real estate representative" and then retaliated against staff who questioned his behavior, among other allegations.

EPA has previously dismissed Chmielewski as one of a "group of disgruntled employees who have either been dismissed or reassigned." The agency did not immediately comment on the latest letter.

Gowdy's probe into Pruitt's activities has been in contrast to his GOP colleagues, who have adopted a "wait and see" approach toward the EPA chief's ethical woes. Lawmakers this week expressed discomfort with Pruitt's spending when asked and vowed to press him about it at future hearings. But they've stopped short of demanding documents or issuing subpoenas to investigate the alleged ethics lapses.

Pruitt last appeared before Congress in late January before the Senate Environment and Public Works Committee. Unlike his fellow Cabinet members, he has yet to appear before any congressional committees to defend his fiscal 2019 budget request. And he's not scheduled to return to Capitol Hill for another two weeks, when he is scheduled to attend an April 26 session with the House Energy and Commerce Committee.

"The Republicans are absolving themselves of all oversight responsibility even in the face of the most egregious conduct. They may as well stop calling committees oversight," Melanie Sloan, senior adviser at American Oversight, told POLITICO. "What would it take? Would he literally have to kill somebody before they say it's a problem?"

GOP lawmakers were less patient with Obama EPA officials. Senate and House lawmakers questioned former Administrators Lisa Jackson and Gina McCarthy, as well as other senior brass, on issues ranging from the use of nonofficial email accounts, whether they used texting to avoid record-keeping requirements, whether they allowed a senior staffer to commit time fraud and why they hadn't fired employees who spent hours watching pornography at work more quickly.

EPW Chairman John Barrasso (R-Wyo.) has said he planned to await the results of a White House review of Pruitt's conduct and would not comment on multiple occasions this week on when the administrator would return to his committee.

"He was just here earlier this year and answered questions for 2½ hours, but I expect him to come back again," Barrasso told reporters.

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EPA prepping documents in response to Oversight probe [Back](#)

By Anthony Adragna | 04/26/2018 08:11 PM EDT

EPA staff is in the process of providing documents to the House Oversight Committee that it believes will respond to allegations of lavish spending and unethical conduct by Administrator Scott Pruitt and may negate the need for several aides to appear for interviews, according to a senior EPA official.

The agency staffers believe the documents will show former Trump campaign aide Kevin Chmielewski, who served as a senior aide to Pruitt, made a number of "exaggerations" when he spoke with Democratic and Republican lawmakers, according to the official.

Senior staffers at the agency are also willing to sit for interviews with Oversight staff if desired, the official said. Those officials include: Pasquale "Nino" Perrotta, Pruitt's security chief; Ryan Jackson, Pruitt's chief of staff; Millan Hupp, a scheduling and advance aide; and Sarah Greenwalt, a senior counsel to Pruitt.

House Oversight Chairman [Trey Gowdy](#) (R-S.C.) [expanded his probe](#) into the embattled EPA chief's activities one day after his staff sat down with Chmielewski. In an April 13 letter, Gowdy requested a host of documents and that the interviews be scheduled by April 27.

In addition, an Oversight Committee aide said earlier this week the committee had informally requested on April 16 that Samantha Dravis, formerly one of Pruitt's closest aides, appear for a transcribed interview with committee staff. Dravis had not been included in Gowdy's original letter because it was thought she left the agency, but her resignation was actually effective April 20, according to the aide.

A spokeswoman for the Oversight Committee did not respond to request for comment today.

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Documents: EPA reversed raises one day after Pruitt's Fox interview [Back](#)

By Emily Holden and Nick Juliano | 04/26/2018 06:45 PM EDT

EPA reversed raises for two top aides to Administrator Scott Pruitt the day after his interview with Fox News, according to [documents](#) shared by the agency today.

Pruitt [told Fox](#) his staff had authorized the raises and he had "corrected them." A day later, on April 5, Pruitt's chief of staff, Ryan Jackson, signed personnel forms reverting the aides to their previous pay grades, according to copies of the forms reviewed by POLITICO. Jackson signed the documents "for Scott Pruitt," as he had on forms authorizing the initial pay bumps a few days earlier, according to documents [previously released](#) by EPA's inspector general.

Sarah Greenwalt, senior counsel to Pruitt, received a \$56,765 increase in her annual salary on April 1, and Millan Hupp, director of scheduling and advance, saw a \$28,130 increase that same day, according to the earlier IG documents.

Jackson reversed those moves on April 5, bumping Greenwalt's salary back to \$109,900 per year, and Hupp's to \$88,450, according to the new documents.

Pruitt signed a memo in March 2017 delegating to Jackson the ability to make hiring and salary decisions using a special section of the Safe Drinking Water Act.

"Administrator Pruitt has consistently said he was not aware of the amount of the raises or the process that was used, as he said both today and in prior interviews," EPA spokesman Jahan Wilcox said in a statement. "He was aware one of the individuals was receiving changes to job responsibilities and might be asking for a raise, but had no further involvement in the discussions, negotiations or approvals, because he had authorized his Chief of Staff and other EPA officials to handle all personnel matters."

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McConnell seeks redemption in ugly West Virginia primary [Back](#)

By Alex Isenstadt | 04/26/2018 04:48 PM EDT

HUNTINGTON, W. Va. — Don Blankenship walked into the Guyan Golf & Country Club on Tuesday afternoon and bluntly laid out his plan for the final two-week stretch of the GOP Senate primary: a relentless slash-and-burn campaign targeting Mitch McConnell.

As the assembled local GOP women's group munched on chocolate chip cookies, the coal baron who spent a year behind bars after a deadly 2010 mine explosion compared his current battle against the McConnell-led Republican establishment to his past legal fight against the federal government.

"When you've been falsely charged, when you've had seven of 10 bill of rights flagrantly violated, you tend to fight back. ... I make no apologies for that," he said, adding that when he sees people like McConnell "leading us to the left, I will speak out about it, because I know bad people join good organizations."

As the dramatic May 8 primary campaign hurtles to a close, it's taking on an all-too familiar outline. For the second time in a matter of months, an insurgent outsider is taking aim at McConnell, looking to capitalize on the broiling anti-establishment unrest that's dominating Republican politics. And just like last time, McConnell is fighting back.

In the fall, the leader's aggressive campaign to defeat Alabama Republican Roy Moore backfired spectacularly. This time, his attempt to stop the 68-year-old Blankenship seems to be faring better. Amid an avalanche of attacks from a McConnell-aligned super PAC, two new polls out this week show Blankenship, once seen as an early front-runner, plunging into third place.

Crisscrossing the state this week, Blankenship savaged the Kentucky Republican as weak-kneed, accused him of failing to stand up for the coal industry, and said he'd long ago lost touch with Republican voters.

Blankenship vowed to oppose McConnell as Senate GOP leader if he won and began airing a TV ad — which he personally composed — envisioning McConnell as a bog-enveloped "swamp captain."

At times, the attacks grew intensely personal. During an interview with POLITICO on Sunday, Blankenship said McConnell "has a lot of connections in China," adding that the GOP leader's wife, Transportation Secretary Elaine Chao, is "from China, so we have to be really concerned that we are in truth" putting America's interests first. Blankenship's girlfriend was born in China.

During an appearance on a local radio show the following day, Blankenship repeated the jab, describing Chao's father as a "wealthy Chinaperson," who was "well-connected in China."

Asked about the remarks, Josh Holmes, a longtime McConnell political adviser, charged that Blankenship is "mentally ill," noting that Blankenship had once spoken of moving to China and becoming a Chinese citizen. Holmes also said Blankenship had used a "racial blast" against the Taiwan-born Chao, whom he described as "the dictionary definition of the American dream."

"The one consistency we've seen over the last decade is that the death rattle of a primary candidate is always a tendency to attack other Republicans because they know reporters will report it," Holmes added. "At this point what's clear is that voters are writing him off and so he knows that by attacking McConnell he'll get attention."

Driving the McConnell team's offensive is a belief that Blankenship cannot defeat Democratic Sen. Joe Manchin in November.

This spring, Steven Law, president of the McConnell-aligned Senate Leadership Fund super PAC, wrote a memo to top Republican Party donors that stated Manchin was beatable — but not if Blankenship wins the primary.

"We would forfeit any chance of beating Manchin if Blankenship becomes the nominee," wrote Law, underlining the sentence for emphasis.

Republican strategists spent weeks deliberating how to take down Blankenship, concerned that an overtly Washington-led effort would only strengthen him - just as it did when Senate Leadership Fund spent millions of dollars against Moore.

Finally, a group of Republican strategists who've previously worked with Senate Leadership Fund mobilized and earlier this month launched the generically-titled Mountain Families PAC. Over the span of a little more than a week, the super PAC pummeled Blankenship with over \$700,000 in TV ads accusing him of contaminating drinking water with coal slurry.

The creative force behind the commercials was a GOP consulting firm spearheaded by Larry McCarthy, a McConnell ally who is widely viewed as the master of the political attack ad. Among his credits: the 1988 Willie Horton spot that helped to sink Democrat Michael Dukakis' presidential bid.

Apparently not finished with Blankenship, Mountain Families PAC on Thursday began purchasing additional commercial airtime.

With Blankenship cratering in polls, many Republicans are convinced that Blankenship has been effectively neutralized and that the contest has emerged as a two-person race between GOP Rep. Evan Jenkins and state Attorney General Patrick Morrisey. The coal baron has derided both as pawns of the establishment.

As he hit the trail this week, Blankenship bristled over the effort to upend his candidacy. Each time, he pointed to the super PAC's connection to the GOP leader.

"As you know," he said at the GOP women's luncheon in Huntington, "I've even been beat up by the Republican Mitch McConnell."

During a news conference on Monday afternoon, Blankenship fired back at Washington Republicans who called him unelectable, saying even his dog could beat Manchin.

At one point, he was asked point-blank whether he had a message for McConnell.

"He needs to understand that if I'm there I will not vote for him for majority leader, and so the rest of the senators should understand that they should not put him up if they need my vote," Blankenship responded.

In an interview, Blankenship recounted a personal history with McConnell, a fellow coal country pol, that he said dated back nearly three decades. He said he first met McConnell during the late 1980s while visiting the home of a GOP donor in Kentucky, and that their paths occasionally crossed over the years after. The coal company that Blankenship formerly presided over, Massey Energy, has mines in Kentucky.

Massey, Blankenship said, had been helpful to McConnell early in his political career. In 1999, Blankenship, a longtime GOP donor who for years bankrolled West Virginia campaigns, contributed \$1,000 to McConnell's reelection campaign, according to federal filings.

Over time, though, Blankenship said he came to see the Republican leader as insufficiently supportive of the mining industry. He said they haven't spoken in about a decade.

"I never felt that he fought very hard for coal. He seemed to be too willing to compromise on climate change legislation," said Blankenship, adding that West Virginians felt that McConnell didn't put up enough of a fight against President Barack Obama's push to regulate carbon emissions.

McConnell advisers dispute the criticism. "People have accused Mitch McConnell of a lot of things over the years, but I've never heard anyone say he's insufficiently pro-coal," said Holmes.

After being released from prison last year, Blankenship launched his campaign with an eye toward clearing his name and pushing back against the allegations the federal government leveled against him. As the race has progressed, he has come to see his war with McConnell as intertwined with the central theme of his candidacy: that the Washington establishment is out to get him.

At Blankenship campaign events, he hands out copies of "An American Political Prisoner," the manifesto he wrote while in jail.

The anti-McConnell campaign has a decidedly homemade flavor. Blankenship, who's staffed his campaign with West Virginia-based operatives rather than ones from Washington, personally wrote the "swamp captain" ad, an amateur-style spot that lacks the slick production of typical political commercials. After producing the concept and the script, his small group of advisers made some edits before releasing it to TV stations.

But as the race enters its final days, Blankenship finds himself playing catch-up against his more establishment-friendly rivals.

During his closing remarks in a Tuesday afternoon debate, he chose to go after one of his opponents with a familiar weapon.

"Will Evan Jenkins stand up when Mitch McConnell looks at him?" Blankenship asked as the congressman looked on. "That's the question."

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Pruitt scales back EPA's use of science [Back](#)

By Emily Holden and Annie Snider | 04/24/2018 03:17 PM EDT

Environmental Protection Agency chief Scott Pruitt announced Tuesday he would seek to bar the agency from relying on studies that don't publicly disclose all their data, a major policy change that has long been sought by conservatives that will sharply reduce the research the agency can rely on when crafting new regulations.

The unveiling of the proposed rule delivers a win to Republicans like House Science Chairman [Lamar Smith](#) (R-Texas), who unsuccessfully pushed legislation to impose the same type of change. The move also demonstrates Pruitt's persistence in pursuing President Donald Trump's anti-regulation agenda just two days before the embattled EPA chief is due to face fierce questioning from lawmakers about his hefty spending, expanded security detail and cheap condominium rental from the wife of an energy lobbyist.

At an invitation-only meeting at EPA headquarters with Smith, Sen. [Mike Rounds](#) (R-S.D.) and other supporters of the policy, Pruitt said the proposed rule was critical in ensuring that the agency was transparent about how it is making decisions to justify costly new regulations. It is the latest step Pruitt has taken to fundamentally shift the agency's approach to science.

"It is a codification of an approach that says as we do our business at the agency the science that we use is going to be transparent, it's going to be reproducible, it's going to be able to be analyzed by those in the marketplace. And those who watch what we do can make informed decisions about whether we've drawn the proper conclusions or not," Pruitt said.

Text of the proposed rule was not immediately available.

The proposal, based on legislation pushed by Smith, is intensely controversial, and scientists and public health groups say it will prevent federal regulators from enacting health and safety protections. Nearly 1,000 scientists, including former EPA career staffers, signed a [letter](#) opposing the policy sent by the Union of Concerned Scientists to Pruitt on Monday.

Their primary concern was that many of the country's bedrock air and water quality regulations are based on research that cannot disclose raw data because it includes the personal health information.

But industry has its own version of the same problem. EPA often relies on industry studies that are considered by companies to be confidential business information when determining whether new pesticides and toxic chemicals are safe to use. Internal EPA emails obtained under the Freedom of Information Act show that EPA political officials, including Nancy Beck, who became the chief of the agency's chemical safety office last year after working for years at a chemical industry lobbying group, worried that the new policy would limit the agency's ability to consider industry data or would force companies to make this proprietary data public.

"We will need to thread this one real tight!" Richard Yamada, political official who led work on the new policy wrote to Beck after she raised the concerns.

It was not immediately clear if the new proposed rule included measures to address those concerns.

Rush Holt, CEO of the American Association for the Advancement of Science, said Pruitt's changes could keep the agency from revising public health regulations as problems arise or new data comes to light.

"On the surface it sounds so innocuous or even beneficial. What could be wrong with transparency? Well it's clear to me that this is not based on an effort to be transparent. It is rather based on an effort to be just the opposite," he said.

"EPA is particularly important because when science is misused, people die," he added.

Pruitt has been discussing the new scientific policy publicly for weeks, but it only went to the White House for interagency review last week. Such swift review is very rare for the Office of Management and Budget, which often takes months to vet a new policy. At least one group, the Environmental Defense Fund, has requested a meeting with OMB officials to discuss the rule, but OMB's website shows that no meetings have been scheduled with interested groups.

Many public health studies can't be replicated without exposing people to contaminants, and environmental disasters such as the Deepwater Horizon oil spill cannot be recreated, the group said, raising intellectual property, proprietary and privacy concerns.

Pruitt's predecessor Gina McCarthy, and her air chief Janet McCabe, in an op-ed in The New York Times in March said concerns about studies are dealt with through the existing peer-review process, which ensures scientific integrity.

"[Pruitt] and some conservative members of Congress are setting up a nonexistent problem in order to prevent the E.P.A. from using the best available science," they said.

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'Jon poked the bear': Tester braces for Trump's revenge [Back](#)

By Burgess Everett | 04/26/2018 05:47 PM EDT

Jon Tester didn't intend to play a central role in taking down President Donald Trump's pick to lead the Veterans Affairs Department. Yet that's exactly what the Montana Democrat ended up doing

And now, Trump is coming after him.

The president is enraged over Tester's work documenting allegations of malfeasance by Rear Adm. Ronny Jackson, which quickly unraveled Jackson's nomination to be VA secretary and marks a turning point in the relationship between the moderate Democrat and Trump.

As Tester's reelection campaign kicks into high gear, Trump is more motivated than ever to campaign against him in the ruby-red state — accusing the senator of irresponsibly leaking the damaging information to undermine the president's nominee.

Trump said Thursday that Tester will have a "big price to pay" for his part in working to sink Jackson's nomination. But Tester is sanguine about his decision to go public with accusations about Jackson's workplace misconduct, poor prescription practices and drinking on the job.

"If he thinks it's my job to sweep his stuff under the table and ignore our military folks, he's wrong. If he thinks I should not be sticking up for veterans, he's wrong," Tester said Thursday of the president. "I look forward to working with President Trump. I've worked with him many times in the past, but we disagree."

Tester has repeatedly tried to emphasize points of agreement with Trump in his nascent reelection campaign, including sending Trump 13 of his bills to sign. But Trump and other Republicans are taking it personally that as ranking member of the Senate Veterans Affairs Committee, Tester and his staff compiled interviews with more than two dozen current and former military members describing Jackson's alleged wrongdoing and then released them this week.

Senate Majority Whip John Cornyn (R-Texas) said Tester "painted a big target on himself" this fall in Montana, which Trump won by 20 points. And a Republican senator, granted anonymity to speak candidly about a colleague, said a "livid" Trump is now set to prioritize the campaign to knock off Tester this fall.

"Jon poked the bear. Did you see the bear today? The bear was mad," the senator said. "If there was any doubt he was coming to Montana it was removed today. He overreached."

The allegations, sourced anonymously, were the death knell of Jackson's nomination.

"That was not Jon's best time with regards to his Senate career," said Sen. Pat Roberts (R-Kan.). "Man, they aim low. They really aim low. And they brought him down."

Democrats strongly reject that argument. They say Tester did the right thing by speaking up about a crucial post and that Trump and Republican are deflecting blame for the Jackson debacle.

"Sen. Tester released profoundly serious, credible allegations from military men and women who put their careers on the line," said Sen. Richard Blumenthal (D-Conn.). "The administration bungled this nomination from the start. And then it fumbled the defense of its nominee. So the blame really lies with the administration."

Former Secretary of Defense Chuck Hagel also defended Tester from partisan attacks.

"I've always admired Jon Tester's commitment to helping veterans — not using veterans for political purposes. Veterans know who their champions are, and Jon Tester is one of them," said Hagel, who also served as a Republican senator from Nebraska.

Still, in interviews this week, Tester acknowledged it was "risky" for him to release the information about Jackson. The allegations could turn out to be false, he acknowledged, and take on a more partisan tinge by coming from the Democratic minority.

Tester felt compelled to move given the circumstances and received no criticism for doing so from Senate Veterans' Affairs Chairman Johnny Isakson (R-Ga.) on Thursday. In fact, until about a week ago, Jackson's nomination appeared to be going relatively smoothly, save for concerns about his lack of experience. But then Tester's staff started getting calls. Lots of calls.

By Wednesday, 23 people had contacted the committee about Jackson's history of misconduct, according to Democratic aides. Tester spoke to some of them, while his staff handled most of the work.

And as inquiries poured in from the press, Tester felt he had no choice but to go forward publicly. Each allegation in the two-page document, including that Jackson drunkenly crashed a government vehicle and wrote his own prescriptions, was verified by at least two sources, Democratic aides said. Two more people buttressing the claims contacted the committee after the summary was released.

"I don't want to be in this situation. But the truth is. We got the information. It's our obligation to follow up," Tester said. "We did not initiate any of this. None of it. It was news to us."

Tester gradually ramped up his role in challenging Jackson's beleaguered nomination as the week wore on. After allegations about Jackson's history dangled anonymously for two days, Tester confirmed them in an NPR interview on Tuesday night then did several cable news hits before releasing the two-page summary of Jackson's alleged misconduct on Wednesday.

Sen. Dan Sullivan (R-Alaska) said Tester's move "poisons the well" in a committee that generally operates outside partisan politics, but allies said Tester had no choice and that Republicans were disingenuously claiming they wouldn't have done the same.

"Do you think if the shoe was on the other foot it would have been released? It would be irresponsible if it wasn't. Military members came forward wanting to talk about the doctor," said Sen. Claire McCaskill (D-Mo.).

But Tester is under heavy attack from Trump, the White House and Republicans for the move. Trump said Thursday that Tester's work "is going to cause him a lot of problems in his state."

"I find it outrageous for a senator for political gain to take uncorroborated allegations that have not been investigated and to throw them out in a way to besmirch somebody's character," said Marc Short, Trump's legislative director. "Very irresponsible to go on national TV and make those allegations knowing that that would besmirch that person's character."

The incident and its fallout underscores how the burly, plain-spoken Tester hasn't exactly tacked to the center in an election year. Perhaps he feels emboldened after dodging a big-name opponent; after former Rep. Ryan Zinke was drafted into the Trump administration and the state attorney general passed on the race, Tester's opposition is made up of lesser known opponents who will compete in a June primary.

And since Trump became president, Tester often votes in a different manner than his fellow red state incumbents, seemingly unworried about his state's GOP lean. He was the lone red state Democrat to oppose Mike Pompeo to be secretary of state on Thursday and voted twice against a government funding bill in January.

But Tester has also positioned himself as someone who sends Trump bills to sign, including eight on veterans issues, and is open to working with the president. And he seems to genuinely believe that if he sticks to his guns and does not try to pander to conservative voters, the politics will work out this fall.

"It was going to be difficult anyway," Tester said of his campaign. "Look, if I made decisions around here based on the election, I wouldn't be a very good senator."

Tester's decision to aggressively take on Trump is rare among at-risk senators. Now, Tester is credited with helping bring down the confirmation prospects of a man whom Trump counts as a confidant, friend and personal doctor.

And Trump is plainly angry about it, to almost no one's surprise.

"I can understand that, if [Trump] thinks it's a personal attack. If you have a friend and someone personally attacks your friend, you're going to have to fight back," said Sen. Joe Manchin (D-W.Va.). "But Jon is also going to have to do his job, too."

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Pompeo confirmed as secretary of state [Back](#)

By Nolan D. McCaskill | 04/26/2018 12:35 PM EDT

The Senate confirmed Mike Pompeo to be President Donald Trump's secretary of state on Thursday, after a handful of Democrats facing difficult reelection challenges joined every Republican in backing the CIA director.

Pompeo's hawkish foreign policy views drew strong opposition from the left, but he ultimately won over Democratic Sens. Heidi Heitkamp of North Dakota, Joe Manchin of West Virginia, Joe Donnelly of Indiana, Bill Nelson of Florida, Claire McCaskill of Missouri and Doug Jones of Alabama.

Pompeo, who was confirmed on a 57-42 vote, was sworn in early Thursday afternoon by Supreme Court Justice Samuel Alito, according to State Department spokesperson Heather Nauert.

He's wasting little time. Almost immediately after being sworn in, Pompeo was to fly to Brussels for a meeting of foreign ministers, followed by stops in Riyadh, Jerusalem and Amman over the next four days. The newly minted secretary of state is expected to discuss a range of hot issues with counterparts in Europe and the Middle East, including the fate of the Iran nuclear deal.

Pompeo ultimately received more Democratic votes for secretary of state than Rex Tillerson. And unlike Tillerson, who repeatedly clashed with and was undercut by Trump, Pompeo enjoys a positive relationship with the president. Trump applauded Pompeo's confirmation, hailing him as a "patriot" with "immense talent, energy and intellect" who will be an asset for the United States.

"He will always put the interests of America first," Trump said in a statement. "He has my trust. He has my support."

Pompeo is also expected to play a major role in talks with North Korea. He met with dictator Kim Jong Un over Easter weekend in a private trip to Pyongyang. The secret summit came ahead of an expected meeting between Trump and Kim.

The Trump administration had little margin for error in confirming Pompeo. With Sen. John McCain (R-Ariz.) out recovering from cancer treatment, Republicans' majority had slimmed to 50-49. Libertarian-leaning Sen. Rand Paul (R-Ky.), a member of the Senate Foreign Relations Committee, had also initially announced his opposition to Pompeo.

The former Kansas congressman was poised just days ago to get an unfavorable recommendation from the Senate Foreign Relations Committee until Paul flipped, citing assurances from the president and incoming secretary that the war in Iraq was a "mistake" and that the U.S. should wind down its presence in Afghanistan.

Republican leaders were determined to bring Pompeo's nomination to the floor regardless of the committee vote. But had Paul remained opposed, he and Democrats could have killed the nomination outright.

Paul's shifting position, however, all but assured Pompeo would breeze through Thursday's confirmation. Republicans maintained that he is well-qualified to be America's top diplomat and criticized Democrats for playing politics with his nomination. Fourteen Senate Democrats had voted to confirm him as CIA director in January 2017.

"From the founding of the republic until 2017, the Senate has never required a cloture vote to confirm a secretary of state nominee. Now we're at two," Senate Majority Leader Mitch McConnell complained earlier Thursday. "I guess Senate Democrats are in a history-making mood. Because over the past 15 months, they've embarked on a partisan campaign to block, obstruct and delay President Trump's nominees that is quite simply without precedent in American history."

Senate Minority Leader Chuck Schumer (D-N.Y.) said Wednesday he was troubled by Pompeo's past rhetoric and argued that he was too hawkish to be secretary of state. He also indicated that Pompeo's confirmation hearing did nothing to convince him that he would serve as a check on the president.

"This is not about denying the president his team just for the sake of it," Schumer said. "This is about the role of the Congress and, frankly, the Cabinet to provide a check on the president, who might go off the rails and undo the respect for rule of law, the tradition of rule of law that we have had in this country for so long."

Aside from concerns about his foreign policy views, many Democrats also opposed Pompeo because of past comments he's made denigrating Muslims and members of the LGBT community.

Pompeo was among a trio of controversial Cabinet and Cabinet-level nominees the president named in recent weeks, and he is expected to have the easiest time getting confirmed.

Pompeo's deputy at the CIA, Gina Haspel, is expected to have her confirmation hearing to succeed him as CIA director next month. Department of Veterans Affairs secretary nominee Ronny Jackson withdrew from consideration Thursday morning following allegations that he drank on the job and loosely dispensed pills on foreign trips.

The Senate also confirmed Richard Grenell to be the ambassador to Germany on Thursday on a 56-42 vote.

Nahal Toosi contributed to this report.

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Perry's latest bid to help coal faces uphill battle [Back](#)

By Eric Wolff | 04/25/2018 05:08 AM EDT

Energy Secretary Rick Perry's latest idea to protect coal-fired and nuclear power plants may not fare much better than his previous efforts, according to energy experts.

Perry is considering invoking the 1950 Defense Production Act to keep money-losing power plants running by designating them as crucial for national security. But that would stretch the definition of the law and almost certainly draw legal challenges — and it would hit a big hurdle in Congress, which would need to approve perhaps billions of dollars in funding to keep the plants afloat, the experts said.

At the urging of President Donald Trump, Perry has sought to keep open coal and nuclear power plants that are threatened with shutdowns amid the stagnant demand for power — and even as natural gas and renewable power sources grab a growing share of the market.

So far, Perry's had no luck. FERC earlier this year rejected his proposal to give the plants financial support, and Energy Department lawyers stymied a push last year to invoke the agency's authority under the Federal Power Act to force the plants to run.

Some experts said any attempt to use the DPA is likely to meet the same fate.

"To me, it's a tough argument to make. It's a specious argument on its surface that seems like a perversion of the intended use of the Defense Production Act," said Tom Hicks, a former acting undersecretary of the Navy under former President Barack Obama and now a principal at the advisory firm The Mabus Group. "Defense Production Act is on the vanguard of the need for resources, not on the back end for an industry being challenged by economic forces."

But the effort has been a priority for Trump and Perry, who sees saving coal-fired power generation as vital to U.S. security, according to a source familiar with the conversations on the issue.

The Cold War-era law grants the federal government powerful authorities to inject cash into companies essential for national defense in order to preserve domestic supplies of key products. But DOE will have to make the case that electricity produced specifically from coal and nuclear power plants, and not other types of power, is a critical resource.

Using the act to protect the plants when there appeared to be no immediate shortage of power supplies would be a novel application that would almost certainly face legal challenge.

"If the administration uses DPA, they're going to be using it very creatively," said Ari Peskoe, director of the Electricity Law Initiative at the Harvard Law School Environmental and Energy Law Program. "They may come up with reasoning for higher rates and who's going to pay for it. Whether that will hold up, I don't know."

Perry and his staff appear to have very few viable options for bailing out coal and nuclear power, a major energy priority for Trump, who has promised to revive the coal industry. DOE has opened a comments process for interested parties to weigh in on its use of the Federal Power Act's 202(c) emergency provisions, though that would require the agency to go through FERC, which unanimously rejected a similar Perry effort in January.

The 202(c) effort has been pushed by coal magnate Bob Murray, owner of Murray Energy, and by FirstEnergy Solutions, the unit of FirstEnergy Corp. that is in bankruptcy proceedings and which expects to shut down four coal and nuclear power plants. That company asked DOE to use the emergency authority to save not only its plants, but all 85 coal and nuclear power plants in the PJM Interconnection power market.

The DPA was last used by the Obama administration starting in 2012 to help spur the biofuels industry to develop the kind of advanced biofuels that could power ships and aircraft. The government can purchase capital equipment for the cause of national security, and it can fund advertising to support the effort.

And it allows the government to become the buyer of last resort, which could put Washington on the hook to buy excess power generated by coal and nuclear plants. Technically, this electricity could only be purchased at the "cost of production," a level that in the past has been determined by a team within the Defense Department.

While no hard estimate for the cost of a DPA subsidy exists, consultants analyzing Perry's previous bailout proposal estimated costs between \$4 billion and \$10.6 billion annually.

That's a far higher level than Congress typically allocates for the DPA. It provided \$67.4 million in the omnibus passed in March, H.R. 1625 (115), down slightly from the \$76 million it provided for all projects in 2017, according to a report submitted to Congress.

And Congress — and the Republican Party — is deeply divided on using government subsidies to save these plants. Rep. David McKinley (R-W.Va.) has some allies from other coal districts for the effort, but other free market-oriented lawmakers like Rep. Pete Olson (R-Texas) say they want to see markets function unimpeded.

McKinley's staff has been in touch with DOE and the White House, as has West Virginia Sen. Joe Manchin (D).

"I think it's an emergency national concern for the national defense of our country. I think Rick Perry agrees with it, and I think the president does also," Manchin told POLITICO.

PJM has itself said the retirement of FirstEnergy's coal plants did not pose a threat to the region's power supplies, and that it had ample generation to meet demand. It has opposed any effort to mandate to require the plants to stay online.

"We believe that a market-oriented approach consistent with the American free-enterprise system offers better results than government-mandated subsidies," said PJM spokesman Jeff Shields.

Anthony Adragna contributed to this report.

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Subject: Fwd: Legislation
Attachments: Chemical Assessment Improvement Act HR blank.pdf; ATT00001.htm

Deliberative Process / Ex. 5

Begin forwarded message:

From: "Ringel, Aaron" <ringel.aaron@epa.gov>
Date: July 16, 2018 at 9:11:39 AM EDT
To: "Yamada, Richard (Yujiro)" <yamada.richard@epa.gov>, "Woods, Clint" <woods.clint@epa.gov>, "Beck, Nancy" <Beck.Nancy@epa.gov>
Cc: "Moody, Christina" <Moody.Christina@epa.gov>, "Williams, Thea" <Williams.Thea@epa.gov>, "Rodrick, Christian" <rodrick.christian@epa.gov>, "Thundiyil, Karen" <Thundiyil.Karen@epa.gov>, "Kaiser, Sven-Erik" <Kaiser.Sven-Erik@epa.gov>, "Lyons, Troy" <lyons.troy@epa.gov>
Subject: FW: Legislation

Richard/Clint/Nancy,

Want to make sure you saw the attached bill that House Science is planning to mark up this Wednesday. **Deliberative Process / Ex. 5**

-Aaron

From: Traynham, Ben [<mailto:Ben.Traynham@mail.house.gov>]
Sent: Friday, July 13, 2018 5:17 PM
To: Ringel, Aaron <ringel.aaron@epa.gov>
Subject: Legislation

Hi Aaron,

Attached is draft legislation we plan to mark up next Wednesday. Thanks, and have a great weekend!

Ben

Ben Traynham
Counsel | Subcommittee on Environment
Committee on Science, Space, and Technology

2321 Rayburn House Office Building
202-225-6371

From: E&E News [ealerts@eenews.net]
Sent: 3/20/2018 5:35:07 PM
To: Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]
Subject: March 20 -- Greenwire is ready

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GREENWIRE

AN E&E NEWS PUBLICATION

GREENWIRE — Tue., March 20, 2018



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1. APPROPRIATIONS:

Negotiators aim to settle policy fights, post omnibus tonight

Congressional leaders hope to have massive omnibus spending legislation on the House floor by Thursday, assuming they can resolve a few dozen outstanding policy fights.

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Pruitt aide didn't have to sign Trump ethics pledge

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Details lacking as Pruitt attacks 'secret science'

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From: POLITICO Pro Energy [politicoemail@politicopro.com]
Sent: 5/24/2018 9:45:03 AM
To: Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]
Subject: Morning Energy, presented by ExxonMobil: Democrats try to make GOP pay at the pump — Nukes out at PJM even as capacity prices double — Senate Appropriations marks up Energy-Water

By Kelsey Tamborrino | 05/24/2018 05:42 AM EDT

With help from Anthony Adragna and Eric Wolff

PUMP UP THE VOLUME: Days away from the Memorial Day weekend, gas prices are on the rise — and Democrats didn't have to look far for someone to blame. During a press conference in front of a notably pricey Exxon gas station, Democratic leaders blamed President Donald Trump's foreign policy decisions — including his move to reimpose sanctions on Iran — for the 50-cent-per-gallon surge in prices since he took office. "There's a straight line between Trump's policies and the price of gasoline," Sen. [Brian Schatz](#) told Pro's Ben Lefebvre and Anthony Adragna.

A page out of the Trump playbook: In pushing the blame onto Republicans, Democrats aren't breaking new ground. Trump himself called for former President Barack Obama's firing when in October 2012 gas prices hit "crazy levels." Republicans weren't surprised by the Democratic talking point, either. "Everyone's going to look for whatever political leverage they have going into an election," Sen. [Lisa Murkowski](#) said. "[But do] you think that Republicans created the high prices? No."

Roadblocks ahead: The Democratic message faces a big obstacle: Short of an energy crisis like the one President Jimmy Carter faced in his 1980 reelection campaign, it's tough to convince voters the president is to blame for expensive gas. Especially because the White House has little control over gas prices, which largely track the movement in global crude oil market prices. Energy market watchers say the price rally is largely due to moves by OPEC and Russia, in addition to the collapse of Venezuela's oil industry. Read [more](#).

RELATED DOC: Trump has staffed his administration with oil and auto industry insiders, according to a new report from ethics watchdog group Public Citizen. The report breaks down industry influence by the numbers and finds 52 administration staff members have oil and gas ties, 15 with auto industry ties and 10 who have ties to both. Those industry ties are most concentrated at EPA, Interior and the White House. Read [the report](#).

GOOD THURSDAY MORNING! I'm your host Kelsey Tamborrino. Congrats to the American Petroleum Institute's Khary Cauthen, who was the first to identify Franklin D. Roosevelt as the first president to have a state car custom built to Secret Service standards. For today: In what year did someone first attempt to jump the White House fence? Send your tips, energy gossip and comments to ktamborrino@politico.com, or follow us on Twitter [@kelseytam](#), [@Morning_Energy](#) and [@POLITICOPro](#).

POLITICO and the South China Morning Post are partnering to expand coverage of U.S.-China relations. Read our note from POLITICO Editor-in-Chief John Harris and Editor Carrie Budoff Brown to [learn more](#). If you want all China-related content that appears through this partnership sent directly to your inbox, go to your [account settings](#) to sign up for the South China Morning Post tag or reach out to your [account manager](#) for assistance.

COMMENT PERIOD EXTENDED: EPA [extended](#) the comment period for its controversial "secret science" proposal that was set to end on May 30. The public will now have until Aug 16 to make their voices heard on

the proposal to ban the use of studies that don't publicly disclose all data. EPA also said it would hold a public hearing July 17 in Washington on the proposal rule, heeding public requests to do so.

NUKES OUT OF PJM EVEN AS CAPACITY PRICES DOUBLE: PJM Interconnection, which manages the nation's largest power market, shed almost a third of its nuclear capacity in capacity auction results released yesterday for the 2021-22 delivery year. The auction, which provides extra payments to generators in return for staying available to run at any time, saw prices nearly double to \$140 per megawatt-day, and it will generate \$9.3 billion in revenue for companies with plants that cleared. Stu Bressler, PJM's senior vice president for Operations and Markets said prices rose because companies were trying to make up revenue lost to lower energy prices. "The offers from supply resources into the capacity auction take into account the actual as well as the anticipated energy revenues when they construct those offers in order to meet their required revenues," he told reporters Wednesday.

More megawatts cleared the auction for every other fuel type. Solar capacity quadrupled and wind added 529 MW, making up for ground lost in last year's auction. Coal added 500 MW compared to the previous auction, something that may catch the attention of the Department of Energy, which is trying to save coal plants. "The results of this auction should reassure everyone that the electricity markets are working and maintaining a reliable system," said Susan Buehler, a spokeswoman for the grid operator. "PJM has always said we don't believe there is any need for intervention."

Plenty of power: PJM continues to have far more power than it needs to meet reserve requirements. In 2021-22, it will have a 21.5 percent reserve, well above the 15.8 percent target. That reserve is actually down 2 points from the auction to supply power for 2020-21.

EVERY BILL GETS ITS DAY: The Senate Appropriations Committee will mark up its fiscal 2019 Energy-Water appropriation bill, which puts discretionary funding at \$43.8 billion — \$566 million more than this year's appropriation and \$7.2 billion more than the administration requested. The bill provides \$6.65 billion for the Office of Science — a \$390 million boost — and would increase funds for ARPA-E, which the White House has sought to eliminate. The committee will also consider so-called 302(b) allocations.

How it'll play out: Lamar Alexander is already eyeing how the Senate might move on the title in the coming weeks. "My guess would be two or three bills would come over from the House, Sen. [Mitch] McConnell could put those bills together, put them on the floor at once and allow amendments to them all," Alexander, who chairs the Energy and Water Subcommittee, told reporters. He added that 83 senators had provided input into his bill and that his subcommittee was able to address those suggestions "to some degree in almost every case."

If you go: The markup kicks off at 10:30 a.m. in 106 Dirksen.

BRIDENSTINE'S CLIMATE EVOLUTION COMPLETE: NASA Administrator Jim Bridenstine endorsed a major federal report that echoed the scientific consensus that human activity is the primary driver of climate change. Under questioning Wednesday from Sen. Brian Schatz, the former Oklahoma lawmaker said the National Climate Assessment "has clearly stated that it is extremely likely ... that human activity is the dominate cause of global warming and I have no reason to doubt the science that comes from that." Bridenstine agreed that his new position on the science constituted an evolution of his views and vowed to protect climate science work at the space agency. Keep in mind: The climate report in question is the same assessment Administrator Scott Pruitt sought to rebuff in his proposed "red team-blue team" debate. Watch the Bridenstine clip here.

WHEN WE LAST LEFT OUR HEROES: Top deputies across the Trump administration — including EPA Deputy Administrator Andrew Wheeler, Deputy Energy Secretary Dan Brouillette and USDA Deputy Secretary Stephen Censky — will meet today to try to resolve long-standing tensions over the Renewable Fuel Standard. The group will pick up where the president left off during his meeting on the topic last month, including the unfinished business of whether to allow biofuel exports to receive Renewable Identification Numbers, and whether to reallocate the gallons small refiners were exempted from blending under economic hardship waivers

from EPA. A refining source previously told Pro's Eric Wolff the USDA is trying to capitalize on the controversies surrounding EPA and has been pressing the agency to move quickly on allowing year-round sales of 15 percent ethanol fuel.

And with small refinery exemptions on the table, ME will be looking to see how Wednesday's news that Marathon Petroleum asked EPA for an exemption plays out. Ahead of today's meeting, the ethanol and biofuel trade association Growth Energy released a statement that called out the "flood of illegitimate waivers" and their resulting "'demand destruction' for U.S. farmers at a time when rural communities can least afford it."

**** Presented by ExxonMobil:** Biofuels refined from algae could transform how we power the vehicles that move people and things. It's energy-rich and emits significantly less CO₂ than most transportation fuels. And it doesn't compete with food and fresh water supplies. We're researching how to scale up algae biofuels production in a meaningful way. EnergyFactor.com **

BIODIESEL WANTS MORE: Biodiesel producers think EPA should crank up the biodiesel requirement, not leave it flat, as POLITICO reported yesterday. "These rumored numbers are disappointing," Kurt Kovarik, VO for federal affairs for the National Biodiesel Board said in a statement. "Holding biomass based diesel flat is a missed opportunity to signal growth, which is what the RFS is intended to do. ... The easiest way to fix this and turn around growing dissatisfaction among rural voters is to provide growth to the biodiesel industry and increase this number."

STILL WORKING: John Cornyn, the Senate's No. 2 Republican, said he continues to have discussions on his legislation to overhaul the Renewable Fuel Standard "almost daily, certainly at the staff level," but wasn't sure the talks would bear fruit this year. "We keep making progress but the goal line still seems some ways away," he told reporters. "I'd love to solve the problem this year, but I just don't know."

CARB AND EPA HAVE A MEET: EPA and the California Air Resources Board met Wednesday to open negotiations on a single unified standard for fuel economy, following a White House meeting with automakers earlier in the month. EPA and the National Highway Traffic Safety Administration are threatening to try and revoke California's waiver, risking a lengthy court battle that could balkanize the auto market. "Today's conversations between Administration Officials and the California Air Resources Board were productive," EPA and the Department of Transportation said in a joint statement following the meeting. "We are fully supportive of an open dialogue that proceeds in an expedited manner. EPA and USDOT look forward to moving ahead on a joint proposed rule and receiving practical and productive feedback from all stakeholders."

MOVING QUICKLY: Senate EPW Chairman John Barrasso said Wednesday he's working to reach a time agreement with Democrats to speed floor consideration of a broad water infrastructure package S. 2800 (115) that cleared his panel unanimously earlier this week. Barrasso said it would "be great" to get the bill passed before the Fourth of July recess. His Democratic counterpart on the panel, Sen. Tom Carper, agreed it wouldn't take long for the Senate to complete its work on the bill: "I don't think we're going to need a week. We might need a day," he said.

N.J. GOV DEFENDS EXXON SETTLEMENT USE: New Jersey Gov. Phil Murphy defended using money from a \$225 million settlement with Exxon Mobil to help balance his state's budget. The Democratic governor told reporters he wasn't happy about the decision, but said the state had "been dealt a lousy hand." Environmental groups are appealing the settlement in the hopes of negotiating a new deal, Pro New Jersey's Danielle Muoio reports.

MAIL CALL! FINISH UP, FERC: A new letter from 16 Democratic senators calls on FERC to finish up its rule to allow distributed energy resources to connect to the grid. The letter, led by Sheldon Whitehouse and Ed Markey, concerns the integration of DERs and renewable aggregators into capacity and energy markets. "This

will enable consumers to play a central role in strengthening reliability and avoiding unnecessary costs by supplying localized energy services," the senators write. Read the [letter](#).

REPORT: TRIBAL COMMUNITIES AT RISK: The Clean Air Task Force published a new [brief](#) Wednesday on the adverse health effects from oil and gas pollution on tribal lands. The report, which looked at lands in New Mexico, North Dakota and Utah, found that Native Americans face disproportionate health risks from living near sources of pollutants, such as VOCs, NOx and resultant smog.

WHAT'S HAPPENING IN COLORADO? The Colorado Association of Commerce and Industry and the National Association of Manufacturers will host [an event](#) today with former Interior Secretary and Colorado Attorney General Gale Norton, focusing on the Boulder, Colo., [climate lawsuit](#) against energy manufacturers over their role in contributing to climate change. Ahead of the event, Independent Petroleum Association of America's Energy in Depth is launching a digital ad buy in the state on the opposition against the lawsuit. Watch [the video](#).

THANKS, CHARLIE: The Citizens for Responsible Energy Solutions will announce a \$185,000 [television and digital ad](#) buy today, thanking Massachusetts Gov. Charlie Baker for his actions addressing climate change and on clean energy solutions. The ads will run across the state and encourage residents to thank Baker for his leadership.

MOVER, SHAKER: Van Ness Feldman announced Wednesday that Jason Larrabee, former Interior principal deputy assistant secretary for fish and wildlife and parks, has joined the firm as a senior policy adviser.

QUICK HITS

- Critics: EPA can't keep prior fuel economy data in its blind spot, [Bloomberg BNA](#).
- Coal company claims bank did not allow it to make loan payments, [S&P Global](#).
- Zinke, Burgum tout innovation over regulation at oil conference, [Bismarck Tribune](#).
- How more carbon dioxide can make food less nutritious, [The New York Times](#).
- New documents show why Pruitt wanted a "campaign-style" media operation, [Mother Jones](#).

HAPPENING TODAY

10:30 a.m. — Senate Appropriations Committee [markup](#) of FY 2019 Energy-Water bill and consideration of 302(b) allocations, 106 Dirksen

11:00 a.m. — The National Oceanographic and Atmospheric Administration conference call briefing on the 2018 Atlantic hurricane season outlook, Lakeland, Fla.

12:45 p.m. — The Center for Strategic and International Studies [conference](#) on "Can Nuclear Compete?" 1616 Rhode Island Avenue

1:00 p.m. — The National Academy of Sciences' Polar Research Board [webinar](#) on "Shaping Scientific Committee on Antarctic Research's New Scientific Research Programs"

5:30 p.m. — U.S. Green Building Council holds [2018 Building Tech Forum](#), Boston

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To view online:

<https://subscriber.politicopro.com/newsletters/morning-energy/2018/05/democrats-try-to-make-gop-pay-at-the-pump-227726>

Stories from POLITICO Pro

Democrats turn to GOP playbook in pinning gas prices on Trump [Back](#)

By Ben Lefebvre and Anthony Adragna | 05/24/2018 05:02 AM EDT

A spike in gasoline prices is giving Democrats a rare chance to borrow an old Republican tactic: pounding the occupant of the White House for motorists' pain at the pump.

They're unleashing the message with gusto against President Donald Trump, arguing that his foreign policy moves — including his push to reimpose sanctions on Iran — are to blame for a 50-cent-per-gallon surge in prices since he took office. Democrats also note that gas prices are the highest they've been in nearly four years despite the multibillion-dollar windfall that oil companies are set to receive from the GOP-backed tax bill.

"There's a straight line between Trump's policies and the price of gasoline," Rep. [Brian Schatz](#) (D-Hawaii) said in a brief interview, echoing a growing chorus of Democrats.

Voters are already feeling spooked: Forty-two percent of Americans won't take a road trip for summer vacation this year, a much lower number of people than last year, and many of them cited higher gas prices as the reason, according to a [survey](#) by gas station data company GasBuddy.

But the Democratic message faces a big obstacle, even as the party is riding a wave of optimism to the November midterms: Short of an energy crisis like the one former President Jimmy Carter faced in his 1980 reelection campaign, it's tough to convince voters the president is to blame for expensive gas, as GOP candidate Mitt Romney found out when he [tried to use it](#) against former President Barack Obama 2012.

Trump himself frequently criticized Obama for rising gas prices in the run-up to his reelection, [tweeting](#) weeks before the November 2012 vote, "Gas prices are at crazy levels--fire Obama!"

GOP lawmakers say they aren't surprised by the Democrats' efforts and they doubt voters will buy the attacks.

"Everyone's going to look for whatever political leverage they have going into an election," Sen. [Lisa Murkowski](#) (R-Alaska), chairwoman of the Energy and Natural Resources Committee, told POLITICO. "[But do] you think that Republicans created the high prices? No."

Still, Democrats believe that the jump in prices at the pump to [nearly \\$3 a gallon](#) will be a core pocketbook issue for voters on the Memorial Day weekend, which signals the beginning of the high-demand summer driving season.

"I'm going to be having town meetings at home over the course of the week. They'll be in rural areas. People drive a long way and they're not going to see this as an abstract issue," Sen. Ron Wyden (D-Ore.), the top Democrat on the Senate Finance Committee, told POLITICO.

Wyden's panel on Tuesday released a report highlighting the fact that the nation's four largest oil companies are poised to reap some \$15 billion in tax benefits over the next decade from the GOP's tax law, while gas prices reach their highest levels in years. Sen. Ed Markey (D-Mass.) released his own staff report this week using the same tactic, blaming higher prices on "President Trump's incoherent foreign policy."

To be sure, the White House has little control over gas prices, which largely track the movement in global crude oil market prices. Those prices have jumped more than 60 percent since last June, even as U.S. oil production climbs to record levels. Energy market watchers say the price rally is largely because OPEC and Russia have cooperated to sop up extra supplies in the international markets as demand continues to climb.

In addition, the collapse of Venezuela's oil industry, one of the biggest foreign suppliers to the U.S., has pushed prices up. Its oil exports have fallen by a third from January 2016 amid the country's political meltdown, and the Trump administration looks poised to place sanctions on the country's remaining exports.

"Even OPEC could not have hoped for this kind of result," said Kevin Book, analyst at energy consulting firm ClearView Energy.

But analysts are also saying that the White House may indeed be contributing to the rise in prices. Trump's appointment of John Bolton as his national security adviser has spooked oil traders who worry about tensions in the Middle East, said Citigroup energy analyst Eric Lee. Meanwhile, Trump's threat to place heavy sanctions on Iran could remove oil from the global markets, and his moving the U.S. embassy in Israel to Jerusalem may irritate Saudi Arabia enough that the kingdom won't increase its own oil flows to lessen the hurt on U.S. drivers.

"It's a combination of things, but what really took prices to the current level is U.S. policy or at least uncertainty," Lee said in an interview.

On Wednesday, a gaggle of Democratic senators including Markey, Minority Leader Chuck Schumer, Maria Cantwell (Wash.) and Bob Menendez (N.J.) held a news conference at an Exxon filling station near the Capitol to blame the price increase on Trump.

"It's well known that geopolitical instability drives oil prices, and gas prices, around the world higher and higher," said Menendez, ranking member of the Senate Foreign Relations Committee. "The Trump administration's chaotic approach to foreign policy not only served instability around the world, it certainly serves to drive up oil prices higher and higher."

When asked how any president could impact pump prices, Schumer told reporters that Trump should pressure OPEC member states and U.S. oil companies to lower their prices.

"He's very, very tight with the crown prince," Schumer said of Trump's relationship with the head of Saudi Arabia. "He's very, very tight with the head of the UAE, very, very tight, supposedly, with Putin. Why doesn't he use that? Oil companies just got a big tax break. Jawbone them."

Trump and Republicans still have one card to play, analysts said: releasing oil into the market from the Strategic Petroleum Reserve, which could tap down prices. That's precisely what some Democrats asked Obama to do in early 2012 when they faced rising retail prices.

"I wouldn't be surprised if the president were to consider the use of the SPR to dampen prices to play to his base for the midterm elections," said Gary Ross, head of global oil analytics at S&P Global Platts. "He might see

such as a signal that he cares, and one that might deflect some criticism for higher gasoline prices due to Iranian sanctions."

White House and Energy Department spokespeople declined to answer questions about whether the administration would consider an SPR release if prices continue to climb.

To view online [click here](#).

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Editor's note: A POLITICO partnership in China [Back](#)

By John F. Harris and Carrie Budoff Brown | 05/22/2018 05:04 AM EDT

POLITICO readers will see on our pages today something new and important: the first stories reflecting the publication's commitment to illuminating the U.S. relationship with China.

POLITICO, which began in 2007 as preeminently a Washington publication, in recent years has had a global focus. In Europe, we have the largest news operation covering the increasingly complex and consequential workings of the European Union. Including our growing coverage in the U.S., POLITICO's 250 reporters and editors are now in 15 cities spanning nine time zones. Increasingly, we have heard from our most engaged readers that the place to expand our focus is toward the Pacific, as the U.S. relationship with China — intensely competitive in some spheres, intertwined and mutually dependent in others — will hover over the political and policy debates of the next generation.

One part of our expanding coverage involves a content partnership we are unveiling today with the South China Morning Post. SCMP, based in Hong Kong, is the oldest newspaper in Asia and is the only independent English-language publication in the region. SCMP has an editorial staff of 300 in Asia, with about 40 reporters stationed in mainland China. Like POLITICO, the publication has global ambitions. Under the partnership, SCMP editors will have access to POLITICO stories to share with their readers, and POLITICO editors can draw on the SCMP stories we believe our readers will find most relevant. Over time, editors in both newsrooms will look for opportunities to combine resources on original stories produced in combination with POLITICO and SCMP journalists.

Our experience shows often that the most important stories are best illuminated by being reported simultaneously from multiple perspectives. That's what we do every day in the United States and in Europe. In combination with SCMP, we will now be able to do the same on important subjects — trade, finance, technology and national security among them — at the heart of U.S. interests in China.

And you can expect POLITICO's growth to continue. As our readers' interests reflect a global perspective, so will our publication's journalistic focus and resources.

John F. Harris
Editor in chief

Carrie Budoff Brown
Editor

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Senate subcommittee advances energy and water spending bill [Back](#)

By Eric Wolff | 05/22/2018 03:44 PM EDT

A Senate subcommittee today advanced the Energy-Water appropriations bill to the full committee.

The bill appropriates \$43.8 billion in discretionary funding, \$566 million more than last year's appropriation and \$7.2 billion more than the administration requested. Non-defense activities rose \$474 million, while defense activities were increased \$92 million.

The bill provides \$6.65 billion for the Office of Science, \$390 million more than the last appropriation. And it funds an increase for ARPA-E. It also maintains funding for a weatherization assistance program and includes an extra \$196 million for drought resilience, among other measures.

Chairman [Lamar Alexander](#) lamented that writing the bill was made more difficult because the committee "started with an unrealistic budget proposal from the administration."

Appropriators funded DOE's Office of Energy Efficiency and Renewable Energy at \$2.3 billion, the same level as the current appropriation, but \$1.6 billion than President Donald Trump's budget.

The bill also provides \$6.9 billion for the Army Corps of Engineers, the largest appropriation for the corps, according to Alexander. It makes full use of the Inland Waterways Trust Fund, specifically the top four priority projects.

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Emails show Pruitt pushing 'red team-blue team' climate debate [Back](#)

By Alex Guillén and Anthony Adragna | 05/15/2018 06:39 PM EDT

EPA Administrator Scott Pruitt had hoped at least twice last year to announce his plans for a controversial red team-blue team debate that would take aim at a federal assessment supporting climate change science, according to newly released emails.

Pruitt's contentious review was abandoned because of the White House's objections, but the [communications](#) reveal new details about how the process would have worked and who was influencing Pruitt.

Many scientists have complained that a red team-blue team style debate was a poor way to examine the scientific evidence that overwhelmingly supports the findings that humans are the primary driver behind climate change. But for Pruitt, who had once suggested the event might be televised, [the debate](#) appeared to be directed at rebuffing the Fourth National Climate Assessment.

That government-wide report issued on Nov. 3 contradicted many Trump administration political appointees who have questioned the connection between greenhouse gas pollution and global warming.

A draft press release that circulated on Nov. 4 among top EPA officials, and which was shared with Pruitt on Nov. 5, laid out the line of attack, according to the documents made public on Tuesday by EPA following a records request from the Natural Resources Defense Council.

"EPA is standing up a Red Team peer review of the report," they wrote, while the "blue team" would essentially be the federal assessment and its authors.

"A robust, transparent public peer review evaluation of climate change is something everyone should support," Pruitt said in the unreleased November statement. "Now is a perfect opportunity for the formation of a 'Red Team' exercise."

The draft release also included space for quotes from two prominent climate science critics: Steve Koonin, an Obama-era Energy Department official, and William Happer, a Princeton physicist who argues that increased carbon dioxide would benefit the planet.

The duo appear to have been tapped to help guide the red-team review together.

"Your contributions even in a small way to the validity of the red team blue team approach would be appreciated," Ryan Jackson, Pruitt's chief of staff, wrote to Koonin and Happer on Nov. 4.

In an email to POLITICO, Happer said the exercise was "badly needed," while Koonin, now the director of the Center for Urban Science and Progress at New York University, told POLITICO the National Climate Assessment was "demonstrably deficient on a number of points."

EPA did not return a request for comment.

Pruitt has previously said a Wall Street Journal piece written by Koonin in April 2017 calling for a similar EPA review of climate science was his inspiration for instigating the "red team" review.

The emails, however, show that Koonin and his allies began wooing Pruitt even before that. In an email more than a week before Koonin's WSJ piece ran, Dan Yergin, the Pulitzer-winning oil historian and vice chairman of IHS Markit who joined a board advising President Donald Trump, introduced Koonin by email to Jackson.

Pruitt and Koonin met April 28, and the emails show Koonin was closely involved in the process afterward.

Koonin sent EPA a "prospectus" outlining the exercise, and though much of it was redacted by EPA before its release, Koonin suggested timing the red team review to the National Climate Assessment, which was due out six months later. Doing so would "ensure that certainties and uncertainties in projections of future climates are accurately presented to the public and decision makers," he wrote.

A revised version of the prospectus was circulated by EPA to White House officials in July after news of Pruitt's plans had leaked.

"There are a lot of press reports about EPA's planning on this. None of it is being run by us. This seems to be getting out of control," wrote Michael Catanzaro, a top energy adviser to Trump who has since left the administration, a few days after receiving Koonin's proposal.

In late June, Liz Bowman, then a top EPA spokeswoman, questioned whether the exercise could be announced as early as July 5 or 6. But it wasn't until November that top Pruitt staffers begin circulating a draft press release on the announcement.

A draft of the announcement on Nov. 5 inspired a [lengthy email chain](#), which EPA redacted, that involved direct messages from Trump chief of staff John Kelly, strategic communications director Mercedes Schlapp, and former White House staff secretary Rob Porter.

Pruitt was [touting](#) his plans to launch the red team review as late as December. Emails early in that month [indicate](#) the agency's air chief, Bill Wehrum, would make the announcement on Dec. 12 while Pruitt traveled in Morocco. One message that included Jackson had the subject line of "Red Team/Blue Team Announcement Planned for Tuesday, Dec. 12."

The [New York Times](#) reported in March that Kelly and other top officials stopped the announcement in the fall, and Kelly's deputy Rick Dearborn met with Pruitt in mid-December to declare the plan dead.

To view online [click here](#).

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Sources: EPA, DOE, USDA to talk biofuels Thursday [Back](#)

By Eric Wolff | 05/22/2018 05:09 PM EDT

Top deputies for EPA and the departments of Energy and Agriculture will meet on Thursday to hash out changes to the Renewable Fuel Standard, sources in the ethanol industry and the Senate told POLITICO today.

EPA Deputy Administrator Andrew Wheeler, DOE Deputy Secretary Dan Brouillette and USDA Deputy Secretary Stephen Censky will try to resolve long-standing tensions over the program. None of the agencies responded to requests for comment.

The group will pick up the items left unfinished from the meeting with President Donald Trump last month, including whether to allow biofuel exports to receive Renewable Identification Numbers, and whether to reallocate the gallons small refiners were exempted from blending under the economic hardship waivers granted by EPA.

A refining industry source says that USDA has been pressing EPA to move quickly on allowing year-round sales of 15 percent ethanol fuel, and that USDA "is looking to jam EPA" on reallocating the gallons in the 2019 blending mandate.

"They are probably trying to take advantage of what they imagine to be Pruitt's weakened status these days," the source said. "Not sure it will work."

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Subject: Morning Energy: Second 'minibus' pulls in — The great California divide — Trump-Putin meeting's energy potential

By Kelsey Tamborrino | 07/16/2018 05:42 AM EDT

With help from Daniel Lippman

SECOND 'MINIBUS' PULLS IN: With negotiations still stalled on the first fiscal 2019 "minibus" funding bill, the House Rules Committee will meet today on the second minibuss, which means debate on a host of thorny, energy-related issues. The measure, H.R. 6147 (115), combines funding for Interior-Environment with Financial Services, and while not as controversial as some of the other spending bills the House is slated to take up, it'll offer lawmakers ample opportunity to zero in on the indiscretions of former EPA Administrator Scott Pruitt, as well as address issues like what coastlines should be exempt from offshore drilling.

House Republican leaders are aiming to keep any fighting off the floor by curtailing the amendments to the two-bill package, Pro's Lauren Aratani reports. And because the Rules panel will likely seek a "structured" rule, the most controversial tweaks are expected to be cast aside. Still, Democrats will use debate over the spending bill to rehash Pruitt's missteps, Lauren reports, and pursue continued investigation into allegations that he misused taxpayer money.

The panel begins work today on more than 160 proposed amendments submitted last week to the Interior-Environment portion, including one to ensure EPA's inspector general will continue its investigations into Pruitt, and another that would bar funds from being used to install a private phone booth in or near the office of the Interior secretary. Another proposed tweak would require EPA to publicly disclose all funds used for top-level travel, within 10 days of each trip — a clear call to Pruitt's tenure at EPA.

ME is also keeping an eye on an amendment from Democratic Rep. Paul Tonko that would bar EPA from using money to adopt a rule that would keep the agency from using research without publicly disclosed data, as Lauren highlights. Dozens of lawmakers from both parties have also sponsored amendments that would bar federal funds from being used to support offshore drilling in various locations off the nation's coasts, as the White House seeks to expand exploration for oil and gas. Read more here.

GOOD MONDAY MORNING! I'm your host, Kelsey Tamborrino. The League of Conservation Voters' Gene Karpinski was first to identify Hawaii as the state that does not have a straight line forming part of its border. Today's question comes from Bracewell's Frank Maisano in honor of this week's All-Star game: Which presidents threw out the first pitch at an All-Star game in D.C.? Send your tips, energy gossip and comments to ktamborrino@politico.com, or follow us on Twitter [@kelseytam](https://twitter.com/kelseytam), [@Morning_Energy](https://twitter.com/Morning_Energy) and [@POLITICOPro](https://twitter.com/POLITICOPro).

JUST RELEASED: View the latest POLITICO/AARP poll to better understand Arizona voters over 50, a voting bloc poised to shape the midterm election outcome. Get up to speed on priority issues for Hispanic voters age 50+, who will help determine whether Arizona turns blue or stays red.

What role will Hispanic voters over 50 play in Arizona this Fall? Read POLITICO Magazine's new series "The Deciders" which focuses on this powerful voting bloc that could be the determining factor in turning Arizona blue.

THE GREAT CALIFORNIA DIVIDE: California Democrats rebuked Sen. Dianne Feinstein this weekend and endorsed her progressive opponent, state Sen. Kevin de León, who has been embraced by climate hawks among other liberal activists in his long-shot bid to keep Feinstein from winning a fifth term. The vote offers a glimpse into the dynamics in the state Democratic party, POLITICO's Carla Marinucci and Jeremy B. White report, where infighting between moderate and progressive factions has taken over.

The decision to endorse de León delivers a much-needed lifeline to the struggling campaign of the state Senate president pro tem, who came in second in California's jungle primary earlier this year to earn a spot against Feinstein in November. De León has made climate and environmental policy keystone issues and has been endorsed by Climate Hawks Vote, 350 Action, 350.org's Bill McKibben and billionaire environmentalist Tom Steyer. The nod from the state party ensures his campaign valuable voter outreach information and the potential for an infusion of federal campaign cash, Carla and Jeremy report.

Feinstein on Saturday downplayed the symbolism of the de León endorsement. "This was not a close primary election, and there were 32 people on the ballot," she said of the June vote. "I take nothing for granted ... we work hard." For his part, de León told POLITICO on Saturday that he thinks "it's always good to have younger generations rise up and assume positions of leadership."

Still, the vote draws attention to the deepening divide between in state's Democratic party and what action Feinstein is taking to lessen the pressure. Last week, the California Democrat told E&E News she supports a ban on fracking in the state, something she had previously stopped short of saying. As the ranking Democrat on the Senate Judiciary Committee, Feinstein has also touted her importance in the effort to oppose Brett Kavanaugh's nomination to the Supreme Court — another issue closely watched by environmentalists and industry alike.

Climate Hawks Vote Founder R.L. Miller said in a statement the group appreciated Feinstein's "new position on fracking," but highlighted de León's potential in California. "Kevin de Leon has shown vision, courage, and tenacity," Miller said. "He's an extraordinary leader for extraordinary times, moving California toward a bright future with bills like his SB 100 (100 percent clean energy by 2045) and SB 54, the California Values Act (sanctuary state) that was just upheld in court." Read more.

TRUMP-PUTIN MEETING'S ENERGY POTENTIAL: The president is in Helsinki today for his highly anticipated meeting with Russian President Vladimir Putin. While the two have met before on the sidelines of other events, today's confab will be the first meeting between the two presidents, Jon Huntsman, the U.S. ambassador to Russia, said Sunday. Unlike official presidential summits, the meeting in Helsinki will not feature a joint statement or any predetermined policy results. "You don't know what's going to come out of this meeting, but what it will be is the first opportunity for these presidents to actually sit down across a table, alone and then with their teams, to talk about everything from meddling in the election, to areas where we have some shared interests," Huntsman said.

Of course, President Donald Trump made news last week on the Russian energy front at a breakfast meeting with NATO chief Jens Stoltenberg where he said Germany is "totally controlled by Russia" and specifically called out the controversial Nord Stream 2 gas pipeline project. Energy Secretary Rick Perry said last week Trump thinks the "Nord Stream 2 is not in the European Union's best interest, and my bet is he'll be more than happy to tell President Putin that straight to his face," Axios reported. The State Department told Reuters last week that Western firms invested in the pipeline were at risk of sanctions, although Perry told reporters that sanctions would be "kind of the last place we would like to land" but said they were an option.

WHERE'S WHEELER? Marking another departure from the Pruitt era at EPA, the agency gave a heads-up that acting Administrator Andrew Wheeler will be in Canonsburg, Pa., this afternoon. Wheeler will be in the area to attend a meeting of the Washington County Chamber of Commerce, alongside Region 3 Administrator Cosmo Servidio.

ON TAP THIS WEEK: The Rules Committee will meet Tuesday to consider a resolution, H. Con. Res. 119 (115), that calls a carbon tax "detrimental" to the U.S. economy and "not in the best interest" of the country. The meeting tees up a likely vote later this week on the non-binding resolution, following a recent push by conservative groups to take up the measure. The legislation is led by Majority Whip Steve Scalise, Pro's Anthony Adragna reports, and could offer an interesting vote for Climate Solutions Caucus members, who have yet to weigh in on specific solutions for addressing climate change.

EPA ETHICS OFFICIAL DEFENDS FOIA PROCESS: Kevin Minoli, EPA's principal deputy general counsel, replied last night to the top Democrat on the House Oversight Committee, who on Friday pressed for a subpoena over the agency's handling of FOIA requests. In his letter, Minoli offers to brief Congress on the agency's FOIA Expert Assistance Team that was created in 2013 to "make the FOIA process at EPA better." While Minoli's letter acknowledges "EPA's FOIA program is far from perfect," he highlights the work of the FEAT and other offices, writing that they have "laid a foundation from which EPA's FOIA program could be a model of what a FOIA program should be, not an example of what a FOIA program should not be." Read the letter.

MAIL CALL! Thirteen attorneys general on Friday demanded in a letter to Wheeler that his agency withdraw an order to manufacturers of glider trucks that the agency will not enforce a strict 300-unit production cap for 2018 and 2019, which was issued by Pruitt on his last day. The AGs call the move "clearly unlawful" and a violation of EPA's policy against "no action assurances." In a statement, New York AG Barbara Underwood said Pruitt gave "a parting gift to polluters on his very last day as EPA Administrator — bolstering the Trump Administration's legacy of siding with corporations over people." New York, along with California, Connecticut, Illinois, Maine, Maryland, Massachusetts, New Jersey, North Carolina, Oregon, Pennsylvania, Vermont and Washington, signed onto the letter, as did the Pennsylvania Department of Environmental Protection and the California Air Resources Board.

— **GOP Reps. Greg Walden, Gregg Harper and John Shimkus** wrote to Wheeler on Friday, seeking additional information on EPA's process for reviewing grant applications. Read the letter here.

CLEARPATH ACTION BACKS UPTON: Jay Faison's ClearPath Action Fund will announce its endorsement of Michigan Rep. Fred Upton today. The clean energy advocacy group will begin running digital ads backing the Michigan Republican as part of a six-figure effort for his reelection. Upton, who is the chairman of Energy and Commerce's Energy Subcommittee, "has an accomplished record of shepherding many bills hitting every facet of clean energy innovation," Faison said in a statement.

MOVERS, SHAKERS: Matthew Mailloux, managing director at the American Conservation Coalition, joined the New Hampshire Office of Strategic Initiatives as Gov. Chris Sununu's energy adviser.

— **Katie Valentine** is now a media relations associate at the Conservation Fund. She is the former deputy climate editor at ThinkProgress.

QUICK HITS

— "California is preparing for extreme weather. It's time to plant some trees," The New York Times.

— "Energy execs set fundraiser for Fla. Gov. Rick Scott," E&E News.

— "Widespread unrest erupts in southern Iraq amid acute shortages of water, electricity," The Washington Post.

— "Fill 'er up, or plug it in? Oil, utilities fight to fuel vehicles of the future," The Wall Street Journal.

— "Pence family's failed gas stations cost taxpayers \$20M+," The Associated Press.

— "National parks could get much-needed money for upkeep through bipartisan bill," [ABC News](#).

HAPPENING THIS WEEK

MONDAY

Noon — The National Iranian American Council [briefing](#) on "Joint Comprehensive Plan of Action (JCPOA) 2.0: Iran, Europe, Trump, and the Future of the Iran Deal," SVC-210.

2 p.m. — The Environmental and Energy Study Institute holds a [briefing](#) on safely decommissioning nuclear power plants, HC-8.

4 p.m. — The Institute of World Politics lecture on "Energy Trends: Nuclear and Non-nuclear," 1521 16th St. NW.

5 p.m. — House Rules Committee meets to formulate a rule on [H.R. 6147 \(115\)](#), the "Interior, Environment, Financial Services, and General Government Appropriations Act, 2019," H-313.

6:45 p.m. — Smithsonian Associates [discussion](#) on "Making Sense of Climate Change," 1100 Jefferson Drive SW.

TUESDAY

8:30 a.m. — POLITICO's [Pro Summit](#), 999 Ninth St. NW.

8:45 a.m. — The United States Institute of Peace [discussion](#) on "Wildlife Poaching and Trafficking: Combating a Vital Source of Terrorism," 2301 Constitution Ave. NW.

9:45 a.m. — Senate Environment and Public Works Committee [hearing](#) on "The Endangered Species Act Amendments of 2018," 406 Dirksen.

10 a.m. — House Natural Resources Federal Lands Subcommittee [hearing](#) on federal land bills, 1324 Longworth.

10 a.m. — The Atlantic Council discussion on "Ready and Resilient," focusing on disaster preparedness, 1030 15th St. NW.

10 a.m. — House Oversight Interior, Energy and Environment Subcommittee [hearing](#) on "Tribal Energy Resources: Reducing Barriers to Opportunity," 2247 Rayburn.

10 a.m. — House Science Energy and Environment Subcommittees [joint hearing](#) on "The Future of Fossil: Energy Technologies Leading the Way," 2318 Rayburn.

10 a.m. — Senate Energy and Natural Resources Committee [hearing](#) on the Interior Department's final list of critical minerals, 366 Dirksen.

1 p.m. — EPA [meeting](#) on pesticide health and safety, Rosslyn, Va.

WEDNESDAY

9 a.m. — EPA public hearing on "Proposed Renewable Fuel Standards for 2019, and the Biomass-Based Diesel Volume for 2020," Ypsilanti, Mich.

9 a.m. — House Energy and Commerce Energy Subcommittee hearing on "Powering America: The Role of Energy Storage in the Nation's Electricity System," 2322 Rayburn.

10 a.m. — Senate Commerce Committee hearing on "SHARKS! — Innovations in Shark Research and Technology," 253 Russell.

10 a.m. — House Transportation Economic Development, Public Buildings and Emergency Management Subcommittee hearing on "Are We Ready? Recovering from 2017 Disasters and Preparing for the 2018 Hurricane Season," 2167 Rayburn.

10:30 a.m. — The Center for Strategic and International Studies discussion on "Digitalization in the Industrial Sector: Implications for Energy, Technology, and Policy," 1616 Rhode Island Ave. NW.

2:30 p.m. — Senate Indian Affairs Committee hearing on three bills, including S. 3168 (115), to amend the Omnibus Public Land Management Act of 2009 to make Reclamation Water Settlements Fund permanent, 628 Dirksen.

1 p.m. — The Atlantic Council discussion on "Oil and Iran: How Renewed Sanctions Will Affect Iran and World Markets," 1030 15th St. NW.

THURSDAY

9 a.m. — The Atlantic Council discussion on "Finnish Perspectives on Energy Security in Europe," 1030 15th St. NW.

10 a.m. — Senate Environment and Public Works Committee hearing on nomination of Mary Bridget Neumayr to be a member of the Council on Environmental Quality, 406 Dirksen.

12 p.m. — The Woodrow Wilson Center's China Environment Forum discussion on "Aiming Low: Wielding New Low-carbon Tools to Help Chinese and U.S. Cities Peak Carbon," 1300 Pennsylvania Ave. NW.

FRIDAY

10 a.m. — The Middle East Policy Council briefing on "Withdrawal from the Joint Comprehensive Plan of Action (JCPOA): Options for the Trump Administration," 562 Dirksen.

CORRECTION: The July 13 edition of Morning Energy incorrectly attributed a statement related to Yucca Mountain. It came from Rep. Dina Titus.

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Stories from POLITICO Pro

Lawmakers battle over busting budget to pay for veterans health care [Back](#)

Spooking House conservatives and risking a presidential veto, Senate spending leaders are proposing to blow past budget limits to fund a popular private health care program for military veterans.

Minutes before they were to meet on Thursday, congressional appropriators canceled their first public conference talk that had been intended to settle differences in three of the 12 annual spending bills President Donald Trump must sign by Sept. 30 to avert a government shutdown. One of the three provides for spending on veterans.

The 11th-hour cancellation came amid a cross-Congress showdown over how to pay for a program that allows some veterans to spend taxpayer money on private doctors and hospitals. The question is whether to break budget limits, known as caps, to come up with the cash.

"They canceled the meeting. But it's all about the VA," Senate Appropriations Chairman Richard Shelby (R-Ala.) told reporters Thursday, apparently referring to GOP leaders. "Do we break the caps? Do we prorate everything else? Do we cut other veterans programs to fund this? We got a shortfall, and we got to work it out. And we're not there yet."

Congress needs to approve \$1.6 billion for fiscal 2019, plus nearly \$18.2 billion more in the two years thereafter, to fully fund what has been authorized for the VA Choice program and its successor within the new VA Mission Act.

The suggestion that Congress "break the caps" set by the budget deal, H.R. 1892 (115), struck this year is already irking House conservatives, who would be loath to vote on any final spending bill that goes above those limits — even in the face of an impending shutdown this fall. The idea likely would not play well, either, in talks with a White House that was already seen as surprisingly conciliatory in signing that grand budget deal.

Money for veterans programs comes with special political protections, however, since policymakers want to avoid the uncomfortable optics of fighting funding for those who have served in the military. And top Democrats are already trying to use that perception to their advantage.

"You don't go to a veterans assembly and say 'We're not going to help the veterans,'" Sen. Patrick Leahy (D-Vt.), ranking Democrat on the Senate Appropriations Committee, said Thursday.

The administration has been heavily involved in discussions for weeks. The White House budget office has argued that any extra VA money would be akin to breaking this year's budget deal.

"It's obviously critically important to give veterans the resources they need, and we think that can happen inside the existing caps," according to a senior administration official.

Leahy planned to offer an amendment during the conference meeting that would have added funding for the veterans health care program. The meeting was then postponed, he said, because negotiators didn't want to go on record against doling out that cash. A GOP aide said that Republicans weren't expecting any amendments in Thursday's meeting, the first time negotiators would meet face-to-face.

"A lot of the people were I think concerned, I'm told, that they'd have to vote today," Leahy said.

The issue isn't as simple as supporting or opposing money for VA Choice, though.

The funding problem began last month, when Congress enacted a bill, S. 2372 (115), that created a budget gap by switching the program's community care services from the mandatory side of the ledger to the discretionary side.

Democrats — as well as some Republican appropriators — are in favor of exempting the new money from Congress' strict spending caps. But many Republicans, including White House officials, say the cash should come out of the government's already-determined budget, even if that means trimming the topline for other programs.

That means Congress would need to divert hundreds of millions of dollars from other programs into the veterans health care program, which until this year, was funded automatically.

For their part, House lawmakers have already agreed to pay for part of the program without blowing through budget limits. The veterans spending bill, H.R. 5786 (115), that the House passed last month as part of a three-bill minibus would fully fund the program for fiscal 2019.

In a statement to POLITICO on Thursday, House Speaker Paul Ryan called out Leahy by name, saying the Senate spending bill "neglected" to fund the VA program despite the House's action.

"This attack is the height of hypocrisy," said a senior House GOP aide. "Democrats are scrambling to cover up the fact they have not kept their promises as the House did."

House GOP leaders have repeatedly refused to adjust Congress' current spending cap to pay for the additional discretionary spending on the veterans program. Instead, Republicans agreed to pitch in that \$1.1 billion by reshuffling existing money from the House's funding bill for the Department of Homeland Security.

Their Democratic counterparts, led by Rep. Nita Lowey (D-N.Y.), have protested the move, arguing that it will shortchange other domestic programs. Lowey's own caps-busting amendment was rejected by the spending committee.

The fight over the budget caps has been long simmering and nearly broke out into the open earlier this summer.

Shelby had long backed Leahy's amendment to surpass the caps, but the GOP chairman was forced to shelve his support for bringing it to the floor at the last minute after several conservatives raised issues with it, according to Senate aides.

Shelby even declared on the Senate floor in May that he would support a plan that exceeds the caps, warning that Congress' newest version of the veterans law authorized large sums of spending "without providing any way to pay for it under the spending caps."

"Fortunately, there is existing law and ample precedent for adjusting spending caps to reflect changes resulting from a shift in mandatory spending to discretionary spending," Shelby said on the floor.

Anthony Adragna and John Bresnahan contributed to this report.

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Pruitt scales back EPA's use of science [Back](#)

By Emily Holden and Annie Snider | 04/24/2018 03:28 PM EDT

Environmental Protection Agency chief Scott Pruitt announced Tuesday he would seek to bar the agency from relying on studies that don't publicly disclose all their data, a major policy change that has long been sought by conservatives that will sharply reduce the research the agency can rely on when crafting new regulations.

The unveiling of the proposed rule delivers a win to Republicans like House Science Chairman Lamar Smith (R-Texas), who unsuccessfully pushed legislation to impose the same type of change. The move also demonstrates Pruitt's persistence in pursuing President Donald Trump's anti-regulation agenda just two days before the embattled EPA chief is due to face fierce questioning from lawmakers about his hefty spending, expanded security detail and cheap condominium rental from the wife of an energy lobbyist.

At an invitation-only meeting at EPA headquarters with Smith, Sen. Mike Rounds (R-S.D.) and other supporters of the policy, Pruitt said the proposed rule was critical in ensuring that the agency was transparent about how it is making decisions to justify costly new regulations. It is the latest step Pruitt has taken to fundamentally shift the agency's approach to science.

"It is a codification of an approach that says as we do our business at the agency the science that we use is going to be transparent, it's going to be reproduceable, it's going to be able to be analyzed by those in the marketplace. And those who watch what we do can make informed decisions about whether we've drawn the proper conclusions or not," Pruitt said.

Text of the proposed rule was not immediately available.

The proposal, based on legislation pushed by Smith, is intensely controversial, and scientists and public health groups say it will prevent federal regulators from enacting health and safety protections. Nearly 1,000 scientists, including former EPA career staffers, signed a [letter](#) opposing the policy sent by the Union of Concerned Scientists to Pruitt on Monday.

Their primary concern was that many of the country's bedrock air and water quality regulations are based on research that cannot disclose raw data because it includes the personal health information.

But industry has its own version of the same problem. EPA often relies on industry studies that are considered by companies to be confidential business information when determining whether new pesticides and toxic chemicals are safe to use. Internal EPA emails obtained under the Freedom of Information Act show that EPA political officials, including Nancy Beck, who became the chief of the agency's chemical safety office last year after working for years at a chemical industry lobbying group, worried that the new policy would limit the agency's ability to consider industry data or would force companies to make this proprietary data public.

"We will need to thread this one real tight!" Richard Yamada, political official who led work on the new policy wrote to Beck after she raised the concerns.

It was not immediately clear if the new proposed rule included measures to address those concerns.

Rush Holt, CEO of the American Association for the Advancement of Science, said Pruitt's changes could keep the agency from revising public health regulations as problems arise or new data comes to light.

"On the surface it sounds so innocuous or even beneficial. What could be wrong with transparency? Well it's clear to me that this is not based on an effort to be transparent. It is rather based on an effort to be just the opposite," he said.

"EPA is particularly important because when science is misused, people die," he added.

Pruitt has been discussing the new scientific policy publicly for weeks, but it only went to the White House for interagency review last week. Such swift review is very rare for the Office of Management and Budget, which often takes months to vet a new policy. At least one group, the Environmental Defense Fund, has requested a meeting with OMB officials to discuss the rule, but OMB's website shows that no meetings have been scheduled with interested groups.

Many public health studies can't be replicated without exposing people to contaminants, and environmental disasters such as the Deepwater Horizon oil spill cannot be recreated, the group said, raising intellectual property, proprietary and privacy concerns.

Pruitt's predecessor Gina McCarthy, and her air chief Janet McCabe, in an op-ed in The New York Times in March said concerns about studies are dealt with through the existing peer-review process, which ensures scientific integrity.

"[Pruitt] and some conservative members of Congress are setting up a nonexistent problem in order to prevent the E.P.A. from using the best available science," they said.

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Net neutrality, offshore drilling, tax-free churches: What's dredged up in the latest spending debate [Back](#)

By Lauren Aratani | 07/16/2018 05:03 AM EDT

House leaders will bring two more spending bills to the floor this week, still aiming to pass all 12 of the fiscal 2019 measures before federal cash runs out on Sept. 30. Albeit a softball compared to the more controversy-packed funding bills, this second "minibus" provides ample opportunity for political potshots and fiery policy debate.

House Republican leaders are expected to keep much of that fighting off the floor by curtailing amendments to the two-bill package, H.R. 6147 (115), which includes funding for the Interior Department, EPA, IRS, SEC and General Services Administration — among several other agencies — as well as federal courts and Washington, D.C.

But issues such as federal jobs for young immigrants, financial transactions with marijuana vendors and the indiscretions of former EPA Administrator Scott Pruitt are sure to come up as GOP leaders prep for floor debate.

The House Rules Committee is set to meet Monday night to wade through the more than 240 proposed amendments to the Financial Services, H.R. 6258 (115), and Interior-Environment titles. Because the panel will likely seek a "structured" rule, the most controversial tweaks are expected to be cast aside before the legislative duo is called up for floor debate. What to watch:

Sticking it to Scott Pruitt

Though Pruitt is EPA administrator no more, Democrats will use this week's spending bill to rehash his missteps and pursue continued investigation into allegations that he misused taxpayer money. One proposed amendment would withhold funds for finalizing any EPA rules Pruitt initiated, until the agency's inspector general completes its investigations into the former administrator's spending.

Another proposed tweak would require the EPA to publicly disclose all funds used for top-level travel, within 10 days of each trip.

The bill already includes a committee-approved, tongue-in-cheek provision that would bar the EPA's chief from purchasing fountain pens that cost more than \$50, following reports that Pruitt spent \$3,230 on especially pricey writing tools. And an amendment has been proposed that would essentially bar the Interior secretary from installing a private phone booth, after Pruitt spent \$43,000 on a soundproof stall.

Supporting the marijuana economy

More than 20 co-sponsors — from both sides of the aisle — have piled on in support of an amendment that would prevent financial institutions from being penalized for serving legal marijuana businesses.

Disputing research requirements

Rep. Paul Tonko (D-N.Y.) has drafted an amendment that would bar the EPA from using money to adopt a rule that would keep the agency from using research without publicly disclosed data. Conservatives argue that the rule brings transparency to scientific research, but many scientists contend that the stipulation would allow the agency, under the guise of transparency, to pick and choose which research it will use for regulations.

Protecting employment for DREAMers

An amendment by Rep. Pete Aguilar (D-Calif.), and another by Rep. Darren Michael Soto (D-Fla.), would ensure immigrants protected under the Deferred Action for Childhood Arrivals program are eligible for federal employment. Although some moderate Republicans have voiced support for that effort, chances of action have grown slim after House Republicans failed last month to bring GOP immigration proposals to the floor.

Stopping offshore drilling

Dozens of lawmakers from both parties have sponsored amendments that would bar federal funds from being used to support offshore drilling in various locations off the nation's coasts, as the White House seeks to expand exploration for oil and gas.

Curtailing church donations

Several Democrats have endorsed an amendment by Rep. Debbie Wasserman Schultz (D-Fla.), and another by Rep. John Lewis (D-Ga.), that would seek to continue enforcement of the current prohibition on tax-exempt nonprofit organizations endorsing or donating to political candidates. House Republicans have included language in the Financial Services title that would basically ban the IRS from rooting out churches that break that rule.

Reviving net neutrality

Democrats have proposed an amendment that would restore the FCC's net neutrality rules, after the commission's repeal took effect this month.

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Billionaire Steyer endorses de León over Feinstein [Back](#)

By David Siders | 04/18/2018 11:53 AM EDT

LOS ANGELES — Tom Steyer, the billionaire Democratic mega-donor, is endorsing Kevin de León in his longshot bid to unseat California Sen. Dianne Feinstein, the latest rebuke of Feinstein from her party's increasingly agitated left flank.

Steyer's endorsement - if followed by outside spending - could improve de León's standing in a race that he has so far failed to make competitive. Feinstein, a centrist Democrat, holds a massive advantage over the progressive state senator in both fundraising and public opinion polls.

"I have known Sen. de León for years and have fought alongside him on immigrant rights, expanding health care, and climate change," Steyer said in a prepared statement. "Our work together on behalf of all Californians has assured me that he would be a champion of California's priorities and values. Kevin de León has proven himself to be the best of the next generation, and I am proud to support him for U.S. Senate."

The endorsement was not unexpected. Steyer once considered challenging Feinstein himself, and he has appeared on cable television previously as a near-surrogate for de León. Earlier this year, Steyer described the contest on MSNBC as "incrementalism versus visionary thinking in the Democratic Party."

Lauded by many young, progressive activists in California, de León in February deprived Feinstein of her own state Democratic Party's endorsement, outpolling her by 17 percentage points in the delegate vote.

But the state senator remains largely unknown to the broader electorate in California. Feinstein leads him 42 percent to 16 percent among likely voters, according to a Public Policy Institute of California poll last month.

The race between Feinstein and de León is unlikely to be decided before November. With no prominent Republican running in the state's top-two primary in June, Feinstein and de León are both expected to advance to the general election.

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Feinstein: I'm equipped to lead anti-Kavanaugh brigade [Back](#)

By Carla Marinucci | 07/14/2018 01:39 PM EDT

OAKLAND, Calif. — Sen. Dianne Feinstein, the ranking Democrat on the Senate Judiciary Committee, said Saturday that the vetting process for the confirmation of Brett Kavanaugh to the Supreme Court will be "incredibly difficult," and that her staff is reading nearly 1 million documents that she said could give red-state Democrats reason to oppose his nomination.

Feinstein made her toughest comments to date about opposing Kavanaugh's nomination while addressing a "Unity Breakfast" of her supporters at a California Democratic Party executive Committee meeting in Oakland. State party activists will decide later Saturday on an endorsement in Feinstein's race against progressive state Sen. Kevin de León.

Reminding supporters of her seniority in the Senate and her leadership position on the Judiciary Committee, Feinstein said she has helped write the party's modern-day battle plan for a Supreme Court confirmation. She said that she has sat in on more than 10 confirmation hearings for Supreme Court justices since she was elected in 1992. But Kavanaugh's nomination, Feinstein said, "is beyond, [it is] different from all of them. ... Because this man will be the deciding vote on most things we hold most dear."

"This president has said he would appoint the person that would take down Roe [v.Wade] ... and I take him at his word," she said.

Feinstein told Democrats that now, as the nomination process goes forward, "we have a massive effort going ... We collect information from everywhere," including the Bush Presidential archives.

"The vetting process of this justice is going to be incredibly difficult... it's estimated that 1 million pieces of paper that our staff is going to need to go through prior to a hearing," she said. "I can tell you this: That it is really key and critical that Democrats, including those in difficult states, get the support of our party so that they can do the right thing in this vote..."

Feinstein noted that "we have five Democratic [senators up for reelection] from states that Donald Trump won [by large margins], and this makes this vote difficult for them," she said. "For me, it's not difficult at all. But I'm the lead Democrat on the committee, and we will put together a kind of message, I hope, for the American people which will enable those Democrats to vote along with us."

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Feinstein gets progressive smackdown [Back](#)

By Carla Marinucci and Jeremy B. White | 07/15/2018 08:01 AM EDT

California Democrats, torn by infighting between moderate and progressive factions, rebuked Sen. Dianne Feinstein's bid for a fifth term — for the second time this year.

The state party's executive committee voted Saturday to endorse progressive state Sen. Kevin de León in the general election, signaling what many fear will be a divisive Democrat-on-Democrat battle going toward to the fall in California, where the party hoped to put the focus on a host of crucial congressional races that could determine control of the House of Representatives.

The endorsement delivers a lifeline to de León's struggling campaign — and the party's imprimatur, which is accompanied by valuable access to slate cards, email lists and voter outreach machinery that will allow him to reach an estimated 2 million Democratic voters. And he could also get an infusion of federal campaign cash shared with the party, party officials said.

Feinstein, who was also snubbed in February at the annual state convention where party activists declined to endorse her bid for reelection, had pleaded for party unity prior to Saturday's vote. She asked the executive committee of the California Democrats, the nation's largest state Democratic Party, to choose "no endorsement" — what many saw as a strategic defense to head off an aggressive challenge for the party's endorsement by de León.

And in an effort to frame the endorsement clash in the context of the national political landscape, the senator's team circulated a "no-endorsement" plea signed by a half-dozen Democrats whose campaigns in contested California districts are a linchpin of the national party's strategy to retake the House.

The final vote gave de León 217 votes, or 65 percent — beating the 60 percent required threshold — versus 94 votes, or 28 percent, for the "no endorsement" urged by Feinstein, and 22 votes, or 7 percent, for the senator herself.

The Senate contest pits two contrasting pols: Feinstein — at 85, the oldest member of the Senate — and De León, 51, a former state Senate president pro tem and son of a single immigrant mother. She is a centrist long at odds with her state party's leftist activist grass roots, while he is a progressive who has called for new "bold leadership" from Democrats unafraid of confronting President Donald Trump head-on.

"I think it's always good to have younger generations rise up and assume positions of leadership," de León told POLITICO on Saturday.

His fight, he said, was not about "a gender issue ... it's not an age issue." Pointing to progressive icons Sens. Elizabeth Warren and Bernie Sanders, de León said, "it's about the right values."

The weekend's nail-biter over the party's Senate general election endorsement underscored the depths of the bitter divisions still lingering from the 2016 battles between more progressive backers of Sanders' presidential bid and the more centrist faction of Hillary Clinton supporters in the nation's most populous state.

Although the endorsement involved just a small circle of the most activist voters — a 313-member executive committee in a party that represents 8.4 million voters — many Democratic insiders said it carried potentially dangerous implications for the party beyond the state's borders.

Not only did the internal battle threaten to extend the rift among Democrats in California — a traditional mother lode of campaign contributions — many Democratic leaders, including former state chair Art Torres, worried about the prospect of a circular firing squad.

"We have the opportunity to change the nature and the control of the House," said Torres, a Feinstein backer, adding that a de León endorsement threatened that Democrats "won't have enough federal money to put into those congressional campaigns."

"Federal money is the hardest to raise," he said, "and if the party is going to spend money on a U.S. Senate campaign — why do it?"

For de León's campaign, snagging the party's endorsement was widely seen as his last shot at making a serious run at Feinstein. California's senior senator pummeled him by 32 percentage points in the June all-party primary, winning more than 70 percent of the Democratic vote in a contest in which 32 candidates competed.

She has also dramatically outraised him: Feinstein reported \$10.3 million cash on hand at the end of March, compared with \$672,330 for de León, according to campaign finance reports.

But de León has gained traction among the party's far left as the author of the controversial SB54, the California Values Act, also known as the "sanctuary state" law. The legislation, aimed at curtailing the cooperation of local law enforcement with federal immigration officials, was recently largely upheld by a federal judge's ruling.

De Leon has also called for abolishing the Immigration and Customs Enforcement agency and impeaching Trump — a position that is shared by his friend, wealthy Democratic activist Tom Steyer.

In making the rounds this weekend in caucus meetings at Oakland's Marriott Hotel, Feinstein repeatedly reminded Democrats of her seniority in Washington, her legislative leadership on issues like the assault weapons ban, and of what she vowed will be her pivotal role as the ranking Democrat on the Senate Judiciary Committee — which will weigh Trump's nomination of Brett Kavanaugh to the Supreme Court.

Feinstein on Saturday downplayed the symbolism of a de León endorsement and her difficulty with the party's grass roots, insisting it would have no effect on her campaign. "This was not a close primary election, and there were 32 people on the ballot," she said of the June contest. "I take nothing for granted ... we work hard."

"I think people understand I'm now ranking on Judiciary, going into one of the biggest moments that this party has — the decisive Supreme Court justice," she said. "This is a very big deal because this affects the life of every American going forward. So who that Supreme Court seat goes to is all-important."

Asked why her decades of accomplishments in public office haven't earned her an easy endorsement from her party in her bid this year, Feinstein jokingly shrugged: "Well, that thought occurred to me — but I wiped it out of my mind completely."

In a measure of the contest's intensity, party members said they were inundated with appeals from both camps in recent days, and Feinstein's call for neutrality irked some pro-de León inhabitants of the party's progressive wing.

"Delegates are very angry at the constant barrage of emails we've gotten from people who have endorsed Dianne Feinstein telling us not to endorse," said R.L. Miller, a prominent environmental activist who was wearing one of a profusion of "United4KDL" stickers.

In caucus meetings and in hallways where he made the rounds, de León argued that Trump's recent actions on immigrant family separations, the Supreme Court and environmental policy demanded unfailingly tough action and confrontation from Democrats in Washington. And — without ever naming Feinstein — he repeatedly drew a sharp contrast with her centrist approach and more conciliatory style on Capitol Hill.

"We need bold leadership in Washington today," de León told a meeting of the Women's Caucus. "Brett Kavanaugh is in a position to take away the rights of every American. ... That's why we have to shut the Senate down — and never allow this individual to come to the Senate floor," he said to cheers. "This is where you need the courage of your convictions — to not be on the sidelines, but on the front lines because what's at stake is a generation of power."

Steyer also drew cheers from the Democratic crowd in Oakland when he delivered a similar message to Democratic lawmakers on Capitol Hill: "If you don't have what it takes to lead now, when we are totally under the gun, then don't come asking for support later," he said. "Lead, follow or get out of the way."

Feinstein has appeared to respond to progressive pressures as the campaign has unfolded. She moved left on a pair of issues where her moderation has long stood out in California: she endorsed legalizing marijuana, reversing her longtime opposition, and renounced her prior embrace of the death penalty.

Bill Carrick, Feinstein's campaign strategist, downplayed the importance of this weekend's vote, saying that the opposition of the party's far left to Feinstein is "not a surprise; we've been through this in the past."

Carrick noted that de León "got the lowest total of any candidate" ever in a top-two primary race, while "she won every county, 70 percent of the Democrats, every congressional district of every kind of demographic that exists in California. So I think we're in good shape."

Still, he acknowledged that it would have been "much better for the Democratic Party" to present a unified front as the November election approaches, and to have avoided an endorsement fight.

Despite the passion of progressive voters, he said, a political reality exists even in solidly blue California. "We can't be naïve about these swing districts," he said. "The idea that suddenly we vaporize the Republicans in these districts and just walk in, is just crazy. They're all going to be very, very close districts."

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U.S. ambassador: Trump-Putin meeting 'isn't a summit' [Back](#)

By Quint Forgey | 07/15/2018 10:53 AM EDT

President Donald Trump's highly anticipated meeting on Monday in Helsinki with Russian President Vladimir Putin is just that — only a meeting, the U.S. ambassador to Russia said Sunday.

"It isn't a summit. I've heard it called a summit. This is a meeting," Jon Huntsman said on [NBC's "Meet the Press."](#)

"In fact, it's the first meeting between the two presidents," Huntsman added. "They've had some pull-asides, one at the G-20 in Hamburg and the other at the APEC Ministerial in Da Nang, Vietnam, but this is really the first time for both presidents to actually sit across the table and have a conversation."

Unlike previous presidential summits — such as Ronald Reagan's visit to China in 1984, Huntsman said — Trump and Putin's get-together in Helsinki will not feature a state dinner, a joint statement or any predetermined policy deliverables.

"You don't know what's going to come out of this meeting, but what it will be is the first opportunity for these presidents to actually sit down across a table, alone and then with their teams, to talk about everything from meddling in the election, to areas where we have some shared interests," Huntsman said.

Huntsman also said recent developments in special counsel Robert Mueller's investigation of Russian interference in the 2016 presidential election, including the Friday indictment of 12 Russian military officials for hacking the Democratic National Committee, will be a part of Monday's talks.

"That now makes probably almost 30 Russians who have been rolled up by the Mueller indictment. That investigation continues," Huntsman said. "The bigger picture is we need to hold the Russians accountable for what they did, their malign activity throughout Europe as well. That's a part of the conversation that needs to take place."

But Huntsman wouldn't say whether Trump would push Putin for the extradition of the dozen Russian military officers to stand trial in the United States.

"I don't know if he'll make the ask, but it may be part of the agenda. It may be part of their bilateral meeting together. We'll have to see," Huntsman said, adding that the FBI office and the U.S. Embassy in Moscow would work to advance that goal.

"That doesn't necessarily mean that the Russians are going to follow through with it," Huntsman cautioned. "But we'll see if those steps will be taken."

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House to vote on whether carbon tax 'detrimental' to economy [Back](#)

By Anthony Adragna | 07/13/2018 01:18 PM EDT

The House Rules Committee will meet Tuesday to tee up chamber consideration of a resolution, [H. Con. Res. 119 \(115\)](#), arguing a carbon tax would be "detrimental" to the U.S. economy and "not in the best interest" of the country, according to [a notice](#).

Nineteen conservative groups, including the Competitive Enterprise Institute, American Energy Alliance and Americans for Tax Reform, sent House leadership [a letter](#) earlier this week urging them to take up the resolution.

The non-binding resolution is led by Majority Whip [Steve Scalise](#) and may be an interesting vote for members of the Climate Solutions Caucus. That bipartisan group's ranks have swelled to more than 80 lawmakers, but members have yet to weigh in on specific solutions for how to address climate change.

WHAT'S NEXT: The Rules Committee will [meet](#) on the resolution July 17 at 3 p.m.

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Subject: Morning Energy: Another mess for Pruitt — Virgin Islands party boss: Zinke ties improved hurricane response — Coal magnate delivered draft orders to Trump

By Kelsey Tamborrino | 06/07/2018 05:41 AM EDT

With help from Darius Dixon, Anthony Adragna and Annie Snider

ANOTHER MESS FOR PRUITT: Scott Pruitt has an appetite for food from the White House mess — a U.S. Navy-run restaurant for use only by White House officials, Cabinet members and other dignitaries. In fact, he loves eating there so much, the White House asked him to stop coming by so often, POLITICO's Emily Holden, Andrew Restuccia and Anthony Adragna report.

The message was clear, according to one person close to Pruitt: "We love having Mr. Pruitt, but it's not meant for everyday use." A member of the White House's Cabinet affairs team told agency chiefs of staff last year that their bosses shouldn't treat the mess like their personal dining hall — a comment that came in response to Pruitt's recurring use of the restaurant, sources said.

Pruitt's allies privately disputed that the warning about overuse of the mess was aimed squarely at him, but nobody contests that he's a frequent presence at the establishment in the basement of the West Wing. The White House did not respond when asked about his lunch habits, and EPA declined to comment.

A billing statement from July 2017 offered a glimpse into Pruitt's trips to the mess, racking up a bill of \$400 over nine trips that month — a relative bargain in downtown Washington considering the menu. A cheeseburger at the White House runs just \$6.35, according to Pruitt's bill. Compare that to the \$17 you'd pay for a burger from another favorite Pruitt spot, French bistro Le Diplomate. Read [more](#).

Support for Pruitt is also falling on Capitol Hill, Anthony and Emily report, in the wake of this week's news that Pruitt sought to buy a used mattress from the Trump Hotel and inquired about securing a Chick-fil-A franchise for his wife. Two more top aides to Pruitt — scheduler Millan Hupp and counsel Sarah Greenwalt — also are leaving the agency. "I'm not going to come down here, just because he happens to be a nominee of a president I support or a nominee from my party, and try to defend the indefensible," Sen. [John Neely Kennedy](#) said. More [here](#).

On the other hand, [Cory Gardner](#), who heads the Senate GOP campaign arm, told reporters he doesn't think Pruitt's ongoing ethics woes will harm his party in the midterms. "The states like Missouri, Indiana, North Dakota have benefited from a regulatory approach this administration has taken," Gardner said.

Environmentalists' "Boot Pruitt" campaign will gather a "group of cows" outside the Capitol South Metro station today from 8 a.m. to 9:15 a.m. to hand out fake Chick-fil-A coupons for a free chicken sandwich with a donation to Pruitt's legal defense fund. They'll hold signs reading: "Breeth Mor Carhun" and "What the Cluck, Pruitt?"

VIRGIN ISLANDS BOSS PLAYS UP ZINKE RELATIONSHIP: The head of the Virgin Islands Republican Party suggested his fundraising group's longstanding relationship with Interior Secretary Ryan Zinke helped improve the department's response to last year's hurricanes that struck the island territory, Pro's

Ben Lefebvre reports. John Canegata said he had direct access to Interior officials after the storm thanks to money his group raised for Zinke when he was a member of Congress.

Calling Zinke a "close friend," Canegata boasted of his connections in a televised appearance that aired in the Virgin Islands last month but has not received widespread attention outside of the territory. While numerous officials played a role in helping the islands recover from hurricanes Maria and Irma, "behind the scenes, trust me, a lot of telephone calls, a lot of maneuvering was going on because, I think, some of the relationships we built," Canegata said of Zinke.

Interior acknowledged that officials contacted Canegata after the hurricanes but said they did so as part of a wider effort to contact business leaders based in the territory and Zinke did not call him personally. Canegata works for Cruzan Rum, but a company representative told Ben he was not involved in coordinating its relief efforts. Interior expedited the reimbursement of taxes on Virgin Islands rum following the storms, but it was unclear whether Canegata influenced that decision; he did not respond to a request for comment.

For his part, Zinke has known Canegata since at least 2015, Ben reports. The secretary previously came under fire for a fundraiser for the VIGOP, as the group is known, during an official trip to the islands in his first month in President Donald Trump's Cabinet. Read more.

IT'S THURSDAY! I'm your host Kelsey Tamborrino. NRECA's Dan Riedinger correctly identified John Tyler as the only president to have not been a resident of the U.S. when he died. Tyler resided in Virginia at the time, which was part of the Confederate States of America. Today's question: Which Congress had the largest number of veterans in office? Send your tips, energy gossip and comments to ktamborrino@politico.com, or follow us on Twitter [@kelseytam](https://twitter.com/kelseytam), [@Morning_Energy](https://twitter.com/Morning_Energy) and [@POLITICOPro](https://twitter.com/POLITICOPro).

POLITICO convened leading thinkers and policymakers to look closely at the financial well-being of future American retirees. Explore the latest issue of The Agenda to dig more into this important topic and download the Working Group Report to see what potential solutions are being proposed to solve the country's retirement puzzle. *Presented by Prudential*

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MURRAY DELIVERED EXECUTIVE ORDERS TO TRUMP: Coal magnate Bob Murray handed off drafts of six executive orders that would roll back Obama-era environmental regulations to Trump during the beginning of his administration, according to documents from DOE released under FOIA. The documents include a letter to Energy Secretary Rick Perry from Murray praising Trump's March 2017 energy independence executive order, and included a note where Murray wrote, "we have developed the enclosed materials for your review and consideration, consisting of: six (6) Executive Orders further rescinding anti-coal regulations of the Obama administration; and one (1) memorandum outlining the legal rationale for each of these action, and others."

While Trump did not sign those exact orders, the administration has moved to enact similar policies, Pro's Darius Dixon reports. The documents, which were sent to DOE the day Trump signed his energy independence order and one day before Murray met with Perry and DOE chief of staff Brian McCormack, also included concepts about grid security and "resiliency" that Perry later touted as part of his push to stop coal power plants from closing. Read more.

BAILOUT ON HIS MIND: In private remarks given during his visit to FEMA headquarters Wednesday, Trump mentioned a slew of topics that had nothing to do with hurricanes, The Washington Post reports, while only briefly mentioning Puerto Rico. Trump instead encouraged Perry to make an announcement about rescuing economically struggling coal and nuclear power plants, the Post reports. "I'd love to put it out — 'clean coal, nuclear,' it's a very important message," he said, telling Perry he needed to hold a news conference.

WRDA MOVES AHEAD: The House passed the Water Resources Development Act of 2018 (H.R. 8 (115)) last night, marking the first major piece of infrastructure legislation to move under the Trump administration, Pro's Annie Snider reports. Lawmakers signed off on the measure on a broadly bipartisan vote of 408-2. The bill — markedly narrower than the Senate's measure — would authorize six new Army Corps of Engineers projects and enact a suite of policy reforms at the red tape-laden agency.

What about the Senate? For those wondering, EPW Chairman John Barrasso told ME he'd not yet locked down a time for the Senate to consider its broader version of the water resources infrastructure legislation. Separately, Sen. Tammy Baldwin sent this letter to Trump, calling on him to urge Congress to include a permanent Buy America provision in the legislation.

MUM'S THE WORD: Barrasso, whose state produces a lot of coal and uranium, told ME he isn't ready to back Trump's proposed bailout for coal and nuclear power plants. "I've read the article but I want to actually see what the proposal is," he said. DOE is still formulating the details of how it would intervene to save the struggling plants.

RESCISSIONS VOTE TODAY: The House is set to vote today on Trump's \$15 billion rescissions bill, Pro's Sarah Ferris reports. The House Rules Committee teed up the bill, H.R. 3 (115), on Wednesday, a quick turnaround that surprised even some GOP lawmakers.

ALL ABOARD: After the rescissions package, the House is ready to start debate on its "minibus" appropriations package, which includes energy and water, legislative branch and military construction-VA spending bills, Pro's Kaitlyn Burton reports. The Rules Committee has set up floor votes on 50 amendments to the energy and water title. A final vote on the overall bill is expected Friday.

SHIMKUS SPEAKS: Rep. John Shimkus, one of the most ardent Yucca Mountain champions in Congress, said his loud floor dispute with Paul Ryan on Tuesday was simply a dispute over "strategy going forward." Other members suggested it had to do with the timing of the Energy-Water bill, since Shimkus thinks delaying until after the midterms might allow Yucca language to make it into the title. The Senate has avoided tackling Yucca due to Sen. Dean Heller's close reelection contest.

POWER OF THE PEN: The House Appropriations Committee agreed to bar EPA from spending more than \$50 on a fountain pen. The amendment — an apparent reference to the \$1,560 Pruitt spent on a dozen fancy writing implements — passed on a voice vote at Wednesday's markup. The panel cleared its version of the fiscal 2019 EPA-Interior bill, on a vote of 25-20. Committee Republicans blocked an effort from Democrats to boost EPA's Office of Inspector General by \$12 million, but approved an amendment that would change revenue sharing for drilling in the Arctic National Wildlife Refuge. And while the pen amendment passed, the committee shot down another amendment from Democratic Rep. Mike Quigley related to Pruitt's travel.

MEETING WITH A FULL DECK: The last time the leadership of FERC and the Nuclear Regulatory Commission got together, there were just enough commissioners between the two agencies to fill one five-member board. Fast-forward to today, and it's a full house for the first time in years thanks to confirmation of two new NRC leaders last month. The get-together is slated to run for just over two hours. An agenda hasn't been released but the meetings usually involve staff presentations on grid reliability — and how it might be impacted by the retirement of nuclear plants — and cybersecurity regulations. Finding the areas where an

economic regulator overlaps with a safety watchdog isn't always obvious. The meeting is slated to run from 9 a.m. to 11:15 a.m. at FERC headquarters, and will be [webcast](#).

ROYALTY RUMPUS: Interior's Royalty Policy Committee approved recommendations Wednesday aimed at expanding energy lease sales and lowering royalty rates, Ben recaps. But during the advisory committee's meeting, two members questioned whether it had the power to suggest changes to federal environmental review. "NEPA is not referred to in the [committee] charter," Rod Eggert, a professor at the Colorado School of Mines, said during the meeting. "The text in the charter refers to royalties and collections of royalties." Read more [here](#).

Later Wednesday, BLM sent out a [memo](#) instructing field offices to look for ways to speed up permit processing, including by using categorical exclusions, Ben [reports](#).

— **Meanwhile, the Central Arizona Project will meet today** on proposals for sourcing cheaper power to run the Navajo Generating Station. The Bureau of Land Reclamation last week sought to delay the coal-fired power plant's closure, arguing that a 1968 law gives Zinke the authority to require the Arizona water project buy energy from the power plant. Reuters has the rundown [here](#).

GROUPS WARY OF INTERIOR DRAFT BILL: A coalition of sportsmen's groups is concerned about draft legislation that appeared before the House Natural Resources Energy Subcommittee on Wednesday. According to the [draft bill](#), it would enable Interior to recover the costs of administrative protests to oil and gas lease sales, drilling permits and other applications. The bill, [they say](#), would make it more difficult for sportsmen and women to comment on oil and gas lease sales on public land.

BLANKENSHIP IS BACK: Former coal baron Don Blankenship hasn't given up hope to take on the establishment and earn himself a spot in the Senate. After losing a primary bid to West Virginia Attorney General Patrick Morrisey, Blankenship's campaign [announced](#) Wednesday it is petitioning to gain ballot access for the general election as the nominee for the Constitution Party.

BIPARTISAN LETTER ASKS PRUITT TO DROP 'SECRET SCIENCE': More than 100 lawmakers — including Republican Reps. [Brian Fitzpatrick](#), [Carlos Curbelo](#), [Ryan Costello](#) and [Ileana Ros-Lehtinen](#) — signed onto a letter to Pruitt today, asking him to withdraw EPA's so-called secret science proposal to bar EPA from using studies that don't make public all their data. Read the letter [here](#).

DEMS WARN AGAINST E15: Democratic Sens. [Tom Udall](#) and [Peter Welch](#) are calling on EPA to abide "by all legal and regulatory requirements" as the Trump administration weighs the year-round sale of 15 percent ethanol blends of gasoline. "We are very concerned that career EPA officials may be being directed to reverse over 25 years of the agency's position to manufacture legal and scientific justifications for a politically-directed decision on E15," they write. Read the [letter](#).

MAIL CALL! RELEASE THE STUDY: A coalition of environmental groups will send [this letter](#) today to HHS Secretary Alex Azar, calling on him to release the controversial federal chemical pollution study [blocked](#) by EPA officials.

— **Nineteen environmental groups filed a letter** to the House in opposition of [H.R. 5895 \(115\)](#), the so-called minibus, which they say sets up an improper use of water and natural resources, and undermines safe nuclear waste disposal. Read it [here](#).

FOR YOUR RADAR: The International Wildlife Conservation Council, which came [under fire](#) for the big-game trophy hunters added to its ranks, will hold its next meeting June 19 in Atlanta, according to the [Federal Register](#).

ON THE WEB: The Center for American Progress is launching a new website today that is dedicated to tracking legal challenges to the Trump administration's conservation agenda. See it [here](#).

QUICK HITS

- The heat is back on high: May smashes U.S. temperature records, [Associated Press](#).
- Man dies at Randolph County mine, [Charleston Gazette-Mail](#).
- Hurricanes are traveling more slowly — which makes them even more dangerous, [The Washington Post](#).
- Trump falsely claims "We're now exporting energy for the first time," [The New York Times](#).
- Trump's move to please farmers on biofuels reform draws refinery union ire, [Reuters](#).

HAPPENING TODAY

8:00 a.m. — Exchange Monitor holds [Decommissioning Strategy Forum](#), Nashville

8:30 a.m. — New Energy Update holds [U.S. Offshore Wind conference](#), Boston

9:00 a.m. — The Atlantic Council and the American Council on Renewable Energy [discussion](#) on "The State of America's Energy Transition: Renewable Energy Policy Network for the 21st Century Renewable Global Status Report," 1030 15th Street NW

9:00 a.m. — Industry Exchange holds [Mexico Gas Summit](#), San Antonio, Texas

9:00 a.m. — The Federal Energy Regulatory Commission and the Nuclear Regulatory Commission [joint meeting](#), 888 First Street NE

11:00 a.m. — House Energy and Commerce Committee [hearing](#) on "Improving the Hydropower Licensing Process," 2123 Rayburn

11:00 a.m. — House Transportation Coast Guard and Maritime Transportation Subcommittee [hearing](#) on "Maritime Transportation in the Arctic: The U.S. Role," 2167 Rayburn

12:00 p.m. — Hill briefing on "The Export Subsidy RIN: A Valueless Dead End," 608 Dirksen

12:30 p.m. — Women of Renewable Industries and Sustainable Energy [lunch and learn](#), 1501 M St NW

1:00 p.m. — House Science Energy Subcommittee [hearing](#) on the electric grid, 2318 Rayburn

2:00 p.m. — House Natural Resources Oversight Subcommittee [hearing](#) on "Wildfire Risk, Forest Health, and Associated Management Priorities of the U.S. Forest Service," 1324 Longworth

THAT'S ALL FOR ME!

To view online:

<https://subscriber.politicopro.com/newsletters/morning-energy/2018/06/another-mess-for-pruitt-244517>

Stories from POLITICO Pro

Another mess for Pruitt: Overstaying his White House welcome at lunch [Back](#)

By Emily Holden, Andrew Restuccia and Anthony Adragna | 06/06/2018 10:17 PM EDT

EPA Administrator Scott Pruitt loves eating at the White House mess, an exclusive U.S. Navy-run restaurant open only to White House officials, Cabinet members and other dignitaries.

But apparently he liked it too much, and the White House asked him to please eat elsewhere sometimes.

In response to Pruitt's recurring use of the restaurant next to the Situation Room in the basement of the West Wing, a member of the White House's Cabinet affairs team told agency chiefs of staff in a meeting last year that Cabinet members shouldn't treat the mess as their personal dining hall, according to three people with knowledge of the issue.

The message was clear, according to one person close to Pruitt: "We love having Mr. Pruitt, but it's not meant for everyday use." Another person added that the White House asked Cabinet members to visit the mess only occasionally because there are [few tables available](#).

A renovation to update the West Wing HVAC last August included the mess kitchen and may have limited space, one person said. The renovation came shortly after the president tapped John Kelly as chief of staff, and he implemented several day-to-day changes to bring order to the White House.

The White House did not respond to a request for comment and EPA declined to comment. Pruitt's allies privately disputed that the warning about overuse of the mess was aimed squarely at him, but nobody contests that he's a frequent presence at the White House for lunch.

Pruitt has been known to complain that EPA headquarters has no cafeteria of its own and no private dining quarters, according to multiple sources, who said Pruitt still often heads to the White House for lunch. One source said EPA officials called the White House to explain that Pruitt didn't have a place to eat at EPA and would like to continue to visit. Pruitt's EPA office is only a few blocks up Pennsylvania Avenue from the White House.

A [billing statement](#) from July 2017 offered a glimpse into Pruitt's use of the mess, showing the EPA chief or people linked to him dined at the mess at least nine times that month, racking up a bill of \$400, a relative bargain in downtown Washington. Pruitt and his guests dined on dishes like "cowboy" skirt steak, popcorn chicken and waffles, spinach strawberry salad and beer-braised brisket tacos.

While the food is considered to be top-notch, the prices are a real bargain. Skirt steak runs just \$10.25, while coriander beef kabobs were just \$11.95 each. And a cheeseburger runs just \$6.35, according to his bill. The burger at another of Pruitt's haunts, French bistro Le Diplomate, runs \$17.

Records obtained through a Sierra Club Freedom of Information Act request [also show](#) Pruitt often sought to bring friends from Oklahoma to the White House mess.

Five friends from Tulsa — Charlie Polston, Carlyn Mattox, David Mattox, Bob Wagoner and Jerry Dillon — were invited for a September lunch there with him, though it didn't appear in Pruitt's detailed calendar obtained through FOIA.

That lunch came just two weeks after Pruitt made a lunch date there with Bob Funk, a wealthy Oklahoma Republican with whom he bought a major stake in the minor league Oklahoma City RedHawks baseball team back in 2003.

"Please have Mr. Funk arrive at EPA building at 11:40am to ride with Administrator Pruitt to the WH," Lincoln Ferguson, a senior adviser for public affairs, wrote in [an email](#). There was no entry in Pruitt's calendar for the time when the lunch was to have taken place.

Calendars from Pruitt's senior aides show he made frequent use of the space in the month following his February 2017 Senate confirmation. He dined there on Feb. 27, March 2 and met with Ivanka Trump, the president's daughter and West Wing adviser, on March 13. Chief of staff Ryan Jackson's calendar also lists a lunch in the "Mess" on March 16.

Pruitt also hosted representatives from the Oklahoma Farm Bureau on March 29, according to Jackson's calendar. And he returned for lunch with Mike Catanzaro, a senior White House energy aide, and several senior aides on April 7.

Pruitt and his guests also seemed to have a sweet tooth, partaking of a dessert called "Chocolate Freedom" on multiple occasions. As [POLITICO reported](#) in January 2017, the dish — a molten cake made with imported French chocolate that must be ordered at the beginning of lunch because of the baking time — was also popular among Obama administration staffers on their way out the door.

Chocolate Freedom has garnered [rave reviews online](#), and once prompted comedian Zach Galifianakis to [ask](#) whether it was also the staff's nickname for former President Barack Obama.

Also available to diners: boxes of red, white and blue M&Ms featuring the presidential seal.

Alex Guillén contributed to this report.

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Pruitt wanted to buy 'old mattress' from Trump International Hotel [Back](#)

By Anthony Adragna | 06/04/2018 10:43 AM EDT

Two senior House Oversight Democrats are demanding Chairman Trey Gowdy (R-S.C.) subpoena Scott Pruitt for documents after one of his closest aides told congressional investigators the EPA administrator had her book a personal flight to the Rose Bowl, search for housing for him and try to buy him an "old mattress" from the Trump International Hotel.

Ranking member Elijah Cummings (D-Md.) and Gerry Connolly (D-Va.) demanded that Gowdy compel Pruitt to turn over all documents related to the potential mattress purchase, efforts to secure personal flights, and work that agency employees performed on non-EPA tasks for Pruitt that have been withheld from an earlier April Democratic request. That followed a May 18 transcribed interview with Millan Hupp, Pruitt's scheduler.

"If Ms. Hupp's statements to the Committee are accurate, Administrator Pruitt crossed a very clear line and must be held accountable," they wrote. "Federal ethics laws prohibit Administrator Pruitt from using his official position for personal gain and from requesting and accepting services from a subordinate employee that are not part of that employee's official duties."

As part of its investigation into Pruitt, the Oversight Committee said it has conducted several transcribed interviews and obtained 2,350 pages of documents, and a spokeswoman criticized the release of Hupp's testimony.

"Selectively releasing portions of witness interview transcripts damages the credibility of our investigation and discourages future witnesses from coming forward. The Committee will continue conducting a serious, fact-driven investigation, and therefore will wait until the conclusion of our investigation to release our findings," committee spokeswoman Amanda Gonzalez said in a statement.

White House Press Secretary Sarah Huckabee Sanders said Monday the administration is "looking into" the issues in the Democrats' letter, but didn't outline any more specific steps.

"I couldn't comment on the specifics of the furniture use in his apartment and certainly would not attempt to," she said, referring to Pruitt's interest in the mattress.

According to the Democrats' letter, Hupp told Oversight staff she worked with the managing director of the Trump International Hotel in hopes of securing an old mattress. She said Pruitt had told her someone at the hotel indicated he could purchase the mattress, though she did not know why he wished to do so and did not know if he ultimately bought it.

In addition, Hupp said she sent several emails to real estate agents over a period of several months last summer during work hours to help Pruitt find housing after he verbally asked for her help. She said she visited a "probably more than 10" properties during her lunch hour over the course of several months. Hupp said she didn't use work email for the searches and was not paid for her efforts.

Pruitt and his wife ultimately settled on an apartment on 13th and U streets, but left it shortly afterwards because "they were not comfortable in the area," according to Hupp.

Democratic lawmakers have honed in on Pruitt's admission during a May 16 Senate subcommittee hearing that Hupp had searched for housing for him without pay on her own personal time.

"It doesn't cut it that they're a friend or that kind of thing," Sen. Tom Udall (D-N.M.) told Pruitt at the hearing, because having a subordinate staff member voluntarily conduct tasks on personal time would constitute a gift.

"That's in violation of federal law," Udall told Pruitt.

An EPA spokesman said the agency continued to give the information it was seeking.

"We are working diligently with Chairman Gowdy and are in full cooperation in providing the Committee with the necessary documents, travel vouchers, receipts and witnesses to his inquiries." EPA spokesman Jahan Wilcox said in a statement.

According to the Democrats' letter, Hupp said around Christmas she used a personal credit card from Pruitt in her possession to arrange his personal trip to the Rose Bowl in California to watch the Oklahoma Sooners football team play. She did not know why Pruitt, who sent her the details for the trip, and couldn't book the flight on his own.

"He just sent me the flights details and asked me to book for him," Hupp said.

Hupp indicated she considered Pruitt a personal friend, which was why she did these tasks for him. She said the two had met for dinners that were attended by just the two of them.

"We worked very closely together and spent a lot of time together," she said. "I traveled with him, so naturally a friendship developed."

To view online [click here](#).

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Republicans losing patience with scandal-scarred Pruitt [Back](#)

By Anthony Adragna and Emily Holden | 06/06/2018 05:37 PM EDT

Republicans on Capitol Hill are growing frustrated with EPA Administrator Scott Pruitt — and many are now publicly questioning whether he can hang on to his job amid the unending stream of scandals.

Several GOP lawmakers said their patience was running thin after this week's news that Pruitt sought to buy to buy a used mattress from the Trump Hotel and inquired about securing a Chick-fil-A franchise for his wife. And Pruitt's circle of confidantes inside the agency appeared to be shrinking as well, with two of his closest aides set to depart in the coming days.

"The constant drip needs to stop so the agency can get its footing and focus back," House Energy and Commerce Chairman Greg Walden (R-Ore.) told reporters. "They're doing some really good work in the environmental front, but this needs to stop."

"Sometimes people get tripped up on other things besides the core mission, and I think that's what you're seeing," Sen. Shelley Moore Capito (R-W.Va.) told reporters.

Pruitt's scheduler, Millan Hupp, is resigning following her interview by the House Oversight Committee during which she disclosed that she helped her boss find housing and inquired about purchasing a used mattress for him from the Trump International Hotel.

And his top legal counsel, Sarah Greenwalt, will also depart, according to sources. Both women had worked for Pruitt in the Oklahoma attorney general's office and both were among the staff that received raises that had been rejected by the White House.

"I think it's extremely fair to say her and Millan both are tired of the daily grind here," one EPA official said. "Everybody is painfully aware of that."

While acknowledging that President Donald Trump would ultimately make any decision about Pruitt's job, several Republicans indicated Pruitt's support was waning in their conference.

"I'm not going to come down here, just because he happens to be a nominee of a president I support or a nominee from my party, and try to defend the indefensible," Sen. John Kennedy (R-La.) said. "I thought that Mr. Pruitt would have learned his lesson."

Kennedy added: "I said the same thing about Tom Price," referring to Trump's former HHS secretary who resigned after spending lavishly on military and private jets.

Trump reaffirmed his support for Pruitt on Wednesday when they participated in a briefing on the 2018 hurricane season with several Cabinet officials.

"EPA is doing really, really well," Trump said. "You know, somebody has to say that about you a little bit. You know that, Scott."

But even staunch Pruitt allies like Sen. Jim Inhofe (R-Okla.) said the mounting scandals had them rethinking their support.

"Some are true, some are not true. Whether he can weather the storm, I'm not sure," Inhofe said. "The accusations are all troubling. They are."

A few Republicans stood by Pruitt, arguing he's been targeted by an environmental community and press corps eager to take him down.

"I like him," Sen. Roger Wicker (R-Miss.) said. "He is a target because he's keeping the president's campaign promises."

But a more common view among GOP lawmakers was the collective stream of scandals were taking their toll and making Pruitt's position untenable.

"Take a thousand cuts and [there's] not much energy left," Senate Appropriations Chairman Richard Shelby (R-Ala.) told reporters.

Rep. John Shimkus (R-Ill.), who leads the Energy and Commerce subcommittee overseeing EPA, joked he "can't keep up" with the flood of allegations and said he's concerned they haven't stopped.

"These unforced errors are unforced errors," he said. "I don't like being asked all the time about this."

But he raised a possible reason why Republicans weren't abandoning Pruitt: getting a replacement confirmed by the Senate would be nearly impossible.

"Are you going to promise me we could even get an administrator?" he said. "I think that's another concern."

In a video posted by a Nexstar Wednesday, Pruitt defended his attempts to set his wife up with a Chick-fil-A franchise Wednesday, while the president reaffirmed his support in the administrator.

Pruitt said that his wife is "an entrepreneur herself" and that the pair loved the fast-food franchise. As he has in the past, Pruitt dismissed criticism of his behavior as being driven by opposition to the Trump administration's deregulatory policies.

"With great change comes, I think, opposition," he said in a clip the reporter posted to Twitter.

Pruitt did not directly address whether he had asked an EPA aide to reach out to Chick-fil-A President Dan Cathy to inquire about his wife opening up her own restaurant, as the Washington Post first reported Tuesday.

"Chick-fil-A is a franchise of faith and it's one of the best in the country, so that was something we were very excited about," he told the Nextstar reporter Wednesday. "We need more of them in Tulsa, [Okla.]. We need more of them across the country."

Kelsey Tamborrino contributed to this report.

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Trump's Interior chief 'hopping around from campaign event to campaign event' [Back](#)

By Ben Lefebvre and Esther Whieldon | 10/05/2017 05:01 AM EDT

Republican donors paid up to \$5,000 per couple for a photo with Interior Secretary Ryan Zinke at a fundraiser held during a taxpayer-funded trip to the U.S. Virgin Islands, according to documents reviewed by POLITICO — raising questions about his habit of mixing official government business with political activism.

The new details about Zinke's March trip to the Caribbean, including the previously undisclosed invitation to the Virgin Islands Republican Party fundraiser, emerged after weeks of scrutiny of the former Montana GOP congressman's travels. The nearly two-hour event was one of more than a half-dozen times Zinke has met with big donors or political groups while on department-paid trips, Interior travel records and other documents show.

Ethics watchdogs say Zinke is combining politics with his Interior duties so frequently that he risks tripping over the prohibitions against using government resources for partisan activity, even though his appearance at the Virgin Islands event seems to have been legal. Democrats have also seized on the issue, including 26 House members who wrote in a letter Tuesday that Zinke's travels "give the appearance that you are mixing political gatherings and personal destinations with official business."

Zinke has said all his actions have obeyed the law, dismissing concerns about his travel as "a little BS."

But some ethics advocates say Zinke's attendance at a fundraiser during his first month as secretary is not in line with past administrations' conduct, even if he crossed no legal red lines.

"It happens on occasion with other Cabinet secretaries, perhaps even a little more often as you get near the election, but it is not a very common practice for Cabinet members to be hopping around from campaign event to campaign event like we're seeing with Zinke," said Craig Holman, government affairs specialist for government watchdog Public Citizen.

The secretary is already under investigation by his department's inspector general over his use of taxpayer-funded private planes for some of the trips, and the Office of Special Counsel is looking into an activist group's allegations that he violated the Hatch Act, the law limiting political activism by federal employees. The White House has cracked down on Cabinet members' travel habits following former HHS Secretary Tom Price's resignation on Friday, which occurred after POLITICO reported on his own expensive flights.

Zinke visited the Virgin Islands from March 30 to April 1 on an official trip related to the Interior Department's role overseeing the U.S. territory. On his first day, following a "veterans meet and greet" and a reception with Gov. Kenneth Mapp, he appeared in his personal capacity at a March fundraiser for the local Republican Party at the patio bar of the Club Comanche Hotel St. Croix, department records show.

Tickets for the fundraiser ranged from \$75 per person to as much as \$5,000 per couple to be an event "Patron," according to Zinke's official calendar and a copy of the invitation. Patrons and members of the host committee, who paid \$1,500 per couple, could get a photo with Zinke at the start of the event, which was attended by local party members and elected officials.

The following day, Zinke took a \$3,150 flight on a private plane, paid for by the department, from St. Croix to official functions on St. Thomas and returned later that evening. Interior Department officials said there was no

other way to accommodate his schedule, which included official events on both islands commemorating the 100th anniversary of the Dutch government transferring control of the islands to the United States.

Zinke is allowed to engage in partisan political activity in a "purely personal (not official) capacity," so long as he does not use government resources, according to Interior Department guidelines on the Hatch Act and other federal laws. The invitation to the GOP fundraiser did not identify Zinke by his official title and included a disclaimer that the money is being solicited by the local party and "not by any federal official."

All told, Zinke has spent around \$20,000 for three charter flights as secretary, nowhere near the \$1 million tab Price racked up on non-commercial trips. But he has on numerous occasions attended political receptions, spoken to influential conservative groups or appeared alongside past campaign donors during trips has taken outside of Washington, D.C., for official department business.

In one instance, Zinke gave a motivational speech for a professional hockey team owned by a major campaign contributor that he said was official business — and which required him to charter a \$12,000 flight to Montana for an appearance at the Western Governors Association the next day.

In another case, during a speech to the Western Conservative Summit in Denver, he was introduced via a recorded voice as the Interior secretary and Zinke proceeded to talk about the agency's priorities. The summit was organized by the Centennial Institute, which bills itself as Colorado Christian University's think tank and is a part of the State Policy Network of organizations that collectively push for conservative state-level legislation.

An Interior spokeswoman said Zinke always follows the law but declined to answer specific questions about his appearance at the Virgin Islands fundraiser, nor say whether he would keep raising political money. The agency also has yet to post Zinke's trip expenses involving any of the political events.

"The Interior Department under the Trump Administration has always and will always work to ensure all officials follow appropriate rules and regulations when traveling, including seeking commercial options at all times appropriate and feasible, to ensure the efficient use of government resources," spokeswoman Heather Swift said in a statement.

Swift did not respond to questions about whether the department had gotten reimbursement for the political portion of Zinke's three-day Virgin Islands trip, as the head of one watchdog group says it should have.

"Some of this travel is clearly political and that part of the travel should have been paid for by the RNC, NRCC, state political parties, a campaign committee or Zinke personally," said Daniel Stevens, executive director of the Campaign for Accountability.

No payments to the department are listed in the Virgin Islands Republican Party's FEC records.

Zinke is not the first Interior secretary, or Cabinet member, to have his activities questioned.

In 2012, a watchdog group called Cause of Action urged the Office of Special Counsel to investigate whether President Barack Obama's then- Interior Secretary Ken Salazar had violated the Hatch Act while taking an Obama reelection campaign RV tour of Colorado with a couple of lawmakers and the state lieutenant governor. Local organizers of one stop on that tour had billed Salazar on its online events calendar as attending the political rally in his official role. OSC would not say whether its investigation uncovered any problems, but travel records Interior has posted show that one of Salazar's aides had told the tour's coordinator the schedule "should not refer to (Salazar as) 'secretary.'" Salazar did not respond to a request for comment.

A former Salazar aide, who was not authorized to speak on the record, said the Obama administration generally tried to avoid scheduling political events that coincided with official travel because it was difficult to divvy up what expenses should be reimbursed by a campaign.

The special counsel's office found Obama HHS Secretary Kathleen Sebelius in violation of the Hatch Act in 2012, saying she had made "extemporaneous partisan remarks" by endorsing a candidate for North Carolina governor during a speech she made in her official capacity. Sebelius tried to scrub the violation by reclassifying the appearance as political and reimbursing the Treasury Department for costs associated with the trip.

Sally Jewell, who was Interior secretary during Obama's second term, said Zinke was within his rights to appear at the fundraiser in the Virgin Islands. Jewell said she once appeared at a fundraiser for Democratic Sen. Maria Cantwell while in Obama's Cabinet, though she paid her own way to Washington state and was not identified by her official title.

"If he had legitimate business while he's on the island, to do a political thing on the side, I don't think that is that unusual," Jewell said in an interview.

EPA Administrator Scott Pruitt canceled his scheduled appearance at a fundraiser for the Oklahoma Republican Party in April because an invitation had identified him by his official title and said he would discuss his work at the agency. EPA ethics officials said he would have been cleared to attend the event if not for that language on the invitation.

Watchdog groups say Zinke's behavior fits a pattern for Trump's Cabinet.

"These government resources have been abused by this administration," said Virginia Canter, an executive branch ethics counsel for Citizens for Responsibility and Ethics in Washington who previously worked as an ethics official for Presidents George H.W. Bush, George W. Bush and Obama. "To the extent that some of that supports their political ambitions is inconsistent with the intent of this authority."

The Campaign for Accountability called on Interior's inspector general and the Office of Special Counsel to investigate whether Zinke violated the Hatch Act or department ethics rules with his speech to the hockey team, which the group said appeared to be a favor for a donor. Interior's IG office announced its investigation earlier this week, and OSC told the Campaign for Accountability that it was looking into the group's complaint, according to an email shared with POLITICO. The OSC declined to comment.

Reps. Raúl Grijalva (D-Ariz.) and Donald McEachin (D-Va.) have asked Interior's IG to also look into any trips on which the secretary was accompanied by his wife, Lola Zinke, who is chairing the campaign of Montana Republican Troy Downing, a candidate to unseat Democratic Sen. Jon Tester next year. Swift said Lola Zinke was not in the Virgin Islands and has paid her own way whenever she has traveled with her husband on official trips.

Many who know him see Zinke's travels as an attempt to keep in touch with political contacts as he contemplates what he will do after leaving the Trump administration. Back home, the 55-year-old former Montana congressman is seen as an attractive candidate for the open-seat governor's race in 2020, when Democratic Gov. Steve Bullock will have to step down because of term limits.

"I think he's definitely got political aspirations; that's one of the reasons why he is where he is at right now," said Land Tawney, executive director of Backcountry Hunters and Anglers, a Montana-based sportsman group that supported Zinke's bid for Interior secretary. "You don't go from being a Montana legislator to a first-term congressman to [Interior] secretary without having ambition."

The Virgin Islands trip was Zinke's first interaction with big donors or influential conservative groups during his travel as Interior secretary.

A weeklong trip in May that took Zinke through Montana, Utah and California also offered a chance to squeeze in some political events.

Zinke delivered the keynote speech at the RNC spring meeting on May 11 in Coronado, Calif. Zinke had flown to California the previous night, after several days touring monuments in Utah, and the RNC speech was his only event in the state aside from a meeting earlier that afternoon with Rep. Amata Radewagen, the Republican delegate from American Samoa, and members of the American Tunaboat Association.

The next day, Zinke flew back to Montana, where he joined Sen. Steve Daines (R-Mont.) and Vice President Mike Pence to tour a coal mine on the Crow Indian reservation operated by the Westmoreland Coal Co.

The trip offered Zinke and Pence an opportunity to tout the Trump administration's work to promote new coal mining on federal lands — and it allowed them to make a brief detour to promote Zinke's congressional replacement. That Friday night, Zinke, Pence and Daines attended a political rally for GOP candidate Greg Gianforte, and Zinke attended a get-out-the vote event for the Montana GOP the next day.

Zinke apparently paid for his return trip to Washington out of his own pocket — it was marked "personal travel" on his calendar, a designation not applied to the other flights on that trip.

Gianforte, whose wife is a major political donor in Montana, won the May 25 special election to take over Zinke's House seat.

Greg and Susan Gianforte donated more than \$10,000 to Zinke's 2016 congressional campaign and another \$10,000 to a joint Zinke-Daines PAC, according to federal records. The couple donated \$5,000 for his earlier run for Congress.

Zinke met with big influencers and donors in June as well.

On June 25, he flew from D.C. to Reno, Nev., where his only scheduled event was a meeting of the Rule of Law Defense Fund, a group of Republican attorneys general that has been linked to the Koch brothers, where he spoke and took questions for about 30 minutes, according to his schedule.

After his remarks, he sat at a dinner table with Montana's attorney general, the government relations specialist for the Venetian Resort Hotel Casino and Las Vegas Sands, and Koch Industries lobbyist Allen Richardson, Interior documents show.

The next day, Zinke flew to Las Vegas for an event on public lands in nearby Pahrump, Nev., and a speech that night to the National Hockey League's Vegas Golden Knights. Bill Foley, the team owner and chairman of Fidelity, introduced Zinke. Foley donated \$7,800 to Zinke's 2014 campaign, while employees and PACs associated with Fidelity and related companies gave another \$180,000. Interior officials said the speech to the NHL team was part of Zinke's official duties, and they pointed to scheduling conflicts it created to justify his use of a \$12,000 private plane to get to a Western Governors Association meeting in Montana the next day.

In July, Zinke spoke to several conservative groups in Colorado during a three-day trip that also included tours of Interior Department facilities in the state. He flew into Denver on July 20 so he could appear that evening at a closed-door reception for the American Legislative Exchange Council, a group of conservative state legislators, lobbyists and industry groups that has pushed for more state control over federal lands.

And over the next two days, he was a featured speaker at a Republican committee roundtable and attended the Western Conservative Summit in Denver.

Eric Wolff contributed to this report.

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Zinke's political ties to Virgin Islands improved Interior's hurricane response, party boss says [Back](#)

By Ben Lefebvre | 06/07/2018 05:11 AM EDT

The top GOP official in the U.S. Virgin Islands suggested his fundraising group's "behind the scenes" relationship with Interior Secretary Ryan Zinke helped influence the department's response to last year's hurricanes in the island territory.

John Canegata, the head of the Virgin Islands Republican Party, said he had direct access to Interior officials after the storm thanks to money his group raised for Zinke, whom he described as a "close friend." Zinke, a former congressman, has known Canegata since at least 2015, and the secretary was at a [fundraiser](#) for the VIGOP, as the group is known, during an official trip to the islands in his first month in President Donald Trump's Cabinet.

Interior officials acknowledged reaching out to Canegata, who also works for a major rum distiller in the territory, although they said it was part of a wider effort to contact business leaders based in the territory and Zinke did not call him personally. However, a representative of the distiller said Canegata was not involved in their relief efforts, and a spokesman for the Virgin Islands' House delegate disputed Canegata's involvement in the hurricane response.

The department expedited reimbursements of rum taxes as part of its response to the hurricanes, although it's unclear whether Canegata's connection influenced that decision. Interior has jurisdiction over U.S. territories including the Virgin Islands but not Puerto Rico, which suffered more extensive devastation.

Disaster response experts say it would be inappropriate for Canegata's political connections to influence Interior's efforts in the Virgin Islands.

"These are processes that are supposed to be transparent and supposed to be above the board," said Eric LeCompte, executive director of Jubilee USA, an anti-poverty group that has been involved in hurricane disaster relief efforts. "So, it would not be something a political party would be part of."

VIGOP is not a typical political party and faces frequent inquiries from the FEC to better explain its fundraising practices and expenses. Some critics, including past Republican clients, say the group bilks conservative donors with promises to fight Democrats while spending the bulk of its money on overhead instead of political advocacy. The group spends the [vast majority of its money](#) on a small group of Washington-area political consultants who have also done work for Zinke's campaign and leadership PACs.

Zinke was introduced to the VIGOP in 2015 by a Washington fundraising consultant who also did work for his campaigns, and as a member of Congress he has traveled to at least two political conferences in the Virgin

Islands sponsored by the group, POLITICO reported last year. Zinke and Canegata are seen together during a prior trip in a photo posted to Facebook.

Canegata boasted about his Zinke ties in a televised appearance on WTJX Virgin Islands Public Broadcasting that aired last month but has not received widespread attention outside of the territory.

"We were in direct connection with the Department of Interior," Canegata said in the broadcast.

"Secretary Zinke, happens to be, I wouldn't say a personal friend, but a close friend," Canegata continued.

"Prior to him being the secretary of Interior, we spent some time in Washington, we spent some time here in the Virgin Islands. We supported him when he was a congressman and, behold, he becomes the secretary of Interior."

While Canegata credited other officials with their part in aiding the island's response, he said the pre-existing connection to Zinke was key.

"Obviously, we have our congresswoman, our governor doing their job," Canegata continued. "But behind the scenes, trust me, a lot of telephone calls, a lot of maneuvering was going on because, I think, some of the relationships we built."

The Office of Special Counsel on Tuesday closed its investigation into Zinke's appearance at the Virgin Islands fundraiser in March 2017, finding that he had not violated the Hatch Act because he was there in his official capacity and VIGOP reimbursed Interior for its expenses. Interior's inspector general also recently said the appearance at the fundraiser was not inappropriate. It is unclear whether either of those investigations addressed any link between VIGOP and Interior's hurricane response; both offices declined to comment.

Interior's Office of Insular Affairs, which oversees the Virgin Islands, "reached out to dozens of local government employees as well as major private sector employers in the USVI to check their power status and to see how the office could help," Interior spokeswoman Heather Swift said in an email. Canegata "was contacted by those Insular Affairs officials because he works for one of those major private employers, Cruzan Rum."

Canegata, a supply chain specialist at the rum distillery, had no role in the company's disaster relief efforts, according to Cruzan Rum human resources manager Ayanda Daniels.

"He wasn't part of the coordination," Daniels told POLITICO. "Maybe he had a conversation with someone in order to do something, but we had another team for company response."

James Norton, a former Department of Homeland Security Deputy official during the George W. Bush administration, said it is important for disaster response efforts to be handled through the appropriate channels.

"As a matter of proper procedure, it would only be appropriate for all federal actions to be dealt with solely with official authorities at the Department of Defense, Interior, Homeland Security, FEMA, etc., and those local officials on the ground," said Norton, who is now head of the consulting agency Play-Action Strategies. "Anything other than raising awareness and reaching out to get an update on what's happening would be inappropriate, as a political party or other organization doesn't have command and control authority, nor would they be the designated principal federal official on the ground directing rescue operations."

A spokesman for Stacey Plaskett, the Democratic House delegate from the Virgin Islands, disputed Canegata's version of events.

"I cannot honestly remember hearing them or seeing them do anything to that effect," Plaskett's spokesman Mike McQuerry said. "The congresswoman was the person here in D.C. that worked extremely hard during that time to get those funds to the Virgin Islands."

Canegata did not respond to a request for comment this week.

Interior expedited reimbursement of \$223 million in taxes on Virgin Islands rum imported into the mainland and provided a \$567,500 grant to help with a post-hurricane finance audit. Other hurricane relief funds would have come from FEMA, an Insular Affairs spokesperson said.

Otherwise, Zinke and Insular Affairs head Doug Domenech met with Virgin Islands Gov. Kenneth Mapp to discuss recovery efforts, the Insular Affairs spokesperson said. In November, Domenech also met representatives of Cruzan Rum's parent company, Beam Suntory, to discuss the rum tax reimbursements Interior makes to the territory. Beam Suntory donated \$1.5 million to hurricane relief efforts the previous month.

Swift said Zinke did not personally reach out to Canegata. "The only official in the USVI the Secretary called was Governor Mapp," she said.

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Murray had early access to Perry to share coal plan [Back](#)

By Eric Wolff | 12/07/2017 04:22 PM EDT

Coal magnate Bob Murray pitched Energy Secretary Rick Perry on his plan to throw an economic lifeline to coal companies less than a month before Perry set in motion plans to aid the industry, according to newly disclosed photographs that show the two meeting.

The liberal magazine In These Times obtained pictures of Murray and Perry from a March 29 meeting at Energy Department headquarters, less than a month after Perry was sworn in. Several other officials were in attendance, including Andrew Wheeler, who at the time was a lobbyist for Murray and has since been nominated as EPA's No. 2 official.

The meeting puts Murray and Perry together at a crucial moment in the timeline of the Trump administration's push to save the struggling coal industry, an effort that would benefit Murray Energy in particular while hiking electricity prices for potentially millions of people. A month before the meeting, one of Murray's biggest customers, FirstEnergy Corp., had told investors it was seriously considering sending its merchant division, FirstEnergy Solutions, into bankruptcy, a move which would likely void its supply contracts with Murray's coal mines.

Three weeks after Murray's visit, Perry would order a grid study that later became part of the justification for a proposed rule to reward coal and nuclear power plants for providing "grid resiliency." FERC, which has jurisdiction over the proposal, must make a decision on it by Monday.

At the time of the meeting, Wheeler was already the leading candidate to become the deputy administrator for EPA. Wheeler, who represented Murray as a lobbyist for Faegre Baker Daniels, would not be officially

nominated for months. Wheeler, who has acknowledged participating in meetings on Murray's coal plan at DOE and on Capitol Hill, cleared committee last week and is awaiting Senate confirmation.

Murray is an outspoken supporter of President Donald Trump and held a fundraiser for him during the 2016 campaign.

DOE did not dispute the validity of the photos.

"Industry stakeholders visit the Department of Energy on a daily basis," DOE spokeswoman Shaylyn Hynes said, when asked about the meeting. "The DOE proposal to FERC was about the future and resiliency of the nation's power supply, an issue much bigger than one industry or company."

The photographs show Perry sitting at the head of a table in the Department of Energy, with Bob Murray, CEO of Murray Energy, to his left, and Wheeler down the table from Murray.

"Enclosed is an Action Plan for achieving reliable and low cost electricity ... and to assist in the survival of our Country's coal industry, which ... power grid reliability and low cost electricity," Murray writes in a cover letter to Perry, parts of which are visible in one photo from the meeting.

Though the document has never been publicly released, DOE critics say Murray's plan appears to have inspired DOE's grid study and the proposed rule Perry sent FERC in September. Copies are visible at the seats of most of the participants, including Perry and Murray. Wheeler, who told members of the Senate Environment Committee he had only seen the memo briefly, is not holding a copy in the photos obtained by In These Times. Murray told Greenwire in November he "didn't have any involvement" in writing the rule.

Murray has acknowledged sharing the plan with Trump.

"I gave Mr. Trump what I called an action plan very early," Murray said in a recent PBS Frontline documentary on EPA. "It's about three-and-a-half pages and — of what he needed to do in his administration. He's wiped out page one."

The meeting appears to have been successful for all. One of the photos shows Perry and Murray in a big bear hug.

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Murray delivered executive orders on coal rules to Trump administration [Back](#)

By Darius Dixon | 06/06/2018 07:05 PM EDT

Coal magnate Bob Murray delivered six draft executive orders ready for President Donald Trump to sign to roll back Obama-era environmental regulations in the early weeks of the administration, according to newly released Energy Department documents.

The documents released Wednesday after a Freedom of Information Act request include a letter to Energy Secretary Rick Perry from Murray praising Trump's March 2017 energy independence executive order, which largely aimed to help the coal industry. And to bolster that effort, Murray wrote, "we have developed the

enclosed materials for your review and consideration, consisting of: six (6) Executive Orders further rescinding anti-coal regulations of the Obama administration; and one (1) memorandum outlining the legal rationale for each of these action, and others."

Those executive orders were also sent to EPA Administrator Scott Pruitt, whose agency had jurisdiction over most of the issues they involved, such as ozone rules and regulations on coal ash.

Trump has not signed executive orders resembling Murray's, but the administration has moved to enact the policies, such as pulling U.S. out of the Paris climate agreement. The documents, which were sent to DOE the day Trump signed his energy independence order and one day before Murray met with Perry and DOE chief of staff Brian McCormack, also included concepts about grid security and "resiliency" that Perry later touted as part of his push to stop coal power plants from closing.

"The Department of Energy ("DOE") must issue an emergency directive to have an immediate study done of the security and resiliency of our electric power grids," the document states. "DOE will direct that no power plants having an available fuel supply of at least forty-five (45) days be closed during the study period, or a minimum of two (2) years."

Perry later ordered his staff to write a study about the electric grid that was eventually tied to a regulatory proposal that FERC create financial rewards for power plants with a 90-day supply of fuel on-site. That condition would have overwhelmingly benefited coal and nuclear generators, but it was shot down by FERC in January.

Critics have said Murray would be the biggest beneficiary of Trump's efforts, since his company supplies coal to many of the power plants at risk of closing because of stiff competition from cheap natural gas and renewable power as well as lagging electricity demand from consumers.

Murray spokesman Gary Broadbent confirmed the company had submitted the documents to Perry "to assist in the reversal of the illegal, job-killing, anti-coal regulations of the Obama Administration."

"Mr. Murray has always sought to secure reliable, low-cost electricity for all Americans, as well as to preserve and protect the jobs and family livelihoods of thousands of coal mining families," he said in a statement. "We applaud the actions taken by President Trump's Administration, to date, to protect these jobs and to advance the energy security of the United States."

Murray has repeatedly called on DOE to issue must-run orders for FirstEnergy power plants that consume his coal, and he blasted the FERC commissioners who opposed the on-site fuel proposal.

On Tuesday, a top DOE official said the agency is still formulating a plan to keep struggling coal and nuclear power plants from closing, and it had no deadline to meet Trump's demand to rescue them.

"We are evaluating options," Energy Undersecretary Mark Menezes told reporters. Last week, Trump called on DOE to take "immediate steps" to stop a wave of coal and nuclear power plant retirements, and like Perry, he cast the shutdowns as a threat to national security.

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House passes WRDA bill [Back](#)

By Annie Snider | 06/06/2018 09:42 PM EDT

The House has overwhelmingly approved the Water Resources Development Act of 2018, [H.R. 8 \(115\)](#), the first major infrastructure legislation to move under the Trump administration.

Lawmakers signed off on the measure on a broadly bipartisan vote of 408-2. The bill would authorize six new Army Corps of Engineers projects and enact a suite of policy reforms at the red tape-laden agency. It is significantly narrower than the Senate's measure, which would also make changes to EPA drinking water and wastewater programs.

And it includes a provision that could stir some controversy with the Senate, ordering a study of whether the Army Corps' civilian work should remain within the Department of Defense.

But House leaders dodged provisions that could have derailed the bill by blocking controversial amendments from floor consideration. Those included efforts to repeal the Obama administration's Waters of the U.S. rule, allow firearms at Army Corps recreational sites and exempt pesticide spraying from Clean Water Act permitting requirements.

WHAT'S NEXT: The Senate is expected to consider its version of the WRDA bill, America's Water Infrastructure Act of 2018, [S. 2800 \(115\)](#), this summer.

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Trump calls for coal, nuclear power plant bailout [Back](#)

By Eric Wolff | 06/01/2018 02:29 PM EDT

President Donald Trump pressed for a quick regulatory bailout for struggling coal power plants on Friday — a move that would buoy a mining industry that offered him crucial support in 2016, but is riling other energy companies and even some free-market conservatives.

The White House called on Energy Secretary Rick Perry to take immediate steps to keep both coal and nuclear power plants running, backing Perry's claim that plant closures threaten national security. An administration strategy to do that laid out in a memo to the National Security Council circulated widely among industry groups on Friday, but it was not clear that intervention could survive the inevitable political and legal challenges.

It was the latest step in more than a year of efforts by the administration to compel power companies to keep operating the money-losing plants that are suffering from the rise of competing energy sources like natural gas. Those proposals have drawn opposition from most utilities, along with environmentalists, gas producers, power grid operators and conservatives who say it would be an unwarranted intrusion to the energy markets.

The White House statement calling for action came after days of Trump making similarly aggressive moves on international trade, slapping tariffs on the European Union, Canada and Mexico to protect U.S. industries like aluminum and steel. In this case, the president is acting on behalf of what he likes to call "beautiful, clean coal," a once-dominant fuel that still plays a major role in his stump speeches.

Trump "has directed Secretary of Energy Rick Perry to prepare immediate steps to stop the loss of these resources," White House press secretary Sarah Huckabee Sanders said in a statement Friday, referring to coal and nuclear plants.

She added that Trump believes "keeping America's energy grid and infrastructure strong and secure protects our national security... Unfortunately, impending retirements of fuel-secure power facilities are leading to a rapid depletion of a critical part of our nation's energy mix, and impacting the resilience of our power grid."

The statement came five months after federal energy regulators rejected Perry's call that they adopt his proposal to keep the struggling coal and nuclear power plants operating. That proposal would have overwhelmingly benefited mining magnate Bob Murray, an outspoken Trump supporter whose operations supply coal to several endangered plants in the Midwest and Northeast, according to a POLITICO analysis.

Trump's National Security Council gathered Friday to discuss the draft memo that lays out arguments why the administration should use federal authority to keep the money-losing power plants open — despite the assurances from some of the nation's grid operators that no such emergency exists.

"Any federal intervention in the market to order customers to buy electricity from specific power plants would be damaging to the markets and therefore costly to consumers," said the PJM Interconnection, which operates the nation's largest power grid and stretches from the Midwest the Atlantic Coast, in a statement. "There is no need for any such drastic action."

A broad swath of trade associations representing oil and gas, wind and solar power, consumer groups and advanced energy technologies slammed the plan, and they were joined by some congressional Democrats.

"This would be an egregious abuse of power," Sen. Ron Wyden (D-Ore.) said in a statement. "I fought this proposal before, and I will continue to fight this corrupt scheme to prop up the coal industry at the expense of American consumers."

That new 41-page memo, first revealed by Bloomberg News on Thursday evening, says that under the 2015 highway and transit bill known as the FAST Act, DOE must identify critical energy infrastructure, a process the agency is undertaking now with the help of its national labs. But because that is likely to take two years, DOE in the meantime should use the 1950 Defense Production Act and the Federal Power Act to require the plants to keep operating, the memo says.

Power sector experts have said using the two laws to keep specific plants operating would stretch both those measures, and would certainly trigger a major legal fight. Critics of the administration's strategy said the memo appears to signal that the White House is preparing for a fight.

"One way to view the release of this draft is that it is a trial balloon to see how fierce and fast the opposition will be," said Dena Wiggins, CEO of the industry lobby group Natural Gas Supply Association, which opposes the DOE plan. "We've known for some time that all of these federal authorities ... were in play, so the fact that we've now seen it in writing doesn't really change anything. It does, however, underscore how hard it is to cobble together a sound legal rationale to bail out otherwise uneconomic coal and nuclear plants."

And critics say the push to bail out the plants is simply Trump's effort to reward backers like Murray, the coal baron, and live up to his campaign promise to revive coal country. Perry first began work on the power plant issue in March 2017, when he met with Murray at DOE, and Trump himself personally directed Perry to take action on the issue since last summer.

Murray's coal mines have been a major supplier for power plants owned by FirstEnergy Solutions, a unit of Ohio-based utility giant FirstEnergy that sank into bankruptcy this spring. FirstEnergy Solutions has said it plans to close or sell five of its money-losing coal and nuclear power plants.

But the Federal Energy Regulatory Commission and the grid operator have said that even with the planned closures, the region has ample power to supply the market's needs. Stagnant power consumption growth, coupled with the rise of natural gas and renewable power sources like wind, has displaced many of the older coal and nuclear facilities in the markets.

The memo also calls for establishing a new requirement for the electric grid based on "resilience," a term Perry injected into the regulatory conversation last fall with a proposed rule that would have rewarded plants that could keep 90 days of fuel on site. FERC rejected that rule, but it also created a new proceeding to try to define "resilience," which some in the industry say pertains to the grid's ability to withstand and recover from a physical or cyberattack.

The memo largely focuses on the issue of resilience, which it says would suffer if coal and nuclear power plants retire. It specifically targets natural gas as a weakness, because the plants that burn the fuel rely on pipelines that could be disrupted, while coal and nuclear power plants can keep months' worth of fuel on site.

"Natural gas pipelines are increasingly vulnerable to cyber and physical attacks," the memo says. "The incapacitation of certain pipelines through the United States would have severe effects on electric generation necessary to supply critical infrastructure facilities."

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House to vote Thursday on Trump's spending cuts plan [Back](#)

By Sarah Ferris | 06/06/2018 05:32 PM EDT

President Donald Trump's prized deficit-reduction package is rolling toward the House floor this week, though its prospects in the Senate remain in doubt — with little time to spare.

House leaders have set a vote Thursday on the Trump administration's roughly \$15 billion rescissions bill, according to a GOP aide, nearly a full month after the proposal was first delivered to Capitol Hill.

The House Rules Committee will tee up the bill, [H.R. 3 \(115\)](#), on Wednesday evening, a lightning turnaround that surprised even some GOP lawmakers.

The last-minute scheduling change comes after the White House [agreed this week](#) not to slash hundreds of millions of dollars from politically sensitive programs, like Hurricane Sandy aid, which helped [secure votes](#) from numerous GOP holdouts.

Even with some of those unpopular cuts reversed, several House Republicans remain anxious about the plan's optics — specifically, cuts to the ultra-popular Children's Health Insurance Program.

At a closed-door meeting of House Republicans Wednesday, several GOP lawmakers stood up to complain that the kids' health cuts could hit hard on the campaign trail, despite assurance from neutral budget experts that the cuts wouldn't harm the program.

In fact, the vast majority of the White House's proposed spending cuts would exist only on paper. The bill would save only \$1 billion over a decade, according to the CBO, which is far less than 1 percent of the size of Congress' last spending bill, H.R. 1625 (115).

Next, the White House will have to sell the bill to the Senate, where a single Republican "no" vote could sink the package.

Budget chief Mick Mulvaney has already met with Sen. Lisa Murkowski, an Alaska Republican who has raised issues with the cuts to CHIP. Sen. Susan Collins of Maine, another GOP moderate, has not yet said whether she supports the bill.

If the House clears the bill Thursday, the Senate will have roughly two weeks to send the measure to Trump's desk before its filibuster-proof powers expire June 22.

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Minibus spending package ready for House floor action [Back](#)

By Kaitlyn Burton | 06/06/2018 07:46 PM EDT

The House Rules Committee today teed up a three-bill spending bundle for floor consideration as soon as Thursday.

All in all, the panel approved 50 Energy-Water amendments, 22 Military Construction-VA amendments and seven Legislative Branch amendments, setting them up for floor votes.

While the minibuss, H.R. 5895 (115), will likely pass, House Democratic leaders threw a wrench in things when they urged lawmakers to oppose the bill, POLITICO reported Tuesday evening.

Votes on the package are expected to come after a separate Thursday vote on the White House's rescissions measure, H.R. 3 (115). Conservatives, including the Republican Study Committee, asked for the spending cuts to be taken up first, according to a House GOP aide. The Rules Committee teed up the rescissions proposal in a 9-3 vote tonight, allowing no amendment votes.

The minibuss would be the first House-passed fiscal 2019 funding measure.

Sarah Ferris contributed to this alert.

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House appropriators advance \$35B Interior-EPA spending package [Back](#)

By Alex Guillén | 06/06/2018 05:04 PM EDT

The House Appropriations Committee today approved its \$35 billion Interior-EPA spending bill by a party-line vote of 25-20.

Committee Republicans blocked an effort from Democrats to boost EPA's Office of Inspector General by \$12 million, saying the watchdog already has "robust" appropriations. The bill funds the OIG at \$12 million less than his request, but higher than the amount requested by the White House.

The committee voted down an amendment that would have required EPA's administrator and deputy administrator to report public details of travel costs within 10 days of a trip, along with various amendments targeting a repeal of the Waters of the U.S. rule and other policy riders, along with EPA's proposed science transparency policy, offshore drilling and other standard policy disputes.

Lawmakers approved an amendment that would change revenue sharing for drilling in the Arctic National Wildlife Refuge. The approved amendment would send 50 percent of revenue to the federal government, 47 percent to the state and 3 percent to the Alaskan Native claims settlement fund.

They also backed a tongue-in-cheek amendment from Rep. [Marcy Kaptur](#) (D-Mich.) that would limit EPA from spending more than \$50 on any one fountain pen, a response to a recent Washington Post report that Pruitt spent \$1,560 for a dozen personalized fountain pens. The amendment passed with no "nay" votes.

WHAT'S NEXT: Lawmakers hope to have the bill before the full House sometime this summer, but it is unclear whether the Senate will act on a similar timeframe. Like most other appropriations bills in recent years, Congress has passed an omnibus rather than conferencing directly.

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GOP blocks funding increase for EPA watchdog probing Pruitt activities [Back](#)

By Alex Guillén | 06/06/2018 03:06 PM EDT

House Republicans today blocked a Democratic effort to increase funding for EPA's Office of Inspector General to help the watchdog deal with the increased workload stemming from Administrator Scott Pruitt's spending and ethics scandals.

Rep. [Mark Pocan](#) (D-Wis.) and a bloc of Democrats on the House Appropriations Committee pushed an amendment that would have boosted OIG funding for fiscal 2019. It ultimately was voted down on a party-line vote of 21-26.

"It's hard to imagine that there is a more overworked inspector general than at the EPA these days," Pocan said. "This is not a Democrat/Republican thing, this should be a good government thing."

Interior-EPA Appropriations Chairman [Ken Calvert](#) (R-Calif.) said the bill "already includes robust support for EPA's inspector general."

The House Interior-EPA spending package would provide the OIG funding of just over \$50 million, about flat with 2018's level. Most of that is appropriated directly, though some of it is pulled from the Superfund program for OIG's work on Superfund-specific issues. Pocan's amendment would have drawn the extra \$12 million from EPA's "workforce reshaping" account inside the \$2.5 billion environmental programs.

In a February [letter](#), EPA Inspector General Arthur Elkins said the president's proposed OIG budget of \$46 million would "substantially inhibit the OIG from performing the duties of the office." He asked instead for a budget of \$62 million. That request came before an avalanche of congressional requests to review various Pruitt-related issues on spending and ethics.

WHAT'S NEXT: The committee will vote later today on the full spending bill.

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Interior advisory committee recommends streamlining environmental reviews for drilling [Back](#)

By Ben Lefebvre | 06/06/2018 06:31 PM EDT

An Interior Department advisory board on Wednesday approved a slew of recommendations aimed at expanding energy lease sales and lowering royalty rates, even as some members questioned whether it had the power to suggest changes to federal environmental reviews.

The Royalty Policy Committee wrapped up its latest meeting in New Mexico after approving nine [recommendations](#) for Secretary Ryan Zinke to change how the department collects payments from energy production on federal land. Most of the suggestions would benefit oil and gas companies operating on federal acres, while two recommendations were aimed at boosting renewable energy production.

Two committee members disagreed with a recommendation for the Bureau of Land Management to issue "categorical exclusions" for certain oil and gas projects, allowing those projects to forgo full environmental reviews under the National Environmental Protection Act.

"NEPA is not referred to in the [committee] charter," Rod Eggert, a professor at the Colorado School of Mines, said during the meeting. "The text in the charter refers to royalties and collections of royalties."

Committee member Monte Mills of the University of Montana agreed that recommending categorical exclusions fell outside of the committee's scope.

Western Energy Alliance President Kathleen Sgamma, another member of the committee, defended the recommendation, saying it would increase royalty payments to Interior by making it easier for companies to drill on public land.

"We're trying to increase competitiveness of federal lands," Sgamma said during the meeting. "NEPA is often the aspect of the federal process that takes the longest and decreases the competitiveness of public lands the most."

Ultimately, the committee approved the recommendation and deferred further discussion about the scope of its charter until its next meeting, yet to be scheduled.

The committee also suggested Interior make it easier for companies to pay lower royalty rates for mature oil and gas wells and those "difficult" to operate. And it recommended Zinke ask Congress to amend the Outer Continental Shelf Lands Act with language allowing Interior to hold offshore energy project lease sales in Guam and other U.S. territories.

The committee's two renewable power suggestions were that Interior offer annual lease sales for 2 gigawatts of offshore wind power every year for a decade starting in 2024; and to instruct BLM to reduce fees and streamline permit requirements for solar projects.

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BLM tells field office to expedite drilling permit reviews [Back](#)

By Ben Lefebvre | 06/06/2018 08:20 PM EDT

The Bureau of Land Management instructed field offices to prioritize the use of old environmental reviews or categorical exclusions to expedite drilling permit applications for sites where work is already underway, according to a memo released today.

The bulletin posted on the BLM website said those methods will allow officials to process the applications "in the most expeditious and appropriate manner" under the National Environmental Policy Act.

The BLM bulletin directed its field offices that existing environmental analysis for new projects proposed for old sites "should be used to the greatest extent possible" instead of starting a new environmental review process.

If the old analysis isn't sufficient, field offices should determine whether the application falls under an existing categorical exclusion, meaning a new NEPA review would not be required. Criteria to determine whether an exclusion would be available include whether a similar project has already occurred on the same site within the previous five years.

BLM posted its memo soon after Interior's Royalty Policy Committee recommended earlier today that the agency increase its use of categorical exclusions.

WHAT'S NEXT: The environmental review priority list goes into effect immediately.

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White House, EPA headed off chemical pollution study [Back](#)

By Annie Snider | 05/14/2018 12:43 PM EDT

Scott Pruitt's EPA and the White House sought to block publication of a federal health study on a nationwide water-contamination crisis, after one Trump administration aide warned it would cause a "public relations nightmare," newly disclosed emails reveal.

The intervention early this year — not previously disclosed — came as HHS' Agency for Toxic Substances and Disease Registry was preparing to publish its assessment of a class of toxic chemicals that has contaminated water supplies near military bases, chemical plants and other sites from New York to Michigan to West Virginia.

The study would show that the chemicals endanger human health at a far lower level than EPA has previously called safe, according to the emails.

"The public, media, and Congressional reaction to these numbers is going to be huge," one unidentified White House aide said in an email forwarded on Jan. 30 by James Herz, a political appointee who oversees environmental issues at the OMB. The email added: "The impact to EPA and [the Defense Department] is going to be extremely painful. We (DoD and EPA) cannot seem to get ATSDR to realize the potential public relations nightmare this is going to be."

More than three months later, the draft study remains unpublished, and the HHS unit says it has no scheduled date to release it for public comment. Critics say the delay shows the Trump administration is placing politics ahead of an urgent public health concern — something they had feared would happen after agency leaders like Pruitt started placing industry advocates in charge of issues like chemical safety.

Sen. Maggie Hassan (D-N.H.) called the delay "deeply troubling" on Monday, urging Pruitt and President Donald Trump "to immediately release this important study."

"Families who have been exposed to emerging contaminants in their drinking water have a right to know about any health impacts, and keeping such information from the public threatens the safety, health, and vitality of communities across our country," Hassan said, citing POLITICO's reporting of the issue. Details of the internal discussions emerged from EPA emails released to the Union of Concerned Scientists under the Freedom of Information Act.

Sen. Jeanne Shaheen, a fellow New Hampshire Democrat, called the delay "an egregious example of politics interfering with the public's right to know. ... [I]t's unconscionable that even the existence of this study has been withheld until now."

The emails portray a "brazenly political" response to the contamination crisis, said Judith Enck, a former EPA official who dealt with the same pollutants during the Obama administration — saying it goes far beyond a normal debate among scientists.

"Scientists always debate each other, but under the law, ATSDR is the agency that's supposed to make health recommendations," she said.

The White House referred questions about the issue to HHS, which confirmed that the study has no scheduled release date.

Pruitt's chief of staff, Ryan Jackson, defended EPA's actions, telling POLITICO the agency was helping "ensure that the federal government is responding in a uniform way to our local, state, and Congressional constituents and partners."

Still, Pruitt has faced steady criticism for his handling of science at the agency, even before the recent spate of ethics investigations into his upscale travels and dealings with lobbyists. In his year leading EPA, he has overhauled several scientific advisory panels to include more industry representatives and recently ordered limits on the kinds of scientific studies the agency will consider on the health effects of pollution.

On the other hand, Pruitt has also called water pollution one of his signature priorities.

The chemicals at issue in the HHS study have long been used in products like Teflon and firefighting foam, and are contaminating water systems around the country. Known as PFOA and PFOS, they have been linked with thyroid defects, problems in pregnancy and certain cancers, even at low levels of exposure.

The problem has already proven to be enormously costly for chemicals manufacturers. The 3M Co., which used them to make Scotchguard, paid more than \$1.5 billion to settle lawsuits related to water contamination and personal injury claims.

But some of the biggest liabilities reside with the Defense Department, which used foam containing the chemicals in exercises at bases across the country. In a March report to Congress, the Defense Department listed 126 facilities where tests of nearby water supplies showed the substances exceeded the current safety guidelines.

A government study concluding that the chemicals are more dangerous than previously thought could dramatically increase the cost of cleanups at sites like military bases and chemical manufacturing plants, and force neighboring communities to pour money into treating their drinking water supplies.

The discussions about how to address the HHS study involved Pruitt's chief of staff and other top aides, including a chemical industry official who now oversees EPA's chemical safety office.

Herz, the OMB staffer, forwarded the email warning about the study's "extremely painful" consequences to EPA's top financial officer on Jan. 30. Later that day, Nancy Beck, deputy assistant administrator for EPA's Office of Chemical Safety and Pollution Prevention, suggested elevating the study to OMB's Office of Information and Regulatory Affairs to coordinate an interagency review. Beck, who worked as a toxicologist in that office for 10 years, suggested it would be a "good neutral arbiter" of the dispute.

"OMB/OIRA played this role quite a bit under the Bush Administration, but under Obama they just let each agency do their own thing..." Beck wrote in one email that was released to UCS.

Beck, who started at OMB in 2002, worked on a similar issue involving perchlorate, an ingredient in rocket fuel — linked with thyroid problems and other ailments — that has leached from defense facilities and manufacturing sites into the drinking water of at least 20 million Americans. Beck stayed on at OMB into the Obama administration, leaving the office in January 2012 and going to work for the American Chemistry Council, where she was senior director for regulatory science policy until joining EPA last year.

Yogin Kothari, a lobbyist with the Union of Concerned Scientists, called Beck's January email "extremely troubling because it appears as though the White House is trying to interfere in a science-based risk assessment."

Environmentalists say such interference was routine during the Bush administration.

"It's why the Obama administration issued a call for scientific integrity policies across the federal government," Kothari said in an email to POLITICO. "Dr. Beck should know firsthand that the Bush administration sidelined science at every turn, given that she spent time at OMB during that time."

Soon after the Trump White House raised concerns about the impending study, EPA chief of staff Ryan Jackson reached out to his HHS counterpart, as well as senior officials in charge of the agency overseeing the assessment to discuss coordinating work among HHS, EPA and the Pentagon. Jackson confirmed the outreach last week, saying it is important for the government to speak with a single voice on such a serious issue.

"EPA is eager to participate in and, contribute to a coordinated approach so each federal stakeholder is fully informed on what the other stakeholders' concerns, roles, and expertise can contribute and to ensure that the federal government is responding in a uniform way to our local, state, and Congressional constituents and partners," Jackson told POLITICO via email.

Pruitt has made addressing per- and polyfluoroalkyl substances, or PFAS, a priority for EPA. The unpublished HHS study focused on two specific chemicals from this class, PFOA and PFOS.

States have been pleading with EPA for help, and experts say that contamination is so widespread, the chemicals are found in nearly every water supply that gets tested.

In December, the Trump administration's nominee to head the agency's chemical safety office, industry consultant Michael Dourson, withdrew his nomination after North Carolina's Republican senators said they would not support him, in large part because of their state's struggles with PFAS contamination. Dourson's previous research on the subject has been criticized as too favorable to the chemical industry.

Shortly after Dourson's nomination was dropped, Pruitt announced a "leadership summit" with states to discuss the issue scheduled for next week.

In 2016, the agency published a voluntary health advisory for PFOA and PFOS, warning that exposure to the chemicals at levels above 70 parts per trillion, total, could be dangerous. One part per trillion is roughly the equivalent of a single grain of sand in an Olympic-sized swimming pool.

The updated HHS assessment was poised to find that exposure to the chemicals at less than one-sixth of that level could be dangerous for sensitive populations like infants and breastfeeding mothers, according to the emails.

Dave Andrews, a senior scientist with the Environmental Working Group, said those conclusions line up with recent studies on the health effects of PFAS.

"They are looking at very subtle effects like increased risk of obesity for children exposed in womb, lowered immune response, and childhood vaccines becoming not as effective," Andrews said.

The HHS document at issue is called a toxicological profile, which describes the dangers of a chemical based on a review of previous scientific studies. It would carry no regulatory weight itself, but could factor into cleanup requirements at Superfund sites.

EPA scientists, including career staffers, were already talking with the HHS researchers about the differences in their two approaches to evaluating the chemicals when officials at the White House raised alarm in late January, the emails show. Those differences, according to the correspondence, stemmed from the agencies' use of different scientific studies as a basis, and from taking different approaches to accounting for the harm that the chemicals can do to the immune system — an area of research that has burgeoned in the two years since EPA issued its health advisory.

Enck, the former EPA official, said she sees one troubling gap in the emails: They make "no mention of the people who are exposed to PFOA or PFOS, there's no health concern expressed here."

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GREENWIRE

AN E&E NEWS PUBLICATION

GREENWIRE — Thu., April 26, 2018



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'I have nothing to hide' — Pruitt

EPA Administrator Scott Pruitt said today allegations of excessive spending and misuse of his Cabinet-level authority are aimed at upending President Trump's agenda at the agency.

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Subject: Pruitt plans to change EPA policy on scientific studies

By Alex Guillén

03/20/2018 10:38 AM EDT

EPA Administrator Scott Pruitt plans to change how the agency considers scientific information when writing regulations in a way that likely will exclude certain studies, he told the [Daily Caller](#).

Pruitt told the news site he will reverse longtime agency policy to require that any studies used to support regulations make their raw data available for review and replication by independent scientists.

"We need to make sure their data and methodology are published as part of the record," Pruitt said. "Otherwise, it's not transparent. It's not objectively measured, and that's important."

The changes are in line with legislation that House Science Chairman [Lamar Smith](#) (R-Texas) has pushed for years, but which was never been passed by the Senate. Democrats, environmentalists and scientific groups have long criticized that legislation as an attempt to cherry-pick data friendly to industry from the voluminous body of epidemiological science. And EPA already releases significant amounts of this data, they said.

CBO [said last year](#) the changes "would significantly reduce the number of studies that the agency relies on." And although EPA said it could make the changes at little to no cost, CBO estimated it would spend \$5 million from 2018 through 2022. EPA [previously told CBO](#) it would have to spend \$250 million a year scrubbing information from thousands of studies "to ensure the transparency of information and data supporting some covered actions."

WHAT'S NEXT: Pruitt did not say when he will issue a formal directive changing EPA's science policy.

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Subject: Morning Energy: Pruitt steps up to the plate — Tester's 'great equalizer' — Bishop still talking NEPA

By Kelsey Tamborrino | 04/26/2018 05:42 AM EDT

With help from Anthony Adragna

PRUITT STEPS UP TO THE PLATE: Scott Pruitt makes his eagerly anticipated trip to the Hill this morning, and the stakes couldn't be higher for the embattled EPA administrator. His appearances before the House E&C Committee in the morning and Appropriations panel in the afternoon — ostensibly to defend the Trump administration's proposed cuts to EPA's budget — will give lawmakers their first opportunity to directly question Pruitt since the news broke about his heavy spending, sweetheart condo rental, VIP security and first-class flights. And while both Democrats and Republicans are expected to pull no punches as they weigh Pruitt's behavior, the real audience will be sitting in 1600 Pennsylvania Ave.

Check out this graphic breakdown of Pruitt's problems by POLITICO's Emily Holden, Alex Guillén and your ME host.

— **The administrator has kept a low profile** in the lead-up to today's events — even leaving press out of a Tuesday announcement on his plan to ban secret science — but expect the cameras to be out in force this morning. ME breaks down what to expect today as Pruitt heads for the batter's box. (ME is also taking suggestions for an appropriate walk-up song. One option here.)

THE GAME PLAN: Pruitt will point out he now flies coach when he travels, and shift the blame to staffers for the raises given to two of his close aides, according to a talking points document — dubbed "hot topics" — obtained by The New York Times. He will likely also say officials who were reassigned or demoted after challenging his spending all had performance issues.

— **EPA did not dispute the authenticity** of the Times document, but spokesman Jahan Wilcox said Pruitt would tout "the accomplishments of President Trump's EPA," including "working to repeal Obama's Clean Power Plan and Waters of the United States, providing regulatory certainty, and declaring a war on lead — all while returning to Reagan-era staffing levels." You can read Pruitt's full opening statement for the E&C hearing here.

DEMOCRATS WILL SEARCH FOR ANSWERS: The afternoon session is expected to dive into Pruitt's proposed deep cuts to the agency's budget and his deregulatory actions, but that doesn't mean Democrats will ignore the ethics woes dogging the embattled chief. "Administrator Pruitt, you are letting the American people and your agency down," Rep. Betty McCollum, ranking member of the Appropriations subpanel, plans to say. Democrat Nita Lowey, the ranking House appropriator, will question Pruitt on the Antideficiency Act after the Government Accountability Office found EPA illegally failed to notify Congress about the cost of his secure phone booth. Meanwhile, E&C's top Democrat Frank Pallone wouldn't tip his hand: "I just hope he shows up," he said when ME asked for his plan of attack.

— **House Energy and Commerce Democrats** will hold a news conference at 9 a.m. to once again call for Pruitt's ouster. Kathy Castor and Paul Tonko will attend, alongside representatives from numerous green groups.

REPUBLICANS OFFER SOME ADVICE: "Answer the questions and stay calm," John Shimkus said. "And the time will eventually end." The Illinois Republican didn't let on about his line of questions to Pruitt, but added: "It's not going to all be addressing stewardship issues. There are going to be policy questions."

— **Fellow Oklahoman and member of the Approps committee** Tom Cole expects the "highly charged" hearing to contain some "pretty much straight budget questions" — at least from the Republican side. Cole said he recently spoke to Pruitt on the upcoming hearing and warned him it would be "rugged."

Keep in mind: None of the committee Republicans said they'd been in contact with the White House ahead of the session. Shimkus said the Republicans hadn't huddled ahead of time to develop a game plan as they sometimes do with high-profile hearings. And Democrats are expected to turn out in force — E&C members not on the Environment subpanel will "waive in" to the hearing. They don't need GOP permission to do so, but will have to wait until all subcommittee members participate before asking questions. ME would look here for especially fiery questions or any surprises.

STRIKE 3? Pruitt's critical audience, of course, will be President Donald Trump, who has so far stuck by him, but is expected to judge how Pruitt fares in front of the cameras, POLITICO's Anthony Adragna and Nancy Cook report. So far, Pruitt's support among Trump's conservative backers has kept him on solid ground, despite the growing resentment of a "high maintenance" EPA chief among White House officials. "The president is always nervous about offending his base, and Pruitt has real support in the base," said one Republican close to the White House. "If that base diminishes, he does not have a chance of being reelected. He generally likes what Pruitt is doing over there, but he has no relationship with Pruitt of any note. He could get someone else."

IN THE OUTFIELD: Environmental group Defend Our Future will hand out first-class boarding passes today at the Pruitt hearing, while Moms Clean Air Force will deliver these report cards. And the League of Conservation Voters and its state partners will launch television ads today urging Sens. Dean Heller and Cory Gardner to hold Pruitt accountable. Watch them here and here.

If you go: The E&C hearing will begin at 10 a.m. in 2323 Rayburn, and the Appropriations hearing at 2 p.m. in 2007 Rayburn. Watch the livestreams here and here.

IT'S THURSDAY! I'm your host Kelsey Tamborrino, and the American Petroleum Institute's Jeff Stein was the first to name Khartoum, Sudan — the capital city where the Blue and White Niles meet to form the Nile. For today: Name the state where the first officially designated Democratic floor leader hailed. Send your tips, energy gossip and comments to ktamborrino@politico.com, or follow us on Twitter @kelseyam, @Morning_Energy and @POLITICOPro.

POLITICO's Ben White is bringing Morning Money to the Milken Institute Global Conference to provide coverage of the day's events and evening happenings. The newsletter will run April 29 - May 2. Sign up to keep up with your daily conference coverage.

PUBLIC LANDS CRUCIAL FOR TESTER: Democratic Sen. Jon Tester's bid for reelection could come down to how he handles public lands issues, Pro's Kevin Robillard reports. Close to one-third of the land in Tester's home state of Montana is under federal government ownership, and the Democratic senator hopes to use it to keep on board those who voted Trump — including hunters, hikers, snowmobilers and ranchers. "Public lands is one of the great equalizers. It's part of who we are," Democratic Gov. Steve Bullock told Kevin. "It doesn't matter what our political beliefs are, it's a core part of our lives."

Tester's strategy is part of a larger effort by Democrats in the West to emphasize lands. Bullock emphasized it in his reelection bid in 2016 and New Mexico Sen. Martin Heinrich, who is expected to easily win reelection in 2018, started his reelection bid with a video focused heavily on public lands issues. And Democratic strategists think it can help them in states throughout the interior west. "There a lot of people here who are

single-issue voters, and that issue is public lands," said Nick Gevock, the conservation director at the Montana Wildlife Federation. Read [more](#).

DEMOCRATS CALL FOR SPECIAL COUNSEL: In a letter Wednesday to the U.S. Office of Special Counsel, Pallone and Oversight ranking member [Elijah Cummings](#) requested an investigation into whether there is a pattern of problematic personnel practices at EPA. The Democrats point to recent reports of agency officials being reassigned, demoted or requesting new roles, after voicing concerns on Pruitt. "The reassignment or dismissal of employees who questioned Administrator Pruitt's wasteful and potentially unlawful expenditures suggests a troubling pattern of retaliation against EPA employees that may be illegal," they write. Read the letter [here](#).

BISHOP STILL TALKING NEPA: House Natural Resources Chairman [Rob Bishop](#) told ME he's been in contact with administration officials "over the last few weeks" about a series of modifications to NEPA that he says "run the gamut." His two overarching goals are to speed the permitting process and to enact categorical exclusions that will limit litigation to allow projects to advance more quickly. "It's one of the consistent problems they recognize," he said of the administration's engagement on NEPA.

Apples to oranges: Controversy over [\\$139,000 spent on doors](#) at Interior is not comparable to spending woes engulfing Pruitt, according to Bishop. "There are some real issues and there are some issues that we play around with," he said. "This is one I think people are playing with." Interior officials said previously that career facilities and security officials recommended the work and that Secretary Ryan Zinke was not aware of it.

THAT DAM BILL: The House passed a heavily watched measure, [H.R. 3144 \(115\)](#), Wednesday that would override a court decision requiring changes in the operations of major hydropower dams in the Pacific Northwest to help protect endangered salmon. The measure, from Washington Rep. [Cathy McMorris Rodgers](#), passed by a nearly party-line vote of 225-189, and now heads to the Senate, where some of the region's Democratic senators have [made known](#) their opposition. Pro's Annie Snider breaks down more [here](#).

REFINERY WORKERS HIT THE HILL: Close to 100 workers from refineries Monroe Energy, Philadelphia Energy Solutions and PBF Energy will rally for their jobs and Renewable Fuel Standard reform on the Hill today, the United Steelworkers said. The rally begins at 1 p.m. in the "Senate Swamp" — the grass across the drive from the east Senate steps. Texas Sen. [Ted Cruz](#) will participate in a press conference with the workers at the same time. Watch the livestream [here](#).

OFF-SHORE UP SUPPORT: While it didn't have quite the same build-up as Pruitt's hearings this morning, the House Natural Resources energy and mineral resources subcommittee will hold a hearing today on offshore energy revenue sharing for Gulf-producing states, with a focus on the Gulf of Mexico Energy Security Act. Democrats intend to call out the oil and gas industry and demand they take responsibility for their role in causing the destruction of Louisiana wetlands, according to a release. Former Sen. Mary Landrieu (D-La.), now a senior policy adviser at Van Ness Feldman, and John Barry, former board member of the Southeast Louisiana Flood Protection Authority — East, will testify, among others. **If you go:** The [hearing](#) begins at 10 a.m. in 1324 Longworth.

GET YOUR COMMENTS IN: [Comments](#) are due today on EPA's proposed repeal of the Clean Power Plan. The Competitive Enterprise Institute, for one, will file a comment today in support of the proposed repeal, calling the CPP "unlawful." Close to 20 other individuals from free-market groups signed onto the joint comment. Google, meanwhile, submitted its own comment Wednesday "respectfully" urging EPA to forgo the repeal. "Google continues to believe that the Clean Power Plan aligns with overall electricity sector trends and the specific goals of our company," [it says](#). The Natural Resources Defense Council and NRDC Action Fund said it generated 208,000 comments in support of keeping the CPP.

MAIL CALL! IN THE AIR TONIGHT: California Sen. [Dianne Feinstein](#) wrote to Transportation Secretary Elaine Chao Wednesday, calling on her to maintain national fuel economy standards set by California under the Clean Air Act. "I ask for your commitment to maintain the Corporate Average Fuel Economy standards at the maximum feasible level, as required by law, and to seek consensus with California so that we can continue to enjoy the success of a coordinated national program to improve fuel economy," Feinstein wrote. Read the letter [here](#).

— **Eighty-seven lawmakers signed onto a letter Wednesday** that calls on Pruitt to reinstate the "once in, always in" [policy](#) to "safeguard" from harmful air pollutants. "This is a matter of critical human health and safety," the lawmakers write. Read it [here](#).

GoT RENEWABLES? Rapper Kanye West [tweeted](#) about his connection to Trump and their "dragon energy" on Wednesday. "We are both dragon energy. He is my brother. I love everyone. I don't agree with everything anyone does." Spoiler: It's not an energy company we forgot to tell you about. Bloomberg breaks it down [here](#), but earlier in the day, West described dragon energy as, "Natural born leaders Very instinctive Great foresight." The House Natural Resources [account tweeted](#) the exchange telling West to "have your people call our people."

QUICK HITS

— Behind the scenes of Pruitt's Nevada trip, [E&E News](#).

— U.S. mine safety agency website 'hacked,' remains down, [S&P Global](#).

— Exxon Mobil boosts quarterly dividend to 82 cents, [Reuters](#).

— Climate change could make thousands of tropical islands "uninhabitable" in coming decades, new study says, [The Washington Post](#).

— Memo: Park Police officers were forbidden from wearing body cameras, [The Hill](#).

— Perry's son owns an energy investment company. Is that a problem? [McClatchy](#).

HAPPENING TODAY

8:00 a.m. — Water Leaders [summit](#) on "Building an Innovative Future for Water Policy and Technology in America," 215 Capitol Visitors Center

8:30 a.m. — George Mason University's Center for Energy Science and Policy [symposium](#) on "Energy-Water Nexus," Fairfax, Va.

9:00 a.m. — Colorado State University hosts [symposium](#) on "Water in the West," Denver

10:00 a.m. — The U.S. Energy Association [forum](#) on "fostering the deployment of CCUS technologies," 1300 Pennsylvania Ave NW

10:00 a.m. — The House Energy and Commerce Committee [hearing](#) on EPA's budget request, 2323 Rayburn

10:00 a.m. — House Science Environment and Space subcommittees [hearing](#) on "Surveying the Space Weather Landscape," 2318 Rayburn

10:00 a.m. — House Natural Resources Oversight Subcommittee hearing on "Examining the Critical Importance of Offshore Energy Revenue Sharing for Gulf Producing States," 1324 Longworth

10:00 a.m. — The Center for Strategic and International Studies' Energy and National Security Program discussion on "Challenges to Ukrainian Energy Reform and European Energy Security," 1616 Rhode Island Avenue NW

11:30 a.m. — The Atlantic Council discussion on "From an Oil Company to an Energy Company," 1030 15th Street NW

1:00 p.m. — Monroe Energy, Philadelphia Energy Solutions and PBF Energy news conference on RINs prices under the Renewable Fuel Standard, Capitol.

1:30 p.m. — Information Technology and Innovation Foundation release on "Closing the Innovation Gap in Grid-Scale Energy Storage," 1101 K Street NW

2:00 p.m. — House Appropriations Interior, Environment, and Related Agencies Subcommittee hearing on EPA's fiscal 2019 budget, 2007 Rayburn

2:00 p.m. — House Natural Resources Committee hearing on H.R. 5317 (115) and H.R. 211 (115), 1324 Longworth

2:00 p.m. — Senate Appropriations Energy and Water Development Subcommittee hearing on the Nuclear Regulatory Commission's proposed budget for FY 2019, 430 Dirksen

2:30 p.m. — The Center for a New American Security discussion on "Geopolitical Risks and Opportunities of the Lower Oil Price Era," 1152 15th Street NW

3:00 p.m. — Rep. Nydia Velázquez discussion on "21st Century Energy Solutions for Puerto Rico," S-115

5:00 p.m. — The Atlantic Council discussion on "Investing in Iraq: Reconstruction and the Role of the Energy Sector," 1030 15th Street NW

6:30 p.m. — Wild & Scenic Film Festival with screenings of feature films that cover topics from climate change to environmental justice, and a panel discussion on women in the outdoors, 1307 L Street NW

THAT'S ALL FOR ME!

To view online:

<https://www.politicopro.com/newsletters/morning-energy/2018/04/pruitt-steps-up-to-the-plate-183688>

Stories from POLITICO Pro

Pruitt scales back EPA's use of science Back

By Emily Holden and Annie Snider | 04/24/2018 03:17 PM EDT

Environmental Protection Agency chief Scott Pruitt announced Tuesday he would seek to bar the agency from relying on studies that don't publicly disclose all their data, a major policy change that has long been sought by conservatives that will sharply reduce the research the agency can rely on when crafting new regulations.

The unveiling of the proposed rule delivers a win to Republicans like House Science Chairman Lamar Smith (R-Texas), who unsuccessfully pushed legislation to impose the same type of change. The move also demonstrates Pruitt's persistence in pursuing President Donald Trump's anti-regulation agenda just two days before the embattled EPA chief is due to face fierce questioning from lawmakers about his hefty spending, expanded security detail and cheap condominium rental from the wife of an energy lobbyist.

At an invitation-only meeting at EPA headquarters with Smith, Sen. Mike Rounds (R-S.D.) and other supporters of the policy, Pruitt said the proposed rule was critical in ensuring that the agency was transparent about how it is making decisions to justify costly new regulations. It is the latest step Pruitt has taken to fundamentally shift the agency's approach to science.

"It is a codification of an approach that says as we do our business at the agency the science that we use is going to be transparent, it's going to be reproducible, it's going to be able to be analyzed by those in the marketplace. And those who watch what we do can make informed decisions about whether we've drawn the proper conclusions or not," Pruitt said.

Text of the proposed rule was not immediately available.

The proposal, based on legislation pushed by Smith, is intensely controversial, and scientists and public health groups say it will prevent federal regulators from enacting health and safety protections. Nearly 1,000 scientists, including former EPA career staffers, signed a letter opposing the policy sent by the Union of Concerned Scientists to Pruitt on Monday.

Their primary concern was that many of the country's bedrock air and water quality regulations are based on research that cannot disclose raw data because it includes the personal health information.

But industry has its own version of the same problem. EPA often relies on industry studies that are considered by companies to be confidential business information when determining whether new pesticides and toxic chemicals are safe to use. Internal EPA emails obtained under the Freedom of Information Act show that EPA political officials, including Nancy Beck, who became the chief of the agency's chemical safety office last year after working for years at a chemical industry lobbying group, worried that the new policy would limit the agency's ability to consider industry data or would force companies to make this proprietary data public.

"We will need to thread this one real tight!" Richard Yamada, political official who led work on the new policy wrote to Beck after she raised the concerns.

It was not immediately clear if the new proposed rule included measures to address those concerns.

Rush Holt, CEO of the American Association for the Advancement of Science, said Pruitt's changes could keep the agency from revising public health regulations as problems arise or new data comes to light.

"On the surface it sounds so innocuous or even beneficial. What could be wrong with transparency? Well it's clear to me that this is not based on an effort to be transparent. It is rather based on an effort to be just the opposite," he said.

"EPA is particularly important because when science is misused, people die," he added.

Pruitt has been discussing the new scientific policy publicly for weeks, but it only went to the White House for interagency review last week. Such swift review is very rare for the Office of Management and Budget, which often takes months to vet a new policy. At least one group, the Environmental Defense Fund, has requested a meeting with OMB officials to discuss the rule, but OMB's website shows that no meetings have been scheduled with interested groups.

Many public health studies can't be replicated without exposing people to contaminants, and environmental disasters such as the Deepwater Horizon oil spill cannot be recreated, the group said, raising intellectual property, proprietary and privacy concerns.

Pruitt's predecessor Gina McCarthy, and her air chief Janet McCabe, in an op-ed in The New York Times in March said concerns about studies are dealt with through the existing peer-review process, which ensures scientific integrity.

"[Pruitt] and some conservative members of Congress are setting up a nonexistent problem in order to prevent the E.P.A. from using the best available science," they said.

To view online [click here.](#)

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Report: Pruitt plans to shift blame for scandals [Back](#)

By Emily Holden | 04/25/2018 01:55 PM EDT

EPA chief Scott Pruitt will seek to shift the blame for some of his ethics controversies by blaming his staff when he testifies at two House hearings Thursday, according to an internal EPA document reviewed by The New York Times.

Pruitt is prepared to say that he now flies coach rather than first-class, that staffers were responsible for large raises given to close aides without White House sign-off and that officials who were reportedly sidelined for questioning his behavior had performance issues, according to the Times.

The defenses are in line with what Pruitt and EPA spokespeople have said in recent months.

EPA did not dispute the authenticity of the document, but spokesman Jahan Wilcox said Pruitt would tout "the accomplishments of President [Donald] Trump's EPA," including "working to repeal Obama's Clean Power Plan and Waters of the United States, providing regulatory certainty, and declaring a war on lead — all while returning to Reagan-era staffing levels."

Pruitt is expected to face questions about his bargain condo rental from the wife of a lobbyist who has since resigned from his firm, his spending on a round-the-clock security detail and his previous refusal to fly coach. He is under investigation by three congressional committees, the EPA's inspector general and the GAO, among other oversight bodies. White House deputy press secretary Hogan Gidley told NPR today that Pruitt will have to answer questions about the potential ethics violations "in short order."

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'It could be pretty painful' when Pruitt faces Congress [Back](#)

By Anthony Adragna and Nancy Cook | 04/25/2018 06:00 PM EDT

When Scott Pruitt returns to Capitol Hill on Thursday, he will find few friends ready to greet him — and an audience of one waiting to determine his fate.

Republicans say they aren't going to give the Environmental Protection Agency chief a free pass on accusations of lavish spending, a sweetheart condo lease and luxe air travel during a pair of high-stakes hearings. Since Pruitt's previous appearance on Capitol Hill in January, he has faced an avalanche of damaging headlines and investigations that have alienated much of the White House and raised questions about his future leading the agency.

President Donald Trump has so far stuck by Pruitt. But the biggest test for the media-obsessed president may be how Pruitt fares in front of the cameras — only three weeks after he drew poor reviews for a combative interview with Fox News' Ed Henry.

House Energy and Commerce Chairman Greg Walden (R-Ore.) said Pruitt will receive a "cordial reception, but he's got some tough questions to answer."

Rep. John Shimkus (R-Ill.), whose subcommittee will be Pruitt's first stop Thursday, said the administrator should expect a "cool" reception from Republicans — who still strongly support his work to pare back EPA rules.

"It could be pretty painful, but when you accept the position of a senior administrator in a federal agency you've got to expect [that]," Shimkus, who chairs the Energy and Commerce Environment Subcommittee, told Politico. "You've just to grin and bear it and get through it."

Pruitt has few allies left in the White House, apart from the president himself. Senior administration aides characterized the hearings as potential make-or-break moments for Pruitt but said it's ultimately up to the president as to whether the White House wants to tolerate Pruitt's bad press.

Trump is largely keeping Pruitt around because he appreciates Pruitt's hard-charging agenda and because the White House does not want to go through another bruising confirmation battle over another Republican to lead EPA, according to senior administration officials and Republicans close to the White House. Already the White House expended great political energy this week on its pick for secretary of state, Mike Pompeo, a former congressman whom the White House views as eminently qualified but who is barely expected to squeak through the Senate confirmation process.

Most important, the president fears that dumping Pruitt would anger conservatives.

"The president is always nervous about offending his base, and Pruitt has real support in the base," said one Republican close to the White House. "If that base diminishes, he does not have a chance of being reelected. He generally likes what Pruitt is doing over there, but he has no relationship with Pruitt of any note. He could get someone else."

When asked at the White House briefing on Wednesday about Pruitt's spending and potential ethical violations, press secretary Sarah Huckabee Sanders would only say: "We are evaluating these concerns, and we expect the EPA administrator to answer for them."

Pruitt's waning support among White House aides has been months in the making. And at this point, many administration officials say they are tired of the terrible headlines and consider the allegations about Pruitt a nonstop swirl of distractions. It's not just Pruitt's handling of the questions that has irked White House officials but the facts themselves about the way he's led the EPA and run his own staff.

Over the past year, Pruitt has also alienated members of the communications team, National Economic Council, and Cabinet Affairs in various fights over policy like the Paris climate deal, messaging over policy rollouts, and spending decisions at the EPA. Another Republican close to the White House said Pruitt has earned a reputation among White House aides as "high maintenance."

The White House was not involved in helping to prepare Pruitt for the two Hill hearings on Thursday.

Shimkus predicted the toughest questions would come from the other side of the aisle.

"We need to make sure that we understand and recognize the valid, valid concerns that are out there on policy and administrative activity," he said. "But I don't think we'll be gouging his eyes out either — I think we'll have other folks that'll do that."

Some Pruitt supporters say he should be judged on his overall tenure.

"It should be based on his past performance, not necessarily standing in front of a microphone," House Natural Resources Chairman Rob Bishop (R-Utah) said. Bishop's committee does not have jurisdiction over EPA, but he has been a strong supporter of Pruitt's policy goals.

In his opening statement released ahead of the hearing, Pruitt will sidestep any discussion of the latest controversies, instead focusing on policy goals like Superfund cleanups and working more closely with states. "I will focus on key objectives to improve air quality, provide for clean and safe water, revitalize land and prevent contamination, ensure the safety of chemicals in the marketplace, assure compliance with the law, and improve efficiency and effectiveness," Pruitt will say in his prepared remarks.

Democrats are expected to tie the scandals facing Pruitt to his aggressive deregulatory push and proposal to slash EPA's budget by more than a quarter — which they see as just as worrisome as his alleged ethical improprieties. Multiple aides said there's such strong interest in the session that committee Democrats not on the Environment Subcommittee plan to participate, which does not require signoff from the majority.

"There's a confluence of concerns here that I think the Democrats are going to want to get answers to," Rep. Paul Tonko of New York, top Democrat on the panel, told POLITICO. "We were concerned yesterday, we're concerned today and we'll be concerned tomorrow if he's there."

There will be no shortage of things to ask him about, including the more than \$105,000 the agency has spent on his first-class flights, lavish spending on a \$43,000 soundproof phone booth and round-the-clock security, a cushy \$50-per-night condo lease from a Washington lobbyist who personally met with Pruitt to discuss the agency's Chesapeake Bay work, and a trip to Morocco in December on which he spent time promoting liquefied natural gas exports — a topic that isn't part of his agency's portfolio. Pruitt is also facing scrutiny over the significant pay raises the agency gave to a handful of his longtime aides from Oklahoma despite the White House's objections.

Federal watchdogs, the agency's inspector general, congressional investigators and the White House have launched more than a dozen investigations into various aspects of Pruitt's conduct.

But Rep. Joe Barton (R-Texas), the longest-serving member of Energy and Commerce, said Pruitt's ethics issues are "not the purpose of the hearing" and suggested many Republicans would come to the administrator's defense. However, he said the panel's GOP members have not met in advance to plot strategy.

"He's had a lot of death threats. I don't have a problem with his security costs," Barton said Wednesday. "I don't really have a major problem with his telecommunications setup. It's a difficult job to be the EPA administrator when you're a Republican."

Still, signs are increasing of weariness toward Pruitt among congressional Republicans. Three senior Senate Environment and Public Works Committee Republicans, including his staunch ally Sen. Jim Inhofe (R-Okla.), called for hearings into Pruitt's behavior earlier this week. Four House Republicans have called for his resignation. And EPW Chairman John Barrasso (R-Wyo.) said he has "serious questions" about Pruitt's spending and pledged to send additional oversight letters.

"He'll need to acquit himself well," Sen. John Thune, the No. 3 Republican in the Senate, said when asked about how important the sessions will be for Pruitt's future in the administration.

An aide to Rep. Betty McCollum of Minnesota, top Democrat on the House Appropriations Interior and Environment Subcommittee, where Pruitt will appear Thursday afternoon, told POLITICO their hearing would likely focus more on Pruitt's proposed cuts to nearly a quarter of the agency's budget and regulatory rollbacks.

"I expect the E&C hearing will have a greater focus on the ethical concerns surrounding Pruitt," the aide said.

Some Democrats on Energy and Commerce acknowledge Pruitt has in the past performed well in congressional hearings, which they said could allow him to respond to some of the charges.

"If Mr. Trump is going to look for a good performance, I bet he'll put up a great performance," said Rep. Scott Peters (D-Calif.), another member of the subpanel. "But if he doesn't address the substance of the ethical and environmental challenges, I hope that they would think about finding someone else."

Other Democrats think Pruitt's main goal will be to avoid a major gaffe but they don't see any way he will emerge from the hearing in a significantly strengthened position.

"One or two of these transgressions would be survivable but there are so many scandals that it's really hard for me to imagine that Republicans want to lower the bar this much," said Sen. Brian Schatz (D-Hawaii), an outspoken Pruitt critic. "It is actually beyond me why they're sticking by him."

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Tester leans on public lands as key reelection issue [Back](#)

By Kevin Robillard | 04/26/2018 05:05 AM EDT

HELENA, Mont. — The issue that could prove key to Democratic Sen. Jon Tester's reelection bid is under the radar in Washington politics but practically ever-present in Montana life.

Nearly a third of the land in Montana is under federal government ownership, and Tester wants to keep it that way. It's a way the Democratic senator, who is running for a third term, hopes to keep voters who pulled the lever for President Donald Trump — including hunters, hikers, snowmobilers and ranchers — on his side in 2018.

"Public lands is one of the great equalizers. It's part of who we are," Democratic Gov. Steve Bullock said in a phone interview. "It doesn't what matter what our political beliefs are, it's a core part of our lives."

Tester's strategy is part of a larger effort by Democrats in the West to emphasize the issue. Bullock emphasized it in his reelection bid in 2016 as he defeated Republican Greg Gianforte (now Montana's congressman) by 4 percentage points after hammering the Republican billionaire over stream access. New Mexico Sen. Martin Heinrich, who is expected to easily win reelection in 2018, started his reelection bid with a video focused heavily on public lands issues. And Democratic strategists think it can help them in states throughout the interior West.

"There are a lot of people here who are single-issue voters, and that issue is public lands," said Nick Gevock, the conservation director at the Montana Wildlife Federation.

Outdoor recreation is now Montana's largest industry, surpassing agriculture, and contributes \$7 billion and 71,000 jobs to the state's economy.

"They like to go hunting, they like to go fishing, they like to go hiking, they just like to get in the mountains where their cellphone doesn't work," Tester said in an interview. "I want to make sure there's not a mine put at the head of the Yellowstone River, or at the borders of Glacier Park."

A Montana Republican on the national stage is also raising the profile of the issue in-state. Conservationists had high hopes for Interior Secretary Ryan Zinke when he was first named to the job, but his decision to shrink the size of two national monuments has left them dismayed and disappointed.

"We were hopeful that, being a Montanan, he was going to live Montana values and be the Teddy Roosevelt conservationist he said he was," Gevock said, but noting Zinke's Interior Department was "putting the oil and gas industry above every other use."

Tester introduced Zinke at his confirmation hearing and had similar hopes, but is heavily critical of him today.

"It was because I thought he understood conversation. I haven't seen that over the last 14 months," Tester said, adding: "He has time to redeem himself."

The strategy is a proven vote-winner in Montana. Throughout the 2016 gubernatorial campaign, and in his earlier bids for governor and attorney general, Bullock emphasized stream access laws for fishermen. And he hammered Gianforte for fighting stream access laws in multiple television ads last cycle.

The state and national GOP platforms both support selling federal public lands to the states, where many environmentalists feel they would be exposed to oil and gas interests. Tester's opponents don't endorse those views.

"The people of Montana do not want the public lands transferred," state Auditor Matt Rosendale said in an interview, echoing the views of businessman Troy Downing and former judge Russ Fagg. (Rosendale supported selling the land during a 2014 bid for Congress but has changed his position.)

All three said they would like localities to have more say in how lands are managed and how federal authorities balance multiple uses. Rosendale, for instance, criticized the Forest Service for shutting down too many roads in the state.

But while Democrats in Montana have aggressively used the issue, public lands haven't become a top-tier issue in Colorado, Arizona or elsewhere in the interior West, which some Democratic strategists believe is a missed opportunity.

The Western Values Project, a Colorado-based nonprofit, ran ads late last year pressuring three potentially vulnerable Republicans — Arizona Rep. Martha McSally, who is now running for Senate, along with Oregon Rep. Greg Walden and Washington Rep. Jaime Herrera Beutler — over their support for Zinke's decision to shrink the national monuments.

And the attacks had an impact: In Arizona, McSally held a 3-point lead against a generic Democrat in her congressional district in a poll conducted by Global Strategy Group. But when "asked to consider a scenario where she votes to reduce the size of the Bears Ears and Grand Staircase-Escalante national monuments," her support dropped to 38 percent, with a generic Democrat winning 50 percent of the vote.

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Interior spent \$139K on Zinke office doors [Back](#)

By Anthony Adragna | 03/08/2018 05:58 PM EDT

The Interior Department is spending \$139,000 for new doors for Secretary Ryan Zinke's office suite, according to records posted online.

The work was recommended by Interior career facilities and security officials, an agency spokeswoman said, not by Zinke.

"The secretary was not aware of this contract but agrees that this is a lot of money for demo, install, materials, and labor," Heather Swift, the spokeswoman, said in a statement.

The award to Maryland-based Conquest Solutions LLC was first reported by the Associated Press. The work involves replacing three sets of double doors, including two that open onto a balcony and leak during rain storms, the AP reported. An existing set of doors to Zinke's office from a hallway do not have a lock, so the security will be upgraded with the new doors.

Swift said the work is part of a "decade-long modernization of the historic FDR-era building."

"Between regulations that require historic preservation and outdated government procurement rules, the costs for everything from pencils to printing to doors is astronomical. This is a perfect example of why the Secretary believes we need to reform procurement processes."

Housing and Urban Development Secretary Ben Carson drew criticism recently over news that HUD would spend \$31,000 on a dining set. That order was subsequently canceled.

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House passes controversial dam bill [Back](#)

By Annie Snider | 04/25/2018 04:45 PM EDT

The House passed a controversial measure to override a court decision that required changes in the operations of major hydropower dams in the Pacific Northwest to help protect endangered salmon.

The measure, H.R. 3144 (115), from Rep. Cathy McMorris Rodgers (R-Wash.), was passed by a nearly party-line vote of 225-189.

The 9th Circuit Court of Appeals earlier this month upheld a lower court decision requiring that water be spilled over the tops of dams along the Columbia and Snake rivers, including the powerhouse Grand Coulee Dam, the largest power station in the U.S., during periods when young salmon and steelhead migrate to the ocean. The suit was brought by the state of Washington, tribes and conservation groups.

McMorris Rodgers and other Republicans in the region have fought the decision because it would reduce the dams' hydropower output. Their legislation would override the courts and require that dam operations continue as they have historically to maximize power production until an environmental review of the system can be completed.

The legislation is the latest front in a yearslong battle over the nearly 100-year-old hydropower system on the rivers. Conservation groups and tribes with treaty fishing rights want it altered and operated to benefit wildlife, including calling for the removal of four dams along the Snake River.

WHAT'S NEXT: The legislation moves to the Senate, where some of the region's Democratic senators have registered their opposition.

To view online [click here](#).

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EPA drops 'once in, always in' policy from key Clean Air Act requirements [Back](#)

By Alex Guillén | 01/25/2018 06:11 PM EDT

EPA today withdrew a Clinton-era policy that was designed to prevent major emitters like power plants and factories from getting out of tough requirements to limit their toxic air emissions.

In a new memo, EPA air chief Bill Wehrum wrote that the "once in, always in" policy "is contrary to the plain language" of the Clean Air Act. Wehrum revoked a 1995 guidance memo outlining the policy and said EPA would consider new regulations to clarify its interpretation of the law.

Under the now-revoked guidance, any emitter that qualified as a "major" source of hazardous air pollutants would forever be subject to that tougher standard to comply with MACT rules, even if its emissions dropped low enough to be considered an "area" source subject to fewer or no requirements. Wehrum's memo said the law does not specify that such classifications are permanent.

"EPA has now determined that a major source which takes an enforceable limit on its [potential emissions] and takes measures to bring its HAP emissions below the applicable threshold becomes an area source, no matter when the source may choose to take measures to limit its" potential pollution emissions, Wehrum wrote.

Wehrum argued that the policy shift will actually encourage sources that hesitated to install emission reduction projects to move forward. Environmentalists, however, quickly blasted the change on social media.

The Bush administration twice attempted to change the OIAI policy but never succeeded.

WHAT'S NEXT: Wehrum's memo says EPA will "soon publish a Federal Register notice to take comment on adding regulatory text that will reflect EPA's plain language reading of the statute."

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AN E&E NEWS PUBLICATION

GREENWIRE — Wed., April 25, 2018



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Behind the scenes of Pruitt's Nevada trip

More than 160 pages of emails, memos and itineraries obtained by E&E News under a Nevada public records request show what it takes to pull off a visit by EPA Administrator Scott Pruitt. Weeks of emails and conference calls, advance site visits and plenty of overtime let the press-shy EPA chief slip into town.

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Subject: Morning Energy: Perry's latest bid to save coal — NEPA focus of hearing today — More on the Pruitt front

By Kelsey Tamborrino | 04/25/2018 05:54 AM EDT

With help from Anthony Adragna

PERRY'S LATEST BID TO SAVE COAL: So far, Energy Secretary Rick Perry has had no success in his effort to construct a safety net to keep alive coal-fired and nuclear power plants threatened with shutdowns — a mission that's come straight from President Donald Trump. And Perry's latest potential gambit to use the 1950 Defense Production Act in hopes of designating the plants as crucial for national security may not fare better than his previous efforts, energy experts tell Pro's Eric Wolff.

Experts say the bid would stretch the definition of the law and almost certainly draw legal challenges. Plus invoking the act that was last used by the Obama administration to push advanced biofuels would probably hit a snag in Congress, since lawmakers would need to approve perhaps billions of dollars in funding to keep the plants afloat, the experts say.

Using the Korean War-era law to protect the plants could be a novel approach to aiding power plants, Eric writes, especially after Perry failed to gain FERC's support for his proposal to give the plants financial backing. And since Energy Department lawyers stymied a push last year to invoke the agency's authority under the Federal Power Act to force the plants to run, Perry and his staff appear to have very few viable options left.

But the fresh take on the act doesn't necessarily mean it'll work. "To me, it's a tough argument to make. It's a specious argument on its surface that seems like a perversion of the intended use of the Defense Production Act," said Tom Hicks, a former acting undersecretary of the U.S. Navy under former President Barack Obama and now a principal at the advisory firm The Mabus Group. Read [more](#).

WELCOME TO WEDNESDAY! I'm your host Kelsey Tamborrino, and James Daniel was the first to guess the most recent senator to appear on a U.S. postage stamp. It was Maine's Margaret Chase Smith, who [appeared](#) during the Distinguished Americans Issue in 2007, worth a whopping 58 cents face value. A geography question for today: The Blue Nile and the White Nile combine to form the Nile River at which capital city? Send your tips, energy gossip and comments to ktamborrino@politico.com, or follow us on Twitter [@kelseyam](#), [@Morning_Energy](#) and [@POLITICOPro](#).

POLITICO's Ben White is bringing Morning Money to the Milken Institute Global Conference to provide coverage of the day's events and evening happenings. The newsletter will run April 29 — May 2, 2018. [Sign up](#) to keep up with your daily conference coverage.

DON'T FEAR THE NEPA? House Natural Resources will hold an oversight [hearing](#) this afternoon on what it calls the "weaponization" of the National Environmental Policy Act, and it could be a doozy. The committee notice calls NEPA — the seminal law that requires an environmental review on all federal actions — activists' "weapon of choice." Republicans have long-sought to undo parts of the law, and today's hearing will likely echo some of the rhetoric out of the Trump administration, which has supported faster NEPA reviews as part of its [infrastructure push](#). The hearing will review challenges from NEPA and will evaluate reforms to "de-

weaponize" the law to "minimize opportunities for bad faith litigation, and restore the law to its original intent," according to a committee notice.

The committee previously took up the topic last year, holding a similar hearing in November on modernizing the law for the 21st century. James Coleman, a law professor at the Southern Methodist University, is expected to say the current NEPA process is "broken" and that bipartisan efforts to fix the problem have failed. "As President Obama's regulatory czar put it, 'If the permitting bureaucracy were a supervillain, it would be the Blob,'" he'll say, according to his testimony. "Right now, the Blob is winning: We have lost decades of investment while environment reviews grow longer and longer. How can we ensure that the U.S. does not fall behind our global competitors?"

Meanwhile, Laura Alice Watt of Sonoma State University, who says she is a proponent of environmental reviews that are conducted consistently, will discuss the effect of NEPA on the Point Reyes National Seashore, where a review over the last 20 years has contributed to the erosion of active ranches. Melissa Hamsher of Eclipse Energy Resource Corporation and former CEQ official Horst Greczmiel will also testify. Democratic Rep. Donald McEachin, ranking member of the Oversight subcommittee, will say that he'll hold the administration and Republicans to account on NEPA. "Many communities — and especially vulnerable minority and low-income communities — have had to endure a decades-long pattern of environmental injustice, in no small part because they were denied a say in important decisions that affected them," McEachin is expected to say. **If you go:** The hearing kicks off at 2 p.m. in 1324 Longworth.

SPEAKING OF NEPA: The League of Conservation Voters sent this letter to House members Tuesday urging them to oppose H.R. 3144 (115), which LCV says would "attack" the Endangered Species Act and NEPA by "mandating dam operations harmful to endangered salmon and steelhead in the Pacific Northwest."

ADD THIS TO THE LIST: Two days before two House hearings and fresh off an announcement on EPA's plan to bar scientific studies that don't publicly disclose data, Administrator Scott Pruitt got another appointment to testify on his agency's budget. This time Pruitt will appear in May before the Senate appropriations subcommittee that oversees EPA's budget, Lisa Murkowski said Tuesday.

OH, TO BE A FLY ON THE WALL: Sen. Shelley Moore Capito, one of the Republican EPW members open to a hearing with Pruitt, told ME Tuesday she has a "well-timed" phone call with him scheduled for this week. "I think he wants to talk about some regulatory measures," she said. "But I'm going to probably ask him questions on the current state of some of the things that I've read and we'll see where it goes." She said the call had been set up last week.

McConnell voices support ... again: Majority Leader Mitch McConnell told reporters Tuesday he remained a supporter of Pruitt's, while noting the EPA chief's busy Thursday on the Hill. "We'll just see," he said. "I expect there will be a lot of interest."

PERROTTA WORKED FOR TRUMP-BACKED MEDIA COMPANY: Pasquale "Nino" Perrotta — the Secret Service veteran who heads Pruitt's security detail — previously worked on assignments for the tabloid publishing company American Media Inc. during the 2016 presidential campaign, The New York Times reported Tuesday. While it is unclear when Perrotta started working at AMI, the Times reports some of his activities at the company included physical security, cybersecurity and investigative services involving litigation. Read more.

OLD AD-AGE: The Natural Resources Defense Council is sponsoring an ad today in The Washington Post that calls for Pruitt's ouster. The ad — which says: "President Trump promised to drain the swamp. He should start with EPA Administrator Scott Pruitt" — will run as an insert in 3,000 copies of the Post and will be delivered to Capitol Hill on Thursday. See it.

IF YOU PLAY YOUR CARDS RIGHT: The Environmental Defense Fund mapped out what it says are Pruitt's unanswered questions surrounding scandals while he helms EPA and during his time as Oklahoma attorney general — 86 of them to be exact. The group will also hand out a deck of "Non Trivial Pruitt Questions" during Thursday's hearings with a sampling of the ethical questions. See the cards here.

Rally cry: Separately, the American Federation of Government Employees will hold a rally today from noon until 1 p.m. in support of EPA workers. Democratic Reps. Salud Carbajal, Don Beyer, Bill Foster, Sheila Jackson Lee, Alan Lowenthal, Grace Meng, Jamie Raskin and Debbie Wasserman Schultz are all set to attend the rally, which will take place outside of EPA headquarters.

MACRON ADDRESS LAWMAKERS: French President Emmanuel Macron hits the Hill this morning to address a joint session of Congress. Earlier this week, the French president said he'd call for continued U.S. intervention in Syria in his speech. "I will advocate for multilateralism," Macron said in an interview on "Fox News Sunday." But it's also possible issues concerning climate will come up — which would likely receive a welcome reception from Democrats.

Macron, a staunch supporter of the Paris accord, also briefly mentioned climate during a joint press conference with the president Tuesday. "We also talked about the climate. And here, also, we know where we stand," Macron said vaguely. "France will continue to work on major pieces, including the global compact for the environment. But I think I can say that our economic — our businesses, our researchers can continue to work on — can create solutions in the field." Both he and Trump are "attached to that," he said.

Bold move: It's probably not an indication of environmental topics to come, but Apple CEO Tim Cook brought former EPA chief Lisa Jackson to Tuesday's state dinner with Macron. Jackson, who now works as vice president of environment, policy and social initiatives at Apple, has attended events with Cook in the past — but it's an interesting move considering Jackson's not been known to mince words about the Trump administration. For what its worth, Cook will meet today with Trump in the Oval Office.

MORE NOMS: Trump sent James Hubbard's nomination to be undersecretary of Agriculture for natural resources and the environment to the Senate Tuesday. Hubbard, of Colorado, replaces Robert Bonnie, who resigned from the post.

DEMOCRATS CITE SAFETY: Three Energy and Commerce Democratic leaders on Tuesday called on the Government Accountability Office to probe EPA's enforcement of federal health and environmental safeguards. "We are concerned that President Trump's and Administrator Pruitt's policies to 'streamline' permitting processes, reduce regulatory 'burdens' for industry, and defer to states on enforcement will lead to more environmental law violations due to lax enforcement at both the state and federal level," ranking member Frank Pallone and Reps. Diana DeGette and Paul Tonko write in a letter to GAO Comptroller Gene Dodaro. Read it here.

MAIL CALL! GOING NUCLEAR: Former national security officials and nonproliferation experts will send this letter today to congressional foreign affairs leadership stating that for national security reasons, it is in the U.S.' best interest to have a nuclear cooperation agreement — a so-called 123 Agreement — with Saudi Arabia.

— **Democratic Sens. Maria Cantwell and Jeff Merkley** and Reps. Raúl Grijalva and Jared Huffman sent a letter to Interior Secretary Ryan Zinke on Tuesday, calling on him to undo plans for a 2019 lease sale in Alaska's Beaufort Sea. Read it here.

— **Sen. John Barrasso, chairman of the Senate EPW Committee and Capito**, subcommittee chairwoman on clean air and nuclear safety, sent a letter to Pruitt and Perry, asking them to protect the confidential business information of U.S. small refineries. Read the letter here.

AT IT AGAIN: Michigan GOP Rep. [Fred Upton](#) officially filed for reelection in the state's 6th District, [MLive reports](#). "We are full steam ahead and excited about the future," the Energy and Commerce lawmaker said in a statement.

A TANGLED WEB: The Environmental Data & Governance Initiative is out with a new monitoring report this morning that says EPA removed pages related to "international priorities" and "international grants and cooperative agreements," as well as corresponding links, from its [International Cooperation](#) web page. The page in question listed priority areas including "strong environmental institutions," "climate change" and "clean water," among other terms, which EDGI says were removed in December 2017. Read the report [here](#) and see screenshots [here](#).

GROUPS TO SUE OVER DRINKING WATER IN NEW JERSEY: The NRDC and Newark Education Workers Caucus say they will sue the city of Newark, N.J., and Catherine McCabe, the acting commissioner of the New Jersey Department of Environmental Protection, over lead contamination in the city's drinking water, [Pro New Jersey's Danielle Muoio reports](#). A Newark city official [said Tuesday](#) that the complaint filed by the groups is "absolutely and outrageously false."

OLYMPIANS HEAD TO HILL FOR CLIMATE: Five Winter Olympians will brief House and Senate offices today on the impact of climate change on winter sports and outdoor recreation. Cross-country skier Jessie Diggins, freestyle skier David Wise, halfpipe snowboarder Arielle Gold, biathlete Maddie Phaneuf and alpine skier Stacey Cook all will appear on the panel, which is co-hosted by nonprofit Protect Our Winters, Citizens Climate Lobby, and Sens. [Michael Bennet](#) and [Susan Collins](#). **If you go :** The briefing begins at 12:30 p.m. in 538 Dirksen.

CORRECTION: The April 24 edition of Morning Energy misstated the purpose of H.R. 3144 (115). The bill would codify the 2014 Biological Opinion until 2022, while the NEPA and the environmental impact statement processes continue.

QUICK HITS

— Trump White House offered to help prep Pruitt for hearings. EPA told the White House to "get lost," [The New York Times](#).

— Shaheen questions Air Force secretary on PFAS health study, [Seacoast Online](#).

— Harassment targeted; more disciplinary actions could follow, [E&E News](#).

— Provisions in FAA bill could strip endangered species protections, [The Hill](#).

— Zinke put birther conspiracy theorist on super PAC board, [CNN](#).

— Mines owned by Gov. Justice missed deadline for installing safety tech, [Charleston Gazette-Mail](#).

HAPPENING TODAY

8:30 a.m. — Microsoft and the delegation of the European Union to the U.S. [discussion](#) on the future of the EU electricity market, 901 K Street NW

10:00 a.m. — Senate Commerce Committee [hearing](#) on "Enhancing the Marine Mammal Protection Act," 253 Russell

11:30 a.m. — The World Resources Institute forum on "activism for energy," 10 G Street NE

12:30 p.m. — Olympians brief Congress about impact of climate change on winter sports, 538 Dirksen

2:00 p.m. — Resources for the Future webinar on "What Research Says on Key Fracking Debate Issues."

2:00 p.m. — House Natural Resources Committee hearing on "The Weaponization of the National Environmental Policy Act and the Implications of Environmental Lawfare," 1324 Longworth

2:00 p.m. — Senate Appropriations Energy and Water Development Subcommittee hearing on proposed budget estimates and justification for FY 2019 for the Nuclear Regulatory Commission, 430 Dirksen

2:00 p.m. — The Heritage Foundation discussion on "Saving 'Endangered' Species or Regulating with Bad Data," 214 Massachusetts Avenue NE

2:30 p.m. — Senate Indian Affairs Committee hearing on a pair of bills, including H.R. 1491 (115), 628 Dirksen

3:30 p.m. — Bloomberg Government and the Norwegian-American Chamber of Commerce conversation on "Investing In A Sustainable Energy Future," New York City

5:30 p.m. — The National Academy of Sciences lecture on "Distress Signals: Historical Waypoints in Northwest Atlantic Fisheries Since 1850," 2101 Constitution Avenue NW

6:30 p.m. — The Carnegie Institution for Science lecture on the sustainable use of the ocean, 1530 P Street NW

THAT'S ALL FOR ME!

To view online:

<https://www.politicopro.com/newsletters/morning-energy/2018/04/perrys-latest-bid-to-save-coal-182338>

Stories from POLITICO Pro

Perry's latest bid to help coal faces uphill battle Back

By Eric Wolff | 04/25/2018 05:08 AM EDT

Energy Secretary Rick Perry's latest idea to protect coal-fired and nuclear power plants may not fare much better than his previous efforts, according to energy experts.

Perry is considering invoking the 1950 Defense Production Act to keep money-losing power plants running by designating them as crucial for national security. But that would stretch the definition of the law and almost certainly draw legal challenges — and it would hit a big hurdle in Congress, which would need to approve perhaps billions of dollars in funding to keep the plants afloat, the experts said.

At the urging of President Donald Trump, Perry has sought to keep open coal and nuclear power plants that are threatened with shutdowns amid the stagnant demand for power — and even as natural gas and renewable power sources grab a growing share of the market.

So far, Perry's had no luck. FERC earlier this year rejected his proposal to give the plants financial support, and Energy Department lawyers stymied a push last year to invoke the agency's authority under the Federal Power Act to force the plants to run.

Some experts said any attempt to use the DPA is likely to meet the same fate.

"To me, it's a tough argument to make. It's a specious argument on its surface that seems like a perversion of the intended use of the Defense Production Act," said Tom Hicks, a former acting undersecretary of the Navy under former President Barack Obama and now a principal at the advisory firm The Mabus Group. "Defense Production Act is on the vanguard of the need for resources, not on the back end for an industry being challenged by economic forces."

But the effort has been a priority for Trump and Perry, who sees saving coal-fired power generation as vital to U.S. security, according to a source familiar with the conversations on the issue.

The Cold War-era law grants the federal government powerful authorities to inject cash into companies essential for national defense in order to preserve domestic supplies of key products. But DOE will have to make the case that electricity produced specifically from coal and nuclear power plants, and not other types of power, is a critical resource.

Using the act to protect the plants when there appeared to be no immediate shortage of power supplies would be a novel application that would almost certainly face legal challenge.

"If the administration uses DPA, they're going to be using it very creatively," said Ari Peskoe, director of the Electricity Law Initiative at the Harvard Law School Environmental and Energy Law Program. "They may come up with reasoning for higher rates and who's going to pay for it. Whether that will hold up, I don't know."

Perry and his staff appear to have very few viable options for bailing out coal and nuclear power, a major energy priority for Trump, who has promised to revive the coal industry. DOE has opened a comments process for interested parties to weigh in on its use of the Federal Power Act's 202(c) emergency provisions, though that would require the agency to go through FERC, which unanimously rejected a similar Perry effort in January.

The 202(c) effort has been pushed by coal magnate Bob Murray, owner of Murray Energy, and by FirstEnergy Solutions, the unit of FirstEnergy Corp. that is in bankruptcy proceedings and which expects to shut down four coal and nuclear power plants. That company asked DOE to use the emergency authority to save not only its plants, but all 85 coal and nuclear power plants in the PJM Interconnection power market.

The DPA was last used by the Obama administration starting in 2012 to help spur the biofuels industry to develop the kind of advanced biofuels that could power ships and aircraft. The government can purchase capital equipment for the cause of national security, and it can fund advertising to support the effort.

And it allows the government to become the buyer of last resort, which could put Washington on the hook to buy excess power generated by coal and nuclear plants. Technically, this electricity could only be purchased at the "cost of production," a level that in the past has been determined by a team within the Defense Department.

While no hard estimate for the cost of a DPA subsidy exists, consultants analyzing Perry's previous bailout proposal estimated costs between \$4 billion and \$10.6 billion annually.

That's a far higher level than Congress typically allocates for the DPA. It provided \$67.4 million in the omnibus passed in March, H.R. 1625 (115), down slightly from the \$76 million it provided for all projects in 2017, according to a report submitted to Congress.

And Congress — and the Republican Party — is deeply divided on using government subsidies to save these plants. Rep. David McKinley (R-W.Va.) has some allies from other coal districts for the effort, but other free market-oriented lawmakers like Rep. Pete Olson (R-Texas) say they want to see markets function unimpeded.

McKinley's staff has been in touch with DOE and the White House, as has West Virginia Sen. Joe Manchin (D).

"I think it's an emergency national concern for the national defense of our country. I think Rick Perry agrees with it, and I think the president does also," Manchin told POLITICO.

PJM has itself said the retirement of FirstEnergy's coal plants did not pose a threat to the region's power supplies, and that it had ample generation to meet demand. It has opposed any effort to mandate to require the plants to stay online.

"We believe that a market-oriented approach consistent with the American free-enterprise system offers better results than government-mandated subsidies," said PJM spokesman Jeff Shields.

Anthony Adragna contributed to this report.

To view online [click here](#).

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Pruitt scales back EPA's use of science [Back](#)

By Emily Holden and Annie Snider | 04/24/2018 03:28 PM EDT

Environmental Protection Agency chief Scott Pruitt announced Tuesday he would seek to bar the agency from relying on studies that don't publicly disclose all their data, a major policy change that has long been sought by conservatives that will sharply reduce the research the agency can rely on when crafting new regulations.

The unveiling of the proposed rule delivers a win to Republicans like House Science Chairman Lamar Smith (R-Texas), who unsuccessfully pushed legislation to impose the same type of change. The move also demonstrates Pruitt's persistence in pursuing President Donald Trump's anti-regulation agenda just two days before the embattled EPA chief is due to face fierce questioning from lawmakers about his hefty spending, expanded security detail and cheap condominium rental from the wife of an energy lobbyist.

At an invitation-only meeting at EPA headquarters with Smith, Sen. Mike Rounds (R-S.D.) and other supporters of the policy, Pruitt said the proposed rule was critical in ensuring that the agency was transparent about how it is making decisions to justify costly new regulations. It is the latest step Pruitt has taken to fundamentally shift the agency's approach to science.

"It is a codification of an approach that says as we do our business at the agency the science that we use is going to be transparent, it's going to be reproduceable, it's going to be able to be analyzed by those in the marketplace. And those who watch what we do can make informed decisions about whether we've drawn the proper conclusions or not," Pruitt said.

Text of the proposed rule was not immediately available.

The proposal, based on legislation pushed by Smith, is intensely controversial, and scientists and public health groups say it will prevent federal regulators from enacting health and safety protections. Nearly 1,000 scientists, including former EPA career staffers, signed a letter opposing the policy sent by the Union of Concerned Scientists to Pruitt on Monday.

Their primary concern was that many of the country's bedrock air and water quality regulations are based on research that cannot disclose raw data because it includes the personal health information.

But industry has its own version of the same problem. EPA often relies on industry studies that are considered by companies to be confidential business information when determining whether new pesticides and toxic chemicals are safe to use. Internal EPA emails obtained under the Freedom of Information Act show that EPA political officials, including Nancy Beck, who became the chief of the agency's chemical safety office last year after working for years at a chemical industry lobbying group, worried that the new policy would limit the agency's ability to consider industry data or would force companies to make this proprietary data public.

"We will need to thread this one real tight!" Richard Yamada, political official who led work on the new policy wrote to Beck after she raised the concerns.

It was not immediately clear if the new proposed rule included measures to address those concerns.

Rush Holt, CEO of the American Association for the Advancement of Science, said Pruitt's changes could keep the agency from revising public health regulations as problems arise or new data comes to light.

"On the surface it sounds so innocuous or even beneficial. What could be wrong with transparency? Well it's clear to me that this is not based on an effort to be transparent. It is rather based on an effort to be just the opposite," he said.

"EPA is particularly important because when science is misused, people die," he added.

Pruitt has been discussing the new scientific policy publicly for weeks, but it only went to the White House for interagency review last week. Such swift review is very rare for the Office of Management and Budget, which often takes months to vet a new policy. At least one group, the Environmental Defense Fund, has requested a meeting with OMB officials to discuss the rule, but OMB's website shows that no meetings have been scheduled with interested groups.

Many public health studies can't be replicated without exposing people to contaminants, and environmental disasters such as the Deepwater Horizon oil spill cannot be recreated, the group said, raising intellectual property, proprietary and privacy concerns.

Pruitt's predecessor Gina McCarthy, and her air chief Janet McCabe, in an op-ed in The New York Times in March said concerns about studies are dealt with through the existing peer-review process, which ensures scientific integrity.

"[Pruitt] and some conservative members of Congress are setting up a nonexistent problem in order to prevent the E.P.A. from using the best available science," they said.

To view online [click here](#).

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Murkowski: Pruitt will testify to Senate appropriators [Back](#)

By Anthony Adragna | 04/24/2018 03:03 PM EDT

EPA Administrator Scott Pruitt is scheduled to testify in May before the Senate appropriations subcommittee that oversees his budget, Sen. [Lisa Murkowski](#) (R-Alaska), who chairs the panel, said today.

Murkowski did not elaborate on her plans for the hearing or how much it would delve into Pruitt's ethics and spending. But she said it was "absolutely appropriate" for the Environment and Public Works Committee to hold an oversight hearing on the administrator's conduct in office, an idea that has been endorsed by [multiple Republicans](#) on the authorization committee.

"I'm hoping they move on it sooner than later," Murkowski said of the EPW committee.

EPW Chairman [John Barrasso](#) (R-Wyo.) said today he has "serious questions" about how Pruitt has handled taxpayer dollars but stopped short of announcing plans for Pruitt to testify.

"We'll see what comes out of the hearings this Thursday," Barrasso said, referring to Pruitt's scheduled appearance of two House hearings that day.

Barrasso said he planned to send additional letters to EPA, following his recent request for details on the administrator's use of four separate email accounts. In response to that earlier letter, EPA [told him](#) all of Pruitt's accounts are searched in response to public records requests.

"You want to make sure taxpayers are getting value for their dollars," Barrasso told reporters today. "We want to make sure money is being spent appropriately."

WHAT'S NEXT: Murkowski declined to say when Pruitt would appear before her Appropriations Subcommittee on Interior, Environment and Related Agencies, but she has [said previously](#) it was expected to be the week of May 7.

To view online [click here](#).

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Pruitt support in Senate erodes as GOP lawmakers seek hearings [Back](#)

By Anthony Adragna | 04/23/2018 08:32 PM EDT

Scott Pruitt's wall of GOP support is developing new cracks, with three key Senate defenders calling for hearings into the embattled EPA administrator's recent controversies — and Sen. Lisa Murkowski announcing Tuesday that she plans to bring him before her appropriations panel in May.

Three other Republicans, including staunch Pruitt ally Sen. Jim Inhofe (R-Okla.), told POLITICO on Monday that they would also support hearings by the Senate Environment and Public Works Committee to look into the former Oklahoma attorney general's actions. Their words came as Pruitt, who has managed to hold onto President Donald Trump's public support for now, faces a pair of House hearings Thursday that could be make-or-break for his hopes of remaining in the Cabinet.

"I think that a couple of us on the committee think it's appropriate to have a hearing in so far as any accusation having to do with his office is concerned," Inhofe told POLITICO.

Inhofe said he was troubled by a report over the weekend in The New York Times detailing a sweetheart deal Pruitt received on an Oklahoma City home previously owned by a lobbyist while serving in a state government. The Oklahoma Republican declined to discuss which allegations he found disturbing, but said "there are some things in there that I'd like to check out and see."

Joining his call for a Senate hearing were two other senior GOP members of the EPW panel, Sens. Shelley Moore Capito (W.Va.) and John Boozman (Ark.).

"Most people have concerns about some of the allegations," Boozman said. "At some point he'll be before the committee and we'll dig deeper and see exactly what's going on."

EPW Chairman John Barrasso (R-Wyo.) said Tuesday that he has "serious questions" about how Pruitt has handled taxpayer dollars, but he stopped short of announcing plans for Pruitt to testify.

"We want to make sure money is being spent appropriately," Barrasso said.

Murkowski (R-Alaska), who chairs the subcommittee that oversees EPA's appropriations, did not elaborate on her plans for her own hearing with Pruitt, or how much it would delve into his ethics and spending. But she said it would be "absolutely appropriate" for Barrasso's panel to hold an oversight hearing on the administrator's conduct in office, an idea that multiple Republicans on the authorization committee have endorsed.

"I'm hoping they move on it sooner than later," Murkowski said of the EPW Committee.

To date, four House Republicans have called on Pruitt to resign, along with scores of elected Democrats. And Sen. Susan Collins (R-Maine), has said Pruitt was "the wrong person" to lead the agency based on his policies.

Pruitt has drawn criticism about his ethics and lavish spending in recent months. Three congressional committees, the White House and EPA's inspector general are all probing his behavior, ranging from his security expenses, high pay raises for aides, first-class travel and meetings with a coal group.

The House Oversight Committee has requested interviews with five senior agency aides. The White House said it would formally investigate Pruitt's expenses after the Government Accountability Office last week found EPA broke the law by failing to notify Congress about a \$43,000 privacy booth Pruitt had built in his office.

Pruitt will go to the Hill on Thursday to testify before a House Energy and Commerce subcommittee in the morning and at a House Appropriations subpanel in the afternoon. Those appearances will mark his first time before Congress since the recent allegations broke.

Both Inhofe and Capito said they thought those House hearings would prove pivotal for Pruitt's long-term future in the administration.

"It's really important," Capito said. "He's going to have to answer some tough questions. I'm sure they'll be put to him by both sides and we'll see what his response is."

Meanwhile, EPW ranking member Tom Carper (D-Del.) said he had a good conversation with House Oversight Chairman Trey Gowdy (R-S.C.) regarding Pruitt, but he said there was no formal bipartisan agreement to work together on an investigation.

"I just gave him plenty of encouragement that he's doing the right thing," he said.

But the mounting public criticism from Republicans suggests GOP lawmakers' patience in defending the EPA chief's behavior is waning.

"Some of the things that he's done and that he's been alleged to do are just indefensible," Sen. John Kennedy (R-La.) said. "You just can't put lipstick on those pigs. You can't."

To view online [click here](#).

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French president to call for American role in Syria [Back](#)

By Ian Kullgren | 04/22/2018 10:03 AM EDT

French President Emmanuel Macron said Sunday he will call for continued U.S. intervention in Syria before a joint session of Congress this week.

"I will advocate for multilateralism," Macron said in an interview on "Fox News Sunday."

Macron is visiting Washington this week in the first official state visit of the Trump presidency. In an interview with Chris Wallace at the presidential palace in Paris, Macron said he has a "special relationship" with President Donald Trump, describing them both as political outsiders.

"Both of us are probably the maverick of the systems on both sides," Macron said. "President Trump's election was unexpected in your country and probably my election was unexpected in my country."

Macron said that the United States is still an indispensable player for achieving peace in the Middle East, adding that France will rely on the U.S. in Syria once the conflict comes to an end.

"We will have to build a new Syria afterwards," he said.

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Apple's Tim Cook attending White House state dinner for Macron [Back](#)

By POLITICO Pro Staff | 04/24/2018 07:15 PM EDT

Apple CEO Tim Cook is attending tonight's White House state dinner for French President Emmanuel Macron.

Cook was spotted arriving for the dinner with former EPA Administrator Lisa Jackson, who is now vice president of environment, policy and social initiatives for Apple, according to a pool report.

Jackson served as head of the EPA under former President Barack Obama.

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Subject: Morning Energy: How 'the swamp' could overtake West Virginia's primary — Groups react to EPA's proposed 'secret science' rule — API to tap Mike Sommers

By Kelsey Tamborrino | 05/01/2018 06:01 AM EDT

With help from Garrett Ross

HOW 'THE SWAMP' COULD OVERTAKE WEST VIRGINIA'S PRIMARY: West Virginia Attorney General Patrick Morrisey may be touting himself in the GOP Senate primary as a Washington outsider who wants to "blow up" D.C., but his opponents are dragging him through the muddy swamp. "Morrisey got filthy rich in the swamp lobbying for special interests," says the narrator of one of his opponent Rep. Evan Jenkins' ads, Pro's Theodoric Meyer reports. And while Morrisey, who's hoping to take on Democratic Sen. Joe Manchin this fall, has so far weathered the attacks and continues to do well in public polling, the May 8 vote will ultimately test whether GOP voters are willing to send a former lobbyist to Washington.

"Morrisey's self-described 'outsider' rhetoric cloaks an insider record: Before he was elected attorney general, Morrisey spent eight years as a Washington lobbyist, and the influence industry has fueled his campaign with hundreds of thousands of dollars in contributions," Theo writes. "It's going to be challenging, because the word 'lobbyist' has such negative connotations," said Cam Savage, a Republican operative who helped run Sen. Todd Young's successful 2016 campaign against former Democratic Sen. Evan Bayh, whose work for a Washington law and lobbying firm hindered his campaign. Read more.

IN THE OTHER CORNER of the Republican primary sits coal baron Don Blankenship, who spent a year in prison following the 2010 explosion at his Upper Big Branch Mine that killed 29 workers and who continues to escalate his attacks against Senate Majority Leader Mitch McConnell, POLITICO's Alex Isenstadt reports. The Senate hopeful is out with a new ad that dubs McConnell "Cocaine Mitch" as polls show Blankenship falling behind his more mainstream opponents. "One of my goals as U.S. senator will be to ditch Cocaine Mitch," Blankenship says toward the end of the new ad, possibly referring to a 2014 report in the liberal Nation magazine that drugs were once found aboard a shipping vessel owned by the family of McConnell's wife, Transportation Secretary Elaine Chao, Alex reports.

WELCOME TO TUESDAY! I'm your host Kelsey Tamborrino. BP America's Bob Stout was the first to correctly guess that former President Calvin Coolidge was the first president to attend the White House Correspondents' Dinner. For today: Which president brought the first professional baseball team to the White House to visit? Send your tips, energy gossip and comments to ktamborrino@politico.com, or follow us on Twitter @kelseytam, @Morning_Energy and @POLITICOPro.

POLITICO's Ben White is bringing Morning Money to the Milken Institute Global Conference to provide coverage of the day's events and evening happenings. The newsletter will run April 29 - May 2. Sign up to keep up with your daily conference coverage.

WHILE CONGRESS IS AWAY, THE CONFERENCES WILL PLAY: The National Hydropower Association continues its Waterpower Week in Washington today with remarks from FERC Chairman Kevin McIntyre and Thomas Smith, chief of operations and regulatory division for the U.S. Army Corps of Engineers. McIntyre will discuss the "global frontiers of waterpower," providing an update on FERC's

hydropower activities and his perspective on the industry's future. Smith will deliver remarks during the presidential luncheon this afternoon, alongside Herbie Johnson, hydro general manager at the Southern Company. The annual conference is tied to three co-located conferences, including the NHA conference, the International Marine Renewable Energy Conference and the Marine Energy Technology Symposium.

— **The Solar Summit 2018 also kicks off today in San Diego**, where Abigail Ross Hopper, president and CEO of the Solar Energy Industries Association, will discuss solar in the Trump era, with a focus on the corporate tax reform, Section 201 and other macro-level risks. Hopper will be joined on stage by Avangrid Renewables' Laura Beane and Charlie Gray, director of the Solar Energy Technologies Office at DOE's Office of Energy Efficiency & Renewable Energy.

A LOAN IN THE SUN: Coinciding with the solar conference, GTM Research is out with a new report this morning on U.S. residential solar financing. The report found that last year was the first year since 2011 when more systems have been purchased with cash and loans (59 percent) than with leases and power purchase agreements (41 percent). That's in part due to the availability of loan products, as well as a shortage of third-party ownership suppliers, and Tesla and Vivint's move away from third-party ownership, the GTM report found.

The report also said that competition has intensified in solar loans, with various solar-specific loan providers, traditional banks and credit unions entering the realm. The increased competition has led to "uber-competitive rates and therefore compressed margins, leaving questions about the financial health and long-term viability of many of these loan providers," a summary of the report said.

RULE REACTIONS: EPA is moving full-speed ahead in its controversial scientific policy that would exclude the use of studies that don't publicly disclose all data. The agency published the proposed rule in the Federal Register on Monday, kicking into gear a 30-day comment period. And already, several groups have come forward to oppose the policy, laying out what they see as the policy's adverse effects — and calling for more consideration before any formal change.

— **The Union of Concerned Scientists** — which sent a letter signed by more than 1,000 scientists to EPA Administrator Scott Pruitt last week asking him to reverse course prior to the rule's announcement — plans to send another urging for the comment period to be extended a minimum of 60 days and calling for the agency to hold three public hearings across the U.S. to receive additional input. "The current timeframe and lack of opportunities for engagement are wholly inadequate and will not allow for thorough public input of this proposed rule and its impact on science-based health and environmental safeguards." Read the letter here.

— **A group of scientific journals** released a joint statement saying that the proposal "does not strengthen policies based on scientific evidence to limit the scientific evidence that can inform them; rather, it is paramount that the full suite of relevant science vetted through peer review, which includes ever more rigorous features, inform the landscape of decision making. Excluding relevant studies simply because they do not meet rigid transparency standards will adversely affect decision-making processes."

A SOMMERS DAY: The American Petroleum Institute is expected to tap Mike Summers to replace Jack Gerard to lead the oil and gas industry lobbying group, two sources tell POLITICO's Emily Holden and Eric Wolff. Summers was former House Speaker John Boehner's chief of staff and has since spent two years leading the American Investment Council, a private equity trade group. Gerard announced earlier this year that he would step down in August. Read more.

TRUMP GRANTS TARIFF EXTENSION FOR SOME: The president extended a temporary exemption by one month for Canada, Mexico and the European Union from heavily watched steel and aluminum tariffs, the White House announced Monday. The move gives the key U.S. allies until June 1 to reach a deal with the administration to avoid the tariffs of 25 percent on steel and 10 percent on aluminum exports sent to the United

States. The tariffs were slated to take effect at 12:01 a.m. today if President Donald Trump had not moved to extend the deadline, POLITICO's Megan Cassella [reports](#).

WHISTLEBLOWER SAYS PRUITT LIED: Kevin Chmielewski, the former deputy chief of staff for operations at EPA, told ABC News Pruitt was telling a "bold-faced" lie last week when he testified to lawmakers that none of his employees were retaliated against for raising concerns about his spending decisions. Chmielewski, who was dismissed and is now acting as a whistleblower, told ABC that chief of staff Ryan Jackson called him into his office and said: "Hey — Administrator Pruitt either wants me to fire you or put you in an office so that he doesn't have to see you again." Chmielewski added: "And in addition to that, he wants to put Millan (Hupp) in your spot, as your title and your pay grade."

EPA declined to comment to ABC in response to Chmielewski's allegations, but the outlet said it obtained a personnel form filled out by EPA human resources officials that said Chmielewski resigned on March 17. "The form is not signed by Chmielewski, who says he was actually forced to leave a month before that date," ABC writes. [Read more.](#)

DEMOCRATS PRESS PRUITT ON TESTIMONY: Separately, Democratic Reps. [Doris Matsui](#) and [Paul Tonko](#) sent a letter Monday calling out a different aspect of Pruitt's testimony last week before Congress. The pair point to a contradiction between Pruitt's remarks and reports that the administration has [drafted](#) a proposed rulemaking to block California's waiver authority to set stricter standards for light-duty vehicles. "If true, these reports directly contradict your testimony last week. As you were reminded at the start of that hearing, it is a violation of the law to knowingly make false statements to a Congressional committee," Matsui and Tonko write in a letter to Pruitt. Asked last week about whether he would revoke California's special Clean Air Act waiver, Pruitt [told lawmakers](#) "not at present." The lawmakers requested Monday that Pruitt provide all documentation related to the development of the notice of proposed rulemaking by Friday. [Read the letter here.](#)

SAGE SUIT: Conservation groups are suing the Trump administration over policies that they say would "adversely impact essential habitats and populations" for the greater sage grouse. The lawsuit, filed in the U.S. District Court in Boise, concerns Interior Department's oil and gas lease auctions in Nevada, Utah, Montana, Wyoming and Idaho — and calls on the court to reverse the sales. "There's no scientific or legal support behind these policies, and no public support for them either," said Michael Saul, a senior attorney at the Center for Biological Diversity. "They're clearly intended to make fossil fuel development the dominant use of public land, and that's illegal." [Read the complaint.](#)

DOE 'ENCOURAGED' BY PJM MOVE: The Energy Department said it was "encouraged" by news Monday that PJM Interconnection [will perform](#) "stress tests" on different parts of the grid to identify fuel supply vulnerabilities. "PJM's concerns are consistent with what DOE, NERC, and others have been saying for years: premature retirements of fuel-secure resources are putting the future of our nation's electric grid at risk, and that undermines our national security," DOE press secretary Shaylyn Hynes said in a statement. DOE urges the regulatory agency "to take immediate action to stop the loss of fuel-secure capacity," Hynes said, adding that DOE continues to review all of its options within its authority to ensure a resilient grid. Recently, Energy Secretary Rick Perry [has considered](#) invoking the 1950 Defense Production Act to keep money-losing power plants running by designating them as crucial for national security.

BY PROXY: A new report from the American Council for Capital Formation out today found that proxy advisory firms — which advise shareholders on how to assess and vote on company plans — are operating with minimal oversight and are moving toward an increasingly activist stance on issues relating to the environment, as well as social and political issues. The report, titled "The Conflicted Role of Proxy Advisors," examines the impact such proxy firms have on major policies at most publicly traded companies. [Read it here.](#)

FIRST OFFICIAL DAY ON THE JOB: Today is Secretary of State Mike Pompeo's first full day in Foggy Bottom, where he will deliver a speech to introduce himself to the department. POLITICO's Nahal Toosi breaks

down the differences between Pompeo and his predecessor and former Exxon Mobil CEO Rex Tillerson [here](#). But keep an ear out for any climate mentions, as diplomats and environmentalists [gather](#) today in Bonn, Germany, to work out the kinks of the Paris climate agreement. Greens have hit Pompeo as a climate science doubter, while others like Competitive Enterprise Institute's Myron Ebell have said the Kansas Republican will be a "forceful advocate" of Trump's decision to exit the Paris accord.

A PENNY FOR YOUR FREETHOUGHT CAUCUS: Democratic Reps. [Jared Huffman](#), [Jamie Raskin](#), [Jerry McNerney](#) and [Dan Kildee](#) launched the Congressional Freethought Caucus on Monday "to promote sound public policy based on reason, science, and moral values, protect the secular character of our government, and champion the value of freedom of thought worldwide." In a [statement](#), Huffman said the caucus "will help spark an open dialogue about science and reason-based policy solutions."

PAY THE PRICE: The New York Independent System Operator and state policymakers released [a draft plan](#) on Monday to price carbon as part of the electric system, [Pro New York's Marie French](#) reports. The move comes as an early step toward addressing the impact of state subsidies for renewables and nuclear power on the competitive market. "Under the proposal, a social cost of carbon set by state regulators would be added on to regional energy prices," Marie writes. Read [more](#).

MAIL CALL! A coalition of more than 160 groups sent a letter to Interior Secretary Ryan Zinke on Monday in opposition to the department's [proposal](#) to rescind the "blanket rule" the U.S. Fish and Wildlife Service used to extend protections for endangered species. Read the [letter](#).

— **Oregon Sens. [Ron Wyden](#) and [Jeff Merkley](#)** and Reps. [Earl Blumenauer](#), [Peter DeFazio](#), [Suzanne Bonamici](#) and [Kurt Schrader](#) sent a letter Monday to Office of Management and Budget Director Mick Mulvaney and Assistant Army Secretary R.D. James., requesting federal officials support a flood protection feasibility study for Portland. Read it [here](#).

MOVER, SHAKER: The White House is expected to tap California agriculture attorney Michael Stoker to lead EPA's San Francisco-based Region 9 office, [sources tell E&E News](#). The regional office is the only one to which Trump has not appointed a leader.

A NEW LOOK: Trade association the American Exploration & Production Council is launching today a [new website](#) and [Twitter](#) and [Facebook](#) accounts. The new website will include videos, fact sheets, info-graphics and issue pages.

QUICK HITS

— Utilities, oil interests clash over EV policy at conservative policy summit, [Utility Dive](#).

— Contura, Alpha to merge, creating largest U.S. met coal producer, [Reuters](#).

— Blankenship's mine took this man's son, brother and nephew. Now Blankenship wants his vote, [Huffington Post](#).

— In cities v. fossil fuels, Exxon's allies want the accusers investigated, [InsideClimate News](#).

— Australia investing \$377 million to protect Great Barrier Reef, [NPR](#).

HAPPENING TODAY

8:45 a.m. — GreenTech Media holds [Solar Summit](#), San Diego

10:00 a.m. — CSIS Energy & National Security Program discussion on carbon pricing, 1616 Rhode Island Ave NW

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To view online:

<https://subscriber.politicopro.com/newsletters/morning-energy/2018/05/how-the-swamp-could-overtake-west-virginias-primary-197520>

Stories from POLITICO Pro

Lobbyists fuel lobbyist-turned-'outsider' Senate candidate Back

By Theodoric Meyer | 05/01/2018 05:00 AM EDT

West Virginia Attorney General Patrick Morrisey has gone a notch above pledging to "drain the swamp" during his Senate campaign. "Let's not just change Washington; let's blow it up," Morrisey says in an early TV ad, as he drops a mountain on the Capitol dome.

But Morrisey's self-described "outsider" rhetoric cloaks an insider record: Before he was elected attorney general, Morrisey spent eight years as a Washington lobbyist, and the influence industry has fueled his campaign with hundreds of thousands of dollars in contributions. Morrisey's wife is also a lobbyist, and their work in D.C. has been the subject of unforgiving attacks from both of Morrisey's opponents in the Republican Senate primary.

"Morrisey got filthy rich in the swamp lobbying for special interests," the narrator says in one of Rep. Evan Jenkins' commercials.

Morrisey has weathered the attacks, leading the field or running a close second in recent public polls of the Republican primary to take on Democrat Joe Manchin, one of the most vulnerable senators up for reelection this year. The race has attracted national attention as Washington Republicans attempt to derail the candidacy of Don Blankenship, the former coal-mining executive who spent a year in prison for his role in a mine explosion that killed 29 men. But next week's primary will also test whether GOP voters are willing to send a former lobbyist to Washington, despite President Donald Trump's vow to curb K Street's influence.

"It's going to be challenging, because the word 'lobbyist' has such negative connotations," said Cam Savage, a Republican operative who helped run Sen. Todd Young's (R-Ind.) successful 2016 campaign against former Democratic Sen. Evan Bayh, whose work for a Washington law and lobbying firm hindered his campaign.

While Morrisey has tried to deflect attention away from his lobbying past, he has embraced it behind the scenes. Morrisey's campaign raised more than \$250,000 from more than 200 current and former registered lobbyists through March 31, according to a POLITICO review of campaign finance records — accounting for nearly 20 percent of his individual donations.

Morrisey has raised even more from corporate and lobbying firm PACs, as well as from people who aren't registered lobbyists but clearly work in Washington's influence industry, such as former Rep. Mike Ferguson (R-N.J.), who heads BakerHostetler's federal policy team but isn't registered as a lobbyist. Of the \$250,000, roughly \$167,000 of it comes from lobbyists who are currently registered.

Many of Morrisey's lobbyist contributors work for health care and pharmaceutical interests, which Morrisey represented during his own years on K Street. They include Rodger Currie, the top lobbyist for Pharmaceutical

Research and Manufacturers of America, the powerful trade group for drug companies, who wrote Morrissey's campaign a \$2,000 check in December.

Former Rep. David Jolly (R-Fla.), a former lobbyist elected in 2014, said his lobbying background "was definitely an issue that my opponents tried to use to define me" in the race. He was able to overcome those attacks, he said, because he hadn't lobbied for clients that voters found objectionable.

Morrissey represented about 30 clients during his time at two Washington firms, Sidley Austin and King & Spalding, including big pharmaceutical companies such as Bayer, Novartis and Novo Nordisk. If Jolly had represented such clients, he said, he might have had a tougher race.

"These are very fair and legitimate questions," Jolly said.

Morrissey has shied away from discussing his lobbying days, instead casting himself as an outsider and conservative in contrast with Jenkins, who used to be a Democratic state legislator.

Morrissey refused to say the word "lobbyist" during a debate last week, even as Jenkins and Blankenship attacked him for lobbying for the pharmaceutical industry — a sensitive subject in a state that's struggling to combat an opiate crisis partly fueled by drug distributors. Asked by the moderators at the end of the debate to clear up a misconception about himself, Morrissey said only that he'd "never worked on opiate issues in the private sector."

Morrissey's campaign website uses similar language, describing him as a former "health care attorney in the private sector."

Jenkins, who's facing Blankenship and Morrissey in the three-way race for the nomination, has raised far less from K Street, even though, as a sitting congressman, he has plenty of opportunity to mingle with lobbyists, too.

A review of Jenkins' campaign finance reports turned up only 10 current and former lobbyists who had given a combined \$20,000 to his campaign since he filed to run last May. Four of them are currently registered. Jenkins has raised much more than Morrissey from corporate PACs: about \$136,000 to Morrissey's \$86,000, according to a POLITICO analysis.

Morrissey's campaign declined to make him available for an interview.

"Patrick Morrissey served as a law partner and practice group co-chair at two of the largest law firms in the country, focusing his practice on health care regulatory matters, legislative issues, compliance, fraud and abuse, administrative law, investigations, and solving client problems," Nachama Soloveichik, a Morrissey campaign spokeswoman, said in an statement.

Preeya Noronha Pinto, a partner at King & Spalding who lobbied alongside Morrissey and gave his campaign \$500 last year, said much of their work involved meeting with administration officials and, occasionally, members of Congress in an effort to get Medicare, Medicaid and other government health care programs to cover new drugs and medical devices developed by their clients. She said she hadn't seen the ad in which Morrissey drops a mountain on the Capitol, but she wasn't surprised he was running a campaign critical of Washington.

"I think everybody in a certain respect, even if they've worked here for years, thinks that D.C. is dysfunctional and there's a lot of room for improvement," Pinto said.

Morrissey's wife, Denise Henry Morrissey, has also been the subject of attacks based on her lobbying work.

"His wife's firm lobbies for Planned Parenthood," the narrator charges in one of Blankenship's TV ads. "The Morrisseys won't stop drug abuse or abortions by lobbying for drug companies and abortion clinics."

Soloveichik, the Morrissey campaign spokeswoman, said Denise Morrissey would stop lobbying if her husband were elected to the Senate. But she declined to say whether Denise Morrissey would give up her stake in Capitol Counsel, a top Washington firm in which she owns a 15 percent stake.

Denise Morrissey agreed to an interview with POLITICO last week but later stopped responding to emails and phone calls.

Savage, the Republican operative who worked as a consultant on Young's campaign in 2016, said it was possible to parry lobbying attacks — but only with willingness to answer questions about it.

Savage managed former GOP Sen. Dan Coats' comeback campaign in Indiana in 2010, when he won back his old seat in 2010 after working as a lobbyist. Savage credited Coats' victory, in part, to his willingness to be forthcoming about his lobbying work.

"The attacks after that kind of fell flat, to be honest with you," Savage said.

Kevin Robillard contributed to this report.

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Blankenship slams 'Cocaine Mitch' in anti-McConnell ad [Back](#)

By Alex Isenstadt | 04/30/2018 06:23 PM EDT

West Virginia Senate hopeful Don Blankenship is intensifying his offensive against Majority Leader Mitch McConnell, calling him "Cocaine Mitch" in a new TV ad released just more than a week until the Republican primary.

"One of my goals as U.S. senator will be to ditch Cocaine Mitch," Blankenship says toward the end of the [spot](#), which comes as polls show the coal baron falling behind his more mainstream opponents.

Blankenship, who spent a year in prison following the 2010 explosion at his Upper Big Branch Mine that killed 29 workers, offers no context for the jab. But he may be referring to a 2014 [report](#) in the liberal Nation magazine that drugs were once found aboard a shipping vessel owned by the family of McConnell's wife, Transportation Secretary Elaine Chao.

Blankenship has gone after McConnell in startlingly personal ways. During a recent interview with POLITICO, Blankenship said McConnell "has a lot of connections in China," and that Chao is "from China, so we have to be really concerned that we are in truth" putting America's interests first.

A McConnell representative did not respond to a request for comment.

With the May 8 primary fast approaching, Blankenship has launched a slash-and-burn campaign targeting the Senate GOP leader. Blankenship's offensive comes as polls show him falling behind GOP Rep. Evan Jenkins and state Attorney General Patrick Morrisey in the primary.

McConnell's political operation has moved aggressively to block Blankenship's path. Operatives close to the majority leader, convinced that Blankenship would lose to Democrat Joe Manchin in the November general election, have launched a super PAC that has spent about \$1.3 million on TV ads attacking the coal baron.

One ad from Mountain Families PAC describes Blankenship as a "convicted criminal," who lived a lavish lifestyle while ignoring mine safety laws.

"Don Blankenship was about the money," the spot concludes. "West Virginia families paid the price."

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Pruitt scales back EPA's use of science [Back](#)

By Emily Holden and Annie Snider | 04/24/2018 03:17 PM EDT

Environmental Protection Agency chief Scott Pruitt announced Tuesday he would seek to bar the agency from relying on studies that don't publicly disclose all their data, a major policy change that has long been sought by conservatives that will sharply reduce the research the agency can rely on when crafting new regulations.

The unveiling of the proposed rule delivers a win to Republicans like House Science Chairman [Lamar Smith](#) (R-Texas), who unsuccessfully pushed legislation to impose the same type of change. The move also demonstrates Pruitt's persistence in pursuing President Donald Trump's anti-regulation agenda just two days before the embattled EPA chief is due to face fierce questioning from lawmakers about his hefty spending, expanded security detail and cheap condominium rental from the wife of an energy lobbyist.

At an invitation-only meeting at EPA headquarters with Smith, Sen. [Mike Rounds](#) (R-S.D.) and other supporters of the policy, Pruitt said the proposed rule was critical in ensuring that the agency was transparent about how it is making decisions to justify costly new regulations. It is the latest step Pruitt has taken to fundamentally shift the agency's approach to science.

"It is a codification of an approach that says as we do our business at the agency the science that we use is going to be transparent, it's going to be reproducible, it's going to be able to be analyzed by those in the marketplace. And those who watch what we do can make informed decisions about whether we've drawn the proper conclusions or not," Pruitt said.

Text of the proposed rule was not immediately available.

The proposal, based on legislation pushed by Smith, is intensely controversial, and scientists and public health groups say it will prevent federal regulators from enacting health and safety protections. Nearly 1,000 scientists, including former EPA career staffers, signed a [letter](#) opposing the policy sent by the Union of Concerned Scientists to Pruitt on Monday.

Their primary concern was that many of the country's bedrock air and water quality regulations are based on research that cannot disclose raw data because it includes the personal health information.

But industry has its own version of the same problem. EPA often relies on industry studies that are considered by companies to be confidential business information when determining whether new pesticides and toxic chemicals are safe to use. Internal EPA emails obtained under the Freedom of Information Act show that EPA political officials, including Nancy Beck, who became the chief of the agency's chemical safety office last year after working for years at a chemical industry lobbying group, worried that the new policy would limit the agency's ability to consider industry data or would force companies to make this proprietary data public.

"We will need to thread this one real tight!" Richard Yamada, political official who led work on the new policy wrote to Beck after she raised the concerns.

It was not immediately clear if the new proposed rule included measures to address those concerns.

Rush Holt, CEO of the American Association for the Advancement of Science, said Pruitt's changes could keep the agency from revising public health regulations as problems arise or new data comes to light.

"On the surface it sounds so innocuous or even beneficial. What could be wrong with transparency? Well it's clear to me that this is not based on an effort to be transparent. It is rather based on an effort to be just the opposite," he said.

"EPA is particularly important because when science is misused, people die," he added.

Pruitt has been discussing the new scientific policy publicly for weeks, but it only went to the White House for interagency review last week. Such swift review is very rare for the Office of Management and Budget, which often takes months to vet a new policy. At least one group, the Environmental Defense Fund, has requested a meeting with OMB officials to discuss the rule, but OMB's website shows that no meetings have been scheduled with interested groups.

Many public health studies can't be replicated without exposing people to contaminants, and environmental disasters such as the Deepwater Horizon oil spill cannot be recreated, the group said, raising intellectual property, proprietary and privacy concerns.

Pruitt's predecessor Gina McCarthy, and her air chief Janet McCabe, in an op-ed in The New York Times in March said concerns about studies are dealt with through the existing peer-review process, which ensures scientific integrity.

"[Pruitt] and some conservative members of Congress are setting up a nonexistent problem in order to prevent the E.P.A. from using the best available science," they said.

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"It is a codification of an approach that says as we do our business at the agency the science that we use is going to be transparent, it's going to be reproducible, it's going to be able to be analyzed by those in the marketplace. And those who watch what we do can make informed decisions about whether we've drawn the proper conclusions or not," Pruitt said.

Text of the proposed rule was not immediately available.

The proposal, based on legislation pushed by Smith, is intensely controversial, and scientists and public health groups say it will prevent federal regulators from enacting health and safety protections. Nearly 1,000 scientists, including former EPA career staffers, signed a letter opposing the policy sent by the Union of Concerned Scientists to Pruitt on Monday.

Their primary concern was that many of the country's bedrock air and water quality regulations are based on research that cannot disclose raw data because it includes the personal health information.

But industry has its own version of the same problem. EPA often relies on industry studies that are considered by companies to be confidential business information when determining whether new pesticides and toxic chemicals are safe to use. Internal EPA emails obtained under the Freedom of Information Act show that EPA political officials, including Nancy Beck, who became the chief of the agency's chemical safety office last year after working for years at a chemical industry lobbying group, worried that the new policy would limit the agency's ability to consider industry data or would force companies to make this proprietary data public.

"We will need to thread this one real tight!" Richard Yamada, political official who led work on the new policy wrote to Beck after she raised the concerns.

It was not immediately clear if the new proposed rule included measures to address those concerns.

Rush Holt, CEO of the American Association for the Advancement of Science, said Pruitt's changes could keep the agency from revising public health regulations as problems arise or new data comes to light.

"On the surface it sounds so innocuous or even beneficial. What could be wrong with transparency? Well it's clear to me that this is not based on an effort to be transparent. It is rather based on an effort to be just the opposite," he said.

"EPA is particularly important because when science is misused, people die," he added.

Pruitt has been discussing the new scientific policy publicly for weeks, but it only went to the White House for interagency review last week. Such swift review is very rare for the Office of Management and Budget, which often takes months to vet a new policy. At least one group, the Environmental Defense Fund, has requested a meeting with OMB officials to discuss the rule, but OMB's website shows that no meetings have been scheduled with interested groups.

Many public health studies can't be replicated without exposing people to contaminants, and environmental disasters such as the Deepwater Horizon oil spill cannot be recreated, the group said, raising intellectual property, proprietary and privacy concerns.

Pruitt's predecessor Gina McCarthy, and her air chief Janet McCabe, in an op-ed in The New York Times in March said concerns about studies are dealt with through the existing peer-review process, which ensures scientific integrity.

"[Pruitt] and some conservative members of Congress are setting up a nonexistent problem in order to prevent the E.P.A. from using the best available science," they said.

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API's Gerard to exit on an oil industry winning streak [Back](#)

By Ben Lefebvre | 01/17/2018 06:05 PM EDT

American Petroleum Institute President and CEO Jack Gerard's plan to exit the powerful trade association could signal the end an era for oil industry lobbying.

Gerard notched up a long list of achievements during his 10-year tenure, which coincided with the oil and gas boom that turned the U.S. into the world's largest energy producer. He will step down in August after deciding not to renew his contract, API announced.

Gerard took the helm at the API after leading the American Chemistry Council and the National Mining Association. And he was well compensated, receiving \$6 million in salary and other compensation as of 2015, according to the API's latest tax forms.

During his time atop API, flagging U.S. production rebounded with the advent of fracking and horizontal drilling, allowing energy producers to tap new resources in North Dakota, Appalachia and West Texas. And as overall oil output doubled to nearly 10 million barrels a day, API's membership swelled by 50 percent, to more than 600 companies.

That helped API to expand its reach, and it doled out \$9.4 million on lobbying Washington lawmakers in 2017, quadruple the amount it spent in the year Gerard took the helm.

API helped overturn the decades-old ban on oil exports, open new areas to drilling — including the Arctic National Wildlife Refuge — and win federal approval for the Keystone XL pipeline. And under Gerard, API also introduced the term that would eventually be taken up by President Donald Trump, when in 2012 it called for a "new era of American world energy dominance."

"We've taken the nation from energy scarcity to energy abundance," Gerard said of the industry at the API's annual State of American Energy address in Washington earlier this month.

But he warned at that event that it wasn't time for API to take "a victory lap," as he cited a to-do list that contained little more than continuing a yearslong fight to repeal a biofuels mandate the industry finds burdensome and streamlining the federal permitting process.

"It's hard to say API wasn't successful under his tenure," said John Northington, a former Clinton-era Interior Department official who works as an energy consultant for many API member companies, adding that it delivered much of what the industry wanted to accomplish.

Not all energy industry insiders agreed, however. Some pointed that for an organization with annual revenue of around \$250 million — much of which it spent on advertisements, including one that ran during last year's Super Bowl, or donations to Republicans — the API's influence was limited. Despite a string of recent wins, it hadn't managed to record any progress in altering the decade-old Renewable Fuel Standard for biofuels or ending restrictions under the Jones Act against foreign-flagged ships transporting fuel between U.S. ports.

"They have this ridiculous amount of money, but they don't get a lot of results," said one refining industry source who requested anonymity to discuss the association. "They don't do bad work, but for that kind of money, you expect more."

The API's ranks have also become divided over how to handle growing public concern about the oil and gas industry's role in climate change. The group in 2016 created a task force to massage the industry's environmental image and work Democrats on a potential carbon tax, a policy that drives a wedge between companies like Exxon Mobil, which has supported such a tax, and Chevron, which has opposed it.

An API spokeswoman said it was unknown whether Gerard was retiring or would join another organization. Gerard will help lead the search for a new president and CEO, the spokeswoman added.

One possible replacement for Gerard is API's current executive vice president and chief strategy officer, Marty Durbin. Durbin had been in charge of API's government affairs before departing to become head of the lobby group America's Natural Gas Alliance, which subsequently merged with API.

Other names floated by industry insiders as potential candidates included Mike Sommers, a former chief of staff for former House Speaker John Boehner, now CEO of the American Investment Council; Karen Harbert, head of the U.S. Chamber of Commerce's Global Energy Institute; and former Sen. Blanche Lincoln, an Arkansas Democrat.

An API spokeswoman did not comment on possible candidates.

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Sources: API expected to tap Sommers as new chief [Back](#)

By Emily Holden and Eric Wolff | 04/30/2018 04:33 PM EDT

The American Petroleum Institute is expected to tap Mike Sommers, the head of a private equity trade group who worked as a top aide to former House Speaker John Boehner, to replace Jack Gerard at the helm of the powerful oil and gas industry lobby group, according to two sources.

Gerard announced his retirement earlier this year after a decade at the helm of the API, where he notched up a long list of achievements including overturning the decades-old ban on crude oil exports. He will step down in August.

API did not reply to a request for comment.

The oil and gas industry has so far gotten strong support from the Trump administration, which has moved to open the Arctic National Wildlife Refuge to exploration, is considering making wide swathes of coastal waters available to the industry, and last week said it would roll back some Obama offshore drilling rules.

But API has urged the White House to scrap its steel and aluminum tariffs, and to keep core provisions of NAFTA in place as it negotiates an update to the trade agreement.

Sommers, who was Boehner's chief of staff, has led the American Investment Council for two years, a position that kept him close to Arclight Capital Partners, The Blackstone Group, EnCap Investments and other firms that have invested heavily in energy projects. He also served as an aide to former President George W. Bush in 2005 at the National Economic Council working on agriculture, trade and food policy.

Barry Worthington, CEO of the United States Energy Association, which brings together public and private organizations, corporations and government agencies, said he'd been told Sommers would succeed Gerard.

"Jack Gerard is going to be a tough act to follow," he said.

Gerard was also one of the best-paid lobbyists in Washington, D.C. He received \$5 million in direct compensation from API, plus another \$1.2 million in perks in 2015, according to the group's latest IRS forms.

Marianne Levine and Ben Lefebvre contributed to this report.

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Trump grants key U.S. allies an extra month of tariff relief [Back](#)

By Megan Cassella | 04/30/2018 05:57 PM EDT

President Donald Trump has decided to extend by one month a temporary exemption from steel and aluminum tariffs for Canada, Mexico and the European Union, the White House announced Monday evening.

The move gives key allies — and three of the U.S.' four largest trading partners — until June 1 to reach some sort of deal with the Trump administration to avoid duties of 25 percent on steel and 10 percent on aluminum exports sent to the United States. The tariffs had been set to take effect at 12:01 a.m. Tuesday if Trump had not moved to extend the deadline.

The administration has also reached preliminary agreements with three other countries that had initially been granted a temporary exemption — Argentina, Brazil and Australia — allowing them to escape the duties as details are finalized over the next 30 days, the White House said. Trump did not set a deadline for those details to be worked out but said he would consider reimposing the tariffs if the agreements are not finalized "shortly."

One other country, South Korea, had already reached a preliminary deal for a permanent exemption from the steel tariffs because it agreed to cap its exports to the U.S. at 70 percent of the average export volume over the previous three years. Trump's official proclamation said the administration will monitor the implementation and effectiveness of that quota and left room for Trump to "revisit" his decision if needed.

"In all of these negotiations, the administration is focused on quotas that will restrain imports, prevent transshipment, and protect the national security," the White House said in its declaration. "These agreements underscore the Trump administration's successful strategy to reach fair outcomes with allies to protect our national security and address global challenges to the steel and aluminum industries."

The declaration brings some clarity to a decision-making process that until the official release left key allies wondering whether they would beginning Tuesday face penalties sure to roil international markets and disrupt global supply chains. Few people inside the White House or overseas had been sure of what or even when Trump would decide.

Imposing the duties would also have affected foreign steel industries that depend on access to the U.S. market. Canada and Mexico both send more than half of their steel produced annually into the United States, while the 28 nations of the EU together serve as the largest single supplier of steel to the U.S.

Of \$29.1 billion worth of steel that the United States imported last year, \$6.2 billion came from the 28 nations of the EU and \$2.9 billion from other European countries. About \$5.1 billion came from Canada, \$2.8 billion from South Korea, \$2.5 billion from Mexico, \$1.6 billion from Japan, \$1.4 billion from Russia and just \$976 million from China.

A U.K. government spokesperson called the extension "positive" and said EU countries would continue to work to reach a permanent solution.

"We remain concerned about the impact of these tariffs on global trade and will continue to work with the EU on a multilateral solution to the global problem of overcapacity, as well as to manage the impact on domestic markets," the spokesperson said in a statement Monday night.

Although the move grants some of the United States' closest allies another month to work out a deal, it remains unclear what sort of concessions would satisfy Trump and his administration.

Commerce Secretary Wilbur Ross and other administration officials have said in recent days that countries would have to choose between either quotas or tariffs — but the EU, Canada and Mexico have said they expect a full exemption without having to agree to such restrictions.

"We're busy alienating the few friends we have left," said Bill Reinsch, a senior adviser at the Center for Strategic and International Studies. "The president clearly, on trade issues, doesn't make a distinction between the good guys and the bad guys. If you're not doing exactly what he wants, you're a bad guy by definition — and nothing else counts."

The process of deciding on the exclusions and exemptions has been chaotic since the departure of former White House staff secretary Rob Porter, who was heavily invested in trade policy and making sure that differing viewpoints were included in the decision-making process.

U.S. Trade Representative Robert Lighthizer, meanwhile, has had myriad policy questions on his plate, including the ongoing NAFTA talks and his upcoming trip to China later this week to talk trade.

With any final decision still up in the air, some nations have indicated exactly how they will retaliate if and when Trump does impose the tariffs. The European Union last month generated a list of U.S. exports ranging from peanut butter to lipstick and yachts that would face punitive 25 percent duties on their way into the European market if Brussels is not spared. The EU's list, which is valued at roughly \$3.4 billion, is largely comprised of products from Republican states and districts that would bear the brunt of the tariff impact.

At the same time, European nations have also been working among themselves and with the United States to strike a compromise. German Chancellor Angela Merkel and French President Emmanuel Macron both traveled to the White House last week to talk face-to-face about the issue with Trump, who is still toying with the decision.

Merkel and Macron both spoke over the weekend with U.K. Prime Minister Theresa May about the "vital importance" of Europe's steel and aluminum industries and pledged to work together with the rest of the EU to push for a compromise and a permanent exemption.

To that end, EU Trade Commissioner Cecilia Malmström also spoke again over the phone on Monday with Ross.

Tensions are similarly high with Canada and Mexico, who are in intensive trade negotiations with the United States to update NAFTA.

Both countries have repeatedly made clear that they expect to be granted a full, permanent exemption from the tariffs without having to agree to quotas or any other restrictions. But their temporary reprieve was contingent upon a successful completion of the NAFTA rewrite — and with that deal still at least a week away, it remains unclear whether Trump will make the exemption permanent or at least extend it on a temporary basis while negotiations continue.

For either of the U.S. neighbors, imposition of the duties would ratchet up trade tensions at a time when all three countries are working to wrap up a NAFTA negotiation that has already been technically and politically difficult.

"Obviously, Lighthizer knows very clearly our position and how we have to react if any measure is imposed," Mexican Economy Secretary Ildefonso Guajardo said Friday during a visit to Washington to talk NAFTA. "I have been very clear that in this context a quota on steel won't be the best way to go."

If the tariffs do go ultimately into effect for any of the countries involved, a key question will be whether Trump will ratchet up the pressure again after the countries inevitably retaliate, Reinsch said.

"We act, they act, that's round one. The question will be, is [Trump] then going to start round two?" he said, noting that one round of tit-for-tat is "not that unusual" but that two would be more remarkable. "I think the trade war starts in round two."

Nancy Cook and Jakob Hanke contributed to this report.

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Source: EPA draft would halt auto standards at 2021 levels, block California authority [Back](#)

By Alex Guillén | 04/27/2018 06:28 PM EDT

A draft proposal from EPA would freeze auto emissions standards after model year 2021 and seek to block California's ability to enact its own more stringent regulations, according to a source familiar with the draft.

The text of the draft is still reportedly in flux, but if ultimately finalized, it would erase half a decade's worth of the Obama administration's much-touted emissions savings, handing a major win to the oil industry. It would also set up a nasty legal fight with California that many legal experts believe the state could win.

The Los Angeles Times first reported on the draft plan today.

EPA Administrator Scott Pruitt on Thursday told a House Energy and Commerce subcommittee that he did "not at present" have any plans to try to revoke California's Clean Air Act waiver to enforce more stringent standards.

"It's important that we work together to achieve, as was indicated earlier, a national standard," Pruitt added.

Automakers successfully lobbied the Trump administration to revisit the 2022-2025 standards — although most indicated they simply wanted more flexibility to reach the ultimate emissions goals in 2025. They had complained it would be difficult to meet the Obama administration's goals that would have ultimately lifted the average fuel economy target for the nation's fleet of cars and light trucks to 55 miles per gallon by 2025.

Industry trade groups and individual automakers have also cautioned that a single national standard is preferable to a regulatory patchwork of rules.

WHAT'S NEXT: EPA reportedly will send the proposal to the White House for review in the near future. The agency is working alongside the National Highway Traffic Safety Administration, which is writing its own separate but related fuel economy rules for 2022-2025 vehicles.

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Pruitt: EPA not going after California's waiver 'at present' [Back](#)

By Anthony Adragna | 04/26/2018 12:04 PM EDT

EPA Administrator Scott Pruitt said today his agency is "not at present" attempting to undo California's special Clean Air Act waiver allowing the state to set stricter emissions levels for vehicles.

"It's important that we work together to achieve, as was indicated earlier, a national standard," Pruitt said at a House Energy and Commerce subcommittee hearing this morning. "We are working very diligently and diplomatically with California to find answers on this issue."

California officials have warned they would diligently challenge any effort by the Trump administration to go after the waiver.

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PJM to probe fuel supply vulnerabilities [Back](#)

By Eric Wolff | 04/30/2018 11:08 AM EDT

PJM Interconnection said today it would seek to identify any fuel supply vulnerabilities in its grid and design market tools to increase resilience, a move that appears designed to head off Energy Secretary Rick Perry's effort to bail out coal-fired and nuclear power plants.

PJM says in a report out today it will run models to "stress test" different parts of the grid to see if fuel security could be compromised under different circumstances. If it finds risks of fuel constraints, it would consider allowing different prices for power from generators that are better able to hedge against fuel problems.

"As is the case with reliability standards, PJM believes the most effective way to address fuel security is to define and establish fuel security criteria and then use market forces to allow all resources to compete to meet those criteria," the report says.

The report's biggest concern appears to be a grid dominated by natural gas, since cold weather can increase demand for home heating and constrain gas supplies. The report makes only one mention of renewables.

PJM has consistently opposed efforts by DOE to exercise emergency authority under either the Federal Power Act or the Defense Production Act to directly subsidize coal or nuclear power plants struggling in the face of low cost power from natural gas and renewables.

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Perry's latest bid to help coal faces uphill battle [Back](#)

By Eric Wolff | 04/25/2018 05:08 AM EDT

Energy Secretary Rick Perry's latest idea to protect coal-fired and nuclear power plants may not fare much better than his previous efforts, according to energy experts.

Perry is considering invoking the 1950 Defense Production Act to keep money-losing power plants running by designating them as crucial for national security. But that would stretch the definition of the law and almost certainly draw legal challenges — and it would hit a big hurdle in Congress, which would need to approve perhaps billions of dollars in funding to keep the plants afloat, the experts said.

At the urging of President Donald Trump, Perry has sought to keep open coal and nuclear power plants that are threatened with shutdowns amid the stagnant demand for power — and even as natural gas and renewable power sources grab a growing share of the market.

So far, Perry's had no luck. FERC earlier this year rejected his proposal to give the plants financial support, and Energy Department lawyers stymied a push last year to invoke the agency's authority under the Federal Power Act to force the plants to run.

Some experts said any attempt to use the DPA is likely to meet the same fate.

"To me, it's a tough argument to make. It's a specious argument on its surface that seems like a perversion of the intended use of the Defense Production Act," said Tom Hicks, a former acting undersecretary of the Navy under

former President Barack Obama and now a principal at the advisory firm The Mabus Group. "Defense Production Act is on the vanguard of the need for resources, not on the back end for an industry being challenged by economic forces."

But the effort has been a priority for Trump and Perry, who sees saving coal-fired power generation as vital to U.S. security, according to a source familiar with the conversations on the issue.

The Cold War-era law grants the federal government powerful authorities to inject cash into companies essential for national defense in order to preserve domestic supplies of key products. But DOE will have to make the case that electricity produced specifically from coal and nuclear power plants, and not other types of power, is a critical resource.

Using the act to protect the plants when there appeared to be no immediate shortage of power supplies would be a novel application that would almost certainly face legal challenge.

"If the administration uses DPA, they're going to be using it very creatively," said Ari Peskoe, director of the Electricity Law Initiative at the Harvard Law School Environmental and Energy Law Program. "They may come up with reasoning for higher rates and who's going to pay for it. Whether that will hold up, I don't know."

Perry and his staff appear to have very few viable options for bailing out coal and nuclear power, a major energy priority for Trump, who has promised to revive the coal industry. DOE has opened a comments process for interested parties to weigh in on its use of the Federal Power Act's 202(c) emergency provisions, though that would require the agency to go through FERC, which unanimously rejected a similar Perry effort in January.

The 202(c) effort has been pushed by coal magnate Bob Murray, owner of Murray Energy, and by FirstEnergy Solutions, the unit of FirstEnergy Corp. that is in bankruptcy proceedings and which expects to shut down four coal and nuclear power plants. That company asked DOE to use the emergency authority to save not only its plants, but all 85 coal and nuclear power plants in the PJM Interconnection power market.

The DPA was last used by the Obama administration starting in 2012 to help spur the biofuels industry to develop the kind of advanced biofuels that could power ships and aircraft. The government can purchase capital equipment for the cause of national security, and it can fund advertising to support the effort.

And it allows the government to become the buyer of last resort, which could put Washington on the hook to buy excess power generated by coal and nuclear plants. Technically, this electricity could only be purchased at the "cost of production," a level that in the past has been determined by a team within the Defense Department.

While no hard estimate for the cost of a DPA subsidy exists, consultants analyzing Perry's previous bailout proposal estimated costs between \$4 billion and \$10.6 billion annually.

That's a far higher level than Congress typically allocates for the DPA. It provided \$67.4 million in the omnibus passed in March, H.R. 1625 (115), down slightly from the \$76 million it provided for all projects in 2017, according to a report submitted to Congress.

And Congress — and the Republican Party — is deeply divided on using government subsidies to save these plants. Rep. David McKinley (R-W.Va.) has some allies from other coal districts for the effort, but other free market-oriented lawmakers like Rep. Pete Olson (R-Texas) say they want to see markets function unimpeded.

McKinley's staff has been in touch with DOE and the White House, as has West Virginia Sen. Joe Manchin (D).

"I think it's an emergency national concern for the national defense of our country. I think Rick Perry agrees with it, and I think the president does also," Manchin told POLITICO.

PJM has itself said the retirement of FirstEnergy's coal plants did not pose a threat to the region's power supplies, and that it had ample generation to meet demand. It has opposed any effort to mandate to require the plants to stay online.

"We believe that a market-oriented approach consistent with the American free-enterprise system offers better results than government-mandated subsidies," said PJM spokesman Jeff Shields.

Anthony Adragna contributed to this report.

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Chatty Pompeo strikes early contrast with reclusive Tillerson [Back](#)

By Nahal Toosi | 04/30/2018 06:11 PM EDT

Mike Pompeo, the new secretary of state, is leaning hard into the side of the job his predecessor seemed to hate the most: public relations.

Within hours of being confirmed last week, Pompeo took along several journalists on a trip to Europe and the Middle East, answering their questions in public and private, and appearing Sunday on ABC News' "This Week." He's planning a town hall meeting with State Department staff soon. And he may even start tweeting.

The moves are in many ways a return to tradition for a secretary of state, a high-profile position where words are the most powerful tool. But they stand in marked contrast to the man Pompeo replaced, Rex Tillerson, whose early lack of visibility caused lingering damage to his reputation inside the Trump administration and beyond.

"It signals that, unlike Tillerson, Pompeo recognizes some of the basic things he needs to do to make the State Department relevant," said Ilan Goldenberg, a former Obama-era State official now with the Center for a New American Security. "By itself, it won't make Pompeo an effective secretary of state. But not doing these things really hurt Tillerson."

On Tuesday afternoon, his first full day in Foggy Bottom itself, Pompeo will deliver a speech introducing himself to the department. Staffers and journalists won't be the only ones listening; foreign diplomats will also parse Pompeo's words carefully.

Tillerson, too, gave a well-received speech his first full day on the job. But for months afterward, he almost seemed to have taken a vow of silence.

He refused to engage reporters, didn't hold a town hall until three months in and had no social media presence. U.S. diplomats soon found themselves aimless, lacking guidance from Tillerson and his small coterie of advisers. Veteran NBC News reporter Andrea Mitchell took to loudly asking questions of a silent Tillerson during his public appearances, videos of which went viral. The department's daily press briefing, a decades-old

tradition, was put on ice for nearly two months. Under pressure, Tillerson brought it back, but in a scaled back format. Headlines asked: "Where's Rex?"

Tillerson puzzled a foreign policy establishment used to secretaries of state — including Hillary Clinton and John Kerry — who sought, rather than shunned, public attention. Many State Department staffers came to see Tillerson as isolated and aloof. And foreign leaders who concluded he was ineffectual and out of the loop engaged directly with the White House instead.

Tillerson greatly increased his visibility in the second half of his 14-month tenure, but the damage was done. Trump fired Tillerson in mid-March.

The difference between Tillerson and Pompeo might be explained, in part, by their respective backgrounds: Tillerson had previously been a taciturn CEO of ExxonMobil, Pompeo a pugnacious congressman from Kansas.

"His background as a congressman is a great asset in his current position," said Brett Schaefer, a foreign policy analyst with the conservative Heritage Foundation. "He has a great deal of experience in interacting with a broad number of people and doing so in a way that is designed to listen to their concerns and respond to them."

Pompeo has also pledged to stay in close touch with his former colleagues in Congress. Tillerson drew criticism for being slow to respond to lawmakers' requests.

And while Tillerson showed no visible interest in social media, a person familiar with Pompeo's situation said he is considering using Twitter.

David Wade, a former chief of staff to Secretary of State John Kerry, argued that a secretary of state's public words matter well beyond the Washington Beltway. "Externally, you're in a race to define the American narrative against those like Russia and China which will fill in their own narrative if you're absent," he said.

Calling Tillerson "an abysmal failure at communications both internally and externally," Wade said Pompeo "can be a good communicator, and as a politician he's more talented than his predecessor." But, he added, "all the public diplomacy in the world can't get him out from under the weight of Trump's tweets and slurs about people from the Middle East to Africa."

The timing of Pompeo's Thursday confirmation vote allowed him to attend a long-scheduled meeting of NATO foreign ministers in Brussels the next day, winning him early plaudits from others in the military alliance.

"He actually jumped on a plane just after he was sworn in and he was able to address the North Atlantic Council, the foreign ministers of NATO, just 12 hours and 34 minutes after his confirmation," NATO Secretary General Jens Stoltenberg said with admiration.

Pompeo left Washington with six journalists on his plane. On his first major overseas trip, Tillerson brought just one reporter, from the conservative Independent Journal Review.

As he continued from Brussels to Saudi Arabia, Israel and Jordan over the weekend, Pompeo picked up two more reporters. He spoke to the reporters on the plane and also took questions during news conferences on the ground.

Tillerson, by contrast, generally avoided even the reporters who — having been denied seats on his official plane — chased him around the world on commercial flights.

Shortly after he took office, Tillerson took a quick trip to Bonn, Germany, for a meeting of G-20 foreign ministers. At an appearance on the sidelines with Russian Foreign Minister Sergey Lavrov, reporters were escorted out of the room before Tillerson gave remarks. Even Lavrov was puzzled: "Why did they shush them out?" he asked.

"I'm not a big media press access person. I personally don't need it," Tillerson would later tell the IJR reporter, who traveled with him to Asia a month later.

During his 15 months as CIA director, Pompeo forged a much closer relationship with Trump than Tillerson. He is believed to have a much better sense of where the president stands, and his own, often-hawkish views appear more in line with Trump's thinking. Pompeo has also been vocal about wanting to improve morale at the State Department, where many diplomats have been distressed over Trump's attempts to slash their budget and Tillerson's unwillingness to listen to their expertise.

In a news conference in Brussels, Pompeo pointed out that he'd met with U.S. diplomats who work in the Belgian capital and that he was committed to making his department more relevant.

The diplomats, he said, "may have been demoralized, but they seemed in good spirits. They are hopeful that the State Department will get its swagger back."

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Pruitt's Chick-fil-A 'opportunity' grabs Inhofe's attention

One of EPA Administrator Scott Pruitt's closest allies on Capitol Hill expressed worry over the latest ethics allegation against the agency chief.

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AN E&E NEWS PUBLICATION

E&E NEWS PM — Wed., May 9, 2018



READ FULL EDITION

1. REGULATIONS:

White House delays completion of key rules and repeals

The White House this afternoon released the administration's latest regulatory plan, a sweeping survey for all federal agency actions.

THIS AFTERNOON'S STORIES

2. EPA:

Democrats demand answers on quick 'secret science' review

3. CLEAN POWER PLAN:

States, cities oppose Trump bid to stall litigation

4. ENERGY POLICY:

House committee approves grid, cyber and LNG bills

5. NATIONAL PARKS:

DOJ urges justices to bypass hovercraft-riding hunter's case

6. COAL:

6 states join Wash. export lawsuit

UPCOMING HEARINGS AND MARKUPS

7. CALENDAR:

Activity for May 7 - May 13, 2018

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E&E NEWS PM — Fri., June 29, 2018



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1. CLEAN WATER ACT:

White House beefs up WOTUS repeal

The Trump administration is arguing that the Obama administration's Clean Water Rule did not successfully align itself with the vision of Supreme Court Justice Anthony Kennedy in defining which wetlands and small waterways are covered by the Clean Water Act.

THIS AFTERNOON'S STORIES

2. FUEL ECONOMY:

Appeals court slams White House for delaying higher penalties

3. EPA:

Advisory board wants to review 'secret science' proposal

4. NATIONAL PARKS:

Senators propose up to \$6.5B for upkeep

5. AIR POLLUTION:

EPA proposes using CSAPR to meet 'good neighbor' obligations

6. COAL:

W.Va. labor battle site back on historic register

UPCOMING HEARINGS AND MARKUPS

7. CALENDAR:

Activity for June 25 - July 1, 2018

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Subject: Morning Energy, presented by Anheuser-Busch: Returning to the battlefield over California car rules — Pruitt screens friendly questions — Art of the RFS deal

By Kelsey Tamborrino | 05/09/2018 05:42 AM EDT

With help from Anthony Adragna

IF AT FIRST YOU DON'T SUCCEED: The looming fight between the Trump administration and the state of California over climate change rules for cars will cover some familiar terrain — where the liberal state and its environmentalist allies have won major legal battles in the past, Pro's Alex Guillén reports. The White House strategy appears to mirror the approach that automakers and dealers unsuccessfully pursued more than a decade ago in an attempt to reverse California's strict limits on vehicles' greenhouse gas emissions.

This again? California — which has a waiver under the Clean Air Act to enact stricter standards — is hoping things play out the same way it did the last time around, when two federal district courts upheld its rules, which other states also can choose to follow. "It's sort of déjà vu because it's going to be basically round two," said Kevin Leske, who was an assistant attorney general in Vermont in 2007 when the state fought off an industry lawsuit seeking to block the greenhouse gas rules for cars.

The details: At issue is the interplay between the long-standing Corporate Average Fuel Economy standards that were established under the 1975 Energy Policy and Conservation Act, and the relatively new emissions standards enforced nationally for the first time under the Obama administration. The Trump administration is expected to nullify the waiver granted to California and then try to circumvent any questions by arguing that EPCA preempts California from enforcing its auto emissions standards — essentially the same argument automakers and dealers deployed in multiple lawsuits over a decade ago.

But keep in mind: That strategy fell short the first time around. A U.S. district court judge in California concluded that greenhouse gas standards are too different from fuel economy regulations to fall under EPCA's "related to" preemption language. However, the cases were never appealed after a larger political deal was reached on the car rules, but advocates of the Trump administration's approach say they hope to take the issue to a higher court this time around. Read [more](#).

GOOD WEDNESDAY MORNING! I'm your host Kelsey Tamborrino. Andrew Fasoli of the American Chemistry Council was the first to correctly guess that former President Ronald Reagan was first to watch a major league baseball game from the dugout, at a Baltimore Orioles game. For today: In what city did the nation's first paved roadway appear? Send your tips, energy gossip and comments to ktamborrino@politico.com, or follow us on Twitter [@kelseytam](#), [@Morning_Energy](#) and [@POLITICOPro](#).

Download. Edit. Present. DataPoint has ready-made slide presentations to help you translate complex policy issues in the simplest terms. [Learn more](#).

BEGS THE QUESTION: EPA Administrator Scott Pruitt and his staff sought extensive control over questions that could be asked to the administrator when he toured the country speaking to industry groups, POLITICO's Anthony Adragna and Emily Holden report. Even seemingly friendly questions got axed by the agency, like, "How often do you get back to Oklahoma?" That question was crossed off a proposed list of questions without

an explanation ahead of Pruitt's appearance in December at an event in Iowa, internal emails made public by the Sierra Club through a public records lawsuit show. (At the time, EPA's inspector general was already investigating Pruitt's frequent trips back home.) The emails offer new insight into EPA staff's desires to limit access by independent journalists, pre-screen questions from friendly interviewers and coordinate Pruitt's message with lobbyists ahead of gatherings with conservative or industry groups. Read the details [here](#).

WHAT HAPPENED AT THAT BIOFUELS POWWOW: President Donald Trump appears to have brokered a deal in the long-running fight between ethanol producers and oil refiners over federal biofuels mandates. At a White House meeting Tuesday with Pruitt, Agriculture Secretary Sonny Perdue and a few Republican senators. Trump reiterated his pledge to allow 15 percent ethanol fuels year-round and rejected a price cap on biofuel credits, called Renewable Identification Numbers. Those are both big wins for the corn crowd, Pro's Eric Wolff [reports](#). But ethanol producers groused about another proposed aspect of the deal that would lower compliance costs for refiners: allowing ethanol exports to qualify for RINs. Refiners, meanwhile, were wary of a separate proposal for EPA to require large refiners to take on the ethanol-blending requirements for which it issued dozens of waivers to smaller refiners.

IT'S KIND OF INFRASTRUCTURE WEEK: Close to none of Trump's big-ticket [proposals](#) to streamline environmental rules made it into the first major bill infrastructure bill introduced in Congress since his election. America's Water Infrastructure Act of 2018, as the Senate bill is called, is so far the "most significant step lawmakers have taken to help fulfill the president's marquee campaign promise to revitalize the country's transportation arteries," Pro's Annie Snider writes. The bill's authors purposefully set their sights on bipartisanship in light of the fast-approaching midterm elections. "We focus on the 80 percent where we have general agreement, and we're going to get something done," said Sen. [Tom Carper](#) (D-Del.), the top Democrat on the panel and a cosponsor of the measure. Read [more](#).

MORRISEY WINS: West Virginia Attorney General Patrick Morrisey came out on top Tuesday, clinching the Republican nomination to take on Democratic Sen. [Joe Manchin](#) come November. Coal baron Don Blankenship, who was running a controversial campaign against the Republican establishment and Mitch McConnell, ended up in third place in the most-watched race of the night. Blankenship, who was convicted in 2015 of conspiring to skirt mine standards after 29 miners were killed at Massey Energy's Upper Big Branch facility, only [received](#) 19.9 percent of the vote to Morrisey's 34.9 percent, and 29.3 percent for Rep. [Evan Jenkins](#), the other major candidate in the race. Read more on all of Tuesday's primaries [here](#).

NEW DETAILS IN PRUITT SAGA: EPA worked closely with groups such as the Heartland Institute and the CO2 Coalition — both of which dispute the scientific consensus on climate change — when planning Pruitt's proposed "red team, blue team" debate over climate science, The New York Times [reports](#) via new documents released by the NRDC. The emails show that EPA scientists were not involved in the discussion, and that political aides continued to work on the idea even after White House chief of staff John Kelly tried to squelch the plan, according to the Times. In a separate report, the Times got a hold of documents that shed new light on the day security officers, fearing for Pruitt's safety, smashed down his condo door. Read it [here](#).

— **Pruitt's former security chief** Pasquale "Nino" Perrotta told the House Oversight Committee that Pruitt and his staff missed a connecting flight on a trip to Morocco because his security detail's weapons and gear couldn't be transferred between the planes in time, the Associated Press reports, citing anonymous committee aides. The delay forced Pruitt to spend more than 24 hours in Paris, and Perrotta's version of events calls into question the official rationale given by EPA. Read that story [here](#).

**** A message from Anheuser-Busch:** Anheuser-Busch announced that America's leading brewer has placed an order for up to 800 hydrogen-electric powered semi-trucks. The zero-emission trucks will be able to travel between 500 and 1,200 miles. Anheuser-Busch aims to convert its entire long-haul dedicated fleet to renewable powered trucks by 2025. [Learn more](#). **

BARRASSO: 'CLOSELY MONITORING' PRUITT SITUATION: EPW Chairman John Barrasso told ME he's "closely monitoring" the ongoing ethical woes of Pruitt and continuing with unspecified "oversight" of the agency. "The job that he's doing — in terms of the job assigned by the president to roll back regulations and overreach by the federal government — he continues to do well," Barrasso said. "We want to make sure taxpayer money is being well spent and appropriately spent." But Barrasso wouldn't specify if he'd sent additional letters to the agency, again deferring to the White House's vague, ongoing review of the situation.

Wait and see: Senior House Republicans overseeing the EPA also appeared to be publicly sticking with Pruitt as well. Rep. John Shimkus, who oversees the EPA on the House Energy and Commerce Committee, told ME he didn't have plans for additional oversight on his subcommittee but deferred to Chairman Greg Walden on whether it was appropriate. Shimkus acknowledged his lack of oversight plans "might disappoint some of my colleagues," including some Republicans who questioned Pruitt's spending at a hearing several weeks ago. A spokesman for the committee didn't respond to requests for comments on its oversight plans.

HEWITT KNEW IT: Conservative radio host Hugh Hewitt responded Tuesday on his radio show to a POLITICO report about a meeting set up by Hewitt between Pruitt and a water utility that sought a Superfund distinction in his hometown — which it ultimately received. "I knew it was going to show up in the FOIA request," Hewitt said of the meeting request. "I just didn't think it was a story." Separately, the liberal media watchdog group Media Matters reported Tuesday, that The Washington Post's Editorial Page Editor Fred Hiatt had not known of ties between EPA and Hewitt's law firm. "Hewitt, who has not written about Pruitt since September, has agreed not to write about him going forward and has assured us that similar incidents won't occur in the future," Hiatt said in an email to the group.

PERRY PULLS UP: Energy Secretary Rick Perry will testify this morning before the House Science Committee on his department's overall budget for fiscal 2019. Members will likely discuss funding for Advanced Research Projects Agency-Energy and Department's Loan Programs, which are terminated under the budget, as well as Perry's recent moves on coal plants. "Termination of these programs will save over \$300 million in FY 2019 alone while significantly reducing financial risk to the taxpayer moving forward," Perry is expected to say. **If you go:** The hearing kicks off at 9 a.m. in 2318 Rayburn. Watch the livestream here.

AT THE SAME TIME: The House Energy and Commerce Committee is slated to hold a markup on five cybersecurity, small-scale LNG bills this morning. Included in the docket: The bipartisan H.R. 5175 (115), the "Pipeline and LNG Facility Cybersecurity Preparedness Act." The slate of bills — which also includes H.R. 4606 (115), H.R. 5174 (115), H.R. 5239 (115), H.R. 5240 (115) — were approved by the subpanel in April. H.R. 4606 — which would allow the expedited approval of small-scale shipments of liquefied natural gas — got a vote of 19-14 over the objections of most Democrats.

CHATTERJEE SEES CHALLENGES: FERC Commissioner Neil Chatterjee called out natural gas pipeline permitting in New York Tuesday, while speaking at the at the Independent Power Producers of New York conference. "The gravest threat we face to resilience and fuel security is in New England and that's not the result of coal and nuke retirements but because of gas constraints due to a lack of adequate infrastructure," Chatterjee told reporters. Read more from Pro New York's Marie French here.

INTERIOR FACES FOIA SUIT: The Wilderness Society will file a lawsuit today to compel Interior to release documents related to the administration's environmental protection plans on public lands. The group says it filed 21 requests under the Freedom of Information Act for documents related to orders issued by Trump and DOI in March 2017 aimed at removing "potential burdens" to energy development on public lands. TWS says it only received responses to two of those requests.

MAIL CALL! The Environmental Protection Network sent this letter to EPA requesting a public hearing and an extension of the 30-day public comment period on the agency's "secret science" proposal to ban the use of

studies that don't publicly disclose all their data. "The proposal is far too complex, with effects too broad and indeterminate, and requests comment on far too many issues, for a thirty-day response period," the letter says.

WATCH IT: The American Council for Capital Formation released a new ad on Tuesday calling on the president to uphold the investor-state dispute settlement mechanism in any negotiation of NAFTA. Watch it [here](#).

E2 LAUNCHES CLEAN JOBS CAMPAIGN: Environmental Entrepreneurs launched a nationwide campaign Tuesday, dubbed [Clean Jobs Count](#), "to advance awareness and support of America's fastest-growing energy sector." The campaign includes digital ads in Michigan, Ohio, Illinois and Colorado, and additional ad campaigns are planned throughout the rest of the year in at least half a dozen more states.

MOVER, SHAKER: Exelon [announced](#) Constellation CEO Joseph Nigro was promoted to Exelon senior executive vice president and CFO, succeeding Jack Thayer, who becomes senior executive vice president and chief transformation officer. ComEd President and CEO Anne Pramaggiore was promoted to CEO of Exelon Utilities, succeeding Denis O'Brien. And Joseph Dominguez, the executive vice president of governmental and regulatory affairs and public policy, was promoted to CEO of ComEd Chicago.

— **Power Ledger**, a blockchain-powered renewable energy trading platform, announced Dante Disparte was appointed its strategic adviser and ambassador.

QUICK HITS

— Thousands of Puerto Ricans are still in the dark while U.S. agencies leave, [Bloomberg](#).

— Cassidy charts own course on climate change, [E&E News](#).

— Poll: Majority of voters oppose Trump offshore drilling plan, [The Hill](#).

— Trump's pick for top U.N. migration job gave misleading answers on tweets critical of climate change, [CNN](#).

— EPA's "secret science" rule could undermine agency's "war on lead," [Science](#).

— Due to climate change, hurricanes are raining harder and may be growing stronger faster, [The Washington Post](#).

HAPPENING TODAY

9:00 a.m. — House Appropriations Interior-Environment Subcommittee [two-part hearing](#) on "American Indian/Alaska Native Public Witnesses," 2007 Rayburn

9:00 a.m. — OPIS West Coast Fuel Supply and Transportation Opportunities [conference](#), Napa Valley, Calif.

9:00 a.m. — House Science Committee [hearing](#) on "An Overview of the Budget Proposal for the Department of Energy for FY2019," 2318 Rayburn

9:00 a.m. — House Energy and Commerce Committee [markup](#) on various bills, 2123 Rayburn

9:30 a.m. — Center for Climate and Energy Solutions [discussion](#) on "Zero-Carbon Power: Maintaining U.S. Nuclear Capacity," 2000 H St NW

9:30 a.m. — NAS Committee on Earth Resources spring meeting on "Critical Minerals and Materials: Opportunities, Challenges and the Needs for U.S. Manufacturing, Economy and Security," 500 Fifth Street NW

9:30 a.m. — The U.S. Chamber of Commerce's annual Sustainability and Circular Economy Summit on "Translating Value to Ignite Action," 1615 H Street NW

10:00 a.m. — Senate Energy and Natural Resources Public Lands Subcommittee hearing on law enforcement programs at the Bureau of Land Management and the Forest Service, 366 Dirksen

10:00 a.m. — Senate Environment and Public Works Committee hearing on the "America's Water Infrastructure Act of 2018," 406 Dirksen

10:00 a.m. — House Foreign Affairs Committee markup of H.R. 5535 (115), the "Energy Diplomacy Act of 2018," 2172 Rayburn

12:00 p.m. — The Environmental Law Institute discussion on the Ramsar Convention on Wetlands of International Importance, 1730 M Street NW

4:00 p.m. — Senate Indian Affairs Committee hearing on the nomination of Tara Mac Lean Sweeney to be assistant Interior secretary for Indian affairs, 628 Dirksen

6:00 p.m. — The Environmental Law Institute holds National Wetlands Awards, 100 Maryland Avenue SW

6:30 p.m. — The Carnegie Institution for Science discussion on "Deep Earth Through a Diamond Looking Glass," 1530 P Street NW

THAT'S ALL FOR ME!

**** A message from Anheuser-Busch:** Anheuser-Busch announced that America's leading brewer has placed an order for up to 800 hydrogen-electric powered semi-trucks from the pioneer in hydrogen-electric renewable technology, Nikola Motor Company. The zero-emission trucks — which will be able to travel between 500 and 1,200 miles and be refilled within 20 minutes, reducing idle time — are expected to be integrated into Anheuser-Busch's dedicated fleet beginning in 2020.

Through this agreement Anheuser-Busch aims to convert its entire long-haul dedicated fleet to renewable powered trucks by 2025.

"At Anheuser-Busch we're continuously searching for ways to improve sustainability across our entire value chain and drive our industry forward," said Michel Doukeris, CEO of Anheuser-Busch. "The transport industry is one that is ripe for innovative solutions and Nikola is leading the way with hydrogen-electric, zero-emission capabilities. We are very excited by the possibilities our partnership with them can offer."

[Learn more.](#) **

To view online:

<https://subscriber.politicopro.com/newsletters/morning-energy/2018/05/returning-to-the-battlefield-over-california-car-rules-207821>

Stories from POLITICO Pro

Failed legal argument against California car rules gets second wind under Trump Back

The Trump administration's plan to stymie California's tough greenhouse gas emissions for cars is about to trigger an epic legal fight — and the White House appears to be planning to use the same strategy that failed to block the state's rules a decade ago.

California's supporters, however, hope any courtroom battles will play out the way they did when the auto industry tried to prevent California and other like-minded states from setting stricter emissions limits than those pushed by EPA: with a pair of resounding legal defeats.

"It's sort of déjà vu because it's going to be basically round two," said Kevin Leske, who was an assistant attorney general in Vermont in 2007 when the state fought off an industry lawsuit seeking to block the greenhouse gas rules for cars.

"Here we are, 10 or 11 years later, basically facing the prospect, it sounds like, of the Trump administration making the same arguments that the auto industry did," added Leske, now a law professor at Barry University in Florida.

If finalized, the move would be one of the biggest regulatory rollbacks of the Trump administration, and it could go even further than what automakers have asked the White House to do. And its advocates say despite the previous legal setbacks, they hope to take the issue to a higher court, something they were denied in the previous battle when a political deal ended the conflict.

In the meantime, California, which has already spearheaded a lawsuit over EPA's April decision to weaken the standards, is already preparing for a major regulatory break with the Trump administration. The state's Air Resources Board on Monday asked for public input for regulatory language that it will not consider cars complying with a weakened federal standard to be acceptable in California.

The legal issue will center on the interplay between the long-standing fuel economy standards known as the Corporate Average Fuel Economy, which is issued by the National Highway Traffic Safety Administration under the 1975 Energy Policy and Conservation Act, and the relatively new greenhouse gas emissions standards enforced nationally for the first time under the Obama administration.

In requiring a national CAFE standard, Congress barred states from issuing their own laws or regulations "related to" fuel economy standards. But California's novel approach to regulate carbon dioxide emissions via the state's special authority under the Clean Air Act gave it significant leverage to force car makers to meet stricter rules.

In order to avoid a patchwork of different regulations between California and its allies and the rest country, the Trump administration is expected to seek to nullify the waiver EPA granted California in 2009 allowing it to enforce its own rules. EPA has never tried to revoke a waiver, and legal observers note the law does not explicitly grant EPA such authority.

But the Trump administration is expected to try to circumvent any questions around revoking the waiver by arguing that EPCA preempts California from enforcing its auto emissions standards — essentially the same argument automakers and dealers deployed in multiple lawsuits over a decade ago.

A May 1 letter from Sen. Tom Carper to EPA and DOT says the draft proposal would adopt that EPCA preemption argument.

That strategy fell short first time around, when a California judge concluded that greenhouse gas standards are too different from fuel economy regulations to fall under EPCA's "related to" preemption language. Emissions

may be closely correlated to fuel efficiency, he ruled, but factors like air conditioning usage and credits for electric vehicles mean that the pollution rules are not explicitly aimed at fuel economy, and thus are not preempted

Meanwhile, a Vermont judge also ruled in 2007 that since EPA had approved the California standard under the Clean Air Act waiver, it becomes a proper government motor vehicle standard, which EPCA requires DOT to take into account when setting fuel economy targets. Congress "could not have intended that an EPA-approved emissions reduction regulation did not have the force of a federal regulation," the judge wrote.

Those two legal rulings with the span of a few months would seem to be formidable hurdles for any EPCA preemption argument. And the case gets even more difficult for the Trump administration when the Supreme Court's landmark ruling in that year's *Massachusetts v. EPA* is added in. In that case, the majority said that fuel economy and greenhouse gas rules may "overlap," but could both be administered in a way that would "avoid inconsistency."

"I think it's fair to say this ground has been trod before and it's not looking good if Pruitt's EPA trots out this EPCA preemption argument again," said Sara Colangelo, the environmental law and policy program director at Georgetown University.

Congress also passed two major Clean Air Act updates after EPCA, in 1977 and 1990, that expanded California's special powers and didn't address the exemption at all, a move Colangelo said "really signals that they intended California to maintain this special position as the laboratory for advancing pollution controls in the emissions arena."

NHTSA declined to address the preemption issue, but said in a statement that its "top priority" is safety and that the administration "must also consider economic practicability." A spokesman for California's Air Resources Board said that the preemption proposal "would harm people's health, boost greenhouse gas pollution and force drivers to pay more money at the pump for years."

Those two previous court losses are not slowing down conservatives pushing the Trump administration to adopt the preemption argument now.

Undeterred, a coalition of industry groups wrote to EPA Administrator Scott Pruitt in March urging him to revoke California's waiver by concluding it is preempted by EPCA.

"Even though these two lower courts have weighed in, I think there's opportunity now for the lawsuits to move on to a higher level," Patrick Hedger, the policy director for the FreedomWorks Foundation, a conservative advocacy group.

He added that no higher court ultimately addressed the issue. Appeals in both cases were dropped as part of the single national standard deal reached between the Obama administration, California and automakers. Hedger noted that the Supreme Court's *Massachusetts v. EPA* ruling was not specifically about EPCA preemption.

Marlo Lewis, a senior fellow at the Competitive Enterprise Institute, believes the best way to win the preemption argument is to focus on the high degree of overlap to show the two standards are "related" under EPCA

"You and your dad are different people. Are you not related?" Lewis said. "The idea that they're not related because they're not identical is just pure rhetorical flimflam."

Like many other deregulatory actions, this proposal would substantially benefit the energy-producing that voted for Trump.

For conservatives, blocking California's climate change authority is the ultimate goal, since the Democratic hold on state politics and California's size mean its aggressive action on climate change has an outsize influence on the rest of the nation.

"I think this is one step in basically saying, 'Look, we're not going to allow California on this issue or any others in the future to continue to supersede federal policy on these issues and basically impose their standards on the entire country just because of the size of the market,'" said Hedger.

Halting fuel economy standards at 2020 levels would mean needing roughly 2 billion barrels more oil over the lifetime of cars built from 2021 to 2026, said David Cooke, a senior vehicles analyst at the Union of Concerned Scientists. And that's not counting the longer-term demands that would be caused for future model years that would start with lower targets because of this potential freeze.

To view online [click here](#).

[Back](#)

Pruitt sought tight control of events even on friendly turf [Back](#)

By Anthony Adragna and Emily Holden | 05/08/2018 06:38 PM EDT

EPA Administrator Scott Pruitt and his staff went to great lengths to avoid unscripted questions when he toured the country speaking to industry groups, and even a seemingly friendly ice breaker can be deemed unacceptable.

"How often do you get back to Oklahoma?" the top official from the Iowa Association of Electric Cooperatives planned to ask Pruitt when he addressed the group last December, according to internal emails that were recently made public.

That question was crossed out when an EPA staff member sent back a proposed list of questions for Pruitt's "fireside chat" with Chuck Soderberg, the association's executive vice president. Tate Bennett, EPA's associate administrator of public engagement, did not explain why that and another question had been removed, but at the time of his Nov. 29 email the administrator was already [facing questions](#) over his travel practices. A few months earlier, EPA's inspector general had [launched an investigation](#) into whether the agency had sufficient policies in place to "prevent fraud, waste and abuse with the Administrator's travel that included trips to Oklahoma."

The [emails](#) among Bennett, other EPA staffers and representatives of the Iowa cooperatives were included in the thousands of documents obtained by the Sierra Club through a public records lawsuit. They reveal a pattern of Pruitt and his staff working to limit access by independent journalists, pre-screen questions from friendly interviewers and coordinate his message with lobbyists ahead of gatherings with conservative or industry groups.

Ahead of the Iowa event, the co-op association's director of government relations, Kevin Condon, confirmed that neither his group nor EPA would issue a media advisory, and they would cancel a press gaggle but still host an interview with the group's internal Living with Energy in Iowa magazine.

That publication also got questions [pre-approved](#) by EPA staff.

"Let me know if any of these give you heartburn," said Erin Campbell, the co-op group's director of communications. "This would be a friendly interview environment and we're keeping the conversation focused on Iowa consumers."

In another instance, before Pruitt spoke at a U.S. Chamber of Commerce event in June, EPA received a list of 10 proposed questions from the head of the group's energy institute, Karen Harbert. They touched on his regulatory philosophy, his efforts to rollback rules, and whether co-owning a minor league baseball team taught him lessons useful for running a federal agency. EPA staff did not appear to object to Harbert's proposed list.

When Pruitt was slotted to speak at a Texas Oil and Gas Association conference in October, EPA staff asked for a Q&A format with a representative of the group, rather than have the administrator take three pre-screened questions from the crowd.

EPA aides asked for the change in plans after being made aware that four reporters would be attending from the Houston Chronicle, Bloomberg BNA and Reuters.

Bennett wrote that after updating Pruitt that the media would attend, "he'd like to respectfully request that the entire format now be Q&A with two chairs on stage." She also shared a list of questions the moderator could ask, including on regulatory rollbacks, on what Pruitt would consider "true environmentalism" and on what his relationship was like with the president.

"What has it been like to run such a newsworthy agency? More difficult than you imagined?" the last question read.

And in at least one instance, a lobbyist for a group Pruitt was set to address offered to help write his speech for him. Before Pruitt and an entourage of eight staffers and security agents traveled in November to Kiawah Island, South Carolina, for a speaking engagement with the American Chemistry Council, the group's lobbyist Bryan Zumwalt asked a scheduler who to contact to help write Pruitt's speech.

"Who in your sop (sic) should I be working with to help prepare Administrator Pruitt's talking points/speech? Figure someone there might like the help on key areas to discuss," he said.

The scheduler, deputy White House liaison Hayley Ford, replied that Millan Hupp, director of scheduling and advance, and Bennett could assist.

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Trump plan leaves biofuel makers cold [Back](#)

By Eric Wolff | 05/08/2018 06:48 PM EDT

President Donald Trump's latest bid to strike a deal on biofuels on Tuesday appeared to win over oil refiners, but a plan to allow ethanol exports to qualify for credits under the federal program left biofuel producers irate.

Trump gave ethanol producers two big victories at the White House meeting by reiterating his promise to allow 15 percent ethanol fuels year-round and rejecting a price cap on the credits, called Renewable Identification Numbers, that are used to prove compliance with the Renewable Fuel Standard. But ethanol producers balked at

the plan to have EPA Administrator Scott Pruitt and Agriculture Secretary Sonny Perdue set up a system to allow ethanol exports to receive RINs.

"The notion of allowing exported ethanol to count toward an oil company's RFS obligation is extremely problematic," Bob Dinneen, president and CEO of the Renewable Fuels Association, said in a statement. "In no way will that ever be acceptable or considered a win for our industry."

But the Trump administration said it has found the right balance between competing parts of its electorate.

"After several meetings and input from stakeholders on both sides, President Trump is pleased to announce that a final decision has been made that allows E15 to be sold year-round, while providing relief to refiners," White House spokeswoman Lindsay Walters said in a statement. "This outcome will protect our hardworking farmers and refinery workers. The President is satisfied with the attention and care that all parties devoted to this issue."

Refiners backed the idea, although they were wary of a separate proposal to allow EPA to consider requiring large oil refineries to take on the ethanol-blending requirements the agency lifted from small refiners by issuing dozens of compliance waivers.

Sen. Ted Cruz (R-Texas) emerged from Tuesday's meeting calling the deal a "win-win." Refiners have been pressing for years to change the program to lower compliance costs that they say are eating away at their profits.

"President Trump brought together two sides that thought a deal couldn't be reached and he found a 'win-win' solution to one of the most intractable regulatory problems facing the nation — a problem that has been neglected for years," refiner Valero Energy said in a statement.

The group of independent refiners pushing for changes, led by Valero, Carl Icahn's CVR and some Philadelphia-area refiners, had previously sought a cap on RIN prices in exchange for supporting an increase in the sales of E15.

At Tuesday's meeting, the seventh so far held by the White House, a source said Trump agreed to definitively reject any price cap, but he also asked Pruitt and Perdue to work out a plan for how exports could ease price pressure on RINs. Currently, ethanol that is shipped abroad is stripped of the RINs that can be used to meet a refiner's RFS obligation. Sources who work with refiners say preserving those credits would increase the supply and drive down prices for refineries.

"Because biofuels exports are a long-time major objective of the farm community, allowing export RINs is literally the anticipated win-win solution, obviating the need for more direct cost containment devices," said a refining industry source close to discussions.

But ethanol producers, who have been increasing their exports in recent years, complain that allowing those shipments to earn RINS would undermine the biofuel program's goals.

"Pursuing a path that includes RIN credits on export gallons would violate the letter and spirit of the RFS, serving the interests of oil refiners who have already benefited from Administrator Pruitt's unprecedented RFS volume waivers at the further expense of America's farmers," Kevin Skunes, president of the National Corn Growers Association, said in a statement.

Sources said Tuesday's meeting included a lengthy discussion about whether EPA could potentially reallocate the 1.2 billion gallons of ethanol demand the industry says has been exempted under the dozens of compliance waivers the agency has granted to small refineries. One source said Pruitt expressed openness to shifting those gallons to large refiners, something the refiners opposed. But that reallocation discussion got tied up with the

idea of export RINs, and Pruitt and Perdue left the White House with instructions to develop some kind of proposal.

"There was discussion about how to reallocate the waived obligations so that demand for biofuels wouldn't be hurt," Sen. Chuck Grassley (R-Iowa) said in a statement. "While details weren't decided, I look forward to reviewing a plan being developed by Secretary Perdue and Administrator Pruitt. Any fix can't hurt domestic biofuels production."

Republican Sen. Pat Toomey of Pennsylvania also expressed reservations about the vague promise of changes to the program.

"The proposal discussed at our White House meeting today might result in lower RIN prices, which would relieve this artificial burden — but even that is not clear until details are established," he said in a statement.

Even as the White House has pushed for a deal, Sen. John Cornyn (R-Texas) and Rep. John Shimkus (R-Ill.) have been leading efforts in Congress to overhaul the program. Shimkus and his staff have said in the past that administrative changes to the program would undermine their effort, though they appear to be moving full-steam ahead for now.

"Executive actions aren't a substitute for legislation," said Shimkus spokesman Jordan Haverly. "The only path to an enduring and equitable deal for farmers, refiners, ethanol producers, automakers and consumers — especially one that won't spend more time in court than on the books — is through Congress. Those legislative efforts remain ongoing."

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Trump's latest strike against regulations: His infrastructure plan [Back](#)

By Annie Snider and Anthony Adragna | 02/16/2018 05:01 AM EDT

President Donald Trump's infrastructure plan would trigger one of the most significant regulation rollbacks in decades, benefiting not just roads and bridges, but businesses ranging from coal mines to homebuilders to factories.

The blueprint the White House released this week would eliminate the Environmental Protection Agency's authority to veto the Army Corps of Engineers' wetlands permits, a power that the EPA wielded during the Obama administration to block a controversial mountaintop coal mine in West Virginia. Industrial facilities like coal plants and steel factories could get 15-year Clean Water Act pollution permits — up from five years — that would be automatically renewed. For some infrastructure permits, the deadline for opponents to file legal challenges would shrink from six years to 150 days.

The proposed revisions to some of the nation's bedrock environmental regulations are drawing heavy criticism from congressional Democrats — including in the Senate, where Republicans would need at least nine extra votes to enact Trump's plan. Environmental groups say the ambition of the plan's deregulation push contrasts with the relatively meager amount of federal money the White House is proposing to contribute toward the \$1.5 trillion total.

"This isn't an infrastructure package," said Melissa Samet, an attorney with the National Wildlife Federation. "This is an all-out attack on longstanding environmental protections that have done a lot of good for this country."

Republicans and business groups have long complained that the federal government's often cumbersome permitting process, governed by laws Congress enacted decades ago, creates unnecessary delays for projects. "We built the Empire State Building in just one year," Trump said in his State of the Union address last month. "Is it not a disgrace that it can now take 10 years just to get a permit approved for a simple road?"

Supporters of Trump's plan are happy the White House is pushing for changes.

"We're very pleased with the permitting provisions," said Ross Eisenberg, a vice president at the National Association of Manufacturers. "Even some of them being signed law would be a major improvement. We don't want to blow up the process. We just want it to go faster."

Senate Environment and Public Works Chairman John Barrasso (R-Wyo.) said he hopes Democrats will come around.

"You're never going to win over every obstructing Democrat, but they've got to realize that projects have been slowed down in their states," Barrasso said.

But Democrats say the nation's real infrastructure problem is money — and the Trump proposal calls for just \$200 billion in federal investments over the next decade for needs including roads, bridges, airports, water plants, veterans' hospitals and rural broadband service. And they questioned whether Trump's aim is really just to make regulatory reviews more efficient.

"The president's contentions are not to streamline a process, but to compromise needed environmental and public health issues," Sen. Ben Cardin (D-Md.) told reporters.

Some kind of environmental streamlining has been a part of most of the major infrastructure measures Congress has passed in recent years. Provisions in the 2012 highway bill and a 2014 water bill aimed to get agencies to coordinate their permit reviews more efficiently and impose consequences for delays.

Supporters of those changes included then-Sen. Barbara Boxer (D-Calif.), an environmental stalwart, who argued that the streamlining amounted to common sense despite the opposition of some environmentalists. Many of those provisions have yet to take effect, however.

Trump's infrastructure proposal would go much further, setting strict deadlines for reviews and curtailing EPA's say over projects.

For instance, Trump has touted the proposal's two-year limit for agencies to issue final permitting decisions, including a strict 21-month limit on analyses done under the National Environmental Policy Act of 1970, one of the nation's foundational environmental laws.

The law requires federal agencies to make a public estimate of the environmental impacts when the federal government spends money or makes a permitting decision, although nothing in the law requires agencies to limit environmental damage. Repeated environmental studies under NEPA were one factor that contributed to the Obama administration's nearly seven-year review of the Keystone XL oil pipeline, a project Trump has pushed to revive this year.

Under Trump's proposal, agencies would be required to complete environmental reviews in no more than 21 months. Anyone seeking to challenge the permits would have just 150 days to sue, instead of the current six years.

Industry groups argue the act's long statute of limitations for permit challenges leaves a cloud of uncertainty over projects. But Samet, the National Wildlife Federation attorney, said 150 days runs by quickly when challengers have to track down documents that regularly run hundreds of pages, decipher them, find experts to analyze the data, hire lawyers and scrounge up the money to cover legal costs.

The result, she said: "Bad projects will move forward. There'll be nothing to stop them."

Trump's plan would also deliver on a long-sought Republican goal of curbing EPA's authority under the Clean Water Act's wetlands program — a change that would have sweeping effects not just for infrastructure projects but for nearly any kind of development.

The blueprint would remove EPA's authority to oversee the Army Corps of Engineers' determinations about which streams and wetlands are subject to Clean Water Act protections. And it would take away the EPA's ability to veto dredge-and-fill permits that it decides would cause undue harm to the environment.

EPA has used that veto authority only 13 times since the Clean Water Act was enacted, including with its 2012 reversal of a Army Corps permit for the Mingo Logan mountaintop coal mine in West Virginia — a decision that angered the coal industry's supporters in Congress. Most of the other occasions when it used that power came during Republican administrations.

Trump's proposal would also extend pollution discharge permits under the Clean Water Act from five years to 15, and allow them to be automatically renewed as long as "water quality needs do not require more stringent permit limits." Those changes that would apply not only to municipal wastewater treatment plants but also to industrial facilities.

The plan also calls for eliminating a section of the Clean Air Act that requires EPA to review, comment on and rate other agencies' environmental impact statements.

While the proposal may allow construction on projects to get started faster, it might end up creating bigger problems in the end, argued Kym Hunter, an attorney with the Southern Environmental Law Center. She said a narrower NEPA review wouldn't just keep potential environmental problems from coming to light, but it would also keep the public in the dark about whether a project would live up to its promises.

"NEPA is about taking that hard look," Hunter argued. "When it was promulgated in 1970, the idea was if you think about what you are doing you're likely to make a better decision. This [Trump proposal] would just encourage agencies to rush forward without being thoughtful, without being careful."

Trump's plan also attempts to limit the ability of courts to halt work on projects while lawsuits proceed. But that could backfire too, Hunter said, if it keeps courts from halting an ill-conceived project until after a government body has started spending money and taking on debt.

Sen. Tom Carper of Delaware, the top Democrat on the Environment and Public Works Committee, didn't dismiss the idea of making updates to the decade-old laws. But if the administration's goal is to weaken environmental regulations, he said, "we're not going to get very far."

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Trump's proposed regulatory rollbacks left out of Senate infrastructure bill [Back](#)

By Annie Snider | 05/08/2018 06:44 PM EDT

The first major infrastructure bill introduced in Congress since President Donald Trump took office ignores virtually all of the big-ticket deregulatory proposals the White House laid out in its blueprint earlier this year.

Chief among Trump's complaints about the country's infrastructure system is the amount of time it takes to get environmental permits. The package the White House unveiled in February included a meager \$200 billion in federal funding for infrastructure, and instead focused on a number of so-called environmental streamlining provisions. Among them: proposals to eliminate the EPA's authority to veto the Army Corps of Engineers' wetlands permits and reduce the length of time opponents have to file legal challenges to permits from six years to 150 days.

But none of those provisions made it into what stands to be a multibillion dollar water resources measure introduced by top Republicans and Democrats on the Senate Environment and Public Works Committee on Tuesday.

That bill, dubbed America's Water Infrastructure Act of 2018, is so far the most significant step lawmakers have taken to help fulfill the president's marquee campaign promise to revitalize the country's transportation arteries. And in a bid to have a feather in their caps to take home before the 2018 midterm elections, lawmakers in the upper chamber are charting a bipartisan course with the measure.

"We focus on the 80 percent where we have general agreement, and we're going to get something done," Sen. Tom Carper (D-Del.), the top Democrat on the panel and a cosponsor of the measure, told reporters.

The House Transportation and Infrastructure Committee is working on its own water resources bill that also could be released this month, and members are pursuing a bipartisan approach, too, as they have historically.

The Senate bill is sidestepping battles over the nation's foundational environmental laws, including the National Environmental Policy Act and the Clean Water Act. Republicans and business groups fault those laws for delays and skyrocketing costs — "Is it not a disgrace that it can now take 10 years just to get a permit approved for a simple road?" Trump asked in his State of the Union address in January — but Democrats and environmentalists defend them as critical protections.

Instead, the bill's authors set their sights on a suite of more practical changes at the Army Corps of Engineers — one of the government's most red-tape-laden bureaucracies that just about every lawmaker loves to hate.

The bill includes dozens of provisions aimed at making the agency more transparent and responsive to Congress and the communities it works with to build projects. It would make a major change to the way the Army Corps budgets, in an effort to help projects that are important to states but aren't competing well for scarce federal dollars under the current approach. And it would create a board related to water storage projects that an environment committee aide said is aimed at helping communities understand early on whether their project will be able to get a permit.

The measure also includes a number of drinking water and wastewater provisions, issues that became a major component of the last such measure in 2016, when an aid package to help Flint, Mich., recover from its lead

contamination crisis was included. The new Senate bill includes provisions to help small and rural water utilities with technical assistance, allow communities to use federal drinking water dollars to protect their water sources, and to help communities balance multiple costly wastewater upgrade requirements at the same time.

The meat of the bill is six new project authorizations for the Army Corps, including a ship channel extension project in Texas, flood control projects in New York and Hawaii, and hurricane protection projects in Florida and Texas. The bill would also increase the amount that can be spent for the Savannah Harbor expansion project, a top priority for Georgia's senators, and allow more water to be stored at a key Wyoming reservoir.

And it's not just Trump's environmental permitting changes that senators rejected in the bill; they also responded to the White House's past proposals to eliminate or significantly cut a popular Great Lakes restoration program by increasing its authorization. The bill would also require EPA to open a new program office for the Long Island Sound, where the Trump administration also proposed eliminating funding.

Asked Tuesday how work on the the House's measure is coming, Transportation Committee Chairman [Bill Shuster](#) (R-Pa.) said "good."

But one fault line is already emerging between the two chambers.

Shuster has backed a proposal from his water resources subcommittee chairman, Rep. [Garret Graves](#) (R-La.) to move the Army Corps of Engineers out of the Pentagon and to another agency like the Department of Transportation or the Interior Department. But an EPW aide said that both Republicans and Democrats in the Senate have concerns with the idea; their bill would instead mandate a study by the National Academy of Sciences into the structuring of the Army Corps.

"We're trying to pass a bipartisan bill and I think that would make it very difficult to do with the limited amount of time that we have," the aide said.

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Top takeaways from the first big primary of 2018 [Back](#)

By Steven Shepard, Elena Schneider and Scott Bland | 05/09/2018 01:13 AM EDT

Republicans can exhale now.

Convicted coal magnate Don Blankenship's surprise third-place finish in Tuesday's West Virginia GOP Senate primary sidestepped yet another debacle for the party after consecutive meltdowns in special elections in Alabama and Pennsylvania. Instead, party leaders celebrated state Attorney General Patrick Morrisey's win, which capped the first multi-state primary of 2018.

The night saw Republicans pick three of the 10 candidates who will take on Democratic senators in states President Donald Trump won, and the first House incumbent go down in a primary in 2018.

Here are POLITICO's seven takeaways from Tuesday:

1. Republicans averted catastrophe, but victory in West Virginia is far from assured.

A Blankenship nomination might well have extinguished GOP hopes of toppling Democratic Sen. Joe Manchin, despite the state's heavy Republican electorate. Blankenship was living in a Phoenix halfway house this time last year, after his conviction for conspiracy to skirt mine safety rules after an incident claimed the life of 29 miners at one of his facilities. He called Senate Majority Leader Mitch McConnell "Cocaine Mitch," and made racially charged comments about McConnell's family.

Morrissey is someone national Republicans can embrace. National Republican Senatorial Committee executive director Chris Hansen said in a statement Tuesday night that Morrissey will "fight for conservative values" and predicted his victory over Manchin in the general election.

But Morrissey enters the race with his own baggage — even if it's nothing like Blankenship's. Morrissey used to be a Washington lobbyist, and Morrissey's wife still is one. Also, Morrissey ran for Congress in 2000 — in New Jersey.

Rep. Evan Jenkins, who finished second on Tuesday night, tried to level those attacks. But the punches didn't land with Blankenship's circus-like candidacy stealing the spotlight.

With Blankenship fading into the distance, Manchin can contrast his folksy, "Pepperoni Roll," West Virginia affect against Morrissey's Jersey accent and D.C. "swamp" ties. Republicans will fire back, alleging that Manchin isn't the aw-shucks bipartisan he claims to be and doesn't stick up for Trump, who is very popular in the state.

2. Words alone can't earn the Trump mantle.

Reps. Luke Messer and Todd Rokita spent the final week of the GOP Senate primary in Indiana trying to convince voters that Mike Braun — the businessman and former one-term state representative who had surged to the front of the field on an outsider message — wasn't a reliable conservative. They cited Braun's participation in Democratic primaries for more than three decades.

