

**HEARING ON NOMINATION OF ATTORNEY GENERAL SCOTT PRUITT TO BE ADMINISTRATOR OF THE U.S. ENVIRONMENTAL PROTECTION AGENCY**

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**HEARING**  
BEFORE THE  
**COMMITTEE ON**  
**ENVIRONMENT AND PUBLIC WORKS**  
**UNITED STATES SENATE**  
**ONE HUNDRED FIFTEENTH CONGRESS**

FIRST SESSION

—————  
JANUARY 18, 2017  
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Printed for the use of the Committee on Environment and Public Works



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COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

ONE HUNDRED FIFTEENTH CONGRESS  
FIRST SESSION

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GENERAL SCOTT PRUITT TO BE ADMINIS-  
TRATOR OF THE U.S. ENVIRONMENTAL  
PROTECTION AGENCY**

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**WEDNESDAY, JANUARY 18, 2017**

U.S. SENATE,  
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,  
*Washington, DC.*

The Committee met, pursuant to notice, at 10 a.m. in room 406, Dirksen Senate Office Building, Hon. John Barrasso (Chairman of the Committee) presiding.

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

Also present: Senator Lankford.

**OPENING STATEMENT OF HON. JOHN BARRASSO,  
U.S. SENATOR FROM THE STATE OF WYOMING**

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

We have quite a full house today. I welcome the audience. This is a formal Senate hearing, and in order to allow the Committee to conduct its business, we will maintain decorum. That means if there are disorders, demonstrations by a member of the audience, the person causing the disruption will be escorted from the room by the Capitol Police.

Since this is our first hearing of this session, I would like to welcome our new members, Senators Jerry Moran, Joni Ernst, Tammy Duckworth, and Kamala Harris. Thank you very much, and congratulations in joining the Committee.

I would also like to welcome Senator Tom Carper in his new role as the Ranking Member of the Committee. You are here, even if you have a scratchy throat, 40 years from when you were Treasurer of Delaware, Member of Congress, Governor, member of the U.S. Senate. Have not missed a day. You are Cal Ripken, Jr., and the iron man. So thanks for being here. Thank you. I look forward to working with you.

He deserves applause.

With regard to procedure, we will follow the early bird rule in terms of the order of member questions. Members who were here at the start, as you all are, will be placed in the line based on your seniority on the Committee. Members who arrive after the hearing has started will be added to the line in the order they arrive.

With respect to today's hearing, we will abide by the Committee's 5-minute rule. The 5 minutes includes not just the questions but also the nominee's answers, so I ask our members to please leave enough time for the nominee to answer your question. Today we will have many rounds of questions as are necessary so that members' questions are answered.

Today's hearing is to consider the nomination of the Attorney General of Oklahoma, Scott Pruitt, to be the Administrator of the Environmental Protection Agency. Attorney General Pruitt has been a distinguished public servant as well, and we will hear the same from his fellow Oklahomans today. He served 8 years in the Oklahoma State Senate before being elected Attorney General of Oklahoma in November 2010, where he still serves.

There are numerous statements from his peers and the people that he has helped over the years that stand as a testament to his strong qualifications to run the Environmental Protection Agency.

Twenty-four State attorneys general wrote to both Ranking Member Carper and to me stating that "As attorneys general, we understand the need to work collaboratively to address threats to our environment that cross State lines as well as the importance of a Federal counterpart in the EPA Administrator who possesses the knowledge, experience, and principles to work with our States to address issues affecting our environment. We believe that no one exemplifies these qualities more than Scott Pruitt."

Now, Attorney General Pruitt has taken on polluters, including the oil industry, when there was cause. Randy Ellis, an award winning investigative reporter with the Oklahoman newspaper, praised Pruitt for his ability to take on industry. The paper highlighted the work of Attorney General Pruitt to hold a large oil company accountable. This is what Ellis stated. He said, "Mr. Pruitt demonstrated that he will take on industry when they overstep when he sued oil companies such as BP who knowingly double dipped by collecting reimbursements for corrective action environmental costs for sites that they polluted."

This is why I believe President-elect Trump nominated Attorney General Pruitt to serve as the Administrator of the Environmental Protection Agency. The EPA, under the leadership of a qualified and responsible Administrator, is a vital tool that must be used to protect the air we breathe, the water we drink, and the communities where our families live. It is truly a sacred trust.

Colleagues on both sides of the aisle say that Attorney General Pruitt has the right experience for the position. Attorney General Pruitt understands the need to both protect the environment, while allowing our Nation's economy to grow. The agency needs a leader who will follow the laws created by this Committee.

During the last 8 years EPA Administrators created broad and legally questionable new regulations which have undermined the American people's faith in the Agency. These regulations have done great damage to the livelihoods of our Nation's hardest working citizens. The regulatory zeal of the last 8 years has violated a fundamental principle of environmental stewardship, which is do no harm. This failed environmental leadership has contributed to two of the worst Government-created environmental disasters in decades: the Gold King Mine spill and Flint, Michigan's water crisis.

Those disasters hurt people, many from low income and minority communities who can least afford it.

As I have discussed with Attorney General Pruitt, my home State of Wyoming is a leading energy producing State. We have abundant supplies of coal, natural gas, crude oil, and uranium. These industries provide thousands of good paying jobs for Wyoming communities. We are also, in my opinion, one of the most beautiful States in the Nation. We are home to Yellowstone and Grand Teton National Parks and numerous national forests and pristine lakes and waterways. Our wildlife population is diverse and abundant. We have thriving populations of grizzly bears, wolves, elk, and bison. People travel from around the world to come to Wyoming because our State's natural resources are spectacular.

Wyoming has managed to strike that balance between our environment and our economy, and it shows. For 8 years Wyoming has suffered under an EPA that didn't believe in striking a balance. As EPA regulations crushed energy jobs in my State; State revenue fell that pays for State programs. This includes paying for our vital environmental programs. Clearly, a wholesale change is needed. Any new Administrator of the Environmental Protection Agency needs to protect the environment in a responsible way that doesn't ignore the good work that States do to protect their air, land, and water, as well as their economies.

At this time I would like to ask Ranking Member Senator Carper for an opening statement.

[The prepared statement of Senator Barrasso follows:]

STATEMENT OF HON. JOHN BARRASSO,  
U.S. SENATOR FROM THE STATE OF WYOMING

Today we consider the nomination of Oklahoma Attorney General Scott Pruitt to be Administrator of the Environmental Protection Agency.

Attorney General Pruitt has been a distinguished public servant, as we have heard from his fellow Oklahomans.

He served 8 years in the Oklahoma State Senate before being elected Attorney General of Oklahoma in November 2010, where he still serves.

There are numerous statements from his peers and the people he has helped over the years that stand as a testament to his strong qualifications to run the Environmental Protection Agency.

Twenty-four State attorneys general wrote to both Senator Carper and to me, stating that: "As attorneys general, we understand the need to work collaboratively to address threats to our environment that cross State lines as well as the importance of a Federal counterpart in the EPA Administrator who possesses the knowledge, experience, and principles to work with our States to address issues affecting our environment. We believe that no one exemplifies these qualities more than Scott Pruitt."

Attorney General Pruitt has taken on polluters, including the oil industry, when there is cause.

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This is what Ellis stated: "Mr. Pruitt demonstrated that he will take on industry when they overstep when he sued oil companies such as BP who 'knowingly double-dipped by collecting reimbursements for corrective action environmental costs for sites they polluted.'"

This is why I believe President-elect Trump nominated Attorney General Pruitt to serve as the Administrator of the Environmental Protection Agency.

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It's truly a sacred trust.

Colleagues on both sides of the aisle say that Attorney General Pruitt has the right experience for the position.

Attorney General Pruitt understands the need to both protect the environment while allowing our Nation's economy to grow.

The agency needs a leader who will follow the laws created by this Committee.

During the last 8 years EPA Administrators created broad and legally questionable new regulations which have undermined the American people's faith in the agency. These regulations have done great damage to the livelihoods of our Nation's hardest working citizens.

The regulatory zeal of the last 8 years has violated a fundamental principle of environmental stewardship—which is do no harm.

This failed environmental leadership has contributed to two of the worst Government created environmental disasters in decades—the Gold King Mine spill and Flint, Michigan's water crisis.

Those disasters hurt the people, many from low income and minority communities, who can least afford it.

So I've discussed with Attorney General Pruitt, my home State of Wyoming is a leading energy producing State. We have abundant supplies of coal, natural gas, crude oil, and uranium. These industries provide thousands of good paying jobs for Wyoming communities.

We are also, in my opinion, one of the most beautiful States in the Nation. We are home to Yellowstone and Grand Teton National Parks, and numerous national forests and pristine lakes and waterways.

Our wildlife population is diverse and abundant. We have thriving populations of grizzly bears, wolves, elk, and bison.

People travel from around the world to come to Wyoming because our State's natural resources are spectacular.

Wyoming has managed to strike that balance between our environment and our economy, and it shows.

For 8 years Wyoming has suffered under an EPA that didn't believe in striking a balance. As EPA regulations crushed energy jobs in my State, State revenue fell that pays for State programs. This includes paying for our vital environmental programs.

Clearly a wholesale change is needed. Any new Administrator of the Environmental Protection Agency needs to protect the environment in a responsible way that doesn't ignore the good work that States do to protect their air, land, and water, as well as their economies.

**OPENING STATEMENT OF HON. THOMAS R. CARPER,  
U.S. SENATOR FROM THE STATE OF DELAWARE**

Senator CARPER. Mr. Chairman, thank you for bringing us here today. Thank you for your kind words, as well.

Let me begin by welcoming our nominee, his wife Marlyn, and his children, Cade and McKenna, to what is a very important hearing.

Mr. Pruitt, this past Sunday morning I rose at dawn. I went for a long run, took me through a beautiful State park in the northern part of Delaware. I reached the park at sunrise, just as the sun was coming up and the sky was turning a brilliant blue. The winter air was crisp and clear. Wildlife was all around. In a word, it was perfect.

As I ran, I said a prayer of thanksgiving for the gift of this moment. Later that morning, my wife and I went to church. There we joined our congregation in singing a hymn that began with these words: "For the beauty of the earth, for the glory of the skies, for the love which from our birth over and around us lies, Lord of all, to these we raise this our hymn of grateful praise."

Those words filled my heart with emotion then, and they do so again this morning.

In little more than 48 hours, Donald Trump will place his hand on a Bible. He will take an oath to defend our country and Con-

stitution. That Bible reminds us repeatedly to love our neighbors as ourselves, and it answers the question who is my neighbor. Also found in those pages are scores of admonitions about another obligation that those of us who live on this Earth are expected to meet. Simply put, we are to serve as stewards of this planet. I believe that we have a moral obligation to do so.

A great many of my colleagues in the Senate agree, and so do most Americans. We need to be convinced that you embrace it as well; not just with your words, but with your deeds. Much of your record suggests otherwise. And today, and in the days that follow, we need to find out where the truth lies.

Leading the Environmental Protection Agency is hard work. That Agency, created by President Richard Nixon and a bipartisan Congress 46 years ago, is tasked with implementing our Nation's most important clean air, clean water, and safe chemical laws. The EPA is required to use sound science to protect both our environment and our public health. By and large the EPA has done this successfully for decades while our economy has continued to grow.

Many in this room today may not remember a time before the EPA, a time when States had to work individually to protect citizens and the community in which they live, a time before the Clean Water Act and Clean Air Act were signed into law, a time when businesses operating throughout the U.S. were faced with a myriad of conflicting State and local laws affecting our health and our environment. The choking smog and soot of a half-century ago seem unfathomable now. Rivers on fire and deadly toxic plumes sound like something from another world, impossible in our United States of America.

Today we have the luxury of largely forgetting these frightening circumstances thanks to the efforts of the Environmental Protection Agency, its employees, partnership with State and local agencies and with companies across America. In fact the EPA and its many partners throughout this country have been so successful that it is easy for some of us to forget just why this Agency is so critical. For some it is also easy to presume that there is not much more for the Agency to do, and that just could not be further from the truth.

The environmental threats that we face today are real, and they don't respect State boundaries. As we consider a nominee to run our Nation's foremost environmental agency it is worth reminding everyone here why the mission of the EPA is so critical and just what is at stake.

Over time, my State of Delaware has made great strides in cleaning up our own air pollution, but our work only goes so far. Delaware, like many States on the East Coast, sits at the end of what is known as America's tailpipe. Ninety percent of the air pollution in Delaware comes from outside of the First State, from power plants hundreds of miles away in places like Kentucky, Ohio, Indiana, and across the Midwest.

As Governor of Delaware, if I had eliminated every source of air pollution with my State, stopped every combustion source and ordered every motor vehicle off the roads, Delaware would still have faced deadly doses of air pollution. Should children and others in Delaware really be forced to live with the consequences of decisions

made by polluters hundreds or even thousands of miles away who gain economically from our disadvantage? I don't think so.

Fortunately, the EPA has recently implemented something called the Good Neighbor Rule to make sure that all States do their fair share to clean up the air. Every citizen in this country has the right to breathe clean air, regardless of whether they are in a downwind or upwind State. That is why we have the EPA.

I remember fishing as a boy with my dad along the Dan River, near my hometown of Danville, Virginia. We brought home the fish that we caught to eat, and my mom and sister ate them as well. Today that quintessential American pastime comes with a warning label. That river, along with countless other polluted streams, rivers, and lakes in all 50 States are subject to public health advisories cautioning citizens against eating the mercury-laden fish found in them.

We have known for decades that most of the mercury in our fish comes from air pollution that is emitted from the dirtiest coal plants and then settles in our waterways. We also know that mercury is a powerful neurotoxin that accumulates in the human body over time, threatening the health of this environment and this generation and for generations to come.

The EPA recently issued public health protections to clean up the toxic air pollution from our dirtiest coal plants, allowing families in Delaware and thousands of other communities to once again eat the fish from our rivers, our lakes, our streams without concern of mercury poisoning. That is why we have the EPA.

Too often, when State and local communities are pinched for cash, they try to save money by short-changing clean air and clean water protections, and improvements to water infrastructure are oftentimes ignored. Corners are cut; solutions are adopted that may save dollars now but inflict costly and unnecessary damage later. As we have seen most recently in the city of Flint, Michigan, these cuts can have a terrible—even a tragic—impact on the health of the most vulnerable in our society, especially the youngest among us.

Today, the citizens of Flint still lack clean drinking water, and the new generation there which has been exposed to high levels of lead faces an uncertain future. That is why we have the EPA.

You may not know it, Mr. Pruitt, but Delaware is the lowest lying State in our Nation. The highest point in Delaware is a bridge. Back home the reality that our climate is changing is not up for grabs or up for debate. Families and business owners face the stark reality of climate change every single day, and tackling that challenge is not just the right thing to do, what is best for Delaware's economy; it is a matter of survival.

Take a ride with me sometime some 30 miles south of Dover Air Force Base, heading east toward the Delaware Bay, on Prime Hook Road, and you will see what I mean. There was a time not long ago where, just before you reached the Delaware Bay, you came to a parking lot. Today that parking lot is under water. Stand there with me, looking to the east, and you will see part of a concrete bunker slipping out of the water. Recently, someone showed me a photo taken of that bunker in 1947, the year I was born. It was



on dry land, 500 feet west of the water's edge. Five hundred feet west.

But our little State alone cannot stem the flow of greenhouse gases into our atmosphere that is largely causing our climate to change, our seas to rise, and our coastline to retreat. Every State must do its fair share to safeguard our climate and their neighbors. That is why we have the EPA.

Examples of air and water pollution produced by one State and fouling the air and water of others can still be found in too many parts of America, like the runoff from Pennsylvania that degrades the waters of the Chesapeake Bay or the haze exported from other States that oftentimes shrouds the Smokey Mountains and degrades visibility at the Grand Canyon. That is why we have the EPA.

Some of my colleagues describe me as recovering Governor. For the most part I believe that Governors and Presidents deserve deference in picking the members of their leadership teams, and as a result I have given Presidents of both parties that deference in most instances. Since coming to the Senate in 2001 I have opposed only one of the nominees for EPA administrator; supporting two Republicans, two Democrats nominees. Subsequently, every EPA administrator that I have supported demonstrated clearly that they were committed to furthering the overall mission of the EPA, protecting human health and our environment.

I am also committed to a full and fair confirmation process with respect to our nominations that this President-elect has offered, too.

Having said that, though, I have shared with Mr. Pruitt—and I will share with my colleagues today—that too much of what I have seen of his record of the environment and his views about the role of EPA are troubling, and in some cases deeply troubling. Even former Republican EPA Administrator Christie Whitman, with whom I served for 7 years as Governor of neighboring States, recently said that she “can’t recall ever having seen an appointment of someone who is so disdainful of the Agency and the science behind what the Agency does.”

Let me conclude with this. It is hard to imagine a more damning statement, and from one who served not long ago in that position of trust, Mr. Pruitt, to which you have been nominated. Today is your opportunity to show us that she has gotten it wrong. To be honest with you, coming to this hearing today, I fear that she has gotten it right.

Thank you.

[The prepared statement of Senator Carper follows:]

STATEMENT OF HON. THOMAS R. CARPER,  
U.S. SENATOR FROM THE STATE OF DELAWARE

We are gathered here today to consider the nomination of Oklahoma Attorney General Scott Pruitt to be the Administrator of the Environmental Protection Agency (EPA). Let me begin by welcoming the nominee, his wife Marlyn, and their children Cade and McKenna to this important hearing.

Mr. Pruitt, this past Sunday morning I rose at dawn and went for a long run that took me through a beautiful State park in northern Delaware. I reached the park at sunrise as the sky was turning a brilliant blue. The winter air was crisp and clear. Wildlife was all around. In a word, it was perfect.

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In a little more than 48 hours Donald Trump will place his hand on a Bible and take an oath to defend our country and Constitution. That Bible reminds us repeatedly to love our neighbors as ourselves, and it answers the question, “Who is my neighbor?” Also found in those pages are scores of admonitions about another obligation that those of us who live on this earth are expected to meet. Simply put, we are to serve as stewards of this planet.

I believe that we have a moral obligation to do so. A great many of my colleagues in the Senate agree. So do most Americans. We need to be convinced that you embrace it, as well, not just with your words, but with your deeds. Much of your record suggests otherwise. Today, and in the days that follow, we need to find where the truth lies.

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Many in this room today may not remember a time before the EPA: a time when States had to work individually to protect citizens and the communities in which they lived. A time before the Clean Water Act and Clean Air Act were signed into law. A time when businesses operating throughout the U.S. were faced with a myriad of conflicting State and local laws affecting our health and environment.

The choking smog and soot of a half-century ago seems unfathomable now. Rivers on fire and deadly, toxic plumes sound like something from another world—impossible in our United States.

Today, we have the luxury of largely forgetting these frightening circumstances thanks to the efforts of the EPA and its employees, in partnership with State and local agencies and with companies across America. In fact the EPA and its many partners throughout this country have been so successful that it’s easy for some of us to forget just why this agency is so critical. For some it’s also easy to presume there’s not much more for the agency to do. That could not be further from the truth.

The environmental threats we face today are real, and they don’t respect State boundaries. As we consider a nominee to run our Nation’s foremost environmental agency, it’s worth reminding everyone here why the mission of the EPA is so critical and just what’s at stake.

Over time, my State of Delaware has made great strides in cleaning up our own air pollution, but our work only goes so far.

Delaware, like many States on the East Coast, sits at the end of what’s known as “America’s tailpipe.” Ninety percent of the air pollution in Delaware comes from outside the First State—from power plants hundreds of miles away in places like Kentucky, Ohio, Indiana, and across the Midwest.

As Governor of Delaware—even if I had eliminated every source of air pollution within our State by stopping every combustion source and ordering every motor vehicle off of our roads—Delawareans still would have faced deadly doses of air pollution. Should children and others in Delaware really be forced to live with the consequences of decisions made by polluters hundreds—or even thousands—of miles from us? I don’t think so.

Fortunately, the EPA has recently implemented something called the Good Neighbor rule to make sure that all States do their fair share to clean up the air. Every citizen in this country has a right to breathe clean air, regardless of whether they live in a downwind or upwind State. That is why we have the EPA.

I remember fishing as a boy with my father along the Dan River near my hometown of Danville, Virginia. We brought home the fish we caught to eat. My mom and sister ate them, too. Today that quintessential American pastime comes with a warning label. That river, along with countless other polluted streams, rivers, and lakes in all 50 States, are subject to public health advisories cautioning citizens against eating the mercury-laden fish found in them.

We’ve known for decades that most of the mercury in our fish comes from the air pollution that is emitted from the dirtiest coal plants and then settles in our waterways. We also know that mercury is a powerful neurotoxin that accumulates in the

human body over time, threatening the health of this generation and generations to come.

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As we've seen most recently in the city of Flint, Michigan, these cuts can have a terrible—and even tragic—impact on the health of the most vulnerable in our society, especially the youngest among them. Today the citizens of Flint still lack clean drinking water, and a new generation there, which has been exposed to high levels of lead, faces an uncertain future. That's why we have the EPA.

You may not know it, Mr. Pruitt, but Delaware is the lowest lying State in our Nation. The highest point in the First State is a bridge. Back home the reality that our climate is changing is not up for debate. Families and business owners face the stark realities of climate change every single day. Tackling that challenge is not just the right thing to do or what is best for Delaware's economy. It's a matter of survival.

Take a ride with me some 30 miles south of the Dover Air Force Base heading east toward the Delaware Bay on Prime Hook Road, and you'll see what I mean. There was a time not long ago when just before you reached the Bay you came to a parking lot. Today, that parking lot is under water. Stand there with me looking to the east and you'll see part of a concrete bunker sticking up out of the Bay. Recently, someone showed me a photo taken of that bunker in 1947, the year I was born. It was on dry land, 500 feet west of the water's edge.

But our little State alone cannot stem the flow of greenhouse gases into our atmosphere that is largely causing our climate to change, our seas to rise, and our coastlines to retreat. Every State must do its fair share to safeguard our climate and their neighbors. That's why we have the EPA.

Examples of air and water pollution produced by one State and fouling the air and water of others can still be found in too many parts of America, like the runoff from Pennsylvania that degrades the waters of the Chesapeake Bay. Or the haze—exported from other States—that oftentimes shrouds the Smoky Mountains and degrades visibility at the Grand Canyon. That's why we have the EPA.

Some of my colleagues describe me as a “recovering” Governor. For the most part I believe that Governors and Presidents deserve deference in picking the members of their leadership teams. As a result I've given Presidents of both parties that deference in most instances.

Since coming to the Senate in 2001 I have opposed only one nominee for EPA Administrator—supporting two Republican nominees and two Democratic nominees. Subsequently, every EPA Administrator nominee that I've supported demonstrated clearly that they were committed to furthering the overall mission of the EPA—protecting human health and our environment.

I am also committed to a full and fair confirmation process with respect to the nominations of this President-elect, too. Having said that, though, I've shared with Mr. Pruitt, and I'll share with my colleagues, that too much of what I've seen of his record on the environment and his views about the role of the EPA are troubling, and in some cases deeply troubling.

Even former Republican EPA Administrator Christie Whitman—with whom I served for 7 years as Governors of neighboring States—recently said that she can't “... recall ever having seen an appointment of someone who is so disdainful of the agency and the science behind what the agency does.”

It's hard to imagine a more damning statement and from one who served, not that long ago, in the position of trust, Mr. Pruitt, to which you have been nominated.

Today is your opportunity to show that she's gotten it wrong. But to be honest with you, coming into this hearing today, I fear that she's gotten it right.

Senator BARRASSO. Thank you very much, Senator Carper.

In a few moments I would like to turn to Senators Inhofe and Lankford from their home State of Oklahoma regarding the nominee's distinguished career. Before I do that, though, I want to say a few words about Senator Inhofe and his distinguished career as chairman of the Senate Environment and Public Works Committee.

First, I want to thank my friend, Jim Inhofe, for his leadership of this Committee. His dedication to protecting the environment, rebuilding our Nation's infrastructure, strengthening the country's economy was clearly evident throughout his time as Chairman. He worked across party lines to get things done. During the 114th Congress, under Jim Inhofe's leadership this Committee held 67 hearings. Of those, 8 were field hearings. Thirty-two bills passed out of the Committee that were signed into law.

Chairman Inhofe oversaw the first long-term highway bill in a decade. This law will improve the Nation's roads, bridges, transit systems, and rail transportation networks. He also worked on a bipartisan basis with former Ranking Member Barbara Boxer to pass badly needed Water Resources Development Act legislation. This new law prioritizes dam, waterway, and port construction projects, and it supports flood control projects that protect millions of people.

For the first time in 40 years the Toxic Substances Control Act was modernized under Chairman Inhofe's tenure. This law enacts a new uniform regulatory program that will improve public confidence in the safety of chemicals, promote innovation, and provide manufacturers with certainty regarding regulation.

Chairman Inhofe also worked to keep the Administration accountable. Chairman Inhofe worked to ensure that there was oversight of overreaching Administration regulations concerning the Clean Power Plan, Waters of the U.S., the Stream Buffer Rule, coal ash regulations, and many more.

So I am very glad that Senator Inhofe will remain on the Committee. I look forward to working closely with him to protect our environment and bolster our Nation's economy.

Senator Inhofe, thank you for your hard work, your dedication, and your leadership.

Senator Inhofe, you are now recognized to introduce and talk about Attorney General Pruitt.

Thank you.

**OPENING STATEMENT OF HON. JAMES M. INHOFE,  
U.S. SENATOR FROM THE STATE OF OKLAHOMA**

Senator INHOFE. Senator Barrasso, thank you very much, and I am looking forward to working in a very senior position on your Committee. This is the Committee that gets things done, as Scott Pruitt is fully aware.

I thank you, Chairman Barrasso, and also you, Senator Carper, for letting me join you for this, and I am honored to join my fellow Senator, Senator Lankford, in introducing not just the Attorney General, Scott Pruitt, but my good friend, and to offer my support for his nomination to be the next Administrator of the Environmental Protection Agency.

Though neither of us was born in Oklahoma, we got here as quick as we could, and both ended up in Tulsa, so he is also a neighbor. Attorney General Pruitt, you will be glad to know this, he was born in Kentucky. He showed what he was made out of and ended up a great baseball player that was able to get a scholarship and go through the university there. Then he came to Oklahoma, went through law school at the University of Tulsa, and did all kinds of things, specialized at that time in constitutional law.

In 1998 General Pruitt ran and was elected to the Oklahoma State Senate, where he served 6 years and he quickly became a leader. Indeed, success has followed him throughout his law practice to the State Senate, to become the co-owner and manager, managing general partner of Oklahoma City's AAA minor league baseball team—see, we have something in addition to the Thunder that we are all fully aware of—and is currently Oklahoma's Attorney General.

Through the course of his career, Attorney General Pruitt has stood out as a champion of State and individual rights and has fought against Federal overreach. He has earned a reputation as a defender of the rule of law and has worked to keep the role of the Federal Government in check. As head of the Environmental Protection Agency, Attorney General Pruitt will ensure that the Agency fulfills the role delegated to it by the laws passed by Congress, nothing more and nothing less.

Oklahoma is an energy and agricultural State, but we are also a State that knows what it means to protect the environment while balancing competing interests. As Attorney General, Scott was instrumental—oh, this is a big deal. We actually have had an ongoing litigation for 100 years; it was the State of Oklahoma, the city of Oklahoma City, the Choctaw Nation, the Chickasaw Nation. It was over water rights. We weren't able to resolve that problem. This guy comes trotting along and resolves it overnight after 100 years of failures of trying to get this done.

He has also worked with Oklahoma Department of Environmental Quality and the Oklahoma Water Resources Board to protect the scenic rivers. He is kind of a hero of the scenic rivers place. People don't know, Scott, that we in Oklahoma actually have more miles of freshwater shoreline—

[Interruption from audience.]

Senator BARRASSO. I would ask the Senator to please suspend his remarks for a few seconds.

[Interruption from audience.]

Senator BARRASSO. Thank you, Senator Inhofe.

Senator INHOFE. They obviously don't like scenic rivers, but we do in Oklahoma.

Anyway, additionally, in 2012 Oklahoma partnered with four other States—New Mexico, Colorado, Kansas, and Texas—to bring together State official conservation groups, energy and ag industries, and other private landowners to address the challenges facing one of the problems that we have there having to do with what might become an endangered species. It was an effort that saw success in its first year. Now, this is working with four different States. Despite endorsing the plan, the Fish and Wildlife Service moved forward with listing the species as threatened, endangering the cooperation reached between these varying interests.

So Attorney General Pruitt sued the Fish and Wildlife Department for ignoring the unique cooperative agreement, and he won. He wins. He wins these things.

Yes, as Attorney General, Scott Pruitt has fought the EPA, the Fish and Wildlife Service, the oil companies, and the outgoing Administration on many fronts. But all of these suits were brought to

protect State and local interests from overzealous and activist executive agencies.

Over the last 8 years the Obama administration has advanced a radical environmental agenda, has exhibited a deep distrust of State governments and private landowners, and has worked to obstruct the fossil fuel industry and agriculture producers, the most ardent protectors of the environment. These are industries and interests that Oklahoma relies on, and far from being an enemy of the environment Scott has proven himself to be an expert at balancing economic growth with environmental stewardship.

So it is my belief that Attorney General Pruitt will return the Environmental Protection Agency to its proper role as a steward for the environment, acting within the bounds prescribed by Congress and the Constitution.

Thank you, Mr. Chairman.

[The prepared statement of Senator Inhofe follows:]

STATEMENT OF HON. JAMES M. INHOFE,  
U.S. SENATOR FROM THE STATE OF OKLAHOMA

Thank you, Chairman Barrasso, Ranking Member Carper, and colleagues for this opportunity. I am honored to introduce my friend, Oklahoma Attorney General Scott Pruitt, and to offer my support for his nomination to be the next Administrator of the Environmental Protection Agency. Though neither of us were born in Oklahoma, we both got there as fast as we could and made the Tulsa area our home.

Attorney General Pruitt grew up in Kentucky and was enough of a baseball standout in high school to earn a scholarship to the University of Kentucky where he earned the reputation for being driven and a winner. Attorney General Pruitt finished his undergrad at Georgetown College in Georgetown, Kentucky, and then graduated from law school at the University of Tulsa in 1993, where he remained and became a practicing attorney specializing in Constitutional Law.

In 1998 Attorney General Pruitt ran and was elected to the Oklahoma State Senate where he served for 6 years. He quickly became a standout of the party. Indeed, success has followed him from his law practice, to the State Senate, to become co-owner and managing general partner of Oklahoma City's Triple-A minor league baseball team, and currently as Oklahoma's Attorney General.

Through the course of his career Attorney General Pruitt has stood out as a champion of State and individual rights and has fought against Federal overreach. He has earned a reputation as a defender of the rule of law and has worked to keep the role of the Federal Government in check.

As head of the Environmental Protection Agency, Attorney General Pruitt will ensure that the agency fulfills the role delegated to it by the laws passed by Congress—nothing more, nothing less. Oklahoma is an energy and agriculture State, but we're also a State that knows what it means to protect the environment while balancing competing interests.

As Attorney General, Scott was instrumental in negotiating a water rights settlement between the State, Oklahoma City, and the Chickasaw and Choctaw nations—a dispute that dates back to the 19th century. The negotiated settlement maintains tribal sovereignty and environmental conservation guidelines while also guaranteeing Oklahoma City's access to a vital drinking water source.

He has also worked with the Oklahoma Department of Environmental Quality and the Oklahoma Water Resources Board to protect Oklahoma's Scenic Rivers from upstream pollution. In fact the executive director of DEQ credits Attorney General Pruitt's actions and insistence on using sound science with the fact that Oklahoma's desired water standard was preserved.

Additionally, in 2012 Oklahoma partnered with New Mexico, Colorado, Kansas, and Texas to bring together State officials, conservation groups, energy and agricultural industries, and other private landowners to address the challenges facing the lesser prairie-chicken—an effort that saw success in its first year and continues to do so. Despite endorsing the plan the Fish and Wildlife Service moved forward with listing the species as threatened, endangering the cooperation reached by these varying interests. As Attorney General, Scott sued the Fish and Wildlife Service for ignoring this unique cooperative agreement and won.

Yes, as Attorney General, Scott Pruitt has fought the EPA, the Fish and Wildlife Service, and the out-going Administration on many fronts, but all of these suits were brought to protect State and local interests from overzealous and activist executive agencies. Over the last 8 years the Obama administration has advanced a radical environmental agenda, has exhibited a deep distrust of State governments and private landowners, and has worked to obstruct the fossil fuel industry and agriculture producers, the most ardent protectors of the environment. These are industries and interests that Oklahoma relies on. And far from being an enemy of the environment, Scott has proven himself as the expert at balancing economic growth with environmental stewardship.

It is my belief that Attorney General Pruitt will return the Environmental Protection Agency to its proper role as a steward of the environment, acting within the bounds prescribed by Congress and the Constitution.

Thank you again, Mr. Chairman, and I would like to enter into the record an op-ed in support of Attorney General Pruitt from Scott Thompson, executive director of the Oklahoma Department of Environmental Quality.

Senator BARRASSO. Thank you, Senator Inhofe.  
Senator Lankford.

**OPENING STATEMENT OF HON. JAMES LANKFORD,  
U.S. SENATOR FROM THE STATE OF OKLAHOMA**

Senator LANKFORD. Chairman Barrasso, thank you. Ranking Member Carper, members of the Committee, thank you for allowing me to be able to be here today, introduce my fellow Oklahoman, and for Senator Inhofe and I to both be able to stand with him and to be able to introduce who we believe will be a tremendous nominee as Administrator for the Environmental Protection Agency.

It is an honor to speak in support of Attorney General Pruitt today. Over the past 6 years Scott has been a leader in the State of Oklahoma, strongly committed to enforcing the law and adhering to the Constitution. He is a statesman. He is a dedicated public servant. As Administrator of the EPA I would fully expect Scott to lead the Agency to follow every environmental law and to partner with States, local authorities, and tribes to do what is best for our present and for our future.

As Attorney General of Oklahoma he stood shoulder to shoulder with more than half of the States to ensure the Federal Government operates within the bounds of the statute and the Constitution. He has argued consistently that many regulations that the EPA promulgates are in fact the responsibilities of State governments first.

In an environment where Chevron deference is precedent, it is critical that the leader of an agency that has such wide latitude to extract costs from the economy also respects the importance of our Federalist foundation and the pocketbooks of hardworking families.

In previous congressional testimony, Scott has emphasized the importance of laws like the Clean Air Act, stressing that the intention was for States and the EPA to work together under a model of cooperative federalism that protects the environment while considering economic costs.

As Attorney General Scott has been an ardent defender of the rule of law for Oklahomans. In 2012 he sued British Petroleum, arguing that they knowingly double-dipped through the collection of funds through a clean up fund despite having insurance coverage for environmental clean up. He did not hesitate to stand up for his constituents and for his State.

Mike Turpen is the former Attorney General of the State of Oklahoma and the former Chairman of the Oklahoma Democratic Party. He spoke out in mid-December, when Scott was first announced. Let me just read a short portion of his very long statement in support of Scott Pruitt.

Former Attorney General Mike Turpen and our former Democratic Party Chairman said, "Oklahoma Attorney Scott Pruitt is a good choice to head up the Environmental Protection Agency. I am convinced Scott Pruitt will work to protect our natural habitats, reserves, and resources. His vision for a proper relationship between protection and prosperity makes him superbly qualified to serve as our next EPA Administrator."

Scott is an active member and a deacon at his church, First Baptist Church Broken Arrow, a congregation of almost 2,000 people. He is incredibly strong in his faith, and he strives to walk in integrity. Scott is a serious baseball fan, as well. If you run out of environmental or legal questions today, which I doubt you will, but if you run out, why don't you ask him a couple questions about baseball strategy and spring training, which starts in just a few weeks.

I have to tell you Scott is a friend. I have prayed with Scott. I have seen Scott struggle with hard decisions that affect our State's future. I have seen Scott listen to people to try to learn all sides of an issue. And I have seen Scott take difficult stands on matters of law. I think he will be an excellent Administrator for the EPA, and I think he will do very well today in getting a chance to bring you the confidence that he will work hard for our Nation's present and for the future.

Thank you, Mr. Chairman.

[The prepared statement of Senator Lankford follows:]

STATEMENT OF HON. JAMES LANKFORD,  
U.S. SENATOR FROM THE STATE OF OKLAHOMA

Chairman Barrasso, Ranking Member Carper, members of the Committee, thank you for graciously allowing Senator Inhofe and me the opportunity to join you this morning to introduce our fellow Oklahoman, Scott Pruitt, as nominee to be the next EPA Administrator.

It is an honor to speak in support of Attorney General Pruitt today. Over the past 6 years Scott has been a leader in the State of Oklahoma strongly committed to enforcing the law and adhering to the Constitution. He is a statesman and dedicated public servant.

As the Administrator of the EPA, I would fully expect Scott to lead the Agency to follow every environmental law and to partner with States, local authorities, and tribes to do what is best for our present and our future.

As Attorney General of Oklahoma, he's stood shoulder to shoulder with more than half the States to ensure that the Federal Government operates within the bounds of statute and the Constitution. He has argued consistently that many regulations the EPA promulgates are in fact the responsibility of State government.

In an environment where Chevron deference is precedent it is critical that the leader of an agency that has such wide latitude to extract costs from the economy respects the importance of our federalist foundation and the pocketbooks of hard-working families.

In previous congressional testimony he has stressed the importance of laws like the Clean Air Act, stressing that the intention was for States and the EPA to work together under a model of cooperative federalism that protects the environment, while considering economic costs.<sup>1</sup>

As Attorney General, Pruitt has been an ardent defender of the rule of law for Oklahomans. In 2012 he sued BP alleging they "knowingly double-dipped" through

<sup>1</sup>Testimony before the House Oversight Subcommittee on Technology, Information Policy, Intergovernmental Relations and Procurement Reform, June 28, 2012.



the collection of funds through a cleanup fund despite having insurance coverage for environmental clean up. He did not hesitate to stand up for his constituents and his State.

Mike Turpen, former Attorney General of the State of Oklahoma and the former chairman of the Oklahoma Democratic Party, spoke out in mid-December when Scott was first announced. Let me read just a short portion of his long statement—he stated: “Oklahoma Attorney General Scott Pruitt is a good choice to head up the Environmental Protection Agency. I am convinced Scott Pruitt will work to protect our natural habitats, reserves, and resources. His vision for a proper relationship between protection and prosperity makes him superbly qualified to serve as our next EPA Administrator.”

Scott is an active member and Deacon at his church—First Baptist Broken Arrow—a congregation of almost 2,000. He is incredibly strong in his faith and strives to walk with integrity.

Scott is a serious baseball fan. If you run out of environmental or legal questions today, which I doubt you will, ask him about baseball strategy and spring training, which starts in only a few weeks.

Scott is a friend. I have prayed with Scott, seen Scott struggle with hard decisions that affect our State’s future, seen Scott listen to people to learn all sides of an issue, and I have seen Scott take difficult stands on matters of law. I think he will be an excellent EPA Administrator.

Senator BARRASSO. Well, thank you so very much, Senator Lankford and Senator Inhofe.

Senator Lankford, you are welcome to stay, but you can’t stay in that seat.

[Laughter.]

Senator LANKFORD. You got it.

Senator BARRASSO. Now I would like to welcome Attorney General Pruitt to the Senate Environment and Public Works Committee.

Welcome. I invite you to first introduce your family and then proceed with your statement. Congratulations, and welcome.

**STATEMENT OF HON. SCOTT PRUITT, ATTORNEY GENERAL,  
STATE OF OKLAHOMA, NOMINATED TO BE ADMINISTRATOR,  
U.S. ENVIRONMENTAL PROTECTION AGENCY**

Mr. PRUITT. Good morning, Chairman Barrasso, Ranking Member Carper, members of the Committee. It is an honor and a privilege to be before you today to be considered for the position of EPA Administrator.

I first want to say thank you to Senators Inhofe and Lankford for their opening comments. Senator Inhofe has been a mentor and a friend to me many, many years, and he spent a lot of time with me through this process, introducing me to many of you, and I really appreciate his guidance and his help.

Senator Lankford was a friend well before he entered Congress, and he is already serving Oklahoma and this country with great distinction.

Mr. Chairman, you indicated to introduce my family. I am blessed today to have my family in attendance with me. My wife, Marlyn, of 27 years, is in attendance, along with my children, McKenna and Cade. There is a little change going on in their life as well. McKenna is actually graduating from Oklahoma University this spring and Senator Whitehouse’s alma mater of the University of Virginia Law School. And my son is going to be graduating high school and heading to Oklahoma University, following in his sister’s footsteps, to be a Boomer Sooner.

So there is lots of change going on in their lives, lots of change going on in my family's life, and lots of change going on in the country. And I think the people of this country are really hungry for some change.

And with change comes an opportunity for growth, an opportunity to assess how we can reprioritize as a Nation. And when I ponder leading the EPA I get excited about the great work to be done on behalf of our Nation and being a good steward of the natural resources we have as a Nation. What could be more important than protecting our Nation's waters, improving our air, and managing the land that we have been blessed with as a Nation, all the while protecting the health and welfare of our people?

So, if confirmed, I would lead the EPA with the following principles in mind.

First, we must reject as a Nation the false paradigm that if you are pro-energy, you are anti-environment, and if you are pro-environment, you are anti-energy. I utterly reject that narrative. In this Nation we can grow our economy, harvest the resources God has blessed us with, while also being good stewards of the air, land, and water by which we have been favored. It is not an either-or proposition.

Next, we should celebrate the great progress that we have made as a Nation since the inception of the EPA and the laws that have been passed by this body, but recognize that we have much work to do.

Third, rule of law matters. Process matters. It inspires confidence in those that are regulated. The law is static, not transient. Regulators are supposed to make things regular, to fairly and equitably enforce the rules and not pick winners and losers. A regulator should not be for or against any sector of our economy. Instead, a regulator ought to follow law in setting up the rules so that those who are regulated can plan, allocate resources to meet the standards versus operating in a state of uncertainty and duress.

Fourth, federalism matters. It matters because Congress says so. And because we need to achieve good outcomes as a Nation for air and water quality, we need the partnership of the States to achieve that. It is our State regulators who oftentimes best understand the local needs and the uniqueness of our environmental challenges. Plus, our State regulators possess the resources and expertise to enforce our environmental laws.

Fifth, public participation is key. We need to hear all voices as we make decisions on behalf of our country with respect to environmental laws.

Two final things personally. I seek to be a good listener, to listen and to lead. You can't do one without the other. Listen to those career staff—

[Interruption from audience.]

Mr. PRUITT. Listen to those career staff at the EPA, as I have done as Attorney General of Oklahoma, and listen to you here in Congress with respect to the needs of your respective States, and listen to the voice of all Americans as we seek to carry out our duties under the law.

Last—and this is very important—I seek to serve with civility. Oftentimes as policymakers you deal with very contentious issues;

I have as Attorney General of Oklahoma as well. We deal with weighty issues, and there is passion on both sides of issues. But we should not succumb to personalizing matters. We should encourage open and civil discourse. One such issue where civil discourse is absent involves climate change. Let me say to you science tells us that the climate is changing, and that human activity in some manner impacts that change. The ability to measure with precision the degree and extent of that impact and what to do about it are subject to continuing debate and dialogue, and well it should be.

So with these principles in mind I seek to answer your questions today, and I am honored to be here today to be considered for the position of EPA Administrator.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Pruitt follows:]

**Environmental Protection Agency Designate E. Scott Pruitt  
Attorney General, State of Oklahoma  
Senate Confirmation Hearing Opening Statement  
January 18, 2017**

Chairman Barrasso, Ranking Member Carper, members of the Committee, it is a great privilege to be here today and be considered for the position of Administrator of the Environmental Protection Agency. I want to start with what is most important to you and to the public: if I have the honor to serve as EPA Administrator, my overarching goal will be to lead in a way that our future generations inherit a better and healthier environment. It will be my absolute privilege to work with the thousands of dedicated public servants at EPA who have devoted their careers to helping realize this shared goal. I've always said that if you love what you do, you'll never work a day in your life, and I know those who work at EPA do so because of their tireless dedication to what they do.

EPA serves a critical mission. As I have repeatedly emphasized in my testimony to this body and elsewhere, promoting and protecting a strong and healthy environment is among the lifeblood priorities for the government, and EPA is vital to that mission. When I was sworn in as Oklahoma Attorney General, I was immediately confronted with an important water quality issue on the scenic Illinois River. High phosphorous levels were causing a range of environmental problems, and Oklahoma—the downstream state—had been in a long-running dispute with Arkansas over how to control those levels. It's well understood that

interstate water issues are among the most challenging in environmental law and policy. However, I worked together with my Democratic counterpart in Arkansas to reach an historic agreement to clean up that river. While this was a proud success of cooperation among the states, I also came to appreciate that if we had not solved these challenges among us, EPA would provide a vital function in ensuring the protection of the shared resources.

Environmental law, policy, and progress are all based on cooperation: cooperation between the States, cooperation between the States and EPA, and cooperation between the regulators and the public. Such cooperation is essential because clean air and water and a healthy environment are essential to the American way of life and key to our economic success and competitiveness. We should be proud of the progress we have made as a Nation in emphasizing environmental stewardship while also growing our economy. If confirmed as Administrator, I will work tirelessly to build on such progress in promoting a healthier environment and stronger economy for future generations by focusing on three core philosophies: rule of law, cooperative federalism, and public participation.

First, under our Constitution, the role EPA plays in protecting the environment is defined by statute, just as statutes limit every federal agency. Members of this body and of the House of Representatives have worked tirelessly over decades to set the balance in environmental policies through the laws that they have passed. The EPA's role is to administer those laws faithfully.

As Attorney General of Oklahoma, I saw examples where the Agency became dissatisfied with the tools Congress has given it to address certain issues, and bootstrapped its own powers and tools through rulemaking. This, unfortunately, has resulted only in protracted litigation, where the courts suspended most of these rules after years of delay. In the meantime, we lost the opportunity for true environmental protection as a Nation. This is not the right approach.

If given the opportunity to serve as Administrator, I will work to ensure that EPA has a cooperative and collaborative relationship with Congress in fulfilling its intent. The agency must be committed to using its expertise in environmental issues not to end run Congress, but rather to implement its direction, so that Congress may decide the proper policies for our Nation, and the EPA can go about the business of enacting effective regulations that survive legal scrutiny. The purpose of regulation is to make things regular, to put the public on clear notice of its obligations, and to do so fairly, without picking winners and losers. I look forward to working with each of you to accomplish this goal.

Second, cooperative federalism must be respected and applied by the EPA with regard to our environmental laws. Congress has wisely and appropriately directed the EPA through our environmental statutes to utilize the expertise and resources of the States to better protect the environment, and for the States to remain our nation's frontline environmental implementers and enforcers. If we truly want to advance and achieve cleaner air and water the States must be partners and not mere passive instruments of federal will. If confirmed, I will utilize the relationships I have forged with my counterparts in the States to ensure that EPA

returns to its proper role, rather than using a heavy hand to coerce the States into effectuating EPA policies.

Third, it is critical to me that EPA also truly listen to the diverse views of the American people, and learn from them. If confirmed as Administrator, I am committed to ensuring EPA's decisions are conducted through open processes that take into account the full range of views of the American people, including the economic consequences of any regulation. Environmental regulations should not occur in an economic vacuum. We can simultaneously pursue the mutual goals of environmental protection and economic growth. But that can only happen if EPA listens—listens to the views of all interested stakeholders, including the States, so that it can determine how to realize its mission while considering the pragmatic impacts of its decisions on jobs, communities, and most importantly, families.

It is, after all, EPA's core mission to protect people. It is not EPA's mission to be *against* sectors of industry in general, or against particular States. My first and primary goal as Administrator will be to return the agency to that core mission of protecting the American people through common sense and lawful regulations.

In closing, my time as Attorney General of Oklahoma afforded me the opportunity to travel my state meeting farmers, ranchers, landowners, and small business owners of all sorts. These are good people-- hardworking Americans who want to do the right thing by the environment. They want the air that their children breathe and the waters in which they swim to be clean. They *want* to follow the

law. But recently they have felt hopeless, subject to a never ending torrent of new regulations that only a lawyer can understand. They fear the EPA, and that just shouldn't be the case. If confirmed, I will work tirelessly to ensure that the EPA acts lawfully, sensibly, and with those hardworking Americans ever in mind.

Thank you.



Senator BARRASSO. Well, thank you very much. Welcome to your family, and thank you and congratulations again.

Attorney General Pruitt, you have answered the Committee questionnaire. The United States Office of Government Ethics has stated that you are “in compliance with applicable laws and regulations governing conflicts of interest.”

Throughout this hearing, and with the questions for the record, our Committee members will have an opportunity to learn more about your commitment to public service and our Nation. I would ask that throughout this hearing you please respond to the questions for the record.

With that said, I have to ask the following questions that we ask of all nominees on behalf of the Committee.

Do you agree, if confirmed, to appear before this Committee or designated members of this Committee, and other appropriate committees of the Congress, and provide information subject to appropriate and necessary security protection with respect to your responsibilities?

Mr. PRUITT. Yes, Mr. Chairman.

Senator BARRASSO. Do you agree to ensure that testimony, briefings, documents, and electronic and other forms of information are provided to this Committee and its staff, and other appropriate committees, in a timely manner?

Mr. PRUITT. Yes, Mr. Chairman.

Senator BARRASSO. Do you know of any matters which you may or may not have disclosed that might place you in any conflict of interest if you are confirmed?

Mr. PRUITT. No, Chairman.

Senator BARRASSO. Thank you.

Just a couple quick questions before we go back and forth. I would just ask if you could just please describe your environmental philosophy, what you would do to protect our environment.

Mr. PRUITT. Well, Mr. Chairman, as I indicated in my opening statement, I believe that the role of a regulator—and this may not sound too exciting—but is to make things regular. And I think one of the difficult challenges we see with individuals across the country is the inability to predict or know what is expected of them as far as their obligations under our environmental laws. And I really believe, Mr. Chairman, that if confirmed as EPA Administrator, this public participation, cooperative federalism, rule of law being the focus of how we do business at the EPA, is center to restoring confidence and certainty in those that are regulated.

Clearly, the mission of the EPA, as I indicated in my opening statement, to protect our natural resources, protecting our water quality, improving our air, helping protect the health and welfare of our citizens, is key to the leadership of the EPA, and where enforcement is necessary, vigorous enforcement. I have done that as Attorney General in Oklahoma. I have taken very constructive steps against those that have violated the law, but we have done so, I think, in a very decisive and meaningful way.

So, Mr. Chairman, with that in mind.

Senator BARRASSO. I am going to ask one other question, then I am going to reserve the balance of my time for some interjection and questioning throughout.

There are still a number of environmental problems that I see in the country and in my State. Cold war legacy pollution is a serious problem, where chemical compounds are left deep in the soil from our military activity decades ago. Often there are not the tools yet available to adequately address this pollution. If confirmed, would you advocate increasing the EPA's focus on innovative technological solutions to address these and other environmental problems?

Mr. PRUITT. Yes, Mr. Chairman, and this Congress, this past Congress, as you indicated in your statement and as Senator Inhofe recognized, with the changes to the TSCA law, there are priorities this year, new authority actually that has been given to the EPA Administrator to order testing on certain chemicals. As I have spent time with some of the members on this Committee—Senator Gillibrand, as an example, mentioned PFOA as a concern with respect to the Safe Drinking Water Act, along with TSCA. So, yes, Mr. Chairman, I believe that there are priorities that are key to improving our environment, from CERCLA to TSCA, across air quality, with non-attainment to attainment, and would seek to focus and prioritize those efforts.

Senator BARRASSO. Thank you.

Senator Carper.

Senator CARPER. Mr. Pruitt, we don't often have the kind of disruptions in this room and in this building that we are witnessing here today. This is extraordinary. Not unprecedented, but extraordinary. And people might ask, well, why are folks so concerned. Well, I will tell you why they are so concerned. And you don't have to go back to March 3rd up in Detroit, Michigan, where President-elect—then Candidate Trump, Donald Trump said these words, "We're going to get rid of EPA in almost every form. We are going to have little tidbits left, but we are going to take a tremendous amount out." That is what he said during the Republican primary.

And what did he say after the election? Well, November 10th, Fox News with Chris Wallace, he said, "Environmental Protection, what they do is a disgrace. Every week they come out with new regulations." Chris Wallace asked him, "Well, who is going to protect the environment?" He responded by saying, "We'll be fine with the environment." We'll be fine with the environment.

Well, we are concerned that we won't be fine with the environment. Sometimes words do matter. And one of the concerns that I have is he is the President; you would be his nominee, you would be his EPA Administrator. All the things that he said in the campaign, do they just go away? In you he has put somebody in place who has actually defunded or led to the defunding of the Environmental Protection Unit within your own agency. And yet you have joined in a dozen or more lawsuits over the last 6 years, ever since you have been Attorney General, going after the EPA. That is why I have the kind of concern that you are witnessing here today; not just on that side of the dais, but on this side as well.

You just took an oath, you raised your hand and took an oath to answer the questions that our Chairman asked of you, and one of them was a question dealing with your willingness to respond to reasonable questions that are asked of you. One of the things I asked of you—I submitted a letter that I think you received shortly after Christmas, maybe December 28th, close of business, and in

it I asked a lot of questions. I asked you to try to respond by January 9th. You didn't respond to one of them by January 9th, not even one. Today's hearing, I just asked my staff have you responded to any of those questions in writing that I asked almost 3 weeks ago, and to my knowledge no response has yet been received. That is why we have a concern. That is why we have a concern.

Mercury.

Mr. PRUITT. I am sorry?

Senator CARPER. I am going to start off by talking about mercury. In 2011 the EPA required dirty coal power plants to clean up mercury and air toxic emissions by issuing the Mercury and Air Toxic Standards Rule. This rule will reduce the mercury, a neurotoxin that contaminates our streams and our oceans, pollutes our fish, and harms our children's health.

As Attorney General, I believe you have been part of at least 14 legal cases against the EPA and at least 3 of these cases against the EPA's rules, to reduce mercury emissions from power plants. Is that correct? Just yes or no.

Mr. PRUITT. Senator, we have been involved in litigation around the MATS Rule.

Senator CARPER. Is that correct, yes or no?

Mr. PRUITT. As I indicated, yes, we have been a part of litigation involving the MATS Rule.

Senator CARPER. Thank you. It is my understanding that at least one of these cases against the mercury rule is still pending. Is that correct? Just yes or no.

Mr. PRUITT. I believe so, Senator, yes.

Senator CARPER. Thank you. In the cases against the mercury rule, you questioned the EPA's determination that mercury emissions from power plants are harmful to health and should be regulated. To be clear, have you ever supported a case against the EPA that claims, and this is a quote, "human exposure to methylmercury resulting from coal-fired power plants is exceedingly small," yes or no?

Mr. PRUITT. Senator, that is not a yes or no question, if I may.

Senator CARPER. Fair enough. This position seems to question an EPA decision in 2000 in which the Agency determined, after almost a decade of study—and this is a quote from them, "mercury emissions from power plants pose significant hazards to public health and must be reduced." Would you say the legal cases you have supported in the past directly challenge this Agency finding, yes or no?

Mr. PRUITT. Senator, the challenges we have had as a State—

Senator CARPER. Yes or no?

Mr. PRUITT [continuing]. Along with the other States—

Senator CARPER. Yes or no?

Mr. PRUITT. If I may, Senator. If I may.

Senator CARPER. Just hold your fire. Just hold your fire.

Mr. PRUITT. OK.

Senator CARPER. The legal position you have taken on mercury also seems to call in question the 2003 testimony from then-EPA Assistant Administrator of Air and Radiation, Jeff Holmstead, under George W. Bush, who sat right where you are sitting today, and this is what he said: "EPA is required to regulate mercury be-

cause EPA determined that mercury emissions from power plants pose an otherwise unaddressed significant risk to health and the environment and because controls options to reduce this risk are available.”

This Bush EPA statement on mercury risk seems contrary to the legal arguments you have supported in the past. Is that correct, yes or no?

Mr. PRUITT. I agree with Mr. Holmstead’s position that mercury is something that is very dangerous to the environment and should be regulated under section 112.

Senator CARPER. Thank you very much.

Are you aware that the last three administrators have publicly stated that the EPA is required to regulate mercury from power plants because of the health risk, yes or no?

Mr. PRUITT. I believe that mercury should be regulated under section 112.

Senator CARPER. Thank you very much.

My time is about to expire. I will just hold it there.

Thank you very much, Mr. Chairman.

Senator BARRASSO. Thank you, Senator Carper.

Senator Inhofe.

Senator INHOFE. Thank you, Mr. Chairman.

Well, I don’t think you had adequate time to answer some of the questions that were asked. Is there anything you would like to add, to elaborate on?

Mr. PRUITT. Yes, Senator, thank you. I do want to say to Senator Carper’s concern with respect to the President-elect’s statements throughout the campaign, I believe there is a very important role for the Environmental Protection Agency. In fact you and I talked about that in your office. I believe that there are air quality issues and water quality issues that cross State lines; that the jurisdiction of the EPA, its involvement in protecting our air quality and improving our Nation’s waters is extremely important.

And the EPA has served a very valuable role historically. After all it was Republicans who created the EPA under executive order in 1970, and this body has passed many pieces of legislation since the 1970s to focus upon improving our air and improving our water quality, and we have much to celebrate. Actually, there are six criteria pollutants under the NAAQS program since 1980 that are down 63 percent. We have made progress as a country, but we have work to do, and the EPA has a very valuable role, in partner with the States, to carry out those steps to ensure improving our air quality and protecting our Nation’s waters.

So, Senator Carper, I am hopeful that—in response to your concern about the role of the EPA, I believe it is a very valuable role, and it is something that we should focus on in partnering with our States.

With respect to mercury, the litigation that you referred to, there was no argument that we made from a State perspective that mercury is not a hazardous air pollutant under section 112. Our argument focused upon the cost-benefit analysis that the EPA failed to do, and in the Michigan v. EPA case the Supreme Court actually agreed. So it was more about the process, again, that the EPA was supposed to go through in regulating mercury to provide certainty

to those in the marketplace, not a statement with respect to whether mercury should be regulated or not under section 112.

Thank you, Senator Inhofe.

Senator INHOFE. Thank you, General. I am glad you brought up this thing about the Clean Air Act. The amendments from 1990, I was one of the co-sponsors; it has been incredibly successful. You mentioned that we have reduced those pollutants by 63 percent, but what you didn't add was that is in spite of the fact that we had 153 percent increase in our economic activity. That is a major thing.

In my introduction I mentioned this thing that you did that no one can figure out how you did it, involved a 100-year dispute between not just the State of Oklahoma and the city of Oklahoma City and the Choctaws and the Chickasaws. Do you want to share with us how you did that? You know, they tried for 100 years, and you came in and did it in less than 100 days.

Mr. PRUITT. Less than 8 months into my administration as Attorney General, we were sued as a State by the Choctaw and Chickasaw Nation with respect to water in 17 counties in southeast Oklahoma. Many of you—if you know anything about water litigation, it generally takes decades to resolve water litigation. We were able to go from August 2011 until 2016 and negotiate an historic water rights agreement with those two Nations to provide certainty to those that are regulated, to provide a voice to the tribes with respect to water allocation and water quality, and the State has maintained its position as arbiter of how those permits are allocated, as well.

So it was a partnership. It was the way things ought to work when litigation occurs. Sitting across the table from individuals and working together to try to solve the problem. And Senator, we were able to achieve that in record time, and I am very proud of what we did as a State and as the Chickasaw and Choctaw Nation together.

Senator INHOFE. Yes, that is good. I think, also, you got them all in one room, didn't you?

Mr. PRUITT. Yes, sir.

Senator INHOFE. That works.

You have been criticized by some of the people talking about some of your environmental record. I would like to be sure that people are aware of a number of people, I have some here that I will submit for the record, but a guy named Ed Fite is the vice president of scenic rivers and water quality of the GRDA. This is a person who has really been at the forefront of our scenic rivers program; he praises you, saying, "I found that General Pruitt has always done right by our scenic rivers. He has done everything constructive that he told me that he would do."

The same thing comes from the North Carolina Department of Environmental Quality, Donald van der Vaart. He wrote, "Pruitt is committed to clean air and clean water, and to restoring the EPA to its original mission of enforcing the environmental laws written by Congress."

J.D. Strong, head of the Water Resources Board, said, "Attorney General Pruitt" and he goes on and praises you.

I would like to know why it is you have become such a hero of the scenic river people.

Mr. PRUITT. Well, Senator, as you know, Oklahoma has endured many decades of dispute with respect to phosphorus levels in the scenic Illinois River. In fact, there has been litigation that has been a part of that dispute for some time. There was actually a memorandum of understanding that Arkansas and Oklahoma entered into around 2002, 2003, and that memorandum expired during my time as Attorney General. There were many in government at the time that said we should just wait on the EPA to come in and address the issue, and I chose a different path. I actually reached out to my Democratic colleague, Dustin McDaniel, the Attorney General of the State of Arkansas, and we were able to negotiate an agreement that had phosphorus levels set at .037 scientifically driven and enforced on both sides of the border for the first time in history.

So I think Mr. Fite is actually the head of the Scenic Illinois Rivers Commission. He has been center on this issue for a number of years, and I think his good word relates to the work that we did in my office, working with Dustin McDaniel, to achieve that good outcome.

Senator INHOFE. I know my time has expired, but Mr. Chairman, I would like to enter into the record at this point in the record the statement by the DEQ that I referred to.

Senator BARRASSO. Without objection, hearing none.  
[The referenced information follows:]

*Imhof*

## **ENVIRONMENTAL OFFICIALS AND ASSOCIATIONS IN SUPPORT OF PRUITT**

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### ***Scott Thompson, Executive Director Of The Oklahoma Department Of Environmental Quality (DEQ)***

**Oklahoma DEQ Executive Director Scott Thompson Said The EPA Is “In Good Hands With Scott Pruitt.”** “Pruitt looked for our guidance on rule changes and assisted us when we needed clarification of rules or legal support. He and his team focused their efforts on burdensome, and in my opinion, oftentimes unnecessary, rules EPA has promulgated without clear authority. I believe EPA will be in good hands with Scott Pruitt and his confirmation will ensure an environmental agency that once again is responsive and fair to the citizens it serves.” (Scott Thompson, “EPA Will Be In Good Hands With Scott Pruitt,” *Op-Ed, Tulsa World*, 12/30/16)

- **Thompson Also Said Pruitt “Exhibited Deftness At Moving Complex Environmental Issues ... Toward Workable Solutions.”** “When Pruitt took office, his team exhibited deftness at moving complex environmental issues mired in protracted litigation toward workable solutions. Over the past six years, Pruitt’s legal team has consistently shown deference to the legal expertise and professionals at DEQ. More importantly, I cannot recall an instance where they did not allow us to pursue legal action we deemed necessary.” (Scott Thompson, “EPA Will Be In Good Hands With Scott Pruitt,” *Op-Ed, Tulsa World*, 12/30/16)

**Scott Thompson Said Pruitt “Was Essential” To A “Historic Water Rights Settlement With Indian Tribes In Southeast Oklahoma.”** “Pruitt was essential in negotiating an historic water rights settlement with Indian tribes in southeast Oklahoma that preserved the ecosystems of scenic lakes and rivers,” said Thompson. “This settlement, when Pruitt first arrived in office, seemed impossible due to conflict among the parties involved.” Based upon Thompson’s professional experience in working with Pruitt, he believes the Republican nominee would be an adept leader capable of communicating with states and industry heads to cut through the bureaucratic red tape and streamline processes.” (OK DEQ’s Scott Thompson: EPA ‘In Good Hands’ With Scott Pruitt,” *OK Energy Today*, 1/3/17)

- **Thompson Also Said The EPA “Will Be In Good Hands” With Pruitt.** “I believe EPA will be in good hands with Scott Pruitt and his confirmation will ensure an environmental agency that once again is responsive and fair to the citizens it serves,” said Thompson.” (OK DEQ’s Scott Thompson: EPA ‘In Good Hands’ With Scott Pruitt,” *OK Energy Today*, 1/3/17)

### ***J.D. Strong, Director Of Oklahoma’s Wildlife Conservation Department***

**J.D. Strong, Head Of The Wildlife Conservation Department In Oklahoma, Said The State Has “Made Great Strides” In Cleaning Up Oklahoma Rivers Under Pruitt.** “In 2012, Arkansas regulators issued a report questioning Oklahoma’s phosphorus standard. Pruitt chose to negotiate with his Arkansas counterparts. They agreed to hire a team of researchers from Baylor University to study the standards. The researchers reached a conclusion last month, largely affirming Oklahoma’s pollution limits. ‘He played a critical role in getting us all around the table,’ said J.D. Strong, former head of the Oklahoma Water Resources Board. ‘During his time as attorney general, I think we have made great strides when it comes to actual efforts to clean up scenic rivers in Oklahoma.’” (Benjamin Storrow and Niina Heikkinen, “Trump’s EPA Pick Left Okla. Water Pollution Case Hanging,” *OK Publishing*, 1/3/17)

**J.D. Strong Also Said Pruitt “Has Been A Really Good Partner And Ally In Making Sure We Have Adequate [Environmental] Protections In Place.** “J.D. Strong, director of the state Wildlife Conservation Department, said states are in a better position to protect the environment than federal officials. ‘Attorney General Pruitt has been a really good partner and ally in making sure we have adequate protections in place for the quality and quantity of water,’ said Strong, who previously led the Oklahoma Water Resources Board and was state secretary of the environment. ‘I have never

seen him put us in a position where we had to compromise anything to protect the waters of Oklahoma.” (Rick Green, “Oklahoma Officials Support Pruitt For EPA And Have Their Own Problems With Federal Regulators,” *The Oklahoman*, 1/3/17)

- **Strong Said Pruitt “Worked Really Hard With Us” To Clean Up The Illinois River.** “Pruitt has fought against new federal regulations on water pollution, but he has also acted to limit pollution in the Illinois River in eastern Oklahoma, Strong said. ‘He worked really hard with us and Arkansas to come up with a sort of compromise agreement that would avoid litigation but put us on an aggressive path to increased protection on pollution in the Illinois River,’ he said. ... Strong said Pruitt helped Oklahoma and Arkansas officials work together to limit this pollution. State officials, not the EPA, led the way. ‘It is a success story, but there is also more work to be done,’ Strong said.” (Rick Green, “Oklahoma Officials Support Pruitt For EPA And Have Their Own Problems With Federal Regulators,” *The Oklahoman*, 1/3/17)

#### ***Donald Van Der Vaart, Secretary Of Environmental Quality Of North Carolina***

**The Secretary Of The North Carolina Department Of Environmental Quality, Donald R. Van Der Vaart, Stated That Scott Pruitt Is The “Ideal Leader” For The EPA.** “Amid the hand-wringing and name-calling about the nomination of Scott Pruitt as EPA administrator, I would like to offer my observations about why Pruitt is the ideal leader for an agency that under the current administration has flagrantly forced an activist agenda on states.” (Donald R. Van Der Vaart, “Scott Pruitt Is The Ideal Nominee To Lead The EPA,” *Morning Consult*, 12/15/16)

**Van Der Vaart Wrote That Scott Pruitt Is “Committed To Clean Air And Clean Water” And Will Restore The EPA To Its “Mission Of Enforcing Environmental Laws Written By Congress.”** “Like President-elect Donald Trump, Pruitt is committed to clean air and clean water, and to restoring EPA to its original mission of enforcing the environmental laws written by Congress.” (Donald R. Van Der Vaart, “Scott Pruitt Is The Ideal Nominee To Lead The EPA,” *Morning Consult*, 12/15/16)

**Van Der Vaart Explained That Scott Pruitt Has “Laid Out A View That Human Activities Do Impact Climate,” And That We Should Have A Healthy Debate About The Government’s Proper Role In Addressing The Problem.** “He has laid out a view that human activities do impact the climate, and we should be encouraging a healthy debate over the government’s proper role in addressing them rather than trying to shut down the discussion.” (Donald R. Van Der Vaart, “Scott Pruitt Is The Ideal Nominee To Lead The EPA,” *Morning Consult*, 12/15/16)

#### ***Alexie Kindrick, President Of Oklahoma Water Environment Association***

**Alexie Kindrick Said The Oklahoma Water Environment Association Is “Proud” That Pruitt Was Nominated.** “Alexie Kindrick, president of the state chapter of Water Environment Association, said she hopes EPA will continue working to protect human health and the environment. ‘The Oklahoma Water Environment Association is proud that an Oklahoman has been appointed as the administrator of the Environmental Protection Agency under President-elect Donald Trump’s administration,’ she said in an email.” (Janelle Stecklein, “Pruitt’s EPA Posting Ignites Criticism, And Some Praise,” *Enid News & Eagle*, 12/9/16)

- **Kindrick Is President Of The Oklahoma Water Environment Association.** (“Contact Us,” Oklahoma Water Environment Association, Accessed 12/10/16)

#### ***Ed Fite, Vice President for Scenic Rivers and Water Quality of the Grand River Dam Authority***

**Ed Fite of the Grand River Dam Authority Wrote Scott Pruitt Has “Always Done Right By Our Scenic Rivers.”** “He has done every constructive thing that he told me he would do. Furthermore, for the first time ever, he has gotten the State of Arkansas, which happens to have portions of the streams we’ve designated as ‘scenic rivers’ originating in and flowing through their state, to agree to Oklahoma’s Scenic Rivers Phosphorus Standard—an incredible environmental



accomplishment, the impact of which cannot be understated. Instead of engaging in years of interstate litigation, he did this by negotiating an agreement with Arkansas Attorney General Dustin McDaniel, a practical and economical approach that will yield enormous environmental benefits." (Ed Fite, "A Firsthand Prospective From A Man In The Middle: Pruitt Nomination is Welcome," *ValueWalk*, 1/12/17)

- **Ed Fite Also Said That His View Is That** "Scott Pruitt is one who is committed to finding a balance that protects and preserves our environment while at the same time affords an opportunity for a robust economy to exist. Achievement of one doesn't have to be exclusive of the other." (Ed Fite, "A Firsthand Prospective From A Man In The Middle: Pruitt Nomination is Welcome," *ValueWalk*, 1/12/17)



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SECRETARY

R. BRUCE SCOTT  
DEPUTY SECRETARY

January 17, 2017

The Honorable John Barrasso  
307 Dirksen Senate Office Building  
Washington, District of Columbia 20510

The Honorable Tom Carper  
513 Hart Senate Office Building  
Washington, District of Columbia 20510

Dear Chairman Barrasso and Ranking Member Carper:

As the Secretary of the Energy and Environment Cabinet for the Commonwealth of Kentucky, I am offering support for the appointment of Attorney General of Oklahoma E. Scott Pruitt to the position of Administrator of the Environmental Protection Agency (EPA). As you are well aware, the EPA led by the Administrator is a powerful regulatory agency that can impact the landscapes of energy, environment, and the everyday lives of Americans. The Administrator must evaluate these impacts for all citizens of the United States and not limit the evaluations to select interest groups to promote their ideologies.

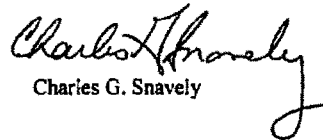
It is our opinion formed from past actions that Attorney General Pruitt will offer a pragmatic, reasonable approach to environmental protection through appropriate regulatory development. Mr. Pruitt's positions on the Water of the United States (WOTUS) and the Clean Power Plan (CPP) are aligned with the Commonwealth's desire for "cooperative federalism." Mr. Pruitt's recognition of the states' abilities to carry out the obligations of the Clean Water Act and Clean Air Act is also a shared understanding. During the previous administration, EPA ignored many states' concerns and comments regarding WOTUS and CPP. Ultimately, states will carry the overwhelming burden of implementing and enforcing EPA regulations. The expertise of state officials should not be ignored and substituted with the opinions of third party interest groups. As a state Attorney General, Mr. Pruitt recognizes the critical role of state environmental agencies.

The Honorable John Barrasso  
The Honorable Tom Carper  
January 17, 2017  
Page Two

Another area of agreement with Mr. Pruitt is the consideration of the devastating economic impacts from recent EPA rulemaking. It is our opinion that the EPA has been allowed to ignore the balance between costs and benefits for the past eight years. When promulgating the new source performance standards (NSPS) to regulate greenhouse gases from electric generating units, EPA admitted that the proposed rule was expected "... to have no, or negligible, costs or monetized benefits associated with it."<sup>1</sup> I am certain and confident that Attorney General Pruitt will not propose such regulatory actions that fail to account for the costs and identify any associated benefits.

In closing, I request that you consider this letter of support for Attorney General Scott Pruitt and confirm his nomination as the Administrator of EPA. If you have specific questions to this letter of support, please do not hesitate to contact me at your convenience.

Sincerely,

  
Charles G. Snavely

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<sup>1</sup> Regulatory Impact Analysis for the Proposed Standards of Performance for Greenhouse Gas Emissions for New Stationary Sources: Electric Utility Generating Units (EPA-452/R12-001, March 2012).

Senator BARRASSO. Senator Whitehouse.

Senator WHITEHOUSE. Thank you, Chairman.

Welcome to the Committee, Mr. Pruitt. As we discussed when you and I met, the oceans off of our Ocean State are warming due to fossil fuel-driven climate change. It is crashing our fisheries like lobster and winter flounder, and making earning a living harder for our fishermen. I see nothing in your career to give those fishermen any confidence that you will care one bit for their well being, and not just the well being of the fossil fuel industry.

In a process that you could replicate in an Oklahoma high school science lab, excess carbon dioxide from fossil fuel emissions is turning our seas more acid. Rhode Island shell fishermen and shell fish growers are concerned. In my colleague Senator Merkley's State, they have already had oysters spat wiped out for businesses by acidified waters. I see nothing in your career that you would care at all about our Rhode Island shell fishermen.

In Rhode Island we have bad air days, and because of EPA's work there are fewer and fewer. A bad air day is a day when people driving into work hear on the radio that ozone from out-of-State smoke stacks has made the air in Rhode Island dangerous and that infants and the elderly and people with breathing difficulties should stay home on an otherwise beautiful day. Because those smoke stacks are out of State, we need EPA to protect us, and I see nothing in your record that would give a mom taking her child to the hospital for an asthma attack any comfort that you would take the slightest interest in her.

And your passion for devolving power down to States doesn't help us because our State regulators can't do anything about any of those problems; they all come from out-of-State sources. In this respect we are very like Delaware.

One of the things I would like to ask you about here is the connection between you and some of these fossil fuel companies. These are some of the companies that have supported you. These are some of the political organizations that you have raised money for. You have raised money for them for Pruitt for Attorney General, correct?

Mr. PRUITT. Yes, sir. I had a campaign committee for that, yes.

Senator WHITEHOUSE. And Devon Energy, Koch Industries, ExxonMobil have all maxed out to that account.

Mr. PRUITT. I am not aware if they maxed out or not, Senator, but I am sure they have given to that committee.

Senator WHITEHOUSE. Oklahoma Strong PAC is your leadership pack?

Mr. PRUITT. It was, yes.

Senator WHITEHOUSE. It was? And similarly, they gave money; they maxed out to that organization as well, which you controlled?

Mr. PRUITT. I am unsure about that, Senator.

Senator WHITEHOUSE. OK. But they contributed to it.

Mr. PRUITT. I am even unsure about that as well. I haven't looked at that.

Senator WHITEHOUSE. You closed your super PAC, Liberty 2.0, but that took fossil fuel contributions as well, correct?

Mr. PRUITT. That particular entity has been closed, yes.

Senator WHITEHOUSE. Now, you helped to raise money for the Republican Attorney Generals Association. While you were a member of its executive committee, they received \$530,000 from Koch Industries, \$350,000 from Murray Energy, \$160,000 from ExxonMobil, and \$125,000 from Devon Energy, the company whose letter you transposed onto your letterhead and sent as an Oklahoma Attorney General document.

Did you solicit, in your role at the Republican Attorney Generals Association, any of that funding?

Mr. PRUITT. I am unable to confirm if they gave those numbers, Senator, those amounts. There were several—

Senator WHITEHOUSE. Did you solicit funding from them in your role at the Republican Attorney Generals Association?

Mr. PRUITT. I attended fundraising events as an Attorney General, along with other attorneys general with respect to the RAGA.

Senator WHITEHOUSE. And did you solicit? Did you ask them for money for RAGA?

Mr. PRUITT. As I indicated, I attended fundraising events with respect to this.

Senator WHITEHOUSE. But that is different. Attending fundraising is one thing. Asking them is my question. Did you ask them for money?

Mr. PRUITT. Specifically, you would have to ask about certain entities. I don't know. You have an entire list.

Senator WHITEHOUSE. Those are the entities: Koch Industries, Murray Energy, ExxonMobil, Devon Energy.

Mr. PRUITT. I did not ask of Koch or—what were the other ones?

Senator WHITEHOUSE. Murray Energy, ExxonMobil, Devon Energy.

Mr. PRUITT. I have not asked them for money on behalf of RAGA.

Senator WHITEHOUSE. You said to the Chairman that there is nothing that might place you in a conflict of interest that you have not disclosed. Yet, you founded the Rule of Law Defense Fund, which is a dark money operation that supports the Republican Attorney Generals Association, and you have not disclosed any of your solicitations for that entity nor have you disclosed what money was raised pursuant to those solicitations. This is an organization that appears to have a million dollar a year budget, so very substantial funds have been solicited. I believe you were its chairman. Will you disclose your role in soliciting money and in receiving money for the Rule of Law Defense Fund pursuant to your solicitations?

Mr. PRUITT. Senator, a point of clarification. I actually did not start nor initiate the Rule of Law Defense Fund. That is something I did not do.

Senator WHITEHOUSE. You led it?

Mr. PRUITT. I have been an officer of that organization for 2016.

Senator WHITEHOUSE. OK, an officer of it.

Mr. PRUITT. There is an executive staff, fundraisers that actually carry out the functions of that organization. There are many attorneys general that serve on that board. It is not a decision of one; it is a decision of those that are empowered to make those decisions.

Senator WHITEHOUSE. But you haven't told us anything about that. You haven't told us——

Mr. PRUITT. I have no access——

Senator WHITEHOUSE [continuing]. Who you asked money from——

Mr. PRUITT. That is a file that——

Senator WHITEHOUSE [continuing]. You haven't told us what they gave, if you asked them. It is a complete black hole into which at least a million dollars goes, and based on your record of fundraising it appears that a great deal of your fundraising comes from these organizations who are in the energy sector and devoted to fighting climate change.

Mr. PRUITT. Some of whom I have actually sued, as well, Senator. But with respect to the Rule of Law——

Senator WHITEHOUSE. Name one you have sued up there.

Mr. PRUITT. ExxonMobil.

Senator WHITEHOUSE. Really?

Mr. PRUITT. Yes.

Senator WHITEHOUSE. My time has expired. We will pursue this in further questions.

Mr. PRUITT. We are involved in, as I indicated, I think, in your office, we are involved in, and Senator Inhofe mentioned it in his comments, a situation in Oklahoma where multiple oil and gas companies, ConocoPhillips and others, have defrauded the State in clean up with respect to spills that have occurred, and ExxonMobil——

Senator WHITEHOUSE. That is a qui tam fraud case; it has nothing to do with the environment.

Mr. PRUITT. Senator,——

Senator BARRASSO. I thought you were going to resolve that for the second round.

Senator WHITEHOUSE. I am sorry, he was coming back to me, so I was responding.

Senator BARRASSO. Thank you.

Before heading to Senator Capito, there are two articles I will be introducing into the record. One from the Wall Street Journal in September, headlined "Hillary Clinton Raises More Than Donald Trump from Oil Industry." The second article that I will be introducing for the record is from Politico from December 27th, by Elana Schor, who quotes America Rising Executive Director Brian Rogers: "This is a partisan fishing expedition by six liberal Democrats who, combined, have taken more than \$1.2 million from far left environmentalist groups dead set against any reforms to an out-of-control EPA."

[The referenced information follows:]

**Oil Industry Contributions**

If Attorney General Scott Pruitt acceptance of oil and gas contributions is an issue, I hope the same standard was applied to Hillary Clinton.

According to a September 6, 2016 Wall Street Journal article, oil and gas donors contributed roughly twice as much to support Mrs. Clinton's campaign as President-Elect Donald Trump's.

I ask unanimous consent to enter the Wall Street Journal Article into the record.

The Wall Street Journal

## Hillary Clinton Raises More Than Donald Trump From Oil Industry

Republican's backers say longtime party stalwarts will come around by Election Day

By **AMY HARDER** and **BRODY MULLINS**

Updated Sept. 6, 2016

WASHINGTON—Democratic presidential candidate Hillary Clinton has raised significantly more money than Donald Trump in the heart of the Republican fundraising territory—the oil and gas industry.

Individuals who work for oil and natural-gas companies donated \$149,000 to Mr. Trump's GOP campaign through July 30, the end of the most recent fundraising period, compared with \$525,000 to Mrs. Clinton.

The industry's executives and employees also have donated \$470,000 to a fundraising account Mr. Trump established with the Republican National Committee, compared with \$650,000 to a similar account Mrs. Clinton set up with the Democrats, according to new calculations provided to The Wall Street Journal by the nonpartisan Center for Responsive Politics.

Taken together, oil and gas donors have contributed roughly twice as much to support Mrs. Clinton's campaign as Mr. Trump's. Election rules bar corporations from giving directly to candidates, but donations from an industry's employees can provide a reflection of where it stands.

At Exxon Mobil Corp., the world's largest publicly traded oil company, employees have made 175 donations to Mrs. Clinton's campaign, totaling roughly \$18,000, while Mr. Trump's campaign has received just one donation from an Exxon employee. At the American Petroleum Institute, the oil industry's Washington lobbying group, no one has contributed to Mr. Trump. (These figures include donations of \$200 or more.)

Mr. Trump's supporters noted that Mr. Trump paid for much of his Republican primary campaign out of his own pocket, and they said that he is picking up the pace of his fundraising. "He will raise as much from the oil and gas industry as he will any other business sector, if not more," said Roy Bailey, chief executive of Giuliani Deason Capital Interests LLC, and Texas finance co-chairman for Mr. Trump's campaign.

Still, Mr. Trump's fundraising deficit among oil and gas donors is notable, because the industry has for decades been one of the GOP's biggest backers. Since 1989, the industry has pumped \$500 million into U.S. elections, with 60% of that going to the Republican Party and its candidates, according to the Center for Responsive Politics.



In 2012, oil and gas executives donated \$19.3 million through various accounts to help Republican candidate Mitt Romney, making the industry Mr. Romney's sixth-largest money source.

So far in the 2016 election, oil and gas executives and employees have directed 90% of their \$71 million in campaign donations to Republicans, though only a small amount of that is going to Mr. Trump.

In interviews with nearly a dozen energy-sector officials, many said privately they worry about some of Mr. Trump's positions and are concerned that he might not understand their industry.

"I think most of us would agree that—nothing against either candidate—but we all wish there were better candidates," said Scott Sheffield, CEO of Pioneer Natural Resources, at the Center for Strategic and International Studies in July.

Mr. Trump, for example, told a Colorado television station several weeks ago that "if a municipality or state wants to ban fracking, I can understand it," referring to hydraulic fracturing. That position is anathema to energy-industry leaders.

One of Mr. Trump's top energy advisers said that he had been confused. "Donald Trump did not understand that concept at the time, in my opinion," said Harold Hamm, CEO of Continental Resources Inc., in an interview with the Journal.

Mr. Trump also has said he doesn't support giving states more control over federal lands within their borders, a policy favored by the industry as a way to promote fossil-fuel development. The Houston Chronicle, a newspaper often sensitive to industry interests, endorsed Mrs. Clinton in July. "These are unsettling times that require a steady hand: That's not Donald Trump," read the endorsement, the second time in 44 years the paper backed a Democrat for president.

Mr. Hamm, charged with raising money for Mr. Trump from energy executives, conceded that some would support Mrs. Clinton. "Some will give Democratic probably, which historically have done so," Mr. Hamm said. But he promised that by the end of the campaign, "There's going to be a lot of money put into this campaign from our oil and gas industry."

Mr. Trump's support from oil and gas donors ranks behind that of some Republicans who folded their campaigns months ago. Sen. Ted Cruz of Texas raised \$1.3 million, while former Florida Gov. Jeb Bush drew \$513,000, and Florida Sen. Marco Rubio collected nearly \$400,000, records show.

Mr. Trump's total also doesn't greatly exceed that of Vermont Sen. Bernie Sanders, Mrs. Clinton's Democratic rival, who vowed on the campaign trail to ban oil and natural-gas production: Mr. Sanders raised \$115,000 from the industry to Mr. Trump's \$149,000.

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**ENVIROMENTAL ORG DONATIONS TO EPW DEMOCRATS**

Some of my Democratic colleagues have expressed concerns over Attorney General Pruitt's links to the energy industry, and his role as director of the Rule of Law Defense Fund.

Six Democrats<sup>1</sup> on the EPW committee have asked in a letter for the names of the Rule of Law Defense Fund's donors and other information relating to AG Pruitt's status as a director.

I have here in my hand a *Politico* article dated December 27, 2016.

I would like to draw the committee's attention to a quote from America Rising Executive Director Brian Rogers, in which he points to this letter as proof of environmental groups "dictating" to Senate Democrats.

Brian Rogers is quoted as saying,

*"This is a partisan fishing expedition by six liberal Democrats who combined have taken more than \$1.2 million from far left environmentalist groups dead-set against any reforms to an out of control EPA."*

I ask unanimous consent to include this article in the record.

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<sup>1</sup>Whitehouse, Merkley, Booker, Markey, Cardin, and Sanders

## POLITICO

### Democrats press EPA pick Pruitt on energy sector ties

A nonprofit he helps lead accepted \$175,000 from a central arm of the Koch brothers' network.

By **ELANA SCHOR** | 12/27/16 06:15 PM EST



Reports have emerged of Scott Pruitt's use of industry talking points in criticizing the Obama administration's environmental rules. | AP Photo

Senate Democrats are raising concerns about the energy industry ties of Scott Pruitt, Donald Trump's pick to helm the Environmental Protection Agency, pointing to his leading role at a nonprofit group that took money from a central arm of the Koch brothers' network.

Six Democrats on the Senate's Environment and Public Works Committee wrote to Pruitt on Tuesday asking for the names of donors, meeting information, internal emails and other details related to his director status at the nonprofit, called the Rule of Law Defense Fund. Formed as an offshoot of the Republican Attorneys General Association, the Defense Fund is organized under a section of the tax code that allows it to keep donors secret — but it

received \$175,000 in 2014 from Freedom Partners, which coordinates the Kochs' political activities.

That contribution, combined with past reports about Pruitt's use of industry talking points in criticism of Obama administration environmental rules, is rousing suspicion among Democrats. In the letter obtained by POLITICO, the six senators said Pruitt's work with the Defense Fund is a "troubling" sign that the Oklahoma attorney general is too close to the fossil-fuel companies he would regulate as chief of Trump's EPA.

The Defense Fund took in \$855,000 in 2014 and \$953,000 last year, according to IRS records. Five Republican state attorneys general joined Pruitt as unpaid directors: Patrick Morrissey of West Virginia, Pam Bondi of Florida, Sean Reyes of Utah, Derek Schmidt of Kansas and Alan Wilson of South Carolina. Bondi, whose political committee received a controversial \$25,000 donation from Trump's foundation in 2013, is a member of the president-elect's transition team.

Defense Fund spokesman Jordan Russell said by email that the group "facilitates study and discussion among attorneys general of a wide range of policy issues, including health care, immigration, federalism, and many other matters affecting states and their citizens." Trump's transition team did not respond to a request for comment.



PRESIDENTIAL TRANSITION

**Trump rewards big donors with jobs and access**

By ISAAC ARNSDORF

America Rising Executive Director Brian Rogers, whose conservative group has launched a pro-Pruitt campaign targeting red-state Democrats, slammed the letter as a sign of green groups dictating to Democratic senators.

"This is a partisan fishing expedition by six liberal Democrats who combined have taken more than \$1.2 million from far-left environmentalist groups dead-set against any reforms to an out of control EPA," Rogers said in a statement.

Democrats' interest in playing up Pruitt's involvement with the group — part of a broader push to turn moderate senators against his confirmation — stems from a New York Times investigation in 2014 that found Pruitt borrowing language almost word-for-word from oil and gas company Devon Energy in a letter that accused EPA of inflating emissions.

"The confirmation process, starting with your responses to committee questions before your hearing, is an opportunity for you to dispel the notion that the advocacy you have

undertaken on environmental issues as Attorney General of Oklahoma has been directed by and for the benefit of the energy industry," the Democrats wrote to Pruitt.

The letter was signed by Sens. Sheldon Whitehouse of Rhode Island, Jeff Merkley of Oregon, Cory Booker of New Jersey, Ed Markey of Massachusetts, Ben Cardin of Maryland and Bernie Sanders (I-Vt.), who caucuses with Democrats. The environment panel's incoming top Democrat, Delaware Sen. Tom Carper, did not sign on, nor did Sen. Kirsten Gillibrand (D-N.Y.) or Sens.-elect Kamala Harris (D-Calif.) and Tammy Duckworth (D-Ill.), who will join the committee next year.



FINANCE

**Trump's new economic math**

By BEN WHITE

Dan Kunsman, chief of staff to Sen. John Barrasso (R-Wyo.), who will assume the environment panel gavel in the new Congress, said committee policy allows senators to question nominees through the chairman rather than on their own.

"Further, the authority to require a nominee to respond to questions following a hearing also rests with the Chairman. That is why members submit their questions to the Chairman to be sent under his or her signature to the nominee," Kunsman said by email. "This was the precedent for President Obama's EPA nominees, and will be followed again."

The Defense Fund's current president is Samantha Dravis, a former counsel at Freedom Partners and White House aide during the George W. Bush administration who also serves as general counsel at RAGA. Other senior employees as of last year were RAGA Executive Director Scott Will; RAGA Chief Financial Officer Lee Russell; and veteran Alabama operative Jessica Garrison, a former aide to Sen. Jeff Sessions (R-Ala.), Trump's attorney general in waiting, as well as Bill Pryor, a federal appeals court judge on Trump's Supreme Court short list.

Defense Fund counsel Charlie Spies, a longtime GOP election lawyer, noted that the Democratic letter acknowledges the right of nonprofits to shield their donors' identities and said the group would "maintain its longstanding policy of maintaining donor confidentiality."

"It is unfortunate that certain Democrat Senators appear willing to trample First Amendment rights in order to score cheap political points," Spies said in a statement.

Senator BARRASSO. Senator Capito.

Senator CAPITO. Thank you, Mr. Chairman.

And thank you, Attorney General Pruitt, for being here, for your willingness to throw your hat in the ring to serve. I would like to quote the Ranking Member when he says it is hard work, because it is. The EPA is hard work.

But one of the things you said really struck me, and I believe that the rule of law does matter, and I am heartened by your passion for that.

The regulatory overreach of the EPA has contributed to economic devastation in my State of West Virginia and my region. Data from the Mine Safety and Health Administration shows that 60,000 coal jobs have been lost between 2011 and 2016. Thousands of these were in West Virginia. We are in a desperate situation in our State right now because of this.

We had a field hearing in Beckley, West Virginia, where our WVU economist, John Deskins, said that the coal industry downturn had resulted in six of our southern West Virginia counties being in a great depression.

For the past 8 years the EPA has given no indication at all that it cares about the economic impact of its policies, even though Congress has said very clearly in the Clean Air Act and other environmental statutes that we expect jobs and economic factors to be taken into account. That is part of the law. In October a Federal court held that the EPA had failed to evaluate the job impacts of the EPA Clean Air Act as required by 321(a) of that Act and ordered the EPA to submit a schedule for conducting the required jobs analysis.

Incredibly, the EPA told the court it would take 2 years—this was just in the last several weeks—it would take 2 years just to come up with a plan on how to do the analysis, which, in my view, if that is part of the law that EPA is supposed to be following, they should already have the protocols set up to do an effective and accurate job analysis.

So the court responded like this: “This response is wholly inefficient, unacceptable, and unnecessary. It evidences the continued hostility on the part of the EPA to the acceptance of the mission established by Congress.”

So I would like to ask you to commit to me to ensure that the EPA will follow the law it is charged with implementing and do those ongoing evaluation of job losses and economic shifts due to the requirements of the Act as required by the law.

Mr. PRUITT. Senator, as you indicated, I really believe that it is important that rule of law is adhered to because it inspires confidence in those that are regulated. I think oftentimes those that are regulated don't know what is expected of them. They look at a statute, they see the requirements of the statute, and then those that are regulating act in a way that is not consistent with that framework, so they don't know what is expected of them, and that causes uncertainty and I think paralysis to a certain degree. So rule of law is something that we should take seriously. It has been at the heart of the litigation that we have initiated as a State.

A lot of times these cases—as we were talking earlier with Senator Carper—there is a policy or a political kind of attention that

is drawn to it but really is about process and rule of law and making sure that the framework that this body, Congress, has established is respected and enforced. So I appreciate your comments.

Senator CAPITO. Well, in looking for the balance, we need to have at least a correct analysis of what the economic implications are of regulations.

It is so important, critically important that we enforce our environmental laws and to keep our air clean and get it cleaner and protect our waters.

In January 2014 a storage tank in Charleston, West Virginia, was corrupted and went into the river. It was right by the water flow of the major water source in my community. Three hundred thousand people had to do without water for several weeks. It caused a lot of angst economically to small businesses. Imagine a restaurant not being able to use water or you can't wash your clothes. You couldn't do anything with the water.

But also, and I share this concern, concern about the health and the long-range implications of what has happened. Several people, multiple individuals and Freedom Industries have pled guilty to environmental crimes in Federal court, which I am very pleased about.

So let's talk about TSCA, because in TSCA I was able to support a provision that would say that if you are storing in close proximity to drinking water, you have to take that into consideration when you are reviewing potentially hazardous chemicals.

Can we count on you to work with this Committee to make sure that this bipartisan TSCA reform bill is fully implemented, and efficiently and fully?

Mr. PRUITT. Absolutely, Senator. In fact, I would commend the work of this Committee, with Senator Inhofe's leadership, in passing that update to the TSCA legislation. For the first time in history, as you know, the EPA has the ability to order testing to address chemicals that are going to be entered into the stream of commerce, and that is a very big substantive change that exists. There are many deadlines—

Senator CAPITO. And I would also add that in TSCA—excuse me just a minute because I am running out of time. In TSCA we actually expanded the EPA's reach. So when you are asked if you are wanting to get rid of the EPA or it doesn't have a value, I voted to expand that reach of EPA to make sure that I have clean water and that if a spill happens in a community around this country, what has happened in Flint, Michigan, doesn't have the far reaching implications that it does.

Thank you very much.

Mr. PRUITT. Thank you, Senator.