But Braun easily defeated both Messer and Rokita because his outsider message, in contrast with his two D.C. insider rivals, resonated more than his Democratic past. (Braun said he only voted in Democratic primaries to influence local elections, but Messer and Rokita painted that as a lame excuse.)

Braun's argument was easier to make after Trump's 2016 presidential campaign. Trump's opponents in the GOP primaries needled the billionaire for his past donations to Democratic candidates, or his past conservative apostasies on issues like abortion and universal health care. Trump parried those attacks, barely breaking a sweat.

Ultimately, as much as Rokita (who donned a red "Make America Great Again" hat in his ads) or Messer (who talked up Trump for a Nobel Peace Prize) tried to claim the Trump mantle, Braun seemed more like the real deal. He hit Messer and Rokita for being attorneys who never practiced law, instead getting into politics at a young age. And Braun, who will now try to unseat Democratic Sen. Joe Donnelly, said he was the only candidate who had signed the front of a paycheck, while his opponents had been endorsing government checks for most of their careers.

3. House members went down hard.

It was a bad night for House members running statewide: Jenkins lost to Morrissey by more than 5 points. Rokita and Messer finished even further behind Braun.

Rep. Jim Renacci, who still won the GOP nomination to face Sen. Sherrod Brown in Ohio, failed to win a majority of the vote in the primary, despite endorsements from Trump and the state Republican Party.

For a party led by a first-time-candidate-turned-president, it's not surprising that Congress isn't the ideal springboard to higher office. But the GOP is relying on other House members to maintain its Senate majority — whether it's Martha McSally in Arizona, Marsha Blackburn in Tennessee or Kevin Cramer in North Dakota.

And for members facing competitive statewide primaries — think McSally, Kristi Noem for governor in South Dakota, Raul Labrador for Idaho governor or Diane Black for Tennessee governor — they may find their congressional résumés are more anchors than propulsion for their candidacies.

4. The first incumbent falls. Will others join?

Rep. Robert Pittenger (R-N.C.) became the first incumbent member of Congress knocked out in a primary in 2018.

Pittenger tried to align himself closely to Trump, touting in his first TV ad that he was the "strongest supporter" of the president. But Mark Harris, a pastor who nearly beat Pittenger in 2016, successfully tagged Pittenger as a part of the "Washington swamp." Republicans in primaries across the country are questioning their opponents' pro-Trump bona fides, a strategy that proved effective here.

Pittenger's loss surprised national and local Republicans, who expected the congressman to survive the primary challenge. But Harris' campaign said Pittenger's "votes didn't match his rhetoric," pointing to his support for the omnibus spending bill in March, said Andy Yates, a spokesman for the campaign. (Harris, a social conservative, said he planned to join the House Freedom Caucus.)

It's not clear that there's a long list of Pittengers about to be swept away in primaries. Still, his defeat could serve as a wake-up call to incumbents who have struggled to unite Republicans at the ballot box in the past, like Reps. Martha Roby (Ala.) and Doug Lamborn (Colo.).

5. Both parties got their men for Ohio governor.

It was an easy night for both parties watching the Ohio gubernatorial race. State Attorney General Mike DeWine easily dispatched Lt. Gov. Mary Taylor in the GOP primary, aided by the imprimatur of the state party.

And on the Democratic side, former state Attorney General Richard Cordray cruised past Rep. Dennis Kucinich after weeks of hand-wringing that the race against the at-times eccentric Kucinich was closer than it should have been.

In the end, Cordray — who until recently headed the federal Consumer Financial Protection Bureau — crushed Kucinich and four other challengers, even winning a greater percentage in the Democratic primary among a fractured field than DeWine earned in a one-on-one matchup with Taylor.

Both parties quickly pivoted to trying to attach a Washington brand to their opponents. The Republican Governors Association called Cordray "a Washington D.C. power-hungry insider," despite DeWine's 20-year congressional tenure.

Meanwhile, the Democratic Governors Association said DeWine was "a card-carrying member of the D.C. and Columbus swamp," despite the fact that Cordray was DeWine's predecessor as attorney general and was an Obama political appointee.

Either way, the gubernatorial election this year will be a rematch of the 2010 attorney general race. DeWine, four years removed from a loss to Brown, toppled the then-incumbent Cordray by 1 percentage point in the GOP wave year.

6. Chalk two up for the GOP establishment.

Establishment Republicans got more good news in Ohio when Troy Balderson and Anthony Gonzalez won primaries for open congressional seats.

Balderson, backed by former Rep. Pat Tiberi, beat Melanie Leneghan in two primaries in Ohio's 12th District on Tuesday — one for the November election, and one for an August special election to complete Tiberi's unexpired term.

The race was a proxy war between Tiberi — an long-time ally of former House Speaker John Boehner — and Rep. Jim Jordan (R-Ohio). Tiberi spent money on TV ads to back Balderson, while Jordan, the House Freedom Caucus co-founder, cut a competing TV ad for Leneghan that aired with help from conservative megadonor Richard Uihlein.

Gonzalez, a former Ohio State University football star, won a similar fight in the state's 16th District. He defeated state Sen. Christina Hagan, who had Jordan's backing in the race.

Both districts have been Republican strongholds — the 16th is even more solidly red than the 12th. But given Democrats' stronger-than-expected performances in special elections in the Trump era, Republicans are gearing up for a fight for the Tiberi seat over the next three months.

"There will be a very clear contrast between Troy and ... [Democratic nominee] Danny O'Connor in the months ahead," said Rep. Steve Stivers (R-Ohio), who chairs the National Republican Congressional Committee.

7. Women are dominating Democratic primaries

Women are running for federal office in record numbers in 2018 — and it looks like Democratic primary voters are poised to support those candidates like never before. There were 20 open Democratic House primaries with women on the ballot Tuesday night, and voters selected a female nominee in 17 of them.

It's a sharp turnaround from past years when female Democrats faced big hurdles in trying to win support from voters. A good number of the primary winners Tuesday night are running in heavily Republican seats with little chance of winning general elections. But they are still part of an important trend: Evidence is building that Democratic voters are tilting toward supporting women this year.

Keep this in mind as we approach primaries in big states full of battleground districts over the next two months: California and New York in June, and Pennsylvania next week.

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Pruitt fast-tracked California cleanup after Hugh Hewitt brokered meeting [Back](#)

By Emily Holden and Anthony Adragna | 05/07/2018 10:12 PM EDT

EPA Administrator Scott Pruitt [placed](#) a polluted California area on his personal priority list of Superfund sites targeted for "immediate and intense" action after conservative radio and television host Hugh Hewitt brokered a

meeting between him and lawyers for the water district that was seeking federal help to clean up the polluted Orange County site.

The previously unreported meeting, which was documented in emails released by EPA under a Freedom of Information Act lawsuit by the Sierra Club, showed Pruitt's staff reacting quickly to the request last September by Hewitt, who has been one of Pruitt's staunchest defenders amid a raft of ethics controversies around his expensive travel, security team spending and a cheap Washington condo rental from a lobbyist.

Pruitt has drawn criticism from environmentalists and other critics for letting prominent GOP backers and industry groups influence the agency's agenda — even as he has kicked scientists off of EPA's advisory panels and moved to limit the kinds of peer-reviewed research it will consider when making decisions.

In many cases, the people whose advice Pruitt is heeding could be useful supporters for him in a future race for U.S. senator or president. They include GOP megadonor Sheldon Adelson, who — as POLITICO reported in March — persuaded Pruitt last year to take a meeting with an Israeli water purification company called Water-Gen that later won a research deal with the EPA.

Hewitt, a resident of Orange County whose son James works in EPA's press office, emailed Pruitt in September to set up a meeting between the administrator and the law firm Larson O'Brien, which employs Hewitt and represents the Orange County Water District. Pruitt had been planning to meet with the lawyers in California a month earlier, but cancelled the trip to undergo knee surgery.

"I'll join if the Administrator would like me too or can catch up later at a dinner," Hewitt wrote in his Sept. 18 message. Hewitt added that the issues surrounding the Superfund site were "Greek to me but a big deal in my home county."

Pruitt's aides responded within minutes and quickly confirmed an Oct. 18 meeting for the lawyers and a project director.

Six weeks after that meeting, on Dec. 8, the Orange County North Basin site appeared on Pruitt's list of 21 contaminated areas to address. A month later, Pruitt proposed listing the site on EPA's National Priorities List, a move that could make it eligible for long-term federal cleanup funding from the federal government if the responsible polluters cannot be identified and forced to pay for its remediation.

Since then, Hewitt has been a robust defender of Pruitt, dismissing his recent controversies as "nonsense scandals" on MSNBC in early April and saying his detractors were "just trying to stop the deregulation effort."

Pruitt has touted the agency's Superfund work as one of his key priorities, setting up a task force to seek to speed up the clean-up of the nation's worst contaminated sites. That task force had been headed by Albert "Kell" Kelly, a former banker and longtime friend, who departed the agency last week after news about loans he provided to Pruitt in Oklahoma, including the mortgage provided to Pruitt for a house he bought from a lobbyist when he was a state senator.

Environmental advocates have worried Pruitt's efforts to identify Superfund priority sites would bypass the process set up by Congress to ensure cleanup resources are divided fairly, and that he could focus on sites seen as important to his political supporters. And environmentalists have said Pruitt's rush to claim that contaminated properties have been remediated could risk turning them over to local governments and businesses that might pursue cheaper, inadequate solutions.

Elgie Holstein, senior director for strategic planning at the Environmental Defense Fund who has been tracking EPA's Superfund actions, said the connection to Hewitt is "not a surprise."

"The biggest fear we have is that No. 1, the administrator's political priorities and personal ambitions, political ambitions become the primary criteria for action under this program instead of science and health," Holstein said.

EPA never disclosed the meeting with Hewitt's contacts. It was listed on Pruitt's public calendar as a staff briefing. But on his private Outlook schedule, which the agency has released in response to lawsuits, it appeared as an "Orange County Superfund Site" meeting with Kelly and two other staffers. The records did not list the Californians in attendance at the meeting at EPA headquarters in Washington.

But EPA spokesman Jahan Wilcox confirmed that two lawyers representing the water district, Robert O'Brien and Scott Sommer, and the water district director of special projects, Bill Hunt, were there. A third lawyer, former federal Judge Stephen G. Larson, was forced to cancel his trip due to wildfires in California, according to emails.

"Hugh Hewitt helped arrange the meeting at the request of the water district but did not attend," Wilcox said.

Wilcox said the meeting was for the water district to "brief EPA on the Superfund site's cleanup efforts and request expedited cleanup," following a 2016 agreement with the agency to conduct a remedial investigation and feasibility study, at a cost of \$4 million over two years. Hunt did not immediately respond to a request for comment.

Hewitt in an email to POLITICO called Pruitt a friend and said he does not have a working relationship with him. He said that his firm has represented the water district and worked on the site with EPA's regional office for years but that he had not participated in that work.

Hewitt said he requested a meeting because the water district wanted to brief the new EPA team, he said, adding that he was an Orange County resident until 2016 as well as an Orange County Children and Families Commission member. He said that he "very much" wanted the Superfund site remediated as soon as possible.

According to an EPA [fact sheet](#), the Orange County site has more than five square miles of polluted groundwater containing chlorinated solvents and other contaminants across the cities of Anaheim, Fullerton, and Placentia. It includes the Orange County Groundwater Basin, which provides drinking water to more than 2.4 million residents across 22 cities, according to the agency. Those pollutants can damage humans' nervous systems, kidneys and livers, and some are considered carcinogenic.

EPA has just begun its process of studying the contamination and it has not determined which companies caused the pollution in the area. But an [administrative settlement](#) with the EPA in 2016 says the area was home to "electronics manufacturing, metals processing, aerospace manufacturing, musical instrument manufacturing, rubber and plastics manufacturing, and dry cleaning."

Hewitt also thanked EPA schedulers for working to arrange a meeting between Pruitt and the California Lincoln Clubs, which describe themselves as in favor of "limited government, fiscal discipline and personal responsibility." After some rescheduling Pruitt eventually met with representatives of the group on a trip to California in March of this year, according to his public calendar. Prominent Orange County businessman John Warner also helped to connect that group with staffers.

Pruitt and his scheduling staff have frequently sought to set up meetings with or for influential Republican figures, according to the internal EPA emails.

His team accepted an invitation for him to address The Philanthropy Roundtable at an invitation-only event at the White House for "conservative and free-market foundation CEOs and individual wealth creators to discuss

the greatest opportunities for foundations to protect and strengthen free society" and "what [Pruitt] views as unique opportunities for philanthropic action.

As POLITICO reported in March, Pruitt also met with an Indiana coal executive and Trump fundraiser who was seeking to soften a pollution rule.

Pruitt also crafted his travel schedule — including a tour of states in August — to meet with big business much like a member of Congress would during the annual recess.

In July, EPA's associate administrator of public engagement Tate Bennett was working with Pruitt to "essentially create an August recess for the EPA to be out in the states talking with individual companies & doing listening sessions within sectors," said Leah Curtsinger, the federal policy director for the Colorado Association of Commerce & Industry, in an email introducing Bennett to her husband, public affairs director at coal company Cloud Peak Energy and a fellow alum of Senate Majority Leader Mitch McConnell's office.

Annie Snider contributed to this report.

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House subpanel approves cybersecurity, small-scale LNG bills [Back](#)

By Anthony Adragna | 04/18/2018 11:19 AM EDT

A House Energy and Commerce subpanel today approved a quartet of bills designed to boost DOE's efforts to protect the nation's electric grid from cyberattack.

All four cybersecurity measures — [H.R. 5174 \(115\)](#), [H.R. 5175 \(115\)](#), [H.R. 5239 \(115\)](#), [H.R. 5240 \(115\)](#) — advanced by voice vote.

H.R. 5175 asks DOE to coordinate the federal, state and business responses to physical and cybersecurity threats. H.R. 5239 would establish a voluntary DOE program to test the cybersecurity of products intended for use in the bulk-power system. H.R. 5240 would encourage public-private partnerships on cybersecurity efforts, while H.R. 5174 would have DOE bolster its emergency response efforts.

In addition, the subcommittee approved [H.R. 4606 \(115\)](#), which would allow the expedited approval of small-scale shipments of liquefied natural gas, over the objections of most Democrats. That vote was 19 to 14.

"Leave it to the Republican leadership of this committee to markup a bill that has even fewer environmental safeguards than a Trump Administration proposal," Rep. [Frank Pallone](#) (D-N.J.), ranking member of the full committee, said. "This bill is unnecessary, it is bad policy and it is a legislative earmark."

WHAT'S NEXT: The bills will get consideration by the full House Energy and Commerce Committee.

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Subject: Morning Energy: Trump wildfire tweets renew spending fight — Several API staffers head for exit — City goes to court over PFAS

By Kelsey Tamborrino | 08/08/2018 05:38 AM EDT

With help from Annie Snider and Eric Wolff

MAKING WAVES: In attempting to blame California's devastating wildfires on environmental laws and Democratic Gov. Jerry Brown, President Donald Trump may have upped the stakes for one of the many spending fights Congress will have to resolve this fall. No serious expert has endorsed the president's view that allowing some water to follow its natural course to the Pacific Ocean has complicated efforts to battle the blaze, and the president offered more measured comments late Tuesday night. But Trump's earlier series of tweets this week echoed arguments that agricultural interests have been making for years in long-running wars over how the thirsty state's scant supplies get used.

In Congress, California Republicans are trying to block the state from diverting less water to central and southern California farms and cities to preserve more for endangered fish, a plan that has won support from local green groups like the San Francisco chapter of the Sierra Club. The State Water Resources Control Board, whose members were appointed by Brown, is set to vote this month on the plan, and while agricultural interests and their allies are largely powerless to stop him in Sacramento they have had better luck in Washington. GOP Rep. Jeff Denham, whose Central California district would feel some of the deepest cuts under the state's plan, successfully attached an amendment to the House Interior-EPA appropriations bill to block federal funding related to implementation of the plan.

The policy rider faces an uphill battle as appropriators attempt to conference the House measure with the Senate's companion bill, H.R. 6147 (115), which contains no such language. Sen. Dianne Feinstein, the California Democrat who was key to a 2016 California drought deal, hasn't taken a public position on the issue, but has historically opposed legislative efforts to override California law. And the provision is sure to draw the ire of Northern California Democrats who have called Denham's provision a water grab.

Denham hosted Interior Secretary Ryan Zinke at the New Melones Dam late last month, and shortly thereafter the Interior Department formally weighed in with comments opposing the state's plan, saying it would "essentially elevate the Project's fish and wildlife purposes over the Project's irrigation and domestic purposes contrary to the prioritization scheme carefully established by Congress."

Don't forget: Zinke's No. 2, David Bernhardt, was previously the long-time lobbyist for the powerhouse Westlands Water District, battling to send more water to the district's massive farms.

That's not all: The president presented a subdued response to the California wildfires during remarks Tuesday night, where he told reporters he was "monitoring the situation very close," adding that his administration "is in constant contact with everything going out in the state and with the local authorities and with the state authorities." Trump applauded the firefighters and first responders and said his administration would hold meetings about the wildfires, "because there are reasons and there are things you can do to mitigate what's happening," per a pool report.

WELCOME TO WEDNESDAY! I'm your host, Kelsey Tamborrino. Bracewell's Frank Maisano is back with the win for knowing the island country of Tokelau is powered entirely by solar. For today: What is the name of the only one-word country whose first and last letter starts with the same consonant? Send your tips, energy gossip and comments to ktamborrino@politico.com, or follow us on Twitter [@kelseytam](https://twitter.com/kelseytam), [@Morning_Energy](https://twitter.com/Morning_Energy) and [@POLITICOPro](https://twitter.com/POLITICOPro).

SEE IT: Greenhouse gas emissions in 2017 hit levels never seen before, marking the warmest year on record in a non-El Niño year. Pro's DataPoint team dives into the numbers from the American Meteorological Society's latest "State of the Climate" report [here](#). Want to add [DataPoint](#) to your Pro account? [Learn more](#).

SEVERAL API STAFFERS HEAD FOR EXIT: The oil and gas industry's top trade association is losing several staffers after hiring a [new chief executive](#), according to sources and social media posts. At least six officials at the American Petroleum Institute, including one of its top lobbyists, have left in recent months, an association spokesman confirmed to Pro's Ben Lefebvre and Marianne LeVine. API's former senior director of federal affairs, Khary Cauthen, is among those who've exited. Cauthen is now vice president of federal affairs at LNG supplier Cheniere, according to a Cheniere spokesperson. Additional senior officials at API are expected to leave in the coming weeks, sources said. Read more [here](#).

DINNER GUESTS: Trump dined last night with [business executives](#) at the White House, including Continental Resources CEO Harold Hamm, according to a pool report. The dinner follows [news](#) this week that Hamm's company gave \$25,000 in May to the legal defense fund created for Trump aides caught up in special counsel Robert Mueller's Russia investigation.

VOTERS SELECT MICHIGAN GOV. CONTENDERS: Come November, Democrat Gretchen Whitmer will face off against Republican state Attorney General Bill Schuette for Gov. Rick Snyder's term-limited seat amid the still-unresolved drinking water crisis in Flint and PFAS contamination elsewhere. Whitmer won the Democratic nomination Tuesday, turning back a primary challenge from progressive [outsider candidate](#) Abdul El-Sayed. Schuette, who leads the state's investigation into the Flint water crisis, also handily won his race. Read the recap of last night's primary winners and losers [here](#).

Detroit-area voters faced power outages in at least 14 polling sites due to thunderstorms that struck the area Monday night, electric and gas company DTE Energy [said](#) Tuesday morning. The outages caused some poll workers to rely on flashlights and small generators to keep things running for voters, according to [tweets](#) sent by Rashida Tlaib, a Democratic candidate in the 13th District. Power was eventually restored to all 14 polling places by around 4:30 p.m., the electric company [said](#).

CITY GOES TO COURT OVER PFAS: The toxic nonstick chemicals known as PFAS that have been popping up in water supplies across the country will be the focus of a lawsuit sought by the New York city of Newburgh. The city [filed a federal lawsuit](#) Monday over the contamination in its own water supply in the U.S. District Court of the Southern District of New York. The suit, the city said, seeks to require 23 defendants to clean up the watershed contamination and pay for the supply of clean water needed until the contamination is gone. The defendants range from those who have manufactured or sold the chemicals to those who owned and operated the Stewart Air National Guard Base and Stewart International Airport, where the contamination originated. The lawsuit alleges the defendants' use of the "aqueous film forming foam" resulted in the spread of 12 different types of PFAS chemicals within Washington Lake, the city's primary water supply.

EDF FILES 'SECRET SCIENCE' FOIA SUIT: The Environmental Defense Fund is suing EPA over its failure to release documents requested under the Freedom of Information Act pertaining to EPA's proposed "secret science" rule to ban the use of studies that don't publicly disclose all their data. Earthjustice is representing EDF in the [lawsuit](#), which was filed Tuesday in the District Court for the Southern District of New York. The suit comes as a slate of experts at Harvard University also submitted a [comment letter](#) on the transparency rule Tuesday, ahead of the Aug. 16 comment deadline.

SECRET KEEPERS: The Trump administration won't have to turn over documents to a law firm related to its legal arguments for the decision to shrink national monuments, U.S. District Judge David Nye said Monday. The law firm, Advocates for the West, sued for 12 documents withheld from a public records request related to the move to downsize the Bears Ears and Grand-Staircase-Escalante national monuments, The Associated Press reports. Instead the federal judge said the records are protected presidential communications. The Advocates for the West's lawyer told the AP the group hasn't decided whether to appeal the decision to the 9th U.S. Circuit Court of Appeals, but said the decision "shows how difficult it is to force sunlight on a government that flourishes in secrecy."

PRIVATE PRACTICE: Tesla CEO Elon Musk took to Twitter on Tuesday to say he's considering taking the electric car company private, jolting the company's stock. The tweet came after a Financial Times report that said Saudi Arabia's sovereign wealth fund has acquired an undisclosed stake of between 3 percent and 5 percent of Tesla's shares this year. In a vague tweet, Musk said he was considering taking the company private at \$420 a share and already has secured funding.

Shortly after, the company posted an email Musk sent to staff explaining the potential move. Musk wrote that the intention is not to merge SpaceX and Tesla, but to instead emulate SpaceX's structure. Tesla shares were at about \$342 in morning trading, Pro's Patrick Temple-West reports, but shortly after 2 p.m., trading was halted on the Nasdaq market at \$367.09, up 7 percent from the start of the day. When trading resumed, Tesla shares bid higher to close at \$379.44.

HAPPY BIRTHDAY, RFS: The Renewable Fuel Standard turns 13 today, making it old enough to have its bar or bat mitzvah. Ethanol producers are filled with naches over the program's expansion of domestic biofuel production, but they want presents. What they'd really like is a Clean Air Act waiver allowing year-round sales of E15, something Trump promised Iowans last week was "very close" (though acting EPA Administrator Andrew Wheeler was skeptical). "President Trump vowed to protect the engine of economic growth that has delivered for 13 years," Kyle Gilley, a spokesman for ethanol producer POET, said in a statement. "It is time to allow year-round E15 access for America's drivers."

BLM SEEKS COMMENT ON ALASKA PROSPECT: The Bureau of Land Management announced Tuesday it is taking comment until Sept. 6 on scoping for an environmental impact statement for the Willow oil and gas prospect within the Bear Tooth Unit of Alaska's National Petroleum Reserve. ConocoPhillips Alaska initiated discussions with the agency regarding the potential development of the prospect, BLM said, which is located within federal leases held by ConocoPhillips.

The proposed project includes the construction of a central processing facility, roadways, an infrastructure pad, drill pads with up to 50 wells on each, an airstrip, pipelines, and a gravel mine on the BLM-managed lands within the reserve, which makes up 23 million acres. Already environmentalists are targeting the project's potential adverse effects. "It will scar the land, harm wildlife and worsen climate change," said Kristen Monsell, senior attorney at the Center for Biological Diversity, in a statement.

POWER BACK FOR MOST: The Puerto Rico Electric Power Authority said this week that just 25 customers — or .002 percent — remain without electricity in the aftermath of Hurricane Maria, which first hit the island 11 months ago. That number is out of the close to 1.4 million customers who initially lost power from the hurricane.

CLIMATE SUMMIT IN SIGHTS: The Peoples Climate Movement will host a press conference in San Francisco today announcing its "Rise for Climate, Jobs and Justice" day of action on Sept. 8 — one week before the Global Climate Action Summit takes place in the city. Today's press conference will involve a street mural drawn in real-time by artists using materials from areas affected by the California wildfires.

MAIL CALL! NUCLEAR REACTIONS: Four senators are expressing concern over a draft proposed rule to decommission nuclear power plants. In a letter to Nuclear Regulatory Commission Chairwoman Kristine Svinicki, the lawmakers question the rule's changes to environmental considerations and financial protection requirements, among other issues, and write that the proposal would make it easier for nuclear power plants to be exempt from safety, security and emergency planning regulations. The letter was signed by Sens. Ed Markey, Bernie Sanders, Kirsten Gillibrand and Kamala Harris.

QUICK HITS

- "Trump tariffs could nix savings that car buyers might see from environmental rollbacks," McClatchy.
- "Official: Pennsylvania 'clearly behind' in pollution goals," The Associated Press.
- "Florida gutted water quality monitoring — as killer algae increased," Tampa Bay Times.
- "Welcome to the 'Man Camps' of West Texas," Bloomberg.
- "Oil pipeline inspection industry 'going wrong' as surveys fail to prevent spills," Climate Home News.

HAPPENING TODAY

8:30 a.m. — American Legislative Exchange Council annual meeting, New Orleans.

7 p.m. — The Politics and Prose Bookstore discussion on "We're Doomed. Now What?: Essays on War and Climate Change," 5015 Connecticut Avenue NW.

THAT'S ALL FOR ME!

To view online:

<https://subscriber.politicopro.com/newsletters/morning-energy/2018/08/trump-wildfire-tweets-renew-spending-fight-309001>

Stories from POLITICO Pro

Trump wildfire tweets spark bewilderment about California water Back

By Annie Snider, Carla Marinucci and Jeremy B. White | 08/06/2018 03:10 PM EDT

OAKLAND, Calif. — Californians are stunned at President Donald Trump's latest tweets on the state's catastrophic wildfires — and his insistence that the state is burning because leaders are letting too much fresh water flow into the Pacific Ocean.

Trump tweeted Monday that California "Governor Jerry Brown must allow the Free Flow of the vast amounts of water coming from the North and foolishly being diverted into the Pacific Ocean. Can be used for fires, farming and everything else. Think of California with plenty of Water - Nice! Fast Federal govt. approvals."

That tweet — on the heels of a Sunday tweet that referenced California's "bad environmental laws" as a cause of the state's current raging wildfires — drew an immediate reaction from veteran California GOP strategist Rob Stutzman, who responded via Twitter: "This is nuts" and also "low water IQ." Stutzman has advised former Gov. Arnold Schwarzenegger and a host of national and state GOP candidates.

Trump's comments may be referencing an unrelated dispute between Brown's administration and California Republicans over how much of the state's water can be diverted to Southern California farms and cities and how much must be allowed to flow naturally to benefit endangered and threatened fish species.

Wildfires around California have killed nine people, but firefighters have not raised concerns about the available water supplies.

"The notion that somehow more water would be mitigating or better in fighting these fires is just mind-boggling," Stutzman told POLITICO on Monday. "I don't watch 'Fox & Friends,' but it would seem that someone has put the idea in his head. It doesn't even show an elementary understanding of water policy."

Fox & Friends had aired a segment about the California fires nearly five hours before Trump's Monday tweet but didn't discuss water issues as part of the segment.

Stutzman called the president's recent tweets on California fires and water policy "frightening," saying that "water has nothing to do with why these places are tinder boxes. It's very exasperating. ... It's a statement from the president that shows no understanding of hydrology."

He said he would advise Brown, a Democrat, to "not take the bait" and react to such uninformed views.

Indeed, Evan Westrup, the spokesman for Brown, told POLITICO that "this does not merit a response." But he also added via email: "It's a sad state of affairs when journalism is reduced to chasing the uninformed, unsupervised tweets of the president."

Some Democrats seized on the latest tweet. Rhys Williams, spokesman for Democratic gubernatorial candidate Gavin Newsom, tweeted: "Has anybody seen the baby's pacifier? He dropped it again."

In a purely political sense, Trump's tweets reflected his alignment with California Republicans who have long complained that the state unfairly prioritizes environmental uses for water over the state's sprawling agricultural industry. Putting "fish over farms" is a popular formulation that has been invoked by Trump allies from California's agricultural heartland, such as Reps. Devin Nunes and Kevin McCarthy.

"Forests should be managed properly and water should be allowed for farmers to grow food to feed people," Nunes wrote on Twitter in response to Trump's Sunday tweet, cheering the president "for bringing much needed attention to our flawed environmental policies!"

Trump has courted the Republican-leaning Farm Bureau heavily. California's water wars are a huge issue for the group. Trump addressed the annual Farm Bureau convention in January, becoming the first president in more than two decades to do so. He also raised the issue during a campaign stop in Fresno in 2016.

But experts who make their living studying California's water system reacted for the second consecutive day with a communal groan of exasperation. Peter Gleick of the Pacific Institute, one of the state's foremost experts on how the state manages its water, issued a tweet calling Trump's latest missive "nuts" after labeling the president's initial tweet "gobbledygook bullsh--."

In an email to POLITICO, Gleick noted that the water that flows from California's rivers into the ocean is what remains after cities and farms take their gulp — and that those flows are critical to shoring up ecosystems that, in some parts of the state, are teetering on the brink of collapse.

"Trump's tweets last night and today show a profound misunderstanding about water, fires, California environmental policy, and of course, climate change," Gleick said, adding that the "idea that somehow state water policies are leading to a shortage of water for fighting the fires is too stupid to rebut."

Stutzman said that even more potentially damaging is that the president's Twitter pronouncement is "even somewhat offensive, given that he's trying to make a point on the backs of these fires."

He noted the president on Twitter to date has shown "no sympathy" and expressed no personal concern for the 18 active and raging blazes around the state, which have to date been responsible for the destruction of more than 1,000 homes and billions of dollars in damage.

Ironically, Stutzman said, Trump has stepped on what could have been his own positive message to California — that the White House "has been quick to approve funds and the emergency declarations have come without any complications."

In July, the State Water Resources Control Board proposed major changes to the state's water allocations, preserving more for ailing fish populations. The changes are slated for a vote later this month. That announcement drew the ire of the state's agricultural groups, and state Republicans have turned to their allies in Congress, who have voted to block federal funding related to the allocation plan.

—*Rebecca Morin contributed to this report.*

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API sees staff departures as new chief settles in [Back](#)

By Ben Lefebvre and Marianne LeVine | 08/07/2018 06:04 PM EDT

The American Petroleum Institute, the oil and gas industry's top trade association, is losing several staffers as its new chief executive settles in, according to sources and social media.

At least six API officials, including one of its top lobbyists, have left in recent months, an association spokesman confirmed. Additional senior officials are expected to leave in the coming weeks, according to two other sources familiar with the moves.

The departures come as Mike Sommers, a former chief of staff to then-House Speaker John Boehner, formally [takes over](#) API from former president and chief executive Jack Gerard. The industry is negotiating a host of issues with Congress and the White House, including a new offshore drilling plan, renewable fuel standards and steel tariffs.

API's former senior director of federal affairs Khary Cauthen has left to become vice president of federal affairs at LNG supplier Cheniere, according to a Cheniere spokesperson. Former API policy adviser Heidi Keller joined oil company BP as associate director in July, according to her LinkedIn account. Former API Senior Director for External Mobilization Deryck Spooner joined e-cigarette company JUUL Labs, according to a JUUL spokesman. Tyra Metoyer, who worked in API's Houston office, also decamped for JUUL in July, according to her LinkedIn profile.

Former Chief Financial Officer John Robertson left in June, according to his LinkedIn page. Vice President of Global Industry Services Lisa Salley has also left the association, the API spokesperson confirmed. Their current activities are unknown.

The former API staffers did not immediately reply to requests for comment sent via social media.

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Business executives come back to Trump a year after Charlottesville [Back](#)

By Andrew Restuccia, Christopher Cadelago and Stephanie Murray | 08/07/2018 01:52 PM EDT

Business executives who distanced themselves from President Donald Trump a year ago in the wake of the deadly clashes in Charlottesville are back to finding common cause with the administration.

The guest list for a Tuesday night dinner at the president's Bedminster, New Jersey, country club includes 15 top executives of some of the country's largest companies. Of the guests, one publicly resigned from a Trump outside advisory council after the president's refusal to condemn white supremacists and neo-Nazis. And two others were reportedly close to stepping down from another advisory council before Trump abruptly dissolved the councils himself amid the backlash.

The dinner offers Trump a high-profile opportunity to show his critics that at least some in the business community have set aside their previous criticism of him.

"They feel that they can associate with [Trump] now because his policies have been such an amazing success," said Stephen Moore, an economic adviser to Trump during the 2016 presidential campaign.

Moore added that he was surprised the president, infamous for blocking those he believes have betrayed him, invited some executives back into the fold: "I don't understand why President Trump would invite anyone who ran for the high grass when there were the first signs of trouble."

One of the attendees slated to attend Tuesday's dinner, Johnson & Johnson CEO Alex Gorsky, released a [statement](#) last year criticizing Trump and announcing his decision to step down from Trump's advisory council on manufacturing.

Though Gorsky had initially insisted he would remain on the council, he changed his mind after Trump gave a press conference at Trump Tower in which he drew an equivalence between white supremacists and the protesters who rallied in Charlottesville against their racist views. "[T]he president's remarks yesterday — equating those who are motivated by race-based hate with those who stand up against hatred — were unacceptable," Gorsky said in the statement at the time. A Johnson & Johnson spokesperson did not immediately respond to a request for comment about why Gorsky decided to attend the Bedminster dinner.

At least two other attendees — PepsiCo CEO Indra Nooyi and Ernst & Young CEO Mark Weinberger — were [reportedly](#) weighing stepping down from a separate outside policy advisory group before the president [announced](#) that he was disbanding the councils.

Several Trump loyalists are also among the invitees to the dinner, including Continental Resources CEO Harold Hamm, Red Apple Group CEO John Catsimatidis and LeFrak CEO Richard LeFrak. Hamm, a vocal defender of Trump who has advised him on energy policy, donated \$25,000 in May to a legal defense fund created for the benefit of White House aides.

Another attendee, FedEx CEO Fred Smith, also has close ties to Trump, even though he has criticized Trump's trade policies. Smith was among the business executives who attended a "Pledge to America's Workers" event last month at the White House, where he received repeated shoutouts from Trump.

Boeing CEO Dennis Muilenburg, who will also attend the dinner, has also courted Trump since he took office and regularly speaks with the president.

Though Nooyi was among the executives who were angry about Trump's remarks about Charlottesville, she also has close ties to the White House. Ivanka Trump, Trump's daughter and adviser, called Nooyi a "mentor" to her in a tweet Tuesday morning amid news that Nooyi would step down as Pepsi's CEO.

International Paper CEO Mark Sutton, another of the participants scheduled to attend Tuesday's dinner, condemned the violence that took place in Charlottesville in a statement at the time, but said he was remaining on Trump's manufacturing council.

Other attendees scheduled to attend Tuesday's dinner include Fiat Chrysler CEO Michael Manley, Mastercard CEO Ajaypal Banga, Boston Beer Company chairman Jim Koch, Honeywell CEO Darius Adamczyk, Newsmax CEO Christopher Ruddy and DocuSign chairman Keith Krach.

The dinner comes during Trump's working vacation in Bedminster, which White House spokesman Hogan Gidley said Monday is taking place while the "White House undergoes needed renovations to the Oval Office and other areas in the West Wing."

White House aides have organized several meetings with the president throughout the week.

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Trump allies back fund for aides' legal defense in Mueller probe [Back](#)

By Kyle Cheney and Lorraine Woellert | 08/06/2018 01:54 PM EDT

A legal defense fund created for the benefit of White House aides has largely relied on contributions from a handful of President Donald Trump's longtime friends and political allies in the first five months of its existence.

Phillip Ruffin, a billionaire casino mogul who has worked with Trump and accompanied him to Moscow for the Miss Universe Pageant in 2013, contributed \$50,000 in April, the documents show. Continental Resources, an oil shale company whose CEO, Harold Hamm, has advised Trump on policy, kicked in \$25,000 in May.

The largest donation in the most recent quarter came from Geoffrey Palmer, a Los Angeles developer who has been a large political contributor of Trump's. He contributed \$100,000 in late June.

The contributions are being collected by the Patriot Legal Expense Fund Trust, a vehicle established by Trump allies in February and managed by former New York GOP Congresswoman Nan Hayworth. It is designed to pay for legal fees for Trump aides who are roped into special counsel Robert Mueller's investigation of Russian interference in the 2016 presidential election. Aides to former President Bill Clinton had a similar arrangement for congressional and special counsel probes during his administration.

The only money raised in the fund's first quarter, which ended March 31, came from a Virginia-based consulting firm called ProActive Communications, which chipped in \$22,000. The firm is owned by Mark Serrano, a onetime consultant to Trump's presidential campaign who is also the spokesman for the legal defense fund.

In all, the fund raised about \$200,000 from February to the end of June. It released its required first- and second-quarter paperwork Monday, after watchdog groups filed complaints with the IRS that the fund had missed a July filing deadline.

"I expected to see millions of dollars raised already," said Craig Holman, a lobbyist with the nonprofit Public Citizen, which filed a complaint with the IRS. "Clearly, there has not yet been a comprehensive effort to raise funds and support the legal costs of administration officials."

Clinton's first fund, established in 1994 to help pay for his personal legal defense amid inquiries into a land deal and a sexual harassment lawsuit, raised more than \$608,000 in the first six months of its existence. The Trump defense fund was designed to pay for his aides' expenses, not for the president's own legal fees.

The Republican National Committee also has been paying legal fees for Trump family members and others under investigation for activities related to the 2016 campaign.

Hayworth did not respond to requests for comment. A lawyer for the fund referred questions to Serrano, who also did not respond.

The Trump team's fund does not accept donations from lobbyists, and anyone giving at least \$200 over a calendar year must have their donations disclosed.

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Ocasio-Cortez and Sanders work to elect first Muslim governor [Back](#)

By Daniel Strauss | 08/04/2018 06:42 AM EDT

Bernie Sanders and Alexandria Ocasio-Cortez are joining forces to elect an underdog but potentially history-making candidate on the ballot in Michigan next week: Abdul El-Sayed, a 33-year-old physician who would be the nation's first Muslim governor.

Sanders is spending the final weekend of the race in the state, and Ocasio-Cortez was there last week to campaign with El-Sayed ahead of Tuesday's Democratic primary. He also has a constellation of hard-left groups in his corner, including MoveOn.org, Justice Democrats and Our Revolution, the offshoot of Sanders' failed presidential campaign.

After a July lull in primary season, the race in Michigan represents the first opportunity for insurgent liberals to shove Democrats leftward since Ocasio-Cortez's upset victory over Rep. Joe Crowley (D-N.Y.) six weeks ago. Tuesday is also the first real test of the burgeoning alliance between Sanders and Ocasio-Cortez, who have also campaigned for two congressional candidates on the ballot next week in Kansas.

El-Sayed, a first-time candidate who's trailed in public polls, has emerged as a threat to the front-runner, former state Sen. Gretchen Whitmer. Whitmer is a favorite of most elected Democrats as well as organized labor and women's groups such as EMILY's List, which backs Democratic women who support abortion rights.

Every public poll of the primary has shown Whitmer leading El-Sayed and entrepreneur Shri Thanedar, a self-funder who has blanketed the airwaves with television ads but hasn't caught fire. But with Sanders parachuting into Michigan this weekend, El-Sayed backers and Sanders allies see a parallel in recent history.

"Bernie was written off" going into the 2016 presidential primary in Michigan, said Democratic strategist Julian Mulvey, whose firm worked for Sanders on that campaign. "I think Nate Silver predicted that Hillary Clinton had a 99 percent chance of winning in Michigan, and Bernie was able to pull it out. So the best thing you can do is have Bernie going in there to help try to close."

Attorney General Bill Schuette is the favorite to win the Republican primary and has been endorsed by President Donald Trump. Schuette has worked to distance himself from unpopular term-limited Gov. Rick Snyder, a Republican. The state is seen as a prime pickup opportunity for Democrats.

According to a Democrat close to her campaign, Whitmer's most recent internal polling showed her with a 16-point lead in the primary. She has raised more money than El-Sayed, and she has more institutional support: In addition to local politicians, unions and EMILY's List, Whitmer was just endorsed by Sen. Kirsten Gillibrand (D-N.Y.).

But El-Sayed, a former executive director of the Detroit Health Department and a public-health expert, has built a significant support base by presenting himself as a Sanders-aligned progressive alternative to the more mainstream Whitmer. Some of the same outside groups that backed Sanders in 2016 are behind El-Sayed, as are Rep. Ro Khanna (D-Calif.) and grass-roots favorites like Ocasio-Cortez and activist Michael Moore. El-Sayed has also received donations from Ben Affleck and received praise from the hosts of the liberal podcast Pod Save America.

Sanders endorsed the candidate only this week, even though El-Sayed had embraced the Vermont senator and many of his core issues, like a \$15 minimum wage, single-payer health care and tuition-free college for families making less than \$150,000 a year. Sanders is planning to appear at two El-Sayed rallies on Sunday, in Detroit and Ypsilanti.

"Abdul has run a campaign — win or lose — that speaks explicitly to the policies that Bernie talked about during the 2016 campaign and continues to talk about in the Senate," said Ari Rabin-Havt, a senior adviser to Sanders. "Abdul lines up so perfectly on these values that the endorsement is a testament to running a campaign based on that."

El-Sayed hasn't shied from his religion in the campaign, even as he's had to swat away rumors that he's a George Soros plant sympathetic to the Muslim Brotherhood. He's happily described the immigrant story of his father moving to the United States from Egypt and spending time with his stepmother, whose family history in Michigan goes back to before the Civil War.

But foremost, El-Sayed and his liberal supporters are betting that campaigning on a Sanders-style platform isn't just good politics in a primary: They're trying to prove that a candidate can tout these issues and win one of the three states that Trump flipped in 2016.

"Michigan is ground zero for the debate over how you win back power from Trump and Trumpism," said Ben Wikler, the Washington director of MoveOn.org, which is backing El-Sayed. "And Abdul El-Sayed is the living avatar of the idea that to defeat Trump you don't move right."

In addition to El-Sayed, Sanders and Ocasio-Cortez are backing two congressional candidates on the ballot Tuesday in Kansas. The two New York natives traveled last month to the state to stump with two candidates: Brent Weller, a former Sanders campaign staffer running for a battleground seat in the Kansas City suburbs, and James Thompson, a repeat, liberal challenger for a more solidly Republican seat.

Weller is running in a crowded, six-candidate Democratic primary for the right to take on Rep. Kevin Yoder (R-Kan.) in a district Clinton narrowly won in 2016. But in a sign that Republicans see Weller's ties to Sanders as a liability, a conservative group began running last-minute ads on Friday that appear designed to boost Weller in the Democratic primary, meddling that Weller's opponents decried, blaming Yoder and the GOP.

Back in Michigan, while El-Sayed is rallying with Sanders, Whitmer will be campaigning with prominent Michigan Democratic politicians, including Detroit Mayor Mike Duggan and Rep. Brenda Lawrence.

Whitmer's surrogates and supporters remain bullish about her chances but also are familiar with their state's history of upsets in gubernatorial races. Democrat Jennifer Granholm wasn't the front-runner when she ran for governor in 2002.

"There's polling data, but primaries are tough to poll," said former Gov. Jim Blanchard, a Whitmer supporter, adding that he still expects Whitmer to win.

EMILY's List President Stephanie Schriock painted the primary as an ultimately constructive argument about how to win a general election fight in a battleground state. The differences between Whitmer and El-Sayed, Schriock said, pale in comparison to the contrast between either of them and Schuette, the front-runner in the Republican primary.

"The values all these Democrats share is the same," Schriock said. "What we're having is a very active debate on how to get there. I'll take that. That's what we're talking about there. You've got Schuette on the other side, who wants to tear it all down."

El-Sayed echoed that sentiment on Friday, promising that Democrats will come together, despite the intraparty battle playing out in the final days before the primary.

"Four days out, things can get heated," El-Sayed tweeted Friday. "I admire [Whitmer and] the vigorous debate we share. While I deeply disagree on health care [and] corporate money in politics, I admire her work [and] commitment to serve. We will walk in lockstep, whoever wins, to a blue wave in November."

To view online [click here](#).

[Back](#)

Chaotic day for Tesla shares amid Musk's tweeting [Back](#)

By Patrick Temple-West | 08/07/2018 05:59 PM EDT

Trading in shares of electric vehicle maker Tesla Inc. was halted today after founder and CEO Elon Musk said on Twitter that his company could be taken private.

Musk stunned the stock market with a message from his personal Twitter account: "Am considering taking Tesla private at \$420. Funding secured."

Tesla shares were at about \$342 in morning trading. Shortly after 2 p.m., trading was halted on the Nasdaq market at \$367.09, up 7 percent from the start of the day. When trading resumed, Tesla shares bid higher to close at \$379.44.

Tesla's shares have been attacked by short-sellers this year, and Musk has taunted them on Twitter before.

"It is possible that he wants to hurt short sellers of Tesla now [and] he has been very vocal against them recently," analysts for Morningstar wrote today.

WHAT'S NEXT: In a [blog](#) posting on Tesla's website, Musk said no final decision has been made and he did not elaborate about funding for the deal.

To view online [click here](#).

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POLITICOPRO

This email was sent to wehrum.bill@epa.gov by: POLITICO, LLC 1000 Wilson Blvd. Arlington, VA, 22209, USA

Message

From: Woods, Clint [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BC65010F5C2E48F4BC2AA050DB50D198-WOODS, CLIN]
Sent: 4/24/2018 8:49:17 PM
To: Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]; Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]; Harlow, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b5a9a34e31fc4fe6b2beadda2affa44-Harlow, Dav]; Dominguez, Alexander [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5ced433b4ef54171864ed98a36cb7a5f-Dominguez,]; Lewis, Josh [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b22d1d3bb3f84436a524f76ab6c79d7e-JOLEWIS]
Subject: FW: SIGNED: Strengthening Transparency in Regulatory Science
Attachments: Strengthening Transparency in Regulatory Science 04-24-2018.pdf

FYI

From: Bolen, Brittany
Sent: Tuesday, April 24, 2018 3:20 PM
To: Schwab, Justin <Schwab.Justin@epa.gov>; Beck, Nancy <Beck.Nancy@epa.gov>; Woods, Clint <woods.clint@epa.gov>
Subject: FW: SIGNED: Strengthening Transparency in Regulatory Science

From: Johnson, Laura-S
Sent: Tuesday, April 24, 2018 3:10 PM
To: Jackson, Ryan <jackson.ryan@epa.gov>; Bowman, Liz <Bowman.Liz@epa.gov>; Lyons, Troy <lyons.troy@epa.gov>; Bennett, Tate <Bennett.Tate@epa.gov>; White, Elizabeth <white.elizabeth@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>; Minoli, Kevin <Minoli.Kevin@epa.gov>; Leopold, Matt <Leopold.Matt@epa.gov>; Bowman, Liz <Bowman.Liz@epa.gov>; Wheeler, Andrew <wheeler.andrew@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>; Orme-Zavaleta, Jennifer <Orme-Zavaleta.Jennifer@epa.gov>; Yamada, Richard (Yujiro) <yamada.richard@epa.gov>
Cc: Wooden-Aguilar, Helena <Wooden-Aguilar.Helena@epa.gov>; Grantham, Nancy <Grantham.Nancy@epa.gov>; Richardson, RobinH <Richardson.RobinH@epa.gov>; Hope, Brian <Hope.Brian@epa.gov>; Fonseca, Silvina <Fonseca.Silvina@epa.gov>; Hewitt, James <hewitt.james@epa.gov>; Abboud, Michael <abboud.michael@epa.gov>; Wilcox, Jahan <wilcox.jahan@epa.gov>; Gaines, Cynthia <Gaines.Cynthia@epa.gov>; Nickerson, William <Nickerson.William@epa.gov>; Lovell, Will (William) <lovell.william@epa.gov>; Kime, Robin <Kime.Robin@epa.gov>; Maguire, Kelly <Maguire.Kelly@epa.gov>; Blackburn, Elizabeth <Blackburn.Elizabeth@epa.gov>
Subject: SIGNED: Strengthening Transparency in Regulatory Science

Good afternoon

Today, the Administrator signed the proposed rule "Strengthening Transparency in Regulatory Science."

This proposed regulation is intended to strengthen the transparency of EPA regulatory science. The proposed regulation provides that when EPA develops regulations, including regulations for which the public is likely to bear the cost of compliance, with regard to those scientific studies that are pivotal to the action being taken, EPA should ensure that the data underlying those are publicly available in a manner sufficient for independent validation.

In this notice, EPA solicits comment on this proposal and how it can best be promulgated and implemented in light of existing law and prior Federal policies that already require increasing public access to data and influential scientific information used to inform federal regulation.

Attached is the signed and dated proposed rule. For your convenience, please go to p. 19 for the Administrator's signature.

Please contact me if you have any questions.

Sincerely,
Laura

Laura S. Johnson | U.S. Environmental Protection Agency
Special Assistant, Office of the Administrator | Cell | **Personal Phone / Ex. 6**
Office (202) 566-1273 | johnson.laura-s@epa.gov

From: POLITICO Pro Energy [politicoemail@politicopro.com]
Sent: 5/8/2018 9:42:17 AM
To: Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]
Subject: Morning Energy, presented by Anheuser-Busch: Conservative talker has pull with Pruitt — It's primary day in coal country — Trump meets with ethanol

By Kelsey Tamborrino | 05/08/2018 05:40 AM EDT

With help from Eric Wolff and Anthony Adragna

PRUITT GETS TO IT FOR HEWITT: New emails emerged Monday that provide previously unknown details in the ongoing raft of controversies that have plagued EPA Administrator Scott Pruitt — and provide more ammo for onlookers who worry Pruitt spends too much time currying favor with his political allies.

Conservative commentator Hugh Hewitt brokered a meeting that ultimately ended with a polluted California area on Pruitt's personal priority list of Superfund sites, POLITICO's Emily Holden and Anthony Adragna report. Hewitt lives in Orange County, where the Superfund site sits, and has a son who works in EPA's press office. The TV and radio host emailed Pruitt back in September to set up a meeting between Pruitt and the law firm Larson O'Brien, which employs Hewitt and represents the Orange County Water District. "I'll join if the Administrator would like me too or can catch up later at a dinner," Hewitt wrote in the email, which was obtained under a FOIA lawsuit by the Sierra Club. He added that the issues surrounding the Superfund site were "Greek to me but a big deal in my home county."

Weeks later, the Orange County North Basin site in question appeared on Pruitt's list of 21 contaminated areas to address. Pruitt then proposed listing the site on the agency's National Priorities List, making it potentially eligible for long-term federal cleanup funding. Since the meet-up, Hewitt has been a staunch defender of Pruitt, dismissing his recent controversies as "nonsense scandals" on MSNBC in early April. EPA spokesman Jahan Wilcox confirmed that Hewitt helped arrange the meeting at the request of the water district but didn't attend.

The meeting adds to environmentalists' concerns about Pruitt. "The biggest fear we have is that No. 1 the administrator's political priorities and personal ambitions, political ambitions become the primary criteria for action under this program instead of science and health," said Elgie Holstein, senior director for strategic planning at the Environmental Defense Fund who has been tracking EPA's Superfund actions. [Read the story here.](#)

FIRST CLASS MEMO: EPA on Monday also released a copy of a memo written by the former head of Pruitt's security detail justifying his first class flights. "We have observed and increased awareness and at times lashing out from passengers which occurs while the Administrator is seated in coach with [his security detail] not easily accessible to him due to uncontrolled full flights," Pasquale "Nino" Perrotta wrote in the May 1, 2017, memo. "Therefore, we believe that the continued use of coach seats for the Administrator would endanger his life and therefore respectfully ask that he be placed in either business and or first class accommodations." The Washington Post and E&E obtained copies of the memo via a FOIA request. Perrotta retired from the agency last week.

WELCOME TO TUESDAY! I'm your host Kelsey Tamborrino. Congrats to Cummins Inc.'s Patrick Wilson, who was first to identify former House Speaker Nathaniel Banks of Massachusetts as the representative who served 11 terms and ran for election on five different party tickets. He was successful in all but the Liberal

Republican ticket. For today: What president was first to watch a major league baseball game from the dugout? Bonus points if you can name the team. Send your tips, energy gossip and comments to ktamborrino@politico.com, or follow us on Twitter [@kelseytam](https://twitter.com/kelseytam), [@Morning_Energy](https://twitter.com/Morning_Energy) and [@POLITICOPro](https://twitter.com/POLITICOPro).

BLANKENSHIP'S BIG DAY: We should know by tonight who will face Sen. [Joe Manchin](#) in a West Virginia Senate race that Republicans see as one of their biggest pickup opportunities of the year — that is, unless coal baron Don Blankenship scores a surprise upset in the surprisingly tight GOP primary. President Donald Trump [tweeted](#) Monday that Blankenship "can't win the General Election in your State," though he didn't endorse one of his opponents. That likely didn't ease fears that the two other major candidates — Rep. [Evan Jenkins](#) and state Attorney General Patrick Morrisey — will split the anti-Blankenship vote evenly and allow the former Massey Energy CEO to come out ahead. Blankenship recently was released from a year in jail following an explosion at the Upper Big Branch Mine that killed 29 workers. Blankenship has called the Upper Big Branch disaster the "worst tragedy" of his life, and is working to have his [conviction thrown out](#). (He has previously lost on appeal and failed to convince the Supreme Court to take the case.) For his part, Blankenship said Monday he was confident he would win, POLITICO's Alex Isenstadt [reports](#) from Mount Hope, W. Va.

That's not all: The Mountain State is not alone in kicking the 2018 midterms into gear. Statewide primary elections also are happening today in Ohio and Indiana and North Carolina, including solar energy entrepreneur and Democrat Dan McCready, who is running in North Carolina's 9th District. Vox nicely breaks down today's big races nationwide [here](#) and POLITICO has 7 things to watch [here](#).

SCHNEIDERMAN RESIGNS: New York Attorney General Eric Schneiderman, who has sued Exxon Mobil and fought the Trump administration's deregulatory agenda, [announced](#) his resignation Monday night in the wake of a report from the [New Yorker](#) that four women had accused him of abuse in previous romantic relationships. Two of the women who went on the record "say that they eventually sought medical attention after having been slapped hard across the ear and face, and also choked," according to the magazine. In a statement, Schneiderman disputed the allegations but said they "will effectively prevent me from leading the office's work at this critical time." The resignation takes effect at the close of business today.

Before the New Yorker story broke, Schneiderman and the attorneys general from seven other states called on Pruitt to withdraw his "secret science" proposal to ban the use of studies that don't publicly disclose all their data. Read the letter [here](#).

CHOPPING BLOCK: The White House on Monday [outlined](#) its package of proposed spending cuts, rescinding \$4.3 billion from the Energy Department's Advanced Technology Vehicles Manufacturing loan program, which supports the production of fuel-efficient, advanced technology vehicles. It was part of an overall request for \$15 billion worth of rescissions from previously appropriated funds from prior years. Another package going after the FY18 omnibus is expected later this year. More [here](#).

ON THE GRID: Puerto Rico's electric grid — which failed to provide power for much of the island for several months after last year's hurricanes — will be the focus of a Senate Energy and Natural Resources hearing this morning. The CEO of the Puerto Rico Electric Power Authority Walter Higgins and Bruce Walker, assistant Energy secretary for electricity delivery and energy reliability, are among the names set to testify. "The end goal is a modern and intelligent energy system that can serve as the resilient engine for Puerto Rico's economic revitalization," Walker is expected to say. Officials [say](#) close to 95 percent of power has now been restored on the island. **If you go:** The [hearing](#) kicks off at 10 a.m. in 366 Dirksen.

— **Forty-seven U.S. and international scientific groups** sent a [letter](#) to Puerto Rico Gov. Ricardo Rosselló on Monday, urging him to keep the island's statistical agency, the Puerto Rico Institute of Statistics, and its board of directors fully independent. "To address the challenges posed by its decade-long economic recession and the devastation of back-to-back hurricanes, Puerto Rico must chart its path toward sustainable recovery using reputable and reliable data and statistical methods," the letter says.

**** A message from Anheuser-Busch:** Anheuser-Busch announced that America's leading brewer has placed an order for up to 800 hydrogen-electric powered semi-trucks. The zero-emission trucks will be able to travel between 500 and 1,200 miles. Anheuser-Busch aims to convert its entire long-haul dedicated fleet to renewable powered trucks by 2025. [Learn more](#). **

ENERGY-WATER BILL ADVANCES: The House Appropriations Energy-Water subpanel swiftly approved its \$44.7 billion energy and water spending bill on a voice vote Monday, sending the measure to the full committee for consideration. The appropriations bill largely ignores the president's budget request, earning the approval of Democrats, who applauded the boost in funding for the Army Corps of Engineers and DOE thanks to the bipartisan agreement to lift spending caps. [Read more](#).

TRUMP MEETS WITH SENATORS ON RFS: In what could perhaps be the final time, Trump plans to meet today with at least Sens. [Chuck Grassley](#), [Joni Ernst](#), [Ted Cruz](#) and [Pat Toomey](#) to discuss their dueling priorities around federal ethanol policy. Who else will be in the room remains unclear, as sources told ME conflicting stories: An ethanol source said neither Pruitt, nor the Ag secretary, would be present, while a Republican Senate aide said both would be there.

A source said Team Ethanol's main goal is to get Trump to affirm his commitment to year-round sales of 15 percent ethanol, but the rest of the agenda seems to be unclear. A biofuels source said they expect Trump to kick the biofuels battle to Congress, where Sen. [John Cornyn](#) and Rep. [John Shimkus](#) have been trying to write a bill to overhaul the RFS. Cruz said at a Capitol Hill rally last week that he would view that decision as doing nothing. Cruz and Toomey are still seeking Renewable Fuel Standard changes to dramatically lower the program's compliance costs for refineries. Trump is scheduled to meet with Republican senators at 11:15 this morning, according to his public schedule.

— **Continuing their push for year-round sales of E15**, fuel retailers from 11 states sent a letter to Trump on Monday, calling on him to instruct EPA to immediately follow up on a pledge to allow the year-round sale of E15 before summer restrictions kick in on June 1. [Read the letter here](#). Eighteen other groups, including the Sierra Club and Earthjustice, signed [onto their own letter](#) expressing concern with the administration's openness to the year-round sale of E15. And the American Energy Alliance launched a digital ad campaign Monday urging for the repeal of the RFS. [Watch that ad here](#).

EXPECTING BIG THINGS: Shimkus is expecting broad support from the House when his comprehensive nuclear waste package [H.R. 3053 \(115\)](#) gets a vote Thursday. "I think people are ready to do something rather than nothing," he told reporters Monday. Shimkus said it's been a months-long process to educate members about the importance of the legislation and added he sent texts to Speaker [Paul Ryan](#) and Majority Leader [Kevin McCarthy](#) thanking them for finally bringing the package to the floor.

But he's not crazy: Shimkus said he hadn't had any recent talks with Senate counterparts about potentially moving the bill across the Capitol and he didn't expect they would this year with one of their most vulnerable incumbents (and ardent Yucca opponent), Sen. [Dean Heller](#), locked in a competitive reelection.

WHERE'S PERRY? Perry is slated to speak today during the Washington Conference on the Americas, where Commerce Secretary Wilbur Ross and Deputy Secretary of State John Sullivan, among others, are set to also appear. Perry will deliver remarks on "energy integration in the Americas" at 3:15 p.m. See the full agenda [here](#).

E&C TACKLES EVs: The House Energy and Commerce Environment Subcommittee will listen to discussion today on how fuel vehicles and electric vehicles will coexist as electric vehicles become more popular. The hearing begins at 10:15 a.m. in 2322 Rayburn, or stream it [here](#).

MAIL CALL: A diverse coalition of energy groups — including Advanced Energy Economy, the American Petroleum Institute and the American Wind Energy Association — on Monday urged Perry not to bail out coal and nuclear plants. Read their [letter](#).

INHOFE BACKS JACKSON: An Axios [report](#) that Pruitt chief of staff Ryan Jackson has been frozen out of the EPA chief's inner circle didn't sound right to his former boss, Sen. [Jim Inhofe](#). "I've known him well since he was 18 years old and I don't think they'd be capable of sidelining him," he told ME. Inhofe admitted that if the report is true — "that's an if I'm not willing to accept," he cautioned — it would be deeply concerning.

PRUITT MEETS MOTHERS ON CHEMICAL BAN: Two mothers will meet today with Pruitt, where they will press the administrator to ban paint strippers containing methylene chloride after their sons died using products with the chemical, according to the Environmental Defense Fund. On former President Barack Obama's last day in office, his administration proposed using the updated Toxic Substances Control Act to ban the use of the chemical in most commercial paint removers. Pruitt [told lawmakers](#) recently that he thinks EPA can make a decision on its proposed ban by the end of the year.

QUICK HITS

- Pruitt's Rome trip: More time on tourism than official business, [The Daily Beast](#).
- Steel town that voted for Trump banks on renewables, [E&E News](#).
- Interior sending officers to assist patrolling the U.S., Mexico border, [The Hill](#).
- EPA proposal pushed by ex-coal lobbyist could transform agency's use of science, [S&P Global](#).
- Booming tourism emits 8 percent of greenhouse gases, study shows, [Reuters](#).
- Old-boys' club that ran power world cracking with its model, [Bloomberg](#).

HAPPENING TODAY

8:30 a.m. — CHP Association holds [CHP policy forum](#) begins, 555 13th St NW

9:00 a.m. — The Atlantic Council's Global Energy Center [discussion](#) on "Transformations in Energy Technology: Innovations for a Secure Energy Future," 1030 15th Street NW

9:00 a.m. — The Bipartisan Policy Center [discussion](#) on "Investing for the Nation's Future: A Renewed Commitment to Federal Science Funding," 1225 I Street NW

10:00 a.m. — The International Energy Agency Bioenergy Technology Collaboration Program [international webinar](#) on "Biofuels for the Marine Sector: New Opportunities and New Challenges."

10:00 a.m. — The United States Energy Association [briefing](#) on "Economic Benefits of U.S. Liquid Natural Gas Exports," 1300 Pennsylvania Avenue NW

10:00 a.m. — Senate Energy and Natural Resources Committee [hearing](#) on the current status of Puerto Rico's electric grid and proposals for the future, 366 Dirksen

10:00 a.m. — The Woodrow Wilson Center's China Environment Forum [discussion](#) on "How Low (on Energy and Carbon) Can Buildings in China and the U.S. Go?" 1300 Pennsylvania Avenue NW

10:00 a.m. — House Transportation and Infrastructure Coast Guard and Maritime Transportation Subcommittee hearing on "blue technologies," 2167 Rayburn

10:15 a.m. — House Energy and Commerce Environment Subcommittee hearing on "Sharing the Road: Policy Implications of Electric and Conventional Vehicles in the Years Ahead," 2322 Rayburn

10:15 a.m. — House Natural Resources Committee markup on various bills, 1324 Longworth

12:00 p.m. — The Americas Society/Council of the Americas annual Washington Conference on the Americas with the theme "Investing in the Americas: The New Agenda for Growth," 2201 C Street NW

3:00 p.m. — House Rules Committee meets to formulate a rule on H.R. 3053 (115), the "Nuclear Waste Policy Amendments Act of 2018," H-313

THAT'S ALL FOR ME!

**** A message from Anheuser-Busch:** Anheuser-Busch announced that America's leading brewer has placed an order for up to 800 hydrogen-electric powered semi-trucks from the pioneer in hydrogen-electric renewable technology, Nikola Motor Company. The zero-emission trucks — which will be able to travel between 500 and 1,200 miles and be refilled within 20 minutes, reducing idle time — are expected to be integrated into Anheuser-Busch's dedicated fleet beginning in 2020.

Through this agreement Anheuser-Busch aims to convert its entire long-haul dedicated fleet to renewable powered trucks by 2025.

"At Anheuser-Busch we're continuously searching for ways to improve sustainability across our entire value chain and drive our industry forward," said Michel Doukeris, CEO of Anheuser-Busch. "The transport industry is one that is ripe for innovative solutions and Nikola is leading the way with hydrogen-electric, zero-emission capabilities. We are very excited by the possibilities our partnership with them can offer."

Learn more. **

To view online:

<https://subscriber.politicopro.com/newsletters/morning-energy/2018/05/conservative-talker-has-pull-with-pruitt-206682>

Stories from POLITICO Pro

Pruitt fast-tracked California cleanup after Hugh Hewitt brokered meeting Back

By Emily Holden and Anthony Adragna | 05/07/2018 10:12 PM EDT

EPA Administrator Scott Pruitt placed a polluted California area on his personal priority list of Superfund sites targeted for "immediate and intense" action after conservative radio and television host Hugh Hewitt brokered a meeting between him and lawyers for the water district that was seeking federal help to clean up the polluted Orange County site.

The previously unreported meeting, which was documented in emails released by EPA under a Freedom of Information Act lawsuit by the Sierra Club, showed Pruitt's staff reacting quickly to the request last September by Hewitt, who has been one of Pruitt's staunchest defenders amid a raft of ethics controversies around his expensive travel, security team spending and a cheap Washington condo rental from a lobbyist.

Pruitt has drawn criticism from environmentalists and other critics for letting prominent GOP backers and industry groups influence the agency's agenda — even as he has kicked scientists off of EPA's advisory panels and moved to limit the kinds of peer-reviewed research it will consider when making decisions.

In many cases, the people whose advice Pruitt is heeding could be useful supporters for him in a future race for U.S. senator or president. They include GOP megadonor Sheldon Adelson, who — as POLITICO reported in March — persuaded Pruitt last year to take a meeting with an Israeli water purification company called Water-Gen that later won a research deal with the EPA.

Hewitt, a resident of Orange County whose son James works in EPA's press office, emailed Pruitt in September to set up a meeting between the administrator and the law firm Larson O'Brien, which employs Hewitt and represents the Orange County Water District. Pruitt had been planning to meet with the lawyers in California a month earlier, but cancelled the trip to undergo knee surgery.

"I'll join if the Administrator would like me too or can catch up later at a dinner," Hewitt wrote in his Sept. 18 message. Hewitt added that the issues surrounding the Superfund site were "Greek to me but a big deal in my home county."

Pruitt's aides responded within minutes and quickly confirmed an Oct. 18 meeting for the lawyers and a project director.

Six weeks after that meeting, on Dec. 8, the Orange County North Basin site appeared on Pruitt's list of 21 contaminated areas to address. A month later, Pruitt proposed listing the site on EPA's National Priorities List, a move that could make it eligible for long-term federal cleanup funding from the federal government if the responsible polluters cannot be identified and forced to pay for its remediation.

Since then, Hewitt has been a robust defender of Pruitt, dismissing his recent controversies as "nonsense scandals" on MSNBC in early April and saying his detractors were "just trying to stop the deregulation effort."

Pruitt has touted the agency's Superfund work as one of his key priorities, setting up a task force to seek to speed up the clean-up of the nation's worst contaminated sites. That task force had been headed by Albert "Kell" Kelly, a former banker and longtime friend, who departed the agency last week after news about loans he provided to Pruitt in Oklahoma, including the mortgage provided to Pruitt for a house he bought from a lobbyist when he was a state senator.

Environmental advocates have worried Pruitt's efforts to identify Superfund priority sites would bypass the process set up by Congress to ensure cleanup resources are divided fairly, and that he could focus on sites seen as important to his political supporters. And environmentalists have said Pruitt's rush to claim that contaminated properties have been remediated could risk turning them over to local governments and businesses that might pursue cheaper, inadequate solutions.

Elgie Holstein, senior director for strategic planning at the Environmental Defense Fund who has been tracking EPA's Superfund actions, said the connection to Hewitt is "not a surprise."

"The biggest fear we have is that No. 1, the administrator's political priorities and personal ambitions, political ambitions become the primary criteria for action under this program instead of science and health," Holstein said.

EPA never disclosed the meeting with Hewitt's contacts. It was listed on Pruitt's public calendar as a staff briefing. But on his private Outlook schedule, which the agency has released in response to lawsuits, it appeared as an "Orange County Superfund Site" meeting with Kelly and two other staffers. The records did not list the Californians in attendance at the meeting at EPA headquarters in Washington.

But EPA spokesman Jahan Wilcox confirmed that two lawyers representing the water district, Robert O'Brien and Scott Sommer, and the water district director of special projects, Bill Hunt, were there. A third lawyer, former federal Judge Stephen G. Larson, was forced to cancel his trip due to wildfires in California, according to emails.

"Hugh Hewitt helped arrange the meeting at the request of the water district but did not attend," Wilcox said.

Wilcox said the meeting was for the water district to "brief EPA on the Superfund site's cleanup efforts and request expedited cleanup," following a 2016 agreement with the agency to conduct a remedial investigation and feasibility study, at a cost of \$4 million over two years. Hunt did not immediately respond to a request for comment.

Hewitt in an email to POLITICO called Pruitt a friend and said he does not have a working relationship with him. He said that his firm has represented the water district and worked on the site with EPA's regional office for years but that he had not participated in that work.

Hewitt said he requested a meeting because the water district wanted to brief the new EPA team, he said, adding that he was an Orange County resident until 2016 as well as an Orange County Children and Families Commission member. He said that he "very much" wanted the Superfund site remediated as soon as possible.

According to an EPA fact sheet, the Orange County site has more than five square miles of polluted groundwater containing chlorinated solvents and other contaminants across the cities of Anaheim, Fullerton, and Placentia. It includes the Orange County Groundwater Basin, which provides drinking water to more than 2.4 million residents across 22 cities, according to the agency. Those pollutants can damage humans' nervous systems, kidneys and livers, and some are considered carcinogenic.

EPA has just begun its process of studying the contamination and it has not determined which companies caused the pollution in the area. But an administrative settlement with the EPA in 2016 says the area was home to "electronics manufacturing, metals processing, aerospace manufacturing, musical instrument manufacturing, rubber and plastics manufacturing, and dry cleaning."

Hewitt also thanked EPA schedulers for working to arrange a meeting between Pruitt and the California Lincoln Clubs, which describe themselves as in favor of "limited government, fiscal discipline and personal responsibility." After some rescheduling Pruitt eventually met with representatives of the group on a trip to California in March of this year, according to his public calendar. Prominent Orange County businessman John Warner also helped to connect that group with staffers.

Pruitt and his scheduling staff have frequently sought to set up meetings with or for influential Republican figures, according to the internal EPA emails.

His team accepted an invitation for him to address The Philanthropy Roundtable at an invitation-only event at the White House for "conservative and free-market foundation CEOs and individual wealth creators to discuss the greatest opportunities for foundations to protect and strengthen free society" and "what [Pruitt] views as unique opportunities for philanthropic action.

As POLITICO reported in March, Pruitt also met with an Indiana coal executive and Trump fundraiser who was seeking to soften a pollution rule.

Pruitt also crafted his travel schedule — including a tour of states in August — to meet with big business much like a member of Congress would during the annual recess.

In July, EPA's associate administrator of public engagement Tate Bennett was working with Pruitt to "essentially create an August recess for the EPA to be out in the states talking with individual companies & doing listening sessions within sectors," said Leah Curtsinger, the federal policy director for the Colorado Association of Commerce & Industry, in an email introducing Bennett to her husband, public affairs director at coal company Cloud Peak Energy and a fellow alum of Senate Majority Leader Mitch McConnell's office.

Annie Snider contributed to this report.

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Blankenship, predicting victory, thumbs his nose at GOP [Back](#)

By Alex Isenstadt | 05/07/2018 08:27 PM EDT

MOUNT HOPE, W. Va. — A defiant Don Blankenship on Monday shrugged off President Donald Trump's last-minute plea for Republican primary voters to reject his insurgent Senate candidacy — and flatly predicted it would fail to halt his momentum.

On the final day of the dramatic West Virginia campaign, the coal baron and ex-prisoner seemed unbothered by the president's foray into the contest, arguing that voters would see through it as the latest ploy in an establishment-led effort aimed at keeping him from winning the nomination.

"I think it's still over," he declared to reporters here during a frenzied final day of the race. "It probably tightens it a point or two, but I don't think it matters much."

At another point in the day, after a reporter asked if he was feeling confident, Blankenship had a deadpan response: "Yeah, we're gonna win."

Senior Republicans are fretting that Blankenship, who spent a year behind bars after the 2010 explosion at his Upper Big Branch Mine that killed 29 workers, has vaulted into the lead heading into Tuesday's primary. GOP officials reviewed a range of surveys over the weekend, with some showing Blankenship holding a narrow single-digit advantage over his mainstream opponents, Rep. Evan Jenkins and state Attorney General Patrick Morrisey. Others had Blankenship ahead by more.

The national GOP has waged an all-out campaign to stop him from winning the nomination. They're convinced would destroy the party's prospects of ousting Democratic Sen. Joe Manchin in November. And many Republicans say a Blankenship win would be yet another black eye for the party, which is still reeling from last year's loss in the Alabama special election.

Over the past month, a super PAC aligned with Senate Majority Leader Mitch McConnell has spent over \$1.3 million on a barrage of anti-Blankenship TV ads.

With the former prisoner gaining momentum, the effort to stop him has gone into overdrive. As the race entered its final day, Blankenship's rivals — who had spent almost the entire campaign attacking one another — turned their fire on him.

In a not-so-veiled jab at Blankenship, Jenkins held a morning campaign event at a memorial for coal workers. At one point, he noted that one of his great grandfathers died in a mine explosion.

"The president could not have made it any clearer this morning that Don Blankenship is not the guy to beat Joe Manchin," Jenkins said.

Morrissey, who spent the day hopscotching across central West Virginia, announced that he'd sent a letter to Blankenship's parole officer highlighting what he argued was a violation. At one point, he took to Twitter to suggest questions for reporters to ask Blankenship. And he released a digital advertisement unloading on the coal baron, and highlighting his role in the 2010 explosion.

"Families devastated, children left fatherless, wives widowed," a narrator intoned. Many in the party are skeptical that the 11th-hour offensive will succeed — and, behind the scenes, finger-pointing is underway. Some are pinning the blame on the White House, saying it should have rebuked Blankenship earlier. Others say the fault lies with Jenkins and Morrissey, whose near constant attacks left one another badly damaged and created an opening for Blankenship.

Still others are pinning the blame on McConnell, saying that he should have long ago used his political muscle to clear the primary field and thereby avoid the three-way dynamic that has played to Blankenship's benefit.

McConnell has privately expressed concern to associates about Blankenship, whom he has long viewed as a serious threat in the contest. A loss for the Senate GOP leader, who hails from a neighboring Appalachian state and has faced withering attacks from Blankenship, would be embarrassing.

Over the weekend, McConnell spoke by phone with the president about the contest. According to a Republican official briefed on the call, Trump informed McConnell that he planned to criticize Blankenship publicly, a step he hadn't taken previously. Among the issues that arose on the call were Blankenship's TV ads, some of which have gone after McConnell's family in deeply personal, racial terms.

White House aides spent part of Friday drafting a tweet targeting Blankenship. Then, on Monday, the president hit send.

"To the great people of West Virginia we have, together, a really great chance to keep making a big difference," he wrote. "Problem is, Don Blankenship, currently running for Senate, can't win the General Election in your State...No way! Remember Alabama. Vote Rep. Jenkins or A.G. Morrissey!"

For Blankenship, who has tied himself closely to the president and on Monday declared himself "Trumpier than Trump," the attack could have stung. Yet as the race came to a close, Blankenship seemed unbothered.

Speaking to reporters after touring a freight shipping office here, Blankenship said he placed no stock in the president's tweet. It was McConnell, Blankenship said, who convinced Trump to weigh in. After Tuesday, Blankenship added, the president would be embarrassed he followed McConnell's lead.

"It's obvious that the president is suffering from the same thing that many in the public do, which is misinformation and untruths," Blankenship said. "The lesson that will be learned here when I win is that you shouldn't blindly endorse or cast doubts or favoritism unless you actually look at their record and not depend on the people in that swamp that you're trying to drain."

At times, Blankenship seemed to take pleasure in his recalcitrance. He refused to commit to endorsing his primary rivals should they win, which he said wouldn't happen, anyway. He wouldn't apologize for running TV ads lambasting McConnell's "China family." And he reiterated that he wouldn't vote for McConnell to serve as Senate GOP leader.

At one point, Blankenship noted that he'd been disrespected at other times in his career. The Marshall University-educated businessman noted that he'd grown up poor before becoming a multimillionaire, and recalled one episode in which he easily passed a CPA exam that Ivy Leaguers he knew had struggled with.

Now, he said, he was confronting another kind of establishment.

"I've been underestimated," he said, "all my life."

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What's in Trump's \$15B spending cuts package [Back](#)

By Kaitlyn Burton | 05/07/2018 08:29 PM EDT

The White House is set to release a \$15 billion spending cuts package Tuesday. Here are some of the plan's targets, a senior administration official told reporters today:

- \$7 billion from the Children's Health Insurance Program, which covers about 9 million low-income children.
- \$4.3 billion from the Energy Department's Advanced Technology Vehicles Manufacturing loan program, which supports the production of fuel-efficient, advanced technology vehicles.
- \$800 million from the Center for Medicare and Medicaid Innovation, which was created under Obamacare.
- \$252 million from the 2015 Ebola outbreak response.
- \$148 million from the Animal and Plant Health Inspection Service for responding to disease outbreaks "that have already been resolved," the official said.
- \$107 million for technical assistance after Hurricane Sandy for emergency watershed programs.
- \$15 million from USDA's Rural Cooperative Development Grant program, which seeks to boost the economies of rural areas.

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Trump tries to woo conservatives with bid to cut spending [Back](#)

By Sarah Ferris and Kaitlyn Burton | 05/07/2018 09:05 AM EDT

The White House on Tuesday will send \$15 billion in proposed spending cuts to Congress in an attempt to demonstrate fiscal austerity to skeptical conservatives, senior administration officials confirmed Monday night.

The administration had last week planned to send Congress a package of \$11 billion in spending reductions. But since then, some conservatives have quietly pushed for an even bolder proposal, particularly after the GOP's spending binge in recent months, said Republicans familiar with the discussions.

The White House initially floated as much as \$60 billion in cuts, including an unprecedented attempt to cancel money from this year's omnibus spending bill. The proposal was later downsized to \$11 billion, and then back up to \$15 billion, targeting only unused funding from past years, which POLITICO first reported.

One senior administration official told reporters that the proposal coming Tuesday is "the largest single rescissions package at one time."

The White House also plans to make a second attempt at clawing back funding from the omnibus, but the senior administration official said that could come weeks later.

The official said President Donald Trump will be personally involved in the details of the next package, which will include "substantial" cuts in current spending based on the president's own budget request.

Unlike regular spending bills, a presidential rescissions package is given fast-track authority in both chambers. That means the proposal is one of the rare spending-related bills that is able to bypass the 60-vote threshold in the Senate.

Nearly half of the package, a whopping \$7 billion, pulls from the Children's Health Insurance Program, which covers about 9 million low-income children.

Of this, \$5 billion is fiscal 2017 funding that has already expired, and \$2 billion is money from a so-called contingency fund that states can tap into if they're short on cash.

These CHIP rollbacks "will not impact the program," the senior administration official said.

It would also cut \$800 million from the Center for Medicare & Medicaid Innovation, which was created under Obamacare.

In addition, the proposal will target 38 programs with large amounts of leftover cash, including \$148 million from the Animal and Plant Health Inspection Service, \$107 million for Hurricane Sandy in 2013 and \$252 million for the Ebola outbreak in 2015.

The senior administration official said the White House is starting with "uncontroversial" cutbacks as a sweetener to bring Democrats on board.

"I don't think we believe there's a reason we wouldn't get bipartisan support for a package like this," the official said.

The process also includes a special bonus for fiscal hawks: Whenever the president submits a rescissions request, that spending is frozen automatically for 45 legislative days, or until Congress formally rejects it.

OMB Director Mick Mulvaney said in April that he hopes for a vote in the House before the July Fourth recess, and officials told reporters Monday that the House is "very interested in this package."

The GOP-dominated House is expected to easily clear the rescissions package, but even White House officials are less confident about its fate in the Senate, White House legislative affairs director Marc Short told POLITICO on Monday. Trump is pleased with the \$15 billion proposal, Short said.

In a call with Capitol Hill staff on Monday, White House officials skirted a question about whether Majority Leader Mitch McConnell had signed off on the proposal.

"We are in discussions with the majority leader," the administration official said on the call, which POLITICO was permitted to listen to by a staffer. "We're hopeful the Senate's going to come our way but I would say it's an ongoing conversation right now."

Trump's unusually large request would come after a nearly two-decade drought of any formal rescissions proposal.

Former President Bill Clinton was the last president to propose rescissions. His three requests totaled just \$128 million, a fraction of Trump's request.

Even with Trump's record-setting sum, conservative groups are demanding the Trump administration go further by proposing to cancel funds from the omnibus, which Trump threatened to veto.

Americans for Prosperity, the right-leaning group founded by the Koch brothers, is asking the White House to reel back \$45 billion from the \$1.3 trillion omnibus.

The group on Monday released an exhaustive list of programs it believes should go on the chopping block, including homeless assistance grants, a Coast Guard security center, FBI salaries and the National Cancer Institute.

Behind the scenes, top budget officials have wrestled for weeks with Republican lawmakers on the size and scope of the rescissions package.

The debate was largely centered on whether to cut money across the board from the omnibus spending package, or whether to target individual programs.

Few Republicans wanted the across-the-board cuts as those would have hit the hard-won increases to military spending. But officials also worried that going after specific programs would spur infighting among Republicans, according to one former top GOP congressional aide briefed on the deliberations — an outcome everyone hoped to avoid ahead of the 2018 midterm elections.

Meanwhile, belt-tightening conservatives in the House are still hoping for more than \$15 billion in cuts.

An internal survey of dozens of House Republican Study Committee members found that lawmakers overwhelmingly support the largest possible rescissions request. The survey, which was obtained by POLITICO, found that 71 percent of RSC members said they would back a proposal that cut at least \$60 billion. Another 9 percent said they'd support any amount.

And 94 percent of RSC members surveyed said the rescissions package should cut at least some domestic funding from this year's \$1.3 trillion omnibus. Only 6 percent said "maybe."

Republican budget wonks also wondered if the final package would accomplish the task of reducing government spending in a meaningful way, if it indeed took previously unspent money from old programs.

"This is not a deficit reduction exercise, but more of a public relations exercise to soothe the base and convince them that the White House is fiscally responsible," said G. William Hoagland, a senior vice president at the Bipartisan Policy Center and former director of budget and appropriations for former Senate Majority Leader Bill Frist as well as the former director of the Senate Budget Committee.

"If they are finding unused budget authority and putting that in a special package to Congress as appropriators are trying to put together the [fiscal] 2019 bill, it may have the effect of creating more spending for 2019 rather than less," Hoagland said.

Nancy Cook, John Bresnahan and Matthew Nussbaum contributed to this report

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House Appropriations panel advances \$44.7B energy and water bill [Back](#)

By Annie Snider | 05/07/2018 06:15 PM EDT

A House Appropriations Committee subpanel swiftly approved its \$44.7 billion energy and water spending bill on a voice vote today, sending it to the full committee for consideration.

Democrats applauded the boost in funding that the measure provides for the Army Corps of Engineers and DOE thanks to the bipartisan agreement to lift spending caps.

"Our bill is certainly a message to the executive branch that the legislative branch rejects the ill-considered, draconian cuts we have come to expect to every important agency we fund in this bill," said Rep. [Marcy Kaptur](#), the top Democrat on the subcommittee.

Overall, the bill would provide \$7.28 billion to the Army Corps of Engineers, \$451 million over 2018 levels. That includes \$1.6 billion for harbor maintenance activities, or \$160 million more than the level appropriators committed in a major 2014 bill.

DOE's energy programs would get \$13.4 billion under the measure, with increases for fossil and nuclear energy research and cuts for renewable energy and energy efficiency.

Democrats objected to that disparity, as well as to a spate of policy riders in the bill such as a provision to repeal the Obama administration's Waters of the U.S. rule and another to override a court decision and operate the Columbia and Snake rivers' dams for hydropower production rather than protecting endangered salmon.

WHAT'S NEXT: The full House Appropriations Committee is expected to consider the measure soon.

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E&E NEWS PM — Tue., August 7, 2018

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1. FUEL EFFICIENCY:

Calif. digs in on existing clean car rules

California outlined its plan to maintain stringent vehicle fuel efficiency standards today despite the Trump administration's efforts to weaken the rule.

THIS AFTERNOON'S STORIES

2. EPA:

Harvard researchers — secret science plan 'irrational at best'

3. FUEL EFFICIENCY:

Clean car rollback will hurt poor communities — Democrats

4. OIL AND GAS:

Court approves rig-seizure case against Venezuela

5. CHESAPEAKE BAY:

Government leaders OK directive targeting farm runoff

UPCOMING HEARINGS AND MARKUPS

6. CALENDAR:

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1. REGULATIONS:

White House plots update to NEPA guidelines

The Trump administration has signaled its intent to update the baseline National Environmental Policy Act guidelines for the whole federal government.

THIS AFTERNOON'S STORIES

2. EPA:

AGs urge Pruitt to stop 'secret science' plan

3. AUTOS:

Top industry group wants deal on fuel efficiency rules

UPCOMING HEARINGS AND MARKUPS

4. CALENDAR:

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GREENWIRE

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GREENWIRE — Thu., May 17, 2018



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Zinke tells greens he'll make 'grand pivot' to conservation

Interior Secretary Ryan Zinke yesterday huddled with more than two dozen conservation group leaders, including some of his staunchest critics, in his latest bid to generate both ideas and support for his ambitious departmental reorganization plans.

TOP STORIES

2. EPA:

Who's donating to Pruitt's defense? Time will tell

3. REGULATIONS:

Emails: EPA all ears as industry pitched 'secret science'

4. OCEANS:

An end to overfishing? NOAA offers an optimistic outlook

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5. PUBLIC LANDS:

Zinke to send more officers to Mexican border

6. PEOPLE:

Glyphosate study defender tapped to lead cancer agency

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Greens ask feds to probe struggling company's cleanup promises

8. YELLOWSTONE:

NPS approves plan to send disease-free bison to other herds

9. WILDLIFE:

Enviro petition urges Wyo. to delay grizzly hunt

10. NATIONAL PARKS:

Utah investigates reports of tainted water at Bryce Canyon

11. FISHERIES:

Oyster farm in Wash. refuge goes back to drawing board

12. WILDLIFE:

Poaching ring was 'demented social club,' officials say

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13. SUPREME COURT:

DOJ backs Wash. in row over fuel taxes, treaty rights

14. PUBLIC LANDS:

Groups sue Forest Service over Tongass timber sale

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15. PIPELINES:

Minn. lawmakers vote to approve Line 3 project, bypass PUC

AIR AND WATER

16. COAL:

Feds toss challenge of utility's mine cleanup promises

17. GROUNDWATER:

USGS finds high uranium levels in Wash. wells

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18. PUBLIC HEALTH:

Chemicals could be making workers sick at coffee roasters

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19. HAWAII:

How Gen. Patton tried to bomb a volcano into submission

20. FLORIDA:

Teacher on leave after video shows students drowning raccoon

21. MINNESOTA:

Enormous bog blocking beach won't budge

22. COLORADO:

Retired power stations become historic landmark

23. COLOMBIA:

Tens of thousands ordered to flee floods at hydropower dam

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1. SUPREME COURT:

Pipelines, railroads and utilities among rejected cases

Backers of a beleaguered pipeline proposal in New York won't get any help from the Supreme Court, as the justices today denied Constitution Pipeline Co. LLC's bid to revive the natural gas project.

TOP STORIES

2. PEOPLE:

'The voice' of coal bids adieu to Washington

3. POLITICS:

Bush ethics czar ditches GOP for Democratic Senate run

4. ENDANGERED SPECIES:

FWS keeps Yellowstone bears off protected list

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EPA opens comment period on 'secret science' draft

6. PEOPLE:

Former DOE, White House official to head efficiency group

7. BIOFUELS:

EPA grants waiver to billionaire Icahn's refinery — sources

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8. EPA:

After 'hiccup,' House watchdog to interview agency officials

9. AGRICULTURE:

Greens gird for conservation cuts in Senate farm bill

10. AUTOS:

Senate staffers, stakeholders discuss high-octane fuel standard

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11. PUBLIC LANDS:

Enviros sue over oil and gas reforms, sage grouse policies

12. PUBLIC LANDS:

School districts ban trips to upcoming Rocky Flats refuge

13. YELLOWSTONE:

Scientists can't explain recent string of geyser blasts

14. OBITUARY:

Burning Man creator dies at 70

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15. SUPERFUND:

Court holds 'third party' liable for hazardous waste cleanup

16. COMMERCE:

Scientist cited in spy case must get her job back — judge

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PJM fuel security study could lead to market changes

18. OIL AND GAS:

Marathon to buy Andeavor for \$23B, creating mega-refiner

19. COAL:

2 firms consider buying Navajo plant as clock ticks

AIR AND WATER

20. CALIFORNIA:

District reverses course, considers funding tunnel project

21. OIL AND GAS:

Smoke from Wis. refinery fire was likely toxic, experts say

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22. SELF-DRIVING CARS:

Move over, Tesla: The Pentagon is coming

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23. NEW YORK:

Old Tappan Zee Bridge to transform into 6 artificial reefs

24. PENNSYLVANIA:

Wildlife agency bans wind turbines on game lands

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Free hay arrives after wildfires, but don't thank Congress

26. OREGON:

Arrows stuck inside live deer puzzle officers

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27. AUSTRALIA:

Great Barrier Reef gets \$379M funding boost

28. ENGLAND:

Caterpillars with toxic hairs invade London

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Lobbyist with hand in Pruitt trips tied to gas-rich nation

The lobbyist who helped arrange EPA Administrator Scott Pruitt's trip to Morocco has another foreign client with natural gas interests, East Timor.

TOP STORIES

2. EPA:

Press deputy to leave

3. CLIMATE:

Trump admin cites Paris targets to expand Mont. coal mine

4. OFF TOPIC:

Climate advocate quietly tutors Trump's team

POLITICS

5. NATIONAL PARKS:

Agency hires GOP operative to push maintenance fund on Hill

6. WHITE HOUSE:

Trade policies could spark another Depression — economists

CONGRESS

7. EPA:

House Dems want more time for comments on 'secret science'

8. MINING:

Western Caucus slams Obama withdrawals, pushes Pebble project

9. NATIONAL MONUMENTS:

Bill would convert N.M.'s White Sands to park status

NATURAL RESOURCES

10. ARCTIC:

Enviros seek ANWR public meeting in D.C.

11. PUBLIC LANDS:

Agency aims to remove hundreds of mistakenly killed trees

12. DROUGHT:

Over 100 horses in Ariz. likely perished looking for water

LAW

13. VW SCANDAL:

Former Volkswagen CEO indicted, upping stakes for company

14. PIPELINES:

Va. lawmaker sues Forest Service over access to protesters

15. SUPERFUND:

2 sentenced for deception over potentially radioactive soil

16. OIL AND GAS:

Chevron settles with city over fire that sickened thousands

AIR AND WATER

17. DRINKING WATER:

Mich. found 'deficiencies' in Flint before ending free water

18. AIR POLLUTION:

The reason for that black smoke in NYC: Dirty oil boilers

19. DRINKING WATER:

Denver utility, state at odds over how to fix lead problem

CHEMICALS

20. AGRICULTURE:

EPA to advance biostimulant guidance this summer — official

21. LOUISIANA:

Fire at chemical plant forces evacuation

22. WATER POLLUTION:

Don't eat the fish, Minn. warns, after 3M contaminated lake

FEDERAL AGENCIES

23. NUCLEAR:

NRC picks leaders for 4 offices

STATES

24. HAWAII:

Kilauea volcano erupts, sending lava onto the streets

25. MICHIGAN:

Some locals fear 'green burials' will taint their water

26. DISTRICT OF COLUMBIA:

Bald eagles Mr. President and First Lady welcome 2 chicks

INTERNATIONAL

27. INDIA:

Pollution, insect dung turn Taj Mahal greenish

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Greenwire is written and produced by the staff of E&E News. The one-stop source for those who need to stay on top of all of today's major energy and environmental action with an average of more than 20 stories a day, Greenwire covers the complete spectrum, from electricity industry restructuring to Clean Air Act litigation to public lands management. Greenwire publishes daily at 1 p.m.



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Sent: 8/28/2018 5:24:26 PM
To: Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]
Subject: August 28 -- Greenwire is ready

[Read today's Greenwire on the web](#)

GREENWIRE

AN E&E NEWS PUBLICATION

GREENWIRE — Tue., August 28, 2018



READ FULL EDITION

1. EPA:

Pentagon challenges 'secret science' proposal

Add the Defense Department to the ranks of those expressing concern about EPA's plans to restrict the use of scientific research in writing new regulations.

TOP STORIES

2. POLITICS:

How McCain's death might affect Scott Pruitt

3. GRID:

Billionaire's gas plant petition sparks Calif. capacity fight

4. CLEAN WATER ACT:

Maui appeals hot-button groundwater ruling to Supreme Court

POLITICS

5. ENDANGERED SPECIES:

Revised plans for red wolves invite public outcry

6. AGRICULTURE:

Some farm groups praise Mexico trade deal

7. PEOPLE:

Zinke's ex-staffer joins BP

8. CAMPAIGN 2018:

Jenkins' W.Va. House seat to stay open until Jan.

NATURAL RESOURCES

9. CHESAPEAKE BAY:

Experts say: Please don't spread the 'Frankenfish'

10. OBITUARY:

Legendary Yosemite climber dies at 82

LAW

11. CLIMATE:

Cities ask appeals court to revive lawsuit against Big Oil

12. CAMPAIGN 2018:

Federal judges throw out N.C. House map again

CLIMATE CHANGE

13. FUEL EFFICIENCY:

AGs call for longer comment period on clean car standards

14. WILDLIFE:

Climate change could be killing birds on namesake plateau

15. SCIENCE:

Shift to cold climate linked to Neanderthals' disappearance

AIR AND WATER

16. AIR POLLUTION:

Toxic air decreases intelligence, study finds

17. WATER POLICY:

Plan B for flood diversion looks better — Minn. officials

FEDERAL AGENCIES

18. EPA:

Audit flags risk of 'unauthorized access' on computers

19. SAFETY:

FEC employees fear they were exposed to asbestos

CHEMICALS

20. PESTICIDES:

Ala. store mixed weedkiller into free popcorn

TRANSPORTATION

21. SELF-DRIVING CARS:

With \$500M investment, Toyota teams up with Uber

STATES

22. ARIZONA:

Clean energy proposal stays on ballot over utility objection

23. CALIFORNIA:

Warmer water may have caused Malibu fish die-off

24. GEORGIA:

Natural gas leak blamed for coffee shop explosion

25. COLORADO:

Xcel plan to invest in renewables, cut coal wins approval

INTERNATIONAL

26. FRANCE:

Environment minister quits over slow climate progress

27. JAPAN:

Abandoned aquarium animals spark public outcry

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To: Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]
Subject: July 20 -- Climatewire is ready

[Read today's Climatewire on the web](#)

CLIMATEWIRE

AN E&E NEWS PUBLICATION

CLIMATEWIRE — Fri., July 20, 2018



READ FULL EDITION

1. AUTOS:

Trump is about to weaken car rules. 5 things to watch

With the Trump administration set to weaken Obama-era fuel economy standards for passenger cars and trucks, a chasm is opening between red and blue states.

TOP STORIES

2. POLITICS:

GOP candidate calls woman 'naive' for asking about climate

3. COURTS:

Judge tosses New York City's case against Big Oil

DISASTERS

4. EXTREME WEATHER:

Wildfires creep into the frigid Arctic

POLITICS

5. MASSACHUSETTS:

State pushes toward setting carbon price on cars

6. ADVOCACY:

Greens like 'censored science' over 'secret science'

SCIENCE

7. SPORTS:

Old cycling videos show changing climate

8. TREES:

Lebanon's ancient cedars are new victims of climate change

INTERNATIONAL

9. ADAPTATION:

Air-conditioned jackets could help Olympic tourists cope

10. CONFLICT:

Iranian farmers blame government for drought

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Climatewire is written and produced by the staff of E&E News. It is designed to provide comprehensive, daily coverage of all aspects of climate change issues. From international agreements on carbon emissions to alternative energy technologies to state and federal GHG programs, Climatewire plugs readers into the information they need to stay abreast of this sprawling, complex issue.

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Message

From: Woods, Clint [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BC65010F5C2E48F4BC2AA050DB50D198-WOODS, CLIN]
Sent: 3/13/2018 1:24:21 PM
To: Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]; Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]; Harlow, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b5a9a34e31fc4fe6b2beaddda2affa44-Harlow, Dav]; Dominguez, Alexander [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5ced433b4ef54171864ed98a36cb7a5f-Dominguez,]
Subject: FW: ATTORNEY-CLIENT, ATTORNEY WORK PRODUCT
Attachments: FR Notice on Data Access Guidelines_3.13.2018.docx

Deliberative Process / Ex. 5

From: Bolen, Brittany
Sent: Tuesday, March 13, 2018 9:19 AM
To: Jackson, Ryan <jackson.ryan@epa.gov>; Yamada, Richard (Yujiro) <yamada.richard@epa.gov>; Schwab, Justin <Schwab.Justin@epa.gov>; Leopold, Matt <Leopold.Matt@epa.gov>
Cc: Beck, Nancy <Beck.Nancy@epa.gov>; Feeley, Drew (Robert) <Feeley.Drew@epa.gov>; Woods, Clint <woods.clint@epa.gov>
Subject: RE: ATTORNEY-CLIENT, ATTORNEY WORK PRODUCT

Deliberative Process / Ex. 5

Thanks,
Brittany

From: E&E News [ealerts@eenews.net]
Sent: 5/16/2018 12:14:32 PM
To: Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]
Subject: May 16 -- Climatewire is ready

[Read today's Climatewire on the web](#)

CLIMATEWIRE

AN E&E NEWS PUBLICATION

CLIMATEWIRE — Wed., May 16, 2018



READ FULL EDITION

1. WHITE HOUSE:

Trump has a messaging problem on climate

It was noteworthy because of his job title and how infrequently it occurs, but here was Scott Pruitt, head of the Environmental Protection Agency, talking about climate change.

TOP STORIES

2. EPA:

Pruitt's advisers question 'secret science' plan

3. POLITICS:

Inslee endorses Wash. carbon fee as backers woo Steyer

POLITICS

4. EPA:

4 policy questions Pruitt might face today

5. ALASKA:

State works with other countries to fight climate change

RISK

6. FLOODS:

Cascades region threatened by bulging rivers

7. FINANCE:

Activists to British bank: Put climate 'front and centre'

BUSINESS

8. OIL AND GAS:

Anadarko investors pass climate resolution

9. OIL AND GAS:

Shell makes new forays into alternatives

10. AUTOS:

Calif. holding VW to task, but 'the pollution's out there'

ENERGY

11. ELECTRICITY:

More AC could triple global demand for power

12. CARBON CAPTURE:

Norway extends timeline for Europe's first industrial project

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Sent: 5/4/2018 9:43:13 AM
To: Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]
Subject: Morning Energy: Heightened vetting for Pruitt-related FOIAs — EPA narrows air permitting guidelines — Coolant industry: Global warming industry is so cool it's hot

By Kelsey Tamborrino | 05/04/2018 05:41 AM EDT

With help from Anthony Adragna, Eric Wolff and Emily Holden

ALL FOIA ONE, ONE FOIA ALL: You may need to have a little patience if you're waiting for EPA to ship over any documents about Administrator Scott Pruitt's activities. Freedom of Information Act requests that relate to Pruitt get an extra layer of vetting before they are released to the public, new internal emails obtained by POLITICO show. Top aides to the administrator, including chief of staff Ryan Jackson, perform the "awareness reviews" on all or most document requests related to Pruitt — on top of the reviews done by career experts. And that is contributing to the slow flow of information released under records requests at EPA, Pro's Alex Guillén reports.

The new vetting processes described in the emails are done before the agency releases essentially any documents involving the administrator. And the emails show Pruitt's political appointees chastising career employees who released documents in accordance with FOIA without letting them screen the records first.

In one exchange from last August, Jackson and Liz Bowman — the head of EPA's Office of Public Affairs who announced on Thursday she was stepping down — expressed concern about documents related to comments Pruitt made on CNBC disputing that carbon dioxide from human activities was the primary cause of climate change. "Why did Kevin Bogardus from E&E all of a sudden get a response to a FOIA today, without any awareness from our FOIA office?" Bowman wrote on Aug. 2, adding later that the deadline wasn't until the end of the month.

ME readers will recall from February that EPA has been flooded with FOIA requests under Pruitt, forcing many groups to sue for the release of documents. But the new emails, which EPA gave to the Natural Resources Defense Council following legal action, shed new light on the cloud of secrecy that surrounds the agency.

While Obama-era EPA officials said the agency sometimes used awareness reviews during their time at the agency when career staff thought documents would generate a lot of interest, FOIA experts say the extra vetting of documents appears to be on the rise under Pruitt. "This does look like the most burdensome review process that I've seen documented," said Nate Jones, director of the FOIA Project at George Washington University's National Security Archive. Read more.

HAPPY FRIDAY! I'm your host Kelsey Tamborrino, and the American Petroleum Institute's Khary Cauthen correctly guessed that Roger Taney — who was nominated for Treasury secretary — was rejected by the Senate, 18-28, in 1834. Not all hope was lost, however, as Taney went on to become a Supreme Court justice. For today: Who was the only member of the Continental Congress to sign all four of the great state papers? Bonus points if you can name all four papers. Send your tips, energy gossip and comments to ktamborrino@politico.com, or follow us on Twitter [@kelseytam](https://twitter.com/kelseytam), [@Morning_Energy](https://twitter.com/Morning_Energy) and [@POLITICOPro](https://twitter.com/POLITICOPro).

EPA NARROWS GUIDELINES: EPA will alter its interpretation of when related facilities are considered a single source for air permitting purposes in a way that could ease their permitting requirements, Alex reports.

The April 30 memo was sent by EPA air chief Bill Wehrum concerning the so-called common control designation, which says plants located near each other should be aggregated for permitting purposes and subject to stricter standards if they are operated by the same entity. Under the new guidance, that will include entities that can "dictate decisions of the other that could affect the applicability of, or compliance with, relevant air pollution regulatory requirements." The memo concerns a Pennsylvania landfill and nearby biogas processing facility that are owned by different companies. Read more.

ADD ADELSON'S NAME TO THE LIST: Yet another high-profile political ally emerged Thursday to have helped Pruitt arrange an international trip: GOP mega-donor Sheldon Adelson. According to new documents obtained by The Washington Post, Adelson arranged parts of Pruitt's canceled trip to Israel — where he was in part scheduled to unveil an agreement with Water-Gen, an Israeli water purification company championed by Adelson. Read the full report here.

MORE INFO PLEASE: Four senior House Energy and Commerce Democrats — Frank Pallone, Paul Tonko, Diana DeGette and Kathy Castor — sent a letter to Pruitt Thursday asking for the names of three people Steven Hart — a lobbyist who was also married to the EPA chief's landlord — recommended for slots on the agency's Scientific Advisory Board. "Despite your earlier claims that J. Steven Hart had no clients with business before EPA, it is now clear that Mr. Hart did represent clients with business before your agency and, in fact, lobbied you on their behalf," they wrote.

MORE TIME PLEASE: Sixty-four Democrats signed onto a letter to Pruitt calling for a 90-day comment period on a his recent "secret science" proposal to ban the use of studies that don't publicly disclose all their data. "Given the large response from scientists and stakeholders before the rule was officially proposed, a comment period of 30 days will not allow for meaningful engagement from stakeholders," the letter states. Read it here.

'NOT OKAY': Interior's inspector general found a male National Park Service regional office official made unwanted sexual advances toward a female employee on consecutive days that she told him were "not okay." The official retired before a scheduled interview and stopped responding to the IG. Read the report here.

CLOVIS OUT ... AGAIN: Sam Clovis, a former Trump campaign aide who had been serving as the Agriculture Department's liaison to the White House, is departing the department and will return home to Iowa, a USDA official confirmed to POLITICO's Liz Crampton. The president had previously nominated him to be USDA undersecretary for research, education and economics, where he faced backlash for his lack of science credentials and ultimately withdrew his name from consideration for that position in November. Greens had also particularly focused on Clovis for his comments that he did not believe in man-made climate change. Read more.

COOLANT INDUSTRY: GLOBAL WARMING INDUSTRY IS SO COOL IT'S HOT: The White House now has evidence that a global warming treaty limiting coolants would generate thousands of new jobs, and now it must decide whether to send the treaty to the Senate for ratification. A report released Thursday by the Air Conditioning Heating and Refrigeration Institute and the Alliance for Responsible Atmospheric Policy said that the amendment to the Montreal Protocol limiting use of hydrofluorocarbons, a greenhouse gas, would help American manufacturers who produce the bulk of the world's supply of advanced coolants. Ratifying the treaty would produce 33,000 additional jobs and an extra \$12.5 billion of annual manufacturing output.

The report is considered critical to help presidential aides persuade President Donald Trump to advance the treaty to the Senate, despite the president's aversion to multilateral treaties, his predecessor's accomplishments, and anything involving global warming. "U.S. ratification of the Kigali Amendment is good for American jobs, good for the economy, and crucial for maintaining U.S. leadership across the globe," said John Hurst, Chairman of The Alliance, and Vice President of Lennox International. He added, "Over 30 countries have ratified the amendment. America cannot afford to be on the sideline. America must continue to lead."

ZINKE HIRES GOP ADVISER FOR NPS: Interior Secretary Ryan Zinke hired Chuck Laudner, a Iowa Republican political consultant who was an adviser to Trump's campaign, for a position with the National Park Service, an Interior spokeswoman confirmed to Pro's Ben Lefevre. Laudner previously worked with Rick Santorum's presidential campaign in Iowa in 2012 and was executive director for the Iowa Republican Party from 2007-08. Interior hired Laudner "a few weeks ago," spokeswoman Heather Swift said, though she did not say what job he had taken.

MAY THE FOURTH BE WITH YOU: Zinke teased out some "Star Wars" related news on Thursday. In a video featuring the secretary walking alongside motorized BB-8 and R2-D2 toys, the droid rolls over an Interior logo. Zinke tweeted the video with a message: "Tomorrow is a big day. More to come. #MayTheFourthBeWithYou." See it.

BLANKENSHIP ATTACKS McCONNELL'S "CHINA FAMILY": West Virginia GOP Senate hopeful Don Blankenship released another ad on Thursday attacking Majority Leader Mitch McConnell. This time, the spot claims "Swamp Captain Mitch McConnell has created millions of jobs for China people." The ad, which POLITICO's Alex Isenstadt reports on here, is expected to start airing today. It closes with a shot of Blankenship holding two young children, one on each arm as he pronounces, "I will beat Joe Manchin and ditch cocaine Mitch for the sake of the kids." The ad arrives days ahead of the state's May 8 primary.

FOIA WHAT IT'S WORTH: The Montana-based Western Values Project filed a FOIA request to EPA in an effort to make public any communication about Zinke. The request includes all communications between select EPA employees that contain "Zinke," "RZ" or "Interior Secretary" and comes in response to a report in The Atlantic that alleges an EPA press employee planted stories about Zinke in order to distract from his boss. EPA spokesman Jahan Wilcox in a statement to the Atlantic called the allegations "categorically false."

CLIMATE LAWMAKERS REBUT CARBON LEGISLATION: The Citizens' Climate Lobby released a rebuttal to Rep. Steve Scalise's concurrent resolution, H. Con. Res. 119 (115), which expresses the sense of Congress that a carbon tax would be detrimental to the U.S. economy. The climate lobby refutes the resolution, claiming that if done correctly, a tax or fee on carbon could boost the economy. Read the rebuttal here and the bill text here.

MAIL CALL! BIOFUELS WRITE TO EPA ON STRATEGY: A coalition of Midwest biofuels associations sent a letter Thursday to EPA asking it to move administrative time and staff away from Renewable Fuel Standard exemptions and instead toward approvals for cellulosic ethanol. "The discrepancy between the way EPA is handling RFS exemptions and cellulosic ethanol pathway approvals tells you everything you need to know about how this EPA is treating the RFS," said Iowa Renewable Fuels Association Executive Director Monte Shaw in a statement. Read the letter.

— **The Business Council for Sustainable Energy**, a coalition of companies and trade associations, wrote to members of Congress on Thursday, asking that they reauthorize energy title programs in the farm bill, H.R. 2 (115). "It is essential that a healthy, robust bipartisan energy title continue as part of new comprehensive agriculture legislation," writes the group's president, Lisa Jacobson. The letter also lays out potential improvements to the programs. Read it here.

— **Congressional Western Caucus Chairman Paul Gosar led 18 lawmakers** in a letter requesting Pruitt reverse course and proceed with an intention to withdraw the Obama-era EPA's preemptive veto of the Pebble Limited Partnership mining project under Section 404(c) of the Clean Water Act. They write that EPA's January decision not to overturn the preemptive vote "has sowed tumult for interested parties."

VW'S WINTERKORN CHARGED: Former Volkswagen AG leader Martin Winterkorn was charged with conspiracy and wire fraud in connection with the company's long-running emissions cheating scheme, according to an indictment unsealed Thursday by the Justice Department. The indictment, issued by a federal

grand jury sitting in the Eastern District of Michigan, charged Winterkorn with four counts of violating federal law. The first count charges that he conspired with other senior executives and Volkswagen employees to defraud customers, the United States and violate the Clean Air Act by making false representations about the company's supposedly "clean diesel" vehicles. The other three counts concern wire fraud tied to the scheme. More from Pro's Lauren Gardner [here](#).

GOING OUT WEST: New Mexico Sen. [Martin Heinrich](#) delivers a keynote address today at the [Outdoor Economics Conference](#), and he's [expected to discuss](#) his legislation to establish the White Sands National Monument as a national park, as well as discuss the outdoor recreation industry in the region. Watch it live [here](#).

REPORT: GRID RESILIENCY IN THE FACE OF NUCLEAR CLOSURES: A new IHS Markit report released Thursday examines the effect of five nuclear closures in the PJM Interconnection, finding the closures will reduce annual net benefits for consumers from PJM grid-based electricity by about \$8 billion per year over 2013-2016. That "translates into a consumer net benefit per kilowatt-hour of PJM nuclear generation of about 3 cents per kWh," the report found. The report was prepared for Nuclear Matters, an industry-funded organization. Read it [here](#).

MOVER, SHAKER: The Joseph Rainey Center for Public Policy, a think tank focused on sustainable politics and inclusive governance, has named Sarah Hunt its founding CEO. Hunt previously was director at the Center for Innovation and Technology at the American Legislative Exchange Council.

HITTING THE ROADMAP: The Delta Institute released a "Coal Plant Redevelopment Roadmap" on Thursday to provide insight into coal-impacted municipalities and their transition processes. Modules in the roadmap will show economic and environmental impacts, as well as provide information on engagement strategies for such communities, among other topics. See it [here](#).

ON THE POD: NPR's podcast, Embedded, released a new episode Thursday on coal in Buchanan County, Va. Listen [here](#).

QUICK HITS

- Continental Resources' Harold Hamm credits OPEC for boosting oil prices, [Reuters](#).
- Pruitt reimbursed himself \$65,000 from Oklahoma attorney general campaign, [CNN](#).
- Texas officials ignore dioxin spread in Houston waterways, [Associated Press](#).
- Gassy earthquakes near Istanbul may pose new risks to region, [The New York Times](#).

HAPPENING TODAY

9:00 a.m. — The International Energy Agency [webinar](#) on "Outlook for Offshore Energy."

THAT'S ALL FOR ME!

To view online:

<https://subscriber.politicopro.com/newsletters/morning-energy/2018/05/heightened-vetting-for-pruitt-related-foias-203960>

Stories from POLITICO Pro

EPA's top spokesperson to depart [Back](#)

By Emily Holden | 05/03/2018 11:26 AM EDT

EPA's top spokeswoman is leaving the agency, the latest in a string of departures by key staffers amid the swarm of investigations into Administrator Scott Pruitt's potential ethical [lapses](#).

The exit of Liz Bowman comes after Pruitt's lead security agent, Pasquale "Nino" Perrotta, and EPA's Superfund task force head and adviser Albert "Kell" Kelly both [quit](#) earlier this week. Perrotta has cited negative media attention as contributing to his decision. His role in Pruitt's [security spending](#) was under review by the agency's inspector general, and he was interviewed by House Oversight Committee staffers on Wednesday.

EPA also confirmed Kelly was leaving because he attracted controversy over being banned from the banking industry.

Bowman, who will join Iowa Republican Sen. Joni Ernst's staff, has been associate administrator for public affairs since shortly after Pruitt was confirmed in early 2017. She was previously director of issue and advocacy communications for the American Chemistry Council.

"I leave extremely thankful for the opportunity to serve the Trump administration and Administrator Pruitt," Bowman said. "Being a member of the EPA team has allowed me to further my skills, learn from my mistakes and make lifelong friendships. It has also provided me the opportunity to develop a new, and deep, respect for the public servants who serve the American people, day in and day out, to ensure that we all have access to clean air, land and water."

EPA chief of staff Ryan Jackson said Bowman "has been an invaluable lead of our public affairs office during this past year."

"I congratulate her on pursuing great and new opportunities on Capitol Hill where we'll continue to work with her, just in a different capacity," he said.

Bowman's last day at EPA is May 11.

Daniel Lippman contributed to this report.

To view online [click here](#).

[Back](#)

Critics pound EPA chief after he disputes human role in climate change [Back](#)

By Alex Guillén | 03/09/2017 12:04 PM EDT

EPA Administrator Scott Pruitt said Thursday that carbon dioxide emitted by human activity is not the primary driver of climate change, a conclusion out of step with mainstream climate science that drew immediate condemnation from Democrats and environmentalists.

"I think that measuring with precision human activity on the climate is something very challenging to do, and there's tremendous disagreement about the degree of impact," Pruitt said on CNBC. "So, no, I would not agree that it's a primary contributor to the global warming that we see." He also called for continued study of the issue.

That is a stronger position than Pruitt took during his confirmation hearing, when he said that the degree of human contribution to climate change is "subject to more debate."

Democrats rushed to condemn Pruitt's remarks.

"This is just nuts: EPA chief Scott Pruitt just claimed carbon not causing climate change," Sen. Brian Schatz (D-Hawaii) tweeted a few minutes after the interview aired. "We Senate D's will be a check on his crazy views."

Most scientists agree that greenhouse gases emitted by human activity like burning fossil fuels is the primary driver of climate change. That includes Pruitt's own agency, which says that human-emitted CO2 "is the primary greenhouse gas that is contributing to recent climate change."

One prominent environmentalist suggested Pruitt should be impeached.

"Pruitt misled Congress about his willingness to do a core part of his job," Sierra Club Executive Director Michael Brune wrote on Twitter. "Contradicting science + law should mean removal from office now."

Pruitt also acknowledged on his CNBC appearance that the Supreme Court has ruled on the matter and that the Obama administration issued an "endangerment finding" concluding greenhouse gases are a threatening pollutant.

But, he added, "nowhere in the continuum, nowhere in the equation, has Congress spoken. The legislative branch has not addressed this issue at all."

Pruitt was slated to speak at the CERAWEEK oil industry conference in Houston later Thursday. He said on CNBC that he would bring a "pro-growth, pro-jobs and pro-environment" message to the conference.

To view online [click here](#).

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EPA narrows guidelines for aggregating sources for air permitting [Back](#)

By Alex Guillén | 05/03/2018 05:59 PM EDT

EPA will alter its interpretation of when related facilities are considered a single source for air permitting purposes in a way that could ease their permitting requirements.

Permitting rules say that plants located near each other should be aggregated for permitting purposes if they are operated by the same entity, known as "common control." In that case, the facilities' emissions can be aggregated and be subject to more stringent permitting requirements than if treated separately.

In an April 30 memo concerning a common control designation for a Pennsylvania landfill and nearby biogas processing facility that are owned by different companies, EPA air chief Bill Wehrum revised the agency's interpretation so that facilities meet the definition if one entity has "the power or authority ... to dictate decisions of the other that could affect the applicability of, or compliance with, relevant air pollution regulatory requirements."

A dependent relationship should not necessarily mean common control, he added. Facilities can be "economically or operationally interconnected" without being able to direct the other.

In the immediate case of the Pennsylvania landfill and processing plant, Wehrum concluded that the two are not commonly controlled because the landfill could otherwise meet methane emissions limits by burning off biogas and because the processing plant hopes to secure other sources of biogas.

WHAT'S NEXT: Ultimately, EPA's reasoning is only a recommendation. Pennsylvania regulators have the final say on whether these particular facilities fall under "common control."

To view online [click here](#).

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Sam Clovis is leaving USDA [Back](#)

By Liz Crampton | 05/03/2018 08:16 PM EDT

Sam Clovis, the former Trump campaign aide who had been serving as USDA's liaison to the White House, is leaving the Agriculture Department and will return home to Iowa, a USDA official confirmed Thursday evening.

Clovis' last day is Friday. A "goodbye party" was being held for him on Thursday night, according to a source attending the party.

Clovis had served as a co-chairman and policy adviser on the Trump campaign and later led the USDA beachhead team for the Trump transition, but ran into trouble when President Donald Trump nominated him to be USDA undersecretary for research, education and economics.

Clovis withdrew his name from consideration in November — before the Senate Agriculture Committee could hold a confirmation hearing — after facing a torrent of criticism from Senate Democrats and environmental advocates. Clovis drew fire for his skepticism of climate science, past comments on issues like race and gender, and what critics on the left said was his lack of scientific credentials that are legally required for the position, which would also have had him serve as the department's chief scientist.

Clovis had endured criticism for months, but his withdrawal came shortly after he was swept up in special counsel Robert Mueller's probe of Russian interference in the 2016 campaign and the Trump campaign's alleged ties to Russian interests. While serving on the campaign, Clovis had supervised George Papadopoulos, a Trump campaign foreign policy adviser who struck a plea deal on charges he lied to FBI investigators about his communications with Russia-linked contacts. Clovis' withdrawal followed shortly after news of Papadopoulos' plea deal.

More recently, Clovis had been posted to the Natural Resources Conservation Service to provide guidance.

"Dr. Clovis was one of the first people through the door at USDA in January 2017, and we are grateful for his time here," a USDA spokesman said. "He is a good man and a patriot who for decades has served his country admirably. While we are sad Dr. Clovis is leaving USDA, we wish him well on his future endeavors back home in Iowa."

Daniel Lippman contributed to this report.

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Zinke hires Iowa political consultant for Interior parks job [Back](#)

By Ben Lefebvre | 05/03/2018 06:55 PM EDT

Interior Secretary Ryan Zinke has hired Iowa Republican political consultant Chuck Laudner for a position with the National Park Service, an Interior spokeswoman confirmed today.

Interior hired Laudner "a few weeks ago," spokeswoman Heather Swift said, though she did not say what his job he had taken.

"Rebuilding our National Parks infrastructure is a major legislative priority of the Secretary and President and Chuck is helping make it happen," Swift said.

Laudner was an [adviser](#) to President Donald Trump's campaign, and he previously worked with Pennsylvania Republican Sen. Rick Santorum's presidential campaign in Iowa in 2012. Laudner also worked as the executive director for the Iowa Republican Party from 2007 to 2008.

Iowa has two national parks, according to the NPS website.

Laudner's appointment could be the latest example that Zinke is considering a possible presidential run. A [polling firm](#) asked Iowa residents in April their opinion on Zinke, while a political group run by former advisers to Vice President Mike Pence paid for a 30-second [television ad](#) featuring Zinke that aired in Washington, D.C. in March.

"What a curious hire," said Aaron Weiss, media director at Center for Western Priorities, a conservation group. "Chuck Laudner doesn't appear to be at all qualified for a job at the Interior Department, but he's very well-qualified to advise a politician with future ambitions in Iowa."

To view online [click here](#).

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Blankenship goes after McConnell's 'China family' in new ad [Back](#)

By Alex Isenstadt | 05/03/2018 05:25 PM EDT

West Virginia GOP Senate hopeful Don Blankenship is amping up his racial attacks on Senate Majority Leader Mitch McConnell with a new ad declaring, "Swamp captain Mitch McConnell has created millions of jobs for China people."

"While doing so, Mitch has gotten rich," Blankenship adds. "In fact, his China family has given him tens of millions of dollars."

McConnell's wife, Transportation Secretary Elaine Chao, was born in Taiwan and her parents are Chinese. Her father is chairman of a shipping company.

The new spot, which is expected to start airing on Friday, comes just ahead of the May 8 primary. As the dramatic contest comes to a close, Blankenship, a former coal baron who spent a year in prison following the 2010 explosion at his Upper Big Branch Mine that killed 29 workers, has focused his assault squarely on McConnell — sometimes in harshly racial terms.

During a recent interview with POLITICO, Blankenship said McConnell "has a lot of connections in China." He also said that Chao is "from China, so we have to be really concerned that we are in truth" putting America's interests first.

Earlier this week, Blankenship began running another TV spot labeling McConnell "cocaine Mitch." The spot is apparently in reference to a 2014 report that drugs were once found aboard a shipping vessel owned by Chao's family.

McConnell has singled out Blankenship for defeat, convinced that a Blankenship primary win would destroy the party's prospects for defeating Democratic Sen. Joe Manchin in November. A McConnell-aligned super PAC has aired about \$1.3 million in negative ads against Blankenship.

Blankenship is facing two more mainstream GOP opponents, Rep. Evan Jenkins and state Attorney General Patrick Morrisey. Recent polls have shown Blankenship fading.

With Blankenship going after Chao, McConnell's political team has swung back aggressively. Josh Holmes, a longtime McConnell political adviser, has described Blankenship as "mentally ill."

In his new spot, Blankenship responds to that accusation, saying: "Mitch's swamp people are now running false, negative ads against me. They're also childishly calling me despicable and mentally ill."

The ad closes with a shot of Blankenship holding two young children, one on each arm as he pronounces, "I will beat Joe Manchin and ditch cocaine Mitch for the sake of the kids."

Holmes fired back at Blankenship. "This clown is a walking talking case study for the limitation of a prison's ability to rehabilitate," he wrote in a text message.

While Blankenship has attempted to focus the campaign on China during the closing stretch of the race, McConnell's team has noted that in 1999 Blankenship spoke of moving to China and becoming a Chinese citizen. Blankenship's girlfriend was born in China, according to media reports.

To view online [click here](#).

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Pruitt airs environmental concerns about proposed Alaska mine [Back](#)

By Alex Guillén | 01/26/2018 07:34 PM EDT

EPA Administrator Scott Pruitt today announced he has serious concerns about any potential mining project in Alaska's Bristol Bay region, creating doubt that the controversial Pebble Mine proposal may ultimately be approved.

EPA said in a release today that it will suspend its proposed withdrawal of Obama-era restrictions after hearing from Alaskan residents and other interested parties. The proposed mine has long drawn opposition from some in the state, including independent Gov. Bill Walker, as well as environmentalists, over worries that it could harm Bristol Bay's critical salmon fisheries.

"It is my judgment at this time that any mining projects in the region likely pose a risk to the abundant natural resources that exist there," Pruitt said in a statement. "Until we know the full extent of that risk, those natural resources and world-class fisheries deserve the utmost protection."

The permitting process, which is handled at this stage by the Army Corps of Engineers, can continue, EPA said. But the agency warned that the developers will have to clear a "high bar." The agency added in a release that not revealing Pruitt's doubts at this stage would be "disingenuous." EPA has veto power over such Army Corps permits.

Pebble Limited Partnership CEO Tom Collier said in a statement that the company "can demonstrate that we can responsibly construct and operate a mine at the Pebble Deposit that meets Alaska's high environmental standards."

To view online [click here](#).

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DOJ charges former VW CEO with conspiracy, wire fraud [Back](#)

By Lauren Gardner | 05/03/2018 04:42 PM EDT

DOJ unsealed an indictment today charging former Volkswagen AG leader Martin Winterkorn with conspiracy and wire fraud linked to the automaker's effort to cheat U.S. diesel emissions standards.

Winterkorn is charged with one count of conspiracy with other VW executives to defraud the United States, along with the manufacturer's customers. The other three counts concern wire fraud tied to the scheme.

"If you try to deceive the United States, then you will pay a heavy price," Attorney General Jeff Sessions said in a statement. "The indictment unsealed today alleges that Volkswagen's scheme to cheat its legal requirements went all the way to the top of the company. These are serious allegations, and we will prosecute this case to the fullest extent of the law."

The indictment alleges that Winterkorn knew of the emissions cheating as far back as May 2014, and that he was informed again of it in July 2015. VW as a company pleaded guilty in March 2017 to criminal charges related to the regulatory deception and agreed to pay a \$2.8 billion criminal penalty.

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Thanks!

Clint Woods
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Office of Air and Radiation, U.S. EPA
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Subject: Morning Energy, presented by Chevron: Pruitt makes his Senate return — Emails: Pruitt pushed 'red team-blue team' climate debate — The WIFIA balancing act

By Kelsey Tamborrino | 05/16/2018 05:40 AM EDT

With help from Anthony Adragna

TIME TO FACE THE MUSIC: Scott Pruitt hits the Hill again today, and on top of the questions he can expect on his lavish spending and ethical quandaries, the EPA administrator will be asked to explain why EPA helped to bury a federal study that would have increased warnings about toxic chemicals found in hundreds of water supplies across the country. As POLITICO reported this week, emails released under the Freedom of Information Act indicate the study was being prepared for release in January, before EPA intervened. It has not been made public more than three months later and the agency producing it says it has no timeline for doing so.

Now lawmakers are looking for answers, including Republicans whose districts suffered contamination from the chemicals PFOA and PFOS, which are linked with certain cancers, thyroid problems and life-threatening pregnancy complications. Annie Snider, who broke the story, has more on the fallout [here](#).

Plus, today's hearing in front of a Senate Appropriations panel comes less than 24 hours after yet [another probe](#) was launched by the agency's inspector general into the handling of Pruitt's emails. That brings the number of probes and investigations into his behavior to an even dozen.

Sparks flying: When Pruitt last appeared on the Hill in April before two House committees, he played the [blame game](#), in part pushing the burden of some of his ethical decisions onto his staff. And since today's appearance will be his first before the Senate since the steady drip of news stories began earlier this year, he'll face a range of inquiries from Democrats, some of whom have been leading the charge against him. The subpanel's ranking Democrat, [Tom Udall](#), has been critical of Pruitt in the past and plans to question him on his spending and ethical issues. "Administrator Pruitt, it's hard to know where to begin this morning. Every day there seems to be a new scandal ... with you at the dead center," Udall will say.

Expect the New Mexico Democrat to discuss the [range of investigations](#) that currently eye Pruitt. "I can only wonder if more investigations will start based on your fast-tracking a new Superfund site at the behest of a conservative media personality and other reports that EPA has taken quick actions to help political donors and lobbyists," he'll say, referencing another [POLITICO story](#).

Both Democrats and Republicans on the subcommittee tell ME they want to discuss the policy at hand. Republican [Shelley Moore Capito](#) said she wants to ask Pruitt about a number of different things, but added she wanted to "just concentrate on the policy." Still, Democrat [Chris Van Hollen](#) said he has a long list of questions for the administrator that involve policy as well as a "betrayal of the public trust." And, fellow subpanel Democrat [Jeff Merkley](#) told ME: "[I] certainly want to get a better understanding of why he feels that he's so comfortable using government funds in all kinds of inappropriate ways, but also the policy."

Separately, EPW Chairman John Barrasso, who is not on the Appropriations committee, suggested [in a letter](#) Tuesday he'll also be watching to see what comes out of today's hearing. That letter comes in response to a request from six Democratic EPW members, who [demanded](#) Barrasso bring Pruitt before the panel. Barrasso

said EPA provided Pruitt's responses to previous questions from the panel earlier this week and added that he intends to call Pruitt for another hearing but will wait to see what comes out of the ongoing probes already looking into Pruitt's activities.

In the crowd: Environmental groups in the audience today will look for senators to ask the tough questions. Moms Clean Air Force will be bringing in local moms and their children, and the group will hand out their Pruitt "report card." Similarly, the Environmental Defense Fund will be watching to see if Pruitt dodges on questions that aim to hold him accountable. EDF will again hand out its "Non-Trivial Pruitt Questions" cards and dropped off hard copies of its "101 Questions" document to committee members' offices. **If you go:** The hearing kicks off at 9:30 a.m. in 124 Dirksen.

GONE QUIET: Sen. Jim Inhofe told reporters he hasn't talked with his buddy Pruitt in "about a month" but said the former Oklahoma attorney general is "weathering the storm" fine. But, he predicted, the tempest was not done yet. "Storms are never over," he said. "They always come back — you know that — in Washington."

WELCOME TO WEDNESDAY! I'm your host Kelsey Tamborrino. Clean Energy Business Network's Andy Barnes was the first to guess that two bathtubs remain in the Senate after they were uncovered in 1936 — although six were first installed in the chamber. Today's question: Who was the first sitting member of Congress sentenced to prison? Bonus points if you can guess the charge. Send your tips, energy gossip and comments to ktamborrino@politico.com, or follow us on Twitter [@kelseytam](https://twitter.com/kelseytam), [@Morning_Energy](https://twitter.com/Morning_Energy) and [@POLITICOPro](https://twitter.com/POLITICOPro).

THIS MIGHT COME UP: New communications reveal additional details about how the controversial red team-blue team debate over climate science would have played out at EPA and who was influencing Pruitt. Pro's Alex Guillén and Anthony Adragna report on a draft press release that circulated on Nov. 4 among top EPA officials, which laid out the line of attack. "EPA is standing up a Red Team peer review of the report," they wrote, rebuffing the Fourth National Climate Assessment, which countered many Trump administration political appointees who have questioned the connection between greenhouse gas pollution and global warming. The "blue team" would essentially be the federal assessment and its authors. Read more on that here.

THE WIFIA BALANCING ACT: A battle is brewing between small and rural communities and the larger ones whose infrastructure projects can be costly — and it could upend a bipartisan effort to pass the first major infrastructure bill during the Trump era. Annie reports on the measure at hand, called the Securing Required Funding for Water Infrastructure Now, or SRF WIN Act. The provision would expand the WIFIA program that loans federal money for water infrastructure projects at Treasury's attractive long-term interest rates, but also includes changes to make the WIFIA program more accessible to small and mid-sized communities. Now the measure has sparked opposition from the groups that originally conceived of the WIFIA program, who say the new proposal tilts too far toward the small communities. Read more here.

**** A message from Chevron:** Chevron and local partners are helping to provide DOERS with the hands-on technical training needed for today's jobs in the manufacturing and energy industries. Watch the video: <https://politi.co/2rBPIuI> **

CANCEL THOSE VACATIONS: Senate Appropriations Chairman Richard Shelby told reporters he's been in talks with Majority Leader Mitch McConnell about shelving the chamber's planned August recess unless they make more progress in the appropriations process. "We might not have an August recess," he said. Asked if it would be realistic to do so in an election year, Shelby quipped: "Might not be realistic for the Democrats — they have a lot more seats." Put ME down as skeptical on this one. Never underestimate the power of late July jet fumes.

INTERIOR-EPA PACKAGE MOVES AHEAD: The House Appropriations Committee's Interior-Environment panel cleared a \$35.25 billion spending package on Tuesday, setting the measure up for committee consideration as early as next week. The bill cleared on a voice vote, Alex reports, and is likely to face contentious amendments before the full committee. Alex breaks down the bill further here.

FOR YOUR RADAR: The full House Appropriations Committee will mark up the fiscal 2019 Energy-Water bill this morning. Read the bill text here.

ENERGY NOM ON TAP: The Senate Foreign Relations Committee will hold a markup on the nomination of Frank Fannon to be an assistant secretary of State for energy resources. Fannon was a former staffer to Inhofe, who released a statement ahead of the vote that called the nominee a "good friend." Inhofe pointed out expanding U.S. energy exports to Eastern Europe, and said Fannon "can use his leadership and expertise effectively to advance American energy dominance and enforce energy sanctions, like those against Russia and Iran."

LISTEN IN: EPA announced Tuesday its Office of Enforcement and Compliance Assurance will host a series of "web-based listening sessions" beginning May 21, on specific recommendations from the agency's Superfund Task Force Recommendations Report.

NEW FOSSIL FUEL ALLIANCE COMING? The Trump administration is weighing the creation of "a new, central institution" that would advocate for natural gas and coal technology and exports, according to draft document obtained and reported on by E&E News. The draft "Clean and Advanced Fossil Fuel Alliance" talking points, though "pre-decisional," lay out a previously described loose affiliation of countries the United States is courting. Read the story here.

MONIZ UNVEILS ENERGY EMPLOYMENT REPORT: Former Energy Secretary Ernest Moniz will unveil the third installment of the 2018 U.S. Energy & Employment Report this morning. The report arrives via Energy Futures Initiative — where Moniz is CEO and president — and the National Association of State Energy Officials. It was originally established during Moniz' time at the DOE, and offers insight into the employment trends of four energy sectors. Moniz will be joined by NASEO head David Terry and author David Foster, as well as Senate Energy ranking member Maria Cantwell. The event will be livestreamed on both the NASEO and EFI websites.

JUDGES HALT ATLANTIC COAST: A federal appeals court ordered the construction of the Atlantic Coast pipeline be halted, following a legal challenge by environmental opponents who argued a review by the U.S. Fish and Wildlife Service was inadequate, the Richmond Times-Dispatch reports. The order vacates FWS' Incidental Take Statement. In a research notice sent by ClearView Energy Partners, the group said there was "a high probability that FERC will direct suspension of construction operations in these areas while the FWS revises the ITS."

NSR PERMITTING FOCUS OF HEARING: The House Energy and Commerce Environment Subcommittee holds a hearing on new source review permitting reform this morning. EPA air chief Bill Wehrum will testify, as well as Bracewell's Jeff Holmstead, NRECA's Kirk Johnson and NAM's Ross Eisenberg, among others. Although the administration doesn't have an official position on the discussion draft that is the focus of the hearing, Wehrum will say the current "program is unnecessarily complicated and confusing," and should be improved.

Eisenberg will say that NAM supports the bill and the need to reform NSR, more so now than ever. "One of our members estimates that there are over a hundred million tons of CO2 that could be reduced by deploying the full suite of available turbine upgrades at power plants," he'll say, adding that many such upgrades "have been impeded because they may potentially trigger NSR." **If you go:** It begins at 10:15 a.m. in 2322 Rayburn.

NWF MEETS WITH ZINKE: The National Wildlife Federation will meet today with Interior Secretary Ryan Zinke, where the group will discuss conservation issues. Ahead of the meeting, the group submitted five of its priorities, including concerns about some of the locations of upcoming lease sales and mining proposals and Zinke's broader conservation agenda.

Heads up! Zinke will deliver the keynote speech at next week's annual Williston Basin Petroleum Conference, in Bismarck, N.D., local KFVR-TV [reports](#).

IT'S A BIRD, IT'S A DRONE: Interior is for the first time investing in small-unmanned aircraft systems services, or drones, to help tackle wildfires. DOI [awarded](#) a "Call When Needed" contract to four U.S. companies, which will allow the agency to employ the drones when needed to support wildland fire operations, search and rescue and emergency management.

MAIL CALL! A group of 20 Democratic senators called on Pruitt Tuesday to extend the comment deadline until July 30 for the agency's "secret science" proposal to ban the use of studies that don't publicly disclose all their data, and to hold more public hearings on the topic. Read [the letter](#).

— **Ahead of the House's vote on the farm bill**, 114 state legislators signed a letter in opposition to a provision they say would exempt EPA from key requirements under the Endangered Species Act that protect pollinators. Read it [here](#).

STUDY: BUSINESSES TAKING THE LEAD: Deloitte is out with two new reports today — one on global battery storage markets and another on energy management and consumption views from businesses and consumers. The latter report found that businesses are taking the lead to address climate change. They are reviewing or changing their energy management policies in response to the U.S. pulling out of the Paris climate agreement, the report found. According to the report, the number of companies with carbon footprint goals increased to 61 percent in 2018, from slightly more than half the year before. Read that report [here](#) and the energy storage report [here](#).

REPORT OUT ON MANUFACTURING AT DOE: The Information Technology and Innovation Foundation will release its new report today reviewing DOE's "Manufacturing USA" institutes, looking at areas of progress and stability. Given the potential ITIF says the institutes have to bridge gaps in private sector investment, the report lays out national goals at stake at the nexus of manufacturing and energy, and outlines why federal action is necessary. Read the report [here](#).

QUICK HITS

— Failure at the EPA, [Pacific Standard](#).

— Why Alaska is crafting a plan to fight climate change: It's impossible to ignore, [The New York Times](#).

— Trump considers ways to boost biofuel market transparency, [Bloomberg](#).

— Whistleblower runs to change a system that burned him, [E&E News](#).

— Judge strikes down Oakland's ban on shipping coal through port, [Bloomberg](#).

— Why clean energy groups are singling out PJM for criticism on grid resilience, [GreenTech Media](#).

— What Pruitt's been doing while you weren't looking, [The Center for Public Integrity](#).

HAPPENING TODAY

9:30 a.m. — The Senate Appropriations Interior-Environment Subcommittee hearing on the EPA's fiscal 2019 budget, 124 Dirksen

10:00 a.m. — The Energy Futures Initiative and the National Association of State Energy Officials briefing to release the 2018 "U.S. Energy and Employment Report," SVC-210

10:00 a.m. — The Information Technology and Innovation Foundation discussion on "Manufacturing USA at DOE: Charting Progress, Seeking Stability," 1101 K Street NW

10:00 a.m. — House Science Committee hearing on "Using Technology to Address Climate Change," 2318 Rayburn

10:00 a.m. — Senate Foreign Relations Committee markup to vote on the nomination of Frank Fannon, 419 Dirksen

10:00 a.m. — House Appropriations Committee markup of energy and water bill, 2118 Rayburn

10:00 a.m. — The Bipartisan Policy Center discussion on "Putting P3s to Work in the United States," 1225 Eye St NW

10:15 a.m. — House Natural Resources Committee markup of various bills, 1324 Longworth

10:15 a.m. — House Energy and Commerce Environment Subcommittee hearing on "Legislation Addressing New Source Review Permitting Reform," 2322 Rayburn

12:00 p.m. — The Environmental Law Institute discussion on "The Burden of Unburdening: Administrative Law of Deregulation," 1730 M Street NW

4:30 p.m. — The Pew Charitable Trusts briefing on "Disaster Mitigation as Smart Infrastructure," 902 Hart

6:00 p.m. — The National Press Club holds Communicators Legends Dinner with former Interior Secretary Ken Salazar, 14th and F Streets NW

THAT'S ALL FOR ME!

**** A message from Chevron:** See how Chevron with local partners are helping DOERS get the hands-on technical training needed for jobs in the energy and manufacturing industries. Watch the video:
<https://politi.co/2rBPIuI> **

To view online:

<https://subscriber.politicopro.com/newsletters/morning-energy/2018/05/pruitt-makes-his-senate-return-219511>

Stories from POLITICO Pro

EPA move on chemical study may trip up Pruitt [Back](#)

By Annie Snider | 05/16/2018 05:02 AM EDT

EPA Administrator Scott Pruitt is facing a new controversy over chemical contamination that could prove even more damaging than his spate of recent ethics scandals.

When Pruitt returns to Capitol Hill Wednesday, he will likely be asked to explain why EPA helped to bury a federal study that would have increased warnings about toxic chemicals found in hundreds of water supplies across the country. A handful of Republicans were quick to demand answers after POLITICO reported Monday that senior aides to Pruitt intervened after the White House warned of a "public relations nightmare" from the impending Health and Human Services Department assessment.

While Pruitt has said partisan witch hunts are to blame for the controversies around his first-class travel, extensive security spending and friendliness with lobbyists, he will struggle to make the same case this time. Emails released under the Freedom of Information Act indicate the HHS study was being prepared for release in January, before EPA intervened. It has not been made public more than three months later, and the agency producing it says it has no timeline for doing so.

Long used in Teflon and firefighting foam, the chemicals PFOA and PFOS are linked with certain cancers, thyroid problems and life-threatening pregnancy complications. Studies have found them in 98 percent of Americans' blood, and communities from West Virginia to Michigan to New York have been in an uproar after discovering that their drinking water has been contaminated with the chemicals.

Tristan Brown, who served as the Obama administration's liaison between EPA and members of Congress when the agency issued a health advisory for PFOA and PFOS in 2016, said that lawmakers on both sides of the aisle are deeply concerned about the issue. He said anger over the Trump administration's interference could snowball if powerful Republicans who have experienced contamination in their states speak out strongly.

"That could be the beginning of a breach of the dam," Brown said.

Already, key Senate Republicans have shown their willingness to break with the Trump administration when it comes to chemical contamination. In December, North Carolina's two Republican senators came out in opposition to the administration's nominee to head EPA's chemical safety office, industry consultant Michael Dourson, in part because of a crisis in their home state with a chemical similar to PFOA and PFOS, called GenX.

At least three Republican lawmakers have joined a host of Democrats in demanding answers from the Trump administration about the HHS study.

Sen. Shelley Moore Capito of West Virginia, which experienced a major chemical spill a few years ago and has a major PFOA and PFOS problem, said she wants to see the study made public.

"It's important that the findings of the study are released so we can determine the health impacts and any potential threats our communities may face as a result of exposure to perfluorinated chemicals. I would encourage the administration to look into this matter," Capito, a member of the Appropriations subcommittee with EPA jurisdiction, where Pruitt will testify Wednesday, said in a statement to POLITICO.

Rep. Mike Turner (R-Ohio), who chairs a House Armed Services subcommittee, chimed in as well.

"This is not an issue of public relations — this is an issue of public health and safety," he said in a statement Tuesday after writing to Pruitt on the matter.

"It would be unacceptable if the political considerations of those at the highest levels of the EPA led to the suppression of information concerning the public health of Americans," Rep. Brian Fitzpatrick (R-Pa.) said in a statement. "The EPA must provide my constituents with answers to these allegations immediately."

"It is vital that there are proper measures in place to perform accurate, expeditious, scientific assessments for chemicals that pose a threat to public health," he said in a statement to POLITICO, citing his state's "tragic history" with chemical contamination.

Pruitt says he is taking the chemicals issue seriously. Not long after the North Carolina senators torpedoed the chemicals nominee, Pruitt announced a "leadership summit" on PFOA, PFOS and related chemicals that is scheduled to be held at EPA headquarters next week.

But few are expecting his response to include any new regulatory action.

EPA has not regulated a single new contaminant under the Safe Drinking Water Act in more than two decades. The agency's 2016 drinking water advisory only provided advice to the states and local water managers — it set no mandatory limits.

And Pruitt's EPA doesn't even plan to go that far for other chemicals. The agency's No. 2 water official, Dennis Lee Forsgren, has told drinking water groups that under Pruitt, the agency won't issue any new health advisories for GenX or other chemicals.

Betsy Southerland, a career staffer who led work on the 2016 health advisory as director of science and technology at EPA's water office before resigning last year, said states would have to translate the information provided by EPA about the chemicals into health advisory levels or drinking water limits on their own, something few are equipped to do.

Pruitt's "not allowing EPA to provide the state with that expertise," she said.

EPA spokesman Jahan Wilcox, defending the agency's approach, said officials are "stressing that all options — not just health advisories — are on the table as we move into the National Leadership Summit and taking additional steps to address PFAS."

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EPA watchdog launches new probe into Pruitt's email habits [Back](#)

By Anthony Adragna | 05/15/2018 06:18 PM EDT

EPA's inspector general said Tuesday it would look into Scott Pruitt's use of nonpublic email accounts, bringing the number of federal probes into the EPA administrator's behavior to an even dozen.

Specifically, the inspector general said it would look into whether Pruitt is properly preserving email records as required under federal law and whether the agency is properly searching all of his accounts in response to public records requests.

Two senior Senate Environment and Public Works Committee Democrats — ranking member Tom Carper of Delaware and Jeff Merkley of Oregon — released [the letter](#), dated May 2, confirming the probe.

EPW Chairman John Barrasso (R-Wyo.) has previously raised concerns about Pruitt's use of nonpublic email accounts. In response, the agency said it searches all of his accounts when responding to public records

requests. Previous EPA administrators also routinely used nonpublic accounts for day-to-day email communications.

The new probe comes as Pruitt faces a litany of questions surrounding his spending and ethical woes. EPA's inspector general, the Government Accountability Office and the House Oversight Committee are all looking into aspects of his conduct.

Those probes involve Pruitt's first-class travel, use of security on personal trips, pay for top political aides and a sweetheart condo deal with an energy lobbyist who later met with him, among others.

In the letter, EPA Inspector General Arthur Elkins warned that a stretched budget and staff meant he could not say when the probe would begin.

"The fact is that the OIG has been funded at less than the levels we deem adequate to do all of the work that should be done, and we therefore have to make difficult decisions about whether to accept any given potential undertaking," he said. "However, despite these constraints, we have determined that the issues raised in your letter are within the authority of the OIG to review, and we will do so."

Pruitt is set to appear before a Senate Appropriations subpanel Wednesday.

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EPA staff in 'despair' after Pruitt blame game [Back](#)

By Emily Holden | 04/27/2018 05:33 PM EDT

Scott Pruitt may have survived his testimony on Capitol Hill, but he's coming back to a further enraged and demoralized Environmental Protection Agency staff.

Several current and former EPA officials and other people close to the agency said Pruitt did himself no favors with his congressional testimony Thursday, in which he blamed his aides for installing a \$43,000 privacy booth in his office and approving more than \$100,000 in first-class flights that he took last year. Pruitt also denied knowing key details about raises that his top staff received last year. And he declined to defend his former policy chief against Democrats' accusations that she had failed to show up for work for three months, even though she and Pruitt had been photographed attending the same meeting during the period in question.

In conversations with 11 people who know the atmosphere inside EPA, including Republican political appointees, a handful said his refusal to grovel may have pleased President Donald Trump. But others said his strategy was appalling to the current and former staffers who found themselves thrown under the bus.

"I think his credibility is damaged, and whether or not he gets fired by a tweet isn't going to diminish the fact that his credibility has been seriously damaged by all of this," one person close to the administration told POLITICO. "It shows a real lack of leadership that he did not defend, or blame, his staff. These are the people that he's asking for loyalty from. These are the people that are defending him. He's not returning the favor. That's not leadership."

A current EPA official said Friday that employees are veering between "despair" and "embarrassment," and Pruitt's televised performance did not help.

"I will tell you, it did not go unnoticed from people who watched the hearing that he did not take responsibility on the policy pieces" of the testimony, the official said. "It was not lost on us on the stuff we know about that he used very careful language, he was parsing his words, that some might say he did not speak the whole truth."

One former EPA official said even political aides are "sick of Pruitt constantly putting himself first," and "putting himself before the president's agenda."

"He's rarely been interested in selling regulatory reform as improving Americans' lives, and is far more interested in saving his political career," the former official said.

But Trump has shown no signs of abandoning his EPA chief, who has won the strong backing of conservative groups with his efforts to erase Obama-era environmental regulations. So far, that has outweighed the anger of White House staff members and exasperation of key Republican lawmakers at Pruitt's series of controversies over luxe travel, extensive security, a below-market D.C. condo rental from a lobbyist and history of questionable real estate deals in his native Oklahoma.

A senior EPA official said Pruitt's strategy of fighting the allegations was designed to appeal to Trump, who disdains members of his team who appear weak on television.

"They like fighters no matter what," the official said. "No matter what, fight. That's what we've been conditioned to."

The official predicted that the White House takeaway from the hours of hearings would be that Republican lawmakers stood with Pruitt, while Democrats squandered their opportunity by spending too much time criticizing Pruitt's deregulatory agenda — which Trump supports — rather than hitting him for the ethics issues.

"Any audience would say the White House saw a Republican bench entirely supportive of him," the EPA source said. "On the Democrat side, the White House also saw Democrats who used half their time to criticize policies he's doing that the White House likes. If they wanted to land punches, why do you ask about these policies? That's not going to do it for you."

Pruitt ally Sen. Jim Inhofe (R-Okla.) took that message from Thursday's hearings, despite saying earlier in the week that he was troubled by some recent allegations about the EPA leader's past dealings in Oklahoma. "After a full day of mudslinging and partisan questioning from the Democratic members of the committees, it is clear that the only fault they could find with Scott Pruitt is that he's successfully ending the EPA's history of overreach and over-regulation," Inhofe said in a statement Friday.

Still, the senior EPA official said, Pruitt's relatively good day in Congress could be "washed away" if his inconsistencies about what he knew about the raises generates a steady narrative that he lied to the White House, as at least one CNN pundit alleged.

And until Trump weighs in, the tension around Pruitt at EPA will remain high.

"There needs to be a halt to this because it's exhausting," the same official said.

Pruitt also still faces multiple investigations inside the executive branch and on Capitol Hill. On Friday, for example, the agency was due to deliver a "batch of documents" to the staff of House Oversight Chairman Trey Gowdy (R-S.C.), who is leading one of the probes.

Departed EPA aides who have said Pruitt didn't tolerate internal criticism of his spending and secrecy say current staffers still fear they'll be similarly swept up in the scandals — but won't be able to find jobs if they quit now and gain a reputation for disloyalty.

"They're trying to do the best they can in a toxic environment," one former staffer said. "You cannot express any idea that might be misconstrued as a political attack on Pruitt or any policy issues, so people just do what they're told. They're professional. ... They don't want to get caught in an undertow."

Another former EPA official has been getting phone calls from staffers who are frustrated by the controversies but keeping their heads down.

"Everyone in the building wants to come out and say something ... but as soon as they say something, they're out of a job," that person said.

Not everyone in the agency was upset that Pruitt pinned many of his controversies on his staff Thursday, after giving an opening statement in the House in which he confessed that his first year on the job had been "a learning process."

"When he was putting it on staff, that's the reality of it," one current EPA political appointee said. "Sure, he's the administrator; sure, he's the head of the agency. That doesn't mean he was aware of the \$40,000. He asked for a secure phone line and the next thing you know it turned into a secure phone booth. ... Overall, I think his staff continue to stand beside him today and will continue to do that."

In his testimony, Pruitt said he had never asked for a \$43,000 secure phone booth — only "access to secure communication" — or biometric locks for his office, and he said his security staffers made the call for him to fly first-class to avoid possible threats from other passengers. He said he had authorized his chief of staff, Ryan Jackson, to give raises to his top staff but had no idea that they were circumventing disapproval from the White House. And he chose not to defend his former policy chief against allegations from Democratic lawmakers that she was not in the office for months, even though an EPA spokesman had dismissed the accusations as "baseless and absurd."

A second political appointee said Pruitt didn't break any new ground with his defenses and that controversies dogging him had been "all blown out of context."

The person called Pruitt a "disruptor" and said "folks don't like that aggressive style."

"Administrator Pruitt speaks for a certain aspect of the Trump administration conservative movement," the appointee said.

Eric Wolff and Anthony Adragna contributed to this report.

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Pruitt fast-tracked California cleanup after Hugh Hewitt brokered meeting [Back](#)

By Emily Holden and Anthony Adragna | 05/07/2018 10:12 PM EDT

EPA Administrator Scott Pruitt placed a polluted California area on his personal priority list of Superfund sites targeted for "immediate and intense" action after conservative radio and television host Hugh Hewitt brokered a meeting between him and lawyers for the water district that was seeking federal help to clean up the polluted Orange County site.

The previously unreported meeting, which was documented in emails released by EPA under a Freedom of Information Act lawsuit by the Sierra Club, showed Pruitt's staff reacting quickly to the request last September by Hewitt, who has been one of Pruitt's staunchest defenders amid a raft of ethics controversies around his expensive travel, security team spending and a cheap Washington condo rental from a lobbyist.

Pruitt has drawn criticism from environmentalists and other critics for letting prominent GOP backers and industry groups influence the agency's agenda — even as he has kicked scientists off of EPA's advisory panels and moved to limit the kinds of peer-reviewed research it will consider when making decisions.

In many cases, the people whose advice Pruitt is heeding could be useful supporters for him in a future race for U.S. senator or president. They include GOP megadonor Sheldon Adelson, who — as POLITICO reported in March — persuaded Pruitt last year to take a meeting with an Israeli water purification company called Water-Gen that later won a research deal with the EPA.

Hewitt, a resident of Orange County whose son James works in EPA's press office, emailed Pruitt in September to set up a meeting between the administrator and the law firm Larson O'Brien, which employs Hewitt and represents the Orange County Water District. Pruitt had been planning to meet with the lawyers in California a month earlier, but cancelled the trip to undergo knee surgery.

"I'll join if the Administrator would like me too or can catch up later at a dinner," Hewitt wrote in his Sept. 18 message. Hewitt added that the issues surrounding the Superfund site were "Greek to me but a big deal in my home county."

Pruitt's aides responded within minutes and quickly confirmed an Oct. 18 meeting for the lawyers and a project director.

Six weeks after that meeting, on Dec. 8, the Orange County North Basin site appeared on Pruitt's list of 21 contaminated areas to address. A month later, Pruitt proposed listing the site on EPA's National Priorities List, a move that could make it eligible for long-term federal cleanup funding from the federal government if the responsible polluters cannot be identified and forced to pay for its remediation.

Since then, Hewitt has been a robust defender of Pruitt, dismissing his recent controversies as "nonsense scandals" on MSNBC in early April and saying his detractors were "just trying to stop the deregulation effort."

Pruitt has touted the agency's Superfund work as one of his key priorities, setting up a task force to seek to speed up the clean-up of the nation's worst contaminated sites. That task force had been headed by Albert "Kell" Kelly, a former banker and longtime friend, who departed the agency last week after news about loans he provided to Pruitt in Oklahoma, including the mortgage provided to Pruitt for a house he bought from a lobbyist when he was a state senator.

Environmental advocates have worried Pruitt's efforts to identify Superfund priority sites would bypass the process set up by Congress to ensure cleanup resources are divided fairly, and that he could focus on sites seen as important to his political supporters. And environmentalists have said Pruitt's rush to claim that contaminated properties have been remediated could risk turning them over to local governments and businesses that might pursue cheaper, inadequate solutions.

Elgie Holstein, senior director for strategic planning at the Environmental Defense Fund who has been tracking EPA's Superfund actions, said the connection to Hewitt is "not a surprise."

"The biggest fear we have is that No. 1, the administrator's political priorities and personal ambitions, political ambitions become the primary criteria for action under this program instead of science and health," Holstein said.

EPA never disclosed the meeting with Hewitt's contacts. It was listed on Pruitt's public calendar as a staff briefing. But on his private Outlook schedule, which the agency has released in response to lawsuits, it appeared as an "Orange County Superfund Site" meeting with Kelly and two other staffers. The records did not list the Californians in attendance at the meeting at EPA headquarters in Washington.

But EPA spokesman Jahan Wilcox confirmed that two lawyers representing the water district, Robert O'Brien and Scott Sommer, and the water district director of special projects, Bill Hunt, were there. A third lawyer, former federal Judge Stephen G. Larson, was forced to cancel his trip due to wildfires in California, according to emails.

"Hugh Hewitt helped arrange the meeting at the request of the water district but did not attend," Wilcox said.

Wilcox said the meeting was for the water district to "brief EPA on the Superfund site's cleanup efforts and request expedited cleanup," following a 2016 agreement with the agency to conduct a remedial investigation and feasibility study, at a cost of \$4 million over two years. Hunt did not immediately respond to a request for comment.

Hewitt in an email to POLITICO called Pruitt a friend and said he does not have a working relationship with him. He said that his firm has represented the water district and worked on the site with EPA's regional office for years but that he had not participated in that work.

Hewitt said he requested a meeting because the water district wanted to brief the new EPA team, he said, adding that he was an Orange County resident until 2016 as well as an Orange County Children and Families Commission member. He said that he "very much" wanted the Superfund site remediated as soon as possible.

According to an EPA fact sheet, the Orange County site has more than five square miles of polluted groundwater containing chlorinated solvents and other contaminants across the cities of Anaheim, Fullerton, and Placentia. It includes the Orange County Groundwater Basin, which provides drinking water to more than 2.4 million residents across 22 cities, according to the agency. Those pollutants can damage humans' nervous systems, kidneys and livers, and some are considered carcinogenic.

EPA has just begun its process of studying the contamination and it has not determined which companies caused the pollution in the area. But an administrative settlement with the EPA in 2016 says the area was home to "electronics manufacturing, metals processing, aerospace manufacturing, musical instrument manufacturing, rubber and plastics manufacturing, and dry cleaning."

Hewitt also thanked EPA schedulers for working to arrange a meeting between Pruitt and the California Lincoln Clubs, which describe themselves as in favor of "limited government, fiscal discipline and personal responsibility." After some rescheduling Pruitt eventually met with representatives of the group on a trip to California in March of this year, according to his public calendar. Prominent Orange County businessman John Warner also helped to connect that group with staffers.

Pruitt and his scheduling staff have frequently sought to set up meetings with or for influential Republican figures, according to the internal EPA emails.

His team accepted an invitation for him to address The Philanthropy Roundtable at an invitation-only event at the White House for "conservative and free-market foundation CEOs and individual wealth creators to discuss the greatest opportunities for foundations to protect and strengthen free society" and "what [Pruitt] views as unique opportunities for philanthropic action.

As POLITICO reported in March, Pruitt also met with an Indiana coal executive and Trump fundraiser who was seeking to soften a pollution rule.

Pruitt also crafted his travel schedule — including a tour of states in August — to meet with big business much like a member of Congress would during the annual recess.

In July, EPA's associate administrator of public engagement Tate Bennett was working with Pruitt to "essentially create an August recess for the EPA to be out in the states talking with individual companies & doing listening sessions within sectors," said Leah Curtsinger, the federal policy director for the Colorado Association of Commerce & Industry, in an email introducing Bennett to her husband, public affairs director at coal company Cloud Peak Energy and a fellow alum of Senate Majority Leader Mitch McConnell's office.

Annie Snider contributed to this report.

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Emails show Pruitt pushing 'red team-blue team' climate debate [Back](#)

By Alex Guillén and Anthony Adragna | 05/15/2018 06:39 PM EDT

EPA Administrator Scott Pruitt had hoped at least twice last year to announce his plans for a controversial red team-blue team debate that would take aim at a federal assessment supporting climate change science, according to newly released emails.

Pruitt's contentious review was abandoned because of the White House's objections, but the communications reveal new details about how the process would have worked and who was influencing Pruitt.

Many scientists have complained that a red team-blue team style debate was a poor way to examine the scientific evidence that overwhelmingly supports the findings that humans are the primary driver behind climate change. But for Pruitt, who had once suggested the event might be televised, the debate appeared to be directed at rebuffing the Fourth National Climate Assessment.

That government-wide report issued on Nov. 3 contradicted many Trump administration political appointees who have questioned the connection between greenhouse gas pollution and global warming.

A draft press release that circulated on Nov. 4 among top EPA officials, and which was shared with Pruitt on Nov. 5, laid out the line of attack, according to the documents made public on Tuesday by EPA following a records request from the Natural Resources Defense Council.

"EPA is standing up a Red Team peer review of the report," they wrote, while the "blue team" would essentially be the federal assessment and its authors.

"A robust, transparent public peer review evaluation of climate change is something everyone should support," Pruitt said in the unreleased November statement. "Now is a perfect opportunity for the formation of a 'Red Team' exercise."

The draft release also included space for quotes from two prominent climate science critics: Steve Koonin, an Obama-era Energy Department official, and William Happer, a Princeton physicist who argues that increased carbon dioxide would benefit the planet.

The duo appear to have been tapped to help guide the red-team review together.

"Your contributions even in a small way to the validity of the red team blue team approach would be appreciated," Ryan Jackson, Pruitt's chief of staff, wrote to Koonin and Happer on Nov. 4.

In an email to POLITICO, Happer said the exercise was "badly needed," while Koonin, now the director of the Center for Urban Science and Progress at New York University, told POLITICO the National Climate Assessment was "demonstrably deficient on a number of points."

EPA did not return a request for comment.

Pruitt has previously said a Wall Street Journal piece written by Koonin in April 2017 calling for a similar EPA review of climate science was his inspiration for instigating the "red team" review.

The emails, however, show that Koonin and his allies began wooing Pruitt even before that. In an email more than a week before Koonin's WSJ piece ran, Dan Yergin, the Pulitzer-winning oil historian and vice chairman of IHS Markit who joined a board advising President Donald Trump, introduced Koonin by email to Jackson.

Pruitt and Koonin met April 28, and the emails show Koonin was closely involved in the process afterward.

Koonin sent EPA a "prospectus" outlining the exercise, and though much of it was redacted by EPA before its release, Koonin suggested timing the red team review to the National Climate Assessment, which was due out six months later. Doing so would "ensure that certainties and uncertainties in projections of future climates are accurately presented to the public and decision makers," he wrote.

A revised version of the prospectus was circulated by EPA to White House officials in July after news of Pruitt's plans had leaked.

"There are a lot of press reports about EPA's planning on this. None of it is being run by us. This seems to be getting out of control," wrote Michael Catanzaro, a top energy adviser to Trump who has since left the administration, a few days after receiving Koonin's proposal.

In late June, Liz Bowman, then a top EPA spokeswoman, questioned whether the exercise could be announced as early as July 5 or 6. But it wasn't until November that top Pruitt staffers begin circulating a draft press release on the announcement.

A draft of the announcement on Nov. 5 inspired a lengthy email chain, which EPA redacted, that involved direct messages from Trump chief of staff John Kelly, strategic communications director Mercedes Schlapp, and former White House staff secretary Rob Porter.

Pruitt was touting his plans to launch the red team review as late as December. Emails early in that month indicate the agency's air chief, Bill Wehrum, would make the announcement on Dec. 12 while Pruitt traveled in

Morocco. One message that included Jackson had the subject line of "Red Team/Blue Team Announcement Planned for Tuesday, Dec. 12."

The New York Times reported in March that Kelly and other top officials stopped the announcement in the fall, and Kelly's deputy Rick Dearborn met with Pruitt in mid-December to declare the plan dead.

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WRDA faces stumbling block over small community projects [Back](#)

By Annie Snider | 05/15/2018 04:48 PM EDT

A battle over boosting funding for drinking water and wastewater projects in small communities is threatening a bipartisan effort to pass the first major infrastructure bill under the Trump administration.

The measure at issue, Securing Required Funding for Water Infrastructure Now, or SRF WIN Act, would expand the popular WIFIA program that loans federal money for water infrastructure projects at Treasury's attractive long-term interest rates. The bill includes a number of changes seeking to make the WIFIA program more accessible to small and mid-sized communities.

Senate Environment and Public Works Chairman John Barrasso (R-Wyo.) said last week that he supported adding it to this year's Water Resources Development Act, S. 2800 (115), through a manager's amendment. But he said attaching the measure, which was introduced by Sens. John Boozman (R-Ark.), Cory Booker (D-N.J.) and nine others, wasn't a done deal. "We're working to try and get to that," he told reporters.

The SRF measure has sparked fierce opposition from the groups that originally conceived of the WIFIA program that say the new proposal tilts too far toward the small communities, and they are now threatening to revoke their support from the overall infrastructure bill if it gets added.

"We believe that SRF WIN Act is a fundamentally flawed proposal that, if enacted, would pose a severe threat to the future viability of the WIFIA program," the American Water Works Association, the Association of Metropolitan Water Agencies and the Water Environment Federation wrote in a letter to Senate EPW leaders last week.

The fight pits small and rural communities against larger communities whose projects can often run into the billions of dollars.

The WIFIA program, authorized as part of the 2014 WRDA bill, targets those larger-scale projects, in part because they have a harder time competing for money from the State Revolving Funds, the main federal funding mechanism for municipal water projects. Those funds prioritize spending in areas with public health problems, and some states have capped the amount that can go to larger projects so they don't drain the funds.

The groups opposing the new measure argue that small and rural communities already have access to a carve-out that gives them 15 percent of WIFIA funding. The proposed changes, they say, would put larger communities at an unfair disadvantage and could ultimately lead to the demise of EPA's State Revolving Funds program.

EPA estimates that \$472.6 billion will be needed over the next two decades to improve drinking water infrastructure, alone. The federal government funds just a fraction of that — most years Congress appropriates less than \$3 billion.

Beyond the rural carve-out under WIFIA, states can also bundle smaller projects together to reach the \$20 million minimum funding requirement, and EPA recently conditionally approved one such application from the Indiana Finance Authority.

The changes being proposed in the SRF WIN Act seek to make this option more accessible, including by waiving the \$100,000 application fee for states filing such applications and authorizing \$200 million annually to go toward such projects.

"This legislation is an innovative approach to helping communities of all sizes, in every state secure loans so they can improve their crumbling infrastructure," Boozman said in a statement introducing the legislation.

Dozens of groups have endorsed including the SRF WIN Act in the Senate's WRDA bill, called America's Water Infrastructure Act, including the Chamber of Commerce, the American Society of Civil Engineers and the Vinyl Institute.

"We believe the inclusion of the SRF WIN Act in the America's Water Infrastructure Act will make a really good bill even better," more than 25 groups wrote in a [letter](#) to Senate EPW leaders on Tuesday.

But the opposing groups argue that Boozman's bill would decrease the program's leveraging rate — an aspect that has been wildly popular with lawmakers since it allows small appropriations to fund much larger infrastructure investments. EPA expects that the \$25 million it got for WIFIA in fiscal 2017 will result in \$2.3 billion worth of loans, the groups said.

"These robust rates enable the federal government to get a tremendous 'bang for the buck' when appropriating funds for water and wastewater infrastructure," AWWA, AMWA and WEF wrote.

The Senate Environment and Public Works Committee is seeking to move its WRDA bill swiftly. It will hold its second legislative [hearing](#) on the measure Thursday, with the assistant secretary of the Army for Civil Works due to testify. Barrasso said a markup will be held shortly thereafter.

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Panel moves \$35B Interior-EPA spending bill to full committee [Back](#)

By Alex Guillén | 05/15/2018 06:18 PM EDT

The House Appropriations Committee's Interior-Environment panel today cleared its \$35.25 billion spending package, teeing it up for consideration by the full committee as early as next week.

The [bill](#) cleared on a voice vote. It is likely to face contentious amendments before the full committee.

Before the bill advanced, ranking member [Betty McCollum](#) (D-Minn.) criticized the policy riders and complained that EPA has not yet reported to Congress regarding the GAO's April [conclusion](#) that EPA's construction of a soundproof booth for Administrator Scott Pruitt violated spending laws.

The bill provided \$7.96 billion for EPA, a \$100 million overall reduction from 2018 levels. Along with language repealing the Waters of the U.S. rule, the bill provided \$2.6 billion for the Clean Water and Drinking Water State Revolving Loans and \$75 million for the Water Infrastructure Finance and Innovation Act program.

Among the Interior Department's major agencies, the bill includes a \$55 million increase for the Bureau of Land Management to \$1.4 billion, a \$19 million hike for the U.S. Geological Survey to \$1.2 billion and another \$53 million to boost the National Park Service to \$3.25 billion.

The Office of Surface Mining would get \$229 million, including \$90 million for another year of a pilot program aimed at cleaning up abandoned Appalachian mines. The Fish and Wildlife Service's budget would drop by \$11 million to \$1.6 billion.

The bill also provided \$6.1 billion for the Agriculture Department's Forest Service, including \$3 billion for wildfire work.

WHAT'S NEXT: The full package will be considered by the full House Appropriations Committee at an unspecified later date.

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CLIMATEWIRE — Tue., April 24, 2018

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Lamar Smith visited the Galápagos, where warming is visible

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Sent: 4/24/2018 9:44:22 AM
To: Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]
Subject: Morning Energy: Pruitt's watershed moment — 'Secret science' policy coming — Blankenship slipping

By Kelsey Tamborrino | 04/24/2018 05:42 AM EDT

With help from Emily Holden

PRUITT'S WATERSHED MOMENT: EPA Administrator Scott Pruitt is approaching his two separate House committee hearings this week with sagging support on the hill. The make-or-break moment is approaching as once-stalwart backers begin to express concern about the controversies that have swirled in recent weeks. Republican Sen. Jim Inhofe (Okla.) — perhaps Pruitt's staunchest ally in Congress — told Pro's Anthony Adragna he thinks it's "appropriate to have a hearing in so far as any accusation having to do with his office is concerned," and he cited a report in The New York Times detailing a sweetheart deal Pruitt received on an Oklahoma City home previously owned by a lobbyist.

Sen. Shelley Moore Capito (R-W.Va.) also thought Thursday's hearings before the House Energy and Commerce and Appropriations committees would prove pivotal for Pruitt's long-term future in the administration. "It's really important," Capito said. "He's going to have to answer some tough questions. I'm sure they'll be put to him by both sides and we'll see what his response is."

And Sen. John Boozman joined his two Republican colleagues in supporting hearings by the Environment and Public Works Committee. Meanwhile, sources told Bloomberg that administration officials privately cautioned lawmakers and other conservative allies to pump the brakes on their defenses of Pruitt.

Publicly, however, the White House stands firm in its commitment to Pruitt. Press secretary Sarah Huckabee Sanders told reporters the administration is "continuing to review a number of the reports" about Pruitt, but noted the EPA chief "has done a good job of implementing the president's policies," particularly on deregulation and energy dominance. White House legislative affairs director Marc Short was more direct earlier Monday: "I think Scott Pruitt is doing a great job and we look forward to keeping him there as EPA administrator," he told MSNBC.

More to come? Earlier Monday, five senior congressional Democrats asked House Oversight Chairman Trey Gowdy to obtain further documents and hold hearings after obtaining new records they say raise "troubling" new questions about Pruitt's security expenditures. EPW ranking member Tom Carper told Anthony he had a good conversation with Gowdy regarding Pruitt, but said there was no formal bipartisan agreement to work together on an investigation. "I just gave him plenty of encouragement that he's doing the right thing," Carper said. Read more.

WELCOME TO TUESDAY! I'm your host Kelsey Tamborrino. Congrats to the Nuclear Energy Institute's Robert Powers, who was first to correctly guess Mary Walker was the first woman to receive the Medal of Honor. For today: Who is the last former senator to appear on a U.S. postage stamp? Send your tips, energy gossip and comments to ktamborrino@politico.com, or follow us on Twitter @kelseytam, @Morning_Energy and @POLITICOPro.

POLITICO's Ben White is bringing Morning Money to the Milken Institute Global Conference to provide coverage of the day's events and evening happenings. The newsletter will run April 29 - May 2. **Sign up to keep up with your daily conference coverage.**

BLINDED WITH SCIENCE: EPA's Pruitt is expected to unveil his new science policy that restricts the agency from relying on research that doesn't make public all its available data, a source briefed on the announcement tells Pro's Emily Holden. The proposed rule, which the agency submitted to the White House for review last week, will mirror legislation from House Science Chairman Lamar Smith (R-Texas).

Pruitt argues the change will bolster transparency, but scientists and health advocates say it is an effort to constrain rulemaking. The rollout has been delayed as agency officials tried to determine how to treat industry research used to evaluate the safety of pesticides and toxic chemicals, as Pro's Annie Snider reported last week. While academic studies often can't disclose data that includes personal health records, corporations can't reveal proprietary information either.

SCIENTISTS REACT: Close to 1,000 scientists signed onto a letter to Pruitt Monday, calling on the administrator to reverse course on his plans to revise how the agency considers outside research. "EPA can only adequately protect our air and water and keep us safe from harmful chemicals if it takes full advantage of the wealth of scientific research that is available to the agency," write the scientists, including some former EPA career staffers. Read it here.

A BLANK SLIP: GOP establishment attacks on former coal baron Don Blankenship seem to be taking hold, POLITICO's Alex Isenstadt reports via new polling. With the West Virginia Senate primary a mere two weeks away, a poll out Monday found Blankenship falling behind his more mainstream rivals, GOP Rep. Evan Jenkins and state Attorney General Patrick Morrisey. The poll found Morrisey leading with 24 percent, followed by Jenkins with 20 percent, and Blankenship trailing with 12 percent.

National Republicans have scrambled to intervene in the race, concerned that a Blankenship primary win would destroy their prospects of defeating Democratic Sen. Joe Manchin in November. Blankenship, who spent a year in jail following the deadly 2010 explosion at his Upper Big Branch Mine, has poured nearly \$2 million of his own money into a slash-and-burn style campaign savaging Jenkins and Morrisey as pawns of the establishment, Alex writes. Blankenship has also used the Senate run as a path to clear his name. So far, much of his campaign has been geared toward portraying himself as the casualty of the Obama-era Justice Department, which he says was bent on locking him up.

The new survey, which was conducted April 17-April 19 and has a margin of error of 4.9 percentage points, precedes a GOP debate today, and another that will be hosted by Fox News next week for a nationally televised audience. Read more.

SPECIAL ELECTION TODAY: Arizona voters will decide today who will pick up the seat left vacant by Rep. Trent Franks' departure in the state's 8th District. While neither candidate highlights specific environmental issues on her campaign website, Republican Debbie Lesko and Democrat Hiral Tipirneni have markedly different takes on climate change. Tipirneni's site says she believes "climate change is real and that we need to reduce carbon emissions." Meanwhile, Lesko said during a debate earlier this year that "certainly not the majority" of climate change is human-caused. "I think it just goes through cycles and it has to do a lot with the sun. So no, I'm not a global warming proponent," she said.

RULES TO MEET ON COLUMBIA RIVER BILL: The House Rules Committee will meet at 5 p.m. to formulate a rule on H.R. 3144 (115), which would void the environmental impact statement process for altering the hydropower system along the Columbia and Snake rivers. Earlier this month, the 9th Circuit Court of Appeals sided with the state of Oregon, the Nez Perce tribe and conservation groups, ruling that dam operations on the Columbia and Snake rivers must forgo hydropower production during key times of the year to protect

endangered salmon. An environmental impact statement for the system has been the subject of congressional fights, with Rep. Cathy McMorris Rodgers filing the legislation to void that process.

COAL ASH HEARING TODAY: EPA holds a public hearing today on its proposal to roll back the Obama-era regulation for the cleanup and disposal of coal ash. The hearing will begin at 9 a.m. in Arlington, Va., where there will be three sessions: 9 a.m. until noon; another beginning at 1 p.m. and ending at 4 p.m.; and a final session beginning at 5 p.m. and ending at 8 p.m.

PROMISES, PROMISES: Senate spending leaders vowed to restore chamber-wide debate on amendments to individual appropriations bills, Pro's Sarah Ferris and Kaitlyn Burton report. It's a risky move, ME readers may recall, considering how Democrats blocked a largely noncontroversial Energy and Water bill in 2016 because of a proposed amendment on Iran, and in 2015, House Republicans' Interior-Environment bill was tripped up by an unrelated rider on the Confederate flag. But Senate Appropriations Chairman Richard Shelby and his Democratic counterpart Patrick Leahy told committee members in a closed-door meeting Monday that leadership has agreed to allow amendments on the Senate floor for every individual spending bill. And the two have met with Majority Leader Mitch McConnell and Minority Leader Chuck Schumer in recent days about opening up the floor for debate on spending bills.

JUDGE: ENBRIDGE PIPELINE SHOULD STICK TO PLAN : An administrative law judge recommended on Monday that Minnesota regulators approve Enbridge Energy's proposal for replacing its Line 3 crude oil pipeline. But the court stipulated that the pipeline should follow the existing route, not the company's preferred route, which would carry Canadian tar sands crude from Alberta across areas in the Mississippi River, the Associated Press reports. Administrative Law Judge Ann O'Reilly's recommendation to the Public Utilities Commission sets up further disputes, "because the existing line crosses two Ojibwe reservations where tribal governments have made it clear that they won't consent and want the old line removed altogether." Read more.

A METHANE TO THE MADNESS: The comment period on the Bureau of Land Management's proposal to reverse the Methane Waste Prevention Rule ended Monday, drawing thousands of far-reaching comments. The left-leaning Center for Western Priorities analyzed a random sample of 2,000 comments, it said, finding 99.8 percent of them were opposed to the proposal. The Independent Petroleum Association of America and Western Energy Alliance meanwhile submitted joint comments applauding the move. "We were pleased to see workable changes are being considered to the rule that more accurately represent the scope of power and authority given to the BLM for regulating this type of activity," IPAA's Dan Naatz said in a statement. And, E2, an affiliate of the Natural Resources Defense Council, sent a letter to Interior Secretary Ryan Zinke on Monday, expressing its opposition to BLM's proposal. Close to 400 businesses signed onto that letter, which calls BLM's proposal "a net negative for the American public." Read it here.

MAIL CALL! IN HONOR OF NATIONAL PARKS WEEK: League of Conservation Voters organized 122 groups — including the American Civil Liberties Union and the Human Rights Campaign — in a letter to members of Congress opposing the administration's moves on public lands. National monuments "have helped make our public lands more inclusive," the letter states, before calling on lawmakers to "reject any legislation that would limit the president's authority under the Antiquities Act or codify any unlawful rollbacks of existing national monuments." Read it here.

FOR YOUR RADAR: The House will vote to overhaul the 1988 Stafford Act this week, Pro's Budget & Appropriations team reports. The three-decade-old bill is the main piece of legislation overseeing federal disaster-relief efforts, with proposed tweaks that include new incentives to build "smarter and stronger to better withstand disasters in the future," according to GOP Majority Leader Kevin McCarthy's office. That could equate to big changes on how states spend disaster relief money.

ICYMI: ZINKE DRAWS OLIVER'S IRE: The Interior secretary got the full treatment from HBO host John Oliver on "Last Week Tonight" on Sunday. Oliver hit Zinke for referring to himself as a geologist and said he

"has a real flair for creative license." Of course, Zinke is not the first to draw scrutiny from the HBO host. A judge recently dismissed a defamation lawsuit brought by coal magnate Bob Murray against Oliver, who referred to Murray as a "geriatric Dr. Evil." Watch the Zinke video [here](#).

STATE NEWS — CUOMO INTRODUCES PLASTIC BAG BILL: New York Gov. Andrew Cuomo introduced a [bill](#) Monday to ban the use of plastic bags throughout the state, Pro New York's Danielle Muoio reports. The legislation — a long-sought promise from Cuomo — would give the state Department of Environmental Conservation jurisdiction over all matters concerning plastic bags and recycling, but comes with caveats that left some environmental advocates saying it isn't far-reaching enough. Read [more](#).

QUICK HITS

— Trump administration official says it's a "top priority" to improve American weather forecasting model, [The Washington Post](#).

— Sources: Arrested Chevron workers could face treason charge in Venezuela, [Reuters](#).

— Trump likes coal, but that doesn't mean he's hostile to wind, [Associated Press](#).

— Halliburton writes off investment in crisis-hit Venezuela, [Financial Times](#).

— U.S. coal bailout review slows after Trump faces pushback, [Bloomberg](#).

HAPPENING TODAY

8:00 a.m. — American Fuel & Petrochemical Manufacturers holds [security conference](#), New Orleans

10:00 a.m. — Senate Energy and Natural Resources Committee [hearing](#) on the president's proposed budget request for FY 2019 for the Forest Service, 366 Dirksen

10:00 a.m. — Senate Foreign Relations Committee [hearing](#) on nominations, including Jackie Wolcott to be representative to the International Atomic Energy Agency, 419 Dirksen

10:00 a.m. — The Bipartisan Policy Center [webcast](#) on "Can America's Infrastructure Withstand the Next Natural Disasters? Lessons Learned from Previous Disasters."

3:00 p.m. — Woodrow Wilson Center [book launch discussion](#) on "Can We Price Carbon?" 1300 Pennsylvania Ave NW

5:00 p.m. — Johns Hopkins University's Energy, Resources and Environment [presentation](#) on "Cities as Innovation Centers: Investing in Resilient Infrastructure," 1619 Massachusetts Avenue NW

THAT'S ALL FOR ME!

To view online:

<https://www.politicopro.com/newsletters/morning-energy/2018/04/pruitts-watershed-moment-180878>

Stories from POLITICO Pro

White House reiterates support for Pruitt [Back](#)

By Anthony Adragna | 04/23/2018 02:30 PM EDT

The White House says it is still standing behind EPA's Scott Pruitt, voicing support for the embattled administrator two days after it was revealed that a Washington lobbyist whose wife rented a condo to him personally lobbied Pruitt despite weeks of denying they had held any meetings.

"We're reviewing some of those allegations, however Administrator Pruitt has done a good job of implementing the president's policies, particularly on deregulation," press secretary Sarah Huckabee Sanders said at the White House briefing.

She added the administration continues its look into Pruitt's conduct, including his lavish spending, first-class travel arrangements, pay raises for political appointees and use of security personnel. White House budget director Mick Mulvaney told a congressional subcommittee last week he'd investigate the EPA chief's spending \$43,000 on a privacy booth for his office.

Pruitt is scheduled to testify at two House hearings on Thursday.

What's next: Sanders said the White House is "monitoring" additional reports about Pruitt.

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White House stands behind Pruitt despite new lobbying disclosure [Back](#)

By Anthony Adragna | 04/23/2018 01:54 PM EDT

The White House said Monday it still stands behind EPA Administrator Scott Pruitt, praising him for enacting President Donald Trump's environmental and energy policies even as it looked into reports of ethical lapses.

It was the first statement from the White House since POLITICO first reported that despite his denials, Pruitt had met with a lobbyist whose wife rented the Environmental Protection Agency chief his \$50-per-night condo. A disclosure form filled late Friday said J. Steven Hart had lobbied the EPA, although both the agency and the lobbyist contend the meeting, held last July, did not constitute formal lobbying.

"We're reviewing some of those allegations. H however, Administrator Pruitt has done a good job of implementing the president's policies, particularly on deregulation," press secretary Sarah Huckabee Sanders said at the White House briefing.

The White House has been looking into Pruitt's lavish spending on first-class travel arrangements, pay raises for political appointees and use of security personnel. Budget director Mick Mulvaney told a congressional subcommittee last week he'd investigate the EPA chief's spending of \$43,000 on a privacy booth for his office.

That's on top of several ongoing probes by the EPA's own watchdog and three by congressional committees, including the House Committee on Oversight and Government Reform.

Pruitt is scheduled to testify at two House hearings on Thursday.

Sanders' comments come as five senior congressional Democrats asked House Oversight Chairman Trey Gowdy (R-S.C.) to seek new documents and hold hearings regarding "troubling" new questions about Pruitt's security expenditures.

According to nonpublic documents cited in the Democrats' letter, Pruitt's office was not cleared for classified communications as of March 2017. EPA previously said Pruitt's need to handle such information justified the installation of the privacy booth. The Government Accountability Office concluded last week the agency violated federal law by not informing Congress of the purchase.

The letter also alleges that a security sweep of Pruitt's office — the contract for which went to a business partner of Pruitt's security chief, Pasquale "Nino" Perrotta — went outside federal contracting norms without proper pre-approval.

"Given the latest developments and these new documents, we believe these and related matters are ripe for additional document requests to EPA and that Administrator Pruitt should testify about all of these matters immediately," the lawmakers wrote. Sens. Tom Carper of Delaware and Sheldon Whitehouse of Rhode Island and Reps. Elijah Cummings of Maryland and Gerry Connolly and Don Beyer, both of Virginia, signed the letter.

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Pruitt support in Senate erodes as GOP lawmakers seek hearings [Back](#)

By Anthony Adragna | 04/23/2018 08:32 PM EDT

Scott Pruitt's wall of GOP support developed some new cracks on Monday, with three key Senate defenders calling for hearings into the embattled EPA administrator's recent controversies.

The three, including staunch Pruitt ally Sen. Jim Inhofe (R-Okla), all said they supported hearings by the Senate Environment and Public Works Committee to look into the former Oklahoma attorney general's actions.

"I think that a couple of us on the committee think it's appropriate to have a hearing in so far as any accusation having to do with his office is concerned," Inhofe told POLITICO.

Inhofe said he was troubled by a report over the weekend in The New York Times detailing a sweetheart deal Pruitt received on an Oklahoma City home previously owned by a lobbyist while serving in a state government. The Oklahoma Republican declined to discuss which allegations he found disturbing, but said "there are some things in there that I'd like to check out and see."

Joining his call for a Senate hearing were two other senior GOP members of the EPW panel, Sens. Shelley Moore Capito (W.Va.) and John Boozman (Ark.).

"Most people have concerns about some of the allegations," Boozman said. "At some point he'll be before the committee and we'll dig deeper and see exactly what's going on."

EPW Chairman John Barrasso (R-Wyo.) told reporters he expected Pruitt would come to testify at some point, but he stopped short of providing a specific timeframe or stating his intention to call a hearing.

To date, four House Republicans have called on Pruitt to resign, along with scores of elected Democrats. And Sen. Susan Collins (R-Maine), has said Pruitt was "the wrong person" to lead the agency based on his policies.

Pruitt has drawn criticism about his ethics and lavish spending in recent months. Three Congressional committees, the White House and EPA's inspector general are all probing his behavior, ranging from his security expenses, high pay raises for aides, first-class travel and meetings with a coal group.

The House Oversight Committee has requested interviews with five senior agency aides and the White House said it would formally investigate Pruitt's expenses after the Government Accountability Office last week found EPA broke the law by failing to notify Congress about a \$43,000 privacy booth Pruitt had built in his office.

Pruitt will go to the Hill on Thursday to testify before a House Energy and Commerce subcommittee in the morning and at a House Appropriations subpanel in the afternoon. Those appearances will mark his first time before Congress since the recent allegations broke.

Both Inhofe and Capito said they thought those House hearings would prove pivotal for Pruitt's long-term future in the administration.

"It's really important," Capito said. "He's going to have to answer some tough questions. I'm sure they'll be put to him by both sides and we'll see what his response is."

Meanwhile, EPW ranking member Tom Carper (D-Del.) said he had a good conversation with House Oversight Chairman Trey Gowdy (R-S.C.) regarding Pruitt, but he said there was no formal bipartisan agreement to work together on an investigation.

"I just gave him plenty of encouragement that he's doing the right thing," he said.

But the mounting public criticism from Republicans suggests GOP lawmakers' patience in defending the EPA chief's behavior is waning.

"Some of the things that he's done and that he's been alleged to do are just indefensible," Sen. John Kennedy (R-La.) said. "You just can't put lipstick on those pigs. You can't."

To view online [click here](#).

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EPA emails show industry worries slowed new science policy [Back](#)

By Annie Snider | 04/19/2018 05:01 PM EDT

EPA's rollout of a controversial new transparency policy that would severely restrict the scientific research the agency can rely on when drafting new regulations has been slowed down by political officials' fears that it could have major unintended consequences for chemical makers, according to newly released EPA documents.

The issue of scientific transparency has been high on the agenda of House Science Chairman [Lamar Smith](#) (R-Texas), who has found strong support from EPA Administrator Scott Pruitt — much to the consternation of public health advocates and green groups, who view the effort as backdoor attack on the agency's ability to enact environmental regulations.

Since Pruitt announced plans for the new policy last month, researchers and public health proponents have raised alarms that it could restrict the agency's ability to consider a broad swath of data about the effects of pollution on human health. But documents released under the Freedom of Information Act show that top EPA officials are more worried the new restrictions would prevent the agency from considering industry studies that frequently support their efforts to justify less stringent regulations.

Emails between EPA officials obtained by the Union of Concerned Scientists show that Nancy Beck, the top political official in the agency's chemicals office who came to the agency after serving as a key expert for the chemical industry's lead lobbying group, voiced major concerns after she received a draft of the not-yet-released policy on Jan. 31.

The new scientific transparency directive is expected to require that the raw data for all studies EPA relies on be publicly available, and that the studies be peer-reviewed. But Beck said these requirements would exclude a great deal of industry data about pesticides and toxic chemicals that her office considers when determining whether a substance is safe or must be restricted.

It costs companies "millions of dollars to do these studies," Beck wrote in an email to Richard Yamada, the political official in EPA's office of research and development who is spearheading work on the new scientific policy and is also a former staffer for the House Science Committee chairman.

"These data will be extremely valuable, extremely high quality, and NOT published," Beck wrote. "The directive needs to be revised."

Moreover, much of this data, Beck noted, is considered proprietary by companies. It is dubbed confidential business information, and even though EPA can consider it as part of its regulatory review, the data cannot legally be made public.

Yamada replied to thank Beck for the heads up. "Yes, thanks this is helpful - didn't know about the intricacies of CBI," he wrote. "We will need to thread this one real tight!"

The term "confidential business information" primarily applies to industry information. That data is separate from the personal medical information that public health researchers worry could block consideration of their work.

Yogin Kothari, a lobbyist for the Union of Concerned Scientists, said the emails show the Trump administration's EPA has been "trying to stack the deck in favor of the industries they're supposed to be regulating."

"They want to potentially create exemptions for industry, but if you look at this entire set of documents ... you will see that there's not a single consideration for the impacts on public health data, on long-term health studies, on studies that EPA does after public health disasters like the BP oil spill," he said.

EPA spokeswoman Liz Bowman emphasized the policy is not yet finalized.

"These discussions are part of the deliberative process; the policy is still being developed. It's important to understand; however, that any standards for protecting [confidential business information] would be the same for all stakeholders," she said in a statement.

The emails indicate Pruitt wanted the new science policy rolled out at the end of February, and teased his plans in an interview with conservative outlet The Daily Caller in mid-March. But the agency has yet to finalize the policy.

The transparency directive has its origins in legislation introduced by Smith during the Obama administration, that had the backing of a number of industry groups, including the American Chemistry Council. The House Science Committee chairman frequently charged that the Obama EPA used "secret science" to justify "costly new regulations."

Although versions of the measure were approved by the House multiple times, the Senate never took it up. CBO estimated that one version of Smith's legislation would cost EPA \$250 million a year, at least in the initial years, and a leaked staff response to questions from the budget office said a later version would be even more costly, would endanger confidential medical and business information, and "would prevent EPA from using the best available science."

But Smith found an ally in Pruitt. The emails indicate that Smith met with Pruitt in early January and show that Pruitt's staff quickly began working on a directive to "internally implement" the legislation.

Industry's backing for the new scientific approach began to waiver under the Trump administration, though. When a top American Chemistry Council scientist testified before Smith's committee in February 2017, she emphasized the need to protect industry information if the transparency initiative moved forward.

"One of the things that we do need to take into consideration as making that data publicly available is that there are adequate protections for confidential business information to ensure that we keep innovation and competitiveness available for the marketplace," Kimberly White told the committee.

Industry has historically claimed that a wide range of information about chemicals, ranging from the processes by which they are produced, to the locations of manufacturing plants, to their very identities, must be kept confidential in order to keep competitors from learning trade secrets. Environmental and public health advocates argue that industry claims this exemption in many cases where it's not necessary and that it often keeps important health and safety information from public view.

The issue was a key point of debate when Congress considered a major overhaul of the nation's primary chemical safety law passed 2016 and has reemerged as Pruitt's EPA sets about implementing the law.

Asked for comment on EPA's new effort to implement the scientific transparency approach internally, American Chemistry Council spokesman Scott Openshaw said the group looks forward to reviewing the directive once it's finalized.

"It is critical that any final directive properly protect confidential business information and competitive intelligence," he said in a statement.

The internal emails show that EPA political staff were particularly attuned to this concern. In a Feb. 23 email to colleagues, Beck forwarded language from a 2005 White House document that laid out narrow exemptions from its requirement that all "important scientific information" disseminated by the federal government go through peer review.

"[Y]ou may need to tweak but hopefully there is something helpful here that can be borrowed/adopted," she wrote.

Richard Denison, lead senior scientist for the Environmental Defense Fund, said that EPA's access to industry data is indeed important to its ability to review the safety of new chemicals and pesticides, but said the internal EPA communications show that Pruitt's EPA wants to "have their cake and eat it too" with the new directive.

"They're trying to force peer review studies done by academic scientists to disclose every last detail, while at the same time allowing industry studies to be kept private or aspects of those to still be kept private," he said.

He pointed out that the concerns Beck raised about the burden the new policy would place on industry are the very same ones that the CBO report said the policy would place on EPA.

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Poll: Coal baron Blankenship fading in W.Va. Senate primary [Back](#)

By Alex Isenstadt | 04/23/2018 07:26 PM EDT

WHEELING, W.Va. — A new poll out Monday evening shows recently imprisoned coal baron and Senate hopeful Don Blankenship fading in the Republican primary, amid an avalanche of establishment attacks aimed at stopping him from winning the nomination.

With the primary two weeks away, the survey shows Blankenship, who spent a year in jail following the deadly 2010 explosion at his Upper Big Branch Mine, falling far behind his more mainstream rivals, GOP Rep. Evan Jenkins and state Attorney General Patrick Morrisey. The poll found Morrisey leading with 24 percent, followed by Jenkins with 20 percent, and Blankenship trailing with 12 percent. Thirty-nine percent were undecided.

The survey, which was conducted April 17-19 and has a margin of error of 4.9 percentage points, came as Blankenship squared off against his rivals in a 90-minute debate held at Wheeling Jesuit University. The candidates spent much of the evening aligning themselves with President Donald Trump, and beating up on Democratic Sen. Joe Manchin.

They will also meet on Tuesday, and again next week for a nationally televised debate hosted by Fox News.

The survey of 411 primary voters was commissioned by GOPAC, an organization that promotes state Republican legislators, and was conducted by National Research Inc., a polling firm that worked on Trump's 2016 campaign. Neither has taken sides in the primary.

National Republicans have scrambled to intervene in the contest, fearing that a Blankenship primary win would destroy their prospects of unseating Manchin. The 68-year-old former coal executive has spent nearly \$2 million of his own to fund a slash-and-burn style campaign savaging Jenkins and Morrisey as establishment pawns.

He has also sought to clear his name. Much of Blankenship's campaign has been geared toward portraying himself as the casualty of an Obama Justice Department bent on locking him up.

Fearful that Blankenship was gaining traction, Mountain Families PAC, a super PAC overseen by strategists close to Senate Majority Leader Mitch McConnell's political operation, swung back — airing around \$700,000 worth of TV ads in recent days accusing Blankenship of contaminating drinking water.

The effort to defeat Blankenship has gone further. Earlier this month, Trump flew to West Virginia to hold an event aimed at selling his tax reform legislation. The president was seated next to Jenkins and Morrisey, a clear attempt to promote their candidacies over Blankenship, who was not in attendance.

For national Republicans, the move was not without risk. Last year, a McConnell-aligned super PAC spent millions to stop Alabama Senate candidate Roy Moore from winning the nomination, only to see it backfire. Moore used it to cast himself as the victim of the establishment, and went on to win the primary before losing the general election in a stunning upset.

Blankenship is taking a similar approach. With the contest hurtling into the final stretch, he has begun airing commercials calling McConnell a "swamp creature."

And during a news conference on Monday morning, Blankenship pledged not to support McConnell as Senate GOP leader if he's elected.

"He needs to understand that if I'm there I will not vote for him for majority leader, and so the rest of the senators should understand that they should not put him up if they need my vote," he told reporters.

The candidates largely avoided attacking each other at Monday's debate, perhaps because three lesser-known contenders were also included onstage, a setup that limited the amount of speaking time.

Blankenship used the debate to further his argument against the establishment. He called the 2010 mine explosion "heart-wrenching," and called it "one of the worst days of my life."

But he blamed the disaster on the government, saying it had taken steps to limit the amount of airflow available to the miners.

During his closing remarks, Blankenship referred to Washington as the "district of corruption," and argued that politicians there often tried to make themselves look like they were fighting over ideals when they were merely posturing.

"When I go to D.C.," he said, "it won't be a fake fight, it will be a real fight."

With candidates and outside groups crowding the TV airwaves, much of the firepower is being directed at Jenkins, a second-term congressman who in 2014 defeated longtime Democratic Rep. Nick Rahall. All told, around \$1.2 million is expected to be spent against Jenkins, according to a media buyer.

Among those spending heavily against Jenkins is Duty and Country, an outside Democratic group with offices in Washington. To date the group has spent around \$380,000 on TV, the vast majority of it against Jenkins.

At Monday's debate, Jenkins argued that Democrats were trying to "meddle" in the primary. He said their attacks on him was proof that the opposing party viewed him as the biggest threat to Manchin.

The Democratic effort, he added, was unprecedented in West Virginia politics.

"They're scared to death of Evan Jenkins on the ballot in November because they know Evan Jenkins can beat Joe Manchin," the congressman said.

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Court chooses salmon over hydropower in Columbia River fight [Back](#)

The 9th Circuit Court of Appeals has sided with the state of Oregon, the Nez Perce tribe and nearly a dozen conservation groups, ruling that hotly contested dam operations on the Columbia and Snake Rivers must forgo hydropower production during key times of the year in order to protect endangered salmon.

The three-judge panel upheld a lower court's decision requiring that water be spilled over the top of dams along the Columbia River System, including the powerhouse Grand Coulee dam, the largest power station in the U.S., during periods when young salmon and steelhead migrate to the ocean. The hydropower turbines pose a threat to the fish.

The Justice Department, representing the National Marine Fisheries Service, Army Corps of Engineers and Bureau of Reclamation, had argued that requiring such operations would cause electricity rates to spike and could threaten the reliability of the electrical grid.

The ruling stems from a years-long battle over the nearly 100-year-old hydropower system along the Columbia and Snake rivers. Conservation groups and tribes with treaty fishing rights want the system altered and operated to benefit wildlife, including calling for the removal of four dams along the Snake River. As part of that litigation, the federal agencies are also working on an environmental impact statement for the system that has been the subject of congressional fights, with Rep. Cathy McMorris Rodgers (R-Wash.) filing a measure (H.R. 3144) to void that process, and Democratic lawmakers coming out in opposition.

WHAT'S NEXT: Unless they successfully appeal the decision, the federal agencies will need to release water over the top of dams beginning this spring. The ongoing environmental impact statement process will continue.

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Senate spending leaders vow to open up floor debate for amendments [Back](#)

By Sarah Ferris and Kaitlyn Burton | 04/23/2018 06:20 PM EDT

Senate Appropriations Chairman Richard Shelby is vowing to restore chamber-wide debate on amendments to individual appropriations bills to help end Congress' stop-and-go funding cycle.

Shelby (R-Ala.), along with his Democratic counterpart Sen. Patrick Leahy, of Vermont, told committee members in a closed-door meeting today that leadership has agreed to allow amendments on the Senate floor for every individual spending bill.

"There is perhaps unanimity, but certainly strong consensus that if the appropriations process is going to work we're going to be casting votes on amendments and we stay here and we vote," Sen. Jerry Moran (R-Kan.) told reporters exiting the meeting, which was the committee's first bipartisan sit-down of fiscal 2019

"I think it's the single best way to restore the Senate the way the Senate's supposed to work. The full Senate gets a chance to offer a variety of amendments, and if you don't like it, you can vote against it," Sen. Lamar Alexander (R-Tenn.) added.

Shelby and Leahy have met with Majority Leader Mitch McConnell and Minority Leader Chuck Schumer in recent days about opening up the floor for debate on spending bills.

When asked if both leaders were on board, Shelby added: "They tell us they are, and I like to believe them." Leahy added: "We both talked with both of them. I think they both understand. The Senate can't go on like this."

It's a risky gambit, particularly in an election year. Contentious amendments have held up bills in both chambers in recent years.


Back in 2016, Senate Democrats blocked a largely noncontroversial Energy and Water bill because of a proposed amendment on Iran. In 2015, the House GOP's Interior-Environment bill was tripped up by an unrelated rider on the Confederate flag.

The number of amendments on Senate spending bills has dropped dramatically in the last two decades, as the chambers considers fewer and fewer individual bills.

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AN E&E NEWS PUBLICATION

GREENWIRE — Thu., May 31, 2018



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Pebble mine foes find an unlikely friend at EPA

The fate of one of Alaska's largest and most contentious wetland projects may rest with a former congressional staffer who once said some nasty things about wetlands.

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Subject: Morning Energy, presented by America's Pledge: First SAB meeting to eye EPA reg rollbacks — Cramer hits Trump's legislative director — DOE: U.S. generally 'well prepared' for grid hacks

By Kelsey Tamborrino | 05/31/2018 05:43 AM EDT

With help from Eric Wolff

PRUITT'S SAB STORY: EPA's independent Science Advisory Board will meet today and Friday for the first time since Administrator Scott Pruitt barred scientists on the committee from receiving EPA grants and boosted its ranks with industry representatives — and the group's agenda is packed. The SAB will look at Pruitt's "secret science" proposal to bar EPA from using studies that don't make public all their data, as well as the Clean Power Plan repeal, Pruitt's decision to relax 2022-25 auto emissions standards, changes to the 2016 methane rule for new oil and gas wells and effort to repeal a rule regulating emissions from "glider" trucks — and that's not all.

A lot to dive into: The heavy slate of issues is unusual for the advisory board, Pro's Alex Guillén reports. Several current and former SAB members say it's unprecedented for the board to consider reviewing so many regulatory actions. But like green groups and critics of Pruitt, the SAB scientists say EPA has declined to share information about its regulatory rollbacks. "The agency has not been forthcoming about how they're developing the relevant science work products," said Chris Frey, a professor of environmental engineering at North Carolina State University and a SAB member since 2012.

EPA keeps quiet: SAB has been conducting twice-yearly reviews of EPA's planned regulatory actions since 2012, members said. It's an effort designed to enable the advisory board to help guide EPA before its rules are finalized. But this time around, the SAB's working groups say EPA wasn't being forthcoming with information. "Basically they just didn't provide us with any answers," said Frey. "That kind of put us in a position where all we can really do is say EPA has not identified the science or any plan to review it, and clearly there are science issues that are in the proposed rule."

What to expect: It's not immediately clear whether the full SAB will vote today to advance the reviews. But Frey noted that some of the members appointed by Pruitt had been on the working groups, giving him hope that the full board will back the recommendations to look deeper into the regulatory rollbacks. Should SAB adopt them, Alex reports, it likely would mean setting up special subcommittees that include current members plus outside experts to question EPA further. Read more [here](#).

IT'S THURSDAY! I'm your host Kelsey Tamborrino, and Entergy's Rob Hall correctly identified former President William Howard Taft as the first to see a Major League Baseball game in his hometown of Cincinnati. For today: Name all the presidents who were married while in office. Send your tips, energy gossip and comments to ktamborrino@politico.com, or follow us on Twitter [@kelseyam](#), [@Morning_Energy](#) and [@POLITICPro](#).

Register for the Pro Summit: Join Pro subscribers, expert reporters and key decision-makers from the executive branch, federal agencies and Congress for a full day of incisive policy conversations on July 17. [Learn more](#).

THE LONG AND SHORT OF IT: In an unusual attack on the White House's legislative affairs director, North Dakota Rep. Kevin Cramer blamed Marc Short explicitly for the party's legislative failures in the Senate, including ending the Obama rule on flaring and venting from oil and gas wells. After POLITICO published a story outlining the awkward dynamic between Heidi Heitkamp, Cramer and the White House, Cramer told North Dakota radio host Rob Port that he had done some digging and believes that there "are some people in the White House that think, you know, the president's too friendly too her," Burgess Everett recaps.

Moreover, Cramer laid specific blame at Short's feet for failed GOP efforts in the Senate to roll back an Obama-era regulation limiting flaring and venting, as well as repealing Obamacare. Heitkamp voted against gutting that flaring rule, something Cramer has criticized her for, in particular. "If Marc Short was very good at his job, you know, we'd have a repeal and replacement of Obamacare, we'd have a replacement of the venting and flaring rule," Cramer said. Read that story here.

PRUITT'S MEDIA BLITZ: The EPA administrator visited Rosslyn, Va., on Wednesday to sit for interviews with two conservative media outlets. One was conducted by Boris Epshteyn for his Sinclair Broadcasting segment, "Bottom Line with Boris." (Watch that here.) The other was with the Washington Free Beacon, where Pruitt repeated familiar talking points in defense of the ongoing scandals and investigations that have surrounded him over the past few months. Pruitt said he still has President Donald Trump's backing, noting that Trump has "spoken very strongly and consistently" about their working relationship. "It's been intense the last couple of months, but he's been very encouraging, very empathetic and very supportive rather consistently," Pruitt said. The administrator also discusses the Paris climate agreement, "The Bachelorette" and, of course, baseball in the 13-minute segment, which you can listen to here.

GRID AND BEAR IT: In response to an executive order signed last year, the Energy Department released a new report Wednesday that said senior government officials and electric sector executives don't know enough about how energy companies could recover from a disruptive cyberattack, and those companies aren't thinking about cyber threats enough when building out their supply chains. While the report mainly hammered home some long-known problems with the grid, DOE highlighted how grid resilience efforts suffer because of "gaps in incorporating cybersecurity concerns, including planning for long-term disruption events, into state emergency response and energy assurance planning." Generally, however, the report said the U.S. is "well prepared to manage most electricity disruptions." Read more from Pro's Eric Geller here.

WHERE'S PERRY? Energy Secretary Rick Perry delivers remarks this morning on critical infrastructure at DOE's Texas-Israel Cyber Security Conference in Dallas. The department also announced that Perry would address the DOE's annual Cyber Conference in Austin on Monday. During both events Perry is expected to discuss DOE's new Cybersecurity, Energy Security and Emergency Response office, as well as efforts at DOE to address cyber vulnerabilities in the energy sector.

ABOUT THAT GLIDER RULE: The New York Times' Eric Lipton tweeted out new documents late Wednesday that give new details into the controversial Tennessee Technological University study on truck emissions that Pruitt used to consider rewriting part of the Phase 2 truck rules. "The letters obtained via open records request show that the principal investigator at Tenn Tech who conducted study funded by Fitzgerald, the company that makes the so-called glider trucks, disavowed the work, saying that it had been distorted in a fraudulent way," Lipton tweeted.

BY THE NUMBERS: The federal government spent \$13.2 billion across 19 agencies during fiscal 2017 on programs related to climate change, a report from the Government Accountability Office says. That's an overall \$1.5 billion increase across the federal government over fiscal 2016, Pro's Anthony Adragna reports. And it's an increase of \$4.4 billion since fiscal 2010, according to the report, which was request by House Science Chairman Lamar Smith. Read more.

CALIFORNIA GETS CHARGED UP FOR EVs: The California Public Utilities Commission is expected to approve a \$589 million program for its four investor-owned utilities to build out their electric vehicle charging infrastructure. The plan is part of the implementation of California's aggressive greenhouse gas law passed in 2015. Most of the money — which will ultimately come from ratepayers — will go toward setting up electric vehicle charging stations and related infrastructure. California leads the nation by far in electric vehicle sales and adoption.

NO MAJOR FLAWS IN FERC PROCESS: Auditors in the DOE inspector general's office said they found no major flaws in FERC's process for reviewing interstate natural gas pipelines, according to a new report. But they also flagged concerns about FERC's transparency and how it handles public comments. The auditors said that "nothing came to our attention to indicate that FERC had not performed its due diligence" in how it balanced public benefits of a proposed project with its adverse impacts. But the report also said regulators' "had not fully ensured" that the certification process was transparent to those who want to participate, and it hit the agency's eLibrary documentation system as difficult to use, Pro's Darius Dixon reports.

**** A message from America's Pledge:** America's Pledge is flipping the script on climate action. One year after the federal government announced it would pull out of the Paris Agreement, 2,700+ U.S. cities, states, and businesses are saying, "We Are Still In." See how far we've come: <https://politi.co/2koAHZb> **

FERC DENIES PENNEAST REHEARING: FERC on Wednesday denied a rehearing sought by the Delaware Riverkeeper Network and Sourland Conservancy on the controversial PennEast pipeline. Commissioner Richard Glick issued a separate statement on the agency's use of tolling orders. "This proceeding, in particular, illustrates the need for prompt action on rehearing requests," Glick wrote. " ... I also have serious concerns regarding the Commission's practice of issuing conditional certificates — which, notwithstanding their name, vest the pipeline developer with full eminent domain authority — in cases where the record does not contain adequate evidence to conclude definitively that the pipeline is in the public interest."

GREENS ENDORSE DE LEON OVER FEINSTEIN: 350.org co-founder Bill McKibben and 350 Action said Wednesday it is backing Kevin de León in his bid to challenge California Sen. Dianne Feinstein. McKibben said de León, a current California state senator, "has been a strong champion of clean energy — and an effective one, using his power in Sacramento to make change happen against the strong opposition of the fossil fuel industry." Read De León's candidate questionnaire answers here.

SELC SUES OMB OVER REORG: The Southern Environmental Law Center sued the Office of Management and Budget Wednesday for its failure to release information under FOIA on the reorganization at federal agencies that manage public lands. SELC says OMB has not provided requested information under a November 2017 FOIA request, nor has it made a determination or otherwise responded to the request, and has subsequently stopped communicating with SELC. The center is seeking "all records in the custody or control of OMB submitted in connection with Executive Order 13781 by any agency responsible for the management of federal public lands," including the Forest Service, National Park Service, BLM and the Fish and Wildlife Service. The EO in question directed each agency head to submit a report to OMB outlining proposed changes to their agency. Read the lawsuit.

CRES BACKS McMASTER IN SOUTH CAROLINA: Citizens for Responsible Energy Solutions will announce a \$175,000 television and digital ad buy today highlighting South Carolina Gov. Henry McMaster's record on clean energy. "First as lieutenant governor and now as governor, his commitment to the development of advanced energy technologies like natural gas and solar power is helping the state's economy and job market thrive," CRES Chairman and Executive Director James Dozier said.

McCARTHY NAMED DIRECTOR OF HARVARD CENTER: Harvard T.H. Chan School of Public Health announced former EPA Administrator Gina McCarthy will lead its newly launched Center for Climate, Health,

and the Global Environment. Under McCarthy, C-CHANGE announced a collaboration between Harvard University and Google to reduce the use of harmful chemicals in construction and renovation projects. "C-CHANGE will ensure that cutting-edge science produced by Harvard Chan School is actionable — that the public understands it, and that it gets into the hands of decision-makers so that science drives decisions," McCarthy said in a statement.

MOVER, SHAKER: Mitch Schwartz started this week as communications director for Jason Crow's campaign in Colorado's 6th Congressional District. Schwartz previously worked for SKDKnickerbocker.

— **PUSH Buffalo, a sustainable housing group**, announced Rahwa Ghirmatzion as its new executive director as of August 2018. Ghirmatzion has served as the organization's deputy director since 2017.

QUICK HITS

— Exxon aims to boost production even with any climate rules, [Associated Press](#).

— Buffett utility to be first in U.S. to reach 100 percent renewables, [Reuters](#).

— Chevron shareholders reject climate change resolutions, [Washington Examiner](#).

— It's not every day you see a tropical depression over Indiana — but here it is, [The Washington Post](#).

— U.S. solar manufacturing poised to boom in wake of Trump tariffs, [Bloomberg](#).

— Oil prices steady after big drop on OPEC talks, [The Wall Street Journal](#).

HAPPENING TODAY

10:00 a.m. — The U.S. Energy Association [forum](#) on coal mine drainage as a domestic source of rare earth elements, 1300 Pennsylvania Ave NW

10:00 a.m. — The World Resources Institute [webinar](#) on "Guidance for Apparel and Footwear Sector Companies to Set Science-Based Targets," focusing on greenhouse gas emissions

12:00 p.m. — Women's Council on Energy and the Environment [event](#) on "Solar Jobs and Community Impact," 1350 I Street NW

12:00 p.m. — The Property Casualty Insurers Association of America briefing on "Hurricane Season: Preparedness, Response, and Recovery," 2044 Rayburn

5:00 p.m. — House Science Committee [field hearing](#) on "Earthquake Mitigation: Reauthorizing the National Earthquake Hazards Reduction Program," Huntington Beach, Calif.

THAT'S ALL FOR ME!

**** A message from America's Pledge:** One year after President Trump announced plans to withdraw from the Paris Agreement, America's Pledge is showing the world that U.S. cities, states, and businesses can lead us towards our goals - with or without Washington. <https://politi.co/2koAHZb> **

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<https://subscriber.politicopro.com/newsletters/morning-energy/2018/05/first-sab-meeting-set-to-begin-237617>

Stories from POLITICO Pro

EPA boosts industry membership on key advisory boards [Back](#)

By Alex Guillén | 11/03/2017 01:41 PM EDT

EPA officially announced the new line ups for several key advisory boards today, bolstering their membership with employees of energy companies and state agencies just days after Administrator Scott Pruitt ordered scientists who have received agency grant money to give up their EPA funding or their seat.

As POLITICO [reported](#) on Tuesday, the [Science Advisory Board](#)'s new additions include representatives from Phillips 66, Total, Southern Co., the American Chemistry Council and NERA Economic Consulting, a firm frequently hired by industry interests. Their additions boost the industry membership of SAB, although the panel had previously included members from Dow Chemical and other industries or companies.

The [Clean Air Scientific Advisory Committee](#), which provides health advice for air quality standards, also has three new members. Aside from new Chairman Tony Cox, an independent consultant, the new members are Larry Wolk of the Colorado Department of Public Health and Environment and James Boylan of the Georgia Department of Natural Resources.

EPA also announced a slate of new additions to the [Board of Scientific Counselors](#), which advises on research issues. The former chairwoman, Deborah Swackhamer of the University of Minnesota, is now listed as member, while Paul Gilman of waste-to-energy company Covanta has taken over as chair.

Other new BOSC members include representatives from the North Dakota Petroleum Council, Eli Lilly and Co., the Defense Threat Reduction Agency, the Arkansas Department of Environmental Quality, the California Energy Commission and the consulting firm Ramboll Environ.

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EPA's science advisers turn eyes on Pruitt's rollbacks [Back](#)

By Alex Guillén | 05/31/2018 05:00 AM EDT

EPA's influential Science Advisory Board will meet on Thursday for its first time since Administrator Scott Pruitt filled it with a slate of industry representatives — and it's got a long list of controversial rule rollbacks to review.

The SAB plans to pore over the science EPA is using to justify rollbacks on emissions regulators for cars, trucks, power plants and oil and gas wells — as well as Pruitt's proposed "transparency" rule for scientific studies.

Several current and former SAB members told POLITICO that it was unprecedented for the board to consider diving into so many regulatory actions, but the heightened scrutiny from the outside experts came about because the agency stonewalled the scientists' questions about Pruitt's deregulatory decisions. That echoes the complaints from environmentalists and public advocacy groups who say EPA has declined to share information about how it was justifying easing the regulations put in place during the Obama administration.

"The agency has not been forthcoming about how they're developing the relevant science work products," said Chris Frey, a professor of environmental engineering at North Carolina State University and a SAB member since 2012.

In a move critics derided as an attempt to stack the 44-member board with industry-friendly voices, Pruitt last year broke with the tradition of reappointing first-term SAB members for second three-year stints by removing several advisers who received grants from the agency. In their places, he installed scientists from the fossil fuel and chemicals sectors and several Republican environmental officials. Among the new members are representatives from Phillips 66, Total, Southern Co., the American Chemistry Council and NERA Economic Consulting.

In addition to studying Pruitt's proposal to bar EPA from using studies that don't make public all their data, the SAB's working groups suggested the full group take a closer look at the repeal of the Clean Power Plan and EPA's reconsideration of its related rule limiting carbon emissions from future power plants. Also up for review are Pruitt's decision to relax 2022-2025 auto emissions standards, changes to the 2016 methane rule for new oil and gas wells, and EPA's effort to repeal a rule regulating emissions from "glider" trucks.

The working groups also deferred decisions on two other rulemakings: the Waters of the U.S. rewrite and rules on a special class of "persistent, bioaccumulative and toxic chemicals" under the Toxic Substances Control Act. SAB can decide whether to conduct a deeper review into those once EPA has reviewable regulatory language available, the groups said.

Frey, who has been a SAB member for six years, said having multiple rules up for review was very unusual for the board.

"It's very rare that we've recommended to the full Science Advisory Board that there should be an SAB action," he said.

SAB has been conducting twice-yearly reviews of EPA's planned regulatory actions since 2012, members said, an effort designed to enable the advisory board to help guide EPA before its rules are finalized.

In the early days, getting information from EPA was "like pulling teeth," said Kimberly Jones, a SAB member from 2011 through 2017 and the chair of environmental engineering at Howard University. But that quickly improved once EPA knew the scope of SAB inquiries, she added.

The SAB's working groups review how EPA uses scientific studies in its rulemakings, including whether and how a study was peer-reviewed and if EPA has properly accounted for uncertainties in the scientific findings. The groups typically find that further reviews aren't needed.

But this time around, the working groups said EPA didn't respond to their questions about many of Pruitt's highest-profile rollbacks.

"Basically, they just didn't provide us with any answers," Frey said. "That kind of put us in a position where all we can really do is say EPA has not identified the science or any plan to review it, and clearly there are science issues that are in the proposed rule."

Frey pointed to lengthy memos from the working groups that included multiple pages of questions that had been posed to EPA for each rulemaking. EPA responded with short statements promising to keep the issues in mind as it develops the final rules.

"The response from the agency was basically a non-response," Frey said.

An agency spokesman said in a statement that SAB "plays an important role" advising EPA.

"We value the Board's expertise, and we welcome feedback from the chartered panel on areas in which they are interested in getting additional scientific information that is relevant to the rulemaking process," the spokesman said.

It was not clear whether the full SAB will vote on Thursday to advance the reviews.

Frey noted that some of the members appointed by Pruitt had been on the working groups, giving him hope that the full board will back the recommendations to look deeper into the regulatory rollbacks.

Should SAB adopt them, it likely would mean setting up special subcommittees that include current members plus outside experts to question EPA further.

The board can advise EPA only on scientific matters, not policy or legal issues. In several cases, like with the repeals of the Clean Power Plan and the glider rule, EPA says it has a legal argument about statutory authority that does not rely on scientific issues.

But even then, Frey said, EPA must keep the science in mind.

"It's in the best interest of the agency to make sure that it's using appropriately developed and reviewed science in its rules," Frey said. "And the flip side of that is if the agency's not doing that, it could open itself up to legal challenges for not following appropriate procedures to develop the science."

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GOP sweats Trump's Heitkamp flirtation [Back](#)

By Alex Isenstadt and Burgess Everett | 05/30/2018 05:08 AM EDT

When a small group of alarmed White House aides caught wind that Sen. Heidi Heitkamp — one of the most endangered Democrats up for reelection in 2018 — would be attending President Donald Trump's bill signing last week, they raced to stop it.

Word eventually reached Senate Majority Leader Mitch McConnell, who has made unseating Heitkamp a top priority. He opted not to intervene, and the invitation stood: As the president signed a banking deregulation bill into law before a national audience, Heitkamp was right next to him, the only Democrat in the room.

As the election year kicks into high gear, Republicans have grown increasingly frustrated with Trump's ongoing flirtation with the freshman senator. At a time when many in the GOP fear that the president's unpredictable style will undercut their best-laid midterm plans, the relationship has given Heitkamp — who is seeking reelection in a state where Trump won nearly two-thirds of the vote — fodder to portray herself as a presidential ally.

Her office keeps a running list of the dozen-plus meetings Heitkamp has had with Trump and his top advisers since the 2016 election. And the senator is fond of noting that she forged close ties with Trump's former top economist, Gary Cohn. The president met with Heitkamp in Trump Tower after the 2016 election to discuss a

possible Cabinet position, asked her to join him on Air Force One, and invited her onstage to join him and her Republican opponent, Rep. Kevin Cramer, during an appearance in North Dakota.

"Everyone is saying, 'What's she doing up here?'" the president said at the September event to sell his tax reform plan, which Heitkamp eventually opposed. "But I'll tell you what. Good woman, and I think we'll have your support, I hope we'll have your support. And thank you very much, senator, thank you for coming up."

After last week's bill signing, Heitkamp's allies raced to capitalize. The North Dakota Democratic Party sent out a tweet with an image of Cramer looking on uncomfortably as the president stood next to Heitkamp.

"At a bill signing today, @HeidiHeitkamp got a shout out and all @kevincramer got was a photo op next to a chair," the state party boasted.

"We will see footage of this on every platform," said Doug Heye, a former top Republican National Committee official. "It's a huge gift for her campaign."

Trump aggressively recruited Cramer to give up his House seat to take on Heitkamp, and his actions since have left some of Cramer's closest allies feeling snubbed. They note that while Trump has savaged Democratic incumbents Joe Donnelly of Indiana and Jon Tester of Montana and visited a growing list of states to pump up Republican Senate hopefuls — most recently Tennessee, where he appeared Tuesday on behalf of Rep. Marsha Blackburn — he has yet to make a campaign appearance with Cramer. Nor has the attack dog-in-chief attacked Heitkamp.

After Cramer learned last year that Heitkamp would be accompanying the president on Air Force One to North Dakota, he complained bitterly to the White House, according to two people with direct knowledge of the discussions. Heitkamp, Cramer predicted at the time, would try to use it to her political advantage. (A Cramer adviser, Pat Finken, denied that the congressman had complained about the senator riding on Air Force One.)

The administration has taken steps to assure Cramer that he has the president's full support. The congressman has been regularly in touch with White House political director Bill Stepien, and the two met earlier this month. Trump has agreed to hold a rally for Cramer later this year.

In an interview, Cramer shrugged off Heitkamp's attendance at the bill signing and said there would soon be "clarity" on who Trump supports in the race.

Yet the congressman declined to predict whether the president would go after Heitkamp aggressively, as Trump has done with other Democratic incumbents. Cramer seemed aware of the warmth between the president and the senator. Trump has asked Cramer whether he likes Heitkamp, and when the congressman responds yes, the president seems to be "relieved," Cramer said.

"Politically, North Dakota's a pretty nice state. So I don't know that turning it on her is necessarily politically helpful to me," Cramer said. "They may just be concerned that she's a woman and maybe that has an impact. I just don't know."

Heitkamp said she's proud of her ability to work with the president.

"I have a friendly relationship. I have a very important working relationship," she said in an interview, "not just with him but other members of the administration."

Trump's reluctance to go after Heitkamp stems in part from the simple fact that he needs her vote. With Republicans clinging to a narrow Senate majority, the White House has pushed for her support on several

contentious votes, including the recent confirmations of CIA Director Gina Haspel and Secretary of State Mike Pompeo. She also backed Trump's nominations of Supreme Court Justice Neil Gorsuch and Environmental Protection Agency Administrator Scott Pruitt.

Last week's signing ceremony was organized by White House Office of Legislative Affairs Director Marc Short. He said he extended an invitation to Heitkamp because she played a central role in passing the banking deregulation law.

"She was an original cosponsor of the bill," Short said. "But she's also someone who opposed tax relief, who opposed repeal of Obamacare, and someone who will always support Chuck Schumer. So you can be sure the president will be actively campaigning in North Dakota this cycle."

Cramer's February entry into the race followed an intense pursuit from Trump and top White House officials. After Cramer initially said in January that he wouldn't run for Senate, he received overtures from Trump, White House counselor Kellyanne Conway, and energy executive and Trump donor Harold Hamm within a three-day period. Trump also met with Cramer's wife, Kris.

Cramer said Trump told him at the time that he'll "be out there campaigning more than you are." Trump's entreaties, Republicans contend, helped to push Cramer into the contest. Cramer won his statewide, at-large House seat in 2012, the same year Heitkamp entered the Senate.

"The president leaned on him very hard. The president wanted the best candidate, and everyone in the state thought Kevin was the best candidate to beat Heidi," said Gary Emineth, a former North Dakota GOP chairman who is close with the congressman. "You know how the president is. He just doesn't quit."

Heitkamp predicted that Trump would attack her eventually. While she has maintained a positive working relationship with the president, she said it pales in comparison to Cramer's staunch loyalty.

"I don't think anyone can match his Trump credentials," Heitkamp said. "He is somebody who will always do what the president asks him to do, regardless of whether it's good for North Dakota."

As of late, the senator has been airing commercials that highlight her balancing act. "When I agree with the president I vote with him — and that's over half my votes," she says in a spot that began airing this month. "And if his policies hurt North Dakota, he knows I'll speak up."

Cramer accused Heitkamp of acting like a "Republican wannabe" with her occasional support for key Trump nominees.

"Her trying to cozy up to Donald Trump has resulted in good votes," Cramer said. "But every time she tries to become more like me, it's more flattering to me than it is to her."

Democrats, however, couldn't be happier to portray Cramer as a jilted lover.

Last week, the North Dakota Democratic Party released a video featuring a montage of clips of the president praising Heitkamp and shaking her hand as Cramer looks on — set to the sad sounds of R.E.M.'s "Everybody Hurts."

To view online [click here](#).

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GOP Senate candidate lashes out at Trump's legislative director [Back](#)

By Burgess Everett | 05/30/2018 06:27 PM EDT

Rep. Kevin Cramer, one of the GOP's top Senate recruits, launched an unusual attack on the White House's legislative director Wednesday, blaming him explicitly for the party's legislative failures in the Senate.

The comments from Cramer (R-N.D.) come amid rising GOP angst over President Donald Trump's close relationship with his opponent in the North Dakota Senate race, Democratic Sen. Heidi Heitkamp.

Heitkamp was the only Democrat invited to the White House last week for a bank deregulation bill signing, alarming some White House aides and Republicans. After POLITICO published a [story](#) on Wednesday outlining the awkward dynamic between Heitkamp, Cramer and the White House, Cramer [told](#) North Dakota radio host Rob Port that he had done some digging and believes that there "are some people in the White House that think, you know, the president's too friendly too her."

Then Cramer laid into White House legislative affairs director Marc Short for two prominent failed GOP efforts in the Senate: Repeal of Obamacare and the rollback of an Obama-era regulation that would limit flaring and venting from oil and gas wells. Heitkamp voted against both and Cramer has criticized her in particular over the flaring vote.

"If Marc Short was very good at his job, you know, we'd have a repeal and replacement of Obamacare, we'd have a replacement of the venting and flaring rule," Cramer said.

In an interview last week with POLITICO, Cramer insisted he is not angry over Trump's political flirtations with Heitkamp: "Not the case at all. I've been fine with it. I just don't think it hurts me." And on Wednesday on Port's show, Cramer said the spat over Heitkamp's attendance at the banking bill signing "just seems to be an argument between Marc Short and other people in the White House."

Short extended an invitation to Heitkamp to the bill signing, but also has knocked Heitkamp for opposing the GOP's tax law. He did not respond to a request for comment for this story.

Heitkamp has tried to stay out of the back and forth, though she is playing up her collaborations with a president that won her state in 2016 by more than 35 points.

"The president has got bigger fish to fry and bigger problems to solve than whether Kevin likes him more than I do," Heitkamp said.

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DOE report: U.S. generally 'well prepared' for grid hacking, but gaps remain [Back](#)

By Eric Geller | 05/30/2018 06:05 PM EDT

Senior government officials and electric sector executives don't know enough about how energy companies could recover from a disruptive cyberattack, and those companies don't consider cyber threats enough when building out their supply chains, according to a new Energy Department [report](#).

Grid resilience efforts also suffer because of "gaps in incorporating cybersecurity concerns, including planning for long-term disruption events, into state emergency response and energy assurance planning," said the report.

"The United States is, in general, well prepared to manage most electricity disruptions," the Energy Department said in its report. But gaps still exist in areas like situational awareness, workforce development, separation of roles and responsibilities and the coordinated use of resources like digital defense tools.

DOE completed the report last August as part of President Donald Trump's May 2017 cyber executive order but did not publish it until today.

The report mostly hammered home long-understood problems with protecting the power grid from hackers, including the challenges of sharing cyber threat data between partners

"The variation in infrastructure ownership and operation and the jurisdictional overlap add complexity to sharing actionable information in a timely manner," the report said. "These complexities are compounded when information is classified or sensitive due to the limited options and access to facilitate sharing."

It also warned of compounding problems in the event of a major power outage. For example, "as cyber incidents may impact disparate systems across the country, the impacted owner-operators may not be familiar with each other's systems and procedures."

To view online [click here](#).

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DOE working to stand up new cyber unit in fiscal 2018 [Back](#)

By Darius Dixon | 03/01/2018 01:11 PM EDT

The Energy Department is aiming to have its new cybersecurity office fired up before the end of the fiscal year, Bruce Walker, the agency's top electricity official, said today.

"We're working with Congress because we put it into the FY 2019 budget proposal ... and we're looking to stand it up earlier because of the importance and our sector-specific agency authority [for cyber incidents]," he told reporters after testifying before the Senate Energy and Natural Resources Committee.

Walker has previously noted that DOE wouldn't need additional congressional authority to create the office or a new assistant secretary job to lead it. Today, he also said that the design change is meant to elevate cyber issues as well as to divide up the agency's infrastructure work into short-term and long-term operations.

Creating the Office of Cybersecurity, Energy Security and Emergency Response is a reaction to a range of issues, including Congress giving DOE more emergency authorities in the 2015 FAST Act ([H.R. 22 \(114\)](#)), the relentless need to improve cyber defenses, and the deepening marriage between the natural gas and electric sectors.

Walker would still lead the electricity office, which would focus on long-term infrastructure plans and set research-and-development goals, including for cybersecurity. Meanwhile, the new CESER office would be "actionable, near-term and highly responsive" recovery work like the devastation in Puerto Rico or the immediate response to a cyberattack, he said.

"One basically feeds the other," Walker said. "[CESER] responds to the incidents, OE will design them out of the system on a going-forward basis."

To view online [click here](#).

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GAO: Government spent \$13.2B on climate change last year [Back](#)

By Anthony Adragna | 05/30/2018 04:34 PM EDT

The federal government spent \$13.2 billion across 19 agencies during fiscal 2017 for various programs related to climate change, according to [a report](#) from the Government Accountability Office released today.

Overall, climate change-related spending across the federal government rose \$1.5 billion between fiscal 2016 and 2017 and grew \$4.4 billion since fiscal 2010, according to the report.

GAO examined the budget justifications for six agencies accounting for 89 percent of all climate change spending and found just 18 of 533 programs within those agencies whose primary purpose is to address climate change. It further concluded that those programs primarily dedicated to addressing the problem "serve different purposes, target different audiences, or operate at different time periods and scales, which minimizes potential overlap or duplication." The other programs had multiple purposes beyond addressing climate change.

The White House Office of Management and Budget reports the government has spent over \$154 billion since 1993 to understand and address climate change.

House Science Chairman [Lamar Smith](#) (R-Texas) requested the report.

To view online [click here](#).

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DOE IG: No big flaws in FERC pipeline review process, but transparency should improve [Back](#)

By Darius Dixon | 05/30/2018 03:21 PM EDT

Federal watchdogs said they found no major flaws in FERC's process for reviewing interstate natural gas pipelines, but they flagged concerns about its transparency and how it handles public comments, according to [new report](#).

Auditors in the Energy Department inspector general's office who reviewed FERC's pipeline certification process said that "nothing came to our attention to indicate that FERC had not performed its due diligence" in how it balanced public benefits of a proposed project with its adverse impacts.

But the report said regulators' "had not fully ensured" that the certification process was transparent to those who want to participate and that its eLibrary documentation system was difficult to use. And it said FERC lacked a consistent method for tracking and addressing comments submitted on a proposed project.

"FERC had not specifically designed its public-facing systems for use by the general public," the IG report said, noting that "although available to the general public, eLibrary had been designed for use by practitioners, the legal community, and other stakeholders."

The report also said parts of the eLibrary website "did not contain a sufficient explanation of the entire process" and that a document for landowners who could be affected by a project was not clear about key aspects of the certification process.

"While nothing came to our attention to indicate that natural gas certification applications had been inappropriately approved or disapproved," watchdogs wrote, "FERC can take steps to improve aspects of the natural gas certification process."

WHAT'S NEXT: FERC is in the process of a broad review of its natural gas pipeline certification process but there's no established deadline.

To view online [click here](#).

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Yes, very



Somewhat



Neutral



Not really



Not at all

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POLITICOPRO

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Message

From: Woods, Clint [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BC65010F5C2E48F4BC2AA050DB50D198-WOODS, CLIN]
Sent: 3/5/2018 4:23:10 PM
To: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]; Harlow, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b5a9a34e31fc4fe6b2beaddda2affa44-Harlow, Dav]; Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]; Dominguez, Alexander [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5ced433b4ef54171864ed98a36cb7a5f-Dominguez,]
Subject: Fwd: new directive - second edit/redline
Attachments: OGC comments (legal) REDLINE 3.5.18.docx; ATT00001.htm; OGC comments (legal) CLEAN 3.5.18.docx; ATT00002.htm

Updated version

Begin forwarded message:

From: "Schwab, Justin" <Schwab.Justin@epa.gov>
Date: March 5, 2018 at 10:52:51 AM EST
To: "Jackson, Ryan" <jackson.ryan@epa.gov>, "Leopold, Matt" <Leopold.Matt@epa.gov>, "Bolen, Brittany" <bolen.brittany@epa.gov>, "Yamada, Richard (Yujiro)" <yamada.richard@epa.gov>, "Beck, Nancy" <Beck.Nancy@epa.gov>, "Woods, Clint" <woods.clint@epa.gov>, "Feeley, Drew (Robert)" <Feeley.Drew@epa.gov>
Cc: "Bowman, Liz" <Bowman.Liz@epa.gov>, "Lyons, Troy" <lyons.troy@epa.gov>, "Bennett, Tate" <Bennett.Tate@epa.gov>
Subject: new directive - second edit/redline

Dear All,

Per Ryan's request, please find attached a redline and clean version of a lighter edit of the directive,

Attorney Client / Ex. 5

Attorney Client / Ex. 5

From: POLITICO Pro Energy [politicoemail@politicopro.com]
Sent: 5/30/2018 9:43:17 AM
To: Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]
Subject: Morning Energy, presented by America's Pledge: Battle in the Bakken state? — Groups sue over EPA waiver exemptions — Deja vu on formaldehyde

By Kelsey Tamborrino | 05/30/2018 05:41 AM EDT

With help from Annie Snider and Ben Lefebvre

BATTLE IN THE BAKKEN STATE? As the election year kicks into high gear, President Donald Trump's friendly relationship with Democratic Sen. [Heidi Heitkamp](#) is worrying some within the Republican party, POLITICO's Alex Isenstadt and Burgess Everett report. Republicans have grown increasingly frustrated with Trump's ongoing flirtation with the freshman senator from the No. 2 oil-producing state, especially at a time when many in the GOP fear that the president's unpredictable style will undercut their midterm plans. Heitkamp, who is seeking reelection in a state where Trump won nearly two-thirds of the vote, has a friendly relationship with the president, even after Trump aggressively recruited Rep. [Kevin Cramer](#) — who advised his campaign on energy issues — to give up his House seat and enter that race, leaving some of Cramer's closest allies feeling snubbed.

In an interview, Cramer said there would soon be "clarity" on who Trump supports in the race. But the congressman declined to predict whether the president would go after Heitkamp aggressively, as Trump has done with other Democratic incumbents. Cramer seemed aware of the warmth between the president and the senator, Alex and Burgess report. Trump has asked Cramer if he likes Heitkamp, and when the congressman responds yes, the president seems to be "relieved," Cramer said. "Politically, North Dakota's a pretty nice state. So I don't know that turning it on her is necessarily politically helpful to me," Cramer said. "They may just be concerned that she's a woman and maybe that has an impact. I just don't know."

For her part, Heitkamp said she's proud of her ability to work with the president. "I have a friendly relationship, I have a very important working relationship," she said in an interview, "not just with him but other members of the administration." Read the story [here](#).

WELCOME TO WEDNESDAY! I'm your host Kelsey Tamborrino, and Peter Robertson of the Pebble Partnership was the first to correctly identify California and Ohio as the two states that don't have an avenue named after them in D.C. Instead, there's a California Street and Ohio Drive. For today: Which president was the first to see a major league baseball game in his hometown, and which town was it? Send your tips, energy gossip and comments to ktamborrino@politico.com, or follow us on Twitter [@kelseytam](#), [@Morning_Energy](#) and [@POLITICOPro](#).

Register for the Pro Summit: Join Pro subscribers, expert reporters and key decision-makers from the executive branch, federal agencies and Congress for a full day of incisive policy conversations on July 17. [Learn more.](#)

GROUPS SUE ON WAIVER EXEMPTIONS: Ethanol and farm groups say they've filed a lawsuit against EPA over some of the waivers granted to small refineries allowing them to shed their Renewable Fuel Standard requirements on blending biofuels, Pro's Eric Wolff reports. The Renewable Fuels Association, National Corn Growers Association, American Coalition for Ethanol and National Farmers Union are challenging the waivers granted to CVR Refining's Wynnewood, Okla., refinery and the HollyFrontier refineries at Cheyenne, Wyo. and

Woods Cross, Utah. Those refineries have collectively saved \$170 million in compliance costs, the coalition said.

Those waivers, which ethanol backers say violate the volume mandates under the RFS, are also the subject of some horse-trading in the discussions between EPA Administrator Scott Pruitt and USDA Secretary Sonny Perdue. The two are trying to put the final touches on a compromise deal over EPA's rules for biofuels. Read [more](#).

CHEVRON SHAREHOLDERS VOTE: Shareholders at Chevron's annual meeting today will vote on a pair of climate change-related provisions. First up is a proposal that the oil giant report to investors how it will change its business model to account for any decreased demand for oil and gas resulting from greater development of renewable energy sources. Another proposal is that Chevron start providing reports on steps it is taking to minimize methane emissions from its fracking operations. Chevron's board of directors have advised against both proposals, saying the company is already making sufficient efforts on both matters.

Exxon, which also holds its annual meeting today, is getting a break this year from the sort of environmental proposals its shareholders considered in 2017.

**** A message from America's Pledge:** America's Pledge is flipping the script on climate action. One year after the federal government announced it would pull out of the Paris Agreement, 2,700+ U.S. cities, states, and businesses are saying, "We Are Still In." See how far we've come: <https://politi.co/2koAHZb> **

DEJA VU? Already under fire for their handling of a controversial assessment of nonstick chemicals in drinking water, a newly uncovered EPA email suggests that public relations strategy was also front-of-mind for EPA staffers as the agency contemplated reevaluating the risks of formaldehyde. Reuters reported last week that EPA delayed release of a new assessment of the chemical that is expected to for the first time link formaldehyde with leukemia after meeting with the American Chemistry Council in January.

"They reiterated the concern you have raised about information leaking before it's been vetted and asked that the Agency have appropriate communication materials ready to use if needed," Jennifer Orme-Zavaleta, who heads EPA's Office of Research and Development, wrote in a Jan. 24 email to EPA chief of staff Ryan Jackson and Richard Yamada, deputy assistant administrator for research and development. The email was released to the Union of Concerned Scientists under the Freedom of Information Act.

Yogin Kothari, a lobbyist of UCS, said the email "sounds eerily similar" to concerns that EPA and White House officials expressed about a HHS assessment of the chemicals PFOA and PFOS. "It's not surprising that the ACC is attempting to wield its influence over EPA when its former staff are basically running the place," Kothari said by email.

WE'RE CLOSED: The Environmental Council of the States' upcoming fall meeting will close to the public certain sessions attended by EPA officials, according to the group's draft agenda for the August meeting. The draft shows ECOS will hold closed sessions on several issues, including a state-EPA roundtable on "cooperative federalism" and joint PFAS activities. (h/t E&E News' Sean Reilly)

NAFTA TALKS STILL STALLED: Recent NAFTA talks between the U.S., Mexico and Canada have not resulted in progress on the thorniest issues because the U.S. remains unwilling to offer important concessions, two sources close to the talks told Pro's Sabrina Rodriguez. Negotiators from the Office of the U.S. Trade Representative continue to demand that "they want everything, and there's no possible way they'll get everything they want," one of the sources said. "Conversations have stalled entirely." Read [more](#).

WE'LL ALWAYS HAVE PARIS: This week marks the one-year anniversary of Trump's decision to pull the U.S. out of the Paris climate agreement. The United States still technically remains in the 2015 pact for the next

two-and-a-half years, but the action to implement it is playing out in the rest of the world. To mark the occasion, the World Resources Institute will host a [discussion](#) today on whether other nations have moved on since Trump's decision to exit the agreement. Among those participating is Todd Stern, the former State Department special envoy for climate change who helped seal the deal. In the lead-up to the event, WRI's Eliza Northrop laid out the seven signs of progress since Trump's announcement [here](#), including a timeline of events over the last year. If you go: The discussion kicks off at 2:30 p.m at 10 G Street NW. Watch the livestream [here](#).

— **And the National League of Cities**, as well as mayors from across the country, will release today their latest "State of the Cities" report that will look into the trend of cities taking on clean energy goals, despite the federal government.

OFFSHORE DRILLER FINED \$4M: Oil and gas company Energy Resource Technology was fined \$4 million Tuesday by the U.S. Attorney's Office for the Eastern District of Louisiana for fabricating data about the readiness of a key piece equipment used to prevent oil spills, Interior said. The fine comes as a result of an [investigation](#) by Interior's Office of Inspector General that found that ERT management directed an employee on its rig in the Gulf of Mexico to create a fake blowout preventer pressure test chart to conceal a failed test result, Pro's Ben Lefebvre reports. Read [more](#).

EPA, KILDEE SPAR OVER SUMMIT: EPA defended its move to only allow federal agency and state representatives on the second day of last week's summit on toxic chemicals in drinking water, dismissing Democratic Rep. [Dan Kildee](#)'s complaint that members of his staff had been barred from attending as a mischaracterization. EPA Associate Administrator Troy Lyons wrote in a letter Tuesday to Kildee and obtained by POLITICO that the agency worked with Kildee's office ahead of time to allow a staffer to attend the first day of the summit.

"**I trust you understand our disappointment** when we discovered that no one from your office attended the summit on May 22, particularly in light of the subsequent events on May 23," Lyons wrote. In a statement, Mitchell Rivard, Kildee's chief of staff, said that "it is hard to mischaracterize the EPA's actions — it had been widely reported that the EPA blocked both journalists and a congressional office from the taxpayer-funded PFAS summit." Read the letter [here](#).

MAIL CALL! 45Q AND YOU: Rep. Cramer shared [a letter](#) Tuesday from the Treasury Department in response to [his request](#) for direction on the expanded 45Q tax credit for capturing and storing carbon dioxide. In the letter, Assistant Secretary for Legislative Affairs Drew Maloney said Treasury is developing published guidance to provide clarity to taxpayers for the purpose of using the credit.

— **A coalition of 12 state and city attorneys general** and attorneys sent a letter to National Academy of Sciences President Marcia McNutt saying EPA's so-called secret science proposal to ban the use of studies that don't publicly disclose all data is "too vague and rushed to allow for meaningful public review." And they pressed for the group to weigh in, saying "the National Academy's input on this extremely consequential proposal." Read it [here](#).

API WRITES TO TRUMP ON SECTION 232: The American Petroleum Institute [sent a letter](#) to Trump last week requesting that the list of countries currently exempt from Section 232 tariffs on steel and aluminum be expanded "without imposing alternative measures such as quotas," and that the president remove any associated import quotas that have already been imposed. In his letter, API President and CEO Jack Gerard writes that additional import restrictions "will have a negative effect on our industry just as we have achieved the highest level of domestic hydrocarbon (oil and natural gas and natural gas liquids, or NGLs) production since 1949," according to EIA.

TRUDEAU COMMENTS ON PIPELINE: Canadian Prime Minister Justin Trudeau defended the Canadian government's plan to buy and complete the expansion of Kinder Morgan's Trans Mountain pipeline. "The

project became too risky for a commercial entity to go forward with it; that's what Kinder Morgan told us," Trudeau said during a Bloomberg Businessweek event. "We are going to ensure that it gets built so that we can get our resources to new markets." More [here](#).

WHITE HOUSE TALKS PUERTO RICO: Aboard an Air Force One flight, press secretary Sarah Huckabee Sanders was asked whether the president — despite his [previous comments](#) — now thinks Puerto Rico constitutes a "real catastrophe" following the release of a Harvard University study that found at least 4,645 people died from the September 2017 storm rather than the 64 deaths federal authorities counted. The White House continues to be supportive of the governor of Puerto Rico, Sanders said according to pool reports, and of "transparency and accountability." The people of Puerto Rico "deserve nothing less than that, and were going to continue to be focused on helping in every way we can," she said. "FEMA has already done the largest response ever in history to any natural disaster. They're in Puerto Rico, and we're going to continue to give as much assistance as possible."

RBS COMMITS TO NEW ENERGY FINANCING: Ahead of its shareholder meeting today, the Royal Bank of Scotland [announced](#) Tuesday new energy financing policies to support a transition to low carbon. The bank said it would no longer provide "project-specific finance" to new coal-fired power plants, thermal coal mines or oil sands projects, among other projects. Additionally, RBS said it is tightening restrictions on general lending to mining and power companies generating more than 40 percent of their revenues from thermal coal and of electricity from coal, respectively. In response, Rainforest Action Network Executive Director Lindsey Allen said the announcement "comes as a result of groups like us pressuring banks to defund fossil fuels and deforestation," but said the "policy is only half a step forward because it leaves loopholes in place."

REPORT: COOK TAPPED FOR SUPERFUND JOB: EPA has named Steven Cook — a former senior counsel at chemical giant LyondellBasell — to the agency's Superfund Task Force in the position left vacant by Albert "Kell" Kelly, Bloomberg BNA [reported](#). Cook has been serving as deputy assistant administrator for the agency's land and waste office, prior to his move to the Superfund spot.

ZINKE DEFENDS 'KONICHIWA' GREETING: In a wide-ranging radio interview with Breitbart Radio, Interior Secretary Ryan Zinke defended his use of the greeting "konichiwa" in response to a question from Rep. Colleen Hanabusa on preserving internment sites during a March Natural Resources hearing. "I grew up in a little logging, timber town, railroad town in Montana and a lot of my family lived through the years of the internment camps. I've long since had friends that were Japanese families that went through that," Zinke said, calling it an "appropriate salute." Listen to the full interview [here](#).

AD WARS: Club for Growth Action said Tuesday that it would spend \$250,000 on new ads attacking Russ Fagg, a former judge and Republican candidate for Senate in Montana. Campaign Pro's James Arkin [reports](#) the new ad campaign attacks Fagg over his record during his two decades as a district judge, including the time he called a judge who "undercut" Trump's rollback of environmental rules a "thoughtful moderate." Watch the TV ad [here](#).

MOVER, SHAKER: Stuart Siffring joined the Western Energy Alliance as a regulatory analyst, the trade group announced Tuesday. Siffring previously worked as a permit engineer at EPA and the Colorado Department of Public Health and Environment.

QUICK HITS

- EPA used disavowed research to justify putting dirtier trucks on the road, [Los Angeles Times](#).
- Antarctica has enormous mountain ranges and valleys deep beneath its ice, [The Washington Post](#).
- Former Perry adviser is FirstEnergy's secret weapon in U.S. bailout, [Bloomberg](#).

- McConnell's plan for a packed summer Senate agenda, [CQ Roll Call](#).
- Lowe's drops paint strippers blamed in dozens of deaths, [The New York Times](#).
- No offsets, no problem as Army Corps OKs wetland projects, [E&E News](#).

HAPPENING TODAY

9:30 a.m. — The Woodrow Wilson Center's Environmental Change and Security Program [discussion](#) on "Sustainable Water, Resilient Communities: The Challenge of Erratic Water," 1300 Pennsylvania Ave NW

1:00 p.m. — The National Academy of Sciences' Government-University-Industry Research Roundtable [webinar](#) on "Connecting Research to Policy: The Broadband Research Initiative at Pew Charitable Trusts."

1:00 p.m. — The Center for Climate, Health, and the Global Environment at the Harvard T.H. Chan School of Public Health [launches new center](#), Boston.

2:00 p.m. — The Woodrow Wilson Center [discussion](#) on "Where Does the Transatlantic Relationship Go from Here," 1300 Pennsylvania Avenue NW

2:30 p.m. — The World Resources Institute [forum](#) on "One Year Later: Has the World Moved On Since President Trump's Announcement on the Paris Agreement?" 10 G Street NE

4:00 p.m. — Atlantic Council's Cyber Statecraft Initiative and Global Energy Center [discussion](#) on "Supply Chain Vulnerabilities in the Software Era," 1030 15th Street Northwest

THAT'S ALL FOR ME!

**** A message from America's Pledge:** One year after President Trump announced plans to withdraw from the Paris Agreement, America's Pledge is showing the world that U.S. cities, states, and businesses can lead us towards our goals - with or without Washington. <https://politi.co/2koAHZb> **

To view online:

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The one Democrat Trump can't help but like [Back](#)

By Alex Isenstadt and Burgess Everett | 05/30/2018 05:08 AM EDT

When a small group of alarmed White House aides caught wind that Sen. Heidi Heitkamp — one of the most endangered Democrats up for reelection in 2018 — would be attending President Donald Trump's bill signing last week, they raced to stop it.

Word eventually reached Senate Majority Leader Mitch McConnell, who has made unseating Heitkamp a top priority. He opted not to intervene, and the invitation stood: As the president signed a banking deregulation bill into law before a national audience, Heitkamp was right next to him, the only Democrat in the room.

As the election year kicks into high gear, Republicans have grown increasingly frustrated with Trump's ongoing flirtation with the freshman senator. At a time when many in the GOP fear that the president's unpredictable

style will undercut their best-laid midterm plans, the relationship has given Heitkamp — who is seeking reelection in a state where Trump won nearly two-thirds of the vote — fodder to portray herself as a presidential ally.

Her office keeps a running list of the dozen-plus meetings Heitkamp has had with Trump and his top advisers since the 2016 election. And the senator is fond of noting that she forged close ties with Trump's former top economist, Gary Cohn. The president met with Heitkamp in Trump Tower after the 2016 election to discuss a possible Cabinet position, asked her to join him on Air Force One, and invited her onstage to join him and her Republican opponent, Rep. Kevin Cramer, during an appearance in North Dakota.

"Everyone is saying, 'What's she doing up here?'" the president said at the September event to sell his tax reform plan, which Heitkamp eventually opposed. "But I'll tell you what. Good woman, and I think we'll have your support, I hope we'll have your support. And thank you very much, senator, thank you for coming up."

After last week's bill signing, Heitkamp's allies raced to capitalize. The North Dakota Democratic Party sent out a tweet with an image of Cramer looking on uncomfortably as the president stood next to Heitkamp.

"At a bill signing today, @HeidiHeitkamp got a shout out and all @kevincramer got was a photo op next to a chair," the state party boasted.

"We will see footage of this on every platform," said Doug Heye, a former top Republican National Committee official. "It's a huge gift for her campaign."

Trump aggressively recruited Cramer to give up his House seat to take on Heitkamp, and his actions since have left some of Cramer's closest allies feeling snubbed. They note that while Trump has savaged Democratic incumbents Joe Donnelly of Indiana and Jon Tester of Montana and visited a growing list of states to pump up Republican Senate hopefuls — most recently Tennessee, where he appeared Tuesday on behalf of Rep. Marsha Blackburn — he has yet to make a campaign appearance with Cramer. Nor has the attack dog-in-chief attacked Heitkamp.

After Cramer learned last year that Heitkamp would be accompanying the president on Air Force One to North Dakota, he complained bitterly to the White House, according to two people with direct knowledge of the discussions. Heitkamp, Cramer predicted at the time, would try to use it to her political advantage. (A Cramer adviser, Pat Finken, denied that the congressman had complained about the senator riding on Air Force One.)

The administration has taken steps to assure Cramer that he has the president's full support. The congressman has been regularly in touch with White House political director Bill Stepien, and the two met earlier this month. Trump has agreed to hold a rally for Cramer later this year.

In an interview, Cramer shrugged off Heitkamp's attendance at the bill signing and said there would soon be "clarity" on who Trump supports in the race.

Yet the congressman declined to predict whether the president would go after Heitkamp aggressively, as Trump has done with other Democratic incumbents. Cramer seemed aware of the warmth between the president and the senator. Trump has asked Cramer whether he likes Heitkamp, and when the congressman responds yes, the president seems to be "relieved," Cramer said.

"Politically, North Dakota's a pretty nice state. So I don't know that turning it on her is necessarily politically helpful to me," Cramer said. "They may just be concerned that she's a woman and maybe that has an impact. I just don't know."

Heitkamp said she's proud of her ability to work with the president.

"I have a friendly relationship. I have a very important working relationship," she said in an interview, "not just with him but other members of the administration."

Trump's reluctance to go after Heitkamp stems in part from the simple fact that he needs her vote. With Republicans clinging to a narrow Senate majority, the White House has pushed for her support on several contentious votes, including the recent confirmations of CIA Director Gina Haspel and Secretary of State Mike Pompeo. She also backed Trump's nominations of Supreme Court Justice Neil Gorsuch and Environmental Protection Agency Administrator Scott Pruitt.

Last week's signing ceremony was organized by White House Office of Legislative Affairs Director Marc Short. He said he extended an invitation to Heitkamp because she played a central role in passing the banking deregulation law.

"She was an original cosponsor of the bill," Short said. "But she's also someone who opposed tax relief, who opposed repeal of Obamacare, and someone who will always support Chuck Schumer. So you can be sure the president will be actively campaigning in North Dakota this cycle."

Cramer's February entry into the race followed an intense pursuit from Trump and top White House officials. After Cramer initially said in January that he wouldn't run for Senate, he received overtures from Trump, White House counselor Kellyanne Conway, and energy executive and Trump donor Harold Hamm within a three-day period. Trump also met with Cramer's wife, Kris.

Cramer said Trump told him at the time that he'll "be out there campaigning more than you are." Trump's entreaties, Republicans contend, helped to push Cramer into the contest. Cramer won his statewide, at-large House seat in 2012, the same year Heitkamp entered the Senate.

"The president leaned on him very hard. The president wanted the best candidate, and everyone in the state thought Kevin was the best candidate to beat Heidi," said Gary Emineth, a former North Dakota GOP chairman who is close with the congressman. "You know how the president is. He just doesn't quit."

Heitkamp predicted that Trump would attack her eventually. While she has maintained a positive working relationship with the president, she said it pales in comparison to Cramer's staunch loyalty.

"I don't think anyone can match his Trump credentials," Heitkamp said. "He is somebody who will always do what the president asks him to do, regardless of whether it's good for North Dakota."

As of late, the senator has been airing commercials that highlight her balancing act. "When I agree with the president I vote with him — and that's over half my votes," she says in a spot that began airing this month. "And if his policies hurt North Dakota, he knows I'll speak up."

Cramer accused Heitkamp of acting like a "Republican wannabe" with her occasional support for key Trump nominees.

"Her trying to cozy up to Donald Trump has resulted in good votes," Cramer said. "But every time she tries to become more like me, it's more flattering to me than it is to her."

Democrats, however, couldn't be happier to portray Cramer as a jilted lover.

Last week, the North Dakota Democratic Party released a video featuring a montage of clips of the president praising Heitkamp and shaking her hand as Cramer looks on — set to the sad sounds of R.E.M.'s "Everybody Hurts."

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Ethanol, farm groups sue EPA over exemptions [Back](#)

By Eric Wolff | 05/29/2018 07:13 PM EDT

A coalition of ethanol and farmers groups said they filed a lawsuit in federal court today against EPA seeking to overturn some of the waivers the agency has granted to small refineries allowing them to shed their Renewable Fuel Standard requirements on blending biofuels.

The Renewable Fuels Association, National Corn Growers Association, American Coalition for Ethanol and National Farmers Union are challenging the waivers granted to CVR Refining's Wynnewood, Okla., refinery and the HollyFrontier refineries at Cheyenne, Wyo. and Woods Cross, Utah. Those refineries have collectively saved \$170 million in compliance costs, the coalition said.

The groups, along with their allies in Congress, have criticized EPA's frequent use of the waivers, which they say undermines the RFS mandates on the amount of biofuel that must be sold into the U.S. fuel market.

"EPA is trying to undermine the RFS program under the cover of night," RFA CEO Bob Dinneen said in a statement. "And there's a reason it has been done in secret — it's because EPA is acting in contravention of the statute and its own regulations, methodically destroying the demand for renewable fuels."

The Advanced Biofuels Association challenged the waivers May 1.

WHAT'S NEXT: The complaint will be heard in the U.S. Court of Appeals for the 10th Circuit.

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Exxon shareholders win vote to build Paris climate pact into plans [Back](#)

By Ben Lefebvre | 05/31/2017 02:37 PM EDT

The Trump administration may be preparing to [withdraw the U.S.](#) from the Paris climate change accords, but shareholders at Exxon Mobil and at least one other U.S. oil company are demanding the companies incorporate the international deal in their business models.

Nearly two-thirds of Exxon's shareholders backed a proposal on Wednesday calling for the company to assess how climate change and global efforts to limit temperature increases will affect its business. The vote is non-binding, but the results show that the once-fringe idea of linking climate change to big oil's operations has gained momentum.

The vote at the Exxon annual shareholder meeting in Dallas came after investors in its smaller rival Occidental Petroleum earlier this month cast more than two-thirds of their votes for a measure calling for the company to

assess how its business would be affected by the Paris climate change accord's target of holding global warming to 2-degrees. Company credit rating agency Moody's said last year it would start to use the Paris pledge to assess financial risk for corporations.

"Shareholders have spoken clearly on climate," said Danielle Fugere, president and chief counsel for As You Sow, a group that helps shareholders introduce environmental proposals. "If there's less demand for oil and the world is awash in oil, there's going to be more competition among these companies. Shareholders are trying to figure out who is the best bet."

Not all of these climate-related investor proposals succeeded, however. Chevron shareholders Wednesday morning rejected a motion that the company issue a report on how limiting global temperature increase to 2 degrees Celsius (3.6 degrees Fahrenheit) would affect its business. Only 27 percent of voting shareholders approved the proposal, down from more than 40 percent who voted for a similar proposal last year.

Exxon, Chevron and other energy companies facing such proposals argue that they are already taking the Paris agreement seriously and incorporating it into their business plans. Exxon in particular pointed out that it was developing technology that would capture the carbon emitted at natural gas power plants and then either store it or use it to produce more electricity.

"We believe the goal of carbon policy is to reduce emissions at the lowest cost to society," Exxon Chief Executive Darren Woods said at the shareholder meeting. "These goals led us to support the Paris Agreement." Woods sent President Donald Trump a letter earlier this month urging the U.S. to stay in the Paris deal.

For Exxon, the votes also illustrate how entangled the company has become in New York state climate change politics. The climate change proposal shareholders approved was partly sponsored by the New York State Common Retirement Fund, which is run by the State's comptroller. Meanwhile, the company is embroiled in a lawsuit with the New York and Massachusetts attorneys general over whether it withheld its own research on climate change from shareholders.

"The burden is now on Exxon Mobil to respond swiftly and demonstrate that it takes shareholder concerns about climate risk seriously," New York State Comptroller Thomas P. DiNapoli said in a prepared statement after the vote.

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NAFTA talks stall amid apparent refusal of U.S. to make concessions [Back](#)

By Sabrina Rodriguez | 05/29/2018 07:41 PM EDT

Recent high-level NAFTA talks between the U.S., Mexico and Canada have not resulted in progress on the thorniest issues because the U.S. remains unwilling to offer important concessions, two sources close to the talks said on Tuesday.

Negotiators from the Office of the U.S. Trade Representative continue to demand that "they want everything, and there's no possible way they'll get everything they want," one of the sources told POLITICO. "Conversations have stalled entirely."

As the U.S. and Canada resumed talks in Washington on Tuesday, the sources confirmed that Mexican Trade Undersecretary Juan Carlos Baker met with officials from USTR last week to present a counterproposal that would see Mexico make concessions on wages in the automotive sector in return for U.S. concessions on other flashpoint issues.

Under the offer, Mexico reportedly would accept language on automotive rules of origin that would require that 20 percent of cars produced within North America be made by workers earning at least \$16 an hour.

In exchange, Mexico reportedly asked that the U.S. back off some of its thorniest proposals, like placing limits on government procurement as well as a so-called sunset clause, which would allow for the deal to be terminated if all three countries don't agree to renew it after five years. News of the counterproposal was first reported by Bloomberg.

Mexico's counterproposal was not well received by USTR, the sources said.

"USTR did not take a close look at their proposal before rejecting it," one of the sources said. "As soon as it included [the U.S.] giving in on something, it was a 'no' from USTR."

That leaves it up to U.S. Trade Representative Robert Lighthizer to decide if the U.S. will offer any concessions to Mexico and Canada, the sources added.

USTR did not immediately respond to a request for comment on Tuesday evening.

The latest deadlock comes as Mexico and Canada face a looming deadline in their effort to secure a permanent exemption from the U.S. steel and aluminum tariffs. Mexico and Canada were temporarily exempted from the duties, but to win a permanent reprieve each country must reach a separate agreement to satisfy U.S. national security concerns by June 1.

Mexican President Enrique Peña Nieto and Canadian Prime Minister Justin Trudeau have both emphasized in recent days that they will not be pressured into accepting a NAFTA deal that is bad for their respective countries.

"No NAFTA is better than a bad deal, and we've made that very clear to [President Donald Trump]," Trudeau said Tuesday in an interview with Bloomberg. "We are not going to move ahead just for the sake of moving ahead."

Trudeau discussed the NAFTA talks during a call with Vice President Mike Pence on Tuesday, the White House said in a readout that provided no details of the conversation.

Negotiators have made some gains, despite the continued difficulties over the hot-button topics. Canadian Foreign Minister Chrystia Freeland, Canada's top NAFTA official, said she had a "very substantive" conversation with her U.S. counterpart in Washington on Tuesday.

The NAFTA nations' top trade officials have been in consistent contact over the phone since they last met in Washington two weeks ago.

Lighthizer had acknowledged at that point that the three countries still faced "gaping differences" on a number of issues, such as market access for agricultural products and automotive rules of origin. "The NAFTA countries are nowhere near close to a deal," Lighthizer said then.

Talks have continued to move forward on the NAFTA modernization chapters, like e-commerce, "but as long as USTR keeps the thorny issues on the table, there won't be movement," one of the sources said.

Negotiators have so far closed nine chapters and six sectoral annexes, Mexico's chief negotiator, Kenneth Smith Ramos, said last week. Those chapters include: telecommunications, small- and medium-sized enterprises, competition, and technical barriers to trade.

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Gulf of Mexico rig operator fined \$4M after Interior Department investigation [Back](#)

By Ben Lefebvre | 05/29/2018 04:36 PM EDT

The U.S. Attorney's Office for the Eastern District of Louisiana fined offshore oil and gas company Energy Resource Technology \$4 million for fabricating data about readiness of a key piece equipment used to prevent oil spills, the Interior Department said today.

The fine was a result of an [investigation](#) by Interior's Office of Inspector General that found that ERT management directed an employee on its rig in the Gulf of Mexico to create a fake blowout preventer pressure test chart to conceal a failed test result. The failure by a blowout preventer was one of the main causes of Deepwater Horizon rig accident that killed 11 people in 2010.

An ERT supervisor on the same rig had employees perform welding near an active well in violation of Interior safety regulations.

Interior had fined ERT \$4 million in 2012 for earlier violations on its rigs, and an accident [killed](#) a contract worker on an ERT rig in February.

ERT is a subsidiary of Houston-based Talos Energy.

WHAT'S NEXT: In addition to the fine, ERT was sentenced to 36 months' probation and ordered to pay \$200,000 in restitution.

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Study: 4,645 people died after Hurricane Maria, far more than official estimate [Back](#)

By Mel Leonor | 05/29/2018 11:40 AM EDT

At least 4,645 people died amid the devastation wrought by Hurricane Maria in Puerto Rico — more than 70 times the official government death toll of 64, according to a new study from Harvard University.

Locals, journalists and public health experts have for months questioned the government estimate of deaths from the storm, which caused more than \$90 billion in damage.

President Donald Trump, however, said in October that Puerto Rico officials should be "very proud" of the low death toll.

The study, published Tuesday in the New England Journal of Medicine, is based on household surveys of more than 3,000 homes in the territory, where researchers found a boom in the mortality rate between late September and late December 2017.

The authors of the study, which was largely funded by the Harvard T.H. Chan School of Public Health, described the official death count as a "substantial underestimate" and called it evidence of the "inattention of the U.S. government to the frail infrastructure of Puerto Rico."

"The timely estimation of the death toll after a natural disaster is critical to defining the scale and severity of the crisis and to targeting interventions for recovery," they wrote.

Researchers found that "interruption of medical care was the primary cause" of the high mortality rate that came after the storm made landfall.

With the 2018 hurricane season in swing, the authors also urged chronically ill patients, communities and health care providers to develop contingency plans for future disasters.

Carlos R. Mercader, executive director of the Puerto Rico Federal Affairs Administration, said in a statement that officials would analyze the report, adding, "We have always expected the number to be higher than what was previously reported."

He said the Puerto Rico government has commissioned a report from George Washington University, which he said would be released "soon."

Trump said in October that the storm had been less devastating than Hurricane Katrina in 2005, but the new study indicates that may not be true. Hurricane Katrina resulted in the deaths of 1,833 people, according to FEMA.

"Every death is a horror," Trump said at the time, "but if you look at a real catastrophe like Katrina and you look at the tremendous — hundreds and hundreds of people that died — and you look at what happened here with, really, a storm that was just totally overpowering ... no one has ever seen anything like this."

Rep. Nydia Velázquez (D-N.Y.) said after the report was released Tuesday that the apparent undercounting of deaths "concealed" the impact of Hurricane Maria on the territory.

"By obscuring this, many were left to believe the Trump Administration's mythology that Puerto Rico was not hit hard by Maria," Velázquez said in a statement. "We must get to the bottom of this discrepancy."

The White House did not respond to a request for comment.

Last year, Velázquez and Rep. Bennie Thompson (D-Miss.) asked a government watchdog to investigate how Puerto Rican officials "originally arrived at such a low number."

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New Club for Growth ads attack Fagg in Montana [Back](#)

By James Arkin | 05/29/2018 03:48 PM EDT

Club for Growth Action, the super PAC arm of the Club for Growth, announced today that it would spend \$250,000 on new ads attacking Russ Fagg, a former judge and Republican candidate for Senate in Montana.

The Club is backing state auditor Matt Rosendale in the race in the race to face Democratic Sen. Jon Tester, and its PACs have spent more than \$1 million on ads backing Rosendale and attacking Fagg, one of his top challengers in the June 5 primary.

The new ad campaign attacks Fagg over his record during his two decades as a district judge. The TV ad makes three claims against Fagg: that he defended another judge who suggested a rape victim was to blame for her own attack; that he called a judge who "undercut" President Donald Trump's rollback of environmental rules a "thoughtful moderate"; and that he "praised a liberal federal judge who ruled against speeding up deportations."

"Russ Fagg's values are not Montana values," the narrator says.

The radio version of the ad features a woman and a man having a conversation about Fagg's record and pointing listeners to a website, factsformontana.com, funded by Club for Growth Action.

You can watch the TV ad [here](#) and listen to the radio ad [here](#).

To view online [click here](#).

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'Brett Kavanaugh is the next Scott Pruitt' — Carper

Environmentalists and their allies in the Senate have launched a full-court press in an effort to defeat the Supreme Court nomination of Brett Kavanaugh.

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Subject: Morning Energy: Where do biofuels stand? — This week: Pruitt faces the Hill — Macron heads to Washington

By Kelsey Tamborrino | 04/23/2018 05:42 AM EDT

With help from Eric Wolff and Annie Snider

YOU CAN'T ALWAYS GET WHAT YOU WANT: Despite efforts by President Donald Trump to settle a long-running dispute between ethanol backers and the refining industry, progress on a biofuels deal has stalled. Instead, the administration has taken a piecemeal approach to the policy, pushing for an expanded market for higher blends of ethanol, while handing out exemptions to the Renewable Fuels Standard to small refiners.

Trump, for his part, has huddled multiple times with members of his Cabinet, industry and lawmakers from both corn belt and oil states, Pro's Eric Wolff reports. But so far, there's been little progress in striking a grand deal. At odds are the independent refiners, who say they feel financial stress from the RFS, and the agriculture sector, which is anxious to expand the market for corn ethanol.

Trump has promised to allow year-round sales of 15 percent ethanol blends of gasoline, while EPA Administrator Scott Pruitt has so far granted more than two dozen temporary waivers to small refineries that exempt them from the mandate requiring them to blend ethanol with gasoline. "After 18 months of pursuing various regulatory forms of relief and a handful of Oval Office confabs, the merchant refiners ended up with [an increase in E15] taking even more market share away from them in return for some small refiner hardship waivers — and some of them did not even get that," one oil refining source told Eric.

And Pruitt's controversies stemming from his first-class flights, security spending and condo rental from a lobbyist, have left the EPA chief unable to make an aggressive case for instituting price caps many refiners want on the biofuel credits, according to an administration source. Read more [here](#).

Democrats weigh in: House Energy and Commerce ranking member [Frank Pallone](#) and Agriculture ranking member [Collin Peterson](#) sent this [letter](#) to the president on Friday, expressing concern with the waivers issued by Pruitt to small refineries, writing it "undermines the goal of the RFS program, creates uncertainty and economic hardship in the agricultural community, and gives unfair advantage to specific facilities within the refining sector."

GOOD MONDAY MORNING! I'm your host Kelsey Tamborrino, and Entergy's Rob Hall was first to correctly answer that former Senate Majority Leader Robert Taft's father served as a Supreme Court chief justice. For today: Who was the first woman to be awarded the Medal of Honor? Send your tips, energy gossip and comments to ktamborrino@politico.com, or follow us on Twitter [@kelseyam](#), [@Morning_Energy](#) and [@POLITICOPro](#).

POLITICO Space is our new weekly briefing on the policies and personalities shaping the second space age. [Sign up today](#).

ICYMI: Check out the [event videos and highlights](#) from last Tuesday's event on how private businesses can address clean energy and build a more sustainable future.

PRUITT HEADS TO THE HILL: Thursday's the day: Pruitt is scheduled to face questions from two House committees for the first time since his swirling scandals emerged in March. He'll appear before both the House Appropriations Committee and the Energy and Commerce Committee to discuss his agency's budget request for fiscal 2019, but of course lawmakers are planning to take Pruitt to task over his ethics and spending issues. "Members are going to have questions about how things are going at the EPA and how the money is being spent," E&C Chairman Greg Walden told POLITICO last week. "And we will. We should. He'll have to answer those."

Not least on the list of questions: POLITICO's Theo Meyer and Eliana Johnson were first to report this weekend that the lobbyist, J. Steven Hart, whose wife rented a \$50-per-night condo to Pruitt, also lobbied the agency while Pruitt was leading it, according to a Friday filing by his firm. That news comes despite the denials from both Hart and Pruitt that the lobbyist did not have any business before the agency. Hart announced his resignation from his lobbying firm Williams & Jensen hours before the disclosure was published. He was already planning to retire in November, but moved up his departure in the wake of the revelation that his wife had been Pruitt's landlord.

An EPA official acknowledged on Saturday that Pruitt had met with Hart, who attended a meeting with a former meat-processing executive concerned about Trump's proposal to cut spending on a Chesapeake Bay cleanup program. But the official argued that the meeting didn't meet the definition of lobbying. The disclosure, meanwhile, says Hart lobbied the EPA on issues "relating to support for EPA Chesapeake Bay Programs." A spokeswoman for House Oversight Chairman Trey Gowdy, who is already probing the administrator, told POLITICO that "the Committee has already been looking into this matter." Read more.

The hits keep coming: The Associated Press reported on Friday that state records show how, as Oklahoma's attorney general, Pruitt ordered investigations agents from his office to work as his driver and bodyguard. And a separate report from The New York Times probed how Pruitt bought a historic house in Oklahoma from a top lobbyist with the help of a shell company.

— **Another Republican called on Pruitt to resign** this weekend, marking at least four current Republican lawmakers to do so. "Yes EPA Administrator Scott Pruitt should resign. Wrong fit from start for agency dedicated to protecting our environment," New Jersey Rep. Frank LoBiondo tweeted. "#EarthDay2018 reinforces our need to promote pristine planet via clean air & water, leaving it better for future generations. Requires leadership & balance."

NOW THAT'S A MISTAKE: Three days after releasing a raft of communications between top EPA personnel to the Union of Concerned Scientists under the Freedom of Information Act, the agency removed them from its electronic library Friday. Among the documents were emails POLITICO cited on Thursday that show political officials developing a new scientific transparency policy were more concerned with the impact it could have on the agency's ability to consider industry data when reviewing pesticides and toxic chemicals for safety than they were about potentially excluding studies on the effect of pollution on public health, as many scientists have warned. EPA sent the policy, based on legislation from House Science Chairman Lamar Smith (R-Texas), to the White House for interagency review Thursday.

EPA did not respond to requests for comment over the weekend, but Yogin Kothari with UCS said the agency told him it accidentally released documents with private information and privileged attorney-client communications. His group removed emails it considered to fit that description and posted the rest on its website.

XCEL NOT SO INTO MARKETS AFTER ALL: Colorado utility Xcel Energy blew a hole in Southwest Power Pool's plans for a western power market when the company announced late Friday it had dropped out of the Mountain West Transmission Group. SPP had been working with the informal group of power providers for months to try and join the power market — and SPP had advanced the effort as recently as last month. Xcel

didn't respond to a request for comment, but the press release said there were "limited benefits" in the effort and "increasingly uncertain costs."

Perhaps most intriguing to ME is the company's point that "Xcel now sees few opportunities for westward expansion of the RTO which might have added to the value proposition." SPP faces competition from both California's already established energy-imbalance market that includes utilities in the Pacific Northwest and Nevada, and a nascent joint project between eastern market operator PJM Interconnection and western reliability manager PEAK. Xcel's press release did not say if it had engaged with either of these other projects.

MR. MACRON HEADS TO WASHINGTON: French President Emmanuel Macron makes his first official visit to Washington this week, where he'll meet with the president and deliver an address to a joint meeting of Congress. Macron and his wife will be hosted by the president and first lady at a private dinner tonight and the two leaders will participate in a bilateral meeting on Tuesday.

Officially, the two heads of state are set to discuss ongoing issues in Syria, the Iran deal and trade tensions. But keep an ear out for climate mentions, too. Macron has been critical of Trump's announcement that he would remove the U.S. from the Paris climate agreement.

Ahead of his meeting with Trump, Macron appeared on "Fox News Sunday," where he was asked whether he believes Trump will serve his full term. "I never wonder that," Macron said. "I mean, I work with him because both of us are very much at the service of our country in both side. And for me, that's why — even when we have some disagreements on climate and on some issues, I think the most important thing is to — I mean, just to remind that we are at the service of our people, that's our legitimacy."

FROM BLOOMBERG WITH LOVE: Special envoy to the U.N. for climate action Michael Bloomberg pledged to help cover the U.S. financial commitment to the Paris climate accord on Sunday. Appearing on CBS, the former New York City mayor announced he would foot the \$4.5 million bill to the U.N. Climate Change Secretariat under the 2015 agreement that was struck by former President Barack Obama.

"America made a commitment. And as an American, if the government's not going to do it, we all have a responsibility, and I'm able to do it," he said on CBS. "So yes, I'm going to send them a check for the monies that America had promised to the organization." Bloomberg will also make more funding available should the U.S. government fail to produce funds for its share of the U.N. climate budget in 2019, according to a press release announcing the action.

READY FOR TAKEOFF: Rep. Jim Bridenstine will be sworn-in at 2:30 p.m. today as the new NASA administrator. After the swearing-in ceremony, Vice President Mike Pence and Bridenstine will speak live with three NASA astronauts currently living on the International Space Station.

MAIL CALL! Senate Democrats sent a series of letters Friday, calling on the administration and agency heads to share documents related to the Koch brothers' role in influencing policy in the Trump era. The letters cite specific actions for which the Koch network has taken credit, including shrinking national monuments, exiting the Paris climate change agreement and streamlining of infrastructure permitting. "Americans have a right to know if special interests are unduly influencing public policy decisions that have profound implications for public health, the environment, and the economy," the senators write. The letters, led by Sen. Sheldon Whitehouse, come before Senate floor speeches this week from Democrats that are expected to detail the influence of the Koch brothers network. Read the letter to the White House here, EPA here and Interior here.

IN CELEBRATION OF EARTH DAY: The president touted his administration's rollback of "unnecessary and harmful regulations," and pointed toward a "market-driven economy" as an essential tool in environmental protection. "A healthy environment and a strong economy go hand in hand," a White House presidential message said. "We know that it is impossible for humans to flourish without clean air, land, and water. We also

know that a strong, market-driven economy is essential to protecting these resources." Trump said for that reason, his administration is "dedicated to removing unnecessary and harmful regulations that restrain economic growth and make it more difficult for local communities to prosper and to choose the best solutions for their environment."

REPORT OUT ON DOE BUDGET: The Information Technology and Innovation Foundation is out with a new report today analyzing the Energy Department's budget for research, development and demonstration. The report details how the administration's current budget proposal for fiscal 2019 would "impose the largest single-year decrease" in DOE history. "R&D spending as a share of sales in the U.S. energy industry is only 0.4 percent, compared with 8.5 percent in aerospace and defense, 9.8 percent in computers and electronics, and 2.4 percent in the automotive industry," the report finds. [Read it here.](#)

MOVER, SHAKER: Holly Burke last week joined the League of Conservation Voters as communications coordinator. She previously worked for American Bridge.

— **Jennifer Talhelm**, formerly communications director for Sen. [Tom Udall](#), is moving to the Western Resource Advocates and will be based in Santa Fe.

QUICK HITS

- She tried to report on climate change. Sinclair told her to be more "balanced," [BuzzFeed](#).
- Oil is fast approaching \$70. Is the economy ready for it? [The Wall Street Journal](#).
- EPA sources: Pruitt aide tried to back-date departure after congressional interview request, [CNN](#).
- Environmental review for mine project expected this week, [Associated Press](#).
- America's nuclear headache: old plutonium with nowhere to go, [Reuters](#).
- Perched on a platform high in a tree, a 61-year-old woman fights a gas pipeline, [The Washington Post](#).

HAPPENING THIS WEEK

MONDAY

11:30 a.m. — Verizon [discussion](#) on "Celebrating Earth Day: The Power of Next-Gen Networks to Advance Environmental Sustainability," 1300 I Street NW

TUESDAY

8:00 a.m. — American Fuel & Petrochemical Manufacturers holds [security conference](#), New Orleans

10:00 a.m. — Senate Energy and Natural Resources Committee [hearing](#) on the president's proposed budget request for FY 2019 for the Forest Service, 366 Dirksen

10:00 a.m. — Senate Foreign Relations Committee [hearing](#) on nominations, including Jackie Wolcott to be representative to the International Atomic Energy Agency, 419 Dirksen

10:00 a.m. — The Bipartisan Policy Center [webcast](#) "Can America's Infrastructure Withstand the Next Natural Disasters? Lessons Learned from Previous Disasters."

3:00 p.m. — Woodrow Wilson Center book launch discussion with author Barry Rabe on pricing carbon, 1300 Pennsylvania Ave NW

5:00 p.m. — Johns Hopkins University's Energy, Resources and Environment presentation on "Cities as Innovation Centers: Investing in Resilient Infrastructure," 1619 Massachusetts Avenue NW

WEDNESDAY

10:00 a.m. — Senate Commerce Committee hearing on "Enhancing the Marine Mammal Protection Act," 253 Russell

11:30 a.m. — The World Resources Institute forum on "activism for energy," 10 G Street NE

12:30 p.m. — Olympians brief Congress about impact of climate change on winter sports, hosted by Sens. Michael Bennet and Susan Collins, 538 Dirksen

2:00 p.m. — Resources for the Future webinar on "What Research Says on Key Fracking Debate Issues."

2:00 p.m. — House Natural Resources Committee hearing on "The Weaponization of the National Environmental Policy Act and the Implications of Environmental Lawfare," 1324 Longworth

3:30 p.m. — Bloomberg Government and the Norwegian-American Chamber of Commerce conversation on "Investing In A Sustainable Energy Future," New York City

6:30 p.m. — The Carnegie Institution for Science lecture on the sustainable use of the ocean, 1530 P Street NW

THURSDAY

8:00 a.m. — Water Leaders summit on "Building an Innovative Future for Water Policy and Technology in America," 215 Capitol Visitors Center

8:30 a.m. — George Mason University's Center for Energy Science and Policy symposium on "Energy-Water Nexus," Fairfax, Va.

9:00 a.m. — Colorado State University hosts symposium on "Water in the West," Denver

10:00 a.m. — The U.S. Energy Association forum on "fostering the deployment of CCUS technologies," 1300 Pennsylvania Ave NW

10:00 a.m. — The House Energy and Commerce Committee hearing on EPA's budget request, 2323 Rayburn

10:00 a.m. — House Natural Resources Oversight Subcommittee hearing on "Examining the Critical Importance of Offshore Energy Revenue Sharing for Gulf Producing States," 1324 Longworth

10:00 a.m. — The Center for Strategic and International Studies' Energy and National Security Program discussion on "Challenges to Ukrainian Energy Reform and European Energy Security," 1616 Rhode Island Avenue NW

11:30 a.m. — The Atlantic Council discussion on "From an Oil Company to an Energy Company," 1030 15th Street NW

1:30 p.m. — Information Technology and Innovation Foundation release on "Closing the Innovation Gap in Grid-Scale Energy Storage," 1101 K Street NW

2:00 p.m. — House Appropriations Interior, Environment, and Related Agencies Subcommittee hearing on EPA's fiscal 2019 budget, 2007 Rayburn

2:00 p.m. — House Natural Resources Committee hearing on H.R. 5317 (115) and H.R. 211 (115), 1324 Longworth

2:00 p.m. — Senate Appropriations Energy and Water Development Subcommittee hearing on the Nuclear Regulatory Commission's proposed budget for FY 2019, 430 Dirksen

2:30 p.m. — The Center for a New American Security event on how lower oil prices have reshaped geopolitical calculations for U.S. policymakers, 1152 15th St NW

FRIDAY

12:00 p.m. — Women's Council on Energy and the Environment discussion on wholesale electricity pricing, 888 First Street NE

12:00 p.m. — The Nuclear Information and Resource Service, and U.S. Climate Action Network discussion on "Climate Justice and Nuclear Power in South Africa," 1200 G Street NW

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To view online:

<https://www.politicopro.com/newsletters/morning-energy/2018/04/where-do-biofuels-stand-179483>

Stories from POLITICO Pro

Failure to strike biofuels deal opens door for smaller ethanol moves Back

By Eric Wolff | 04/23/2018 05:01 AM EDT

President Donald Trump's long-sought biofuels deal between the agricultural and refining industries appears to be turning into a piecemeal policy cobbled together through EPA that expands the market for corn ethanol while granting exemptions from the program to many small oil processors.

Trump has huddled several times with members of his Cabinet, refining and ethanol industry players, and lawmakers from both corn-belt and oil states. But so far, there's been little progress in striking a grand deal that would relieve the financial pain that some independent refiners say the Renewable Fuel Standard is causing them while acceding to agriculture-sector pressure to expand the market for corn ethanol.

Instead, Trump has promised to allow year-round sales of 15 percent ethanol blends of gasoline while EPA Administrator Scott Pruitt has handed out more than two dozen temporary waivers to small refineries that exempt them from the mandate requiring them to blend ethanol with gasoline.

"After 18 months of pursuing various regulatory forms of relief and a handful of Oval Office confabs, the merchant refiners ended up with [an increase in E15] taking even more market share away from them in return for some small refiner hardship waivers — and some of them did not even get that," said a source with an oil refining company.

For over a year, refiners have urged the administration to put a cap on the price of the biofuel credits that refiners must buy to meet their RFS compliance levels. But the move has been sharply opposed by ethanol and corn interests, as well as Sen. Chuck Grassley (R-Iowa), who as recently as last month called a potential cap "CATASTROPHIC to ethanol."

But the prices for biofuel credits, called Renewable Identification Numbers, have fallen since Pruitt's EPA began issuing at least 25 compliance waivers. Although that's angered biofuels supporters who complain it has sapped demand for ethanol, they see the administration's plan to drop the Clean Air Act rules that have barred E15 sales in the summer in some states as a boon.

"Right now we're going to have anywhere from a billion- to a billion and a half-[gallon] reduction in [ethanol] demand because of [RFS] waivers given so far," Sen. Mike Rounds (R-S.D.) told POLITICO. "I think we're moving in the right direction, but we want to make sure we get the [E15] waiver in place."

At a meeting with Midwestern senators and governors April 12, Trump announced his plan to expand E15 sales. But Trump also said there were efforts to set a transition period for the two years "where we will have a little bit of complexity," an apparent reference to refiners' worries that an increase in the number of RINs from higher E15 sales won't help push down prices for the credits in the near term.

The expansion of E15 sales came after an early April meeting at the White House, where Agriculture Secretary Sonny Perdue urged Trump to give corn farmers something to offset the ethanol demand drop they were seeing from the refinery compliance waivers, as well as the decline expected because of China's retaliatory import tariffs put in place after Trump announced his trade penalties, according to an administration source. The Washington Post reported Trump spent much of the meeting discussing the controversies around Pruitt's condo rental from a lobbyist and heavy spending on first-class travel and round-the-clock security.

Trump's discussion of Pruitt's controversies left the EPA chief unable to make an aggressive case for instituting price caps on RINs, according to an administration source, and have put him in a generally weakened position inside the White House.

And that may have killed the effort to establish RIN price caps, and given traction to the piecemeal EPA actions on E15 and the temporary compliance waivers, according to both administration and industry sources.

"[The oil industry] got what they wanted with the small refinery waivers, so we should get what we want," said Rob Walther, vice president of federal affairs for the ethanol producer POET.

Refiners, who over the last several months have sought and received RFS waivers for the 2016 and 2017 compliance years, are now expected to be pushing for the same exemptions for 2018 before they even know what their final liability for the year is.

Separately, a debate has grown over how EPA has been able to issue so many waivers to refiners this year. Though an EPA spokeswoman says the agency continued to use the same process it had under the Obama EPA to grant those exceptions, oil and ethanol industry sources acknowledge it has made crucial changes that make it far easier to get out from under the biofuel mandates.

In particular, EPA is relying on report language congressional appropriators added to 2016 and 2017 government funding bills that called on EPA to loosen its requirements for determining if a refinery should be awarded a waiver. EPA has also softened its definition of what constitutes economic hardship for a refinery as a result of a ruling from the U.S. Court of Appeals for the 10th Circuit last year.

That decision, in the case of *Sinclair Wyoming Refining v. EPA*, said the agency's test for defining economic hardship as whether a refiner was about to be pushed into bankruptcy had been too severe.

EPA has also taken a more aggressive interpretation of the law, saying it would no longer grant only partial waivers. Instead, the agency is now granting full-volume waivers to qualifying small refineries, according to an industry attorney.

The American Petroleum Institute, which represents the biggest oil companies, has opposed the waivers, and ethanol producers are furious at the use of the congressional report language to loosen the standards for receiving them. Monte Shaw, executive director of the Iowa Renewable Fuels Association, said his group has asked allies on the Appropriations Committee to consider writing their own language into future appropriations reports reversing the previous guidance.

Other groups think EPA is relying too much on that congressional guidance that is not included in the law.

"The report language does not override the plain reading of the statute," said Bob Dinneen, CEO of the Renewable Fuels Association. "While the court's decision in *Sinclair* might suggest EPA views these waivers differently, EPA has turned 180 degrees in its interpretation of the statute, and essentially now requires no demonstration of economic hardship. That's not what either the statute or the court required."

EPA staff has begun work trying to figure out how to best implement the expansion of E15 sales, which corn growers see as pivotal for the program's near future. But ethanol producers and their allies are looking ahead to the long term, in which E25 and E30 provide the octane for smaller, high-efficiency engines that get far higher fuel efficiency than current models.

"We have to move to the point to emphasize the need for octane, for these small engines that become more important in meeting CAFE standards in coming years," Rounds said. "That's where ethanol really shines."

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Lobbyist whose wife rented to Pruitt lobbied EPA despite denials [Back](#)

By Theodoric Meyer and Eliana Johnson | 04/20/2018 06:43 PM EDT

The prominent lobbyist whose wife rented a condominium to Environmental Protection Agency Administrator Scott Pruitt lobbied the agency while Pruitt was leading it, contrary to his and Pruitt's public denials that he had any business before the agency, according to a Friday filing by his firm.

The [disclosure](#) from the lobbying firm Williams & Jensen contradicts Pruitt's public statement last month that the lobbyist, J. Steven Hart, had no clients with business before the EPA, and came hours after Hart's resignation from the firm.

An EPA official acknowledged on Saturday that Pruitt had met with Hart, who attended a meeting with a former meat processing executive concerned about President Donald Trump's proposal to cut spending on a Chesapeake Bay cleanup program. But the official argued that the meeting didn't meet the definition of lobbying.

A second EPA official, agency spokesman Jahan Wilcox, told POLITICO: "We have no knowledge of any facts that precipitated Williams & Jensen electing to make this filing."

The disclosure is the latest sign of one-time allies distancing themselves from Pruitt, whose job is in jeopardy because of multiple investigations into his stewardship of the agency, ranging from spending on a 20-person security team and first-class travel to the installation of costly office furniture and a soundproof phone booth. The Government Accountability Office said earlier this week that the purchase of the booth, which cost \$43,000, violated federal law. And the staff of House Oversight Chairman Trey Gowdy (R-S.C.) has interviewed a former EPA political appointee who alleges that Pruitt lied about not knowing about steep raises given to two of his top aides.

When asked late Friday about Hart's lobbying activities, a Gowdy spokeswoman told POLITICO that 'the Committee has already been looking into this matter.'"

Sen. Sheldon Whitehouse (D-R.I.) said in a statement Saturday that any evidence of deception about Pruitt's relationship with the lobbyist-turned-landlord would bode ill for the EPA administrator.

"It doesn't get much swampier than an agency head getting a sweetheart deal on rent from a lobbyist with business before his agency, but someone lying about it afterwards does make it worse," Whitehouse said. "The laundry list of Pruitt scandals grows."

Hart announced he would resign from Williams & Jensen hours before the firm filed a disclosure showing that he lobbied the EPA for Smithfield Foods in the first quarter of 2017. While Hart, the chairman and former chief executive of the firm, has disputed that the contact he had with Pruitt and Pruitt's chief of staff, Ryan Jackson, constituted lobbying activity, the disclosure indicates otherwise.

Hart lobbied the EPA on issues "relating to support for EPA Chesapeake Bay Programs," according to the disclosure.

Pruitt told Fox News earlier this month that "Hart has no clients that have business before this agency."

Smithfield paid Williams & Jensen, which has lobbied for the company for years, \$70,000 to lobby on a variety of matters in the first quarter, according to the disclosure filing. Hart also lobbied Congress on trade, agriculture and food safety issues on Smithfield's behalf during the first quarter, alongside other Williams & Jensen lobbyists.

But Smithfield said Hart's lobbying of the EPA "was not undertaken at the direction of or on behalf of Smithfield Foods."

"These activities were conducted at the request of a then former executive and current Smithfield Foundation board member, Dennis Treacy, in his personal capacity," the company said in a statement. "Mr. Treacy is associated with several environmental organizations and is a member of the Chesapeake Bay Commission."

Treacy had been Smithfield's chief sustainability officer, as well as president of the nonprofit Smithfield Foundation, and before that had led Virginia's Department of Environmental Quality.

The first EPA official, who spoke on condition of anonymity, said Pruitt and Jackson, his chief of staff, met with Treacy and Hart on July 11 for 20 minutes in Pruitt's office. That's backed up by a chain of agency emails obtained by POLITICO, which show Treacy requesting a meeting in May to discuss his "focused and unique view of environmental protection" with Pruitt, and one finally being scheduled for July 11.

On July 10, Hart wrote to Jackson that he wanted to attend the meeting at Treacy's request. Hart added that Treacy "is a good guy and can be trusted. He is coming in as the business rep on the Chesapeake Bay Foundation — another of your controversies."

But the disclosure filed by Williams & Jensen indicates that Hart's lobbying work took place in the first three months of this year, not in 2017.

The official said Hart set up the meeting as a "personal introduction" but that Treacy used a Smithfield email address, which may have prompted Williams & Jensen to consider the meeting lobbying activity on behalf of Smithfield. Treacy wanted to talk about the president's proposed budget cuts to EPA's spending on Chesapeake Bay, the subject of one of the nation's premier ecosystem restoration projects, the official said.

The official said Pruitt discussed his meeting with Hart with EPA staff before going on Fox News for an interview this month, where Pruitt maintained that Hart had no clients with business before the agency. But "it has been clear in [Pruitt's] mind for months now this was a personal introduction of an individual who was supportive of the administration, who wanted to meet the administrator."

Smithfield Foods has had a tangled history with Chesapeake Bay: In 1997, a federal judge slapped the company with a record \$12.6 million fine for violating the Clean Water Act by dumping hog waste into a bay tributary. But Smithfield is now listed as a corporate partner of the nonprofit Alliance for the Chesapeake Bay.

Pruitt's rental of the Capitol Hill condo — a relative bargain at \$50 a night — had attracted criticism even before the filing because Hart has lobbied on energy issues in the past. Hart is also a past political donor to Pruitt, contributing a total of \$4,366 in cash and in-kind services to the former Oklahoma attorney general's campaigns and leadership PAC.

Pruitt's lease originally had J. Steven Hart's name printed on it as the landlord, but someone crossed it out and wrote in the name of his wife, Vicki. Public records show Vicki Hart's name on both the mortgage and deed. (Vicki Hart is also a lobbyist but works primarily on health care issues.)

Hart was already planning to retire in November but moved up his departure in the wake of the revelation that his wife has been Pruitt's landlord.

"Considering the last couple of weeks, I think it is easier on my family and the firm to expedite my departure," Hart wrote on Friday afternoon in an email to family and friends that was obtained by POLITICO.

Williams & Jensen confirmed Hart's departure.

"Mr. Hart informed the firm of his decision to resign today," the firm said in a statement on Friday. "We are grateful to Steve for his 35 years of service and we wish him and his family well in all of their future endeavors."

Hart did not respond to a request for comment. But he was sharply critical of the news coverage of the Pruitt scandal in the email he sent on Friday.

"As you know, these days I am no more an energy lobbyist than I am an astronaut," Hart wrote. "But, why let the facts get in the way of a good story?"

After leaving the firm, Hart wrote that he was "looking forward to devoting myself to an independent legal practice, some strategic business counseling for a few clients, golf, and shooting (not in that order)."

Alex Guillén and Emily Holden contributed to this report.

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Third Republican calls on Pruitt to resign [Back](#)

By Alex Guillén | 04/05/2018 03:34 PM EDT

Rep. [Elise Stefanik](#) (R-N.Y.) today called on EPA Administrator Scott Pruitt to resign, becoming at least the third Republican to do so even as more conservative lawmakers come to Pruitt's defense.

"I'm going to make news today," Stefanik said at a town hall meeting in South Glens Falls, about 45 miles north of Albany, according to [The Saratogian](#). "I think Scott Pruitt should resign. I fundamentally disagree with how Pruitt has handled the EPA."

Reps. [Carlos Curbelo](#) and [Ileana Ros-Lehtinen](#), both Florida Republicans, earlier this week called for Pruitt's ouster, as have a number of Democrats. Pruitt is facing increased scrutiny for ethics issues including the \$50-per-night rent he paid to rent space in a condo from a lobbyist last year.

Meanwhile, conservative Republicans like Sens. [Rand Paul](#) (R-Ky.) and [Ted Cruz](#) (R-Texas) have come to Pruitt's defense today.

"Why do Obama and his media cronies want so badly to drive @EPAScottPruitt out of office?" [tweeted](#) Cruz.

Pruitt "is likely the bravest and most conservative member of Trump's cabinet," [tweeted](#) Paul. "We need him to help @realDonaldTrump drain the regulatory swamp."

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EPA emails show industry worries slowed new science policy [Back](#)

By Annie Snider | 04/19/2018 05:01 PM EDT

EPA's rollout of a controversial new transparency policy that would severely restrict the scientific research the agency can rely on when drafting new regulations has been slowed down by political officials' fears that it could have major unintended consequences for chemical makers, according to newly released EPA documents.

The issue of scientific transparency has been high on the agenda of House Science Chairman [Lamar Smith](#) (R-Texas), who has found strong support from EPA Administrator Scott Pruitt — much to the consternation of public health advocates and green groups, who view the effort as backdoor attack on the agency's ability to enact environmental regulations.

Since Pruitt announced plans for the new policy last month, researchers and public health proponents have raised alarms that it could restrict the agency's ability to consider a broad swath of data about the effects of pollution on human health. But documents released under the Freedom of Information Act show that top EPA officials are more worried the new restrictions would prevent the agency from considering industry studies that frequently support their efforts to justify less stringent regulations.

Emails between EPA officials obtained by the Union of Concerned Scientists show that Nancy Beck, the top political official in the agency's chemicals office who came to the agency after serving as a key expert for the chemical industry's lead lobbying group, voiced major concerns after she received a draft of the not-yet-released policy on Jan. 31.

The new scientific transparency directive is expected to require that the raw data for all studies EPA relies on be publicly available, and that the studies be peer-reviewed. But Beck said these requirements would exclude a great deal of industry data about pesticides and toxic chemicals that her office considers when determining whether a substance is safe or must be restricted.

It costs companies "millions of dollars to do these studies," Beck wrote in an email to Richard Yamada, the political official in EPA's office of research and development who is spearheading work on the new scientific policy and is also a former staffer for the House Science Committee chairman.

"These data will be extremely valuable, extremely high quality, and NOT published," Beck wrote. "The directive needs to be revised."

Moreover, much of this data, Beck noted, is considered proprietary by companies. It is dubbed confidential business information, and even though EPA can consider it as part of its regulatory review, the data cannot legally be made public.

Yamada replied to thank Beck for the heads up. "Yes, thanks this is helpful - didn't know about the intricacies of CBI," he wrote. "We will need to thread this one real tight!"

The term "confidential business information" primarily applies to industry information. That data is separate from the personal medical information that public health researchers worry could block consideration of their work.

Yogin Kothari, a lobbyist for the Union of Concerned Scientists, said the emails show the Trump administration's EPA has been "trying to stack the deck in favor of the industries they're supposed to be regulating."

"They want to potentially create exemptions for industry, but if you look at this entire set of documents ... you will see that there's not a single consideration for the impacts on public health data, on long-term health studies, on studies that EPA does after public health disasters like the BP oil spill," he said.

EPA spokeswoman Liz Bowman emphasized the policy is not yet finalized.

"These discussions are part of the deliberative process; the policy is still being developed. It's important to understand; however, that any standards for protecting [confidential business information] would be the same for all stakeholders," she said in a statement.

The emails indicate Pruitt wanted the new science policy rolled out at the end of February, and teased his plans in an interview with conservative outlet The Daily Caller in mid-March. But the agency has yet to finalize the policy.

The transparency directive has its origins in legislation introduced by Smith during the Obama administration, that had the backing of a number of industry groups, including the American Chemistry Council. The House Science Committee chairman frequently charged that the Obama EPA used "secret science" to justify "costly new regulations."

Although versions of the measure were approved by the House multiple times, the Senate never took it up. CBO estimated that one version of Smith's legislation would cost EPA \$250 million a year, at least in the initial years, and a leaked staff response to questions from the budget office said a later version would be even more costly, would endanger confidential medical and business information, and "would prevent EPA from using the best available science."

But Smith found an ally in Pruitt. The emails indicate that Smith met with Pruitt in early January and show that Pruitt's staff quickly began working on a directive to "internally implement" the legislation.

Industry's backing for the new scientific approach began to waiver under the Trump administration, though. When a top American Chemistry Council scientist testified before Smith's committee in February 2017, she emphasized the need to protect industry information if the transparency initiative moved forward.

"One of the things that we do need to take into consideration as making that data publicly available is that there are adequate protections for confidential business information to ensure that we keep innovation and competitiveness available for the marketplace," Kimberly White told the committee.

Industry has historically claimed that a wide range of information about chemicals, ranging from the processes by which they are produced, to the locations of manufacturing plants, to their very identities, must be kept confidential in order to keep competitors from learning trade secrets. Environmental and public health advocates argue that industry claims this exemption in many cases where it's not necessary and that it often keeps important health and safety information from public view.

The issue was a key point of debate when Congress considered a major overhaul of the nation's primary chemical safety law passed 2016 and has reemerged as Pruitt's EPA sets about implementing the law.

Asked for comment on EPA's new effort to implement the scientific transparency approach internally, American Chemistry Council spokesman Scott Openshaw said the group looks forward to reviewing the directive once it's finalized.

"It is critical that any final directive properly protect confidential business information and competitive intelligence," he said in a statement.

The internal emails show that EPA political staff were particularly attuned to this concern. In a Feb. 23 email to colleagues, Beck forwarded language from a 2005 White House document that laid out narrow exemptions from its requirement that all "important scientific information" disseminated by the federal government go through peer review.

"[Y]ou may need to tweak but hopefully there is something helpful here that can be borrowed/adopted," she wrote.

Richard Denison, lead senior scientist for the Environmental Defense Fund, said that EPA's access to industry data is indeed important to its ability to review the safety of new chemicals and pesticides, but said the internal EPA communications show that Pruitt's EPA wants to "have their cake and eat it too" with the new directive.

"They're trying to force peer review studies done by academic scientists to disclose every last detail, while at the same time allowing industry studies to be kept private or aspects of those to still be kept private," he said.

He pointed out that the concerns Beck raised about the burden the new policy would place on industry are the very same ones that the CBO report said the policy would place on EPA.

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France's Macron arrives for 'celebration' of unlikely friendship with Trump [Back](#)

By Nicholas Vinocur and Michael Crowley | 04/22/2018 09:45 PM EDT

PARIS — French President Emmanuel Macron will receive full state honors in Washington this week, nine months after he rolled out a literal red carpet for Donald Trump on Paris' Avenue des Champs Élysées.

The three-day visit is likely to feature more displays of public affection between two leaders who talk on the phone constantly and closely coordinated recent airstrikes against Syria. Despite the U.S president's enormous unpopularity in his country, Macron virtually never criticizes Trump in public and calls him a "friend." Trump in turn reportedly even scribbled a [love note](#) to the 40-year-old French president last July.

This week's visit will be "something of a celebration of the relationship," a senior Trump administration official said.

Few would have predicted such talk just after Macron's May 2017 election defeat of the nationalist insurgent Marine LePen, whom Trump [implied](#) he supported. Macron's dark-horse win was seen as a rebuke to the western nationalist movement of which Trump has become a symbol. And while the French [adored](#) President Barack Obama as a suave intellectual, Trump is seen as the embodiment of a gauche American.

But rather than denounce Trump as many French politicians have, Macron has sought to win Trump over with flattering words. In an interview with "Fox News Sunday," Macron stressed his similarities with Trump, saying both he and the president could be called a "maverick" whose election had been unexpected.

The two men hardly see eye to eye on policy, and are expected to debate the Iran nuclear deal, Syria and trade policy, among other sensitive topics.

But Macron and Trump have worked closely together as Paris takes a larger leadership role on international issues — at a time when Britain is sidelined by political chaos and a weakened German Chancellor Angela Merkel's relationship with Trump is cool at best.

"Macron has become Trump's main European interlocutor when it comes to addressing international crises," Alexandra de Hoop Scheffer, senior transatlantic fellow at the German Marshall Fund, [wrote](#) in a recent policy paper.

Macron and Trump will share a private dinner Monday evening, followed by a bilateral meeting early Tuesday. They'll then meet with Cabinet members before a state dinner at the White House. On Wednesday, Macron will address a joint session of Congress.

In their private talks, the two men are likely to focus on security issues, including a fast-approaching decision point for the Iran nuclear deal. French officials say they share some of Trump's concerns about the July 2015 pact brokered by President Barack Obama, but are urging Trump not to abandon the agreement in mid-May, when Trump has threatened to reimpose sanctions on Tehran.

Macron has sought common ground with Trump by saying the current deal is flawed and that he might be willing to crack down on Iran's ballistic missile program. But Trump wants much stronger measures that French officials worry could abrogate the deal entirely. A Trump official said the deal would be "a major topic of discussion" during Macron's visit.

The official also said the two leaders "will discuss, probably in some detail, the way ahead in Syria."

In a televised debate last week, Macron said he had changed Trump's mind on the U.S. presence in war-torn Syria: "President Trump said the USA's will is to disengage from Syria. We convinced him that it was necessary to stay," the French leader said.

The White House quickly denied that characterization, and Macron later said he never meant the countries should maintain an indefinite military presence in the country.

But on Sunday, Macron told Fox News that he would urge international cooperation during his address to Congress, warning that Iran would benefit from a U.S. and European abandonment of Syria. "We are very much attached to the same values, and especially liberty and peace," Macron said of America and France.

Trade will also be on the agenda, after Macron and Merkel — who's due to fly into Washington on April 27, a few days after Macron leaves — both vowed to tell the U.S. president that Europe would not stand for his recent steel tariffs. U.S. officials may in turn complain to Macron's entourage about a French-led proposal to slap a 3-percent tax on U.S. internet giants.

Despite the menu of issue differences, officials on both sides sought to lower expectations for specific results from the meeting.

"It's largely symbolic," an aide to Macron said.

"I think what the President would like to hear from President Macron is his counsel and his point of view and his perspective," said the Trump official. "Whether we will actually solve, or come to closure, or a full detailed agreement on some of the issues that we've touched on is difficult to say at this remove."

As they work together internationally, Trump and Macron are both fending off political threats at home. A year into his presidency, the French president's sheen as a political prodigy and savior of European liberalism has been dulled by grinding rail strikes and sagging poll numbers.

Macron wants Trump to stand at his side as the European Union's soon-to-be sole military power with a permanent seat on the United Nations Security Council, nuclear capability and the will to intervene where others will not.

The April 14 strike on Syria's chemical facilities bolstered the burgeoning Franco-American relationship, French officials say. Macron and Trump spoke repeatedly during the crisis — and no fewer than seven times over the past month, according to accounts from the Elysée presidential palace.

While Britain also joined the strikes, Merkel barely featured in the Syrian discussions. Characteristically for intervention-averse Germany, she did not order participation in the strikes, commenting on them after the fact as "necessary and appropriate."

Once the missiles had hit their targets, Macron seized on a chance to drive home his point: While others may waver, France remains a red-blooded beacon of Western power. Paris had intervened in Syria for the "honor of the international community," he told the European Parliament in Strasbourg

One outstanding question about the Macron-Trump relationship that fascinates commentators in Europe: Does the French president really like Trump, or is he just "playing him"?

European commentators suggested as much last summer when, during Trump's visit to Paris, Macron mimicked his guest's signature thumbs-up move to TV cameras.

There may be no definitive answer. Macron is a one-time stage actor who loves to quote classical French playwrights from memory and, as he told a pair of French interviewers last weekend, has "no friends."

Quizzed about Macron's apparent affection for Trump, the French president's aides say he has concluded that befriending Trump and avoiding any direct criticism of the U.S. president that could inflame his temper are the best ways of keeping Trump — and the United States — on his nation's side.

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GREENWIRE

AN E&E NEWS PUBLICATION

GREENWIRE — Fri., April 20, 2018



READ FULL EDITION

1. REGULATIONS:

EPA sends 'secret science' plan to White House

EPA yesterday sent a proposed rule to the White House Office of Management and Budget with the announced purpose of "strengthening transparency and validity in regulatory science," according to the RegInfo.gov site.

TOP STORIES

2. INTERIOR:

Migratory bird law may target smugglers, not polluters

3. PUBLIC LANDS:

This Patch of Heaven emerges as anti-government hotbed

4. BUSINESS:

100% renewables — gimmick or game changer?

CONGRESS

5. AIR POLLUTION:

14 Republicans urged Pruitt to retain Obama glider rules

6. FEDERAL AGENCIES:

Senate Democrats probe Koch 'infiltration'

7. OFFSHORE DRILLING:

Cantwell wants to protect coasts from spills

POLITICS

8. OFF TOPIC:

Meet the clean car pioneer they called 'dragon lady'

9. EPA:

Wheeler sworn in

10. WHITE HOUSE:

Oil markets shift as Trump tweets

11. BRISTOL BAY:

Conservatives keep up pressure on Pruitt over Pebble

NATURAL RESOURCES

12. NATIONAL MONUMENTS:

San Gabriel plans bar energy, mineral development

13. BRISTOL BAY:

Pebble protesters say Army Corps silenced their concerns

14. PUBLIC LANDS:

Utah's Rainbow Bridge monument becomes dark sky sanctuary

15. SCIENCE:

Humans to blame for 'downsizing of nature' — study

16. WILDLIFE:

Reclamation investigates possible theft of mammoth bones

ENERGY

17. BIOFUELS:

Ethanol boosters scramble to decode Trump's E15 plans

18. ELECTRICITY:

In a first, U.K. goes 55 hours without tapping coal

19. OIL AND GAS:

3 LNG tankers cross Panama Canal in a day, setting milestone

AIR AND WATER

20. COLORADO RIVER:

Western states call Ariz. a water hog

21. WASTE:

The smelly food in your fridge squanders tons of water

22. AIR POLLUTION:

Artist's pods give people a taste of world's dirtiest air

CHEMICALS

23. TEXAS:

Valero plant explodes; no injuries reported

24. TOXICS:

Contaminated soil leads to tense dispute with Army Corps

STATES

25. HAWAII:

Historic rains inspire 'despicable' scam by boaters

26. NEW JERSEY:

Former acting EPA chief visits threatened marsh cabins

27. WYOMING:

Coal firm appealed to Gov. Mead over denied mine permit

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28. JAPAN:

Volcano erupts for first time in a quarter-millennium

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AN E&E NEWS PUBLICATION

CLIMATEWIRE — Fri., April 20, 2018

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1. POLITICS:

DOE could use wartime law to help coal. Here's how it works

Invoking a Korean War-era law to aid struggling coal and nuclear units would represent a dramatic expansion of the Trump administration's campaign to rescue the industry, lobbyists and analysts said yesterday.

TOP STORIES

2. EPA:

Smith pitched Pruitt on 'secret science.' Now it's happening

3. FUEL ECONOMY:

If gas goes up, big cars might still be the rage. Here's why

SCIENCE

4. ANTARCTICA:

Feedback loop means melting ice causes even more melting

TRUMP ADMINISTRATION

5. WHITE HOUSE:

Ex-Trump aide was overruled on solar tariffs

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15 states support oil companies in climate cases

7. BUSINESS:

Shell: 'Very difficult choices' ahead

SOCIETY

8. FOOD:

Chili buffalo worms, cricket energy bars hit supermarkets

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9. AUTOS:

Lyft promises to offset GHG emissions

10. BICYCLES:

Protected lanes spark 'bikelash' in surprising places

ADAPTATION

11. ADAPTATION:

Hurricane victims want homes on stilts, but it's pricey

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Subject: Morning Energy: Interior rejected staff advice on casino, docs show — Pruitt's science directive slowed by industry concerns — Francis Brooke: Rookie of the year

By Kelsey Tamborrino | 04/20/2018 05:43 AM EDT

With help from Anthony Adragna

YOU NEVER KNOW WHAT YOU'RE GONNA GET: Interior officials reversed course on plans from two American Indian tribes to build a casino last year, new documents show. The heavily redacted documents released via FOIA show officials rejected recommendations from federal experts on Indian gaming, Pro's Nick Juliano reports, raising further questions about whether Interior Secretary Ryan Zinke and his political appointees caved to lobbying pressure from MGM Resorts International.

The tribes' treatment is now the subject of an Interior inspector general investigation, a spokeswoman told Nick. And while the documents don't reveal the contents of the internal deliberations by the staff of the Bureau of Indian Affairs' Office of Indian Gaming, they do show that the career staffers were circulating what they labeled as "approval" letters just 48 hours before their bosses refused to either OK or reject the tribes' application, leaving the casino in legal limbo.

No direct effort by MGM to lobby experts in BIA's Indian gaming office can be seen in the docs, but they show a timeline that indicates Interior officials closest to gaming issues were ready to side with the tribes after about six weeks of internal review. The department arrived at the opposite conclusion less than 48 hours after their recommendations went to Associate Deputy Secretary James Cason, a veteran of three Republican administrations, who was one of President Donald Trump's first hires at the department.

The emails also indicate even Interior career staff were unsure how they would explain the sudden about-face from higher-ups. "As for why we didn't approve the Mohegan compact amendment, you say the letter speaks for itself," Troy Woodward, a senior policy adviser in the Office of Indian Gaming, wrote to a colleague who wondered how he should answer questions. And "like Forrest Gump, say: 'that's all I've got to say about that.'" Read more.

WELCOME TO FRIDAY! I'm your host Kelsey Tamborrino, and NRECA's Kirk Johnson knew all the states with just one representative in the House: Alaska, Delaware, North Dakota, South Dakota, Montana, Vermont and Wyoming. For today: Who was the Senate majority leader whose father served as chief justice? Send your tips, energy gossip and comments to ktamborrino@politico.com, or follow us on Twitter [@kelseytam](https://twitter.com/kelseytam), [@Morning_Energy](https://twitter.com/Morning_Energy) and [@POLITICOPro](https://twitter.com/POLITICOPro).

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CONCERN ON ALL FRONTS: Scientists aren't the only ones expressing concern with EPA Administrator Scott Pruitt's plans to revise how the agency considers outside research, emails show. As the administrator weighs next steps on a scientific transparency directive announced earlier this year — which is expected to require that the raw data for all studies be publicly available and peer-reviewed — members of Pruitt's staff expressed concern it could block their own use of industry data, Pro's Annie Snider reports.

Emails between EPA officials obtained by the Union of Concerned Scientists show that Nancy Beck, the top political official in the agency's chemicals office, voiced concerns after she received a draft of the not-yet-released policy on Jan. 31. The directive in question has origins in legislation introduced by Rep. Lamar Smith during the Obama administration, but its requirements would exclude a great deal of data about pesticides and toxic chemicals that Beck's office considers when determining whether a substance is safe or must be restricted. "These data will be extremely valuable, extremely high quality, and NOT published," Beck wrote in an email to an official in EPA's office of research and development. "The directive needs to be revised." Read more here.

THE ROOKIE: The energy industry is unsure what to make of the relatively unknown Francis Brooke, who will soon replace Mike Catanzaro as the top White House energy aide. A 28-year-old former baseball pitcher, Brooke spent the last year in Vice President Mike Pence's office serving in a junior role to Catanzaro and George David Banks. But Pro's Ben Lefebvre and Eric Wolff report energy lobbyists worry his promotion could leave them without steady hands to steer the White House as big decisions on the coal industry, biofuels and energy trade pile up — especially in the crucial run-up to the midterm elections. "It shows you this administration doesn't care about these issues," said one lobbyist who works extensively with the administration on energy policy. "I expect agencies are now going to have to play a bigger role. There's not going to be a lot of policy issues that will be determined over the next eight months or so." Read more.

WHAT'S THE HOLD UP? House Natural Resources Chairman Rob Bishop says a comprehensive GOP energy bill is "being held up" until the Pentagon weighs how offshore drilling near Florida could affect national security, following backlash from the offshore proposal that led two Florida Republicans to pursue a permanent moratorium. A pending energy bill, H.R. 4239 (115), is one potential vehicle to extend that moratorium. Bishop told Anthony he is waiting for a Defense Department report on how expanded drilling near Florida would affect "mission compatibility." A committee spokeswoman said the results of the study would help determine next steps on the moratorium.

— **On the anniversary of the Deepwater Horizon oil spill**, New Jersey Gov. Phil Murphy is expected to sign into law today a bill that bans offshore drilling in state waters. The Center for American Progress, in anticipation of the legislation, cheered the move. Florida Sen. Bill Nelson, meanwhile, marked the anniversary by joining legislation Thursday intended to block the oil industry from rolling back Interior drilling safety rules adopted in response to the spill.

TRAVEL COMPANIONS: In preparation for a planned trip that was later canceled because of Hurricane Harvey, Pruitt spent nearly \$45,000 to fly five people to Australia, according to Reuters. While not a violation of government policy, Reuters reports two of Pruitt's aides and three security agents flew on business-class tickets costing roughly \$9,000 to set up advance meetings for the administrator. Pruitt was scheduled to participate in environment-related meetings with Australian officials.

Agency officials did not dispute the figures. EPA spokesman Jahan Wilcox told Reuters Hurricane Harvey, which caused major flooding in Texas, caused him to cancel the trip and instead go to Corpus Christi to assess the agency's relief efforts. "This is not news," he said, adding Pruitt's team was "adhering to the federal government's travel policy."

WHAT ABOUT HIS EMAILS? EPA told Senate Environment and Public Works Chairman John Barrasso that all of Pruitt's four emails were searched whenever there was a FOIA records request, but that a "full review" is being conducted just to make sure. "As long as EPA Administrators have had secondary email accounts, EPA staff have routinely searched requested accounts in response to FOIA and Congressional inquiries," Steve Fine, EPA's deputy chief information officer, wrote in a letter released by Barrasso.

DEMS WADE INTO WEST VIRGINIA PRIMARY: Republicans aren't the only ones trying to meddle in West Virginia's Senate primary. National Democrats are also jumping into the game, POLITICO's Alex Isenstadt reports, with an effort launched Thursday that could be designed to help coal baron Don Blankenship

win the Republican nomination. Washington-based super PAC Duty and Country has begun airing ads hitting the other two GOP contenders in the field: Rep. [Evan Jenkins](#) and state Attorney General Patrick Morrisey, ahead of the state's May 8 primary. But Blankenship was notably omitted from their target list, Alex writes. [Read more.](#)

— **Fox News Channel announced Thursday** its "America's Election Headquarters 2018" midterm election series would kick-off in West Virginia, with a GOP Senate primary debate on May 1. Candidates will need to reach a 10 percent threshold in a Fox poll next week to be invited to the debate.

ABOUT THAT CRA THREAT: Sen. [Lisa Murkowski](#) doesn't sound super gung-ho about using the Congressional Review Act on a 2016 plan from the Bureau of Land Management (that GAO [concluded](#) last year met the definition of a federal rule). "Obviously, we've got some issues that need to be resolved in the Tongass and whether this is the best way to do it is something we've been analyzing," she told reporters. Of course, floor time in the Senate is a valuable commodity so carving out time for the Alaska-centric issue may be a heavier lift. Background [here](#) on the Senate Republicans' new novel push to undo federal rules.

IT'S ALMOST EARTH DAY: Sunday marks Earth Day, where the Earth Day Network is using the date to promote its goal of [ending plastic pollution](#). The organization says more than 1 billion people from 192 countries will take part in the event on April 22. For its part, EPA promotes a list of Earth Day events [here](#).

CFA FLAGS FUNDRAISER AT PRUITT CONDO: Washington-based watchdog group Campaign for Accountability filed a complaint Thursday with the FEC against GOP Sen. [Mike Crapo](#) and Vicki Hart, the lobbyist co-owner of the controversial condo where Pruitt lived. The complaint alleges Crapo and Hart violated the Federal Election Campaign Act and FEC regulations when they failed to disclose improper in-kind contributions. Read it [here](#).

GOING PUBLIC: The Sierra Club filed a lawsuit for documents related to EPA's Office of Public Affairs after EPA failed to respond to its FOIA requests concerning whether the agency improperly — and potentially illegally — used the Office of Public Affairs' staff time to promote topics outside the scope of the office. Read it [here](#).

MAIL CALL! BIRD IS THE WORD: Sixty-two Democrats, led by Rep. [Alan Lowenthal](#), sent a letter to Zinke on Thursday regarding Interior's interpretation of the Migratory Bird Treaty Act. "We ask that you continue to enforce this foundational bird conservation law as every administration from across the political spectrum has done for more than forty years," the [letter](#) says.

— **Thirty-one outdoor businesses** will send [this letter](#) to Zinke today, calling on DOI to acknowledge the role of the outdoor recreation industry in its proposal to reverse the Methane Waste Prevention Rule. They request best practices are implemented to improve air quality in oil fields across the country, among other issues.

SPEAKING OF METHANE: Earlier this week BP released its "[advancing the energy transition](#)" report, [committing](#) to near-term carbon reductions and setting a target methane intensity of 0.2 percent and holding it below 0.3 percent. The Environmental Defense Fund [highlights](#) the report Thursday in a post arguing on the next frontier of methane targets, as annual shareholder resolution meetings are on the horizon.

SOLAR BILL SPOTLIGHT: Democratic Rep. [Jacky Rosen](#) introduced the bipartisan "Protecting American Solar Jobs Act," [H.R. 5571 \(115\)](#) this week, which would repeal tariffs introduced by the Trump administration on imported solar panels. It would undo increases in duty and a tariff-rate quota on certain crystalline silicon photovoltaic cells.

QUICK HITS

- Explosion reported at Valero oil refinery in Texas, [NBC](#).
- Girl Scouts to press EPA on coal ash, [WCIA](#).
- Wehrum: EPA "still thinking about" Obama mercury standards, [E&E News](#).
- Otter poop helps scientists track pollution at a Superfund site, [Scientific American](#).
- Trump's looming trade war gives Democrats an opening in farm country, [Reuters](#).
- Forget rising interest rates, banks are still loving solar power, [Bloomberg](#).

HAPPENING TODAY

8:30 a.m. — Elemental Excelerator holds [Earth Day Energy Summit](#), Hawaii

8:45 a.m. — Brookings holds a [discussion](#) on "A new EIB bond product in support of the Global Goals: Building a sustainable financial system," 2175 K St NW

9:00 a.m. — The George Washington University Elliott School of International Affairs [discussion](#) on "The French Leadership on Global Climate Actions," 1957 E Street NW

12:00 p.m. — Environmental Law Institute [conference](#) of lawyers committed to addressing the climate emergency, 2000 H Street, NW

12:30 p.m. — John Hopkins School of Advanced International Studies [discussion](#) on renewable energy's future in Puerto Rico, 1619 Massachusetts Avenue NW

1:00 p.m. — Global American Business Institute [discussion](#) on Korea's long-term natural gas plan, 1001 Connecticut Avenue NW

1:30 p.m. — House Transportation and Infrastructure Water Resources and Environment Subcommittee [field roundtable](#) on "America's Water Resources Infrastructure: Concepts for the Next Water Resources Development Act, Part II," Coos Bay, Ore.

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Stories from POLITICO Pro

Zinke's agency held up Indians' casino after MGM lobbying [Back](#)

By Nick Juliano | 02/01/2018 05:00 AM EDT

Two casino-owning American Indian tribes are accusing Interior Secretary Ryan Zinke of illegally blocking their plans to expand operations in Connecticut — a delay that stands to benefit politically connected gambling giant MGM Resorts International.

The Interior Department's refusal to sign off on the tribes' plans for a third Connecticut casino came after Zinke and other senior department officials held numerous meetings and phone calls with MGM lobbyists and the company's Republican supporters in Congress, according to a POLITICO review of Zinke's schedule, lobbying registrations and other documents. The documents don't indicate whether they discussed the tribes' casino project.

Federal law gives Interior just 45 days to issue a yes-or-no verdict after a tribe submits proposed changes to its gaming compact with a state, as the Mohegan and Mashantucket Pequot tribes note in a suit they filed against Zinke and the department. But the department declined to make any decision in this case, an inaction that raises questions about whether an intensive lobbying campaign by one of the gambling industry's biggest players muscled aside the interests of both the tribes and the state of Connecticut.

"I think the Department of Interior has been derelict in failing to give approval" to the tribes' request, Sen. Richard Blumenthal (D-Conn.) told POLITICO. "We asked for a meeting, but they were unresponsive. They never even responded."

Meanwhile, MGM and its allies had direct access to Interior. Zinke had multiple conversations last year with Sen. Dean Heller and Rep. Mark Amodei — two Nevada Republicans whose state is a major center of employment for MGM, and who have each tried to impede the tribes' casino plans. The company also doubled its lobbying spending and assembled a team that includes Bush-era Interior Secretary Gale Norton and Florida-based Trump fundraiser Brian Ballard.

The proposed Connecticut casino would sit on non-tribal land just across the border from a billion-dollar casino that MGM is planning in Springfield, Massachusetts. The Pequot tribe's Foxwoods Casino in Connecticut previously provoked the ire of former New Jersey casino owner Donald Trump, who complained during a 1993 congressional hearing that "they don't look like Indians to me."

An Interior spokeswoman did not respond to requests for comment, but the department is due to respond by next week to the suit the tribes filed in November. MGM has sought to join the suit on Interior's side.

MGM and its supporters say the tribes are trying to circumvent restrictions on "off-reservation" gambling while still maintaining their exclusive access to Connecticut's lucrative casino market, and that the new property would provide unfair competition to its Springfield project.

Interior officials sent the tribes encouraging signals as recently as May. But by mid-September the department reversed course, saying it would be premature to either approve or reject the plans.

"It's 100 percent about delaying us for as long as they possibly can," said Andrew Doba, a spokesman for the joint enterprise the tribes created for their new project.

The case is far from the first legal dispute to arise from Interior's role as the overseer of Indian tribes' gambling agreements with the states. Clinton-era Secretary Bruce Babbitt faced a special prosecutors' investigation after Interior rejected three Wisconsin tribes' plans for a casino that other, Democrat-supporting tribes opposed — though he ultimately was cleared. Indian gambling also played a key role in the George W. Bush-era Jack Abramoff scandal.

In the Connecticut case, the tribes have been operating two casinos — the Pequot tribe's Foxwoods and the Mohegan Sun — since the early 1990s. Their success in the market between Boston and New York provided competition to casinos in Atlantic City, including the formerly Trump-owned Taj Mahal.

As gambling spread across the U.S. in recent decades, MGM and other casino developers — including Trump — pursued projects in Connecticut but were ultimately unsuccessful. State law there limits casino ownership to the two in-state tribes and their new joint venture.

The tribes say they are fully complying with state law and the federal Indian Gaming Regulatory Act, which allows federally recognized tribes to operate casinos on their reservations or lands held in trust by the federal government. The casino they want to open is technically a commercial project that would be operated by MMCT Venture, a company jointly owned by the tribes that owns the casino site in East Windsor and entered into a development agreement with the town.

Connecticut Gov. Dannel Malloy and the state legislature signed off on that arrangement last year, so long as the tribes agreed to amend their gaming compacts that guaranteed a certain share of slot revenues would go to the state. The Indian Gaming Regulatory Act requires Interior to approve such compact amendments after a brief review window, unless the amendments violate the terms of the federal law.

The lawsuit seeks to force approval of the contract, arguing that the law does not allow Interior to refuse to render a verdict.

"IGRA and its implementing regulations leave the Secretary with no discretion to proceed in any other manner," Connecticut and the tribes argue in their lawsuit, filed in U.S. District Court for the District of Columbia on Nov. 29.

At one point, Interior seemed inclined to agree with the tribes' interpretation of the law. In a May 12 technical guidance letter to the tribes, Associate Deputy Interior Secretary James Cason acknowledged that the Indian Gaming Regulatory Act provides for a 45-day review period for compact amendments and that the department may disapprove them only for violating the act, other federal laws or trust obligations to the tribes.

While Cason stressed that his advice was nonbinding and did not constitute a preliminary decision, he endorsed earlier guidance from the Obama administration that the Connecticut amendment reflected the "unique circumstances" at play and that opening a new casino would not affect the tribes' exclusivity agreement with the state.

But the tribes' request drew opposition from out-of-state lawmakers like Heller and Amodei.

"Under that framework, the tribes seek to expand off-reservation gaming without going through the procedures mandated by" the Indian Gaming Regulatory Act, Amodei wrote in a July 28 letter to Cason, following up on a discussion earlier that day. Amodei asked whether Interior planned to allow the 45-day review period to lapse, which would allow the amendments to be "deemed approved."

Ultimately, Interior decided against approval. Acting Assistant Secretary for Indian Affairs Michael Black told the tribes in a Sept. 15 letter that approving or disapproving the amendment to their gaming compact was "premature and likely unnecessary," and said Interior had "insufficient information" to make a decision. However, he did not cite any legal justification for that move, nor did he outline what additional information the department would need.

Interior has on at least one occasion returned a gaming compact amendment rather than make a yes-or-no decision, although the circumstances were slightly different at the time. In 2013, the department told the Cheyenne-Arapaho tribes in Oklahoma that it could not process their amendments because of incomplete information. But in that case, the department replied in less than 30 days rather than wait for the entire review period to elapse, and it cited specific regulations and outlined what additional information it needed from the tribes.

Black copied Amodei and Heller on his letter but did not include any Connecticut lawmakers. (He did say a separate letter was going to Malloy, the Connecticut governor.) Zinke and Heller also spoke on the phone on Sept. 15, according to an entry on Zinke's calendar. And the day before Black sent the letter, Zinke and Cason were scheduled to meet at the White House with deputy chief of staff Rick Dearborn, although Zinke's calendar does not list the subject of the meeting.

Ahead of the decision, MGM "participated in Interior's review" through meetings and correspondence in which the company urged Interior to either return the amendments without making a decision or to disapprove them for violating the Indian Gaming Regulatory Act, according to a statement filed in court by Uri Clinton, MGM's senior vice president and legal counsel.

MGM brought on heavyweights including Norton — who disclosed her work for the company just last month — as well as Ballard, a lobbyist who has helped raise millions for Trump's campaign. MGM's spending on lobbyists for all issues more than doubled last year, to \$1.5 million spread across five outside firms and its own newly formed in-house team.

An affiliated company, MGM Public Policy LLC, also paid \$270,000 last year to hire a team of lobbyists from Brownstein Hyatt Farber Schreck LLP to work on issues including gaming. That's the firm at which Deputy Interior Secretary David Bernhardt worked until he joined the administration last year, though he has agreed to recuse himself from matters involving former clients of his firm without prior authorization.

"MGM Resorts last year established a public policy office in Washington to engage more directly on Federal legislative and policy issues," an MGM spokesman said in a statement. "Our advocacy activity reflected that increased engagement. As the largest employer in Nevada, part of that advocacy is routinely engaging our elected representatives."

Heller and Amodei each had multiple meetings and phone calls with Zinke last year, according to the secretary's calendar, although it's unclear whether they discussed the Connecticut casinos. On one occasion, Zinke joined Heller for dinner at a Las Vegas steakhouse on July 30, when he was in the state touring national monuments, one of several pieces of Interior's portfolio of interest to Nevada.

A Heller spokeswoman did not respond to a request for comment. But the senator has tried to advance MGM's interests in the past: In 2016, he offered an amendment to a defense bill that would have prevented Indian tribes from operating commercial casinos in the same state where they operate casinos on the reservation — precisely what the Connecticut tribes are trying to do. The amendment never came to a vote, and Heller does not appear to have ever discussed it publicly.

MGM employees and the company's political action committee have given \$96,000 this cycle to Heller's reelection campaign and leadership PAC, making the company his largest single source of contributions, according to the Center for Responsive Politics. Amodei has received no donations from company employees or its PAC.

Interior's Sept. 15 decision came two weeks after Zinke invited several lobbyists for MGM to join him and other guests for a social visit on his office balcony, which overlooks the National Mall. They included, according to Zinke's calendar, Ballard and other lobbyists from his firm Florida-based firm Ballard Partners, which opened its first Washington, D.C., office in 2017. Also present were Zinke's former family attorney and a major GOP fundraiser, according to copies of the secretary's calendar.

MGM hired Ballard in March and paid the firm \$270,000 last year, according to disclosure filings. Ballard was Florida finance chairman for Trump's 2016 campaign and helped organize a fundraiser at the Trump International Hotel in Washington last summer at which donors gave \$35,000 to attend or \$100,000 to join the host committee.

Ballard declined to discuss his work for MGM or any other client and said he could not recall the details of that particular meeting, which took place Aug. 29, according to Zinke's calendar. But Ballard said he had met Zinke and thinks "the world of him."

In October, MGM brought on Norton, who served as Interior secretary from 2001 to 2006, to lobby on issues related to the Connecticut tribes. Norton began lobbying for MGM on Oct. 25, according to disclosures filed Jan. 19.

The next day, Oct. 26, Interior officials spoke to the tribes and asked them to explain why the department was obligated to weigh in on their casino since it was being built by a commercial entity and not on tribal land.

In a brief interview last week, Norton said she did not know why her disclosure form was filed so late — lobbyists are required to file disclosures within 45 days — and she did not respond to follow-up inquiries.

Meanwhile, a new state legislative session begins in February in Connecticut. MGM plans to ask legislators there to allow an open bidding process for new casinos in the state, arguing that Interior's refusal to act shows that the state's attempt to limit casino ownership to the tribes would not work.

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Interior rejected staff advice when scuttling tribes' casino, documents suggest [Back](#)

By Nick Juliano | 04/20/2018 05:02 AM EDT

Trump administration officials rejected recommendations from federal experts on Indian gaming policy when they blocked two American Indian tribes from opening a casino last year, documents obtained by POLITICO indicate.

The heavily blacked-out documents add to questions about whether Interior Secretary Ryan Zinke and his political appointees buckled to lobbying pressure from MGM Resorts International, a gambling industry giant that is planning its own casino just 12 miles from the project proposed by the Mohegan and Mashantucket Pequot tribes.

Interior's inspector general is investigating the department's handling of the tribes' casino application, a spokeswoman told POLITICO, after Connecticut lawmakers asked the internal watchdog to look into the matter.

The documents, released under the Freedom of Information Act, don't reveal the contents of the internal deliberations by the staff of the Bureau of Indian Affairs' Office of Indian Gaming. But they show that the career staffers were circulating what they labeled "approval" letters just 48 hours before their political bosses reversed course and refused to either OK or reject the tribes' application — a nondecision that left the Indians' East Windsor project in legal limbo.

To fight off the potential competition, MGM [spent heavily on lobbyists](#), including George W. Bush-era Interior Secretary Gale Norton and firms with ties to the Trump administration, while enlisting the assistance of friendly lawmakers such as Sen. [Dean Heller](#) and Rep. [Mark Amodei](#). MGM lobbyists and the two Nevada Republicans

held a handful of meetings and conversations with Associate Deputy Secretary James Cason in the months and days before he edited Interior's letter holding up the tribes' plans.

A spokesman for the tribes' casino project said they were caught off guard by Interior's about-face and are glad to see the department's internal watchdog probing the matter.

"We are grateful there's an IG investigation into this issue because since last fall, none of the department's actions have passed the smell test," said Andrew Doba, a spokesman for MMCT Venture, the company the tribes formed to own and operate the new casino. "Something clearly happened to pollute the process, which should be problematic for an administration that promised to drain the swamp."

The tribes have also sued, arguing that Zinke ignored his responsibilities under the Indian Gaming Regulatory Act to either approve or reject their application in a timely manner and to act to protect the tribes' interests.

Cason and spokespeople for Interior and the Bureau of Indian Affairs did not respond to requests for comment this week.

But the emails show that even Interior's career staff was unsure how they would explain the sudden about-face.

"As for why we didn't approve the Mohegan compact amendment, you say the letter speaks for itself," Troy Woodward, a senior policy adviser in the Office of Indian Gaming, wrote in a Sept. 26 email to a colleague who anticipated having to answer questions about it at a gaming industry conference. And "like Forrest Gump, say: 'that's all I've got to say about that.'"