Senator BARRASSO. Senator Cardin.

Senator CARDIN. Thank you, Mr. Chairman.

Mr. Pruitt, welcome to the Committee. Thank you for your willingness to serve our country.

I want to talk about the Chesapeake Bay Program. We talked about that in my office. I explained to you, and I will do it very quickly, that this is a program that was developed at the State level with the States that are in the watershed, including Delaware, with my colleague, Senator Carper. It is a State that the

locals have determined how it is best to reach their pollution targets in order to help preserve the Chesapeake Bay. It is the largest estuary in the northern hemisphere. It is critically important; it is complicated. It doesn't flush itself, as many bodies of water do; it has a reduction of oyster crops. There are so many problems. All the stakeholders have gotten together; they worked out a plan. The Federal Government is part of that plan. It is enforced through the TMDL program, and it has been agreed to by the local governments.

It was challenged, the TMDLs, including you joined that lawsuit. The Supreme Court refused to overturn the Court of Appeals supporting the use of the TMDLs.

If you are confirmed, will you support the Federal role in the Chesapeake Bay Program as envisioned by the partners and stakeholders, enforcing the TMDLs, if necessary?

Mr. PRUITT. Yes, Senator. And as I indicated in your office, the time that we had together, I really commend the six States that joined together to address the Chesapeake Bay and to try to set levels for both point source and non-point source type of discharge into the Chesapeake Bay. There were some concerns about the precedent, the role that EPA was playing initially, but through that litigation the EPA has acknowledged that their role is more informational. And there was concern in Oklahoma about the Mississippi River Basin and the precedent that was set in that matter, and that is what spawned our litigation.

But I really want to emphasize to you that process represents what should occur, for States to join together and enter into an agreement to address water quality issues and then involve the EPA to serve the role it is supposed to serve is something that should be commended and celebrated. And as it relates to enforcing that TMDL, I can commit to you that in fact I will do so.

Senator CARDIN. Part of the Federal Government's partnership is to provide resources. There are several programs that fund initiatives within the Chesapeake Bay Watershed; probably the largest is the State Revolving Funds dealing with wastewater. Will you support the Federal Government's partnership through funding these programs that are critically important to make the advancements in the Chesapeake Bay watershed?

Mr. PRUITT. Yes, Senator. I believe that the grant making role of the EPA, as we talked about in your office, is very important to States across this country, whether it is the revolving funds or the WIFIA portions of our statutes. But grant making, in general, is very important, and I will commit to you in that regard that I would do so with respect to the Chesapeake Bay.

Senator CARDIN. I want to continue on clean water for one moment. We have had significant problems with safe drinking water and clean water. Let me ask you a preliminary question. Do you believe there is any safe level of lead that can be taken into the human body, particularly a young person?

Mr. PRUITT. Senator, that is something I have not reviewed nor know about. I would be very concerned about any level of lead going into the drinking water or obviously human consumption, but I have not looked at the scientific research on that.



Senator CARDIN. The Clean Water Act provides for Federal guidance as to acceptable clean water. It is enforced by the States. So my question to you in regards to clean water is what steps will you take to make sure that our children are safe. We saw in Flint, Michigan, a tragedy occur. Where do you think the Federal Government needs to strengthen its regulatory roles to make sure that our children are safe from lead?

Mr. PRUITT. Well, I think with Flint, Michigan, it is an example of delay in response by the EPA. There should have been more done on corrosion control programs with the Flint, Michigan, system. As you know, under the Clean Water Act and the Safe Drinking Water Act if there is an emergency situation the EPA can enter an emergency order to address those kinds of concerns. I think there should have been a more fast response, a more rapid response to Flint, Michigan.

I think with respect to water quality it is infrastructure. Water infrastructure is important. And as you indicated the States play a very vital role in that process, and there needs to be more cooperation between the EPA and the States to ensure water quality is protected.

Senator CARDIN. Just so I understand, you have participated in several lawsuits against the EPA's involvement, saying that the locals should have the responsibility. If you are confirmed, will you support Federal enforcement, particularly in multi-State issues, where the only way we can get enforcement is at the Federal level?

Mr. PRUITT. I believe that is a vital role of the EPA. As I indicated in your office, with air quality, water quality, issues that cross State line, there is an enforcement mechanism that is important and would seek to do so if confirmed as EPA Administrator.

Senator CARDIN. Thank you.

Senator BARRASSO. Thank you, Senator Cardin.

Senator FISCHER.

Senator FISCHER. Thank you, Mr. Chairman.

And thank you, Mr. Pruitt, for being here today, but also for accepting the nomination. It is a service and a sacrifice not just for you, but for your family, as well, to step forward to serve this country. So thank you, sir, for being willing to do that.

Mr. PRUITT. Thank you, Senator.

Senator FISCHER. For your testimony, I do thank you, and I would like to, first of all, let you know that Nebraskans have been really affected by the EPA in many instances, and I will give you some examples of that.

Nebraska's public power utilities are grappling with how they could ever comply with the EPA's carbon emission reduction mandates. The city of Omaha is struggling with the Agency's expensive CSO mandate and drinking water affordability. Nebraska farmers are waiting on new crop technology products that are stuck in a broken regulatory process. Our biofuel investors and producers are desperate for certainty under the RFS. Homebuilders, transportation stakeholders, and local county officials are concerned about the jurisdictional expansion to control our State's water resources. Communities and small business owners fear that the EPA's ozone mandate will stunt potential economic development and growth in our State. As a result of the activist role the EPA has played for

the past 8 years, families are concerned about the futures of their livelihood.

We all want clean air, and we all want clean water. That is one point that I know each and every person here agrees on. But with the EPA's tremendous impact on Americans' lives each and every day, it is important that the Agency be open, transparent, and answerable for its actions. Given these concerns, along with the many others that have been and will continue to be discussed today, what steps will you take as the EPA Administrator to provide relief for American families that are faced truly with an onslaught of EPA rules?

Mr. PRUITT. Senator, you mentioned open, transparent rule-making. There are concerns that have been expressed recently with respect to regulation through litigation, where groups initiate litigation against the EPA and the U.S. Government, and set environmental policy through something called a sue and settle process. I think this body, as well as the U.S. House, has looked at those kinds of issues. And when we talk about open transparency, there is a reason why the Administrative Procedures Act exists. It is intended to provide notice to those that are going to be impacted with rules to give them the opportunity to offer comment and to inform the regulators on the impact of those rules. And then it is the obligation of the regulator to take those things into consideration in finalizing rules; otherwise they act in an arbitrary and capricious way.

So it is very important that that process be adhered to, to give voice to all Americans in balancing the environmental objectives we have, but also the economic harm that results. And the Supreme Court has spoken about that rather consistently of late, and I would seek to lead the EPA in such a way to ensure that openness and transparency.

Senator FISCHER. You know, a couple weeks ago I held a very good conversation about our shared vision for the EPA, to bring common sense and accountability back to that Agency, and I think that is going to go a long way in restoring confidence in the Agency by the American people.

One issue we did discuss was the Renewable Fuel Standard and its importance to my home State of Nebraska. We are the largest ethanol producer west of the Missouri River. Our neighbors to the east, Senator Ernst's home State, they do lead the Nation in ethanol production. So honoring the congressionally mandated timelines and the volume requirements that are critical from an investment point of view and also from a planning perspective, I think that this is especially relevant, and especially during the current farm crisis that we are seeing and the negative impact on people in agriculture all across this Nation.

In our meeting you did express your commitment to me to honor the law and you echoed President-elect Trump's support for the statute itself and a strong RVO. For the record, can you please once again express your commitment to uphold the congressional intent of the RFS?

Mr. PRUITT. Yes, Senator, and you said it well, to honor the intent and the expression of the Renewable Fuel Standard statute is very, very important. It is not the job of the Administrator of the

EPA to do anything other than administer the program according to the intent of Congress, and I commit to you to do so.

Senator FISCHER. And you also—

Mr. PRUITT. And I would say this. The waivers that routinely are offered by the Administrator, recently another waiver was offered, it should be used judiciously. There is a reason why Congress put in that statute those statutory objectives. The market has changed since 2005, and the waiver authority that has been provided by this body is important, but that waiver authority should be used judiciously, and the Act should be complied with and enforced consistent with the will of Congress.

Senator FISCHER. Thank you, sir. And I would ask that you also tell us publicly what you told us, that you will honor the timelines on the volume levels that are mandated by Congress.

Mr. PRUITT. Yes, Senator.

Senator FISCHER. Thank you very much.

Senator BARRASSO. Thank you, Senator Fischer.

Senator Merkley.

Senator MERKLEY. Thank you, Mr. Chairman.

Over a number of years information started pouring into EPA that the estimate of the amount of fugitive methane escaping in gas and oil drilling had been deeply underestimated. In 2011 the EPA put out its best estimates based on the information that was being presented. And this is relevant because methane is a global warming gas, more potent than CO<sub>2</sub>.

Gas companies didn't like this because, well, it presented a vision of natural gas being more damaging environmentally than folks had previously understood. Devon Energy is one of the groups that sought to cast doubt on this scientific information, and they came to you to be their spokesperson, and they asked will you be our mouthpiece in casting doubt and send a letter we have drafted to the EPA, and you sent that letter.

And I just want to ask, first, are you aware that methane is approximately 30 times more potent than carbon dioxide as a global warming gas?

Mr. PRUITT. I am, Senator.

Senator MERKLEY. Thank you.

Mr. PRUITT. I think the impact on human—

Senator MERKLEY. That is the answer. Yes. Thank you. It is a yes or no question.

And on a 1 to 10 scale, how concerned are you about the impacts of fugitive methane in driving global warming?

Mr. PRUITT. Methane, as you indicated—

Senator MERKLEY. One to 10 scale. Highly, 10, very concerned, or 1, not so concerned?

Mr. PRUITT. The quantities of methane in the atmosphere compared to CO<sub>2</sub> is less, but it is far more potent, and it is—

Senator MERKLEY. Are you concerned? I am asking about your level of concern.

Mr. PRUITT. Yes. Yes.

Senator MERKLEY. Highly concerned?

Mr. PRUITT. I am concerned.

Senator MERKLEY. Thank you. Do you acknowledge sending this letter to the EPA in October 2011?

Mr. PRUITT. Senator, if that is a letter that is on my letterhead that was sent to the EPA, yes, with respect to the issue.

Senator MERKLEY. Do you acknowledge that 97 percent of the words in that letter came directly from Devon Energy?

Mr. PRUITT. I have not looked at the percentage, Senator.

Senator MERKLEY. The statement that has been analyzed many times is that all of the 1,016 words, except for 37 words, were written directly by Devon Energy.

Mr. PRUITT. Senator, that was a step that was taken as Attorney General representing the interest of our State. Over 25 percent of—

Senator MERKLEY. I didn't ask that question. I was just asking if you copied the letter virtually word for word. You have acknowledged that, yes, it is in the record. People can count it. It is correct.

All right, so a public office is about serving the public. There is a public concern over the impact of methane on global warming. There is scientific research showing that it is far more devastating than anticipated and far more is leaking. But you used your office as a direct extension of an oil company rather than a direct extension of the interests of the public health of the people of Oklahoma. Do you acknowledge that you presented a private oil company's position rather than a position developed by the people of Oklahoma?

Mr. PRUITT. Senator, with respect, I disagree. The efforts that I took as Attorney General were representing the interests of the State of Oklahoma.

Senator MERKLEY. Earlier you said you—

Mr. PRUITT. And there was a concern about—

Senator MERKLEY. No, no, excuse me. I am asking the questions. You said earlier you listen to everyone. In drafting this letter you took an oil company's position and then without consulting people who had diverse views about the impact, you sent it off. How can you present that as representing the people of Oklahoma when you simply only consulted an oil company to push its own point of view for its private profit?

Mr. PRUITT. Senator, there is an obligation the EPA has to follow processes as established by this body. The cost-benefit analysis under section 112 is something that they have to engage in. There was a concern about the overestimated percentages that the EPA put in the record; it was a record-based challenge. That was the expression of the letter to the EPA, and it was representing the interests of an industry in the State of Oklahoma; not a company, an industry.

Senator MERKLEY. Thank you. But my question was what other groups—environmental groups or other groups—did you consult so that you had that full perspective before representing simply a for-profit oil company using your official office and your official letterhead?

Mr. PRUITT. I consulted with other environmental officials in Oklahoma that regulate that industry and learned from them with respect to the concerns about the estimates that were provided by the EPA.

Senator MERKLEY. Can you provide this Committee with information showing who you consulted in representing this letter specifically for Devon Energy? Because the information that is in the

public realm only shows that they simply sent you a letter, asked you to send it, and you sent it without questions.

Mr. PRUITT. We have seven or so individuals in our office that are involved in these kinds of issues, and we will collect the information they have and provide it to this body pursuant to the Chairman's direction.

Senator MERKLEY. Your staff expanded substantially while you were in charge, to 251 staff members. Why do you need an outside oil company to draft a letter when you have 250 people working for you?

Mr. PRUITT. Senator, as I have indicated, that was an effort that was protecting the State's interest in making sure that we made the voices of all Oklahomans heard on a very important industry to our State.

Senator MERKLEY. You said all heard, but you only sent it on behalf of a single voice, the oil company.

Thank you.

Senator BARRASSO. I still have some time remaining from my questioning. Is there anything you would like to add that you haven't felt you have had a chance in terms of answering fully some of the areas of the questioning?

Mr. PRUITT. I think, Senator, the clarification that the letter that was sent to the EPA was not sent on behalf of any one company. This was not particular to Devon Energy, not particular to Chesapeake, not particular to other companies in our State; it was particular to an industry. The State of Oklahoma has an oil and gas industry that is vibrant to our State, as you might imagine, just like many of you have industry in your State. There was concern expressed by that industry—many folks in that industry—about the overestimating that occurred with that methane rule. That was the communication to the EPA. It was a position of the State, not the position of any one company.

Senator BARRASSO. Thank you.

Senator Moran.

Senator MORAN. Chairman, thank you very much.

General Pruitt, welcome to the Committee. Thank you for your public service. I am going to see if I can get through three areas in the 5 minutes that I have.

First of all, WOTUS, Waters of the United States. Despite there being an injunction against the enforcement of the WOTUS rule, I am told that EPA Region 7, the region in which Kansas is part, those regional inspectors have increased their inspection of smaller animal feeding operations. Unlike many States, Kansas has a well established State permit system for small facilities as well as the delegated authority under the Clean Water Act. The EPA—rather than cooperating with the State agency, the EPA is engaged in its own inspections and its own enforcement on these small facilities, often conflicting with State permitting and the enforcement process.

In these actions the EPA has claimed jurisdiction over features like grass waterways, culverts under county roads unconnected to the feeding operation and not situated in or near any body of water.

General Pruitt, what would your direction be to the EPA staff, to Region 7 and others, in regard to their actions enforcing WOTUS while an injunction is in place?

Mr. PRUITT. Well, Senator, as you indicated, and I do want to acknowledge the same concerns have been expressed by those individuals in Oklahoma in different groups with respect to the WOTUS definition that has been offered by the EPA that is subject to a 31-State challenge that was consolidated there before the 6th Circuit, and as you indicated there has been a stay of enforcement against that particular rule. The Supreme Court actually, last Friday, took up a matter of jurisdiction on that case, so that adds some complexity to this.

But I think the role of the EPA, prospectively, is to seek to provide clarity on what the true definition, what the best definition is with respect to Waters of the United States. As you know, there is much flexibility and discretion there given to the EPA in a series of cases that lead up to the Rapanos decision that haven't provided a tremendous amount of clarity. The best thing the EPA can do going forward is to reestablish that clarity so that States and individuals know what is expected of them in compliance.

Senator MORAN. General, thank you. I don't think I need to remind you, in particular, about the role that States play in clean water. But I would take a moment to highlight something that is often, I think, forgotten in the regulatory world of water, water quality, is the Department of Agriculture, the Natural Resource Conservation Service, in which landowners are assisted through the Department of Agriculture in improving water quality and water quantity in a very partnership oriented local effort that is significantly different than the tremendous reach from the EPA in Washington, DC, as compared to the local efforts by landowners themselves to work with USDA to solve problems.

Let me move to my second question. It revolves the Flint Hills. That is a native grassland in our State. The owners of those grasslands, these are thousands of acres of grass, they burn the prairie in the early spring for purposes of regeneration of that grass. It is learned from the Indians that lightning used to be the method by which that grassland burned. Less so now with the settlement that has occurred of our country. And as a result of that annual burning, that is ecologically desirable, there is times in which a city—even one of our own, Wichita, for example—is in non-attainment under the Clean Air Act. And I raise this issue to you in asking that you work, if you are confirmed, with the State of Kansas in our local efforts to manage the burning of the national grasslands in a way that is advantageous to wildlife habitat, at the same time done in a timely fashion, at appropriate times, in appropriate amounts, that preserves the air quality; but again not a heavy handed approach that one-size solution or a ban fits the circumstance.

Mr. PRUITT. If confirmed, Senator, I look forward to working with you on that issue.

Senator MORAN. I thank you for that.

Finally, I want to highlight a small town in Kansas named Pretty Prairie, a typical name or a perfect name for a town in our State. Pretty Prairie, Kansas, has a population of about 700 people.

For several decades, because of the high nitrates in the city's water levels—I didn't say that very well. Because of high levels of nitrate in the city water system, the city has provided free bottled water to its citizens. And my question to you is now the EPA is disallowing that practice and requiring the city to spend approximately \$2.4 million and raise the rates of our residents of that community by \$80 a month while the community seemingly is satisfied with the solution of the city providing an alternative to the expense of a new water treatment plant.

I ask this question, again, as an example of where a rigid decision, as compared to a community-based decision, seems to prevail at the EPA and would give you an opportunity to confirm to me what I hope you would say is that you will work with communities. You, as an Oklahoman, and me as a Kansan, and many of the members of this Committee represent lots of communities in which the population is insufficient to be able to pay for the costs of water or sewer treatment. We need financial resources to accomplish that, but we also need common sense solutions to the problem.

Mr. PRUITT. Senator, I look forward to working with you on that issue as well as the other. There was a saying in the environmental space: national standards, neighborhood solutions. And I think it is important for the EPA Administrator, those in Washington, as I said in my opening statement, to listen and learn from those, from you with respect to the needs of your community and your State and collaborate with you and the local officials to achieve good outcomes.

Senator MORAN. I look forward to educating you on behalf of Kansans.

Senator BARRASSO. Thank you, Senator Moran.

Senator BOOKER.

Senator BOOKER. Good morning, Mr. Pruitt.

Mr. PRUITT. Good morning, Senator Booker.

Senator BOOKER. I have a letter that I read that you sent to the Committee last year, and you said that the Oklahoma Attorney General—you said, "I am responsible for protecting the welfare of Oklahoma citizens." I assume that is still correct, and you believe that.

Mr. PRUITT. Yes, Senator.

Senator BOOKER. And during the past 6 years in pursuit of that, if you look at the record of the lawsuits you filed against the EPA, you have joined or filed 14 lawsuits against the EPA challenging clean air and clean water rules, yes?

Mr. PRUITT. We have been involved in multiple pieces of litigation, Senator.

Senator BOOKER. Yes, but I am looking at specifically 14, and Mr. Chairman, I would like to put those 14 lawsuits into the record, of where you specifically challenged the EPA on air quality. And let me just go through some of those.

Senator BARRASSO. Without objection.

[The referenced information follows:]

Case Name	Subject & Status	Oklahoma Involvement	Result
<b>CASES AGAINST EPA</b>			
<b>Climate-related cases</b>			
<b>West Virginia v. EPA</b> (D.C. Cir., filed Oct. 2015)	Clean Power Plan (carbon emission standards for existing power plants) - challenge to final rule. Active case - fully briefed, argued before en banc court Sept. 2016. Clean Power Plan rule is currently stayed.	Oklahoma filed separate petition and stay motion, represented by David Rivkin (Baker & Hostetler). OK and ND maintained separate liaison counsel from other states (WV, AL, AZ (Corporation Commission), AR, CO, FL, GA, IN, KS, KY, LA, MI (AG Schuette), MS, MO, MT, NE, NJ, NC DEQ, OH, SC, SD, TX, UT, WI). State and industry petitioners filed joint briefs (other petitioners include: UARG, APPA, NRECA, Murray Energy, ACCCE, United Mine Workers, U.S. Chamber of Commerce, NAM, et al.).	Case ongoing.
<b>In re: State of West Virginia, et al.</b> (D.C. Cir., filed Aug. 2015)	Clean Power Plan - emergency petition to stay Clean Power Plan rule prior to publication. Petitions denied Sept. 2015; challenge to final CPP ongoing in D.C. Cir (West Virginia v. EPA).	Oklahoma filed jointly with other states (WV, AL, AR, FL, IN, KS, KY, LA, MI, NE, OH, SD, WI, WY). Case was consolidated with Peabody Energy petition for extraordinary writ.	Loss: petitions denied as premature.
<b>State of Oklahoma ex rel. Pruitt, et al. v. McCarthy, et al.</b> (10th Cir., filed July 2015)	Clean Power Plan - challenge to proposed rule. Case dismissed Sept. 2015; challenge to final CPP ongoing in D.C. Cir (West Virginia v. EPA).	Oklahoma and ODEQ filed July 2015 in the US Dist. Ct. for the Northern District of Oklahoma seeking declaratory and injunctive relief to prevent EPA from finalizing the proposed Clean Power Plan rule; Dist. Ct. dismissed. Oklahoma appealed to 10th Cir. and moved for a stay; 10th Cir. denied stay. Oklahoma moved to dismiss appeal Sept. 2015 in anticipation of publication of final CPP rule.	Dismissed.
<b>West Virginia v. EPA</b> (D.C. Cir., filed Aug. 2014)	Clean Power Plan - petition for review of settlement agreement in which EPA committed to proposing regulation of existing coal-fired power plants under CAA section 111(d), filed after CPP proposed rule published. Petitions denied June 2015. Challenge to final CPP ongoing in D.C. Cir (West Virginia v. EPA).	Oklahoma filed jointly with other states (WV, AL, IN, KS, KY, LA, NE, OH, OK, SC, SD, WY). States also intervened in similar Murray Energy cases (petitions for writ of prohibition and review). Oral argument was held jointly all three cases.	Loss: petitions denied as premature.



<p><b>State of West Virginia, et al. v. EPA, et al.</b> (D.C. Cir., filed July 2016)</p>	<p>Carbon emission standards for new power plants (NSPS) - petitions for review of EPA's denial of reconsideration, consolidated with challenge to NSPS final rule (North Dakota v. EPA).</p>	<p>Oklahoma filed jointly with other states (WV, AL, AZ (Corp. Comm'n), AR, FL, GA, IN, KS, KY, LA, LADEQ, MI (AG Schuette), MO, MT, NE, NCDEQ, OH, SC, SD, TX, UT, WI, WY). Separate petitions filed by industry (Murray, UARG, APPA, EELI).</p>	<p>Case ongoing.</p>
<p><b>State of North Dakota v. EPA</b> (D.C. Cir., filed Nov. 2015)</p>	<p>Carbon emission standards for new power plants (NSPS) - challenge to final rule. Active case - currently being briefed.</p>	<p>Oklahoma filed jointly with other states (WV, TX, AL, AZ (Corp. Comm'n), AR, FL, GA, IN, KS, KY, LA, LADEQ, MI (AG Schuette), MO, MT, NE, NCDEQ, OH, OK, SC, SD, UT, WI, WY; ND filed separately). All cases consolidated, including challenges to denial of reconsideration petitions. ND, all other states, and industry filed three separate briefs (other petitioners include: Murray Energy, Peabody Energy, UARG, APPA, NMA, United Mine Workers, U.S. Chamber of Commerce, NAM, ACCCE, NRECA, EELI, et al.).</p>	<p>Case ongoing.</p>
<p><b>American Petroleum Institute, et al. v. EPA</b> (D.C. Cir., filed Aug. 2016)</p>	<p>Methane emission standards for the oil and natural gas sector - challenge to final rule. Active case - briefing not yet started.</p>	<p>Oklahoma filed jointly with other states (WV, AL, AZ, KS, KY, LA, MI (AG Schuette), MT, OH, OK, SC, WI, KYEEC, NCDEQ; ND filed separately). Cases consolidated (other petitioners include: API, Independent Oil &amp; Gas Assoc. of America, several state oil &amp; gas associations, et al.).</p>	<p>Case ongoing.</p>
<p><b>Coalition for Responsible Regulation, Inc., et al. v. EPA</b> (D.C. Cir., filed Dec. 2009)</p>	<p>Consolidated greenhouse gas cases: Endangerment Finding, Tailpipe Rule, Timing and Tailoring Rules. D.C. Cir. dismissed petitions for review of Timing and Tailoring Rules and denied remaining petitions. Supreme Court reviewed limited question; affirmed in part and reversed in part in UARG v. EPA, 134 S. Ct. 2427 (2014).</p>	<p>Oklahoma participated as intervenor in support of petitioners, jointly with AK, FL, IN, KY, LA, MI, NE, ND, SC, SD, and UT. State petitioners and intervenors filed one joint brief (petitioners include: AL, TX, VA, UARG, Alpha Natural Resources, American Farm Bureau, U.S. Chamber of Commerce, Coalition for Responsible Regulation, Competitive Enterprise Institute, Massey Energy, NMA, NAHB, NAM, Peabody Energy, Southeastern Legal Foundation, et al.).</p>	<p>Loss: D.C. Cir. petitions denied &amp; dismissed; largely affirmed by SCOTUS.</p>

<b>Air pollution cases</b>			
<b>Murray Energy Corporation v. EPA</b> (D.C. Cir., filed June 2016)	Mercury and Air Toxics Standards - supplemental "appropriate and necessary" finding. Active case - currently being briefed. MATS rule remains in effect.	Oklahoma filed jointly with other states (AL, AZ, AR, KS, KY, MI (AG Schuette), NE, ND, OH, OK, SC, TX, WV, WI, WY, TCEQ, PUCT, TXRRC). All state and industry petitioners filed one joint brief (other petitioners include: Murray Energy, ARIPPA, UARG, Southern Company, et al.).	Case ongoing.
<b>State of Michigan v. EPA</b> (D.C. Cir., filed Apr. 2012)	Mercury and Air Toxics Standards - challenge to final rule. D.C. Cir. denied petitions Apr. 2014. SCOTUS reviewed only with regard to consideration of costs; reversed and remanded without vacatur. EPA made supplemental cost determination (subsequently challenged in Murray v. EPA).	Oklahoma filed jointly with other states (AL, AK, AZ, FL, ID, IN, KS, MI, MS, MO, NE, ND, OH, OK, PA, SC, UT, VA, WV, WY, IA (Gov Branstad), KY (AG Conway)). State, industry, and labor petitioners filed one joint brief (other petitioners include: White Stallion Energy, NMA, UARG, APPA, Peabody Energy, ARIPPA, United Mine Workers, et al.).	Mixed: D.C. Cir. petitions denied; SCOTUS reversed on cost question; standards left intact by both courts.
<b>White Stallion Energy Center, et al. v. EPA</b> (D.C. Cir., filed June 2012)	Emission standards for hazardous air pollutants from power plants. Case settled and dismissed Oct. 2014.	Oklahoma participated as intervenor for petitioners jointly with other states (AL, AK, AZ, AR, FL, ID, IN, KS, MS, MO, NE, ND, OH, OK, PA, SC, UT, VA, WV, WY, TX, TCEQ, PUCT, TXRRC, MI (AG Schuette), KY (AG Conway), IA (Gov Branstad)). All petitioner intervenors filed one joint brief per order of the court.	Settled.
<b>Murray Energy Corporation v. EPA</b> (D.C. Cir., filed Oct. 2015)	Ozone National Ambient Air Quality Standards - challenge to final rule. Active case - briefing completed, oral argument scheduled for Apr. 2017.	Oklahoma filed jointly with other states (AR, AZ, ND, NM Env. Dept.; TX filed separately). State petitioners and industry petitioners filed two separate briefs (other petitioners include: Murray Energy, UARG, U.S. Chamber, NAM, API, Portland Cement Assoc., et al.).	Case ongoing.

<b>Walter Coke Inc. v. EPA</b> (D.C. Cir., filed Aug. 2015)	Update to policy for excess emissions during periods of startup, shutdown, and malfunction - challenge to final rule. Active case - briefing completed, oral argument scheduled for May 2017.	Oklahoma filed jointly with other states (FL, AL, AZ, AR, DE, GA, KS, LA, MS, MO, OH, OK, SC, SD, WV, KY, NCDENR). Cases consolidated; state petitioners and industry petitioners filed separate briefs (other petitioners include Walter Coke, UARG, Southern Company, Luminant, Big Brown, Ameren Missouri, TX Oil & Gas Assoc., et al.).	Case ongoing.
<b>Public Service Company of Oklahoma, d.b.a. AEP v. EPA</b> (D.C. Cir., filed Feb. 2012)	Cross-State Air Pollution Rule - challenge to imposition of Federal Implementation Plans for Iowa, Michigan, Missouri, Oklahoma, and Wisconsin. Case held in abeyance pending challenges to CSAPR Update Rule, published Oct. 2016.	Oklahoma filed separately. Cases consolidated (other petitioners: UARG, Public Service Company of OK, Western Farmers Electric Coop, Wisconsin Public Service Corp., Oklahoma Gas and Electric Co.).	Case held in abeyance; SCOTUS upheld imposition of FIPs.
<b>EME Homer City Generation, L.P. v. EPA</b> (D.C. Cir., filed Sept. 2011)	Cross-State Air Pollution Rule - challenge to final rule. On remand from Supreme Court (EPA v. EME Homer, 134 S.Ct. 1584 (2014)), D.C. Cir. considered several as-applied challenges to EPA's 2014 emissions budgets. Rule remanded without vacatur to EPA to reconsider 2014 emissions budgets. Broader challenges to the Rule were rejected.	Oklahoma filed jointly with AL, FL, NE, SC, TX, and VA. Several other states, state agencies, and localities filed separately. All state and local petitioners filed one joint brief; industry petitioners filed a separate joint brief (other petitioners include: EME Homer, Murray Energy, Peabody Energy, United Mine Workers, UARG, NMA, et al.).	Loss: challenges to standards rejected; OK did not join challenges to CSAPR Update Rule.
<b>State of Oklahoma, et al. v. EPA, et al.</b> (10th Cir., filed Feb. 2012)	Regional Haze - challenge to partial disapproval of Oklahoma's State Implementation Plan. 10th Cir. denied the petitions for review July 2013.	Oklahoma filed jointly with Oklahoma Industrial Energy Consumers. Case consolidated with separate Oklahoma Gas & Electric Co. petition.	Loss: petitions denied.
<b>Grocery Manufacturers Association, et al. v. EPA</b> (D.C. Cir., filed July 2011)	Partial grant of Clean Air Act Waiver Application to increase the allowable ethanol content of gasoline to 15 percent. Dismissed Aug. 2012 for lack of standing.	Oklahoma participated as amicus curiae supporting petitioners, jointly with AL, AK, and VA, arguing that EPA's grant of a partial waiver was invalid and threatened their state sovereignty.	Supported losing side.

<b>Water pollution cases</b>			
<b>In re: DOD &amp; EPA Final Rule: Clean Water Rule</b> (6th Cir., filed July 2015)	Clean Water Rule: definition of "Waters of the United States" - challenge to final rule. Active case - currently being briefed.	Oklahoma filed separately in 10th Cir. Transferred to 6th Cir. and consolidated under Case No. 15-3751. All state petitioners filed joint brief.	Case ongoing.
<b>State of Oklahoma ex rel. E. Scott Pruitt v. EPA</b> (10th Cir., filed July 2015)	Clean Water Rule - Oklahoma challenge in 10th Cir., transferred to 6th Cir. and consolidated.	Oklahoma filed separately in 10th Cir. Transferred to 6th Cir. and consolidated.	Transferred.
<b>State of Oklahoma ex rel. E. Scott Pruitt v. EPA, et al.</b> (Northern Dist. OK, filed July 2015)	Clean Water Rule - Oklahoma challenge in OK district court, dismissed due to lack of subject matter jurisdiction after transfer and consolidation of all cases to 6th Cir.	Oklahoma filed a complaint for declaratory and injunctive relief in OK Dist. Ct.	Dismissed.
<b>American Farm Bureau Federation et al. v EPA</b> (D.C. Cir., filed 2013)	Clean Water Act TMDL – agricultural trade associations challenged EPA's CWA total maximum daily load (TMDL) regulations for nitrogen, phosphorus, and sediment that can be released into the Chesapeake Bay. D.C. Cir. affirmed the district court's ruling upholding EPA's TMDL.	Oklahoma participated as amicus curiae in support of reversal, jointly with KS, IN, MO, AL, AK, AR, FL, GA, KY, LA, MI, MT, NE, ND, SC, SD, TX, UT, WV, and WY. Argued that EPA's "Chesapeake Bay [TMDL] defies the limits of the Clean Water Act and strips States of their traditional right to make the land-use decisions necessary to comply with federal water quality standards."	Supported losing side.
<b>Mingo Logan Coal Co. v. EPA</b> (SCOTUS petition for cert. denied March 2014)	Clean Water Act permitting – challenge to EPA authority under CWA section 404(c) to withdraw a disposal site specification after issuance of a dredge and fill permit. D.C. Cir. upheld EPA authority. Mingo Logan petitioned for Supreme Court review; cert. denied March 2014.	Oklahoma participated as amicus curiae in support of petition for certiorari, jointly with WV, AL, AK, AZ, AR, CO, FL, GA, IN, KS, KY, LA, MI, MO, MT, NE, NV, ND, OH, SC, SD, TX, UT, VA, WI, and WY. Argued that the DC Circuit's decision upholding EPA authority "threatens public works projects in every State and fundamentally alters the way water pollution is regulated in this country." Amicus briefs were also filed by NMA, API, U.S. Chamber of Commerce, NAHB, NAM, Pacific Legal Foundation, et al.	Supported losing side.

<p><b>National Mining Association, et al. v. Gina McCarthy, et al.</b> (D.C. Cir., filed Oct. 2012)</p>	<p>Clean Water Act permitting - challenge to EPA/ACOE Enhanced Coordination Process for CWA mining permits and EPA's Final Guidance for CWA permits. D.C. Cir. reversed Dist. Ct. grant of summary judgment to plaintiffs and remanded to Dist. Ct. to grant judgment for Government on Enhanced Coord. Process claim and dismiss challenge to Final Guidance.</p>	<p>Oklahoma participated, jointly with AL, AK, FL, KS, MI, MT, NE, OH, SC, and VA as amicus curiae in support of appellees, arguing that EPA's guidance conflicts with traditional principles of cooperative federalism.</p>	<p>Loss: judgment for government and partially dismissed.</p>
<p><b>Other subject matter</b></p>			
<p><b>State of Oklahoma ex rel. Scott Pruitt v. EPA</b> (Western Dist. OK, filed July 2013)</p>	<p>Freedom of Information Act – challenge to EPA's denial of FOIA request seeking records of EPA communications with non-governmental organizations. Dist. Ct. dismissed Dec. 2013, finding records requests vague and overly broad.</p>	<p>Oklahoma filed as lead plaintiff jointly with AL, AZ, GA, KS, MI (Schuette), ND, SC, TX, UT, WY. Same states filed FOIA request in Feb. 2013, alleging that EPA engages in "sue and settle" strategy with environmental groups.</p>	<p>Loss: dismissed.</p>
<p><b>San Luis &amp; Delta-Mendota Water Authority, et al. v. Salazar et al.</b> (9th Cir., filed Apr. 2011)</p>	<p>Endangered Species Act - 9th Cir. partially reversed and partially affirmed district court judgment invalidating 2008 biological opinion by US FWS concluding that water projects jeopardized existence of delta smelt.</p>	<p>Oklahoma participated as amicus curiae in support of Petitioners-Appellees' petition for rehearing en banc, jointly with NE, AK, KS, SC, WY.</p>	<p>Supported losing side.</p>
<p><b>State of Wyoming v. EPA, et al.</b> (10th Cir., filed Jan. 2015)</p>	<p>EPA action under the CAA granting an application from the Northern Arapaho and the Eastern Shoshone Tribes to be treated in the same manner as a State for certain non-regulatory CAA programs on the Wind River Indian Reservation in Wyoming.</p>	<p>Oklahoma participated as amicus curiae in support of petitioners, jointly with ID, AL, CO, KS, MT, NE, ND, SD, and UT. Amici states participated only to argue that " an administrative agency is owed no deference with respect to its application of federal common law principles to historical facts"</p>	<p>Case ongoing.</p>

CASES AGAINST OTHER AGENCIES OR ENTITIES			
<b>WildEarth Guardians v. Scott Bidegain, Chairman of the New Mexico State Game Commission, et al.</b> (10th Cir., filed Jan. 2013)	Endangered Species Act - challenge to failure of New Mexico State Game Commission to regulate trapping in Mexican Wolf Experimental Population Area. 10th Cir. dismissed appeal for lack of Article III standing and remanded to district court to vacate judgment and dismiss action.	Oklahoma participated as amicus curiae, jointly with AZ, GA, ID, IN, KS, LA, MS, MT, TX, and UT, arguing that reintroduced populations are not subject to ESA section 9 protections.	Supported losing side.
<b>In re: Endangered Species Act Section 4 Deadline Litigation – MDL No. 2165</b> (transferred to D.D.C. Feb. 2015)	Endangered Species Act –Multidistrict Litigation over FWS listing decisions for candidate species. FWS reached settlement agreements with CBD and WildEarth Guardians setting deadlines for listing determinations. Active case – subsequent challenges to settlement agreements have been consolidated.	Oklahoma and the Domestic Energy Producers Alliance sought declaratory and injunctive relief against FWS for alleged ESA, APA, and constitutional violations, challenging FWS settlement agreements setting deadlines to complete listing determinations for candidate species. KS, ND, and OK Farm Bureau subsequently joined as additional plaintiffs. Over opposition by Oklahoma et al., case transferred to D.D.C. to be consolidated in Multidistrict Litigation no. 2165.	Case ongoing.
<b>Hillsdale Environmental Loss Prevention, Inc., et al. v. U.S. Army Corps of Engineers, et al.</b> (10th Cir., filed July 2011)	Clean Water Act permitting - challenge to ACOE decision to grant dredge and fill Clean Water Act sec. 404 permit for BNSF Railway intermodal facility, alleging violations of CWA and NEPA. 10th Cir. upheld ACOE decision to grant permit Nov. 2012.	Oklahoma participated as amicus curiae (with the State of Kansas) arguing that, contrary to arguments that ACOE violated NEPA by failing to account for air pollution, Kansas' state air pollution limits will protect public health and the states are the lead authority for air pollution control within their boundaries.	Supported winning side.
<b>State of Missouri, et al. v. Kamala Harris, et al.</b> (9th Cir., filed Oct. 2014)	Multi-state challenge to California state law governing the sale of shell eggs: Assembly Bill 1437 ("AB1437") and CDFA Shell Egg Food Safety regulation 1350(d), seeking declaration of unconstitutionality and injunction of enforcement. In Nov. 2016 9th Cir. affirmed district court's dismissal of action for lack of standing; remanded with instructions to dismiss without prejudice.	The States of Missouri, Iowa, Nebraska, Oklahoma, Kentucky, and Alabama brought this action against the Attorney General of California and the Secretary of the California Department of Food and Agriculture.	Loss: dismissed for lack of standing.

Senator BOOKER. Thank you, sir.

To reflect your recollection, you filed two lawsuits challenging the EPA Mercury and Air Toxics Standard; you filed a lawsuit challenging the EPA's 2015 National Ambient Air Quality Standards for ozone; you filed four lawsuits challenging the EPA's Clean Power Plan; you have sued to challenge the EPA's 111(b) standards for carbon dioxide emissions from new power plants; and you also sued to challenge the EPA's Federal implementation plan for Oklahoma under the Regional Haze Rule.

You are familiar with those, I imagine?

Mr. PRUITT. Yes, Senator.

Senator BOOKER. And you filed a lawsuit challenging the EPA Cross-State Air Pollution Rule, something in New Jersey we are very concerned with. Are you aware that that rule, which you lost in that suit, scientists estimate that that alone prevents 400,000 asthma attacks nationally each year? Are you aware of those estimations?

Mr. PRUITT. Yes, Your Honor. Yes, Senator. May I offer—

Senator BOOKER. I appreciate your promotion to judge.

[Laughter.]

Senator BOOKER. Let me continue, Mr. Pruitt. I don't have much time.

Mr. PRUITT. OK.

Senator BOOKER. So each of these lawsuits that I just went through and that we analyzed, all of them challenge attempts by the EPA to reduce air pollution. In all of them except one you filed those lawsuits joining with polluting companies that were also suing the EPA. And so, in addition to filing those lawsuits with some of the polluting companies, or at least one that has now been specifically mentioned by two of my colleagues, you used substantial portions of the letters from those companies, put them on your official Attorney General letterhead, and what was sort of surprising to me is that when you have been asked about this in the public, you basically represented that that is actually called representative government in my view of the world. Your testimony here says that you were representing industry; you were representing the polluters.

So with all of these lawsuits you filed, and with all of these letters like this one, written to the EPA on behalf of the industries that are causing the pollution, it seems clear to me that obviously the fact pattern on representing polluters is clear, that you worked very hard on behalf of these industries that have their profits externalized, negative externalities are their pollution.

So I just have a question for you specifically about the children of Oklahoma. Do you know how many kids in Oklahoma, roughly, have asthma?

Mr. PRUITT. I do not, Senator.

Senator BOOKER. Well, according to data published by the very non-partisan group, the American Lung Association, more than 111,000 children in Oklahoma, which is more than 10 percent, more than 1 in 10 of all the kids in Oklahoma, have asthma. That is one of the highest asthma rates in the entire United States of America.

Now, this is a crisis; similar data, for where I was mayor, and I can tell you firsthand the devastating impacts that asthma has on children and families; affecting their economic well being, parents who have to watch their children struggle to breathe, people that have to miss work, rushing their kids to the hospital. One in 10 kids having a disease, missing school, is a significant problem.

So if you have been writing letters on behalf of polluting industries, I want to ask you how many letters did you write to the EPA about this health crisis? If this is representative government, did you represent those children? I want to know what actions you have taken in the past 6 years in your capacity as protector of the welfare of Oklahoma citizens to protect the welfare of those 111,000 children. Did you ever let any of them write letters on your letterhead to the EPA, and did you even file one lawsuit, one lawsuit on behalf of those kids to reduce the air pollution in your State and help them to have a healthy life?

Mr. PRUITT. Senator, I have actually provided a list of cases to the Chairman with respect to enforcement steps we have taken in multiple pieces of environmental litigation. But let me say to you, with respect to cross-State pollution and some of the cases you referred to, the State has to have an interest before it can bring those cases, as you know. You can't just bring a lawsuit if you don't have standing, if there has not been some injury to the State of Oklahoma. In each of those cases—

Senator BOOKER. My time has expired, but if I could just say injury, clearly asthma is triggered and caused by air pollutants. Clearly there is an air pollution problem. And the fact that you have not brought suits in any of the levels which you have represented the industries that are causing the pollution is really problematic when you are going to sit in a position that is nationally supposed to be affecting this reality. And asthma, in our country, is the No. 1 reason why children in America, health reason why children in America miss school.

Mr. Chairman, thank you.

Senator BARRASSO. Thank you very much.

I submit for the record first an article from the Tulsa World from Scott Thompson. The headline is "EPA will be in good hands with Scott Pruitt." Scott Thompson is the Executive Director of the Oklahoma Department of Environmental Quality. Talks about the excellent work done and ends with a quote: "EPA will be in good hands with Scott Pruitt."

I would point out that between 2004 and 2008—and we will submit this for the record—the most recent employers of Obama administration senior EPA officials sue the EPA with 12 lawsuits, at least, in the time when George W. Bush was in his second term, including Lisa Jackson, Assistant Administrator Cynthia Giles, Gina McCarthy, and Stephen Owens. They were petitioners and plaintiffs filing suits against the EPA.

And finally, I will submit an editorial from the Tulsa World. "Over the past 6 years, Pruitt's legal team has consistently shown deference to the legal expertise and professionals at DEQ," the Department of Environmental Quality. This was written by the executive director. More importantly, he said, "I cannot recall an in-



stance where they did not allow us to pursue legal action when deemed necessary.”

And then, finally, from Mike Turpen, who is the former Chairman of the Oklahoma Democratic Party, says, “The job of the EPA is the essential mission of guaranteeing clean air and clean water. Pruitt has never compromised those critical components of a healthy population with any actions he has taken.”

[The referenced information follows:]



## **Tulsa World: Scott Thompson: EPA will be in good hands with Scott Pruitt**

Scott Thompson, Executive Director of the Oklahoma Department of Environmental Quality  
Published: Friday, Dec. 30, 2016

*Quality*  
*Equality*

In my time as the executive director of the Oklahoma Department of Environmental Quality, I have worked with Oklahoma Attorney General Scott Pruitt and have been fortunate to experience a productive relationship. Having worked with Pruitt, I feel I can add a unique perspective that may currently be missing from the conversation.

When Pruitt took office, his team exhibited deftness at moving complex environmental issues mired in protracted litigation toward workable solutions.

Over the past six years, Pruitt's legal team has consistently shown deference to the legal expertise and professionals at DEQ. More importantly, I cannot recall an instance where they did not allow us to pursue legal action we deemed necessary.

One such example involved negotiations he initiated to protect Oklahoma's Scenic Rivers from phosphorus pollution. Pruitt insisted on using science as the determining factor in a legal dispute between Oklahoma and Arkansas, which had long been in dispute about Arkansas's upstream pollution of Oklahoma's Scenic Rivers. Ultimately, Pruitt's actions resulted in the preservation of Oklahoma's desired standard of phosphorus levels in our rivers.

Pruitt was essential in negotiating an historic water rights settlement with Indian tribes in southeast Oklahoma that preserved the ecosystems of scenic lakes and rivers. This settlement, when Pruitt first arrived in office, seemed impossible due to conflict among the parties involved.

Lastly, DEQ has independently managed our state and federal regulatory programs, including enforcement cases, as well as our daily operations free of the worry we might face pressure or politicizing of our responsibilities by the Office of the Attorney General. We are fortunate to have experienced this situation as I am not sure my counterparts in other states have a similar relationship with their attorney general's office.

This experience gives me confidence in how Pruitt will address similar politically fraught challenges as the next EPA Administrator. Looking at the issues facing EPA, I believe he will make reforms in line with his actions in Oklahoma.

Among them:

- To prioritize funding for states that are effectively implementing programs and enforcing the rules while aggressively streamlining the bureaucracy so resources can be used where they make the biggest difference;
- To measure success not based on number of new rules created, but on achieving solutions while minimizing the burdens placed companies and citizens who are trying to play by the rules;
- To consult states and localities on any updates that are made to rules and regulations rather than having a top down government-knows-best approach.

It has been my experience, that the principles behind these reforms guided the implementation of policy. Pruitt looked for our guidance on rule changes and assisted us when we needed clarification of rules or legal support. He and his team focused their efforts on burdensome, and in my opinion, oftentimes unnecessary, rules EPA has promulgated without clear authority.

I believe EPA will be in good hands with Scott Pruitt and his confirmation will ensure an environmental agency that once again is responsive and fair to the citizens it serves.