The dispute is complicated by the peculiarities of federal law on Indian gaming, which seeks to promote tribes' economic development but also discourages the spread of off-reservation gambling. The two Connecticut tribes, which already operate two lucrative casinos on their reservations, are exploring a gray area with their proposed third casino, which a jointly owned private company would operate on nonreservation land.

MGM, which plans to open a casino later this year in nearby Springfield, Mass., says the tribes' approach would set a worrisome precedent for other states.

"This is an unusual situation, and we're kind of pushing the bounds on IGRA," says Kathryn Rand, dean of the University of North Dakota School of Law and a co-director of its Institute for the Study of Tribal Gaming Law and Policy. Rand is not affiliated with MGM or the Connecticut tribes.

The newly released documents do not show any effort by MGM to make its case to experts in BIA's Indian gaming office. They also indicate that Interior officials closest to Indian gaming issues were ready to side with the tribes after about six weeks of internal review.

Instead, Interior reversed course with little official explanation less than 48 hours after their recommendations went to Cason, a veteran of the previous three Republican administrations who was one of President Donald Trump's first hires at the department.

On Sept. 11, Woodward emailed around copies of "the edited letters for Pequot and Mohegan," which he said had "been through the surname process," a system for internal review. The contents of the letters were redacted, but each was about two pages long, and file names referred to both as "draft approval" letters.

The following day, Woodward alerted colleagues that "Jim wants some changes," referring to Cason. But on Sept. 13, Woodward still sent "approval" letters "for Mike Black's signature," referring to the then-acting

assistant secretary for Indian affairs, along with a notice the department was required to publish in the Federal Register. Again, the attachments were redacted, but each was two pages long.

A day later, "Jim's edits" came back, and the documents were no longer referred to as "approval" letters.

Instead, Black signed a one-page letter on Sept. 15 informing the tribes that it would be "premature and likely unnecessary" to weigh in on their gaming applications at all.

Returning the applications without approving or disapproving them appears to be an option Interior officials did not consider until earlier that day. A pair of redacted memos circulated that morning, including one "regarding Secretarial Authority to not act on a compact," according to its title.

It is unclear precisely what happened over those days, but by then Cason had received ample input from MGM and its allies. As early as June, Cason met with a senior adviser to Zinke and a lobbyist from Ballard Partners, a Trump-connected firm MGM hired last year, to discuss issues related to the company, according to his calendars. And he was in touch with MGM supporters several more times over the intervening months up to the days before Interior's response was being finished.

On Sept. 13, Cason met with Amodei, and the following day he had a teleconference with Heller, according to Cason's calendar. MGM is a major employer in Nevada, and both lawmakers had previously raised concerns about the Connecticut tribes' proposals and the potential expansion of off-reservation gambling.

Cason's Sept. 14 meeting with Heller included some officials who were working on the Connecticut case, according to his calendar and the BIA emails. Later that day, Cason joined Zinke at a meeting at the White House with Rick Dearborn, Trump's deputy chief of staff for policy.

The president has his own history of clashes with the Mashantucket Pequot, whose Foxwoods Casino competed with his Atlantic City properties to draw gamblers from New York City. "They don't look like Indians to me," Trump infamously declared in a 1993 congressional hearing.

Several weeks after Interior released its decision, Norton sent Zinke a 24-page memo outlining legal arguments in support of the decision on behalf of MGM. Among the evidence she cited was Trump's congressional testimony, though not that particular phrase.

"Supreme Court precedent and President Trump's testimony counsel against approving Connecticut's discriminatory framework, the sole function of which is to grant MMCT, a private corporation, a monopoly over commercial, off-reservation, state-regulated gaming," the former Interior secretary wrote in her Oct. 30 memo to Zinke.

Black's ambiguous Sept. 15 letter, which Cason had edited, left the tribes unable to proceed with their planned casino.

The tribes' lawsuit is pending in U.S. District Court for the District of Columbia, and MGM has asked to intervene in the case, although both Interior and the tribes say it does not have standing to do so.

The case hinges on dueling interpretations of the goals of the Indian gaming law — essentially, whether more weight should be given to IGRA's goal of supporting tribes' economic prospects or its prohibitions on off-reservation gaming in most circumstances.

In court filings, Interior has also stressed the importance of procedural differences between the two tribes' prior gaming agreements, which it says should prevent the Mashantucket Pequot from participating in the case at all.

While the Mohegan tribe was operating under a state gaming compact, the Mashantucket were never able to reach an agreement with Connecticut officials back in the 1980s — so Foxwoods has been operating under the terms of "secretarial procedures" authorized under a different section of the law.

The law says amendments to gaming compacts, such as the Mohegan's, must be approved within 45 days unless Interior can demonstrate that their terms violate federal law or the department's trust responsibilities to the tribe. But it contains no such deadline for secretarial procedures such as the Mashantucket Pequot's.

Interior and MGM say that because the department has no obligation to act on the Pequot's proposed amendment, the entire case is effectively moot. However, the newly disclosed emails suggest that career officials were aware of that distinction throughout their review and did not see it as a reason to deny the tribes' request.

Rand, the law school dean, said courts have not previously grappled with the issue. "That I think is a real interesting and open question that we wouldn't have a whole lot to go on," she said.

This case is also unusual because of the nature of the two tribes at issue and the lucrative market the two sides are battling over.

"That might be a bit implicit in MGM's arguments — that the Mohegans and the Pequots aren't acting like tribal governments in this enterprise, they're operating like competitors. And because of their status ... they don't need the protection that other tribes do," Rand said in an interview this week. "The counterargument, of course, is that tribal sovereignty doesn't depend on whether the tribe needs the federal government's help. Tribal sovereignty is just a fact."

Black's Sept. 15 letter also does not mention the procedural difference between the tribes as a factor in deciding to return the applications without acting on them.

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EPA emails show industry worries slowed new science policy [Back](#)

By Annie Snider | 04/19/2018 05:01 PM EDT

EPA's rollout of a controversial new transparency policy that would severely restrict the scientific research the agency can rely on when drafting new regulations has been slowed down by political officials' fears that it could have major unintended consequences for chemical makers, according to newly released EPA documents.

The issue of scientific transparency has been high on the agenda of House Science Chairman [Lamar Smith](#) (R-Texas), who has found strong support from EPA Administrator Scott Pruitt — much to the consternation of public health advocates and green groups, who view the effort as backdoor attack on the agency's ability to enact environmental regulations.

Since Pruitt announced plans for the new policy last month, researchers and public health proponents have raised alarms that it could restrict the agency's ability to consider a broad swath of data about the effects of pollution on human health. But documents released under the Freedom of Information Act show that top EPA

officials are more worried the new restrictions would prevent the agency from considering industry studies that frequently support their efforts to justify less stringent regulations.

Emails between EPA officials obtained by the Union of Concerned Scientists show that Nancy Beck, the top political official in the agency's chemicals office who came to the agency after serving as a key expert for the chemical industry's lead lobbying group, voiced major concerns after she received a draft of the not-yet-released policy on Jan. 31.

The new scientific transparency directive is expected to require that the raw data for all studies EPA relies on be publicly available, and that the studies be peer-reviewed. But Beck said these requirements would exclude a great deal of industry data about pesticides and toxic chemicals that her office considers when determining whether a substance is safe or must be restricted.

It costs companies "millions of dollars to do these studies," Beck wrote in an email to Richard Yamada, the political official in EPA's office of research and development who is spearheading work on the new scientific policy and is also a former staffer for the House Science Committee chairman.

"These data will be extremely valuable, extremely high quality, and NOT published," Beck wrote. "The directive needs to be revised."

Moreover, much of this data, Beck noted, is considered proprietary by companies. It is dubbed confidential business information, and even though EPA can consider it as part of its regulatory review, the data cannot legally be made public.

Yamada replied to thank Beck for the heads up. "Yes, thanks this is helpful - didn't know about the intricacies of CBI," he wrote. "We will need to thread this one real tight!"

The term "confidential business information" primarily applies to industry information. That data is separate from the personal medical information that public health researchers worry could block consideration of their work.

Yogin Kothari, a lobbyist for the Union of Concerned Scientists, said the emails show the Trump administration's EPA has been "trying to stack the deck in favor of the industries they're supposed to be regulating."

"They want to potentially create exemptions for industry, but if you look at this entire set of documents ... you will see that there's not a single consideration for the impacts on public health data, on long-term health studies, on studies that EPA does after public health disasters like the BP oil spill," he said.

EPA spokeswoman Liz Bowman emphasized the policy is not yet finalized.

"These discussions are part of the deliberative process; the policy is still being developed. It's important to understand; however, that any standards for protecting [confidential business information] would be the same for all stakeholders," she said in a statement.

The emails indicate Pruitt wanted the new science policy rolled out at the end of February, and teased his plans in an interview with conservative outlet The Daily Caller in mid-March. But the agency has yet to finalize the policy.

The transparency directive has its origins in legislation introduced by Smith during the Obama administration, that had the backing of a number of industry groups, including the American Chemistry Council. The House

Science Committee chairman frequently charged that the Obama EPA used "secret science" to justify "costly new regulations."

Although versions of the measure were approved by the House multiple times, the Senate never took it up. CBO estimated that one version of Smith's legislation would cost EPA \$250 million a year, at least in the initial years, and a leaked staff response to questions from the budget office said a later version would be even more costly, would endanger confidential medical and business information, and "would prevent EPA from using the best available science."

But Smith found an ally in Pruitt. The emails indicate that Smith met with Pruitt in early January and show that Pruitt's staff quickly began working on a directive to "internally implement" the legislation.

Industry's backing for the new scientific approach began to waiver under the Trump administration, though. When a top American Chemistry Council scientist testified before Smith's committee in February 2017, she emphasized the need to protect industry information if the transparency initiative moved forward.

"One of the things that we do need to take into consideration as making that data publicly available is that there are adequate protections for confidential business information to ensure that we keep innovation and competitiveness available for the marketplace," Kimberly White told the committee.

Industry has historically claimed that a wide range of information about chemicals, ranging from the processes by which they are produced, to the locations of manufacturing plants, to their very identities, must be kept confidential in order to keep competitors from learning trade secrets. Environmental and public health advocates argue that industry claims this exemption in many cases where it's not necessary and that it often keeps important health and safety information from public view.

The issue was a key point of debate when Congress considered a major overhaul of the nation's primary chemical safety law passed 2016 and has reemerged as Pruitt's EPA sets about implementing the law.

Asked for comment on EPA's new effort to implement the scientific transparency approach internally, American Chemistry Council spokesman Scott Openshaw said the group looks forward to reviewing the directive once it's finalized.

"It is critical that any final directive properly protect confidential business information and competitive intelligence," he said in a statement.

The internal emails show that EPA political staff were particularly attuned to this concern. In a Feb. 23 email to colleagues, Beck forwarded language from a 2005 White House document that laid out narrow exemptions from its requirement that all "important scientific information" disseminated by the federal government go through peer review.

"[Y]ou may need to tweak but hopefully there is something helpful here that can be borrowed/adopted," she wrote.

Richard Denison, lead senior scientist for the Environmental Defense Fund, said that EPA's access to industry data is indeed important to its ability to review the safety of new chemicals and pesticides, but said the internal EPA communications show that Pruitt's EPA wants to "have their cake and eat it too" with the new directive.

"They're trying to force peer review studies done by academic scientists to disclose every last detail, while at the same time allowing industry studies to be kept private or aspects of those to still be kept private," he said.

He pointed out that the concerns Beck raised about the burden the new policy would place on industry are the very same ones that the CBO report said the policy would place on EPA.

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Energy industry puzzles over new White House adviser [Back](#)

By Ben Lefebvre and Eric Wolff | 04/19/2018 07:14 PM EDT

The appointment of a 28-year-old former congressional staffer as the top White House energy aide left many industry lobbyists scratching their heads — and nervous that the new hire may have trouble filling the shoes of the more experienced adviser he's replacing.

The relatively unknown [Francis Brooke](#) will step into the role as replacement for Mike Catanzaro, who will exit the White House next week. Catanzaro and NSC energy adviser George David Banks, another energy adviser who departed earlier this year, have been the top two energy experts in the White House, and they'll take with them decades of experience.

Brooke spent the last year in Vice President Mike Pence's office serving in a junior role to Catanzaro and Banks. But energy lobbyists worry his elevation will leave them without steady hands in the White House just as the administration confronts big decisions on the coal industry, an intra-party biofuels fight and thorny energy trade issues. Putting a relative rookie into the role also shows that the administration may not devote as much attention to energy issues in the run-up to the 2018 elections, sources said.

"It shows you this administration doesn't care about these issues," said one lobbyist who works extensively with the administration on energy policy, but who requested anonymity to discuss people he expects to work with. "I expect agencies are now going to have to play a bigger role. There's not going to be a lot of policy issues that will be determined over the next eight months or so."

Brooke joins the White House with far less energy-sector experience than Banks and Catanzaro, who came to their jobs with long histories in industry and government. He started his career as an intern for Mick Mulvaney in October 2012 when the White House budget director was a South Carolina congressman. After that, he had stints as a staff assistant for Rep. [Andy Barr](#) (R-Ky.) and legislative aide for Senate Majority Leader [Mitch McConnell](#) (R-Ky.). Pence's office tapped him to be associate director of policy in February 2017.

His family was involved in international politics in the previous decade. His father, [Francis Brooke Sr.](#), helped foster the relationship between officials in the George W. Bush administration and Ahmed Chalabi, the controversial Iraqi exile who helped convince the U.S. to invade his country.

Pence's office confirmed Brooke's biographical information but did not offer further details about his time working with the vice president.

McConnell's office did not respond to questions about Brooke. A spokeswoman for Barr said Brooke had been "one of the Congressman's most trusted legislative assistants and handled a wide variety of issues including energy, environment, and health care."

Previous to that, Brooke's biggest notice came from pitching 97 innings in the 2012 season with Northwestern University, making 13 starts and ending with a 2.51 earned run average. He would later serve as a coach to the Republicans' congressional baseball team, and he was on the Arlington, Va., practice field when a gunman shot Rep. Steve Scalise of Louisiana.

Lobbyists say they worry that with the departures of Catanzaro and Banks, Brooke will not be able to help the White House navigate complex energy issues with technical details that can be headache-inducing.

"There is angst downtown that without Mike there, no one knows who is going to make the trains run on time," said Andeavor's Stephen Brown said before Brooke was officially named to the position. "Mike was always the adult in the room on energy issues with substantive knowledge, not just a political perspective."

Brooke, along with Wells Griffith, an Energy Department official on a three-month loan to the White House, will have almost no time to get acclimated to their jobs. The Department of Energy is grappling with whether to try to use emergency authority to keep economically distressed coal-fired power plants running. And the two new staffers may need to help Trump navigate the dispute between refiners seeking changes to the Renewable Fuel Standard and corn farmers who are counting on the president to live up to his promise to protect ethanol.

They will also have to cope with White House officials on trade issues, such as the steel tariffs that oil and gas companies have complained could hamper the construction of new pipelines.

But some current and former administration officials say they have confidence Brooke is up to the job. They say he worked closely with Banks and Catanzaro on all their key issues, including traveling with Banks to the U.N. climate conference at Bonn, Germany, as a key adviser.

"He knows all the players, he's been in all the meetings," said one administration source. "He has the right temperament, the right judgment. People get into these jobs and they use them for vanity tours. Brooke doesn't do that. He's going to be great."

Banks, who left the White House in February, agreed.

"I think that he's ready for the role," said Banks, former adviser to Trump on the NSC. "Francis has been deeply engaged in all of the major energy environment [initiatives]. Some people wouldn't have the experience he's had in working these issues for over a year in the White House. He's incredibly bright, disciplined person."

Critics of the administration's energy policy rollbacks hoped Brooke's lack of experience would depoliticize some of the big decisions before the administration.

"Of course it's weird that there's no senior person covering energy issues," said John Morton, former senior director for energy and climate change on the NSC during the Obama administration. "Though with this administration, it's often a blessing in disguise when a policy area gets neglected by Trump appointees, as it allows more talented career staff to manage affairs."

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Bishop: Drilling moratorium holding up energy bill vote in House [Back](#)

By Anthony Adragna | 04/19/2018 05:32 PM EDT

House Natural Resources Chairman [Rob Bishop](#) says a wide-ranging GOP energy bill is "being held up" until the Pentagon weighs in on how offshore drilling near Florida could affect national security.

The Trump administration earlier this year proposed allowing drilling in the Eastern Gulf of Mexico after an existing moratorium expires in 2022. Although Interior Secretary Ryan Zinke [quickly backed away](#) from the idea, the resulting firestorm led two Florida Republicans to pursue [a permanent moratorium](#), which they said has the backing of Speaker [Paul Ryan](#).

A pending energy bill, [H.R. 4239 \(115\)](#), is one potential vehicle to extend the moratorium. But Bishop, a strong supporter of the oil industry, did not include any limits on offshore drilling when the bill passed out of his committee last year.

The Utah Republican told POLITICO this week he is waiting for the Defense Department report on how expanded drilling near Florida would affect "mission compatibility." A committee spokeswoman said the report's findings would influence "how to move forward on a potential agreement regarding the future of the Eastern Gulf once the moratorium expires in 2022."

Oil and gas leasing within 125 miles off the Florida coastline and areas of the Gulf of Mexico is currently off limits until 2022.

Bishop said in the interview Wednesday that the absence of House Majority Whip [Steve Scalise](#) (R-La.), lead sponsor of the legislation, for surgery is an additional factor in getting the bill floor time.

WHAT'S NEXT: When the measure will get floor consideration remains unclear.

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Report: EPA spent \$45,000 on Australia trip Pruitt canceled [Back](#)

By Emily Holden | 04/19/2018 05:34 PM EDT

Five EPA employees spent \$45,000 traveling to Australia last year to prepare for a trip by EPA Administrator Scott Pruitt that was ultimately canceled, Reuters [reported](#) today.

The two advance team aides and three security agents spent about \$9,000 each on business-class tickets to fly to Australia in August, an expense that is permitted under government rules on flights lasting 14 hours or more. The two EPA staffers were advance director Millan Hupp, the Oklahoma aide who followed Pruitt to Washington and has drawn scrutiny for receiving a large raise, and Kevin Chmielewski, the former deputy chief of staff for operations who was dismissed and is now acting as a whistleblower to lawmakers about Pruitt's spending habits.

Agency officials did not dispute the figures. EPA spokesman Jahan Wilcox said Pruitt did not go to Australia because of Hurricane Harvey. Pruitt traveled from his home in Tulsa, Okla. to Corpus Christi, Texas, to assess relief efforts on Aug. 30, according to his schedule and flight records.

Pruitt spent at least \$105,000 on first class flights and at least \$3 million on a round-the-clock [security detail](#). Records show about one-quarter of the \$120,000 costs for a trip to Italy in June for a G-7 environment meeting was to cover Pruitt's security. EPA's inspector general and various other government officials are investigating Pruitt's travel and spending.

Flight vouchers EPA has shared with lawmakers show Pruitt originally intended to travel to Sydney and Melbourne from Aug. 31 through Sept. 8 to "discuss best practices regarding the environmental operations" within the country.

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EPA tells Barrasso all Pruitt's emails searched for FOIA [Back](#)

By Alex Guillén | 04/19/2018 05:24 PM EDT

EPA today told Senate Environment and Public Works Chairman [John Barrasso](#) (R-Wyo.) that all four of Administrator Scott Pruitt's emails were searched whenever there was a Freedom of Information Act records request, but that a "full review" is being conducted just to make sure.

"As long as EPA Administrators have had secondary email accounts, EPA staff have routinely searched requested accounts in response to FOIA and Congressional inquiries. That practice has not changed under Administrator Pruitt's leadership," Steve Fine, EPA's deputy chief information officer, wrote in a [letter](#) released today by Barrasso.

Fine added: "However, in response to your concern, my office is conducting a full review of the searches conducted regarding FOIA requests seeking Administrator Pruitt's records. If additional documents exist, we will contact the relevant requesters, and we will update you once our review is complete."

"I look forward to receiving the findings of the agency's full review that's being conducted in response to my letter," Barrasso said in a statement.

WHAT'S NEXT: Fine did not say how long EPA's review of FOIA request fulfillment will take.

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Democrats meddle in West Virginia's GOP Senate primary [Back](#)

By Alex Isenstadt | 04/19/2018 04:23 PM EDT

National Democrats launched a campaign Thursday to intervene in the upcoming West Virginia Senate GOP primary — an effort that could be designed to help recently imprisoned coal baron Don Blankenship win the Republican nomination.

Duty and Country, a Washington-based Super PAC, began airing TV and web ads savaging the two mainstream Republican candidates, Rep. Evan Jenkins and state Attorney General Patrick Morrisey, who are competing in the May 8 primary. Left off the group's target list, however, was Blankenship, who spent one year in prison following the 2010 explosion at his Upper Big Branch Mine that killed 29 workers.

In propping up Blankenship, the Democratic Party is wading into an intensifying GOP civil war. Republicans are growing increasingly worried about Blankenship, who has been gaining traction in the primary. GOP officials in Washington are concerned that if Blankenship wins the nomination, he'll ruin the party's prospects of defeating Democratic Sen. Joe Manchin in November.

Last week, national Republicans launched a super PAC named Mountain Families PAC aimed at stopping Blankenship. The organization, which is staffed by consultants who've previously worked for a political group aligned with Senate Majority Leader Mitch McConnell, has begun airing TV commercials accusing Blankenship of contaminating drinking water by pumping toxic slurry while setting up a separate piping system to his mansion.

The Democratic group is spending over \$380,000 to air the commercials. One of the TV spots says that as the former head of West Virginia State Medical Association, Jenkins pushed doctors to use an insurance company that overcharged, allowing his organization to profit. Another ad describes Morrisey as a carpetbagger, calling him a "millionaire New Yorker and former lobbyist who came down here and ran for office with no idea of the real challenges West Virginians face."

The Democratic group has also begun sending out mailers describing Jenkins as "part of the swamp, part of the problem."

A Duty and Country spokesman, Mike Plante, said the group had no plans to go after Blankenship and was instead focused on his two rivals.

"We made the strategic decision based on data that shows that either Patrick Morrisey or Evan Jenkins is more likely to be the nominee, so that's where we're focusing our attention," he said.

Duty and Country appears to have close ties to the national Democratic Party. In its federal filings, it lists the same downtown Washington address as other major party groups, including Senate Majority PAC, the main Democratic super PAC devoted to electing Senate Democrats.

In another twist, West Virginia attorney Booth Goodwin, who served as U.S. attorney in the case against Blankenship, is listed as the group's treasurer.

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GOP maneuver could roll back decades of regulation [Back](#)

By Zachary Warmbrodt | 04/17/2018 10:16 AM EDT

Republicans are preparing to open a new front in their push to roll back regulations across the government, using a maneuver that could enable them to strike down decisions by federal agencies that reach back decades.

As soon as Tuesday, GOP senators, backed by President Donald Trump, will use the Congressional Review Act to topple safeguards issued by the CFPB in 2013 that were intended to discourage discrimination in auto lending.

While Republicans in the Trump era have already taken advantage of the 1996 law to remove more than a dozen recently issued rules, this would be the first time that Congress will have used it to kill a regulatory policy that is several years old.

Now, actions going back to President Bill Clinton's administration could be in play under the procedure GOP lawmakers are undertaking, forcing numerous agencies to reconsider how they roll out new regulations.

"It's a hugely important precedent," Sen. Pat Toomey (R-Pa.), the architect of the effort, said in an interview. "It's potentially a big, big opening."

While conservatives are applauding the effort as a way to rein in rogue bureaucrats and boost the economy, consumer advocates are warning that the consequences could be dire.

"This takes an already incredibly dangerous law and cranks it up to 11," said James Goodwin, senior policy analyst at the Center for Progressive Reform.

Republicans are leveraging two key provisions of the Congressional Review Act.

They're again taking advantage of fast-track authority that allows a simple majority of the Senate to pass a resolution rolling back a rule if the vote occurs within a window that's open for no more than a few months. The provision enables senators to avoid a filibuster.

But the more novel use lies in the law's requirement that federal agencies submit rules to Congress for their potential disapproval. Republicans have landed on a way to target a wide array of decisions — including regulatory guidance — that haven't typically been implemented as formal rules under the Administrative Procedure Act.

"You have this unimaginably large universe of stuff that is now eligible for repeal under the CRA," Goodwin said, citing a hypothetical Occupational Safety and Health Administration workplace safety poster as a potential example. "Agencies don't submit all this stuff because it would be an administrative nightmare."

In the case of the auto-lending policy, the CFPB released it as a guidance document rather than a formal rule governed by the notice-and-comment requirements of the APA. As such, it wasn't technically submitted to lawmakers for the purposes of the Congressional Review Act. That means the clock for congressional review never started.

That changed last year. For advocates of deregulation, the stars had aligned thanks to the ascendance of a Republican president eager to roll back rules and the Republicans retaining control of Congress.

Toomey, the former president of the conservative Club for Growth, went on the hunt for ways the GOP could take advantage of its congressional majority to eliminate federal rules.

He found a way to wield the power that the Congressional Review Act gives a majority of the Senate to sidestep obstruction via filibuster when it comes to years-old regulatory actions.

To do so, he asked the Government Accountability Office to determine whether the CFPB auto-lending guidance qualified as a rule for the purposes of the Congressional Review Act. In December, GAO told him that

it did in fact satisfy the legal definition of a rule, starting the clock for Republicans to undo it without having to seek any help from Democrats.

"When regulators regulate by guidance rather than through the process they're supposed to use, which is the Administrative Procedure Act and do a proper rulemaking, they shouldn't be able to get away with that," Toomey said. "If we can get a determination that the guidance rises to the significance of being a rule, then from that moment the clock starts on the CRA opportunity."

Amit Narang, regulatory policy advocate at Public Citizen, said it "is really going to open up a Pandora's box." Public Citizen and 60 other advocacy groups covering the gamut of finance, the environment, labor and gay rights are calling on Congress to oppose the CFPB rollback, saying it would set a dangerous precedent.

They warned it would put at risk not only protections for workers, consumers, minorities and the environment, but also regulatory certainty for businesses.

"Expanding the power of the CRA to overturn guidance from decades ago will threaten protections hardworking families rely on, making it harder for middle class Americans to get ahead and responsible businesses to follow the law," Sen. Sherrod Brown (D-Ohio) said.

Critics have also questioned the need to undo the CFPB auto-lending guidance because the bureau is now led by a Trump appointee, acting Director Mick Mulvaney, who could eliminate it himself. Mulvaney told lawmakers last week he was reviewing the policy. The National Automobile Dealers Association and the American Financial Services Association are supporting the rollback of the anti-discrimination measure, arguing that the way the CFPB crafted the guidance was flawed.

The Senate opened debate on the bill Tuesday following a 50-47 procedural vote. Sen. Joe Manchin (D-W.Va.) was the only Democrat to support moving forward with the legislation.

Other lawmakers have begun to test the waters. In November, GAO in a response to a request from Sen. Lisa Murkowski (R-Alaska) confirmed that a 2016 plan from the Bureau of Land Management was a rule for the purposes of review under the CRA. A spokeswoman for Murkowski did not respond to a request for comment.

Paul Larkin, a senior legal research fellow at the Heritage Foundation, has been advocating for Congress to take advantage of this deregulatory pathway in the Congressional Review Act, saying it could force agencies to comply with formal rulemaking requirements and help the economy by cutting red tape.

"This would indicate that Congress believes it can reach back beyond what the conventional wisdom was," he said.

To view online [click here](#).

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This email was sent to wehrum.bill@epa.gov by: POLITICO, LLC 1000 Wilson Blvd. Arlington, VA, 22209, USA

Message

From: Gunasekara, Mandy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=53D1A3CAA8BB4EBAB8A2D28CA59B6F45-GUNASEKARA,]
Sent: 7/30/2018 10:18:14 PM
To: Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]
Subject: RE: INPUT NEEDED--Administrator Cheat Sheet
Attachments: OAR Hearing Cheat Sheet.odt

See attached. Please edit and then send on.

From: Wehrum, Bill
Sent: Monday, July 30, 2018 2:38 PM
To: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>
Subject: Fwd: INPUT NEEDED--Administrator Cheat Sheet

Can you get someone started on this?

Bill Wehrum
Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency
(202) 564-7404

Begin forwarded message:

From: "Lyons, Troy" <lyons.troy@epa.gov>
Date: July 30, 2018 at 2:14:01 PM EDT
To: "Wehrum, Bill" <Wehrum.Bill@epa.gov>, "Ross, David P" <ross.davidp@epa.gov>, "Wright, Peter" <wright.peter@epa.gov>, "Beck, Nancy" <Beck.Nancy@epa.gov>, "Baptist, Erik" <Baptist.Erik@epa.gov>, "Bertrand, Charlotte" <Bertrand.Charlotte@epa.gov>, "Breen, Barry" <Breen.Barry@epa.gov>, "Ross, David P" <ross.davidp@epa.gov>, "Forsgren, Lee" <Forsgren.Lee@epa.gov>, "Yamada, Richard (Yujiro)" <yamada.richard@epa.gov>, "Chancellor, Erin" <chancellor.erin@epa.gov>
Cc: "Jackson, Ryan" <jackson.ryan@epa.gov>, "Palich, Christian" <palich.christian@epa.gov>, "Bolen, Brittany" <bolen.brittany@epa.gov>, "Frye, Tony (Robert)" <frye.robert@epa.gov>
Subject: INPUT NEEDED--Administrator Cheat Sheet

Team—the Administrator would like a single paged cheat sheet on the top issues most likely to be asked.

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Please let me know if you have any questions.

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Troy M. Lyons

Associate Administrator

Office of Congressional & Intergovernmental Relations

U.S. Environmental Protection Agency

Personal Phone / Ex. 6

From: E&E News [ealerts@eenews.net]
Sent: 7/17/2018 5:37:19 PM
To: Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]
Subject: July 17 -- Greenwire is ready

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GREENWIRE

AN E&E NEWS PUBLICATION

GREENWIRE — Tue., July 17, 2018



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1. POLITICS:

Is George Mason the new Trump U?

President Obama was known for nominating graduates of Harvard Law School, his alma mater, for top posts in his administration. Less well-known is that key players in the Trump administration have ties to a suburban Virginia campus just outside Washington.

TOP STORIES

2. NUCLEAR:

Once allies, NEI and utility gird for trial

3. INTERIOR:

Zinke to rec panel: 'I can't fix it unless I know about it'

4. SCIENCE:

Decadeslong climate study flies 'under the radar'

POLITICS

5. AGRICULTURE:

Trump picks entomologist for USDA science post

6. EPA:

Witnesses slam 'secret science' rule at public hearing

7. LOBBYING:

Obama EPA policy chief working for green group

CONGRESS

8. ENDANGERED SPECIES:

Dems decry grouse, prairie chicken language in defense bill

NATURAL RESOURCES

9. INTERIOR:

Calif. agency mismanaged funds for groundwater cleanup — IG

10. YOSEMITE:

Wildfire fills park with smoke, empties businesses

11. SCIENCE:

Turtle researcher loses award over racy pictures

12. WILDFIRES:

How a pasta machine could help Western rangeland

LAW

13. AIR POLLUTION:

Greens sue EPA over loophole for high-emission rigs

14. CLIMATE:

Group sues Treasury over companies' risk disclosures

15. OFFSHORE DRILLING:

Greens sue over Trump admin's Gulf of Mexico leasing

16. FERC:

Appeals court tosses challenges to Texas gas pipeline

17. CLEAN WATER RULE:

Trump admin urges court to halve WOTUS litigation

CLIMATE CHANGE

18. SCIENCE:

Will climate change turn alligators female, too?

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Perry announces \$2B for tribal energy projects

20. COAL:

Navajo kick off talks with potential plant owner

21. DOE:

Feds stayed mum after radioactive material was stolen

AIR AND WATER

22. AVIATION:

Super-fast flights would cost the environment — study

23. DRINKING WATER:

Taps are dry but Coca-Cola abundant in Mexico town

24. DRINKING WATER:

D.C. Council members criticize outreach on contamination

STATES

25. HAWAII:

Lava explosion injures 23 on tour boat

26. MINNESOTA:

Home water softeners turn lakes and streams saltier — study

27. IDAHO:

Experts decry selfie of mountain goat licking man

INTERNATIONAL

28. MYANMAR:

Landslide buries dozens of jade hunters after monsoon

29. HONG KONG:

Rare pink dolphins under threat from bridge construction

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To: Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]
Subject: Morning Energy: Emails from the land down under — Poll: Voters respond to Pruitt — Sommers tapped for API

By Kelsey Tamborrino | 05/03/2018 05:40 AM EDT

SCENES FROM THE SWAMP: Congress may be out this week, but congressional committees are still hard at work on probes around EPA Administrator Scott Pruitt. Ongoing investigations into Pruitt's travel spending and security arrangements were playing out behind closed doors as a trove of new documents circulated among the Republican and Democratic staffers on the Hill.

Staff of the House Energy and Commerce Committee, which oversees EPA, began receiving new paperwork from the agency this week, Anthony Adragna reports. That follows Pruitt's promise to Chairman Greg Walden that EPA would provide the panel with "all the documents and information EPA produces" for a host of ongoing inquiries into his conduct. And Pruitt's now-former security guard Pasquale "Nino" Perrotta — who reports suggest was a willing partner in Pruitt's spending on travel and security — sat down with staff from the House Oversight Committee on Wednesday for several hours. Staffers declined to comment on the substance of that interview, but an aide said Democratic staffers took part in the transcribed session and have access to the documents EPA has shared with the committee.

The administrator has maintained a low profile this week. He was not sighted at a swearing-in of Secretary of State Mike Pompeo, which several of Pruitt's fellow Cabinet members — like Interior Secretary Ryan Zinke — attended. Still, other newly issued documents offered a fresh look into his lobbyist and industry ties. The emails, which were released via a public records request from the Sierra Club, showed consultant and Global Impact Inc. CEO Matthew C. Freedman helped to set the itinerary for a planned trip to Australia for Pruitt, though it was eventually canceled when Hurricane Harvey hit Texas.

In the emails, Freedman warned EPA officials that Pruitt could get an angry reception from Australian officials who disagreed with the Trump administration on climate change. "I think that the trip will be more hostile than what the Administrator may be expecting," wrote Freedman, who now runs an advisory firm and is treasurer of the American Australian Council, a nonprofit whose members include Chevron, BHP and ConocoPhillips. POLITICO's Alex Guillén reports more on the details of the documents here. A draft schedule for the trip also included a visit and public appearance at the Australian parliament, though it noted such a stop raised "potential for protests, negative reaction." Trips to the Great Barrier Reef and Tasmania were also planned, dubbed a "bridge too far."

More to come? Democratic Sens. Tom Carper and Sheldon Whitehouse contended on Wednesday there were at least 3,100 pages of communications between Pruitt and special interest groups during his time as Oklahoma's AG that now have business before the agency and have yet to be released. In a letter to Pruitt and federal ethics officials, the pair says, the records, disclosed in state court proceedings, include 1,122 pages of "emails containing documents, amicus briefs, and legal strategy which are part of litigation files."

Grain of salt: Of course, Pruitt still has the support of the president, who has yet to weigh in publicly since Pruitt's testimony last week. And Sen. Jim Inhofe, a vocal ally of Pruitt, told a reporter from The Oklahoman that he believes Pruitt still has President Donald Trump's support. "That's the way President Trump is. He makes up his mind," Inhofe told Justin Wingerter. "It's kind of like Jeff Sessions ... about five different times I thought he was going to fire him and he never did."

GOOD THURSDAY MORNING! I'm your host Kelsey Tamborrino, and Bracewell's Frank Maisano was the first to correctly identify the eight countries the Prime Meridian passes through: The U.K., Spain, France, Algeria, Mali, Burkina Faso, Togo and Ghana. For today: Who was the first ever Cabinet nominee to be formally rejected by the Senate? Send your tips, energy gossip and comments to ktamborrino@politico.com, or follow us on Twitter [@kelseytam](https://twitter.com/kelseytam), [@Morning_Energy](https://twitter.com/Morning_Energy) and [@POLITICOPro](https://twitter.com/POLITICOPro).

SIGNED, SEALED, DELIVERED: The FEC is asking the SEAL PAC, a leadership PAC previously affiliated with Zinke, to give it more information about its donors. Pro's Ben Lefebvre reports that the PAC raised more than \$42,000 in increments above \$200 from donors in February who failed to adequately disclose their occupations, according to a FEC [letter](#) dated May 1. The FEC also dinged the PAC for waiting more than a month to provide missing donor information in previous filings. Read [more](#).

POLL: VOTERS TURN ON PRUITT: Respondents in a new POLITICO/Morning Consult poll turned more sharply negative on Pruitt after being told that he "is under investigation for ethical infractions related to the amount of taxpayer money he has spent while in office, specifically on travel, his security detail and pay raises for his personal aides." Respondents were also informed that Pruitt testified before Congress that "he delegated authority to make spending decisions to members of his staff." POLITICO's Steven Shepard [breaks down](#) how after being told that information, 59 percent of respondents said Pruitt had not conducted himself appropriately. Far fewer, 11 percent, said Pruitt had acted appropriately.

Also in the poll: A slight majority — 53 percent — said Pruitt should be removed from his position as EPA administrator, while 12 percent said he shouldn't be removed. More than one-third, 35 percent, had no opinion. "Although Republicans are dissatisfied with Scott Pruitt's behavior, they do not necessarily want him out as EPA administrator," said Kyle Dropp, Morning Consult's co-founder and chief research officer. "While 48 percent of Republicans say Scott Pruitt has conducted himself inappropriately as EPA administrator, only 38 percent say he should be removed from his position." See the poll topline [here](#) and the crosstabs [here](#).

SHALL I COMPARE THEE TO A SOMMER'S DAY: The American Petroleum Institute officially announced Wednesday Mike Sommers will replace Jack Gerard at the helm of the powerful oil and gas trade group. Sommers, who will take over for Gerard later this summer, was [reported](#) to be API's pick. He previously led the [American Investment Council](#) for two years, where he worked closely with firms invested in energy projects, and before that was chief of staff for former House Speaker John Boehner. National Association of Manufacturers President and CEO Jay Timmons applauded the news in a statement, calling Sommers "absolutely the perfect person to lead the oil and gas industry and the American Petroleum Institute to the next historic chapter." More from your host [here](#).

BISHOP TO TRAVEL TO PUERTO RICO: House Natural Resources Chairman [Rob Bishop](#) is traveling to Puerto Rico this week to survey the island's recovery in the aftermath of Hurricanes Maria and Irma, he said Wednesday. "This trip will help me better understand the continuing challenges and what disaster relief is still needed," the chairman said in a statement. Bishop is set to meet with Resident Commissioner [Jenniffer González](#) while there.

Separately, Democratic Rep. [Don Beyer](#) requested a hearing on the status of the territory's recovery in a brief [letter](#) to Bishop, writing the "committee has been silent," on a host of issues including the island-wide blackout and the privatization of PREPA, among other topics. A spokeswoman for Bishop called Beyer's claim that the committee had been silent "absolutely baseless, half-baked and politically motivated," noting that the committee has held multiple hearings, forums and sent letters on the topic.

MAIL CALL! THE ISDS OF MAY: API, NAM, the Business Roundtable and U.S. Chamber of Commerce joined together in a letter to President Donald Trump and other Cabinet officials on Wednesday on NAFTA, noting that though they support "efforts to modernize NAFTA to grow the U.S. economy and support American

jobs" they want the administration to retain the investment protections and the investor-state dispute settlement. Read it [here](#).

— **Congressional Western Caucus Chairman [Paul Gosar](#)** led a letter on Wednesday with fellow lawmakers calling on the president and agency heads to review all mineral withdrawals implemented by the Obama administration and to scrap any that were determined "without merit." Read the letter [here](#).

FOR YOUR RADAR: BLM on Wednesday released draft environmental impact statements for proposed changes to greater sage-grouse conservation plans in [Wyoming](#), [Colorado](#), [Idaho](#), [Nevada](#), [Utah](#) and [Oregon](#). Conservation groups say the amendments largely ignore the hundreds of thousands of public comments that were submitted to BLM asking the Obama-era plans be left alone. But a spokesperson for Interior told the Associated Press the proposed changes are largely technical in nature and arrived via feedback the agency received about the 2015 plans from governors in sage grouse states. Read [more](#).

FREEZE FRAME: The administration's plan to freeze CAFE standards at 2020 levels through 2025 would have an impact on fuel economy, oil consumption and GHG emissions, according to a new report today from Rhodium's U.S. Climate Service. The report found that freezing CAFE standards at 2020 levels would increase oil consumption in the U.S. by between 126,000 and 283,000 barrels per day in 2025, depending on oil prices. By 2030, the report finds, that impact would be 221,000-644,000, when assuming no change in post-2025 standards. Read the report [here](#).

HAPPY SMALL BUSINESS WEEK: The Citizens for Responsible Energy Solutions Forum will launch a video series today on U.S. clean energy companies that have benefited from ARPA-E funding. CRES Forum will begin the series with a video featuring Rita Hansen, CEO of Bend, Ore.-based Onboard Dynamics, a compressed natural gas refueling company. CRES Forum will roll out additional videos in the coming months. See today's video [here](#).

CUSTOMERS ONLY: While many discussions on grid reliability and resiliency focus on the bulk power system, a new paper out Wednesday explored a "customer-focused" approach, recommending a broader framework focused on customers' experiences. The paper, which was prepared for the Natural Resources Defense Council and the Environmental Defense Fund, discusses how when viewed from a customer-centric framework, the power system should be seen end-to-end, reaching from the customer "through distribution and transmission up to power generation and fuel supply." See it [here](#).

HIGH WIND MARKS: American Wind Energy Association's recently released market report found that utility and non-utility customers signed contracts for 3,500 megawatts of U.S. wind capacity in the first quarter of 2018, a "high water mark" in recent years. See the report [here](#).

GREENS SUPPORT STABENOW: Environmental groups, The League of Conservation Voters Action Fund and the NRDC Action Fund, [announced](#) Wednesday that they are endorsing Michigan's [Debbie Stabenow](#) in her bid for Senate reelection.

QUICK HITS

— Top Interior official resigned amid claims of intimidating behavior, [Talking Points Memo](#).

— Clean energy sector swings Republican with U.S. campaign donations, [Reuters](#).

— First federal reg czar opposes EPA 'secret science' plan, [E&E News](#).

— Arizona settlement with Volkswagen frees \$40 million for schools, consumers, [AZCentral](#).

— Ex-EPA Superfund chief says resignation won't slow down efforts, [Bloomberg BNA](#).

— Deputy Interior secretary keeps meeting with lobbyists for client of his former firm, [Huffington Post](#).

HAPPENING TODAY

9:00 a.m. — The Wilderness Society [discussion](#) on the role U.S. public lands play in the climate change problem and solution, 14th and F Streets NW

12:00 p.m. — The Heritage Foundation [discussion](#) on "Will the Iran Nuclear Agreement Be Ended or Mended?" 214 Massachusetts Avenue NE

2:00 p.m. — Middle East Institute panel [discussion](#) on "Oil in Iraq: Pathways to Enabling Better Governance," 1319 18th Street NW

CORRECTION: The May 2 edition of Morning Energy misstated the first president to invite amateur baseball teams to the White House. It was Andrew Johnson.

THAT'S ALL FOR ME!

To view online:

<https://subscriber.politicopro.com/newsletters/morning-energy/2018/05/emails-from-the-land-down-under-201273>

Stories from POLITICO Pro

More congressional panels digging through Pruitt records [Back](#)

By Anthony Adragna | 05/02/2018 08:12 PM EDT

Scrutiny into Scott Pruitt's ethics woes intensified Wednesday as a growing group of lawmakers' staff dug through reams of documents connected to the Environmental Protection Agency administrator's pricey travel and extensive security team.

Staff of the House Oversight Committee met for several hours with Pruitt's former security chief, Pasquale "Nino" Perrotta, who oversaw much of EPA's spending on perks such as first-class flights, a \$43,000 soundproof booth and round-the-clock bodyguards. Democratic staffers took part in the transcribed session and have access to the documents EPA has shared with the committee led by Chairman Trey Gowdy (R-S.C.), a Democratic aide said.

Staffers declined to comment on the substance of the interview with Perrotta, who has cited personal reasons for resigning from the agency Monday. Sources told [POLITICO](#) last month that Perrotta, a former Secret Service agent who worked in various capacities at EPA since 2004, was a willing partner in Pruitt's lavish spending on travel and security.

Separately, staff of the House Energy and Commerce Committee, which has jurisdiction over EPA, has begun receiving new paperwork from the agency this week. This came after Pruitt promised Chairman Greg Walden (R-Ore.) last week that the agency would provide the panel with "all the documents and information EPA produces" for a host of ongoing inquiries into his conduct.

"I can confirm that EPA has begun to share additional documents with the committee," a spokesman for the panel said.

Pruitt, meanwhile, has kept a low public profile since testifying Thursday before two House subcommittees — even as more questions emerged this week about his dealings with lobbyists. He did not attend Wednesday's swearing-in of Secretary of State Mike Pompeo, which several of Pruitt's fellow Cabinet members attended.

The New York Times and The Washington Post reported Wednesday that a former lobbyist for foreign governments had helped arrange a planned trip by Pruitt last year to Australia — a trek that EPA spent \$45,000 planning before he canceled it to deal with Hurricane Harvey relief efforts in Texas. The ex-lobbyist, Matthew Freedman, is a former Donald Trump transition team member who worked in the 1980s for Paul Manafort, who was briefly Trump's campaign manager in 2016.

A Republican aide to the House Oversight panel said EPA continues to cooperate with their information requests, offering five document productions to date. That includes more than 1,000 pages of records the agency turned over last week.

Separately Wednesday, two Senate Environment and Public Works Committee members — ranking member Tom Carper (D-Del.) and Sheldon Whitehouse (D-R.I.) — sent a letter to Pruitt and federal ethics officials alerting them to about 3,100 pages of unreleased communications between Pruitt and groups with business before EPA while he served as Oklahoma attorney general.

The senators said the records, disclosed in state court proceedings, include 1,122 pages of "emails containing documents, amicus briefs, and legal strategy which are part of litigation files," 1,754 pages of "emails containing documents, drafts of proposed rules, pleadings and drafts, legal strategy and data from investigations for cases in litigation," and 196 pages of "emails regarding personal matters not related to the transaction of public business."

"Each of these categories of documents may contain information directly relevant to your ability to do your job impartially," Carper and Whitehouse wrote. They did not release copies of the documents in question.

To view online [click here](#).

[Back](#)

Pruitt's security chief goaded spending, employees say [Back](#)

By Emily Holden and Alex Guillén | 04/12/2018 08:13 PM EDT

Environmental Protection Agency Administrator Scott Pruitt has had a willing partner in pushing for his massive spending on bodyguards and first-class flights, current and former EPA officials say — the Secret Service veteran who heads his security detail.

Pasquale "Nino" Perrotta played a key role in the investigation into mobster John "Junior" Gotti in the 1990s, and he's boasted of his exploits with women, firearms and luxury watches in a self-published autobiography. Now he's running security for the nation's top environmental regulator like a lavishly funded SWAT team, according to interviews with seven people who have worked with him under both the Trump and Obama administrations.

The current and former staffers say that rather than acting as a restraint on Pruitt, who came into the agency a year ago demanding round-the-clock bodyguards, Perrotta has instead egged him on — indulging his requests for a 19-person security detail, high-performance SUV, \$43,000 soundproof booth and bug-sweep of his offices, as well as first-class flights to limit his exposure to potential threats from fellow passengers. Perrotta has even barred all but a select group of agency employees from entering rooms and corridors near Pruitt's offices, according to Ron Slotkin, a career official who recently retired as director of the EPA's multimedia office.

Perrotta has also accompanied Pruitt on flights and offered him advice on environmental policy and other agency matters, according to two of the sources.

Slotkin said Perrotta and others around Pruitt strained repeatedly against any restrictions on their activity, including longstanding federal limits on spending and conduct.

"They would object to anything when we said, 'No, you can't do that' or 'That would be wrong,'" Slotkin said. He added: "We'd say, 'It's not a matter of legality, it's ethics, it's the way things look.' But they went out of their way to do something different."

Now Perrotta's own ethics are drawing scrutiny from members of Congress looking into Pruitt's actions. Five Democratic lawmakers alleged in a letter sent to President Donald Trump on Thursday that EPA issued at least one contract to an employee of Perrotta's private security firm, and that other contracts may have gone to Perrotta's "friends or associates," based on allegations from former agency deputy chief of staff Kevin Chmielewski.

Chmielewski, a former Trump campaign aide, has told lawmakers EPA fired him after he refused to retroactively approve first-class travel for one of Pruitt's closest aides, former agency policy chief Samantha Dravis, according to the letter from Democrats including Sens. Tom Carper of Delaware and Sheldon Whitehouse of Rhode Island. He also told the lawmakers that Perrotta threatened to go to his home to seize his EPA parking pass — adding that he "didn't give a f---" who might be listening to their phone call.

Perrotta did not respond to multiple requests for comment.

Agency spokesman Jahan Wilcox defended EPA's decisions on Pruitt's security arrangements, calling them "similar to security protocol across the federal government." He added that the agency had done similar security sweeps for former President Barack Obama's two EPA administrators, Lisa Jackson and Gina McCarthy.

"According to EPA's Assistant Inspector General, Scott Pruitt has faced an unprecedented amount of death threats against him and security decisions are made by EPA's Protective Service Detail," Wilcox said in a statement. "Americans should all agree that members of the President's cabinet should be kept safe from these violent threats."

Pruitt's spending, relationships with industry lobbyists and reputation for excessive secrecy have generated calls for his firing from Democratic lawmakers, some Republicans and even White House staff. But he still has at least a public champion in Trump, who tweeted last weekend that "Scott is doing a great job!"

To the contrary, the current and former agency employees say Pruitt has fostered an atmosphere of chaos, mistrust and disregard for optics — and that Perrotta has been a crucial part of it.

Several said Perrotta's personality and Pruitt's expectations are both probably driving EPA's security spending, adding that other key aides have signed off on the administrator's expenses either willingly or begrudgingly.

"He'll do anything to satisfy his boss," said one departed career staffer.

Perrotta was born to Italian immigrants in New York and has spent his life in law enforcement, including in the Secret Service, where he said he protected presidents and dignitaries and investigated financial and organized crimes, according to "Dual Mission," the autobiography he self-published in 2016.

In the book, he calls himself "completely misunderstood by most," including family, friends and coworkers, in large part because of his "high level of energy." Former and current colleagues have described Perrotta as rigidly loyal but also enthusiastic to push boundaries to get what he wants — an impression his book supports.

He recalls "creatively" finding ways to show probable cause to get warrants, providing financial incentives to police, and making sources of female "friends," "showering them with gifts that I was easily able to afford."

Perrotta said he also let women hold his government-issued firearm in romantic situations. "It was, in some ways, like a dangerous, forbidden sex toy to some, and I played right along," he recalled.

He said he liked the finer things, including a Rolex Submariner watch that he wore in his youth. When working for the Secret Service in Bulgaria, he wrote, he dressed "more like a gangster than law enforcement," clad in square-toed, black biker boots and a black, Italian-made turtleneck sweater with a ".380 Sig" gun tucked underneath.

He joined EPA in 2004. That eventually brought him into Pruitt's orbit.

Pruitt, a former Oklahoma attorney general, had built a reputation in conservative Republican circles for his frequent lawsuits against the EPA's Obama-era regulations, putting him at odds with much of the agency's workforce. And his penchant for lavish spending was documented even before he arrived in Washington: An audit in Oklahoma showed that expenses at the attorney general's office surged during his tenure compared with his predecessor's, The Intercept reported Thursday.

When Pruitt arrived at EPA after his confirmation in February 2017, his transition team had already made it clear that he expected around-the-clock security, a former agency employee who was there at the time said.

A week after Pruitt's first day at the agency, top staffers had a meeting on "24/7 security," according to calendars obtained by the watchdog group American Oversight. Chief of staff Ryan Jackson met for half an hour with security officials including Henry Barnett, the director of the criminal enforcement office where Pruitt's security detail is housed.

Perrotta was soon promoted to replace a career staffer who had pushed back on the administrator's desire to use sirens to navigate D.C. traffic. He quickly developed a close relationship with Pruitt.

As head of Pruitt's security detail, Perrotta has been instrumental in decisions for him to fly only first-class, upgrade to a souped-up SUV and have his office swept for bugs, a former Trump administration official said. Perrotta has also overseen Pruitt's 19-person crew of bodyguards, which is three times the size of the team that protected McCarthy — and offers 24/7 protection that exceeds what most Cabinet members receive.

"Mr. Pruitt thinks he's the president of the United States," said the first former career staffer. "He's big on image."

The office sweep for listening devices — which was conducted by a company linked to Perrotta — rankled some career staffers and led to a scuffle between Perrotta and a member of the agency's homeland security office at a meeting last summer, The New York Times reported Thursday.

Despite EPA's argument that Pruitt has received a record number of death threats, an internal report from the agency's Office of Homeland Security suggests that the threats mainly consist of letters and criticism on social media that don't warrant such blanket protection. (On Tuesday, the agency dismissed a staffer who had signed off on the memo and argued with Perrotta, for what it insists were issues dating back several years.)

But several current and former EPA staffers say they also consider the security fears overblown.

"We never saw any threat, never heard any threat," said Slotkin, the former multimedia director. "If anything, it came from Pruitt, we would hear him speak about it. But there was no evidence that anybody could even get near him."

That included many EPA employees: Slotkin said Perrotta cordoned off Pruitt's suite of offices inside EPA's headquarters at Federal Triangle, posting security guards to keep out anyone who wasn't on an approved list. One restricted area was a chandelier-decorated conference room named after environmentalist Rachel Carson where agency employees had previously been allowed to hold events, Slotkin said.

"He didn't want anybody near him," Slotkin said.

Soon Perrotta was flying with Pruitt and discussing matters that went beyond security, two former employees said.

"It wasn't uncommon that given travel and Nino's proximity, he would always weigh in on matters beyond his scope as security, leveraging his institutional knowledge," one said. "He often would say what he recalled prior administrators doing."

By the spring of last year, Perrotta was regularly attending travel planning meetings with top political staff, including a March 30 international scheduling discussion and an April 10 talk on international travel, according to EPA records.

He and other security agents were closely involved in planning in May for a trip the following month to Italy, where Pruitt visited the Vatican and then attended G-7 environment meetings in Bologna. Perrotta had lived for two years in Rome on Secret Service assignment, where he made many connections, according to his book.

Wilcox said the security arrangements on the Italy trip were not novel. "EPA's Protective Service Detail tried to replicate the same security measures taken when EPA Administrator Gina McCarthy traveled to Italy in 2015," he wrote.

Thursday's congressional letter offered a new detail about Perrotta: The Democratic senators said Chmielewski reported that Perrotta entered into a \$30,000 contract with private Italian security personnel for that trip. Records have revealed that expense but did not disclose whether it was for a private detail.

One of the former EPA staffers said Perrotta was friends with those guards. That source described Pruitt's protection while in Italy as extensive, with security agents from EPA and the U.S. Embassy, in addition to a large group of local agents.

News reports have revealed Pruitt also had a soundproof booth constructed for his office and considered having bulletproof desks installed.

And the spending isn't over. EPA also appears to be planning to purchase bulletproof vests specially designed to blend in underneath regular clothing for his security detail, according to a solicitation issued on Friday. The solicitation calls for 16 white-colored vests of varying sizes manufactured by Velocity Systems, along with

corresponding armor made of "special threat enhanced steel" and cummerbunds that provide enhanced protection.

The armor requested is just over a quarter-inch thick and can protect against the type of bullets shot from AK-47 rifles and some AR-15 semi-automatics, according to Velocity Systems' [website](#).

EPA would not confirm to POLITICO whether the armor is for Pruitt's protective detail or for other agents, saying only that all agents in EPA's criminal enforcement division, which includes Pruitt's detail, "are assigned bulletproof vests" and that the effectiveness of the vests expires every five years. But a source familiar with EPA's security operations said the vests are likely for Pruitt's bodyguards because of their unusual specifications and the number requested. Other enforcement agents wouldn't need their vests to be concealed, that source said.

To view online [click here](#).

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Lobbyist warned Pruitt of 'angry group of Aussies' [Back](#)

By Alex Guillén | 05/02/2018 09:17 PM EDT

A former lobbyist who helped organize a planned Australian trip for Scott Pruitt warned agency staff last year that the EPA administrator might get an angry reception from officials there who disagreed with the Trump administration on climate change, according to emails obtained Wednesday.

"I think that the trip will be more hostile than what the Administrator may be expecting," [wrote](#) Matthew Freedman, who now runs an advisory firm and is treasurer of the American Australian Council, a nonprofit whose members include Chevron, BHP and ConocoPhillips. Freedman was also a former Donald Trump transition team member who worked in the 1980s for Paul Manafort, the former Trump campaign manager who has been indicted in connection with his work in Ukraine.

Freedman's emails to Millan Hupp, an EPA scheduler and advance staffer who has worked for Pruitt since he was Oklahoma attorney general, show his close participation in planning Pruitt's visit to Australia, which EPA ultimately canceled after Hurricane Harvey hit the U.S. Gulf Coast.

Freedman wrote in July last year to Hupp that "the outright hostility may come to the surface more frequently than you might expect. He needs to be prepared for a more confused and angry group of Aussies."

The emails about the trip, obtained by POLITICO after being first reported by The New York Times, add to a growing list of questions about lobbyists' roles in arranging overseas travel for Pruitt as he pursued industry-friendly environmental policies for Trump. The release followed the Times' previous report about the role a lobbyist and close conservative ally played in setting the travel agendas for Pruitt in his controversial trips to Morocco and Rome last year.

Freedman also suggested a meeting with regional officials from the state of Victoria, but cautioned that the "outcome may be no different than if the Administrator met with Bernie Sanders." State leaders, Freedman said, "will be hostile to any Trump appointee," particularly on climate change issues and the Paris climate agreement, which Pruitt convinced Trump to pull out of.

Pruitt "will not find the local government meeting particularly useful or insightful for him," Freedman wrote.

However, Freedman did recommend sitting Pruitt down with Bill Shorten, the leader of the center-left Labor Party. Shorten is likely the next prime minister, Freedman wrote, "who is also a good friend."

What would be most useful, Freedman argued, are meetings set up through the Institute of Public Affairs, a conservative Australian think tank.

"They are aligned with the Trump vision on various issues, including coal, the challenge to businesses given the environmental approvals required, the unprecedented [government] control related to gas exploration/development, gas/fracking challenges," Freedman wrote. "These are the inputs/meetings that he should be focused on."

Freedman later wrote that he had contacted several companies for meetings, including aluminum maker Alcoa and ConocoPhillips.

Freedman also said he had spoken to Frank Fannon, then the head of government affairs for mining giant BHP Billiton in Washington. "Looks like their only interest at this point is a private meeting with the CEO in Melbourne," Freedman wrote.

Trump in January nominated Fannon to be assistant secretary of State for energy resources. He has not yet been confirmed by the Senate.

Other emails between EPA's Hupp and U.S. coal miner Peabody Energy that did not include Freedman indicated that Pruitt had considered a visit to the company's Wambo mine in New South Wales. The mine was too far from Sydney to drive, and a company executive noted no commercial flight would work out on the date in question. A charter plane would cost \$10,000, he told Hupp, who noted that EPA could not accept a "complimentary" plane ride.

They later changed the destination to another Peabody facility, the underground Metropolitan mine, which is less than an hour's drive from Sydney.

A draft itinerary for the trip also included a visit and public appearance at the Australian parliament, though it noted such a stop raised "potential for protests, negative reaction." That same day would also have included a stop at an event with lawmakers and fossil fuel leaders hosted by the Minerals Council of Australia.

Other planned stops for the trip included a meeting with a sports and environmental alliance on the "greening of sports," a tour of Sydney Harbor and a visit to Taronga Zoo complete with a "visit with koalas," per the draft itinerary.

The emails were released to the Sierra Club following a lawsuit.

Anthony Adragna contributed to this report.

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FEC seeks more info from Zinke's former PAC [Back](#)

By Ben Lefebvre | 05/02/2018 06:52 PM EDT

The Federal Election Commission is asking a leadership PAC previously affiliated with Interior Secretary Ryan Zinke to give it more information about its donors.

The committee, known as SEAL PAC, raised more than \$42,000 in increments above \$200 from donors in February who failed to adequately disclose their occupations, the FEC said in a [letter](#) to PAC Treasurer Paul Kilgore dated May 1. Donations of more than \$200 must include the contributor's employment, according to FEC rules.

"You must provide the missing information, or if you are unable to do so, you must demonstrate that 'best efforts' have been used to obtain the information," the FEC wrote in the letter.

Kilgore could not be immediately reached.

The FEC also dinged the PAC for waiting more than a month to provide missing donor information in previous filings. "These procedures were deemed incomplete," the FEC said.

The FEC's scrutiny of SEAL PAC has [increased](#) in recent months. The commission has questioned the PAC regarding all but one of the campaign finance reports it has made since the beginning of 2017.

Zinke launched SEAL PAC when he was elected to Congress in 2014 and separated himself from the group after being selected to join President Donald Trump's Cabinet.

WHAT'S NEXT: SEAL PAC has until June to respond to the FEC inquiry.

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Poll: Majority of voters say Trump White House running chaotically [Back](#)

By Steven Shepard | 05/02/2018 05:53 AM EDT

A strong majority of voters say President Donald Trump's administration is running chaotically after Trump's pick for veterans affairs secretary, White House physician Ronny Jackson, withdrew his name from consideration last week, according to a new POLITICO/Morning Consult poll.

More than 3 in 5 voters, 62 percent, say Trump's administration is running very or somewhat chaotically — nearly twice as many as the 32 percent who say it's running very or somewhat well.

A majority of Republicans, 68 percent, say the Trump administration is running well. But that sentiment is shared by few Democrats (9 percent) and independents (25 percent).

Moreover, the percentage of voters who see chaos in Trump's White House has increased modestly, but steadily, in recent weeks. In early April, 61 percent of voters said the Trump administration was running chaotically. In mid-March it was 57 percent, and in early March it was 54 percent.

Nearly half of voters, 49 percent, say the Trump administration has done a poor job when it comes to hiring and retaining qualified people — roughly twice as many who say the Trump administration has done an excellent or good job combined.

The new survey was conducted April 26-May 1 — in the wake of Jackson's withdrawal from consideration to head the Veterans Affairs Department, and as questions continued to swirl around a handful of other Cabinet members, including Attorney General Jeff Sessions and Environmental Protection Agency Administrator Scott Pruitt.

Of Trump's Cabinet officials, Sessions has the greatest name identification — and some of the highest negatives. Slightly more than a quarter of voters, 26 percent, have a favorable opinion of Sessions, while 41 percent view him unfavorably. (That ties Education Secretary Betsy DeVos, who also has a 41 percent unfavorable rating.)

Pruitt — embattled over what critics call profligate spending on personal items at EPA, including first-class airfare — is lesser known. Only 19 percent view Pruitt favorably, compared with 32 percent who view him unfavorably. Roughly half say they have never heard of him, or have heard of him but don't have an opinion.

But poll respondents turn more sharply negative on Pruitt after being told that Pruitt "is under investigation for ethical infractions related to the amount of taxpayer money he has spent while in office, specifically on travel, his security detail and pay raises for his personal aides." (Respondents were also informed that Pruitt has testified before Congress that "he delegated authority to make spending decisions to members of his staff.")

After receiving that information, a majority of respondents, 59 percent, say Pruitt has not conducted himself appropriately. Far fewer, 11 percent, say Pruitt has acted appropriately.

A slight majority, 53 percent, say Pruitt should be removed from his position as EPA administrator, while only 12 percent say he should not be removed. More than a third, 35 percent, have no opinion.

Pruitt isn't getting much backup from Republicans, the poll shows — though there isn't a loud drumbeat to remove him.

"Although Republicans are dissatisfied with Scott Pruitt's behavior, they do not necessarily want him out as EPA administrator," said Kyle Dropp, Morning Consult's co-founder and chief research officer. "While 48 percent of Republicans say Scott Pruitt has conducted himself inappropriately as EPA administrator, only 38 percent say he should be removed from his position."

Overall, voters want the Trump administration to do more to protect the environment. A 54 percent majority say the federal government should do more to strengthen environmental protections, even if it hurts some businesses. That's more than twice the 23 percent who say the U.S. should do more to help businesses, even if it weakens environmental protections.

A majority of voters, 59 percent, say the U.S. should be a part of the Paris Agreement, the deal reached between 195 countries to reduce global greenhouse gas emissions. Only 18 percent of voters say the U.S. should not be part of the Paris accord.

But a 43 percent plurality says the U.S. should not provide aid to help developing countries reduce carbon emissions in their own countries, compared with 31 percent who think the U.S. should provide that aid to developing countries.

Half of voters, 50 percent, say EPA is not doing enough to address the issue of climate change — roughly two times the 26 percent who say the EPA is doing enough to address climate change.

Trump's approval rating in the poll is 42 percent, unchanged from last week. And Democrats retain their 9-point lead on the generic congressional ballot, equaling the party's 2018 high water mark from last week.

The POLITICO/Morning Consult poll surveyed 1,991 registered voters and has a margin of sampling error of plus or minus 2 percentage points.

Morning Consult is a nonpartisan media and technology company that provides data-driven research and insights on politics, policy and business strategy.

More details on the poll and its methodology can be found in these two documents — Toplines: <https://politi.co/2HHsg55> | Crosstabs: <https://politi.co/2jj1BB4>

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Sources: API expected to tap Sommers as new chief [Back](#)

By Emily Holden and Eric Wolff | 04/30/2018 04:33 PM EDT

The American Petroleum Institute is expected to tap Mike Sommers, the head of a private equity trade group who worked as a top aide to former House Speaker John Boehner, to replace Jack Gerard at the helm of the powerful oil and gas industry lobby group, according to two sources.

Gerard announced his retirement earlier this year after a decade at the helm of the API, where he notched up a long list of achievements including overturning the decades-old ban on crude oil exports. He will step down in August.

API did not reply to a request for comment.

The oil and gas industry has so far gotten strong support from the Trump administration, which has moved to open the Arctic National Wildlife Refuge to exploration, is considering making wide swathes of coastal waters available to the industry, and last week said it would roll back some Obama offshore drilling rules.

But API has urged the White House to scrap its steel and aluminum tariffs, and to keep core provisions of NAFTA in place as it negotiates an update to the trade agreement.

Sommers, who was Boehner's chief of staff, has led the American Investment Council for two years, a position that kept him close to Arclight Capital Partners, The Blackstone Group, EnCap Investments and other firms that have invested heavily in energy projects. He also served as an aide to former President George W. Bush in 2005 at the National Economic Council working on agriculture, trade and food policy.

Barry Worthington, CEO of the United States Energy Association, which brings together public and private organizations, corporations and government agencies, said he'd been told Sommers would succeed Gerard.

"Jack Gerard is going to be a tough act to follow," he said.

Gerard was also one of the best-paid lobbyists in Washington, D.C. He received \$5 million in direct compensation from API, plus another \$1.2 million in perks in 2015, according to the group's latest IRS forms.

Marianne Levine and Ben Lefebvre contributed to this report.

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API announces Sommers as new CEO [Back](#)

By Kelsey Tamborrino | 05/02/2018 04:35 PM EDT

The American Petroleum Institute officially announced it would hire Mike Sommers today to replace Jack Gerard as president and CEO of the powerful oil and gas trade group.

Sommers has led the [American Investment Council](#) for two years, where he worked closely with firms invested in energy projects. He also was chief of staff for former House Speaker John Boehner and served as an aide to former President George W. Bush in 2005 at the National Economic Council working on agriculture, trade and food policy. Sources [told POLITICO](#) earlier this week that the group was readying to tap Sommers.

"At a time of transformational progress when natural gas and oil are pioneering groundbreaking innovation, delivering tremendous environmental benefits and leading long-term economic solutions, I look forward to continuing the work of API's talented team and representing an industry that is directly enhancing the lives and improving opportunities for Americans and people around the world," Sommers said in a statement.

API's board of directors held an election this afternoon confirming Sommers atop the group, API said.

Gerard previously [announced](#) he'd step down in August.

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Subject: May 2 -- Greenwire is ready

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GREENWIRE

AN E&E NEWS PUBLICATION

GREENWIRE — Wed., May 2, 2018



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1. EPA:

Spotlight turns to lobbyist who facilitated Morocco trip

Top Senate Democrats are demanding a hearing with EPA Administrator Scott Pruitt after reports surfaced yesterday that a lobbyist helped facilitate his trip to Morocco last year.

TOP STORIES

2. REGULATIONS:

First federal reg czar opposes EPA 'secret science' plan

3. INTERIOR:

Indian Affairs head resigned amid harassment charges — email

4. EPA:

Lobbyist recommended science advisers

CONGRESS

5. EPA:

Dems charge Pruitt sought to open office in hometown

6. DOE:

Perry tells lawmakers he has no travel controversies

POLITICS

7. ADVOCACY:

Group hires leader for sportswomen's program

8. CAMPAIGN 2018:

Colo.'s Lamborn back on ballot after federal court ruling

9. RENEWABLES:

Solar, wind donate more to GOP than Dems in midterms

NATURAL RESOURCES

10. NATIONAL PARKS:

NPS set to close farm over contract dispute

11. ENDANGERED SPECIES:

Judge reaffirms protections for Klamath River salmon

12. MARINE MAMMALS:

Humpback whales near Antarctica having more babies

13. INVASIVE SPECIES:

Frog-eating frogs as big as fists found in New Orleans

14. FISHERIES:

La. House panel votes down Russian fish farming

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15. BIOFUELS:

Trade group sues EPA over refineries' hardship waivers

16. CLEAN WATER RULE:

Judge rejects Trump bid to halt N.D. lawsuit

17. VW SCANDAL:

Carmaker reaches \$2.65M settlement with W.Va.

18. MARINE MAMMALS:

Splashing manatees gets Fla. man arrested, police say

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19. OIL AND GAS:

EPA finds no toxic air after refinery blast

AIR AND WATER

20. AIR POLLUTION:

EPA keeping standards for makers of brake materials

21. AIR POLLUTION:

New Delhi tops list of most polluted megacities

WASTES & HAZARDOUS SUBSTANCES

22. PUBLIC HEALTH:

E-waste linked to lower fertility hormones in Nigerian men

23. WASTE:

Is it the end of the line for tiny hotel shampoo?

24. BUSINESS:

Fast fashion turns to mushrooms, algae to cut waste

INTERNATIONAL

25. UNITED KINGDOM:

Wet wipes are reshaping Thames riverbed — enviros

26. MADAGASCAR:

10,000 endangered tortoises rescued from traffickers

27. PERU:

Enviros fret as tourists trek to newfound 'Rainbow Mountain'

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Subject: Re: INPUT NEEDED--Administrator Cheat Sheet

On it

Sent from my iPhone

On Jul 30, 2018, at 2:37 PM, Wehrum, Bill <Wehrum.Bill@epa.gov> wrote:

Can you get someone started on this?

Bill Wehrum
Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency
(202) 564-7404

Begin forwarded message:

From: "Lyons, Troy" <lyons.troy@epa.gov>
Date: July 30, 2018 at 2:14:01 PM EDT
To: "Wehrum, Bill" <Wehrum.Bill@epa.gov>, "Ross, David P" <ross.davidp@epa.gov>, "Wright, Peter" <wright.peter@epa.gov>, "Beck, Nancy" <Beck.Nancy@epa.gov>, "Baptist, Erik" <Baptist.Erik@epa.gov>, "Bertrand, Charlotte" <Bertrand.Charlotte@epa.gov>, "Breen, Barry" <Breen.Barry@epa.gov>, "Ross, David P" <ross.davidp@epa.gov>, "Forsgren, Lee" <Forsgren.Lee@epa.gov>, "Yamada, Richard (Yujiro)" <yamada.richard@epa.gov>, "Chancellor, Erin" <chancellor.erin@epa.gov>
Cc: "Jackson, Ryan" <jackson.ryan@epa.gov>, "Palich, Christian" <palich.christian@epa.gov>, "Bolen, Brittany" <bolen.brittany@epa.gov>, "Frye, Tony (Robert)" <frye.robert@epa.gov>
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Team—the Administrator would like a single paged cheat sheet on the top issues most likely to be asked.

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Please let me know if you have any questions.

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Troy M. Lyons

Associate Administrator

Office of Congressional & Intergovernmental Relations

U.S. Environmental Protection Agency

Personal Phone / Ex. 6

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GREENWIRE

AN E&E NEWS PUBLICATION

GREENWIRE — Tue., March 27, 2018



READ FULL EDITION

1. EXTREME WEATHER:

Record natural disasters spur mitigation windfall in omnibus

The \$1.3 trillion omnibus spending bill President Trump signed last week includes a record amount of funding to prepare communities for future extreme weather events that scientists say are being exacerbated by the impacts of global warming.

TOP STORIES

2. POLITICS:

Move to open CRS reports spotlights agency's climate debate

3. SUPREME COURT:

Justices wary of upending rule that could affect water law

4. ENERGY POLICY:

Study finds flood of 'extreme' errors in EIA projections

POLITICS

5. INFRASTRUCTURE:

Enviros worry about precedent set by FCC regs ruling

6. EPA:

McCarthy, McCabe blast Pruitt's attack on 'secret science'

7. ENERGY EFFICIENCY:

Groups slam DOE proposal to overhaul rules

8. PEOPLE:

Carper aide joins public affairs firm

NATURAL RESOURCES

9. INTERIOR:

Outdoor recreation panel stocked with industry leaders

10. EVERGLADES:

Fla. reservoir plan aims to cut back algal blooms

11. POWDER RIVER BASIN:

Federal lease sale draws \$20M, enviro protests in Wyo.

12. PUBLIC LANDS:

FWS to open up Rocky Flats despite contamination concerns

13. FORESTS:

Greenpeace pulls out of main wood certification group

14. WILDLIFE:

Vandals disrupt research on hibernating bats in Mich. mine

15. INVASIVE SPECIES:

House mice are eating birds alive at albatross colony

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16. AIR POLLUTION:

XTO agrees to fine for alleged Bakken violations

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17. METHANE:

Agencies must improve emission measurements — study

18. AUTOS:

Most Americans support Obama's clean car rules — poll

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19. PIPELINES:

Greens, Dems sound alarm on FERC's intervention policy

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20. PEOPLE:

Former 'Jeopardy' star lands at DOE

WASTES & HAZARDOUS SUBSTANCES

21. SUPERFUND:

\$1.8M EPA settlement could allow apartments at Pa. site

AIR AND WATER

22. WATER POLLUTION:

Potentially toxic algal bloom coats La.'s Lake Pontchartrain

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23. AUTONOMOUS VEHICLES:

Ariz. governor suspends Uber testing after pedestrian death

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24. WASHINGTON:

State bans Atlantic salmon farming after catastrophic escape

25. CALIFORNIA:

Flat Earther, amateur rocket scientist and future governor?

26. UTAH:

Floating boom traps trash before it can hurt waterfowl

27. DISTRICT OF COLUMBIA:

Bald eagles Mr. President and First Lady welcome egg

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28. INDIA:

Video of elephant 'smoking' befuddles scientists

29. CHILE:

'Why Til Til again?' Tiny town groans under tons of trash

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Greenwire is written and produced by the staff of E&E News. The one-stop source for those who need to stay on top of all of today's major energy and environmental action with an average of more than 20 stories a day, Greenwire covers the complete spectrum, from electricity industry restructuring to Clean Air Act litigation to public lands management. Greenwire publishes daily at 1 p.m.

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GREENWIRE

AN E&E NEWS PUBLICATION

GREENWIRE — Fri., August 17, 2018



READ FULL EDITION

1. CHEMICALS:

Court torpedoed Trump EPA bid to delay safety standards

In another major court loss for the Trump administration, the U.S. Court of Appeals for the District of Columbia Circuit today tossed out a rule delaying Obama-era safety standards for chemical facilities.

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EPA drafting rule to curb its veto power — sources

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She's fighting Trump on climate change — and bringing cookies

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Seals are washing up on Maine beaches, stumping experts

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Water tax proposal is back, but this time, it's voluntary

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Groups fear oil exploration will hurt giant prehistoric fish

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Subject: Morning Energy: Spotlight on FERC at Pro summit — Hitching a ride on the 'minibus' — 'Secret science' out in the open

By Kelsey Tamborrino | 07/17/2018 05:43 AM EDT

With help from Emily Holden, Anthony Adragna, Colin Wilhelm and Darius Dixon

SEE YOU THERE: Today's the day — POLITICO Pro is hosting its second annual Pro summit, featuring one-on-one conversations with newsmakers across the policy landscape, including two sessions on energy.

FERC Commissioner Cheryl LaFleur will sit down this afternoon with our own Darius Dixon, before the regulatory body is deadlocked next month following the exit of GOP Commissioner Rob Powelson. LaFleur, a Democrat, has served under presidents from both parties and experienced the agency in almost every configuration — whether it has all five commissioners in place, or just one. There's no shortage of topics to chew over: the potential impact of an Energy Department coal and nuclear rescue plan, the heated rhetoric against states that stand in the way of pipelines, and whether FERC is "on the wrong side of history" when it comes to climate change. Darius' interview with LaFleur starts around 2 p.m.

Also on tap: California Air Resources Board Chairwoman Mary Nichols, Murray Energy CEO Bob Murray and the Council on Foreign Relations' Amy Myers Jaffe will participate in a panel this morning on America's "energy future." Nichols, for one, has been heavily involved in discussions with the Trump administration over car rules that the White House is considering rolling back. Expect questions related to the administration's efforts to pare back regulations and increase oil, gas and coal production — and an in-depth conversation on what that means for free market forces and renewables.

See the full agenda [here](#) and watch the livestream [here](#).

WELCOME TO TUESDAY! I'm your host, Kelsey Tamborrino. Citizens' Climate Lobby's Brett Cease was first to correctly identify the two presidents who threw out the first pitch at an All-Star game in D.C.: Franklin D. Roosevelt in 1937 and John F. Kennedy in 1962. For today: Which state or states have just one consonant in its spelling? Send your tips, energy gossip and comments to ktamborrino@politico.com, or follow us on Twitter [@kelseytam](#), [@Morning_Energy](#) and [@POLITICOPro](#).

JUST RELEASED: [View the latest POLITICO/AARP poll](#) to better understand Arizona voters over 50, a voting bloc poised to shape the midterm election outcome. Get up to speed on priority issues for Hispanic voters age 50+, who will help determine whether Arizona turns blue or stays red.

HITCHING A RIDE ON THE 'MINIBUS': The House Rules Committee late Monday made 70 amendments to the EPA and Interior title of the spending minibuss, [H.R. 6147 \(115\)](#). The amendments focus on blocking a host of Obama-era environmental regulations even as the Trump administration is in the process of rolling back many of those. Some of the amendments that caught ME's eye:

— **Diesel emissions grants:** Rep. [Gary Palmer's amendment](#) would eliminate the popular bipartisan Diesel Emissions Reduction Grant program used to retrofit diesel engines like those in school buses,

— **WOTUS:** Rep. Don Beyer's amendment would remove language blocking the Obama administration's Waters of the U.S. regulation,

— **Obama-era methane rule:** Rep. Markwayne Mullin's amendment would block enforcement of the Obama-era regulation aimed at curbing methane emissions from new oil and gas sources, which the Trump administration is already reconsidering,

— **Social cost of carbon:** Another amendment from conservatives would bar the use of the social cost of carbon in rulemakings,

— **Trailer efficiency:** Reps. Barry Loudermilk and Morgan Griffith's amendment would bar EPA from applying stricter fuel efficiency and greenhouse gas emissions standards to certain truck trailers,

— **Chesapeake Bay:** Rep. Bob Goodlatte's effort would limit EPA's ability to go after states that miss Chesapeake Bay cleanup milestones,

— **Ozone:** Rep. Glenn Grothman's amendment would block implementation of EPA's 2015 tightened ozone standard,

— **Coal ash:** A Democratic amendment would block the Trump EPA from revisiting an Obama-era coal ash regulation,

— **Endangered Species Act riders:** Several measures would bar the administration from issuing or enforcing Endangered Species Act rules relating to species like the lesser prairie chicken and Preble's meadow jumping mouse,

— **Attorney fees:** An amendment from Reps. Jason Smith and Greg Gianforte would block attorney fees from being awarded in any Clean Air Act, Clean Water Act or Endangered Species Act settlement, and,

— **Inspectors general:** Nothing related to former Administrator Scott Pruitt was made in order, but the House will consider an amendment from Rep. Raúl Grijalva that would increase the budget of the Interior Department's inspector general by \$2.5 million.

Read the full list of amendments made in order to the measure here.

'SECRET SCIENCE' OUT IN THE OPEN: EPA's controversial proposal to consider only research with publicly available data gets a public hearing at agency headquarters today starting at 8 a.m. Nearly 70 health, medical, academic and science groups — including the American Lung Association, American Heart Association, American Medical Association and American Academy of Pediatrics — oppose the plan, which they say could hamstring public health and environment protections.

EPA's Science Advisory Board voted unanimously to review the proposal, which Pruitt said was meant to bolster transparency. Paul Billings, national senior vice president of advocacy at the American Lung Association, called the rule a "coordinated effort to ignore the science that is inconvenient to the EPA's agenda," and compared it to lobbying efforts by the tobacco industry in the 1990s to exclude studies that showed secondhand smoke could kill.

What's at stake? The proposal could move forward quickly enough to allow EPA to roll back certain air quality standards currently under review. According to the Natural Resources Defense Council, the plan could undercut computer models meant to test chemicals under the new Toxic Substances Control Act and could toss

out landmark studies that relied on personal health records following extraordinary events, including when Hiroshima and Nagasaki victims were tested over time to find out the effects of radiation on humans.

The meeting will run until 8 p.m. or an hour after the last of more than 100 registered speakers has commented. Speakers, aside from many environment and public health groups, include the American Petroleum Institute, the U.S. Chamber of Commerce, the American Chemistry Council, FreedomWorks Foundation and climate science critic Steve Milloy. Dan Byers of the Chamber of Commerce's Global Energy Institute is expected to applaud the agency's efforts and commend EPA for going through the formal public comment and rulemaking process. "It is one thing to be cavalier about transparency principles when their application has little or no import to public policy, but federal rules that impact millions of people and billions of dollars should be held to a higher standard," he is expected to say. Also registered are Reps. Paul Tonko, Suzanne Bonamici and Dan Lipinski. Comments can be submitted until Aug. 16.

Related reading: Competitive Enterprise Institute senior fellow Angela Logomasini looks at the science transparency rule in analysis published today. "The rule is actually far more modest and flexible than depicted by its critics, and its goals are in fact achievable," Logomasini writes. Read it here.

FOR THE RECORD: The House Rules Committee meets at 3 p.m. this afternoon to formulate a rule on an anti-carbon tax resolution, H. Con. Res. 119 (115), that calls a tax on carbon released from fossil fuels "detrimental to the United States economy." The Rules panel will tee up a vote later this week on the resolution, which is led by Majority Whip Steve Scalise and would put a range of lawmakers — most notably the Climate Solutions Caucus — on the record on the issue.

WHERE'S ZINKE? Interior Secretary Ryan Zinke will deliver remarks this morning at the first meeting of the "Made in America" Outdoor Recreation Advisory Committee. The committee is tasked with advising the secretary on "public-private partnerships across all public lands, with the goal of expanding access to and improving infrastructure on public lands and waterways." See the meeting agenda.

AMERICA'S PLEDGE STILL WORKING ON PLEDGES: Michael Bloomberg and California Gov. Jerry Brown, the co-chairs of climate organization "America's Pledge," have unveiled a preview of the report they will release at the Global Climate Action Summit in San Francisco in September, detailing "bottom-up" opportunities for climate action sans federal leadership. The list is familiar: boosting renewables, accelerating coal retirements, retrofitting buildings for energy efficiency, electrifying building energy use, accelerating electric vehicle adoption, phasing out HFCs, preventing methane leaks at the wellhead, reducing methane leaks in cities, reducing emissions from land and starting carbon markets.

Vice Chairman Carl Pope said the group still plans to debut a quantitative analysis outlining what state and local governments are already doing, what they have committed to and what they are keying up. "We have every reason to believe the rest of the world is watching this very closely," Pope said, noting that the U.N.'s top climate official, Patricia Espinosa, mentioned the group and summit by name at the Vatican earlier this month. Read it here.

ESA GETS ITS DAY: Proposed tweaks to the Endangered Species Act will be front and center at a Senate Environment and Public Works hearing this morning. The hearing will feature testimony from Wyoming Gov. Matt Mead, Colorado Parks and Wildlife's Bob Broscheid and Virginia's Secretary of Natural Resources Matthew J. Strickler, and will focus on a discussion draft released by Chairman John Barrasso earlier this month aimed at changing the statute. **If you go:** The hearing kicks off at 9:45 a.m. in 406 Dirksen. Livestream here.

TAKEN BY STORMWATER: The House on Monday passed by voice vote H.R. 3906 (115), the Innovative Stormwater Infrastructure Act of 2017, which would "establish centers of excellence" for stormwater control infrastructure. The legislation, introduced last year by Democratic Rep. Denny Heck, directs EPA to create a

stormwater infrastructure funding task force to make recommendations on the availability of public and private funding for stormwater infrastructure.

DOE ISSUES FIRST TRIBAL LOAN GUARANTEE: The Energy Department will issue its first solicitation for the Tribal Energy Loan Guarantee Program today. The program provides up to \$2 billion in partial loan guarantees to support energy development in Native American and Alaska Native communities. According to DOE, today's solicitation marks more than \$40 billion in energy infrastructure loans and loan guarantees from DOE's Loan Programs Office in five areas.

HOUSE PANEL TO HOLD GRID HEARING: House Natural Resources will hold a hearing on July 25 on Puerto Rico's electric grid recovery and possible improvements to make it more efficient and resilient to future hurricanes. On top of the devastation caused by Hurricane Maria last year, Puerto Rico's electric utility owes bondholders \$9 billion, and most of its leadership departed last week after clashes with Gov. Ricardo Rosselló over executive compensation and political control of the utility, which is quasi-governmental.

MAKING THE GRADE: The Environment America Research & Policy Center is out today with its state-by-state report card, "Renewables on the Rise," which details increases in solar, wind, energy efficiency, electric vehicles and battery storage. The report says the U.S. now produces almost six times as much renewable electricity from wind and solar than it did in 2008. It also found that in March of last year, wind and solar produced 10 percent of the United States' electricity — marking a first. On the state level, the report said California, Arizona, North Carolina, Nevada and Texas saw the greatest total increases from 2008 until 2017 in solar energy generation. See the report [here](#) and a state-by-state interactive map [here](#).

YOU DOWN WITH TIP? A bipartisan group of four senators wrote to Energy Secretary Rick Perry on Monday in support of the Western Area Power Administration's Transmission Infrastructure Program, which was axed under the Trump administration's fiscal 2019 budget proposal. "TIP is one of the few federal programs that directly supports new and upgraded electric transmission," according to the letter, signed by Sens. Catherine Cortez Masto, Martin Heinrich, Dean Heller and Cory Gardner.

HOUSE PLANS FLOOD INSURANCE VOTE: The House is planning to vote next week to extend the National Flood Insurance Program, ahead of its July 31 expiration, sources familiar with the matter tell Pro Financial Services' Zachary Warmbrodt. There are already a few options on the table for the program: one from Financial Services Chairman Jeb Hensarling, who has been trying to put together an extension bill that includes reforms, and a new bill introduced by Scalise and Rep. Tom MacArthur that would reauthorize the program through Nov. 30. Read [more](#).

FOR YOUR RADAR: Republican Sen. Chuck Grassley introduced bipartisan legislation on Monday targeting price fixing by OPEC. The bill would amend the Sherman Act to make oil-producing and exporting cartels illegal, and was co-sponsored by Sens. Amy Klobuchar, Mike Lee and Patrick Leahy. "It's long past time to put an end to illegal price fixing by OPEC," Grassley said in a statement. Read the legislation [here](#).

MAIL CALL! National Rural Electric Cooperative Association CEO Jim Matheson sent a letter to the leadership of the Energy and Commerce Environment Subcommittee on Monday in support of legislation to reform the New Source Review permitting program.

— **More than 100 Democrats** signed onto a letter to members of both House and Senate Armed Services committees today to urge them to oppose any provisions to the National Defense Authorization Act that would "have widespread, negative consequences for the conservation of our imperiled wildlife and public lands." Read the letter [here](#).

— **Iowa's congressional delegation** invited acting EPA Administrator Andrew Wheeler to their state to discuss the Renewable Fuel Standard. Read it [here](#).

What role will Hispanic voters over 50 play in Arizona this Fall? Read POLITICO Magazine's new series "The Deciders" which focuses on this powerful voting bloc that could be the determining factor in turning Arizona blue.

QUICK HITS

- "Puerto Ricans return to power grid, but fear for long term," The Associated Press.
- "Oil boom in Southern New Mexico ignites groundwater feud with Texas," Water Deeply.
- "In N.Y., farmers think about what might have been," E&E News.
- "Same agenda, different style, acting EPA head pledges," Bloomberg Environment.

HAPPENING TODAY

8:30 a.m. — POLITICO's Pro Summit, 999 Ninth St. NW.

8:45 a.m. — The United States Institute of Peace discussion on "Wildlife Poaching and Trafficking: Combating a Vital Source of Terrorism," 2301 Constitution Avenue NW.

9 a.m. — The Resilient Puerto Rico Advisory Commission discussion with the authors of the newly released "ReImagina Puerto Rico" report, 14th and F St. NW.

9 a.m. — The National Academy of Sciences' Board on Atmospheric Sciences and Climate meeting to discuss a research agenda for adaptation science, 2101 Constitution Ave. NW.

9:45 a.m. — Senate Environment and Public Works Committee hearing on "The Endangered Species Act Amendments of 2018," 406 Dirksen.

10 a.m. — House Natural Resources Federal Lands Subcommittee hearing on federal land bills, 1324 Longworth.

10 a.m. — The Atlantic Council discussion on "Ready and Resilient," focusing on disaster preparedness, 1030 15th St. NW.

10 a.m. — House Oversight Interior, Energy and Environment Subcommittee hearing on "Tribal Energy Resources: Reducing Barriers to Opportunity," 2247 Rayburn.

10 a.m. — House Science Energy and Environment Subcommittees joint hearing on "The Future of Fossil: Energy Technologies Leading the Way," 2318 Rayburn.

10 a.m. — Senate Energy and Natural Resources Committee hearing on the Interior Department's final list of critical minerals, 366 Dirksen.

12:30 p.m. — The Washington Institute for Near East Policy discussion on "Reimplementing Iran Sanctions: Where, How and How Much?" 1111 19th St. NW.

12:30 p.m. — Sens. Ed Markey and Tom Carper press conference on Supreme Court nominee Brett Kavanaugh, S-115.

1 p.m. — EPA meeting on pesticide health and safety, Rosslyn, Va.

1 p.m. — House Energy and Commerce Environment Subcommittee markup of H.R. 3128 (115), 2322 Rayburn.

3 p.m. — House Rules Committee meets to formulate a rule on H. Con. Res. 119 (115), H-313.

THAT'S ALL FOR ME!

To view online:

<https://subscriber.politicopro.com/newsletters/morning-energy/2018/07/spotlight-on-ferc-280874>

Stories from POLITICO Pro

House plans vote to keep flood insurance program going Back

By Zachary Warmbrodt | 07/16/2018 06:49 PM EDT

The House is planning to vote next week to extend the National Flood Insurance Program before leaving town ahead of the program's July 31 expiration, sources familiar with the matter said.

House Financial Services Chairman Jeb Hensarling (R-Texas) has been trying to put together an extension bill that includes reforms, sources said. Another option is a new bill introduced by House Majority Whip Steve Scalise (R-La.) and Rep. Tom MacArthur (R-N.J.) that would reauthorize the program through Nov. 30.

In a statement, Scalise said it was important to keep working on a long-term flood insurance reauthorization but that his bill would take concerns about a lapse off the table for the remainder of hurricane season.

While the House has passed a five-year reauthorization and overhaul, the Senate hasn't reached agreement on its own bill amid disputes over how to retool the program. It's unclear if the Senate would be able to pass anything other than a clean, short-term reauthorization at this stage. Sources said Sen. John Kennedy (R-La.) was planning to try to hotline an extension through January.

To view online click here.

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Subject: Morning Energy: What's happening with WOTUS — Keystone fight far from over — Wheeler to Michigan

By Kelsey Tamborrino | 08/17/2018 05:44 AM EDT

With help from Annie Snider, Ben Lefebvre and Alex Guillén

A COUNTRY DIVIDED: Which streams and wetlands are protected under the Clean Water Act? As of Thursday, the answer depends on where you're standing. After a South Carolina District Court [ruling](#) overturning the Trump administration's attempted delay of the Obama administration's Waters of the U.S. rule for failing to offer the public a proper opportunity to comment, the 2015 rule is now officially on the books in 26 states — but not in the other 24 states where other district court injunctions are in place.

"**The agencies refused to engage** in a substantive reevaluation of the definition of the 'waters of the United States' even though the legal effect of the Suspension Rule is that the definition of 'waters of the United States' ceases to be the definition under the WOTUS rule and reverts to the definition under the 1980s regulation," Judge David Norton wrote in Thursday's ruling. "An illusory opportunity to comment is no opportunity at all."

Environmental groups hailed the decision, with Jon Devine of the Natural Resources Defense Council calling it a "sharp rebuke to the Trump administration." Meanwhile, Zippy Duvall, president of the American Farm Bureau Federation, one of the fiercest critics of the Obama-era rule, called on the Trump administration to "to take immediate steps to limit the impact of this dangerous court decision."

But will it hold? The Justice Department is reviewing the decision, a spokesman said, and players on both sides broadly expect an appeal. Separately, EPA said in a statement it and the Army Corps of Engineers "will review the order as the agencies work to determine next steps." But the fate of the delay rule could ultimately become moot if the federal district judge in Texas grants a nationwide injunction request.

And don't forget, this is just the warm-up fight. The battle royale will be over the Trump administration's rule to repeal the 2015 rule, which the agency has not finalized. Geoff Gisler, the Southern Environmental Law Center attorney who brought yesterday's case on behalf of local environmental groups, argued that Thursday's South Carolina court decision has implications for that fight and "should give the agencies pause" as they move forward. "The agencies just aren't telling the public what they're doing," he argued. "What this decision said was you can't just have a comment period, it has to be a meaningful comment period."

WE MADE IT TO FRIDAY! I'm your host, Kelsey Tamborrino. Simon and Company's Jen Covino named the eight senators who formerly served as mayors: [Dianne Feinstein](#), [Cory Booker](#), [Jim Inhofe](#), [Bob Corker](#), [Bernie Sanders](#), [Tim Kaine](#), [Mike Enzi](#) and [Bob Menendez](#). For today: Who are the three current House lawmakers who previously served as ambassadors? Send your tips, energy gossip and comments to ktamborrino@politico.com, or follow us on Twitter [@kelseyam](#), [@Morning_Energy](#) and [@POLITICOPro](#).

FAR FROM OVER: A federal judge's order directing the State Department to conduct a supplemental environmental review for the Keystone XL pipeline's updated path through Nebraska is another setback in nearly a decade full of them for TransCanada. The order is sure to stall construction of the pipeline for months, Pro's Ben Lefebvre [reports](#). Plaintiffs in the case said the review would involve public hearings in Nebraska and consultations with Native American tribes whose land the pipeline would traverse.

Pipeline opponents are hoping to use the new review to push for a broader study of the project, Ben reports. Doug Hayes, a lawyer for the Sierra Club and one of the plaintiffs in the case, said the judge's ruling that the "entire pipeline remains interrelated and requires one [environmental review] to understand the functioning of the entire unit" could open the door for them to seek a new review for the pipeline's entire route. "If they are going back to do a supplemental environmental impact statement, our position is they would need to evaluate all the new impacts of the pipeline," Hayes said. "That would take definitely months."

WHERE'S WHEELER? Acting EPA Administrator Andrew Wheeler travels to Michigan today to discuss issues plaguing the Great Lakes and meet with GOP Rep. Tim Walberg, a member of the Energy and Commerce Committee, and officials from the Michigan Department of Natural Resources and Department of Environmental Quality.

WHEELER DELIVERS MESSAGE ON HARASSMENT: Wheeler reaffirmed EPA's policy against harassment in a memorandum sent to staff Thursday. Wheeler wrote that he expects "all individuals working at the EPA — employees, supervisors and non-employees — will not engage in or be subjected to unlawful and prohibited harassment."

MURKOWSKI: FERC NOMINEE SHOULD GO LITMUS TEST-FREE: Senate Energy Chairman Lisa Murkowski wouldn't comment on POLITICO's report that DOE's Bernard McNamee will be nominated to FERC. But the Alaska Republican said she believes that the next nominee shouldn't face a litmus test over their view of the Trump administration's efforts to prop up coal and nuclear power plants, Pro's Darius Dixon reports. "I worry that this is going to be viewed as, 'If you don't commit to voting against or voting for, then you're not going to have my support,'" Murkowski said. "That's not the way that we should be selecting commissioners for the FERC."

GET YOUR COMMENTS IN: American Petroleum Institute's Frank Macchiarola reiterated the need for Renewable Fuel Standard reform on a call with reporters Thursday outlining the group's comments for EPA's proposed biofuel blending requirements for the coming year under the RFS. "Very simply what we want is an end to this program by 2022," he said. Macchiarola said API is "willing to compromise" on certain policies like a waiver for summertime sales of E15, but only if the program will sunset by 2022. "The problem again is that the ethanol industry has been dug in to not doing anything," Macchiarola said. He added legislation is being drafted to reform the program in both chambers, but noted challenges and lengthy debate are likely ahead. Comments are due today on EPA's proposed volumes, with the final rule due to be released by Nov. 30.

— **API is also looking at the proposed plan** by EPA and the Department of Transportation to freeze fuel efficiency standards for cars and trucks. "It is a very complex proposal to a very complex program," Macchiarola said. "We will say that we appreciate the administration's relooking at CAFE in the light of changing energy market realities."

SECRET'S OUT: Thursday was the last day for comments on EPA's proposed "secret science" rule, which would ban the use of studies that don't publicly disclose all their data. Getting their thoughts in under the wire, Sens. Sheldon Whitehouse, Brian Schatz, Maggie Hassan, Jeff Merkley, Ed Markey, Tammy Duckworth, Kirsten Gillibrand, Tom Carper and Kamala Harris banded together to make their opposition known. "The proposed rule is illegal because it is arbitrary and capricious," they write, adding that "the proposed rule is illegal because it is the result of an effective delegation of rulemaking authority to private interests."

The American Chemistry Council, meanwhile, applauded the proposal in its comment Thursday. "EPA's proposal codifies an important good governance principle — that government agencies should be as transparent as possible, within the bounds of the law, about scientific information relied upon and the justifications for the significant regulatory decisions they make." Still, the trade association also highlighted that implementation of the plan would benefit from better historical context and applicability, and that greater clarity is required on key definitions and regulatory text, among other recommendations.

FIGHTING FIRE WITH A FEDERAL PLAN: The Agriculture Department released a new, aggressive approach to fighting wildfires Thursday, with proactive steps. During a bipartisan press conference, Secretary Sonny Perdue unveiled a plan that emphasizes increased collaboration with states, implementation of mapping and remote sensing tools, and management practices such as prescribed burns and timber sales, Pro's Liz Crampton reports. Though Perdue brushed aside specific questions on climate change's role, he said Interior Secretary Ryan Zinke is on board with the plan and noted further details and costs will be forthcoming from the U.S. Forest Service. "Really a lot of people ... when you talk about climate change, they want to talk about what the causes are," Perdue said. "[What] we're trying to talk about is the impact."

FERC RESTARTS PART OF PIPELINE: FERC modified a stop work order for the Mountain Valley Pipeline this week, allowing construction to restart for around 77 miles of the pipeline's West Virginia route with the exception of a 7-mile area surrounding the Weston and Gauley Bridge Turnpike Bridge Trail, MVP said Thursday. However, the company said about half of its construction workforce has been released due to continued delays. MVP said that it "remains committed to the earliest possible in-service date," though it noted that is now expected to arrive during the fourth quarter of 2019.

GREENS CALL FOR FERC REVIEW: The Southern Environmental Law Center and Appalachian Mountain Advocates petitioned the 4th U.S. Circuit Court of Appeals on Thursday to review FERC's approval of the Atlantic Coast Pipeline. The suit was filed on behalf of 13 other conservation groups. "FERC ordered the ACP construction stopped because the 4th Circuit determined that permits were issued without proper scrutiny," SELC attorney Greg Buppert said in a statement. "On the very same day, FERC rejected a rehearing request in which the conservation groups asserted that it also rushed through its decision to permit a pipeline that we don't need." The 4th Circuit last week vacated two permits issued for the project by the U.S. Fish and Wildlife Service and the National Park Service.

GREENS FILE FOIA SUIT: Environmental group Friends of the Earth filed a lawsuit Thursday against the Interior Department for lack of response to a Freedom of Information Act request. The lawsuit seeks to compel DOI to produce documents related to senior members of the department and the industries they regulate. The suit points to David Bernhardt's work as a lawyer and lobbyist for oil and gas companies and Vincent DeVito's time working as an energy industry representative. Friends of the Earth is being represented by the law firm Meyer Glitzenstein & Eubanks LLP.

AD-ING IT UP: Ahead of Wyoming's gubernatorial primaries Tuesday, a partnership between the Wyoming Wildlife Federation and Rocky Mountain Farmers Union, dubbed the Wyoming Conservation Legacy, will launch a five-figure ad campaign asking candidates to support conservation. The campaign will begin on Saturday and run through Aug. 21 with full-page print ads in the Casper Star Tribune and the Wyoming Tribune Eagle, separate radio buys on Wyoming Public Media programs, and digital ads across the state. See the ads here.

MAIL CALL! ON THE FARM: The National Biodiesel Board sent a letter to farm bill conference committee lawmakers reiterating its support for the inclusion of biodiesel programs in the five-year bill.

STAR-STUDDERED SUMMIT: Attendees of the Global Climate Action Summit in San Francisco in September will hear from former White House officials, including former Vice President Al Gore and Secretary of State John Kerry. The summit announced Thursday night that new delegates will join the event, including Executive Secretary of the United Nations Framework Convention on Climate Change Patricia Espinosa and U.N. Special Envoy for Climate Action Michael Bloomberg. Actor Alec Baldwin and chimpanzee expert Jane Goodall will also attend.

GO NUCLEAR: The American Nuclear Society this week launched a nuclear science educational program for middle schoolers that covers topics like fission and fusion, and detecting radiation. The "Navigating Nuclear:"

Energizing Our World" program is aligned with the Next Generation Science Standards framework, which provides an evidence-based foundation for scientific research.

MOVER, SHAKERS: Jack Cramton, policy adviser for Sen. Bill Cassidy (R-La.), will start Monday as a legislative affairs adviser at the Department of Energy's Congressional and Intergovernmental Affairs Office.

QUICK HITS

- "U.S. energy chief applauds Mexico's plan to end fuel imports," Reuters.
- "Trump's CO2 rule is coming, and industries wonder who's next," E&E News.
- "California fire risk won't abate until November, U.S. warns," Bloomberg.
- "Zinke said he would never sell public land. But Interior is considering it," The Washington Post.
- "Elon Musk confronts a fateful tweet and an 'excruciating' year," The New York Times.

HAPPENING TODAY

crickets

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<https://subscriber.politicopro.com/newsletters/morning-energy/2018/08/whats-happening-with-wotus-320196>

Stories from POLITICO Pro

Judge restores WOTUS rule in 26 states Back

By Alex Guillén | 08/16/2018 03:20 PM EDT

A federal judge today ruled that the Trump administration violated administrative legal requirements when it delayed the start of the Obama administration's Waters of the U.S. rule by two years — a move that means the rule will now go into effect for about half the country.

The judge said EPA and the Army Corps of Engineers had unlawfully declined to consider any comments addressing substantive issues related to WOTUS or an earlier 1982 version when it proposed delaying the rule to give the agencies more time to repeal and replace it.

That was a fatal flaw, ruled Judge David Norton of the U.S. District Court for South Carolina, a George H.W. Bush appointee. Delaying the WOTUS rule has the effect of reverting to the 1982 rule, he wrote.

Norton's injunction means the Obama-era rule will take effect in 26 states. The other 24 are covered by two different injunctions, one issued to 13 states in 2013 and one issued to another 11 states in June.

However, WOTUS may be blocked nationwide again if the rule's opponents get their way. In another WOTUS lawsuit in a federal court in Texas, three states in February asked for a nationwide injunction of WOTUS. That court has yet to decide on the matter.

WHAT'S NEXT: The Trump administration is working to finalize its repeal of the Obama WOTUS rule. And EPA and the Corps are expected to propose a replacement rule in the near future.

To view online [click here](#).

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Montana ruling could set back Keystone XL for months [Back](#)

By Ben Lefebvre | 08/16/2018 04:37 PM EDT

The fight over the Keystone XL pipeline isn't over yet.

District Court Judge Brian Morris' partial order that the State Department must conduct a supplemental environmental review to account for the pipeline's new path through Nebraska is another setback for developer TransCanada that's likely to delay construction of the nearly decade-old project by at least several months.

The order was a response to Nebraska regulators' approval in November 2017 of a route for the 830,000 barrel-a-day pipeline through the state that TransCanada had not proposed. The original environmental assessment the Trump administration used to approve Keystone XL earlier that year — a review conducted during the Obama administration — only considered a different route that TransCanada had planned for the pipeline.

The new route through Nebraska would cross through five counties that weren't included in the State Department's original environmental review, Morris noted in his order, meaning it would cross different waterways and require an additional pump station, .

Pipeline opponents say they hope to use Wednesday's ruling to push for a new broader study of the project.

Doug Hayes, a lawyer for the Sierra Club, one of the plaintiffs in the case, told POLITICO that Judge Morris' statement in his ruling that the "entire pipeline remains interrelated and requires one [environmental review] to understand the functioning of the entire unit" could open the door for them to seek a new review for the pipeline's entire route through the U.S.

"If they are going back to do a supplemental environmental impact statement, our position is they would need to evaluate all the new impacts of the pipeline," Hayes said. "That would take definitely months."

Jane Kleeb, who has long fought the pipeline and is now chairwoman of the Nebraska Democratic Party, said she thought process would drag out even longer.

"We think it buys us a year," she told POLITICO. "We just think there's a lot of significant hurdles in front of them."

Plaintiffs in the case said a new review would entail holding public hearings in Nebraska and consulting with Native American tribes whose land the pipeline would traverse.

Environmental groups have argued the pipeline posed a special risk because of the nature of the heavy oil it would transport, and that it would increase global carbon emissions. The Obama administration quashed the project in 2015, only to see their decision reversed when President Donald Trump took office a year and a half later.

A TransCanada spokesman declined to comment pending the company's review of the judge's decision.

Russ Girling, the company's chief executive officer, said during a call with investors earlier this month that the company hoped to make a final decision on whether to build the pipeline later this year or in early 2019. If approved, construction could start during the first quarter of 2019, Girling added.

A State Department official was not immediately available to comment.

Keystone XL also faces a test in Nebraska Supreme Court, where a lawsuit filed by environmental groups and state landowners challenges Nebraska regulators' approval of a route that TransCanada never formally requested. Hearings in that case are expected to start in October.

TransCanada is also waiting for several permits from federal agencies. Interior's Bureau of Land Management must issue right-of-way permits to cross federal land in Montana, and the Army Corp of Engineers must approve the pipeline's path over several waterways across the country.

To view online [click here](#).

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Sources: DOE's McNamee to get FERC nod [Back](#)

By Eric Wolff and Darius Dixon | 08/08/2018 04:07 PM EDT

The White House plans to nominate Energy Department official Bernard McNamee to fill the FERC leadership seat being vacated by departing Commissioner Rob Powelson, three sources familiar with discussions tell POLITICO.

McNamee helped roll out Energy Secretary Rick Perry's proposal last year to save struggling coal and nuclear power plants — an issue that sources have said served as a key litmus test for Trump administration officials evaluating a replacement for Powelson, who is [set to resign](#) Friday.

FERC in January unanimously voted down that plan, which sought to create special payments for power plants capable of holding 90 days of fuel on-site. But the administration has been considering additional options such as invoking rarely used emergency powers to force power plants to run, which would potentially give McNamee a chance to provide the pivotal vote on the subsequent rates and rules as a commissioner.

It is unclear when President Donald Trump would formally nominate McNamee, and the vetting process still seems to be underway. It would likely take the Senate several months to confirm him, a process that would start with hearings at the Energy and Natural Resources Committee.

Neither the White House nor DOE immediately responded to requests for comment Wednesday.

McNamee, who runs the DOE's Office of Policy, has been in and out of the agency under Trump. He was deputy general counsel for energy policy last year when he worked on Perry's ill-fated proposal to FERC. In February, he left DOE for a senior post with the Texas Public Policy Foundation, a conservative think tank [with ties to Perry](#), before returning to DOE in May.

Before joining the Trump administration, McNamee previously worked at McGuireWoods, as chief of staff to Texas Attorney General Ken Paxton and as an aide to Sen. [Ted Cruz](#) (R-Texas).

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Murkowski: Next FERC nominee should be free of litmus tests [Back](#)

By Darius Dixon | 08/16/2018 05:38 PM EDT

Alaska GOP Sen. [Lisa Murkowski](#) today declined to comment on POLITICO's [report](#) that DOE's Bernard McNamee would be nominated to FERC, but said she believes that the next nominee shouldn't face a litmus test over their view of the Trump administration's efforts to prop up coal and nuclear power plants.

"I worry that this is going to be viewed as 'If you don't commit to voting against or voting for, then you're not going to have my support,'" Murkowski, who chairs the Senate Energy and Natural Resources Committee, told POLITICO, referring to the administration's efforts to stave off coal retirements by potentially issuing emergency orders. "That's not the way that we should be selecting commissioners for the FERC."

Trump will want someone fairly aligned with the administration, she said, though she added that FERC came to the "right decision" in rejecting the Energy Department's controversial push to create special market payments for coal and nuclear plants last year. Still, she hoped that FERC's independence would be respected and that Democrats won't be reflexively opposed to the White House nominee in the way that they have been for Supreme Court nominee Brett Kavanaugh.

"A seat on the FERC is different than being a deputy secretary of Energy or Labor or whatever. Again, this is an independent regulatory agency that has a very different mission," she said. "The mission is not whatever the White House says it is. It is a very specific, statutory mission and so you want somebody who is going to be true to that. My hope is that the White House picks somebody who can demonstrate that they will be true to that."

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USDA unveils plan for fighting wildfires [Back](#)

By Liz Crampton | 08/16/2018 03:00 PM EDT

USDA said today it's embarking on a new, aggressive approach to combat wildfires by taking preventative steps like working more with states and upping use of forest management tools.

Department officials at a press conference unveiled a 22-page plan that emphasizes increased collaboration with states, implementation of mapping and remote sensing tools, and management practices such as prescribed burns and timber sales.

Further details and costs of the initiative will be forthcoming after the U.S. Forest Service and other agencies hold discussions with state partners, USDA Secretary Sonny Perdue said. He added that Interior Secretary Ryan Zinke is on board, although he was not in attendance.

The plan comes as the West is enduring yet another brutal wildfire season after 2017 ranked as the most expensive year for wildfires. Federal agencies last year spent \$2.9 billion to suppress wildfires across the country, according to USDA.

"Today to truly protect our forest and communities, we must increase the size of our projects and access larger landscapes across boundaries," Perdue said. "Frankly we cannot do it ourselves. It's got to be done in the shared stewardship of state and local communities."

Perdue was joined by interim Chief of the U.S. Forest Service Vicki Christiansen and Sens. [Maria Cantwell](#) (D-Wash.), [Lisa Murkowski](#) (R-Alaska), [Ron Wyden](#) (D-Ore.) and [Steve Daines](#) (D-Mont.).

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Subject: Morning Energy: How Trump favored Texas over Puerto Rico — EPA holds final 'listening session' on climate rule repeal — DOE gets pushback on 'market-based' efficiency rules

By Kelsey Tamborrino | 03/27/2018 05:45 AM EDT

With help from Nick Juliano and Eric Wolff

HOW TRUMP FAVORED TEXAS OVER PUERTO RICO: A double standard has emerged in President Donald Trump's handling of disaster relief efforts in Texas versus in Puerto Rico, POLITICO's Danny Vinik found in a new investigation out today. A review of public documents, never-before-published FEMA records and interviews with more than 50 people involved with disaster response show an imbalance that tracks with one core person's attention: the president.

Behind the scenes, people with direct knowledge of Trump's comments said the president was focused less on the details of the relief effort than on public appearances, repeatedly using conference calls and meetings to direct FEMA Administrator Brock Long to spend more time on television touting his agency's progress. And as the administration moves to rebuild Texas and Puerto Rico, the contrast in the Trump administration's responses are taking on new dimensions, Danny writes.

During the first nine days after Hurricane Harvey, FEMA provided 5.1 million meals, 4.5 million liters of water and over 20,000 tarps to Houston; but in the same period, it delivered just 1.6 million meals, 2.8 million liters of water and roughly 5,000 tarps to Puerto Rico.

The federal government has already begun funding projects to help make permanent repairs to Texas infrastructure. But in Puerto Rico, that funding has yet to begin, as details of an experimental funding system are negotiated with Trump's Office of Management and Budget — an experimental formula that multiple congressional staffers and people with knowledge said White House officials told Puerto Rico Gov. Ricardo Rosselló to agree to if wanted money for his island. Read it [here](#).

GOOD TUESDAY MORNING! I'm your host Kelsey Tamborrino. Andrew Fasoli of the American Chemistry Council was fastest in identifying former first lady Helen Herron Taft as the first to plant the saplings of the Japanese cherry trees in D.C., which now surround the Tidal Basin and Capitol grounds. For today: Who is the only former Cabinet member to be selected as "designated survivor" twice during past State of the Union addresses? Send your tips, energy gossip and comments to ktamborrino@politico.com, or follow us on Twitter [@kelseytam](#), [@Morning_Energy](#) and [@POLITICOPro](#).

POLITICO Space is our new, free weekly briefing on the policies and personalities shaping the second space age in Washington and beyond. **Sign up today to start receiving the newsletter right at launch on April 6.** *Presented by Boeing.*

OFFSHORE ORCHESTRATION: Interior Secretary Ryan Zinke's meeting with Florida Gov. Rick Scott at the Tallahassee airport back in January — after which Zinke declared the state "off the table" for expanded offshore drilling — wasn't as spontaneous as it first seemed, POLITICO Florida's Matt Dixon reports. Scott's office cast the announcement as a hastily arranged example of the governor's ability to influence Trump administration policy, all while dismissing any suggestion that the move had anything to do with his expected

entrance into this year's Senate race. But Matt got ahold of 1,200 documents — including emails, text messages and phone records — that show Interior officials and Scott aides had been coordinating days ahead of the meeting. More from Matt [here](#).

ONE LAST TIME: EPA will hold its final "[listening session](#)" today in Gillette, Wyo., on the proposed repeal of the Clean Power Plan. A preliminary list of speakers shows a range of voices will attend the session — including various speakers from Cloud Peak Energy, a firm headquartered in Gillette that mines coal in the Powder River Basin, and the Rocky Mountain Coal Mining Institute. Sens. [John Barrasso](#) and [Mike Enzi](#) — who have previously [applauded](#) the proposed repeal — are also scheduled to speak. Barrasso plans to emphasize how the rule would hurt energy workers in his state, an aide tells ME, and will highlight bipartisan [efforts](#) in Congress to promote carbon capture technologies.

On the other side, advocates from the American Lung Association, Moms Clean Air Force and National Wildlife Federation will speak. Moms Clean Air Force will highlight EPA's "legal and moral obligation" to action on greenhouse gas emissions, according to the group's talking points. Administrator Scott Pruitt won't be there today, but he is set to [make a separate trip](#) to Wyoming this week to visit the state's coal-mining operations.

WHERE'S PERRY? Energy Secretary Rick Perry is in California today, where he'll tour the Lawrence Berkeley National Laboratory and hold an all-hands meeting with the facility's employees at 3 p.m. The trip follows Perry's [visit](#) to the Lawrence Livermore National Lab on Monday.

REFINERS: MORE THAN EPA'S PES WAIVER IS NEEDED TO SURVIVE THE RFS : Two Philadelphia-area refiners said a consent decree between EPA and Philadelphia Energy Services was an acknowledgment by the government that the Renewable Fuel Standard is broken and needs significant reform. PBF told DOJ, which took comments on the agreement until Monday, that "one-time forgiveness of RIN obligations fails to remedy the root cause for the bankruptcy and provides the wrong incentives to the [Renewable Identification Number] market." Monroe said the agreement "is a reflection, an acknowledgment, of the economic harm caused by the RFS program." Both of them were joined by refining giant Valero in arguing that the program needs to be changed more radically than just the one-time waiver offered by EPA. Ethanol producers said in their own earlier comments that they oppose the consent decree and reject the idea that PES' bankruptcy could be blamed on the RFS.

Read Monroe's comments [here](#), PBF's [here](#) and Valero's [here](#).

JUDGE LEAVES SOLAR TARIFFS IN PLACE: A judge in the U.S. Court of International Trade on Monday rejected requests for a stay of U.S. solar tariffs pending an appeal. Silfab Solar, Heliene, Canadian Solar (USA) and Canadian Solar Solutions had been hoping the court would block the 30 percent tariff the Trump administration imposed on imported solar panel and solar cells last month. The court had rejected their motions for a temporary restraining order and preliminary injunction earlier in March.

TRADE DEADLINE: Can appliances be regulated like automobiles? That's the question the Energy Department posed last year in an effort to apply Trump's regulatory reform goals to its efficiency standards program, and responses were due by Monday. DOE asked for input on several potential reforms, including enforcing efficiency rules similar to the Corporate Average Fuel Economy program, which averages performance across an automakers' entire vehicle fleet. DOE's request for information also pointed to state-level renewable portfolio standards or California's cap-and-trade program as examples of the ideas it was considering.

But those "market based" approaches probably won't work, numerous commenters told DOE. The main barrier is "anti-backsliding" provisions in the Energy Policy and Conservation Act, which prevents DOE from weakening existing requirements. Current law "precludes the use of averaging, credit-trading, or providing feebates as an alternative to minimum energy-efficiency requirements," the Alliance to Save Energy, a pro-

efficiency group, wrote in its [comments](#). A coalition of industry trade associations agreed that such mechanisms would be unlikely to work; in their [comments](#), the groups, including the Air-Conditioning, Heating and Refrigeration Institute and the Association of Home Appliance Manufacturers, urged DOE "to focus its limited resources on reforming the existing program" through changes to a separate process improvement rule. Read additional comments from [AHRI](#), the [Natural Resources Defense Council](#), [Lennox International](#), [E2](#), [Whirlpool](#), the [Edison Electric Institute](#), [Dow](#), [Southern Company](#) and the [California Energy Commission](#).

DEFENDING EPA'S SCIENCE: Former EPA Administrator Gina McCarthy and Janet McCabe, the former acting assistant administrator of the Office of Air and Radiation, [wrote an op-ed](#) in The New York Times Monday defending EPA's use of scientific studies to support its regulations. Conservatives have long accused the agency of relying on "secret science," and Pruitt says he plans to start relying only on publicly available data. But McCarthy and McCabe say that would deprive EPA of valuable research based on individuals' private health records or proprietary information that businesses want to protect. "Opponents of the agency and of mainstream climate science call these studies 'secret science,'" the pair writes. "But that's simply not true."

BSEE: WE COULD USE YOUR HELP: Interior is calling on its career staff to come up with ways to speed up the offshore drilling permitting process, Pro's Ben Lefebvre [reports](#). The Bureau of Safety and Environmental Enforcement will assemble teams of employees across departments to periodically review the process and look for ways to improve its efficiency across the agency, BSEE said Monday.

MAIL CALL! CALLING OUT WEAK LEASE SALES: House Natural Resources ranking member [Raúl Grijalva](#) sent a [letter](#) to Zinke Monday, requesting additional information on his agency's budget priorities. Grijalva also asked Zinke to keep royalty rates for offshore drilling development stable, in light of [weak demand](#) for lease sales.

— **Sens. [Sheldon Whitehouse](#) and [Brian Schatz](#)** wrote to the CEOs of [BlackRock](#) and [JP Morgan Chase](#) questioning the firms' investment in companies active in the Amazon rainforest.

NEW JERSEY TO BLOCK DRILLING: New Jersey Gov. Phil Murphy is expected sign a bill that would prohibit state regulators from approving permits for pipelines or related infrastructure to facilitate expanded offshore drilling in federal waters. Pro New Jersey's Danielle Muoio [has more](#).

MOVER, SHAKER: Friends of the Earth announced Monday that Liz Butler will become vice president of organizing and strategic alliances. Butler will lead a staff of five organizers and 13 organizing fellows in grassroots environmental campaigns.

— **Michael Pratt is joining the American Enterprise Institute's** press office as director of media relations and marketing. Pratt previously served in several other roles at AEI in the digital and media relations departments.

QUICK HITS

— ITER nuclear fusion project avoids delays as U.S. doubles budget, [Reuters](#).

— Half of all U.S. coal plants would lose money without regulation, [Bloomberg](#).

— Federal lease sale fails to impress, but nets \$10 million for Wyoming, [Casper Star-Tribune](#).

— Former CEO of Maersk Oil to become Shell Oil president, [Houston Business Journal](#).

— Shell just outlined a radical scenario for what it would take to halt climate change, [The Washington Post](#).

— The EPA says it wants research transparency. Scientists see an attack on science, The New York Times.

HAPPENING TODAY

7:30 a.m. — The American Water Works Association holds Sustainable Water Management Conference, Seattle

8:00 a.m. — The California Solar Power Expo, San Diego

8:00 a.m. — The Mediterranean Oil and Gas Forum 2018 with Mark Menezes, undersecretary of Energy, Nicosia, Cyprus

8:45 a.m. — Energy Thought Summit, Austin, Texas

9:00 a.m. — Inter-American Dialogue discussion "Unconventional Oil and Gas in Argentina," 1155 15th Street NW

9:30 a.m. — American Fuel and Petrochemical Manufacturers holds International Petrochemical Conference, San Antonio, Texas.

11:00 a.m. — The National Academy of Sciences webinar on "Improving Characterization of Anthropogenic Methane Emissions in the United States."

12:00 p.m. — Americans for a Clean Energy Grid webinar on "Transmission Needed to Meet Corporate America's Growing Demand for Renewable Power."

5:00 p.m. — The Johns Hopkins University Paul H. Nitze School of Advanced International Studies book discussion on "The Fracking Debate: The Risks, Benefits, and Uncertainties of the Shale Revolution," 1717 Massachusetts Avenue NW

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<https://www.politicopro.com/newsletters/morning-energy/2018/03/how-trump-favored-texas-over-puerto-rico-151171>

Stories from POLITICO Pro

How Trump favored Texas over Puerto Rico Back

By Danny Vinik | 03/27/2018 05:00 AM EDT

SAN JUAN, Puerto Rico — As Hurricane Maria unleashed its fury on Puerto Rico in mid-September, knocking out the island's electrical system and damaging hundreds of thousands of homes, disaster recovery experts expected that only one man could handle the enormity of the task ahead: Mike Byrne.

But Byrne, a widely acknowledged star of the Federal Emergency Management Agency, remained in Houston, which had been ravaged by Hurricane Harvey less than a month earlier.

Today, disaster recovery experts still express shock that FEMA kept Byrne in an already-stabilizing Texas and didn't send him to Puerto Rico for three more weeks. But now, the decision strikes many as emblematic of a

double standard within the Trump administration. A POLITICO review of public documents, newly obtained FEMA records and interviews with more than 50 people involved with disaster response indicates that the Trump administration — and the president himself — responded far more aggressively to Texas than to Puerto Rico.

"We have the U.S. Army and Marine Corps. We go anywhere, anytime we want in the world," bemoaned retired Army Lt. Gen. Russel Honoré, who led the military's relief efforts after Hurricane Katrina. "And [in Puerto Rico] we didn't use those assets the way they should have been used."

No two hurricanes are alike, and Harvey and Maria were vastly different storms that struck areas with vastly different financial, geographic and political situations. But a comparison of government statistics relating to the two recovery efforts strongly supports the views of disaster-recovery experts that FEMA and the Trump administration exerted a faster, and initially greater, effort in Texas, even though the damage in Puerto Rico exceeded that in Houston.

Within six days of Hurricane Harvey, U.S. Northern Command had deployed 73 helicopters over Houston, which are critical for saving victims and delivering emergency supplies. It took at least three weeks after Maria before it had more than 70 helicopters flying above Puerto Rico.

Nine days after the respective hurricanes, FEMA had approved \$141.8 million in individual assistance to Harvey victims, versus just \$6.2 million for Maria victims.

During the first nine days after Harvey, FEMA provided 5.1 million meals, 4.5 million liters of water and over 20,000 tarps to Houston; but in the same period, it delivered just 1.6 million meals, 2.8 million liters of water and roughly 5,000 tarps to Puerto Rico.

Nine days after Harvey, the federal government had 30,000 personnel in the Houston region, compared with 10,000 at the same point after Maria.

It took just 10 days for FEMA to approve permanent disaster work for Texas, compared with 43 days for Puerto Rico.

Seventy-eight days after each hurricane, FEMA had approved 39 percent of federal applications for relief from victims of Harvey, versus 28 percent for Maria.

Those imbalances track with another one: the attention of President Donald Trump. In public, Trump appeared much more concerned with the victims of Harvey than Maria. He visited Houston twice during the first eight days after the hurricane, but didn't visit Puerto Rico for 13 days. In the first week after the disasters, Trump sent three times as many tweets about Harvey as Maria — 24 about the plight of Texas and eight about Puerto Rico, including a series of comments about Puerto Rico's debt level and quality of infrastructure that local officials considered insulting and enraging while lives were still in jeopardy.

"Wow - Now experts are calling #Harvey a once in 500 year flood! We have an all out effort going, and going well!" he crowed about Texas on Aug. 27, two days after the storm made landfall.

On Sept. 30, 10 days after Maria, and while fielding criticism from Puerto Rican officials, Trump testily tweeted: "[They] want everything to be done for them and it should be a community effort. 10,000 Federal workers now on island doing a fantastic job."

Behind the scenes, according to people with direct knowledge of his comments, Trump was focused less on the details of the relief effort than on public appearances, repeatedly using conference calls and meetings designed

to update him on the relief effort to direct FEMA Administrator Brock Long to spend more time on television touting his agency's progress.

In addition, Trump spent the first weekend after the Puerto Rico crisis tweeting repeatedly about NFL players kneeling for the national anthem. Those messages, experts said, send a subtle, yet important signal to the federal bureaucracy.

"On Texas and Florida [during Hurricane Irma], the president was very vocal and engaged in the run-up to the storm. His messaging was frankly pretty good," said Jeremy Konyndyk, the former top disaster response official at USAID under former President Barack Obama. "If you look at his public messaging on a comparable timeline around Puerto Rico, there's virtually nothing. ... That sends a signal to the whole federal bureaucracy about how they should prioritize."

FEMA and administration officials defend the response to the storm, saying it posed unprecedented logistical challenges as the agency faced perhaps the most demanding stretch in its 39-year history. Hurricane Maria was the third major hurricane to strike the United States in less than a month. Combine that with an overwhelmed local government and nonexistent communications and it created a fog-of-war atmosphere that made it difficult to determine what resources were needed when and how to get them to an island whose ports and airports were heavily damaged.

In a statement to POLITICO, Long defended FEMA's efforts, arguing that, unlike in Texas, the agency was forced to take on a greater role in the post-disaster response. "We provided Puerto Rico the same, if not more support, as we have for all presidentially declared disasters across the nation," he said, "but an optimal response cannot rely on FEMA's efforts alone."

A spokesperson for the National Security Council said Trump was "personally engaged" on the response and his "primary directive" to Long was to oversee a unified and effective federal response.

But in that situation, former FEMA officials say, extra political pressure and impetus can make a difference. Puerto Rico, as a U.S. territory rather than a state, has just a single, nonvoting delegate in Congress, compared with the 36 representatives and two senators from Texas who loudly demanded proper resources for their state. Likewise, victims of Superstorm Sandy had six senators and dozens of U.S. representatives in the states of New York, New Jersey and Connecticut to demand extra disaster relief, including powerful lawmakers like Chuck Schumer, then the No. 3 Democrat in the Senate.

"After Sandy, [Rep.] Peter King was all over FEMA continuously. So was Schumer," said Michael Balboni, a former New York state legislator and an expert on disaster response. That constant pressure on senior federal officials, he added, is critical to getting the proper resources after a disaster.

In that vacuum, presidential leadership plays a larger role. But as the administration moves to rebuild Texas and Puerto Rico, the contrast in the Trump administration's responses to Harvey and Maria is taking on new dimensions. The federal government has already begun funding projects to help make permanent repairs to Texas infrastructure. But in Puerto Rico, that funding has yet to start, as local officials continue to negotiate the details of an experimental funding system that the island agreed to adopt after a long, contentious discussion with Trump's Office of Management and Budget.

Multiple congressional staffers and people with direct knowledge of the arrangement said White House officials told Puerto Rico's governor, Ricardo Rosselló, that if he didn't agree to the experimental formula, the island wouldn't get the money, effectively forcing the island to take a huge gamble since it would be responsible for any cost overruns, a requirement that doesn't exist for Texas. The White House denies making that demand.

"There is no doubt that Puerto Rico gets treated differently to a state. And there is no doubt that it has been true for the disaster response as well," Rosselló said in an interview at the governor's mansion in Old San Juan. He added, "Our objective is to eradicate this notion of second-class citizenship in the United States, so that whenever a disaster hits — whether it's Texas, Florida, New York or Puerto Rico — the federal government responds equally in all cases."

After Hurricane Harvey hit the Houston region on Aug. 25, dropping over 50 inches of rain and flooding whole swaths of the metropolitan region, FEMA quickly mobilized, sending out mission assignments to a long list of federal agencies. In less than a week, U.S. Northern Command deployed 73 helicopters and the Coast Guard sent an additional 18. Within nine days, a whopping 30,000 federal personnel were helping an army of state and local authorities with the response, conducting search-and-rescue missions, removing debris and helping victims apply for disaster assistance, among many other assignments.

The response was effective enough that by Sept. 14, Texas Gov. Greg Abbott reported that "The risk to lives has now been reduced, if not completely eliminated."

On Sept. 20, after four days of increasingly dire forecasts, Hurricane Maria made landfall in a Puerto Rico already reeling from Hurricane Irma two weeks earlier.

POLITICO's analysis of data on Harvey and Maria, pieced together through news releases, internal FEMA documents, revealed for the first time, and numbers supplied by the agency, indicates that FEMA's response to Maria was much slower than it was to Harvey. Helicopters, which are crucial to rescue people from remote, flooded areas, were slow to arrive. In the initial days, Northern Command had, at most, just a few dozen helicopters on the island and the U.S. Virgin Islands while the Coast Guard deployed just six. By Day 9, just 10,000 federal personnel were on the island, about a third as many as were dealing with Harvey at the same point. Those figures increased over time — Northern Command eventually supplied over 70 helicopters and the government deployed more than 20,000 personnel — but the ramp-up took more than three weeks.

The increase in personnel coincided with the arrival of Byrne. A former New York City firefighter, Byrne has spent his career working in emergency management, serving as a senior regional FEMA officer after 9/11 and as a private sector consultant, helping manage a \$10 billion recovery program after hurricanes Katrina and Rita. After Superstorm Sandy in 2013, he led FEMA's recovery operations, a position known as the federal coordinating officer, or FCO. Last September, he was promoted to assistant administrator for field operations, overseeing the entire disaster workforce.

Despite his promotion, Byrne still often goes out into the field to oversee the most important assignments. So it came as no surprise to disaster-recovery experts when Long, the FEMA administrator, announced on Sept. 1, a week after Harvey hit Houston, that Byrne was heading down to Houston to help with the recovery efforts.

The surprise came on Sept. 20, the day that Hurricane Maria hit Puerto Rico, when FEMA named Alejandro De La Campa the FCO, while it kept Byrne in Texas.

De La Campa, a Puerto Rican native who runs FEMA's local office on the island, has strong relationships with Puerto Rican officials but is not considered one of FEMA's top disaster response leaders, much less the best person for one of the most complicated and challenging disasters in FEMA's history. Even at the time, the decision shocked former FEMA officials, many of whom thought well of De La Campa, who goes by Alex, but were expecting Long to deploy a much more experienced official for such a critical job.

"When I started hearing things, I was thinking there are a lot of heavy hitters sitting on the bench," said Craig Fugate, the head of FEMA during the Obama administration. Fugate acknowledged that it's difficult to second guess the decision-making without being in the meetings at the time. But he said, "I would have put my heavy hitters in there."

The storm impacted every part of the island, wiping out the electricity system and leaving even the local first responders as victims, many of whom lost power and first had to protect their families. Even today, more than 5 percent of the island remains without power. While the Houston region has about twice as many people as Puerto Rico, the severity and nature of the damage caused by Maria overshadowed that of Harvey. As such, FEMA eventually both received and approved more applications for individual assistance from victims of Hurricane Maria than of Hurricane Harvey.

"You had almost a perfect storm," said Jeff Parks, who worked for Honoré on the Katrina recovery effort and traveled to Puerto Rico in a private capacity soon after Maria.

Byrne said he wasn't involved in the FCO decision for Puerto Rico but that he wasn't surprised with the selection of De La Campa, explaining that he has a "stellar reputation." FEMA declined to make De La Campa available for an interview. Asked for further information on why De La Campa was initially selected to serve as the FCO, a FEMA spokesperson said the "question has been answered and addressed."

FEMA also deployed Justo "Tito" Hernandez, an experienced first responder who previously had served as an FCO on the island, as De La Campa's deputy. Hernandez, also a Puerto Rico native, did not comment directly on the selection, instead stressing that FEMA's personnel in Puerto Rico were a team.

Still, he added, "Mike [Byrne] is the best person for the job."

The best person for the job, though, was nearly 2,000 miles away during the first three weeks after Hurricane Maria made landfall, and he was quickly missed. On Oct. 10, in a five-sentence news release, billed as an expansion of the leadership team, FEMA announced it was replacing De La Campa with Byrne.

Former FEMA officials and disaster response experts said the slow ramp-up in force — from the delay in deploying Byrne to the limited number of helicopters — in Puerto Rico and the U.S. Virgin Islands is evidence that the agency underestimated the ferocity of the storm and failed to properly pre-position assets.

"That says that they didn't have the right footprint in place," said Konyndyk. "It's one thing if that's happening over a week or two. It's very different if that's taking a month."

Federal officials caution against comparing Harvey and Maria, arguing that Texas' and Puerto Rico's very different geographic, financial and political situations make comparisons misleading. After POLITICO requested data from U.S. Northern Command on helicopters deployed on certain dates after Maria and Harvey, a spokesperson declined to provide any figures, saying that the only overlap between Florida, Texas and Puerto Rico was that all three experienced hurricanes.

"That's where the comparison stops for us," he said.

Byrne and Hernandez offered two main explanations for the limited number of military assets, particularly helicopters, in the first week after Hurricane Maria. They said it was much easier to deploy helicopters to Houston than to Puerto Rico and the U.S. Virgin Islands, which were 1,000 miles from the United States and had no working ports or airports immediately after the disaster. And even if FEMA could get more responders to Puerto Rico, they said, it had no place to house them.

But it still took weeks for FEMA and the Department of Defense to increase their forces in Puerto Rico and the U.S. Virgin Islands, even though the main airports and ports were opened within a few days. Disaster-recovery experts also faulted the government for failing to direct the aircraft carrier USS Abraham Lincoln and other ships, which have their own fleets of helicopters and were deployed off the coast for Florida to help with Hurricane Irma in early September, to help with the response efforts to Hurricane Maria. The Lincoln began to position itself to help with Irma two days before the storm hit Florida. FEMA never requested that the Department of Defense send the Lincoln to Puerto Rico and the U.S. Virgin Islands.

The USNS Comfort, a hospital ship, didn't even embark from Norfolk, Virginia, to reach Puerto Rico and the U.S. Virgin Islands until nine days after the storm, despite the fact that few hospitals in the region had consistent power, leaving thousands of patients in dire medical condition.

FEMA directed questions about the Comfort and Lincoln to the Department of Defense, which said that during Irma, the Lincoln was also not requested by FEMA for help with civil authorities but instead helped secure military installations in Florida. A spokesperson for NORTHCOM also said that an agreement between DOD and FEMA to send the Comfort was reached "on/about Sept. 25," five days after the storm. It then takes the ship roughly four days to assemble its crew, add necessary supplies and start the ship's engine before it can embark, the spokesperson said.

Other data raise questions about FEMA's claim that a lack of housing prevented a quicker ramp-up in federal personnel on the island.

According to internal FEMA documents given to POLITICO by a person involved in the response efforts, a week after Hurricane Maria, FEMA had filled only 150 of 250 beds that were set aside for first responders at the Puerto Rico Convention Center. Two weeks after Maria, FEMA had filled only 1,258 of 2,250 beds allotted for its first responders at the convention center and aboard two training vessels from the U.S. Maritime Service.

A FEMA spokesperson did not say why the beds weren't used but explained that the numbers were fluid during those days as FEMA staff frequently moved to different parts of the island. "During an emergency, deployed staff comes in and out and depending on where they are needed, they are moved around to support federal and state partners," the spokesperson said.

Nonetheless, Byrne and Hernandez said in separate interviews that FEMA had enough resources to complete its missions, whether conducting search-and-rescue operations or providing food and water to the victims.

"The fact that we ramped up to about 20,000 people in the first month, month-and-a-half, that's impressive to me," said Hernandez. "Whoever says it was slow, I ask them where were you. Where were you when we were moving as fast as we could with the resources that we had?"

Byrne added: "We didn't have any deaths from starving on this. We didn't have any deaths from dehydration. We got plenty of water and food out to people."

People on the ground, however, describe a different scene, one defined by mass confusion and little coordination among the dozens of different nonprofit groups and federal, state and local officials involved in the response, most of whom had little ability to communicate with one another. They said FEMA was mostly absent during the initial days after the storm.

"For the first couple weeks, right after the hurricane, we were the only thing moving out there," said Mike Soto, a founder of a Puerto Rican think tank who became a leader in the response effort after the storm hit Puerto

Rico. "The government was definitely catatonic. FEMA wasn't around and when they were finally here, it took them awhile."

Bernardo Márquez, the mayor of Toa Baja, a municipality of less than 100,000 people in northern Puerto Rico, said just two pallets of water and one pallet of food arrived from FEMA in the first week, forcing local officials to rely on donations from local supermarkets and nonprofits like the Red Cross. "It was slow," he said.

FEMA did deliver some supplies during the first few weeks: In the first nine days after Hurricane Maria, the agency provided 1.6 million meals, 2.8 million liters of water and roughly 5,000 tarps to the island. But that was only a third as many meals and half as much water as it provided to Texas in the same time period after Harvey. Within three days of Harvey's landfall, FEMA had delivered over 20,000 tarps to Texas.

The agency argued that any comparison of the delivery of assistance between Puerto Rico and Texas is effectively impossible. Texas is accessible by roads, making it easy for FEMA to truck food, water and other emergency supplies into Houston while Puerto Rico is 1,000 miles away from the mainland U.S. "We moved stuff. We moved stuff pretty efficiently," said Byrne. "And the challenge here was getting it by ship."

According to a document obtained by POLITICO through the person involved in the response efforts, federal officials were also slow to begin installing "blue roofs" on the island, the hard, plastic covering that allows victims to return and live in their homes before permanent repairs begin.

Twenty-five days after the storm, the Army Corps of Engineers, the federal agency responsible for installing the roofs, had completed just 260 installations in Puerto Rico out of an estimated 60,000 that were needed, equal to 0.4 percent.

There's no similar data for Harvey because Texas didn't request any blue roofs and instead handled temporary housing relief in the first weeks after the storm by itself. But 25 days after Hurricane Irma struck Florida, the Army Corps had installed 1,600 blue roofs, out of 15,000 estimated, or 10.7 percent. A week later, the Army Corps had completed more than a third of the installations in Florida, compared with just 2.8 percent during the same period in Puerto Rico.

Jacqueline Tate, a spokeswoman for the Army Corps, wrote in an email that the agency faced multiple challenges with its blue roof program in Puerto Rico, including locating where victims lived based on their provided address and road closures resulting from landslides and debris.

Experts said it's difficult to pinpoint the exact costs of all these delays.

The official death toll as a result of Hurricane Maria currently stands at 64, compared with 103 from Hurricane Harvey, but a New York Times report in December, using a statistical analysis to compare deaths in the weeks after the storm with a similar period in 2015 and 2016, put the number as high as 1,052. According to the report, deaths from sepsis, pneumonia and breathing disorders jumped considerably. Local officials and experts are suspicious of FEMA's official death count and also said the delays, if not causing deaths, significantly aggravated the pain and stress felt by many Puerto Ricans.

Eventually, officials agree, FEMA's distribution of food and water accelerated; since the storm, FEMA has distributed more than 64 million meals and 72 million liters of water, both records for the agency. But the initial delays represented lost time that can never be recovered.

For FEMA, the response to Hurricane Maria put the agency in an unfamiliar position, forcing it to take on the lead role in the response when it typically acts as a support agency, fulfilling requests from state and local officials. In Puerto Rico, the state and local governments didn't always know what they needed or what they could even request. But after FEMA struggled under similar conditions after Hurricane Katrina, Congress gave

the agency additional authorities to send commodities and help with the emergency response even before it receives official requests from local officials. Many disaster response experts suggested that FEMA failed to use those authorities effectively after Hurricane Maria.

"My big mantra is I never get time back," said Fugate, the former FEMA administrator from the Obama administration, adding that he always erred on the side of sending relief supplies rather than waiting for an official request.

As hurricane victims look to start rebuilding their lives in the aftermath of a storm, many first turn to FEMA to apply for federal assistance. Applicants can receive a quick infusion of cash — up to \$34,000, depending on their needs and the severity of the damage — to start fixing their homes, money that also helps jump-start the local economy. But that money was slow to arrive in Puerto Rico.

According to FEMA data on its individual assistance program, the agency processed applications more slowly for victims of Hurricane Maria than victims of Hurricane Harvey. Nine days after Harvey, FEMA had already approved more than \$141.8 million in federal assistance, compared with just \$6 million during the same period after Maria. In fact, from Oct. 2 to Oct. 9, FEMA approved just \$6,008 in individual assistance for Puerto Rico.

A FEMA spokesperson explained that communications were a challenge in the first days after the storm, preventing Puerto Ricans from using the online application and making it difficult for federal officials to follow up with survivors. Many victims also had trouble proving their residency with a deed or title, the spokesperson said.

Still, Puerto Ricans found a way to register in the first two weeks. By Oct. 5, the agency had received 248,281 registrations for individual assistance, rising to 496,418 by Oct. 13.

Seventy-eight days after the two hurricanes, FEMA had received 18 percent more applications from victims of Maria than from victims of Harvey but had approved 13 percent more applicants from Harvey than from Maria. At the time, 39 percent of applicants from Harvey had been approved compared with just 28 percent of applicants from Maria.

"People are grateful for what FEMA was done. Mayors won't openly say we hate FEMA," said Sen. Eduardo Bhatia, the minority leader of the Puerto Rico Senate. "But if you talk to them enough, they will say it was totally frustrating. It was an absolute mess. No communication, no coordination, no chain of command and certainly no reasonable plans given the magnitude of the problem."

A little before noon on Oct. 3, Air Force One landed at the Luis Muñiz Air National Guard Base in Carolina, Puerto Rico, where Trump was scheduled to get a first-hand look at the devastation wrought by Hurricane Maria, his first trip to the island since the storm hit 13 days earlier. He visited Texas twice in the first eight days after Harvey but was slower to visit Puerto Rico, the NSC spokesperson said, so that his trip "didn't have a negative impact on ongoing response operations."

Nonetheless, Puerto Ricans were grateful for the chance for national attention, given what they considered the still-daunting magnitude of the crisis.

Quickly, however, they realized that Trump's visit wasn't going to include the worst-hit areas, and that Trump didn't have patience for any complaints.

Instead, the carefully scripted trip appeared to be something of a victory tour, as Trump praised FEMA's response and gave an "A+" to Long, the FEMA administrator, and touted the fact that the death count at the time stood at 16, compared with nearly 2,000 after Hurricane Katrina.

At a briefing on the base, he indirectly alluded to Puerto Rico's financial woes, suggesting that the federal response to the storm was creating new challenges for Mick Mulvaney, the White House budget director. "Now, I hate to tell you, Puerto Rico," Trump said, "but you've thrown our budget a little out of whack because we've spent a lot of money on Puerto Rico, and that's fine."

On a walking tour during the afternoon, Trump visited a neighborhood in nearby Guaynabo, an effort to show the president the damage on the ground. But the area had been one of the least-affected neighborhoods in Puerto Rico, according to multiple Puerto Rican officials, because most of the houses were constructed with cement.

"Nothing happened. Everything was perfect," said Sandra Rodriguez, a communications consultant who lives eight minutes away from the neighborhood. "The only thing was, it didn't have any electric power."

At a church, Trump handed out bags of rice to local residents before taking paper towels and impersonating a basketball player as he shot them into the crowd, whose members scrambled to grab the free supplies. To many Puerto Rican residents, that image — Trump's arms arched as if shooting a three-pointer — illustrated the president's cavalier attitude toward the island.

"The president's visit made it very clear that he did not think this was a big deal," said Bhatia, the Senate minority leader. "The whole paper towel incident was silly. He was making a joke out of it."

The NSC spokesperson defended the location chosen for Trump's walking tour, saying the president was fully aware of the challenges facing Puerto Rico. "Had the president visited areas that were severely impacted by the Hurricane, security measures would have required that rescue and relief efforts be temporarily redirected, which is not what the president wanted," the spokesperson said.

James Norton, a senior official in the Department of Homeland Security under former President George W. Bush, said public appearances and visits to storm-wrecked regions play an important role in establishing priorities within the federal government — as Bush learned the hard way when he was criticized for not getting more personally involved in the Katrina recovery effort.

"Bush made every effort to correct [the mistakes made after Hurricane Katrina] given how many visits he made to the region," he said. "Compare that to Trump: He made one visit. That type of executive attention drives the bureaucracy. While there might be people working behind the scenes, not having that constant attention and trips to region does have an impact on the level of effort."

To some aides, Trump didn't seem to approach Hurricane Maria any differently than Hurricane Harvey. In both cases, he lauded the efforts of FEMA and the military, heaping praise on officials who he believed were reflecting positively on his administration. "He came across as a coach, like Mickey in those Rocky movies," one person familiar with his comments said. "'You're killing them, go get 'em.'"

But in Trump's Twitter feed, a proxy for his daily attention, he didn't seem particularly concerned with the fate of Puerto Rico after Hurricane Maria. According to a POLITICO tally, he tweeted just eight times about the island in the week after the storm, often to criticize Puerto Rico. In a three-part tweet on Sept. 25, he said Puerto Rico "is in deep trouble," due to its debt and infrastructure; during that same week, he tweeted 18 times about NFL players not standing for the national anthem. In comparison, in the week after Harvey, he was laser focused on the storm, tweeting 24 times about the relief efforts in Texas and repeatedly praising the first responders.

Trump also got into verbal disputes with local Puerto Rican officials, including the mayor of San Juan, Carmen Yulín Cruz, who criticized the federal response at a Sept. 29 news conference, saying that "We are dying and you are killing us with the inefficiency."

A day later, Trump struck back, slamming Cruz for her "poor leadership" and tweeting that she and "others in Puerto Rico ... want everything to be done for them."

"It was a little disheartening to see the exchange between the president and the mayor," said Michael Coen, former chief of staff of FEMA during the Obama administration. "It doesn't help morale at FEMA and the staff who are working hard."

On Oct. 12, more than three weeks after Hurricane Maria hit Puerto Rico, the president suggested that the federal government wasn't prepared to help the island indefinitely. "We cannot keep FEMA, the Military & the First Responders, who have been amazing (under the most difficult circumstances) in P.R. forever!" The next day, he walked back that tweet in another tweet, saying about Puerto Ricans, "I will always be with them!"

To many Puerto Rican officials and disaster experts, Trump's public comments about Puerto Rico, a territory with no voting representation in Congress, exacerbated the challenges it faces with the federal bureaucracy due to its political status. "There is certainly a different treatment and many of these things, in order to get some reaction, there has to be some pushing," said Rosselló.

The NSC spokesperson said in a statement that the idea that Trump's public comments negatively affected the federal response was a "ridiculous insinuation" and "an insult to the thousands of FEMA and other federal employees who were in Puerto Rico before, during and after the storms." The official added that such criticisms were "partisan political shots."

But there is a lot of evidence that political pressure can lead to a stepped-up disaster response.

In Texas, Senate Majority Whip John Cornyn (R-Texas) held up the nomination of the deputy director of the White House budget office for months over concerns about inadequate support for his state in the wake of Harvey. He finally allowed the nomination to move forward in February after Congress passed a bill with \$90 billion of disaster relief funding and Trump signed it.

Rep. Dan Donovan (R-N.Y.), who leads the House Homeland Security subcommittee on emergency preparedness, told POLITICO that even today, more than five years after Superstorm Sandy, he still has to keep lobbying FEMA to support his constituents on different issues resulting from the storm, such as flood insurance mitigation measures. "We are always putting pressure on them," he said.

Puerto Rico, with a single, nonvoting delegate in the House, can't hold up White House nominations. The territory doesn't have a full delegation of lawmakers — or congressional staffers — to put pressure on FEMA. "Unless you are God, you can't do the job of six people just yourself and without a vote," said Kenneth McClintock, the former secretary of state of Puerto Rico.

As of March 20, six months after Hurricane Harvey, Texas was already receiving federal dollars from FEMA for more than a dozen permanent projects to repair schools, roads and other public infrastructure that were damaged by the storm.

But for Puerto Rico, FEMA has so far not funded a single dollar for similar permanent work projects.

The gap is a result of Puerto Rico's decision to use an experimental formula for calculating the federal funds allocated to rebuild its public infrastructure. The new formula gives Puerto Rico significant flexibility during the rebuilding process, but it also requires the island to pay for any cost overruns, a burden that doesn't apply to Texas, where FEMA will pay for any excess costs. For a cash-strapped territory like Puerto Rico, which is more than \$70 billion in debt, the potential for cost overruns is a huge risk, making the decision to use the new formula across all rebuilding projects a somewhat surprising gamble.

But according to multiple congressional officials and people with direct knowledge of the arrangement, the island was forced to take that gamble. According to those people, White House officials, led by Mulvaney and Homeland Security Adviser Tom Bossert, told Puerto Rico that in order to receive money for permanent work projects, it had to adopt the experimental funding formula for all its projects.

That formula, which dates to Hurricane Katrina and was used on a major housing project after Superstorm Sandy, has never been tried on this scale and Puerto Rican officials weren't interested in being the guinea pig. But in a series of contentious meetings and conversations in late October, White House officials told Puerto Rico it had no choice, according to the congressional staffers and people with direct knowledge of the meetings.

On Nov. 2, with almost no media attention, FEMA published an amendment to its disaster declaration for Puerto Rico that required the use of the experimental funding formula across all projects. It had never been included in a disaster declaration before.

"This is unusual and when it came out, I had lots of phone calls from people," said Elizabeth Zimmerman, a former senior FEMA official who helped create the program when she was in the Obama administration.

Byrne defended the process, arguing that the administration did not force Puerto Rico to adopt the new formula.

"We made a strong case. We showed them all the pluses to it because of the flexibility you'd have, the increased use of mitigation," he said. "It speaks for itself. And at the end of the day, the governor put it in writing that that's how he wanted it done."

A senior administration official said it was "absolutely false" that FEMA forced Puerto Rico's hand.

Rosselló said the administration was "not explicit" in ordering Puerto Rico to adopt the experimental formula, which is known as 428 for its section in the Stafford Act, but he added that "they were very adamant about 428."

Rosselló also argued that the process has slowed down Puerto Rico's ability to rebuild its infrastructure. The process for authorizing permanent funding for Puerto Rico took 43 days, compared with 10 days for Texas. The U.S. Virgin Islands received that authorization within 15 days.

The senior administration official acknowledged that projects might get rebuilt quicker under the traditional payment method but said the delay reflects the time necessary to build back the island's infrastructure in a smarter, more effective way. "It does take a little more time to plan that out," the official said, adding that many emergency projects, including some road repairs and electricity generation, are ongoing. FEMA has already spent more than \$1.3 billion on such emergency projects.

Still, today, more than six months after Hurricane Maria, FEMA still hasn't funded any permanent work projects on the island as Puerto Rico and federal officials negotiate an agreement under 428. The most important piece of those negotiations is the cost estimate. Puerto Rico is on the hook for any overruns, so state officials are very concerned about who is conducting the estimate. According to Rosselló, FEMA agreed in November that Puerto Rico and FEMA would jointly be in charge of the estimate. "We had this explicitly written down in order for us to agree to 428," he said.

Byrne, however, suggested that FEMA would ultimately determine the estimate. "We're more than happy to have Puerto Rico engineers and engineering firms be part of this, and they can help us with the estimates," he said, citing an inspector general's report after Sandy that faulted FEMA for weaknesses in its financial controls in using the new formula. "At the end of the day, we're going to do the estimate." Any disagreements would go to a third-party panel for review, he added. "This is going to be fair."

Bryan Koon, who served as the director for Florida's emergency management agency from 2011 to last October, said he supports 428 and thinks it could help Puerto Rico. But if he were in charge, he said, he would object to FEMA conducting the cost estimate itself. "As a state guy, I would be opposed to that."

The senior administration official conceded that there is "tension" around the cost estimate but said it should reflect a collaborative approach. "We recognize that you don't want to take the number we're giving you and you have to recognize that we're not going to just take the number you give us," the official said. "That's the way this works."

The official also argued that the Trump administration has put Puerto Rico in a better position to use 428 by requesting and receiving from Congress an exemption from the requirement that the cost estimate be based upon the pre-disaster conditions of Puerto Rico's infrastructure. "That's a big deal," the official said. The exemption could prove lucrative to Puerto Rico, since FEMA now can now fund permanent work projects without deducting for any pre-existing damage that was not caused by Maria.

Experts on the formula said it could have additional benefits. It is, effectively, a block grant, allowing the island to more efficiently allocate resources to rebuild its roads, bridges and power system. Under the formula, FEMA also distributes the money up front, instead of reimbursing the island for individual projects, an important benefit for the cash-strapped territory that also cuts down on burdensome paperwork.

Rosselló said he was examining the formula before the White House approached him, realizing that it would be a mistake to rebuild Puerto Rico's outdated infrastructure to its previous condition. "Puerto Rico is in hurricane alley," he said. "It's going to come again."

But Rosselló and other Puerto Rican officials worry that the administration's position on 428 is representative of a broader White House strategy to limit funding toward Puerto Rico. The governor particularly pointed to the Treasury Department's decision to withhold more than half of a \$4.7 billion loan that Congress authorized for Puerto Rico in an October spending bill. Treasury said Puerto Rico didn't need the money, which was earmarked to help the island pay for essential services, since it had a cash balance of \$1.7 billion at the end of 2017. The two sides reached an agreement over the loan last week.

Rosselló believes the president is committed to funding Puerto Rico's recovery, but he's worried that it will not be a priority as the administration moves on to other issues. "When we asked for him a certain set of things ... [Trump] has responded," he said. "My concern is that somewhere along the way, it has sort of fizzled."

"I don't know who it is, but there certainly is evidence that they are trying to penny-pinch," the governor added.

The senior administration official rejected that accusation, saying, "I'm not sure where he is getting that impression" and noting that the federal government has already committed more than \$10 billion in funding to Puerto Rico. "Our No. 1 concern is to make sure we deliver for the people of Puerto Rico," the official said, adding, "Things take longer than anyone would like them to."

Puerto Rico's recovery will take many years and will continue to put pressure on the federal budget. The historic 2017 hurricane season and California wildfires have already forced Congress to pass three disaster spending bills, totaling more than \$140 billion, and another disaster spending bill could be needed later this year. The Trump administration, led by Mulvaney, has attempted to keep costs down, sending a funding request to

Congress in November that Democrats and Republicans both derided as too low. The White House budget office included in that request a list of spending cuts that Congress could use to offset the extra hurricane-related costs, which lawmakers also ignored in February's disaster spending bill.

Many Puerto Rican officials and disaster-recovery experts fear that the contentious battles over 428 and the Treasury Department loan are just the first of many future fights between Puerto Rico and the federal government. It's a fear shared by many in Puerto Rico, who, now more than ever, feel like second-class citizens.

"There is a lingering lack of knowledge about Puerto Rico and a lingering tendency to want to treat Puerto Rico differently," said McClintock, the former Puerto Rico secretary of state, "and always for the worst."

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POLITICO Florida: Records, Zinke's office refute Scott framing of impromptu oil-drilling reversal [Back](#)

By Matt Dixon | 03/27/2018 05:05 AM EDT

TALLAHASSEE — When Gov. Rick Scott and U.S. Interior Secretary Ryan Zinke announced Jan. 9 Florida was "off the table" for offshore oil drilling, the governor cast the hastily arranged news conference at the Tallahassee airport as unplanned and the Trump administration's decision as something Scott had influenced at the eleventh hour.

In fact, Zinke's top advance staffer, whose job it is to plan ahead for such events, was in Tallahassee the previous day. And top officials from the offices of both Scott and the secretary were in regular contact for several days leading up to the announcement, according to more than 1,200 documents reviewed by POLITICO Florida as part of a public records request.

The documents, which include phone records, text messages, and emails, contradict the supposed spontaneous event that portrayed Scott as single-handedly securing a politically popular win for Florida's environmental future only days after the administration had spelled out a controversial new national five-year plan to boost offshore oil drilling. The event left Scott, at least for the moment, with a big victory to hold over Sen. [Bill Nelson](#) (D-Fla.), whom the term-limited Scott is almost assuredly challenging in 2018.

The records reaffirm the perception at the time that the Trump administration's decision to reverse course and remove Florida from the list was carefully choreographed to give Scott a political win in his widely expected challenge this year to unseat Nelson.

"Whatever Rick needs, they [Trump administration] will do. There will be net more offshore drilling, but the governor will get what he needs," one Republican who spoke directly with Zinke [told POLITICO Florida](#) at the time, a prediction that came true.

It will "be a big win, and it won't be Bill Nelson bringing it home," the Republican added.

Turns out all the optics were orchestrated long before that January day.

Zinke press secretary Heather Swift told POLITICO Florida Monday that "the governor's staff was certainly aware that the secretary was traveling to Florida at the governor's request," but Scott's office — at the time — gave no indication the meeting and oil drilling deal had been hashed out prior to the Jan. 9 airport meeting.

Scott's office did not include the meeting on his original public schedule, which is released each morning. The event was sent out as part of an amended calendar around 4:50 p.m. on January 9, about an hour before the event. Around the same time, Scott's office began telling reporters to get to the airport, but there was no notice prior to the amended statement and calls from staff. There was an absolute feeling in Florida political circles at the time that the announcement came out of nowhere.

The decision to give no public notice was done despite Zinke's staff being already in Tallahassee to help coordinate the event: "Even the shortest trips require a lot of coordination and planning," Swift said.

Scott spokesman McKinley Lewis said Monday Scott wanted the meeting with Zinke to "express his strong opposition to drilling off Florida's coast," but did not discuss the public perception that the meeting was not planned.

"Governor Scott was glad to have the opportunity to quickly meet with Secretary Zinke and get commitment from him in that meeting to take Florida off the table for future off shore drilling," Lewis said.

He did not return follow up questions about why the meeting was kept off Scott's original public Jan. 9 calendar.

Records clearly show Rusty Roddy, Zinke's former advance staffer, was in Tallahassee ahead of the Jan. 9 event helping coordinate with Scott's staff.

"Head's up. Secretary having issues with flight out of Atlanta," wrote Roddy in a text message the day of the event to Scott deputy chief of staff Craig Carbone. "Arrival here TBD but looks like it will be later than planned for sure."

Roddy, who is no longer with Zinke's office, acknowledged that the event was "planned" and that he was in Tallahassee prior to the airport meeting. Additional records further confirm the "off the table" airport event was not as hastily thrown together as it then seemed publicly. In emails, Roddy indicated he was planning to be in Florida before the event as early as Friday, Jan. 5, a day after Zinke announced Florida was on the oil drilling list, and days before the Jan. 9 airport event, which officials said was not planned.

"Look forward to seeing you guys Monday," he said in a Jan. 5 email to Jackie Schutz Zeckman, Scott's former chief of staff. She resigned Monday and is likely to join Scott's Senate campaign.

The way Scott's office framed the Zinke trip helped downplay the perception of political gamesmanship from the announcement. Scott's office maintains that 2018 politics had no role in the process, a sentiment they stressed in January.

"This is not about politics," John Tupps, Scott's communications director, told POLITICO Florida at the time. "This is good policy for Florida."

Records show that between the Jan. 4 announcement that Florida could see additional oil drilling rigs off its shore and the Jan. 9 meeting where the state was taken "off the table," Carbone spoke with Roddy, the Zinke advance staffer, 17 times, while Schutz Zeckman spoke with Kate MacGregor, who at the time was acting assistant secretary of Land and Minerals Management, seven times. MacGregor was the point person for much of the discussions, and traveled with Zinke for the Tallahassee rollout, records show.

The records show a general uptick in Scott administration contact with the Interior Department officials in the months leading up to the oil drilling announcements. Those increased conversations were something Scott talked about at the time, as he said he was lobbying to keep Florida off any oil drilling lists.

There were at least 60 calls Carbone and Schutz Zeckman had over the last three months of October with Interior officials. Prior to October, Scott's office and the Interior Department had discussions about various policy issues, but the discussions became much more frequent as the oil drilling announcements approached.

Nelson, Democrats and other Scott opponents always saw political motivations in the quick about-face by the Trump administration toward Florida. Scott was one of Trump's earliest political supporters, and is the current chairman of a pro-Trump super PAC.

"I have spent my entire life fighting to keep oil rigs away from our coasts. But now, suddenly, Secretary Zinke announces plans to drill off Florida's coast and four days later agrees to 'take Florida off the table?' I don't believe," Nelson said in a statement at the time. "This is a political stunt orchestrated by the Trump administration to help Rick Scott, who has wanted to drill off Florida's coast his entire career."

That last point has been one of debate. Nelson's camp has tied Scott to oil drilling, pointing to the fact that in 2010 when first running for office, Scott said that there must be "sound policies in place" when working to "explore the expansion of domestic drilling in the U.S."

Scott now opposes offshore oil drilling, and he immediately tweeted opposition to Trump's oil drilling plan when it was first announced in early January. That garnered him a "full flop" from PolitiFact Florida earlier this year.

His stance also opened a brief rift between the two political pals, but his past statements are not likely to go away headed into the mid-term elections.

"Just like Donald Trump," the Florida Democratic Party responded in January, "Governor Scott is trying to rewrite his long anti-environment record with a tweet."

This article first appeared on POLITICO Florida on March 26, 2018.

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BSEE to review offshore safety permitting process for efficiency [Back](#)

By Ben Lefebvre | 03/26/2018 03:49 PM EDT

The Interior Department is asking career staff to come up with new ways to speed up permitting for offshore energy development.

Interior's Bureau of Safety and Environmental Enforcement will soon assemble teams of employees from various departments to periodically review the permitting process and look for ways to make it more efficient and consistent across the agency, BSEE announced today.

BSEE's regional directors and deputy regional directors will nominate employees to the teams, agency spokesman Greg Julian said.

"In the coming weeks, BSEE plans to identify permit types to be assessed and nominate team members for assessments to take place this year," Julian said.

The move comes as Interior tries to roll back regulations and otherwise speed the permitting process across all its agencies. BSEE earlier proposed to roll back Obama-era rules on offshore oil and gas well safety.

WHAT'S NEXT: Interior is still trying to decide whether to merge BSEE with the Bureau of Ocean Energy Management, which is in charge of offering offshore oil and gas drilling leases.

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'Bellwether' auction shows weak demand for offshore oil leases [Back](#)

By Ben Lefebvre | 03/21/2018 01:22 PM EDT

An Interior Department auction for offshore drilling leases generated \$124.7 million, a relatively low amount that shows little industry interest as of yet in a key part of the Trump administration's offshore energy policy.

The Trump administration has promoted offshore drilling as part of its policy to increase oil and gas production, advertising this lease sale as the largest ever in the Gulf of Mexico. Interior for the second auction in a row put its entire Gulf holdings up for lease, breaking previous practice of only offering parts of the Gulf up for auction at a time. And it again offered reduced rates for less attractive, shallow water parcels as it did at its August 2017 lease sale in the Gulf.

Interior Secretary Ryan Zinke, who has proposed opening virtually the entire U.S. coastline to oil and gas exploration, recently pointed to the auction as a "bellwether" of industry interest in expanded offshore drilling, compared to surging onshore production in states like Texas and North Dakota.

But the auction brought in about the same amount of money as an August lease sale, which raised just \$121 million — about 40 percent below the government's initial forecast. As recently as March 2017, Interior raised over \$274 million with a single lease sale.

Interior has actively promoted coastal drilling as a way to boost oil and gas production, but so far hasn't been able to buck market trends that work against companies investing billions of dollars in deepwater projects that take years to start producing.

Michael Celata, regional director for the Gulf of Mexico region at Interior's Bureau of Ocean Energy Management, argued it was unfair to compare Wednesday's sale to results before Interior started offering leases in the entire Gulf up for sale last August.

"It's difficult to compare this sale to sales from years past," Celata told reporters on a conference call Wednesday. "The best comparison is directly to the last previous sale."

Celata did not have the numbers for how much BOEM had forecast this latest lease sale would generate. Celata also said that lowering the royalty rates for shallow water tracts may have helped increase interest in the area. Data released after the sale showed companies had bid for 43 tracts in shallow water regions, nearly double the number from the March 2017 lease sale when shallow water royalty rates had been higher.

Oil production coming from projects started in years past has helped bring oil production in the U.S. Gulf of Mexico to record highs, according to the Energy Information Administration. But more recently, Exxon, Chevron and other companies have hesitated to add more area to their operations in federal waters, preferring to drill in North Dakota, Texas and other onshore shale plays that have proven much cheaper to set up and much faster in producing new oil.

But the area is also facing new competition for industry attention as Mexico has become more open to allowing foreign companies to drill in its part of the Gulf. Mexico for decades only allowed its national oil company Pemex to drill in those waters, meaning the area is much less developed than on the U.S. side.

Shell and other international oil companies participated in a January auction of Mexican offshore oil leases, bidding aggressively despite fears that a change of government later this year could roll back the country's energy policy reforms.

In a time of low oil prices and strict limits on capital spending, companies have to decide whether to gamble on buying space in a less developed area or sticking to known territory on the U.S. side, said Bernadette Johnson, VP of market intelligence for Drillinginfo, an industry research organization.

"You may do both, but many won't," Johnson said. "Companies are going to be much choosier because margins are tight and are going to stay tight."

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Subject: Morning Energy: Trump's not-so simple math — Judge orders update of Keystone XL study — States' rights get tricky over water

By Kelsey Tamborrino | 08/16/2018 05:43 AM EDT

With help from Ben Lefebvre and Annie Snider

A NUMBERS GAME: The White House's plan to rewrite the Obama administration's cornerstone climate rule for power plants may be based on some fuzzy math, setting up a potentially brutal court battle for the Justice Department. The legally risky strategy, POLITICO's Alex Guillén and Emily Holden report, calls for redoing the calculations of how much the rule would cost and who would benefit.

EPA's proposed replacement plan is expected to be unveiled any day now and will likely downplay a key feature of the Obama-era greenhouse rule: the money saved by using less electricity. Some expect EPA will also count only a fraction of the improvements in public health from reduced smog and soot pollution, Alex and Emily report, and it won't consider any benefits from slowing climate change outside the U.S.

In doing so, President Donald Trump's EPA will argue that the Obama-era rule had higher costs and fewer benefits than previously stated, a change to help improve the comparison when it unveils its own proposal. The Obama administration had estimated that the benefits from its rule would outstrip the costs by \$26 billion to \$45 billion by 2030, though supporters of that version say those net benefits could be even higher now.

In fact, math could become vital to the success or failure of several of Trump's rules. Critics say similarly fuzzy math underlies other Trump administration proposals to reverse or stymie action on climate change, such as a recent plan by EPA and the Department of Transportation to halt a planned tightening of fuel efficiency standards for cars and trucks. "They are cooking the books on technical analysis to try to justify preconceived conclusions that these regulations are bad," said David Doniger, senior strategic director of the Natural Resources Defense Council's climate program who was influential in the Obama EPA's crafting of the original rule. Read more.

GOOD THURSDAY MORNING! I'm your host, Kelsey Tamborrino. Many of you knew, but ClearView Energy Partners' Mitch Huber was the first to correctly answer that it's Loretta and Linda Sanchez who were the first and only sisters to serve simultaneously in Congress. For today: How many current senators are also former mayors? Bonus points if you can name them. Send your tips, energy gossip and comments to ktamborrino@politico.com, or follow us on Twitter [@kelseytam](https://twitter.com/kelseytam), [@Morning_Energy](https://twitter.com/Morning_Energy) and [@POLITICOPro](https://twitter.com/POLITICOPro).

DO THAT AGAIN: The Trump administration was ordered Wednesday to update an environmental study of the Keystone XL pipeline despite its contention the alternative route picked last year by Nebraska regulators didn't require an updated environmental impact statement. Instead, Judge Brian Morris of the U.S. District Court for Montana ordered the State Department to go back to its 2014 EIS to take into account the new route, Alex reports for Pros. Morris said the State Department still has a "meaningful opportunity to evaluate" the alternative route that was picked in Nebraska. However, he declined environmentalists' request that Trump's permit be vacated.

STATES' RIGHTS GET TRICKY OVER WATER: The roiling debate over states' right to halt development projects over their water quality effects heads to the Senate Environment and Public Works Committee today. The panel will hold a legislative hearing on a bill from Chairman John Barrasso, S. 3303 (115), the Water Quality Certification Improvement Act of 2018. The measure would limit states' authority under Section 401 of the Clean Water Act, which requires states to certify that projects won't harm their water quality standards before the federal government issues a permit. In recent years a handful of Democratic-led states have used that authority to block natural gas pipelines. Republican Maryland Gov. Larry Hogan is also using the authority to try to force Exelon Corp. to clean up nutrient pollution flowing through one of its dams that harms the Chesapeake Bay.

GOP lawmakers have backed earlier efforts to limit or remove the authority, including in this year's House Appropriations bill, House and Senate energy legislation and standalone bills. But the Western Governors Association, which represents a number of Republican governors, has come out in opposition to reining in states' authority, and the Environmental Council of the States warned Wednesday that such moves could have unintended consequences. **If you go:** The hearing begins at 10 a.m. in 406 Dirksen.

NOMINATIONS ON TAP: Two nominees to the Energy Department will testify before the Senate Energy and Natural Resources Committee this morning: Bill Cooper to be general counsel and Lane Genatowski for director of the Advanced Research Projects Agency-Energy, which the Trump administration has sought to eliminate.

Who are they? Cooper serves as senior counsel and director of the McConnell Valdés law firm. Prior to that he was a subcommittee staff director for House Natural Resources, with a particular policy focus on the National Environmental Policy Act that the White House has sought to change up. Cooper also previously was president of the Center for Liquefied Natural Gas and counsel to the House Energy and Commerce Committee. His credentials have earned him the backing of industry groups, including the Air-Conditioning, Heating, and Refrigeration Institute, the Interstate Natural Gas Association of America, and the Electric Reliability Coordinating Council.

— **Genatowski hails from** a banking background. He's managing partner in investments at Dividend Advisors, a firm he founded in 2012. Genatowski before that was an energy investment banker at JPMorgan Chase and other Wall Street giants. His résumé lines up with others in Rick Perry's Energy Department, which has focused more on businessmen with energy-sector experience. **If you go:** The hearing kicks off at 10 a.m. in 366 Dirksen.

RESCISSIONS — TAKE TWO: The Trump administration is once again weighing a so-called rescissions package to force Congress to roll back federal spending, with just weeks to go until the next budget deadline, Pro's Sarah Ferris and John Bresnahan report. Senate Appropriations Chairman Richard Shelby said Wednesday he was told about the idea: "I heard they were thinking about one, but I haven't seen it." But a Senate leadership source said OMB chief Mick Mulvaney has already begun moving ahead on the effort.

FLORIDA DRILLING BITS: To drill or not to drill off the Florida coast is a question once again heating up the state's election campaigns. Gwen Graham, the current front-runner in the Democratic gubernatorial primary field, sent out a message titled "Drilling 75 Miles off Florida's Beaches is Insane" after a POLITICO report highlighted the idea as one that oil industry lobbyists are pushing to have included in the Interior Department's upcoming offshore drilling plan. Sunshine State Democratic Sen. Bill Nelson took the story to the Senate floor to try to whack current Gov. Rick Scott, who is running to replace him and earlier this year got help from Trump on the drilling issue.

REMEMBRANCE OF TARBALLS PAST: Former Florida Lt. Gov. Jeff Kottkamp is catching heat for his statement at a pro-drilling rally in Tallahassee that oil from the Deepwater Horizon spill "didn't even reach the shores of Florida." The remark, as first reported in the Florida Phoenix, may have surprised those who

remember former Gov. Charlie Crist squatting over oil-stained beaches in Pensacola. Kottkamp, who was speaking as co-chair of Explore Offshore Florida, went on to say "tarballs are naturally occurring." Earthjustice staff attorney Bradley Marshall called it "absurd to claim the Deepwater Horizon spill did not reach Florida" given the damage the state experienced. "That's why so many of Florida's leaders, regardless of what political party they belong to, have been so protective of our coasts all these years," he said in a statement.

WHAT'S THE RISK? EPA acting Administrator Andrew Wheeler delivered a video address at the National Environmental Justice Advisory Council's public meeting in Boston on Wednesday where he acknowledged the need for improvement in risk communication and noted the agency owes it to the American public to improve. "How well or how poorly we communicate risk disproportionately impacts those on the lower end of the socioeconomic ladder," he said. "We have fallen short in the past from our response to the Gold King Mine in Colorado, to the Kanawha River in West Virginia, to Flint, Mich." Watch it here.

CASE CLOSED: Interior's Office of Inspector General has closed its investigation into an allegation made against National Park Service officials. The claim centered around references to human-caused climate change in a report on sea-level rise and storm surge projections that officials allegedly sought to remove. The watchdog office said Wednesday that shortly after it opened the investigation, the NPS "published the report with all original references to human-caused climate change," thus prompting it to close its probe.

'SECRET' AGENTS: Comments are due today on EPA's proposed "scientific transparency" rule, which would ban the use of studies that don't publicly disclose all their data. Experts have said that plan could prohibit the use of vital studies on how pollutants affect human health because researchers typically promise to keep subjects' health information confidential. But conservatives have long accused the agency of relying on "secret science," prompting former Administrator Scott Pruitt to unveil the proposal in the name of transparency.

Under the wire: With the comment deadline approaching, nearly 80 groups, including the Union of Concerned Scientists, Sierra Club and Moms Clean Air Force, signed onto a letter Wednesday calling on Wheeler to withdraw the so-called secret science proposal. Separately, 66 health and medical organizations sent comments to Wheeler in opposition to the proposed rule. That's not to say there isn't support for the proposal; several comments posted Wednesday echoed the refrain that scientists should be required to "show your work."

AFTER THE STORM: The nonprofit Environmental Integrity Project released a new report today leading up to the one-year anniversary of Hurricane Harvey's widespread destruction in Texas. Using records from the Texas Commission on Environmental Quality, the report looks at air pollution during and after the storm as well as the government's and industries' response, and makes recommendations for the future. The "Preparing for the Next Storm" report found that all five of the largest industrial air pollution releases during Harvey were in the Houston area — with the Magellan Galena Park Terminal the biggest polluter, releasing 2,472,402 pounds of air pollution.

Harvey also triggered the release of at least 8.3 million pounds of unpermitted air pollution from petrochemical plants, according to the EIP report. And in the nine months after Harvey, "18 companies revised their air pollution reports to the state to erase 1.7 million pounds of unpermitted emissions during Hurricane Harvey," the report found.

LET'S MAKE A DEAL: Trump might soon strike a deal with Mexico on NAFTA, even as a trade war plays out with the rest of the world, POLITICO's Megan Cassella reports. The apparent turnaround after months of stalemate arrives as Mexican Secretary of Economy Ildefonso Guajardo visited Washington on Wednesday to hammer out some of the most contentious issues on NAFTA. "Both U.S. and Mexican officials now say they could be on the verge of announcing a preliminary agreement on everything from complicated automotive rules to environmental regulations by the end of August," Megan reports.

CATCHING FIRE: Agriculture Secretary Sonny Perdue will join Senate Energy ranking member [Maria Cantwell](#) and Sens. [Steve Daines](#) and [Ron Wyden](#) to unveil a new federal plan for addressing wildfires. Earlier this year, Perdue and Cantwell [worked together](#) on a commitment to use unmanned aircraft technology this fire season, and the Washington Democrat will likely highlight similar tools and technology today. Watch the [livestream here](#).

POLL: CLIMATE A FACTOR FOR MOST: Slightly more than half (53 percent) of U.S. voters believe climate change is a factor in making the ongoing California wildfires more extreme, while 39 percent say it's not, according to a new poll from Quinnipiac University [released](#) Wednesday. Sixty-four percent of voters said they think the country is not doing enough to address climate change, the national poll found. Eighteen percent of voters say the U.S. is doing enough to address the issue, while 10 percent say the U.S. is doing too much.

— **On a related note**, the Natural Resources Defense Council launched [a tracker](#) this week to see where every state's lawmakers stand on offshore drilling.

QUICK HITS

— "A coal company and Interior teamed up to save a power plant," [E&E News](#).

— "FirstEnergy Solutions takes next step toward closure of nuclear power plants," [Akron Business Journal](#).

— "A rising concern? After straws, balloons get more scrutiny," [The Associated Press](#).

— "Will Washington State Voters Make History on Climate Change?" [The Atlantic](#).

HAPPENING TODAY

10 a.m. — Senate Environment and Public Works Committee [hearing](#) on clean water, 406 Dirksen.

10 a.m. — Senate Energy and Natural Resources Committee [hearing](#) to consider DOE nominees, 366 Dirksen.

10 a.m. — American Petroleum Institute conference call briefing on efforts "to reform the broken Renewable Fuel Standard that threatens to reverse America's energy progress."

12:45 p.m. — Senate Energy and Natural Resources ranking member [Maria Cantwell](#) and Agriculture Secretary Sonny Perdue [unveil](#) a federal plan for addressing wildfire, Senate Room S-115.

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<https://subscriber.politicopro.com/newsletters/morning-energy/2018/08/trumps-not-so-simple-math-319039>

Stories from POLITICO Pro

Exclusive: Draft details Trump's plan for reversing Obama climate rule [Back](#)

By Emily Holden | 08/14/2018 07:46 PM EDT

The Trump administration is preparing to unveil its plan for undoing Barack Obama's most ambitious climate regulation — offering a replacement that would do far less to reduce the greenhouse gas emissions that are warming the planet, according to POLITICO's review of a portion of the unpublished draft.

The new climate proposal for coal-burning power plants, expected to be released in the coming days, would give states wide latitude to write their own modest regulations for coal plants or even seek permission to opt out, according to the document and a source who has read other sections of the draft.

That's a sharp contrast from the aims of Obama's Clean Power Plan, a 2015 regulation that would have sped a shift away from coal use and toward less-polluting sources such as natural gas, wind and solar. That plan was the centerpiece of Obama's pledge for the U.S. to cut carbon dioxide emissions as part of the Paris climate agreement, which President Donald Trump has said he plans to exit.

The Environmental Protection Agency acknowledges that both carbon emissions and pollutants such as soot and smog would be higher under its new proposal than under the Clean Power Plan. And Trump's critics call it a recipe for abandoning the effort to take on one of the world's most urgent problems.

The proposal would be "another, more official, sign that the government of the United States is not committed to climate policy," said Janet McCabe, EPA's air chief under Obama.

McCabe said based on a description of the proposal, it would offer "a significant amount of discretion to states to decide that nothing at all needs to be done."

Many red states and several companies sued over the Clean Power Plan, and a federal appeals court was nearing a decision when Trump's EPA asked for time to rewrite the rule. McCabe said the proposal could be meant to eat up time and stall a future president from quickly regulating greenhouse gases.

EPA was widely expected to write a far less stringent replacement rule. Trump promised to nix the Clean Power Plan and exit the Paris deal during his campaign. But the draft offers the first look at the specifics since the agency released a broader notice that it would reconsider the rule in April.

The White House Office of Management and Budget has finished reviewing the draft and sent it back to EPA this week.

The rule would allow states to write rules to make coal plants more efficient, enabling them to burn less coal to produce the same amount of electricity. But that could be bad for the planet, people familiar with state air programs say, by making it cost-effective for power companies to run those plants more often.

EPA looked at the outcomes of various scenarios that could be possible from state-proposed plans in 2025, 2030 and 2035, implying that the plans could be in place before 2025.

Obama's plan was meant to see greenhouse gas emissions from the U.S. power sector fall to 32 percent below 2005 levels by 2030. The nation has already achieved much of that reduction because of trends such as the closures of dozens of older coal plants.

EPA intends to argue that the Obama administration rule illegally sought to regulate the broader power sector, beyond coal plants, and that the compliance costs would have been big and the climate benefits negligible, according to the draft POLITICO reviewed.

Environmental advocates and blue states plan to wage war on the proposal once it is final. But while the legal fights play out, the regulation will be a placeholder that could stall a future president from regulating power plants.

States will be able to present reasons for why they don't want to regulate coal plants, including considering how many more years they have left before they would probably shut down, according to a source who reviewed a different section of the document.

In another contentious portion of the proposal, EPA is looking at letting states decide whether they want to adopt changes to pollution reviews that kick in when a plant makes upgrades. Existing rules are meant to keep plants from making changes that cause more pollution.

Conservatives and industry groups have long argued that the review process, called New Source Review, makes it too expensive for operators to make improvements to plants.

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The key to Trump's climate reversal? New math [Back](#)

By Alex Guillén and Emily Holden | 08/16/2018 05:06 AM EDT

The Trump administration's attempt to reverse Barack Obama's most sweeping climate regulation rests on a legally risky strategy — redoing the calculations of how much the rule would cost and who would benefit.

The EPA's proposed replacement is expected to downplay the money that people and businesses would save from using less electricity, a key feature of the Obama-era greenhouse rule for power plants. People tracking the issue also expect that the agency will count only a fraction of the improvements in public health from reduced smog and soot pollution, and won't consider any benefits from slowing climate change outside the U.S.

The upshot: President Donald Trump's Environmental Protection Agency will argue that the Obama administration's rule had more costs and fewer benefits than previously stated, a change to help improve the comparison when it unveils its own, much less ambitious power plant proposal as soon as next week.

The Obama administration had estimated that the benefits from its 2015 rule would outstrip the costs by \$26 billion to \$45 billion by 2030.

Supporters of the Obama version say those net benefits could be even higher now, because states are on track to meet the climate goals and the costs of clean energy have continued to plummet. And they warn that repealing the regulation could keep older, more expensive coal-fired power plants in operation, adding to consumers' costs.

The math could be crucial to the success or failure of a number of Trump rules. That could make the rollbacks legally vulnerable when environmental advocates and states sue to overturn Trump's action, critics of the new proposals say.

"They are cooking the books on technical analysis to try to justify preconceived conclusions that these regulations are bad," said David Doniger, the senior strategic director of the Natural Resources Defense Council's climate program who was influential in the Obama EPA's crafting of the original rule.

EPA did not respond to a request for comment on Wednesday.

Trump administration lawyers reviewing the replacement are already struggling with how to defend a rule that could cost electricity users money but would not do much to address climate change or air pollution, according to a person aware of conversations between the White House and the Justice Department. DOJ would be charged with defending the rule in court.

POLITICO has examined a portion of the agency's unpublished draft of the new rule, which would allow states to write their own modest regulations for coal plants or even let plant operators seek to opt out entirely, according to a source with knowledge of the broader proposal.

The proposed rewrite of the power plant rule is part of a pattern: Critics say similarly fuzzy math underlies other Trump administration proposals to reverse or stymie action on climate change, such as a recent plan by EPA and the Department of Transportation to halt a planned tightening of fuel efficiency standards for cars and trucks.

Sean Donahue, an environmental lawyer who has represented groups like the Environmental Defense Fund, said he would expect a court to be "very skeptical" of any effort that looks as though EPA is trying to evade its obligation to regulate greenhouse gases. But he conceded that will depend on the details of EPA's power plant proposal.

"If it were one or two technical judgments where there's a difference between this administration and the last one, or this administration and prior consistent practice, that would be one thing," Donahue said. "But it's many, many things, all pointing the same way, all pointing toward rolling back greenhouse gas mitigation efforts."

Trump has repeatedly expressed doubts about man-made climate change, and much of his Cabinet shares a similar view. In contrast, the federal government's own scientific assessment finds that human-caused climate change will not only raise temperatures but also make extreme weather more dangerous and lift sea levels by 1 to 4 feet by the end of the century.

Kate Larsen, director of economic research firm Rhodium Group, said the Trump administration's justifications for unraveling climate change policies are symptomatic of its broader governing principles.

"A decision we make today is narrowly focused on the impacts to myself and my immediate neighbor in the next week, but you're not taking into account impacts next year and the following year to yourself, your neighbor, the entire community," she said.

Environmental experts are also scrutinizing the auto rule proposal, released earlier this month, which would freeze the Obama administration's aggressive fuel economy standards after 2020 and dial back EPA greenhouse gas rules to match.

EPA and DOT's National Highway Traffic Safety Administration argued that the freeze would save billions of dollars in costs. Critics say the administration overestimated compliance costs of the Obama-era auto targets by as much as fourfold, which could significantly tip the cost-benefit analysis in their favor. Another claim that the Trump rollback would save more than 1,000 lives per year — yielding benefits of \$77 billion — has also drawn skepticism.

On Tuesday, EPA released a June memo that showed agency staff criticizing a number of "unrealistic" aspects of NHTSA's modeling. They disagreed with the proposal's fatality figures, with EPA staff estimating deaths would increase slightly under the freeze. And they thought the rule overestimated compliance costs and the time needed to recoup those costs in fuel savings, all factors that boosted benefits and lowered costs for the proposed freeze. Both EPA and NHTSA dismissed the memo as only one part of a complex review process.

The administration and industry groups have blasted the Obama administration's use of "co-benefits" — the benefits in improved health or reduced pollution that arise even when they're not the primary aim of a regulation. (One example: Cutting coal plants' carbon dioxide pollution under the power plant regulation would't do much directly to improve people's health, but it would reduce smog.) But Donahue argued that Trump's regulators sometimes lean on co-benefits to help build the case for their rollbacks.

For example, NHTSA's modeling credits changes in consumer behavior as the overwhelming factor behind all the lives that the Trump administration contends its auto rollback would save. The agencies argue that under the previous Obama rule, drivers would be more likely to remain in older, more dangerous cars than purchase more expensive, safer ones.

That "would seem to be a co-benefits argument, since the EPA doesn't have, and NHTSA doesn't have, the authority to regulate used cars," said Donahue, who called the paradox "sort of entertaining."

Counting co-benefits is a long-standing practice for federal regulators, but energy industry groups and Republican state officials grew incensed by the Obama administration's use of it to justify major regulations.

"The co-benefits thing has ballooned into the biggest scandal in environmental regulation," said the conservative Competitive Enterprise Institute's Myron Ebell, who led Trump's post-election transition team at EPA. "You get very small direct benefits, but you make up, essentially, a lot of co-benefits."

Still, he contended that EPA's withdrawal of Obama's power plant rule would eliminate a huge amount of costs in the coming years, saying Obama's regulation represented "just the first emissions cuts."

"There were going to be more beyond that if the Obama administration had been succeeded by the Clinton administration," Ebell said. He added: "By cutting it off in the way that they're doing, we're avoiding immense future costs."

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Keystone XL pipeline wins green light in Nebraska — but may face new hurdles [Back](#)

By Ben Lefebvre | 11/20/2017 11:25 AM EDT

Nebraska regulators approved the Keystone XL pipeline Monday, but only if it is built along a new path that may force the project developer to jump through a new set of regulatory hoops.

The 3-2 vote by the Nebraska Public Service Commission gave the green light to a different route than the one preferred by Keystone developer TransCanada, moving it east to run partially alongside the original Keystone pipeline and through a portion of the state's ecologically sensitive Sandhills area as well across the Ogallala Aquifer.

The Trump administration is evaluating whether it would have to re-approve the controversial pipeline to account for the new route. But activists who have spent the better part of a decade fighting to block Keystone said the decision throws the whole project into jeopardy, while TransCanada, the company seeking to build the project, said only that it is evaluating its next steps.

"This decision today throws the entire project into a huge legal question mark," said Jane Kleeb, the activist who led the opposition to the pipeline and who is now Nebraska Democratic Party chair. "TransCanada will have to go back to the State Department because that route has never been reviewed by the feds."

The State Department said it is reviewing the PSC decision for just such a possibility.

"We won't know about any impacts until we learn precisely the extent of any changes, something we are currently engaged in," State Department spokesman Vincent Campos said.

TransCanada President and CEO Russ Girling said the company "will conduct a careful review of the Public Service Commission's ruling while assessing how the decision would impact the cost and schedule of the project."

Former President Barack Obama had blocked the permits for the pipeline in 2015, citing the oil sands' impact on climate change, but President Donald Trump quickly reversed that decision after taking office. Keystone XL is designed to transport up to 830,000 barrels per day of crude from Canada's oil sands and North Dakota's shale fields to oil refineries on the Gulf Coast.

The Nebraska PSC vote comes as TransCanada adds new crews to its cleanup operations in South Dakota, where the original Keystone Pipeline ruptured last week and released 210,000 gallons of oil. But Nebraska law bars the regulators from considering spills or pipeline safety in its decision-making process.

Environmentalists and landowners who opposed Keystone XL's construction have promised to try to overturn the commission's decision.

"We will appeal," Kleeb said. "We will challenge a foreign corporation being given eminent domain in the county courts, with every intent to bring it to the Supreme Court if needed."

Even with the approval, the project, whose costs to build the nearly 1,200 mile artery have ballooned to \$8 billion, is still not ready to be built since TransCanada is gauging the economics of the huge investment. Though prices for oil have rebounded moderately in recent months, and while TransCanada has said demand for space on the pipeline is strong, it's not yet clear that enough companies will commit to the 20-year contracts required to reserve space on it.

The opposition to Keystone XL had been a rallying cry for green activists who have long said mining Canada's oil sands would be a disaster for global climate change, releasing vast amounts of carbon dioxide into the atmosphere.

But supporters have said tapping the oil fields in Alberta is no worse than the oil production in Venezuela, where much of the heavy sour crude that is shipped to U.S. refineries comes from now.

Many in the oil industry, however, no longer see the Keystone XL pipeline as crucial to the U.S. refineries as they once did, especially since the railroad sector stepped in to offer a more flexible — though more expensive — way to ship the oil.

"There's not going to be a parade thrown, although everyone in the industry is going to be grateful," said Tyler Nelson, an energy lobbyist for Cornerstone Government Affairs. "It should have been done years ago. But now a lot of people want it to be over with and done and move on."

The pipeline may struggle to succeed in the oil business. Energy markets have made the Alberta oil sands less attractive, with ExxonMobil, ConocoPhillips and others pulling out of the region to concentrate on U.S. oil

shale development in Texas. Meanwhile, rival pipeline company Enbridge has expanded its pipeline system delivering Canadian crude to the U.S.

Critics have pointed to the recent shale oil boom as a reason that supply from the Canadian and North Dakota fields is in less demand, and they argue that much of the oil from Keystone XL could end up on tankers bound for export. U.S. oil production is on target to average more than 9 million barrels a day this year, nearly double what it was when TransCanada first proposed the massive pipeline.

If TransCanada gives its final approval to go ahead, construction would not start until 2019 at the earliest, Paul Miller, TransCanada's president of liquids pipelines, said during a conference call earlier this month.

The pipeline already is the focus of a court challenge stemming from Trump's State Department approving the project. A coalition of groups is arguing the State Department did not do due diligence before approving the cross-border pipeline in March. The case is still in the beginning stages, with a decision pending from the U.S. District Court of Montana on a Trump administration motion to dismiss.

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Judge orders Trump administration to update Keystone XL environmental study [Back](#)

By Alex Guillén | 08/15/2018 08:17 PM EDT

A federal judge today ordered the Trump administration to update its environmental study of the Keystone XL pipeline.

Nebraska regulators last year picked an alternative route through the state after the pipeline was approved by President Donald Trump. Now the State Department must update its previous 2014 environmental impact statement to take that route into account, ruled Judge Brian Morris of the U.S. District Court for Montana.

The Trump administration argued that it did not need to update the EIS, despite Nebraska regulators' decision to pick the alternate route.

But Morris concluded that the State Department still has a "meaningful opportunity to evaluate" the alternative route that was picked in Nebraska. "Federal Defendants cannot escape their responsibility under NEPA to evaluate the Mainline Alternative route," he ruled.

The approved route differs from the one studied in the 2014 EIS by crossing different counties and bodies of water and requiring an extra pump station and electric infrastructure, Morris noted.

However, Morris declined environmentalists' request that Trump's permit be vacated, at least for now.

TransCanada does not plan to start construction before the second quarter of 2019, he said, giving the Trump administration sufficient time "to supplement the EIS in a manner that allows appropriate review before TransCanada's planned construction activities." Morris said he would revisit the issue if "circumstances change" and he is unable to review the new supplemental EIS before TransCanada begins construction.

WHAT'S NEXT: Morris ordered the State Department to propose a schedule to supplement the EIS.

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Trump administration to make a second try on spending cutbacks [Back](#)

By Sarah Ferris and John Bresnahan | 08/15/2018 07:15 PM EDT

The Trump administration is eyeing a second attempt to force Congress to roll back federal spending, after its last attempt collapsed in the GOP-led Senate, according to the chairman of the Senate Appropriations Committee as well as a Senate leadership source.

The Office of Management and Budget is said to be considering a second package of so-called rescissions, with just weeks to go until Congress' next budget deadline.

OMB officials did not return a request for comment and it's not known yet what spending the White House might try to cut or eliminate this time around.

Senate Appropriations Chairman Richard Shelby said today he was told about the idea. "I heard they were thinking about one, but I haven't seen it," Shelby (R-Ala.) told POLITICO.

OMB chief Mick Mulvaney has already begun moving ahead, according to the Senate leadership source.

Budget hawks, led by Mulvaney, fought hard for the last package, H.R. 3 (115), which would have pulled back \$15 billion in already-approved federal dollars. That bill ultimately tanked in the Senate, coming up just one vote shy on a procedural vote.

If the White House moves quickly, its next rescissions package could arrive in the middle of a separate major funding fight on Capitol Hill. Lawmakers have until Sept. 30 to send roughly \$1.4 trillion in fiscal 2019 funding to President Donald Trump's desk or risk a funding lapse.

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Oil companies ask Florida lawmakers to unlock offshore drilling [Back](#)

By Ben Lefebvre | 08/15/2018 05:01 AM EDT

Oil and gas companies are aggressively lobbying Florida lawmakers to agree to allow offshore drilling in the eastern Gulf of Mexico — seeking to break decades of bipartisan opposition in a state that has long viewed oil spills as an existential threat to its tourist economy.

The effort, which would potentially bring oil rigs as close as 75 miles to Florida beaches, comes just seven months after Interior Secretary Ryan Zinke promised that the state was "off the table" for offshore drilling. And it could complicate Republican Gov. Rick Scott's campaign to unseat Democratic Sen. Bill Nelson, whose opposition to drilling off the coast has been a main theme of his decades in Congress.

But the expansion would aid President Donald Trump's effort to increase U.S. oil and gas production, in what he calls a bid for American "energy dominance."

Gaining access to the millions of barrels of oil and natural gas off Florida's west coast is a top priority for Exxon Mobil, Chevron, Shell and other companies.

Energy lobbyists and trade associations believe Zinke left some wiggle room in his comments, and they are trying to persuade Florida lawmakers to sign on to possible compromises, including allowing drill rigs to operate up to 75 miles off the state's Gulf coast, lawmakers and industry sources said. That would be down from more than 200 miles under an existing drilling moratorium.

Zinke's tweet exempting Florida — which critics charge was simply a political gift for Scott's Senate campaign — and his subsequent statement that he was "removing Florida from consideration for any new oil and gas platforms" shouldn't be read as official Interior policy, said Randall Luthi, president of the trade group National Offshore Industry Association, which is pressing for access to the waters.

"Secretarial tweets and statements to Congress are outside the administrative process, but certainly are indicators of where the Secretary and evidently the White House might end up," Luthi said in a statement to POLITICO. "The Eastern Gulf of Mexico is ripe for some kind of a reasonable compromise."

The Gulf of Mexico Energy Security Act of 2006 put a moratorium on oil and gas exploration in the eastern Gulf until June 2022. Department of Defense offshore training zones put another large part of those waters out of contention for drilling.

Interior's first draft plan included opening up every acre of federal water to oil and gas companies, however. Zinke has implied in later conversations with coastal state governors, senators and trade associations that the final plan wouldn't necessarily include drilling off the coasts of New Jersey, Delaware, Maine, but his plan to announce a final decision this fall could delay unpopular decisions — including possibly opening up the waters off southern California and the Mid-Atlantic region — until after the midterm elections, sources said.

The most aggressive plan industry lobbyists have brought to lawmakers calls for allowing drilling platforms within 75 miles of Florida's Gulf coast, an idea that Interior itself floated in its draft plan. Buffer zones going out as far as 125 miles have also been discussed, sources said. Either could technically adhere to Zinke's promise not to open Florida's waters, since the state's jurisdiction only extends nine nautical miles from the shoreline. Interior proposed the use of so-called exclusion zones for the eastern Gulf of Mexico and the Atlantic coast in its draft plan.

One lobbyist working the issue told POLITICO that Zinke and Scott were careful to "not say the entire Eastern Gulf," was off the table during their press conference at the Tallahassee airport in January.

"There are some Republicans who are prepared to make a deal. Seventy-five miles is the expected buffer, but folks might be willing to throw it a little further," said the lobbyist, speaking anonymously to frankly discuss ongoing negotiations.

That reduced buffer zone would please the oil industry because most of the oil and gas reserves in the eastern Gulf are believed to be in the waters south of Alabama and the Florida Panhandle, said a person at one oil and gas company who was not authorized to discuss the draft plan.

"I think we could live with 75 miles," the person said. "I think that wouldn't hurt anyone."

The idea so far has failed to gain much traction with at least two Florida Republicans who said they have been inundated with industry requests to open the area to drilling.

Florida Republican Rep. Matt Gaetz said he opposes the idea on national security grounds, given that the Defense Department uses a large part of the eastern Gulf for training exercises.

"It seems every week the oil and gas industry is working to obtain permission to crack the Destin Dome," Gaetz said in an interview with POLITICO, referring to one offshore site believed to hold large amounts of natural gas. "That would be devastating to our national security. I don't have a nuanced view on this. I am opposed."

Gaetz said he has raised his concerns on several occasions with Zinke, who he said has not pushed for a specific policy but has espoused an expansion of oil and gas drilling in general.

"I've had meetings with the secretary on this," Gaetz said. "I've had spirited conversations with him. I would not say he was wedded to any particular plan. He was trying to advance the cause of energy exploration."

An Interior spokeswoman did not answer questions about Zinke's meetings with Florida lawmakers or the possibility of establishing a 75-mile buffer zone.

"Secretary Zinke regularly meets with and communicates with many members on both sides of the aisle, coastal and non-coastal," the spokeswoman said in a written statement. "Members often discuss relevant issues pertaining to their districts and states as appropriate."

Republican Rep. Francis Rooney, who opposed drilling off the Florida coast during his 2016 campaign, said the industry has also been reaching out to him. Industry representatives have suggested several compromises, including a 100-mile buffer zone, he said, though he has rejected that plan, saying currents could carry any spilled oil from that part of the Gulf onto state beaches.

Instead, Rooney, who had served on the board of the oil and gas company Laredo Petroleum, offered to allow drilling 200 miles off the coast, west of the area where the military conducts training.

"The oil people have brought up several different things and I have been pretty much recalcitrant in negotiating with them," Rooney told POLITICO. "I think we need a clear delineation of where they will drill and not drill, and we don't need them drilling east of that military mission line."

Environmentalists also oppose any drilling, saying a buffer zone wouldn't protect Florida's beaches and tourism economy.

"The Deepwater Horizon disaster that spoiled Florida's coastline was 200 miles from its shore," said Diane Hoskins, director of environmental group Oceana, referring to the 2010 deepwater gusher that took months to plug. "A 75-mile buffer would be a cold comfort for Floridians."

Alexandra Glorioso contributed to this report.

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Trump delivers a Senate race sweetener to Scott [Back](#)

By Marc Caputo, Ben Lefebvre, Matt Dixon and Bruce Ritchie | 01/09/2018 11:24 PM EDT

Donald Trump delivered a big political contribution to Rick Scott on Tuesday as the Florida governor contemplates a bid for U.S. Senate: a pledge to spare Florida from administration plans to expand offshore oil drilling nationwide.

The surprise announcement from Secretary of Interior Ryan Zinke — who went to the trouble of flying to Tallahassee to stand beside Scott — outraged environmentalists and Democrats who insist the decision was a political ploy that unlawfully gave preferential treatment to Florida, a swing state that voted for Trump and that's home to his so-called "Winter White House" escape at Mar-a-Lago in Palm Beach.

Zinke made sure that the term-limited governor got all the credit. In response to a question about what was the final determining factor in his decision, Zinke said: "The governor."

"You have a tremendous governor that is straightforward, easy to work for, says exactly what he means. And I can tell you Florida is well-served," Zinke said.

Zinke's glowing endorsement of Scott has become de facto policy for Trump, who has tried for more than a year to woo Scott publicly and privately to run for U.S. Senate against Democratic incumbent Bill Nelson. The veteran senator is one of the most vocal opponents of offshore oil-drilling in Florida, an issue that typically enjoys broad bipartisan support in a state whose economy depends heavily on tourism and development along 1,300 miles of coastline.

Scott used to be an exception to the blanket opposition to offshore oil drilling. In 2010, the then-political newcomer voiced more support for oil exploration, but the position became a political liability in the state after the Deepwater Horizon oil spill coated some Florida beaches with tar balls and damaged tourism in parts of the Gulf.

A 2016 University of South Florida-Nelson poll found that 47 percent of state residents see offshore drilling as a move in the "wrong direction," a distinction that makes it one of the most unpopular policy proposals in the state.

So when Zinke announced last Thursday that the administration wanted to open vast new stretches of federal waters to oil and gas drilling, opposition was united in Florida — from liberal environmentalists to conservative lawmakers and even Scott, who issued a rare public denunciation of the policy.

At the time, Democrats and Nelson supporters highlighted the unpopular policy announcement by a president who's flagging in the polls. Nelson's campaign began fundraising off of the initial announcement to expand oil exploration.

One Republican insider, however, told POLITICO shortly after the initial announcement that the administration would scale the plan back somewhat to give Scott a political boost that would "be a big win, and it won't be Bill Nelson bringing it home."

As late as Tuesday, Nelson was still fundraising off the drilling announcement. "President Trump is about to hand a huge victory to the oil industry and put Florida's entire economy at risk," Nelson's campaign wrote. "He just announced plans to rollback offshore drilling regulations that were put in place after the 2010 Deepwater Horizon disaster, and open up nearly all federal waters to offshore oil drilling — including the eastern Gulf of Mexico."

But just before that email solicitation was sent out, Zinke was unexpectedly standing in Tallahassee's regional airport with Scott announcing the reversal to the Florida capital press corps.

Nelson said he was incredulous.

"I have spent my entire life fighting to keep oil rigs away from our coasts. But now, suddenly, Secretary Zinke announces plans to drill off Florida's coast and four days later agrees to 'take Florida off the table'? I don't believe it," Nelson said in a written statement. "This is a political stunt orchestrated by the Trump administration to help Rick Scott, who has wanted to drill off Florida's coast his entire career. We shouldn't be playing politics with the future of Florida."

Similarly, the Sierra Club of Florida said the decision was "a purely political move to aid the ambitions of Rick Scott." And the League of Conservation Voters called it a "publicity stunt."

Scott's spokesman, Jonathan Tupps, said oil-drilling opponents should not be upset.

"Senator Nelson and anyone else who opposes oil drilling off of Florida's coast should be happy that the governor was able to secure this commitment," he said. "This isn't about politics. This is good policy for Florida."

Tupps said that, contrary to claims by Scott's opponents, the governor and staff have frequently discussed Florida's opposition to more offshore oil drilling with the Interior Department. Scott personally raised the issue with Zinke in an October meeting in Washington, Tupps said.

Why Zinke suddenly reversed months of planning four days after announcing the new oil and gas exploration policy are unclear. Zinke also made his announcement via Twitter after a brief question-and-answer session with reporters in Tallahassee.

In reversing the policy for Florida, however, Zinke may have run afoul of the Administrative Procedure Act, critics said. That could give ammunition to California and Atlantic Coast states wanting to get on the same no-drill list -- the opposite of what President Donald Trump intended when he directed Zinke to expand oil companies' access to federal waters to boost U.S. energy production.

The American Petroleum Institute President Jack Gerard earlier in the day had applauded the Trump administration's plan to make all available federal waters available for drilling, saying "It represents a bold acknowledgement of the industry's advancements in technology to safely access U.S. energy resources."

Almost immediately after Zinke's announcement, lawmakers from other states took to Twitter to raise the specter of lawsuits, which could lead to courtroom entanglements for Interior's offshore drilling plan. The proposal was supposed to go into effect in 2019 and offer acres off the coast of Florida in late 2022 when a drilling moratorium officially ends.

"Under the Administrative Procedure Act, an agency can't act in an arbitrary and capricious manner. In this case, exempting Florida but not California (which has an even larger coastal economy) is arbitrary and capricious," Rep. Ted Lieu, a California Democrat and attorney, told POLITICO.

"So the agency would either have to not exempt Florida, or in the alternative, exempt Florida, California and any other state that can show the coasts are important to the state's tourism and economy."

California Attorney General Xavier Becerra also hammered that point on Twitter, echoing Scott's argument against drilling off the Florida coast to say "California is also 'unique' & our 'coasts are heavily reliant on tourism as an economic driver.' Our 'local and state voice' is firmly opposed to any and all offshore drilling. If that's your standard, we, too, should be removed from your list. Immediately."

In Virginia, U.S. Sen. Tim Kaine took a more low key approach. "Virginia's governor (and governor-elect) have made this same request [as Florida], but we have not received the same commitment. Wonder why..." he tweeted.

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Pruitt touts science policy as transparency as Democrats slam him for secrecy [Back](#)

By Emily Holden and Annie Snider | 04/26/2018 03:17 PM EDT

Embattled EPA Administrator Scott Pruitt sought to fend off criticisms he had clouded his activities within the agency in secrecy, pointing during Thursday's congressional hearing to the new science policy rolled out this week that he said is boosting transparency around new rules.

But that new policy, long a conservative priority, had Democrats howling that Pruitt had effectively given himself carte blanche to conceal studies that would not support his rollback of Obama EPA rules.

"The type of studies you want to exclude are the same kind of scientific studies that were used to prove that lead in pipes and paints harm children and that secondhand smoke is a dangerous carcinogen," said Rep. [Raul Ruiz](#) (D-Calif.). "You have demonstrated a disregard of true science [and] the scientific process," he said.

The discussion was one of the most substantive policy issues at [the hearing](#) of the Energy and Commerce subcommittee that focused largely on the scandals that have erupted around Pruitt in recent weeks.

The draft rule, which was announced at a closed event at agency headquarters on Tuesday, could have far-reaching effects that limit EPA's ability to rely on studies that don't have publicly available raw data when making decisions about air and water regulations. Scientists and public health advocates have argued the change could keep the agency from updating health protections based on new science since those studies typically redact subjects' personal information.

Pruitt's GOP supporters on the panel praised the move as a way to ensure that scientific data used to support new regulations was available for everyone to review.

"I've had a lot of constituents over the years who've been very concerned about decisions ... that get made by administrators or the bureaucracy and in some cases they can't get access to the underlying data that underpins the decisions," said Rep. [Greg Walden](#) (R-Ore.), chairman of the Energy and Commerce Committee.

Rep. [Paul Tonko](#) (D-N.Y.) called Pruitt "hypocritical" because the proposed rule gives broad authority Pruitt to grant exemptions from the new requirements, which he said Pruitt could use "without any transparency or accountability" for his decisions.

Tonko pointed to internal emails between top EPA officials initially released under the Freedom of Information Act that show the agency's top chemicals official, a former leading chemicals industry expert, expressing concerns about the impact the policy could have on companies' confidential business information.

"If EPA was assessing the safety of a chemical, you alone would have the power to selectively block public health studies that do not support your political priorities and allow ones that favor your friends in industry. Not only does this open the door to special treatment for industry over the public health, but you could also pick winners and losers among the industry types," Tonko said.

Pruitt argued the restrictions will apply equally to "all third party studies." He said both business and personal health information could be redacted, which experts have argued would be time-consuming and expensive.

Yogin Kothari, a Washington representative for the Union of Concerned Scientists, which has opposed the change, said Democrats were right to highlight the hypocrisy of the policy that he said was really about restricting science.

"What it highlights is a lack of transparency at the agency because he hasn't really talked about this or explained this or explained his thinking about this," Kothari said.

Frank Maisano, a spokesman for the lobbying firm Bracewell who attended the hearing, said Republicans on the committee appeared to be interested in hearing more about the policy.

"It's a topic that is different from what Democrats are talking about, it's a topic that's substantive," Maisano said. "It's a topic that many in the business community and many in the conservative community have been focused on for years."

EPA's proposal, based on long-sought legislation from House Science Chairman Lamar Smith (R-Texas), also drew support from Rep. Kevin Cramer (R-N.D.) who said it undercut Democrats who attacked Pruitt for secrecy while defending the agency previous use of "secret science."

"You've also been accused of hypocrisy, a lack of transparency, by people who are in the same breath defending secret science as a means of carrying out their political philosophy ... the irony is rich beyond rich with me," he said.

Quint Forgey contributed to this report.

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Mexico, U.S. may be heading toward NAFTA deal amid Trump's global trade war [Back](#)

By Megan Cassella | 08/15/2018 05:32 PM EDT

President Donald Trump could be poised to make a deal with Mexico on NAFTA even as he engages in a trade war with the rest of the world.

Mexican Economy Secretary Ildefonso Guajardo arrived in Washington on Wednesday — as he has every week for the past month — to hammer out some of the most contentious issues on NAFTA. U.S. and Mexican officials now say they could be on the verge of announcing a preliminary agreement on everything from complicated automotive rules to environmental regulations by the end of August.

The apparent turnaround after months of stalemate is a surprise outcome of discussions reaching their year anniversary on Thursday. And while the two sides have yet to bring Canada, the third partner in NAFTA, into the latest round, the negotiators' optimistic tone could signal that Trump may be ready to extinguish at least one trade conflagration before the midterms. That would placate Republicans who have been calling for a return to stability as the U.S. and China have been slapping tariffs on each other's exports, roiling international markets and burdening American farmers.

"We're settling in for the long haul with China, so we really need to release the pressure in our backyard," said Dan Ujcz, an international trade lawyer who specializes in Canada-U.S. matters. "I think that's a driving force for the U.S.' desire to get a deal right now."

To be sure, some major controversial issues remain unresolved, including the U.S. proposal to automatically terminate the pact after five years unless all three countries agree to renew it — an idea that Canada and Mexico have both rejected outright. And for the time being, at least, Canada still remains on the outside of the current talks.

But reaching even a bare-bones agreement on NAFTA before November's elections would hand a concrete victory to Trump, who would likely point to the revamped pact as a symbol that his strong-arm tactics have worked, industry sources and experts closely following the talks say. It would also allow U.S. trade officials to clear a major task off their agenda and dedicate more time to areas where U.S. Trade Representative Robert Lighthizer in particular has wanted to focus, primarily trade issues with China.

At the same time, Mexican negotiators are also under renewed pressure to get a deal after the country elected a new leader who takes office in December and who badly wants NAFTA to be signed and off his plate before then. Mexico has pointed to Aug. 25 as the date by which it must wrap up at least a preliminary agreement for outgoing President Enrique Peña Nieto to be able to sign the deal before he leaves office.

Those domestic politics have put Guajardo in a tough position, as he tries to appease the incoming Mexican administration and quickly wrap up a deal while still standing up firmly against some U.S. proposals that Mexico has repeatedly derided as unworkable.

"They're under a lot of pressure to just come up with anything, whatever it is," one source close to the talks said, requesting anonymity to speak freely about internal deliberations. "What I've been hearing from other Mexican parties is that Ildefonso was sort of distraught and frazzled by the fact that he's being asked to wrap it up, and that of course means making concessions that he wasn't ready to make. It lowers his negotiating potential."

Against that backdrop, sources close to the talks say Mexico appears to be poised to accept large swaths of a U.S. proposal involving the rules that govern North American-produced automobiles and dictate what percentage of each car must be sourced from within a NAFTA country to qualify for reduced duties under the agreement.

At the U.S.' urging, Mexico looks likely to agree to an increase in the overall amount of North American-sourced content that must be included in each automobile, and will accept a requirement that a certain percentage of each car must be produced by workers earning at least \$16 an hour, sources say. Mexico is also poised to accept mandates that a certain percentage of the steel, aluminum and plastic included in each vehicle is also sourced from a NAFTA country.

In exchange, the United States would be prepared to give up a controversial proposal that would have made it easier for American fruit and vegetable growers to make the case that Mexico is selling produce at unfairly low prices when crops are in season in a particular region, two sources with knowledge of the trade-off told POLITICO. The U.S. would also submit to Mexico's demand to leave a chapter largely untouched that contains rules on disputes between governments, one of the sources said.

"Essentially, there is a deal," one of the sources said.

At the same time, however, other major aspects of the renegotiation remain unfinished. Chief among them is the so-called sunset clause that the U.S. wants, which would end the pact after five years unless the parties opt to continue it. Several sources close to the talks say the sunset clause has hardly been discussed during the latest set of meetings between the U.S. and Mexico, and the two countries still remain on opposite sides.

And Canada will need to come to the table for a deal to be finalized. Officials from all three countries have sought to emphasize that the U.S.-Mexico engagement is not a sign of ill will toward Canada but is instead an attempt to work out bilateral issues before bringing Ottawa back into the fold.

But negotiators had expected that Washington and Mexico City would have made enough progress by now for Canadian Foreign Minister Chrystia Freeland to have joined the meetings in Washington. The more time that passes, the more likely it is that the strategy to put off a trilateral meeting could backfire, a source close to the talks said.

"Yes, there's U.S.-Mexico momentum — that's a positive message and great from Mexico's point of view," the source said. "But the longer it takes to bring in Canada, the less likely this is going to get done in the short term."

Still, any incremental progress, or even the fact that the U.S. and Mexico are continuing to engage in good-faith negotiations and regular meetings, has offered a signal of some hope to U.S. farmers, consumers and industry groups who have been worn out by months of uncertainty and pummeled by retaliatory tariffs imposed over the past few months.

Retailers and business groups are reluctant to throw their support at this point behind a deal that is still unfinished, particularly when a number of proposals that some have termed poison pills remain on the table.

But at the same time, "I think what all of our members want, what the business industry at large wants, is certainty," said Vanessa Sciarra, a former U.S. trade negotiator who now works as a vice president at the National Foreign Trade Council. "Anything that provides for greater clarity on trade relationships, particularly with Mexico and Canada ... would be helpful."

Adam Behsudi contributed to this report.

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FYI - Updated data access draft attached. Event planned for next Tues afternoon.

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Deliberative Process / Ex. 5

Deliberative Process / Ex. 5 Let me know when you're available to discuss next steps.

Thanks,
Brittany


From: E&E News [ealerts@eenews.net]
Sent: 3/26/2018 11:19:50 AM
To: Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]
Subject: March 26 -- Climatewire is ready

[Read today's Climatewire on the web](#)

CLIMATEWIRE

AN E&E NEWS PUBLICATION

CLIMATEWIRE — Mon., March 26, 2018

 [READ FULL EDITION](#)

1. FUEL ECONOMY:

Trump to allow more car pollution. But by how much?

President Trump is poised to relax rules affecting tailpipe emissions in millions of U.S. cars, marking one of his most forceful moves against pollution standards since taking office.

TOP STORIES

2. EPA:

Pruitt's attack on 'secret science' to affect climate rule

POLITICS

3. LAW:

Attorneys general threaten to sue Pruitt over methane rule delay

4. SENATE:

Miss. lawmaker mentions 'asbestos underwear' but not climate

SCIENCE

5. ARCTIC:

Sea ice hits 2nd-lowest level in 39 years

6. EMISSIONS:

Banana peels and chicken bones: The new plastic?

STATES

7. CALIFORNIA:

State passes HFC rules to fill federal gap

8. FLORIDA:

All-solar town lures residents 'thrilled to be pioneers'

BUSINESS

9. COAL:

Britain blocks new mine, citing climate impacts

10. TRANSPORTATION:

Could hydrogen dethrone battery-powered cars?

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To send a press release, fax 202-737-5299 or email editorial@eenews.net.

ABOUT CLIMATEWIRE – POLICY. SCIENCE. BUSINESS.

Climatewire is written and produced by the staff of E&E News. It is designed to provide comprehensive, daily coverage of all aspects of climate change issues. From international agreements on carbon emissions to alternative energy technologies to state and federal GHG programs, Climatewire plugs readers into the information they need to stay abreast of this sprawling, complex issue.

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Appointment

From: Shoaff, John [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=AC16FB09CF2C44ADB34A7405DC331532-JSHOAFF]
Sent: 6/29/2018 7:40:24 PM
To: Shoaff, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ac16fb09cf2c44adb34a7405dc331532-JShoaff]; Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clint]; Hockstad, Leif [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5a4fb1f8930645efa34fdfa7485bc6da-LHOCKSTA]
Subject: SAB follow up
Attachments: EDIT 06122018 Draft - SAB Response - Cover Letter 5-30-18 cw updates.docx; EPA-SAB-18-002 response 6-25-2018.docx; Spring2017RegRevLetter.pdf; Fall2017RegRevLetter.pdf; EPA action description annotated Template 20141230.docx
Location: DCRoomARN5428PolyTB/DC-ARN-OAR
Start: 7/2/2018 2:00:00 PM
End: 7/2/2018 2:30:00 PM
Show Time As: Busy

Focus of discussion is to outline desired response so we can help pull together an updated draft for your (Clint's) review as well as next steps with templates & SAB process fwd.

Relevant materials are appended for ease of reference/discussion which includes: draft/deliberative responses to SAB (first two Word files), incoming SAB ltrs to the Admin for Spring and Fall 2017 actions (3rd ltr on Scientific Transparency still pending), and the template for Spring 2018 with relevant action list/table below.

We'll call you Leif.

Thanks.

John

<u>RIN</u>	<u>Agency</u>	<u>Agenda Stage of Rulemaking</u>	<u>Title</u>	<u>Publication</u>	<u>New</u>	<u>Tier</u>
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Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Appointment

From: Wehrum, Bill [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=33D96AE800CF43A3911D94A7130B6C41-WEHRUM, WIL]
Sent: 5/22/2018 5:43:57 PM
To: Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]; Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clint]; Shoaff, John [Shoaff.John@epa.gov]; Tsirigotis, Peter [Tsirigotis.Peter@epa.gov]; Koerber, Mike [Koerber.Mike@epa.gov]; Grundler, Christopher [grundler.christopher@epa.gov]; Cook, Leila [cook.leila@epa.gov]; Hengst, Benjamin [Hengst.Benjamin@epa.gov]; Dunham, Sarah [Dunham.Sarah@epa.gov]; Harlow, David [harlow.david@epa.gov]; Gunasekara, Mandy [Gunasekara.Mandy@epa.gov]; Bolen, Brittany [bolen.brittany@epa.gov]; Schwab, Justin [Schwab.Justin@epa.gov]
Subject: SAB Meeting Discussion
Attachments: draft+SAB+meeting+agenda_5_16_18.pdf; SABWkGrpSpring2017Att+ABC.PDF; WG_Memo_Fall17_RegRevAttsABC.PDF; WkGrp_memo_2080-AA14_final_05132018.pdf; Best Practices for EPA Engagement with the Science Advisory Board Marchpdf; SAB Mtg Prep
Location: WJC-N 5400 + Video with RTP + Dial: **Conference phone number and access code/Ex. 6**
Start: 5/24/2018 8:15:00 PM
End: 5/24/2018 9:00:00 PM
Show Time As: Busy

Materials Attached

To: Wehrum, Bill; Woods, Clint; Shoaff, John; Tsirigotis, Peter; Koerber, Mike; Grundler, Christopher; Cook, Leila; Hengst, Benjamin; Dunham, Sarah; Harlow, David; Gunasekara, Mandy; Bolen, Brittany; Schwab, Justin



draft+SAB+meeti...



SABWkGrpSprin...



WG_Memo_Fall1...



WkGrp_memo_2...



Best Practices for
EPA Engagemen...



SAB Mtg Prep

Sent: 3/27/2018 2:56:29 PM
To: Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]; Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]; Harlow, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b5a9a34e31fc4fe6b2beaddda2affa44-Harlow, Dav]; Dominguez, Alexander [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5ced433b4ef54171864ed98a36cb7a5f-Dominguez,]
Subject: RE: Articles of Interest - 3/27/18

States Go to Forefront as EPA Chips Away at Backlog of Decisions

By Amena H. Saiyid

Posted March 29, 2018, 8:55 AM

Shifting the burden of environmental protection to states could speed approvals of air and water permits that businesses need to operate, as the EPA tries to halve its backlog of overdue decisions.

Politics

4. EPA

Wehrum, Nichols huddle ahead of high-stakes auto decision

<https://bna.com/news/bna.com/environment-and-energy/epas-reason-for-easing-auto-rules-will-set-up-next-policy-fight?context=landing-heroes>

EPA's Reason for Easing Auto Rules Will Set Up Next Policy Fight

Posted March 29, 2018, 7:41 AM

California Adopts Federal HFC Rules After Court Gutted EPA SNAP Program

The California Air Resources Board (CARB) has adopted strong controls on hydrofluorocarbons (HFCs) -- the potent climate warming chemicals -- in refrigerants and air-conditioning systems that echo requirements under EPA's Significant New Alternatives Policy (SNAP) program that were gutted by a court ruling last year.

- Conservative groups urge EPA to revoke California air act waiver
The groups' push for Pruitt to revoke California's waiver comes on the eve of EPA's expected proposal to weaken existing GHG rules for 2022-25 model year vehicles.

Utilities, Northeast States Clash Over Proof For EPA Interstate Air Petitions

Electric utilities and Northeastern states are clashing over the standard of proof states must meet in order to succeed with Clean Air Act petitions asking for direct federal regulation of air pollution sources in one state that are hindering another state's ability to attain national ambient air quality standards (NAAQS) such as the ozone NAAQS.

<https://platform.mi.spglobal.com/web/client?auth=inherit#news/article?id=43987127&cdid=A-43987127-10541>

Foxconn would represent major new source of air pollution in Wisconsin
<https://www.jsonline.com/story/news/politics/2018/03/28/...air.../461586002/>

1. Cached

5 hours ago - The 2015 **ozone** rules were advanced under President Barack Obama after a five-year scientific review but have been attacked by business groups as costly and challenged in the courts by some states, including Wisconsin. As part of Walker's request to the **EPA**, the DNR has also filed extensive comments showing the ...

The 'secret science' that distorts air-quality studies – Orange County ...

www.ocregister.com/2018/03/27/the-secret-science-that-distorts-air-quality-studies/

1. Cached

14 hours ago - About five years ago, House Science Committee Chairman Lamar Smith, R-Texas, expressed concern that the **EPA's** new limits on **ozone** would cost \$90 billion per year by the agency's own estimate. He was not pleased that the **EPA** had cited hidden, undisclosed data more than 1,000 times in its assessment supporting ...

Mar 27 2018

Electricity Rates Are Mostly Up. But Relief is in Sight
Heath Knakmuhs

AMT

Intra-urban spatial variability of surface ozone in Riverside, CA: viability and validation of low-cost sensors by Kira Sadighi, Evan Coffey, Andrea Polidori, Brandon Feenstra, Qin Lv, Daven K. Henze, and Michael Hammigan

<https://www.atmos-meas-tech.net/11/1777/2018/>

Short Summary: Ground-level ozone has negative human health impacts. In the summer of 2015, 13 low-cost sensor monitors were deployed to several neighborhoods around Riverside, California. There were significant spatial differences between monitors. This is important because it means that ozone in certain places may be higher than what EPA monitors report for an area, which is pertinent for residents of those communities. This research helps inform the limitations and advantages of low-cost sensor networks.

Clint Woods

Deputy Assistant Administrator
Office of Air and Radiation, U.S. EPA
202.564.6562

From: Woods, Clint

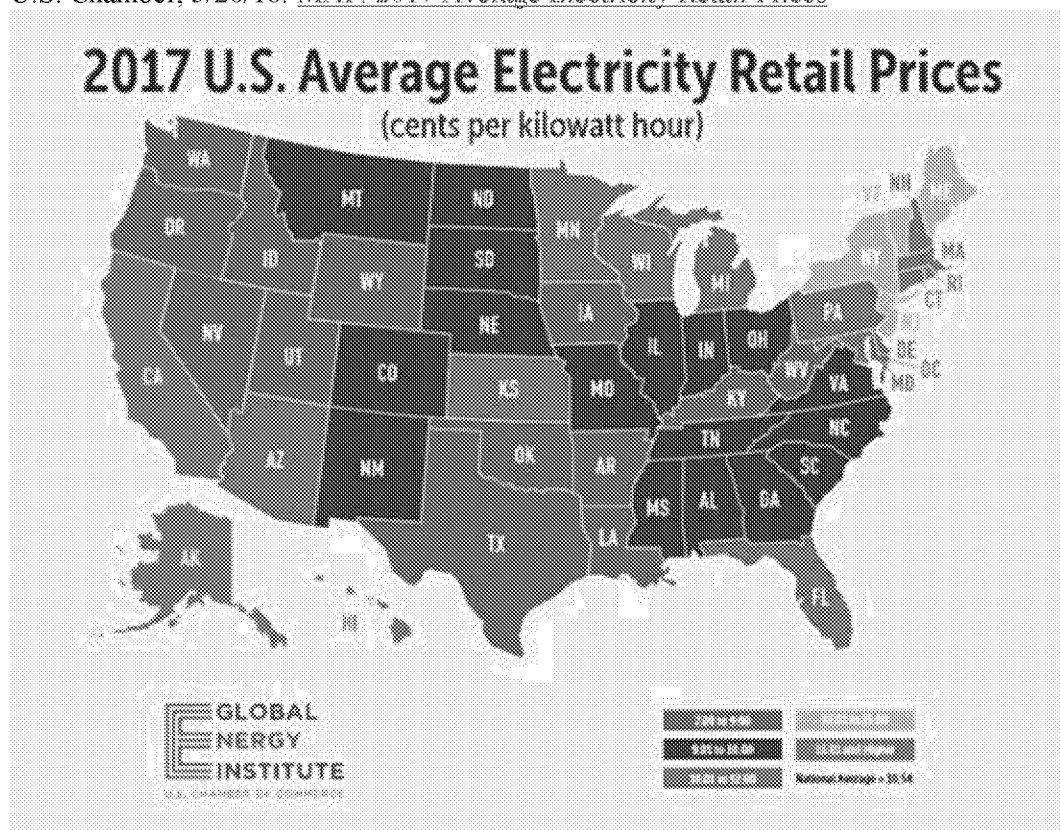
Sent: Tuesday, March 27, 2018 9:35 AM

To: Wehrum, Bill <Wehrum.Bill@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Harlow, David <harlow.david@epa.gov>; Dominguez, Alexander <dominguez.alexander@epa.gov>

Subject: Articles of Interest - 3/27/18

- Bloomberg, 3/27/18: [California's Ready to Retaliate If Trump Cuts Auto Rules, Sources Say](#)
- Bloomberg BNA, 3/26/18: [Faster Air Pollution Permits Prominent on EPA's Agenda](#)
- Climate Wire, 3/26/18: [EPA: Pruitt's attack on 'secret science' to affect climate rule](#)
- Inside EPA, 3/22/18: [Wehrum Said To Favor Quick Ozone NAAQS Review Over Reconsideration](#)
- Climate Wire, 3/27/18: [White House: Meet Trump's new climate guy](#)
- Climate Wire, 3/27/18: [CLEAN POWER PLAN: Critics blast rule in coal country](#)
- Gina McCarthy & Janet McCabe, NYT, 3/26/18: [Scott Pruitt's Attack on Science Would Paralyze the E.P.A](#)
- Steve Milloy, WSJ, 3/26/18: [The EPA Cleans Up Its Science](#)
- New York Magazine, 3/25/18: [The Paris Climate Accords Are Looking More and More Like Fantasy](#)
- Inside EPA, 3/26/18: [Bolstering IRIS, FY18 Spending Deal Urges EPA To Continue Reform Effort](#)
- Inside EPA, 3/26/18: [Pruitt's Bid To End 'Secret Science' Faces Legal, Implementation Hurdles](#)
- Inside EPA, 3/26/18: [FY18 Bill Boosts Diesel Cleanup Funds, Raising Questions Over Glider Plan](#)

- Bloomberg BNA, 3/27/18: [Pruitt's Open Data Plan Could Limit Usable Research, Critics Say](#)
- EDF, 3/26/18: [Environmental Groups Sue to Stop EPA Loophole Allowing Industrial Plants to Turn off Pollution Controls](#)
- Environmental Integrity Project, 3/26/18: [New Report Shows Rollback of Federal Air Pollution Control Rule Will Multiply Toxic Emissions](#)
- Senate EPW, 3/22/18: [Bipartisan Group of Senators Introduce Bill to Promote Carbon Capture Research and Development](#)
- Washington Post, 3/27/18: [The Energy 202: Meet the government insiders quietly shaping Trump's energy and environment agenda](#)
- EDF, 3/22/18: [New Oil and Gas Study Shows – Once Again – Industry is Severely Underreporting Methane Emissions](#)
- Journal of Geophysical Research: Atmospheres, 3/2018: [Multimodel Surface Temperature Responses to Removal of U.S. Sulfur Dioxide Emissions \(pages 2773–2796\); Spatial and Temporal Variability and Trends in 2001–2016 Global Fire Activity \(pages 2524–2536\); The Wintertime Covariation of CO2 and Criteria Pollutants in an Urban Valley of the Western United States \(pages 2684–2703\)](#)
- U.S. Chamber, 3/26/18: [MAP: 2017 Average Electricity Retail Prices](#)



Clint Woods
 Deputy Assistant Administrator
 Office of Air and Radiation, U.S. EPA

Personal Phone / Ex. 6

From: POLITICO Pro Energy [politicoemail@politicopro.com]
Sent: 5/16/2018 9:42:47 AM
To: Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clint]
Subject: Morning Energy, presented by Chevron: Pruitt makes his Senate return — Emails: Pruitt pushed 'red team-blue team' climate debate — The WIFIA balancing act

By Kelsey Tamborrino | 05/16/2018 05:40 AM EDT

With help from Anthony Adragna

TIME TO FACE THE MUSIC: Scott Pruitt hits the Hill again today, and on top of the questions he can expect on his lavish spending and ethical quandaries, the EPA administrator will be asked to explain why EPA helped to bury a federal study that would have increased warnings about toxic chemicals found in hundreds of water supplies across the country. As POLITICO reported this week, emails released under the Freedom of Information Act indicate the study was being prepared for release in January, before EPA intervened. It has not been made public more than three months later and the agency producing it says it has no timeline for doing so.

Now lawmakers are looking for answers, including Republicans whose districts suffered contamination from the chemicals PFOA and PFOS, which are linked with certain cancers, thyroid problems and life-threatening pregnancy complications. Annie Snider, who broke the story, has more on the fallout [here](#).

Plus, today's hearing in front of a Senate Appropriations panel comes less than 24 hours after yet [another probe](#) was launched by the agency's inspector general into the handling of Pruitt's emails. That brings the number of probes and investigations into his behavior to an even dozen.

Sparks flying: When Pruitt last appeared on the Hill in April before two House committees, he played the [blame game](#), in part pushing the burden of some of his ethical decisions onto his staff. And since today's appearance will be his first before the Senate since the steady drip of news stories began earlier this year, he'll face a range of inquiries from Democrats, some of whom have been leading the charge against him. The subpanel's ranking Democrat, [Tom Udall](#), has been critical of Pruitt in the past and plans to question him on his spending and ethical issues. "Administrator Pruitt, it's hard to know where to begin this morning. Every day there seems to be a new scandal ... with you at the dead center," Udall will say.

Expect the New Mexico Democrat to discuss the [range of investigations](#) that currently eye Pruitt. "I can only wonder if more investigations will start based on your fast-tracking a new Superfund site at the behest of a conservative media personality and other reports that EPA has taken quick actions to help political donors and lobbyists," he'll say, referencing another [POLITICO story](#).

Both Democrats and Republicans on the subcommittee tell ME they want to discuss the policy at hand. Republican [Shelley Moore Capito](#) said she wants to ask Pruitt about a number of different things, but added she wanted to "just concentrate on the policy." Still, Democrat [Chris Van Hollen](#) said he has a long list of questions for the administrator that involve policy as well as a "betrayal of the public trust." And, fellow subpanel Democrat [Jeff Merkley](#) told ME: "[I] certainly want to get a better understanding of why he feels that he's so comfortable using government funds in all kinds of inappropriate ways, but also the policy."

Separately, EPW Chairman John Barrasso, who is not on the Appropriations committee, suggested [in a letter](#) Tuesday he'll also be watching to see what comes out of today's hearing. That letter comes in response to a request from six Democratic EPW members, who [demanded](#) Barrasso bring Pruitt before the panel. Barrasso

said EPA provided Pruitt's responses to previous questions from the panel earlier this week and added that he intends to call Pruitt for another hearing but will wait to see what comes out of the ongoing probes already looking into Pruitt's activities.

In the crowd: Environmental groups in the audience today will look for senators to ask the tough questions. Moms Clean Air Force will be bringing in local moms and their children, and the group will hand out their Pruitt "report card." Similarly, the Environmental Defense Fund will be watching to see if Pruitt dodges on questions that aim to hold him accountable. EDF will again hand out its "Non-Trivial Pruitt Questions" cards and dropped off hard copies of its "101 Questions" document to committee members' offices. **If you go:** The hearing kicks off at 9:30 a.m. in 124 Dirksen.

GONE QUIET: Sen. Jim Inhofe told reporters he hasn't talked with his buddy Pruitt in "about a month" but said the former Oklahoma attorney general is "weathering the storm" fine. But, he predicted, the tempest was not done yet. "Storms are never over," he said. "They always come back — you know that — in Washington."

WELCOME TO WEDNESDAY! I'm your host Kelsey Tamborrino. Clean Energy Business Network's Andy Barnes was the first to guess that two bathtubs remain in the Senate after they were uncovered in 1936 — although six were first installed in the chamber. Today's question: Who was the first sitting member of Congress sentenced to prison? Bonus points if you can guess the charge. Send your tips, energy gossip and comments to ktamborrino@politico.com, or follow us on Twitter [@kelseytam](https://twitter.com/kelseytam), [@Morning_Energy](https://twitter.com/Morning_Energy) and [@POLITICOPro](https://twitter.com/POLITICOPro).

THIS MIGHT COME UP: New communications reveal additional details about how the controversial red team-blue team debate over climate science would have played out at EPA and who was influencing Pruitt. Pro's Alex Guillén and Anthony Adragna report on a draft press release that circulated on Nov. 4 among top EPA officials, which laid out the line of attack. "EPA is standing up a Red Team peer review of the report," they wrote, rebuffing the Fourth National Climate Assessment, which countered many Trump administration political appointees who have questioned the connection between greenhouse gas pollution and global warming. The "blue team" would essentially be the federal assessment and its authors. Read more on that here.

THE WIFIA BALANCING ACT: A battle is brewing between small and rural communities and the larger ones whose infrastructure projects can be costly — and it could upend a bipartisan effort to pass the first major infrastructure bill during the Trump era. Annie reports on the measure at hand, called the Securing Required Funding for Water Infrastructure Now, or SRF WIN Act. The provision would expand the WIFIA program that loans federal money for water infrastructure projects at Treasury's attractive long-term interest rates, but also includes changes to make the WIFIA program more accessible to small and mid-sized communities. Now the measure has sparked opposition from the groups that originally conceived of the WIFIA program, who say the new proposal tilts too far toward the small communities. Read more here.

**** A message from Chevron:** Chevron and local partners are helping to provide DOERS with the hands-on technical training needed for today's jobs in the manufacturing and energy industries. Watch the video: <https://politi.co/2rBPIuI> **

CANCEL THOSE VACATIONS: Senate Appropriations Chairman Richard Shelby told reporters he's been in talks with Majority Leader Mitch McConnell about shelving the chamber's planned August recess unless they make more progress in the appropriations process. "We might not have an August recess," he said. Asked if it would be realistic to do so in an election year, Shelby quipped: "Might not be realistic for the Democrats — they have a lot more seats." Put ME down as skeptical on this one. Never underestimate the power of late July jet fumes.

INTERIOR-EPA PACKAGE MOVES AHEAD: The House Appropriations Committee's Interior-Environment panel cleared a \$35.25 billion spending package on Tuesday, setting the measure up for committee consideration as early as next week. The bill cleared on a voice vote, Alex reports, and is likely to face contentious amendments before the full committee. Alex breaks down the bill further here.

FOR YOUR RADAR: The full House Appropriations Committee will mark up the fiscal 2019 Energy-Water bill this morning. Read the bill text here.

ENERGY NOM ON TAP: The Senate Foreign Relations Committee will hold a markup on the nomination of Frank Fannon to be an assistant secretary of State for energy resources. Fannon was a former staffer to Inhofe, who released a statement ahead of the vote that called the nominee a "good friend." Inhofe pointed out expanding U.S. energy exports to Eastern Europe, and said Fannon "can use his leadership and expertise effectively to advance American energy dominance and enforce energy sanctions, like those against Russia and Iran."

LISTEN IN: EPA announced Tuesday its Office of Enforcement and Compliance Assurance will host a series of "web-based listening sessions" beginning May 21, on specific recommendations from the agency's Superfund Task Force Recommendations Report.

NEW FOSSIL FUEL ALLIANCE COMING? The Trump administration is weighing the creation of "a new, central institution" that would advocate for natural gas and coal technology and exports, according to draft document obtained and reported on by E&E News. The draft "Clean and Advanced Fossil Fuel Alliance" talking points, though "pre-decisional," lay out a previously described loose affiliation of countries the United States is courting. Read the story here.

MONIZ UNVEILS ENERGY EMPLOYMENT REPORT: Former Energy Secretary Ernest Moniz will unveil the third installment of the 2018 U.S. Energy & Employment Report this morning. The report arrives via Energy Futures Initiative — where Moniz is CEO and president — and the National Association of State Energy Officials. It was originally established during Moniz' time at the DOE, and offers insight into the employment trends of four energy sectors. Moniz will be joined by NASEO head David Terry and author David Foster, as well as Senate Energy ranking member Maria Cantwell. The event will be livestreamed on both the NASEO and EFI websites.

JUDGES HALT ATLANTIC COAST: A federal appeals court ordered the construction of the Atlantic Coast pipeline be halted, following a legal challenge by environmental opponents who argued a review by the U.S. Fish and Wildlife Service was inadequate, the Richmond Times-Dispatch reports. The order vacates FWS' Incidental Take Statement. In a research notice sent by ClearView Energy Partners, the group said there was "a high probability that FERC will direct suspension of construction operations in these areas while the FWS revises the ITS."

NSR PERMITTING FOCUS OF HEARING: The House Energy and Commerce Environment Subcommittee holds a hearing on new source review permitting reform this morning. EPA air chief Bill Wehrum will testify, as well as Bracewell's Jeff Holmstead, NRECA's Kirk Johnson and NAM's Ross Eisenberg, among others. Although the administration doesn't have an official position on the discussion draft that is the focus of the hearing, Wehrum will say the current "program is unnecessarily complicated and confusing," and should be improved.

Eisenberg will say that NAM supports the bill and the need to reform NSR, more so now than ever. "One of our members estimates that there are over a hundred million tons of CO2 that could be reduced by deploying the full suite of available turbine upgrades at power plants," he'll say, adding that many such upgrades "have been impeded because they may potentially trigger NSR." **If you go:** It begins at 10:15 a.m. in 2322 Rayburn.

NWF MEETS WITH ZINKE: The National Wildlife Federation will meet today with Interior Secretary Ryan Zinke, where the group will discuss conservation issues. Ahead of the meeting, the group submitted five of its priorities, including concerns about some of the locations of upcoming lease sales and mining proposals and Zinke's broader conservation agenda.

Heads up! Zinke will deliver the keynote speech at next week's annual Williston Basin Petroleum Conference, in Bismarck, N.D., local KFYZ-TV [reports](#).

IT'S A BIRD, IT'S A DRONE: Interior is for the first time investing in small-unmanned aircraft systems services, or drones, to help tackle wildfires. DOI [awarded](#) a "Call When Needed" contract to four U.S. companies, which will allow the agency to employ the drones when needed to support wildland fire operations, search and rescue and emergency management.

MAIL CALL! A group of 20 Democratic senators called on Pruitt Tuesday to extend the comment deadline until July 30 for the agency's "secret science" proposal to ban the use of studies that don't publicly disclose all their data, and to hold more public hearings on the topic. Read [the letter](#).

— **Ahead of the House's vote on the farm bill**, 114 state legislators signed a letter in opposition to a provision they say would exempt EPA from key requirements under the Endangered Species Act that protect pollinators. Read it [here](#).

STUDY: BUSINESSES TAKING THE LEAD: Deloitte is out with two new reports today — one on global battery storage markets and another on energy management and consumption views from businesses and consumers. The latter report found that businesses are taking the lead to address climate change. They are reviewing or changing their energy management policies in response to the U.S. pulling out of the Paris climate agreement, the report found. According to the report, the number of companies with carbon footprint goals increased to 61 percent in 2018, from slightly more than half the year before. Read that report [here](#) and the energy storage report [here](#).

REPORT OUT ON MANUFACTURING AT DOE: The Information Technology and Innovation Foundation will release its new report today reviewing DOE's "Manufacturing USA" institutes, looking at areas of progress and stability. Given the potential ITIF says the institutes have to bridge gaps in private sector investment, the report lays out national goals at stake at the nexus of manufacturing and energy, and outlines why federal action is necessary. Read the report [here](#).

QUICK HITS

— Failure at the EPA, [Pacific Standard](#).

— Why Alaska is crafting a plan to fight climate change: It's impossible to ignore, [The New York Times](#).

— Trump considers ways to boost biofuel market transparency, [Bloomberg](#).

— Whistleblower runs to change a system that burned him, [E&E News](#).

— Judge strikes down Oakland's ban on shipping coal through port, [Bloomberg](#).

— Why clean energy groups are singling out PJM for criticism on grid resilience, [GreenTech Media](#).

— What Pruitt's been doing while you weren't looking, [The Center for Public Integrity](#).

HAPPENING TODAY

9:30 a.m. — The Senate Appropriations Interior-Environment Subcommittee hearing on the EPA's fiscal 2019 budget, 124 Dirksen

10:00 a.m. — The Energy Futures Initiative and the National Association of State Energy Officials briefing to release the 2018 "U.S. Energy and Employment Report," SVC-210

10:00 a.m. — The Information Technology and Innovation Foundation discussion on "Manufacturing USA at DOE: Charting Progress, Seeking Stability," 1101 K Street NW

10:00 a.m. — House Science Committee hearing on "Using Technology to Address Climate Change," 2318 Rayburn

10:00 a.m. — Senate Foreign Relations Committee markup to vote on the nomination of Frank Fannon, 419 Dirksen

10:00 a.m. — House Appropriations Committee markup of energy and water bill, 2118 Rayburn

10:00 a.m. — The Bipartisan Policy Center discussion on "Putting P3s to Work in the United States," 1225 Eye St NW

10:15 a.m. — House Natural Resources Committee markup of various bills, 1324 Longworth

10:15 a.m. — House Energy and Commerce Environment Subcommittee hearing on "Legislation Addressing New Source Review Permitting Reform," 2322 Rayburn

12:00 p.m. — The Environmental Law Institute discussion on "The Burden of Unburdening: Administrative Law of Deregulation," 1730 M Street NW

4:30 p.m. — The Pew Charitable Trusts briefing on "Disaster Mitigation as Smart Infrastructure," 902 Hart

6:00 p.m. — The National Press Club holds Communicators Legends Dinner with former Interior Secretary Ken Salazar, 14th and F Streets NW

THAT'S ALL FOR ME!

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EPA move on chemical study may trip up Pruitt [Back](#)

By Annie Snider | 05/16/2018 05:02 AM EDT

EPA Administrator Scott Pruitt is facing a new controversy over chemical contamination that could prove even more damaging than his spate of recent ethics scandals.

When Pruitt returns to Capitol Hill Wednesday, he will likely be asked to explain why EPA helped to bury a federal study that would have increased warnings about toxic chemicals found in hundreds of water supplies across the country. A handful of Republicans were quick to demand answers after POLITICO reported Monday that senior aides to Pruitt intervened after the White House warned of a "public relations nightmare" from the impending Health and Human Services Department assessment.

While Pruitt has said partisan witch hunts are to blame for the controversies around his first-class travel, extensive security spending and friendliness with lobbyists, he will struggle to make the same case this time. Emails released under the Freedom of Information Act indicate the HHS study was being prepared for release in January, before EPA intervened. It has not been made public more than three months later, and the agency producing it says it has no timeline for doing so.

Long used in Teflon and firefighting foam, the chemicals PFOA and PFOS are linked with certain cancers, thyroid problems and life-threatening pregnancy complications. Studies have found them in 98 percent of Americans' blood, and communities from West Virginia to Michigan to New York have been in an uproar after discovering that their drinking water has been contaminated with the chemicals.

Tristan Brown, who served as the Obama administration's liaison between EPA and members of Congress when the agency issued a health advisory for PFOA and PFOS in 2016, said that lawmakers on both sides of the aisle are deeply concerned about the issue. He said anger over the Trump administration's interference could snowball if powerful Republicans who have experienced contamination in their states speak out strongly.

"That could be the beginning of a breach of the dam," Brown said.

Already, key Senate Republicans have shown their willingness to break with the Trump administration when it comes to chemical contamination. In December, North Carolina's two Republican senators came out in opposition to the administration's nominee to head EPA's chemical safety office, industry consultant Michael Dourson, in part because of a crisis in their home state with a chemical similar to PFOA and PFOS, called GenX.

At least three Republican lawmakers have joined a host of Democrats in demanding answers from the Trump administration about the HHS study.

Sen. Shelley Moore Capito of West Virginia, which experienced a major chemical spill a few years ago and has a major PFOA and PFOS problem, said she wants to see the study made public.

"It's important that the findings of the study are released so we can determine the health impacts and any potential threats our communities may face as a result of exposure to perfluorinated chemicals. I would encourage the administration to look into this matter," Capito, a member of the Appropriations subcommittee with EPA jurisdiction, where Pruitt will testify Wednesday, said in a statement to POLITICO.

Rep. Mike Turner (R-Ohio), who chairs a House Armed Services subcommittee, chimed in as well.

"This is not an issue of public relations — this is an issue of public health and safety," he said in a statement Tuesday after writing to Pruitt on the matter.

"It would be unacceptable if the political considerations of those at the highest levels of the EPA led to the suppression of information concerning the public health of Americans," Rep. Brian Fitzpatrick (R-Pa.) said in a statement. "The EPA must provide my constituents with answers to these allegations immediately."

"It is vital that there are proper measures in place to perform accurate, expeditious, scientific assessments for chemicals that pose a threat to public health," he said in a statement to POLITICO, citing his state's "tragic history" with chemical contamination.

Pruitt says he is taking the chemicals issue seriously. Not long after the North Carolina senators torpedoed the chemicals nominee, Pruitt announced a "leadership summit" on PFOA, PFOS and related chemicals that is scheduled to be held at EPA headquarters next week.

But few are expecting his response to include any new regulatory action.

EPA has not regulated a single new contaminant under the Safe Drinking Water Act in more than two decades. The agency's 2016 drinking water advisory only provided advice to the states and local water managers — it set no mandatory limits.

And Pruitt's EPA doesn't even plan to go that far for other chemicals. The agency's No. 2 water official, Dennis Lee Forsgren, has told drinking water groups that under Pruitt, the agency won't issue any new health advisories for GenX or other chemicals.

Betsy Southerland, a career staffer who led work on the 2016 health advisory as director of science and technology at EPA's water office before resigning last year, said states would have to translate the information provided by EPA about the chemicals into health advisory levels or drinking water limits on their own, something few are equipped to do.

Pruitt's "not allowing EPA to provide the state with that expertise," she said.

EPA spokesman Jahan Wilcox, defending the agency's approach, said officials are "stressing that all options — not just health advisories — are on the table as we move into the National Leadership Summit and taking additional steps to address PFAS."

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EPA watchdog launches new probe into Pruitt's email habits [Back](#)

By Anthony Adragna | 05/15/2018 06:18 PM EDT

EPA's inspector general said Tuesday it would look into Scott Pruitt's use of nonpublic email accounts, bringing the number of federal probes into the EPA administrator's behavior to an even dozen.

Specifically, the inspector general said it would look into whether Pruitt is properly preserving email records as required under federal law and whether the agency is properly searching all of his accounts in response to public records requests.

Two senior Senate Environment and Public Works Committee Democrats — ranking member Tom Carper of Delaware and Jeff Merkley of Oregon — released [the letter](#), dated May 2, confirming the probe.

EPW Chairman John Barrasso (R-Wyo.) has previously raised concerns about Pruitt's use of nonpublic email accounts. In response, the agency said it searches all of his accounts when responding to public records

requests. Previous EPA administrators also routinely used nonpublic accounts for day-to-day email communications.

The new probe comes as Pruitt faces a litany of questions surrounding his spending and ethical woes. EPA's inspector general, the Government Accountability Office and the House Oversight Committee are all looking into aspects of his conduct.

Those probes involve Pruitt's first-class travel, use of security on personal trips, pay for top political aides and a sweetheart condo deal with an energy lobbyist who later met with him, among others.

In the letter, EPA Inspector General Arthur Elkins warned that a stretched budget and staff meant he could not say when the probe would begin.

"The fact is that the OIG has been funded at less than the levels we deem adequate to do all of the work that should be done, and we therefore have to make difficult decisions about whether to accept any given potential undertaking," he said. "However, despite these constraints, we have determined that the issues raised in your letter are within the authority of the OIG to review, and we will do so."

Pruitt is set to appear before a Senate Appropriations subpanel Wednesday.

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EPA staff in 'despair' after Pruitt blame game [Back](#)

By Emily Holden | 04/27/2018 05:33 PM EDT

Scott Pruitt may have survived his testimony on Capitol Hill, but he's coming back to a further enraged and demoralized Environmental Protection Agency staff.

Several current and former EPA officials and other people close to the agency said Pruitt did himself no favors with his congressional testimony Thursday, in which he blamed his aides for installing a \$43,000 privacy booth in his office and approving more than \$100,000 in first-class flights that he took last year. Pruitt also denied knowing key details about raises that his top staff received last year. And he declined to defend his former policy chief against Democrats' accusations that she had failed to show up for work for three months, even though she and Pruitt had been photographed attending the same meeting during the period in question.

In conversations with 11 people who know the atmosphere inside EPA, including Republican political appointees, a handful said his refusal to grovel may have pleased President Donald Trump. But others said his strategy was appalling to the current and former staffers who found themselves thrown under the bus.

"I think his credibility is damaged, and whether or not he gets fired by a tweet isn't going to diminish the fact that his credibility has been seriously damaged by all of this," one person close to the administration told POLITICO. "It shows a real lack of leadership that he did not defend, or blame, his staff. These are the people that he's asking for loyalty from. These are the people that are defending him. He's not returning the favor. That's not leadership."

A current EPA official said Friday that employees are veering between "despair" and "embarrassment," and Pruitt's televised performance did not help.

"I will tell you, it did not go unnoticed from people who watched the hearing that he did not take responsibility on the policy pieces" of the testimony, the official said. "It was not lost on us on the stuff we know about that he used very careful language, he was parsing his words, that some might say he did not speak the whole truth."

One former EPA official said even political aides are "sick of Pruitt constantly putting himself first," and "putting himself before the president's agenda."

"He's rarely been interested in selling regulatory reform as improving Americans' lives, and is far more interested in saving his political career," the former official said.

But Trump has shown no signs of abandoning his EPA chief, who has won the strong backing of conservative groups with his efforts to erase Obama-era environmental regulations. So far, that has outweighed the anger of White House staff members and exasperation of key Republican lawmakers at Pruitt's series of controversies over luxe travel, extensive security, a below-market D.C. condo rental from a lobbyist and history of questionable real estate deals in his native Oklahoma.

A senior EPA official said Pruitt's strategy of fighting the allegations was designed to appeal to Trump, who disdains members of his team who appear weak on television.

"They like fighters no matter what," the official said. "No matter what, fight. That's what we've been conditioned to."

The official predicted that the White House takeaway from the hours of hearings would be that Republican lawmakers stood with Pruitt, while Democrats squandered their opportunity by spending too much time criticizing Pruitt's deregulatory agenda — which Trump supports — rather than hitting him for the ethics issues.

"Any audience would say the White House saw a Republican bench entirely supportive of him," the EPA source said. "On the Democrat side, the White House also saw Democrats who used half their time to criticize policies he's doing that the White House likes. If they wanted to land punches, why do you ask about these policies? That's not going to do it for you."

Pruitt ally Sen. Jim Inhofe (R-Okla.) took that message from Thursday's hearings, despite saying earlier in the week that he was troubled by some recent allegations about the EPA leader's past dealings in Oklahoma. "After a full day of mudslinging and partisan questioning from the Democratic members of the committees, it is clear that the only fault they could find with Scott Pruitt is that he's successfully ending the EPA's history of overreach and over-regulation," Inhofe said in a statement Friday.

Still, the senior EPA official said, Pruitt's relatively good day in Congress could be "washed away" if his inconsistencies about what he knew about the raises generates a steady narrative that he lied to the White House, as at least one CNN pundit alleged.

And until Trump weighs in, the tension around Pruitt at EPA will remain high.

"There needs to be a halt to this because it's exhausting," the same official said.

Pruitt also still faces multiple investigations inside the executive branch and on Capitol Hill. On Friday, for example, the agency was due to deliver a "batch of documents" to the staff of House Oversight Chairman Trey Gowdy (R-S.C.), who is leading one of the probes.

Departed EPA aides who have said Pruitt didn't tolerate internal criticism of his spending and secrecy say current staffers still fear they'll be similarly swept up in the scandals — but won't be able to find jobs if they quit now and gain a reputation for disloyalty.

"They're trying to do the best they can in a toxic environment," one former staffer said. "You cannot express any idea that might be misconstrued as a political attack on Pruitt or any policy issues, so people just do what they're told. They're professional. ... They don't want to get caught in an undertow."

Another former EPA official has been getting phone calls from staffers who are frustrated by the controversies but keeping their heads down.

"Everyone in the building wants to come out and say something ... but as soon as they say something, they're out of a job," that person said.

Not everyone in the agency was upset that Pruitt pinned many of his controversies on his staff Thursday, after giving an opening statement in the House in which he confessed that his first year on the job had been "a learning process."

"When he was putting it on staff, that's the reality of it," one current EPA political appointee said. "Sure, he's the administrator; sure, he's the head of the agency. That doesn't mean he was aware of the \$40,000. He asked for a secure phone line and the next thing you know it turned into a secure phone booth. ... Overall, I think his staff continue to stand beside him today and will continue to do that."

In his testimony, Pruitt said he had never asked for a \$43,000 secure phone booth — only "access to secure communication" — or biometric locks for his office, and he said his security staffers made the call for him to fly first-class to avoid possible threats from other passengers. He said he had authorized his chief of staff, Ryan Jackson, to give raises to his top staff but had no idea that they were circumventing disapproval from the White House. And he chose not to defend his former policy chief against allegations from Democratic lawmakers that she was not in the office for months, even though an EPA spokesman had dismissed the accusations as "baseless and absurd."

A second political appointee said Pruitt didn't break any new ground with his defenses and that controversies dogging him had been "all blown out of context."

The person called Pruitt a "disruptor" and said "folks don't like that aggressive style."

"Administrator Pruitt speaks for a certain aspect of the Trump administration conservative movement," the appointee said.

Eric Wolff and Anthony Adragna contributed to this report.

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Pruitt fast-tracked California cleanup after Hugh Hewitt brokered meeting [Back](#)

By Emily Holden and Anthony Adragna | 05/07/2018 10:12 PM EDT

EPA Administrator Scott Pruitt placed a polluted California area on his personal priority list of Superfund sites targeted for "immediate and intense" action after conservative radio and television host Hugh Hewitt brokered a meeting between him and lawyers for the water district that was seeking federal help to clean up the polluted Orange County site.

The previously unreported meeting, which was documented in emails released by EPA under a Freedom of Information Act lawsuit by the Sierra Club, showed Pruitt's staff reacting quickly to the request last September by Hewitt, who has been one of Pruitt's staunchest defenders amid a raft of ethics controversies around his expensive travel, security team spending and a cheap Washington condo rental from a lobbyist.

Pruitt has drawn criticism from environmentalists and other critics for letting prominent GOP backers and industry groups influence the agency's agenda — even as he has kicked scientists off of EPA's advisory panels and moved to limit the kinds of peer-reviewed research it will consider when making decisions.

In many cases, the people whose advice Pruitt is heeding could be useful supporters for him in a future race for U.S. senator or president. They include GOP megadonor Sheldon Adelson, who — as POLITICO reported in March — persuaded Pruitt last year to take a meeting with an Israeli water purification company called Water-Gen that later won a research deal with the EPA.

Hewitt, a resident of Orange County whose son James works in EPA's press office, emailed Pruitt in September to set up a meeting between the administrator and the law firm Larson O'Brien, which employs Hewitt and represents the Orange County Water District. Pruitt had been planning to meet with the lawyers in California a month earlier, but cancelled the trip to undergo knee surgery.

"I'll join if the Administrator would like me too or can catch up later at a dinner," Hewitt wrote in his Sept. 18 message. Hewitt added that the issues surrounding the Superfund site were "Greek to me but a big deal in my home county."

Pruitt's aides responded within minutes and quickly confirmed an Oct. 18 meeting for the lawyers and a project director.

Six weeks after that meeting, on Dec. 8, the Orange County North Basin site appeared on Pruitt's list of 21 contaminated areas to address. A month later, Pruitt proposed listing the site on EPA's National Priorities List, a move that could make it eligible for long-term federal cleanup funding from the federal government if the responsible polluters cannot be identified and forced to pay for its remediation.

Since then, Hewitt has been a robust defender of Pruitt, dismissing his recent controversies as "nonsense scandals" on MSNBC in early April and saying his detractors were "just trying to stop the deregulation effort."

Pruitt has touted the agency's Superfund work as one of his key priorities, setting up a task force to seek to speed up the clean-up of the nation's worst contaminated sites. That task force had been headed by Albert "Kell" Kelly, a former banker and longtime friend, who departed the agency last week after news about loans he provided to Pruitt in Oklahoma, including the mortgage provided to Pruitt for a house he bought from a lobbyist when he was a state senator.

Environmental advocates have worried Pruitt's efforts to identify Superfund priority sites would bypass the process set up by Congress to ensure cleanup resources are divided fairly, and that he could focus on sites seen as important to his political supporters. And environmentalists have said Pruitt's rush to claim that contaminated properties have been remediated could risk turning them over to local governments and businesses that might pursue cheaper, inadequate solutions.

Elgie Holstein, senior director for strategic planning at the Environmental Defense Fund who has been tracking EPA's Superfund actions, said the connection to Hewitt is "not a surprise."

"The biggest fear we have is that No. 1, the administrator's political priorities and personal ambitions, political ambitions become the primary criteria for action under this program instead of science and health," Holstein said.

EPA never disclosed the meeting with Hewitt's contacts. It was listed on Pruitt's public calendar as a staff briefing. But on his private Outlook schedule, which the agency has released in response to lawsuits, it appeared as an "Orange County Superfund Site" meeting with Kelly and two other staffers. The records did not list the Californians in attendance at the meeting at EPA headquarters in Washington.

But EPA spokesman Jahan Wilcox confirmed that two lawyers representing the water district, Robert O'Brien and Scott Sommer, and the water district director of special projects, Bill Hunt, were there. A third lawyer, former federal Judge Stephen G. Larson, was forced to cancel his trip due to wildfires in California, according to emails.

"Hugh Hewitt helped arrange the meeting at the request of the water district but did not attend," Wilcox said.

Wilcox said the meeting was for the water district to "brief EPA on the Superfund site's cleanup efforts and request expedited cleanup," following a 2016 agreement with the agency to conduct a remedial investigation and feasibility study, at a cost of \$4 million over two years. Hunt did not immediately respond to a request for comment.

Hewitt in an email to POLITICO called Pruitt a friend and said he does not have a working relationship with him. He said that his firm has represented the water district and worked on the site with EPA's regional office for years but that he had not participated in that work.

Hewitt said he requested a meeting because the water district wanted to brief the new EPA team, he said, adding that he was an Orange County resident until 2016 as well as an Orange County Children and Families Commission member. He said that he "very much" wanted the Superfund site remediated as soon as possible.

According to an EPA fact sheet, the Orange County site has more than five square miles of polluted groundwater containing chlorinated solvents and other contaminants across the cities of Anaheim, Fullerton, and Placentia. It includes the Orange County Groundwater Basin, which provides drinking water to more than 2.4 million residents across 22 cities, according to the agency. Those pollutants can damage humans' nervous systems, kidneys and livers, and some are considered carcinogenic.

EPA has just begun its process of studying the contamination and it has not determined which companies caused the pollution in the area. But an administrative settlement with the EPA in 2016 says the area was home to "electronics manufacturing, metals processing, aerospace manufacturing, musical instrument manufacturing, rubber and plastics manufacturing, and dry cleaning."

Hewitt also thanked EPA schedulers for working to arrange a meeting between Pruitt and the California Lincoln Clubs, which describe themselves as in favor of "limited government, fiscal discipline and personal responsibility." After some rescheduling Pruitt eventually met with representatives of the group on a trip to California in March of this year, according to his public calendar. Prominent Orange County businessman John Warner also helped to connect that group with staffers.

Pruitt and his scheduling staff have frequently sought to set up meetings with or for influential Republican figures, according to the internal EPA emails.

His team accepted an invitation for him to address The Philanthropy Roundtable at an invitation-only event at the White House for "conservative and free-market foundation CEOs and individual wealth creators to discuss the greatest opportunities for foundations to protect and strengthen free society" and "what [Pruitt] views as unique opportunities for philanthropic action.

As POLITICO reported in March, Pruitt also met with an Indiana coal executive and Trump fundraiser who was seeking to soften a pollution rule.

Pruitt also crafted his travel schedule — including a tour of states in August — to meet with big business much like a member of Congress would during the annual recess.

In July, EPA's associate administrator of public engagement Tate Bennett was working with Pruitt to "essentially create an August recess for the EPA to be out in the states talking with individual companies & doing listening sessions within sectors," said Leah Curtsinger, the federal policy director for the Colorado Association of Commerce & Industry, in an email introducing Bennett to her husband, public affairs director at coal company Cloud Peak Energy and a fellow alum of Senate Majority Leader Mitch McConnell's office.

Annie Snider contributed to this report.

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Emails show Pruitt pushing 'red team-blue team' climate debate [Back](#)

By Alex Guillén and Anthony Adragna | 05/15/2018 06:39 PM EDT

EPA Administrator Scott Pruitt had hoped at least twice last year to announce his plans for a controversial red team-blue team debate that would take aim at a federal assessment supporting climate change science, according to newly released emails.

Pruitt's contentious review was abandoned because of the White House's objections, but the communications reveal new details about how the process would have worked and who was influencing Pruitt.

Many scientists have complained that a red team-blue team style debate was a poor way to examine the scientific evidence that overwhelmingly supports the findings that humans are the primary driver behind climate change. But for Pruitt, who had once suggested the event might be televised, the debate appeared to be directed at rebuffing the Fourth National Climate Assessment.

That government-wide report issued on Nov. 3 contradicted many Trump administration political appointees who have questioned the connection between greenhouse gas pollution and global warming.

A draft press release that circulated on Nov. 4 among top EPA officials, and which was shared with Pruitt on Nov. 5, laid out the line of attack, according to the documents made public on Tuesday by EPA following a records request from the Natural Resources Defense Council.

"EPA is standing up a Red Team peer review of the report," they wrote, while the "blue team" would essentially be the federal assessment and its authors.

"A robust, transparent public peer review evaluation of climate change is something everyone should support," Pruitt said in the unreleased November statement. "Now is a perfect opportunity for the formation of a 'Red Team' exercise."

The draft release also included space for quotes from two prominent climate science critics: Steve Koonin, an Obama-era Energy Department official, and William Happer, a Princeton physicist who argues that increased carbon dioxide would benefit the planet.

The duo appear to have been tapped to help guide the red-team review together.

"Your contributions even in a small way to the validity of the red team blue team approach would be appreciated," Ryan Jackson, Pruitt's chief of staff, wrote to Koonin and Happer on Nov. 4.

In an email to POLITICO, Happer said the exercise was "badly needed," while Koonin, now the director of the Center for Urban Science and Progress at New York University, told POLITICO the National Climate Assessment was "demonstrably deficient on a number of points."

EPA did not return a request for comment.

Pruitt has previously said a Wall Street Journal piece written by Koonin in April 2017 calling for a similar EPA review of climate science was his inspiration for instigating the "red team" review.

The emails, however, show that Koonin and his allies began wooing Pruitt even before that. In an email more than a week before Koonin's WSJ piece ran, Dan Yergin, the Pulitzer-winning oil historian and vice chairman of IHS Markit who joined a board advising President Donald Trump, introduced Koonin by email to Jackson.

Pruitt and Koonin met April 28, and the emails show Koonin was closely involved in the process afterward.

Koonin sent EPA a "prospectus" outlining the exercise, and though much of it was redacted by EPA before its release, Koonin suggested timing the red team review to the National Climate Assessment, which was due out six months later. Doing so would "ensure that certainties and uncertainties in projections of future climates are accurately presented to the public and decision makers," he wrote.

A revised version of the prospectus was circulated by EPA to White House officials in July after news of Pruitt's plans had leaked.

"There are a lot of press reports about EPA's planning on this. None of it is being run by us. This seems to be getting out of control," wrote Michael Catanzaro, a top energy adviser to Trump who has since left the administration, a few days after receiving Koonin's proposal.

In late June, Liz Bowman, then a top EPA spokeswoman, questioned whether the exercise could be announced as early as July 5 or 6. But it wasn't until November that top Pruitt staffers begin circulating a draft press release on the announcement.

A draft of the announcement on Nov. 5 inspired a lengthy email chain, which EPA redacted, that involved direct messages from Trump chief of staff John Kelly, strategic communications director Mercedes Schlapp, and former White House staff secretary Rob Porter.

Pruitt was touting his plans to launch the red team review as late as December. Emails early in that month indicate the agency's air chief, Bill Wehrum, would make the announcement on Dec. 12 while Pruitt traveled in

Morocco. One message that included Jackson had the subject line of "Red Team/Blue Team Announcement Planned for Tuesday, Dec. 12."

The New York Times reported in March that Kelly and other top officials stopped the announcement in the fall, and Kelly's deputy Rick Dearborn met with Pruitt in mid-December to declare the plan dead.

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WRDA faces stumbling block over small community projects [Back](#)

By Annie Snider | 05/15/2018 04:48 PM EDT

A battle over boosting funding for drinking water and wastewater projects in small communities is threatening a bipartisan effort to pass the first major infrastructure bill under the Trump administration.

The measure at issue, Securing Required Funding for Water Infrastructure Now, or SRF WIN Act, would expand the popular WIFIA program that loans federal money for water infrastructure projects at Treasury's attractive long-term interest rates. The bill includes a number of changes seeking to make the WIFIA program more accessible to small and mid-sized communities.

Senate Environment and Public Works Chairman John Barrasso (R-Wyo.) said last week that he supported adding it to this year's Water Resources Development Act, S. 2800 (115), through a manager's amendment. But he said attaching the measure, which was introduced by Sens. John Boozman (R-Ark.), Cory Booker (D-N.J.) and nine others, wasn't a done deal. "We're working to try and get to that," he told reporters.

The SRF measure has sparked fierce opposition from the groups that originally conceived of the WIFIA program that say the new proposal tilts too far toward the small communities, and they are now threatening to revoke their support from the overall infrastructure bill if it gets added.

"We believe that SRF WIN Act is a fundamentally flawed proposal that, if enacted, would pose a severe threat to the future viability of the WIFIA program," the American Water Works Association, the Association of Metropolitan Water Agencies and the Water Environment Federation wrote in a letter to Senate EPW leaders last week.

The fight pits small and rural communities against larger communities whose projects can often run into the billions of dollars.

The WIFIA program, authorized as part of the 2014 WRDA bill, targets those larger-scale projects, in part because they have a harder time competing for money from the State Revolving Funds, the main federal funding mechanism for municipal water projects. Those funds prioritize spending in areas with public health problems, and some states have capped the amount that can go to larger projects so they don't drain the funds.

The groups opposing the new measure argue that small and rural communities already have access to a carve-out that gives them 15 percent of WIFIA funding. The proposed changes, they say, would put larger communities at an unfair disadvantage and could ultimately lead to the demise of EPA's State Revolving Funds program.

EPA estimates that \$472.6 billion will be needed over the next two decades to improve drinking water infrastructure, alone. The federal government funds just a fraction of that — most years Congress appropriates less than \$3 billion.

Beyond the rural carve-out under WIFIA, states can also bundle smaller projects together to reach the \$20 million minimum funding requirement, and EPA recently conditionally approved one such application from the Indiana Finance Authority.

The changes being proposed in the SRF WIN Act seek to make this option more accessible, including by waiving the \$100,000 application fee for states filing such applications and authorizing \$200 million annually to go toward such projects.

"This legislation is an innovative approach to helping communities of all sizes, in every state secure loans so they can improve their crumbling infrastructure," Boozman said in a statement introducing the legislation.

Dozens of groups have endorsed including the SRF WIN Act in the Senate's WRDA bill, called America's Water Infrastructure Act, including the Chamber of Commerce, the American Society of Civil Engineers and the Vinyl Institute.

"We believe the inclusion of the SRF WIN Act in the America's Water Infrastructure Act will make a really good bill even better," more than 25 groups wrote in a [letter](#) to Senate EPW leaders on Tuesday.

But the opposing groups argue that Boozman's bill would decrease the program's leveraging rate — an aspect that has been wildly popular with lawmakers since it allows small appropriations to fund much larger infrastructure investments. EPA expects that the \$25 million it got for WIFIA in fiscal 2017 will result in \$2.3 billion worth of loans, the groups said.

"These robust rates enable the federal government to get a tremendous 'bang for the buck' when appropriating funds for water and wastewater infrastructure," AWWA, AMWA and WEF wrote.

The Senate Environment and Public Works Committee is seeking to move its WRDA bill swiftly. It will hold its second legislative [hearing](#) on the measure Thursday, with the assistant secretary of the Army for Civil Works due to testify. Barrasso said a markup will be held shortly thereafter.

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Panel moves \$35B Interior-EPA spending bill to full committee [Back](#)

By Alex Guillén | 05/15/2018 06:18 PM EDT

The House Appropriations Committee's Interior-Environment panel today cleared its \$35.25 billion spending package, teeing it up for consideration by the full committee as early as next week.

The [bill](#) cleared on a voice vote. It is likely to face contentious amendments before the full committee.

Before the bill advanced, ranking member [Betty McCollum](#) (D-Minn.) criticized the policy riders and complained that EPA has not yet reported to Congress regarding the GAO's April [conclusion](#) that EPA's construction of a soundproof booth for Administrator Scott Pruitt violated spending laws.

The bill provided \$7.96 billion for EPA, a \$100 million overall reduction from 2018 levels. Along with language repealing the Waters of the U.S. rule, the bill provided \$2.6 billion for the Clean Water and Drinking Water State Revolving Loans and \$75 million for the Water Infrastructure Finance and Innovation Act program.

Among the Interior Department's major agencies, the bill includes a \$55 million increase for the Bureau of Land Management to \$1.4 billion, a \$19 million hike for the U.S. Geological Survey to \$1.2 billion and another \$53 million to boost the National Park Service to \$3.25 billion.

The Office of Surface Mining would get \$229 million, including \$90 million for another year of a pilot program aimed at cleaning up abandoned Appalachian mines. The Fish and Wildlife Service's budget would drop by \$11 million to \$1.6 billion.

The bill also provided \$6.1 billion for the Agriculture Department's Forest Service, including \$3 billion for wildfire work.

WHAT'S NEXT: The full package will be considered by the full House Appropriations Committee at an unspecified later date.

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Message

From: Daniell, Kelsi [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=CD867173479344B3BDA202B3004FF830-DANIELL, KE]
Sent: 5/23/2018 8:56:43 PM
To: Schwab, Justin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=eed0f609c0944cc2bbdb05df3a10aadb-Schwab, Jus]; Lovell, Will (William) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3b150bb6ade640f68d744fadcb83a73e-Lovell, Wil]; Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clin]; Yamada, Richard (Yujiro) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4c34a1e0345e4d26b361b5031430639d-Yamada, Yuj]
CC: Bolen, Brittany [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31e872a691114372b5a6a88482a66e48-Bolen, Brit]; Beach, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=6b124299bb6f46a39aa5d84519f25d5d-Beach, Chri]; Konkus, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=555471b2baa6419e8e141696f4577062-Konkus, Joh]
Subject: RE: FOR REVIEW -- EPA Announces Extended Comment Period and Public Hearing on Proposed Rule to Strengthen Science Transparency in EPA Regulations

Made that edit below. Please let me know what else.

From: Schwab, Justin
Sent: Wednesday, May 23, 2018 4:53 PM
To: Lovell, Will (William) <lovell.william@epa.gov>; Woods, Clint <woods.clint@epa.gov>
Cc: Daniell, Kelsi <daniell.kelsi@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>; Yamada, Richard (Yujiro) <yamada.richard@epa.gov>; Beach, Christopher <beach.christopher@epa.gov>; Konkus, John <konkus.john@epa.gov>
Subject: Re: FOR REVIEW -- EPA Announces Extended Comment Period and Public Hearing on Proposed Rule to Strengthen Science Transparency in EPA Regulations

Looping in Clint.

Attorney Client / Ex. 5

Sent from my iPhone

On May 23, 2018, at 4:47 PM, Lovell, Will (William) <lovell.william@epa.gov> wrote:

Looping in Richard.

From: Daniell, Kelsi
Sent: Wednesday, May 23, 2018 4:45 PM
To: Bolen, Brittany <bolen.brittany@epa.gov>; Lovell, Will (William) <lovell.william@epa.gov>; Schwab, Justin <Schwab.Justin@epa.gov>
Cc: Beach, Christopher <beach.christopher@epa.gov>; Konkus, John <konkus.john@epa.gov>
Subject: FOR REVIEW -- EPA Announces Extended Comment Period and Public Hearing on Proposed Rule to Strengthen Science Transparency in EPA Regulations

Please review ASAP. We'd like to schedule this to go out at 8:00am tomorrow morning. We're just waiting for a link from Will/ORD for the pre-publication document. Thanks!

Deliberative Process / Ex. 5

Message

From: Abboud, Michael [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=B6F5AF791A1842F1ADCC088CBF9ED3CE-ABBOUD, MIC]
Sent: 8/21/2018 9:48:40 PM
To: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]
CC: Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clint]; Block, Molly [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=60d0c681a16441a0b4fa16aa2dd4b9c5-Block, Moll]
Subject: Re: RIA on existing power plants

Clint do you have any input on this?

Sent from my iPad

On Aug 21, 2018, at 4:15 PM, Gunasekara, Mandy <Gunasekara.Mandy@epa.gov> wrote:

Clint – please add/amend as appropriate.

Deliberative Process / Ex. 5

From: Abboud, Michael
Sent: Tuesday, August 21, 2018 3:02 PM
To: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Woods, Clint <woods.clint@epa.gov>
Cc: Block, Molly <block.molly@epa.gov>
Subject: FW: RIA on existing power plants

From: Eric Roston (BLOOMBERG/ NEWSROOM:) [<mailto:eroston@bloomberg.net>]
Sent: Tuesday, August 21, 2018 2:10 PM

To: Press <Press@epa.gov>

Subject: RIA on existing power plants

Greetings -- Writing a short piece, trying to ask this question:
Would all of the scientific studies cited in the new existing-
power-plants RIA be admissible for EPA analysis if the
Strengthening Transparency in Regulatory Science rule were in
effect? Thank you.

Best regards,
Eric Roston

Eric Roston
212.617.5464 desk
202.253.5723 cell/Signal

Message

From: Lewis, Josh [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=B22D1D3BB3F84436A524F76AB6C79D7E-JOLEWIS]
Sent: 4/20/2018 8:11:06 PM
To: Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clin]
Subject: FW: EPA - Data Access NPRM - comments
Attachments: Data Access Draft - EPA - 4-17-18__EBR.DOCX

Flag: Flag for follow up

Josh Lewis
Chief of Staff
EPA/Office of Air and Radiation
Office: 202 564 2095
Cell: 202 329 2291

From: Kim, Jim H. EOP/OMB [REDACTED] **EOP / Ex. 6**
Sent: Friday, April 20, 2018 4:07 PM
To: Lewis, Josh <Lewis.Josh@epa.gov>
Cc: Laity, Jim A. EOP/OMB [REDACTED] **EOP / Ex. 6**; Schwab, Margo EOP/OMB [REDACTED] **EOP / Ex. 6**
Subject: RE: EPA - Data Access NPRM - comments

Hi Josh,

Attached and below are comments from OMB's Environment Branch (Jim Herz shop). **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5

Sorry for the confusion of sending multiple sets of comments. Please feel free to call us if you would like to discuss.

Jim

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

From: Lewis, Josh <Lewis.Josh@epa.gov>

Sent: Friday, April 20, 2018 2:55 PM

To: Kim, Jim H. EOP/OMB [REDACTED] EOP / Ex. 6

Cc: Laity, Jim A. EOP/OMB [REDACTED] EOP / Ex. 6 Schwab, Margo EOP/OMB

[REDACTED] EOP / Ex. 6

Subject: RE: EPA - Data Access NPRM - comments

Hi Jim,

Confirming receipt.

Josh Lewis
Chief of Staff
EPA/Office of Air and Radiation
Office: 202 564 2095

From: Kim, Jim H. EOP/OMB [REDACTED] EOP / Ex. 6

Sent: Friday, April 20, 2018 2:43 PM

To: Lewis, Josh <Lewis.Josh@epa.gov>

Cc: Laity, Jim A. EOP/OMB [REDACTED] EOP / Ex. 6 Schwab, Margo EOP/OMB

[REDACTED] EOP / Ex. 6

Subject: EPA - Data Access NPRM - comments

Hi Josh,

Please find attached our comments and CEQ's comments on the Data Access draft. We are providing line edits designed to:

Deliberative Process / Ex. 5

We will also pass along other agencies' comments as we receive them.

Let me know if you have questions.

Thanks,
Jim

James Kim, Ph.D., DABT
Office of Information and Regulatory Affairs
Office of Management and Budget

EOP / Ex. 6

Message

From: Schwab, Justin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=EED0F609C0944CC2BBDB05DF3A10AADB-SCHWAB, JUS]
Sent: 4/20/2018 8:01:14 PM
To: Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clin]
Subject: Data - new redline
Attachments: REDLINE 04202018 Data Access Draft.docx

Matt is meeting with his deputies now. Here is the new redline. I can discuss after 5? (Or earlier if we get out earlier.)

Message

From: Dominguez, Alexander [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=5CED433B4EF54171864ED98A36CB7A5F-DOMINGUEZ,]
Sent: 5/15/2018 8:57:13 PM
To: Greaves, Holly [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=abcb6428b3df40a9a78b059a8ba59707-Greaves, Ho]; Hanson, Paige (Catherine) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=95adc1b2ac3b40ab9dc591801d594df8-Hanson, Cat]
CC: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]; Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clint]; Harlow, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b5a9a34e31fc4fe6b2beadda2affa44-Harlow, Dav]
Subject: OAR Talking Points
Attachments: OCFO_May 2018 Hearing TPs_Draft (V1).docx; RFS TPs_May 2018 Hearing_Final (V3).docx; 14May2018 FAIRBANKS PARTICULATE MATTER NONATTAINMENT AREA.DOCX; HEC Special OAR TPs 5-15-18.docx; SMALL REMOTE ALASKA INCINERATORS-SAC.DOCX

Holly,

Please see the attached document entitled "OCFO_May 2018 Hearing TPs_Draft (V1)" which includes the requested and concise talking points on Fairbanks, residential wood heaters, RVOs, small remote incinerators, May 9 NAAQS Memo, and the EPA/NIH side-by-side.

Although you likely will not need as these are a bit more in the weeds, for reference I've also included:

- RFS TPs - the doc I previously sent you with info on several RFS issues
- Fairbanks PM Nonattainment Area – more extensive background on the topic
- HEC Special OAR TPs – more extensive background on NAAQS memo, April 30 science transparency proposed rule, and PM2.5 health effects
- Small Remote Incinerators – more extensive background on the issue

Please let us know if you need anything else.

Thanks,
Alex

From: Greaves, Holly
Sent: Tuesday, May 15, 2018 3:55 PM
To: Dominguez, Alexander <dominguez.alexander@epa.gov>; Hanson, Paige (Catherine) <hanson.catherine@epa.gov>
Cc: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Woods, Clint <woods.clint@epa.gov>
Subject: RE: RFS RVO TPs

Hi Alex,

In hearing prep, a side by side of NIH vs. EPA's proposed rule was requested during our discussion of the NAAQs memo. I don't think I see this in this document. If it's there, please point me to it.

The other items I requested were updates on "new" topics since the House hearing – wood heaters, small remote incinerators, and Fairbanks. Do you have a few points on those?

Thanks,
Holly

From: Dominguez, Alexander
Sent: Tuesday, May 15, 2018 3:39 PM
To: Hanson, Paige (Catherine) <hanson.catherine@epa.gov>
Cc: Greaves, Holly <greaves.holly@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>
Subject: RE: RFS RVO TPs

Paige – See attached for talkers on various RFS issues. Those specifically regarding the Renewable Volume Obligations are at the bottom of the second page. Feel free to give me a call if you have questions on anything.

Alex

From: Hanson, Paige (Catherine)
Sent: Friday, May 11, 2018 11:08 AM
To: Dominguez, Alexander <dominguez.alexander@epa.gov>
Cc: Greaves, Holly <greaves.holly@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>
Subject: RFS RVO TPs

Alex,

Happy Friday! I heard from Mandy y'all are sending something up to OMB today. In light of that, are these still appropriate talking points for the Administrator in his hearing next week?

Thanks,
Paige

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Message

From: McGartland, Al [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=5FE25FC1DF634F9798675527E0070429-AMCGARTL]
Sent: 4/29/2018 4:52:57 PM
To: Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clint]
Subject: Re: replication of science results

Lol. I'm sure you are terribly busy.

Sent from my iPhone

On Apr 28, 2018, at 5:51 PM, Woods, Clint <woods.clint@epa.gov> wrote:

Al,

Pardon my continue delay – I agree, and let's fix it soon. Thanks!

Clint Woods
Deputy Assistant Administrator
Office of Air and Radiation, U.S. EPA
202.564.6562

From: McGartland, Al
Sent: Wednesday, April 18, 2018 9:32 PM
To: Bolen, Brittany <bolen.brittany@epa.gov>
Cc: Woods, Clint <woods.clint@epa.gov>
Subject: Re: replication of science results

Hi Clint. Our paths have yet to cross since your arrival at EPA. We should do something about that!

From: Bolen, Brittany
Sent: Wednesday, April 18, 2018 9:1
To: McGartland, Al
Cc: Woods, Clint
Subject: Re: replication of science results

Thanks. Sharing with Clint, too.

Sent from my iPhone

On Apr 18, 2018, at 8:57 PM, McGartland, Al <McGartland.Al@epa.gov> wrote:

Hi Brittany. I was reading through stuff tonight and thought you would find this article of interest.

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

How Bad Is the Government's Science?

Policy makers often cite research to justify their rules, but many of those studies wouldn't replicate.

By

Peter Wood and

David Randall

April 16, 2018 5:56 p.m. ET

[70 COMMENTS](#)

Half the results published in peer-reviewed scientific journals are probably wrong. John Ioannidis, now a professor of medicine at Stanford, made headlines with that claim in 2005. Since then, researchers have confirmed his skepticism by trying—and often failing—to reproduce many influential journal articles. Slowly, scientists are internalizing the lessons of this irreproducibility crisis. But what about government, which has been

making policy for generations without confirming that the science behind it is valid?

The biggest newsmakers in the crisis have involved psychology. Consider three findings: Striking a “power pose” can improve a person’s hormone balance and increase tolerance for risk. Invoking a negative stereotype, such as by telling black test-takers that an exam measures intelligence, can measurably degrade performance. Playing a sorting game that involves quickly pairing faces (black or white) with bad and good words (“happy” or “death”) can reveal “implicit bias” and predict discrimination.

All three of these results received massive media attention, but independent researchers haven’t been able to reproduce any of them properly. It seems as if there’s no end of “scientific truths” that just aren’t so. For a 2015 article in *Science*, independent researchers tried to replicate 100 prominent psychology studies and succeeded with only 39% of them.

Further from the spotlight is a lot of equally flawed research that is often more consequential. In 2012 the biotechnology firm Amgen tried to reproduce 53 “landmark” studies in hematology and oncology. The company could only replicate six. Are doctors basing serious decisions about medical treatment on the rest? Consider the financial costs, too. A 2015 study estimated that American researchers spend \$28 billion a year on irreproducible preclinical research.

The chief cause of irreproducibility may be that scientists, whether wittingly or not, are fishing fake statistical significance out of noisy data. If a researcher looks long enough, he can turn any fluke correlation into a seemingly positive result. But other factors compound the problem: Scientists can make arbitrary decisions about research techniques, even changing procedures partway through an experiment. They are susceptible to groupthink and aren’t as skeptical of results that fit their biases. Negative results typically go into the file drawer. Exciting new findings are a route to tenure and fame, and there’s little reward for replication studies.

PHOTO: DAVID KLEIN

American science has begun to face up to these problems. The National Institutes of Health has strengthened its reproducibility standards. Scientific journals have reduced the incentives and opportunities to publish bad research. Private philanthropies have put serious money behind groups like the Meta-Research Innovation Center at Stanford, led in part by Dr. Ioannidis, and the Center for Open Science in Charlottesville, Va.

There's more to be done, and the National Association of Scholars has made some recommendations. Before conducting a study, scientists should "preregister" their research protocols by posting the intended methodology online, which eliminates opportunities for changing the rules in the middle of the experiment. High schools, colleges and graduate schools need to improve science education, particularly in statistics. Universities and journals should create incentives for researchers to publish negative results. Scientific associations should seek to disrupt disciplinary groupthink by putting their favored ideas up for review by experts in other sciences.

A deeper issue is that the irreproducibility crisis has remained largely invisible to the general public and policy makers. That's a problem given how often the government relies on supposed scientific findings to inform its decisions. Every year the U.S. adds more laws and regulations that could be based on nothing more than statistical manipulations.

All government agencies should review the scientific justifications for their policies and regulations to ensure they meet strict reproducibility standards. The economics research that steers decisions at the Federal Reserve and the Treasury Department needs to be rechecked. The social psychology that informs education policy could be entirely irreproducible. The whole discipline of climate science is a farrago of unreliable statistics, arbitrary research techniques and politicized groupthink.

The process of policy-making also needs to be overhauled. Federal agencies that give out research grants should immediately adopt the NIH's new standards for funding reproducible research. Congress should pass a law—call it the Reproducible Science Reform Act—to ensure that all future regulations are based on similar high standards.

Each scientific discipline needs to accept responsibility for its share of the irreproducibility crisis and incorporate strict standards into its procedures. The goal must be to reinvigorate the tradition of scientific inquiry. What the crisis teaches is that the scientific spirit lies with those who constantly test for that fundamental requirement of truth—that a result can be reproduced.

Mr. Wood is president of the National Association of Scholars. Mr. Randall is the NAS's director of research and a co-author of its new report, "The Irreproducibility Crisis of Modern Science."

Message

What you
need to
know to start
your day.

From: Bloomberg Environment - Environment & Energy Report
[bloomberg@bna.com]
Sent: 8/21/2018 11:49:10 AM
To: Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group
(FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-
Woods, Clint]
Subject: First Move: Energy Primaries • 'Secret Science' • Fire Retardant Explained

**Bloomberg
Environment**

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Energy Primaries • 'Secret Science' • Fire Retardant Explained



By [Chuck McCutcheon](#)

Energy-producing giants Alaska and Wyoming hold primaries today, with large fields of candidates for governor in both states.

In Alaska, incumbent Gov. Bill Walker, an independent, is seeking re-election. His recent restructuring of the Permanent Fund—the annual payout that Alaskans get from the state's oil wealth—dramatically reduced the budget deficit and restored the state's credit rating, he says.

Seven Republicans are seeking the state chief executive's job, with ex-Lt. Gov. Mead Treadwell—a former chairman of the U.S. Arctic Research Commission—and former state Sen. Mike Dunleavy seen as the leading candidates. Both have spoken out against future cutting of Permanent Fund dividends, and each has promised to promote new oil exploration.

Former U.S. Sen. Mark Begich is running in the Democratic primary for governor, vowing to market Alaska as “a global leader” in addressing climate change.

In Wyoming, six Republicans are running to replace term-limited GOP Gov. Matt Mead. Several—including businessman Sam Galeotos, state Treasurer Mark Gordon, and natural-resources lawyer Harriet Hageman—have drawn oil and gas industry support.

One of the GOP candidates, party megadonor Foster Friess, has come out against transferring federal public lands to the state—a hot-button issue in the rural West. He argues it will be easier for special interests to lobby the state to turn public-access lands into privately controlled ones.

Wyoming’s lone House member, GOP Rep. Liz Cheney, faces two primary challengers but is strongly favored. Likewise, Republican Sen. John Barrasso, who heads the Senate’s environment committee, has five token opponents. Bloomberg Government’s [Greg Giroux](#) is monitoring.

SECRET SCIENCE: The EPA’s controversial plan to limit the types of science it uses to back up regulations has won plaudits from industry and states—but even some of them say the idea needs work.

Then-EPA Administrator Scott Pruitt unveiled the proposal in April to bar the use of scientific research including data that isn’t or can’t be made public. Pruitt called it an effort to remove “secret science” from the agency’s decision-making.

The Texas Commission on Environmental Quality, which backs the proposal’s intention, says the EPA should create a work group or review panel of experts to help develop crucial details about the plan. Two steel associations supporting the proposal also are calling for the EPA’s rulemaking process to be “vetted through a rigorous analytical process.”

[Sylvia Carignan](#) has more details in a [story](#) out today.

OTHER STORIES WE’RE COVERING

- EPA Acting Administrator Andrew Wheeler at 10 a.m. holds a press briefing to unveil the administration’s replacement for the Clean Power Plan. [Abby Smith](#) and Bloomberg News are tracking.
- CVS’s infamously long receipts have been the butt of jokes, but the pharmacy giant also is being held up as a poster child for an issue

spanning the entire retail sector: toxic chemicals used on cash-register paper, [Adam Allington](#) says in a [story](#) out today.

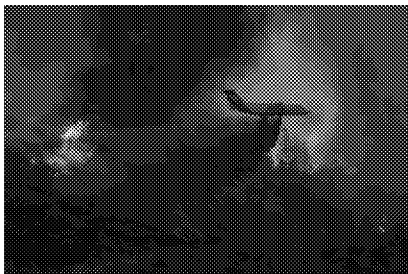
- The Senate’s energy committee [explores](#) the energy efficiency of blockchain and similar technologies and the cybersecurity possibilities for energy industry applications. [Rebecca Kern](#) is covering.
- Heavy hitters in the air pollution and climate change fields meet in Baltimore for an Air & Waste Management Association [conference](#). Steven Winberg, assistant secretary of fossil fuel programs at the Energy Department, and Mandy Gunasekara, a top official at the EPA’s air office (and one of the Trump administration’s first appointees to the agency early last year), are expected to speak. [David Schultz](#) is tracking.

QUOTE OF THE DAY

“Unless Andrew Wheeler significantly changes the way EPA has been doing business in this administration, he can expect more of the same from the courts.”

—Georgetown law professor Lisa Heinzerling, a former Obama-era EPA official, [assessing](#) the agency’s three recent legal losses.

ALL ABOUT: FIRE RETARDANT



A firefighting plane drops retardant at the Holy Fire near Lake Elsinore, Calif., on Aug. 7.
Photographer: David McNew/AFP/Getty Images

Soot and ash aren’t the only things California’s wildfires are leaving behind—the red fire retardant dropped from planes is coating homes and cars.

The retardant affects a wildfire’s progress by coating vegetation and lowering the temperature of plants that could become fuel, reducing the fire’s intensity and speed. The color makes the retardant more visible to firefighters.

A widely used retardant, known by the brand name Phos-Chek, washes off vehicles and isn’t known to cause long-term health effects, according to the manufacturer, Perimeter Solutions of St. Louis. The ingredients can irritate eyes and skin and be fatal to some aquatic life. The EPA has rated the retardant

“practically non-toxic” for humans and other mammals.

The main ingredient in one of Phos-Chek’s retardants, diammonium phosphate, is also the world’s most widely used phosphorus fertilizer, according to potash and fertilizer producer Mosaic Co.

The U.S. Forest Service maps out environmentally sensitive areas—including waterways, reservoirs, and endangered species habitats—that firefighters must avoid when dropping fire retardant from aircraft. Certain concentrations of ammonia can create algae blooms and disfigure or kill fish, according to a 2011 Forest Service report. —*Sylvia Carignan*

AROUND THE WEB

- Flushing [old contact lenses](#) in the toilet, or down the sink, could add to the growing problem of microplastic pollution.
- Bitcoin’s [annual carbon footprint](#) is equal to that of Ireland’s.
- Texas’ environmental commission names ex-commissioner [Toby Baker](#) as executive director and former EPA Region 6 official [Emily Lindley](#) as a commissioner.

TODAY’S EVENTS

- **All Day • Nuclear** • The Nuclear Energy Institute opens its [Regulatory Affairs Forum](#) in Bethesda, Md. Nuclear industry representatives will discuss federal regulation and the Nuclear Regulatory Commission’s “transformation” efforts. NRC officials will speak, but NEI spokesman John Keeley told Bloomberg Environment that the forum is closed to reporters.
- **9:30 a.m. • Pentagon** • Senate Armed Services Committee [holds hearing](#) on several Pentagon nominees, including Alex Beehler to be assistant secretary of the Army for energy, installations, and environment.
- **2:30 p.m. • Cyber** • Senate Judiciary Committee’s crime and terrorism panel [holds hearing](#) on cyber threats to infrastructure.

For all of today’s Bloomberg Environment headlines, visit [Environment & Energy Report](#)

Bloomberg Environment

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From: E&E News [ealerts@eenews.net]
Sent: 4/13/2018 11:11:26 AM
To: Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clint]
Subject: April 13 -- E&E Daily is ready

[Read today's E&E Daily on the web](#)

E&E DAILY



AN E&E NEWS PUBLICATION

E&E DAILY — Fri., April 13, 2018



[READ FULL EDITION](#)

1. EPA:

Democrats, greens see some benefit as Pruitt hangs on

Politicians and environmentalists are using EPA Administrator Scott Pruitt's woes as a rallying cry and to build momentum ahead of the midterms.

TOP STORIES

2. EPA:

Former top aide also met with Republicans

3. NOMINATIONS:

'Climate silence' in 5-hour Pompeo hearing

4. AGRICULTURE:

Farm bill sets debate on conservation, forestry

POLITICS

5. CAMPAIGN 2018:

Republicans launch offensive against Blankenship

IN THE HOUSE

6. LAW:

Lawmakers mull limiting legal challenges to permits

7. COAL:

Boosters want lawmakers to help save Navajo plant

8. DEFENSE:

Pentagon enviro official probed on climate, species

9. TRANSPORTATION:

Chao faces bipartisan ire over Gateway project brouhaha

IN THE SENATE

10. EPA:

Dem presses White House on 'secret science'

11. HURRICANES:

Cities wait for help from feds: 'We've not received a penny'

12. NATURAL GAS:

Whitehouse bill would create demand response pilot program

UPCOMING HEARINGS AND MARKUPS

13. CALENDAR:

Activity for April 9 - April 15, 2018

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AN E&E NEWS PUBLICATION

GREENWIRE — Fri., August 17, 2018



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Subject: Morning Energy: Did Pruitt skate by? — EPA prepping Oversight docs — McConnell tries for West Virginia redemption

By Kelsey Tamborrino | 04/27/2018 06:01 AM EDT

With help from Anthony Adragna

DID PRUITT SKATE BY? EPA Administrator Scott Pruitt had a simple task Thursday: Keep his conservative backers happy — and in turn, keep the president happy. And he may have managed to do just that. While Democrats and environmentalists panned Pruitt's performance, the EPA chief, who is facing a heavy stack of ethical and spending quandaries, left most Republicans pleased enough with his performance that he's probably salvaged his job for now.

But of course, President Donald Trump has yet to weigh in on Pruitt's performance. And on a day that saw Trump's nominee for Veterans Affairs withdraw, triggering a long Trump rant on "Fox & Friends," that could be good news for the EPA chief, POLITICO's Nancy Cook reports. "As long as [Pruitt's] explanations hold and there are no crazy discrepancies or smoking gun or anything like that, I don't think that creates any red flags for Pruitt," said one Republican close to the White House, who predicted Pruitt would survive the scrutiny.

Still, Pruitt's shifting answers about what he knew about controversial raises for two close aides raised a lot of concerns that he hadn't been completely forthright during his interview with Fox News earlier this month. Under lawmakers' questioning, he acknowledged that he had authorized his chief of staff to award pay increases to his aides — but said he did not know how high they would be or that they would circumvent the White House's disapproval. That's different than what he told Fox's Ed Henry when he said he hadn't known about the raises until after the fact and that he did not know who authorized them.

Pruitt used the two hearings to blame his torrent of scandals on career staff, as POLITICO's Anthony Adragna, Annie Snider and Alex Guillén reported, while maintaining the headlines surrounding him aren't painting an accurate picture. "Let me be very clear: I have nothing to hide as it relates to how I've run the agency for the past 16 months," Pruitt said. (In case you missed it, POLITICO's Energy team has the full recap of the key moments here.)

But all in all, his critical audience of House Republicans exited two separate hearings Thursday believing that Pruitt fared well. "I found his responses credible," said Rep. Mike Simpson, a House appropriator. Meanwhile, Rep. Ken Calvert, the chairman of the House Appropriations Interior-Environment subcommittee, said Pruitt did "fine." "He answered our questions," he said. "... He's doing well, he's very professional, he's doing his job." And Illinois' John Shimkus, who chaired Pruitt's first hearing, said he thought Pruitt handled himself well and that Republican members were tough in their questions, Anthony recaps. "Some of it was accountability for policy, so I don't know what more [critics] want," Shimkus said. "I think that he answered the questions in the best way that he could answer them."

Of course, Pruitt's performance did not please everyone. "I think the opprobrium that you've generated on some of these spending decisions is actually warranted," GOP Rep. Ryan Costello, who is retiring from Congress, told Pruitt. Ana Unruh Cohen, managing director of government affairs at the Natural Resources Defense Council said the EPA administrator "demonstrated beyond any doubt that he is unqualified" to lead his

agency. "He should be fired before sundown," she said. And Rep. Marcy Kaptur, ranking member of the Appropriations subcommittee that questioned Pruitt, used the term "evasive" to describe the performance. "For someone who has been in the job a year and a half, he didn't seem to command a lot of the details," she said. "... I don't think we know the full extent of what he's done yet."

WHAT COMES NEXT? Keep in mind: Pruitt's under multiple investigations that have yet to fully play out. "We have a committee that's looking into these charges and we'll have a resolution," Calvert said of Pruitt's ongoing scandals. "We'll see what comes of it." Today, for one, marks the deadline set by House Oversight Chairman Trey Gowdy in his expanded probe into the embattled EPA chief's activities. He's called for a host of documents to be delivered and interviews to be scheduled by today. An EPA official said the agency is currently in the process of providing the documents, Anthony reports. The official said the documents will respond to the allegations of lavish spending and unethical conduct and may negate the need for several aides to appear for interviews.

WELCOME TO FRIDAY! I'm your host Kelsey Tamborrino, and no one guessed Alabama — the home state of the first officially designated Democratic floor leader, Oscar Underwood. For today: Name the only senator to be preceded by both of his or her parents. Send your tips, energy gossip and comments to ktamborrino@politico.com, or follow us on Twitter [@kelseytam](https://twitter.com/kelseytam), [@Morning_Energy](https://twitter.com/Morning_Energy) and [@POLITICOPro](https://twitter.com/POLITICOPro).

POLITICO's Ben White is bringing Morning Money to the Milken Institute Global Conference to provide coverage of the day's events and evening happenings. The newsletter will run April 29 - May 2. **Sign up to keep up with your daily conference coverage.**

PRUITT RAISES UNDONE AFTER FOX INTERVIEW: Amid the deluge of news coming out of the hearings, Pro's Emily Holden and Nick Juliano reported via documents released by EPA that the agency reversed raises for the two top aides to Pruitt the day after his interview with Fox News. Pruitt told Fox he had "corrected them" after finding out about them. A day later, on April 5, Pruitt's chief of staff Ryan Jackson signed personnel forms reverting the aides to their previous pay grades, according to copies of the forms reviewed by POLITICO. Read more [here](#).

McCONNELL'S WEST VIRGINIA REDEMPTION: Amid an increasingly tense GOP primary battle for Democratic Sen. Joe Manchin's seat, coal baron Don Blankenship has focused his efforts into a relentless slash-and-burn campaign targeting Majority Leader Mitch McConnell. Blankenship — who spent a year in prison following the deadly 2010 Upper Big Branch mine disaster — compared his current battle against the McConnell-led Republican establishment to his past legal fight against the federal government, POLITICO's Alex Isenstadt writes. But as the May 8 primary inches closer, McConnell is fighting back with an avalanche of attacks from a super PAC aligned with the Senate leader, among other efforts.

Blankenship's attacks have grown intensely personal. During an interview with POLITICO, Blankenship said that McConnell "has a lot of connections in China," adding that the GOP leader's wife is Transportation Secretary Elaine Chao. And during an appearance on a local radio show, Blankenship described Chao's father as a "wealthy Chinaperson," who was "well-connected in China." Read [more](#).

DOE TO ANNOUNCE FUNDS FOR ADVANCED NUCLEAR: Energy Secretary Rick Perry will announce today the selection of 13 projects that will receive about \$60 million in funding to support cost-shared research and development in advanced nuclear technologies. The selections — broken down into categories pertaining to nuclear demonstration readiness, advanced reactor development, and regulatory assistance grants — are the first under the Office of Nuclear Energy's "U.S. Industry Opportunities for Advanced Nuclear Technology Development" funding opportunity announcement. "Making these new investments is an important step to reviving and revitalizing nuclear energy, and ensuring that our nation continues to benefit from this clean, reliable, resilient source of electricity," Perry said in a statement.

ALL IN THE TIMING: The Office of Management and Budget completed its review of EPA's proposed "secret science" rule Wednesday, E&E News' Sean Reilly reports, even though Pruitt had already signed it by then. The policy that bars the agency from relying on studies that don't publicly disclose all their data got Pruitt's signature on Tuesday, but the Reginfo.gov site showed the review completion date as Wednesday. "While OMB is sometimes slow to update the site, it was unclear why Pruitt would have signed a rule before the review was completed," Reilly writes. EPA spokeswoman Liz Bowman suggested to E&E the fault lay with OMB. "Interagency review concluded before this proposal was signed," she said in a statement. Reilly later tweeted: "[@OMBPress](https://twitter.com/OMBPress) has now changed the date on the <http://Reginfo.gov> site to show that the review of this proposed #EPA rule was completed on April 23, not April 25. A #OMB spokesman won't discuss the reason for the change on the record."

TESTER TESTS TRUMP: The president is coming after Democratic Sen. Jon Tester, in what could be a problematic move for the Montanan as he fights to win reelection. Trump was enraged over Tester's work documenting allegations of malfeasance by Rear Adm. Ronny Jackson, provoking a series of inquiries that ultimately led to Jackson withdrawing his nomination to be VA secretary. POLITICO's Burgess Everett reports Tester is now at a turning point in his relationship with Trump, who railed against him on Thursday morning. "The incident and its fallout underscores how the burly, plain-spoken Tester hasn't exactly tacked to the center in an election year," Burgess writes. "Perhaps he feels emboldened after dodging a big-name opponent; after Ryan Zinke was drafted into the Trump administration and the state attorney general passed on the race, Tester's opposition is made up of lesser known opponents that will compete in a June primary." Read more.

SENATE MAKES POMPEO OFFICIAL: The Senate narrowly confirmed Mike Pompeo on Thursday, shifting him from CIA director to secretary of State. Pompeo was confirmed 57-42, ultimately winning support from Democrats Heidi Heitkamp, Manchin, Joe Donnelly, Bill Nelson, Claire McCaskill and Doug Jones. Supreme Court Justice Samuel Alito swore in Pompeo shortly after the vote Thursday, formally installing Pompeo, who has previously doubted climate science — a point greens jumped onto ahead of the vote. "There's some who think we're warming, there's some who think we're cooling," Pompeo said in 2013.

"Democrats that jumped ship to support this dangerous climate denier must and will be held accountable by the people," Food & Water Watch Executive Director Wenonah Hauter said in a statement. But others cheered the move: Competitive Enterprise Institute director of the Center for Energy and Environment, Myron Ebell, said in a statement he was "pleased." Pompeo, he said, "understands the importance of affordable, reliable energy to Americans' health and ability to provide for our families." Pompeo will be a "forceful advocate" of Trump's decision to remove the U.S. from the Paris climate agreement, Ebell said.

MANCHIN TRIES AGAIN: Manchin sent another letter this week urging Perry and Defense Secretary Jim Mattis to examine use of the Defense Production Act to protect coal-fired power plants. "The ability to produce reliable electricity and to recover from disruptions to our grid are critical to ensuring our nation's security against the various threats facing our nation today — whether those threats be extreme weather events or adversarial foreign actors," he writes. Earlier this month, Manchin similarly wrote to the president on the issue, although, as Pro's Eric Wolff reported, it faces an uphill battle on many fronts. Read the letter.

WATCH: House Speaker Paul Ryan was asked about climate change Thursday — by the 7-year-old daughter of E&E News' Scott Walden. See it here.

PRUITT FOCUS OF NEW AD: The opposition research firm American Bridge is scheduled to air an ad this morning on "Fox and Friends" focusing on Pruitt's swirling scandals and his previous criticism of the president. Watch it here.

DEMOCRATS COME OUT IN FULL FORCE FOR CPP: Ahead of the comment deadline, eight Democratic senators signed onto a letter led by EPW ranking member Tom Carper opposing EPA's proposal to repeal the Clean Power Plan. The senators write that the law is instrumental in fighting climate change and say

that rescinding it "ignores scientific evidence on the risks of climate change and puts generations of Americans at grave health and economic risk."

— **A coalition of 16 attorneys general and municipalities** submitted a supplemental comment letter to EPA with evidence of what they say are due process violations and ethical issues due to Pruitt's involvement. The group previously wrote to EPA, claiming Pruitt had not had an open mind on CPP. "Since then, the evidence continues to grow that Administrator Pruitt should have been disqualified from participating in this rulemaking before it began," they write. "His involvement has irreparably tainted the current administrative process, and as a result, EPA must withdraw the proposed CPP repeal." Read it [here](#).

MAIL CALL! WE NEED AN EXTENSION: Sens. [Ron Wyden](#) and [Jeff Merkley](#) and Reps. [Peter DeFazio](#) and [Jared Huffman](#) wrote to Interior Secretary Ryan Zinke and Agriculture Secretary Sonny Perdue on Thursday, urging an extension on interim mineral withdrawal protections for the Chetco River in southwest Oregon. Read it [here](#).

— **Sixteen senators, led by Democratic Sen. [Tom Udall](#)**, sent [this letter](#) to Zinke asking him to pause any plans for the management of Bears Ears and Grand Staircase-Escalante national monuments until legal challenges related to the president are resolved.

— **The House Biofuel Caucus sent a letter** to Pruitt objecting to Renewable Fuel Standard waivers issued by EPA, demanding Pruitt "immediately cease all waiver activity" and provide lawmakers a "full list" with further details. Read it [here](#).

CSB TO INVESTIGATE HUSKY EXPLOSION: The Chemical Safety Board said Thursday it is sending a four-person investigative team to Superior, Wis., to the scene of the Husky Energy explosion that injured several Thursday morning. The refinery was shutting down in preparation for a five-week turnaround, CSB said, when the explosion occurred. The Superior Police Department [evacuated](#) areas within miles of the explosion, including a small hospital nearby as a precaution. As of the latest count, at least 11 people were injured in the explosion, the Associated Press [reports](#).

CHA-CHING: Following a House Natural Resources hearing Thursday on offshore energy revenue sharing for Gulf-producing states, Interior announced it would disburse nearly \$188 million to four states: Alabama, Louisiana, Mississippi and Texas, as well as their coastal political subdivisions. It is the first disbursement of funds under Phase II of the Gulf of Mexico Energy Security Act of 2006, which comes from oil and gas leasing revenues on the Outer Continental Shelf, according to DOI. See the *massive* check [here](#).

QUICK HITS

— As climate change zaps their snow, winter sports fans seek to change Washington, [McClatchy](#).

— Skinny and sweet: U.S. refiner earnings depend on the oil diet, [Reuters](#).

— India nears power success, but millions are still in the dark, [Bloomberg](#).

— Coal producer Peabody Energy doubles down on share buyback program, [S&P Global](#).

— How Oman's rocks could help save the planet, [The New York Times](#).

HAPPENING TODAY

8:30 a.m. — Administrative Law and Regulatory Practice Institute hosts Daniel Cohen, assistant general counsel for legislation, regulation and energy efficiency at the Energy Department, 1201 24th Street NW

11:15 a.m. — Agriculture Secretary Sonny Perdue discussion with former Agriculture Secretary Tom Vilsack on agriculture and water conservation, Denver, Colo.

12:00 p.m. — Women's Council on Energy and the Environment discussion on wholesale electricity pricing, 888 First Street NE

12:00 p.m. — The Nuclear Information and Resource Service, and U.S. Climate Action Network discussion on "Climate Justice and Nuclear Power in South Africa," 1200 G Street NW

THAT'S ALL FOR ME!

To view online:

<https://www.politicopro.com/newsletters/morning-energy/2018/04/did-pruitt-skate-by-187652>

Stories from POLITICO Pro

Ronny Jackson drama overshadows Pompeo success for White House Back

By Nancy Cook | 04/26/2018 06:05 PM EDT

White House aides were reveling in the pomp of French President Emmanuel Macron's state visit, viewing it as a welcome reprieve from the chaos of Cabinet confirmations, an intensifying Russia probe and a boss with a short fuse. Then reality hit.

President Donald Trump's pick for Veterans Affairs Secretary Ronny Jackson finally withdrew from the confirmation process amid escalating allegations of misconduct, and Trump called into the TV show *Fox and Friends* to deliver an unscripted interview touching on everything from the Russia probe and the investigation of his personal attorney Michael Cohen to fan-tweets from Kanye West—all before 10 a.m.

The day also included the confirmation of Mike Pompeo, previously Trump's CIA director, as secretary of state—an unexpectedly hard-fought victory that was overshadowed by routine House hearings featuring testimony from EPA Administrator Scott Pruitt, who has been accused of a string of ethics violations.

"The state visit was cool for folks in the White House and fun distraction for one hour from stories about Scott Pruitt or Michael Cohen before everyone got back to the shitshow," said one former White House official.

The president often publicly frames these hectic junctures as a White House unduly under siege from the press or other opponents. About Jackson's nomination, Trump said on Thursday: "He's a great man, and he got treated very, very unfairly. He got treated really unfairly. And he's a hell of a man."

The lack of vetting and Trump's tendency to name top-level nominees with little scrutiny dates back to the presidential transition in the fall of 2016. It's a pattern that surprises few insiders, even as it creates headaches for the White House and the nominees.

"Generally, White House aides are blaming the president from shooting from the hip and without giving it any thought, but this is how every decision he has made has gone," said the former White House official.

On Wednesday, the night before Jackson dropped out of consideration, a number of administration aides and Republicans close to the White House gathered at the Trump International Hotel for after-work drinks—and a few aides kept hoping aloud that Jackson would announce he was dropping out on TV, so no one would have to run back to the White House and everyone could keep drinking, according to one attendee.

The biggest beneficiary of this week's chaos was Pruitt, who started out the week under great scrutiny and disdain from several disparate circles of White House staffers and then ultimately skated through his two Capitol Hill hearings with little incident. Earlier in the week, those hearings were seen as a make-or-break moment for the EPA Administrator and ones that the president would pay attention to.

"As long as his explanations hold and there are no crazy discrepancies or smoking gun or anything like that, I don't think that creates any red flags for Pruitt," said one Republican close to the White House, who predicted Pruitt would survive the scrutiny.

What helps Pruitt and other Cabinet nominees who frustrate the White House or Trump is the math in the Senate. The Republicans do not have a large or cohesive enough majority to easily confirm new Cabinet secretaries, and the drama surrounding Jackson's departure puts a damper on creating any new vacancies to fill.

"In the ideal situation, the only headlines coming out of the agencies are the policy decisions advancing the president's agenda," said one senior administration aide, speaking about the spate of bad headlines surrounding Pruitt's leadership at the EPA. "That is the clear direction from the top, and we've communicated that."

But many White House officials—and the president himself—have adopted the view that the administration is unfairly maligned, no matter what it does.

Many aides were surprised that Pompeo's confirmation process seemed so shaky at certain points, given the White House's huge, upcoming foreign policy decisions on meeting with North Korea, keeping troops in Syria, and deciding the fate of the U.S.'s role in the Iran deal. The White House's Director of Legislative Affairs Marc Short devoted most of his time over the past few weeks to ensuring Pompeo got confirmed.

"We can only pick so many battles, and Pompeo has got to get done as quickly as possible," said one White House official.

To view online [click here](#).

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Pruitt dodges blame [Back](#)

By Anthony Adragna, Annie Snider and Alex Guillén | 04/26/2018 10:46 AM EDT

Scott Pruitt may have handled his daylong congressional grilling well enough to salvage his job for now — but only after he blamed his torrent of scandals on staff, disavowed one of his top advisers and raised new questions about what he knew about massive raises awarded to some of his closest aides.

The Environmental Protection Agency administrator shrugged off responsibility Thursday for a \$43,000 privacy booth and more than \$100,000 in first-class flights, and even said he has no idea whether his chief policy adviser showed up for work at all during a three-month stretch.

But the former Oklahoma attorney general stayed calm throughout the nearly six hours of questioning. And his televised performance brought no immediate complaints from the one person whose opinion matters — the media-obsessed president who has so far stuck with Pruitt despite a multitude of investigations and the exasperation of key White House staff.

"Let me be very clear: I have nothing to hide as it relates to how I've run the agency for the past 16 months," Pruitt told a House Energy and Commerce subcommittee, the first of two panels to subject him to hours of questioning Thursday.

But he also didn't offer enough specifics to satisfy Democratic lawmakers — and a few Republicans — who criticized the lavish spending, cozy relations with lobbyists and other controversies that have taken root on his watch. He pointedly refused to apologize, instead accusing his critics of trying to "derail" President Donald Trump's policies.

Several Republican lawmakers who defended him during the hearings said he'd held his own against a barrage of Democratic complaints.

"I think he did well," said Rep. Tom Cole (R-Okla.), adding, "I know him well enough to not believe that he's deliberately done anything wrong or that he's made decisions in an inappropriate or unethical manner."

Still, Cole admitted any decision on Pruitt's fate is in Trump's hands.

Rep. Betty McCollum (D-Minn.) said Pruitt merely tried to dodge accountability for actions such as a massive expansion of his personal security team, while sidestepping accusations that he had punished staffers who questioned whether he faces serious threats to his safety.

"He could have taken personal responsibility and really meant it," McCollum told reporters after an afternoon hearing by a House Appropriations subcommittee, where she had told Pruitt he should resign. "Instead he messed up in that he got caught up in thinking he needed more security than he needed, and that when employees pushed back on him, he did retaliate."

One aspect of Thursday's testimony drew a notable amount of attention — Pruitt's shifting explanations for what he knew, and when, about raises as high as 72 percent that went to some of his key aides.

Weeks ago, Pruitt told Fox News that he hadn't known about the raises until after the fact, that he did not know who authorized them and that the aides should not have received them. But under lawmakers' questioning Thursday, he acknowledged that he had authorized his chief of staff to award pay increases to the aides — but said he did not know how high they would be or that they would circumvent the White House's disapproval.

"I was not aware of the amount, nor was I aware of the bypassing or the [Presidential Personnel Office] process not being respected," Pruitt said, responding to a question from Rep. Paul Tonko of New York, the top Democrat on the Energy and Commerce Environment Subcommittee.

An EPA spokesman later said Pruitt had given his chief of staff, Ryan Jackson, blanket authorization to handle hiring and raises using the EPA's power under a water law that didn't require the White House's sign-off.

Lawmakers didn't ask — and Pruitt didn't say — whether he would discipline Jackson for his handling of the raises.

A preliminary report from EPA's inspector general has found that Jackson signed off on the pay hikes to Sarah Greenwalt, a Pruitt adviser who previously worked as his general counsel in the Oklahoma attorney general's

office, and Millan Hupp, a former "Team Pruitt Operations Director" who is now his director of scheduling and advance.

Pruitt also said he didn't know whether one of his top aides, Samantha Dravis, had failed to show up for work for much or all of November through January, as Sen. Tom Carper (D-Del.) has alleged. His answer essentially abandoned a past statement by an EPA spokesman, who called the accusations "baseless and absurd."

"I'm not aware that she did or did not appear for work. So that's something that is being reviewed at this point," Pruitt told lawmakers Thursday, referring to an inspector general decision to review her attendance.

Dravis, EPA's associate administrator in charge of EPA's Office of Policy until last week, was such a senior aide that she had traveled with Pruitt on official business in Morocco as recently as December. She also appears with him in a meeting photo that Pruitt's EPA Twitter account tweeted Dec. 6.

Pruitt also blamed his staff for the controversial purchase and installation of the privacy booth in his office, and said he would have stopped it if he knew the cost. He said the installation came after he'd received a phone call "of a sensitive nature" and requested "access to secure communication."

"I gave direction to my staff to address that, and out of that came a \$43,000 expenditure that I did not approve," he said. "If I'd known about it, I would have refused it."

Pruitt did not single out the staff members he was blaming for the phone booth installation, but agency staffers have told POLITICO that those and other pricey expenditures were overseen by Pasquale "Nino" Perrotta, the career employee who heads his security detail.

Even after surviving Thursday's gauntlet, Pruitt is still facing numerous investigations from Congress, the White House and government watchdogs into his taxpayer-funded first-class travel; unprecedented, 24-hour security detail; and sweetheart rental deal with the wife of a lobbyist who sought to influence his agency. A senior EPA official said Thursday that high-level staffers including Jackson, Greenwalt and Perrotta are willing to sit for interviews with staff of the House Oversight Committee, which is carrying out one of the probes of Pruitt's actions.

Ahead of Thursday's hearing, EPA distributed a 23-page document responding to various allegations.

Democrats ripped into him from the start, charging that Pruitt had put his own interests and political ambitions over the job of protecting the environment and human health, and he had shown he didn't deserve the public trust.

"I think your actions are an embarrassment to President Trump and distract from the EPA's ability to effectively carry out the president's mission, and if I were the president I wouldn't want your help," said Frank Pallone (D-N.J.). "I'd get rid of you."

Sitting in front of protesters wearing "Impeach Pruitt" T-shirts and a sign calling him "Mr. Corruption" on Thursday morning, Pruitt dismissed the wave of criticism as an attempt to undercut "transformational change" happening at the agency.

"Let's have no illusions about what's really going on here: Those who have attacked the EPA and attacked me are doing so because they want to attack and derail the president's agenda and undermine this administration's priorities," he said. "I'm simply not going to let that happen."

Rep. John Shimkus (R-Ill.), who chaired the morning hearing, said afterward that he thought Pruitt had acquitted himself well.

"I think that he answered the questions in the best way that he could answer them," Shimkus said.

Shimkus wouldn't speculate about potential next steps by the Energy and Commerce panel, saying the decision was up to full committee Chairman Greg Walden (R-Ore.). He also declined say whether he thought questions remain unanswered.

"I'm just glad he showed up," Shimkus said.

Pruitt's defenders, like Rep. David McKinley (R-W.Va.), who has praised Pruitt's rollback of climate change and water regulations, dismissed the Democrats' complaints as political posturing.

"To the public, I think this has been a lot of classic display of innuendo and McCarthyism that we're seeing too often here in Washington that I think unfortunately works against civility and respect for people in public office," he said. "Some can't resist the limelight, the opportunity to grandstand."

Rep. Joe Barton (R-Texas) said the focus on the controversies was an attempt to undermine Pruitt's, and Trump's, policies.

"If you can't debate the policies in Washington, you attack the personality, and that's what's happening to you," Barton told Pruitt. "Republicans do it when it's a Democratic president. Democrats do it when it's a Republican president. And in my opinion, it's just my opinion, that's what's happening to you."

Not every Republican came to Pruitt's defense, though. Rep. Ryan Costello of Pennsylvania offered the harshest criticism from the GOP, saying his activities deserved the anger they had provoked.

"I think the opprobrium that you've generated on some of these spending decisions is actually warranted," Costello, who is retiring from Congress, told Pruitt. "I've reviewed your answers, and I find some of them lacking or insufficient. And I believe you've not demonstrated the requisite good judgment required of an appointed executive branch official on some of these spending items."

Trump has so far stood by Pruitt, praising his work to pare back environmental rules and remaining wary of upsetting conservatives who strongly support the administrator.

The administration's desire to avoid another tough confirmation fight also appears to be weighing in Pruitt's favor. While new Secretary of State Mike Pompeo narrowly won Senate confirmation and was sworn in Thursday, Rear Adm. Ronny Jackson's nomination to head the Department of Veterans Affairs crashed and burned, and Trump also needs to win approval for a controversial pick to head the CIA.

Democrats suggested that Pruitt's controversies were the result of his penchant for abusing the perks of his position and rewarding his political backers.

"Only in recent weeks have we come to understand the extent of your political ambitions, your tendency to abuse your position for personal gain and to advance the agendas of your political benefactors in what appears to be a propensity for grift," Tonko said.

Under questioning from Rep. Anna Eshoo (D-Calif.), Pruitt declined multiple times to answer whether he felt any remorse for wasteful spending at the agency,

"I think there are changes I've made already," he said. But he deflected several questions about his first-class flights, saying his security detail decides where he sits on airplanes, and that he now plans to fly coach.

Eshoo didn't buy it.

"With all due respect, I may be elected, but I'm not a fool," she said. "That's really a lousy answer from someone that has a high position in the federal government."

Emily Holden contributed to this report.

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'Embarrassment' or 'McCarthyism': Key moments as Pruitt faces lawmakers [Back](#)

By Quint Forgey, Anthony Adragna, Alex Guillén and Annie Snider | 04/26/2018 01:40 PM EDT

Scott Pruitt, the scandal-ridden administrator of the Environmental Protection Agency, appeared on Capitol Hill on Thursday for back-to-back House committee hearings on his agency's budget request.

But the only spending most lawmakers wanted to discuss were reports of Pruitt's taxpayer-funded air travel, the sweetheart condo lease he secured from a lobbyist, and the numerous other allegations of misappropriating funds and unethical management that have tarred his tenure at the EPA.

Here are key moments from the contentious hearings, held by subcommittees of the House Energy and Commerce and House Appropriations committees:

A defiant Pruitt says he has nothing to hide. The former Oklahoma attorney general argued his critics were simply attempting to undercut the "transformational change" he's making at the agency on behalf of President Donald Trump. "Let's have no illusions about what's really going on here: Those who have attacked the EPA and attacked me are doing so because they want to attack and derail the president's agenda and undermine this administration's priorities," he said at the outside of the day's first hearing, in front of a House Energy and Commerce subcommittee. "I'm simply not going to let that happen." Pruitt maintained had "nothing to hide," and suggested some of the reports regarding his behavior were inaccurate. "Facts are facts and fiction are fiction," he said. "And a lie doesn't become truth just because it appears on the front page of a newspaper."

Pruitt acknowledged he authorized pay raises for his key aides. But he said he didn't know how much they were, or that his chief of staff — who took the blame for signing off on the salary hikes — circumvented the White House to award them. "I was not aware of the amount, nor was I aware of the bypassing or the [Presidential Personnel Office] process not being respected," Pruitt told lawmakers. Pruitt had earlier said on Fox News that he hadn't known about the raises and that the aides should not have received them. A preliminary report from EPA's inspector general found that chief of staff Ryan Jackson signed off on multiple large raises using Safe Drinking Water Act authority, which allows the agency to move forward without White House sign-off. The raises totaled as much as 72.3 percent.

But he blamed EPA's career staff for his \$43,000 privacy booth. He said career employees signed off on the expensive soundproof phone booth installed in his office — and maintained he would have refused it if he'd known about the cost. "I did have a phone call that came in of a sensitive nature and I did not have access to

secure communication," he said. "I gave direction to my staff to address that and out of that came a \$43,000 expenditure that I did not approve." The Government Accountability Office has said the agency violated spending laws by not informing Congress about the booth beforehand. To Pruitt's critics, the booth has come a prominent symbol of his reputation for high-spending and extreme secrecy. Pruitt later said he uses the booth only "rarely," and that "it depends on the nature of the call and how urgent the call is."

Pruitt also had trouble explaining the expensive biometric locks recently installed in his office. They require a code for him to enter, but he wouldn't say whether the locks feature fingerprint scanners or some other type of identification system. When Pruitt said career staffers made the decision to install the locks, Rep. Peter Welch (D-Vt.) wasn't impressed. "It's really starting to seem like there's something on the desk with a motto, 'The buck stops nowhere,'" he quipped.

It's still not clear whether one of Pruitt's top aides came to work for three months. "I'm not aware that she did or did not appear for work. So that's something that is being reviewed at this point," Pruitt said of Samantha Dravis, the associate administrator in charge of EPA's Office of Policy. Sen. Tom Carper (D-Del.) has alleged that Dravis largely did not work the months of November through January, and EPA's inspector general has agreed to review her attendance. Dravis said several weeks ago that she planned to resign, and her last day was reportedly April 20. Pruitt's comments Thursday were a shift from EPA's past statements that the no-show accusation is "completely baseless and absurd."

Democrats pounded him early and often. Those included top Energy and Commerce Democrat Frank Pallone of New Jersey, who said the scandals enveloping Pruitt are "an embarrassment to President Trump and distract from the EPA's ability to effectively carry out the president's mission. And if I were the president, I wouldn't want your help. I'd get rid of you."

Some Republicans also warned Pruitt he needs to answer questions. Environment subcommittee Chairman John Shimkus (R-Ill.) said he considered much of the media narrative surrounding the EPA chief's scandals to be "a distraction," but the committee "cannot ignore" reports of Pruitt's impropriety. "As public servants, our jobs are not based solely on the things we do, or the things we have done, but also on the way we conduct our business," Shimkus said in his opening statement. "It is no secret that there have been many stories in the press about the management and operations of the agency and your dealings with potentially regulated sectors." And full Energy and Commerce Chairman Greg Walden (R-Ore.) expressed concerns that Pruitt's progress on policy is being "undercut" by the allegations. "These issues are too persistent to ignore," said Walden, a member of House Republican leadership.

But other GOP lawmakers came to his rescue, and one likened the criticism to "McCarthyism." Rep. Joe Barton, a former Energy and Commerce chairman, and Rep. David McKinley (R-W.Va.), a staunch Pruitt ally, blamed Democrats and toxic partisanship for Pruitt's precarious professional standing. "If you can't debate the policies in Washington, you attack the personality, and that's what's happening to you," Barton lamented. McKinley accused Democrats on the panel of not being able to "resist the limelight" and said Pruitt's detractors were simply grandstanding. "I think this has been a lot of classic display of innuendo and McCarthyism that we're seeing too often here in Washington, that I think unfortunately works against civility and respect for people in public office," McKinley said.

Rep. Bill Johnson (R-Ohio) also jumped to shield Pruitt. "I think it's shameful today that this hearing has turned into a personal attack hearing and a shameful attempt to denigrate the work that's being done at the EPA and with this administration," he said. Public officials should have ethical standards "beyond reproach," Johnson said, "but so should members of Congress."

Staffers moved or dismissed under Pruitt weren't being punished, he said. "There's no truth to the assertion that decisions have been made about reassignments or otherwise as far as employment status based upon the things you reference. I'm not aware of that ever happening, and it's something I want to make very, very clear,"

Pruitt said, vowing he would not retaliate against civil servants who flag wrongdoing. The New York Times reported this month that several top staffers were reassigned or demoted after questioning Pruitt, and POLITICO reported that the agency's deputy homeland security chief was dismissed after signing off on a report questioning Pruitt's security spending.

One Republican ripped into Pruitt with particular gusto. "I think the opprobrium that you've generated on some of these spending decisions is actually warranted," Ryan Costello (R-Pa.), who is retiring from Congress, told the EPA chief. "I've reviewed your answers and I find some of them lacking or insufficient. And I believe you've not demonstrated the requisite good judgment required of an appointed executive branch official on some of these spending items." He went on to ask specifically about reports of retaliation against employees who questioned Pruitt, as well as whether security threats against him were "warranted or credible."

Pruitt: I only took that controversial trip to Morocco because the country's ambassador invited me.

"There was a free trade agreement that is in existence with Morocco and the ambassador of Morocco invited me to Morocco to negotiate the environmental chapter on that free trade agreement," Pruitt told lawmakers. The EPA administrator's December jaunt to the North African nation came under intense scrutiny when the agency, in a news release after the fact, described the trip as dual-purpose: to discuss updates to a U.S.-Morocco Free Trade Agreement "and the potential benefit of liquified [sic] natural gas (LNG) imports on Morocco's economy." Later on Thursday, Pruitt attempted to downplay his role in promoting American natural gas exports. "There was a lot of reference made to LNG only because the ambassador [of Morocco] asked me to share that with individuals when I was in country," he said.

Pruitt the leaker? After facing questions about the severity of the threats the EPA chief has faced in office — which the agency has cited to justify his pricey security budget — Pruitt read part of a report from the inspector general's office that documented threats directed at him and his family. Asked whether EPA Inspector General Arthur Elkins Jr. had written the report he cited, Pruitt replied, "I'm looking at the document that says inspector general." But a spokeswoman for the IG's office said Thursday that it came from another official, not Elkins himself. "It was an internal memo from Assistant IG for Investigations Patrick Sullivan," OIG spokeswoman Tia Elbaum said in an email. "It was leaked without authorization. It will be released in the near future as part of an OIG FOIA response."

By the time Pruitt was finished, Shimkus was "just glad he showed up." The Illinois Republican, who chaired Pruitt's first hearing, said he thought the administrator handled himself well and that GOP members were suitably tough in their questioning. "Some of it was accountability for policy, so I don't know what more [critics] want," Shimkus told POLITICO of Pruitt's performance. "I think that he answered the questions in the best way that he could answer them." Shimkus declined to speculate about potential next steps the House Energy and Commerce Committee or the Environment subcommittee would take, and didn't specifically state whether he thought questions remain unanswered after today's grilling. "I knew it would be painful," he said.

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Shimkus praises Pruitt performance in first hearing [Back](#)

By Anthony Adragna | 04/26/2018 02:39 PM EDT

Rep. [John Shimkus](#) (R-Ill.), who chaired EPA Administrator Scott Pruitt's first hearing today, said he thought Pruitt handled himself well and that Republican members were tough in their questions.

Shimkus pointed to questions from Reps. [Ryan Costello](#) (R-Pa.), [Leonard Lance](#) (R-N.J.) and [Billy Long](#) (R-Mo.) at the Energy and Commerce environment subcommittee hearing this morning.

"Some of it was accountability for policy, so I don't know what more [critics] want," Shimkus told POLITICO of Pruitt's performance. "I think that he answered the questions in the best way that he could answer them."

Shimkus declined to speculate about potential next steps, saying that decision was up to full committee Chairman [Greg Walden](#) (R-Ore.). And he declined to specifically state whether he thought questions remain unanswered.

"I'm just glad he showed up," he said. "I knew it would be painful. There would be policy and politics."

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Gowdy expands probe into EPA's Pruitt [Back](#)

By Anthony Adragna and Alex Guillén | 04/13/2018 05:45 PM EDT

House Oversight Chairman Trey Gowdy (R-S.C.) said Friday he's expanding his probe into the alleged ethical and spending abuses by EPA Administrator Scott Pruitt one day after his staff met for several hours with a former EPA aide who was pushed out of the agency.

Gowdy's latest [letter](#) is a further sign of the deepening bipartisan scrutiny facing President Donald Trump's environmental chief, whose critics accuse him of excessive spending on travel, vehicles, staff raises and luxe security features such as a \$43,000 soundproof phone booth.

The committee's new request focuses on the decision to increase Pruitt's security to round-the-clock protection, contracts to sweep Pruitt's office for electronic surveillance, his trips to Italy and Morocco, the hiring of an Italian security firm, and travel by Pruitt's security chief, Pasquale "Nino" Perrotta.

The letter comes after the committee interviewed ousted EPA employee and former Trump campaign aide Kevin Chmielewski, who is being treated as a whistleblower. A committee spokeswoman said the information he provided is consistent with allegations laid out in [a letter](#) released Thursday by House and Senate Democrats who had also spoken to him.