RE: nominees to EPA that are suing the agency

**Between 2004 and the end of 2008, the most recent employers of Obama Administration senior EPA officials confirmed in the 111<sup>th</sup> Congress following the 2008 presidential election (including Administrator Lisa Jackson, and Assistant Administrators Cynthia Giles, Gina McCarthy, and Stephen Owens) were petitioners/plaintiffs in 12 lawsuits filed in federal appellate and district courts against U.S. EPA.** <sup>at least</sup>

Notes:

- This includes petitioners/plaintiffs but does not include intervenors.
- This includes the following "previous employers" (cases, which includes overlapping cases):
  - o Lisa Jackson: New Jersey Department of Environmental Protection/State of New Jersey (5)
  - o Cynthia Giles: Conservation Law Foundation (2)
  - o Gina McCarthy: Connecticut Department of Environmental Protection/State of Connecticut (7)
  - o Stephen Owens: Arizona DEQ/State of Arizona (1)

Below are the cases we could find (12 with former employers as petitioner/plaintiff):

**State of NJ Dept of Env Protec v. EPA**

Filed: December 22, 2008 as 08-4818

**Petitioner:** NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION

**Intervenor:** RRI ENERGY MID-ATLANTIC POWER HOLDINGS LLC

**Respondent:** UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

**Court:** Third Circuit U.S. Court of Appeals, Third Circuit

**Type:** Other Statutes › Other

**Conservation Law Foundation v. Environmental Protection Agency et al**

Filed: October 28, 2008 as 2:2008cv00238

**Plaintiff:** Conservation Law Foundation

**Defendant:** Environmental Protection Agency, Environmental Protection Agency Region 1

**Cause Of Action:** U.S. Government Defendant

**Court:** Second Circuit › Vermont › Vermont District Court

**Type:** Other Statutes › None

**States Of New York, Connecticut, Delaware, Illinois, Maine, Michigan, Minnesota, Missouri, Washington v. United States Environmental Protection Agency et al**

Filed: October 2, 2008 as 7:2008cv08430

**Plaintiff:** States Of New York, Connecticut, Delaware, Illinois, Maine, Michigan, Minnesota,

Missouri, Washington, States Of New York, Connecticut, Delaware, Illinois, Maine, Michigan,

Minnesota, Missouri, Washington, States Of New York, Connecticut, Delaware, Illinois, Maine, Michigan, Minnesota, Missouri, Washington and others  
**Defendant:** United States Environmental Protection Agency, Stephen L. Johnson  
**Cause Of Action:** U.S. Government Defendant  
**Court:** [Second Circuit](#) › [New York](#) › [New York Southern District Court](#)  
**Type:** [Other Statutes](#) › [None](#)

**States Of New York, Connecticut, Delaware, Illinois, Maine, Michigan, Minnesota, Missouri, Washington v. United States Environmental Protection Agency et al**  
 Filed: October 2, 2008 as 1:2008cv08430  
**Plaintiff:** States Of New York, Connecticut, Delaware, Illinois, Maine, Michigan, Minnesota, Missouri, Washington, States Of New York, Connecticut, Delaware, Illinois, Maine, Michigan, Minnesota, Missouri, Washington, States Of New York, Connecticut, Delaware, Illinois, Maine, Michigan, Minnesota, Missouri, Washington and others  
**Defendant:** United States Environmental Protection Agency, Stephen L. Johnson  
**Cause Of Action:** U.S. Government Defendant  
**Court:** [Second Circuit](#) › [New York](#) › [New York Southern District Court](#)  
**Type:** [Other Statutes](#) › [None](#)

**State of New York, et al v. EPA**  
 Filed: August 25, 2008 as 08-1279  
**Petitioner:** State of New York, State of California, State of Connecticut and others  
**Respondent:** Environmental Protection Agency  
**Court:** [D.C. Circuit U.S. Court of Appeals, D.C. Circuit](#)  
**Type:** [Other Statutes](#) › [Other](#)

**State of New York v. EPA**  
 Filed: May 27, 2008 as 08-1202  
**Petitioner:** State of New York, State of California, by and through Arnold Schwarzenegger, Governor of the State of California, California Air Resources Board and others  
**Respondent:** Environmental Protection Agency  
**Court:** [D.C. Circuit U.S. Court of Appeals, D.C. Circuit](#)  
**Type:** [Other Statutes](#) › [Other](#)

**State of New York v. EPA**  
 Filed: May 5, 2008 as 08-1179  
**Petitioner:** State of New York, State of Arizona, State of Connecticut and others  
**Respondent:** Environmental Protection Agency  
**Intervenor For Respondent:** Alliance of Automobile Manufacturers, National Automobile Dealers Association  
**Amicus Curiae For Respondent:** American Petroleum Institute, Chamber of Commerce of the United States of America, Utility Air Regulatory Group

**Amicus Curiae For Petitioner:** National Conference of State Legislatures (NCSL), National Association of Counties, National League of Cities and others  
**Movant-Amicus Curiae For Petitioner:** City of Sacramento  
**Movant-Amicus Curiae For Respondent:** John Campbell, United States Representative  
**Court:** D.C. Circuit U.S. Court of Appeals, D.C. Circuit  
**Type:** Other Statutes › Other

**Natural Resources Defense Coun. et al v. EPA, et al**

Filed: May 5, 2008 as 08-1180

**Petitioner:** Natural Resources Defense Council, Sierra Club, Conservation Law Foundation and others

**Respondent:** Environmental Protection Agency, Stephen L. Johnson, Administrator, U.S. Environmental Protection Agency

**Amicus Curiae For Respondent:** American Petroleum Institute, Chamber of Commerce of the United States of America, Utility Air Regulatory Group

**Amicus Curiae For Petitioner:** National Conference of State Legislatures (NCSL), National Association of Counties, National League of Cities and others

**Movant-Amicus Curiae For Petitioner:** City of Sacramento

**Movant-Amicus Curiae For Respondent:** John Campbell, United States Representative

**Court:** D.C. Circuit U.S. Court of Appeals, D.C. Circuit

**Type:** Other Statutes › Other

**State of New Jersey v. EPA**

Filed: February 19, 2008 as 08-1065

**Petitioner:** State of New Jersey

**Respondent:** Environmental Protection Agency

**Intervenor For Respondent:** Air Permitting Forum, Alliance of Automobile Manufacturers, American Chemistry Council and others

**Court:** D.C. Circuit U.S. Court of Appeals, D.C. Circuit

**Type:** Other Statutes › Other

**State of New York et al v. State of Illinois et al**

Filed: November 28, 2007 as 1:2007cv10632

**Plaintiff:** State of New York, The State Arizona, State of California and others

**Defendant:** Stephen L. Johnson, U.S. Environmental Protection Agency

**Cause Of Action:** Maritime Subsidy Board

**Court:** Second Circuit › New York › New York Southern District Court

**Type:** Other Statutes › Environmental Matters

**STATE OF NEW JERSEY et al v. UNITED STATES ENVIRONMENTAL PROTECTION AGENCY et al**

Filed: February 6, 2007 as 3:2007cv00612

**Plaintiff:** NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION, STATE OF NEW JERSEY

**Defendant:** UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, STEPHEN L. JOHNSON

**Cause Of Action:** Clean Air Act  
**Court:** [Third Circuit](#) › [New Jersey](#) › [New Jersey District Court](#)  
**Type:** [Other Statutes](#) › [Environmental Matters](#)

**St NJ, et al v. EPA** ↗

Filed: March 28, 2005 as 05-1097

**Petitioner:** State of New Jersey, State of California, State of Connecticut and others

**Respondent:** Environmental Protection Agency

**Intervenor For Respondent:** Utility Air Regulatory Group, PPL Corp., PSEG Fossil LLC and others

**Intervenor For Petitioner:** Physicians for Social Responsibility, American Nurses Association, The American Public Health Association and others

**Terminated Party:** Aroostook Band of Micmac Indians, Houlton Band of Maliseet Indians, Penobscot Indian Nation and others

**Intervenor:** State of Rhode Island, West Associates, National Mining Association

**Amicus Curiae For Respondent:** Washington Legal Foundation, The State of West Virginia, Department of Environmental Protection

**Court:** [D.C. Circuit](#) [U.S. Court of Appeals](#), [D.C. Circuit](#)

**Type:** [Other Statutes](#) › [Other](#)

\*NJ as intervenor against EPA:

**American Petroleum Institute v. EPA**

Filed: August 21, 2008 as 08-1277

**Petitioner:** American Petroleum Institute, National Petrochemical & Refiners Association, Western States Petroleum Association

**Respondent:** Environmental Protection Agency

**Intervenor For Petitioner:** Lion Oil Company, State of New Jersey

**Intervenor For Respondent:** Environmental Integrity Project, Natural Resources Defense Council, Sierra Club and others

**Court:** [D.C. Circuit](#) [U.S. Court of Appeals](#), [D.C. Circuit](#)

**Type:** [Other Statutes](#) › [Other](#)

## Mike Turpen: Scott Pruitt is a good choice for EPA chief

By Mike Turpen | Posted: Monday, December 12, 2016 9:00 am

With all the fireworks of the 2016 campaign now silenced, President-elect Donald Trump is getting to work assembling a government. As a lifelong Democrat, I may not agree with all of the president-elect's policies or nominees, but I do know that Oklahoma Attorney General Scott Pruitt is a good choice to head up the Environmental Protection Agency.

As a Democrat, I take seriously the threats to our environment, and I believe we must work to address issues such as pollution, climate change and ensuring clean air and water. Pruitt's background in constitutional law combined with a nuanced understanding of how environmental regulations affect the economy mean that he will be a thoughtful leader of the EPA and one capable of striking the balance between protecting the environment and our economy.

Pruitt understands that an American energy revolution is a means of new jobs and new wealth in our country. Of course, the energy industry, just like any other industry, should be subject to appropriate scrutiny to make sure laws are followed, our environment is protected and Americans are safe. The potential for the energy industry to contribute to an economic renaissance is enormous: half a million jobs each year and \$30 billion in higher wages, according to one study.

Finally, the job of the EPA is the essential mission of guaranteeing clean air and clean water. Pruitt has never compromised those critical components of a healthy population with any actions he has taken. "We drink the water, we breathe the air here in Oklahoma. To think that we don't care about that, and somehow are being led to sacrifice those things ... (is) not accurate," Pruitt told the Financial Times.



Mike Turpen

Turpen



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I am convinced Scott Pruitt will work to protect our natural habitats, reserves and resources. His vision for a proper relationship between protection and prosperity makes him superbly qualified to serve as our next EPA administrator.

Mike Turpen is a former attorney general of Oklahoma and a former chairman of the Oklahoma Democratic Party. He wrote this for InsideSources.com.

Senator BARRASSO. Senator Rounds.

Senator ROUNDS. Thank you, Mr. Chairman.

Welcome, Attorney General Pruitt.

Mr. PRUITT. Thank you, Senator Rounds.

Senator ROUNDS. I notice that you didn't have the opportunity in the time allotted for Senator Booker's question. Would you care to finish your response with regard to the role that the States have in their ability to either participate in a suit and whether or not they have standing? Would you like to finish your thoughts on that?

Mr. PRUITT. Thank you, Senator.

Senator, as I indicated in your office, when we spent time together, the enforcement role in the State of Oklahoma is different than other States. With respect to the Department of Environmental Quality, the Oklahoma Water Resources Board, we had multiple agencies, Department of Agriculture, that have frontline enforcement authority with respect to our environmental laws.

The role that we play in my office largely is a general counsel role. We provide guidance and direction to those agencies. There were many cases we have initiated in conjunction with them, but mainly those agencies enforce actions at their level. Many of those agencies have dozens of attorneys on their staff and a general counsel in their own right bringing those enforcement actions.

You mentioned several of the cases. From MATS to Cross-State Air Pollution and the rest. I believe the Cross-State Air Pollution Rule is a very important statute that EPA should enforce. I believe that if there are downwind States that are contributing to non-attainment—I am sorry, upwind States that are contributing to non-attainment in downwind States, that there should be responsibility for those States. We had that issue with Texas at times.

So the lawsuit was not questioning the authority of the EPA to regulate under the Cross-State Air Pollution Rule; it was more that they were trying to assess damages against certain States that were in excess of their allocated share.

So each of those cases I would ask you to remember I am an advocate in behalf of the State of Oklahoma. There is a State's interest that Senator Rounds indicated that has to be in play. To say that any of those cases is about any one company is just simply not right. There is no *parens patriae* standing that I have as Attorney General to bring a case on behalf of a private citizen or a company; there has to be a standing, an injury to the State's interest to bring those cases.

So I would ask you to consider that as we go through those cases you mentioned earlier.

Thank you, Senator Rounds.

Senator ROUNDS. Thank you.

And thank you, sir, for your response, your complete response.

Also, as the chairman of the Subcommittee on Oversight of the Environmental Protection Agency, I have had the opportunity to look at their basis or the way that they make their decisions known and the logic they use in getting to those decisions. We had a chance to talk about it in my office the other day, and one of the items that I brought up was the fact that we actually had received

comments from the Small Business Administration Office of Advocacy, a copy of which I got.

Mr. Chairman, I would like to have those put into the record.

Senator BARRASSO. Without objection.

Senator ROUNDS. Thank you.

[The referenced information follows:]



**Advocacy: the voice of small business in government**

October 1, 2014

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

Maj. Gen. John Peabody  
 Deputy Commanding General  
 Civil and Emergency Operations  
 U.S. Army Corps of Engineers  
 Attn: CECW-CO-R 441 G Street, NW  
 Washington, D.C. 20314-1000

**Re: Definition of "Waters of the United States" Under the Clean Water Act<sup>1</sup>**

Dear Administrator McCarthy and Major General Peabody:

The Office of Advocacy of the U.S. Small Business Administration (Advocacy) submits these comments regarding the proposed rule to the U.S. Army Corps of Engineers (the Corps) and the Environmental Protection Agency (EPA, and together, "the agencies"). Advocacy believes that EPA and the Corps have improperly certified the proposed rule under the Regulatory Flexibility Act (RFA) because it would have direct, significant effects on small businesses. Advocacy recommends that the agencies withdraw the rule and that the EPA conduct a Small Business Advocacy Review panel before proceeding any further with this rulemaking.

**The Office of Advocacy and the Regulatory Flexibility Act**

Advocacy was established pursuant to Pub. L. 94-305 to represent the views of small entities before federal agencies and Congress. Advocacy is an independent office within SBA, so our views do not necessarily reflect those of SBA or the Administration. The RFA, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA),<sup>2</sup> requires small entities to be considered in the federal rulemaking process. The RFA requires federal agencies to consider the impact of their proposed rules on small businesses. When a rule is expected to have a significant economic impact on a substantial number of small entities, agencies must evaluate the impact, consider less

<sup>1</sup> Definition of Waters of the United States Under the Clean Water Act, 79 *Fed. Reg.* 22188 (April 21, 2014).

<sup>2</sup> Pub. L. 104-121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C. §601 et seq.).

burdensome alternatives, and in the case of EPA, convene a Small Business Advocacy Review panel.<sup>3</sup> The RFA directs Advocacy to monitor agency compliance with the RFA. To this end, Advocacy may file written comments reflecting small business concerns about the impact of a rulemaking.<sup>4</sup> Because of small business concerns with the proposed rule, Advocacy held a roundtable on July 21, 2014 and has heard from numerous small entities in many industries.

### **Background**

The Clean Water Act (CWA) was enacted in 1972 to “restore and maintain the chemical, physical and biological integrity of the Nation’s waters.”<sup>5</sup> The CWA accomplishes this by eliminating the “discharge of pollutants into the navigable waters.”<sup>6</sup> The CWA defines “navigable waters” as “the waters of the United States, including the territorial seas.”<sup>7</sup> Existing regulations currently define “waters of the United States” as traditional navigable waters, interstate waters, all other waters that could affect interstate or foreign commerce, impoundments of waters of the United States, tributaries, the territorial seas, and adjacent wetlands.<sup>8</sup>

The CWA requires a permit in order to discharge pollutants, dredged, or fill materials into any body of water deemed to be a “water of the United States.”<sup>9</sup> The EPA generally administers these permits, but EPA and the Corps jointly administer and enforce certain permit programs under the Act.<sup>10</sup>

The extent of the Act’s jurisdiction has been the subject of much litigation and regulatory action, including three Supreme Court decisions. Actions of the Court have expanded and contracted the definition, especially regarding wetlands and smaller bodies of water.

- In 1985, the Supreme Court determined that adjacent wetlands may be included in the regulatory definition of “waters of the United States.”<sup>11</sup>
- In 2001, the Court held that migratory birds’ use of isolated “nonnavigable” intrastate ponds was not sufficient cause to extend federal jurisdiction under the CWA.<sup>12</sup>
- In 2006, the Supreme Court considered whether wetlands near ditches or man-made drains that eventually empty into traditional navigable waters were

<sup>3</sup> 5 U.S.C. § 603, 605.

<sup>4</sup> The Small Business Jobs Act of 2010 (Pub. L. 111-240 § 1601) also requires agencies to give every appropriate consideration to Advocacy’s written comments on a proposed rule. This response must be included in an explanation or discussion accompanying the final rule’s publication in the *Federal Register* unless the agency certifies that the public interest is not served by doing so.

<sup>5</sup> 33 U.S.C. § 1251(a) (1972).

<sup>6</sup> *Id.* at § 1251(a)(1).

<sup>7</sup> *Id.* at § 1362(7).

<sup>8</sup> 33 C.F.R. § 328.3(a); 40 C.F.R. § 230.3(s).

<sup>9</sup> 33 U.S.C. §§ 1311(a), 1342, 1344.

<sup>10</sup> *Id.* at § 1344.

<sup>11</sup> *United States v. Riverside Bayview Homes*, 474 U.S. 121, 134-135 (1985).

<sup>12</sup> *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers (SWANCC)*, 531 U.S. 159, 174 (2001).

considered “waters of the United States.”<sup>13</sup> Justice Scalia, writing for the plurality, determined that “*only* those wetlands with a continuous surface connection to bodies that are ‘waters of the United States’ [ . . . ] are ‘adjacent to’ such waters and covered by the Act.”<sup>14</sup> Justice Kennedy concurred in the judgment, but concluded that the Corps must establish the existence of a “significant nexus” when it asserted jurisdiction over wetlands adjacent to non-navigable tributaries.<sup>15</sup>

The courts have left much uncertainty regarding what constitutes a “water of the United States.” Such uncertainty has made it difficult for small entities to know which waters are subject to jurisdiction and CWA permitting.

To address this uncertainty, the EPA and Corps proposed this rule which would revise the regulatory definition of “waters of the United States” and would apply to all sections of the Clean Water Act. The proposed rule defines “waters of the United States” within the framework of the CWA as the following seven categories:

- All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;
- All interstate waters, including interstate wetlands;
- The territorial seas;
- All impoundments of a traditional navigable water, interstate water, the territorial seas or a tributary;
- All tributaries of a traditional navigable water, interstate water, the territorial seas or impoundment;
- All waters, including wetlands, adjacent to a traditional navigable water, interstate water, the territorial seas, impoundment or tributary; and
- On a case-specific basis, other waters, including wetlands, provided that those waters alone, or in combination with other similarly situated waters, including wetlands, located in the same region, have a significant nexus to a traditional navigable water, interstate water or the territorial seas.<sup>16</sup>

The proposed rule defines several terms for the first time: “neighboring,” “riparian area,” “floodplain,” “tributary,” and “significant nexus”; and it clarifies the terms, “adjacent” and “wetlands.”<sup>17</sup> The rule leaves the regulatory definitions of “traditional navigable waters,” “interstate waters,” “the territorial seas,” and “impoundments” unchanged.<sup>18</sup>

#### **Regulatory Flexibility Act Requirements**

The RFA states that “[w]henver an agency is required by section 553 of this title, or any other law, to publish general notice of proposed rulemaking for any proposed rule, or

<sup>13</sup> *Rapanos v. United States*, 547 U.S. 715, 729 (2006).

<sup>14</sup> *Id.* at 742.

<sup>15</sup> *Id.* at 779 (Kennedy, J., concurring).

<sup>16</sup> 79 *Fed. Reg.* at 22,198.

<sup>17</sup> See *Id.* at 22,263, for the complete definitions of “adjacent,” “neighboring,” “riparian area,” “floodplain,” “tributary,” “wetlands,” and “significant nexus.”

<sup>18</sup> *Id.*

publishes a notice of proposed rulemaking for an interpretative rule involving the internal revenue laws of the United States, the agency shall prepare and make available for public comment an initial regulatory flexibility analysis [IRFA]. Such analysis shall describe the impact of the proposed rule on small entities.”<sup>19</sup>

Under Section 609(b) of the RFA, EPA is required to conduct small business advocacy review panels, often referred to as SBREFA panels, when it is unable to certify that a rule will not have a significant economic impact on a substantial number of small businesses. SBREFA panels consist of representatives of the rulemaking agency, the Office of Management and Budget’s Office of Information and Regulatory Affairs (OIRA), and the Chief Counsel for Advocacy. SBREFA panels give small entity representatives (SERs) a chance to understand an upcoming proposed rule and provide meaningful input to help the agency comply with the RFA. SERs help the panel understand the ramifications of the proposed rule and significant alternatives to it.

Section 605(b) of the RFA allows an agency to certify that a rule will not have a significant economic impact on a substantial number of small entities in lieu of preparing an IRFA.<sup>20</sup> When certifying, the agency must provide a factual basis for the certification.<sup>21</sup> In the current case, the agencies have certified that revising the definition of “waters of the United States” will not have a significant economic impact on a substantial number of small businesses.

#### **The Proposed Rule Has Been Certified in Error**

Advocacy believes that the agencies have improperly certified this rule. Advocacy, and the small businesses we have spoken to, believe that

- The agencies used an incorrect baseline for determining their obligations under the RFA;
- The rule imposes costs directly on small businesses; and
- The rule will have a significant economic impact on small businesses.

#### **A. The Agencies Use the Incorrect Baseline for its Regulatory Flexibility Act Certification**

Advocacy believes that the agencies used the wrong baseline for their RFA certification. In certifying the rule, the agencies state that, “This proposed rule is narrower than that under the existing regulations...fewer waters will be subject to the CWA under the proposed rule than are subject to regulation under the existing regulations.”<sup>22</sup> On this

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<sup>19</sup> 5 U.S.C. §603.

<sup>20</sup> 5 U.S.C. §605.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

basis the agencies conclude that, “This action will not affect small entities to a greater degree than the existing regulations.”<sup>23</sup>

The “existing regulations” that the agencies refer to in this reasoning is the 1986 rule defining the scope of waters of the United States. Compared to the 1986 definition, the proposed changes represent a narrowing of coverage. However, in the economic analysis accompanying the rule, the agencies assess the regulation vis-à-vis current practice and determine that the rule increases the CWA’s jurisdiction by approximately 3 percent.<sup>24</sup> The agencies’ certification and economic analysis contradict each other.

Advocacy believes that the proper baseline from which to assess the rule’s impact is current practice. Guidance from the Office of Management and Budget’s Office of Information and Regulatory Affairs (OIRA) substantiates this view. OIRA’s Circular A-4 provides guidance to federal agencies on the development of regulatory analysis.<sup>25</sup> It states that “The baseline should be the best assessment of the way the world would look absent the proposed action.”<sup>26</sup> The 1986 regulation has been abrogated by several Supreme Court cases and is no longer in use.<sup>27</sup> The Corps and EPA also issued a guidance document in 2008 which sought to bring jurisdictional determinations in line with these Supreme Court cases.<sup>28</sup> The 1986 regulation does not represent the current method for determining jurisdiction and has not served that purpose for more than thirteen years. Using an obsolete baseline improperly diminishes the effects of this rule. Advocacy agrees with the agencies’ economic analysis that uses current practice as the appropriate baseline for evaluating the rule.

#### **B. The Rule Imposes Costs Directly on Small Businesses**

The second basis for the certification appears to be the agencies’ position that the impact on small businesses will be indirect, hence not requiring an initial regulatory flexibility analysis or a SBAR panel.<sup>29</sup> EPA cites *Mid-Tex Electric Cooperative, Inc., v. Federal Energy Regulatory Commission*<sup>30</sup> and *American Trucking Associations, Inc., v. EPA*<sup>31</sup> in support of their certification.<sup>32</sup> Advocacy believes that the agencies’ reliance on *Mid-Tex* and *American Trucking* is misplaced because the proposed rule will have direct effects on small businesses.

<sup>23</sup> Id.

<sup>24</sup> Id.

<sup>25</sup> Office of Management and Budget, *Circular A-4*, [http://www.whitehouse.gov/omb/circulars\\_a004\\_a-4/#e](http://www.whitehouse.gov/omb/circulars_a004_a-4/#e) (September 17, 2003).

<sup>26</sup> Id.

<sup>27</sup> See *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers (SWANCC)*, 531 U.S. 159, 174 (2001); *Rapanos v. United States*, 547 U.S. 715, 729 (2006).

<sup>28</sup> Clean Water Act Jurisdiction Following the U.S. Supreme Court’s Decision in *Rapanos v. United States* and *Carabell v. United States*, December 2, 2008, <http://water.epa.gov/lawsregs/guidance/wetlands/CWAwaters.cfm>.

<sup>29</sup> 79 *Fed. Reg.* at 22,220.

<sup>30</sup> *Mid-Tex Electric Cooperative, Inc. v. Federal Energy Regulatory Commission (FERC)*, 773 F.2d 327, 342 (D.C. Cir. 1985).

<sup>31</sup> *American Trucking Associations v. EPA*, 175 F.3d 1027 (D.C. Cir. 1999).

<sup>32</sup> 79 *Fed. Reg.* at 22,220.



In *Mid-Tex*,<sup>33</sup> the Federal Energy Regulatory Commission (FERC) issued regulations instructing generating utilities how to include costs of construction work in their rates. Although the generating utilities were large businesses, their customers included small entities, to whom they may or may not have been able to pass on these costs through any rate changes.<sup>34</sup> The issue raised in this case was whether the agency had improperly certified the rule because it failed to consider the impact on the small business customers. The court concluded that an agency is required to file an IRFA only in cases where a regulation directly affects small businesses;<sup>35</sup> if it does not, an agency may properly certify.

In *Mid-Tex*, the proposed regulation's applicability to small businesses is akin to the FERC regulation's applicability to the generating utilities themselves, not their customers, as EPA seems to believe. Generating utilities were an intervening actor between the regulatory agency and the small business customers; the utilities had a substantial amount of discretion as to whether they would pass on their construction costs to their small entity customers and, if so, how much of those costs they would pass on.

Such is not the case with this rule. First, there is no intervening regulated actor. In *Mid-Tex*, the generating utilities were the entities regulated and bound by FERC guidelines, and it was not certain that they would pass on the costs of the new guidelines to their small business customers. In the current case, the Clean Water Act and the revised definition proposed in this rule directly determine permitting requirements and other obligations. It is unquestionable that small businesses will continue to seek permits under the Clean Water Act. Therefore they will be subject to the application of the proposed definition and the impacts arising from its application.

Second, the rule defines the scope of jurisdiction of the Clean Water Act without any discretion left to any entity or intermediary. The rule does not, for example, set a goal for which types or how many waters must be included in jurisdiction, leaving the Corps or states to determine the exact definition of waters of the United States in particular instances. This rule establishes the definition and all small entities are bound by it.

In *American Trucking*,<sup>36</sup> the EPA's certification of rules to establish a primary national ambient air quality standard (NAAQS) for ozone was challenged. The basis of the EPA's certification was that the NAAQS regulated small entities indirectly through state implementation plans. The rules gave states broad discretion to determine how to achieve compliance with the NAAQS.<sup>37</sup> The rules *required* EPA to approve any state plan that met the standards; it could not reject a plan based upon its view of the wisdom of a state's choices.<sup>38</sup> Under these circumstances, the court concluded that EPA had properly

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<sup>33</sup> 773 F.2d at 342.

<sup>34</sup> *Id.* The generating utilities were not required to pass on the rate increases and in some cases were limited by state law in how much of the rate increase could be passed on to customers.

<sup>35</sup> *Id.*

<sup>36</sup> 175 F.3d 1027 (D.C. Cir. 1999).

<sup>37</sup> *Id.*

<sup>38</sup> *Id.* at 1044.

certified because any impacts to small entities would flow from the individual states' actions and thus be indirect.<sup>39</sup>

EPA's proposed rule is distinguishable from the regulations at issue in *American Trucking*. The states were intervening actors with broad discretion regarding how to implement the federal standards. The EPA rules only told the states what the goal was; the states were left to develop the plans that would implement those goals and thereby impose impacts on small businesses.<sup>40</sup> In the current case, the agencies are not defining a goal nor are they authorizing any third party to determine the means and methods for reaching the goal. To the contrary, the agencies are defining the term governing the applicability of their own CWA programs. A change in the scope of the definition of "waters of the United States" necessarily leads to an increase in the scope and impact of the CWA since the programs thereunder only apply to waters that fall within this definition. The agencies, not a third party, determine whether a given body of water is within the jurisdiction of the requirements of the Clean Water Act and therefore subject to it.

Small businesses have also provided specific examples of how this rule will directly impact them. For example, during a May hearing of the U.S. House of Representatives Committee on Small Business, Jack Field of the Lazy JF Cattle Co. testified that the rule would essentially eliminate an exemption for normal farming practices that he relies upon to do things such as building a fence to control his grazing cattle.<sup>41</sup> The proposed rule would eliminate the exemption for farmers whose actions do not comply with Natural Resources Conservation Services standards.<sup>42</sup>

Small entities in the utility industry have expressed that this proposed rule could eliminate the advantages of Nationwide Permit 12 – Utility Line Projects (NWP 12). Utility companies use NWP 12 to construct and maintain roads that provide access to the utility grid. Under NWP 12 a "single and complete" project that results in less than a ½ acre loss of waters of the U.S. is allowed to proceed under NWP 12 rather than obtain an individual CWA permit.<sup>43</sup> Currently, each crossing of a road over a water of the U.S. is treated as a "single and complete" project. The proposed rule creates large areas in which NWP 12 could no longer be used at all. Under this proposed rule waters in the same riparian area or floodplain all become adjacent waters and therefore waters of the U.S. If all of the waters in the riparian area or floodplain are treated as one interconnected water of the U.S. it would be virtually impossible for small utility companies to use NWP 12. Small utilities would need to apply for the more costly and time consuming individual

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<sup>39</sup> Id. at 1045.

<sup>40</sup> Id. at 1044.

<sup>41</sup> Testimony of Jack Field, Owner Lazy JF Cattle Co. at U.S. House of Representatives Committee on Small Business Hearing entitled "Will EPA's Waters of the United States Rule Drown Small Businesses?", May 29, 2014 at <http://smallbusiness.house.gov/calendar/eventsingle.aspx?EventID=373099>.

<sup>42</sup> 79 Fed. Reg. at 22,194; Notice of Availability Regarding the Exemption From Permitting Under Section 404(f)(1)(A) of the Clean Water Act to Certain Agricultural Conservation Practices, 79 Fed. Reg. 22,276.

<sup>43</sup> Reissuance of Nationwide Permits, 77 Fed. Reg. 10195 (February 21, 2012).

permits. This is a direct cost imposed solely as a result of the changes to the definition of the term “waters of the United States” proposed in this rule.

These examples, as well as comments that Advocacy has received from small entities in other industries, demonstrate that the impact of the proposed rule will be direct. Therefore, the agencies are required to measure the impacts of the rule and to determine whether those impacts are significant for a substantial number of small entities.

### **C. The Rule Will Have a Significant Economic Impact on Small Businesses**

The economic analysis clearly indicates that this rule is likely to have a significant economic effect on small businesses. In the analysis, the agencies examine the anticipated changes to permitting under CWA Section 404 (development projects that discharge dredge or fill materials into waters of the U.S.). They find that in current practice 98 percent of streams and 98.5 percent of wetlands meet the definition of waters of the U.S.,<sup>44</sup> under the revised definition these figures rise to 100 percent.<sup>45</sup> They find zero percent of “other waters” (the seventh category in the revised definition) to be covered in current practice, but the revised definition would cover 17 percent of this category.<sup>46</sup> The agencies evidence an understanding that this increase in jurisdiction will lead to greater costs stating, “A change in assertion of CWA jurisdiction could result in indirect costs of implementation of the CWA 404 program: a greater share of development projects would intersect with jurisdictional waters, thus requiring the sponsors of those additional projects to obtain and comply with CWA 404 permits.”<sup>47</sup>

The agencies estimate that CWA 404 permit costs would increase between \$19.8 million and \$52.0 million dollars annually, and they estimate that section 404 mitigation costs would rise between \$59.7 million and \$113.5 million annually.<sup>48</sup> These amounts do not reflect additional possible cost increases associated with other Clean Water Act programs, such as Section 402 permitting or Section 311 oil spill prevention plans.<sup>49</sup> The agencies further state that the economic analysis done with respect to the 404 program increase is likely not representative of the changes that may occur with respect to 402 and 311 permitting,<sup>50</sup> leaving small businesses without a clear idea of the additional costs they are likely to incur for these Clean Water Act programs.

The economic analysis also singles out a particular class of businesses potentially affected by the revised definition, yet fails to evaluate any of these potential effects. EPA acknowledges that “a large portion of traditional 402 permit holders are located nearby large water sources to support their operations.”<sup>51</sup> The agencies do not identify how many

<sup>44</sup> Economic Analysis of Proposed Revised Definition of Waters of the United States, U.S. Environmental Protection Agency and U.S. Army Corps of Engineers, 11 (March 2014).

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> *Id.* at 13. Advocacy disagrees with the agencies’ assertion that this cost is indirect (see above).

<sup>48</sup> *Id.* at 16.

<sup>49</sup> *Id.* at 12.

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

of these businesses may be small nor do they discuss the expected impact of this rule on them. Yet this proposed rule would directly affect those small businesses that may be located next to large water sources and which fall within the 3 percent of waters that will be newly included in the definition “waters of the U.S.”

Concerns raised by small businesses as well as the agencies’ own economic analysis both indicate that small businesses will see a cost increase as a result of the revised definition. The EPA and the Corps have obligations under OMB guidance, and the RFA to measure and communicate this increase. Their certification of no small business impact is inappropriate in light of this information. Because of this probable small business impact, the RFA requires the agencies to complete an IRFA and a SBAR panel.

**Conclusion**

Advocacy and small businesses are extremely concerned about the rule as proposed. The rule will have a direct and potentially costly impact on small businesses. The limited economic analysis which the agencies submitted with the rule provides ample evidence of a potentially significant economic impact. Advocacy advises the agencies to withdraw the rule and conduct a SBAR panel prior to promulgating any further rule on this issue.

If we can be of any further assistance, please contact Kia Dennis, Assistant Chief Counsel, at (202) 205-6936.

Thank you for your attention to this matter.

Sincerely,  
/s/ Winslow Sargeant, Ph.D.  
Chief Counsel for Advocacy

/s/ Kia Dennis  
Assistant Chief Counsel

/s/ Stephanie Fekete  
Legal Fellow

Senator ROUNDS. And with this, this was a letter that was sent to the EPA in October 2014 requesting that the EPA withdraw the proposed Waters of the U.S. Rule, the WOTUS Rule, and reevaluate the impacts the rule would have on American small business. Now, this is a Federal agency requesting the EPA take a second look at a proposed rule.

The EPA refused this request and issued the final rule that we have today.

What are your thoughts on this? And would you, if you are approved and become the next Administrator of the EPA, would you take a second look at whether or not they had a valid reason for having the Waters of the U.S. Rule considered again?

Mr. PRUITT. I think, Senator, the response of the 6th Circuit and where we are presently with litigation, there is definitely a need to address that on a prospective basis. Historically, as you know, under the Clean Water Act, and even before the Clean Water Act was passed, waters of the United States equaled navigable waters, navigable in fact waters. We know from a couple of cases that led up to the most recent case, Rapanos, that the Clean Water Act is something more than navigable in fact. But what that more is has to be determined and assessed.

So, as I indicated earlier to another Senator's question, the most important thing is to provide certainty, to make sure that the Clean Water Act helps those at the State level know where the boundaries are, where they have jurisdiction and where they don't, so that we can have regulations that are fair and equitable, and uncertainty is not created.

Senator ROUNDS. In the lawsuits that you brought against the Environmental Protection Agency on behalf of the State of Oklahoma, would it be fair to say that a number of those are based upon the Environmental Protection Agency failing to follow its own rules and the promulgation of those rules?

Mr. PRUITT. Yes, Senator. I think whether it is the MATS case or the Clean Power Plan case or the WOTUS case, or a multitude of cases, the courts have agreed that the EPA has exceeded its authority; that the EPA has not acted within the framework that Congress has established in performing the role that it is supposed to perform. That is the reason I mentioned in my opening statement that process matters, rule of law matters, federalism matters. Those issues matter because Congress has said so. It is Congress who gives authority to the EPA. The EPA is an administrative agency, it is not a legislative body. So it is important for that agency to act within the framework, within the substantive authority that Congress has provided it in doing its job.

In leading the EPA, if confirmed, I think if I do that effectively, it will provide confidence, certainty to those that are regulated to know what is expected to them, and improve our air and improve our water because of that.

Senator ROUNDS. Thank you, Mr. Chairman.

Senator BARRASSO. Thank you, Senator Rounds.

Senator Markey.

Senator MARKEY. Thank you, Mr. Chairman.

This morning, NOAA, NASA has declared 2016 the hottest year in the 137-year-old record that has been kept. Donald Trump has

called global warming a hoax caused by the Chinese. Do you agree that global warming is a hoax?

Mr. PRUITT. I do not, Senator.

Senator MARKEY. So Donald Trump is wrong?

Mr. PRUITT. I do not believe that climate change is a hoax.

Senator MARKEY. OK. That is important for the President to hear.

Mr. Pruitt, you have made a career working on behalf of the fossil fuel industry to eviscerate regulations designed to protect public health and the environment. You have sued the EPA 19 times to stop clean air and water protections. Eight of those cases are still ongoing, including your litigation that challenges critical rules that reduce levels of hazardous smog, mercury, and carbon pollution.

As EPA Administrator, you would be in a position to serve as plaintiff, defendant, judge, and jury on these ongoing eight lawsuits, and that would be wrong. In your ethics agreement you have said that you would not participate in any matter that is ongoing litigation within 1 year. But Mr. Pruitt, isn't it correct that these lawsuits may very well continue for much longer than 1 year?

Mr. PRUITT. Well, Senator, I have the letter from the ethics counsel at the EPA, and the 1-year time period is intended to address covered entities, entities that I served in a chairmanship or an officer capacity. The Southern Theological Seminary, the Windows Ministry, those entities are covered entities. So if there is a matter that arises before the EPA within a 1-year period, a particular matter, a specific case that involves those entities, then the recusal would be in order. But that is really the focus of the 1-year timeline.

Senator MARKEY. So will you agree to recuse yourself from those lawsuits which you brought as the Attorney General of Oklahoma against the EPA, not just for 1 year, but for the entirety of the time that you are the Administrator of the EPA? Will you commit to doing that?

Mr. PRUITT. Senator, for clarity, I think that it is important to note that the 1-year time period, again, is for those covered entities that were highlighted in the EPA letter.

With respect to pending litigation, the EPA ethics counsel has indicated, with respect to particular matters and specific parties, there will be an opportunity to get counsel from the EPA at that point to determine what steps could be taken to avoid appearances of impropriety.

Senator MARKEY. Are you saying that you will not recuse yourself from the actual matters which you are suing the EPA on right now as Attorney General of Oklahoma for the time that you are the head of the EPA?

Mr. PRUITT. I am not saying that at all, Senator.

Senator MARKEY. You are saying that. Will you recuse yourself?

Mr. PRUITT. I am saying that the EPA ethics counsel has indicated those cases will require a review by the EPA ethics counsel, and if it involves a particular matter with a specific party then recusal would potentially be in order, and I would follow the guidance and counsel of EPA ethics.

Senator MARKEY. This is a clear line for the American public, given your record from Oklahoma in suing the EPA on all of these

matters, that if you don't agree to recuse yourself, then again you become plaintiff, defendant, judge, and jury on the cases that you are bringing right now as Attorney General of Oklahoma against the EPA, and the EPA is for all of the people of the United States, not just the fossil fuel industry of Oklahoma. So you are not committing—and I think that is a big mistake, Mr. Pruitt—to recuse yourself from those cases. It is critical.

Moreover, you also are in a position to initiate regulations that could overturn smog protections, carbon pollution protections that are right now on the books that you are suing as Attorney General of Oklahoma to overturn. Would you commit to not regulating, promulgating new regulations in any of the areas where you right now are suing the EPA? Would you make a commitment that you would recuse yourself from doing that?

Mr. PRUITT. Let me be clear, Senator, because we talked about this in your office, and I very much enjoyed the conversation that we had there in this area that we talked about. I have every willingness and desire to recuse, as directed by EPA ethics counsel, and if directed to do so, I will in fact do so, to recuse from those cases. There is a difference, as you know, between pending litigation in a particular matter with specific parties and prospective rulemaking. Rulemaking goes through a process.

Senator MARKEY. What the American people are expecting here is the EPA doesn't turn into every polluter's ally. The only way to ensure that is for you to recuse yourself from the cases that you have brought, because most of them are to overturn the clean air, clean water, smog regulations. So to create an appearance of independence, it is critical that you recuse yourself; otherwise—

Mr. PRUITT. And I will—

Senator MARKEY [continuing]. Otherwise, honestly, people are going to think that it is not just the fox guarding the hen house, it is the fox destroying the hen house, because you haven't distanced yourself from the actual litigation that you have initiated on most of the key issues that you are now going to have responsibility for protecting in terms of the public health of the entire country.

Mr. PRUITT. And Senator, I can say to you unequivocally I will recuse, as directed by EPA ethics counsel.

Senator MARKEY. And I am saying to you that you should just start out saying I am going to recuse myself from anything that relates to any litigation that I have initiated as the Attorney General of Oklahoma that questions the clean air, clean water, climate change, smog, or mercury protections which are right now on the books that the EPA is honored to protect. And if you don't do that, then we are going to have a fundamental conflict of interest that is presented by your presence as the Administrator of the EPA. It just gets down to being a matter as simple as that.

Senator BARRASSO. The Senator's time has expired. Thank you, Senator Markey.

For clarification, will you fully follow the advice of the EPA ethics counsel?

Mr. PRUITT. Yes, Mr. Chairman.

Senator BARRASSO. Thank you.

Just for additional clarification, regarding conflicts of interest, I note the letter to this Committee on January 4th that I am submitting to the record. “We”—this is the Office of Government Ethics—“believe that this nominee is in compliance with applicable laws and regulations governing conflicts of interest.”

And then there was a letter yesterday from Walter Shaub, Director, Office of Government Ethics, responding to a letter from Senator Carper and other EPW Democrats regarding Attorney General Pruitt and potential conflicts of interest, and they say, “If the Office of Government Ethics has transmitted a certified financial disclosure report and an ethics agreement to the Senate,”—which they have—“it means the Office of Government Ethics is satisfied that all financial conflicts of interest have been identified and resolved.”

Senator Ernst.

[The referenced information follows:]



**OGE Letter**

Any questions relating to potential conflicts for Attorney General Pruitt have been fully addressed by the Office of Government Ethics.

*Walter*  
✓ On January 17, 2017 Walter Shaub, Director, Office of Government Ethics, responded to a letter from Senator Carper and other EPW Democrats regarding Scott Pruitt and potential conflicts of interest:

*"[I]f OGE has transmitted a certified financial disclosure report and an ethics agreement to the Senate, it means that OGE is satisfied that all financial conflicts of interest have been identified and resolved."*

This follows the Attorney General Pruitt's OGE financial disclosure report and ethics agreement that was transmitted to this Committee on January 4, 2017. The transmittal letter states:

*"[W]e [OGE] believe that this nominee is in compliance with applicable laws and regulations governing conflicts of interest."*

I ask unanimous consent to enter the two OGE letters into the record.

UNITED STATES OFFICE OF  
GOVERNMENT ETHICS



January 17, 2017

The Honorable Thomas R. Carper  
Ranking Member  
Committee on Environment and  
Public Works  
United States Senate  
456 Dirksen Senate Office Bldg.  
Washington, DC 20510

The Honorable Benjamin L. Cardin  
United States Senator  
509 Hart Senate Office Bldg.  
Washington, DC 20510

The Honorable Bernard Sanders  
United States Senator  
332 Dirksen Senate Office Bldg.  
Washington, DC 20510

The Honorable Sheldon Whitehouse  
United States Senator  
530 Hart Senate Office Bldg.  
Washington, DC 20510

The Honorable Jeff Merkley  
United States Senator  
313 Hart Senate Office Bldg.  
Washington, DC 20510

The Honorable Kirsten Gillibrand  
United States Senator  
478 Russell Senate Office Bldg.  
Washington, DC 20510

The Honorable Cory A. Booker  
United States Senator  
359 Dirksen Senate Office Bldg.  
Washington, DC 20510

The Honorable Edward Markey  
United States Senator  
255 Dirksen Senate Office Bldg.  
Washington, DC 20510

The Honorable Tammy Duckworth  
United States Senator  
SD-G12 Dirksen Senate Office Bldg.  
Washington, DC 20510

Dear Ranking Member Carper and Senators Cardin, Sanders, Whitehouse, Merkley, Gillibrand, Booker, Markey, and Duckworth:

This responds to your letter of January 12, 2017, requesting specific information regarding the ethics review of a named individual who has been announced as an intended nominee of the President-elect. The U.S. Office of Government Ethics (OGE) generally avoids providing information about individual nominees, but believes that the information regarding the nominee financial disclosure process provided below is responsive to your request.

The Honorable Thomas R. Carper, et al.  
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It is necessary to avoid formally sharing information regarding OGE's work on individual nominations whenever releasing such information could undermine the purposes of the nominee ethics review process. As described below, preclearing a nominee financial disclosure report involves an extensive deliberative process between OGE, the nominee, and agency ethics officials. Accordingly, OGE adheres to this nondisclosure practice as closely as possible, particularly if other information may satisfy the interests underlying the request.

In this instance, additional information about OGE's work and the nomination process is provided below to address the concerns underlying your request. As explained below, if OGE has transmitted a certified financial disclosure report and an ethics agreement to the Senate, it means that OGE is satisfied that all financial conflicts of interest have been identified and resolved. Note that OGE is focused on financial conflicts of interest and not on what might be described as "intellectual conflicts of interest" or the political viewpoints of nominees, which are often the subject of media and public scrutiny of nominees but which are outside the scope of OGE's review. OGE's determination is based on the information contained in the report, the agency's advice regarding possible financial conflicts of interest, and whether the report complies with the Ethics in Government Act and government ethics regulations, all in light of the agency's functions and the nominee's proposed duties.

A nominee submits a draft public financial disclosure report (OGE Form 278e) through OGE's electronic filing system (*Integrity*). Ethics officials review the draft financial disclosure report, ask follow-up questions, and provide instructions for revising the report. Multiple rounds of questions and revisions are almost always exchanged before a report meets the complex disclosure requirements of the Ethics in Government Act.

We note that the disclosure requirements of the OGE Form 278e are dictated by the Ethics in Government Act.<sup>1</sup> Moreover, as your letter correctly stated, OGE's ethics review focuses on a nominee's personal financial interests, not a nominee's history of political solicitations and activity. Your letter asked about reportable positions and "affiliations." Nominees are required to report certain positions held, during the current calendar year and during the two-year period preceding such calendar year, as an officer, director, trustee, partner, proprietor, representative, employee, or consultant of any corporation, company, firm, partnership, or other business enterprise, any nonprofit organization, any labor organization, or any educational or other institution other than the United States.<sup>2</sup> They are not, however, required to report positions held in any religious, social, fraternal, or political entity or any positions solely of an honorary nature.<sup>3</sup> OGE's view is that a position with a political action committee, for example, qualifies for this exclusion from disclosure by virtue of being political in nature.

The exclusion does not extend, however, to earned income from an excluded position, which must be disclosed in Part 2 of the OGE Form 278e. Nominees must report salaries, fees, commissions, wages, and any other compensation for personal services (other than from

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<sup>1</sup> See 5 U.S.C. app. § 102.

<sup>2</sup> See 5 U.S.C. app. § 102(a)(6)(A).

<sup>3</sup> See *id.*

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United States Government employment) in excess of \$200 from any one source, including income from positions that need not be reported in Part I of the OGE Form 278e.<sup>4</sup>

Your letter also asked about reportable gifts. Nominees are not required to complete the portion of the report that covers gifts and travel reimbursements.<sup>5</sup>

Each nominee is legally responsible for ensuring that the information he or she reports is “true, complete and correct.”<sup>6</sup> The financial disclosure system does not require or authorize either OGE or agency ethics officials to independently investigate or verify the information that a nominee reports; however, OGE and agency ethics officials recognize that the reporting requirements are complex and work diligently to help each nominee to fully comply with the requirements based on the information the nominee provides. OGE and agency ethics officials review a nominee’s report for internal inconsistencies and self-evident omissions. OGE staff also asks extensive questions that lead to more complete reporting.

For this work, OGE’s staff draws on decades of collective experience in reviewing financial disclosure reports to help filers to identify the types of assets, positions, and liabilities that filers commonly overlook or forget to report. Examples of the types of items that OGE staff discusses with filers are found in sample checklists on OGE’s website.<sup>7</sup> Multiple rounds of questions and revisions are usually needed before a nominee’s report can be finalized. This back and forth process can take weeks or, in the case of extremely wealthy individuals, sometimes months. Through focused effort, OGE and agency ethics officials help nominees complete their reports as quickly as possible without sacrificing quality.

Once the nominee confirms that the report contains all of his or her legally reportable information, as a result of the revisions discussed above, OGE and agency ethics officials analyze the information contained in the report to identify potential conflicts of interest with the duties of the position for which the individual is being nominated. OGE and agency ethics officials then work together to prepare an ethics agreement. The ethics agreement outlines the specific steps a nominee will take to avoid the identified conflicts of interest and ensures that the nominee will be able to carry out his or her duties as a Presidential appointee. OGE and agency ethics officials draft each ethics agreement using standardized language from OGE’s ethics agreement guide, which is tailored to the nominee’s unique circumstances.<sup>8</sup> The nominee must agree to take the steps outlined in the agreement to resolve his or her conflicts of interest; for example, resignation of positions, divestiture of holdings, or recusal.

When the nominee has confirmed that the report is “true, complete and correct” and has agreed to take the steps outlined in the ethics agreement to resolve the identified conflicts of interest, OGE can begin to finalize its work. OGE ensures that it is satisfied that the report is

<sup>4</sup> See 5 C.F.R. § 2634.302(a)(1).

<sup>5</sup> See 5 C.F.R. § 2634.304(c).

<sup>6</sup> Public financial disclosure report filers must make the following certification: “I certify that the statements that I have made in this report are true, complete and correct to the best of my knowledge.” See OGE Form 278e, at 1.

<sup>7</sup> These checklists are available online at <https://www.oge.gov/Web/OGEP.nsf/03C9275C546F68A21C9525905600451E83.M11.E1?Financial%20Disclosure%20Checklists.pdf>.

<sup>8</sup> The OGE PAS Nominee Ethics Agreement Guide is available online at [https://www.oge.gov/Web/oge.nsf/Resources/PAS+Nominee+Ethics+Agreement+Guide+\(MS+Word\)](https://www.oge.gov/Web/oge.nsf/Resources/PAS+Nominee+Ethics+Agreement+Guide+(MS+Word)).

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complete and the ethics agreement has resolved all ethics issues. OGE then preclears the report (i.e., provides staff-level assurance that it is cleared for certification by OGE's Director). After OGE has precleared the report, the nominee must log back into the electronic filing system and formally file the report by certifying that the information in the finalized report is correct. Ethics officials at the agency to which the nominee is being nominated then review the report. If they are satisfied with the report, they certify the report and send it to OGE with an opinion indicating that all conflicts of interest have been resolved. Next, OGE reviews the report for final certification, certifies the report, and transmits both the report and the ethics agreement to the Senate.

Your letter asked whether there are "other avenues" that will require the nominee to disclose additional information to the Designated Agency Ethics Official (DAEO), if confirmed. When OGE certifies a report, it means that both the DAEO and OGE are satisfied that all potential conflicts of interest apparent at the present time have been identified and addressed. However, the nominee financial disclosure report is a snapshot in time. If confirmed, the nominee, after becoming an appointee, is subject to periodic transaction, annual, and termination financial disclosure reporting requirements.<sup>9</sup>

In addition, promptly after appointment, the nominee—now an appointee—must complete an initial ethics briefing. The initial ethics briefing must include the following content:<sup>10</sup>

(1) If the individual acquired new financial interests reportable under section 102 of the [Ethics in Government] Act after filing the nominee financial disclosure report, the agency ethics official must appropriately address the potential for conflicts of interest arising from those financial interests.

(2) The agency ethics official must counsel the individual on the basic recusal obligation under 18 U.S.C. 208(a).

(3) The agency ethics official must explain the recusal obligations and other commitments addressed in the individual's ethics agreement and ensure that the individual understands what is specifically required in order to comply with each of them, including any deadline for compliance. The ethics official and the individual must establish a process by which the recusals will be achieved, which may consist of a screening arrangement or, when the DAEO deems appropriate, vigilance on the part of the individual with regard to recusal obligations as they arise in particular matters.

<sup>9</sup> See 5 U.S.C. app. §§ 101(d), 101(e), 103(l).

<sup>10</sup> 5 C.F.R. § 2638.305(f) (2017). The recently updated regulations at 5 C.F.R. part 2638 are not yet in print but are available online at [http://www.eefi.gov/cgi-bin/ctricvel/CFR?op=&S|D=811bb7d7982fcb93026d480679936b&tr=PART&nr=5v3.0.10.11||se.5.3.2638\\_1305](http://www.eefi.gov/cgi-bin/ctricvel/CFR?op=&S|D=811bb7d7982fcb93026d480679936b&tr=PART&nr=5v3.0.10.11||se.5.3.2638_1305).

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(4) The agency ethics official must provide the individual with instructions and the deadline for completing initial ethics training, unless the individual completes the initial ethics training either before or during the ethics briefing.

In addition, the nominee must complete new employee ethics training and, later, annual ethics training.<sup>11</sup> An appointee must also demonstrate compliance with the ethics agreement signed as part of the nomination process. The DAEO works closely with the appointee to ensure full compliance.<sup>12</sup> OGE tracks ethics agreement compliance by requiring the DAEO to notify OGE when compliance efforts are complete. Finally, an appointee has an ongoing obligation to comply with ethics statutes and regulations, including the criminal conflict-of-interest laws, the Ethics in Government Act, and the *Standards of Ethical Conduct for Employees of the Executive Branch*.

In other words, even if a nominee has fully complied with the requirements of the nominee financial disclosure process, it is possible for that nominee, once confirmed, to face potential conflicts involving interests that were not identified or addressed in his or her financial disclosure report or ethics agreement. This potential is the reason for the executive branch requirements for briefings, training, ongoing disclosure, and consultations with agency ethics officials. Executive branch officials, especially those at the highest levels, should regularly seek the advice of their agency ethics officials in order to avoid potential conflicts of interest when performing the important duties with which the public has entrusted them.

I hope you have found the information provided regarding the nominee financial disclosure process helpful.

Sincerely,  
WALTER  
SHAUB

Walter M. Shaub, Jr.  
Director

Digitally signed by WALTER SHAUB  
DN: c=US, o=US Government, ou=Office of Government Ethics,  
email=WALTER.SHAUB@OGE.EOP  
1.3.25.2.1.0001.0001.0001.1.1.001910002  
64652  
Date: 2017.01.17 15:16:12 -0500

cc: The Honorable John Barrasso  
Chairman  
Committee on Environment and  
Public Works  
United States Senate  
307 Dirksen Senate Office Bldg.  
Washington, DC 20510

<sup>11</sup> See 5 C.F.R. §§ 2638.304, 2638.308 (2017).

<sup>12</sup> See 5 C.F.R. § 2638.104(c)(13) (2017).

UNITED STATES OFFICE OF  
**GOVERNMENT ETHICS**



JAN - 4 2017

The Honorable James M. Inhofe  
Chairman  
Committee on Environment and  
Public Works  
United States Senate  
Washington, DC 20510

Dear Mr. Chairman:

In accordance with the Ethics in Government Act of 1978, I enclose a copy of the financial disclosure report filed by Edward Scott Pruitt. President-Elect Trump has announced his intention to nominate Mr. Pruitt for the position of Administrator, Environmental Protection Agency.

We have reviewed the report and have obtained advice from the agency concerning any possible conflict in light of its functions and the nominee's proposed duties. Also enclosed is an ethics agreement outlining the actions that the nominee will undertake to avoid conflicts of interest. Unless a date for compliance is indicated in the ethics agreement, the nominee must fully comply within three months of confirmation with any action specified in the ethics agreement.

Based thereon, we believe that this nominee is in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,

A handwritten signature in black ink, appearing to read "Walter M. Shaub, Jr.", is written over a light blue horizontal line.

Walter M. Shaub, Jr.  
Director

Enclosures

Senator ERNST. Thank you, Mr. Chair.

Thank you, Attorney General Pruitt, for appearing in front of us today. I enjoyed our conversation, both one-on-one and then in a group setting as well, and I would like to go back and revisit our discussion on the RFS. As you know, Iowa is home to 43 ethanol refineries. We are the largest producer of ethanol west or east of the Missouri River.

President-elect Trump reiterated his support for biofuels while he was campaigning cross Iowa and all across the Midwest, and those areas of the country overwhelmingly supported his candidacy and led to his victory. And thank you for stating once again that you would honor his commitment to biofuels by carrying out the RFS as intended by Congress.

Policy certainty is key for economic growth, and this is something that we discussed in my office. Unfortunately, as a result of uncertainty surrounding the EPA's renewable fuel volume targets in 2014, 2015, and 2016, second generation biofuel investment decreased and proposed projects moved overseas. Fortunately, the EPA has recently changed its course and released updated volume targets for the RFS that meet the levels prescribed by Congress.

If confirmed as Administrator, what will you do to continue to provide certainty so that investment can continue to happen right here at home in the United States?

Mr. PRUITT. You know, Senator, as you indicated in our meeting, the importance of the infrastructure, the investment that has occurred in reliance upon the law was passed in 2005 and updated in 2007, and as I indicated earlier to Senator Fischer's question, the latitude discretion that has been given to the EPA Administrator with respect to waiving those statutory targets should be judiciously used. It shouldn't be automatic; it should be something that the EPA Administrator seeks to comply with and adhere to because of the will of this body.

So I think those waivers obviously are in order, but with respect to market conditions we have less consumption today, more fuel-efficient vehicles. Market conditions have changed since 2005, but despite that the EPA Administrator should not use that to undermine or to somehow put into question the commitments made by this body in the Renewable Fuel Standards statute.

Senator ERNST. Thank you for your commitment to the RFS and the intention of Congress.

I also want to touch on an issue you mentioned in your testimony, which is the level of fear and distrust many folks have of the EPA. When I am home in Iowa I host town halls all across the State and just want to hear what is going on in their communities, and what I hear, without fail, at these town halls is that folks are frustrated with the EPA and the gotcha mentality that has stemmed from the Agency. My constituents tell me the EPA is out to get them rather than work with them, and there is a huge lack of trust between many of my constituents and the EPA. And if we take a look specifically at the WOTUS rule, Iowans truly feel that the EPA ignored their comments and concerns, threw them under the rug and then just moved forward.

We know now that the EPA relied on gimmicky mass e-mails and social media events to prop up their message, and then they used



those tactics to insinuate that anyone who had reasonable concerns about the WOTUS rule are somehow in favor of dirty water, which is absolutely ridiculous. And this type of culture that was created under the Obama administration has no place, has no place here.

So, Mr. Pruitt, what do you plan to do in your first days as the Administrator to improve the relationships EPA has with the hard-working folks across the country?

Mr. PRUITT. Well, Senator, as I indicated in my opening statement, this paradigm that we live within today, that if you are pro-energy, you are anti-environment, if you are pro-environment, you are anti-energy, is something that I think is just a false narrative. We can do better than that. In fact, this country has shown for decades that we can grow our economy and be a good steward of our air, land, and water, and we need to get back to that.

Cooperative federalism is at the heart of many of the environmental statutes that have been passed by this body, and the reason for that is it is the States, many times, that have the resources, the expertise, and understanding what the unique challenges are for the environment and improving our water and our air. It is not that they don't care about it. Senator Whitehouse indicated a devolution of authority to the States would create a problem. That is not what I am advocating. And I think we hear in the marketplace we need a partnership, a true partnership between the EPA in performing its role along with the States in performing theirs. And if we had that partnership, as opposed to punishment, as opposed to uncertainty and duress that we currently see in the marketplace, I think we will have better air, better water quality as a result.

Senator ERNST. Thank you. I look forward to that partnership and transparency.

Thank you, Mr. Chair.

Senator BARRASSO. Thank you, Senator.

Senator Duckworth.

Senator DUCKWORTH. Thank you.

Mr. Pruitt, I want to clarify your response to Senator Ernst on this whole congressional intent when it comes to the RFS. What I want to know, and what the people of Illinois, we are also a great producer of ethanol, what we need to know is where exactly you stand on the RFS. Are you the Attorney General who only 3 years ago sided with big oil to slam the RFS? You said that RFS was "unworkable" and also that it was a "flawed program."

So I am a little confused by what you are saying today. Are you that Mr. Pruitt, or are you the Scott Pruitt today who is saying all the right things in this confirmation hearing and in these meetings to try to reassure pro-RFS States by repeating nice sounding, but ultimately vague and hollow mantra that, if confirmed, you would enforce the RFS law as written by Congress?

As you and I are quite well aware of, such a statement essentially dodges the critical issue for biofuels producers and workers, because under the law the EPA has considerable discretion to adjust the renewable volume obligation in a manner that you would argue is contrary to congressional intent, yet may be compliant with the explicit letter of the statute. So, as EPA Administrator, you could still technically be in compliance with Congress, with the

law, but actually be working against it; and your answers today have not clarified that.

So my question to you, Mr. Pruitt, is this: Which specific actions has EPA taken since 2007 while administering the RFS that you, in your view, are not consistent with congressional intent? Can you name any?

Mr. PRUITT. Thank you, Senator. The Administrator and the EPA routinely misses the statutory targets in publishing those each year, creating great uncertainty in the marketplace. In fact, in some years they have missed the timeline as far as submitting those targets by over a year; in some cases over 2 years.

Senator DUCKWORTH. OK, so let me ask you this, then. Yes or no, do you believe that Congress intended for the RFS to increase the amount of renewable fuel blended in our Nation's liquid transportation fuel supply, yes or no?

Mr. PRUITT. Without question.

Senator DUCKWORTH. Without question.

Mr. PRUITT. Yes.

Senator DUCKWORTH. All right. My second question, then, is—yes or no—do you believe Congress intended for the RFS to be a stable policy that drives private investment in the renewable energy industry?

Mr. PRUITT. Yes.

Senator DUCKWORTH. And finally, if confirmed, will you commit to opposing any and all proposals to move the point of obligation under the RFS program from refiners to blenders?

Mr. PRUITT. Senator, as you know, the EPA is actually involved in a comment period on that very issue, and to prejudge the outcome of that I think would be—I would not be able to do that. There are many aspects of the program, from the trading program, the monitoring of fraud in the system, that need to be better administered by the EPA. These have been administration issues. The EPA has created uncertainty. We talked about—a minute ago, with the Senator—about the amount of investment that has gone into the infrastructure because of the 2005 law. Those individuals need to have certainty and confidence that the RFS is going to be enforced and administered pursuant to the desires of Congress.

Senator DUCKWORTH. Right. But if you were to do that, then you would actually have to answer yes because to move the RFS program from refiners to blenders is actually one of those ways that you can actually undermine the RFS standards as intended by Congress, which you yourself just now said was intended to increase the amount of biofuels blended into the fuel supply of the United States.

This is my problem. On the one hand your entire track record shows you to be someone who opposes the RFS, and yet here in front of Congress and in meetings with Senators you are giving these vague answers that sound right when it comes to the RFS but really opens all sorts of back doors for you to oppose the Renewable Fuel Standard, and that is very troublesome because all across the Midwest—you know, for those of us who have fought to strengthen national security by lessening our country's dangerous dependence on foreign oil, I am really incredibly concerned about the future of the RFS on American-produced biofuels under a Scott

Pruitt-led EPA. And I am also incredibly concerned about what you are going to do in terms of protecting the environment.

In your answer to one of my colleagues about what the role of the EPA is, what is the job of the EPA, one of the first questions you got, you spent 5 minutes talking before you actually said protect the environment. You talked all about reducing EPA's influence over States for a good 5 minutes before you actually got to the environment. And then for my farmers, my corn and soybean producers for my biofuel industry, the RFS is critical in order to continue that. And I would rather burn American-made American-grown corn and soybean in my gas tank than I would oil from the Middle East. I have already been to a war fought over oil in the Middle East, and I don't intend to allow us to continue to do that, which is why the RFS is so critical not just for the jobs in Illinois, not just to support Illinois agriculture, but for our national security when it comes to where we are going to get our energy supply.

I am out of time. Thank you, Mr. Chairman.

Senator BARRASSO. Thank you, Senator Duckworth.

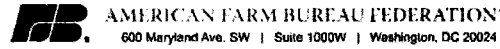
Mr. PRUITT. If I may, Senator, let me say to you the role of the Administrator of the EPA is to enforce and administer the RFS program to carry out the objectives of that statute. Those targets that have been put in that statute by this body need to be respected. The discretion authority, the waiver authority of the Administrator needs to be judiciously used to address those concerns that we talked about.

So I don't want you to have any concern about the intent, objective, or will, if confirmed, of carrying out the RFS mandate or the statute in its whole.

Senator DUCKWORTH. That very answer concerns me because you have not actually said that you are going to stick with it.

Senator BARRASSO. I would like to submit for the record two. One, a letter from the American Farm Bureau Federation which strongly supports the nomination of Scott Pruitt as Administrator of the U.S. Environmental Protection Agency and urges a vote in favor of his confirmation. The second is a letter from the Democrat Attorney General of the State of Arkansas, former Democrat Attorney General, Dustin McDaniel, who has this to say about Attorney General Scott Pruitt's work on the stem phosphorus levels in the Illinois River watershed. He said, "Recent press accounts regarding these efforts unfairly mischaracterize the work that was done by General Pruitt and his team. He was a staunch defender of sound science and good policy as appropriate tools to protect the environment of his State. I saw firsthand how General Pruitt was able to bridge political divides and manage multiple agency agendas to reach an outcome that was heralded by most credible observers as both positive and historic."

[The referenced information follows:]



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January 4, 2017

The Honorable John Barrasso  
Chairman  
The U.S. Senate Committee on Environment and Public Works  
410 Dirksen Senate Office Building  
Washington, D.C. 20510-6176

The Honorable Tom Carper  
Ranking Member  
The U.S. Senate Committee on Environment and Public Works  
456 Dirksen Senate Office Building  
Washington, D.C. 20510-6175

Dear Senator Barrasso and Senator Carper:

The American Farm Bureau Federation strongly supports the nomination of Scott Pruitt as Administrator of the U.S. Environmental Protection Agency (EPA) and urges you to vote in favor of his confirmation.

Scott Pruitt is an ideal nominee for EPA Administrator for many reasons, but his nomination should command respect from Senators for one reason above all: he has profound respect for the laws written by Congress. In contesting EPA's 'waters of the US' (WOTUS) rule, Mr. Pruitt is in fact defending the bipartisan view of Congress that the agency has illegally overstepped its bounds and ignored the U.S. Supreme Court. Similarly, in the stance he has taken on the Clean Power Plan, he is defending Congress: in 2009, the Senate failed even to take up for debate the cap-and-trade plan narrowly approved by the House. Mr. Pruitt very soundly takes the view that Congress has not authorized the sweeping attempt by EPA to coerce action by the states.

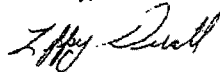
No one cares more about the responsible stewardship of our land, air, and water than American farmers and ranchers. Our livelihoods depend on it. In recent years, farmers and ranchers have suffered under burdensome, unnecessary and, too often, unlawful federal regulations promulgated by the EPA. We desperately need an administrator who understands the challenges our farmers and ranchers face in producing safe, wholesome and affordable food for our nation and the world.

Some activists are attempting to characterize this as a debate over environmental goals. Nothing could be further from the truth. It is about respect for the law and for an agency that will live within the statutory programs Congress has authorized. AFBF supports Scott Pruitt for EPA administrator because he will restore respect for the law and enforce it fairly. Further, he understands how and when federal power should be exercised. We support him because he has

demonstrated a keen understanding of the devastating economic implications of federal overreach.

Scott Pruitt will put the EPA back on track and ensure that federal decisions are based on sound science, not politics. He will produce a fair regulatory environment that respects the rule of law. We urge his confirmation.

Sincerely,

A handwritten signature in black ink, appearing to read "Zippy Duvall". The signature is fluid and cursive, with a large initial "Z" and a long, sweeping tail.

Zippy Duvall  
President

**Phosphorous levels in the Illinois River watershed**

Dustin McDaniel, the former *Democratic* Attorney General of the State of Arkansas, had this to say about Attorney General Scott Pruitt's work to stem phosphorous levels in the Illinois River watershed:

*"The resulting agreement reflects that Oklahoma enhanced, not relaxed, its enforcement of environmental protections. Scientists were appointed to establish the proper water quality metrics, establish a binding standard, and at no time were phosphorous abatement measures relaxed. It was an historic moment that demonstrated that cooperation in pursuit of environmental protection yielded better results than litigation." ✦*

*"Recent press accounts regarding these efforts unfairly mischaracterize the work that was done by General Pruitt and his team. He was a staunch defender of sound science and good policy as appropriate tools to protect the environment of his state. I saw firsthand how General Pruitt was able to bridge political divides and manage multiple agency agendas to reach an outcome that was heralded by most credible observers as positive and historic." ✦*

~~ask unanimous consent to insert the McDaniel letter into the record.~~

\* letter dated Jan 18, 2017



DUSTIN MCDANIEL • SCOTT RICHARDSON • BART CALHOUN  
Attorneys at Law / 1020 W. Fourth St., Suite 410, Little Rock, AR 72201  
o / 501.235.8336 f / 501.588.2104

January 18, 2017

The Honorable John Barrasso  
Chairman, U.S. Senate Committee  
on Environment & Public Works  
410 Dirksen Senate Office Building  
Washington, D.C. 20510

The Honorable Tom Carper  
Ranking Member, U.S. Senate Committee  
on Environment & Public Works  
456 Dirksen Senate Office Building

*Re: Attorney General Scott Pruitt's  
Nomination To Serve As Director of the  
Environmental Protection Agency*

Dear Chairman Barrasso, Ranking Member Carper, and Members of the U.S. Senate  
Environment and Public Works Committee,

My name is Dustin McDaniel. I am an attorney in Little Rock, Arkansas. I served as the Democratic Attorney General of the State of Arkansas from 2007-2015. During that time, I served for three years as the Co-Chair of the Democratic Attorneys General Association. I am a member of the Democratic National Committee and was a strong supporter of Secretary Clinton's campaign for President. I am grateful for your work on this committee. I believe in the core mission of the Environmental Protection Agency. I believe that climate change is real and overwhelmingly the result of human activity. I believe that the United States has a moral obligation to lead the world in shaping climate policy. These challenges in a hostile political environment will be acutely felt by the next director of the EPA.

As you consider the nomination of my friend Scott Pruitt, I respectfully ask that you enter this letter into the record so that I may attempt to clarify what I believe to be unfair criticisms of the historic agreement negotiated between myself on behalf of the State of Arkansas and Attorney General Pruitt on behalf of the State of Oklahoma regarding water quality in the Illinois River watershed.

Prior to the elections of General Pruitt or myself, Oklahoma grappled with Arkansas municipal water systems and Arkansas industry, primarily poultry companies, over increased phosphorous levels in the Illinois River watershed. Pollution was substantially impacting the water quality in one of Oklahoma's most scenic waterways. In 2003, an agreement was executed that would require that the phosphorus levels be reduced over the next 10 years to a level .037 parts per million. As a result, all parties on both sides of the state line worked diligently to substantially improve the water quality.

Dustin McDaniel letter to U.S. Senate  
Environment and Public Works Committee  
January 17, 2017  
Page 2 of 2

At the same time, then-Oklahoma Attorney General Drew Edmondson filed suit using an out of state plaintiffs' firm against Arkansas's poultry industry. Many criticized the litigation as taking the focus away from the environment and placing it on money damages. The State of Oklahoma's outside counsel presented their case to U.S. District Court Judge Gregory Frizzell. Almost all the claims were dismissed by the court. The evidence was fully submitted to the judge in March of 2010 on the remaining question regarding injunctive relief. To this day, no ruling in that litigation has been handed down.

As 2013, the ten-year deadline for the reduced phosphorus levels, was approaching, two things were evident: 1.) despite huge improvements in water quality, the phosphorus levels in the river would not be at .037 parts per million before the deadline, and 2.) research into the standard itself called into question its origin and basis in hard science.

The States of Arkansas and Oklahoma were facing a point of litigating against one another (again) over this issue to the detriment of all concerned. I approached General Pruitt to ask if we could reach a solution that would protect the environment and demonstrate to our citizens that we were committed to working together on their behalf rather than litigating against one another using taxpayer dollars for lawyers instead of scientists.

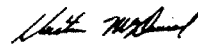
The resulting agreement reflects that Oklahoma enhanced, not relaxed, its enforcement of environmental protections. Scientists were appointed to establish the proper water quality metrics, establish a binding standard, and at no time were phosphorous abatement measures relaxed. It was an historic moment that demonstrated that cooperation in pursuit of environmental protection yielded better results than litigation. The resulting report was recently released from the commission and is available for your review. (*See, [www.ok.gov/conservation/documents/IR%202016.12.19%20Final%20Report.pdf](http://www.ok.gov/conservation/documents/IR%202016.12.19%20Final%20Report.pdf)*)

Recent press accounts regarding these efforts unfairly mischaracterize the work that was done by General Pruitt and his team. He was a staunch defender of sound science and good policy as appropriate tools to protect the environment of his state. I saw firsthand how General Pruitt was able to bridge political divides and manage multiple agency agendas to reach an outcome that was heralded by most credible observers as both positive and historic.

As I am sure that this committee will have questions about this matter, I wanted to take this opportunity to add facts and context to an accomplishment that should stand as a credit to General Pruitt's career and qualifications for this nomination.

I sincerely appreciate the opportunity to submit this letter to you and to your committee and to be a part of the record in these proceedings. I thank you for your service to our nation.

Respectfully submitted,



Dustin McDaniel

DM/bw



Senator BARRASSO. Senator Boozman.

Senator BOOZMAN. Thank you, Mr. Chairman.

And thank you, Attorney General Pruitt, for your willingness to serve, and your family. I think everybody at the dais here realizes these really are family affairs that truly affect everyone.

In recent years EPA has made it increasingly difficult for Arkansas to manage its delegated national pollutant discharge elimination system. Too often the permits, rulemakings, or other actions sent to EPA for review are returned with demands far more restrictive, additional expensive data collection is required, and other costly onerous requirements. New leadership at EPA has an opportunity to correct this coercive federalism and instead restore cooperative federalism as intended. The States have the expertise and local knowledge necessary to administer environmental programs.

Mr. Pruitt, EPA has the opportunity to play a significant role in supporting a move back to cooperative federalism. Can you please explain how you plan to change the EPA's State dynamic?

My experience with EPA, and being on transportation in the House, being Ranking Member on water there, Ranking Member of the Senate is the EPA, their attitude is we are with you unless you come out with a finding that is contrary, and then we are going to do it our way. So can you address that?

Mr. PRUITT. I think two things, Senator. One, as we indicated earlier, rule of law and making sure that the authority granted to the States under State implementation plans, delegation under certain clean water provisions, that that is respected. But also I think the EPA needs to provide more assistance to the States and work in partnership and be proactive. Those regional administrators that we have across the country need to be seen as partners and not adversaries.

So I think restoring that confidence, restoring that relationship and seeking to do so is very, very important in carrying out this partnership that we know exists under the various environmental statutes.

Senator BOOZMAN. Very good.

For the past 8 years, EPA has acted as a political arm of the Obama administration time and time again. We have seen rules developed not based on sound science but on political ideology. When rules have been released, States and private sector—and even Congress—have had trouble getting EPA to show the science that helped develop these rules.

Under your leadership can we expect EPA to be more transparent, in other words, how the rules are being developed, the science behind them? And you have continued to allude to this, and I think it is so important, as Administrator of the EPA, can we count on you to base all of your decisions on the rule of law, not on the Administrator's or even your own political ideology?

Mr. PRUITT. Absolutely, Senator, in response to the latter point of your question. Public participation is important. There is a reason why, in rulemaking, that you take comment. There is a reason, as I indicated earlier to Senator Ernst, that you involve those that are impacted by rulemaking, because you want to understand the impact, both economically and otherwise, in the benefit of the environment as well as making sure that you craft rules and regula-

tions that take all those things into consideration. So hearing the voices of all Americans in that rulemaking process, responding to those comments in the record before rules are finalized, transparency, objectivity, a commitment to process is very important, in my view, of restoring the confidence of the American people in the rulemaking processes that occur here in Washington, DC.

Senator BOOZMAN. So, again, releasing the scientific data behind that would be something that you would very much support?

Mr. PRUITT. Yes, Senator.

Senator BOOZMAN. A problem with the EPA the EPW Committee has faced with the current Administration is a lack of communication. Time and time again EPA either did not respond to questions from Committee members or at the very least took months to respond. Under your leadership can we expect EPA to get Committee members answers in a timely fashion?

Mr. PRUITT. Yes, Senator. As I indicated in my opening statement, listening is an important role of leadership, and listening to the voices of folks here in Congress. As I went through and met with many of you through this process, there were issues particular to your State that you made me aware of, and I, if confirmed as EPA Administrator, seek to be very active in listening to the needs with respect to your various States and respond to this body with respect to questions.

Senator BOOZMAN. Let me just comment on the Arkansas-Oklahoma issue. I was the Congressman in that district, so I inherited that in 2001. I have been working on this for 15 years. And I appreciate you and Attorney General McDaniel doing a very good job of getting things done. On the other hand, the idea that somehow you were soft, in fact, I would argue that the agreement that was reached was way too restrictive and is probably one of the most restrictive watersheds as far as phosphorus requirements of anyplace in the United States.

Mr. PRUITT. Well, as you know, Senator, in that process we actually selected a biologist from Baylor University to engage in a scientific study on what the phosphorus levels should be, the numeric quality of the water, and it was determined at the end of that process that .037 was the right standard and is now enforceable on both sides of the border for the first time in history. So it is a very important outcome.

Senator BOOZMAN. No, I understand, and I commend you on the process. You know, the implication here is somehow, you know, you came up with a deal that was too soft, and if anything I would argue that it was perhaps a little bit too harsh. But I do appreciate the process. I know that you and our former Attorney General were able to do something that had been going on for decades.

Mr. PRUITT. Thank you, Senator.

Senator BARRASSO. You have been at it now for about 2 hours. If you can stay with us 'til we finish the first round of questioning; we have about five or six additional questions coming.

Senator Harris is next, and then we will break at about 12:30, if that is all right.

Senator CARPER. Can I make a unanimous consent request, Mr. Chairman?

Senator BARRASSO. Yes, sir.

Senator CARPER. I would like to ask unanimous consent to submit for the record the legal brief against the Mercury and Air Toxics rule which Mr. Pruitt supported. Stated in that brief, I will just quote it, it says, "Human exposure to methylmercury resulting from coal-fired electric-generating utilities is exceedingly small." That is the quote.

Also ask unanimous consent to submit for the record a recent article that quotes, I think from the New York Times, it quotes a 40-year career employee of the Oklahoma Department of Environmental Quality that has him saying these words: "Mr. Pruitt has advocated and stood up for the profits of businesses, be it poultry companies or the energy industry and other polluters, at the expense of people who have to drink the water or breathe the air."

Other statements have been introduced for the record saying quite a different thing about Mr. Pruitt. I think it is only fair to go to someone who has worked there for 40 years that has quite a different view than the one than the witness has expressed.

Thank you.

Senator BARRASSO. Without objection.  
[The referenced information follows:]

Nos. 14-46, 14-47, 14-49

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IN THE  
**Supreme Court of the United States**

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STATE OF MICHIGAN, ET AL.,  
*Petitioners,*

v.

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY, ET AL.,  
*Respondents.*

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**On Writs of Certiorari to the  
United States Court of Appeals  
for the District of Columbia Circuit**

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**BRIEF OF PETITIONER  
UTILITY AIR REGULATORY GROUP, ET AL.**

---

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January 20, 2015 *Counsel for Petitioner*

[Counsel for Respondents in Support of Petitioner Joining  
in This Brief Are Listed Inside This Cover]

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**COUNSEL FOR RESPONDENTS IN SUPPORT OF  
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Energy Center, LLC*

**QUESTION PRESENTED**

Whether the Environmental Protection Agency unreasonably refused to consider costs in determining whether it is appropriate to regulate hazardous pollutants emitted by electric utilities.

## **PARTIES TO THE PROCEEDING**

Petitioners in No. 14-46 are the States of Michigan, Alabama, Alaska, Arizona, Arkansas (ex rel. Dustin McDaniel, Attorney General), Idaho, Indiana, Iowa (Terry E. Branstad, Governor of the State of Iowa on behalf of the People of Iowa), Kansas, Kentucky (Jack Conway, Attorney General of Kentucky), Mississippi, Missouri, Nebraska, North Dakota, Ohio, Oklahoma, South Carolina, Texas, Utah, West Virginia, and Wyoming, and the Texas Commission on Environmental Quality, the Texas Public Utility Commission, and the Railroad Commission of Texas. Petitioner in No. 14-47 is the Utility Air Regulatory Group. Petitioner in No. 14-49 is the National Mining Association. Each petitioner in these consolidated cases was also a petitioner in the court of appeals.

Respondents herein, which were the respondents below, are the United States Environmental Protection Agency, and Gina McCarthy, Administrator, United States Environmental Protection.

Respondents who were petitioners in the court of appeals are: White Stallion Energy Center, LLC; American Public Power Association; ARIPPA; Chase Power Development, LLC; Edgecombe Genco, LLC; FirstEnergy Generation Corporation; Gulf Coast Lignite Coalition; Institute for Liberty; Julander Energy Company; Kansas City Board of Public Utilities; Midwest Ozone Group; National Black Chamber of Commerce; Oak Grove Management Company, LLC; Peabody Energy Corporation; Puerto Rico Electric Power Authority; Spruance Genco, LLC; State of Florida; Commonwealth of Pennsylvania; Commonwealth of Virginia; Tri-State Generation and Transmission Association, Inc.; United Mine Workers of

America; West Virginia Chamber of Commerce, Inc.; Georgia Association of Manufacturers, Inc.; Indiana Chamber of Commerce, Inc.; Indiana Coal Council, Inc.; Kentucky Chamber of Commerce, Inc.; Kentucky Coal Association, Inc.; North Carolina Chamber; Ohio Chamber of Commerce; Pennsylvania Coal Association; South Carolina Chamber of Commerce; The Virginia Chamber of Commerce; The Virginia Coal Association, Incorporated; West Virginia Coal Association, Inc.; Wisconsin Industrial Energy Group, Inc.; Wolverine Power Supply Cooperative, Inc.; Chesapeake Climate Action Network; Conservation Law Foundation; Environmental Integrity Project; and Sierra Club.

Respondent-intervenors in the court of appeals (with respect to certain petitions for review) were Commonwealth of Massachusetts; State of California; State of Connecticut; State of Delaware; State of Illinois; State of Iowa; State of Maine; State of Maryland; State of Minnesota; State of New Hampshire; State of New Mexico; State of New York; State of North Carolina; State of Oregon; State of Rhode Island; State of Vermont; City of Baltimore; City of Chicago; City of New York; District of Columbia; County of Erie, New York; Calpine Corporation; Chase Power Development, LLC; Exelon Corporation; National Grid Generation LLC; Public Service Enterprise Group, Inc.; Gulf Coast Lignite Coalition; Institute for Liberty; Lignite Energy Council; National Black Chamber of Commerce; National Mining Association; Oak Grove Management Company, LLC; Peabody Energy Corporation; Sunflower Electric Power Corporation; Tri-State Generation and Transmission Association, Inc.; Utility Air Regulatory Group; White Stallion Energy Center, LLC; Amer-



ican Academy of Pediatrics; American Lung Association; American Nurses Association; American Public Health Association; Chesapeake Bay Foundation; Citizens for Pennsylvania's Future; Clean Air Council; Conservation Law Foundation; Environment America; Environmental Defense Fund; Izaak Walton League of America; National Association for the Advancement of Colored People; Natural Resources Council of Maine; Natural Resources Defense Council; Ohio Environmental Council; Physicians for Social Responsibility; Sierra Club; and Waterkeeper Alliance.

A respondent in the court of appeals (with respect to certain petitions for review) was Lisa Perez Jackson, Administrator, United States Environmental Protection Agency. Ms. Jackson ceased to hold the office of Administrator, United States Environmental Protection Agency, on February 15, 2013; that office is currently held by Gina McCarthy, Administrator, United States Environmental Protection Agency.

## **RULE 29.6 DISCLOSURE STATEMENTS**

### **Petitioner**

**Utility Air Regulatory Group** (“UARG”) is an ad hoc, unincorporated association of individual electric generating companies and industry trade associations that participates on behalf of its members collectively in administrative proceedings under the Clean Air Act, and in litigation arising from those proceedings, that affect electric generators. UARG has no outstanding shares or debt securities in the hands of the public and has no parent company. No publicly held company has a 10% or greater ownership interest in UARG.

### **Respondents in Support of Petitioner**

**American Public Power Association** (“APPA”) is a nonprofit trade association whose members are units of state and local governments that own and operate electric generating, distribution and transmission assets. APPA addresses issues of interest to its members, including those issues related to the development and implementation of requirements under federal and state Clean Air Act programs. APPA does not have any outstanding securities in the hands of the public, nor does APPA have a publicly owned parent, subsidiary, or affiliate.

**ARIPPA** is a non-profit trade association that represents a membership primarily comprised of electric generating plants using environmentally-friendly circulating fluidized bed boiler technology to convert coal refuse and/or other alternative fuels such as biomass into alternative energy and/or steam, with the resultant alkaline ash used to reclaim mine lands. ARIPPA was organized in 1988

for the purpose of promoting the professional, legislative and technical interests of its member facilities. ARIPPA has no outstanding shares or debt securities in the hands of the public and does not have any parent, subsidiary, or affiliate that has issued shares or debt securities to the public.

**Gulf Coast Lignite Coalition** (“GCLC”) is a non-profit corporation organized under the laws of the State of Texas and comprised of individual electric generating and mining companies. GCLC participates on behalf of its members collectively in proceedings brought under United States environmental regulations, and in litigation arising from those proceedings, which affect electric generators and mines. GCLC has no outstanding shares or debt securities in the hands of the public and has no parent company. No publicly held company has a 10% or greater ownership interest in GCLC.

**Kansas City Board Of Public Utilities- Unified Government Wyandotte County/Kansas City, Kansas** is not required to provide a Rule 29.6 Disclosure Statement because it is a governmental entity organized under the laws of the State of Kansas. Accordingly, no Disclosure Statement is being provided.

**White Stallion Energy Center, LLC** (“WSEC”) is a limited liability company organized under the laws of the State of Texas engaged in the business of energy development and production. Maris Investment Company, LLC, and Sky Global Partners, LLC each hold a 10% or greater ownership interest in it.

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## OPINIONS BELOW

The majority opinion of the D.C. Circuit is reported at 748 F.3d 1222 (D.C. Cir. 2014) (*per curiam*), and reproduced in the Utility Air Regulatory Group (“UARG”) petitioner’s appendix (“Pet. App.”) at Pet. App. 3a-72a. The dissent of Judge Brett Kavanaugh is reproduced at Pet. App. 73a-104a.

## JURISDICTION

The D.C. Circuit entered judgment denying (and, in the case of No. 12-1174, dismissing) the petitions for review on April 15, 2014. Pet. App. 1a-2a. This Court has jurisdiction under 28 U.S.C. §1254(1).

## STATUTORY AND REGULATORY PROVISIONS INVOLVED

Section 112(n)(1)(A) of the Clean Air Act (“CAA” or “Act”), 42 U.S.C. §7412(n)(1)(A), provides:

### **(n) Other provisions**

#### **(1) Electric utility steam generating units**

(A) The Administrator shall 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) of this section after imposition of the requirements of this chapter. The Administrator shall report the results of this study to the Congress within 3 years after November 15, 1990. The Administrator shall develop and describe in the Administrator’s report to Congress alternative control strategies for emissions which may warrant regulation under this section. The Administrator shall regulate electric utility

steam generating units under this section, if the Administrator finds such regulation is appropriate and necessary after considering the results of the study required by this subparagraph.

This provision and additional excerpts from 42 U.S.C. §7412 are reproduced at Pet. App. 477a-505a.

The Mercury and Air Toxics Standards rule at issue, 77 Fed. Reg. 9304 (Feb. 16, 2012) (“MATS Rule”), is reproduced in excerpted form at Pet. App. 105a-476a and in full in the appendix filed with the National Mining Association’s (“NMA”) petition for a writ of certiorari at NMA App. 196a-1160a.

## INTRODUCTION

CAA §112(n), 42 U.S.C. §7412(n), provides that the U.S. Environmental Protection Agency (“EPA” or “Agency”) Administrator shall regulate electric utility steam generating unit (“EGU”) hazardous air pollutant (“HAP”) emissions “under this section,” if she “finds [that] *such regulation* is appropriate and necessary” to address “hazards to public health” that remain “*after* imposition of the requirements of this [Act].” §7412(n)(1)(A) (emphases added).<sup>1</sup> Because

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<sup>1</sup> The §7412(n)(1)(A) study refers to “hazards to public health reasonably anticipated to occur” as a result of exposure to remaining EGU emissions. Generally, the word “hazard” refers to a *potential* source of harm and the word “risk” is the *likelihood* of harm resulting from exposure to a hazard. Section 7412(n) provides that the “hazard” at issue is a threat to “public health” and the “risk” of that hazard occurring cannot be remote or speculative, but must be “reasonably anticipated to occur.” In managing carcinogenic hazards of the kind referenced in the §7412(n) study, EPA has found risk estimates as high as one predicted mortality in ten thousand to be presumptively “safe”

residual risk provisions like §7412(n)(1)(A) address diminishing increments of air pollution, they require balancing substantial costs to society against shrinking benefits.

In the MATS Rule, the quantified costs of HAP regulation are more than one-thousand times greater than the quantified benefits: \$9.6 billion versus \$4 to \$6 million. EPA says that Congress' direction to regulate specific HAP emissions posing remaining "hazards to public health" only if "appropriate and necessary" authorizes the Agency to regulate, at enormous cost, HAP emissions that present only environmental risks or de minimis health hazards. That interpretation is as curious as it is wrong.

### STATEMENT OF THE CASE

#### I. Regulation of EGU HAP Emissions Under the CAA.

Numerous times after passage of the CAA in 1970, EPA evaluated the electric utility industry for potential §7412 regulation. Every time EPA came to a consistent scientific conclusion: the public health risks presented by EGU HAP emissions are vanishingly small and are adequately regulated through other CAA programs. This history informed Congress' treatment of EGUs in the 1990 CAA Amendments.

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and, at the other end of the spectrum, risks of one-in-one million or less to be too remote to require protection. *Infra* pp. 4-5. Hereafter, references to "public health risk" and "health hazards" are used interchangeably to refer to "hazards to public health reasonably anticipated to occur."



### A. CAA HAP Regulation Prior to 1990.

Prior to the 1990 Amendments, §7412 required EPA to develop a list of individual HAPs for regulation, and then to develop emission standards for each listed HAP as needed to provide an “ample margin of safety” to protect public health. Pub. L. No. 91-604, 84 Stat. 1676, 1685 (1970); 42 U.S.C. §1857c-7(a)(1), (b)(1)(B) (1970). In establishing these emission standards, EPA interpreted the “ample margin of safety” language to authorize a risk management decision considering “all health information...as well as other relevant factors including costs and economic impacts, technological feasibility, and other factors relevant to each particular decision.” 54 Fed. Reg. 38,044, 38,045 (Sept. 14, 1989).

Under EPA’s pre-1990 approach to developing HAP emission standards, EPA first established “a ‘safe’ or ‘acceptable’ risk level...considering all health information...[with] ‘an MIR (maximum individual risk) of approximately 1 in 10 thousand...[as] the upper-end of the range of acceptability.’” EPA, EPA-453/R-99-001, Residual Risk Report to Congress at ES-11 (Mar. 1999), *available at* [http://www.epa.gov/ttn/oarpg/t3/reports/risk\\_rep.pdf](http://www.epa.gov/ttn/oarpg/t3/reports/risk_rep.pdf) (“EPA Residual Risk Report”). In providing an ample margin of safety considering “other relevant factors including costs, economic impacts, [and] technological feasibility,” EPA considered alternative standards addressing risks between one-in-ten thousand and one-in-one million to determine a protective level. *Id.*

Over this same period, the CAA required EGUs to install controls for a variety of conventional, non-hazardous pollutants, including flue gas desulfuriza-

tion systems (known as “scrubbers”) for sulfur dioxide (“SO<sub>2</sub>”) emissions and fabric filters or electrostatic precipitators for particulate matter (“PM”) emissions. HAPs in EGU combustion gas streams were also reduced by these controls.<sup>2</sup> Reflecting the fact that emissions of HAPs constituted a miniscule percentage of all EGU emissions, every EPA evaluation of EGU HAP emissions prior to the 1990 CAA concluded that those emissions did not pose a significant public health risk. 40 Fed. Reg. 48,292, 48,297, 48,298 (Oct. 14, 1975) (mercury); 52 Fed. Reg. 8724, 8725 (Mar. 19, 1987) (mercury); see also 48 Fed. Reg. 15,076, 15,085 (Apr. 6, 1983) (radionuclides); 54 Fed. Reg. 51,654, 51,671-72 (Dec. 15, 1989) (radionuclides).

In the case of radionuclides, for example, EPA found that EGU emission levels were “safe” because no facility had a risk above one-in-ten thousand (the highest risk from an EGU was one-in-seventy-five-thousand). EPA estimated that 130,000 people in the U.S. were potentially exposed to health risks greater than one-in-one million, and that the cost of

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<sup>2</sup> EPA, *The Benefits and Costs of the Clean Air Act, 1970 to 1990*, at 39 (Oct. 1997), available at <http://www.epa.gov/cleanairactbenefits/retro.html> (“Control of [hazardous air] pollutants resulted...from incidental control due to criteria pollutant programs...”); see also 65 Fed. Reg. 79,825 (Dec. 20, 2000) (“Notice of Finding”), Pet. App. 621a-622a; 70 Fed. Reg. 15,994 (Mar. 29, 2005) (“2005 Correction Rule”) (correcting certain conclusions drawn in 2000), Pet. App. 587a; EPA, EPA-453/R-98-004a, *Study of Hazardous Air Pollutant Emissions from Electric Utility Steam Generating Units—Final Report to Congress*, Vol. 1 (Feb. 1998), Docket No. EPA-HQ-OAR-2009-0234-3052 (“Utility Study”) (estimating utility HAP emissions in 1990), Joint Appendix (“JA”) 69.

reducing those risks would require \$13 billion in capital costs plus \$4.4 billion in annual costs. 54 Fed. Reg. at 51,671-72. Weighing the public health risks and costs, EPA concluded that existing radionuclide emissions were at levels that protected public health “with an ample margin of safety.” *Id.* at 51,672.