The committee also asked for sit-down interviews with four senior EPA officials: Perrotta; Ryan Jackson, Pruitt's chief of staff; Millan Hupp, a scheduling and advance aide; and Sarah Greenwalt, a senior counsel to Pruitt. Gowdy requested the agency schedule those interviews and provide a litany of documents by April 27. Gowdy also requested an on-the-record interview with Chmielewski, who spoke more informally with lawmakers this week.

Hupp and Greenwalt, both of whom have worked for Pruitt since he was Oklahoma's attorney general, are the two staffers who received raises via a special authority granted Pruitt under the Safe Drinking Water Act. Pruitt told Fox News last week he was not aware of the raises, although Chmielewski told Democrats this week that the raises were "100 percent Pruitt himself."

EPA spokesman Jahan Wilcox said the agency had "responded to Chairman Gowdy's inquiries and we will continue to work with him."

EPA's inspector general is also investigating complaints about Pruitt's travel spending and other practices. The inspector general's office said it will release an interim report Monday afternoon on one of its probes, which involves whether Pruitt misused special hiring authority provided by the Safe Drinking Water Act to bring some key aides into the agency.

It's unclear whether the IG has expanded that probe to include a recent controversy around EPA's use of the same water law to grant raises to the two Pruitt aides despite the White House's disapproval.

Chmielewski told Democrats this week that EPA fired him after he refused to sign off retroactively on first-class travel for one of Pruitt's closest aides, Samantha Dravis. Gowdy's letter does not request an interview with Dravis, who has announced her intent to leave the agency.

During congressional interviews earlier this week, Chmielewski outlined a detailed litany of seemingly unethical behavior against Pruitt. He said the EPA chief insisted on staying at expensive hotels while traveling even if they exceeded permissible federal spending limits, directed staff to book him on Delta Air Lines so he could accrue frequent flier miles, made a close aide "act as a personal real estate representative" and then retaliated against staff who questioned his behavior, among other allegations.

EPA has previously dismissed Chmielewski as one of a "group of disgruntled employees who have either been dismissed or reassigned." The agency did not immediately comment on the latest letter.

Gowdy's probe into Pruitt's activities has been in contrast to his GOP colleagues, who have adopted a "wait and see" approach toward the EPA chief's ethical woes. Lawmakers this week expressed discomfort with Pruitt's spending when asked and vowed to press him about it at future hearings. But they've stopped short of demanding documents or issuing subpoenas to investigate the alleged ethics lapses.

Pruitt last appeared before Congress in late January before the Senate Environment and Public Works Committee. Unlike his fellow Cabinet members, he has yet to appear before any congressional committees to defend his fiscal 2019 budget request. And he's not scheduled to return to Capitol Hill for another two weeks, when he is scheduled to attend an April 26 session with the House Energy and Commerce Committee.

"The Republicans are absolving themselves of all oversight responsibility even in the face of the most egregious conduct. They may as well stop calling committees oversight," Melanie Sloan, senior adviser at American Oversight, told POLITICO. "What would it take? Would he literally have to kill somebody before they say it's a problem?"

GOP lawmakers were less patient with Obama EPA officials. Senate and House lawmakers questioned former Administrators Lisa Jackson and Gina McCarthy, as well as other senior brass, on issues ranging from the use of nonofficial email accounts, whether they used texting to avoid record-keeping requirements, whether they allowed a senior staffer to commit time fraud and why they hadn't fired employees who spent hours watching pornography at work more quickly.

EPW Chairman John Barrasso (R-Wyo.) has said he planned to await the results of a White House review of Pruitt's conduct and would not comment on multiple occasions this week on when the administrator would return to his committee.

"He was just here earlier this year and answered questions for 2½ hours, but I expect him to come back again," Barrasso told reporters.

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EPA prepping documents in response to Oversight probe [Back](#)

By Anthony Adragna | 04/26/2018 08:11 PM EDT

EPA staff is in the process of providing documents to the House Oversight Committee that it believes will respond to allegations of lavish spending and unethical conduct by Administrator Scott Pruitt and may negate the need for several aides to appear for interviews, according to a senior EPA official.

The agency staffers believe the documents will show former Trump campaign aide Kevin Chmielewski, who served as a senior aide to Pruitt, made a number of "exaggerations" when he spoke with Democratic and Republican lawmakers, according to the official.

Senior staffers at the agency are also willing to sit for interviews with Oversight staff if desired, the official said. Those officials include: Pasquale "Nino" Perrotta, Pruitt's security chief; Ryan Jackson, Pruitt's chief of staff; Millan Hupp, a scheduling and advance aide; and Sarah Greenwalt, a senior counsel to Pruitt.

House Oversight Chairman [Trey Gowdy](#) (R-S.C.) [expanded his probe](#) into the embattled EPA chief's activities one day after his staff sat down with Chmielewski. In an April 13 letter, Gowdy requested a host of documents and that the interviews be scheduled by April 27.

In addition, an Oversight Committee aide said earlier this week the committee had informally requested on April 16 that Samantha Dravis, formerly one of Pruitt's closest aides, appear for a transcribed interview with committee staff. Dravis had not been included in Gowdy's original letter because it was thought she left the agency, but her resignation was actually effective April 20, according to the aide.

A spokeswoman for the Oversight Committee did not respond to request for comment today.

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Documents: EPA reversed raises one day after Pruitt's Fox interview [Back](#)

By Emily Holden and Nick Juliano | 04/26/2018 06:45 PM EDT

EPA reversed raises for two top aides to Administrator Scott Pruitt the day after his interview with Fox News, according to [documents](#) shared by the agency today.

Pruitt [told Fox](#) his staff had authorized the raises and he had "corrected them." A day later, on April 5, Pruitt's chief of staff, Ryan Jackson, signed personnel forms reverting the aides to their previous pay grades, according to copies of the forms reviewed by POLITICO. Jackson signed the documents "for Scott Pruitt," as he had on forms authorizing the initial pay bumps a few days earlier, according to documents [previously released](#) by EPA's inspector general.

Sarah Greenwalt, senior counsel to Pruitt, received a \$56,765 increase in her annual salary on April 1, and Millan Hupp, director of scheduling and advance, saw a \$28,130 increase that same day, according to the earlier IG documents.

Jackson reversed those moves on April 5, bumping Greenwalt's salary back to \$109,900 per year, and Hupp's to \$88,450, according to the new documents.

Pruitt signed a memo in March 2017 delegating to Jackson the ability to make hiring and salary decisions using a special section of the Safe Drinking Water Act.

"Administrator Pruitt has consistently said he was not aware of the amount of the raises or the process that was used, as he said both today and in prior interviews," EPA spokesman Jahan Wilcox said in a statement. "He was aware one of the individuals was receiving changes to job responsibilities and might be asking for a raise, but had no further involvement in the discussions, negotiations or approvals, because he had authorized his Chief of Staff and other EPA officials to handle all personnel matters."

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McConnell seeks redemption in ugly West Virginia primary [Back](#)

By Alex Isenstadt | 04/26/2018 04:48 PM EDT

HUNTINGTON, W. Va. — Don Blankenship walked into the Guyan Golf & Country Club on Tuesday afternoon and bluntly laid out his plan for the final two-week stretch of the GOP Senate primary: a relentless slash-and-burn campaign targeting Mitch McConnell.

As the assembled local GOP women's group munched on chocolate chip cookies, the coal baron who spent a year behind bars after a deadly 2010 mine explosion compared his current battle against the McConnell-led Republican establishment to his past legal fight against the federal government.

"When you've been falsely charged, when you've had seven of 10 bill of rights flagrantly violated, you tend to fight back. ... I make no apologies for that," he said, adding that when he sees people like McConnell "leading us to the left, I will speak out about it, because I know bad people join good organizations."

As the dramatic May 8 primary campaign hurtles to a close, it's taking on an all-too familiar outline. For the second time in a matter of months, an insurgent outsider is taking aim at McConnell, looking to capitalize on the broiling anti-establishment unrest that's dominating Republican politics. And just like last time, McConnell is fighting back.

In the fall, the leader's aggressive campaign to defeat Alabama Republican Roy Moore backfired spectacularly. This time, his attempt to stop the 68-year-old Blankenship seems to be faring better. Amid an avalanche of attacks from a McConnell-aligned super PAC, two new polls out this week show Blankenship, once seen as an early front-runner, plunging into third place.

Crisscrossing the state this week, Blankenship savaged the Kentucky Republican as weak-kneed, accused him of failing to stand up for the coal industry, and said he'd long ago lost touch with Republican voters.

Blankenship vowed to oppose McConnell as Senate GOP leader if he won and began airing a TV ad — which he personally composed — envisioning McConnell as a bog-enveloped "swamp captain."

At times, the attacks grew intensely personal. During an interview with POLITICO on Sunday, Blankenship said McConnell "has a lot of connections in China," adding that the GOP leader's wife, Transportation Secretary Elaine Chao, is "from China, so we have to be really concerned that we are in truth" putting America's interests first. Blankenship's girlfriend was born in China.

During an appearance on a local radio show the following day, Blankenship repeated the jab, describing Chao's father as a "wealthy Chinaperson," who was "well-connected in China."

Asked about the remarks, Josh Holmes, a longtime McConnell political adviser, charged that Blankenship is "mentally ill," noting that Blankenship had once spoken of moving to China and becoming a Chinese citizen. Holmes also said Blankenship had used a "racial blast" against the Taiwan-born Chao, whom he described as "the dictionary definition of the American dream."

"The one consistency we've seen over the last decade is that the death rattle of a primary candidate is always a tendency to attack other Republicans because they know reporters will report it," Holmes added. "At this point what's clear is that voters are writing him off and so he knows that by attacking McConnell he'll get attention."

Driving the McConnell team's offensive is a belief that Blankenship cannot defeat Democratic Sen. Joe Manchin in November.

This spring, Steven Law, president of the McConnell-aligned Senate Leadership Fund super PAC, wrote a memo to top Republican Party donors that stated Manchin was beatable — but not if Blankenship wins the primary.

"We would forfeit any chance of beating Manchin if Blankenship becomes the nominee," wrote Law, underlining the sentence for emphasis.

Republican strategists spent weeks deliberating how to take down Blankenship, concerned that an overtly Washington-led effort would only strengthen him - just as it did when Senate Leadership Fund spent millions of dollars against Moore.

Finally, a group of Republican strategists who've previously worked with Senate Leadership Fund mobilized and earlier this month launched the generically-titled Mountain Families PAC. Over the span of a little more than a week, the super PAC pummeled Blankenship with over \$700,000 in TV ads accusing him of contaminating drinking water with coal slurry.

The creative force behind the commercials was a GOP consulting firm spearheaded by Larry McCarthy, a McConnell ally who is widely viewed as the master of the political attack ad. Among his credits: the 1988 Willie Horton spot that helped to sink Democrat Michael Dukakis' presidential bid.

Apparently not finished with Blankenship, Mountain Families PAC on Thursday began purchasing additional commercial airtime.

With Blankenship cratering in polls, many Republicans are convinced that Blankenship has been effectively neutralized and that the contest has emerged as a two-person race between GOP Rep. Evan Jenkins and state Attorney General Patrick Morrisey. The coal baron has derided both as pawns of the establishment.

As he hit the trail this week, Blankenship bristled over the effort to upend his candidacy. Each time, he pointed to the super PAC's connection to the GOP leader.

"As you know," he said at the GOP women's luncheon in Huntington, "I've even been beat up by the Republican Mitch McConnell."

During a news conference on Monday afternoon, Blankenship fired back at Washington Republicans who called him unelectable, saying even his dog could beat Manchin.

At one point, he was asked point-blank whether he had a message for McConnell.

"He needs to understand that if I'm there I will not vote for him for majority leader, and so the rest of the senators should understand that they should not put him up if they need my vote," Blankenship responded.

In an interview, Blankenship recounted a personal history with McConnell, a fellow coal country pol, that he said dated back nearly three decades. He said he first met McConnell during the late 1980s while visiting the home of a GOP donor in Kentucky, and that their paths occasionally crossed over the years after. The coal company that Blankenship formerly presided over, Massey Energy, has mines in Kentucky.

Massey, Blankenship said, had been helpful to McConnell early in his political career. In 1999, Blankenship, a longtime GOP donor who for years bankrolled West Virginia campaigns, contributed \$1,000 to McConnell's reelection campaign, according to federal filings.

Over time, though, Blankenship said he came to see the Republican leader as insufficiently supportive of the mining industry. He said they haven't spoken in about a decade.

"I never felt that he fought very hard for coal. He seemed to be too willing to compromise on climate change legislation," said Blankenship, adding that West Virginians felt that McConnell didn't put up enough of a fight against President Barack Obama's push to regulate carbon emissions.

McConnell advisers dispute the criticism. "People have accused Mitch McConnell of a lot of things over the years, but I've never heard anyone say he's insufficiently pro-coal," said Holmes.

After being released from prison last year, Blankenship launched his campaign with an eye toward clearing his name and pushing back against the allegations the federal government leveled against him. As the race has progressed, he has come to see his war with McConnell as intertwined with the central theme of his candidacy: that the Washington establishment is out to get him.

At Blankenship campaign events, he hands out copies of "An American Political Prisoner," the manifesto he wrote while in jail.

The anti-McConnell campaign has a decidedly homemade flavor. Blankenship, who's staffed his campaign with West Virginia-based operatives rather than ones from Washington, personally wrote the "swamp captain" ad, an amateur-style spot that lacks the slick production of typical political commercials. After producing the concept and the script, his small group of advisers made some edits before releasing it to TV stations.

But as the race enters its final days, Blankenship finds himself playing catch-up against his more establishment-friendly rivals.

During his closing remarks in a Tuesday afternoon debate, he chose to go after one of his opponents with a familiar weapon.

"Will Evan Jenkins stand up when Mitch McConnell looks at him?" Blankenship asked as the congressman looked on. "That's the question."

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Pruitt scales back EPA's use of science [Back](#)

By Emily Holden and Annie Snider | 04/24/2018 03:17 PM EDT

Environmental Protection Agency chief Scott Pruitt announced Tuesday he would seek to bar the agency from relying on studies that don't publicly disclose all their data, a major policy change that has long been sought by conservatives that will sharply reduce the research the agency can rely on when crafting new regulations.

The unveiling of the proposed rule delivers a win to Republicans like House Science Chairman [Lamar Smith](#) (R-Texas), who unsuccessfully pushed legislation to impose the same type of change. The move also demonstrates Pruitt's persistence in pursuing President Donald Trump's anti-regulation agenda just two days before the embattled EPA chief is due to face fierce questioning from lawmakers about his hefty spending, expanded security detail and cheap condominium rental from the wife of an energy lobbyist.

At an invitation-only meeting at EPA headquarters with Smith, Sen. [Mike Rounds](#) (R-S.D.) and other supporters of the policy, Pruitt said the proposed rule was critical in ensuring that the agency was transparent about how it is making decisions to justify costly new regulations. It is the latest step Pruitt has taken to fundamentally shift the agency's approach to science.

"It is a codification of an approach that says as we do our business at the agency the science that we use is going to be transparent, it's going to be reproducible, it's going to be able to be analyzed by those in the marketplace. And those who watch what we do can make informed decisions about whether we've drawn the proper conclusions or not," Pruitt said.

Text of the proposed rule was not immediately available.

The proposal, based on legislation pushed by Smith, is intensely controversial, and scientists and public health groups say it will prevent federal regulators from enacting health and safety protections. Nearly 1,000 scientists, including former EPA career staffers, signed a [letter](#) opposing the policy sent by the Union of Concerned Scientists to Pruitt on Monday.

Their primary concern was that many of the country's bedrock air and water quality regulations are based on research that cannot disclose raw data because it includes the personal health information.

But industry has its own version of the same problem. EPA often relies on industry studies that are considered by companies to be confidential business information when determining whether new pesticides and toxic chemicals are safe to use. Internal EPA emails obtained under the Freedom of Information Act show that EPA political officials, including Nancy Beck, who became the chief of the agency's chemical safety office last year after working for years at a chemical industry lobbying group, worried that the new policy would limit the agency's ability to consider industry data or would force companies to make this proprietary data public.

"We will need to thread this one real tight!" Richard Yamada, political official who led work on the new policy wrote to Beck after she raised the concerns.

It was not immediately clear if the new proposed rule included measures to address those concerns.

Rush Holt, CEO of the American Association for the Advancement of Science, said Pruitt's changes could keep the agency from revising public health regulations as problems arise or new data comes to light.

"On the surface it sounds so innocuous or even beneficial. What could be wrong with transparency? Well it's clear to me that this is not based on an effort to be transparent. It is rather based on an effort to be just the opposite," he said.

"EPA is particularly important because when science is misused, people die," he added.

Pruitt has been discussing the new scientific policy publicly for weeks, but it only went to the White House for interagency review last week. Such swift review is very rare for the Office of Management and Budget, which often takes months to vet a new policy. At least one group, the Environmental Defense Fund, has requested a meeting with OMB officials to discuss the rule, but OMB's website shows that no meetings have been scheduled with interested groups.

Many public health studies can't be replicated without exposing people to contaminants, and environmental disasters such as the Deepwater Horizon oil spill cannot be recreated, the group said, raising intellectual property, proprietary and privacy concerns.

Pruitt's predecessor Gina McCarthy, and her air chief Janet McCabe, in an op-ed in The New York Times in March said concerns about studies are dealt with through the existing peer-review process, which ensures scientific integrity.

"[Pruitt] and some conservative members of Congress are setting up a nonexistent problem in order to prevent the E.P.A. from using the best available science," they said.

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'Jon poked the bear': Tester braces for Trump's revenge [Back](#)

By Burgess Everett | 04/26/2018 05:47 PM EDT

Jon Tester didn't intend to play a central role in taking down President Donald Trump's pick to lead the Veterans Affairs Department. Yet that's exactly what the Montana Democrat ended up doing

And now, Trump is coming after him.

The president is enraged over Tester's work documenting allegations of malfeasance by Rear Adm. Ronny Jackson, which quickly unraveled Jackson's nomination to be VA secretary and marks a turning point in the relationship between the moderate Democrat and Trump.

As Tester's reelection campaign kicks into high gear, Trump is more motivated than ever to campaign against him in the ruby-red state — accusing the senator of irresponsibly leaking the damaging information to undermine the president's nominee.

Trump said Thursday that Tester will have a "big price to pay" for his part in working to sink Jackson's nomination. But Tester is sanguine about his decision to go public with accusations about Jackson's workplace misconduct, poor prescription practices and drinking on the job.

"If he thinks it's my job to sweep his stuff under the table and ignore our military folks, he's wrong. If he thinks I should not be sticking up for veterans, he's wrong," Tester said Thursday of the president. "I look forward to working with President Trump. I've worked with him many times in the past, but we disagree."

Tester has repeatedly tried to emphasize points of agreement with Trump in his nascent reelection campaign, including sending Trump 13 of his bills to sign. But Trump and other Republicans are taking it personally that as ranking member of the Senate Veterans Affairs Committee, Tester and his staff compiled interviews with more than two dozen current and former military members describing Jackson's alleged wrongdoing and then released them this week.

Senate Majority Whip John Cornyn (R-Texas) said Tester "painted a big target on himself" this fall in Montana, which Trump won by 20 points. And a Republican senator, granted anonymity to speak candidly about a colleague, said a "livid" Trump is now set to prioritize the campaign to knock off Tester this fall.

"Jon poked the bear. Did you see the bear today? The bear was mad," the senator said. "If there was any doubt he was coming to Montana it was removed today. He overreached."

The allegations, sourced anonymously, were the death knell of Jackson's nomination.

"That was not Jon's best time with regards to his Senate career," said Sen. Pat Roberts (R-Kan.). "Man, they aim low. They really aim low. And they brought him down."

Democrats strongly reject that argument. They say Tester did the right thing by speaking up about a crucial post and that Trump and Republican are deflecting blame for the Jackson debacle.

"Sen. Tester released profoundly serious, credible allegations from military men and women who put their careers on the line," said Sen. Richard Blumenthal (D-Conn.). "The administration bungled this nomination from the start. And then it fumbled the defense of its nominee. So the blame really lies with the administration."

Former Secretary of Defense Chuck Hagel also defended Tester from partisan attacks.

"I've always admired Jon Tester's commitment to helping veterans — not using veterans for political purposes. Veterans know who their champions are, and Jon Tester is one of them," said Hagel, who also served as a Republican senator from Nebraska.

Still, in interviews this week, Tester acknowledged it was "risky" for him to release the information about Jackson. The allegations could turn out to be false, he acknowledged, and take on a more partisan tinge by coming from the Democratic minority.

Tester felt compelled to move given the circumstances and received no criticism for doing so from Senate Veterans' Affairs Chairman Johnny Isakson (R-Ga.) on Thursday. In fact, until about a week ago, Jackson's nomination appeared to be going relatively smoothly, save for concerns about his lack of experience. But then Tester's staff started getting calls. Lots of calls.

By Wednesday, 23 people had contacted the committee about Jackson's history of misconduct, according to Democratic aides. Tester spoke to some of them, while his staff handled most of the work.

And as inquiries poured in from the press, Tester felt he had no choice but to go forward publicly. Each allegation in the two-page document, including that Jackson drunkenly crashed a government vehicle and wrote his own prescriptions, was verified by at least two sources, Democratic aides said. Two more people buttressing the claims contacted the committee after the summary was released.

"I don't want to be in this situation. But the truth is. We got the information. It's our obligation to follow up," Tester said. "We did not initiate any of this. None of it. It was news to us."

Tester gradually ramped up his role in challenging Jackson's beleaguered nomination as the week wore on. After allegations about Jackson's history dangled anonymously for two days, Tester confirmed them in an NPR interview on Tuesday night then did several cable news hits before releasing the two-page summary of Jackson's alleged misconduct on Wednesday.

Sen. Dan Sullivan (R-Alaska) said Tester's move "poisons the well" in a committee that generally operates outside partisan politics, but allies said Tester had no choice and that Republicans were disingenuously claiming they wouldn't have done the same.

"Do you think if the shoe was on the other foot it would have been released? It would be irresponsible if it wasn't. Military members came forward wanting to talk about the doctor," said Sen. Claire McCaskill (D-Mo.).

But Tester is under heavy attack from Trump, the White House and Republicans for the move. Trump said Thursday that Tester's work "is going to cause him a lot of problems in his state."

"I find it outrageous for a senator for political gain to take uncorroborated allegations that have not been investigated and to throw them out in a way to besmirch somebody's character," said Marc Short, Trump's legislative director. "Very irresponsible to go on national TV and make those allegations knowing that that would besmirch that person's character."

The incident and its fallout underscores how the burly, plain-spoken Tester hasn't exactly tacked to the center in an election year. Perhaps he feels emboldened after dodging a big-name opponent; after former Rep. Ryan Zinke was drafted into the Trump administration and the state attorney general passed on the race, Tester's opposition is made up of lesser known opponents who will compete in a June primary.

And since Trump became president, Tester often votes in a different manner than his fellow red state incumbents, seemingly unworried about his state's GOP lean. He was the lone red state Democrat to oppose Mike Pompeo to be secretary of state on Thursday and voted twice against a government funding bill in January.

But Tester has also positioned himself as someone who sends Trump bills to sign, including eight on veterans issues, and is open to working with the president. And he seems to genuinely believe that if he sticks to his guns and does not try to pander to conservative voters, the politics will work out this fall.

"It was going to be difficult anyway," Tester said of his campaign. "Look, if I made decisions around here based on the election, I wouldn't be a very good senator."

Tester's decision to aggressively take on Trump is rare among at-risk senators. Now, Tester is credited with helping bring down the confirmation prospects of a man whom Trump counts as a confidant, friend and personal doctor.

And Trump is plainly angry about it, to almost no one's surprise.

"I can understand that, if [Trump] thinks it's a personal attack. If you have a friend and someone personally attacks your friend, you're going to have to fight back," said Sen. Joe Manchin (D-W.Va.). "But Jon is also going to have to do his job, too."

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Pompeo confirmed as secretary of state [Back](#)

By Nolan D. McCaskill | 04/26/2018 12:35 PM EDT

The Senate confirmed Mike Pompeo to be President Donald Trump's secretary of state on Thursday, after a handful of Democrats facing difficult reelection challenges joined every Republican in backing the CIA director.

Pompeo's hawkish foreign policy views drew strong opposition from the left, but he ultimately won over Democratic Sens. Heidi Heitkamp of North Dakota, Joe Manchin of West Virginia, Joe Donnelly of Indiana, Bill Nelson of Florida, Claire McCaskill of Missouri and Doug Jones of Alabama.

Pompeo, who was confirmed on a 57-42 vote, was sworn in early Thursday afternoon by Supreme Court Justice Samuel Alito, according to State Department spokesperson Heather Nauert.

He's wasting little time. Almost immediately after being sworn in, Pompeo was to fly to Brussels for a meeting of foreign ministers, followed by stops in Riyadh, Jerusalem and Amman over the next four days. The newly minted secretary of state is expected to discuss a range of hot issues with counterparts in Europe and the Middle East, including the fate of the Iran nuclear deal.

Pompeo ultimately received more Democratic votes for secretary of state than Rex Tillerson. And unlike Tillerson, who repeatedly clashed with and was undercut by Trump, Pompeo enjoys a positive relationship with the president. Trump applauded Pompeo's confirmation, hailing him as a "patriot" with "immense talent, energy and intellect" who will be an asset for the United States.

"He will always put the interests of America first," Trump said in a statement. "He has my trust. He has my support."

Pompeo is also expected to play a major role in talks with North Korea. He met with dictator Kim Jong Un over Easter weekend in a private trip to Pyongyang. The secret summit came ahead of an expected meeting between Trump and Kim.

The Trump administration had little margin for error in confirming Pompeo. With Sen. John McCain (R-Ariz.) out recovering from cancer treatment, Republicans' majority had slimmed to 50-49. Libertarian-leaning Sen. Rand Paul (R-Ky.), a member of the Senate Foreign Relations Committee, had also initially announced his opposition to Pompeo.

The former Kansas congressman was poised just days ago to get an unfavorable recommendation from the Senate Foreign Relations Committee until Paul flipped, citing assurances from the president and incoming secretary that the war in Iraq was a "mistake" and that the U.S. should wind down its presence in Afghanistan.

Republican leaders were determined to bring Pompeo's nomination to the floor regardless of the committee vote. But had Paul remained opposed, he and Democrats could have killed the nomination outright.

Paul's shifting position, however, all but assured Pompeo would breeze through Thursday's confirmation. Republicans maintained that he is well-qualified to be America's top diplomat and criticized Democrats for playing politics with his nomination. Fourteen Senate Democrats had voted to confirm him as CIA director in January 2017.

"From the founding of the republic until 2017, the Senate has never required a cloture vote to confirm a secretary of state nominee. Now we're at two," Senate Majority Leader Mitch McConnell complained earlier Thursday. "I guess Senate Democrats are in a history-making mood. Because over the past 15 months, they've embarked on a partisan campaign to block, obstruct and delay President Trump's nominees that is quite simply without precedent in American history."

Senate Minority Leader Chuck Schumer (D-N.Y.) said Wednesday he was troubled by Pompeo's past rhetoric and argued that he was too hawkish to be secretary of state. He also indicated that Pompeo's confirmation hearing did nothing to convince him that he would serve as a check on the president.

"This is not about denying the president his team just for the sake of it," Schumer said. "This is about the role of the Congress and, frankly, the Cabinet to provide a check on the president, who might go off the rails and undo the respect for rule of law, the tradition of rule of law that we have had in this country for so long."

Aside from concerns about his foreign policy views, many Democrats also opposed Pompeo because of past comments he's made denigrating Muslims and members of the LGBT community.

Pompeo was among a trio of controversial Cabinet and Cabinet-level nominees the president named in recent weeks, and he is expected to have the easiest time getting confirmed.

Pompeo's deputy at the CIA, Gina Haspel, is expected to have her confirmation hearing to succeed him as CIA director next month. Department of Veterans Affairs secretary nominee Ronny Jackson withdrew from consideration Thursday morning following allegations that he drank on the job and loosely dispensed pills on foreign trips.

The Senate also confirmed Richard Grenell to be the ambassador to Germany on Thursday on a 56-42 vote.

Nahal Toosi contributed to this report.

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Perry's latest bid to help coal faces uphill battle [Back](#)

By Eric Wolff | 04/25/2018 05:08 AM EDT

Energy Secretary Rick Perry's latest idea to protect coal-fired and nuclear power plants may not fare much better than his previous efforts, according to energy experts.

Perry is considering invoking the 1950 Defense Production Act to keep money-losing power plants running by designating them as crucial for national security. But that would stretch the definition of the law and almost certainly draw legal challenges — and it would hit a big hurdle in Congress, which would need to approve perhaps billions of dollars in funding to keep the plants afloat, the experts said.

At the urging of President Donald Trump, Perry has sought to keep open coal and nuclear power plants that are threatened with shutdowns amid the stagnant demand for power — and even as natural gas and renewable power sources grab a growing share of the market.

So far, Perry's had no luck. FERC earlier this year rejected his proposal to give the plants financial support, and Energy Department lawyers stymied a push last year to invoke the agency's authority under the Federal Power Act to force the plants to run.

Some experts said any attempt to use the DPA is likely to meet the same fate.

"To me, it's a tough argument to make. It's a specious argument on its surface that seems like a perversion of the intended use of the Defense Production Act," said Tom Hicks, a former acting undersecretary of the Navy under former President Barack Obama and now a principal at the advisory firm The Mabus Group. "Defense Production Act is on the vanguard of the need for resources, not on the back end for an industry being challenged by economic forces."

But the effort has been a priority for Trump and Perry, who sees saving coal-fired power generation as vital to U.S. security, according to a source familiar with the conversations on the issue.

The Cold War-era law grants the federal government powerful authorities to inject cash into companies essential for national defense in order to preserve domestic supplies of key products. But DOE will have to make the case that electricity produced specifically from coal and nuclear power plants, and not other types of power, is a critical resource.

Using the act to protect the plants when there appeared to be no immediate shortage of power supplies would be a novel application that would almost certainly face legal challenge.

"If the administration uses DPA, they're going to be using it very creatively," said Ari Peskoe, director of the Electricity Law Initiative at the Harvard Law School Environmental and Energy Law Program. "They may come up with reasoning for higher rates and who's going to pay for it. Whether that will hold up, I don't know."

Perry and his staff appear to have very few viable options for bailing out coal and nuclear power, a major energy priority for Trump, who has promised to revive the coal industry. DOE has opened a comments process for interested parties to weigh in on its use of the Federal Power Act's 202(c) emergency provisions, though that would require the agency to go through FERC, which unanimously rejected a similar Perry effort in January.

The 202(c) effort has been pushed by coal magnate Bob Murray, owner of Murray Energy, and by FirstEnergy Solutions, the unit of FirstEnergy Corp. that is in bankruptcy proceedings and which expects to shut down four coal and nuclear power plants. That company asked DOE to use the emergency authority to save not only its plants, but all 85 coal and nuclear power plants in the PJM Interconnection power market.

The DPA was last used by the Obama administration starting in 2012 to help spur the biofuels industry to develop the kind of advanced biofuels that could power ships and aircraft. The government can purchase capital equipment for the cause of national security, and it can fund advertising to support the effort.

And it allows the government to become the buyer of last resort, which could put Washington on the hook to buy excess power generated by coal and nuclear plants. Technically, this electricity could only be purchased at the "cost of production," a level that in the past has been determined by a team within the Defense Department.

While no hard estimate for the cost of a DPA subsidy exists, consultants analyzing Perry's previous bailout proposal estimated costs between \$4 billion and \$10.6 billion annually.

That's a far higher level than Congress typically allocates for the DPA. It provided \$67.4 million in the omnibus passed in March, H.R. 1625 (115), down slightly from the \$76 million it provided for all projects in 2017, according to a report submitted to Congress.

And Congress — and the Republican Party — is deeply divided on using government subsidies to save these plants. Rep. David McKinley (R-W.Va.) has some allies from other coal districts for the effort, but other free market-oriented lawmakers like Rep. Pete Olson (R-Texas) say they want to see markets function unimpeded.

McKinley's staff has been in touch with DOE and the White House, as has West Virginia Sen. Joe Manchin (D).

"I think it's an emergency national concern for the national defense of our country. I think Rick Perry agrees with it, and I think the president does also," Manchin told POLITICO.

PJM has itself said the retirement of FirstEnergy's coal plants did not pose a threat to the region's power supplies, and that it had ample generation to meet demand. It has opposed any effort to mandate to require the plants to stay online.

"We believe that a market-oriented approach consistent with the American free-enterprise system offers better results than government-mandated subsidies," said PJM spokesman Jeff Shields.

Anthony Adragna contributed to this report.

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Subject: Morning Energy: How Trump favored Texas over Puerto Rico — EPA holds final 'listening session' on climate rule repeal — DOE gets pushback on 'market-based' efficiency rules

By Kelsey Tamborrino | 03/27/2018 05:45 AM EDT

With help from Nick Juliano and Eric Wolff

HOW TRUMP FAVORED TEXAS OVER PUERTO RICO: A double standard has emerged in President Donald Trump's handling of disaster relief efforts in Texas versus in Puerto Rico, POLITICO's Danny Vinik found in a new investigation out today. A review of public documents, never-before-published FEMA records and interviews with more than 50 people involved with disaster response show an imbalance that tracks with one core person's attention: the president.

Behind the scenes, people with direct knowledge of Trump's comments said the president was focused less on the details of the relief effort than on public appearances, repeatedly using conference calls and meetings to direct FEMA Administrator Brock Long to spend more time on television touting his agency's progress. And as the administration moves to rebuild Texas and Puerto Rico, the contrast in the Trump administration's responses are taking on new dimensions, Danny writes.

During the first nine days after Hurricane Harvey, FEMA provided 5.1 million meals, 4.5 million liters of water and over 20,000 tarps to Houston; but in the same period, it delivered just 1.6 million meals, 2.8 million liters of water and roughly 5,000 tarps to Puerto Rico.

The federal government has already begun funding projects to help make permanent repairs to Texas infrastructure. But in Puerto Rico, that funding has yet to begin, as details of an experimental funding system are negotiated with Trump's Office of Management and Budget — an experimental formula that multiple congressional staffers and people with knowledge said White House officials told Puerto Rico Gov. Ricardo Rosselló to agree to if wanted money for his island. Read it [here](#).

GOOD TUESDAY MORNING! I'm your host Kelsey Tamborrino. Andrew Fasoli of the American Chemistry Council was fastest in identifying former first lady Helen Herron Taft as the first to plant the saplings of the Japanese cherry trees in D.C., which now surround the Tidal Basin and Capitol grounds. For today: Who is the only former Cabinet member to be selected as "designated survivor" twice during past State of the Union addresses? Send your tips, energy gossip and comments to ktamborrino@politico.com, or follow us on Twitter [@kelseytam](#), [@Morning_Energy](#) and [@POLITICOPro](#).

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OFFSHORE ORCHESTRATION: Interior Secretary Ryan Zinke's meeting with Florida Gov. Rick Scott at the Tallahassee airport back in January — after which Zinke declared the state "off the table" for expanded offshore drilling — wasn't as spontaneous as it first seemed, POLITICO Florida's Matt Dixon reports. Scott's office cast the announcement as a hastily arranged example of the governor's ability to influence Trump administration policy, all while dismissing any suggestion that the move had anything to do with his expected

entrance into this year's Senate race. But Matt got ahold of 1,200 documents — including emails, text messages and phone records — that show Interior officials and Scott aides had been coordinating days ahead of the meeting. More from Matt [here](#).

ONE LAST TIME: EPA will hold its final "[listening session](#)" today in Gillette, Wyo., on the proposed repeal of the Clean Power Plan. A preliminary list of speakers shows a range of voices will attend the session — including various speakers from Cloud Peak Energy, a firm headquartered in Gillette that mines coal in the Powder River Basin, and the Rocky Mountain Coal Mining Institute. Sens. [John Barrasso](#) and [Mike Enzi](#) — who have previously [applauded](#) the proposed repeal — are also scheduled to speak. Barrasso plans to emphasize how the rule would hurt energy workers in his state, an aide tells ME, and will highlight bipartisan [efforts](#) in Congress to promote carbon capture technologies.

On the other side, advocates from the American Lung Association, Moms Clean Air Force and National Wildlife Federation will speak. Moms Clean Air Force will highlight EPA's "legal and moral obligation" to action on greenhouse gas emissions, according to the group's talking points. Administrator Scott Pruitt won't be there today, but he is set to [make a separate trip](#) to Wyoming this week to visit the state's coal-mining operations.

WHERE'S PERRY? Energy Secretary Rick Perry is in California today, where he'll tour the Lawrence Berkeley National Laboratory and hold an all-hands meeting with the facility's employees at 3 p.m. The trip follows Perry's [visit](#) to the Lawrence Livermore National Lab on Monday.

REFINERS: MORE THAN EPA'S PES WAIVER IS NEEDED TO SURVIVE THE RFS : Two Philadelphia-area refiners said a consent decree between EPA and Philadelphia Energy Services was an acknowledgment by the government that the Renewable Fuel Standard is broken and needs significant reform. PBF told DOJ, which took comments on the agreement until Monday, that "one-time forgiveness of RIN obligations fails to remedy the root cause for the bankruptcy and provides the wrong incentives to the [Renewable Identification Number] market." Monroe said the agreement "is a reflection, an acknowledgment, of the economic harm caused by the RFS program." Both of them were joined by refining giant Valero in arguing that the program needs to be changed more radically than just the one-time waiver offered by EPA. Ethanol producers said in their own earlier comments that they oppose the consent decree and reject the idea that PES' bankruptcy could be blamed on the RFS.

Read Monroe's comments [here](#), PBF's [here](#) and Valero's [here](#).

JUDGE LEAVES SOLAR TARIFFS IN PLACE: A judge in the U.S. Court of International Trade on Monday rejected requests for a stay of U.S. solar tariffs pending an appeal. Silfab Solar, Heliene, Canadian Solar (USA) and Canadian Solar Solutions had been hoping the court would block the 30 percent tariff the Trump administration imposed on imported solar panel and solar cells last month. The court had rejected their motions for a temporary restraining order and preliminary injunction earlier in March.

TRADE DEADLINE: Can appliances be regulated like automobiles? That's the question the Energy Department posed last year in an effort to apply Trump's regulatory reform goals to its efficiency standards program, and responses were due by Monday. DOE asked for input on several potential reforms, including enforcing efficiency rules similar to the Corporate Average Fuel Economy program, which averages performance across an automakers' entire vehicle fleet. DOE's request for information also pointed to state-level renewable portfolio standards or California's cap-and-trade program as examples of the ideas it was considering.

But those "market based" approaches probably won't work, numerous commenters told DOE. The main barrier is "anti-backsliding" provisions in the Energy Policy and Conservation Act, which prevents DOE from weakening existing requirements. Current law "precludes the use of averaging, credit-trading, or providing feebates as an alternative to minimum energy-efficiency requirements," the Alliance to Save Energy, a pro-

efficiency group, wrote in its [comments](#). A coalition of industry trade associations agreed that such mechanisms would be unlikely to work; in their [comments](#), the groups, including the Air-Conditioning, Heating and Refrigeration Institute and the Association of Home Appliance Manufacturers, urged DOE "to focus its limited resources on reforming the existing program" through changes to a separate process improvement rule. Read additional comments from [AHRI](#), the [Natural Resources Defense Council](#), [Lennox International](#), [E2](#), [Whirlpool](#), the [Edison Electric Institute](#), [Dow](#), [Southern Company](#) and the [California Energy Commission](#).

DEFENDING EPA'S SCIENCE: Former EPA Administrator Gina McCarthy and Janet McCabe, the former acting assistant administrator of the Office of Air and Radiation, [wrote an op-ed](#) in The New York Times Monday defending EPA's use of scientific studies to support its regulations. Conservatives have long accused the agency of relying on "secret science," and Pruitt says he plans to start relying only on publicly available data. But McCarthy and McCabe say that would deprive EPA of valuable research based on individuals' private health records or proprietary information that businesses want to protect. "Opponents of the agency and of mainstream climate science call these studies 'secret science,'" the pair writes. "But that's simply not true."

BSEE: WE COULD USE YOUR HELP: Interior is calling on its career staff to come up with ways to speed up the offshore drilling permitting process, Pro's Ben Lefebvre [reports](#). The Bureau of Safety and Environmental Enforcement will assemble teams of employees across departments to periodically review the process and look for ways to improve its efficiency across the agency, BSEE said Monday.

MAIL CALL! CALLING OUT WEAK LEASE SALES: House Natural Resources ranking member [Raúl Grijalva](#) sent a [letter](#) to Zinke Monday, requesting additional information on his agency's budget priorities. Grijalva also asked Zinke to keep royalty rates for offshore drilling development stable, in light of [weak demand](#) for lease sales.

— **Sens. [Sheldon Whitehouse](#) and [Brian Schatz](#)** wrote to the CEOs of [BlackRock](#) and [JP Morgan Chase](#) questioning the firms' investment in companies active in the Amazon rainforest.

NEW JERSEY TO BLOCK DRILLING: New Jersey Gov. Phil Murphy is expected sign a bill that would prohibit state regulators from approving permits for pipelines or related infrastructure to facilitate expanded offshore drilling in federal waters. Pro New Jersey's Danielle Muoio [has more](#).

MOVER, SHAKER: Friends of the Earth announced Monday that Liz Butler will become vice president of organizing and strategic alliances. Butler will lead a staff of five organizers and 13 organizing fellows in grassroots environmental campaigns.

— **Michael Pratt is joining the American Enterprise Institute's** press office as director of media relations and marketing. Pratt previously served in several other roles at AEI in the digital and media relations departments.

QUICK HITS

— ITER nuclear fusion project avoids delays as U.S. doubles budget, [Reuters](#).

— Half of all U.S. coal plants would lose money without regulation, [Bloomberg](#).

— Federal lease sale fails to impress, but nets \$10 million for Wyoming, [Casper Star-Tribune](#).

— Former CEO of Maersk Oil to become Shell Oil president, [Houston Business Journal](#).

— Shell just outlined a radical scenario for what it would take to halt climate change, [The Washington Post](#).

— The EPA says it wants research transparency. Scientists see an attack on science, The New York Times.

HAPPENING TODAY

7:30 a.m. — The American Water Works Association holds Sustainable Water Management Conference, Seattle

8:00 a.m. — The California Solar Power Expo, San Diego

8:00 a.m. — The Mediterranean Oil and Gas Forum 2018 with Mark Menezes, undersecretary of Energy, Nicosia, Cyprus

8:45 a.m. — Energy Thought Summit, Austin, Texas

9:00 a.m. — Inter-American Dialogue discussion "Unconventional Oil and Gas in Argentina," 1155 15th Street NW

9:30 a.m. — American Fuel and Petrochemical Manufacturers holds International Petrochemical Conference, San Antonio, Texas.

11:00 a.m. — The National Academy of Sciences webinar on "Improving Characterization of Anthropogenic Methane Emissions in the United States."

12:00 p.m. — Americans for a Clean Energy Grid webinar on "Transmission Needed to Meet Corporate America's Growing Demand for Renewable Power."

5:00 p.m. — The Johns Hopkins University Paul H. Nitze School of Advanced International Studies book discussion on "The Fracking Debate: The Risks, Benefits, and Uncertainties of the Shale Revolution," 1717 Massachusetts Avenue NW

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<https://www.politicopro.com/newsletters/morning-energy/2018/03/how-trump-favored-texas-over-puerto-rico-151171>

Stories from POLITICO Pro

How Trump favored Texas over Puerto Rico Back

By Danny Vinik | 03/27/2018 05:00 AM EDT

SAN JUAN, Puerto Rico — As Hurricane Maria unleashed its fury on Puerto Rico in mid-September, knocking out the island's electrical system and damaging hundreds of thousands of homes, disaster recovery experts expected that only one man could handle the enormity of the task ahead: Mike Byrne.

But Byrne, a widely acknowledged star of the Federal Emergency Management Agency, remained in Houston, which had been ravaged by Hurricane Harvey less than a month earlier.

Today, disaster recovery experts still express shock that FEMA kept Byrne in an already-stabilizing Texas and didn't send him to Puerto Rico for three more weeks. But now, the decision strikes many as emblematic of a

double standard within the Trump administration. A POLITICO review of public documents, newly obtained FEMA records and interviews with more than 50 people involved with disaster response indicates that the Trump administration — and the president himself — responded far more aggressively to Texas than to Puerto Rico.

"We have the U.S. Army and Marine Corps. We go anywhere, anytime we want in the world," bemoaned retired Army Lt. Gen. Russel Honoré, who led the military's relief efforts after Hurricane Katrina. "And [in Puerto Rico] we didn't use those assets the way they should have been used."

No two hurricanes are alike, and Harvey and Maria were vastly different storms that struck areas with vastly different financial, geographic and political situations. But a comparison of government statistics relating to the two recovery efforts strongly supports the views of disaster-recovery experts that FEMA and the Trump administration exerted a faster, and initially greater, effort in Texas, even though the damage in Puerto Rico exceeded that in Houston.

Within six days of Hurricane Harvey, U.S. Northern Command had deployed 73 helicopters over Houston, which are critical for saving victims and delivering emergency supplies. It took at least three weeks after Maria before it had more than 70 helicopters flying above Puerto Rico.

Nine days after the respective hurricanes, FEMA had approved \$141.8 million in individual assistance to Harvey victims, versus just \$6.2 million for Maria victims.

During the first nine days after Harvey, FEMA provided 5.1 million meals, 4.5 million liters of water and over 20,000 tarps to Houston; but in the same period, it delivered just 1.6 million meals, 2.8 million liters of water and roughly 5,000 tarps to Puerto Rico.

Nine days after Harvey, the federal government had 30,000 personnel in the Houston region, compared with 10,000 at the same point after Maria.

It took just 10 days for FEMA to approve permanent disaster work for Texas, compared with 43 days for Puerto Rico.

Seventy-eight days after each hurricane, FEMA had approved 39 percent of federal applications for relief from victims of Harvey, versus 28 percent for Maria.

Those imbalances track with another one: the attention of President Donald Trump. In public, Trump appeared much more concerned with the victims of Harvey than Maria. He visited Houston twice during the first eight days after the hurricane, but didn't visit Puerto Rico for 13 days. In the first week after the disasters, Trump sent three times as many tweets about Harvey as Maria — 24 about the plight of Texas and eight about Puerto Rico, including a series of comments about Puerto Rico's debt level and quality of infrastructure that local officials considered insulting and enraging while lives were still in jeopardy.

"Wow - Now experts are calling #Harvey a once in 500 year flood! We have an all out effort going, and going well!" he crowed about Texas on Aug. 27, two days after the storm made landfall.

On Sept. 30, 10 days after Maria, and while fielding criticism from Puerto Rican officials, Trump testily tweeted: "[They] want everything to be done for them and it should be a community effort. 10,000 Federal workers now on island doing a fantastic job."

Behind the scenes, according to people with direct knowledge of his comments, Trump was focused less on the details of the relief effort than on public appearances, repeatedly using conference calls and meetings designed

to update him on the relief effort to direct FEMA Administrator Brock Long to spend more time on television touting his agency's progress.

In addition, Trump spent the first weekend after the Puerto Rico crisis tweeting repeatedly about NFL players kneeling for the national anthem. Those messages, experts said, send a subtle, yet important signal to the federal bureaucracy.

"On Texas and Florida [during Hurricane Irma], the president was very vocal and engaged in the run-up to the storm. His messaging was frankly pretty good," said Jeremy Konyndyk, the former top disaster response official at USAID under former President Barack Obama. "If you look at his public messaging on a comparable timeline around Puerto Rico, there's virtually nothing. ... That sends a signal to the whole federal bureaucracy about how they should prioritize."

FEMA and administration officials defend the response to the storm, saying it posed unprecedented logistical challenges as the agency faced perhaps the most demanding stretch in its 39-year history. Hurricane Maria was the third major hurricane to strike the United States in less than a month. Combine that with an overwhelmed local government and nonexistent communications and it created a fog-of-war atmosphere that made it difficult to determine what resources were needed when and how to get them to an island whose ports and airports were heavily damaged.

In a statement to POLITICO, Long defended FEMA's efforts, arguing that, unlike in Texas, the agency was forced to take on a greater role in the post-disaster response. "We provided Puerto Rico the same, if not more support, as we have for all presidentially declared disasters across the nation," he said, "but an optimal response cannot rely on FEMA's efforts alone."

A spokesperson for the National Security Council said Trump was "personally engaged" on the response and his "primary directive" to Long was to oversee a unified and effective federal response.

But in that situation, former FEMA officials say, extra political pressure and impetus can make a difference. Puerto Rico, as a U.S. territory rather than a state, has just a single, nonvoting delegate in Congress, compared with the 36 representatives and two senators from Texas who loudly demanded proper resources for their state. Likewise, victims of Superstorm Sandy had six senators and dozens of U.S. representatives in the states of New York, New Jersey and Connecticut to demand extra disaster relief, including powerful lawmakers like Chuck Schumer, then the No. 3 Democrat in the Senate.

"After Sandy, [Rep.] Peter King was all over FEMA continuously. So was Schumer," said Michael Balboni, a former New York state legislator and an expert on disaster response. That constant pressure on senior federal officials, he added, is critical to getting the proper resources after a disaster.

In that vacuum, presidential leadership plays a larger role. But as the administration moves to rebuild Texas and Puerto Rico, the contrast in the Trump administration's responses to Harvey and Maria is taking on new dimensions. The federal government has already begun funding projects to help make permanent repairs to Texas infrastructure. But in Puerto Rico, that funding has yet to start, as local officials continue to negotiate the details of an experimental funding system that the island agreed to adopt after a long, contentious discussion with Trump's Office of Management and Budget.

Multiple congressional staffers and people with direct knowledge of the arrangement said White House officials told Puerto Rico's governor, Ricardo Rosselló, that if he didn't agree to the experimental formula, the island wouldn't get the money, effectively forcing the island to take a huge gamble since it would be responsible for any cost overruns, a requirement that doesn't exist for Texas. The White House denies making that demand.

"There is no doubt that Puerto Rico gets treated differently to a state. And there is no doubt that it has been true for the disaster response as well," Rosselló said in an interview at the governor's mansion in Old San Juan. He added, "Our objective is to eradicate this notion of second-class citizenship in the United States, so that whenever a disaster hits — whether it's Texas, Florida, New York or Puerto Rico — the federal government responds equally in all cases."

After Hurricane Harvey hit the Houston region on Aug. 25, dropping over 50 inches of rain and flooding whole swaths of the metropolitan region, FEMA quickly mobilized, sending out mission assignments to a long list of federal agencies. In less than a week, U.S. Northern Command deployed 73 helicopters and the Coast Guard sent an additional 18. Within nine days, a whopping 30,000 federal personnel were helping an army of state and local authorities with the response, conducting search-and-rescue missions, removing debris and helping victims apply for disaster assistance, among many other assignments.

The response was effective enough that by Sept. 14, Texas Gov. Greg Abbott reported that "The risk to lives has now been reduced, if not completely eliminated."

On Sept. 20, after four days of increasingly dire forecasts, Hurricane Maria made landfall in a Puerto Rico already reeling from Hurricane Irma two weeks earlier.

POLITICO's analysis of data on Harvey and Maria, pieced together through news releases, internal FEMA documents, revealed for the first time, and numbers supplied by the agency, indicates that FEMA's response to Maria was much slower than it was to Harvey. Helicopters, which are crucial to rescue people from remote, flooded areas, were slow to arrive. In the initial days, Northern Command had, at most, just a few dozen helicopters on the island and the U.S. Virgin Islands while the Coast Guard deployed just six. By Day 9, just 10,000 federal personnel were on the island, about a third as many as were dealing with Harvey at the same point. Those figures increased over time — Northern Command eventually supplied over 70 helicopters and the government deployed more than 20,000 personnel — but the ramp-up took more than three weeks.

The increase in personnel coincided with the arrival of Byrne. A former New York City firefighter, Byrne has spent his career working in emergency management, serving as a senior regional FEMA officer after 9/11 and as a private sector consultant, helping manage a \$10 billion recovery program after hurricanes Katrina and Rita. After Superstorm Sandy in 2013, he led FEMA's recovery operations, a position known as the federal coordinating officer, or FCO. Last September, he was promoted to assistant administrator for field operations, overseeing the entire disaster workforce.

Despite his promotion, Byrne still often goes out into the field to oversee the most important assignments. So it came as no surprise to disaster-recovery experts when Long, the FEMA administrator, announced on Sept. 1, a week after Harvey hit Houston, that Byrne was heading down to Houston to help with the recovery efforts.

The surprise came on Sept. 20, the day that Hurricane Maria hit Puerto Rico, when FEMA named Alejandro De La Campa the FCO, while it kept Byrne in Texas.

De La Campa, a Puerto Rican native who runs FEMA's local office on the island, has strong relationships with Puerto Rican officials but is not considered one of FEMA's top disaster response leaders, much less the best person for one of the most complicated and challenging disasters in FEMA's history. Even at the time, the decision shocked former FEMA officials, many of whom thought well of De La Campa, who goes by Alex, but were expecting Long to deploy a much more experienced official for such a critical job.

"When I started hearing things, I was thinking there are a lot of heavy hitters sitting on the bench," said Craig Fugate, the head of FEMA during the Obama administration. Fugate acknowledged that it's difficult to second guess the decision-making without being in the meetings at the time. But he said, "I would have put my heavy hitters in there."

The storm impacted every part of the island, wiping out the electricity system and leaving even the local first responders as victims, many of whom lost power and first had to protect their families. Even today, more than 5 percent of the island remains without power. While the Houston region has about twice as many people as Puerto Rico, the severity and nature of the damage caused by Maria overshadowed that of Harvey. As such, FEMA eventually both received and approved more applications for individual assistance from victims of Hurricane Maria than of Hurricane Harvey.

"You had almost a perfect storm," said Jeff Parks, who worked for Honoré on the Katrina recovery effort and traveled to Puerto Rico in a private capacity soon after Maria.

Byrne said he wasn't involved in the FCO decision for Puerto Rico but that he wasn't surprised with the selection of De La Campa, explaining that he has a "stellar reputation." FEMA declined to make De La Campa available for an interview. Asked for further information on why De La Campa was initially selected to serve as the FCO, a FEMA spokesperson said the "question has been answered and addressed."

FEMA also deployed Justo "Tito" Hernandez, an experienced first responder who previously had served as an FCO on the island, as De La Campa's deputy. Hernandez, also a Puerto Rico native, did not comment directly on the selection, instead stressing that FEMA's personnel in Puerto Rico were a team.

Still, he added, "Mike [Byrne] is the best person for the job."

The best person for the job, though, was nearly 2,000 miles away during the first three weeks after Hurricane Maria made landfall, and he was quickly missed. On Oct. 10, in a five-sentence news release, billed as an expansion of the leadership team, FEMA announced it was replacing De La Campa with Byrne.

Former FEMA officials and disaster response experts said the slow ramp-up in force — from the delay in deploying Byrne to the limited number of helicopters — in Puerto Rico and the U.S. Virgin Islands is evidence that the agency underestimated the ferocity of the storm and failed to properly pre-position assets.

"That says that they didn't have the right footprint in place," said Konyndyk. "It's one thing if that's happening over a week or two. It's very different if that's taking a month."

Federal officials caution against comparing Harvey and Maria, arguing that Texas' and Puerto Rico's very different geographic, financial and political situations make comparisons misleading. After POLITICO requested data from U.S. Northern Command on helicopters deployed on certain dates after Maria and Harvey, a spokesperson declined to provide any figures, saying that the only overlap between Florida, Texas and Puerto Rico was that all three experienced hurricanes.

"That's where the comparison stops for us," he said.

Byrne and Hernandez offered two main explanations for the limited number of military assets, particularly helicopters, in the first week after Hurricane Maria. They said it was much easier to deploy helicopters to Houston than to Puerto Rico and the U.S. Virgin Islands, which were 1,000 miles from the United States and had no working ports or airports immediately after the disaster. And even if FEMA could get more responders to Puerto Rico, they said, it had no place to house them.

But it still took weeks for FEMA and the Department of Defense to increase their forces in Puerto Rico and the U.S. Virgin Islands, even though the main airports and ports were opened within a few days. Disaster-recovery experts also faulted the government for failing to direct the aircraft carrier USS Abraham Lincoln and other ships, which have their own fleets of helicopters and were deployed off the coast for Florida to help with Hurricane Irma in early September, to help with the response efforts to Hurricane Maria. The Lincoln began to position itself to help with Irma two days before the storm hit Florida. FEMA never requested that the Department of Defense send the Lincoln to Puerto Rico and the U.S. Virgin Islands.

The USNS Comfort, a hospital ship, didn't even embark from Norfolk, Virginia, to reach Puerto Rico and the U.S. Virgin Islands until nine days after the storm, despite the fact that few hospitals in the region had consistent power, leaving thousands of patients in dire medical condition.

FEMA directed questions about the Comfort and Lincoln to the Department of Defense, which said that during Irma, the Lincoln was also not requested by FEMA for help with civil authorities but instead helped secure military installations in Florida. A spokesperson for NORTHCOM also said that an agreement between DOD and FEMA to send the Comfort was reached "on/about Sept. 25," five days after the storm. It then takes the ship roughly four days to assemble its crew, add necessary supplies and start the ship's engine before it can embark, the spokesperson said.

Other data raise questions about FEMA's claim that a lack of housing prevented a quicker ramp-up in federal personnel on the island.

According to internal FEMA documents given to POLITICO by a person involved in the response efforts, a week after Hurricane Maria, FEMA had filled only 150 of 250 beds that were set aside for first responders at the Puerto Rico Convention Center. Two weeks after Maria, FEMA had filled only 1,258 of 2,250 beds allotted for its first responders at the convention center and aboard two training vessels from the U.S. Maritime Service.

A FEMA spokesperson did not say why the beds weren't used but explained that the numbers were fluid during those days as FEMA staff frequently moved to different parts of the island. "During an emergency, deployed staff comes in and out and depending on where they are needed, they are moved around to support federal and state partners," the spokesperson said.

Nonetheless, Byrne and Hernandez said in separate interviews that FEMA had enough resources to complete its missions, whether conducting search-and-rescue operations or providing food and water to the victims.

"The fact that we ramped up to about 20,000 people in the first month, month-and-a-half, that's impressive to me," said Hernandez. "Whoever says it was slow, I ask them where were you. Where were you when we were moving as fast as we could with the resources that we had?"

Byrne added: "We didn't have any deaths from starving on this. We didn't have any deaths from dehydration. We got plenty of water and food out to people."

People on the ground, however, describe a different scene, one defined by mass confusion and little coordination among the dozens of different nonprofit groups and federal, state and local officials involved in the response, most of whom had little ability to communicate with one another. They said FEMA was mostly absent during the initial days after the storm.

"For the first couple weeks, right after the hurricane, we were the only thing moving out there," said Mike Soto, a founder of a Puerto Rican think tank who became a leader in the response effort after the storm hit Puerto

Rico. "The government was definitely catatonic. FEMA wasn't around and when they were finally here, it took them awhile."

Bernardo Márquez, the mayor of Toa Baja, a municipality of less than 100,000 people in northern Puerto Rico, said just two pallets of water and one pallet of food arrived from FEMA in the first week, forcing local officials to rely on donations from local supermarkets and nonprofits like the Red Cross. "It was slow," he said.

FEMA did deliver some supplies during the first few weeks: In the first nine days after Hurricane Maria, the agency provided 1.6 million meals, 2.8 million liters of water and roughly 5,000 tarps to the island. But that was only a third as many meals and half as much water as it provided to Texas in the same time period after Harvey. Within three days of Harvey's landfall, FEMA had delivered over 20,000 tarps to Texas.

The agency argued that any comparison of the delivery of assistance between Puerto Rico and Texas is effectively impossible. Texas is accessible by roads, making it easy for FEMA to truck food, water and other emergency supplies into Houston while Puerto Rico is 1,000 miles away from the mainland U.S. "We moved stuff. We moved stuff pretty efficiently," said Byrne. "And the challenge here was getting it by ship."

According to a document obtained by POLITICO through the person involved in the response efforts, federal officials were also slow to begin installing "blue roofs" on the island, the hard, plastic covering that allows victims to return and live in their homes before permanent repairs begin.

Twenty-five days after the storm, the Army Corps of Engineers, the federal agency responsible for installing the roofs, had completed just 260 installations in Puerto Rico out of an estimated 60,000 that were needed, equal to 0.4 percent.

There's no similar data for Harvey because Texas didn't request any blue roofs and instead handled temporary housing relief in the first weeks after the storm by itself. But 25 days after Hurricane Irma struck Florida, the Army Corps had installed 1,600 blue roofs, out of 15,000 estimated, or 10.7 percent. A week later, the Army Corps had completed more than a third of the installations in Florida, compared with just 2.8 percent during the same period in Puerto Rico.

Jacqueline Tate, a spokeswoman for the Army Corps, wrote in an email that the agency faced multiple challenges with its blue roof program in Puerto Rico, including locating where victims lived based on their provided address and road closures resulting from landslides and debris.

Experts said it's difficult to pinpoint the exact costs of all these delays.

The official death toll as a result of Hurricane Maria currently stands at 64, compared with 103 from Hurricane Harvey, but a New York Times report in December, using a statistical analysis to compare deaths in the weeks after the storm with a similar period in 2015 and 2016, put the number as high as 1,052. According to the report, deaths from sepsis, pneumonia and breathing disorders jumped considerably. Local officials and experts are suspicious of FEMA's official death count and also said the delays, if not causing deaths, significantly aggravated the pain and stress felt by many Puerto Ricans.

Eventually, officials agree, FEMA's distribution of food and water accelerated; since the storm, FEMA has distributed more than 64 million meals and 72 million liters of water, both records for the agency. But the initial delays represented lost time that can never be recovered.

For FEMA, the response to Hurricane Maria put the agency in an unfamiliar position, forcing it to take on the lead role in the response when it typically acts as a support agency, fulfilling requests from state and local officials. In Puerto Rico, the state and local governments didn't always know what they needed or what they could even request. But after FEMA struggled under similar conditions after Hurricane Katrina, Congress gave

the agency additional authorities to send commodities and help with the emergency response even before it receives official requests from local officials. Many disaster response experts suggested that FEMA failed to use those authorities effectively after Hurricane Maria.

"My big mantra is I never get time back," said Fugate, the former FEMA administrator from the Obama administration, adding that he always erred on the side of sending relief supplies rather than waiting for an official request.

As hurricane victims look to start rebuilding their lives in the aftermath of a storm, many first turn to FEMA to apply for federal assistance. Applicants can receive a quick infusion of cash — up to \$34,000, depending on their needs and the severity of the damage — to start fixing their homes, money that also helps jump-start the local economy. But that money was slow to arrive in Puerto Rico.

According to FEMA data on its individual assistance program, the agency processed applications more slowly for victims of Hurricane Maria than victims of Hurricane Harvey. Nine days after Harvey, FEMA had already approved more than \$141.8 million in federal assistance, compared with just \$6 million during the same period after Maria. In fact, from Oct. 2 to Oct. 9, FEMA approved just \$6,008 in individual assistance for Puerto Rico.

A FEMA spokesperson explained that communications were a challenge in the first days after the storm, preventing Puerto Ricans from using the online application and making it difficult for federal officials to follow up with survivors. Many victims also had trouble proving their residency with a deed or title, the spokesperson said.

Still, Puerto Ricans found a way to register in the first two weeks. By Oct. 5, the agency had received 248,281 registrations for individual assistance, rising to 496,418 by Oct. 13.

Seventy-eight days after the two hurricanes, FEMA had received 18 percent more applications from victims of Maria than from victims of Harvey but had approved 13 percent more applicants from Harvey than from Maria. At the time, 39 percent of applicants from Harvey had been approved compared with just 28 percent of applicants from Maria.

"People are grateful for what FEMA was done. Mayors won't openly say we hate FEMA," said Sen. Eduardo Bhatia, the minority leader of the Puerto Rico Senate. "But if you talk to them enough, they will say it was totally frustrating. It was an absolute mess. No communication, no coordination, no chain of command and certainly no reasonable plans given the magnitude of the problem."

A little before noon on Oct. 3, Air Force One landed at the Luis Muñiz Air National Guard Base in Carolina, Puerto Rico, where Trump was scheduled to get a first-hand look at the devastation wrought by Hurricane Maria, his first trip to the island since the storm hit 13 days earlier. He visited Texas twice in the first eight days after Harvey but was slower to visit Puerto Rico, the NSC spokesperson said, so that his trip "didn't have a negative impact on ongoing response operations."

Nonetheless, Puerto Ricans were grateful for the chance for national attention, given what they considered the still-daunting magnitude of the crisis.

Quickly, however, they realized that Trump's visit wasn't going to include the worst-hit areas, and that Trump didn't have patience for any complaints.

Instead, the carefully scripted trip appeared to be something of a victory tour, as Trump praised FEMA's response and gave an "A+" to Long, the FEMA administrator, and touted the fact that the death count at the time stood at 16, compared with nearly 2,000 after Hurricane Katrina.

At a briefing on the base, he indirectly alluded to Puerto Rico's financial woes, suggesting that the federal response to the storm was creating new challenges for Mick Mulvaney, the White House budget director. "Now, I hate to tell you, Puerto Rico," Trump said, "but you've thrown our budget a little out of whack because we've spent a lot of money on Puerto Rico, and that's fine."

On a walking tour during the afternoon, Trump visited a neighborhood in nearby Guaynabo, an effort to show the president the damage on the ground. But the area had been one of the least-affected neighborhoods in Puerto Rico, according to multiple Puerto Rican officials, because most of the houses were constructed with cement.

"Nothing happened. Everything was perfect," said Sandra Rodriguez, a communications consultant who lives eight minutes away from the neighborhood. "The only thing was, it didn't have any electric power."

At a church, Trump handed out bags of rice to local residents before taking paper towels and impersonating a basketball player as he shot them into the crowd, whose members scrambled to grab the free supplies. To many Puerto Rican residents, that image — Trump's arms arched as if shooting a three-pointer — illustrated the president's cavalier attitude toward the island.

"The president's visit made it very clear that he did not think this was a big deal," said Bhatia, the Senate minority leader. "The whole paper towel incident was silly. He was making a joke out of it."

The NSC spokesperson defended the location chosen for Trump's walking tour, saying the president was fully aware of the challenges facing Puerto Rico. "Had the president visited areas that were severely impacted by the Hurricane, security measures would have required that rescue and relief efforts be temporarily redirected, which is not what the president wanted," the spokesperson said.

James Norton, a senior official in the Department of Homeland Security under former President George W. Bush, said public appearances and visits to storm-wrecked regions play an important role in establishing priorities within the federal government — as Bush learned the hard way when he was criticized for not getting more personally involved in the Katrina recovery effort.

"Bush made every effort to correct [the mistakes made after Hurricane Katrina] given how many visits he made to the region," he said. "Compare that to Trump: He made one visit. That type of executive attention drives the bureaucracy. While there might be people working behind the scenes, not having that constant attention and trips to region does have an impact on the level of effort."

To some aides, Trump didn't seem to approach Hurricane Maria any differently than Hurricane Harvey. In both cases, he lauded the efforts of FEMA and the military, heaping praise on officials who he believed were reflecting positively on his administration. "He came across as a coach, like Mickey in those Rocky movies," one person familiar with his comments said. "'You're killing them, go get 'em.'"

But in Trump's Twitter feed, a proxy for his daily attention, he didn't seem particularly concerned with the fate of Puerto Rico after Hurricane Maria. According to a POLITICO tally, he tweeted just eight times about the island in the week after the storm, often to criticize Puerto Rico. In a three-part tweet on Sept. 25, he said Puerto Rico "is in deep trouble," due to its debt and infrastructure; during that same week, he tweeted 18 times about NFL players not standing for the national anthem. In comparison, in the week after Harvey, he was laser focused on the storm, tweeting 24 times about the relief efforts in Texas and repeatedly praising the first responders.

Trump also got into verbal disputes with local Puerto Rican officials, including the mayor of San Juan, Carmen Yulín Cruz, who criticized the federal response at a Sept. 29 news conference, saying that "We are dying and you are killing us with the inefficiency."

A day later, Trump struck back, slamming Cruz for her "poor leadership" and tweeting that she and "others in Puerto Rico ... want everything to be done for them."

"It was a little disheartening to see the exchange between the president and the mayor," said Michael Coen, former chief of staff of FEMA during the Obama administration. "It doesn't help morale at FEMA and the staff who are working hard."

On Oct. 12, more than three weeks after Hurricane Maria hit Puerto Rico, the president suggested that the federal government wasn't prepared to help the island indefinitely. "We cannot keep FEMA, the Military & the First Responders, who have been amazing (under the most difficult circumstances) in P.R. forever!" The next day, he walked back that tweet in another tweet, saying about Puerto Ricans, "I will always be with them!"

To many Puerto Rican officials and disaster experts, Trump's public comments about Puerto Rico, a territory with no voting representation in Congress, exacerbated the challenges it faces with the federal bureaucracy due to its political status. "There is certainly a different treatment and many of these things, in order to get some reaction, there has to be some pushing," said Rosselló.

The NSC spokesperson said in a statement that the idea that Trump's public comments negatively affected the federal response was a "ridiculous insinuation" and "an insult to the thousands of FEMA and other federal employees who were in Puerto Rico before, during and after the storms." The official added that such criticisms were "partisan political shots."

But there is a lot of evidence that political pressure can lead to a stepped-up disaster response.

In Texas, Senate Majority Whip John Cornyn (R-Texas) held up the nomination of the deputy director of the White House budget office for months over concerns about inadequate support for his state in the wake of Harvey. He finally allowed the nomination to move forward in February after Congress passed a bill with \$90 billion of disaster relief funding and Trump signed it.

Rep. Dan Donovan (R-N.Y.), who leads the House Homeland Security subcommittee on emergency preparedness, told POLITICO that even today, more than five years after Superstorm Sandy, he still has to keep lobbying FEMA to support his constituents on different issues resulting from the storm, such as flood insurance mitigation measures. "We are always putting pressure on them," he said.

Puerto Rico, with a single, nonvoting delegate in the House, can't hold up White House nominations. The territory doesn't have a full delegation of lawmakers — or congressional staffers — to put pressure on FEMA. "Unless you are God, you can't do the job of six people just yourself and without a vote," said Kenneth McClintock, the former secretary of state of Puerto Rico.

As of March 20, six months after Hurricane Harvey, Texas was already receiving federal dollars from FEMA for more than a dozen permanent projects to repair schools, roads and other public infrastructure that were damaged by the storm.

But for Puerto Rico, FEMA has so far not funded a single dollar for similar permanent work projects.

The gap is a result of Puerto Rico's decision to use an experimental formula for calculating the federal funds allocated to rebuild its public infrastructure. The new formula gives Puerto Rico significant flexibility during the rebuilding process, but it also requires the island to pay for any cost overruns, a burden that doesn't apply to Texas, where FEMA will pay for any excess costs. For a cash-strapped territory like Puerto Rico, which is more than \$70 billion in debt, the potential for cost overruns is a huge risk, making the decision to use the new formula across all rebuilding projects a somewhat surprising gamble.

But according to multiple congressional officials and people with direct knowledge of the arrangement, the island was forced to take that gamble. According to those people, White House officials, led by Mulvaney and Homeland Security Adviser Tom Bossert, told Puerto Rico that in order to receive money for permanent work projects, it had to adopt the experimental funding formula for all its projects.

That formula, which dates to Hurricane Katrina and was used on a major housing project after Superstorm Sandy, has never been tried on this scale and Puerto Rican officials weren't interested in being the guinea pig. But in a series of contentious meetings and conversations in late October, White House officials told Puerto Rico it had no choice, according to the congressional staffers and people with direct knowledge of the meetings.

On Nov. 2, with almost no media attention, FEMA published an amendment to its disaster declaration for Puerto Rico that required the use of the experimental funding formula across all projects. It had never been included in a disaster declaration before.

"This is unusual and when it came out, I had lots of phone calls from people," said Elizabeth Zimmerman, a former senior FEMA official who helped create the program when she was in the Obama administration.

Byrne defended the process, arguing that the administration did not force Puerto Rico to adopt the new formula.

"We made a strong case. We showed them all the pluses to it because of the flexibility you'd have, the increased use of mitigation," he said. "It speaks for itself. And at the end of the day, the governor put it in writing that that's how he wanted it done."

A senior administration official said it was "absolutely false" that FEMA forced Puerto Rico's hand.

Rosselló said the administration was "not explicit" in ordering Puerto Rico to adopt the experimental formula, which is known as 428 for its section in the Stafford Act, but he added that "they were very adamant about 428."

Rosselló also argued that the process has slowed down Puerto Rico's ability to rebuild its infrastructure. The process for authorizing permanent funding for Puerto Rico took 43 days, compared with 10 days for Texas. The U.S. Virgin Islands received that authorization within 15 days.

The senior administration official acknowledged that projects might get rebuilt quicker under the traditional payment method but said the delay reflects the time necessary to build back the island's infrastructure in a smarter, more effective way. "It does take a little more time to plan that out," the official said, adding that many emergency projects, including some road repairs and electricity generation, are ongoing. FEMA has already spent more than \$1.3 billion on such emergency projects.

Still, today, more than six months after Hurricane Maria, FEMA still hasn't funded any permanent work projects on the island as Puerto Rico and federal officials negotiate an agreement under 428. The most important piece of those negotiations is the cost estimate. Puerto Rico is on the hook for any overruns, so state officials are very concerned about who is conducting the estimate. According to Rosselló, FEMA agreed in November that Puerto Rico and FEMA would jointly be in charge of the estimate. "We had this explicitly written down in order for us to agree to 428," he said.

Byrne, however, suggested that FEMA would ultimately determine the estimate. "We're more than happy to have Puerto Rico engineers and engineering firms be part of this, and they can help us with the estimates," he said, citing an inspector general's report after Sandy that faulted FEMA for weaknesses in its financial controls in using the new formula. "At the end of the day, we're going to do the estimate." Any disagreements would go to a third-party panel for review, he added. "This is going to be fair."

Bryan Koon, who served as the director for Florida's emergency management agency from 2011 to last October, said he supports 428 and thinks it could help Puerto Rico. But if he were in charge, he said, he would object to FEMA conducting the cost estimate itself. "As a state guy, I would be opposed to that."

The senior administration official conceded that there is "tension" around the cost estimate but said it should reflect a collaborative approach. "We recognize that you don't want to take the number we're giving you and you have to recognize that we're not going to just take the number you give us," the official said. "That's the way this works."

The official also argued that the Trump administration has put Puerto Rico in a better position to use 428 by requesting and receiving from Congress an exemption from the requirement that the cost estimate be based upon the pre-disaster conditions of Puerto Rico's infrastructure. "That's a big deal," the official said. The exemption could prove lucrative to Puerto Rico, since FEMA now can now fund permanent work projects without deducting for any pre-existing damage that was not caused by Maria.

Experts on the formula said it could have additional benefits. It is, effectively, a block grant, allowing the island to more efficiently allocate resources to rebuild its roads, bridges and power system. Under the formula, FEMA also distributes the money up front, instead of reimbursing the island for individual projects, an important benefit for the cash-strapped territory that also cuts down on burdensome paperwork.

Rosselló said he was examining the formula before the White House approached him, realizing that it would be a mistake to rebuild Puerto Rico's outdated infrastructure to its previous condition. "Puerto Rico is in hurricane alley," he said. "It's going to come again."

But Rosselló and other Puerto Rican officials worry that the administration's position on 428 is representative of a broader White House strategy to limit funding toward Puerto Rico. The governor particularly pointed to the Treasury Department's decision to withhold more than half of a \$4.7 billion loan that Congress authorized for Puerto Rico in an October spending bill. Treasury said Puerto Rico didn't need the money, which was earmarked to help the island pay for essential services, since it had a cash balance of \$1.7 billion at the end of 2017. The two sides reached an agreement over the loan last week.

Rosselló believes the president is committed to funding Puerto Rico's recovery, but he's worried that it will not be a priority as the administration moves on to other issues. "When we asked for him a certain set of things ... [Trump] has responded," he said. "My concern is that somewhere along the way, it has sort of fizzled."

"I don't know who it is, but there certainly is evidence that they are trying to penny-pinch," the governor added.

The senior administration official rejected that accusation, saying, "I'm not sure where he is getting that impression" and noting that the federal government has already committed more than \$10 billion in funding to Puerto Rico. "Our No. 1 concern is to make sure we deliver for the people of Puerto Rico," the official said, adding, "Things take longer than anyone would like them to."

Puerto Rico's recovery will take many years and will continue to put pressure on the federal budget. The historic 2017 hurricane season and California wildfires have already forced Congress to pass three disaster spending bills, totaling more than \$140 billion, and another disaster spending bill could be needed later this year. The Trump administration, led by Mulvaney, has attempted to keep costs down, sending a funding request to

Congress in November that Democrats and Republicans both derided as too low. The White House budget office included in that request a list of spending cuts that Congress could use to offset the extra hurricane-related costs, which lawmakers also ignored in February's disaster spending bill.

Many Puerto Rican officials and disaster-recovery experts fear that the contentious battles over 428 and the Treasury Department loan are just the first of many future fights between Puerto Rico and the federal government. It's a fear shared by many in Puerto Rico, who, now more than ever, feel like second-class citizens.

"There is a lingering lack of knowledge about Puerto Rico and a lingering tendency to want to treat Puerto Rico differently," said McClintock, the former Puerto Rico secretary of state, "and always for the worst."

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POLITICO Florida: Records, Zinke's office refute Scott framing of impromptu oil-drilling reversal [Back](#)

By Matt Dixon | 03/27/2018 05:05 AM EDT

TALLAHASSEE — When Gov. Rick Scott and U.S. Interior Secretary Ryan Zinke announced Jan. 9 Florida was "off the table" for offshore oil drilling, the governor cast the hastily arranged news conference at the Tallahassee airport as unplanned and the Trump administration's decision as something Scott had influenced at the eleventh hour.

In fact, Zinke's top advance staffer, whose job it is to plan ahead for such events, was in Tallahassee the previous day. And top officials from the offices of both Scott and the secretary were in regular contact for several days leading up to the announcement, according to more than 1,200 documents reviewed by POLITICO Florida as part of a public records request.

The documents, which include phone records, text messages, and emails, contradict the supposed spontaneous event that portrayed Scott as single-handedly securing a politically popular win for Florida's environmental future only days after the administration had spelled out a controversial new national five-year plan to boost offshore oil drilling. The event left Scott, at least for the moment, with a big victory to hold over Sen. [Bill Nelson](#) (D-Fla.), whom the term-limited Scott is almost assuredly challenging in 2018.

The records reaffirm the perception at the time that the Trump administration's decision to reverse course and remove Florida from the list was carefully choreographed to give Scott a political win in his widely expected challenge this year to unseat Nelson.

"Whatever Rick needs, they [Trump administration] will do. There will be net more offshore drilling, but the governor will get what he needs," one Republican who spoke directly with Zinke [told POLITICO Florida](#) at the time, a prediction that came true.

It will "be a big win, and it won't be Bill Nelson bringing it home," the Republican added.

Turns out all the optics were orchestrated long before that January day.

Zinke press secretary Heather Swift told POLITICO Florida Monday that "the governor's staff was certainly aware that the secretary was traveling to Florida at the governor's request," but Scott's office — at the time — gave no indication the meeting and oil drilling deal had been hashed out prior to the Jan. 9 airport meeting.

Scott's office did not include the meeting on his original public schedule, which is released each morning. The event was sent out as part of an amended calendar around 4:50 p.m. on January 9, about an hour before the event. Around the same time, Scott's office began telling reporters to get to the airport, but there was no notice prior to the amended statement and calls from staff. There was an absolute feeling in Florida political circles at the time that the announcement came out of nowhere.

The decision to give no public notice was done despite Zinke's staff being already in Tallahassee to help coordinate the event: "Even the shortest trips require a lot of coordination and planning," Swift said.

Scott spokesman McKinley Lewis said Monday Scott wanted the meeting with Zinke to "express his strong opposition to drilling off Florida's coast," but did not discuss the public perception that the meeting was not planned.

"Governor Scott was glad to have the opportunity to quickly meet with Secretary Zinke and get commitment from him in that meeting to take Florida off the table for future off shore drilling," Lewis said.

He did not return follow up questions about why the meeting was kept off Scott's original public Jan. 9 calendar.

Records clearly show Rusty Roddy, Zinke's former advance staffer, was in Tallahassee ahead of the Jan. 9 event helping coordinate with Scott's staff.

"Head's up. Secretary having issues with flight out of Atlanta," wrote Roddy in a text message the day of the event to Scott deputy chief of staff Craig Carbone. "Arrival here TBD but looks like it will be later than planned for sure."

Roddy, who is no longer with Zinke's office, acknowledged that the event was "planned" and that he was in Tallahassee prior to the airport meeting. Additional records further confirm the "off the table" airport event was not as hastily thrown together as it then seemed publicly. In emails, Roddy indicated he was planning to be in Florida before the event as early as Friday, Jan. 5, a day after Zinke announced Florida was on the oil drilling list, and days before the Jan. 9 airport event, which officials said was not planned.

"Look forward to seeing you guys Monday," he said in a Jan. 5 email to Jackie Schutz Zeckman, Scott's former chief of staff. She resigned Monday and is likely to join Scott's Senate campaign.

The way Scott's office framed the Zinke trip helped downplay the perception of political gamesmanship from the announcement. Scott's office maintains that 2018 politics had no role in the process, a sentiment they stressed in January.

"This is not about politics," John Tupps, Scott's communications director, told POLITICO Florida at the time. "This is good policy for Florida."

Records show that between the Jan. 4 announcement that Florida could see additional oil drilling rigs off its shore and the Jan. 9 meeting where the state was taken "off the table," Carbone spoke with Roddy, the Zinke advance staffer, 17 times, while Schutz Zeckman spoke with Kate MacGregor, who at the time was acting assistant secretary of Land and Minerals Management, seven times. MacGregor was the point person for much of the discussions, and traveled with Zinke for the Tallahassee rollout, records show.

The records show a general uptick in Scott administration contact with the Interior Department officials in the months leading up to the oil drilling announcements. Those increased conversations were something Scott talked about at the time, as he said he was lobbying to keep Florida off any oil drilling lists.

There were at least 60 calls Carbone and Schutz Zeckman had over the last three months of October with Interior officials. Prior to October, Scott's office and the Interior Department had discussions about various policy issues, but the discussions became much more frequent as the oil drilling announcements approached.

Nelson, Democrats and other Scott opponents always saw political motivations in the quick about-face by the Trump administration toward Florida. Scott was one of Trump's earliest political supporters, and is the current chairman of a pro-Trump super PAC.

"I have spent my entire life fighting to keep oil rigs away from our coasts. But now, suddenly, Secretary Zinke announces plans to drill off Florida's coast and four days later agrees to 'take Florida off the table?' I don't believe," Nelson said in a statement at the time. "This is a political stunt orchestrated by the Trump administration to help Rick Scott, who has wanted to drill off Florida's coast his entire career."

That last point has been one of debate. Nelson's camp has tied Scott to oil drilling, pointing to the fact that in 2010 when first running for office, Scott said that there must be "sound policies in place" when working to "explore the expansion of domestic drilling in the U.S."

Scott now opposes offshore oil drilling, and he immediately tweeted opposition to Trump's oil drilling plan when it was first announced in early January. That garnered him a "full flop" from PolitiFact Florida earlier this year.

His stance also opened a brief rift between the two political pals, but his past statements are not likely to go away headed into the mid-term elections.

"Just like Donald Trump," the Florida Democratic Party responded in January, "Governor Scott is trying to rewrite his long anti-environment record with a tweet."

This article first appeared on POLITICO Florida on March 26, 2018.

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BSEE to review offshore safety permitting process for efficiency [Back](#)

By Ben Lefebvre | 03/26/2018 03:49 PM EDT

The Interior Department is asking career staff to come up with new ways to speed up permitting for offshore energy development.

Interior's Bureau of Safety and Environmental Enforcement will soon assemble teams of employees from various departments to periodically review the permitting process and look for ways to make it more efficient and consistent across the agency, BSEE announced today.

BSEE's regional directors and deputy regional directors will nominate employees to the teams, agency spokesman Greg Julian said.

"In the coming weeks, BSEE plans to identify permit types to be assessed and nominate team members for assessments to take place this year," Julian said.

The move comes as Interior tries to roll back regulations and otherwise speed the permitting process across all its agencies. BSEE earlier proposed to roll back Obama-era rules on offshore oil and gas well safety.

WHAT'S NEXT: Interior is still trying to decide whether to merge BSEE with the Bureau of Ocean Energy Management, which is in charge of offering offshore oil and gas drilling leases.

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'Bellwether' auction shows weak demand for offshore oil leases [Back](#)

By Ben Lefebvre | 03/21/2018 01:22 PM EDT

An Interior Department auction for offshore drilling leases generated \$124.7 million, a relatively low amount that shows little industry interest as of yet in a key part of the Trump administration's offshore energy policy.

The Trump administration has promoted offshore drilling as part of its policy to increase oil and gas production, advertising this lease sale as the largest ever in the Gulf of Mexico. Interior for the second auction in a row put its entire Gulf holdings up for lease, breaking previous practice of only offering parts of the Gulf up for auction at a time. And it again offered reduced rates for less attractive, shallow water parcels as it did at its August 2017 lease sale in the Gulf.

Interior Secretary Ryan Zinke, who has proposed opening virtually the entire U.S. coastline to oil and gas exploration, recently pointed to the auction as a "bellwether" of industry interest in expanded offshore drilling, compared to surging onshore production in states like Texas and North Dakota.

But the auction brought in about the same amount of money as an August lease sale, which raised just \$121 million — about 40 percent below the government's initial forecast. As recently as March 2017, Interior raised over \$274 million with a single lease sale.

Interior has actively promoted coastal drilling as a way to boost oil and gas production, but so far hasn't been able to buck market trends that work against companies investing billions of dollars in deepwater projects that take years to start producing.

Michael Celata, regional director for the Gulf of Mexico region at Interior's Bureau of Ocean Energy Management, argued it was unfair to compare Wednesday's sale to results before Interior started offering leases in the entire Gulf up for sale last August.

"It's difficult to compare this sale to sales from years past," Celata told reporters on a conference call Wednesday. "The best comparison is directly to the last previous sale."

Celata did not have the numbers for how much BOEM had forecast this latest lease sale would generate. Celata also said that lowering the royalty rates for shallow water tracts may have helped increase interest in the area. Data released after the sale showed companies had bid for 43 tracts in shallow water regions, nearly double the number from the March 2017 lease sale when shallow water royalty rates had been higher.

Oil production coming from projects started in years past has helped bring oil production in the U.S. Gulf of Mexico to record highs, according to the Energy Information Administration. But more recently, Exxon, Chevron and other companies have hesitated to add more area to their operations in federal waters, preferring to drill in North Dakota, Texas and other onshore shale plays that have proven much cheaper to set up and much faster in producing new oil.

But the area is also facing new competition for industry attention as Mexico has become more open to allowing foreign companies to drill in its part of the Gulf. Mexico for decades only allowed its national oil company Pemex to drill in those waters, meaning the area is much less developed than on the U.S. side.

Shell and other international oil companies participated in a January auction of Mexican offshore oil leases, bidding aggressively despite fears that a change of government later this year could roll back the country's energy policy reforms.

In a time of low oil prices and strict limits on capital spending, companies have to decide whether to gamble on buying space in a less developed area or sticking to known territory on the U.S. side, said Bernadette Johnson, VP of market intelligence for Drillinginfo, an industry research organization.

"You may do both, but many won't," Johnson said. "Companies are going to be much choosier because margins are tight and are going to stay tight."

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Highlights

LEADING THE NEWS

Bottled Water and the Damage Done: Coping With Plastic Pollution

By Adam Allington

Bottled water beats out soda as the best-selling U.S. beverage, but that popularity spotlights the environmental costs of so many plastic bottles being used once and then tossed aside.

Kuraray America Chemicals Plant Blast Draws Safety Probe (1)

By Sam Pearson

Federal investigators are heading to Pasadena, Texas, to look into an explosion at a specialty chemicals plant that injured 21 workers.

Supreme Court Will Look at Virginia Ban on Uranium Mining

By Bernie Pazanowski

Virginia's ban on conventional uranium mining is about to come under the U.S. Supreme Court's microscope.

Environmental Suit Against IFC Gets High Court Review

By Patrick L. Gregory

A group of Indian nationals could get another chance to sue the International Finance Corporation over a power plant project's alleged environmental harm, after the U.S. Supreme Court granted review today.

Two Puerto Rican Islands Can Test the Future of Microgrids

By Rebecca Kern

A 30-kilowatt solar farm powered by Windmar PV and Tesla-donated batteries is powering the waste treatment plant in Culebra, a small island located approximately 17 miles east of Puerto Rico. It could be a model for the future.

Canadian Diplomats Under Scrutiny in Anti-Mining Activist's Death

By James Munson

What are the responsibilities of diplomatic staff when they know an environmental activist is in danger overseas?

TODAY'S NEWS

DTE, Consumers Energy Promise Clean Power to Dodge Ballot Measure

By Alex Ebert

DTE Energy and Consumers Energy, Michigan's two largest utilities, must file plans over the next year to massively increase renewable energy and efficiency as part of a deal to stave off a 30 percent renewable energy ballot initiative.

World Trade, Safety at Risk from New Ship Fuel Rule, Shippers Say

By Alaric Nightingale

A group representing the vast majority of the world's ship owners said world trade is at risk if issues surrounding new fuel rules aren't resolved quickly, providing the starkest warning yet as to the potential impact of regulations that are due to enter into force in less than two years' time.

New York Ports Need Upgrades to Handle Offshore Wind Industry

By Bobby Magill

New York will have to modify some of its ports from Albany to eastern Long Island and create a new wind turbine manufacturing industry for the state to meet its 2030 offshore wind power targets.

Efficient Cars, Not Electric Cars, Will Be Worse for Oil

By Heesu Lee

Oil demand is set to face an even bigger threat from fuel-efficient engines than from electric vehicles over the next two decades, according to Bloomberg New Energy Finance.

Threat of Cobalt Supply Shock Is Top Risk for Electric Vehicles

By David Stringer and Martin Ritchie

A burgeoning risk of a supply crunch in cobalt—a critical battery metal that's more than tripled in price in two years—poses one of the biggest threats to forecasts for rising electric vehicle adoption.

Cambridge University Urged to Divest Most Polluting Fossil Fuels

By Anna Hirtenstein

An official Cambridge University panel urged the school's 6.3 billion-pound (\$8.45 billion) endowment fund to divest itself from the most polluting fossil fuels.

Clothes May Be Caught in UK Curbs on Ocean-Polluting Plastics

By Jessica Shankleman

U.K. Chancellor Philip Hammond is being urged to start taxing clothes made from polyester and nylon as he seeks to stop harmful plastics filling the world's oceans.

Gas Guzzlers Set to Fade as China Sparks Surge for Electric Cars

By Bloomberg News

The century-long dominance of gasoline-engine cars will sputter in coming decades as incentivized Chinese buyers and more-efficient manufacturers combine to put electric vehicles atop the sales leader board.

Zombie Companies Funding Toxic Cleanups

By Peter Hayes

The cleanup of contaminated properties can become much more expensive when companies responsible for some, if not most, of the pollution have long since been dissolved.

PRACTITIONER INSIGHTS

Practitioner Insights: EPA's Flawed 'Secret Science' Plan Puts Good Science at Risk

On April 30, EPA proposed a far-reaching set of restrictions on its use of scientific data to support regulatory action to protect human health. The EPA proposal is flawed and misconceived. In the name of "transparency," it will burden EPA scientists with unnecessary and costly procedures that run counter to the Agency's long-standing obligation to base public health

decisions on the best available science, according to Bob Sussman, a former EPA attorney now with Safer Chemicals Healthy Families.

FRIDAY NIGHT WRAPUP

Relief From Emissions Limits Could Mean More Agency Spending

By Abby Smith and Rebecca Kern

Federal agencies no longer have to meet comprehensive Obama-era greenhouse gas, energy conservation, and renewable electricity targets—and that could mean fewer dollars saved, efficiency advocates said.

Uranium Contamination Found in Washington State Wells

By Paul Shukovsky

Domestic wells showing high levels of uranium in a rural corner of Washington state highlight the need for broader testing to protect public health, a U.S. Geological Survey study said.

Water Bill Could Flow Quickly Through the House

By David Schultz

The House's biennial water resources bill is designed to move quickly through the chamber, with lawmakers omitting controversial provisions that could have held it up, according to water industry observers.

Norway Looking for Carbon Capture Storage Site, Outside Investors

By Marcus Hoy

Norway has named its preferred location for what could become the world's first full-scale carbon capture and storage site, but this may be irrelevant in the long term if funding issues aren't first resolved.

Trump Taps Advanced Energy Agency Head to Lead Office of Science

By Rebecca Kern

The Trump administration named Christopher Fall, now head of the Energy Department's Advanced Research Projects Agency-Energy, to be the director of the agency's Office of Science, according to a May 18 announcement.

Bloomberg Environment

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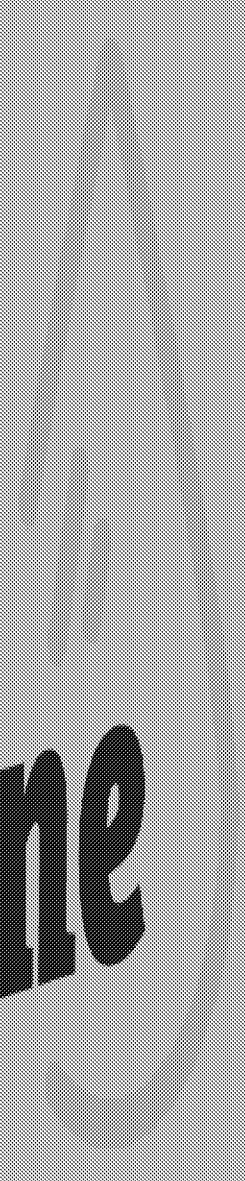
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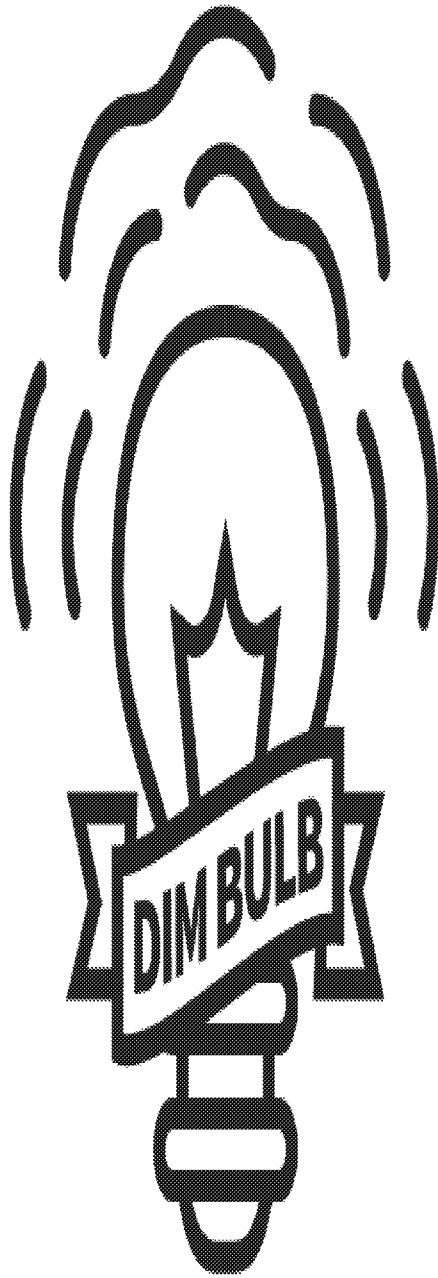
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If at first you don't succeed, sue, sue again.

The Hill (8/16/18) reports: "A federal judge has ordered the government to conduct a full environmental review of a new route for the Keystone XL pipeline in a blow for the Trump administration. Reuters reported that U.S. District Court Judge Brian Morris in Montana made the ruling late Wednesday in favor of the Indigenous Environmental Network and other groups challenging the pipeline. The decision is likely to delay the project, which was proposed more than 10 years ago."





"A different approach might stand a better chance in Congress — one that would focus on building more clean energy, rather than taxing emissions. This could be accomplished by setting a national clean-energy standard. This policy would require the share of American electricity from low-emitting sources to increase steadily over time."

– Justin Gillis and Jameson McBride,
NYT Opinion

WOTUS hits a rocky shore.

E&E News (8/16/18) reports: "The Obama-era Clean Water Rule became the law in 26 states today as a federal judge in South Carolina issued a nationwide injunction on the Trump administration's delay of the regulation that defines what wetlands and waterways get federal protection. The injunction targets the Trump administration's February order suspending the rule while EPA and the Army Corps of Engineers worked up a new version."

As they teach in elementary school math: show your work.

Washington Examiner (8/16/18) reports: "The Environmental Protection Agency is set to take a big step forward Thursday toward implementing a contentious 'secret science' rule, a move that critics fear will undermine the scientific process in favor of cherry-picking research that supports specific outcomes. The 'Strengthening Transparency in Regulatory Science' rulemaking, as it is formally titled, would require EPA's scientific studies to be independently verified through a peer-reviewed process outside the agency...The rule would help the industry contain the cost of new regulation by giving them the ability to

question the basis of new pollution standards, especially if the "public is likely to bear the cost of compliance" with those regulations, according to the EPA."

Who'd a thunk it: solar panel mandates make homes more expensive

Inside Sources (8/14/18) reports: "California, with its temperate weather and sunny skies, has been America's poster child for solar energy. The bulk of the panels installed in the past year have been placed in California and the state's government is happy to use legislation to try to push the state further into its green energy future. Unfortunately for state residents, these mandates are likely to increase the cost of living in one of America's most expensive states. A new solar mandate is likely to dramatically increase the cost of housing in the Golden State."

If you oppose a carbon tax, please contact us and take a stand.

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Energy Markets

WTI Crude Oil: ↑ \$65.73

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REDEFINING EPA: Overhauling an agency and its mission -- Complete coverage

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Latest News

EPA Raises Early Defenses Against Likely Suit Over Ash Program Approval

EPA is raising early legal defenses against environmentalists' promised legal challenge to the agency's approval of Oklahoma's first-of-its-kind coal ash disposal permit program, with EPA downplaying as irrelevant

environmentalists' claims that the Sooner State lacks the resources to adequately implement its new permitting regime.

Observers Brace For Trump Reorganization Plan With EPA Impact Unclear

The Trump administration is expected to release as soon as June 21 a broad plan for reorganizing the federal government, though some observers doubt the plan will spur broad proposed changes at EPA, such as closing of regional offices, despite calls from some to do so.

CEQ Issues Advance Notice For Sweeping Update Of NEPA Regulations

The White House Council on Environmental Quality (CEQ) is publishing an advance notice of proposed rulemaking (ANPR) on a long-anticipated and potentially sweeping update of its National Environmental Policy Act (NEPA) implementing rules, opening the door to just the second amendment to the rules in 40 years.

Court Rejects Coal Lease NEPA Review Suit But Outlines Paths Forward

A federal appeals court panel is rejecting a long-running lawsuit seeking to force the Bureau of Land Management (BLM) to conduct a broad National Environmental Policy Act (NEPA) review to consider the climate impacts of its coal leasing program, but two of the three judges are outlining other options environmentalists can use to force such analysis.

'Secret Science' Policy's Impact On Pending NAAQS Review May Be Muted

EPA Administrator Scott Pruitt's proposed rule barring the agency from using confidential data in rulemakings might not have as dramatic an impact on pending national ambient air quality standards (NAAQS) as many fear because some of the most influential air pollution studies relevant to those reviews rely on publicly available data, sources say.

Inspector General Details Broad Review Of EPA Programs In Annual Plan

EPA's Office of Inspector General (OIG) is laying out a broad agenda for the remainder of fiscal year 2018 that ranges from reviews of the agency's regulatory oversight on key media and research programs to internal staffing and management as well as previously announced inquiries into Administrator Scott Pruitt's controversial security, spending and hiring.

Daily Feed

Top EPA union official announces retirement

John O'Grady is a long-time union representative of EPA employees who has been a public spokesman for many career staff concerned about the Trump administration.

Colorado to join backers of California vehicle GHG rules

Colorado will join a dozen states that have embraced California's vehicle GHG limits, just as the Trump administration is readying a plan roll back current standards and target states' ability to enforce their own rules.

Environmentalists detail issues in Superfund financial rule suit

Environmental groups suing over EPA's decision to drop a planned Superfund rule are questioning whether the agency's action is contrary to the administrative record and the law.

Ewire: EPA shifts grant reviews from public affairs office

In today's Ewire: As of last month, EPA requires regional administrators or assistant administrators of program offices to sign off on grants, replacing its old policy of reviews by a political aide in the public affairs office.

Auto industry-focused publication calls for Pruitt to resign

A "serious industry deserves a serious regulator, a public servant of proven integrity who lives by at least a baseline standard of propriety. Scott Pruitt is none of those things," *Automotive News* says in an editorial.

D.C. Circuit schedules argument in SO2 NAAQS designations suit

The U.S. Court of Appeals for the District of Columbia Circuit will hear oral argument Sept. 11 in consolidated litigation over EPA's 2010 sulfur dioxide air standard attainment designations.

Read all the latest EPA news, analysis and documents →

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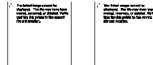
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Pebble mine foes find an unlikely friend at EPA

The fate of one of Alaska's largest and most contentious wetland projects may rest with a former congressional staffer who once said some nasty things about wetlands.

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11. PUBLIC LANDS:

Zinke names 19 national recreation trails

12. EXTREME WEATHER:

Alberto blamed for explosive gas leak that killed 2

13. ENDANGERED SPECIES:

'Cross-fostering' gives Mexican wolf genetics a boost

14. PUBLIC LANDS:

Santa Fe National Forest closes over fire risk

LAW

15. TRANSPORTATION:

Watchdog probes communications between DOT, McConnell

16. COAL:

Calif. city to appeal ruling against export ban

CLIMATE CHANGE

17. CARBON CAPTURE:

'Breakthrough' power plant starts up in Texas

ENERGY

18. BIOFUELS:

EPA gives credits to 2 refiners denied waivers under Obama

19. RENEWABLES:

Trump's solar tariffs boost U.S. capacity

AIR AND WATER

20. AIR POLLUTION:

Calif. bill sets fines for Obama-era truck rule violations

FEDERAL AGENCIES

21. NUCLEAR:

New NRC commissioners sworn in

CHEMICALS

22. ADVOCACY:

Gina McCarthy's center works with Google on chemical dangers

TRANSPORTATION

23. ELECTRIC VEHICLES:

Tesla changes *Consumer Reports'* mind with wireless fix

STATES

24. SOUTH CAROLINA:

Court upholds state water law in a win for big ag

25. HAWAII:

Hottest and fastest-moving lava forces evacuations

26. CALIFORNIA:

He says he's helping people. County says it's an illegal dump

27. MONTANA:

Exxon spill deal to fund Yellowstone River projects

INTERNATIONAL

28. THAILAND:

Famous movie beach gets a break from tourism

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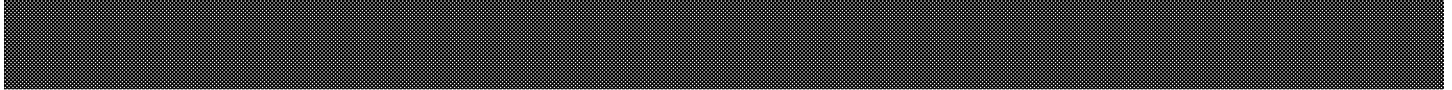
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Sent: 9/5/2018 12:38:34 PM
To: Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clint]
Subject: Morning Consult Energy: Toyota Recalls 1 Million Hybrid Vehicles Over Electrical Defect That Poses Fire Risk



By Jacqueline Toth

Top Stories

- Toyota Motor Corp. said it is recalling more than 1 million 2016-18 model-year Prius and C-HR crossover vehicles because of problems with the cars' electrical systems that subject them to wear, posing a fire risk. The recall impacts about 192,000 Prius vehicles in the United States, and Toyota said it will contact U.S. owners of affected cars by mail late this month. (The Wall Street Journal)

- The Environmental Protection Agency made last-minute deletions of over 500 words highlighting the consequences of climate change from the regulatory impact analysis for its Affordable Clean Energy rule proposal, which would replace the Clean Power Plan, according to internal government documents recently released online. Agency spokeswoman Molly Block acknowledged the revisions but did not explain the rationale. ([Bloomberg](#))
- Vincent DeVito, who stepped down as Interior Secretary Ryan Zinke's energy counselor in mid-August, will join independent oil and gas company Cox Oil Offshore LLC as executive vice president and general counsel. At Interior, DeVito worked to update federal royalty rates and federal permitting rules and was involved in endangered species regulation. ([The Hill](#))

Chart Review

Why red and blue states divide over green policy
CNN

Events Calendar (All Times Local)

WEDNESDAY

American Association for Aerosol Research 10th International Aerosol Conference	7 a.m.
Department of Energy Grid Modernization Initiative Peer Review	7:30 a.m.
2018 Future Power Markets Summit	9 a.m.

National Press Club conversation with Rep. Lamar Smith (R-Texas)	9:30 a.m.
Senate Committee on Commerce, Science and Transportation executive session on fishing legislation and several nominees	10 a.m.
Nuclear Industry Council briefing on the U.S. nuclear fleet	11:30 a.m.
Environmental Protection Agency PFAS Community Engagement	1 p.m.
Great Lakes Commission and Northeast Midwest Institute briefing on Great Lakes green infrastructure	2:30 p.m.
National Academy of Sciences and the National Academy of Public Administration event on nuclear security	3 p.m.
Young Conservatives for Energy Reform & Christian Coalition Conservative Clean Energy Summit	5 p.m.

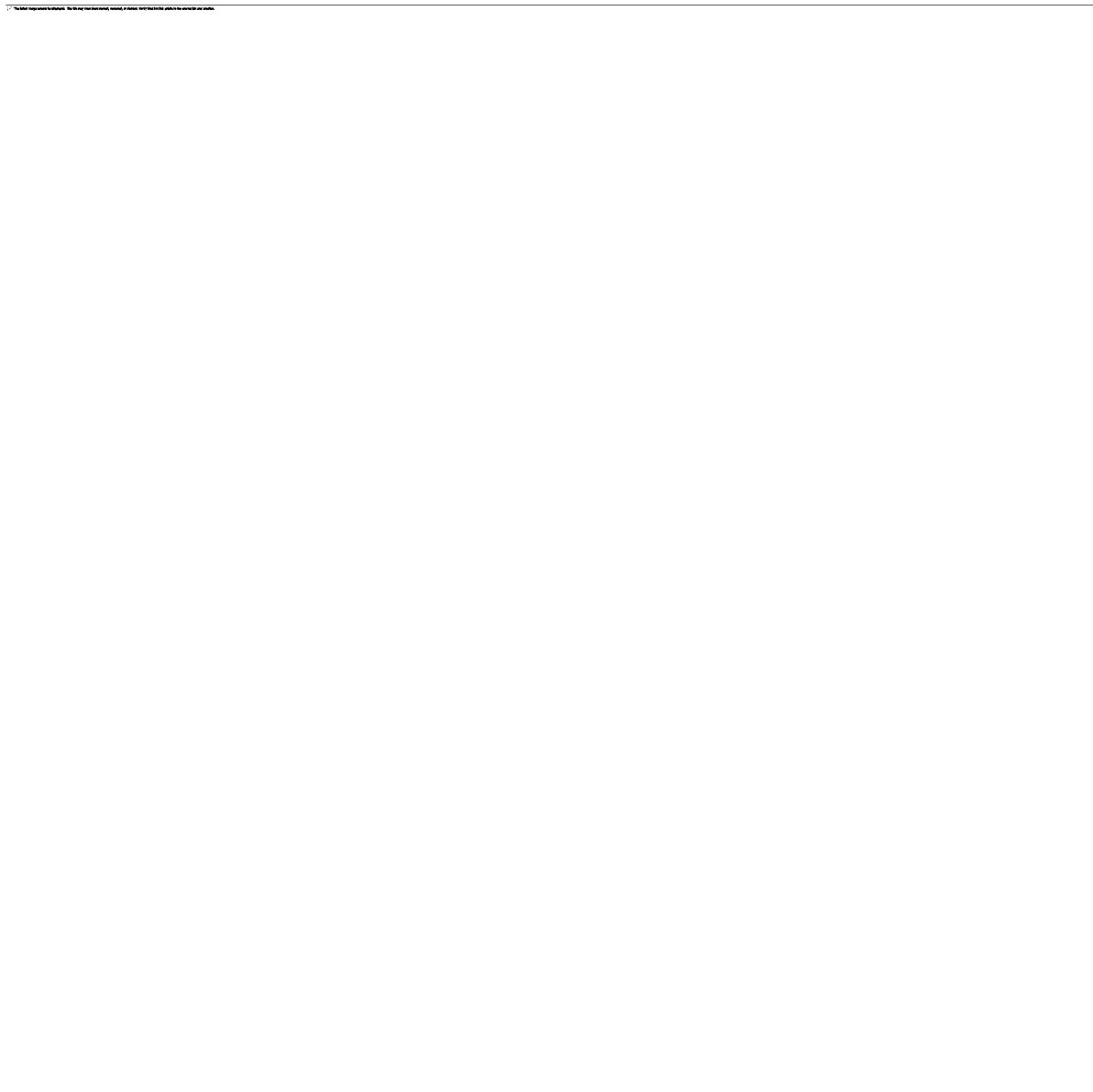
THURSDAY

American Association for Aerosol Research 10th International Aerosol Conference	7 a.m.
Environmental Business Council New England Rhode Island program on PCBs	7:30 a.m.
Department of Energy Grid Modernization Initiative Peer Review	8 a.m.
Rep. Brian Fitzpatrick, Sen. Sheldon Whitehouse speak at Bipartisan Policy Center and The Hill event	8 a.m.
Young Conservatives for Energy Reform & Christian Coalition Conservative Clean Energy Summit	9 a.m.
American Enterprise Institute panel on implementing the Paris agreement	9:30 a.m.
House Energy and Commerce Environment Subcommittee hearing on perfluorinated chemicals	10 a.m.
House Federal Lands Subcommittee hearing on federal land bills	10 a.m.

House Intergovernmental Affairs and Interior, Energy and Environment Subcommittees hearing on permitting	10 a.m.
Regional Greenhouse Gas Initiative event on carbon trading in the states	10 a.m.
Senate Environment and Public Works confirmation hearing on nominee for the Northern Border Regional Commission	10 a.m.
National Academy of Sciences and the National Academy of Public Administration event on nuclear security	11 a.m.
House Oversight and Government Reform hearing on federal disaster response and recovery	1 p.m.
U.S. Energy Association briefing on the Affordable Clean Energy Rule	2 p.m.

FRIDAY

American Association for Aerosol Research 10th International Aerosol Conference	7 a.m.
Department of Energy Grid Modernization Initiative Peer Review	7:30 a.m.
Federal Reserve Banks of Dallas and Kansas City joint conference on global oil market dynamics	7:30 a.m.
House Water Resources and Environment Subcommittee hearing on water resources projects and policy	9 a.m.
Young Conservatives for Energy Reform & Christian Coalition Conservative Clean Energy Summit	9 a.m.



CSR & Political Activism in the Trump Era

How to avoid a firestorm and improve your brand's reputation.

General

Climate skeptic to join NSC, advise Trump on emerging technologies

Miranda Green, The Hill

President Trump is appointing William Happer, a well-known climate skeptic, to his National Security Council (NSC).

FEMA Was Overwhelmed by Hurricanes and Wildfires in 2017, GAO Says

Erin Ailworth, The Wall Street Journal

The back-to-back devastation of hurricanes Harvey, Irma and Maria, followed by catastrophic wildfires in California, overwhelmed federal disaster responders in 2017, according to a government report released Tuesday.

Wildlife advocates fear Trump administration is de-clawing Endangered Species Act

David Goldstein, McClatchy DC

Currently, species listed as "threatened" via the ESA - such as the murrelet and the pond turtle - are granted the same safeguards as those that are considered "endangered." The Trump administration has signaled it wants to prohibit that practice.

Court walks back order, won't immediately require EPA to enforce chemical plant safety rule

Timothy Cama, The Hill

A federal court on Tuesday walked back its previous order that sought to force the Environmental Protection Agency (EPA) to immediately start enforcing a major Obama administration regulation on the safety of chemical plants and similar facilities.

Oil drops toward \$77 as U.S. storm threat eases

Alex Lawler, Reuters

Oil extended losses on Wednesday, falling toward \$77 a barrel, as a tropical storm hitting the U.S. Gulf coast weakened, offsetting support from forecasts of lower U.S. inventories and sanctions against Iran.

Oil and Natural Gas

PE-Backed Flywheel Buys Southwestern Shale Biz For \$1.9B
Adam Rhodes, Law360

Natural gas exploration and production company Southwestern Energy Co. on Tuesday said it inked a roughly \$1.87 billion cash deal to sell its Fayetteville, Arkansas, shale business, along with some midstream gathering assets, to private equity-backed Flywheel Energy LLC.

Mexico's CRE approves first permit for private oil products pipeline
Daniel Rodriguez, Platts

Mexico's Energy Regulatory Commission or CRE has granted the country's first permit to a private company to transport refined products via pipeline, a key step towards enhancing efficiency in the domestic fuel market.

Exxon reasserts its methane position as EPA preps rollback
Amy Harder, Axios

The comments, posted Tuesday by the CEO of XTO Energy, an Exxon subsidiary with large U.S. natural-gas operations, illustrate an awkward predicament facing industry under President Trump.

Energy Transfer, Magellan and more team up for Permian pipeline project
Jordan Blum, Houston Chronicle

Pipeline giants Energy Transfer Partners, Magellan Midstream Partners and others are teaming up on a new, 600-mile Permian pipeline system to Houston.

NextDecade hits snag over contractor for LNG export project in Texas
Harry Weber, Platts

NextDecade will take another year to secure a contractor to build its Rio Grande LNG export terminal in Texas after deciding not to move forward with an agreement with McDermott International.

Southwestern Energy selling Arkansas shale for \$1.9B
Jordan Blum, Houston Chronicle

The Spring natural gas producer Southwestern Energy said Tuesday it is selling its core Fayetteville shale assets in Arkansas for nearly \$1.9 billion in cash to a private equity-backed startup.

Dirty secrets: tainted shipping fuel sparks calls for tighter quality control

Roslan Khasawneh, Reuters

A wave of contaminated fuel that has clogged and damaged engines on hundreds of oil tankers and container vessels in the past months has pushed shippers to demand stricter quality controls around the world.

Utilities and Infrastructure

ISO-NE proposes market bridge to valuing fuel security

Gavin Bade, Utility Dive

ISO-New England filed proposed interim revisions to its capacity market rules with the Federal Energy Regulatory Commission on Friday, seeking to preserve market operations as it designs new compensation mechanisms for fuel secure resources.

California Utility Frets on Fire Costs as State Dodges Action

Romy Varghese, Bloomberg

As California's lawmakers debated late Friday night under the statehouse capitol dome in Sacramento, the city's utility district kept the lights on for them. But the legislators fell short for the electricity provider.

Renewables

Mercedes Unveils First Tesla Rival in \$12 Billion Attack

Christoph Rauwald, Bloomberg

Mercedes-Benz, the world's largest maker of luxury cars, is rolling out its first in a series of battery-powered models, adding to a growing array of high-end brands targeting Tesla Inc.

Residential Energy Storage Surging, No Longer Just a 'Cool Toy'

Brian Eckhouse, Bloomberg

Consumers installed home batteries with 57.5 megawatt-hours of storage capacity last quarter, according to a report Wednesday from the Energy Storage Association and Wood Mackenzie Power & Renewables.

AAA's big move into electric vehicles

David Ferris, E&E News

One of the country's biggest experiments in electric vehicles is about to be launched, not by Uber or Tesla, but by AAA, the straight-laced organization best known for its auto insurance and roadside mechanics.

Coal

Georgia Power to excavate two more coal ash ponds

Catherine Morehouse, Utility Dive

Georgia Power is "completely excavating" and closing two coal ash ponds at its Branch and Bowen coal plants, the utility announced Thursday, part of its larger plan to close 29 such facilities across the state.

Nuclear

SCANA sale clears another hurdle, shifting focus to SC regulators

John McDermott, The Post and Courier

The proposed sale of SCANA Corp. cleared its last hurdle at the federal level, placing the fate of the deal with Dominion Energy Inc. in the hands of state regulators.

Climate

Greener growth could add \$26 trillion to world economy by 2030: study

Alister Doyle and Nina Chestney, Reuters

Strong action to combat climate change could cumulatively add at least \$26 trillion to the world economy by 2030, according to a study on Wednesday which seeks to dispel fears that a shift from fossil fuels will undermine growth.

Climate Envoys Seek Successor to \$33 Billion UN Carbon Market

Mathew Carr, Bloomberg

After the United Nations's first attempt to build a global carbon market fizzled from \$33 billion to almost nothing, climate envoys from nearly 200 countries are meeting in Bangkok this week to give it another go.

The Country's First Climate Change Casualties?

Elaina Plott, Pacific Standard Magazine

Back in 2015, the science journal Nature ran a study warning of Tangier's demise at the hands of sea-level rise due to climate change. The dire findings caught the attention of climate scientists and, of course, the island's residents themselves, most of whom were skeptical.

Opinions, Editorials and Perspectives

Cyberthreats require strengthened standards, increased government collaboration

Brien J. Sheahan and Robert F. Powelson, Utility Dive

Recent confirmation by the U.S. Department of Homeland Security that Russian hackers targeted the control rooms of the nation's public utilities underscores the vulnerability of our critical infrastructure and the urgency to address this susceptibility in a coordinated and comprehensive way.

Reverse EPA proposal based on trumped-up 'secret science' claim

Sherwood Boehlert, The Hill

Scott Pruitt has been ousted as head of the Environmental Protection Agency, but what may be the most damaging aspect of his legacy still looms. EPA is still considering Pruitt's proposed rule to limit what science the agency can take into account when deciding whether and how to protect the public from pollution.

Using Wildfires as an Excuse to Plunder Forests

Chad T. Hanson and Michael Brune, The New York Times

President Trump recently blamed environmental protections for the loss of homes and lives in wildfires in California, and followed up that groundless suggestion by strongly implying that increased logging could protect rural towns from these conflagrations.

Research Reports

2017 Hurricanes and Wildfires: Initial Observations on the Federal Response and Key Recovery Challenges

U.S. Government Accountability Office

The federal government provided significant support to Puerto Rico and the U.S. Virgin Islands in response to Hurricanes Irma and Maria, but faced numerous challenges that complicated response efforts. FEMA efforts in Puerto Rico alone were the largest and longest single response in the agency's history.

Setting with the Sun: The Impacts of Renewable Energy on Wholesale Power Markets

James Bushnell, Kevin Novan, The National Bureau of Economic Research

While previous empirical work explores the economic and environmental impacts of renewable production, the focus has exclusively been on the short-run impacts of expanding renewable supply. In this paper, we shed light on the longer run impacts of renewable expansions.



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Subject: April 26 -- Greenwire is ready

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GREENWIRE

AN E&E NEWS PUBLICATION

GREENWIRE — Thu., April 26, 2018

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1. EPA:

'I have nothing to hide' — Pruitt

EPA Administrator Scott Pruitt said today allegations of excessive spending and misuse of his Cabinet-level authority are aimed at upending President Trump's agenda at the agency.

TOP STORIES

2. WHITE HOUSE:

Pruitt signed 'secret science' plan before OMB ended review

3. POLITICS:

EPA chief's hush-hush trips draw cheers and sneers

4. BIOFUELS:

Wood pellet pollution growing — report

CONGRESS

5. NOMINATIONS:

Senate confirms Pompeo for State

6. POLITICS:

LCV hits Gardner, Heller on Pruitt

POLITICS

7. LAW:

Trump nominates slew of federal court judges

8. PEOPLE:

'The Mooch' weighs in on Pruitt

NATURAL RESOURCES

9. NATIONAL PARKS:

Feds fail in bid for Yosemite trademarks appraisal info

10. GREAT LAKES:

Ohio's spending on algal blooms isn't paying off — study

11. EXTREME WEATHER:

No twisters in 'Tornado Alley' states this spring

12. HURRICANE HARVEY:

Houston registry to track storm's impacts

13. WILDLIFE:

Colo. mine next to pristine ecosystem could get approval

LAW

14. AGRICULTURE:

N.Y. court strikes down manure permits for megafarms

15. VW SCANDAL:

Volkswagen agrees to pay Md. \$33.5M for excess emissions

16. ELECTRIC VEHICLES:

Lawsuit accuses Tesla of not allowing rest breaks

CLIMATE CHANGE

17. TRANSPORTATION:

Elaine Chao has said little on climate. Here's what we know

18. CLEAN POWER PLAN:

Curtain falls today for comments on proposed repeal

ENERGY

19. COAL:

Ariz. exempts mines from sales tax to save power plant

AIR AND WATER

20. OIL SPILLS:

Sunlight reduces effectiveness of dispersants — study

CHEMICALS

21. LEAD:

Pollution remains near closed Calif. battery recycling plant

BUSINESS

22. PEOPLE:

John Kerry joins impact investing firm

INTERNATIONAL

23. AFRICA:

Scientists find gorilla population dropping at alarming rate

24. PHILIPPINES:

Famous vacation island closes for cleanup

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Message

From: Shoaff, John [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=AC16FB09CF2C44ADB34A7405DC331532-JSHOAFF]
Sent: 5/31/2018 12:51:15 PM
To: Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clint]
Subject: RE: Quick SAB Work Group Question

Clint,

Sure, this is summarized in the SAB WG Memo to the board,

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

John

Deliberative Process / Ex. 5

JOHN SHOAFF | DIRECTOR
OFFICE OF AIR POLICY & PROGRAM SUPPORT (OAPPS)
OFFICE OF AIR & RADIATION | U.S. EPA | WJC NORTH 5442-B

From: Woods, Clint
Sent: Thursday, May 31, 2018 8:17 AM
To: Shoaff, John <Shoaff.John@epa.gov>
Subject: Quick SAB Work Group Question

John,

Deliberative Process / Ex. 5 would you remind me of the timeline of questions/responses to the work group's fact finding efforts in lead up to this meeting? Thanks!

PRUITT'S SAB STORY: EPA's independent Science Advisory Board will meet today and Friday for the first time since Administrator Scott Pruitt barred scientists on the committee from receiving EPA grants and boosted its ranks with industry representatives — and the group's agenda is packed. The SAB will look at Pruitt's "secret science" proposal to bar EPA from using studies that don't make public all their data, as well as the Clean Power Plan repeal, Pruitt's decision to relax 2022-25 auto emissions standards, changes to the 2016 methane rule for new oil and gas wells and effort to repeal a rule regulating emissions from "glider" trucks — and that's not all.

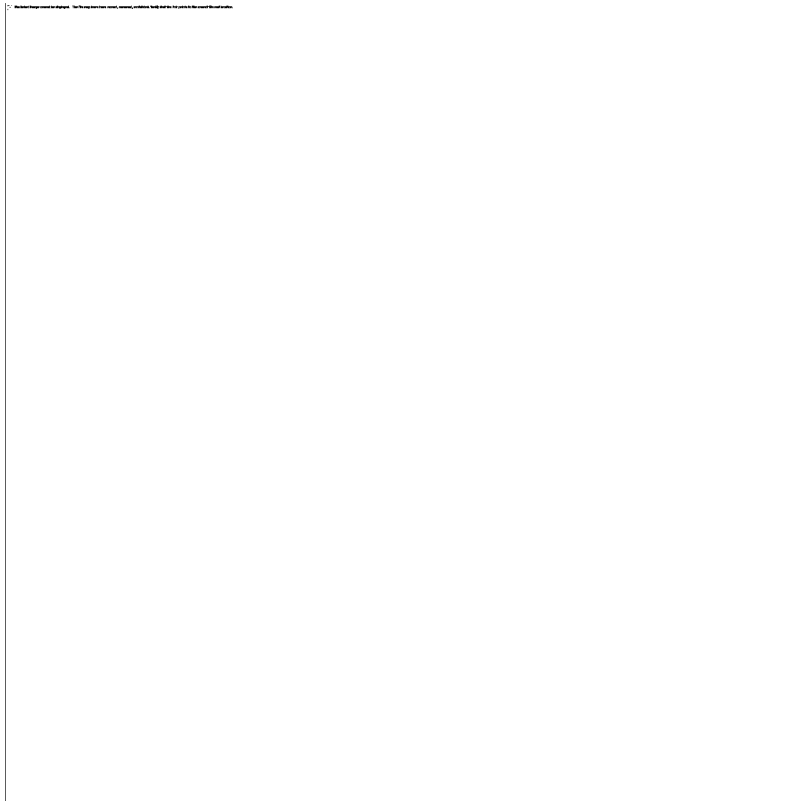
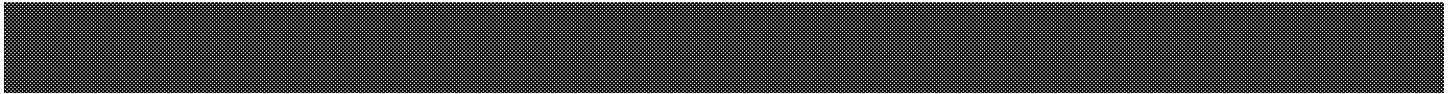
A lot to dive into: The heavy slate of issues is unusual for the advisory board, Pro's Alex Guillén reports. Several current and former SAB members say it's unprecedented for the board to consider reviewing so many regulatory actions. But like green groups and critics of Pruitt, the SAB scientists say EPA has declined to share information about its regulatory rollbacks. "The agency has not been forthcoming about how they're developing the relevant science work products," said Chris Frey, a professor of environmental engineering at North Carolina State University and a SAB member since 2012.

EPA keeps quiet: SAB has been conducting twice-yearly reviews of EPA's planned regulatory actions since 2012, members said. It's an effort designed to enable the advisory board to help guide EPA before its rules are finalized. But this time around, the SAB's working groups say EPA wasn't being forthcoming with information. "Basically they just didn't provide us with any answers," said Frey. "That kind of put us in a position where all we can really do is say EPA has not identified the science or any plan to review it, and clearly there are science issues that are in the proposed rule."

What to expect: It's not immediately clear whether the full SAB will vote today to advance the reviews. But Frey noted that some of the members appointed by Pruitt had been on the working groups, giving him hope that the full board will back the recommendations to look deeper into the regulatory rollbacks. Should SAB adopt them, Alex reports, it likely would mean setting up special subcommittees that include current members plus outside experts to question EPA further. Read more [here](#).

Message

From: Morning Consult [reply@e.morningconsult.com]
Sent: 4/26/2018 1:01:33 PM
To: Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clint]
Subject: Morning Consult Energy, Presented by Wells Fargo: Pruitt Expected to Face GOP Questions Over Ethics, Spending at Hearings



By Jacqueline Toth

Top Stories

- When Environmental Protection Agency Administrator Scott Pruitt testifies before two House committees today, he is likely to face at least some critical questions from Republicans about allegations of ethical lapses and excessive spending. House Energy and Commerce Environment Subcommittee Chairman John Shimkus (R-Ill.) said Pruitt can expect a "cool" reception from his party, though committee member Joe Barton (R-Texas) said

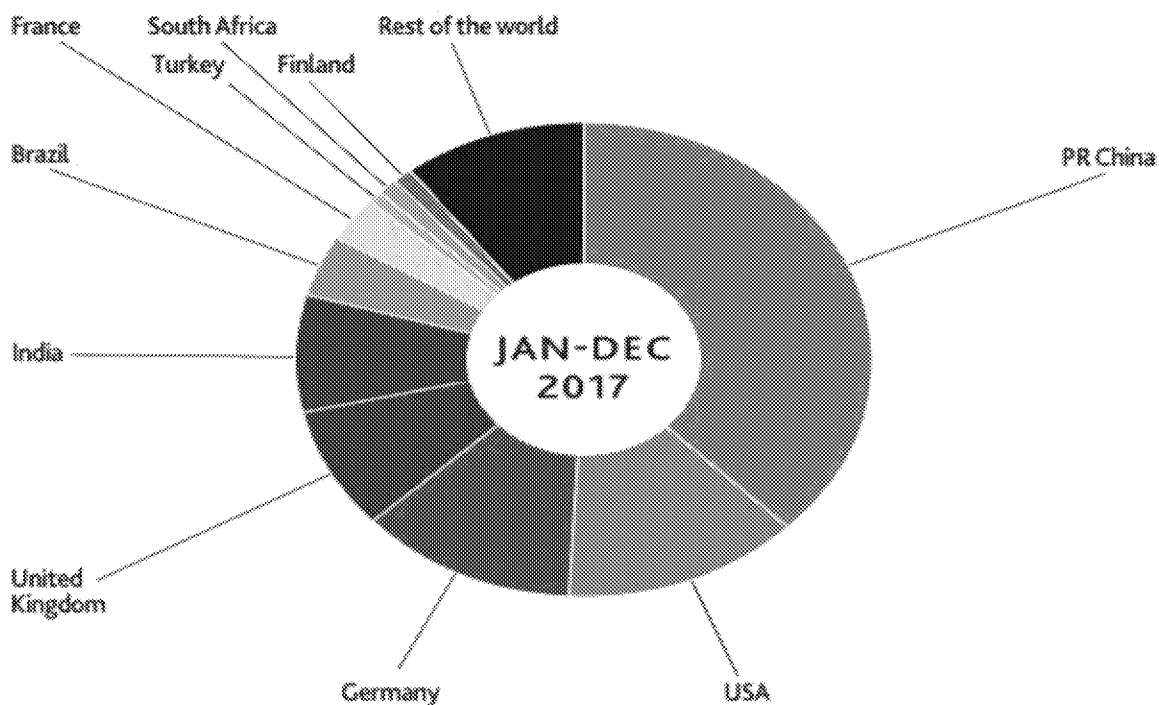
scrutinizing Pruitt's ethics is "not the purpose of the hearing" and suggested that many Republicans would defend Pruitt. ([Politico](#))

- ConocoPhillips Co. won a long-running legal battle against Venezuela's state oil company Petróleos de Venezuela S.A., entitling ConocoPhillips to over \$2 billion from Pdvsa after Venezuela expropriated multiple oil projects over 10 years ago. But collecting the money may be difficult after Pdvsa and Venezuela defaulted on over \$50 billion in bonds last fall. ([The New York Times](#))
- Royal Dutch Shell Plc reported its first-quarter profit rose 42 percent to \$5.3 billion, thanks to stronger oil prices and production. But Shell's shares fell as its cash flow was below analysts' forecasts. ([Reuters](#))

Chart Review

[Global Wind Report - Annual Market Update 2017](#)
The Global Wind Energy Council

TOP 10 NEW INSTALLED CAPACITY JAN-DEC 2017



Events Calendar (All Times Local)

THURSDAY

Center for Energy Science and Policy energy symposium on the energy-water nexus	8:30 a.m.
House Energy and Mineral Resources Subcommittee hearing on the importance of offshore energy revenue sharing in the Gulf	10 a.m.
House Environment Subcommittee hearing on the Environmental Protection Agency FY2019 budget	10 a.m.
United States Energy Association event on the Plains CO ₂ Reduction Partnership	10 a.m.
Atlantic Council conversation with Orsted North America President Thomas Brostrom	11:30 a.m.
Daniel Morgan Graduate School of National Security event on the geopolitics of energy and Saudi Aramco's IPO	12 p.m.
Information Technology & Innovation Foundation event on grid-scale energy storage	1:30 p.m.
House Appropriations Interior, Environment and Related Agencies Subcommittee hearing on FY2019 EPA budget	2 p.m.
Center for a New American Security event on geopolitical risks and opportunities in the low oil price era	2:30 p.m.
Atlantic Council event on energy in Iraq	5 p.m.

FRIDAY

Women's Council on Energy and the Environment overview of wholesale electricity pricing	12 p.m.
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General

'It could be pretty painful' when Pruitt faces Congress

Anthony Adragna et al., Politico

When Scott Pruitt returns to Capitol Hill on Thursday, he will find few friends ready to greet him - and an audience of one waiting to determine his fate.

What to Watch as Scott Pruitt, the E.P.A. Chief, Goes Before Congress

Coral Davenport, The New York Times

Scott Pruitt, the embattled head of the Environmental Protection Agency, will face two congressional panels on Thursday, in what is expected to be a daylong grilling over recent allegations of ethical infractions and lavish spending.

Support for Pruitt wanes as he takes the hot seat on Capitol Hill

Leigh Ann Caldwell et al., NBC

Supporters of embattled Environmental Protection Agency Administrator Scott Pruitt are starting to raise questions about his alleged ethical lapses, a shift in tone that could spell trouble as he appears before Congress Thursday.

Pruitt's Friends Became Lobbyists. And Then Handed Their Clients an EPA Biomass Win.

Marianne Lavelle, InsideClimate News

When Environmental Protection Agency Administrator Scott Pruitt declared this week that tree burning was inherently a carbon-neutral way to produce electricity, it was a victory for some Oklahoma friends of Scott Pruitt.

'You can't abuse taxpayer money': GOP's Kennedy on Pruitt

John Verhovek, ABC News

Republican Sen. John Kennedy of Louisiana criticized Environmental Protection Agency Administrator Scott Pruitt for his spending habits and other behavior during his time leading the agency but said the decision whether to fire him should be left up to President Donald Trump.

Scientists denounce Pruitt's effort to block 'secret science' at EPA

Joel Achenbach, The Washington Post

In the annals of science there aren't many reports that had as much impact as Harvard's Six Cities Study of 1993. It showed a dramatic association between long-term exposure to air pollution and higher risk of an early death.

Behind the scenes of Pruitt's Nevada trip

Kevin Bogardus, E&E News

Pam Robinson, policy director for Nevada Gov. Brian Sandoval (R), had been working feverishly to help set up EPA Administrator Scott Pruitt's Feb. 5 trip to the Silver State.

Oil gains as concern heats up over Iran sanctions, Venezuelan output

Amanda Cooper, Reuters

Oil rose on Thursday, supported by expectations of renewed U.S. sanctions on Iran, declining output in Venezuela and ongoing strong demand.

Oil and Natural Gas

ConocoPhillips Wins \$2 Billion Ruling Over Venezuelan Seizure

Clifford Krauss, The New York Times

ConocoPhillips won a ruling on Wednesday that says it is entitled to more than \$2 billion from Venezuela's state oil company over the country's expropriation of several oil projects more than a decade ago.

Shell profit soars on higher oil prices, cash flow disappoints

Ron Bousso, Reuters

Royal Dutch Shell reported on Thursday a 42 percent rise in first-quarter profit to its highest in more than three years on stronger oil prices and production, but its shares fell as the oil major's cash flow missed forecasts.

High Oil Prices Boost Industry Earnings, but Investors Remain Wary

Sarah Kent, The Wall Street Journal

Rising crude prices are supercharging earnings at the world's major oil firms, but investors may need more convincing that Big Oil is back.

Skinny and sweet: U.S. refiner earnings depend on the oil diet

Devika Krishna Kumar, Reuters

Smaller independent refiners with less complex facilities are surging in the stock market of late, as investors expect strong earnings growth thanks to the recent fall in price of their primary cost - light, sweet crude oil coming out of West Texas.

Shell pushes ahead with US Gulf of Mexico Vito development

Starr Spencer, Platts

Shell Tuesday said it would push ahead with the Vito deepwater development in the US Gulf of Mexico, signaling confidence in both crude prices above \$60/b and that region's future after sluggish activity over the last few years.

BP Names Oil Industry Veteran Helge Lund as Chairman

Carlo Martuscelli, The Wall Street Journal

BP PLC has appointed energy industry veteran Helge Lund as its next chairman as the oil giant seeks to move past the Deepwater Horizon disaster and get to grips with a fast-changing industry.

Utilities and Infrastructure

Trump Tax Revamp Threatens to Make Gas Pipelines Pay \$18.5 Billion

Naureen S. Malik, Bloomberg

Pipeline owners led by Enbridge Inc. and Williams Cos. could be forced to refund as much as \$18.5 billion to drillers, utilities and even United Airlines Inc. for upfront payments they charged customers before new U.S. tax rules cut the corporate rate.

Can Puerto Rico Recover From Maria Before the Next Storm Hits?

Vann R. Newkirk II, The Atlantic

Puerto Rico still doesn't know how many people died from Hurricane Maria. The official death toll of people drowned in floods, killed by landslides, caught in collapsed houses, or who perished from environmental or health problems in the immediate aftermath of the storm seven months ago sits at 64.

Renewables

Tesla fan: Autopilot glitches brought peril to road trip
Will Evans, The Center for Investigative Reporting

As You You Xue completed a whirlwind cross-country trip in his brand-new Tesla Model 3 earlier this year, the 20-year-old Californian racked up some impressive statistics.

Coal

Kentucky jury awards \$67.5 million to miners who used defective dust masks
Bill Estep, Lexington Herald Leader

A Knott County jury has awarded \$67.5 million in damages to two former coal miners who claimed defective dust masks led to their debilitating black-lung disease.

Don't Gut Coal Ash Rules, Communities Beg EPA at Hearing
Georgina Gustin, InsideClimate News

It took decades for the Environmental Protection Agency to craft public safeguards for the disposal of coal ash, the toxic byproduct that coal-burning power plants generate more than 100 million tons of every year.

Nuclear

FirstEnergy Solutions definitely to close its nuclear power plants
John Funk, Cleveland.com

FirstEnergy's power plant subsidiary announced this morning that it has certified to federal regulators the definite shut down of its three nuclear power plants.

US officials slam Washington state nuke waste site problems
The Associated Press

Problems first identified six years ago at a Washington state plant where deadly nuclear waste is supposed to be treated in the future continue to plague the multi-billion dollar facility, U.S. investigators have said.

Climate

Macron: The US will come back to the Paris climate pact
Timothy Cama, The Hill

French President Emmanuel Macron on Wednesday predicted that the United States will come back to the Paris climate change agreement.

Profit slips at Volkswagen after accounting change
David McHugh, The Associated Press

Profits have slipped at automaker Volkswagen in the first quarter due to a change in accounting rules, but sales increased and the company recorded no significant additional losses from its diesel emissions scandal.

Ford to kill Fusion, Taurus and Fiesta cars to make way for more SUVs
J.C. Reindl, Detroit Free Press

Ford, backing up its promise to double-down on trucks and SUVs, is killing the Fiesta subcompact, Fusion midsize sedan, Taurus large sedan and C-Max van in the U.S., it announced Wednesday.

A Message from Wells Fargo:

Wells Fargo: Committed to the environment

How can a bank help the world transition to a lower-carbon economy? By setting goals and meeting them. Last year, Wells Fargo began meeting 100% of its global electricity needs with renewable energy. We remain committed to protecting the environment and leading by action through our businesses, our operations and our philanthropy. [Learn more.](#)

Opinions, Editorials and Perspectives

Who's afraid of global warming?

Robert J. Samuelson, The Washington Post

As we mark Earth Day this week, it's natural to ask: What do Americans think of global warming? Is it a big worry?

Scott Pruitt's New Rule Could Completely Transform the EPA

Robinson Meyer, The Atlantic

Do you think the Environmental Protection Agency should completely overhaul how it uses science in its work? Do you think it should adopt new guidelines that totally undermine at least the last three decades of clean air and water rules?

Climate Activists Are Lousy Salesmen

Stewart Easterby, The Wall Street Journal

Politicians, bureaucrats, activists, scientists and the media have warned Americans for decades that the Earth is headed toward climate catastrophe. Yet surveys consistently show that less than half of U.S. adults are "deeply concerned" or "very worried" about climate issues.

The Carbon Tax Could Come Soon To A State Near You

Ryan Maness, Law360

Lawmakers in Washington state thought that this was going to be the year that they would pass a carbon tax.

The EPA Is Acting Like Big Tobacco

Emily Atkin, The New Republic

"This is really evil," Professor Stan Glantz said after I sent him an article about the Environmental Protection Agency's new science policy.

Research Reports

Most atolls will be uninhabitable by the mid-21st century because of sea-level rise exacerbating wave-driven flooding

Curt D. Storlazzi et al., Science Advances

Sea levels are rising, with the highest rates in the tropics, where thousands of low-lying coral atoll islands are located. Most studies on the

resilience of these islands to sea-level rise have projected that they will experience minimal inundation impacts until at least the end of the 21st century.



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REDEFINING EPA: Overhauling an agency and its mission -- Complete coverage

April 26, 2018

Latest News

Expecting New TSCA Resources, OPPT Proposes New Reorganization Plan

Responding to staff concerns, EPA's Office of Pollution Prevention and Toxics (OPPT) has delayed its ongoing reorganization effort to propose a revised plan that relies on OPPT leadership being able to hire sufficient

number of new scientists to fill a second risk analysis division to bolster chemical assessments required by the reformed Toxic Substances Control Act (TSCA).

EPA Faulted For Justifying Oil & Gas CTG Repeal By Citing Methane NSPS

Environmentalists are criticizing EPA for justifying its proposed withdrawal of oil and gas sector volatile organic compound (VOC) reduction guidelines by saying the CTG are “fundamentally linked” to methane and VOC standards for new oil and gas drilling that EPA is reconsidering, previewing possible lawsuit arguments if EPA finalizes the withdrawal.

House Lawmakers Seek Expedited EPA Rulemaking For PFAS Standard

A bipartisan group of House lawmakers, whose districts are affected by drinking water contaminants such as perfluorinated chemicals, is urging appropriators to adopt report language that requires EPA to conduct an expedited rulemaking to craft a standard for the substances, pushing back on agency concerns that such an effort could drag on for years.

Pruitt's Backing For High-Octane Standard May Boost GOP Bid For RFS Fix

EPA Administrator Scott Pruitt says creating a national standard for higher octane in motor fuel is a “tremendous idea” that would benefit ethanol, farm, and auto industries, support that could bolster a push by some House GOP lawmakers to use the standard as a fix for what they see as problems with the agency's renewable fuel standard (RFS).

Pruitt's Testimony Focuses On FY19 Cuts But He Also Plans Ethics Defense

EPA Administrator Scott Pruitt's testimony for a high-profile April 26 hearing makes the case for the Trump administration's fiscal year 2019 budget request that seeks to cut EPA's budget by 25 percent, while ignoring the litany of Pruitt's spending and ethics scandals, but a leaked document shows he is planning to defend his actions by blaming political and career staff.

'Cooperative' Policy Might Spur EPA To Send Enforcement Cases To States

ORLANDO, FL -- EPA might send some enforcement cases already in its pipeline back to states to prosecute or otherwise resolve due to Administrator Scott Pruitt's “cooperative federalism” policy of giving greater deference to states on environmental protection, but is finding that some cases are too advanced for EPA to drop its participation.

Daily Feed

CREW seeks IG inquiry into 'broken' EPA ethics process

“The clearly inadequate handling of the numerous, increasingly outrageous ethical issues that have recently come to light suggests that the process is broken,” says the group Citizens for Responsibility and Ethics in Washington.

Whitehouse asks for EPA air chief Wehrum's recusal statement

EPA air chief William Wehrum faces calls from a top Senate Democrat to provide the agreement detailing his recusal from Clean Air Act issues he previously worked on as an industry attorney.

Pruitt on Capitol Hill

Complete coverage of Administrator Scott Pruitt's April 26 appearances before two House committees.

Quote-Unquote: On science, climate change, biomass and NAAQS

EPA issues long-awaited policies on “secret science” and biomass.

EPA official says Superfund reform agenda remains in flux

EPA's Superfund enforcement chief says the 42 task force recommendations to overhaul that program are still subject to change and will likely be winnowed down, but with no clear deadline for doing so.

House Democrats seek GAO review of EPA enforcement

The lawmakers are concerned that "policies to 'streamline' permitting processes, reduce regulatory 'burdens' for industry, and defer to states on enforcement will lead to more environmental law violations."

Ewire: White House takes a tougher line with Pruitt ahead of hearing

In today's Ewire: Tensions between EPA Administrator Scott Pruitt and the Trump White House over Pruitt's alleged ethics scandals appear to be heightening just one day before the administrator is slated to appear before two House committees.

EPA defends discretion in setting 2017 RFS targets

EPA in a new legal filing is rejecting attacks on its process for setting the 2017 renewable fuel standard targets, saying a federal appeals court should defer to its discretion in how it sets the goals.

Read all the latest EPA news, analysis and documents →

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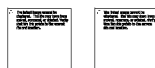
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[Read today's E&E News PM on the web.](#)

E&E NEWS PM

AN E&E NEWS PUBLICATION

E&E NEWS PM — Wed., May 9, 2018



READ FULL EDITION

1. REGULATIONS:

White House delays completion of key rules and repeals

The White House this afternoon released the administration's latest regulatory plan, a sweeping survey for all federal agency actions.

THIS AFTERNOON'S STORIES

2. EPA:

Democrats demand answers on quick 'secret science' review

3. CLEAN POWER PLAN:

States, cities oppose Trump bid to stall litigation

4. ENERGY POLICY:

House committee approves grid, cyber and LNG bills

5. NATIONAL PARKS:

DOJ urges justices to bypass hovercraft-riding hunter's case

6. COAL:

6 states join Wash. export lawsuit

UPCOMING HEARINGS AND MARKUPS

7. CALENDAR:

Activity for May 7 - May 13, 2018

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GREENWIRE

AN E&E NEWS PUBLICATION

GREENWIRE — Fri., April 20, 2018



READ FULL EDITION

1. REGULATIONS:

EPA sends 'secret science' plan to White House

EPA yesterday sent a proposed rule to the White House Office of Management and Budget with the announced purpose of "strengthening transparency and validity in regulatory science," according to the RegInfo.gov site.

TOP STORIES

2. INTERIOR:

Migratory bird law may target smugglers, not polluters

3. PUBLIC LANDS:

This Patch of Heaven emerges as anti-government hotbed

4. BUSINESS:

100% renewables — gimmick or game changer?

CONGRESS

5. AIR POLLUTION:

14 Republicans urged Pruitt to retain Obama glider rules

6. FEDERAL AGENCIES:

Senate Democrats probe Koch 'infiltration'

7. OFFSHORE DRILLING:

Cantwell wants to protect coasts from spills

POLITICS

8. OFF TOPIC:

Meet the clean car pioneer they called 'dragon lady'

9. EPA:

Wheeler sworn in

10. WHITE HOUSE:

Oil markets shift as Trump tweets

11. BRISTOL BAY:

Conservatives keep up pressure on Pruitt over Pebble

NATURAL RESOURCES

12. NATIONAL MONUMENTS:

San Gabriel plans bar energy, mineral development

13. BRISTOL BAY:

Pebble protesters say Army Corps silenced their concerns

14. PUBLIC LANDS:

Utah's Rainbow Bridge monument becomes dark sky sanctuary

15. SCIENCE:

Humans to blame for 'downsizing of nature' — study

16. WILDLIFE:

Reclamation investigates possible theft of mammoth bones

ENERGY

17. BIOFUELS:

Ethanol boosters scramble to decode Trump's E15 plans

18. ELECTRICITY:

In a first, U.K. goes 55 hours without tapping coal

19. OIL AND GAS:

3 LNG tankers cross Panama Canal in a day, setting milestone

AIR AND WATER

20. COLORADO RIVER:

Western states call Ariz. a water hog

21. WASTE:

The smelly food in your fridge squanders tons of water

22. AIR POLLUTION:

Artist's pods give people a taste of world's dirtiest air

CHEMICALS

23. TEXAS:

Valero plant explodes; no injuries reported

24. TOXICS:

Contaminated soil leads to tense dispute with Army Corps

STATES

25. HAWAII:

Historic rains inspire 'despicable' scam by boaters

26. NEW JERSEY:

Former acting EPA chief visits threatened marsh cabins

27. WYOMING:

Coal firm appealed to Gov. Mead over denied mine permit

INTERNATIONAL

28. JAPAN:

Volcano erupts for first time in a quarter-millennium

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Subject: Morning Energy, presented by America's Pledge: First SAB meeting to eye EPA reg rollbacks — Cramer hits Trump's legislative director — DOE: U.S. generally 'well prepared' for grid hacks

By Kelsey Tamborrino | 05/31/2018 05:43 AM EDT

With help from Eric Wolff

PRUITT'S SAB STORY: EPA's independent Science Advisory Board will meet today and Friday for the first time since Administrator Scott Pruitt barred scientists on the committee from receiving EPA grants and boosted its ranks with industry representatives — and the group's agenda is packed. The SAB will look at Pruitt's "secret science" proposal to bar EPA from using studies that don't make public all their data, as well as the Clean Power Plan repeal, Pruitt's decision to relax 2022-25 auto emissions standards, changes to the 2016 methane rule for new oil and gas wells and effort to repeal a rule regulating emissions from "glider" trucks — and that's not all.

A lot to dive into: The heavy slate of issues is unusual for the advisory board, Pro's Alex Guillén reports. Several current and former SAB members say it's unprecedented for the board to consider reviewing so many regulatory actions. But like green groups and critics of Pruitt, the SAB scientists say EPA has declined to share information about its regulatory rollbacks. "The agency has not been forthcoming about how they're developing the relevant science work products," said Chris Frey, a professor of environmental engineering at North Carolina State University and a SAB member since 2012.

EPA keeps quiet: SAB has been conducting twice-yearly reviews of EPA's planned regulatory actions since 2012, members said. It's an effort designed to enable the advisory board to help guide EPA before its rules are finalized. But this time around, the SAB's working groups say EPA wasn't being forthcoming with information. "Basically they just didn't provide us with any answers," said Frey. "That kind of put us in a position where all we can really do is say EPA has not identified the science or any plan to review it, and clearly there are science issues that are in the proposed rule."

What to expect: It's not immediately clear whether the full SAB will vote today to advance the reviews. But Frey noted that some of the members appointed by Pruitt had been on the working groups, giving him hope that the full board will back the recommendations to look deeper into the regulatory rollbacks. Should SAB adopt them, Alex reports, it likely would mean setting up special subcommittees that include current members plus outside experts to question EPA further. Read more [here](#).

IT'S THURSDAY! I'm your host Kelsey Tamborrino, and Entergy's Rob Hall correctly identified former President William Howard Taft as the first to see a Major League Baseball game in his hometown of Cincinnati. For today: Name all the presidents who were married while in office. Send your tips, energy gossip and comments to ktamborrino@politico.com, or follow us on Twitter [@kelseyam](#), [@Morning_Energy](#) and [@POLITICPro](#).

Register for the Pro Summit: Join Pro subscribers, expert reporters and key decision-makers from the executive branch, federal agencies and Congress for a full day of incisive policy conversations on July 17. [Learn more](#).

THE LONG AND SHORT OF IT: In an unusual attack on the White House's legislative affairs director, North Dakota Rep. Kevin Cramer blamed Marc Short explicitly for the party's legislative failures in the Senate, including ending the Obama rule on flaring and venting from oil and gas wells. After POLITICO published a story outlining the awkward dynamic between Heidi Heitkamp, Cramer and the White House, Cramer told North Dakota radio host Rob Port that he had done some digging and believes that there "are some people in the White House that think, you know, the president's too friendly too her," Burgess Everett recaps.

Moreover, Cramer laid specific blame at Short's feet for failed GOP efforts in the Senate to roll back an Obama-era regulation limiting flaring and venting, as well as repealing Obamacare. Heitkamp voted against gutting that flaring rule, something Cramer has criticized her for, in particular. "If Marc Short was very good at his job, you know, we'd have a repeal and replacement of Obamacare, we'd have a replacement of the venting and flaring rule," Cramer said. Read that story here.

PRUITT'S MEDIA BLITZ: The EPA administrator visited Rosslyn, Va., on Wednesday to sit for interviews with two conservative media outlets. One was conducted by Boris Epshteyn for his Sinclair Broadcasting segment, "Bottom Line with Boris." (Watch that here.) The other was with the Washington Free Beacon, where Pruitt repeated familiar talking points in defense of the ongoing scandals and investigations that have surrounded him over the past few months. Pruitt said he still has President Donald Trump's backing, noting that Trump has "spoken very strongly and consistently" about their working relationship. "It's been intense the last couple of months, but he's been very encouraging, very empathetic and very supportive rather consistently," Pruitt said. The administrator also discusses the Paris climate agreement, "The Bachelorette" and, of course, baseball in the 13-minute segment, which you can listen to here.

GRID AND BEAR IT: In response to an executive order signed last year, the Energy Department released a new report Wednesday that said senior government officials and electric sector executives don't know enough about how energy companies could recover from a disruptive cyberattack, and those companies aren't thinking about cyber threats enough when building out their supply chains. While the report mainly hammered home some long-known problems with the grid, DOE highlighted how grid resilience efforts suffer because of "gaps in incorporating cybersecurity concerns, including planning for long-term disruption events, into state emergency response and energy assurance planning." Generally, however, the report said the U.S. is "well prepared to manage most electricity disruptions." Read more from Pro's Eric Geller here.

WHERE'S PERRY? Energy Secretary Rick Perry delivers remarks this morning on critical infrastructure at DOE's Texas-Israel Cyber Security Conference in Dallas. The department also announced that Perry would address the DOE's annual Cyber Conference in Austin on Monday. During both events Perry is expected to discuss DOE's new Cybersecurity, Energy Security and Emergency Response office, as well as efforts at DOE to address cyber vulnerabilities in the energy sector.

ABOUT THAT GLIDER RULE: The New York Times' Eric Lipton tweeted out new documents late Wednesday that give new details into the controversial Tennessee Technological University study on truck emissions that Pruitt used to consider rewriting part of the Phase 2 truck rules. "The letters obtained via open records request show that the principal investigator at Tenn Tech who conducted study funded by Fitzgerald, the company that makes the so-called glider trucks, disavowed the work, saying that it had been distorted in a fraudulent way," Lipton tweeted.

BY THE NUMBERS: The federal government spent \$13.2 billion across 19 agencies during fiscal 2017 on programs related to climate change, a report from the Government Accountability Office says. That's an overall \$1.5 billion increase across the federal government over fiscal 2016, Pro's Anthony Adragna reports. And it's an increase of \$4.4 billion since fiscal 2010, according to the report, which was request by House Science Chairman Lamar Smith. Read more.

CALIFORNIA GETS CHARGED UP FOR EVs: The California Public Utilities Commission is expected to approve a \$589 million program for its four investor-owned utilities to build out their electric vehicle charging infrastructure. The plan is part of the implementation of California's aggressive greenhouse gas law passed in 2015. Most of the money — which will ultimately come from ratepayers — will go toward setting up electric vehicle charging stations and related infrastructure. California leads the nation by far in electric vehicle sales and adoption.

NO MAJOR FLAWS IN FERC PROCESS: Auditors in the DOE inspector general's office said they found no major flaws in FERC's process for reviewing interstate natural gas pipelines, according to a new report. But they also flagged concerns about FERC's transparency and how it handles public comments. The auditors said that "nothing came to our attention to indicate that FERC had not performed its due diligence" in how it balanced public benefits of a proposed project with its adverse impacts. But the report also said regulators' "had not fully ensured" that the certification process was transparent to those who want to participate, and it hit the agency's eLibrary documentation system as difficult to use, Pro's Darius Dixon reports.

**** A message from America's Pledge:** America's Pledge is flipping the script on climate action. One year after the federal government announced it would pull out of the Paris Agreement, 2,700+ U.S. cities, states, and businesses are saying, "We Are Still In." See how far we've come: <https://politi.co/2koAHZb> **

FERC DENIES PENNEAST REHEARING: FERC on Wednesday denied a rehearing sought by the Delaware Riverkeeper Network and Sourland Conservancy on the controversial PennEast pipeline. Commissioner Richard Glick issued a separate statement on the agency's use of tolling orders. "This proceeding, in particular, illustrates the need for prompt action on rehearing requests," Glick wrote. " ... I also have serious concerns regarding the Commission's practice of issuing conditional certificates — which, notwithstanding their name, vest the pipeline developer with full eminent domain authority — in cases where the record does not contain adequate evidence to conclude definitively that the pipeline is in the public interest."

GREENS ENDORSE DE LEON OVER FEINSTEIN: 350.org co-founder Bill McKibben and 350 Action said Wednesday it is backing Kevin de León in his bid to challenge California Sen. Dianne Feinstein. McKibben said de León, a current California state senator, "has been a strong champion of clean energy — and an effective one, using his power in Sacramento to make change happen against the strong opposition of the fossil fuel industry." Read De León's candidate questionnaire answers here.

SELC SUES OMB OVER REORG: The Southern Environmental Law Center sued the Office of Management and Budget Wednesday for its failure to release information under FOIA on the reorganization at federal agencies that manage public lands. SELC says OMB has not provided requested information under a November 2017 FOIA request, nor has it made a determination or otherwise responded to the request, and has subsequently stopped communicating with SELC. The center is seeking "all records in the custody or control of OMB submitted in connection with Executive Order 13781 by any agency responsible for the management of federal public lands," including the Forest Service, National Park Service, BLM and the Fish and Wildlife Service. The EO in question directed each agency head to submit a report to OMB outlining proposed changes to their agency. Read the lawsuit.

CRES BACKS McMASTER IN SOUTH CAROLINA: Citizens for Responsible Energy Solutions will announce a \$175,000 television and digital ad buy today highlighting South Carolina Gov. Henry McMaster's record on clean energy. "First as lieutenant governor and now as governor, his commitment to the development of advanced energy technologies like natural gas and solar power is helping the state's economy and job market thrive," CRES Chairman and Executive Director James Dozier said.

McCARTHY NAMED DIRECTOR OF HARVARD CENTER: Harvard T.H. Chan School of Public Health announced former EPA Administrator Gina McCarthy will lead its newly launched Center for Climate, Health,

and the Global Environment. Under McCarthy, C-CHANGE announced a collaboration between Harvard University and Google to reduce the use of harmful chemicals in construction and renovation projects. "C-CHANGE will ensure that cutting-edge science produced by Harvard Chan School is actionable — that the public understands it, and that it gets into the hands of decision-makers so that science drives decisions," McCarthy said in a statement.

MOVER, SHAKER: Mitch Schwartz started this week as communications director for Jason Crow's campaign in Colorado's 6th Congressional District. Schwartz previously worked for SKDKnickerbocker.

— **PUSH Buffalo, a sustainable housing group**, announced Rahwa Ghirmatzion as its new executive director as of August 2018. Ghirmatzion has served as the organization's deputy director since 2017.

QUICK HITS

- Exxon aims to boost production even with any climate rules, [Associated Press](#).
- Buffett utility to be first in U.S. to reach 100 percent renewables, [Reuters](#).
- Chevron shareholders reject climate change resolutions, [Washington Examiner](#).
- It's not every day you see a tropical depression over Indiana — but here it is, [The Washington Post](#).
- U.S. solar manufacturing poised to boom in wake of Trump tariffs, [Bloomberg](#).
- Oil prices steady after big drop on OPEC talks, [The Wall Street Journal](#).

HAPPENING TODAY

10:00 a.m. — The U.S. Energy Association [forum](#) on coal mine drainage as a domestic source of rare earth elements, 1300 Pennsylvania Ave NW

10:00 a.m. — The World Resources Institute [webinar](#) on "Guidance for Apparel and Footwear Sector Companies to Set Science-Based Targets," focusing on greenhouse gas emissions

12:00 p.m. — Women's Council on Energy and the Environment [event](#) on "Solar Jobs and Community Impact," 1350 I Street NW

12:00 p.m. — The Property Casualty Insurers Association of America briefing on "Hurricane Season: Preparedness, Response, and Recovery," 2044 Rayburn

5:00 p.m. — House Science Committee [field hearing](#) on "Earthquake Mitigation: Reauthorizing the National Earthquake Hazards Reduction Program," Huntington Beach, Calif.

THAT'S ALL FOR ME!

**** A message from America's Pledge:** One year after President Trump announced plans to withdraw from the Paris Agreement, America's Pledge is showing the world that U.S. cities, states, and businesses can lead us towards our goals - with or without Washington. <https://politi.co/2koAHZb> **

To view online:

<https://subscriber.politicopro.com/newsletters/morning-energy/2018/05/first-sab-meeting-set-to-begin-237617>

EPA boosts industry membership on key advisory boards [Back](#)

By Alex Guillén | 11/03/2017 01:41 PM EDT

EPA officially announced the new line ups for several key advisory boards today, bolstering their membership with employees of energy companies and state agencies just days after Administrator Scott Pruitt ordered scientists who have received agency grant money to give up their EPA funding or their seat.

As POLITICO [reported](#) on Tuesday, the [Science Advisory Board's](#) new additions include representatives from Phillips 66, Total, Southern Co., the American Chemistry Council and NERA Economic Consulting, a firm frequently hired by industry interests. Their additions boost the industry membership of SAB, although the panel had previously included members from Dow Chemical and other industries or companies.

The [Clean Air Scientific Advisory Committee](#), which provides health advice for air quality standards, also has three new members. Aside from new Chairman Tony Cox, an independent consultant, the new members are Larry Wolk of the Colorado Department of Public Health and Environment and James Boylan of the Georgia Department of Natural Resources.

EPA also announced a slate of new additions to the [Board of Scientific Counselors](#), which advises on research issues. The former chairwoman, Deborah Swackhamer of the University of Minnesota, is now listed as member, while Paul Gilman of waste-to-energy company Covanta has taken over as chair.

Other new BOSC members include representatives from the North Dakota Petroleum Council, Eli Lilly and Co., the Defense Threat Reduction Agency, the Arkansas Department of Environmental Quality, the California Energy Commission and the consulting firm Ramboll Environ.

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EPA's science advisers turn eyes on Pruitt's rollbacks [Back](#)

By Alex Guillén | 05/31/2018 05:00 AM EDT

EPA's influential Science Advisory Board will meet on Thursday for its first time since Administrator Scott Pruitt filled it with a slate of industry representatives — and it's got a long list of controversial rule rollbacks to review.

The SAB plans to pore over the science EPA is using to justify rollbacks on emissions regulators for cars, trucks, power plants and oil and gas wells — as well as Pruitt's proposed "transparency" rule for scientific studies.

Several current and former SAB members told POLITICO that it was unprecedented for the board to consider diving into so many regulatory actions, but the heightened scrutiny from the outside experts came about because the agency stonewalled the scientists' questions about Pruitt's deregulatory decisions. That echoes the complaints from environmentalists and public advocacy groups who say EPA has declined to share information about how it was justifying easing the regulations put in place during the Obama administration.

"The agency has not been forthcoming about how they're developing the relevant science work products," said Chris Frey, a professor of environmental engineering at North Carolina State University and a SAB member since 2012.

In a move critics derided as an attempt to stack the 44-member board with industry-friendly voices, Pruitt last year broke with the tradition of reappointing first-term SAB members for second three-year stints by removing several advisers who received grants from the agency. In their places, he installed scientists from the fossil fuel and chemicals sectors and several Republican environmental officials. Among the new members are representatives from Phillips 66, Total, Southern Co., the American Chemistry Council and NERA Economic Consulting.

In addition to studying Pruitt's proposal to bar EPA from using studies that don't make public all their data, the SAB's working groups suggested the full group take a closer look at the repeal of the Clean Power Plan and EPA's reconsideration of its related rule limiting carbon emissions from future power plants. Also up for review are Pruitt's decision to relax 2022-2025 auto emissions standards, changes to the 2016 methane rule for new oil and gas wells, and EPA's effort to repeal a rule regulating emissions from "glider" trucks.

The working groups also deferred decisions on two other rulemakings: the Waters of the U.S. rewrite and rules on a special class of "persistent, bioaccumulative and toxic chemicals" under the Toxic Substances Control Act. SAB can decide whether to conduct a deeper review into those once EPA has reviewable regulatory language available, the groups said.

Frey, who has been a SAB member for six years, said having multiple rules up for review was very unusual for the board.

"It's very rare that we've recommended to the full Science Advisory Board that there should be an SAB action," he said.

SAB has been conducting twice-yearly reviews of EPA's planned regulatory actions since 2012, members said, an effort designed to enable the advisory board to help guide EPA before its rules are finalized.

In the early days, getting information from EPA was "like pulling teeth," said Kimberly Jones, a SAB member from 2011 through 2017 and the chair of environmental engineering at Howard University. But that quickly improved once EPA knew the scope of SAB inquiries, she added.

The SAB's working groups review how EPA uses scientific studies in its rulemakings, including whether and how a study was peer-reviewed and if EPA has properly accounted for uncertainties in the scientific findings. The groups typically find that further reviews aren't needed.

But this time around, the working groups said EPA didn't respond to their questions about many of Pruitt's highest-profile rollbacks.

"Basically, they just didn't provide us with any answers," Frey said. "That kind of put us in a position where all we can really do is say EPA has not identified the science or any plan to review it, and clearly there are science issues that are in the proposed rule."

Frey pointed to lengthy memos from the working groups that included multiple pages of questions that had been posed to EPA for each rulemaking. EPA responded with short statements promising to keep the issues in mind as it develops the final rules.

"The response from the agency was basically a non-response," Frey said.

An agency spokesman said in a statement that SAB "plays an important role" advising EPA.

"We value the Board's expertise, and we welcome feedback from the chartered panel on areas in which they are interested in getting additional scientific information that is relevant to the rulemaking process," the spokesman said.

It was not clear whether the full SAB will vote on Thursday to advance the reviews.

Frey noted that some of the members appointed by Pruitt had been on the working groups, giving him hope that the full board will back the recommendations to look deeper into the regulatory rollbacks.

Should SAB adopt them, it likely would mean setting up special subcommittees that include current members plus outside experts to question EPA further.

The board can advise EPA only on scientific matters, not policy or legal issues. In several cases, like with the repeals of the Clean Power Plan and the glider rule, EPA says it has a legal argument about statutory authority that does not rely on scientific issues.

But even then, Frey said, EPA must keep the science in mind.

"It's in the best interest of the agency to make sure that it's using appropriately developed and reviewed science in its rules," Frey said. "And the flip side of that is if the agency's not doing that, it could open itself up to legal challenges for not following appropriate procedures to develop the science."

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GOP sweats Trump's Heitkamp flirtation [Back](#)

By Alex Isenstadt and Burgess Everett | 05/30/2018 05:08 AM EDT

When a small group of alarmed White House aides caught wind that Sen. Heidi Heitkamp — one of the most endangered Democrats up for reelection in 2018 — would be attending President Donald Trump's bill signing last week, they raced to stop it.

Word eventually reached Senate Majority Leader Mitch McConnell, who has made unseating Heitkamp a top priority. He opted not to intervene, and the invitation stood: As the president signed a banking deregulation bill into law before a national audience, Heitkamp was right next to him, the only Democrat in the room.

As the election year kicks into high gear, Republicans have grown increasingly frustrated with Trump's ongoing flirtation with the freshman senator. At a time when many in the GOP fear that the president's unpredictable style will undercut their best-laid midterm plans, the relationship has given Heitkamp — who is seeking reelection in a state where Trump won nearly two-thirds of the vote — fodder to portray herself as a presidential ally.

Her office keeps a running list of the dozen-plus meetings Heitkamp has had with Trump and his top advisers since the 2016 election. And the senator is fond of noting that she forged close ties with Trump's former top economist, Gary Cohn. The president met with Heitkamp in Trump Tower after the 2016 election to discuss a

possible Cabinet position, asked her to join him on Air Force One, and invited her onstage to join him and her Republican opponent, Rep. Kevin Cramer, during an appearance in North Dakota.

"Everyone is saying, 'What's she doing up here?'" the president said at the September event to sell his tax reform plan, which Heitkamp eventually opposed. "But I'll tell you what. Good woman, and I think we'll have your support, I hope we'll have your support. And thank you very much, senator, thank you for coming up."

After last week's bill signing, Heitkamp's allies raced to capitalize. The North Dakota Democratic Party sent out a tweet with an image of Cramer looking on uncomfortably as the president stood next to Heitkamp.

"At a bill signing today, @HeidiHeitkamp got a shout out and all @kevincramer got was a photo op next to a chair," the state party boasted.

"We will see footage of this on every platform," said Doug Heye, a former top Republican National Committee official. "It's a huge gift for her campaign."

Trump aggressively recruited Cramer to give up his House seat to take on Heitkamp, and his actions since have left some of Cramer's closest allies feeling snubbed. They note that while Trump has savaged Democratic incumbents Joe Donnelly of Indiana and Jon Tester of Montana and visited a growing list of states to pump up Republican Senate hopefuls — most recently Tennessee, where he appeared Tuesday on behalf of Rep. Marsha Blackburn — he has yet to make a campaign appearance with Cramer. Nor has the attack dog-in-chief attacked Heitkamp.

After Cramer learned last year that Heitkamp would be accompanying the president on Air Force One to North Dakota, he complained bitterly to the White House, according to two people with direct knowledge of the discussions. Heitkamp, Cramer predicted at the time, would try to use it to her political advantage. (A Cramer adviser, Pat Finken, denied that the congressman had complained about the senator riding on Air Force One.)

The administration has taken steps to assure Cramer that he has the president's full support. The congressman has been regularly in touch with White House political director Bill Stepien, and the two met earlier this month. Trump has agreed to hold a rally for Cramer later this year.

In an interview, Cramer shrugged off Heitkamp's attendance at the bill signing and said there would soon be "clarity" on who Trump supports in the race.

Yet the congressman declined to predict whether the president would go after Heitkamp aggressively, as Trump has done with other Democratic incumbents. Cramer seemed aware of the warmth between the president and the senator. Trump has asked Cramer whether he likes Heitkamp, and when the congressman responds yes, the president seems to be "relieved," Cramer said.

"Politically, North Dakota's a pretty nice state. So I don't know that turning it on her is necessarily politically helpful to me," Cramer said. "They may just be concerned that she's a woman and maybe that has an impact. I just don't know."

Heitkamp said she's proud of her ability to work with the president.

"I have a friendly relationship. I have a very important working relationship," she said in an interview, "not just with him but other members of the administration."

Trump's reluctance to go after Heitkamp stems in part from the simple fact that he needs her vote. With Republicans clinging to a narrow Senate majority, the White House has pushed for her support on several

contentious votes, including the recent confirmations of CIA Director Gina Haspel and Secretary of State Mike Pompeo. She also backed Trump's nominations of Supreme Court Justice Neil Gorsuch and Environmental Protection Agency Administrator Scott Pruitt.

Last week's signing ceremony was organized by White House Office of Legislative Affairs Director Marc Short. He said he extended an invitation to Heitkamp because she played a central role in passing the banking deregulation law.

"She was an original cosponsor of the bill," Short said. "But she's also someone who opposed tax relief, who opposed repeal of Obamacare, and someone who will always support Chuck Schumer. So you can be sure the president will be actively campaigning in North Dakota this cycle."

Cramer's February entry into the race followed an intense pursuit from Trump and top White House officials. After Cramer initially said in January that he wouldn't run for Senate, he received overtures from Trump, White House counselor Kellyanne Conway, and energy executive and Trump donor Harold Hamm within a three-day period. Trump also met with Cramer's wife, Kris.

Cramer said Trump told him at the time that he'll "be out there campaigning more than you are." Trump's entreaties, Republicans contend, helped to push Cramer into the contest. Cramer won his statewide, at-large House seat in 2012, the same year Heitkamp entered the Senate.

"The president leaned on him very hard. The president wanted the best candidate, and everyone in the state thought Kevin was the best candidate to beat Heidi," said Gary Emineth, a former North Dakota GOP chairman who is close with the congressman. "You know how the president is. He just doesn't quit."

Heitkamp predicted that Trump would attack her eventually. While she has maintained a positive working relationship with the president, she said it pales in comparison to Cramer's staunch loyalty.

"I don't think anyone can match his Trump credentials," Heitkamp said. "He is somebody who will always do what the president asks him to do, regardless of whether it's good for North Dakota."

As of late, the senator has been airing commercials that highlight her balancing act. "When I agree with the president I vote with him — and that's over half my votes," she says in a spot that began airing this month. "And if his policies hurt North Dakota, he knows I'll speak up."

Cramer accused Heitkamp of acting like a "Republican wannabe" with her occasional support for key Trump nominees.

"Her trying to cozy up to Donald Trump has resulted in good votes," Cramer said. "But every time she tries to become more like me, it's more flattering to me than it is to her."

Democrats, however, couldn't be happier to portray Cramer as a jilted lover.

Last week, the North Dakota Democratic Party released a video featuring a montage of clips of the president praising Heitkamp and shaking her hand as Cramer looks on — set to the sad sounds of R.E.M.'s "Everybody Hurts."

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GOP Senate candidate lashes out at Trump's legislative director [Back](#)

By Burgess Everett | 05/30/2018 06:27 PM EDT

Rep. Kevin Cramer, one of the GOP's top Senate recruits, launched an unusual attack on the White House's legislative director Wednesday, blaming him explicitly for the party's legislative failures in the Senate.

The comments from Cramer (R-N.D.) come amid rising GOP angst over President Donald Trump's close relationship with his opponent in the North Dakota Senate race, Democratic Sen. Heidi Heitkamp.

Heitkamp was the only Democrat invited to the White House last week for a bank deregulation bill signing, alarming some White House aides and Republicans. After POLITICO published a [story](#) on Wednesday outlining the awkward dynamic between Heitkamp, Cramer and the White House, Cramer [told](#) North Dakota radio host Rob Port that he had done some digging and believes that there "are some people in the White House that think, you know, the president's too friendly too her."

Then Cramer laid into White House legislative affairs director Marc Short for two prominent failed GOP efforts in the Senate: Repeal of Obamacare and the rollback of an Obama-era regulation that would limit flaring and venting from oil and gas wells. Heitkamp voted against both and Cramer has criticized her in particular over the flaring vote.

"If Marc Short was very good at his job, you know, we'd have a repeal and replacement of Obamacare, we'd have a replacement of the venting and flaring rule," Cramer said.

In an interview last week with POLITICO, Cramer insisted he is not angry over Trump's political flirtations with Heitkamp: "Not the case at all. I've been fine with it. I just don't think it hurts me." And on Wednesday on Port's show, Cramer said the spat over Heitkamp's attendance at the banking bill signing "just seems to be an argument between Marc Short and other people in the White House."

Short extended an invitation to Heitkamp to the bill signing, but also has knocked Heitkamp for opposing the GOP's tax law. He did not respond to a request for comment for this story.

Heitkamp has tried to stay out of the back and forth, though she is playing up her collaborations with a president that won her state in 2016 by more than 35 points.

"The president has got bigger fish to fry and bigger problems to solve than whether Kevin likes him more than I do," Heitkamp said.

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DOE report: U.S. generally 'well prepared' for grid hacking, but gaps remain [Back](#)

By Eric Geller | 05/30/2018 06:05 PM EDT

Senior government officials and electric sector executives don't know enough about how energy companies could recover from a disruptive cyberattack, and those companies don't consider cyber threats enough when building out their supply chains, according to a new Energy Department [report](#).

Grid resilience efforts also suffer because of "gaps in incorporating cybersecurity concerns, including planning for long-term disruption events, into state emergency response and energy assurance planning," said the report.

"The United States is, in general, well prepared to manage most electricity disruptions," the Energy Department said in its report. But gaps still exist in areas like situational awareness, workforce development, separation of roles and responsibilities and the coordinated use of resources like digital defense tools.

DOE completed the report last August as part of President Donald Trump's May 2017 cyber executive order but did not publish it until today.

The report mostly hammered home long-understood problems with protecting the power grid from hackers, including the challenges of sharing cyber threat data between partners

"The variation in infrastructure ownership and operation and the jurisdictional overlap add complexity to sharing actionable information in a timely manner," the report said. "These complexities are compounded when information is classified or sensitive due to the limited options and access to facilitate sharing."

It also warned of compounding problems in the event of a major power outage. For example, "as cyber incidents may impact disparate systems across the country, the impacted owner-operators may not be familiar with each other's systems and procedures."

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DOE working to stand up new cyber unit in fiscal 2018 [Back](#)

By Darius Dixon | 03/01/2018 01:11 PM EDT

The Energy Department is aiming to have its new cybersecurity office fired up before the end of the fiscal year, Bruce Walker, the agency's top electricity official, said today.

"We're working with Congress because we put it into the FY 2019 budget proposal ... and we're looking to stand it up earlier because of the importance and our sector-specific agency authority [for cyber incidents]," he told reporters after testifying before the Senate Energy and Natural Resources Committee.

Walker has previously noted that DOE wouldn't need additional congressional authority to create the office or a new assistant secretary job to lead it. Today, he also said that the design change is meant to elevate cyber issues as well as to divide up the agency's infrastructure work into short-term and long-term operations.

Creating the Office of Cybersecurity, Energy Security and Emergency Response is a reaction to a range of issues, including Congress giving DOE more emergency authorities in the 2015 FAST Act ([H.R. 22 \(114\)](#)), the relentless need to improve cyber defenses, and the deepening marriage between the natural gas and electric sectors.

Walker would still lead the electricity office, which would focus on long-term infrastructure plans and set research-and-development goals, including for cybersecurity. Meanwhile, the new CESER office would be "actionable, near-term and highly responsive" recovery work like the devastation in Puerto Rico or the immediate response to a cyberattack, he said.

"One basically feeds the other," Walker said. "[CESER] responds to the incidents, OE will design them out of the system on a going-forward basis."

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GAO: Government spent \$13.2B on climate change last year [Back](#)

By Anthony Adragna | 05/30/2018 04:34 PM EDT

The federal government spent \$13.2 billion across 19 agencies during fiscal 2017 for various programs related to climate change, according to [a report](#) from the Government Accountability Office released today.

Overall, climate change-related spending across the federal government rose \$1.5 billion between fiscal 2016 and 2017 and grew \$4.4 billion since fiscal 2010, according to the report.

GAO examined the budget justifications for six agencies accounting for 89 percent of all climate change spending and found just 18 of 533 programs within those agencies whose primary purpose is to address climate change. It further concluded that those programs primarily dedicated to addressing the problem "serve different purposes, target different audiences, or operate at different time periods and scales, which minimizes potential overlap or duplication." The other programs had multiple purposes beyond addressing climate change.

The White House Office of Management and Budget reports the government has spent over \$154 billion since 1993 to understand and address climate change.

House Science Chairman [Lamar Smith](#) (R-Texas) requested the report.

To view online [click here](#).

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DOE IG: No big flaws in FERC pipeline review process, but transparency should improve [Back](#)

By Darius Dixon | 05/30/2018 03:21 PM EDT

Federal watchdogs said they found no major flaws in FERC's process for reviewing interstate natural gas pipelines, but they flagged concerns about its transparency and how it handles public comments, according to [new report](#).

Auditors in the Energy Department inspector general's office who reviewed FERC's pipeline certification process said that "nothing came to our attention to indicate that FERC had not performed its due diligence" in how it balanced public benefits of a proposed project with its adverse impacts.

But the report said regulators' "had not fully ensured" that the certification process was transparent to those who want to participate and that its eLibrary documentation system was difficult to use. And it said FERC lacked a consistent method for tracking and addressing comments submitted on a proposed project.

"FERC had not specifically designed its public-facing systems for use by the general public," the IG report said, noting that "although available to the general public, eLibrary had been designed for use by practitioners, the legal community, and other stakeholders."

The report also said parts of the eLibrary website "did not contain a sufficient explanation of the entire process" and that a document for landowners who could be affected by a project was not clear about key aspects of the certification process.

"While nothing came to our attention to indicate that natural gas certification applications had been inappropriately approved or disapproved," watchdogs wrote, "FERC can take steps to improve aspects of the natural gas certification process."

WHAT'S NEXT: FERC is in the process of a broad review of its natural gas pipeline certification process but there's no established deadline.

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Subject: Morning Energy: Pruitt steps up to the plate — Tester's 'great equalizer' — Bishop still talking NEPA

By Kelsey Tamborrino | 04/26/2018 05:42 AM EDT

With help from Anthony Adragna

PRUITT STEPS UP TO THE PLATE: Scott Pruitt makes his eagerly anticipated trip to the Hill this morning, and the stakes couldn't be higher for the embattled EPA administrator. His appearances before the House E&C Committee in the morning and Appropriations panel in the afternoon — ostensibly to defend the Trump administration's proposed cuts to EPA's budget — will give lawmakers their first opportunity to directly question Pruitt since the news broke about his heavy spending, sweetheart condo rental, VIP security and first-class flights. And while both Democrats and Republicans are expected to pull no punches as they weigh Pruitt's behavior, the real audience will be sitting in 1600 Pennsylvania Ave.

Check out this graphic breakdown of Pruitt's problems by POLITICO's Emily Holden, Alex Guillén and your ME host.

— **The administrator has kept a low profile** in the lead-up to today's events — even leaving press out of a Tuesday announcement on his plan to ban secret science — but expect the cameras to be out in force this morning. ME breaks down what to expect today as Pruitt heads for the batter's box. (ME is also taking suggestions for an appropriate walk-up song. One option here.)

THE GAME PLAN: Pruitt will point out he now flies coach when he travels, and shift the blame to staffers for the raises given to two of his close aides, according to a talking points document — dubbed "hot topics" — obtained by The New York Times. He will likely also say officials who were reassigned or demoted after challenging his spending all had performance issues.

— **EPA did not dispute the authenticity** of the Times document, but spokesman Jahan Wilcox said Pruitt would tout "the accomplishments of President Trump's EPA," including "working to repeal Obama's Clean Power Plan and Waters of the United States, providing regulatory certainty, and declaring a war on lead — all while returning to Reagan-era staffing levels." You can read Pruitt's full opening statement for the E&C hearing here.

DEMOCRATS WILL SEARCH FOR ANSWERS: The afternoon session is expected to dive into Pruitt's proposed deep cuts to the agency's budget and his deregulatory actions, but that doesn't mean Democrats will ignore the ethics woes dogging the embattled chief. "Administrator Pruitt, you are letting the American people and your agency down," Rep. Betty McCollum, ranking member of the Appropriations subpanel, plans to say. Democrat Nita Lowey, the ranking House appropriator, will question Pruitt on the Antideficiency Act after the Government Accountability Office found EPA illegally failed to notify Congress about the cost of his secure phone booth. Meanwhile, E&C's top Democrat Frank Pallone wouldn't tip his hand: "I just hope he shows up," he said when ME asked for his plan of attack.

— **House Energy and Commerce Democrats** will hold a news conference at 9 a.m. to once again call for Pruitt's ouster. Kathy Castor and Paul Tonko will attend, alongside representatives from numerous green groups.

REPUBLICANS OFFER SOME ADVICE: "Answer the questions and stay calm," John Shimkus said. "And the time will eventually end." The Illinois Republican didn't let on about his line of questions to Pruitt, but added: "It's not going to all be addressing stewardship issues. There are going to be policy questions."

— **Fellow Oklahoman and member of the Approps committee** Tom Cole expects the "highly charged" hearing to contain some "pretty much straight budget questions" — at least from the Republican side. Cole said he recently spoke to Pruitt on the upcoming hearing and warned him it would be "rugged."

Keep in mind: None of the committee Republicans said they'd been in contact with the White House ahead of the session. Shimkus said the Republicans hadn't huddled ahead of time to develop a game plan as they sometimes do with high-profile hearings. And Democrats are expected to turn out in force — E&C members not on the Environment subpanel will "waive in" to the hearing. They don't need GOP permission to do so, but will have to wait until all subcommittee members participate before asking questions. ME would look here for especially fiery questions or any surprises.

STRIKE 3? Pruitt's critical audience, of course, will be President Donald Trump, who has so far stuck by him, but is expected to judge how Pruitt fares in front of the cameras, POLITICO's Anthony Adragna and Nancy Cook report. So far, Pruitt's support among Trump's conservative backers has kept him on solid ground, despite the growing resentment of a "high maintenance" EPA chief among White House officials. "The president is always nervous about offending his base, and Pruitt has real support in the base," said one Republican close to the White House. "If that base diminishes, he does not have a chance of being reelected. He generally likes what Pruitt is doing over there, but he has no relationship with Pruitt of any note. He could get someone else."

IN THE OUTFIELD: Environmental group Defend Our Future will hand out first-class boarding passes today at the Pruitt hearing, while Moms Clean Air Force will deliver these report cards. And the League of Conservation Voters and its state partners will launch television ads today urging Sens. Dean Heller and Cory Gardner to hold Pruitt accountable. Watch them here and here.

If you go: The E&C hearing will begin at 10 a.m. in 2323 Rayburn, and the Appropriations hearing at 2 p.m. in 2007 Rayburn. Watch the livestreams here and here.

IT'S THURSDAY! I'm your host Kelsey Tamborrino, and the American Petroleum Institute's Jeff Stein was the first to name Khartoum, Sudan — the capital city where the Blue and White Niles meet to form the Nile. For today: Name the state where the first officially designated Democratic floor leader hailed. Send your tips, energy gossip and comments to ktamborrino@politico.com, or follow us on Twitter @kelseytam, @Morning_Energy and @POLITICOPro.

POLITICO's Ben White is bringing Morning Money to the Milken Institute Global Conference to provide coverage of the day's events and evening happenings. The newsletter will run April 29 - May 2. Sign up to keep up with your daily conference coverage.

PUBLIC LANDS CRUCIAL FOR TESTER: Democratic Sen. Jon Tester's bid for reelection could come down to how he handles public lands issues, Pro's Kevin Robillard reports. Close to one-third of the land in Tester's home state of Montana is under federal government ownership, and the Democratic senator hopes to use it to keep on board those who voted Trump — including hunters, hikers, snowmobilers and ranchers. "Public lands is one of the great equalizers. It's part of who we are," Democratic Gov. Steve Bullock told Kevin. "It doesn't matter what our political beliefs are, it's a core part of our lives."

Tester's strategy is part of a larger effort by Democrats in the West to emphasize lands. Bullock emphasized it in his reelection bid in 2016 and New Mexico Sen. Martin Heinrich, who is expected to easily win reelection in 2018, started his reelection bid with a video focused heavily on public lands issues. And Democratic strategists think it can help them in states throughout the interior west. "There a lot of people here who are

single-issue voters, and that issue is public lands," said Nick Gevock, the conservation director at the Montana Wildlife Federation. Read [more](#).

DEMOCRATS CALL FOR SPECIAL COUNSEL: In a letter Wednesday to the U.S. Office of Special Counsel, Pallone and Oversight ranking member [Elijah Cummings](#) requested an investigation into whether there is a pattern of problematic personnel practices at EPA. The Democrats point to recent reports of agency officials being reassigned, demoted or requesting new roles, after voicing concerns on Pruitt. "The reassignment or dismissal of employees who questioned Administrator Pruitt's wasteful and potentially unlawful expenditures suggests a troubling pattern of retaliation against EPA employees that may be illegal," they write. Read the letter [here](#).

BISHOP STILL TALKING NEPA: House Natural Resources Chairman [Rob Bishop](#) told ME he's been in contact with administration officials "over the last few weeks" about a series of modifications to NEPA that he says "run the gamut." His two overarching goals are to speed the permitting process and to enact categorical exclusions that will limit litigation to allow projects to advance more quickly. "It's one of the consistent problems they recognize," he said of the administration's engagement on NEPA.

Apples to oranges: Controversy over [\\$139,000 spent on doors](#) at Interior is not comparable to spending woes engulfing Pruitt, according to Bishop. "There are some real issues and there are some issues that we play around with," he said. "This is one I think people are playing with." Interior officials said previously that career facilities and security officials recommended the work and that Secretary Ryan Zinke was not aware of it.

THAT DAM BILL: The House passed a heavily watched measure, [H.R. 3144 \(115\)](#), Wednesday that would override a court decision requiring changes in the operations of major hydropower dams in the Pacific Northwest to help protect endangered salmon. The measure, from Washington Rep. [Cathy McMorris Rodgers](#), passed by a nearly party-line vote of 225-189, and now heads to the Senate, where some of the region's Democratic senators have [made known](#) their opposition. Pro's Annie Snider breaks down more [here](#).

REFINERY WORKERS HIT THE HILL: Close to 100 workers from refineries Monroe Energy, Philadelphia Energy Solutions and PBF Energy will rally for their jobs and Renewable Fuel Standard reform on the Hill today, the United Steelworkers said. The rally begins at 1 p.m. in the "Senate Swamp" — the grass across the drive from the east Senate steps. Texas Sen. [Ted Cruz](#) will participate in a press conference with the workers at the same time. Watch the livestream [here](#).

OFF-SHORE UP SUPPORT: While it didn't have quite the same build-up as Pruitt's hearings this morning, the House Natural Resources energy and mineral resources subcommittee will hold a hearing today on offshore energy revenue sharing for Gulf-producing states, with a focus on the Gulf of Mexico Energy Security Act. Democrats intend to call out the oil and gas industry and demand they take responsibility for their role in causing the destruction of Louisiana wetlands, according to a release. Former Sen. Mary Landrieu (D-La.), now a senior policy adviser at Van Ness Feldman, and John Barry, former board member of the Southeast Louisiana Flood Protection Authority — East, will testify, among others. **If you go:** The [hearing](#) begins at 10 a.m. in 1324 Longworth.

GET YOUR COMMENTS IN: [Comments](#) are due today on EPA's proposed repeal of the Clean Power Plan. The Competitive Enterprise Institute, for one, will file a comment today in support of the proposed repeal, calling the CPP "unlawful." Close to 20 other individuals from free-market groups signed onto the joint comment. Google, meanwhile, submitted its own comment Wednesday "respectfully" urging EPA to forgo the repeal. "Google continues to believe that the Clean Power Plan aligns with overall electricity sector trends and the specific goals of our company," [it says](#). The Natural Resources Defense Council and NRDC Action Fund said it generated 208,000 comments in support of keeping the CPP.

MAIL CALL! IN THE AIR TONIGHT: California Sen. [Dianne Feinstein](#) wrote to Transportation Secretary Elaine Chao Wednesday, calling on her to maintain national fuel economy standards set by California under the Clean Air Act. "I ask for your commitment to maintain the Corporate Average Fuel Economy standards at the maximum feasible level, as required by law, and to seek consensus with California so that we can continue to enjoy the success of a coordinated national program to improve fuel economy," Feinstein wrote. Read the letter [here](#).

— **Eighty-seven lawmakers signed onto a letter Wednesday** that calls on Pruitt to reinstate the "once in, always in" [policy](#) to "safeguard" from harmful air pollutants. "This is a matter of critical human health and safety," the lawmakers write. Read it [here](#).

GoT RENEWABLES? Rapper Kanye West [tweeted](#) about his connection to Trump and their "dragon energy" on Wednesday. "We are both dragon energy. He is my brother. I love everyone. I don't agree with everything anyone does." Spoiler: It's not an energy company we forgot to tell you about. Bloomberg breaks it down [here](#), but earlier in the day, West described dragon energy as, "Natural born leaders Very instinctive Great foresight." The House Natural Resources [account tweeted](#) the exchange telling West to "have your people call our people."

QUICK HITS

— Behind the scenes of Pruitt's Nevada trip, [E&E News](#).

— U.S. mine safety agency website 'hacked,' remains down, [S&P Global](#).

— Exxon Mobil boosts quarterly dividend to 82 cents, [Reuters](#).

— Climate change could make thousands of tropical islands "uninhabitable" in coming decades, new study says, [The Washington Post](#).

— Memo: Park Police officers were forbidden from wearing body cameras, [The Hill](#).

— Perry's son owns an energy investment company. Is that a problem? [McClatchy](#).

HAPPENING TODAY

8:00 a.m. — Water Leaders [summit](#) on "Building an Innovative Future for Water Policy and Technology in America," 215 Capitol Visitors Center

8:30 a.m. — George Mason University's Center for Energy Science and Policy [symposium](#) on "Energy-Water Nexus," Fairfax, Va.

9:00 a.m. — Colorado State University hosts [symposium](#) on "Water in the West," Denver

10:00 a.m. — The U.S. Energy Association [forum](#) on "fostering the deployment of CCUS technologies," 1300 Pennsylvania Ave NW

10:00 a.m. — The House Energy and Commerce Committee [hearing](#) on EPA's budget request, 2323 Rayburn

10:00 a.m. — House Science Environment and Space subcommittees [hearing](#) on "Surveying the Space Weather Landscape," 2318 Rayburn

10:00 a.m. — House Natural Resources Oversight Subcommittee hearing on "Examining the Critical Importance of Offshore Energy Revenue Sharing for Gulf Producing States," 1324 Longworth

10:00 a.m. — The Center for Strategic and International Studies' Energy and National Security Program discussion on "Challenges to Ukrainian Energy Reform and European Energy Security," 1616 Rhode Island Avenue NW

11:30 a.m. — The Atlantic Council discussion on "From an Oil Company to an Energy Company," 1030 15th Street NW

1:00 p.m. — Monroe Energy, Philadelphia Energy Solutions and PBF Energy news conference on RINs prices under the Renewable Fuel Standard, Capitol.

1:30 p.m. — Information Technology and Innovation Foundation release on "Closing the Innovation Gap in Grid-Scale Energy Storage," 1101 K Street NW

2:00 p.m. — House Appropriations Interior, Environment, and Related Agencies Subcommittee hearing on EPA's fiscal 2019 budget, 2007 Rayburn

2:00 p.m. — House Natural Resources Committee hearing on H.R. 5317 (115) and H.R. 211 (115), 1324 Longworth

2:00 p.m. — Senate Appropriations Energy and Water Development Subcommittee hearing on the Nuclear Regulatory Commission's proposed budget for FY 2019, 430 Dirksen

2:30 p.m. — The Center for a New American Security discussion on "Geopolitical Risks and Opportunities of the Lower Oil Price Era," 1152 15th Street NW

3:00 p.m. — Rep. Nydia Velázquez discussion on "21st Century Energy Solutions for Puerto Rico," S-115

5:00 p.m. — The Atlantic Council discussion on "Investing in Iraq: Reconstruction and the Role of the Energy Sector," 1030 15th Street NW

6:30 p.m. — Wild & Scenic Film Festival with screenings of feature films that cover topics from climate change to environmental justice, and a panel discussion on women in the outdoors, 1307 L Street NW

THAT'S ALL FOR ME!

To view online:

<https://www.politicopro.com/newsletters/morning-energy/2018/04/pruitt-steps-up-to-the-plate-183688>

Stories from POLITICO Pro

Pruitt scales back EPA's use of science Back

By Emily Holden and Annie Snider | 04/24/2018 03:17 PM EDT

Environmental Protection Agency chief Scott Pruitt announced Tuesday he would seek to bar the agency from relying on studies that don't publicly disclose all their data, a major policy change that has long been sought by conservatives that will sharply reduce the research the agency can rely on when crafting new regulations.

The unveiling of the proposed rule delivers a win to Republicans like House Science Chairman Lamar Smith (R-Texas), who unsuccessfully pushed legislation to impose the same type of change. The move also demonstrates Pruitt's persistence in pursuing President Donald Trump's anti-regulation agenda just two days before the embattled EPA chief is due to face fierce questioning from lawmakers about his hefty spending, expanded security detail and cheap condominium rental from the wife of an energy lobbyist.

At an invitation-only meeting at EPA headquarters with Smith, Sen. Mike Rounds (R-S.D.) and other supporters of the policy, Pruitt said the proposed rule was critical in ensuring that the agency was transparent about how it is making decisions to justify costly new regulations. It is the latest step Pruitt has taken to fundamentally shift the agency's approach to science.

"It is a codification of an approach that says as we do our business at the agency the science that we use is going to be transparent, it's going to be reproducible, it's going to be able to be analyzed by those in the marketplace. And those who watch what we do can make informed decisions about whether we've drawn the proper conclusions or not," Pruitt said.

Text of the proposed rule was not immediately available.

The proposal, based on legislation pushed by Smith, is intensely controversial, and scientists and public health groups say it will prevent federal regulators from enacting health and safety protections. Nearly 1,000 scientists, including former EPA career staffers, signed a letter opposing the policy sent by the Union of Concerned Scientists to Pruitt on Monday.

Their primary concern was that many of the country's bedrock air and water quality regulations are based on research that cannot disclose raw data because it includes the personal health information.

But industry has its own version of the same problem. EPA often relies on industry studies that are considered by companies to be confidential business information when determining whether new pesticides and toxic chemicals are safe to use. Internal EPA emails obtained under the Freedom of Information Act show that EPA political officials, including Nancy Beck, who became the chief of the agency's chemical safety office last year after working for years at a chemical industry lobbying group, worried that the new policy would limit the agency's ability to consider industry data or would force companies to make this proprietary data public.

"We will need to thread this one real tight!" Richard Yamada, political official who led work on the new policy wrote to Beck after she raised the concerns.

It was not immediately clear if the new proposed rule included measures to address those concerns.

Rush Holt, CEO of the American Association for the Advancement of Science, said Pruitt's changes could keep the agency from revising public health regulations as problems arise or new data comes to light.

"On the surface it sounds so innocuous or even beneficial. What could be wrong with transparency? Well it's clear to me that this is not based on an effort to be transparent. It is rather based on an effort to be just the opposite," he said.

"EPA is particularly important because when science is misused, people die," he added.

Pruitt has been discussing the new scientific policy publicly for weeks, but it only went to the White House for interagency review last week. Such swift review is very rare for the Office of Management and Budget, which often takes months to vet a new policy. At least one group, the Environmental Defense Fund, has requested a meeting with OMB officials to discuss the rule, but OMB's website shows that no meetings have been scheduled with interested groups.

Many public health studies can't be replicated without exposing people to contaminants, and environmental disasters such as the Deepwater Horizon oil spill cannot be recreated, the group said, raising intellectual property, proprietary and privacy concerns.

Pruitt's predecessor Gina McCarthy, and her air chief Janet McCabe, in an op-ed in The New York Times in March said concerns about studies are dealt with through the existing peer-review process, which ensures scientific integrity.

"[Pruitt] and some conservative members of Congress are setting up a nonexistent problem in order to prevent the E.P.A. from using the best available science," they said.

To view online [click here.](#)

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Report: Pruitt plans to shift blame for scandals [Back](#)

By Emily Holden | 04/25/2018 01:55 PM EDT

EPA chief Scott Pruitt will seek to shift the blame for some of his ethics controversies by blaming his staff when he testifies at two House hearings Thursday, according to an internal EPA document reviewed by The New York Times.

Pruitt is prepared to say that he now flies coach rather than first-class, that staffers were responsible for large raises given to close aides without White House sign-off and that officials who were reportedly sidelined for questioning his behavior had performance issues, according to the Times.

The defenses are in line with what Pruitt and EPA spokespeople have said in recent months.

EPA did not dispute the authenticity of the document, but spokesman Jahan Wilcox said Pruitt would tout "the accomplishments of President [Donald] Trump's EPA," including "working to repeal Obama's Clean Power Plan and Waters of the United States, providing regulatory certainty, and declaring a war on lead — all while returning to Reagan-era staffing levels."

Pruitt is expected to face questions about his bargain condo rental from the wife of a lobbyist who has since resigned from his firm, his spending on a round-the-clock security detail and his previous refusal to fly coach. He is under investigation by three congressional committees, the EPA's inspector general and the GAO, among other oversight bodies. White House deputy press secretary Hogan Gidley told NPR today that Pruitt will have to answer questions about the potential ethics violations "in short order."

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'It could be pretty painful' when Pruitt faces Congress [Back](#)

By Anthony Adragna and Nancy Cook | 04/25/2018 06:00 PM EDT

When Scott Pruitt returns to Capitol Hill on Thursday, he will find few friends ready to greet him — and an audience of one waiting to determine his fate.

Republicans say they aren't going to give the Environmental Protection Agency chief a free pass on accusations of lavish spending, a sweetheart condo lease and luxe air travel during a pair of high-stakes hearings. Since Pruitt's previous appearance on Capitol Hill in January, he has faced an avalanche of damaging headlines and investigations that have alienated much of the White House and raised questions about his future leading the agency.

President Donald Trump has so far stuck by Pruitt. But the biggest test for the media-obsessed president may be how Pruitt fares in front of the cameras — only three weeks after he drew poor reviews for a combative interview with Fox News' Ed Henry.

House Energy and Commerce Chairman Greg Walden (R-Ore.) said Pruitt will receive a "cordial reception, but he's got some tough questions to answer."

Rep. John Shimkus (R-Ill.), whose subcommittee will be Pruitt's first stop Thursday, said the administrator should expect a "cool" reception from Republicans — who still strongly support his work to pare back EPA rules.

"It could be pretty painful, but when you accept the position of a senior administrator in a federal agency you've got to expect [that]," Shimkus, who chairs the Energy and Commerce Environment Subcommittee, told Politico. "You've just to grin and bear it and get through it."

Pruitt has few allies left in the White House, apart from the president himself. Senior administration aides characterized the hearings as potential make-or-break moments for Pruitt but said it's ultimately up to the president as to whether the White House wants to tolerate Pruitt's bad press.

Trump is largely keeping Pruitt around because he appreciates Pruitt's hard-charging agenda and because the White House does not want to go through another bruising confirmation battle over another Republican to lead EPA, according to senior administration officials and Republicans close to the White House. Already the White House expended great political energy this week on its pick for secretary of state, Mike Pompeo, a former congressman whom the White House views as eminently qualified but who is barely expected to squeak through the Senate confirmation process.

Most important, the president fears that dumping Pruitt would anger conservatives.

"The president is always nervous about offending his base, and Pruitt has real support in the base," said one Republican close to the White House. "If that base diminishes, he does not have a chance of being reelected. He generally likes what Pruitt is doing over there, but he has no relationship with Pruitt of any note. He could get someone else."

When asked at the White House briefing on Wednesday about Pruitt's spending and potential ethical violations, press secretary Sarah Huckabee Sanders would only say: "We are evaluating these concerns, and we expect the EPA administrator to answer for them."

Pruitt's waning support among White House aides has been months in the making. And at this point, many administration officials say they are tired of the terrible headlines and consider the allegations about Pruitt a nonstop swirl of distractions. It's not just Pruitt's handling of the questions that has irked White House officials but the facts themselves about the way he's led the EPA and run his own staff.

Over the past year, Pruitt has also alienated members of the communications team, National Economic Council, and Cabinet Affairs in various fights over policy like the Paris climate deal, messaging over policy rollouts, and spending decisions at the EPA. Another Republican close to the White House said Pruitt has earned a reputation among White House aides as "high maintenance."

The White House was not involved in helping to prepare Pruitt for the two Hill hearings on Thursday.

Shimkus predicted the toughest questions would come from the other side of the aisle.

"We need to make sure that we understand and recognize the valid, valid concerns that are out there on policy and administrative activity," he said. "But I don't think we'll be gouging his eyes out either — I think we'll have other folks that'll do that."

Some Pruitt supporters say he should be judged on his overall tenure.

"It should be based on his past performance, not necessarily standing in front of a microphone," House Natural Resources Chairman Rob Bishop (R-Utah) said. Bishop's committee does not have jurisdiction over EPA, but he has been a strong supporter of Pruitt's policy goals.

In his opening statement released ahead of the hearing, Pruitt will sidestep any discussion of the latest controversies, instead focusing on policy goals like Superfund cleanups and working more closely with states. "I will focus on key objectives to improve air quality, provide for clean and safe water, revitalize land and prevent contamination, ensure the safety of chemicals in the marketplace, assure compliance with the law, and improve efficiency and effectiveness," Pruitt will say in his prepared remarks.

Democrats are expected to tie the scandals facing Pruitt to his aggressive deregulatory push and proposal to slash EPA's budget by more than a quarter — which they see as just as worrisome as his alleged ethical improprieties. Multiple aides said there's such strong interest in the session that committee Democrats not on the Environment Subcommittee plan to participate, which does not require signoff from the majority.

"There's a confluence of concerns here that I think the Democrats are going to want to get answers to," Rep. Paul Tonko of New York, top Democrat on the panel, told POLITICO. "We were concerned yesterday, we're concerned today and we'll be concerned tomorrow if he's there."

There will be no shortage of things to ask him about, including the more than \$105,000 the agency has spent on his first-class flights, lavish spending on a \$43,000 soundproof phone booth and round-the-clock security, a cushy \$50-per-night condo lease from a Washington lobbyist who personally met with Pruitt to discuss the agency's Chesapeake Bay work, and a trip to Morocco in December on which he spent time promoting liquefied natural gas exports — a topic that isn't part of his agency's portfolio. Pruitt is also facing scrutiny over the significant pay raises the agency gave to a handful of his longtime aides from Oklahoma despite the White House's objections.

Federal watchdogs, the agency's inspector general, congressional investigators and the White House have launched more than a dozen investigations into various aspects of Pruitt's conduct.

But Rep. Joe Barton (R-Texas), the longest-serving member of Energy and Commerce, said Pruitt's ethics issues are "not the purpose of the hearing" and suggested many Republicans would come to the administrator's defense. However, he said the panel's GOP members have not met in advance to plot strategy.

"He's had a lot of death threats. I don't have a problem with his security costs," Barton said Wednesday. "I don't really have a major problem with his telecommunications setup. It's a difficult job to be the EPA administrator when you're a Republican."

Still, signs are increasing of weariness toward Pruitt among congressional Republicans. Three senior Senate Environment and Public Works Committee Republicans, including his staunch ally Sen. Jim Inhofe (R-Okla.), called for hearings into Pruitt's behavior earlier this week. Four House Republicans have called for his resignation. And EPW Chairman John Barrasso (R-Wyo.) said he has "serious questions" about Pruitt's spending and pledged to send additional oversight letters.

"He'll need to acquit himself well," Sen. John Thune, the No. 3 Republican in the Senate, said when asked about how important the sessions will be for Pruitt's future in the administration.

An aide to Rep. Betty McCollum of Minnesota, top Democrat on the House Appropriations Interior and Environment Subcommittee, where Pruitt will appear Thursday afternoon, told POLITICO their hearing would likely focus more on Pruitt's proposed cuts to nearly a quarter of the agency's budget and regulatory rollbacks.

"I expect the E&C hearing will have a greater focus on the ethical concerns surrounding Pruitt," the aide said.

Some Democrats on Energy and Commerce acknowledge Pruitt has in the past performed well in congressional hearings, which they said could allow him to respond to some of the charges.

"If Mr. Trump is going to look for a good performance, I bet he'll put up a great performance," said Rep. Scott Peters (D-Calif.), another member of the subpanel. "But if he doesn't address the substance of the ethical and environmental challenges, I hope that they would think about finding someone else."

Other Democrats think Pruitt's main goal will be to avoid a major gaffe but they don't see any way he will emerge from the hearing in a significantly strengthened position.

"One or two of these transgressions would be survivable but there are so many scandals that it's really hard for me to imagine that Republicans want to lower the bar this much," said Sen. Brian Schatz (D-Hawaii), an outspoken Pruitt critic. "It is actually beyond me why they're sticking by him."

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Tester leans on public lands as key reelection issue [Back](#)

By Kevin Robillard | 04/26/2018 05:05 AM EDT

HELENA, Mont. — The issue that could prove key to Democratic Sen. Jon Tester's reelection bid is under the radar in Washington politics but practically ever-present in Montana life.

Nearly a third of the land in Montana is under federal government ownership, and Tester wants to keep it that way. It's a way the Democratic senator, who is running for a third term, hopes to keep voters who pulled the lever for President Donald Trump — including hunters, hikers, snowmobilers and ranchers — on his side in 2018.

"Public lands is one of the great equalizers. It's part of who we are," Democratic Gov. Steve Bullock said in a phone interview. "It doesn't what matter what our political beliefs are, it's a core part of our lives."

Tester's strategy is part of a larger effort by Democrats in the West to emphasize the issue. Bullock emphasized it in his reelection bid in 2016 as he defeated Republican Greg Gianforte (now Montana's congressman) by 4 percentage points after hammering the Republican billionaire over stream access. New Mexico Sen. Martin Heinrich, who is expected to easily win reelection in 2018, started his reelection bid with a video focused heavily on public lands issues. And Democratic strategists think it can help them in states throughout the interior West.

"There are a lot of people here who are single-issue voters, and that issue is public lands," said Nick Gevock, the conservation director at the Montana Wildlife Federation.

Outdoor recreation is now Montana's largest industry, surpassing agriculture, and contributes \$7 billion and 71,000 jobs to the state's economy.

"They like to go hunting, they like to go fishing, they like to go hiking, they just like to get in the mountains where their cellphone doesn't work," Tester said in an interview. "I want to make sure there's not a mine put at the head of the Yellowstone River, or at the borders of Glacier Park."

A Montana Republican on the national stage is also raising the profile of the issue in-state. Conservationists had high hopes for Interior Secretary Ryan Zinke when he was first named to the job, but his decision to shrink the size of two national monuments has left them dismayed and disappointed.

"We were hopeful that, being a Montanan, he was going to live Montana values and be the Teddy Roosevelt conservationist he said he was," Gevock said, but noting Zinke's Interior Department was "putting the oil and gas industry above every other use."

Tester introduced Zinke at his confirmation hearing and had similar hopes, but is heavily critical of him today.

"It was because I thought he understood conversation. I haven't seen that over the last 14 months," Tester said, adding: "He has time to redeem himself."

The strategy is a proven vote-winner in Montana. Throughout the 2016 gubernatorial campaign, and in his earlier bids for governor and attorney general, Bullock emphasized stream access laws for fishermen. And he hammered Gianforte for fighting stream access laws in multiple television ads last cycle.

The state and national GOP platforms both support selling federal public lands to the states, where many environmentalists feel they would be exposed to oil and gas interests. Tester's opponents don't endorse those views.

"The people of Montana do not want the public lands transferred," state Auditor Matt Rosendale said in an interview, echoing the views of businessman Troy Downing and former judge Russ Fagg. (Rosendale supported selling the land during a 2014 bid for Congress but has changed his position.)

All three said they would like localities to have more say in how lands are managed and how federal authorities balance multiple uses. Rosendale, for instance, criticized the Forest Service for shutting down too many roads in the state.

But while Democrats in Montana have aggressively used the issue, public lands haven't become a top-tier issue in Colorado, Arizona or elsewhere in the interior West, which some Democratic strategists believe is a missed opportunity.

The Western Values Project, a Colorado-based nonprofit, ran ads late last year pressuring three potentially vulnerable Republicans — Arizona Rep. Martha McSally, who is now running for Senate, along with Oregon Rep. Greg Walden and Washington Rep. Jaime Herrera Beutler — over their support for Zinke's decision to shrink the national monuments.

And the attacks had an impact: In Arizona, McSally held a 3-point lead against a generic Democrat in her congressional district in a poll conducted by Global Strategy Group. But when "asked to consider a scenario where she votes to reduce the size of the Bears Ears and Grand Staircase-Escalante national monuments," her support dropped to 38 percent, with a generic Democrat winning 50 percent of the vote.

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Interior spent \$139K on Zinke office doors [Back](#)

By Anthony Adragna | 03/08/2018 05:58 PM EDT

The Interior Department is spending \$139,000 for new doors for Secretary Ryan Zinke's office suite, according to records posted online.

The work was recommended by Interior career facilities and security officials, an agency spokeswoman said, not by Zinke.

"The secretary was not aware of this contract but agrees that this is a lot of money for demo, install, materials, and labor," Heather Swift, the spokeswoman, said in a statement.

The award to Maryland-based Conquest Solutions LLC was first reported by the Associated Press. The work involves replacing three sets of double doors, including two that open onto a balcony and leak during rain storms, the AP reported. An existing set of doors to Zinke's office from a hallway do not have a lock, so the security will be upgraded with the new doors.

Swift said the work is part of a "decade-long modernization of the historic FDR-era building."

"Between regulations that require historic preservation and outdated government procurement rules, the costs for everything from pencils to printing to doors is astronomical. This is a perfect example of why the Secretary believes we need to reform procurement processes."

Housing and Urban Development Secretary Ben Carson drew criticism recently over news that HUD would spend \$31,000 on a dining set. That order was subsequently canceled.

To view online [click here](#).

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House passes controversial dam bill [Back](#)

By Annie Snider | 04/25/2018 04:45 PM EDT

The House passed a controversial measure to override a court decision that required changes in the operations of major hydropower dams in the Pacific Northwest to help protect endangered salmon.

The measure, H.R. 3144 (115), from Rep. Cathy McMorris Rodgers (R-Wash.), was passed by a nearly party-line vote of 225-189.

The 9th Circuit Court of Appeals earlier this month upheld a lower court decision requiring that water be spilled over the tops of dams along the Columbia and Snake rivers, including the powerhouse Grand Coulee Dam, the largest power station in the U.S., during periods when young salmon and steelhead migrate to the ocean. The suit was brought by the state of Washington, tribes and conservation groups.

McMorris Rodgers and other Republicans in the region have fought the decision because it would reduce the dams' hydropower output. Their legislation would override the courts and require that dam operations continue as they have historically to maximize power production until an environmental review of the system can be completed.

The legislation is the latest front in a yearslong battle over the nearly 100-year-old hydropower system on the rivers. Conservation groups and tribes with treaty fishing rights want it altered and operated to benefit wildlife, including calling for the removal of four dams along the Snake River.

WHAT'S NEXT: The legislation moves to the Senate, where some of the region's Democratic senators have registered their opposition.

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EPA drops 'once in, always in' policy from key Clean Air Act requirements [Back](#)

By Alex Guillén | 01/25/2018 06:11 PM EDT

EPA today withdrew a Clinton-era policy that was designed to prevent major emitters like power plants and factories from getting out of tough requirements to limit their toxic air emissions.

In a new memo, EPA air chief Bill Wehrum wrote that the "once in, always in" policy "is contrary to the plain language" of the Clean Air Act. Wehrum revoked a 1995 guidance memo outlining the policy and said EPA would consider new regulations to clarify its interpretation of the law.

Under the now-revoked guidance, any emitter that qualified as a "major" source of hazardous air pollutants would forever be subject to that tougher standard to comply with MACT rules, even if its emissions dropped low enough to be considered an "area" source subject to fewer or no requirements. Wehrum's memo said the law does not specify that such classifications are permanent.

"EPA has now determined that a major source which takes an enforceable limit on its [potential emissions] and takes measures to bring its HAP emissions below the applicable threshold becomes an area source, no matter when the source may choose to take measures to limit its" potential pollution emissions, Wehrum wrote.

Wehrum argued that the policy shift will actually encourage sources that hesitated to install emission reduction projects to move forward. Environmentalists, however, quickly blasted the change on social media.

The Bush administration twice attempted to change the OIAI policy but never succeeded.

WHAT'S NEXT: Wehrum's memo says EPA will "soon publish a Federal Register notice to take comment on adding regulatory text that will reflect EPA's plain language reading of the statute."

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Hi Rosario –

As discussed, please see the attached updated data access notice: [Deliberative Process / Ex. 5] Let me know your availability for a call tomorrow or Friday to walk through the document.

Thanks,

Brittany

From: E&E News [ealerts@eenews.net]
Sent: 4/20/2018 12:15:14 PM
To: Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clint]
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AN E&E NEWS PUBLICATION

CLIMATEWIRE — Fri., April 20, 2018



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DOE could use wartime law to help coal. Here's how it works

Invoking a Korean War-era law to aid struggling coal and nuclear units would represent a dramatic expansion of the Trump administration's campaign to rescue the industry, lobbyists and analysts said yesterday.

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Smith pitched Pruitt on 'secret science.' Now it's happening

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If gas goes up, big cars might still be the rage. Here's why

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Chili buffalo worms, cricket energy bars hit supermarkets

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Subject: Morning Energy: What's happening with WOTUS — Keystone fight far from over — Wheeler to Michigan

By Kelsey Tamborrino | 08/17/2018 05:44 AM EDT

With help from Annie Snider, Ben Lefebvre and Alex Guillén

A COUNTRY DIVIDED: Which streams and wetlands are protected under the Clean Water Act? As of Thursday, the answer depends on where you're standing. After a South Carolina District Court [ruling](#) overturning the Trump administration's attempted delay of the Obama administration's Waters of the U.S. rule for failing to offer the public a proper opportunity to comment, the 2015 rule is now officially on the books in 26 states — but not in the other 24 states where other district court injunctions are in place.

"**The agencies refused to engage** in a substantive reevaluation of the definition of the 'waters of the United States' even though the legal effect of the Suspension Rule is that the definition of 'waters of the United States' ceases to be the definition under the WOTUS rule and reverts to the definition under the 1980s regulation," Judge David Norton wrote in Thursday's ruling. "An illusory opportunity to comment is no opportunity at all."

Environmental groups hailed the decision, with Jon Devine of the Natural Resources Defense Council calling it a "sharp rebuke to the Trump administration." Meanwhile, Zippy Duvall, president of the American Farm Bureau Federation, one of the fiercest critics of the Obama-era rule, called on the Trump administration to "to take immediate steps to limit the impact of this dangerous court decision."

But will it hold? The Justice Department is reviewing the decision, a spokesman said, and players on both sides broadly expect an appeal. Separately, EPA said in a statement it and the Army Corps of Engineers "will review the order as the agencies work to determine next steps." But the fate of the delay rule could ultimately become moot if the federal district judge in Texas grants a nationwide injunction request.

And don't forget, this is just the warm-up fight. The battle royale will be over the Trump administration's rule to repeal the 2015 rule, which the agency has not finalized. Geoff Gisler, the Southern Environmental Law Center attorney who brought yesterday's case on behalf of local environmental groups, argued that Thursday's South Carolina court decision has implications for that fight and "should give the agencies pause" as they move forward. "The agencies just aren't telling the public what they're doing," he argued. "What this decision said was you can't just have a comment period, it has to be a meaningful comment period."

WE MADE IT TO FRIDAY! I'm your host, Kelsey Tamborrino. Simon and Company's Jen Covino named the eight senators who formerly served as mayors: [Dianne Feinstein](#), [Cory Booker](#), [Jim Inhofe](#), [Bob Corker](#), [Bernie Sanders](#), [Tim Kaine](#), [Mike Enzi](#) and [Bob Menendez](#). For today: Who are the three current House lawmakers who previously served as ambassadors? Send your tips, energy gossip and comments to ktamborrino@politico.com, or follow us on Twitter [@kelseyam](#), [@Morning_Energy](#) and [@POLITICOPro](#).

FAR FROM OVER: A federal judge's order directing the State Department to conduct a supplemental environmental review for the Keystone XL pipeline's updated path through Nebraska is another setback in nearly a decade full of them for TransCanada. The order is sure to stall construction of the pipeline for months, Pro's Ben Lefebvre [reports](#). Plaintiffs in the case said the review would involve public hearings in Nebraska and consultations with Native American tribes whose land the pipeline would traverse.

Pipeline opponents are hoping to use the new review to push for a broader study of the project, Ben reports. Doug Hayes, a lawyer for the Sierra Club and one of the plaintiffs in the case, said the judge's ruling that the "entire pipeline remains interrelated and requires one [environmental review] to understand the functioning of the entire unit" could open the door for them to seek a new review for the pipeline's entire route. "If they are going back to do a supplemental environmental impact statement, our position is they would need to evaluate all the new impacts of the pipeline," Hayes said. "That would take definitely months."

WHERE'S WHEELER? Acting EPA Administrator Andrew Wheeler travels to Michigan today to discuss issues plaguing the Great Lakes and meet with GOP Rep. Tim Walberg, a member of the Energy and Commerce Committee, and officials from the Michigan Department of Natural Resources and Department of Environmental Quality.

WHEELER DELIVERS MESSAGE ON HARASSMENT: Wheeler reaffirmed EPA's policy against harassment in a memorandum sent to staff Thursday. Wheeler wrote that he expects "all individuals working at the EPA — employees, supervisors and non-employees — will not engage in or be subjected to unlawful and prohibited harassment."

MURKOWSKI: FERC NOMINEE SHOULD GO LITMUS TEST-FREE: Senate Energy Chairman Lisa Murkowski wouldn't comment on POLITICO's report that DOE's Bernard McNamee will be nominated to FERC. But the Alaska Republican said she believes that the next nominee shouldn't face a litmus test over their view of the Trump administration's efforts to prop up coal and nuclear power plants, Pro's Darius Dixon reports. "I worry that this is going to be viewed as, 'If you don't commit to voting against or voting for, then you're not going to have my support,'" Murkowski said. "That's not the way that we should be selecting commissioners for the FERC."

GET YOUR COMMENTS IN: American Petroleum Institute's Frank Macchiarola reiterated the need for Renewable Fuel Standard reform on a call with reporters Thursday outlining the group's comments for EPA's proposed biofuel blending requirements for the coming year under the RFS. "Very simply what we want is an end to this program by 2022," he said. Macchiarola said API is "willing to compromise" on certain policies like a waiver for summertime sales of E15, but only if the program will sunset by 2022. "The problem again is that the ethanol industry has been dug in to not doing anything," Macchiarola said. He added legislation is being drafted to reform the program in both chambers, but noted challenges and lengthy debate are likely ahead. Comments are due today on EPA's proposed volumes, with the final rule due to be released by Nov. 30.

— **API is also looking at the proposed plan** by EPA and the Department of Transportation to freeze fuel efficiency standards for cars and trucks. "It is a very complex proposal to a very complex program," Macchiarola said. "We will say that we appreciate the administration's relooking at CAFE in the light of changing energy market realities."

SECRET'S OUT: Thursday was the last day for comments on EPA's proposed "secret science" rule, which would ban the use of studies that don't publicly disclose all their data. Getting their thoughts in under the wire, Sens. Sheldon Whitehouse, Brian Schatz, Maggie Hassan, Jeff Merkley, Ed Markey, Tammy Duckworth, Kirsten Gillibrand, Tom Carper and Kamala Harris banded together to make their opposition known. "The proposed rule is illegal because it is arbitrary and capricious," they write, adding that "the proposed rule is illegal because it is the result of an effective delegation of rulemaking authority to private interests."

The American Chemistry Council, meanwhile, applauded the proposal in its comment Thursday. "EPA's proposal codifies an important good governance principle — that government agencies should be as transparent as possible, within the bounds of the law, about scientific information relied upon and the justifications for the significant regulatory decisions they make." Still, the trade association also highlighted that implementation of the plan would benefit from better historical context and applicability, and that greater clarity is required on key definitions and regulatory text, among other recommendations.

FIGHTING FIRE WITH A FEDERAL PLAN: The Agriculture Department released a new, aggressive approach to fighting wildfires Thursday, with proactive steps. During a bipartisan press conference, Secretary Sonny Perdue unveiled a plan that emphasizes increased collaboration with states, implementation of mapping and remote sensing tools, and management practices such as prescribed burns and timber sales, Pro's Liz Crampton reports. Though Perdue brushed aside specific questions on climate change's role, he said Interior Secretary Ryan Zinke is on board with the plan and noted further details and costs will be forthcoming from the U.S. Forest Service. "Really a lot of people ... when you talk about climate change, they want to talk about what the causes are," Perdue said. "[What] we're trying to talk about is the impact."

FERC RESTARTS PART OF PIPELINE: FERC modified a stop work order for the Mountain Valley Pipeline this week, allowing construction to restart for around 77 miles of the pipeline's West Virginia route with the exception of a 7-mile area surrounding the Weston and Gauley Bridge Turnpike Bridge Trail, MVP said Thursday. However, the company said about half of its construction workforce has been released due to continued delays. MVP said that it "remains committed to the earliest possible in-service date," though it noted that is now expected to arrive during the fourth quarter of 2019.

GREENS CALL FOR FERC REVIEW: The Southern Environmental Law Center and Appalachian Mountain Advocates petitioned the 4th U.S. Circuit Court of Appeals on Thursday to review FERC's approval of the Atlantic Coast Pipeline. The suit was filed on behalf of 13 other conservation groups. "FERC ordered the ACP construction stopped because the 4th Circuit determined that permits were issued without proper scrutiny," SELC attorney Greg Buppert said in a statement. "On the very same day, FERC rejected a rehearing request in which the conservation groups asserted that it also rushed through its decision to permit a pipeline that we don't need." The 4th Circuit last week vacated two permits issued for the project by the U.S. Fish and Wildlife Service and the National Park Service.

GREENS FILE FOIA SUIT: Environmental group Friends of the Earth filed a lawsuit Thursday against the Interior Department for lack of response to a Freedom of Information Act request. The lawsuit seeks to compel DOI to produce documents related to senior members of the department and the industries they regulate. The suit points to David Bernhardt's work as a lawyer and lobbyist for oil and gas companies and Vincent DeVito's time working as an energy industry representative. Friends of the Earth is being represented by the law firm Meyer Glitzenstein & Eubanks LLP.

AD-ING IT UP: Ahead of Wyoming's gubernatorial primaries Tuesday, a partnership between the Wyoming Wildlife Federation and Rocky Mountain Farmers Union, dubbed the Wyoming Conservation Legacy, will launch a five-figure ad campaign asking candidates to support conservation. The campaign will begin on Saturday and run through Aug. 21 with full-page print ads in the Casper Star Tribune and the Wyoming Tribune Eagle, separate radio buys on Wyoming Public Media programs, and digital ads across the state. See the ads here.

MAIL CALL! ON THE FARM: The National Biodiesel Board sent a letter to farm bill conference committee lawmakers reiterating its support for the inclusion of biodiesel programs in the five-year bill.

STAR-STUDDERED SUMMIT: Attendees of the Global Climate Action Summit in San Francisco in September will hear from former White House officials, including former Vice President Al Gore and Secretary of State John Kerry. The summit announced Thursday night that new delegates will join the event, including Executive Secretary of the United Nations Framework Convention on Climate Change Patricia Espinosa and U.N. Special Envoy for Climate Action Michael Bloomberg. Actor Alec Baldwin and chimpanzee expert Jane Goodall will also attend.

GO NUCLEAR: The American Nuclear Society this week launched a nuclear science educational program for middle schoolers that covers topics like fission and fusion, and detecting radiation. The "Navigating Nuclear:"

Energizing Our World" program is aligned with the Next Generation Science Standards framework, which provides an evidence-based foundation for scientific research.

MOVER, SHAKERS: Jack Cramton, policy adviser for Sen. Bill Cassidy (R-La.), will start Monday as a legislative affairs adviser at the Department of Energy's Congressional and Intergovernmental Affairs Office.

QUICK HITS

- "U.S. energy chief applauds Mexico's plan to end fuel imports," Reuters.
- "Trump's CO2 rule is coming, and industries wonder who's next," E&E News.
- "California fire risk won't abate until November, U.S. warns," Bloomberg.
- "Zinke said he would never sell public land. But Interior is considering it," The Washington Post.
- "Elon Musk confronts a fateful tweet and an 'excruciating' year," The New York Times.

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Stories from POLITICO Pro

Judge restores WOTUS rule in 26 states Back

By Alex Guillén | 08/16/2018 03:20 PM EDT

A federal judge today ruled that the Trump administration violated administrative legal requirements when it delayed the start of the Obama administration's Waters of the U.S. rule by two years — a move that means the rule will now go into effect for about half the country.

The judge said EPA and the Army Corps of Engineers had unlawfully declined to consider any comments addressing substantive issues related to WOTUS or an earlier 1982 version when it proposed delaying the rule to give the agencies more time to repeal and replace it.

That was a fatal flaw, ruled Judge David Norton of the U.S. District Court for South Carolina, a George H.W. Bush appointee. Delaying the WOTUS rule has the effect of reverting to the 1982 rule, he wrote.

Norton's injunction means the Obama-era rule will take effect in 26 states. The other 24 are covered by two different injunctions, one issued to 13 states in 2013 and one issued to another 11 states in June.

However, WOTUS may be blocked nationwide again if the rule's opponents get their way. In another WOTUS lawsuit in a federal court in Texas, three states in February asked for a nationwide injunction of WOTUS. That court has yet to decide on the matter.

WHAT'S NEXT: The Trump administration is working to finalize its repeal of the Obama WOTUS rule. And EPA and the Corps are expected to propose a replacement rule in the near future.

To view online [click here](#).

[Back](#)

Montana ruling could set back Keystone XL for months [Back](#)

By Ben Lefebvre | 08/16/2018 04:37 PM EDT

The fight over the Keystone XL pipeline isn't over yet.

District Court Judge Brian Morris' partial order that the State Department must conduct a supplemental environmental review to account for the pipeline's new path through Nebraska is another setback for developer TransCanada that's likely to delay construction of the nearly decade-old project by at least several months.

The order was a response to Nebraska regulators' approval in November 2017 of a route for the 830,000 barrel-a-day pipeline through the state that TransCanada had not proposed. The original environmental assessment the Trump administration used to approve Keystone XL earlier that year — a review conducted during the Obama administration — only considered a different route that TransCanada had planned for the pipeline.

The new route through Nebraska would cross through five counties that weren't included in the State Department's original environmental review, Morris noted in his order, meaning it would cross different waterways and require an additional pump station, .

Pipeline opponents say they hope to use Wednesday's ruling to push for a new broader study of the project.

Doug Hayes, a lawyer for the Sierra Club, one of the plaintiffs in the case, told POLITICO that Judge Morris' statement in his ruling that the "entire pipeline remains interrelated and requires one [environmental review] to understand the functioning of the entire unit" could open the door for them to seek a new review for the pipeline's entire route through the U.S.

"If they are going back to do a supplemental environmental impact statement, our position is they would need to evaluate all the new impacts of the pipeline," Hayes said. "That would take definitely months."

Jane Kleeb, who has long fought the pipeline and is now chairwoman of the Nebraska Democratic Party, said she thought process would drag out even longer.

"We think it buys us a year," she told POLITICO. "We just think there's a lot of significant hurdles in front of them."

Plaintiffs in the case said a new review would entail holding public hearings in Nebraska and consulting with Native American tribes whose land the pipeline would traverse.

Environmental groups have argued the pipeline posed a special risk because of the nature of the heavy oil it would transport, and that it would increase global carbon emissions. The Obama administration quashed the project in 2015, only to see their decision reversed when President Donald Trump took office a year and a half later.

A TransCanada spokesman declined to comment pending the company's review of the judge's decision.

Russ Girling, the company's chief executive officer, said during a call with investors earlier this month that the company hoped to make a final decision on whether to build the pipeline later this year or in early 2019. If approved, construction could start during the first quarter of 2019, Girling added.

A State Department official was not immediately available to comment.

Keystone XL also faces a test in Nebraska Supreme Court, where a lawsuit filed by environmental groups and state landowners challenges Nebraska regulators' approval of a route that TransCanada never formally requested. Hearings in that case are expected to start in October.

TransCanada is also waiting for several permits from federal agencies. Interior's Bureau of Land Management must issue right-of-way permits to cross federal land in Montana, and the Army Corp of Engineers must approve the pipeline's path over several waterways across the country.

To view online [click here](#).

[Back](#)

Sources: DOE's McNamee to get FERC nod [Back](#)

By Eric Wolff and Darius Dixon | 08/08/2018 04:07 PM EDT

The White House plans to nominate Energy Department official Bernard McNamee to fill the FERC leadership seat being vacated by departing Commissioner Rob Powelson, three sources familiar with discussions tell POLITICO.

McNamee helped roll out Energy Secretary Rick Perry's proposal last year to save struggling coal and nuclear power plants — an issue that sources have said served as a key litmus test for Trump administration officials evaluating a replacement for Powelson, who is [set to resign](#) Friday.

FERC in January unanimously voted down that plan, which sought to create special payments for power plants capable of holding 90 days of fuel on-site. But the administration has been considering additional options such as invoking rarely used emergency powers to force power plants to run, which would potentially give McNamee a chance to provide the pivotal vote on the subsequent rates and rules as a commissioner.

It is unclear when President Donald Trump would formally nominate McNamee, and the vetting process still seems to be underway. It would likely take the Senate several months to confirm him, a process that would start with hearings at the Energy and Natural Resources Committee.

Neither the White House nor DOE immediately responded to requests for comment Wednesday.

McNamee, who runs the DOE's Office of Policy, has been in and out of the agency under Trump. He was deputy general counsel for energy policy last year when he worked on Perry's ill-fated proposal to FERC. In February, he left DOE for a senior post with the Texas Public Policy Foundation, a conservative think tank [with ties to Perry](#), before returning to DOE in May.

Before joining the Trump administration, McNamee previously worked at McGuireWoods, as chief of staff to Texas Attorney General Ken Paxton and as an aide to Sen. [Ted Cruz](#) (R-Texas).

To view online [click here](#).

[Back](#)

Murkowski: Next FERC nominee should be free of litmus tests [Back](#)

By Darius Dixon | 08/16/2018 05:38 PM EDT

Alaska GOP Sen. [Lisa Murkowski](#) today declined to comment on POLITICO's [report](#) that DOE's Bernard McNamee would be nominated to FERC, but said she believes that the next nominee shouldn't face a litmus test over their view of the Trump administration's efforts to prop up coal and nuclear power plants.

"I worry that this is going to be viewed as 'If you don't commit to voting against or voting for, then you're not going to have my support,'" Murkowski, who chairs the Senate Energy and Natural Resources Committee, told POLITICO, referring to the administration's efforts to stave off coal retirements by potentially issuing emergency orders. "That's not the way that we should be selecting commissioners for the FERC."

Trump will want someone fairly aligned with the administration, she said, though she added that FERC came to the "right decision" in rejecting the Energy Department's controversial push to create special market payments for coal and nuclear plants last year. Still, she hoped that FERC's independence would be respected and that Democrats won't be reflexively opposed to the White House nominee in the way that they have been for Supreme Court nominee Brett Kavanaugh.

"A seat on the FERC is different than being a deputy secretary of Energy or Labor or whatever. Again, this is an independent regulatory agency that has a very different mission," she said. "The mission is not whatever the White House says it is. It is a very specific, statutory mission and so you want somebody who is going to be true to that. My hope is that the White House picks somebody who can demonstrate that they will be true to that."

To view online [click here](#).

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USDA unveils plan for fighting wildfires [Back](#)

By Liz Crampton | 08/16/2018 03:00 PM EDT

USDA said today it's embarking on a new, aggressive approach to combat wildfires by taking preventative steps like working more with states and upping use of forest management tools.

Department officials at a press conference unveiled a 22-page plan that emphasizes increased collaboration with states, implementation of mapping and remote sensing tools, and management practices such as prescribed burns and timber sales.

Further details and costs of the initiative will be forthcoming after the U.S. Forest Service and other agencies hold discussions with state partners, USDA Secretary Sonny Perdue said. He added that Interior Secretary Ryan Zinke is on board, although he was not in attendance.

The plan comes as the West is enduring yet another brutal wildfire season after 2017 ranked as the most expensive year for wildfires. Federal agencies last year spent \$2.9 billion to suppress wildfires across the country, according to USDA.

"Today to truly protect our forest and communities, we must increase the size of our projects and access larger landscapes across boundaries," Perdue said. "Frankly we cannot do it ourselves. It's got to be done in the shared stewardship of state and local communities."

Perdue was joined by interim Chief of the U.S. Forest Service Vicki Christiansen and Sens. [Maria Cantwell](#) (D-Wash.), [Lisa Murkowski](#) (R-Alaska), [Ron Wyden](#) (D-Ore.) and [Steve Daines](#) (D-Mont.).

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Highlights

LEADING THE NEWS

'No Planet B,' Macron Tells Congress, Defending Climate Deal

By Dean Scott

French President Emmanuel Macron urged Congress April 25 to reconsider having the U.S. walk away from the Paris climate pact and work with other nations to build a low-carbon economy.

EPA Plan to Limit Science Use May Undercut Air, Climate Programs

By Jennifer Lu and Abby Smith

New EPA plans to limit "secret science" in policy making could unravel the agency's decades-old approach to crafting environmental protections, both supporters and critics of the proposal said.

TODAY'S NEWS

House Takes Up Fish, Science, Pacific Northwest Electricity Bill

By Alan Kovski

House lawmakers are scheduled to vote April 25 whether to override a federal judge's opinion on protections for salmon and steelhead fish at hydroelectric dams on the Columbia River system in Washington state.

Fight Grows Over Who Owns Real Estate Drowned by Climate Change

By Christopher Flavelle

As seas rise and coasts wash away, who owns the land that goes underwater? A debate on that issue is taking place in courtrooms, legislatures, and government offices, raising the question of whether and when climate change justifies seizing private property. The stakes are enormous, affecting not just ownership of offshore mineral and fishing rights but also potentially trillions of dollars of coastal real estate.

Williams Companies to Try Again for New York's Pipeline Approval

By Gerald B. Silverman

The Williams Companies Inc. will press forward to get New York approval of an expansion of its Transco natural gas pipeline through three states, despite a permitting setback from state environmental regulators.

PG&E, Edison Could Gain Shield from Some Wildfire Liability in California

By Mark Chediak

Utility giants PG&E Corp. and Edison International could gain at least some protection against future wildfire damages under a bill that's advancing in California's legislature.

Congress to Seek VW Chief's Testimony in New Cheating Probe (Corrected)

By Ari Natter and Ryan Beene

A U.S. House committee has begun investigating allegations of overseas emissions cheating by Volkswagen AG and seeks testimony from the automaker's chief executive officer Herbert Diess.

Bosch Says Breakthrough Can Save Diesel Engines

By Christoph Rauwald

Robert Bosch GmbH said its engineers have developed a new diesel-exhaust system that cuts emissions far below legal limits taking effect in 2020 and can help automakers avoid potential driving bans in Europe that threaten to doom the engine technology.

Air Pollution Monitors, Not Tighter Rules, Next Step for Indian Cities

By Madhur Singh

India wants to extend air quality monitoring to 100 of its cities, but industrial polluters needn't worry about tighter regulations. At least not yet.

Asia-Pacific Fight for Forests Hitting Fiscal Realities

By Murray Griffin

Asia-Pacific countries see efforts to reduce deforestation and forest degradation as crucial to meeting their climate goals, but still lack the money needed to adequately address the issue, a top official from Fiji said.

Ruling Tosses Green Group Claims Over N.M. Fracking

By Steven M. Sellers

Proposed fracking wells in New Mexico's San Juan Basin, one the largest oil and gas fields in the U.S., may proceed because the U.S. Bureau of Land Management followed federal requirements in assessing and issuing permits for those wells, a federal court in New Mexico ruled.

Federal Circuit Reignites Oil Drilling Equipment Case

By Brian Flood

Imports of oil drilling equipment partially made in China were improperly exempted from anti-dumping and anti-subsidy duties, a Federal Circuit Court of Appeals panel ruled.

TUESDAY NIGHT WRAPUP

Retailers' Costs May Rise Under California Pesticide Label Proposal

By Ayanna Alexander

Retailers could face increased costs from lawsuits if California revises pesticide labeling requirements, an industry group said.

EPA's Ethanol Waivers Reduced Sales, Biofuel Group's Study Says

By Mario Parker

The EPA's hardship exemptions for small refiners "effectively erased" at least 1.6 billion gallons of federally mandated biofuel demand, according to an analysis by the Renewable Fuels Association.

MarkWest Agrees to Spend \$5.6M to Settle Clean Air Act Claims

By Leslie A. Pappas

Two MarkWest Energy Partners LP subsidiaries will pay more than \$5.6 million and cut annual emissions by more than 700 tons to settle allegations of Clean Air Act violations in Pennsylvania and Ohio.

Canada Pushes for Caribou Protection as Alaska Prepares to Drill

By James Munson

Canada will urge the U.S. not to allow oil and gas drilling where Alaskan caribou give birth, during a study of the environmental impacts of new petroleum development.

Divest Automakers That Relax Fuel Standards: California Democrats

By Kate Smith

A group of congressional Democrats representing California urged the state's pension system to divest from any car manufacturer that follows the Trump administration's plan to relax emission standards.

Brazil Lawsuit Seeks to Suspend Sale of Genetically Modified Seeds

By Michael Kepp

Brazil has moved to suspend the sale of three of its most widely planted, genetically modified seeds as scientists evaluate the toxicity of the herbicide that they are bioengineered to resist.

Bloomberg Environment

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Subject: FW: Qs for the Record on Examining the Office of Information and Regulatory Affairs' Role in Reviewing Agency Rulemaking
Attachments: HWM162 - OMB QFRs Rao+OGC.DOCX

Sending mostly for awareness. These are QfRs from a Neomi Rao hearing. EPA-related Q/As on pp. 1-6 (scientific transparency and gliders). Program offices and OGC have reviewed. You'll see an edit included from David Orlin.

There's still time to provide additional edits, if you see anything you want to add/delete/change.

Josh

From: Gomez, Laura
Sent: Tuesday, May 29, 2018 12:02 PM
To: Grogard, Megan <Grogard.Megan@epa.gov>; Kime, Robin <Kime.Robin@epa.gov>; Linkins, Samantha <Linkins.Samantha@epa.gov>; Hanley, Mary <Hanley.Mary@epa.gov>; Keller, Kaitlin <keller.kaitlin@epa.gov>; Folkemer, Nathaniel <Folkemer.Nathaniel@epa.gov>; Emmerson, Caroline <Emmerson.Caroline@epa.gov>; Jones-Parra, Lisa <Jones-Parra.Lisa@epa.gov>; Mills, Derek <Mills.Derek@epa.gov>; Monson, Mahri <Monson.Mahri@epa.gov>; Dieu, Martin <Dieu.Martin@epa.gov>; Harwood, Jackie <Harwood.Jackie@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>; Lubetsky, Jonathan <Lubetsky.Jonathan@epa.gov>; Saltman, Tamara <Saltman.Tamara@epa.gov>
Cc: Moody, Christina <Moody.Christina@epa.gov>; Williams, Thea <Williams.Thea@epa.gov>; Richardson, RobinH <Richardson.RobinH@epa.gov>
Subject: LRM [HWM-115-162] DUE 05/31 @ 12:00 PM OMB Questions for the Record on Examining the Office of Information and Regulatory Affairs' Role in Reviewing Agency Rulemaking

DEADLINE: 12:00 PM Thursday, May 31, 2018

Attached please find draft QFRs from OMB (Rao) from a Thursday, April 12th hearing entitled "Examining the Office of Information and Regulatory Affairs' Role in Reviewing Agency Rulemaking" before the HSGAC subcommittee on Regulatory Affairs and Federal Management. OMB testimony for the hearing was cleared under LRM SS-115-113.

Among other topics, the QFRs discuss recent regulatory actions by EPA and OIRA input on those actions; a DOL proposed rule; deregulatory actions related to tax regulations; Executive Order 13771; and race and ethnicity standards for Federal information collections.

Please review the draft 16-page QFRs and respond by the deadline.

Laura E. Gómez Rodríguez
Congressional Liaison Specialist

US Environmental Protection Agency (EPA)
Office of Congressional and Intergovernmental Relations (OCIR)
1200 Pennsylvania Ave., N.W. MC-2650R
Washington DC, 20004
gomez.laura@epa.gov

From: POLITICO Pro Energy [politicoemail@politicopro.com]
Sent: 4/20/2018 9:45:32 AM
To: Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clint]
Subject: Morning Energy: Interior rejected staff advice on casino, docs show — Pruitt's science directive slowed by industry concerns — Francis Brooke: Rookie of the year

By Kelsey Tamborrino | 04/20/2018 05:43 AM EDT

With help from Anthony Adragna

YOU NEVER KNOW WHAT YOU'RE GONNA GET: Interior officials reversed course on plans from two American Indian tribes to build a casino last year, new documents show. The heavily redacted documents released via FOIA show officials rejected recommendations from federal experts on Indian gaming, Pro's Nick Juliano reports, raising further questions about whether Interior Secretary Ryan Zinke and his political appointees caved to lobbying pressure from MGM Resorts International.

The tribes' treatment is now the subject of an Interior inspector general investigation, a spokeswoman told Nick. And while the documents don't reveal the contents of the internal deliberations by the staff of the Bureau of Indian Affairs' Office of Indian Gaming, they do show that the career staffers were circulating what they labeled as "approval" letters just 48 hours before their bosses refused to either OK or reject the tribes' application, leaving the casino in legal limbo.

No direct effort by MGM to lobby experts in BIA's Indian gaming office can be seen in the docs, but they show a timeline that indicates Interior officials closest to gaming issues were ready to side with the tribes after about six weeks of internal review. The department arrived at the opposite conclusion less than 48 hours after their recommendations went to Associate Deputy Secretary James Cason, a veteran of three Republican administrations, who was one of President Donald Trump's first hires at the department.

The emails also indicate even Interior career staff were unsure how they would explain the sudden about-face from higher-ups. "As for why we didn't approve the Mohegan compact amendment, you say the letter speaks for itself," Troy Woodward, a senior policy adviser in the Office of Indian Gaming, wrote to a colleague who wondered how he should answer questions. And "like Forrest Gump, say: 'that's all I've got to say about that.'" Read more.

WELCOME TO FRIDAY! I'm your host Kelsey Tamborrino, and NRECA's Kirk Johnson knew all the states with just one representative in the House: Alaska, Delaware, North Dakota, South Dakota, Montana, Vermont and Wyoming. For today: Who was the Senate majority leader whose father served as chief justice? Send your tips, energy gossip and comments to ktamborrino@politico.com, or follow us on Twitter [@kelseytam](https://twitter.com/kelseytam), [@Morning_Energy](https://twitter.com/Morning_Energy) and [@POLITICOPRO](https://twitter.com/POLITICOPRO).

POLITICO Space is our new weekly briefing on the policies and personalities shaping the second space age. Sign up today.

CONCERN ON ALL FRONTS: Scientists aren't the only ones expressing concern with EPA Administrator Scott Pruitt's plans to revise how the agency considers outside research, emails show. As the administrator weighs next steps on a scientific transparency directive announced earlier this year — which is expected to require that the raw data for all studies be publicly available and peer-reviewed — members of Pruitt's staff expressed concern it could block their own use of industry data, Pro's Annie Snider reports.

Emails between EPA officials obtained by the Union of Concerned Scientists show that Nancy Beck, the top political official in the agency's chemicals office, voiced concerns after she received a draft of the not-yet-released policy on Jan. 31. The directive in question has origins in legislation introduced by Rep. Lamar Smith during the Obama administration, but its requirements would exclude a great deal of data about pesticides and toxic chemicals that Beck's office considers when determining whether a substance is safe or must be restricted. "These data will be extremely valuable, extremely high quality, and NOT published," Beck wrote in an email to an official in EPA's office of research and development. "The directive needs to be revised." Read more here.

THE ROOKIE: The energy industry is unsure what to make of the relatively unknown Francis Brooke, who will soon replace Mike Catanzaro as the top White House energy aide. A 28-year-old former baseball pitcher, Brooke spent the last year in Vice President Mike Pence's office serving in a junior role to Catanzaro and George David Banks. But Pro's Ben Lefebvre and Eric Wolff report energy lobbyists worry his promotion could leave them without steady hands to steer the White House as big decisions on the coal industry, biofuels and energy trade pile up — especially in the crucial run-up to the midterm elections. "It shows you this administration doesn't care about these issues," said one lobbyist who works extensively with the administration on energy policy. "I expect agencies are now going to have to play a bigger role. There's not going to be a lot of policy issues that will be determined over the next eight months or so." Read more.

WHAT'S THE HOLD UP? House Natural Resources Chairman Rob Bishop says a comprehensive GOP energy bill is "being held up" until the Pentagon weighs how offshore drilling near Florida could affect national security, following backlash from the offshore proposal that led two Florida Republicans to pursue a permanent moratorium. A pending energy bill, H.R. 4239 (115), is one potential vehicle to extend that moratorium. Bishop told Anthony he is waiting for a Defense Department report on how expanded drilling near Florida would affect "mission compatibility." A committee spokeswoman said the results of the study would help determine next steps on the moratorium.

— **On the anniversary of the Deepwater Horizon oil spill**, New Jersey Gov. Phil Murphy is expected to sign into law today a bill that bans offshore drilling in state waters. The Center for American Progress, in anticipation of the legislation, cheered the move. Florida Sen. Bill Nelson, meanwhile, marked the anniversary by joining legislation Thursday intended to block the oil industry from rolling back Interior drilling safety rules adopted in response to the spill.

TRAVEL COMPANIONS: In preparation for a planned trip that was later canceled because of Hurricane Harvey, Pruitt spent nearly \$45,000 to fly five people to Australia, according to Reuters. While not a violation of government policy, Reuters reports two of Pruitt's aides and three security agents flew on business-class tickets costing roughly \$9,000 to set up advance meetings for the administrator. Pruitt was scheduled to participate in environment-related meetings with Australian officials.

Agency officials did not dispute the figures. EPA spokesman Jahan Wilcox told Reuters Hurricane Harvey, which caused major flooding in Texas, caused him to cancel the trip and instead go to Corpus Christi to assess the agency's relief efforts. "This is not news," he said, adding Pruitt's team was "adhering to the federal government's travel policy."

WHAT ABOUT HIS EMAILS? EPA told Senate Environment and Public Works Chairman John Barrasso that all of Pruitt's four emails were searched whenever there was a FOIA records request, but that a "full review" is being conducted just to make sure. "As long as EPA Administrators have had secondary email accounts, EPA staff have routinely searched requested accounts in response to FOIA and Congressional inquiries," Steve Fine, EPA's deputy chief information officer, wrote in a letter released by Barrasso.

DEMS WADE INTO WEST VIRGINIA PRIMARY: Republicans aren't the only ones trying to meddle in West Virginia's Senate primary. National Democrats are also jumping into the game, POLITICO's Alex Isenstadt reports, with an effort launched Thursday that could be designed to help coal baron Don Blankenship

win the Republican nomination. Washington-based super PAC Duty and Country has begun airing ads hitting the other two GOP contenders in the field: Rep. [Evan Jenkins](#) and state Attorney General Patrick Morrisey, ahead of the state's May 8 primary. But Blankenship was notably omitted from their target list, Alex writes. [Read more.](#)

— **Fox News Channel announced Thursday** its "America's Election Headquarters 2018" midterm election series would kick-off in West Virginia, with a GOP Senate primary debate on May 1. Candidates will need to reach a 10 percent threshold in a Fox poll next week to be invited to the debate.

ABOUT THAT CRA THREAT: Sen. [Lisa Murkowski](#) doesn't sound super gung-ho about using the Congressional Review Act on a 2016 plan from the Bureau of Land Management (that GAO [concluded](#) last year met the definition of a federal rule). "Obviously, we've got some issues that need to be resolved in the Tongass and whether this is the best way to do it is something we've been analyzing," she told reporters. Of course, floor time in the Senate is a valuable commodity so carving out time for the Alaska-centric issue may be a heavier lift. Background [here](#) on the Senate Republicans' new novel push to undo federal rules.

IT'S ALMOST EARTH DAY: Sunday marks Earth Day, where the Earth Day Network is using the date to promote its goal of [ending plastic pollution](#). The organization says more than 1 billion people from 192 countries will take part in the event on April 22. For its part, EPA promotes a list of Earth Day events [here](#).

CFA FLAGS FUNDRAISER AT PRUITT CONDO: Washington-based watchdog group Campaign for Accountability filed a complaint Thursday with the FEC against GOP Sen. [Mike Crapo](#) and Vicki Hart, the lobbyist co-owner of the controversial condo where Pruitt lived. The complaint alleges Crapo and Hart violated the Federal Election Campaign Act and FEC regulations when they failed to disclose improper in-kind contributions. Read it [here](#).

GOING PUBLIC: The Sierra Club filed a lawsuit for documents related to EPA's Office of Public Affairs after EPA failed to respond to its FOIA requests concerning whether the agency improperly — and potentially illegally — used the Office of Public Affairs' staff time to promote topics outside the scope of the office. Read it [here](#).

MAIL CALL! BIRD IS THE WORD: Sixty-two Democrats, led by Rep. [Alan Lowenthal](#), sent a letter to Zinke on Thursday regarding Interior's interpretation of the Migratory Bird Treaty Act. "We ask that you continue to enforce this foundational bird conservation law as every administration from across the political spectrum has done for more than forty years," the [letter](#) says.

— **Thirty-one outdoor businesses** will send [this letter](#) to Zinke today, calling on DOI to acknowledge the role of the outdoor recreation industry in its proposal to reverse the Methane Waste Prevention Rule. They request best practices are implemented to improve air quality in oil fields across the country, among other issues.

SPEAKING OF METHANE: Earlier this week BP released its "[advancing the energy transition](#)" report, [committing](#) to near-term carbon reductions and setting a target methane intensity of 0.2 percent and holding it below 0.3 percent. The Environmental Defense Fund [highlights](#) the report Thursday in a post arguing on the next frontier of methane targets, as annual shareholder resolution meetings are on the horizon.

SOLAR BILL SPOTLIGHT: Democratic Rep. [Jacky Rosen](#) introduced the bipartisan "Protecting American Solar Jobs Act," [H.R. 5571 \(115\)](#) this week, which would repeal tariffs introduced by the Trump administration on imported solar panels. It would undo increases in duty and a tariff-rate quota on certain crystalline silicon photovoltaic cells.

QUICK HITS

- Explosion reported at Valero oil refinery in Texas, [NBC](#).
- Girl Scouts to press EPA on coal ash, [WCIA](#).
- Wehrum: EPA "still thinking about" Obama mercury standards, [E&E News](#).
- Otter poop helps scientists track pollution at a Superfund site, [Scientific American](#).
- Trump's looming trade war gives Democrats an opening in farm country, [Reuters](#).
- Forget rising interest rates, banks are still loving solar power, [Bloomberg](#).

HAPPENING TODAY

8:30 a.m. — Elemental Excelerator holds [Earth Day Energy Summit](#), Hawaii

8:45 a.m. — Brookings holds a [discussion](#) on "A new EIB bond product in support of the Global Goals: Building a sustainable financial system," 2175 K St NW

9:00 a.m. — The George Washington University Elliott School of International Affairs [discussion](#) on "The French Leadership on Global Climate Actions," 1957 E Street NW

12:00 p.m. — Environmental Law Institute [conference](#) of lawyers committed to addressing the climate emergency, 2000 H Street, NW

12:30 p.m. — John Hopkins School of Advanced International Studies [discussion](#) on renewable energy's future in Puerto Rico, 1619 Massachusetts Avenue NW

1:00 p.m. — Global American Business Institute [discussion](#) on Korea's long-term natural gas plan, 1001 Connecticut Avenue NW

1:30 p.m. — House Transportation and Infrastructure Water Resources and Environment Subcommittee [field roundtable](#) on "America's Water Resources Infrastructure: Concepts for the Next Water Resources Development Act, Part II," Coos Bay, Ore.

THAT'S ALL FOR ME!

To view online:

<https://www.politicopro.com/newsletters/morning-energy/2018/04/interior-rejected-staff-advice-on-casino-docs-show-177901>

Stories from POLITICO Pro

Zinke's agency held up Indians' casino after MGM lobbying [Back](#)

By Nick Juliano | 02/01/2018 05:00 AM EDT

Two casino-owning American Indian tribes are accusing Interior Secretary Ryan Zinke of illegally blocking their plans to expand operations in Connecticut — a delay that stands to benefit politically connected gambling giant MGM Resorts International.

The Interior Department's refusal to sign off on the tribes' plans for a third Connecticut casino came after Zinke and other senior department officials held numerous meetings and phone calls with MGM lobbyists and the company's Republican supporters in Congress, according to a POLITICO review of Zinke's schedule, lobbying registrations and other documents. The documents don't indicate whether they discussed the tribes' casino project.

Federal law gives Interior just 45 days to issue a yes-or-no verdict after a tribe submits proposed changes to its gaming compact with a state, as the Mohegan and Mashantucket Pequot tribes note in a suit they filed against Zinke and the department. But the department declined to make any decision in this case, an inaction that raises questions about whether an intensive lobbying campaign by one of the gambling industry's biggest players muscled aside the interests of both the tribes and the state of Connecticut.

"I think the Department of Interior has been derelict in failing to give approval" to the tribes' request, Sen. Richard Blumenthal (D-Conn.) told POLITICO. "We asked for a meeting, but they were unresponsive. They never even responded."

Meanwhile, MGM and its allies had direct access to Interior. Zinke had multiple conversations last year with Sen. Dean Heller and Rep. Mark Amodei — two Nevada Republicans whose state is a major center of employment for MGM, and who have each tried to impede the tribes' casino plans. The company also doubled its lobbying spending and assembled a team that includes Bush-era Interior Secretary Gale Norton and Florida-based Trump fundraiser Brian Ballard.

The proposed Connecticut casino would sit on non-tribal land just across the border from a billion-dollar casino that MGM is planning in Springfield, Massachusetts. The Pequot tribe's Foxwoods Casino in Connecticut previously provoked the ire of former New Jersey casino owner Donald Trump, who complained during a 1993 congressional hearing that "they don't look like Indians to me."

An Interior spokeswoman did not respond to requests for comment, but the department is due to respond by next week to the suit the tribes filed in November. MGM has sought to join the suit on Interior's side.

MGM and its supporters say the tribes are trying to circumvent restrictions on "off-reservation" gambling while still maintaining their exclusive access to Connecticut's lucrative casino market, and that the new property would provide unfair competition to its Springfield project.

Interior officials sent the tribes encouraging signals as recently as May. But by mid-September the department reversed course, saying it would be premature to either approve or reject the plans.

"It's 100 percent about delaying us for as long as they possibly can," said Andrew Doba, a spokesman for the joint enterprise the tribes created for their new project.

The case is far from the first legal dispute to arise from Interior's role as the overseer of Indian tribes' gambling agreements with the states. Clinton-era Secretary Bruce Babbitt faced a special prosecutors' investigation after Interior rejected three Wisconsin tribes' plans for a casino that other, Democrat-supporting tribes opposed — though he ultimately was cleared. Indian gambling also played a key role in the George W. Bush-era Jack Abramoff scandal.

In the Connecticut case, the tribes have been operating two casinos — the Pequot tribe's Foxwoods and the Mohegan Sun — since the early 1990s. Their success in the market between Boston and New York provided competition to casinos in Atlantic City, including the formerly Trump-owned Taj Mahal.

As gambling spread across the U.S. in recent decades, MGM and other casino developers — including Trump — pursued projects in Connecticut but were ultimately unsuccessful. State law there limits casino ownership to the two in-state tribes and their new joint venture.

The tribes say they are fully complying with state law and the federal Indian Gaming Regulatory Act, which allows federally recognized tribes to operate casinos on their reservations or lands held in trust by the federal government. The casino they want to open is technically a commercial project that would be operated by MMCT Venture, a company jointly owned by the tribes that owns the casino site in East Windsor and entered into a development agreement with the town.

Connecticut Gov. Dannel Malloy and the state legislature signed off on that arrangement last year, so long as the tribes agreed to amend their gaming compacts that guaranteed a certain share of slot revenues would go to the state. The Indian Gaming Regulatory Act requires Interior to approve such compact amendments after a brief review window, unless the amendments violate the terms of the federal law.

The lawsuit seeks to force approval of the contract, arguing that the law does not allow Interior to refuse to render a verdict.

"IGRA and its implementing regulations leave the Secretary with no discretion to proceed in any other manner," Connecticut and the tribes argue in their lawsuit, filed in U.S. District Court for the District of Columbia on Nov. 29.

At one point, Interior seemed inclined to agree with the tribes' interpretation of the law. In a May 12 technical guidance letter to the tribes, Associate Deputy Interior Secretary James Cason acknowledged that the Indian Gaming Regulatory Act provides for a 45-day review period for compact amendments and that the department may disapprove them only for violating the act, other federal laws or trust obligations to the tribes.

While Cason stressed that his advice was nonbinding and did not constitute a preliminary decision, he endorsed earlier guidance from the Obama administration that the Connecticut amendment reflected the "unique circumstances" at play and that opening a new casino would not affect the tribes' exclusivity agreement with the state.

But the tribes' request drew opposition from out-of-state lawmakers like Heller and Amodei.

"Under that framework, the tribes seek to expand off-reservation gaming without going through the procedures mandated by" the Indian Gaming Regulatory Act, Amodei wrote in a July 28 letter to Cason, following up on a discussion earlier that day. Amodei asked whether Interior planned to allow the 45-day review period to lapse, which would allow the amendments to be "deemed approved."

Ultimately, Interior decided against approval. Acting Assistant Secretary for Indian Affairs Michael Black told the tribes in a Sept. 15 letter that approving or disapproving the amendment to their gaming compact was "premature and likely unnecessary," and said Interior had "insufficient information" to make a decision. However, he did not cite any legal justification for that move, nor did he outline what additional information the department would need.

Interior has on at least one occasion returned a gaming compact amendment rather than make a yes-or-no decision, although the circumstances were slightly different at the time. In 2013, the department told the Cheyenne-Arapaho tribes in Oklahoma that it could not process their amendments because of incomplete information. But in that case, the department replied in less than 30 days rather than wait for the entire review period to elapse, and it cited specific regulations and outlined what additional information it needed from the tribes.

Black copied Amodei and Heller on his letter but did not include any Connecticut lawmakers. (He did say a separate letter was going to Malloy, the Connecticut governor.) Zinke and Heller also spoke on the phone on Sept. 15, according to an entry on Zinke's calendar. And the day before Black sent the letter, Zinke and Cason were scheduled to meet at the White House with deputy chief of staff Rick Dearborn, although Zinke's calendar does not list the subject of the meeting.

Ahead of the decision, MGM "participated in Interior's review" through meetings and correspondence in which the company urged Interior to either return the amendments without making a decision or to disapprove them for violating the Indian Gaming Regulatory Act, according to a statement filed in court by Uri Clinton, MGM's senior vice president and legal counsel.

MGM brought on heavyweights including Norton — who disclosed her work for the company just last month — as well as Ballard, a lobbyist who has helped raise millions for Trump's campaign. MGM's spending on lobbyists for all issues more than doubled last year, to \$1.5 million spread across five outside firms and its own newly formed in-house team.

An affiliated company, MGM Public Policy LLC, also paid \$270,000 last year to hire a team of lobbyists from Brownstein Hyatt Farber Schreck LLP to work on issues including gaming. That's the firm at which Deputy Interior Secretary David Bernhardt worked until he joined the administration last year, though he has agreed to recuse himself from matters involving former clients of his firm without prior authorization.

"MGM Resorts last year established a public policy office in Washington to engage more directly on Federal legislative and policy issues," an MGM spokesman said in a statement. "Our advocacy activity reflected that increased engagement. As the largest employer in Nevada, part of that advocacy is routinely engaging our elected representatives."

Heller and Amodei each had multiple meetings and phone calls with Zinke last year, according to the secretary's calendar, although it's unclear whether they discussed the Connecticut casinos. On one occasion, Zinke joined Heller for dinner at a Las Vegas steakhouse on July 30, when he was in the state touring national monuments, one of several pieces of Interior's portfolio of interest to Nevada.

A Heller spokeswoman did not respond to a request for comment. But the senator has tried to advance MGM's interests in the past: In 2016, he offered an amendment to a defense bill that would have prevented Indian tribes from operating commercial casinos in the same state where they operate casinos on the reservation — precisely what the Connecticut tribes are trying to do. The amendment never came to a vote, and Heller does not appear to have ever discussed it publicly.

MGM employees and the company's political action committee have given \$96,000 this cycle to Heller's reelection campaign and leadership PAC, making the company his largest single source of contributions, according to the Center for Responsive Politics. Amodei has received no donations from company employees or its PAC.

Interior's Sept. 15 decision came two weeks after Zinke invited several lobbyists for MGM to join him and other guests for a social visit on his office balcony, which overlooks the National Mall. They included, according to Zinke's calendar, Ballard and other lobbyists from his firm Florida-based firm Ballard Partners, which opened its first Washington, D.C., office in 2017. Also present were Zinke's former family attorney and a major GOP fundraiser, according to copies of the secretary's calendar.

MGM hired Ballard in March and paid the firm \$270,000 last year, according to disclosure filings. Ballard was Florida finance chairman for Trump's 2016 campaign and helped organize a fundraiser at the Trump International Hotel in Washington last summer at which donors gave \$35,000 to attend or \$100,000 to join the host committee.

Ballard declined to discuss his work for MGM or any other client and said he could not recall the details of that particular meeting, which took place Aug. 29, according to Zinke's calendar. But Ballard said he had met Zinke and thinks "the world of him."

In October, MGM brought on Norton, who served as Interior secretary from 2001 to 2006, to lobby on issues related to the Connecticut tribes. Norton began lobbying for MGM on Oct. 25, according to disclosures filed Jan. 19.

The next day, Oct. 26, Interior officials spoke to the tribes and asked them to explain why the department was obligated to weigh in on their casino since it was being built by a commercial entity and not on tribal land.

In a brief interview last week, Norton said she did not know why her disclosure form was filed so late — lobbyists are required to file disclosures within 45 days — and she did not respond to follow-up inquiries.

Meanwhile, a new state legislative session begins in February in Connecticut. MGM plans to ask legislators there to allow an open bidding process for new casinos in the state, arguing that Interior's refusal to act shows that the state's attempt to limit casino ownership to the tribes would not work.

To view online [click here](#).

[Back](#)

Interior rejected staff advice when scuttling tribes' casino, documents suggest [Back](#)

By Nick Juliano | 04/20/2018 05:02 AM EDT

Trump administration officials rejected recommendations from federal experts on Indian gaming policy when they blocked two American Indian tribes from opening a casino last year, documents obtained by POLITICO indicate.

The heavily blacked-out documents add to questions about whether Interior Secretary Ryan Zinke and his political appointees buckled to lobbying pressure from MGM Resorts International, a gambling industry giant that is planning its own casino just 12 miles from the project proposed by the Mohegan and Mashantucket Pequot tribes.

Interior's inspector general is investigating the department's handling of the tribes' casino application, a spokeswoman told POLITICO, after Connecticut lawmakers asked the internal watchdog to look into the matter.

The documents, released under the Freedom of Information Act, don't reveal the contents of the internal deliberations by the staff of the Bureau of Indian Affairs' Office of Indian Gaming. But they show that the career staffers were circulating what they labeled "approval" letters just 48 hours before their political bosses reversed course and refused to either OK or reject the tribes' application — a nondecision that left the Indians' East Windsor project in legal limbo.

To fight off the potential competition, MGM [spent heavily on lobbyists](#), including George W. Bush-era Interior Secretary Gale Norton and firms with ties to the Trump administration, while enlisting the assistance of friendly lawmakers such as Sen. [Dean Heller](#) and Rep. [Mark Amodei](#). MGM lobbyists and the two Nevada Republicans

held a handful of meetings and conversations with Associate Deputy Secretary James Cason in the months and days before he edited Interior's letter holding up the tribes' plans.

A spokesman for the tribes' casino project said they were caught off guard by Interior's about-face and are glad to see the department's internal watchdog probing the matter.

"We are grateful there's an IG investigation into this issue because since last fall, none of the department's actions have passed the smell test," said Andrew Doba, a spokesman for MMCT Venture, the company the tribes formed to own and operate the new casino. "Something clearly happened to pollute the process, which should be problematic for an administration that promised to drain the swamp."

The tribes have also sued, arguing that Zinke ignored his responsibilities under the Indian Gaming Regulatory Act to either approve or reject their application in a timely manner and to act to protect the tribes' interests.

Cason and spokespeople for Interior and the Bureau of Indian Affairs did not respond to requests for comment this week.

But the emails show that even Interior's career staff was unsure how they would explain the sudden about-face.

"As for why we didn't approve the Mohegan compact amendment, you say the letter speaks for itself," Troy Woodward, a senior policy adviser in the Office of Indian Gaming, wrote in a Sept. 26 email to a colleague who anticipated having to answer questions about it at a gaming industry conference. And "like Forrest Gump, say: 'that's all I've got to say about that.'"

The dispute is complicated by the peculiarities of federal law on Indian gaming, which seeks to promote tribes' economic development but also discourages the spread of off-reservation gambling. The two Connecticut tribes, which already operate two lucrative casinos on their reservations, are exploring a gray area with their proposed third casino, which a jointly owned private company would operate on nonreservation land.

MGM, which plans to open a casino later this year in nearby Springfield, Mass., says the tribes' approach would set a worrisome precedent for other states.

"This is an unusual situation, and we're kind of pushing the bounds on IGRA," says Kathryn Rand, dean of the University of North Dakota School of Law and a co-director of its Institute for the Study of Tribal Gaming Law and Policy. Rand is not affiliated with MGM or the Connecticut tribes.

The newly released documents do not show any effort by MGM to make its case to experts in BIA's Indian gaming office. They also indicate that Interior officials closest to Indian gaming issues were ready to side with the tribes after about six weeks of internal review.

Instead, Interior reversed course with little official explanation less than 48 hours after their recommendations went to Cason, a veteran of the previous three Republican administrations who was one of President Donald Trump's first hires at the department.

On Sept. 11, Woodward emailed around copies of "the edited letters for Pequot and Mohegan," which he said had "been through the surname process," a system for internal review. The contents of the letters were redacted, but each was about two pages long, and file names referred to both as "draft approval" letters.

The following day, Woodward alerted colleagues that "Jim wants some changes," referring to Cason. But on Sept. 13, Woodward still sent "approval" letters "for Mike Black's signature," referring to the then-acting

assistant secretary for Indian affairs, along with a notice the department was required to publish in the Federal Register. Again, the attachments were redacted, but each was two pages long.

A day later, "Jim's edits" came back, and the documents were no longer referred to as "approval" letters.

Instead, Black signed a one-page letter on Sept. 15 informing the tribes that it would be "premature and likely unnecessary" to weigh in on their gaming applications at all.

Returning the applications without approving or disapproving them appears to be an option Interior officials did not consider until earlier that day. A pair of redacted memos circulated that morning, including one "regarding Secretarial Authority to not act on a compact," according to its title.

It is unclear precisely what happened over those days, but by then Cason had received ample input from MGM and its allies. As early as June, Cason met with a senior adviser to Zinke and a lobbyist from Ballard Partners, a Trump-connected firm MGM hired last year, to discuss issues related to the company, according to his calendars. And he was in touch with MGM supporters several more times over the intervening months up to the days before Interior's response was being finished.

On Sept. 13, Cason met with Amodei, and the following day he had a teleconference with Heller, according to Cason's calendar. MGM is a major employer in Nevada, and both lawmakers had previously raised concerns about the Connecticut tribes' proposals and the potential expansion of off-reservation gambling.

Cason's Sept. 14 meeting with Heller included some officials who were working on the Connecticut case, according to his calendar and the BIA emails. Later that day, Cason joined Zinke at a meeting at the White House with Rick Dearborn, Trump's deputy chief of staff for policy.

The president has his own history of clashes with the Mashantucket Pequot, whose Foxwoods Casino competed with his Atlantic City properties to draw gamblers from New York City. "They don't look like Indians to me," Trump infamously declared in a 1993 congressional hearing.

Several weeks after Interior released its decision, Norton sent Zinke a 24-page memo outlining legal arguments in support of the decision on behalf of MGM. Among the evidence she cited was Trump's congressional testimony, though not that particular phrase.

"Supreme Court precedent and President Trump's testimony counsel against approving Connecticut's discriminatory framework, the sole function of which is to grant MMCT, a private corporation, a monopoly over commercial, off-reservation, state-regulated gaming," the former Interior secretary wrote in her Oct. 30 memo to Zinke.

Black's ambiguous Sept. 15 letter, which Cason had edited, left the tribes unable to proceed with their planned casino.

The tribes' lawsuit is pending in U.S. District Court for the District of Columbia, and MGM has asked to intervene in the case, although both Interior and the tribes say it does not have standing to do so.

The case hinges on dueling interpretations of the goals of the Indian gaming law — essentially, whether more weight should be given to IGRA's goal of supporting tribes' economic prospects or its prohibitions on off-reservation gaming in most circumstances.

In court filings, Interior has also stressed the importance of procedural differences between the two tribes' prior gaming agreements, which it says should prevent the Mashantucket Pequot from participating in the case at all.

While the Mohegan tribe was operating under a state gaming compact, the Mashantucket were never able to reach an agreement with Connecticut officials back in the 1980s — so Foxwoods has been operating under the terms of "secretarial procedures" authorized under a different section of the law.

The law says amendments to gaming compacts, such as the Mohegan's, must be approved within 45 days unless Interior can demonstrate that their terms violate federal law or the department's trust responsibilities to the tribe. But it contains no such deadline for secretarial procedures such as the Mashantucket Pequot's.

Interior and MGM say that because the department has no obligation to act on the Pequot's proposed amendment, the entire case is effectively moot. However, the newly disclosed emails suggest that career officials were aware of that distinction throughout their review and did not see it as a reason to deny the tribes' request.

Rand, the law school dean, said courts have not previously grappled with the issue. "That I think is a real interesting and open question that we wouldn't have a whole lot to go on," she said.

This case is also unusual because of the nature of the two tribes at issue and the lucrative market the two sides are battling over.

"That might be a bit implicit in MGM's arguments — that the Mohegans and the Pequots aren't acting like tribal governments in this enterprise, they're operating like competitors. And because of their status ... they don't need the protection that other tribes do," Rand said in an interview this week. "The counterargument, of course, is that tribal sovereignty doesn't depend on whether the tribe needs the federal government's help. Tribal sovereignty is just a fact."

Black's Sept. 15 letter also does not mention the procedural difference between the tribes as a factor in deciding to return the applications without acting on them.

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EPA emails show industry worries slowed new science policy [Back](#)

By Annie Snider | 04/19/2018 05:01 PM EDT

EPA's rollout of a controversial new transparency policy that would severely restrict the scientific research the agency can rely on when drafting new regulations has been slowed down by political officials' fears that it could have major unintended consequences for chemical makers, according to newly released EPA documents.

The issue of scientific transparency has been high on the agenda of House Science Chairman [Lamar Smith](#) (R-Texas), who has found strong support from EPA Administrator Scott Pruitt — much to the consternation of public health advocates and green groups, who view the effort as backdoor attack on the agency's ability to enact environmental regulations.

Since Pruitt announced plans for the new policy last month, researchers and public health proponents have raised alarms that it could restrict the agency's ability to consider a broad swath of data about the effects of pollution on human health. But documents released under the Freedom of Information Act show that top EPA

officials are more worried the new restrictions would prevent the agency from considering industry studies that frequently support their efforts to justify less stringent regulations.

Emails between EPA officials obtained by the Union of Concerned Scientists show that Nancy Beck, the top political official in the agency's chemicals office who came to the agency after serving as a key expert for the chemical industry's lead lobbying group, voiced major concerns after she received a draft of the not-yet-released policy on Jan. 31.

The new scientific transparency directive is expected to require that the raw data for all studies EPA relies on be publicly available, and that the studies be peer-reviewed. But Beck said these requirements would exclude a great deal of industry data about pesticides and toxic chemicals that her office considers when determining whether a substance is safe or must be restricted.

It costs companies "millions of dollars to do these studies," Beck wrote in an email to Richard Yamada, the political official in EPA's office of research and development who is spearheading work on the new scientific policy and is also a former staffer for the House Science Committee chairman.

"These data will be extremely valuable, extremely high quality, and NOT published," Beck wrote. "The directive needs to be revised."

Moreover, much of this data, Beck noted, is considered proprietary by companies. It is dubbed confidential business information, and even though EPA can consider it as part of its regulatory review, the data cannot legally be made public.

Yamada replied to thank Beck for the heads up. "Yes, thanks this is helpful - didn't know about the intricacies of CBI," he wrote. "We will need to thread this one real tight!"

The term "confidential business information" primarily applies to industry information. That data is separate from the personal medical information that public health researchers worry could block consideration of their work.

Yogin Kothari, a lobbyist for the Union of Concerned Scientists, said the emails show the Trump administration's EPA has been "trying to stack the deck in favor of the industries they're supposed to be regulating."

"They want to potentially create exemptions for industry, but if you look at this entire set of documents ... you will see that there's not a single consideration for the impacts on public health data, on long-term health studies, on studies that EPA does after public health disasters like the BP oil spill," he said.

EPA spokeswoman Liz Bowman emphasized the policy is not yet finalized.

"These discussions are part of the deliberative process; the policy is still being developed. It's important to understand; however, that any standards for protecting [confidential business information] would be the same for all stakeholders," she said in a statement.

The emails indicate Pruitt wanted the new science policy rolled out at the end of February, and teased his plans in an interview with conservative outlet The Daily Caller in mid-March. But the agency has yet to finalize the policy.

The transparency directive has its origins in legislation introduced by Smith during the Obama administration, that had the backing of a number of industry groups, including the American Chemistry Council. The House

Science Committee chairman frequently charged that the Obama EPA used "secret science" to justify "costly new regulations."

Although versions of the measure were approved by the House multiple times, the Senate never took it up. CBO estimated that one version of Smith's legislation would cost EPA \$250 million a year, at least in the initial years, and a leaked staff response to questions from the budget office said a later version would be even more costly, would endanger confidential medical and business information, and "would prevent EPA from using the best available science."

But Smith found an ally in Pruitt. The emails indicate that Smith met with Pruitt in early January and show that Pruitt's staff quickly began working on a directive to "internally implement" the legislation.

Industry's backing for the new scientific approach began to waiver under the Trump administration, though. When a top American Chemistry Council scientist testified before Smith's committee in February 2017, she emphasized the need to protect industry information if the transparency initiative moved forward.

"One of the things that we do need to take into consideration as making that data publicly available is that there are adequate protections for confidential business information to ensure that we keep innovation and competitiveness available for the marketplace," Kimberly White told the committee.

Industry has historically claimed that a wide range of information about chemicals, ranging from the processes by which they are produced, to the locations of manufacturing plants, to their very identities, must be kept confidential in order to keep competitors from learning trade secrets. Environmental and public health advocates argue that industry claims this exemption in many cases where it's not necessary and that it often keeps important health and safety information from public view.

The issue was a key point of debate when Congress considered a major overhaul of the nation's primary chemical safety law passed 2016 and has reemerged as Pruitt's EPA sets about implementing the law.

Asked for comment on EPA's new effort to implement the scientific transparency approach internally, American Chemistry Council spokesman Scott Openshaw said the group looks forward to reviewing the directive once it's finalized.

"It is critical that any final directive properly protect confidential business information and competitive intelligence," he said in a statement.

The internal emails show that EPA political staff were particularly attuned to this concern. In a Feb. 23 email to colleagues, Beck forwarded language from a 2005 White House document that laid out narrow exemptions from its requirement that all "important scientific information" disseminated by the federal government go through peer review.

"[Y]ou may need to tweak but hopefully there is something helpful here that can be borrowed/adopted," she wrote.

Richard Denison, lead senior scientist for the Environmental Defense Fund, said that EPA's access to industry data is indeed important to its ability to review the safety of new chemicals and pesticides, but said the internal EPA communications show that Pruitt's EPA wants to "have their cake and eat it too" with the new directive.

"They're trying to force peer review studies done by academic scientists to disclose every last detail, while at the same time allowing industry studies to be kept private or aspects of those to still be kept private," he said.

He pointed out that the concerns Beck raised about the burden the new policy would place on industry are the very same ones that the CBO report said the policy would place on EPA.

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Energy industry puzzles over new White House adviser [Back](#)

By Ben Lefebvre and Eric Wolff | 04/19/2018 07:14 PM EDT

The appointment of a 28-year-old former congressional staffer as the top White House energy aide left many industry lobbyists scratching their heads — and nervous that the new hire may have trouble filling the shoes of the more experienced adviser he's replacing.

The relatively unknown [Francis Brooke](#) will step into the role as replacement for Mike Catanzaro, who will exit the White House next week. Catanzaro and NSC energy adviser George David Banks, another energy adviser who departed earlier this year, have been the top two energy experts in the White House, and they'll take with them decades of experience.

Brooke spent the last year in Vice President Mike Pence's office serving in a junior role to Catanzaro and Banks. But energy lobbyists worry his elevation will leave them without steady hands in the White House just as the administration confronts big decisions on the coal industry, an intra-party biofuels fight and thorny energy trade issues. Putting a relative rookie into the role also shows that the administration may not devote as much attention to energy issues in the run-up to the 2018 elections, sources said.

"It shows you this administration doesn't care about these issues," said one lobbyist who works extensively with the administration on energy policy, but who requested anonymity to discuss people he expects to work with. "I expect agencies are now going to have to play a bigger role. There's not going to be a lot of policy issues that will be determined over the next eight months or so."

Brooke joins the White House with far less energy-sector experience than Banks and Catanzaro, who came to their jobs with long histories in industry and government. He started his career as an intern for Mick Mulvaney in October 2012 when the White House budget director was a South Carolina congressman. After that, he had stints as a staff assistant for Rep. [Andy Barr](#) (R-Ky.) and legislative aide for Senate Majority Leader [Mitch McConnell](#) (R-Ky.). Pence's office tapped him to be associate director of policy in February 2017.

His family was involved in international politics in the previous decade. His father, [Francis Brooke Sr.](#), helped foster the relationship between officials in the George W. Bush administration and Ahmed Chalabi, the controversial Iraqi exile who helped convince the U.S. to invade his country.

Pence's office confirmed Brooke's biographical information but did not offer further details about his time working with the vice president.

McConnell's office did not respond to questions about Brooke. A spokeswoman for Barr said Brooke had been "one of the Congressman's most trusted legislative assistants and handled a wide variety of issues including energy, environment, and health care."

Previous to that, Brooke's biggest notice came from pitching 97 innings in the 2012 season with Northwestern University, making 13 starts and ending with a 2.51 earned run average. He would later serve as a coach to the Republicans' congressional baseball team, and he was on the Arlington, Va., practice field when a gunman shot Rep. Steve Scalise of Louisiana.

Lobbyists say they worry that with the departures of Catanzaro and Banks, Brooke will not be able to help the White House navigate complex energy issues with technical details that can be headache-inducing.

"There is angst downtown that without Mike there, no one knows who is going to make the trains run on time," said Andeavor's Stephen Brown said before Brooke was officially named to the position. "Mike was always the adult in the room on energy issues with substantive knowledge, not just a political perspective."

Brooke, along with Wells Griffith, an Energy Department official on a three-month loan to the White House, will have almost no time to get acclimated to their jobs. The Department of Energy is grappling with whether to try to use emergency authority to keep economically distressed coal-fired power plants running. And the two new staffers may need to help Trump navigate the dispute between refiners seeking changes to the Renewable Fuel Standard and corn farmers who are counting on the president to live up to his promise to protect ethanol.

They will also have to cope with White House officials on trade issues, such as the steel tariffs that oil and gas companies have complained could hamper the construction of new pipelines.

But some current and former administration officials say they have confidence Brooke is up to the job. They say he worked closely with Banks and Catanzaro on all their key issues, including traveling with Banks to the U.N. climate conference at Bonn, Germany, as a key adviser.

"He knows all the players, he's been in all the meetings," said one administration source. "He has the right temperament, the right judgment. People get into these jobs and they use them for vanity tours. Brooke doesn't do that. He's going to be great."

Banks, who left the White House in February, agreed.

"I think that he's ready for the role," said Banks, former adviser to Trump on the NSC. "Francis has been deeply engaged in all of the major energy environment [initiatives]. Some people wouldn't have the experience he's had in working these issues for over a year in the White House. He's incredibly bright, disciplined person."

Critics of the administration's energy policy rollbacks hoped Brooke's lack of experience would depoliticize some of the big decisions before the administration.

"Of course it's weird that there's no senior person covering energy issues," said John Morton, former senior director for energy and climate change on the NSC during the Obama administration. "Though with this administration, it's often a blessing in disguise when a policy area gets neglected by Trump appointees, as it allows more talented career staff to manage affairs."

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Bishop: Drilling moratorium holding up energy bill vote in House [Back](#)

By Anthony Adragna | 04/19/2018 05:32 PM EDT

House Natural Resources Chairman [Rob Bishop](#) says a wide-ranging GOP energy bill is "being held up" until the Pentagon weighs in on how offshore drilling near Florida could affect national security.

The Trump administration earlier this year proposed allowing drilling in the Eastern Gulf of Mexico after an existing moratorium expires in 2022. Although Interior Secretary Ryan Zinke [quickly backed away](#) from the idea, the resulting firestorm led two Florida Republicans to pursue [a permanent moratorium](#), which they said has the backing of Speaker [Paul Ryan](#).

A pending energy bill, [H.R. 4239 \(115\)](#), is one potential vehicle to extend the moratorium. But Bishop, a strong supporter of the oil industry, did not include any limits on offshore drilling when the bill passed out of his committee last year.

The Utah Republican told POLITICO this week he is waiting for the Defense Department report on how expanded drilling near Florida would affect "mission compatibility." A committee spokeswoman said the report's findings would influence "how to move forward on a potential agreement regarding the future of the Eastern Gulf once the moratorium expires in 2022."

Oil and gas leasing within 125 miles off the Florida coastline and areas of the Gulf of Mexico is currently off limits until 2022.

Bishop said in the interview Wednesday that the absence of House Majority Whip [Steve Scalise](#) (R-La.), lead sponsor of the legislation, for surgery is an additional factor in getting the bill floor time.

WHAT'S NEXT: When the measure will get floor consideration remains unclear.

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Report: EPA spent \$45,000 on Australia trip Pruitt canceled [Back](#)

By Emily Holden | 04/19/2018 05:34 PM EDT

Five EPA employees spent \$45,000 traveling to Australia last year to prepare for a trip by EPA Administrator Scott Pruitt that was ultimately canceled, Reuters [reported](#) today.

The two advance team aides and three security agents spent about \$9,000 each on business-class tickets to fly to Australia in August, an expense that is permitted under government rules on flights lasting 14 hours or more. The two EPA staffers were advance director Millan Hupp, the Oklahoma aide who followed Pruitt to Washington and has drawn scrutiny for receiving a large raise, and Kevin Chmielewski, the former deputy chief of staff for operations who was dismissed and is now acting as a whistleblower to lawmakers about Pruitt's spending habits.

Agency officials did not dispute the figures. EPA spokesman Jahan Wilcox said Pruitt did not go to Australia because of Hurricane Harvey. Pruitt traveled from his home in Tulsa, Okla. to Corpus Christi, Texas, to assess relief efforts on Aug. 30, according to his schedule and flight records.

Pruitt spent at least \$105,000 on first class flights and at least \$3 million on a round-the-clock security detail. Records show about one-quarter of the \$120,000 costs for a trip to Italy in June for a G-7 environment meeting was to cover Pruitt's security. EPA's inspector general and various other government officials are investigating Pruitt's travel and spending.

Flight vouchers EPA has shared with lawmakers show Pruitt originally intended to travel to Sydney and Melbourne from Aug. 31 through Sept. 8 to "discuss best practices regarding the environmental operations" within the country.

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EPA tells Barrasso all Pruitt's emails searched for FOIA [Back](#)

By Alex Guillén | 04/19/2018 05:24 PM EDT

EPA today told Senate Environment and Public Works Chairman John Barrasso (R-Wyo.) that all four of Administrator Scott Pruitt's emails were searched whenever there was a Freedom of Information Act records request, but that a "full review" is being conducted just to make sure.

"As long as EPA Administrators have had secondary email accounts, EPA staff have routinely searched requested accounts in response to FOIA and Congressional inquiries. That practice has not changed under Administrator Pruitt's leadership," Steve Fine, EPA's deputy chief information officer, wrote in a letter released today by Barrasso.

Fine added: "However, in response to your concern, my office is conducting a full review of the searches conducted regarding FOIA requests seeking Administrator Pruitt's records. If additional documents exist, we will contact the relevant requesters, and we will update you once our review is complete."

"I look forward to receiving the findings of the agency's full review that's being conducted in response to my letter," Barrasso said in a statement.

WHAT'S NEXT: Fine did not say how long EPA's review of FOIA request fulfillment will take.

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Democrats meddle in West Virginia's GOP Senate primary [Back](#)

By Alex Isenstadt | 04/19/2018 04:23 PM EDT

National Democrats launched a campaign Thursday to intervene in the upcoming West Virginia Senate GOP primary — an effort that could be designed to help recently imprisoned coal baron Don Blankenship win the Republican nomination.

Duty and Country, a Washington-based Super PAC, began airing TV and web ads savaging the two mainstream Republican candidates, Rep. Evan Jenkins and state Attorney General Patrick Morrisey, who are competing in the May 8 primary. Left off the group's target list, however, was Blankenship, who spent one year in prison following the 2010 explosion at his Upper Big Branch Mine that killed 29 workers.

In propping up Blankenship, the Democratic Party is wading into an intensifying GOP civil war. Republicans are growing increasingly worried about Blankenship, who has been gaining traction in the primary. GOP officials in Washington are concerned that if Blankenship wins the nomination, he'll ruin the party's prospects of defeating Democratic Sen. Joe Manchin in November.

Last week, national Republicans launched a super PAC named Mountain Families PAC aimed at stopping Blankenship. The organization, which is staffed by consultants who've previously worked for a political group aligned with Senate Majority Leader Mitch McConnell, has begun airing TV commercials accusing Blankenship of contaminating drinking water by pumping toxic slurry while setting up a separate piping system to his mansion.

The Democratic group is spending over \$380,000 to air the commercials. One of the [TV spots](#) says that as the former head of West Virginia State Medical Association, Jenkins pushed doctors to use an insurance company that overcharged, allowing his organization to profit. Another [ad](#) describes Morrisey as a carpetbagger, calling him a "millionaire New Yorker and former lobbyist who came down here and ran for office with no idea of the real challenges West Virginians face."

The Democratic group has also begun sending out mailers describing Jenkins as "part of the swamp, part of the problem."

A Duty and Country spokesman, Mike Plante, said the group had no plans to go after Blankenship and was instead focused on his two rivals.

"We made the strategic decision based on data that shows that either Patrick Morrisey or Evan Jenkins is more likely to be the nominee, so that's where we're focusing our attention," he said.

Duty and Country appears to have close ties to the national Democratic Party. In its federal filings, it lists the same downtown Washington address as other major party groups, including Senate Majority PAC, the main Democratic super PAC devoted to electing Senate Democrats.

In another twist, West Virginia attorney Booth Goodwin, who served as U.S. attorney in the case against Blankenship, is listed as the group's treasurer.

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GOP maneuver could roll back decades of regulation [Back](#)

By Zachary Warmbrodt | 04/17/2018 10:16 AM EDT

Republicans are preparing to open a new front in their push to roll back regulations across the government, using a maneuver that could enable them to strike down decisions by federal agencies that reach back decades.

As soon as Tuesday, GOP senators, backed by President Donald Trump, will use the Congressional Review Act to topple safeguards issued by the CFPB in 2013 that were intended to discourage discrimination in auto lending.

While Republicans in the Trump era have already taken advantage of the 1996 law to remove more than a dozen recently issued rules, this would be the first time that Congress will have used it to kill a regulatory policy that is several years old.

Now, actions going back to President Bill Clinton's administration could be in play under the procedure GOP lawmakers are undertaking, forcing numerous agencies to reconsider how they roll out new regulations.

"It's a hugely important precedent," Sen. Pat Toomey (R-Pa.), the architect of the effort, said in an interview. "It's potentially a big, big opening."

While conservatives are applauding the effort as a way to rein in rogue bureaucrats and boost the economy, consumer advocates are warning that the consequences could be dire.

"This takes an already incredibly dangerous law and cranks it up to 11," said James Goodwin, senior policy analyst at the Center for Progressive Reform.

Republicans are leveraging two key provisions of the Congressional Review Act.

They're again taking advantage of fast-track authority that allows a simple majority of the Senate to pass a resolution rolling back a rule if the vote occurs within a window that's open for no more than a few months. The provision enables senators to avoid a filibuster.

But the more novel use lies in the law's requirement that federal agencies submit rules to Congress for their potential disapproval. Republicans have landed on a way to target a wide array of decisions — including regulatory guidance — that haven't typically been implemented as formal rules under the Administrative Procedure Act.

"You have this unimaginably large universe of stuff that is now eligible for repeal under the CRA," Goodwin said, citing a hypothetical Occupational Safety and Health Administration workplace safety poster as a potential example. "Agencies don't submit all this stuff because it would be an administrative nightmare."

In the case of the auto-lending policy, the CFPB released it as a guidance document rather than a formal rule governed by the notice-and-comment requirements of the APA. As such, it wasn't technically submitted to lawmakers for the purposes of the Congressional Review Act. That means the clock for congressional review never started.

That changed last year. For advocates of deregulation, the stars had aligned thanks to the ascendance of a Republican president eager to roll back rules and the Republicans retaining control of Congress.

Toomey, the former president of the conservative Club for Growth, went on the hunt for ways the GOP could take advantage of its congressional majority to eliminate federal rules.

He found a way to wield the power that the Congressional Review Act gives a majority of the Senate to sidestep obstruction via filibuster when it comes to years-old regulatory actions.

To do so, he asked the Government Accountability Office to determine whether the CFPB auto-lending guidance qualified as a rule for the purposes of the Congressional Review Act. In December, GAO told him that

it did in fact satisfy the legal definition of a rule, starting the clock for Republicans to undo it without having to seek any help from Democrats.

"When regulators regulate by guidance rather than through the process they're supposed to use, which is the Administrative Procedure Act and do a proper rulemaking, they shouldn't be able to get away with that," Toomey said. "If we can get a determination that the guidance rises to the significance of being a rule, then from that moment the clock starts on the CRA opportunity."

Amit Narang, regulatory policy advocate at Public Citizen, said it "is really going to open up a Pandora's box." Public Citizen and 60 other advocacy groups covering the gamut of finance, the environment, labor and gay rights are calling on Congress to oppose the CFPB rollback, saying it would set a dangerous precedent.

They warned it would put at risk not only protections for workers, consumers, minorities and the environment, but also regulatory certainty for businesses.

"Expanding the power of the CRA to overturn guidance from decades ago will threaten protections hardworking families rely on, making it harder for middle class Americans to get ahead and responsible businesses to follow the law," Sen. Sherrod Brown (D-Ohio) said.

Critics have also questioned the need to undo the CFPB auto-lending guidance because the bureau is now led by a Trump appointee, acting Director Mick Mulvaney, who could eliminate it himself. Mulvaney told lawmakers last week he was reviewing the policy. The National Automobile Dealers Association and the American Financial Services Association are supporting the rollback of the anti-discrimination measure, arguing that the way the CFPB crafted the guidance was flawed.

The Senate opened debate on the bill Tuesday following a 50-47 procedural vote. Sen. Joe Manchin (D-W.Va.) was the only Democrat to support moving forward with the legislation.

Other lawmakers have begun to test the waters. In November, GAO in a response to a request from Sen. Lisa Murkowski (R-Alaska) confirmed that a 2016 plan from the Bureau of Land Management was a rule for the purposes of review under the CRA. A spokeswoman for Murkowski did not respond to a request for comment.

Paul Larkin, a senior legal research fellow at the Heritage Foundation, has been advocating for Congress to take advantage of this deregulatory pathway in the Congressional Review Act, saying it could force agencies to comply with formal rulemaking requirements and help the economy by cutting red tape.

"This would indicate that Congress believes it can reach back beyond what the conventional wisdom was," he said.

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Subject: Morning Energy, presented by America's Pledge: Battle in the Bakken state? — Groups sue over EPA waiver exemptions — Deja vu on formaldehyde

By Kelsey Tamborrino | 05/30/2018 05:41 AM EDT

With help from Annie Snider and Ben Lefebvre

BATTLE IN THE BAKKEN STATE? As the election year kicks into high gear, President Donald Trump's friendly relationship with Democratic Sen. Heidi Heitkamp is worrying some within the Republican party, POLITICO's Alex Isenstadt and Burgess Everett report. Republicans have grown increasingly frustrated with Trump's ongoing flirtation with the freshman senator from the No. 2 oil-producing state, especially at a time when many in the GOP fear that the president's unpredictable style will undercut their midterm plans. Heitkamp, who is seeking reelection in a state where Trump won nearly two-thirds of the vote, has a friendly relationship with the president, even after Trump aggressively recruited Rep. Kevin Cramer — who advised his campaign on energy issues — to give up his House seat and enter that race, leaving some of Cramer's closest allies feeling snubbed.

In an interview, Cramer said there would soon be "clarity" on who Trump supports in the race. But the congressman declined to predict whether the president would go after Heitkamp aggressively, as Trump has done with other Democratic incumbents. Cramer seemed aware of the warmth between the president and the senator, Alex and Burgess report. Trump has asked Cramer if he likes Heitkamp, and when the congressman responds yes, the president seems to be "relieved," Cramer said. "Politically, North Dakota's a pretty nice state. So I don't know that turning it on her is necessarily politically helpful to me," Cramer said. "They may just be concerned that she's a woman and maybe that has an impact. I just don't know."

For her part, Heitkamp said she's proud of her ability to work with the president. "I have a friendly relationship, I have a very important working relationship," she said in an interview, "not just with him but other members of the administration." Read the story here.

WELCOME TO WEDNESDAY! I'm your host Kelsey Tamborrino, and Peter Robertson of the Pebble Partnership was the first to correctly identify California and Ohio as the two states that don't have an avenue named after them in D.C. Instead, there's a California Street and Ohio Drive. For today: Which president was the first to see a major league baseball game in his hometown, and which town was it? Send your tips, energy gossip and comments to ktamborrino@politico.com, or follow us on Twitter [@kelseytam](https://twitter.com/kelseytam), [@Morning_Energy](https://twitter.com/Morning_Energy) and [@POLITICOPro](https://twitter.com/POLITICOPro).

Register for the Pro Summit: Join Pro subscribers, expert reporters and key decision-makers from the executive branch, federal agencies and Congress for a full day of incisive policy conversations on July 17. [Learn more.](#)

GROUPS SUE ON WAIVER EXEMPTIONS: Ethanol and farm groups say they've filed a lawsuit against EPA over some of the waivers granted to small refineries allowing them to shed their Renewable Fuel Standard requirements on blending biofuels, Pro's Eric Wolff reports. The Renewable Fuels Association, National Corn Growers Association, American Coalition for Ethanol and National Farmers Union are challenging the waivers granted to CVR Refining's Wynnewood, Okla., refinery and the HollyFrontier refineries at Cheyenne, Wyo. and

Woods Cross, Utah. Those refineries have collectively saved \$170 million in compliance costs, the coalition said.

Those waivers, which ethanol backers say violate the volume mandates under the RFS, are also the subject of some horse-trading in the discussions between EPA Administrator Scott Pruitt and USDA Secretary Sonny Perdue. The two are trying to put the final touches on a compromise deal over EPA's rules for biofuels. Read [more](#).

CHEVRON SHAREHOLDERS VOTE: Shareholders at Chevron's annual meeting today will vote on a pair of climate change-related provisions. First up is a proposal that the oil giant report to investors how it will change its business model to account for any decreased demand for oil and gas resulting from greater development of renewable energy sources. Another proposal is that Chevron start providing reports on steps it is taking to minimize methane emissions from its fracking operations. Chevron's board of directors have advised against both proposals, saying the company is already making sufficient efforts on both matters.

Exxon, which also holds its annual meeting today, is getting a break this year from the sort of environmental proposals its shareholders considered in 2017.

**** A message from America's Pledge:** America's Pledge is flipping the script on climate action. One year after the federal government announced it would pull out of the Paris Agreement, 2,700+ U.S. cities, states, and businesses are saying, "We Are Still In." See how far we've come: <https://politi.co/2koAHZb> **

DEJA VU? Already under fire for their handling of a controversial assessment of nonstick chemicals in drinking water, a newly uncovered EPA email suggests that public relations strategy was also front-of-mind for EPA staffers as the agency contemplated reevaluating the risks of formaldehyde. Reuters reported last week that EPA delayed release of a new assessment of the chemical that is expected to for the first time link formaldehyde with leukemia after meeting with the American Chemistry Council in January.

"They reiterated the concern you have raised about information leaking before it's been vetted and asked that the Agency have appropriate communication materials ready to use if needed," Jennifer Orme-Zavaleta, who heads EPA's Office of Research and Development, wrote in a Jan. 24 email to EPA chief of staff Ryan Jackson and Richard Yamada, deputy assistant administrator for research and development. The email was released to the Union of Concerned Scientists under the Freedom of Information Act.

Yogin Kothari, a lobbyist of UCS, said the email "sounds eerily similar" to concerns that EPA and White House officials expressed about a HHS assessment of the chemicals PFOA and PFOS. "It's not surprising that the ACC is attempting to wield its influence over EPA when its former staff are basically running the place," Kothari said by email.

WE'RE CLOSED: The Environmental Council of the States' upcoming fall meeting will close to the public certain sessions attended by EPA officials, according to the group's draft agenda for the August meeting. The draft shows ECOS will hold closed sessions on several issues, including a state-EPA roundtable on "cooperative federalism" and joint PFAS activities. (h/t E&E News' Sean Reilly)

NAFTA TALKS STILL STALLED: Recent NAFTA talks between the U.S., Mexico and Canada have not resulted in progress on the thorniest issues because the U.S. remains unwilling to offer important concessions, two sources close to the talks told Pro's Sabrina Rodriguez. Negotiators from the Office of the U.S. Trade Representative continue to demand that "they want everything, and there's no possible way they'll get everything they want," one of the sources said. "Conversations have stalled entirely." Read [more](#).

WE'LL ALWAYS HAVE PARIS: This week marks the one-year anniversary of Trump's decision to pull the U.S. out of the Paris climate agreement. The United States still technically remains in the 2015 pact for the next

two-and-a-half years, but the action to implement it is playing out in the rest of the world. To mark the occasion, the World Resources Institute will host a [discussion](#) today on whether other nations have moved on since Trump's decision to exit the agreement. Among those participating is Todd Stern, the former State Department special envoy for climate change who helped seal the deal. In the lead-up to the event, WRI's Eliza Northrop laid out the seven signs of progress since Trump's announcement [here](#), including a timeline of events over the last year. If you go: The discussion kicks off at 2:30 p.m at 10 G Street NW. Watch the livestream [here](#).

— **And the National League of Cities**, as well as mayors from across the country, will release today their latest "State of the Cities" report that will look into the trend of cities taking on clean energy goals, despite the federal government.

OFFSHORE DRILLER FINED \$4M: Oil and gas company Energy Resource Technology was fined \$4 million Tuesday by the U.S. Attorney's Office for the Eastern District of Louisiana for fabricating data about the readiness of a key piece equipment used to prevent oil spills, Interior said. The fine comes as a result of an [investigation](#) by Interior's Office of Inspector General that found that ERT management directed an employee on its rig in the Gulf of Mexico to create a fake blowout preventer pressure test chart to conceal a failed test result, Pro's Ben Lefebvre reports. Read [more](#).

EPA, KILDEE SPAR OVER SUMMIT: EPA defended its move to only allow federal agency and state representatives on the second day of last week's summit on toxic chemicals in drinking water, dismissing Democratic Rep. [Dan Kildee](#)'s complaint that members of his staff had been barred from attending as a mischaracterization. EPA Associate Administrator Troy Lyons wrote in a letter Tuesday to Kildee and obtained by POLITICO that the agency worked with Kildee's office ahead of time to allow a staffer to attend the first day of the summit.

"**I trust you understand our disappointment** when we discovered that no one from your office attended the summit on May 22, particularly in light of the subsequent events on May 23," Lyons wrote. In a statement, Mitchell Rivard, Kildee's chief of staff, said that "it is hard to mischaracterize the EPA's actions — it had been widely reported that the EPA blocked both journalists and a congressional office from the taxpayer-funded PFAS summit." Read the letter [here](#).

MAIL CALL! 45Q AND YOU: Rep. Cramer shared [a letter](#) Tuesday from the Treasury Department in response to [his request](#) for direction on the expanded 45Q tax credit for capturing and storing carbon dioxide. In the letter, Assistant Secretary for Legislative Affairs Drew Maloney said Treasury is developing published guidance to provide clarity to taxpayers for the purpose of using the credit.

— **A coalition of 12 state and city attorneys general** and attorneys sent a letter to National Academy of Sciences President Marcia McNutt saying EPA's so-called secret science proposal to ban the use of studies that don't publicly disclose all data is "too vague and rushed to allow for meaningful public review." And they pressed for the group to weigh in, saying "the National Academy's input on this extremely consequential proposal." Read it [here](#).

API WRITES TO TRUMP ON SECTION 232: The American Petroleum Institute [sent a letter](#) to Trump last week requesting that the list of countries currently exempt from Section 232 tariffs on steel and aluminum be expanded "without imposing alternative measures such as quotas," and that the president remove any associated import quotas that have already been imposed. In his letter, API President and CEO Jack Gerard writes that additional import restrictions "will have a negative effect on our industry just as we have achieved the highest level of domestic hydrocarbon (oil and natural gas and natural gas liquids, or NGLs) production since 1949," according to EIA.

TRUDEAU COMMENTS ON PIPELINE: Canadian Prime Minister Justin Trudeau defended the Canadian government's plan to buy and complete the expansion of Kinder Morgan's Trans Mountain pipeline. "The

project became too risky for a commercial entity to go forward with it; that's what Kinder Morgan told us," Trudeau said during a Bloomberg Businessweek event. "We are going to ensure that it gets built so that we can get our resources to new markets." More [here](#).

WHITE HOUSE TALKS PUERTO RICO: Aboard an Air Force One flight, press secretary Sarah Huckabee Sanders was asked whether the president — despite his [previous comments](#) — now thinks Puerto Rico constitutes a "real catastrophe" following the release of a Harvard University study that found at least 4,645 people died from the September 2017 storm rather than the 64 deaths federal authorities counted. The White House continues to be supportive of the governor of Puerto Rico, Sanders said according to pool reports, and of "transparency and accountability." The people of Puerto Rico "deserve nothing less than that, and were going to continue to be focused on helping in every way we can," she said. "FEMA has already done the largest response ever in history to any natural disaster. They're in Puerto Rico, and we're going to continue to give as much assistance as possible."

RBS COMMITS TO NEW ENERGY FINANCING: Ahead of its shareholder meeting today, the Royal Bank of Scotland [announced](#) Tuesday new energy financing policies to support a transition to low carbon. The bank said it would no longer provide "project-specific finance" to new coal-fired power plants, thermal coal mines or oil sands projects, among other projects. Additionally, RBS said it is tightening restrictions on general lending to mining and power companies generating more than 40 percent of their revenues from thermal coal and of electricity from coal, respectively. In response, Rainforest Action Network Executive Director Lindsey Allen said the announcement "comes as a result of groups like us pressuring banks to defund fossil fuels and deforestation," but said the "policy is only half a step forward because it leaves loopholes in place."

REPORT: COOK TAPPED FOR SUPERFUND JOB: EPA has named Steven Cook — a former senior counsel at chemical giant LyondellBasell — to the agency's Superfund Task Force in the position left vacant by Albert "Kell" Kelly, Bloomberg BNA [reported](#). Cook has been serving as deputy assistant administrator for the agency's land and waste office, prior to his move to the Superfund spot.

ZINKE DEFENDS 'KONICHIWA' GREETING: In a wide-ranging radio interview with Breitbart Radio, Interior Secretary Ryan Zinke defended his use of the greeting "konichiwa" in response to a question from Rep. Colleen Hanabusa on preserving internment sites during a March Natural Resources hearing. "I grew up in a little logging, timber town, railroad town in Montana and a lot of my family lived through the years of the internment camps. I've long since had friends that were Japanese families that went through that," Zinke said, calling it an "appropriate salute." Listen to the full interview [here](#).

AD WARS: Club for Growth Action said Tuesday that it would spend \$250,000 on new ads attacking Russ Fagg, a former judge and Republican candidate for Senate in Montana. Campaign Pro's James Arkin [reports](#) the new ad campaign attacks Fagg over his record during his two decades as a district judge, including the time he called a judge who "undercut" Trump's rollback of environmental rules a "thoughtful moderate." Watch the TV ad [here](#).

MOVER, SHAKER: Stuart Siffring joined the Western Energy Alliance as a regulatory analyst, the trade group announced Tuesday. Siffring previously worked as a permit engineer at EPA and the Colorado Department of Public Health and Environment.

QUICK HITS

- EPA used disavowed research to justify putting dirtier trucks on the road, [Los Angeles Times](#).
- Antarctica has enormous mountain ranges and valleys deep beneath its ice, [The Washington Post](#).
- Former Perry adviser is FirstEnergy's secret weapon in U.S. bailout, [Bloomberg](#).

- McConnell's plan for a packed summer Senate agenda, [CQ Roll Call](#).
- Lowe's drops paint strippers blamed in dozens of deaths, [The New York Times](#).
- No offsets, no problem as Army Corps OKs wetland projects, [E&E News](#).

HAPPENING TODAY

9:30 a.m. — The Woodrow Wilson Center's Environmental Change and Security Program [discussion](#) on "Sustainable Water, Resilient Communities: The Challenge of Erratic Water," 1300 Pennsylvania Ave NW

1:00 p.m. — The National Academy of Sciences' Government-University-Industry Research Roundtable [webinar](#) on "Connecting Research to Policy: The Broadband Research Initiative at Pew Charitable Trusts."

1:00 p.m. — The Center for Climate, Health, and the Global Environment at the Harvard T.H. Chan School of Public Health [launches new center](#), Boston.

2:00 p.m. — The Woodrow Wilson Center [discussion](#) on "Where Does the Transatlantic Relationship Go from Here," 1300 Pennsylvania Avenue NW

2:30 p.m. — The World Resources Institute [forum](#) on "One Year Later: Has the World Moved On Since President Trump's Announcement on the Paris Agreement?" 10 G Street NE

4:00 p.m. — Atlantic Council's Cyber Statecraft Initiative and Global Energy Center [discussion](#) on "Supply Chain Vulnerabilities in the Software Era," 1030 15th Street Northwest

THAT'S ALL FOR ME!

**** A message from America's Pledge:** One year after President Trump announced plans to withdraw from the Paris Agreement, America's Pledge is showing the world that U.S. cities, states, and businesses can lead us towards our goals - with or without Washington. <https://politi.co/2koAHZb> **

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Stories from POLITICO Pro

The one Democrat Trump can't help but like [Back](#)

By Alex Isenstadt and Burgess Everett | 05/30/2018 05:08 AM EDT

When a small group of alarmed White House aides caught wind that Sen. Heidi Heitkamp — one of the most endangered Democrats up for reelection in 2018 — would be attending President Donald Trump's bill signing last week, they raced to stop it.

Word eventually reached Senate Majority Leader Mitch McConnell, who has made unseating Heitkamp a top priority. He opted not to intervene, and the invitation stood: As the president signed a banking deregulation bill into law before a national audience, Heitkamp was right next to him, the only Democrat in the room.

As the election year kicks into high gear, Republicans have grown increasingly frustrated with Trump's ongoing flirtation with the freshman senator. At a time when many in the GOP fear that the president's unpredictable

style will undercut their best-laid midterm plans, the relationship has given Heitkamp — who is seeking reelection in a state where Trump won nearly two-thirds of the vote — fodder to portray herself as a presidential ally.

Her office keeps a running list of the dozen-plus meetings Heitkamp has had with Trump and his top advisers since the 2016 election. And the senator is fond of noting that she forged close ties with Trump's former top economist, Gary Cohn. The president met with Heitkamp in Trump Tower after the 2016 election to discuss a possible Cabinet position, asked her to join him on Air Force One, and invited her onstage to join him and her Republican opponent, Rep. Kevin Cramer, during an appearance in North Dakota.

"Everyone is saying, 'What's she doing up here?'" the president said at the September event to sell his tax reform plan, which Heitkamp eventually opposed. "But I'll tell you what. Good woman, and I think we'll have your support, I hope we'll have your support. And thank you very much, senator, thank you for coming up."

After last week's bill signing, Heitkamp's allies raced to capitalize. The North Dakota Democratic Party sent out a tweet with an image of Cramer looking on uncomfortably as the president stood next to Heitkamp.

"At a bill signing today, @HeidiHeitkamp got a shout out and all @kevincramer got was a photo op next to a chair," the state party boasted.

"We will see footage of this on every platform," said Doug Heye, a former top Republican National Committee official. "It's a huge gift for her campaign."

Trump aggressively recruited Cramer to give up his House seat to take on Heitkamp, and his actions since have left some of Cramer's closest allies feeling snubbed. They note that while Trump has savaged Democratic incumbents Joe Donnelly of Indiana and Jon Tester of Montana and visited a growing list of states to pump up Republican Senate hopefuls — most recently Tennessee, where he appeared Tuesday on behalf of Rep. Marsha Blackburn — he has yet to make a campaign appearance with Cramer. Nor has the attack dog-in-chief attacked Heitkamp.

After Cramer learned last year that Heitkamp would be accompanying the president on Air Force One to North Dakota, he complained bitterly to the White House, according to two people with direct knowledge of the discussions. Heitkamp, Cramer predicted at the time, would try to use it to her political advantage. (A Cramer adviser, Pat Finken, denied that the congressman had complained about the senator riding on Air Force One.)

The administration has taken steps to assure Cramer that he has the president's full support. The congressman has been regularly in touch with White House political director Bill Stepien, and the two met earlier this month. Trump has agreed to hold a rally for Cramer later this year.

In an interview, Cramer shrugged off Heitkamp's attendance at the bill signing and said there would soon be "clarity" on who Trump supports in the race.

Yet the congressman declined to predict whether the president would go after Heitkamp aggressively, as Trump has done with other Democratic incumbents. Cramer seemed aware of the warmth between the president and the senator. Trump has asked Cramer whether he likes Heitkamp, and when the congressman responds yes, the president seems to be "relieved," Cramer said.

"Politically, North Dakota's a pretty nice state. So I don't know that turning it on her is necessarily politically helpful to me," Cramer said. "They may just be concerned that she's a woman and maybe that has an impact. I just don't know."

Heitkamp said she's proud of her ability to work with the president.

"I have a friendly relationship. I have a very important working relationship," she said in an interview, "not just with him but other members of the administration."

Trump's reluctance to go after Heitkamp stems in part from the simple fact that he needs her vote. With Republicans clinging to a narrow Senate majority, the White House has pushed for her support on several contentious votes, including the recent confirmations of CIA Director Gina Haspel and Secretary of State Mike Pompeo. She also backed Trump's nominations of Supreme Court Justice Neil Gorsuch and Environmental Protection Agency Administrator Scott Pruitt.

Last week's signing ceremony was organized by White House Office of Legislative Affairs Director Marc Short. He said he extended an invitation to Heitkamp because she played a central role in passing the banking deregulation law.

"She was an original cosponsor of the bill," Short said. "But she's also someone who opposed tax relief, who opposed repeal of Obamacare, and someone who will always support Chuck Schumer. So you can be sure the president will be actively campaigning in North Dakota this cycle."

Cramer's February entry into the race followed an intense pursuit from Trump and top White House officials. After Cramer initially said in January that he wouldn't run for Senate, he received overtures from Trump, White House counselor Kellyanne Conway, and energy executive and Trump donor Harold Hamm within a three-day period. Trump also met with Cramer's wife, Kris.

Cramer said Trump told him at the time that he'll "be out there campaigning more than you are." Trump's entreaties, Republicans contend, helped to push Cramer into the contest. Cramer won his statewide, at-large House seat in 2012, the same year Heitkamp entered the Senate.

"The president leaned on him very hard. The president wanted the best candidate, and everyone in the state thought Kevin was the best candidate to beat Heidi," said Gary Emineth, a former North Dakota GOP chairman who is close with the congressman. "You know how the president is. He just doesn't quit."

Heitkamp predicted that Trump would attack her eventually. While she has maintained a positive working relationship with the president, she said it pales in comparison to Cramer's staunch loyalty.

"I don't think anyone can match his Trump credentials," Heitkamp said. "He is somebody who will always do what the president asks him to do, regardless of whether it's good for North Dakota."

As of late, the senator has been airing commercials that highlight her balancing act. "When I agree with the president I vote with him — and that's over half my votes," she says in a spot that began airing this month. "And if his policies hurt North Dakota, he knows I'll speak up."

Cramer accused Heitkamp of acting like a "Republican wannabe" with her occasional support for key Trump nominees.

"Her trying to cozy up to Donald Trump has resulted in good votes," Cramer said. "But every time she tries to become more like me, it's more flattering to me than it is to her."

Democrats, however, couldn't be happier to portray Cramer as a jilted lover.

Last week, the North Dakota Democratic Party released a video featuring a montage of clips of the president praising Heitkamp and shaking her hand as Cramer looks on — set to the sad sounds of R.E.M.'s "Everybody Hurts."

To view online [click here.](#)

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Ethanol, farm groups sue EPA over exemptions [Back](#)

By Eric Wolff | 05/29/2018 07:13 PM EDT

A coalition of ethanol and farmers groups said they filed a lawsuit in federal court today against EPA seeking to overturn some of the waivers the agency has granted to small refineries allowing them to shed their Renewable Fuel Standard requirements on blending biofuels.

The Renewable Fuels Association, National Corn Growers Association, American Coalition for Ethanol and National Farmers Union are challenging the waivers granted to CVR Refining's Wynnewood, Okla., refinery and the HollyFrontier refineries at Cheyenne, Wyo. and Woods Cross, Utah. Those refineries have collectively saved \$170 million in compliance costs, the coalition said.

The groups, along with their allies in Congress, have criticized EPA's frequent use of the waivers, which they say undermines the RFS mandates on the amount of biofuel that must be sold into the U.S. fuel market.

"EPA is trying to undermine the RFS program under the cover of night," RFA CEO Bob Dinneen said in a statement. "And there's a reason it has been done in secret — it's because EPA is acting in contravention of the statute and its own regulations, methodically destroying the demand for renewable fuels."

The Advanced Biofuels Association challenged the waivers May 1.

WHAT'S NEXT: The complaint will be heard in the U.S. Court of Appeals for the 10th Circuit.

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Exxon shareholders win vote to build Paris climate pact into plans [Back](#)

By Ben Lefebvre | 05/31/2017 02:37 PM EDT

The Trump administration may be preparing to [withdraw the U.S.](#) from the Paris climate change accords, but shareholders at Exxon Mobil and at least one other U.S. oil company are demanding the companies incorporate the international deal in their business models.

Nearly two-thirds of Exxon's shareholders backed a proposal on Wednesday calling for the company to assess how climate change and global efforts to limit temperature increases will affect its business. The vote is non-binding, but the results show that the once-fringe idea of linking climate change to big oil's operations has gained momentum.

The vote at the Exxon annual shareholder meeting in Dallas came after investors in its smaller rival Occidental Petroleum earlier this month cast more than two-thirds of their votes for a measure calling for the company to

assess how its business would be affected by the Paris climate change accord's target of holding global warming to 2-degrees. Company credit rating agency Moody's said last year it would start to use the Paris pledge to assess financial risk for corporations.

"Shareholders have spoken clearly on climate," said Danielle Fugere, president and chief counsel for As You Sow, a group that helps shareholders introduce environmental proposals. "If there's less demand for oil and the world is awash in oil, there's going to be more competition among these companies. Shareholders are trying to figure out who is the best bet."

Not all of these climate-related investor proposals succeeded, however. Chevron shareholders Wednesday morning rejected a motion that the company issue a report on how limiting global temperature increase to 2 degrees Celsius (3.6 degrees Fahrenheit) would affect its business. Only 27 percent of voting shareholders approved the proposal, down from more than 40 percent who voted for a similar proposal last year.

Exxon, Chevron and other energy companies facing such proposals argue that they are already taking the Paris agreement seriously and incorporating it into their business plans. Exxon in particular pointed out that it was developing technology that would capture the carbon emitted at natural gas power plants and then either store it or use it to produce more electricity.

"We believe the goal of carbon policy is to reduce emissions at the lowest cost to society," Exxon Chief Executive Darren Woods said at the shareholder meeting. "These goals led us to support the Paris Agreement." Woods sent President Donald Trump a letter earlier this month urging the U.S. to stay in the Paris deal.

For Exxon, the votes also illustrate how entangled the company has become in New York state climate change politics. The climate change proposal shareholders approved was partly sponsored by the New York State Common Retirement Fund, which is run by the State's comptroller. Meanwhile, the company is embroiled in a lawsuit with the New York and Massachusetts attorneys general over whether it withheld its own research on climate change from shareholders.

"The burden is now on Exxon Mobil to respond swiftly and demonstrate that it takes shareholder concerns about climate risk seriously," New York State Comptroller Thomas P. DiNapoli said in a prepared statement after the vote.

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NAFTA talks stall amid apparent refusal of U.S. to make concessions [Back](#)

By Sabrina Rodriguez | 05/29/2018 07:41 PM EDT

Recent high-level NAFTA talks between the U.S., Mexico and Canada have not resulted in progress on the thorniest issues because the U.S. remains unwilling to offer important concessions, two sources close to the talks said on Tuesday.

Negotiators from the Office of the U.S. Trade Representative continue to demand that "they want everything, and there's no possible way they'll get everything they want," one of the sources told POLITICO. "Conversations have stalled entirely."

As the U.S. and Canada resumed talks in Washington on Tuesday, the sources confirmed that Mexican Trade Undersecretary Juan Carlos Baker met with officials from USTR last week to present a counterproposal that would see Mexico make concessions on wages in the automotive sector in return for U.S. concessions on other flashpoint issues.

Under the offer, Mexico reportedly would accept language on automotive rules of origin that would require that 20 percent of cars produced within North America be made by workers earning at least \$16 an hour.

In exchange, Mexico reportedly asked that the U.S. back off some of its thorniest proposals, like placing limits on government procurement as well as a so-called sunset clause, which would allow for the deal to be terminated if all three countries don't agree to renew it after five years. News of the counterproposal was first reported by Bloomberg.

Mexico's counterproposal was not well received by USTR, the sources said.

"USTR did not take a close look at their proposal before rejecting it," one of the sources said. "As soon as it included [the U.S.] giving in on something, it was a 'no' from USTR."

That leaves it up to U.S. Trade Representative Robert Lighthizer to decide if the U.S. will offer any concessions to Mexico and Canada, the sources added.

USTR did not immediately respond to a request for comment on Tuesday evening.

The latest deadlock comes as Mexico and Canada face a looming deadline in their effort to secure a permanent exemption from the U.S. steel and aluminum tariffs. Mexico and Canada were temporarily exempted from the duties, but to win a permanent reprieve each country must reach a separate agreement to satisfy U.S. national security concerns by June 1.

Mexican President Enrique Peña Nieto and Canadian Prime Minister Justin Trudeau have both emphasized in recent days that they will not be pressured into accepting a NAFTA deal that is bad for their respective countries.

"No NAFTA is better than a bad deal, and we've made that very clear to [President Donald Trump]," Trudeau said Tuesday in an interview with Bloomberg. "We are not going to move ahead just for the sake of moving ahead."

Trudeau discussed the NAFTA talks during a call with Vice President Mike Pence on Tuesday, the White House said in a readout that provided no details of the conversation.

Negotiators have made some gains, despite the continued difficulties over the hot-button topics. Canadian Foreign Minister Chrystia Freeland, Canada's top NAFTA official, said she had a "very substantive" conversation with her U.S. counterpart in Washington on Tuesday.

The NAFTA nations' top trade officials have been in consistent contact over the phone since they last met in Washington two weeks ago.

Lighthizer had acknowledged at that point that the three countries still faced "gaping differences" on a number of issues, such as market access for agricultural products and automotive rules of origin. "The NAFTA countries are nowhere near close to a deal," Lighthizer said then.

Talks have continued to move forward on the NAFTA modernization chapters, like e-commerce, "but as long as USTR keeps the thorny issues on the table, there won't be movement," one of the sources said.

Negotiators have so far closed nine chapters and six sectoral annexes, Mexico's chief negotiator, Kenneth Smith Ramos, said last week. Those chapters include: telecommunications, small- and medium-sized enterprises, competition, and technical barriers to trade.

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Gulf of Mexico rig operator fined \$4M after Interior Department investigation [Back](#)

By Ben Lefebvre | 05/29/2018 04:36 PM EDT

The U.S. Attorney's Office for the Eastern District of Louisiana fined offshore oil and gas company Energy Resource Technology \$4 million for fabricating data about readiness of a key piece equipment used to prevent oil spills, the Interior Department said today.

The fine was a result of an [investigation](#) by Interior's Office of Inspector General that found that ERT management directed an employee on its rig in the Gulf of Mexico to create a fake blowout preventer pressure test chart to conceal a failed test result. The failure by a blowout preventer was one of the main causes of Deepwater Horizon rig accident that killed 11 people in 2010.

An ERT supervisor on the same rig had employees perform welding near an active well in violation of Interior safety regulations.

Interior had fined ERT \$4 million in 2012 for earlier violations on its rigs, and an accident [killed](#) a contract worker on an ERT rig in February.

ERT is a subsidiary of Houston-based Talos Energy.

WHAT'S NEXT: In addition to the fine, ERT was sentenced to 36 months' probation and ordered to pay \$200,000 in restitution.

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Study: 4,645 people died after Hurricane Maria, far more than official estimate [Back](#)

By Mel Leonor | 05/29/2018 11:40 AM EDT

At least 4,645 people died amid the devastation wrought by Hurricane Maria in Puerto Rico — more than 70 times the official government death toll of 64, according to a new study from Harvard University.

Locals, journalists and public health experts have for months questioned the government estimate of deaths from the storm, which caused more than \$90 billion in damage.

President Donald Trump, however, said in October that Puerto Rico officials should be "very proud" of the low death toll.

The study, published Tuesday in the New England Journal of Medicine, is based on household surveys of more than 3,000 homes in the territory, where researchers found a boom in the mortality rate between late September and late December 2017.

The authors of the study, which was largely funded by the Harvard T.H. Chan School of Public Health, described the official death count as a "substantial underestimate" and called it evidence of the "inattention of the U.S. government to the frail infrastructure of Puerto Rico."

"The timely estimation of the death toll after a natural disaster is critical to defining the scale and severity of the crisis and to targeting interventions for recovery," they wrote.

Researchers found that "interruption of medical care was the primary cause" of the high mortality rate that came after the storm made landfall.

With the 2018 hurricane season in swing, the authors also urged chronically ill patients, communities and health care providers to develop contingency plans for future disasters.

Carlos R. Mercader, executive director of the Puerto Rico Federal Affairs Administration, said in a statement that officials would analyze the report, adding, "We have always expected the number to be higher than what was previously reported."

He said the Puerto Rico government has commissioned a report from George Washington University, which he said would be released "soon."

Trump said in October that the storm had been less devastating than Hurricane Katrina in 2005, but the new study indicates that may not be true. Hurricane Katrina resulted in the deaths of 1,833 people, according to FEMA.

"Every death is a horror," Trump said at the time, "but if you look at a real catastrophe like Katrina and you look at the tremendous — hundreds and hundreds of people that died — and you look at what happened here with, really, a storm that was just totally overpowering ... no one has ever seen anything like this."

Rep. Nydia Velázquez (D-N.Y.) said after the report was released Tuesday that the apparent undercounting of deaths "concealed" the impact of Hurricane Maria on the territory.

"By obscuring this, many were left to believe the Trump Administration's mythology that Puerto Rico was not hit hard by Maria," Velázquez said in a statement. "We must get to the bottom of this discrepancy."

The White House did not respond to a request for comment.

Last year, Velázquez and Rep. Bennie Thompson (D-Miss.) asked a government watchdog to investigate how Puerto Rican officials "originally arrived at such a low number."

To view online [click here](#).

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New Club for Growth ads attack Fagg in Montana [Back](#)

By James Arkin | 05/29/2018 03:48 PM EDT

Club for Growth Action, the super PAC arm of the Club for Growth, announced today that it would spend \$250,000 on new ads attacking Russ Fagg, a former judge and Republican candidate for Senate in Montana.

The Club is backing state auditor Matt Rosendale in the race in the race to face Democratic Sen. Jon Tester, and its PACs have spent more than \$1 million on ads backing Rosendale and attacking Fagg, one of his top challengers in the June 5 primary.

The new ad campaign attacks Fagg over his record during his two decades as a district judge. The TV ad makes three claims against Fagg: that he defended another judge who suggested a rape victim was to blame for her own attack; that he called a judge who "undercut" President Donald Trump's rollback of environmental rules a "thoughtful moderate"; and that he "praised a liberal federal judge who ruled against speeding up deportations."

"Russ Fagg's values are not Montana values," the narrator says.

The radio version of the ad features a woman and a man having a conversation about Fagg's record and pointing listeners to a website, factsformontana.com, funded by Club for Growth Action.

You can watch the TV ad [here](#) and listen to the radio ad [here](#).

To view online [click here](#).

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Subject: April 25 -- Greenwire is ready

[Read today's Greenwire on the web](#)

GREENWIRE

AN E&E NEWS PUBLICATION

GREENWIRE — Wed., April 25, 2018



READ FULL EDITION

1. EPA:

Behind the scenes of Pruitt's Nevada trip

More than 160 pages of emails, memos and itineraries obtained by E&E News under a Nevada public records request show what it takes to pull off a visit by EPA Administrator Scott Pruitt. Weeks of emails and conference calls, advance site visits and plenty of overtime let the press-shy EPA chief slip into town.

TOP STORIES

2. EPA:

Critics: Legal ambush awaits Pruitt's 'secret science' rule

3. BRISTOL BAY:

How Pruitt found middle ground on Pebble mine

4. COAL:

Blankenship swears documents clear him, but his case is shaky

POLITICS

5. EPA:

Pruitt skirts ethics woes in written remarks for hearing

6. EPA:

Agency nixes webpages for international initiatives

7. CLIMATE:

Macron on Paris pact: 'The U.S. will come back'

CONGRESS

8. BIOFUELS:

Is hemp the newest threat against the ethanol mandate?

9. COMMERCE:

Panel approves maritime, whaling bills

10. NATIONAL MONUMENTS:

Bill would create wilderness areas in N.M. site

11. TEXAS:

Special election set for Farenthold's seat

NATURAL RESOURCES

12. OIL AND GAS:

BLM cancels massive June lease sale in Mont.

13. ENDANGERED SPECIES:

Wild red wolves will be gone in 10 years — FWS

14. WILDLIFE:

Wyo. could target a record 58 wolves

LAW

15. INTERIOR:

Activist opts for trial in press secretary assault case

16. SEA-LEVEL RISE:

Legal battles begin over flooded La. tracts

CLIMATE CHANGE

17. ENERGY POLICY:

Climate change looms large as FERC reviews pipeline policy

ENERGY

18. NUCLEAR:

FirstEnergy informs NRC of plan to close plants

19. ELECTRICITY:

U.K. runs without coal for 3 days, shatters recent record

FEDERAL AGENCIES

20. EPA:

Pruitt's security chief worked for Trump-linked tabloid

TRANSPORTATION

21. CALIFORNIA:

Gas tax repeal to appear on November ballot

BUSINESS

22. TRANSPORTATION:

What to know about Chao's trip to China

23. FINANCE:

BP CEO urges Cambridge University not to dump investments

INTERNATIONAL

24. CANADA:

Nation weighs replacing historic flame with LED lights

25. INDONESIA:

Fire at illegal oil well kills 18

26. KENYA:

Is the world's strictest plastic bag ban working?

27. SINGAPORE:

Zoo euthanizes first polar bear born in tropics

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Greenwire is written and produced by the staff of E&E News. The one-stop source for those who need to stay on top of all of today's major energy and environmental action with an average of more than 20 stories a day, Greenwire covers the complete spectrum, from electricity industry restructuring to Clean Air Act litigation to public lands management. Greenwire publishes daily at 1 p.m.

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Subject: March 26 -- Climatewire is ready

[Read today's Climatewire on the web](#)

CLIMATEWIRE

AN E&E NEWS PUBLICATION

CLIMATEWIRE — Mon., March 26, 2018



READ FULL EDITION

1. FUEL ECONOMY:

Trump to allow more car pollution. But by how much?

President Trump is poised to relax rules affecting tailpipe emissions in millions of U.S. cars, marking one of his most forceful moves against pollution standards since taking office.

TOP STORIES

2. EPA:

Pruitt's attack on 'secret science' to affect climate rule

POLITICS

3. LAW:

Attorneys general threaten to sue Pruitt over methane rule delay

4. SENATE:

Miss. lawmaker mentions 'asbestos underwear' but not climate

SCIENCE

5. ARCTIC:

Sea ice hits 2nd-lowest level in 39 years

6. EMISSIONS:

Banana peels and chicken bones: The new plastic?

STATES

7. CALIFORNIA:

State passes HFC rules to fill federal gap

8. FLORIDA:

All-solar town lures residents 'thrilled to be pioneers'

BUSINESS

9. COAL:

Britain blocks new mine, citing climate impacts

10. TRANSPORTATION:

Could hydrogen dethrone battery-powered cars?

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ABOUT CLIMATEWIRE – POLICY. SCIENCE. BUSINESS.

Climatewire is written and produced by the staff of E&E News. It is designed to provide comprehensive, daily coverage of all aspects of climate change issues. From international agreements on carbon emissions to alternative energy technologies to state and federal GHG programs, Climatewire plugs readers into the information they need to stay abreast of this sprawling, complex issue.

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Subject: April 27 -- Greenwire is ready

[Read today's Greenwire on the web](#)

GREENWIRE

AN E&E NEWS PUBLICATION

GREENWIRE — Fri., April 27, 2018

 [READ FULL EDITION](#)

1. WHITE HOUSE:

OMB backdates completion date for 'secret science' review

The White House has altered an official timeline to show that a required review of a proposed EPA science rule was finished one day before agency Administrator Scott Pruitt signed it this past Tuesday.