As for non-EGU HAP sources, the difficulty of risk characterizations and controversy surrounding a program that could impose substantial costs on key industries resulted in limited HAP emissions regulation under §7412 prior to 1990. As of 1990, EPA had listed only eight HAPs for regulation under §7412, and had regulated emissions of only seven of those for a limited number of source categories. 40 C.F.R. pt. 61; see *New Jersey v. EPA*, 517 F.3d 574 (D.C. Cir. 2008).

#### **B. Statutory Changes to the CAA in 1990.**

*Non-EGU HAP emissions*—Dissatisfied with the slow progress of regulation under §7412, Congress in 1990 amended that provision to introduce a new, control technology-driven approach to ensure prompt regulation of HAPs from the many stationary source categories that had not yet been regulated. See S. Rep. No. 101-228, at 131-33 (1989), *reprinted in* 1990 U.S.C.C.A.N. 3385, 3516-18. Congress listed 189 HAPs for regulation, §7412(b), and defined in objective terms the source categories whose HAP emissions were to be regulated. A source category would be listed for regulation if a source within that category is located at a facility that emits more than either 10 tons of any one HAP or 25 tons of all HAPs. §7412(a)(1), (c)(1).

For listed categories, Congress, as it had under other CAA programs, called upon EPA initially to promulgate “technology-based” emission standards<sup>3</sup> under §7412(d), and later to consider more stringent standards under §7412(f) if unacceptable risks remained after implementation of the technology-based standards. Cf. Visibility Protection Program, 42 U.S.C. §7491(b)(2)(A) (“best available retrofit technology” (“BART”)) & (B) (“long term...strategy” to reduce risk of visibility impairment).

Technology-based emission standards are found throughout the CAA and have two common elements: (1) Congress identifies a universe of technologies (*i.e.*, low emitting measures, processes, systems or techniques) upon which standards will be based (thus creating a “floor” on required reductions), and (2) Congress requires that costs, energy, and other factors be considered in setting standards based on the candidate technologies. See, *e.g.*, 42 U.S.C. §§7411(a)(1) (“best system of emission reduction”), 7479(3) (“best available control technology” (“BACT”)), 7491(b)(2)(A) (BART). For source categories listed under §7412, EPA must establish what EPA calls MACT (“maximum achievable control technology”) emission standards, which reflect the “maximum degree of reduction in emissions” that is “achievable” for new and existing sources within the category, “taking into consideration the cost of achieving such emission reduction” and other factors. §7412(d)(2).

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<sup>3</sup> Emission reduction “technology” includes virtually any measure or technique that limits the emissions of a pollutant, from process changes to emission control equipment. See, *e.g.*, §7412(d)(2).

For new sources, the universe of technologies considered in this MACT standard-setting inquiry is determined in the first instance in reference to the degree of emission limitation “achieved in practice by the best controlled similar source.” §7412(d)(3). For existing sources, it is determined in reference to the “best performing...existing sources.” *Id.* EPA must establish MACT for every individual HAP emitted by major sources in a listed category. *Nat’l Lime Ass’n v. EPA*, 233 F.3d 625, 633-34 (D.C. Cir. 2000). Finally, EPA must review MACT standards at least every eight years to account for “developments in practices, processes, and control technologies” for specific HAPs, considering costs. §7412(d)(6); *Ass’n of Battery Recyclers, Inc. v. EPA*, 716 F.3d 667, 673-74 (D.C. Cir. 2013) (*per curiam*).

Following implementation of §7412(d) standards, the Administrator must consider regulation of residual *public health* risks posed by individual HAP emissions if needed to provide an “ample margin of safety to protect public health in accordance with this section (*as in effect before November 15, 1990*),” §7412(f)(2)(A) (emphasis added)—a reference to EPA’s pre-1990 interpretation of “ample margin of safety” to encompass consideration of cost and other factors. Moreover, reflecting EPA’s pre-1990 approach to “ample margin of safety” regulation, Congress recognized one-in-one million as a negligible level of public health risk. See §7412(f)(2)(A), (c)(9). Finally, under §7412(f), the Administrator must also consider regulation of residual *environmental* risks associated with such non-EGU emissions if she determines that a more stringent standard is “necessary to prevent, taking into consideration *costs*, energy, safety, and other relevant factors, an adverse

environmental effect.”<sup>4</sup> §7412(f)(2)(A) (emphasis added). In this manner, Congress made clear that costs and other factors are relevant to striking an appropriate regulatory balance when addressing either health or environmental residual risks that might remain after control technology regulation.

*EGU HAP emissions*—In the legislative process that led to the 1990 Amendments, individual legislators expressed concern that duplicative regulation of EGUs “would increase power rates, while potentially providing little or no public health benefit.” 136 Cong. Rec. 3493 (Mar. 6, 1990) (statement of Sen. Steve Symms); *see also* 136 Cong. Rec. 3185 (Mar. 1, 1990) (Summary of Bi-Partisan Senate Clean Air Act Agreement Nonattainment of Health Standards for Ozone); 136 Cong. Rec. 3392 (Mar. 5, 1990) (same); S. 1630, §301 (1990), *reprinted in* 3 A Legislative History of the Clean Air Act Amendments of 1990, at 4119, 4407, 4433 (1993) (“1990 Legis. History”). While the Senate went to conference with a bill that would have treated EGUs the same as other source categories, *see* S. 1630, §301 (1990), *reprinted in* 3 1990 Legis. History, at 4418-28, the House bill included an EGU-specific provision virtually identical to the current §7412(n)(1)(A). S. 1630 as passed by the House, §301 (1990), *reprinted in* 2 1990 Legis. History at 1809, 2122, 2148-49. Reflecting the widespread concern with duplicative regulation of EGUs, the Conference Committee adopted the House provision requiring separate regulatory scrutiny of EGU HAP emissions. Pub. L. No. 101-549, 104 Stat. Ann. 2399, 2558-59 (1990).

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<sup>4</sup> “Adverse environmental effect” is defined in §7412(a)(7) as “any significant and widespread adverse effect.”

In this EGU-specific provision, which became §7412(n) of the Act, Congress recognized that EGU HAP emissions are not like HAP emissions from other source categories.<sup>5</sup> In addition to earlier CAA programs that had substantially reduced EGU HAP emissions, Congress in 1990 imposed massive additional reduction requirements on EGU emissions of conventional, non-hazardous pollutants, such as SO<sub>2</sub>, nitrogen oxides and PM. These programs included a new regional haze visibility program, new acid rain title, and stringent, new nonattainment requirements—all focused on further EGU reductions in conventional pollutants. These requirements reduced conventional pollutant emissions by many millions of tons and lowered EGU HAP emissions even further beyond the already low, pre-1990 levels.<sup>6</sup> Congress in §7412(n)(1)(A) therefore focused EPA's authority to regulate EGU HAPs on only those HAP emissions that posed an unacceptable residual health risk after implementation of other CAA programs.

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<sup>5</sup> 2005 Correction Rule, Pet. App. 550a; MATS Rule, Pet. App. 242a (acknowledging “disparate treatment” of EGUs under §7412); see also Pet. App. 84a (“the majority opinion...does not sufficiently account for the fact that treating electric utilities differently from standard sources was the intent of Section [74]12(n)(1)(A), as revealed by the statutory text...”) (Kavanaugh, J., concurring in part and dissenting in part).

<sup>6</sup> See EPA, Clean Air Market Programs, Acid Rain Program Benefits Exceed Expectations (undated), *available at* <http://www.epa.gov/capandtrade/documents/benefits.pdf>; National Acid Precipitation Assessment Program, National Acid Precipitation Assessment Program Report to Congress 2011: An Integrated Assessment (Dec. 2011), *available at* [www.whitehouse.gov/sites/default/files/microsites/ostp/2011\\_napap\\_508.pdf](http://www.whitehouse.gov/sites/default/files/microsites/ostp/2011_napap_508.pdf).

Congress in §7412(n) instructed EPA to conduct “a study of the hazards to public health reasonably anticipated to occur as a result of [the EGU HAP] emissions” that remain *after* “imposition of the requirements of this [Act].” §7412(n)(1)(A). As part of that evaluation, Congress instructed EPA to “develop and describe...alternative control strategies for [any HAP] emissions which may warrant regulation under this section.” *Id.* Then, for any HAP emission that might “warrant” regulation, Congress provided that EPA is to regulate that emission “under this section [§7412]” if it determines that “such regulation is appropriate and necessary after considering the results of the study.” *Id.*

Congress’ §7412(n)(1)(A) program for residual public health risks from EGU HAP emissions shares a number of features in common with other programs addressing residual risk regulation of non-EGU source categories. In particular, residual risk regulation under both §7412(f) and §7412(n)(1)(A) requires a pollutant-specific risk management decision that considers a broad array of factors and regulatory consequences. As Representative Oxley (a sponsor of the 1990 House Bill) explained, §7412(n) was written to “protect[]...the public health while avoiding the imposition of excessive and unnecessary costs on residential, industrial, and commercial consumers of electricity.” See House Debate on the Clean Air Act Amendments of 1990 Conference Report (Oct. 26, 1990) (statement of Rep. Michael Oxley), *reprinted in* 1 1990 Legis. History, at 1417.

## II. Characteristics of EGU HAP Emissions.

EGU HAP emissions result from elements naturally present in trace amounts in the fuels combust-



ed to generate electricity. Emissions of these elements are largely removed from EGU gas streams by control technologies installed to address conventional pollutants. See *supra* pp. 4-5 & note 2. The four general categories of EGU HAPs on which EPA focused in the MATS rulemaking were mercury, non-mercury metals (*e.g.*, arsenic, chromium, and nickel), acid gases (*e.g.*, hydrogen chloride (“HCl”) and hydrogen fluoride (“HF”)), and organics (including dioxins).

**Mercury:** Mercury enters the environment both through natural processes, such as volcanic eruptions and forest fires, and through human activities, such as gold mining and fossil fuel combustion. In 2004, EPA estimated that total global emissions of mercury were about 5,000 tons per year: 1,000 tons from natural sources, 2,000 tons from manmade sources, and 2,000 tons from reemission of mercury previously deposited on soil. 69 Fed. Reg. 4652 (Jan. 30, 2004) (“2004 Proposed Correction Rule”), JA 143. EPA’s 1998 Utility Study estimated that U.S. coal-fired EGUs emitted about 51.5 tons of mercury annually, or about 1% of the 5,000 tons of annual worldwide mercury emissions. Utility Study, JA 132-134. By 2010, those mercury emissions were reduced to 29 tons per year as a result of other CAA control programs. 76 Fed. Reg. 24,976 (May 3, 2011) (“Proposed MATS Rule”), NMA App. 1298a.

Humans are primarily exposed to mercury through consumption of fish containing methylmercury. *Id.* at 1195a. EGUs do *not* produce or emit methylmercury. Methylmercury is formed by microbes in waterbody sediment and eventually works its way up the food chain to fish. Only a small fraction of the mercury emitted by EGUs deposits in the

United States and only a small fraction of that deposited mercury actually enters waterbodies. Only a very small fraction of that deposition is biologically transformed into methylmercury, and only a small fraction of that methylmercury ends up in the fish that people eat. See Electric Power Research Institute (“EPRI”) Comments on 2004 Proposed Correction Rule at 2 (June 16, 2004), Docket No. EPA-HQ-OAR-2002-0056-2578. As a result, human exposure to methylmercury resulting from domestic EGU emissions is exceedingly small. 2005 Correction Rule, JA 146-153.

**Trace metals:** When coal and oil are combusted in an EGU, non-mercury trace metals (*e.g.*, chromium and arsenic) adhere to ash particles, which are captured by high efficiency PM control devices required under other CAA programs. In the 1998 Utility Study, EPA performed a conservative, “high-end” estimate of the inhalation risks posed by non-mercury metal emissions from all coal-fired EGUs. Those analyses of HAP metals showed that out of 426 coal-fired utility boilers, Utility Study, JA 123, *only two* had cumulative carcinogenic risks of slightly greater than one-in-one million, with the highest facility risk at three-in-one million. *Id.* at 124-125. For non-carcinogenic trace metal emissions, EPA found that inhalation exposure levels were far below the reference concentration (“RfC”), which defines a safe level of exposure. *Id.*

In December 2009, EPRI modeled every coal-fired facility in the United States and found that *none* posed a carcinogenic risk greater than one-in-one million. EPRI, Comments on Proposed MATS Rule at 3-22 to 3-24 (Aug. 4, 2011) (“EPRI MATS Comments”). In 2010-2011, EPA performed another

highly conservative analysis, and concluded that five coal-fired utility boilers in the United States *might* slightly exceed a one-in-one million risk level, with the highest calculated risk at five-in-one million. MATS Rule, NMA App. 440a; EPA, EPA-452/R-11-013, Supplement to the Non-Hg Case Study Chronic Inhalation Risk Assessment in Support of the Appropriate and Necessary Finding for Coal- and Oil-Fired Electric Generating Units (Nov. 2011), Docket No. EPA-HQ-OAR-2009-0234-19912 (“Supplement to Non-Hg Case Study”), JA 819-820.<sup>7</sup>

**Acid gases:** During the combustion process, trace amounts of chlorine and fluorine combine with hydrogen to form the acid gases HCl and HF, which are non-carcinogens. Acid gas emissions are limited by SO<sub>2</sub> control devices such as scrubbers required under other programs. Proposed MATS Rule, NMA App. 1330a. EPA’s modeling has consistently shown that the levels of human exposure to EGU acid gas emissions are an order of magnitude or more below conservative health-protective levels for those HAPs. Utility Study, JA 120-121, 131; Proposed MATS Rule, NMA App. 1485a (“Our case study analyses of the chronic impacts of EGUs did not indicate any significant potential for them to cause any exceedances of the chronic RfC for HCl...”); Supplement to Non-Hg Case Study, JA 818-820. In terms of envi-

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<sup>7</sup> As explained in UARG’s April 2012 petition for administrative reconsideration, later re-sampling of these five plants showed that the emissions data on which EPA relied to claim a greater than one-in-one million risk level were the result of sampling contamination. UARG Petition for Reconsideration of MATS Rule at 6-7 (Apr. 16, 2012), Docket No. EPA-HQ-OAR-2009-0234-20179. EPA has never responded to that aspect of UARG’s petition.

ronmental effects, these acid gases represent less than one percent of the emissions contributing to acidification in United States waterbodies. EPRI MATS Comments, JA 412-418.

**Organics:** Coal and oil are mostly made up of “organic” compounds—*i.e.*, molecules comprised mostly of carbon and hydrogen—which release significant amounts of energy when combusted. Organic HAPs are emitted as a result of incomplete fuel combustion. Testing for EGU emissions of organic HAPs in 2010 reported a large majority of “non-detect” values, meaning the amount emitted (if any) was so low that modern measurement methods could not detect it. Proposed MATS Rule, NMA App. 1441a.

### III. Agency Action Under §7412(n) Prior to the MATS Rulemaking.

**Administrator Browner’s “notice of regulatory finding”**—In 1998, EPA published the Utility Study required by §7412(n)(1)(A). In that study, EPA evaluated mercury, non-mercury metals, acid gases, and organics. Consistent with EPA’s pre-1990 evaluations of EGU HAP emissions, EPA did not identify any “hazards to public health” that would remain after implementation of other CAA programs. Therefore, EPA did not make any “appropriate and necessary” finding under §7412(n)(1)(A). Utility Study, JA 62. Instead, EPA identified the need for further research in 11 areas “to gain a better understanding of the risks and impacts of utility mercury emissions.” *Id.* at 110, 136-137. EPA also noted “potential concerns and uncertainties that may need further study” for dioxins, arsenic, and nickel emissions. *Id.* at 111. EPA found risks for acid gases and

organic HAPs were far below levels that would pose any health concern. *Id.* at 124-125.

Without completing most of the mercury research and any of the arsenic, nickel or chromium research identified by the Utility Study, and without conducting any notice-and-comment rulemaking, on December 20, 2000, then-departing Administrator Browner published a “[n]otice of regulatory finding.” Notice of Finding, Pet. App. 610a-635a. In conclusory terms, she announced that regulation of mercury emissions from coal-fired EGUs and nickel emissions from oil-fired EGUs was “appropriate and necessary” under §7412(n)(1)(A). *Id.* at 630a, 633a. In so doing, Administrator Browner indicated that this “regulatory finding” would be the subject of future rulemaking. *Id.* at 634a. Based on this regulatory finding, EPA listed EGUs as a source category under §7412(c), triggering the §7412(d) regulatory regime applicable to non-EGU source categories. *Id.*

**Initial §7412(n) rulemaking**—In 2004, EPA began the promised notice-and-comment rulemaking to examine whether it was “appropriate and necessary” to regulate EGU HAP emissions. At the end of this rulemaking, EPA found that the last-minute 2000 notice “lacked foundation” and concluded, based on “new information,” that it was not appropriate to regulate mercury emissions from EGUs or nickel emissions from oil-fired EGUs. 2005 Correction Rule, Pet. App. 590a, 604a-608a. In addition, EPA found, coal-fired EGU emissions of other non-mercury HAPs posed too little risk to warrant regulation. *Id.* at 598a-604a. As a result, EPA removed EGUs from the §7412(c) list of source categories for regulation under §7412(d). *Id.* at 545a.

In rejecting regulation of EGU emissions under §7412, the Agency concluded that “[n]othing precludes EPA from considering costs in assessing whether regulation of Utility Units under section [74]12 is appropriate in light of all of the facts and circumstances presented.” *Id.* at 576a. Therefore, “[e]ven if the remaining utility HAP emissions cause hazards to public health, it *still may not be appropriate* to regulate [EGUs] under section 112 because there may be other relevant factors [such as cost]...that would lead the Agency to conclude it is not...‘appropriate’ to regulate [EGUs] under section [74]12.” *Id.* at 575a (emphasis added). In a companion rule known as the Clean Air Mercury Rule, EPA promulgated emission standards regulating mercury emissions from both new and existing EGUs under §7411. 70 Fed. Reg. 28,606 (May 18, 2005).

***New Jersey v. EPA***—The D.C. Circuit heard challenges to the final §7412(n) rule on EGU HAP emissions and the final §7411 rule regulating EGU mercury emissions. The court vacated EPA’s decision to remove coal- and oil-fired EGUs from the §7412(c) list of regulated source categories, reinstated the earlier §7412(c) listing, and vacated the §7411 standards. *New Jersey v. EPA*, 517 F.3d 574 (D.C. Cir. 2008). In so doing, the court did not review the factual or statutory basis for the finding that *any* “regulation under [§7412]” was not “appropriate and necessary.” Instead, it found that even if the Browner §7412(n) finding in 2000 and §7412(c) listing were erroneous, EPA could only remove EGUs from the list of source categories regulated under §7412(d) if it followed the delisting requirements of §7412(c)(9). *Id.* at 583. Section 7412(c)(9) provides for “de-listing” of a listed source category only if no source in the

category poses a lifetime cancer risk of greater than one-in-one million, or a noncancer health risk that “exceed[s] a level which is adequate to protect public health with an ample margin of safety.” §7412(c)(9)(B)(ii). De-listing also requires a finding that HAP emissions from a source do not create an “adverse environmental effect.” *Id.* With EGUs reinstated to the §7412(c) list, the court vacated the §7411 EGU mercury regulations on the ground that EGUs could not simultaneously be regulated under those two provisions. *New Jersey*, 517 F.3d at 583; see also §7411(d); *Am. Elec. Power Co. v. Connecticut*, 131 S. Ct. 2527, 2537 n.7 (2011).

#### **IV. Regulation of EGU HAP Emissions Under the MATS Rule.**

In 2011 and 2012, EPA conducted its *New Jersey* remand rulemaking, which resulted in the MATS Rule at issue here. In the MATS Rule, yet another EPA (*i.e.*, the third Administration to address the issue) concluded that the December 2000 Notice of Finding *was* sufficient to list EGUs under §7412(c). MATS Rule, Pet. App. 179a. Looking to the §7412(d) regulatory regime that applies to non-EGUs, EPA then concluded that “such [§7412(d)] regulation” was “appropriate and necessary” for EGUs under §7412(n), in order to regulate not just mercury (the pollutant addressed in Administrator Browner’s regulatory finding), but *every HAP* emitted by *every EGU*, as long as EPA found that one HAP emitted by one EGU created a residual “public health” risk or an “environmental” risk. *Id.* at 365a; see also Proposed MATS Rule, Pet. App. 523a.

EPA then promulgated the §7412(d) emissions standards for EGUs, regulating all HAPs emitted by

EGUs regardless of the magnitude—or even existence—of any public health risk, and regardless of the cost of regulation. Not surprisingly, the costs of EPA’s final rule dwarfed the HAP emission reduction benefits that EPA was able to quantify. Compare MATS Rule, Pet. App. 115a (estimating annual compliance costs of \$9.6 billion) with *id.* at 461a (quantifying HAP health benefits, all associated with mercury reduction, at \$4 to \$6 million). Regarding acid gases in particular, EPA never found any threat to public health but nevertheless imposed MATS compliance obligations that account for about one-half of the \$9.6 billion in annual costs estimated by EPA (and for about \$30 billion in additional capital costs). See UARG, Comments on Proposed MATS Rule at 258 (Aug. 4, 2011) (“UARG Comments on Proposed MATS Rule”), Pet. App. 512a, JA 807-810.

#### V. The D.C. Circuit Decision.

A total of 23 States and one governor, as well as numerous industry parties, filed petitions for review of various aspects of the MATS Rule, including EPA’s refusal to consider costs in determining whether it was “appropriate and necessary” to regulate EGU HAPs. On April 15, 2014, the D.C. Circuit (Chief Judge Merrick Garland, Judge Judith Rogers, and Judge Brett Kavanaugh) denied all petitions for review. Pet. App. 10a.

With regard to whether EPA is required to consider cost in determining if it is “appropriate” to regulate emissions of EGU HAPs, Judges Garland and Rogers held that EPA was not required to consider cost. *Id.* at 26a (“[S]uch a reading of ‘appropriate’ is unwarranted here....”). They concluded that Congress’ use of the word “costs” in other provisions of



§7412 meant that Congress could not, “by using only the broad term ‘appropriate’[,]...have intended...that costs be considered...in §[74]12(n)(1)(A).” *Id.* at 27a. The panel majority also reasoned that Congress had anticipated that the factors EPA decides to consider in making an “appropriate and necessary” determination—and hence whether and how to regulate (or not) under §7412(n)(1)(A)—can change over time. *Id.* at 35a (“[A]dministrations may differ and can change positions without legal jeopardy....”).

In a strongly worded dissent on the cost question, Judge Kavanaugh concluded that the “key statutory term...‘appropriate’...[is] the classic broad and all encompassing term that naturally and traditionally includes consideration of all the relevant factors, health and safety benefits on the one hand and costs on the other.” *Id.* at 88a. In fact, the magnitude of the costs at issue in this rulemaking were so enormous that Judge Kavanaugh found EPA’s neglect particularly egregious:

The estimated cost of compliance with EPA’s Final Rule is approximately \$9.6 billion per year, *by EPA’s own calculation*.... To put it in perspective, that amount would pay the annual health insurance premiums of about two million Americans.... Put simply, the Rule is “among the most expensive rules that EPA has ever promulgated.”

*Id.* at 82a (emphasis in original) (citation omitted).

More recent federal government analyses demonstrate that EPA’s costs estimates were, if anything, underestimated. While EPA projected that coal-fired retirements would be 4.7 gigawatts, the U.S. Energy Information Administration has estimated that the

MATS Rule will contribute to the retirement by 2016 of 54 gigawatts of coal-fired generation capacity, or about 1/6 of total domestic coal-fired capacity.<sup>8</sup> The magnitude of these compliance costs is unprecedented. In 2011, EPA projected that *total* CAA compliance costs for EGUs, including the costs associated with regulation under the NAAQS, visibility, pre-construction and operating permit programs, and new source performance standards, would be about \$10.4 billion annually by 2020,<sup>9</sup> as compared to the

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<sup>8</sup> U.S. Energy Information Administration, Today in Energy, AEO2014 Projects More Coal-Fired Power Plant Retirements by 2016 Than Have Been Scheduled (Feb. 14, 2014), *available at* <http://www.eia.gov/todayinenergy/detail.cfm?id=15031>; see also Institute for Energy Research, Impact of EPA's Regulatory Assault on Power Plants: New Regulations to Take More than 72 GW of Electricity Generation Offline and the Plant Closing Announcements Keep Coming... (Oct. 2014), *available at* <http://instituteforenergyresearch.org/topics/policy/power-plant-closures/>.

<sup>9</sup> EPA, The Benefits and Costs of the Clean Air Act from 1990 to 2020, Final Report—Rev. A, at 3-8 (Apr. 2011), *available at* <http://www.epa.gov/cleanairactbenefits/prospective2.html>; see also Industrial Economics, Inc., Direct Cost Estimates for the Clean Air Act Second Section 812 Prospective Analysis, at 2-29 & n.77 (Feb. 2011), *available at* <http://www.epa.gov/air/sect812/feb11/costfullreport.pdf> (explaining inclusion of Clean Air Mercury Rule costs). In 1999, EPA had estimated that *total* compliance of HAP regulation, across *all* source categories, would total \$840 million by 2010. EPA, EPA-410-R-99-001, The Benefits and Costs of the Clean Air Act 1990 to 2010, EPA Report to Congress at 25 (Nov. 1999), *available at* [http://www.epa.gov/cleanairactbenefits/prospective1.html?\\_ga=1.261211470.2101051446.1421202605](http://www.epa.gov/cleanairactbenefits/prospective1.html?_ga=1.261211470.2101051446.1421202605) (“Benefits and Costs 1990-2010”).

compliance costs of the MATS Rule alone of about \$9.6 billion annually.<sup>10</sup>

### SUMMARY OF ARGUMENT

This case involves a simple question: can EPA refuse to consider costs when determining whether it is “appropriate and necessary” to regulate EGU HAP emissions under §7412 of the Clean Air Act? Congressional intent on this question is clear. And the answer is no.

The Clean Air Act presents an intricate statutory regime, requiring EPA to undertake a variety of tasks, including making health determinations, conducting studies, and setting emission standards. Every time that the Act calls upon EPA to consider establishing emission standards, EPA is required to consider cost in some fashion.

In keeping with this general approach to clean air regulation, Congress addressed EGU HAP emissions very differently from non-EGU HAP emissions under §7412. Non-EGU HAP emissions from source categories other than EGUs are subject to technology-based regulation whenever tonnage thresholds are exceeded. By contrast, in recognition of the numerous other programs that indirectly reduce EGU HAP emissions, Congress directed that EGU HAP emissions are to be regulated under §7412 only if EPA determines that “such [§7412] regulation” is “appropriate and necessary.” Determining whether regulation under any of the specific emission standard-setting

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<sup>10</sup> EPA’s \$9.6 billion cost figure focuses only on compliance costs, not indirect costs that EPA has elsewhere recognized, like effects on work force and consumers of electricity. Benefits and Costs 1990 to 2010, at iii.

provisions of §7412 is “appropriate and necessary” requires consideration of a number of factors, as is the case for emission standard-setting decisions under the Clean Air Act generally, including the public health impacts of EGU HAP emissions and the costs of regulation. EPA’s refusal to consider cost under this broad and encompassing statutory language and in the context of this specific statutory framework is impermissible.

When one examines the function of §7412(n)(1)(A), which is to determine whether §7412 regulation is needed and is suitable to address residual risks that might remain after regulation of EGU HAP emissions under other programs, the unreasonableness of EPA’s interpretation is underscored. Residual risk, by definition, presents the prospect of diminishing benefits for ever increasing regulatory costs. Disavowing any consideration of cost in this context caused EPA to act contrary to what is in the public interest: to regulate EGU HAP emissions only if “appropriate.” The imposition of \$9.6 billion in costs to achieve \$4 to \$6 million in benefit should, at the very least, signal caution. Throwing caution to the wind, the panel endorsed EPA’s refusal to consider cost because the word “cost” is not listed explicitly in the provision. But this word (and other relevant factors) also do not appear in statutory provisions calling for “public interest” regulation. When “appropriate and necessary” is read in a common sense way and in the context of §7412(n)(1)(A)’s purpose and objectives, those broad and encompassing terms compel consideration of cost.

In refusing to consider cost, EPA erred. The economic consequences of its error are overwhelming.

## ARGUMENT

In deciding whether it was “appropriate” to regulate EGU HAP emissions, EPA refused to consider the costs that regulation would impose. That much is not in dispute. Less clear is why EPA chose to be cost blind.

In the Proposed MATS Rule, EPA “interpret[ed] the term ‘appropriate’ to *not allow* for the consideration of costs.” Pet. App. 523a (emphasis added). This interpretation of “appropriate,” EPA said, was “consistent with the overall structure of the CAA,” insofar as “Congress *did not authorize* the consideration of costs” in making decisions on “listing” and “delisting” other source categories under §7412(c). *Id.* at 527a (emphasis added). In responding to public comments in the MATS rulemaking, however, EPA seemed to shift, claiming that, because “[c]ost does not *have to be* read into the definition of ‘appropriate,’” MATS Rule, Pet. App. 212a (emphasis added), it was “reasonable” to make the “appropriate determination[] without considering costs.” *Id.* at 210a; see also EPA’s Responses to Public Comments on Proposed MATS Rule, Vol. 1 (Dec. 2011), Docket No. EPA-HQ-OAR-2009-0234-20126, Pet. App. 509a.

The panel majority offered similar, competing rationales for EPA’s refusal to consider costs. Compare Pet. App. 26a (§7412(n)(1)(A) “neither requires EPA to consider costs nor prohibits EPA from doing so.”) with *id.* at 27a. (Because Congress used the word “costs” in certain other provisions of §7412, Congress could not “by using only the broad term ‘appropriate’...have intended...that costs be considered...in §[74]12(n)(1)(A).”).

Regardless of the *Chevron* rationale, EPA's refusal to consider costs in determining whether it was "appropriate" to regulate EGU HAP emissions under §7412 was unlawful.

**I. The "Appropriate and Necessary" Decisional Standard in §7412(n)(1)(A) Embraces a Broad Range of Factors That Includes Costs.**

Section 7412(n)(1)(A), like other residual risk emission reduction provisions, calls upon EPA to identify risks of a particular kind ("hazards to public health") that are found to remain after implementation of other emission reduction provisions of the CAA. If no "hazards to public health" are identified in the §7412(n) study called for by Congress, no §7412 regulatory response by EPA is contemplated or authorized. If EPA finds a public health hazard that is reasonably anticipated to occur, however, §7412(n) requires EPA to focus on the EGU HAP emissions that cause that health hazard and to determine the degree to which that hazard would be reduced through "regulation [of those emissions] under" §7412. Finally, having identified the §7412 regulatory response, EPA must determine whether "such regulation" under §7412 is "appropriate and necessary."

Both "appropriate" and "necessary" are terms that call for qualitative judgments influenced by a broad range of factors. The word "appropriate" means "suitable or proper in the circumstances." The New Oxford American Dictionary 76 (2d ed. 2005). The word "necessary" means "required to be done, achieved, or present; needed; essential." *Id.* at 1135. In the context of §7412(n), the cost of achiev-

ing reductions and the size of those reductions are centrally relevant to determining whether “such regulation” of EGU emissions under §7412 is “appropriate and necessary” to address a health hazard. The size and seriousness of a health risk balanced against costs and other consequences of reducing that risk will determine whether a new level of control is “needed,” whether the existing level is “proper,” and whether the proposed §7412 regulatory response is “suitable” to address that risk.

As discussed below, the “appropriate and necessary” decisional standard contemplates that EPA make policy judgments regarding imposition of additional emissions regulation. Like other CAA provisions governing emission standard-setting decisions, including those based on residual risk, costs will always be a relevant consideration in making those policy judgments. See, e.g., *Indus. Union Dep’t, AFL-CIO v. Am. Petroleum Inst.*, 448 U.S. 607, 708 (1980) (Marshall, Brennan, White and Blackmun, JJ., dissenting) (“[R]easonably necessary or appropriate’ clauses are routinely inserted in regulatory legislation, and...have uniformly been interpreted as general provisos that regulatory actions must bear a reasonable relation to th[e] statutory purposes.”); *id.* at 704 (Occupational Safety and Health Act (“OSHA”) gave “careful consideration’ to...whether the admittedly substantial costs were justified in light of the hazards” under the act’s “necessary or appropriate” standard.); *id.* at 667 (Powell, J., concurring) (A standard “is neither ‘reasonably necessary’ nor ‘feasible’...if it calls for expenditures wholly disproportionate to the expected health and safety benefits.”).

**A. Congress Has Consistently Required Consideration of Costs in Making Decisions on CAA Emission Standards.**

The CAA authorizes a variety of different types of agency actions under numerous different air pollution control programs. Certain actions call for a finding that specific emissions contribute to pollution that endangers health or welfare. *E.g.*, 42 U.S.C. §§7411(b)(1)(A) (new source performance standards), 7521(a) (vehicle and engine emissions). Others provide for ambient standards that identify pollutant concentrations that are protective of public health or welfare. Cost is irrelevant to these health and welfare effects actions. §7409(b)(1), (d) (NAAQS). *Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 471 (2001) (holding that costs may not be considered in setting NAAQS under §7409(b)); *Coal. for Responsible Regulation, Inc. v. EPA*, 684 F.3d 102, 118 (D.C. Cir. 2012) (*per curiam*), *aff'd in part & rev'd in part*, *UARG v. EPA*, 134 S. Ct. 2427 (2014) (concluding that cost judgments are not part of “endangerment finding” in §7521(a)(1)).

By contrast, every provision of the Act that authorizes EPA to address the establishment of *emission standards* for specific sources includes costs as a standard-setting consideration. See, *e.g.*, §§7410(a)(2)(D) (“good neighbor” provision, which was interpreted in *EPA v. EME Homer City Generation, L.P.*, 134 S. Ct. 1584, 1607 (2014), to contemplate consideration of cost), 7411(b) & (d) (new and existing source performance standards), 7412(d)(2) (MACT), 7475 (BACT), 7491 (BART), 7502 (“reasonably available control technology”) & 7651f (nitrogen oxides “acid rain” emissions standards for EGUs).



Consideration of cost in establishing standards regulating conduct is found across all regulatory statutes. See, e.g., *Entergy Corp. v. Riverkeeper, Inc.*, 556 U.S. 208 (2009) (upholding EPA's use of cost-benefit analysis in setting "best technology" cooling water intake requirements under the Clean Water Act); *Am. Textile Mfrs. Inst., Inc. v. Donovan*, 452 U.S. 490 (1981) (OSHA). Emission control standards that are so stringent as to put sources out of business create their own public health and welfare risks, through impacts on both communities (e.g., lost tax base) and individuals (e.g., lost jobs).<sup>11</sup> Cf. Pet. App. 78a ("[T]he centrality of cost consideration to proper regulatory decisionmaking" necessarily establishes "cost" as being among the "relevant factors" that a regulatory agency must normally take into account.).

Consideration of cost-benefit relationships is especially relevant for emission standards that address residual emissions and risk. Whenever smaller increments of emissions are regulated, the costs to society of achieving those reductions increase.<sup>12</sup> Resid-

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<sup>11</sup> See *Indus. Union Dep't*, 448 U.S. at 669 (Powell, J., concurring) ("[A] standard-setting process that ignored economic considerations would result in a serious misallocation of resources and a lower effective level of safety than could be achieved under standards set with reference to the comparative benefits available at a lower cost."); Steve P. Calandrillo, *Responsible Regulation: A Sensible Cost-Benefit, Risk Versus Risk Approach to Federal Health and Safety Regulation*, 81 B.U. L. REV. 957, 996 (2001) ("[W]ell-meaning regulations aimed at improving public safety by reducing certain risks sometimes unintentionally increase the probability of other risks.").

<sup>12</sup> See, e.g., Sheldon Meyers, Office of Radiation Programs, Office of Air and Radiation, EPA, *Applications of De Minimis*, in DE MINIMIS RISK 101, 102 (Chris Whipple ed., 1987) ("We all know that each decade of risk reduction has generally increased

ual risk standard-setting necessarily involves an inquiry into both whether the increment of emissions of a pollutant that remains after earlier reductions of the pollutant is of continuing regulatory concern (*i.e.*, poses a risk that is not de minimis) and, if so, whether those residual risks are worth regulating (*i.e.*, what level of risk and risk reduction is achievable in light of costs, feasibility, and other factors). See EPA Residual Risk Report at 127.<sup>13</sup> Without consideration of the consequences of regulating, the increasing costs of regulating and the declining risks posed by progressively smaller increments of a pollutant can lead to a gross misallocation of resources and “extreme disparities” between costs and benefits. See *Entergy Corp.*, 556 U.S. at 224; VICIOUS CIRCLE at 11 (Ignoring consequences can result in “standards so stringent...that the regulatory action ultimately imposes high costs without achieving significant additional safety benefits.”).

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costs and decreased benefits—it frequently is relatively cheap to reduce risks from 0 to 90%, more expensive to go from 90 to 99%, and more expensive still to go from 99 to 99.9%.”); see also STEPHEN BREYER, *BREAKING THE VICIOUS CIRCLE: TOWARD EFFECTIVE RISK REGULATION* 11 (1993) (“VICIOUS CIRCLE”) (“Removing that last little bit [of risk] can involve limited technological choice, high cost...and endless argument.”); Stephen Breyer, *Forward: Beyond the Vicious Circle*, 3 NYU ENVTL. L.J. 251, 252 (1994-95).

<sup>13</sup> See also Meyers, *supra* note 12, at 101 (“There are two possibilities for deciding that one eventually reaches a point where further risk reduction is not warranted: Either (1) the cost of further risk reduction becomes very great in relation to the small additional incremental benefits, or (2) the risk...is so small that it becomes inconsequential....”).

**B. Section 7412(n)(1)(A) Is a Residual Risk Provision.**

Congress in §7412 addressed regulation of residual risk in several places. And in each, Congress instructed EPA to consider a broad range of factors, either by listing a range of relevant factors, see, *e.g.*, §7412(f)(2), or by using regulatory terms that require subjective judgments made after considering myriad factors relevant to those judgments. See, *e.g.*, *id.* §7412(m), (n)(1)(A).

For example, in order to regulate residual public health risk associated with emissions regulated under §7412(f), Congress said the Administrator must apply the “ample margin of safety” standard “as in effect before November 15, 1990.” §7412(f)(2)(A). This formulation ensures consideration of *all* of the consequences of residual risk regulation, including costs. See *Natural Res. Def. Council v. EPA*, 529 F.3d 1077, 1081-83 (D.C. Cir. 2008) (discussing §7412(f)(2)); EPA Residual Risk Report at ES-11, 128 (explaining that “relevant factors” under the ample margin of safety standard “include[] costs, economic impacts, technological feasibility, and any other relevant factor”).

Where regulation of the emission of specific pollutants under §7412 fails to resolve serious adverse health *or* environmental risks to the Great Lakes and other waters, the Administrator is authorized to regulate those individual pollutants as “necessary and appropriate” to address such residual risks. §7412(m). And where “hazards to public health” from an EGU HAP emission remain “after imposition of the requirements of this [Act],” the Administrator may regulate those emissions “under this section,” if

the Administrator finds “such regulation” is “appropriate and necessary,” after considering the remaining public health risks and “alternative control strategies for emissions which may warrant regulation under this section.” §7412(n)(1)(A).

In this statutory context, cost is a factor that must be considered for EPA to resolve whether its proposed §7412 regulatory response for residual health hazard is “appropriate and necessary.” Section 112 regulation that addresses minor health risks at huge costs cannot, in any common understanding of the term, be “compelled” and “proper.”

The panel majority concedes, as it must, that “the word ‘appropriate’ might require cost consideration in *some* contexts.” Pet. App. 26a. But, according to the panel, “such a reading of ‘appropriate’ is unwarranted here.” *Id.* Why “unwarranted”? The panel majority claims that “[t]hroughout §[74]12, Congress mentioned costs explicitly where it intended EPA to consider them,” but failed to explicitly list costs as a relevant factor in §7412(n)(1)(A). *Id.* at 26a-27a. But the word “cost” is absent from numerous CAA provisions under which cost is a relevant factor in EPA policy decisions regarding further regulation of emissions. See, e.g., *EME Homer City*, 134 S. Ct. at 1607 (“The Agency has chosen, sensibly in our view, to reduce the amount easier, *i.e.*, less costly, to eradicate, and nothing in the text of the Good Neighbor Provision precludes that choice.”); *Ass’n of Battery Recyclers*, 716 F.3d at 673 (the fact that “section [74]12(d)(6) itself makes no reference to cost” does not bar consideration of cost); 74 Fed. Reg. 30,366, 30,371 (June 25, 2009) (finding that the legislative history “clearly provides that EPA may consider

costs” under §7412(d)(5) even though the term does not appear in the provision).

When Congress uses broad terms that call for subjective policy judgments regarding the regulation of private conduct, Congress is requiring that agencies consider every factor relevant to making that judgment. In the context of broad subjective decisional standards (like “appropriate and necessary”), therefore, congressional silence on factors that must be considered assures consideration of the broadest range of relevant factors, see, *e.g.*, *Indus. Union Dep’t.*, 448 U.S. at 708 (Marshall, Brennan, White, and Blackmun, JJ., dissenting), whereas listing one or two factors in such a provision could be interpreted as a congressional intent to *limit* relevant factors to those listed. Indeed, the logic of the majority turns syntax on its head, leading to absurdity.

Construing “silence” as a prohibition would give rise to the “obvious logical impossibility” that EPA was permitted to disregard “all potentially relevant factors.” *Entergy Corp.* 556 U.S. at 222. In other words, if the absence of the word “cost” in §7412(n)(1)(A) permitted (if not required) EPA to disregard cost in determining whether regulation of EGU HAP emissions was “appropriate and necessary,” then taken to its (il)logical end, *no* factor would be relevant in making determinations under “public interest,” “reasonable,” “public necessity” and similar broad, qualitative decisional standards. EPA and the panel’s interpretive approach would transform such standards into factor-blind directives for which an agency, at best, would have unrestricted discretion to consider only the factors it wishes to consider, thereby fashioning a regulatory decisional standard of the agency’s creation. This is an inter-

pretive approach that “surely proves too much.” *Energy Corp.*, 556 U.S. at 222.

The six CAA provisions cited by the panel majority for the proposition that Congress’ failure to mention “cost” in §7412(n)(1)(A) requires a cost-blind determination, see Pet. App. 26a-27a, are either irrelevant (because they do not address the establishment of emission standards) or actually confirm the important role that cost considerations must play in any residual risk evaluation. First, three of the provisions on which the panel majority relied are reports to Congress that have no role in establishing emission standards under §7412. See §7412(f)(1), (n)(1)(B) & (s). They say nothing about Congress’ use of “appropriate and necessary” in the §7412(n)(1)(A) residual risk evaluation.

Second, the panel majority cites §7412(d)(2) in support of its cost-blind interpretation of §7412(n)(1)(A). Pet. App. 26a-27a. This is an emission standard-setting provision which, as discussed *supra* pp. 7-8, explicitly requires the consideration of cost and other factors in establishing MACT standards based upon control technologies identified applying the §7412(d)(3) criteria. This provision simply underscores the relevance of costs in decisions regarding source emission standards.

Next, the panel majority cites §7412(f)(2)(A), which authorizes public health “residual risk” regulation for pollutants for which control technology standards have been established under §7412(d). Congress explicitly stated that §7412(f)(2)(A) did not disturb the interpretation set forth in a 1989 HAP rule in which EPA considered costs and a range of other factors in evaluating whether there was an

“ample margin of safety.” §7412(f)(2)(B); see also *supra* p. 4; 71 Fed. Reg. 76,603, 76,608 (Dec. 21, 2006) (discussing §7412(f) history). This provision highlights the relevance of cost in decisions regarding residual risk standard-setting.

The final provision cited by the panel majority is §7412(d)(8)(A)(i), which provides specific MACT standard-setting instructions for coke ovens. In this provision, Congress stated that in evaluating the “effectiveness” of certain controls and practices, and in determining their “suitability for [their] use on new and existing coke oven batteries,” “costs” are relevant. §7412(d)(8)(A)(i). If the controls and practices identified under this provision reduce emissions more than the coke oven technologies identified under the §7412(d)(3) “floor” criteria, see *supra* p. 8, then this provision merely confirms what the §7412(d)(2) emission standard-setting provision requires: Costs must be considered in setting MACT standards. If they do not, then this provision simply authorizes consideration of a broader range of technologies for coke oven MACT standard-setting than the (d)(3) “floor” criteria would. In either case, the provision merely underscores congressional intent that costs be considered in setting coke oven emission standards. This is hardly a statement that costs cannot be considered in deciding to regulate EGU HAP emissions.

In sum, §7412(n)(1)(A) requires the Administrator to regulate EGU HAP emissions under §7412 only if she finds “such [§7412] regulation” is “appropriate and necessary.” Section 7412(n), read in context, says what other emission control provisions say: EPA must consider costs and other consequences of

regulation in making decisions regarding standards that regulate residual risk.

**C. The Panel Majority's Reliance on *Whitman* Was Misplaced.**

Recognizing that nothing in §7412(n) directs EPA *not* to consider costs, the panel majority invokes this Court's decision in *Whitman v. American Trucking Ass'ns*, 531 U.S. 457 (2001), in order to “create[] a negative implication that costs are an unnecessary consideration” under §7412(n)(1)(A). Pet. App. 87a (Kavanaugh, J., concurring in part and dissenting in part). In seeking to establish such a negative implication, the panel majority was not only “over-reading” *Whitman* but, more importantly, was ignoring the distinction throughout the Act between threshold actions premised on public health or welfare effects findings and actions premised on judgments regarding the degree to which stationary source emissions should be further regulated. *Id.*

*Whitman* addressed the level of air quality for specific pollutants that would protect public health or welfare. See §7409(b)(1). As discussed above, health and welfare effects are the only factors relevant to NAAQS determinations, as well as to “endangerment” findings found throughout the CAA. By contrast, in making decisions regarding CAA emission standards that apply to individual sources, feasibility, availability, cost, and other considerations are always relevant. As a result, Congress has required, explicitly or implicitly, that costs be considered in CAA determinations regarding emissions regulation. See *supra* p. 7.

If §7412(n) required that EPA regulate EGU HAP emissions under §7412(d) whenever the Administra-



tor found a “health hazard” associated with any EGU HAP emission, it would be similar to the CAA’s “endangerment” provisions. However, that is not what §7412(n)(1)(A) says. EPA’s obligations under §7412(n) do not end with a threshold health finding; they *begin with* such a finding. After EPA identifies an EGU HAP emission creating a remaining “health hazard,” EPA must (1) determine the degree of EGU HAP emission regulation that the identified health hazard triggers “under” §7412, and then (2) decide whether “such regulation” of EGU emissions under §7412 is “appropriate and necessary.” In other words, in deciding whether or not “such [§7412] regulation” is “appropriate and necessary,” EPA will resolve the nature and extent of EGU HAP emissions regulation under §7412. Once EPA has determined the degree to which EGU HAPs would be regulated, Congress directed EPA to resolve whether “such [§7412] regulation” is “appropriate and necessary,” a phrase that contemplates a careful balancing of the costs and benefits of that further regulation of EGU emissions.

## **II. EPA Was Also Required to Consider Costs as a Matter of Reasoned Decisionmaking.**

In *Motor Vehicles Manufacturers Ass’n v. State Farm Mutual Automobile Insurance Co.*, 463 U.S. 29 (1983), this Court made clear that, while an agency decision would be upheld provided that, among other things, the agency had taken into “consideration...the relevant factors,” the agency’s decision-making would be found unreasonable where the agency had “entirely *failed to consider* an important aspect of the problem.” 463 U.S. at 42-43 (emphasis added). Here, no one disputes that EPA “entirely failed to consider” costs when it found that it was

“appropriate” to regulate all EGU HAP emissions. That being the case, EPA’s refusal to consider costs can reflect reasoned decision-making only if: (1) Congress itself precluded EPA from considering costs; or (2) costs are not an “important aspect of the problem” (*i.e.*, a “relevant factor”).

Ultimately, neither EPA nor the panel majority was willing to take the position that EPA was *prohibited* from considering costs. Nor did either EPA or the panel majority explain how it could ever be the case that costs were not a relevant factor.

As Judge Kavanaugh noted, the “consideration of costs” is commonly understood to be “a central and well-established part of the regulatory decision-making process.” Pet. App. 82a. This “centrality of cost consideration to proper regulatory decision-making,” he further pointed out, necessarily establishes “cost” as being among the factors for which a regulatory agency must normally account, a conclusion underscored by the fact that “every real choice requires a decisionmaker to weigh advantages against disadvantages, and disadvantages can be seen in terms of (often quantifiable) costs.” *Id.* at 78a-79a (quoting *Entergy Corp.*, 556 U.S. at 232 (opinion of Breyer, J.)).

The only response that the panel majority could muster is telling: “[W]hile the dissent insists on ‘the centrality of cost consideration to proper regulatory decisionmaking,’ the panel majority argued, “*Whitman* makes clear the Supreme Court believes that Congress does not necessarily agree.” Pet. App. 33a. “Nor,” continued the panel majority, “is *Whitman* the only case in which courts have found that Congress legislated in a way the dissent would find irrational.”

*Id.* at 33a-34a (citing *Am. Textile Mfrs.*, 452 U.S. at 511-12).

This Court's precedents do not support the panel majority's assertion. The panel majority asserts that *American Textile Manufacturers* stands for the proposition that cost is not a central consideration in regulatory decision-making. Pet. App. 34a (citing *Am. Textile Mfrs.*, 452 U.S. at 511-12). The Court in that case did *not* say that cost was irrelevant, but rather only that "specific language" in the OSHA provision at issue, 29 U.S.C. §655(b)(5), made clear that "cost-benefit analysis...is not required...because feasibility analysis is." 452 U.S. at 509, 511.

OSHA contained another provision that defined the term "occupational safety and health standard" as "a standard which requires conditions...*reasonably necessary or appropriate* to provide safe or healthful employment and places of employment." *Id.* at 512 (quoting 29 U.S.C. §652(8) (emphasis added by Court)). While the Court found that the provision must be read in concert with the feasibility provision and could not provide an "overriding requirement of cost-benefit analysis," *id.* at 513, the Court also observed that, "[t]aken alone, the phrase 'reasonably necessary or appropriate' might be construed to *contemplate some balancing of the costs and benefits of a standard.*" *Id.* at 512 (emphasis added).

In this case, even if some limitation did exist on using the cost-benefit method of analysis under §7412(n) (akin to the "feasibility" section in OSHA), there is nothing about *Am. Textile Manufacturers* that eliminates EPA's responsibility to consider cost in *some manner*. Cf. *id.* at 513 n.31 ("[A]s the legislative history makes plain...any standard that was

not economically or technologically feasible would *a fortiori* not be ‘reasonably necessary or appropriate’ under [OSHA].”). Indeed, in *American Textile Manufacturers*, no party disagreed that cost must be considered; they disagreed merely *how* and *how much*.<sup>14</sup>

In the final analysis, the panel majority’s argument strikes at a straw man. No one would suggest that it is “irrational” for Congress, in its legislative judgment, to preclude a regulatory agency, in a given setting, from taking costs into account in adopting regulations defining pollutant concentrations protective of public health and welfare. Instead, the pertinent question here is: where costs are clearly relevant, as is the case with regulatory decisions involving emission standards, and Congress has not limited the factors that may be considered to exclude costs, could it ever be “reasonable” for an agency to forgo such consideration? This Court’s decision in *State Farm* says no.<sup>15</sup>

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<sup>14</sup> The panel majority also cited *National Ass’n of Clean Air Agencies v. EPA*, 489 F.3d 1221 (D.C. Cir. 2007) (“NACAA”), as supporting EPA’s decision not to consider cost. Pet. App. 26a. In fact, in that case, no one disputed the relevance of cost; the only debate was over the weight to be given that consideration. See *NACAA*, 489 F.3d at 1226.

<sup>15</sup> See also *Entergy Corp.*, 556 U.S. at 232-33 (Breyer, J., concurring in part and dissenting in part) (Noting as to another provision of the CAA that “every real [regulatory] choice requires a decisionmaker to weigh advantages against disadvantages, and disadvantages can be seen in terms of (often quantifiable) costs....[A]n absolute prohibition [on cost-benefit analysis] would bring about irrational results. As the respondents themselves say, it would make no sense to require [power] plants to ‘spend billions to save one more fish or plankton.’”).

In this case, there is no dispute that the MATS Rule will impose billions of dollars of costs. In the face of these real-world realities, EPA's bland assertion that "nothing about the definition [of 'appropriate'] compels a consideration of costs," and that it was "appropriate to regulate EGUs under CAA section [74]12" simply "because EPA has determined that HAP emissions from EGUs pose hazards to public health and the environment," Pet. App. 211a, is not only unreasonable, it borders on the irrational. Cost here is an "important aspect of the problem" that EPA was required to consider in any exercise of reasoned decision-making.

**III. Under §7412(n), Costs Must Be Considered in the Context of Emission Standard-Setting Decisions for the Specific EGU HAP Emissions That Pose Health Hazards.**

Whether the term "regulation under this section" in §7412(n)(1)(A) means regulation under §7412(d), as EPA and the panel below concluded,<sup>16</sup> pollutant-specific standards under §7412(n) focused on "unacceptable" public health risks, as petitioners below argued, or some other type of regulation under

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<sup>16</sup> In the MATS Rule, EPA interpreted §7412(n) to mandate §7412(d) standards that control all HAPs emitted by EGUs, so long as one HAP emitted by one EGU is found to pose either a residual health or environmental risk. The panel below affirmed this interpretation of §7412(n). Pet. App. 41a-43a. In view of the \$9.6 billion cost associated with §7412(d) regulation of all EGU HAPs, a pollutant-specific "risk management" approach to regulation under §7412(n)—an option EPA proposed in the 2004 Proposed Correction Rule—could provide EPA broader authority to regulate EGU HAP emissions than §7412(d) regulation.

§7412, EPA must identify the specific EGU emission reductions that “regulation under” §7412 would require in order to be able to resolve whether “such regulation” is “appropriate and necessary.”

Residual risk regulation focuses on specific types of harm caused by specific pollutants. For example, §7412(f)(2) calls for additional regulation of HAP emissions that pose either an unacceptable residual “public health” risk or residual “environmental” risk by establishing standards that “provide...public health” protection or “prevent...adverse environmental effect.” Similarly, §7412(m) calls for additional regulation of residual “health” or “environmental” risks “as may be necessary and appropriate to prevent such effects [in identified waterbodies].” If control technology regulation of a HAP leaves no residual health or environmental risk of concern, no residual risk regulation of that HAP is required or authorized under §7412(f) or (m).

Section 7412(n)(1)(A) calls upon EPA to perform a study of the “hazards to public health” associated with EGU HAP emissions that remain “after imposition of the requirements of this [Act].” To address any residual public health risks identified in that study, EPA must describe “alternative control strategies for [those] emissions which may warrant regulation under this section.” Thus, like §7412(f) and (m), the §7412(n)(1)(A) residual risk program focuses not on all HAPs, but on the specific remaining EGU HAP emissions that present risks that may warrant regulation. Unlike §7412(f) and (m), however, §7412(n)(1)(A) focuses only on residual “hazards to public health,” and not on residual environmental risks.

In the §7412(n)(1)(A) rulemaking, EPA made three independent findings. For mercury, EPA found a health risk associated with EGU emissions across the entire EGU source category. *Supra* p. 18; see also *supra* p. 16. For non-mercury metals, EPA found a health risk above the one-in-one million level for only five EGU boilers. *Supra* pp. 13-14. For acid gases, EPA found no health hazard, but instead “potential” adverse environmental effects. Proposed MATS Rule, NMA App. 1324a.

Reflecting these findings, EPA could estimate public health benefits (\$4-\$6 million) only for EGU mercury emissions. EPA estimated no health benefits associated with reducing other metals. In the case of acid gas emissions, EPA conceded that they do not pose any health risk. Proposed MATS Rule, Pet. App. 542a-543a; see also *supra* p. 14. Perhaps reflecting that the EGU acid gas emissions represent an exceedingly small percentage of the EGU emissions regulated by the CAA’s Acid Deposition Control Program, see *supra* pp. 14-15, EPA was unable to identify any adverse environmental effect in the United States caused by this small fraction of already comprehensively regulated EGU emissions. See EPRI MATS Comments, JA 398-399.

By contrast, EPA estimates that §7412(d) MACT standards for EGUs would collectively cost the industry \$9.6 billion annually, raising the question whether such regulation could ever be an “appropriate and necessary” regulatory response. Where overall costs and benefits are so wildly out of balance, whether one or more pollutants are driving that overall imbalance is an important aspect of the problem. To say that Congress authorized EPA to regulate EGU HAP emissions posing a residual

health risk in order to trigger regulation, and at the same time required regulation of EGU HAP emissions that pose no residual health risk, would contradict the language of the statute and completely sever the link articulated in the “appropriate and necessary” clause between the need to regulate and a rational regulatory response.

In this rulemaking, the annual control cost for acid gas emissions is approximately one-half of the \$9.6 billion total annual MATS compliance cost while public health benefits are “zero.” See *supra* p. 19; see also *supra* p. 14. For trace metals, control costs are less, and there are only five EGU boilers that might pose health risks slightly above the one-in-one million negligible risk level. See *supra* pp. 13-14. Finally, while mercury controls are estimated to produce small benefits, those benefits would come at a cost of well over \$1 billion annually. See UARG Comments on Proposed MATS Rule, JA 807.

Because cost of regulation is a relevant consideration under §7412(n), EPA should at the least have to explain why a §7412 regulatory response that requires regulation of specific EGU HAP emissions that pose negligible public health risks and no quantifiable adverse environmental effects, at a cost of billions of dollars annually, could be found to be “appropriate and necessary.”



**CONCLUSION**

The MATS Rule is based on an unlawful interpretation of the CAA and should be declared invalid.

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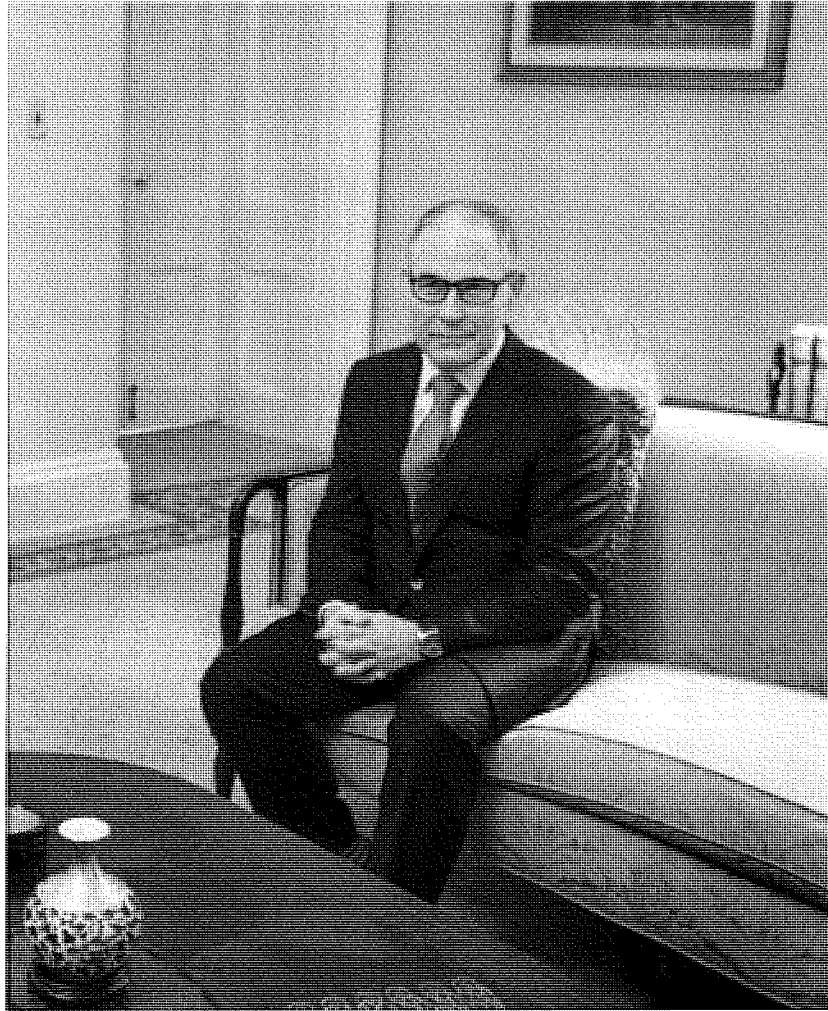
U.S.

## ***Scott Pruitt, Trump's E.P.A. Pick, Backed Industry Donors Over Regulators***

By ERIC LIPTON and CORAL DAVENPORT JAN. 14, 2017



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Scott Pruitt, Trump's E.P.A. Pick, Backed Industry Donors Over Regulators - The New York Times

Scott Pruitt, the Oklahoma attorney general, is President-elect Donald J. Trump's nominee to lead the Environmental Protection Agency. [Stephen L. Crowley/The New York Times](#)

WASHINGTON — A legal fight to clean up tons of chicken manure fouling the waters of Oklahoma's bucolic northeastern corner — much of it from neighboring Arkansas — was in full swing six years ago when the conservative lawyer Scott Pruitt took office as Oklahoma's attorney general.

His response: Put on the brakes.

Rather than push for a federal judge to punish the companies by extracting perhaps tens of millions of dollars in damages, Oklahoma's new chief law enforcement officer quietly negotiated a deal to simply study the problem further.

The move came after he had taken tens of thousands of dollars in campaign contributions from executives and lawyers for the poultry industry.

It was one of a series of instances in which Mr. Pruitt put cooperation with industry before confrontation as he sought to blunt the impact of federal environmental policies in his state — against oil, gas, agriculture and other interests. His antipathy to federal regulation — he sued the Environmental Protection Agency 14 times — in many ways defined his tenure as Oklahoma's attorney general.

Now, Mr. Pruitt, tapped to head Donald J. Trump's Environmental Protection Agency, will have the opportunity to engineer a radical shift in Washington. If confirmed by the Senate, he is expected to shelve the Obama administration's aggressive environmental enforcement and embrace a more collaborative approach with the industries that the agency is charged with policing, many of which have helped him advance his political career.

The impact would stretch from the nation's waterways to the planet's climate, since the E.P.A. carries out and enforces rules to combat global warming.

"He has advocated and stood up for the profits of business, be it the poultry companies or the energy industry and other polluters, at the expense of people who have to drink the water or breathe the air," said Mark Derichsweiler, who led the Oklahoma Department of Environmental Quality division responsible for overseeing the poultry-related cleanup. Mr. Derichsweiler retired in 2015 after 40 years with the state, frustrated with Mr. Pruitt's approach.

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Algae, caused by phosphorus and nitrates in chicken manure, on a rock pulled from the Illinois River in Tahlequah, Okla.  
Nick Oxford for The New York Times

Mr. Pruitt declined a request to comment. But his supporters contend that his record demonstrates a deeply held philosophy that states understand their needs best and should be allowed to regulate their own environment. On Thursday, a coalition of 23 powerful conservative advocacy groups endorsed Mr. Pruitt's nomination, in advance of his confirmation hearing, set for Wednesday.

"Some claim Mr. Pruitt opposes clean air and water. This could not be further from the truth," wrote the groups, which include the political action committee Club for Growth; the American Energy Alliance, which has advised Mr. Trump on energy policy; and Americans for Tax Reform, the group founded by the anti-tax lobbyist Grover Norquist. Mr. Pruitt, the endorsement said, "understands that many of the nation's challenges regarding clean air and water are best met at the state and local level."

Mr. Pruitt, if confirmed, will take over the agency in an odd position: He has spent the last seven years suing it to block regulations that he would be expected to put into effect and enforce. Some legal scholars say he should recuse himself from major pending environmental matters, while groups like the Environmental Defense Fund are urging Congress to reject his confirmation.

"The president's choices deserve a lot of deference from Congress and even environmental groups," said Fred Krupp, president of the Environmental Defense Fund. "But at some point when the nominee has spent his entire career attempting to dismantle environmental protections, it becomes unacceptable. That's why Mr. Pruitt is the first E.P.A. nominee from either party that the Environmental Defense Fund has opposed in our 50-year history."

Some experts say that while returning more authority to states can be desirable in some cases, environmental protection is probably not one of them. Smog and toxic chemicals that foul the air and waterways of one state may originate from one or several others, necessitating federal oversight of pollution.

"Pollution doesn't respect state boundaries," said Patrick A. Parenteau, a professor of environmental law at Vermont Law School. "States have limited ability to regulate pollution from outside the state, and almost every state is downstream or downwind from other pollution."

Case in point: the "Green Country" chicken battle that Mr. Pruitt inherited in eastern Oklahoma. The phosphorus and nitrates in chicken manure were causing algae blooms in the ponds, streams and lakes of the 1.1-million acre Illinois River watershed, which reaches from Arkansas into Oklahoma.

In 2005, Attorney General Drew Edmondson of Oklahoma, Mr. Pruitt's predecessor, sued Tyson Food, Cargill Turkey and a dozen other major poultry producers for damages caused by the pollution and to force them to change the way they disposed of 300,000 tons a year of animal waste.

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**Document: Pruitt v. EPA:  
14 Challenges of EPA  
Rules by the Oklahoma  
Attorney General**

As Mr. Pruitt ran for election, at least \$40,000 in contributions poured into his campaign from nearly 30 executives at poultry companies named in the lawsuit or attorneys at law firms representing them, including Mark Simmons, the founder of Simmons Foods; Donald J. Smith, then the chief executive of Tysons Foods; and Gary Weeks, a lawyer listed on the court papers as representing George's, another company targeted in the lawsuit, according to data assembled by the nonprofit Environmental Working Group and confirmed by The New York Times. That money represents about 4 percent of the total \$1 million he raised in the 2010 campaign, [records show](#).

After Mr. Pruitt took over, instead of pushing the federal judge for a ruling that, seven years later, still hasn't been issued, he negotiated an agreement with Arkansas and the poultry companies to conduct a study of the appropriate level of phosphorus in the Illinois River.

"Regulation through litigation is wrong in my view," Mr. Pruitt [told The Oklahoman newspaper](#) in 2015. "That was not a decision my office made. It was a case we inherited."

J. D. Strong, director of Oklahoma's Wildlife Department and the state's former Secretary of Environment, praised Mr. Pruitt for negotiating the settlement.

[https://www.nytimes.com/2017/01/14/us/scott-pruitt-trump-epa-pick.html?\\_r=0](https://www.nytimes.com/2017/01/14/us/scott-pruitt-trump-epa-pick.html?_r=0)[1/24/2017 6:23:04 PM]



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"You can't force a judge to rule," Mr. Strong said. "Pruitt didn't sit back and wait or badger the judge for a ruling. He worked to get the states of Oklahoma and Arkansas around the table."

A spokesman from Tyson Food noted that the contributions to Mr. Pruitt's campaign were made by the company's executives and employees — including two former chief executives and members of the Tyson family — rather than by the company itself.

"We'll point out that our employees are encouraged to participate in the election process of public officials at all levels, and are at liberty to make personal contributions to any campaign as they see fit," Worth Sparkman, the spokesman for Tyson, said.

But Mr. Pruitt quietly allowed the expiration of a 2003 agreement that Mr. Edmondson helped negotiate with Arkansas to reduce poultry waste pollution — and to monitor the progress — without seeking another formal extension of the deal. And Mr. Pruitt shut down the specialized unit of four attorneys and a criminal investigator that had helped initiate the lawsuit against the 14 poultry companies.

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Drew Edmondson, Mr. Pruitt's predecessor as Oklahoma attorney general, arrived for closing arguments in the state's case against the Arkansas poultry industry in February 2010. Cory Young/Tulsa World, via Associated Press

That environmental unit had broad jurisdiction, forcing pork-producing farmers to spend millions of dollars on their own cleanups and collecting tens of millions of dollars to clean up toxic sites in the state, including poisonous waste left at an abandoned lead and zinc mine known as Tar Creek.

Mr. Pruitt, in response to questions, provided a list of environmental enforcement actions taken during his tenure, but the list includes cases that were largely initiated under Mr. Pruitt's predecessor, Mr. Edmondson.

A spokesman for Mr. Pruitt said that while the environmental unit had been closed, environmental cases continued to be handled by the state solicitor

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general's unit. "Under the leadership of Attorney General Pruitt, this team has held bad actors accountable and protected stewardship of Oklahoma's natural resources."

But Mr. Edmondson said that prosecution of such environmental crimes fell as a result of the shuttering of the unit. "Under his tenure as attorney general, I don't think environmental crimes have disappeared," Mr. Edmondson said of Mr. Pruitt, in an interview. "It is just the filing of cases alleging environmental crimes that has largely disappeared."

Residents who live in eastern Oklahoma, where local ponds and streams are still often clogged with algae, said they, too, were frustrated.

Phosphorus levels have declined considerably — a total of about 70 percent between 1998 and 2015 — but the largest reductions took place before Mr. Pruitt became attorney general, as wastewater treatment plants have been upgraded and more poultry farmers have shipped chicken waste for proper disposal. Still, the levels remain far above the state standard and the decline in pollution has been slower than some hoped.

"I want an attorney general — and a head of our E.P.A. — who is not averse to protecting Oklahoma's most outstanding waterways," said Ed Brocksmitth, who is a co-founder of a group called [Save the Illinois River](#).

At the same time that he was retreating from his predecessor's more aggressive approach, Mr. Pruitt sent a [series of letters to federal regulators](#) that in some cases were drafted by industry lobbyists and then put on his state government stationery, open records [obtained by The New York Times in 2014](#) showed. The letters pressed the federal government to back down on proposals to tighten controls over energy production, such as oil and gas wells that can release planet-warming methane.

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Ed Brocksmith near the Illinois River, which he crosses several time a day. He said he wanted a state attorney general and head of the Environmental Protection Agency who was "not averse to protecting Oklahoma's most outstanding waterways."  
Nick Oxford for The New York Times

Mr. Pruitt separately filed a series of lawsuits against the federal government, challenging regulations intended to reduce the discharge of poisonous mercury from coal-burning power plants, carbon dioxide blamed for climate change and other emissions that federal authorities argued were causing unsightly haze in Oklahoma's air.

In total, Mr. Pruitt filed 14 lawsuits challenging federal environmental regulations. In 13 of those cases, the co-parties included companies that had contributed money to Mr. Pruitt or to Pruitt-affiliated political campaign committees.

Mr. Pruitt separately has served as a leader of the Republican Attorneys General Association, which since 2013 has collected \$4.2 million from fossil-fuel related companies, including Exxon Mobil, Koch Industries, Murray Energy and Southern Company, which in many cases have also supported

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the lawsuits he has filed.

Given the scale of his regulatory challenges, Mr. Pruitt turned to major corporate law firms, which typically defend energy companies fighting these laws, for help. In some cases, that assistance was offered free.

BakerHostetler, the Cleveland-based law firm whose clients have included dozens of energy industry players, assigned five of its lawyers to help Oklahoma overturn President Obama's Clean Power Plan, intended to combat climate change. The law firm did not charge Oklahoma anything for the work, Mr. Pruitt's office confirmed.

David B. Rivkin Jr., the lead attorney from BakerHostetler who handled the matter, said that the work was considered charitable, similar to when major law firms give free legal advice to inmates at the Guantánamo Bay military prison.

Environmentalists scoffed.

"The industries and companies, through their corporate lawyers, are renting the state's seal in order to make it look like their self-interested arguments are being made by Scott Pruitt on behalf of a state," said David Doniger, director of the Climate and Clean Air Program at the Natural Resources Defense Counsel. "It is a disgrace."

Even federal judges are skeptical.

Mr. Pruitt joined with Missouri and several other mostly rural states in one federal suit to beat back California's regulations requiring egg farms, including those in Oklahoma, that wanted to sell in the state to seek more humane treatment of hens. In rejecting the suit, the federal judge admonished the plaintiffs.

"The court concludes plaintiffs have not brought this action on behalf of their interest in the physical or economic well-being of their residents in general," Judge Kimberly J. Mueller of the United States District Court wrote in her 2014 opinion, "but rather on behalf of a discrete group of egg farmers whose businesses will allegedly be impacted."

Senator BARRASSO. Senator Harris.

Senator HARRIS. Thank you, Chairman.

Mr. Pruitt, as an Attorney General, I know as former Attorney General of California that we as attorneys general have several duties which include representing our clients, State agencies, and also the discretion and power to initiate lawsuits in our independent capacity as attorneys general. Would you agree with that?

Mr. PRUITT. Some States provide more latitude than others.

Senator HARRIS. Does your State?

Mr. PRUITT. Our State has not provided constitutionally as much authority as other States—

Senator HARRIS. Have you never exercised your independent capacity as Attorney General to bring a legal action?

Mr. PRUITT. Senator, I would have to know more specifics about what you are referring to. But in response to your question, it does—

Senator HARRIS. Have you ever exercised your independent capacity as the Attorney General of your State to initiate a legal action, yes or no?

Mr. PRUITT. The litigations that we have engaged in largely have been in consultation with agencies that—

Senator HARRIS. Largely. So you have also exercised your independent capacity as the Attorney General of your State, is that correct or not?

Mr. PRUITT. I may have, Senator. I don't know.

Senator HARRIS. You don't know if you have or not? You have been Attorney General for your State for almost 7 years, is that correct?

Mr. PRUITT. Approaching that, yes. Six years, actually.

Senator HARRIS. And I have read that you have initiated, and it has been mentioned before, 14 lawsuits in your independent capacity as the Attorney General of Oklahoma, and apparently 7 of those cases have been resolved, 6 of which you have lost. My question is—I hear that you are a lover of baseball. What would your batting average then be?

Mr. PRUITT. It was generally about .300, which is pretty good for a second baseman.

Senator HARRIS. My calculation is it is .142.

Moving on, would you agree that as attorneys who have the responsibility for doing the work of justice, and particularly as an Attorney General, that we make decisions based on propriety and impropriety; we make decisions based on what is not only an actual conflict but what is an appearance of conflict? Would you agree that is important?

Mr. PRUITT. I believe that is important, Senator.

Senator HARRIS. OK. And so on this issue of whether or not you would be recused if you are nominated and actually voted in as the Administrator of the EPA, you have said that you will recuse yourself from the cases your office has been involved with if directed to do that. Do you agree that you also have the discretion to recuse yourself from those cases?

Mr. PRUITT. I believe, Senator, the rules of professional conduct, in addition to the review that OGE—

Senator HARRIS. Do you believe that you have the discretion to recuse yourself from the cases that you were involved with as Attorney General?

Mr. PRUITT. I think it is actually stronger than that, Senator. I actually have an obligation in those instances, as directed by ethics counsel, and that is the reason I indicated earlier that I will recuse.

Senator HARRIS. Independent of any direction from ethics counsel, do you agree you have the discretion to recuse yourself from those cases?

Mr. PRUITT. I believe that it is important to maintain——

Senator HARRIS. I am asking about whether or not you actually have the discretion, the power, to recuse yourself. Do you disagree or agree with that?

Mr. PRUITT. Clearly, there is a discretion to recuse.

Senator HARRIS. Clearly.

You are familiar with the Clean Air Act, yes?

Mr. PRUITT. I am sorry, Senator?

Senator HARRIS. You are familiar with the Clean Air Act?

Mr. PRUITT. I am.

Senator HARRIS. And as you may know, section 209, subdivision (b) of the Clean Air Act, recognizes California's authority to issue air pollution standards for new motor vehicles that go above and beyond Federal standards. The EPA has historically recognized California's authority to issue new motor vehicle pollution standards that go above and beyond Federal standards.

In your opening statement you write, "It is not EPA's mission to be against sectors of industry in general or against particular States." Will you commit, then, to upholding that same standard and recognizing California's authority to issue its own new motor vehicle air pollution standards?

Mr. PRUITT. You know, Senator, as you indicated, California was actually regulating those standards before the EPA was actually created, which is why the California waiver exists under statute.

Senator HARRIS. Do you agree to uphold that same standard that has been held by your previous Administrators?

Mr. PRUITT. I agree to review that as each Administrator before me has. It has been granted at times and denied at times.

Senator HARRIS. Do you agree to uphold it? Reviewing and upholding are two different points.

Mr. PRUITT. Senator, as you know, Administrators in the past have not granted the waiver and in fact have granted the waiver. That is a review process that will be conducted if confirmed.

Senator HARRIS. What is your intention, sir?

Mr. PRUITT. I don't know without going through the process to determine that, Senator, and one would not want to presume the outcome.

Senator HARRIS. In the 14 cases that have been previously mentioned, in each of those cases regulated companies were also a party to your suits; is that correct?

Mr. PRUITT. In some instances, yes.

Senator HARRIS. In most of them. Can you name a few instances in which you have filed a lawsuit in your independent capacity as Attorney General against a corporate entity for violating State or Federal pollution laws?

Mr. PRUITT. Senator, I have a list here that has been provided.

Senator HARRIS. Can you name them, please?

Mr. PRUITT. Sure. There is a list that has been—

Senator HARRIS. Can you name one?

Mr. PRUITT. Yes. The first is the Mahard Egg Farm involving a CAFO situation and clean up of a large hen operation that affected water quality. Coco Manufacturing—

Senator HARRIS. Did you file a lawsuit in that case, sir?

Mr. PRUITT. I did, Senator.

Senator HARRIS. OK. And what was the outcome of that case?

Mr. PRUITT. We received a good outcome against them.

Senator HARRIS. And the name of that entity was what?

Mr. PRUITT. Mahard Egg Farm.

Senator HARRIS. And can you name any other cases where you have actually filed a lawsuit against a corporate entity for violating Federal pollution laws?

Mr. PRUITT. In fact, that case was brought in conjunction with the EPA. And I want to address something, Senator. Earlier, when you say independent capacity, those cases that you referred to, the list of cases, were as an extension of the DEQ in the State of Oklahoma, an extension of agencies at the State level that had authority granted to them by this body that we were—

Senator HARRIS. And I understand that role, as a former Attorney General, but that is you representing your client. I am asking about your independent capacity as the Attorney General of your State.

Let's move on.

On the issue of mercury—

Senator BARRASSO. I would suggest that the Senator's time has expired.

Senator HARRIS. Thank you.

Senator BARRASSO. Thank you.

I would like to introduce for the record a letter by J.D. Strong, who is the Director of the Oklahoma Department of Wildlife Conservation, who in reference to the submission recently by the Ranking Member makes reference to that former employee who is retired from the State of Oklahoma and is currently serving as Vice Chairman of the Oklahoma chapter of the Sierra Club. So the references are from now someone who is no longer a State employee but the Vice Chairman of the Oklahoma chapter of the Sierra Club.

But this letter from Mr. Strong goes to talk about the efforts by Attorney General Pruitt, who says, "For the past 6 years General Pruitt has been instrumental in many of our successes and has never asked me to compromise regulatory efforts to benefit industry." He says, "On the contrary. All of our projects and cases that involved his office were given staff support at the highest level, and more often than not resulted in more stringent environmental protection. He has been a strong ally in defending our ability to continue the great progress that we made in protecting Oklahoma's environment."

Senator CARPER. Mr. Chairman, in response, let me just ask for unanimous consent to put in the record, and this is on behalf of Senator Whitehouse, rebuttal articles for Mr. Pruitt's claim on litigation against fossil companies. Some of the topline points from



these articles are, one, that they are fraud cases first and foremost; second, some were brought by his predecessor, Drew Edmondson; third point, the case against BP was filed and left dormant at least for any publication; and also that Mr. Pruitt fought against the participation of State whistleblowers in the litigation, and that was a reference to qui tam action.

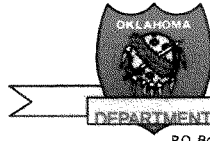
Thank you.

Senator BARRASSO. Without objection.

[The referenced information follows:]

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January 15, 2017

The Honorable John Barrasso  
Chairman, U.S. Senate Committee  
on Environment & Public Works  
410 Dirksen Senate Office Building  
Washington, DC 20510-6175

The Honorable Tom Carper  
Ranking Member, U.S. Senate Committee  
on Environment & Public Works  
456 Dirksen Senate Office Building  
Washington, DC 20510-6175

RE: Debunking *New York Times* article, "Scott Pruitt, Trump's E.P.A. Pick, Backed Industry Donors Over Regulators," January 14, 2017

Dear Chairman Barrasso and Ranking Member Carper:

Rarely do I feel compelled to respond to a newspaper article, particularly one that runs in a nationally renowned news outlet like the *New York Times*. I've learned over 23-years as a State environmental regulator to value the media's role in uncovering and exposing the truth, not to mention the wisdom found in the quote, "Never pick a fight with anyone who buys ink by the barrel." However, the mistruths propagated by the above captioned article undoubtedly caught the attention of you, your fellow committee members, and many of your respective constituents just days before Attorney General Scott Pruitt's confirmation hearing for EPA Administrator, and thus deserve a response from at least one of the regulators that allegedly lost out to industry donors.

First, it's worth noting that I spoke with the *New York Times* for nearly fifteen minutes laying out the facts from my perspective as Oklahoma's former Secretary of Environment and a plaintiff in the state's litigation against the poultry industry, then later as Director of the Oklahoma Water Resources Board – the agency responsible for establishing the phosphorus standard referenced in the article. One would think such experience deserves significant play in an article of this focus, yet more column space was devoted to a retired employee of the Oklahoma Department of Environmental Quality who was incorrectly listed as the leader of the agency's Water Quality Division and wrongfully given credit for being responsible for "overseeing the poultry-related cleanup." The poultry industry and its related cleanup are governed by our Oklahoma Department of Agriculture, Food & Forestry. Rather than insinuating that Mr. Derichsweiler retired out of frustration with General Pruitt, instead of the fact that he retired after 40 years of service to the State, the *New York Times* should have at least divulged that Derichsweiler currently serves as Vice Chair of the Oklahoma Chapter of Sierra Club, an organization that has launched a campaign to oppose General Pruitt's confirmation.

The facts that I shared in my interview with the *New York Times* paint a completely different picture than the article portrays. If I were writing the headline, it would read, "Pruitt Helps Deliver Water Quality Improvement in Oklahoma's Scenic Rivers." At the end of the day, that has been Oklahoma's goal in the Illinois River watershed for decades, and that is what is happening during General

The Oklahoma Department of Wildlife Conservation is the state agency responsible for managing fish and wildlife. The Wildlife Department receives no general tax appropriations and is supported by hunting and fishing license fees and federal excise taxes on hunting and fishing equipment.

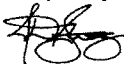
Letter to Senators Barrasso and Carper  
January 15, 2017  
Page 2 of 2

Pruitt's term as Attorney General. As I stated to the *New York Times*, no State Attorney General can force a Federal Judge to rule, or I'm certain former Attorney General Drew Edmondson would have taken such action during his last two years in office. Rather than beating his head against that wall, Pruitt helped Oklahoma negotiate a new agreement with the State of Arkansas that prompted not just a study of the appropriate phosphorus level necessary to protect our shared scenic rivers, which the article dismissed as trivial, but more importantly provided for continued phosphorus controls on wastewater and poultry facilities. For the first time in my career, Oklahoma measured decreasing phosphorus levels and water quality improvement in the Illinois River watershed beginning in 2012. While many people on both sides of the border deserve credit for this result, General Pruitt definitely was a key player. This mere "study" ultimately led to a recent agreement between the states of Arkansas and Oklahoma wherein Arkansas committed to meet a more stringent phosphorus standard - another shocking development for two states that have quarreled for decades and quite the opposite result one would expect from an Attorney General that is being unfairly maligned as a shill for industry.

Rather than spend several more pages contesting the inaccuracies found in the *New York Times* article, I will leave you with this overarching truth. As a fifth generation Oklahoman and someone that has devoted my career to natural resource protection, I take great pride in the progress that has been made in improving Oklahoma's land, air, water and wildlife resources. For the past six years, General Pruitt has been instrumental in many of our successes and has never asked me to compromise regulatory efforts to benefit industry. On the contrary, all of our projects and cases that involved his office were given staff support at the highest level and, more often than not, resulted in more stringent environmental protections. Please do not confuse Pruitt as being anti-environment because of his well justified (and strongly supported by me) efforts to counter the EPA's various attempts to second-guess or usurp State authority. Rather, he has been a strong ally in defending our ability to continue the great progress that we've made in protecting Oklahoma's environment at the state level - progress that is too often impeded by Federal overreach and interference.

Rec'd  
/


If I can be of further assistance as you embark on your important task of reviewing Mr. Pruitt's qualifications and disposition to serve as EPA Administrator, please do not hesitate to contact me. I've always found Mr. Pruitt to be a man of great honesty and integrity, so you should have the perfect opportunity in your hearing to gather facts before making your final decision. If truth prevails, you will find what most of us in Oklahoma know to be true: Scott Pruitt stands for responsible, common sense, State-led environmental protection efforts that generate positive results.

Respectfully,  
  
J.D. Strong  
Director

**FT Connections Quiz**


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## Details emerge in deal to end lawsuit by state of Oklahoma against Phillips 66

 by Paul Monies • Published: January 13, 2017 8:00 AM CDT



Environmental Protection Agency (EPA) Administrator-designate Scott Pruitt listens to a reporter's question during his meeting with Sen. Shelly Moore Capito, R-W.Va., on Capitol Hill in Washington, Wednesday, Jan. 4, 2017. (AP Photo/Greg Owen)

The state of Oklahoma received \$2.8 million and an outside law firm working on contingency for Oklahoma Attorney General Scott Pruitt received \$942,000 from a little-publicized settlement with Phillips 66 over alleged "double-dipping" into a petroleum storage tank cleanup fund.

The state's portion of the payout went to the Petroleum Storage Tank Indemnity Fund, and Alabama law firm McCallum,

Methvin & Terrell received its portion of the \$3.77 million settlement for its work on the case, Pruitt spokesman Lincoln Ferguson said Thursday.

While the case against ConocoPhillips was filed in district court in Oklahoma County in 2013, the settlement agreement doesn't appear in the court docket. The attorney general's office and the McCallum law firm filed to dismiss the case in September without mentioning a settlement.

Pruitt, who typically issues news releases touting legal victories, didn't publicize the settlement award or issue a news release. The only public mention of it came in meeting minutes at the Oklahoma Corporation Commission. The settlement agreement doesn't specify how much of


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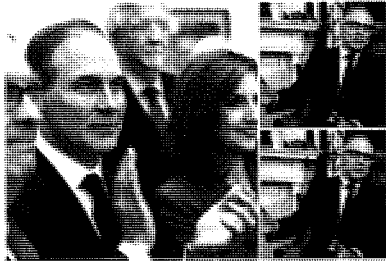
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Oklahoma Corporation Commission. The settlement agreement doesn't specify how much of

the award went to the outside law firm, only that "the Oklahoma attorney general shall be responsible for paying any attorney fees."



A message with the McCallum law firm wasn't returned on Thursday.

Phillips 66, which was spun out of ConocoPhillips in 2012, did not admit wrongdoing in the settlement agreement. The Houston-based company operates refineries and markets fuel at more than 7,500 U.S. service stations.

Pruitt's lawsuit alleged Phillips 66 had collected money from the indemnity fund even after it used private insurance proceeds for the environmental remediation.

Ferguson said the settlement wasn't required to be filed in district court. The attorney general's office contracted with the McCallum law firm because of its expertise on storage tank lawsuits. The contract was not subject to bidding since there's no state law requiring that in Oklahoma, Ferguson said.

Pruitt, who was nominated by President-elect Donald Trump last month to head the Environmental Protection Agency, has filed several lawsuits over EPA regulations during his tenure as attorney general. Environmental groups and some Democrats have accused him of working on behalf of the energy industry in lawsuits and in comments on pending federal rules.

**RELATED:** [Pruitt's office releases contract](#)

The Phillips 66 case and others like it have been touted by Pruitt supporters as an example of the attorney general also being willing to go after energy companies. Related lawsuits against BP and Chevron over indemnity fund payments were filed by his predecessor in late 2010.

"Mr. Pruitt demonstrated that he will take on industry when they overstep when he sued oil companies such as BP who 'knowingly double-dipped by collecting reimbursements for corrective action environmental costs for sites they polluted,'" said a fact sheet by America Rising Squared, which started the ConfirmPruitt.com website to support his EPA nomination.

Pruitt's Senate confirmation hearing is scheduled for Wednesday.

#### 'Double-dipping' allegations

Allegations of companies double-dipping into the petroleum tank indemnity fund preceded Pruitt, who took office in January 2011. His Democratic predecessor, Drew Edmondson, sued Chevron and BP over similar allegations in December 2010. Pruitt didn't pursue those cases, and the court dismissed them in March 2011.

**RELATED:** [Pruitt's confirmation hearing set for Wednesday](#)

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The Legislature created the indemnity fund in 1989 to help storage tank owners meet a federal requirement for liability insurance for the cleanup and damages caused by leaking tanks. Lawmakers commissioned an investigative audit of the fund in 2002 that criticized its expenditures on items other than cleanup costs.

The Phillips 66 lawsuit was complicated by the intervention of two whistleblowers, who had filed a separate "qui tam" taxpayer lawsuit in 2004 alleging double dipping into the petroleum tank indemnity fund. Qui tam lawsuits allow whistleblowers to recover a portion of the funds owed to the government.

Both Phillips 66 and Oklahoma objected to the whistleblowers getting involved in the state case and asked the district judge to dismiss the taxpayers' involvement. District Judge Bryan C. Dixon agreed, but the whistleblowers appealed to the Oklahoma Supreme Court.

The state Supreme Court declined to take up the appeal in March, and the docket doesn't show any actions other than record-keeping entries until the case's dismissal in September.

The Oklahoma Corporation Commission, whose staff administers the petroleum storage tank indemnity fund, discussed the settlement in an hourlong executive session in June. The three-member commission then voted to approve the settlement, according to meeting minutes from June 21.

**RELATED:** [Transcript: Scott Pruitt 2016 interview on EPA and carbon dioxide regulation](#)

Mike Hunter, first assistant attorney general at the time, signed the Phillips 66 settlement that same day on behalf of the attorney general's office. In October, Gov. Mary Fallin appointed Hunter as Oklahoma secretary of state. Hunter has been mentioned as a possible successor to Pruitt if he is confirmed as EPA administrator.

#### **Outside law firms**

Ferguson, Pruitt's spokesman, said the contract for the McCallum law firm wasn't available Thursday. He said contingency attorneys don't fall under the same requirements as the contracts for outside attorneys paid with taxpayer funds.

Pruitt's office also has a contingency-fee arrangement with California law firms hired to work the state's consumer lawsuit against Volkswagen AG. Pruitt filed a lawsuit in June against the German automaker in Oklahoma County District Court, alleging it misled consumers over the attributes of its "clean diesel" line of engines. The lawsuit came after Pruitt decided to leave a multistate lawsuit pursued by 44 other states.

The lawsuit said there were about 3,855 VW vehicles registered in Oklahoma with "defeat device" software to cheat EPA emissions testing. Assisting the state were the Larson O'Brien LLP and McCuneWright LLP, two California law firms that pursued similar actions on behalf of consumers in other states.

**RELATED:** [It's a tough time in Oklahoma, unless you're Scott Pruitt](#)

Oklahoma's VW case was moved to federal court in California, although Pruitt's office has petitioned to move it back to Oklahoma state court. Ferguson said a hearing on that motion to remand is expected some time in March or April.

VW will pay almost \$20 billion in criminal and civil penalties for its role in the diesel device scandal, including \$4.3 billion from a criminal plea agreement announced Wednesday by the Justice Department. The federal settlements won't affect Oklahoma's consumer lawsuit against the automaker, Pruitt's office said.

Paul Nolette, an assistant professor at Marquette University who has written a book about the changing role of attorneys general in complex litigation, said it's not the first time Pruitt has split from multistate settlements. Pruitt pursued his own settlement over allegations of mortgage fraud in the wake of the 2008-2009 financial crisis. At that time, he didn't use outside attorneys.

"He went his own way because he was concerned the settlement was being used as a regulatory device to punish banks," Nolette said.

Hiring attorneys on a contingency basis makes sense for both Republican and Democratic attorneys general, Nolette said.

"The beauty of it from a political point of view is that technically it is not taxpayer money," Nolette said. "You can argue that it is taxpayer money if a third of it goes out the door, but that money is coming from a corporation. It's not coming from state coffers. That's also been part of the motivation on the part of attorneys general to get around cuts to state agencies."

On environmental litigation, Pruitt also has used outside counsel, most notably on the state's challenge to the Obama administration's Clean Power Plan to reduce carbon dioxide emissions from power plants.

The Washington law firm of Baker & Hostetler LP is helping Oklahoma in the legal challenge to the plan, which is under a stay from the U.S. Supreme Court.

Attorney David Rivkin, a leader in the conservative legal movement, and others at the firm are working on the Clean Power Plan case at no cost to Oklahoma. Rivkin and Pruitt have appeared together at several events involving regulatory and environmental policy, including the 2015 Southern Republican Leadership Conference in Oklahoma City.



Paul Monies



Paul Monies is an energy reporter for The Oklahoman. He has worked at newspapers in Texas and Missouri and most recently was a data journalist for... [read more >](#)

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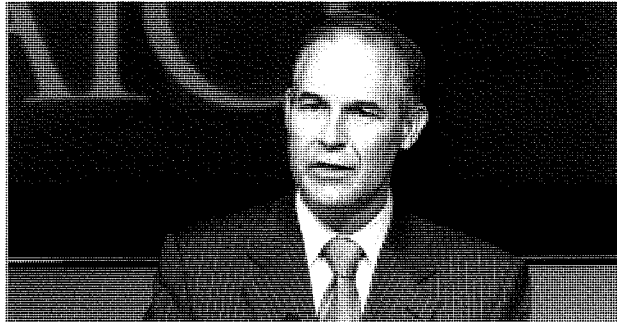
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 THE TRANSFORMATION OF THE ENERGY SECTOR
 

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**TRANSITION****Whistleblowers say Pruitt fought them in oil fraud case**

Mike Soraghan, E&E News reporter  
 Published: Tuesday, January 17, 2017



Scott Pruitt (R), Oklahoma's attorney general and President-elect Donald Trump's nominee to head U.S. EPA. Photo courtesy of C-SPAN.