TOP STORIES

2. INTERIOR:

Indian Affairs head resigns, but agency won't say why

3. SCIENCE:

'Gamechanger' earthquake linked to geothermal power

4. OFF TOPIC:

On this Dem's 2020 platform: Rising seas, robot apocalypse

POLITICS

5. AIR POLLUTION:

New Source Review rulemaking possible — Pruitt

6. LAW:

Red-state AGs vow to fight climate lawsuits

CONGRESS

7. SENATE:

Energy and environment bills roll out before recess

NATURAL RESOURCES

8. MINING:

Army Corps advances massive Alaska gold project

9. EXTREME WEATHER:

Trump declares disaster area in Ala. tornado path

10. HURRICANE HARVEY:

Houston housing market tries to prepare for future floods

11. MINING:

Colo. regulators reject gravel pit in key habitat

12. PUBLIC LANDS:

Utah activists will face jury for closing cattle gate

13. ENDANGERED SPECIES:

Albino orangutan gets her own island for protection

LAW

14. COAL:

Court won't revive suit challenging black lung claims

ENERGY

15. NUCLEAR:

DOE announces \$60M in grants, agreement with France

16. SOLAR:

In win for Trump, First Solar boosts manufacturing

17. OIL AND GAS:

Fire extinguished at Wis. refinery rocked by explosion

18. UTILITIES:

PG&E fined nearly \$100M for improper talks with regulators

AIR AND WATER

19. AGRICULTURE:

Minn. bails on rule to protect wild rice

BUSINESS

20. PEOPLE:

Watchdogs fret that Perry's son owns energy investment firm

21. COAL:

Arch slashes production amid poor market

TRANSPORTATION

22. ELECTRIC VEHICLES:

Proposal calls for independent Tesla chairman — not Elon Musk

23. ELECTRIC VEHICLES:

Tesla, utilities duke it out over rebates

24. CALIFORNIA:

Billions from gas tax to pay for transit upgrades

STATES

25. CALIFORNIA:

LA ends free trips for solo drivers in zero-emission cars

26. COLORADO:

City receives \$500k for wildfire mitigation

27. WYOMING:

Hunting gear raffle used to boost elk disease reporting

INTERNATIONAL

28. EUROPEAN UNION:

Member states agree to neonicotinoids ban

29. AUSTRALIA:

All of nation's packaging will be sustainable by 2025

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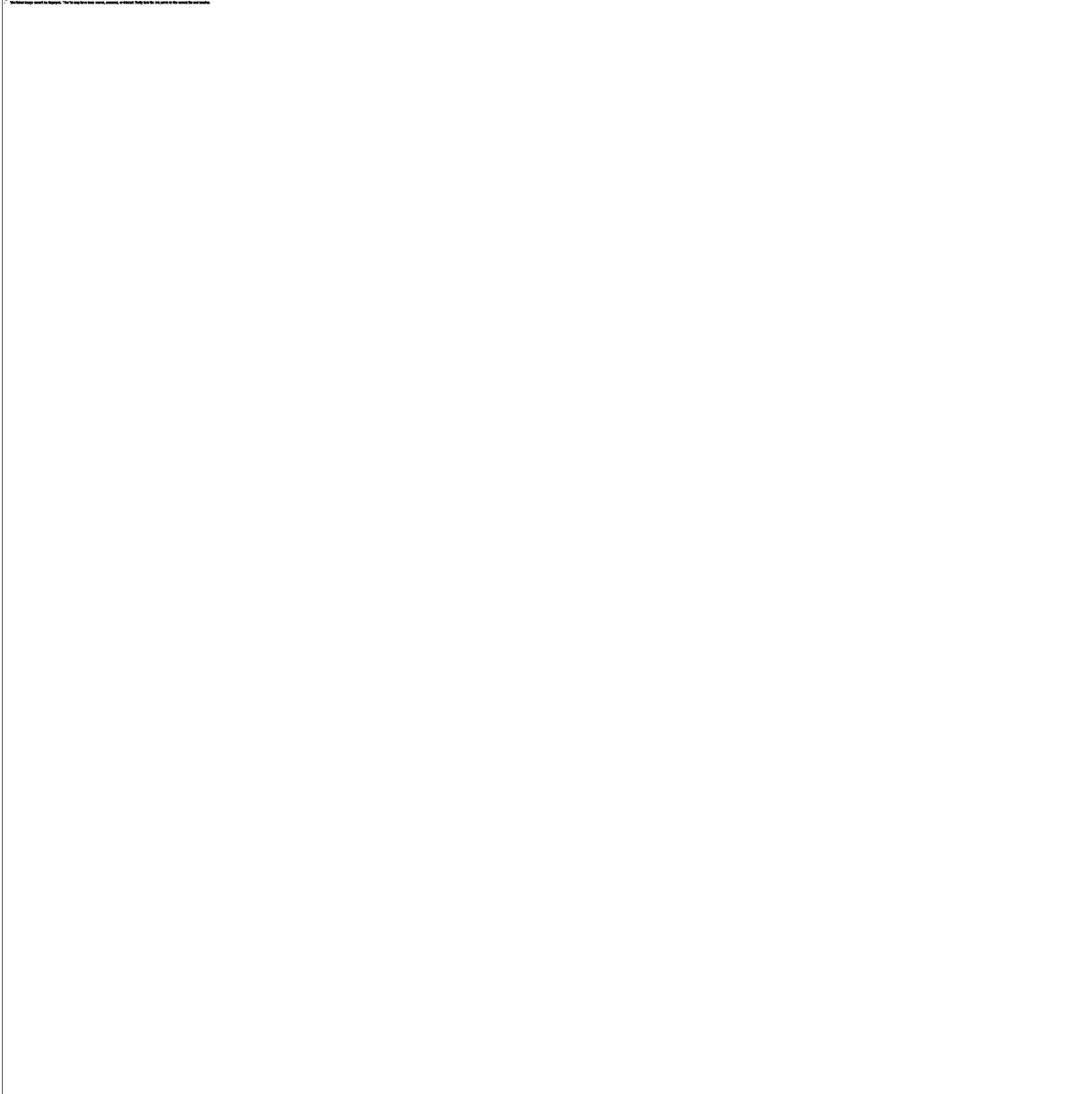
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Subject: The Morning Headlines from InsideEPA.com -- May 21, 2018



REDEFINING EPA: Overhauling an agency and its mission -- Complete coverage

May 21, 2018

Latest News

Despite Scandals, Observers See Little Chance Of Pruitt's Ouster At EPA

Former EPA officials and others say there is little possibility that Administrator Scott Pruitt's array of ethics and spending scandals will be enough to turn the GOP against him absent a damning investigators' report, but

instead see greater odds for Pruitt to leave the agency voluntarily as soon as the end of the year, likely to run for office.

EPA's Plan To Wait On OSHA Could Stall Facility Safety Update For Years

The Trump administration plan to scrap the Obama-era rule strengthening EPA's facility accident prevention program and wait for the Occupational Safety and Health Administration (OSHA) to advance a similar rulemaking could stall changes to facility oversight for the foreseeable future, as OSHA has shelved plans to update its companion rule.

States Aim To Revive 2015 Ozone NAAQS Suit, Fearing No Reconsideration

States opposed to the Obama EPA's 2015 rule tightening the ozone air standard are asking a federal appeals court to revive currently stayed litigation over the standard, saying the Trump administration appears to have backed off possible plans to reconsider the standard and instead proceed with a regular Clean Air Act-mandated review of the limit.

In Rare Loss For EPA, D.C. Circuit Rejects Indiana Site's Superfund Listing

In an unusual loss for EPA, the U.S. Court of Appeals for the District of Columbia Circuit has vacated the agency's decision to place an Indiana waste site on the Superfund National Priorities List (NPL), finding that EPA ignored evidence that a contaminated aquifer is not connected to other groundwater.

Suppliers Seek 'Robust' Vehicle GHG Standards With Additional 'Flexibility'

Auto industry suppliers are detailing their call for the Trump administration to embrace "robust" vehicle greenhouse gas and fuel economy standards with more flexibility for automakers, urging agencies to formally seek comment on an "advanced technologies flexibility option" that would recognize California's "critical role" in limiting emissions and possibly prevent years of litigation over the program.

Shimkus Pushes RFS Reform Bill Despite Trump Deal On EPA-Led Changes

Rep. John Shimkus (R-IL), chairman of the energy committee's environment panel, says he is pushing ahead with long-running efforts to craft legislation overhauling EPA's renewable fuel standard (RFS) despite a deal brokered by the White House that will see the agency make several immediate administrative changes to the program.

Daily Feed

Narrow CWA test fails to make the cut as Farm Bill amendment

While the House Rules Committee did not allow a floor vote on the proposed Farm Bill amendment, the language limiting which waters are regulated could still serve as a marker for EPA's upcoming rule.

EPA touts 'renewed emphasis' on self-audit policies

EPA is promoting "opportunities to increase compliance through use of existing self-disclosure policies or tailored programs."

Wehrum sidesteps queries on SAB review of science rule

The EPA air chief's responses to a Democratic lawmaker's questions suggest the agency may urge its science advisors to avoid a review of its controversial rule seeking to block the use of 'secret science.'

Ewire: Amid scandals, Pruitt lawyers up

In today's Ewire: The EPA chief has hired a white-collar defense attorney to advise him as he faces more than a dozen official investigations, and hired another attorney to set up a legal defense fund.

Wehrum strongly hints EPA will not scrap GHG risk finding

EPA's air chief said Administrator Scott Pruitt is trying to find a way to allow critics of the finding have "some voice," but he said there is no "process" to solicit those views and there is no "schedule" to do so.

Read all the latest EPA news, analysis and documents →

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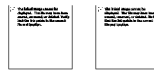
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Subject: Morning Energy: Trump's not-so simple math — Judge orders update of Keystone XL study — States' rights get tricky over water

By Kelsey Tamborrino | 08/16/2018 05:43 AM EDT

With help from Ben Lefebvre and Annie Snider

A NUMBERS GAME: The White House's plan to rewrite the Obama administration's cornerstone climate rule for power plants may be based on some fuzzy math, setting up a potentially brutal court battle for the Justice Department. The legally risky strategy, POLITICO's Alex Guillén and Emily Holden report, calls for redoing the calculations of how much the rule would cost and who would benefit.

EPA's proposed replacement plan is expected to be unveiled any day now and will likely downplay a key feature of the Obama-era greenhouse rule: the money saved by using less electricity. Some expect EPA will also count only a fraction of the improvements in public health from reduced smog and soot pollution, Alex and Emily report, and it won't consider any benefits from slowing climate change outside the U.S.

In doing so, President Donald Trump's EPA will argue that the Obama-era rule had higher costs and fewer benefits than previously stated, a change to help improve the comparison when it unveils its own proposal. The Obama administration had estimated that the benefits from its rule would outstrip the costs by \$26 billion to \$45 billion by 2030, though supporters of that version say those net benefits could be even higher now.

In fact, math could become vital to the success or failure of several of Trump's rules. Critics say similarly fuzzy math underlies other Trump administration proposals to reverse or stymie action on climate change, such as a recent plan by EPA and the Department of Transportation to halt a planned tightening of fuel efficiency standards for cars and trucks. "They are cooking the books on technical analysis to try to justify preconceived conclusions that these regulations are bad," said David Doniger, senior strategic director of the Natural Resources Defense Council's climate program who was influential in the Obama EPA's crafting of the original rule. Read more.

GOOD THURSDAY MORNING! I'm your host, Kelsey Tamborrino. Many of you knew, but ClearView Energy Partners' Mitch Huber was the first to correctly answer that it's Loretta and Linda Sanchez who were the first and only sisters to serve simultaneously in Congress. For today: How many current senators are also former mayors? Bonus points if you can name them. Send your tips, energy gossip and comments to ktamborrino@politico.com, or follow us on Twitter [@kelseytam](https://twitter.com/kelseytam), [@Morning_Energy](https://twitter.com/Morning_Energy) and [@POLITICOPro](https://twitter.com/POLITICOPro).

DO THAT AGAIN: The Trump administration was ordered Wednesday to update an environmental study of the Keystone XL pipeline despite its contention the alternative route picked last year by Nebraska regulators didn't require an updated environmental impact statement. Instead, Judge Brian Morris of the U.S. District Court for Montana ordered the State Department to go back to its 2014 EIS to take into account the new route, Alex reports for Pros. Morris said the State Department still has a "meaningful opportunity to evaluate" the alternative route that was picked in Nebraska. However, he declined environmentalists' request that Trump's permit be vacated.

STATES' RIGHTS GET TRICKY OVER WATER: The roiling debate over states' right to halt development projects over their water quality effects heads to the Senate Environment and Public Works Committee today. The panel will hold a legislative hearing on a bill from Chairman John Barrasso, S. 3303 (115), the Water Quality Certification Improvement Act of 2018. The measure would limit states' authority under Section 401 of the Clean Water Act, which requires states to certify that projects won't harm their water quality standards before the federal government issues a permit. In recent years a handful of Democratic-led states have used that authority to block natural gas pipelines. Republican Maryland Gov. Larry Hogan is also using the authority to try to force Exelon Corp. to clean up nutrient pollution flowing through one of its dams that harms the Chesapeake Bay.

GOP lawmakers have backed earlier efforts to limit or remove the authority, including in this year's House Appropriations bill, House and Senate energy legislation and standalone bills. But the Western Governors Association, which represents a number of Republican governors, has come out in opposition to reining in states' authority, and the Environmental Council of the States warned Wednesday that such moves could have unintended consequences. **If you go:** The hearing begins at 10 a.m. in 406 Dirksen.

NOMINATIONS ON TAP: Two nominees to the Energy Department will testify before the Senate Energy and Natural Resources Committee this morning: Bill Cooper to be general counsel and Lane Genatowski for director of the Advanced Research Projects Agency-Energy, which the Trump administration has sought to eliminate.

Who are they? Cooper serves as senior counsel and director of the McConnell Valdés law firm. Prior to that he was a subcommittee staff director for House Natural Resources, with a particular policy focus on the National Environmental Policy Act that the White House has sought to change up. Cooper also previously was president of the Center for Liquefied Natural Gas and counsel to the House Energy and Commerce Committee. His credentials have earned him the backing of industry groups, including the Air-Conditioning, Heating, and Refrigeration Institute, the Interstate Natural Gas Association of America, and the Electric Reliability Coordinating Council.

— **Genatowski hails from** a banking background. He's managing partner in investments at Dividend Advisors, a firm he founded in 2012. Genatowski before that was an energy investment banker at JPMorgan Chase and other Wall Street giants. His résumé lines up with others in Rick Perry's Energy Department, which has focused more on businessmen with energy-sector experience. **If you go:** The hearing kicks off at 10 a.m. in 366 Dirksen.

RESCISSIONS — TAKE TWO: The Trump administration is once again weighing a so-called rescissions package to force Congress to roll back federal spending, with just weeks to go until the next budget deadline, Pro's Sarah Ferris and John Bresnahan report. Senate Appropriations Chairman Richard Shelby said Wednesday he was told about the idea: "I heard they were thinking about one, but I haven't seen it." But a Senate leadership source said OMB chief Mick Mulvaney has already begun moving ahead on the effort.

FLORIDA DRILLING BITS: To drill or not to drill off the Florida coast is a question once again heating up the state's election campaigns. Gwen Graham, the current front-runner in the Democratic gubernatorial primary field, sent out a message titled "Drilling 75 Miles off Florida's Beaches is Insane" after a POLITICO report highlighted the idea as one that oil industry lobbyists are pushing to have included in the Interior Department's upcoming offshore drilling plan. Sunshine State Democratic Sen. Bill Nelson took the story to the Senate floor to try to whack current Gov. Rick Scott, who is running to replace him and earlier this year got help from Trump on the drilling issue.

REMEMBRANCE OF TARBALLS PAST: Former Florida Lt. Gov. Jeff Kottkamp is catching heat for his statement at a pro-drilling rally in Tallahassee that oil from the Deepwater Horizon spill "didn't even reach the shores of Florida." The remark, as first reported in the Florida Phoenix, may have surprised those who

remember former Gov. Charlie Crist squatting over oil-stained beaches in Pensacola. Kottkamp, who was speaking as co-chair of Explore Offshore Florida, went on to say "tarballs are naturally occurring." Earthjustice staff attorney Bradley Marshall called it "absurd to claim the Deepwater Horizon spill did not reach Florida" given the damage the state experienced. "That's why so many of Florida's leaders, regardless of what political party they belong to, have been so protective of our coasts all these years," he said in a statement.

WHAT'S THE RISK? EPA acting Administrator Andrew Wheeler delivered a video address at the National Environmental Justice Advisory Council's public meeting in Boston on Wednesday where he acknowledged the need for improvement in risk communication and noted the agency owes it to the American public to improve. "How well or how poorly we communicate risk disproportionately impacts those on the lower end of the socioeconomic ladder," he said. "We have fallen short in the past from our response to the Gold King Mine in Colorado, to the Kanawha River in West Virginia, to Flint, Mich." Watch it here.

CASE CLOSED: Interior's Office of Inspector General has closed its investigation into an allegation made against National Park Service officials. The claim centered around references to human-caused climate change in a report on sea-level rise and storm surge projections that officials allegedly sought to remove. The watchdog office said Wednesday that shortly after it opened the investigation, the NPS "published the report with all original references to human-caused climate change," thus prompting it to close its probe.

'SECRET' AGENTS: Comments are due today on EPA's proposed "scientific transparency" rule, which would ban the use of studies that don't publicly disclose all their data. Experts have said that plan could prohibit the use of vital studies on how pollutants affect human health because researchers typically promise to keep subjects' health information confidential. But conservatives have long accused the agency of relying on "secret science," prompting former Administrator Scott Pruitt to unveil the proposal in the name of transparency.

Under the wire: With the comment deadline approaching, nearly 80 groups, including the Union of Concerned Scientists, Sierra Club and Moms Clean Air Force, signed onto a letter Wednesday calling on Wheeler to withdraw the so-called secret science proposal. Separately, 66 health and medical organizations sent comments to Wheeler in opposition to the proposed rule. That's not to say there isn't support for the proposal; several comments posted Wednesday echoed the refrain that scientists should be required to "show your work."

AFTER THE STORM: The nonprofit Environmental Integrity Project released a new report today leading up to the one-year anniversary of Hurricane Harvey's widespread destruction in Texas. Using records from the Texas Commission on Environmental Quality, the report looks at air pollution during and after the storm as well as the government's and industries' response, and makes recommendations for the future. The "Preparing for the Next Storm" report found that all five of the largest industrial air pollution releases during Harvey were in the Houston area — with the Magellan Galena Park Terminal the biggest polluter, releasing 2,472,402 pounds of air pollution.

Harvey also triggered the release of at least 8.3 million pounds of unpermitted air pollution from petrochemical plants, according to the EIP report. And in the nine months after Harvey, "18 companies revised their air pollution reports to the state to erase 1.7 million pounds of unpermitted emissions during Hurricane Harvey," the report found.

LET'S MAKE A DEAL: Trump might soon strike a deal with Mexico on NAFTA, even as a trade war plays out with the rest of the world, POLITICO's Megan Cassella reports. The apparent turnaround after months of stalemate arrives as Mexican Secretary of Economy Ildefonso Guajardo visited Washington on Wednesday to hammer out some of the most contentious issues on NAFTA. "Both U.S. and Mexican officials now say they could be on the verge of announcing a preliminary agreement on everything from complicated automotive rules to environmental regulations by the end of August," Megan reports.

CATCHING FIRE: Agriculture Secretary Sonny Perdue will join Senate Energy ranking member [Maria Cantwell](#) and Sens. [Steve Daines](#) and [Ron Wyden](#) to unveil a new federal plan for addressing wildfires. Earlier this year, Perdue and Cantwell [worked together](#) on a commitment to use unmanned aircraft technology this fire season, and the Washington Democrat will likely highlight similar tools and technology today. Watch the [livestream here](#).

POLL: CLIMATE A FACTOR FOR MOST: Slightly more than half (53 percent) of U.S. voters believe climate change is a factor in making the ongoing California wildfires more extreme, while 39 percent say it's not, according to a new poll from Quinnipiac University [released](#) Wednesday. Sixty-four percent of voters said they think the country is not doing enough to address climate change, the national poll found. Eighteen percent of voters say the U.S. is doing enough to address the issue, while 10 percent say the U.S. is doing too much.

— **On a related note**, the Natural Resources Defense Council launched [a tracker](#) this week to see where every state's lawmakers stand on offshore drilling.

QUICK HITS

— "A coal company and Interior teamed up to save a power plant," [E&E News](#).

— "FirstEnergy Solutions takes next step toward closure of nuclear power plants," [Akron Business Journal](#).

— "A rising concern? After straws, balloons get more scrutiny," [The Associated Press](#).

— "Will Washington State Voters Make History on Climate Change?" [The Atlantic](#).

HAPPENING TODAY

10 a.m. — Senate Environment and Public Works Committee [hearing](#) on clean water, 406 Dirksen.

10 a.m. — Senate Energy and Natural Resources Committee [hearing](#) to consider DOE nominees, 366 Dirksen.

10 a.m. — American Petroleum Institute conference call briefing on efforts "to reform the broken Renewable Fuel Standard that threatens to reverse America's energy progress."

12:45 p.m. — Senate Energy and Natural Resources ranking member [Maria Cantwell](#) and Agriculture Secretary Sonny Perdue [unveil](#) a federal plan for addressing wildfire, Senate Room S-115.

THAT'S ALL FOR ME!

To view online:

<https://subscriber.politicopro.com/newsletters/morning-energy/2018/08/trumps-not-so-simple-math-319039>

Stories from POLITICO Pro

Exclusive: Draft details Trump's plan for reversing Obama climate rule [Back](#)

By Emily Holden | 08/14/2018 07:46 PM EDT

The Trump administration is preparing to unveil its plan for undoing Barack Obama's most ambitious climate regulation — offering a replacement that would do far less to reduce the greenhouse gas emissions that are warming the planet, according to POLITICO's review of a portion of the unpublished draft.

The new climate proposal for coal-burning power plants, expected to be released in the coming days, would give states wide latitude to write their own modest regulations for coal plants or even seek permission to opt out, according to the document and a source who has read other sections of the draft.

That's a sharp contrast from the aims of Obama's Clean Power Plan, a 2015 regulation that would have sped a shift away from coal use and toward less-polluting sources such as natural gas, wind and solar. That plan was the centerpiece of Obama's pledge for the U.S. to cut carbon dioxide emissions as part of the Paris climate agreement, which President Donald Trump has said he plans to exit.

The Environmental Protection Agency acknowledges that both carbon emissions and pollutants such as soot and smog would be higher under its new proposal than under the Clean Power Plan. And Trump's critics call it a recipe for abandoning the effort to take on one of the world's most urgent problems.

The proposal would be "another, more official, sign that the government of the United States is not committed to climate policy," said Janet McCabe, EPA's air chief under Obama.

McCabe said based on a description of the proposal, it would offer "a significant amount of discretion to states to decide that nothing at all needs to be done."

Many red states and several companies sued over the Clean Power Plan, and a federal appeals court was nearing a decision when Trump's EPA asked for time to rewrite the rule. McCabe said the proposal could be meant to eat up time and stall a future president from quickly regulating greenhouse gases.

EPA was widely expected to write a far less stringent replacement rule. Trump promised to nix the Clean Power Plan and exit the Paris deal during his campaign. But the draft offers the first look at the specifics since the agency released a broader notice that it would reconsider the rule in April.

The White House Office of Management and Budget has finished reviewing the draft and sent it back to EPA this week.

The rule would allow states to write rules to make coal plants more efficient, enabling them to burn less coal to produce the same amount of electricity. But that could be bad for the planet, people familiar with state air programs say, by making it cost-effective for power companies to run those plants more often.

EPA looked at the outcomes of various scenarios that could be possible from state-proposed plans in 2025, 2030 and 2035, implying that the plans could be in place before 2025.

Obama's plan was meant to see greenhouse gas emissions from the U.S. power sector fall to 32 percent below 2005 levels by 2030. The nation has already achieved much of that reduction because of trends such as the closures of dozens of older coal plants.

EPA intends to argue that the Obama administration rule illegally sought to regulate the broader power sector, beyond coal plants, and that the compliance costs would have been big and the climate benefits negligible, according to the draft POLITICO reviewed.

Environmental advocates and blue states plan to wage war on the proposal once it is final. But while the legal fights play out, the regulation will be a placeholder that could stall a future president from regulating power plants.

States will be able to present reasons for why they don't want to regulate coal plants, including considering how many more years they have left before they would probably shut down, according to a source who reviewed a different section of the document.

In another contentious portion of the proposal, EPA is looking at letting states decide whether they want to adopt changes to pollution reviews that kick in when a plant makes upgrades. Existing rules are meant to keep plants from making changes that cause more pollution.

Conservatives and industry groups have long argued that the review process, called New Source Review, makes it too expensive for operators to make improvements to plants.

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The key to Trump's climate reversal? New math [Back](#)

By Alex Guillén and Emily Holden | 08/16/2018 05:06 AM EDT

The Trump administration's attempt to reverse Barack Obama's most sweeping climate regulation rests on a legally risky strategy — redoing the calculations of how much the rule would cost and who would benefit.

The EPA's proposed replacement is expected to downplay the money that people and businesses would save from using less electricity, a key feature of the Obama-era greenhouse rule for power plants. People tracking the issue also expect that the agency will count only a fraction of the improvements in public health from reduced smog and soot pollution, and won't consider any benefits from slowing climate change outside the U.S.

The upshot: President Donald Trump's Environmental Protection Agency will argue that the Obama administration's rule had more costs and fewer benefits than previously stated, a change to help improve the comparison when it unveils its own, much less ambitious power plant proposal as soon as next week.

The Obama administration had estimated that the benefits from its 2015 rule would outstrip the costs by \$26 billion to \$45 billion by 2030.

Supporters of the Obama version say those net benefits could be even higher now, because states are on track to meet the climate goals and the costs of clean energy have continued to plummet. And they warn that repealing the regulation could keep older, more expensive coal-fired power plants in operation, adding to consumers' costs.

The math could be crucial to the success or failure of a number of Trump rules. That could make the rollbacks legally vulnerable when environmental advocates and states sue to overturn Trump's action, critics of the new proposals say.

"They are cooking the books on technical analysis to try to justify preconceived conclusions that these regulations are bad," said David Doniger, the senior strategic director of the Natural Resources Defense Council's climate program who was influential in the Obama EPA's crafting of the original rule.

EPA did not respond to a request for comment on Wednesday.

Trump administration lawyers reviewing the replacement are already struggling with how to defend a rule that could cost electricity users money but would not do much to address climate change or air pollution, according to a person aware of conversations between the White House and the Justice Department. DOJ would be charged with defending the rule in court.

POLITICO has examined a portion of the agency's unpublished draft of the new rule, which would allow states to write their own modest regulations for coal plants or even let plant operators seek to opt out entirely, according to a source with knowledge of the broader proposal.

The proposed rewrite of the power plant rule is part of a pattern: Critics say similarly fuzzy math underlies other Trump administration proposals to reverse or stymie action on climate change, such as a recent plan by EPA and the Department of Transportation to halt a planned tightening of fuel efficiency standards for cars and trucks.

Sean Donahue, an environmental lawyer who has represented groups like the Environmental Defense Fund, said he would expect a court to be "very skeptical" of any effort that looks as though EPA is trying to evade its obligation to regulate greenhouse gases. But he conceded that will depend on the details of EPA's power plant proposal.

"If it were one or two technical judgments where there's a difference between this administration and the last one, or this administration and prior consistent practice, that would be one thing," Donahue said. "But it's many, many things, all pointing the same way, all pointing toward rolling back greenhouse gas mitigation efforts."

Trump has repeatedly expressed doubts about man-made climate change, and much of his Cabinet shares a similar view. In contrast, the federal government's own scientific assessment finds that human-caused climate change will not only raise temperatures but also make extreme weather more dangerous and lift sea levels by 1 to 4 feet by the end of the century.

Kate Larsen, director of economic research firm Rhodium Group, said the Trump administration's justifications for unraveling climate change policies are symptomatic of its broader governing principles.

"A decision we make today is narrowly focused on the impacts to myself and my immediate neighbor in the next week, but you're not taking into account impacts next year and the following year to yourself, your neighbor, the entire community," she said.

Environmental experts are also scrutinizing the auto rule proposal, released earlier this month, which would freeze the Obama administration's aggressive fuel economy standards after 2020 and dial back EPA greenhouse gas rules to match.

EPA and DOT's National Highway Traffic Safety Administration argued that the freeze would save billions of dollars in costs. Critics say the administration overestimated compliance costs of the Obama-era auto targets by as much as fourfold, which could significantly tip the cost-benefit analysis in their favor. Another claim that the Trump rollback would save more than 1,000 lives per year — yielding benefits of \$77 billion — has also drawn skepticism.

On Tuesday, EPA released a June memo that showed agency staff criticizing a number of "unrealistic" aspects of NHTSA's modeling. They disagreed with the proposal's fatality figures, with EPA staff estimating deaths would increase slightly under the freeze. And they thought the rule overestimated compliance costs and the time needed to recoup those costs in fuel savings, all factors that boosted benefits and lowered costs for the proposed freeze. Both EPA and NHTSA dismissed the memo as only one part of a complex review process.

The administration and industry groups have blasted the Obama administration's use of "co-benefits" — the benefits in improved health or reduced pollution that arise even when they're not the primary aim of a regulation. (One example: Cutting coal plants' carbon dioxide pollution under the power plant regulation would't do much directly to improve people's health, but it would reduce smog.) But Donahue argued that Trump's regulators sometimes lean on co-benefits to help build the case for their rollbacks.

For example, NHTSA's modeling credits changes in consumer behavior as the overwhelming factor behind all the lives that the Trump administration contends its auto rollback would save. The agencies argue that under the previous Obama rule, drivers would be more likely to remain in older, more dangerous cars than purchase more expensive, safer ones.

That "would seem to be a co-benefits argument, since the EPA doesn't have, and NHTSA doesn't have, the authority to regulate used cars," said Donahue, who called the paradox "sort of entertaining."

Counting co-benefits is a long-standing practice for federal regulators, but energy industry groups and Republican state officials grew incensed by the Obama administration's use of it to justify major regulations.

"The co-benefits thing has ballooned into the biggest scandal in environmental regulation," said the conservative Competitive Enterprise Institute's Myron Ebell, who led Trump's post-election transition team at EPA. "You get very small direct benefits, but you make up, essentially, a lot of co-benefits."

Still, he contended that EPA's withdrawal of Obama's power plant rule would eliminate a huge amount of costs in the coming years, saying Obama's regulation represented "just the first emissions cuts."

"There were going to be more beyond that if the Obama administration had been succeeded by the Clinton administration," Ebell said. He added: "By cutting it off in the way that they're doing, we're avoiding immense future costs."

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Keystone XL pipeline wins green light in Nebraska — but may face new hurdles [Back](#)

By Ben Lefebvre | 11/20/2017 11:25 AM EDT

Nebraska regulators approved the Keystone XL pipeline Monday, but only if it is built along a new path that may force the project developer to jump through a new set of regulatory hoops.

The 3-2 vote by the Nebraska Public Service Commission gave the green light to a different route than the one preferred by Keystone developer TransCanada, moving it east to run partially alongside the original Keystone pipeline and through a portion of the state's ecologically sensitive Sandhills area as well across the Ogallala Aquifer.

The Trump administration is evaluating whether it would have to re-approve the controversial pipeline to account for the new route. But activists who have spent the better part of a decade fighting to block Keystone said the decision throws the whole project into jeopardy, while TransCanada, the company seeking to build the project, said only that it is evaluating its next steps.

"This decision today throws the entire project into a huge legal question mark," said Jane Kleeb, the activist who led the opposition to the pipeline and who is now Nebraska Democratic Party chair. "TransCanada will have to go back to the State Department because that route has never been reviewed by the feds."

The State Department said it is reviewing the PSC decision for just such a possibility.

"We won't know about any impacts until we learn precisely the extent of any changes, something we are currently engaged in," State Department spokesman Vincent Campos said.

TransCanada President and CEO Russ Girling said the company "will conduct a careful review of the Public Service Commission's ruling while assessing how the decision would impact the cost and schedule of the project."

Former President Barack Obama had blocked the permits for the pipeline in 2015, citing the oil sands' impact on climate change, but President Donald Trump quickly reversed that decision after taking office. Keystone XL is designed to transport up to 830,000 barrels per day of crude from Canada's oil sands and North Dakota's shale fields to oil refineries on the Gulf Coast.

The Nebraska PSC vote comes as TransCanada adds new crews to its cleanup operations in South Dakota, where the original Keystone Pipeline ruptured last week and released 210,000 gallons of oil. But Nebraska law bars the regulators from considering spills or pipeline safety in its decision-making process.

Environmentalists and landowners who opposed Keystone XL's construction have promised to try to overturn the commission's decision.

"We will appeal," Kleeb said. "We will challenge a foreign corporation being given eminent domain in the county courts, with every intent to bring it to the Supreme Court if needed."

Even with the approval, the project, whose costs to build the nearly 1,200 mile artery have ballooned to \$8 billion, is still not ready to be built since TransCanada is gauging the economics of the huge investment. Though prices for oil have rebounded moderately in recent months, and while TransCanada has said demand for space on the pipeline is strong, it's not yet clear that enough companies will commit to the 20-year contracts required to reserve space on it.

The opposition to Keystone XL had been a rallying cry for green activists who have long said mining Canada's oil sands would be a disaster for global climate change, releasing vast amounts of carbon dioxide into the atmosphere.

But supporters have said tapping the oil fields in Alberta is no worse than the oil production in Venezuela, where much of the heavy sour crude that is shipped to U.S. refineries comes from now.

Many in the oil industry, however, no longer see the Keystone XL pipeline as crucial to the U.S. refineries as they once did, especially since the railroad sector stepped in to offer a more flexible — though more expensive — way to ship the oil.

"There's not going to be a parade thrown, although everyone in the industry is going to be grateful," said Tyler Nelson, an energy lobbyist for Cornerstone Government Affairs. "It should have been done years ago. But now a lot of people want it to be over with and done and move on."

The pipeline may struggle to succeed in the oil business. Energy markets have made the Alberta oil sands less attractive, with ExxonMobil, ConocoPhillips and others pulling out of the region to concentrate on U.S. oil

shale development in Texas. Meanwhile, rival pipeline company Enbridge has expanded its pipeline system delivering Canadian crude to the U.S.

Critics have pointed to the recent shale oil boom as a reason that supply from the Canadian and North Dakota fields is in less demand, and they argue that much of the oil from Keystone XL could end up on tankers bound for export. U.S. oil production is on target to average more than 9 million barrels a day this year, nearly double what it was when TransCanada first proposed the massive pipeline.

If TransCanada gives its final approval to go ahead, construction would not start until 2019 at the earliest, Paul Miller, TransCanada's president of liquids pipelines, said during a conference call earlier this month.

The pipeline already is the focus of a court challenge stemming from Trump's State Department approving the project. A coalition of groups is arguing the State Department did not do due diligence before approving the cross-border pipeline in March. The case is still in the beginning stages, with a decision pending from the U.S. District Court of Montana on a Trump administration motion to dismiss.

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Judge orders Trump administration to update Keystone XL environmental study [Back](#)

By Alex Guillén | 08/15/2018 08:17 PM EDT

A federal judge today ordered the Trump administration to update its environmental study of the Keystone XL pipeline.

Nebraska regulators last year picked an alternative route through the state after the pipeline was approved by President Donald Trump. Now the State Department must update its previous 2014 environmental impact statement to take that route into account, ruled Judge Brian Morris of the U.S. District Court for Montana.

The Trump administration argued that it did not need to update the EIS, despite Nebraska regulators' decision to pick the alternate route.

But Morris concluded that the State Department still has a "meaningful opportunity to evaluate" the alternative route that was picked in Nebraska. "Federal Defendants cannot escape their responsibility under NEPA to evaluate the Mainline Alternative route," he ruled.

The approved route differs from the one studied in the 2014 EIS by crossing different counties and bodies of water and requiring an extra pump station and electric infrastructure, Morris noted.

However, Morris declined environmentalists' request that Trump's permit be vacated, at least for now.

TransCanada does not plan to start construction before the second quarter of 2019, he said, giving the Trump administration sufficient time "to supplement the EIS in a manner that allows appropriate review before TransCanada's planned construction activities." Morris said he would revisit the issue if "circumstances change" and he is unable to review the new supplemental EIS before TransCanada begins construction.

WHAT'S NEXT: Morris ordered the State Department to propose a schedule to supplement the EIS.

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Trump administration to make a second try on spending cutbacks [Back](#)

By Sarah Ferris and John Bresnahan | 08/15/2018 07:15 PM EDT

The Trump administration is eyeing a second attempt to force Congress to roll back federal spending, after its last attempt collapsed in the GOP-led Senate, according to the chairman of the Senate Appropriations Committee as well as a Senate leadership source.

The Office of Management and Budget is said to be considering a second package of so-called rescissions, with just weeks to go until Congress' next budget deadline.

OMB officials did not return a request for comment and it's not known yet what spending the White House might try to cut or eliminate this time around.

Senate Appropriations Chairman Richard Shelby said today he was told about the idea. "I heard they were thinking about one, but I haven't seen it," Shelby (R-Ala.) told POLITICO.

OMB chief Mick Mulvaney has already begun moving ahead, according to the Senate leadership source.

Budget hawks, led by Mulvaney, fought hard for the last package, H.R. 3 (115), which would have pulled back \$15 billion in already-approved federal dollars. That bill ultimately tanked in the Senate, coming up just one vote shy on a procedural vote.

If the White House moves quickly, its next rescissions package could arrive in the middle of a separate major funding fight on Capitol Hill. Lawmakers have until Sept. 30 to send roughly \$1.4 trillion in fiscal 2019 funding to President Donald Trump's desk or risk a funding lapse.

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Oil companies ask Florida lawmakers to unlock offshore drilling [Back](#)

By Ben Lefebvre | 08/15/2018 05:01 AM EDT

Oil and gas companies are aggressively lobbying Florida lawmakers to agree to allow offshore drilling in the eastern Gulf of Mexico — seeking to break decades of bipartisan opposition in a state that has long viewed oil spills as an existential threat to its tourist economy.

The effort, which would potentially bring oil rigs as close as 75 miles to Florida beaches, comes just seven months after Interior Secretary Ryan Zinke promised that the state was "off the table" for offshore drilling. And it could complicate Republican Gov. Rick Scott's campaign to unseat Democratic Sen. Bill Nelson, whose opposition to drilling off the coast has been a main theme of his decades in Congress.

But the expansion would aid President Donald Trump's effort to increase U.S. oil and gas production, in what he calls a bid for American "energy dominance."

Gaining access to the millions of barrels of oil and natural gas off Florida's west coast is a top priority for Exxon Mobil, Chevron, Shell and other companies.

Energy lobbyists and trade associations believe Zinke left some wiggle room in his comments, and they are trying to persuade Florida lawmakers to sign on to possible compromises, including allowing drill rigs to operate up to 75 miles off the state's Gulf coast, lawmakers and industry sources said. That would be down from more than 200 miles under an existing drilling moratorium.

Zinke's tweet exempting Florida — which critics charge was simply a political gift for Scott's Senate campaign — and his subsequent statement that he was "removing Florida from consideration for any new oil and gas platforms" shouldn't be read as official Interior policy, said Randall Luthi, president of the trade group National Offshore Industry Association, which is pressing for access to the waters.

"Secretarial tweets and statements to Congress are outside the administrative process, but certainly are indicators of where the Secretary and evidently the White House might end up," Luthi said in a statement to POLITICO. "The Eastern Gulf of Mexico is ripe for some kind of a reasonable compromise."

The Gulf of Mexico Energy Security Act of 2006 put a moratorium on oil and gas exploration in the eastern Gulf until June 2022. Department of Defense offshore training zones put another large part of those waters out of contention for drilling.

Interior's first draft plan included opening up every acre of federal water to oil and gas companies, however. Zinke has implied in later conversations with coastal state governors, senators and trade associations that the final plan wouldn't necessarily include drilling off the coasts of New Jersey, Delaware, Maine, but his plan to announce a final decision this fall could delay unpopular decisions — including possibly opening up the waters off southern California and the Mid-Atlantic region — until after the midterm elections, sources said.

The most aggressive plan industry lobbyists have brought to lawmakers calls for allowing drilling platforms within 75 miles of Florida's Gulf coast, an idea that Interior itself floated in its draft plan. Buffer zones going out as far as 125 miles have also been discussed, sources said. Either could technically adhere to Zinke's promise not to open Florida's waters, since the state's jurisdiction only extends nine nautical miles from the shoreline. Interior proposed the use of so-called exclusion zones for the eastern Gulf of Mexico and the Atlantic coast in its draft plan.

One lobbyist working the issue told POLITICO that Zinke and Scott were careful to "not say the entire Eastern Gulf," was off the table during their press conference at the Tallahassee airport in January.

"There are some Republicans who are prepared to make a deal. Seventy-five miles is the expected buffer, but folks might be willing to throw it a little further," said the lobbyist, speaking anonymously to frankly discuss ongoing negotiations.

That reduced buffer zone would please the oil industry because most of the oil and gas reserves in the eastern Gulf are believed to be in the waters south of Alabama and the Florida Panhandle, said a person at one oil and gas company who was not authorized to discuss the draft plan.

"I think we could live with 75 miles," the person said. "I think that wouldn't hurt anyone."

The idea so far has failed to gain much traction with at least two Florida Republicans who said they have been inundated with industry requests to open the area to drilling.

Florida Republican Rep. Matt Gaetz said he opposes the idea on national security grounds, given that the Defense Department uses a large part of the eastern Gulf for training exercises.

"It seems every week the oil and gas industry is working to obtain permission to crack the Destin Dome," Gaetz said in an interview with POLITICO, referring to one offshore site believed to hold large amounts of natural gas. "That would be devastating to our national security. I don't have a nuanced view on this. I am opposed."

Gaetz said he has raised his concerns on several occasions with Zinke, who he said has not pushed for a specific policy but has espoused an expansion of oil and gas drilling in general.

"I've had meetings with the secretary on this," Gaetz said. "I've had spirited conversations with him. I would not say he was wedded to any particular plan. He was trying to advance the cause of energy exploration."

An Interior spokeswoman did not answer questions about Zinke's meetings with Florida lawmakers or the possibility of establishing a 75-mile buffer zone.

"Secretary Zinke regularly meets with and communicates with many members on both sides of the aisle, coastal and non-coastal," the spokeswoman said in a written statement. "Members often discuss relevant issues pertaining to their districts and states as appropriate."

Republican Rep. Francis Rooney, who opposed drilling off the Florida coast during his 2016 campaign, said the industry has also been reaching out to him. Industry representatives have suggested several compromises, including a 100-mile buffer zone, he said, though he has rejected that plan, saying currents could carry any spilled oil from that part of the Gulf onto state beaches.

Instead, Rooney, who had served on the board of the oil and gas company Laredo Petroleum, offered to allow drilling 200 miles off the coast, west of the area where the military conducts training.

"The oil people have brought up several different things and I have been pretty much recalcitrant in negotiating with them," Rooney told POLITICO. "I think we need a clear delineation of where they will drill and not drill, and we don't need them drilling east of that military mission line."

Environmentalists also oppose any drilling, saying a buffer zone wouldn't protect Florida's beaches and tourism economy.

"The Deepwater Horizon disaster that spoiled Florida's coastline was 200 miles from its shore," said Diane Hoskins, director of environmental group Oceana, referring to the 2010 deepwater gusher that took months to plug. "A 75-mile buffer would be a cold comfort for Floridians."

Alexandra Glorioso contributed to this report.

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Trump delivers a Senate race sweetener to Scott [Back](#)

By Marc Caputo, Ben Lefebvre, Matt Dixon and Bruce Ritchie | 01/09/2018 11:24 PM EDT

Donald Trump delivered a big political contribution to Rick Scott on Tuesday as the Florida governor contemplates a bid for U.S. Senate: a pledge to spare Florida from administration plans to expand offshore oil drilling nationwide.

The surprise announcement from Secretary of Interior Ryan Zinke — who went to the trouble of flying to Tallahassee to stand beside Scott — outraged environmentalists and Democrats who insist the decision was a political ploy that unlawfully gave preferential treatment to Florida, a swing state that voted for Trump and that's home to his so-called "Winter White House" escape at Mar-a-Lago in Palm Beach.

Zinke made sure that the term-limited governor got all the credit. In response to a question about what was the final determining factor in his decision, Zinke said: "The governor."

"You have a tremendous governor that is straightforward, easy to work for, says exactly what he means. And I can tell you Florida is well-served," Zinke said.

Zinke's glowing endorsement of Scott has become de facto policy for Trump, who has tried for more than a year to woo Scott publicly and privately to run for U.S. Senate against Democratic incumbent Bill Nelson. The veteran senator is one of the most vocal opponents of offshore oil-drilling in Florida, an issue that typically enjoys broad bipartisan support in a state whose economy depends heavily on tourism and development along 1,300 miles of coastline.

Scott used to be an exception to the blanket opposition to offshore oil drilling. In 2010, the then-political newcomer voiced more support for oil exploration, but the position became a political liability in the state after the Deepwater Horizon oil spill coated some Florida beaches with tar balls and damaged tourism in parts of the Gulf.

A 2016 University of South Florida-Nelson poll found that 47 percent of state residents see offshore drilling as a move in the "wrong direction," a distinction that makes it one of the most unpopular policy proposals in the state.

So when Zinke announced last Thursday that the administration wanted to open vast new stretches of federal waters to oil and gas drilling, opposition was united in Florida — from liberal environmentalists to conservative lawmakers and even Scott, who issued a rare public denunciation of the policy.

At the time, Democrats and Nelson supporters highlighted the unpopular policy announcement by a president who's flagging in the polls. Nelson's campaign began fundraising off of the initial announcement to expand oil exploration.

One Republican insider, however, told POLITICO shortly after the initial announcement that the administration would scale the plan back somewhat to give Scott a political boost that would "be a big win, and it won't be Bill Nelson bringing it home."

As late as Tuesday, Nelson was still fundraising off the drilling announcement. "President Trump is about to hand a huge victory to the oil industry and put Florida's entire economy at risk," Nelson's campaign wrote. "He just announced plans to rollback offshore drilling regulations that were put in place after the 2010 Deepwater Horizon disaster, and open up nearly all federal waters to offshore oil drilling — including the eastern Gulf of Mexico."

But just before that email solicitation was sent out, Zinke was unexpectedly standing in Tallahassee's regional airport with Scott announcing the reversal to the Florida capital press corps.

Nelson said he was incredulous.

"I have spent my entire life fighting to keep oil rigs away from our coasts. But now, suddenly, Secretary Zinke announces plans to drill off Florida's coast and four days later agrees to 'take Florida off the table'? I don't believe it," Nelson said in a written statement. "This is a political stunt orchestrated by the Trump administration to help Rick Scott, who has wanted to drill off Florida's coast his entire career. We shouldn't be playing politics with the future of Florida."

Similarly, the Sierra Club of Florida said the decision was "a purely political move to aid the ambitions of Rick Scott." And the League of Conservation Voters called it a "publicity stunt."

Scott's spokesman, Jonathan Tupps, said oil-drilling opponents should not be upset.

"Senator Nelson and anyone else who opposes oil drilling off of Florida's coast should be happy that the governor was able to secure this commitment," he said. "This isn't about politics. This is good policy for Florida."

Tupps said that, contrary to claims by Scott's opponents, the governor and staff have frequently discussed Florida's opposition to more offshore oil drilling with the Interior Department. Scott personally raised the issue with Zinke in an October meeting in Washington, Tupps said.

Why Zinke suddenly reversed months of planning four days after announcing the new oil and gas exploration policy are unclear. Zinke also made his announcement via Twitter after a brief question-and-answer session with reporters in Tallahassee.

In reversing the policy for Florida, however, Zinke may have run afoul of the Administrative Procedure Act, critics said. That could give ammunition to California and Atlantic Coast states wanting to get on the same no-drill list -- the opposite of what President Donald Trump intended when he directed Zinke to expand oil companies' access to federal waters to boost U.S. energy production.

The American Petroleum Institute President Jack Gerard earlier in the day had applauded the Trump administration's plan to make all available federal waters available for drilling, saying "It represents a bold acknowledgement of the industry's advancements in technology to safely access U.S. energy resources."

Almost immediately after Zinke's announcement, lawmakers from other states took to Twitter to raise the specter of lawsuits, which could lead to courtroom entanglements for Interior's offshore drilling plan. The proposal was supposed to go into effect in 2019 and offer acres off the coast of Florida in late 2022 when a drilling moratorium officially ends.

"Under the Administrative Procedure Act, an agency can't act in an arbitrary and capricious manner. In this case, exempting Florida but not California (which has an even larger coastal economy) is arbitrary and capricious," Rep. Ted Lieu, a California Democrat and attorney, told POLITICO.

"So the agency would either have to not exempt Florida, or in the alternative, exempt Florida, California and any other state that can show the coasts are important to the state's tourism and economy."

California Attorney General Xavier Becerra also hammered that point on Twitter, echoing Scott's argument against drilling off the Florida coast to say "California is also 'unique' & our 'coasts are heavily reliant on tourism as an economic driver.' Our 'local and state voice' is firmly opposed to any and all offshore drilling. If that's your standard, we, too, should be removed from your list. Immediately."

In Virginia, U.S. Sen. Tim Kaine took a more low key approach. "Virginia's governor (and governor-elect) have made this same request [as Florida], but we have not received the same commitment. Wonder why..." he tweeted.

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Pruitt touts science policy as transparency as Democrats slam him for secrecy [Back](#)

By Emily Holden and Annie Snider | 04/26/2018 03:17 PM EDT

Embattled EPA Administrator Scott Pruitt sought to fend off criticisms he had clouded his activities within the agency in secrecy, pointing during Thursday's congressional hearing to the new science policy rolled out this week that he said is boosting transparency around new rules.

But that new policy, long a conservative priority, had Democrats howling that Pruitt had effectively given himself carte blanche to conceal studies that would not support his rollback of Obama EPA rules.

"The type of studies you want to exclude are the same kind of scientific studies that were used to prove that lead in pipes and paints harm children and that secondhand smoke is a dangerous carcinogen," said Rep. [Raul Ruiz](#) (D-Calif.). "You have demonstrated a disregard of true science [and] the scientific process," he said.

The discussion was one of the most substantive policy issues at [the hearing](#) of the Energy and Commerce subcommittee that focused largely on the scandals that have erupted around Pruitt in recent weeks.

The draft rule, which was announced at a closed event at agency headquarters on Tuesday, could have far-reaching effects that limit EPA's ability to rely on studies that don't have publicly available raw data when making decisions about air and water regulations. Scientists and public health advocates have argued the change could keep the agency from updating health protections based on new science since those studies typically redact subjects' personal information.

Pruitt's GOP supporters on the panel praised the move as a way to ensure that scientific data used to support new regulations was available for everyone to review.

"I've had a lot of constituents over the years who've been very concerned about decisions ... that get made by administrators or the bureaucracy and in some cases they can't get access to the underlying data that underpins the decisions," said Rep. [Greg Walden](#) (R-Ore.), chairman of the Energy and Commerce Committee.

Rep. [Paul Tonko](#) (D-N.Y.) called Pruitt "hypocritical" because the proposed rule gives broad authority Pruitt to grant exemptions from the new requirements, which he said Pruitt could use "without any transparency or accountability" for his decisions.

Tonko pointed to internal emails between top EPA officials initially released under the Freedom of Information Act that show the agency's top chemicals official, a former leading chemicals industry expert, expressing concerns about the impact the policy could have on companies' confidential business information.

"If EPA was assessing the safety of a chemical, you alone would have the power to selectively block public health studies that do not support your political priorities and allow ones that favor your friends in industry. Not only does this open the door to special treatment for industry over the public health, but you could also pick winners and losers among the industry types," Tonko said.

Pruitt argued the restrictions will apply equally to "all third party studies." He said both business and personal health information could be redacted, which experts have argued would be time-consuming and expensive.

Yogin Kothari, a Washington representative for the Union of Concerned Scientists, which has opposed the change, said Democrats were right to highlight the hypocrisy of the policy that he said was really about restricting science.

"What it highlights is a lack of transparency at the agency because he hasn't really talked about this or explained this or explained his thinking about this," Kothari said.

Frank Maisano, a spokesman for the lobbying firm Bracewell who attended the hearing, said Republicans on the committee appeared to be interested in hearing more about the policy.

"It's a topic that is different from what Democrats are talking about, it's a topic that's substantive," Maisano said. "It's a topic that many in the business community and many in the conservative community have been focused on for years."

EPA's proposal, based on long-sought legislation from House Science Chairman Lamar Smith (R-Texas), also drew support from Rep. Kevin Cramer (R-N.D.) who said it undercut Democrats who attacked Pruitt for secrecy while defending the agency previous use of "secret science."

"You've also been accused of hypocrisy, a lack of transparency, by people who are in the same breath defending secret science as a means of carrying out their political philosophy ... the irony is rich beyond rich with me," he said.

Quint Forgey contributed to this report.

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Mexico, U.S. may be heading toward NAFTA deal amid Trump's global trade war [Back](#)

By Megan Cassella | 08/15/2018 05:32 PM EDT

President Donald Trump could be poised to make a deal with Mexico on NAFTA even as he engages in a trade war with the rest of the world.

Mexican Economy Secretary Ildefonso Guajardo arrived in Washington on Wednesday — as he has every week for the past month — to hammer out some of the most contentious issues on NAFTA. U.S. and Mexican officials now say they could be on the verge of announcing a preliminary agreement on everything from complicated automotive rules to environmental regulations by the end of August.

The apparent turnaround after months of stalemate is a surprise outcome of discussions reaching their year anniversary on Thursday. And while the two sides have yet to bring Canada, the third partner in NAFTA, into the latest round, the negotiators' optimistic tone could signal that Trump may be ready to extinguish at least one trade conflagration before the midterms. That would placate Republicans who have been calling for a return to stability as the U.S. and China have been slapping tariffs on each other's exports, roiling international markets and burdening American farmers.

"We're settling in for the long haul with China, so we really need to release the pressure in our backyard," said Dan Ujcz, an international trade lawyer who specializes in Canada-U.S. matters. "I think that's a driving force for the U.S.' desire to get a deal right now."

To be sure, some major controversial issues remain unresolved, including the U.S. proposal to automatically terminate the pact after five years unless all three countries agree to renew it — an idea that Canada and Mexico have both rejected outright. And for the time being, at least, Canada still remains on the outside of the current talks.

But reaching even a bare-bones agreement on NAFTA before November's elections would hand a concrete victory to Trump, who would likely point to the revamped pact as a symbol that his strong-arm tactics have worked, industry sources and experts closely following the talks say. It would also allow U.S. trade officials to clear a major task off their agenda and dedicate more time to areas where U.S. Trade Representative Robert Lighthizer in particular has wanted to focus, primarily trade issues with China.

At the same time, Mexican negotiators are also under renewed pressure to get a deal after the country elected a new leader who takes office in December and who badly wants NAFTA to be signed and off his plate before then. Mexico has pointed to Aug. 25 as the date by which it must wrap up at least a preliminary agreement for outgoing President Enrique Peña Nieto to be able to sign the deal before he leaves office.

Those domestic politics have put Guajardo in a tough position, as he tries to appease the incoming Mexican administration and quickly wrap up a deal while still standing up firmly against some U.S. proposals that Mexico has repeatedly derided as unworkable.

"They're under a lot of pressure to just come up with anything, whatever it is," one source close to the talks said, requesting anonymity to speak freely about internal deliberations. "What I've been hearing from other Mexican parties is that Ildefonso was sort of distraught and frazzled by the fact that he's being asked to wrap it up, and that of course means making concessions that he wasn't ready to make. It lowers his negotiating potential."

Against that backdrop, sources close to the talks say Mexico appears to be poised to accept large swaths of a U.S. proposal involving the rules that govern North American-produced automobiles and dictate what percentage of each car must be sourced from within a NAFTA country to qualify for reduced duties under the agreement.

At the U.S.' urging, Mexico looks likely to agree to an increase in the overall amount of North American-sourced content that must be included in each automobile, and will accept a requirement that a certain percentage of each car must be produced by workers earning at least \$16 an hour, sources say. Mexico is also poised to accept mandates that a certain percentage of the steel, aluminum and plastic included in each vehicle is also sourced from a NAFTA country.

In exchange, the United States would be prepared to give up a controversial proposal that would have made it easier for American fruit and vegetable growers to make the case that Mexico is selling produce at unfairly low prices when crops are in season in a particular region, two sources with knowledge of the trade-off told POLITICO. The U.S. would also submit to Mexico's demand to leave a chapter largely untouched that contains rules on disputes between governments, one of the sources said.

"Essentially, there is a deal," one of the sources said.

At the same time, however, other major aspects of the renegotiation remain unfinished. Chief among them is the so-called sunset clause that the U.S. wants, which would end the pact after five years unless the parties opt to continue it. Several sources close to the talks say the sunset clause has hardly been discussed during the latest set of meetings between the U.S. and Mexico, and the two countries still remain on opposite sides.

And Canada will need to come to the table for a deal to be finalized. Officials from all three countries have sought to emphasize that the U.S.-Mexico engagement is not a sign of ill will toward Canada but is instead an attempt to work out bilateral issues before bringing Ottawa back into the fold.

But negotiators had expected that Washington and Mexico City would have made enough progress by now for Canadian Foreign Minister Chrystia Freeland to have joined the meetings in Washington. The more time that passes, the more likely it is that the strategy to put off a trilateral meeting could backfire, a source close to the talks said.

"Yes, there's U.S.-Mexico momentum — that's a positive message and great from Mexico's point of view," the source said. "But the longer it takes to bring in Canada, the less likely this is going to get done in the short term."

Still, any incremental progress, or even the fact that the U.S. and Mexico are continuing to engage in good-faith negotiations and regular meetings, has offered a signal of some hope to U.S. farmers, consumers and industry groups who have been worn out by months of uncertainty and pummeled by retaliatory tariffs imposed over the past few months.

Retailers and business groups are reluctant to throw their support at this point behind a deal that is still unfinished, particularly when a number of proposals that some have termed poison pills remain on the table.

But at the same time, "I think what all of our members want, what the business industry at large wants, is certainty," said Vanessa Sciarra, a former U.S. trade negotiator who now works as a vice president at the National Foreign Trade Council. "Anything that provides for greater clarity on trade relationships, particularly with Mexico and Canada ... would be helpful."

Adam Behsudi contributed to this report.

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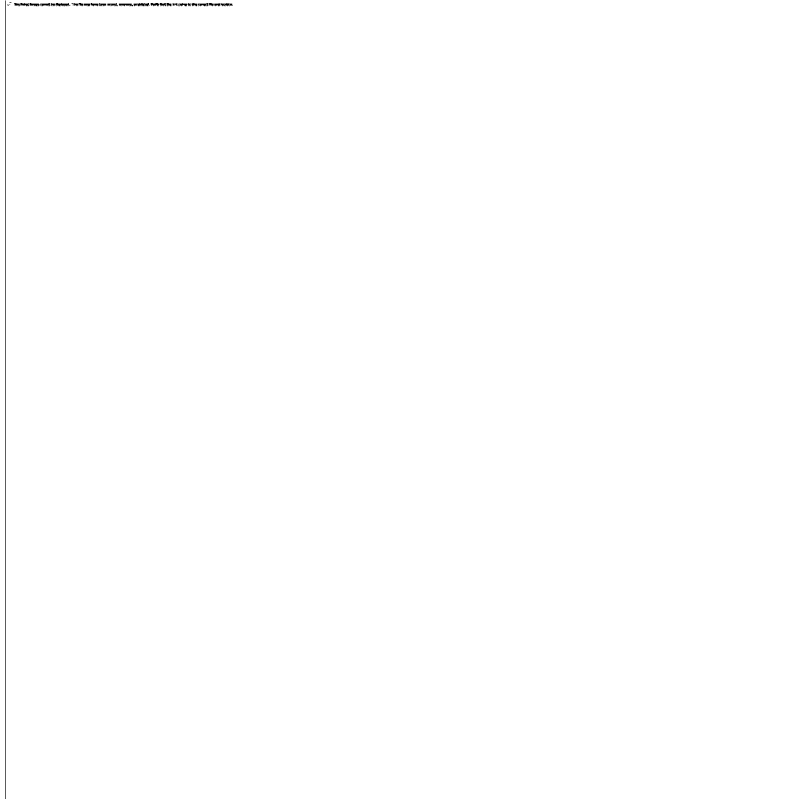
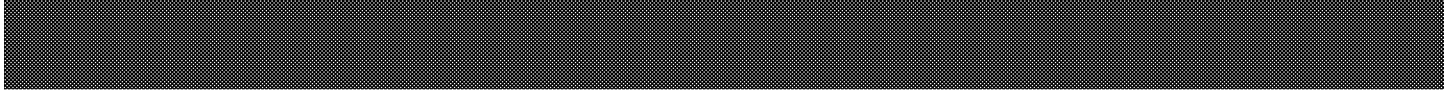
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By Sei Chong

Week in Review

Tariffs and budget

- President Donald Trump unveiled a \$60 billion package of tariffs on Chinese-made goods, including electric and other "new-energy" vehicles. The Trump administration is expected to present a list of specific products subject to the duties in the next two weeks, which will be followed by a public comment period.

- Robert Lighthizer, the U.S. trade representative, told the Senate Finance Committee that the European Union, Argentina, Australia, Brazil and South Korea would be excluded from the Trump administration's tariffs on steel and aluminum imports.
- A government shutdown was averted when Trump signed into law an omnibus spending bill, which rejected the Trump administration's proposed cuts for the Environmental Protection Agency's funding.

Scrutiny over travel costs

- EPA documents requested by House Oversight and Government Reform Committee Chairman Trey Gowdy (R-S.C.) revealed \$68,000 in previously undisclosed travel costs for Administrator Scott Pruitt from August to February, which included first-class flights. The EPA said the higher costs were related to increased security for Pruitt because of the threats he has received.
- Interior Secretary Ryan Zinke and his wife took a security contingent with them when they went on vacation in Greece and Turkey last year, according to documents the agency made public via a Freedom of Information Act request. Zinke did not handle government business during the two-week vacation, but Interior spokeswoman Heather Swift said U.S. Park Police officers accompanied Zinke because of concerns about security threats in the region.

Oil

- Trump's decision to replace Lt. Gen. H.R. McMaster with John Bolton, former U.S. ambassador to the United Nations, as his new national security adviser has increased the chances that the United States will abandon the Iran nuclear deal as it nears a May 12 deadline to waive oil-related sanctions on Tehran, according to analysts.
- Oil and gas drillers bid on 1 percent of Gulf of Mexico leases offered in what the Interior Department billed as the largest offshore oil and natural gas lease sale in U.S. history. Winning bids averaged \$153 an acre, 35 percent below levels last year, according to the data.
- The Bureau of Land Management sold all 43 plots in Utah, including areas near the original boundaries of Bears Ears National Monument, that were available in an online auction for

oil and gas leases. The auction of more than 51,000 acres, which generated more than \$1.5 million in projected revenues, didn't include any of the land that recently lost monument status at Bears Ears.

- Saudi Arabian Energy Minister Khalid al-Falih said in an interview that members of the Organization of the Petroleum Exporting Countries will need to continue to work with Russia and other non-OPEC allies on supply cuts in 2019 to push down global oil inventories to desired levels.
- Saudi Arabia is looking to list the state-run oil giant Aramco at home next year while weighing a decision whether to move forward with an international offering, according to government officials and others close to the process.

Climate change

- An increase in global energy demand, driven by greater consumption in China and India, led to a 1.4 percent increase in carbon dioxide emissions last year, the International Energy Agency said. The growth in carbon dioxide emissions in 2017 "tells us that current efforts to combat climate change are far from sufficient," said Fatih Birol, IEA executive director.
- The United Nations' World Meteorological Organization said in its annual report on the global climate that the last three years were the hottest on record and that heat waves in Australia, unusual warmth in the Arctic and water shortages in Cape Town, South Africa, are extending harmful weather extremes in 2018.
- The nation's first court hearing on the science of climate change was held in a San Francisco federal court, where U.S. District Judge William Alsup listened to lawyers for the cities of San Francisco and Oakland and for five of the world's largest oil and gas companies present a tutorial on global warming science. The cities are suing the oil companies, contending that they are liable for damages linked to climate change.

What's Ahead

- Both the House and Senate are in recess. The two chambers will return the week of April 9.
- Energy Secretary Rick Perry is scheduled to testify before the House Energy and Commerce's Energy Subcommittee on April 12. The subcommittee is also expected to hear from all Federal Energy Regulatory Commission members on April 17.
- The House Energy and Commerce's Environment Subcommittee will hear from Pruitt on the EPA's budget request on April 26.
- The EPA is scheduled to hold a listening session for its proposed repeal of the Clean Power Plan in Gillette, Wyo., on March 27.

Events Calendar (All Times Local)

MONDAY

Platts North American Digital Commodities Summit	7 a.m.
Sustainable Water Management Conference	7:30 a.m.
American Fuel & Petrochemical Manufacturers' International Petrochemical Conference	7:30 a.m.

TUESDAY

Sustainable Water Management Conference	7 a.m.
California Solar Power Expo	7 a.m.
American Fuel & Petrochemical Manufacturers' International Petrochemical Conference	8:30 a.m.
EPA listening session on proposed repeal of Clean Power Plan	9 a.m.

American Association of Petroleum Geologists Global Super Basins Leadership Conference	6 p.m.
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WEDNESDAY

American Association of Petroleum Geologists Global Super Basins Leadership Conference	6 a.m.
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California Solar Power Expo	8 a.m.
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Sustainable Water Management Conference	8 a.m.
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U.S. Energy Association brown bag lunch on integrating intermittent renewables	12 p.m.
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EESI and National Association of State Energy Officials briefing on public/private drive toward resilient buildings	12 p.m.
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THURSDAY

American Association of Petroleum Geologists Global Super Basins Leadership Conference	6 a.m.
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FRIDAY

No events scheduled

New Report: The Future of Retail

Insights into how consumers are reacting to changes in the retail industry, and what they're looking for in the future.

Morning Consult Energy Top Reads

1) [Pruitt Expected to Limit Science Used to Make EPA Pollution Rules](#)
Scott Waldman, Robin Bravender, E&E News

2) [Superfund, Water Infrastructure See Funding Bump in Omnibus](#)
Dean Scott and Rebecca Kern, Bloomberg BNA

3) [Scott Pruitt, Trump's Rule-Cutting E.P.A. Chief, Plots His Political Future](#)
Coral Davenport, The New York Times

4) [Scott Pruitt Will End EPA's Use Of 'Secret Science' To Justify Regulations](#)
Michael Bastasch, Daily Caller

5) [Hurricane Harvey's toxic impact deeper than public told](#)
Frank Bajak, The Associated Press and Lise Olsen, Houston Chronicle

6) [Congress closes in on massive spending bill](#)
Sarah Ferris et al., Politico

7) [Trump prepared to hit China with \\$60 billion in annual tariffs](#)
Damian Paletta et al., The Washington Post

8) [Self-Driving Uber Car Kills Pedestrian in Arizona, Where Robots Roam](#)
Daisuke Wakabayashi, The New York Times

9) [Companies Seeking Reprieve From Steel Tariffs Get Ground Rules](#)
Jennifer A Dlouhy, Bloomberg

10) [Ryan Zinke defends use of 'konnichiwa' comment to Japanese-American congresswoman](#)
Rafael Carranza, The Arizona Republic



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Subject: Agreeing with the Controversial Transparency Rule
Attachments: ATT00001.txt; FINAL one page LNT project summary 10-24-17.docx; FINAL LNT Presentation of Howard McClintic.pptx



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FAX

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Good Morning Mr. Woods,

My colleague, Dr. Robert (Bob) Golden and I knew that this Transparency Rule was coming and cheer its arrival – Bravo!

Nonetheless, I am haunted when I read the Administrator's urging: that the rule **be lasting**! There is **only one way** for this important tectonic change to meet and that is it **be mandated** by a newly formulated, independent Committee of the National Academy of Sciences (NAS). When undertaking their literature review, the NAS Committee Members and Staff will uncover a recently released, peer reviewed, highly credentialed, science-based Report that makes plain that there is a wealth of

toxicological and epidemiology data for chemicals and radiation that will readily yield reproducible as well as transparent regulations.

Administrator Pruitt is unique in recognizing that the mathematical construct that the EPA uses for assessing risk, the linear no-threshold (LNT) methodology, is of **MOST** questionable scientific validity. The LNT model was originally adopted by the National Academy of Sciences (NAS) in 1956 for radiation and in 1977 for chemicals. Because LNT-driven regulations, whether for chemicals or radiation, have, for many years, been claimed to be science-based (see <https://science.house.gov/sites/republicans.science.house.gov/files/documents/HHRG-113-SY-20131114-SD001%20.pdf> as well as <http://www.c-span.org/video/?327016-1/epa-administrator-gina-mccarthy-testimony-proposed-regulations>), the underlying scientific foundation for such regulations, particularly the LNT model itself, should also, by definition, reflect empirical data. If such scientific data are lacking, as they are for the LNT model, science-based regulatory methodologies (including benefit-cost analyses) for both chemicals and radiation should be updated to reflect significant advancements in scientific knowledge.

Besides introducing you to the fact that the **CTC Foundation** has empaneled a prestigious Science Committee that comprised of 15 individuals in the fields of toxicology, radiation biology, evolutionary biology, epidemiology, risk assessment, and economics; the Committee is preparing its FINAL Report that will demonstrate that there is no scientific support for the LNT model

and that ample modern data (NOT threshold models) should be the bases for regulations. In particular, the abundant data generated as part of the Department of Energy's 10 year, \$200 million Low Dose Radiation Research Program (LDRRP) will be a central element of the anticipated publication. Collectively, these and other complementary data have elucidated the cellular defense mechanisms by which humans can withstand exposure to low dose radiation without adverse effects.

I have begun to encourage the "doctors in the US Senate" (Barrasso [R-WY] and Cassidy [R-LA]) to introduce and progress legislation in the Senate that would be a companion bill to H.R. 4675, pertaining to the low dose radiation research that Doctor and US Congressman Roger Marshall (R-KS) championed. There are some modifications that Dr. Robert (Bob) Golden and I would advocate, given our respective professional experiences working at NAS, but more on that later. Our overarching Goal is shared: a paradigm shift whereby a **lasting**, scientifically valid approach for radiation and chemical risk assessment as well as for economic benefit-cost analyses be achieved.

Thank you for your time and interest.

Most sincerely yours,

Howard


Howard G. McClintic
Executive Director

202 689 4586

https://www.washingtonpost.com/news/energy-environment/wp/2018/04/24/pruitt-to-unveil-controversial-transparency-rule-limiting-what-research-epa-can-use/?noredirect=on&utm_term=.4f5c21b67c8c

Pruitt unveils controversial 'transparency' rule limiting what research EPA can use

by Juliet Eilperin and Brady Dennis by Juliet Eilperin and Brady
Dennis Email the author
Energy and Environment
April 24 at 6:09 PM Email the author



Environmental Protection Agency chief Scott Pruitt listens to President Trump address reporters before a meeting at the White House this month. (EPA-EFE/Shutterstock)

This post has been updated.

Environmental Protection Agency Administrator Scott Pruitt moved Tuesday to limit what science can be used in writing agency regulations, a change long sought by conservatives.

The proposed rule would only allow the EPA to consider studies where the underlying data is made available publicly. Such restrictions could affect how the agency protects Americans from toxic chemicals, air pollution and other health risks.

Pruitt and proponents describe the new approach as an advance for transparency, one that will increase Americans' trust and

confidence in the research on which EPA decisions are based. “Today is a red-letter day,” he told a group of supporters at agency headquarters. “The science that we use is going to be transparent. It’s going to be **reproducible**.”

But a chorus of scientists and public health groups warn that the rule would effectively block the EPA from relying on long-standing, landmark studies on the harmful effects of air pollution and pesticide exposure. Such research often involves confidential personal or medical histories or proprietary information.

The move reflects a broader effort already underway to shift how the EPA conducts and uses science to guide its work. Pruitt has upended the standards for who can serve on its advisory committees, barring scientists who received agency grants for their research while still allowing those funded by industry.

His announcement Tuesday came as the administrator faces increasing heat for ethics and management decisions — from both sides of the political aisle, with even President Trump privately voicing more concern over the growing number of allegations. Pruitt only focused on the proposed rule during his remarks, saying his agency was “taking responsibility for how we do our work and respecting process.”

He made clear he intends the new requirements to be lasting ones. “This is not a policy,” he said. “This is not a memo.”

The proposal will be subject to a 30-day comment period, EPA officials said. Scientific organizations are already campaigning to

block the rule from being finalized. Based on previous court cases, it could prompt legal challenges if implemented.

Former EPA administrator Gina McCarthy said that requiring the kind of disclosure Pruitt envisions would have disqualified the federal government from tapping groundbreaking research, such as studies linking exposure to leaded gasoline to neurological damage or a major 1993 study by Harvard University that established the link between fine-particle air pollution and premature deaths.

Scientists often collect personal data from subjects but pledge to keep it confidential. Researchers will have trouble recruiting study participants if the rule is enacted, she predicted, even if they pledge to redact private information before handing it over to the government.

“The best studies follow individuals over time, so that you can control all the factors except for the ones you’re measuring,” said McCarthy, who now directs the Center for Health and the Global Environment at Harvard’s public health school. “But it means following people’s personal history, their medical history. And nobody would want somebody to expose all of their private information.”

House Science Committee Chairman Rep. Lamar Smith (R-Tex.), who was with Pruitt during his announcement Tuesday, has for years sought to establish a similar requirement. His 2017 legislation, titled the Honest and Open New EPA Science Treatment Act, failed to pass both chambers.

Pruitt and Smith met at EPA headquarters on Jan. 9, according to Pruitt's public calendar, and an email obtained under the Freedom of Information Act indicates that the lawmaker pressed the administrator to adopt the legislation's goal as his own.

Smith made "his pitch that EPA internally implement the HONEST Act [so that] no regulation can go into effect unless the scientific data is publicly available for review," Aaron Ringel, deputy associate administrator for congressional affairs at the EPA, wrote other agency staffers. His email was obtained by the Union of Concerned Scientists, a scientific advocacy organization.

Conservatives, such as Trump EPA transition team member Steve Milloy, have long tried to discredit independent research the agency used to justify limiting air pollution from burning coal and other fossil fuels. A series of studies has shown that fine particulate matter, often referred to as soot, enters the lungs and bloodstream and can cause illnesses such as asthma and even premature death.

"During the Obama administration, the EPA wantonly destroyed 94 percent of the market value of the coal industry, killed thousands of coal mining jobs and wreaked havoc on coal mining families and communities," Milloy said in a statement, "all based on data the EPA and its taxpayer-funded university researchers have been hiding from the public and Congress for more than 20 years."

While the administration presses ahead, legal experts warn that the rule may be vulnerable to a court challenge. In unanimous decisions in 2002 and 2010, the U.S. Court of Appeals for the

District of Columbia Circuit said the EPA is not legally obligated to obtain and publicize the data underlying the research it considers in crafting regulations.

In the 2002 case, brought by the American Trucking Associations, two judges appointed by Ronald Reagan and one named by Bill Clinton wrote that they agreed with the agency that such a requirement “would be impractical and unnecessary.” The government’s defense had noted that “EPA’s reliance on published scientific studies without obtaining and reviewing the underlying data is not only reasonable, it is the only workable approach.”

A range of scientific organizations are already campaigning to block the rule from being finalized. On Monday, 985 scientists signed a letter organized by the Union of Concerned Scientists, urging Pruitt not to forge ahead with the policy change.

“There are ways to improve transparency in the decision-making process, but restricting the use of science would improve neither transparency nor the quality of EPA decision-making,” they wrote. “If fully implemented, this proposal would greatly weaken EPA’s ability to comprehensively consider the scientific evidence across the full array of health studies.”

Under the proposed rule, third parties would be able to test and try to replicate the findings of studies submitted to the EPA. But, the scientists wrote, “many public health studies cannot be replicated, as doing so would require intentionally and unethically exposing people and the environment to harmful contaminants or recreating one-time events.”

Gretchen Goldman, an expert on air pollution and research director for the organization's Center for Science and Democracy, said the rule could put some scientists in a quandary: Keeping personal health data or propriety information private would mean having their work ignored by the EPA.

"We have this incredible science-based process that works, and it has worked, by and large, even in the face of tremendous political pressures to not go with a science-based decision," Goldman said.

The Environmental Protection Network, a group of former EPA employees, issued a report Tuesday stating that many older studies — in which the original data sets were either not maintained or stored in outdated formats — would be eliminated under the proposed rule.

And while there is no estimate yet for how much it would cost EPA to obtain and disseminate studies' underlying data, the Congressional Budget Office has projected that Smith's measure, if enacted, would cost the agency \$250 million for initial compliance and then between \$1 million and \$100 million annually. A 2015 CBO analysis estimated that EPA would cut the number of studies it relies on by half because of the bill's requirements.

Geophysicist Marcia McNutt, who is president of the National Academy of Sciences, said Tuesday that she is concerned the rule would prevent the EPA from relying on the best available scientific evidence.

“This decision seems hasty,” she wrote in an email. “I would be fearful that the very foundations of clean air and clean water could be undermined.”

Yet the American Chemistry Council praised Pruitt’s effort. “Our industry is committed to working with EPA to help ensure the final rule increases transparency and public confidence in the agency’s regulations,” its statement said, “while protecting personal privacy, confidential business information, proprietary interest and intellectual property rights.”

Joel Achenbach and Dino Grandoni contributed to this report.

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May 18, 2018

In today's coverage . . .

. . . Michigan's two largest electric utilities, DTE Energy and Consumers Energy, are accelerating their transition to clean energy in an agreement reached with NextGen America so the group will drop its pursuit of a mandatory clean energy ballot initiative in the state.

Speaking of states, California officials are considering backing the launch of a satellite in part to track methane emission hot spots around the world in response to Trump administration proposals to defund such carbon monitoring efforts by NASA.

Staying in California, EPA appointed long-time California agriculture industry attorney Mike Stoker as the administrator of Region 9, which covers the Golden State, Arizona, Hawaii and Nevada, though he is already attracting controversy over his reported refusal to work out of the region's San Francisco headquarters. We rounded up some of our must-read coverage from the past week, including the latest on EPA's vehicle greenhouse gas standards, as well as a look at how one utility is curbing biomass power, efforts to save coal plants and EPA's "secret science" rule.

And our daily news roundup looked at a sharp criticism of the Trump administration's environmental deregulatory agenda from a libertarian think tank, which charges that federal officials are protecting "ill-gotten gains" for favored industries while foisting costs on the public.

READ THE CLIMATE BEAT →

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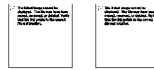
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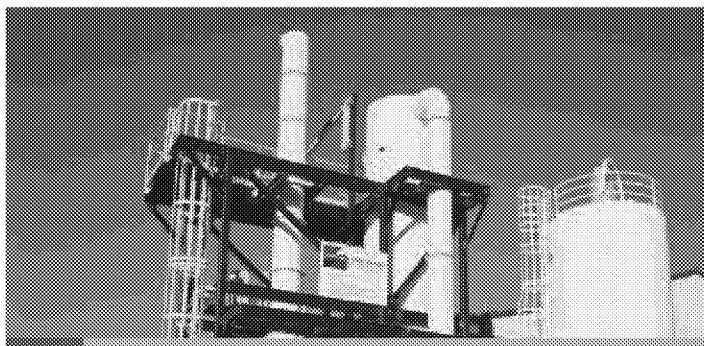
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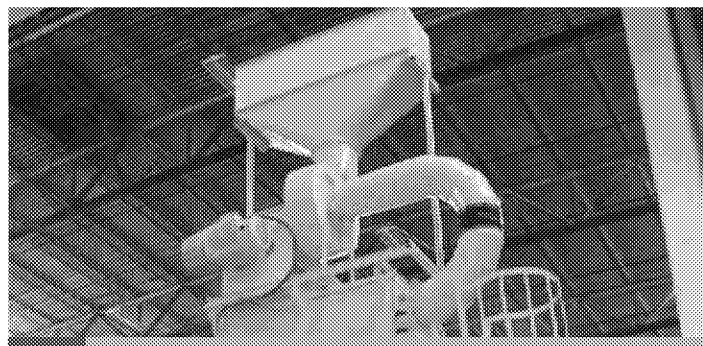


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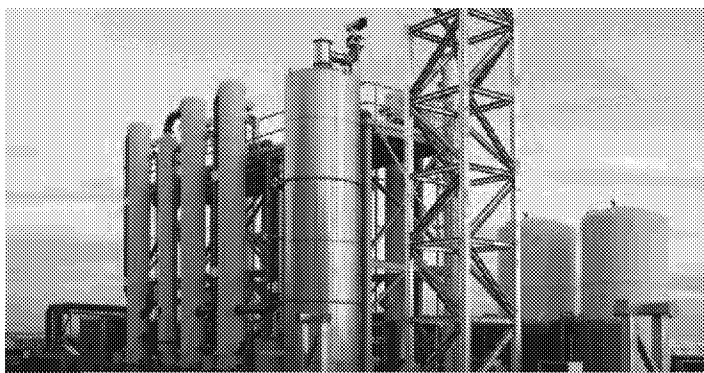


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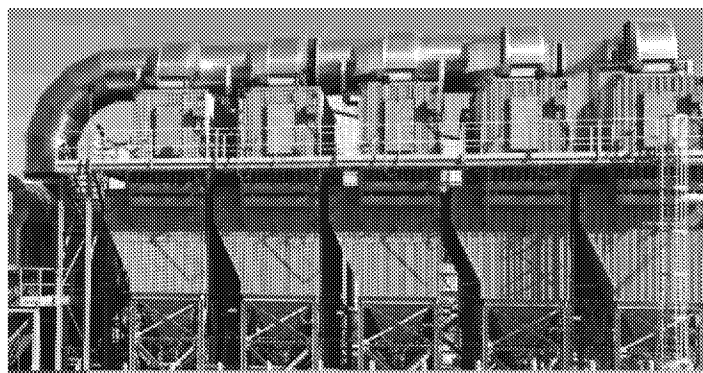


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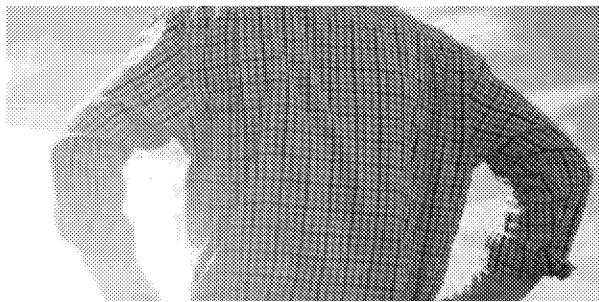
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Federal and State Perspectives on National Ambient Air Quality Standards

by John Kinsman

This issue of *EM* focuses on the U.S. Clean Air Act (CAA) National Ambient Air Quality Standards (NAAQS) program. Authors from the federal government (U.S. Environmental Protection Agency; EPA) and three state associations—Association of Air Pollution Control Agencies (AAPCA); National Association of Clean Air Agencies (NACAA); and Western States Air Resources Council WESTAR/Western Regional Air Partnership (WRAP)—discuss various NAAQS science and policy topics.



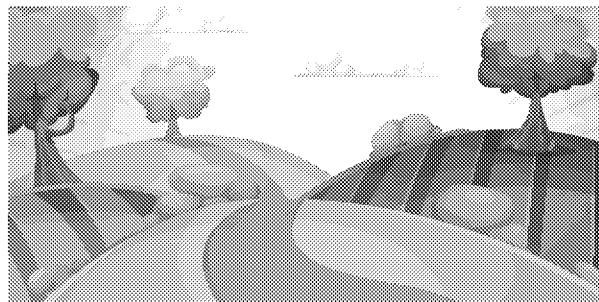
EPA's 'Back-to-Basics' Process for Review of the National Ambient Air Quality Standards

by Alexander Dominguez and Clint Woods, EPA



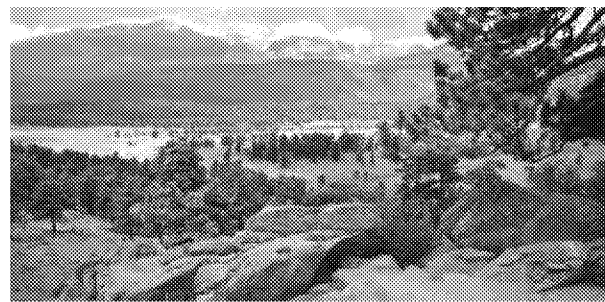
A Story Seldom Told: National Ambient Air Quality Standards and Success in Air Pollution Control

by Jason Sloan, Stuart Spencer, and Nancy Vehr, AAPCA



For NAAQS, Follow the Science

by Miles Keogh, NACAA



Western Ozone NAAQS Implementation Issues: Addressing Background and Transport

by Mary Uhl and Tom Moore, WESTAR/WRAP

Departments

Message from the President: Leveraging Technology to Better Serve Members

by Chris Nelson

In Memoriam: George R. Offen, Ph.D. (1939-2018)

Last Stop: Getting to Know A&WMA's Organizational Members

Columns

PM File: Minding Business

by David L. Elam

This month, *PM File* reminds us to practice mindfulness and avoid the pitfalls of media multitasking.

Remember *EM* is available for **FREE** to all A&WMA members in digital app, flipbook .pdf, and downloadable .pdf versions. Check it out online at <https://www.awma.org/em>.





Leveraging Technology to Better Serve Members

by Chris Nelson, P.E. » president@awma.org

This month's *EM* provides policy and technical updates related to the U.S. National Ambient Air Quality Standards (NAAQS). The ozone NAAQS typically receives the most attention, but standards for particulate matter, sulfur dioxide, and nitrogen oxides are also important for public health and can create compliance challenges during permitting or State Implementation Plan development. The U.S. Environmental Protection Agency (EPA) regularly reviews the science supporting the various NAAQS and updates them when appropriate.

In practice, the updates lead to ongoing changes in both implementation guidance from regulatory agencies and compliance strategies for communities and permitted facilities. I hope this issue of *EM* provides useful information for members as you navigate NAAQS attainment issues.

Last month, I discussed mentoring, one of my long-term focus areas for our Association. This month, I want to delve into a second focus area: the use of modern media for content delivery.

A&WMA has adopted some new practices for delivering programs, including basic elements (e.g., LinkedIn groups and email news updates) and effective current practices (e.g., webinars). We have a minimal social media presence, though our Young Professionals Advisory Committee (YPAC) is active on Twitter and adds value. A key challenge is to match our capabilities with the needs of our members and customers. I have a few ideas and hope you, our members, can provide feedback and help innovate at the local level.

My kids spend a ridiculous amount of time watching YouTube videos. We can't emulate the business model of the YouTubers they follow though. I don't think A&WMA members are clamoring for videos of me adopting a silly voice and providing commentary as I navigate AP-42 or AERMOD input files. However, we could potentially cooperate with

member companies or other partners to provide "how does it work?"-style videos for educational purposes. YPAC has been executing similar sessions at our Annual Conference & Exhibition for several years. In 2018, they added live demonstrations at the Young Professional Hub on the exhibit floor in Hartford. An accessible library that explains the fundamentals of stack testing or the operations of a baghouse may be useful for professional development.

While educational videos would be relatively static over time, A&WMA members are also looking for real-time updates on policy or technology changes. At our 2018 A&WMA Leadership Training Academy in April, our incoming YPAC Chair, Paul Algu, asked me to record a short interview on a professional development topic. He planned to post it online for Association YPs. I think these types of updates may be useful on technical topics as well. Our Association will not be able to produce podcasts with the production value of Freakonomics (<http://freakonomics.com/archive/>) or Revisionist History (<http://revisionisthistory.com/>) (two of my personal favorites), but could produce something simple with real value. A series of short updates on key priorities from state or local air directors would be topical for many of us. Similarly, sharing of compliance best practices or innovations from companies and consultants may be one way to stay current with technical trends.

I am not as tech savvy as many of our A&WMA members. If you have ideas on ways the Association could leverage technology to better serve our members and a drive to execute those ideas, please drop an A&WMA Board member a note or call. If you have successful examples from your Section or Chapter, please share them.

Thanks for your service as environmental professionals and A&WMA members. **em**

Federal and State Perspectives

on National Ambient Air Quality Standards



This issue of *EM* focuses on the U.S. Clean Air Act (CAA) National Ambient Air Quality Standards (NAAQS) program. Authors from the federal government (U.S. Environmental Protection Agency, or EPA) and three state associations—Association of Air Pollution Control Agencies (AAPCA); National Association of Clean Air Agencies (NACAA); and Western States Air Resources Council (WESTAR)/Western Regional Air Partnership (WRAP)—discuss various NAAQS science and policy topics.

This issue presents federal and state perspectives on NAAQS issues. In the first article, Alexander Dominguez and Clint Woods of EPA discuss the agency's efforts to review and reform the NAAQS program, including a "back-to-basics" approach for NAAQS standard setting, designations, and implementation. An April 2018 Presidential memorandum is reviewed, which set forth nine primary directives intended to ensure EPA's efficient and cost-effective implementation of air quality standards and regional haze programs. Timeliness, cooperative federalism (working with state co-regulators), and recognition of international and background sources of pollution are critical issues the agency is directed to address.

The authors also discuss EPA's May 2018 memorandum, *Back-to-Basics Process for Reviewing National Ambient Air Quality Standards*, which directs the agency and its independent science advisors to follow five principles for a transparent, timely, and efficient process in reviewing and revising future public health- and welfare-based NAAQS. The authors present important milestones in implementing NAAQS, such as goals for reducing the number of non-attainment areas, reducing the backlog in state plan submissions, and actions related to exceptional events, international sources, interstate transport, state plans, etc.

In the next article, Jason Sloan, Stuart Spencer, and Nancy Vehr of AAPCA (a national organization of more than 20 state environmental agencies and additional local air agencies) focus on air quality improvements in the United States, and the role of states and local air agencies responsible for implementing the NAAQS through the CAA's framework of cooperative federalism. In April 2017, AAPCA published the inaugural edition of *The Greatest Story Seldom Told: Profiles and Success Stories in Air Pollution Control*, an annual report that highlights air quality trends, and underscores the critical role of state and local air agencies in making complex regulatory decisions impacting their communities. The 2018 edition of AAPCA's report, published in July, includes updated trends for criteria pollutant concentrations and emissions that show continued progress.

The authors discuss opportunities for continued air quality success as state and local agencies continue to work toward attaining national standards and characterizing air quality. AAPCA-conducted surveys of state environmental agency comments recognized several common concerns when it comes to establishing compliance with new NAAQS. For example, of 44 state environmental agencies that filed individual comments, 26 state agencies raised background ozone (O_3) as an achievability or implementation challenge, including both naturally occurring and internationally transported contributions to ground-level O_3 . The authors state that continued success is dependent on informed collaboration at the federal, state, and local levels.

Next, Miles Keogh of NACAA (a national association of 156 state and local air pollution control agencies in 41 states, the

District of Columbia, and four territories) observes that since 1970, the United States has made tremendous strides in reducing levels of the criteria pollutants for which NAAQS are established, driven by the scientific evidence that there are serious health consequences associated with exposure to these pollutants.

The article then focuses on EPA's April 30 proposed rule, "Strengthening Transparency in Regulatory Science." While EPA has stated that its intent with the proposed rule is to increase the quality and transparency of the agency's decision-making, the author says that it is possible that the provisions of the science proposal would weaken both, and many unknowns remain that should be fleshed out. Further, while there is a laudable long-term trend toward increased transparency in science, complete public access to underlying data is not always possible, especially in the case of epidemiological studies based on private health data that must remain confidential. The author concludes by observing that the NAAQS remain a key component of the hard-won clean air gains of recent decades, and diminishing the science used to understand the health implications that drive these standards would harm the health of Americans.

The final article by Mary Uhl of WESTAR and Tom Moore of WRAP (a forum of 15 western states and federal land management partners, and a partnership of states, tribes, federal land managers, local air agencies, and EPA, respectively) addresses NAAQS implementation issues in the Western United States, especially background O_3 and O_3 transport issues. As the O_3 NAAQS have changed in form and stringency over the past two decades, rural areas with high concentrations of O_3 and low numbers of local sources likely responsible for elevated O_3 concentrations have brought a new focus on the analysis of transport, uncontrollable sources of O_3 precursors and background O_3 . Western planning needs also include identification of O_3 exceptional events, and clarification of the application of planning mechanisms offered in the CAA (i.e., international transport in Sec. 179B Demonstrations and Sec. 182 Rural Transport Areas).

The authors observe that EPA's funding support in the East has advanced understanding by eastern states of the origin of O_3 precursors, O_3 formation and the fate of O_3 , which helped with the development and implementation of meaningful and effective regulatory programs to improve air quality. Western states need a better understanding of the origin of O_3 precursors, photochemical activity, and fate of transported O_3 to develop and implement effective regulatory programs.

Some NAAQS Observations

Since soon after the CAA's NAAQS provisions were established in 1970, improving air quality and declining emissions have been a constant. For example, according to EPA, from 1990 to 2017 electric power sulfur dioxide (SO_2) and nitrogen oxides

emissions have been reduced consistently over time, by 92 and 84 percent, respectively, supporting the nation's progress in meeting the SO₂, nitrogen dioxide (NO₂), O₃, and fine particle (PM_{2.5}) NAAQS.

Another constant is that the NAAQS process is a never-ending cycle of reviewing and often revising standards; updating implementation rules and guidance; improving air quality models and related tools; updating state plans and industry requirements; and litigation. This process delivers air quality improvements, but further process refinements to reduce time and increase efficiency could benefit federal and state regulatory agencies, regulated industry, and the public.

A final constant is that the NAAQS field is broad. Therefore, numerous important activities could not be addressed in this issue of *EM*; these include:

- Implementation of the 2015 O₃ NAAQS (including addressing the controversial court decision regarding implementation of the 2008 NAAQS) and litigation of the level of the 2015 O₃ NAAQS;
- Retention of the 2010 1-hr NO₂ NAAQS in 2018 and proposed retention of the 2010 1-hr SO₂ NAAQS to be finalized by early 2019;

- Updated reviews of the O₃ and PM_{2.5} NAAQS to be completed in 2020;
- Final designations in 2020 for the 2010 1-hr SO₂ NAAQS;
- Evaluation of secondary NAAQS for SO₂, NO₂, and PM_{2.5};
- Improvements in air quality models, modeling guidelines, and tools to streamline and make air quality permitting more accurate and efficient;
- Addressing interstate transport, including litigation of the "CSAPR Update" rule, EPA responses to state CAA Sec. 126 and 176 petitions and related litigation, addressing state plans for full compliance with Good Neighbor provisions for the 2008 O₃ NAAQS, and the new approach to state plans to address Good Neighbor state plans for the 2015 O₃ NAAQS, through state-by-state plan submissions instead of EPA regional rulemaking;
- Advance notice of proposed rulemaking on increasing consistency and transparency in considering costs and benefits of the rulemaking process; and
- Congressional consideration of legislation addressing the NAAQS review process, permitting and international emissions.

Look for the December issue of *EM* to continue the discussion of NAAQS issues. **em**

John Kinsman is Senior Director, Environment with the Edison Electric Institute, and Chair of *EM*'s Editorial Advisory Committee.
E-mail: jkinsman@eei.org

2019 Specialty Conference Call for Abstracts

Guideline on Air Quality Models

March 18-20, 2019 • Durham, NC



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Abstracts are due **October 15, 2018**. Find complete details online at www.awma.org/measurements.

Share your work, advance the industry, learn the latest, and make new connections.



EPA's 'Back-to-Basics'

Process for Review of the National Ambient Air Quality Standards

A primer of EPA's process for reviewing the National Ambient Air Quality Standards.

Consistent with the Administration's commitment to regulatory reform, cooperative federalism, and domestic manufacturing, the U.S. Environmental Protection Agency (EPA) is working to review and reform the National Ambient Air Quality Standards (NAAQS) program of the U.S. Clean Air Act (CAA). These efforts include a focus on getting "back-to-basics" for NAAQS setting, designations, and implementation. The United States has experienced tremendous progress in reducing the emission of criteria pollutants and their precursors. Still, challenges remain, both in implementing a number of increasingly stringent NAAQS and in undertaking several upcoming NAAQS reviews. This presents the agency with a unique opportunity, given the direction it has received from the President, to make meaningful changes to the program that, while consistent with EPA's responsibility under the CAA to support public health and the environment, will also ensure a timely, efficient, and transparent process that both respects state agency resources and facilitates robust economic activity.

Background

As readers of *EM* likely know, EPA sets primary and secondary NAAQS for criteria air pollutants that include ozone, nitrogen dioxide, sulfur dioxide, coarse and fine particulate matter, carbon monoxide, and lead. Primary NAAQS are set, based on the judgment of the EPA Administrator and allowing for an adequate margin of safety, at a level to protect the public health. Secondary NAAQS are set at a level to protect the public welfare, which may include effects on soils, water, crops, vegetation, and visibility from the presence of the pollutant in the ambient air. These standards are to reflect the best current scientific information. Under the CAA, EPA is required to review each NAAQS every five years. However, EPA has often failed to do so, sometimes taking twice that amount of time before finalizing a review and any accompanying revision. These delays result in uncertainty as

well as lost opportunities for implementing the NAAQS to protect health and the environment in a manner compatible with a vibrant U.S. economy.

In setting the NAAQS, the EPA Administrator receives advice from a critical federal advisory committee established by the CAA, the Clean Air Scientific Advisory Committee (CASAC). EPA staff in the Offices of Research and Development and Air and Radiation develop a comprehensive scientific and technical assessment, which CASAC then reviews in the process of providing advice to the Administrator. Having received this expert advice, EPA publishes a notice of proposed rulemaking and solicits public comment on the Administrator's proposal. After taking into consideration all of the significant public comments received, the Administrator reaches a final decision and issues a final rule either to maintain the current NAAQS or to set a revised standard. Where EPA sets a new NAAQS or revises an existing standard, then the Agency is required within two years, after taking into consideration the recommendations of governors, to designate areas as either attaining or not attaining the standard.

Each NAAQS revision requires significant new planning and permitting for states and regulated entities. In particular, a nonattainment designation can create challenges for the construction or expansion of industrial facilities. Under the NAAQS program, EPA and states cooperate as co-regulators to carry out the CAA's mission of protecting human health and the environment. Implementation of the standards must be accomplished in a manner that is both consistent with the principles of cooperative federalism and which also complies with statutory requirements.

Back-to-Basics

In April 2018, the President issued a memorandum, Promoting Domestic Manufacturing and Job Creation –



The themes of timeliness, cooperative federalism, and recognition of international and background sources of pollution are critical issues EPA is directed to address to ensure states can successfully implement the standards.

Table 1. April 2018 Presidential Memorandum Topics

Timely Processing of State Implementation Plans
Cooperative Engagement with States to Review Regional Haze Plans
Timely Processing of Preconstruction Permit Applications
Demonstrations or Petitions Submitted Pursuant to Sections 319 and 179B of the CAA Relating to Emissions
Beyond the Control of State and Local Air Agencies
Monitoring and Modeling Data
Offsets
Future NAAQS Reviews
Timely Issuance of Implementing Regulations and Guidance
Review of Rules, Guidance, Memoranda, and Procedures Relating to State Implementation Plans and Permitting

Policies and Procedures Relating to Implementation of Air Quality Standards (<https://www.gpo.gov/fdsys/pkg/DCPD-201800239/pdf/DCPD-201800239.pdf>). This memorandum set forth nine primary directives intended to ensure EPA's efficient and cost-effective implementation of air quality standards under the NAAQS and regional haze programs. These directives are outlined in Table 1. The themes of timeliness, cooperative federalism, and recognition of international and background sources of pollution are critical issues the Agency is directed to address to ensure states can successfully implement the standards.

To advance the initiatives set out in the presidential memorandum, EPA has issued its own memorandum, Back-to-Basics Process for Reviewing National Ambient Air Quality Standards, (<https://www.epa.gov/sites/production/files/2018-05/documents/image2018-05-09-173219.pdf>). In May 2018, EPA's memorandum directs the agency and its independent science advisors to follow five principles for a transparent, timely, and efficient process in reviewing and revising future public health- and welfare-based NAAQS.

Principle 1: Meet Statutory Deadlines

As noted above, EPA routinely fails to meet the CAA requirements to review each NAAQS every five years. These delays result in uncertainty as well as lost opportunities for implementing the NAAQS to protect health and the environment in a manner compatible with a growing American economy. EPA and CASAC are encouraged to look for efficiencies and opportunities to streamline the NAAQS review process to ensure that it is completed within the statutorily-mandated five-year period. EPA's Back-to-Basics memorandum also directs the agency and CASAC to ensure that any potential revisions

to the NAAQS for ozone or particulate matter, last set in 2015 and 2012 respectively, be finalized by late 2020.

Principle 2: Address CAA Provisions for NAAQS Reviews

While the CAA clearly identifies the roles and responsibilities of CASAC in providing important advice in the review of air quality criteria, EPA has frequently failed to request that the committee provide advice with respect to all of the CASAC duties to which the statute specifically speaks. For example, Section 109(d)(2)(C) requires CASAC to advise the Administrator on the "relative contribution to air pollution concentrations of natural as well as anthropogenic activity," as well as "any adverse public health, welfare, social, economic, or energy effects which may result from various strategies for attainment and maintenance of such" NAAQS. To address these past failures, EPA intends to provide CASAC with a standardized set of key charge questions so that the entirety of the NAAQS review process is properly framed. While certain of these charge questions may elicit information which is outside the scope of the Administrator's standard-setting authority itself, such information, by providing important contextual insights, should nevertheless prove valuable to the public, co-regulators, EPA, and other policymakers.

Principle 3: Streamline and Standardize the Process for Development and Review of Key Policy-Relevant Information

CASAC has frequently identified reducing the length and complexity of the scientific assessments as a key process improvement for streamlining NAAQS reviews and ensuring the Agency adheres to the statutory deadlines. To help bridge the gap between the scientific assessments and the

judgments required of the Administrator, the memorandum recommends incorporating policy-relevant science earlier into the review process. EPA is also directed to ensure that the initial drafts of all technical and policy assessments are high quality and ready for robust review from CASAC and the public.

Principle 4: Differentiate Science and Policy

Considerations in NAAQS Review Process

The Back-to-Basics memo directs EPA to establish a clearer distinction between its scientific findings (contained in the Integrated Science Assessment) and the wider range of policy concerns that the Administrator may consider in judgments about the level of the NAAQS. CASAC and EPA should seek to find consensus, but should allow for individual advisors to share their individual perspectives.'

Principle 5: Issue Timely Implementation Regulations and Guidance

When a NAAQS is revised, EPA should strive for expedition in the release of implementation tools for co-regulators, including regulations, guidance, and technical information to assist state agencies in developing approvable plans. In the past, EPA implementation regulations and guidance have often trailed NAAQS revisions by years, which may hinder co-regulators from completing the required steps to administer the NAAQS at the state level. Failure to issue timely implementation regulations and guidance may contribute to nonattainment areas not attaining the NAAQS as quickly as practicable, as well as to the misallocation of state planning resources.

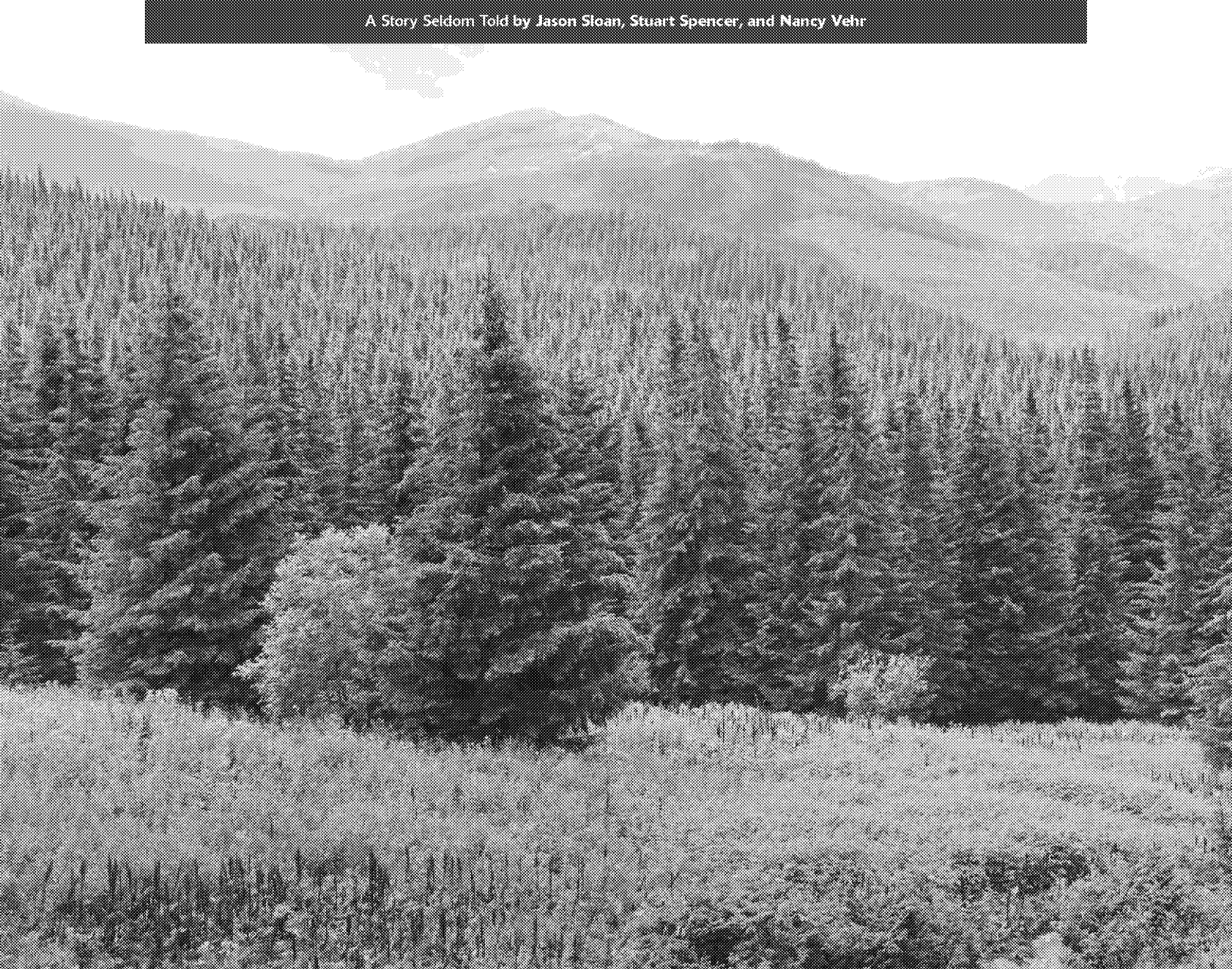
Flexibilities

Based on requirements in the CAA and the President's April 2018 memorandum, EPA has also committed to a number of important milestones in implementing NAAQS collaboratively

with the states. Many of these critical measures have been incorporated in the agency's FY2018–FY2022 strategic plan, as well as other EPA priority documents. These efforts include:

- As an agency priority goal, reducing the number of NAAQS nonattainment areas, including a 20-per cent reduction in these areas in the next few years.
- Addressing the backlog in state implementation plan revision submissions, which the CAA directs EPA to act upon within 18 months of submission.
- Pursuant to Section 319B of the CAA, releasing and communicating a number of tools related to the exclusion of air quality data exceeding the NAAQS when such data result from "exceptional events" outside the control of state, local, or tribal air agencies. Since 2016, EPA has acted upon more than 20 "exceptional event" demonstrations, nearly all of which concurred with state recommendations and thus provided the state with regulatory relief.
- Maximizing states' flexibility to use other tools enabling regulatory relief for appropriate reasons, including CAA provisions to address emissions caused by international sources.
- Working closely with states to facilitate the submission of "Good Neighbor" state implementation plans for the 2015 ozone NAAQS. Under Section 110 of the CAA, states must address in their plans emissions that contribute significantly to nonattainment or interfere with maintenance of the NAAQS in other states.
- Revisiting aspects of the previous Administration's regional haze rule, including identifying flexibilities and technical tools for state plans due in 2021.
- Simplifying the New Source Review process and, by October 2019, reducing by 50 percent the number of permitting-related decisions that exceed six months. **em**

Alexander Dominguez is a Policy Analyst, and **Clint Woods** is Deputy Assistant Administrator, both with the U.S. Environmental Protection Agency's Office of Air and Radiation



A Story Seldom Told

National Ambient Air Quality Standards and Success in Air Pollution Control

The Association of Air Pollution Control Agencies reports on trends in U.S. air quality control.

As a cornerstone of the U.S. Clean Air Act, the National Ambient Air Quality Standards (NAAQS) program has been a vital component in the significant progress that has been achieved in reducing air pollution in the United States. State and local air agencies, responsible for implementing the NAAQS through the Clean Air Act's framework of cooperative federalism, have helped lead this success by developing sensible, localized strategies that address air pollution and respond to unique social and economic factors. In April 2017, the Association of Air Pollution Control Agencies (AAPCA) published the inaugural edition of *The Greatest Story Seldom Told: Profiles and Success Stories in Air Pollution Control*,¹ an annual report that highlights air quality trends, both in the AAPCA footprint and nationally, and underscores the critical role of state and local air agencies in making complex regulatory decisions impacting their communities.

Seeking to catalogue long-term air quality trends through publicly available data from the U.S. Environmental Protection Agency (EPA) and other agencies, AAPCA's annual report includes key metrics on the emissions and ambient concentrations of the six criteria air pollutants for which EPA has set NAAQS: carbon monoxide (CO), sulfur dioxide (SO₂), ground-level ozone (O₃), fine particulate matter (PM_{2.5}), lead (Pb), and nitrogen dioxide (NO₂).² Annual reports and data analyses that are made available to the public by EPA provide important information on long-term air quality and criteria pollutant trends. These include:

- An analysis (<https://www.epa.gov/air-trends>) of the ambient air pollution data provided to the national air quality system from thousands of monitors across the United States, collected by EPA, state, local, and tribal air pollution control agencies;

- Air pollutant emissions trends data (<https://www.epa.gov/air-emissions-inventories/air-pollutant-emissions-trends-data>), which provide nationwide estimates of emissions of criteria air pollutants based on the National Emissions Inventory (NEI);³ and
- Air quality design values (<https://www.epa.gov/air-trends/air-quality-design-values>), which EPA defines as "a statistic that describes the air quality status of a given location relative to the level of the NAAQS ... typically used to designate and classify nonattainment areas, as well as to assess progress towards meeting the NAAQS."⁴

Relying on these reports and analyses, AAPCA's *The Greatest Story Seldom Told* is able to spotlight some of the nation's important air quality successes. The 2018 edition of AAPCA's report, published July 2018, includes updated trends for criteria pollutant concentrations and emissions that show continued progress.

Air Quality Trends

Over the course of the past several decades, ambient concentrations of the six criteria air pollutants have declined substantially. According to EPA's analysis of 2017 monitoring data,⁵ there has been at least a 32-percent reduction in the ambient levels of CO, Pb, NO₂, O₃, and SO₂ since 1980, and available monitoring data for fine and coarse particulate matter (PM_{2.5} and PM₁₀) show similar trends. A decade-over-decade comparison demonstrates consistent and consequential changes in ambient air quality since 1980, 1990, and 2000 (see Table 1).

Emissions Trends

Reductions in the emissions of criteria pollutants or criteria

Table 1. A decade-over-decade comparison of ambient air quality since 1980.

Pollutant	1980 vs. 2017 (% change)	1990 vs. 2017 (% change)	2000 vs. 2017 (% change)
Carbon monoxide (CO)	-84	-77	-61
Lead (Pb)	-99	-98	-94
Nitrogen dioxide (NO ₂ ; annual)	-63	-56	-49
Nitrogen dioxide (NO ₂ ; 1-hr)	-60	-50	-35
Ozone (O ₃ ; 8-hr)	-32	-22	-17
PM ₁₀ (24-hr)	n/a	-34	-30
PM _{2.5} (annual)	n/a	n/a	-41
PM _{2.5} (24-hr)	n/a	n/a	-40
Sulfur dioxide (SO ₂ ; 1-hr)	-90	-885	-79

pollutant precursors have contributed to the considerable progress in air quality. Utilizing the NEI, EPA publishes air pollutant emissions trends data that provide annual estimates of criteria pollutant emissions and precursors, distinguished by major sources.

The trends data on emissions published by EPA for 2017 show that, nationally, criteria pollutant emissions and precursors continue to decline.⁶ When comparing 1990 to 2017, there has been at least a 29-percent reduction in the emissions of all criteria pollutants or precursors (see Table 2). EPA's 2018 air quality report, entitled *Our Nation's Air: Status and Trends Through 2017*, (<https://gispub.epa.gov/air/trendsreport/2018/>) and published as an interactive website, further highlights a 73-percent decrease overall in the combined emissions of criteria pollutants or precursors since 1970.

Social and Economic Growth

Planning for, implementing, and enforcing the NAAQS require that state and local air pollution control agencies not only find ways to reduce emissions and improve air quality, but accommodate the social and economic growth characteristics of their jurisdictions. A more complete profile of air quality nationally can be seen when accounting for the tremendous gains in population, gross domestic product, and other factors—all of which have the potential to impact pollution levels.

Importantly, the trend lines for these social and economic growth indicators are in sharp contrast to the trends of the criteria air pollutants. Using data from the U.S. Census Bureau, U.S. Bureau of Economic Analysis, and U.S. Energy Information Administration, AAPCA's 2017 report charted the significant increases since 1960 in U.S. Gross Domestic

Table 2. Emissions Trends, 1990–2017.

Pollutant	1990 Emissions (in thousands of tons)	2017 Emissions (in thousands of tons)	% Reduction
Carbon monoxide (CO)	154,188	60,109	-61
Oxides of nitrogen (NO _x)	25,527	10,776	-58
PM _{2.5}	7,560	5,345	-29
Sulfur dioxide (SO ₂)	23,077	2,815	-88
Volatile organic compounds (VOCs)	24,108	16,232	-33

Product (436 percent from 1960 to 2016), population (72 percent from 1960 to 2010), and energy production (105 percent from 1960 to 2014). EPA's 2018 air quality report details similar trends since 1970: U.S. Gross Domestic Product has increased by 262 percent, population has grown 59 percent, vehicle miles traveled are up 189 percent, and energy consumption has risen 44 percent.

Opportunities for Continued Air Quality Success

While significant progress has been achieved in controlling air pollution at both the state and national level, challenges still exist as state and local agencies work toward attaining national standards and seek to appropriately characterize air quality in their areas.

For example, AAPCA-conducted surveys of state environmental agency comments on EPA's proposed 2015 O₃ standard—the most recent standard to be revised downward—recognized several common concerns when it comes to establishing compliance with new NAAQS.⁷

Of the 44 state environmental agencies that filed individual comments, AAPCA found that:

- 26 state agencies raised background O₃ as an achievability or implementation challenge, including both naturally occurring and internationally transported contributions to ground-level O₃;
- Roughly three-quarters of state agencies raised concerns about the need for timely implementation rules and guidance from EPA under a revised standard; and
- 22 states commented on limitations to activating Clean Air Act tools for excluding data effected by “exceptional events.”

Recognizing these vital on-the-ground issues, which are outside of state and local air agency control, highlights the need to establish methods that provide regulatory and other assistance for attaining air quality standards.

On April 12, 2018, a Presidential Memorandum was issued on "Promoting Domestic Manufacturing and Job Creation—Policies and Procedures Relating to Implementation of Air Quality Standards."⁸ This memorandum included directives for EPA that may accommodate some of these environmental agency concerns, as well as better characterize air quality in terms of background concentrations and exceptional events. Other recent policies, such as EPA's October 2017 directive on "Strengthening and Improving Membership on EPA Federal Advisory Committees,"⁹ have sought to broaden input earlier in scientific and regulatory processes by increasing state, tribal, and local membership, as well as enhancing geographic diversity. Engaging state and local air agencies is critical as these policies are carried out, especially as EPA begins to implement recently announced policy changes to the NAAQS standard-setting process and works to complete reviews of the current O₃ and PM_{2.5} standards by 2020.¹⁰

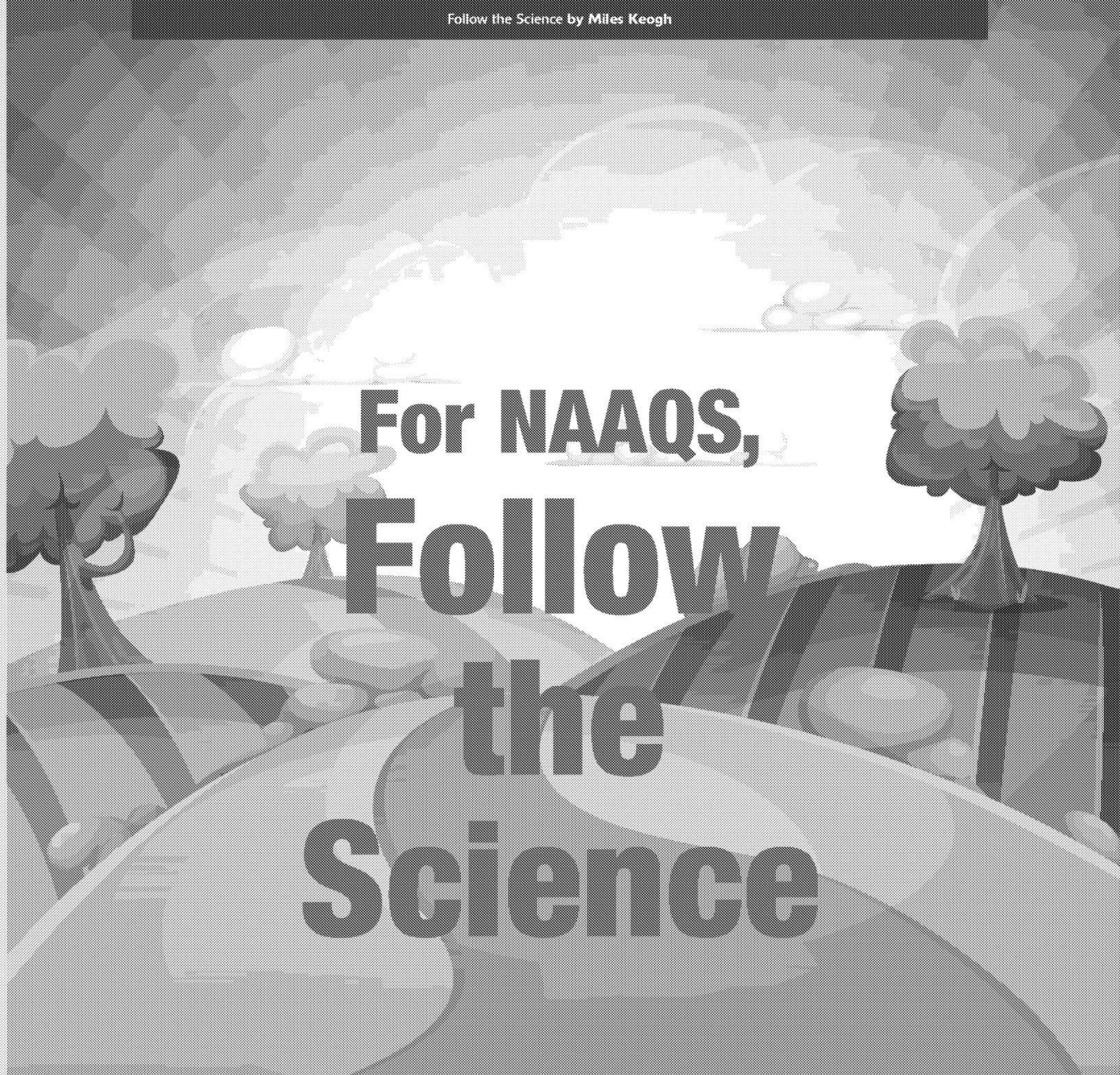
Continued success reflective of the long-term trend in air quality is dependent on informed collaboration at the federal, state, and local levels. As the Environmental Council of States indicates in its Cooperative Federalism 2.0 paper, "States are a critical part of achieving our nation's environmental and public health goals and mandated responsibilities in an effective and efficient way."¹¹ Further, as AAPCA indicated in comments on EPA's *Draft FY 2018–2022 EPA Strategic Plan*, "State and local agencies are often the first point of contact for community air quality concerns."¹² Involving the agencies directly responsible for implementing air quality standards and responding to public concerns early in the regulatory and decision-making process can provide opportunities to better define, understand, and, ultimately, find solutions to the complex issues facing the nation's air quality—and continue the positive trends the nation has witnessed in air quality over the past 40 years. **em**

Jason Sloan is the Executive Director for the Association of Air Pollution Control Agencies (AAPCA). **Stuart Spencer** is an Associate Director at the Arkansas Department of Environmental Quality and 2018 AAPCA President. **Nancy Vehr** is the Air Quality Division Administrator for the Wyoming Department of Environmental Quality and 2019 AAPCA President-Elect. E-mail: jsloan@csg.org.

AAPCA is a national, nonprofit, consensus-driven organization focused on assisting state and local air quality agencies and personnel with implementation and technical issues associated with the U.S. Clean Air Act. AAPCA represents more than 40 state and local air agencies, and senior officials from 20 state environmental agencies currently sit on the AAPCA Board of Directors. AAPCA is housed in Lexington, KY, as an affiliate of The Council of State Governments.

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For NAAQS, Follow the Science

The National Association of Clean Air Agencies comments on EPA's April 30, 2018 regulatory proposal, "Strengthening Transparency in the Regulatory Science."

In an April 2018 regulatory proposal, the U.S. Environmental Protection Agency (EPA) wrote that “the best available science must serve as the foundation of EPA’s regulatory actions.”¹ Indeed, reliance on best-available science is a fundamental requirement of the U.S. Clean Air Act and other environmental statutes that EPA administers in partnership with state and local governments. Science-based decision-making is at the very core of our shared mission as air regulators to protect public health and the environment from the harmful effects of air pollution.

The National Ambient Air Quality Standards (NAAQS) are a central example of sound science-driven policy. The Clean Air Act requires EPA to establish NAAQS at levels “requisite to protect the public health” with “an adequate margin of safety.” In meeting this obligation, EPA is required to develop air quality criteria that “*accurately reflect the latest scientific knowledge*” useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of such pollutant in the ambient air, in varying quantities.”²

EPA’s own research from 2011 showed that the science-driven implementation of pollution control programs for ozone and particulates under the NAAQS will prevent over 230,000 premature deaths in adults and infants in 2020.³ Since 1970, the United States has made tremendous strides in reducing levels of the “criteria pollutants” for which NAAQS are established; those improvements have been driven by the scientific evidence that there are serious health consequences associated with exposure to these pollutants.

On April 30, 2018, EPA published a proposed rule, Strengthening Transparency in Regulatory Science,⁴ that could change the way that science is used by the agency to set and implement air pollution prevention programs like the NAAQS. State and local clean air agencies depend on EPA to use the best scientific information to set health-based standards, which are then implemented in the first instance by state and local agencies for the health and wellbeing of Americans. The NAAQS are directly implicated in this proposal.⁵

EPA has stated that its intent with the proposed rule is to increase the quality and transparency of the agency’s decision-making. However, it is possible that the provisions of the science proposal would weaken both, and many unknowns remain that should have been fleshed out before the rule was proposed. The proposal includes three main components. First, it would require EPA to ensure that the data and models underlying the scientific studies on which its regulatory actions are based are “publicly available in a manner sufficient for independent validation.”⁶ Second, it would impose upon the agency requirements for the analysis of dose—response models used in scientific studies upon which it relies.⁷ Third, it would require EPA itself to conduct “independent peer review” of scientific studies used to justify its regulatory decisions.⁸

There is a laudable long-term trend toward increased transparency in science—in particular, toward providing greater public access to underlying data and analytical techniques after scientific studies are published.⁹ But complete public access to underlying data is not always possible, especially in the case of epidemiological studies based on private health data that must remain confidential. To the extent that techniques are available to anonymize such data, efforts to support and further develop those techniques should be encouraged. In the meantime, however, insistence that every datum must be universally available must not override EPA’s legal and moral obligation to consider the full range of peer-reviewed, sound scientific research that is available and relevant to its regulatory decisions.

Full public access to underlying data and models is not necessary to assure the validity of scientific studies.¹⁰ Rather, the most effective assurance of scientific validity and accuracy is the process of peer review itself, a process to which the vast majority of scientific information on which EPA relies has already been subject. There are many steps involved in this process. Scientists collect data, analyze them, create a model to test theories, compare the model to the data, and then adjust the model. When the results of a scientific study are submitted for publication, the uncertainties, assumptions,



The most effective assurance of scientific validity and accuracy is the process of peer review itself.

parameters, and theories utilized by the scientists are laid out in the publication. Peer review analyzes all these components to establish validity. This process of peer review has been rigorously developed over centuries. If EPA believes the peer review process is flawed, it is incumbent on the agency to explain exactly why it believes the process is inadequate and how its proposal specifically addresses those inadequacies.

The proposal fails to acknowledge that EPA already has the institutional mechanisms to review and vet scientific information through panels of scientific experts. The primary function of EPA's Science Advisory Board (SAB) is to review the quality and relevance of scientific and technical information being used by EPA or proposed as the basis for EPA regulations. EPA's Clean Air Scientific Advisory Committee (CASAC) provides independent advice to the EPA Administrator on the technical bases for the NAAQS. Similarly, the Federal Insecticide, Fungicide, and Rodenticide Act Scientific Advisory Panel provides independent scientific advice on the health and safety issues related to pesticides. By ignoring the existence of these bodies in the proposed rule, EPA suggests that it does not trust its own scientific advisors. This tends to undermine public confidence in EPA decision-making, rather than to bolster it.

Of critical concern to air regulators, the proposal could serve to preclude EPA's consideration of relevant scientific literature in the establishment of air regulations designed to protect human health and the environment. Taking one key example, a broad range of concerns has been raised that the landmark Harvard School of Public Health "Six Cities" epidemiological study, which established the strong association between fine particulate matter pollution and mortality, could potentially be excluded for failing to meet the stringent transparency requirements of the proposed rule because it relies on human health data subject to patient confidentiality agreements that were entered into decades ago.

The proposal would also allow the EPA Administrator to grant exemptions to the rule's requirements on a case-by-case basis if he or she determines it is "not feasible" to make underlying data publicly available or to conduct independent peer review of scientific studies. However, this provision does not alleviate concerns about the potential exclusion of relevant data, because the proposal does not include any criteria for how the Administrator would make such a determination. The provision would thus have the unwelcome effect of interjecting the appearance of politics into what should be a fair and unbiased assessment. It is an opportunity for arbitrary decision-making and is wholly insufficient to protect against the exclusion of relevant, valid scientific studies.

The proposed rule would require EPA to conduct "*independent peer review*" [*emphasis added*] of scientific studies

underlying its significant regulatory decisions, such as the establishment of health-based air quality standards. Unfortunately, EPA has included no details about how this element of the proposal would be implemented. With respect to the NAAQS in particular, what relationship would this review process have to the role played by the CASAC? More fundamentally, why should scientific literature that has already undergone peer review and been vetted by EPA's science advisory panels be subjected to an additional layer of "independent" review? These are key questions that should have been considered, and the answers made public, prior to the science rule's proposal.

The proposal offers that the direction suggested by EPA is consistent with the Administrative Procedure Act, the guidance of the Office of Management and Budget, and other federal transparency and data laws. However, it outlines requirements that are actually out of sync with these laws, which could possibly result in the exclusion of the best data to inform the most appropriate policy. Even the U.S. Food and Drug Administration does not require this level of disclosure and data exclusion—no other federal agency does. Numerous public health experts have raised concerns that confidential personal information would be at risk—or perceived by study participants to be at risk—if the proposal were to be implemented. EPA offers that concerns about information disclosure can be addressed using tools available through other federal programs, but such tools have not been enumerated, which raises issues about the easy identification of study participants and the negative impact on the quality of research and its potential to be included in the setting of public policy.

EPA implies that the rule would be implemented "over time" and prospectively, but also requests comment on whether there would be value to applying requirements of the science proposal retrospectively. The agency asks whether for regulatory programs like the NAAQS, in which future significant regulatory actions may be based on the administrative records from previous reviews, the final rule should apply to that previous administrative record. Existing programs should not be opened to retrospective review under this rule. To do so would create significant regulatory uncertainty by calling into question existing regulatory standards, as well as the permits, state implementation plans, and other decisions that are based on those standards. Applying these rules to data and models in underlying studies that have already been completed or are currently underway would be detrimental to the certainty on which businesses and citizens alike depend. Moreover, in the case of the NAAQS, iterative five-year reviews provide an opportunity for ongoing and comprehensive review of the literature. This already allows EPA to evaluate the veracity and any uncertainties in past studies in relation to current ones.

NACAA has a long history of supporting EPA actions that rely on the most recent scientific evidence to establish any primary and secondary NAAQS to protect public health and welfare, respectively, and the agency's reliance on advice from its own science advisory committees like CASAC.¹¹ Regulations with such significant ramifications for EPA's science-based decision-making and for weighing the benefits of wide-ranging programs must be thoroughly vetted *prior to proposal* by the scientific community, industry, consumer advocates, and other key stakeholders, including the state

and local air agencies that rely on the quality of EPA's regulations to protect public health and the environment from the harmful effects of air pollution. The NAAQS remain a key component of the hard-won clean air gains of recent decades, and diminishing the science used to understand the health implications that drive these standards would harm the health of Americans. The proposal should be withdrawn and any future similar proposal should be fully informed through a transparent, pre-proposal process, and better considered by decision-makers at EPA. **em**

Miles Keogh is the Executive Director of the National Association of Clean Air Agencies (NACAA, www.4cleanair.org), a national, non-partisan, non-profit association of 156 state and local air pollution control agencies in 41 states, the District of Columbia, and four territories.

Disclaimer: This article is based on NACAA's July 2018 comments to the U.S. Environmental Protection Agency (EPA) on the agency's April 30, 2018, regulatory proposal, "Strengthening Transparency in the Regulatory Science," but includes additional perspectives that are the author's alone.

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5. *Note:* EPA's proposal specifically notes: "For regulatory programs, like the National Ambient Air Quality Standards program, in which future significant regulatory actions may be based on the administrative record from previous reviews... EPA seeks comment on the manner in which this proposed rule should apply to that previous record."
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10. *Note:* EPA's own science advisors acknowledge this point. In a recent memorandum, a Science Advisory Board (SAB) Work Group Chair elaborated on this and many other concerns with the proposed rule. The Work Group concluded that the action warrants further review by the SAB. See Memorandum to Members of the Chartered SAB and SAB Liaisons from Alison Cullen, Chair, SAB Work Group on EPA Planned Actions for SAB Consideration, "Preparations for Chartered Science Advisory Board (SAB) Discussions of Proposed Rule: Strengthening Transparency in Regulatory Science RIN" (May 12, 2018), at 4 (available at [https://yosemite.epa.gov/sab/sabproduct.nsf/E21FFAE956B548258525828C00808BB7/\\$File/WkGrp_memo_2080-A14_final_05132018.pdf](https://yosemite.epa.gov/sab/sabproduct.nsf/E21FFAE956B548258525828C00808BB7/$File/WkGrp_memo_2080-A14_final_05132018.pdf)).
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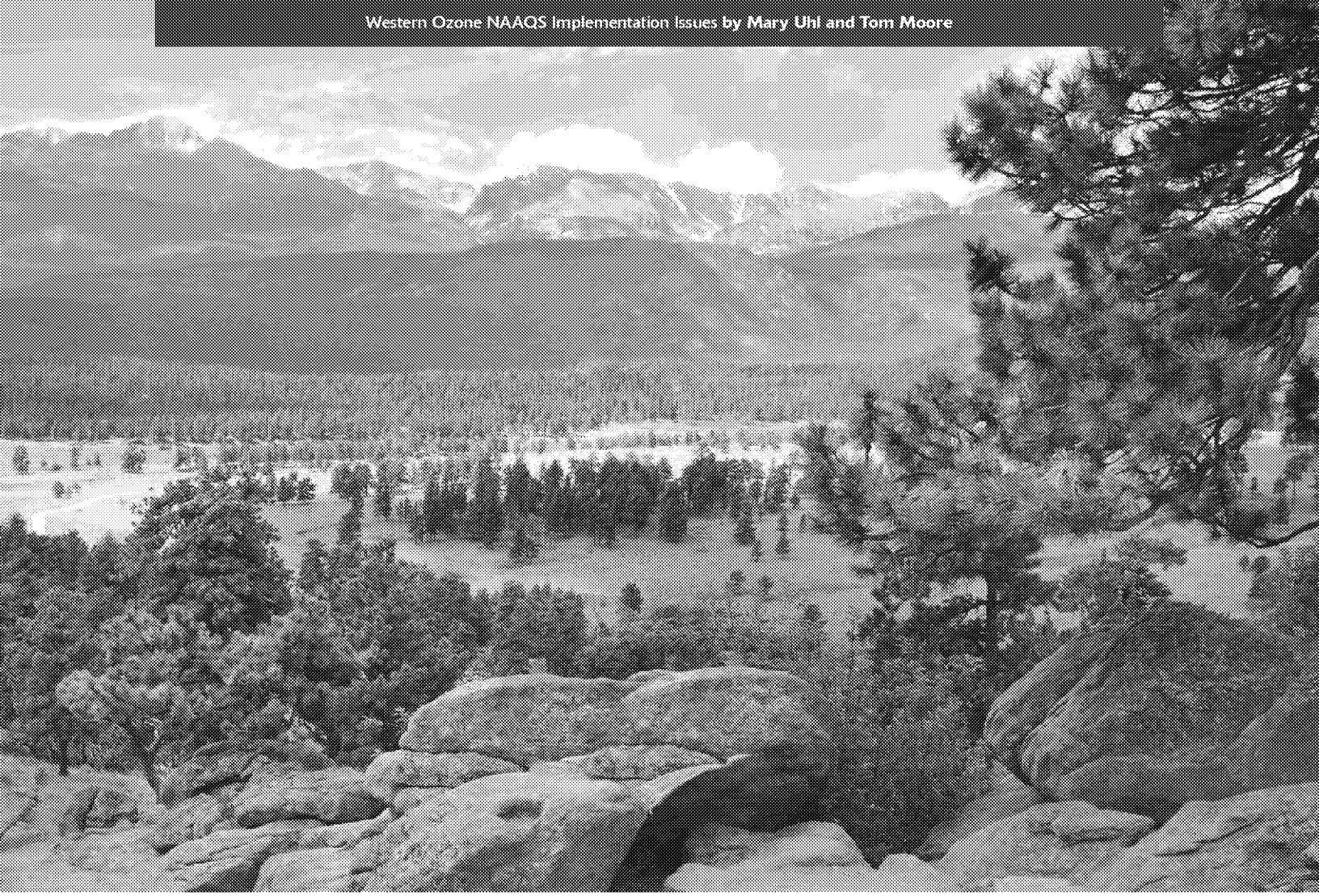
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Western Ozone NAAQS Implementation Issues:

Addressing Background and Transport

As the National Ambient Air Quality Standards (NAAQS) for ozone (O_3) have changed in form and stringency over the past two decades in order to protect health and welfare, western states have had to move quickly to understand and respond to non-urban areas with O_3 concentrations nearing the federal NAAQS, as well as the background and transported O_3 affecting existing nonattainment areas from beyond those areas' boundaries.

Rural areas with high concentrations of O_3 and low numbers of local sources likely responsible for elevated O_3 concentrations have brought a new focus on the analysis of transport, uncontrollable sources of O_3 precursors, and background O_3 . More stringent O_3 NAAQS have also necessarily led to further analysis of background and transported O_3 affecting existing nonattainment areas. Other western planning needs such as identification of both controllable and uncontrollable sources contributing to O_3 transport, identification of O_3 exceptional events (EEs), and clarification of the application of planning mechanisms offered in the U.S. Clean Air Act (international transport §179B demonstrations and §182 Rural Transport Areas) all depend on accurately quantifying background O_3 . Western states need detailed O_3 analyses focusing on the western United States to gain a better understanding of the origin of O_3 precursors, photochemical activity, and fate of transported O_3 with a level of confidence that will lead to the development and implementation of effective regulatory programs for the West.

The U.S. Environmental Protection Agency (EPA) defines U.S. background (USB) O_3 to be any O_3 formed from sources or processes other than U.S. manmade emissions of nitrogen oxides (NO_x), volatile organic compounds (VOCs), methane (CH_4), and carbon monoxide (CO).¹ In the West, USB sources may include international transport of O_3 precursors, stratospheric intrusion, lightning, biogenic emissions, and wildfire. Along the West Coast, seasonal USB O_3 mean concentrations are in the range of 30–50 parts per billion (ppb).² Levels of USB O_3 in remote intermountain west high-altitude locations, including many intermountain national parks, significantly contribute to the overall O_3 concentrations measured.

Table 1 shows O_3 design values (ODV) at paired monitoring sites for the maximum daily 8-hr average (MDA8) value, the compliance statistic for the O_3 NAAQS. Note that for these paired nearby locations within each state, higher elevation sites have higher design values attributable to higher USB O_3 . In each state, the lower elevation site is in a small urban or rural location, while the elevated site is more remote. The large USB O_3 signal relative to the compliance level of the O_3 NAAQS (0.070 parts per million, ppm) for rural and remote sites, which are typical of large areas of the West, complicates the task of western air regulatory agencies to meet federal air quality requirements, including attainment and maintenance of the O_3 NAAQS and issues with determination of O_3 transport into the United States and/or between states. The accurate identification and quantification of USB O_3 , as well as a correct representation of atmospheric chemistry and transport, are necessary to determine what control measures for local sources will be effective in reducing ambient O_3 . As discussed below, quantifying USB O_3 is challenging.

Characterizing Ozone for Air Quality Planning Decisions in the West

Primary tools used by states and EPA to manage air quality are the State Implementation Plans (SIPs)³ or Federal Implementation Plans (FIPs). These documents are federally-enforceable plans developed by and/or for states that identify how the state will attain and/or maintain the air quality standards. A key component of each SIP is the maintenance of a network of regulatory O_3 monitors operated by the state that use standardized sampling methodologies, quality assurance, and siting requirements established by EPA, along with complementary monitors operated by other federal,

Table 1. Comparison of O_3 ODVs for adjacent sites with differences in elevations >1,000 m (2013–2015).^a

State	Site	Coordinates	Meters ASL	O_3 Design Value (ppb) ^b
Oregon	Bend	44.02°N, 121.26°W	1,135	59
Oregon	Mt. Bachelor	43.98°N, 121.69°W	2,763	77
Wyoming	Carbon	41.78°N, 107.12°W	2,015	55
Wyoming	Centennia	41.36°N, 106.24°W	3,178	66

Notes:

a Data are from EPA Air Quality System (AQS) database (<https://www.epa.gov/aqs>) except for the non-regulatory Mt. Bachelor measurements, which are from the University of Washington data archive (<https://digital.lib.washington.edu/researchworks>).

b The MDA8 values used in the ODV calculations are only the data acquired with start hours between 0700 and 2300 local standard time. The ODV is the three-year average of the 4th highest annual MDA8, calculated after approved EE data have been excluded from AQS. For all sites listed here, no EE days were identified or excluded from the ODV calculation. Note that EEs have not been formally evaluated for the Mt. Bachelor data, since it is not a regulatory monitor.

tribal, and local agencies. Knowledge of the sources contributing to the ambient levels on the highest O_3 days is important because controlling the domestic contribution to O_3 production affects the estimates of both the health benefits and the economic costs and benefits associated with achieving the NAAQS.⁴ This knowledge is also important for SIP development because it helps states identify the most effective emission control strategies.

Quantifying USB O_3 requires a complicated mix of modeling and evaluation using observational data; however, missing pieces of scientific understanding of some sources of O_3 precursors such as wildfire, stratospheric intrusion, and international/interstate transport hinder the use of these data for air quality planning and affects the accuracy of results. Most O_3 monitoring in the United States is accomplished in urban areas or in those rural areas with significant influence from nearby, O_3 precursor sources such as oil and gas production areas in the Intermountain West. There are few monitors along the West Coast in remote locations that might be considered representative of the USB O_3 entering the western United States.

Air quality computer models require accurate emissions, comprehensive representation of physical and chemical processes in the atmosphere, and the ability to replicate plume dispersion to yield useful results. There are several modeling approaches that have been employed to quantify USB O_3 , and each approach has strengths and weaknesses. The resolution of O_3 NAAQS compliance planning issues becomes difficult due to two major factors: (1) USB O_3 contributes substantially to monitored concentrations, quantification methodologies are lacking necessary analytical capabilities, and have substantial uncertainties; and (2) air regulators are able to evaluate and further control the relatively small fractions of controllable local precursors contributing to monitored O_3 levels in their plans to reduce O_3 levels. Figure 1 demonstrates this complexity with conceptual models for O_3 sources (a) in the United States and (b) at a single location.

The trend in the annual fourth highest daily average 8-hr O_3 concentration for 2000–2017 for nine urban U.S. locations—San Bernardino, Chicago, Atlanta, Boston, Albuquerque, Sacramento, Salt Lake City, Denver, and Reno—is presented

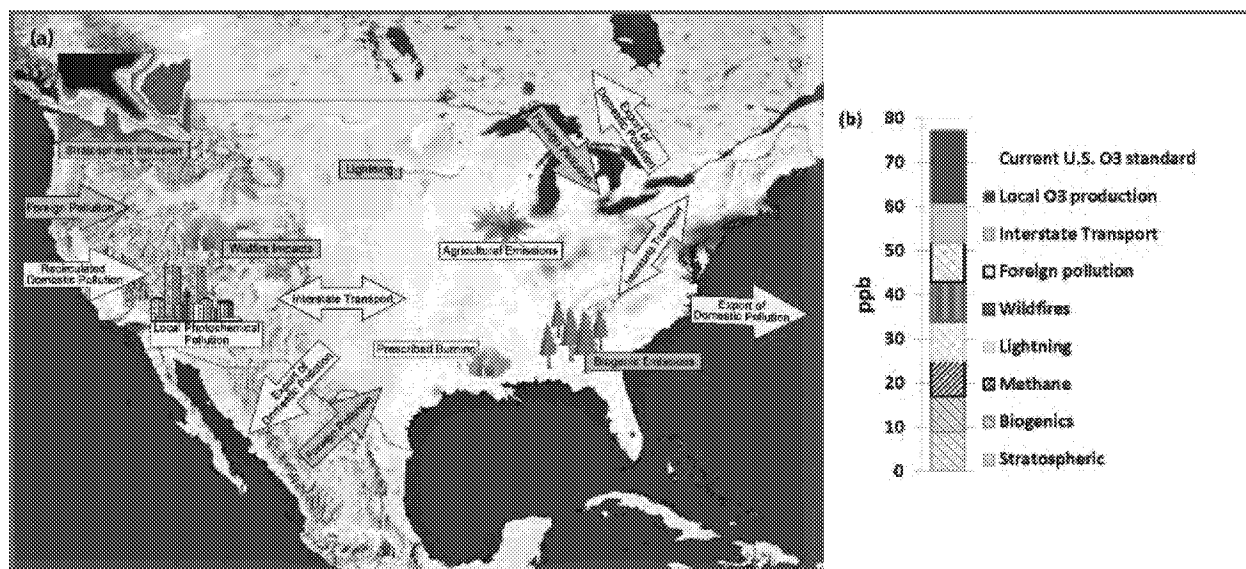


Figure 1. Conceptual models for O_3 sources (a) in the United States and (b) at a single location.

Notes:

(a) The U.S. O_3 sources shown with yellow boxes or arrows represent domestic/controllable anthropogenic sources. Sources shown with blue boxes or arrows represent USB/uncontrollable sources. Note that locations for each process are not specific to any one region. The base map shows satellite-observed tropospheric nitrogen dioxide (NO_2) column concentrations for 2014 from the Ozone Monitoring Instrument (OMI) onboard the NASA Aura satellite (Credit: NASA Goddard's Scientific Visualization Studio/T. Schindler). NO_2 column amounts are relative with red colors showing highest values, followed by yellow then blue. OMI NO_2 is a proxy to show local O_3 precursor emission sources.

(b) The bar chart shows a theoretical example of how both domestic anthropogenic and USB O_3 sources combine to produce elevated O_3 at a specific location on any given day. Each source varies daily and there are also nonlinear interactions between USB O_3 sources and domestic anthropogenic sources that can further add to O_3 formation (e.g., forest fires and urban emissions).⁵

in Figure 2. In each location, a single monitoring site with one of the highest ozone design values in that urban area was chosen. San Bernardino, Atlanta, Boston, Albuquerque, and Sacramento all show statistically significant downward trends in the fourth highest 8-hr ozone concentration whereas the non-coastal western cities, Salt Lake City, Denver, and Reno, plus Chicago show no significant trend since 2000. Overall, the significant reductions in the urban areas are generally consistent with the rural O_3 trends. The downward trends in fourth highest MDA8 O_3 concentrations are linked to significant reductions in emissions of O_3 precursors,

NAAQS, in particular. This is especially true given the recent lowering of the O_3 NAAQS levels and the associated increasing relative importance of USB O_3 as domestic precursor emissions decrease. Quantification of USB O_3 requires a chemical transport model (CTM), since it cannot be measured directly, but these models must be informed and evaluated using observations. Most estimates of USB O_3 have been made using regional CTMs such as the Community Multiscale Air Quality Modeling System (CMAQ)⁶ and the Comprehensive Air Quality Model with Extensions (CAMx)⁷ that are initialized using lateral boundary conditions derived from global models. The model approaches used to estimate USB O_3 have different merits, limitations, and best uses. Different methods of employing CTMs may be best suited (scientifically or computationally) to a specific policy or research question.

USB Ozone Influence on Regional Air Quality Modeling: A Western Case Study

SIPs and FIPs require models to accurately simulate O_3 sources so that the models can be used to examine emission control scenarios to demonstrate future attainment of the NAAQS. Presented here is a case study illustrating results of comparative regulatory applications of the regional modeling platforms. The regulatory analysis excludes identified exceptional days and focuses on the top 10 monitored O_3 days. While this case study compares only two models, it adds to the weight of evidence of the need for further western analyses, as it provides insights into the relationships between regional model estimates of USB O_3 and observations.

The EPA Transport Assessment⁸ and the Western Air Quality Study⁹ both independently performed model simulations of USB O_3 at 12-km resolution in Colorado for 2011. This is an ideal case study for USB

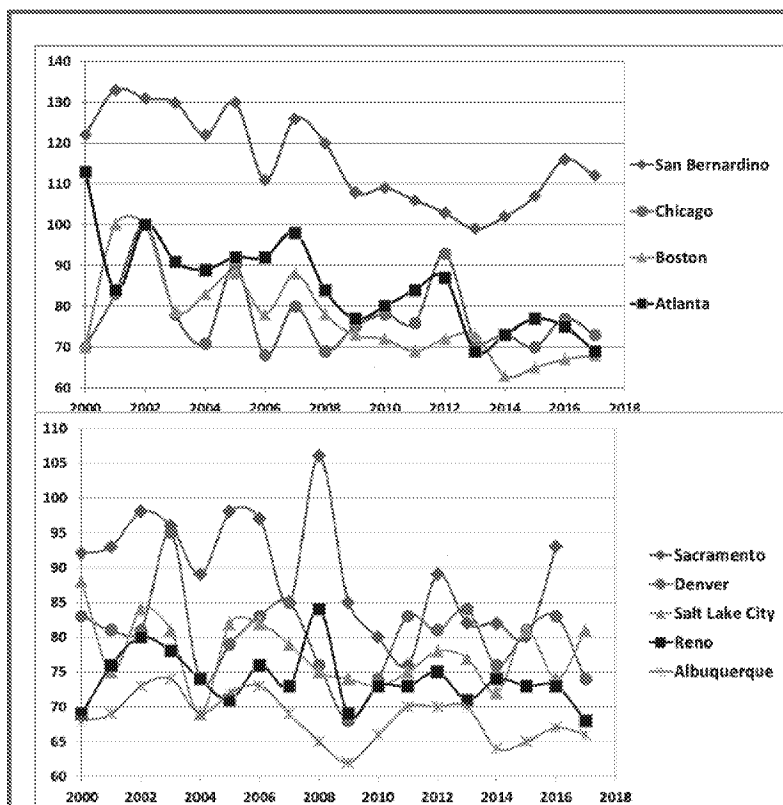


Figure 2. Annual fourth highest MDA8 O_3 (ppb) for one site in each urban area.

Note:

Data shown include any exceptional event days that may have been excluded from the ODV calculation.

while at the same time there can be important regional differences in such precursor emission trends (e.g., emissions related to oil and gas extraction in some parts of the western states) that can help explain some of the weaker trends. Three of the four locations with no significant trend are high elevation sites (Salt Lake City, Denver, and Reno). Trends in O_3 at these western sites might also be influenced by increasing wildfire activity.

Quantification of USB O_3 is essential for air quality management in general, and for state and local efforts to meet the

O_3 relevant to state planning because the western states typically have high USB O_3 contributions, and because the Northern Colorado Front Range often experiences high O_3 levels that exceed the NAAQS. The modeling systems in both assessments used global simulations to provide high-time-resolution, varying boundary conditions; EPA used the GEOS-Chem modeling while WAQS used MOZARTv4. USB O_3 contributions were determined as the sum of boundary and natural sources tagged with tracers in the modeling systems, of O_3 from May 1 through Sept. 29. Simulation results were compared for contributions of local, regional, and USB

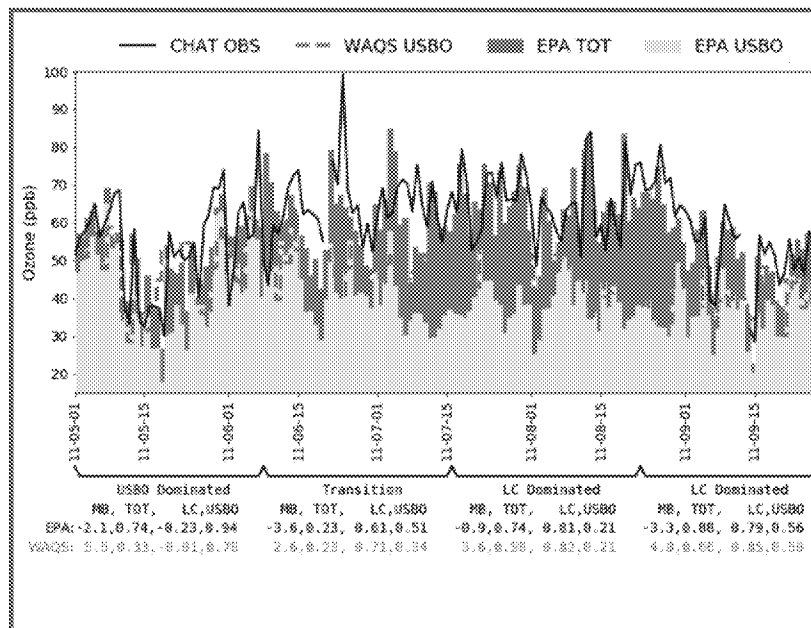


Figure 3. Observed and modeled MDA8 O₃ with USB O₃ from EPA model and WAQS for Chatfield. Observed O₃ (black lines), EPA model MDA8 O₃ (top of dark grey), EPA model USB O₃ (top of light grey), and WAQS USB O₃ (dashed green lines). For four simulation segments, the values below the axis give (for both models) the mean bias (MB), correlation (r) of total prediction with observations (TOT), correlation of local contribution (LC) with observations, and correlation of USB O₃ contribution with observations (USBO). DOI: <https://doi.org/10.1525/elementa.309.f6>

O₃ sources at a suburban monitor southwest of Denver (Chatfield) and at Rocky Mountain National Park.

EPA and WAQS 2011 modeling for Chatfield and Rocky Mountain National Park highlights similarities between the GEOS-Chem and the MOZARTv4 models, but also confirms the need to improve modeling of USB O₃. Jaffe et al.¹⁰ provide correlations between observations and source contributions at Chatfield over the whole period are generally consistent with previous studies,¹¹⁻¹³ showing that:

1. as illustrated in Figure 1b and Figure 3, USB O₃ and natural/uncontrollable O₃ sources within the United States are significant fractions of total monitored O₃;
2. the monitored and predicted O₃ levels are most strongly correlated with the local contribution; and
3. boundary conditions are anti-correlated with the local contribution of O₃ sources.

Conclusions

Concentrations of O₃ in rural areas of the West originate from a mix of locally controllable and uncontrollable USB sources. Because of this and the fact that, historically, O₃ nonattainment planning policies have focused on resolution of urban O₃ exceedances, a greater emphasis on the identification and

quantification of USB O₃ sources is also now necessary for effective regulatory decision-making. While O₃ modeling in the eastern United States has been accomplished through federally-funded efforts under the Ozone Transport Commission, no similar effort with federal funding have ever been initiated in the West. Western states have long commented that EPA should provide funding to help states better understand O₃ background, uncontrollable sources of O₃ precursors and transport in the West.

As a result of the EPA's extraordinary funding support in the East, eastern states have been able to develop a better understanding of the origin of O₃ precursors, O₃ formation, and the fate of O₃ with a level of confidence that helped with the development and implementation of meaningful and effective regulatory programs to improve air quality. The slim differences in the West between the seasonal mean USB O₃ level and the 2015 O₃ NAAQS alone drives a need for increased precision in model accuracy. Western states need detailed O₃ analyses focusing on the western United States to gain a better understanding of the origin of O₃ precursors, photochemical activity, and fate of transported O₃ with a level of confidence that will lead to the development and implementation of effective regulatory programs for the West. **em**

Mary A. Uhl is the Executive Director of the Western States Air Resources (WESTAR) Council and **Tom Moore** is the Air Quality Program Manager for WESTAR, Western Regional Air Partnership (WRAP). E-mail: tmoore@westar.org.

Author's Note

The authors relied upon the Jaffe, et. al. paper cited next as the primary source for our article under the Creative Commons use policy. We express our sincere gratitude to Dr. Jaffe and his co-authors.

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In Next Month's Issue...

Air Quality Modeling

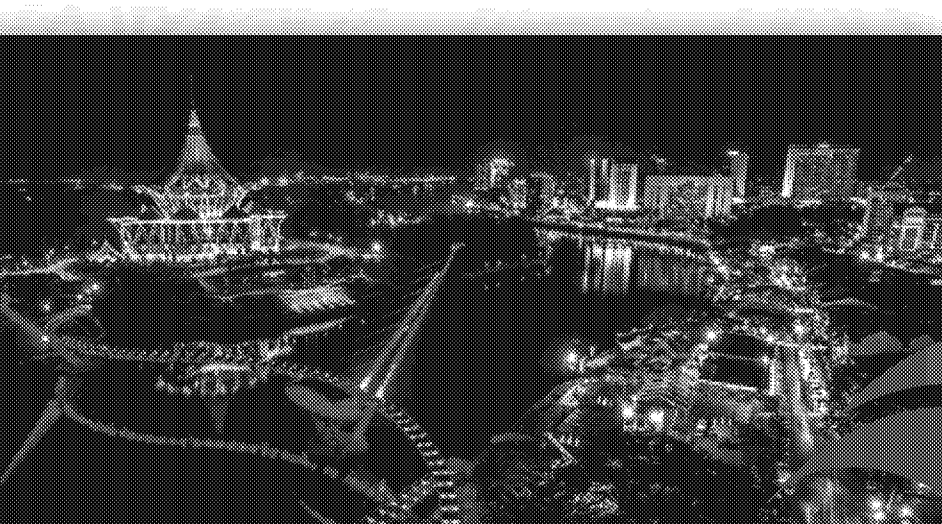
The U.S. Environmental Protection Agency (EPA) has completed its modeling guideline updates, but new advances in air quality modeling may spur additional changes. The October issue will consider renewed interest in effectively modeling low wind; improved treatment of porous structures and more complex buildings; incorporating scientifically credible, reduced-form chemical mechanisms into dispersion modeling to assess secondary formation; and formulation of next-generation modeling systems for chemical transport models that are driving air quality modeling in new directions.

Regional Action, Global Impact

BORNEO CONVENTION CENTRE KUCHING, SARAWAK, MALAYSIA

Clean Air Asia, the Clean Air Forum Society of Malaysia (MyCAS), Malaysia's Ministry of Natural Resources and Environment, and the Natural Resources and Environment Board of Sarawak are organizing the **10th Better Air Quality (BAQ) Conference**, with the theme Regional Action, Global Impact, which is focused on the urgent need for action on air pollution at all levels and across all sectors.

Now in its 10th year, BAQ is Asia's leading air quality event. Building on the success of previous conferences, we're expecting more than 700 participants this year, with representatives from more than 50 countries throughout Asia and other regions, 25 cities, international organizations, development agencies, the private sector, NGOs, and academic and research institutions.



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- Learn about the latest advancements in air-quality science, current issues, and trends and policies that are shaping governance and business approaches
- Engage with the visionary changemakers in Sarawak who are leading Malaysia's clean energy transition and helping guide the country towards a sustainable, clean energy future.



Minding Business

by David Elam

PM File reminds us to practice mindfulness and avoid the pitfalls of media multitasking.

A day rarely passes without a message about the importance of being mindful. We're encouraged to be mindful in our exercise, our eating, our relationships, and our work. Although there are many ways to practice mindfulness, the consistent theme is that we remain present in the moment, turning our full attention to the activity at hand. It isn't easy to practice mindfulness, and in the project manager's world of changing priorities and deadlines, it can seem impractical. As a result, we tend to turn to "multitasking" in an attempt to work on various tasks simultaneously. Technology has made multitasking seem easy—we can e-mail, talk, instant message, text, search the Web, and write a report all at the same time because we have tools that allow us to do so. But does the fact that we can do something mean that we are doing any of it well?

Research consistently shows that multitasking is ineffective, and in the case of media multitasking—the concurrent

consumption of multiple media forms—the process can impair cognitive processes and induce socio-emotional difficulties. Research by Kep Kee Loh and Ryota Kanai, shows that media multitasking reduces gray matter density, resulting in structural brain changes that decrease cognitive control performance and socio-emotional regulation.¹ Effective cognitive processing, responsible social interactions, and emotional intelligence are vital environment, health, and safety (EH&S) project manager attributes that can't be compromised in pursuit of the hollow productivity gains of multitasking. Clearly, multimedia consumption isn't in the best interest of the EH&S project manager.

If we are to preserve the attributes that determine our success as EH&S project managers, we must manage our relationship with technology, recognizing that it exists to serve, not control, us.

To that end, I invite you to consider the following actions that can help you remain present:

1. **Create a weekly action list.** Take time alone and create a list of tasks that you want to complete for the week. To disconnect from technology, consider creating your list in handwritten form in a notebook. Prioritize the list of tasks based on deadlines and urgency. When you are free from distractions, you will be free to develop an action list that reflects your highest priorities.
2. **Create a daily action list.** Draw from your weekly action list to identify the tasks that you want to or must complete for each given day. I've found most success by creating the list for the next day at the close of the preceding day. Estimate the time for each task, allowing some time each day for unplanned activities. Again, consider creating this list in handwritten form in a notebook, free from technology distractions.
3. **Prepare for every meeting.** You will either chair or participate in several meetings or conference calls during the week. Prepare for each one of them. Whether you are the leader or a participant, consider the guidance offered in a previous column "Meeting Challenges."² If you lead the meeting, you are obligated to ensure that it is productive. If you participate in a meeting, you are obligated to contribute productively.
4. **Give your full attention to the task at hand.** When you are in a group meeting, meeting one-on-one with a colleague, or participating in a conference call or Skype meeting, eliminate the distractions of technology

by silencing notifications or closing applications. If someone visits you for a discussion, make a point of silencing your phone and closing your e-mail. If the person you are meeting with doesn't take the cue from your actions, politely close the conversation if they allow the meeting to be de-railed by their technology interruptions. If the pressures of a competing deadline keeps you from focusing on the meeting, reschedule the meeting. There is no financial return in making marginal investments in competing interests.

5. **Value the time of others.** We have limited time for interpersonal interaction. Commit to making the most of opportunities that allow it. Plan formal meetings to remain so engaging that no one wants to check their phone for e-mails, texts, or social media posts. And when it comes to social time with friends and family, put them at the forefront, encouraging them to tell their story, a much more interesting proposition than them considering the fleeting posts on their social media network.

Our responsibility as EH&S project managers is to use technology to improve environmental and economic outcomes. We're not likely to achieve those objectives if we are mindless slaves to technology—technology that improperly applied has been shown to reduce our cognitive and socio-emotional skills. Instead, we have the opportunity to be mindful stewards of our responsibilities by setting priorities and following through on those priorities that respect the importance of engagement. **em**

David L. Elam, Jr., CIH, CMQ/OE, PMP, is a consultant with TRC. E-mail: delam@trcsolutions.com.

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- Richard Beatty Mellon Environmental Stewardship Award
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- Richard C. Scherr Award of Industrial Environmental Excellence
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Go to www.awma.org/honors for descriptions and criteria.



George R. Offen

(1939–2018)

Emeritus Member, **George R. Offen, Ph.D.**, passed away on August 5, 2018. He was 79.

Dr. Offen was a native of London, UK, having been born there after his parents escaped from Nazi Germany in 1938. The family emigrated to the United States via Uruguay, in a perilous wartime ocean journey, finally settling in San Francisco, CA. As a naturalized U.S. citizen, Dr. Offen attended Stanford University, where he earned bachelor's and doctorate degrees in mechanical engineering. He also earned a master's degree from the Massachusetts Institute of Technology. He was fluent in French and German.

As a senior technical executive at the Electric Power Research Institute in Palo Alto, CA, Dr. Offen's research focused on the reduction of air pollutants from coal-fired power plants, specifically mercury emissions. He and his team also researched low-cost enhancements for particulate (fly ash) controls on difficult-to-collect fly ash, methods to reduce the operational costs and improve the availability of sulfur dioxide controls, and multipollutant controls. Other responsibilities included the development of continuous emission monitors for mercury.

Dr. Offen joined EPRI in 1985 as a project manager, focus-

ing on low-cost sulfur dioxide controls and nitrogen oxides reduction by selective catalytic reduction systems. Before joining EPRI, he was manager of energy engineering at Acurex Corporation. Earlier positions included teaching at Stanford and Santa Clara Universities, research assignments at Chevron Research and the French Institute of Petroleum, and three years as an officer and test engineer with the U.S. Air Force.

Dr. Offen is considered the creator and champion of the highly popular MEGA Symposium series, which is co-hosted by A&WMA. In part as a result of his efforts with the MEGA Symposium, he was awarded the Richard C. Scherr Award of Industrial Environmental Excellence in 2014. The Award is presented annually to an individual who works in the business community, recognizing his/her contributions to the Association and accomplishments in the field of environmental protection.

In his leisure time, Dr. Offen enjoyed hiking, running, and travel. He and his wife traveled extensively, the latest trip to five national parks in Utah.

Dr. Offen is survived by his wife Karen; daughters Catherine and Stephanie; and four grandchildren. **em**

Getting to Know A&WMA's Organizational Members

On this page you will find the company profiles of a randomly selected grouping of Organizational Members. A&WMA thanks you—and all of our current Organization Members—for your continued support of this Association.

Babst Calland

Attorneys at Law

Babst Calland's Environmental Practice Group (www.babstcalland.com) is one of the most respected environmental law practices in the United States. For more than three decades, Babst Calland has been unsurpassed when it comes to addressing new or legacy problems, or anticipating impending regulatory developments or other complications that may be on the horizon.

Babst Calland environmental attorneys provide a nationwide clientele with sophisticated and practical representation in all aspects of environmental law. With the nation's largest staff of regulatory attorneys who focus their practices exclusively in this field, our environmental attorneys are able to focus their practices on specific environmental areas, such as air pollution, industrial and municipal wastewater management, hazardous and solid waste, complex site remediation, natural resource damages, chemical regulation, and occupational safety and health.

Babst Calland offers a team of seasoned practitioners with varied and extensive degrees and experience in the environment, health, and safety fields. Babst Calland attorneys not only understand the law, they also understand the underlying science that so often is the center of environmental regulatory issues. In addition, Babst Calland attorneys appreciate the value of knowing our clients' processes and facilities, and routinely spend time in the field so that practical solutions to often complex environmental problems are not missed because of a lack of understanding of the framework in which an environmental problem arises.

In addition to extensive experience, Babst Calland also offers a very competitive rate structure. With environmental attorneys with varying levels of environmental experience from one year to more than 40 years, Babst Calland can perform work at the most cost-efficient level.

Through an integrated, multidisciplinary approach and preventative law philosophy, Babst Calland environmental attorneys collaborate with attorneys in the firm's other legal practices, including construction, corporate and commercial, creditors' rights and insolvency, employment and labor, energy and natural resources, land use, litigation, public sector, real estate, and transportation safety. This collaboration creates a synergy not typically found in today's legal market and enables us to comprehensively advise our clients, by taking into account relevant legal considerations from multiple disciplines.



Cornerstone Environmental (www.cornerstoneeg.com), a Tetra Tech Company, is an engineering consulting and field service firm dedicated to providing services to the solid waste industry and commercial, industrial, and agricultural clients throughout the United States. Cornerstone provides a range of specialized services spanning multiple markets, including Air Quality, Biogas & Landfill Gas, Environmental Planning and Compliance, Hydrogeology, Landfill Engineering & Design, O & M, Organics Management, Remediation, Site & Civil Design, and Transfer, Recycling, and Processing Facilities.

Cornerstone's air quality services practice includes a diverse mix of mechanical, chemical, civil, and environmental engineers, working alongside air pollution scientists with a depth of experience in all areas of air quality services, including New Source Review and Title V Air Permitting, atmospheric dispersion modeling, NSPS & NESHAP permit compliance support, compliance assessments and emission source inventories, ambient air monitoring and monitoring plan development, point source emissions testing review and oversight, community awareness and public relations support, mobile data collection and mapping, and spatial information management. Many of Cornerstone's air quality personnel have both consulting and regulatory experience. The firm's approach includes extensive hands-on experience in examining production processes from the perspective of emissions and regulatory compliance.

To advance the state-of-practice and provide forward-looking sustainable projects, Cornerstone implements new technology and reaches for the next innovation. For example, the company developed BioCNG (www.biocng.us), an alternative vehicle fuel system that uses a patented biogas conditioning system to economically produce biogas-based fuel to power compressed natural gas vehicles. BioCNG uses biogas from organic and agricultural digesters, landfills, and wastewater treatment plants to produce renewable fuel.



For more than a century, the business law firm of Bingham Greenebaum Doll (BGD) LLP (www.bgdlegal.com) has provided environmental legal services to clients across a wide array of industries and sectors. Clients served include manufacturers, public and private utilities, energy and mining businesses, real estate developers, financial institutions, and agribusinesses. BGD's attorneys use their industry knowledge and understanding of federal and state regulatory programs to provide innovative solutions to complex issues and, if necessary, are able to draw on a broad experience in environmental litigation.

Capabilities span a broad spectrum of environmental and natural resource law matters, including air, water, remediation and voluntary cleanups, waste management, energy resources, and brownfield and real estate development. Services include permitting, compliance counseling, legislative and regulatory negotiations, transactional due diligence, enforcement defense, and litigation. BGD serves its clients from six offices located in Indiana, Kentucky, and Ohio. **em**

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Staff and Contributors

A&WMA Headquarters

Stephanie M. Glyptis
Executive Director
Air & Waste Management Association
Koppers Building
436 Seventh Ave., Ste. 2100
Pittsburgh, PA 15219
1-412-232-3444; 412-232-3450 (fax)
em@awma.org
www.awma.org

Advertising

Jeff Schurman
1-412-904-6003
jschurman@awma.org

Editorial

Lisa Bucher
Managing Editor
1-412-904-6023
lbucher@awma.org

Editorial Advisory Committee

John D. Kinsman, Chair
Edison Electric Institute
Term Ends: 2019

Teresa Raine, Vice Chair
ERM
Term Ends: 2020

Robert Basil
EHS Technology Group
Term Ends: 2019

Leiran Biton
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Term Ends: 2019

Gary Bramble, P.E.
Retired
Term Ends: 2021

Bryan Comer
International Council on Clean Transportation
Term Ends: 2020

Prakash Doraiswamy, Ph.D.
RTI International
Term Ends: 2020

Ali Farnoud
Ramboll Environ
Term Ends: 2020

Steven P. Frysinger, Ph.D.
James Madison University
Term Ends: 2021

Keith Gaydosh
Affinity Consultants
Term Ends: 2021

C. Arthur Gray, III
Givaudan Flavors Corp.
Term Ends: 2019

Jennifer K. Kelley
General Electric
Term Ends: 2020

Mingming Lu
University of Cincinnati
Term Ends: 2019

David H. Minott, QEP, CCM
Arc5 Environmental Consulting
Term Ends: 2020

Brian Noel, P.E.
Trinity Consultants
Term Ends: 2020

Golam Sarwar
U.S. Environmental Protection Agency
Term Ends: 2019

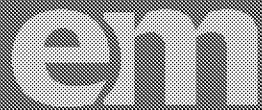
Anthony J. Schroeder, CCM, CM
Trinity Consultants
Term Ends: 2019

Susan S.G. Wierman
Retired
Term Ends: 2021

Layout and Design: Clay Communications, 1.412.704.7897

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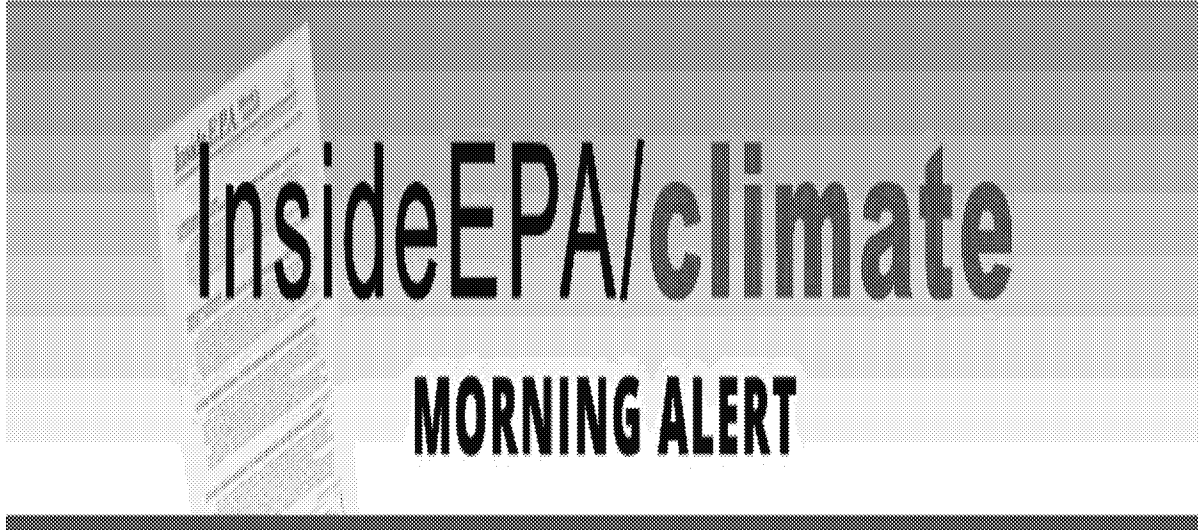


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April 25, 2018

Latest News

Honda Details Proposed Vehicle GHG 'Flexibilities' While Retaining Goals

American Honda Motor Co. says regulators should extend until 2025 several flexibilities under EPA's current greenhouse gas standards for model year 2022-2025 passenger vehicles that expire after 2021, while retaining the overall emissions standards in order to preserve a national set of rules that is joined by California.

Facing Legal Hurdles, EPA's 'Secret Science' Plan Punts On Key Issues

EPA Administrator Scott Pruitt has signed a long-promised plan barring the agency's use of any information in decision-making that is not publicly available, but the proposed rule punts on a host of tricky legal and implementation issues, including statutory mandates to use the best available science and how to address confidential trade secrets and medically protected data.

EPA Urges Local Officials To Adopt Pre-Disaster Climate Adaptation Plans

EPA is urging local government officials to adopt "worst-case" climate adaptation plans to limit damage from future natural disasters, a stance that appears to be at odds with the Trump administration's general resistance to acknowledging and addressing climate change and its adverse impacts.

Climate Beat

Technology: Oil, electricity firms join new CCS lobbying group

The new Energy Advance Center includes oil and gas majors BP and Chevron, as well as utility giant Southern Company and other companies with interest in the climate mitigation technology.

Loose Change: Inhofe, other GOP senators call for Pruitt hearing

In today's news roundup: Sen. Jim Inhofe (R-OK) says "a couple of us on the committee think it's appropriate to have a hearing in so far as any accusation having to do with his office is concerned."

EDITORIAL CONTACT

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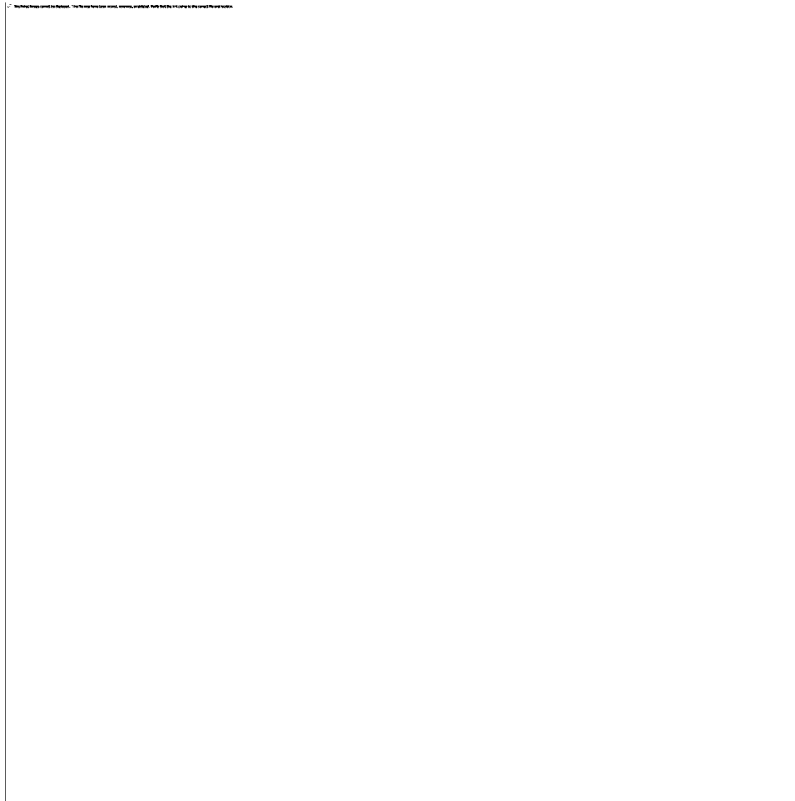
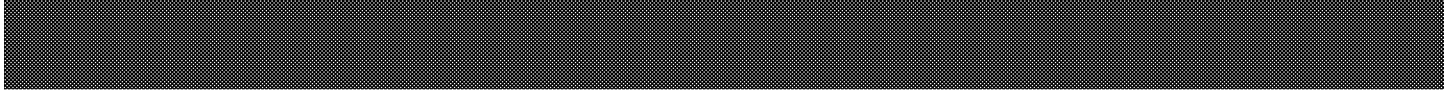
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Message

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To: Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clint]
Subject: Morning Consult Energy, Presented by Wells Fargo: Exxon Sees Lowest 1st-Quarter Output Since 1999



By [Jacqueline Toth](#)

Top Stories

- Exxon Mobil Corp. said in its earnings report that output fell to 3.889 million barrels a day in the first quarter, the first time since the 1999 merger between Exxon and Mobil Corp. that the company has pumped less than 4 million barrels a day in that quarter. The output figure, along with the company's profit of \$1.09 a share, fell short of analysts' expectations. ([Bloomberg](#))

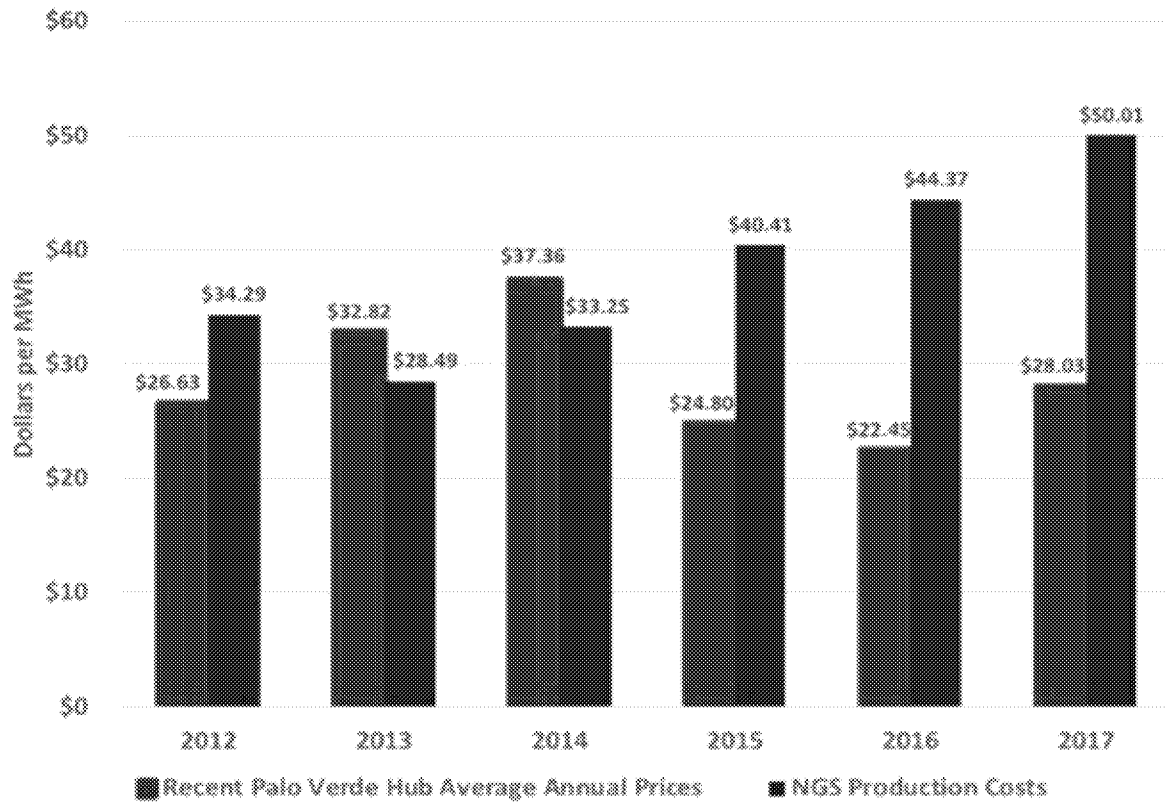
- The Environmental Protection Agency Office of Inspector General disputed that the "threat assessment" Administrator Scott Pruitt cited in two House hearings, which he used to justify his spending on security, came from EPA Inspector General Arthur Elkins as Pruitt had said. The EPA clarified that the document was instead an internal memo from Patrick Sullivan, an assistant inspector general, and was leaked without authorization from the office. ([The Hill](#))
- Dangerous volatile organic compounds and other air contaminants emanating from an explosion at the Husky Energy Inc. oil refinery in Wisconsin will pose a health risk to people downwind of the facility, according to pollution experts. Officials ordered people to evacuate from the area to reduce public exposure, and government agencies plan to test the air in the region, refinery manager Kollin Schade said at a news conference. ([The Associated Press](#))
- Al Monaco, chief executive of Enbridge Inc., said the pipeline company will continue with its efforts to chart a new route to replace the Line 3 pipeline in Minnesota, despite a recommendation on Monday from an administrative law judge that the project is only of comparative benefit if construction tracks along Line 3's current route. Monaco said the recommendation, which may be taken into account by state regulators, "ignores the extensive record" the state has compiled "that incorporates input from thousands of Minnesotans who are in favor of our proposed route." ([Star Tribune](#))

Chart Review

Six Insurmountable Business Risks to Keeping Navajo Generating Station Open Past 2019

Institute for Energy Economics and Financial Analysis

Figure 3: Recent NGS Production Costs vs. Palo Verde Hub Prices



Events Calendar (All Times Local)

FRIDAY

Women's Council on Energy and the Environment overview of wholesale electricity pricing

12
p.m.

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Wells Fargo: Transitioning to a lower-carbon economy

Did you know more than nine percent of all wind and solar photovoltaic energy generated in the U.S. in 2016 came from projects owned by Wells Fargo?

Growing sustainable environmental solutions is critical to the future of our planet. That's why we've pledged to provide \$200 billion in financing for clean technology, renewable energy, land conservation, sustainable agriculture and recycling projects through 2030. [Learn more.](#)

General

IG: Threat memo cited by Pruitt isn't from IG **Timothy Cama, The Hill**

The Environmental Protection Agency's (EPA) Office of Inspector General (OIG) pushed back Thursday against EPA head Scott Pruitt, saying he misrepresented a memo about the threats against him in testimony to the House.

EPA removes 'international priorities' page from site **Julia Manchester, The Hill**

The Environmental Protection Agency (EPA) removed an "international priorities" page from its website in December, according to a report released this week by the Environmental Data & Governance Initiative (EDGI).

Pruitt aide approved to work for GOP firm, Fla. lawmaker **Kevin Bogardus, E&E News**

John Konkus, one of EPA Administrator Scott Pruitt's political aides, was approved by ethics officials to work outside the agency for a Republican political consulting firm and a Florida state representative.

Pruitt backtracks on explanation of privacy booth **Gregory Wallace, CNN**

Environmental Protection Agency Administrator Scott Pruitt told lawmakers on Thursday that the controversial sound proof booth installed in his office is not the type used for classified information, contradicting his past justification of the \$43,000 purchase.

Pruitt Distances Himself From Trump's Proposed EPA Grant Cuts **David Schultz, Bloomberg**

Scott Pruitt told Congress he isn't responsible for Trump administration spending plans that would impose double-digit cuts to popular EPA grant programs, including one that helps businesses in the Great Lakes region meet environmental standards.

Pruitt signed 'secret science' plan before OMB ended review **Sean Reilly, E&E News**

The White House Office of Management and Budget completed its review of EPA's proposed "secret science" rule yesterday - one day after EPA Administrator Scott Pruitt signed it, according to the Reginfo.gov site.

Oil prices inch down but gain support from Iran concerns
Shadia Nasralla, Reuters

Oil prices edged lower on Friday as the dollar rose, but Brent was still headed for its third week of gains amid supply concerns should the United States reimpose sanctions on Iran.

Oil and Natural Gas

Exxon Falls Short of Production Targets, Missing Out on Crude Rally
Kevin Crowley, Bloomberg

Exxon Mobil Corp. posted its weakest first-quarter output since the 1999 merger that created the company in its modern form, underscoring the eroding quality of its worldwide portfolio.

Smoke From Wisconsin Refinery Explosion Poses Health Risk
The Associated Press

An explosion and asphalt fire at a Wisconsin oil refinery on Thursday sent huge plumes of smoke into the air that pollution experts said almost certainly contained large amounts of toxins, posing a serious health risk to those living downwind.

Enbridge CEO says company will continue pursuing its preferred route for new pipeline
Mike Hughlett, Star Tribune

Enbridge's chief executive said the company will continue pursuing a new route for its proposed Line 3 pipeline across northern Minnesota, despite a judge's recommendation against that route.

'Mexico First' Campaign Could End Welcome for U.S. Oil Giants
Clifford Krauss, The New York Times

As President Trump moves to recast trade and border relations with Mexico, American oil companies are worried that the prospective winner of Mexico's presidential election will play his own nationalist card.

Companies Feel the Impact of Rising Oil Prices
Doug Cameron et al., The Wall Street Journal

The highest oil prices in years are increasing expenses for companies that had grown used to low energy costs since crude's 2014 tumble, while the turnabout is proving to be a boon for some businesses.

The Coal Industry Extracted a Steep Price From West Virginia. Now Natural Gas Is Leading the State Down the Same Path.
Ken Ward Jr., ProPublica

It was a warm Monday afternoon in late February. Thousands of teachers, public school employees and supporters rallied on the steps of West Virginia's Capitol building, on the banks of the Kanawha River in Charleston.

Gulf states want more revenue: 'The cap should be lifted'
Rob Hotakainen, E&E News

With their coastline damaged by the oil and gas industry, a delegation of Louisianans asked a House Natural Resources panel yesterday to give their state a greater share of the federal government's energy revenues.

Utilities and Infrastructure

Utility Says Retired Underwater Cables May Be Damaged
The Associated Press

A suspected anchor strike that severed two electric cables in the waterway linking Lakes Huron and Michigan may have damaged additional cables in the area that were taken out of service long ago but never removed from the water, officials said Thursday.

PSEG settles enforcement charges tied to errors in energy offers submitted to PJM
Jasmin Melvin, Platts

Having failed to detect errors in its cost-based offers submitted to PJM Interconnection's energy market over nearly a decade, a Public Service Enterprise Group subsidiary has agreed to pay millions of dollars in civil penalties and disgorgement, according to a settlement approved by the Federal Energy Regulatory Commission.

Renewables

First Solar to build new manufacturing plant in northwest Ohio

Sarah Elms, The Toledo Blade

First Solar Inc. plans to build a new solar panel manufacturing facility near its North American factory complex in Perrysburg Township, a move that's expected to create 500 jobs.

Tesla's Foe in Fight Over Electric Vehicle Rebate: Utilities

John Lippert et al., Bloomberg

Early adopters of the electric car often band together in what can seem, in the age of Donald Trump and resurgent sport utility vehicles, like a lonely defense of an unloved technology.

Arizona utilities cautious over costs, reliability for proposed 80% clean energy mandate

Robert Walton, Utility Dive

Arizona utility regulators are considering a proposal to modernize the state's electric grid, adding more renewables along with energy storage to help integrate the intermittent resources.

Coal

EPA Rampaging on Coal Ash Rule Despite Groundwater Concerns

Sonal Patel, POWER Magazine

Despite pleas by environmental groups for more time to review recent dumps of groundwater monitoring data from power companies, the Environmental Protection Agency (EPA) is forging ahead to finalize a proposed overhaul of the Obama administration's 2015 final Coal Combustion Residuals (CCR) rule.

Nuclear

Rick Perry enters 'new era' with France on nuclear power

John Siciliano, Washington Examiner

Energy Secretary Rick Perry entered into a "new era" of nuclear power development with France on Thursday, using the state visit by French President Emmanuel Macron to sign a joint agreement to advance nuclear and clean energy.

Climate

From Siberia, an Unlikely Cry: 'We Need Greenpeace Out Here!'

Andrew E. Kramer, The New York Times

At a truck stop at the northern terminus of the Vilyui ice highway in northeastern Siberia, drivers make small talk not about life on the road but rather the life of the road.

A Message from Wells Fargo:

Wells Fargo: Committed to the environment

How can a bank help the world transition to a lower-carbon economy? By setting goals and meeting them. Last year, Wells Fargo began meeting 100% of its global electricity needs with renewable energy. We remain committed to protecting the environment and leading by action through our businesses, our operations and our philanthropy. [Learn more.](#)

Opinions, Editorials and Perspectives

Americans Should Embrace This Energy Opportunity

Randall Luthi, Morning Consult

Earlier this year, protesters descended on public meetings held throughout the country on the Bureau of Ocean Energy Management's Draft Proposed Program for offshore leasing.

The biggest Scott Pruitt scandal is the one right in front of us

Robert Redford, The Washington Post

President Trump should follow the suggestion of many - including some within his own party, and reportedly even his chief of staff - and replace Environmental Protection Agency Administrator Scott Pruitt.

Hiroshima, Kyoto, and the Bombs of Climate Change

Bill McKibben, The New Yorker

I spent Earth Day in Kyoto, the next day in Hiroshima, and the time since pondering the difference between the two.

Scott Pruitt's Crusade Against "Secret Science" Could Be Disastrous for Public Health

Carolyn Kormann, The New Yorker

Today is a red-letter day, a banner day," Scott Pruitt, the head of the Environmental Protection Agency, said on Tuesday afternoon. A few moments later, he signed a controversial rule proposal titled "Strengthening Transparency in Regulatory Science."

Scott Pruitt is the face of America's big problem

Jeffrey Sachs, CNN

The federal government's top ethics official has asked the Environmental Protection Agency to take "appropriate actions to address any violations" rising from the behavior of the agency's administrator, Scott Pruitt.

Research Reports

Fueling utility innovation through analytics

Marcus Braun et al., McKinsey & Company

Advanced analytics can deliver enormous value for utilities and drive organizations to new frontiers of efficiency- but only with the right approach. There's little to be gained from just bolting on a software solution.

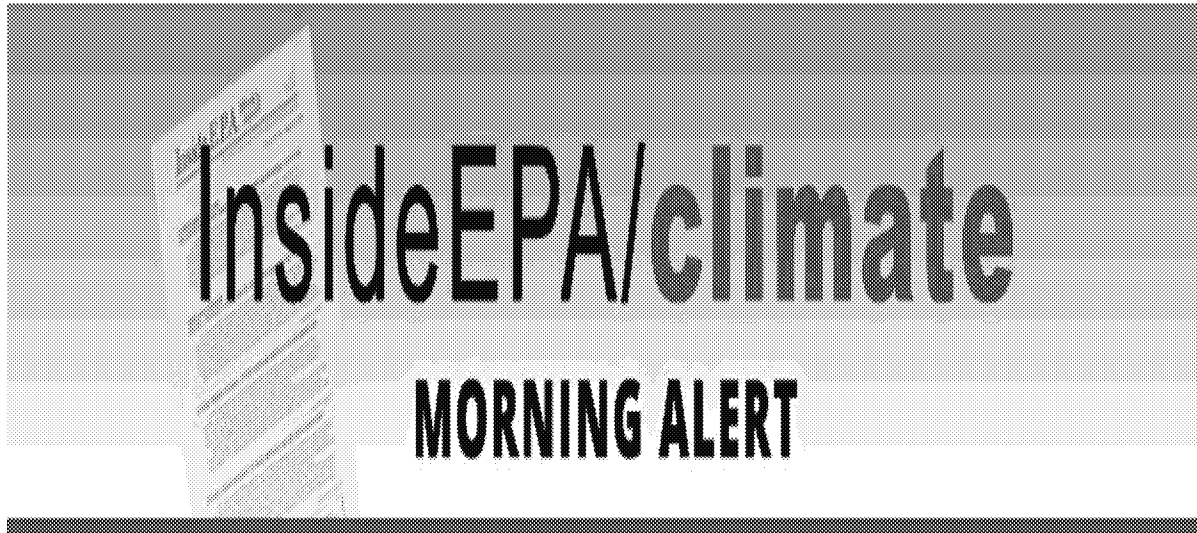


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April 3, 2018

Latest News

EPA Embraces Automaker Claims In Bid To Weaken Vehicle GHG Standards

EPA's determination that its vehicle greenhouse gas standards are too stringent and needs to be eased broadly embraces a suite of auto industry arguments on cost, consumer tastes and technology challenges, setting the stage for a formal process to fill in the details of proposed changes to model year 2022-2025 limits that promises to be highly contentious.

Pruitt's Bid To End 'Secret Science' Faces Legal, Implementation Hurdles

EPA Administrator Scott Pruitt's pending plan to apply a sweeping new data transparency requirement at EPA is expected to face legal and implementation controversies likely as soon as it is released, agency watchers say, including potential violations of medical privacy protections, trade secret information and other data that form the basis for air quality standards, pesticide and chemical approvals and climate rules.

California Officials Reject Calls To Tighten 2035 Transportation GHG Targets

The California Air Resources Board (CARB) has adopted controversial 2035 transportation-related greenhouse gas targets for major metropolitan areas in the state, rejecting calls by environmentalists and civil rights groups to make the goals more stringent.

Climate Beat

Regulation: EPA announces plan to ease vehicle GHG standards

But California's waiver -- which allows the state to retain its standards -- is still being "reexamined," EPA says.

Biofuels: Group blames EPA waivers for falling ethanol demand

A new biofuels industry analysis of the effects of EPA's RFS waivers suggests the agency might not have to take short-term measures to curb compliance costs.

Loose Change: On condo scandal, Christie not sure if Pruitt can 'survive'

In today's news roundup: Former New Jersey Gov. Chris Christie (R) says he is not sure how Scott Pruitt can "survive" as EPA chief after he secured a \$50-per-night lease on a Capitol Hill condo connected to an energy lobbyist.

EDITORIAL CONTACT

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To: Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clint]
Subject: Morning Energy, presented by Anheuser-Busch: Returning to the battlefield over California car rules — Pruitt screens friendly questions — Art of the RFS deal

By Kelsey Tamborrino | 05/09/2018 05:42 AM EDT

With help from Anthony Adragna

IF AT FIRST YOU DON'T SUCCEED: The looming fight between the Trump administration and the state of California over climate change rules for cars will cover some familiar terrain — where the liberal state and its environmentalist allies have won major legal battles in the past, Pro's Alex Guillén reports. The White House strategy appears to mirror the approach that automakers and dealers unsuccessfully pursued more than a decade ago in an attempt to reverse California's strict limits on vehicles' greenhouse gas emissions.

This again? California — which has a waiver under the Clean Air Act to enact stricter standards — is hoping things play out the same way it did the last time around, when two federal district courts upheld its rules, which other states also can choose to follow. "It's sort of déjà vu because it's going to be basically round two," said Kevin Leske, who was an assistant attorney general in Vermont in 2007 when the state fought off an industry lawsuit seeking to block the greenhouse gas rules for cars.

The details: At issue is the interplay between the long-standing Corporate Average Fuel Economy standards that were established under the 1975 Energy Policy and Conservation Act, and the relatively new emissions standards enforced nationally for the first time under the Obama administration. The Trump administration is expected to nullify the waiver granted to California and then try to circumvent any questions by arguing that EPCA preempts California from enforcing its auto emissions standards — essentially the same argument automakers and dealers deployed in multiple lawsuits over a decade ago.

But keep in mind: That strategy fell short the first time around. A U.S. district court judge in California concluded that greenhouse gas standards are too different from fuel economy regulations to fall under EPCA's "related to" preemption language. However, the cases were never appealed after a larger political deal was reached on the car rules, but advocates of the Trump administration's approach say they hope to take the issue to a higher court this time around. Read [more](#).

GOOD WEDNESDAY MORNING! I'm your host Kelsey Tamborrino. Andrew Fasoli of the American Chemistry Council was the first to correctly guess that former President Ronald Reagan was first to watch a major league baseball game from the dugout, at a Baltimore Orioles game. For today: In what city did the nation's first paved roadway appear? Send your tips, energy gossip and comments to ktamborrino@politico.com, or follow us on Twitter [@kelseytam](#), [@Morning_Energy](#) and [@POLITICOPro](#).

Download. Edit. Present. DataPoint has ready-made slide presentations to help you translate complex policy issues in the simplest terms. [Learn more](#).

BEGS THE QUESTION: EPA Administrator Scott Pruitt and his staff sought extensive control over questions that could be asked to the administrator when he toured the country speaking to industry groups, POLITICO's Anthony Adragna and Emily Holden report. Even seemingly friendly questions got axed by the agency, like, "How often do you get back to Oklahoma?" That question was crossed off a proposed list of questions without

an explanation ahead of Pruitt's appearance in December at an event in Iowa, internal emails made public by the Sierra Club through a public records lawsuit show. (At the time, EPA's inspector general was already investigating Pruitt's frequent trips back home.) The emails offer new insight into EPA staff's desires to limit access by independent journalists, pre-screen questions from friendly interviewers and coordinate Pruitt's message with lobbyists ahead of gatherings with conservative or industry groups. Read the details [here](#).

WHAT HAPPENED AT THAT BIOFUELS POWWOW: President Donald Trump appears to have brokered a deal in the long-running fight between ethanol producers and oil refiners over federal biofuels mandates. At a White House meeting Tuesday with Pruitt, Agriculture Secretary Sonny Perdue and a few Republican senators. Trump reiterated his pledge to allow 15 percent ethanol fuels year-round and rejected a price cap on biofuel credits, called Renewable Identification Numbers. Those are both big wins for the corn crowd, Pro's Eric Wolff [reports](#). But ethanol producers groused about another proposed aspect of the deal that would lower compliance costs for refiners: allowing ethanol exports to qualify for RINs. Refiners, meanwhile, were wary of a separate proposal for EPA to require large refiners to take on the ethanol-blending requirements for which it issued dozens of waivers to smaller refiners.

IT'S KIND OF INFRASTRUCTURE WEEK: Close to none of Trump's big-ticket [proposals](#) to streamline environmental rules made it into the first major bill infrastructure bill introduced in Congress since his election. America's Water Infrastructure Act of 2018, as the Senate bill is called, is so far the "most significant step lawmakers have taken to help fulfill the president's marquee campaign promise to revitalize the country's transportation arteries," Pro's Annie Snider writes. The bill's authors purposefully set their sights on bipartisanship in light of the fast-approaching midterm elections. "We focus on the 80 percent where we have general agreement, and we're going to get something done," said Sen. [Tom Carper](#) (D-Del.), the top Democrat on the panel and a cosponsor of the measure. Read [more](#).

MORRISEY WINS: West Virginia Attorney General Patrick Morrisey came out on top Tuesday, clinching the Republican nomination to take on Democratic Sen. [Joe Manchin](#) come November. Coal baron Don Blankenship, who was running a controversial campaign against the Republican establishment and Mitch McConnell, ended up in third place in the most-watched race of the night. Blankenship, who was convicted in 2015 of conspiring to skirt mine standards after 29 miners were killed at Massey Energy's Upper Big Branch facility, only [received](#) 19.9 percent of the vote to Morrisey's 34.9 percent, and 29.3 percent for Rep. [Evan Jenkins](#), the other major candidate in the race. Read more on all of Tuesday's primaries [here](#).

NEW DETAILS IN PRUITT SAGA: EPA worked closely with groups such as the Heartland Institute and the CO2 Coalition — both of which dispute the scientific consensus on climate change — when planning Pruitt's proposed "red team, blue team" debate over climate science, The New York Times [reports](#) via new documents released by the NRDC. The emails show that EPA scientists were not involved in the discussion, and that political aides continued to work on the idea even after White House chief of staff John Kelly tried to squelch the plan, according to the Times. In a separate report, the Times got a hold of documents that shed new light on the day security officers, fearing for Pruitt's safety, smashed down his condo door. Read it [here](#).

— **Pruitt's former security chief** Pasquale "Nino" Perrotta told the House Oversight Committee that Pruitt and his staff missed a connecting flight on a trip to Morocco because his security detail's weapons and gear couldn't be transferred between the planes in time, the Associated Press reports, citing anonymous committee aides. The delay forced Pruitt to spend more than 24 hours in Paris, and Perrotta's version of events calls into question the official rationale given by EPA. Read that story [here](#).

**** A message from Anheuser-Busch:** Anheuser-Busch announced that America's leading brewer has placed an order for up to 800 hydrogen-electric powered semi-trucks. The zero-emission trucks will be able to travel between 500 and 1,200 miles. Anheuser-Busch aims to convert its entire long-haul dedicated fleet to renewable powered trucks by 2025. [Learn more](#). **

BARRASSO: 'CLOSELY MONITORING' PRUITT SITUATION: EPW Chairman John Barrasso told ME he's "closely monitoring" the ongoing ethical woes of Pruitt and continuing with unspecified "oversight" of the agency. "The job that he's doing — in terms of the job assigned by the president to roll back regulations and overreach by the federal government — he continues to do well," Barrasso said. "We want to make sure taxpayer money is being well spent and appropriately spent." But Barrasso wouldn't specify if he'd sent additional letters to the agency, again deferring to the White House's vague, ongoing review of the situation.

Wait and see: Senior House Republicans overseeing the EPA also appeared to be publicly sticking with Pruitt as well. Rep. John Shimkus, who oversees the EPA on the House Energy and Commerce Committee, told ME he didn't have plans for additional oversight on his subcommittee but deferred to Chairman Greg Walden on whether it was appropriate. Shimkus acknowledged his lack of oversight plans "might disappoint some of my colleagues," including some Republicans who questioned Pruitt's spending at a hearing several weeks ago. A spokesman for the committee didn't respond to requests for comments on its oversight plans.

HEWITT KNEW IT: Conservative radio host Hugh Hewitt responded Tuesday on his radio show to a POLITICO report about a meeting set up by Hewitt between Pruitt and a water utility that sought a Superfund distinction in his hometown — which it ultimately received. "I knew it was going to show up in the FOIA request," Hewitt said of the meeting request. "I just didn't think it was a story." Separately, the liberal media watchdog group Media Matters reported Tuesday, that The Washington Post's Editorial Page Editor Fred Hiatt had not known of ties between EPA and Hewitt's law firm. "Hewitt, who has not written about Pruitt since September, has agreed not to write about him going forward and has assured us that similar incidents won't occur in the future," Hiatt said in an email to the group.

PERRY PULLS UP: Energy Secretary Rick Perry will testify this morning before the House Science Committee on his department's overall budget for fiscal 2019. Members will likely discuss funding for Advanced Research Projects Agency-Energy and Department's Loan Programs, which are terminated under the budget, as well as Perry's recent moves on coal plants. "Termination of these programs will save over \$300 million in FY 2019 alone while significantly reducing financial risk to the taxpayer moving forward," Perry is expected to say. **If you go:** The hearing kicks off at 9 a.m. in 2318 Rayburn. Watch the livestream here.

AT THE SAME TIME: The House Energy and Commerce Committee is slated to hold a markup on five cybersecurity, small-scale LNG bills this morning. Included in the docket: The bipartisan H.R. 5175 (115), the "Pipeline and LNG Facility Cybersecurity Preparedness Act." The slate of bills — which also includes H.R. 4606 (115), H.R. 5174 (115), H.R. 5239 (115), H.R. 5240 (115) — were approved by the subpanel in April. H.R. 4606 — which would allow the expedited approval of small-scale shipments of liquefied natural gas — got a vote of 19-14 over the objections of most Democrats.

CHATTERJEE SEES CHALLENGES: FERC Commissioner Neil Chatterjee called out natural gas pipeline permitting in New York Tuesday, while speaking at the at the Independent Power Producers of New York conference. "The gravest threat we face to resilience and fuel security is in New England and that's not the result of coal and nuke retirements but because of gas constraints due to a lack of adequate infrastructure," Chatterjee told reporters. Read more from Pro New York's Marie French here.

INTERIOR FACES FOIA SUIT: The Wilderness Society will file a lawsuit today to compel Interior to release documents related to the administration's environmental protection plans on public lands. The group says it filed 21 requests under the Freedom of Information Act for documents related to orders issued by Trump and DOI in March 2017 aimed at removing "potential burdens" to energy development on public lands. TWS says it only received responses to two of those requests.

MAIL CALL! The Environmental Protection Network sent this letter to EPA requesting a public hearing and an extension of the 30-day public comment period on the agency's "secret science" proposal to ban the use of

studies that don't publicly disclose all their data. "The proposal is far too complex, with effects too broad and indeterminate, and requests comment on far too many issues, for a thirty-day response period," the letter says.

WATCH IT: The American Council for Capital Formation released a new ad on Tuesday calling on the president to uphold the investor-state dispute settlement mechanism in any negotiation of NAFTA. Watch it [here](#).

E2 LAUNCHES CLEAN JOBS CAMPAIGN: Environmental Entrepreneurs launched a nationwide campaign Tuesday, dubbed [Clean Jobs Count](#), "to advance awareness and support of America's fastest-growing energy sector." The campaign includes digital ads in Michigan, Ohio, Illinois and Colorado, and additional ad campaigns are planned throughout the rest of the year in at least half a dozen more states.

MOVER, SHAKER: Exelon [announced](#) Constellation CEO Joseph Nigro was promoted to Exelon senior executive vice president and CFO, succeeding Jack Thayer, who becomes senior executive vice president and chief transformation officer. ComEd President and CEO Anne Pramaggiore was promoted to CEO of Exelon Utilities, succeeding Denis O'Brien. And Joseph Dominguez, the executive vice president of governmental and regulatory affairs and public policy, was promoted to CEO of ComEd Chicago.

— **Power Ledger**, a blockchain-powered renewable energy trading platform, announced Dante Disparte was appointed its strategic adviser and ambassador.

QUICK HITS

— Thousands of Puerto Ricans are still in the dark while U.S. agencies leave, [Bloomberg](#).

— Cassidy charts own course on climate change, [E&E News](#).

— Poll: Majority of voters oppose Trump offshore drilling plan, [The Hill](#).

— Trump's pick for top U.N. migration job gave misleading answers on tweets critical of climate change, [CNN](#).

— EPA's "secret science" rule could undermine agency's "war on lead," [Science](#).

— Due to climate change, hurricanes are raining harder and may be growing stronger faster, [The Washington Post](#).

HAPPENING TODAY

9:00 a.m. — House Appropriations Interior-Environment Subcommittee [two-part hearing](#) on "American Indian/Alaska Native Public Witnesses," 2007 Rayburn

9:00 a.m. — OPIS West Coast Fuel Supply and Transportation Opportunities [conference](#), Napa Valley, Calif.

9:00 a.m. — House Science Committee [hearing](#) on "An Overview of the Budget Proposal for the Department of Energy for FY2019," 2318 Rayburn

9:00 a.m. — House Energy and Commerce Committee [markup](#) on various bills, 2123 Rayburn

9:30 a.m. — Center for Climate and Energy Solutions [discussion](#) on "Zero-Carbon Power: Maintaining U.S. Nuclear Capacity," 2000 H St NW

9:30 a.m. — NAS Committee on Earth Resources spring meeting on "Critical Minerals and Materials: Opportunities, Challenges and the Needs for U.S. Manufacturing, Economy and Security," 500 Fifth Street NW

9:30 a.m. — The U.S. Chamber of Commerce's annual Sustainability and Circular Economy Summit on "Translating Value to Ignite Action," 1615 H Street NW

10:00 a.m. — Senate Energy and Natural Resources Public Lands Subcommittee hearing on law enforcement programs at the Bureau of Land Management and the Forest Service, 366 Dirksen

10:00 a.m. — Senate Environment and Public Works Committee hearing on the "America's Water Infrastructure Act of 2018," 406 Dirksen

10:00 a.m. — House Foreign Affairs Committee markup of H.R. 5535 (115), the "Energy Diplomacy Act of 2018," 2172 Rayburn

12:00 p.m. — The Environmental Law Institute discussion on the Ramsar Convention on Wetlands of International Importance, 1730 M Street NW

4:00 p.m. — Senate Indian Affairs Committee hearing on the nomination of Tara Mac Lean Sweeney to be assistant Interior secretary for Indian affairs, 628 Dirksen

6:00 p.m. — The Environmental Law Institute holds National Wetlands Awards, 100 Maryland Avenue SW

6:30 p.m. — The Carnegie Institution for Science discussion on "Deep Earth Through a Diamond Looking Glass," 1530 P Street NW

THAT'S ALL FOR ME!

**** A message from Anheuser-Busch:** Anheuser-Busch announced that America's leading brewer has placed an order for up to 800 hydrogen-electric powered semi-trucks from the pioneer in hydrogen-electric renewable technology, Nikola Motor Company. The zero-emission trucks — which will be able to travel between 500 and 1,200 miles and be refilled within 20 minutes, reducing idle time — are expected to be integrated into Anheuser-Busch's dedicated fleet beginning in 2020.

Through this agreement Anheuser-Busch aims to convert its entire long-haul dedicated fleet to renewable powered trucks by 2025.

"At Anheuser-Busch we're continuously searching for ways to improve sustainability across our entire value chain and drive our industry forward," said Michel Doukeris, CEO of Anheuser-Busch. "The transport industry is one that is ripe for innovative solutions and Nikola is leading the way with hydrogen-electric, zero-emission capabilities. We are very excited by the possibilities our partnership with them can offer."

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Stories from POLITICO Pro

Failed legal argument against California car rules gets second wind under Trump Back

The Trump administration's plan to stymie California's tough greenhouse gas emissions for cars is about to trigger an epic legal fight — and the White House appears to be planning to use the same strategy that failed to block the state's rules a decade ago.

California's supporters, however, hope any courtroom battles will play out the way they did when the auto industry tried to prevent California and other like-minded states from setting stricter emissions limits than those pushed by EPA: with a pair of resounding legal defeats.

"It's sort of déjà vu because it's going to be basically round two," said Kevin Leske, who was an assistant attorney general in Vermont in 2007 when the state fought off an industry lawsuit seeking to block the greenhouse gas rules for cars.

"Here we are, 10 or 11 years later, basically facing the prospect, it sounds like, of the Trump administration making the same arguments that the auto industry did," added Leske, now a law professor at Barry University in Florida.

If finalized, the move would be one of the biggest regulatory rollbacks of the Trump administration, and it could go even further than what automakers have asked the White House to do. And its advocates say despite the previous legal setbacks, they hope to take the issue to a higher court, something they were denied in the previous battle when a political deal ended the conflict.

In the meantime, California, which has already spearheaded a lawsuit over EPA's April decision to weaken the standards, is already preparing for a major regulatory break with the Trump administration. The state's Air Resources Board on Monday asked for public input for regulatory language that it will not consider cars complying with a weakened federal standard to be acceptable in California.

The legal issue will center on the interplay between the long-standing fuel economy standards known as the Corporate Average Fuel Economy, which is issued by the National Highway Traffic Safety Administration under the 1975 Energy Policy and Conservation Act, and the relatively new greenhouse gas emissions standards enforced nationally for the first time under the Obama administration.

In requiring a national CAFE standard, Congress barred states from issuing their own laws or regulations "related to" fuel economy standards. But California's novel approach to regulate carbon dioxide emissions via the state's special authority under the Clean Air Act gave it significant leverage to force car makers to meet stricter rules.

In order to avoid a patchwork of different regulations between California and its allies and the rest country, the Trump administration is expected to seek to nullify the waiver EPA granted California in 2009 allowing it to enforce its own rules. EPA has never tried to revoke a waiver, and legal observers note the law does not explicitly grant EPA such authority.

But the Trump administration is expected to try to circumvent any questions around revoking the waiver by arguing that EPCA preempts California from enforcing its auto emissions standards — essentially the same argument automakers and dealers deployed in multiple lawsuits over a decade ago.

A May 1 letter from Sen. Tom Carper to EPA and DOT says the draft proposal would adopt that EPCA preemption argument.

That strategy fell short first time around, when a California judge concluded that greenhouse gas standards are too different from fuel economy regulations to fall under EPCA's "related to" preemption language. Emissions

may be closely correlated to fuel efficiency, he ruled, but factors like air conditioning usage and credits for electric vehicles mean that the pollution rules are not explicitly aimed at fuel economy, and thus are not preempted

Meanwhile, a Vermont judge also ruled in 2007 that since EPA had approved the California standard under the Clean Air Act waiver, it becomes a proper government motor vehicle standard, which EPCA requires DOT to take into account when setting fuel economy targets. Congress "could not have intended that an EPA-approved emissions reduction regulation did not have the force of a federal regulation," the judge wrote.

Those two legal rulings with the span of a few months would seem to be formidable hurdles for any EPCA preemption argument. And the case gets even more difficult for the Trump administration when the Supreme Court's landmark ruling in that year's *Massachusetts v. EPA* is added in. In that case, the majority said that fuel economy and greenhouse gas rules may "overlap," but could both be administered in a way that would "avoid inconsistency."

"I think it's fair to say this ground has been trod before and it's not looking good if Pruitt's EPA trots out this EPCA preemption argument again," said Sara Colangelo, the environmental law and policy program director at Georgetown University.

Congress also passed two major Clean Air Act updates after EPCA, in 1977 and 1990, that expanded California's special powers and didn't address the exemption at all, a move Colangelo said "really signals that they intended California to maintain this special position as the laboratory for advancing pollution controls in the emissions arena."

NHTSA declined to address the preemption issue, but said in a statement that its "top priority" is safety and that the administration "must also consider economic practicability." A spokesman for California's Air Resources Board said that the preemption proposal "would harm people's health, boost greenhouse gas pollution and force drivers to pay more money at the pump for years."

Those two previous court losses are not slowing down conservatives pushing the Trump administration to adopt the preemption argument now.

Undeterred, a coalition of industry groups wrote to EPA Administrator Scott Pruitt in March urging him to revoke California's waiver by concluding it is preempted by EPCA.

"Even though these two lower courts have weighed in, I think there's opportunity now for the lawsuits to move on to a higher level," Patrick Hedger, the policy director for the FreedomWorks Foundation, a conservative advocacy group.

He added that no higher court ultimately addressed the issue. Appeals in both cases were dropped as part of the single national standard deal reached between the Obama administration, California and automakers. Hedger noted that the Supreme Court's *Massachusetts v. EPA* ruling was not specifically about EPCA preemption.

Marlo Lewis, a senior fellow at the Competitive Enterprise Institute, believes the best way to win the preemption argument is to focus on the high degree of overlap to show the two standards are "related" under EPCA

"You and your dad are different people. Are you not related?" Lewis said. "The idea that they're not related because they're not identical is just pure rhetorical flimflam."

Like many other deregulatory actions, this proposal would substantially benefit the energy-producing that voted for Trump.

For conservatives, blocking California's climate change authority is the ultimate goal, since the Democratic hold on state politics and California's size mean its aggressive action on climate change has an outsize influence on the rest of the nation.

"I think this is one step in basically saying, 'Look, we're not going to allow California on this issue or any others in the future to continue to supersede federal policy on these issues and basically impose their standards on the entire country just because of the size of the market,'" said Hedger.

Halting fuel economy standards at 2020 levels would mean needing roughly 2 billion barrels more oil over the lifetime of cars built from 2021 to 2026, said David Cooke, a senior vehicles analyst at the Union of Concerned Scientists. And that's not counting the longer-term demands that would be caused for future model years that would start with lower targets because of this potential freeze.

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Pruitt sought tight control of events even on friendly turf [Back](#)

By Anthony Adragna and Emily Holden | 05/08/2018 06:38 PM EDT

EPA Administrator Scott Pruitt and his staff went to great lengths to avoid unscripted questions when he toured the country speaking to industry groups, and even a seemingly friendly ice breaker can be deemed unacceptable.

"How often do you get back to Oklahoma?" the top official from the Iowa Association of Electric Cooperatives planned to ask Pruitt when he addressed the group last December, according to internal emails that were recently made public.

That question was crossed out when an EPA staff member sent back a proposed list of questions for Pruitt's "fireside chat" with Chuck Soderberg, the association's executive vice president. Tate Bennett, EPA's associate administrator of public engagement, did not explain why that and another question had been removed, but at the time of his Nov. 29 email the administrator was already [facing questions](#) over his travel practices. A few months earlier, EPA's inspector general had [launched an investigation](#) into whether the agency had sufficient policies in place to "prevent fraud, waste and abuse with the Administrator's travel that included trips to Oklahoma."

The [emails](#) among Bennett, other EPA staffers and representatives of the Iowa cooperatives were included in the thousands of documents obtained by the Sierra Club through a public records lawsuit. They reveal a pattern of Pruitt and his staff working to limit access by independent journalists, pre-screen questions from friendly interviewers and coordinate his message with lobbyists ahead of gatherings with conservative or industry groups.

Ahead of the Iowa event, the co-op association's director of government relations, Kevin Condon, confirmed that neither his group nor EPA would issue a media advisory, and they would cancel a press gaggle but still host an interview with the group's internal Living with Energy in Iowa magazine.

That publication also got questions [pre-approved](#) by EPA staff.

"Let me know if any of these give you heartburn," said Erin Campbell, the co-op group's director of communications. "This would be a friendly interview environment and we're keeping the conversation focused on Iowa consumers."

In another instance, before Pruitt spoke at a U.S. Chamber of Commerce event in June, EPA received a list of 10 proposed questions from the head of the group's energy institute, Karen Harbert. They touched on his regulatory philosophy, his efforts to rollback rules, and whether co-owning a minor league baseball team taught him lessons useful for running a federal agency. EPA staff did not appear to object to Harbert's proposed list.

When Pruitt was slotted to speak at a Texas Oil and Gas Association conference in October, EPA staff asked for a Q&A format with a representative of the group, rather than have the administrator take three pre-screened questions from the crowd.

EPA aides asked for the change in plans after being made aware that four reporters would be attending from the Houston Chronicle, Bloomberg BNA and Reuters.

Bennett wrote that after updating Pruitt that the media would attend, "he'd like to respectfully request that the entire format now be Q&A with two chairs on stage." She also shared a list of questions the moderator could ask, including on regulatory rollbacks, on what Pruitt would consider "true environmentalism" and on what his relationship was like with the president.

"What has it been like to run such a newsworthy agency? More difficult than you imagined?" the last question read.

And in at least one instance, a lobbyist for a group Pruitt was set to address offered to help write his speech for him. Before Pruitt and an entourage of eight staffers and security agents traveled in November to Kiawah Island, South Carolina, for a speaking engagement with the American Chemistry Council, the group's lobbyist Bryan Zumwalt asked a scheduler who to contact to help write Pruitt's speech.

"Who in your sop (sic) should I be working with to help prepare Administrator Pruitt's talking points/speech? Figure someone there might like the help on key areas to discuss," he said.

The scheduler, deputy White House liaison Hayley Ford, replied that Millan Hupp, director of scheduling and advance, and Bennett could assist.

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Trump plan leaves biofuel makers cold [Back](#)

By Eric Wolff | 05/08/2018 06:48 PM EDT

President Donald Trump's latest bid to strike a deal on biofuels on Tuesday appeared to win over oil refiners, but a plan to allow ethanol exports to qualify for credits under the federal program left biofuel producers irate.

Trump gave ethanol producers two big victories at the White House meeting by reiterating his promise to allow 15 percent ethanol fuels year-round and rejecting a price cap on the credits, called Renewable Identification Numbers, that are used to prove compliance with the Renewable Fuel Standard. But ethanol producers balked at

the plan to have EPA Administrator Scott Pruitt and Agriculture Secretary Sonny Perdue set up a system to allow ethanol exports to receive RINs.

"The notion of allowing exported ethanol to count toward an oil company's RFS obligation is extremely problematic," Bob Dinneen, president and CEO of the Renewable Fuels Association, said in a statement. "In no way will that ever be acceptable or considered a win for our industry."

But the Trump administration said it has found the right balance between competing parts of its electorate.

"After several meetings and input from stakeholders on both sides, President Trump is pleased to announce that a final decision has been made that allows E15 to be sold year-round, while providing relief to refiners," White House spokeswoman Lindsay Walters said in a statement. "This outcome will protect our hardworking farmers and refinery workers. The President is satisfied with the attention and care that all parties devoted to this issue."

Refiners backed the idea, although they were wary of a separate proposal to allow EPA to consider requiring large oil refineries to take on the ethanol-blending requirements the agency lifted from small refiners by issuing dozens of compliance waivers.

Sen. Ted Cruz (R-Texas) emerged from Tuesday's meeting calling the deal a "win-win." Refiners have been pressing for years to change the program to lower compliance costs that they say are eating away at their profits.

"President Trump brought together two sides that thought a deal couldn't be reached and he found a 'win-win' solution to one of the most intractable regulatory problems facing the nation — a problem that has been neglected for years," refiner Valero Energy said in a statement.

The group of independent refiners pushing for changes, led by Valero, Carl Icahn's CVR and some Philadelphia-area refiners, had previously sought a cap on RIN prices in exchange for supporting an increase in the sales of E15.

At Tuesday's meeting, the seventh so far held by the White House, a source said Trump agreed to definitively reject any price cap, but he also asked Pruitt and Perdue to work out a plan for how exports could ease price pressure on RINs. Currently, ethanol that is shipped abroad is stripped of the RINs that can be used to meet a refiner's RFS obligation. Sources who work with refiners say preserving those credits would increase the supply and drive down prices for refineries.

"Because biofuels exports are a long-time major objective of the farm community, allowing export RINs is literally the anticipated win-win solution, obviating the need for more direct cost containment devices," said a refining industry source close to discussions.

But ethanol producers, who have been increasing their exports in recent years, complain that allowing those shipments to earn RINS would undermine the biofuel program's goals.

"Pursuing a path that includes RIN credits on export gallons would violate the letter and spirit of the RFS, serving the interests of oil refiners who have already benefited from Administrator Pruitt's unprecedented RFS volume waivers at the further expense of America's farmers," Kevin Skunes, president of the National Corn Growers Association, said in a statement.

Sources said Tuesday's meeting included a lengthy discussion about whether EPA could potentially reallocate the 1.2 billion gallons of ethanol demand the industry says has been exempted under the dozens of compliance waivers the agency has granted to small refineries. One source said Pruitt expressed openness to shifting those gallons to large refiners, something the refiners opposed. But that reallocation discussion got tied up with the

idea of export RINs, and Pruitt and Perdue left the White House with instructions to develop some kind of proposal.

"There was discussion about how to reallocate the waived obligations so that demand for biofuels wouldn't be hurt," Sen. Chuck Grassley (R-Iowa) said in a statement. "While details weren't decided, I look forward to reviewing a plan being developed by Secretary Perdue and Administrator Pruitt. Any fix can't hurt domestic biofuels production."

Republican Sen. Pat Toomey of Pennsylvania also expressed reservations about the vague promise of changes to the program.

"The proposal discussed at our White House meeting today might result in lower RIN prices, which would relieve this artificial burden — but even that is not clear until details are established," he said in a statement.

Even as the White House has pushed for a deal, Sen. John Cornyn (R-Texas) and Rep. John Shimkus (R-Ill.) have been leading efforts in Congress to overhaul the program. Shimkus and his staff have said in the past that administrative changes to the program would undermine their effort, though they appear to be moving full-steam ahead for now.

"Executive actions aren't a substitute for legislation," said Shimkus spokesman Jordan Haverly. "The only path to an enduring and equitable deal for farmers, refiners, ethanol producers, automakers and consumers — especially one that won't spend more time in court than on the books — is through Congress. Those legislative efforts remain ongoing."

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Trump's latest strike against regulations: His infrastructure plan [Back](#)

By Annie Snider and Anthony Adragna | 02/16/2018 05:01 AM EDT

President Donald Trump's infrastructure plan would trigger one of the most significant regulation rollbacks in decades, benefiting not just roads and bridges, but businesses ranging from coal mines to homebuilders to factories.

The blueprint the White House released this week would eliminate the Environmental Protection Agency's authority to veto the Army Corps of Engineers' wetlands permits, a power that the EPA wielded during the Obama administration to block a controversial mountaintop coal mine in West Virginia. Industrial facilities like coal plants and steel factories could get 15-year Clean Water Act pollution permits — up from five years — that would be automatically renewed. For some infrastructure permits, the deadline for opponents to file legal challenges would shrink from six years to 150 days.

The proposed revisions to some of the nation's bedrock environmental regulations are drawing heavy criticism from congressional Democrats — including in the Senate, where Republicans would need at least nine extra votes to enact Trump's plan. Environmental groups say the ambition of the plan's deregulation push contrasts with the relatively meager amount of federal money the White House is proposing to contribute toward the \$1.5 trillion total.

"This isn't an infrastructure package," said Melissa Samet, an attorney with the National Wildlife Federation. "This is an all-out attack on longstanding environmental protections that have done a lot of good for this country."

Republicans and business groups have long complained that the federal government's often cumbersome permitting process, governed by laws Congress enacted decades ago, creates unnecessary delays for projects. "We built the Empire State Building in just one year," Trump said in his State of the Union address last month. "Is it not a disgrace that it can now take 10 years just to get a permit approved for a simple road?"

Supporters of Trump's plan are happy the White House is pushing for changes.

"We're very pleased with the permitting provisions," said Ross Eisenberg, a vice president at the National Association of Manufacturers. "Even some of them being signed law would be a major improvement. We don't want to blow up the process. We just want it to go faster."

Senate Environment and Public Works Chairman John Barrasso (R-Wyo.) said he hopes Democrats will come around.

"You're never going to win over every obstructing Democrat, but they've got to realize that projects have been slowed down in their states," Barrasso said.

But Democrats say the nation's real infrastructure problem is money — and the Trump proposal calls for just \$200 billion in federal investments over the next decade for needs including roads, bridges, airports, water plants, veterans' hospitals and rural broadband service. And they questioned whether Trump's aim is really just to make regulatory reviews more efficient.

"The president's contentions are not to streamline a process, but to compromise needed environmental and public health issues," Sen. Ben Cardin (D-Md.) told reporters.

Some kind of environmental streamlining has been a part of most of the major infrastructure measures Congress has passed in recent years. Provisions in the 2012 highway bill and a 2014 water bill aimed to get agencies to coordinate their permit reviews more efficiently and impose consequences for delays.

Supporters of those changes included then-Sen. Barbara Boxer (D-Calif.), an environmental stalwart, who argued that the streamlining amounted to common sense despite the opposition of some environmentalists. Many of those provisions have yet to take effect, however.

Trump's infrastructure proposal would go much further, setting strict deadlines for reviews and curtailing EPA's say over projects.

For instance, Trump has touted the proposal's two-year limit for agencies to issue final permitting decisions, including a strict 21-month limit on analyses done under the National Environmental Policy Act of 1970, one of the nation's foundational environmental laws.

The law requires federal agencies to make a public estimate of the environmental impacts when the federal government spends money or makes a permitting decision, although nothing in the law requires agencies to limit environmental damage. Repeated environmental studies under NEPA were one factor that contributed to the Obama administration's nearly seven-year review of the Keystone XL oil pipeline, a project Trump has pushed to revive this year.

Under Trump's proposal, agencies would be required to complete environmental reviews in no more than 21 months. Anyone seeking to challenge the permits would have just 150 days to sue, instead of the current six years.

Industry groups argue the act's long statute of limitations for permit challenges leaves a cloud of uncertainty over projects. But Samet, the National Wildlife Federation attorney, said 150 days runs by quickly when challengers have to track down documents that regularly run hundreds of pages, decipher them, find experts to analyze the data, hire lawyers and scrounge up the money to cover legal costs.

The result, she said: "Bad projects will move forward. There'll be nothing to stop them."

Trump's plan would also deliver on a long-sought Republican goal of curbing EPA's authority under the Clean Water Act's wetlands program — a change that would have sweeping effects not just for infrastructure projects but for nearly any kind of development.

The blueprint would remove EPA's authority to oversee the Army Corps of Engineers' determinations about which streams and wetlands are subject to Clean Water Act protections. And it would take away the EPA's ability to veto dredge-and-fill permits that it decides would cause undue harm to the environment.

EPA has used that veto authority only 13 times since the Clean Water Act was enacted, including with its 2012 reversal of a Army Corps permit for the Mingo Logan mountaintop coal mine in West Virginia — a decision that angered the coal industry's supporters in Congress. Most of the other occasions when it used that power came during Republican administrations.

Trump's proposal would also extend pollution discharge permits under the Clean Water Act from five years to 15, and allow them to be automatically renewed as long as "water quality needs do not require more stringent permit limits." Those changes that would apply not only to municipal wastewater treatment plants but also to industrial facilities.

The plan also calls for eliminating a section of the Clean Air Act that requires EPA to review, comment on and rate other agencies' environmental impact statements.

While the proposal may allow construction on projects to get started faster, it might end up creating bigger problems in the end, argued Kym Hunter, an attorney with the Southern Environmental Law Center. She said a narrower NEPA review wouldn't just keep potential environmental problems from coming to light, but it would also keep the public in the dark about whether a project would live up to its promises.

"NEPA is about taking that hard look," Hunter argued. "When it was promulgated in 1970, the idea was if you think about what you are doing you're likely to make a better decision. This [Trump proposal] would just encourage agencies to rush forward without being thoughtful, without being careful."

Trump's plan also attempts to limit the ability of courts to halt work on projects while lawsuits proceed. But that could backfire too, Hunter said, if it keeps courts from halting an ill-conceived project until after a government body has started spending money and taking on debt.

Sen. Tom Carper of Delaware, the top Democrat on the Environment and Public Works Committee, didn't dismiss the idea of making updates to the decade-old laws. But if the administration's goal is to weaken environmental regulations, he said, "we're not going to get very far."

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Trump's proposed regulatory rollbacks left out of Senate infrastructure bill [Back](#)

By Annie Snider | 05/08/2018 06:44 PM EDT

The first major infrastructure bill introduced in Congress since President Donald Trump took office ignores virtually all of the big-ticket deregulatory proposals the White House laid out in its blueprint earlier this year.

Chief among Trump's complaints about the country's infrastructure system is the amount of time it takes to get environmental permits. The package the White House unveiled in February included a meager \$200 billion in federal funding for infrastructure, and instead focused on a number of so-called environmental streamlining provisions. Among them: proposals to eliminate the EPA's authority to veto the Army Corps of Engineers' wetlands permits and reduce the length of time opponents have to file legal challenges to permits from six years to 150 days.

But none of those provisions made it into what stands to be a multibillion dollar water resources measure introduced by top Republicans and Democrats on the Senate Environment and Public Works Committee on Tuesday.

That bill, dubbed America's Water Infrastructure Act of 2018, is so far the most significant step lawmakers have taken to help fulfill the president's marquee campaign promise to revitalize the country's transportation arteries. And in a bid to have a feather in their caps to take home before the 2018 midterm elections, lawmakers in the upper chamber are charting a bipartisan course with the measure.

"We focus on the 80 percent where we have general agreement, and we're going to get something done," Sen. Tom Carper (D-Del.), the top Democrat on the panel and a cosponsor of the measure, told reporters.

The House Transportation and Infrastructure Committee is working on its own water resources bill that also could be released this month, and members are pursuing a bipartisan approach, too, as they have historically.

The Senate bill is sidestepping battles over the nation's foundational environmental laws, including the National Environmental Policy Act and the Clean Water Act. Republicans and business groups fault those laws for delays and skyrocketing costs — "Is it not a disgrace that it can now take 10 years just to get a permit approved for a simple road?" Trump asked in his State of the Union address in January — but Democrats and environmentalists defend them as critical protections.

Instead, the bill's authors set their sights on a suite of more practical changes at the Army Corps of Engineers — one of the government's most red-tape-laden bureaucracies that just about every lawmaker loves to hate.

The bill includes dozens of provisions aimed at making the agency more transparent and responsive to Congress and the communities it works with to build projects. It would make a major change to the way the Army Corps budgets, in an effort to help projects that are important to states but aren't competing well for scarce federal dollars under the current approach. And it would create a board related to water storage projects that an environment committee aide said is aimed at helping communities understand early on whether their project will be able to get a permit.

The measure also includes a number of drinking water and wastewater provisions, issues that became a major component of the last such measure in 2016, when an aid package to help Flint, Mich., recover from its lead

contamination crisis was included. The new Senate bill includes provisions to help small and rural water utilities with technical assistance, allow communities to use federal drinking water dollars to protect their water sources, and to help communities balance multiple costly wastewater upgrade requirements at the same time.

The meat of the bill is six new project authorizations for the Army Corps, including a ship channel extension project in Texas, flood control projects in New York and Hawaii, and hurricane protection projects in Florida and Texas. The bill would also increase the amount that can be spent for the Savannah Harbor expansion project, a top priority for Georgia's senators, and allow more water to be stored at a key Wyoming reservoir.

And it's not just Trump's environmental permitting changes that senators rejected in the bill; they also responded to the White House's past proposals to eliminate or significantly cut a popular Great Lakes restoration program by increasing its authorization. The bill would also require EPA to open a new program office for the Long Island Sound, where the Trump administration also proposed eliminating funding.

Asked Tuesday how work on the the House's measure is coming, Transportation Committee Chairman [Bill Shuster](#) (R-Pa.) said "good."

But one fault line is already emerging between the two chambers.

Shuster has backed a proposal from his water resources subcommittee chairman, Rep. [Garret Graves](#) (R-La.) to move the Army Corps of Engineers out of the Pentagon and to another agency like the Department of Transportation or the Interior Department. But an EPW aide said that both Republicans and Democrats in the Senate have concerns with the idea; their bill would instead mandate a study by the National Academy of Sciences into the structuring of the Army Corps.

"We're trying to pass a bipartisan bill and I think that would make it very difficult to do with the limited amount of time that we have," the aide said.

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Top takeaways from the first big primary of 2018 [Back](#)

By Steven Shepard, Elena Schneider and Scott Bland | 05/09/2018 01:13 AM EDT

Republicans can exhale now.

Convicted coal magnate Don Blankenship's surprise third-place finish in Tuesday's West Virginia GOP Senate primary sidestepped yet another debacle for the party after consecutive meltdowns in special elections in Alabama and Pennsylvania. Instead, party leaders celebrated state Attorney General Patrick Morrisey's win, which capped the first multi-state primary of 2018.

The night saw Republicans pick three of the 10 candidates who will take on Democratic senators in states President Donald Trump won, and the first House incumbent go down in a primary in 2018.

Here are POLITICO's seven takeaways from Tuesday:

1. Republicans averted catastrophe, but victory in West Virginia is far from assured.

A Blankenship nomination might well have extinguished GOP hopes of toppling Democratic Sen. Joe Manchin, despite the state's heavy Republican electorate. Blankenship was living in a Phoenix halfway house this time last year, after his conviction for conspiracy to skirt mine safety rules after an incident claimed the life of 29 miners at one of his facilities. He called Senate Majority Leader Mitch McConnell "Cocaine Mitch," and made racially charged comments about McConnell's family.

Morrissey is someone national Republicans can embrace. National Republican Senatorial Committee executive director Chris Hansen said in a statement Tuesday night that Morrissey will "fight for conservative values" and predicted his victory over Manchin in the general election.

But Morrissey enters the race with his own baggage — even if it's nothing like Blankenship's. Morrissey used to be a Washington lobbyist, and Morrissey's wife still is one. Also, Morrissey ran for Congress in 2000 — in New Jersey.

Rep. Evan Jenkins, who finished second on Tuesday night, tried to level those attacks. But the punches didn't land with Blankenship's circus-like candidacy stealing the spotlight.

With Blankenship fading into the distance, Manchin can contrast his folksy, "Pepperoni Roll," West Virginia affect against Morrissey's Jersey accent and D.C. "swamp" ties. Republicans will fire back, alleging that Manchin isn't the aw-shucks bipartisan he claims to be and doesn't stick up for Trump, who is very popular in the state.

2. Words alone can't earn the Trump mantle.

Reps. Luke Messer and Todd Rokita spent the final week of the GOP Senate primary in Indiana trying to convince voters that Mike Braun — the businessman and former one-term state representative who had surged to the front of the field on an outsider message — wasn't a reliable conservative. They cited Braun's participation in Democratic primaries for more than three decades.

But Braun easily defeated both Messer and Rokita because his outsider message, in contrast with his two D.C. insider rivals, resonated more than his Democratic past. (Braun said he only voted in Democratic primaries to influence local elections, but Messer and Rokita painted that as a lame excuse.)

Braun's argument was easier to make after Trump's 2016 presidential campaign. Trump's opponents in the GOP primaries needed the billionaire for his past donations to Democratic candidates, or his past conservative apostasies on issues like abortion and universal health care. Trump parried those attacks, barely breaking a sweat.

Ultimately, as much as Rokita (who donned a red "Make America Great Again" hat in his ads) or Messer (who talked up Trump for a Nobel Peace Prize) tried to claim the Trump mantle, Braun seemed more like the real deal. He hit Messer and Rokita for being attorneys who never practiced law, instead getting into politics at a young age. And Braun, who will now try to unseat Democratic Sen. Joe Donnelly, said he was the only candidate who had signed the front of a paycheck, while his opponents had been endorsing government checks for most of their careers.

3. House members went down hard.

It was a bad night for House members running statewide: Jenkins lost to Morrissey by more than 5 points. Rokita and Messer finished even further behind Braun.

Rep. Jim Renacci, who still won the GOP nomination to face Sen. Sherrod Brown in Ohio, failed to win a majority of the vote in the primary, despite endorsements from Trump and the state Republican Party.

For a party led by a first-time-candidate-turned-president, it's not surprising that Congress isn't the ideal springboard to higher office. But the GOP is relying on other House members to maintain its Senate majority — whether it's Martha McSally in Arizona, Marsha Blackburn in Tennessee or Kevin Cramer in North Dakota.

And for members facing competitive statewide primaries — think McSally, Kristi Noem for governor in South Dakota, Raul Labrador for Idaho governor or Diane Black for Tennessee governor — they may find their congressional résumés are more anchors than propulsion for their candidacies.

4. The first incumbent falls. Will others join?

Rep. Robert Pittenger (R-N.C.) became the first incumbent member of Congress knocked out in a primary in 2018.

Pittenger tried to align himself closely to Trump, touting in his first TV ad that he was the "strongest supporter" of the president. But Mark Harris, a pastor who nearly beat Pittenger in 2016, successfully tagged Pittenger as a part of the "Washington swamp." Republicans in primaries across the country are questioning their opponents' pro-Trump bona fides, a strategy that proved effective here.

Pittenger's loss surprised national and local Republicans, who expected the congressman to survive the primary challenge. But Harris' campaign said Pittenger's "votes didn't match his rhetoric," pointing to his support for the omnibus spending bill in March, said Andy Yates, a spokesman for the campaign. (Harris, a social conservative, said he planned to join the House Freedom Caucus.)

It's not clear that there's a long list of Pittengers about to be swept away in primaries. Still, his defeat could serve as a wake-up call to incumbents who have struggled to unite Republicans at the ballot box in the past, like Reps. Martha Roby (Ala.) and Doug Lamborn (Colo.).

5. Both parties got their men for Ohio governor.

It was an easy night for both parties watching the Ohio gubernatorial race. State Attorney General Mike DeWine easily dispatched Lt. Gov. Mary Taylor in the GOP primary, aided by the imprimatur of the state party.

And on the Democratic side, former state Attorney General Richard Cordray cruised past Rep. Dennis Kucinich after weeks of hand-wringing that the race against the at-times eccentric Kucinich was closer than it should have been.

In the end, Cordray — who until recently headed the federal Consumer Financial Protection Bureau — crushed Kucinich and four other challengers, even winning a greater percentage in the Democratic primary among a fractured field than DeWine earned in a one-on-one matchup with Taylor.

Both parties quickly pivoted to trying to attach a Washington brand to their opponents. The Republican Governors Association called Cordray "a Washington D.C. power-hungry insider," despite DeWine's 20-year congressional tenure.

Meanwhile, the Democratic Governors Association said DeWine was "a card-carrying member of the D.C. and Columbus swamp," despite the fact that Cordray was DeWine's predecessor as attorney general and was an Obama political appointee.

Either way, the gubernatorial election this year will be a rematch of the 2010 attorney general race. DeWine, four years removed from a loss to Brown, toppled the then-incumbent Cordray by 1 percentage point in the GOP wave year.

6. Chalk two up for the GOP establishment.

Establishment Republicans got more good news in Ohio when Troy Balderson and Anthony Gonzalez won primaries for open congressional seats.

Balderson, backed by former Rep. Pat Tiberi, beat Melanie Leneghan in two primaries in Ohio's 12th District on Tuesday — one for the November election, and one for an August special election to complete Tiberi's unexpired term.

The race was a proxy war between Tiberi — an long-time ally of former House Speaker John Boehner — and Rep. Jim Jordan (R-Ohio). Tiberi spent money on TV ads to back Balderson, while Jordan, the House Freedom Caucus co-founder, cut a competing TV ad for Leneghan that aired with help from conservative megadonor Richard Uihlein.

Gonzalez, a former Ohio State University football star, won a similar fight in the state's 16th District. He defeated state Sen. Christina Hagan, who had Jordan's backing in the race.

Both districts have been Republican strongholds — the 16th is even more solidly red than the 12th. But given Democrats' stronger-than-expected performances in special elections in the Trump era, Republicans are gearing up for a fight for the Tiberi seat over the next three months.

"There will be a very clear contrast between Troy and ... [Democratic nominee] Danny O'Connor in the months ahead," said Rep. Steve Stivers (R-Ohio), who chairs the National Republican Congressional Committee.

7. Women are dominating Democratic primaries

Women are running for federal office in record numbers in 2018 — and it looks like Democratic primary voters are poised to support those candidates like never before. There were 20 open Democratic House primaries with women on the ballot Tuesday night, and voters selected a female nominee in 17 of them.

It's a sharp turnaround from past years when female Democrats faced big hurdles in trying to win support from voters. A good number of the primary winners Tuesday night are running in heavily Republican seats with little chance of winning general elections. But they are still part of an important trend: Evidence is building that Democratic voters are tilting toward supporting women this year.

Keep this in mind as we approach primaries in big states full of battleground districts over the next two months: California and New York in June, and Pennsylvania next week.

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Pruitt fast-tracked California cleanup after Hugh Hewitt brokered meeting [Back](#)

By Emily Holden and Anthony Adragna | 05/07/2018 10:12 PM EDT

EPA Administrator Scott Pruitt [placed](#) a polluted California area on his personal priority list of Superfund sites targeted for "immediate and intense" action after conservative radio and television host Hugh Hewitt brokered a

meeting between him and lawyers for the water district that was seeking federal help to clean up the polluted Orange County site.

The previously unreported meeting, which was documented in emails released by EPA under a Freedom of Information Act lawsuit by the Sierra Club, showed Pruitt's staff reacting quickly to the request last September by Hewitt, who has been one of Pruitt's staunchest defenders amid a raft of ethics controversies around his expensive travel, security team spending and a cheap Washington condo rental from a lobbyist.

Pruitt has drawn criticism from environmentalists and other critics for letting prominent GOP backers and industry groups influence the agency's agenda — even as he has kicked scientists off of EPA's advisory panels and moved to limit the kinds of peer-reviewed research it will consider when making decisions.

In many cases, the people whose advice Pruitt is heeding could be useful supporters for him in a future race for U.S. senator or president. They include GOP megadonor Sheldon Adelson, who — as POLITICO reported in March — persuaded Pruitt last year to take a meeting with an Israeli water purification company called Water-Gen that later won a research deal with the EPA.

Hewitt, a resident of Orange County whose son James works in EPA's press office, emailed Pruitt in September to set up a meeting between the administrator and the law firm Larson O'Brien, which employs Hewitt and represents the Orange County Water District. Pruitt had been planning to meet with the lawyers in California a month earlier, but cancelled the trip to undergo knee surgery.

"I'll join if the Administrator would like me too or can catch up later at a dinner," Hewitt wrote in his Sept. 18 message. Hewitt added that the issues surrounding the Superfund site were "Greek to me but a big deal in my home county."

Pruitt's aides responded within minutes and quickly confirmed an Oct. 18 meeting for the lawyers and a project director.

Six weeks after that meeting, on Dec. 8, the Orange County North Basin site appeared on Pruitt's list of 21 contaminated areas to address. A month later, Pruitt proposed listing the site on EPA's National Priorities List, a move that could make it eligible for long-term federal cleanup funding from the federal government if the responsible polluters cannot be identified and forced to pay for its remediation.

Since then, Hewitt has been a robust defender of Pruitt, dismissing his recent controversies as "nonsense scandals" on MSNBC in early April and saying his detractors were "just trying to stop the deregulation effort."

Pruitt has touted the agency's Superfund work as one of his key priorities, setting up a task force to seek to speed up the clean-up of the nation's worst contaminated sites. That task force had been headed by Albert "Kell" Kelly, a former banker and longtime friend, who departed the agency last week after news about loans he provided to Pruitt in Oklahoma, including the mortgage provided to Pruitt for a house he bought from a lobbyist when he was a state senator.

Environmental advocates have worried Pruitt's efforts to identify Superfund priority sites would bypass the process set up by Congress to ensure cleanup resources are divided fairly, and that he could focus on sites seen as important to his political supporters. And environmentalists have said Pruitt's rush to claim that contaminated properties have been remediated could risk turning them over to local governments and businesses that might pursue cheaper, inadequate solutions.

Elgie Holstein, senior director for strategic planning at the Environmental Defense Fund who has been tracking EPA's Superfund actions, said the connection to Hewitt is "not a surprise."

"The biggest fear we have is that No. 1, the administrator's political priorities and personal ambitions, political ambitions become the primary criteria for action under this program instead of science and health," Holstein said.

EPA never disclosed the meeting with Hewitt's contacts. It was listed on Pruitt's public calendar as a staff briefing. But on his private Outlook schedule, which the agency has released in response to lawsuits, it appeared as an "Orange County Superfund Site" meeting with Kelly and two other staffers. The records did not list the Californians in attendance at the meeting at EPA headquarters in Washington.

But EPA spokesman Jahan Wilcox confirmed that two lawyers representing the water district, Robert O'Brien and Scott Sommer, and the water district director of special projects, Bill Hunt, were there. A third lawyer, former federal Judge Stephen G. Larson, was forced to cancel his trip due to wildfires in California, according to emails.

"Hugh Hewitt helped arrange the meeting at the request of the water district but did not attend," Wilcox said.

Wilcox said the meeting was for the water district to "brief EPA on the Superfund site's cleanup efforts and request expedited cleanup," following a 2016 agreement with the agency to conduct a remedial investigation and feasibility study, at a cost of \$4 million over two years. Hunt did not immediately respond to a request for comment.

Hewitt in an email to POLITICO called Pruitt a friend and said he does not have a working relationship with him. He said that his firm has represented the water district and worked on the site with EPA's regional office for years but that he had not participated in that work.

Hewitt said he requested a meeting because the water district wanted to brief the new EPA team, he said, adding that he was an Orange County resident until 2016 as well as an Orange County Children and Families Commission member. He said that he "very much" wanted the Superfund site remediated as soon as possible.

According to an EPA [fact sheet](#), the Orange County site has more than five square miles of polluted groundwater containing chlorinated solvents and other contaminants across the cities of Anaheim, Fullerton, and Placentia. It includes the Orange County Groundwater Basin, which provides drinking water to more than 2.4 million residents across 22 cities, according to the agency. Those pollutants can damage humans' nervous systems, kidneys and livers, and some are considered carcinogenic.

EPA has just begun its process of studying the contamination and it has not determined which companies caused the pollution in the area. But an [administrative settlement](#) with the EPA in 2016 says the area was home to "electronics manufacturing, metals processing, aerospace manufacturing, musical instrument manufacturing, rubber and plastics manufacturing, and dry cleaning."

Hewitt also thanked EPA schedulers for working to arrange a meeting between Pruitt and the California Lincoln Clubs, which describe themselves as in favor of "limited government, fiscal discipline and personal responsibility." After some rescheduling Pruitt eventually met with representatives of the group on a trip to California in March of this year, according to his public calendar. Prominent Orange County businessman John Warner also helped to connect that group with staffers.

Pruitt and his scheduling staff have frequently sought to set up meetings with or for influential Republican figures, according to the internal EPA emails.

His team accepted an invitation for him to address The Philanthropy Roundtable at an invitation-only event at the White House for "conservative and free-market foundation CEOs and individual wealth creators to discuss

the greatest opportunities for foundations to protect and strengthen free society" and "what [Pruitt] views as unique opportunities for philanthropic action.

As POLITICO reported in March, Pruitt also met with an Indiana coal executive and Trump fundraiser who was seeking to soften a pollution rule.

Pruitt also crafted his travel schedule — including a tour of states in August — to meet with big business much like a member of Congress would during the annual recess.

In July, EPA's associate administrator of public engagement Tate Bennett was working with Pruitt to "essentially create an August recess for the EPA to be out in the states talking with individual companies & doing listening sessions within sectors," said Leah Curtsinger, the federal policy director for the Colorado Association of Commerce & Industry, in an email introducing Bennett to her husband, public affairs director at coal company Cloud Peak Energy and a fellow alum of Senate Majority Leader Mitch McConnell's office.

Annie Snider contributed to this report.

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House subpanel approves cybersecurity, small-scale LNG bills [Back](#)

By Anthony Adragna | 04/18/2018 11:19 AM EDT

A House Energy and Commerce subpanel today approved a quartet of bills designed to boost DOE's efforts to protect the nation's electric grid from cyberattack.

All four cybersecurity measures — [H.R. 5174 \(115\)](#), [H.R. 5175 \(115\)](#), [H.R. 5239 \(115\)](#), [H.R. 5240 \(115\)](#) — advanced by voice vote.

H.R. 5175 asks DOE to coordinate the federal, state and business responses to physical and cybersecurity threats. H.R. 5239 would establish a voluntary DOE program to test the cybersecurity of products intended for use in the bulk-power system. H.R. 5240 would encourage public-private partnerships on cybersecurity efforts, while H.R. 5174 would have DOE bolster its emergency response efforts.

In addition, the subcommittee approved [H.R. 4606 \(115\)](#), which would allow the expedited approval of small-scale shipments of liquefied natural gas, over the objections of most Democrats. That vote was 19 to 14.

"Leave it to the Republican leadership of this committee to markup a bill that has even fewer environmental safeguards than a Trump Administration proposal," Rep. [Frank Pallone](#) (D-N.J.), ranking member of the full committee, said. "This bill is unnecessary, it is bad policy and it is a legislative earmark."

WHAT'S NEXT: The bills will get consideration by the full House Energy and Commerce Committee.

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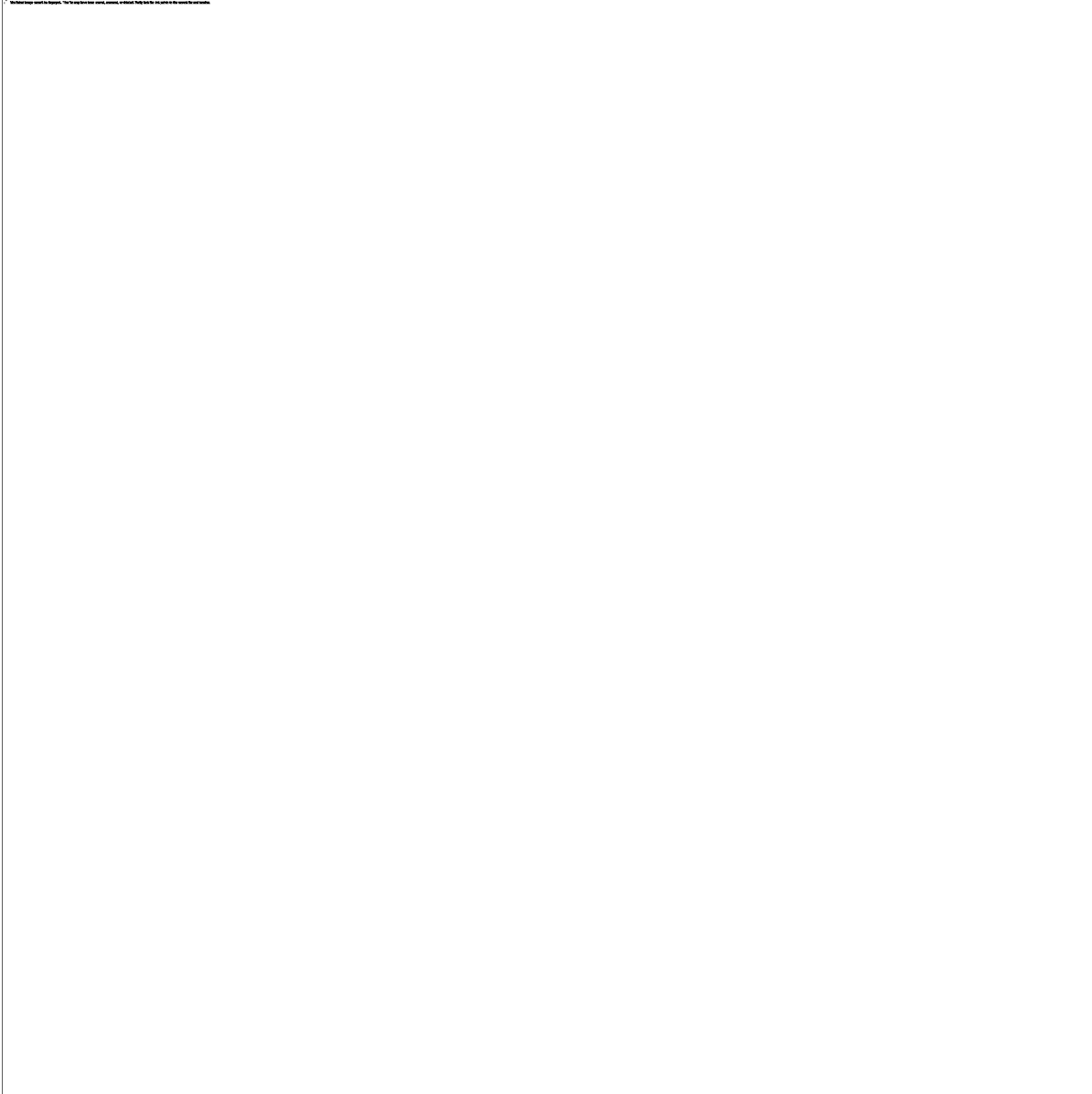
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REDEFINING EPA: Overhauling an agency and its mission -- Complete coverage

April 25, 2018

Latest News

Facing Legal Hurdles, EPA's 'Secret Science' Plan Punts On Key Issues

EPA Administrator Scott Pruitt has signed a long-promised plan barring the agency's use of any information in decision-making that is not publicly available, but the proposed rule punts on a host of tricky legal and

implementation issues, including statutory mandates to use the best available science and how to address confidential trade secrets and medically protected data.

NRDC Threatens Rare SDWA Suit Over New Jersey City's LCR Compliance

The Natural Resources Defense Council (NRDC) is threatening to file a rare suit against state and local officials in New Jersey over alleged violations of the Safe Drinking Water Act (SDWA) lead and copper rule (LCR), citing sampling and water treatment issues that are central to EPA's debate over how to update the LCR.

Utilities Urge EPA To Delay Ash Rule Deadlines Pending Policy Revisions

Utilities are urging EPA to postpone compliance deadlines in its coal ash disposal rule while the agency revises the policy to allow for site-specific disposal criteria and other flexibilities, warning that even if the rule is changed ahead of those deadlines there will be little time to craft new standards before facilities must take "irreversible" compliance steps.

EPA, State Air Funding Cuts Might Hinder Implementation Of NAAQS Memo

State air regulators are warning that President Donald Trump's bid to slash EPA and state air quality funding could hinder implementation of his memo directing the agency to overhaul and streamline the national ambient air quality standards (NAAQS) process, saying even current funding might be insufficient to achieve the memo's goals.

EPA Argues Ruling Scrapping Parts Of Ozone Policy At Odds With Air Law

EPA is asking a U.S. Court of Appeals for the District of Columbia Circuit panel to reconsider its ruling scrapping parts of an Obama-era rule on implementing the 2008 ozone ambient air limit and revoking the 1997 standard, arguing that the court's fears over the rule worsening air quality are unfounded and at odds with the Clean Air Act.

EPA Urges Local Officials To Adopt Pre-Disaster Climate Adaptation Plans

EPA is urging local government officials to adopt "worst-case" climate adaptation plans to limit damage from future natural disasters, a stance that appears to be at odds with the Trump administration's general resistance to acknowledging and addressing climate change and its adverse impacts.

Daily Feed

5th Circuit prepares to hear ELG delay challenge

An appeals court is starting up a case over EPA's delay of an Obama-era power plant effluent rule after a district judge blocked environmentalists' bid to keep an identical suit in a lower court.

Democrats seek IG probe into Pruitt's Superfund pick

The lawmakers are seeking an inquiry into whether EPA followed "suitability" requirements when Administrator Scott Pruitt hired a disgraced former banker to oversee the agency's Superfund reforms.

California court upholds state's Prop. 65 glyphosate listing

While the state court rejected industry arguments, a federal court has blocked the state from requiring the pesticide be labeled as a carcinogen.

Pruitt signs proposed rule limiting EPA science

EPA's proposal has drawn concerns from industry groups who fear it would limit EPA's ability to use trade secret information to approve chemicals and pesticides.

EPA poised to release science transparency rule

It is not clear how the measure will address concerns from industry groups and some top agency officials that basing regulatory decision on publicly available science will limit use of confidential industry studies.

Ewire: Inhofe, other GOP senators call for Pruitt hearing

In today's Ewire: Sen. Jim Inhofe (R-OK) says "a couple of us on the committee think it's appropriate to have a hearing in so far as any accusation having to do with his office is concerned."

Boozman touts 'SRF WIN' bill but open to changes

Sen. John Boozman (R-AR) told water industry representatives he is willing to make additional changes to his bill that some industry representatives have criticized.

Read all the latest EPA news, analysis and documents →

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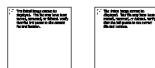
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Phoenix Lawyers Chapter	The Death of Chevron <ul style="list-style-type: none">• Tom Collins, Executive Director, Arizona Clean Elections Commission• William Eskridge, Jr., John A. Garver Professor of Jurisprudence, Yale Law School• Hon. Patricia Starr, Lower Court of Appeals, Maricopa County Superior Court	May 2 6:00 p.m.
Montgomery Federalist Society Chapter & State AGs Project	Alabama Attorney General Candidate Forum <ul style="list-style-type: none">• Chess Bedsole, Former Criminal Court Judge & Senior Counsel to DOJ• Chris Christie, Former Trial Lawyer, Bradley Arant Boult Cummings LLP• Alice Howze, Former Alabama Chief Deputy & Deputy Attorney General• Steve Marshall, Alabama Attorney General• Moderator: Allen Mendenhall, Associate Dean and Executive Director, Blackstone & Burke Center for Law & Liberty, Faulkner University	May 2 6:00 p.m.
Columbia Lawyers Chapter	May Luncheon with Daniel Blomberg <ul style="list-style-type: none">• Daniel Blomberg, The Becket Fund for Religious Liberty	May 3 12:00 p.m.
Indianapolis Lawyers Chapter	What Can Trump Teach Conservatives <ul style="list-style-type: none">• David Azerrad, Director, B. Kenneth Simon Center for Principles and Politics, The Heritage Foundation	May 3 12:00 p.m.
New York City Lawyers Chapter	Gerald Walpin Memorial Lecture	May 3 6:00 p.m.

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New Online

[ARTICLE] Court Limits US Lawsuits Over Foreign Corporate Conduct

The US Supreme Court has rejected a lawsuit under the Alien Tort Statute against a foreign bank accused of helping to finance terrorist activities outside the US, sharply limiting the ways in which people may seek redress from foreign corporations in US courts for alleged human rights violations.

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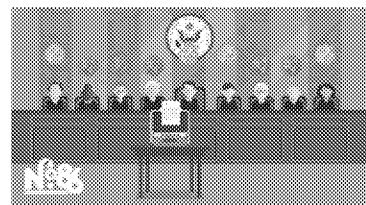


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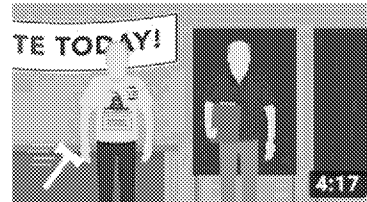


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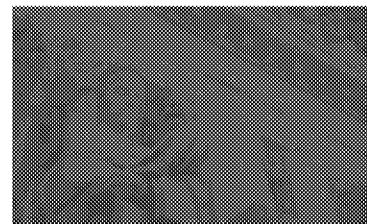


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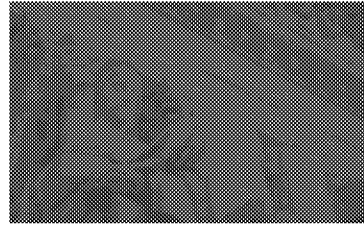
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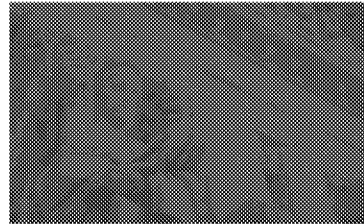
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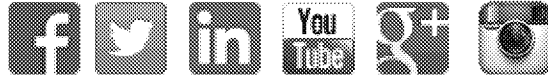
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May 18, 2018

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Auto industry suppliers are detailing their call for the Trump administration to embrace “robust” vehicle greenhouse gas and fuel economy standards with more flexibility for automakers, urging agencies to formally seek comment on an “advanced technologies flexibility option” that would recognize California’s “critical role” in limiting emissions and possibly prevent years of litigation over the program.

Top Advisers Pan Pruitt’s Science Transparency Rule, Seek SAB Review

Top EPA science advisers, including Administrator Scott Pruitt's hand-picked chairman of the agency's Science Advisory Board (SAB), are strongly criticizing the administrator's controversial plan to require only publicly available research to justify its regulations, charging it will undermine rules' integrity and was developed without adequate review.

EPA Science Plan Skirted Usual Process, Raising Finalization, Legal Doubts

The Trump EPA's controversial plan requiring use of publicly available research to justify rules appears to have been developed by political appointees without following the agency's usual action development process (ADP) for crafting important rules, leaving career staff and program offices out of the loop but raising doubts about how it will be finalized without them.

Magistrate Suggests Court Unlikely To Halt Discovery In Youth Climate Suit

A federal magistrate judge is strongly suggesting that he is unlikely to grant the Trump administration's request to halt discovery in a novel suit brought by 21 youth plaintiffs who charge that the government is violating the Constitution and the public trust doctrine by failing to protect them from the worst harms of climate change.

Climate Beat

Regulation: Wehrum sidesteps queries on SAB review of science rule

The EPA air chief's responses to a Democratic lawmaker's questions suggest the agency may urge its science advisors to avoid a review of its controversial rule seeking to block the use of 'secret science.'

Vehicles: Northeast states float EV charging strategy

The strategy seeks to coordinate a range of efforts regarding electric vehicle charging deployment, and could complement other state efforts to encourage sales of such vehicles to improve air quality and address climate change.

Loose Change: Amid scandals, Pruitt lawyers up

In today's news roundup: The EPA chief has hired a white-collar defense attorney to advise him as he faces more than a dozen official investigations, and hired another attorney to set up a legal defense fund.

EDITORIAL CONTACT

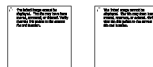
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Mining The Future

This week *Western Wire* [previews the 120th National Western Mining Conference](#), hosted by the Colorado Mining Association in Denver, Colo. next week. We sat down with leaders in the mining safety, technology, recruitment, and industry-higher education outreach to show how the industry is moving to adapt to a changing landscape of an aging workforce, heightened competition for talent, and the ever-present duty to ensure employee safety. From drones to outside-the-box innovation competitions and targeted recruitment to career development, the future of mining is now, according to the speakers in our feature piece.

No More 'Secret Science': With EPA Administrator Scott Pruitt [poised](#) to move his agency away from the policy of using "secret" studies that obstruct transparency by preventing data and methodology to be shared with other researchers and the public in general, critics have said he's moving away from science. Not so, say supporters, who believe the push for open and public discourse and the disclosure of study data will increase not only transparency but the quality of the studies that help the EPA determine regulatory actions that affect our lives and the economy. "It would be better if the data was just available. That's how science is supposed to be," Steve Milloy told *Western Wire*.

You Say You Want A Revolution: Well, you know, *Western Wire* takes a [look](#) at the competition sponsored by Stanford's Natural Gas Initiative that focuses on methane emissions identification through drone or truck and plane-mounted technologies. The Mobile Monitoring

Challenge aims to study methane emission detection and measurement with the competing companies and academic projects hoping to achieve commercial viability. "There's an enormous opportunity for utilization of unmanned aerial systems for detection and characterization of methane emissions in the oil and gas sector," said Andrew Aubrey, Ph.D., Founder and CEO at SeekOps, Inc.

Finally, the Bureau of Land Management's quarterly [lease sales](#) for 2018 opened quietly after a robust 2017. Nearly \$21.5 million in revenues was taken in across six Western states this month on leases that one Utah county planner called an "important contributor to a diversified county economy."

Here are *Western Wire's* headlines from the week...

NEWS



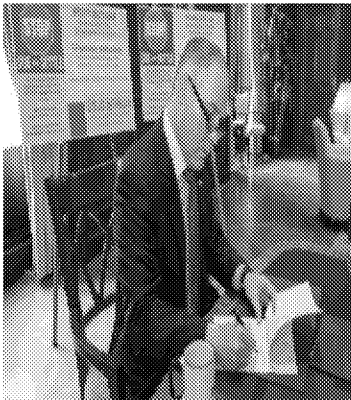
CMA Conference: The Future Of Mining Is Now

BY MICHAEL SANDOVAL AND ELENA CONNOLLY MARCH

27, 2018

The mining industry faces a tall order: adapt to a changing landscape of an aging workforce, heightened competition for talent, and the ever-present duty to ensure employee safety. According to those who speak next week, the industry is up to the task.

ANALYSIS



From 'Secret Science' To 'Science In The Sunshine,' Pruitt's Push
Opens EPA Transparency

BY MICHAEL SANDOVAL MARCH 30, 2018

Environmental Protection Agency (EPA) Administrator Scott Pruitt plans to halt the "secret science" underpinning his agency's regulations, opening a conversation about how studies can be weaponized in favor of onerous regulations without additional scrutiny and the transparency involved in determining how data and methodology are pursued or analyzed by outside researchers.

NEWS

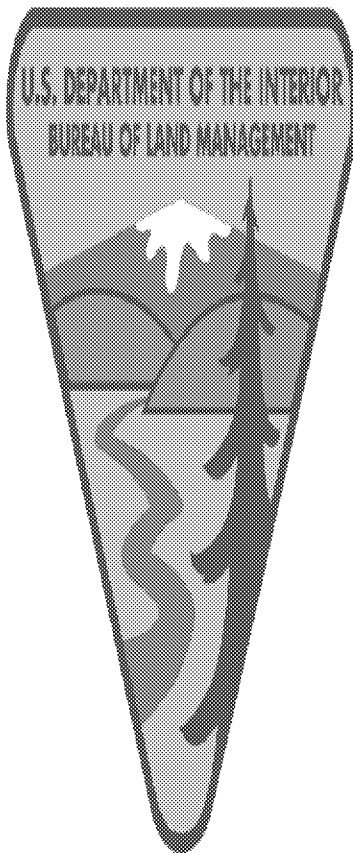


'Revolution In Gas-Sensing Technologies' Could Reshape
Methane Emissions Detection In Mobile Monitoring Challenge

BY MICHAEL SANDOVAL MARCH 28, 2018

Twelve different technologies from 11 organizations from drones to plane and truck monitors aimed at detecting and measuring methane emissions have been selected to advance to the testing phase of the Mobile Monitoring Challenge, the competition's sponsors announced this week.

NEWS



BLM's First Quarterly Lease Sale Opens Quietly After Robust 2017

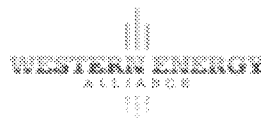
BY MICHAEL SANDOVAL MARCH 28, 2018

The Bureau of Land Management's first quarterly lease sale for oil and gas development on the agency's multiple-use lands in 2018 opened quietly after a robust showing in 2017 that saw Western states draw nearly \$350 million in receipts.



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GREENWIRE

AN E&E NEWS PUBLICATION

GREENWIRE — Mon., April 30, 2018



[READ FULL EDITION](#)

1. SUPREME COURT:

Pipelines, railroads and utilities among rejected cases

Backers of a beleaguered pipeline proposal in New York won't get any help from the Supreme Court, as the justices today denied Constitution Pipeline Co. LLC's bid to revive the natural gas project.

TOP STORIES

2. PEOPLE:

'The voice' of coal bids adieu to Washington

3. POLITICS:

Bush ethics czar ditches GOP for Democratic Senate run

4. ENDANGERED SPECIES:

FWS keeps Yellowstone bears off protected list

POLITICS

5. REGULATIONS:

EPA opens comment period on 'secret science' draft

6. PEOPLE:

Former DOE, White House official to head efficiency group

7. BIOFUELS:

EPA grants waiver to billionaire Icahn's refinery — sources

CONGRESS

8. EPA:

After 'hiccup,' House watchdog to interview agency officials

9. AGRICULTURE:

Greens gird for conservation cuts in Senate farm bill

10. AUTOS:

Senate staffers, stakeholders discuss high-octane fuel standard

NATURAL RESOURCES

11. PUBLIC LANDS:

Enviros sue over oil and gas reforms, sage grouse policies

12. PUBLIC LANDS:

School districts ban trips to upcoming Rocky Flats refuge

13. YELLOWSTONE:

Scientists can't explain recent string of geyser blasts

14. OBITUARY:

Burning Man creator dies at 70

LAW

15. SUPERFUND:

Court holds 'third party' liable for hazardous waste cleanup

16. COMMERCE:

Scientist cited in spy case must get her job back — judge

ENERGY

17. GRID:

PJM fuel security study could lead to market changes

18. OIL AND GAS:

Marathon to buy Andeavor for \$23B, creating mega-refiner

19. COAL:

2 firms consider buying Navajo plant as clock ticks

AIR AND WATER

20. CALIFORNIA:

District reverses course, considers funding tunnel project

21. OIL AND GAS:

Smoke from Wis. refinery fire was likely toxic, experts say

TRANSPORTATION

22. SELF-DRIVING CARS:

Move over, Tesla: The Pentagon is coming

STATES

23. NEW YORK:

Old Tappan Zee Bridge to transform into 6 artificial reefs

24. PENNSYLVANIA:

Wildlife agency bans wind turbines on game lands

25. OKLAHOMA:

Free hay arrives after wildfires, but don't thank Congress

26. OREGON:

Arrows stuck inside live deer puzzle officers

INTERNATIONAL

27. AUSTRALIA:

Great Barrier Reef gets \$379M funding boost

28. ENGLAND:

Caterpillars with toxic hairs invade London

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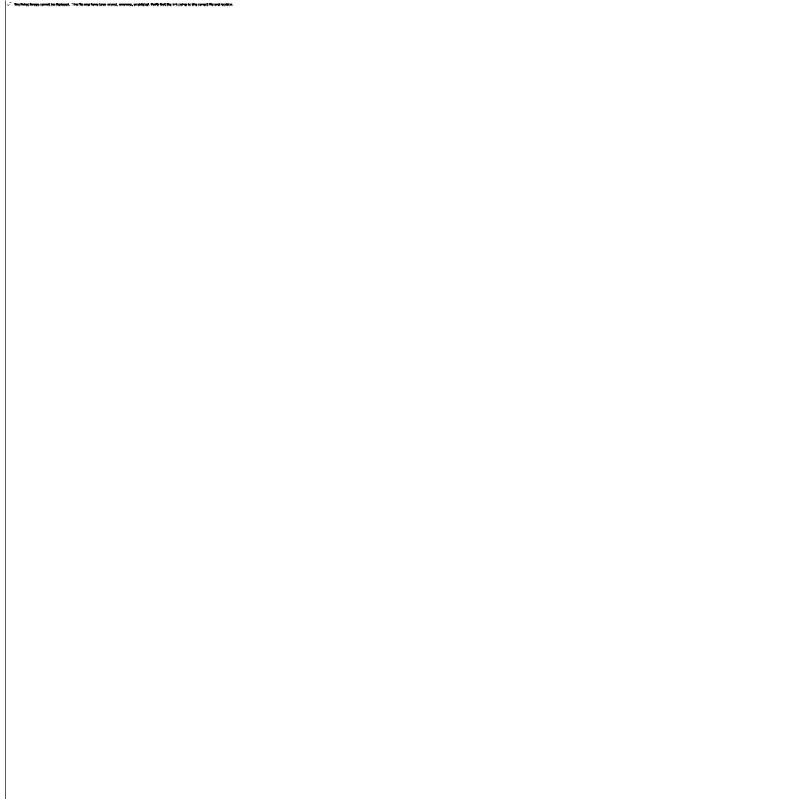
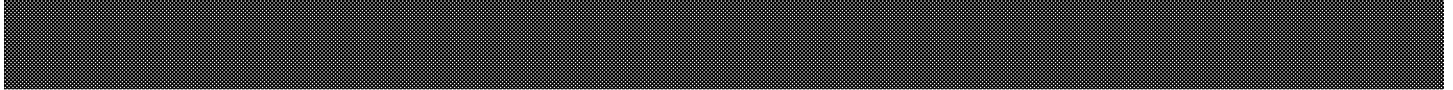
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Subject: Morning Consult Energy: U.S. Exit From Iran Nuclear Deal Would Have Limited Oil Market Impact, Analysts Say



By [Jacqueline Toth](#)

Morning Consult has published the latest edition of its monthly Trump Tracker, showing the president's approval state by state, month over month. See it [here](#).

Top Stories

- Analysts said they expect the impact on oil markets to be limited if President Donald Trump announces today that the United States will withdraw from the 2015 Iran nuclear deal and reinstates sanctions on oil exports from Iran. The sanctions are likely to

reduce Iranian oil exports by 300,000 to 500,000 barrels per day, fewer than the cut of 1 million to 1.5 million barrels under President Barack Obama's administration. (CNBC)

- Records made available through a Freedom of Information Act request show the Environmental Protection Agency had 33 threat investigations ongoing as of the middle of March, including 10 involving Administrator Scott Pruitt in the prior six months, with threats sent via Twitter posts, phone calls, emails, postcards and other sources. The files show that the EPA investigated 50 threats to agency officials in fiscal year 2017, 43 in 2016 and 47 in fiscal year 2015. (The New York Times)
- Senior staff members at the White House are telling Trump to fire Pruitt, believing Deputy EPA Administrator Andrew Wheeler would accomplish Trump's environmental agenda without drawing as much negative publicity as Pruitt has, according to two administration officials. At a briefing Monday, White House press secretary Sarah Huckabee Sanders said there were no "personnel announcements on that front" regarding Pruitt's future but expressed confidence in Wheeler. (The New York Times)
- In a voice vote, a House Appropriations subcommittee approved a spending bill to fund the Energy Department and Army Corps of Engineers at \$44.7 billion - \$8.2 billion more than the Trump administration recommended in its budget request and an increase of \$1.5 billion over fiscal 2018 spending. The bill would increase funding for nuclear weapons, water development and fossil fuel and nuclear research but would reduce energy efficiency and renewable energy program funding. (The Hill)

Chart Review

Mapping the U.S.-Canada Energy Relationship
Center for Strategic and International Studies

Events Calendar (All Times Local)

TUESDAY

American Wind Energy Association Windpower conference	7 a.m.
Combined Heat and Power Association 2018 Policy Forum	8:30 a.m.
The Wall Street Journal's The Future of Everything Festival	8:30 a.m.

Atlantic Council event on the future of global energy	9 a.m.
Bipartisan Policy Center conversation on federal science funding	9 a.m.
U.S. Energy Association event on the economic benefits of U.S. LNG exports	10 a.m.
Wilson Center event on energy efficiency and carbon emissions in China and U.S. buildings	10 a.m.
International Energy Agency webinar on biofuels in the marine sector	10 a.m.
Senate Energy and Natural Resources hearing on Puerto Rico's electric grid	10 a.m.
American Wind Action 'True American Power' reception	5 p.m.
EnviroRun running event and networking session	6 p.m.

WEDNESDAY

American Wind Energy Association Windpower conference	7 a.m.
Oil Price Information Service event on West Coast fuel supply and transportation opportunities	8 a.m.
The Wall Street Journal's The Future of Everything Festival	8:30 a.m.
House Science, Space and Technology hearing on the FY2019 Energy Department budget	9 a.m.
Combined Heat and Power Association 2018 Policy Forum	9 a.m.
Center for Climate and Energy Solutions conversation on U.S. nuclear power plants	9:30 a.m.
Senate Public Lands, Forests and Mining Subcommittee hearing on Bureau of Land Management and U.S. Forest Service law enforcement	10 a.m.
Senate Environment and Public Works hearing on water infrastructure legislation	10 a.m.

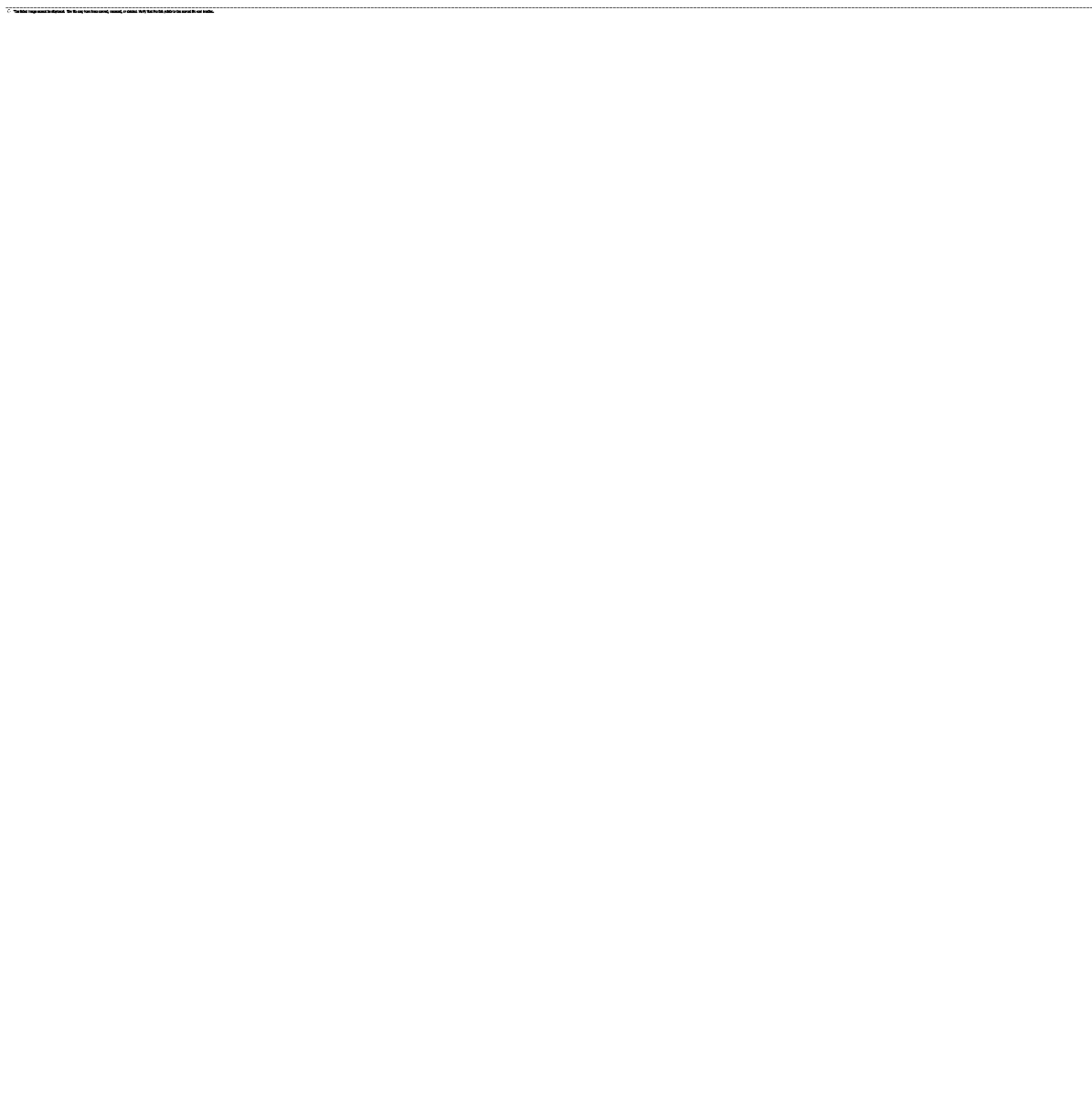
House Foreign Affairs markup of energy legislation	10 a.m.
Senate Indian Affairs hearing on Tara Sweeney's nomination to be an assistant secretary at the Interior Department	2:30 p.m.

THURSDAY

Oil Price Information Service event on West Coast fuel supply and transportation opportunities	6 a.m.
American Wind Energy Association Windpower conference	7 a.m.
Women's Council on Energy and the Environment event on congressional energy priorities	8 a.m.
The Wall Street Journal's The Future of Everything Festival	8:30 a.m.
Federal Renewable Energy and Energy Efficiency Advisory Committee meeting on U.S. renewable energy products and services	8:30 a.m.
Environmental Law Institute event on change in infrastructure reviews and permitting	9 a.m.
The Washington Post Energy 202 Live event	9 a.m.
Senate Interior, Environment Appropriations Subcommittee hearing on the FY2019 Interior Department budget	9:30 a.m.
Energy Subcommittee hearing on electric transmission infrastructure	10 a.m.
U.S. Energy Association event on coal utilization	1 p.m.
Center for Climate and Energy Solutions and U.S. Conference of Mayors webinar on city-utility partnerships in clean energy	2 p.m.
New York City Bar Association panel discussion on the role of natural gas in a low-carbon economy	6 p.m.

FRIDAY

No events scheduled



These are the Most Loved Brands in America

The brands that define American culture and commerce, ranked using over 250,000 survey interviews with U.S. adults.

General

New Files Detail the Threats Made Against Scott Pruitt at the E.P.A.

Eric Lipton et al., The New York Times

The Environmental Protection Agency had a total of 33 threat investigations underway as of mid-March - 10 of them involving Scott Pruitt from the last six months - a security assessment released Monday shows, offering the most detailed tally yet of threats against the agency's top official.

White House Aides Are Urging President Trump to Fire Scott Pruitt, the E.P.A. Chief

Coral Davenport and Maggie Haberman, The New York Times

Senior White House staff members are encouraging President Trump to fire Scott Pruitt, his embattled Environmental Protection Agency chief, according to two top administration officials. While Mr. Trump has until now championed Mr. Pruitt, the officials say the president's enthusiasm may be cooling because of the ongoing cascade of alleged ethical and legal missteps.

House panel votes to boost funding for Energy Dept., Army Corps

Timothy Cama, The Hill

A House subcommittee voted Monday for a bipartisan funding bill to give \$44.7 billion to the Energy Department and Army Corps of Engineers, rejecting many of President Trump's proposed cuts to the programs.

Pruitt fast-tracked California cleanup after Hugh Hewitt brokered meeting

Emily Holden, Politico

EPA Administrator Scott Pruitt placed a polluted California area on his personal priority list of Superfund sites targeted for "immediate and intense" action after conservative radio and television host Hugh Hewitt brokered a meeting between him and lawyers for the water district that was seeking federal help to clean up the polluted Orange County site.

Memo says Pruitt flew first class to avoid 'lashing out from passengers'

Sara Ganim and Gregory Wallace, CNN

Documents provided to Congress fail to show Scott Pruitt got federally required waivers to fly first class - and if he did, then his office has twice declined to hand them over to fellow Republicans asking for the verification.

How Pruitt's Aides Work to Shield the Boss: Seven Quotes
Eric Lipton, The New York Times

The New York Times was given a cache of E.P.A. emails and other documents detailing the communications of top political aides to Scott Pruitt, the Environmental Protection Agency chief, after the Sierra Club, an environmental group, sued to obtain the correspondence.

AGs urge Pruitt to stop 'secret science' plan
Sean Reilly, E&E News

EPA should halt planned changes to its standards for scientific research used in writing new regulations and then ask independent experts whether any action is needed, New York Attorney General Eric Schneiderman and seven other Democratic attorneys general urged today.

Interior sending officers to assist patrolling the US, Mexico border
Miranda Green, The Hill

The Interior Department is sending its law enforcement officers to help the Department of Homeland Security secure the U.S.- Mexico border, according to an internal email obtained by The Hill.

White House plots update to NEPA guidelines
Nick Sobczyk, E&E News

The Trump administration has signaled its intent to update the baseline National Environmental Policy Act guidelines for the whole federal government.

Maryland to Other States: Stop Sending Us Your Dirty Air
Kris Maher, The Wall Street Journal

From a grassy hilltop in western Maryland, a high-tech spying operation tracks the source of pollution and ozone coming into the state.

Tab for refurbishing Rick Perry's office: \$4,652
Christa Marshall, E&E News

The Department of Energy spent \$4,652 last year to refurbish Secretary Rick Perry's office, including \$857 for a wingback chair and \$1,157 for a sofa.

Oil recedes as market awaits Trump decision on Iran

Amanda Cooper, Reuters

Oil retreated from 3-1/2 year highs on Tuesday as investors waited for an announcement by President Donald Trump later in the day on whether the United States will reimpose sanctions on Iran.

Oil and Natural Gas

Iran sanctions seen having limited impact on oil market if Trump scraps nuclear deal

Tom DiChristopher, CNBC

President Donald Trump may withdraw the United States from the 2015 Iran nuclear deal by restoring sanctions on Iranian oil exports this week. But analysts say the impact on the market will likely be limited.

Pa. Pipeline Row Shows Enviro Rights Amendment Still Murky

Matt Fair, Law 360

A recently advanced effort to hold a Sunoco Inc. unit liable for violations of the Pennsylvania Constitution over a controversial pipeline project highlights what attorneys say is continued uncertainty around the so-called environmental rights amendment, which was reinvigorated by the state's Supreme Court last year.

Sempra says it is sticking to 2019 startup for three trains at Cameron LNG

Harry Weber, Platts

Sempra Energy said Monday its top priority is making sure the three production units at the Cameron LNG export terminal in Louisiana are online in 2019, and for now it is confident there won't be any more delays.

Utilities and Infrastructure

FERC approves elimination of SPP regional entity

Robert Walton, Utility Dive

The Federal Energy Regulatory Commission's decision last week aims to "promote effective and efficient administration of bulk-power system reliability," and it will expand the geographic footprints of both MRO and SERC.

Solar has transformed into solar-plus-storage; What will net metering become?

Herman K. Trabish, Utility Dive

When distributed solar becomes more of a stress than a service to the grid, it transforms into solar-plus-storage and begins again the struggle to build economies of scale to drive its price down to levels competitive with traditional generation.

Renewables

Injury at Tesla solar business draws company's biggest safety fine

Will Evans, The Center for Investigative Reporting

Federal safety officials fined Tesla Inc. more than \$110,000, the biggest safety fine in the company's history, after an employee received a high-voltage electrical shock at a solar energy facility in Massachusetts.

Steel town that voted for Trump banks on renewables

Benjamin Storrow, E&E News

In this prairie city, where the Sangre de Cristo Mountains rise to meet the parched expanse of the Southern Plains, blue-collar workers whose grandfathers toiled for generations in steel mills are making wind turbines and installing solar panels.

New Water-Based Battery Could Help Store Solar and Wind Energy

Avery Thompson, Popular Mechanics

A group of researchers at Stanford University have developed a new type of battery using water and salt that they hope could be used to store energy produced from wind and solar farms, increasing the effectiveness of renewable energy sources.

Coal

DOE's coal crusade keeps the heat on FERC

Sam Mintz and Rod Kuckro, E&E News

Cracks in the public relationship between the Federal Energy Regulatory Commission and the Department of Energy were on display last week with dueling comments from a DOE spokesperson and one of FERC's five commissioners.

Nuclear

Nev. lawmakers prepare battle against Yucca bill

Sam Mintz, E&E News

Nevada's congressional delegation is gearing up to battle a major nuclear waste reform bill that is up for a vote in the House this week and would advance the proposed spent fuel repository at Yucca Mountain.

Climate

Germany probes Audi for potential new illegal emissions device

Edward Taylor, Reuters

German motor vehicle authority KBA has summoned Audi for a formal hearing about whether its diesel-engined A6/A7 models have been fitted with a previously unknown defeat device, Germany's Transport Ministry said on Tuesday.

After Fatal Uber Crash, a Self-Driving Start-Up Moves Forward

Cade Metz, The New York Times

On Monday, an orange and blue car with the words "Self-Driving Vehicle" prominently displayed on both sides drove itself through the streets of this rapidly growing city north of Dallas, navigating across four lanes of traffic and around a traffic circle.

Opinions, Editorials and Perspectives

Private Sector Stands Ready to Modernize Nation's Electric Infrastructure

Linda Apsey, Morning Consult

In energy policy conversations across the country, one key point often is missing: the growing importance of electricity transmission infrastructure to our economy.

America risks being left behind on clean energy

U.S. Rep. Raul M. Grijalva (D-Ariz.), Washington Examiner

French President Emmanuel Macron's recent visit to the U.S. offers a stern reminder that even as the Trump administration tries to withdraw our country from the global community, our friends and foes around the world continue to respond to climate change, and those responses will have long-lasting implications.

Oil Market May Get Blindsided by Iran Deal

Spencer Jakab, The Wall Street Journal

The oil market has surged on the expectation that President Donald Trump will reimpose sanctions on Iran. No matter what Mr. Trump decides, oil bulls and other beneficiaries of higher prices shouldn't get too confident.

Tesla's Factory in a Fishbowl

John D. Stoll, The Wall Street Journal

Elon Musk has always run his car company at his own pace, but now he finds himself in a historic race to deliver on enormous promises. The next six months will determine whether Tesla Inc.'s Model 3 can reshape the U.S. auto industry or serve merely as a flashy footnote.

Clean up EPA's inefficient toxic waste program

Winston Porter, The Hill

EPA's Superfund hazardous waste cleanup program is in need of leadership.

Research Reports

The carbon footprint of global tourism

Manfred Lenzen et al., Nature Climate Change

Tourism contributes significantly to global gross domestic product, and is forecast to grow at an annual 4%, thus outpacing many other economic sectors.

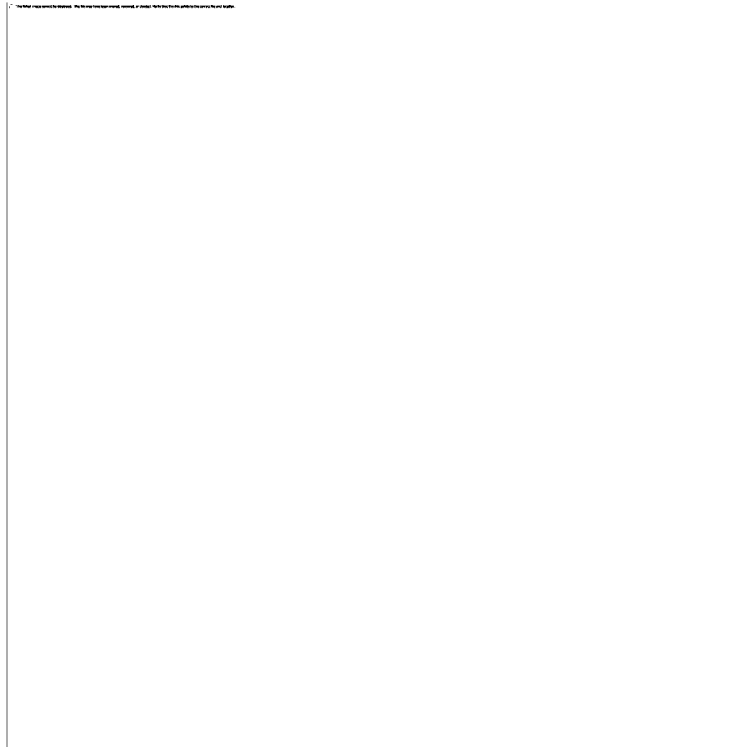
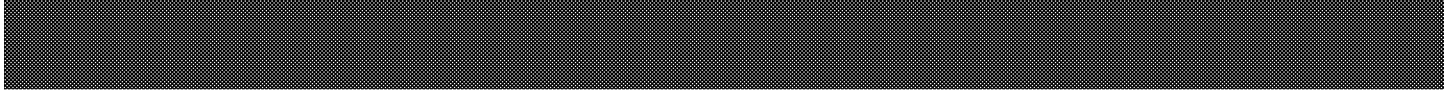


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Subject: Morning Consult Energy: Week in Review & What's Ahead



By Jacqueline Toth

Morning Consult Energy will be off for the Labor Day holiday. Publication of the morning briefs and afternoon updates will resume Tuesday.

Week in Review

Trump administration

- President Donald Trump announced that the United States and Mexico agreed to revisions to the North American Free Trade

Agreement - a step that had been delayed in part by disagreements over energy issues.

- Trump signed proclamations to allow targeted relief from the administration's steel import quotas for South Korea and Brazil, and from quotas on both steel and aluminum for Argentina, according to the Commerce Department.

Utilities

- The Colorado Public Utilities Commission approved Minneapolis-based electric utility Xcel Energy Inc.'s proposed plan to retire two coal-fired power plants in Pueblo, Colo., and to invest \$2.5 billion in natural gas, solar and wind energy in Colorado.
- Documents released under a Freedom of Information Act request to a nonprofit identified PG&E Corp. as the utility that the Federal Energy Regulatory Commission fined \$2.7 million in May for losing control of a database with 30,000 records containing sensitive information, including passwords and system controls, which was exposed online for 70 days.

Clean energy

- California lawmakers passed a bill to require the state to source 100 percent of its power from clean energy resources by 2045. The measure awaits the signature of Gov. Jerry Brown (D).
- Facebook Inc. announced it will target the purchase of renewable energy for 100 percent of its operations by the end of 2020 and to cut its greenhouse gas emissions by 75 percent from 2017 levels.

Oil and gas

- King Salman, the father of Crown Prince Mohammed bin Salman, put the brakes on Saudi Arabian Oil Co.'s planned initial public offering, according to three sources with ties to the kingdom's government, after the king concluded it would undermine the kingdom by requiring full public disclosure of Aramco's finances.
- Following its validation of a sufficient number of petition signatures, the Colorado Secretary of State's office announced the state will vote this November on whether to ban oil and gas drilling within 2,500 feet of homes, businesses and other areas deemed vulnerable.

- Construction on the Trans Mountain pipeline was effectively halted after Canada's Federal Court of Appeal unanimously rejected the country's approval of the project, declaring the National Energy Board's regulatory review of the \$3.5 billion pipeline "impermissibly flawed" for not examining tanker traffic resulting from the project and for not adequately consulting with indigenous people.

Environmental Protection Agency

- The Environmental Protection Agency told the U.S. Supreme Court that it is no longer pursuing a regulation to limit the use of refrigerant chemicals, and that the high court doesn't need to take up companies' appeal of a lower court's ruling that overturned the Obama-era restrictions.
- An EPA spokeswoman said the agency intends to ask the White House Office of Management and Budget to examine its draft proposal that questions whether it had been "appropriate and necessary" for the agency to set limits in 2012 on toxic emissions from existing power plants, including for mercury.

What's Ahead

- Both the House and Senate are in session this week.
- The Environmental Protection Agency's Office of Inspector General said it expects to release a report on the administrator's Protective Service Detail on Tuesday.
- The Senate Commerce, Science and Transportation Committee has scheduled an executive session for Wednesday at 10 a.m. on legislation, including a bipartisan bill on bycatch reduction, and several nominations, including Kelvin Droegemeier to be director of the White House Office of Science and Technology Policy.
- Rep. Brian Fitzpatrick (R-Pa.) and Sen. Sheldon Whitehouse (D-R.I.) are expected to speak at an event hosted by The Hill and the

Bipartisan Policy Center on Thursday on public and private sector climate solutions.

Events Calendar (All Times Local)

MONDAY

American Association for Aerosol Research 10th International Aerosol Conference	7 a.m.
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TUESDAY

American Association for Aerosol Research 10th International Aerosol Conference	7 a.m.
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Department of Energy Grid Modernization Initiative Peer Review	1 p.m.
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House Rules meeting on small-scale LNG legislation	5 p.m.
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WEDNESDAY

American Association for Aerosol Research 10th International Aerosol Conference	7 a.m.
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Department of Energy Grid Modernization Initiative Peer Review	7:30 a.m.
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2018 Future Power Markets Summit	9 a.m.
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National Press Club conversation with Rep. Lamar Smith (R-Texas)	9:30 a.m.
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Senate Committee on Commerce, Science and Transportation executive session on fishing legislation and several nominees	10 a.m.
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Nuclear Industry Council briefing on the U.S. nuclear fleet	11:30 a.m.
Environmental Protection Agency PFAS Community Engagement	1 p.m.
Great Lakes Commission and Northeast Midwest Institute briefing on Great Lakes green infrastructure	2:30 p.m.
National Academy of Sciences and the National Academy of Public Administration event on nuclear security	3 p.m.
Young Conservatives for Energy Reform & Christian Coalition Conservative Clean Energy Summit	5 p.m.

THURSDAY

American Association for Aerosol Research 10th International Aerosol Conference	7 a.m.
Environmental Business Council New England Rhode Island program on PCBs	7:30 a.m.
Department of Energy Grid Modernization Initiative Peer Review	8 a.m.
Rep. Brian Fitzpatrick, Sen. Sheldon Whitehouse speak at Bipartisan Policy Center and The Hill event	8 a.m.
Young Conservatives for Energy Reform & Christian Coalition Conservative Clean Energy Summit	9 a.m.
American Enterprise Institute panel on implementing the Paris agreement	9:30 a.m.
House Energy and Commerce Environment Subcommittee hearing on perfluorinated chemicals	10 a.m.
House Federal Lands Subcommittee hearing on federal land bills	10 a.m.
House Intergovernmental Affairs and Interior, Energy and Environment Subcommittees hearing on permitting	10 a.m.
Regional Greenhouse Gas Initiative event on carbon trading in the states	10 a.m.

Senate Environment and Public Works confirmation hearing on nominee for the Northern Border Regional Commission	10 a.m.
National Academy of Sciences and the National Academy of Public Administration event on nuclear security	11 a.m.
House Oversight and Government Reform hearing on federal disaster response and recovery	1 p.m.
U.S. Energy Association briefing on the Affordable Clean Energy Rule	2 p.m.

FRIDAY

American Association for Aerosol Research 10th International Aerosol Conference	7 a.m.
Department of Energy Grid Modernization Initiative Peer Review	7:30 a.m.
Federal Reserve Banks of Dallas and Kansas City joint conference on global oil market dynamics	7:30 a.m.
House Water Resources and Environment Subcommittee hearing on water resources projects and policy	9 a.m.
Young Conservatives for Energy Reform & Christian Coalition Conservative Clean Energy Summit	9 a.m.

CSR & Political Activism in the Trump Era

How to avoid a firestorm and improve your brand's reputation.

Morning Consult Energy Top Reads

1) California Assembly advances 100% clean energy bill

Liam Dillon, Los Angeles Times

2) A Carbon-Free California Requires a Lot More Cheap Batteries

Naureen S. Malik and Mark Chediak, Bloomberg

3) What Are You Getting If You Buy Clean Electricity?

Catherine Wolfram, Energy Institute at Haas

4) State Regulators Give OK To Xcel Energy's \$2.5 Billion Clean Power Plan

Matt Bloom, KUNC

5) Zinke says Interior reorganization won't relocate employees - yet

Miranda Green, The Hill

6) Permian region is expected to drive U.S. crude oil production growth through 2019

U.S. Energy Information Administration

7) Drowning in Dirty Water, Permian Seeks \$22 Billion Lifeline

David Wethe and Kevin Crowley, Bloomberg

8) Colorado Measure Would Make Most of State Off Limits to Drillers

Rebecca Elliott, The Wall Street Journal

9) Pesticide Studies Won E.P.A.'s Trust, Until Trump's Team Scorned 'Secret Science'

Danny Hakim and Eric Lipton, The New York Times

10) Top interior staffer who backed shrinking national monuments to join BP

Juliet Eilperin, The Washington Post



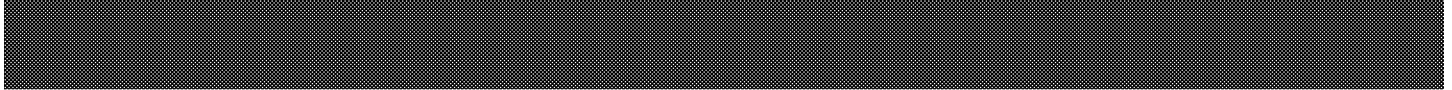
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Subject: Morning Consult Energy: Rollback of Clean Power Plan Said to Give States More Power Over Coal-Fired Plants



By Jacqueline Toth

Top Stories

- The Trump administration intends to give states greater latitude to create their own rules to make coal-fired power plants more efficient or to request permission to opt out of such regulations, under a proposed replacement of the Obama administration's Clean Power Plan, according to an unpublished draft and a source familiar with other parts of the plan. The proposal's release is expected in the coming days. (Politico)

- Environmental Protection Agency staff cast doubt on the Transportation Department's calculations of the benefits of the Trump administration's proposed changes to federal fuel economy and greenhouse gas emission standards for certain vehicles, according to an internal June 18 memo posted online by the EPA. The memo estimates that the changes would increase traffic deaths by 17 annually from 2036-2045 due to increased vehicle traffic, instead of the annual reduction of 150 deaths over that period as forecast by the Transportation Department, and that the new fuel efficiency plan would result in net societal costs of \$83 billion rather than the Transportation Department's estimate of \$49 billion in net benefits. ([Reuters](#))
- Onshore oil and gas developer Diamondback Energy Inc. will buy Energen Corp. through an all-stock deal of about \$8.4 billion that would give Diamondback shareholders ownership of about 62 percent of the combined company and Energen shareholders control of the rest. Completion of the deal, which is valued at \$9.2 billion including debt, would mean the new entity would control 390,000 acres in the Permian Basin. ([The Wall Street Journal](#))

Chart Review

U.S. refineries running at near-record highs
U.S. Energy Information Administration

Events Calendar (All Times Local)

WEDNESDAY

2018 Tribal Lands & Environment Forum	8:30 a.m.
American Coalition for Ethanol 2018 Conference	10:30 a.m.
Senate Energy and Natural Resources legislative hearing on monument, memorial, national park and other bills	4 p.m.

THURSDAY

American Coalition for Ethanol 2018 Conference	8 a.m.
2018 Tribal Lands & Environment Forum	8:30 a.m.
Senate Environment and Public Works hearing on the Water Quality Certification Improvement Act	10 a.m.
Senate Energy and Natural Resources confirmation hearing on Energy Department nominees	10 a.m.

FRIDAY

American Coalition for Ethanol 2018 Conference	8 a.m.
National Oceanic and Atmospheric Administration briefing on Alaskan climate conditions	4 p.m.

CSR & Political Activism in the Trump Era

How to avoid a firestorm, improve your brand's reputation.

General

Scientists report political meddling, self-censorship
Christa Marshall and Sean Reilly, E&E News

Federal scientists at EPA, the Interior Department and other agencies are reporting political interference with their work, requests to remove "climate change" from research and declining staff levels, a new survey of government employees said.

Science and Health Leaders Lay Out Evidence Against EPA's 'Secret Science' Rule
Marianne Lavelle, InsideClimate News

Arguing that public health and safety are at risk, researchers, health experts and administrators from leading scientific institutions across the nation have joined in opposition to a controversial Trump administration proposal that would restrict the use of science in federal policy making.

Federal oversight board orders changes to PREPA budget
Gavin Bade, Utility Dive

The federal oversight board that reviews Puerto Rico's finances on Monday sent notices to the island's power and water utilities, saying their proposed budgets are not compliant with the board's fiscal plans.

Zinke blames 'environmental terrorist groups' for scale of California wildfires
Miranda Green, The Hill

Zinke, who visited neighborhoods ravaged by the state's largest wildfire ever over the weekend and on Monday, said environmentalists and green regulations in California made the fires much worse.

Wanted, once again: BLM deputy director
Scott Streater, E&E News

Richard Cardinale, the Bureau of Land Management's acting deputy director of operations, is out after a 60-day stint overseeing the day-to-day operations of the federal government's largest land management agency.

Oil falls on U.S. stocks rise, weaker economic outlook
Christopher Johnson, Reuters

Oil prices fell on Wednesday, weighed down by a gloomier global economic outlook and a report of rising U.S. crude inventories, even as U.S. sanctions on Tehran threatened to curb Iranian crude oil supplies.

Oil and Natural Gas

Exxon Must Face Class-Action Suit Over Climate-Change Accounting

Tom Korosec, Bloomberg

Exxon Mobil Corp. must face a lawsuit by investors who blamed a drop in the company's shares on the disclosure that regulators were scrutinizing its reserve accounting related to climate change.

Cheniere makes feedgas request for Corpus Christi LNG export facility

Harry Weber and Ross Wyeno, Platts

Cheniere Energy wants to introduce feedgas to the first liquefaction unit at its LNG export facility in Texas as it prepares to begin production before the end of the year.

The Key to Big Profits in Clean Energy: Animal Fats

Sarah Kent, The Wall Street Journal

One of the best-performing stocks in the global oil sector this year is a company that makes most of its money without touching crude.

Utilities and Infrastructure

Puerto Rico utility completes restoration 10 months after Maria

Jessica Resnick-Ault, Reuters

Puerto Rico's electric utility said it completed restoration of power to all of its customers on Tuesday, more than ten months after Hurricane Maria left 1.5 million homes and businesses in the dark.

PG&E's landmark energy storage projects snagged by pushback

Peter Maloney, Utility Dive

It may not be smooth sailing for Pacific Gas and Electric's landmark energy storage projects.

Needing pipeline capacity, ConEd to launch gas demand response program

Sarah Smith, Platts

Aiming to reduce the need for new gas pipe or other costly alternatives, Consolidated Edison will be able to launch a pilot program to manage gas demand after a New York state regulator gave its approval.

Exit fee: Deciding the fate of California's utilities and customer choice movement

Herman K. Trabish, Utility Dive

Promised more renewables and lower utility bills, customers in California are flocking to newly-emerging Community Choice Aggregation (CCA) programs and Direct Access (DA) providers.

Hydro One Replaces Board as Quarterly Profit Beats Estimates

Michael Bellusci, Bloomberg

Hydro One Ltd. has replaced its board after its former directors were ousted by Ontario Premier Doug Ford in a mission to overhaul the Toronto-based utility.

Renewables

Investors Should Brace for a Drawn-Out Tussle Between Elon Musk and the SEC

Matt Robinson and Benjamin Bain, Bloomberg

As the bizarre Tesla Inc. go-private saga enters its ninth day, many investors are wondering when regulators will decide whether Elon Musk broke the rules by dripping out details so haphazardly.

Saudi fund may only play minor part in Musk's \$72 billion Tesla plan: bankers

Andrew Torchia, Reuters

Elon Musk told investors this week that "obviously, the Saudi sovereign fund has more than enough capital needed" to finance taking Tesla private.

How Saudi's Stake in Tesla Could Help Musk Go Private **Sarah Algethami, Bloomberg**

With the Saudi government hoping to grow its Public Investment Fund to more than \$2 trillion by 2030, it seems that the interests of both parties may have aligned.

Coal

Cost of Coal: Electric Bills Skyrocket in Appalachia as Region's Economy Collapses **James Bruggers, InsideClimate News**

As natural gas and renewables get cheaper elsewhere, residents in Appalachia are stuck paying for coal-fired power plants that no longer make economic sense.

Nuclear

Defense Measure Has Potential to Create Leader in Fledgling Micro-Reactor Market **Jacqueline Toth, Morning Consult**

President Donald Trump's signature on the fiscal 2019 National Defense Authorization Act opens the door to eventually outfitting the Defense Department with smaller nuclear reactors it has said could help ensure the energy resilience of its bases and potentially cementing an industry leader in the promising new market of micro-reactors.

435 tons of toxic Hanford waste kept out of Columbia River **Annette Cary, Tri-City Herald**

Hanford workers have removed 90 tons of contaminants from Hanford groundwater over the last 10 months, keeping it from reaching the Columbia River.

Climate

Seattle judge dismisses young activists' climate lawsuit **The Associated Press**

A Washington state judge has dismissed a lawsuit filed by young activists who argued the state is violating their rights by failing to protect them from climate change.

Opinions, Editorials and Perspectives

How to Solve a Problem Like Elon?

Holman W. Jenkins, Jr., The Wall Street Journal

Elon Musk is extraordinarily popular with the public, with shareholders, with politicians. His company is worth \$60 billion in the marketplace.

The San Onofre nuclear plant is a 'Fukushima waiting to happen'

Steve Chapple, Los Angeles Times

Southern California Edison is keeping 3.6 million pounds of lethal radioactive waste at the shuttered San Onofre nuclear plant in San Clemente.

Unclear Which Way Wind Blows After Reversal Of Alta Wind

Julie Marion et al., Law360

On July 27, 2018, the U.S. Court of Appeals for the Federal Circuit handed down its decision in Alta Wind Owner Lessor C et al. v. United States, reversing a taxpayer-friendly decision by the Court of Federal Claims in 2016 that had been widely applauded by the renewable energy sector, which benefits from valuable federal income tax subsidies generated by their projects.

Research Reports

A novel probabilistic forecast system predicting anomalously warm 2018-2022 reinforcing the long-term global warming trend

Florian Sévellec and Sybren S. Drijfhout, Nature Communications

Here we develop a novel method to predict global-mean surface air temperature and sea surface temperature, based on transfer operators, which allows, by-design, probabilistic forecasts. The prediction accuracy is equivalent to operational forecasts and its reliability is high.



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Subject: Morning Energy: Perry's latest bid to save coal — NEPA focus of hearing today — More on the Pruitt front

By Kelsey Tamborrino | 04/25/2018 05:54 AM EDT

With help from Anthony Adragna

PERRY'S LATEST BID TO SAVE COAL: So far, Energy Secretary Rick Perry has had no success in his effort to construct a safety net to keep alive coal-fired and nuclear power plants threatened with shutdowns — a mission that's come straight from President Donald Trump. And Perry's latest potential gambit to use the 1950 Defense Production Act in hopes of designating the plants as crucial for national security may not fare better than his previous efforts, energy experts tell Pro's Eric Wolff.

Experts say the bid would stretch the definition of the law and almost certainly draw legal challenges. Plus invoking the act that was last used by the Obama administration to push advanced biofuels would probably hit a snag in Congress, since lawmakers would need to approve perhaps billions of dollars in funding to keep the plants afloat, the experts say.

Using the Korean War-era law to protect the plants could be a novel approach to aiding power plants, Eric writes, especially after Perry failed to gain FERC's support for his proposal to give the plants financial backing. And since Energy Department lawyers stymied a push last year to invoke the agency's authority under the Federal Power Act to force the plants to run, Perry and his staff appear to have very few viable options left.

But the fresh take on the act doesn't necessarily mean it'll work. "To me, it's a tough argument to make. It's a specious argument on its surface that seems like a perversion of the intended use of the Defense Production Act," said Tom Hicks, a former acting undersecretary of the U.S. Navy under former President Barack Obama and now a principal at the advisory firm The Mabus Group. Read [more](#).

WELCOME TO WEDNESDAY! I'm your host Kelsey Tamborrino, and James Daniel was the first to guess the most recent senator to appear on a U.S. postage stamp. It was Maine's Margaret Chase Smith, who [appeared](#) during the Distinguished Americans Issue in 2007, worth a whopping 58 cents face value. A geography question for today: The Blue Nile and the White Nile combine to form the Nile River at which capital city? Send your tips, energy gossip and comments to ktamborrino@politico.com, or follow us on Twitter [@kelseyam](#), [@Morning_Energy](#) and [@POLITICOPro](#).

POLITICO's Ben White is bringing Morning Money to the Milken Institute Global Conference to provide coverage of the day's events and evening happenings. The newsletter will run April 29 — May 2, 2018. [Sign up](#) to keep up with your daily conference coverage.

DON'T FEAR THE NEPA? House Natural Resources will hold an oversight [hearing](#) this afternoon on what it calls the "weaponization" of the National Environmental Policy Act, and it could be a doozy. The committee notice calls NEPA — the seminal law that requires an environmental review on all federal actions — activists' "weapon of choice." Republicans have long-sought to undo parts of the law, and today's hearing will likely echo some of the rhetoric out of the Trump administration, which has supported faster NEPA reviews as part of its [infrastructure push](#). The hearing will review challenges from NEPA and will evaluate reforms to "de-

weaponize" the law to "minimize opportunities for bad faith litigation, and restore the law to its original intent," according to a committee notice.

The committee previously took up the topic last year, holding a similar hearing in November on modernizing the law for the 21st century. James Coleman, a law professor at the Southern Methodist University, is expected to say the current NEPA process is "broken" and that bipartisan efforts to fix the problem have failed. "As President Obama's regulatory czar put it, 'If the permitting bureaucracy were a supervillain, it would be the Blob,'" he'll say, according to his testimony. "Right now, the Blob is winning: We have lost decades of investment while environment reviews grow longer and longer. How can we ensure that the U.S. does not fall behind our global competitors?"

Meanwhile, Laura Alice Watt of Sonoma State University, who says she is a proponent of environmental reviews that are conducted consistently, will discuss the effect of NEPA on the Point Reyes National Seashore, where a review over the last 20 years has contributed to the erosion of active ranches. Melissa Hamsher of Eclipse Energy Resource Corporation and former CEQ official Horst Greczmiel will also testify. Democratic Rep. Donald McEachin, ranking member of the Oversight subcommittee, will say that he'll hold the administration and Republicans to account on NEPA. "Many communities — and especially vulnerable minority and low-income communities — have had to endure a decades-long pattern of environmental injustice, in no small part because they were denied a say in important decisions that affected them," McEachin is expected to say. **If you go:** The hearing kicks off at 2 p.m. in 1324 Longworth.

SPEAKING OF NEPA: The League of Conservation Voters sent this letter to House members Tuesday urging them to oppose H.R. 3144 (115), which LCV says would "attack" the Endangered Species Act and NEPA by "mandating dam operations harmful to endangered salmon and steelhead in the Pacific Northwest."

ADD THIS TO THE LIST: Two days before two House hearings and fresh off an announcement on EPA's plan to bar scientific studies that don't publicly disclose data, Administrator Scott Pruitt got another appointment to testify on his agency's budget. This time Pruitt will appear in May before the Senate appropriations subcommittee that oversees EPA's budget, Lisa Murkowski said Tuesday.

OH, TO BE A FLY ON THE WALL: Sen. Shelley Moore Capito, one of the Republican EPW members open to a hearing with Pruitt, told ME Tuesday she has a "well-timed" phone call with him scheduled for this week. "I think he wants to talk about some regulatory measures," she said. "But I'm going to probably ask him questions on the current state of some of the things that I've read and we'll see where it goes." She said the call had been set up last week.

McConnell voices support ... again: Majority Leader Mitch McConnell told reporters Tuesday he remained a supporter of Pruitt's, while noting the EPA chief's busy Thursday on the Hill. "We'll just see," he said. "I expect there will be a lot of interest."

PERROTTA WORKED FOR TRUMP-BACKED MEDIA COMPANY: Pasquale "Nino" Perrotta — the Secret Service veteran who heads Pruitt's security detail — previously worked on assignments for the tabloid publishing company American Media Inc. during the 2016 presidential campaign, The New York Times reported Tuesday. While it is unclear when Perrotta started working at AMI, the Times reports some of his activities at the company included physical security, cybersecurity and investigative services involving litigation. Read more.

OLD AD-AGE: The Natural Resources Defense Council is sponsoring an ad today in The Washington Post that calls for Pruitt's ouster. The ad — which says: "President Trump promised to drain the swamp. He should start with EPA Administrator Scott Pruitt" — will run as an insert in 3,000 copies of the Post and will be delivered to Capitol Hill on Thursday. See it.

IF YOU PLAY YOUR CARDS RIGHT: The Environmental Defense Fund mapped out what it says are Pruitt's unanswered questions surrounding scandals while he helms EPA and during his time as Oklahoma attorney general — 86 of them to be exact. The group will also hand out a deck of "Non Trivial Pruitt Questions" during Thursday's hearings with a sampling of the ethical questions. See the cards here.

Rally cry: Separately, the American Federation of Government Employees will hold a rally today from noon until 1 p.m. in support of EPA workers. Democratic Reps. Salud Carbajal, Don Beyer, Bill Foster, Sheila Jackson Lee, Alan Lowenthal, Grace Meng, Jamie Raskin and Debbie Wasserman Schultz are all set to attend the rally, which will take place outside of EPA headquarters.

MACRON ADDRESS LAWMAKERS: French President Emmanuel Macron hits the Hill this morning to address a joint session of Congress. Earlier this week, the French president said he'd call for continued U.S. intervention in Syria in his speech. "I will advocate for multilateralism," Macron said in an interview on "Fox News Sunday." But it's also possible issues concerning climate will come up — which would likely receive a welcome reception from Democrats.

Macron, a staunch supporter of the Paris accord, also briefly mentioned climate during a joint press conference with the president Tuesday. "We also talked about the climate. And here, also, we know where we stand," Macron said vaguely. "France will continue to work on major pieces, including the global compact for the environment. But I think I can say that our economic — our businesses, our researchers can continue to work on — can create solutions in the field." Both he and Trump are "attached to that," he said.

Bold move: It's probably not an indication of environmental topics to come, but Apple CEO Tim Cook brought former EPA chief Lisa Jackson to Tuesday's state dinner with Macron. Jackson, who now works as vice president of environment, policy and social initiatives at Apple, has attended events with Cook in the past — but it's an interesting move considering Jackson's not been known to mince words about the Trump administration. For what its worth, Cook will meet today with Trump in the Oval Office.

MORE NOMS: Trump sent James Hubbard's nomination to be undersecretary of Agriculture for natural resources and the environment to the Senate Tuesday. Hubbard, of Colorado, replaces Robert Bonnie, who resigned from the post.

DEMOCRATS CITE SAFETY: Three Energy and Commerce Democratic leaders on Tuesday called on the Government Accountability Office to probe EPA's enforcement of federal health and environmental safeguards. "We are concerned that President Trump's and Administrator Pruitt's policies to 'streamline' permitting processes, reduce regulatory 'burdens' for industry, and defer to states on enforcement will lead to more environmental law violations due to lax enforcement at both the state and federal level," ranking member Frank Pallone and Reps. Diana DeGette and Paul Tonko write in a letter to GAO Comptroller Gene Dodaro. Read it here.

MAIL CALL! GOING NUCLEAR: Former national security officials and nonproliferation experts will send this letter today to congressional foreign affairs leadership stating that for national security reasons, it is in the U.S.' best interest to have a nuclear cooperation agreement — a so-called 123 Agreement — with Saudi Arabia.

— **Democratic Sens. Maria Cantwell and Jeff Merkley** and Reps. Raúl Grijalva and Jared Huffman sent a letter to Interior Secretary Ryan Zinke on Tuesday, calling on him to undo plans for a 2019 lease sale in Alaska's Beaufort Sea. Read it here.

— **Sen. John Barrasso, chairman of the Senate EPW Committee and Capito**, subcommittee chairwoman on clean air and nuclear safety, sent a letter to Pruitt and Perry, asking them to protect the confidential business information of U.S. small refineries. Read the letter here.

AT IT AGAIN: Michigan GOP Rep. [Fred Upton](#) officially filed for reelection in the state's 6th District, [MLive reports](#). "We are full steam ahead and excited about the future," the Energy and Commerce lawmaker said in a statement.

A TANGLED WEB: The Environmental Data & Governance Initiative is out with a new monitoring report this morning that says EPA removed pages related to "international priorities" and "international grants and cooperative agreements," as well as corresponding links, from its [International Cooperation](#) web page. The page in question listed priority areas including "strong environmental institutions," "climate change" and "clean water," among other terms, which EDGI says were removed in December 2017. Read the report [here](#) and see screenshots [here](#).

GROUPS TO SUE OVER DRINKING WATER IN NEW JERSEY: The NRDC and Newark Education Workers Caucus say they will sue the city of Newark, N.J., and Catherine McCabe, the acting commissioner of the New Jersey Department of Environmental Protection, over lead contamination in the city's drinking water, [Pro New Jersey's Danielle Muoio reports](#). A Newark city official [said Tuesday](#) that the complaint filed by the groups is "absolutely and outrageously false."

OLYMPIANS HEAD TO HILL FOR CLIMATE: Five Winter Olympians will brief House and Senate offices today on the impact of climate change on winter sports and outdoor recreation. Cross-country skier Jessie Diggins, freestyle skier David Wise, halfpipe snowboarder Arielle Gold, biathlete Maddie Phaneuf and alpine skier Stacey Cook all will appear on the panel, which is co-hosted by nonprofit Protect Our Winters, Citizens Climate Lobby, and Sens. [Michael Bennet](#) and [Susan Collins](#). **If you go :** The briefing begins at 12:30 p.m. in 538 Dirksen.

CORRECTION: The April 24 edition of Morning Energy misstated the purpose of H.R. 3144 (115). The bill would codify the 2014 Biological Opinion until 2022, while the NEPA and the environmental impact statement processes continue.

QUICK HITS

— Trump White House offered to help prep Pruitt for hearings. EPA told the White House to "get lost," [The New York Times](#).

— Shaheen questions Air Force secretary on PFAS health study, [Seacoast Online](#).

— Harassment targeted; more disciplinary actions could follow, [E&E News](#).

— Provisions in FAA bill could strip endangered species protections, [The Hill](#).

— Zinke put birther conspiracy theorist on super PAC board, [CNN](#).

— Mines owned by Gov. Justice missed deadline for installing safety tech, [Charleston Gazette-Mail](#).

HAPPENING TODAY

8:30 a.m. — Microsoft and the delegation of the European Union to the U.S. [discussion](#) on the future of the EU electricity market, 901 K Street NW

10:00 a.m. — Senate Commerce Committee [hearing](#) on "Enhancing the Marine Mammal Protection Act," 253 Russell

11:30 a.m. — The World Resources Institute forum on "activism for energy," 10 G Street NE

12:30 p.m. — Olympians brief Congress about impact of climate change on winter sports, 538 Dirksen

2:00 p.m. — Resources for the Future webinar on "What Research Says on Key Fracking Debate Issues."

2:00 p.m. — House Natural Resources Committee hearing on "The Weaponization of the National Environmental Policy Act and the Implications of Environmental Lawfare," 1324 Longworth

2:00 p.m. — Senate Appropriations Energy and Water Development Subcommittee hearing on proposed budget estimates and justification for FY 2019 for the Nuclear Regulatory Commission, 430 Dirksen

2:00 p.m. — The Heritage Foundation discussion on "Saving 'Endangered' Species or Regulating with Bad Data," 214 Massachusetts Avenue NE

2:30 p.m. — Senate Indian Affairs Committee hearing on a pair of bills, including H.R. 1491 (115), 628 Dirksen

3:30 p.m. — Bloomberg Government and the Norwegian-American Chamber of Commerce conversation on "Investing In A Sustainable Energy Future," New York City

5:30 p.m. — The National Academy of Sciences lecture on "Distress Signals: Historical Waypoints in Northwest Atlantic Fisheries Since 1850," 2101 Constitution Avenue NW

6:30 p.m. — The Carnegie Institution for Science lecture on the sustainable use of the ocean, 1530 P Street NW

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<https://www.politicopro.com/newsletters/morning-energy/2018/04/perrys-latest-bid-to-save-coal-182338>

Stories from POLITICO Pro

Perry's latest bid to help coal faces uphill battle Back

By Eric Wolff | 04/25/2018 05:08 AM EDT

Energy Secretary Rick Perry's latest idea to protect coal-fired and nuclear power plants may not fare much better than his previous efforts, according to energy experts.

Perry is considering invoking the 1950 Defense Production Act to keep money-losing power plants running by designating them as crucial for national security. But that would stretch the definition of the law and almost certainly draw legal challenges — and it would hit a big hurdle in Congress, which would need to approve perhaps billions of dollars in funding to keep the plants afloat, the experts said.

At the urging of President Donald Trump, Perry has sought to keep open coal and nuclear power plants that are threatened with shutdowns amid the stagnant demand for power — and even as natural gas and renewable power sources grab a growing share of the market.

So far, Perry's had no luck. FERC earlier this year rejected his proposal to give the plants financial support, and Energy Department lawyers stymied a push last year to invoke the agency's authority under the Federal Power Act to force the plants to run.

Some experts said any attempt to use the DPA is likely to meet the same fate.

"To me, it's a tough argument to make. It's a specious argument on its surface that seems like a perversion of the intended use of the Defense Production Act," said Tom Hicks, a former acting undersecretary of the Navy under former President Barack Obama and now a principal at the advisory firm The Mabus Group. "Defense Production Act is on the vanguard of the need for resources, not on the back end for an industry being challenged by economic forces."

But the effort has been a priority for Trump and Perry, who sees saving coal-fired power generation as vital to U.S. security, according to a source familiar with the conversations on the issue.

The Cold War-era law grants the federal government powerful authorities to inject cash into companies essential for national defense in order to preserve domestic supplies of key products. But DOE will have to make the case that electricity produced specifically from coal and nuclear power plants, and not other types of power, is a critical resource.

Using the act to protect the plants when there appeared to be no immediate shortage of power supplies would be a novel application that would almost certainly face legal challenge.

"If the administration uses DPA, they're going to be using it very creatively," said Ari Peskoe, director of the Electricity Law Initiative at the Harvard Law School Environmental and Energy Law Program. "They may come up with reasoning for higher rates and who's going to pay for it. Whether that will hold up, I don't know."

Perry and his staff appear to have very few viable options for bailing out coal and nuclear power, a major energy priority for Trump, who has promised to revive the coal industry. DOE has opened a comments process for interested parties to weigh in on its use of the Federal Power Act's 202(c) emergency provisions, though that would require the agency to go through FERC, which unanimously rejected a similar Perry effort in January.

The 202(c) effort has been pushed by coal magnate Bob Murray, owner of Murray Energy, and by FirstEnergy Solutions, the unit of FirstEnergy Corp. that is in bankruptcy proceedings and which expects to shut down four coal and nuclear power plants. That company asked DOE to use the emergency authority to save not only its plants, but all 85 coal and nuclear power plants in the PJM Interconnection power market.

The DPA was last used by the Obama administration starting in 2012 to help spur the biofuels industry to develop the kind of advanced biofuels that could power ships and aircraft. The government can purchase capital equipment for the cause of national security, and it can fund advertising to support the effort.

And it allows the government to become the buyer of last resort, which could put Washington on the hook to buy excess power generated by coal and nuclear plants. Technically, this electricity could only be purchased at the "cost of production," a level that in the past has been determined by a team within the Defense Department.

While no hard estimate for the cost of a DPA subsidy exists, consultants analyzing Perry's previous bailout proposal estimated costs between \$4 billion and \$10.6 billion annually.

That's a far higher level than Congress typically allocates for the DPA. It provided \$67.4 million in the omnibus passed in March, H.R. 1625 (115), down slightly from the \$76 million it provided for all projects in 2017, according to a report submitted to Congress.

And Congress — and the Republican Party — is deeply divided on using government subsidies to save these plants. Rep. David McKinley (R-W.Va.) has some allies from other coal districts for the effort, but other free market-oriented lawmakers like Rep. Pete Olson (R-Texas) say they want to see markets function unimpeded.

McKinley's staff has been in touch with DOE and the White House, as has West Virginia Sen. Joe Manchin (D).

"I think it's an emergency national concern for the national defense of our country. I think Rick Perry agrees with it, and I think the president does also," Manchin told POLITICO.

PJM has itself said the retirement of FirstEnergy's coal plants did not pose a threat to the region's power supplies, and that it had ample generation to meet demand. It has opposed any effort to mandate to require the plants to stay online.

"We believe that a market-oriented approach consistent with the American free-enterprise system offers better results than government-mandated subsidies," said PJM spokesman Jeff Shields.

Anthony Adragna contributed to this report.

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Pruitt scales back EPA's use of science [Back](#)

By Emily Holden and Annie Snider | 04/24/2018 03:28 PM EDT

Environmental Protection Agency chief Scott Pruitt announced Tuesday he would seek to bar the agency from relying on studies that don't publicly disclose all their data, a major policy change that has long been sought by conservatives that will sharply reduce the research the agency can rely on when crafting new regulations.

The unveiling of the proposed rule delivers a win to Republicans like House Science Chairman Lamar Smith (R-Texas), who unsuccessfully pushed legislation to impose the same type of change. The move also demonstrates Pruitt's persistence in pursuing President Donald Trump's anti-regulation agenda just two days before the embattled EPA chief is due to face fierce questioning from lawmakers about his hefty spending, expanded security detail and cheap condominium rental from the wife of an energy lobbyist.

At an invitation-only meeting at EPA headquarters with Smith, Sen. Mike Rounds (R-S.D.) and other supporters of the policy, Pruitt said the proposed rule was critical in ensuring that the agency was transparent about how it is making decisions to justify costly new regulations. It is the latest step Pruitt has taken to fundamentally shift the agency's approach to science.

"It is a codification of an approach that says as we do our business at the agency the science that we use is going to be transparent, it's going to be reproduceable, it's going to be able to be analyzed by those in the marketplace. And those who watch what we do can make informed decisions about whether we've drawn the proper conclusions or not," Pruitt said.

Text of the proposed rule was not immediately available.

The proposal, based on legislation pushed by Smith, is intensely controversial, and scientists and public health groups say it will prevent federal regulators from enacting health and safety protections. Nearly 1,000 scientists, including former EPA career staffers, signed a letter opposing the policy sent by the Union of Concerned Scientists to Pruitt on Monday.

Their primary concern was that many of the country's bedrock air and water quality regulations are based on research that cannot disclose raw data because it includes the personal health information.

But industry has its own version of the same problem. EPA often relies on industry studies that are considered by companies to be confidential business information when determining whether new pesticides and toxic chemicals are safe to use. Internal EPA emails obtained under the Freedom of Information Act show that EPA political officials, including Nancy Beck, who became the chief of the agency's chemical safety office last year after working for years at a chemical industry lobbying group, worried that the new policy would limit the agency's ability to consider industry data or would force companies to make this proprietary data public.

"We will need to thread this one real tight!" Richard Yamada, political official who led work on the new policy wrote to Beck after she raised the concerns.

It was not immediately clear if the new proposed rule included measures to address those concerns.

Rush Holt, CEO of the American Association for the Advancement of Science, said Pruitt's changes could keep the agency from revising public health regulations as problems arise or new data comes to light.

"On the surface it sounds so innocuous or even beneficial. What could be wrong with transparency? Well it's clear to me that this is not based on an effort to be transparent. It is rather based on an effort to be just the opposite," he said.

"EPA is particularly important because when science is misused, people die," he added.

Pruitt has been discussing the new scientific policy publicly for weeks, but it only went to the White House for interagency review last week. Such swift review is very rare for the Office of Management and Budget, which often takes months to vet a new policy. At least one group, the Environmental Defense Fund, has requested a meeting with OMB officials to discuss the rule, but OMB's website shows that no meetings have been scheduled with interested groups.

Many public health studies can't be replicated without exposing people to contaminants, and environmental disasters such as the Deepwater Horizon oil spill cannot be recreated, the group said, raising intellectual property, proprietary and privacy concerns.

Pruitt's predecessor Gina McCarthy, and her air chief Janet McCabe, in an op-ed in The New York Times in March said concerns about studies are dealt with through the existing peer-review process, which ensures scientific integrity.

"[Pruitt] and some conservative members of Congress are setting up a nonexistent problem in order to prevent the E.P.A. from using the best available science," they said.

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Murkowski: Pruitt will testify to Senate appropriators [Back](#)

By Anthony Adragna | 04/24/2018 03:03 PM EDT

EPA Administrator Scott Pruitt is scheduled to testify in May before the Senate appropriations subcommittee that oversees his budget, Sen. [Lisa Murkowski](#) (R-Alaska), who chairs the panel, said today.

Murkowski did not elaborate on her plans for the hearing or how much it would delve into Pruitt's ethics and spending. But she said it was "absolutely appropriate" for the Environment and Public Works Committee to hold an oversight hearing on the administrator's conduct in office, an idea that has been endorsed by [multiple Republicans](#) on the authorization committee.

"I'm hoping they move on it sooner than later," Murkowski said of the EPW committee.

EPW Chairman [John Barrasso](#) (R-Wyo.) said today he has "serious questions" about how Pruitt has handled taxpayer dollars but stopped short of announcing plans for Pruitt to testify.

"We'll see what comes out of the hearings this Thursday," Barrasso said, referring to Pruitt's scheduled appearance of two House hearings that day.

Barrasso said he planned to send additional letters to EPA, following his recent request for details on the administrator's use of four separate email accounts. In response to that earlier letter, EPA [told him](#) all of Pruitt's accounts are searched in response to public records requests.

"You want to make sure taxpayers are getting value for their dollars," Barrasso told reporters today. "We want to make sure money is being spent appropriately."

WHAT'S NEXT: Murkowski declined to say when Pruitt would appear before her Appropriations Subcommittee on Interior, Environment and Related Agencies, but she has [said previously](#) it was expected to be the week of May 7.

To view online [click here](#).

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Pruitt support in Senate erodes as GOP lawmakers seek hearings [Back](#)

By Anthony Adragna | 04/23/2018 08:32 PM EDT

Scott Pruitt's wall of GOP support is developing new cracks, with three key Senate defenders calling for hearings into the embattled EPA administrator's recent controversies — and Sen. Lisa Murkowski announcing Tuesday that she plans to bring him before her appropriations panel in May.

Three other Republicans, including staunch Pruitt ally Sen. Jim Inhofe (R-Okla.), told POLITICO on Monday that they would also support hearings by the Senate Environment and Public Works Committee to look into the former Oklahoma attorney general's actions. Their words came as Pruitt, who has managed to hold onto President Donald Trump's public support for now, faces a pair of House hearings Thursday that could be make-or-break for his hopes of remaining in the Cabinet.

"I think that a couple of us on the committee think it's appropriate to have a hearing in so far as any accusation having to do with his office is concerned," Inhofe told POLITICO.

Inhofe said he was troubled by a report over the weekend in The New York Times detailing a sweetheart deal Pruitt received on an Oklahoma City home previously owned by a lobbyist while serving in a state government. The Oklahoma Republican declined to discuss which allegations he found disturbing, but said "there are some things in there that I'd like to check out and see."

Joining his call for a Senate hearing were two other senior GOP members of the EPW panel, Sens. Shelley Moore Capito (W.Va.) and John Boozman (Ark.).

"Most people have concerns about some of the allegations," Boozman said. "At some point he'll be before the committee and we'll dig deeper and see exactly what's going on."

EPW Chairman John Barrasso (R-Wyo.) said Tuesday that he has "serious questions" about how Pruitt has handled taxpayer dollars, but he stopped short of announcing plans for Pruitt to testify.

"We want to make sure money is being spent appropriately," Barrasso said.

Murkowski (R-Alaska), who chairs the subcommittee that oversees EPA's appropriations, did not elaborate on her plans for her own hearing with Pruitt, or how much it would delve into his ethics and spending. But she said it would be "absolutely appropriate" for Barrasso's panel to hold an oversight hearing on the administrator's conduct in office, an idea that multiple Republicans on the authorization committee have endorsed.

"I'm hoping they move on it sooner than later," Murkowski said of the EPW Committee.

To date, four House Republicans have called on Pruitt to resign, along with scores of elected Democrats. And Sen. Susan Collins (R-Maine), has said Pruitt was "the wrong person" to lead the agency based on his policies.

Pruitt has drawn criticism about his ethics and lavish spending in recent months. Three congressional committees, the White House and EPA's inspector general are all probing his behavior, ranging from his security expenses, high pay raises for aides, first-class travel and meetings with a coal group.

The House Oversight Committee has requested interviews with five senior agency aides. The White House said it would formally investigate Pruitt's expenses after the Government Accountability Office last week found EPA broke the law by failing to notify Congress about a \$43,000 privacy booth Pruitt had built in his office.

Pruitt will go to the Hill on Thursday to testify before a House Energy and Commerce subcommittee in the morning and at a House Appropriations subpanel in the afternoon. Those appearances will mark his first time before Congress since the recent allegations broke.

Both Inhofe and Capito said they thought those House hearings would prove pivotal for Pruitt's long-term future in the administration.

"It's really important," Capito said. "He's going to have to answer some tough questions. I'm sure they'll be put to him by both sides and we'll see what his response is."

Meanwhile, EPW ranking member Tom Carper (D-Del.) said he had a good conversation with House Oversight Chairman Trey Gowdy (R-S.C.) regarding Pruitt, but he said there was no formal bipartisan agreement to work together on an investigation.

"I just gave him plenty of encouragement that he's doing the right thing," he said.

But the mounting public criticism from Republicans suggests GOP lawmakers' patience in defending the EPA chief's behavior is waning.

"Some of the things that he's done and that he's been alleged to do are just indefensible," Sen. John Kennedy (R-La.) said. "You just can't put lipstick on those pigs. You can't."

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French president to call for American role in Syria [Back](#)

By Ian Kullgren | 04/22/2018 10:03 AM EDT

French President Emmanuel Macron said Sunday he will call for continued U.S. intervention in Syria before a joint session of Congress this week.

"I will advocate for multilateralism," Macron said in an interview on "Fox News Sunday."

Macron is visiting Washington this week in the first official state visit of the Trump presidency. In an interview with Chris Wallace at the presidential palace in Paris, Macron said he has a "special relationship" with President Donald Trump, describing them both as political outsiders.

"Both of us are probably the maverick of the systems on both sides," Macron said. "President Trump's election was unexpected in your country and probably my election was unexpected in my country."

Macron said that the United States is still an indispensable player for achieving peace in the Middle East, adding that France will rely on the U.S. in Syria once the conflict comes to an end.

"We will have to build a new Syria afterwards," he said.

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Apple's Tim Cook attending White House state dinner for Macron [Back](#)

By POLITICO Pro Staff | 04/24/2018 07:15 PM EDT

Apple CEO Tim Cook is attending tonight's White House state dinner for French President Emmanuel Macron.

Cook was spotted arriving for the dinner with former EPA Administrator Lisa Jackson, who is now vice president of environment, policy and social initiatives for Apple, according to a pool report.

Jackson served as head of the EPA under former President Barack Obama.

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A graphic with the text "InsideEPA" in large, bold, black letters and "MORNING ALERT" in smaller, bold, black letters below it. The background is a light gray with a faint, repeating pattern of the words "InsideEPA" and "MORNING ALERT".

InsideEPA

MORNING ALERT

REDEFINING EPA: Overhauling an agency and its mission -- Complete coverage

May 18, 2018

The Weekly Focus

Absent Federal Policy, Governments File Tort Suits For Environmental Harms

From fossil fuels that cause climate change, to lead paint and a host of toxic chemicals, state, county and city governments are increasingly turning to common law nuisance claims to recover cleanup and other funds from manufacturers, a growing sign that federal policy may be inadequate – or at least insufficiently funded – to address these harms.

Latest News

Inhofe Floats 'Legislative Fix' To Codify Limits On States' CWA 401 Decisions

Sen. James Inhofe (R-OK) is suggesting Congress create “a good legislative fix” to prevent states from using their authority under Clean Water Act (CWA) section 401 to stall federal projects such as construction of natural gas pipelines, drawing support from Assistant Secretary of the Army for Civil Works R.D. James at a May 17 hearing.

EPA Proposes To Scrap Most Obama-Era Revisions To RMP Program

The Trump administration is proposing to scrap most requirements of the Obama-era final rule updating EPA's facility accident prevention program, rescinding numerous new safety requirements in response to industry and state petitions, and arguing that EPA failed to adequately coordinate with other agencies in issuing the costly changes.

EPA Again Finds Formaldehyde Poses Leukemia Risks But Stalls Study

After years of additional study and scientific review, EPA has again found that formaldehyde poses leukemia and other cancer risks, though Democratic senators say the draft finding has prompted Trump EPA appointees to block release of the assessment and they are urging Administrator Scott Pruitt to quickly release it.

Democrats Take Rare Step Of Using CRA To Kill Trump Rule, Despite Critique

Democrats are taking the rare step of using the Congressional Review Act (CRA), the law that eases Congress' ability to repeal EPA and other agencies' rules, to block a Trump administration rule rolling back Obama-era 'net neutrality' mandates, despite criticism from environmentalists that it legitimizes use of a poorly-written law that Republicans and industry have long-used as a deregulatory tool and which they are seeking to repeal.

Daily Feed

Narrow CWA test fails to make the cut as Farm Bill amendment

While the House Rules Committee did not allow a floor vote on the proposed Farm Bill amendment, the language limiting which waters are regulated could still serve as a marker for EPA's upcoming rule.

EPA touts 'renewed emphasis' on self-audit policies

EPA is promoting "opportunities to increase compliance through use of existing self-disclosure policies or tailored programs."

Wehrum sidesteps queries on SAB review of science rule

The EPA air chief's responses to a Democratic lawmaker's questions suggest the agency may urge its science advisors to avoid a review of its controversial rule seeking to block the use of 'secret science.'

Ewire: Amid scandals, Pruitt lawyers up

In today's Ewire: The EPA chief has hired a white-collar defense attorney to advise him as he faces more than a dozen official investigations, and hired another attorney to set up a legal defense fund.

Wehrum strongly hints EPA will not scrap GHG risk finding

EPA's air chief said Administrator Scott Pruitt is trying to find a way to allow critics of the finding have "some voice," but he said there is no "process" to solicit those views and there is no "schedule" to do so.

Read all the latest EPA news, analysis and documents →

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Message

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Sent: 4/30/2018 3:58:07 PM
To: Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clin]
Subject: FW: Cooler Heads Coalition next meeting reminder and EPA's secret science reforms

From: Myron Ebell [mailto:Myron.Ebell@cei.org]
Sent: Monday, April 30, 2018 11:14 AM
To: Myron Ebell <Myron.Ebell@cei.org>
Subject: Cooler Heads Coalition next meeting reminder and EPA's secret science reforms

The Cooler Heads Coalition will hold its May strategy meeting on Monday, 14th May, beginning at 12 noon at CEI, 1310 L Street, N. W., Seventh Floor. Please e-mail or ring me at 331-2256 with questions or agenda items.

EPA's Scientific Transparency Reforms:

EPA Administrator Scott Pruitt on 24th April announced a proposed rule to end the use of secret science (and make other science reforms) in EPA's regulatory process. The press release is [here: https://www.epa.gov/newsreleases/epa-administrator-pruitt-proposes-rule-strengthen-science-used-epa-regulations](https://www.epa.gov/newsreleases/epa-administrator-pruitt-proposes-rule-strengthen-science-used-epa-regulations). The link to the proposed rule is at <https://www.epa.gov/newsroom/proposed-rule-strengthening-transparency-regulatory-science>.

One week before Pruitt's announcement, the National Association of Scholars published an important study by David Randall and Christopher Welser on *The Irreproducibility Crisis of Modern Science*. Here is the link: https://www.nas.org/projects/irreproducibility_report.

Pruitt deserves lots of credit and so do many people who have worked for decades for scientific transparency. I'll mention only two here: Steve Milloy of JunkScience.com and Representative Lamar Smith, Chairman of the House Science, Space, and Technology Committee. Steve, a charter member of the Cooler Heads Coalition, has ongoing coverage of the controversy at JunkScience.com. Here is Chairman Smith's statement: <https://science.house.gov/news/press-releases/smith-remarks-administrator-pruitt-s-scientific-transparency-announcement>.

The blowback from environmental pressure groups and the junk science community has been amusing to watch. They are all for transparency and reproducibility, but not for requiring it when using junk science to justify costly new rules. Here are some examples: <http://thehill.com/opinion/energy-environment/384898-epa-proposal-will-hobble-good-science-and-harm-american-families>
<https://s3.amazonaws.com/ucs-documents/science-and-democracy/secret-science-letter-4-23-2018.pdf>;

<https://www.popsoci.com/epa-transparency-public-health-data>

Here are three news stories that toe the party line:

https://www.washingtonpost.com/news/energy-environment/wp/2018/04/24/pruitt-to-unveil-controversial-transparency-rule-limiting-what-research-epa-can-use/?noredirect=on&utm_term=.29e5569ee37d

https://www.huffingtonpost.com/entry/pruitt-epa-transparency-rule-science_us_5adf44a8e4b07560f395fb16

<http://www.latimes.com/politics/la-na-pol-epa-science-20180424-story.html>

Although it isn't easy to argue against scientific transparency, the campaign against EPA's reforms is going to be intense. We will need to gear up to counter the mis-information from the environmental pressure groups and spread by the mainstream media. Angela Logomasini, my CEI colleague, does a good job in this article published on the Hill blog:

<http://thehill.com/opinion/energy-environment/385411-pruitts-rule-ending-secret-science-is-pro-science-pro-consumer>

Myron Ebell

Director, Center for Energy and Environment

Competitive Enterprise Institute

1310 L Street, N. W., Seventh Floor

Washington, DC 20005, USA

Tel direct: (202) 331-2256

Tel mobile: (202) 320-6685

E-mail: Myron.Ebell@cei.org

Stop continental drift!

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Sent: 5/8/2018 9:42:18 AM
To: Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clint]
Subject: Morning Energy, presented by Anheuser-Busch: Conservative talker has pull with Pruitt — It's primary day in coal country — Trump meets with ethanol

By Kelsey Tamborrino | 05/08/2018 05:40 AM EDT

With help from Eric Wolff and Anthony Adragna

PRUITT GETS TO IT FOR HEWITT: New emails emerged Monday that provide previously unknown details in the ongoing raft of controversies that have plagued EPA Administrator Scott Pruitt — and provide more ammo for onlookers who worry Pruitt spends too much time currying favor with his political allies.

Conservative commentator Hugh Hewitt brokered a meeting that ultimately ended with a polluted California area on Pruitt's personal priority list of Superfund sites, POLITICO's Emily Holden and Anthony Adragna report. Hewitt lives in Orange County, where the Superfund site sits, and has a son who works in EPA's press office. The TV and radio host emailed Pruitt back in September to set up a meeting between Pruitt and the law firm Larson O'Brien, which employs Hewitt and represents the Orange County Water District. "I'll join if the Administrator would like me too or can catch up later at a dinner," Hewitt wrote in the email, which was obtained under a FOIA lawsuit by the Sierra Club. He added that the issues surrounding the Superfund site were "Greek to me but a big deal in my home county."

Weeks later, the Orange County North Basin site in question appeared on Pruitt's list of 21 contaminated areas to address. Pruitt then proposed listing the site on the agency's National Priorities List, making it potentially eligible for long-term federal cleanup funding. Since the meet-up, Hewitt has been a staunch defender of Pruitt, dismissing his recent controversies as "nonsense scandals" on MSNBC in early April. EPA spokesman Jahan Wilcox confirmed that Hewitt helped arrange the meeting at the request of the water district but didn't attend.

The meeting adds to environmentalists' concerns about Pruitt. "The biggest fear we have is that No. 1 the administrator's political priorities and personal ambitions, political ambitions become the primary criteria for action under this program instead of science and health," said Elgie Holstein, senior director for strategic planning at the Environmental Defense Fund who has been tracking EPA's Superfund actions. [Read the story here.](#)

FIRST CLASS MEMO: EPA on Monday also released a copy of a memo written by the former head of Pruitt's security detail justifying his first class flights. "We have observed and increased awareness and at times lashing out from passengers which occurs while the Administrator is seated in coach with [his security detail] not easily accessible to him due to uncontrolled full flights," Pasquale "Nino" Perrotta wrote in the May 1, 2017, memo. "Therefore, we believe that the continued use of coach seats for the Administrator would endanger his life and therefore respectfully ask that he be placed in either business and or first class accommodations." The Washington Post and E&E obtained copies of the memo via a FOIA request. Perrotta retired from the agency last week.

WELCOME TO TUESDAY! I'm your host Kelsey Tamborrino. Congrats to Cummins Inc.'s Patrick Wilson, who was first to identify former House Speaker Nathaniel Banks of Massachusetts as the representative who served 11 terms and ran for election on five different party tickets. He was successful in all but the Liberal

Republican ticket. For today: What president was first to watch a major league baseball game from the dugout? Bonus points if you can name the team. Send your tips, energy gossip and comments to ktamborrino@politico.com, or follow us on Twitter [@kelseytam](https://twitter.com/kelseytam), [@Morning_Energy](https://twitter.com/Morning_Energy) and [@POLITICOPro](https://twitter.com/POLITICOPro).

BLANKENSHIP'S BIG DAY: We should know by tonight who will face Sen. [Joe Manchin](#) in a West Virginia Senate race that Republicans see as one of their biggest pickup opportunities of the year — that is, unless coal baron Don Blankenship scores a surprise upset in the surprisingly tight GOP primary. President Donald Trump [tweeted](#) Monday that Blankenship "can't win the General Election in your State," though he didn't endorse one of his opponents. That likely didn't ease fears that the two other major candidates — Rep. [Evan Jenkins](#) and state Attorney General Patrick Morrisey — will split the anti-Blankenship vote evenly and allow the former Massey Energy CEO to come out ahead. Blankenship recently was released from a year in jail following an explosion at the Upper Big Branch Mine that killed 29 workers. Blankenship has called the Upper Big Branch disaster the "worst tragedy" of his life, and is working to have his [conviction thrown out](#). (He has previously lost on appeal and failed to convince the Supreme Court to take the case.) For his part, Blankenship said Monday he was confident he would win, POLITICO's Alex Isenstadt [reports](#) from Mount Hope, W. Va.

That's not all: The Mountain State is not alone in kicking the 2018 midterms into gear. Statewide primary elections also are happening today in Ohio and Indiana and North Carolina, including solar energy entrepreneur and Democrat Dan McCready, who is running in North Carolina's 9th District. Vox nicely breaks down today's big races nationwide [here](#) and POLITICO has 7 things to watch [here](#).

SCHNEIDERMAN RESIGNS: New York Attorney General Eric Schneiderman, who has sued Exxon Mobil and fought the Trump administration's deregulatory agenda, [announced](#) his resignation Monday night in the wake of a report from the [New Yorker](#) that four women had accused him of abuse in previous romantic relationships. Two of the women who went on the record "say that they eventually sought medical attention after having been slapped hard across the ear and face, and also choked," according to the magazine. In a statement, Schneiderman disputed the allegations but said they "will effectively prevent me from leading the office's work at this critical time." The resignation takes effect at the close of business today.

Before the New Yorker story broke, Schneiderman and the attorneys general from seven other states called on Pruitt to withdraw his "secret science" proposal to ban the use of studies that don't publicly disclose all their data. Read the letter [here](#).

CHOPPING BLOCK: The White House on Monday [outlined](#) its package of proposed spending cuts, rescinding \$4.3 billion from the Energy Department's Advanced Technology Vehicles Manufacturing loan program, which supports the production of fuel-efficient, advanced technology vehicles. It was part of an overall request for \$15 billion worth of rescissions from previously appropriated funds from prior years. Another package going after the FY18 omnibus is expected later this year. More [here](#).

ON THE GRID: Puerto Rico's electric grid — which failed to provide power for much of the island for several months after last year's hurricanes — will be the focus of a Senate Energy and Natural Resources hearing this morning. The CEO of the Puerto Rico Electric Power Authority Walter Higgins and Bruce Walker, assistant Energy secretary for electricity delivery and energy reliability, are among the names set to testify. "The end goal is a modern and intelligent energy system that can serve as the resilient engine for Puerto Rico's economic revitalization," Walker is expected to say. Officials [say](#) close to 95 percent of power has now been restored on the island. **If you go:** The [hearing](#) kicks off at 10 a.m. in 366 Dirksen.

— **Forty-seven U.S. and international scientific groups** sent a [letter](#) to Puerto Rico Gov. Ricardo Rosselló on Monday, urging him to keep the island's statistical agency, the Puerto Rico Institute of Statistics, and its board of directors fully independent. "To address the challenges posed by its decade-long economic recession and the devastation of back-to-back hurricanes, Puerto Rico must chart its path toward sustainable recovery using reputable and reliable data and statistical methods," the letter says.

**** A message from Anheuser-Busch:** Anheuser-Busch announced that America's leading brewer has placed an order for up to 800 hydrogen-electric powered semi-trucks. The zero-emission trucks will be able to travel between 500 and 1,200 miles. Anheuser-Busch aims to convert its entire long-haul dedicated fleet to renewable powered trucks by 2025. [Learn more](#). **

ENERGY-WATER BILL ADVANCES: The House Appropriations Energy-Water subpanel swiftly approved its \$44.7 billion energy and water spending bill on a voice vote Monday, sending the measure to the full committee for consideration. The appropriations bill largely ignores the president's budget request, earning the approval of Democrats, who applauded the boost in funding for the Army Corps of Engineers and DOE thanks to the bipartisan agreement to lift spending caps. [Read more](#).

TRUMP MEETS WITH SENATORS ON RFS: In what could perhaps be the final time, Trump plans to meet today with at least Sens. [Chuck Grassley](#), [Joni Ernst](#), [Ted Cruz](#) and [Pat Toomey](#) to discuss their dueling priorities around federal ethanol policy. Who else will be in the room remains unclear, as sources told ME conflicting stories: An ethanol source said neither Pruitt, nor the Ag secretary, would be present, while a Republican Senate aide said both would be there.

A source said Team Ethanol's main goal is to get Trump to affirm his commitment to year-round sales of 15 percent ethanol, but the rest of the agenda seems to be unclear. A biofuels source said they expect Trump to kick the biofuels battle to Congress, where Sen. [John Cornyn](#) and Rep. [John Shimkus](#) have been trying to write a bill to overhaul the RFS. Cruz said at a Capitol Hill rally last week that he would view that decision as doing nothing. Cruz and Toomey are still seeking Renewable Fuel Standard changes to dramatically lower the program's compliance costs for refineries. Trump is scheduled to meet with Republican senators at 11:15 this morning, according to his public schedule.

— **Continuing their push for year-round sales of E15**, fuel retailers from 11 states sent a letter to Trump on Monday, calling on him to instruct EPA to immediately follow up on a pledge to allow the year-round sale of E15 before summer restrictions kick in on June 1. [Read the letter here](#). Eighteen other groups, including the Sierra Club and Earthjustice, signed [onto their own letter](#) expressing concern with the administration's openness to the year-round sale of E15. And the American Energy Alliance launched a digital ad campaign Monday urging for the repeal of the RFS. [Watch that ad here](#).

EXPECTING BIG THINGS: Shimkus is expecting broad support from the House when his comprehensive nuclear waste package [H.R. 3053 \(115\)](#) gets a vote Thursday. "I think people are ready to do something rather than nothing," he told reporters Monday. Shimkus said it's been a months-long process to educate members about the importance of the legislation and added he sent texts to Speaker [Paul Ryan](#) and Majority Leader [Kevin McCarthy](#) thanking them for finally bringing the package to the floor.

But he's not crazy: Shimkus said he hadn't had any recent talks with Senate counterparts about potentially moving the bill across the Capitol and he didn't expect they would this year with one of their most vulnerable incumbents (and ardent Yucca opponent), Sen. [Dean Heller](#), locked in a competitive reelection.

WHERE'S PERRY? Perry is slated to speak today during the Washington Conference on the Americas, where Commerce Secretary Wilbur Ross and Deputy Secretary of State John Sullivan, among others, are set to also appear. Perry will deliver remarks on "energy integration in the Americas" at 3:15 p.m. See the full agenda [here](#).

E&C TACKLES EVs: The House Energy and Commerce Environment Subcommittee will listen to discussion today on how fuel vehicles and electric vehicles will coexist as electric vehicles become more popular. The hearing begins at 10:15 a.m. in 2322 Rayburn, or stream it [here](#).

MAIL CALL: A diverse coalition of energy groups — including Advanced Energy Economy, the American Petroleum Institute and the American Wind Energy Association — on Monday urged Perry not to bail out coal and nuclear plants. Read their [letter](#).

INHOFE BACKS JACKSON: An Axios [report](#) that Pruitt chief of staff Ryan Jackson has been frozen out of the EPA chief's inner circle didn't sound right to his former boss, Sen. [Jim Inhofe](#). "I've known him well since he was 18 years old and I don't think they'd be capable of sidelining him," he told ME. Inhofe admitted that if the report is true — "that's an if I'm not willing to accept," he cautioned — it would be deeply concerning.

PRUITT MEETS MOTHERS ON CHEMICAL BAN: Two mothers will meet today with Pruitt, where they will press the administrator to ban paint strippers containing methylene chloride after their sons died using products with the chemical, according to the Environmental Defense Fund. On former President Barack Obama's last day in office, his administration proposed using the updated Toxic Substances Control Act to ban the use of the chemical in most commercial paint removers. Pruitt [told lawmakers](#) recently that he thinks EPA can make a decision on its proposed ban by the end of the year.

QUICK HITS

- Pruitt's Rome trip: More time on tourism than official business, [The Daily Beast](#).
- Steel town that voted for Trump banks on renewables, [E&E News](#).
- Interior sending officers to assist patrolling the U.S., Mexico border, [The Hill](#).
- EPA proposal pushed by ex-coal lobbyist could transform agency's use of science, [S&P Global](#).
- Booming tourism emits 8 percent of greenhouse gases, study shows, [Reuters](#).
- Old-boys' club that ran power world cracking with its model, [Bloomberg](#).

HAPPENING TODAY

8:30 a.m. — CHP Association holds [CHP policy forum](#) begins, 555 13th St NW

9:00 a.m. — The Atlantic Council's Global Energy Center [discussion](#) on "Transformations in Energy Technology: Innovations for a Secure Energy Future," 1030 15th Street NW

9:00 a.m. — The Bipartisan Policy Center [discussion](#) on "Investing for the Nation's Future: A Renewed Commitment to Federal Science Funding," 1225 I Street NW

10:00 a.m. — The International Energy Agency Bioenergy Technology Collaboration Program [international webinar](#) on "Biofuels for the Marine Sector: New Opportunities and New Challenges."

10:00 a.m. — The United States Energy Association [briefing](#) on "Economic Benefits of U.S. Liquid Natural Gas Exports," 1300 Pennsylvania Avenue NW

10:00 a.m. — Senate Energy and Natural Resources Committee [hearing](#) on the current status of Puerto Rico's electric grid and proposals for the future, 366 Dirksen

10:00 a.m. — The Woodrow Wilson Center's China Environment Forum [discussion](#) on "How Low (on Energy and Carbon) Can Buildings in China and the U.S. Go?" 1300 Pennsylvania Avenue NW

10:00 a.m. — House Transportation and Infrastructure Coast Guard and Maritime Transportation Subcommittee hearing on "blue technologies," 2167 Rayburn

10:15 a.m. — House Energy and Commerce Environment Subcommittee hearing on "Sharing the Road: Policy Implications of Electric and Conventional Vehicles in the Years Ahead," 2322 Rayburn

10:15 a.m. — House Natural Resources Committee markup on various bills, 1324 Longworth

12:00 p.m. — The Americas Society/Council of the Americas annual Washington Conference on the Americas with the theme "Investing in the Americas: The New Agenda for Growth," 2201 C Street NW

3:00 p.m. — House Rules Committee meets to formulate a rule on H.R. 3053 (115), the "Nuclear Waste Policy Amendments Act of 2018," H-313

THAT'S ALL FOR ME!

**** A message from Anheuser-Busch:** Anheuser-Busch announced that America's leading brewer has placed an order for up to 800 hydrogen-electric powered semi-trucks from the pioneer in hydrogen-electric renewable technology, Nikola Motor Company. The zero-emission trucks — which will be able to travel between 500 and 1,200 miles and be refilled within 20 minutes, reducing idle time — are expected to be integrated into Anheuser-Busch's dedicated fleet beginning in 2020.

Through this agreement Anheuser-Busch aims to convert its entire long-haul dedicated fleet to renewable powered trucks by 2025.

"At Anheuser-Busch we're continuously searching for ways to improve sustainability across our entire value chain and drive our industry forward," said Michel Doukeris, CEO of Anheuser-Busch. "The transport industry is one that is ripe for innovative solutions and Nikola is leading the way with hydrogen-electric, zero-emission capabilities. We are very excited by the possibilities our partnership with them can offer."

Learn more. **

To view online:

<https://subscriber.politicopro.com/newsletters/morning-energy/2018/05/conservative-talker-has-pull-with-pruitt-206682>

Stories from POLITICO Pro

Pruitt fast-tracked California cleanup after Hugh Hewitt brokered meeting Back

By Emily Holden and Anthony Adragna | 05/07/2018 10:12 PM EDT

EPA Administrator Scott Pruitt placed a polluted California area on his personal priority list of Superfund sites targeted for "immediate and intense" action after conservative radio and television host Hugh Hewitt brokered a meeting between him and lawyers for the water district that was seeking federal help to clean up the polluted Orange County site.

The previously unreported meeting, which was documented in emails released by EPA under a Freedom of Information Act lawsuit by the Sierra Club, showed Pruitt's staff reacting quickly to the request last September by Hewitt, who has been one of Pruitt's staunchest defenders amid a raft of ethics controversies around his expensive travel, security team spending and a cheap Washington condo rental from a lobbyist.

Pruitt has drawn criticism from environmentalists and other critics for letting prominent GOP backers and industry groups influence the agency's agenda — even as he has kicked scientists off of EPA's advisory panels and moved to limit the kinds of peer-reviewed research it will consider when making decisions.

In many cases, the people whose advice Pruitt is heeding could be useful supporters for him in a future race for U.S. senator or president. They include GOP megadonor Sheldon Adelson, who — as POLITICO reported in March — persuaded Pruitt last year to take a meeting with an Israeli water purification company called Water-Gen that later won a research deal with the EPA.

Hewitt, a resident of Orange County whose son James works in EPA's press office, emailed Pruitt in September to set up a meeting between the administrator and the law firm Larson O'Brien, which employs Hewitt and represents the Orange County Water District. Pruitt had been planning to meet with the lawyers in California a month earlier, but cancelled the trip to undergo knee surgery.

"I'll join if the Administrator would like me too or can catch up later at a dinner," Hewitt wrote in his Sept. 18 message. Hewitt added that the issues surrounding the Superfund site were "Greek to me but a big deal in my home county."

Pruitt's aides responded within minutes and quickly confirmed an Oct. 18 meeting for the lawyers and a project director.

Six weeks after that meeting, on Dec. 8, the Orange County North Basin site appeared on Pruitt's list of 21 contaminated areas to address. A month later, Pruitt proposed listing the site on EPA's National Priorities List, a move that could make it eligible for long-term federal cleanup funding from the federal government if the responsible polluters cannot be identified and forced to pay for its remediation.

Since then, Hewitt has been a robust defender of Pruitt, dismissing his recent controversies as "nonsense scandals" on MSNBC in early April and saying his detractors were "just trying to stop the deregulation effort."

Pruitt has touted the agency's Superfund work as one of his key priorities, setting up a task force to seek to speed up the clean-up of the nation's worst contaminated sites. That task force had been headed by Albert "Kell" Kelly, a former banker and longtime friend, who departed the agency last week after news about loans he provided to Pruitt in Oklahoma, including the mortgage provided to Pruitt for a house he bought from a lobbyist when he was a state senator.

Environmental advocates have worried Pruitt's efforts to identify Superfund priority sites would bypass the process set up by Congress to ensure cleanup resources are divided fairly, and that he could focus on sites seen as important to his political supporters. And environmentalists have said Pruitt's rush to claim that contaminated properties have been remediated could risk turning them over to local governments and businesses that might pursue cheaper, inadequate solutions.

Elgie Holstein, senior director for strategic planning at the Environmental Defense Fund who has been tracking EPA's Superfund actions, said the connection to Hewitt is "not a surprise."

"The biggest fear we have is that No. 1, the administrator's political priorities and personal ambitions, political ambitions become the primary criteria for action under this program instead of science and health," Holstein said.

EPA never disclosed the meeting with Hewitt's contacts. It was listed on Pruitt's public calendar as a staff briefing. But on his private Outlook schedule, which the agency has released in response to lawsuits, it appeared as an "Orange County Superfund Site" meeting with Kelly and two other staffers. The records did not list the Californians in attendance at the meeting at EPA headquarters in Washington.

But EPA spokesman Jahan Wilcox confirmed that two lawyers representing the water district, Robert O'Brien and Scott Sommer, and the water district director of special projects, Bill Hunt, were there. A third lawyer, former federal Judge Stephen G. Larson, was forced to cancel his trip due to wildfires in California, according to emails.

"Hugh Hewitt helped arrange the meeting at the request of the water district but did not attend," Wilcox said.

Wilcox said the meeting was for the water district to "brief EPA on the Superfund site's cleanup efforts and request expedited cleanup," following a 2016 agreement with the agency to conduct a remedial investigation and feasibility study, at a cost of \$4 million over two years. Hunt did not immediately respond to a request for comment.

Hewitt in an email to POLITICO called Pruitt a friend and said he does not have a working relationship with him. He said that his firm has represented the water district and worked on the site with EPA's regional office for years but that he had not participated in that work.

Hewitt said he requested a meeting because the water district wanted to brief the new EPA team, he said, adding that he was an Orange County resident until 2016 as well as an Orange County Children and Families Commission member. He said that he "very much" wanted the Superfund site remediated as soon as possible.

According to an EPA fact sheet, the Orange County site has more than five square miles of polluted groundwater containing chlorinated solvents and other contaminants across the cities of Anaheim, Fullerton, and Placentia. It includes the Orange County Groundwater Basin, which provides drinking water to more than 2.4 million residents across 22 cities, according to the agency. Those pollutants can damage humans' nervous systems, kidneys and livers, and some are considered carcinogenic.

EPA has just begun its process of studying the contamination and it has not determined which companies caused the pollution in the area. But an administrative settlement with the EPA in 2016 says the area was home to "electronics manufacturing, metals processing, aerospace manufacturing, musical instrument manufacturing, rubber and plastics manufacturing, and dry cleaning."

Hewitt also thanked EPA schedulers for working to arrange a meeting between Pruitt and the California Lincoln Clubs, which describe themselves as in favor of "limited government, fiscal discipline and personal responsibility." After some rescheduling Pruitt eventually met with representatives of the group on a trip to California in March of this year, according to his public calendar. Prominent Orange County businessman John Warner also helped to connect that group with staffers.

Pruitt and his scheduling staff have frequently sought to set up meetings with or for influential Republican figures, according to the internal EPA emails.

His team accepted an invitation for him to address The Philanthropy Roundtable at an invitation-only event at the White House for "conservative and free-market foundation CEOs and individual wealth creators to discuss the greatest opportunities for foundations to protect and strengthen free society" and "what [Pruitt] views as unique opportunities for philanthropic action.

As POLITICO reported in March, Pruitt also met with an Indiana coal executive and Trump fundraiser who was seeking to soften a pollution rule.

Pruitt also crafted his travel schedule — including a tour of states in August — to meet with big business much like a member of Congress would during the annual recess.

In July, EPA's associate administrator of public engagement Tate Bennett was working with Pruitt to "essentially create an August recess for the EPA to be out in the states talking with individual companies & doing listening sessions within sectors," said Leah Curtsinger, the federal policy director for the Colorado Association of Commerce & Industry, in an email introducing Bennett to her husband, public affairs director at coal company Cloud Peak Energy and a fellow alum of Senate Majority Leader Mitch McConnell's office.

Annie Snider contributed to this report.

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Blankenship, predicting victory, thumbs his nose at GOP [Back](#)

By Alex Isenstadt | 05/07/2018 08:27 PM EDT

MOUNT HOPE, W. Va. — A defiant Don Blankenship on Monday shrugged off President Donald Trump's last-minute plea for Republican primary voters to reject his insurgent Senate candidacy — and flatly predicted it would fail to halt his momentum.

On the final day of the dramatic West Virginia campaign, the coal baron and ex-prisoner seemed unbothered by the president's foray into the contest, arguing that voters would see through it as the latest ploy in an establishment-led effort aimed at keeping him from winning the nomination.

"I think it's still over," he declared to reporters here during a frenzied final day of the race. "It probably tightens it a point or two, but I don't think it matters much."

At another point in the day, after a reporter asked if he was feeling confident, Blankenship had a deadpan response: "Yeah, we're gonna win."

Senior Republicans are fretting that Blankenship, who spent a year behind bars after the 2010 explosion at his Upper Big Branch Mine that killed 29 workers, has vaulted into the lead heading into Tuesday's primary. GOP officials reviewed a range of surveys over the weekend, with some showing Blankenship holding a narrow single-digit advantage over his mainstream opponents, Rep. Evan Jenkins and state Attorney General Patrick Morrisey. Others had Blankenship ahead by more.

The national GOP has waged an all-out campaign to stop him from winning the nomination. They're convinced would destroy the party's prospects of ousting Democratic Sen. Joe Manchin in November. And many Republicans say a Blankenship win would be yet another black eye for the party, which is still reeling from last year's loss in the Alabama special election.

Over the past month, a super PAC aligned with Senate Majority Leader Mitch McConnell has spent over \$1.3 million on a barrage of anti-Blankenship TV ads.

With the former prisoner gaining momentum, the effort to stop him has gone into overdrive. As the race entered its final day, Blankenship's rivals — who had spent almost the entire campaign attacking one another — turned their fire on him.

In a not-so-veiled jab at Blankenship, Jenkins held a morning campaign event at a memorial for coal workers. At one point, he noted that one of his great grandfathers died in a mine explosion.

"The president could not have made it any clearer this morning that Don Blankenship is not the guy to beat Joe Manchin," Jenkins said.

Morrissey, who spent the day hopscotching across central West Virginia, announced that he'd sent a letter to Blankenship's parole officer highlighting what he argued was a violation. At one point, he took to Twitter to suggest questions for reporters to ask Blankenship. And he released a digital advertisement unloading on the coal baron, and highlighting his role in the 2010 explosion.

"Families devastated, children left fatherless, wives widowed," a narrator intoned. Many in the party are skeptical that the 11th-hour offensive will succeed — and, behind the scenes, finger-pointing is underway. Some are pinning the blame on the White House, saying it should have rebuked Blankenship earlier. Others say the fault lies with Jenkins and Morrissey, whose near constant attacks left one another badly damaged and created an opening for Blankenship.

Still others are pinning the blame on McConnell, saying that he should have long ago used his political muscle to clear the primary field and thereby avoid the three-way dynamic that has played to Blankenship's benefit.

McConnell has privately expressed concern to associates about Blankenship, whom he has long viewed as a serious threat in the contest. A loss for the Senate GOP leader, who hails from a neighboring Appalachian state and has faced withering attacks from Blankenship, would be embarrassing.

Over the weekend, McConnell spoke by phone with the president about the contest. According to a Republican official briefed on the call, Trump informed McConnell that he planned to criticize Blankenship publicly, a step he hadn't taken previously. Among the issues that arose on the call were Blankenship's TV ads, some of which have gone after McConnell's family in deeply personal, racial terms.

White House aides spent part of Friday drafting a tweet targeting Blankenship. Then, on Monday, the president hit send.

"To the great people of West Virginia we have, together, a really great chance to keep making a big difference," he wrote. "Problem is, Don Blankenship, currently running for Senate, can't win the General Election in your State...No way! Remember Alabama. Vote Rep. Jenkins or A.G. Morrissey!"

For Blankenship, who has tied himself closely to the president and on Monday declared himself "Trumpier than Trump," the attack could have stung. Yet as the race came to a close, Blankenship seemed unbothered.

Speaking to reporters after touring a freight shipping office here, Blankenship said he placed no stock in the president's tweet. It was McConnell, Blankenship said, who convinced Trump to weigh in. After Tuesday, Blankenship added, the president would be embarrassed he followed McConnell's lead.

"It's obvious that the president is suffering from the same thing that many in the public do, which is misinformation and untruths," Blankenship said. "The lesson that will be learned here when I win is that you shouldn't blindly endorse or cast doubts or favoritism unless you actually look at their record and not depend on the people in that swamp that you're trying to drain."

At times, Blankenship seemed to take pleasure in his recalcitrance. He refused to commit to endorsing his primary rivals should they win, which he said wouldn't happen, anyway. He wouldn't apologize for running TV ads lambasting McConnell's "China family." And he reiterated that he wouldn't vote for McConnell to serve as Senate GOP leader.

At one point, Blankenship noted that he'd been disrespected at other times in his career. The Marshall University-educated businessman noted that he'd grown up poor before becoming a multimillionaire, and recalled one episode in which he easily passed a CPA exam that Ivy Leaguers he knew had struggled with.

Now, he said, he was confronting another kind of establishment.

"I've been underestimated," he said, "all my life."

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What's in Trump's \$15B spending cuts package [Back](#)

By Kaitlyn Burton | 05/07/2018 08:29 PM EDT

The White House is set to release a \$15 billion spending cuts package Tuesday. Here are some of the plan's targets, a senior administration official told reporters today:

- \$7 billion from the Children's Health Insurance Program, which covers about 9 million low-income children.
- \$4.3 billion from the Energy Department's Advanced Technology Vehicles Manufacturing loan program, which supports the production of fuel-efficient, advanced technology vehicles.
- \$800 million from the Center for Medicare and Medicaid Innovation, which was created under Obamacare.
- \$252 million from the 2015 Ebola outbreak response.
- \$148 million from the Animal and Plant Health Inspection Service for responding to disease outbreaks "that have already been resolved," the official said.
- \$107 million for technical assistance after Hurricane Sandy for emergency watershed programs.
- \$15 million from USDA's Rural Cooperative Development Grant program, which seeks to boost the economies of rural areas.

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Trump tries to woo conservatives with bid to cut spending [Back](#)

By Sarah Ferris and Kaitlyn Burton | 05/07/2018 09:05 AM EDT

The White House on Tuesday will send \$15 billion in proposed spending cuts to Congress in an attempt to demonstrate fiscal austerity to skeptical conservatives, senior administration officials confirmed Monday night.

The administration had last week planned to send Congress a package of \$11 billion in spending reductions. But since then, some conservatives have quietly pushed for an even bolder proposal, particularly after the GOP's spending binge in recent months, said Republicans familiar with the discussions.

The White House initially floated as much as \$60 billion in cuts, including an unprecedented attempt to cancel money from this year's omnibus spending bill. The proposal was later downsized to \$11 billion, and then back up to \$15 billion, targeting only unused funding from past years, which POLITICO first reported.

One senior administration official told reporters that the proposal coming Tuesday is "the largest single rescissions package at one time."

The White House also plans to make a second attempt at clawing back funding from the omnibus, but the senior administration official said that could come weeks later.

The official said President Donald Trump will be personally involved in the details of the next package, which will include "substantial" cuts in current spending based on the president's own budget request.

Unlike regular spending bills, a presidential rescissions package is given fast-track authority in both chambers. That means the proposal is one of the rare spending-related bills that is able to bypass the 60-vote threshold in the Senate.

Nearly half of the package, a whopping \$7 billion, pulls from the Children's Health Insurance Program, which covers about 9 million low-income children.

Of this, \$5 billion is fiscal 2017 funding that has already expired, and \$2 billion is money from a so-called contingency fund that states can tap into if they're short on cash.

These CHIP rollbacks "will not impact the program," the senior administration official said.

It would also cut \$800 million from the Center for Medicare & Medicaid Innovation, which was created under Obamacare.

In addition, the proposal will target 38 programs with large amounts of leftover cash, including \$148 million from the Animal and Plant Health Inspection Service, \$107 million for Hurricane Sandy in 2013 and \$252 million for the Ebola outbreak in 2015.

The senior administration official said the White House is starting with "uncontroversial" cutbacks as a sweetener to bring Democrats on board.

"I don't think we believe there's a reason we wouldn't get bipartisan support for a package like this," the official said.

The process also includes a special bonus for fiscal hawks: Whenever the president submits a rescissions request, that spending is frozen automatically for 45 legislative days, or until Congress formally rejects it.

OMB Director Mick Mulvaney said in April that he hopes for a vote in the House before the July Fourth recess, and officials told reporters Monday that the House is "very interested in this package."

The GOP-dominated House is expected to easily clear the rescissions package, but even White House officials are less confident about its fate in the Senate, White House legislative affairs director Marc Short told POLITICO on Monday. Trump is pleased with the \$15 billion proposal, Short said.

In a call with Capitol Hill staff on Monday, White House officials skirted a question about whether Majority Leader Mitch McConnell had signed off on the proposal.

"We are in discussions with the majority leader," the administration official said on the call, which POLITICO was permitted to listen to by a staffer. "We're hopeful the Senate's going to come our way but I would say it's an ongoing conversation right now."

Trump's unusually large request would come after a nearly two-decade drought of any formal rescissions proposal.

Former President Bill Clinton was the last president to propose rescissions. His three requests totaled just \$128 million, a fraction of Trump's request.

Even with Trump's record-setting sum, conservative groups are demanding the Trump administration go further by proposing to cancel funds from the omnibus, which Trump threatened to veto.

Americans for Prosperity, the right-leaning group founded by the Koch brothers, is asking the White House to reel back \$45 billion from the \$1.3 trillion omnibus.

The group on Monday released an exhaustive list of programs it believes should go on the chopping block, including homeless assistance grants, a Coast Guard security center, FBI salaries and the National Cancer Institute.

Behind the scenes, top budget officials have wrestled for weeks with Republican lawmakers on the size and scope of the rescissions package.

The debate was largely centered on whether to cut money across the board from the omnibus spending package, or whether to target individual programs.

Few Republicans wanted the across-the-board cuts as those would have hit the hard-won increases to military spending. But officials also worried that going after specific programs would spur infighting among Republicans, according to one former top GOP congressional aide briefed on the deliberations — an outcome everyone hoped to avoid ahead of the 2018 midterm elections.

Meanwhile, belt-tightening conservatives in the House are still hoping for more than \$15 billion in cuts.

An internal survey of dozens of House Republican Study Committee members found that lawmakers overwhelmingly support the largest possible rescissions request. The survey, which was obtained by POLITICO, found that 71 percent of RSC members said they would back a proposal that cut at least \$60 billion. Another 9 percent said they'd support any amount.

And 94 percent of RSC members surveyed said the rescissions package should cut at least some domestic funding from this year's \$1.3 trillion omnibus. Only 6 percent said "maybe."

Republican budget wonks also wondered if the final package would accomplish the task of reducing government spending in a meaningful way, if it indeed took previously unspent money from old programs.

"This is not a deficit reduction exercise, but more of a public relations exercise to soothe the base and convince them that the White House is fiscally responsible," said G. William Hoagland, a senior vice president at the Bipartisan Policy Center and former director of budget and appropriations for former Senate Majority Leader Bill Frist as well as the former director of the Senate Budget Committee.

"If they are finding unused budget authority and putting that in a special package to Congress as appropriators are trying to put together the [fiscal] 2019 bill, it may have the effect of creating more spending for 2019 rather than less," Hoagland said.

Nancy Cook, John Bresnahan and Matthew Nussbaum contributed to this report

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House Appropriations panel advances \$44.7B energy and water bill [Back](#)

By Annie Snider | 05/07/2018 06:15 PM EDT

A House Appropriations Committee subpanel swiftly approved its \$44.7 billion energy and water spending bill on a voice vote today, sending it to the full committee for consideration.

Democrats applauded the boost in funding that the measure provides for the Army Corps of Engineers and DOE thanks to the bipartisan agreement to lift spending caps.

"Our bill is certainly a message to the executive branch that the legislative branch rejects the ill-considered, draconian cuts we have come to expect to every important agency we fund in this bill," said Rep. [Marcy Kaptur](#), the top Democrat on the subcommittee.

Overall, the bill would provide \$7.28 billion to the Army Corps of Engineers, \$451 million over 2018 levels. That includes \$1.6 billion for harbor maintenance activities, or \$160 million more than the level appropriators committed in a major 2014 bill.

DOE's energy programs would get \$13.4 billion under the measure, with increases for fossil and nuclear energy research and cuts for renewable energy and energy efficiency.

Democrats objected to that disparity, as well as to a spate of policy riders in the bill such as a provision to repeal the Obama administration's Waters of the U.S. rule and another to override a court decision and operate the Columbia and Snake rivers' dams for hydropower production rather than protecting endangered salmon.

WHAT'S NEXT: The full House Appropriations Committee is expected to consider the measure soon.

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**A bunch of House Repu
Do they mean it?**



BY DINO GRANDONI
with Paulina Firozi

THE LIGHTBULB



Rep. Carlos Curbelo (R-Fla.) right, stands with
Capitol Hill. (AP Photo/J. Scott Applewhite, File)

Last week, a bipartisan group of
Block any provisions curtailing
the next spending bill.

The letter came from members
representatives who have vowed
drought and other effects of climate

Half of the group's 78 members
their party, and their president
it is real, giving some progress
climate change seriously. **But** c
granting green credentials to R
actions of its members.

When it came time to sign the bill, Deutch said he was disappointed that it would prohibit or limit the federal government's ability to regulate climate change. Its impacts, only nine of the 100 House members signed the bill.

"I'm very disappointed," Rep. Deutch told **The Post**. "I'm really serious about this. I can bring together Democrats and Republicans and be really helpful. But the caucus would be a climate change. Part of that success would undermine our efforts."

Deutch added that he thought the bill was a good idea. Nita Lowey (D-N.Y.), the chairwoman of the House Committee, "would be an easy sell," he said in a letter.

It was hard to lock down members of the caucus on Memorial Day, a key time for House members to go home, Deutch explained. "In the next week, we'll have a vote," Deutch said, "and the fact is that the only way to get this matter is their votes."

Founded by Deutch and Rep. Louie Gohmert, the caucus's constituents are already grappling with the issue. Deutch said he wanted to be bipartisan from the start. He said he wanted a Republican for every Democrat.

The young caucus is still growing. It has 100 members just last week. **But the addition**

consider checkered legislative
exactly the group is stands for

Among the head-scratchers is
abolish the Environmental Protection
News Journal, a newspaper in
the EPA has a poor track record

"We should be focused on solutions

As a group, Republicans in the
The League of Conservation Voters
in the group's annual scorecard
considering the social cost of carbon
Alaska's Arctic National Wildlife Refuge
cut package.

"When faced with real votes that
director of the Sierra Club, "the

Mark Reynolds, executive director
group that helped organize the
accurately captures the emerging
to climate change," noting that
and 2017.

When it comes to proactive legislation
short, too. Last year, Rep. Don
introduced a carbon-pricing bill

sponsors. Beyer's office said it
Caucus members.

However, caucus leaders tak
Rep. Scott Perry (R-Pa.) that w
the vulnerabilities of military ba
Members worked behind the sc
Joanna Rodriguez wrote by em

You are reading **The I**

POWER PLAYS



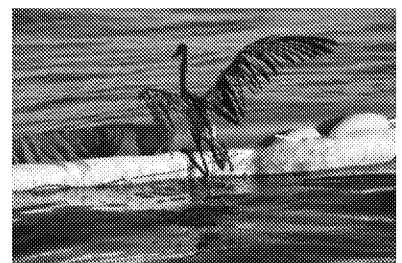
Scott Pruitt, Chief of the Environmental Protection

—Another day, another study
cancer risks from formaldehyde,

According to internal communications briefings on the studies findings materials like plywood and foam for the first time to detail its links scrutiny of EPA, already fending study on water contamination by

— **Time is on your side:** The E its controversial “secret science” 30, but will now continue until Au studies where the underlying data such a restriction would prevent pesticide exposure when crafting

— **Energy funding cuts, reject** advance an energy and water sp proposed cuts, the Washington L \$566 million more than the fundi administration. The bill includes \$375 million for its energy startup



An oil-drenched bird struggles to climb onto a log in 2010. (AP Photo/Gerald Herbert)

— **For the birds:** A coalition of e Trump administration’s move clip years, the United States has con

international treaties and laws,” J
statement. “The Trump administr
reverse decades of progress.”

The law was used to prosecute B
the Deepwater Horizon explosio
interpretation, the MBTA will no l

— Panel urges chemical plants
calling on chemical plants to con
pipes and production equipment
chemical fire at the Arkema plan
Hurricane Harvey. “Such facilitie
extreme weather events,” the bo
should assess seismic hazard m
other extreme weather such as h



Secretary of State Mike Pompeo testifies before

— Pompeo urges limits on uranium

said the Trump administration wants to see the U.S. deal with Iran as other Middle East nations that have nuclear weapons. "Saudi Arabia has said it wants to use U.S. prestige, keep up with Iran and France," Mufson reports. "Yet to use U.S. power to force the United States called a 123 Agreement with Iran, previous administrations have in the past with the United Arab Emirates. That agreement was never implemented."

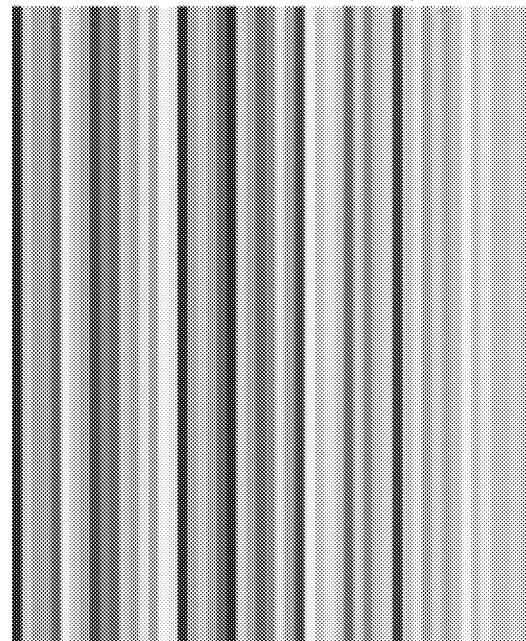
— Trump team defends Keystone XL pipeline

in federal court on Tuesday. The Trump administration has sued to stop the line. The Court of Appeals in Denver is expected to rule on the case in the coming weeks.

because of its potential to exacer-
bating office. "U.S. government a-
focus on climate change reflected
studies of the project," according

THERMOMETER

Annual temperature



Visualization of the average temperature over the
temperature of a particular year. (Ed Hawkins)

— **Climate change in colors:** A
visualization of temperature over

cooler years and the red stripes
representations that unambiguously

As the researcher, Ed Hawkins,
graphs and allows the viewer to
needing to interpret anything else



The fisherman and owner of Valley Fish and Ch...
(Washington Post)

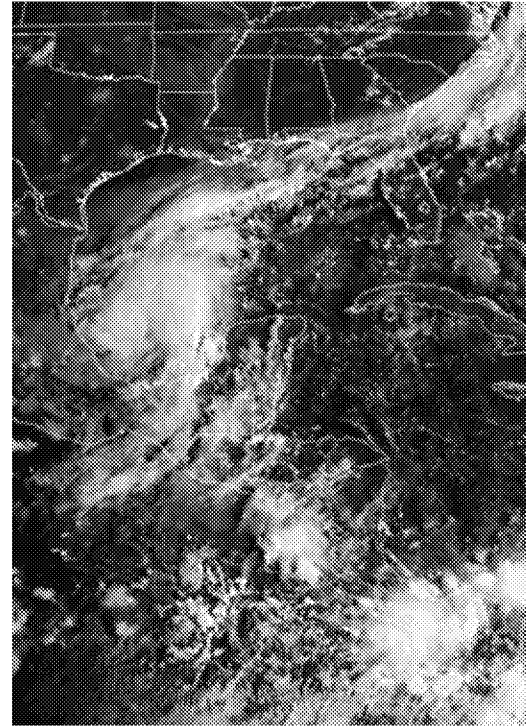
— Fish feel pain, and that could
biologists have been pushing back
complex enough to feel pain. Vic
University who co-authored a gro
scientific consensus is that fish c
do, which is more sophisticated,

So why is decades worth of re
might have to amend the Animal
which exclude fish," Carman rep
throwing them in a cooler. Fish f
trawlers, the boats that roam the
humanely."



A weasel in its white winter coat. (Karol Zub)

— **Camouflage mismatch:** In the subspecies of a species known as winter white, which evolved as a published in the journal *Scientific* did, and there are fewer white weasels, wildlife biologists call camouflage vulnerability when there's no snow. "The extinction of white subspecies," H of Sciences, told The Post.



Satellite image of three 2017 hurricanes in the Atlantic Ocean.

— **Closer to normal:** After a record-breaking season, the National Oceanic and Atmospheric Administration predicts the 2017 season will be slightly above normal, The Post's climate scientist says.

- 10-16 named storms
- 5-9 hurricanes
- 1-4 major hurricanes (category 3 or higher)

That's compared with 17 named storms, 11 hurricanes and three major hurricanes in the 2016 destructive and active season in the Atlantic.

According to a Time magazine editorial, NOAA's model produces are accurate, but often only off by one or two storms. The world of predicting the weather is a tricky world of predicting the weather.

— **Meanwhile:** A cluster of showers, at least a tropical depression, and possibly a hurricane in the next few days, Fritz reports. The National Hurricane Center has a 60 percent chance of developing in the next five days. And even if it doesn't, very least, several inches of torren-

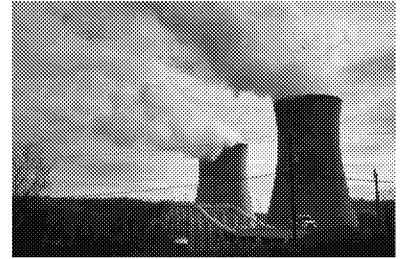


Artwork depicting a scene at the end of the Cretaceous (from NASA Images)

— **New study says dino-killing** Scientists have long believed that 65 million years ago, there was an increase in carbon dioxide in the atmosphere surge in the journal Science has produced new evidence that have unnerving implications for t

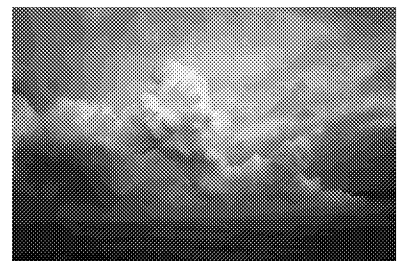
researchers concluded the effect
Fahrenheit average warming in a

OIL CHECK



In this photo, the FirstEnergy Corp. Beaver Valley
Merriman/Bloomberg)

— **Nuclear push:** The United States
and urge investment in new nuclear
the Energy Department, launched
Russia, South Africa, the United
nations aims to promote areas such
technologies like hybrid nuclear-



Steam plumes rise and lava glows as it enters the
Island. (Mario Tama/Getty Images)

— **And finally, here are some g**
Memorial Day off):

- **Former EPA head still ha**
EPA work to dismantle the
Swidey writes in a Boston
blunt, no-nonsense style. E
these days, feeling unencu
four decades, and dumbfo
loose even more. She now
your-lumps therapist.”
- **“I expect great science f**
Island that began on May
studying oozing fissures, e
Wilson and Sarah Kaplan
science, though it certainly
tracks through the ground
be used to better plan and

DAYBOOK

Coming Up

- Congress is in recess for a
- The US Energy Association
- EIA holds its annual 2018

- The Atlantic Council holds

EXTRA MILEAGE

— As Kilauea on Hawaii's Big Is
volcanic fissures can be seen from



BuzzFeed

Satellite im

Kilauea vo

@ESA_EC



BuzzFeed

@BuzzFeed

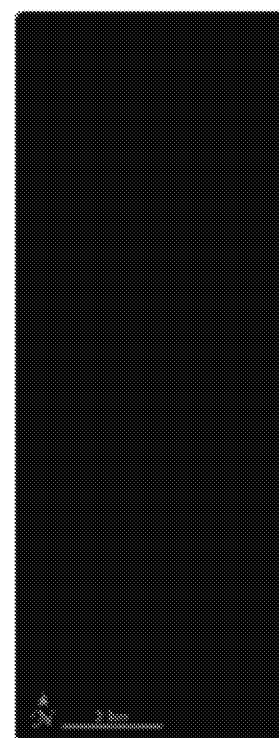
A nighttime view

Hawaii's Big Isla

earthobservator

pic.twitter.com/Y...

4:30 PM - May 24



90 51 peo

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Message

From: Bolen, Brittany [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=31E872A691114372B5A6A88482A66E48-BOLEN, BRIT]
Sent: 4/23/2018 8:34:30 PM
To: Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clin]
Subject: Fwd: Status?
Attachments: EPA Response to OIRA Data Access Comments - 4-23-18.docx; ATT00001.htm

Sent from my iPad

Begin forwarded message:

From: "Nickerson, William" <Nickerson.William@epa.gov>
Date: April 23, 2018 at 3:15:08 PM EDT
To: "Bolen, Brittany" <bolen.brittany@epa.gov>
Cc: "Lovell, Will (William)" <lovell.william@epa.gov>
Subject: RE: Status?

This version includes the following edits. (I think since then we've received a docket number, which I can forward separately).

1. Comment requesting docket #
2. Comment to remove watermark
3. Inserted RIN 2080-AA14
4. Comment FOR FURTHER INFORMATION CONTACT needs an employee name & tel#
5. Double spaced the document
6. Suggested using References section rather than footnotes
7. Removed CRA section
8. Added special header for Administrator signature page / removed Deliberative heading
9. Comment to add signer name & title below the signature line
10. Made minor reg text edits

-----Original Message-----

From: Bolen, Brittany
Sent: Monday, April 23, 2018 3:00 PM
To: Nickerson, William <Nickerson.William@epa.gov>
Cc: Lovell, Will (William) <lovell.william@epa.gov>
Subject: Status?

Hi Bill - what is the status of this?

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Thanks,
Brittany

On Apr 23, 2018, at 8:51 AM, Bolen, Brittany <bolen.brittany@epa.gov> wrote:

Bill,

As we discussed, attached the latest version of the document to be reviewed for formatting and boilerplate text conformity by your staff. Can I can those edits by this afternoon?

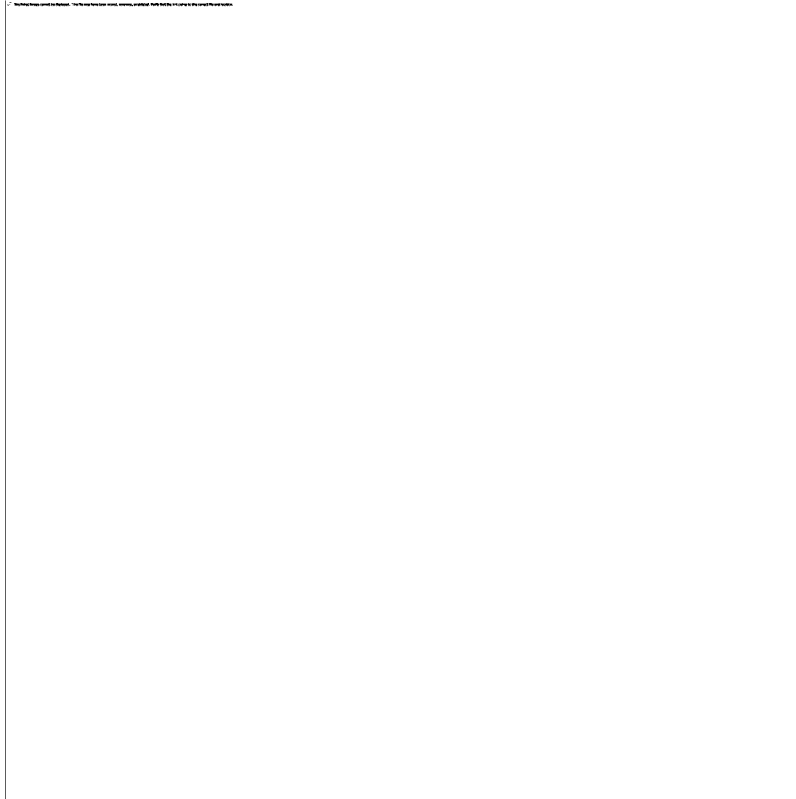
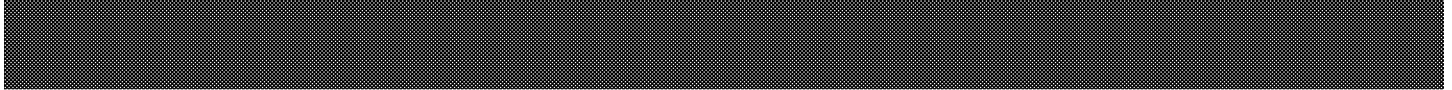
Thanks,

Brittany

<EPA Response to OIRA Data Access Comments - 4-22-18.docx>

Message

From: Morning Consult [reply@e.morningconsult.com]
Sent: 4/30/2018 12:35:19 PM
To: Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clint]
Subject: Morning Consult Energy: Refinery Owned by Icahn Said to Receive RFS Waiver



By Jacqueline Toth

Top Stories

- CVR Energy Inc., an oil refinery owned by former Trump adviser Carl Icahn, in recent months received a hardship waiver from the Environmental Protection Agency that exempts a plant in Wynnewood, Okla., from fuel blending requirements under the Renewable Fuel Standard, according to two industry sources. Icahn, who ended his advisory role in August after lawmakers questioned whether he had ethical conflicts working as both an

advisor and investor, is under federal investigation into whether he influenced biofuels policy while advising President Donald Trump. ([Reuters](#))

- Marathon Petroleum Corp., the second-largest refiner in the United States, said it plans to buy pipeline and refining company Andeavor in a cash-and-stock deal worth \$23.3 billion, according to the two companies. Marathon, based in Findlay, Ohio, has operations in the East, and Andeavor, based in San Antonio, operates in the West, which could make it easier for the companies to get regulatory approval. ([The Wall Street Journal](#))
- The Environmental Protection Agency's Office of Inspector General opened another investigation into Administrator Scott Pruitt, this time over his \$50-a-night condo rental in Washington from a lobbyist whose husband represented clients with matters at the agency, according to letters from Inspector General Arthur A. Elkins Jr. to Democratic Reps. Don Beyer of Virginia and Ted Lieu of California. The EPA's top ethics officer has said the housing arrangement did not violate rules on gift-giving, but the officer had not examined whether it ran against other ethics regulations or if the space was used as the lease indicated. ([Bloomberg](#))
- Pruitt has directed three senior EPA officials - Deputy Administrator Andrew Wheeler, Chief of Staff Ryan Jackson and Chief Financial Officer Holly Greaves - to review future agency spending made on his behalf that exceeds \$5,000, according to a signed memorandum. The memo came after Pruitt, at House hearings on Thursday, addressed allegations of extravagant spending on his behalf, including the purchase of a \$43,000 soundproof phone booth for his office, whose cost he ascribed to the decisions of career officials. ([The Hill](#))

Chart Review

Recommendations for Enhancing the Safety Focus of New Reactor
Regulatory Reviews
The Nuclear Energy Institute

Events Calendar (All Times Local)

MONDAY

Offshore Technology Conference	7:30 a.m.
National Hydropower Association's Waterpower Week	7:30 a.m.
Michigan Energy Innovation Business Council meeting	8:30 a.m.

Milken Institute Global Conference event on investing in climate action	10:45 a.m.
Collision's planet:tech Conference	12 p.m.
Milken Institute Global Conference event on biodiversity and a sixth extinction	2:30 p.m.
Columbia University Center on Global Energy Policy panel on conservative prescriptions on climate change	5 p.m.
Guarini Center event on natural gas generation in the U.S.	6:30 p.m.

TUESDAY

National Hydropower Association's Waterpower Week	7:30 a.m.
Offshore Technology Conference	7:30 a.m.
Greentech Media Solar Summit	7:45 a.m.
Collision's planet:tech Conference	9 a.m.
CSIS Energy & National Security Program event on carbon pricing	10 a.m.
Milken Institute Global Conference event on closing the energy gap in Sub-Saharan Africa	9:30 a.m.
Milken Institute Global Conference event on oil, gas and renewable energy markets	3:45 p.m.

WEDNESDAY

National Hydropower Association's Waterpower Week	7:30 a.m.
Offshore Technology Conference	7:30 a.m.

Greentech Media Solar Summit	8 a.m.
Collision's planet:tech Conference	9 a.m.
Great Plains Institute & Nicholas Institute for Environmental Policy Solutions event on PJM region energy	9 a.m.
Atlantic Council event on Russia's energy strategy	10 a.m.
Nuclear and Radiation Studies Board meeting on plutonium disposal at the Waste Isolation Pilot Plant	2:30 p.m.

THURSDAY

Offshore Technology Conference	7:30 a.m.
The Wilderness Society panel discussion on climate change and U.S. public lands	8:30 a.m.
Collision's planet:tech Conference	9 a.m.

FRIDAY

No events scheduled

Report: The Great Recession, 10 Years Later

How much of an impact does the recession continue to have on Americans, their perceptions of the financial industry, and their personal finances?

General

EPA Watchdog Opens Probe of Administrator Pruitt's Condo Rental

Jennifer A. Dlouhy, Bloomberg

The Environmental Protection Agency's internal watchdog will probe Administrator Scott Pruitt's unorthodox rental of a Capitol Hill condominium from a lobbyist, marking at least the 10th federal investigation of the agency's chief.

Pruitt signs memo directing aides to scrutinize future big expenses

Timothy Cama, The Hill

Under intense scrutiny of his expenses, Environmental Protection Agency (EPA) chief Scott Pruitt directed three senior officials to review any future expenditures made on his behalf that cost more than \$5,000.

EPA staff in 'despair' after Pruitt blame game

Emily Holden, Politico

Scott Pruitt may have survived his testimony on Capitol Hill, but he's coming back to a further enraged and demoralized Environmental Protection Agency staff.

Proposed shake-up at National Park Service could make senior leaders hit the road

Joel Achenbach, The Washington Post

A major management shake-up could be underway at the National Park Service, including the proposed reassignment of the veteran superintendent of Yellowstone National Park and six other senior executives, according to several individuals familiar with the plan

California Air Regulator to Pruitt: 'Call Me Maybe?'

Mark Chediak et al., Bloomberg

California's top air-quality regulator took to Twitter Friday to engage Environmental Protection Agency Administrator Scott Pruitt over the future of automotive pollution standards.

Dem AGs renew call for Pruitt to recuse himself from climate rule repeal process

Timothy Cama, The Hill

Democratic state attorneys general are renewing their call for Environmental Protection Agency (EPA) Administrator Scott Pruitt to

recuse himself from the process of repealing the agency's climate change rule for power plants.

OMB backdates completion date for 'secret science' review
Sean Reilly, E&E News

The White House has altered an official timeline to show that a required review of a proposed EPA science rule was finished one day before agency Administrator Scott Pruitt signed it this past Tuesday.

Water delivery suspended in Nevada mine battle
Scott Sonner, The Associated Press

It was an uncharacteristically urgent demand at a U.S. Superfund site where the cleanup of an abandoned World War II-era mine has dragged on for two decades and progress is measured, at best, in years.

Oil slips on rising U.S. rig count; Iran concerns limit downside
Koustav Samanta, Reuters

Oil prices dipped on Monday after a rising rig count in the United States pointed to higher production there, but markets held near their highest in over three years and remained set for a second straight month of gains.

Oil and Natural Gas

U.S. EPA grants biofuels waiver to billionaire Icahn's oil refinery - sources
Jarrett Renshaw et al., Reuters

The U.S. Environmental Protection Agency has granted a financial hardship waiver to an oil refinery owned by billionaire Carl Icahn, a former adviser to President Donald Trump, exempting the Oklahoma facility from requirements under a federal biofuels law, according to two industry sources briefed on the matter.

Marathon Petroleum to Buy Andeavor for More Than \$20 Billion
Dana Cimilluca et al., The Wall Street Journal

Marathon Petroleum Corp. plans to buy pipeline and refining company Andeavor for more than \$20 billion, the companies said Monday.

Saudi Aramco Shakes Up Board, Adds First Female Director
Summer Said, The Wall Street Journal

Saudi state-oil giant Aramco reshuffled its board, adding five members including its first-ever female director, as it prepares for a public listing.

Trump officials seek to ease landmark offshore drilling safety rules

Timothy Cama, The Hill

The Trump administration is proposing to roll back parts of a landmark offshore drilling safety regulation that was written in response to the 2010 BP Deepwater Horizon disaster.

Utilities and Infrastructure

'Cyber Blindspot' Threatens Energy Companies Spending Too Little

Naureen S. Malik, Bloomberg

What's the cost of securing the nation's energy from a cyber attack?

Pruitt: EPA will seek 'comprehensive rule' to alter New Source Review

Gavin Bade, Utility Dive

If Pruitt survives investigation into possible ethics violations, the power sector can expect more action on NSR and science policy.

PJM CEO touts benefits of new market amid shifting dynamics in the West

Kate Winston, Platts

A new electricity market in the West could offer unique benefits compared to the existing markets in the region, PJM Interconnection President and CEO Andrew Ott said Friday in an interview with S&P Global Platts.

Can San Diego Ditch the Power Company? Not Without a Fight
Ivan Penn, The New York Times

Seeking control over the way their electricity was generated and paid for, Cape Cod residents banded together two decades ago to bypass the local utility and buy power in bulk.

Renewables

Electric scooters draw hordes of investors and users - but a number of critics as well

Deborah Findling, CNBC

The market for electric scooters is booming, with names like LimeBike, Spin, Bird among the few companies appealing to consumers in big cities who are looking for quick, convenient and environmentally-friendly transportation.

Coal

DTE Electric plans to keep Belle River, Monroe coal plants running: official

Bob Matyi, Platts

Even though it is retiring three of its coal plants by 2023, DTE Electric intends to keep running its 1,395-MW Belle River and 3,000-MW Monroe coal plants until around 2030 and 2040, respectively, Trevor Lauer, DTE president and chief operating officer, said Friday in an interview.

Nuclear

Nuclear Power Plants Have a 'Blind Spot' for Hackers. Here's How to Fix That.

Sean Lyngaas

Billy Rios likes to hack the machines that make modern society function. Take the Morpho Itemiser 3, a prototype of the device the Transportation Security Administration uses to screen airport travelers for explosives and narcotics.

Climate

Unprecedented U.S.-British project launches to study the world's most dangerous glacier

Chris Mooney, The Washington Post

The largest U.S.-British Antarctic mission in seven decades officially launched at an event in Cambridge on Monday, as the two countries pooled dollars and scientific resources for missions to West Antarctica's Thwaites glacier - a Florida-size ice body that, scientists fear, could flood the world's coastlines in our lifetimes.

In Cities v. Fossil Fuels, Exxon's Allies Want the Accusers Investigated

David Hasemyer, InsideClimate News

The elbowing for advantage between ExxonMobil and the California cities and counties suing the oil giant for billions of dollars in climate change damages has spread to the U.S. Securities and Exchange Commission.

Opinions, Editorials and Perspectives

Support From Congress Shows High Stakes of Coal Plant for Tribes and Economies

Darren Bearson, Morning Consult

Comprehensive energy legislation has not been at the top of Congress' agenda throughout the first years of the Trump presidency.

Why climate change can't escape Washington's back burner

Amy Harder, Axios

When it comes to federal policy priorities, climate change rarely drives the agenda.

Scott Pruitt's feisty defense of himself may have been good enough to save his job of destroying the earth!

Tom Toles, The Washington Post

There are times when what you are watching is so far out of line with what is actually happening and what actually matters that you know that somebody is screamingly bonkers

Scott Pruitt Is Forced to Confront Reality

Emily Atkin, The Atlantic

Thursday morning's hearing of the House Energy and Commerce Committee was supposed to be all about Scott Pruitt, the embattled head of the Environmental Protection Agency. But it also turned out to be about Drew Wynne.

The Incredible Shrinking Exxon
Spencer Jakab, The Wall Street Journal

Exxon Mobil put an exclamation point on what ails big oil on Friday.

Scott Pruitt seems determined to harm the environment
The Editorial Board, The Washington Post

Environmental Protection Agency Administrator Scott Pruitt's expanding ethical cloud is one reason he should not be the nation's top environmental officer. The other is that he seems determined to ruin the environment.

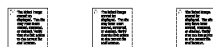
EPA scandals overshadow Scott Pruitt failure to undo Obama environmental regulations
Stuart Shapiro, USA Today

Scott Pruitt told Congress this week that the many ethics complaints against him are an attempt to discredit him because of his successful efforts to eliminate environmental regulations as head of the Environmental Protection Agency.

Research Reports

North American Power & Utilities Deal Insights Q1 2018
PricewaterhouseCoopers

Fading uncertainties regarding tax reform, the unique window of opportunity for solar and wind energy assets, and a continuing drive to rationalize portfolios all served to keep results strong in the first quarter of 2018.





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Subject: May 7 -- E&E News PM is ready

[Read today's E&E News PM on the web](#)

E&E NEWS PM

AN E&E NEWS PUBLICATION

E&E NEWS PM — Mon., May 7, 2018

 [READ FULL EDITION](#)

1. REGULATIONS:

White House plots update to NEPA guidelines

The Trump administration has signaled its intent to update the baseline National Environmental Policy Act guidelines for the whole federal government.

THIS AFTERNOON'S STORIES

2. EPA:

AGs urge Pruitt to stop 'secret science' plan

3. AUTOS:

Top industry group wants deal on fuel efficiency rules

UPCOMING HEARINGS AND MARKUPS

4. CALENDAR:

Activity for May 7 - May 13, 2018

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To: Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clint]
Subject: May 24 -- Greenwire is ready

[Read today's Greenwire on the web](#)

GREENWIRE

AN E&E NEWS PUBLICATION

GREENWIRE — Thu., May 24, 2018



[READ FULL EDITION](#)

1. LAW:

Clean Water Act 'ambulance chasers'? Firm raises eyebrows

The Trump administration is taking rare action against a Pennsylvania law firm for filing Clean Water Act citizen suits.

TOP STORIES

2. EPA:

Agency wanted 'war room' press coverage

3. SCIENCE:

GOP lawmakers, industry had EPA's ear on advisory panels

4. DRINKING WATER:

Science proposal muddies reviews of toxic nonstick chemicals

POLITICS

5. EPA:

Comment period extended for 'secret science' proposal

6. AUTOS:

Global confusion as Trump floats tariffs on car imports

7. PEOPLE:

Ex-Interior appointee turns to government relations

CONGRESS

8. DEFENSE:

House OKs Pentagon bill with sage grouse, mining provisions

9. NUCLEAR:

White House keeps Congress, advocates guessing about review

NATURAL RESOURCES

10. INTERIOR:

Award-winning FWS official has 'had a blast'

11. POLLINATORS:

Beekeepers coming to terms with increased winter losses

12. EXTREME WEATHER:

NOAA predicts 'near- or above-normal' hurricane season

13. WILDLIFE:

Wyo. approves trophy hunt of Yellowstone-area grizzlies

14. PEOPLE:

Air Force general who oversaw disaster response retires

15. WILDLIFE:

USDA cyanide devices killed 164 Wyo. coyotes last year

16. MARINE MAMMALS:

Humans caused 2 Calif. whale deaths — officials

LAW

17. WILDLIFE:

Greens sue Interior over migratory bird law revisions

18. COAL:

Greens sue over water permit for power plant

AIR AND WATER

19. AGRICULTURE:

'Takes your breath away': N.C. residents fight manure pools

BUSINESS

20. SPORTS:

Stadiums score high on green architecture

TRANSPORTATION

21. SELF-DRIVING CARS:

Uber halts testing in Ariz. in wake of fatal crash

STATES

22. CALIFORNIA:

Companies draw fire for ballot bid to duck lead paint costs

23. HAWAII:

Volcano creates blue flames; man describes harrowing injury

24. MARYLAND:

Some worry pumped-up Ocean City beaches threaten swimmers

25. WEST VIRGINIA:

Mishandled flood relief money draws scrutiny

26. NEW JERSEY:

Shore town bans plastics, foam takeout boxes

INTERNATIONAL

27. AUSTRALIA:

World's longest cat-proof fence to guard marsupials

28. INDIA:

Authorities pull plug on smelter after deadly protests

29. YEMEN:

Cyclone pounds island with winds, rain

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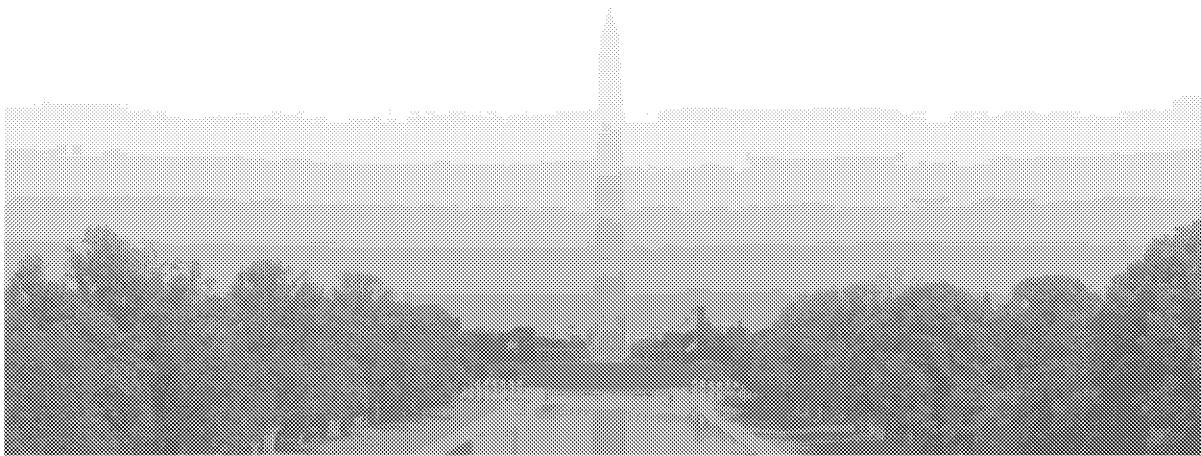
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Message

From: Regulatory Transparency Project [rtp=regproject.org@mail124.suw111.mcdlv.net]
on behalf of Regulatory Transparency Project [rtp@regproject.org]
Sent: 5/7/2018 5:59:54 PM
To: Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group
(FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clint]
Subject: Your Regulatory Transparency Project Newsletter



What's New?



[Free Lunch] [Tennessee Licensing Board Alarmed by Entrepreneur's Facial Recognition Software](#)

Featuring Adam Jackson (Edge AI) and Braden Boucek (Beacon Center of Tennessee), the 30th episode of Free Lunch discusses how Adam has been barred by the Tennessee Alarm Systems Contractors Board from distributing the software he developed to identify potentially dangerous individuals and prompt a security response before violence occurs. This episode of Free Lunch will be released as a podcast tomorrow, May 8.



[Fourth Branch] Innovation in the US Patent System

How does the US patent system affect inventors and innovators? Does the patent system promote or stifle innovation? Josh Malone, inventor of Bunch O Balloons, and a variety of intellectual property experts weigh in on this important topic.



[Free Lunch] Arizona Dumps Deference: The Beginning of the End for Chevron?

Featuring Prof. Philip Hamburger (Columbia Law School) and Jonathan Riches (Goldwater Institute), the 29th episode of Free Lunch discusses Arizona's recent passage of legislation eliminating Chevron deference in

Arizona state courts, how this new law might change state agency rulemaking and enforcement, and whether this law can serve as a model for the rest of the country, and the federal government.



[Free Lunch] Analyzing how EPA is Addressing “Secret Science”

Featuring Daren Bakst (The Heritage Foundation) and Richard B. Belzer Ph.D., the 28th episode of Free Lunch discusses EPA Administrator Scott Pruitt’s recent announcement on “secret science” and “how transparency in government can be strengthened and better inform policymaking.”

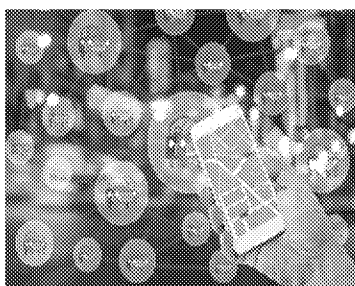
What's Coming Up?



[Paper] The FDA's Approach to Off-Label Communications: Restricting Free Speech in Medicine?

The FDA currently bars any speech by the manufacturer of a drug describing or promoting a use of the drug for any use other than an on-label use – even if the information is entirely truthful

and non-misleading and will help physicians better treat their patients. Is such a restriction compatible with the First Amendment? How can the FDA modernize and clarify its position on off-label communications? This paper, to be released on Thursday, May 10, will delve into these important questions.



[Event] Emerging Technology in Transportation

Start: Friday, May 18, 2018, 12:00 PM ET

End: Friday, May 18, 2018, 1:30 PM ET

Location:

Capitol Hill Club

300 First St, SE

Washington, DC 20003

On Friday, May 18, join Ryan Hagemann (Niskanen Center), Christopher Koopman (Center for Growth and Opportunity), Gregory S. McNeal (Pepperdine University), and Brent Skorup (Mercatus Center) for a discussion on drone delivery, autonomous vehicles, flight sharing, and more.



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Message

From: Gordon, Stephen [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=7C8FB4D82BFF4EEC98F5C5D00A47F554-GORDON, STE]
Sent: 4/23/2018 5:58:26 PM
To: Palich, Christian [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=330ad62e158d43af93fcbbece930d21a-Palich, Chr]
CC: Yamada, Richard (Yujiro) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4c34a1e0345e4d26b361b5031430639d-Yamada, Yuj]; Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clint]; Frye, Tony (Robert) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=58c08abdfc1b4129a10456b78e6fc2e1-Frye, Rober]
Subject: RE: Science Transparency

Awesome thanks Christian.

From: Palich, Christian
Sent: Monday, April 23, 2018 1:17 PM
To: Gordon, Stephen <gordon.stephen@epa.gov>
Cc: Yamada, Richard (Yujiro) <yamada.richard@epa.gov>; Woods, Clint <woods.clint@epa.gov>; Frye, Tony (Robert) <frye.robert@epa.gov>
Subject: Fwd: Science Transparency

Senator Rounds attending tomorrow.

Christian R. Palich
Deputy Associate Administrator
Office of Congressional Affairs
C: 202.306.4656

Sent from my iPhone

Begin forwarded message:

From: "Tharpe, Amanda (Rounds)" <Amanda_Tharpe@rounds.senate.gov>
Date: April 23, 2018 at 1:15:02 PM EDT
To: "Palich, Christian" <palich.christian@epa.gov>
Subject: Re: Science Transparency

Hey Christian -

The Senator would like to come tomorrow. Will it be a similar setup as the SAB event in terms of remarks, etc?

Thanks!
Mandy

Sent from my BlackBerry 10 smartphone on the Verizon Wireless 4G LTE network.

From: Palich, Christian
Sent: Monday, April 23, 2018 10:57 AM

To: Tharpe, Amanda (Rounds)
Subject: Re: Science Transparency

Should be done around 230. No later than 245.

Christian R. Palich
Deputy Associate Administrator
Office of Congressional Affairs
C: 202.306.4656

Sent from my iPhone

On Apr 23, 2018, at 10:55 AM, Tharpe, Amanda (Rounds) <Amanda_Tharpe@rounds.senate.gov> wrote:

Thanks Christian, I'll check. Do you know how long the event is estimated to take?

From: Palich, Christian [<mailto:palich.christian@epa.gov>]
Sent: Monday, April 23, 2018 10:34 AM
To: Tharpe, Amanda (Rounds) <Amanda_Tharpe@rounds.senate.gov>
Subject: Re: Science Transparency

It is for 2pm and we would love to have you and the Senator come! Below is some more details. Let me know when you can and we can add him to the run of show.

- EPA is proposing a regulation intended to strengthen the transparency of EPA regulatory science.
- The proposed regulation provides that when EPA develops regulations, including regulations for which the public is likely to bear the cost of compliance, with regard to those scientific studies that are pivotal to the action being taken, EPA should rely on such studies if the data underlying those are publicly available in a manner sufficient for independent validation.
- EPA will be soliciting comment on this proposal and how it can best be promulgated and implemented in light of existing law and prior Federal policies that already require increasing public access to data and influential scientific information used to inform federal regulation.

Christian R. Palich
Deputy Associate Administrator
Office of Congressional Affairs
C: 202.306.4656

Sent from my iPhone

On Apr 23, 2018, at 10:29 AM, Tharpe, Amanda (Rounds)
<Amanda_Tharpe@rounds.senate.gov> wrote:

Hey Christian –

Is the science transparency event still on the calendar for tomorrow? Will it be a similar setup to the SAB event?

Thanks!

Mandy

Amanda L. Tharpe

Deputy Legislative Director and Counsel

Senator Mike Rounds (SD)

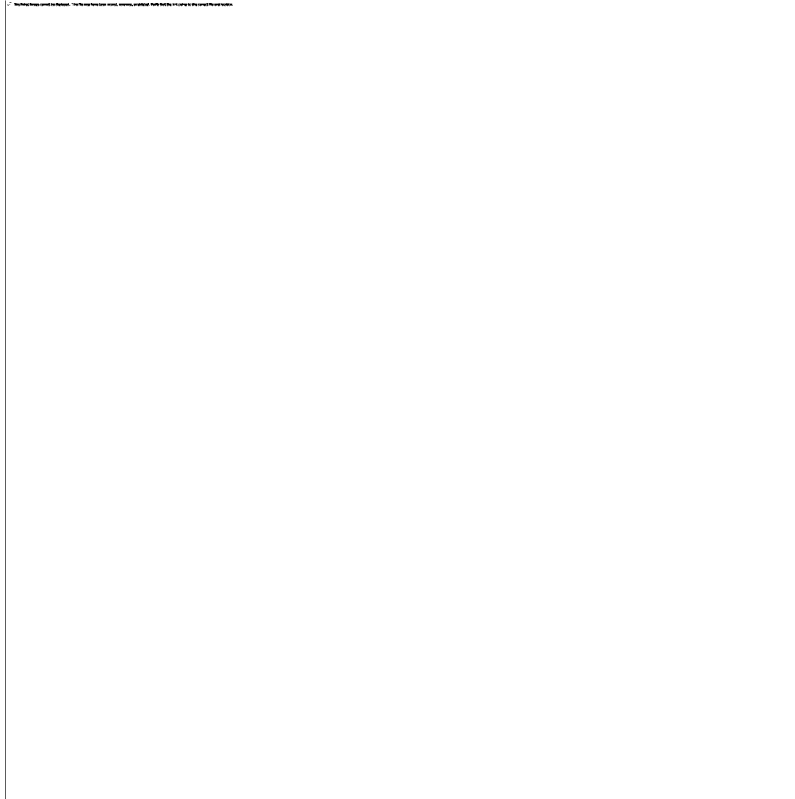
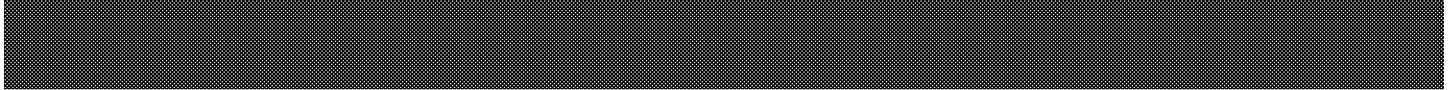
202-224-5842

502 Hart Senate Office Building

<image001.jpg><image002.jpg><image003.jpg><image004.jpg><image005.jpg>

Message

From: Morning Consult [reply@e.morningconsult.com]
Sent: 5/7/2018 12:51:17 PM
To: Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clint]
Subject: Morning Consult Energy: Brent Crude Hits Highest Level Since 2014 on Concerns About Resumed Iran Sanctions



By [Jacqueline Toth](#)

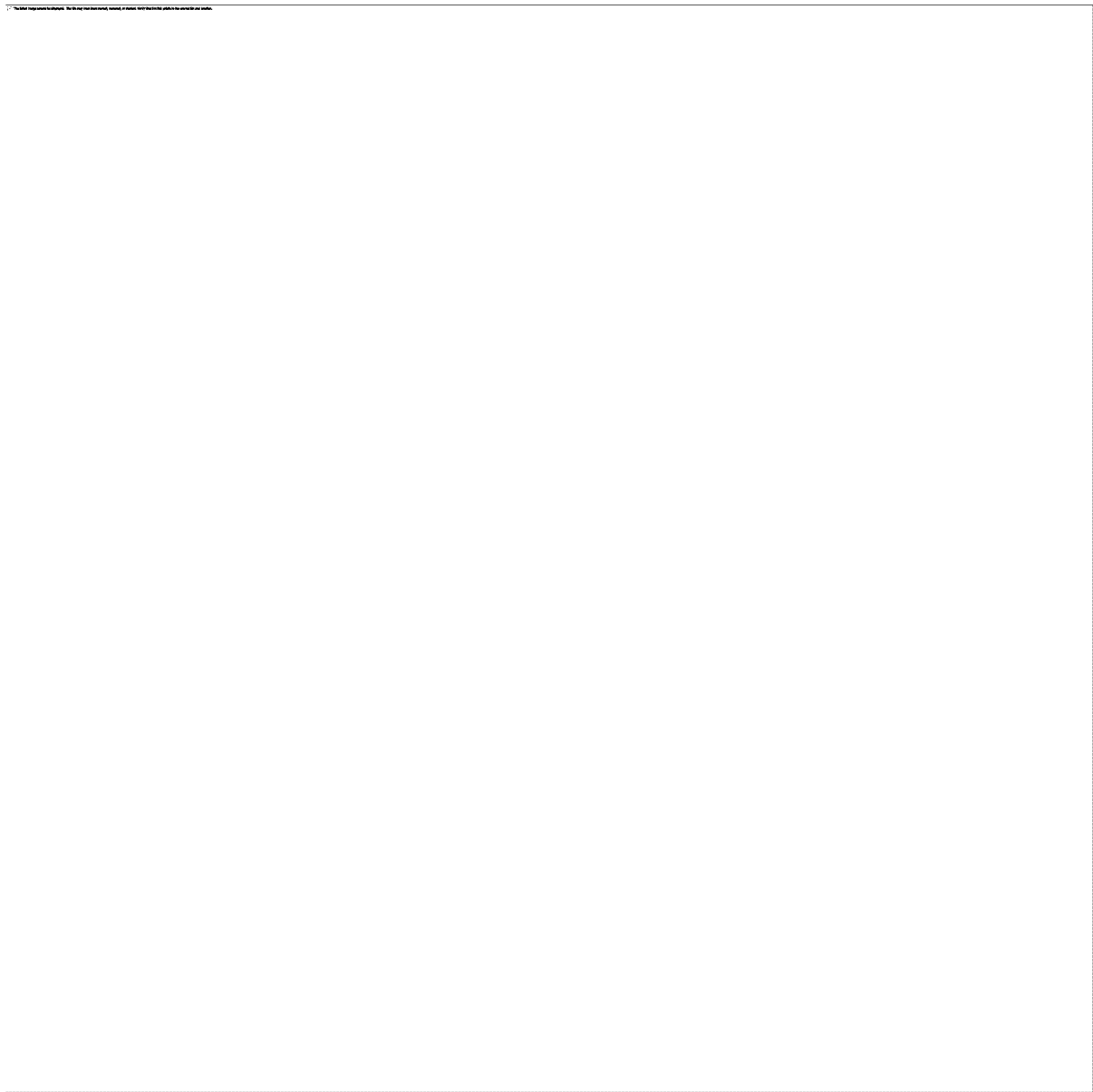
Top Stories

- Worries about a resumption of U.S. sanctions on Iran pushed up the price of Brent crude oil to \$75.89 a barrel, its highest level since November 2014. The surge in oil prices followed a warning from Iranian President Hassan Rouhani that it would be a "historic" mistake for the United States to withdraw from the 2015 nuclear deal with Iran. ([Financial Times](#))

- ConocoPhillips Co. is trying to take the Caribbean facilities on Curacao, Bonaire and St. Eustatius owned by Venezuela's Petróleos de Venezuela, S.A. to enforce the \$2 billion arbitration award it recently won in a lawsuit against PDVSA for the nationalization of oil projects more than 10 years ago in Venezuela, according to three sources. The facilities on the three islands are important to PDVSA's oil processing, storing and blending operations and accounted for around a quarter of Venezuela's oil exports in 2017. ([Reuters](#))
- ISO-New England, the grid operator for New England, asked the Federal Energy Regulatory Commission for permission to work toward a reliability must-run agreement to prevent the retirement of two units of an Exelon generating station in Middlesex, Mass., according to a filing. Exelon has said it intends to retire the two units once their capacity supply obligations expire May 31, 2022, but losing the two units, ISO-NE said, would result in violations of mandatory reliability standards. ([Platts](#))
- New Volkswagen AG Chief Executive Herbert Diess has received a safe-passage assurance from the Justice Department that allows him to travel freely around the world without fear of being arrested in relation to VW's emissions cheating scandal, according to two sources. Diess, who was appointed as head of the automaker last month, also has a spoken assurance that he will be told in advance if prosecutors will charge him as part of their ongoing investigation into the scandal. ([Bloomberg](#))
- According to newly released internal emails, political appointees of Environmental Protection Agency Administrator Scott Pruitt reviewed records collected in response to Freedom of Information Act requests for documents related to Pruitt's activities, which slowed the speed of information released under the act. The emails show that political staff also chastised career EPA staff for releasing files without first letting them screen the documents. ([Politico](#))

Chart Review

New Estimates Show Rapid Growth in Off-Grid Renewables
International Renewable Energy Agency



Events Calendar (All Times Local)

MONDAY

American Wind Energy Association Windpower conference	8 a.m.
Energy and Water Development Appropriations Subcommittee markup of FY2019 spending bill	5:30 p.m.

TUESDAY

American Wind Energy Association Windpower conference	7 a.m.
Combined Heat and Power Association 2018 Policy Forum	8:30 a.m.
The Wall Street Journal's The Future of Everything Festival	8:30 a.m.
Atlantic Council event on the future of global energy	9 a.m.
U.S. Energy Association event on the economic benefits of U.S. LNG exports	10 a.m.
Wilson Center event on energy efficiency and carbon emissions in China and U.S. buildings	10 a.m.
International Energy Agency webinar on biofuels in the marine sector	10 a.m.
Senate Energy and Natural Resources hearing on Puerto Rico's electric grid	10 a.m.
American Wind Action 'True American Power' reception	5 p.m.

WEDNESDAY

American Wind Energy Association Windpower conference	7 a.m.
Oil Price Information Service event on West Coast fuel supply and transportation opportunities	8 a.m.
The Wall Street Journal's The Future of Everything Festival	8:30 a.m.
Combined Heat and Power Association 2018 Policy Forum	9 a.m.
Center for Climate and Energy Solutions conversation on U.S. nuclear power plants	9:30 a.m.
Senate Public Lands, Forests and Mining Subcommittee hearing on Bureau of Land Management and U.S. Forest Service law enforcement	10 a.m.

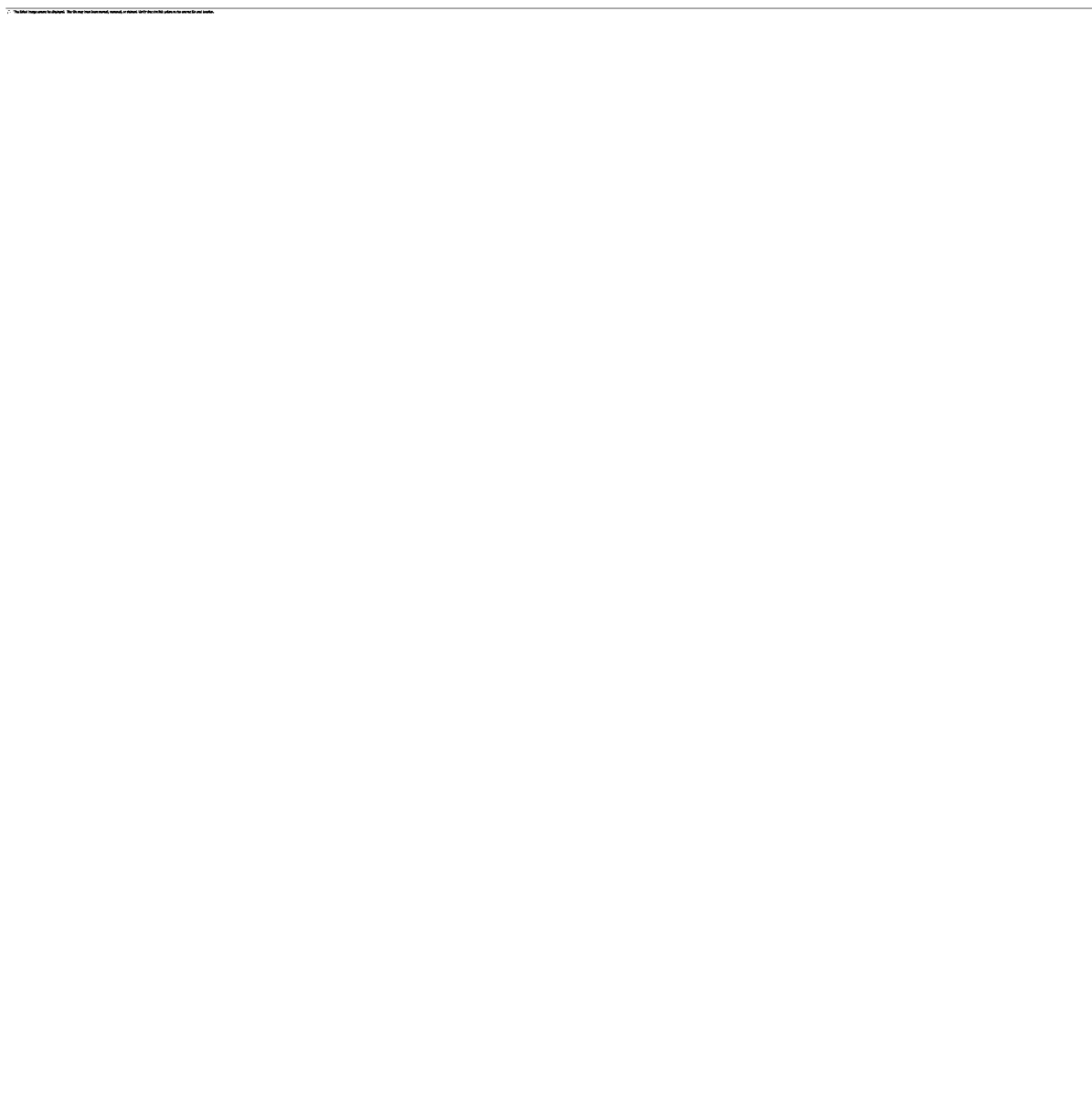
Senate Environment and Public Works hearing on water infrastructure legislation	10 a.m.
House Foreign Affairs markup of energy legislation	10 a.m.
Senate Indian Affairs hearing on Tara Sweeney's nomination to be an assistant secretary at the Interior Department	2:30 p.m.

THURSDAY

Oil Price Information Service event on West Coast fuel supply and transportation opportunities	6 a.m.
American Wind Energy Association Windpower conference	7 a.m.
The Wall Street Journal's The Future of Everything Festival	8:30 a.m.
Federal Renewable Energy and Energy Efficiency Advisory Committee meeting on U.S. renewable energy products and services	8:30 a.m.
Environmental Law Institute event on change in infrastructure reviews and permitting	9 a.m.
The Washington Post Energy 202 Live event	9 a.m.
Energy Subcommittee hearing on electric transmission infrastructure	10 a.m.
U.S. Energy Association event on coal utilization	1 p.m.
Center for Climate and Energy Solutions and U.S. Conference of Mayors webinar on city-utility partnerships in clean energy	2 p.m.
New York City Bar Association panel discussion on the role of natural gas in a low-carbon economy	6 p.m.

FRIDAY

No events scheduled



These are the Most Loved Brands in America

The brands that define American culture and commerce, ranked using over 250,000 survey interviews with U.S. adults.

General

EPA clamps down on document requests linked to Pruitt **Alex Guillén, Politico**

Top aides to Scott Pruitt at the Environmental Protection Agency are screening public records requests related to the embattled administrator, slowing the flow of information released under the Freedom of Information Act - at times beyond what the law allows.

Pruitt's problematic security had a playbook **Sara Ganim et al., CNN**

Make protection feel like a perk. Cultivate a healthy paranoia. Eliminate the usual annoyances of travel.

Senate Banking Chair Mike Crapo Set Up Campaign Shop in Scott Pruitt's Lobbyist Pad **Lachlan Markay et al., The Daily Beast**

The townhouse that served as a cut-rate rental pad for EPA administrator Scott Pruitt doubled as a veritable campaign headquarters for one of the most powerful chairman in the U.S. Senate.

Couple who rented condo to Pruitt pays fine to D.C. **Anthony Adragna, Politico**

The lobbyist couple whose condo EPA Administrator Scott Pruitt leased for \$50 a night paid a \$2,034 fine Friday for wrongly renting out the property, a spokesman for the D.C. Department of Consumer and Regulatory Affairs said.

New Interior guidance prohibits telling developers Endangered Species Act permits are mandatory **Miranda Green, The Hill**

Fish and Wildlife Service (FWS) staff can no longer advise builders they need to obtain a permit mandated by law to maintain endangered species habitat, according to new Interior Department guidance.

The man who could replace Scott Pruitt **Eric Wolff, Politico**

The man poised to take the reins at the Environmental Protection Agency if Scott Pruitt falls to scandal is a longtime Washington insider and coal

lobbyist who would pursue the same anti-regulation agenda - only without all of Pruitt's baggage.

Iran nuclear worries pushes crude oil to 4-year high
Stephen Smith, Financial Times

Brent crude on Monday touched its highest level since 2014 as oil prices increased on rising tension between the US and Iran.

Oil and Natural Gas

Conoco moves to take over Venezuelan PDVSA's Caribbean assets - sources
Marianna Parraga et al., Reuters

U.S. oil firm ConocoPhillips has moved to take Caribbean assets of Venezuela's state-run PDVSA to enforce a \$2 billion arbitration award over a decade-oil nationalization of its projects in the South American country, according to three sources familiar with its actions.

Oil MLPs Are Beckoning Again, but Know the Risks
Jeff Brown, The Wall Street Journal

Oil producers are pumping fiercely, and crude prices are up since last summer but still below previous peaks. Car buyers are grabbing gas-guzzling pickups and SUVs. World demand for oil is growing.

Utilities and Infrastructure

ISO-NE seeks US FERC permission to keep Exelon units online for fuel security
Marcy Crane, Platts

In an apparent first, the New England grid operator has asked federal regulators for permission to pursue a reliability must-run agreement to keep two retiring units of Exelon's Mystic Generating Station in Middlesex, Massachusetts, online to address reliability risks related to "fuel security."

How Storms, Missteps and an Ailing Grid Left Puerto Rico in the Dark
James Glanz et al., The New York Times

It took months to restore electricity in Puerto Rico after hurricanes dealt a one-two punch. Many homes are still without power, and the system's future is far from certain.

Illinois to sue EPA for exempting Foxconn plant from pollution controls

Valerie Volcovici, Reuters

Illinois' Attorney General said on Friday she plans to sue the U.S. Environmental Protection Agency for allowing a proposed Foxconn Technology Co Ltd plant in neighboring Wisconsin to operate without stringent pollution controls.

Renewables

Western coal-burning giant embraces wind

Benjamin Storrow, E&E News

A Western utility giant has so much wind that it has begun to turn its back on fossil fuels.

Coal

Trump admin cites Paris targets to expand Mont. coal mine

Dylan Brown, E&E News

Even while President Trump is pulling the United States out of the Paris Agreement, his administration is citing other nations' climate goals to justify expanding a Montana coal mine.

Nuclear

Top-level turmoil at EPA raises local concern about West Lake Landfill progress

Bryce Gray, St. Louis Post-Dispatch

As Environmental Protection Agency Administrator Scott Pruitt faces a mounting list of ethics and spending complaints, many locally wonder how the controversy will affect the West Lake Landfill Superfund site.

Climate

VW CEO Given Rare U.S. Safe-Passage Deal

Tom Schoenberg et al., The Wall Street Journal

Not long after U.S. authorities filed sealed charges against Volkswagen AG's old chief executive officer, they granted the new CEO a rare safe-passage deal.

EPA's climate change website went down a year ago for 'updating.' It's still not back.

Chris Mooney, The Washington Post

The news came on a Friday evening in late April last year: The U.S. Environmental Protection Agency had removed an informational website about climate change, taking down a page that had been up, in some form, for nearly two decades and under three presidents.

IG will probe alleged censoring of draft NPS climate study

Michael Doyle et al., E&E News

The Interior Department's Office of Inspector General will scrutinize alleged alterations to a pending National Park Service report related to climate change and rising sea levels.

Opinions, Editorials and Perspectives

The future is in supercomputers

Energy Secretary Rick Perry, CNN

Technology is easy to take for granted, but it has an incredible impact. Computers, for instance, are commonplace, but they give us extraordinary capabilities. And we may only be seeing the beginnings of their potential.

The EPA's new 'secret science' rule makes sense from a risk-assessment perspective

Michael Dourson, Washington Examiner

Environmental Protection Agency Administrator Scott Pruitt's recent announcement that EPA will not use "secret science" - that is science for which the underlying data is not available - is challenging. Whereas EPA is routinely in receipt of unpublished toxicity studies for chemicals designed for commerce, not all important scientific findings are publishable.

Clean water is essential to health care around the globe
William Reilly, The Hill

When four British hospitals shut down for all but emergency care due to a major waterline burst, bedpans, bottled water and hand gel were handed out and patients were asked to not flush toilets.

Scott Pruitt's breathtaking corruption is part of Paul Ryan's legacy
Jennifer Rubin, The Washington Post

Using your government job to check off travel destinations on your bucket list is just about the swampiest gambit in a long list of Pruitt's abuses.

Don't prop up coal if the economy can't
The Editorial Board, Washington Examiner

Don't prop up coal if the economy can't. One of the reasons President Trump was elected is that President Barack Obama's launched a mean-spirited and heavy-handed campaign to kill coal as a source of electricity.

A power primer for the Trump era
Amy Harder, Axios

Electricity, the thing we all use but don't really notice, has unexpectedly become a hot topic under President Trump.

Research Reports

Climate-driven shifts in sediment chemistry enhance methane production in northern lakes
E. J. S. Emilson, Nature Communications

Freshwater ecosystems are a major source of methane (CH₄), contributing 0.65 GtC yr⁻¹ towards global carbon emissions and offsetting ~25% of the terrestrial carbon sink. Most freshwater CH₄ emissions come from littoral sediments, where large quantities of plant material are decomposed.





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Subject: May 4 -- Greenwire is ready

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GREENWIRE

AN E&E NEWS PUBLICATION

GREENWIRE — Fri., May 4, 2018



READ FULL EDITION

1. EPA:

Lobbyist with hand in Pruitt trips tied to gas-rich nation

The lobbyist who helped arrange EPA Administrator Scott Pruitt's trip to Morocco has another foreign client with natural gas interests, East Timor.

TOP STORIES

2. EPA:

Press deputy to leave

3. CLIMATE:

Trump admin cites Paris targets to expand Mont. coal mine

4. OFF TOPIC:

Climate advocate quietly tutors Trump's team

POLITICS

5. NATIONAL PARKS:

Agency hires GOP operative to push maintenance fund on Hill

6. WHITE HOUSE:

Trade policies could spark another Depression — economists

CONGRESS

7. EPA:

House Dems want more time for comments on 'secret science'

8. MINING:

Western Caucus slams Obama withdrawals, pushes Pebble project

9. NATIONAL MONUMENTS:

Bill would convert N.M.'s White Sands to park status

NATURAL RESOURCES

10. ARCTIC:

Enviros seek ANWR public meeting in D.C.

11. PUBLIC LANDS:

Agency aims to remove hundreds of mistakenly killed trees

12. DROUGHT:

Over 100 horses in Ariz. likely perished looking for water

LAW

13. VW SCANDAL:

Former Volkswagen CEO indicted, upping stakes for company

14. PIPELINES:

Va. lawmaker sues Forest Service over access to protesters

15. SUPERFUND:

2 sentenced for deception over potentially radioactive soil

16. OIL AND GAS:

Chevron settles with city over fire that sickened thousands

AIR AND WATER

17. DRINKING WATER:

Mich. found 'deficiencies' in Flint before ending free water

18. AIR POLLUTION:

The reason for that black smoke in NYC: Dirty oil boilers

19. DRINKING WATER:

Denver utility, state at odds over how to fix lead problem

CHEMICALS

20. AGRICULTURE:

EPA to advance biostimulant guidance this summer — official

21. LOUISIANA:

Fire at chemical plant forces evacuation

22. WATER POLLUTION:

Don't eat the fish, Minn. warns, after 3M contaminated lake

FEDERAL AGENCIES

23. NUCLEAR:

NRC picks leaders for 4 offices

STATES

24. HAWAII:

Kilauea volcano erupts, sending lava onto the streets

25. MICHIGAN:

Some locals fear 'green burials' will taint their water

26. DISTRICT OF COLUMBIA:

Bald eagles Mr. President and First Lady welcome 2 chicks

INTERNATIONAL

27. INDIA:

Pollution, insect dung turn Taj Mahal greenish

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Message

From: Dolley Madison [fedsoc@fed-soc.ccsend.com]
on behalf of Dolley Madison [dolley@fedsoc.org]
Sent: 4/23/2018 2:47:22 PM
To: Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group
(FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clint]
Subject: Teleforum Calls This Week -- April 23, 2018



April 23, 2018



TELEFORUM

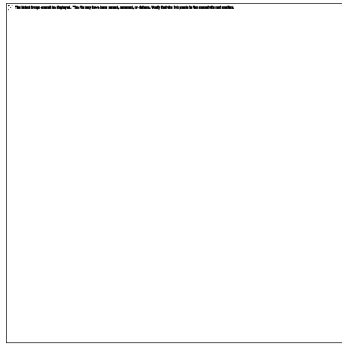
Teleforum Calls This Week

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Courthouse Steps: *Lucia v. SEC*

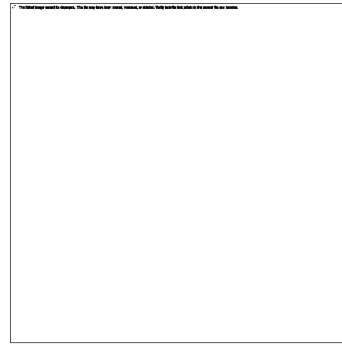
Litigation and Administrative Law Practice Groups Teleforum

Monday, April 23, 2018 | 3:00 p.m. ET



Prof. Gregory Dolin

Co-director of the Center for Medicine
and Law
University of Baltimore School of Law



Kevin B. Muhlendorf

Partner
Wiley Rein LLP

In *Lucia v. SEC*, the SEC fined the petitioner Raymond J. Lucia \$300,000 and barred him from working as an investment advisor for anti-fraud violations of the anti-fraud provisions of the Investment Advisers Act. The petitioner requested SEC review, arguing that the administrative proceedings were invalid, as the administrative law judge (ALJ) who decided his case was unconstitutionally appointed. ALJs are appointed by SEC staff in a manner that Lucia claimed violated the Appointments Clause under Article II, Section 2, Clause 2 of the Constitution. When the SEC ruled against Lucia, he appealed to the D.C. Circuit which denied the petition for review by a divided court, issuing a new decision affirming the SEC's decision as required under D.C. Circuit Rule 35(d).

Kevin Muhlendorf of Wiley Rein and Professor Gregory Dolin of the University of Baltimore School of Law will join us to give their impressions of the oral argument of this important case.

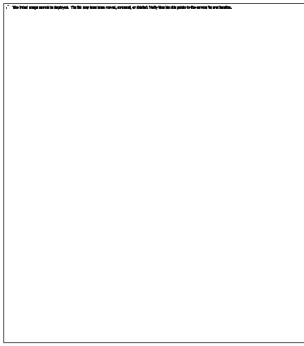
Analyzing how EPA is Addressing "Secret Science"

Regulator Transparency Project Teleforum

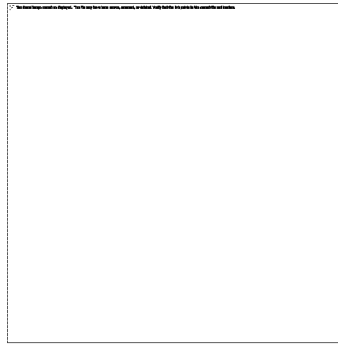
Tuesday, April 24, 2018

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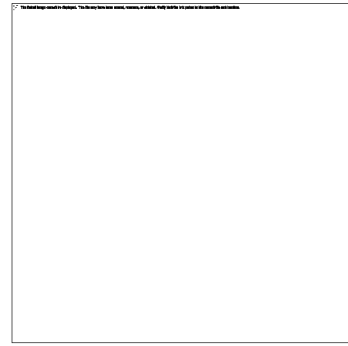
12:00 noon ET



Daren Bakst
Senior Research Fellow in
Agricultural Policy
The Heritage Foundation



Dr. Richard B. Belzer
Associate Fellow
R Street Institute



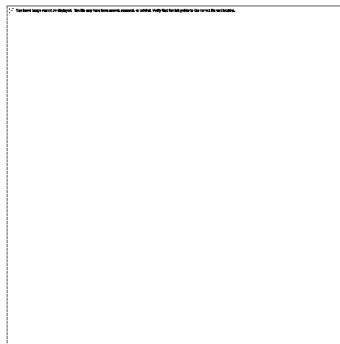
Moderator:
Devon Westhill
Director
Regulatory
Transparency Project

EPA Administrator Scott Pruitt announced that his agency would no longer allow the use of "secret science" in developing federal regulations. Specifically, the agency will only use scientific studies to develop regulations when the data and methodology for those studies are made accessible to the public. Is there really a secret science or transparency problem that even needs to be addressed? If so, have there been attempts historically to correct the problem? What are the implications of excluding such studies? This presentation will provide background on this effort and discuss how transparency in government can be strengthened and better inform policymaking.

Courthouse Steps: *Trump v. Hawaii*

International & National Security Law Practice Group Teleforum

Wednesday, April 25, 2018 | 3:00 p.m. ET



Steven Giaier
Senior Counsel
House Committee on Homeland Security

On April 25, the Supreme Court will hear oral argument in *Trump v. Hawaii*, the latest iteration of Hawaii's challenge to President Trump's Executive Order suspending immigrant and nonimmigrant entry into the country by citizens of specific countries. While the original order banned entry of citizens from seven majority Muslim countries, it was superseded by the current order which affects citizens from other countries as well, such as Chad, North Korea and Venezuela. Steve Giaier attended oral argument and will join us to share his observations.

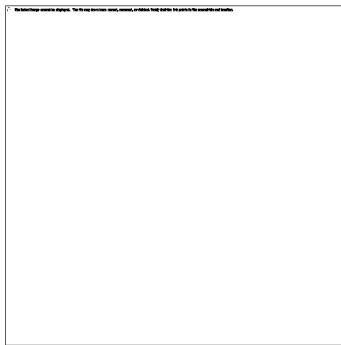
The Struggle to Rein In Shareholder Activism

Corporations, Securities & Antitrust Teleforum

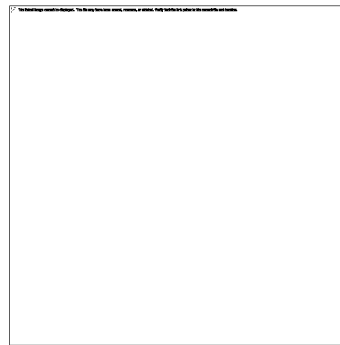
Thursday, April 26, 2018

|

2:00 p.m. ET



Jason A. Levine
Litigation Partner
Vinson & Elkins LLP



Lawrence Elbaum
Litigation Counsel
Vinson & Elkins LLP

For over a decade, shareholder activism has been on the rise, affecting an increasing number of publicly-traded companies. Essentially a re-brand of the 1980s-era "corporate raiders," today's activists are primarily institutional shareholders that seek to profit by forcing change at companies - whether by seeking board seats, pursuing managerial purges, or effectuating transactions for short-term gain. Shareholder activism is a battle for corporate control, accomplished largely through proxy fights and publicity campaigns. This Teleforum will provide an overview of the shareholder activism landscape, strategies and counter strategies to protect against activist tactics, and will assess the prospect for legal reforms intended to stem the flow of activist campaigns.

Courthouse Steps: *Animal Science Products v. Hebei Welcome Pharmaceutical*

Litigation Practice Group Teleforum

Friday, April 27, 2018 | 2:00 p.m. ET



John Shu

Attorney and Legal Commentator

Animal Science Products, a U.S. company, sued Hebei Welsome Pharmaceutical Co., a Chinese company, for violating U.S. antitrust laws by coordinating prices and artificially decreasing supply. Hebei moved to dismiss the case, stating that they were acting according to Chinese law. The district court denied the dismissal, and the jury trial found in favor of Animal Science Products, ordering Hebei to pay them \$147 million in damages.

Hebei appealed, and the circuit court reversed the district court's denial to dismiss. The circuit court reasoned that the district court had erred in not deferring to the Chinese government's interpretations of its laws, as the Chinese government had appeared in court to defend Hebei's actions.

John Shu will join us to discuss his perceptions of the oral argument in this important case.

Previously Recorded Calls

Antitrust Enforcement by State Attorney Generals

**Corporations, Securities & Antitrust and Financial Services & E-Commerce
Practice Group Teleforum**

State Attorneys General often investigate antitrust violations - ranging from price fixing to anticompetitive mergers - in conjunction with the federal antitrust enforcement agencies (the U.S. Department of Justice and the Federal Trade Commission). But recently the nation's AGs have more frequently taken the lead, conducting their own investigations and initiating independent enforcement actions. Are these examples of state AGs merely utilizing their own statutory authority to protect their constituents? Are they filling a vacuum when federal authorities choose not to act? Or are they becoming the equivalent of national regulators? An experienced panel of antitrust practitioners and representatives from state AG offices will share their perspectives on the impact of increased antitrust enforcement by the state AGs and what businesses and their counsel need to understand about it.

[Listen]

The Role of Congressional Intelligence Committees

International & National Security Law Practice Groups and Article I Initiative Teleforum

Former Minority Staff Director and General Counsel for the House Permanent Select Committee on Intelligence Michael Bahar, Former General Counsel Michael Geffroy of the U.S. Senate Select Committee on Intelligence, and Former Minority Staff Director for the House Permanent Select Committee on Intelligence Heather Molino will join us to discuss the role of Congressional Intelligence Committees. How well are they able to discharge their duties in the present environment? Has the Russian investigation impeded their functionality? Are they able to provide effective oversight? What could be improved?

[Listen]

Preview: *Trump v. Hawaii*

International & National Security Law Practice Group Teleforum

On April 25, the Supreme Court will hear oral argument in *Trump v. Hawaii*, the latest iteration of Hawaii's challenge to President Trump's Executive Order suspending immigrant and nonimmigrant entry into the country by citizens of specific countries. While the original order banned entry of citizens from seven majority Muslim countries, it was superseded by the current order which affects citizens from other countries as well, such as Chad, North Korea and Venezuela. Ilya Somin and Josh Blackman will join us to preview the case.

[Listen]

Tenth Anniversary of *Heller*

Criminal Law & Procedure Practice Group Teleforum

This year marks the tenth anniversary of *Heller v. District of Columbia*. Before *Heller*, courts had split on whether the Second Amendment recognized an individual right to keep and bear arms or if that right was limited only to those citizens participating in organized militias. Justice Antonin Scalia, writing for the majority, held that the Second Amendment recognized a right of individuals to keep and bear arms for private self-defense. In the wake of *Heller*, most lower courts have rejected Second Amendment challenges to state and federal gun control laws. The decision, however, left many questions unanswered concerning the scope of the Second Amendment.

In this Teleforum, Professors Nelson Lund and Darrell Miller will debate the original meaning of the Second Amendment, whether *Heller* was correctly

decided, whether lower courts are faithfully applying *Heller*, and how *Heller* might apply to future legislation regarding the right to keep and bear arms.

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Message

From: POLITICO Pro Energy [politicoemail@politicopro.com]
Sent: 5/4/2018 9:43:14 AM
To: Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clint]
Subject: Morning Energy: Heightened vetting for Pruitt-related FOIAs — EPA narrows air permitting guidelines — Coolant industry: Global warming industry is so cool it's hot

By Kelsey Tamborrino | 05/04/2018 05:41 AM EDT

With help from Anthony Adragna, Eric Wolff and Emily Holden

ALL FOIA ONE, ONE FOIA ALL: You may need to have a little patience if you're waiting for EPA to ship over any documents about Administrator Scott Pruitt's activities. Freedom of Information Act requests that relate to Pruitt get an extra layer of vetting before they are released to the public, new internal emails obtained by POLITICO show. Top aides to the administrator, including chief of staff Ryan Jackson, perform the "awareness reviews" on all or most document requests related to Pruitt — on top of the reviews done by career experts. And that is contributing to the slow flow of information released under records requests at EPA, Pro's Alex Guillén reports.

The new vetting processes described in the emails are done before the agency releases essentially any documents involving the administrator. And the emails show Pruitt's political appointees chastising career employees who released documents in accordance with FOIA without letting them screen the records first.

In one exchange from last August, Jackson and Liz Bowman — the head of EPA's Office of Public Affairs who announced on Thursday she was stepping down — expressed concern about documents related to comments Pruitt made on CNBC disputing that carbon dioxide from human activities was the primary cause of climate change. "Why did Kevin Bogardus from E&E all of a sudden get a response to a FOIA today, without any awareness from our FOIA office?" Bowman wrote on Aug. 2, adding later that the deadline wasn't until the end of the month.

ME readers will recall from February that EPA has been flooded with FOIA requests under Pruitt, forcing many groups to sue for the release of documents. But the new emails, which EPA gave to the Natural Resources Defense Council following legal action, shed new light on the cloud of secrecy that surrounds the agency.

While Obama-era EPA officials said the agency sometimes used awareness reviews during their time at the agency when career staff thought documents would generate a lot of interest, FOIA experts say the extra vetting of documents appears to be on the rise under Pruitt. "This does look like the most burdensome review process that I've seen documented," said Nate Jones, director of the FOIA Project at George Washington University's National Security Archive. Read more.

HAPPY FRIDAY! I'm your host Kelsey Tamborrino, and the American Petroleum Institute's Khary Cauthen correctly guessed that Roger Taney — who was nominated for Treasury secretary — was rejected by the Senate, 18-28, in 1834. Not all hope was lost, however, as Taney went on to become a Supreme Court justice. For today: Who was the only member of the Continental Congress to sign all four of the great state papers? Bonus points if you can name all four papers. Send your tips, energy gossip and comments to ktamborrino@politico.com, or follow us on Twitter [@kelseytam](https://twitter.com/kelseytam), [@Morning_Energy](https://twitter.com/Morning_Energy) and [@POLITICOPro](https://twitter.com/POLITICOPro).

EPA NARROWS GUIDELINES: EPA will alter its interpretation of when related facilities are considered a single source for air permitting purposes in a way that could ease their permitting requirements, Alex reports.

The April 30 memo was sent by EPA air chief Bill Wehrum concerning the so-called common control designation, which says plants located near each other should be aggregated for permitting purposes and subject to stricter standards if they are operated by the same entity. Under the new guidance, that will include entities that can "dictate decisions of the other that could affect the applicability of, or compliance with, relevant air pollution regulatory requirements." The memo concerns a Pennsylvania landfill and nearby biogas processing facility that are owned by different companies. Read more.

ADD ADELSON'S NAME TO THE LIST: Yet another high-profile political ally emerged Thursday to have helped Pruitt arrange an international trip: GOP mega-donor Sheldon Adelson. According to new documents obtained by The Washington Post, Adelson arranged parts of Pruitt's canceled trip to Israel — where he was in part scheduled to unveil an agreement with Water-Gen, an Israeli water purification company championed by Adelson. Read the full report here.

MORE INFO PLEASE: Four senior House Energy and Commerce Democrats — Frank Pallone, Paul Tonko, Diana DeGette and Kathy Castor — sent a letter to Pruitt Thursday asking for the names of three people Steven Hart — a lobbyist who was also married to the EPA chief's landlord — recommended for slots on the agency's Scientific Advisory Board. "Despite your earlier claims that J. Steven Hart had no clients with business before EPA, it is now clear that Mr. Hart did represent clients with business before your agency and, in fact, lobbied you on their behalf," they wrote.

MORE TIME PLEASE: Sixty-four Democrats signed onto a letter to Pruitt calling for a 90-day comment period on a his recent "secret science" proposal to ban the use of studies that don't publicly disclose all their data. "Given the large response from scientists and stakeholders before the rule was officially proposed, a comment period of 30 days will not allow for meaningful engagement from stakeholders," the letter states. Read it here.

'NOT OKAY': Interior's inspector general found a male National Park Service regional office official made unwanted sexual advances toward a female employee on consecutive days that she told him were "not okay." The official retired before a scheduled interview and stopped responding to the IG. Read the report here.

CLOVIS OUT ... AGAIN: Sam Clovis, a former Trump campaign aide who had been serving as the Agriculture Department's liaison to the White House, is departing the department and will return home to Iowa, a USDA official confirmed to POLITICO's Liz Crampton. The president had previously nominated him to be USDA undersecretary for research, education and economics, where he faced backlash for his lack of science credentials and ultimately withdrew his name from consideration for that position in November. Greens had also particularly focused on Clovis for his comments that he did not believe in man-made climate change. Read more.

COOLANT INDUSTRY: GLOBAL WARMING INDUSTRY IS SO COOL IT'S HOT: The White House now has evidence that a global warming treaty limiting coolants would generate thousands of new jobs, and now it must decide whether to send the treaty to the Senate for ratification. A report released Thursday by the Air Conditioning Heating and Refrigeration Institute and the Alliance for Responsible Atmospheric Policy said that the amendment to the Montreal Protocol limiting use of hydrofluorocarbons, a greenhouse gas, would help American manufacturers who produce the bulk of the world's supply of advanced coolants. Ratifying the treaty would produce 33,000 additional jobs and an extra \$12.5 billion of annual manufacturing output.

The report is considered critical to help presidential aides persuade President Donald Trump to advance the treaty to the Senate, despite the president's aversion to multilateral treaties, his predecessor's accomplishments, and anything involving global warming. "U.S. ratification of the Kigali Amendment is good for American jobs, good for the economy, and crucial for maintaining U.S. leadership across the globe," said John Hurst, Chairman of The Alliance, and Vice President of Lennox International. He added, "Over 30 countries have ratified the amendment. America cannot afford to be on the sideline. America must continue to lead."

ZINKE HIRES GOP ADVISER FOR NPS: Interior Secretary Ryan Zinke hired Chuck Laudner, a Iowa Republican political consultant who was an adviser to Trump's campaign, for a position with the National Park Service, an Interior spokeswoman confirmed to Pro's Ben Lefevre. Laudner previously worked with Rick Santorum's presidential campaign in Iowa in 2012 and was executive director for the Iowa Republican Party from 2007-08. Interior hired Laudner "a few weeks ago," spokeswoman Heather Swift said, though she did not say what job he had taken.

MAY THE FOURTH BE WITH YOU: Zinke teased out some "Star Wars" related news on Thursday. In a video featuring the secretary walking alongside motorized BB-8 and R2-D2 toys, the droid rolls over an Interior logo. Zinke tweeted the video with a message: "Tomorrow is a big day. More to come. #MayTheFourthBeWithYou." See it.

BLANKENSHIP ATTACKS McCONNELL'S "CHINA FAMILY": West Virginia GOP Senate hopeful Don Blankenship released another ad on Thursday attacking Majority Leader Mitch McConnell. This time, the spot claims "Swamp Captain Mitch McConnell has created millions of jobs for China people." The ad, which POLITICO's Alex Isenstadt reports on here, is expected to start airing today. It closes with a shot of Blankenship holding two young children, one on each arm as he pronounces, "I will beat Joe Manchin and ditch cocaine Mitch for the sake of the kids." The ad arrives days ahead of the state's May 8 primary.

FOIA WHAT IT'S WORTH: The Montana-based Western Values Project filed a FOIA request to EPA in an effort to make public any communication about Zinke. The request includes all communications between select EPA employees that contain "Zinke," "RZ" or "Interior Secretary" and comes in response to a report in The Atlantic that alleges an EPA press employee planted stories about Zinke in order to distract from his boss. EPA spokesman Jahan Wilcox in a statement to the Atlantic called the allegations "categorically false."

CLIMATE LAWMAKERS REBUT CARBON LEGISLATION: The Citizens' Climate Lobby released a rebuttal to Rep. Steve Scalise's concurrent resolution, H. Con. Res. 119 (115), which expresses the sense of Congress that a carbon tax would be detrimental to the U.S. economy. The climate lobby refutes the resolution, claiming that if done correctly, a tax or fee on carbon could boost the economy. Read the rebuttal here and the bill text here.

MAIL CALL! BIOFUELS WRITE TO EPA ON STRATEGY: A coalition of Midwest biofuels associations sent a letter Thursday to EPA asking it to move administrative time and staff away from Renewable Fuel Standard exemptions and instead toward approvals for cellulosic ethanol. "The discrepancy between the way EPA is handling RFS exemptions and cellulosic ethanol pathway approvals tells you everything you need to know about how this EPA is treating the RFS," said Iowa Renewable Fuels Association Executive Director Monte Shaw in a statement. Read the letter.

— **The Business Council for Sustainable Energy**, a coalition of companies and trade associations, wrote to members of Congress on Thursday, asking that they reauthorize energy title programs in the farm bill, H.R. 2 (115). "It is essential that a healthy, robust bipartisan energy title continue as part of new comprehensive agriculture legislation," writes the group's president, Lisa Jacobson. The letter also lays out potential improvements to the programs. Read it here.

— **Congressional Western Caucus Chairman Paul Gosar led 18 lawmakers** in a letter requesting Pruitt reverse course and proceed with an intention to withdraw the Obama-era EPA's preemptive veto of the Pebble Limited Partnership mining project under Section 404(c) of the Clean Water Act. They write that EPA's January decision not to overturn the preemptive vote "has sowed tumult for interested parties."

VW'S WINTERKORN CHARGED: Former Volkswagen AG leader Martin Winterkorn was charged with conspiracy and wire fraud in connection with the company's long-running emissions cheating scheme, according to an indictment unsealed Thursday by the Justice Department. The indictment, issued by a federal

grand jury sitting in the Eastern District of Michigan, charged Winterkorn with four counts of violating federal law. The first count charges that he conspired with other senior executives and Volkswagen employees to defraud customers, the United States and violate the Clean Air Act by making false representations about the company's supposedly "clean diesel" vehicles. The other three counts concern wire fraud tied to the scheme. More from Pro's Lauren Gardner [here](#).

GOING OUT WEST: New Mexico Sen. [Martin Heinrich](#) delivers a keynote address today at the [Outdoor Economics Conference](#), and he's [expected to discuss](#) his legislation to establish the White Sands National Monument as a national park, as well as discuss the outdoor recreation industry in the region. Watch it live [here](#).

REPORT: GRID RESILIENCY IN THE FACE OF NUCLEAR CLOSURES: A new IHS Markit report released Thursday examines the effect of five nuclear closures in the PJM Interconnection, finding the closures will reduce annual net benefits for consumers from PJM grid-based electricity by about \$8 billion per year over 2013-2016. That "translates into a consumer net benefit per kilowatt-hour of PJM nuclear generation of about 3 cents per kWh," the report found. The report was prepared for Nuclear Matters, an industry-funded organization. Read it [here](#).

MOVER, SHAKER: The Joseph Rainey Center for Public Policy, a think tank focused on sustainable politics and inclusive governance, has named Sarah Hunt its founding CEO. Hunt previously was director at the Center for Innovation and Technology at the American Legislative Exchange Council.

HITTING THE ROADMAP: The Delta Institute released a "Coal Plant Redevelopment Roadmap" on Thursday to provide insight into coal-impacted municipalities and their transition processes. Modules in the roadmap will show economic and environmental impacts, as well as provide information on engagement strategies for such communities, among other topics. See it [here](#).

ON THE POD: NPR's podcast, Embedded, released a new episode Thursday on coal in Buchanan County, Va. Listen [here](#).

QUICK HITS

- Continental Resources' Harold Hamm credits OPEC for boosting oil prices, [Reuters](#).
- Pruitt reimbursed himself \$65,000 from Oklahoma attorney general campaign, [CNN](#).
- Texas officials ignore dioxin spread in Houston waterways, [Associated Press](#).
- Gassy earthquakes near Istanbul may pose new risks to region, [The New York Times](#).

HAPPENING TODAY

9:00 a.m. — The International Energy Agency [webinar](#) on "Outlook for Offshore Energy."

THAT'S ALL FOR ME!

To view online:

<https://subscriber.politicopro.com/newsletters/morning-energy/2018/05/heightened-vetting-for-pruitt-related-foias-203960>

Stories from POLITICO Pro

EPA's top spokesperson to depart [Back](#)

By Emily Holden | 05/03/2018 11:26 AM EDT

EPA's top spokeswoman is leaving the agency, the latest in a string of departures by key staffers amid the swarm of investigations into Administrator Scott Pruitt's potential ethical [lapses](#).

The exit of Liz Bowman comes after Pruitt's lead security agent, Pasquale "Nino" Perrotta, and EPA's Superfund task force head and adviser Albert "Kell" Kelly both [quit](#) earlier this week. Perrotta has cited negative media attention as contributing to his decision. His role in Pruitt's [security spending](#) was under review by the agency's inspector general, and he was interviewed by House Oversight Committee staffers on Wednesday.

EPA also confirmed Kelly was leaving because he attracted controversy over being banned from the banking industry.

Bowman, who will join Iowa Republican Sen. Joni Ernst's staff, has been associate administrator for public affairs since shortly after Pruitt was confirmed in early 2017. She was previously director of issue and advocacy communications for the American Chemistry Council.

"I leave extremely thankful for the opportunity to serve the Trump administration and Administrator Pruitt," Bowman said. "Being a member of the EPA team has allowed me to further my skills, learn from my mistakes and make lifelong friendships. It has also provided me the opportunity to develop a new, and deep, respect for the public servants who serve the American people, day in and day out, to ensure that we all have access to clean air, land and water."

EPA chief of staff Ryan Jackson said Bowman "has been an invaluable lead of our public affairs office during this past year."

"I congratulate her on pursuing great and new opportunities on Capitol Hill where we'll continue to work with her, just in a different capacity," he said.

Bowman's last day at EPA is May 11.

Daniel Lippman contributed to this report.

To view online [click here](#).

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Critics pound EPA chief after he disputes human role in climate change [Back](#)

By Alex Guillén | 03/09/2017 12:04 PM EDT

EPA Administrator Scott Pruitt said Thursday that carbon dioxide emitted by human activity is not the primary driver of climate change, a conclusion out of step with mainstream climate science that drew immediate condemnation from Democrats and environmentalists.

"I think that measuring with precision human activity on the climate is something very challenging to do, and there's tremendous disagreement about the degree of impact," Pruitt said on CNBC. "So, no, I would not agree that it's a primary contributor to the global warming that we see." He also called for continued study of the issue.

That is a stronger position than Pruitt took during his confirmation hearing, when he said that the degree of human contribution to climate change is "subject to more debate."

Democrats rushed to condemn Pruitt's remarks.

"This is just nuts: EPA chief Scott Pruitt just claimed carbon not causing climate change," Sen. Brian Schatz (D-Hawaii) tweeted a few minutes after the interview aired. "We Senate D's will be a check on his crazy views."

Most scientists agree that greenhouse gases emitted by human activity like burning fossil fuels is the primary driver of climate change. That includes Pruitt's own agency, which says that human-emitted CO2 "is the primary greenhouse gas that is contributing to recent climate change."

One prominent environmentalist suggested Pruitt should be impeached.

"Pruitt misled Congress about his willingness to do a core part of his job," Sierra Club Executive Director Michael Brune wrote on Twitter. "Contradicting science + law should mean removal from office now."

Pruitt also acknowledged on his CNBC appearance that the Supreme Court has ruled on the matter and that the Obama administration issued an "endangerment finding" concluding greenhouse gases are a threatening pollutant.

But, he added, "nowhere in the continuum, nowhere in the equation, has Congress spoken. The legislative branch has not addressed this issue at all."

Pruitt was slated to speak at the CERAWEEK oil industry conference in Houston later Thursday. He said on CNBC that he would bring a "pro-growth, pro-jobs and pro-environment" message to the conference.

To view online [click here](#).

[Back](#)

EPA narrows guidelines for aggregating sources for air permitting [Back](#)

By Alex Guillén | 05/03/2018 05:59 PM EDT

EPA will alter its interpretation of when related facilities are considered a single source for air permitting purposes in a way that could ease their permitting requirements.

Permitting rules say that plants located near each other should be aggregated for permitting purposes if they are operated by the same entity, known as "common control." In that case, the facilities' emissions can be aggregated and be subject to more stringent permitting requirements than if treated separately.

In an April 30 memo concerning a common control designation for a Pennsylvania landfill and nearby biogas processing facility that are owned by different companies, EPA air chief Bill Wehrum revised the agency's interpretation so that facilities meet the definition if one entity has "the power or authority ... to dictate decisions of the other that could affect the applicability of, or compliance with, relevant air pollution regulatory requirements."

A dependent relationship should not necessarily mean common control, he added. Facilities can be "economically or operationally interconnected" without being able to direct the other.

In the immediate case of the Pennsylvania landfill and processing plant, Wehrum concluded that the two are not commonly controlled because the landfill could otherwise meet methane emissions limits by burning off biogas and because the processing plant hopes to secure other sources of biogas.

WHAT'S NEXT: Ultimately, EPA's reasoning is only a recommendation. Pennsylvania regulators have the final say on whether these particular facilities fall under "common control."

To view online [click here](#).

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Sam Clovis is leaving USDA [Back](#)

By Liz Crampton | 05/03/2018 08:16 PM EDT

Sam Clovis, the former Trump campaign aide who had been serving as USDA's liaison to the White House, is leaving the Agriculture Department and will return home to Iowa, a USDA official confirmed Thursday evening.

Clovis' last day is Friday. A "goodbye party" was being held for him on Thursday night, according to a source attending the party.

Clovis had served as a co-chairman and policy adviser on the Trump campaign and later led the USDA beachhead team for the Trump transition, but ran into trouble when President Donald Trump nominated him to be USDA undersecretary for research, education and economics.

Clovis withdrew his name from consideration in November — before the Senate Agriculture Committee could hold a confirmation hearing — after facing a torrent of criticism from Senate Democrats and environmental advocates. Clovis drew fire for his skepticism of climate science, past comments on issues like race and gender, and what critics on the left said was his lack of scientific credentials that are legally required for the position, which would also have had him serve as the department's chief scientist.

Clovis had endured criticism for months, but his withdrawal came shortly after he was swept up in special counsel Robert Mueller's probe of Russian interference in the 2016 campaign and the Trump campaign's alleged ties to Russian interests. While serving on the campaign, Clovis had supervised George Papadopoulos, a Trump campaign foreign policy adviser who struck a plea deal on charges he lied to FBI investigators about his communications with Russia-linked contacts. Clovis' withdrawal followed shortly after news of Papadopoulos' plea deal.

More recently, Clovis had been posted to the Natural Resources Conservation Service to provide guidance.

"Dr. Clovis was one of the first people through the door at USDA in January 2017, and we are grateful for his time here," a USDA spokesman said. "He is a good man and a patriot who for decades has served his country admirably. While we are sad Dr. Clovis is leaving USDA, we wish him well on his future endeavors back home in Iowa."

Daniel Lippman contributed to this report.

To view online [click here](#).

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Zinke hires Iowa political consultant for Interior parks job [Back](#)

By Ben Lefebvre | 05/03/2018 06:55 PM EDT

Interior Secretary Ryan Zinke has hired Iowa Republican political consultant Chuck Laudner for a position with the National Park Service, an Interior spokeswoman confirmed today.

Interior hired Laudner "a few weeks ago," spokeswoman Heather Swift said, though she did not say what his job he had taken.

"Rebuilding our National Parks infrastructure is a major legislative priority of the Secretary and President and Chuck is helping make it happen," Swift said.

Laudner was an [adviser](#) to President Donald Trump's campaign, and he previously worked with Pennsylvania Republican Sen. Rick Santorum's presidential campaign in Iowa in 2012. Laudner also worked as the executive director for the Iowa Republican Party from 2007 to 2008.

Iowa has two national parks, according to the NPS website.

Laudner's appointment could be the latest example that Zinke is considering a possible presidential run. A [polling firm](#) asked Iowa residents in April their opinion on Zinke, while a political group run by former advisers to Vice President Mike Pence paid for a 30-second [television ad](#) featuring Zinke that aired in Washington, D.C. in March.

"What a curious hire," said Aaron Weiss, media director at Center for Western Priorities, a conservation group. "Chuck Laudner doesn't appear to be at all qualified for a job at the Interior Department, but he's very well-qualified to advise a politician with future ambitions in Iowa."

To view online [click here](#).

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Blankenship goes after McConnell's 'China family' in new ad [Back](#)

By Alex Isenstadt | 05/03/2018 05:25 PM EDT

West Virginia GOP Senate hopeful Don Blankenship is amping up his racial attacks on Senate Majority Leader Mitch McConnell with a new ad declaring, "Swamp captain Mitch McConnell has created millions of jobs for China people."

"While doing so, Mitch has gotten rich," Blankenship adds. "In fact, his China family has given him tens of millions of dollars."

McConnell's wife, Transportation Secretary Elaine Chao, was born in Taiwan and her parents are Chinese. Her father is chairman of a shipping company.

The new spot, which is expected to start airing on Friday, comes just ahead of the May 8 primary. As the dramatic contest comes to a close, Blankenship, a former coal baron who spent a year in prison following the 2010 explosion at his Upper Big Branch Mine that killed 29 workers, has focused his assault squarely on McConnell — sometimes in harshly racial terms.

During a recent interview with POLITICO, Blankenship said McConnell "has a lot of connections in China." He also said that Chao is "from China, so we have to be really concerned that we are in truth" putting America's interests first.

Earlier this week, Blankenship began running another TV spot labeling McConnell "cocaine Mitch." The spot is apparently in reference to a 2014 report that drugs were once found aboard a shipping vessel owned by Chao's family.

McConnell has singled out Blankenship for defeat, convinced that a Blankenship primary win would destroy the party's prospects for defeating Democratic Sen. Joe Manchin in November. A McConnell-aligned super PAC has aired about \$1.3 million in negative ads against Blankenship.

Blankenship is facing two more mainstream GOP opponents, Rep. Evan Jenkins and state Attorney General Patrick Morrisey. Recent polls have shown Blankenship fading.

With Blankenship going after Chao, McConnell's political team has swung back aggressively. Josh Holmes, a longtime McConnell political adviser, has described Blankenship as "mentally ill."

In his new spot, Blankenship responds to that accusation, saying: "Mitch's swamp people are now running false, negative ads against me. They're also childishly calling me despicable and mentally ill."

The ad closes with a shot of Blankenship holding two young children, one on each arm as he pronounces, "I will beat Joe Manchin and ditch cocaine Mitch for the sake of the kids."

Holmes fired back at Blankenship. "This clown is a walking talking case study for the limitation of a prison's ability to rehabilitate," he wrote in a text message.

While Blankenship has attempted to focus the campaign on China during the closing stretch of the race, McConnell's team has noted that in 1999 Blankenship spoke of moving to China and becoming a Chinese citizen. Blankenship's girlfriend was born in China, according to media reports.

To view online [click here](#).

[Back](#)

Pruitt airs environmental concerns about proposed Alaska mine [Back](#)

By Alex Guillén | 01/26/2018 07:34 PM EDT

EPA Administrator Scott Pruitt today announced he has serious concerns about any potential mining project in Alaska's Bristol Bay region, creating doubt that the controversial Pebble Mine proposal may ultimately be approved.

EPA said in a release today that it will suspend its proposed withdrawal of Obama-era restrictions after hearing from Alaskan residents and other interested parties. The proposed mine has long drawn opposition from some in the state, including independent Gov. Bill Walker, as well as environmentalists, over worries that it could harm Bristol Bay's critical salmon fisheries.

"It is my judgment at this time that any mining projects in the region likely pose a risk to the abundant natural resources that exist there," Pruitt said in a statement. "Until we know the full extent of that risk, those natural resources and world-class fisheries deserve the utmost protection."

The permitting process, which is handled at this stage by the Army Corps of Engineers, can continue, EPA said. But the agency warned that the developers will have to clear a "high bar." The agency added in a release that not revealing Pruitt's doubts at this stage would be "disingenuous." EPA has veto power over such Army Corps permits.

Pebble Limited Partnership CEO Tom Collier said in a statement that the company "can demonstrate that we can responsibly construct and operate a mine at the Pebble Deposit that meets Alaska's high environmental standards."

To view online [click here](#).

[Back](#)

DOJ charges former VW CEO with conspiracy, wire fraud [Back](#)

By Lauren Gardner | 05/03/2018 04:42 PM EDT

DOJ unsealed an indictment today charging former Volkswagen AG leader Martin Winterkorn with conspiracy and wire fraud linked to the automaker's effort to cheat U.S. diesel emissions standards.

Winterkorn is charged with one count of conspiracy with other VW executives to defraud the United States, along with the manufacturer's customers. The other three counts concern wire fraud tied to the scheme.

"If you try to deceive the United States, then you will pay a heavy price," Attorney General Jeff Sessions said in a statement. "The indictment unsealed today alleges that Volkswagen's scheme to cheat its legal requirements went all the way to the top of the company. These are serious allegations, and we will prosecute this case to the fullest extent of the law."

The indictment alleges that Winterkorn knew of the emissions cheating as far back as May 2014, and that he was informed again of it in July 2015. VW as a company pleaded guilty in March 2017 to criminal charges related to the regulatory deception and agreed to pay a \$2.8 billion criminal penalty.

To view online [click here](#).

[Back](#)

Was this Pro content helpful? Tell us what you think in one click.



Yes, very



Somewhat



Neutral



Not really



Not at all

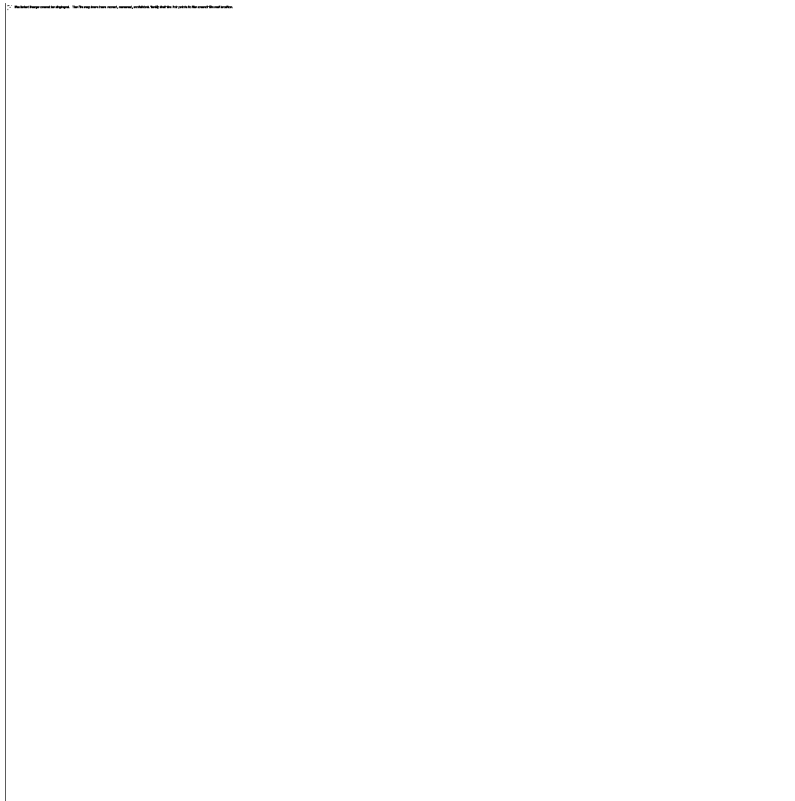
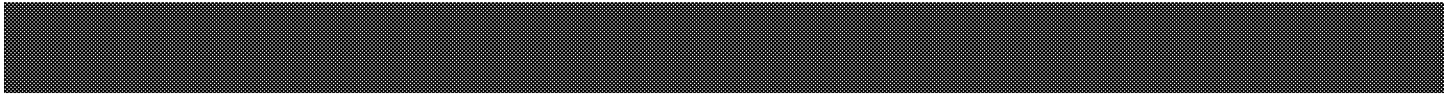
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Message

From: Morning Consult [reply@e.morningconsult.com]
Sent: 4/23/2018 1:37:16 PM
To: Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clint]
Subject: Morning Consult Energy, Presented by Wells Fargo: Filing Confirms Lobbyist Linked to Pruitt's Rental Condo Contacted EPA on Behalf of Client



By Jacqueline Toth

Top Stories

- A disclosure filed by Williams & Jensen confirmed that J. Steven Hart had contacted the Environmental Protection Agency on behalf of Smithfield Foods in the first three months of this year, contradicting Hart's previous assertions that he had not lobbied Administrator Scott Pruitt's agency last year while Hart's wife was renting to Pruitt a \$50-per-night condo or since the rental agreement ended. Additionally, Hart said he would step down as

chairman of the lobbying firm, citing recent publicity from the condo rental. ([The Hill](#))

- Two EPA officials who have joined Pruitt at the agency were involved in Pruitt's acquisition of a house close to the Oklahoma City Capitol, according to records. The shell company that held the property was registered to Kenneth Wagner, a business partner of Pruitt's who is now an EPA appointee, while the mortgage was issued by Albert Kelly, a top aide running the agency's Superfund program who has been barred from work in the financial industry due to an undisclosed banking violation. ([The New York Times](#))
- Former New York City Mayor Michael Bloomberg said he would pay the \$4.5 million needed to cover the United States' commitment to the Paris climate accord, after President Donald Trump started a process last year to remove the country from the pact. Bloomberg charity, Bloomberg Philanthropies, said it will continue to contribute funding to the agreement if the United States does not rejoin the accord. ([Reuters](#))

Chart Review

Fuel cell power plants are used in diverse ways across the United States

U.S. Energy Information Administration

Events Calendar (All Times Local)

MONDAY

Smart Electric Power Alliance Utility Conference 7 a.m.

TUESDAY

Smart Electric Power Alliance Utility Conference 6 a.m.

American Fuel & Petrochemical Manufacturers Security Conference	7 a.m.
Solar & Storage Finance & Investment Texas program on energy	8 a.m.
Bipartisan Policy Center discussion on how federal policies and local infrastructure can respond to natural disasters	10 a.m.
Senate Energy and Natural Resources hearing on the U.S. Forest Service FY2019 budget request	10 a.m.
Wilson Center book launch on pricing carbon	3 p.m.
SAIS event on investing in resilient infrastructure	5 p.m.

WEDNESDAY

Smart Electric Power Alliance Utility Conference	6 a.m.
American Fuel & Petrochemical Manufacturers Security Conference	7 a.m.
Solar & Storage Finance & Investment Texas program on energy	8 a.m.
SAIS Energy, Resources and Environment Program event on the life cycle land footprint of energy infrastructure	12:30 p.m.
Senate Appropriations Energy and Water Development Subcommittee hearing on Nuclear Regulatory Commission FY2019 budget	2 p.m.
House Natural Resources hearing on the weaponization of the National Environmental Policy Act	2 p.m.
Bloomberg Government and the Norwegian-American Chamber of Commerce event on sustainable investments	3:30 p.m.

THURSDAY

Center for Energy Science and Policy energy symposium on the energy-water nexus	8:30 a.m.
House Energy and Mineral Resources Subcommittee hearing on the importance of offshore energy revenue sharing in the Gulf	10 a.m.
House Environment Subcommittee hearing on the Environmental Protection Agency FY2019 budget	10 a.m.
United States Energy Association event on the Plains CO2 Reduction Partnership	10 a.m.
Daniel Morgan Graduate School of National Security event on the geopolitics of energy and Saudi Aramco's IPO	12 p.m.
Information Technology & Innovation Foundation event on grid-scale energy storage	1:30 p.m.
House Appropriations Interior, Environment and Related Agencies Subcommittee hearing on FY2019 EPA budget	2 p.m.
Center for a New American Security event on geopolitical risks and opportunities in the low oil price era	2:30 p.m.

FRIDAY

Women's Council on Energy and the Environment overview of wholesale electricity pricing	12 p.m.
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Wells Fargo: Transitioning to a lower-carbon economy

Did you know more than nine percent of all wind and solar photovoltaic energy generated in the U.S. in 2016 came from projects owned by Wells Fargo?

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General

Pruitt met with lobbyist whose wife rented him condo **Luis Sanchez, The Hill**

Environmental Protection Agency (EPA) Administrator Scott Pruitt met with the lobbyist whose wife rented him a \$50-a-night condo in Washington, D.C.

Scott Pruitt Before the E.P.A.: Fancy Homes, a Shell Company and Friends With Money **Steve Eder et al., The New York Times**

Early in Scott Pruitt's political career, as a state senator from Tulsa, he attended a gathering at the Oklahoma City home of an influential telecommunications lobbyist who was nearing retirement and about to move away.

EPA chief recorded a single, one-hour meeting on day 1 of Morocco trip **Stephanie Ebbs, ABC News**

The Environmental Protection Agency has released new details about Administrator Scott Pruitt's schedule in Morocco last year that show he was scheduled for only one meeting on the first day of the costly trip.

Trump in Earth Day message notes need for 'market-driven economy' to protect environment **Max Greenwood, The Hill**

President Trump marked Earth Day on Sunday by renewing his vow to undo "unnecessary and harmful regulations," and insisting that a "market-driven economy is essential to protecting" the environment.

EPA staff see hurdles in Pruitt science revamp, internal emails show **Valerie Volcovici, Reuters**

U.S. Environmental Protection Agency officials are concerned that companies may be required to publicly disclose confidential data used in crafting government regulations, under an initiative by the agency's chief to eliminate "secret science," internal emails showed.

Top Interior official key to delaying protection for an endangered species

Miranda Green, The Hill

A top Interior Department employee with ties to the energy industry took credit for delaying the endangered species designation for a species of mussel, internal emails between the official and an industry trade group show.

'A factory of bad ideas': How Scott Pruitt undermined his mission at EPA

Juliet Eilperin et al., The Washington Post

The April 9 gathering in the Oval Office was supposed to be about ethanol policy. But the meeting had barely gotten underway when President Trump turned his attention to Scott Pruitt's "rough week."

Oil dips as rising U.S. yields steer bulls

Amanda Cooper, Reuters

Oil eased on Monday on rising U.S. borrowing costs and the prospect of further output rises after another increase in the weekly rig count, although the overall picture for crude remained bullish.

Oil and Natural Gas

Thousands of cleanup workers that claim BP oil spill made them sick haven't had day in court

David Hammer, USA Today

In the sea of fines, fees and compensation BP has paid to individuals, businesses, governments and lawyers for its 2010 oil spill, one group of claimants stands out for missing out on the billions.

N.J. bans drilling in state waters

David Iaconangelo, E&E News

New Jersey's governor signed a ban on offshore oil and gas exploration in state waters Friday, in a rebuke of the Trump administration's proposed expansion of drilling leases.

Utilities and Infrastructure

U.S. Coal Bailout Review Slows After Trump Faces Pushback
Ari Natter et al., Bloomberg

A bankrupt power generator's plea for President Donald Trump to help saving money-losing power plants has drawn opposition from key administration officials, slowing action on the proposal, according to two people familiar with the deliberations.

CenterPoint Energy to buy Vectren in \$6 bln deal
John Benny, Reuters

U.S. gas and electric utility CenterPoint Energy said on Monday it would buy rival Vectren Corp in a deal valued at about \$6 billion.

Perched on a platform high in a tree, a 61-year-old woman fights a gas pipeline
Gregory S. Schneider, The Washington Post

When the trees started coming down, Theresa "Red" Terry went up.

Renewables

Ferrari Quietly-Very Quietly-Tests Electric Car
Tommaso Ebhardt, Bloomberg

Two years ago, Sergio Marchionne dubbed the notion of a Ferrari that can run without the aggressive growl of its 12-cylinder engines "obscene." Today, it's a reality.

How Windmills as Wide as Jumbo Jets Are Making Clean Energy Mainstream
Stanley Reed et al., The New York Times

At the northern end of Denmark's Jutland peninsula, the wind blows so hard that rows of trees grow in one direction, like gnarled flags.

Electric Scooters Are Causing Havoc. This Man Is Shrugging It Off.
Nellie Bowles et al., The New York Times

Travis VanderZanden, the chief executive of electric scooter company Bird Rides, surveyed the new indoor park at his office one morning this week.

100% renewables - gimmick or game changer?

Christa Marshall, E&E News

Are company claims about 100 percent renewables wrong?

Coal

With court battles on coal ash raging, Virginia Attorney

General Mark Herring stays on sidelines so far

Robert Zullo, Richmond Times-Dispatch

Before he filed it last month, Maryland Attorney General Brian Frosh invited other states' attorneys general to sign on to an amicus brief urging a federal appeals court to uphold a ruling that coal ash pollution moving from unlined pits at a Tennessee power plant into the Cumberland River violates the federal Clean Water Act.

Nuclear

DOE's Walker: National security assessment broader than grid reliability

Gavin Bade, Utility Dive

The Department of Energy's assessment of a national security threat goes beyond grid reliability assessments from the federal government and regional grid operators, DOE Assistant Secretary Bruce Walker told Utility Dive Friday.

Climate

Michael Bloomberg to write \$4.5 million check for Paris climate pact

Yasmeen Abutaleb, Reuters

Former New York mayor and billionaire Michael Bloomberg said on Sunday he will write a \$4.5 million check to cover this year's U.S. financial commitment to the Paris Climate Agreement.

The Latest Climate Threat for Coastal Cities: More Rich People
Christopher Flavelle, Bloomberg

When Hurricane Irma reached Florida's Big Pine Key in September, it caused the floor of Terry and Sharon Baron's cream-colored mobile home to collapse.

Overseer Faults Volkswagen's Reform Efforts Since Emissions Scandal

Jack Ewing, The New York Times

Volkswagen's attempt to remake its company culture and become more law abiding has received poor grades from the former United States prosecutor who is enforcing the carmaker's compliance with a deal that settled emissions cheating charges.

Antarctic Glaciers Are Helping Drive Their Own Melt **Chelsea Harvey, E&E News**

Glaciers in Antarctica are melting from the bottom up as warm ocean water seeps underneath the ice. It's now the dominant driver of ice loss across most of the continent.

A Message from Wells Fargo:

Wells Fargo: Committed to the environment

How can a bank help the world transition to a lower-carbon economy? By setting goals and meeting them. Last year, Wells Fargo began meeting 100% of its global electricity needs with renewable energy. We remain committed to protecting the environment and leading by action through our businesses, our operations and our philanthropy. [Learn more.](#)

Opinions, Editorials and Perspectives

Incentives Working to Spur Land Conservation **Drew Troyer, Morning Consult**

The United States loses about 6,000 acres of open space every day to development. Land that previously served agricultural or ecological balance purposes is bought up and converted into new homes or shopping centers.

How Do You Celebrate Earth Day When Scott Pruitt Is Still at the E.P.A.?

Elizabeth Kolbert, The New Yorker

Today is Earth Day, and, to mark the occasion, thousands of Americans will flock to parks, beaches, and hiking trails. Others will stay home, monitoring their Twitter feeds for the latest Scott Pruitt scandal.

Is it finally Scott Pruitt's time to go?

Jennifer Rubin, The Washington Post

Even casual political-watchers know that Friday is the customary day for dropping bad news and dumping senior officials. No senior official is more deserving of being dumped than Environmental Protection Agency Administrator Scott Pruitt.

The energy revolution has already begun

David Von Drehle, The Washington Post

Between the science-denying trolls who say climate change is a hoax and the we're-all-doomed Cassandras who picture the last human remnant escaping to Mars, there is an exciting frontier.

OPEC Can Live With Tweets So Long as Venezuela Gets Worse

Liam Denning, Bloomberg

What explains President Donald Trump's Friday-morning focus on restrictive commodity agreements? Your guess is as good as mine.

Research Reports

Stakeholders' and Officials' Views on Federal Odorizing Requirements

U.S. Government Accountability Office

While federal odorization requirements follow a risk-based approach by focusing on pipelines in populated areas, the officials and stakeholders GAO contacted disagreed on the need to modify these requirements for some pipelines.

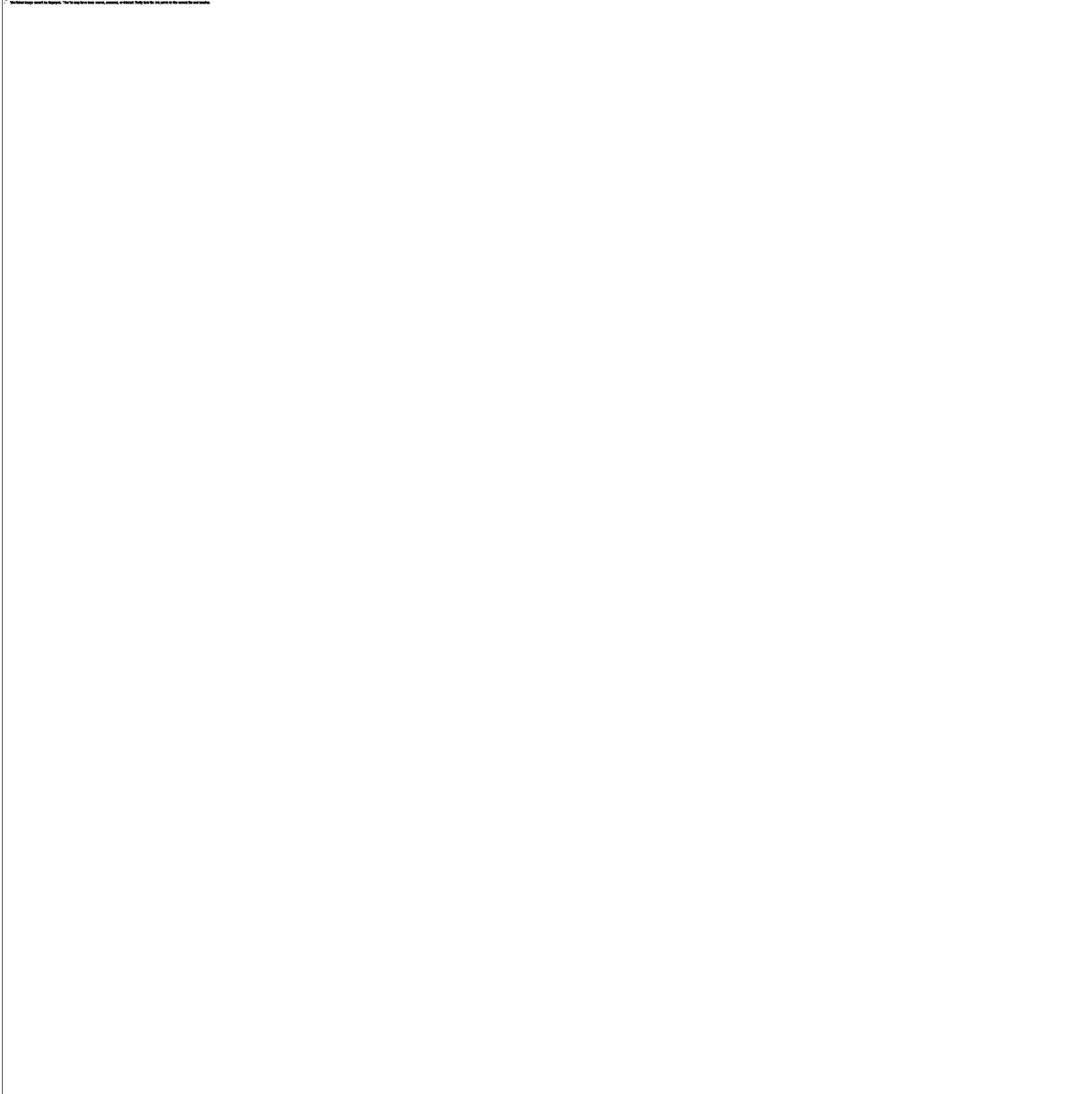


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To: Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clint]
Subject: The Morning Headlines from InsideEPA.com -- April 23, 2018



REDEFINING EPA: Overhauling an agency and its mission -- Complete coverage

April 23, 2018

Latest News

EPA Floats 'Secret Science' Ban Rule, Signaling Possible Internal Fixes

EPA has sent for White House review a proposed rule to increase the transparency of regulatory science, advancing Administrator Scott Pruitt's controversial efforts to ban the use of "secret science" in a move that

suggests officials have addressed at least some internal concerns that such a policy could violate statutory protections of medical privacy and trade secrets.

Previewing Hearing, Environmentalists Fault EPA Coal Ash Rule Revisions

Environmentalists are previewing their testimony for an EPA hearing next week on the agency's planned revisions to its coal ash disposal rule, warning that the changes would increase risks to children's health by removing a mandate to protect sensitive subpopulations and harm communities by ending a requirement to quickly clean up ash spills.

Compliance Costs Create Dilemma For Wehrum's Bid To Kill Utility MACT

ORLANDO, FL -- EPA air chief William Wehrum is acknowledging that he faces a dilemma over whether to grant calls from utilities and others to scrap the regulatory justification for the Obama-era utility air toxics rule as a "satisfying" move, or retain it as even some of its staunchest industry critics have spent millions in compliance costs.

EPA's Chloroform Study Plan Raises Queries Over Reach Of IRIS Reviews

Introducing their plan to science advisors last September, Bahadori's presentation slides explained that chloroform has a "small evidence base" and the plan is to conduct a "targeted update to address Agency need." EPA's Superfund, air and Region 4 offices expressed a specific need for an inhalation reference value for chloroform, the documents say.

CSB Asks Appellate Court To Back Broad Subpoena On 'Potential' Releases

The U.S. Chemical Safety and Hazard Investigation Board's (CSB) is asking a federal appellate court to grant it broad power to subpoena documents related to "potential" releases at facilities where it is investigating industrial incidents, a move that a major refiner is resisting, charging it amounts to an unlawful expansion of the board's powers.

Daily Feed

IG to investigate Pruitt security on personal travel

This investigation will be separate from probes already under way into Pruitt's travel and security detail, "so as not to delay the completion of our ongoing work in those areas," EPA's IG says.

States criticize EPA's efforts to 'delay' CWA jurisdiction rule suit

Seven GOP-led states are pushing back against EPA's latest attempt to block substantive litigation over the 2015 Clean Water Act jurisdiction rule.

Democratic senators block ballast provision

Democratic senators have blocked a controversial provision that would remove EPA's Clean Water Act regulation of ships' ballast water.

ALA ties ozone spike to global warming

The American Lung Association is using its annual 'state of the air' report to call for action to protect Obama-era Clean Air Act rules from attacks by Congress and EPA.

Federal judge sends utility ELG delay suit to appeals court

The judge's order ends a lower court suit over the Trump EPA's delay of the Obama-era power plant effluent rule and shifts focus to a pending appeals court case.

Ewire: Mulvaney pledges probe of Pruitt's spending

In today's Ewire: "I'm not any happier about it than you are," White House budget chief Mick Mulvaney tells a House financial services panel, referencing reports of Scott Pruitt's spending as EPA administrator.

EPA GHG inventory sees 2.5 percent drop in 2016

EPA Administrator Scott Pruitt touted the use of innovative technologies for the decline in greenhouse gases, calling it "one of the great environmental successes of our time."

Read all the latest EPA news, analysis and documents →

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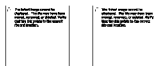
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Message

From: Bolen, Brittany [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=31E872A691114372B5A6A88482A66E48-BOLEN, BRIT]
Sent: 4/23/2018 11:32:13 AM
To: Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clint]
Subject: Re: EPA - Data Access NPRM - comments

Understood. Thanks, Clint.

On Apr 23, 2018, at 12:06 AM, Woods, Clint <woods.clint@epa.gov> wrote:

Deliberative Process / Ex. 5

On Apr 22, 2018, at 5:58 PM, Bolen, Brittany <bolen.brittany@epa.gov> wrote:

Please forgive me for delay on this.

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Happy to discuss.

On Apr 22, 2018, at 12:36 PM, Schwab, Justin <Schwab.Justin@epa.gov> wrote:

Attorney Client / Ex. 5

From: Woods, Clint
Sent: Sunday, April 22, 2018 12:30 PM
To: Schwab, Justin <Schwab.Justin@epa.gov>
Cc: Beck, Nancy <Beck.Nancy@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>; Leopold, Matt <Leopold.Matt@epa.gov>; Yamada, Richard (Yujiro) <yamada.richard@epa.gov>
Subject: Re: EPA - Data Access NPRM - comments

Thanks so much for useful feedback! Will transmit to OIRA shortly.

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

On Apr 22, 2018, at 10:37 AM, Schwab, Justin
<Schwab.Justin@epa.gov> wrote:

Attorney Client / Ex. 5

From: Beck, Nancy
Sent: Sunday, April 22, 2018 10:35 AM
To: Schwab, Justin <Schwab.Justin@epa.gov>; Woods, Clint <woods.clint@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>; Leopold, Matt <Leopold.Matt@epa.gov>; Yamada, Richard (Yujiro) <yamada.richard@epa.gov>
Subject: RE: EPA - Data Access NPRM - comments

INTERNAL-DELIBERATIVE-FOR DISCUSSION ONLY

Deliberative Process / Ex. 5

Nancy

Nancy B. Beck, Ph.D., DABT

Deputy Assistant Administrator, OCSPP

P: [202-564-1273](tel:202-564-1273)

M: [202-731-9910](tel:202-731-9910)

Beck.Nancy@epa.gov

From: Schwab, Justin

Sent: Saturday, April 21, 2018 9:07 PM

To: Woods, Clint <woods.clint@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>; Leopold, Matt <Leopold.Matt@epa.gov>; Yamada, Richard (Yujiro) <yamada.richard@epa.gov>; Beck, Nancy <Beck.Nancy@epa.gov>

Subject: RE: EPA - Data Access NPRM - comments

Redline/bubbles attached. When I save the document my comments just become "Author" comments so I've tried to put "(Justin)" in my comment bubbles so they don't get mixed up with OIRA's etc.

From: Woods, Clint

Sent: Saturday, April 21, 2018 8:02 PM

To: Bolen, Brittany <bolen.brittany@epa.gov>; Leopold, Matt <Leopold.Matt@epa.gov>; Schwab, Justin <Schwab.Justin@epa.gov>; Yamada, Richard (Yujiro) <yamada.richard@epa.gov>; Beck, Nancy <Beck.Nancy@epa.gov>

Subject: RE: EPA - Data Access NPRM - comments

Attached version contained suggested edits, additions, and responses to OIRA, CEQ, and OMB-budget comments.

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Please let me know if you see any red flags and, if not, I'll send back at noon tmrw. Thanks!

From: Woods, Clint

Sent: Friday, April 20, 2018 5:21 PM

To: Bolen, Brittany <bolen.brittany@epa.gov>; Leopold, Matt <Leopold.Matt@epa.gov>; Schwab, Justin <Schwab.Justin@epa.gov>; Yamada, Richard (Yujiro) <yamada.richard@epa.gov>; Beck, Nancy <Beck.Nancy@epa.gov>

Subject: Fwd: EPA - Data Access NPRM - comments

Begin forwarded message:

From: "Lewis, Josh"

<Lewis.Josh@epa.gov>

Date: April 20, 2018 at 4:11:06 PM EDT

To: "Woods, Clint"

<woods.clint@epa.gov>

**Subject: FW: EPA - Data Access NPRM -
comments**

Josh Lewis
Chief of Staff
EPA/Office of Air and Radiation
Office: 202 564 2095
Cell: 202 329 2291

From: Kim, Jim H. EOP/OMB

EOP / Ex. 6

Sent: Friday, April 20, 2018 4:07 PM

To: Lewis, Josh <Lewis.Josh@epa.gov>

Cc: Laity, Jim A. EOP/OMB

EOP / Ex. 6

Schwab, Margo EOP/OMB

EOP / Ex. 6

Subject: RE: EPA - Data Access NPRM -
comments

Hi Josh,

Attached and below are comments
from OMB's Environment Branch

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Sorry for the confusion of sending multiple sets of comments. Please feel free to call us if you would like to discuss.

Jim

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

From: Lewis, Josh
<Lewis.Josh@epa.gov>
Sent: Friday, April 20, 2018 2:55 PM
To: Kim, Jim H. EOP/OMB
EOP / Ex. 6
Cc: Laity, Jim A. EOP/OMB
EOP / Ex. 6
Schwab, Margo EOP/OMB
EOP / Ex. 6
Subject: RE: EPA - Data Access NPRM -
comments

Hi Jim,

Confirming receipt.

Josh Lewis
Chief of Staff
EPA/Office of Air and Radiation
Office: 202 564 2095

From: Kim, Jim H. EOP/OMB
EOP / Ex. 6
Sent: Friday, April 20, 2018 2:43 PM
To: Lewis, Josh <Lewis.Josh@epa.gov>
Cc: Laity, Jim A. EOP/OMB
EOP / Ex. 6
Schwab, Margo EOP/OMB
EOP / Ex. 6
Subject: EPA - Data Access NPRM -
comments

Hi Josh,

Please find attached our comments and
CEQ's comments on the Data Access
draft.

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

We will also pass along other agencies' comments as we receive them.

Let me know if you have questions.

Thanks,
Jim

James Kim, Ph.D., DABT
Office of Information and Regulatory Affairs
Office of Management and Budget

EOP / Ex. 6

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Subject: July 18 -- E&E Daily is ready

[Read today's E&E Daily on the web](#)

E&E DAILY



AN E&E NEWS PUBLICATION

E&E DAILY — Wed., July 18, 2018



READ FULL EDITION

1. SUPREME COURT:

'Brett Kavanaugh is the next Scott Pruitt' — Carper

Environmentalists and their allies in the Senate have launched a full-court press in an effort to defeat the Supreme Court nomination of Brett Kavanaugh.

TOP STORIES

2. CLIMATE:

House kicks off partisan fight on carbon tax

3. APPROPRIATIONS:

House OKs Interior-EPA amendments; energy-water bill stalled

4. AIR POLLUTION:

Party-line vote advances reforms to New Source Review

ON THE HILL

5. NATIONAL MONUMENTS:

Democrats introduce bill to strengthen Antiquities Act

6. EPA:

White House regs chief ducks queries on 'secret science' plan

7. BIOFUELS:

Iowa lawmakers press Wheeler for visit

8. ENERGY POLICY:

Bills take aim at OPEC, Russian pipeline

9. FEDERAL AGENCIES:

Committee approves bill to ease worker removal

IN THE SENATE

10. ENDANGERED SPECIES:

States move from bit part to starring role in ESA drama

11. WILDLIFE:

Bipartisan conservation bill unveiled

12. MINING:

Panel debates permit reform, mineral dependence

IN THE HOUSE

13. OFFSHORE DRILLING:

Fla. Republican is 'rabid' about extending moratorium

14. PUBLIC LANDS:

Bipartisan support voiced for slate of bills on eve of markup

15. CARBON CAPTURE:

Dems blast Trump over 'clean coal' comments, research cuts

16. SUSPENSIONS:

Mont. wild and scenic river designation bill passes

17. SELF-DRIVING CARS:

Ohio lawmakers push for testing site in their state

18. TRIBES:

Indian Country leaders call for faster energy development

UPCOMING HEARINGS AND MARKUPS

19. CALENDAR:

Activity for July 16 - July 22, 2018

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E&E Daily is written and produced by the staff of E&E News. Designed for policy players who need to know what's happening to their issues on Capitol Hill, from federal agency appropriations to comprehensive energy legislation, E&E Daily is the place insiders go to track their environmental and energy issues in Congress. E&E Daily publishes daily by 7:30 a.m. while Congress is in session.



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Subject: July 17 -- Greenwire is ready

[Read today's Greenwire on the web](#)

GREENWIRE

AN E&E NEWS PUBLICATION

GREENWIRE — Tue., July 17, 2018



READ FULL EDITION

1. POLITICS:

Is George Mason the new Trump U?

President Obama was known for nominating graduates of Harvard Law School, his alma mater, for top posts in his administration. Less well-known is that key players in the Trump administration have ties to a suburban Virginia campus just outside Washington.

TOP STORIES

2. NUCLEAR:

Once allies, NEI and utility gird for trial

3. INTERIOR:

Zinke to rec panel: 'I can't fix it unless I know about it'

4. SCIENCE:

Decadeslong climate study flies 'under the radar'

POLITICS

5. AGRICULTURE:

Trump picks entomologist for USDA science post

6. EPA:

Witnesses slam 'secret science' rule at public hearing

7. LOBBYING:

Obama EPA policy chief working for green group

CONGRESS

8. ENDANGERED SPECIES:

Dems decry grouse, prairie chicken language in defense bill

NATURAL RESOURCES

9. INTERIOR:

Calif. agency mismanaged funds for groundwater cleanup — IG

10. YOSEMITE:

Wildfire fills park with smoke, empties businesses

11. SCIENCE:

Turtle researcher loses award over racy pictures

12. WILDFIRES:

How a pasta machine could help Western rangeland

LAW

13. AIR POLLUTION:

Greens sue EPA over loophole for high-emission rigs

14. CLIMATE:

Group sues Treasury over companies' risk disclosures

15. OFFSHORE DRILLING:

Greens sue over Trump admin's Gulf of Mexico leasing

16. FERC:

Appeals court tosses challenges to Texas gas pipeline

17. CLEAN WATER RULE:

Trump admin urges court to halve WOTUS litigation

CLIMATE CHANGE

18. SCIENCE:

Will climate change turn alligators female, too?

ENERGY

19. DOE:

Perry announces \$2B for tribal energy projects

20. COAL:

Navajo kick off talks with potential plant owner

21. DOE:

Feds stayed mum after radioactive material was stolen

AIR AND WATER

22. AVIATION:

Super-fast flights would cost the environment — study

23. DRINKING WATER:

Taps are dry but Coca-Cola abundant in Mexico town

24. DRINKING WATER:

D.C. Council members criticize outreach on contamination

STATES

25. HAWAII:

Lava explosion injures 23 on tour boat

26. MINNESOTA:

Home water softeners turn lakes and streams saltier — study

27. IDAHO:

Experts decry selfie of mountain goat licking man

INTERNATIONAL

28. MYANMAR:

Landslide buries dozens of jade hunters after monsoon

29. HONG KONG:

Rare pink dolphins under threat from bridge construction

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ABOUT GREENWIRE – THE LEADER IN ENERGY AND ENVIRONMENT NEWS

Greenwire is written and produced by the staff of E&E News. The one-stop source for those who need to stay on top of all of today's major energy and environmental action with an average of more than 20 stories a day, Greenwire covers the complete spectrum, from electricity industry restructuring to Clean Air Act litigation to public lands management. Greenwire publishes daily at 1 p.m.

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Subject: May 17 -- Greenwire is ready

[Read today's Greenwire on the web](#)

GREENWIRE

AN E&E NEWS PUBLICATION

GREENWIRE — Thu., May 17, 2018



READ FULL EDITION

1. INTERIOR:

Zinke tells greens he'll make 'grand pivot' to conservation

Interior Secretary Ryan Zinke yesterday huddled with more than two dozen conservation group leaders, including some of his staunchest critics, in his latest bid to generate both ideas and support for his ambitious departmental reorganization plans.

TOP STORIES

2. EPA:

Who's donating to Pruitt's defense? Time will tell

3. REGULATIONS:

Emails: EPA all ears as industry pitched 'secret science'

4. OCEANS:

An end to overfishing? NOAA offers an optimistic outlook

POLITICS

5. PUBLIC LANDS:

Zinke to send more officers to Mexican border

6. PEOPLE:

Glyphosate study defender tapped to lead cancer agency

NATURAL RESOURCES

7. COAL:

Greens ask feds to probe struggling company's cleanup promises

8. YELLOWSTONE:

NPS approves plan to send disease-free bison to other herds

9. WILDLIFE:

Enviro petition urges Wyo. to delay grizzly hunt

10. NATIONAL PARKS:

Utah investigates reports of tainted water at Bryce Canyon

11. FISHERIES:

Oyster farm in Wash. refuge goes back to drawing board

12. WILDLIFE:

Poaching ring was 'demented social club,' officials say

LAW

13. SUPREME COURT:

DOJ backs Wash. in row over fuel taxes, treaty rights

14. PUBLIC LANDS:

Groups sue Forest Service over Tongass timber sale

ENERGY

15. PIPELINES:

Minn. lawmakers vote to approve Line 3 project, bypass PUC

AIR AND WATER

16. COAL:

Feds toss challenge of utility's mine cleanup promises

17. GROUNDWATER:

USGS finds high uranium levels in Wash. wells

CHEMICALS

18. PUBLIC HEALTH:

Chemicals could be making workers sick at coffee roasters

STATES

19. HAWAII:

How Gen. Patton tried to bomb a volcano into submission

20. FLORIDA:

Teacher on leave after video shows students drowning raccoon

21. MINNESOTA:

Enormous bog blocking beach won't budge

22. COLORADO:

Retired power stations become historic landmark

23. COLOMBIA:

Tens of thousands ordered to flee floods at hydropower dam

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Subject: First Move: Wheeler's New Approach • Keeping Calendars Public • 'Secret'
Science Gets Public Airing

What you
need to
know to start
your day.

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Wheeler's New Approach • Keeping Calendars Public • 'Secret' Science Gets Public Airing

By [Marissa Horn](#)

Scott Pruitt's agenda may never go out of style, at least under a GOP president.

But the way that agenda was delivered to the public during Pruitt's 503 days at the EPA is ending, the EPA's acting administrator told Bloomberg Environment in an exclusive [interview](#) yesterday in Canonsburg, Pa.

Later this week, we'll be digging into new acting chief Andrew Wheeler's comments on environmental permitting, enforcement, and a topic that marks an about-face for an agency that [barred](#) three reporters from entering a chemical summit in May—communication.

NOT-SO SECRET CALENDAR: Speaking of Wheeler, [Abby Smith](#) took a look at whom he spoke with during his first week at the EPA.

In another shift from Pruitt's tenure at the agency, Wheeler is updating his calendar daily. Wheeler's anticipated forthrightness—both about his day-to-day

schedule and the EPA's policymaking process—could give regulated industries more clarity, attorneys and consultants say.

For updates, follow [Abby](#) on Twitter and look for the story later today on our [website](#).

SCIENCE TRANSPARENCY: The EPA proposal to [ensure transparency](#) in the science it considers when writing regulations will be the subject of a public hearing today.

Among those speaking in favor of the measure is the U.S. Chamber of Commerce, which according to its written testimony will praise EPA “for finally addressing a longstanding problem inherent in much of its regulatory decision-making processes.” [Sylvia Carignan](#) is tracking.

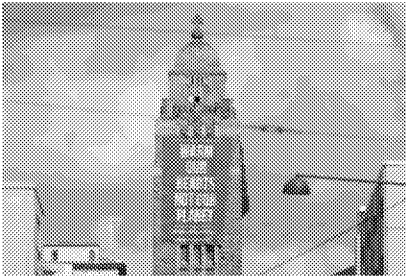
OTHER STORIES WE'RE COVERING

- The House is expected to take up its second “minibus” package, which would provide more than \$35 billion for the EPA, Interior Department, and other environmental agencies for the coming fiscal year. [David Schultz](#) is covering.
- Wyoming's John Barrasso, who heads the Senate's environment panel, gives fellow senators a push toward thinking about changes to the Endangered Species Act in a hearing today. Follow [Alan Kovski](#) for the latest updates and look for his story [later today](#).
- Lawmakers will lock horns over President Trump's list of 35 critical minerals. Democrats on the Senate Energy and Natural Resources committee are expected to argue the list is a giveaway to the mining industry, while Republicans are likely to counter that streamlined permitting is important for national security. [Stephen Lee](#) has you covered on the hearing.
- Authors from [Wiley Rein LLP](#) point out in an Insights [article](#) five “hot spot” areas that a historic upswing in private actions are targeting in the nation's toxic chemicals law, which was updated in 2016.

QUOTE OF THE DAY

“Anybody who buys on Amazon cannot give me the line that they're environmentally responsible consumers.”

—Yossi Sheffi, engineering professor focusing on supply chain management at the Massachusetts Institute of Technology.



A banner by environmental non-governmental organization Greenpeace is fixed at the Kallio Church tower in Helsinki, Finland, on July 16 ahead of a meeting between President Donald Trump and Russian President Vladimir Putin.

Photographer: Alessandro Rampazzo/AFP/Getty Images

AROUND THE WEB

- Almost the entire Gulf of Finland has been infested with a blue-green algae, the Finnish Environment Institute reports.
- Plutonium went missing in San Antonio more than a year ago, and the federal government still doesn't know where it is.
- As Trump's trade war heats up, a team of trade and climate policy analysts is proposing a new way to counter protectionism that could prod the U.S. back into action on the climate at the same time.
- See the before and after of Louisiana's ambitious effort to rebuild barrier islands by bulking their skeletal remains with tons of sand dredged from the Gulf of Mexico and the Mississippi River.

TODAY'S EVENTS

- **All Day • Pro Summit** • Politico Pro Summit features speakers including California Air Resources Board Chairman Mary Nichols and Murray Energy CEO Robert E. Murray.
- **10 a.m. • Energy** • House science committee's energy and environment panels hold hearing on fossil energy technologies.
- **10 a.m. • Tribal Energy** • House Oversight and Government Reform's interior panel talks about reducing barriers to opportunity for tribal energy resources.
- **10 a.m. • Federal Lands** • House Natural Resources' federal lands panel holds hearing on eight federal lands bills.

- **10 a.m. • FEMA • Atlantic Council** [holds discussion](#) with Daniel Kaniewski, the Federal Emergency Management Agency's deputy administrator, on engaging communities in preparing for and recovering from catastrophes.
- **12 p.m. • Hazardous Waste • Environmental Law Institute** [holds seminar](#) on hazardous waste laws.
- **1 p.m. • New Source Review • The House Energy and Commerce** environmental panel [considers bill](#) that changes the way industrial increases in emissions are calculated when the plants are either modified or constructed.
- **1 p.m. • Coal Combustion • The Air & Waste Management Association** kicks off the first part in a three-part webinar [series](#) looking at the history of coal combustion residual regulations.

For all of today's Bloomberg Environment headlines, visit [Environment & Energy Report](#)

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Subject: Morning Energy: Where do biofuels stand? — This week: Pruitt faces the Hill — Macron heads to Washington

By Kelsey Tamborrino | 04/23/2018 05:42 AM EDT

With help from Eric Wolff and Annie Snider

YOU CAN'T ALWAYS GET WHAT YOU WANT: Despite efforts by President Donald Trump to settle a long-running dispute between ethanol backers and the refining industry, progress on a biofuels deal has stalled. Instead, the administration has taken a piecemeal approach to the policy, pushing for an expanded market for higher blends of ethanol, while handing out exemptions to the Renewable Fuels Standard to small refiners.

Trump, for his part, has huddled multiple times with members of his Cabinet, industry and lawmakers from both corn belt and oil states, Pro's Eric Wolff reports. But so far, there's been little progress in striking a grand deal. At odds are the independent refiners, who say they feel financial stress from the RFS, and the agriculture sector, which is anxious to expand the market for corn ethanol.

Trump has promised to allow year-round sales of 15 percent ethanol blends of gasoline, while EPA Administrator Scott Pruitt has so far granted more than two dozen temporary waivers to small refineries that exempt them from the mandate requiring them to blend ethanol with gasoline. "After 18 months of pursuing various regulatory forms of relief and a handful of Oval Office confabs, the merchant refiners ended up with [an increase in E15] taking even more market share away from them in return for some small refiner hardship waivers — and some of them did not even get that," one oil refining source told Eric.

And Pruitt's controversies stemming from his first-class flights, security spending and condo rental from a lobbyist, have left the EPA chief unable to make an aggressive case for instituting price caps many refiners want on the biofuel credits, according to an administration source. Read more [here](#).

Democrats weigh in: House Energy and Commerce ranking member [Frank Pallone](#) and Agriculture ranking member [Collin Peterson](#) sent this [letter](#) to the president on Friday, expressing concern with the waivers issued by Pruitt to small refineries, writing it "undermines the goal of the RFS program, creates uncertainty and economic hardship in the agricultural community, and gives unfair advantage to specific facilities within the refining sector."

GOOD MONDAY MORNING! I'm your host Kelsey Tamborrino, and Entergy's Rob Hall was first to correctly answer that former Senate Majority Leader Robert Taft's father served as a Supreme Court chief justice. For today: Who was the first woman to be awarded the Medal of Honor? Send your tips, energy gossip and comments to ktamborrino@politico.com, or follow us on Twitter [@kelseyam](#), [@Morning_Energy](#) and [@POLITICOPro](#).

POLITICO Space is our new weekly briefing on the policies and personalities shaping the second space age. [Sign up today](#).

ICYMI: Check out the [event videos and highlights](#) from last Tuesday's event on how private businesses can address clean energy and build a more sustainable future.

PRUITT HEADS TO THE HILL: Thursday's the day: Pruitt is scheduled to face questions from two House committees for the first time since his swirling scandals emerged in March. He'll appear before both the House Appropriations Committee and the Energy and Commerce Committee to discuss his agency's budget request for fiscal 2019, but of course lawmakers are planning to take Pruitt to task over his ethics and spending issues. "Members are going to have questions about how things are going at the EPA and how the money is being spent," E&C Chairman Greg Walden told POLITICO last week. "And we will. We should. He'll have to answer those."

Not least on the list of questions: POLITICO's Theo Meyer and Eliana Johnson were first to report this weekend that the lobbyist, J. Steven Hart, whose wife rented a \$50-per-night condo to Pruitt, also lobbied the agency while Pruitt was leading it, according to a Friday filing by his firm. That news comes despite the denials from both Hart and Pruitt that the lobbyist did not have any business before the agency. Hart announced his resignation from his lobbying firm Williams & Jensen hours before the disclosure was published. He was already planning to retire in November, but moved up his departure in the wake of the revelation that his wife had been Pruitt's landlord.

An EPA official acknowledged on Saturday that Pruitt had met with Hart, who attended a meeting with a former meat-processing executive concerned about Trump's proposal to cut spending on a Chesapeake Bay cleanup program. But the official argued that the meeting didn't meet the definition of lobbying. The disclosure, meanwhile, says Hart lobbied the EPA on issues "relating to support for EPA Chesapeake Bay Programs." A spokeswoman for House Oversight Chairman Trey Gowdy, who is already probing the administrator, told POLITICO that "the Committee has already been looking into this matter." Read more.

The hits keep coming: The Associated Press reported on Friday that state records show how, as Oklahoma's attorney general, Pruitt ordered investigations agents from his office to work as his driver and bodyguard. And a separate report from The New York Times probed how Pruitt bought a historic house in Oklahoma from a top lobbyist with the help of a shell company.

— **Another Republican called on Pruitt to resign** this weekend, marking at least four current Republican lawmakers to do so. "Yes EPA Administrator Scott Pruitt should resign. Wrong fit from start for agency dedicated to protecting our environment," New Jersey Rep. Frank LoBiondo tweeted. "#EarthDay2018 reinforces our need to promote pristine planet via clean air & water, leaving it better for future generations. Requires leadership & balance."

NOW THAT'S A MISTAKE: Three days after releasing a raft of communications between top EPA personnel to the Union of Concerned Scientists under the Freedom of Information Act, the agency removed them from its electronic library Friday. Among the documents were emails POLITICO cited on Thursday that show political officials developing a new scientific transparency policy were more concerned with the impact it could have on the agency's ability to consider industry data when reviewing pesticides and toxic chemicals for safety than they were about potentially excluding studies on the effect of pollution on public health, as many scientists have warned. EPA sent the policy, based on legislation from House Science Chairman Lamar Smith (R-Texas), to the White House for interagency review Thursday.

EPA did not respond to requests for comment over the weekend, but Yogin Kothari with UCS said the agency told him it accidentally released documents with private information and privileged attorney-client communications. His group removed emails it considered to fit that description and posted the rest on its website.

XCEL NOT SO INTO MARKETS AFTER ALL: Colorado utility Xcel Energy blew a hole in Southwest Power Pool's plans for a western power market when the company announced late Friday it had dropped out of the Mountain West Transmission Group. SPP had been working with the informal group of power providers for months to try and join the power market — and SPP had advanced the effort as recently as last month. Xcel

didn't respond to a request for comment, but the press release said there were "limited benefits" in the effort and "increasingly uncertain costs."

Perhaps most intriguing to ME is the company's point that "Xcel now sees few opportunities for westward expansion of the RTO which might have added to the value proposition." SPP faces competition from both California's already established energy-imbalance market that includes utilities in the Pacific Northwest and Nevada, and a nascent joint project between eastern market operator PJM Interconnection and western reliability manager PEAK. Xcel's press release did not say if it had engaged with either of these other projects.

MR. MACRON HEADS TO WASHINGTON: French President Emmanuel Macron makes his first official visit to Washington this week, where he'll meet with the president and deliver an address to a joint meeting of Congress. Macron and his wife will be hosted by the president and first lady at a private dinner tonight and the two leaders will participate in a bilateral meeting on Tuesday.

Officially, the two heads of state are set to discuss ongoing issues in Syria, the Iran deal and trade tensions. But keep an ear out for climate mentions, too. Macron has been critical of Trump's announcement that he would remove the U.S. from the Paris climate agreement.

Ahead of his meeting with Trump, Macron appeared on "Fox News Sunday," where he was asked whether he believes Trump will serve his full term. "I never wonder that," Macron said. "I mean, I work with him because both of us are very much at the service of our country in both side. And for me, that's why — even when we have some disagreements on climate and on some issues, I think the most important thing is to — I mean, just to remind that we are at the service of our people, that's our legitimacy."

FROM BLOOMBERG WITH LOVE: Special envoy to the U.N. for climate action Michael Bloomberg pledged to help cover the U.S. financial commitment to the Paris climate accord on Sunday. Appearing on CBS, the former New York City mayor announced he would foot the \$4.5 million bill to the U.N. Climate Change Secretariat under the 2015 agreement that was struck by former President Barack Obama.

"America made a commitment. And as an American, if the government's not going to do it, we all have a responsibility, and I'm able to do it," he said on CBS. "So yes, I'm going to send them a check for the monies that America had promised to the organization." Bloomberg will also make more funding available should the U.S. government fail to produce funds for its share of the U.N. climate budget in 2019, according to a press release announcing the action.

READY FOR TAKEOFF: Rep. Jim Bridenstine will be sworn-in at 2:30 p.m. today as the new NASA administrator. After the swearing-in ceremony, Vice President Mike Pence and Bridenstine will speak live with three NASA astronauts currently living on the International Space Station.

MAIL CALL! Senate Democrats sent a series of letters Friday, calling on the administration and agency heads to share documents related to the Koch brothers' role in influencing policy in the Trump era. The letters cite specific actions for which the Koch network has taken credit, including shrinking national monuments, exiting the Paris climate change agreement and streamlining of infrastructure permitting. "Americans have a right to know if special interests are unduly influencing public policy decisions that have profound implications for public health, the environment, and the economy," the senators write. The letters, led by Sen. Sheldon Whitehouse, come before Senate floor speeches this week from Democrats that are expected to detail the influence of the Koch brothers network. Read the letter to the White House here, EPA here and Interior here.

IN CELEBRATION OF EARTH DAY: The president touted his administration's rollback of "unnecessary and harmful regulations," and pointed toward a "market-driven economy" as an essential tool in environmental protection. "A healthy environment and a strong economy go hand in hand," a White House presidential message said. "We know that it is impossible for humans to flourish without clean air, land, and water. We also

know that a strong, market-driven economy is essential to protecting these resources." Trump said for that reason, his administration is "dedicated to removing unnecessary and harmful regulations that restrain economic growth and make it more difficult for local communities to prosper and to choose the best solutions for their environment."

REPORT OUT ON DOE BUDGET: The Information Technology and Innovation Foundation is out with a new report today analyzing the Energy Department's budget for research, development and demonstration. The report details how the administration's current budget proposal for fiscal 2019 would "impose the largest single-year decrease" in DOE history. "R&D spending as a share of sales in the U.S. energy industry is only 0.4 percent, compared with 8.5 percent in aerospace and defense, 9.8 percent in computers and electronics, and 2.4 percent in the automotive industry," the report finds. Read it [here](#).

MOVER, SHAKER: Holly Burke last week joined the League of Conservation Voters as communications coordinator. She previously worked for American Bridge.

— **Jennifer Talhelm**, formerly communications director for Sen. [Tom Udall](#), is moving to the Western Resource Advocates and will be based in Santa Fe.

QUICK HITS

- She tried to report on climate change. Sinclair told her to be more "balanced," [BuzzFeed](#).
- Oil is fast approaching \$70. Is the economy ready for it? [The Wall Street Journal](#).
- EPA sources: Pruitt aide tried to back-date departure after congressional interview request, [CNN](#).
- Environmental review for mine project expected this week, [Associated Press](#).
- America's nuclear headache: old plutonium with nowhere to go, [Reuters](#).
- Perched on a platform high in a tree, a 61-year-old woman fights a gas pipeline, [The Washington Post](#).

HAPPENING THIS WEEK

MONDAY

11:30 a.m. — Verizon [discussion](#) on "Celebrating Earth Day: The Power of Next-Gen Networks to Advance Environmental Sustainability," 1300 I Street NW

TUESDAY

8:00 a.m. — American Fuel & Petrochemical Manufacturers holds [security conference](#), New Orleans

10:00 a.m. — Senate Energy and Natural Resources Committee [hearing](#) on the president's proposed budget request for FY 2019 for the Forest Service, 366 Dirksen

10:00 a.m. — Senate Foreign Relations Committee [hearing](#) on nominations, including Jackie Wolcott to be representative to the International Atomic Energy Agency, 419 Dirksen

10:00 a.m. — The Bipartisan Policy Center [webcast](#) "Can America's Infrastructure Withstand the Next Natural Disasters? Lessons Learned from Previous Disasters."

3:00 p.m. — Woodrow Wilson Center book launch discussion with author Barry Rabe on pricing carbon, 1300 Pennsylvania Ave NW

5:00 p.m. — Johns Hopkins University's Energy, Resources and Environment presentation on "Cities as Innovation Centers: Investing in Resilient Infrastructure," 1619 Massachusetts Avenue NW

WEDNESDAY

10:00 a.m. — Senate Commerce Committee hearing on "Enhancing the Marine Mammal Protection Act," 253 Russell

11:30 a.m. — The World Resources Institute forum on "activism for energy," 10 G Street NE

12:30 p.m. — Olympians brief Congress about impact of climate change on winter sports, hosted by Sens. Michael Bennet and Susan Collins, 538 Dirksen

2:00 p.m. — Resources for the Future webinar on "What Research Says on Key Fracking Debate Issues."

2:00 p.m. — House Natural Resources Committee hearing on "The Weaponization of the National Environmental Policy Act and the Implications of Environmental Lawfare," 1324 Longworth

3:30 p.m. — Bloomberg Government and the Norwegian-American Chamber of Commerce conversation on "Investing In A Sustainable Energy Future," New York City

6:30 p.m. — The Carnegie Institution for Science lecture on the sustainable use of the ocean, 1530 P Street NW

THURSDAY

8:00 a.m. — Water Leaders summit on "Building an Innovative Future for Water Policy and Technology in America," 215 Capitol Visitors Center

8:30 a.m. — George Mason University's Center for Energy Science and Policy symposium on "Energy-Water Nexus," Fairfax, Va.

9:00 a.m. — Colorado State University hosts symposium on "Water in the West," Denver

10:00 a.m. — The U.S. Energy Association forum on "fostering the deployment of CCUS technologies," 1300 Pennsylvania Ave NW

10:00 a.m. — The House Energy and Commerce Committee hearing on EPA's budget request, 2323 Rayburn

10:00 a.m. — House Natural Resources Oversight Subcommittee hearing on "Examining the Critical Importance of Offshore Energy Revenue Sharing for Gulf Producing States," 1324 Longworth

10:00 a.m. — The Center for Strategic and International Studies' Energy and National Security Program discussion on "Challenges to Ukrainian Energy Reform and European Energy Security," 1616 Rhode Island Avenue NW

11:30 a.m. — The Atlantic Council discussion on "From an Oil Company to an Energy Company," 1030 15th Street NW

1:30 p.m. — Information Technology and Innovation Foundation release on "Closing the Innovation Gap in Grid-Scale Energy Storage," 1101 K Street NW

2:00 p.m. — House Appropriations Interior, Environment, and Related Agencies Subcommittee hearing on EPA's fiscal 2019 budget, 2007 Rayburn

2:00 p.m. — House Natural Resources Committee hearing on H.R. 5317 (115) and H.R. 211 (115), 1324 Longworth

2:00 p.m. — Senate Appropriations Energy and Water Development Subcommittee hearing on the Nuclear Regulatory Commission's proposed budget for FY 2019, 430 Dirksen

2:30 p.m. — The Center for a New American Security event on how lower oil prices have reshaped geopolitical calculations for U.S. policymakers, 1152 15th St NW

FRIDAY

12:00 p.m. — Women's Council on Energy and the Environment discussion on wholesale electricity pricing, 888 First Street NE

12:00 p.m. — The Nuclear Information and Resource Service, and U.S. Climate Action Network discussion on "Climate Justice and Nuclear Power in South Africa," 1200 G Street NW

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<https://www.politicopro.com/newsletters/morning-energy/2018/04/where-do-biofuels-stand-179483>

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Failure to strike biofuels deal opens door for smaller ethanol moves Back

By Eric Wolff | 04/23/2018 05:01 AM EDT

President Donald Trump's long-sought biofuels deal between the agricultural and refining industries appears to be turning into a piecemeal policy cobbled together through EPA that expands the market for corn ethanol while granting exemptions from the program to many small oil processors.

Trump has huddled several times with members of his Cabinet, refining and ethanol industry players, and lawmakers from both corn-belt and oil states. But so far, there's been little progress in striking a grand deal that would relieve the financial pain that some independent refiners say the Renewable Fuel Standard is causing them while acceding to agriculture-sector pressure to expand the market for corn ethanol.

Instead, Trump has promised to allow year-round sales of 15 percent ethanol blends of gasoline while EPA Administrator Scott Pruitt has handed out more than two dozen temporary waivers to small refineries that exempt them from the mandate requiring them to blend ethanol with gasoline.

"After 18 months of pursuing various regulatory forms of relief and a handful of Oval Office confabs, the merchant refiners ended up with [an increase in E15] taking even more market share away from them in return for some small refiner hardship waivers — and some of them did not even get that," said a source with an oil refining company.

For over a year, refiners have urged the administration to put a cap on the price of the biofuel credits that refiners must buy to meet their RFS compliance levels. But the move has been sharply opposed by ethanol and corn interests, as well as Sen. Chuck Grassley (R-Iowa), who as recently as last month called a potential cap "CATASTROPHIC to ethanol."

But the prices for biofuel credits, called Renewable Identification Numbers, have fallen since Pruitt's EPA began issuing at least 25 compliance waivers. Although that's angered biofuels supporters who complain it has sapped demand for ethanol, they see the administration's plan to drop the Clean Air Act rules that have barred E15 sales in the summer in some states as a boon.

"Right now we're going to have anywhere from a billion- to a billion and a half-[gallon] reduction in [ethanol] demand because of [RFS] waivers given so far," Sen. Mike Rounds (R-S.D.) told POLITICO. "I think we're moving in the right direction, but we want to make sure we get the [E15] waiver in place."

At a meeting with Midwestern senators and governors April 12, Trump announced his plan to expand E15 sales. But Trump also said there were efforts to set a transition period for the two years "where we will have a little bit of complexity," an apparent reference to refiners' worries that an increase in the number of RINs from higher E15 sales won't help push down prices for the credits in the near term.

The expansion of E15 sales came after an early April meeting at the White House, where Agriculture Secretary Sonny Perdue urged Trump to give corn farmers something to offset the ethanol demand drop they were seeing from the refinery compliance waivers, as well as the decline expected because of China's retaliatory import tariffs put in place after Trump announced his trade penalties, according to an administration source. The Washington Post reported Trump spent much of the meeting discussing the controversies around Pruitt's condo rental from a lobbyist and heavy spending on first-class travel and round-the-clock security.

Trump's discussion of Pruitt's controversies left the EPA chief unable to make an aggressive case for instituting price caps on RINs, according to an administration source, and have put him in a generally weakened position inside the White House.

And that may have killed the effort to establish RIN price caps, and given traction to the piecemeal EPA actions on E15 and the temporary compliance waivers, according to both administration and industry sources.

"[The oil industry] got what they wanted with the small refinery waivers, so we should get what we want," said Rob Walther, vice president of federal affairs for the ethanol producer POET.

Refiners, who over the last several months have sought and received RFS waivers for the 2016 and 2017 compliance years, are now expected to be pushing for the same exemptions for 2018 before they even know what their final liability for the year is.

Separately, a debate has grown over how EPA has been able to issue so many waivers to refiners this year. Though an EPA spokeswoman says the agency continued to use the same process it had under the Obama EPA to grant those exceptions, oil and ethanol industry sources acknowledge it has made crucial changes that make it far easier to get out from under the biofuel mandates.

In particular, EPA is relying on report language congressional appropriators added to 2016 and 2017 government funding bills that called on EPA to loosen its requirements for determining if a refinery should be awarded a waiver. EPA has also softened its definition of what constitutes economic hardship for a refinery as a result of a ruling from the U.S. Court of Appeals for the 10th Circuit last year.

That decision, in the case of *Sinclair Wyoming Refining v. EPA*, said the agency's test for defining economic hardship as whether a refiner was about to be pushed into bankruptcy had been too severe.

EPA has also taken a more aggressive interpretation of the law, saying it would no longer grant only partial waivers. Instead, the agency is now granting full-volume waivers to qualifying small refineries, according to an industry attorney.

The American Petroleum Institute, which represents the biggest oil companies, has opposed the waivers, and ethanol producers are furious at the use of the congressional report language to loosen the standards for receiving them. Monte Shaw, executive director of the Iowa Renewable Fuels Association, said his group has asked allies on the Appropriations Committee to consider writing their own language into future appropriations reports reversing the previous guidance.

Other groups think EPA is relying too much on that congressional guidance that is not included in the law.

"The report language does not override the plain reading of the statute," said Bob Dinneen, CEO of the Renewable Fuels Association. "While the court's decision in *Sinclair* might suggest EPA views these waivers differently, EPA has turned 180 degrees in its interpretation of the statute, and essentially now requires no demonstration of economic hardship. That's not what either the statute or the court required."

EPA staff has begun work trying to figure out how to best implement the expansion of E15 sales, which corn growers see as pivotal for the program's near future. But ethanol producers and their allies are looking ahead to the long term, in which E25 and E30 provide the octane for smaller, high-efficiency engines that get far higher fuel efficiency than current models.

"We have to move to the point to emphasize the need for octane, for these small engines that become more important in meeting CAFE standards in coming years," Rounds said. "That's where ethanol really shines."

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Lobbyist whose wife rented to Pruitt lobbied EPA despite denials [Back](#)

By Theodoric Meyer and Eliana Johnson | 04/20/2018 06:43 PM EDT

The prominent lobbyist whose wife rented a condominium to Environmental Protection Agency Administrator Scott Pruitt lobbied the agency while Pruitt was leading it, contrary to his and Pruitt's public denials that he had any business before the agency, according to a Friday filing by his firm.

The [disclosure](#) from the lobbying firm Williams & Jensen contradicts Pruitt's public statement last month that the lobbyist, J. Steven Hart, had no clients with business before the EPA, and came hours after Hart's resignation from the firm.

An EPA official acknowledged on Saturday that Pruitt had met with Hart, who attended a meeting with a former meat processing executive concerned about President Donald Trump's proposal to cut spending on a Chesapeake Bay cleanup program. But the official argued that the meeting didn't meet the definition of lobbying.

A second EPA official, agency spokesman Jahan Wilcox, told POLITICO: "We have no knowledge of any facts that precipitated Williams & Jensen electing to make this filing."

The disclosure is the latest sign of one-time allies distancing themselves from Pruitt, whose job is in jeopardy because of multiple investigations into his stewardship of the agency, ranging from spending on a 20-person security team and first-class travel to the installation of costly office furniture and a soundproof phone booth. The Government Accountability Office said earlier this week that the purchase of the booth, which cost \$43,000, violated federal law. And the staff of House Oversight Chairman Trey Gowdy (R-S.C.) has interviewed a former EPA political appointee who alleges that Pruitt lied about not knowing about steep raises given to two of his top aides.

When asked late Friday about Hart's lobbying activities, a Gowdy spokeswoman told POLITICO that 'the Committee has already been looking into this matter.'"

Sen. Sheldon Whitehouse (D-R.I.) said in a statement Saturday that any evidence of deception about Pruitt's relationship with the lobbyist-turned-landlord would bode ill for the EPA administrator.

"It doesn't get much swampier than an agency head getting a sweetheart deal on rent from a lobbyist with business before his agency, but someone lying about it afterwards does make it worse," Whitehouse said. "The laundry list of Pruitt scandals grows."

Hart announced he would resign from Williams & Jensen hours before the firm filed a disclosure showing that he lobbied the EPA for Smithfield Foods in the first quarter of 2017. While Hart, the chairman and former chief executive of the firm, has disputed that the contact he had with Pruitt and Pruitt's chief of staff, Ryan Jackson, constituted lobbying activity, the disclosure indicates otherwise.

Hart lobbied the EPA on issues "relating to support for EPA Chesapeake Bay Programs," according to the disclosure.

Pruitt told Fox News earlier this month that "Hart has no clients that have business before this agency."

Smithfield paid Williams & Jensen, which has lobbied for the company for years, \$70,000 to lobby on a variety of matters in the first quarter, according to the disclosure filing. Hart also lobbied Congress on trade, agriculture and food safety issues on Smithfield's behalf during the first quarter, alongside other Williams & Jensen lobbyists.

But Smithfield said Hart's lobbying of the EPA "was not undertaken at the direction of or on behalf of Smithfield Foods."

"These activities were conducted at the request of a then former executive and current Smithfield Foundation board member, Dennis Treacy, in his personal capacity," the company said in a statement. "Mr. Treacy is associated with several environmental organizations and is a member of the Chesapeake Bay Commission."

Treacy had been Smithfield's chief sustainability officer, as well as president of the nonprofit Smithfield Foundation, and before that had led Virginia's Department of Environmental Quality.

The first EPA official, who spoke on condition of anonymity, said Pruitt and Jackson, his chief of staff, met with Treacy and Hart on July 11 for 20 minutes in Pruitt's office. That's backed up by a chain of agency emails obtained by POLITICO, which show Treacy requesting a meeting in May to discuss his "focused and unique view of environmental protection" with Pruitt, and one finally being scheduled for July 11.

On July 10, Hart wrote to Jackson that he wanted to attend the meeting at Treacy's request. Hart added that Treacy "is a good guy and can be trusted. He is coming in as the business rep on the Chesapeake Bay Foundation — another of your controversies."

But the disclosure filed by Williams & Jensen indicates that Hart's lobbying work took place in the first three months of this year, not in 2017.

The official said Hart set up the meeting as a "personal introduction" but that Treacy used a Smithfield email address, which may have prompted Williams & Jensen to consider the meeting lobbying activity on behalf of Smithfield. Treacy wanted to talk about the president's proposed budget cuts to EPA's spending on Chesapeake Bay, the subject of one of the nation's premier ecosystem restoration projects, the official said.

The official said Pruitt discussed his meeting with Hart with EPA staff before going on Fox News for an interview this month, where Pruitt maintained that Hart had no clients with business before the agency. But "it has been clear in [Pruitt's] mind for months now this was a personal introduction of an individual who was supportive of the administration, who wanted to meet the administrator."

Smithfield Foods has had a tangled history with Chesapeake Bay: In 1997, a federal judge slapped the company with a record \$12.6 million fine for violating the Clean Water Act by dumping hog waste into a bay tributary. But Smithfield is now listed as a corporate partner of the nonprofit Alliance for the Chesapeake Bay.

Pruitt's rental of the Capitol Hill condo — a relative bargain at \$50 a night — had attracted criticism even before the filing because Hart has lobbied on energy issues in the past. Hart is also a past political donor to Pruitt, contributing a total of \$4,366 in cash and in-kind services to the former Oklahoma attorney general's campaigns and leadership PAC.

Pruitt's lease originally had J. Steven Hart's name printed on it as the landlord, but someone crossed it out and wrote in the name of his wife, Vicki. Public records show Vicki Hart's name on both the mortgage and deed. (Vicki Hart is also a lobbyist but works primarily on health care issues.)

Hart was already planning to retire in November but moved up his departure in the wake of the revelation that his wife has been Pruitt's landlord.

"Considering the last couple of weeks, I think it is easier on my family and the firm to expedite my departure," Hart wrote on Friday afternoon in an email to family and friends that was obtained by POLITICO.

Williams & Jensen confirmed Hart's departure.

"Mr. Hart informed the firm of his decision to resign today," the firm said in a statement on Friday. "We are grateful to Steve for his 35 years of service and we wish him and his family well in all of their future endeavors."

Hart did not respond to a request for comment. But he was sharply critical of the news coverage of the Pruitt scandal in the email he sent on Friday.

"As you know, these days I am no more an energy lobbyist than I am an astronaut," Hart wrote. "But, why let the facts get in the way of a good story?"

After leaving the firm, Hart wrote that he was "looking forward to devoting myself to an independent legal practice, some strategic business counseling for a few clients, golf, and shooting (not in that order)."

Alex Guillén and Emily Holden contributed to this report.

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Third Republican calls on Pruitt to resign [Back](#)

By Alex Guillén | 04/05/2018 03:34 PM EDT

Rep. [Elise Stefanik](#) (R-N.Y.) today called on EPA Administrator Scott Pruitt to resign, becoming at least the third Republican to do so even as more conservative lawmakers come to Pruitt's defense.

"I'm going to make news today," Stefanik said at a town hall meeting in South Glens Falls, about 45 miles north of Albany, according to [The Saratogian](#). "I think Scott Pruitt should resign. I fundamentally disagree with how Pruitt has handled the EPA."

Reps. [Carlos Curbelo](#) and [Ileana Ros-Lehtinen](#), both Florida Republicans, earlier this week called for Pruitt's ouster, as have a number of Democrats. Pruitt is facing increased scrutiny for ethics issues including the \$50-per-night rent he paid to rent space in a condo from a lobbyist last year.

Meanwhile, conservative Republicans like Sens. [Rand Paul](#) (R-Ky.) and [Ted Cruz](#) (R-Texas) have come to Pruitt's defense today.

"Why do Obama and his media cronies want so badly to drive @EPAScottPruitt out of office?" [tweeted](#) Cruz.

Pruitt "is likely the bravest and most conservative member of Trump's cabinet," [tweeted](#) Paul. "We need him to help @realDonaldTrump drain the regulatory swamp."

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EPA emails show industry worries slowed new science policy [Back](#)

By Annie Snider | 04/19/2018 05:01 PM EDT

EPA's rollout of a controversial new transparency policy that would severely restrict the scientific research the agency can rely on when drafting new regulations has been slowed down by political officials' fears that it could have major unintended consequences for chemical makers, according to newly released EPA documents.

The issue of scientific transparency has been high on the agenda of House Science Chairman [Lamar Smith](#) (R-Texas), who has found strong support from EPA Administrator Scott Pruitt — much to the consternation of public health advocates and green groups, who view the effort as backdoor attack on the agency's ability to enact environmental regulations.

Since Pruitt announced plans for the new policy last month, researchers and public health proponents have raised alarms that it could restrict the agency's ability to consider a broad swath of data about the effects of pollution on human health. But documents released under the Freedom of Information Act show that top EPA officials are more worried the new restrictions would prevent the agency from considering industry studies that frequently support their efforts to justify less stringent regulations.

Emails between EPA officials obtained by the Union of Concerned Scientists show that Nancy Beck, the top political official in the agency's chemicals office who came to the agency after serving as a key expert for the chemical industry's lead lobbying group, voiced major concerns after she received a draft of the not-yet-released policy on Jan. 31.

The new scientific transparency directive is expected to require that the raw data for all studies EPA relies on be publicly available, and that the studies be peer-reviewed. But Beck said these requirements would exclude a great deal of industry data about pesticides and toxic chemicals that her office considers when determining whether a substance is safe or must be restricted.

It costs companies "millions of dollars to do these studies," Beck wrote in an email to Richard Yamada, the political official in EPA's office of research and development who is spearheading work on the new scientific policy and is also a former staffer for the House Science Committee chairman.

"These data will be extremely valuable, extremely high quality, and NOT published," Beck wrote. "The directive needs to be revised."

Moreover, much of this data, Beck noted, is considered proprietary by companies. It is dubbed confidential business information, and even though EPA can consider it as part of its regulatory review, the data cannot legally be made public.

Yamada replied to thank Beck for the heads up. "Yes, thanks this is helpful - didn't know about the intricacies of CBI," he wrote. "We will need to thread this one real tight!"

The term "confidential business information" primarily applies to industry information. That data is separate from the personal medical information that public health researchers worry could block consideration of their work.

Yogin Kothari, a lobbyist for the Union of Concerned Scientists, said the emails show the Trump administration's EPA has been "trying to stack the deck in favor of the industries they're supposed to be regulating."

"They want to potentially create exemptions for industry, but if you look at this entire set of documents ... you will see that there's not a single consideration for the impacts on public health data, on long-term health studies, on studies that EPA does after public health disasters like the BP oil spill," he said.

EPA spokeswoman Liz Bowman emphasized the policy is not yet finalized.

"These discussions are part of the deliberative process; the policy is still being developed. It's important to understand; however, that any standards for protecting [confidential business information] would be the same for all stakeholders," she said in a statement.

The emails indicate Pruitt wanted the new science policy rolled out at the end of February, and teased his plans in an interview with conservative outlet The Daily Caller in mid-March. But the agency has yet to finalize the policy.

The transparency directive has its origins in legislation introduced by Smith during the Obama administration, that had the backing of a number of industry groups, including the American Chemistry Council. The House Science Committee chairman frequently charged that the Obama EPA used "secret science" to justify "costly new regulations."

Although versions of the measure were approved by the House multiple times, the Senate never took it up. CBO estimated that one version of Smith's legislation would cost EPA \$250 million a year, at least in the initial years, and a leaked staff response to questions from the budget office said a later version would be even more costly, would endanger confidential medical and business information, and "would prevent EPA from using the best available science."

But Smith found an ally in Pruitt. The emails indicate that Smith met with Pruitt in early January and show that Pruitt's staff quickly began working on a directive to "internally implement" the legislation.

Industry's backing for the new scientific approach began to waiver under the Trump administration, though. When a top American Chemistry Council scientist testified before Smith's committee in February 2017, she emphasized the need to protect industry information if the transparency initiative moved forward.

"One of the things that we do need to take into consideration as making that data publicly available is that there are adequate protections for confidential business information to ensure that we keep innovation and competitiveness available for the marketplace," Kimberly White told the committee.

Industry has historically claimed that a wide range of information about chemicals, ranging from the processes by which they are produced, to the locations of manufacturing plants, to their very identities, must be kept confidential in order to keep competitors from learning trade secrets. Environmental and public health advocates argue that industry claims this exemption in many cases where it's not necessary and that it often keeps important health and safety information from public view.

The issue was a key point of debate when Congress considered a major overhaul of the nation's primary chemical safety law passed 2016 and has reemerged as Pruitt's EPA sets about implementing the law.

Asked for comment on EPA's new effort to implement the scientific transparency approach internally, American Chemistry Council spokesman Scott Openshaw said the group looks forward to reviewing the directive once it's finalized.

"It is critical that any final directive properly protect confidential business information and competitive intelligence," he said in a statement.

The internal emails show that EPA political staff were particularly attuned to this concern. In a Feb. 23 email to colleagues, Beck forwarded language from a 2005 White House document that laid out narrow exemptions from its requirement that all "important scientific information" disseminated by the federal government go through peer review.

"[Y]ou may need to tweak but hopefully there is something helpful here that can be borrowed/adopted," she wrote.

Richard Denison, lead senior scientist for the Environmental Defense Fund, said that EPA's access to industry data is indeed important to its ability to review the safety of new chemicals and pesticides, but said the internal EPA communications show that Pruitt's EPA wants to "have their cake and eat it too" with the new directive.

"They're trying to force peer review studies done by academic scientists to disclose every last detail, while at the same time allowing industry studies to be kept private or aspects of those to still be kept private," he said.

He pointed out that the concerns Beck raised about the burden the new policy would place on industry are the very same ones that the CBO report said the policy would place on EPA.

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France's Macron arrives for 'celebration' of unlikely friendship with Trump [Back](#)

By Nicholas Vinocur and Michael Crowley | 04/22/2018 09:45 PM EDT

PARIS — French President Emmanuel Macron will receive full state honors in Washington this week, nine months after he rolled out a literal red carpet for Donald Trump on Paris' Avenue des Champs Élysées.

The three-day visit is likely to feature more displays of public affection between two leaders who talk on the phone constantly and closely coordinated recent airstrikes against Syria. Despite the U.S president's enormous unpopularity in his country, Macron virtually never criticizes Trump in public and calls him a "friend." Trump in turn reportedly even scribbled a [love note](#) to the 40-year-old French president last July.

This week's visit will be "something of a celebration of the relationship," a senior Trump administration official said.

Few would have predicted such talk just after Macron's May 2017 election defeat of the nationalist insurgent Marine LePen, whom Trump [implied](#) he supported. Macron's dark-horse win was seen as a rebuke to the western nationalist movement of which Trump has become a symbol. And while the French [adored](#) President Barack Obama as a suave intellectual, Trump is seen as the embodiment of a gauche American.

But rather than denounce Trump as many French politicians have, Macron has sought to win Trump over with flattering words. In an interview with "Fox News Sunday," Macron stressed his similarities with Trump, saying both he and the president could be called a "maverick" whose election had been unexpected.

The two men hardly see eye to eye on policy, and are expected to debate the Iran nuclear deal, Syria and trade policy, among other sensitive topics.

But Macron and Trump have worked closely together as Paris takes a larger leadership role on international issues — at a time when Britain is sidelined by political chaos and a weakened German Chancellor Angela Merkel's relationship with Trump is cool at best.

"Macron has become Trump's main European interlocutor when it comes to addressing international crises," Alexandra de Hoop Scheffer, senior transatlantic fellow at the German Marshall Fund, [wrote](#) in a recent policy paper.

Macron and Trump will share a private dinner Monday evening, followed by a bilateral meeting early Tuesday. They'll then meet with Cabinet members before a state dinner at the White House. On Wednesday, Macron will address a joint session of Congress.

In their private talks, the two men are likely to focus on security issues, including a fast-approaching decision point for the Iran nuclear deal. French officials say they share some of Trump's concerns about the July 2015 pact brokered by President Barack Obama, but are urging Trump not to abandon the agreement in mid-May, when Trump has threatened to reimpose sanctions on Tehran.

Macron has sought common ground with Trump by saying the current deal is flawed and that he might be willing to crack down on Iran's ballistic missile program. But Trump wants much stronger measures that French officials worry could abrogate the deal entirely. A Trump official said the deal would be "a major topic of discussion" during Macron's visit.

The official also said the two leaders "will discuss, probably in some detail, the way ahead in Syria."

In a televised debate last week, Macron said he had changed Trump's mind on the U.S. presence in war-torn Syria: "President Trump said the USA's will is to disengage from Syria. We convinced him that it was necessary to stay," the French leader said.

The White House quickly denied that characterization, and Macron later said he never meant the countries should maintain an indefinite military presence in the country.

But on Sunday, Macron told Fox News that he would urge international cooperation during his address to Congress, warning that Iran would benefit from a U.S. and European abandonment of Syria. "We are very much attached to the same values, and especially liberty and peace," Macron said of America and France.

Trade will also be on the agenda, after Macron and Merkel — who's due to fly into Washington on April 27, a few days after Macron leaves — both vowed to tell the U.S. president that Europe would not stand for his recent steel tariffs. U.S. officials may in turn complain to Macron's entourage about a French-led proposal to slap a 3-percent tax on U.S. internet giants.

Despite the menu of issue differences, officials on both sides sought to lower expectations for specific results from the meeting.

"It's largely symbolic," an aide to Macron said.

"I think what the President would like to hear from President Macron is his counsel and his point of view and his perspective," said the Trump official. "Whether we will actually solve, or come to closure, or a full detailed agreement on some of the issues that we've touched on is difficult to say at this remove."

As they work together internationally, Trump and Macron are both fending off political threats at home. A year into his presidency, the French president's sheen as a political prodigy and savior of European liberalism has been dulled by grinding rail strikes and sagging poll numbers.

Macron wants Trump to stand at his side as the European Union's soon-to-be sole military power with a permanent seat on the United Nations Security Council, nuclear capability and the will to intervene where others will not.

The April 14 strike on Syria's chemical facilities bolstered the burgeoning Franco-American relationship, French officials say. Macron and Trump spoke repeatedly during the crisis — and no fewer than seven times over the past month, according to accounts from the Elysée presidential palace.

While Britain also joined the strikes, Merkel barely featured in the Syrian discussions. Characteristically for intervention-averse Germany, she did not order participation in the strikes, commenting on them after the fact as "necessary and appropriate."

Once the missiles had hit their targets, Macron seized on a chance to drive home his point: While others may waver, France remains a red-blooded beacon of Western power. Paris had intervened in Syria for the "honor of the international community," he told the European Parliament in Strasbourg

One outstanding question about the Macron-Trump relationship that fascinates commentators in Europe: Does the French president really like Trump, or is he just "playing him"?

European commentators suggested as much last summer when, during Trump's visit to Paris, Macron mimicked his guest's signature thumbs-up move to TV cameras.

There may be no definitive answer. Macron is a one-time stage actor who loves to quote classical French playwrights from memory and, as he told a pair of French interviewers last weekend, has "no friends."

Quizzed about Macron's apparent affection for Trump, the French president's aides say he has concluded that befriending Trump and avoiding any direct criticism of the U.S. president that could inflame his temper are the best ways of keeping Trump — and the United States — on his nation's side.

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By Kelsey Tamborrino | 07/17/2018 05:43 AM EDT

With help from Emily Holden, Anthony Adragna, Colin Wilhelm and Darius Dixon

SEE YOU THERE: Today's the day — POLITICO Pro is hosting its second annual Pro summit, featuring one-on-one conversations with newsmakers across the policy landscape, including two sessions on energy.

FERC Commissioner Cheryl LaFleur will sit down this afternoon with our own Darius Dixon, before the regulatory body is deadlocked next month following the exit of GOP Commissioner Rob Powelson. LaFleur, a Democrat, has served under presidents from both parties and experienced the agency in almost every configuration — whether it has all five commissioners in place, or just one. There's no shortage of topics to chew over: the potential impact of an Energy Department coal and nuclear rescue plan, the heated rhetoric against states that stand in the way of pipelines, and whether FERC is "on the wrong side of history" when it comes to climate change. Darius' interview with LaFleur starts around 2 p.m.

Also on tap: California Air Resources Board Chairwoman Mary Nichols, Murray Energy CEO Bob Murray and the Council on Foreign Relations' Amy Myers Jaffe will participate in a panel this morning on America's "energy future." Nichols, for one, has been heavily involved in discussions with the Trump administration over car rules that the White House is considering rolling back. Expect questions related to the administration's efforts to pare back regulations and increase oil, gas and coal production — and an in-depth conversation on what that means for free market forces and renewables.

See the full agenda [here](#) and watch the livestream [here](#).

WELCOME TO TUESDAY! I'm your host, Kelsey Tamborrino. Citizens' Climate Lobby's Brett Cease was first to correctly identify the two presidents who threw out the first pitch at an All-Star game in D.C.: Franklin D. Roosevelt in 1937 and John F. Kennedy in 1962. For today: Which state or states have just one consonant in its spelling? Send your tips, energy gossip and comments to ktamborrino@politico.com, or follow us on Twitter [@kelseytam](#), [@Morning_Energy](#) and [@POLITICOPro](#).

JUST RELEASED: [View the latest POLITICO/AARP poll](#) to better understand Arizona voters over 50, a voting bloc poised to shape the midterm election outcome. Get up to speed on priority issues for Hispanic voters age 50+, who will help determine whether Arizona turns blue or stays red.

HITCHING A RIDE ON THE 'MINIBUS': The House Rules Committee late Monday made 70 amendments to the EPA and Interior title of the spending minibuss, [H.R. 6147 \(115\)](#). The amendments focus on blocking a host of Obama-era environmental regulations even as the Trump administration is in the process of rolling back many of those. Some of the amendments that caught ME's eye:

— **Diesel emissions grants:** Rep. [Gary Palmer's amendment](#) would eliminate the popular bipartisan Diesel Emissions Reduction Grant program used to retrofit diesel engines like those in school buses,

— **WOTUS:** Rep. Don Beyer's amendment would remove language blocking the Obama administration's Waters of the U.S. regulation,

— **Obama-era methane rule:** Rep. Markwayne Mullin's amendment would block enforcement of the Obama-era regulation aimed at curbing methane emissions from new oil and gas sources, which the Trump administration is already reconsidering,

— **Social cost of carbon:** Another amendment from conservatives would bar the use of the social cost of carbon in rulemakings,

— **Trailer efficiency:** Reps. Barry Loudermilk and Morgan Griffith's amendment would bar EPA from applying stricter fuel efficiency and greenhouse gas emissions standards to certain truck trailers,

— **Chesapeake Bay:** Rep. Bob Goodlatte's effort would limit EPA's ability to go after states that miss Chesapeake Bay cleanup milestones,

— **Ozone:** Rep. Glenn Grothman's amendment would block implementation of EPA's 2015 tightened ozone standard,

— **Coal ash:** A Democratic amendment would block the Trump EPA from revisiting an Obama-era coal ash regulation,

— **Endangered Species Act riders:** Several measures would bar the administration from issuing or enforcing Endangered Species Act rules relating to species like the lesser prairie chicken and Preble's meadow jumping mouse,

— **Attorney fees:** An amendment from Reps. Jason Smith and Greg Gianforte would block attorney fees from being awarded in any Clean Air Act, Clean Water Act or Endangered Species Act settlement, and,

— **Inspectors general:** Nothing related to former Administrator Scott Pruitt was made in order, but the House will consider an amendment from Rep. Raúl Grijalva that would increase the budget of the Interior Department's inspector general by \$2.5 million.

Read the full list of amendments made in order to the measure here.

'SECRET SCIENCE' OUT IN THE OPEN: EPA's controversial proposal to consider only research with publicly available data gets a public hearing at agency headquarters today starting at 8 a.m. Nearly 70 health, medical, academic and science groups — including the American Lung Association, American Heart Association, American Medical Association and American Academy of Pediatrics — oppose the plan, which they say could hamstring public health and environment protections.

EPA's Science Advisory Board voted unanimously to review the proposal, which Pruitt said was meant to bolster transparency. Paul Billings, national senior vice president of advocacy at the American Lung Association, called the rule a "coordinated effort to ignore the science that is inconvenient to the EPA's agenda," and compared it to lobbying efforts by the tobacco industry in the 1990s to exclude studies that showed secondhand smoke could kill.

What's at stake? The proposal could move forward quickly enough to allow EPA to roll back certain air quality standards currently under review. According to the Natural Resources Defense Council, the plan could undercut computer models meant to test chemicals under the new Toxic Substances Control Act and could toss

out landmark studies that relied on personal health records following extraordinary events, including when Hiroshima and Nagasaki victims were tested over time to find out the effects of radiation on humans.

The meeting will run until 8 p.m. or an hour after the last of more than 100 registered speakers has commented. Speakers, aside from many environment and public health groups, include the American Petroleum Institute, the U.S. Chamber of Commerce, the American Chemistry Council, FreedomWorks Foundation and climate science critic Steve Milloy. Dan Byers of the Chamber of Commerce's Global Energy Institute is expected to applaud the agency's efforts and commend EPA for going through the formal public comment and rulemaking process. "It is one thing to be cavalier about transparency principles when their application has little or no import to public policy, but federal rules that impact millions of people and billions of dollars should be held to a higher standard," he is expected to say. Also registered are Reps. Paul Tonko, Suzanne Bonamici and Dan Lipinski. Comments can be submitted until Aug. 16.

Related reading: Competitive Enterprise Institute senior fellow Angela Logomasini looks at the science transparency rule in analysis published today. "The rule is actually far more modest and flexible than depicted by its critics, and its goals are in fact achievable," Logomasini writes. Read it here.

FOR THE RECORD: The House Rules Committee meets at 3 p.m. this afternoon to formulate a rule on an anti-carbon tax resolution, H. Con. Res. 119 (115), that calls a tax on carbon released from fossil fuels "detrimental to the United States economy." The Rules panel will tee up a vote later this week on the resolution, which is led by Majority Whip Steve Scalise and would put a range of lawmakers — most notably the Climate Solutions Caucus — on the record on the issue.

WHERE'S ZINKE? Interior Secretary Ryan Zinke will deliver remarks this morning at the first meeting of the "Made in America" Outdoor Recreation Advisory Committee. The committee is tasked with advising the secretary on "public-private partnerships across all public lands, with the goal of expanding access to and improving infrastructure on public lands and waterways." See the meeting agenda.

AMERICA'S PLEDGE STILL WORKING ON PLEDGES: Michael Bloomberg and California Gov. Jerry Brown, the co-chairs of climate organization "America's Pledge," have unveiled a preview of the report they will release at the Global Climate Action Summit in San Francisco in September, detailing "bottom-up" opportunities for climate action sans federal leadership. The list is familiar: boosting renewables, accelerating coal retirements, retrofitting buildings for energy efficiency, electrifying building energy use, accelerating electric vehicle adoption, phasing out HFCs, preventing methane leaks at the wellhead, reducing methane leaks in cities, reducing emissions from land and starting carbon markets.

Vice Chairman Carl Pope said the group still plans to debut a quantitative analysis outlining what state and local governments are already doing, what they have committed to and what they are keying up. "We have every reason to believe the rest of the world is watching this very closely," Pope said, noting that the U.N.'s top climate official, Patricia Espinosa, mentioned the group and summit by name at the Vatican earlier this month. Read it here.

ESA GETS ITS DAY: Proposed tweaks to the Endangered Species Act will be front and center at a Senate Environment and Public Works hearing this morning. The hearing will feature testimony from Wyoming Gov. Matt Mead, Colorado Parks and Wildlife's Bob Broscheid and Virginia's Secretary of Natural Resources Matthew J. Strickler, and will focus on a discussion draft released by Chairman John Barrasso earlier this month aimed at changing the statute. **If you go:** The hearing kicks off at 9:45 a.m. in 406 Dirksen. Livestream here.

TAKEN BY STORMWATER: The House on Monday passed by voice vote H.R. 3906 (115), the Innovative Stormwater Infrastructure Act of 2017, which would "establish centers of excellence" for stormwater control infrastructure. The legislation, introduced last year by Democratic Rep. Denny Heck, directs EPA to create a

stormwater infrastructure funding task force to make recommendations on the availability of public and private funding for stormwater infrastructure.

DOE ISSUES FIRST TRIBAL LOAN GUARANTEE: The Energy Department will issue its first solicitation for the Tribal Energy Loan Guarantee Program today. The program provides up to \$2 billion in partial loan guarantees to support energy development in Native American and Alaska Native communities. According to DOE, today's solicitation marks more than \$40 billion in energy infrastructure loans and loan guarantees from DOE's Loan Programs Office in five areas.

HOUSE PANEL TO HOLD GRID HEARING: House Natural Resources will hold a hearing on July 25 on Puerto Rico's electric grid recovery and possible improvements to make it more efficient and resilient to future hurricanes. On top of the devastation caused by Hurricane Maria last year, Puerto Rico's electric utility owes bondholders \$9 billion, and most of its leadership departed last week after clashes with Gov. Ricardo Rosselló over executive compensation and political control of the utility, which is quasi-governmental.

MAKING THE GRADE: The Environment America Research & Policy Center is out today with its state-by-state report card, "Renewables on the Rise," which details increases in solar, wind, energy efficiency, electric vehicles and battery storage. The report says the U.S. now produces almost six times as much renewable electricity from wind and solar than it did in 2008. It also found that in March of last year, wind and solar produced 10 percent of the United States' electricity — marking a first. On the state level, the report said California, Arizona, North Carolina, Nevada and Texas saw the greatest total increases from 2008 until 2017 in solar energy generation. See the report [here](#) and a state-by-state interactive map [here](#).

YOU DOWN WITH TIP? A bipartisan group of four senators wrote to Energy Secretary Rick Perry on Monday in support of the Western Area Power Administration's Transmission Infrastructure Program, which was axed under the Trump administration's fiscal 2019 budget proposal. "TIP is one of the few federal programs that directly supports new and upgraded electric transmission," according to the letter, signed by Sens. Catherine Cortez Masto, Martin Heinrich, Dean Heller and Cory Gardner.

HOUSE PLANS FLOOD INSURANCE VOTE: The House is planning to vote next week to extend the National Flood Insurance Program, ahead of its July 31 expiration, sources familiar with the matter tell Pro Financial Services' Zachary Warmbrodt. There are already a few options on the table for the program: one from Financial Services Chairman Jeb Hensarling, who has been trying to put together an extension bill that includes reforms, and a new bill introduced by Scalise and Rep. Tom MacArthur that would reauthorize the program through Nov. 30. Read [more](#).

FOR YOUR RADAR: Republican Sen. Chuck Grassley introduced bipartisan legislation on Monday targeting price fixing by OPEC. The bill would amend the Sherman Act to make oil-producing and exporting cartels illegal, and was co-sponsored by Sens. Amy Klobuchar, Mike Lee and Patrick Leahy. "It's long past time to put an end to illegal price fixing by OPEC," Grassley said in a statement. Read the legislation [here](#).

MAIL CALL! National Rural Electric Cooperative Association CEO Jim Matheson sent a letter to the leadership of the Energy and Commerce Environment Subcommittee on Monday in support of legislation to reform the New Source Review permitting program.

— **More than 100 Democrats** signed onto a letter to members of both House and Senate Armed Services committees today to urge them to oppose any provisions to the National Defense Authorization Act that would "have widespread, negative consequences for the conservation of our imperiled wildlife and public lands." Read the letter [here](#).

— **Iowa's congressional delegation** invited acting EPA Administrator Andrew Wheeler to their state to discuss the Renewable Fuel Standard. Read it [here](#).

What role will Hispanic voters over 50 play in Arizona this Fall? Read POLITICO Magazine's new series "The Deciders" which focuses on this powerful voting bloc that could be the determining factor in turning Arizona blue.

QUICK HITS

- "Puerto Ricans return to power grid, but fear for long term," The Associated Press.
- "Oil boom in Southern New Mexico ignites groundwater feud with Texas," Water Deeply.
- "In N.Y., farmers think about what might have been," E&E News.
- "Same agenda, different style, acting EPA head pledges," Bloomberg Environment.

HAPPENING TODAY

8:30 a.m. — POLITICO's Pro Summit, 999 Ninth St. NW.

8:45 a.m. — The United States Institute of Peace discussion on "Wildlife Poaching and Trafficking: Combating a Vital Source of Terrorism," 2301 Constitution Avenue NW.

9 a.m. — The Resilient Puerto Rico Advisory Commission discussion with the authors of the newly released "ReImagina Puerto Rico" report, 14th and F St. NW.

9 a.m. — The National Academy of Sciences' Board on Atmospheric Sciences and Climate meeting to discuss a research agenda for adaptation science, 2101 Constitution Ave. NW.

9:45 a.m. — Senate Environment and Public Works Committee hearing on "The Endangered Species Act Amendments of 2018," 406 Dirksen.

10 a.m. — House Natural Resources Federal Lands Subcommittee hearing on federal land bills, 1324 Longworth.

10 a.m. — The Atlantic Council discussion on "Ready and Resilient," focusing on disaster preparedness, 1030 15th St. NW.

10 a.m. — House Oversight Interior, Energy and Environment Subcommittee hearing on "Tribal Energy Resources: Reducing Barriers to Opportunity," 2247 Rayburn.

10 a.m. — House Science Energy and Environment Subcommittees joint hearing on "The Future of Fossil: Energy Technologies Leading the Way," 2318 Rayburn.

10 a.m. — Senate Energy and Natural Resources Committee hearing on the Interior Department's final list of critical minerals, 366 Dirksen.

12:30 p.m. — The Washington Institute for Near East Policy discussion on "Reimplementing Iran Sanctions: Where, How and How Much?" 1111 19th St. NW.

12:30 p.m. — Sens. Ed Markey and Tom Carper press conference on Supreme Court nominee Brett Kavanaugh, S-115.

1 p.m. — EPA meeting on pesticide health and safety, Rosslyn, Va.

1 p.m. — House Energy and Commerce Environment Subcommittee markup of H.R. 3128 (115), 2322 Rayburn.

3 p.m. — House Rules Committee meets to formulate a rule on H. Con. Res. 119 (115), H-313.

THAT'S ALL FOR ME!

To view online:

<https://subscriber.politicopro.com/newsletters/morning-energy/2018/07/spotlight-on-ferc-280874>

Stories from POLITICO Pro

House plans vote to keep flood insurance program going Back

By Zachary Warmbrodt | 07/16/2018 06:49 PM EDT

The House is planning to vote next week to extend the National Flood Insurance Program before leaving town ahead of the program's July 31 expiration, sources familiar with the matter said.

House Financial Services Chairman Jeb Hensarling (R-Texas) has been trying to put together an extension bill that includes reforms, sources said. Another option is a new bill introduced by House Majority Whip Steve Scalise (R-La.) and Rep. Tom MacArthur (R-N.J.) that would reauthorize the program through Nov. 30.

In a statement, Scalise said it was important to keep working on a long-term flood insurance reauthorization but that his bill would take concerns about a lapse off the table for the remainder of hurricane season.

While the House has passed a five-year reauthorization and overhaul, the Senate hasn't reached agreement on its own bill amid disputes over how to retool the program. It's unclear if the Senate would be able to pass anything other than a clean, short-term reauthorization at this stage. Sources said Sen. John Kennedy (R-La.) was planning to try to hotline an extension through January.

To view online click here.

[Back](#)

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Yes, very



Somewhat



Neutral



Not really



Not at all

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POLITICOPRO

This email was sent to woods.clinton@epa.gov by: POLITICO, LLC 1000 Wilson Blvd. Arlington, VA, 22209, USA

Message

From: Shoaff, John [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=AC16FB09CF2C44ADB34A7405DC331532-JSHOAF]
Sent: 4/24/2018 9:07:04 PM
To: Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clint]
Subject: Re: SIGNED: Strengthening Transparency in Regulatory Science

Thanks Clint. Will scan and bet OAQPS would be interested if it comes up with your visit tomorrow. Hope trip goes well.

Sent from my iPhone

On Apr 24, 2018, at 4:48 PM, Woods, Clint <woods.clint@epa.gov> wrote:

Thanks again for the feedback on this front -- Think this is an improvement.

From: Bolen, Brittany
Sent: Tuesday, April 24, 2018 3:20 PM
To: Schwab, Justin <Schwab.Justin@epa.gov>; Beck, Nancy <Beck.Nancy@epa.gov>; Woods, Clint <woods.clint@epa.gov>
Subject: FW: SIGNED: Strengthening Transparency in Regulatory Science

From: Johnson, Laura-S
Sent: Tuesday, April 24, 2018 3:10 PM
To: Jackson, Ryan <jackson.ryan@epa.gov>; Bowman, Liz <[Bowman.Liz@epa.gov](mailto: Bowman.Liz@epa.gov)>; Lyons, Troy <lyons.troy@epa.gov>; Bennett, Tate <Bennett.Tate@epa.gov>; White, Elizabeth <white.elizabeth@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>; Minoli, Kevin <Minoli.Kevin@epa.gov>; Leopold, Matt <Leopold.Matt@epa.gov>; Bowman, Liz <[Bowman.Liz@epa.gov](mailto: Bowman.Liz@epa.gov)>; Wheeler, Andrew <wheeler.andrew@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>; Orme-Zavaleta, Jennifer <Orme-Zavaleta.Jennifer@epa.gov>; Yamada, Richard (Yujiro) <yamada.richard@epa.gov>
Cc: Wooden-Aguilar, Helena <Wooden-Aguilar.Helena@epa.gov>; Grantham, Nancy <Grantham.Nancy@epa.gov>; Richardson, RobinH <Richardson.RobinH@epa.gov>; Hope, Brian <Hope.Brian@epa.gov>; Fonseca, Silvina <Fonseca.Silvina@epa.gov>; Hewitt, James <hewitt.james@epa.gov>; Abboud, Michael <abboud.michael@epa.gov>; Wilcox, Jahan <wilcox.jahan@epa.gov>; Gaines, Cynthia <Gaines.Cynthia@epa.gov>; Nickerson, William <Nickerson.William@epa.gov>; Lovell, Will (William) <lovell.william@epa.gov>; Kime, Robin <Kime.Robin@epa.gov>; Maguire, Kelly <Maguire.Kelly@epa.gov>; Blackburn, Elizabeth <Blackburn.Elizabeth@epa.gov>
Subject: SIGNED: Strengthening Transparency in Regulatory Science

Good afternoon

Today, the Administrator signed the proposed rule "Strengthening Transparency in Regulatory Science."

This proposed regulation is intended to strengthen the transparency of EPA regulatory science. The proposed regulation provides that when EPA develops regulations, including regulations for which the public is likely to bear the cost of compliance, with regard to those scientific studies that are pivotal to the action being taken, EPA should ensure that the data underlying those are publicly available in a manner sufficient for independent validation.

In this notice, EPA solicits comment on this proposal and how it can best be promulgated and implemented in light of existing law and prior Federal policies that already require increasing public access to data and influential scientific information used to inform federal regulation.

Attached is the signed and dated proposed rule. For your convenience, please go to p. 19 for the Administrator's signature.

Please contact me if you have any questions.

Sincerely,
Laura

Laura S. Johnson | U.S. Environmental Protection Agency
Special Assistant, Office of the Administrator | Cell (202) 819-4941
Office (202) 566-1273 | johnson.laura-s@epa.gov

<Strengthening Transparency in Regulatory Science 04-24-2018.pdf>

Message

From: Harvey, Reid [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F8EC31CAAD5048DB83F210032847DE32-RHARVE02]
Sent: 4/24/2018 8:52:04 PM
To: Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clint]
Subject: RE: SIGNED: Strengthening Transparency in Regulatory Science

Yes, thanks, appreciate you sharing it with me.

Reid

From: Woods, Clint
Sent: Tuesday, April 24, 2018 4:48 PM
To: Harvey, Reid <Harvey.Reid@epa.gov>
Subject: FW: SIGNED: Strengthening Transparency in Regulatory Science

FYI – Think there are definitely some improvements here.

From: Bolen, Brittany
Sent: Tuesday, April 24, 2018 3:20 PM
To: Schwab, Justin <Schwab.Justin@epa.gov>; Beck, Nancy <Beck.Nancy@epa.gov>; Woods, Clint <woods.clint@epa.gov>
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Sent: Tuesday, April 24, 2018 3:10 PM
To: Jackson, Ryan <jackson.ryan@epa.gov>; Bowman, Liz <Bowman.Liz@epa.gov>; Lyons, Troy <lyons.troy@epa.gov>; Bennett, Tate <Bennett.Tate@epa.gov>; White, Elizabeth <white.elizabeth@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>; Minoli, Kevin <Minoli.Kevin@epa.gov>; Leopold, Matt <Leopold.Matt@epa.gov>; Bowman, Liz <Bowman.Liz@epa.gov>; Wheeler, Andrew <wheeler.andrew@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>; Orme-Zavaleta, Jennifer <Orme-Zavaleta.Jennifer@epa.gov>; Yamada, Richard (Yujiro) <yamada.richard@epa.gov>
Cc: Wooden-Aguilar, Helena <Wooden-Aguilar.Helena@epa.gov>; Grantham, Nancy <Grantham.Nancy@epa.gov>; Richardson, RobinH <Richardson.RobinH@epa.gov>; Hope, Brian <Hope.Brian@epa.gov>; Fonseca, Silvina <Fonseca.Silvina@epa.gov>; Hewitt, James <hewitt.james@epa.gov>; Abboud, Michael <abboud.michael@epa.gov>; Wilcox, Jahan <wilcox.jahan@epa.gov>; Gaines, Cynthia <Gaines.Cynthia@epa.gov>; Nickerson, William <Nickerson.William@epa.gov>; Lovell, Will (William) <lovell.william@epa.gov>; Kime, Robin <Kime.Robin@epa.gov>; Maguire, Kelly <Maguire.Kelly@epa.gov>; Blackburn, Elizabeth <Blackburn.Elizabeth@epa.gov>
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Sincerely,
Laura

Laura S. Johnson | U.S. Environmental Protection Agency
Special Assistant, Office of the Administrator | Cell (202) 819-4941
Office (202) 566-1273 | johnson.laura-s@epa.gov

Message

From: Tsirigotis, Peter [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D19C179F3CCB4FADB48E3AE85563F132-PTSIRIGO]
Sent: 4/24/2018 8:49:17 PM
To: Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clint]
Subject: Re: SIGNED: Strengthening Transparency in Regulatory Science

Thanks Clint. Full day tomorrow. :)

> On Apr 24, 2018, at 4:47 PM, Woods, Clint <woods.clint@epa.gov> wrote:
>
> Think this is much improved. Looking forward to visiting with the team tomorrow – Thanks!
>
> From: Bolen, Brittany
> Sent: Tuesday, April 24, 2018 3:20 PM
> To: Schwab, Justin <Schwab.Justin@epa.gov>; Beck, Nancy <Beck.Nancy@epa.gov>; Woods, Clint <woods.clint@epa.gov>
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> Cc: Wooden-Aguilar, Helena <Wooden-Aguilar.Helena@epa.gov<mailto:Wooden-Aguilar.Helena@epa.gov>>; Grantham, Nancy <Grantham.Nancy@epa.gov<mailto:Grantham.Nancy@epa.gov>>; Richardson, RobinH <Richardson.RobinH@epa.gov<mailto:Richardson.RobinH@epa.gov>>; Hope, Brian <Hope.Brian@epa.gov<mailto:Hope.Brian@epa.gov>>; Fonseca, Silvina <Fonseca.Silvina@epa.gov<mailto:Fonseca.Silvina@epa.gov>>; Hewitt, James <hewitt.james@epa.gov<mailto:hewitt.james@epa.gov>>; Abboud, Michael <abboud.michael@epa.gov<mailto:abboud.michael@epa.gov>>; Wilcox, Jahan <wilcox.jahan@epa.gov<mailto:wilcox.jahan@epa.gov>>; Gaines, Cynthia <Gaines.Cynthia@epa.gov<mailto:Gaines.Cynthia@epa.gov>>; Nickerson, William <Nickerson.William@epa.gov<mailto:Nickerson.William@epa.gov>>; Lovell, Will (William) <lovell.william@epa.gov<mailto:lovell.william@epa.gov>>; Kime, Robin <Kime.Robin@epa.gov<mailto:Kime.Robin@epa.gov>>; Maguire, Kelly <Maguire.Kelly@epa.gov<mailto:Maguire.Kelly@epa.gov>>; Blackburn, Elizabeth <Blackburn.Elizabeth@epa.gov<mailto:Blackburn.Elizabeth@epa.gov>>
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> Laura
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> Laura S. Johnson | U.S. Environmental Protection Agency
> Special Assistant, Office of the Administrator | Cell (202) 819-4941
> Office (202) 566-1273 | johnson.laura-s@epa.gov<mailto:johnson.laura-s@epa.gov>
>
> <Strengthening Transparency in Regulatory Science 04-24-2018.pdf>

Message

From: Yamada, Richard (Yujiro) [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=4C34A1E0345E4D26B361B5031430639D-YAMADA, YUJ]
Sent: 1/24/2018 4:56:20 PM
To: Bolen, Brittany [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31e872a691114372b5a6a88482a66e48-Bolen, Brit]
CC: Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clin]
Subject: Re: draft memo

Yes will be there Brittany - thanks

Sent from my iPhone

On Jan 24, 2018, at 11:54 AM, Bolen, Brittany <bolen.brittany@epa.gov> wrote:

Clint, sorry we'll miss you. I don't think calling in for this is necessary. Richard, just confirming, are you able to attend briefing?

Thanks,
Brittany

From: Yamada, Richard (Yujiro)
Sent: Wednesday, January 24, 2018 8:36 AM
To: Woods, Clint <woods.clint@epa.gov>
Cc: Bolen, Brittany <bolen.brittany@epa.gov>
Subject: Re: draft memo

Thanks for help and comments -

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Sent from my iPhone

On Jan 23, 2018, at 9:41 PM, Woods, Clint <woods.clint@epa.gov> wrote:

Saw the invite to brief the Administrator on this topic Thursday. Unfortunately, I'm out in Austin but let me know how can I help ahead of time or if joining over the phone would be useful.

On Jan 23, 2018, at 1:28 PM, Woods, Clint <woods.clint@epa.gov> wrote:

Richard,

Thanks for getting the ball rolling. A few quick reactions below,

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Clint Woods
Deputy Assistant Administrator
Office of Air and Radiation, U.S. EPA
202.564.6562

From: Yamada, Richard (Yujiro)
Sent: Monday, January 22, 2018 5:25 PM
To: Bolen, Brittany <bolen.brittany@epa.gov>; Woods, Clint <woods.clint@epa.gov>; Feeley, Drew (Robert) <Feeley.Drew@epa.gov>
Cc: Baptist, Erik <Baptist.Erik@epa.gov>
Subject: draft memo

(This email contains pre-decisional and deliberative material)

Hey Brittany and team,

Please take a look at the brief draft outline – Clint, could you send me

Deliberative Process / Ex. 5

Richard

Richard Yamada
Deputy Assistant Administrator
Office of Research and Development
U.S. Environmental Protection Agency

Phone: 202-564-1727
yamada.richard@epa.gov

Message

From: Lovell, Will (William) [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=3B150BB6ADE640F68D744FADCB83A73E-LOVELL, WIL]
Sent: 4/18/2018 2:27:05 PM
To: Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clin]
Subject: RE: DRAFT Science Transparency op-ed
Attachments: Science Transparency TPs.docx

Also, per Brittany's request, please find attached draft talking points.

From: Lovell, Will (William)
Sent: Wednesday, April 18, 2018 9:01 AM
To: Woods, Clint <woods.Clint@epa.gov>
Subject: RE: DRAFT Science Transparency op-ed

Clint,

Please find attached the documents **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5

Will

From: Woods, Clint
Sent: Wednesday, April 18, 2018 8:54 AM
To: Bolen, Brittany <bolen.brittany@epa.gov>
Cc: Lovell, Will (William) <lovell.william@epa.gov>
Subject: Re: DRAFT Science Transparency op-ed

Thanks! Getting some feedback and talkers together this morning

On Apr 18, 2018, at 7:35 AM, Bolen, Brittany <bolen.brittany@epa.gov> wrote:

Thanks, Will! I won't have time to review until late this afternoon so sharing with Clint who may be able to review earlier today.

Brittany

Begin forwarded message:

From: "Lovell, Will (William)" <lovell.william@epa.gov>
Date: April 17, 2018 at 8:08:04 PM EDT

To: "Bolen, Brittany" <bolen.brittany@epa.gov>
Subject: FW: DRAFT Science Transparency op-ed

Deliberative Process / Ex. 5

From: Beach, Christopher
Sent: Monday, April 16, 2018 3:38 PM
To: Bolen, Brittany <bolen.brittany@epa.gov>; Lovell, Will (William) <lovell.william@epa.gov>
Cc: Woods, Clint <woods.clint@epa.gov>
Subject: RE: DRAFT Science Transparency op-ed

Would it be possible to get it back by COB tomorrow or Wednesday? Thanks!

From: Bolen, Brittany
Sent: Monday, April 16, 2018 3:11 PM
To: Beach, Christopher <beach.christopher@epa.gov>; Lovell, Will (William) <lovell.william@epa.gov>
Cc: Woods, Clint <woods.clint@epa.gov>
Subject: RE: DRAFT Science Transparency op-ed

Thanks, Chris. What is your timeframe?

From: Beach, Christopher
Sent: Monday, April 16, 2018 2:43 PM
To: Bolen, Brittany <bolen.brittany@epa.gov>; Lovell, Will (William) <lovell.william@epa.gov>
Subject: DRAFT Science Transparency op-ed

Hi Brittany and Will,

Here's a rough draft (emphasis on rough) of a science transparency op-ed Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Thanks!
Chris

<Science Op-Ed CB Mark-Up.docx>

<Science Op-Ed WL.docx>

Message

From: Gomez, Laura [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=575BA24FC19D429C8302A05102353238-LGOMEZ]
Sent: 1/23/2018 10:34:23 PM
To: Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clint]; Dominguez, Alexander [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5ced433b4ef54171864ed98a36cb7a5f-Dominguez,]
Subject: RE: EPA PRE-INTERNAL CALL : HONEST ACT IMPLEMENTATION

Likewise Clint!

From: Woods, Clint
Sent: Tuesday, January 23, 2018 4:31 PM
To: Dominguez, Alexander <dominguez.alexander@epa.gov>
Cc: Gomez, Laura <Gomez.Laura@epa.gov>
Subject: Re: EPA PRE-INTERNAL CALL : HONEST ACT IMPLEMENTATION

Thanks Laura! It's been way too long - Looking forward to working with you!

On Jan 23, 2018, at 4:27 PM, Dominguez, Alexander <dominguez.alexander@epa.gov> wrote:

Laura – Can you please forward the invite to Clint Woods and include him on all subsequent HONEST Act discussions. Thank you.

Alex Dominguez

Policy Analyst to the Principal Deputy
Office of Air and Radiation
U.S. Environmental Protection Agency

-----Original Appointment-----

From: Gomez, Laura
Sent: Tuesday, January 23, 2018 4:19 PM
To: Lewis, Josh; Dominguez, Alexander; Atkinson, Emily
Subject: EPA PRE-INTERNAL CALL : HONEST ACT IMPLEMENTATION
When: Friday, January 26, 2018 11:30 AM-1:00 PM (UTC-05:00) Eastern Time (US & Canada).
Where: DIAL IN:

Conference line and code/Ex.6

Purpose: To internally discuss EPA implementation of HR 1430 (ATTACHED)

This is an internal call in preparation for a briefing with Committee on House Science, Space and Technology (HSST). DAA Ringel (OCIR) will lead a discussion with respective program offices regarding the agency's implementation efforts of the HONEST ACT.

Message

From: EPA Press Office [press=epa.gov@cmail20.com]
on behalf of EPA Press Office [press@epa.gov]
Sent: 5/24/2018 12:00:19 PM
To: Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clint]
Subject: EPA Announces Extended Comment Period and Public Hearing on Proposed Rule to Strengthen Science Transparency in EPA Regulations

EPA Announces Extended Comment Period and Public Hearing on Proposed Rule to Strengthen Science Transparency in EPA Regulations

WASHINGTON (May 24, 2018) - Today, the U.S. Environmental Protection Agency (EPA) announced an extension of the comment period on the proposed rule, “Strengthening Transparency in Regulatory Science.” EPA is also announcing a public hearing for the proposed rule, which will be held on July 17, 2018, in Washington, D.C.

“EPA is committed to public participation and transparency in the rulemaking process,” said EPA Administrator Scott Pruitt. **“By extending the comment period for this rule and holding a public hearing, we are giving stakeholders the opportunity to provide valuable input about how EPA can improve the science underlying its rules.”**

On April 30, 2018, EPA announced the proposed rule with a 30-day comment period that was scheduled to close on May 30. With today’s extension, the comment period will now close on August 17. EPA is soliciting comments on all aspects of the proposal and specifically on the issues identified in Section III. The public hearing will provide a forum for interested parties to present data, views, and arguments regarding EPA’s proposed rule.

The proposed rule will strengthen the science used in regulations issued by EPA. It will require that underlying scientific information be publicly available. Also, this rule is consistent with data access requirements for major scientific journals and builds upon Executive Orders 13777 and 13783.

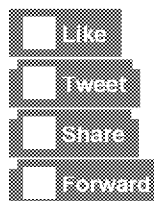
Comments should be identified by Docket ID No. is EPA-HQ-OA-2018-0259 and submitted through the Federal eRulemaking Portal: <http://www.regulations.gov>.

The public hearing will be held at the U.S. Environmental Protection Agency Headquarters, William Jefferson Clinton East Building, Main Floor Room 1153, 1201 Constitution Avenue NW, in Washington, D.C. 20460. The public hearing will convene at 8:00 a.m. EST and continue until 8:00 p.m. EST. Parties interested in presenting oral testimony at the public hearing should register online by July 15, 2018, at <https://www.epa.gov/osa/strengthening-transparency-regulatory-science>.

While we have taken steps to ensure the accuracy of this [Internet version of the rule](#), it is not the official version of the rule for purposes of public comment. Please refer to the official version in a forthcoming *Federal Register* publication.

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Washington, D.C. 20004



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From: POLITICO Pro Energy [politicoemail@politicopro.com]
Sent: 5/24/2018 9:45:04 AM
To: Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clint]
Subject: Morning Energy, presented by ExxonMobil: Democrats try to make GOP pay at the pump — Nukes out at PJM even as capacity prices double — Senate Appropriations marks up Energy-Water

By Kelsey Tamborrino | 05/24/2018 05:42 AM EDT

With help from Anthony Adragna and Eric Wolff

PUMP UP THE VOLUME: Days away from the Memorial Day weekend, gas prices are on the rise — and Democrats didn't have to look far for someone to blame. During a press conference in front of a notably pricey Exxon gas station, Democratic leaders blamed President Donald Trump's foreign policy decisions — including his move to reimpose sanctions on Iran — for the 50-cent-per-gallon surge in prices since he took office. "There's a straight line between Trump's policies and the price of gasoline," Sen. [Brian Schatz](#) told Pro's Ben Lefebvre and Anthony Adragna.

A page out of the Trump playbook: In pushing the blame onto Republicans, Democrats aren't breaking new ground. Trump himself called for former President Barack Obama's firing when in October 2012 gas prices hit "crazy levels." Republicans weren't surprised by the Democratic talking point, either. "Everyone's going to look for whatever political leverage they have going into an election," Sen. [Lisa Murkowski](#) said. "[But do] you think that Republicans created the high prices? No."

Roadblocks ahead: The Democratic message faces a big obstacle: Short of an energy crisis like the one President Jimmy Carter faced in his 1980 reelection campaign, it's tough to convince voters the president is to blame for expensive gas. Especially because the White House has little control over gas prices, which largely track the movement in global crude oil market prices. Energy market watchers say the price rally is largely due to moves by OPEC and Russia, in addition to the collapse of Venezuela's oil industry. Read [more](#).

RELATED DOC: Trump has staffed his administration with oil and auto industry insiders, according to a new report from ethics watchdog group Public Citizen. The report breaks down industry influence by the numbers and finds 52 administration staff members have oil and gas ties, 15 with auto industry ties and 10 who have ties to both. Those industry ties are most concentrated at EPA, Interior and the White House. Read [the report](#).

GOOD THURSDAY MORNING! I'm your host Kelsey Tamborrino. Congrats to the American Petroleum Institute's Khary Cauthen, who was the first to identify Franklin D. Roosevelt as the first president to have a state car custom built to Secret Service standards. For today: In what year did someone first attempt to jump the White House fence? Send your tips, energy gossip and comments to ktamborrino@politico.com, or follow us on Twitter [@kelseytam](#), [@Morning_Energy](#) and [@POLITICOPro](#).

POLITICO and the South China Morning Post are partnering to expand coverage of U.S.-China relations. Read our note from POLITICO Editor-in-Chief John Harris and Editor Carrie Budoff Brown to [learn more](#). If you want all China-related content that appears through this partnership sent directly to your inbox, go to your [account settings](#) to sign up for the South China Morning Post tag or reach out to your [account manager](#) for assistance.

COMMENT PERIOD EXTENDED: EPA [extended](#) the comment period for its controversial "secret science" proposal that was set to end on May 30. The public will now have until Aug 16 to make their voices heard on

the proposal to ban the use of studies that don't publicly disclose all data. EPA also said it would hold a public hearing July 17 in Washington on the proposal rule, heeding public requests to do so.

NUKES OUT OF PJM EVEN AS CAPACITY PRICES DOUBLE: PJM Interconnection, which manages the nation's largest power market, shed almost a third of its nuclear capacity in capacity auction results released yesterday for the 2021-22 delivery year. The auction, which provides extra payments to generators in return for staying available to run at any time, saw prices nearly double to \$140 per megawatt-day, and it will generate \$9.3 billion in revenue for companies with plants that cleared. Stu Bressler, PJM's senior vice president for Operations and Markets said prices rose because companies were trying to make up revenue lost to lower energy prices. "The offers from supply resources into the capacity auction take into account the actual as well as the anticipated energy revenues when they construct those offers in order to meet their required revenues," he told reporters Wednesday.

More megawatts cleared the auction for every other fuel type. Solar capacity quadrupled and wind added 529 MW, making up for ground lost in last year's auction. Coal added 500 MW compared to the previous auction, something that may catch the attention of the Department of Energy, which is trying to save coal plants. "The results of this auction should reassure everyone that the electricity markets are working and maintaining a reliable system," said Susan Buehler, a spokeswoman for the grid operator. "PJM has always said we don't believe there is any need for intervention."

Plenty of power: PJM continues to have far more power than it needs to meet reserve requirements. In 2021-22, it will have a 21.5 percent reserve, well above the 15.8 percent target. That reserve is actually down 2 points from the auction to supply power for 2020-21.

EVERY BILL GETS ITS DAY: The Senate Appropriations Committee will mark up its fiscal 2019 Energy-Water appropriation bill, which puts discretionary funding at \$43.8 billion — \$566 million more than this year's appropriation and \$7.2 billion more than the administration requested. The bill provides \$6.65 billion for the Office of Science — a \$390 million boost — and would increase funds for ARPA-E, which the White House has sought to eliminate. The committee will also consider so-called 302(b) allocations.

How it'll play out: Lamar Alexander is already eyeing how the Senate might move on the title in the coming weeks. "My guess would be two or three bills would come over from the House, Sen. [Mitch] McConnell could put those bills together, put them on the floor at once and allow amendments to them all," Alexander, who chairs the Energy and Water Subcommittee, told reporters. He added that 83 senators had provided input into his bill and that his subcommittee was able to address those suggestions "to some degree in almost every case."

If you go: The markup kicks off at 10:30 a.m. in 106 Dirksen.

BRIDENSTINE'S CLIMATE EVOLUTION COMPLETE: NASA Administrator Jim Bridenstine endorsed a major federal report that echoed the scientific consensus that human activity is the primary driver of climate change. Under questioning Wednesday from Sen. Brian Schatz, the former Oklahoma lawmaker said the National Climate Assessment "has clearly stated that it is extremely likely ... that human activity is the dominate cause of global warming and I have no reason to doubt the science that comes from that." Bridenstine agreed that his new position on the science constituted an evolution of his views and vowed to protect climate science work at the space agency. Keep in mind: The climate report in question is the same assessment Administrator Scott Pruitt sought to rebuff in his proposed "red team-blue team" debate. Watch the Bridenstine clip here.

WHEN WE LAST LEFT OUR HEROES: Top deputies across the Trump administration — including EPA Deputy Administrator Andrew Wheeler, Deputy Energy Secretary Dan Brouillette and USDA Deputy Secretary Stephen Censky — will meet today to try to resolve long-standing tensions over the Renewable Fuel Standard. The group will pick up where the president left off during his meeting on the topic last month, including the unfinished business of whether to allow biofuel exports to receive Renewable Identification Numbers, and whether to reallocate the gallons small refiners were exempted from blending under economic hardship waivers

from EPA. A refining source previously told Pro's Eric Wolff the USDA is trying to capitalize on the controversies surrounding EPA and has been pressing the agency to move quickly on allowing year-round sales of 15 percent ethanol fuel.

And with small refinery exemptions on the table, ME will be looking to see how Wednesday's news that Marathon Petroleum asked EPA for an exemption plays out. Ahead of today's meeting, the ethanol and biofuel trade association Growth Energy released a statement that called out the "flood of illegitimate waivers" and their resulting "'demand destruction' for U.S. farmers at a time when rural communities can least afford it."

**** Presented by ExxonMobil:** Biofuels refined from algae could transform how we power the vehicles that move people and things. It's energy-rich and emits significantly less CO₂ than most transportation fuels. And it doesn't compete with food and fresh water supplies. We're researching how to scale up algae biofuels production in a meaningful way. EnergyFactor.com **

BIODIESEL WANTS MORE: Biodiesel producers think EPA should crank up the biodiesel requirement, not leave it flat, as POLITICO reported yesterday. "These rumored numbers are disappointing," Kurt Kovarik, VO for federal affairs for the National Biodiesel Board said in a statement. "Holding biomass based diesel flat is a missed opportunity to signal growth, which is what the RFS is intended to do. ... The easiest way to fix this and turn around growing dissatisfaction among rural voters is to provide growth to the biodiesel industry and increase this number."

STILL WORKING: John Cornyn, the Senate's No. 2 Republican, said he continues to have discussions on his legislation to overhaul the Renewable Fuel Standard "almost daily, certainly at the staff level," but wasn't sure the talks would bear fruit this year. "We keep making progress but the goal line still seems some ways away," he told reporters. "I'd love to solve the problem this year, but I just don't know."

CARB AND EPA HAVE A MEET: EPA and the California Air Resources Board met Wednesday to open negotiations on a single unified standard for fuel economy, following a White House meeting with automakers earlier in the month. EPA and the National Highway Traffic Safety Administration are threatening to try and revoke California's waiver, risking a lengthy court battle that could balkanize the auto market. "Today's conversations between Administration Officials and the California Air Resources Board were productive," EPA and the Department of Transportation said in a joint statement following the meeting. "We are fully supportive of an open dialogue that proceeds in an expedited manner. EPA and USDOT look forward to moving ahead on a joint proposed rule and receiving practical and productive feedback from all stakeholders."

MOVING QUICKLY: Senate EPW Chairman John Barrasso said Wednesday he's working to reach a time agreement with Democrats to speed floor consideration of a broad water infrastructure package S. 2800 (115) that cleared his panel unanimously earlier this week. Barrasso said it would "be great" to get the bill passed before the Fourth of July recess. His Democratic counterpart on the panel, Sen. Tom Carper, agreed it wouldn't take long for the Senate to complete its work on the bill: "I don't think we're going to need a week. We might need a day," he said.

N.J. GOV DEFENDS EXXON SETTLEMENT USE: New Jersey Gov. Phil Murphy defended using money from a \$225 million settlement with Exxon Mobil to help balance his state's budget. The Democratic governor told reporters he wasn't happy about the decision, but said the state had "been dealt a lousy hand." Environmental groups are appealing the settlement in the hopes of negotiating a new deal, Pro New Jersey's Danielle Muoio reports.

MAIL CALL! FINISH UP, FERC: A new letter from 16 Democratic senators calls on FERC to finish up its rule to allow distributed energy resources to connect to the grid. The letter, led by Sheldon Whitehouse and Ed Markey, concerns the integration of DERs and renewable aggregators into capacity and energy markets. "This

will enable consumers to play a central role in strengthening reliability and avoiding unnecessary costs by supplying localized energy services," the senators write. Read the [letter](#).

REPORT: TRIBAL COMMUNITIES AT RISK: The Clean Air Task Force published a new [brief](#) Wednesday on the adverse health effects from oil and gas pollution on tribal lands. The report, which looked at lands in New Mexico, North Dakota and Utah, found that Native Americans face disproportionate health risks from living near sources of pollutants, such as VOCs, NOx and resultant smog.

WHAT'S HAPPENING IN COLORADO? The Colorado Association of Commerce and Industry and the National Association of Manufacturers will host [an event](#) today with former Interior Secretary and Colorado Attorney General Gale Norton, focusing on the Boulder, Colo., [climate lawsuit](#) against energy manufacturers over their role in contributing to climate change. Ahead of the event, Independent Petroleum Association of America's Energy in Depth is launching a digital ad buy in the state on the opposition against the lawsuit. Watch [the video](#).

THANKS, CHARLIE: The Citizens for Responsible Energy Solutions will announce a \$185,000 [television and digital ad](#) buy today, thanking Massachusetts Gov. Charlie Baker for his actions addressing climate change and on clean energy solutions. The ads will run across the state and encourage residents to thank Baker for his leadership.

MOVER, SHAKER: Van Ness Feldman announced Wednesday that Jason Larrabee, former Interior principal deputy assistant secretary for fish and wildlife and parks, has joined the firm as a senior policy adviser.

QUICK HITS

- Critics: EPA can't keep prior fuel economy data in its blind spot, [Bloomberg BNA](#).
- Coal company claims bank did not allow it to make loan payments, [S&P Global](#).
- Zinke, Burgum tout innovation over regulation at oil conference, [Bismarck Tribune](#).
- How more carbon dioxide can make food less nutritious, [The New York Times](#).
- New documents show why Pruitt wanted a "campaign-style" media operation, [Mother Jones](#).

HAPPENING TODAY

10:30 a.m. — Senate Appropriations Committee [markup](#) of FY 2019 Energy-Water bill and consideration of 302(b) allocations, 106 Dirksen

11:00 a.m. — The National Oceanographic and Atmospheric Administration conference call briefing on the 2018 Atlantic hurricane season outlook, Lakeland, Fla.

12:45 p.m. — The Center for Strategic and International Studies [conference](#) on "Can Nuclear Compete?" 1616 Rhode Island Avenue

1:00 p.m. — The National Academy of Sciences' Polar Research Board [webinar](#) on "Shaping Scientific Committee on Antarctic Research's New Scientific Research Programs"

5:30 p.m. — U.S. Green Building Council holds [2018 Building Tech Forum](#), Boston

THAT'S ALL FOR ME!

**** Presented by ExxonMobil:** Energy is fundamental to modern life and drives economic prosperity - in small communities across America and around the world. We need a range of solutions to meet growing energy demand while reducing emissions to address the risk of climate change. Visit the Energy Factor to learn more about some of the bold ideas and next-generation technologies we're working on to meet this challenge: EnergyFactor.com **

To view online:

<https://subscriber.politicopro.com/newsletters/morning-energy/2018/05/democrats-try-to-make-gop-pay-at-the-pump-227726>

Stories from POLITICO Pro

Democrats turn to GOP playbook in pinning gas prices on Trump [Back](#)

By Ben Lefebvre and Anthony Adragna | 05/24/2018 05:02 AM EDT

A spike in gasoline prices is giving Democrats a rare chance to borrow an old Republican tactic: pounding the occupant of the White House for motorists' pain at the pump.

They're unleashing the message with gusto against President Donald Trump, arguing that his foreign policy moves — including his push to reimpose sanctions on Iran — are to blame for a 50-cent-per-gallon surge in prices since he took office. Democrats also note that gas prices are the highest they've been in nearly four years despite the multibillion-dollar windfall that oil companies are set to receive from the GOP-backed tax bill.

"There's a straight line between Trump's policies and the price of gasoline," Rep. [Brian Schatz](#) (D-Hawaii) said in a brief interview, echoing a growing chorus of Democrats.

Voters are already feeling spooked: Forty-two percent of Americans won't take a road trip for summer vacation this year, a much lower number of people than last year, and many of them cited higher gas prices as the reason, according to a [survey](#) by gas station data company GasBuddy.

But the Democratic message faces a big obstacle, even as the party is riding a wave of optimism to the November midterms: Short of an energy crisis like the one former President Jimmy Carter faced in his 1980 reelection campaign, it's tough to convince voters the president is to blame for expensive gas, as GOP candidate Mitt Romney found out when he [tried to use it](#) against former President Barack Obama 2012.

Trump himself frequently criticized Obama for rising gas prices in the run-up to his reelection, [tweeting](#) weeks before the November 2012 vote, "Gas prices are at crazy levels--fire Obama!"

GOP lawmakers say they aren't surprised by the Democrats' efforts and they doubt voters will buy the attacks.

"Everyone's going to look for whatever political leverage they have going into an election," Sen. [Lisa Murkowski](#) (R-Alaska), chairwoman of the Energy and Natural Resources Committee, told POLITICO. "[But do] you think that Republicans created the high prices? No."

Still, Democrats believe that the jump in prices at the pump to [nearly \\$3 a gallon](#) will be a core pocketbook issue for voters on the Memorial Day weekend, which signals the beginning of the high-demand summer driving season.

"I'm going to be having town meetings at home over the course of the week. They'll be in rural areas. People drive a long way and they're not going to see this as an abstract issue," Sen. Ron Wyden (D-Ore.), the top Democrat on the Senate Finance Committee, told POLITICO.

Wyden's panel on Tuesday released a report highlighting the fact that the nation's four largest oil companies are poised to reap some \$15 billion in tax benefits over the next decade from the GOP's tax law, while gas prices reach their highest levels in years. Sen. Ed Markey (D-Mass.) released his own staff report this week using the same tactic, blaming higher prices on "President Trump's incoherent foreign policy."

To be sure, the White House has little control over gas prices, which largely track the movement in global crude oil market prices. Those prices have jumped more than 60 percent since last June, even as U.S. oil production climbs to record levels. Energy market watchers say the price rally is largely because OPEC and Russia have cooperated to sop up extra supplies in the international markets as demand continues to climb.

In addition, the collapse of Venezuela's oil industry, one of the biggest foreign suppliers to the U.S., has pushed prices up. Its oil exports have fallen by a third from January 2016 amid the country's political meltdown, and the Trump administration looks poised to place sanctions on the country's remaining exports.

"Even OPEC could not have hoped for this kind of result," said Kevin Book, analyst at energy consulting firm ClearView Energy.

But analysts are also saying that the White House may indeed be contributing to the rise in prices. Trump's appointment of John Bolton as his national security adviser has spooked oil traders who worry about tensions in the Middle East, said Citigroup energy analyst Eric Lee. Meanwhile, Trump's threat to place heavy sanctions on Iran could remove oil from the global markets, and his moving the U.S. embassy in Israel to Jerusalem may irritate Saudi Arabia enough that the kingdom won't increase its own oil flows to lessen the hurt on U.S. drivers.

"It's a combination of things, but what really took prices to the current level is U.S. policy or at least uncertainty," Lee said in an interview.

On Wednesday, a gaggle of Democratic senators including Markey, Minority Leader Chuck Schumer, Maria Cantwell (Wash.) and Bob Menendez (N.J.) held a news conference at an Exxon filling station near the Capitol to blame the price increase on Trump.

"It's well known that geopolitical instability drives oil prices, and gas prices, around the world higher and higher," said Menendez, ranking member of the Senate Foreign Relations Committee. "The Trump administration's chaotic approach to foreign policy not only served instability around the world, it certainly serves to drive up oil prices higher and higher."

When asked how any president could impact pump prices, Schumer told reporters that Trump should pressure OPEC member states and U.S. oil companies to lower their prices.

"He's very, very tight with the crown prince," Schumer said of Trump's relationship with the head of Saudi Arabia. "He's very, very tight with the head of the UAE, very, very tight, supposedly, with Putin. Why doesn't he use that? Oil companies just got a big tax break. Jawbone them."

Trump and Republicans still have one card to play, analysts said: releasing oil into the market from the Strategic Petroleum Reserve, which could tap down prices. That's precisely what some Democrats asked Obama to do in early 2012 when they faced rising retail prices.

"I wouldn't be surprised if the president were to consider the use of the SPR to dampen prices to play to his base for the midterm elections," said Gary Ross, head of global oil analytics at S&P Global Platts. "He might see

such as a signal that he cares, and one that might deflect some criticism for higher gasoline prices due to Iranian sanctions."

White House and Energy Department spokespeople declined to answer questions about whether the administration would consider an SPR release if prices continue to climb.

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Editor's note: A POLITICO partnership in China [Back](#)

By John F. Harris and Carrie Budoff Brown | 05/22/2018 05:04 AM EDT

POLITICO readers will see on our pages today something new and important: the first stories reflecting the publication's commitment to illuminating the U.S. relationship with China.

POLITICO, which began in 2007 as preeminently a Washington publication, in recent years has had a global focus. In Europe, we have the largest news operation covering the increasingly complex and consequential workings of the European Union. Including our growing coverage in the U.S., POLITICO's 250 reporters and editors are now in 15 cities spanning nine time zones. Increasingly, we have heard from our most engaged readers that the place to expand our focus is toward the Pacific, as the U.S. relationship with China — intensely competitive in some spheres, intertwined and mutually dependent in others — will hover over the political and policy debates of the next generation.

One part of our expanding coverage involves a content partnership we are unveiling today with the South China Morning Post. SCMP, based in Hong Kong, is the oldest newspaper in Asia and is the only independent English-language publication in the region. SCMP has an editorial staff of 300 in Asia, with about 40 reporters stationed in mainland China. Like POLITICO, the publication has global ambitions. Under the partnership, SCMP editors will have access to POLITICO stories to share with their readers, and POLITICO editors can draw on the SCMP stories we believe our readers will find most relevant. Over time, editors in both newsrooms will look for opportunities to combine resources on original stories produced in combination with POLITICO and SCMP journalists.

Our experience shows often that the most important stories are best illuminated by being reported simultaneously from multiple perspectives. That's what we do every day in the United States and in Europe. In combination with SCMP, we will now be able to do the same on important subjects — trade, finance, technology and national security among them — at the heart of U.S. interests in China.

And you can expect POLITICO's growth to continue. As our readers' interests reflect a global perspective, so will our publication's journalistic focus and resources.

John F. Harris
Editor in chief

Carrie Budoff Brown
Editor

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Senate subcommittee advances energy and water spending bill [Back](#)

By Eric Wolff | 05/22/2018 03:44 PM EDT

A Senate subcommittee today advanced the Energy-Water appropriations bill to the full committee.

The bill appropriates \$43.8 billion in discretionary funding, \$566 million more than last year's appropriation and \$7.2 billion more than the administration requested. Non-defense activities rose \$474 million, while defense activities were increased \$92 million.

The bill provides \$6.65 billion for the Office of Science, \$390 million more than the last appropriation. And it funds an increase for ARPA-E. It also maintains funding for a weatherization assistance program and includes an extra \$196 million for drought resilience, among other measures.

Chairman [Lamar Alexander](#) lamented that writing the bill was made more difficult because the committee "started with an unrealistic budget proposal from the administration."

Appropriators funded DOE's Office of Energy Efficiency and Renewable Energy at \$2.3 billion, the same level as the current appropriation, but \$1.6 billion than President Donald Trump's budget.

The bill also provides \$6.9 billion for the Army Corps of Engineers, the largest appropriation for the corps, according to Alexander. It makes full use of the Inland Waterways Trust Fund, specifically the top four priority projects.

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Emails show Pruitt pushing 'red team-blue team' climate debate [Back](#)

By Alex Guillén and Anthony Adragna | 05/15/2018 06:39 PM EDT

EPA Administrator Scott Pruitt had hoped at least twice last year to announce his plans for a controversial red team-blue team debate that would take aim at a federal assessment supporting climate change science, according to newly released emails.

Pruitt's contentious review was abandoned because of the White House's objections, but the [communications](#) reveal new details about how the process would have worked and who was influencing Pruitt.

Many scientists have complained that a red team-blue team style debate was a poor way to examine the scientific evidence that overwhelmingly supports the findings that humans are the primary driver behind climate change. But for Pruitt, who had once suggested the event might be televised, [the debate](#) appeared to be directed at rebuffing the Fourth National Climate Assessment.

That government-wide report issued on Nov. 3 contradicted many Trump administration political appointees who have questioned the connection between greenhouse gas pollution and global warming.

A draft press release that circulated on Nov. 4 among top EPA officials, and which was shared with Pruitt on Nov. 5, laid out the line of attack, according to the documents made public on Tuesday by EPA following a records request from the Natural Resources Defense Council.

"EPA is standing up a Red Team peer review of the report," they wrote, while the "blue team" would essentially be the federal assessment and its authors.

"A robust, transparent public peer review evaluation of climate change is something everyone should support," Pruitt said in the unreleased November statement. "Now is a perfect opportunity for the formation of a 'Red Team' exercise."

The draft release also included space for quotes from two prominent climate science critics: Steve Koonin, an Obama-era Energy Department official, and William Happer, a Princeton physicist who argues that increased carbon dioxide would benefit the planet.

The duo appear to have been tapped to help guide the red-team review together.

"Your contributions even in a small way to the validity of the red team blue team approach would be appreciated," Ryan Jackson, Pruitt's chief of staff, wrote to Koonin and Happer on Nov. 4.

In an email to POLITICO, Happer said the exercise was "badly needed," while Koonin, now the director of the Center for Urban Science and Progress at New York University, told POLITICO the National Climate Assessment was "demonstrably deficient on a number of points."

EPA did not return a request for comment.

Pruitt has previously said a Wall Street Journal piece written by Koonin in April 2017 calling for a similar EPA review of climate science was his inspiration for instigating the "red team" review.

The emails, however, show that Koonin and his allies began wooing Pruitt even before that. In an email more than a week before Koonin's WSJ piece ran, Dan Yergin, the Pulitzer-winning oil historian and vice chairman of IHS Markit who joined a board advising President Donald Trump, introduced Koonin by email to Jackson.

Pruitt and Koonin met April 28, and the emails show Koonin was closely involved in the process afterward.

Koonin sent EPA a "prospectus" outlining the exercise, and though much of it was redacted by EPA before its release, Koonin suggested timing the red team review to the National Climate Assessment, which was due out six months later. Doing so would "ensure that certainties and uncertainties in projections of future climates are accurately presented to the public and decision makers," he wrote.

A revised version of the prospectus was circulated by EPA to White House officials in July after news of Pruitt's plans had leaked.

"There are a lot of press reports about EPA's planning on this. None of it is being run by us. This seems to be getting out of control," wrote Michael Catanzaro, a top energy adviser to Trump who has since left the administration, a few days after receiving Koonin's proposal.

In late June, Liz Bowman, then a top EPA spokeswoman, questioned whether the exercise could be announced as early as July 5 or 6. But it wasn't until November that top Pruitt staffers begin circulating a draft press release on the announcement.

A draft of the announcement on Nov. 5 inspired a [lengthy email chain](#), which EPA redacted, that involved direct messages from Trump chief of staff John Kelly, strategic communications director Mercedes Schlapp, and former White House staff secretary Rob Porter.

Pruitt was [touting](#) his plans to launch the red team review as late as December. Emails early in that month [indicate](#) the agency's air chief, Bill Wehrum, would make the announcement on Dec. 12 while Pruitt traveled in Morocco. One message that included Jackson had the subject line of "Red Team/Blue Team Announcement Planned for Tuesday, Dec. 12."

The [New York Times](#) reported in March that Kelly and other top officials stopped the announcement in the fall, and Kelly's deputy Rick Dearborn met with Pruitt in mid-December to declare the plan dead.

To view online [click here](#).

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Sources: EPA, DOE, USDA to talk biofuels Thursday [Back](#)

By Eric Wolff | 05/22/2018 05:09 PM EDT

Top deputies for EPA and the departments of Energy and Agriculture will meet on Thursday to hash out changes to the Renewable Fuel Standard, sources in the ethanol industry and the Senate told POLITICO today.

EPA Deputy Administrator Andrew Wheeler, DOE Deputy Secretary Dan Brouillette and USDA Deputy Secretary Stephen Censky will try to resolve long-standing tensions over the program. None of the agencies responded to requests for comment.

The group will pick up the items left unfinished from the meeting with President Donald Trump last month, including whether to allow biofuel exports to receive Renewable Identification Numbers, and whether to reallocate the gallons small refiners were exempted from blending under the economic hardship waivers granted by EPA.

A refining industry source says that USDA has been pressing EPA to move quickly on allowing year-round sales of 15 percent ethanol fuel, and that USDA "is looking to jam EPA" on reallocating the gallons in the 2019 blending mandate.

"They are probably trying to take advantage of what they imagine to be Pruitt's weakened status these days," the source said. "Not sure it will work."

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This email was sent to woods.clinton@epa.gov by: POLITICO, LLC 1000 Wilson Blvd. Arlington, VA, 22209, USA

Message

From: Yamada, Richard (Yujiro) [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=4C34A1E0345E4D26B361B5031430639D-YAMADA, YUJ]
Sent: 5/23/2018 9:35:36 PM
To: Daniell, Kelsi [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cd867173479344b3bda202b3004ff830-Daniell, Ke]
CC: Bolen, Brittany [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31e872a691114372b5a6a88482a66e48-Bolen, Brit]; Lovell, Will (William) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3b150bb6ade640f68d744fadcb83a73e-Lovell, Wil]; Schwab, Justin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=eed0f609c0944cc2bbdb05df3a10aadb-Schwab, Jus]; Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clin]; Beach, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=6b124299bb6f46a39aa5d84519f25d5d-Beach, Chri]; Konkus, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=555471b2baa6419e8e141696f4577062-Konkus, Joh]
Subject: Re: FOR REVIEW -- EPA Announces Extended Comment Period and Public Hearing on Proposed Rule to Strengthen Science Transparency in EPA Regulations

We are working on it - thanks

Sent from my iPhone

On May 23, 2018, at 5:33 PM, Daniell, Kelsi <daniell.kelsi@epa.gov> wrote:

Thanks.

Richard – just need the link from your team.

From: Bolen, Brittany
Sent: Wednesday, May 23, 2018 5:29 PM
To: Daniell, Kelsi <daniell.kelsi@epa.gov>
Cc: Lovell, Will (William) <lovell.william@epa.gov>; Schwab, Justin <Schwab.Justin@epa.gov>; Woods, Clint <woods.clint@epa.gov>; Yamada, Richard (Yujiro) <yamada.richard@epa.gov>; Beach, Christopher <beach.christopher@epa.gov>; Konkus, John <konkus.john@epa.gov>
Subject: Re: FOR REVIEW -- EPA Announces Extended Comment Period and Public Hearing on Proposed Rule to Strengthen Science Transparency in EPA Regulations

Looks good to me. Thanks.

Sent from my iPhone

On May 23, 2018, at 5:05 PM, Daniell, Kelsi <daniell.kelsi@epa.gov> wrote:

Great, thanks Will

From: Lovell, Will (William)
Sent: Wednesday, May 23, 2018 5:04 PM
To: Daniell, Kelsi <daniell.kelsi@epa.gov>; Schwab, Justin <Schwab.Justin@epa.gov>; Woods, Clint <woods.clint@epa.gov>; Yamada, Richard (Yujiro) <yamada.richard@epa.gov>

Cc: Bolen, Brittany <bolen.brittany@epa.gov>; Beach, Christopher <beach.christopher@epa.gov>; Konkus, John <konkus.john@epa.gov>
Subject: RE: FOR REVIEW -- EPA Announces Extended Comment Period and Public Hearing on Proposed Rule to Strengthen Science Transparency in EPA Regulations

Inserting template language at the bottom for posting a pre-pub document.

From: Daniell, Kelsi
Sent: Wednesday, May 23, 2018 4:57 PM
To: Schwab, Justin <Schwab.Justin@epa.gov>; Lovell, Will (William) <lovell.william@epa.gov>; Woods, Clint <woods.clint@epa.gov>; Yamada, Richard (Yujiro) <yamada.richard@epa.gov>
Cc: Bolen, Brittany <bolen.brittany@epa.gov>; Beach, Christopher <beach.christopher@epa.gov>; Konkus, John <konkus.john@epa.gov>
Subject: RE: FOR REVIEW -- EPA Announces Extended Comment Period and Public Hearing on Proposed Rule to Strengthen Science Transparency in EPA Regulations

Made that edit below. Please let me know what else.

From: Schwab, Justin
Sent: Wednesday, May 23, 2018 4:53 PM
To: Lovell, Will (William) <lovell.william@epa.gov>; Woods, Clint <woods.clint@epa.gov>
Cc: Daniell, Kelsi <daniell.kelsi@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>; Yamada, Richard (Yujiro) <yamada.richard@epa.gov>; Beach, Christopher <beach.christopher@epa.gov>; Konkus, John <konkus.john@epa.gov>
Subject: Re: FOR REVIEW -- EPA Announces Extended Comment Period and Public Hearing on Proposed Rule to Strengthen Science Transparency in EPA Regulations

Looping in Clint.

Attorney Client / Ex. 5

Sent from my iPhone

On May 23, 2018, at 4:47 PM, Lovell, Will (William) <lovell.william@epa.gov> wrote:

Looping in Richard.

From: Daniell, Kelsi
Sent: Wednesday, May 23, 2018 4:45 PM
To: Bolen, Brittany <bolen.brittany@epa.gov>; Lovell, Will (William) <lovell.william@epa.gov>; Schwab, Justin <Schwab.Justin@epa.gov>
Cc: Beach, Christopher <beach.christopher@epa.gov>; Konkus, John <konkus.john@epa.gov>
Subject: FOR REVIEW -- EPA Announces Extended Comment Period and Public Hearing on Proposed Rule to Strengthen Science Transparency in EPA Regulations

Please review ASAP. We'd like to schedule this to go out at 8:00am tomorrow morning. We're just waiting for a link from Will/ORD for the pre-publication document. Thanks!

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

From: POLITICO Pro Energy [politicoemail@politicopro.com]
Sent: 6/11/2018 9:44:37 AM
To: Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clint]
Subject: Morning Energy, presented by the National Rural Electric Cooperative Association: What's inside the Senate farm bill? — 11 states win WOTUS injunction — Oil refiners win out in biofuels stalemate

By Kelsey Tamborrino | 06/11/2018 05:42 AM EDT

With help from Annie Snider and Alex Guillén

SHIFTING GEARS TO SENATE'S FARM BILL: The Senate Agriculture Committee is aiming to move its long-awaited [farm bill](#) through the chamber in a speedy three-and-a-half weeks, hoping for a vote on the bipartisan measure that includes reauthorizing its Energy Title programs before the July 4 recess. Chairman [Pat Roberts](#) and ranking member [Debbie Stabenow](#) are hoping for a drama-free process, Pro's Agriculture team [reports](#), starting with the committee mark up on Wednesday.

— **Among the Energy Title programs** that would be reauthorized are the Biorefinery Assistance Program, which provides loan guarantees to build facilities that make advanced biofuels and renewable chemicals; the Rural Energy for America Program, which gives grants for renewable energy systems and energy efficiency improvements; and the Repowering Assistance Program, which reimburses biorefineries for dropping fossil fuels in favor of biomass like wood chips and perennial grasses.

Digging deeper: Democratic Sen. [Ron Wyden](#) held up his soil provision for its focus on improving soil health, in a way that would also address climate change. Wyden's provision, he said in a [statement](#), would establish a pilot project managed by USDA to promote the use of advanced farming practices to capture carbon in soil.

— **Conservation programs were spared major cuts** in the Senate legislation, leaving in place two flagship USDA conservation programs — the Conservation Stewardship Program and the Environmental Quality Incentives Program — as separate entities, while the House bill aims to combine parts of both, Pro's Liz Crampton [writes](#). Read the draft bill [here](#).

11 STATES WIN WOTUS INJUNCTION: A federal judge granted a [preliminary injunction](#) on Friday evening against the Obama administration's Waters of the U.S. rule to 11 states. Judge Lisa Godbey Wood for U.S. District Court for the Southern District of Georgia, a George W. Bush appointee, ruled that the states have a substantial likelihood of winning at least some of their claims against the 2015 rule, also called the Clean Water Rule. She singled out two of the states' claims as particularly strong: that the Obama rule violated the Clean Water Act with its sweeping coverage of wetlands and streams high up in the tributary network, and that it violated the Administrative Procedures Act by making significant changes between the proposed and final versions of the rule.

A nation divided: The Georgia court's injunction covers the states of Georgia, Alabama, Florida, Indiana, Kansas, North Carolina, South Carolina, Utah, West Virginia, Wisconsin and Kentucky. That puts the rule on hold in half the country, with a North Dakota district court judge having granted a preliminary injunction to 13 states shortly after the rule was finalized in 2015.

But does it matter? Not immediately, since the Trump administration has already finalized a rule delaying the effective date for WOTUS until 2020. But environmental groups and blue states are challenging that delay rule in court; if they win, that could kick the 2015 rule back into effect. But perhaps more important than the

practical consequences is the signal the ruling sends: Friday's preliminary injunction is the first major ruling on the Obama rule since the Supreme Court kicked the fight down to district courts, and it suggests that opponents of the rule, who have a number of suits filed across the country, including a nationwide injunction request in a Texas district court, may have more wins ahead.

IT'S MONDAY! I'm your host Kelsey Tamborrino, and Andeavor's Stephen Brown correctly identified former President Bill Clinton as the last president to propose a rescissions package. For today: What is the oldest capital city in the United States? Send your tips, energy gossip and comments to ktamborrino@politico.com, or follow us on Twitter [@kelseytam](https://twitter.com/kelseytam), [@Morning_Energy](https://twitter.com/Morning_Energy) and [@POLITICOPro](https://twitter.com/POLITICOPro).

Join Pro subscribers, expert reporters and key decision-makers from the executive branch, federal agencies and Congress for a full day of incisive policy conversations on July 17. Speakers include: Rep. Joe Crowley (D-N.Y.), Chairman, House Democratic Caucus, Kevin McAleenan, Commissioner, U.S. Customs and Border Patrol, and others. [Register today](#).

**** A message from the National Rural Electric Cooperative Association:** America's electric cooperatives serve 1 in 8 Americans, providing affordable and reliable electricity around the clock. More than 900 electric cooperatives serve 56% of the American landscape, including exurban and rural America. Learn more: <https://bit.ly/2kLKp7Z> **

PHONE A FRIEND: Despite controversies surrounding mattresses and Chick-fil-A, EPA Administrator Scott Pruitt remains in the president's good graces, The New York Times [reports](#) in a story focusing on turnover within the White House. The Times writes that President Donald Trump has taken to seeking counsel from outside voices, including Pruitt, and "has dismissed the advice of several aides who have tried to persuade him to fire Mr. Pruitt in light of the growing questions about misuse of his authority." Trump and Pruitt "speak frequently, and the president enjoys discussing his negative view of Jeff Sessions, the attorney general, with the embattled EPA leader." Keep in mind, Pruitt [reportedly](#) has his eye on Sessions' job.

You can drive my car: But even with the president's support, emails continue to provide further fodder for Pruitt critics. ABC News dug out some emails exchanged last fall between a former Pruitt aide and a Toyota representative, which show the Lexus parent company offered the administrator a private chance to test drive one of its brand new Lexus' models — "a potentially problematic pitch to the head of a regulatory body from a company subject to its regulation." Toyota told ABC, however, Pruitt never drove the vehicles. More [here](#).

ICYMI: Pruitt spoke before Colorado's Western Conservative Summit Friday night, where he continued to dismiss criticism as a product of the "substantial" and "transformative changes" occurring at his agency. Asked about criticism of his leadership, Pruitt said, "it was all about Washington and not about people across the country," [according to](#) E&E News' Jennifer Yachnin. "The president gets that, I get that, that's why you see a combustible situation."

IN THE SENATE: The Senate Appropriations Committee [will pick up](#) a series of spending bills this week, beginning Tuesday with a subcommittee markup on its Interior-Environment appropriations bill for fiscal 2019. The full committee is expected to take up the bill on Thursday morning. House appropriators [advanced](#) their \$35 billion Interior-EPA spending bill by a party-line vote last week.

START THE CLOCK: Now that the House has passed the president's roughly \$15 billion in spending cuts via [H.R. 3 \(115\)](#), the Senate is running out of time to carry the torch to the finish line. Under an obscure federal law, Congress can take up the White House's plans for spending cuts with a simple majority in the Senate, Pro's Sarah Ferris reports. But those filibuster-proof powers expire: The Senate must approve the bill by June 22 or be forced to recruit Democrats to the effort. Read [more](#).

A CLOSER LOOK AT THE COMMUNIQUE: The president left this weekend's G-7 meeting with an abrupt reversal on the joint communique, which U.S. officials worked closely with negotiators for days to write, POLITICO's Andrew Restuccia and Brent Griffiths [report](#). Trump announced his decision in a tweet, lashing out at Canadian Prime Minister Justin Trudeau, who expressed opposition to Trump's trade policies at the conclusion of the summit. "... I have instructed our U.S. Reps not to endorse the Communique as we look at Tariffs on automobiles flooding the U.S. Market!" Trump wrote.

But while trade was the focus of Trump's ire, the communique he opted to leave behind also would have dealt with energy. Five bullet points of the agreement were devoted to "climate change, oceans and clean energy," although the U.S. was left out of any items specifically addressing climate change. "We commit to ongoing action to strengthen our collective energy security and demonstrate leadership in ensuring that our energy systems continue to drive sustainable economic growth," the document read.

The other nations also recommitted to the Paris climate agreement, while a separate line outlined that the United States "commits to ongoing action to strengthen the world's collective energy security, including through policies that facilitates open, diverse, transparent, liquid and secure global markets for all energy sources." [Read it.](#)

NO NEWS IS GOOD NEWS FOR REFINERIES: While corn-state Republicans thanked the president last week for squashing proposed changes to the Renewable Fuel Standard that would have sharply increased Renewable Identification Numbers in the market, experts tell Pro's Eric Wolff it's oil refiners who are reaping the rewards of the stalled deal. While refineries say the increase in RINs is necessary to bring down their cost of compliance, the dozens of economic hardship waivers already issued by Pruitt to small oil processors has pushed the cost of those credits to their lowest levels in five years — and without a biofuels deal those waivers will stay in place for now, Eric reports.

"No deal allows the EPA to continue to implement actions as they see fit, and those have been benefiting refiners," said Andy Lipow, an oil industry analyst with Lipow Oil Associates. "[Pruitt's] actions are geared toward helping manufacturing, and the oil industry is just one of the many he's been helping through the deregulation process."

But while those waivers have helped bring RIN prices down, ethanol producers complain it removes an incentive for oil industry players to develop new infrastructure to increase fuel blending. Brooke Coleman, executive director of the Advanced Biofuels Business Council, suggested Pruitt was pushing the limits of the program without concern that the changes could be cut down in court, as scandals mount around him.

"At the end of the day the political cost of all of this stuff ultimately falls on an administration that is unlikely to include him," Coleman said. "One has to wonder if his systematic dismantling of the RFS is something that comes to his benefit and to no one else and that's fine with him." [Read more.](#)

EPA SAYS IT WILL DECIDE FUTURE OF 2015 OZONE RULE BY AUGUST: EPA on Friday told a federal court that it expects to decide by Aug. 1 whether to formally reconsider the 2015 ozone standard. Lawsuits challenging the rule were put on hold in April 2017, just days before oral arguments were scheduled, because the agency said it needed time to decide whether to roll the standard back. EPA has since been ordered by the courts to issue almost all the designations that make up the next implementation step for the 2015 rule. In a Friday [filing](#), EPA urged the court not to revive the suit per a recent request from the ozone rule's challengers, so that it can complete its reconsideration review by Aug. 1.

For those keeping track at home: It's been about 32 months since the 2015 rule was finalized. Because NAAQS standards are supposed to be reviewed every five years, we're currently about 28 months from the next statutory deadline. Factor in either court review time or a reconsideration rulemaking — the next ozone standard is much closer than you think.

POPE WARNS ON CLIMATE CHANGE: The Vatican's two-day confab with top oil executives this weekend centered around the risks of climate change, Reuters reports, with the pope telling executives it is destroying civilization and that the world must reduce fossil fuel use. Pope Francis addressed around 50 executives on Saturday, where he told them that energy access for all is necessary to eliminate poverty and hunger. Read [more](#).

IRAN DEAL CLOUDS NORTH KOREA SUMMIT: Heading into this week's historic summit between Trump and North Korea's Kim Jong Un, the Iran deal lingers, POLITICO's Nahal Toosi reports. The Islamic Republic announced last week that it has expanded its ability to enrich uranium, a key ingredient for nuclear weapons, just weeks after Trump quit the Obama-era Iran deal — and the North Koreans are certainly watching to see what happens next. By insisting the Iran deal should have been far more comprehensive and longer-lasting, Nahal writes, Trump has effectively set a higher — and potentially unattainable — standard for any deal with Kim. Read [more](#).

Related reading: As Trump prepares for the summit in Singapore, he will do so without the help of a White House science adviser or senior counselor trained in nuclear physics, the Times [reports](#), marking him as the first president since 1941 to not name one.

ZINKE WEIGHS IN: Interior Secretary Ryan Zinke appeared on Fox News this weekend to talk trade policy and national security ahead of the summit. Watch it [here](#).

EASY RIDER: A custom Renewable Fuels Association motorcycle that runs on ethanol will debut tonight on an episode of Discovery Channel's "American Chopper." The bike by Paul Jr. Designs is part of RFA's recently announced "Fuel Your Knowledge" campaign to educate on ethanol-blended fuels in small engines, long a controversial issue in the mandates for the biofuel. The episode airs at 10 p.m. tonight.

WATCH: The Sierra Club is out with a new video featuring Minnesota landowners and how they feel about Enbridge's proposed Line 3 tar sands pipeline. Watch it [here](#).

MOVER, SHAKER: The National Wildlife Federation will today announce that Mike Saccone will serve as its associate vice president for communications. Saccone most recently was communications director for the Keystone Policy Center.

QUICK HITS

— FERC and climate change: Where are we now? [E&E News](#).

— Iran slams U.S. for seeking Saudi oil output hike, says OPEC won't comply, [Reuters](#).

—PG&E may face criminal charges after probe of deadly wildfires, [Bloomberg](#).

— Loss of investigators slows key federal chemical safety agency, [Houston Chronicle](#).

— Murphy flouting voters' will on Exxon settlement, groups say, [Associated Press](#).

— The government's new contractor to run Los Alamos includes the same manager it effectively fired for safety problems, [ProPublica](#).

HAPPENING THIS WEEK

MONDAY

8:30 a.m. — The Woodrow Wilson Center's Polar Initiative forum on "Space Technology for a Smart and Resilient Arctic," 1300 Pennsylvania Avenue NW

9:00 a.m. — Citizens' Climate Lobby International Conference and Lobby Day, 2500 Calvert St. NW

9:00 a.m. — International Fuel Ethanol Expo, Omaha, Neb.

10:00 a.m. — The Stanford Woods Institute for the Environment and the Stanford Precourt Institute for Energy forum on "Carbon Removal in the Climate Response Portfolio," 529 14th Street NW

11:00 a.m. — The International Trade Administration discussion on "The Importance of Commercial Nuclear Exports to the U.S. Economy," 2322 Rayburn

12:00 p.m. — Atlantic Council conversation with Vincent DeVito, 1030 15th Street NW

12:00 p.m. — The Heritage Foundation discussion on "Common Sense Farm Subsidy Reforms," 214 Massachusetts Avenue NE

2:00 p.m. — House Natural Resources Committee field hearing on "Effects of Mismanagement of the Cormorant in the Great Lakes Region," Alpena, Mich.

4:00 p.m. — The Wilson Center Brazil Institute discussion on "Brazil-U.S. Cooperation in Implementing Carbon Emissions Reduction Policies," 1300 Pennsylvania Ave NW

TUESDAY

7:45 a.m. — POLITICO Playbook Breakfast interview with House Majority Whip Steve Scalise on Republican priorities and the leadership agenda, 901 Fourth Street NW

8:30 a.m. — The Fuel Cell and Hydrogen Energy Association forum and showcase, 1300 Pennsylvania Ave NW

9:30 a.m. — Senate Appropriations Interior-Environment Subcommittee markup of the FY 2019 Interior-Environment appropriations bill, 124 Dirksen

9:30 a.m. — The Woodrow Wilson Center's Environmental Change and Security Program discussion on "A More Resilient World: The Role of Population and Family Planning in Sustainable Development," 1300 Pennsylvania Avenue NW

10:00 a.m. — Senate Energy and Natural Resources Committee hearing on FERC, 366 Dirksen

12:00 p.m. — The High Performance Building Coalition briefing on building the industry of the future, 2322 Rayburn

12:30 p.m. — The Henry L. Stimson Center and the Institute of Nuclear Materials Management seminar on the disposal of nuclear waste, 1211 Connecticut Avenue NW

1:00 p.m. — United States Energy Association discussion on carbon capture use and policy, 1300 Pennsylvania Avenue NW

WEDNESDAY

8:15 a.m. — NAESCO holds Technology and Financing Workshop, Milwaukee

8:30 a.m. — Securing America's Future Energy discussion on "America's Workforce and the Self-Driving Future," 805 21st Street NW

9:30 a.m. — Senate Agriculture Committee markup of the 2018 farm bill, 328-A Russell

10:00 a.m. — Senate Energy and Natural Resources Committee hearing on various bills, 366 Dirksen

10:00 a.m. — Senate Environment and Public Works Committee hearing on "Innovation and America's Infrastructure: Examining the Effects of Emerging Autonomous Technologies on America's Roads and Bridges," 406 Dirksen

1:00 p.m. — The Electric Drive Transportation Association discussion on "Building the Modern Grid with E-Mobility," 529 14th Street NW

2:30 p.m. — Senate Environment and Public Works Superfund Subcommittee hearing on "Oversight of the Army Corps' Regulation of Surplus Water and the Role of States' Rights," 406 Dirksen

2:30 p.m. — International Association of Drilling Contractors event on "Onshore and Offshore Drilling Rigs," 406 Dirksen

THURSDAY

8:30 a.m. — The National Academy of Sciences workshop on "The Feasibility of Addressing Environmental and Occupational Health Exposure Questions Using Department of Defense Biorepositories," 2101 Constitution Avenue NW

10:30 a.m. — Senate Appropriations Committee markup of the FY 2019 Interior-Environment appropriations bill, 106 Dirksen

1:00 p.m. — The Center for American Progress discussion on "Silencing Science: Risks Posed to Climate and Energy Data from Political Interference," 1333 H Street NW

3:00 p.m. — The Woodrow Wilson Center discussion on "Building Resilience Through Integrated Regional Programming," 1300 Pennsylvania Ave NW

FRIDAY

8:15 a.m. — Securing America's Energy Future forum on its report titled "America's Workforce and the Self-Driving Future," 805 21st Street NW

10:00 a.m. — The Center for Strategic and International Studies discussion on Energy Department priorities, 1616 Rhode Island Avenue NW

12:00 p.m. — The Global America Business Institute discussion on spent fuel management in Sweden, 1001 Connecticut Avenue NW

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Senate Ag debuts bipartisan farm bill [Back](#)

By Helena Bottemiller Evich, Catherine Boudreau and Liz Crampton | 06/08/2018 12:29 PM EDT

The Senate Agriculture Committee on Friday released its long-awaited [farm bill](#), a measure crafted to draw bipartisan backing that would make only minor changes to the farm safety net and the food stamps program.

Senate Agriculture Chairman [Pat Roberts](#) (R-Kan.) and ranking member [Debbie Stabenow](#) (D-Mich.) have said for months they wouldn't undertake a major rewrite of farm policy or the Supplemental Nutrition Assistance Program — in part because the tight budget environment allows them no additional money to work with, but also because they chose to avoid the political conflicts that fueled the failed vote on the House farm bill last month.

"When ranking member Stabenow and I started this journey in Manhattan, Kansas, last year, we made a commitment to make tough choices and produce a good, bipartisan farm bill," Roberts said in a statement. "I'm pleased that today marks a big step in the process to get a farm bill reauthorized on time.

"Whether it's low prices, over-burdensome regulations, or unpredictable trade markets, it's no secret that farmers and ranchers are struggling," he added. "That's why we need a farm bill that works for all producers across all regions. Simply put, our producers need predictability — and that's just what our bill provides."

By opting to write a bipartisan measure, Roberts and Stabenow are hoping for a drama-free process that would quickly move the measure to the floor. The Senate Agriculture Committee plans to mark up the bill Wednesday, and Majority Leader [Mitch McConnell](#) has said he will bring it to the floor before the July 4 recess.

"From revitalizing small towns, to promoting good stewardship of our land and water, to expanding local food economies, this farm bill is a major bipartisan victory," Stabenow said in a statement.

The Senate's decision to propose a largely status quo bill that would be capable of winning support from both sides of the aisle sets up potentially contentious negotiations with the House should both chambers pass their respective bills.

The Senate bill, as expected, would leave SNAP largely unchanged. The House farm bill, [H.R. 2 \(115\)](#), became a partisan lightning rod over its proposals to impose stricter work requirements on millions of able-bodied SNAP recipients, while tightening eligibility rules and significantly expanding state-run education and training programs.

Unlike the House bill, the Senate's effort doesn't call for new work requirements for SNAP recipients or significant changes to eligibility requirements. The bill would cut the majority of bonuses doled out to states for

reducing their error rates, a safeguard designed to address accusations that several states in recent years have essentially gamed the system to artificially lower their rates and thus collect incentive payments from USDA. The bill also would "modernize" how states administer SNAP verification, committee staff told reporters.

The bill also features a provision that calls for additional SNAP education and job training pilot programs — building off those authorized by the 2014 farm bill. The new pilots would be targeted at particularly vulnerable populations, including people who are elderly, homeless, recently incarcerated, disabled or struggling with substance abuse.

The House bill takes a somewhat different approach to SNAP job training, seeking a tenfold increase in federal funding while making participation for able-bodied adults largely mandatory (unless the recipient works an average of 20 hours per week).

Under the Senate bill's nutrition title, the Emergency Food Assistance Program, which helps dole out commodities to people in need, would get a boost in funding, and many other popular nutrition incentive programs would continue on as they are now. There's also a provision to create a new pilot program to examine the effectiveness of produce prescriptions — a practice by which doctors write prescriptions for people to purchase fruits and vegetables.

While the Senate bill largely seeks to lock in existing farm safety net policy, it contains provisions aimed at ensuring payments from the commodity support program known as Agriculture Risk Coverage are more consistent across county lines, but would leave the Price Loss Coverage support program untouched. The House measure would sweeten PLC, which triggers payments when crop prices drop below levels Congress sets in the law, by allowing reference prices to move upward as the market improves, but would cap them at 115 percent.

The adjusted gross income limit, which is aimed at preventing wealthy farmers from collecting commodity subsidies, would be lowered from \$900,000 to \$700,000 under the Senate bill. However, the bill would not tighten provisions defining what it means to be "actively engaged" in farming, an assessment that determines which producers are eligible for payments. Chuck Grassley (R-Iowa) has said he will offer an amendment at the markup to reform the definition to cut down on subsidies being paid to people who don't work the land.

The House farm bill would make it easier for farmers to collect greater subsidies, both by expanding eligibility to family members like nieces, nephews and first cousins, and by allowing each individual owner of farms that are structured as limited-liability corporations and S corporations to have their own payment limit, instead of an overall cap for the entire entity.

Conservation programs would see incremental adjustments under the Senate bill. That's at odds with the House's bid to overhaul the nation's conservation efforts by eliminating the Conservation Stewardship Program as well as seeking to cut \$800 million from the farm bill's conservation title over a decade. The Senate proposed no cuts to the title.

Under the Senate bill, acreage that is allowed to be enrolled in the Conservation Reserve Program would increase to 25 million, 1 million more acres than the current cap but still 4 million fewer than what the House proposed. The Conservation Reserve Program financially rewards farmers for taking environmentally sensitive land out of production.

The House bill, largely because of its SNAP proposals, was lambasted by Democrats as a raw deal for low-income people, and not a single Democrat supported it last month when it failed by a vote of 198-213. But that margin of defeat had much to do with the House Freedom Caucus revolting in an effort to force a vote on a conservative immigration package — a situation that remains unresolved and has clouded efforts to bring the bill up for a re-vote.

The process in the House has been so polarizing that House Agriculture ranking member [Collin Peterson](#) (D-Minn.) has said publicly that he would team up with Senate leaders during conference negotiations, if and when the process gets that far.

The current farm bill expires at the end of September.

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Senate farm bill makes small tweaks to conservation programs [Back](#)

By Liz Crampton | 06/08/2018 02:07 PM EDT

Conservation programs were spared major cuts in the Senate [farm bill](#), which seeks to leverage public-private partnerships to boost conservation efforts around the country.

That's a marked difference from the House's proposals to slash funding by more than \$800 million over ten years for conservation initiatives and to eliminate the Conservation Stewardship Program. The Senate bill would leave the two flagship USDA conservation programs — CSP and the Environmental Quality Incentives Program — as separate entities, while the House bill aims to combine parts of both.

The Senate [measure](#) would restore funding for the Agricultural Conservation Easement Program, which faced deep cuts in the 2014 farm bill. It also would increase funding for the Regional Conservation Partnership Program, a popular program that connects local environmental groups to farmers, and would increase flexibility in how the effort is administered in an attempt to incentivize more private investment.

The acreage cap under the Conservation Reserve Program — which pays farmers to take land out of production — would be lifted to 25 million acres under the Senate bill, in effect allowing for one million more acres to be enrolled. That bump would be paid for by lowering the annual rental rate for both general and continuous sign-ups to 88.5 percent of the county rental rate. The House bill would increase the acreage cap to 29 million acres — an issue that will have to be worked out in conference should both chambers pass their legislation.

The Senate bill also contains a number of provisions geared at improving soil health and water quality.

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EPA chief Pruitt is said to be eyeing attorney general job [Back](#)

By Andrew Restuccia | 01/05/2018 12:40 PM EDT

Scott Pruitt, the administrator of the Environmental Protection Agency, has told friends and associates that he's interested in becoming attorney general, according to three people familiar with the internal discussions.

With rumors swirling that Jeff Sessions could depart the administration and two members of the House Freedom Caucus calling on the former Alabama senator to resign, Pruitt is quietly positioning himself as a possible candidate for the job.

"Pruitt is very interested," a person close to him said. "He has expressed that on a number of occasions."

It's unclear whether Pruitt would be on the shortlist for the position, but people close to the president said Trump has grown to like him. Pruitt has emerged as the face of Trump's deregulatory agenda, taking steps to overturn former President Barack Obama's climate change regulations. He was also a leading advocate for pulling out of the Paris agreement on climate change.

Pruitt has developed a reputation in Washington as one of the most ambitious members of Trump's Cabinet, and people close to him have long suspected that he harbors bigger aspirations in politics, perhaps as governor or senator. Two people close to him also said he has toyed with the possibility of running for president someday.

The EPA denied that Pruitt is eyeing the attorney general position.

"No, this is not true," agency spokesman Jahan Wilcox said in a statement. "From creating regulatory certainty to cleaning up toxic superfund sites, Administrator Pruitt is solely focused on implementing President Trump's agenda to protect the environment."

Pruitt's allies stressed that he is happy at the EPA and, in the words of one person who has talked to him, "feels he's doing nation-changing work."

Before joining the Trump administration in February, Pruitt served as Oklahoma's attorney general, and he was a state senator before that.

A prominent Washington attorney advising one member of the administration said choosing Pruitt to replace Sessions would make sense because, as a member of the Cabinet who has already been confirmed by the Senate, Pruitt could serve in an acting capacity until he is formally nominated.

But a Pruitt nomination for attorney general would face fierce resistance from Democrats, who have criticized his tenure at the EPA, arguing that he is too closely tied to the oil industry and has weakened crucial environmental protections.

Sessions' relationship with Trump has ebbed and flowed in recent months. It reached a low point over the summer, when Trump called out Sessions on Twitter, publicly wondering why the attorney general wasn't investigating Hillary Clinton — and people close to the president said his relationship with Sessions has never fully recovered.

The president has also complained about Sessions' decision to recuse himself from the Russia investigation.

"Sessions should have never recused himself, and if he was going to recuse himself, he should have told me before he took the job and I would have picked somebody else," Trump said in a July interview with The New York Times.

The Times published an article on Thursday that said a top White House lawyer tried to persuade Sessions not to recuse himself. The Times also reported that a Sessions aide asked a congressional staffer whether he had damaging information about the director of the FBI at the time, James Comey.

Trump fired Comey in May, a move that is under scrutiny by special counsel Robert Mueller as he investigates whether the president obstructed justice.

It's unclear how the Times article will influence Sessions' status in the White House. A White House spokeswoman and several senior administration officials did not respond to requests for comment on the issue.

In an op-ed published on Thursday, Republican Reps. Mark Meadows and Jim Jordan, the chairman and former chairman of the conservative House Freedom Caucus, appeared to channel Trump's frustrations. The lawmakers called on Sessions to step down, railing against intelligence leaks to the press.

"Attorney General Jeff Sessions has recused himself from the Russia investigation, but it would appear he has no control at all of the premier law enforcement agency in the world," the lawmakers wrote. "It is time for Sessions to start managing in a spirit of transparency to bring all of this improper behavior to light and stop further violations.

"If Sessions can't address this issue immediately, then we have one final question needing an answer: When is it time for a new attorney general? Sadly, it seems the answer is now."

Eliana Johnson contributed to this report.

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House appropriators advance \$35B Interior-EPA spending package [Back](#)

By Alex Guillén | 06/06/2018 05:04 PM EDT

The House Appropriations Committee today approved its \$35 billion Interior-EPA spending bill by a party-line vote of 25-20.

Committee Republicans blocked an effort from Democrats to boost EPA's Office of Inspector General by \$12 million, saying the watchdog already has "robust" appropriations. The bill funds the OIG at \$12 million less than his request, but higher than the amount requested by the White House.

The committee voted down an amendment that would have required EPA's administrator and deputy administrator to report public details of travel costs within 10 days of a trip, along with various amendments targeting a repeal of the Waters of the U.S. rule and other policy riders, along with EPA's proposed science transparency policy, offshore drilling and other standard policy disputes.

Lawmakers approved an amendment that would change revenue sharing for drilling in the Arctic National Wildlife Refuge. The approved amendment would send 50 percent of revenue to the federal government, 47 percent to the state and 3 percent to the Alaskan Native claims settlement fund.

They also backed a tongue-in-cheek amendment from Rep. Marcy Kaptur (D-Mich.) that would limit EPA from spending more than \$50 on any one fountain pen, a response to a recent Washington Post report that Pruitt spent \$1,560 for a dozen personalized fountain pens. The amendment passed with no "nay" votes.

WHAT'S NEXT: Lawmakers hope to have the bill before the full House sometime this summer, but it is unclear whether the Senate will act on a similar timeframe. Like most other appropriations bills in recent years, Congress has passed an omnibus rather than conferencing directly.

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House Republicans serve up Trump's spending cuts [Back](#)

By Sarah Ferris | 06/07/2018 09:23 PM EDT

The House passed a cost-cutting measure Thursday that President Donald Trump has personally championed, advancing the first major deficit-reduction bill of his tenure.

Nearly every House Republican voted to support the roughly \$15 billion in spending cuts, which target spare cash at a slew of domestic programs, ranging from children's health insurance to public housing.

The White House has declared the legislation "an important step toward bringing the nation's fiscal house in order," part of a yearlong approach to "reduce wasteful and unnecessary spending." But even supporters of the proposal acknowledge that it is a modest effort, particularly after Republicans in Congress have repeatedly blown past fiscal restraints in pursuit of budget increases and tax cuts.

The bill would result in only about \$1 billion in real savings, according to Congress' budget scorekeeper, because the vast majority of the money couldn't — or wouldn't — be spent anyway. And that savings amounts to much less than 1 percent of the funding handed out under Congress' latest spending bill.

"I think it is a small step, probably more procedural than anything else," said Republican Study Committee Chairman Mark Walker (R-N.C.), who has helped push the bill to the floor over the past month. "At least we're still trying to have some kind of thought that we're fiscally conscious here."

Trump is the first president in two decades to use the rescissions tool. Under an obscure federal law, Congress can take up the White House's plans for reneging spending with a simple majority in the Senate.

The filibuster-proof powers do expire, however. The Senate must approve the bill by June 22 or be forced to recruit Democrats to the effort.

With just 10 working days until that deadline, prospects for the bill remain unclear in the Senate, where every GOP senator will need to support the package.

White House budget director Mick Mulvaney has personally met with Sen. Lisa Murkowski, an Alaska Republican who has raised issues with the cuts to CHIP, in an effort to secure her vote. Sen. Susan Collins of Maine, another GOP moderate, has not yet said whether she supports the bill.

Senate Appropriations Chairman Richard Shelby (R-Ala.) has also remained noncommittal to the package, despite a slew of changes from the White House.

"We'll see what the House does. We'll look at it," Shelby said on Thursday. "I think whatever we rescind, we ought to evaluate it. Is it substantive, or is it more optics, or what?"

The House vote comes a month after the White House unveiled its sweeping proposal, which proved difficult to sell across the GOP Conference.

Multiple Republican lawmakers in the House had refused to support the initial version because it would have eliminated funding to fight the Ebola virus amid emergence of a new outbreak in Central Africa. Others, mostly from New York and New Jersey, were skittish about eliminating money set aside from Hurricane Sandy recovery work. So the White House agreed this week to make concessions that would jolt the legislative effort back to life.

Officials released a revised package on Tuesday that backs away from cuts to anti-Ebola and hurricane recovery cash, though it maintained \$7 billion in cuts to the Children's Health Insurance Program. Those reductions have opened up a tough line of attack from Democrats, even after nonpartisan budget officials confirmed that the measure would have no effect on the health program for kids.

"\$7 billion for sick kids. It's really unbelievable if you stop and consider it," Rep. Joe Crowley (D-N.Y.) shouted from the House floor Thursday. "Republicans are asking children to pay for their tax cut to the rich."

Democrats on the Senate Budget Committee attacked the GOP's bill as "nothing more than a PR stunt," arguing that the Republican tax overhaul cost 1,300 times as much as the so-called rescissions package would save.

Just one day before the bill landed on the House floor, a fight over the children's health care program erupted in a closed-door House GOP meeting, with multiple lawmakers expressing concerns about the optics of those cuts ahead of the November elections.

The same day, leaders of the conservative Republican Study Committee said in a sit-down with House Speaker Paul Ryan that they wanted a vote on the rescissions package before agreeing to back any spending bills.

"In this conference, you sometimes have to draw a line in the sand," Walker said Thursday before the vote.

The White House's revisions didn't win the votes of every GOP holdout. Rep. Mario Diaz-Balart (R-Fla.), for example, said the latest version was "better," but voiced concerns with cutbacks to a low-income housing program.

"I commend them for looking at where we can save money. That's a good thing," Diaz-Balart said. "But now, we're down to probably less than \$1 billion, and some policy issues. Cutting money from a program to get people from dependency to self-sufficiency is probably not something we should do."

The \$15 billion in cuts marks the largest rescissions package in history and is far less of a lightning rod than Trump himself once imagined. After this spring's funding battle, the president vowed to use the obscure budget tool to claw back money from the trillion-dollar omnibus bill.

That changed after House Majority Leader Kevin McCarthy quietly helped persuade White House officials to lower their sights and produce a mostly controversy-free bill intended to reclaim unspent funding from past years.

Rep. Tom Cole (R-Okla.), a co-sponsor of the bill, described it as an attempt to "weed the garden."

"I started out as a skeptic," Cole said. "I actually raised questions about this, because I was afraid it would undo a carefully negotiated deal. It doesn't do that."

The Trump administration is already planning two more spending cutbacks, including one that would target money laid out under the fiscal 2018 spending package. The second proposal is expected before the midterm elections.

Fiscal hawks, like those at the Committee for a Responsible Federal Budget, are cautioning House Republicans not to take a victory lap on debt reduction after the rescissions bill.

"Rescissions are only a very small step forward in restraining spending," the group wrote in a statement Thursday.

Adam Cancryn contributed to this report.

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Trump stuns allies, won't sign G-7 joint agreement [Back](#)

By Andrew Restuccia and Brent D. Griffiths | 06/09/2018 02:37 PM EDT

President Donald Trump said the United States will not sign a joint agreement with other G-7 countries, an abrupt reversal that will further erode relations with key U.S. allies and underscore the country's increasing isolation under Trump.

Trump announced his decision in a tweet while lashing out at Canadian Prime Minister Justin Trudeau, who expressed opposition to Trump's trade policies at the conclusion of the contentious summit.

"Based on Justin's false statements at his news conference, and the fact that Canada is charging massive Tariffs to our U.S. farmers, workers and companies, I have instructed our U.S. Reps not to endorse the Communique as we look at Tariffs on automobiles flooding the U.S. Market!" Trump wrote, adding that Trudeau was "very dishonest and weak."

It's a remarkable change of tune for the United States. U.S. officials worked closely with G-7 negotiators for days on the communique, and other nations took pains to ensure that Trump would sign on, despite deep disagreements on trade.

Trump's decision is likely to further divide the U.S. from its G-7 allies, who have long been skeptical of the president and have publicly and privately expressed deep frustration with Trump's flippant comments and desire to overhaul their trade policies.

For Trump, the decision may be a political winner. The president's base is deeply skeptical of the system of international cooperation that has for so long been at the core of U.S. foreign and economic policy.

Earlier in the day, Trump rated his relationship with G-7 leaders a perfect 10 — but the deep divide between the United States and some of its closest allies nonetheless shined through at the high-profile summit in Canada.

Even as Trump insisted he gets along just fine with his counterparts leading Canada, France, Germany, Italy, Japan and the United Kingdom, he further ostracized himself, arguing that Russia should be invited back into

the exclusive international group and threatening to cut off trade relations with the G-7 nations if they don't rethink what he says are unfair trade practices.

"The G-8 is a more meaningful group than the G-7," Trump told reporters in a free-wheeling press conference before departing the continent for his historic meeting with Kim Jong Un.

Indeed, Trump did little to hide his distaste for the summit from the outset — arriving late to the summit on Friday and missing his first scheduled meeting with French President Emmanuel Macron and then joining a Saturday breakfast on gender equality after it had already started.

Soon after Trump boarded Air Force One, having cut short his time in Canada, German Chancellor Angela Merkel's office distributed a photograph of G-7 leaders standing in a semi-circle with Trump sitting on the other side of a table with his arms crossed — an image that underscored Trump's isolation.

Photos taken from other angles during the meeting appear to show a less dramatic scene, but the decision by Merkel's office to release that picture was nonetheless seen as a symbol of what many in the international community have begun derisively referring to as the "G6 +1."

Trump's ongoing efforts to strengthen ties with Moscow were perhaps the most unsettling for the West.

Russia was kicked out of the group, then the G-8, in 2014 for illegally annexing Crimea from Ukraine. Since then, Russia has been accused of meddling in the 2016 U.S. presidential election and poisoning a former Russian spy on British soil.

But Trump blamed former President Barack Obama, not Russian President Vladimir Putin, for the annexation of Crimea — adding that he may have done something different in response if it happened on his watch.

Trump's comments were met with skepticism from many U.S. allies. "Before discussions could begin on any of this, we would have to ensure Russia is amending its ways and taking a different route," British Prime Minister Theresa May said in a television interview on Friday after Trump first broached the issue.

Trump's comments about bringing Russia back into the G-7 come as he is planning a summit with Putin. The Kremlin said Saturday that Vienna has been discussed as a possible venue for the meeting.

In the run-up to the G-7 summit, Trump told people close to him that he was dreading the meeting. The president hates being lectured to by other foreign officials and he tends to avoid one-on-one confrontations. Trump is more fixated on building relationships with powerful and domineering world leaders like Putin, Chinese President Xi Jinping and Kim, who he is eager to meet in Singapore.

Tensions over trade, meanwhile, dominated the summit. As POLITICO reported on Friday, Trump, during a private meeting, floated the idea of ending all tariffs and trade barriers between the U.S. and its G-7 allies. Right before leaving for Singapore, Trump upped the ante in his press conference with reporters, warning that he could cut off or severely limit trade access to the United States if G-7 countries don't cooperate.

"We're the piggybank that everybody is robbing," Trump said. "And that ends."

The Trump administration recently imposed tariffs on steel and aluminum imports from Canada, Mexico and the European Union, a decision that sent shockwaves throughout the world and resulted in a venomous response from key U.S. allies. Ahead of the summit, Trudeau called the decision "insulting" and "totally unacceptable."

The U.S. imposed the tariffs on national security grounds, a rationale that offended close allies like Canada. But Trump refused to back away from that justification.

"It is our balance sheet, it is our strength, it is our national security," he told reporters. "To have a great military, you need a great balance sheet."

In his final press conference, Trudeau said people who expected the G-7 countries to resolve their differences with Trump on trade during the summit were expecting too much.

Trudeau also sharply disagreed with Trump's comments from earlier Saturday that the NAFTA deal should have a clause that sunsets the agreement, signaling more future fireworks on trade between the two nations.

"There will be no sunset clause," Trudeau said.

His words apparently set Trump off.

"PM Justin Trudeau of Canada acted so meek and mild during our @G7 meetings only to give a news conference after I left saying that, 'US Tariffs were kind of insulting' and he 'will not be pushed around.' Very dishonest & weak. Our Tariffs are in response to his of 270% on dairy!"

Every U.S. president has disagreements with other countries, even allies, but Trump's tweet marked an unprecedented rebuke of the nation's neighbor and ally.

And it's the latest example of Trump upending U.S. relations with longtime allies, and turning the tables on countries that have been dependable friends for decades.

Some G7 officials said Trump was too late. The communique was agreed, the summit done, the leaders packing up or already gone.

They noted the leaders' declarations are typically not signed, simply agreed at the summit and published by the host country. The declarations had already been published and distributed to reporters at the summit site before Trump blasted out his tweets.

"We stick to the communique as agreed by all participants," an EU official said.

Before Trump departed on Saturday morning, Trump had said that his relationships with other G-7 leaders could not be better.

"I would say the level of relationship is a 10," he said. "We have a great relationship, Angela and Emmanuel and Justin."

Trump also sought to cut through the tensions with some humor during the meeting.

"Justin has agreed to cut all tariffs," he joked with reporters on Friday during his bilateral meeting with Trudeau.

When Trudeau was asked if he was disappointed that Trump decided to leave the summit early, Trump interjected. "He's happy," Trump said, sticking out his tongue to indicate he was joking.

David M. Herszenhorn contributed to this report from La Malbaie, Canada.

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Biofuel deal stalemate keeps pressure off refiners [Back](#)

By Eric Wolff | 06/08/2018 02:33 PM EDT

Ethanol backers praised President Donald Trump this week for blocking changes to the biofuel program that they feared would be a setback for the corn-based fuel, but experts say it's oil refiners who are getting all the benefits from the stalemate.

Iowa Republican Sens. [Chuck Grassley](#) and [Joni Ernst](#) both [thanked Trump](#) on Tuesday for refusing to sign off on a deal to alter the Renewable Fuel Standard to expand sales of E15 fuel but allow exports of ethanol to qualify for compliance credits, a change that would have sharply increased the number of those Renewable Identification Numbers in the market.

Though refineries have portrayed that increase in RINs as a necessary approach to bring down their cost of compliance, the dozens of economic hardship waivers that EPA Administrator Scott Pruitt has granted to small oil processors has already pushed the cost of those credits to their lowest levels in five years. And the failure to reach an agreement on changes to the RFS mean those EPA waivers will stay in place for now.

"No deal allows the EPA to continue to implement actions as they see fit, and those have been benefiting refiners," said Andy Lipow, an oil industry analyst with Lipow Oil Associates. "[Pruitt's] actions are geared toward helping manufacturing, and the oil industry is just one of the many he's been helping through the deregulation process."

Ethanol producers say EPA has de facto lowered the legal ethanol blending mandate for U.S. refiners by at least 1.5 billion gallons by issuing the waivers. That, as well as the chatter about allowing RINs on exports, drove RIN prices down to 18 cents per gallon on Monday, a dramatic fall from prices near \$1 last August, according to energy price data service OPIS. Those prices has ticked up slightly to 21 cent per gallon by Thursday.

And RIN prices aren't expected to rise much, even though any deal is on hold for now.

"The only reason RIN prices are as high as they are today is uncertainty of small refinery policy," said Neelesh Nerurkar, an analyst with ClearView Energy Partners. "Just because a reform deal is on ice, doesn't mean RIN prices should shoot up."

Both Grassley and Ernst have been critical of Pruitt — who Ernst [derided](#) as "about as swampy as you get" this week — and ethanol groups expect that he will continue to be sympathetic to the complaints of the refiners. Pruitt was seen [at dinner](#) this week with Sen. [Ted Cruz](#) (R-Texas), who has championed the refiners' arguments in the White House talks.

"It's clear that the refiners have the ear of Administrator Pruitt," said Brooke Coleman, executive director of the Advanced Biofuels Business Council. "We feel like Administrator Pruitt is going to stay at it."

While the corn growers and ethanol backers have been pleased Trump has stuck to his promise to support the biofuel, some refiners say the agricultural groups may be missing an opportunity to stake out a real compromise

solution that allows them to sell more fuel, especially since Pruitt's EPA could find new ways to help the oil industry.

"There's going to be some changes in this program," said a refining industry source. "If anything, changes [ethanol producers] want to the RFS program will come with a price attached to it that is stability for RINs. They had a golden opportunity to get what they want the most. There are other options that almost certainly will proceed if this option is off the table."

EPA declined to comment on whether the agency would seek future changes to the RFS, but Pruitt has aggressively explored ways to change the program. Last fall he proposed cutting biodiesel requirements in half. When that effort failed, he put the word out that the agency would be taking a broader interpretation the rules allowing small refiners facing economic hardship to be exempted from requirements, according to an oil industry source.

EPA has reportedly granted waiver exemptions to the RFS to over two dozen refiners, along with retroactive exemptions to two refiners dating back to 2014. In at least one case, EPA granted an exemption to a refinery even though it exceeded the 75,000 barrel-per-day capacity definition of "small refinery" because the plant operated at lower volumes. Pruitt also granted a waiver to refiner Philadelphia Energy Solutions as part of the refinery's bankruptcy proceedings.

Those waivers have helped bring the RIN prices down, a core goal for the refiners, but one that ethanol producers complain removes an incentive for oil industry players to develop new infrastructure to increasing fuel blending.

Advanced Biofuel's Coleman suggested that Pruitt was pushing the limits of the program without concern that the changes could be cut down in court — even as questions about Pruitt's future swirl because of the growing number of scandals around him.

"At the end of the day the political cost of all of this stuff ultimately falls on an administration that is unlikely to include him. One has to wonder if his systematic dismantling of the RFS is something that comes to his benefit and to no one else and that's fine with him," Coleman said.

Members of Congress working on a legislative overhaul of the RFS would prefer to see EPA and the administration stop mucking around with the program. Sen. John Cornyn (R-Texas) and Rep. John Shimkus (R-Ill.) have been working on a bill to make broader changes. Supporters of a legislative fix worried that big administrative changes would suck the life out of an overhaul bill.

"The inability to reach a deal on administrative changes to the RFS perfectly illustrates the need for an enduring, legislative solution," said Jordan Haverly, a Shimkus spokesman. "That goal is no less difficult to reach, but it's the only way we'll get to an agreement that works for growers, producers, refiners, automakers, marketers, and most importantly, consumers."

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Nixed Iran nuclear deal looms over Trump's North Korea talks [Back](#)

By Nahal Toosi | 06/10/2018 06:59 AM EDT

Days before President Donald Trump embarked on a North Korea summit meant to solve one nuclear crisis, Iran hinted at another.

The Islamic Republic announced last week that it has expanded its ability to enrich uranium, a key ingredient for nuclear weapons. The move came just weeks after Trump abruptly quit the Barack Obama-era deal that largely dismantled Iran's nuclear program, and it could be a first step toward an eventual Iranian dash to a nuclear bomb.

Iran probably didn't time its move to throw a stink bomb into Tuesday's summit in Singapore between Trump and North Korean leader Kim Jong Un, experts say. But the news served as a vivid reminder of how the troubled Iran nuclear deal will haunt Trump's talks with Kim.

The North Koreans are certainly watching.

"In my informal conversations with North Korean officials, they have consistently brought up the Iran deal," said Suzanne DiMaggio of New America, who, like many North Korea analysts, occasionally engages in unofficial discussions with the country's representatives.

For all of Trump's criticisms of the 2015 Iran deal, it was one of the most rigorous nonproliferation agreements ever negotiated. By insisting the Iran deal should have been far more comprehensive and longer-lasting, Trump has effectively set a higher — and possibly unattainable — standard for any deal with Kim.

Democrats say Trump's actions on Iran could undermine him as he seeks a deal with North Korea. "The fact that the U.S. president pulled out of an international agreement, it does affect America's credibility," said Sen. Ben Cardin (D-Md.). "I don't want to overstate it, but it doesn't help."

Trump aides argue, however, that by scrapping the Iran deal, the president has demonstrated his seriousness about securing a better bargain with Kim.

So far, Kim has shown no sign that Trump's withdrawal from the Iran agreement makes him less willing to strike a deal of his own with the United States. Nor has North Korea responded to Trump's vow, in remarks to reporters Thursday, that he is "totally prepared to walk away" from his talks with Kim, unlike U.S. negotiators Trump says were too eager to accommodate Iran.

But reaching a credible deal with North Korea will likely be far harder than it was to reach the deal with Iran, according to former U.S. officials and analysts.

The main reason: Unlike Iran, which always said its nuclear program was meant for civilian use, North Korea already has nuclear weapons, and it has even threatened to use them against the United States.

North Korea's overall nuclear program is more advanced and more widespread. It is also believed to be partly hidden underground, making it harder to understand and almost impossible to fully disable in a military strike. All those factors give Kim more negotiating leverage than Tehran had during the Obama years.

Reaching that more basic agreement with Iran still took several years of talks, sanctions and implementation work. It included an interim deal as well as coordination with world powers beyond the United States.

A permanent agreement with North Korea — in which the country, at a minimum, eliminates its nuclear stockpile — will also likely to take years to implement, given the size and complexity of its nuclear program. And that's only if North Korea agrees to give up its nukes, something many analysts say its isolated and paranoid leadership will never do.

Despite Trump's criticisms of Obama's "rotten" deal with Iran, he's already following a similar strategy when it comes to North Korea.

Just as the U.S. and its allies jointly cranked up economic sanctions to bring Tehran to the negotiating table, the Trump administration has rallied other countries around a "maximum pressure campaign" imposing new sanctions on North Korea. The Iranians, their economy in pain, eventually agreed to talk.

The Trump team also has indicated that, as with the Iran deal, economic incentives will be at the heart of any agreement with North Korea. Secretary of State Mike Pompeo has spoken of private-sector investment in North Korea, while Trump said last week that his diplomacy could "usher in a new era of prosperity, security and peace for all Koreans, for North and South, and for people everywhere."

While Iran was eager to see sanctions lifted on its oil-exporting economy and has courted foreign investment, North Korea's demands may be more complicated. North Korea has a smaller and far less globally integrated economy than Iran, making it less vulnerable to sanctions pressure.

North Korea has also spurned offers of economic help, saying in a recent statement that "we have never had any expectation of U.S. support in carrying out our economic construction and will not at all make such a deal in the future." That leaves many experts predicting that what Kim really wants is assurances about his regime's security.

One of Trump's complaints about the Iran deal was that it was too narrow — that it didn't cover Iran's ballistic missiles, its sponsorship of terrorism and other vexing matters. Obama aides say that had they tackled those elements, they never would have reached a deal, because Iran refused to discuss issues beyond its nuclear program.

If Trump expands his demands to cover things like North Korea's atrocious human rights abuses or its stockpile of chemical and biological weapons, that will make any deal harder and more time-consuming. It will also likely require additional U.S. concessions. But leaving such issues untouched will expose Trump to criticism that he went too easy on Kim.

Making matters somewhat easier is the fact that North Korean troublemaking beyond its borders is fairly modest, at least as compared to Iran's multiple interventions across the Middle East, a region of far more political interest to Washington than East Asia.

It remains unclear what Kim truly wants from Trump. Even the North Korean leader's stated commitment to "denuclearization" is vague and could mean that he will give up his nuclear arms only over a long period of time or after controversial U.S. steps like a possible removal of America's 28,500 troops from South Korea.

One sensitive issue will be the duration of any agreement Trump reaches with Kim. Trump complained repeatedly that some provisions of the Iran deal expired after 10 or 15 years, alleging that that would allow Iran to resume a robust nuclear program. Trump insisted, before withdrawing from the deal, that it be modified to restrict Iran's nuclear activities permanently.

If Trump ends up granting a "sunset" for any North Korea deal, he'll be open himself to charges of hypocrisy.

In a letter to Trump last week, seven senior Senate Democrats, including Minority Leader Chuck Schumer, laid out tough benchmarks for what they'd like to see in a deal. It starts with the "dismantlement and removal" of all of North Korea's nuclear, chemical and biological weapons. The Democrats also insisted on severe restrictions on the country's ballistic missile work, as well as intrusive inspections like those required of Iran.

Ruling out the possibility of sunsets, they declared that "any agreement with North Korea must be permanent in nature." Their bottom line: Any deal giving North Korea sanctions relief for anything less than "the verifiable performance of its obligations to dismantle its nuclear and missile arsenal is a bad deal."

In a column published Tuesday, Seyed Hossein Mousavian, a former spokesman for Iran's nuclear negotiators, offered some advice to North Korea ahead of the summit, namely that its "main card in negotiations with the United States is its nuclear weapons."

"If [North Korea] gives up this bargaining chip upfront, it can forget about the United States implementing its side of the deal," Mousavian wrote on the NK News website. The Asian country "must seek a phased deal that requires each side to implement its commitments in a step-by-step fashion with proportional reciprocation."

Trump and Pompeo have already pre-empted one potential talking point from critics of their North Korea diplomacy: that Congress should have a say.

Republicans blasted the Obama White House for structuring the Iran agreement so that it was not a treaty requiring ratification by the U.S. Senate. But Pompeo, who last week called Obama's 2015 deal a "flimsy piece of paper," has said Trump would strive to submit the North Korea deal to the Senate in the form of a treaty.

But with partisan divides so strong, odds are low that a treaty could get the necessary two-thirds approval in the Senate. The more topics a proposed treaty with North Korea tackles, the greater the chances of political opposition — especially if the U.S. is seen as appeasing a regime considered more brutal than the one in Tehran.

At the moment, the Iran nuclear deal hasn't fully collapsed — European countries who helped negotiate are looking for ways to salvage it, and Iran's announcement last week is said to be within the deal's boundaries.

As they watch the Iran deal teeter, some Obama administration officials who helped craft it say they nonetheless hope Trump's diplomatic overture to Kim succeeds.

Some of them note that a treaty would be difficult to secure, but said it probably would be fine if Congress passes special legislation reviewing any agreement with Kim, just as it did for the Iran deal. The Iran-related legislation requires that the president periodically certify to Congress whether Tehran is complying with the agreement.

When it comes to oversight, it's important to "not set thresholds that are impossible," said Wendy Sherman, a former U.S. official who has negotiated with Iran and North Korea.

If Trump can secure an agreement with North Korea that dismantles its nuclear program, tackles other areas of concern and is permanent, it would be a modern-day miracle, former officials and analysts say. The reality, though, is that even getting a deal with North Korea that mirrors the one with Iran would be a major accomplishment.

"The Trump administration will be very lucky to get a deal as good as the Iran deal with the North Koreans," DiMaggio said. "It should have been a model to emulate."

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Message

From: Bolen, Brittany [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=31E872A691114372B5A6A88482A66E48-BOLEN, BRIT]
Sent: 12/13/2017 11:52:57 PM
To: Woods, Clinton [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clin]
Subject: FW: Need Help on Some QA

From: Bolen, Brittany
Sent: Tuesday, December 5, 2017 5:26 PM
To: Bowman, Liz <Bowman.Liz@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Dravis, Samantha <dravis.samantha@epa.gov>; Fotouhi, David <fotouhi.david@epa.gov>
Cc: Hewitt, James <hewitt.james@epa.gov>; Bennett, Tate <Bennett.Tate@epa.gov>; Block, Molly <block.molly@epa.gov>
Subject: RE: Need Help on Some QA

TPs for SCC, PM2.5 and cost-benefit reform below.

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Let me know if you need anything else, Liz!

From: Bowman, Liz
Sent: Tuesday, December 5, 2017 2:41 PM
To: Bolen, Brittany <bolen.brittany@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Dravis, Samantha <dravis.samantha@epa.gov>
Cc: Hewitt, James <hewitt.james@epa.gov>; Bennett, Tate <Bennett.Tate@epa.gov>; Block, Molly <block.molly@epa.gov>
Subject: Need Help on Some QA

SP is speaking at Heritage tomorrow and they want to ask some questions about the following issues, can you all provide some help here, just a few bullets by COB today?

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Message

From: Dan Greenbaum [DGreenbaum@healtheffects.org]
Sent: 3/23/2018 1:54:00 PM
To: Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group
(FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clint]
CC: Robert O'Keefe [ROKeefe@healtheffects.org]
Subject: Reproducing Science...
Attachments: Goodman Ioannidis 341ps12.full.pdf; HEI_2018_Annual_Conference_Brochure.pdf

Dear Clint:

Hope this finds you well – I am sure you are BUSY!

Could not help but remember when we saw the latest news (<https://www.epa.gov/newsreleases/daily-caller-scott-pruitt-will-end-epas-use-secret-science-justify-regulations>) the many constructive discussions we had had when you were at House Science about the opportunities to enhance data sharing. Though I am sure you are occupied with many things, I thought you should know we are very much still on the case, trying to make our data available – and educating the scientific community about the need to do so. We actually had already planned an entire session at our Annual Conference in Chicago in late April on “Reproducibility in Environmental Health Research” and are pleased to have Steve Goodman, who authored the attached with John Ioannidis to lead off in the session. If there is someone there who you think could benefit from attending, please let us know and we can help facilitate that...

And in the meantime, if there are ways that we might help in identifying the opportunities and the potential snags in this new initiative, please let us know...

All the best!
Dan

Dan Greenbaum, President
Health Effects Institute
O: +1 617 488 2331
C: +1 617 283 5904
www.healtheffects.org

What does research reproducibility mean?

Steven N. Goodman,* Daniele Fanelli, John P. A. Ioannidis

The language and conceptual framework of “research reproducibility” are nonstandard and unsettled across the sciences. In this Perspective, we review an array of explicit and implicit definitions of reproducibility and related terminology, and discuss how to avoid potential misunderstandings when these terms are used as a surrogate for “truth.”

Concern about the reproducibility of scientific research has been steadily rising recently with reports that the results of experiments in numerous domains of science could not be replicated (1, 2). Whereas problems in biomedical research have garnered most of the attention, concerns have touched almost every field in the biological and social sciences and beyond (3) (Fig. 1). As the movement to examine and enhance the reliability of research expands, it is important to note that some of its basic terms—reproducibility, replicability, reliability, robustness, and generalizability—are not standardized. This diverse nomenclature has led to confusion, both conceptual and operational, about what kind of confirmation is needed to trust a given scientific result. Here, we dissect this vocabulary, explore the reasons for the confusion, and offer a framework to improve both communication and understanding.

DEFINING THE TERMS

Although the importance of multiple studies corroborating a given result is acknowledged in virtually all of the sciences (Fig. 1), the modern use of “reproducible research” was originally applied not to corroboration, but to transparency, with application in the computational sciences. Computer scientist Jon Claerbout coined the term and associated it with a software platform and set of procedures that permit the reader of a paper to see the entire processing trail from the raw data and code to figures and tables (4). This concept has been carried forward into many data-intensive domains, including epidemiology (5), computational biology (6), economics (7), and clinical trials (8). According to a U.S. National Science Foundation (NSF) subcommittee on replicability in science (9), “*reproducibility* refers to the ability of a researcher to duplicate

the results of a prior study using the same materials as were used by the original investigator. That is, a second researcher might use the same raw data to build the same analysis files and implement the same statistical analysis in an attempt to yield the same results.... Reproducibility is a minimum necessary condition for a finding to be believable and informative.”

Documenting this kind of reproducibility thus requires, at minimum, the sharing of analytical data sets (original raw or processed data), relevant metadata, analytical code, and related software. Reproducibility defined in this way mainly addresses issues of trust that data and analyses are as represented. The definition does not specify to what extent deviations are acceptable. Such reproducibility does not add new evidential weight, although greater subjective weight is often accorded to evidence that is more highly trusted. New evidence is provided by new experimentation, defined in the NSF report as “*replicability*,” which refers to “the ability of a researcher to duplicate the results of a prior study if the same procedures are followed but new data are collected.”

Although the preceding conceptual distinctions might seem clear, the definitions do not provide clear operational criteria for what constitutes successful replication or reproduction. Furthermore, the terminology is not universally used, and sometimes the meanings above are reversed. Consider the language of Francis Collins, director of the U.S. National Institutes of Health (NIH), in his commentary on plans to enhance research reproducibility (10):

“... a complex array of other factors seems to have contributed to the lack of reproducibility. Factors include poor training of researchers in experimental design, increased emphasis on making provocative statements rather than presenting technical details, and publications that do not report basic elements of ex-

perimental design. Some irreproducible reports are probably the result of coincidental findings that happen to reach statistical significance, coupled with publication bias. Another pitfall is over-interpretation of creative ‘hypothesis-generating’ experiments, which are designed to uncover new avenues of inquiry rather than to provide definitive proof for any single question. Still, there remains a troubling frequency of published reports that claim a significant result, but fail to be reproducible.”

This short passage covers a wide range of issues subsumed under the rubric of reproducibility: design, reporting, analysis, interpretation, and corroborating studies (that is, replication, as previously defined). If one looks at the terminology being used across the scientific literature, one finds similar variation and intermingling of concepts. For example, the largest-scale attempt to replicate experiments in psychology was published with the title “Estimating the reproducibility of psychological science,” (2) clearly alluding the term “reproducibility” with the conduct of new studies.

One notable absence from this diverse lexicon is the word “truth.” The fundamental concern of Collins and others is, in fact, not reproducibility per se, but whether scientific claims based on scientific results are true. Below, we discuss how treating reproducibility as an end in itself—rather than as an imperfect surrogate for scientific truth—is partly responsible for the current terminological and operational morass, and suggest how we can benefit by refocusing on cumulative evidence and truth.

A NEW LEXICON FOR RESEARCH REPRODUCIBILITY

We start the process of clarification by proposing a new terminology to distinguish between the various interpretations of reproducibility. Rather than offer new technical meanings for words whose common language interpretations are nearly identical (such as reproducibility, replicability, and repeatability), we propose to ally the word reproducibility—currently the most widely used single term in this domain—with descriptors for the underlying construct. This yields three terms: methods reproducibility, results reproducibility, and inferential reproducibility. Although we apply these terms mainly to the biomedical field, they have utility across many domains of science, each of which has different conventions and cultures about how

Meta-Research Innovation Center at Stanford (METRICS), Stanford University, Stanford, CA 94305, USA.

*Corresponding author. Email: steve.goodman@stanford.edu

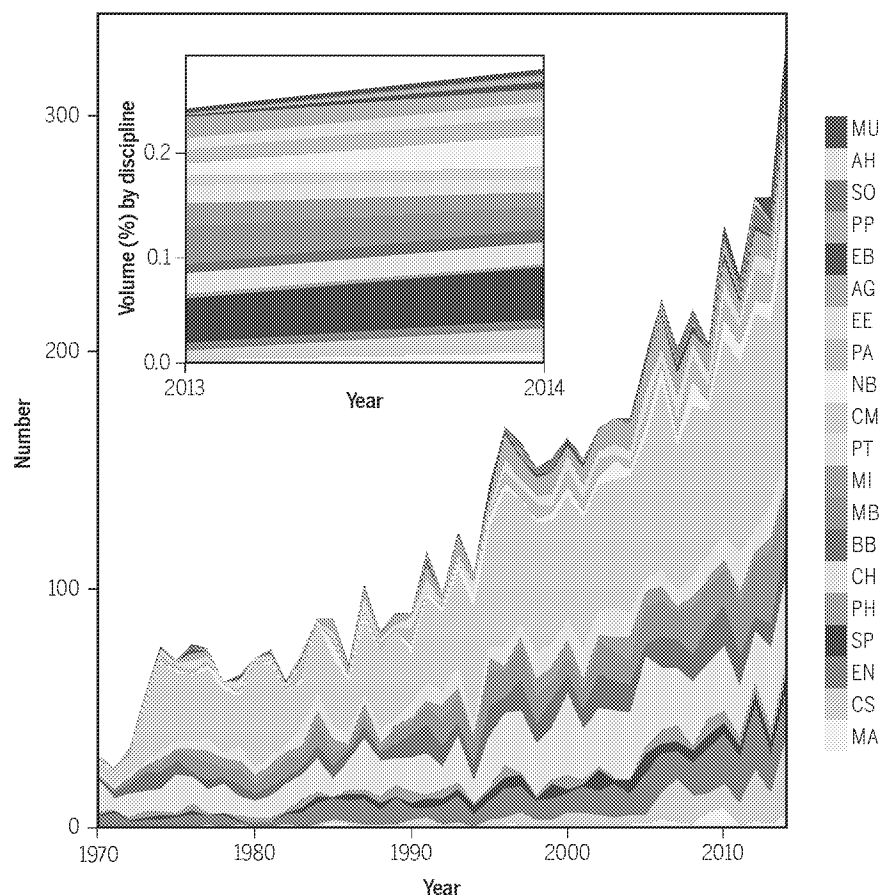


Fig. 1. Reports rising. Number of publications recorded in Scopus that have, in the title or abstract, at least one of the following expressions: research reproducibility, reproducibility of research, reproducibility of results, results reproducibility, reproducibility of study, study reproducibility, reproducible research, reproducible finding, or reproducible result. Papers are classified by discipline on the basis of the journal, following an adaptation and expansion of Thomson Reuters' Essential Science Indicators classification system. Journals not included in the latter database were hand-classified on the basis of their name. The subplot reports the percentage over the total number of records for each discipline, in the last 2 years of the series. Disciplines legend: MA, mathematics; CS, computer sciences; EN, engineering; SP, space science; PH, physics; CH, chemistry; BB, biology and biochemistry; MB, molecular biology; MI, microbiology; PT, pharmacology and toxicology; CM, clinical medicine; NB, neurobiology and behavior; PA, plant and animal sciences; EE, environment and ecology; AG, agricultural sciences; EB, economics and business; PP, psychology and psychiatry; SO, social sciences, general; AH, arts and humanities; MU, multidisciplinary. The time series was truncated at 2014.

to handle the role of chance, the level of certainty required for making published claims, and the adopted criteria for "proof" (Table 1) (11).

Methods reproducibility is meant to capture the original meaning of reproducibility, that is, the ability to implement, as exactly as possible, the experimental and computational procedures, with the same data and tools, to obtain the same results. Results reproducibility refers to what was previously described as "replication," that is, the production of corroborating results in a new study, having followed

the same experimental methods. Inferential reproducibility, not often recognized as a separate concept, is the making of knowledge claims of similar strength from a study replication or reanalysis. This is not identical to results reproducibility, because not all investigators will draw the same conclusions from the same results, or they might make different analytical choices that lead to different inferences from the same data. Here, we explore the definitions and operational complexities of each of these concepts.

Methods reproducibility

Methods reproducibility refers to the provision of enough detail about study procedures and data so the same procedures could, in theory or in actuality, be exactly repeated. Operationally, this can mean different things in different sciences. In the biomedical sciences, this means, at minimum, a detailed study protocol, a description of measurement procedures, the data gathered, the data used for analysis with descriptive metadata, the analysis software and code, and the final analytical results. In laboratory science, how key reagents and biological materials were created or obtained can be critical. In theory, these requirements are clear, but in practice, the level of procedural detail needed to describe a study as "methodologically reproducible" does not have consensus. For example, the detection of batch effects, which have been responsible for a number of high-visibility claims and retractions, can require information on exactly which samples were tested on which machine in what order and on what day, together with calibration data. This level of detail is typically not provided in publications and is not always retained by the investigator.

In the clinical sciences, the definition of which data need to be examined to ensure reproducibility can be contentious. The relevant data could be anywhere along the continuum from the initial raw measurement (such as a pathology slide or image), to the interpretation of those data (the pathologic diagnosis), to the coded data in the computer analytic file. Many judgments and choices are made along this path and in the processes of data cleaning and transformation that can be critical in determining analytical results. Last, even if there is consensus on the appropriate analytical data set, methodologic reproducibility requires an understanding of which and how many analyses were performed in a published paper were chosen. So, whether a particular study is to be considered methodologically reproducible is contingent on whether there is general agreement about the level of detail needed in the description of the measurement process, the degree of processing of the raw data, and the completeness of the analytic reporting.

Results reproducibility

Results reproducibility (previously described as replicability) refers to obtaining the same results from the conduct of an independent study whose procedures are as closely matched

Table 1. Examples of differences that affect the approach to reproducibility in distinct scientific domains.

Degree of determinism
Signal to measurement-error ratio
Complexity of designs and measurement tools
Closeness of fit between hypothesis and experimental design or data
Statistical or analytic methods to test hypotheses
Typical heterogeneity of experimental results
Culture of replication, transparency, and cumulating knowledge
Statistical criteria for truth claims
Purposes to which findings will be put and consequences of false conclusions

to the original experiment as possible. As with methods reproducibility, this might be clear in principle but is operationally elusive. The problem arises in settings where there is substantial random error in any result, making unclear the criteria for considering results to be “the same.” The intuition and logic of results reproducibility are derived from systems that are deterministic or for which the signal-to-error ratio is exceedingly high. But, when the same intuition and logic are applied to studies with substantive stochastic components, the paradigm of accumulating evidence might be more appropriate than any binary criteria for successful or unsuccessful replication.

In a deterministic system (for example, computational research), the outcome is determined by the initial conditions. Methods reproducibility is often demonstrated through results reproducibility because the two are linked by determinacy—the signal-to-noise ratio is effectively infinite. A single failure to reproduce the original results with identical inputs casts doubt on the methodology and on any predictions (12).

Closely related is a proof-of-principle study, which demonstrates a new phenomenon not previously observed; for example, delivery of the first normal, live-born infant derived from in vitro fertilization or a first case of human limb regeneration would be sufficient to show that such phenomena are possible. That said, a first demonstration will not be accepted without intensive, independent scrutiny of the methods employed and the outcomes claimed, in order to rule out the possibility of misconduct, selective reporting, or procedural compromise. Failure to replicate the phenome-

non under circumstances that preclude ancillary causes (for example, mistaken diagnosis, faulty procedures, measurement error, biased design, or fraud) constitutes effective disproof of the original claim. This type of scrutiny helped debunk claims of cold fusion (13) and pluripotent stem cell creation (14).

The bright-line logic of deterministic and proof-of-principle studies is superficially mimicked through statistical significance testing; findings that are statistically significant are often regarded either as literally true or, at least, as justifying a knowledge claim, and those that aren’t are regarded as either confirming the null hypothesis or inconclusive. However, it is inappropriate to combine null hypothesis–significance testing with intuition from fields of science with determinacy or very high signal-to-noise ratios. Statistical significance by itself tells very little about whether one study has “replicated” the results of another. For example, two studies that show identical 10% survival differences between the treatment and control arms would have very different degrees of statistical significance if their sample sizes were substantially different. If one was highly significant and the other far from significance, the two studies might be reported individually as supporting opposite conclusions, in spite of the fact that they are mutually corroborative.

An interpretive error complementary to the one described above involves the assumption that multiple studies that fail to demonstrate statistical significance necessarily confirm the absence of an effect. This fallacy was demonstrated, for example, in a well-known early meta-analysis of the effect of tamoxifen on breast cancer survival (15). (Meta-analysis is the mathematical pooling of results of multiple independent studies that investigate the same research question.) In this pooled analysis, 25 of 26 individual studies of tamoxifen’s effect were not statistically significant. Naïvely, these nonsignificant findings could be described as having been replicated 25 times. Yet, when properly pooled, they cumulatively added up to a definitive rejection of the null hypothesis with a highly statistically significant 20% reduction in mortality. So the proper approach to interpreting the evidential meaning of independent studies is not to assess whether or not statistical significance has been observed in each, but rather to assess their cumulative evidential weight.

The above example involved randomized experiments without major bias. If major biases are at play, having multiple statistically

significant studies and even a statistically significant summary result for a meta-analysis does not guarantee that a genuine effect exists. For example, many studies on single nutrients and even their meta-analyses show significant associations with cancer or death risk, but most reflect confounding and reporting biases (16). What matters in such scientific fields is not replication defined by the presence or absence of statistical significance, but the evaluation of the cumulative evidence and assessment of whether it is susceptible to major biases, due to either the study design or the self-selection of subjects in ways that are unknown or not measurable.

It is easier to statistically define nonreplication than replication, through statistical tests of heterogeneity, which can evaluate whether the difference between two or more experimental results might be due to the play of chance. Two or more studies are judged to be statistically heterogeneous when the between-study variance in reported effects is substantially greater than what is expected from sampling error. Such tests, however, are greatly underpowered and therefore unreliable when comparing several studies, particularly when they are small or imprecise (17). Conversely, when there are many large studies, tests for heterogeneity might demonstrate statistical heterogeneity (and, therefore, lack of results reproducibility) even if the effect sizes of different studies are close (17) and regarded as scientifically equivalent. Therefore, a preferred way to assess the evidential meaning of two or more results with substantive stochastic variability is to evaluate the cumulative evidence they provide vis-à-vis a hypothesis of interest and not whether one contradicts or discredits the other through the lens of statistical significance.

Whether experiments can be pooled to provide cumulative evidence depends further on which features of a study or results are considered scientifically equivalent enough to pool. For example, in a recent replication effort of the anti-Leishmania activity of tested peptides, it was difficult to tell whether replication had been achieved or not; the peptides were found to have anti-Leishmania activity, but at concentrations 10 to 50 higher than in the original experiments and close to the toxicity range of eukaryotic human cells (18). Rejection of the null hypothesis in the two sets of experiments was insufficient to garner consensus about results reproducibility when consensus was missing about the operational scientific question, that is, whether the peptides had activity at low (and clinically relevant) con-

centrations or at any concentration. These experiments could be regarded as conflicting on the first question and mutually supportive on the second, so the question of results reproducibility is always dependent on the specificity of the underlying scientific question.

In the absence of a consensus on what constitutes successful results reproduction, investigators employ a range of operational definitions, as occurred in the case of the evaluation of the (results) reproducibility of 100 psychology studies conducted by the Open Science Collaboration (2). They acknowledged the lack of an accepted definition and so examined the studies from a variety of perspectives: significance levels, effect sizes, the number of studies whose effect size was within the confidence interval of another selected study, whether the combined estimate of the original and replication studies was statistically significant and finally, a “subjective assessment” of reproducibility. The lack of a single accepted definition opened the door to controversy about their methodological approach and conclusions (19).

Robustness and generalizability

We briefly introduce these terms because they are sometimes used in lieu of the term reproducibility. Robustness refers to the stability of experimental conclusions to variations in either baseline assumptions or experimental procedures. It is somewhat related to the concept of generalizability (also known as transportability), which refers to the persistence of an effect in settings different from and outside of an experimental framework. The issue of generalizability arises in clinical trials and other types of studies in which the context of how an intervention is delivered and the types of subjects tested are highly relevant. When a universal property of nature or biology is being explored, generalizability is often assumed, and the concept of robustness of a finding to minor variations in experimental procedures is more frequently invoked. Whether a study design is similar enough to the original to be considered a replication, a “robustness test,” or some of many variations of pure replication that have been identified, particularly in the social sciences (for example, conceptual replication, pseudoreplication), is an unsettled question (12).

Inferential reproducibility

This dimension of reproducibility, while underrecognized, might be the most important one. It refers to the drawing of qualitatively similar conclusions from either an indepen-

dent replication of a study or a reanalysis of the original study. Inferential reproducibility is not identical to results reproducibility or to methods reproducibility, because scientists might draw the same conclusions from different sets of studies and data or could draw different conclusions from the same original data, sometimes even if they agree on the analytical results. The aforementioned debate about the interpretation of the psychology reproducibility results could be seen as an example of this (19). There are many contributors to these differences, including different assessments of the prior probability of the hypotheses being explored—which can only be examined through a Bayesian lens—and different choices about how to analyze and report data, which we will discuss under the general rubric of “multiplicity.”

Bayesian perspectives. What scientists and science users are really concerned about when they debate research reproducibility is the truth of research claims. Research reproducibility and other related concepts can be regarded as ways to operationalize truth. To express this informally, if a finding can be reliably repeated, it is likely to be true, and if it cannot be, its truth is in question (20). Unfortunately, the standard frequentist approach to statistics does not allow the assigning of a probability of truth to a hypothesis or claim (21). However, the philosophy underlying Bayesian statistics does: The probability that a claim is true after an experiment is a function of the strength of the new experimental evidence combined with how likely it was to be true before the experiment. Viewed through this lens, the aim of repeated experimentation is to increase the amount of evidence, measured on a continuous scale, either for or against the original claim.

How much evidence needs to be gathered for effective proof depends on the prior probability of the original hypothesis, which itself depends on prior evidence. If a hypothesis is highly unlikely a priori, such as the presence of extrasensory perception or the therapeutic effect of homeopathy, a large amount of high-quality evidence would have to be gathered to outweigh the very strong prior reasons to view such claims skeptically (22, 23). Conversely, for a hypothesis based on a plausible, coherent, and robust body of prior work, such as the research that preceded the development of imatinib for leukemia (24), a claim is more likely to be true both before and after an experiment that supports it. Under the

Bayesian paradigm, every study contributes evidence that adds to the prior evidence, represented by the a priori probability of truth of a given claim. Reproducibility plays no formal role except that repeated experiments with similar findings will generate strong cumulative evidence, which can confirm or refute an initial finding.

A hybrid Bayesian-frequentist index that captures the traditional notion of results reproducibility is predictive power: the probability that, given a result in one experiment, the next experiment of specified design will be statistically significant. This probability has been dubbed the replication (25) or reproducibility probability (26). After a significant result, this probability is typically far lower than most scientists suspect, due to the random variation of the *P* value. This phenomenon shows that the failure to observe a significant result in a second experiment of similar design is to be expected and cannot be used as a criterion to undermine the credibility of the first experiment (25–28).

Multiplicity. Multiplicity, combined with incomplete reporting, might be the single largest contributor to the phenomenon of nonreproducibility, or falsity, of published claims. Multiplicity can arise in many ways, including testing many hypotheses in one experiment, testing one hypothesis many times or in multiple ways in one or more studies, and other maneuvers that virtually guarantee a chance observation that will appear to strongly support some hypotheses. A diverse vocabulary has developed in various fields for the biases or practices that can mislead because of multiplicity (Table 2). These range from the conduct of multiple experiments (and reporting only “good” ones) to the use of multiple endpoints, multiple predictors, and, perhaps most invisibly, the fitting of many mathematical or statistical models. Coupled with incomplete or selective reporting, these practices are a formula for generating findings unlikely to be supported by further experimentation. However, the adverse effects of multiplicity can be greatly ameliorated through complete reporting of analytical procedures and choices (for example, reporting the total number of associations tested or models considered).

These practices are likely to thrive when there is low consensus on the correct methodology and what is considered sufficiently complete reporting. Many scientific fields have seen an increasing burden of multiplicity,

Table 2. Terminology to describe practices that introduce or hide multiplicity.

Multiple comparisons (many statisticians)
File-drawer problem (29)
Pseudoreplication (32)
Significance questing (33)
Data mining, dredging, torturing (34)
Hypothesizing after the results are known (HARKing) (30)
Data snooping (35)
Selective outcome reporting (36)
Silent multiplicity (37)
Specification searching (38)
P-hacking (31)

because they have expanded their capacity to measure more variables and to fit increasingly complex models. Scientific fields that routinely work with multiple hypotheses without correcting for or reporting the occurrence of multiplicity run a higher risk of non-reproducibility of results or inferences.

A variety of old and new practices that are described as specific forms of bias actually result from multiplicity. The classic file-drawer publication bias problem (wherein non-significant or “uninteresting” results are not published) (29) results in bias under the assumption that multiple studies are being produced independently but a biased sample is published. The acronym “HARKing”—hypothesizing after the results are known—is used in psychology literature to indicate the phenomenon of constructing hypotheses after the data are analyzed, suggesting that only one hypothesis was tested while many were contemplated (30). The practice of P-hacking, a term recently coined in psychology literature and applied to a long-recognized phenomenon in modeling, refers to applying multiple statistical analyses and subanalyses until hitting upon and reporting a statistically significant result while not completely reporting how it was obtained (31).

Ultimately, inferential reproducibility might be an unattainable ideal, and in some situations not even a desirable one, because differences between scientists and their interpretations of a single or multiple studies are the means through which weaknesses or gaps in the evidence base are identified and science progresses. What is clear, however, is that none

of these types of reproducibility can be assessed without complete reporting of all relevant aspects of scientific design, conduct, measurements, data, and analysis. Such transparency will allow scientists to evaluate the weight of evidence provided by any given study more quickly and reliably and design a higher proportion of future studies to address actual knowledge gaps or to effectively strengthen cumulative evidence, rather than explore blind alleys suggested by research inadequately conducted or reported.

CONCLUSIONS

The lexicon of reproducibility to date has been multifarious and ill-defined. The causes of and remedies for what is called poor reproducibility, in any scientific field, require a clear specification of the kind of reproducibility being discussed (methods, results, or inferences), a proper understanding of how it affects knowledge claims, scientific investigation of its causes, and an improved understanding of the limitations of statistical significance as a criterion for claims. Many aspects of the new interest in research reproducibility have been salutary, but we need to move toward a better understanding of the relationship between reproducibility, cumulative evidence, and the truth of scientific claims.

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Science Translational Medicine

What does research reproducibility mean?

Steven N. Goodman, Daniele Fanelli and John P. A. Ioannidis

Sci Transl Med **8**, 341ps12341ps12.
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SUNDAY, APRIL 29**9-11:30 AM Pre-Conference Workshop: Causal Modeling in Air Pollution Research and Policy**

Chairs: Francesca Dominici, Harvard T.H. Chan School of Public Health, and Katherine Walker, Health Effects Institute

Recent years have seen a growing interest in the application of causal modeling methods to explore causal relationships between air pollution and health. This session will bring together experts in causal modeling to introduce different methods, provide critical perspectives on their potential contributions and limitations, and discuss their interpretation within the broader context of causation. Open to all conference attendees.

1:00 PM Ozone: Global Pollutant, Personal Effects

Chairs: Dan Greenbaum, Health Effects Institute, and Jana Milford, University of Colorado–Boulder

Ozone is a secondary pollutant that is regulated through the National Ambient Air Quality Standards (NAAQS), which are reviewed every five years; the next ozone review is due to start soon. This session will discuss challenges in controlling ozone levels, including atmospheric transport across continents and climate change, and the current science-based evidence that will contribute to the ozone health assessment. The session will end with a discussion of key issues relevant to the next ozone NAAQS.

4:15 PM Poster Session I**6:00 PM Opening Reception, Dinner, and Keynote Speaker**

Venkat Sumantran, Chairman, Celeris Technologies; coauthor of Faster, Smarter, Greener: The Future of the Car and Urban Mobility

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MONDAY, APRIL 30**8:30 AM Traffic-Related Air Pollution and Health: A Moving Target**

Chairs: Francesco Forastiere, Lazio Regional Health Service, Italy, and Fred Lurmann, Sonoma Technology, Inc.

This session will discuss important factors related to the design and interpretation of health studies of traffic-related air pollution (TRAP). It is intended to aid the scope of a new systematic review to update HEI's 2010 review of the health effects of TRAP. We will introduce the Traffic Review Panel and announce new HEI studies on TRAP, taking into account other factors, such as noise, socioeconomic status, and green space.

10:45 AM Air Pollution and Diabetes: What Is the Evidence?

Chairs: Barbara Hoffmann, University of Düsseldorf, Germany, and Ivan Rusyn, Texas A&M University

Diabetes and obesity, as well as air pollution, are known risk factors in the development of cardiovascular and respiratory diseases. Air pollution is associated with development of diabetes in adults, and there is some evidence that early-life exposure in children may be associated with diabetes later in life. This session will discuss the evidence, who is most susceptible, and what mechanisms are behind these observations.

1:30 PM Poster Session 2**3:15 PM Reproducibility in Environmental Health Research**

Chairs: Amy Herring, Duke University, and Kiros Berhane, University of Southern California

Awareness has grown that many scientific studies are not reproducible and this problem seems to be particularly widespread in certain fields of science. Environmental standards are health based and there have been long-standing debates about replicability and reproducibility (including data access, analysis, and quality) of the studies underpinning regulations. Questions about reproducibility have been discussed in scientific journals and are reflected in congressional efforts at transparency. This session will describe these issues and present examples of the best practices.

5:15 PM Free Evening**TUESDAY, MAY 1****8:30 AM Advancing Air Quality, Global Health, and Energy Science at HEI**

Research Committee Chair David Eaton, University of Washington–Seattle, and Review Committee Chair James Merchant, University of Iowa, will introduce the two committees and preside over a presentation of HEI's research program, which includes traffic-related air pollution, low levels of exposure, accountability, and mechanisms of effect, as well as the expanding Global Health Program. Energy Research Committee Chair George Homberger, Vanderbilt University, will join them to present HEI's Energy Research Program, focused on the potential for human exposure and health effects from the development of oil and natural gas from unconventional resources.

11:00 AM The Power of Place: Pathways to Urban Living

Chairs: David Foster, University of Wisconsin–Madison, and Frank Kelly, King's College London, United Kingdom

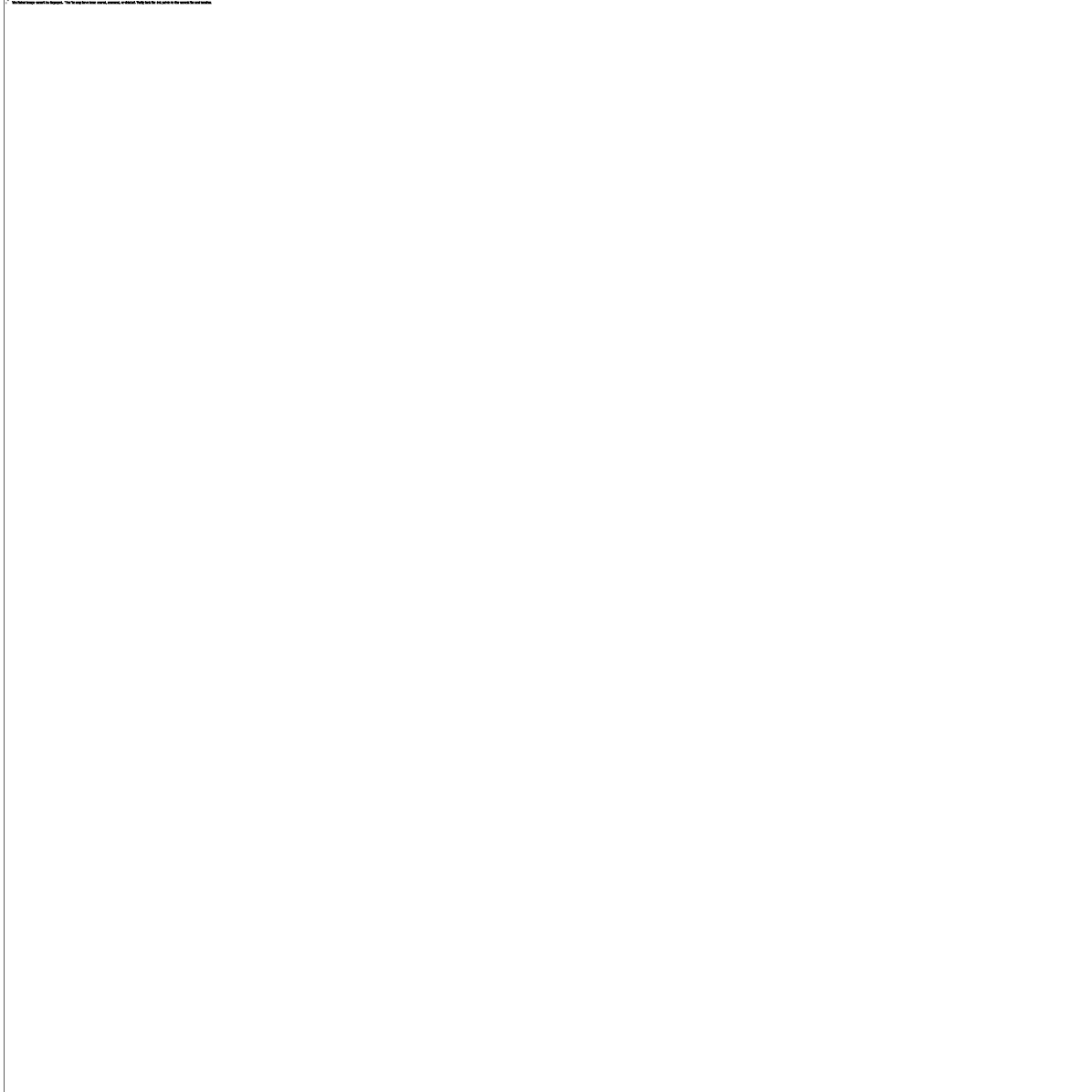
More than half of the world's population now lives in urban areas, and this number is expected to increase due to continuing population growth and urbanization. Air pollution and noise, along with interrelated factors such as physical inactivity, lack of green space, stress, and socioeconomic deprivation, are associated with adverse health. This session will explore how integrated urban design, transport planning, and new mobility and transportation technologies can improve city residents' health and reshape cities in the future.

2:30 PM Conference Adjourns**PLEASE POST**

Note: This is a preliminary program. The timing and order of the sessions are subject to change.

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From: InsideEPA.com [insideepa-alerts@iwpnews.com]
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Latest News

Eyeing State Discretion, EPA, ECOS Grapple With New Program Review Policy

ST. PAUL, MN -- EPA and state regulators are continuing months-long talks on streamlining agency reviews of states' federally-delegated programs, seeking to clarify the level of deference EPA staff should afford state

regulators and crafting a policy for elevating disputes among lower-level officials during permitting or enforcement reviews.

Legal Briefs Highlight Wide-Ranging Attacks On EPA's CSAPR 'Update'

A series of new legal briefs from several states, power companies and environmental groups highlights wide-ranging and often competing attacks on the Obama EPA's "update" to its Cross-State Air Pollution Rule (CSAPR) emissions trading program, a program that the Trump administration is defending in ongoing appellate litigation.

Auto Suppliers Seek Compromise To Avoid Fractured Vehicle GHG Rules

Auto suppliers and a car-state Democrat are urging policymakers to avoid a political and legal blowup over pending revisions to light-duty vehicle GHG and fuel economy rules, pushing Trump officials to work seriously with California on a possible deal, while also suggesting that defenders of the Obama-era standards must be open to some changes.

In IRIS Comments, DOD Queries Study EPA Uses To Set Uranium Policies

The Defense Department (DOD) is querying whether a 1998 study EPA is considering using in its upcoming Integrated Risk Information System (IRIS) assessment of uranium -- a study that is also the basis for several strict regulatory policies -- is appropriate, or whether the agency should instead use a 1949 study that could result in weaker limits.

D.C. Circuit Slated To Hear Suit Over EPA's 'Exceptional Events' Air Policy

The U.S. Court of Appeals for the District of Columbia Circuit will hear oral argument March 22 in a suit filed by environmentalists over EPA's rule allowing Clean Air Act regulatory exemptions for air pollution associated with "exceptional events" such as wildfires, a policy critics claim allows for unlawful increases in emissions.

Daily Feed

EPA seeks an extra 90 days to propose lead dust rule update

"While it is important for the proposed rule to be issued expeditiously, it is also important for EPA to have a clear and reasonable timetable," EPA says.

Quote-Unquote: EPA promises new audit and science policies

Plus: a reason to stay in the Paris climate accord and governors urge Trump to reject proposals that would 'weaken' RFS.

Ewire: Climate science's big day in court

The parties have eight questions to answer at the novel court-ordered "tutorial."

House panel seeks briefing on EPA reorganization plans

The Trump administration has developed a draft EPA workforce reorganization plan, not yet released publicly, with an eye toward incorporating reorganization proposals into its fiscal year 2019 budget.

Environmentalists denounce Pruitt's planned science policy

"This canard about 'secret science' began as an attempt by industry to undermine the landmark research -- from more than two decades ago -- that determined air pollution is bad for your health," one environmentalist says.

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Please find attached. **Attorney Client / Ex. 5**

Attorney Client / Ex. 5 Please let me know if you have any questions or comments. **Attorney Client / Ex. 5**

Message

From: Dan Greenbaum [DGreenbaum@healtheffects.org]
Sent: 3/30/2018 4:57:39 PM
To: Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clint]
CC: Robert O'Keefe [ROKeefe@healtheffects.org]
Subject: RE: Reproducing Science...

Thanks Clint... And NO need for the pardon; entirely understandable given the fire hose I imaging is aimed at you these days...

Look forward to staying in touch..

Best
Dan

From: Woods, Clint [mailto:woods.clint@epa.gov]
Sent: Friday, March 30, 2018 11:36 AM
To: Dan Greenbaum <DGreenbaum@healtheffects.org>
Cc: Robert O'Keefe <ROKeefe@healtheffects.org>
Subject: RE: Reproducing Science...

Dan,

Please pardon my delay in following up -- Thanks so much for sending this along. Will be in touch in near future on several items of interest.

Clint Woods
Deputy Assistant Administrator
Office of Air and Radiation, U.S. EPA
202.564.6562

From: Dan Greenbaum [mailto:DGreenbaum@healtheffects.org]
Sent: Friday, March 23, 2018 9:54 AM
To: Woods, Clint <woods.clint@epa.gov>
Cc: Robert O'Keefe <ROKeefe@healtheffects.org>
Subject: Reproducing Science...

Dear Clint:

Hope this finds you well -- I am sure you are BUSY!

Could not help but remember when we saw the latest news (<https://www.epa.gov/newsreleases/daily-caller-scott-pruitt-will-end-epas-use-secret-science-justify-regulations>) the many constructive discussions we had had when you were at House Science about the opportunities to enhance data sharing. Though I am sure you are occupied with many things, I thought you should know we are very much still on the case, trying to make our data available -- and educating the scientific community about the need to do so. We actually had already planned an entire session at our Annual Conference in Chicago in late April on "Reproducibility in Environmental Health Research" and are pleased to have Steve Goodman, who authored the attached with John Ioannidis to lead off in the session. If there is someone there who you think could benefit from attending, please let us know and we can help facilitate that...

And in the meantime, if they are ways that we might help in identifying the opportunities and the potential snags in this new initiative, please let us know...

All the best!

Dan

Dan Greenbaum, President

Health Effects Institute

O: +1 617 488 2331

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Subject: July 16 -- E&E News PM is ready

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E&E NEWS PM

AN E&E NEWS PUBLICATION

E&E NEWS PM — Mon., July 16, 2018



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1. CLIMATE:

Kochs rally lawmakers for anti-carbon-tax resolution

Koch Industries Inc. today wrote lawmakers urging support for an anti-carbon-tax resolution set for a vote in the House, as outside groups gird for a fight over the proposal.

THIS AFTERNOON'S STORIES

2. EPA:

Lineups set for marathon 'secret science' hearing

3. PEOPLE:

Former Clinton White House official joins EDF

4. FEDERAL AGENCIES:

USGS not liable for fatal helicopter crash

UPCOMING HEARINGS AND MARKUPS

5. CALENDAR:

Activity for July 16 - July 22, 2018

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Subject: The Morning Headlines from InsideEPA/climate -- March 21, 2018



March 21, 2018

Latest News

Former Adviser Holds Out Hope Trump May Remain In Paris Climate Deal

Despite President Donald Trump's pledge to withdraw from the Paris climate deal, a former climate adviser hopes the president will eventually reverse his stance and remain in the deal, albeit with a weaker greenhouse gas reduction target than the Obama administration and which would be approved by Congress.

Auto Suppliers Seek Compromise To Avoid Fractured Vehicle GHG Rules

Auto suppliers and a car-state Democrat are urging policymakers to avoid a political and legal blowup over pending revisions to light-duty vehicle GHG and fuel economy rules, pushing Trump officials to work seriously with California on a possible deal, while also suggesting that defenders of the Obama-era standards must be open to some changes.

Pro-Ethanol Lawmakers Call On Trump To Oppose RFS Credit Price Cap

Pro-ethanol lawmakers are calling on President Donald Trump to oppose calls from the oil sector and others for EPA to impose a short-term cap on renewable fuel standard (RFS) compliance credit prices, warning that a cap would make it "impossible" to achieve the RFS' goals for production of alternative and renewable fuels.

Climate Beat

Congress: House panel seeks briefing on EPA reorganization plans

The Trump administration has developed a draft EPA workforce reorganization plan, not yet released publicly, with an eye toward incorporating reorganization proposals into its fiscal year 2019 budget.

Congress: Udall urges EPA to answer GAO queries on secure phone booth

The top Democrat on the appropriations panel overseeing EPA's budget questions whether Administrator Scott Pruitt's secure phone booth is an unnecessary taxpayer expenditure that violated budget laws.

Loose Change: Pruitt to issue policy curtailing 'secret science'

In today's news roundup: The policy, long pushed by Rep. Lamar Smith (R-TX), would require scientific studies used for regulations to publish their underlying data though critics say the move is simply an effort to hinder EPA rules.

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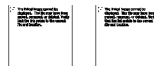
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Subject: PM 2.5 goes mainstream

“Mainstream,” that is, assuming anybody still reads *The New Republic* nowadays.

* * * *

Air Pollution Denial Could Become EPA Policy

For decades, the agency has said that inhaling soot in any amount is unsafe. The Trump administration might change that.

By Emily Atkin

The New Republic

August 8, 2018

Much of the Republican Party has long denied the science of climate change—that humans are causing the planet to warm. They’ve been less willing, historically, to deny the science of air pollution, which states that breathing in soot is bad for humans. But norms have changed since Donald Trump became president. For the last year and a half, fringe theories once promoted only by tobacco lobbyists and the very far-right have seeped into the offices of the Environmental Protection Agency. Now, those theories could soon be reflected in official EPA regulations intended to protect the public’s health.

A story published Monday in environmental policy outlet E&E News details the evidence. “After decades of increasingly strong assertions that there is no known safe level of fine particle exposure for the American public, [the] EPA under the Trump administration is now considering taking a new position,” reporter Niina Heikkinen wrote. “The agency is floating the idea of changing its rulemaking process and setting a threshold level of fine particles that it would consider safe.” (She’s referring to particulate matter that is 2.5 micrometers or less in diameter, small enough to penetrate deep into the circulatory system and potentially infiltrate the central nervous system. PM2.5 is the main component of soot.)

Under these changes, which are being considered by EPA acting administrator Andrew Wheeler, PM 2.5 would no longer be considered a “non-threshold pollutant”—one that causes harm at any level of exposure. Instead, it would become a “threshold pollutant,” or one that causes harm only above a certain exposure level. Wheeler is considering this change most likely because it would help him to legally justify repealing the Clean Power Plan, a set of Obama-era climate regulations to reduce greenhouse gas emissions from coal plants.

Wheeler must prove that Obama’s policy would do more harm than good. Obama’s EPA had argued that the Clean Power Plan would reduce PM2.5 pollution, thus creating from \$13 billion to \$30.3 billion in public health benefits. This figure made up about half of the Clean Power Plan’s stated benefits. If Wheeler changes the official designation of PM2.5, the EPA’s position would be that breathing in small amounts of soot has the same impact as breathing in none. Thus, many of Obama’s predicted benefits would be erased.

This goes against nearly all mainstream scientific research on air pollution. But Wheeler might be able to make it official EPA policy anyway. That’s because in April, the EPA’s disgraced former administrator, Scott Pruitt, proposed a new rule to limit how science can be used at the agency. Championed by a former tobacco lobbyist, the rule prohibits the EPA from using research that includes confidential data about human subjects—effectively disqualifying much of the research showing how air pollution damages public health.

The scientific community is pushing back against the agency’s so-called secret science policy. On Tuesday, the entirety of Harvard University—its law school, medical school, school of public health, and all its teaching hospitals—wrote in an extensive letter that the “rule will wreak havoc on public health, medical, and scientific research and undermine the protection of public health and safety.” The school warned that the EPA’s rule could disqualify high-quality science that supports some of the EPA’s strongest regulations on lead, arsenic, hormone-disrupting chemicals, and—of course—air pollution.

Wheeler hasn’t yet decided whether the EPA will change its position on PM2.5. If he does, air pollution denial will become U.S. policy for the first time.

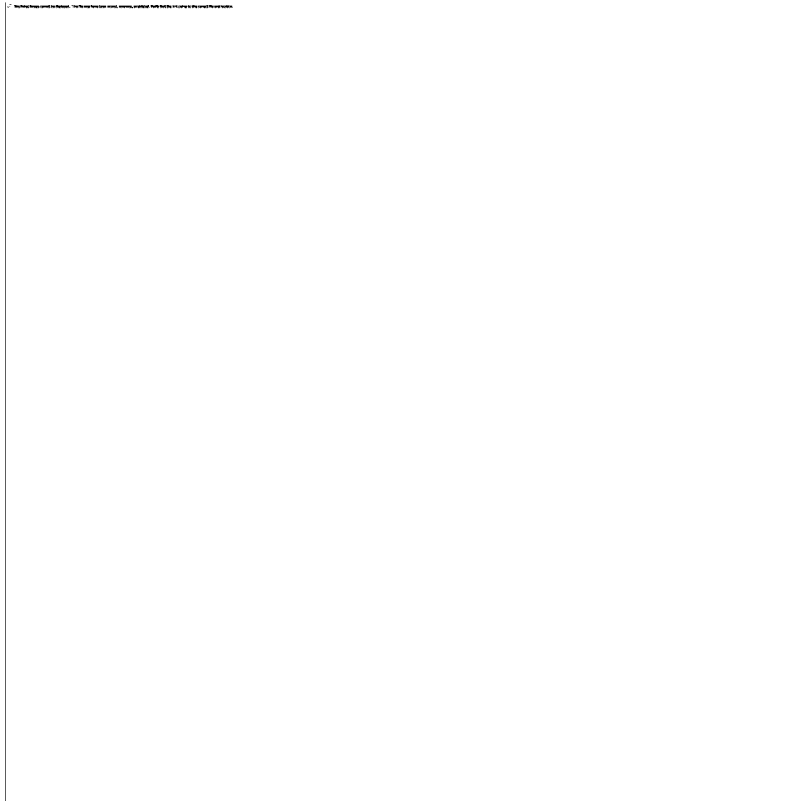
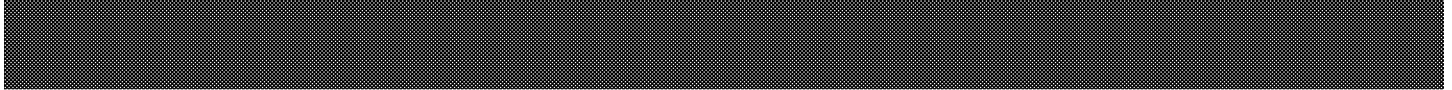
Emily Atkin is a staff writer at The New Republic.

David S. Harlow
Senior Counsel
Immediate Office of the Assistant Administrator
Office of Air and Radiation, USEPA
WJC-N Room 5409K

1200 Pennsylvania Avenue NW
Washington, DC 20460
202-564-1233
Harlow.David@epa.gov

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By [Jacqueline Toth](#)

Top Stories

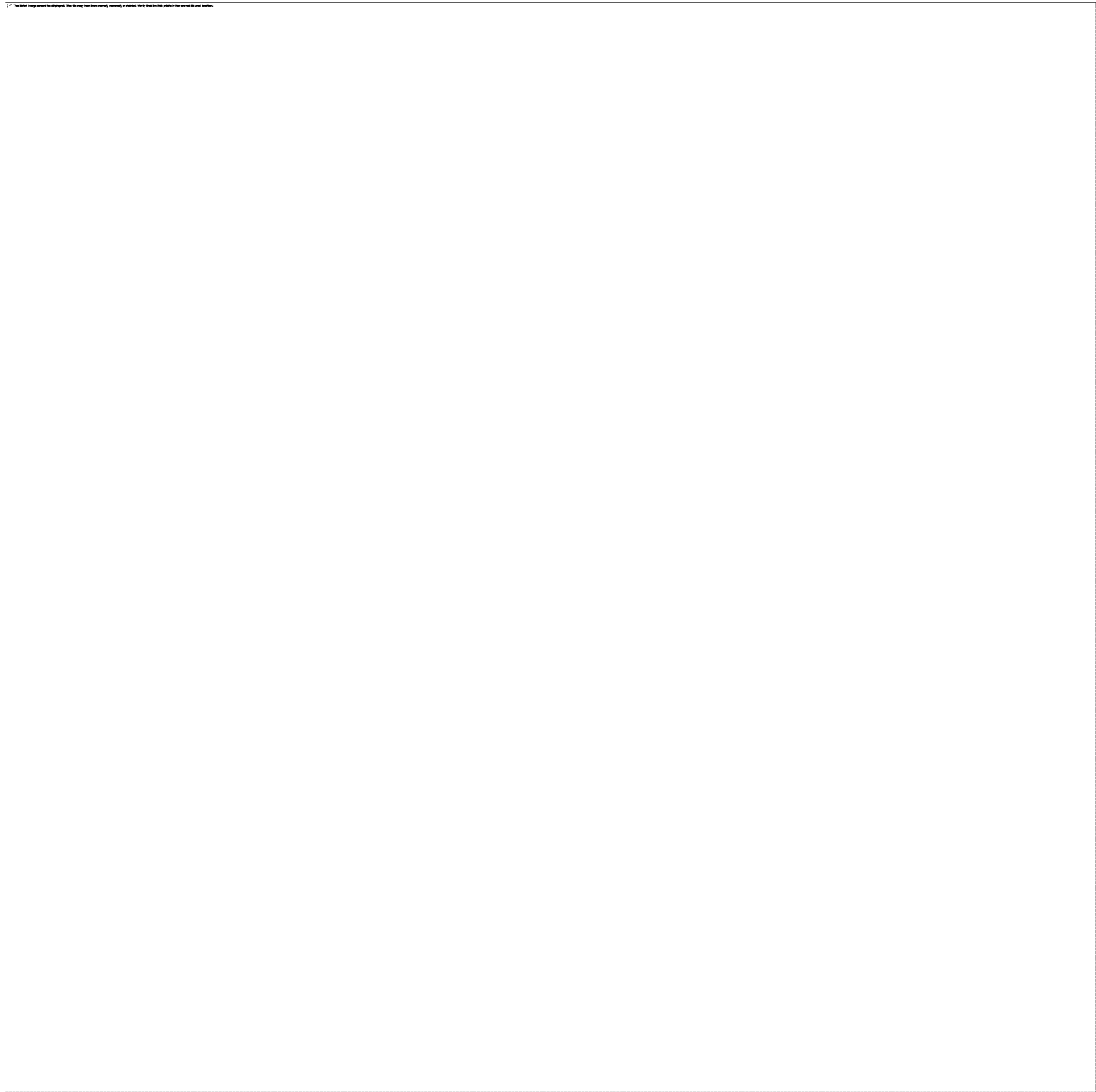
- Brent crude prices rose past \$80 a barrel, their highest level since November 2014, as the world continues to react to the United States' decision to withdraw from the Iran nuclear deal and reinstate sanctions on Iran, and as European companies start pulling back from Iran given the threat of sanctions. Brent crude was up 0.8 percent to \$79.91 a barrel on London's ICE Futures exchange. ([The Wall Street Journal](#))

- For the last few weeks, Environmental Protection Agency Administrator Scott Pruitt has been advised by white-collar defense lawyer Paul Rauser, co-founder of the Aegis Law Group, over the federal investigations Pruitt faces surrounding extravagant spending and allegations of ethical lapses, according to two people familiar with the situation. Pruitt's support among White House staffers has waned, but President Donald Trump "hasn't yet gotten to the point" of wanting to fire Pruitt yet, according to a former White House official. ([Politico](#))
- Citing security concerns, a senior United States diplomat warned that the United States might choose to sanction Russia's Nord Stream 2 natural gas pipeline that is planned to span from Russia to Germany. The project would double how much natural gas Russia can ship to Europe from Siberia. ([The Associated Press](#))
- The National Highway Traffic Safety Administration launched what is at least its second investigation into car crashes involving vehicles made by Tesla Inc., this time over last week's crash of a car on Autopilot in Utah. The NHTSA, which has sent a team of investigators to look into the accident, said it "will take appropriate action" depending on the results of its review. ([Reuters](#))
- Canadian Finance Minister Bill Morneau said Canada will cover Kinder Morgan Inc.'s losses on the \$5.75 billion Trans Mountain pipeline expansion, a project Prime Minister Justin Trudeau approved in 2016 but which British Columbia has vowed to block, citing environmental risks. Kinder Morgan has said it will abandon the project on May 31 unless political and legal hurdles over the project are lifted. ([The Wall Street Journal](#))

Chart Review

Tax credits and solar tariffs affect timing of projected renewable power plant deployment

U.S. Energy Information Administration



Events Calendar (All Times Local)

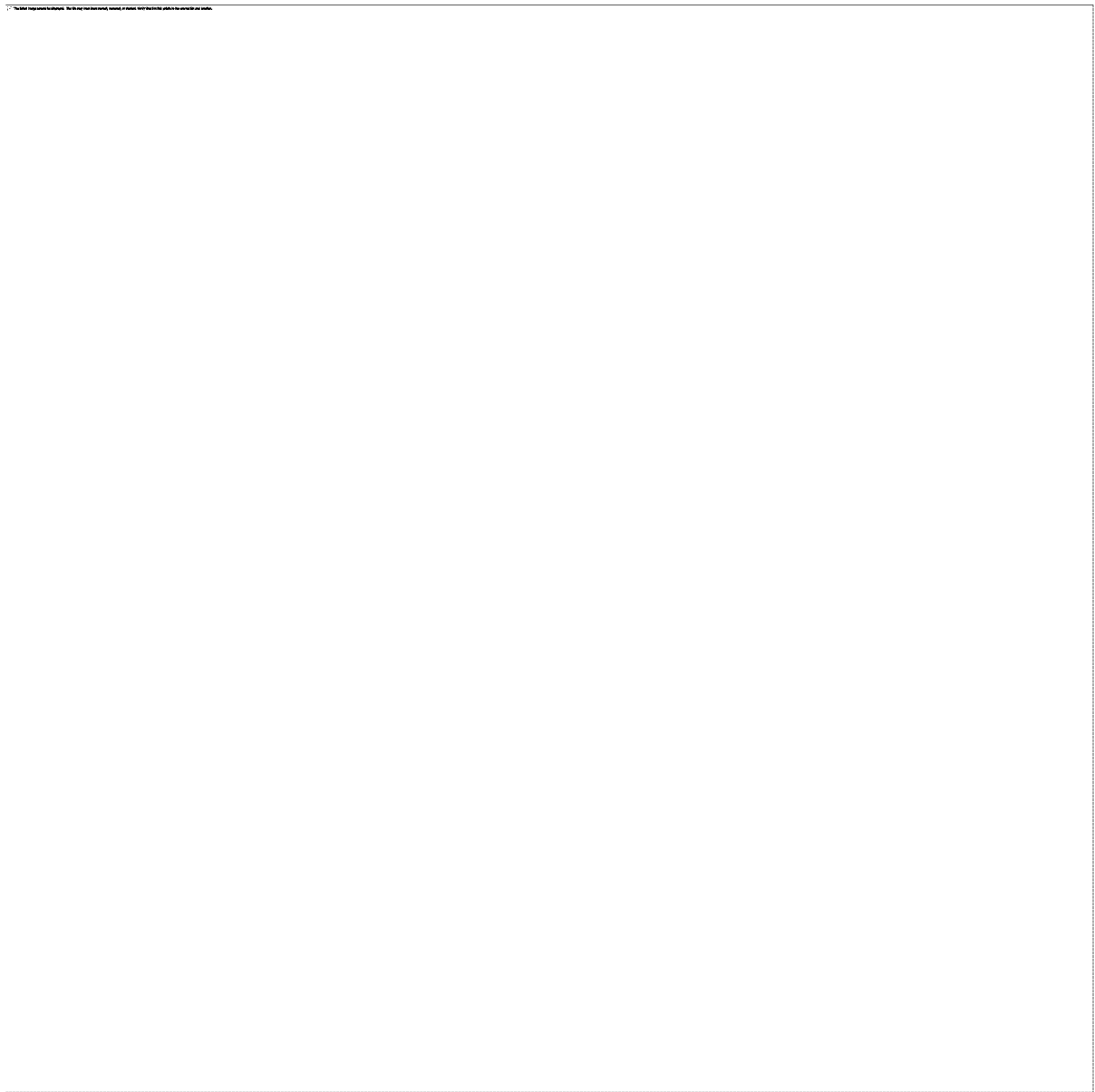
THURSDAY

AclaraConnect conference	7 a.m.
California Energy Summit	8 a.m.
National Infrastructure Week	8 a.m.

CSIS conversation with Total S.A. Chairman and CEO Patrick Pouyanné	9 a.m.
Federal Energy Regulatory Commission open meeting	10 a.m.
House Natural Resources Oversight hearing on impediments to commerce and innovative injurious species management	10 a.m.
U.S. Energy Association event on a carbon sequestration partnership	10 a.m.
Senate Environment and Public Works hearing on S.2800, America's Water Infrastructure Act of 2018	10:15 a.m.
Advanced Energy Economy webinar on cybersecurity in a distributed energy future	11 a.m.
American Council on Renewable Energy webinar on community choice aggregation	12 p.m.
House Federal Lands Subcommittee hearing on H.R. 2365, H.R. 3777, H.R. 4824 and H.R. 5023	2 p.m.

FRIDAY

National Infrastructure Week	8 a.m.
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These are the Most Loved Brands in America

The brands that define American culture and commerce, ranked using over 250,000 survey interviews with U.S. adults.

General

Brent Crude Hits \$80 Amid Concerns Over Iran Supply
Sarah McFarlane, The Wall Street Journal

Brent crude prices climbed past \$80 a barrel Thursday, as Washington's decision to reinstate sanctions on Iran continued to fuel a rally that has pushed the market to 3½-year highs.

Pruitt taps outside attorney for help amid investigations
Andrew Restuccia and Emily Holden, Politico

EPA administrator Scott Pruitt has tapped a white-collar defense lawyer to advise him as he grapples with a dozen federal investigations into his activity, according to two people familiar with the situation.

EPA's Own Advisory Board Questions "Secret Science" Plan
Scott Waldman, E&E News

EPA's Science Advisory Board wants to review Administrator Scott Pruitt's plan to restrict studies the agency uses when crafting regulations.

Environmental groups sue EPA for abandoning hard rock mining rule
Valerie Volcovici, Reuters

Six environmental groups on Wednesday filed a lawsuit against U.S. Environmental Protection Agency chief Scott Pruitt for abandoning a rule that would have forced hard-rock mining companies to prove they have enough money up front to clean up hazardous substances released at mine sites.

EPA's Scott Pruitt given extension to file financial disclosure
Josh Siegel, Washington Examiner

Environmental Protection Agency Administrator Scott Pruitt did not file his financial disclosure form for 2018 when it was due Tuesday because he was granted an extension.

EPA move on chemical study may trip up Pruitt
Annie Snider, Politico

EPA Administrator Scott Pruitt is facing a new controversy over chemical contamination that could prove even more damaging than his spate of recent ethics scandals.

Dems claim Pruitt's former security chief intervened to hire business associate

Miranda Green, The Hill

Two Democrats on the Senate Environment and Public Works Committee are requesting that the Environmental Protection Agency (EPA) inspector general (IG) look into the business dealings of Administrator Scott Pruitt's former head of security.

Scott Pruitt's Policy Director at EPA Met With Hundreds of Industry Representatives, Emails Show

Sharon Lerner, The Intercept

A cache of internal Environmental Protection Agency communications shows that the embattled agency administrator Scott Pruitt isn't the only one who has been in frequent contact with the industries that the environmental agency is supposed to regulate.

Oil magnate gave Pence tickets to NFL game he walked out of

Megan R. Wilson, The Hill

Vice President Pence received NFL tickets from oil magnate Forrest Lucas and tickets to the 2017 Super Bowl valued at \$15,000 from Houston Texans owner Bob McNair, according to the vice president's most recent personal financial disclosure form.

Oil and Natural Gas

US Warns of Sanctions Risk to Germany-Russia Gas Pipeline

Frank Jordans, The Associated Press

A pipeline project between Russia and Germany risks triggering U.S. sanctions because of security concerns, a senior American diplomat said Thursday.

Canada Ready to Compensate Kinder Morgan for Pipeline Losses

Paul Vieira, The Wall Street Journal

In a bid to protect Canada's reputation as an attractive destination for energy investment, the Liberal government pledged Wednesday to cover Kinder Morgan Inc.'s losses on the Trans Mountain pipeline expansion caused by British Columbia's efforts to delay and potentially kill the project.

US court ruling sparks tussle over impact on construction of Atlantic Coast gas pipe project

Maya Weber, Platts

Following an appeals court decision late Tuesday vacating a US Fish and Wildlife Service authorization for the Atlantic Coast Pipeline, the next battleground is emerging over the extent to which construction can move forward on the 600-mile natural gas pipeline project.

Oil Is Above \$70, but Frackers Still Struggle to Make Money

Christopher M. Matthews and Bradley Olson, The Wall Street Journal

American shale drillers are still spending more money than they are making, even as oil prices rise.

Statoil name change shines light on future of Big Oil

Patrick McLoughlin, Platts

Statoil officially changed its name to Equinor on Wednesday after a shareholder vote, raising but not necessarily answering questions as to the degree of strategic change in the Norwegian energy major's focus.

Two North America Pipeline Giants Bring Units Back Into Fold

Amanda Jordan, Bloomberg

Two of North America's biggest pipeline companies announced plans to repurchase subsidiaries as the industry seeks to curb future tax obligations in the face of a federal overhaul.

Utilities and Infrastructure

Full reconstruction of Puerto Rico's grid could take a decade, says lead contractor

Robert Walton, Utility Dive

It's been eight months since Hurricane Maria destroyed Puerto Rico's electric grid. Despite significant recovery work, there are still thousands without power - and though the island is not prepared for it, the 2018 Atlantic hurricane season begins in two weeks.

New York proposes strict carbon emission limits for existing power plants

Robert Walton, Utility Dive

Federal efforts to impose carbon emission limits on power plants have been stalled for some time amid litigation and an unfavorable political climate, leaving it to states to take action to address a major source of greenhouse gas emissions.

Renewables

U.S. safety agency sends team to investigate Tesla crash

David Shepardson, Reuters

The U.S. National Highway Traffic Safety Administration (NHTSA) said on Wednesday that it was sending a team to investigate the crash of a Tesla Inc vehicle last week in Utah that occurred while the car was in Autopilot mode.

Nissan's Following Tesla Into Solar Power and Home Batteries

Jack Stewart, Wired

Given the weather in the United Kingdom-that cloudy, foggy, drizzly country-it doesn't seem like the best place to launch a business that revolves around solar power. But this is where the builder of the world's best-selling electric car just started selling Nissan Energy Solar, a generation-to-acceleration scheme that equips customers with roof-mounted panels and a battery to store some of the electricity they generate.

Coal

Judge allows bankrupt FirstEnergy Solutions to exit power plant co-op

Robert Walton, Utility Dive

A judge in the U.S. Bankruptcy Court of the Northern District of Ohio, Eastern Division, has granted a preliminary injunction allowing FirstEnergy Solutions to withdraw from the Ohio Valley Electric Corporation (OVEC), a cooperative of companies that operates two coal-fired power plants.

Nuclear

The French stress test for nuclear power

Andrew Ward and David Keohane, Financial Times

Years late and billions over budget the first European Pressurised Reactor is set to become operational. Its success is critical for France.

Climate

Nominee skirts question on climate science

Maxine Joselow, E&E News

President Trump's nominee to lead the National Highway Traffic Safety Administration yesterday refused to say whether she agrees with mainstream climate science.

Opinions, Editorials and Perspectives

Investors Stand with the Gwich'in to Defend Arctic Refuge

Bernadette Demientieff, Morning Consult

As far back as I can remember, my people have considered the coastal plain of the Arctic National Wildlife Refuge sacred. Known to the Gwich'in people as "Iizhik Gwats'an Gwandaii Goodlit / the sacred place where life begins," I was always told that if it were ever disturbed, we would lose our identity, our culture and our way of life as Gwich'in.

California utilities race to charge your electric car, bus, forklift

Adrian Martinez, Utility Dive

California has its eye on the prize when it comes to the future of its air and the future of its energy grid. That's why it's taking on the most aggressive EV charging station plan in the nation.

Unable to sway oil prices, Trump admin now missing clean energy potential

Robert Johnson, Axios

Market fears of snapback sanctions on Iranian oil exports have caused oil prices to rise, providing a stark reminder that the U.S. is still the world's largest oil consumer. In response to the trend, President Trump said that such prices "will not be accepted."

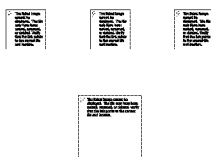
Pruitt's EPA disregards the science behind the Clean Air Act **Bernard D. Goldstein, The Hill**

In the name of "cooperative federalism," Environmental Protection Agency Administrator Scott Pruitt is out to gut one of the finest examples of cooperative federalism in environmental law - that of setting outdoor air pollutant standards.

Research Reports

Barriers to Industrial Decarbonisation **Sandbag**

Industries operating within the EU's Emissions Trading System (ETS) account for some 42% of the bloc's total CO₂ emissions. Reducing these sources of greenhouse gases is critical to meeting the EU's overall emissions targets and limiting global temperature rise in line with the Paris Agreement.



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Attachments: Data Access Draft - EPA - 4-17-18 - CLEAN.docx

Hi Rosario,

As discussed, please see attached updated notice.

[Deliberative Process / Ex. 5]

[Deliberative Process / Ex. 5]

Let me know when you're available to discuss next steps.

Thanks,
Brittany

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InsideEPA

MORNING ALERT

REDEFINING EPA: Overhauling an agency and its mission -- Complete coverage

March 21, 2018

Latest News

EPA Planning Streamlined Audit Policy For New Oil & Gas Facilities

ST. PAUL, MN -- Seeking to increase compliance with environmental rules, EPA is crafting a new audit policy for streamlining disclosure of non-compliance by new oil and natural gas facilities and is seeking states' input on the issue, though environmentalists and others are cautioning that strong enforcement will still be needed to deter non-compliance.

Amidst Uncertainty, EPA Expects To Miss Deadline For Lead Hazard Rule

Government lawyers have told a federal appellate court that EPA will miss a 90-day deadline -- expected to kick in as soon as March 27 -- for proposing updates to its lead hazard standard for residential structures though the lawyers are asking the court to clarify the deadline after the judges failed to issue an expected mandate that would have made the order final.

4th Circuit Poised To Hear Suit Testing CWA Liability For Coal Ash Sites

The U.S. Court of Appeals for the 4th Circuit is poised to hear oral argument March 21 in the first appeal over whether coal ash disposal sites that pollute surface waters through groundwater leaks are liable under the Clean Water Act (CWA), and the eventual ruling could set a precedent for whether ash facilities nationwide face penalties for leaks.

Former Adviser Holds Out Hope Trump May Remain In Paris Climate Deal

Despite President Donald Trump's pledge to withdraw from the Paris climate deal, a former climate adviser hopes the president will eventually reverse his stance and remain in the deal, albeit with a weaker greenhouse gas reduction target than the Obama administration and which would be approved by Congress.

6th Circuit's CWA Ruling Could Bolster GOP Calls For Permit Streamlining

The U.S. Court of Appeals for the 6th Circuit has rejected a Michigan road commission's novel suit claiming that EPA objections to draft Clean Water Act (CWA) permits are final agency actions subject to judicial review, but the ruling may boost GOP lawmakers' claim that the case shows a need to streamline CWA permits.

D.C. Circuit Backs EPA's Approval Of States Using CSAPR As Haze Control

A federal appeals court in a unanimous ruling is backing the Obama EPA's policy allowing states to rely on their participation in the Cross-State Air Pollution Rule (CSAPR) emissions trading program to satisfy regional haze air pollution control mandates, rejecting challenges to the policy from environmentalists and utility industry groups.

Bolstering EPA Rules, New Study Details Risks Of Lead Exposure In Adults

A new study linking low-level lead exposure with increased risk of adult deaths from cardiovascular disease could help EPA strengthen its cost-benefit analyses and drive new or updated rules to address the metal, including a measure addressing lead paint in public and commercial (P&C) buildings where the agency is struggling to assess risks to adults.'

Daily Feed

Udall urges EPA to answer GAO questions on secure phone booth

The top Democrat on the appropriations panel overseeing EPA's budget questions whether Administrator Scott Pruitt's secure phone booth is an unnecessary taxpayer expenditure that violated budget laws.

EPA proposes technical changes to refinery air rules

EPA is proposing a series of technical amendments to its air rules governing the refinery sector, which it says will ease regulatory burdens and save the industry millions of dollars.

EPA plans state meeting on PFAS

EPA is planning a meeting with states on the ubiquitous class of chemicals but it is not clear whether it will ensure the consistent risk values that state drinking water regulators are seeking.

Judge rejects POTWs' suit over CWA test methods

The suit by wastewater utility groups was their second attempt to challenge a test method that they claim EPA and states cannot lawfully mandate in discharge permits.

Ewire: Pruitt to issue policy curtailing 'secret science'

In today's Ewire: The policy, long pushed by Rep. Lamar Smith (R-TX), would require scientific studies used for regulations to publish their underlying data though critics say the move is simply an effort to hinder EPA rules.

IG finds 'allegedly flawed' methane studies not used for rules

At issue is a pair of studies conducted by the Environmental Defense Fund and University of Texas-Austin to estimate oil and gas methane emissions, though some argue the reports underestimate emissions.

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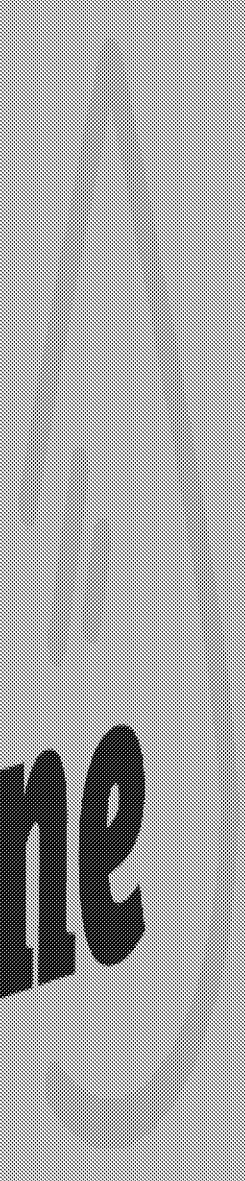
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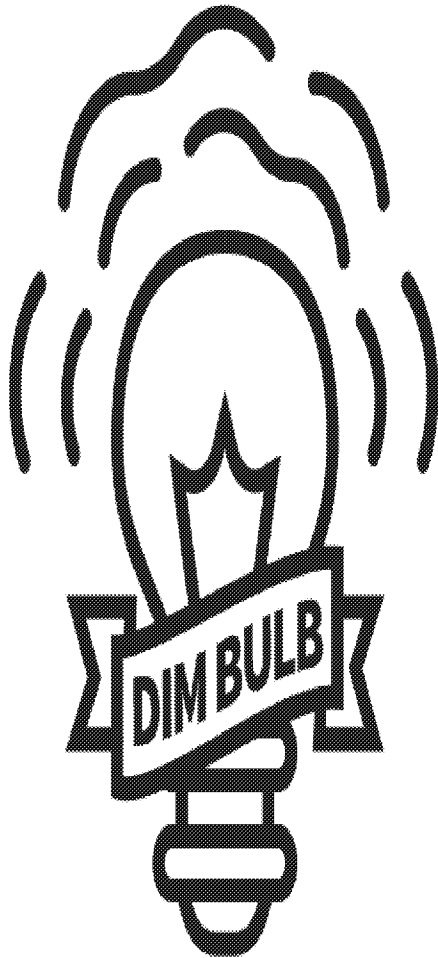
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Cato Institute (8/27/18) blog post: "Since the 1950s, environmental regulations are largely based upon something called the 'linearity-no threshold' (LNT) model, which holds, for example, that the first photon of ionizing radiation has the same probability of causing cancer as the bazillionth one... In fact the LNT model isn't just wrong—nature actually works opposite to it. Small amounts of exposure to things that are toxic in large amounts can actually be beneficial... The alternative model is also largely the handiwork of Dr. Calabrese, which he calls the 'biphasic dose-response,' or 'hermetic' model."





"Capitalism as we know it is over. So suggests a new report commissioned by a group of scientists appointed by the UN Secretary-General. The main reason? We're transitioning rapidly to a radically different global economy, due to our increasingly unsustainable exploitation of the planet's environmental resources."

– Nafeez Ahmed, Vice Motherboard

A reminder that politicians are great at destroying economic opportunities for Americans.

The Salt Lake Tribune (8/7/18) reports: "The West's coal country has long sought to offset declining domestic coal consumption through exports to Pacific Rim countries. But politically liberal West Coast cities and states have gotten in the way, obstructing proposals for new coal-handling terminals. Now, Utah is looking south of the U.S. border to ship its coal and possibly natural gas overseas. On Thursday, the Utah Office of Energy Development (OED) signed a memorandum of understanding with economic development officials for the Mexican state of Baja California to establish 'a close binational collaboration' aimed at connecting Utah energy resources with new markets abroad."

Shocker! The bureaucracy opposes transparency.

The Hill (8/28/18) reports: "The Pentagon is criticizing the Environmental Protection Agency's (EPA) proposal to boost 'transparency' standards for the science it uses in decision making. Patricia Underwood in the Department of

Defense's office of energy, installations and environment told the EPA last week that the proposal could unnecessarily exclude sound science from the agency's use."



How the war on climate change hammers the world's poor.

New York Post (8/26/18) op-ed: "Forcing poor countries to reduce emissions does even more harm, because cheap, abundant energy brings prosperity. Example: Activists argue Bangladesh should cut coal expansion. That would

deliver global climate benefits worth nearly \$100 billion. But the forgone boost to the Bangladeshi economy would cost about \$50 billion. Aside from the immorality of obliging poor nations to avoid policies that would reduce poverty, the big problem with forcing carbon cuts is that green energy is not yet the savior that it is portrayed as. Even after decades of heavy investment in subsidies to support green-energy production — costing more than \$150 billion just this year — the International Energy Agency finds that wind provides just 0.6 percent of energy needs, and solar 0.2 percent."



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From: E&E News [ealerts@eenews.net]
Sent: 7/20/2018 12:18:50 PM
To: Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clint]
Subject: July 20 -- Climatewire is ready

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AN E&E NEWS PUBLICATION

CLIMATEWIRE — Fri., July 20, 2018

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Judge tosses New York City's case against Big Oil

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Wildfires creep into the frigid Arctic

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State pushes toward setting carbon price on cars

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Message

From: Abboud, Michael [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=B6F5AF791A1842F1ADCC088CBF9ED3CE-ABBOUD, MIC]
Sent: 4/24/2018 8:16:00 PM
To: Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clin]
Subject: RE: TPs

Thanks man!

From: Woods, Clint
Sent: Tuesday, April 24, 2018 4:14 PM
To: Abboud, Michael <abboud.michael@epa.gov>
Subject: TPs

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

.....

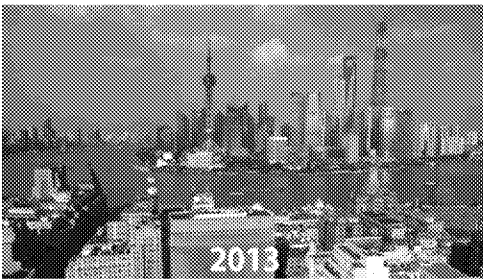
.....

Message

From: Schwab, Justin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=EED0F609C0944CC2BBDB05DF3A10AADB-SCHWAB, JUS]
Sent: 3/14/2018 10:27:42 PM
To: Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clint]
Subject: RE: LAST CALL: Clean Copy of Data Access FRN

Attorney Client / Ex. 5

From: Woods, Clint
Sent: Wednesday, March 14, 2018 6:26 PM
To: Schwab, Justin <Schwab.Justin@epa.gov>
Subject: RE: LAST CALL: Clean Copy of Data Access FRN



ed:

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

From: Schwab, Justin
Sent: Wednesday, March 14, 2018 5:56 PM
To: Bolen, Brittany <bolen.brittany@epa.gov>; Woods, Clint <woods.clint@epa.gov>; Yamada, Richard (Yujiro) <yamada.richard@epa.gov>; Beck, Nancy <Beck.Nancy@epa.gov>; Feeley, Drew (Robert) <Feeley.Drew@epa.gov>
Subject: RE: LAST CALL: Clean Copy of Data Access FRN

(Dropping RJ and Matt for this): Reminder from the Designated OGC Nag to have your folks start pulling and PDFing documents that we can put in the docket/record.

From: Bolen, Brittany
Sent: Wednesday, March 14, 2018 5:55 PM
To: Woods, Clint <woods.clint@epa.gov>; Yamada, Richard (Yujiro) <yamada.richard@epa.gov>; Schwab, Justin <Schwab.Justin@epa.gov>; Beck, Nancy <Beck.Nancy@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>; Leopold, Matt <Leopold.Matt@epa.gov>; Feeley, Drew (Robert) <Feeley.Drew@epa.gov>
Subject: RE: LAST CALL: Clean Copy of Data Access FRN

Thanks, Clint! We'll send this over to OMB for informal review.

From: Woods, Clint
Sent: Wednesday, March 14, 2018 4:41 PM
To: Yamada, Richard (Yujiro) <yamada.richard@epa.gov>; Schwab, Justin <Schwab.Justin@epa.gov>; Beck, Nancy <Beck.Nancy@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>; Leopold, Matt <Leopold.Matt@epa.gov>; Feeley, Drew (Robert) <Feeley.Drew@epa.gov>
Subject: RE: LAST CALL: Clean Copy of Data Access FRN

The attached clean version should incorporate all the feedback and be shareable. Thanks!

From: Yamada, Richard (Yujiro)
Sent: Wednesday, March 14, 2018 1:02 PM
To: Woods, Clint <woods.clint@epa.gov>
Cc: Schwab, Justin <Schwab.Justin@epa.gov>; Beck, Nancy <Beck.Nancy@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>; Leopold, Matt <Leopold.Matt@epa.gov>; Feeley, Drew (Robert) <Feeley.Drew@epa.gov>
Subject: Re: LAST CALL: Clean Copy of Data Access FRN

Our folks at Office of science advisor can handle so it should be fine to have ORD as point of contact - thanks Much

Sent from my iPhone

On Mar 14, 2018, at 11:27 AM, Yamada, Richard (Yujiro) <yamada.richard@epa.gov> wrote:

Not sure if we want ORD to be point of contact for the directive? Could be OP? Thanks

Sent from my iPhone

On Mar 14, 2018, at 8:28 AM, Yamada, Richard (Yujiro) <yamada.richard@epa.gov> wrote:

Deliberative Process / Ex. 5

Sent from my iPhone

On Mar 14, 2018, at 8:00 AM, Woods, Clint <woods.clint@epa.gov> wrote:

Deliberative Process / Ex. 5

From: Schwab, Justin
Sent: Wednesday, March 14, 2018 8:09 AM
To: Beck, Nancy <Beck.Nancy@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>; Yamada, Richard (Yujiro) <yamada.richard@epa.gov>; Leopold, Matt <Leopold.Matt@epa.gov>
Cc: Feeley, Drew (Robert) <Feeley.Drew@epa.gov>; Woods, Clint <woods.clint@epa.gov>
Subject: RE: LAST CALL: Clean Copy of Data Access FRN

Attorney Client / Ex. 5

From: Beck, Nancy
Sent: Tuesday, March 13, 2018 11:28 PM
To: Bolen, Brittany <bolen.brittany@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>; Yamada, Richard (Yujiro) <yamada.richard@epa.gov>; Leopold, Matt <Leopold.Matt@epa.gov>
Cc: Feeley, Drew (Robert) <Feeley.Drew@epa.gov>; Woods, Clint <woods.clint@epa.gov>; Schwab, Justin <Schwab.Justin@epa.gov>
Subject: RE: LAST CALL: Clean Copy of Data Access FRN

Brittany,
A few minor suggestions in the attached. All editorial.

Thanks,
Nancy

Nancy B. Beck, Ph.D., DABT
Deputy Assistant Administrator, OCSPP
P: 202-564-1273
M: 202-731-9910
beck.nancy@epa.gov

From: Bolen, Brittany
Sent: Tuesday, March 13, 2018 7:11 PM
To: Jackson, Ryan <jackson.ryan@epa.gov>; Yamada, Richard (Yujiro) <yamada.richard@epa.gov>; Leopold, Matt <Leopold.Matt@epa.gov>; Beck, Nancy <Beck.Nancy@epa.gov>
Cc: Feeley, Drew (Robert) <Feeley.Drew@epa.gov>; Woods, Clint <woods.clint@epa.gov>; Schwab, Justin <Schwab.Justin@epa.gov>
Subject: LAST CALL: Clean Copy of Data Access FRN

All –
Clint, Justin, and I just concluded review of all the remaining comments and edits. Attached is a clean copy of the document we would like to submit to OMB tomorrow. Please let me know if you have issues with this version as soon as practicable.
Thanks,
Brittany
(202)309-8321

From: Schwab, Justin
Sent: Tuesday, March 13, 2018 4:35 PM
To: Jackson, Ryan <jackson.ryan@epa.gov>; Yamada, Richard (Yujiro) <yamada.richard@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>; Leopold, Matt <Leopold.Matt@epa.gov>
Cc: Beck, Nancy <Beck.Nancy@epa.gov>; Feeley, Drew (Robert) <Feeley.Drew@epa.gov>; Woods, Clint <woods.clint@epa.gov>
Subject: RE: ATTORNEY-CLIENT, ATTORNEY WORK PRODUCT

Attached are OGC's redline/comments.

Attorney Client / Ex. 5

From: Jackson, Ryan
Sent: Tuesday, March 13, 2018 3:07 PM
To: Yamada, Richard (Yujiro) <yamada.richard@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>; Schwab, Justin <Schwab.Justin@epa.gov>; Leopold, Matt <Leopold.Matt@epa.gov>
Cc: Beck, Nancy <Beck.Nancy@epa.gov>; Feeley, Drew (Robert) <Feeley.Drew@epa.gov>; Woods, Clint <woods.clint@epa.gov>
Subject: RE: ATTORNEY-CLIENT, ATTORNEY WORK PRODUCT

What remaining items are you expecting to add to the attached version?

From: Yamada, Richard (Yujiro)
Sent: Tuesday, March 13, 2018 12:52 PM

To: Bolen, Brittany <bolen.brittany@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>; Schwab, Justin <Schwab.Justin@epa.gov>; Leopold, Matt <Leopold.Matt@epa.gov>
Cc: Beck, Nancy <Beck.Nancy@epa.gov>; Feeley, Drew (Robert) <Feeley.Drew@epa.gov>; Woods, Clint <woods.clint@epa.gov>
Subject: RE: ATTORNEY-CLIENT, ATTORNEY WORK PRODUCT

I made a few edits (see comment boxes) – please see attached. Thanks much

From: Bolen, Brittany
Sent: Tuesday, March 13, 2018 9:19 AM
To: Jackson, Ryan <jackson.ryan@epa.gov>; Yamada, Richard (Yujiro) <yamada.richard@epa.gov>; Schwab, Justin <Schwab.Justin@epa.gov>; Leopold, Matt <Leopold.Matt@epa.gov>
Cc: Beck, Nancy <Beck.Nancy@epa.gov>; Feeley, Drew (Robert) <Feeley.Drew@epa.gov>; Woods, Clint <woods.clint@epa.gov>
Subject: RE: ATTORNEY-CLIENT, ATTORNEY WORK PRODUCT

Deliberative Process / Ex. 5

Thanks,
Brittany

From: Bolen, Brittany
Sent: Friday, March 9, 2018 3:10 PM
To: Jackson, Ryan <jackson.ryan@epa.gov>; Yamada, Richard (Yujiro) <yamada.richard@epa.gov>; Schwab, Justin <schwab.justin@epa.gov>; Leopold, Matt <Leopold.Matt@epa.gov>
Cc: Beck, Nancy <beck.nancy@epa.gov>; Feeley, Drew (Robert) <Feeley.Drew@epa.gov>; Woods, Clint <woods.Clint@epa.gov>
Subject: RE: ATTORNEY-CLIENT, ATTORNEY WORK PRODUCT

Deliberative Process / Ex. 5

I'll bring marked up and clean copies of this to the 5pm.
Looking forward to it,
Brittany

From: Jackson, Ryan
Sent: Wednesday, March 7, 2018 6:30 PM
To: Yamada, Richard (Yujiro) <yamada.richard@epa.gov>; Schwab, Justin <Schwab.Justin@epa.gov>; Leopold, Matt <Leopold.Matt@epa.gov>
Cc: Bolen, Brittany <bolen.brittany@epa.gov>; Beck, Nancy <Beck.Nancy@epa.gov>; Feeley, Drew (Robert)

<Feeley.Drew@epa.gov>; Woods, Clint <woods.clint@epa.gov>

Subject: RE: ATTORNEY-CLIENT, ATTORNEY WORK PRODUCT

Attorney Client / Ex. 5

From: Yamada, Richard (Yujiro)

Sent: Wednesday, March 7, 2018 5:49 PM

To: Schwab, Justin <Schwab.Justin@epa.gov>; Leopold, Matt
<Leopold.Matt@epa.gov>

Cc: Bolen, Brittany <bolen.brittany@epa.gov>; Beck, Nancy
<Beck.Nancy@epa.gov>; Feeley, Drew (Robert)
<Feeley.Drew@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>;
Woods, Clint <woods.clint@epa.gov>

Subject: ATTORNEY-CLIENT, ATTORNEY WORK PRODUCT

(This email contains deliberative and pre-decisional matters)

Attorney Client / Ex. 5

Richard

Richard Yamada
Deputy Assistant Administrator
Office of Research and Development
U.S. Environmental Protection Agency

Phone: 202-564-1727
yamada.richard@epa.gov

Message

From: Iglesias, Amber [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=ED1DA89F33F24B5B9F2C4B9BCF91A2AD-IGLESIAS, A]
Sent: 5/11/2018 4:41:03 PM
To: Saltman, Tamara [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9901d215c1e0496698e33501bac501d6-TSALTMAN]; Eagles, Tom [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=6e3f422f9a2e4c8a94efdd5871f6cba8-TEagles]; Ashley, Jackie [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=01a9a3cadfa14c509d09cdae3498dd43-JASHLEY]; Cortelyou-Lee, Jan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=75b1eec7b16e46d5b9114935fc6a771e-JCORTELY]; Hawkins, CherylA [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d917bee23e774e0dbb05ce06d694985e-Hawkins, CherylA]; Shoaff, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ac16fb09cf2c44adb34a7405dc331532-JShoaff]; Lubetsky, Jonathan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e125d09a658e48119789ccae5712b4a5-JLUBETSK]; Millett, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c067caa6c93544f78c26ab08cc567d27-Millett, John]; DeLuca, Isabel [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=0b021c30cbee4637a7c7ca683e5e044a-IDELUCA]; Sinks, Tom [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=001007b7d256453a8a19b91df704e22c-Sinks, Tom]; Siciliano, CarolAnn [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a0e84b7f6ddd4d92b99b2dba90aa86b1-CSICILIA]; Cawiezell, Thomas [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=eb3be5507fbc4947bf3ac3d03af1f3ab-Cawiezell,]; Greene, Mary [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9aaa7190f96e4bfca7b06f8be3f35d45-Greene, Mary]
CC: Henigin, Mary [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=0cbe828e291f4facb492fc28261db45f-MHenigin]; Rush, Alan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=87bd4df8264d4490afe9414cb28062b9-ARush]; Koerber, Mike [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9c513901d4fd49f9ab101a6f7a7a863e-Koerber, Mike]; South, Peter [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1ead249df78840c9928874ec2ec4f9a6-PSouth]; Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clin]
Subject: FW: request for public hearing help
Attachments: FRN extension and hearing 5.10.18_.docx; FR Notice_Strengthening Transparency extension and hearing example.docx

Good Afternoon,

I attached the original notice with bubble comments highlighting concerns. I also revised the noticed and attached that as well without bubble comments but highlighting areas of concern or blanks.

Deliberative Process / Ex. 5

- This notice lists the map room as the location of the hearing. However, the map room is in high demand and without knowing a true date of publication it may not be available.
- We don't typically offer AV support due to time constraints. We ask that any presentations be submitted to the docket.

If anyone would like to call me and go over the document, I can be reached at 564-3175.

Amber Iglesias

From: Henigin, Mary
Sent: Friday, May 11, 2018 10:15 AM
To: Iglesias, Amber <Iglesias.Amber@epa.gov>
Subject: Fwd: request for public hearing help

Begin forwarded message:

From: "Noonan, Jenny" <Noonan.Jenny@epa.gov>
Date: May 11, 2018 at 10:14:05 AM EDT
To: "Saltman, Tamara" <Saltman.Tamara@epa.gov>
Cc: "Eagles, Tom" <Eagles.Tom@epa.gov>, "Shoaff, John" <Shoaff.John@epa.gov>, "Henigin, Mary" <Henigin.Mary@epa.gov>, "Rush, Alan" <Rush.Alan@epa.gov>, "Ashley, Jackie" <Ashley.Jackie@epa.gov>, "Cortelyou-Lee, Jan" <Cortelyou-Lee.Jan@epa.gov>
Subject: Re: request for public hearing help

Mary Henigin is a great resource with her DC team.

Sent from my iPhone

On May 11, 2018, at 9:47 AM, Saltman, Tamara <Saltman.Tamara@epa.gov> wrote:

Our superstars at organizing public hearings are definitely the PACS team and those that work with them in OAQPS, although I am sure OTAQ also does them well (I just have less experience working with them).

From: Eagles, Tom
Sent: Friday, May 11, 2018 9:36 AM
To: Shoaff, John <Shoaff.John@epa.gov>
Cc: Henigin, Mary <Henigin.Mary@epa.gov>; Rush, Alan <Rush.Alan@epa.gov>; Saltman, Tamara <Saltman.Tamara@epa.gov>
Subject: RE: Draft FR notice

John –

I've never been involved in the outreach end of the business, so I can only guess who might be good contacts for this. I'm sure that Millett and company is a good place to start. Since OAQPS was heavily involved with CPP, I suggest checking with Mary Henigin and Alan Rush. In our shop, you might check with Tamara, who often knows about things that have to do with involving the public.

I've cc'd Mary, Alan, and Tamara here.

- Tom Eagles

From: Shoaff, John

Sent: Friday, May 11, 2018 8:56 AM

To: Lubetsky, Jonathan <Lubetsky.Jonathan@epa.gov>; Eagles, Tom <Eagles.Tom@epa.gov>; Millett, John <Millett.John@epa.gov>; DeLuca, Isabel <DeLuca.Isabel@epa.gov>

Subject: Fwd: Draft FR notice

Hi folks, any thoughts on who to reach out to or join a mtg Mon on public mtg question(s), see below, haven't read fully to ascertain whether this in regard to the FRN for announcing the public mtg or logistics of organizing or both. Anyway, do we know who did these for CPP? Thx.

John

Sent from my iPhone

Begin forwarded message:

From: "Sinks, Tom" <Sinks.Tom@epa.gov>

Date: May 11, 2018 at 8:39:19 AM EDT

To: "Shoaff, John" <Shoaff.John@epa.gov>, "Greene, Mary" <greene.mary@epa.gov>, "Siciliano, CarolAnn" <Siciliano.CarolAnn@epa.gov>, "Hawkins, CherylA" <Hawkins.CherylA@epa.gov>

Cc: "Cawiezell, Thomas" <Cawiezell.Thomas@epa.gov>

Subject: Fwd: Draft FR notice

Hi John. I'm reaching out to OAR to identify someone with expertise re putting together public hearings to support rule making.

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5 I'm out today but Mary Greene and Tom C should be able to look at calendars once we know who to connect.

Sent from my iPhone

Begin forwarded message:

From: "Siciliano, CarolAnn" <Siciliano.CarolAnn@epa.gov>

Date: May 10, 2018 at 7:02:11 PM EDT

To: "Sinks, Tom" <Sinks.Tom@epa.gov>, "Greene, Mary" <greene.mary@epa.gov>, "Cawiezell, Thomas" <Cawiezell.Thomas@epa.gov>, "Hawkins, CherylA" <Hawkins.CherylA@epa.gov>

Cc: "Feeley, Drew (Robert)" <Feeley.Drew@epa.gov>

Subject: RE: Draft FR notice

Thanks, Tom. Tracy Sheppard has the OGC lead. She is available on Monday. And please copy me and Andrew Simons. One of us will join you.

Carol Ann Siciliano
Associate General Counsel

Cross-Cutting Issues Law Office
Office of General Counsel
U.S. Environmental Protection Agency
(202) 564-5489
siciliano.carolann@epa.gov

From: Sinks, Tom
Sent: Thursday, May 10, 2018 7:01 PM
To: Greene, Mary <greene.mary@epa.gov>; Cawiezell, Thomas <Cawiezell.Thomas@epa.gov>; Hawkins, CherylA <Hawkins.CherylA@epa.gov>
Cc: Feeley, Drew (Robert) <Feeley.Drew@epa.gov>; Siciliano, CarolAnn <Siciliano.CarolAnn@epa.gov>
Subject: Fwd: Draft FR notice

Anything you can do tomorrow to schedule a meeting with OAR folks on Monday and to check the availability of the Map Room for an all day meeting in July would be helpful. Good to invite Drew and someone from CarolAnn's office to Monday meeting as well.

Sent from my iPhone

Begin forwarded message:

From: "Feeley, Drew (Robert)" <Feeley.Drew@epa.gov>
Date: May 10, 2018 at 6:19:28 PM EDT
To: "Sinks, Tom" <Sinks.Tom@epa.gov>, "Muellerleile, Caryn" <Muellerleile.Caryn@epa.gov>
Subject: RE: Draft FR notice

Thanks Tom.

From: Sinks, Tom
Sent: Thursday, May 10, 2018 5:22 PM
To: Feeley, Drew (Robert) <Feeley.Drew@epa.gov>; Muellerleile, Caryn <Muellerleile.Caryn@epa.gov>
Subject: FW: Draft FR notice

FYI – I will be off tomorrow but should be available by phone 404 226 6288

From: Sinks, Tom
Sent: Thursday, May 10, 2018 5:16 PM
To: Woods, Clint <woods.clint@epa.gov>
Cc: Siciliano, CarolAnn <Siciliano.CarolAnn@epa.gov>; Sinks, Tom <Sinks.Tom@epa.gov>; Yamada, Richard (Yujiro) <yamada.richard@epa.gov>; Orme-Zavaleta, Jennifer <Orme-Zavaleta.Jennifer@epa.gov>; Cawiezell, Thomas <Cawiezell.Thomas@epa.gov>; Hawkins, CherylA <Hawkins.CherylA@epa.gov>
Subject: FW: Draft FR notice

Hi Clint – CarolAnn dropped by my office to discuss this proposed FRN. She made some notes and will be sending a revised version before she heads home tonight.

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Tom Cawiezell manages my calendar. I will be off tomorrow but available if needed by cell phone 404 226 6288.

Tom

From: Siciliano, CarolAnn
Sent: Thursday, May 10, 2018 4:48 PM
To: Sinks, Tom <Sinks.Tom@epa.gov>
Subject: Fwd: Draft FR notice

Carol Ann Siciliano
Associate General Counsel
Cross-Cutting Issues Law Office
Office of General Counsel
U.S. Environmental Protection Agency
(202) 564-5489
siciliano.carolann@epa.gov

Begin forwarded message:

From: "Sheppard, Tracy"
<Sheppard.Tracy@epa.gov>
Date: May 10, 2018 at 3:52:24 PM EDT
To: "Siciliano, CarolAnn"
<Siciliano.CarolAnn@epa.gov>,
"Simons, Andrew"
<Simons.Andrew@epa.gov>
Subject: RE: Draft FR notice

I've made the edit.

Tracy L. Sheppard, Attorney-
Advisor,
US EPA, Office of General Counsel
Sheppard.Tracy@epa.gov
(202) 564-1305 office
(202) 839-2038 mobile

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From: Siciliano, CarolAnn
Sent: Thursday, May 10, 2018 3:44 PM
To: Sheppard, Tracy
<Sheppard.Tracy@epa.gov>; Simons, Andrew <Simons.Andrew@epa.gov>
Subject: RE: Draft FR notice

Attorney Client / Ex. 5

Carol Ann Siciliano
Associate General Counsel
Cross-Cutting Issues Law Office
Office of General Counsel
U.S. Environmental Protection
Agency
(202) 564-5489
siciliano.carolann@epa.gov

From: Sheppard, Tracy
Sent: Thursday, May 10, 2018 3:43 PM
To: Siciliano, CarolAnn
<Siciliano.CarolAnn@epa.gov>; Simons, Andrew <Simons.Andrew@epa.gov>
Subject: RE: Draft FR notice

Attorney Client / Ex. 5

Tracy L. Sheppard, Attorney-Advisor,
US EPA, Office of General Counsel
Sheppard.Tracy@epa.gov
(202) 564-1305 office
(202) 839-2038 mobile

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From: Siciliano, CarolAnn
Sent: Thursday, May 10, 2018 3:30 PM
To: Sheppard, Tracy
<Sheppard.Tracy@epa.gov>; Simons,
Andrew <Simons.Andrew@epa.gov>
Subject: RE: Draft FR notice

Thank you, Tracy. I hope to talk to
Tom Sinks today. I'll keep you &
Andy informed.

Attorney Client / Ex. 5

Attorney Client / Ex. 5

Carol Ann Siciliano
Associate General Counsel
Cross-Cutting Issues Law Office
Office of General Counsel
U.S. Environmental Protection
Agency
(202) 564-5489
siciliano.carolann@epa.gov

From: Sheppard, Tracy
Sent: Thursday, May 10, 2018 3:27 PM
To: Siciliano, CarolAnn
<Siciliano.CarolAnn@epa.gov>; Simons,
Andrew <Simons.Andrew@epa.gov>
Subject: Draft FR notice

Here's the draft notice for the comment
period extension and hearing.

Attorney Client / Ex. 5

Attorney Client / Ex. 5

Attorney Client / Ex. 5

I hadn't planned to work tomorrow but
I will be available before 10am and after
1pm if there's anything you need me to
do.

Tracy L. Sheppard, Attorney-
Advisor,
US EPA, Office of General Counsel
Sheppard.Tracy@epa.gov
(202) 564-1305 office
(202) 839-2038 mobile

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From: E&E News [ealerts@eenews.net]
Sent: 3/20/2018 5:35:28 PM
To: Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clint]
Subject: March 20 -- Greenwire is ready

[Read today's Greenwire on the web](#)

GREENWIRE

AN E&E NEWS PUBLICATION

GREENWIRE — Tue., March 20, 2018



[READ FULL EDITION](#)

1. APPROPRIATIONS:

Negotiators aim to settle policy fights, post omnibus tonight

Congressional leaders hope to have massive omnibus spending legislation on the House floor by Thursday, assuming they can resolve a few dozen outstanding policy fights.

TOP STORIES

2. EPA:

Pruitt aide didn't have to sign Trump ethics pledge

3. EPA:

Details lacking as Pruitt attacks 'secret science'

4. INTERIOR:

Activist charged with assaulting press secretary

POLITICS

5. ARMY CORPS:

Agency veterans shrug as lawmakers propose move out of DOD

6. EPA:

Water chief recuses himself on Pebble, but not Chesapeake Bay

7. INTERIOR:

Zinke and co. hit swing states to announce wildlife funding

CONGRESS

8. SENATE:

Miss. governor expected to announce Hyde-Smith as new senator

9. DOE:

Perry: 'I'm not going anywhere'

10. PENNSYLVANIA:

Supreme Court rejects GOP plea to block redrawn map

NATURAL RESOURCES

11. PUBLIC LANDS:

BLM holds lease sale despite enviro, Park Service concerns

12. ENDANGERED SPECIES:

Last male northern white rhino dies

13. MARINE MAMMALS:

Mystery of sole woman in 47-year-old photo is solved

14. EXTREME WEATHER:

Storms blow out windows, pull up roofs in South

15. ENDANGERED SPECIES:

To find sea cows, researchers hunt for DNA trails in water

LAW

16. AIR POLLUTION:

D.C. Circuit upholds Obama-era haze rule

17. CLIMATE:

Chevron asks judge to toss lawsuits, unveils strategy

18. EDUCATION:

Vermont Law again tops rankings of environmental programs

CLIMATE CHANGE

19. BUSINESS:

McDonald's aims to cut greenhouse gas emissions by a third

ENERGY

20. MINING:

Glencore tightens grip on coal with \$1.7B mine deal

21. WIND:

System aims to save eagles from turbine blades

FEDERAL AGENCIES

22. PUBLIC HEALTH:

EPA plans summit on politically toxic nonstick chemicals

TRANSPORTATION

23. AUTONOMOUS VEHICLES:

Fatality spurs calls for more testing

24. HIGH-SPEED RAIL:

Calif. governor says critics' arguments are 'bullshit'

STATES

25. DISTRICT OF COLUMBIA:

Councilman had more to say on Jewish family, climate efforts

26. OREGON:

Clean air law lets factories off the hook — analysis

27. ALASKA:

Crab marketers to consumers: 'Get ugly'

INTERNATIONAL

28. INDIA:

Amid crisis, government bought air purifiers for itself

29. NEPAL:

Campaign aims to haul trash off Everest, with yaks' help

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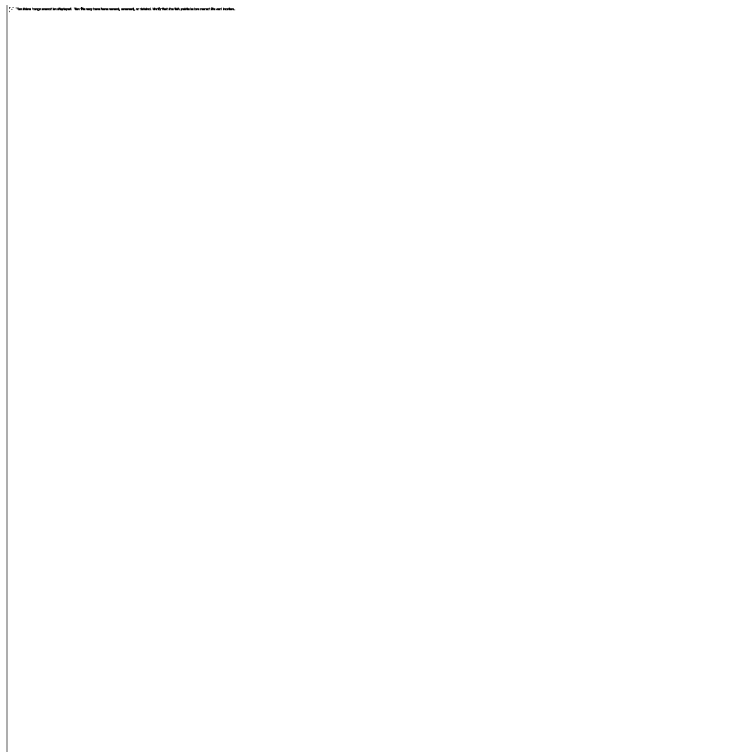
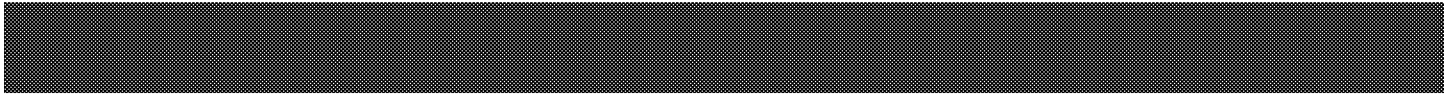
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Message

From: Morning Consult [reply@e.morningconsult.com]
Sent: 8/29/2018 12:48:13 PM
To: Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clint]
Subject: Morning Consult Energy: California Moves Forward With Bill to Require 100% State Sourcing from Clean Energy by 2045



By Jacqueline Toth

Top Stories

- The California Assembly passed a bill to require the state to source 100 percent of its power from clean energy resources by 2045, legislation which now moves to the state Senate. Enactment would make California the second U.S. state, after Hawaii, to rely only on clean energy. ([Los Angeles Times](#))
- At the first of three hearings on the issue, the Defense Nuclear Facilities Safety Board said a Department of Energy order issued

in May that would let the agency withhold sensitive data from the board would violate the U.S. Atomic Energy Act. A technical expert for the board said the order has already been cited to prevent the board from accessing data about explosives at the department's Pantex Plant outside of Amarillo, Texas, and about a worker's complaint at the Los Alamos National Laboratory. ([ProPublica](#))

- Calgary-based Imperial Oil Ltd., a producer in Canada's oil sands that is 69 percent owned by Exxon Mobil Corp., said it will reduce its emissions by 10 percent over the next five years from 2016 levels through the use of new technology and better reliability and energy efficiency. The announcement is the second time this year that Exxon, the world's largest oil explorer, published an emissions target. ([Bloomberg](#))

Chart Review

A Carbon-Free California Requires a Lot More Cheap Batteries
Bloomberg

Events Calendar (All Times Local)

WEDNESDAY

National Conference on Ecosystem Restoration	8:30 a.m.
U.S. Energy Association presentation on the 2018 U.S. Energy and Employment Report	10 a.m.
Senate Commerce, Science and Transportation executive session on fishing and other bills and several nominations	10 a.m.

Nuclear Regulatory Commission public meeting on Interim Storage
Partners' response plan for the interim storage facility 1 p.m.

House Natural Resources field hearing on energy and education in
Utah 2 p.m.

THURSDAY

National Conference on Ecosystem Restoration 8:30 a.m.

FRIDAY

No events scheduled

CSR & Political Activism in the Trump Era

How to avoid a firestorm and improve your brand's reputation.

General

Pentagon challenges 'secret science' proposal

Sean Reilly, E&E News

Add the Defense Department to the ranks of those expressing concern about EPA's plans to restrict the use of scientific research in writing new regulations.

Senate Confirms Head of New Energy Department

Cybersecurity Office

Rebecca Kern and Patrick Ambrosio, Bloomberg Environment

The Senate Aug. 28 confirmed Karen Evans to lead a new Energy Department office devoted to protecting the nation's electric grid.

US official reiterates push to move land agency out West

Brady McCombs, The Associated Press

The move isn't a done deal, Susan Combs, an assistant secretary at Interior, said as she visited a northern Utah city that is among those under consideration for the new location. But she spoke passionately during a round table in Ogden about the need to bridge the gap between bureaucrats and the people affected by their decisions.

How McCain's death might affect Scott Pruitt

Robin Bravender, E&E News

The Arizona Republican's perch atop the Senate Armed Services Committee is widely expected to be occupied by Sen. Jim Inhofe (R-Okla.), who might be more likely to run for re-election - and more likely to win - if he's the chairman of that powerful panel.

US officials take action to protect Alaska whistleblower

Dan Joling, The Associated Press

The federal office that protects employees against reprisals for whistleblowing is advocating on behalf of a federal employee in Alaska who complained about the handling of an Arctic offshore lease sale.

Oil steady on lower Iran exports, rising U.S. supply

Christopher Johnson, Reuters

Oil prices steadied on Wednesday, supported by news of a fall in Iranian crude supplies as U.S. sanctions deter buyers, but held back by evidence of a rise in U.S. inventories.

Oil and Natural Gas

Mexico's new government may halt oil auctions indefinitely - document

Adriana Barrera, Reuters

Mexico's incoming government is considering indefinitely suspending auctions for oil and gas projects, and giving state-owned Pemex authority to pick its own joint-venture partners rather than holding competitive tenders, according to policy guidelines seen by Reuters.

Three regions account for half of U.S. natural gas production **Katherine Blunt, Houston Chronicle**

The U.S. Energy Department reported that the Appalachian Basin in the Northeast, the Permian Basin in West Texas and the Haynesville Shale straddling Texas and Louisiana have grown to account for almost 50 percent of domestic production, up from 15 percent in 2007.

TransCanada's Shale Gas Pipe Cost Jumps by Almost \$1 Billion **Ryan Collins, Bloomberg**

TransCanada Corp. won a 49 percent price increase for space on the pipeline it's building to haul shale gas from Appalachian fields as labor shortages and escalating land prices pushed construction costs almost \$1 billion higher.

In America's Hottest Drilling Spot, Vast Volumes of Gas Go Up in Smoke

Rebecca Elliott, The Wall Street Journal

In America's busiest oil field, roughly \$1 million worth of natural gas goes to waste each day.

Chinese energy executive says \$84 billion investment in West Virginia still on track

Bill Holland, Platts

A plan calling for nearly \$84 billion in Chinese investment in West Virginia petrochemical and natural gas projects will be honored despite the rumblings of a trade war between the US and China, the head of the Chinese conglomerate making the investment push said in Hong Kong on Monday.

Iran's Oil Exports Dropping Faster Than Expected Before U.S. Sanctions

Benoit Faucon, The Wall Street Journal

Iran expects crude exports to fall by a third in September, according to people familiar with purchasing plans, potentially posing an unforeseen supply risk to markets.

U.S. energy companies fume over rejected steel tariff exemptions

Liz Hampton, Reuters

Commerce has received more than 37,000 exemption requests, far more than it planned to handle. Although 130 employees and contractors are now evaluating the applications, the agency had only ruled on 2,871 of those requests as of August 20.

Utilities and Infrastructure

Analysis: Utilities spending about \$520 million to repair systems after Hurricane Harvey

Mark Watson, Platts

In the year since Hurricane Harvey devastated the western Gulf Coast with high-speed winds and record rain totals, electric utilities have spent about \$520 million to repair damage and harden systems in preparation for the next major storm, and that work continues.

Renewables

Tencent-Backed EV Maker Seeks Valuation Above \$8 Billion in IPO

Jie Ma, Bloomberg

NIO Inc., the Chinese electric-car maker backed by Tencent Holdings Ltd., is planning a U.S. initial public offering that would give it a valuation topping \$8 billion as it gears up to take on the likes of Tesla Inc.

Tesla wins court case against Ontario government over rebate cancellation

Anna Mehler Paperny, Reuters

A Canadian court has ruled in favor of Tesla Inc after the electric carmaker challenged the province of Ontario's wind-down of an electric vehicle rebate.

Face the heat: Should EV incentives be restructured for battery degradation?

Herman K. Trabish, Utility Dive

A century after EVs fell out of the car market because gasoline-powered vehicles were cheaper to operate, forecasts show battery-powered transportation could take the market back because it is cleaner and becoming affordable. But controversial new research proposes revising EV policy because batteries degrade over time, increasing costs and emissions.

In Elon Musk's World, Brakes Are for Cars, Not C.E.O.s

David Gelles, The New York Times

Associates, including several people inside the company interviewed over the past week, portray him as a workaholic who zeroes in on the smallest details.

Coal

Coal industry between a rock and a hard place

Henry Sanderson, Financial Times

A push to reduce the development of coal mines along with increasing pressure from investors to divest from fossil fuels is creating a split in the mining industry between companies exiting the sector and those vowing to remain.

Nuclear

Second Hanford radioactive tunnel collapse expected. And it could be more severe

Annette Cary, Tri-City Herald

The possible collapse of a second Hanford tunnel storing radioactive waste is both more likely than thought a year ago and the effects potentially more severe, according to Hanford officials.

Climate

Texas sues Trump EPA for declaring San Antonio's ozone pollution levels too high

Josh Siegel, Washington Examiner

Texas Gov. Greg Abbott, and Attorney General Ken Paxton, both Republicans, sued the Trump administration in federal court Tuesday for ruling that parts of San Antonio have toxic ozone levels that are too high.

California lawmakers finalize details of a \$1-billion wildfire prevention plan, but tough votes lie ahead

John Myers, Los Angeles Times

A bipartisan group of California lawmakers proposed on Tuesday to spend \$1 billion to clear fire-prone trees and brush from across the state over the next five years while providing new relief for utility companies that have said wildfire costs could lead them to bankruptcy.

5 Terrifying Takeaways From California's New Climate Assessment

Lydia O'Connor, HuffPost

In a vast assessment that draws on more than 50 reports on climate change, state officials paint a grim picture of California's future if greenhouse gas emissions continue at their current rate. Below are five of the assessment's most unsettling predictions.

Opinions, Editorials and Perspectives

The Affordable Clean Energy Rule Should Be Renamed 'Path to Hothouse Earth'

Sweta Chakraborty, Morning Consult

The Obama administration's plan was to reduce carbon emissions by 32 percent from 2005 levels by the year 2030. Trump's plan is a carefully crafted gross misnomer.

Next frontier of Russian meddling: energy intimidation **Former Ambassador Douglas Lute, The Hill**

While Putin has yet to play this card beyond Ukraine, energy intimidation must be a national security concern among many of our NATO allies.

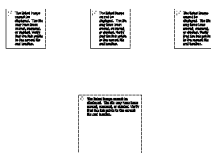
Elon Musk's Public Reckoning
The Editorial Board, The Wall Street Journal

Tesla shareholders have been on a bumpy ride amid Elon Musk's media outbursts and flirtation with taking the company private. The CEO late last week abandoned that idea, and perhaps he saw that public markets have their uses.

Research Reports

Black carbon radiative effects highly sensitive to emitted particle size when resolving mixing-state diversity
Hitoshi Matsui et al., Nature Communications

Here we use a multiple-mixing-state global aerosol microphysics model and show that the sensitivity (range) of present-day BC direct radiative effect, due to current uncertainties in emission size distributions, is amplified 5-7 times (0.18-0.42 W m⁻²) when the diversity in BC mixing state is sufficiently resolved.



This email was sent by: Morning Consult
PO Box 27068 Washington, DC, 20038, US
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From: Hockstad, Leif [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=5A4FB1F8930645EFA34FDFA7485BC6DA-LHOCKSTA]
Sent: 7/16/2018 2:54:09 PM
To: Shoaff, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ac16fb09cf2c44adb34a7405dc331532-JShoaff]; Tsirigotis, Peter [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d19c179f3ccb4fadb48e3ae85563f132-PTSIRIGO]; Koerber, Mike [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9c513901d4fd49f9ab101a6f7a7a863e-Koerber, Mike]; Culligan, Kevin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5ab7ef4a59614fd4b4485668c42818c7-KCULLIGA]; Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]; Cook, Leila [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d4536ad140a1461781d78ca67921b02f-Cook, Leila]; Hengst, Benjamin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c414e2bf04a246bb987d88498eefff06-Hengst, Benjamin]; Charmley, William [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=fb1828fb00af42ffb68b9e0a71626d95-Charmley, William]; Burch, Julia [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=27b0cd43b0404bab89aef0c8d08c165f-Burch, Julia]; Srinivasan, Gautam [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d69332838210416ba51779b19025f832-GSRINIVA]; Marks, Matthew [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=66cf58c470d84403af7d7dfd7efc8016-Marks, Matthew]; Hoffman, Howard [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9b294b6d14284e0d86d25bc366efe259-HHOFFMAN]; Orlin, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=aa64dad518d64c5f9801eb9bb15b7ec3-DORLIN]; Carrillo, Andrea [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=242465abb76c4aef81c2afb6e2ccba7-Carrillo, Andrea]; Zenick, Elliott [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1b2eaa2a560d415fb7c8ce9bb56c7ce5-EZENICK]
CC: Schwab, Justin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=eed0f609c0944cc2bbdb05df3a10aadb-Schwab, Jus]; Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clin]
Subject: RE: By COB Fri. - Draft Response to SAB Letter
Attachments: EDIT Draft 071218 - Admin Response to SAB re 2017 Actions + Sci Transpy + Comments-July 16 AM-CLEAN.DOCX; EDIT Draft 071218 - Admin Response to SAB re 2017 Actions + Sci Transpy + Comments-July 16 AM.DOCX

All –

Please find attached the latest versions of the draft responses to the SAB Chair's letters to the Administrator. I have included a "clean" version which accepts all changes and shows most of the comments have been resolved. I also included a version in "track changes" so people can see the extensive edits we have been making. These versions both include the latest information from OAQPS and OTAQ on their relevant actions and which the believe address concerns and comments received.

The next steps would be for our review and final edits to the letters, so please send me any feedback by COB Monday (today). We will then incorporate any last edits and clean up the letter to move forward promptly.

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Thanks,
Leif

Leif Hockstad
Office of Air and Radiation - OAPPS
U.S. Environmental Protection Agency
Phone: 202 343 9432
hockstad.leif@epa.gov

From: Shoaff, John
Sent: Thursday, July 12, 2018 2:51 PM
To: Tsirigotis, Peter <Tsirigotis.Peter@epa.gov>; Koerber, Mike <Koerber.Mike@epa.gov>; Culligan, Kevin <Culligan.Kevin@epa.gov>; Grundler, Christopher <grundler.christopher@epa.gov>; Cook, Leila <cook.leila@epa.gov>; Hengst, Benjamin <Hengst.Benjamin@epa.gov>; Charmley, William <charmley.william@epa.gov>; Burch, Julia <Burch.Julia@epa.gov>; Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Marks, Matthew <Marks.Matthew@epa.gov>; Hoffman, Howard <hoffman.howard@epa.gov>; Orlin, David <Orlin.David@epa.gov>; Carrillo, Andrea <Carrillo.Andrea@epa.gov>; Zenick, Elliott <Zenick.Elliott@epa.gov>
Cc: Schwab, Justin <Schwab.Justin@epa.gov>; Woods, Clint <woods.clint@epa.gov>; Hockstad, Leif <Hockstad.Leif@epa.gov>
Subject: By COB Fri. - Draft Response to SAB Letter

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All,

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

John

JOHN SHOAF | DIRECTOR

OFFICE OF AIR POLICY & PROGRAM SUPPORT (OAPPS)

OFFICE OF AIR & RADIATION | U.S. EPA | WJC NORTH 5442-B

1200 PENNSYLVANIA AVE. NW | MC 6103A | WASHINGTON, D.C. | 20460 | USA

ShoafJohn@epa.gov | 1-202-564-0531 DIRECT | 1-202-257-1755 MOBILE

Message

From: Schwab, Justin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=EED0F609C0944CC2BBDB05DF3A10AADB-SCHWAB, JUS]
Sent: 4/17/2018 4:04:37 PM
To: Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clin]
Subject: Data
Attachments: EDIT 04172018 PM Data Access DRAFT NPRM 04-11-2018.docx

New redline at bottom of 3

Message

From: Edward Calabrese [edwardc@schoolph.umass.edu]
Sent: 8/10/2018 9:01:35 AM
To: Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group
(FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clint]
Subject: see new paper on EPA proposal
Attachments: Dose Response-Model Uncertainty.pdf

Flag: Flag for follow up

Clint:

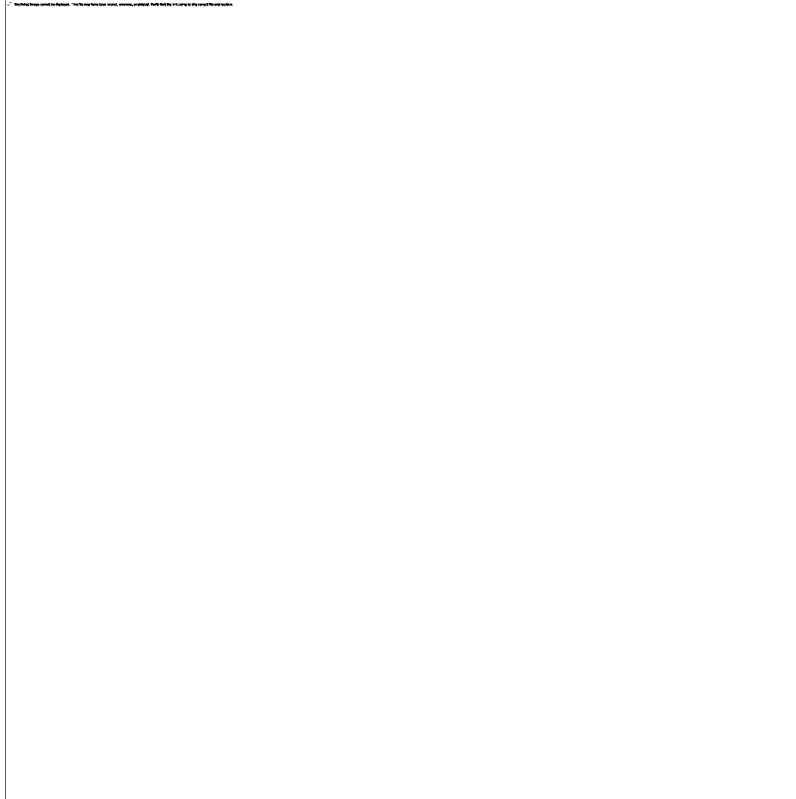
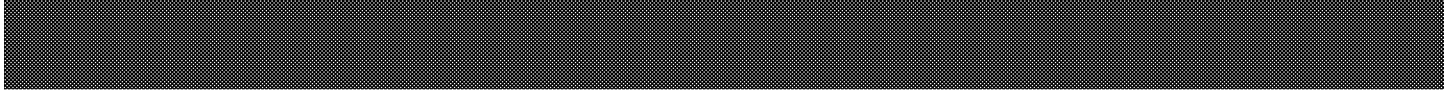
See the attached new paper....published overnight.

Please distribute to your colleagues.

Ed

Message

From: Morning Consult [reply@e.morningconsult.com]
Sent: 6/8/2018 12:58:20 PM
To: Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clint]
Subject: Morning Consult Energy: Trump to Miss Climate Session at G7 Summit in Early Departure



By [Jacqueline Toth](#)

Top Stories

- President Donald Trump will not attend the climate change and environment sessions of the Group of 7 summit in Canada, the White House said in a statement that followed several critical tweets between Trump and French President Emmanuel Macron and Canadian Prime Minister Justin Trudeau that illustrated the friction between the United States and some of its allies. The White House said that Trump will leave the summit mid-morning

on Saturday and that an aide will take Trump's place at the sessions. ([CNN](#))

- Energy Department employees are worried that the agency is not giving sufficient oversight to its own spending, sources said, as it has received increased appropriations beyond what the Trump administration requested while a lag in appropriations from Congress means it has to spend most of the full-year funding in six months. The agency has issued over \$300 million for energy-related projects since mid-April, a level of spending that could lead Congress to complain the department is "spending unwisely, when it forced the agency to do that," said Stan Collender, a public policy professor at Georgetown University. ([E&E News](#))
- In its review of 10 chemicals that is required under a 2016 update to the federal chemicals law, the Environmental Protection Agency excluded the potential impacts of exposure to the chemicals' presence in water, in the air or on the ground, according to internal documents the agency released last week, focusing instead on the effects of direct exposure to the substances. The chemical industry has pushed for this more narrow review approach, and EPA spokesman Jahan Wilcox said the agency can better protect people and the environment by focusing on exposure "likely to represent the greatest areas of concern to EPA." ([The New York Times](#))
- The EPA is seeking changes to the cost-benefit analysis it performs for its regulations, proposing an end to counting the benefits to rulemakings that reduce more than one kind of pollution. The agency noted that it received comments from multiple industry groups in 2017 requesting this type of analytical change. ([InsideClimate News](#))
- Iran's Organization of the Petroleum Exporting Countries Governor Hossein Kazempour Ardebili criticized the reported request from the United States to Saudi Arabia that it boost its oil production to cover the declines expected in Iranian oil exports following the U.S. reimposition of sanctions on Iran. He predicted that OPEC would not "act against two of its founder members" and that oil prices would rise in response to U.S. sanctions on Iran and Venezuela. ([Reuters](#))

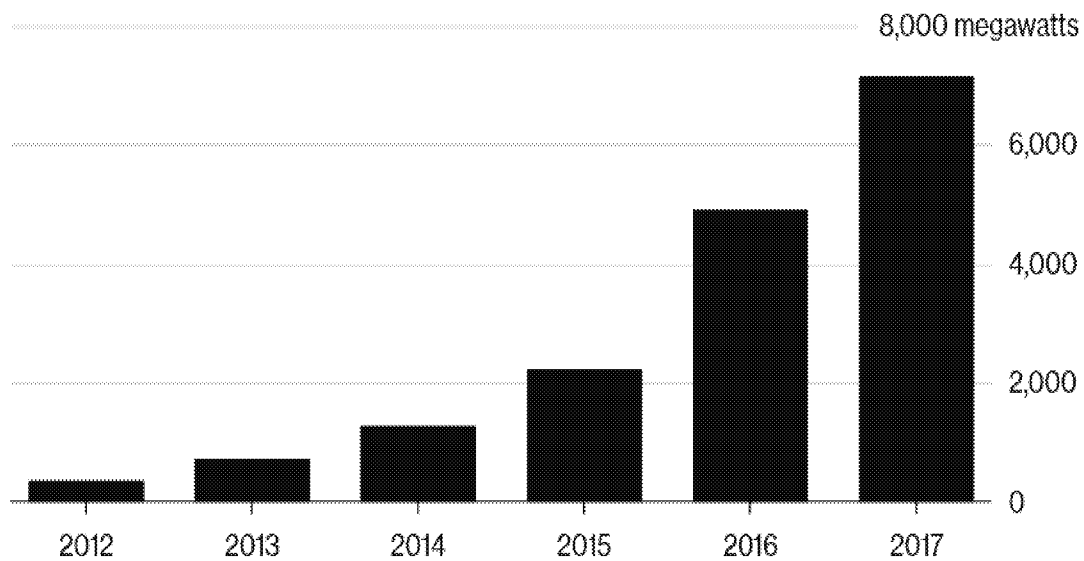
Chart Review

Trump's Love for Coal and Republicans Who Want More Solar **Bloomberg**

Here Comes the Sun

Once solar's smallest U.S. market, the Southeast is now booming

■ Cumulative installations



Source: Bloomberg New Energy Finance

Events Calendar (All Times Local)

FRIDAY

Exchange Monitor event on nuclear decommissioning	7 a.m.
New Energy Update conference on U.S. offshore wind	8:30 a.m.
Symposium on the effects of climate change on oceans	8:30 a.m.

United States Energy Association briefing with Kenyan Energy Minister Charles Keter	9 a.m.
Environmental and Energy Study Institute event on the state of Germany's energy transition	12 p.m.
United States Association for Energy Economics talk on renewable energy entrepreneurship	12 p.m.



Introducing: The Midterm Wave Watcher

A new interactive feature showcasing a range of survey research insights related to the 2018 midterm elections.

General

Trump to skip climate portion of G7 after Twitter spat with Macron and Trudeau

Kevin Liptak et al., CNN

President Donald Trump plans to depart from this weekend's Group of 7 summit in Canada several hours early, the White House announced Thursday, punctuating an explosion of acrimony between Trump and his foreign counterparts on the eve of the talks.

'It's a mess': Employees fret over spending spree

Christa Marshall, E&E News

The Department of Energy has been on a spending spree, making employees worry their agency is "cutting corners" by moving so much cash so quickly.

Toyota offered Pruitt private test drive of new Lexus model, emails show

Lucien Bruggeman, ABC News

Toyota's top brass offered embattled Environmental Protection Agency Administrator Scott Pruitt a private test drive in one of Lexus' latest models late last year, and although it's not clear if there was ever a test drive, it's a potentially problematic pitch to the head of a regulatory body from a company subject to its regulation.

Scott Pruitt Made Public Servants Fetch His Protein Bars and Greek Yogurt

Lachlan Markay and Asawin Suebsaeng, The Daily Beast

If you've worked for Scott Pruitt, there's a not-insignificant chance that you have fetched him his favorite junk-and health!-food while on the job.

The Chemical Industry Scores a Big Win at the E.P.A.

Eric Lipton, The New York Times

The Trump administration, after heavy lobbying by the chemical industry, is scaling back the way the federal government determines health and safety risks associated with the most dangerous chemicals on the market, documents from the Environmental Protection Agency show.

More than 100 bipartisan lawmakers urge Pruitt to scrap 'secret science' rule

Miranda Green, The Hill

Bipartisan members of the House are calling on the Environmental Protection Agency (EPA) to withdraw a recently proposed rule aiming to increase transparency that some fear will limit science used in the regulation process.

Ex-Volkswagen CEO summoned to testify in emissions lawsuit: Bild

Ilona Wissenbach et al., Reuters

Former Volkswagen Chief Executive Martin Winterkorn has been asked to testify before a German court in connection with a lawsuit seeking damages from the carmaker over its emissions cheating scandal, a German paper reported on Thursday.

Pruitt Starts Rewriting How EPA Weighs Costs, Benefits of Regulation

John H. Cushman Jr., InsideClimate News

The Environmental Protection Agency took its first step on Thursday toward a comprehensive overhaul of the cost-benefit calculations that underpin the entire array of its regulations, notably any actions to rein in global warming.

Oil Prices Cool After Recent Rally

Sarah McFarlane, The Wall Street Journal

Oil prices edged lower Friday, giving up some of the ground made in a recent rally spurred by supply concerns in Venezuela and Iran.

Oil and Natural Gas

Iran slams U.S. for seeking Saudi oil output hike, says OPEC won't comply

Alex Lawler, Reuters

Iran criticized a U.S. request that Saudi Arabia pump more oil to cover a drop in Iranian exports and predicted OPEC would not heed the appeal, setting the stage for a tough meeting of the producer group later this month.

Oil Boom Bottleneck Costs Permian Investors \$1 Billion a Day

David Wethe et al., Bloomberg

More than \$1 billion a day. That's how much value a Permian Basin pipeline crunch wiped out from the explorers most focused on the booming U.S. shale region in two weeks.

Exxon to Show Its Green Side in Meeting with Pope Francis
Bradley Olson, The Wall Street Journal

Exxon Mobil Corp. the oil giant, long derided by environmentalists, is trying to give itself a green facelift.

Trump requested Saudi oil support before Iran nuclear decision - sources
Rania El Gamal et al., Reuters

A day before U.S. President Donald Trump withdrew from the Iran nuclear deal, one of his senior officials phoned Saudi Arabia to ask the world's largest oil exporter to help keep prices stable if the decision disrupted supply.

Canada pushes oil pipeline, looks to gain Chinese market and end US as sole buyer for its oil
Patti Domm, CNBC

By building the Trans Mountain expansion, Canada will be able to sell oil outside North America, bringing in higher prices for its oil.

Appalachian natural gas market reacts to explosion, force majeure
John McManus et al., Platts

An explosion early Thursday morning in Marshall County, West Virginia, on TransCanada's Columbia Gas Transmission system caused a force majeure on the pipeline's Leach XPress and put prices in the region on a roller-coaster.

Trump, Backing Coal and Nuclear, Shuns Natural Gas
Alex Neuhauser, U.S. News & World Report

President Donald Trump catapulted to office with the support of the natural gas industry and pledged to introduce an era of U.S. "energy dominance" led by gas and coal. But since taking office, Trump has repeatedly taken steps that promise to crimp the industry he once showered with praise and drive up costs for taxpayers he had promised to help.

Construction planned to prepare Alaska's Arctic refuge for oil drilling

Yereth Rosen, Reuters

The Trump administration said on Thursday it would spend \$4 million on construction projects in the Arctic National Wildlife Refuge in preparation for oil drilling in the nation's biggest wildlife park.

Oil demand set to peak around 2030 as more cars go electric: Equinor

Robert Perkins, Platts

Global oil demand will peak around 2030 at 111 million b/d as a sharp rise in electric vehicles and energy efficiency gains offset growing demand from the aviation and petrochemical sectors, Norwegian producer Equinor said in its long-term energy outlook.

Utilities and Infrastructure

The energy sector is driving job growth, but not where you think

Robert Walton, Utility Dive

Energy efficiency and utility investments in grid modernization are growing sector employment.

Renewables

Tesla Model X in California Crash Sped Up Prior to Impact

Alan Levin and Ryan Beene, Bloomberg

The Tesla Inc. Model X that crashed in California earlier this year while being guided by its semi-autonomous driving system sped up to 71 miles an hour in the seconds before the vehicle slammed into a highway barrier, investigators said Thursday.

2 Western senators want to repeal Trump's solar tariffs

Susan Montoya Bryan, The Associated Press

Republican Dean Heller of Nevada and Democrat Martin Heinrich of New Mexico introduced a measure that calls for duties and tariffs for

solar cells to revert to previous rates and to allow for companies affected by the tariffs hike to seek reimbursements.

Coal

Bluestone Coal to reopen met mine as export, domestic demand boom

Bob Matyi, Platts

Fueled by strong export and domestic demand for metallurgical coal, Bluestone Coal is reopening an underground mine in West Virginia in July and hiring 250 employees for all of its met coal operations in the state, CEO Jay Justice said Thursday.

Nuclear

Micro-Reactors Get Potential Boost in Defense Authorization Bill Provision

Jacqueline Toth, Morning Consult

A provision tucked into the House's annual National Defense Authorization Act that could eventually pave the way for smaller-sized nuclear reactors to be deployed at one or more sites operated by federal agencies sends a signal of support and opportunity in the burgeoning field, developers and industry observers say.

Hanford contractor settles accusations of using front companies

Annette Cary, Tri-City Herald

Washington Closure Hanford has reached a settlement agreement with the Department of Justice in a lawsuit involving millions of dollars worth of small-business subcontracts.

Judge's ruling keeps over-budget nuclear project from being shut down

Sammy Fretwell, The State

A judge on Thursday stopped the federal government from suspending construction of a nuclear fuel factory at the Savannah River Site atomic weapons complex near Aiken.

Climate

Truck Emissions Study Aimed at EPA Limits All Along, Records Show

Abby Smith, Bloomberg

Newly released records show university researchers coordinated closely with the company funding a study that found trucks with rebuilt engines were as clean as new trucks, an argument the company used to persuade the EPA to lift emissions limits on its products.

CO2 trading group IETA warns on carbon floor price risk

Frank Watson, Platts

Global carbon market industry group, the International Emissions Trading Association, on Wednesday warned that the introduction of carbon floor prices by European countries risks distorting the market with no environmental benefits.

Opinions, Editorials and Perspectives

Nuclear Energy: A Path Forward for Environmental Advocates

Carol M. Browner, Morning Consult

As a former Environmental Protection Agency administrator and director of the White House Office of Energy and Climate Change Policy, I have long championed accountability and stewardship for the planet - a sense of ownership over the role we play in the fate of our world.

The nuclear industry is making a big bet on small power plants

Scott L. Montgomery, The Conversation

Until now, generating nuclear power has required massive facilities surrounded by acres of buildings, electrical infrastructure, roads, parking lots and more. The nuclear industry is trying to change that picture - by going small.

Research Reports

Political, Social, and Environmental Shareholder Resolutions: Do They Create or Destroy Shareholder Value?

Joseph P. Kalt et al., Compass Lexecon LLC

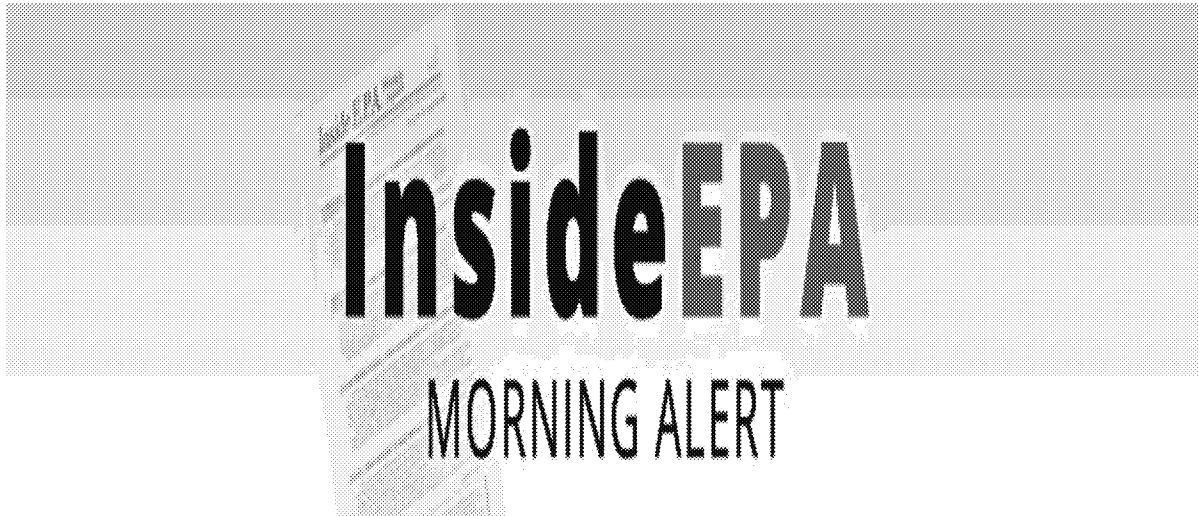
The increased use of politically-charged shareholder resolutions has garnered considerable attention in recent years, as shareholder meetings have become venues for discussion and debate regarding corporate positions and actions on issues of the day



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REDEFINING EPA: Overhauling an agency and its mission -- Complete coverage

March 29, 2018

Latest News

California Adopts Federal HFC Rules After Court Gutted EPA SNAP Program

The California Air Resources Board (CARB) has adopted strong controls on hydrofluorocarbons (HFCs) -- the potent climate warming chemicals -- in refrigerants and air-conditioning systems that echo requirements under EPA's Significant New Alternatives Policy (SNAP) program that were gutted by a court ruling last year.

EDF Signals New Chemical-Specific Path To Target EPA SNURs Under TSCA

The Environmental Defense Fund (EDF) is warning that a draft EPA rule allowing a new use of an existing chemical is "legally vulnerable," suggesting a new chemical-specific path for environmentalists to challenge EPA's approval of new chemical uses under the revised Toxic Substances Control Act (TSCA).

Judges Grapple With How To Force Climate Review Of Coal Lease Program

Appellate judges during March 23 arguments appeared to grapple with how environmentalists could force the Interior Department's Bureau of Land Management (BLM) to review the climate change impacts of its coal leasing program under the National Environmental Policy Act (NEPA).

Court Faults BLM NEPA Review For Failing To Assess Downstream GHGs

A federal district court has found the Bureau of Land Management's (BLM) resource management plan (RMP) for the fossil fuel-rich Powder River Basin to be in violation of the National Environmental Policy Act (NEPA) for failing to consider the downstream greenhouse gas impacts of the vast oil, gas and coal resources that could eventually be extracted under the plan.

Utilities, Northeast States Clash Over Proof For EPA Interstate Air Petitions

Electric utilities and Northeastern states are clashing over the standard of proof states must meet in order to succeed with Clean Air Act petitions asking for direct federal regulation of air pollution sources in one state that

are hindering another state's ability to attain national ambient air quality standards (NAAQS) such as the ozone NAAQS.

Daily Feed

EPA floats new climate talking points downplaying GHG science

The agency's newly developed talking points stress adaptation to the effects of climate change while saying there are "clear gaps" in studies on its human causes.

Quote-Unquote: Covering a wide range of environmental issues

Including: 'secret science', the Marks legal test, cybersecurity and a leaner IG office.

Ewire: EPA, states meet to speed permitting

In today's Ewire: EPA is meeting with state regulators to speed agency approvals of a host of state permits. Plus: Pruitt fights back on travel costs and the last Clean Power Plan meeting.

EPA stepping up cybersecurity effort following recent utility attack

EPA is sponsoring a free workshop to prepare water utilities for possible cybersecurity attacks in the wake of recent Russian attacks on utilities and other critical infrastructure.

Read all the latest EPA news, analysis and documents →

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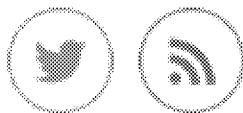
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GREENWIRE

AN E&E NEWS PUBLICATION

GREENWIRE — Tue., August 28, 2018



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1. EPA:

Pentagon challenges 'secret science' proposal

Add the Defense Department to the ranks of those expressing concern about EPA's plans to restrict the use of scientific research in writing new regulations.

TOP STORIES

2. POLITICS:

How McCain's death might affect Scott Pruitt

3. GRID:

Billionaire's gas plant petition sparks Calif. capacity fight

4. CLEAN WATER ACT:

Maui appeals hot-button groundwater ruling to Supreme Court

POLITICS

5. ENDANGERED SPECIES:

Revised plans for red wolves invite public outcry

6. AGRICULTURE:

Some farm groups praise Mexico trade deal

7. PEOPLE:

Zinke's ex-staffer joins BP

8. CAMPAIGN 2018:

Jenkins' W.Va. House seat to stay open until Jan.

NATURAL RESOURCES

9. CHESAPEAKE BAY:

Experts say: Please don't spread the 'Frankenfish'

10. OBITUARY:

Legendary Yosemite climber dies at 82

LAW

11. CLIMATE:

Cities ask appeals court to revive lawsuit against Big Oil

12. CAMPAIGN 2018:

Federal judges throw out N.C. House map again

CLIMATE CHANGE

13. FUEL EFFICIENCY:

AGs call for longer comment period on clean car standards

14. WILDLIFE:

Climate change could be killing birds on namesake plateau

15. SCIENCE:

Shift to cold climate linked to Neanderthals' disappearance

AIR AND WATER

16. AIR POLLUTION:

Toxic air decreases intelligence, study finds

17. WATER POLICY:

Plan B for flood diversion looks better — Minn. officials

FEDERAL AGENCIES

18. EPA:

Audit flags risk of 'unauthorized access' on computers

19. SAFETY:

FEC employees fear they were exposed to asbestos

CHEMICALS

20. PESTICIDES:

Ala. store mixed weedkiller into free popcorn

TRANSPORTATION

21. SELF-DRIVING CARS:

With \$500M investment, Toyota teams up with Uber

STATES

22. ARIZONA:

Clean energy proposal stays on ballot over utility objection

23. CALIFORNIA:

Warmer water may have caused Malibu fish die-off

24. GEORGIA:

Natural gas leak blamed for coffee shop explosion

25. COLORADO:

Xcel plan to invest in renewables, cut coal wins approval

INTERNATIONAL

26. FRANCE:

Environment minister quits over slow climate progress

27. JAPAN:

Abandoned aquarium animals spark public outcry

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Subject: Morning Energy: Trump wildfire tweets renew spending fight — Several API staffers head for exit — City goes to court over PFAS

By Kelsey Tamborrino | 08/08/2018 05:38 AM EDT

With help from Annie Snider and Eric Wolff

MAKING WAVES: In attempting to blame California's devastating wildfires on environmental laws and Democratic Gov. Jerry Brown, President Donald Trump may have upped the stakes for one of the many spending fights Congress will have to resolve this fall. No serious expert has endorsed the president's view that allowing some water to follow its natural course to the Pacific Ocean has complicated efforts to battle the blaze, and the president offered more measured comments late Tuesday night. But Trump's earlier series of tweets this week echoed arguments that agricultural interests have been making for years in long-running wars over how the thirsty state's scant supplies get used.

In Congress, California Republicans are trying to block the state from diverting less water to central and southern California farms and cities to preserve more for endangered fish, a plan that has won support from local green groups like the San Francisco chapter of the Sierra Club. The State Water Resources Control Board, whose members were appointed by Brown, is set to vote this month on the plan, and while agricultural interests and their allies are largely powerless to stop him in Sacramento they have had better luck in Washington. GOP Rep. Jeff Denham, whose Central California district would feel some of the deepest cuts under the state's plan, successfully attached an amendment to the House Interior-EPA appropriations bill to block federal funding related to implementation of the plan.

The policy rider faces an uphill battle as appropriators attempt to conference the House measure with the Senate's companion bill, H.R. 6147 (115), which contains no such language. Sen. Dianne Feinstein, the California Democrat who was key to a 2016 California drought deal, hasn't taken a public position on the issue, but has historically opposed legislative efforts to override California law. And the provision is sure to draw the ire of Northern California Democrats who have called Denham's provision a water grab.

Denham hosted Interior Secretary Ryan Zinke at the New Melones Dam late last month, and shortly thereafter the Interior Department formally weighed in with comments opposing the state's plan, saying it would "essentially elevate the Project's fish and wildlife purposes over the Project's irrigation and domestic purposes contrary to the prioritization scheme carefully established by Congress."

Don't forget: Zinke's No. 2, David Bernhardt, was previously the long-time lobbyist for the powerhouse Westlands Water District, battling to send more water to the district's massive farms.

That's not all: The president presented a subdued response to the California wildfires during remarks Tuesday night, where he told reporters he was "monitoring the situation very close," adding that his administration "is in constant contact with everything going out in the state and with the local authorities and with the state authorities." Trump applauded the firefighters and first responders and said his administration would hold meetings about the wildfires, "because there are reasons and there are things you can do to mitigate what's happening," per a pool report.

WELCOME TO WEDNESDAY! I'm your host, Kelsey Tamborrino. Bracewell's Frank Maisano is back with the win for knowing the island country of Tokelau is powered entirely by solar. For today: What is the name of the only one-word country whose first and last letter starts with the same consonant? Send your tips, energy gossip and comments to ktamborrino@politico.com, or follow us on Twitter [@kelseytam](https://twitter.com/kelseytam), [@Morning_Energy](https://twitter.com/Morning_Energy) and [@POLITICOPro](https://twitter.com/POLITICOPro).

SEE IT: Greenhouse gas emissions in 2017 hit levels never seen before, marking the warmest year on record in a non-El Niño year. Pro's DataPoint team dives into the numbers from the American Meteorological Society's latest "State of the Climate" report [here](#). Want to add [DataPoint](#) to your Pro account? [Learn more](#).

SEVERAL API STAFFERS HEAD FOR EXIT: The oil and gas industry's top trade association is losing several staffers after hiring a [new chief executive](#), according to sources and social media posts. At least six officials at the American Petroleum Institute, including one of its top lobbyists, have left in recent months, an association spokesman confirmed to Pro's Ben Lefebvre and Marianne LeVine. API's former senior director of federal affairs, Khary Cauthen, is among those who've exited. Cauthen is now vice president of federal affairs at LNG supplier Cheniere, according to a Cheniere spokesperson. Additional senior officials at API are expected to leave in the coming weeks, sources said. Read more [here](#).

DINNER GUESTS: Trump dined last night with [business executives](#) at the White House, including Continental Resources CEO Harold Hamm, according to a pool report. The dinner follows [news](#) this week that Hamm's company gave \$25,000 in May to the legal defense fund created for Trump aides caught up in special counsel Robert Mueller's Russia investigation.

VOTERS SELECT MICHIGAN GOV. CONTENDERS: Come November, Democrat Gretchen Whitmer will face off against Republican state Attorney General Bill Schuette for Gov. Rick Snyder's term-limited seat amid the still-unresolved drinking water crisis in Flint and PFAS contamination elsewhere. Whitmer won the Democratic nomination Tuesday, turning back a primary challenge from progressive [outsider candidate](#) Abdul El-Sayed. Schuette, who leads the state's investigation into the Flint water crisis, also handily won his race. Read the recap of last night's primary winners and losers [here](#).

Detroit-area voters faced power outages in at least 14 polling sites due to thunderstorms that struck the area Monday night, electric and gas company DTE Energy [said](#) Tuesday morning. The outages caused some poll workers to rely on flashlights and small generators to keep things running for voters, according to [tweets](#) sent by Rashida Tlaib, a Democratic candidate in the 13th District. Power was eventually restored to all 14 polling places by around 4:30 p.m., the electric company [said](#).

CITY GOES TO COURT OVER PFAS: The toxic nonstick chemicals known as PFAS that have been popping up in water supplies across the country will be the focus of a lawsuit sought by the New York city of Newburgh. The city [filed a federal lawsuit](#) Monday over the contamination in its own water supply in the U.S. District Court of the Southern District of New York. The suit, the city said, seeks to require 23 defendants to clean up the watershed contamination and pay for the supply of clean water needed until the contamination is gone. The defendants range from those who have manufactured or sold the chemicals to those who owned and operated the Stewart Air National Guard Base and Stewart International Airport, where the contamination originated. The lawsuit alleges the defendants' use of the "aqueous film forming foam" resulted in the spread of 12 different types of PFAS chemicals within Washington Lake, the city's primary water supply.

EDF FILES 'SECRET SCIENCE' FOIA SUIT: The Environmental Defense Fund is suing EPA over its failure to release documents requested under the Freedom of Information Act pertaining to EPA's proposed "secret science" rule to ban the use of studies that don't publicly disclose all their data. Earthjustice is representing EDF in the [lawsuit](#), which was filed Tuesday in the District Court for the Southern District of New York. The suit comes as a slate of experts at Harvard University also submitted a [comment letter](#) on the transparency rule Tuesday, ahead of the Aug. 16 comment deadline.

SECRET KEEPERS: The Trump administration won't have to turn over documents to a law firm related to its legal arguments for the decision to shrink national monuments, U.S. District Judge David Nye said Monday. The law firm, Advocates for the West, sued for 12 documents withheld from a public records request related to the move to downsize the Bears Ears and Grand-Staircase-Escalante national monuments, The Associated Press reports. Instead the federal judge said the records are protected presidential communications. The Advocates for the West's lawyer told the AP the group hasn't decided whether to appeal the decision to the 9th U.S. Circuit Court of Appeals, but said the decision "shows how difficult it is to force sunlight on a government that flourishes in secrecy."

PRIVATE PRACTICE: Tesla CEO Elon Musk took to Twitter on Tuesday to say he's considering taking the electric car company private, jolting the company's stock. The tweet came after a Financial Times report that said Saudi Arabia's sovereign wealth fund has acquired an undisclosed stake of between 3 percent and 5 percent of Tesla's shares this year. In a vague tweet, Musk said he was considering taking the company private at \$420 a share and already has secured funding.

Shortly after, the company posted an email Musk sent to staff explaining the potential move. Musk wrote that the intention is not to merge SpaceX and Tesla, but to instead emulate SpaceX's structure. Tesla shares were at about \$342 in morning trading, Pro's Patrick Temple-West reports, but shortly after 2 p.m., trading was halted on the Nasdaq market at \$367.09, up 7 percent from the start of the day. When trading resumed, Tesla shares bid higher to close at \$379.44.

HAPPY BIRTHDAY, RFS: The Renewable Fuel Standard turns 13 today, making it old enough to have its bar or bat mitzvah. Ethanol producers are filled with naches over the program's expansion of domestic biofuel production, but they want presents. What they'd really like is a Clean Air Act waiver allowing year-round sales of E15, something Trump promised Iowans last week was "very close" (though acting EPA Administrator Andrew Wheeler was skeptical). "President Trump vowed to protect the engine of economic growth that has delivered for 13 years," Kyle Gilley, a spokesman for ethanol producer POET, said in a statement. "It is time to allow year-round E15 access for America's drivers."

BLM SEEKS COMMENT ON ALASKA PROSPECT: The Bureau of Land Management announced Tuesday it is taking comment until Sept. 6 on scoping for an environmental impact statement for the Willow oil and gas prospect within the Bear Tooth Unit of Alaska's National Petroleum Reserve. ConocoPhillips Alaska initiated discussions with the agency regarding the potential development of the prospect, BLM said, which is located within federal leases held by ConocoPhillips.

The proposed project includes the construction of a central processing facility, roadways, an infrastructure pad, drill pads with up to 50 wells on each, an airstrip, pipelines, and a gravel mine on the BLM-managed lands within the reserve, which makes up 23 million acres. Already environmentalists are targeting the project's potential adverse effects. "It will scar the land, harm wildlife and worsen climate change," said Kristen Monsell, senior attorney at the Center for Biological Diversity, in a statement.

POWER BACK FOR MOST: The Puerto Rico Electric Power Authority said this week that just 25 customers — or .002 percent — remain without electricity in the aftermath of Hurricane Maria, which first hit the island 11 months ago. That number is out of the close to 1.4 million customers who initially lost power from the hurricane.

CLIMATE SUMMIT IN SIGHTS: The Peoples Climate Movement will host a press conference in San Francisco today announcing its "Rise for Climate, Jobs and Justice" day of action on Sept. 8 — one week before the Global Climate Action Summit takes place in the city. Today's press conference will involve a street mural drawn in real-time by artists using materials from areas affected by the California wildfires.

MAIL CALL! NUCLEAR REACTIONS: Four senators are expressing concern over a draft proposed rule to decommission nuclear power plants. In a letter to Nuclear Regulatory Commission Chairwoman Kristine Svinicki, the lawmakers question the rule's changes to environmental considerations and financial protection requirements, among other issues, and write that the proposal would make it easier for nuclear power plants to be exempt from safety, security and emergency planning regulations. The letter was signed by Sens. Ed Markey, Bernie Sanders, Kirsten Gillibrand and Kamala Harris.

QUICK HITS

- "Trump tariffs could nix savings that car buyers might see from environmental rollbacks," McClatchy.
- "Official: Pennsylvania 'clearly behind' in pollution goals," The Associated Press.
- "Florida gutted water quality monitoring — as killer algae increased," Tampa Bay Times.
- "Welcome to the 'Man Camps' of West Texas," Bloomberg.
- "Oil pipeline inspection industry 'going wrong' as surveys fail to prevent spills," Climate Home News.

HAPPENING TODAY

8:30 a.m. — American Legislative Exchange Council annual meeting, New Orleans.

7 p.m. — The Politics and Prose Bookstore discussion on "We're Doomed. Now What?: Essays on War and Climate Change," 5015 Connecticut Avenue NW.

THAT'S ALL FOR ME!

To view online:

<https://subscriber.politicopro.com/newsletters/morning-energy/2018/08/trump-wildfire-tweets-renew-spending-fight-309001>

Stories from POLITICO Pro

Trump wildfire tweets spark bewilderment about California water Back

By Annie Snider, Carla Marinucci and Jeremy B. White | 08/06/2018 03:10 PM EDT

OAKLAND, Calif. — Californians are stunned at President Donald Trump's latest tweets on the state's catastrophic wildfires — and his insistence that the state is burning because leaders are letting too much fresh water flow into the Pacific Ocean.

Trump tweeted Monday that California "Governor Jerry Brown must allow the Free Flow of the vast amounts of water coming from the North and foolishly being diverted into the Pacific Ocean. Can be used for fires, farming and everything else. Think of California with plenty of Water - Nice! Fast Federal govt. approvals."

That tweet — on the heels of a Sunday tweet that referenced California's "bad environmental laws" as a cause of the state's current raging wildfires — drew an immediate reaction from veteran California GOP strategist Rob Stutzman, who responded via Twitter: "This is nuts" and also "low water IQ." Stutzman has advised former Gov. Arnold Schwarzenegger and a host of national and state GOP candidates.

Trump's comments may be referencing an unrelated dispute between Brown's administration and California Republicans over how much of the state's water can be diverted to Southern California farms and cities and how much must be allowed to flow naturally to benefit endangered and threatened fish species.

Wildfires around California have killed nine people, but firefighters have not raised concerns about the available water supplies.

"The notion that somehow more water would be mitigating or better in fighting these fires is just mind-boggling," Stutzman told POLITICO on Monday. "I don't watch 'Fox & Friends,' but it would seem that someone has put the idea in his head. It doesn't even show an elementary understanding of water policy."

Fox & Friends had aired a segment about the California fires nearly five hours before Trump's Monday tweet but didn't discuss water issues as part of the segment.

Stutzman called the president's recent tweets on California fires and water policy "frightening," saying that "water has nothing to do with why these places are tinder boxes. It's very exasperating. ... It's a statement from the president that shows no understanding of hydrology."

He said he would advise Brown, a Democrat, to "not take the bait" and react to such uninformed views.

Indeed, Evan Westrup, the spokesman for Brown, told POLITICO that "this does not merit a response." But he also added via email: "It's a sad state of affairs when journalism is reduced to chasing the uninformed, unsupervised tweets of the president."

Some Democrats seized on the latest tweet. Rhys Williams, spokesman for Democratic gubernatorial candidate Gavin Newsom, tweeted: "Has anybody seen the baby's pacifier? He dropped it again."

In a purely political sense, Trump's tweets reflected his alignment with California Republicans who have long complained that the state unfairly prioritizes environmental uses for water over the state's sprawling agricultural industry. Putting "fish over farms" is a popular formulation that has been invoked by Trump allies from California's agricultural heartland, such as Reps. Devin Nunes and Kevin McCarthy.

"Forests should be managed properly and water should be allowed for farmers to grow food to feed people," Nunes wrote on Twitter in response to Trump's Sunday tweet, cheering the president "for bringing much needed attention to our flawed environmental policies!"

Trump has courted the Republican-leaning Farm Bureau heavily. California's water wars are a huge issue for the group. Trump addressed the annual Farm Bureau convention in January, becoming the first president in more than two decades to do so. He also raised the issue during a campaign stop in Fresno in 2016.

But experts who make their living studying California's water system reacted for the second consecutive day with a communal groan of exasperation. Peter Gleick of the Pacific Institute, one of the state's foremost experts on how the state manages its water, issued a tweet calling Trump's latest missive "nuts" after labeling the president's initial tweet "gobbledygook bullsh--."

In an email to POLITICO, Gleick noted that the water that flows from California's rivers into the ocean is what remains after cities and farms take their gulp — and that those flows are critical to shoring up ecosystems that, in some parts of the state, are teetering on the brink of collapse.

"Trump's tweets last night and today show a profound misunderstanding about water, fires, California environmental policy, and of course, climate change," Gleick said, adding that the "idea that somehow state water policies are leading to a shortage of water for fighting the fires is too stupid to rebut."

Stutzman said that even more potentially damaging is that the president's Twitter pronouncement is "even somewhat offensive, given that he's trying to make a point on the backs of these fires."

He noted the president on Twitter to date has shown "no sympathy" and expressed no personal concern for the 18 active and raging blazes around the state, which have to date been responsible for the destruction of more than 1,000 homes and billions of dollars in damage.

Ironically, Stutzman said, Trump has stepped on what could have been his own positive message to California — that the White House "has been quick to approve funds and the emergency declarations have come without any complications."

In July, the State Water Resources Control Board proposed major changes to the state's water allocations, preserving more for ailing fish populations. The changes are slated for a vote later this month. That announcement drew the ire of the state's agricultural groups, and state Republicans have turned to their allies in Congress, who have voted to block federal funding related to the allocation plan.

—Rebecca Morin contributed to this report.

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API sees staff departures as new chief settles in [Back](#)

By Ben Lefebvre and Marianne LeVine | 08/07/2018 06:04 PM EDT

The American Petroleum Institute, the oil and gas industry's top trade association, is losing several staffers as its new chief executive settles in, according to sources and social media.

At least six API officials, including one of its top lobbyists, have left in recent months, an association spokesman confirmed. Additional senior officials are expected to leave in the coming weeks, according to two other sources familiar with the moves.

The departures come as Mike Sommers, a former chief of staff to then-House Speaker John Boehner, formally [takes over](#) API from former president and chief executive Jack Gerard. The industry is negotiating a host of issues with Congress and the White House, including a new offshore drilling plan, renewable fuel standards and steel tariffs.

API's former senior director of federal affairs Khary Cauthen has left to become vice president of federal affairs at LNG supplier Cheniere, according to a Cheniere spokesperson. Former API policy adviser Heidi Keller joined oil company BP as associate director in July, according to her LinkedIn account. Former API Senior Director for External Mobilization Deryck Spooner joined e-cigarette company JUUL Labs, according to a JUUL spokesman. Tyra Metoyer, who worked in API's Houston office, also decamped for JUUL in July, according to her LinkedIn profile.

Former Chief Financial Officer John Robertson left in June, according to his LinkedIn page. Vice President of Global Industry Services Lisa Salley has also left the association, the API spokesperson confirmed. Their current activities are unknown.

The former API staffers did not immediately reply to requests for comment sent via social media.

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Business executives come back to Trump a year after Charlottesville [Back](#)

By Andrew Restuccia, Christopher Cadelago and Stephanie Murray | 08/07/2018 01:52 PM EDT

Business executives who distanced themselves from President Donald Trump a year ago in the wake of the deadly clashes in Charlottesville are back to finding common cause with the administration.

The guest list for a Tuesday night dinner at the president's Bedminster, New Jersey, country club includes 15 top executives of some of the country's largest companies. Of the guests, one publicly resigned from a Trump outside advisory council after the president's refusal to condemn white supremacists and neo-Nazis. And two others were reportedly close to stepping down from another advisory council before Trump abruptly dissolved the councils himself amid the backlash.

The dinner offers Trump a high-profile opportunity to show his critics that at least some in the business community have set aside their previous criticism of him.

"They feel that they can associate with [Trump] now because his policies have been such an amazing success," said Stephen Moore, an economic adviser to Trump during the 2016 presidential campaign.

Moore added that he was surprised the president, infamous for blocking those he believes have betrayed him, invited some executives back into the fold: "I don't understand why President Trump would invite anyone who ran for the high grass when there were the first signs of trouble."

One of the attendees slated to attend Tuesday's dinner, Johnson & Johnson CEO Alex Gorsky, released a [statement](#) last year criticizing Trump and announcing his decision to step down from Trump's advisory council on manufacturing.

Though Gorsky had initially insisted he would remain on the council, he changed his mind after Trump gave a press conference at Trump Tower in which he drew an equivalence between white supremacists and the protesters who rallied in Charlottesville against their racist views. "[T]he president's remarks yesterday — equating those who are motivated by race-based hate with those who stand up against hatred — were unacceptable," Gorsky said in the statement at the time. A Johnson & Johnson spokesperson did not immediately respond to a request for comment about why Gorsky decided to attend the Bedminster dinner.

At least two other attendees — PepsiCo CEO Indra Nooyi and Ernst & Young CEO Mark Weinberger — were [reportedly](#) weighing stepping down from a separate outside policy advisory group before the president [announced](#) that he was disbanding the councils.

Several Trump loyalists are also among the invitees to the dinner, including Continental Resources CEO Harold Hamm, Red Apple Group CEO John Catsimatidis and LeFrak CEO Richard LeFrak. Hamm, a vocal defender of Trump who has advised him on energy policy, donated \$25,000 in May to a legal defense fund created for the benefit of White House aides.

Another attendee, FedEx CEO Fred Smith, also has close ties to Trump, even though he has criticized Trump's trade policies. Smith was among the business executives who attended a "Pledge to America's Workers" event last month at the White House, where he received repeated shoutouts from Trump.

Boeing CEO Dennis Muilenburg, who will also attend the dinner, has also courted Trump since he took office and regularly speaks with the president.

Though Nooyi was among the executives who were angry about Trump's remarks about Charlottesville, she also has close ties to the White House. Ivanka Trump, Trump's daughter and adviser, called Nooyi a "mentor" to her in a tweet Tuesday morning amid news that Nooyi would step down as Pepsi's CEO.

International Paper CEO Mark Sutton, another of the participants scheduled to attend Tuesday's dinner, condemned the violence that took place in Charlottesville in a statement at the time, but said he was remaining on Trump's manufacturing council.

Other attendees scheduled to attend Tuesday's dinner include Fiat Chrysler CEO Michael Manley, Mastercard CEO Ajaypal Banga, Boston Beer Company chairman Jim Koch, Honeywell CEO Darius Adamczyk, Newsmax CEO Christopher Ruddy and DocuSign chairman Keith Krach.

The dinner comes during Trump's working vacation in Bedminster, which White House spokesman Hogan Gidley said Monday is taking place while the "White House undergoes needed renovations to the Oval Office and other areas in the West Wing."

White House aides have organized several meetings with the president throughout the week.

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Trump allies back fund for aides' legal defense in Mueller probe [Back](#)

By Kyle Cheney and Lorraine Woellert | 08/06/2018 01:54 PM EDT

A legal defense fund created for the benefit of White House aides has largely relied on contributions from a handful of President Donald Trump's longtime friends and political allies in the first five months of its existence.

Phillip Ruffin, a billionaire casino mogul who has worked with Trump and accompanied him to Moscow for the Miss Universe Pageant in 2013, contributed \$50,000 in April, the documents show. Continental Resources, an oil shale company whose CEO, Harold Hamm, has advised Trump on policy, kicked in \$25,000 in May.

The largest donation in the most recent quarter came from Geoffrey Palmer, a Los Angeles developer who has been a large political contributor of Trump's. He contributed \$100,000 in late June.

The contributions are being collected by the Patriot Legal Expense Fund Trust, a vehicle established by Trump allies in February and managed by former New York GOP Congresswoman Nan Hayworth. It is designed to pay for legal fees for Trump aides who are roped into special counsel Robert Mueller's investigation of Russian interference in the 2016 presidential election. Aides to former President Bill Clinton had a similar arrangement for congressional and special counsel probes during his administration.

The only money raised in the fund's first quarter, which ended March 31, came from a Virginia-based consulting firm called ProActive Communications, which chipped in \$22,000. The firm is owned by Mark Serrano, a onetime consultant to Trump's presidential campaign who is also the spokesman for the legal defense fund.

In all, the fund raised about \$200,000 from February to the end of June. It released its required first- and second-quarter paperwork Monday, after watchdog groups filed complaints with the IRS that the fund had missed a July filing deadline.

"I expected to see millions of dollars raised already," said Craig Holman, a lobbyist with the nonprofit Public Citizen, which filed a complaint with the IRS. "Clearly, there has not yet been a comprehensive effort to raise funds and support the legal costs of administration officials."

Clinton's first fund, established in 1994 to help pay for his personal legal defense amid inquiries into a land deal and a sexual harassment lawsuit, raised more than \$608,000 in the first six months of its existence. The Trump defense fund was designed to pay for his aides' expenses, not for the president's own legal fees.

The Republican National Committee also has been paying legal fees for Trump family members and others under investigation for activities related to the 2016 campaign.

Hayworth did not respond to requests for comment. A lawyer for the fund referred questions to Serrano, who also did not respond.

The Trump team's fund does not accept donations from lobbyists, and anyone giving at least \$200 over a calendar year must have their donations disclosed.

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Ocasio-Cortez and Sanders work to elect first Muslim governor [Back](#)

By Daniel Strauss | 08/04/2018 06:42 AM EDT

Bernie Sanders and Alexandria Ocasio-Cortez are joining forces to elect an underdog but potentially history-making candidate on the ballot in Michigan next week: Abdul El-Sayed, a 33-year-old physician who would be the nation's first Muslim governor.

Sanders is spending the final weekend of the race in the state, and Ocasio-Cortez was there last week to campaign with El-Sayed ahead of Tuesday's Democratic primary. He also has a constellation of hard-left groups in his corner, including MoveOn.org, Justice Democrats and Our Revolution, the offshoot of Sanders' failed presidential campaign.

After a July lull in primary season, the race in Michigan represents the first opportunity for insurgent liberals to shove Democrats leftward since Ocasio-Cortez's upset victory over Rep. Joe Crowley (D-N.Y.) six weeks ago. Tuesday is also the first real test of the burgeoning alliance between Sanders and Ocasio-Cortez, who have also campaigned for two congressional candidates on the ballot next week in Kansas.

El-Sayed, a first-time candidate who's trailed in public polls, has emerged as a threat to the front-runner, former state Sen. Gretchen Whitmer. Whitmer is a favorite of most elected Democrats as well as organized labor and women's groups such as EMILY's List, which backs Democratic women who support abortion rights.

Every public poll of the primary has shown Whitmer leading El-Sayed and entrepreneur Shri Thanedar, a self-funder who has blanketed the airwaves with television ads but hasn't caught fire. But with Sanders parachuting into Michigan this weekend, El-Sayed backers and Sanders allies see a parallel in recent history.

"Bernie was written off" going into the 2016 presidential primary in Michigan, said Democratic strategist Julian Mulvey, whose firm worked for Sanders on that campaign. "I think Nate Silver predicted that Hillary Clinton had a 99 percent chance of winning in Michigan, and Bernie was able to pull it out. So the best thing you can do is have Bernie going in there to help try to close."

Attorney General Bill Schuette is the favorite to win the Republican primary and has been endorsed by President Donald Trump. Schuette has worked to distance himself from unpopular term-limited Gov. Rick Snyder, a Republican. The state is seen as a prime pickup opportunity for Democrats.

According to a Democrat close to her campaign, Whitmer's most recent internal polling showed her with a 16-point lead in the primary. She has raised more money than El-Sayed, and she has more institutional support: In addition to local politicians, unions and EMILY's List, Whitmer was just endorsed by Sen. Kirsten Gillibrand (D-N.Y.).

But El-Sayed, a former executive director of the Detroit Health Department and a public-health expert, has built a significant support base by presenting himself as a Sanders-aligned progressive alternative to the more mainstream Whitmer. Some of the same outside groups that backed Sanders in 2016 are behind El-Sayed, as are Rep. Ro Khanna (D-Calif.) and grass-roots favorites like Ocasio-Cortez and activist Michael Moore. El-Sayed has also received donations from Ben Affleck and received praise from the hosts of the liberal podcast Pod Save America.

Sanders endorsed the candidate only this week, even though El-Sayed had embraced the Vermont senator and many of his core issues, like a \$15 minimum wage, single-payer health care and tuition-free college for families making less than \$150,000 a year. Sanders is planning to appear at two El-Sayed rallies on Sunday, in Detroit and Ypsilanti.

"Abdul has run a campaign — win or lose — that speaks explicitly to the policies that Bernie talked about during the 2016 campaign and continues to talk about in the Senate," said Ari Rabin-Havt, a senior adviser to Sanders. "Abdul lines up so perfectly on these values that the endorsement is a testament to running a campaign based on that."

El-Sayed hasn't shied from his religion in the campaign, even as he's had to swat away rumors that he's a George Soros plant sympathetic to the Muslim Brotherhood. He's happily described the immigrant story of his father moving to the United States from Egypt and spending time with his stepmother, whose family history in Michigan goes back to before the Civil War.

But foremost, El-Sayed and his liberal supporters are betting that campaigning on a Sanders-style platform isn't just good politics in a primary: They're trying to prove that a candidate can tout these issues and win one of the three states that Trump flipped in 2016.

"Michigan is ground zero for the debate over how you win back power from Trump and Trumpism," said Ben Wikler, the Washington director of MoveOn.org, which is backing El-Sayed. "And Abdul El-Sayed is the living avatar of the idea that to defeat Trump you don't move right."

In addition to El-Sayed, Sanders and Ocasio-Cortez are backing two congressional candidates on the ballot Tuesday in Kansas. The two New York natives traveled last month to the state to stump with two candidates: Brent Welder, a former Sanders campaign staffer running for a battleground seat in the Kansas City suburbs, and James Thompson, a repeat, liberal challenger for a more solidly Republican seat.

Welder is running in a crowded, six-candidate Democratic primary for the right to take on Rep. Kevin Yoder (R-Kan.) in a district Clinton narrowly won in 2016. But in a sign that Republicans see Welder's ties to Sanders as a liability, a conservative group began running last-minute ads on Friday that appear designed to boost Welder in the Democratic primary, meddling that Welder's opponents decried, blaming Yoder and the GOP.

Back in Michigan, while El-Sayed is rallying with Sanders, Whitmer will be campaigning with prominent Michigan Democratic politicians, including Detroit Mayor Mike Duggan and Rep. Brenda Lawrence.

Whitmer's surrogates and supporters remain bullish about her chances but also are familiar with their state's history of upsets in gubernatorial races. Democrat Jennifer Granholm wasn't the front-runner when she ran for governor in 2002.

"There's polling data, but primaries are tough to poll," said former Gov. Jim Blanchard, a Whitmer supporter, adding that he still expects Whitmer to win.

EMILY's List President Stephanie Schriock painted the primary as an ultimately constructive argument about how to win a general election fight in a battleground state. The differences between Whitmer and El-Sayed, Schriock said, pale in comparison to the contrast between either of them and Schuette, the front-runner in the Republican primary.

"The values all these Democrats share is the same," Schriock said. "What we're having is a very active debate on how to get there. I'll take that. That's what we're talking about there. You've got Schuette on the other side, who wants to tear it all down."

El-Sayed echoed that sentiment on Friday, promising that Democrats will come together, despite the intraparty battle playing out in the final days before the primary.

"Four days out, things can get heated," El-Sayed tweeted Friday. "I admire [Whitmer and] the vigorous debate we share. While I deeply disagree on health care [and] corporate money in politics, I admire her work [and] commitment to serve. We will walk in lockstep, whoever wins, to a blue wave in November."

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Chaotic day for Tesla shares amid Musk's tweeting [Back](#)

By Patrick Temple-West | 08/07/2018 05:59 PM EDT

Trading in shares of electric vehicle maker Tesla Inc. was halted today after founder and CEO Elon Musk said on Twitter that his company could be taken private.

Musk stunned the stock market with a message from his personal Twitter account: "Am considering taking Tesla private at \$420. Funding secured."

Tesla shares were at about \$342 in morning trading. Shortly after 2 p.m., trading was halted on the Nasdaq market at \$367.09, up 7 percent from the start of the day. When trading resumed, Tesla shares bid higher to close at \$379.44.

Tesla's shares have been attacked by short-sellers this year, and Musk has taunted them on Twitter before.

"It is possible that he wants to hurt short sellers of Tesla now [and] he has been very vocal against them recently," analysts for Morningstar wrote today.

WHAT'S NEXT: In a [blog](#) posting on Tesla's website, Musk said no final decision has been made and he did not elaborate about funding for the deal.

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Clint,

With compliments to Leif, here's an updated draft response to the SAB. Included a few marginal questions and notes for your review/awareness. Please refine and share with Justin as you like and let me know how/when you'd like to also reach out to ODs/staff for feedback on the response and potential briefings and/or questions to the Board for consideration. Thanks!

John

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GREENWIRE

AN E&E NEWS PUBLICATION

GREENWIRE — Wed., May 2, 2018



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1. EPA:

Spotlight turns to lobbyist who facilitated Morocco trip

Top Senate Democrats are demanding a hearing with EPA Administrator Scott Pruitt after reports surfaced yesterday that a lobbyist helped facilitate his trip to Morocco last year.

TOP STORIES

2. REGULATIONS:

First federal reg czar opposes EPA 'secret science' plan

3. INTERIOR:

Indian Affairs head resigned amid harassment charges — email

4. EPA:

Lobbyist recommended science advisers

CONGRESS

5. EPA:

Dems charge Pruitt sought to open office in hometown

6. DOE:

Perry tells lawmakers he has no travel controversies

POLITICS

7. ADVOCACY:

Group hires leader for sportswomen's program

8. CAMPAIGN 2018:

Colo.'s Lamborn back on ballot after federal court ruling

9. RENEWABLES:

Solar, wind donate more to GOP than Dems in midterms

NATURAL RESOURCES

10. NATIONAL PARKS:

NPS set to close farm over contract dispute

11. ENDANGERED SPECIES:

Judge reaffirms protections for Klamath River salmon

12. MARINE MAMMALS:

Humpback whales near Antarctica having more babies

13. INVASIVE SPECIES:

Frog-eating frogs as big as fists found in New Orleans

14. FISHERIES:

La. House panel votes down Russian fish farming

LAW

15. BIOFUELS:

Trade group sues EPA over refineries' hardship waivers

16. CLEAN WATER RULE:

Judge rejects Trump bid to halt N.D. lawsuit

17. VW SCANDAL:

Carmaker reaches \$2.65M settlement with W.Va.

18. MARINE MAMMALS:

Splashing manatees gets Fla. man arrested, police say

ENERGY

19. OIL AND GAS:

EPA finds no toxic air after refinery blast

AIR AND WATER

20. AIR POLLUTION:

EPA keeping standards for makers of brake materials

21. AIR POLLUTION:

New Delhi tops list of most polluted megacities

WASTES & HAZARDOUS SUBSTANCES

22. PUBLIC HEALTH:

E-waste linked to lower fertility hormones in Nigerian men

23. WASTE:

Is it the end of the line for tiny hotel shampoo?

24. BUSINESS:

Fast fashion turns to mushrooms, algae to cut waste

INTERNATIONAL

25. UNITED KINGDOM:

Wet wipes are reshaping Thames riverbed — enviros

26. MADAGASCAR:

10,000 endangered tortoises rescued from traffickers

27. PERU:

Enviros fret as tourists trek to newfound 'Rainbow Mountain'

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E&E NEWS PM — Tue., August 7, 2018



READ FULL EDITION

1. FUEL EFFICIENCY:

Calif. digs in on existing clean car rules

California outlined its plan to maintain stringent vehicle fuel efficiency standards today despite the Trump administration's efforts to weaken the rule.

THIS AFTERNOON'S STORIES

2. EPA:

Harvard researchers — secret science plan 'irrational at best'

3. FUEL EFFICIENCY:

Clean car rollback will hurt poor communities — Democrats

4. OIL AND GAS:

Court approves rig-seizure case against Venezuela

5. CHESAPEAKE BAY:

Government leaders OK directive targeting farm runoff

UPCOMING HEARINGS AND MARKUPS

6. CALENDAR:

Activity for August 6 - August 12, 2018

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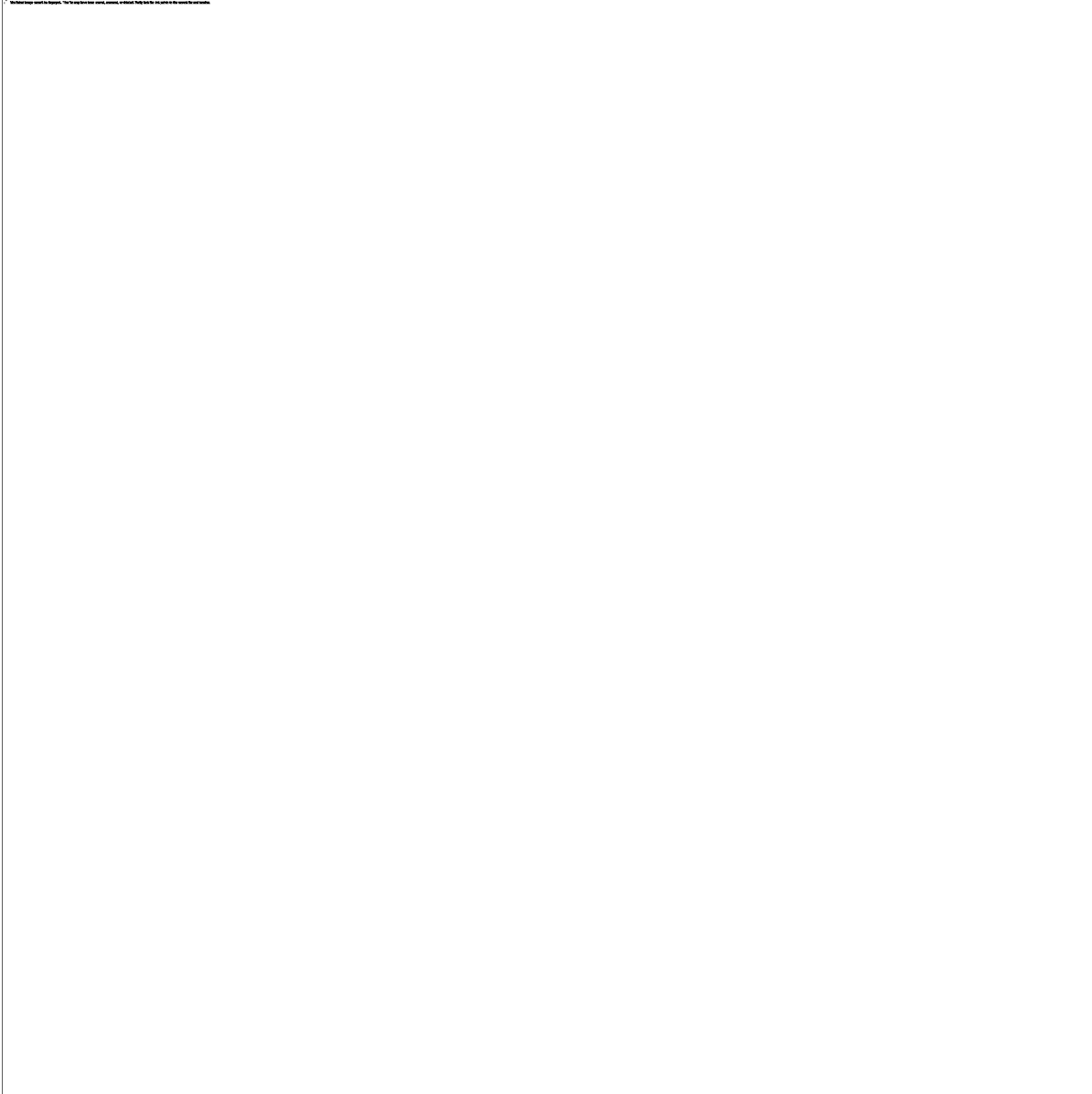
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Sent: 6/21/2018 11:34:49 AM
To: Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group
(FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clint]
Subject: The Morning Headlines from InsideEPA.com -- June 21, 2018



REDEFINING EPA: Overhauling an agency and its mission -- Complete coverage

June 21, 2018

Latest News

Pruitt's Scandals Complicate Path For EPA Waste, International Nominees

Ongoing concerns about EPA Administrator Scott Pruitt's ethics scandals, the agency's limited responses to oversight requests and other issues will make it difficult for President Donald Trump's nominees to head the

agency's waste and international affairs offices to gain Senate approval, Democratic senators told a June 20 environment committee hearing.

Reversing Course, Inhofe Defends Pruitt, Calling Accusations 'Lies'

Sen. James Inhofe (R-OK) is strongly defending EPA Administrator Scott Pruitt against numerous allegations of unethical conduct, calling them "outrageous lies," an apparent reversal from a week ago when the senator said he was upset by Pruitt's missteps and suggested the administrator might need to step down.

Major Glider Manufacturer Blames Layoffs On EPA's Stalled Repeal Proposal

One of the country's largest manufacturers of high-emitting "glider" trucks is blaming EPA's failure, so far, to scrap Obama-era production limits on the vehicles for layoffs at the company, a situation that highlights the Trump EPA's incomplete deregulatory efforts and which could play into political efforts to speed action on the repeal rule.

ATSDR Seeks To Downplay Effect Of PFAS Risk Levels Stricter Than EPA's

A federal health agency has released its much-anticipated draft toxicological profile for perfluorinated chemicals that recommends risk values more conservative than EPA's, but the agency is downplaying potential health concerns from exposures above its limits, cautioning the public not to read its levels as cleanup or health effects standards.

EPA Drops Plan For CWA Spill Rule Despite Settlement To Consider Policy

EPA is proposing to formally drop plans for a Clean Water Act (CWA) rule to prevent or contain industrial chemical spills by claiming that current policies already cover all the requirements that a comprehensive spill policy would include, drawing fire from environmentalists who had a settlement with EPA to consider pursuing the new rule.

Daily Feed

EPA issues TSCA new chemicals submission guide

EPA's guidance seeks to advise industry on how to ensure speedy review and approvals of their new chemicals submissions.

New York sues manufacturers over firefighting foam contamination

The state says the suit is the first to target manufacturers of firefighting foam containing perfluorinated chemicals.

EPA sends ozone NAAQS 'good neighbor' rule for OMB review

The agency's pending proposed rule could potentially find that EPA does not need to take additional regulatory steps to help states attain the 2008 ozone national ambient air quality standard.

Quote-Unquote: Covering NEPA, secret science and a plan to reorganize EPA

CEQ begins its long-awaited NEPA rethink, Colorado opts to adopt California vehicle rules, and the Heritage Foundation's approach for revamping EPA.

Ewire: Bipartisan group forms to push carbon tax

In today's Ewire: Co-chaired by former Sens. Trent Lott (R-MS) and John Breaux (D-LA), Americans for Carbon Dividends is hoping to break decades of GOP resistance to carbon controls.

Texas business group launches new suit over Obama-era CWA rule

The suit seeks to block not only the 2015 rule but any future rule from asserting authority over waters known as Texas coastal prairie wetlands.

Read all the latest EPA news, analysis and documents →

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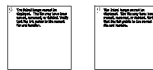
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From: POLITICO Pro Energy [politicoemail@politicopro.com]
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To: Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clint]
Subject: Morning Energy: Second 'minibus' pulls in — The great California divide — Trump-Putin meeting's energy potential

By Kelsey Tamborrino | 07/16/2018 05:42 AM EDT

With help from Daniel Lippman

SECOND 'MINIBUS' PULLS IN: With negotiations still stalled on the first fiscal 2019 "minibus" funding bill, the House Rules Committee will meet today on the second minibuss, which means debate on a host of thorny, energy-related issues. The measure, H.R. 6147 (115), combines funding for Interior-Environment with Financial Services, and while not as controversial as some of the other spending bills the House is slated to take up, it'll offer lawmakers ample opportunity to zero in on the indiscretions of former EPA Administrator Scott Pruitt, as well as address issues like what coastlines should be exempt from offshore drilling.

House Republican leaders are aiming to keep any fighting off the floor by curtailing the amendments to the two-bill package, Pro's Lauren Aratani reports. And because the Rules panel will likely seek a "structured" rule, the most controversial tweaks are expected to be cast aside. Still, Democrats will use debate over the spending bill to rehash Pruitt's missteps, Lauren reports, and pursue continued investigation into allegations that he misused taxpayer money.

The panel begins work today on more than 160 proposed amendments submitted last week to the Interior-Environment portion, including one to ensure EPA's inspector general will continue its investigations into Pruitt, and another that would bar funds from being used to install a private phone booth in or near the office of the Interior secretary. Another proposed tweak would require EPA to publicly disclose all funds used for top-level travel, within 10 days of each trip — a clear call to Pruitt's tenure at EPA.

ME is also keeping an eye on an amendment from Democratic Rep. Paul Tonko that would bar EPA from using money to adopt a rule that would keep the agency from using research without publicly disclosed data, as Lauren highlights. Dozens of lawmakers from both parties have also sponsored amendments that would bar federal funds from being used to support offshore drilling in various locations off the nation's coasts, as the White House seeks to expand exploration for oil and gas. Read more here.

GOOD MONDAY MORNING! I'm your host, Kelsey Tamborrino. The League of Conservation Voters' Gene Karpinski was first to identify Hawaii as the state that does not have a straight line forming part of its border. Today's question comes from Bracewell's Frank Maisano in honor of this week's All-Star game: Which presidents threw out the first pitch at an All-Star game in D.C.? Send your tips, energy gossip and comments to ktamborrino@politico.com, or follow us on Twitter [@kelseytam](https://twitter.com/kelseytam), [@Morning_Energy](https://twitter.com/Morning_Energy) and [@POLITICOPro](https://twitter.com/POLITICOPro).

JUST RELEASED: View the latest POLITICO/AARP poll to better understand Arizona voters over 50, a voting bloc poised to shape the midterm election outcome. Get up to speed on priority issues for Hispanic voters age 50+, who will help determine whether Arizona turns blue or stays red.

What role will Hispanic voters over 50 play in Arizona this Fall? Read POLITICO Magazine's new series "The Deciders" which focuses on this powerful voting bloc that could be the determining factor in turning Arizona blue.

THE GREAT CALIFORNIA DIVIDE: California Democrats rebuked Sen. Dianne Feinstein this weekend and endorsed her progressive opponent, state Sen. Kevin de León, who has been embraced by climate hawks among other liberal activists in his long-shot bid to keep Feinstein from winning a fifth term. The vote offers a glimpse into the dynamics in the state Democratic party, POLITICO's Carla Marinucci and Jeremy B. White report, where infighting between moderate and progressive factions has taken over.

The decision to endorse de León delivers a much-needed lifeline to the struggling campaign of the state Senate president pro tem, who came in second in California's jungle primary earlier this year to earn a spot against Feinstein in November. De León has made climate and environmental policy keystone issues and has been endorsed by Climate Hawks Vote, 350 Action, 350.org's Bill McKibben and billionaire environmentalist Tom Steyer. The nod from the state party ensures his campaign valuable voter outreach information and the potential for an infusion of federal campaign cash, Carla and Jeremy report.

Feinstein on Saturday downplayed the symbolism of the de León endorsement. "This was not a close primary election, and there were 32 people on the ballot," she said of the June vote. "I take nothing for granted ... we work hard." For his part, de León told POLITICO on Saturday that he thinks "it's always good to have younger generations rise up and assume positions of leadership."

Still, the vote draws attention to the deepening divide between in state's Democratic party and what action Feinstein is taking to lessen the pressure. Last week, the California Democrat told E&E News she supports a ban on fracking in the state, something she had previously stopped short of saying. As the ranking Democrat on the Senate Judiciary Committee, Feinstein has also touted her importance in the effort to oppose Brett Kavanaugh's nomination to the Supreme Court — another issue closely watched by environmentalists and industry alike.

Climate Hawks Vote Founder R.L. Miller said in a statement the group appreciated Feinstein's "new position on fracking," but highlighted de León's potential in California. "Kevin de Leon has shown vision, courage, and tenacity," Miller said. "He's an extraordinary leader for extraordinary times, moving California toward a bright future with bills like his SB 100 (100 percent clean energy by 2045) and SB 54, the California Values Act (sanctuary state) that was just upheld in court." Read more.

TRUMP-PUTIN MEETING'S ENERGY POTENTIAL: The president is in Helsinki today for his highly anticipated meeting with Russian President Vladimir Putin. While the two have met before on the sidelines of other events, today's confab will be the first meeting between the two presidents, Jon Huntsman, the U.S. ambassador to Russia, said Sunday. Unlike official presidential summits, the meeting in Helsinki will not feature a joint statement or any predetermined policy results. "You don't know what's going to come out of this meeting, but what it will be is the first opportunity for these presidents to actually sit down across a table, alone and then with their teams, to talk about everything from meddling in the election, to areas where we have some shared interests," Huntsman said.

Of course, President Donald Trump made news last week on the Russian energy front at a breakfast meeting with NATO chief Jens Stoltenberg where he said Germany is "totally controlled by Russia" and specifically called out the controversial Nord Stream 2 gas pipeline project. Energy Secretary Rick Perry said last week Trump thinks the "Nord Stream 2 is not in the European Union's best interest, and my bet is he'll be more than happy to tell President Putin that straight to his face," Axios reported. The State Department told Reuters last week that Western firms invested in the pipeline were at risk of sanctions, although Perry told reporters that sanctions would be "kind of the last place we would like to land" but said they were an option.

WHERE'S WHEELER? Marking another departure from the Pruitt era at EPA, the agency gave a heads-up that acting Administrator Andrew Wheeler will be in Canonsburg, Pa., this afternoon. Wheeler will be in the area to attend a meeting of the Washington County Chamber of Commerce, alongside Region 3 Administrator Cosmo Servidio.

ON TAP THIS WEEK: The Rules Committee will meet Tuesday to consider a resolution, H. Con. Res. 119 (115), that calls a carbon tax "detrimental" to the U.S. economy and "not in the best interest" of the country. The meeting tees up a likely vote later this week on the non-binding resolution, following a recent push by conservative groups to take up the measure. The legislation is led by Majority Whip Steve Scalise, Pro's Anthony Adragna reports, and could offer an interesting vote for Climate Solutions Caucus members, who have yet to weigh in on specific solutions for addressing climate change.

EPA ETHICS OFFICIAL DEFENDS FOIA PROCESS: Kevin Minoli, EPA's principal deputy general counsel, replied last night to the top Democrat on the House Oversight Committee, who on Friday pressed for a subpoena over the agency's handling of FOIA requests. In his letter, Minoli offers to brief Congress on the agency's FOIA Expert Assistance Team that was created in 2013 to "make the FOIA process at EPA better." While Minoli's letter acknowledges "EPA's FOIA program is far from perfect," he highlights the work of the FEAT and other offices, writing that they have "laid a foundation from which EPA's FOIA program could be a model of what a FOIA program should be, not an example of what a FOIA program should not be." Read the letter.

MAIL CALL! Thirteen attorneys general on Friday demanded in a letter to Wheeler that his agency withdraw an order to manufacturers of glider trucks that the agency will not enforce a strict 300-unit production cap for 2018 and 2019, which was issued by Pruitt on his last day. The AGs call the move "clearly unlawful" and a violation of EPA's policy against "no action assurances." In a statement, New York AG Barbara Underwood said Pruitt gave "a parting gift to polluters on his very last day as EPA Administrator — bolstering the Trump Administration's legacy of siding with corporations over people." New York, along with California, Connecticut, Illinois, Maine, Maryland, Massachusetts, New Jersey, North Carolina, Oregon, Pennsylvania, Vermont and Washington, signed onto the letter, as did the Pennsylvania Department of Environmental Protection and the California Air Resources Board.

— **GOP Reps. Greg Walden, Gregg Harper and John Shimkus** wrote to Wheeler on Friday, seeking additional information on EPA's process for reviewing grant applications. Read the letter here.

CLEARPATH ACTION BACKS UPTON: Jay Faison's ClearPath Action Fund will announce its endorsement of Michigan Rep. Fred Upton today. The clean energy advocacy group will begin running digital ads backing the Michigan Republican as part of a six-figure effort for his reelection. Upton, who is the chairman of Energy and Commerce's Energy Subcommittee, "has an accomplished record of shepherding many bills hitting every facet of clean energy innovation," Faison said in a statement.

MOVERS, SHAKERS: Matthew Mailloux, managing director at the American Conservation Coalition, joined the New Hampshire Office of Strategic Initiatives as Gov. Chris Sununu's energy adviser.

— **Katie Valentine** is now a media relations associate at the Conservation Fund. She is the former deputy climate editor at ThinkProgress.

QUICK HITS

— "California is preparing for extreme weather. It's time to plant some trees," The New York Times.

— "Energy execs set fundraiser for Fla. Gov. Rick Scott," E&E News.

— "Widespread unrest erupts in southern Iraq amid acute shortages of water, electricity," The Washington Post.

— "Fill 'er up, or plug it in? Oil, utilities fight to fuel vehicles of the future," The Wall Street Journal.

— "Pence family's failed gas stations cost taxpayers \$20M+," The Associated Press.

— "National parks could get much-needed money for upkeep through bipartisan bill," [ABC News](#).

HAPPENING THIS WEEK

MONDAY

Noon — The National Iranian American Council [briefing](#) on "Joint Comprehensive Plan of Action (JCPOA) 2.0: Iran, Europe, Trump, and the Future of the Iran Deal," SVC-210.

2 p.m. — The Environmental and Energy Study Institute holds a [briefing](#) on safely decommissioning nuclear power plants, HC-8.

4 p.m. — The Institute of World Politics lecture on "Energy Trends: Nuclear and Non-nuclear," 1521 16th St. NW.

5 p.m. — House Rules Committee meets to formulate a rule on [H.R. 6147 \(115\)](#), the "Interior, Environment, Financial Services, and General Government Appropriations Act, 2019," H-313.

6:45 p.m. — Smithsonian Associates [discussion](#) on "Making Sense of Climate Change," 1100 Jefferson Drive SW.

TUESDAY

8:30 a.m. — POLITICO's [Pro Summit](#), 999 Ninth St. NW.

8:45 a.m. — The United States Institute of Peace [discussion](#) on "Wildlife Poaching and Trafficking: Combating a Vital Source of Terrorism," 2301 Constitution Ave. NW.

9:45 a.m. — Senate Environment and Public Works Committee [hearing](#) on "The Endangered Species Act Amendments of 2018," 406 Dirksen.

10 a.m. — House Natural Resources Federal Lands Subcommittee [hearing](#) on federal land bills, 1324 Longworth.

10 a.m. — The Atlantic Council discussion on "Ready and Resilient," focusing on disaster preparedness, 1030 15th St. NW.

10 a.m. — House Oversight Interior, Energy and Environment Subcommittee [hearing](#) on "Tribal Energy Resources: Reducing Barriers to Opportunity," 2247 Rayburn.

10 a.m. — House Science Energy and Environment Subcommittees [joint hearing](#) on "The Future of Fossil: Energy Technologies Leading the Way," 2318 Rayburn.

10 a.m. — Senate Energy and Natural Resources Committee [hearing](#) on the Interior Department's final list of critical minerals, 366 Dirksen.

1 p.m. — EPA [meeting](#) on pesticide health and safety, Rosslyn, Va.

WEDNESDAY

9 a.m. — EPA public hearing on "Proposed Renewable Fuel Standards for 2019, and the Biomass-Based Diesel Volume for 2020," Ypsilanti, Mich.

9 a.m. — House Energy and Commerce Energy Subcommittee hearing on "Powering America: The Role of Energy Storage in the Nation's Electricity System," 2322 Rayburn.

10 a.m. — Senate Commerce Committee hearing on "SHARKS! — Innovations in Shark Research and Technology," 253 Russell.

10 a.m. — House Transportation Economic Development, Public Buildings and Emergency Management Subcommittee hearing on "Are We Ready? Recovering from 2017 Disasters and Preparing for the 2018 Hurricane Season," 2167 Rayburn.

10:30 a.m. — The Center for Strategic and International Studies discussion on "Digitalization in the Industrial Sector: Implications for Energy, Technology, and Policy," 1616 Rhode Island Ave. NW.

2:30 p.m. — Senate Indian Affairs Committee hearing on three bills, including S. 3168 (115), to amend the Omnibus Public Land Management Act of 2009 to make Reclamation Water Settlements Fund permanent, 628 Dirksen.

1 p.m. — The Atlantic Council discussion on "Oil and Iran: How Renewed Sanctions Will Affect Iran and World Markets," 1030 15th St. NW.

THURSDAY

9 a.m. — The Atlantic Council discussion on "Finnish Perspectives on Energy Security in Europe," 1030 15th St. NW.

10 a.m. — Senate Environment and Public Works Committee hearing on nomination of Mary Bridget Neumayr to be a member of the Council on Environmental Quality, 406 Dirksen.

12 p.m. — The Woodrow Wilson Center's China Environment Forum discussion on "Aiming Low: Wielding New Low-carbon Tools to Help Chinese and U.S. Cities Peak Carbon," 1300 Pennsylvania Ave. NW.

FRIDAY

10 a.m. — The Middle East Policy Council briefing on "Withdrawal from the Joint Comprehensive Plan of Action (JCPOA): Options for the Trump Administration," 562 Dirksen.

CORRECTION: The July 13 edition of Morning Energy incorrectly attributed a statement related to Yucca Mountain. It came from Rep. Dina Titus.

THAT'S ALL FOR ME!

To view online:

<https://subscriber.politicopro.com/newsletters/morning-energy/2018/07/second-minibus-pulls-in-279903>

Stories from POLITICO Pro

Lawmakers battle over busting budget to pay for veterans health care [Back](#)

Spooking House conservatives and risking a presidential veto, Senate spending leaders are proposing to blow past budget limits to fund a popular private health care program for military veterans.

Minutes before they were to meet on Thursday, congressional appropriators canceled their first public conference talk that had been intended to settle differences in three of the 12 annual spending bills President Donald Trump must sign by Sept. 30 to avert a government shutdown. One of the three provides for spending on veterans.

The 11th-hour cancellation came amid a cross-Congress showdown over how to pay for a program that allows some veterans to spend taxpayer money on private doctors and hospitals. The question is whether to break budget limits, known as caps, to come up with the cash.

"They canceled the meeting. But it's all about the VA," Senate Appropriations Chairman Richard Shelby (R-Ala.) told reporters Thursday, apparently referring to GOP leaders. "Do we break the caps? Do we prorate everything else? Do we cut other veterans programs to fund this? We got a shortfall, and we got to work it out. And we're not there yet."

Congress needs to approve \$1.6 billion for fiscal 2019, plus nearly \$18.2 billion more in the two years thereafter, to fully fund what has been authorized for the VA Choice program and its successor within the new VA Mission Act.

The suggestion that Congress "break the caps" set by the budget deal, H.R. 1892 (115), struck this year is already irking House conservatives, who would be loath to vote on any final spending bill that goes above those limits — even in the face of an impending shutdown this fall. The idea likely would not play well, either, in talks with a White House that was already seen as surprisingly conciliatory in signing that grand budget deal.

Money for veterans programs comes with special political protections, however, since policymakers want to avoid the uncomfortable optics of fighting funding for those who have served in the military. And top Democrats are already trying to use that perception to their advantage.

"You don't go to a veterans assembly and say 'We're not going to help the veterans,'" Sen. Patrick Leahy (D-Vt.), ranking Democrat on the Senate Appropriations Committee, said Thursday.

The administration has been heavily involved in discussions for weeks. The White House budget office has argued that any extra VA money would be akin to breaking this year's budget deal.

"It's obviously critically important to give veterans the resources they need, and we think that can happen inside the existing caps," according to a senior administration official.

Leahy planned to offer an amendment during the conference meeting that would have added funding for the veterans health care program. The meeting was then postponed, he said, because negotiators didn't want to go on record against doling out that cash. A GOP aide said that Republicans weren't expecting any amendments in Thursday's meeting, the first time negotiators would meet face-to-face.

"A lot of the people were I think concerned, I'm told, that they'd have to vote today," Leahy said.

The issue isn't as simple as supporting or opposing money for VA Choice, though.

The funding problem began last month, when Congress enacted a bill, [S. 2372 \(115\)](#), that created a budget gap by switching the program's community care services from the mandatory side of the ledger to the discretionary side.

Democrats — as well as some Republican appropriators — are in favor of exempting the new money from Congress' strict spending caps. But many Republicans, including White House officials, say the cash should come out of the government's already-determined budget, even if that means trimming the topline for other programs.

That means Congress would need to divert hundreds of millions of dollars from other programs into the veterans health care program, which until this year, was funded automatically.

For their part, House lawmakers have already agreed to pay for part of the program without blowing through budget limits. The veterans spending bill, [H.R. 5786 \(115\)](#), that the House passed last month as part of a three-bill [minibus](#) would fully fund the program for fiscal 2019.

In a statement to POLITICO on Thursday, House Speaker [Paul Ryan](#) called out Leahy by name, saying the Senate spending bill "neglected" to fund the VA program despite the House's action.

"This attack is the height of hypocrisy," said a senior House GOP aide. "Democrats are scrambling to cover up the fact they have not kept their promises as the House did."

House GOP leaders have repeatedly refused to adjust Congress' current spending cap to pay for the additional discretionary spending on the veterans program. Instead, Republicans agreed to pitch in that \$1.1 billion by reshuffling existing money from the House's funding bill for the Department of Homeland Security.

Their Democratic counterparts, led by Rep. [Nita Lowey](#) (D-N.Y.), have protested the move, arguing that it will shortchange other domestic programs. Lowey's own caps-busting amendment was rejected by the spending committee.

The fight over the budget caps has been long simmering and nearly broke out into the open earlier this summer.

Shelby had long backed Leahy's amendment to surpass the caps, but the GOP chairman was forced to shelve his support for bringing it to the floor at the last minute after several conservatives raised issues with it, according to Senate aides.

Shelby even declared on the Senate floor in May that he would support a plan that exceeds the caps, warning that Congress' newest version of the veterans law authorized large sums of spending "without providing any way to pay for it under the spending caps."

"Fortunately, there is existing law and ample precedent for adjusting spending caps to reflect changes resulting from a shift in mandatory spending to discretionary spending," Shelby said on the floor.

Anthony Adragna and John Bresnahan contributed to this report.

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Pruitt scales back EPA's use of science [Back](#)

By Emily Holden and Annie Snider | 04/24/2018 03:28 PM EDT

Environmental Protection Agency chief Scott Pruitt announced Tuesday he would seek to bar the agency from relying on studies that don't publicly disclose all their data, a major policy change that has long been sought by conservatives that will sharply reduce the research the agency can rely on when crafting new regulations.

The unveiling of the proposed rule delivers a win to Republicans like House Science Chairman Lamar Smith (R-Texas), who unsuccessfully pushed legislation to impose the same type of change. The move also demonstrates Pruitt's persistence in pursuing President Donald Trump's anti-regulation agenda just two days before the embattled EPA chief is due to face fierce questioning from lawmakers about his hefty spending, expanded security detail and cheap condominium rental from the wife of an energy lobbyist.

At an invitation-only meeting at EPA headquarters with Smith, Sen. Mike Rounds (R-S.D.) and other supporters of the policy, Pruitt said the proposed rule was critical in ensuring that the agency was transparent about how it is making decisions to justify costly new regulations. It is the latest step Pruitt has taken to fundamentally shift the agency's approach to science.

"It is a codification of an approach that says as we do our business at the agency the science that we use is going to be transparent, it's going to be reproduceable, it's going to be able to be analyzed by those in the marketplace. And those who watch what we do can make informed decisions about whether we've drawn the proper conclusions or not," Pruitt said.

Text of the proposed rule was not immediately available.

The proposal, based on legislation pushed by Smith, is intensely controversial, and scientists and public health groups say it will prevent federal regulators from enacting health and safety protections. Nearly 1,000 scientists, including former EPA career staffers, signed a [letter](#) opposing the policy sent by the Union of Concerned Scientists to Pruitt on Monday.

Their primary concern was that many of the country's bedrock air and water quality regulations are based on research that cannot disclose raw data because it includes the personal health information.

But industry has its own version of the same problem. EPA often relies on industry studies that are considered by companies to be confidential business information when determining whether new pesticides and toxic chemicals are safe to use. Internal EPA emails obtained under the Freedom of Information Act show that EPA political officials, including Nancy Beck, who became the chief of the agency's chemical safety office last year after working for years at a chemical industry lobbying group, worried that the new policy would limit the agency's ability to consider industry data or would force companies to make this proprietary data public.

"We will need to thread this one real tight!" Richard Yamada, political official who led work on the new policy wrote to Beck after she raised the concerns.

It was not immediately clear if the new proposed rule included measures to address those concerns.

Rush Holt, CEO of the American Association for the Advancement of Science, said Pruitt's changes could keep the agency from revising public health regulations as problems arise or new data comes to light.

"On the surface it sounds so innocuous or even beneficial. What could be wrong with transparency? Well it's clear to me that this is not based on an effort to be transparent. It is rather based on an effort to be just the opposite," he said.

"EPA is particularly important because when science is misused, people die," he added.

Pruitt has been discussing the new scientific policy publicly for weeks, but it only went to the White House for interagency review last week. Such swift review is very rare for the Office of Management and Budget, which often takes months to vet a new policy. At least one group, the Environmental Defense Fund, has requested a meeting with OMB officials to discuss the rule, but OMB's website shows that no meetings have been scheduled with interested groups.

Many public health studies can't be replicated without exposing people to contaminants, and environmental disasters such as the Deepwater Horizon oil spill cannot be recreated, the group said, raising intellectual property, proprietary and privacy concerns.

Pruitt's predecessor Gina McCarthy, and her air chief Janet McCabe, in an op-ed in The New York Times in March said concerns about studies are dealt with through the existing peer-review process, which ensures scientific integrity.

"[Pruitt] and some conservative members of Congress are setting up a nonexistent problem in order to prevent the E.P.A. from using the best available science," they said.

To view online [click here](#).

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Net neutrality, offshore drilling, tax-free churches: What's dredged up in the latest spending debate [Back](#)

By Lauren Aratani | 07/16/2018 05:03 AM EDT

House leaders will bring two more spending bills to the floor this week, still aiming to pass all 12 of the fiscal 2019 measures before federal cash runs out on Sept. 30. Albeit a softball compared to the more controversy-packed funding bills, this second "minibus" provides ample opportunity for political potshots and fiery policy debate.

House Republican leaders are expected to keep much of that fighting off the floor by curtailing amendments to the two-bill package, H.R. 6147 (115), which includes funding for the Interior Department, EPA, IRS, SEC and General Services Administration — among several other agencies — as well as federal courts and Washington, D.C.

But issues such as federal jobs for young immigrants, financial transactions with marijuana vendors and the indiscretions of former EPA Administrator Scott Pruitt are sure to come up as GOP leaders prep for floor debate.

The House Rules Committee is set to meet Monday night to wade through the more than 240 proposed amendments to the Financial Services, H.R. 6258 (115), and Interior-Environment titles. Because the panel will likely seek a "structured" rule, the most controversial tweaks are expected to be cast aside before the legislative duo is called up for floor debate. What to watch:

Sticking it to Scott Pruitt

Though Pruitt is EPA administrator no more, Democrats will use this week's spending bill to rehash his missteps and pursue continued investigation into allegations that he misused taxpayer money. One proposed amendment would withhold funds for finalizing any EPA rules Pruitt initiated, until the agency's inspector general completes its investigations into the former administrator's spending.

Another proposed tweak would require the EPA to publicly disclose all funds used for top-level travel, within 10 days of each trip.

The bill already includes a committee-approved, tongue-in-cheek provision that would bar the EPA's chief from purchasing fountain pens that cost more than \$50, following reports that Pruitt spent \$3,230 on especially pricey writing tools. And an amendment has been proposed that would essentially bar the Interior secretary from installing a private phone booth, after Pruitt spent \$43,000 on a soundproof stall.

Supporting the marijuana economy

More than 20 co-sponsors — from both sides of the aisle — have piled on in support of an amendment that would prevent financial institutions from being penalized for serving legal marijuana businesses.

Disputing research requirements

Rep. Paul Tonko (D-N.Y.) has drafted an amendment that would bar the EPA from using money to adopt a rule that would keep the agency from using research without publicly disclosed data. Conservatives argue that the rule brings transparency to scientific research, but many scientists contend that the stipulation would allow the agency, under the guise of transparency, to pick and choose which research it will use for regulations.

Protecting employment for DREAMers

An amendment by Rep. Pete Aguilar (D-Calif.), and another by Rep. Darren Michael Soto (D-Fla.), would ensure immigrants protected under the Deferred Action for Childhood Arrivals program are eligible for federal employment. Although some moderate Republicans have voiced support for that effort, chances of action have grown slim after House Republicans failed last month to bring GOP immigration proposals to the floor.

Stopping offshore drilling

Dozens of lawmakers from both parties have sponsored amendments that would bar federal funds from being used to support offshore drilling in various locations off the nation's coasts, as the White House seeks to expand exploration for oil and gas.

Curtailing church donations

Several Democrats have endorsed an amendment by Rep. Debbie Wasserman Schultz (D-Fla.), and another by Rep. John Lewis (D-Ga.), that would seek to continue enforcement of the current prohibition on tax-exempt nonprofit organizations endorsing or donating to political candidates. House Republicans have included language in the Financial Services title that would basically ban the IRS from rooting out churches that break that rule.

Reviving net neutrality

Democrats have proposed an amendment that would restore the FCC's net neutrality rules, after the commission's repeal took effect this month.

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Billionaire Steyer endorses de León over Feinstein [Back](#)

By David Siders | 04/18/2018 11:53 AM EDT

LOS ANGELES — Tom Steyer, the billionaire Democratic mega-donor, is endorsing Kevin de León in his longshot bid to unseat California Sen. Dianne Feinstein, the latest rebuke of Feinstein from her party's increasingly agitated left flank.

Steyer's endorsement - if followed by outside spending - could improve de León's standing in a race that he has so far failed to make competitive. Feinstein, a centrist Democrat, holds a massive advantage over the progressive state senator in both fundraising and public opinion polls.

"I have known Sen. de León for years and have fought alongside him on immigrant rights, expanding health care, and climate change," Steyer said in a prepared statement. "Our work together on behalf of all Californians has assured me that he would be a champion of California's priorities and values. Kevin de León has proven himself to be the best of the next generation, and I am proud to support him for U.S. Senate."

The endorsement was not unexpected. Steyer once considered challenging Feinstein himself, and he has appeared on cable television previously as a near-surrogate for de León. Earlier this year, Steyer described the contest on MSNBC as "incrementalism versus visionary thinking in the Democratic Party."

Lauded by many young, progressive activists in California, de León in February deprived Feinstein of her own state Democratic Party's endorsement, outpolling her by 17 percentage points in the delegate vote.

But the state senator remains largely unknown to the broader electorate in California. Feinstein leads him 42 percent to 16 percent among likely voters, according to a Public Policy Institute of California poll last month.

The race between Feinstein and de León is unlikely to be decided before November. With no prominent Republican running in the state's top-two primary in June, Feinstein and de León are both expected to advance to the general election.

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Feinstein: I'm equipped to lead anti-Kavanaugh brigade [Back](#)

By Carla Marinucci | 07/14/2018 01:39 PM EDT

OAKLAND, Calif. — Sen. Dianne Feinstein, the ranking Democrat on the Senate Judiciary Committee, said Saturday that the vetting process for the confirmation of Brett Kavanaugh to the Supreme Court will be "incredibly difficult," and that her staff is reading nearly 1 million documents that she said could give red-state Democrats reason to oppose his nomination.

Feinstein made her toughest comments to date about opposing Kavanaugh's nomination while addressing a "Unity Breakfast" of her supporters at a California Democratic Party executive Committee meeting in Oakland. State party activists will decide later Saturday on an endorsement in Feinstein's race against progressive state Sen. Kevin de León.

Reminding supporters of her seniority in the Senate and her leadership position on the Judiciary Committee, Feinstein said she has helped write the party's modern-day battle plan for a Supreme Court confirmation. She said that she has sat in on more than 10 confirmation hearings for Supreme Court justices since she was elected in 1992. But Kavanaugh's nomination, Feinstein said, "is beyond, [it is] different from all of them. ... Because this man will be the deciding vote on most things we hold most dear."

"This president has said he would appoint the person that would take down Roe [v.Wade] ... and I take him at his word," she said.

Feinstein told Democrats that now, as the nomination process goes forward, "we have a massive effort going ... We collect information from everywhere," including the Bush Presidential archives.

"The vetting process of this justice is going to be incredibly difficult... it's estimated that 1 million pieces of paper that our staff is going to need to go through prior to a hearing," she said. "I can tell you this: That it is really key and critical that Democrats, including those in difficult states, get the support of our party so that they can do the right thing in this vote..."

Feinstein noted that "we have five Democratic [senators up for reelection] from states that Donald Trump won [by large margins], and this makes this vote difficult for them," she said. "For me, it's not difficult at all. But I'm the lead Democrat on the committee, and we will put together a kind of message, I hope, for the American people which will enable those Democrats to vote along with us."

To view online [click here](#).

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Feinstein gets progressive smackdown [Back](#)

By Carla Marinucci and Jeremy B. White | 07/15/2018 08:01 AM EDT

California Democrats, torn by infighting between moderate and progressive factions, rebuked Sen. Dianne Feinstein's bid for a fifth term — for the second time this year.

The state party's executive committee voted Saturday to endorse progressive state Sen. Kevin de León in the general election, signaling what many fear will be a divisive Democrat-on-Democrat battle going toward the fall in California, where the party hoped to put the focus on a host of crucial congressional races that could determine control of the House of Representatives.

The endorsement delivers a lifeline to de León's struggling campaign — and the party's imprimatur, which is accompanied by valuable access to slate cards, email lists and voter outreach machinery that will allow him to reach an estimated 2 million Democratic voters. And he could also get an infusion of federal campaign cash shared with the party, party officials said.

Feinstein, who was also snubbed in February at the annual state convention where party activists declined to endorse her bid for reelection, had pleaded for party unity prior to Saturday's vote. She asked the executive committee of the California Democrats, the nation's largest state Democratic Party, to choose "no endorsement" — what many saw as a strategic defense to head off an aggressive challenge for the party's endorsement by de León.

And in an effort to frame the endorsement clash in the context of the national political landscape, the senator's team circulated a "no-endorsement" plea signed by a half-dozen Democrats whose campaigns in contested California districts are a linchpin of the national party's strategy to retake the House.

The final vote gave de León 217 votes, or 65 percent — beating the 60 percent required threshold — versus 94 votes, or 28 percent, for the "no endorsement" urged by Feinstein, and 22 votes, or 7 percent, for the senator herself.

The Senate contest pits two contrasting pols: Feinstein — at 85, the oldest member of the Senate — and De León, 51, a former state Senate president pro tem and son of a single immigrant mother. She is a centrist long at odds with her state party's leftist activist grass roots, while he is a progressive who has called for new "bold leadership" from Democrats unafraid of confronting President Donald Trump head-on.

"I think it's always good to have younger generations rise up and assume positions of leadership," de León told POLITICO on Saturday.

His fight, he said, was not about "a gender issue ... it's not an age issue." Pointing to progressive icons Sens. Elizabeth Warren and Bernie Sanders, de León said, "it's about the right values."

The weekend's nail-biter over the party's Senate general election endorsement underscored the depths of the bitter divisions still lingering from the 2016 battles between more progressive backers of Sanders' presidential bid and the more centrist faction of Hillary Clinton supporters in the nation's most populous state.

Although the endorsement involved just a small circle of the most activist voters — a 313-member executive committee in a party that represents 8.4 million voters — many Democratic insiders said it carried potentially dangerous implications for the party beyond the state's borders.

Not only did the internal battle threaten to extend the rift among Democrats in California — a traditional mother lode of campaign contributions — many Democratic leaders, including former state chair Art Torres, worried about the prospect of a circular firing squad.

"We have the opportunity to change the nature and the control of the House," said Torres, a Feinstein backer, adding that a de León endorsement threatened that Democrats "won't have enough federal money to put into those congressional campaigns."

"Federal money is the hardest to raise," he said, "and if the party is going to spend money on a U.S. Senate campaign — why do it?"

For de León's campaign, snagging the party's endorsement was widely seen as his last shot at making a serious run at Feinstein. California's senior senator pummeled him by 32 percentage points in the June all-party primary, winning more than 70 percent of the Democratic vote in a contest in which 32 candidates competed.

She has also dramatically outraised him: Feinstein reported \$10.3 million cash on hand at the end of March, compared with \$672,330 for de León, according to campaign finance reports.

But de León has gained traction among the party's far left as the author of the controversial SB54, the California Values Act, also known as the "sanctuary state" law. The legislation, aimed at curtailing the cooperation of local law enforcement with federal immigration officials, was recently largely upheld by a federal judge's ruling.

De Leon has also called for abolishing the Immigration and Customs Enforcement agency and impeaching Trump — a position that is shared by his friend, wealthy Democratic activist Tom Steyer.

In making the rounds this weekend in caucus meetings at Oakland's Marriott Hotel, Feinstein repeatedly reminded Democrats of her seniority in Washington, her legislative leadership on issues like the assault weapons ban, and of what she vowed will be her pivotal role as the ranking Democrat on the Senate Judiciary Committee — which will weigh Trump's nomination of Brett Kavanaugh to the Supreme Court.

Feinstein on Saturday downplayed the symbolism of a de León endorsement and her difficulty with the party's grass roots, insisting it would have no effect on her campaign. "This was not a close primary election, and there were 32 people on the ballot," she said of the June contest. "I take nothing for granted ... we work hard."

"I think people understand I'm now ranking on Judiciary, going into one of the biggest moments that this party has — the decisive Supreme Court justice," she said. "This is a very big deal because this affects the life of every American going forward. So who that Supreme Court seat goes to is all-important."

Asked why her decades of accomplishments in public office haven't earned her an easy endorsement from her party in her bid this year, Feinstein jokingly shrugged: "Well, that thought occurred to me — but I wiped it out of my mind completely."

In a measure of the contest's intensity, party members said they were inundated with appeals from both camps in recent days, and Feinstein's call for neutrality irked some pro-de León inhabitants of the party's progressive wing.

"Delegates are very angry at the constant barrage of emails we've gotten from people who have endorsed Dianne Feinstein telling us not to endorse," said R.L. Miller, a prominent environmental activist who was wearing one of a profusion of "United4KDL" stickers.

In caucus meetings and in hallways where he made the rounds, de León argued that Trump's recent actions on immigrant family separations, the Supreme Court and environmental policy demanded unfailingly tough action and confrontation from Democrats in Washington. And — without ever naming Feinstein — he repeatedly drew a sharp contrast with her centrist approach and more conciliatory style on Capitol Hill.

"We need bold leadership in Washington today," de León told a meeting of the Women's Caucus. "Brett Kavanaugh is in a position to take away the rights of every American. ... That's why we have to shut the Senate down — and never allow this individual to come to the Senate floor," he said to cheers. "This is where you need the courage of your convictions — to not be on the sidelines, but on the front lines because what's at stake is a generation of power."

Steyer also drew cheers from the Democratic crowd in Oakland when he delivered a similar message to Democratic lawmakers on Capitol Hill: "If you don't have what it takes to lead now, when we are totally under the gun, then don't come asking for support later," he said. "Lead, follow or get out of the way."

Feinstein has appeared to respond to progressive pressures as the campaign has unfolded. She moved left on a pair of issues where her moderation has long stood out in California: she endorsed legalizing marijuana, reversing her longtime opposition, and renounced her prior embrace of the death penalty.

Bill Carrick, Feinstein's campaign strategist, downplayed the importance of this weekend's vote, saying that the opposition of the party's far left to Feinstein is "not a surprise; we've been through this in the past."

Carrick noted that de León "got the lowest total of any candidate" ever in a top-two primary race, while "she won every county, 70 percent of the Democrats, every congressional district of every kind of demographic that exists in California. So I think we're in good shape."

Still, he acknowledged that it would have been "much better for the Democratic Party" to present a unified front as the November election approaches, and to have avoided an endorsement fight.

Despite the passion of progressive voters, he said, a political reality exists even in solidly blue California. "We can't be naïve about these swing districts," he said. "The idea that suddenly we vaporize the Republicans in these districts and just walk in, is just crazy. They're all going to be very, very close districts."

To view online [click here](#).

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U.S. ambassador: Trump-Putin meeting 'isn't a summit' [Back](#)

By Quint Forgey | 07/15/2018 10:53 AM EDT

President Donald Trump's highly anticipated meeting on Monday in Helsinki with Russian President Vladimir Putin is just that — only a meeting, the U.S. ambassador to Russia said Sunday.

"It isn't a summit. I've heard it called a summit. This is a meeting," Jon Huntsman said on [NBC's "Meet the Press."](#)

"In fact, it's the first meeting between the two presidents," Huntsman added. "They've had some pull-asides, one at the G-20 in Hamburg and the other at the APEC Ministerial in Da Nang, Vietnam, but this is really the first time for both presidents to actually sit across the table and have a conversation."

Unlike previous presidential summits — such as Ronald Reagan's visit to China in 1984, Huntsman said — Trump and Putin's get-together in Helsinki will not feature a state dinner, a joint statement or any predetermined policy deliverables.

"You don't know what's going to come out of this meeting, but what it will be is the first opportunity for these presidents to actually sit down across a table, alone and then with their teams, to talk about everything from meddling in the election, to areas where we have some shared interests," Huntsman said.

Huntsman also said recent developments in special counsel Robert Mueller's investigation of Russian interference in the 2016 presidential election, including the Friday indictment of 12 Russian military officials for hacking the Democratic National Committee, will be a part of Monday's talks.

"That now makes probably almost 30 Russians who have been rolled up by the Mueller indictment. That investigation continues," Huntsman said. "The bigger picture is we need to hold the Russians accountable for what they did, their malign activity throughout Europe as well. That's a part of the conversation that needs to take place."

But Huntsman wouldn't say whether Trump would push Putin for the extradition of the dozen Russian military officers to stand trial in the United States.

"I don't know if he'll make the ask, but it may be part of the agenda. It may be part of their bilateral meeting together. We'll have to see," Huntsman said, adding that the FBI office and the U.S. Embassy in Moscow would work to advance that goal.

"That doesn't necessarily mean that the Russians are going to follow through with it," Huntsman cautioned. "But we'll see if those steps will be taken."

To view online [click here](#).

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House to vote on whether carbon tax 'detrimental' to economy [Back](#)

By Anthony Adragna | 07/13/2018 01:18 PM EDT

The House Rules Committee will meet Tuesday to tee up chamber consideration of a resolution, [H. Con. Res. 119 \(115\)](#), arguing a carbon tax would be "detrimental" to the U.S. economy and "not in the best interest" of the country, according to [a notice](#).

Nineteen conservative groups, including the Competitive Enterprise Institute, American Energy Alliance and Americans for Tax Reform, sent House leadership [a letter](#) earlier this week urging them to take up the resolution.

The non-binding resolution is led by Majority Whip [Steve Scalise](#) and may be an interesting vote for members of the Climate Solutions Caucus. That bipartisan group's ranks have swelled to more than 80 lawmakers, but members have yet to weigh in on specific solutions for how to address climate change.

WHAT'S NEXT: The Rules Committee will [meet](#) on the resolution July 17 at 3 p.m.

To view online [click here](#).

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Ending Secret Science or Censoring Science?

Posted by Chester Babst

On April 30, 2018, EPA issued a Notice of Proposed Rulemaking entitled “Strengthening Transparency in Regulatory Science.” Although EPA’s stated intent is to increase transparency and public confidence in the Agency’s regulations, a number of its critics have described the proposed rule as “exquisitely opaque,” “vague,” and “lacking data transparency.” Even supporters of the proposed rule seem to recognize that it may need some work before it is issued in final form....

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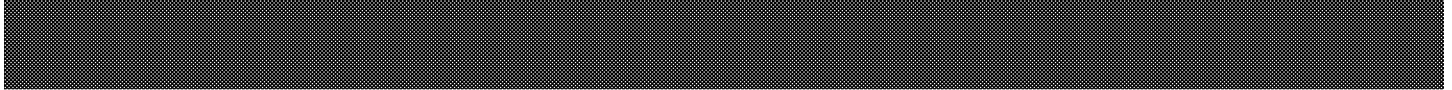
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By [Jacqueline Toth](#)

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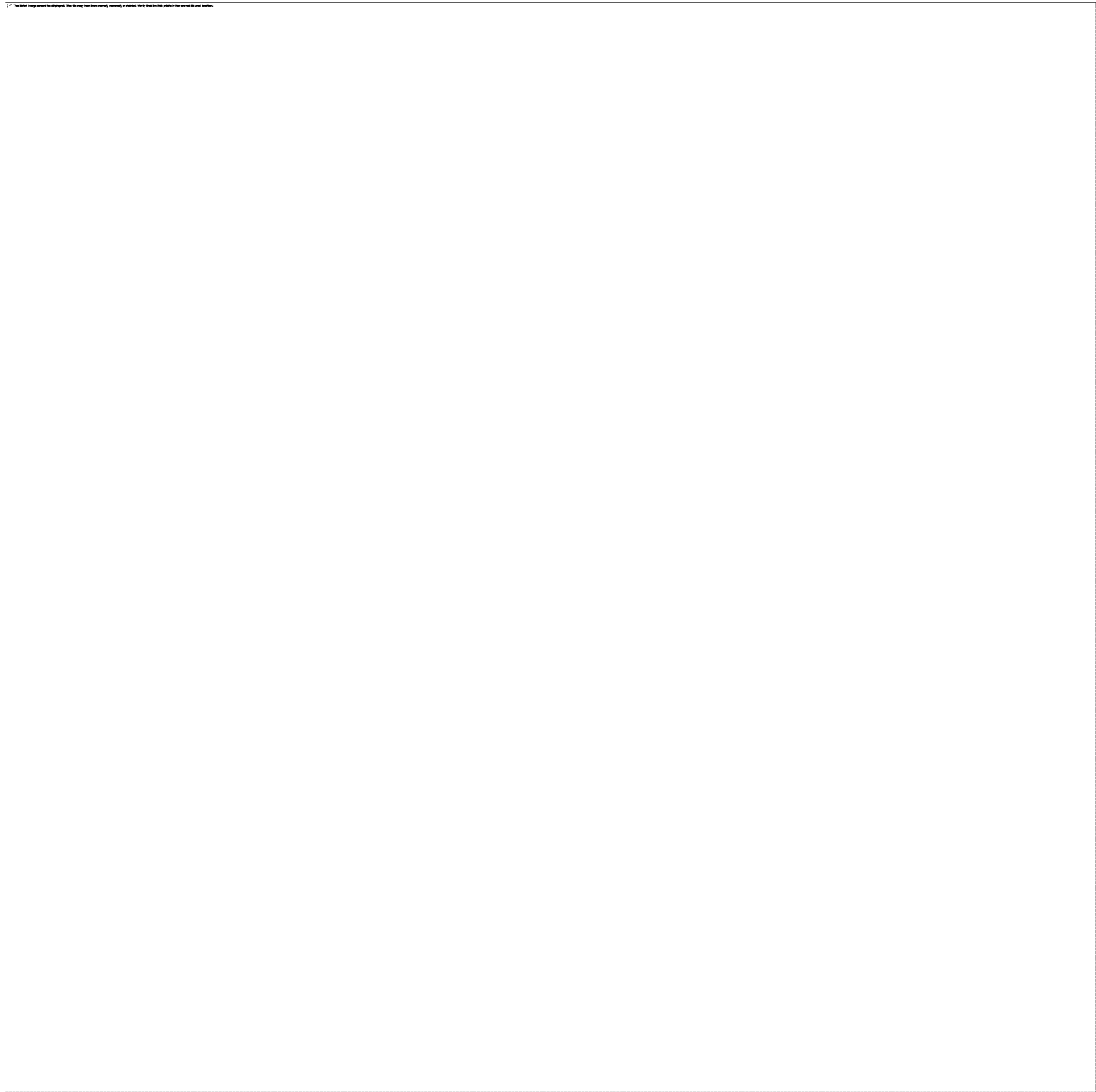
- Tesla Inc. Chief Executive Elon Musk said that he and the board of directors will not pursue turning Tesla into a private company, following a tumultuous few weeks of speculation and the launch of a securities investigation after Musk tweeted on Aug. 7 that he was considering taking the company private. Separately, six of Tesla's board members reaffirmed their support for Musk as CEO. ([The New York Times](#))

- The United States and Mexico may resolve outstanding differences over the North Atlantic Free Trade Agreement talks as early as today after breakthroughs on energy and automobile issues, according to three people familiar with the discussions. The two countries have addressed the incoming Mexican government's concerns that the new agreement would put too many constraints on how Mexico can treat foreign oil firms that invest in the country, said Jesus Seade, the NAFTA negotiator for President-elect Andres Manuel Lopez Obrador. ([Bloomberg](#))
- Documents released under a Freedom of Information Act request to a nonprofit identify PG&E Corp. as the utility that the Federal Energy Regulatory Commission fined \$2.7 million in May for losing control of a database with 30,000 records containing sensitive information, including passwords and system controls, which was exposed online for 70 days. At the time it issued the fine for the 2016 breach, FERC had declined to name the utility. ([The Wall Street Journal](#))

Chart Review

Permian region is expected to drive U.S. crude oil production growth through 2019

U.S. Energy Information Administration



Events Calendar (All Times Local)

MONDAY

National Conference on Ecosystem Restoration	7:30 a.m.
National Renewable Energy Laboratory webinar on marine energy, hydropower and pumped storage	10 a.m.

TUESDAY

National Conference on Ecosystem Restoration	8:30 a.m.
Senate Oceans, Atmosphere, Fisheries and Coast Guard Subcommittee hearing on harmful algal blooms	2:30 p.m.
University of Chicago panel discussion on oil and gas production and transportation advancements	6:30 p.m.

WEDNESDAY

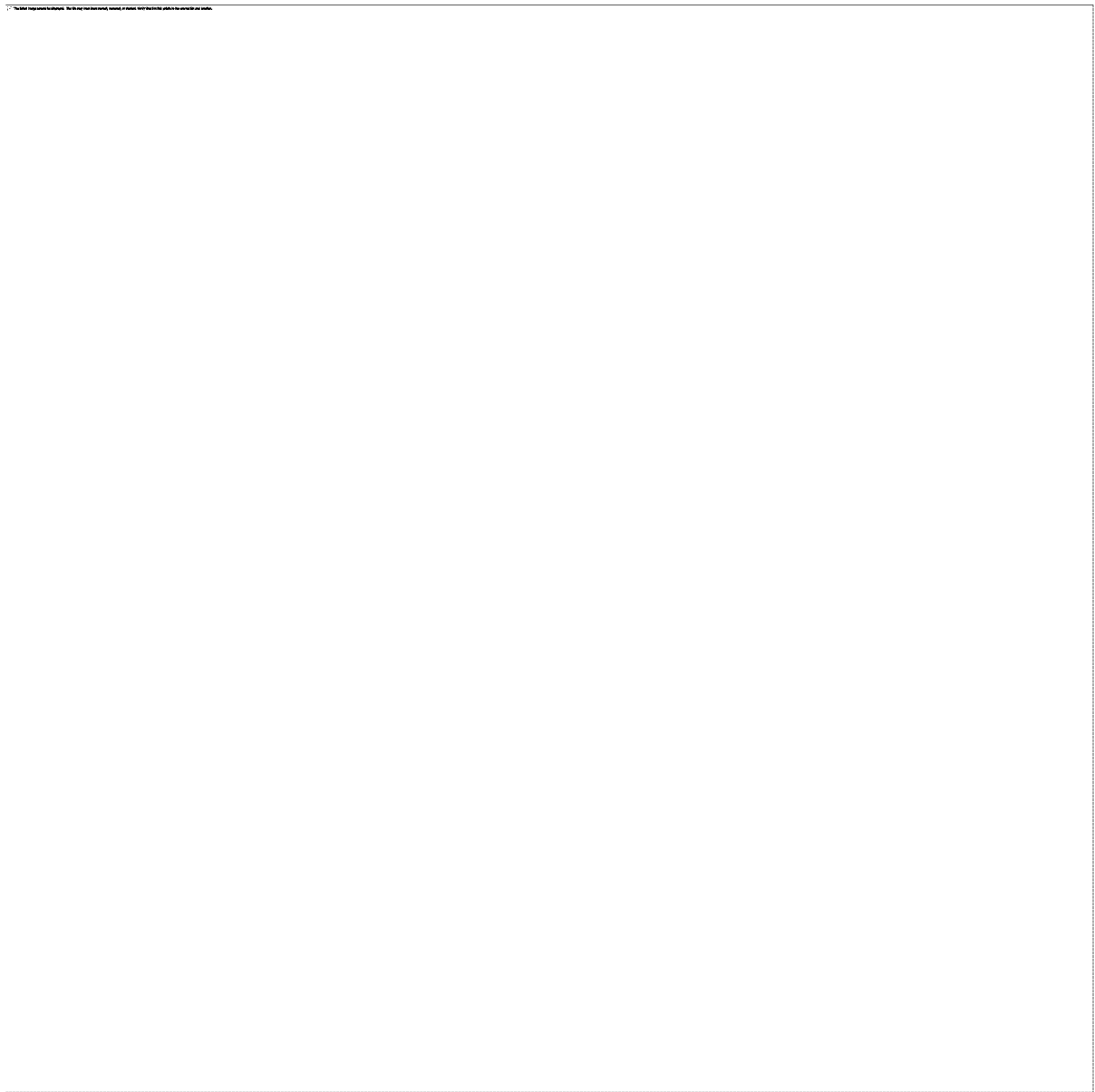
National Conference on Ecosystem Restoration	8:30 a.m.
U.S. Energy Association presentation on the 2018 U.S. Energy and Employment Report	10 a.m.
Senate Commerce, Science and Transportation executive session on fishing and other bills and several nominations	10 a.m.
Nuclear Regulatory Commission public meeting on Interim Storage Partners' response plan for the interim storage facility	1 p.m.
House Natural Resources field hearing on energy and education in Utah	2 p.m.

THURSDAY

National Conference on Ecosystem Restoration	8:30 a.m.
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FRIDAY

No events scheduled



CSR & Political Activism in the Trump Era

How to avoid a firestorm and improve your brand's reputation.

General

Pesticide Studies Won E.P.A.'s Trust, Until Trump's Team
Scorned 'Secret Science'

Danny Hakim and Eric Lipton, The New York Times

José Camacho once worked the fields here in the Salinas Valley, known as "the Salad Bowl of the World" for its abundance of lettuce and vegetables. His wife still does.

Oil dips as trade row weighs, Iran sanctions expected to cut
supply

Henning Gloystein, Reuters

Oil prices fell on Monday on concerns the U.S.-China trade dispute will erode global economic growth, although looming U.S. sanctions against Iran's oil sector kept crude from falling further, traders said.

Oil and Natural Gas

Saudi Aramco loses its 'in perpetuity' oil and gas rights

Anjali Raval, Financial Times

Saudi Arabia has cut the length of time that its state energy company has exclusive rights to the kingdom's vast oil and gasfields, raising questions about Saudi Aramco's long-term production and revealing a power struggle between the company and the government.

Venezuela's PDVSA files appeal against Crystallex court ruling

Angus Berwick, Reuters

Venezuela's state oil firm Petroleos de Venezuela SA (PDVSA) said on Saturday it filed an appeal requesting that a Delaware court vacate a decision on Aug. 23 granting Canadian miner Crystallex the right to seize its U.S. assets.

Gas-fired generation remains on track to capture increasingly
larger share of MISO market

Brandon Evans, Platts

After several years of increased coal-to-gas switching across the Midcontinent Independent System Operator service area, the region is expected to become even more bullish for gas as additional coal retirements loom while multiple new gas-fired plants are slated to enter service over the next few years.

Utilities and Infrastructure

California lawmakers find critics on both sides as they unveil effort to help utilities pay wildfire costs

John Myers, Los Angeles Times

A far-reaching proposal to assist electric utility companies faced with covering billions of dollars in wildfire damage was unveiled Friday to intense debate over whether ratepayers would end up saddled with some of the bill for California's worst-ever fire year.

Utilities pivot from power plants to grid work for profits

Emery P. Dalesio, The Associated Press

Electric utilities are pouring billions of dollars into a race to prevent terrorists or enemy governments from shutting down the power grid and everything that depends on electricity in America's hyper-connected society.

PacifiCorp, Idaho Power agree to make CAISO their reliability coordinator

Peter Maloney, Utility Dive

Idaho Power and PacifiCorp committed Thursday to take Reliability Coordinator (RC) services from the California ISO (CAISO). The Balancing Authority of Northern California has also committed to using CAISO's services, bringing the total commitments to three.???

Microgrid adoption could accelerate in the US in coming years

Jared Anderson, Platts

Citing an increase in power outages, Silicon Valley manufacturing firm JSR Micro said Thursday it will install a microgrid system that can power its operations if the power grid fails, a solution that could proliferate in the coming years.

Renewables

Exxon Seeks Wind, Solar Power Delivery in Texas

Brian Eckhouse and Kevin Crowley, Bloomberg

Exxon Mobil Corp. has been looking to buy renewable energy for delivery in Texas, according to people familiar with the matter.

Energy firm executives plead not guilty in tax credits case
The Associated Press

Two top executives of a Salt Lake City-based biodiesel company have pleaded not guilty to fraud and other federal charges accusing them of filing false claims that resulted in the company being issued \$511 million of renewable fuel tax credits.

Musk's Brazen Gambit Collapsed as Investor Support Withered
Dana Hull et al., Bloomberg

Elon Musk's stunning tweet that he wanted to take Tesla Inc. private and had funding secured was a classic Musk moonshot - given credibility only by the sense that if anyone could possibly pull such a brazen feat, he was the guy.

Musk's U-turn on Tesla deal could intensify his legal, regulatory woes
Michelle Price, Reuters

Tesla Inc Chief Executive Elon Musk's decision to abruptly abandon a plan to take his electric carmaker private will not resolve his mounting regulatory and legal woes, and may even make them worse, some securities lawyers said.

Coal

Clean Power Plan replacement revealed, but Wyoming's moved on
Heather Richards, Casper Star Tribune

The Clean Power Plan was once the storm on the horizon for Wyoming's coal industry, threatening job loss, production decline and a catastrophic revenue drain both in coal communities and the state as a whole.

Even in Coal Country, Trump Aid Won't Keep This Power Plant Open
Chris Martin, Bloomberg

Vistra Energy Corp. plans to close another money-losing coal plant this year despite the Trump administration's efforts to prop up the ailing fossil-fuel industry.

Amid relaxed coal restrictions, NIPSCO keeps plan to retire plants

Karen Caffarini, Post-Tribune

The Trump administration's newly announced proposal to dramatically scale back restrictions on emissions from coal-fired power plants would result in more asthma and other health issues in the region, while failing to stop these plants' inevitable demise, according to a local environmentalist and an Indiana University professor.

Nuclear

The Nuclear Power Plant of the Future May Be Floating Near Russia

Andrew E. Kramer, The New York Times

Along the shore of Kola Bay in the far northwest of Russia lie bases for the country's nuclear submarines and icebreakers. Low, rocky hills descend to an industrial waterfront of docks, cranes and railway tracks. Out on the bay, submarines have for decades stalked the azure waters, traveling between their port and the ocean depths.

The \$4.7 Billion Nuclear Bill That No One Wants to Pay

Mengqi Sun, The Wall Street Journal

The primary owner of a power plant with two partially built nuclear reactors in South Carolina walked away from the \$9 billion project last summer because of high construction costs and delays. Now no one wants to pay for it.

Climate

VW's compliance monitor urges greater transparency

Edward Taylor and Jan Schwartz, Reuters

Volkswagen's external compliance monitor on Monday said he disagreed with some VW executives' use of privacy and attorney client privilege rights to withhold information about a \$27 billion global emissions cheating scandal.

Merkel says EU should meet existing emissions aims, not set new ones

Thomas Escritt, Reuters

A proliferation of extreme weather events around the world provides ample evidence that climate change is a reality, German Chancellor Angela Merkel said on Sunday, but she rejected calls for more ambitious climate protection goals.

Trump reshaped U.S. climate policy in one month: August 2018

Maxine Joselow and Benjamin Storrow, E&E News

August was supposed to be a quiet month for climate politics, a time when Congress went on recess; President Trump played golf in Bedminster, N.J.; and Americans took a break from politics before this November's midterm elections. Instead, it may go down as a historic turning point in U.S. climate efforts.

So Far, More Heat Waves Do Not Mean More Heat Deaths

Christopher Joyce, WAMU

More Americans die from the effects of heat than of any other form of severe weather, and this summer has seen one heat wave after another. Some places in the U.S. and elsewhere have recorded their highest temperatures ever.

Opinions, Editorials and Perspectives

Trump ends Obama's war on coal

U.S. Rep. Steve Scalise (R-La.), Washington Examiner

Last week's announcement from the Trump administration, on the EPA's new Affordable Clean Energy Plan to replace the Clean Power Plan, is another welcome addition to President Trump's list of promises fulfilled that benefit American workers.

Putting Elon Musk's Tesla into climate change perspective

Amy Harder, Axios

Elon Musk and Tesla offer a gripping corporate tale and coveted electric cars, but when it comes to climate change, they are a rather minor subplot.

Climate change brought down another government in Australia. Here's what happened.

Joshua Busby, The Washington Post

In Australia, Scott Morrison was sworn in as prime minister on Friday night, after an internal party revolt that led to the downfall of Malcolm Turnbull, who had been premier since September 2015. Conservative backbenchers within Turnbull's own right-leaning Liberal party rejected his proposal to address climate change through an emissions reduction target, and challenged his leadership.

McCain Was a Warrior for the Climate

Fred Krupp, The Wall Street Journal

As a prisoner of war two generations ago, John McCain proved his patriotism and bravery. But it was through his more recent work to protect future generations of Americans that I knew Sen. McCain. Tributes to the American hero, who died Saturday at 81, must not overlook the political bravery-and, yes, patriotism-he showed in the fight to meet the threat of climate change.

Research Reports

Streamlining Environmental Permitting

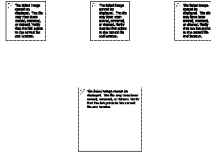
EHS Strategies

The push is on to find ways to speed up the federal review and authorization process for major infrastructure projects, which are those that require multiple agency approvals, an environmental impact statement, and designated funding.

The Favor Factory

Jenny Rowland and Marc Rehmann, The Center for American Progress

On August 3, 2017, Secretary of the Interior Ryan Zinke spent his afternoon and evening with David Lesar, the chairman of oil services giant Halliburton. The two men met in Zinke's lavish Interior Department offices, toured the Lincoln Memorial together, and then had dinner at a popular Washington, D.C., beer garden



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Subject: Pruitt plans to change EPA policy on scientific studies

By Alex Guillén

03/20/2018 10:38 AM EDT

EPA Administrator Scott Pruitt plans to change how the agency considers scientific information when writing regulations in a way that likely will exclude certain studies, he told the [Daily Caller](#).

Pruitt told the news site he will reverse longtime agency policy to require that any studies used to support regulations make their raw data available for review and replication by independent scientists.

"We need to make sure their data and methodology are published as part of the record," Pruitt said. "Otherwise, it's not transparent. It's not objectively measured, and that's important."

The changes are in line with legislation that House Science Chairman [Lamar Smith](#) (R-Texas) has pushed for years, but which was never been passed by the Senate. Democrats, environmentalists and scientific groups have long criticized that legislation as an attempt to cherry-pick data friendly to industry from the voluminous body of epidemiological science. And EPA already releases significant amounts of this data, they said.

CBO [said last year](#) the changes "would significantly reduce the number of studies that the agency relies on." And although EPA said it could make the changes at little to no cost, CBO estimated it would spend \$5 million from 2018 through 2022. EPA [previously told CBO](#) it would have to spend \$250 million a year scrubbing information from thousands of studies "to ensure the transparency of information and data supporting some covered actions."

WHAT'S NEXT: Pruitt did not say when he will issue a formal directive changing EPA's science policy.

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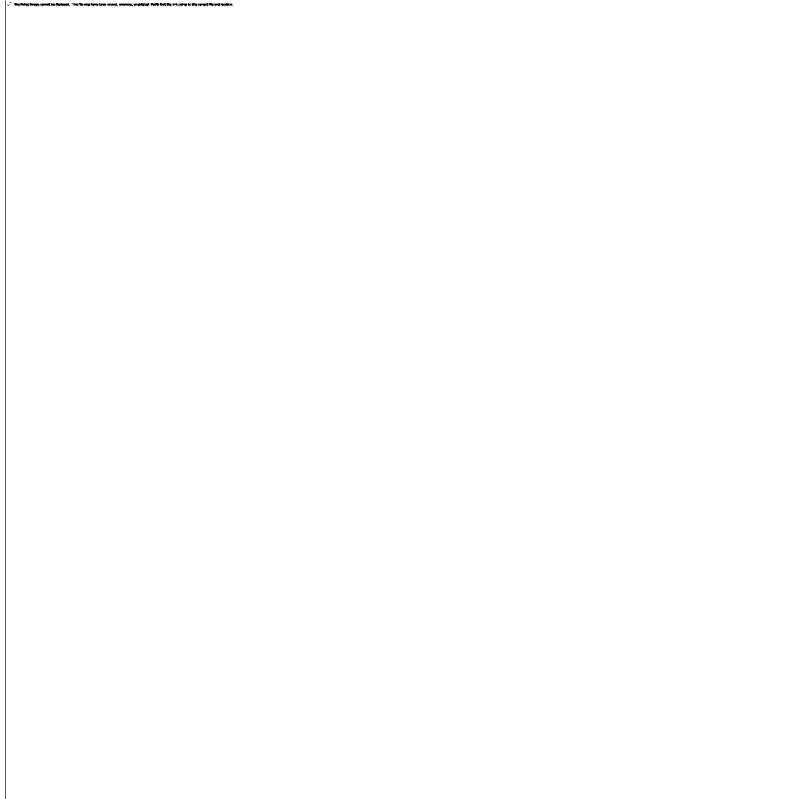
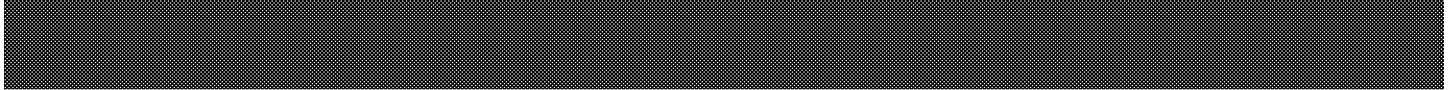
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Sent: 6/7/2018 1:00:20 PM
To: Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clint]
Subject: Morning Consult Energy: U.S. Petroleum Exports Hit Record High of \$19.9 Billion in April



By [Jacqueline Toth](#)

Top Stories

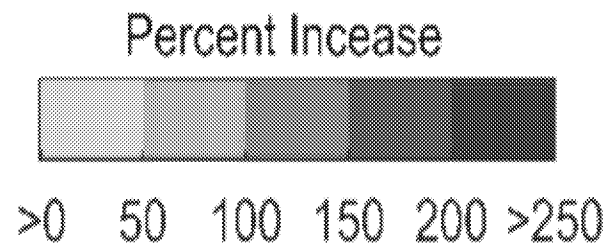
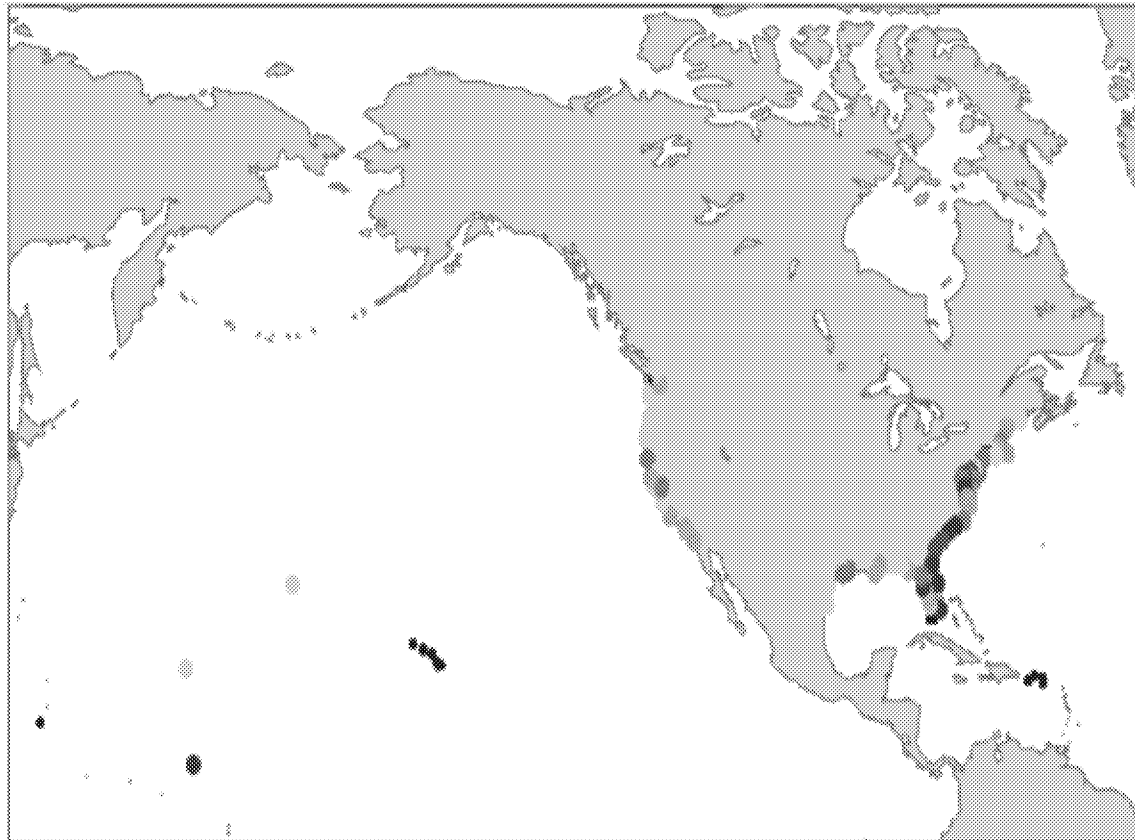
- A record \$19.9 billion in petroleum exports from the United States in April contributed to a 2.1 percent reduction in the country's trade gap that month, according to the Commerce Department. The United States is now shipping as much as four times the amount of petroleum each month as it exported a decade ago, and the increase in those exports, which started around the recession,

is boosting oil producers' earnings and protecting the U.S. economy from oil price shocks. ([The Wall Street Journal](#))

- Several Republican lawmakers suggested they are losing patience with Environmental Protection Agency Administrator Scott Pruitt after recent news reports revealed that he asked a close aide to look into buying a used mattress from the Trump Hotel and to contact Chick-fil-A about a potential franchise for his wife. One of those lawmakers, Sen. John Kennedy (R-La.), said he would not "try to defend the indefensible," but President Donald Trump, at a briefing on this year's hurricane season, reiterated his support for Pruitt and said the "EPA is doing really, really well." ([Politico](#))
- Trump's decision to impose tariffs on imported solar panels have pushed domestic renewable energy firms to cancel or freeze over \$2.5 billion in large solar installation investments, as well as thousands of jobs, according to companies, which is more than the \$1 billion in projects announced by firms that are building or expanding solar panel factories in the United States. Developer Cypress Creek Renewables LLC, for example, said it froze \$1.5 billion for about 150 projects, mostly in the Carolinas, Texas and Colorado, due to increased costs from the tariffs. ([Reuters](#))
- Coal tycoon Bob Murray, chief executive of Murray Energy Corp., showed at least six coal-related draft executive orders to the Trump administration last year, according to records released under a Freedom of Information Act request, though it did not appear that Trump signed the orders. The draft orders included language on withdrawing from the Paris climate agreement and suspending ozone and coal ash regulations. ([E&E News](#))
- The United Steelworkers, North America's largest industrial union representing refinery workers, said in a statement that Trump's decision to postpone changes to federal biofuel blending requirements "threatens the livelihood" of tens of thousands of workers. The American Petroleum Institute trade group, however, said that it was glad that the Trump administration scrapped its plan and that it would rather see "comprehensive legislative reform" of the Renewable Fuel Standard. ([Reuters](#))

Chart Review

b. Percent increase in High Tide Flooding since 2000



Events Calendar (All Times Local)

THURSDAY

Exchange Monitor event on nuclear decommissioning

7 a.m.

KPMG's 16th Annual Global Energy Conference	7 a.m.
New Energy Update conference on U.S. offshore wind	7 a.m.
World Environmental & Water Resources Congress	8:15 a.m.
Symposium on the effects of climate change on oceans	8:30 a.m.
Atlantic Council and American Council on Renewable Energy launch of REN21's Renewable Global Status Report	9 a.m.
House Energy and Commerce Energy Subcommittee hearing on hydropower licensing	11 a.m.
House Science, Space and Technology Energy Subcommittee hearing on the electric grid of the future	1 p.m.
Carnegie Endowment for International Peace event on policymakers in an age of global disruption	2 p.m.
House Federal Lands Subcommittee hearing on wildfire risk and forest health	2 p.m.

FRIDAY

Exchange Monitor event on nuclear decommissioning	7 a.m.
New Energy Update conference on U.S. offshore wind	8:30 a.m.
Symposium on the effects of climate change on oceans	8:30 a.m.
United States Energy Association briefing with Kenyan Energy Minister Charles Keter	9 a.m.
Environmental and Energy Study Institute event on the state of Germany's energy transition	12 p.m.
United States Association for Energy Economics talk on renewable energy entrepreneurship	12 p.m.



Introducing: The Midterm Wave Watcher

A new interactive feature showcasing a range of survey research insights related to the 2018 midterm elections.

General

Republicans losing patience with scandal-scarred Pruitt **Anthony Adragna and Emily Holden, Politico**

Republicans on Capitol Hill are growing frustrated with EPA Administrator Scott Pruitt - and many are now publicly questioning whether he can hang on to his job amid the unending stream of scandals.

Bob Murray drafted 6 orders on coal, climate for Trump **Hannah Northey and Benjamin Storrow, E&E News**

Coal executive Bob Murray last year presented Trump administration officials with half a dozen draft executive orders aimed at exiting the Paris climate accord and peeling back coal regulations.

Another mess for Pruitt: Overstaying his White House welcome at lunch **Emily Holden et al., Politico**

EPA Administrator Scott Pruitt loves eating at the White House mess, an exclusive U.S. Navy-run restaurant open only to White House officials, Cabinet members and other dignitaries.

Pruitt: Chick-fil-A is a 'franchise of faith' **Miranda Green, The Hill**

Environmental Protection Agency (EPA) Administrator Scott Pruitt is defending actions he took to try to help his wife secure a franchise opportunity with the fast food company Chick-fil-A, calling it a "franchise of faith."

Democrats want a 9/11-type commission to probe Puerto Rico hurricane controversy **Christine Condon, McClatchy DC**

Democrats are eager to make the controversy over the Hurricane Maria death toll a political flashpoint this fall, telling voters they want a special commission to investigate the Trump administration's response to the disaster in the same way a similar panel investigated the 9/11 terrorist attacks.

Trump praises hurricane response amid demands for Maria death toll investigation

Lorraine Woellert and Colin Wilhelm, Politico

President Donald Trump praised his administration's response to last year's devastating storms even as thousands of Puerto Rican evacuees face eviction from temporary shelters and the island remains partly without power nine months after Hurricane Maria.

EPA Plan for Transparency in Science Alarms Industry, Too
Eric Roston, Bloomberg

Scientists are concerned that the proposal would restrict studies that rely on health records obtained with the understanding that the identities of patients be kept confidential, a practice that some conservatives label "secret science."

Major oil group launches new coalition to promote offshore drilling

Miranda Green, The Hill

A top U.S. oil and gas industry leader is setting its sights on expanding offshore drilling in the eastern Gulf and off the coast of mid-Atlantic states.

Oil rises as reality dawns over Venezuela's export crisis
Amanda Cooper, Reuters

Oil rose on Thursday on concerns about a plunge in exports from Venezuela, although surging U.S. production kept gains in check.

Oil and Natural Gas

Record Oil Exports Help Cut U.S. Trade Gap
Josh Mitchell and Christopher M. Matthews, The Wall Street Journal

The U.S. exported a record amount of oil and fuel in April, helping to narrow the nation's trade gap while giving the economy a lift.

Trump's move to please farmers on biofuels reform draws refinery union ire
Jarrett Renshaw and Chris Prentice, Reuters

U.S. President Donald Trump, in yielding to pressure from farming states and agreeing to suspend changes to U.S. biofuel policy is now being criticized by another important constituency, the main union for oil refinery workers.

As Fuel Prices Rise, Airlines Warn of Higher Fares
Martha C. White, The New York Times

The price of jet fuel has gone up 50 percent in the past year, and airline executives are warning that they may have to raise ticket prices and cut capacity if fuel costs continue to rise.

Utilities and Infrastructure

LaFleur, Glick Promise a Light Touch on Changing West
Jason Fordney, RTO Insider

Two top federal energy regulators told state utility commissioners that they will take a light-handed approach as the West develops new market structures, allowing flexibility and acknowledging regional differences.

Exelon CEO endorses nuke bailout, punts on leaked DOE memo
Gavin Bade, Utility Dive

The CEO of the largest U.S. nuclear operator on Wednesday urged the federal government to take urgent action to halt the retirement of nuclear power plants, but stopped short of endorsing the framework for emergency action outlined in a Department of Energy memo leaked last week.

Renewables

Billions in U.S. solar projects shelved after Trump panel tariff
Nichola Groom, Reuters

President Donald Trump's tariff on imported solar panels has led U.S. renewable energy companies to cancel or freeze investments of more than \$2.5 billion in large installation projects, along with thousands of jobs, the developers told Reuters.

China's Solar Cutback Wiping Out Trump Bump for First Solar **Chris Martin, Bloomberg**

President Donald Trump said imposing solar tariffs would help domestic companies. But China's surprise decision to slash installations is negating those gains, and shares of U.S. manufacturers are plunging.

PJM region and California dominate US storage via different paths

Peter Maloney, Utility Dive

While much of the U.S. activity surrounding energy storage has been focused on California and the PJM region, the locus of activity is expected to expand as states like New York and Massachusetts implement ambitious storage goals.

Coal

Colorado utility plans to retire coal plants, add renewables **Dan Elliott, The Associated Press**

Colorado's largest electricity provider said Wednesday it wants to retire two coal-fired units a decade early and nearly double the share of power it gets from renewable sources.

Nuclear

U.S. subsidies may not save some coal, nuclear plants slated for closure **Scott DiSavino, Reuters**

Several major U.S. operators of nuclear reactors and coal plants said they had not changed plans to close plants in coming years, even after the White House said it would take emergency steps to subsidize struggling operators.

Climate

Hurricanes Are Linger Longer. That Makes Them More Dangerous. **Kendra Pierre-Louis, The New York Times**

With wind speeds that can top 180 miles per hour, hurricanes are not usually thought of as slow. Yet tropical cyclones, which include hurricanes, have grown more sluggish since the mid-20th century, researchers say. That may mean bad news for people residing in their path.

A Wyoming Reservation Shows the New Face of Drought
John Fialka, E&E News

Perhaps the most menacing and widespread aspects of climate change are the droughts that can come with climbing temperatures.

Opinions, Editorials and Perspectives

Zinke's 'Konichi Wa' Controversy Shows Need For Cultural National Monuments
Carole Hayashino, Morning Consult

On Memorial Day, Interior Secretary Ryan Zinke appeared on Breitbart Radio, where he expressed support for President Donald Trump's border wall and defended his controversial decision to send Interior staff to the border. He also went out of his way to double-down on shocking, offensive comments he made to Congresswoman Colleen Hanabusa (D-Hawaii) during a recent congressional hearing.

Cost-Benefit Reform at the EPA
The Editorial Board, The Wall Street Journal

Barack Obama's Environmental Protection Agency jammed through an average of 565 new rules each year during the Obama Presidency, imposing the highest regulatory costs of any agency. It pulled off this regulatory spree in part by gaming cost-benefit analysis to downplay the consequences of its major environmental rules.

Here's why Trump's new strategy to keep ailing coal and nuclear plants open makes no sense
James Van Nostrand, The Conversation

President Donald Trump recently ordered Energy Secretary Rick Perry to take "immediate steps" to stop the closure of coal and nuclear power plants.

In Trump's power moves, it's coal first, nuclear power second
Amy Harder, Axios

President Trump is asking his administration to bolster economically struggling coal and nuclear power plants - but the concerns over coal are really driving decisions.

Trump's Coal Plan Is Bad News
Theodore Kupfer, National Review

The proposal, if implemented, would force energy-grid operators across the country to buy power from these plants for a period of two years - and fulfill a key promise of Trump's to stand up for the coal industry.

Maybe Scott Pruitt isn't corrupt enough
Dana Milbank, The Washington Post

Scott Pruitt: You can do better than this.

How I Learned to Stop Worrying and Love Electric Scooters
Kevin Roose, The New York Times

I wanted to hate the scooters. I really did.

Research Reports

A global slowdown of tropical-cyclone translation speed
James P. Kossin, Nature

As the Earth's atmosphere warms, the atmospheric circulation changes. These changes vary by region and time of year, but there is evidence that anthropogenic warming causes a general weakening of summertime tropical circulation.



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To: Carrillo, Andrea [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=242465abb76c4aef81c2afb6e2ccba7-Carrillo, Andrea]; Shoaff, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ac16fb09cf2c44adb34a7405dc331532-JShoaff]; Tsirigotis, Peter [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d19c179f3ccb4fadb48e3ae85563f132-PTSIRIGO]; Koerber, Mike [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9c513901d4fd49f9ab101a6f7a7a863e-Koerber, Mike]; Culligan, Kevin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5ab7ef4a59614fd4b4485668c42818c7-KCULLIGA]; Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]; Cook, Leila [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d4536ad140a1461781d78ca67921b02f-Cook, Leila]; Hengst, Benjamin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c414e2bf04a246bb987d88498eefff06-Hengst, Benjamin]; Charmley, William [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=fb1828fb00af42ffb68b9e0a71626d95-Charmley, William]; Burch, Julia [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=27b0cd43b0404bab89aef0c8d08c165f-Burch, Julia]; Srinivasan, Gautam [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d69332838210416ba51779b19025f832-GSRINIVA]; Marks, Matthew [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=66cf58c470d84403af7d7dfd7efc8016-Marks, Matthew]; Hoffman, Howard [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9b294b6d14284e0d86d25bc366efe259-HHOFFMAN]; Orlin, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=aa64dad518d64c5f9801eb9bb15b7ec3-DORLIN]; Zenick, Elliott [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1b2eaa2a560d415fb7c8ce9bb56c7ce5-EZENICK]
CC: Schwab, Justin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=eed0f609c0944cc2bbdb05df3a10aadb-Schwab, Jus]; Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clint]; Hockstad, Leif [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5a4fb1f8930645efa34fdfa7485bc6da-LHOCKSTA]
Subject: FW: By COB Fri. - Draft Response to SAB Letter
Attachments: EDIT Draft 071218 - Admin Response to SAB re 2017 Actions + Sci Transpy + Comments ks.docx

Attached is a version that suggests some specific edits (in redline/strikethrough)

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

From: Charmley, William
Sent: Thursday, July 12, 2018 5:44 PM
To: Sargeant, Kathryn <sargeant.kathryn@epa.gov>
Subject: Fwd: By COB Fri. - Draft Response to SAB Letter

Sent from my iPhone

Begin forwarded message:

From: "Carrillo, Andrea" <Carrillo.Andrea@epa.gov>
Date: July 12, 2018 at 5:42:45 PM EDT
To: "Shoaff, John" <Shoaff.John@epa.gov>, "Tsirigotis, Peter" <Tsirigotis.Peter@epa.gov>, "Koerber, Mike" <Koerber.Mike@epa.gov>, "Culligan, Kevin" <Culligan.Kevin@epa.gov>, "Grundler, Christopher" <grundler.christopher@epa.gov>, "Cook, Leila" <cook.leila@epa.gov>, "Hengst, Benjamin" <Hengst.Benjamin@epa.gov>, "Charmley, William" <charmley.william@epa.gov>, "Burch, Julia" <Burch.Julia@epa.gov>, "Srinivasan, Gautam" <Srinivasan.Gautam@epa.gov>, "Marks, Matthew" <Marks.Matthew@epa.gov>, "Hoffman, Howard" <hoffman.howard@epa.gov>, "Orlin, David" <Orlin.David@epa.gov>, "Zenick, Elliott" <Zenick.Elliott@epa.gov>
Cc: "Schwab, Justin" <Schwab.Justin@epa.gov>, "Woods, Clint" <woods.clint@epa.gov>, "Hockstad, Leif" <Hockstad.Leif@epa.gov>
Subject: RE: By COB Fri. - Draft Response to SAB Letter

Thanks, John.

Attorney Client / Ex. 5

Andrea Carrillo
Attorney-Advisor
Office of General Counsel
U.S. Environmental Protection Agency
(202) 564-3392 (office) | (202) 603-4003 (telework/cell) | WJCN 7426KK

From: Shoaff, John
Sent: Thursday, July 12, 2018 2:51 PM
To: Tsirigotis, Peter <Tsirigotis.Peter@epa.gov>; Koerber, Mike <Koerber.Mike@epa.gov>; Culligan, Kevin <Culligan.Kevin@epa.gov>; Grundler, Christopher <grundler.christopher@epa.gov>; Cook, Leila <cook.leila@epa.gov>; Hengst, Benjamin <Hengst.Benjamin@epa.gov>; Charmley, William

<charmley.william@epa.gov>; Burch, Julia <Burch.Julia@epa.gov>; Srinivasan, Gautam
<Srinivasan.Gautam@epa.gov>; Marks, Matthew <Marks.Matthew@epa.gov>; Hoffman, Howard
<hoffman.howard@epa.gov>; Orlin, David <Orlin.David@epa.gov>; Carrillo, Andrea
<Carrillo.Andrea@epa.gov>; Zenick, Elliott <Zenick.Elliott@epa.gov>
Cc: Schwab, Justin <Schwab.Justin@epa.gov>; Woods, Clint <woods.clint@epa.gov>; Hockstad, Leif
<Hockstad.Leif@epa.gov>

Subject: By COB Fri. - Draft Response to SAB Letter

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Deliberative Process / Ex. 5

John

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OFFICE OF AIR POLICY & PROGRAM SUPPORT (OAPPS)
OFFICE OF AIR & RADIATION | U.S. EPA | WJC NORTH 5442-B
1200 PENNSYLVANIA AVE. NW | MC 6103A | WASHINGTON, D.C. | 20460 | USA

Shoaff.john@epa.gov | 1-202-564-0531 DIRECT | 1-202-257-1755 MOBILE

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Sent: 6/7/2018 9:44:09 AM
To: Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clint]
Subject: Morning Energy: Another mess for Pruitt — Virgin Islands party boss: Zinke ties improved hurricane response — Coal magnate delivered draft orders to Trump

By Kelsey Tamborrino | 06/07/2018 05:41 AM EDT

With help from Darius Dixon, Anthony Adragna and Annie Snider

ANOTHER MESS FOR PRUITT: Scott Pruitt has an appetite for food from the White House mess — a U.S. Navy-run restaurant for use only by White House officials, Cabinet members and other dignitaries. In fact, he loves eating there so much, the White House asked him to stop coming by so often, POLITICO's Emily Holden, Andrew Restuccia and Anthony Adragna report.

The message was clear, according to one person close to Pruitt: "We love having Mr. Pruitt, but it's not meant for everyday use." A member of the White House's Cabinet affairs team told agency chiefs of staff last year that their bosses shouldn't treat the mess like their personal dining hall — a comment that came in response to Pruitt's recurring use of the restaurant, sources said.

Pruitt's allies privately disputed that the warning about overuse of the mess was aimed squarely at him, but nobody contests that he's a frequent presence at the establishment in the basement of the West Wing. The White House did not respond when asked about his lunch habits, and EPA declined to comment.

A billing statement from July 2017 offered a glimpse into Pruitt's trips to the mess, racking up a bill of \$400 over nine trips that month — a relative bargain in downtown Washington considering the menu. A cheeseburger at the White House runs just \$6.35, according to Pruitt's bill. Compare that to the \$17 you'd pay for a burger from another favorite Pruitt spot, French bistro Le Diplomate. Read [more](#).

Support for Pruitt is also falling on Capitol Hill, Anthony and Emily report, in the wake of this week's news that Pruitt sought to buy a used mattress from the Trump Hotel and inquired about securing a Chick-fil-A franchise for his wife. Two more top aides to Pruitt — scheduler Millan Hupp and counsel Sarah Greenwalt — also are leaving the agency. "I'm not going to come down here, just because he happens to be a nominee of a president I support or a nominee from my party, and try to defend the indefensible," Sen. [John Neely Kennedy](#) said. More [here](#).

On the other hand, [Cory Gardner](#), who heads the Senate GOP campaign arm, told reporters he doesn't think Pruitt's ongoing ethics woes will harm his party in the midterms. "The states like Missouri, Indiana, North Dakota have benefited from a regulatory approach this administration has taken," Gardner said.

Environmentalists' "Boot Pruitt" campaign will gather a "group of cows" outside the Capitol South Metro station today from 8 a.m. to 9:15 a.m. to hand out fake Chick-fil-A coupons for a free chicken sandwich with a donation to Pruitt's legal defense fund. They'll hold signs reading: "Breeth Mor Carhun" and "What the Cluck, Pruitt?"

VIRGIN ISLANDS BOSS PLAYS UP ZINKE RELATIONSHIP: The head of the Virgin Islands Republican Party suggested his fundraising group's longstanding relationship with Interior Secretary Ryan Zinke helped improve the department's response to last year's hurricanes that struck the island territory, Pro's

Ben Lefebvre reports. John Canegata said he had direct access to Interior officials after the storm thanks to money his group raised for Zinke when he was a member of Congress.

Calling Zinke a "close friend," Canegata boasted of his connections in a televised appearance that aired in the Virgin Islands last month but has not received widespread attention outside of the territory. While numerous officials played a role in helping the islands recover from hurricanes Maria and Irma, "behind the scenes, trust me, a lot of telephone calls, a lot of maneuvering was going on because, I think, some of the relationships we built," Canegata said of Zinke.

Interior acknowledged that officials contacted Canegata after the hurricanes but said they did so as part of a wider effort to contact business leaders based in the territory and Zinke did not call him personally. Canegata works for Cruzan Rum, but a company representative told Ben he was not involved in coordinating its relief efforts. Interior expedited the reimbursement of taxes on Virgin Islands rum following the storms, but it was unclear whether Canegata influenced that decision; he did not respond to a request for comment.

For his part, Zinke has known Canegata since at least 2015, Ben reports. The secretary previously came under fire for a fundraiser for the VIGOP, as the group is known, during an official trip to the islands in his first month in President Donald Trump's Cabinet. Read more.

IT'S THURSDAY! I'm your host Kelsey Tamborrino. NRECA's Dan Riedinger correctly identified John Tyler as the only president to have not been a resident of the U.S. when he died. Tyler resided in Virginia at the time, which was part of the Confederate States of America. Today's question: Which Congress had the largest number of veterans in office? Send your tips, energy gossip and comments to ktamborrino@politico.com, or follow us on Twitter [@kelseytam](https://twitter.com/kelseytam), [@Morning_Energy](https://twitter.com/Morning_Energy) and [@POLITICOPro](https://twitter.com/POLITICOPro).

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MURRAY DELIVERED EXECUTIVE ORDERS TO TRUMP: Coal magnate Bob Murray handed off drafts of six executive orders that would roll back Obama-era environmental regulations to Trump during the beginning of his administration, according to documents from DOE released under FOIA. The documents include a letter to Energy Secretary Rick Perry from Murray praising Trump's March 2017 energy independence executive order, and included a note where Murray wrote, "we have developed the enclosed materials for your review and consideration, consisting of: six (6) Executive Orders further rescinding anti-coal regulations of the Obama administration; and one (1) memorandum outlining the legal rationale for each of these action, and others."

While Trump did not sign those exact orders, the administration has moved to enact similar policies, Pro's Darius Dixon reports. The documents, which were sent to DOE the day Trump signed his energy independence order and one day before Murray met with Perry and DOE chief of staff Brian McCormack, also included concepts about grid security and "resiliency" that Perry later touted as part of his push to stop coal power plants from closing. Read more.

BAILOUT ON HIS MIND: In private remarks given during his visit to FEMA headquarters Wednesday, Trump mentioned a slew of topics that had nothing to do with hurricanes, The Washington Post reports, while only briefly mentioning Puerto Rico. Trump instead encouraged Perry to make an announcement about rescuing economically struggling coal and nuclear power plants, the Post reports. "I'd love to put it out — 'clean coal, nuclear,' it's a very important message," he said, telling Perry he needed to hold a news conference.

WRDA MOVES AHEAD: The House passed the Water Resources Development Act of 2018 (H.R. 8 (115)) last night, marking the first major piece of infrastructure legislation to move under the Trump administration, Pro's Annie Snider reports. Lawmakers signed off on the measure on a broadly bipartisan vote of 408-2. The bill — markedly narrower than the Senate's measure — would authorize six new Army Corps of Engineers projects and enact a suite of policy reforms at the red tape-laden agency.

What about the Senate? For those wondering, EPW Chairman John Barrasso told ME he'd not yet locked down a time for the Senate to consider its broader version of the water resources infrastructure legislation. Separately, Sen. Tammy Baldwin sent this letter to Trump, calling on him to urge Congress to include a permanent Buy America provision in the legislation.

MUM'S THE WORD: Barrasso, whose state produces a lot of coal and uranium, told ME he isn't ready to back Trump's proposed bailout for coal and nuclear power plants. "I've read the article but I want to actually see what the proposal is," he said. DOE is still formulating the details of how it would intervene to save the struggling plants.

RESCISSIONS VOTE TODAY: The House is set to vote today on Trump's \$15 billion rescissions bill, Pro's Sarah Ferris reports. The House Rules Committee teed up the bill, H.R. 3 (115), on Wednesday, a quick turnaround that surprised even some GOP lawmakers.

ALL ABOARD: After the rescissions package, the House is ready to start debate on its "minibus" appropriations package, which includes energy and water, legislative branch and military construction-VA spending bills, Pro's Kaitlyn Burton reports. The Rules Committee has set up floor votes on 50 amendments to the energy and water title. A final vote on the overall bill is expected Friday.

SHIMKUS SPEAKS: Rep. John Shimkus, one of the most ardent Yucca Mountain champions in Congress, said his loud floor dispute with Paul Ryan on Tuesday was simply a dispute over "strategy going forward." Other members suggested it had to do with the timing of the Energy-Water bill, since Shimkus thinks delaying until after the midterms might allow Yucca language to make it into the title. The Senate has avoided tackling Yucca due to Sen. Dean Heller's close reelection contest.

POWER OF THE PEN: The House Appropriations Committee agreed to bar EPA from spending more than \$50 on a fountain pen. The amendment — an apparent reference to the \$1,560 Pruitt spent on a dozen fancy writing implements — passed on a voice vote at Wednesday's markup. The panel cleared its version of the fiscal 2019 EPA-Interior bill, on a vote of 25-20. Committee Republicans blocked an effort from Democrats to boost EPA's Office of Inspector General by \$12 million, but approved an amendment that would change revenue sharing for drilling in the Arctic National Wildlife Refuge. And while the pen amendment passed, the committee shot down another amendment from Democratic Rep. Mike Quigley related to Pruitt's travel.

MEETING WITH A FULL DECK: The last time the leadership of FERC and the Nuclear Regulatory Commission got together, there were just enough commissioners between the two agencies to fill one five-member board. Fast-forward to today, and it's a full house for the first time in years thanks to confirmation of two new NRC leaders last month. The get-together is slated to run for just over two hours. An agenda hasn't been released but the meetings usually involve staff presentations on grid reliability — and how it might be impacted by the retirement of nuclear plants — and cybersecurity regulations. Finding the areas where an

economic regulator overlaps with a safety watchdog isn't always obvious. The meeting is slated to run from 9 a.m. to 11:15 a.m. at FERC headquarters, and will be [webcast](#).

ROYALTY RUMPUS: Interior's Royalty Policy Committee approved recommendations Wednesday aimed at expanding energy lease sales and lowering royalty rates, Ben recaps. But during the advisory committee's meeting, two members questioned whether it had the power to suggest changes to federal environmental review. "NEPA is not referred to in the [committee] charter," Rod Eggert, a professor at the Colorado School of Mines, said during the meeting. "The text in the charter refers to royalties and collections of royalties." Read more [here](#).

Later Wednesday, BLM sent out a [memo](#) instructing field offices to look for ways to speed up permit processing, including by using categorical exclusions, Ben [reports](#).

— **Meanwhile, the Central Arizona Project will meet today** on proposals for sourcing cheaper power to run the Navajo Generating Station. The Bureau of Land Reclamation last week sought to delay the coal-fired power plant's closure, arguing that a 1968 law gives Zinke the authority to require the Arizona water project buy energy from the power plant. Reuters has the rundown [here](#).

GROUPS WARY OF INTERIOR DRAFT BILL: A coalition of sportsmen's groups is concerned about draft legislation that appeared before the House Natural Resources Energy Subcommittee on Wednesday. According to the [draft bill](#), it would enable Interior to recover the costs of administrative protests to oil and gas lease sales, drilling permits and other applications. The bill, [they say](#), would make it more difficult for sportsmen and women to comment on oil and gas lease sales on public land.

BLANKENSHIP IS BACK: Former coal baron Don Blankenship hasn't given up hope to take on the establishment and earn himself a spot in the Senate. After losing a primary bid to West Virginia Attorney General Patrick Morrisey, Blankenship's campaign [announced](#) Wednesday it is petitioning to gain ballot access for the general election as the nominee for the Constitution Party.

BIPARTISAN LETTER ASKS PRUITT TO DROP 'SECRET SCIENCE': More than 100 lawmakers — including Republican Reps. [Brian Fitzpatrick](#), [Carlos Curbelo](#), [Ryan Costello](#) and [Ileana Ros-Lehtinen](#) — signed onto a letter to Pruitt today, asking him to withdraw EPA's so-called secret science proposal to bar EPA from using studies that don't make public all their data. Read the letter [here](#).

DEMS WARN AGAINST E15: Democratic Sens. [Tom Udall](#) and [Peter Welch](#) are calling on EPA to abide "by all legal and regulatory requirements" as the Trump administration weighs the year-round sale of 15 percent ethanol blends of gasoline. "We are very concerned that career EPA officials may be being directed to reverse over 25 years of the agency's position to manufacture legal and scientific justifications for a politically-directed decision on E15," they write. Read the [letter](#).

MAIL CALL! RELEASE THE STUDY: A coalition of environmental groups will send [this letter](#) today to HHS Secretary Alex Azar, calling on him to release the controversial federal chemical pollution study [blocked](#) by EPA officials.

— **Nineteen environmental groups filed a letter** to the House in opposition of [H.R. 5895 \(115\)](#), the so-called minibus, which they say sets up an improper use of water and natural resources, and undermines safe nuclear waste disposal. Read it [here](#).

FOR YOUR RADAR: The International Wildlife Conservation Council, which came [under fire](#) for the big-game trophy hunters added to its ranks, will hold its next meeting June 19 in Atlanta, according to the [Federal Register](#).

ON THE WEB: The Center for American Progress is launching a new website today that is dedicated to tracking legal challenges to the Trump administration's conservation agenda. See it [here](#).

QUICK HITS

- The heat is back on high: May smashes U.S. temperature records, [Associated Press](#).
- Man dies at Randolph County mine, [Charleston Gazette-Mail](#).
- Hurricanes are traveling more slowly — which makes them even more dangerous, [The Washington Post](#).
- Trump falsely claims "We're now exporting energy for the first time," [The New York Times](#).
- Trump's move to please farmers on biofuels reform draws refinery union ire, [Reuters](#).

HAPPENING TODAY

8:00 a.m. — Exchange Monitor holds [Decommissioning Strategy Forum](#), Nashville

8:30 a.m. — New Energy Update holds [U.S. Offshore Wind conference](#), Boston

9:00 a.m. — The Atlantic Council and the American Council on Renewable Energy [discussion](#) on "The State of America's Energy Transition: Renewable Energy Policy Network for the 21st Century Renewable Global Status Report," 1030 15th Street NW

9:00 a.m. — Industry Exchange holds [Mexico Gas Summit](#), San Antonio, Texas

9:00 a.m. — The Federal Energy Regulatory Commission and the Nuclear Regulatory Commission [joint meeting](#), 888 First Street NE

11:00 a.m. — House Energy and Commerce Committee [hearing](#) on "Improving the Hydropower Licensing Process," 2123 Rayburn

11:00 a.m. — House Transportation Coast Guard and Maritime Transportation Subcommittee [hearing](#) on "Maritime Transportation in the Arctic: The U.S. Role," 2167 Rayburn

12:00 p.m. — Hill briefing on "The Export Subsidy RIN: A Valueless Dead End," 608 Dirksen

12:30 p.m. — Women of Renewable Industries and Sustainable Energy [lunch and learn](#), 1501 M St NW

1:00 p.m. — House Science Energy Subcommittee [hearing](#) on the electric grid, 2318 Rayburn

2:00 p.m. — House Natural Resources Oversight Subcommittee [hearing](#) on "Wildfire Risk, Forest Health, and Associated Management Priorities of the U.S. Forest Service," 1324 Longworth

THAT'S ALL FOR ME!

To view online:

<https://subscriber.politicopro.com/newsletters/morning-energy/2018/06/another-mess-for-pruitt-244517>

Stories from POLITICO Pro

Another mess for Pruitt: Overstaying his White House welcome at lunch [Back](#)

By Emily Holden, Andrew Restuccia and Anthony Adragna | 06/06/2018 10:17 PM EDT

EPA Administrator Scott Pruitt loves eating at the White House mess, an exclusive U.S. Navy-run restaurant open only to White House officials, Cabinet members and other dignitaries.

But apparently he liked it too much, and the White House asked him to please eat elsewhere sometimes.

In response to Pruitt's recurring use of the restaurant next to the Situation Room in the basement of the West Wing, a member of the White House's Cabinet affairs team told agency chiefs of staff in a meeting last year that Cabinet members shouldn't treat the mess as their personal dining hall, according to three people with knowledge of the issue.

The message was clear, according to one person close to Pruitt: "We love having Mr. Pruitt, but it's not meant for everyday use." Another person added that the White House asked Cabinet members to visit the mess only occasionally because there are few tables available.

A renovation to update the West Wing HVAC last August included the mess kitchen and may have limited space, one person said. The renovation came shortly after the president tapped John Kelly as chief of staff, and he implemented several day-to-day changes to bring order to the White House.

The White House did not respond to a request for comment and EPA declined to comment. Pruitt's allies privately disputed that the warning about overuse of the mess was aimed squarely at him, but nobody contests that he's a frequent presence at the White House for lunch.

Pruitt has been known to complain that EPA headquarters has no cafeteria of its own and no private dining quarters, according to multiple sources, who said Pruitt still often heads to the White House for lunch. One source said EPA officials called the White House to explain that Pruitt didn't have a place to eat at EPA and would like to continue to visit. Pruitt's EPA office is only a few blocks up Pennsylvania Avenue from the White House.

A billing statement from July 2017 offered a glimpse into Pruitt's use of the mess, showing the EPA chief or people linked to him dined at the mess at least nine times that month, racking up a bill of \$400, a relative bargain in downtown Washington. Pruitt and his guests dined on dishes like "cowboy" skirt steak, popcorn chicken and waffles, spinach strawberry salad and beer-braised brisket tacos.

While the food is considered to be top-notch, the prices are a real bargain. Skirt steak runs just \$10.25, while coriander beef kabobs were just \$11.95 each. And a cheeseburger runs just \$6.35, according to his bill. The burger at another of Pruitt's haunts, French bistro Le Diplomate, runs \$17.

Records obtained through a Sierra Club Freedom of Information Act request also show Pruitt often sought to bring friends from Oklahoma to the White House mess.

Five friends from Tulsa — Charlie Polston, Carlyn Mattox, David Mattox, Bob Wagoner and Jerry Dillon — were invited for a September lunch there with him, though it didn't appear in Pruitt's detailed calendar obtained through FOIA.

That lunch came just two weeks after Pruitt made a lunch date there with Bob Funk, a wealthy Oklahoma Republican with whom he bought a major stake in the minor league Oklahoma City RedHawks baseball team back in 2003.

"Please have Mr. Funk arrive at EPA building at 11:40am to ride with Administrator Pruitt to the WH," Lincoln Ferguson, a senior adviser for public affairs, wrote in [an email](#). There was no entry in Pruitt's calendar for the time when the lunch was to have taken place.

Calendars from Pruitt's senior aides show he made frequent use of the space in the month following his February 2017 Senate confirmation. He dined there on Feb. 27, March 2 and met with Ivanka Trump, the president's daughter and West Wing adviser, on March 13. Chief of staff Ryan Jackson's calendar also lists a lunch in the "Mess" on March 16.

Pruitt also hosted representatives from the Oklahoma Farm Bureau on March 29, according to Jackson's calendar. And he returned for lunch with Mike Catanzaro, a senior White House energy aide, and several senior aides on April 7.

Pruitt and his guests also seemed to have a sweet tooth, partaking of a dessert called "Chocolate Freedom" on multiple occasions. As [POLITICO reported](#) in January 2017, the dish — a molten cake made with imported French chocolate that must be ordered at the beginning of lunch because of the baking time — was also popular among Obama administration staffers on their way out the door.

Chocolate Freedom has garnered [rave reviews online](#), and once prompted comedian Zach Galifianakis to [ask](#) whether it was also the staff's nickname for former President Barack Obama.

Also available to diners: boxes of red, white and blue M&Ms featuring the presidential seal.

Alex Guillén contributed to this report.

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Pruitt wanted to buy 'old mattress' from Trump International Hotel [Back](#)

By Anthony Adragna | 06/04/2018 10:43 AM EDT

Two senior House Oversight Democrats are demanding Chairman Trey Gowdy (R-S.C.) subpoena Scott Pruitt for documents after one of his closest aides told congressional investigators the EPA administrator had her book a personal flight to the Rose Bowl, search for housing for him and try to buy him an "old mattress" from the Trump International Hotel.

Ranking member Elijah Cummings (D-Md.) and Gerry Connolly (D-Va.) demanded that Gowdy compel Pruitt to turn over all documents related to the potential mattress purchase, efforts to secure personal flights, and work that agency employees performed on non-EPA tasks for Pruitt that have been withheld from an earlier April Democratic request. That followed a May 18 transcribed interview with Millan Hupp, Pruitt's scheduler.

"If Ms. Hupp's statements to the Committee are accurate, Administrator Pruitt crossed a very clear line and must be held accountable," they wrote. "Federal ethics laws prohibit Administrator Pruitt from using his official position for personal gain and from requesting and accepting services from a subordinate employee that are not part of that employee's official duties."

As part of its investigation into Pruitt, the Oversight Committee said it has conducted several transcribed interviews and obtained 2,350 pages of documents, and a spokeswoman criticized the release of Hupp's testimony.

"Selectively releasing portions of witness interview transcripts damages the credibility of our investigation and discourages future witnesses from coming forward. The Committee will continue conducting a serious, fact-driven investigation, and therefore will wait until the conclusion of our investigation to release our findings," committee spokeswoman Amanda Gonzalez said in a statement.

White House Press Secretary Sarah Huckabee Sanders said Monday the administration is "looking into" the issues in the Democrats' letter, but didn't outline any more specific steps.

"I couldn't comment on the specifics of the furniture use in his apartment and certainly would not attempt to," she said, referring to Pruitt's interest in the mattress.

According to the Democrats' letter, Hupp told Oversight staff she worked with the managing director of the Trump International Hotel in hopes of securing an old mattress. She said Pruitt had told her someone at the hotel indicated he could purchase the mattress, though she did not know why he wished to do so and did not know if he ultimately bought it.

In addition, Hupp said she sent several emails to real estate agents over a period of several months last summer during work hours to help Pruitt find housing after he verbally asked for her help. She said she visited a "probably more than 10" properties during her lunch hour over the course of several months. Hupp said she didn't use work email for the searches and was not paid for her efforts.

Pruitt and his wife ultimately settled on an apartment on 13th and U streets, but left it shortly afterwards because "they were not comfortable in the area," according to Hupp.

Democratic lawmakers have honed in on Pruitt's admission during a May 16 Senate subcommittee hearing that Hupp had searched for housing for him without pay on her own personal time.

"It doesn't cut it that they're a friend or that kind of thing," Sen. Tom Udall (D-N.M.) told Pruitt at the hearing, because having a subordinate staff member voluntarily conduct tasks on personal time would constitute a gift.

"That's in violation of federal law," Udall told Pruitt.

An EPA spokesman said the agency continued to give the information it was seeking.

"We are working diligently with Chairman Gowdy and are in full cooperation in providing the Committee with the necessary documents, travel vouchers, receipts and witnesses to his inquiries." EPA spokesman Jahan Wilcox said in a statement.

According to the Democrats' letter, Hupp said around Christmas she used a personal credit card from Pruitt in her possession to arrange his personal trip to the Rose Bowl in California to watch the Oklahoma Sooners football team play. She did not know why Pruitt, who sent her the details for the trip, and couldn't book the flight on his own.

"He just sent me the flights details and asked me to book for him," Hupp said.

Hupp indicated she considered Pruitt a personal friend, which was why she did these tasks for him. She said the two had met for dinners that were attended by just the two of them.

"We worked very closely together and spent a lot of time together," she said. "I traveled with him, so naturally a friendship developed."

To view online [click here](#).

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Republicans losing patience with scandal-scarred Pruitt [Back](#)

By Anthony Adragna and Emily Holden | 06/06/2018 05:37 PM EDT

Republicans on Capitol Hill are growing frustrated with EPA Administrator Scott Pruitt — and many are now publicly questioning whether he can hang on to his job amid the unending stream of scandals.

Several GOP lawmakers said their patience was running thin after this week's news that Pruitt sought to buy to buy a used mattress from the Trump Hotel and inquired about securing a Chick-fil-A franchise for his wife. And Pruitt's circle of confidantes inside the agency appeared to be shrinking as well, with two of his closest aides set to depart in the coming days.

"The constant drip needs to stop so the agency can get its footing and focus back," House Energy and Commerce Chairman Greg Walden (R-Ore.) told reporters. "They're doing some really good work in the environmental front, but this needs to stop."

"Sometimes people get tripped up on other things besides the core mission, and I think that's what you're seeing," Sen. Shelley Moore Capito (R-W.Va.) told reporters.

Pruitt's scheduler, Millan Hupp, is resigning following her interview by the House Oversight Committee during which she disclosed that she helped her boss find housing and inquired about purchasing a used mattress for him from the Trump International Hotel.

And his top legal counsel, Sarah Greenwalt, will also depart, according to sources. Both women had worked for Pruitt in the Oklahoma attorney general's office and both were among the staff that received raises that had been rejected by the White House.

"I think it's extremely fair to say her and Millan both are tired of the daily grind here," one EPA official said. "Everybody is painfully aware of that."

While acknowledging that President Donald Trump would ultimately make any decision about Pruitt's job, several Republicans indicated Pruitt's support was waning in their conference.

"I'm not going to come down here, just because he happens to be a nominee of a president I support or a nominee from my party, and try to defend the indefensible," Sen. John Kennedy (R-La.) said. "I thought that Mr. Pruitt would have learned his lesson."

Kennedy added: "I said the same thing about Tom Price," referring to Trump's former HHS secretary who resigned after spending lavishly on military and private jets.

Trump reaffirmed his support for Pruitt on Wednesday when they participated in a briefing on the 2018 hurricane season with several Cabinet officials.

"EPA is doing really, really well," Trump said. "You know, somebody has to say that about you a little bit. You know that, Scott."

But even staunch Pruitt allies like Sen. Jim Inhofe (R-Okla.) said the mounting scandals had them rethinking their support.

"Some are true, some are not true. Whether he can weather the storm, I'm not sure," Inhofe said. "The accusations are all troubling. They are."

A few Republicans stood by Pruitt, arguing he's been targeted by an environmental community and press corps eager to take him down.

"I like him," Sen. Roger Wicker (R-Miss.) said. "He is a target because he's keeping the president's campaign promises."

But a more common view among GOP lawmakers was the collective stream of scandals were taking their toll and making Pruitt's position untenable.

"Take a thousand cuts and [there's] not much energy left," Senate Appropriations Chairman Richard Shelby (R-Ala.) told reporters.

Rep. John Shimkus (R-Ill.), who leads the Energy and Commerce subcommittee overseeing EPA, joked he "can't keep up" with the flood of allegations and said he's concerned they haven't stopped.

"These unforced errors are unforced errors," he said. "I don't like being asked all the time about this."

But he raised a possible reason why Republicans weren't abandoning Pruitt: getting a replacement confirmed by the Senate would be nearly impossible.

"Are you going to promise me we could even get an administrator?" he said. "I think that's another concern."

In a video posted by a Nexstar Wednesday, Pruitt defended his attempts to set his wife up with a Chick-fil-A franchise Wednesday, while the president reaffirmed his support in the administrator.

Pruitt said that his wife is "an entrepreneur herself" and that the pair loved the fast-food franchise. As he has in the past, Pruitt dismissed criticism of his behavior as being driven by opposition to the Trump administration's deregulatory policies.

"With great change comes, I think, opposition," he said in a clip the reporter posted to Twitter.

Pruitt did not directly address whether he had asked an EPA aide to reach out to Chick-fil-A President Dan Cathy to inquire about his wife opening up her own restaurant, as the Washington Post first reported Tuesday.

"Chick-fil-A is a franchise of faith and it's one of the best in the country, so that was something we were very excited about," he told the Nextstar reporter Wednesday. "We need more of them in Tulsa, [Okla.]. We need more of them across the country."

Kelsey Tamborrino contributed to this report.

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Trump's Interior chief 'hopping around from campaign event to campaign event' [Back](#)

By Ben Lefebvre and Esther Whieldon | 10/05/2017 05:01 AM EDT

Republican donors paid up to \$5,000 per couple for a photo with Interior Secretary Ryan Zinke at a fundraiser held during a taxpayer-funded trip to the U.S. Virgin Islands, according to documents reviewed by POLITICO — raising questions about his habit of mixing official government business with political activism.

The new details about Zinke's March trip to the Caribbean, including the previously undisclosed invitation to the Virgin Islands Republican Party fundraiser, emerged after weeks of scrutiny of the former Montana GOP congressman's travels. The nearly two-hour event was one of more than a half-dozen times Zinke has met with big donors or political groups while on department-paid trips, Interior travel records and other documents show.

Ethics watchdogs say Zinke is combining politics with his Interior duties so frequently that he risks tripping over the prohibitions against using government resources for partisan activity, even though his appearance at the Virgin Islands event seems to have been legal. Democrats have also seized on the issue, including 26 House members who wrote in a letter Tuesday that Zinke's travels "give the appearance that you are mixing political gatherings and personal destinations with official business."

Zinke has said all his actions have obeyed the law, dismissing concerns about his travel as "a little BS."

But some ethics advocates say Zinke's attendance at a fundraiser during his first month as secretary is not in line with past administrations' conduct, even if he crossed no legal red lines.

"It happens on occasion with other Cabinet secretaries, perhaps even a little more often as you get near the election, but it is not a very common practice for Cabinet members to be hopping around from campaign event to campaign event like we're seeing with Zinke," said Craig Holman, government affairs specialist for government watchdog Public Citizen.

The secretary is already under investigation by his department's inspector general over his use of taxpayer-funded private planes for some of the trips, and the Office of Special Counsel is looking into an activist group's allegations that he violated the Hatch Act, the law limiting political activism by federal employees. The White House has cracked down on Cabinet members' travel habits following former HHS Secretary Tom Price's resignation on Friday, which occurred after POLITICO reported on his own expensive flights.

Zinke visited the Virgin Islands from March 30 to April 1 on an official trip related to the Interior Department's role overseeing the U.S. territory. On his first day, following a "veterans meet and greet" and a reception with Gov. Kenneth Mapp, he appeared in his personal capacity at a March fundraiser for the local Republican Party at the patio bar of the Club Comanche Hotel St. Croix, department records show.

Tickets for the fundraiser ranged from \$75 per person to as much as \$5,000 per couple to be an event "Patron," according to Zinke's official calendar and a copy of the invitation. Patrons and members of the host committee, who paid \$1,500 per couple, could get a photo with Zinke at the start of the event, which was attended by local party members and elected officials.

The following day, Zinke took a \$3,150 flight on a private plane, paid for by the department, from St. Croix to official functions on St. Thomas and returned later that evening. Interior Department officials said there was no

other way to accommodate his schedule, which included official events on both islands commemorating the 100th anniversary of the Dutch government transferring control of the islands to the United States.

Zinke is allowed to engage in partisan political activity in a "purely personal (not official) capacity," so long as he does not use government resources, according to Interior Department guidelines on the Hatch Act and other federal laws. The invitation to the GOP fundraiser did not identify Zinke by his official title and included a disclaimer that the money is being solicited by the local party and "not by any federal official."

All told, Zinke has spent around \$20,000 for three charter flights as secretary, nowhere near the \$1 million tab Price racked up on non-commercial trips. But he has on numerous occasions attended political receptions, spoken to influential conservative groups or appeared alongside past campaign donors during trips has taken outside of Washington, D.C., for official department business.

In one instance, Zinke gave a motivational speech for a professional hockey team owned by a major campaign contributor that he said was official business — and which required him to charter a \$12,000 flight to Montana for an appearance at the Western Governors Association the next day.

In another case, during a speech to the Western Conservative Summit in Denver, he was introduced via a recorded voice as the Interior secretary and Zinke proceeded to talk about the agency's priorities. The summit was organized by the Centennial Institute, which bills itself as Colorado Christian University's think tank and is a part of the State Policy Network of organizations that collectively push for conservative state-level legislation.

An Interior spokeswoman said Zinke always follows the law but declined to answer specific questions about his appearance at the Virgin Islands fundraiser, nor say whether he would keep raising political money. The agency also has yet to post Zinke's trip expenses involving any of the political events.

"The Interior Department under the Trump Administration has always and will always work to ensure all officials follow appropriate rules and regulations when traveling, including seeking commercial options at all times appropriate and feasible, to ensure the efficient use of government resources," spokeswoman Heather Swift said in a statement.

Swift did not respond to questions about whether the department had gotten reimbursement for the political portion of Zinke's three-day Virgin Islands trip, as the head of one watchdog group says it should have.

"Some of this travel is clearly political and that part of the travel should have been paid for by the RNC, NRCC, state political parties, a campaign committee or Zinke personally," said Daniel Stevens, executive director of the Campaign for Accountability.

No payments to the department are listed in the Virgin Islands Republican Party's FEC records.

Zinke is not the first Interior secretary, or Cabinet member, to have his activities questioned.

In 2012, a watchdog group called Cause of Action urged the Office of Special Counsel to investigate whether President Barack Obama's then- Interior Secretary Ken Salazar had violated the Hatch Act while taking an Obama reelection campaign RV tour of Colorado with a couple of lawmakers and the state lieutenant governor. Local organizers of one stop on that tour had billed Salazar on its online events calendar as attending the political rally in his official role. OSC would not say whether its investigation uncovered any problems, but travel records Interior has posted show that one of Salazar's aides had told the tour's coordinator the schedule "should not refer to (Salazar as) 'secretary.'" Salazar did not respond to a request for comment.

A former Salazar aide, who was not authorized to speak on the record, said the Obama administration generally tried to avoid scheduling political events that coincided with official travel because it was difficult to divvy up what expenses should be reimbursed by a campaign.

The special counsel's office found Obama HHS Secretary Kathleen Sebelius in violation of the Hatch Act in 2012, saying she had made "extemporaneous partisan remarks" by endorsing a candidate for North Carolina governor during a speech she made in her official capacity. Sebelius tried to scrub the violation by reclassifying the appearance as political and reimbursing the Treasury Department for costs associated with the trip.

Sally Jewell, who was Interior secretary during Obama's second term, said Zinke was within his rights to appear at the fundraiser in the Virgin Islands. Jewell said she once appeared at a fundraiser for Democratic Sen. Maria Cantwell while in Obama's Cabinet, though she paid her own way to Washington state and was not identified by her official title.

"If he had legitimate business while he's on the island, to do a political thing on the side, I don't think that is that unusual," Jewell said in an interview.

EPA Administrator Scott Pruitt canceled his scheduled appearance at a fundraiser for the Oklahoma Republican Party in April because an invitation had identified him by his official title and said he would discuss his work at the agency. EPA ethics officials said he would have been cleared to attend the event if not for that language on the invitation.

Watchdog groups say Zinke's behavior fits a pattern for Trump's Cabinet.

"These government resources have been abused by this administration," said Virginia Canter, an executive branch ethics counsel for Citizens for Responsibility and Ethics in Washington who previously worked as an ethics official for Presidents George H.W. Bush, George W. Bush and Obama. "To the extent that some of that supports their political ambitions is inconsistent with the intent of this authority."

The Campaign for Accountability called on Interior's inspector general and the Office of Special Counsel to investigate whether Zinke violated the Hatch Act or department ethics rules with his speech to the hockey team, which the group said appeared to be a favor for a donor. Interior's IG office announced its investigation earlier this week, and OSC told the Campaign for Accountability that it was looking into the group's complaint, according to an email shared with POLITICO. The OSC declined to comment.

Reps. Raúl Grijalva (D-Ariz.) and Donald McEachin (D-Va.) have asked Interior's IG to also look into any trips on which the secretary was accompanied by his wife, Lola Zinke, who is chairing the campaign of Montana Republican Troy Downing, a candidate to unseat Democratic Sen. Jon Tester next year. Swift said Lola Zinke was not in the Virgin Islands and has paid her own way whenever she has traveled with her husband on official trips.

Many who know him see Zinke's travels as an attempt to keep in touch with political contacts as he contemplates what he will do after leaving the Trump administration. Back home, the 55-year-old former Montana congressman is seen as an attractive candidate for the open-seat governor's race in 2020, when Democratic Gov. Steve Bullock will have to step down because of term limits.

"I think he's definitely got political aspirations; that's one of the reasons why he is where he is at right now," said Land Tawney, executive director of Backcountry Hunters and Anglers, a Montana-based sportsman group that supported Zinke's bid for Interior secretary. "You don't go from being a Montana legislator to a first-term congressman to [Interior] secretary without having ambition."

The Virgin Islands trip was Zinke's first interaction with big donors or influential conservative groups during his travel as Interior secretary.

A weeklong trip in May that took Zinke through Montana, Utah and California also offered a chance to squeeze in some political events.

Zinke delivered the keynote speech at the RNC spring meeting on May 11 in Coronado, Calif. Zinke had flown to California the previous night, after several days touring monuments in Utah, and the RNC speech was his only event in the state aside from a meeting earlier that afternoon with Rep. Amata Radewagen, the Republican delegate from American Samoa, and members of the American Tunaboat Association.

The next day, Zinke flew back to Montana, where he joined Sen. Steve Daines (R-Mont.) and Vice President Mike Pence to tour a coal mine on the Crow Indian reservation operated by the Westmoreland Coal Co.

The trip offered Zinke and Pence an opportunity to tout the Trump administration's work to promote new coal mining on federal lands — and it allowed them to make a brief detour to promote Zinke's congressional replacement. That Friday night, Zinke, Pence and Daines attended a political rally for GOP candidate Greg Gianforte, and Zinke attended a get-out-the vote event for the Montana GOP the next day.

Zinke apparently paid for his return trip to Washington out of his own pocket — it was marked "personal travel" on his calendar, a designation not applied to the other flights on that trip.

Gianforte, whose wife is a major political donor in Montana, won the May 25 special election to take over Zinke's House seat.

Greg and Susan Gianforte donated more than \$10,000 to Zinke's 2016 congressional campaign and another \$10,000 to a joint Zinke-Daines PAC, according to federal records. The couple donated \$5,000 for his earlier run for Congress.

Zinke met with big influencers and donors in June as well.

On June 25, he flew from D.C. to Reno, Nev., where his only scheduled event was a meeting of the Rule of Law Defense Fund, a group of Republican attorneys general that has been linked to the Koch brothers, where he spoke and took questions for about 30 minutes, according to his schedule.

After his remarks, he sat at a dinner table with Montana's attorney general, the government relations specialist for the Venetian Resort Hotel Casino and Las Vegas Sands, and Koch Industries lobbyist Allen Richardson, Interior documents show.

The next day, Zinke flew to Las Vegas for an event on public lands in nearby Pahrump, Nev., and a speech that night to the National Hockey League's Vegas Golden Knights. Bill Foley, the team owner and chairman of Fidelity, introduced Zinke. Foley donated \$7,800 to Zinke's 2014 campaign, while employees and PACs associated with Fidelity and related companies gave another \$180,000. Interior officials said the speech to the NHL team was part of Zinke's official duties, and they pointed to scheduling conflicts it created to justify his use of a \$12,000 private plane to get to a Western Governors Association meeting in Montana the next day.

In July, Zinke spoke to several conservative groups in Colorado during a three-day trip that also included tours of Interior Department facilities in the state. He flew into Denver on July 20 so he could appear that evening at a closed-door reception for the American Legislative Exchange Council, a group of conservative state legislators, lobbyists and industry groups that has pushed for more state control over federal lands.

And over the next two days, he was a featured speaker at a Republican committee roundtable and attended the Western Conservative Summit in Denver.

Eric Wolff contributed to this report.

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Zinke's political ties to Virgin Islands improved Interior's hurricane response, party boss says [Back](#)

By Ben Lefebvre | 06/07/2018 05:11 AM EDT

The top GOP official in the U.S. Virgin Islands suggested his fundraising group's "behind the scenes" relationship with Interior Secretary Ryan Zinke helped influence the department's response to last year's hurricanes in the island territory.

John Canegata, the head of the Virgin Islands Republican Party, said he had direct access to Interior officials after the storm thanks to money his group raised for Zinke, whom he described as a "close friend." Zinke, a former congressman, has known Canegata since at least 2015, and the secretary was at a [fundraiser](#) for the VIGOP, as the group is known, during an official trip to the islands in his first month in President Donald Trump's Cabinet.

Interior officials acknowledged reaching out to Canegata, who also works for a major rum distiller in the territory, although they said it was part of a wider effort to contact business leaders based in the territory and Zinke did not call him personally. However, a representative of the distiller said Canegata was not involved in their relief efforts, and a spokesman for the Virgin Islands' House delegate disputed Canegata's involvement in the hurricane response.

The department expedited reimbursements of rum taxes as part of its response to the hurricanes, although it's unclear whether Canegata's connection influenced that decision. Interior has jurisdiction over U.S. territories including the Virgin Islands but not Puerto Rico, which suffered more extensive devastation.

Disaster response experts say it would be inappropriate for Canegata's political connections to influence Interior's efforts in the Virgin Islands.

"These are processes that are supposed to be transparent and supposed to be above the board," said Eric LeCompte, executive director of Jubilee USA, an anti-poverty group that has been involved in hurricane disaster relief efforts. "So, it would not be something a political party would be part of."

VIGOP is not a typical political party and faces frequent inquiries from the FEC to better explain its fundraising practices and expenses. Some critics, including past Republican clients, say the group bilks conservative donors with promises to fight Democrats while spending the bulk of its money on overhead instead of political advocacy. The group spends the [vast majority of its money](#) on a small group of Washington-area political consultants who have also done work for Zinke's campaign and leadership PACs.

Zinke was introduced to the VIGOP in 2015 by a Washington fundraising consultant who also did work for his campaigns, and as a member of Congress he has traveled to at least two political conferences in the Virgin

Islands sponsored by the group, POLITICO reported last year. Zinke and Canegata are seen together during a prior trip in a photo posted to Facebook.

Canegata boasted about his Zinke ties in a televised appearance on WTJX Virgin Islands Public Broadcasting that aired last month but has not received widespread attention outside of the territory.

"We were in direct connection with the Department of Interior," Canegata said in the broadcast.

"Secretary Zinke, happens to be, I wouldn't say a personal friend, but a close friend," Canegata continued.

"Prior to him being the secretary of Interior, we spent some time in Washington, we spent some time here in the Virgin Islands. We supported him when he was a congressman and, behold, he becomes the secretary of Interior."

While Canegata credited other officials with their part in aiding the island's response, he said the pre-existing connection to Zinke was key.

"Obviously, we have our congresswoman, our governor doing their job," Canegata continued. "But behind the scenes, trust me, a lot of telephone calls, a lot of maneuvering was going on because, I think, some of the relationships we built."

The Office of Special Counsel on Tuesday closed its investigation into Zinke's appearance at the Virgin Islands fundraiser in March 2017, finding that he had not violated the Hatch Act because he was there in his official capacity and VIGOP reimbursed Interior for its expenses. Interior's inspector general also recently said the appearance at the fundraiser was not inappropriate. It is unclear whether either of those investigations addressed any link between VIGOP and Interior's hurricane response; both offices declined to comment.

Interior's Office of Insular Affairs, which oversees the Virgin Islands, "reached out to dozens of local government employees as well as major private sector employers in the USVI to check their power status and to see how the office could help," Interior spokeswoman Heather Swift said in an email. Canegata "was contacted by those Insular Affairs officials because he works for one of those major private employers, Cruzan Rum."

Canegata, a supply chain specialist at the rum distillery, had no role in the company's disaster relief efforts, according to Cruzan Rum human resources manager Ayanda Daniels.

"He wasn't part of the coordination," Daniels told POLITICO. "Maybe he had a conversation with someone in order to do something, but we had another team for company response."

James Norton, a former Department of Homeland Security Deputy official during the George W. Bush administration, said it is important for disaster response efforts to be handled through the appropriate channels.

"As a matter of proper procedure, it would only be appropriate for all federal actions to be dealt with solely with official authorities at the Department of Defense, Interior, Homeland Security, FEMA, etc., and those local officials on the ground," said Norton, who is now head of the consulting agency Play-Action Strategies.

"Anything other than raising awareness and reaching out to get an update on what's happening would be inappropriate, as a political party or other organization doesn't have command and control authority, nor would they be the designated principal federal official on the ground directing rescue operations."

A spokesman for Stacey Plaskett, the Democratic House delegate from the Virgin Islands, disputed Canegata's version of events.

"I cannot honestly remember hearing them or seeing them do anything to that effect," Plaskett's spokesman Mike McQuerry said. "The congresswoman was the person here in D.C. that worked extremely hard during that time to get those funds to the Virgin Islands."

Canegata did not respond to a request for comment this week.

Interior expedited reimbursement of \$223 million in taxes on Virgin Islands rum imported into the mainland and provided a \$567,500 grant to help with a post-hurricane finance audit. Other hurricane relief funds would have come from FEMA, an Insular Affairs spokesperson said.

Otherwise, Zinke and Insular Affairs head Doug Domenech met with Virgin Islands Gov. Kenneth Mapp to discuss recovery efforts, the Insular Affairs spokesperson said. In November, Domenech also met representatives of Cruzan Rum's parent company, Beam Suntory, to discuss the rum tax reimbursements Interior makes to the territory. Beam Suntory donated \$1.5 million to hurricane relief efforts the previous month.

Swift said Zinke did not personally reach out to Canegata. "The only official in the USVI the Secretary called was Governor Mapp," she said.

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Murray had early access to Perry to share coal plan [Back](#)

By Eric Wolff | 12/07/2017 04:22 PM EDT

Coal magnate Bob Murray pitched Energy Secretary Rick Perry on his plan to throw an economic lifeline to coal companies less than a month before Perry set in motion plans to aid the industry, according to newly disclosed photographs that show the two meeting.

The liberal magazine In These Times obtained pictures of Murray and Perry from a March 29 meeting at Energy Department headquarters, less than a month after Perry was sworn in. Several other officials were in attendance, including Andrew Wheeler, who at the time was a lobbyist for Murray and has since been nominated as EPA's No. 2 official.

The meeting puts Murray and Perry together at a crucial moment in the timeline of the Trump administration's push to save the struggling coal industry, an effort that would benefit Murray Energy in particular while hiking electricity prices for potentially millions of people. A month before the meeting, one of Murray's biggest customers, FirstEnergy Corp., had told investors it was seriously considering sending its merchant division, FirstEnergy Solutions, into bankruptcy, a move which would likely void its supply contracts with Murray's coal mines.

Three weeks after Murray's visit, Perry would order a grid study that later became part of the justification for a proposed rule to reward coal and nuclear power plants for providing "grid resiliency." FERC, which has jurisdiction over the proposal, must make a decision on it by Monday.

At the time of the meeting, Wheeler was already the leading candidate to become the deputy administrator for EPA. Wheeler, who represented Murray as a lobbyist for Faegre Baker Daniels, would not be officially

nominated for months. Wheeler, who has acknowledged participating in meetings on Murray's coal plan at DOE and on Capitol Hill, cleared committee last week and is awaiting Senate confirmation.

Murray is an outspoken supporter of President Donald Trump and held a fundraiser for him during the 2016 campaign.

DOE did not dispute the validity of the photos.

"Industry stakeholders visit the Department of Energy on a daily basis," DOE spokeswoman Shaylyn Hynes said, when asked about the meeting. "The DOE proposal to FERC was about the future and resiliency of the nation's power supply, an issue much bigger than one industry or company."

The photographs show Perry sitting at the head of a table in the Department of Energy, with Bob Murray, CEO of Murray Energy, to his left, and Wheeler down the table from Murray.

"Enclosed is an Action Plan for achieving reliable and low cost electricity ... and to assist in the survival of our Country's coal industry, which ... power grid reliability and low cost electricity," Murray writes in a cover letter to Perry, parts of which are visible in one photo from the meeting.

Though the document has never been publicly released, DOE critics say Murray's plan appears to have inspired DOE's grid study and the proposed rule Perry sent FERC in September. Copies are visible at the seats of most of the participants, including Perry and Murray. Wheeler, who told members of the Senate Environment Committee he had only seen the memo briefly, is not holding a copy in the photos obtained by In These Times. Murray told Greenwire in November he "didn't have any involvement" in writing the rule.

Murray has acknowledged sharing the plan with Trump.

"I gave Mr. Trump what I called an action plan very early," Murray said in a recent PBS Frontline documentary on EPA. "It's about three-and-a-half pages and — of what he needed to do in his administration. He's wiped out page one."

The meeting appears to have been successful for all. One of the photos shows Perry and Murray in a big bear hug.

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Murray delivered executive orders on coal rules to Trump administration [Back](#)

By Darius Dixon | 06/06/2018 07:05 PM EDT

Coal magnate Bob Murray delivered six draft executive orders ready for President Donald Trump to sign to roll back Obama-era environmental regulations in the early weeks of the administration, according to newly released Energy Department documents.

The documents released Wednesday after a Freedom of Information Act request include a letter to Energy Secretary Rick Perry from Murray praising Trump's March 2017 energy independence executive order, which largely aimed to help the coal industry. And to bolster that effort, Murray wrote, "we have developed the

enclosed materials for your review and consideration, consisting of: six (6) Executive Orders further rescinding anti-coal regulations of the Obama administration; and one (1) memorandum outlining the legal rationale for each of these action, and others."

Those executive orders were also sent to EPA Administrator Scott Pruitt, whose agency had jurisdiction over most of the issues they involved, such as ozone rules and regulations on coal ash.

Trump has not signed executive orders resembling Murray's, but the administration has moved to enact the policies, such as pulling U.S. out of the Paris climate agreement. The documents, which were sent to DOE the day Trump signed his energy independence order and one day before Murray met with Perry and DOE chief of staff Brian McCormack, also included concepts about grid security and "resiliency" that Perry later touted as part of his push to stop coal power plants from closing.

"The Department of Energy ("DOE") must issue an emergency directive to have an immediate study done of the security and resiliency of our electric power grids," the document states. "DOE will direct that no power plants having an available fuel supply of at least forty-five (45) days be closed during the study period, or a minimum of two (2) years."

Perry later ordered his staff to write a study about the electric grid that was eventually tied to a regulatory proposal that FERC create financial rewards for power plants with a 90-day supply of fuel on-site. That condition would have overwhelmingly benefited coal and nuclear generators, but it was shot down by FERC in January.

Critics have said Murray would be the biggest beneficiary of Trump's efforts, since his company supplies coal to many of the power plants at risk of closing because of stiff competition from cheap natural gas and renewable power as well as lagging electricity demand from consumers.

Murray spokesman Gary Broadbent confirmed the company had submitted the documents to Perry "to assist in the reversal of the illegal, job-killing, anti-coal regulations of the Obama Administration."

"Mr. Murray has always sought to secure reliable, low-cost electricity for all Americans, as well as to preserve and protect the jobs and family livelihoods of thousands of coal mining families," he said in a statement. "We applaud the actions taken by President Trump's Administration, to date, to protect these jobs and to advance the energy security of the United States."

Murray has repeatedly called on DOE to issue must-run orders for FirstEnergy power plants that consume his coal, and he blasted the FERC commissioners who opposed the on-site fuel proposal.

On Tuesday, a top DOE official said the agency is still formulating a plan to keep struggling coal and nuclear power plants from closing, and it had no deadline to meet Trump's demand to rescue them.

"We are evaluating options," Energy Undersecretary Mark Menezes told reporters. Last week, Trump called on DOE to take "immediate steps" to stop a wave of coal and nuclear power plant retirements, and like Perry, he cast the shutdowns as a threat to national security.

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House passes WRDA bill [Back](#)

By Annie Snider | 06/06/2018 09:42 PM EDT

The House has overwhelmingly approved the Water Resources Development Act of 2018, [H.R. 8 \(115\)](#), the first major infrastructure legislation to move under the Trump administration.

Lawmakers signed off on the measure on a broadly bipartisan vote of 408-2. The bill would authorize six new Army Corps of Engineers projects and enact a suite of policy reforms at the red tape-laden agency. It is significantly narrower than the Senate's measure, which would also make changes to EPA drinking water and wastewater programs.

And it includes a provision that could stir some controversy with the Senate, ordering a study of whether the Army Corps' civilian work should remain within the Department of Defense.

But House leaders dodged provisions that could have derailed the bill by blocking controversial amendments from floor consideration. Those included efforts to repeal the Obama administration's Waters of the U.S. rule, allow firearms at Army Corps recreational sites and exempt pesticide spraying from Clean Water Act permitting requirements.

WHAT'S NEXT: The Senate is expected to consider its version of the WRDA bill, America's Water Infrastructure Act of 2018, [S. 2800 \(115\)](#), this summer.

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Trump calls for coal, nuclear power plant bailout [Back](#)

By Eric Wolff | 06/01/2018 02:29 PM EDT

President Donald Trump pressed for a quick regulatory bailout for struggling coal power plants on Friday — a move that would buoy a mining industry that offered him crucial support in 2016, but is riling other energy companies and even some free-market conservatives.

The White House called on Energy Secretary Rick Perry to take immediate steps to keep both coal and nuclear power plants running, backing Perry's claim that plant closures threaten national security. An administration strategy to do that laid out in a memo to the National Security Council circulated widely among industry groups on Friday, but it was not clear that intervention could survive the inevitable political and legal challenges.

It was the latest step in more than a year of efforts by the administration to compel power companies to keep operating the money-losing plants that are suffering from the rise of competing energy sources like natural gas. Those proposals have drawn opposition from most utilities, along with environmentalists, gas producers, power grid operators and conservatives who say it would be an unwarranted intrusion to the energy markets.

The White House statement calling for action came after days of Trump making similarly aggressive moves on international trade, slapping tariffs on the European Union, Canada and Mexico to protect U.S. industries like aluminum and steel. In this case, the president is acting on behalf of what he likes to call "beautiful, clean coal," a once-dominant fuel that still plays a major role in his stump speeches.

Trump "has directed Secretary of Energy Rick Perry to prepare immediate steps to stop the loss of these resources," White House press secretary Sarah Huckabee Sanders said in a statement Friday, referring to coal and nuclear plants.

She added that Trump believes "keeping America's energy grid and infrastructure strong and secure protects our national security... Unfortunately, impending retirements of fuel-secure power facilities are leading to a rapid depletion of a critical part of our nation's energy mix, and impacting the resilience of our power grid."

The statement came five months after federal energy regulators rejected Perry's call that they adopt his proposal to keep the struggling coal and nuclear power plants operating. That proposal would have overwhelmingly benefited mining magnate Bob Murray, an outspoken Trump supporter whose operations supply coal to several endangered plants in the Midwest and Northeast, according to a POLITICO analysis.

Trump's National Security Council gathered Friday to discuss the draft memo that lays out arguments why the administration should use federal authority to keep the money-losing power plants open — despite the assurances from some of the nation's grid operators that no such emergency exists.

"Any federal intervention in the market to order customers to buy electricity from specific power plants would be damaging to the markets and therefore costly to consumers," said the PJM Interconnection, which operates the nation's largest power grid and stretches from the Midwest the Atlantic Coast, in a statement. "There is no need for any such drastic action."

A broad swath of trade associations representing oil and gas, wind and solar power, consumer groups and advanced energy technologies slammed the plan, and they were joined by some congressional Democrats.

"This would be an egregious abuse of power," Sen. Ron Wyden (D-Ore.) said in a statement. "I fought this proposal before, and I will continue to fight this corrupt scheme to prop up the coal industry at the expense of American consumers."

That new 41-page memo, first revealed by Bloomberg News on Thursday evening, says that under the 2015 highway and transit bill known as the FAST Act, DOE must identify critical energy infrastructure, a process the agency is undertaking now with the help of its national labs. But because that is likely to take two years, DOE in the meantime should use the 1950 Defense Production Act and the Federal Power Act to require the plants to keep operating, the memo says.

Power sector experts have said using the two laws to keep specific plants operating would stretch both those measures, and would certainly trigger a major legal fight. Critics of the administration's strategy said the memo appears to signal that the White House is preparing for a fight.

"One way to view the release of this draft is that it is a trial balloon to see how fierce and fast the opposition will be," said Dena Wiggins, CEO of the industry lobby group Natural Gas Supply Association, which opposes the DOE plan. "We've known for some time that all of these federal authorities ... were in play, so the fact that we've now seen it in writing doesn't really change anything. It does, however, underscore how hard it is to cobble together a sound legal rationale to bail out otherwise uneconomic coal and nuclear plants."

And critics say the push to bail out the plants is simply Trump's effort to reward backers like Murray, the coal baron, and live up to his campaign promise to revive coal country. Perry first began work on the power plant issue in March 2017, when he met with Murray at DOE, and Trump himself personally directed Perry to take action on the issue since last summer.

Murray's coal mines have been a major supplier for power plants owned by FirstEnergy Solutions, a unit of Ohio-based utility giant FirstEnergy that sank into bankruptcy this spring. FirstEnergy Solutions has said it plans to close or sell five of its money-losing coal and nuclear power plants.

But the Federal Energy Regulatory Commission and the grid operator have said that even with the planned closures, the region has ample power to supply the market's needs. Stagnant power consumption growth, coupled with the rise of natural gas and renewable power sources like wind, has displaced many of the older coal and nuclear facilities in the markets.

The memo also calls for establishing a new requirement for the electric grid based on "resilience," a term Perry injected into the regulatory conversation last fall with a proposed rule that would have rewarded plants that could keep 90 days of fuel on site. FERC rejected that rule, but it also created a new proceeding to try to define "resilience," which some in the industry say pertains to the grid's ability to withstand and recover from a physical or cyberattack.

The memo largely focuses on the issue of resilience, which it says would suffer if coal and nuclear power plants retire. It specifically targets natural gas as a weakness, because the plants that burn the fuel rely on pipelines that could be disrupted, while coal and nuclear power plants can keep months' worth of fuel on site.

"Natural gas pipelines are increasingly vulnerable to cyber and physical attacks," the memo says. "The incapacitation of certain pipelines through the United States would have severe effects on electric generation necessary to supply critical infrastructure facilities."

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House to vote Thursday on Trump's spending cuts plan [Back](#)

By Sarah Ferris | 06/06/2018 05:32 PM EDT

President Donald Trump's prized deficit-reduction package is rolling toward the House floor this week, though its prospects in the Senate remain in doubt — with little time to spare.

House leaders have set a vote Thursday on the Trump administration's roughly \$15 billion rescissions bill, according to a GOP aide, nearly a full month after the proposal was first delivered to Capitol Hill.

The House Rules Committee will tee up the bill, [H.R. 3 \(115\)](#), on Wednesday evening, a lightning turnaround that surprised even some GOP lawmakers.

The last-minute scheduling change comes after the White House [agreed this week](#) not to slash hundreds of millions of dollars from politically sensitive programs, like Hurricane Sandy aid, which helped [secure votes](#) from numerous GOP holdouts.

Even with some of those unpopular cuts reversed, several House Republicans remain anxious about the plan's optics — specifically, cuts to the ultra-popular Children's Health Insurance Program.

At a closed-door meeting of House Republicans Wednesday, several GOP lawmakers stood up to complain that the kids' health cuts could hit hard on the campaign trail, despite assurance from neutral budget experts that the cuts wouldn't harm the program.

In fact, the vast majority of the White House's proposed spending cuts would exist only on paper. The bill would save only \$1 billion over a decade, according to the CBO, which is far less than 1 percent of the size of Congress' last spending bill, H.R. 1625 (115).

Next, the White House will have to sell the bill to the Senate, where a single Republican "no" vote could sink the package.

Budget chief Mick Mulvaney has already met with Sen. Lisa Murkowski, an Alaska Republican who has raised issues with the cuts to CHIP. Sen. Susan Collins of Maine, another GOP moderate, has not yet said whether she supports the bill.

If the House clears the bill Thursday, the Senate will have roughly two weeks to send the measure to Trump's desk before its filibuster-proof powers expire June 22.

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Minibus spending package ready for House floor action [Back](#)

By Kaitlyn Burton | 06/06/2018 07:46 PM EDT

The House Rules Committee today teed up a three-bill spending bundle for floor consideration as soon as Thursday.

All in all, the panel approved 50 Energy-Water amendments, 22 Military Construction-VA amendments and seven Legislative Branch amendments, setting them up for floor votes.

While the minibuss, H.R. 5895 (115), will likely pass, House Democratic leaders threw a wrench in things when they urged lawmakers to oppose the bill, POLITICO reported Tuesday evening.

Votes on the package are expected to come after a separate Thursday vote on the White House's rescissions measure, H.R. 3 (115). Conservatives, including the Republican Study Committee, asked for the spending cuts to be taken up first, according to a House GOP aide. The Rules Committee teed up the rescissions proposal in a 9-3 vote tonight, allowing no amendment votes.

The minibuss would be the first House-passed fiscal 2019 funding measure.

Sarah Ferris contributed to this alert.

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House appropriators advance \$35B Interior-EPA spending package [Back](#)

By Alex Guillén | 06/06/2018 05:04 PM EDT

The House Appropriations Committee today approved its \$35 billion Interior-EPA spending bill by a party-line vote of 25-20.

Committee Republicans blocked an effort from Democrats to boost EPA's Office of Inspector General by \$12 million, saying the watchdog already has "robust" appropriations. The bill funds the OIG at \$12 million less than his request, but higher than the amount requested by the White House.

The committee voted down an amendment that would have required EPA's administrator and deputy administrator to report public details of travel costs within 10 days of a trip, along with various amendments targeting a repeal of the Waters of the U.S. rule and other policy riders, along with EPA's proposed science transparency policy, offshore drilling and other standard policy disputes.

Lawmakers approved an amendment that would change revenue sharing for drilling in the Arctic National Wildlife Refuge. The approved amendment would send 50 percent of revenue to the federal government, 47 percent to the state and 3 percent to the Alaskan Native claims settlement fund.

They also backed a tongue-in-cheek amendment from Rep. [Marcy Kaptur](#) (D-Mich.) that would limit EPA from spending more than \$50 on any one fountain pen, a response to a recent Washington Post report that Pruitt spent \$1,560 for a dozen personalized fountain pens. The amendment passed with no "nay" votes.

WHAT'S NEXT: Lawmakers hope to have the bill before the full House sometime this summer, but it is unclear whether the Senate will act on a similar timeframe. Like most other appropriations bills in recent years, Congress has passed an omnibus rather than conferencing directly.

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GOP blocks funding increase for EPA watchdog probing Pruitt activities [Back](#)

By Alex Guillén | 06/06/2018 03:06 PM EDT

House Republicans today blocked a Democratic effort to increase funding for EPA's Office of Inspector General to help the watchdog deal with the increased workload stemming from Administrator Scott Pruitt's spending and ethics scandals.

Rep. [Mark Pocan](#) (D-Wis.) and a bloc of Democrats on the House Appropriations Committee pushed an amendment that would have boosted OIG funding for fiscal 2019. It ultimately was voted down on a party-line vote of 21-26.

"It's hard to imagine that there is a more overworked inspector general than at the EPA these days," Pocan said. "This is not a Democrat/Republican thing, this should be a good government thing."

Interior-EPA Appropriations Chairman [Ken Calvert](#) (R-Calif.) said the bill "already includes robust support for EPA's inspector general."

The House Interior-EPA spending package would provide the OIG funding of just over \$50 million, about flat with 2018's level. Most of that is appropriated directly, though some of it is pulled from the Superfund program for OIG's work on Superfund-specific issues. Pocan's amendment would have drawn the extra \$12 million from EPA's "workforce reshaping" account inside the \$2.5 billion environmental programs.

In a February [letter](#), EPA Inspector General Arthur Elkins said the president's proposed OIG budget of \$46 million would "substantially inhibit the OIG from performing the duties of the office." He asked instead for a budget of \$62 million. That request came before an avalanche of congressional requests to review various Pruitt-related issues on spending and ethics.

WHAT'S NEXT: The committee will vote later today on the full spending bill.

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Interior advisory committee recommends streamlining environmental reviews for drilling [Back](#)

By Ben Lefebvre | 06/06/2018 06:31 PM EDT

An Interior Department advisory board on Wednesday approved a slew of recommendations aimed at expanding energy lease sales and lowering royalty rates, even as some members questioned whether it had the power to suggest changes to federal environmental reviews.

The Royalty Policy Committee wrapped up its latest meeting in New Mexico after approving nine [recommendations](#) for Secretary Ryan Zinke to change how the department collects payments from energy production on federal land. Most of the suggestions would benefit oil and gas companies operating on federal acres, while two recommendations were aimed at boosting renewable energy production.

Two committee members disagreed with a recommendation for the Bureau of Land Management to issue "categorical exclusions" for certain oil and gas projects, allowing those projects to forgo full environmental reviews under the National Environmental Protection Act.

"NEPA is not referred to in the [committee] charter," Rod Eggert, a professor at the Colorado School of Mines, said during the meeting. "The text in the charter refers to royalties and collections of royalties."

Committee member Monte Mills of the University of Montana agreed that recommending categorical exclusions fell outside of the committee's scope.

Western Energy Alliance President Kathleen Sgamma, another member of the committee, defended the recommendation, saying it would increase royalty payments to Interior by making it easier for companies to drill on public land.

"We're trying to increase competitiveness of federal lands," Sgamma said during the meeting. "NEPA is often the aspect of the federal process that takes the longest and decreases the competitiveness of public lands the most."

Ultimately, the committee approved the recommendation and deferred further discussion about the scope of its charter until its next meeting, yet to be scheduled.

The committee also suggested Interior make it easier for companies to pay lower royalty rates for mature oil and gas wells and those "difficult" to operate. And it recommended Zinke ask Congress to amend the Outer Continental Shelf Lands Act with language allowing Interior to hold offshore energy project lease sales in Guam and other U.S. territories.

The committee's two renewable power suggestions were that Interior offer annual lease sales for 2 gigawatts of offshore wind power every year for a decade starting in 2024; and to instruct BLM to reduce fees and streamline permit requirements for solar projects.

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BLM tells field office to expedite drilling permit reviews [Back](#)

By Ben Lefebvre | 06/06/2018 08:20 PM EDT

The Bureau of Land Management instructed field offices to prioritize the use of old environmental reviews or categorical exclusions to expedite drilling permit applications for sites where work is already underway, according to a memo released today.

The bulletin posted on the BLM website said those methods will allow officials to process the applications "in the most expeditious and appropriate manner" under the National Environmental Policy Act.

The BLM bulletin directed its field offices that existing environmental analysis for new projects proposed for old sites "should be used to the greatest extent possible" instead of starting a new environmental review process.

If the old analysis isn't sufficient, field offices should determine whether the application falls under an existing categorical exclusion, meaning a new NEPA review would not be required. Criteria to determine whether an exclusion would be available include whether a similar project has already occurred on the same site within the previous five years.

BLM posted its memo soon after Interior's Royalty Policy Committee recommended earlier today that the agency increase its use of categorical exclusions.

WHAT'S NEXT: The environmental review priority list goes into effect immediately.

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White House, EPA headed off chemical pollution study [Back](#)

By Annie Snider | 05/14/2018 12:43 PM EDT

Scott Pruitt's EPA and the White House sought to block publication of a federal health study on a nationwide water-contamination crisis, after one Trump administration aide warned it would cause a "public relations nightmare," newly disclosed emails reveal.

The intervention early this year — not previously disclosed — came as HHS' Agency for Toxic Substances and Disease Registry was preparing to publish its assessment of a class of toxic chemicals that has contaminated water supplies near military bases, chemical plants and other sites from New York to Michigan to West Virginia.

The study would show that the chemicals endanger human health at a far lower level than EPA has previously called safe, according to the emails.

"The public, media, and Congressional reaction to these numbers is going to be huge," one unidentified White House aide said in an email forwarded on Jan. 30 by James Herz, a political appointee who oversees environmental issues at the OMB. The email added: "The impact to EPA and [the Defense Department] is going to be extremely painful. We (DoD and EPA) cannot seem to get ATSDR to realize the potential public relations nightmare this is going to be."

More than three months later, the draft study remains unpublished, and the HHS unit says it has no scheduled date to release it for public comment. Critics say the delay shows the Trump administration is placing politics ahead of an urgent public health concern — something they had feared would happen after agency leaders like Pruitt started placing industry advocates in charge of issues like chemical safety.

Sen. Maggie Hassan (D-N.H.) called the delay "deeply troubling" on Monday, urging Pruitt and President Donald Trump "to immediately release this important study."

"Families who have been exposed to emerging contaminants in their drinking water have a right to know about any health impacts, and keeping such information from the public threatens the safety, health, and vitality of communities across our country," Hassan said, citing POLITICO's reporting of the issue. Details of the internal discussions emerged from EPA emails released to the Union of Concerned Scientists under the Freedom of Information Act.

Sen. Jeanne Shaheen, a fellow New Hampshire Democrat, called the delay "an egregious example of politics interfering with the public's right to know. ... [I]t's unconscionable that even the existence of this study has been withheld until now."

The emails portray a "brazenly political" response to the contamination crisis, said Judith Enck, a former EPA official who dealt with the same pollutants during the Obama administration — saying it goes far beyond a normal debate among scientists.

"Scientists always debate each other, but under the law, ATSDR is the agency that's supposed to make health recommendations," she said.

The White House referred questions about the issue to HHS, which confirmed that the study has no scheduled release date.

Pruitt's chief of staff, Ryan Jackson, defended EPA's actions, telling POLITICO the agency was helping "ensure that the federal government is responding in a uniform way to our local, state, and Congressional constituents and partners."

Still, Pruitt has faced steady criticism for his handling of science at the agency, even before the recent spate of ethics investigations into his upscale travels and dealings with lobbyists. In his year leading EPA, he has overhauled several scientific advisory panels to include more industry representatives and recently ordered limits on the kinds of scientific studies the agency will consider on the health effects of pollution.

On the other hand, Pruitt has also called water pollution one of his signature priorities.

The chemicals at issue in the HHS study have long been used in products like Teflon and firefighting foam, and are contaminating water systems around the country. Known as PFOA and PFOS, they have been linked with thyroid defects, problems in pregnancy and certain cancers, even at low levels of exposure.

The problem has already proven to be enormously costly for chemicals manufacturers. The 3M Co., which used them to make Scotchguard, paid more than \$1.5 billion to settle lawsuits related to water contamination and personal injury claims.

But some of the biggest liabilities reside with the Defense Department, which used foam containing the chemicals in exercises at bases across the country. In a March report to Congress, the Defense Department listed 126 facilities where tests of nearby water supplies showed the substances exceeded the current safety guidelines.

A government study concluding that the chemicals are more dangerous than previously thought could dramatically increase the cost of cleanups at sites like military bases and chemical manufacturing plants, and force neighboring communities to pour money into treating their drinking water supplies.

The discussions about how to address the HHS study involved Pruitt's chief of staff and other top aides, including a chemical industry official who now oversees EPA's chemical safety office.

Herz, the OMB staffer, forwarded the email warning about the study's "extremely painful" consequences to EPA's top financial officer on Jan. 30. Later that day, Nancy Beck, deputy assistant administrator for EPA's Office of Chemical Safety and Pollution Prevention, suggested elevating the study to OMB's Office of Information and Regulatory Affairs to coordinate an interagency review. Beck, who worked as a toxicologist in that office for 10 years, suggested it would be a "good neutral arbiter" of the dispute.

"OMB/OIRA played this role quite a bit under the Bush Administration, but under Obama they just let each agency do their own thing..." Beck wrote in one email that was released to UCS.

Beck, who started at OMB in 2002, worked on a similar issue involving perchlorate, an ingredient in rocket fuel — linked with thyroid problems and other ailments — that has leached from defense facilities and manufacturing sites into the drinking water of at least 20 million Americans. Beck stayed on at OMB into the Obama administration, leaving the office in January 2012 and going to work for the American Chemistry Council, where she was senior director for regulatory science policy until joining EPA last year.

Yogin Kothari, a lobbyist with the Union of Concerned Scientists, called Beck's January email "extremely troubling because it appears as though the White House is trying to interfere in a science-based risk assessment."

Environmentalists say such interference was routine during the Bush administration.

"It's why the Obama administration issued a call for scientific integrity policies across the federal government," Kothari said in an email to POLITICO. "Dr. Beck should know firsthand that the Bush administration sidelined science at every turn, given that she spent time at OMB during that time."

Soon after the Trump White House raised concerns about the impending study, EPA chief of staff Ryan Jackson reached out to his HHS counterpart, as well as senior officials in charge of the agency overseeing the assessment to discuss coordinating work among HHS, EPA and the Pentagon. Jackson confirmed the outreach last week, saying it is important for the government to speak with a single voice on such a serious issue.

"EPA is eager to participate in and, contribute to a coordinated approach so each federal stakeholder is fully informed on what the other stakeholders' concerns, roles, and expertise can contribute and to ensure that the federal government is responding in a uniform way to our local, state, and Congressional constituents and partners," Jackson told POLITICO via email.

Pruitt has made addressing per- and polyfluoroalkyl substances, or PFAS, a priority for EPA. The unpublished HHS study focused on two specific chemicals from this class, PFOA and PFOS.

States have been pleading with EPA for help, and experts say that contamination is so widespread, the chemicals are found in nearly every water supply that gets tested.

In December, the Trump administration's nominee to head the agency's chemical safety office, industry consultant Michael Dourson, withdrew his nomination after North Carolina's Republican senators said they would not support him, in large part because of their state's struggles with PFAS contamination. Dourson's previous research on the subject has been criticized as too favorable to the chemical industry.

Shortly after Dourson's nomination was dropped, Pruitt announced a "leadership summit" with states to discuss the issue scheduled for next week.

In 2016, the agency published a voluntary health advisory for PFOA and PFOS, warning that exposure to the chemicals at levels above 70 parts per trillion, total, could be dangerous. One part per trillion is roughly the equivalent of a single grain of sand in an Olympic-sized swimming pool.

The updated HHS assessment was poised to find that exposure to the chemicals at less than one-sixth of that level could be dangerous for sensitive populations like infants and breastfeeding mothers, according to the emails.

Dave Andrews, a senior scientist with the Environmental Working Group, said those conclusions line up with recent studies on the health effects of PFAS.

"They are looking at very subtle effects like increased risk of obesity for children exposed in womb, lowered immune response, and childhood vaccines becoming not as effective," Andrews said.

The HHS document at issue is called a toxicological profile, which describes the dangers of a chemical based on a review of previous scientific studies. It would carry no regulatory weight itself, but could factor into cleanup requirements at Superfund sites.

EPA scientists, including career staffers, were already talking with the HHS researchers about the differences in their two approaches to evaluating the chemicals when officials at the White House raised alarm in late January, the emails show. Those differences, according to the correspondence, stemmed from the agencies' use of different scientific studies as a basis, and from taking different approaches to accounting for the harm that the chemicals can do to the immune system — an area of research that has burgeoned in the two years since EPA issued its health advisory.

Enck, the former EPA official, said she sees one troubling gap in the emails: They make "no mention of the people who are exposed to PFOA or PFOS, there's no health concern expressed here."

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Yes, very



Somewhat



Neutral



Not really



Not at all

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Message

From: Hoffman, Howard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=9B294B6D14284E0D86D25BC366EFE259-HHOFFMAN]
Sent: 7/12/2018 7:29:02 PM
To: Marks, Matthew [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=66cf58c470d84403af7d7dfd7efc8016-Marks, Matthew]; Shoaff, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ac16fb09cf2c44adb34a7405dc331532-JShoaff]; Tsirigotis, Peter [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d19c179f3ccb4fadb48e3ae85563f132-PTSIRIGO]; Koerber, Mike [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9c513901d4fd49f9ab101a6f7a7a863e-Koerber, Mike]; Culligan, Kevin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5ab7ef4a59614fd4b4485668c42818c7-KCULLIGA]; Srinivasan, Gautam [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d69332838210416ba51779b19025f832-GSRINIVA]; Zenick, Elliott [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1b2eaa2a560d415fb7c8ce9bb56c7ce5-EZENICK]
CC: Schwab, Justin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=eed0f609c0944cc2bbdb05df3a10aadb-Schwab, Jus]; Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clin]; Hockstad, Leif [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5a4fb1f8930645efa34fdfa7485bc6da-LHOCKSTA]
Subject: RE: By COB Fri. - Draft Response to SAB Letter
Attachments: EDIT Draft 071218 - Admin Response to SAB re 2017 Actions + Sci Transpy + Comments_HJH.docx

Attorney Client / Ex. 5

Howard J. Hoffman USEPA-OGC-ARLO (202) 564-5582(O) (240)-401-9721(C) Room 7415 WJC-North
Mailing address: Mail Code 7344A, 1200 Pennsylvania Ave. NW Washington, D.C. 20460

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From: Marks, Matthew

Sent: Thursday, July 12, 2018 3:12 PM

To: Shoaff, John <Shoaff.John@epa.gov>; Tsirigotis, Peter <Tsirigotis.Peter@epa.gov>; Koerber, Mike

<Koerber.Mike@epa.gov>; Culligan, Kevin <Culligan.Kevin@epa.gov>; Grundler, Christopher <grundler.christopher@epa.gov>; Cook, Leila <cook.leila@epa.gov>; Hengst, Benjamin <Hengst.Benjamin@epa.gov>; Charmley, William <charmley.william@epa.gov>; Burch, Julia <Burch.Julia@epa.gov>; Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Hoffman, Howard <hoffman.howard@epa.gov>; Orlin, David <Orlin.David@epa.gov>; Carrillo, Andrea <Carrillo.Andrea@epa.gov>; Zenick, Elliott <Zenick.Elliott@epa.gov>
Cc: Schwab, Justin <Schwab.Justin@epa.gov>; Woods, Clint <woods.clint@epa.gov>; Hockstad, Leif <Hockstad.Leif@epa.gov>
Subject: RE: By COB Fri. - Draft Response to SAB Letter

Hi John,

Attorney Client / Ex. 5

Matt

From: Shoaff, John
Sent: Thursday, July 12, 2018 2:51 PM
To: Tsirigotis, Peter <Tsirigotis.Peter@epa.gov>; Koerber, Mike <Koerber.Mike@epa.gov>; Culligan, Kevin <Culligan.Kevin@epa.gov>; Grundler, Christopher <grundler.christopher@epa.gov>; Cook, Leila <cook.leila@epa.gov>; Hengst, Benjamin <Hengst.Benjamin@epa.gov>; Charmley, William <charmley.william@epa.gov>; Burch, Julia <Burch.Julia@epa.gov>; Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Marks, Matthew <Marks.Matthew@epa.gov>; Hoffman, Howard <hoffman.howard@epa.gov>; Orlin, David <Orlin.David@epa.gov>; Carrillo, Andrea <Carrillo.Andrea@epa.gov>; Zenick, Elliott <Zenick.Elliott@epa.gov>
Cc: Schwab, Justin <Schwab.Justin@epa.gov>; Woods, Clint <woods.clint@epa.gov>; Hockstad, Leif <Hockstad.Leif@epa.gov>
Subject: By COB Fri. - Draft Response to SAB Letter

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John

JOHN SHOAFF | DIRECTOR

OFFICE OF AIR POLICY & PROGRAM SUPPORT (OAPPS)

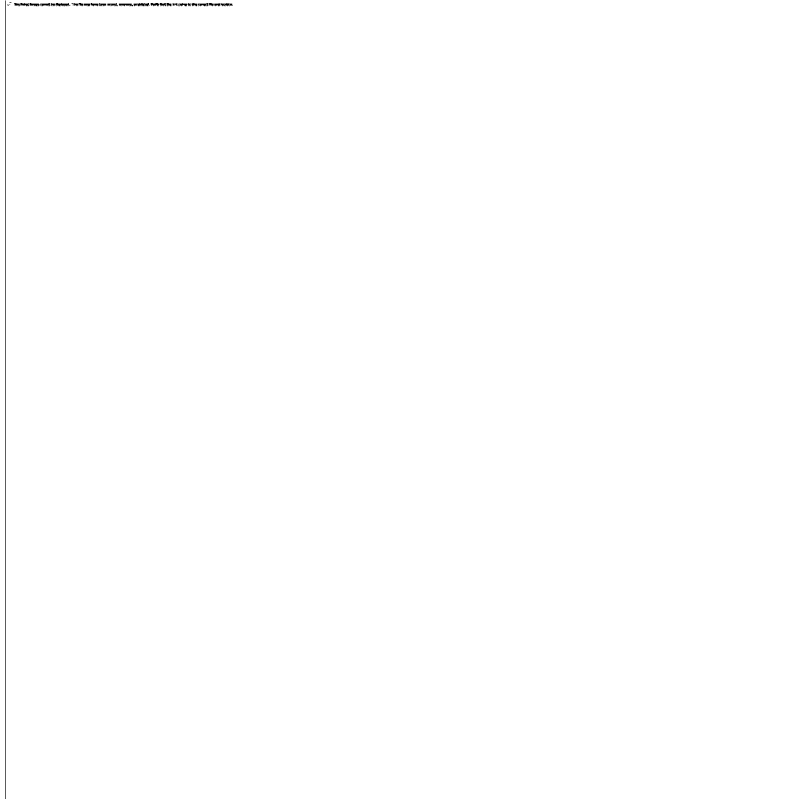
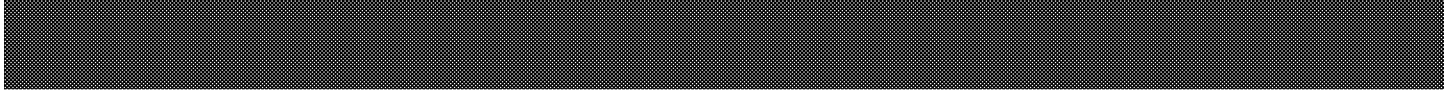
OFFICE OF AIR & RADIATION | U.S. EPA | WJC NORTH 5442-B

1200 PENNSYLVANIA AVE. NW | MC 6103A | WASHINGTON, D.C. | 20460 | USA

Shoaff.john@epa.gov | 1-202-564-0531 DIRECT | 1-202-257-1755 MOBILE

Message

From: Morning Consult [reply@e.morningconsult.com]
Sent: 3/20/2018 12:43:29 PM
To: Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clint]
Subject: Morning Consult Energy: Trump Plans to Impose \$60 Billion in Annual Tariffs Against China



By Sei Chong

Top Stories

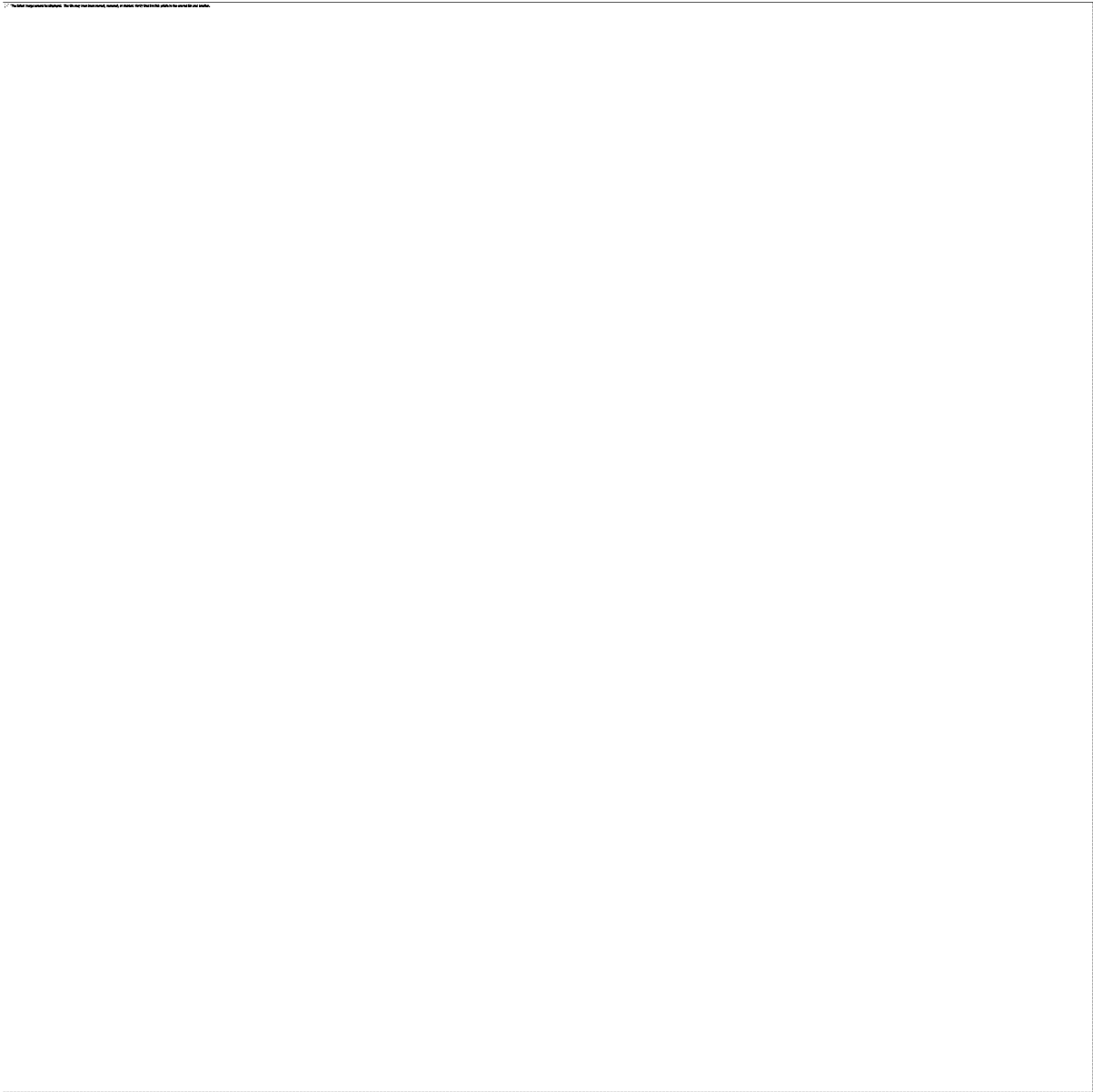
- President Donald Trump is planning to impose \$60 billion in annual tariffs against more than 100 Chinese products, which are expected to be announced Friday, according to administration officials. Trump was initially presented with a \$30 billion tariff package, sources said, but Trump ordered them to roughly double the scope of the tariffs. (The Washington Post)

- Environmental Protection Agency Administrator Scott Pruitt said in an interview that the EPA would stop using "secret science" in the rulemaking process, referring to non-public scientific studies. Under the new policy, regulators could consider only scientific studies that make their data available for public scrutiny. ([Daily Caller](#))
- GOP leaders and senior White House officials are rejecting last-minute attempts to tack on controversial policy riders as they seek to clear the way toward passage of a \$1.3 trillion spending bill before government funding expires on Friday. House Speaker Paul Ryan (R-Ky.) discussed the new spending bill in a House GOP Conference meeting last night, and the bill's release is expected to be released today. ([Politico](#))
- The Interior Department today will hold an auction of more than 51,000 acres in southeastern Utah for oil and gas development, including land near the boundaries of the former Bears Ears National Monument, which was scaled back by the Trump administration last year, and the Hovenweep and Canyons of the Ancients monuments. Conservationists say the Bureau of Land Management has not taken into account the potential impact of drilling in sensitive archaeological and wilderness sites. ([Reuters](#))
- Uber Technologies Inc. suspended testing of autonomous cars in Tempe, Ariz., Pittsburgh, San Francisco and Toronto after one of the cars, which had an emergency backup driver behind the wheel, hit and killed a woman on a street in Tempe. The accident is believed to be the first pedestrian death linked to self-driving technology. ([The New York Times](#))

Chart Review

The United States exported more natural gas than it imported in 2017

Energy Information Administration



Events Calendar (All Times Local)

TUESDAY

Electric Power Conference	7 a.m.
AWEA Wind Project Siting & Environmental Compliance Conference	7:30 a.m.
ClimateCon's Business of Climate Forum	7:45 a.m.

American Shore and Beach Preservation Association Coastal Summit	8 a.m.
Senate Energy and Natural Resources hearing on FY19 Energy Department budget	10 a.m.
Senate Clean Air and Nuclear Safety Subcommittee hearing on TVA board of directors nomination	10 a.m.
House Energy and Water Development Subcommittee hearing on National Nuclear Security Administration budget	10 a.m.
House E&C Energy and Environment subcommittees hearing on Nuclear Regulatory Commission budget	10:15 a.m.
House Indian Affairs Subcommittee oversight hearing on FY19 budget for Indian affairs	10:30 a.m.
House Economic Development, Public Buildings and Emergency Mgmt Subcommittee hearing on 2017 wildfires	10:30 a.m.
House Federal Lands Subcommittee hearing on HR 5210, HR 2584	2 p.m.
Atlantic Council discussion on "Future of Solar Energy and the Role of American Leadership"	3:45 p.m.

WEDNESDAY

Electric Power Conference	7 a.m.
American Coalition for Ethanol DC Fly-In and Government Affairs Summit	7:30 a.m.
AWEA Wind Project Siting & Environmental Compliance Conference	7:30 a.m.
American Shore and Beach Preservation Association Coastal Summit	7:45 a.m.
ClimateCon's Business of Climate Forum	7:45 a.m.

UtilityDive workshop on clean energy's impact on electric utility industry	8:30 a.m.
House Ways and Means Committee hearing with USTR Robert Lighthizer about trade policy	10 a.m.
Senate Environment and Public Works Committee hearing on Nuclear Regulatory Commission oversight	10 a.m.
House Commerce, Justice, Science, and Related Agencies Subcommittee hearing on NOAA FY19 budget	10 a.m.
House Natural Resources Committee markup	10:15 a.m.
House Oversight Subcommittee on National Security hearing on hurricane recovery in Puerto Rico	2 p.m.
House Water, Power and Oceans Subcommittee hearing on FY19 Bureau of Reclamation spending	2 p.m.

THURSDAY

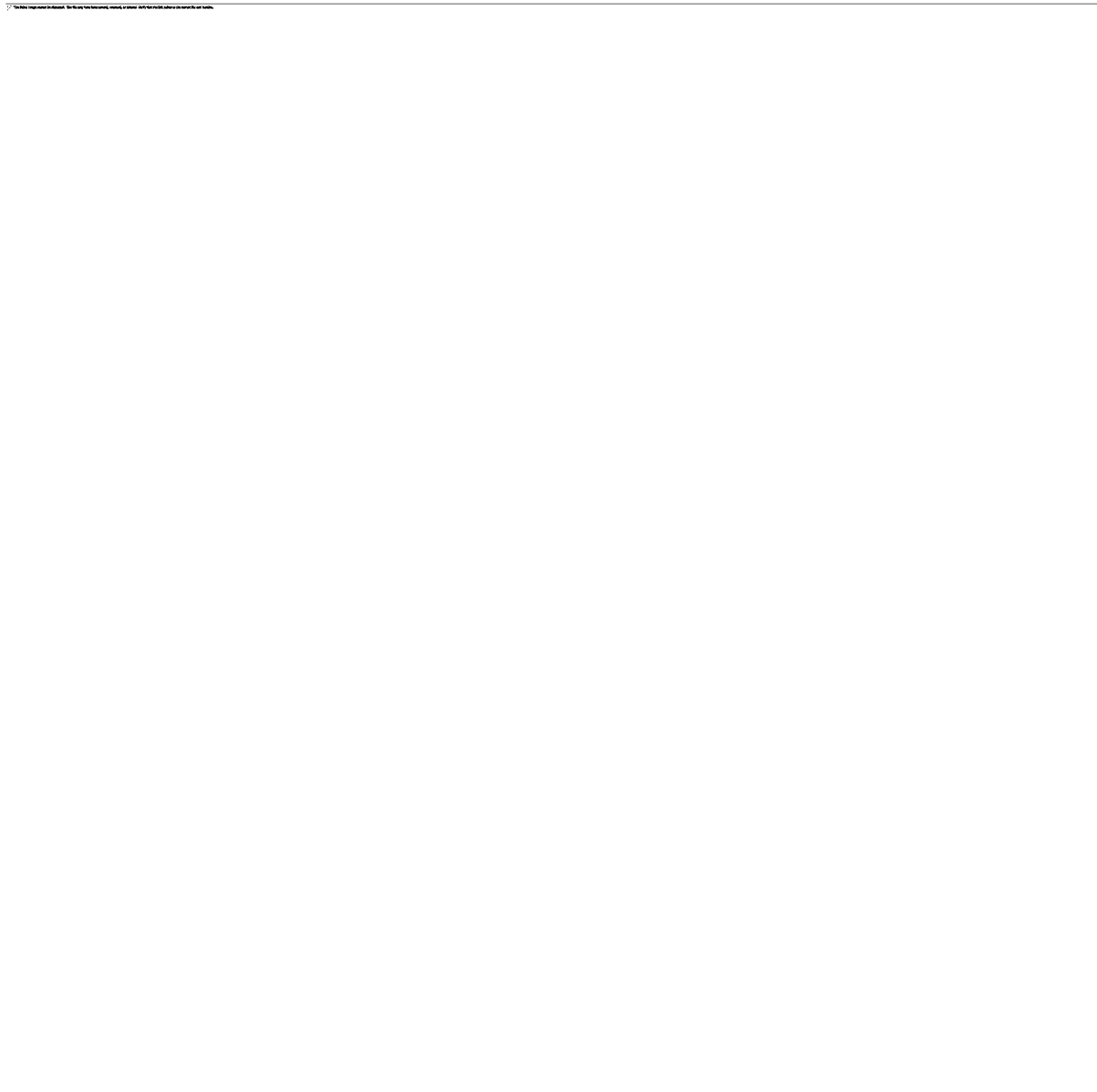
Electric Power Conference	7:30 a.m.
American Coalition for Ethanol DC Fly-In and Government Affairs Summit	7:30 a.m.
American Shore and Beach Preservation Association Coastal Summit	8 a.m.
Wilson Center's China Environmental Forum discussion on China's energy ambitions	9 a.m.
House Energy and Water Development Subcommittee hearing on FY19 Applied Energy budget	9 a.m.
House Ways and Means Committee hearing with Commerce Secretary Wilbur Ross about tariffs	9 a.m.
Senate Energy and Natural Resources hearing on Western water supply outlook and water infrastructure bills	10 a.m.

Senate Finance Committee hearing with USTR Lighthizer on the president's trade policy agenda	10 a.m.
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AEI discussion with Transportation Undersecretary Derek Kan on future of infrastructure policy	2 p.m.
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FRIDAY

Energy Institute at Haas POWER Conference on Energy Research and Policy	8 a.m.
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New Report: The Future of Retail

Insights into how consumers are reacting to changes in the retail industry, and what they're looking for in the future.

General

Trump prepared to hit China with \$60 billion in annual tariffs
Damian Paletta et al., The Washington Post

President Trump is preparing to impose a package of \$60 billion in annual tariffs against Chinese products, following through on a longtime threat that he says will punish China for intellectual property theft and create more U.S. jobs. The tariff package, which Trump plans to unveil by Friday, was confirmed by four senior administration officials.

Scott Pruitt Will End EPA's Use Of 'Secret Science' To Justify Regulations
Michael Bastasch, Daily Caller

Environmental Protection Agency (EPA) Administrator Scott Pruitt will soon end his agency's use of "secret science" to craft regulations. "We need to make sure their data and methodology are published as part of the record," Pruitt said in an exclusive interview with The Daily Caller News Foundation.

Congress closes in on massive spending bill
Sarah Ferris et al., Politico

Congressional leaders and top White House officials are clearing the way for a massive \$1.3 trillion spending bill, scrapping several last-minute attempts to tack on controversial policy riders ahead of a Friday deadline to fund the government.

Self-Driving Uber Car Kills Pedestrian in Arizona, Where Robots Roam
Daisuke Wakabayashi, The New York Times

Arizona officials saw opportunity when Uber and other companies began testing driverless cars a few years ago. Promising to keep oversight light, they invited the companies to test their robotic vehicles on the state's roads. Then on Sunday night, an autonomous car operated by Uber - and with an emergency backup driver behind the wheel - struck and killed a woman on a street in Tempe, Ariz.

EPA to hold national summit on chemicals found in drinking water

John Siciliano, Washington Examiner

The Environmental Protection Agency said Monday that it will hold a two-day summit in May to address a chemical that has been seen as a drinking water contaminant.

Oil prices rise on Middle East tension, falling Venezuela output
Henning Gloystein, Reuters

Oil prices rose by almost 1 percent on Tuesday, lifted by a weak dollar, tensions in the Middle East and concerns of a further fall in Venezuelan output.

Oil and Natural Gas

U.S. Interior Department offers oil leases near Utah's wilderness monuments

Valerie Volcovici, Reuters

The U.S. Department of Interior on Tuesday will auction off more than 51,000 acres (21,000 hectares) in southeastern Utah for oil and gas development, over objections from conservationists, who say the move threatens sensitive archaeological and wilderness sites.

U.S. tariffs on China could hamper new LNG export projects along Gulf Coast

Collin Eaton, Houston Chronicle

New U.S. tariffs on Chinese goods could make it harder for U.S. liquefied natural gas exporters to tap into China's booming market and get investors to sink money into Gulf Coast projects.

Petroleum industry calls for 'flexible' process for considering exemptions to Trump's steel tariffs

Josh Siegel, Washington Examiner

The American Petroleum Institute on Monday called on the Commerce Department to show deference to affected industry groups when it considers exemptions to President Trump's 25 percent tariff on steel, just moments after Commerce issued guidance saying it would consider exemptions for products that are "unmet by domestic production or on specific national security considerations."

A small oil field in Oklahoma is seeing big bets from producers
John Benny, Reuters

A little-known shale oil play in Oklahoma is attracting more drilling and investment as rising output from newer wells is enticing companies to boost production beyond the giant Permian basin in Texas. The Meramec formation is a part of what is called the STACK region - Sooner Trend Anadarko basin Canadian and Kingfisher counties - where companies such as Marathon Oil and Devon Energy bought up acreage following the oil slump in 2014.

Safety inspectors to spend more time on offshore drilling platforms
Miranda Green, The Hill

The Interior Department's safety arm will soon increase its physical inspection time for offshore drilling.

SandRidge Energy Rejects Midstates Petroleum's Bid But Hires Advisers to Review Strategic Alternatives
Maria Armental, The Wall Street Journal

SandRidge Energy Inc. has rejected Midstates Petroleum Co.'s unsolicited offer, saying the numbers didn't make a deal feasible, but it has hired advisers and said it is open to other options-that may include Midstates.

Utilities and Infrastructure

Feds route millions to aging Minnesota electrical lines
Maya Rao, Star Tribune

As electrical systems age and decline in northwestern Minnesota, Runestone Electric Association is preparing to upgrade 180 miles of line and build 88 more with the help of federal loans. "A lot of the equipment is over 30 years old and pre-computers and electronic devices ... it's like going from an old rotary phone to a smartphone," said Al Haman,

manager of operations and engineering at the Alexandria-based utility company.

How Big Is the Peak Capacity Market for Batteries?

Julian Spector, Greentech Media

The age of storage serving peak power has only just begun, so the size of that market is very much up for debate. California has already halted a new gas plant in favor of deploying energy storage in its place.

Renewables

SunPower: Tariff Exclusion Would Free Funds to Open New US Solar Manufacturing Facilities

Julia Pyper, Greentech Media

Solar industry stakeholders filed applications with the Office of the U.S. Trade Representative last week seeking exclusions from the Trump administration's 30 percent tariff on imported solar products.

Coal

A complicated calculus keeps the remaining coal fleet alive

Peter Maloney, UtilityDive

It's no secret that the coal fleet in the U.S. is shrinking. The number of coal-fired power plants is roughly half it was about 10 years ago.

Could this 'clean coal' plant proposal be answer to Indiana's 17 billion tons of reserves?

Sarah Bowman and Emily Hopkins, IndyStar

When it comes to coal, the United States is what the Middle East is for oil. That fact is not lost on an industry competing for relevancy at a time when it's undersold by natural gas and renewable energy.

Nuclear

Nevada senators fight Yucca Mountain restart on two fronts

Gary Martin, Las Vegas Review-Journal

Trump administration efforts to revive the licensing process for a nuclear waste repository at Nevada's Yucca Mountain are being met with stiff resistance from Nevada's senators.

Why Oil-Rich Saudi Arabia Is Turning to Nuclear Power
Mahmoud Habboush and Bruce Stanley, Bloomberg

With the world's second-biggest proven reserves of oil, Saudi Arabia seems an unlikely aspirant to the nuclear-energy club. Yet the largest oil exporter plans to build at least 16 nuclear reactors over the next 25 years at a cost of more than \$80 billion.

Climate

The Arctic's carbon bomb might be even more potent than we thought
Chris Mooney, The Washington Post

For some time, scientists fearing the mass release of greenhouse gases from the carbon-rich, frozen soils of the Arctic have had at least one morsel of good news in their forecasts: They predicted that most of the gas released would be carbon dioxide, which, though a greenhouse gas, drives warming more slowly than some other gases.

How do you talk to Pruitt about climate change?
Niina Heikkinen, E&E News

U.S. EPA boss Scott Pruitt is skilled at sticking to his talking points, particularly when it comes to climate change. For journalists covering that issue, pushing Pruitt beyond his rhetoric has become more important as the EPA chief has become one of the Trump administration's highest-profile officials casting doubt on mainstream climate science.

McDonald's Tries to Boost Reputation by Cutting Greenhouse Gases
Leslie Patton, Bloomberg

McDonald's Corp., on a quest to boost sales by improving its image, is vowing to cut its greenhouse-gas emissions.

Can climate litigation save the world?
Damian Carrington, The Guardian

Courts are a new front line of climate action with cases against governments and oil firms spiralling, and while victories have so far been rare the pressure for change is growing

Canada's Outdoor Rinks Are Melting. So Is a Way of Life.
John Schwartz, The New York Times

Jack Williams and his sister, Cara, sat in their kitchen watching their backyard rink melt. "Dad calls it a big birdbath," said Jack, who is 12.

Opinions, Editorials and Perspectives

Renewable Energy Growth Is Surging and Boosting U.S. Economy
Isak Kvam, Morning Consult

A new report published this month highlights the rapid growth in renewable energy throughout the U.S. as the country moves toward a clean-energy economy. The 2018 Sustainable Energy in America Factbook was produced by the Business Council for Sustainable Energy by Bloomberg New Energy Finance, and it's chock full of good news for renewable energy, the U.S. economy and our low-carbon future.

All hail Ryan Zinke, our imperial viceroy
Dana Milbank, The Washington Post

Were these normal times, we would now be saying "sayonara" to Ryan Zinke. President Trump's secretary of the interior has inspired a half-dozen ongoing investigations into his travel expenses, his blending of official business with political activities and personal pleasure, and his whimsical management of a 70,000-person, 500 million-acre agency.

Drone Company Hangs On to Win Clean-Energy Bet
Matthew A. Winkler, Bloomberg

Clean earns more money. That's the mantra for investors reaping the reward of alternative energy outperforming fossil fuel. They've known since 2013 that you don't have to drive a Tesla or own its shares (they're up 826 percent) to benefit from green companies lapping the carbon crowd with superior perennial returns.

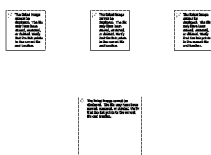
The Divestment Movement Gains Steam
Dennis Wamsted, Institute for Energy Economics & Financial Analysis

Fossil fuel divestment took center stage during a good part of IEEFA's annual conference last week in New York, with experts and government officials weighing in in detail on the burgeoning movement.

Research Reports

Groundswell : Preparing for Internal Climate Migration **Kanta Kumari Rigaud et al., World Bank**

This report, which focuses on three regions-Sub-Saharan Africa, South Asia, and Latin America that together represent 55 percent of the developing world's population-finds that climate change will push tens of millions of people to migrate within their countries by 2050.



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Message

From: Schwab, Justin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=EED0F609C0944CC2BBDB05DF3A10AADB-SCHWAB, JUS]
Sent: 4/16/2018 10:03:01 PM
To: Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clin]
Subject: Data - edit
Attachments: EDIT 04162018 PM Data Access DRAFT NPRM 04-11-2018.docx

Flag: Flag for follow up

Message

From: Block, Molly [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=60D0C681A16441A0B4FA16AA2DD4B9C5-BLOCK, MOLL]
Sent: 6/6/2018 2:03:35 PM
To: Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clint]; Lovell, Will (William) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3b150bb6ade640f68d744fadcb83a73e-Lovell, Wil]
CC: Daniell, Kelsi [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cd867173479344b3bda202b3004ff830-Daniell, Ke]; Yamada, Richard (Yujiro) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4c34a1e0345e4d26b361b5031430639d-Yamada, Yuj]
Subject: RE: "Strengthening transparency..." story

Thanks all!

From: Woods, Clint
Sent: Wednesday, June 6, 2018 9:11 AM
To: Lovell, Will (William) <lovell.william@epa.gov>
Cc: Daniell, Kelsi <daniell.kelsi@epa.gov>; Block, Molly <block.molly@epa.gov>; Yamada, Richard (Yujiro) <yamada.richard@epa.gov>
Subject: Re: "Strengthening transparency..." story

Agree

On Jun 6, 2018, at 9:05 AM, Lovell, Will (William) <lovell.william@epa.gov> wrote:

Looping in Clint and Richard and taking off Brittany.

Deliberative Process / Ex. 5

From: Daniell, Kelsi
Sent: Tuesday, June 5, 2018 5:26 PM
To: Bolen, Brittany <bolen.brittany@epa.gov>; Block, Molly <block.molly@epa.gov>; Lovell, Will (William) <lovell.william@epa.gov>
Subject: Fwd: "Strengthening transparency..." story

See below. Anything we want to say here?

Sent from my iPhone

Begin forwarded message:

Resent-From: <Press@epa.gov>
From: "Eric Roston (BLOOMBERG/ NEWSROOM:)" <eroston@bloomberg.net>

Date: June 5, 2018 at 10:19:17 AM MDT

To: "Wilcox, Jahan" <wilcox.jahan@epa.gov>, Press <Press@epa.gov>

Subject: Fwd:"Strengthening transparency..." story

Reply-To: Eric Roston <eroston@bloomberg.net>

Hi, resending this in case it fell in a crack, thanks. Best, Eric

Eric Roston
212-617-5464

----- Original Message -----

From: ERIC ROSTON

To: press@epa.gov

At: 04-Jun-2018 16:15:42

Greetings,

I'm writing an overview/catch-up piece about the proposed "Strengthening Transparency in Regulatory Science" rule. It's an introduction to the debate(s). It explains what the rule would appear to do, why many scientists and organizations say they oppose it in its current form, and shares some of the comments from the public docket. I'd like to run the below questions and comments by you, in the event that EPA would like to respond to any or all of them, or flag anything specific you would like considered for inclusion. Thank you. Eric

1) Any thoughts on these things?:

- A public comment from the Bipartisan Policy Center says that the proposal "is not consistent with the [2009] BPC report in substance or intent" [<https://bit.ly/2Js0NIR>].
- The SAB's Friday agreement to include the transparency rule in its coming letter to the Administrator.
- Five leading peer reviewed journals in a public comment suggest that the rule would "limit the scientific evidence" that can inform policy [<https://bit.ly/2Lm2vZI>].
- The Ranking Member of the House Science Committee, U.S. Rep. Johnson, sent in a public comment that accuses

the agency of executive “overreach”
[<https://bit.ly/2J86kFb>].

- This recent essay by Stanford’s John Ioannidis:
<https://bit.ly/2IopXYl>

Some other questions:

- A comment from a GWU Regulatory Studies Center scholar concludes that "The requirements proposed here are not a radical departure from existing guidelines." What in the proposal is a departure, and why is it necessary?
- Is “secret science” fraudulent science? What studies specifically are the best examples of it? (I noticed that that phrase does not appear in the rule.)
- Is this line from the 2002 “Guidelines for Ensuring and Maximizing the Quality...” a plausible summary of the overall “transparency” v “best available science” debate [<https://bit.ly/2J8qA9r>]? “However, the objectivity standard does not override other compelling interests such as privacy, trade secrets, intellectual property, and other confidentiality protections.” Is this sentence consistent with the proposed rule?
- The same 2002 guidance cites the HEI work on the Harvard Six Cities study and the ACS PM study as an example how to verify studies without absolute public disclosure. Is that 3rd-party verification by HEI still a useful reference for reproducibility? Would this rule vacate that guidance?
- Could small business owners be disproportionately affected by the rule?
- Can you describe the review process for the proposal before it went out on April 30? How deeply were career staff involved in its drafting?

- This question may sound petty, but I'm actually just curious, probably because it relates to my own nightmares when publishing stories on any topic. Copy-editing errors are rare in regulations, but there are at least two in the 4/30 proposal. It just made me wonder if anything about the rule was rushed:
- Footnote 3: "...Historically, EPA has not consistently observed the policies underlying this proposal, and courts have at times upheld EPA's use non-public data in support..."
- Section §30.7 heading: "What role does independent peer review in this section?" [This question is written correctly on the prior page.]

Thanks again for any insight.

Eric Roston
212.617.5464 desk
202.253.5723 cell/Signal

From: POLITICO Pro Energy [politicoemail@politicopro.com]
Sent: 5/1/2018 10:05:06 AM
To: Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clint]
Subject: Morning Energy: How 'the swamp' could overtake West Virginia's primary — Groups react to EPA's proposed 'secret science' rule — API to tap Mike Sommers

By Kelsey Tamborrino | 05/01/2018 06:01 AM EDT

With help from Garrett Ross

HOW 'THE SWAMP' COULD OVERTAKE WEST VIRGINIA'S PRIMARY: West Virginia Attorney General Patrick Morrisey may be touting himself in the GOP Senate primary as a Washington outsider who wants to "blow up" D.C., but his opponents are dragging him through the muddy swamp. "Morrisey got filthy rich in the swamp lobbying for special interests," says the narrator of one of his opponent Rep. Evan Jenkins' ads, Pro's Theodoric Meyer reports. And while Morrisey, who's hoping to take on Democratic Sen. Joe Manchin this fall, has so far weathered the attacks and continues to do well in public polling, the May 8 vote will ultimately test whether GOP voters are willing to send a former lobbyist to Washington.

"Morrisey's self-described 'outsider' rhetoric cloaks an insider record: Before he was elected attorney general, Morrisey spent eight years as a Washington lobbyist, and the influence industry has fueled his campaign with hundreds of thousands of dollars in contributions," Theo writes. "It's going to be challenging, because the word 'lobbyist' has such negative connotations," said Cam Savage, a Republican operative who helped run Sen. Todd Young's successful 2016 campaign against former Democratic Sen. Evan Bayh, whose work for a Washington law and lobbying firm hindered his campaign. Read more.

IN THE OTHER CORNER of the Republican primary sits coal baron Don Blankenship, who spent a year in prison following the 2010 explosion at his Upper Big Branch Mine that killed 29 workers and who continues to escalate his attacks against Senate Majority Leader Mitch McConnell, POLITICO's Alex Isenstadt reports. The Senate hopeful is out with a new ad that dubs McConnell "Cocaine Mitch" as polls show Blankenship falling behind his more mainstream opponents. "One of my goals as U.S. senator will be to ditch Cocaine Mitch," Blankenship says toward the end of the new ad, possibly referring to a 2014 report in the liberal Nation magazine that drugs were once found aboard a shipping vessel owned by the family of McConnell's wife, Transportation Secretary Elaine Chao, Alex reports.

WELCOME TO TUESDAY! I'm your host Kelsey Tamborrino. BP America's Bob Stout was the first to correctly guess that former President Calvin Coolidge was the first president to attend the White House Correspondents' Dinner. For today: Which president brought the first professional baseball team to the White House to visit? Send your tips, energy gossip and comments to ktamborrino@politico.com, or follow us on Twitter @kelseytam, @Morning_Energy and @POLITICOPro.

POLITICO's Ben White is bringing Morning Money to the Milken Institute Global Conference to provide coverage of the day's events and evening happenings. The newsletter will run April 29 - May 2. Sign up to keep up with your daily conference coverage.

WHILE CONGRESS IS AWAY, THE CONFERENCES WILL PLAY: The National Hydropower Association continues its Waterpower Week in Washington today with remarks from FERC Chairman Kevin McIntyre and Thomas Smith, chief of operations and regulatory division for the U.S. Army Corps of Engineers. McIntyre will discuss the "global frontiers of waterpower," providing an update on FERC's

hydropower activities and his perspective on the industry's future. Smith will deliver remarks during the presidential luncheon this afternoon, alongside Herbie Johnson, hydro general manager at the Southern Company. The annual conference is tied to three co-located conferences, including the NHA conference, the International Marine Renewable Energy Conference and the Marine Energy Technology Symposium.

— **The Solar Summit 2018 also kicks off today in San Diego**, where Abigail Ross Hopper, president and CEO of the Solar Energy Industries Association, will discuss solar in the Trump era, with a focus on the corporate tax reform, Section 201 and other macro-level risks. Hopper will be joined on stage by Avangrid Renewables' Laura Beane and Charlie Gray, director of the Solar Energy Technologies Office at DOE's Office of Energy Efficiency & Renewable Energy.

A LOAN IN THE SUN: Coinciding with the solar conference, GTM Research is out with a new report this morning on U.S. residential solar financing. The report found that last year was the first year since 2011 when more systems have been purchased with cash and loans (59 percent) than with leases and power purchase agreements (41 percent). That's in part due to the availability of loan products, as well as a shortage of third-party ownership suppliers, and Tesla and Vivint's move away from third-party ownership, the GTM report found.

The report also said that competition has intensified in solar loans, with various solar-specific loan providers, traditional banks and credit unions entering the realm. The increased competition has led to "uber-competitive rates and therefore compressed margins, leaving questions about the financial health and long-term viability of many of these loan providers," a summary of the report said.

RULE REACTIONS: EPA is moving full-speed ahead in its controversial scientific policy that would exclude the use of studies that don't publicly disclose all data. The agency published the proposed rule in the Federal Register on Monday, kicking into gear a 30-day comment period. And already, several groups have come forward to oppose the policy, laying out what they see as the policy's adverse effects — and calling for more consideration before any formal change.

— **The Union of Concerned Scientists** — which sent a letter signed by more than 1,000 scientists to EPA Administrator Scott Pruitt last week asking him to reverse course prior to the rule's announcement — plans to send another urging for the comment period to be extended a minimum of 60 days and calling for the agency to hold three public hearings across the U.S. to receive additional input. "The current timeframe and lack of opportunities for engagement are wholly inadequate and will not allow for thorough public input of this proposed rule and its impact on science-based health and environmental safeguards." Read the letter here.

— **A group of scientific journals** released a joint statement saying that the proposal "does not strengthen policies based on scientific evidence to limit the scientific evidence that can inform them; rather, it is paramount that the full suite of relevant science vetted through peer review, which includes ever more rigorous features, inform the landscape of decision making. Excluding relevant studies simply because they do not meet rigid transparency standards will adversely affect decision-making processes."

A SOMMERS DAY: The American Petroleum Institute is expected to tap Mike Sommers to replace Jack Gerard to lead the oil and gas industry lobbying group, two sources tell POLITICO's Emily Holden and Eric Wolff. Sommers was former House Speaker John Boehner's chief of staff and has since spent two years leading the American Investment Council, a private equity trade group. Gerard announced earlier this year that he would step down in August. Read more.

TRUMP GRANTS TARIFF EXTENSION FOR SOME: The president extended a temporary exemption by one month for Canada, Mexico and the European Union from heavily watched steel and aluminum tariffs, the White House announced Monday. The move gives the key U.S. allies until June 1 to reach a deal with the administration to avoid the tariffs of 25 percent on steel and 10 percent on aluminum exports sent to the United

States. The tariffs were slated to take effect at 12:01 a.m. today if President Donald Trump had not moved to extend the deadline, POLITICO's Megan Cassella [reports](#).

WHISTLEBLOWER SAYS PRUITT LIED: Kevin Chmielewski, the former deputy chief of staff for operations at EPA, told ABC News Pruitt was telling a "bold-faced" lie last week when he testified to lawmakers that none of his employees were retaliated against for raising concerns about his spending decisions. Chmielewski, who was dismissed and is now acting as a whistleblower, told ABC that chief of staff Ryan Jackson called him into his office and said: "Hey — Administrator Pruitt either wants me to fire you or put you in an office so that he doesn't have to see you again." Chmielewski added: "And in addition to that, he wants to put Millan (Hupp) in your spot, as your title and your pay grade."

EPA declined to comment to ABC in response to Chmielewski's allegations, but the outlet said it obtained a personnel form filled out by EPA human resources officials that said Chmielewski resigned on March 17. "The form is not signed by Chmielewski, who says he was actually forced to leave a month before that date," ABC writes. [Read more.](#)

DEMOCRATS PRESS PRUITT ON TESTIMONY: Separately, Democratic Reps. [Doris Matsui](#) and [Paul Tonko](#) sent a letter Monday calling out a different aspect of Pruitt's testimony last week before Congress. The pair point to a contradiction between Pruitt's remarks and reports that the administration has [drafted](#) a proposed rulemaking to block California's waiver authority to set stricter standards for light-duty vehicles. "If true, these reports directly contradict your testimony last week. As you were reminded at the start of that hearing, it is a violation of the law to knowingly make false statements to a Congressional committee," Matsui and Tonko write in a letter to Pruitt. Asked last week about whether he would revoke California's special Clean Air Act waiver, Pruitt [told lawmakers](#) "not at present." The lawmakers requested Monday that Pruitt provide all documentation related to the development of the notice of proposed rulemaking by Friday. [Read the letter here.](#)

SAGE SUIT: Conservation groups are suing the Trump administration over policies that they say would "adversely impact essential habitats and populations" for the greater sage grouse. The lawsuit, filed in the U.S. District Court in Boise, concerns Interior Department's oil and gas lease auctions in Nevada, Utah, Montana, Wyoming and Idaho — and calls on the court to reverse the sales. "There's no scientific or legal support behind these policies, and no public support for them either," said Michael Saul, a senior attorney at the Center for Biological Diversity. "They're clearly intended to make fossil fuel development the dominant use of public land, and that's illegal." [Read the complaint.](#)

DOE 'ENCOURAGED' BY PJM MOVE: The Energy Department said it was "encouraged" by news Monday that PJM Interconnection [will perform](#) "stress tests" on different parts of the grid to identify fuel supply vulnerabilities. "PJM's concerns are consistent with what DOE, NERC, and others have been saying for years: premature retirements of fuel-secure resources are putting the future of our nation's electric grid at risk, and that undermines our national security," DOE press secretary Shaylyn Hynes said in a statement. DOE urges the regulatory agency "to take immediate action to stop the loss of fuel-secure capacity," Hynes said, adding that DOE continues to review all of its options within its authority to ensure a resilient grid. Recently, Energy Secretary Rick Perry [has considered](#) invoking the 1950 Defense Production Act to keep money-losing power plants running by designating them as crucial for national security.

BY PROXY: A new report from the American Council for Capital Formation out today found that proxy advisory firms — which advise shareholders on how to assess and vote on company plans — are operating with minimal oversight and are moving toward an increasingly activist stance on issues relating to the environment, as well as social and political issues. The report, titled "The Conflicted Role of Proxy Advisors," examines the impact such proxy firms have on major policies at most publicly traded companies. [Read it here.](#)

FIRST OFFICIAL DAY ON THE JOB: Today is Secretary of State Mike Pompeo's first full day in Foggy Bottom, where he will deliver a speech to introduce himself to the department. POLITICO's Nahal Toosi breaks

down the differences between Pompeo and his predecessor and former Exxon Mobil CEO Rex Tillerson [here](#). But keep an ear out for any climate mentions, as diplomats and environmentalists [gather](#) today in Bonn, Germany, to work out the kinks of the Paris climate agreement. Greens have hit Pompeo as a climate science doubter, while others like Competitive Enterprise Institute's Myron Ebell have said the Kansas Republican will be a "forceful advocate" of Trump's decision to exit the Paris accord.

A PENNY FOR YOUR FREETHOUGHT CAUCUS: Democratic Reps. [Jared Huffman](#), [Jamie Raskin](#), [Jerry McNerney](#) and [Dan Kildee](#) launched the Congressional Freethought Caucus on Monday "to promote sound public policy based on reason, science, and moral values, protect the secular character of our government, and champion the value of freedom of thought worldwide." In a [statement](#), Huffman said the caucus "will help spark an open dialogue about science and reason-based policy solutions."

PAY THE PRICE: The New York Independent System Operator and state policymakers released [a draft plan](#) on Monday to price carbon as part of the electric system, [Pro New York's Marie French](#) reports. The move comes as an early step toward addressing the impact of state subsidies for renewables and nuclear power on the competitive market. "Under the proposal, a social cost of carbon set by state regulators would be added on to regional energy prices," Marie writes. Read [more](#).

MAIL CALL! A coalition of more than 160 groups sent a letter to Interior Secretary Ryan Zinke on Monday in opposition to the department's [proposal](#) to rescind the "blanket rule" the U.S. Fish and Wildlife Service used to extend protections for endangered species. Read the [letter](#).

— **Oregon Sens. [Ron Wyden](#) and [Jeff Merkley](#)** and Reps. [Earl Blumenauer](#), [Peter DeFazio](#), [Suzanne Bonamici](#) and [Kurt Schrader](#) sent a letter Monday to Office of Management and Budget Director Mick Mulvaney and Assistant Army Secretary R.D. James., requesting federal officials support a flood protection feasibility study for Portland. Read it [here](#).

MOVER, SHAKER: The White House is expected to tap California agriculture attorney Michael Stoker to lead EPA's San Francisco-based Region 9 office, [sources tell E&E News](#). The regional office is the only one to which Trump has not appointed a leader.

A NEW LOOK: Trade association the American Exploration & Production Council is launching today a [new website](#) and [Twitter](#) and [Facebook](#) accounts. The new website will include videos, fact sheets, info-graphics and issue pages.

QUICK HITS

— Utilities, oil interests clash over EV policy at conservative policy summit, [Utility Dive](#).

— Contura, Alpha to merge, creating largest U.S. met coal producer, [Reuters](#).

— Blankenship's mine took this man's son, brother and nephew. Now Blankenship wants his vote, [Huffington Post](#).

— In cities v. fossil fuels, Exxon's allies want the accusers investigated, [InsideClimate News](#).

— Australia investing \$377 million to protect Great Barrier Reef, [NPR](#).

HAPPENING TODAY

8:45 a.m. — GreenTech Media holds [Solar Summit](#), San Diego

10:00 a.m. — CSIS Energy & National Security Program discussion on carbon pricing, 1616 Rhode Island Ave NW

THAT'S ALL FOR ME!

To view online:

<https://subscriber.politicopro.com/newsletters/morning-energy/2018/05/how-the-swamp-could-overtake-west-virginias-primary-197520>

Stories from POLITICO Pro

Lobbyists fuel lobbyist-turned-'outsider' Senate candidate Back

By Theodoric Meyer | 05/01/2018 05:00 AM EDT

West Virginia Attorney General Patrick Morrisey has gone a notch above pledging to "drain the swamp" during his Senate campaign. "Let's not just change Washington; let's blow it up," Morrisey says in an early TV ad, as he drops a mountain on the Capitol dome.

But Morrisey's self-described "outsider" rhetoric cloaks an insider record: Before he was elected attorney general, Morrisey spent eight years as a Washington lobbyist, and the influence industry has fueled his campaign with hundreds of thousands of dollars in contributions. Morrisey's wife is also a lobbyist, and their work in D.C. has been the subject of unforgiving attacks from both of Morrisey's opponents in the Republican Senate primary.

"Morrisey got filthy rich in the swamp lobbying for special interests," the narrator says in one of Rep. Evan Jenkins' commercials.

Morrisey has weathered the attacks, leading the field or running a close second in recent public polls of the Republican primary to take on Democrat Joe Manchin, one of the most vulnerable senators up for reelection this year. The race has attracted national attention as Washington Republicans attempt to derail the candidacy of Don Blankenship, the former coal-mining executive who spent a year in prison for his role in a mine explosion that killed 29 men. But next week's primary will also test whether GOP voters are willing to send a former lobbyist to Washington, despite President Donald Trump's vow to curb K Street's influence.

"It's going to be challenging, because the word 'lobbyist' has such negative connotations," said Cam Savage, a Republican operative who helped run Sen. Todd Young's (R-Ind.) successful 2016 campaign against former Democratic Sen. Evan Bayh, whose work for a Washington law and lobbying firm hindered his campaign.

While Morrisey has tried to deflect attention away from his lobbying past, he has embraced it behind the scenes. Morrisey's campaign raised more than \$250,000 from more than 200 current and former registered lobbyists through March 31, according to a POLITICO review of campaign finance records — accounting for nearly 20 percent of his individual donations.

Morrisey has raised even more from corporate and lobbying firm PACs, as well as from people who aren't registered lobbyists but clearly work in Washington's influence industry, such as former Rep. Mike Ferguson (R-N.J.), who heads BakerHostetler's federal policy team but isn't registered as a lobbyist. Of the \$250,000, roughly \$167,000 of it comes from lobbyists who are currently registered.

Many of Morrisey's lobbyist contributors work for health care and pharmaceutical interests, which Morrisey represented during his own years on K Street. They include Rodger Currie, the top lobbyist for Pharmaceutical

Research and Manufacturers of America, the powerful trade group for drug companies, who wrote Morrissey's campaign a \$2,000 check in December.

Former Rep. David Jolly (R-Fla.), a former lobbyist elected in 2014, said his lobbying background "was definitely an issue that my opponents tried to use to define me" in the race. He was able to overcome those attacks, he said, because he hadn't lobbied for clients that voters found objectionable.

Morrissey represented about 30 clients during his time at two Washington firms, Sidley Austin and King & Spalding, including big pharmaceutical companies such as Bayer, Novartis and Novo Nordisk. If Jolly had represented such clients, he said, he might have had a tougher race.

"These are very fair and legitimate questions," Jolly said.

Morrissey has shied away from discussing his lobbying days, instead casting himself as an outsider and conservative in contrast with Jenkins, who used to be a Democratic state legislator.

Morrissey refused to say the word "lobbyist" during a debate last week, even as Jenkins and Blankenship attacked him for lobbying for the pharmaceutical industry — a sensitive subject in a state that's struggling to combat an opiate crisis partly fueled by drug distributors. Asked by the moderators at the end of the debate to clear up a misconception about himself, Morrissey said only that he'd "never worked on opiate issues in the private sector."

Morrissey's campaign website uses similar language, describing him as a former "health care attorney in the private sector."

Jenkins, who's facing Blankenship and Morrissey in the three-way race for the nomination, has raised far less from K Street, even though, as a sitting congressman, he has plenty of opportunity to mingle with lobbyists, too.

A review of Jenkins' campaign finance reports turned up only 10 current and former lobbyists who had given a combined \$20,000 to his campaign since he filed to run last May. Four of them are currently registered. Jenkins has raised much more than Morrissey from corporate PACs: about \$136,000 to Morrissey's \$86,000, according to a POLITICO analysis.

Morrissey's campaign declined to make him available for an interview.

"Patrick Morrissey served as a law partner and practice group co-chair at two of the largest law firms in the country, focusing his practice on health care regulatory matters, legislative issues, compliance, fraud and abuse, administrative law, investigations, and solving client problems," Nachama Soloveichik, a Morrissey campaign spokeswoman, said in an statement.

Preeya Noronha Pinto, a partner at King & Spalding who lobbied alongside Morrissey and gave his campaign \$500 last year, said much of their work involved meeting with administration officials and, occasionally, members of Congress in an effort to get Medicare, Medicaid and other government health care programs to cover new drugs and medical devices developed by their clients. She said she hadn't seen the ad in which Morrissey drops a mountain on the Capitol, but she wasn't surprised he was running a campaign critical of Washington.

"I think everybody in a certain respect, even if they've worked here for years, thinks that D.C. is dysfunctional and there's a lot of room for improvement," Pinto said.

Morrissey's wife, Denise Henry Morrissey, has also been the subject of attacks based on her lobbying work.

"His wife's firm lobbies for Planned Parenthood," the narrator charges in one of Blankenship's TV ads. "The Morrisseys won't stop drug abuse or abortions by lobbying for drug companies and abortion clinics."

Soloveichik, the Morrissey campaign spokeswoman, said Denise Morrissey would stop lobbying if her husband were elected to the Senate. But she declined to say whether Denise Morrissey would give up her stake in Capitol Counsel, a top Washington firm in which she owns a 15 percent stake.

Denise Morrissey agreed to an interview with POLITICO last week but later stopped responding to emails and phone calls.

Savage, the Republican operative who worked as a consultant on Young's campaign in 2016, said it was possible to parry lobbying attacks — but only with willingness to answer questions about it.

Savage managed former GOP Sen. Dan Coats' comeback campaign in Indiana in 2010, when he won back his old seat in 2010 after working as a lobbyist. Savage credited Coats' victory, in part, to his willingness to be forthcoming about his lobbying work.

"The attacks after that kind of fell flat, to be honest with you," Savage said.

Kevin Robillard contributed to this report.

To view online [click here](#).

[Back](#)

Blankenship slams 'Cocaine Mitch' in anti-McConnell ad [Back](#)

By Alex Isenstadt | 04/30/2018 06:23 PM EDT

West Virginia Senate hopeful Don Blankenship is intensifying his offensive against Majority Leader Mitch McConnell, calling him "Cocaine Mitch" in a new TV ad released just more than a week until the Republican primary.

"One of my goals as U.S. senator will be to ditch Cocaine Mitch," Blankenship says toward the end of the [spot](#), which comes as polls show the coal baron falling behind his more mainstream opponents.

Blankenship, who spent a year in prison following the 2010 explosion at his Upper Big Branch Mine that killed 29 workers, offers no context for the jab. But he may be referring to a 2014 [report](#) in the liberal Nation magazine that drugs were once found aboard a shipping vessel owned by the family of McConnell's wife, Transportation Secretary Elaine Chao.

Blankenship has gone after McConnell in startlingly personal ways. During a recent interview with POLITICO, Blankenship said McConnell "has a lot of connections in China," and that Chao is "from China, so we have to be really concerned that we are in truth" putting America's interests first.

A McConnell representative did not respond to a request for comment.

With the May 8 primary fast approaching, Blankenship has launched a slash-and-burn campaign targeting the Senate GOP leader. Blankenship's offensive comes as polls show him falling behind GOP Rep. Evan Jenkins and state Attorney General Patrick Morrisey in the primary.

McConnell's political operation has moved aggressively to block Blankenship's path. Operatives close to the majority leader, convinced that Blankenship would lose to Democrat Joe Manchin in the November general election, have launched a super PAC that has spent about \$1.3 million on TV ads attacking the coal baron.

One ad from Mountain Families PAC describes Blankenship as a "convicted criminal," who lived a lavish lifestyle while ignoring mine safety laws.

"Don Blankenship was about the money," the spot concludes. "West Virginia families paid the price."

To view online [click here](#).

[Back](#)

Blankenship slams 'Cocaine Mitch' in anti-McConnell ad [Back](#)

By Alex Isenstadt | 04/30/2018 06:23 PM EDT

West Virginia Senate hopeful Don Blankenship is intensifying his offensive against Majority Leader Mitch McConnell, calling him "Cocaine Mitch" in a new TV ad released just more than a week until the Republican primary.

"One of my goals as U.S. senator will be to ditch Cocaine Mitch," Blankenship says toward the end of the spot, which comes as polls show the coal baron falling behind his more mainstream opponents.

Blankenship, who spent a year in prison following the 2010 explosion at his Upper Big Branch Mine that killed 29 workers, offers no context for the jab. But he may be referring to a 2014 report in the liberal Nation magazine that drugs were once found aboard a shipping vessel owned by the family of McConnell's wife, Transportation Secretary Elaine Chao.

Blankenship has gone after McConnell in startlingly personal ways. During a recent interview with POLITICO, Blankenship said McConnell "has a lot of connections in China," and that Chao is "from China, so we have to be really concerned that we are in truth" putting America's interests first.

A McConnell representative did not respond to a request for comment.

With the May 8 primary fast approaching, Blankenship has launched a slash-and-burn campaign targeting the Senate GOP leader. Blankenship's offensive comes as polls show him falling behind GOP Rep. Evan Jenkins and state Attorney General Patrick Morrisey in the primary.

McConnell's political operation has moved aggressively to block Blankenship's path. Operatives close to the majority leader, convinced that Blankenship would lose to Democrat Joe Manchin in the November general election, have launched a super PAC that has spent about \$1.3 million on TV ads attacking the coal baron.

One ad from Mountain Families PAC describes Blankenship as a "convicted criminal," who lived a lavish lifestyle while ignoring mine safety laws.

"Don Blankenship was about the money," the spot concludes. "West Virginia families paid the price."

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Pruitt scales back EPA's use of science [Back](#)

By Emily Holden and Annie Snider | 04/24/2018 03:17 PM EDT

Environmental Protection Agency chief Scott Pruitt announced Tuesday he would seek to bar the agency from relying on studies that don't publicly disclose all their data, a major policy change that has long been sought by conservatives that will sharply reduce the research the agency can rely on when crafting new regulations.

The unveiling of the proposed rule delivers a win to Republicans like House Science Chairman [Lamar Smith](#) (R-Texas), who unsuccessfully pushed legislation to impose the same type of change. The move also demonstrates Pruitt's persistence in pursuing President Donald Trump's anti-regulation agenda just two days before the embattled EPA chief is due to face fierce questioning from lawmakers about his hefty spending, expanded security detail and cheap condominium rental from the wife of an energy lobbyist.

At an invitation-only meeting at EPA headquarters with Smith, Sen. [Mike Rounds](#) (R-S.D.) and other supporters of the policy, Pruitt said the proposed rule was critical in ensuring that the agency was transparent about how it is making decisions to justify costly new regulations. It is the latest step Pruitt has taken to fundamentally shift the agency's approach to science.

"It is a codification of an approach that says as we do our business at the agency the science that we use is going to be transparent, it's going to be reproducible, it's going to be able to be analyzed by those in the marketplace. And those who watch what we do can make informed decisions about whether we've drawn the proper conclusions or not," Pruitt said.

Text of the proposed rule was not immediately available.

The proposal, based on legislation pushed by Smith, is intensely controversial, and scientists and public health groups say it will prevent federal regulators from enacting health and safety protections. Nearly 1,000 scientists, including former EPA career staffers, signed a [letter](#) opposing the policy sent by the Union of Concerned Scientists to Pruitt on Monday.

Their primary concern was that many of the country's bedrock air and water quality regulations are based on research that cannot disclose raw data because it includes the personal health information.

But industry has its own version of the same problem. EPA often relies on industry studies that are considered by companies to be confidential business information when determining whether new pesticides and toxic chemicals are safe to use. Internal EPA emails obtained under the Freedom of Information Act show that EPA political officials, including Nancy Beck, who became the chief of the agency's chemical safety office last year after working for years at a chemical industry lobbying group, worried that the new policy would limit the agency's ability to consider industry data or would force companies to make this proprietary data public.

"We will need to thread this one real tight!" Richard Yamada, political official who led work on the new policy wrote to Beck after she raised the concerns.

It was not immediately clear if the new proposed rule included measures to address those concerns.

Rush Holt, CEO of the American Association for the Advancement of Science, said Pruitt's changes could keep the agency from revising public health regulations as problems arise or new data comes to light.

"On the surface it sounds so innocuous or even beneficial. What could be wrong with transparency? Well it's clear to me that this is not based on an effort to be transparent. It is rather based on an effort to be just the opposite," he said.

"EPA is particularly important because when science is misused, people die," he added.

Pruitt has been discussing the new scientific policy publicly for weeks, but it only went to the White House for interagency review last week. Such swift review is very rare for the Office of Management and Budget, which often takes months to vet a new policy. At least one group, the Environmental Defense Fund, has requested a meeting with OMB officials to discuss the rule, but OMB's website shows that no meetings have been scheduled with interested groups.

Many public health studies can't be replicated without exposing people to contaminants, and environmental disasters such as the Deepwater Horizon oil spill cannot be recreated, the group said, raising intellectual property, proprietary and privacy concerns.

Pruitt's predecessor Gina McCarthy, and her air chief Janet McCabe, in an op-ed in The New York Times in March said concerns about studies are dealt with through the existing peer-review process, which ensures scientific integrity.

"[Pruitt] and some conservative members of Congress are setting up a nonexistent problem in order to prevent the E.P.A. from using the best available science," they said.

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Pruitt scales back EPA's use of science [Back](#)

By Emily Holden and Annie Snider | 04/24/2018 03:17 PM EDT

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API's Gerard to exit on an oil industry winning streak [Back](#)

By Ben Lefebvre | 01/17/2018 06:05 PM EDT

American Petroleum Institute President and CEO Jack Gerard's plan to exit the powerful trade association could signal the end an era for oil industry lobbying.

Gerard notched up a long list of achievements during his 10-year tenure, which coincided with the oil and gas boom that turned the U.S. into the world's largest energy producer. He will step down in August after deciding not to renew his contract, API announced.

Gerard took the helm at the API after leading the American Chemistry Council and the National Mining Association. And he was well compensated, receiving \$6 million in salary and other compensation as of 2015, according to the API's latest tax forms.

During his time atop API, flagging U.S. production rebounded with the advent of fracking and horizontal drilling, allowing energy producers to tap new resources in North Dakota, Appalachia and West Texas. And as overall oil output doubled to nearly 10 million barrels a day, API's membership swelled by 50 percent, to more than 600 companies.

That helped API to expand its reach, and it doled out \$9.4 million on lobbying Washington lawmakers in 2017, quadruple the amount it spent in the year Gerard took the helm.

API helped overturn the decades-old ban on oil exports, open new areas to drilling — including the Arctic National Wildlife Refuge — and win federal approval for the Keystone XL pipeline. And under Gerard, API also introduced the term that would eventually be taken up by President Donald Trump, when in 2012 it called for a "new era of American world energy dominance."

"We've taken the nation from energy scarcity to energy abundance," Gerard said of the industry at the API's annual State of American Energy address in Washington earlier this month.

But he warned at that event that it wasn't time for API to take "a victory lap," as he cited a to-do list that contained little more than continuing a yearslong fight to repeal a biofuels mandate the industry finds burdensome and streamlining the federal permitting process.

"It's hard to say API wasn't successful under his tenure," said John Northington, a former Clinton-era Interior Department official who works as an energy consultant for many API member companies, adding that it delivered much of what the industry wanted to accomplish.

Not all energy industry insiders agreed, however. Some pointed that for an organization with annual revenue of around \$250 million — much of which it spent on advertisements, including one that ran during last year's Super Bowl, or donations to Republicans — the API's influence was limited. Despite a string of recent wins, it hadn't managed to record any progress in altering the decade-old Renewable Fuel Standard for biofuels or ending restrictions under the Jones Act against foreign-flagged ships transporting fuel between U.S. ports.

"They have this ridiculous amount of money, but they don't get a lot of results," said one refining industry source who requested anonymity to discuss the association. "They don't do bad work, but for that kind of money, you expect more."

The API's ranks have also become divided over how to handle growing public concern about the oil and gas industry's role in climate change. The group in 2016 created a task force to massage the industry's environmental image and work Democrats on a potential carbon tax, a policy that drives a wedge between companies like Exxon Mobil, which has supported such a tax, and Chevron, which has opposed it.

An API spokeswoman said it was unknown whether Gerard was retiring or would join another organization. Gerard will help lead the search for a new president and CEO, the spokeswoman added.

One possible replacement for Gerard is API's current executive vice president and chief strategy officer, Marty Durbin. Durbin had been in charge of API's government affairs before departing to become head of the lobby group America's Natural Gas Alliance, which subsequently merged with API.

Other names floated by industry insiders as potential candidates included Mike Sommers, a former chief of staff for former House Speaker John Boehner, now CEO of the American Investment Council; Karen Harbert, head of the U.S. Chamber of Commerce's Global Energy Institute; and former Sen. Blanche Lincoln, an Arkansas Democrat.

An API spokeswoman did not comment on possible candidates.

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Sources: API expected to tap Sommers as new chief [Back](#)

By Emily Holden and Eric Wolff | 04/30/2018 04:33 PM EDT

The American Petroleum Institute is expected to tap Mike Sommers, the head of a private equity trade group who worked as a top aide to former House Speaker John Boehner, to replace Jack Gerard at the helm of the powerful oil and gas industry lobby group, according to two sources.

Gerard announced his retirement earlier this year after a decade at the helm of the API, where he notched up a long list of achievements including overturning the decades-old ban on crude oil exports. He will step down in August.

API did not reply to a request for comment.

The oil and gas industry has so far gotten strong support from the Trump administration, which has moved to open the Arctic National Wildlife Refuge to exploration, is considering making wide swathes of coastal waters available to the industry, and last week said it would roll back some Obama offshore drilling rules.

But API has urged the White House to scrap its steel and aluminum tariffs, and to keep core provisions of NAFTA in place as it negotiates an update to the trade agreement.

Sommers, who was Boehner's chief of staff, has led the American Investment Council for two years, a position that kept him close to Arclight Capital Partners, The Blackstone Group, EnCap Investments and other firms that have invested heavily in energy projects. He also served as an aide to former President George W. Bush in 2005 at the National Economic Council working on agriculture, trade and food policy.

Barry Worthington, CEO of the United States Energy Association, which brings together public and private organizations, corporations and government agencies, said he'd been told Sommers would succeed Gerard.

"Jack Gerard is going to be a tough act to follow," he said.

Gerard was also one of the best-paid lobbyists in Washington, D.C. He received \$5 million in direct compensation from API, plus another \$1.2 million in perks in 2015, according to the group's latest IRS forms.

Marianne Levine and Ben Lefebvre contributed to this report.

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Trump grants key U.S. allies an extra month of tariff relief [Back](#)

By Megan Cassella | 04/30/2018 05:57 PM EDT

President Donald Trump has decided to extend by one month a temporary exemption from steel and aluminum tariffs for Canada, Mexico and the European Union, the White House announced Monday evening.

The move gives key allies — and three of the U.S.' four largest trading partners — until June 1 to reach some sort of deal with the Trump administration to avoid duties of 25 percent on steel and 10 percent on aluminum exports sent to the United States. The tariffs had been set to take effect at 12:01 a.m. Tuesday if Trump had not moved to extend the deadline.

The administration has also reached preliminary agreements with three other countries that had initially been granted a temporary exemption — Argentina, Brazil and Australia — allowing them to escape the duties as details are finalized over the next 30 days, the White House said. Trump did not set a deadline for those details to be worked out but said he would consider reimposing the tariffs if the agreements are not finalized "shortly."

One other country, South Korea, had already reached a preliminary deal for a permanent exemption from the steel tariffs because it agreed to cap its exports to the U.S. at 70 percent of the average export volume over the previous three years. Trump's official proclamation said the administration will monitor the implementation and effectiveness of that quota and left room for Trump to "revisit" his decision if needed.

"In all of these negotiations, the administration is focused on quotas that will restrain imports, prevent transshipment, and protect the national security," the White House said in its declaration. "These agreements underscore the Trump administration's successful strategy to reach fair outcomes with allies to protect our national security and address global challenges to the steel and aluminum industries."

The declaration brings some clarity to a decision-making process that until the official release left key allies wondering whether they would beginning Tuesday face penalties sure to roil international markets and disrupt global supply chains. Few people inside the White House or overseas had been sure of what or even when Trump would decide.

Imposing the duties would also have affected foreign steel industries that depend on access to the U.S. market. Canada and Mexico both send more than half of their steel produced annually into the United States, while the 28 nations of the EU together serve as the largest single supplier of steel to the U.S.

Of \$29.1 billion worth of steel that the United States imported last year, \$6.2 billion came from the 28 nations of the EU and \$2.9 billion from other European countries. About \$5.1 billion came from Canada, \$2.8 billion from South Korea, \$2.5 billion from Mexico, \$1.6 billion from Japan, \$1.4 billion from Russia and just \$976 million from China.

A U.K. government spokesperson called the extension "positive" and said EU countries would continue to work to reach a permanent solution.

"We remain concerned about the impact of these tariffs on global trade and will continue to work with the EU on a multilateral solution to the global problem of overcapacity, as well as to manage the impact on domestic markets," the spokesperson said in a statement Monday night.

Although the move grants some of the United States' closest allies another month to work out a deal, it remains unclear what sort of concessions would satisfy Trump and his administration.

Commerce Secretary Wilbur Ross and other administration officials have said in recent days that countries would have to choose between either quotas or tariffs — but the EU, Canada and Mexico have said they expect a full exemption without having to agree to such restrictions.

"We're busy alienating the few friends we have left," said Bill Reinsch, a senior adviser at the Center for Strategic and International Studies. "The president clearly, on trade issues, doesn't make a distinction between the good guys and the bad guys. If you're not doing exactly what he wants, you're a bad guy by definition — and nothing else counts."

The process of deciding on the exclusions and exemptions has been chaotic since the departure of former White House staff secretary Rob Porter, who was heavily invested in trade policy and making sure that differing viewpoints were included in the decision-making process.

U.S. Trade Representative Robert Lighthizer, meanwhile, has had myriad policy questions on his plate, including the ongoing NAFTA talks and his upcoming trip to China later this week to talk trade.

With any final decision still up in the air, some nations have indicated exactly how they will retaliate if and when Trump does impose the tariffs. The European Union last month generated a list of U.S. exports ranging from peanut butter to lipstick and yachts that would face punitive 25 percent duties on their way into the European market if Brussels is not spared. The EU's list, which is valued at roughly \$3.4 billion, is largely comprised of products from Republican states and districts that would bear the brunt of the tariff impact.

At the same time, European nations have also been working among themselves and with the United States to strike a compromise. German Chancellor Angela Merkel and French President Emmanuel Macron both traveled to the White House last week to talk face-to-face about the issue with Trump, who is still toying with the decision.

Merkel and Macron both spoke over the weekend with U.K. Prime Minister Theresa May about the "vital importance" of Europe's steel and aluminum industries and pledged to work together with the rest of the EU to push for a compromise and a permanent exemption.

To that end, EU Trade Commissioner Cecilia Malmström also spoke again over the phone on Monday with Ross.

Tensions are similarly high with Canada and Mexico, who are in intensive trade negotiations with the United States to update NAFTA.

Both countries have repeatedly made clear that they expect to be granted a full, permanent exemption from the tariffs without having to agree to quotas or any other restrictions. But their temporary reprieve was contingent upon a successful completion of the NAFTA rewrite — and with that deal still at least a week away, it remains unclear whether Trump will make the exemption permanent or at least extend it on a temporary basis while negotiations continue.

For either of the U.S. neighbors, imposition of the duties would ratchet up trade tensions at a time when all three countries are working to wrap up a NAFTA negotiation that has already been technically and politically difficult.

"Obviously, Lighthizer knows very clearly our position and how we have to react if any measure is imposed," Mexican Economy Secretary Ildefonso Guajardo said Friday during a visit to Washington to talk NAFTA. "I have been very clear that in this context a quota on steel won't be the best way to go."

If the tariffs do go ultimately into effect for any of the countries involved, a key question will be whether Trump will ratchet up the pressure again after the countries inevitably retaliate, Reinsch said.

"We act, they act, that's round one. The question will be, is [Trump] then going to start round two?" he said, noting that one round of tit-for-tat is "not that unusual" but that two would be more remarkable. "I think the trade war starts in round two."

Nancy Cook and Jakob Hanke contributed to this report.

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Source: EPA draft would halt auto standards at 2021 levels, block California authority [Back](#)

By Alex Guillén | 04/27/2018 06:28 PM EDT

A draft proposal from EPA would freeze auto emissions standards after model year 2021 and seek to block California's ability to enact its own more stringent regulations, according to a source familiar with the draft.

The text of the draft is still reportedly in flux, but if ultimately finalized, it would erase half a decade's worth of the Obama administration's much-touted emissions savings, handing a major win to the oil industry. It would also set up a nasty legal fight with California that many legal experts believe the state could win.

The Los Angeles Times first reported on the draft plan today.

EPA Administrator Scott Pruitt on Thursday told a House Energy and Commerce subcommittee that he did "not at present" have any plans to try to revoke California's Clean Air Act waiver to enforce more stringent standards.

"It's important that we work together to achieve, as was indicated earlier, a national standard," Pruitt added.

Automakers successfully lobbied the Trump administration to revisit the 2022-2025 standards — although most indicated they simply wanted more flexibility to reach the ultimate emissions goals in 2025. They had complained it would be difficult to meet the Obama administration's goals that would have ultimately lifted the average fuel economy target for the nation's fleet of cars and light trucks to 55 miles per gallon by 2025.

Industry trade groups and individual automakers have also cautioned that a single national standard is preferable to a regulatory patchwork of rules.

WHAT'S NEXT: EPA reportedly will send the proposal to the White House for review in the near future. The agency is working alongside the National Highway Traffic Safety Administration, which is writing its own separate but related fuel economy rules for 2022-2025 vehicles.

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Pruitt: EPA not going after California's waiver 'at present' [Back](#)

By Anthony Adragna | 04/26/2018 12:04 PM EDT

EPA Administrator Scott Pruitt said today his agency is "not at present" attempting to undo California's special Clean Air Act waiver allowing the state to set stricter emissions levels for vehicles.

"It's important that we work together to achieve, as was indicated earlier, a national standard," Pruitt said at a House Energy and Commerce subcommittee hearing this morning. "We are working very diligently and diplomatically with California to find answers on this issue."

California officials have warned they would diligently challenge any effort by the Trump administration to go after the waiver.

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PJM to probe fuel supply vulnerabilities [Back](#)

By Eric Wolff | 04/30/2018 11:08 AM EDT

PJM Interconnection said today it would seek to identify any fuel supply vulnerabilities in its grid and design market tools to increase resilience, a move that appears designed to head off Energy Secretary Rick Perry's effort to bail out coal-fired and nuclear power plants.

PJM says in a report out today it will run models to "stress test" different parts of the grid to see if fuel security could be compromised under different circumstances. If it finds risks of fuel constraints, it would consider allowing different prices for power from generators that are better able to hedge against fuel problems.

"As is the case with reliability standards, PJM believes the most effective way to address fuel security is to define and establish fuel security criteria and then use market forces to allow all resources to compete to meet those criteria," the report says.

The report's biggest concern appears to be a grid dominated by natural gas, since cold weather can increase demand for home heating and constrain gas supplies. The report makes only one mention of renewables.

PJM has consistently opposed efforts by DOE to exercise emergency authority under either the Federal Power Act or the Defense Production Act to directly subsidize coal or nuclear power plants struggling in the face of low cost power from natural gas and renewables.

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Perry's latest bid to help coal faces uphill battle [Back](#)

By Eric Wolff | 04/25/2018 05:08 AM EDT

Energy Secretary Rick Perry's latest idea to protect coal-fired and nuclear power plants may not fare much better than his previous efforts, according to energy experts.

Perry is considering invoking the 1950 Defense Production Act to keep money-losing power plants running by designating them as crucial for national security. But that would stretch the definition of the law and almost certainly draw legal challenges — and it would hit a big hurdle in Congress, which would need to approve perhaps billions of dollars in funding to keep the plants afloat, the experts said.

At the urging of President Donald Trump, Perry has sought to keep open coal and nuclear power plants that are threatened with shutdowns amid the stagnant demand for power — and even as natural gas and renewable power sources grab a growing share of the market.

So far, Perry's had no luck. FERC earlier this year rejected his proposal to give the plants financial support, and Energy Department lawyers stymied a push last year to invoke the agency's authority under the Federal Power Act to force the plants to run.

Some experts said any attempt to use the DPA is likely to meet the same fate.

"To me, it's a tough argument to make. It's a specious argument on its surface that seems like a perversion of the intended use of the Defense Production Act," said Tom Hicks, a former acting undersecretary of the Navy under

former President Barack Obama and now a principal at the advisory firm The Mabus Group. "Defense Production Act is on the vanguard of the need for resources, not on the back end for an industry being challenged by economic forces."

But the effort has been a priority for Trump and Perry, who sees saving coal-fired power generation as vital to U.S. security, according to a source familiar with the conversations on the issue.

The Cold War-era law grants the federal government powerful authorities to inject cash into companies essential for national defense in order to preserve domestic supplies of key products. But DOE will have to make the case that electricity produced specifically from coal and nuclear power plants, and not other types of power, is a critical resource.

Using the act to protect the plants when there appeared to be no immediate shortage of power supplies would be a novel application that would almost certainly face legal challenge.

"If the administration uses DPA, they're going to be using it very creatively," said Ari Peskoe, director of the Electricity Law Initiative at the Harvard Law School Environmental and Energy Law Program. "They may come up with reasoning for higher rates and who's going to pay for it. Whether that will hold up, I don't know."

Perry and his staff appear to have very few viable options for bailing out coal and nuclear power, a major energy priority for Trump, who has promised to revive the coal industry. DOE has opened a comments process for interested parties to weigh in on its use of the Federal Power Act's 202(c) emergency provisions, though that would require the agency to go through FERC, which unanimously rejected a similar Perry effort in January.

The 202(c) effort has been pushed by coal magnate Bob Murray, owner of Murray Energy, and by FirstEnergy Solutions, the unit of FirstEnergy Corp. that is in bankruptcy proceedings and which expects to shut down four coal and nuclear power plants. That company asked DOE to use the emergency authority to save not only its plants, but all 85 coal and nuclear power plants in the PJM Interconnection power market.

The DPA was last used by the Obama administration starting in 2012 to help spur the biofuels industry to develop the kind of advanced biofuels that could power ships and aircraft. The government can purchase capital equipment for the cause of national security, and it can fund advertising to support the effort.

And it allows the government to become the buyer of last resort, which could put Washington on the hook to buy excess power generated by coal and nuclear plants. Technically, this electricity could only be purchased at the "cost of production," a level that in the past has been determined by a team within the Defense Department.

While no hard estimate for the cost of a DPA subsidy exists, consultants analyzing Perry's previous bailout proposal estimated costs between \$4 billion and \$10.6 billion annually.

That's a far higher level than Congress typically allocates for the DPA. It provided \$67.4 million in the omnibus passed in March, H.R. 1625 (115), down slightly from the \$76 million it provided for all projects in 2017, according to a report submitted to Congress.

And Congress — and the Republican Party — is deeply divided on using government subsidies to save these plants. Rep. David McKinley (R-W.Va.) has some allies from other coal districts for the effort, but other free market-oriented lawmakers like Rep. Pete Olson (R-Texas) say they want to see markets function unimpeded.

McKinley's staff has been in touch with DOE and the White House, as has West Virginia Sen. Joe Manchin (D).

"I think it's an emergency national concern for the national defense of our country. I think Rick Perry agrees with it, and I think the president does also," Manchin told POLITICO.

PJM has itself said the retirement of FirstEnergy's coal plants did not pose a threat to the region's power supplies, and that it had ample generation to meet demand. It has opposed any effort to mandate to require the plants to stay online.

"We believe that a market-oriented approach consistent with the American free-enterprise system offers better results than government-mandated subsidies," said PJM spokesman Jeff Shields.

Anthony Adragna contributed to this report.

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Chatty Pompeo strikes early contrast with reclusive Tillerson [Back](#)

By Nahal Toosi | 04/30/2018 06:11 PM EDT

Mike Pompeo, the new secretary of state, is leaning hard into the side of the job his predecessor seemed to hate the most: public relations.

Within hours of being confirmed last week, Pompeo took along several journalists on a trip to Europe and the Middle East, answering their questions in public and private, and appearing Sunday on ABC News' "This Week." He's planning a town hall meeting with State Department staff soon. And he may even start tweeting.

The moves are in many ways a return to tradition for a secretary of state, a high-profile position where words are the most powerful tool. But they stand in marked contrast to the man Pompeo replaced, Rex Tillerson, whose early lack of visibility caused lingering damage to his reputation inside the Trump administration and beyond.

"It signals that, unlike Tillerson, Pompeo recognizes some of the basic things he needs to do to make the State Department relevant," said Ilan Goldenberg, a former Obama-era State official now with the Center for a New American Security. "By itself, it won't make Pompeo an effective secretary of state. But not doing these things really hurt Tillerson."

On Tuesday afternoon, his first full day in Foggy Bottom itself, Pompeo will deliver a speech introducing himself to the department. Staffers and journalists won't be the only ones listening; foreign diplomats will also parse Pompeo's words carefully.

Tillerson, too, gave a well-received speech his first full day on the job. But for months afterward, he almost seemed to have taken a vow of silence.

He refused to engage reporters, didn't hold a town hall until three months in and had no social media presence. U.S. diplomats soon found themselves aimless, lacking guidance from Tillerson and his small coterie of advisers. Veteran NBC News reporter Andrea Mitchell took to loudly asking questions of a silent Tillerson during his public appearances, videos of which went viral. The department's daily press briefing, a decades-old

tradition, was put on ice for nearly two months. Under pressure, Tillerson brought it back, but in a scaled back format. Headlines asked: "Where's Rex?"

Tillerson puzzled a foreign policy establishment used to secretaries of state — including Hillary Clinton and John Kerry — who sought, rather than shunned, public attention. Many State Department staffers came to see Tillerson as isolated and aloof. And foreign leaders who concluded he was ineffectual and out of the loop engaged directly with the White House instead.

Tillerson greatly increased his visibility in the second half of his 14-month tenure, but the damage was done. Trump fired Tillerson in mid-March.

The difference between Tillerson and Pompeo might be explained, in part, by their respective backgrounds: Tillerson had previously been a taciturn CEO of ExxonMobil, Pompeo a pugnacious congressman from Kansas.

"His background as a congressman is a great asset in his current position," said Brett Schaefer, a foreign policy analyst with the conservative Heritage Foundation. "He has a great deal of experience in interacting with a broad number of people and doing so in a way that is designed to listen to their concerns and respond to them."

Pompeo has also pledged to stay in close touch with his former colleagues in Congress. Tillerson drew criticism for being slow to respond to lawmakers' requests.

And while Tillerson showed no visible interest in social media, a person familiar with Pompeo's situation said he is considering using Twitter.

David Wade, a former chief of staff to Secretary of State John Kerry, argued that a secretary of state's public words matter well beyond the Washington Beltway. "Externally, you're in a race to define the American narrative against those like Russia and China which will fill in their own narrative if you're absent," he said.

Calling Tillerson "an abysmal failure at communications both internally and externally," Wade said Pompeo "can be a good communicator, and as a politician he's more talented than his predecessor." But, he added, "all the public diplomacy in the world can't get him out from under the weight of Trump's tweets and slurs about people from the Middle East to Africa."

The timing of Pompeo's Thursday confirmation vote allowed him to attend a long-scheduled meeting of NATO foreign ministers in Brussels the next day, winning him early plaudits from others in the military alliance.

"He actually jumped on a plane just after he was sworn in and he was able to address the North Atlantic Council, the foreign ministers of NATO, just 12 hours and 34 minutes after his confirmation," NATO Secretary General Jens Stoltenberg said with admiration.

Pompeo left Washington with six journalists on his plane. On his first major overseas trip, Tillerson brought just one reporter, from the conservative Independent Journal Review.

As he continued from Brussels to Saudi Arabia, Israel and Jordan over the weekend, Pompeo picked up two more reporters. He spoke to the reporters on the plane and also took questions during news conferences on the ground.

Tillerson, by contrast, generally avoided even the reporters who — having been denied seats on his official plane — chased him around the world on commercial flights.

Shortly after he took office, Tillerson took a quick trip to Bonn, Germany, for a meeting of G-20 foreign ministers. At an appearance on the sidelines with Russian Foreign Minister Sergey Lavrov, reporters were escorted out of the room before Tillerson gave remarks. Even Lavrov was puzzled: "Why did they shush them out?" he asked.

"I'm not a big media press access person. I personally don't need it," Tillerson would later tell the IJR reporter, who traveled with him to Asia a month later.

During his 15 months as CIA director, Pompeo forged a much closer relationship with Trump than Tillerson. He is believed to have a much better sense of where the president stands, and his own, often-hawkish views appear more in line with Trump's thinking. Pompeo has also been vocal about wanting to improve morale at the State Department, where many diplomats have been distressed over Trump's attempts to slash their budget and Tillerson's unwillingness to listen to their expertise.

In a news conference in Brussels, Pompeo pointed out that he'd met with U.S. diplomats who work in the Belgian capital and that he was committed to making his department more relevant.

The diplomats, he said, "may have been demoralized, but they seemed in good spirits. They are hopeful that the State Department will get its swagger back."

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Somewhat



Neutral



Not really



Not at all

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Subject: March 27 -- Greenwire is ready

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GREENWIRE

AN E&E NEWS PUBLICATION

GREENWIRE — Tue., March 27, 2018

 [READ FULL EDITION](#)

1. EXTREME WEATHER:

Record natural disasters spur mitigation windfall in omnibus

The \$1.3 trillion omnibus spending bill President Trump signed last week includes a record amount of funding to prepare communities for future extreme weather events that scientists say are being exacerbated by the impacts of global warming.

TOP STORIES

2. POLITICS:

Move to open CRS reports spotlights agency's climate debate

3. SUPREME COURT:

Justices wary of upending rule that could affect water law

4. ENERGY POLICY:

Study finds flood of 'extreme' errors in EIA projections

POLITICS

5. INFRASTRUCTURE:

Enviros worry about precedent set by FCC regs ruling

6. EPA:

McCarthy, McCabe blast Pruitt's attack on 'secret science'

7. ENERGY EFFICIENCY:

Groups slam DOE proposal to overhaul rules

8. PEOPLE:

Carper aide joins public affairs firm

NATURAL RESOURCES

9. INTERIOR:

Outdoor recreation panel stocked with industry leaders

10. EVERGLADES:

Fla. reservoir plan aims to cut back algal blooms

11. POWDER RIVER BASIN:

Federal lease sale draws \$20M, enviro protests in Wyo.

12. PUBLIC LANDS:

FWS to open up Rocky Flats despite contamination concerns

13. FORESTS:

Greenpeace pulls out of main wood certification group

14. WILDLIFE:

Vandals disrupt research on hibernating bats in Mich. mine

15. INVASIVE SPECIES:

House mice are eating birds alive at albatross colony

LAW

16. AIR POLLUTION:

XTO agrees to fine for alleged Bakken violations

CLIMATE CHANGE

17. METHANE:

Agencies must improve emission measurements — study

18. AUTOS:

Most Americans support Obama's clean car rules — poll

ENERGY

19. PIPELINES:

Greens, Dems sound alarm on FERC's intervention policy

FEDERAL AGENCIES

20. PEOPLE:

Former 'Jeopardy' star lands at DOE

WASTES & HAZARDOUS SUBSTANCES

21. SUPERFUND:

\$1.8M EPA settlement could allow apartments at Pa. site

AIR AND WATER

22. WATER POLLUTION:

Potentially toxic algal bloom coats La.'s Lake Pontchartrain

TRANSPORTATION

23. AUTONOMOUS VEHICLES:

Ariz. governor suspends Uber testing after pedestrian death

STATES

24. WASHINGTON:

State bans Atlantic salmon farming after catastrophic escape

25. CALIFORNIA:

Flat Earther, amateur rocket scientist and future governor?

26. UTAH:

Floating boom traps trash before it can hurt waterfowl

27. DISTRICT OF COLUMBIA:

Bald eagles Mr. President and First Lady welcome egg

INTERNATIONAL

28. INDIA:

Video of elephant 'smoking' befuddles scientists

29. CHILE:

'Why Til Til again?' Tiny town groans under tons of trash

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Subject: Re: June 29 -- E&E News PM is ready

Thanks! Looks like it came out while we were talking! Will review and we can pick back up with discussion Mon. AM.
Cheers.

Sent from my iPhone

On Jun 29, 2018, at 4:19 PM, Woods, Clint <woods.clint@epa.gov> wrote:

Clint Woods
Deputy Assistant Administrator
Office of Air and Radiation, U.S. EPA
202.564.6562

From: E&E News [<mailto:eaalerts@eenews.net>]
Sent: Friday, June 29, 2018 4:12 PM
To: Woods, Clint <woods.clint@epa.gov>
Subject: June 29 -- E&E News PM is ready

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E&E NEWS PM — Fri., June 29, 2018



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The Trump administration is arguing that the Obama administration's Clean Water Rule did not successfully align itself with the vision of Supreme Court Justice Anthony Kennedy in defining which wetlands and small waterways are covered by the Clean Water Act.

THIS AFTERNOON'S STORIES

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Appeals court slams White House for delaying higher penalties

3. EPA:

Advisory board wants to review 'secret science' proposal

4. NATIONAL PARKS:

Senators propose up to \$6.5B for upkeep

5. AIR POLLUTION:

EPA proposes using CSAPR to meet 'good neighbor' obligations

6. COAL:

W.Va. labor battle site back on historic register

UPCOMING HEARINGS AND MARKUPS

7. CALENDAR:

Activity for June 25 - July 1, 2018

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E&E News PM is written and produced by the staff of E&E News. A late afternoon roundup providing coverage of all the breaking and developing policy news from Capitol Hill, around the country and around the world, E&E News PM is a must-read for the key players who need to be ahead of the next day's headlines. E&E News PM publishes daily at 4:30 p.m.

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Subject:[SPAM] First Move: Pruitt's Science Margin for Error • Coal Country Debate •
Undersea Robots Study Dead Zone

What you
need to
know to start
your day.

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Pruitt's Science Margin for Error • Coal Country Debate • Undersea Robots Study Dead Zone

By Chuck McCutcheon

Scott Pruitt drew lots of attention when he declared limits on “secret science” in policymaking. But it’s no secret to lawyers watching the EPA chief that he has no room for error in crafting the policy.

The proposed open-data policy would enable the EPA head to issue waivers, David Schultz writes in a story being published today. Environmental attorneys say the waiver provision actually makes the proposal even more vulnerable to legal challenges.

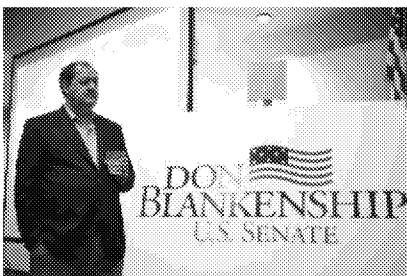
“How is EPA choosing when to waive and when not to waive?” asks Amanda Leiter, a law professor at American University in Washington. “Does that give the EPA too much discretion? Will they just be cherry-picking?”

COAL COUNTRY DEBATE: The West Virginia Republican Senate race goes

nationwide tonight, with the three top contenders squaring off in a nationally televised Fox News debate.

All three candidates want the same things for coal—to get the government out of the way, to open more mines, to burn more coal for energy, to export more coal to foreign countries, and to create more jobs at home.

The splashiest name is former coal mogul and ex-convict Don Blankenship. So far, Blankenship has concentrated on criticizing the Mine Safety and Health Administration, which he says is the real culprit for the mine disaster that landed him in jail. Blankenship wants to split MSHA into two agencies, one responsible for regulating and the other for enforcement.



West Virginia Republican U.S. Senate candidate Don Blankenship appears at a town hall campaign event in Huntington in February.
Photographer: Luke Sharrett/Bloomberg via Getty Images

Rival Evan Jenkins walks into the debate with three and a half years' experience in the House and two decades before that as a state lawmaker. If elected, he'd be a reliable vote to pare back the EPA's budget and staffing. He's worked to give money to Appalachian states to clean up abandoned mines and backs funding research to extract rare earth elements from coal.

The third candidate, state Attorney General Patrick Morrisey, shares some similarities to Scott Pruitt. Like the EPA chief when he was Oklahoma's attorney general, Morrisey sued the Obama EPA several times, and both Morrisey and Pruitt are strong believers in deregulation. Stephen Lee is watching.

OMAN DEAD ZONE: It sounds like bad science fiction: Undersea robots spent eight months exploring a marine dead zone off the coast of Oman.

But the robot research yielded scary real-life results, Matthew Kalman writes in a story being published today. Scientists found that the zone of oxygen-starved waters, mapped in the 1960s, had grown and crept closer to the coast of Oman, squeezing valuable tuna, lanternfish, and other fish into a shrinking layer of oxygen-rich water close to the surface.

Dead zones are a “disaster waiting to happen, made worse by climate change, as warmer waters hold less oxygen, and by fertilizer and sewage running off the land into the seas,” says Bastien Queste, a research fellow at the U.K.’s University of East Anglia.

OTHER STORIES WE’RE COVERING

- The National Hydropower Association continues its [Waterpower Week](#). Today’s speakers include Federal Energy Regulatory Commission Chairman Kevin McIntyre and Tim Welch, hydropower program manager for the Energy Department’s Water Power Technologies Office. Bloomberg News is covering.
- The Federalist Society is [holding a teleconference](#) on Arizona’s recent decision to eliminate legal deference to agencies in state courts. [Kimberly Robinson](#) is monitoring.
- The latest episode of Bloomberg Environment’s podcast, [Parts Per Billion](#), follows up with [Sylvia Carignan](#) on her [recent story](#) about locating a bitcoin mine at a contaminated site in New York, where General Motors once manufactured parts for its ill-fated Corvair. Could this be the Superfund program’s future?

QUOTE OF THE DAY

“Clean water is a basic right. We won’t allow a pipeline to put that at risk.”
—New York Attorney General Eric Schneiderman, [tweeting](#) about the U.S. Supreme Court’s decision not to hear an appeal from four natural gas companies seeking to build a natural gas pipeline to New York from the Marcellus Shale in Pennsylvania.

AROUND THE WEB

- The federal government [helped turn](#) Nevada rancher Cliven Bundy into an anti-public lands hero.
- Penn State researchers [are joining](#) an international effort to better understand the “doomsday glacier,” an Antarctic glacier about the size of Pennsylvania that’s at risk of collapsing and contributing significantly to global sea-level rise.
- Minneapolis [becomes](#) the 65th U.S. city to adopt an all-renewables goal.

- Pruitt's low-wattage, lawyerly demeanor [helped him deal](#) with last week's hearings in which lawmakers aggressively questioned his ethics and spending decisions.

TODAY'S EVENTS

- **All Day • Renewable Energy/Smart Grid** • The U.S. Agency for International Development holds a [forum](#) on renewable energy and smart grid suppliers in Denver as a prelude to the National Renewable Energy Laboratory's [Emerging Markets Day](#) and the NREL Industry Growth Forum.
- **10 a.m. • Carbon Pricing** • Center for Strategic & International Studies [holds forum](#) on carbon pricing.
- **2 p.m. • Pesticides and Mosquitoes** • The EPA [holds webinar](#) on how pesticide resistance testing can help manage mosquitoes.

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To: Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clint]; Shoaff, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ac16fb09cf2c44adb34a7405dc331532-JShoaff]
CC: Hockstad, Leif [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5a4fb1f8930645efa34fdfa7485bc6da-LHOCKSTA]
Subject: RE: Draft Admin. Response to SAB re: 2017 Actions & Scientific Transparency
Attachments: EDIT Draft 070518 - Admin Response to SAB re 2017 Actions + Sci Transpy cw.docx

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Attorney Client / Ex. 5

From: Woods, Clint
Sent: Wednesday, July 11, 2018 2:38 PM
To: Shoaff, John <Shoaff.John@epa.gov>
Cc: Hockstad, Leif <Hockstad.Leif@epa.gov>; Schwab, Justin <Schwab.Justin@epa.gov>
Subject: RE: Draft Admin. Response to SAB re: 2017 Actions & Scientific Transparency

John, Leif, and Justin,

Thanks again, and my apologies for the delay. Attached are a handful of edits but I think this should get the ball rolling for the office directors' review of their specific actions. John, if you wouldn't mind sending it to them later today or early tomorrow after Justin has a chance to provide comment, I'd appreciate it.

Clint Woods
Deputy Assistant Administrator
Office of Air and Radiation, U.S. EPA
202.564.6562

From: Shoaff, John
Sent: Thursday, July 5, 2018 12:29 PM
To: Woods, Clint <woods.clint@epa.gov>
Cc: Hockstad, Leif <Hockstad.Leif@epa.gov>
Subject: Draft Admin. Response to SAB re: 2017 Actions & Scientific Transparency

Clint,

With compliments to Leif, here's an updated draft response to the SAB. Included a few marginal questions and notes for your review/awareness. Please refine and share with Justin as you like and let me know how/when you'd like to also reach out to ODs/staff for feedback on the response and potential briefings and/or questions to the Board for consideration. Thanks!

John

Message

From: Bolen, Brittany [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=31E872A691114372B5A6A88482A66E48-BOLEN, BRIT]
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Subject: FW: new version
Attachments: Data Access Draft 4-23-18_ OIRA Conclusion Version revised 4 24.docx

Importance: High

Can you please confirm with Carol Ann?

From: Nickerson, William
Sent: Tuesday, April 24, 2018 12:01 PM
To: Bolen, Brittany <bolen.brittany@epa.gov>
Subject: new version

There is at least one thing we need from OGC.

Attorney Client / Ex. 5

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Subject: RE: June 29 -- E&E News PM is ready

Thanks. **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5

From: Woods, Clint
Sent: Friday, June 29, 2018 4:19 PM
To: Shoaff, John <Shoaff.John@epa.gov>; Hockstad, Leif <Hockstad.Leif@epa.gov>
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Office of Air and Radiation, U.S. EPA
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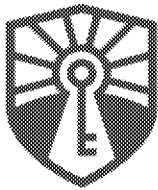
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Subject: Teleforum Starting Now: Analyzing how EPA is Addressing "Secret Science"



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April 24, 2018



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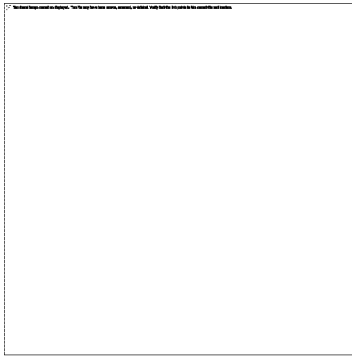
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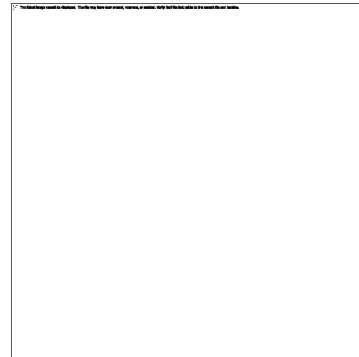
A Teleforum Sponsored by the Regulatory Transparency Project

Tuesday, April 24, 2018 | 12:00 p.m. ET



Daren Bakst

Senior Research Fellow
Agricultural Policy
The Heritage Foundation



Richard Belzer

Independent Consultant
Regulation, Risk, Economics &
Information Quality

EPA Administrator Scott Pruitt announced that his agency would no longer allow the use of "secret science" in developing federal regulations. Specifically, the agency will only use scientific studies to develop regulations when the data and methodology for those studies are made accessible to the public. Is there really a secret science or transparency problem that even needs to be addressed? If so, have there been attempts historically to correct the problem? What are the implications of excluding such studies? This presentation will provide background on this effort and discuss how transparency in government can be strengthened and better inform policymaking.

Featuring:

- **Daren Bakst**, Senior Research Fellow, Agricultural Policy, The Heritage Foundation
- **Richard Belzer**, Independent Consultant, Regulation, Risk, Economics & Information Quality
- **Moderator: Devon Westhill**, Director, Regulatory Transparency Project

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Speaker Biographies

Daren Bakst

Daren Bakst studies and writes about agriculture subsidies, property rights, environmental policy, food labeling and related issues as The Heritage Foundation's research fellow in agricultural policy.

Mr. Bakst, who joined Heritage's Roe Institute for Economic Policy Studies in May 2013, previously was a policy counsel for the U.S. Chamber of Commerce, where he focused on regulatory reform as well as food and agricultural policy. He worked for seven years at the Raleigh, N.C.-based John Locke Foundation, one of the largest state-based, free-market think tanks. As director of legal and regulatory studies there, he concentrated on property rights and environmental policy.

Mr. Bakst has appeared in or been quoted by media outlets such as The Wall Street Journal, USA Today, The Washington Times, CNN and National Review Online.

He serves on the Federalist Society's Environmental Law & Property Rights and Administrative Law & Regulation Executive Committees and was previously a member of the Energy, Environment and Agriculture Task Force of the American Legislative Exchange Council.

Mr. Bakst, who hails from West Palm Beach, Fla., received his bachelor's and master's degrees from George Washington University. A licensed attorney, he holds a law degree from University of Miami and a master of laws degree from American University.

Richard Belzer

Since 2001, Dr. Richard Belzer has been an independent consultant in regulation, risk, economics and information quality. Previously he was a visiting professor of public policy at Washington University in St. Louis and economist in the Office of Information and Regulatory Affairs in the Office of Management and Budget. He

received his Ph.D. in public policy from Harvard University (1989), Master's in Public Policy (MPP) from the John F. Kennedy School of Government (now Harvard Kennedy School) (1982), and MS and BS degrees in agricultural economics from the University of California at Davis (1979, 1980). He is a regular contributor to scholarly professions through journal peer review and service to professional societies. He was elected Treasurer of the Society for Risk Analysis (1998, 2000) elected Secretary-Treasurer of the Society for Benefit-Cost Analysis (2008, 2010, 2012). He earned multiple awards for exemplary performance at OMB, the SRA's Distinguished Service Award (2003), and the SBCA's Richard O. Zerbe, Jr. Distinguished Service Award (2017). In 1995, he was named a Fellow of the Cecil and Ida Green Center for the Study of Science and Society. In 2017, Dr. Belzer completed a 2-year term as a member of the USEPA Science Advisory Board Panel on Economy-wide Modeling. He serves as a member of the RTP Energy and Environment Working Group.

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E&E NEWS PM — Tue., June 5, 2018



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1. EPA:

Pruitt's Chick-fil-A 'opportunity' grabs Inhofe's attention

One of EPA Administrator Scott Pruitt's closest allies on Capitol Hill expressed worry over the latest ethics allegation against the agency chief.

THIS AFTERNOON'S STORIES

2. SENATE:

McConnell cancels August recess

3. APPROPRIATIONS:

Trump drops EPA, Sandy aid from cuts package

4. LEAD:

TV home renovation show draws EPA penalty

5. EPA:

Former staffers blast 'secret science' plan, rollbacks

6. NATURAL RESOURCES:

Republicans seek clarity on green group's China ties

7. FORESTS:

Trump admin working to lift roadless rule in Alaska

8. PEOPLE:

Heritage Action's Dan Holler jumps to Rubio staff

UPCOMING HEARINGS AND MARKUPS

9. CALENDAR:

Activity for June 4 - June 10, 2018

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1. CLEAN WATER ACT:

White House beefs up WOTUS repeal

The Trump administration is arguing that the Obama administration's Clean Water Rule did not successfully align itself with the vision of Supreme Court Justice Anthony Kennedy in defining which wetlands and small waterways are covered by the Clean Water Act.

THIS AFTERNOON'S STORIES

2. FUEL ECONOMY:

Appeals court slams White House for delaying higher penalties

3. EPA:

Advisory board wants to review 'secret science' proposal

4. NATIONAL PARKS:

Senators propose up to \$6.5B for upkeep

5. AIR POLLUTION:

EPA proposes using CSAPR to meet 'good neighbor' obligations

6. COAL:

W.Va. labor battle site back on historic register

UPCOMING HEARINGS AND MARKUPS

7. CALENDAR:

Activity for June 25 - July 1, 2018

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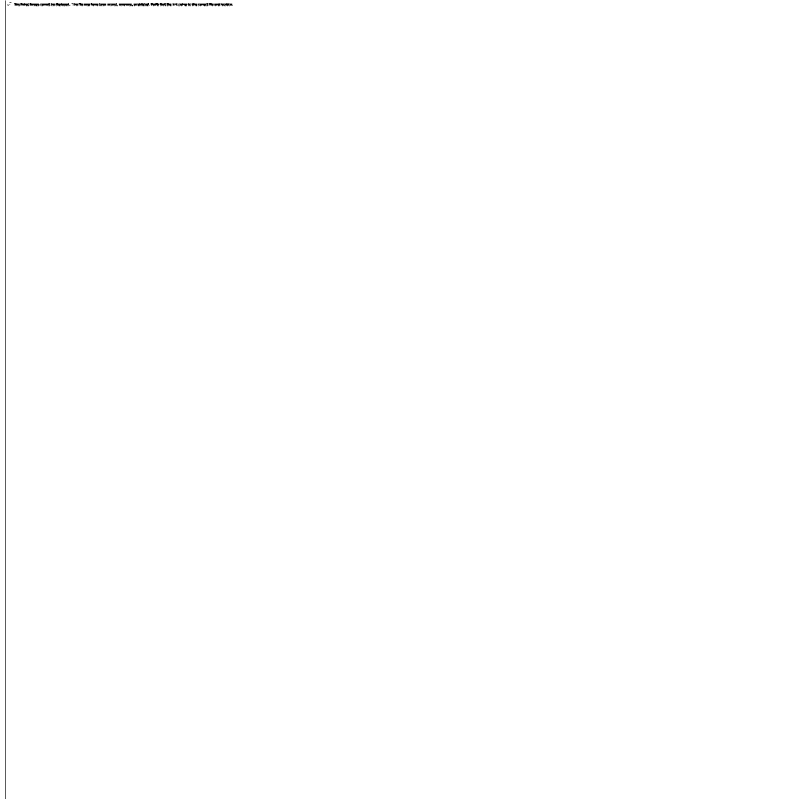
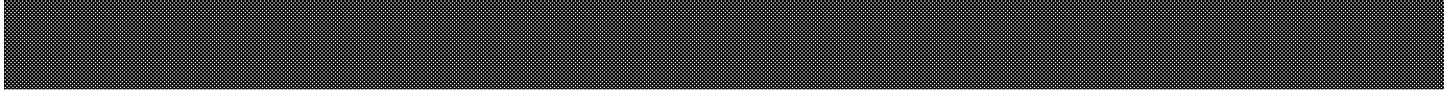
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Subject: Morning Consult Energy: California Said to Consider Decoupling Auto Emissions Rules from Federal Standards



By Sei Chong

Top Stories

- If the Environmental Protection Agency eases Obama-era rules on vehicle greenhouse gas emissions, California is likely to push back by decoupling the state's standards from the federal rules and has begun informing the nine states that have adopted California's standards of the possibility, two people familiar with the matter said. If California goes its own way on emissions standards, it

would require automakers to adjust to different efficiency regulations around the nation. (Bloomberg)

- The city council of Jacksonville, Fla., is expected to approve today fast-tracked incentives for JinkoSolar (U.S.) Inc., a Chinese solar panel maker that wants to open a plant in the city. JinkoSolar would be the first Chinese company to set up a factory in the United States after President Donald Trump imposed tariffs on imported solar panel equipment in January. (Jacksonville Daily Record)
- U.S. District Judge Brian Morris in Great Falls, Mont., has ordered Bureau of Land Management officials who are involved in regional planning for the Powder River Basin, which supplies 40 percent of the nation's coal, to consider reducing coal mining as a way to fight climate change. The judge, who issued the ruling Friday, told the government and environmental groups to work together on additional planning in the region but declined environmentalists' request to halt mining. (The Associated Press)

Chart Review

Coal tycoon governor Jim Justice uses loophole to leave mines and workers idle

Climate Home News

Events Calendar (All Times Local)

TUESDAY

Sustainable Water Management Conference	7 a.m.
California Solar Power Expo	7 a.m.
American Fuel & Petrochemical Manufacturers' International Petrochemical Conference	8:30 a.m.

EPA listening session on proposed repeal of Clean Power Plan	9 a.m.
--	--------

American Association of Petroleum Geologists Global Super Basins Leadership Conference	6 p.m.
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WEDNESDAY

American Association of Petroleum Geologists Global Super Basins Leadership Conference	6 a.m.
--	--------

California Solar Power Expo	8 a.m.
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Sustainable Water Management Conference	8 a.m.
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U.S. Energy Association brown bag lunch on integrating intermittent renewables	12 p.m.
--	---------

EESI and National Association of State Energy Officials briefing on public/private drive toward resilient buildings	12 p.m.
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THURSDAY

American Association of Petroleum Geologists Global Super Basins Leadership Conference	6 a.m.
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FRIDAY

No events scheduled

Morning Consult Report: The Future of Retail

Get insights into how consumers are reacting to changes in the retail industry, and what they're looking for in the future.

General

California's Ready to Retaliate If Trump Cuts Auto Rules, Sources Say

Ryan Beene and John Lippert, Bloomberg

As the Trump administration begins to dismantle Barack Obama's ambitious auto efficiency regulations, California is said to be poised to retaliate by doing something that automakers have feared: de-coupling the state's rules with those set in Washington.

EPA Plan Would Discount Health Benefits of Reducing CO2 Emissions

Niina Heikkinen, E&E News

U.S. EPA's "secret science" plan could reduce the health benefits that come along with controlling carbon emissions, scrambling previous calculations that gave weight to saving lives and avoiding heart attacks. The most immediate consequence of the potential policy—which would prevent the agency from using some scientific studies in its rulemaking—could fall on EPA's efforts to rewrite the Clean Power Plan, according to proponents and critics of EPA's proposal.

The E.P.A. Says It Wants Research Transparency. Scientists See an Attack on Science.

Lisa Friedman, The New York Times

The Environmental Protection Agency is considering a major change to the way it assesses scientific work, a move that would severely restrict the research available to it when writing environmental regulations.

Unlike those in the resistance, certain career officials' stars have risen under Trump

Juliet Eilperin and Dino Grandoni

He's known by some as the cicada. Randal Bowman has toiled 32 years at the Interior Department. A proponent of limited federal regulation, he goes underground during Democratic administrations.

Sources: Zinke tells employees diversity isn't important

Sara Ganim, CNN

Several employees at the Interior Department have told CNN that Secretary Ryan Zinke repeatedly says that he won't focus on diversity, an apparent talking point that has upset many people within the agency. Three high-ranking Interior officials from three different divisions said that Zinke has made several comments with a similar theme, saying

"diversity isn't important," or "I don't care about diversity," or "I don't really think that's important anymore."

Oil holds above \$70 as geopolitics eclipses supply outlook
Amanda Cooper, Reuters

Oil rose on Tuesday, holding above \$70 a barrel for a third day, supported by concerns that tensions in the Middle East could lead to supply disruptions, although with global output rising fast, investors remained cautious.

Oil and Natural Gas

Shell sketches future with drastically fewer fossil fuels
Amy Harder, Axios

Coal, oil and natural gas would plummet within the next couple of decades in a new report Royal Dutch Shell released Monday, envisioning a future where world leaders cut greenhouse gas emissions as laid out in the 2015 Paris climate deal.

Deepwater Oil Starting to Hold Its Own With Shale, Chevron Says
David Wethe, Bloomberg

Chevron Corp. is studding the ocean floor with heavy-duty pumping gear as part of an effort to make deepwater oil discoveries competitive with shale.

Devon Energy eyes more asset sales to simplify portfolio
Ernest Scheyder, Reuters

U.S. oil producer Devon Energy Corp said on Monday it was looking to sell even more assets than previously announced in order to focus its portfolio on three shale regions.

Inside the Tax Bill's \$25 Billion Oil Company Bonanza
Antonia Juhasz, Pacific Standard

Last month, during a retreat in West Virginia, congressional Republicans set out their 2018 party goals. Their primary objective is to hold onto their majorities in the House of Representatives and the Senate, and the key mechanism for doing so is to ride the coattails of the Tax Cuts and Jobs Act.

Foreign Trade Houses Grab Dominant Share of U.S. Crude Exports

Sarah McFarlane, The Wall Street Journal

A handful of international trade houses are dominating the buying and selling of U.S. crude exports, two years after Washington lifted its ban on sending oil abroad.

Utilities and Infrastructure

MVP contractor tied to pipeline cited for environmental violations

Kate Mishkin, Charleston Gazette-Mail

A construction company working on a natural gas pipeline that recently was accused of violating environmental standards also will work on the Mountain Valley Pipeline. Precision Pipeline, a Wisconsin-based construction company, will work on the Mountain Valley Pipeline, which is still in its nascent stages. It has been working on the Rover Pipeline, which is nearing completion.

Appeals court rejects bid for pipeline restrictions

Alex Rose, Delaware County Daily Times

The Commonwealth Court of Pennsylvania has rejected an appeal from six Middletown residents seeking the ability to enforce a local ordinance against Sunoco in the construction of the Mariner East 2 pipeline.

Renewables

When incentives are in hand, JinkoSolar to move quickly

Karen Brune Mathis, Jacksonville Daily Record

JinkoSolar (U.S.) Industries Inc.'s plans for its Jacksonville solar-panel plant could unfold quickly if City Council signs off Tuesday, as expected, on fast-tracked legislation for incentives.

How California Taught China to Sell Electric Cars

Mark Chediak et al., Bloomberg

A liberal bastion and an authoritarian government agree on how to help bring about the future of cars, with help from the state.

China draws up plans to promote standardization in electric vehicles

David Stanway, Reuters

China said it will work to improve levels of standardization in its electric vehicle industry - a sector it is aggressively promoting to help combat smog and to position the country as a leading car-making giant in the future.

Coal

Judge: Less mining must be studied for No. 1 US coal region

Mead Gruver, The Associated Press

U.S. government officials who engage in regional planning for an area of Wyoming and Montana that supplies 40 percent of the nation's coal must consider reducing coal mining as a way to fight climate change, a judge has ruled.

Half of All U.S. Coal Plants Would Lose Money Without Regulation

Joe Ryan, Bloomberg

It's long been clear that U.S. coal plants are struggling. A study released Monday shows how much - concluding that barely half earned enough revenue last year to cover their operating expenses.

Nuclear

ITER nuclear fusion project avoids delays as U.S. doubles budget

Geert De Clercq, Reuters

The United States has agreed to double its planned 2018 budget contribution to the ITER project to build a prototype nuclear fusion reactor, avoiding delays to the international project this year, its director said on Monday.

Climate

Meeting Paris Agreement Targets Will Take Massive Cuts in Emissions

Brian K Sullivan, Bloomberg

Meeting the Paris accord's temperature targets will take massive cuts to greenhouse gas emissions within 15 years, but won't require them to be reduced to zero, according to a new study published Monday in the journal Nature Climate Change.

Runaway Arctic Ice Menaces Oil Rigs and Shipping as the Planet Warms

Bob Berwyn, InsideClimate News

As the planet warms, giant icebergs and sea ice that once would have remained trapped in the frozen Arctic are moving southward faster and more frequently, menacing shipping and oil and gas drilling operations.

These Maps Show How Climate Change Will Mess Up The Weather Where You Live

Ben Schiller, Fast Company

If you like the weather where you live, but are worried it's not going to be the same as climate change wreaks havoc on meteorological systems, there's now a way to know where you should be planning to move. The Climate Ex map shows the climatic similarities between different places, as well as the projected climate changes for those places over time.

Hotting up: how climate change could swallow Louisiana's Tabasco island

Oliver Milman, The Guardian

Avery Island, a dome of salt fringed by marshes where Tabasco sauce has been made for the past 150 years, has been an outpost of stubborn consistency near the Louisiana coast. But the state is losing land to the seas at such a gallop that even its seemingly impregnable landmarks are now threatened.

China meets 2020 carbon target ahead of schedule: Xinhua

David Stanway, Reuters

China met its 2020 carbon intensity target three years ahead of schedule last year, the official Xinhua news agency reported on Tuesday, citing the country's top climate official Xie Zenhua.

Opinions, Editorials and Perspectives

The EPA Cleans Up Its Science

Steve Milloy, The Wall Street Journal

The Environmental Protection Agency will no longer rely on "secret" scientific data to justify regulations, Administrator Scott Pruitt announced last week. EPA regulators and agency-funded researchers have become accustomed to producing unaccountable, dodgy science to advance a political agenda.

Scott Pruitt's Attack on Science Would Paralyze the E.P.A.

Gina McCarthy and Janet G. McCabe, The New York Times

Scott Pruitt, the administrator of the Environmental Protection Agency, has announced that he alone will decide what is and isn't acceptable science for the agency to use when developing policies that affect your health and the environment.

Research Reports

Predicting unpredictability

Steven J. Davis, Nature

Analysts and markets have struggled to predict a number of phenomena, such as the rise of natural gas, in US energy markets over the past decade or so. Research shows the challenge may grow because the industry - and consequently the market - is becoming increasingly volatile.

Enhancing Canada's Climate Commitments: Building on the Pan-Canadian Framework

Jeffrey Rissman et al., Energy Innovation and Pembina Institute

The Pembina Institute and Energy Innovation collaborated to create the Canada Energy Policy Simulator, a versatile, free and open-source computer model evaluating the impacts of 50 policies on pollutant emissions, cash flows, human lives saved, and more. Our analysis finds that even if the PCF is fully implemented, 2030 emissions will exceed Canada's goal by 161 million metric tons (MMT), a gap 3.7 times larger than the 44 MMT shortfall predicted by Canada's government.



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Focus of discussion is to outline desired response so we can help pull together an updated draft for your (Clint's) review as well as next steps with templates & SAB process fwd.

Relevant materials are appended for ease of reference/discussion which includes: draft/deliberative responses to SAB (first two Word files), incoming SAB ltrs to the Admin for Spring and Fall 2017 actions (3rd ltr on Scientific Transparency still pending), and the template for Spring 2018 with relevant action list/table below.

We'll call you Leif.

Thanks.

John

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

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The Washington Post

Analysis on the energy and environment

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The En

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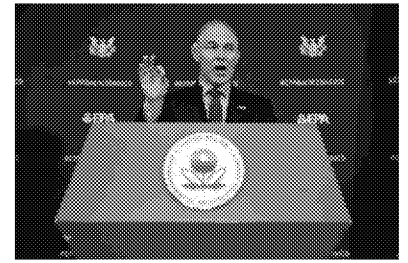
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Why Scott Pruitt's decision



BY DINO GRANDONI
with Paulina Firozi

THE LIGHTBULB



Environmental Protection Agency Administrator

Here is a reminder that Scott Pruitt
is still charging forward with

The EPA chief declared Monday
will be considered “carbon neutral”
reported Monday evening.

Trees are largely composed of carbon.
Ideally, as the trees grow back, they pull
out of the atmosphere. **So the forest is**
considered a renewable and

“Today’s announcement grants recognition
to the carbon neutrality of forests in the state of
Georgia.



Adminis
@EPASco

It's been a great
carbon neutrality
& water quality,
daily lives. This
bit.ly/2JJTcbs

2:01 PM - Apr 23

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But the notion that biomass is
that once forests are cleared
back as planned.

“Like so much else from Pruitt and his administration,” said Sami Yassa, who opposes burning wood for electricity.

If the forests do grow back, why are there complications:

- **While carbon dioxide emissions from trees take decades or more to offset their growth** — say, a forest fire in the West could take decades to regrow.
- **Wood products are often exported** — for instance, to Europe, which has declared wood pellets carbon neutral, despite their greenhouse gas emissions.
- **Even if forests grow back, they may not be the same wooded habitat for decades.**

The EPA’s own Science Advisory Board said in the agency’s policy memo released last week that “it is not scientifically valid to claim that the board said any such determination.”

William Schlesinger, president of the National Science Foundation and a Science Advisory Board member, said the subject, “he said — by making a determination that ‘it is not scientifically valid to claim that the board said any such determination.’” “We’re supposed to provide an opinion on what’s our role?”

Why does the forest products industry say carbon neutral could make it easier to burn wood for electricity?

deregulating biomass carbon dioxide emissions under the same provisions in the Clean Air Act.

“Recognizing that forest biomass energy production will encourage landowners to reforest, creating long-term paying jobs well into the future, the House Committee on Energy of Forest Owners, said in a statement.

Why do conservationists care? The House Committee on Energy Clean Power Plan, or something like that, would mean that biomass energy would be treated like so-called “dispatchable” carbon sources of electricity.

And Congress? Lawmakers, including Sen. Al Franken, said it was spurred by the May 2015 report from the U.S. Energy and Agriculture department that biomass is “one of the most promising” sources of renewable energy.

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POWER PLAYS



The Capitol Hill condo building where Environment

— Dems raise “troubling” que

letter calling on House Oversight
information about Pruitt’s securit

In the letter, the Democrats cite c
communications, which contradic
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preapproval, and were done out
Thomas R. Carper (Del.) and Sh
Gerald E. Connolly (Va.) and Do

Republicans are calling for he

(Ark.).and Pruitt ally James M. In
and Public Works Committee on
on the committee think it’s appro
his office is concerned,” Inhofe s

Pruitt *is* heading to the Capito

Commerce Subcommittee on En
subcommittee in the afternoon.

The hearings are ostensibly al

questions about his spending an

— like granting high raises to favor his own finances. It's the first time Pruitt v



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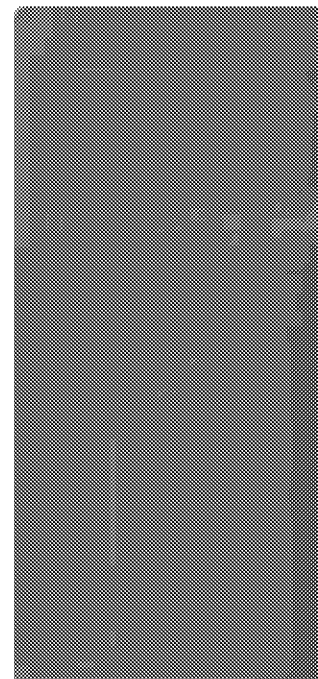
— White House press secretary
White House's ongoing support a

himself has not yet soured on the regulations.

"We're reviewing some of those implementing the President's policies are something we are monitoring."

White House officials are wary of Pruitt, Bloomberg News reports. "His support may be waning," the report adds.

— Environmentalists are trying to stop Pruitt, Fox & Friends released a new ad on "Fox & Friends" about a condo deal with a lobbyist's wife.



Friends

@foe_us

Trump has been

So today we pu

@foxandfriends

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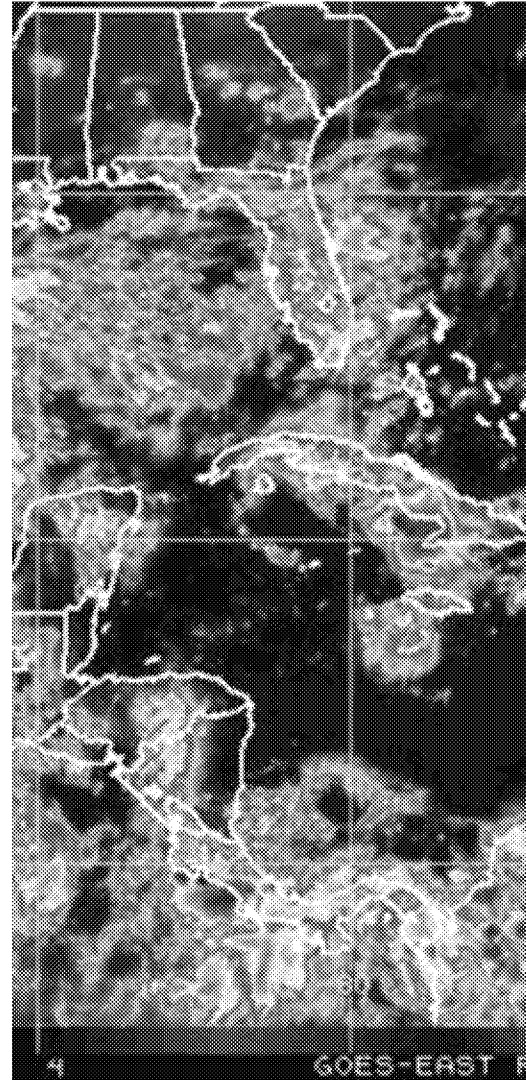
— **Back to EPA policy:** After we
expected to announce a new sci
into consideration when writing n
new rule will allow the EPA to

Why? Conservatives want to lim
transparency. House Science Co
requirement through legislation,

However, many scientists, along with health and environmental studies, have found information the EPA could take into account. Sensitive health information from studies on agricultural chemicals are harming people.

— **Meanwhile, another policy change.** The administration cannot delay pending a decision. The U.S. Circuit Court of Appeals did not take the case." Instead, it issued a one-day order. The Safety Administration on triple fine.

— **Changing targets:** Senate Democrats. Pruitt, began a series of speeches. His influence on Trump administration. He came after Sens. Sheldon Whitehouse (Nev.), Elizabeth Warren (Mass.). He wrote a letter to President Trump calling for a new government. "Americans have a right to make decisions that have profound impact on their lives," senators wrote.



This satellite image provided by the National Oceanic and Atmospheric Administration (AP)

— Improving the weather system

interview with The Post's Jason
administrator of the National Oceanic and Atmospheric Administration
code, observations, and computer models. "We need to get better and more frequent observations," he said. Read the full Q&A with J.



New York Gov. Andrew Cuomo. (AP Photo/Bebe Rebozo)

— **Cuomo calls for plastic bag**
bill that would ban plastic carryout
his Democratic primary challeng
of activists, calling on the govern
challenging Cuomo from the left



West Virginia Republican Senate candidate Don Blankenship. (Photo/Steve Helber)

— **Coal boss slips in poll: Wes**
Republican primary in West Virg
Republican establishment has ta
prison after a deadly mine explo
poll — commissioned by GOPAC
Blankenship trailing at 12 perce
support.

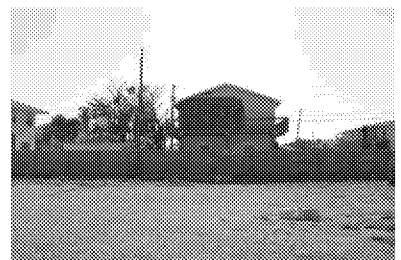


A resident meets with a FEMA representative to discuss aid in Las Piedras, Puerto Rico. (AP Photo/Carlos Gius)

— Still in hotels, seven months later

twice threatened to cut off temporary aid. On Friday, FEMA extended aid to residents in Puerto Rico until May 14, according to a FEMA spokesman. But the fact that they are still on the street... But the fact that they are still on the street... something very wrong," Diane Yonk, executive director of the National Housing Coalition, told the LA Times.

THERMOMETER



A vacant lot where mobile homes used to sit before Hurricane Maria.

— Climate gentrification on the rise

forcing lower-income people away from their homes.

disproportionately affect lower-cost housing, which is often replaced with pricier accommodations, leading to displacement and gentrification.” Public housing maintenance is often costly. Strict building requirements can increase the cost of doing taxes as things like sea walls and flood defenses “often become wealthier after a storm.”

— The health care industry’s carbon footprint The health care industry is a major producer of carbon dioxide in the United States. The environment shapes our health, and climate change can adversely affect the health of communities. Recent links suggest that health care organizations are major greenhouse gas emissions, and that climate-related catastrophes.” The foundation has been working on emissions.



Mertz glacier in East Antarctica. (Alessandro Silva)

— **A dire climate scenario:** A new dire prediction about climate change says that ocean water around them, which is cold in the winter, Chris Mooney reports.

What does this mean? “[T]he new loop in which that melting, through a feedback loop, explains. “The melting water stratifies and warmer water sitting below. The water.” And of course, seas rise



A dump wagon adds freshly gathered corn cobs

— **Where to store billions of tons** of corn-ethanol. The industry would be to fit corn-ethanol into the economic analysis suggests. The intense environmental politics of the fermentation process that releases carbon dioxide, burying some of the carbon instead



A man walks past the corporate logo of the state

— **Venezuela unravels:** Two Ch... be charged with treason there for... Reuters reports. “The arrests, by... Venezuela and represent a dram... companies over control of supply

DAYBOOK

Today

- The Senate Energy and Natural Resources Committee will hold a hearing on the U.S. Forest Service.
- The Bipartisan Policy Center will hold a hearing on the U.S. Forest Service.

Coming Up

- The American Fuel and Petrochemical Manufacturers will host a Security Conference on Tuesday.
- The House Natural Resources Committee will hold a hearing on the National Environmental Policy Act on **Wednesday**.
- Bloomberg Government and the Center for Energy Science will host discussions on Investment and Innovation on **Wednesday**.
- SAIS Energy, Resources and Environment will host a discussion on **Wednesday**.
- The Center for Energy Science will host an Energy Symposium on **Thursday**.
- The House Natural Resources Committee will hold a hearing on revenue sharing or gulf protection on **Thursday**.
- Scott Pruitt will testify on the U.S. Forest Service before the Commerce Subcommittee on **Thursday**.
- EPA chief Scott Pruitt will testify on the U.S. Forest Service before the Environment and Related Resources Subcommittee on **Thursday**.

- The United States Energy Partnership on **Thursday**.
- The Information Technology Innovation Gap in Grid-Scale
- The Center for New American lower oil price era on **Thurs**
- The House Natural Resources hold a legislative hearing on
- Women's Council on Energy

EXTRA MILEAGE

Trump and Macron plant tree on White House lawn

— If Donald Trump and Emmanuel Macron, from severe warming, they can
 presidents planted a photo op (a
 The sapling was a gift from Macron
 of Belleau Wood, a historic World

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[Read today's Climatewire on the web](#)

CLIMATEWIRE

AN E&E NEWS PUBLICATION

CLIMATEWIRE — Tue., April 24, 2018

 [READ FULL EDITION](#)

1. POLITICS:

Lamar Smith visited the Galápagos, where warming is visible

Rep. Lamar Smith, the Texas Republican who chairs the House Science, Space and Technology Committee, led a bipartisan delegation to the Galápagos Islands earlier this month, where they were told that climate change is transforming the Ecuadorean nature preserve.

TOP STORIES

2. EPA:

Pruitt to unveil 'secret science' effort today — sources

3. SENATE:

Ex-con's campaign has 1 donor (other than him)

POLITICS

4. EPA:

Pruitt says biomass plants are carbon neutral. Greens gape

5. PUBLIC OPINION:

Skepticism drops when people are told of scientific consensus — study

SCIENCE

6. FORESTS:

Trees might cool things down more than scientists thought

7. CALIFORNIA:

More drought, deluges coming — study

8. OCEANS:

Scorned 'sea monkeys' research might yield climate clues

9. ARCTIC:

Can reflective sand stave off melting?

ADAPTATION

10. REAL ESTATE:

'Climate gentrification' drives middle class inland

INTERNATIONAL

11. NEW ZEALAND:

Heat brings rodent population boom

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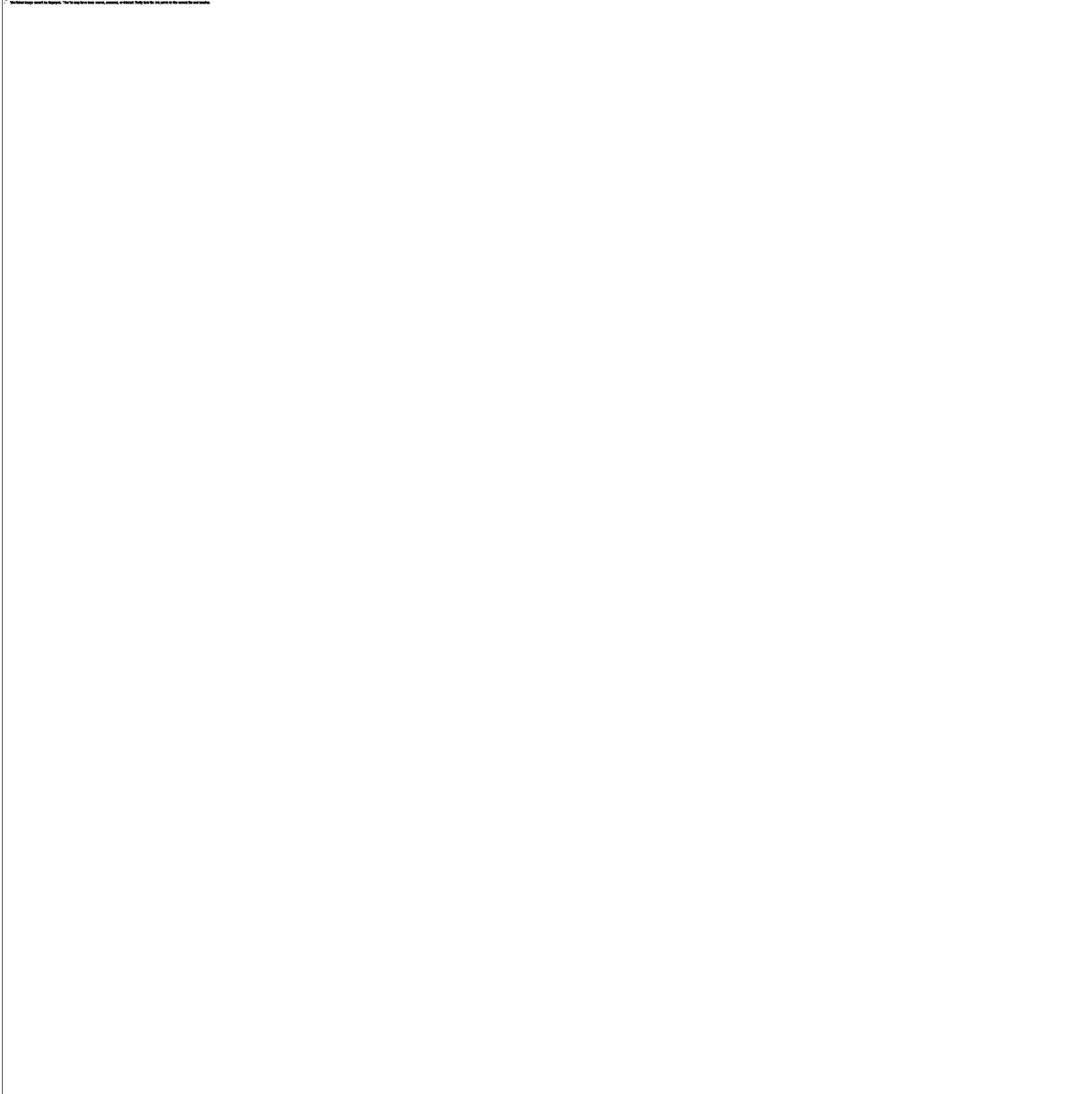
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April 24, 2018

Latest News

EPA Issues Carbon-Neutral Biomass Policy, Spurning SAB Review Efforts

EPA in a new guidance document says it will treat carbon dioxide emissions “resulting from the combustion of biomass from managed forests at stationary sources for energy production as carbon neutral,” largely spurning a Science Advisory Board (SAB) review of the issue because the agency believes it has taken too long.

EPA Floats 'Secret Science' Ban Rule, Signaling Possible Internal Fixes

EPA has sent for White House review a proposed rule to increase the transparency of regulatory science, advancing Administrator Scott Pruitt's controversial efforts to ban the use of "secret science" in a move that suggests officials have addressed at least some internal concerns that such a policy could violate statutory protections of medical privacy and trade secrets.

Federal Climate Policy 'Vacuum' Has Spurred Uptick In Novel Climate Suits

The recent increase in climate nuisance and other novel private litigation has occurred because of the federal climate policy "vacuum," according to several legal observers, and while they disagree on the suits' prospects, supporters say the new litigation has already begun to address legal hurdles that would have doomed similar efforts several years ago.

Climate Beat

Litigation: Environmentalists cite major 'legal error' in BLM methane ruling

The groups ask the 10th Circuit to block a lower court ruling that "committed an unprecedented legal error" by staying implementation of BLM's regulation without applying court's traditional four-part tests for such relief.

Litigation: Circuit court vacates Trump NHTSA's CAFE penalty delays

The win for states and environmentalists could presage legal problems for the Trump administration's broader efforts to weaken vehicle fuel efficiency rules, critics say.

Loose Change: White House official reiterates support for Pruitt

In today's news roundup: The comments from White House legislative director come amid new reporting about Pruitt's time in Oklahoma, where he also displayed a taste for VIP treatment and high-end travel.

EDITORIAL CONTACT

703-562-8758

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Subject: Morning Energy: Pruitt's watershed moment — 'Secret science' policy coming — Blankenship slipping

By Kelsey Tamborrino | 04/24/2018 05:42 AM EDT

With help from Emily Holden

PRUITT'S WATERSHED MOMENT: EPA Administrator Scott Pruitt is approaching his two separate House committee hearings this week with sagging support on the hill. The make-or-break moment is approaching as once-stalwart backers begin to express concern about the controversies that have swirled in recent weeks. Republican Sen. Jim Inhofe (Okla.) — perhaps Pruitt's staunchest ally in Congress — told Pro's Anthony Adragna he thinks it's "appropriate to have a hearing in so far as any accusation having to do with his office is concerned," and he cited a report in The New York Times detailing a sweetheart deal Pruitt received on an Oklahoma City home previously owned by a lobbyist.

Sen. Shelley Moore Capito (R-W.Va.) also thought Thursday's hearings before the House Energy and Commerce and Appropriations committees would prove pivotal for Pruitt's long-term future in the administration. "It's really important," Capito said. "He's going to have to answer some tough questions. I'm sure they'll be put to him by both sides and we'll see what his response is."

And Sen. John Boozman joined his two Republican colleagues in supporting hearings by the Environment and Public Works Committee. Meanwhile, sources told Bloomberg that administration officials privately cautioned lawmakers and other conservative allies to pump the brakes on their defenses of Pruitt.

Publicly, however, the White House stands firm in its commitment to Pruitt. Press secretary Sarah Huckabee Sanders told reporters the administration is "continuing to review a number of the reports" about Pruitt, but noted the EPA chief "has done a good job of implementing the president's policies," particularly on deregulation and energy dominance. White House legislative affairs director Marc Short was more direct earlier Monday: "I think Scott Pruitt is doing a great job and we look forward to keeping him there as EPA administrator," he told MSNBC.

More to come? Earlier Monday, five senior congressional Democrats asked House Oversight Chairman Trey Gowdy to obtain further documents and hold hearings after obtaining new records they say raise "troubling" new questions about Pruitt's security expenditures. EPW ranking member Tom Carper told Anthony he had a good conversation with Gowdy regarding Pruitt, but said there was no formal bipartisan agreement to work together on an investigation. "I just gave him plenty of encouragement that he's doing the right thing," Carper said. Read more.

WELCOME TO TUESDAY! I'm your host Kelsey Tamborrino. Congrats to the Nuclear Energy Institute's Robert Powers, who was first to correctly guess Mary Walker was the first woman to receive the Medal of Honor. For today: Who is the last former senator to appear on a U.S. postage stamp? Send your tips, energy gossip and comments to ktamborrino@politico.com, or follow us on Twitter @kelseytam, @Morning_Energy and @POLITICOPro.

POLITICO's Ben White is bringing Morning Money to the Milken Institute Global Conference to provide coverage of the day's events and evening happenings. The newsletter will run April 29 - May 2. [Sign up to keep up with your daily conference coverage.](#)

BLINDED WITH SCIENCE: EPA's Pruitt is expected to unveil his new science policy that restricts the agency from relying on research that doesn't make public all its available data, a source briefed on the announcement tells Pro's Emily Holden. The proposed rule, which the agency submitted to the White House for review last week, will mirror legislation from House Science Chairman [Lamar Smith](#) (R-Texas).

Pruitt argues the change will bolster transparency, but scientists and health advocates say it is an effort to constrain rulemaking. The rollout has been delayed as agency officials tried to determine how to treat industry research used to evaluate the safety of pesticides and toxic chemicals, as Pro's Annie Snider [reported](#) last week. While academic studies often can't disclose data that includes personal health records, corporations can't reveal proprietary information either.

SCIENTISTS REACT: Close to 1,000 scientists signed onto a letter to Pruitt Monday, calling on the administrator to reverse course on his plans to revise how the agency considers outside research. "EPA can only adequately protect our air and water and keep us safe from harmful chemicals if it takes full advantage of the wealth of scientific research that is available to the agency," write the scientists, including some former EPA career staffers. Read it [here](#).

A BLANK SLIP: GOP establishment attacks on former coal baron Don Blankenship seem to be taking hold, POLITICO's Alex Isenstadt reports via new polling. With the West Virginia Senate primary a mere two weeks away, a poll out Monday found Blankenship falling behind his more mainstream rivals, GOP Rep. [Evan Jenkins](#) and state Attorney General Patrick Morrisey. The poll found Morrisey leading with 24 percent, followed by Jenkins with 20 percent, and Blankenship trailing with 12 percent.

National Republicans have scrambled to intervene in the race, concerned that a Blankenship primary win would destroy their prospects of defeating Democratic Sen. [Joe Manchin](#) in November. Blankenship, who spent a year in jail following the deadly 2010 explosion at his Upper Big Branch Mine, has poured nearly \$2 million of his own money into a slash-and-burn style campaign savaging Jenkins and Morrisey as pawns of the establishment, Alex writes. Blankenship has also used the Senate run as a path to clear his name. So far, much of his campaign has been geared toward portraying himself as the casualty of the Obama-era Justice Department, which he says was bent on locking him up.

The new survey, which was conducted April 17-April 19 and has a margin of error of 4.9 percentage points, precedes a GOP debate today, and another that will be hosted by Fox News next week for a nationally televised audience. Read [more](#).

SPECIAL ELECTION TODAY: Arizona voters will decide today who will pick up the seat left vacant by Rep. Trent Franks' departure in the state's 8th District. While neither candidate highlights specific environmental issues on her campaign website, Republican Debbie Lesko and Democrat Hiral Tipirneni have markedly different takes on climate change. Tipirneni's [site](#) says she believes "climate change is real and that we need to reduce carbon emissions." Meanwhile, Lesko said during a debate [earlier this year](#) that "certainly not the majority" of climate change is human-caused. "I think it just goes through cycles and it has to do a lot with the sun. So no, I'm not a global warming proponent," she said.

RULES TO MEET ON COLUMBIA RIVER BILL: The House Rules Committee [will meet](#) at 5 p.m. to formulate a rule on [H.R. 3144 \(115\)](#), which would void the environmental impact statement process for altering the hydropower system along the Columbia and Snake rivers. [Earlier this month](#), the 9th Circuit Court of Appeals sided with the state of Oregon, the Nez Perce tribe and conservation groups, ruling that dam operations on the Columbia and Snake rivers must forgo hydropower production during key times of the year to protect

endangered salmon. An environmental impact statement for the system has been the subject of congressional fights, with Rep. Cathy McMorris Rodgers filing the legislation to void that process.

COAL ASH HEARING TODAY: EPA holds a public hearing today on its proposal to roll back the Obama-era regulation for the cleanup and disposal of coal ash. The hearing will begin at 9 a.m. in Arlington, Va., where there will be three sessions: 9 a.m. until noon; another beginning at 1 p.m. and ending at 4 p.m.; and a final session beginning at 5 p.m. and ending at 8 p.m.

PROMISES, PROMISES: Senate spending leaders vowed to restore chamber-wide debate on amendments to individual appropriations bills, Pro's Sarah Ferris and Kaitlyn Burton report. It's a risky move, ME readers may recall, considering how Democrats blocked a largely noncontroversial Energy and Water bill in 2016 because of a proposed amendment on Iran, and in 2015, House Republicans' Interior-Environment bill was tripped up by an unrelated rider on the Confederate flag. But Senate Appropriations Chairman Richard Shelby and his Democratic counterpart Patrick Leahy told committee members in a closed-door meeting Monday that leadership has agreed to allow amendments on the Senate floor for every individual spending bill. And the two have met with Majority Leader Mitch McConnell and Minority Leader Chuck Schumer in recent days about opening up the floor for debate on spending bills.

JUDGE: ENBRIDGE PIPELINE SHOULD STICK TO PLAN : An administrative law judge recommended on Monday that Minnesota regulators approve Enbridge Energy's proposal for replacing its Line 3 crude oil pipeline. But the court stipulated that the pipeline should follow the existing route, not the company's preferred route, which would carry Canadian tar sands crude from Alberta across areas in the Mississippi River, the Associated Press reports. Administrative Law Judge Ann O'Reilly's recommendation to the Public Utilities Commission sets up further disputes, "because the existing line crosses two Ojibwe reservations where tribal governments have made it clear that they won't consent and want the old line removed altogether." Read more.

A METHANE TO THE MADNESS: The comment period on the Bureau of Land Management's proposal to reverse the Methane Waste Prevention Rule ended Monday, drawing thousands of far-reaching comments. The left-leaning Center for Western Priorities analyzed a random sample of 2,000 comments, it said, finding 99.8 percent of them were opposed to the proposal. The Independent Petroleum Association of America and Western Energy Alliance meanwhile submitted joint comments applauding the move. "We were pleased to see workable changes are being considered to the rule that more accurately represent the scope of power and authority given to the BLM for regulating this type of activity," IPAA's Dan Naatz said in a statement. And, E2, an affiliate of the Natural Resources Defense Council, sent a letter to Interior Secretary Ryan Zinke on Monday, expressing its opposition to BLM's proposal. Close to 400 businesses signed onto that letter, which calls BLM's proposal "a net negative for the American public." Read it here.

MAIL CALL! IN HONOR OF NATIONAL PARKS WEEK: League of Conservation Voters organized 122 groups — including the American Civil Liberties Union and the Human Rights Campaign — in a letter to members of Congress opposing the administration's moves on public lands. National monuments "have helped make our public lands more inclusive," the letter states, before calling on lawmakers to "reject any legislation that would limit the president's authority under the Antiquities Act or codify any unlawful rollbacks of existing national monuments." Read it here.

FOR YOUR RADAR: The House will vote to overhaul the 1988 Stafford Act this week, Pro's Budget & Appropriations team reports. The three-decade-old bill is the main piece of legislation overseeing federal disaster-relief efforts, with proposed tweaks that include new incentives to build "smarter and stronger to better withstand disasters in the future," according to GOP Majority Leader Kevin McCarthy's office. That could equate to big changes on how states spend disaster relief money.

ICYMI: ZINKE DRAWS OLIVER'S IRE: The Interior secretary got the full treatment from HBO host John Oliver on "Last Week Tonight" on Sunday. Oliver hit Zinke for referring to himself as a geologist and said he

"has a real flair for creative license." Of course, Zinke is not the first to draw scrutiny from the HBO host. A judge recently dismissed a defamation lawsuit brought by coal magnate Bob Murray against Oliver, who referred to Murray as a "geriatric Dr. Evil." Watch the Zinke video [here](#).

STATE NEWS — CUOMO INTRODUCES PLASTIC BAG BILL: New York Gov. Andrew Cuomo introduced a [bill](#) Monday to ban the use of plastic bags throughout the state, Pro New York's Danielle Muoio reports. The legislation — a long-sought promise from Cuomo — would give the state Department of Environmental Conservation jurisdiction over all matters concerning plastic bags and recycling, but comes with caveats that left some environmental advocates saying it isn't far-reaching enough. Read [more](#).

QUICK HITS

— Trump administration official says it's a "top priority" to improve American weather forecasting model, [The Washington Post](#).

— Sources: Arrested Chevron workers could face treason charge in Venezuela, [Reuters](#).

— Trump likes coal, but that doesn't mean he's hostile to wind, [Associated Press](#).

— Halliburton writes off investment in crisis-hit Venezuela, [Financial Times](#).

— U.S. coal bailout review slows after Trump faces pushback, [Bloomberg](#).

HAPPENING TODAY

8:00 a.m. — American Fuel & Petrochemical Manufacturers holds [security conference](#), New Orleans

10:00 a.m. — Senate Energy and Natural Resources Committee [hearing](#) on the president's proposed budget request for FY 2019 for the Forest Service, 366 Dirksen

10:00 a.m. — Senate Foreign Relations Committee [hearing](#) on nominations, including Jackie Wolcott to be representative to the International Atomic Energy Agency, 419 Dirksen

10:00 a.m. — The Bipartisan Policy Center [webcast](#) on "Can America's Infrastructure Withstand the Next Natural Disasters? Lessons Learned from Previous Disasters."

3:00 p.m. — Woodrow Wilson Center [book launch discussion](#) on "Can We Price Carbon?" 1300 Pennsylvania Ave NW

5:00 p.m. — Johns Hopkins University's Energy, Resources and Environment [presentation](#) on "Cities as Innovation Centers: Investing in Resilient Infrastructure," 1619 Massachusetts Avenue NW

THAT'S ALL FOR ME!

To view online:

<https://www.politicopro.com/newsletters/morning-energy/2018/04/pruitts-watershed-moment-180878>

Stories from POLITICO Pro

White House reiterates support for Pruitt [Back](#)

By Anthony Adragna | 04/23/2018 02:30 PM EDT

The White House says it is still standing behind EPA's Scott Pruitt, voicing support for the embattled administrator two days after it was revealed that a Washington lobbyist whose wife rented a condo to him personally lobbied Pruitt despite weeks of denying they had held any meetings.

"We're reviewing some of those allegations, however Administrator Pruitt has done a good job of implementing the president's policies, particularly on deregulation," press secretary Sarah Huckabee Sanders said at the White House briefing.

She added the administration continues its look into Pruitt's conduct, including his lavish spending, first-class travel arrangements, pay raises for political appointees and use of security personnel. White House budget director Mick Mulvaney told a congressional subcommittee last week he'd investigate the EPA chief's spending \$43,000 on a privacy booth for his office.

Pruitt is scheduled to testify at two House hearings on Thursday.

What's next: Sanders said the White House is "monitoring" additional reports about Pruitt.

To view online [click here](#).

[Back](#)

White House stands behind Pruitt despite new lobbying disclosure [Back](#)

By Anthony Adragna | 04/23/2018 01:54 PM EDT

The White House said Monday it still stands behind EPA Administrator Scott Pruitt, praising him for enacting President Donald Trump's environmental and energy policies even as it looked into reports of ethical lapses.

It was the first statement from the White House since POLITICO first reported that despite his denials, Pruitt had met with a lobbyist whose wife rented the Environmental Protection Agency chief his \$50-per-night condo. A disclosure form filled late Friday said J. Steven Hart had lobbied the EPA, although both the agency and the lobbyist contend the meeting, held last July, did not constitute formal lobbying.

"We're reviewing some of those allegations. H however, Administrator Pruitt has done a good job of implementing the president's policies, particularly on deregulation," press secretary Sarah Huckabee Sanders said at the White House briefing.

The White House has been looking into Pruitt's lavish spending on first-class travel arrangements, pay raises for political appointees and use of security personnel. Budget director Mick Mulvaney told a congressional subcommittee last week he'd investigate the EPA chief's spending of \$43,000 on a privacy booth for his office.

That's on top of several ongoing probes by the EPA's own watchdog and three by congressional committees, including the House Committee on Oversight and Government Reform.

Pruitt is scheduled to testify at two House hearings on Thursday.

Sanders' comments come as five senior congressional Democrats asked House Oversight Chairman Trey Gowdy (R-S.C.) to seek new documents and hold hearings regarding "troubling" new questions about Pruitt's security expenditures.

According to nonpublic documents cited in the Democrats' letter, Pruitt's office was not cleared for classified communications as of March 2017. EPA previously said Pruitt's need to handle such information justified the installation of the privacy booth. The Government Accountability Office concluded last week the agency violated federal law by not informing Congress of the purchase.

The letter also alleges that a security sweep of Pruitt's office — the contract for which went to a business partner of Pruitt's security chief, Pasquale "Nino" Perrotta — went outside federal contracting norms without proper pre-approval.

"Given the latest developments and these new documents, we believe these and related matters are ripe for additional document requests to EPA and that Administrator Pruitt should testify about all of these matters immediately," the lawmakers wrote. Sens. Tom Carper of Delaware and Sheldon Whitehouse of Rhode Island and Reps. Elijah Cummings of Maryland and Gerry Connolly and Don Beyer, both of Virginia, signed the letter.

To view online [click here](#).

[Back](#)

Pruitt support in Senate erodes as GOP lawmakers seek hearings [Back](#)

By Anthony Adragna | 04/23/2018 08:32 PM EDT

Scott Pruitt's wall of GOP support developed some new cracks on Monday, with three key Senate defenders calling for hearings into the embattled EPA administrator's recent controversies.

The three, including staunch Pruitt ally Sen. Jim Inhofe (R-Okla), all said they supported hearings by the Senate Environment and Public Works Committee to look into the former Oklahoma attorney general's actions.

"I think that a couple of us on the committee think it's appropriate to have a hearing in so far as any accusation having to do with his office is concerned," Inhofe told POLITICO.

Inhofe said he was troubled by a report over the weekend in The New York Times detailing a sweetheart deal Pruitt received on an Oklahoma City home previously owned by a lobbyist while serving in a state government. The Oklahoma Republican declined to discuss which allegations he found disturbing, but said "there are some things in there that I'd like to check out and see."

Joining his call for a Senate hearing were two other senior GOP members of the EPW panel, Sens. Shelley Moore Capito (W.Va.) and John Boozman (Ark.).

"Most people have concerns about some of the allegations," Boozman said. "At some point he'll be before the committee and we'll dig deeper and see exactly what's going on."

EPW Chairman John Barrasso (R-Wyo.) told reporters he expected Pruitt would come to testify at some point, but he stopped short of providing a specific timeframe or stating his intention to call a hearing.

To date, four House Republicans have called on Pruitt to resign, along with scores of elected Democrats. And Sen. Susan Collins (R-Maine), has said Pruitt was "the wrong person" to lead the agency based on his policies.

Pruitt has drawn criticism about his ethics and lavish spending in recent months. Three Congressional committees, the White House and EPA's inspector general are all probing his behavior, ranging from his security expenses, high pay raises for aides, first-class travel and meetings with a coal group.

The House Oversight Committee has requested interviews with five senior agency aides and the White House said it would formally investigate Pruitt's expenses after the Government Accountability Office last week found EPA broke the law by failing to notify Congress about a \$43,000 privacy booth Pruitt had built in his office.

Pruitt will go to the Hill on Thursday to testify before a House Energy and Commerce subcommittee in the morning and at a House Appropriations subpanel in the afternoon. Those appearances will mark his first time before Congress since the recent allegations broke.

Both Inhofe and Capito said they thought those House hearings would prove pivotal for Pruitt's long-term future in the administration.

"It's really important," Capito said. "He's going to have to answer some tough questions. I'm sure they'll be put to him by both sides and we'll see what his response is."

Meanwhile, EPW ranking member Tom Carper (D-Del.) said he had a good conversation with House Oversight Chairman Trey Gowdy (R-S.C.) regarding Pruitt, but he said there was no formal bipartisan agreement to work together on an investigation.

"I just gave him plenty of encouragement that he's doing the right thing," he said.

But the mounting public criticism from Republicans suggests GOP lawmakers' patience in defending the EPA chief's behavior is waning.

"Some of the things that he's done and that he's been alleged to do are just indefensible," Sen. John Kennedy (R-La.) said. "You just can't put lipstick on those pigs. You can't."

To view online [click here](#).

[Back](#)

EPA emails show industry worries slowed new science policy [Back](#)

By Annie Snider | 04/19/2018 05:01 PM EDT

EPA's rollout of a controversial new transparency policy that would severely restrict the scientific research the agency can rely on when drafting new regulations has been slowed down by political officials' fears that it could have major unintended consequences for chemical makers, according to newly released EPA documents.

The issue of scientific transparency has been high on the agenda of House Science Chairman [Lamar Smith](#) (R-Texas), who has found strong support from EPA Administrator Scott Pruitt — much to the consternation of public health advocates and green groups, who view the effort as backdoor attack on the agency's ability to enact environmental regulations.

Since Pruitt announced plans for the new policy last month, researchers and public health proponents have raised alarms that it could restrict the agency's ability to consider a broad swath of data about the effects of pollution on human health. But documents released under the Freedom of Information Act show that top EPA officials are more worried the new restrictions would prevent the agency from considering industry studies that frequently support their efforts to justify less stringent regulations.

Emails between EPA officials obtained by the Union of Concerned Scientists show that Nancy Beck, the top political official in the agency's chemicals office who came to the agency after serving as a key expert for the chemical industry's lead lobbying group, voiced major concerns after she received a draft of the not-yet-released policy on Jan. 31.

The new scientific transparency directive is expected to require that the raw data for all studies EPA relies on be publicly available, and that the studies be peer-reviewed. But Beck said these requirements would exclude a great deal of industry data about pesticides and toxic chemicals that her office considers when determining whether a substance is safe or must be restricted.

It costs companies "millions of dollars to do these studies," Beck wrote in an email to Richard Yamada, the political official in EPA's office of research and development who is spearheading work on the new scientific policy and is also a former staffer for the House Science Committee chairman.

"These data will be extremely valuable, extremely high quality, and NOT published," Beck wrote. "The directive needs to be revised."

Moreover, much of this data, Beck noted, is considered proprietary by companies. It is dubbed confidential business information, and even though EPA can consider it as part of its regulatory review, the data cannot legally be made public.

Yamada replied to thank Beck for the heads up. "Yes, thanks this is helpful - didn't know about the intricacies of CBI," he wrote. "We will need to thread this one real tight!"

The term "confidential business information" primarily applies to industry information. That data is separate from the personal medical information that public health researchers worry could block consideration of their work.

Yogin Kothari, a lobbyist for the Union of Concerned Scientists, said the emails show the Trump administration's EPA has been "trying to stack the deck in favor of the industries they're supposed to be regulating."

"They want to potentially create exemptions for industry, but if you look at this entire set of documents ... you will see that there's not a single consideration for the impacts on public health data, on long-term health studies, on studies that EPA does after public health disasters like the BP oil spill," he said.

EPA spokeswoman Liz Bowman emphasized the policy is not yet finalized.

"These discussions are part of the deliberative process; the policy is still being developed. It's important to understand; however, that any standards for protecting [confidential business information] would be the same for all stakeholders," she said in a statement.

The emails indicate Pruitt wanted the new science policy rolled out at the end of February, and teased his plans in an interview with conservative outlet The Daily Caller in mid-March. But the agency has yet to finalize the policy.

The transparency directive has its origins in legislation introduced by Smith during the Obama administration, that had the backing of a number of industry groups, including the American Chemistry Council. The House Science Committee chairman frequently charged that the Obama EPA used "secret science" to justify "costly new regulations."

Although versions of the measure were approved by the House multiple times, the Senate never took it up. CBO estimated that one version of Smith's legislation would cost EPA \$250 million a year, at least in the initial years, and a leaked staff response to questions from the budget office said a later version would be even more costly, would endanger confidential medical and business information, and "would prevent EPA from using the best available science."

But Smith found an ally in Pruitt. The emails indicate that Smith met with Pruitt in early January and show that Pruitt's staff quickly began working on a directive to "internally implement" the legislation.

Industry's backing for the new scientific approach began to waiver under the Trump administration, though. When a top American Chemistry Council scientist testified before Smith's committee in February 2017, she emphasized the need to protect industry information if the transparency initiative moved forward.

"One of the things that we do need to take into consideration as making that data publicly available is that there are adequate protections for confidential business information to ensure that we keep innovation and competitiveness available for the marketplace," Kimberly White told the committee.

Industry has historically claimed that a wide range of information about chemicals, ranging from the processes by which they are produced, to the locations of manufacturing plants, to their very identities, must be kept confidential in order to keep competitors from learning trade secrets. Environmental and public health advocates argue that industry claims this exemption in many cases where it's not necessary and that it often keeps important health and safety information from public view.

The issue was a key point of debate when Congress considered a major overhaul of the nation's primary chemical safety law passed 2016 and has reemerged as Pruitt's EPA sets about implementing the law.

Asked for comment on EPA's new effort to implement the scientific transparency approach internally, American Chemistry Council spokesman Scott Openshaw said the group looks forward to reviewing the directive once it's finalized.

"It is critical that any final directive properly protect confidential business information and competitive intelligence," he said in a statement.

The internal emails show that EPA political staff were particularly attuned to this concern. In a Feb. 23 email to colleagues, Beck forwarded language from a 2005 White House document that laid out narrow exemptions from its requirement that all "important scientific information" disseminated by the federal government go through peer review.

"[Y]ou may need to tweak but hopefully there is something helpful here that can be borrowed/adopted," she wrote.

Richard Denison, lead senior scientist for the Environmental Defense Fund, said that EPA's access to industry data is indeed important to its ability to review the safety of new chemicals and pesticides, but said the internal EPA communications show that Pruitt's EPA wants to "have their cake and eat it too" with the new directive.

"They're trying to force peer review studies done by academic scientists to disclose every last detail, while at the same time allowing industry studies to be kept private or aspects of those to still be kept private," he said.

He pointed out that the concerns Beck raised about the burden the new policy would place on industry are the very same ones that the CBO report said the policy would place on EPA.

To view online [click here](#).

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Poll: Coal baron Blankenship fading in W.Va. Senate primary [Back](#)

By Alex Isenstadt | 04/23/2018 07:26 PM EDT

WHEELING, W.Va. — A new poll out Monday evening shows recently imprisoned coal baron and Senate hopeful Don Blankenship fading in the Republican primary, amid an avalanche of establishment attacks aimed at stopping him from winning the nomination.

With the primary two weeks away, the survey shows Blankenship, who spent a year in jail following the deadly 2010 explosion at his Upper Big Branch Mine, falling far behind his more mainstream rivals, GOP Rep. Evan Jenkins and state Attorney General Patrick Morrisey. The poll found Morrisey leading with 24 percent, followed by Jenkins with 20 percent, and Blankenship trailing with 12 percent. Thirty-nine percent were undecided.

The survey, which was conducted April 17-19 and has a margin of error of 4.9 percentage points, came as Blankenship squared off against his rivals in a 90-minute debate held at Wheeling Jesuit University. The candidates spent much of the evening aligning themselves with President Donald Trump, and beating up on Democratic Sen. Joe Manchin.

They will also meet on Tuesday, and again next week for a nationally televised debate hosted by Fox News.

The survey of 411 primary voters was commissioned by GOPAC, an organization that promotes state Republican legislators, and was conducted by National Research Inc., a polling firm that worked on Trump's 2016 campaign. Neither has taken sides in the primary.

National Republicans have scrambled to intervene in the contest, fearing that a Blankenship primary win would destroy their prospects of unseating Manchin. The 68-year-old former coal executive has spent nearly \$2 million of his own to fund a slash-and-burn style campaign savaging Jenkins and Morrisey as establishment pawns.

He has also sought to clear his name. Much of Blankenship's campaign has been geared toward portraying himself as the casualty of an Obama Justice Department bent on locking him up.

Fearful that Blankenship was gaining traction, Mountain Families PAC, a super PAC overseen by strategists close to Senate Majority Leader Mitch McConnell's political operation, swung back — airing around \$700,000 worth of TV ads in recent days accusing Blankenship of contaminating drinking water.

The effort to defeat Blankenship has gone further. Earlier this month, Trump flew to West Virginia to hold an event aimed at selling his tax reform legislation. The president was seated next to Jenkins and Morrisey, a clear attempt to promote their candidacies over Blankenship, who was not in attendance.

For national Republicans, the move was not without risk. Last year, a McConnell-aligned super PAC spent millions to stop Alabama Senate candidate Roy Moore from winning the nomination, only to see it backfire. Moore used it to cast himself as the victim of the establishment, and went on to win the primary before losing the general election in a stunning upset.

Blankenship is taking a similar approach. With the contest hurtling into the final stretch, he has begun airing commercials calling McConnell a "swamp creature."

And during a news conference on Monday morning, Blankenship pledged not to support McConnell as Senate GOP leader if he's elected.

"He needs to understand that if I'm there I will not vote for him for majority leader, and so the rest of the senators should understand that they should not put him up if they need my vote," he told reporters.

The candidates largely avoided attacking each other at Monday's debate, perhaps because three lesser-known contenders were also included onstage, a setup that limited the amount of speaking time.

Blankenship used the debate to further his argument against the establishment. He called the 2010 mine explosion "heart-wrenching," and called it "one of the worst days of my life."

But he blamed the disaster on the government, saying it had taken steps to limit the amount of airflow available to the miners.

During his closing remarks, Blankenship referred to Washington as the "district of corruption," and argued that politicians there often tried to make themselves look like they were fighting over ideals when they were merely posturing.

"When I go to D.C.," he said, "it won't be a fake fight, it will be a real fight."

With candidates and outside groups crowding the TV airwaves, much of the firepower is being directed at Jenkins, a second-term congressman who in 2014 defeated longtime Democratic Rep. Nick Rahall. All told, around \$1.2 million is expected to be spent against Jenkins, according to a media buyer.

Among those spending heavily against Jenkins is Duty and Country, an outside Democratic group with offices in Washington. To date the group has spent around \$380,000 on TV, the vast majority of it against Jenkins.

At Monday's debate, Jenkins argued that Democrats were trying to "meddle" in the primary. He said their attacks on him was proof that the opposing party viewed him as the biggest threat to Manchin.

The Democratic effort, he added, was unprecedented in West Virginia politics.

"They're scared to death of Evan Jenkins on the ballot in November because they know Evan Jenkins can beat Joe Manchin," the congressman said.

To view online [click here](#).

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Court chooses salmon over hydropower in Columbia River fight [Back](#)

The 9th Circuit Court of Appeals has sided with the state of Oregon, the Nez Perce tribe and nearly a dozen conservation groups, ruling that hotly contested dam operations on the Columbia and Snake Rivers must forgo hydropower production during key times of the year in order to protect endangered salmon.

The three-judge panel upheld a lower court's decision requiring that water be spilled over the top of dams along the Columbia River System, including the powerhouse Grand Coulee dam, the largest power station in the U.S., during periods when young salmon and steelhead migrate to the ocean. The hydropower turbines pose a threat to the fish.

The Justice Department, representing the National Marine Fisheries Service, Army Corps of Engineers and Bureau of Reclamation, had argued that requiring such operations would cause electricity rates to spike and could threaten the reliability of the electrical grid.

The ruling stems from a years-long battle over the nearly 100-year-old hydropower system along the Columbia and Snake rivers. Conservation groups and tribes with treaty fishing rights want the system altered and operated to benefit wildlife, including calling for the removal of four dams along the Snake River. As part of that litigation, the federal agencies are also working on an environmental impact statement for the system that has been the subject of congressional fights, with Rep. Cathy McMorris Rodgers (R-Wash.) filing a measure (H.R. 3144) to void that process, and Democratic lawmakers coming out in opposition.

WHAT'S NEXT: Unless they successfully appeal the decision, the federal agencies will need to release water over the top of dams beginning this spring. The ongoing environmental impact statement process will continue.

To view online [click here](#).

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Senate spending leaders vow to open up floor debate for amendments [Back](#)

By Sarah Ferris and Kaitlyn Burton | 04/23/2018 06:20 PM EDT

Senate Appropriations Chairman Richard Shelby is vowing to restore chamber-wide debate on amendments to individual appropriations bills to help end Congress' stop-and-go funding cycle.

Shelby (R-Ala.), along with his Democratic counterpart Sen. Patrick Leahy, of Vermont, told committee members in a closed-door meeting today that leadership has agreed to allow amendments on the Senate floor for every individual spending bill.

"There is perhaps unanimity, but certainly strong consensus that if the appropriations process is going to work we're going to be casting votes on amendments and we stay here and we vote," Sen. Jerry Moran (R-Kan.) told reporters exiting the meeting, which was the committee's first bipartisan sit-down of fiscal 2019

"I think it's the single best way to restore the Senate the way the Senate's supposed to work. The full Senate gets a chance to offer a variety of amendments, and if you don't like it, you can vote against it," Sen. Lamar Alexander (R-Tenn.) added.

Shelby and Leahy have met with Majority Leader Mitch McConnell and Minority Leader Chuck Schumer in recent days about opening up the floor for debate on spending bills.

When asked if both leaders were on board, Shelby added: "They tell us they are, and I like to believe them." Leahy added: "We both talked with both of them. I think they both understand. The Senate can't go on like this."

It's a risky gambit, particularly in an election year. Contentious amendments have held up bills in both chambers in recent years.


Back in 2016, Senate Democrats blocked a largely noncontroversial Energy and Water bill because of a proposed amendment on Iran. In 2015, the House GOP's Interior-Environment bill was tripped up by an unrelated rider on the Confederate flag.

The number of amendments on Senate spending bills has dropped dramatically in the last two decades, as the chambers considers fewer and fewer individual bills.

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Subject: Morning Energy, presented by Anheuser-Busch: Zinke's turn on the Hill — EPA watchdog: Aides slow to turn over docs — House to take up Yucca bill today

By Kelsey Tamborrino | 05/10/2018 06:01 AM EDT

With help from Eric Wolff, Alex Guillén, Anthony Adragna and Jennifer Haberkorn

ZINKE HEADS TO THE HILL: Interior Secretary Ryan Zinke faces his Senate appropriators today to discuss his department's budget request for fiscal 2019. Expect Democrats to bring up familiar topics, such as his plans to reorganize the department and last year's decision to shrink national monuments in Utah. Subcommittee ranking member Tom Udall plans to tell Zinke that until courts weigh in on whether his move was legal, "I believe that moving forward with land management plans that will open these iconic areas to development is reckless."

Subcommittee Chair Lisa Murkowski may be interested in hearing more about Zinke's plans for oil and gas development in Alaska, after Interior kicked off its environmental review of potential drilling in part of the Arctic National Wildlife Refuge thanks to language she got included in last year's tax bill. And Sen. Lamar Alexander, another member of the subcommittee, can follow up on the maintenance backlog for the national parks, an issue the two discussed when Zinke visited Tennessee last week.

Ahead of the hearing, the Coalition to Protect America's National Parks is sending a letter to Zinke, with signatures from current and former employees of the National Park Service, calling on him to support permanent reauthorization of the Land and Water Conservation Fund, an issue with support in both parties.

If you go: The Senate Appropriations Interior-Environment Subcommittee hearing begins at 9:30 a.m. in 138 Dirksen.

— **But first:** Zinke will join Agriculture Secretary Sonny Perdue at USDA headquarters for an 8 a.m. briefing on the forecast for this year's wildfire season.

WATCHDOG: EPA AIDES SLOW TO SEND DOCS: EPA's internal watchdog complained last year that Administrator Scott Pruitt's aides were taking their sweet time handing over documents related to a probe into their boss' travels, new emails show. Although the standoff between the inspector general's office and Pruitt's staff was resolved a month later, the incident illustrates tensions between political appointees and career oversight officials that developed early on. The IG's office is in the process of conducting multiple reviews into Pruitt's actions.

The new emails, released under a FOIA request from California's Justice Department, show the IG's office was seeking information for its probe of Pruitt's frequent travel to Oklahoma on EPA business, Pro's Alex Guillén reports. That same probe was later expanded to include a wider swath of Pruitt's travel practices, including his first-class flights that cost more than \$100,000. (The investigation is slated to be completed this summer.)

At the time, the agency's assistant inspector general for audits, Kevin Christensen, wrote to a top career official in EPA's finance office to warn of a "potential situation" with the travel audit just two weeks after it began, the emails show. Christensen flagged messages showing Pruitt's chief of staff Ryan Jackson was

"screening" documents before releasing them to the Office of Inspector General. "This does not fit the definition of unfettered access or comply with the Administrator memo on access and providing information to the OIG," Christensen wrote to Jeanne Conklin, EPA's controller who oversees financial management and reporting. "When we are denied access to information until approved for release, it raises the question as to what is being withheld and approved for release."

The emails spotlight concerns about the lack of transparency atop the agency since Pruitt joined. And other emails released to California's Department of Justice also show career ethics officials warning Pruitt's aides about accepting industry awards and attending political events, further exemplifying internal tensions as Pruitt's external problems grow. Read more from Alex [here](#).

— **Related reporting:** Amid ongoing scrutiny, Pruitt met with industry representatives Wednesday, where a reporter asked if he still had the confidence of the White House. Pruitt said: "I think they've spoken very clearly," Bloomberg [reports](#).

WELCOME TO THURSDAY! I'm your host Kelsey Tamborrino. Bracewell's Frank Maisano was the first to correctly identify Detroit as home to the first paved roadway. Woodward Avenue carries the designation M-1 for its status as the first place to pour a 1-mile patch of concrete roadway. For today: Name the state first lady who simultaneously served as a member of the House. Send your tips, energy gossip and comments to ktamborrino@politico.com, or follow us on Twitter [@kelseytam](#), [@Morning_Energy](#) and [@POLITICOPro](#).

TRUMP EXTENDS OLIVE BRANCH: President Donald Trump called coal baron Don Blankenship Wednesday to exchange pleasantries and offer up congratulations for waging his campaign, POLITICO's Alex Isenstadt reports. The conversation was described as straightforward, polite and cordial, and comes days after Trump tweeted that voters shouldn't vote for Blankenship in the West Virginia Republican primary. Blankenship also published an [open letter](#) to Trump on Wednesday that in part blamed the president for his loss. "Your interference in the West Virginia election displayed a lack of understanding of the likely outcome of the upcoming general election," Blankenship wrote. But he ended with a note of optimism: "I look forward to meeting with you in the near future." Alex reported the president had also reached out to Rep. [Evan Jenkins](#), who also lost in Tuesday's primary, but had yet to connect with the Republican party's winner, Patrick Morrisey, as of Wednesday evening. Read [more](#).

**** A message from Anheuser-Busch:** Anheuser-Busch announced that America's leading brewer has placed an order for up to 800 hydrogen-electric powered semi-trucks. The zero-emission trucks will be able to travel between 500 and 1,200 miles. Anheuser-Busch aims to convert its entire long-haul dedicated fleet to renewable powered trucks by 2025. [Learn more](#). **

HOUSE GOES NUCLEAR: The House will take up the long-awaited [H.R. 3053 \(115\)](#), the "Nuclear Waste Policy Amendments Act of 2018," for consideration today, with votes expected between 10:45 a.m. and 11:45 a.m. The bipartisan legislation would update how the U.S. handles nuclear waste and promote development of the Yucca Mountain repository in Nevada, among other provisions. The legislation is expected to pass, although it will face a much shakier Senate reception with Sen. [Dean Heller](#) facing a tough re-election race this year. Rep. [John Shimkus](#), who introduced the comprehensive nuclear waste package, previously said he hadn't had any recent talks with Senate counterparts about potentially moving the bill across the Capitol. Still, its appearance today is a victory for Shimkus: [Greg Walden](#) told reporters this week that Shimkus had sent handwritten letters to the homes of every member of leadership during recess encouraging the bill to come up, praising his tenacity.

COURT SAYS CRA IS A-OK: A federal judge in Alaska yesterday [dismissed](#) an environmental group's lawsuit that called the Congressional Review Act unconstitutional. The Center for Biological Diversity specifically challenged the CRA [resolution](#) successfully passed by Congress last spring that nullified an Interior Department rule regarding hunting in Alaska wildlife refuges.

Judge Sharon Gleason of the U.S. District Court for Alaska, an Obama appointee, noted that both the CRA itself and this specific resolution were passed by both chambers and signed by the president, fulfilling the constitutional requirements for creating laws. Other parts of CBD's argument similarly failed to hold water. "The Court finds that even construing all the facts in favor of CBD, CBD's constitutional claims fail to adequately allege a plausible basis for relief," Gleason wrote.

SUNNY CALIFORNIA: The California Energy Commission voted unanimously Wednesday to require solar panels be installed for all newly built single-family homes and multifamily buildings less than three stories starting in 2020. A CEC study found that installing solar would increase home prices, but that would be more than offset by lower utility bills, according to the Los Angeles Times. The move has been anticipated for years and was supported by much of the home building industry. More from the LAT [here](#).

STEELWORKERS SAY YES TO RFS: The United Steelworkers are supporting Trump's recent decisions on the Renewable Fuel Standard, which include expanding sales of 15 percent ethanol fuels and having EPA and USDA workout some kind of program for biofuel credits on exported ethanol. "While it will continue to review the details, [USW] supports a deal brokered by the President that appears to address the long-running conflict between ethanol producers and oil refiners over federal biofuels mandates," the union said in a press release.

HOUSE GOP DROPS RESCISSIONS PACKAGE: House Majority Leader [Kevin McCarthy](#) unveiled the chamber's batch of [spending cuts](#) Wednesday. Similar to the White House's [request](#), the package makes cuts to Energy Department loan guarantee programs for clean energy and vehicle technologies. The bill is expected to [go directly to the House floor](#) for a vote, Pro's Sarah Ferris [reports](#). Senate GOP leaders have said they will consider the bill if and when it passes the House.

MEANWHILE IN BONN: Things aren't going as planned for the second week of climate talks in Bonn, Germany, punting further discussions to another meeting in September. The U.N. Framework Convention on Climate Change [said](#) Wednesday that there would be an additional meeting from Sept. 3-8 in Bangkok amid a stalemate centered in part around clarity on climate finance between developed and developing countries. The new date underscores the pressure negotiators are under to advance talks enough for ministers to strike a deal later this year at the COP24 in Katowice, Poland. "We need to resolve differences on finance, accounting and transparency," Alden Meyer of the Union of Concerned Scientists [told POLITICO Europe's](#) Kalina Oroschakoff.

CALVERT: EPA-INTERIOR COMING SHORTLY: Rep. [Ken Calvert](#), who oversees EPA and Interior on the Appropriations Committee, told ME to expect their fiscal 2019 bill "pretty soon" as work's going well. "We're working on final details now," he said. As for the perennial question, yes, Calvert expects policy riders to be in play: "There's always riders," he quipped.

AUTOMAKERS WANT MORE FUEL EFFICIENCY: The Alliance of Automobile Manufacturers and the Global Automakers, trade associations which together represent most of the automakers who sell cars in the U.S., will tell Trump that they most definitely want increases in fuel efficiency standards, contra that zero increase preference of the Department of Transportation. They also want the federal government to work out a single national standard with California, rather than face either a bifurcated market or a long legal battle. "Automakers are deeply committed to increased fuel economy and safety measures that meet the needs of our customers, and we expect to share the importance of government policies that provide certainty to the auto sector, continue to reduce greenhouse gas emissions, reflect what consumers will buy and result in a national policy that includes California," the two groups said in a statement.

FOLLOW THE MONEY: The Environmental Integrity Project released a database Wednesday of political contributions from companies and conservative organizations that met with Pruitt between Feb. 21, 2017, and April 13 of this year. The database was compiled via EPA calendars, FEC reports and data from the Center for Responsive Politics. See it [here](#).

SAVE THE DATE: BLM scheduled meetings to discuss its plans for an environmental review of planned oil and gas leases in ANWR. Several will be held in Alaska, including one each in Fairbanks and Anchorage on May 29 and May 30, respectively. Another meeting is scheduled for Washington D.C. on June 15. For those who can't make the hearings, BLM plans to live stream the Fairbanks and Anchorage dates.

MAIL CALL! ISN'T IT IRONIC? Six Democratic senators wrote to Office of Information and Regulatory Affairs Administrator Neomi Rao on the office's review and evaluation process for EPA's proposed "secret science" proposal to ban the use of studies that don't publicly disclose all their data. "The review process and rollout of this rule appears to have been rushed and secretive — which is particularly ironic for a proposal that purportedly aims to improve agency transparency and decision-making processes," they write.

Separately, bipartisan Reps. Ryan Costello and Paul Tonko sent a letter to the National Academy of Sciences asking for its input on the proposed rule, which was discussed when Pruitt testified before the House E&C Committee. Read the letter here.

Of course, Pruitt seems pleased with the proposal: Bloomberg's Ari Natter snapped a photo of new signs at EPA that tout the agency's "Strengthening Transparency in Regulatory Science."

ROCK STARS: Access Fund and American Alpine Club are sponsoring their annual "Climb the Hill" event today with professional rock climbers and outdoor recreation advocacy groups, who will hit the Hill today to talk outdoor recreation and public lands. Sen. Maria Cantwell will attend a reception with the group at 3 p.m. in 385 Russell. High-profile members of the rock-climbing community and executives from REI, Patagonia and The North Face will attend.

QUICK HITS

— Pair of investor-pushed resolutions pass at Kinder Morgan, Axios.

— Saudis pledge to "mitigate" loss of Iranian oil exports from U.S. sanctions. But crude prices rise anyway, The Washington Post.

— Emails: Perdue's donors, agency coordinated on biomass, E&E News.

— Hugh Hewitt used his MSNBC gig to praise efforts to weaken a law that his firm's client is accused of violating, Media Matters.

— Emails show Heritage Foundation offered Pruitt flights, hotel, and talking points for its conference, ThinkProgress.

HAPPENING TODAY

8:00 a.m. — The Women's Council on Energy and the Environment discussion on "Congressional Energy and Environmental Priorities: 2018 and Beyond," 400 North Capitol Street NW

8:30 a.m. — The International Trade Administration meeting of the Renewable Energy and Energy Efficiency Advisory Committee, 1401 Constitution Avenue NW

8:45 a.m. — Peter G. Peterson Foundation holds "the 2018 Fiscal Summit: Debt Matters," 1301 Constitution Ave NW

9:00 a.m. — House Appropriations Interior-Environment Subcommittee two-part hearing on "American Indian/Alaska Native Public Witnesses," 2007 Rayburn

9:00 a.m. — The Environmental Law Institute conference on "Infrastructure Review and Permitting: Is Change in the Wind?" 601 Massachusetts Avenue NW

9:00 a.m. — The Washington Post discussion on "The Energy 202 Live," 1301 K Street NW

9:30 a.m. — Senate Appropriations Interior-Environment Subcommittee hearing on Interior's FY 2019 budget request, 138 Dirksen

10:00 a.m. — House Energy and Commerce Energy Subcommittee hearing examining the state of electric transmission infrastructure investment, planning, construction and alternatives, 2123 Rayburn

1:00 p.m. — The United States Energy Association forum on "Chemical Looping Prospective: An Advanced Approach to Coal Utilization," 1300 Pennsylvania Avenue NW

2:00 p.m. — Center for Climate and Energy Solutions webinar on "City-Utility Partnerships for a Cleaner Energy Future."

THAT'S ALL FOR ME!

**** A message from Anheuser-Busch:** Anheuser-Busch announced that America's leading brewer has placed an order for up to 800 hydrogen-electric powered semi-trucks from the pioneer in hydrogen-electric renewable technology, Nikola Motor Company. The zero-emission trucks — which will be able to travel between 500 and 1,200 miles and be refilled within 20 minutes, reducing idle time — are expected to be integrated into Anheuser-Busch's dedicated fleet beginning in 2020.

Through this agreement Anheuser-Busch aims to convert its entire long-haul dedicated fleet to renewable powered trucks by 2025.

"At Anheuser-Busch we're continuously searching for ways to improve sustainability across our entire value chain and drive our industry forward," said Michel Doukeris, CEO of Anheuser-Busch. "The transport industry is one that is ripe for innovative solutions and Nikola is leading the way with hydrogen-electric, zero-emission capabilities. We are very excited by the possibilities our partnership with them can offer."

Learn more. **

To view online:

<https://subscriber.politicopro.com/newsletters/morning-energy/2018/05/zinkes-turn-on-the-hill-209472>

Stories from POLITICO Pro

EPA watchdog knocked Pruitt aides for slowing probe Back

By Alex Guillén | 05/09/2018 06:43 PM EDT

EPA's internal watchdog complained last year that Scott Pruitt's top aides were delaying handing over documents to auditors probing the administrator's travel practices, according to newly released emails.

That standoff between the EPA inspector general's office and Pruitt's team was resolved a month after the IG's staff flagged the issue and warned that the reticence to release the documents came close to impeding their probe, the emails show. But the incident highlights early tension between EPA's political appointees and the internal watchdog, which is now conducting multiple reviews of Pruitt's actions.

And it shows that concerns about the lack of transparency atop the agency since Pruitt joined have rankled people inside the agency as well as outside. POLITICO reported last week that Pruitt's political appointees were screening documents produced for public records requests related to the embattled administrator, slowing the release of information.

The new emails, released under a Freedom of Information Act request from California's Justice Department, show the IG's office was seeking information for its probe of Pruitt's frequent travel to Oklahoma on EPA business, enabling him to spend numerous weekends at his home in Tulsa.

That probe was later expanded to look at Pruitt's other travel practices, including his first-class flights that cost more than \$100,000, and it is expected to be completed by this summer. The watchdog has since opened additional probes into Pruitt's security spending, condo rental, soundproof phone booth, large raises for aides and allegations of retaliation against staff who questioned him.

Kevin Christensen, EPA's assistant inspector general for audits, wrote in September to a top career official in EPA's finance office to warn of a "potential situation" with the travel audit just two weeks after it began, the emails show. He flagged messages showing Pruitt's chief of staff Ryan Jackson was "screening" documents before releasing them to the Office of Inspector General.

"This does not fit the definition of unfettered access or comply with the Administrator memo on access and providing information to the OIG," Christensen wrote to Jeanne Conklin, EPA's controller who oversees financial management and reporting. "When we are denied access to information until approved for release, it raises the question as to what is being withheld and approved for release."

The auditors were able to obtain the documents on Pruitt's flights from the EPA's finance office in Cincinnati, even as Pruitt's staff continued to withhold them, Conklin wrote to Kevin Minoli, a career official who at that time served as EPA's acting general counsel.

"Do they not understand in the [Office of the Administrator]," Conklin asked Minoli. "Perhaps someone can speak to them and make them understand that the OIG has the documents already and they appear close to impeding the audit."

Both Minoli and Conklin stated in their email exchange that neither of them advised Pruitt's staff that they had the power to delay or withhold handing over documents to the OIG.

Minoli said in an email a week later that Jackson had delayed providing the records over concerns the audit might make public some previously redacted information, such as Pruitt's calendar and flight records. Minoli said he discussed the matter with the deputy inspector general, Chuck Sheehan, and noted the IG's office "has a long-standing practice of not using privileged information in their published work unless absolutely necessary."

An EPA spokesman on Wednesday declined to comment on the incident.

Other emails released to California's Department of Justice under the FOIA request also show career ethics officials warning Pruitt's aides about accepting industry awards and attending political events.

In March 2017, the Oklahoma-based National Stripper Well Association told Pruitt it would award him its "Industry Leader Award" at an annual gala, which was sponsored by Koch Industries. The group represents the

owners of the hundreds of thousands of small wells that produce less than 15 barrels of oil or 90,000 cubic feet of natural gas per day.

But EPA ethics official Justina Fugh noted in an email to Pruitt's schedulers, Sydney Hupp and Millan Hupp, that NSWA was registered to lobby the federal government and Pruitt would violate his ethics agreement if he accepted the honor.

The group had praised Pruitt's decision that month to halt the Obama EPA's request for oil and gas companies to provide the agency with information about methane emissions, a possible first step toward regulating pollution in those existing wells. "NSWA Got a Win at EPA Already!" touted an early March [blog post](#) by the group. It is unclear whether Pruitt's award was directly connected to that decision.

Fugh warned the Hupps that Pruitt would have to walk a fine line in accepting anything from a lobbying entity. Items with "no other intrinsic value" like a plaque may be OK, she said, but "an ashtray or coffee table book" would not be.

Pruitt ultimately appears to have accepted a plaque from the NSWA, according to a [photo](#) posted on the group's site and his own internal calendars. Another photo posted on the NSWA's Facebook page shows Pruitt [posing](#) with Koch executives.

Pruitt's Outlook calendar, released in response to public records requests, lists the topic of the speaking engagement as "acceptance of award, thank you."

EPA did not say whether Pruitt officially accepted the award from the group along with the plaque, despite Fugh's advice.

"We gave the plaque to [the Office of the Executive Secretariat] who confirmed that we could keep it," EPA spokesman Jahan Wilcox said. NSWA did not say Wednesday why it honored Pruitt.

Pruitt aides hinted to ethics officials last fall that he expected to be invited to increasing numbers of political events, which ethics officials warned raises a host of Hatch Act concerns about mixing political activities with his official duties.

Earlier in his tenure, Pruitt had decided not to attend an Oklahoma GOP fundraiser after reports revealed the event would feature a speech on EPA issues.

Last fall, Ronna McDaniel, the head of the Republican National Committee, invited Pruitt to attend an Oct. 25 fundraiser in Dallas for Trump Victory, a joint fundraising committee that funnels money to the RNC and Trump's reelection campaign.

"We will get more and more of these" invites as "political season" approaches, Jackson wrote to an ethics official.

Hatch Act restrictions would allow Pruitt to attend, but he would be barred from mentioning his EPA affiliation or asking for donations, Fugh replied. EPA could not cover his travel costs, although the agency could pay for his security detail's travel, Fugh added. Event organizers could not specifically invite guests with issues before the agency and would need to rescind invitations to anyone with business before EPA.

Pruitt ultimately appears to have skipped that fundraiser.

Emily Holden contributed to this report.

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[Back](#)

Trump calls Blankenship after pushing for his loss in West Virginia [Back](#)

By Alex Isenstadt | 05/09/2018 10:55 PM EDT

President Donald Trump connected by phone on Wednesday with Don Blankenship, the former coal baron and ex-con whose Senate candidacy he helped sink.

Trump and Blankenship spoke briefly, according to three people familiar with the discussion. The conversation was described as straightforward, polite and cordial, with the president calling to exchange pleasantries and offer his congratulations on waging the campaign.

The call came two days after Trump took to Twitter to urge West Virginia Republicans to reject Blankenship's candidacy. In the tweet, Trump argued that Blankenship, who spent a year in jail following a 2010 explosion at his Upper Big Branch Mine that killed 29 workers, would be unable to defeat Democratic Sen. Joe Manchin in November.

Trump's intervention undermined Blankenship, who had aligned himself closely with the president — so much so that he described himself as "Trumpier than Trump."

Blankenship would go on to lose the primary decisively, finishing a distant third behind state Attorney General Patrick Morrisey and Rep. Evan Jenkins.

In his remarks to supporters on Tuesday evening, Blankenship attributed his loss to the president's last-minute intervention in the contest, saying that it had halted his momentum.

"I think if there was any single factor based on the polling at different times, the debates, and all the things I saw, it was probably President Trump's lack of endorsement — I don't know what to call it, but 'Don't vote for Don' tweet," he said. "I don't know what else it would have been."

In the final hours of the race, he said he was convinced that Trump had been pushed into the intervention by Senate Majority Leader Mitch McConnell, who had aggressively opposed Blankenship.

Blankenship on Wednesday released an "open letter" to Trump in which he accused the president of spreading "fake news against me."

"Your interference in the West Virginia election displayed a lack of understanding of the likely outcome of the upcoming general election," Blankenship added. "Patrick Morrisey will likely lose the general election. It's too late to change that, but it's not helpful to do to me what others are doing to you."

The president also connected briefly with Jenkins, but as of Wednesday evening had yet to connect with Morrisey, the winner of the primary. On Tuesday, though, Morrisey spoke with Donald Trump Jr. During the call, the president's eldest son promised to be helpful.

Trump's calls on Wednesday, several Republicans said, were partly aimed at healing the wounds following a deeply divisive primary. Blankenship has yet to endorse Morrissey, who aggressively attacked him during the final days of the race.

Some in the party are concerned that the deep-pocketed Blankenship, who spent more than \$2.5 million of his own funds in the primary, could wage an effort to damage Morrissey in the general election.

To view online [click here](#).

[Back](#)

DOE loan guarantee programs hit hard in White House rescissions package [Back](#)

By Anthony Adragna | 05/08/2018 11:08 AM EDT

More than \$5 billion in Energy Department loan guarantee programs for clean energy and vehicle technologies would be cut under a \$15 billion rescissions [request](#) unveiled today by the White House.

The proposal would cut \$684 million from clean energy loan guarantee programs, on top of the \$4.33 billion in proposed cuts to Advanced Technology Vehicles Manufacturing loan program [already announced](#) by the Trump administration.

"This proposed rescission would eliminate subsidy amounts that are inconsistent with the President's policies," the proposal says of cutting from the loan guarantee programs.

In addition, the package would cut \$10 million in water quality research grants, which the proposal says "are duplicative with other Federal programs."

WHAT'S NEXT: The package is expected to easily pass the House but faces a less certain fate in the Senate.

To view online [click here](#).

[Back](#)

Trump spending cut package to head directly to House floor [Back](#)

By Sarah Ferris | 05/09/2018 01:03 PM EDT

House Republican leaders are moving quickly to tee up the White House's \$15 billion package of proposed spending cutbacks.

GOP leaders plan to release legislative text of [the White House's proposal](#) as early as today, a House GOP aide confirmed.

The package is expected to closely mirror the Trump administration's request, which targeted unspent dollars from years-old accounts.

It will not go through the House Appropriations Committee, another GOP aide confirmed. That sets up the bill directly for a floor vote.

Most Republicans have embraced the proposed cuts, even as some budget hawks complained that most of the savings are only on paper.

But some, like GOP Rep. Vern Buchanan of Florida, have rejected the idea of cutting \$7 billion of budget authority from the Children's Health Insurance Program.

White House officials have argued that most of the funding has technically expired and can't be used, so it would have zero impact on the program.

The CBO confirmed that point today, saying that there would be no actual cuts or coverage reductions for CHIP.

To view online [click here](#).

[Back](#)

House GOP leaders unveil rescissions bill [Back](#)

By Sarah Ferris | 05/09/2018 08:28 PM EDT

House Republican leaders today unveiled a package of spending cuts, following a request from President Donald Trump this week.

The House GOP bill contains \$10.45 billion in specific cuts, including roughly \$7 billion to the Children's Health Insurance Program.

Other cutbacks in the GOP bill — including one targeting an energy program in the 2009 Obama-era stimulus bill — do not provide specific dollar amounts.

House GOP leaders will now begin whipping support for the bill, which is expected to go directly to the House floor for a vote. Senate GOP leaders have said they will consider the bill if and when it passes the House.

Under a decades-old law, presidential rescissions requests can pass the Senate with a simple majority, instead of the usual 60-vote threshold for procedural votes.

Democrats argue that Trump's bill would require the full 60 votes, however, because it targets mandatory funding, and not solely discretionary.

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Yes, very



Somewhat



Neutral



Not really



Not at all

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Subject: Honest Act call summary from Friday FYI
Flag: Flag for follow up

Clint, Mandy,

I wanted to relay a little background from the call OCIR hosted Friday on the Honest Act (HR 1430) in case you weren't also on the line. OCIR scheduled the call in preparation for briefing the House Science, Space and Technology (HSST) Committee (perhaps later this week though I am unsure of exact timing) with many from ORD joining,

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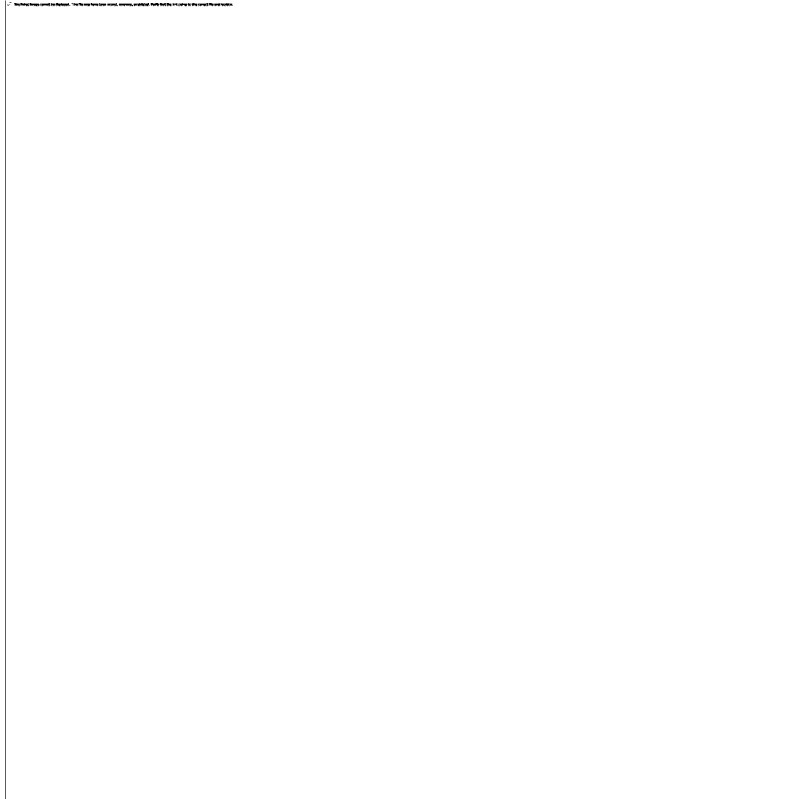
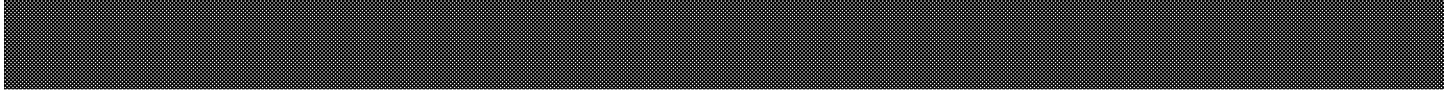
Believe ORD is pulling background together for the HSST briefing by circa today to pass back and share with OCIR and potentially, the wider group. Hope that helps and please let me know if you might have any questions. Best,

John

JOHN SHOAFF | LEADER, POLICY SUPPORT GROUP
OFFICE OF AIR POLICY & PROGRAM SUPPORT (OAPPS)
OFFICE OF AIR & RADIATION | U.S. EPA | WJC NORTH 5442-B
1200 PENNSYLVANIA AVE. NW | MC 6103A | WASHINGTON, D.C. | 20460 | USA
Shoaff.john@epa.gov | 1-202-564-0531 DIRECT | 1-202-257-1755 MOBILE

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Subject: Morning Consult Energy: Trump Administration Considers Using Two Federal Laws to Aid Coal, Nuclear Plants



By Jacqueline Toth

Top Stories

- A planned Energy Department directive would use federal emergency authority under both the Federal Power Act and the Defense Production Act to order grid operators to purchase electricity from coal and nuclear plants in an effort to help those plants compete against cheap natural gas and renewable sources, according to a draft 41-page internal memorandum dated May 29 and circulated Thursday prior to a National Security Council

meeting on the topic today. There was no indication that President Donald Trump had signed off on the plan, or if an order would ultimately be issued. ([Bloomberg](#))

- Pope Francis, who wrote his encyclical on the necessity of addressing climate change, will host a meeting late next week at the Vatican with executives from major oil producers, like BP PLC and Equinor ASA, as well as investment companies to discuss how the firms can tackle a changing climate, according to sources. Former Energy Secretary Ernest Moniz was also expected to attend. ([Axios](#))
- On Thursday, electric cars scored a boost as New Jersey's largest utility owner, Public Service Enterprise Group, spelled out a plan to dole out \$300 million on electric car charging stations; California approved \$738 million in investments by utilities to promote electric vehicles; and the New York Power Authority said it would spend as much as \$250 million on charging stations. The move by the California Public Utilities Commission is the largest utility investment in electric vehicle adoption in the United States to date and promotes a potential electric car-charging network across the state. ([Bloomberg](#))
- In a unanimous vote, the Environmental Protection Agency's 44-member Science Advisory Board of outside experts said it would review the agency's proposed rule to prevent the EPA from using unpublished scientific data in its rulemakings, noting the proposal was written without discussions with the scientific community. The panel also voted to review five additional agency actions, such as its proposed repeal of the Clean Power Plan and glider truck emission standards, and its plan to change current fuel-efficiency standards. ([Washington Examiner](#))

Chart Review

Decarbonisation of heat in Europe: implications for natural gas demand

Anouk Honoré, Oxford Institute for Energy Studies

Events Calendar (All Times Local)

FRIDAY

Northeast Renewables event on developing the Northeast renewables market	7:30 a.m.
Transit Research and Development committee meeting on the federal role in the National Program	8 a.m.
Platts Northeast Power and Gas Markets conference	8 a.m.

House Natural Resources field hearing on natural gas and oil shale opportunities in Western Colorado

2 p.m.

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General

EPA's Science Advisory Board rebukes Pruitt over rule combating 'secret science'

Josh Siegel, Washington Examiner

The Environmental Protection Agency's Science Advisory Board unanimously agreed Thursday to vet a controversial proposal from Administrator Scott Pruitt that would block the agency from using scientific studies that do not make public the raw data used in research.

Think tank balks as agency links it with 'secret science'

Sean Reilly, E&E News

A centrist think tank is disputing EPA's characterization of a 2009 report that it's using to justify its controversial proposal to limit the use of scientific studies in crafting new regulations.

EPA emails could contradict Pruitt testimony on apartment hunt

Gregory Wallace, CNN

Newly released emails appear to contradict EPA Administrator Scott Pruitt's account in recent congressional testimony that the aide who assisted him with his apartment hunt did so "on personal time."

House Oversight to interview two close Pruitt aides

Anthony Adragna, Politico

The House Oversight Committee plans to interview two members of Scott Pruitt's inner circle this month as it presses ahead with its investigation into the embattled EPA administrator's ethics controversies and lavish spending, according to a committee aide.

Interior's top lawyer plays key role as troubleshooter, records reveal

Juliet Eilperin and Dino Grandoni, The Washington Post

In April 2017, pesticide industry officials were eager to meet with the Interior Department's principal deputy solicitor about a provision in the Endangered Species Act they viewed as time-consuming and complex.

Oil Prices Mixed as Gap Between Global Benchmarks Widens
Christopher Alessi, The Wall Street Journal

Oil prices were mixed Friday, further opening a gap between U.S. crude and global prices that is at its widest in three years.

Oil and Natural Gas

Pope convenes Big Oil, investors to talk climate change
Amy Harder, Axios

Pope Francis is hosting a gathering next week at the Vatican with executives of major oil producers and investment firms to talk about how the companies can address climate change, according to several people familiar with the event.

Oil and gas sector worries of accelerating impacts as White House expands steel tariff reach
Maya Weber and Justine Coyne, Platts

Oil and gas industry interests feared higher materials costs, supply chain headaches and risks to trading relationships, following the Trump administration's decision to expand steel and aluminum tariffs to cover the European Union, Canada and Mexico.

U.S. and Brent crude part ways, leaving market flummoxed over oil prices
Amanda Cooper and Ayenat Mersie, Reuters

Global oil markets have been roiled by a surprising divergence between the world's major benchmarks, Brent crude and its U.S. counterpart, which in recent days have traded at odds with one another, wrongfooting investors betting on the exact opposite.

GE Pulls Back From Work in Iran
Benoit Faucon and Thomas Gryta, The Wall Street Journal

General Electric Co. is planning to end sales of oil and natural-gas equipment later this year in Iran, people familiar with the matter said, illustrating how U.S. withdrawal from the nuclear deal is shutting a narrow window of opportunity for some American businesses there.

Shell Tries to Market Some of Its Natural Gas as Clean Energy
Matthew Carr, Bloomberg

Royal Dutch Shell Plc is attempting to market some of its natural gas as clean energy, packaging it with credits for eco-friendly projects that offset pollution coming from the fuel.

24 Oil Wells in a School's Backyard. How Close Is Too Close?

Julie Turkewitz, The New York Times

A new oil rig will rise behind a middle school in this sprawling county in the coming months, its slender tower bearing an announcement: fracking is back.

Utilities and Infrastructure

Battered Puerto Rico still 2 months from full power as hurricane season opens

John Bacon, USA Today

More than eight months after Hurricane Maria tore across Puerto Rico and knocked out power to virtually the entire island of 3.3 million people, full power restoration remains another two months away, authorities said Thursday.

The Energy Grid Isn't Insured Enough to Handle a Catastrophic Hack

Naureen S. Malik, Bloomberg

Insurers are limiting how much coverage energy companies can buy to protect themselves against a major attack by hackers, potentially leaving investors, customers and taxpayers on the hook for sizable losses.

Federal assessment finds 'gaps' in preparation for electric grid attacks

Morgan Chalfant, The Hill

An assessment released by the departments of Energy and Homeland Security this week finds that there are shortfalls preventing the energy sector from improving its ability to respond rapidly in the event of a major cyberattack that disrupts the electric grid.

Renewables

In a Single Day, the Electric Car Boom Gains Speed in 3 States
Mark Chediak and Joe Ryan, Bloomberg

First, New Jersey's biggest utility owner Public Service Enterprise Group laid out a plan to spend \$300 million on electric-car charging stations. Then California cleared utilities to invest a combined \$738 million on projects promoting EVs.

For Electric Cars Without a Plug, Thank Tesla (the Scientist)
Stephen Williams, The New York Times

At its introduction last summer in Barcelona, Spain, the 2019 Audi A8 quattro became the poster child of automotive high tech: matrix L.E.D.s that shine from the headliner with the wave of a hand, advanced autonomous driver assistance sensors, active electromechanical suspension. And on the floor under one of the models, a gray metal pad.

Coal

Trump to Grant Lifeline to Money-Losing Coal Power Plants Nuclear
Jennifer A. Dlouhy, Bloomberg

Trump administration officials are making plans to order grid operators to buy electricity from struggling coal and nuclear plants in an effort to extend their life, a move that could represent an unprecedented intervention into U.S. energy markets.

U.S. coal lobby fights black-lung tax as disease rates surge
Valerie Volcovici, Reuters

The Black Lung Disability Trust Fund is at risk of insolvency due to soaring debt and a slashing of coal-company contributions through a tax cut scheduled for the end of the year, according to a report the U.S. Government Accountability Office plans to publish soon, two sources briefed on the study told Reuters.

Nuclear

Plant overcharged TVA nearly \$4.4 million
Dave Flessner, Times Free Press

The Tennessee Valley Authority was overcharged nearly \$4.4 million by a contractor at the Watts Bar Nuclear Power Plant for construction of the Unit 2 reactor from 2013 to 2015, according to an audit released Wednesday.

Climate

EBRD publishes guidance for firms disclosing climate impacts **Nina Chestney, Reuters**

The European Bank for Reconstruction and Development has published guidance for companies reporting on the physical impact of climate change in their financial results.

SoftBank Fund Puts \$2.25 Billion in G.M.'s Driverless Unit **Neal E. Boudette and Michael J. de la Merced, The New York Times**

Self-driving cars have increasingly figured in visions of the automotive future, and a big new investment is the latest signal that such a moment is close at hand.

Opinions, Editorials and Perspectives

Asian Allies Need U.S. Energy Exports **Surya Gunasekara, Morning Consult**

President Donald Trump knows a bad deal when he sees one, so it should not come as a surprise when the president fulfilled another campaign promise to abandon the Iran nuclear deal. His sober analysis was spot on; the Iran deal was a "horrible, one-sided deal" that allowed Iran to reach the brink of nuclear breakout and will never bring peace.

We're keeping our Paris climate change commitments and our economies are booming: Governors **Jerry Brown et al., USA Today**

The 2015 Paris Agreement on climate change was a landmark moment in human history. It crystallized decades of negotiations into a framework embraced by every country in the world to confront the existential threat of climate change and work together to solve the challenge.

Wacky Prices Pinch Oil Producers' Profits
Spencer Jakab, The Wall Street Journal

"Oil prices rose yesterday." That sound bite is usually enough for those with a casual interest in the direction of the world's most important commodity, whether it is because they own a few hundred shares of Exxon Mobil or want to know how much next weekend's road trip will cost.

Developments in Energy Storage Could Spell the End of the Duck Curve

Purvin N. Patel, POWER Magazine

To alleviate the problematic conditions resulting from the duck curve, utilities have traditionally turned to natural gas peaker plants to quickly deliver energy during peak demand periods.

The New Tech That Terrifies OPEC
Spencer Jakab, The Wall Street Journal

What doesn't kill you makes you stronger. Two years ago, it looked like Saudi Arabia was winning its fight against the U.S. shale oil industry by furiously pumping crude to drive down prices.

The sage grouse isn't just a bird - it's a proxy for control of Western lands

John Freemuth, The Conversation

The Trump administration is revising an elaborate plan developed under the Obama administration that sought to steer energy development away from sage grouse habitat. Conservation groups are suing in response, arguing that this shift and accelerated oil and gas leasing threaten sage grouse and violate several key environmental laws.

The Paris agreement's emissions goals may be in trouble, with or without U.S. participation

Johannes Urpelainen, The Washington Post

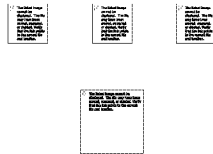
Last June, President Trump announced that the United States would withdraw from the 2015 Paris agreement on climate change. How are the Paris goals looking, a year later? It may be too early to assess whether the Paris signatories are on track with their pledges for the year 2030, but rising carbon dioxide emissions in Asia and Europe, in particular, are a troubling sign.

Research Reports

New Realities, New Risks: Rethinking the Strategic Petroleum Reserve

Jason Bordoff et al., Columbia University Center on Global Energy Policy

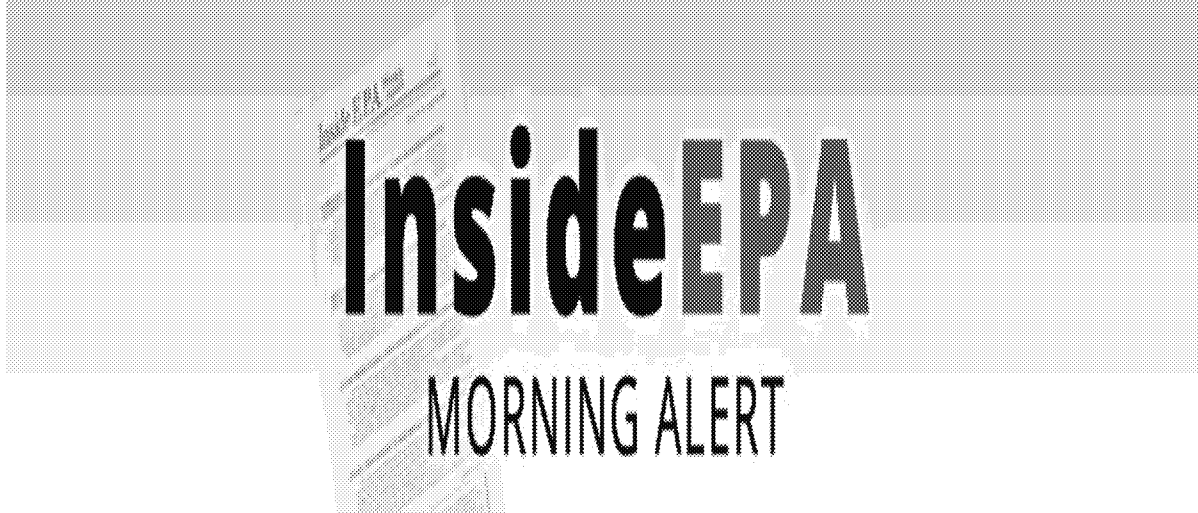
The last few years have offered a reminder, if any was needed, that oil markets are no stranger to volatility. From OPEC's reported demise to OPEC's resurgence, the rapid fall and rise again of US shale, and the ebb and flow of geopolitical risk, oil has been on a rocky ride. After industry leaders and experts declared that the days of cheap oil were over—" \$100 per barrel is becoming the new \$20," explained one top oil CEO in 2014—consensus shifted to a view that oil prices would remain "lower for longer" before sharply rising again in the last few months.



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REDEFINING EPA: Overhauling an agency and its mission -- Complete coverage

June 1, 2018

The Weekly Focus

EPA's Push To Overhaul NAAQS Poses Test For 'Cooperative Federalism'

EPA's push to overhaul and streamline the national ambient air quality standards (NAAQS) process will pose a major test for Administrator Scott Pruitt's pledge to give states more power over environmental decisions, as some states welcome new NAAQS compliance flexibility while others fear it will boost interstate pollution.

Latest News

SAB Votes To Review EPA's Science, Emissions Rules In Sign Of 'Rebuke'

EPA advisers have voted to review the science underlying agency rules aimed at rolling back a suite of Obama administration's greenhouse gas and emissions regulations, as well as a controversial proposal to require that major rules be based on publicly available science, decisions that environmentalists say amount to a "sharp rebuke" of Administrator Scott Pruitt's deregulatory agenda.

SAB Chair Honeycutt Dodges Tough Questions On EPA Science Policies

Michael Honeycutt, the new chair of EPA's Science Advisory Board (SAB), dodged tough questions from reporters on EPA's "secret science" policy, review of major EPA rulemakings and related issues at the first panel meeting since his appointment, but he reaffirmed his skepticism of the Obama administration's decision to tighten the ozone ambient air standard.

EPA, Sierra Club Fail To Reach Deal On Key 'Sue-And-Settle' Test Case

EPA and the Sierra Club have abandoned an effort to settle a suit over the agency's failure to produce congressionally mandated studies on the environmental impacts of the renewable fuel standard (RFS), seeking instead to brief the case in a move that suggests Administrator Scott Pruitt's directive against settling such cases is driving the action.

Observers Criticize Hill GOP Claim No RIA Needed For 'Glider' Repeal Rule

Key observers are criticizing claims by Hill Republicans that the Office of Management and Budget (OMB) should not require a regulatory impact analysis (RIA) when reviewing EPA's plan to scrap production limits on high-emitting "glider" trucks because it is deregulatory, saying there is no such exception.

Judges Reject Rehearing In Groundwater Suit, Teeing Up High Court Petition

A closely divided appellate court will let stand a panel ruling that imposed Clean Water Act (CWA) liability for an underground pipeline leak that reached surface waters through groundwater, but the narrow vote -- with five judges in favor of *en banc* rehearing -- signals that the question is far from settled and could bolster a Supreme Court petition.

Daily Feed

States launch suit to force EPA to implement landfill rules

Eight states say EPA has failed to take action on state compliance plans for the Obama-era methane standards for existing landfills, charging that the agency has "conceded" its failure to act.

OMB formally reviewing vehicle GHG rule rollback plan

It is not clear if officials have incorporated calls from a wide range of industry groups to seek input on a more moderate plan to largely retain Obama-era stringency levels while offering more compliance "flexibility."

Senate Democrats seek IG inquiry into Pruitt's house hunting

Top Democratic senators are seeking an investigation into whether Administrator Scott Pruitt violated federal regulations when one of his top aides searched for housing on his behalf.

Ewire: Pruitt touts Trump's support amid ethics scandals

EPA Administrator Scott Pruitt says that he has President Donald Trump's support despite a slew of recent ethics scandals and a looming IG report.

PEER claims ethics violations in Pruitt defense fund

A whistleblower group says EPA Administrator Scott Pruitt's legal defense fund seems "calculated to give the appearance of taking untoward gifts," and calls for investigations into its structure and donors.

Former EPA chief launches new Harvard climate center

Gina McCarthy said the new center seeks to transform science into "meaningful actions that will deliver a healthier, more just, and sustainable world."

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Subject: eFolder for Friday, January 26, 2018
Attachments: CSAPR Update Briefing for OAR 1-25-18.pptx; Public_Review_GHGI_OAR_Briefing_24Jan18_v2.pptx

Hi Clint,

I hope things are still going well. Here's your eFolder for tomorrow, Friday, January 26, 2018.

10:30am – 11:00am Speech Requests Review

*11:00am – 12:00pm CSAPR Update Briefing

*1:00pm – 2:00pm Public Review of Draft Inventory of GHG Emissions and Sinks: 1990-2016

2:00pm – 3:30pm CONFIRMED: EPA PRE-INTERNAL CALL : HONEST ACT IMPLEMENTATION

2:15pm – 3:00pm Scheduling Meeting

3:30pm – 4:00pm OGC Discussion

If there are any other briefing materials you would like for me to share, please let me know and I'll make sure you get them.

Thank you,

Rhonda Wright
Special Assistant
U.S. Environmental Protection Agency
Office of Air and Radiation
Immediate Office of the Assistant Administrator
Room 5406E, 1200 Pennsylvania Avenue NW
Washington, DC 20460
Office: (202) 564-5437
Cell: (202) 365-6008

Message

From: Woods, Clint [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BC65010F5C2E48F4BC2AA050DB50D198-WOODS, CLIN]
Sent: 5/16/2018 8:02:14 PM
To: Lovell, Will (William) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3b150bb6ade640f68d744fadcb83a73e-Lovell, Wil]
Subject: Follow Up
Attachments: EPA Response to OIRA- Data Access Draft 4-23-18 cw footnote review.docx

Will,

The links in the attached, highlighted footnotes were stripped of hyperlinks in the FRN. Thanks!

Clint Woods
Deputy Assistant Administrator
Office of Air and Radiation, U.S. EPA
202.564.6562

Message

From: Woods, Clint [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BC65010F5C2E48F4BC2AA050DB50D198-WOODS, CLIN]
Sent: 6/20/2018 12:01:55 PM
To: Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clin]
Subject: 'Secret Science' Policy's Impact On Pending NAAQS Review May Be Muted | InsideEPA.com

<https://insideepa.com/daily-news/secret-science-policys-impact-pending-naaqs-review-may-be-muted>

Message

From: Woods, Clint [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BC65010F5C2E48F4BC2AA050DB50D198-WOODS, CLIN]
Sent: 4/20/2018 7:22:47 PM
To: Szabo, Aaron L. EOP/CEQ [EOP / Ex. 6]
Subject: FW: EPA - Data Access NPRM - comments
Attachments: Data Access Draft - EPA - 4-17-18 - CLEAN_suggestions_ceq.docx; Data Access Draft - OIRA comments 4-20-18.docx

Clint Woods
Deputy Assistant Administrator
Office of Air and Radiation, U.S. EPA
202.564.6562

From: Lewis, Josh
Sent: Friday, April 20, 2018 2:54 PM
To: Woods, Clint <woods.clint@epa.gov>
Subject: FW: EPA - Data Access NPRM - comments

From: Kim, Jim H. EOP/OMB [EOP / Ex. 6]
Sent: Friday, April 20, 2018 2:43 PM
To: Lewis, Josh <Lewis.Josh@epa.gov>
Cc: Laity, Jim A. EOP/OMB [EOP / Ex. 6] Schwab, Margo EOP/OMB
[EOP / Ex. 6]
Subject: EPA - Data Access NPRM - comments

Hi Josh,

Please find attached our comments and CEQ's comments on the Data Access draft.
to:

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

We will also pass along other agencies' comments as we receive them.

Let me know if you have questions.

Thanks,
Jim

James Kim, Ph.D., DABT
Office of Information and Regulatory Affairs
Office of Management and Budget

EOP / Ex. 6

Message

From: Woods, Clint [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BC65010F5C2E48F4BC2AA050DB50D198-WOODS, CLIN]
Sent: 3/26/2018 10:43:20 PM
To: Harlow, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b5a9a34e31fc4fe6b2beaddda2affa44-Harlow, Dav]
Subject: FW: Data
Attachments: FR Notice on Data Access Guidelines_3.19.2018docx.docx; Data Access DRAFT NPRM 03222018.docx

David,

Deliberative Process / Ex. 5

Clint Woods
Deputy Assistant Administrator
Office of Air and Radiation, U.S. EPA
202.564.6562

From: Schwab, Justin
Sent: Thursday, March 22, 2018 1:12 PM
To: Bolen, Brittany <bolen.brittany@epa.gov>; Woods, Clint <woods.clint@epa.gov>; Yamada, Richard (Yujiro) <yamada.richard@epa.gov>; Beck, Nancy <Beck.Nancy@epa.gov>; Feeley, Drew (Robert) <Feeley.Drew@epa.gov>
Subject: Data

Attached please find (1) a clean draft:

Attorney Client / Ex. 5

Attorney Client / Ex. 5

; (2) the redline sent to me following Monday's call.

Attorney Client / Ex. 5

Message

From: Woods, Clint [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BC65010F5C2E48F4BC2AA050DB50D198-WOODS, CLIN]
Sent: 4/12/2018 2:57:43 PM
To: Tsirigotis, Peter [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d19c179f3ccb4fadb48e3ae85563f132-PTSIRIGO]
Attachments: Data Access DRAFT NPRM 04-11-2018.docx

From: Woods, Clint [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BC65010F5C2E48F4BC2AA050DB50D198-WOODS, CLIN]
Sent: 8/17/2018 11:46:40 AM
To: clintwoods; Personal Email / Ex. 6
Subject: Fwd: Morning Energy: What's happening with WOTUS — Keystone fight far from over — Wheeler to Michigan

Begin forwarded message:

From: "POLITICO Pro Energy" <politicoemail@politicopro.com>
Date: August 17, 2018 at 5:46:02 AM EDT
To: <woods.clinton@epa.gov>
Subject: Morning Energy: What's happening with WOTUS — Keystone fight far from over — Wheeler to Michigan
Reply-To: "POLITICO subscriptions" <reply-fe8a137676640c7471-630326_HTML-854520896-1376319-0@politicoemail.com>

By Kelsey Tamborrino | 08/17/2018 05:44 AM EDT

With help from Annie Snider, Ben Lefebvre and Alex Guillén

A COUNTRY DIVIDED: Which streams and wetlands are protected under the Clean Water Act? As of Thursday, the answer depends on where you're standing. After a South Carolina District Court ruling overturning the Trump administration's attempted delay of the Obama administration's Waters of the U.S. rule for failing to offer the public a proper opportunity to comment, the 2015 rule is now officially on the books in 26 states — but not in the other 24 states where other district court injunctions are in place.

"**The agencies refused to engage** in a substantive reevaluation of the definition of the 'waters of the United States' even though the legal effect of the Suspension Rule is that the definition of 'waters of the United States' ceases to be the definition under the WOTUS rule and reverts to the definition under the 1980s regulation," Judge David Norton wrote in Thursday's ruling. "An illusory opportunity to comment is no opportunity at all."

Environmental groups hailed the decision, with Jon Devine of the Natural Resources Defense Council calling it a "sharp rebuke to the Trump administration." Meanwhile, Zippy Duvall, president of the American Farm Bureau Federation, one of the fiercest critics of the Obama-era rule, called on the Trump administration to "to take immediate steps to limit the impact of this dangerous court decision."

But will it hold? The Justice Department is reviewing the decision, a spokesman said, and players on both sides broadly expect an appeal. Separately, EPA said in a statement it and the Army Corps of Engineers "will review the order as the agencies work to determine next steps." But the fate of the delay rule could ultimately become moot if the federal district judge in Texas grants a nationwide injunction request.

And don't forget, this is just the warm-up fight. The battle royale will be over the Trump administration's rule to repeal the 2015 rule, which the agency has not finalized. Geoff Gisler, the Southern Environmental Law Center attorney who brought yesterday's case on behalf of local environmental groups, argued that Thursday's South Carolina court decision has implications for that fight and "should give the agencies pause" as they move forward. "The agencies just aren't telling the public what they're doing," he argued. "What this decision said was you can't just have a comment period, it has to be a meaningful comment period."

WE MADE IT TO FRIDAY! I'm your host, Kelsey Tamborrino. Simon and Company's Jen Covino named the eight senators who formerly served as mayors: Dianne Feinstein, Cory Booker, Jim Inhofe, Bob Corker, Bernie Sanders, Tim Kaine, Mike Enzi and Bob Menendez. For today: Who are the three current House lawmakers who previously served as ambassadors? Send your tips, energy gossip and comments to ktamborrino@politico.com, or follow us on Twitter [@kelseytam](https://twitter.com/kelseytam), [@Morning_Energy](https://twitter.com/Morning_Energy) and [@POLITICOPro](https://twitter.com/POLITICOPro).

FAR FROM OVER: A federal judge's order directing the State Department to conduct a supplemental environmental review for the Keystone XL pipeline's updated path through Nebraska is another setback in nearly a decade full of them for TransCanada. The order is sure to stall construction of the pipeline for months, Pro's Ben Lefebvre reports. Plaintiffs in the case said the review would involve public hearings in Nebraska and consultations with Native American tribes whose land the pipeline would traverse.

Pipeline opponents are hoping to use the new review to push for a broader study of the project, Ben reports. Doug Hayes, a lawyer for the Sierra Club and one of the plaintiffs in the case, said the judge's ruling that the "entire pipeline remains interrelated and requires one [environmental review] to understand the functioning of the entire unit" could open the door for them to seek a new review for the pipeline's entire route. "If they are going back to do a supplemental environmental impact statement, our position is they would need to evaluate all the new impacts of the pipeline," Hayes said. "That would take definitely months."

WHERE'S WHEELER? Acting EPA Administrator Andrew Wheeler travels to Michigan today to discuss issues plaguing the Great Lakes and meet with GOP Rep. Tim Walberg, a member of the Energy and Commerce Committee, and officials from the Michigan Department of Natural Resources and Department of Environmental Quality.

WHEELER DELIVERS MESSAGE ON HARASSMENT: Wheeler reaffirmed EPA's policy against harassment in a memorandum sent to staff Thursday. Wheeler wrote that he expects "all individuals working at the EPA — employees, supervisors and non-employees — will not engage in or be subjected to unlawful and prohibited harassment."

MURKOWSKI: FERC NOMINEE SHOULD GO LITMUS TEST-FREE: Senate Energy Chairman Lisa Murkowski wouldn't comment on POLITICO's report that DOE's Bernard McNamee will be nominated to FERC. But the Alaska Republican said she believes that the next nominee shouldn't face a litmus test over their view of the Trump administration's efforts to prop up coal and nuclear power plants, Pro's Darius Dixon reports. "I worry that this is going to be viewed as, 'If you don't commit to voting against or voting for, then you're not going to have my support,'" Murkowski said. "That's not the way that we should be selecting commissioners for the FERC."

GET YOUR COMMENTS IN: American Petroleum Institute's Frank Macchiarola reiterated the need for Renewable Fuel Standard reform on a call with reporters Thursday outlining the group's comments for EPA's proposed biofuel blending requirements for the coming year under

the RFS. "Very simply what we want is an end to this program by 2022," he said. Macchiarola said API is "willing to compromise" on certain policies like a waiver for summertime sales of E15, but only if the program will sunset by 2022. "The problem again is that the ethanol industry has been dug in to not doing anything," Macchiarola said. He added legislation is being drafted to reform the program in both chambers, but noted challenges and lengthy debate are likely ahead. Comments are due today on EPA's proposed volumes, with the final rule due to be released by Nov. 30.

— **API is also looking at the proposed plan** by EPA and the Department of Transportation to freeze fuel efficiency standards for cars and trucks. "It is a very complex proposal to a very complex program," Macchiarola said. "We will say that we appreciate the administration's relooking at CAFE in the light of changing energy market realities."

SECRET'S OUT: Thursday was the last day for comments on EPA's proposed "secret science" rule, which would ban the use of studies that don't publicly disclose all their data. Getting their thoughts in under the wire, Sens. Sheldon Whitehouse, Brian Schatz, Maggie Hassan, Jeff Merkley, Ed Markey, Tammy Duckworth, Kirsten Gillibrand, Tom Carper and Kamala Harris banded together to make their opposition known. "The proposed rule is illegal because it is arbitrary and capricious," they write, adding that "the proposed rule is illegal because it is the result of an effective delegation of rulemaking authority to private interests."

The American Chemistry Council, meanwhile, applauded the proposal in its comment Thursday. "EPA's proposal codifies an important good governance principle — that government agencies should be as transparent as possible, within the bounds of the law, about scientific information relied upon and the justifications for the significant regulatory decisions they make." Still, the trade association also highlighted that implementation of the plan would benefit from better historical context and applicability, and that greater clarity is required on key definitions and regulatory text, among other recommendations.

FIGHTING FIRE WITH A FEDERAL PLAN: The Agriculture Department released a new, aggressive approach to fighting wildfires Thursday, with proactive steps. During a bipartisan press conference, Secretary Sonny Perdue unveiled a plan that emphasizes increased collaboration with states, implementation of mapping and remote sensing tools, and management practices such as prescribed burns and timber sales, Pro's Liz Crampton reports. Though Perdue brushed aside specific questions on climate change's role, he said Interior Secretary Ryan Zinke is on board with the plan and noted further details and costs will be forthcoming from the U.S. Forest Service. "Really a lot of people ... when you talk about climate change, they want to talk about what the causes are," Perdue said. "[What] we're trying to talk about is the impact."

FERC RESTARTS PART OF PIPELINE: FERC modified a stop work order for the Mountain Valley Pipeline this week, allowing construction to restart for around 77 miles of the pipeline's West Virginia route with the exception of a 7-mile area surrounding the Weston and Gauley Bridge Turnpike Bridge Trail, MVP said Thursday. However, the company said about half of its construction workforce has been released due to continued delays. MVP said that it "remains committed to the earliest possible in-service date," though it noted that is now expected to arrive during the fourth quarter of 2019.

GREENS CALL FOR FERC REVIEW: The Southern Environmental Law Center and Appalachian Mountain Advocates petitioned the 4th U.S. Circuit Court of Appeals on Thursday to review FERC's approval of the Atlantic Coast Pipeline. The suit was filed on behalf of 13 other conservation groups. "FERC ordered the ACP construction stopped because the 4th Circuit determined that permits were issued without proper scrutiny," SELC attorney Greg Buppert said

in a statement. "On the very same day, FERC rejected a rehearing request in which the conservation groups asserted that it also rushed through its decision to permit a pipeline that we don't need." The 4th Circuit last week vacated two permits issued for the project by the U.S. Fish and Wildlife Service and the National Park Service.

GREENS FILE FOIA SUIT: Environmental group Friends of the Earth filed a lawsuit Thursday against the Interior Department for lack of response to a Freedom of Information Act request. The lawsuit seeks to compel DOI to produce documents related to senior members of the department and the industries they regulate. The suit points to David Bernhardt's work as a lawyer and lobbyist for oil and gas companies and Vincent DeVito's time working as an energy industry representative. Friends of the Earth is being represented by the law firm Meyer Glitzenstein & Eubanks LLP.

AD-ING IT UP: Ahead of Wyoming's gubernatorial primaries Tuesday, a partnership between the Wyoming Wildlife Federation and Rocky Mountain Farmers Union, dubbed the Wyoming Conservation Legacy, will launch a five-figure ad campaign asking candidates to support conservation. The campaign will begin on Saturday and run through Aug. 21 with full-page print ads in the Casper Star Tribune and the Wyoming Tribune Eagle, separate radio buys on Wyoming Public Media programs, and digital ads across the state. See the ads here.

MAIL CALL! ON THE FARM: The National Biodiesel Board sent a letter to farm bill conference committee lawmakers reiterating its support for the inclusion of biodiesel programs in the five-year bill.

STAR-STUDDER SUMMIT: Attendees of the Global Climate Action Summit in San Francisco in September will hear from former White House officials, including former Vice President Al Gore and Secretary of State John Kerry. The summit announced Thursday night that new delegates will join the event, including Executive Secretary of the United Nations Framework Convention on Climate Change Patricia Espinosa and U.N. Special Envoy for Climate Action Michael Bloomberg. Actor Alec Baldwin and chimpanzee expert Jane Goodall will also attend.

GO NUCLEAR: The American Nuclear Society this week launched a nuclear science educational program for middle schoolers that covers topics like fission and fusion, and detecting radiation. The "Navigating Nuclear: Energizing Our World" program is aligned with the Next Generation Science Standards framework, which provides an evidence-based foundation for scientific research.

MOVER, SHAKERS: Jack Cramton, policy adviser for Sen. Bill Cassidy (R-La.), will start Monday as a legislative affairs adviser at the Department of Energy's Congressional and Intergovernmental Affairs Office.

QUICK HITS

— "U.S. energy chief applauds Mexico's plan to end fuel imports," Reuters.

— "Trump's CO2 rule is coming, and industries wonder who's next," E&E News.

— "California fire risk won't abate until November, U.S. warns," Bloomberg.

— "Zinke said he would never sell public land. But Interior is considering it," The Washington Post.

— "Elon Musk confronts a fateful tweet and an 'excruciating' year," [The New York Times](#).

HAPPENING TODAY

crickets

THAT'S ALL FOR ME!

To view online:

<https://subscriber.politicopro.com/newsletters/morning-energy/2018/08/whats-happening-with-wotus-320196>

Stories from POLITICO Pro

Judge restores WOTUS rule in 26 states [Back](#)

By Alex Guillén | 08/16/2018 03:20 PM EDT

A federal judge today ruled that the Trump administration violated administrative legal requirements when it delayed the start of the Obama administration's Waters of the U.S. rule by two years — a move that means the rule will now go into effect for about half the country.

The judge said EPA and the Army Corps of Engineers had unlawfully declined to consider any comments addressing substantive issues related to WOTUS or an earlier 1982 version when it proposed delaying the rule to give the agencies more time to repeal and replace it.

That was a fatal flaw, ruled Judge David Norton of the U.S. District Court for South Carolina, a George H.W. Bush appointee. Delaying the WOTUS rule has the effect of reverting to the 1982 rule, he wrote.

Norton's injunction means the Obama-era rule will take effect in 26 states. The other 24 are covered by two different injunctions, one issued to 13 states in 2013 and one issued to another 11 states in June.

However, WOTUS may be blocked nationwide again if the rule's opponents get their way. In another WOTUS lawsuit in a federal court in Texas, three states in February asked for a nationwide injunction of WOTUS. That court has yet to decide on the matter.

WHAT'S NEXT: The Trump administration is working to finalize its repeal of the Obama WOTUS rule. And EPA and the Corps are expected to propose a replacement rule in the near future.

To view online [click here](#).

[Back](#)

Montana ruling could set back Keystone XL for months [Back](#)

By Ben Lefebvre | 08/16/2018 04:37 PM EDT

The fight over the Keystone XL pipeline isn't over yet.

District Court Judge Brian Morris' partial order that the State Department must conduct a supplemental environmental review to account for the pipeline's new path through Nebraska is another setback for developer TransCanada that's likely to delay construction of the nearly decade-old project by at least several months.

The order was a response to Nebraska regulators' approval in November 2017 of a route for the 830,000 barrel-a-day pipeline through the state that TransCanada had not proposed. The original environmental assessment the Trump administration used to approve Keystone XL earlier that year — a review conducted during the Obama administration — only considered a different route that TransCanada had planned for the pipeline.

The new route through Nebraska would cross through five counties that weren't included in the State Department's original environmental review, Morris noted in his order, meaning it would cross different waterways and require an additional pump station, .

Pipeline opponents say they hope to use Wednesday's ruling to push for a new broader study of the project.

Doug Hayes, a lawyer for the Sierra Club, one of the plaintiffs in the case, told POLITICO that Judge Morris' statement in his ruling that the "entire pipeline remains interrelated and requires one [environmental review] to understand the functioning of the entire unit" could open the door for them to seek a new review for the pipeline's entire route through the U.S.

"If they are going back to do a supplemental environmental impact statement, our position is they would need to evaluate all the new impacts of the pipeline," Hayes said. "That would take definitely months."

Jane Kleeb, who has long fought the pipeline and is now chairwoman of the Nebraska Democratic Party, said she thought process would drag out even longer.

"We think it buys us a year," she told POLITICO. "We just think there's a lot of significant hurdles in front of them."

Plaintiffs in the case said a new review would entail holding public hearings in Nebraska and consulting with Native American tribes whose land the pipeline would traverse.

Environmental groups have argued the pipeline posed a special risk because of the nature of the heavy oil it would transport, and that it would increase global carbon emissions. The Obama administration quashed the project in 2015, only to see their decision reversed when President Donald Trump took office a year and a half later.

A TransCanada spokesman declined to comment pending the company's review of the judge's decision.

Russ Girling, the company's chief executive officer, said during a call with investors earlier this month that the company hoped to make a final decision on whether to build the pipeline later this year or in early 2019. If approved, construction could start during the first quarter of 2019, Girling added.

A State Department official was not immediately available to comment.

Keystone XL also faces a test in Nebraska Supreme Court, where a lawsuit filed by environmental groups and state landowners challenges Nebraska regulators' approval of a route that TransCanada never formally requested. Hearings in that case are expected to start in October.

TransCanada is also waiting for several permits from federal agencies. Interior's Bureau of Land Management must issue right-of-way permits to cross federal land in Montana, and the Army Corp of Engineers must approve the pipeline's path over several waterways across the country.

To view online [click here](#).

[Back](#)

Sources: DOE's McNamee to get FERC nod [Back](#)

By Eric Wolff and Darius Dixon | 08/08/2018 04:07 PM EDT

The White House plans to nominate Energy Department official Bernard McNamee to fill the FERC leadership seat being vacated by departing Commissioner Rob Powelson, three sources familiar with discussions tell POLITICO.

McNamee helped roll out Energy Secretary Rick Perry's proposal last year to save struggling coal and nuclear power plants — an issue that sources have said served as a key litmus test for Trump administration officials evaluating a replacement for Powelson, who is [set to resign](#) Friday.

FERC in January unanimously voted down that plan, which sought to create special payments for power plants capable of holding 90 days of fuel on-site. But the administration has been considering additional options such as invoking rarely used emergency powers to force power plants to run, which would potentially give McNamee a chance to provide the pivotal vote on the subsequent rates and rules as a commissioner.

It is unclear when President Donald Trump would formally nominate McNamee, and the vetting process still seems to be underway. It would likely take the Senate several months to confirm him, a process that would start with hearings at the Energy and Natural Resources Committee.

Neither the White House nor DOE immediately responded to requests for comment Wednesday.

McNamee, who runs the DOE's Office of Policy, has been in and out of the agency under Trump. He was deputy general counsel for energy policy last year when he worked on Perry's ill-fated proposal to FERC. In February, he left DOE for a senior post with the Texas Public Policy Foundation, a conservative think tank [with ties to Perry](#), before returning to DOE in May.

Before joining the Trump administration, McNamee previously worked at McGuireWoods, as chief of staff to Texas Attorney General Ken Paxton and as an aide to Sen. [Ted Cruz](#) (R-Texas).

To view online [click here](#).

[Back](#)

Murkowski: Next FERC nominee should be free of litmus tests [Back](#)

By Darius Dixon | 08/16/2018 05:38 PM EDT

Alaska GOP Sen. [Lisa Murkowski](#) today declined to comment on POLITICO's [report](#) that DOE's Bernard McNamee would be nominated to FERC, but said she believes that the next nominee shouldn't face a litmus test over their view of the Trump administration's efforts to prop up coal and nuclear power plants.

"I worry that this is going to be viewed as 'If you don't commit to voting against or voting for, then you're not going to have my support,'" Murkowski, who chairs the Senate Energy and Natural Resources Committee, told POLITICO, referring to the administration's efforts to stave off coal retirements by potentially issuing emergency orders. "That's not the way that we should be selecting commissioners for the FERC."

Trump will want someone fairly aligned with the administration, she said, though she added that FERC came to the "right decision" in rejecting the Energy Department's controversial push to create special market payments for coal and nuclear plants last year. Still, she hoped that FERC's independence would be respected and that Democrats won't be reflexively opposed to the White House nominee in the way that they have been for Supreme Court nominee Brett Kavanaugh.

"A seat on the FERC is different than being a deputy secretary of Energy or Labor or whatever. Again, this is an independent regulatory agency that has a very different mission," she said. "The mission is not whatever the White House says it is. It is a very specific, statutory mission and so you want somebody who is going to be true to that. My hope is that the White House picks somebody who can demonstrate that they will be true to that."

To view online [click here](#).

[Back](#)

USDA unveils plan for fighting wildfires [Back](#)

By Liz Crampton | 08/16/2018 03:00 PM EDT

USDA said today it's embarking on a new, aggressive approach to combat wildfires by taking preventative steps like working more with states and upping use of forest management tools.

Department officials at a press conference unveiled a 22-page plan that emphasizes increased collaboration with states, implementation of mapping and remote sensing tools, and management practices such as prescribed burns and timber sales.

Further details and costs of the initiative will be forthcoming after the U.S. Forest Service and other agencies hold discussions with state partners, USDA Secretary Sonny Perdue said. He added that Interior Secretary Ryan Zinke is on board, although he was not in attendance.

The plan comes as the West is enduring yet another brutal wildfire season after 2017 ranked as the most expensive year for wildfires. Federal agencies last year spent \$2.9 billion to suppress wildfires across the country, according to USDA.

"Today to truly protect our forest and communities, we must increase the size of our projects and access larger landscapes across boundaries," Perdue said. "Frankly we cannot do it ourselves. It's got to be done in the shared stewardship of state and local communities."

Perdue was joined by interim Chief of the U.S. Forest Service Vicki Christiansen and Sens. [Maria Cantwell](#) (D-Wash.), [Lisa Murkowski](#) (R-Alaska), [Ron Wyden](#) (D-Ore.) and [Steve Daines](#) (D-Mont.).

To view online [click here](#).

[Back](#)

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POLITICOPRO

This email was sent to woods.clinton@epa.gov by: POLITICO, LLC 1000 Wilson Blvd. Arlington, VA, 22209, USA

Message

From: Woods, Clint [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BC65010F5C2E48F4BC2AA050DB50D198-WOODS, CLIN]
Sent: 5/15/2018 3:50:52 PM
To: Bolen, Brittany [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31e872a691114372b5a6a88482a66e48-Bolen, Brit]
Subject: FW: Hearing help
Attachments: Transparency Side-by-Side & NAAQS Memo TPs 5-15-18.docx

FYI

-----Original Message-----

From: Woods, Clint
Sent: Tuesday, May 15, 2018 11:49 AM
To: Greaves, Holly <greaves.holly@epa.gov>
Cc: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Dominguez, Alexander <dominguez.alexander@epa.gov>; Hanson, Paige (Catherine) <hanson.catherine@epa.gov>
Subject: RE: Hearing help

Holly,

Attached is a stab at the transparency/data access side-by-side, along with NAAQS memo talking points we will get the Alaska issues TPs to you this afternoon. Thanks!

Clint Woods
Deputy Assistant Administrator
Office of Air and Radiation, U.S. EPA
202.564.6562

-----Original Message-----

From: Woods, Clint
Sent: Tuesday, May 15, 2018 10:14 AM
To: Greaves, Holly <greaves.holly@epa.gov>
Cc: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Dominguez, Alexander <dominguez.alexander@epa.gov>; Hanson, Paige (Catherine) <hanson.catherine@epa.gov>
Subject: Re: Hearing help

Will do - Thanks!

> On May 15, 2018, at 10:09 AM, Greaves, Holly <greaves.holly@epa.gov> wrote:
>
> Clint,
>
> Can you please provide Paige and I the side by side of NIH/EPA discusses today? And any other relevant facts related to the NAAQS memo that would be helpful on one page?
>
> Can you also provide 3 or so bullets on wood heaters, Fairbanks attainment, and any thing else that is relevant?
>
> Sent from my iPhone

Message

From: Woods, Clint [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BC65010F5C2E48F4BC2AA050DB50D198-WOODS, CLIN]
Sent: 4/11/2018 3:46:59 PM
To: Bolen, Brittany [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31e872a691114372b5a6a88482a66e48-Bolen, Brit]
CC: Schwab, Justin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=eed0f609c0944cc2bbdb05df3a10aadb-Schwab, Jus]; Yamada, Richard (Yujiro) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4c34a1e0345e4d26b361b5031430639d-Yamada, Yuj]
Subject: RE: Data - redline
Attachments: Data Access DRAFT NPRM 04-11-2018.docx

Attached should be clean version with all changes made this week incorporated -- Thanks!

From: Bolen, Brittany
Sent: Wednesday, April 11, 2018 11:44 AM
To: Woods, Clint <woods.clint@epa.gov>
Cc: Schwab, Justin <Schwab.Justin@epa.gov>; Yamada, Richard (Yujiro) <yamada.richard@epa.gov>
Subject: Re: Data - redline

Deliberative Process / Ex. 5

Sent from my iPhone

On Apr 11, 2018, at 11:22 AM, Woods, Clint <woods.clint@epa.gov> wrote:

Deliberative Process / Ex. 5

From: Bolen, Brittany
Sent: Wednesday, April 11, 2018 11:10 AM
To: Schwab, Justin <Schwab.Justin@epa.gov>; Woods, Clint <woods.clint@epa.gov>
Cc: Yamada, Richard (Yujiro) <yamada.richard@epa.gov>
Subject: RE: Data - redline

Deliberative Process / Ex. 5

From: Schwab, Justin
Sent: Wednesday, April 11, 2018 9:56 AM
To: Woods, Clint <woods.clint@epa.gov>
Cc: Bolen, Brittany <bolen.brittany@epa.gov>; Yamada, Richard (Yujiro) <yamada.richard@epa.gov>
Subject: Re: Data - redline

Attorney Client / Ex. 5

Sent from my iPhone

On Apr 10, 2018, at 1:22 PM, Woods, Clint <woods.clint@epa.gov> wrote:

Deliberative Process / Ex. 5

From: Schwab, Justin
Sent: Monday, April 9, 2018 2:27 PM
To: Bolen, Brittany <bolen.brittany@epa.gov>; Woods, Clint <woods.clint@epa.gov>
Cc: Yamada, Richard (Yujiro) <yamada.richard@epa.gov>
Subject: RE: Data - redline

Attorney Client / Ex. 5

From: Bolen, Brittany
Sent: Monday, April 9, 2018 1:46 PM
To: Schwab, Justin <Schwab.Justin@epa.gov>; Woods, Clint <woods.clint@epa.gov>
Cc: Yamada, Richard (Yujiro) <yamada.richard@epa.gov>
Subject: RE: Data - redline
Importance: High

Deliberative Process / Ex. 5

Thanks,
Brittany

From: Schwab, Justin
Sent: Sunday, April 8, 2018 7:33 PM
To: Woods, Clint <woods.clint@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>
Subject: RE: Data - redline

Looks good to me!

From: Woods, Clint
Sent: Sunday, April 8, 2018 3:13 PM
To: Schwab, Justin <Schwab.Justin@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>
Subject: RE: Data - redline

Attached should have updated reg text (include § on LNT) and a couple minor additions in request for comment section.

From: Schwab, Justin
Sent: Friday, April 6, 2018 10:44 AM

To: Woods, Clint <woods.clint@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>

Subject: Data - redline

Please find attached

Attorney Client / Ex. 5

Attorney Client / Ex. 5

<Data Access DRAFT NPRM 04062018 4-10-18 cw.docx>

Message

From: Woods, Clint [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BC65010F5C2E48F4BC2AA050DB50D198-WOODS, CLIN]
Sent: 6/19/2018 11:57:03 AM
To: Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clin]
Subject: Fwd: For Review: HEC Budget QFRs
Attachments: 06-11-2018-HEC QFR_Pruitt_Compiled_Responses.docx; ATT00001.htm

Begin forwarded message:

From: "Dominguez, Alexander" <dominguez.alexander@epa.gov>
Date: June 18, 2018 at 11:14:58 AM EDT
To: "Woods, Clint" <woods.clint@epa.gov>, "Harlow, David" <harlow.david@epa.gov>, "Gunasekara, Mandy" <Gunasekara.Mandy@epa.gov>
Subject: FW: For Review: HEC Budget QFRs

As mentioned this morning I'm resending these QFRs so they are at the top of the inbox. I haven't had anyone reach out to me stressing urgency so concur with Josh's comment they be put in the queue of things to review.

From: Lewis, Josh
Sent: Tuesday, June 12, 2018 8:41 AM
To: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Woods, Clint <woods.clint@epa.gov>; Harlow, David <harlow.david@epa.gov>; Dominguez, Alexander <dominguez.alexander@epa.gov>
Subject: For Review: HEC Budget QFRs

Attached are a first draft of responses to QFRs following the Administrator's HEC budget hearing. Not sure if you've heard directly from OCIR on these, but my understanding is there's a rush to get these to OMB and then to the Hill (I think OCIR wanted them last Friday for their review). Not sure of the reason, so for now I vote for adding them to the queue of things to review, and we'll get them turned around as soon as we can.

Deliberative Process / Ex. 5

Message

From: Woods, Clint [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BC65010F5C2E48F4BC2AA050DB50D198-WOODS, CLIN]
Sent: 4/9/2018 4:28:59 PM
To: Schwab, Justin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=eed0f609c0944cc2bbdb05df3a10aadb-Schwab, Jus]
Attachments: Mercatus-Lutter-Public-Access-Data-v3.pdf; ATT00001.txt

<https://www.mercatus.org/system/files/Mercatus-Lutter-Public-Access-Data-v3.pdf>

On the Benefits and Costs of Public Access to Data Used to Support Federal Policy Making

Randall Lutter and David Zorn

September 2016

MERCATUS WORKING PAPER



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Randall Lutter and David Zorn. "On the Benefits and Costs of Public Access to Data Used to Support Federal Policy Making." Mercatus Working Paper, Mercatus Center at George Mason University, Arlington, VA, September 2016.

Abstract

Congress is considering two bills that would require the Environmental Protection Agency (EPA) to make publicly available all data from studies that it relies on as it develops regulations. The Congressional Budget Office estimates that it would cost \$250 million per year for the EPA to comply with such a requirement. As an alternative to these bills, the Obama administration points to an Office of Science and Technology Policy directive requiring that agencies spending more than \$100 million per year on research issue plans to maximize public access to federally funded data. We show that this directive has not been implemented by the EPA and that there is good reason to question the validity of scientific research when the data used to create it is not publicly available. Furthermore, there is good reason to believe that the CBO significantly overestimated the cost of the bills. We recommend that all regulatory agencies generally provide public access to the data they rely on to develop economically significant regulations.

JEL code: H11

Keywords: data access, scientific research, regulation, public access, regulatory reform, data quality, government transparency, regulatory best practice, federally funded research, secret science

Author Affiliation and Contact Information

Randall Lutter
Professor of Public Policy
Frank Batten School of Leadership and Public Policy, University of Virginia
Visiting Fellow
Resources for the Future
randall.lutter@virginia.edu

David Zorn
Adjunct Professor
Antonin Scalia Law School, George Mason University
davidjosephzorn@gmail.com

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On the Benefits and Costs of Public Access to Data Used to Support Federal Policy Making

Randall Lutter and David Zorn

Over the past few decades, the quality of published scientific research has increasingly come into question.¹ Researchers seeking to verify independently the results of articles published in prestigious scientific journals have reported different results with surprising frequency.² In August 2015, for example, researchers investigating 100 published papers in psychology found that, while 97 percent of original studies reported statistically significant results, only 39 percent of efforts to reproduce estimates of these effects reported finding the original results.³ Irreproducible results pose such a serious problem that there is a growing awareness that all interested parties need to do more to contribute to a lasting and effective solution.⁴

To protect reproducibility, many scientific journals, including *Science*, *Nature*, and *Environmental Science & Technology*, have adopted policies that require authors to provide access to supporting data, statistical models, and even lab specimens. The *American Economic Review* (*AER*) investigated the reproducibility of results of published papers after the implementation of stronger data access rules.⁵ The *AER* researchers found that data posting requirements are quite effective at promoting reproducibility—in the sense that analysis of original data with identical methods generates the original results. Based on their review of data

¹ John P. A. Ioannidis, “Why Most Published Research Findings Are False,” *PLOS Medicine* 2, no. 8 (2005): e124.

² Florian Prinz, Thomas Schlange, and Khusru Asadullah, “Believe It or Not: How Much Can We Rely on Published Data on Potential Drug Targets?,” *Nature Reviews Drug Discovery* 10, no. 9 (2011): 712.

³ Open Science Collaboration, “Estimating the Reproducibility of Psychological Science,” *Science* 349, no. 6251 (2015): aac4716. See also Daniel T. Gilbert et al., “Comment on ‘Estimating the Reproducibility of Psychological Science,’” *Science* 351, no. 6277 (2016): 1037, and Christopher J. Anderson et al., “Response to Comment on ‘Estimating the Reproducibility of Psychological Science,’” *Science* 351, no. 6277 (2016): 1037.

⁴ Francis S. Collins and Lawrence A. Tabak, “Policy: NIH Plans to Enhance Reproducibility,” *Nature* 505, no. 7485 (2014): 612–13.

⁵ Robert A. Moffitt, “Report of the Editor: *American Economic Review* (with Appendix by Philip J. Glandon),” *American Economic Review* 101, no. 3 (2011): 684–93.

and code placed in repositories for published papers, the *AER* researchers concluded that “all but two of the articles (95 percent) could be replicated with little or no help from the author(s).”⁶ Researchers had earlier found that inadvertent errors in empirical economics research were “commonplace.”⁷ A recent paper in *Environmental Health Perspectives*, a journal of the National Institutes of Health, proposes guidance for judging the quality of risk assessments. The guidance includes the following as a criterion for the selection of literature to be used in a risk assessment: “Sufficient data for the critical studies and the models used in the assessment are available to interested external parties so as to enable them to replicate/verify the assessment outcomes and to judge the scientific credibility of the data/models.”⁸

Recognizing the need to ensure both reliability of the scientific underpinnings of its policy decisions and public confidence in that reliability, the federal government took steps in 2002 to improve the quality of and access to information it uses in policy making. In its Information Quality Guidelines, the Office of Management and Budget (OMB) states, “If an agency is responsible for disseminating influential scientific, financial, or statistical information, agency guidelines shall include a high degree of transparency about data and methods to facilitate the reproducibility of such information by qualified third parties.”⁹ It elaborates that “making the data and methods publicly available will assist in determining whether analytic results are reproducible.”¹⁰ OMB defines reproducibility to mean the “information is capable of being substantially reproduced, subject to an acceptable degree of

⁶ Ibid., 7.

⁷ William G. Dewald, Jerry G. Thursby, and Richard G. Anderson, “Replication in Empirical Economics: The Journal of Money, Credit and Banking Project,” *American Economic Review* 76, no. 4 (1986): 587–603.

⁸ Penelope A. Fenner-Crisp and Vicki L. Dellarco, “Key Elements for Judging the Quality of a Risk Assessment,” *Environmental Health Perspectives*, forthcoming.

⁹ OMB, “Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies; Notice; Republication,” 67 Fed. Reg. 8460 (February 22, 2002).

¹⁰ Ibid.

imprecision.”¹¹ OMB further explains that “‘capable of being substantially reproduced’ means that independent analysis of the original or supporting data using identical methods would generate similar analytic results, subject to an acceptable degree of imprecision or error.”¹²

An OMB directive to federal agencies provides for public access under the Freedom of Information Act (FOIA) to federally funded research data related to published research findings used in developing federal regulations.¹³ The directive covers federal grants to and agreements with institutions of higher education, hospitals, and other nonprofit organizations:

In response to a Freedom of Information Act (FOIA) request for research data relating to published research findings produced under an award that were used by the Federal Government in developing an agency action that has the force and effect of law, the Federal awarding agency shall request, and the recipient shall provide, within a reasonable time, the research data so that they can be made available to the public through the procedures established under the FOIA.¹⁴

To promote scientific integrity, President Obama signed a memorandum on scientific integrity in March 2009,¹⁵ and the Office of Science and Technology Policy (OSTP) issued an implementing memo on scientific integrity in December 2010¹⁶ and one on increasing access to the results of federally funded scientific research in February 2013.¹⁷

Some members of Congress have sought additional action by introducing two bills—H.R. 1030¹⁸ and S. 544¹⁹—that would require the Environmental Protection Agency (EPA) to make publicly available supporting data from any studies that it relies on in its policy making. The

¹¹ Ibid.

¹² Ibid.

¹³ OMB, *Circular A-110*, amended September 30, 1999.

¹⁴ Ibid.

¹⁵ Barack Obama, “Memorandum for the Heads of Executive Departments and Agencies: Scientific Integrity,” March 9, 2009.

¹⁶ John P. Holdren, “Memorandum for the Heads of Executive Departments and Agencies: Scientific Integrity,” December 17, 2010.

¹⁷ John P. Holdren, “Memorandum for the Heads of Executive Departments and Agencies: Increasing Access to the Results of Federally Funded Scientific Research,” February 22, 2013.

¹⁸ Secret Science Reform Act of 2015, H.R. 1030, 114th Cong. (2015).

¹⁹ Secret Science Reform Act of 2015, S. 544, 114th Cong. (2015).

Obama administration has issued statements of administration policy on these bills, indicating that a veto is likely because the bills “would undermine EPA’s ability to protect the health of Americans, would impose expensive new mandates on EPA, and could impose substantial litigation costs on the Federal government. It also could impede EPA’s reliance on the best available science.”²⁰

Ultimately, public access to data affects not only the efficacy of public policies but also public trust in the federal government’s actions. Distrust can prevent the timely adoption of effective solutions to policy problems. Increasing access to the research data used in developing federal regulations may promote public trust.

In this paper, we review current federal policies and procedures intended to ensure that scientific and technical research meets appropriate quality standards and we compare them with similar practices and procedures used by nonfederal institutions. We focus on access to data and computer code because we find that requirements for public access to data and code have become a best practice in nonfederal scientific institutions.²¹

The scientific experience can inform us about the likely success of new federal policies intended to improve the quality and accessibility of information because federal policies and institutions have analogs in the scientific world. Some organizations in the scientific community are adopting best practices to protect scientific integrity. Identifying and characterizing these practices and describing their possible use by federal government agencies should help inform us about how to promote access and reproducibility. Contrary to the findings of some earlier work,

²⁰ “Statement of Administration Policy, H.R. 1030, Secret Science Reform Act of 2015,” March 3, 2014.

²¹ This industry best practice has not yet been adopted by any of the top federal scientific journals, including *Environmental Health Perspectives*, *Emerging Infectious Diseases*, and *Journal of Rehabilitation Research and Development*. See Randall Lutter and David Zorn, “Reinforcing Reproducibility: What Role for the Federal Government?,” *Regulation* 38, no. 4 (2015–2016): 15–16.

our analysis suggests that data and code access can be provided at a reasonable cost that the benefits of transparency and greater reproducibility will likely exceed.

We also summarize major initiatives that the federal government has undertaken to improve the quality and public accessibility of federal policy making (including initiatives of the Obama administration) and their limitations. We then describe evidence that many scientific research papers present results that are irreproducible (and thus unreliable), and we describe steps that high-quality scientific journals have taken to address the issue. We next assess the benefits and costs of implementing a policy of general access to the data and code used in developing economically significant federal regulations. Finally, we make recommendations for improving the policy-making process by requiring public accessibility to the data and code underlying research that federal agencies use to support policies.

Federal Policies on Data Quality and Public Access

Public debate over federal policies that limit public access to the data used in regulatory decisions dates to at least the 1970s. In 1970, the FDA recommended that doctors prescribe oral hypoglycemic drugs only for patients with adult-onset (Type 2) diabetes that could not be controlled by diet and only when the patients were not insulin dependent.²² The recommendation was made on the basis of a federally funded study carried out by the University Group Diabetes Program (UGDP), which found that the oral hypoglycemic drug tolbutamide was associated with an increased death rate from cardiovascular disease among mildly diabetic patients.²³ The results of the UGDP study were immediately controversial. Some researchers raised questions about the

²² “Status of Problem of Usage of Tolbutamide, Preliminary Statements: FDA Statement, Friday May 22, 1970,” *Diabetes* 19, no. 6 (1970): 467.

²³ Dave R. Kelleher, “Applying the Freedom of Information Act in the Area of Federal Grant Law: Exploring an Unknown Entity,” *Cleveland State Law Review* 27, no. 2 (1978): 294–311.

study's design. In addition, the unavailability of oral hypoglycemic drugs would significantly reduce the treatment options for many patients. And the FDA's actions would potentially expose physicians to malpractice lawsuits.

In 1974, the proponents of oral hypoglycemic drugs, who organized as the Committee on the Care of the Diabetic (CCD), criticized the UGDP study and, using the FOIA, began requesting the data underlying the UGDP study in order to replicate the results. In 1975, the FDA proposed restrictive changes to the labeling of oral hypoglycemic drugs largely on the basis of the results of the UGDP study. In 1977, Secretary of Health, Education, and Welfare Joseph Califano declared that phenformin, another oral hypoglycemic drug, was an imminent public health hazard and withdrew FDA approval of drug products that contained it. The FDA denied the CCD's FOIA request on the grounds that the study's data were not agency records subject to the FOIA because the data were maintained by the UGDP and not by an agency of the federal government. A case was brought in federal district court as *Forsham v. Califano* on whether the data should be subject to the FOIA. Forsham and members of the CCD seeking access to the data lost in US District Court and the US Court of Appeals. In 1980, the US Supreme Court ruled that, even though the UGDP study was federally funded, the UGDP data were not subject to the FOIA as long as a federal agency did not have physical possession of the data.²⁴

Two decades later, a similar issue arose when the EPA issued the National Ambient Air Quality Standards for Particulate Matter largely on the basis of federally funded research, particularly the Harvard School of Public Health's Six Cities study and an American Cancer Society (ACS) study.²⁵ Challenges to the regulation included criticisms of the studies' design and

²⁴ *Forsham v. Harris*, 445 U.S. 169 (1980).

²⁵ EPA, "National Ambient Air Quality Standards for Particulate Matter; Final Rule," 62 Fed. Reg. 38652-760 (July 18, 1997).

analysis. Efforts to obtain access to the data underlying the studies failed. The EPA did not possess the data, so the FOIA requests for the data came up empty. Researchers for both studies then gave access to the data to a team of researchers selected by the Health Effects Institute, a nonprofit research institute jointly funded by the EPA and the automotive industry that specialized in the health effects of air pollution so that the researchers could attempt to replicate the studies. In 2000, the reanalysis team reported that it had found very few coding problems with the data used in either study and that it had been able to replicate the point estimates made by the studies' researchers.²⁶ The team also performed a number of sensitivity analyses, a few of which showed a reduction in the estimated effects of particulate matter on mortality.²⁷ The Harvard and ACS researchers refused to share the data more widely on the grounds that they had promised the study participants anonymity and that the data contained personally identifiable information.²⁸ Lack of access to data has continued to play a significant role in the policy debate over EPA's clean air rules. In response to a congressional subpoena seeking the data used in the Six Cities and ACS studies, the EPA stated in 2014 that it still did not possess sufficient data to replicate the results of the original studies, even after multiple interactions with the owners of the data.²⁹

In 1998, partly in response to the difficulties in obtaining data from the Harvard and ACS researchers, Congress passed the Shelby Amendment as part of Public Law 105-277. The amendment directs OMB to revise *Circular A-110* ("Uniform Administrative Requirements for

²⁶ Health Effects Institute, "Reanalysis of the Harvard Six Cities Studies and the American Cancer Society Study of Particulate Air Pollution and Mortality," July 2000, ii.

²⁷ Ibid., ii–iii.

²⁸ Elaine Appleton Grant, "Prevailing Winds," *Harvard Public Health*, Fall (2012): 30–37.

²⁹ Gina McCarthy, letter to Lamar Smith, March 7, 2014, accessed January 20, 2016, [http://science.house.gov/sites/republicans.science.house.gov/files/documents/EPA%20letter%20to%20Smith%20March%207%202014%20\(2\).pdf](http://science.house.gov/sites/republicans.science.house.gov/files/documents/EPA%20letter%20to%20Smith%20March%207%202014%20(2).pdf). Lack of transparency has been alleged against the National Marine Fisheries Service and agencies in the Department of the Interior at a May 19, 2016, hearing titled "Examining Deficiencies in Transparency at the Department of the Interior" before the House Committee on Natural Resources, Subcommittee on Energy and Mineral Resources. See the testimony of Peter Seidel and Kathleen Sgamma.

Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations”) “to require Federal awarding agencies to ensure that all data produced under an award will be made available to the public through the procedures established under the Freedom of Information Act.”³⁰ The Shelby Amendment effectively negated the US Supreme Court’s ruling in *Forsham v. Harris*, at least with respect to research that might be funded later. After two rounds of public comment, OMB revised *Circular A-110* in 1999 to improve public access to federally funded data. Specifically, if federally funded research findings are published in a journal or “when an agency publicly and officially cites the research findings” in issuing a federal regulation, then in the event of a FOIA request for the research data, “the awarding agency shall request, and the recipient shall provide, within a reasonable time, the research data so that they can be made available to the public” through FOIA procedures.³¹

The Shelby Amendment and *Circular A-110* improve public access to federally funded research and data, but obstacles remain. One limitation is that *Circular A-110* does not apply to research by for-profit contractors. Moreover, it is dependent on the use of the FOIA to petition for access to a specific piece of research. The FOIA allows the public to request that federal agencies provide records that the government possesses or has funded (because of the Shelby Amendment). The law requires that agencies “respond” to a request within 20 business days (four calendar weeks), plus an additional 10 business days (for a total of six calendar weeks) if a request involves searching multiple sites (which will usually be the case with research funded through contracts or grants).³² Agencies may respond within the timeframe by affirming that records relating to the request exist. The records may be delivered to the requester at a later time.

³⁰ Omnibus Appropriations Act for FY 1999, Pub. L. No. 105-277 (1998).

³¹ OMB, *Circular A-110*.

³² Openness Promotes Effectiveness in Our National Government Act of 2007, Pub. L. No. 110-175 (2007).

Relying on the FOIA process requires that a requester file a request with the funding agency; that the funding agency determine whether the data requested are subject to the FOIA; and, if so, that the agency then request the data from the researcher. The researcher then sends the data to the funding agency, and the funding agency reviews the data to ensure that no data are protected from public disclosure under established FOIA exceptions.

Agencies often respond to FOIA requests quite slowly, according to independent assessments of agency responsiveness. Using 2015 statistics reported by the Department of Justice, which oversees FOIA activities for the federal government, the Center for Effective Government scored how well agencies performed at processing FOIA requests.³³ Using the data that agencies reported in their annual FOIA reports for 2013, the center rated agency performance based on 16 factors most highly weighted toward the percentage of requests fully or partially granted, the percentage of requests responded to within 20 days, the average number of days to respond to requests, and the size of each agency's request backlog. Also, the Cause of Action Institute tested agency response times to FOIA requests in 2012.³⁴ Table 1 shows the results of both studies of FOIA responses by agency. Other studies by Bloomberg³⁵ and the FOIA Project³⁶ yielded similar results, except they showed that many agencies do not respond to requests even after 180 days.

Other administration initiatives have sought to promote public access to data. For example, a 2013 memorandum from the Office of Science and Technology Policy (OSTP) goes beyond *Circular A-110*. The OSTP states that federally supported data should be publicly accessible and directs executive branch agencies that spend more than \$100 million a year

³³ Sean Moulton and Gavin Baker, "Making the Grade: Access to Information Scorecard 2015," Center for Effective Government, March 2015.

³⁴ Cause of Action Institute, "Grading the Government: A Look at How Federal Agencies Measure Up on FOIA Requests," Cause of Action Institute, 2013.

³⁵ Jim Snyder and Danielle Ivory, "Obama Cabinet Flunks Disclosure Test with 19 in 20 Ignoring Law," Bloomberg, September 27, 2012.

³⁶ The FOIA Project, "Agency FOIA Backlogs and Processing Times," accessed January 15, 2016.

funding research to develop and issue plans to maximize access by the general public to digitally formatted data created with federal funds.³⁷ Also, federally funded research data should be deposited in a repository for public access, according to the OSTP memo. The Obama administration touts the OSTP initiative as a reason that H.R. 1030 and S. 544, requiring the EPA to provide public access to research data used in policy making, are unnecessary.³⁸

Table 1. Agency Responsiveness to FOIA Requests

Agency	CEG FOIA score for processing requests (%) ^(a)	Average number of days to respond to Cause of Action Institute FOIA request ^(b)
Department of Agriculture	94	84.1
Department of Transportation	63	125.0
Department of Health and Human Services	60	135.4
Department of Defense	55	155.0
Environmental Protection Agency	52	47.0
Department of Veterans Affairs	51	79.5
Department of Homeland Security	51	148.0
Department of Education	Not covered by CEG study	21.0
Department of Energy	Not covered by CEG study	101.0
Department of the Interior	Not covered by CEG study	147.0
Department of Commerce	Not covered by CEG study	No response in 240 days

Note: FOIA = Freedom of Information Act; CEG = Center for Effective Government.

Sources: (a) Sean Moulton and Gavin Baker, “Making the Grade: Access to Information Scorecard 2015,” Center for Effective Government,” March 2015; (b) Cause of Action Institute, “Grading the Government: A Look at How Federal Agencies Measure Up on FOIA Requests,” Cause of Action Institute, 2013.

To evaluate implementation of the OSTP initiative, we collected the data policies that each agency posted on its website to comply with the OSTP memo. Table 2 shows the major funding agencies covered by the memo,³⁹ the policies of each agency on how data will be accessible, and when the agency stated that the policy would be effective.

³⁷ Holdren, “Memorandum: Increasing Access to Results.”

³⁸ “Statement of Administration Policy.”

³⁹ John P. Holdren, letter to House and Senate Appropriations Committees, March 24, 2014, https://www.whitehouse.gov/sites/default/files/microsites/ostp/OpenAccess_March-2014.pdf.

Table 2. Policies of Federal Agencies for Publicly Posting Taxpayer-Funded Research Data

Agency	Policy for posting data	Effective date
Agency for Healthcare Research and Quality ^(a)	Researchers are expected to share data at the time of publication of the main findings from the dataset. The agency promotes use of publicly accessible databases.	Oct. 2015
Assistant secretary for preparedness and response, Department of Health and Human Services ^(b)	Researchers must publish digital scientific datasets in a recognized scientific data repository that is capable of long-term preservation of the data and open access to the public within 30 months from the creation of the dataset or on publication of a peer-reviewed article based on the dataset, whichever is sooner.	Oct. 2015
Centers for Disease Control and Prevention ^(c)	Researchers should make data available no later than 30 months after completion of collection, but only on request and only to an agency-approved party for an agency-approved public health purpose.	Oct. 2015
Department of Defense ^(d)	Researchers should store digitally formatted scientific datasets at the time of publication of research where the data are publicly accessible.	pending rulemaking
Department of Energy ^(e)	Researchers should propose appropriate plans to provide access to data.	Oct. 2015
Department of Transportation ^(f)	Researchers must ensure that unclassified data are available for public download and analysis.	Dec. 2015
Food and Drug Administration ^(g)	Researchers are expected to commit to sharing digital data underlying their research findings on publication of their findings in a peer-reviewed article.	Jan. 2016
National Aeronautics and Space Administration ^(h)	Researchers whose work has appeared in peer-reviewed publications must provide a plan for making the research data that underlie their results and findings digitally accessible within a reasonable time period after publication.	Feb. 2015
National Institute of Standards and Technology ⁽ⁱ⁾	Researchers must provide a plan for storage and preservation of the data and for how data will be made available to the public.	Dec. 2014
National Institutes of Health ^(j)	Researchers are expected to make data available at the time the study appears in a peer-reviewed publication.	Dec. 2015
National Oceanic and Atmospheric Administration ^(k)	Researchers must make data available typically within two years of collection or when an article using the data is published if earlier than two years. Data must be publicly discoverable through the agency's data inventory and must be publicly accessible via online services in widely used machine-readable formats.	March 2016
National Science Foundation ^(l)	Researchers should deposit at an appropriate repository all data resulting from the research funded by an award from the foundation, regardless of whether the data support a publication.	no earlier than Jan. 2017
Smithsonian Institution ^(m)	Researchers must submit digital research data supporting publications via an electronic copy or link to such copy to Smithsonian-managed or -approved repositories within a negotiated period of time.	Oct. 2015
Department of Agriculture ⁽ⁿ⁾	Researchers will be required to make the digital data underlying the conclusions of peer-reviewed scientific research publications freely available in public repositories in machine-readable formats.	2017

continued on next page

Agency	Policy for posting data	Effective date
Department of Veterans Affairs ^(o)	Researchers will be required to share all digital data underlying their published results from all agency-funded research at least under controlled public access mechanisms where privacy, intellectual property, or other concerns preclude open public access.	Dec. 2015
Department of Education	No posted plan approved by the Office of Science and Technology Policy.	
Department of Homeland Security	No posted plan approved by the Office of Science and Technology Policy.	
Department of the Interior	No posted plan approved by the Office of Science and Technology Policy.	
Environmental Protection Agency	No posted plan approved by the Office of Science and Technology Policy.	
Office of Director of National Intelligence	No posted plan approved by the Office of Science and Technology Policy.	
Agency for International Development	No posted plan approved by the Office of Science and Technology Policy.	

Note: All the agency policies are lengthy and detailed, and all include exceptions where release of data would compromise personal privacy, confidentiality, intellectual property, or national security.

Sources: (a) Agency for Healthcare Research and Quality, “AHRQ Public Access to Federally Funded Research,” February 2015, accessed June 29, 2016; (b) Office of the Assistant Secretary for Preparedness and Response, “Public Access to Federally Funded Research: Publications and Data,” accessed July 29, 2016; (c) Centers for Disease Control and Prevention, “CDC Plan for Increasing Access to Scientific Publications and Digital Scientific Data Generated with CDC Funding,” January 2015; (d) Department of Defense, “Plan to Establish Public Access to the Results of Federally Funded Research,” February 2015; (e) Department of Energy, “Public Access Plan,” July 24, 2014; (f) Department of Transportation, “U.S. Department of Transportation Public Access Plan: Increasing Access to Federally Funded Research Results,” accessed June 29, 2016; (g) Food and Drug Administration, “Plan to Increase Access to Results of FDA-Funded Scientific Research,” February 2015; (h) National Aeronautics and Space Administration, “NASA Plan: Increasing Access to the Results of Scientific Research (Digital Scientific Data and Peer-Reviewed Publications),” November 21, 2014; (i) National Institute of Standards and Technology, “Plan for Providing Public Access to the Results of Federally Funded Research,” December 4, 2014; (j) National Institutes of Health, “Plan for Increasing Access to Scientific Publications and Digital Scientific Data from NIH Funded Scientific Research,” February 2015; (k) NOAA (National Oceanic and Atmospheric Administration) Research Council, “NOAA Plan for Increasing Public Access to Research Results,” February 2015; (l) National Science Foundation, “NSF’s Public Access Plan: Today’s Data, Tomorrow’s Discoveries: Increasing Access to the Results of Research Funded by the National Science Foundation,” March 18, 2015; (m) Smithsonian Institution, “Plan for Increased Public Access to Results of Federally Funded Research,” August 18, 2015; (n) US Department of Agriculture, “Implementation Plan to Increase Public Access to Results of USDA-Funded Scientific Research,” November 7, 2014; (o) Department of Veterans Affairs, “Policy and Implementation Plan for Public Access to Scientific Publications and Digital Data from Research Funded by the Department of Veterans Affairs,” July 23, 2015.

The OSTP initiative has not been effectively implemented. First, it would not accomplish the goals of H.R. 1030 and S. 544 because it covers only federally funded research and not other research that agencies rely on for policy making, and it is clear that public access to research data is not *required* by most agencies. Most only require commitments to share the data. In the next

section, we will see that such policies employed by scientific journals have proven to be ineffective at ensuring accessibility to research data. Also, more than three years after OSTP issued its directive, a number of major research funding agencies have failed to issue the necessary plans. The EPA, the Office of the Director of National Intelligence, US Agency for International Development, and the departments of Education, Homeland Security, and the Interior have not posted plans to comply with the OSTP initiative.⁴⁰

Public access to data would be inadequate or not timely even for those agencies that have posted approved plans. Plans for the National Science Foundation and the Department of Agriculture are not scheduled to go into effect until sometime in 2017 and for the Department of Defense possibly later, depending on the length of its rulemaking process. Also, several agency plans only require data access for research once it has been published in a peer-reviewed journal, while others make provision for access to data not associated with a publication. Anyone wanting gain access to data funded by the Centers for Disease Control and Prevention must apply via a questionnaire that includes describing the requester's research qualifications and reasons for wanting the data.⁴¹ If the requester's credentials and interest are deemed meritorious, the requester may still have to wait 30 months after final collection of the data.⁴²

Irreproducibility in Scientific Research and Policies to Enhance Reproducibility

Access to the data necessary to replicate scientific studies is essential because the results of so many peer-reviewed scientific publications have proven to be impossible to reproduce. For

⁴⁰ John P. Holdren, letter to House and Senate Appropriations Committees, April 29, 2016, https://www.whitehouse.gov/sites/default/files/microsites/ostp/public_access_report_to_congress_apr2016_final.pdf.

⁴¹ CDC (Centers for Disease Control and Prevention), "CDC Plan for Increasing Access to Scientific Publications and Digital Scientific Data Generated with CDC Funding," January 2015.

⁴² Ibid.

example, researchers at Amgen were able to replicate only 11 percent of 53 major cancer research papers published between 2001 and 2011.⁴³ Researchers at Bayer reported that they could reproduce the results reported in a set of drug research studies relevant to the company only 25 percent of the time.⁴⁴ Researchers reviewing articles in the fields of neuroscience, developmental biology, immunology, cell and molecular biology, and general biology showed that in 54 percent of papers the methods and materials were not identified well enough to permit replication.⁴⁵ A survey of psychologists found that researchers could successfully replicate results of only 49 percent of 257 peer-reviewed papers.⁴⁶

The federal government recognizes the challenges that irreproducible scientific research poses for innovation, the greater scientific enterprise, science-based policy development, and the efficient allocation of research funding. In 2014, the OSTP and the National Economic Council issued a request for information on how the federal government can “identify policy opportunities to promote innovation and its economic benefits in the United States.”⁴⁷ One of the questions was the following: “Given recent evidence of the irreproducibility of a surprising number of published scientific findings, how can the Federal Government leverage its role as a significant funder of scientific research to most effectively address the problem?”⁴⁸ One approach to this question is to review how the nonfederal scientific community seeks to ensure reproducibility specifically and research quality generally.

⁴³ C. Glenn Begley and Lee M. Ellis, “Drug Development: Raise Standards for Preclinical Cancer Research,” *Nature* 483, no. 7391 (2012): 531–33.

⁴⁴ Prinz, Schlange, and Asadullah, “Believe It or Not.”

⁴⁵ Nicole A. Vasilevsky et al., “On the Reproducibility of Science: Unique Identification of Research Resources in the Biomedical Literature,” *PeerJ* 1 (2013): e148.

⁴⁶ Joshua K. Hartshorne and Adena Schachner, “Tracking Replicability as a Method of Post-publication Open Evaluation,” *Frontiers in Computational Neuroscience* 6, no. 8 (2012): 1–13.

⁴⁷ Office of Science and Technology Policy and National Economic Council, “Strategy for American Innovation, Action: Notice of Request for Information,” 79 Fed. Reg. 44064–68 (July 29, 2014).

⁴⁸ *Ibid.*, 44066.

OMB uses peer review as a standard for research relevant for policy, stating that properly peer-reviewed articles deserve a rebuttable presumption of substantial reproducibility.⁴⁹ Peer review in academia is the process that journal editors use to judge the significance and originality of research papers submitted for publication. When journal editors send manuscripts to referees for peer review, they typically ask whether a manuscript properly reviews the existing literature, uses methods adequate to support its conclusions, and reaches conclusions that represent a meaningful contribution to the literature. Reviewers are rarely asked to verify the findings of studies they review, and they typically lack the incentives or resources to do so.⁵⁰ Thus, peer review does not address whether research findings are reproducible.⁵¹ In 2002, a report of the National Research Council stated that “peer review alone does not detect fraud, validate factual findings . . . or substitute for the judgments of the scientific community as a whole.”⁵²

Redoing experiments for research or policy-making purposes may be prohibitively costly for studies that were conducted over a period of years or that required special access to research subjects. Replication using the original data is still important to ensure reliability. For this reason, a number of the most prominent scientific journals require that authors commit to data sharing.⁵³

⁴⁹ Joshua B. Bolten, “Memorandum for the Heads of Departments and Agencies, Subject: Issuance of OMB’s ‘Final Information Quality Bulletin for Peer Review,’” December 16, 2004.

⁵⁰ Sara Schroter et al., “What Errors Do Peer Reviewers Detect, and Does Training Improve Their Ability to Detect Them?,” *Journal of the Royal Society of Medicine* 101, no. 10 (2008): 507–14. Researchers intentionally inserted eight errors into a 600-word paper and sent the paper to 300 reviewers. None of the 300 reviewers noted more than five of the eight errors, and 20 percent of reviewers failed to note any of the eight errors. The median number of errors identified by reviewers was two.

⁵¹ Tom Jefferson, Philip Alderson, Elizabeth Wager, and Frank Davidoff, “Effects of Editorial Peer Review: A Systematic Review,” *Journal of the American Medical Association* 287, no. 21 (2002): 2784–86

⁵² National Research Council, *Access to Research Data in the 21st Century: An Ongoing Dialogue among Interested Parties, Report of a Workshop* (Washington, DC: National Academy Press, 2002).

⁵³ Lutter and Zorn, “Reinforcing Reproducibility.”

Even in cases in which journal policies require authors to commit to sharing data on request, authors rarely follow through on those promises.⁵⁴ This finding has been instrumental in persuading journal editors to require that data be placed in repositories or otherwise made publicly accessible as a condition for publication, rather than just requiring authors to commit to sharing data on request.⁵⁵ The use of public repositories for the archiving of data has become virtually universal in evolutionary biology.⁵⁶ Some research shows that journal requirements to archive data increase data availability 1,000-fold compared with journals with no policy at all, suggesting that requirements for data archiving are very important.⁵⁷

Posting study data has proven to be effective at improving the reliability of research in economics. In empirical economics, a study of replication of well-regarded peer-reviewed research in a highly regarded journal suggested that inadvertent errors may be “commonplace rather than rare occurrences.”⁵⁸ The *AER* subsequently adopted a policy “to publish papers only if the data used in the analysis are clearly and precisely documented and are readily available to any researcher for purposes of replication.” Further, the *AER* conducted an evaluation of its policy and reported in 2011 that about 80 percent of 39 sampled papers met the spirit of the data availability policy and that 95 percent were substantially reproducible. Independent efforts at replication of nine selected papers found no serious errors (with almost exact replication for five studies and “several small discrepancies . . . immaterial to the

⁵⁴ Alawi A. Alsheikh-Ali et al., “Public Availability of Published Research Data in High-Impact Journals,” *PLOS ONE* 6, no. 9 (2011): e24357; Caroline J. Savage and Andrew J. Vickers, “Empirical Study of Data Sharing by Authors Publishing in PLoS Journals,” *PLOS ONE* 4, no. 9 (2009): e7078; and Dewald, Thursby, and Anderson, “Replication in Empirical Economics.” Also, Feigenbaum and Levy show that researchers have professional incentives not to voluntarily share data or willingly assist in replication efforts. Susan Feigenbaum and David M. Levy, “The Market for (Ir)Reproducible Econometrics,” *Social Epistemology* 7, no. 3 (1993): 215–32.

⁵⁵ Moffitt, “Report of the Editor.”

⁵⁶ Bryan T. Drew et al., “Lost Branches on the Tree of Life,” *PLOS Biology* 11, no. 9 (2013): e1001636.

⁵⁷ Timothy H. Vines et al., “Mandated Data Archiving Greatly Improves Access to Research Data,” *FASEB Journal* 27, no. 4 (2013): 1304–8.

⁵⁸ Dewald, Thursby, and Anderson, “Replication in Empirical Economics,” 587.

conclusions” for another four).⁵⁹ This result represents a marked improvement relative to the results of the original 1986 study of replication by Dewald, Thursby, and Anderson. The difference is attributable, at least in part, to the change in the *AER*’s policy of data accessibility. Although analytic methods underlying papers published in the *AER* are different from those used in other disciplines, the experience of the *AER* suggests that data accessibility improves the reliability of the results of published, peer-reviewed scientific papers. Economic methods are broadly similar to those used in other types of scientific research in that they involve complicated statistical analyses of large volumes of nonexperimental data.

Administrative measures taken to date by the federal government have not been adequate to provide timely access to the data and code necessary to assess the independent reproducibility of scientific findings used in federal regulations. Yet the experience of scientific journals suggests that such replication is important because published articles have been found to contain errors with surprising frequency. Thus, one might ask what the benefits and costs are of a policy change that would require agencies to make publicly available all the data and code underlying their regulatory decisions. We next turn to the two parts of this question, focusing on the requirements of H.R. 1030 and S. 544, if extended to the federal government.

Costs of Greater Access to Data Relevant to Federal Rulemaking

The cost of providing access to data has been one of the primary concerns about requiring access to data used by the federal government.⁶⁰ H.R. 1030 and S. 544 would require the EPA to ensure that the data and computer code underlying any scientific research that an agency relies on in a “risk, exposure, or hazard assessment, criteria document, standard, limitation,

⁵⁹ Moffitt, “Report of the Editor.”

⁶⁰ A. A. Rosenberg et al., “Congress’s Attacks on Science-Based Rules,” *Science* 348, no. 6238 (2015): 964–66.

regulation, regulatory impact analysis, or guidance” is publicly available online. According to the Congressional Budget Office (CBO), “Based on information from EPA, CBO estimates that the agency would spend, on average, \$10,000 per scientific study for activities to meet the bill’s requirements. Specifically, such funding would cover the costs of obtaining all of the underlying data used in a study, reviewing the data to address any confidentiality concerns, formatting the data for public access, providing access to the computer codes and models used in the study’s analysis, and providing descriptions and documentation on how to access the data. Such activities could entail correspondence and negotiations with study authors and publishers and computer processing services to construct and maintain databases to store study-related information.”⁶¹ On the basis of that number and an estimate that the EPA references about 25,000 scientific studies per year in its rulemaking, CBO estimates that it would cost the EPA about \$250 million per year to comply with the requirements of the bills if they were enacted.⁶²

We develop an alternative and more transparent estimate of the costs of complying with those bills using estimates that the EPA has already developed for existing requirements that certain firms submit data. The costly activities and services that need to be performed to provide data access can be divided into two categories—data collection and data accessibility. Data collection includes most of the activities listed by CBO:⁶³ correspond with researchers and publishers to obtain the data, review the data for confidentiality concerns, format the data for public access, publicly post the computer code and models used in each study’s analysis, and provide descriptions and documentation on how to obtain the data. Data accessibility includes

⁶¹ CBO, “Cost Estimate, S. 544, Secret Science Reform Act of 2015,” June 5, 2015.

⁶² Ibid., 3.

⁶³ Ibid., 2.

the last activity mentioned by CBO: provide “computer processing services to construct and maintain data bases to store study-related information.”⁶⁴

When federal agencies require that industries or individuals provide information to the government, under the provisions of the Paperwork Reduction Act they must estimate the amount of time needed to provide the information. The EPA’s Health and Safety Data Reporting Rule (40 C.F.R. 716), most recently updated in 2012, requires the chemical industry to undertake activities similar to the data collection activities that the EPA would need to perform under H.R. 1030 and S. 544.⁶⁵ The rule requires manufacturers, processors, and distributors to identify any health and safety studies in their possession that relate to the health or environmental effects of certain chemical substances and mixtures, to copy and summarize the relevant studies, to make lists of studies that are currently in progress, and to review the studies for confidential business information.

The EPA’s supporting statement for its information collection request under the Paperwork Reduction Act gives the number of hours that the EPA estimates for data collection activities. The following estimates are from the EPA’s 2015 supporting statement for the Health and Safety Data Reporting Rule.⁶⁶ The EPA estimates that it would take chemical manufacturers and processors 3.0 hours to determine which of their locations might have relevant studies, plus 4.5 hours to search through the files at those locations for the relevant studies. Those activities should roughly correspond to the efforts that a federal employee would need to spend communicating with researchers and publishers to locate the data underlying a published study and to obtain the data for compliance with a data access policy.

⁶⁴ Ibid.

⁶⁵ EPA, “Health and Safety Data Reporting; Addition of Certain Chemicals,” 77 Fed. Reg. 71561–67 (December 3, 2012).

⁶⁶ EPA, “Supporting Statement for a Request for OMB Review under the Paperwork Reduction Act,” August 31, 2015.

The EPA estimates that it would take chemical manufacturers and processors 1.0 hour to review each study for confidential business information. That should closely correspond to the amount of time needed for a federal employee to review study data for confidentiality concerns in preparation for public disclosure under a data access policy.

The EPA estimates that it would take chemical manufacturers and processors 1.0 hour to photocopy all relevant studies for submission to the agency. Given modern technology, by the time research has been published, almost all relevant underlying data and computer code and models will be in electronic format, so photocopying will be unnecessary. However, formatting unformatted data for public access can take a significant amount of time. In the absence of better information on this point, we surmise that formatting unformatted data and making the analytic models and computer code used in EPA analyses available may, in some cases, take 10.0 hours per study.

The EPA estimates that it would take chemical manufacturers and processors 12.0 hours to make a robust summary of the studies they would submit to the agency. That should roughly correspond to the amount of time needed for a federal employee to provide descriptions and documentation on how to access the data. We note that the level of effort and education necessary to provide a robust summary of scientific research is significantly greater than that needed to write metadata descriptions of study data and instructions on how to make the data available for use by the public. Based on the EPA's estimates, we can presume that the data collection activities needed to make public the data underlying the studies that the EPA uses in its rulemaking would take 30.5 hours per study.

In the same information collection request, the EPA explains how it calculates the monetary cost of paperwork processing activities that the agency must perform for its Health and

Safety Data Reporting Rule. The EPA uses the basic hourly wage for a Grade 13, Step 5 federal employee and adds 60 percent to account for benefits and overhead (the nonwage costs of employee time).⁶⁷ The Office of Personnel Management's 2015 General Schedule Locality Pay Table for the Washington–Baltimore–Northern Virginia area lists that basic hourly wage as \$49.32.⁶⁸ Adjustment for benefits and overhead brings the full labor cost to \$78.91 per hour. At that rate, the 30.5 hours spent on data collection activities would cost \$2,407 for each study relied on by the EPA.

Once the EPA collects and prepares the data for public posting, there will be a cost for storage and maintenance of the data for public accessibility. Researchers at Indiana University have estimated the cost of constructing and maintaining a scientific data repository large enough to contain the data for 64,340 scientific publications, with data files of 32 GB per publication.⁶⁹ The average annual number of new research publications supported by National Science Foundation funding is 64,340, and 32 GB is the average size of a dataset associated with such research.⁷⁰ The Indiana University researchers estimate the cost of providing storage, maintenance, and access to the data for each publication to be \$151.⁷¹

Based on this information, we estimate the total cost to the EPA for data collection and public accessibility would be \$2,558 per study, or about 26 percent of the \$10,000 per study cost estimated by CBO. These cost estimates (both CBO's estimate and the one we present here) assume a baseline of no public access to the EPA data. We estimate, however, that \$592 (or 23

⁶⁷ Ibid., 15.

⁶⁸ Office of Personnel Management, "Salary Table 2015-DCB, Incorporating the 1% General Schedule Increase and a Locality Payment of 24.22% for the Locality Pay Area of Washington-Baltimore-Northern Virginia, DC-MD-VA-WV-PA, Total Increase: 1%, Effective January 2015," accessed July 29, 2016.

⁶⁹ Beth Plale et al., "Repository of NSF-Funded Publications and Related Datasets: 'Back of Envelope' Cost Estimate for 15 Years," March 2013.

⁷⁰ Ibid.

⁷¹ Ibid., 8.

percent) of the total cost is just for obtaining the data. To the extent that the agency uses the same scientific research in its decision making regarding multiple rules, the cost of making research data publicly accessible would be less than \$2,000 per study in those cases, or less than 20 percent of the cost estimated by CBO. Finally, to the extent that study authors posted the necessary data when their studies were published, the costs would be lower still. Many journals require authors to post their supporting data as a condition of publication.

CBO's cost estimate of \$250 million per year for the EPA to comply with H.R. 1030 and S. 544 depends not only on the cost per study but also on the number of studies that the EPA relies on per year. CBO estimates that the EPA uses an average of 25,000 studies per year, based on a midpoint of 12 to 50,000 studies referenced for two different regulations.⁷² We can use information from Regulations.gov to make a more transparent estimate. During the 10 years between January 1, 2005, and December 31, 2014, Regulations.gov listed 177,772 documents as being placed in the EPA's dockets and categorized as "Supporting and Related Material." That category includes some scientific research, some documents summarizing many pieces of scientific research, and many other nonscience-related documents such as administrative documents produced by the agency. A reasonable estimate is that each supporting document represents a single piece of scientific research. In this case, the EPA would reference, on average, 18,000 pieces of scientific research each year.

Using any estimate of the number of pieces of research *referenced* by the EPA is, however, very likely to be an overestimate of the number of pieces of research that would be covered by the texts of H.R. 1030 and S. 544. Both bills refer to research "relied upon" by the agency. The bills do not define the phrase or clarify what research is included by the term, but it

⁷² CBO, "Cost Estimate, S. 544."

is reasonable to interpret the phrase “relied upon” as more narrow than referenced. The agency may reference many pieces of research that are related to a rulemaking but that it does not truly rely on to influence or justify a provision of the rule. For example, all of the EPA’s recent National Ambient Air Quality Standards rules present estimates of the costs to comply with Executive Order 12866, but these costs are irrelevant during judicial review.⁷³

Assuming a cost of \$2,558 per study, our estimate of the total annual cost for the EPA to obtain and post the data for the amount of scientific research that the agency has traditionally cited per year would be \$46 million. In its estimate, CBO mentions that costs over time would decline; once data had been obtained and posted for a study, there would be no additional cost to relying on that study again. The same would be true of our estimate.

The EPA may find that it is unable to obtain the underlying data for many scientific studies. Researchers have shown that, even when authors say their data are available on request, a large percentage of authors do not provide data on request.⁷⁴ They do not respond; they respond after months of delay; or they respond without sharing their data. If this is the case with research that the EPA wants to rely on, the EPA’s costs associated with such studies will only be \$592 for attempting to obtain the data and a small additional amount for asking the authors repeatedly. Based on the studies that have attempted to obtain access to data from peer-reviewed studies, we estimate that after spending 7.5 hours attempting to obtain data from study authors, the EPA will receive data for only 20 percent of the requested studies.⁷⁵ In that case, we estimate that the full \$2,558 cost per study will apply to only 3,600 studies per year (20 percent of 18,000)

⁷³ Whitman, Administrator of Environmental Protection Agency, et al. v. American Trucking Associations, Inc., et al., 531 U.S. 457 (2001).

⁷⁴ Timothy H. Vines et al., “The Availability of Research Data Declines Rapidly with Article Age,” *Current Biology* 24, no. 1 (2014): 94–97, and Youngseek Kim and Melissa Adler, “Social Scientists’ Data Sharing Behaviors: Investigating the Roles of Individual Motivations, Institutional Pressures, and Data Repositories,” *International Journal of Information Management* 35, no. 4 (2015): 408–18.

⁷⁵ Ibid.

and that the \$592 cost of attempting to obtain the data will apply to 14,400 studies per year (80 percent of 18,000), for a total cost of less than \$18 million.

Those who object to H.R. 1030 and S. 544 say that, when the EPA is not able to use scientific studies because supporting data are not available, it will “weaken the ability of science to inform federal rule-making.”⁷⁶ Such a claim seems to ignore the fact that a large percentage of published studies are unreliable. Further, the willingness to make data available is related to the strength of the evidence and the quality of reporting of the statistical results.⁷⁷ So one may presume that regulatory policies are more likely to be based on valid scientific relationships where data are available.

Benefits of Greater Access to Data

Public access to the data underlying studies used by federal agencies in making significant public policies may lead to increases in the true net benefits of federal policies by helping to ensure that the policies are based on valid science and not on published studies with irreproducible results.

Available data let us calculate how large the increases in net benefits of regulations from improved reproducibility would need to be to exceed the costs of providing this greater reproducibility. To calculate this increase, we begin with a 2014 OMB report that states that the EPA’s estimates of the annualized benefits of 34 major rules, finalized by the EPA between October 1, 2003, and September 30, 2013, were \$165 billion to \$850 billion.⁷⁸ This report also states that the estimated annualized costs for major rules issued during that decade were \$38 billion

⁷⁶ Rosenberg et al., “Congress’s Attacks.”

⁷⁷ Jelte M. Wicherts, Marjan Bakker, and Dylan Molenaar, “Willingness to Share Research Data Is Related to the Strength of the Evidence and the Quality of Reporting of Statistical Results,” *PLOS ONE* 6, no. 11 (2011): e26828, and Moffitt, “Report of the Editor.”

⁷⁸ OMB, “2014 Report to Congress on the Benefits and Costs of Federal Regulations and Unfunded Mandates on State, Local, and Tribal Entities,” June 15, 2015.

to \$46 billion. Dividing the benefits and costs for the 10 years of rules suggests that the annual net benefits of these major rules are \$12 billion to \$81 billion, a range derived by subtracting the largest cost estimate from the smallest benefit estimate and the smallest cost estimate from the largest benefit estimate. Improvements in reproducibility can be thought of as increasing the net benefits of regulations because they would avoid situations in which costs or benefits are wrongly estimated to occur or in which regulatory costs are imposed without corresponding benefits. More specifically, we can calculate an increase in existing net benefits from greater reproducibility, which, if it occurred, would cover the costs of obtaining the data and making the data available.

To address fully the uncertainty in such a calculation, we consider both the range of uncertainty in annual net benefits of the EPA's rules and the uncertainty in the costs of providing accessibility to the data underlying those rules. As just discussed, the baseline annual net benefits could be either \$12 billion or \$81 billion, as in two rows of table 3. Similarly, the incremental cost of providing accessibility could be either of the two estimates presented in the last section (\$18 million or \$46 million) or CBO's estimate of \$250 million. We represent these possibilities as three columns in table 3. The content of each of the six cells in the table represents how large the incremental improvement in annual net benefits from the EPA's rules would have to be for such improvements to outweigh the costs of achieving them. As shown, an improvement in net benefits of 0.02 to 2.08 percent would imply that the net benefits of requiring data access are positive.

These estimates are conservative insofar as they ignore the incremental net benefits of the 287 nonmajor final rules that the EPA issued during the 10-year period ending in September 2013.⁷⁹ The estimates also ignore other important benefits of transparency, public participation, and collaboration. Making the data publicly available to verify the findings of research that influences

⁷⁹ From a search of Regulations.gov, accessed January 19, 2016, <http://www.regulations.gov/#!searchResults;rpp=25;po=0;dct=FR;a=EPA;dk=R;pd=10%257C01%257C03-09%257C30%257C13;docst=Final+Rule>.

policy-making may increase the level of trust in federal policies. It is also likely that providing all sides of controversial issues with access to relevant scientific data would serve to focus debates more on strengthening the relationship of policies to reproducible science.

Table 3. Percentage Increases in Estimated Regulatory Net Benefits Needed to Equal Various Estimates of the Cost of Data Access

Annual net benefits of new EPA regulations	Range of annual costs of ensuring access to data used in EPA regulations, %		
	\$18 million (assuming 20% data availability)	\$46 million (assuming 100% data availability)	\$250 million (CBO estimate, assuming 100% data availability)
\$12 billion	0.15	0.38	2.08
\$81 billion	0.02	0.06	0.31

Note: EPA = Environmental Protection Agency; CBO = Congressional Budget Office.

Source: Authors' calculations. See text for explanation.

Some research institutions assert that data availability enhances the scientific enterprise. As the National Institutes of Health explains, “Sharing data reinforces open scientific inquiry, encourages diversity of analysis and opinion, promotes new research, makes possible the testing of new or alternative hypotheses and methods of analysis, supports studies on data collection methods and measurement, facilitates the education of new researchers, enables the exploration of topics not envisioned by the initial investigators, and permits the creation of new data sets when data from multiple sources are combined.”⁸⁰ In the National Institutes of Health’s estimation, data sharing is required to speed the implementation of efforts to improve public policies.⁸¹ Beyond data sharing, providing public access to data in archives has important social benefits in

⁸⁰ National Institutes of Health, “NIH Announces Draft Statement on Sharing Research Data,” March 1, 2002. For some illustrations of the benefits of widely shared information, see the discussion on crowdsourcing by Jerry Brito in “Hack, Mash, & Peer: Crowdsourcing Government Transparency,” *Columbia Science and Technology Law Review* 9 (2008): 119.

⁸¹ “Data sharing is essential for expedited translation of research results into knowledge, products, and procedures to improve human health.” Quoted in National Institutes of Health, “Final NIH Statement on Sharing Research Data,” February 26, 2003. A similar point is made in the editorial, “Sharing Data to Save Lives,” *Nature Medicine* 21, no. 1235 (2015): nm.3991.

preserving the public stock of data, which otherwise is easily lost. As some evolutionary biologists explain, “Once the results of a study are published (if ever), the data on which those results are based are often stored unreliably, subject to loss by hard drive failure and (even more likely) by the researcher forgetting the specific details required to use the data. Moreover, most data are never available to the broader community, even after publication of the results; in most cases this unavailability is permanent due to the eventual death of the researchers involved. We are losing nearly all of this important legacy.”⁸² Of course, our estimates of the benefits of public access to data supporting federal regulatory decisions fall short of proving that the benefits outweigh the associated costs. They do show, however, the plausibility of such a claim.

Policy Recommendations

We show that, without public access to data, federal agencies are at risk of making policy decisions based on flawed information that can misdirect public and private resources. Moreover, public access to influential data is essential for agencies to maintain transparency and for the public to have a meaningful opportunity to participate in the regulatory process in an informed manner. A policy prescribing public access to data in studies that the EPA relies on for its rulemaking would likely offer net benefits with costs much smaller than those estimated by CBO for H.R. 1030 and S. 544. Still, those legislative proposals could be improved. We suggest several refinements to require public access for data used in federal rulemaking.

First, those legislative proposals should be broadened to cover all regulatory agencies. As we show here, papers in numerous scientific disciplines frequently contain irreproducible results,

⁸² Mark D. Rausher et al., “Data Archiving,” *Evolution* 64, no. 3 (2010): 603–4. Rausher et al. also note the value that data archives provide for reproducibility: “The availability of data for published studies also allows error-checking, making science more open, and letting us more rapidly reach accurate conclusions.”

making every federal agency that uses such research results vulnerable to having irreproducible results inadvertently influence policy.

Second, H.R. 1030 and S. 544 should target regulations that are economically significant as defined by Executive Order 12866. According to a search of RegInfo.gov, executive branch agencies published 66 economically significant final regulations in 2015; according to a search of Regulations.gov, the federal government published 1,124 final regulations during 2015. Even though economically significant regulations represent a small percentage of the regulations published, OMB considers them to account for the “vast majority of costs and benefits of new Federal regulations.”⁸³

H.R. 1030 and S. 544 should be amended to define “relied upon” to clarify that those legislative proposals affect only research that an agency uses to support or define key dimensions of policy. Research that merely provides background information relating to a policy is not influential research that is “relied upon” by an agency.

We are not recommending that agencies use the data obtained to replicate the results of studies, although it would be a sensible approach to show reasonable due diligence in regard to the scientific basis for public policies. We are, however, recommending that agencies seek to obtain the data underlying the studies that they rely on and then post the data publicly (after adopting appropriate protections for confidential business information and human subject and patient privacy), so that interested parties can attempt to replicate the results of the studies.

The existence of personally identifiable information (PII) in research data need not be an insurmountable barrier to broader access. A 2007 OMB memorandum with the subject “Safeguarding against and Responding to the Breach of Personally Identifiable Information”

⁸³ OMB, “Draft Report to Congress on the Costs and Benefits of Federal Regulations,” 62 Fed. Reg. 39366 (July 22, 1997).

recognizes that different data have different levels of impact with PII generally having moderate or high impact.⁸⁴ OMB should also instruct the agencies to maximize access to such data if they are used by a federal agency in rulemaking. Depending on the risks to privacy posed by the PII at issue, OMB should encourage agencies to select controls from a suite of measures that can be adopted to protect PII. The range of potential measures includes the following:

- requiring applications for access,
- imposing nondisclosure agreements,
- requiring online training for researchers on how to protect PII,
- implementing digital rights management technologies to prevent copying or redistribution of data,
- establishing physical controls on how data is stored,
- air-gapping computers used to access the data so that the data is never exposed to the Internet,
- restricting the printing of data,
- allowing access to data only at Federal Statistical Research Data Centers,
- allowing data to be used only for the purposes of replication, validation, and sensitivity evaluation,
- requiring background checks,
- requiring users to post performance bonds that will be forfeited if they inadvertently act to release PII,
- imposing civil or criminal penalties for the release of PII, and
- blacklisting violators from accessing PII in the future.

These special considerations for providing access to data containing PII cannot all be legitimately applied to all research data. Specifically, agencies cannot treat all data as though they contain equally sensitive PII.

⁸⁴ Clay Johnson III, “Memorandum for the Heads of Executive Departments and Agencies, Subject: Safeguarding Against and Responding to the Breach of Personally Identifiable Information,” May 22, 2007. OMB has long recognized that agencies should continue to protect the confidentiality of data to the degree promised to research subjects in the consent forms that were approved by the Institutional Review Board for the research.

Many federal agencies already provide access to data containing PII under certain circumstances and already have guidelines for handling PII. Examples include Internal Revenue Service data that include confidential information on income and audits,⁸⁵ Agency for Healthcare Research and Quality Medical Expenditure Panel Survey data that include medical diagnosis, treatment, and billing information,⁸⁶ and Bureau of Labor Statistics National Longitudinal Survey of Youth data that include criminal records, intellectual achievement statistics, sexual activity, and substance use.⁸⁷

The US Government Accountability Office has issued several reports in the last few years finding that federal agencies should protect PII better.⁸⁸ However, we could find no concerns the Government Accountability Office expressed in any of these reports about problems caused by providing access to data for research purposes.

When the PII in research data has the highest degree of sensitivity, so that the data are accessible only after an application process, we recommend that agencies significantly lengthen the standard 60-day comment period on proposed regulations in order to make allowances for the delays in accessing data.

In the event that authors do not supply their underlying data and an agency still believes that relying on the results of a study is warranted, the agency ought to explain why it has

⁸⁵ The following papers illustrate the use of such data: Jason DeBacker et al., “Once Bitten, Twice Shy? The Lasting Impact of IRS Audits on Individual Tax Reporting,” March 25, 2015; Raj Chetty et al., “Is the United States Still a Land of Opportunity? Recent Trends in Intergenerational Mobility,” *American Economic Review* 104, no. 5 (2014): 141–47.

⁸⁶ Agency for Healthcare Research and Quality, “Medical Expenditure Panel Survey Restricted Data Files Available at the Data Centers,” October 8, 2009, accessed June 29, 2016.

⁸⁷ US Bureau of Labor Statistics, “National Longitudinal Survey of Youth 1997 Topical Guide to the Data,” accessed June 29, 2016.

⁸⁸ See, for example, Government Accountability Office, “Information Security: IRS Needs to Further Improve Controls over Financial and Taxpayer Data,” March 2016; Government Accountability Office, “Federal Information Security: Agencies Need to Correct Weaknesses and Fully Implement Security Programs,” September 2015; Government Accountability Office, “Information Security: VA Needs to Address Identified Vulnerabilities,” November 2014; and Government Accountability Office, “Information Security: Agency Responses to Breaches of Personally Identifiable Information Need to Be More Consistent,” December 2013.

sufficient confidence to use the study. For example, the agency might note that other researchers have already reproduced the study results or that the data are available to third parties who sign nondisclosure agreements but that the data cannot be posted publicly.

Our recommendation is similar to one by the Administrative Conference of the United States. In 2013, this independent federal agency made recommendations regarding the use of science in administrative processes. Specifically, regarding policy making, the agency recommended that “agencies should seek to provide disclosure of data underlying scientific research, including both privately and federally funded research being considered by the agencies. Where practicable, such information should be disclosed in machine-readable format. Where such data are not subject to legal or other protections, and the data’s owners nonetheless will not provide such access, agencies should note that fact and explain why they used the results if they chose to do so.” Furthermore, “each agency should identify and make publicly available (on the agency website or some other widely available forum) references to the scientific literature, underlying data, models, and research results that it considered. . . . Consistent with the limitations in the Information Quality Act (IQA) guidelines . . . each agency should ensure that members of the public have access to the information necessary to reproduce or assess the agency’s technical or scientific conclusions.”⁸⁹

We want to clarify that we are calling for access only to the data necessary to replicate a study. We are not calling for access to all raw research data, which are all the data collected in the course of a research study. The data needed to replicate a study will usually have been processed to standardize, format, and organize the information for analysis and distribution and to exclude some raw data (e.g., lab notes that are not relevant to the results of the study as

⁸⁹ Administrative Conference of the United States, “Science in the Administrative Process,” June 14, 2013.

presented). This distinction is also made by journals such as *Science*⁹⁰ and *PLOSOne*,⁹¹ which require the posting of all data necessary for replication as a condition of publication.

Our recommendation is more targeted than the requirements of H.R. 1030 and S. 544 in that it would initially require public access to data underlying a much smaller set of regulatory decisions—those that are economically significant. This targeting would greatly reduce the expected number of actions subject to mandatory public data access.

⁹⁰ “*Science*, Editorial Policies,” accessed January 11, 2016, http://www.sciencemag.org/site/feature/contribinfo/prep/gen_info.xhtml#dataavail.

⁹¹ PLOS One, “Data Availability,” accessed January 11, 2016, <http://journals.plos.org/plosone/s/data-availability>.

Message

From: Woods, Clint [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BC65010F5C2E48F4BC2AA050DB50D198-WOODS, CLIN]
Sent: 4/8/2018 7:13:26 PM
To: Schwab, Justin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=eed0f609c0944cc2bbdb05df3a10aadb-Schwab, Jus]; Bolen, Brittany [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31e872a691114372b5a6a88482a66e48-Bolen, Brit]
Subject: RE: Data - redline
Attachments: Data Access DRAFT NPRM 04062018 (redline from3222018) cw.docx

Attached should have updated reg text Deliberative Process / Ex. 5 and a couple minor additions in request for comment section.

From: Schwab, Justin
Sent: Friday, April 6, 2018 10:44 AM
To: Woods, Clint <woods.clint@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>
Subject: Data - redline

Please find attached. Attorney Client / Ex. 5

Attorney Client / Ex. 5

Message

From: Woods, Clint [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BC65010F5C2E48F4BC2AA050DB50D198-WOODS, CLIN]
Sent: 4/23/2018 8:37:24 PM
To: Schwab, Justin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=eed0f609c0944cc2bbdb05df3a10aadb-Schwab, Jus]
Subject: FW: Status?
Attachments: EPA Response to OIRA Data Access Comments - 4-23-18.docx; ATT00001.htm

Clint Woods
Deputy Assistant Administrator
Office of Air and Radiation, U.S. EPA
202.564.6562

From: Bolen, Brittany
Sent: Monday, April 23, 2018 4:35 PM
To: Woods, Clint <woods.clint@epa.gov>
Subject: Fwd: Status?

Sent from my iPad

Begin forwarded message:

From: "Nickerson, William" <Nickerson.William@epa.gov>
Date: April 23, 2018 at 3:15:08 PM EDT
To: "Bolen, Brittany" <bolen.brittany@epa.gov>
Cc: "Lovell, Will (William)" <lovell.william@epa.gov>
Subject: RE: Status?

This version includes the following edits. (I think since then we've received a docket number, which I can forward separately).

Deliberative Process / Ex. 5

-----Original Message-----
From: Bolen, Brittany

Sent: Monday, April 23, 2018 3:00 PM
To: Nickerson, William <Nickerson.William@epa.gov>
Cc: Lovell, Will (William) <lovell.william@epa.gov>
Subject: Status?

Hi Bill - what is the status of this?

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Thanks,
Brittany

On Apr 23, 2018, at 8:51 AM, Bolen, Brittany <bolen.brittany@epa.gov> wrote:

Bill,

As we discussed, attached the latest version of the document to be reviewed for formatting and boilerplate text conformity by your staff. Can I can those edits by this afternoon?

Thanks,
Brittany

<EPA Response to OIRA Data Access Comments - 4-22-18.docx>

Message

From: Woods, Clint [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BC65010F5C2E48F4BC2AA050DB50D198-WOODS, CLIN]
Sent: 3/9/2018 2:31:33 PM
To: Yamada, Richard (Yujiro) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4c34a1e0345e4d26b361b5031430639d-Yamada, Yuj]; Bolen, Brittany [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31e872a691114372b5a6a88482a66e48-Bolen, Brit]
Subject: RE: ATTORNEY-CLIENT, ATTORNEY WORK PRODUCT
Attachments: OGC comments (legal) REDLINE 3.8.18 ry edits cw.docx

Sorry for the delay – **Deliberative Process / Ex. 5** Let me know if it would be helpful to touch base before call late afternoon.

From: Woods, Clint
Sent: Wednesday, March 7, 2018 5:58 PM
To: Yamada, Richard (Yujiro) <yamada.richard@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>
Subject: Re: ATTORNEY-CLIENT, ATTORNEY WORK PRODUCT

Working on wordsmithing a few additions. Hoping to send shortly.

On Mar 7, 2018, at 5:48 PM, Yamada, Richard (Yujiro) <yamada.richard@epa.gov> wrote:

(This email contains deliberative and pre-decisional matters)

Hi Matt and Justin,

Deliberative Process / Ex. 5

Richard

Richard Yamada
Deputy Assistant Administrator
Office of Research and Development
U.S. Environmental Protection Agency

Phone: 202-564-1727
yamada.richard@epa.gov

<OGC comments (legal) REDLINE 3.8.18 ry edits.docx>

Message

From: Woods, Clint [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BC65010F5C2E48F4BC2AA050DB50D198-WOODS, CLIN]
Sent: 4/23/2018 5:22:45 PM
To: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]; Harlow, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b5a9a34e31fc4fe6b2beaddda2affa44-Harlow, Dav]; Dominguez, Alexander [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5ced433b4ef54171864ed98a36cb7a5f-Dominguez,]
Subject: FW: EPA NPRM Call Regulatory Science
Attachments: data Access Draft -OIRA Response to EPA - 4-23-18 oira2.DOCX

Latest version, but still some negotiated changes being incorporated. Please don't send outside OAR

From: Kim, Jim H. EOP/OMB [EOP / Ex. 6]
Sent: Monday, April 23, 2018 10:59 AM
To: Palmieri, Rosario A. EOP/OMB [EOP / Ex. 6]; Laity, Jim A. EOP/OMB [EOP / Ex. 6]
Bolen, Brittany <bolen.brittany@epa.gov>; Szabo, Aaron L. EOP/CEQ [EOP / Ex. 6] Moran, John S.
EOP/WHO [EOP / Ex. 6]; Bremberg, Andrew P. EOP/WHO [EOP / Ex. 6]
Herz, James P. EOP/OMB [EOP / Ex. 6]; Brooke, Francis J. EOP/OVP [EOP / Ex. 6]
jonathan.brightbill@usdoj.gov; Beck, Nancy <Beck.Nancy@epa.gov>; Schwab, Margo EOP/OMB
[EOP / Ex. 6]; Schwab, Justin <Schwab.Justin@epa.gov>; Yamada, Richard (Yujiro)
<yamada.richard@epa.gov>; Woods, Clint <woods.clint@epa.gov>; David.Gualtieri@usdoj.gov;
eric.t.gormsen@usdoj.gov; Neumayr, Mary B. EOP/CEQ [EOP / Ex. 6]
Subject: RE: EPA NPRM Call Regulatory Science

Hi all,

Please find attached some additional edits for discussion at 11AM.

Thanks,
Jim

-----Original Appointment-----

From: Palmieri, Rosario A. EOP/OMB
Sent: Monday, April 23, 2018 8:58 AM
To: Palmieri, Rosario A. EOP/OMB; Laity, Jim A. EOP/OMB; 'Bolen, Brittany'; Szabo, Aaron L. EOP/CEQ; Moran, John S. EOP/WHO; Bremberg, Andrew P. EOP/WHO; Herz, James P. EOP/OMB; Brooke, Francis J. EOP/OVP;
jonathan.brightbill@usdoj.gov; Beck, Nancy; Schwab, Margo EOP/OMB; 'schwab.justin@epa.gov'; Kim, Jim H. EOP/OMB;
Yamada, Richard (Yujiro); woods.clint@epa.gov; David.Gualtieri@usdoj.gov; Eric.T.Gormsen@usdoj.gov; Neumayr, Mary B. EOP/CEQ
Subject: EPA NPRM Call Regulatory Science
When: Monday, April 23, 2018 11:00 AM-12:00 PM (UTC-05:00) Eastern Time (US & Canada).
Where: Dial-In: **Conference phone and code/Ex. 6**

Message

From: Woods, Clint [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BC65010F5C2E48F4BC2AA050DB50D198-WOODS, CLIN]
Sent: 4/23/2018 4:43:35 PM
To: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]
Subject: Fwd: Transparency/Data Access Statements of Support
Attachments: Science Transparency TPs cw.docx; ATT00001.htm

Begin forwarded message:

From: "Woods, Clint" <woods.clint@epa.gov>
Date: April 23, 2018 at 12:36:39 PM EDT
To: "Yamada, Richard (Yujiro)" <yamada.richard@epa.gov>
Subject: FW: Transparency/Data Access Statements of Support

From: Woods, Clint
Sent: Monday, April 23, 2018 10:23 AM
To: Bowman, Liz <[Bowman.Liz@epa.gov](mailto: Bowman.Liz@epa.gov)>; Bolen, Brittany <bolen.brittany@epa.gov>; Gordon, Stephen <gordon.stephen@epa.gov>; Konkus, John <konkus.john@epa.gov>; Letendre, Daisy <letendre.daisy@epa.gov>; Schwab, Justin <schwab.justin@epa.gov>
Subject: RE: Transparency/Data Access Statements of Support

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

From: Bowman, Liz

Sent: Friday, April 20, 2018 3:29 PM

To: Woods, Clint <woods.clint@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>; Gordon, Stephen <gordon.stephen@epa.gov>; Konkus, John <konkus.john@epa.gov>; Letendre, Daisy <letendre.daisy@epa.gov>; Schwab, Justin <Schwab.Justin@epa.gov>

Subject: RE: Transparency/Data Access Statements of Support

That would be great, can you send us what you have, as well as the draft of the policy/proposed rule? I can work on the draft press release and talking points, while Daisy/Stephen focus on planning the event with John.

From: Woods, Clint

Sent: Friday, April 20, 2018 2:21 PM

To: Bowman, Liz <Bowman.Liz@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>; Gordon, Stephen <gordon.stephen@epa.gov>; Konkus, John <konkus.john@epa.gov>; Letendre, Daisy <letendre.daisy@epa.gov>; Schwab, Justin <Schwab.Justin@epa.gov>

Subject: Transparency/Data Access Statements of Support

Happy to work on some talking points for a release to accompany Tuesday's announcement.

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Clint Woods
Deputy Assistant Administrator
Office of Air and Radiation, U.S. EPA
202.564.6562