Lawyers working for Oklahoma Attorney General Scott Pruitt battled for months against a whistleblower lawsuit seeking to claw back money from ConocoPhillips Co. for "double dipping" from a state cleanup fund.

But in 2013, Pruitt changed his tune. He filed his own suit against the company, alleging the same double dipping, and potentially pushing aside the former state employees who had been pressing the case for nine years. In September, he quietly **settled** with the company for \$3.6 million.

## CONTINUING COVERAGE

## POWER SHIFT

E&E News' ongoing coverage of the new administration and the changes taking place on Capitol Hill. [Click here](#) to view the continuing coverage.

Now that President-elect Donald Trump has named Pruitt to run U.S. EPA, his allies are touting his involvement in such cases as evidence that he will stand up to oil companies. An advocacy group supporting Pruitt's nomination noted a similar case in which Pruitt sued BP PLC, seeking to counter Pruitt's reputation as an ally of oil and gas companies.

"Mr. Pruitt demonstrated that he will take on industry when they overstep," the group, America Rising Squared, stated on its website [ConfirmPruitt.com](#).

But the attorneys for the former state employees who have been pressing the case since 2004 say Pruitt fought them harder than he did the oil company.

"I never saw him do anything to really take on ConocoPhillips," said Thomas Millington, one of the lawyers in the taxpayers' suit. "I did see him actively opposing people who were taking on ConocoPhillips."

ConocoPhillips in 2012 spun off Phillips 66, which is the company that settled with Pruitt.

Pruitt filed the similar double-dipping case against BP in 2012 but has left it dormant ever since. Court records show BP hasn't responded, and nothing has been filed since January 2013.

And Pruitt, who has issued more than 60 press releases about federal overreach and his suits against federal agencies, never issued a news release about the ConocoPhillips or BP cases.

**Double-dipping allegations**



1/24/2017

TRANSITION: Whistleblowers say Pruitt fought them in oil fraud case -- Tuesday, January 17, 2017 -- www.eenews.net

About 40 states have established funds to pay for the thousands of leaking underground storage tanks below gas stations. Many were installed in the 1950s or earlier. When they corroded, the gasoline and diesel they leaked became a serious threat to underground drinking water supplies all over the country.

Oklahoma's fund gets money from a penny-a-gallon gasoline tax approved by the state Legislature in 1989.

Several states have alleged that Phillips, BP and other oil majors "double dipped" by getting insurance money to clean up the sites, then demanding reimbursement from the state cleanup funds.

In Oklahoma, the fund is administered by the staff of the state Corporation Commission. In 2004, two former commission attorneys, Rachel Lawrence Mor and Charles Wight, filed suit saying that ConocoPhillips had unjustly received \$3.6 million in reimbursement for tank cleanups.

Their claim alleged ConocoPhillips was reimbursed for expenses the state fund didn't cover, such as litigation and landscaping.

The legal term for the type of suit is "qui tam." They're more often referred to as "whistleblower," "false claim" or "taxpayer" suits. If they prove fraud, Oklahoma whistleblowers can get half of any money recovered as a reward.

In 2012, the former state employees added a new claim alleging ConocoPhillips had received insurance payments for tank cleanup, then billed the state. They asked for nearly \$4 million.

In April 2012, one of Pruitt's assistant attorneys general, Nancy Zerr, filed a motion, representing the Corporation Commission, to dismiss the case. She said the former state employees had missed the statute of limitations and couldn't recover in a whistleblower case since they'd contacted the FBI about it.

"This action should be dismissed, because the plaintiffs lack the capacity to represent the commission in this matter," Zerr wrote.

The motion was denied. In September 2013, Pruitt filed suit, alleging "a bad-faith, deceptive and fraudulent scheme" to drain the cleanup fund. The suit named ConocoPhillips, Phillips 66 and other companies.

Pruitt's office and Phillips fought efforts by Millington's clients to intervene. And Pruitt and Phillips jointly sought an order keeping documents from the case secret.

Pruitt handed the case to attorney Phillip McCallum of the Birmingham, Ala., law firm McCallum, Methvin & Terrell. Pruitt also brought McCallum into the BP case. When the case was settled last year, according to the *Oklahoman* newspaper in Oklahoma City, the McCallum firm got \$942,000.

The whistleblowers lost before an Oklahoma County jury in February 2016 but are appealing to the Oklahoma Supreme Court.

Phillips 66 spokesman Dennis Nuss declined to comment, saying the company doesn't comment on litigation. BP officials did not respond to a request for comment.

Lincoln Ferguson, Pruitt's spokesman in the attorney general's office, cited the BP double-dipping case when asked to provide support for his statement that listed among Pruitt's accomplishments "holding accountable oil and gas companies that were profiting off pollution and defrauding taxpayers." On Friday, Ferguson referred further questions about the cases to the Trump transition team, which did not respond to emails seeking comment.

But the political advocacy group running the "Confirm Pruitt" campaign responded to questions with a general statement that Pruitt acted properly and diligently ([Greenwire](#), Jan. 12).

"Pruitt held these companies accountable and got results, balancing the need for clean air and water against the interests of his constituents and the rule of law," said Jeremy Adler, spokesman for America Rising Squared.

America Rising Squared is a political organization staffed by veterans of past Republican presidential campaigns ([Enerawire](#), Jan. 10). It is allowed to keep its donors' names secret.

Its affiliated super political action committee has been largely underwritten by hedge fund manager Paul Singer and other investors.

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Senator BARRASSO. Senator Sullivan.

Senator SULLIVAN. Thank you, Mr. Chairman.

General Pruitt, it is good to see you again. Thank you for your willingness to serve. And to your family, as you know, it is a team effort, so I want to thank them as well.

I appreciated your opening statement, particularly your written statement, and I want to emphasize we all want clean air. We all want clean water. My State of Alaska has some of the cleanest air, cleanest water, pristine environment literally in the world. But your emphasis on the ability to do both, to grow an economy, to develop our resources responsibly, and protect the environment I think is very, very important, and I appreciate that focus.

I believe the EPA needs a serious course correction. As Senator Ernst talked about, there is a lot of anger, even fear of this Agency throughout many parts of the country, and I believe you are the right person to provide that course correction and do something that is very important, which is regain the trust of the American people that I think has been lost in a lot of places in America because of the overreach, because of the lack of focusing on the law.

So there has been a lot of discussion this morning about cooperative federalism. Can you explain it in a little more detail? Is that your term, or is that a term that—did you come up with that, or is that something that was actually directed by Congress?

Mr. PRUITT. Directed by Congress, Senator.

Senator SULLIVAN. And so in the Clean Air Act and the Clean Water Act who was given, what entity in our republican form of government was given the primary responsibility over clean air and clean water in the United States?

Mr. PRUITT. Well, as you know, Senator, under the Clean Air Act there is something called State implementation plans that the EPA and the States review together, but the States have that responsibility of adopting the plan—

Senator SULLIVAN. So isn't it correct actually in the law it says—

Mr. PRUITT. It is.

Senator SULLIVAN [continuing]. The primary responsibility under the Clean Air Act and Clean Water—and who directed that?

Mr. PRUITT. Congress.

Senator SULLIVAN. OK. So when you are talking about cooperative federalism, that is not some Scott Pruitt invented; you are focusing on the intent of the Congress.

Mr. PRUITT. Probably more so than any statutes that have been adopted by Congress historically, the environmental statutes that we know, from clean water to clean air to Safe Drinking Water Act, many pieces of legislation, Congress has been very explicit and very specific in saying that cooperative federalism, the role of the States is important, should be respected, and should be emphasized.

Senator SULLIVAN. So let me show you a chart here. This is the Waters of the U.S. in the States and entities that sued to stop that rule. Thirty-two. Democrats and Republicans and Independents. Do you think this is an example of cooperative federalism? And if not, if you are confirmed, what are you going to do to get back to what

is not a Scott Pruitt idea, it is the direct direction of the Congress of the United States?

Mr. PRUITT. Senator, when you think about the relationship between the EPA and the States, the States are not mere vessels of Federal will; they don't exist simply to carry out Federal dictates from Washington, DC. There are substantive requirements, obligations, authority, jurisdiction granted to the States under our environmental statutes. That needs to be respected. When it is not respected, that is what spawned most of this litigation that has been referenced here today. And why does it spawn it? Because it matters. It matters that the States participate in the way that Congress has directed, and they have been unable to do so for a number of years.

Senator SULLIVAN. So, again, cooperative federalism, you are carrying out the will of Congress when you are focused on that issue.

Mr. PRUITT. That is exactly right. The expertise, the resources, the knowledge, the awareness of how to fix environmental issues at the local level is something that is important for the entire country to know.

Senator SULLIVAN. So I am a former Attorney General myself who has sued the EPA, and some of my colleagues on the other side of the aisle, Judge Booker's comments, I think he tried to equate a little bit suing the EPA, not caring for Oklahoma's children. Do you care about Oklahoma's children?

Mr. PRUITT. Without question. I have a couple sitting behind me.

Senator SULLIVAN. Fourteen lawsuits. And again, Senator Boozman mentioned this, what has been the primary focus of those lawsuits? It is not that you don't care about the environment, is it?

Mr. PRUITT. Absolutely not. I care very much about the environment. It is to restore the relationship and ensure the relationship that Congress has directed, the role of the States in improving our environment. There is an idea in Washington that the States, those in Oklahoma or in Alaska or other parts of the country, don't care about the water we drink or the air we breathe. The farmers and ranchers, those in industry in the State of Oklahoma, most of them are very committed to that. When they have not been we have taken enforcement action against them.

Senator SULLIVAN. And just one final question. A lot of my colleagues on the other side of the aisle spent a lot of time, and I think Senator Sanders is up next, vilifying the oil and gas industry, somehow bad actors, polluters. According to the American Petroleum Institute, 364,000 Oklahomans work in the oil and gas industry or related service sectors. Are these people bad actors? Are they polluters? Can you describe? You talk about the good people in your written statement. Who are these people, and are you representing them when you are bringing these kinds of actions? Are they evil people?

Mr. PRUITT. No, Senator. They want to comply with the law. They want to know what is expected of them. They care about the air they breathe and the water they drink, and they want to make sure that the EPA is partnering with State agencies and industry to ensure that that outcome occurs.

Senator SULLIVAN. And aren't these hundreds of thousands of people part of that industry?

Mr. PRUITT. Absolutely. In fact, 25 percent of our entire State budget in Oklahoma is from that industry. This is a State concern. And more than that, we have significant regulation over this industry. Our Corporation Commission has oversight over many of these issues. So we have regulatory bodies from DEQ to the Corporation Commission to others that are involved in making sure that the air we breathe and the water we drink is clear in the State of Oklahoma.

Senator BARRASSO. Thank you.

Senator SULLIVAN. Thank you, Mr. Chairman.

Senator BARRASSO. Senator Gillibrand.

Senator GILLIBRAND. Thank you, Mr. Chairman.

Thank you, Mr. Pruitt, for being willing to serve this Administration, for your interest in public service, and your past public service.

Mr. PRUITT. Thank you, Senator.

Senator GILLIBRAND. I want to talk to you about some of the constituents in my State and the challenges, the very real challenges we face. First, we had millions of people's lives upended with Superstorm Sandy. I mean, millions of people. We had parents who lost their children who drowned because of surges of water coming through their homes, through the streets. The devastation was literally unparalleled in my State; it was just something we had never seen before. And we are going to be looking to you to protect these families and protect these communities, because we know with global climate change the incidences of super storms and violent weather impacts is changed; it is very, very different. And you have already told folks that you do believe that global climate change is real; it has been caused by human activity.

Do you believe also that sea levels are rising?

Mr. PRUITT. Senator, I believe that the EPA, addressing this issue because of the MATS v. EPA case and the endangerment finding has obligations to address the CO<sub>2</sub> issue. In doing so, they need to follow the processes as set up by Congress. So I think it is very important to do both.

Senator GILLIBRAND. But you have studied this issue of sea levels. You do realize they are rising. And it is one of the reasons why these storm surges were so high and devastating communities all across New York City. So I need you to be vigilant because lives are at stake, and I think you have the purview to do that. Will you be vigilant?

Mr. PRUITT. Senator, we will obviously address those issues that we talked about in your office, and I appreciate your passion on this issue.

Senator GILLIBRAND. One of the other issues that we talked about that I think is equally as concerning is issues of mercury that have been raised, about asthma rates that have been raised, about groundwater polluted. I have looked at your record. Most of the lawsuits you filed as Attorney General were related to businesses, specifically what was important for your State in terms of employers and businesses. And the few lawsuits you did file about human safety were few and far between.

But this role as head of the EPA, you are going to have a much more important role to play, and I want to talk specifically about

mercury. If you believe that mercury is a threat to public health but oppose the remedy of reducing mercury air pollution from power plants because it is too costly, what, then, do you think you should do, or what should be done to address the mercury pollution?

Mr. PRUITT. Let me say, Senator, mercury is something—it is a hazardous air pollutant under section 112. It is something that the EPA has authority to regulate and should regulate. It should do so, though, within the framework established by this body, and the Supreme Court said that the EPA did not follow the cost-benefit obligations. It is not that the benefits outweigh the costs; it is just that they simply didn't engage in a proper record-based support for their rule. So that goes back to earlier questions with other Senators about the process mattering, being committed to the rule of law and the rulemaking authority that Congress has given the EPA in making sure that as rules are passed, that they can be upheld in court.

Senator GILLIBRAND. But I need you also to be worried about human health. I understand there is a cost, but when you are talking about lives, when you are talking about children who can't breathe—I have been to the emergency room at 2 in the morning with a child who can't breathe; it is a horrible thing. We have had children die in New York City because none of their teachers, no administrators in the schools knew what to do when a child has an asthma attack. It is a huge problem. So I need you to care about human health and really believe that the cost, when human health is at risk, when people are dying, is far higher than it is the cost to that polluter to clean up the air and change their processes. I need you to feel it as if your children sitting behind you are the ones in the emergency room. I need you to know it.

Mr. PRUITT. And Senator, I would say to you there are certain instances where costs can't even be considered, as you know. Those criteria pollutants under our NAAQS program, cost is not even a factor because human health is the focus.

Senator GILLIBRAND. So let's talk about that. So you and I previewed this in my office. We have a horrible problem in New York State with Superfund sites and with groundwater that is polluted. We have PFOA in our water. We have the largest PCB Superfund site in the United States in the Hudson River. When families who don't have money fish in the Hudson River, they eat those fish, they get ill. It is horrible. The contaminants are real, they are pervasive, and they are destroying lives. They are also destroying the economy, because when you have contaminants all over the place you can't sell your house, you can't put in industries that are relying on tourism. It is a huge problem.

So PFOA is an example of a chemical that needs to be tested. I need you to put it No. 1 on your list, to test it, and if it is the carcinogen that many scientists have said it is, it needs to be banned.

Mr. PRUITT. The TSCA authority that has been granted by this body, you and I talked about that in your office, PFOA needs to be addressed quickly, even under the Safe Drinking Water Act as well.

Senator GILLIBRAND. Will you commit to doing that work?

Mr. PRUITT. Yes, Senator.

Senator GILLIBRAND. Thank you.

Thank you, Mr. Chairman.

Senator BARRASSO. Thank you, Senator.

Senator CARPER. Mr. Chairman, I have a unanimous consent request. I would like to submit for the record—and this is sort of in response to a question raised by Senator Harris. Mr. Pruitt, in his response to her question on whether he had ever filed a lawsuit against a corporate entity for violating State or Federal pollution, apparently was not correct. I want to just submit for the record a list of cases that have been active under Mr. Pruitt's leadership. It notes which ones were started by his predecessor, and it shows that the case in which he mentioned in his exchange with Senator Harris; I think it was the egg case. That case actually was initiated not by Mr. Pruitt, but by his predecessor.

Thank you.

Senator BARRASSO. Without objection.

[The referenced information was not received at time of print.]

Senator BARRASSO. And I would like to submit to the record, as well, having heard that some of my Democratic colleagues have expressed their concerns that Attorney General Pruitt is not open to the finding of science, especially as it relates to climate change, this is not so. I would like to call the Committee's attention to a letter by the Cornwall Alliance for the Stewardship of Creation. The letter is signed by 130 scientists, economists, legal scholars, policy experts, religious leaders, and over 230 other citizens urging Attorney General Pruitt's confirmation. The group includes David Legates, who is a Ph.D. in climatology, Professor of Climatology and Geography at the University of Delaware. The author praises Pruitt, stating, "Mr. Pruitt has also demonstrated understanding of and open-mindedness toward scientific insights crucial to the formulation and implementation of environmental regulation."

The organization's founder and national spokesman, Calvin Beisner, is quoted in the press release announcing the letter as saying the following, "Some environmental activists are determined to prevent Mr. Pruitt's confirmation, painting him as a science denier or a climate change denier." Mr. Beisner continues, "He is neither. He is a solid, common sense Attorney General who will bring much needed reform to the EPA."

Without objection, the letter will be submitted for the record.

[The referenced information follows:]

**CLIMATE CHANGE DENIER – CORNWALL ALLIANCE**  
**RELEASE REBUTTING**

Some of my Democratic colleagues have expressed their concerns that Attorney General Pruitt is not open to the finding of science especially as it relates to climate change.

This is not so.

I would like to call this committee's attention to a letter by The Cornwall Alliance for the Stewardship of Creation.

This letter was signed by 130 “. . .scientists, economists, legal scholars, policy experts, and religious leaders, and over 230 other citizens” urging Attorney General Pruitt's confirmation.

This group includes David Legates, Ph.D. (Climatology), who is a Professor of Climatology and Geography at the University of Delaware.

The authors praise Pruitt and stated that:

*“Mr. Pruitt has also demonstrated understanding of and open-mindedness toward scientific insights crucial to the formulation and implementation of environmental regulation.”*

*(continued on next page)*

The organization's Founder and National Spokesman, Dr. E. Calvin Beisner is quoted in the press release announcing the letter as saying the following:

*'Some environmental activist are determined to prevent Mr. Pruitt's confirmation, painting him as a "science denier" or a "climate-change denier",'*

Mr. Beisner continues:

*'He is neither. He's a solid, common-sense attorney general who will bring much-needed reform to the EPA.'*

I ask unanimous consent to include the letter and the press release into the record.





Honorable Members of the Environment and Public Works Committee, United States Senate:

We write to you as evangelical and mainline Protestant, Roman Catholic, and Jewish scientists, economists, legal scholars, policy experts, and religious leaders in support of the nomination of Oklahoma Attorney General Scott Pruitt to the office of Administrator of the federal Environmental Protection Agency.

The EPA has the crucial task of writing and enforcing regulations that apply statutes passed by Congress and signed by the President to protect the life and health of Americans. Its work necessarily integrates science, economics, law, politics, and ethics, all of which are rooted in religious worldviews. A good Administrator must demonstrate expertise in at least some of these, and mature understanding of and receptivity to the insights of all. Scott Pruitt does.

As Oklahoma Attorney General, Mr. Pruitt has demonstrated his legal expertise in successful litigation to require corporations—including the energy corporations so prominent in his state's economy—to abide by environmental laws and regulations. He has publicly expressed his conviction that the EPA's role is not to create law through regulations that exceed the scope of enabling legislation but to implement the intent of that legislation and nothing more. That is, he recognizes that environmental policy should be determined by the people's elected representatives, not by unelected, unaccountable members of the federal bureaucracy. He has also publicly opposed the abuse of the court system by use of "sue-and-settle" to reach sweetheart deals between the EPA and environmental advocacy groups. These are some of the obvious ways in which his legal expertise qualifies him for Administrator.

Mr. Pruitt has also demonstrated understanding of and open-mindedness toward scientific insights crucial to the formulation and implementation of environmental regulation. He is prepared to hear all sides in debates over the risks and benefits of various activities that come under the purview of the EPA.

Finally, as a committed evangelical Christian, Mr. Pruitt has an unbending commitment to human life and health, especially to the protection of the most vulnerable in society. We are pleased to note that a large group of religious leaders, including presidents of some of America's largest and most prestigious theological seminaries, has also written to you in his support for this reason, and we add our voices to theirs.

Some radical environmentalists and religious activists oppose Mr. Pruitt because he does not embrace their exaggerated fears of human-induced global warming—fears that go well beyond the empirical evidence crucial to genuine science—or their antipathy to the development of the abundant, reliable, affordable energy indispensable to lifting and keeping whole societies out of poverty and the disease and premature death that invariably accompany it. We urge you therefore to confirm Mr. Pruitt's nomination, and we commit ourselves to supporting him in the confirmation process. We welcome you to call on us to assist in any way we can.

Sincerely,

- |  |  |
|--|--|
| 1. Raymond P. Adams, M.Div. (Pastoral Theology), D.D (Honorary), member, Grace Community Church of Sun Valley, Arcadia, CA | 4. William D. Balgord, Ph.D. (Geochemistry), President, Environmental & Resources Technology, Inc., Middleton, WI            |
| 2. Gary L. Anderson, MA (History), Colonel, USAF (retired), Aviation and Civil Engineering, Fruita, CO                     | 5. Tim Ball, Ph.D. (Climatology), Professor, University of Winnipeg, and Adjunct Professor, University of Manitoba (retired) |
| 3. William L. Anderson, Ph.D. (Economics), Professor of Economics, Frostburg State University, Frostburg, MD               |  |

6. Paul Barber, B.S. (Civil Engineering); President of the Board, Barber Brothers Contracting Co. LLC, Baton Rouge, LA
7. Charles G. Battig, M.S. (Electrical Engineering), M.D., Heartland Institute policy expert on environment; Virginia Scientists and Engineers for Energy and Environment (VA-SEEE), Charlottesville, VA
8. David E. Baugh, M.S. (Chemical Engineering), Professional Engineer (retired), Director, Central Oklahoma Chapter, Reasonable Faith, Oklahoma City, OK
9. Timothy Beard, Th.M. (Theology), retired missionary/pastor, Calvary Bible Church, Toppenish, WA
10. E. Calvin Beisner, Ph.D. (History), Founder and National Spokesman, The Cornwall Alliance for the Stewardship of Creation
11. Victoria Blodgett, New England Regional Director, Aglow International, Southbridge, MA
12. Carl W. Bogue, Jr., Th.D. (Theology), Pastor Emeritus, Faith Presbyterian Church, Akron, OH
13. James A. Borland, (Th.D.), Theology, Professor of Theology, Liberty University, Lynchburg, VA
14. David J. Bufalo, B.S. (Civil Engineering), Licensed Professional Engineer, Denver, CO
15. H. Sterling Burnett, Ph.D. (Environmental Ethics), Research Fellow, The Heartland Institute, Rowlett, TX
16. Danny J. Burrows, Lt. Col. (Ret.), USAF, Big Oaks Ranch, Kilgore TX
17. Roger L. Burtner, Ph.D. (Geology), former National Science Foundation Fellow; former Adjunct Professor, Case Western Reserve University; Principal, Remote Sensing Exploration, Fullerton CA
18. Ronald S. Carson, Ph.D. (Nuclear Engineering), Affiliate Assistant Professor, University of Washington; retired Technical Fellow, The Boeing Company; Adjunct Professor, Seattle Pacific University; Renton, WA
19. Kenneth Chilton, Ph.D. (Economics), retired Associate Professor of Management and Director of the Institute for Study of Economics and the Environment, Lindenwood University, St. Louis, MO
20. Rev. Charles Clough, M.S. (Atmospheric Physics); retired chief, U.S. Army Atmospheric Effects Team, Aberdeen Proving Ground, MD; retired Lt. Col., U.S. Air Force Reserve Weather Officer; President, Biblical Framework Ministries; adjunct professor, Chafer Theological Seminary, Albuquerque, NM
21. Mark Coppenger, Ph.D. (Philosophy), Professor of Christian Apologetics, Southern Baptist Theological Seminary, Louisville, KY
22. Donald R. Crowe, P.E., B.S. (Mechanical Engineering), Founder & President, The Absaroke Corporation, Plantation, FL
23. Claude C. Culross, Ph.D. (Organic Chemistry), Staff Chemist (retired), ExxonMobil, Baton Rouge, LA
24. Donn Deans, B.S. (Engineering), retired GE Company Senior Executive, The Villages, FL
25. Mr. Terry W. Donza, B.S. (Geological Engineering), author, Climatic Realism: Alarmism Exposed, Wheat Ridge, CO
26. John Droz, M.S. (Physics), Independent Scientist, Founder, Alliance for Wise Energy Decisions (AWED), Morehead City, NC
27. Trent England, J.D. (Law), David and Ann Brown Distinguished Fellow, Oklahoma Council of Public Affairs, Oklahoma City, OK
28. James E. Enstrom, Ph.D. (Physics), M.P.H. (Epidemiology), Research Professor / Researcher (retired), UCLA School of Public Health; President, Scientific Integrity Institute, Los Angeles, CA
29. Gordon Evans, M.S. (Soil Science), Environmental Manager, The Texas A&M University System, College Station, TX
30. Joseph Farah, Founder and CEO, WND.com, WND Books, and WND Films, Washington, DC
31. Peter M. Felker, Ph.D. (Chemistry), University of California, Los Angeles, CA
32. Neil L. Frnk, Ph.D. (Meteorology), former Director, National Hurricane Center (1974-1987), Chief Meteorologist, KHOU-TV Houston (1987-2008), retired, Pulshear, TX
33. John Freeman, B.S. (Engineering) AFTS, retired Anglican priest, Hillcrest, KwaZulu Natal, South Africa
34. Kevin D. Freeman, CFA, B.S., B.A. (Economics), Founder, NSIC (National Security Investment Consultant) Institute, Bartlesville, OK
35. Martin P. Fricke, Ph.D. (Nuclear Physics), Senior Fellow, American Physical Society, San Diego, CA
36. Jim Gurlew, Ph.D. (Historical Theology), Pastor, Skyline Church, San Diego; Oversight Pastor, The Jefferson Gathering, US Capitol Building, Washington, DC
37. Albrecht Glatzle, Ph.D. (Agriculture), Retired Director of Research, INTAS (Iniciativa para la Investigación y Transferecia de Tecnología Agraria Sostenible), Filadelfia, Paraguay
38. Alan W. Gomes, Ph.D. (Theology), Professor of Theology, Talbot School of Theology, La Mirada, CA
39. Vicki P. Goodman, B.S. (Engineering), Retired Applications Engineer, Prescott, AZ
40. Bruce L. Gordon, Ph.D. (History and Philosophy of Science), Associate Professor, History and Philosophy of Science, Houston Baptist University, Senior Fellow, Center for Science and Culture, Discovery Institute, Richmond, TX
41. Steve Goreham, M.S. (Electrical Engineering), M.B.A., Executive Director, Climate Science Coalition, New Lenox, IL
42. Rev. Paul S. Gould, Ph.D. (Religious Studies), missionary, writer, Christian Laymen's Missionary Evangelism Association, Prosser, WA
43. Jay Grimstead, D.Min. (Theology), Founder/Director, Coalition on Revival; Founder, International Council on Biblical Inerrancy, Coordinator, International Church Council Project, Murphys, CA
44. Karen Gushta, Ph.D. (Philosophy of Education), D. James Kennedy Ministries, Fort Lauderdale, FL
45. Gary Habermas, Ph.D. (Philosophy, History, and Religion), Distinguished Research Professor and Chair, Department of Philosophy, Liberty University, Lynchburg, VA

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50. Thomas D. Hennigan, M.S. (Environmental and Forest Biology), Associate Professor of Organism Biology, Truett McConnell University, Cleveland, GA
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52. Thomas Ice, Ph.D. (Theology), Executive Director, Pre-Trio Research Center, Dallas/Fort Worth, TX
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54. Bryce W. Johnson, Ph.D. (Nuclear Engineering), retired Senior Staff Scientist, Science Applications International Corporation, retired Professional Nuclear Engineer, State of California
55. Rev. Peter Jones, Ph.D. (Theology), Director, truthXchange, Escondido, CA; Emeritus Professor of New Testament, Westminster Theological Seminary, Escondido, CA
56. Rev. Phillip G. Kaysor, Ph.D. (Ethics), Professor of Ethics, Whitefield Theological Seminary, Lakeland, FL
57. J.C. Keister, Ph.D. (Physics), Pharmaceutical Research Specialist, 3M Company (retired), Lakeville, MN
58. Hugh Kendrick, Ph.D. (Nuclear Engineering), University of Michigan; former Director, Plans & Analysis, Office of Nuclear Reactor Research, U.S. Department of Energy; retired VP SAIC (Science Applications International Corporation), Tysons Corner, VA
59. Bernard Kepshire, Ph.D. (Fisheries Science), Oregon Department of Fish and Wildlife, Oregon State University (retired), Corvallis, OR
60. Edward C. Krug, Ph.D. (Soil Science), University of Illinois, Urbana-Champaign, retired
61. Dr. Richard Land, D.Phil. (Theology), President, Southern Theological Seminary, Charlotte, NC
62. Rev. Mark J. Larson, Ph.D. (Historical Theology), Pastor, Peace Reformed Church, Garner, IA
63. Willes K. Lee, President, National Federation of Republican Assemblies
64. David Legates, Ph.D. (Climatology), Professor of Climatology and Geography, University of Delaware, Newark, DE
65. David H. Lester, Ph.D. (Chemical Engineering), retired, Fox Island, WA
66. David H. Linden, M.Div. (Theology and Bible), Assistant Pastor, University Presbyterian Church, Las Cruces, NM (retired)
67. Richard S. Lindzen, Ph.D. (Applied Mathematics), Alfred P. Sloan Professor of Atmospheric Sciences Emeritus, MIT, Cambridge, MA
68. Stephen D. Livesey Ph.D (Education/History), President, Bryan College, Dayton TN
69. Anthony R. Lupo, Ph.D. (Atmospheric Science), Professor, University of Missouri, Columbia, MO
70. James P. MacGillivray, CFP (retired), Registered Investment Adviser, Albuquerque, NM
71. Matt Mackowiak, B.S. (Communication Studies), Executive Director, Fight For Tomorrow, Austin, TX, and Washington, DC
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76. Rod D. Martin, J.D., Founder and CEO, The Martin Organization, Destin, FL; Distinguished Visiting Professor of History and Government, Hannibal LaGrange University, Hannibal, MO
77. The Most Rev. William Mikler (Ph.D.), Biblical Philosophy, Archbishop, Communio Christiana, Sanford, FL
78. Tracy Miller, Ph.D. (Economics), Falls Church, VA
79. Craig Vincent Mitchell, Ph.D. (Philosophy/Ethics), Associate Professor of Philosophy, Politics and Economics, Criswell College, Dallas, TX
80. Rev. William G. Moore, Ph.D. (Church History), Pastor, Cornerstone Baptist Church, Clinton, SC
81. R. Mark Musser, M.Div., Pastor and Missionary, Grace Redeemer Bible Church, Olympia, WA
82. Barry L. Myers, Ph.D. (Computer Science), Associate Professor of Computer Science and Chair, Mathematics and Computer Science Department, Northwest Nazarene University, Nampa, ID
83. Rev. Erik V. Myhrberg, Ph.D. (International Business), Tactical Chaplain, Quantico, VA
84. Dave Odell, M.S. (Zoology), NYSCED Region 8 Wildlife Manager, New York State Department of Environmental Conservation (retired), Clyde, NY
85. George Paul, Ph.D. (Physics), M.B.A., Senior Lecturer in Physics, University of New South Wales (retired), consultant in Intellectual Property, Sydney, NSW, Australia
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87. Philip Pennance, Ph.D. (Chemical Physics), M.Sc. (Geophysics), Professor of Mathematics, University of Puerto Rico, Río Piedras, Puerto Rico
88. Ricki Pepin, Author, Lecturer, Instructor, Institute on the Constitution, Springfield, OH
89. Mark Pinkerton, MD (Family Medicine), Professor of Pharmacy Practice, Cedarville University, Cedarville, OH

90. Joseph A. Pipa Jr., Ph.D. (Theology), President and Professor of Systematic Theology, Greenville Presbyterian Theological Seminary, Greenville, SC
91. Everett Piper, Ph.D., President, Oklahoma Wesleyan University, Bartlesville, OK
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93. Jay W. Richards, Ph.D. (Philosophy), Research Professor, Catholic University of America, Washington, DC
94. Robert J. Romano, D.Min. (Economic Ethics), Founder, Heartist Ministries; AIA Design-Build Architect, Charlotte, NC
95. Caleb Stewart Rossiter, Ph.D. (Policy Analysis), Adjunct Professor, American University, Washington, DC
96. Fred P. Rumak B.S. (Geology), P. Geo; CPG; P. Geol; Energy Consultant, Calgary, Alberta, Canada
97. James H. Rust, Ph.D. (Engineering), Professor of Nuclear Engineering (retired), Georgia Tech, Atlanta, GA; policy advisor, The Heartland Institute, Chicago, IL
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99. Daryl Sas, Ph.D. (Biology), Professor of Biology, Geneva College, Beaver Falls, PA
100. Mark R. Saucy Ph.D. (Theology), Professor of Systematic Theology, Talbot School of Theology, La Mirada, CA
101. Richard L. Sauer, M.S. (Environmental Engineering), Col., U.S. Air Force Reserve (ret.), NASA (ret.), League City, TX
102. Herbert Schlossberg, Ph.D. (History), Fellow, Ethics and Public Policy Center, Washington, DC
103. Kelly Shackelford, J.D. (Law), President and CEO, First Liberty Institute, Plano, TX
104. Thomas P. Sheahan, Ph.D. (Physics), retired research scientist specializing in energy issues, formerly with several different national laboratories
105. David Shormann, Ph.D. (Aquatic Science), President, DIVE, LLC, Haleiwa, HI
106. Chris Skates, B.A. (Biology/Chemistry), former power plant chemist, writer, Adjunct Scholar, Cornwall Alliance for the Stewardship of Creation, Frankfort, KY
107. Buddy Smith, M.Div. (Divinity), Senior Vice President, American Family Association, Tupelo, MS
108. Willie Soon, Ph.D. (Aerospace Engineering), independent scientist, Cambridge, MA
109. Roy W. Spencer, Ph.D. (Meteorology), Principal Research Scientist, Earth System Science Center, University of Alabama, Huntsville, AL, and Lead Scientist, NASA Aqua AMSR-3 Satellite Remote Sensing Program
110. Rev. Larry H. Stallard, M.Div., Retired Pastor, Edgemont Presbyterian Church, Bristol, TN
111. Nicholas Stehle, B.A. (Political Science), CEO, The Stehle Organization; President, Campaign for America's Future; Little Rock, AR
112. Frank Stevenson, J.D. (Law), retired President, NCF Title, Jacksonville, FL
113. Richard F. Storm, PE, CEM, retired engineer, Hilton Head, SC
114. Owen D. Strachan, Ph.D. (Theology), Professor, Midwestern Baptist Theological Seminary, Kansas City, MO
115. Rev. Kenneth G. Talbot, Ph.D., Th.D. (Divinity), President and Professor of Theology and Apologetics, Whitefield Theological Seminary and College; Pastor, Christ Presbyterian Church (RPCGA), Lakeland, FL
116. Timothy D. Terrell, Ph.D. (Environmental Regulatory Economics), Associate Professor, Wofford College, Spartanburg, SC
117. David J. Theroux, M.S. (Mechanical Engineering), M.B.A. (Business Economics), Founder and President, Independent Institute, Oakland, CA
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119. Rev. Reverend Thomas Trouwborst, M.B.A., M.Div., Pastor, Calvary Orthodox Presbyterian Church, Glenside, PA
120. Gary Tuck, Ph.D. (Bible Exposition), Professor of Biblical Literature, Western Seminary, Los Gatos, CA
121. L.L. (Don) Veinot Jr., President, Midwest Christian Outreach, Inc., Wonder Lake, IL
122. Jeffery J. Ventrella, J.D., Ph.D. (Law), Senior Counsel, Alliance Defending Freedom, Scottsdale, AZ
123. James A. Wanliss, Ph.D. (Physics), Professor of Physics, Presbyterian College, Clinton, SC
124. Anthony Watts, American Meteorological Society-certified television and radio meteorologist (retired), owner of WattsUpwithThat.com, Chico, CA
125. David F. Wells, Ph.D. (Theology), Distinguished Research Professor, Gordon-Conwell Theological Seminary, South Hamilton, MA
126. Scott E. Williams, Ph.D. (Applied Mathematics), Monument, Colorado, USA
127. Peter W. Wood, Ph.D. (Anthropology), President, National Association of Scholars, New York, NY
128. Thomas H. Wismuller, B.A., Meteorologist, NASA (Ret.); Chair, Water Day 2013, UNESCO IHE Water Research Institute, Delft, The Netherlands; Chair, Oceanographic Section, 2016 World Congress of Ocean, Qingdao, China; NASA TRCS charter member, Ogunquit, ME
129. V. William Zmistowski, Jr., AIA, NCARB, IIDA, B.S. (Architecture, Land Planning, Urban Design, Environmental Design), International Design Consultant, Boulder, CO
130. Benjamin Zycher, Ph.D. (Economics), John G. Searle Chair, American Enterprise Institute, Washington, DC

[Institutional affiliations are for identification and do not imply institutional endorsement. See additional signers (over 230 as of January 16, 2017) at <http://bit.ly/2hW33pO>. Contact: Megan Toombs, [Megan@CornwallAlliance.org](mailto:Megan@CornwallAlliance.org).]



**For Immediate Release**

**Scientists, Economists, Ethicists, other Scholars  
Support EPA Administrator Nominee Scott Pruitt**

Burke, VA, January 16, 2017—The Cornwall Alliance for the Stewardship of Creation today released an Open Letter to the U.S. Senate Environment and Public Works Committee supporting the nomination of Oklahoma Attorney General Scott Pruitt to head the federal Environmental Protection Agency. Pruitt's confirmation hearing is scheduled for Wednesday, January 18, 2017.

"Some environmental activists are determined to prevent Mr. Pruitt's confirmation, painting him as a 'science denier' or a 'climate-change denier,'" said Cornwall Alliance Founder and National Spokesman Dr. E. Calvin Beisner. "He is neither. He's a solid, common-sense attorney general who will bring much-needed reform to the EPA."

Signed by 130 evangelical, mainline Protestant, Roman Catholic, and Jewish scientists, economists, legal scholars, policy experts, and religious leaders, and over 230 other citizens to date, the Open Letter says that as Oklahoma Attorney General, Mr. Pruitt has demonstrated his legal expertise in successful litigation to require corporations—including the energy corporations so prominent in his state's economy—to abide by environmental laws and regulations. He has publicly expressed his conviction that the EPA's role is not to create law through regulations that exceed the scope of enabling legislation but to implement the intent of that legislation. His Christian faith underlies his commitment to protecting human health and life through pollution controls firmly based in sound science and cost/benefit analysis.

The Open Letter counters some radical environmentalists and religious activists who oppose Mr. Pruitt because he questions exaggerated fears of human-induced global warming—fears based on global climate computer models not validated by the empirical evidence crucial to genuine science—or their antipathy to the development of the abundant, reliable, affordable energy indispensable to lifting and keeping whole societies out of poverty and the disease and premature death that invariably accompany it.

Signers therefore urge Pruitt's confirmation.

"Those who signed our Open Letter include climate scientists, physicists, geologists, ecologists, environmental and developmental economists, theologians, philosophers, religious leaders, and legal scholars," Beisner says. "We think that's important because climate and energy policy must be addressed in light of insights from all these fields of expertise. Science is important, but it can only tell us what is, and climate scientists on all sides acknowledge myriad major uncertainties about the magnitude and consequences of human influence on global climate. It cannot tell us what should be. For that, you need economics and ethics."

Some of the 130 expert signers include:

- William L. Anderson, Ph.D. (Economics), Professor of Economics, Frostburg State University, Frostburg, MD
- James A. Borland, (Th.D.), Theology, Professor of Theology, Liberty University, Lynchburg, VA
- Roger L. Burtner, Ph.D. (Geology), former National Science Foundation Fellow; former Adjunct Professor, Case Western Reserve University; Principal, Remote Sensing Exploration, Fullerton CA
- Neil L. Frank, Ph.D. (Meteorology), former Director, National Hurricane Center (1974–1987), Chief Meteorologist, KHOU-TV Houston (1987–2008)
- Bruce L. Gordon, Ph.D. (History and Philosophy of Science), Associate Professor, History and Philosophy of Science, Houston Baptist University, Senior Fellow, Center for Science and Culture, Discovery Institute, Richmond, TX
- William Happer, Ph.D., Cyrus Fogg Brackett Professor of Physics, Emeritus, Princeton University, Princeton, NJ
- David Legates, Ph.D. (Climatology), Professor of Climatology and Geography, University of Delaware

- Richard S. Lindzen, Ph.D. (Applied Mathematics), Alfred P. Sloan Professor of Atmospheric Sciences Emeritus, MIT
- Anthony R. Lupo, Ph.D. (Atmospheric Science), Professor, University of Missouri, Columbia, MO
- Matthew Malkan, Ph.D. (Astrophysics), Professor of Physics & Astronomy, University of California at Los Angeles (UCLA), Los Angeles, CA
- Craig Vincent Mitchell, Ph.D. (Philosophy/Ethics), Associate Professor of Philosophy, Politics and Economics, Criswell College, Dallas, TX
- Everett Piper, Ph.D., President, Oklahoma Wesleyan University, Bartlesville, OK
- Kelly Shackelford, J.D. (Law), President and CEO, First Liberty Institute, Plano, TX
- Willie Soon, Ph.D. (Aerospace Engineering), independent scientist, Cambridge, MA
- Roy W. Spencer, Ph.D. (Meteorology), Principal Research Scientist, Earth System Science Center, University of Alabama, Huntsville, AL, and Lead Scientist, NASA Aqua AMSR-3 Satellite Remote Sensing Program
- Timothy D. Terrell, Ph.D. (Environmental Regulatory Economics), Associate Professor, Wofford College, Spartanburg, SC
- C. Joseph Touchill, Ph.D. (Environmental Engineering), P.E., DBE, F. AIChE, F. ASCE, President, Touchill Technology Management, Jamison, PA
- James A. Wanliss, Ph.D. (Physics), Professor of Physics, Presbyterian College, Clinton, SC
- Anthony Watts, American Meteorological Society-certified television and radio meteorologist (retired), owner of WattsUpwithThat.com, Chico, CA
- David F. Wells, Ph.D (Theology), Distinguished Research Professor, Gordon-Conwell Theological Seminary, South Hamilton, MA

The Open Letter and a list of all 130 expert signers is attached. The letter is online at <http://cornwallalliance.org/landmark-documents/open-letter-supporting-scott-pruitt-for-epa-administrator/>.

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Senator BARRASSO. Senator Wicker.

Senator WICKER. Thank you, Mr. Chairman and Mr. Ranking Member. I think it has been a good hearing so far. I think we have a lot of information that will be reassuring to the American people.

One thing I do object to, though, is something that has happened for years since I have been a member of this Committee, and that is somehow to list political contributions and suggest that somehow they make an individual suspect or not qualified. My dear friend from Rhode Island showed a poster and showed some contributions and suggested that based on those contributions from companies like Southern Company, for example, who has contributed to my campaign, that his appropriateness for the job should be challenged.

So I am glad that the Chairman had added to the record this article from September 6 from the Wall Street Journal, September 6 of last year, pointing out the Democratic presidential candidate, Hillary Clinton, raised significantly more money than Donald Trump from the oil and gas industry. Individuals who worked for oil and gas companies donated \$149,000 to Mr. Trump's GOP campaign as of the date of July 30, compared with \$525,000 to Mrs. Clinton.

Mr. Chairman, I am glad you put this in the record, and presumably, based on that argument, Hillary Clinton would be suspect were she to have been nominated for the position of heading the EPA.

Now, Mr. Attorney General, let's talk about States as partners. And I enjoyed your exchange with Senator Cardin about the Chesapeake Bay program. As I understand, you actually applaud the Chesapeake Bay program and particularly the way the EPA worked with States as partners, is that correct? And could you enlarge on that?

Mr. PRUITT. Senator, I absolutely applaud the effort by the States to join together in a six-State coalition to address the quality of the Chesapeake Bay's water quality. That is what we did in Arkansas, Oklahoma and Arkansas did with the scenic Illinois River that has already been talked about with Senator Boozman and others. So I think the effort that they engaged in was something that other States ought to model, and the EPA came alongside and took that TMDL and is providing assistance to those six States with respect to that agreement.

Senator WICKER. Now, with regard to the Clean Power Plan and the Waters of the United States rules, where did those regulations go wrong in this respect?

Mr. PRUITT. Well, with respect to the Clean Power Plan, in the cases, the Supreme Court has actually said—it was an unprecedented step that the Supreme Court took. Never in history had the Supreme Court issued a stay against a rule like the Clean Power Plan, and they did so because of the likelihood of success on the merits, in the sense that the Clean Power Plan did not reflect the authority of Congress given to the EPA to regulate CO<sub>2</sub>. As an example, with respect to power generation, there has to be a significant finding that poses risk to public health and welfare. They did not do that. They did not go through the proper processes of inside the fence and regulations of facilities, power generation facilities.

So those matters, Senator, are about rule of law. And the same is true with the Waters of the United States rule.

Senator WICKER. And I have not delved into this as an attorney, as you have, but I can tell you that the Department of Environmental Quality in my State told me very emphatically that the Clean Power Plan would put us out of business because we would not have had an alternative to the coal that we use. So I hope we can continue to make progress on this issue.

Let me ask you about wood products. The Federal Government buys a lot of lumber, uses a lot of wood in construction, and procures a lot of wood. There are standards certifying that the forests are appropriate. One is the American Tree Farm System; another is the Sustainable Forestry Initiative.

EPA seems to like a certification program called the FSC, the Forest Stewardship Council. Problem is, with this certification program, it excludes 90 percent of the lumber grown in the United States of America.

We have had a lot of activity on both sides of the aisle in challenging this, and I object also to a so-called interim recommendation made by EPA in this regard. As far as I am concerned it is discrimination against domestic wood, and now they have come back and told us that this interim recommendation is under review.

Could you comment about both of these, the idea of an interim recommendation being imposed on an entire industry and also give us any thoughts you have about using the Forest Stewardship Council certification model as opposed to these other perfectly good Sustainable Forestry Initiative and American Tree Farm System?

Senator BARRASSO. And if I could ask you to do it briefly, as the Senator's time has expired.

Mr. PRUITT. Senator, as you and I discussed in our meeting, I am very concerned about the latter issue, and making sure that all voices, all options are considered is something the EPA Administrator should do, and I would seek to do, if confirmed.

With respect to the interim step, I think that there is a concern that many have offered throughout the last several years, that regulators in Washington, not just the EPA, are seeking to use guidance or other steps to avoid what would be called formal rule-making; that Congress has obligated those agencies to reform to ensure exactly what you just described, that all voices are heard. And that is unfortunate when agencies do that, because that is an abuse of the process.

Senator WICKER. Thank you, sir.

Thank you, Mr. Chairman.

Senator BARRASSO. Thank you, Senator Wicker.

Senator Sanders.

Senator SANDERS. Thank you, Mr. Chairman. And I apologize for being late, but we were at a hearing with Congressman Price, who is the nominee for HHS. Perhaps not a great idea to have important nominating hearings at exactly the same time. So I apologize for not being here earlier.

My office has received a great deal of comments from people in the State of Vermont, which takes environmental protection very seriously, as well as from all over the country, and the fear is that



the nomination of Mr. Pruitt is a nomination designed to protect the fossil fuel industry and not the environment.

I would like to ask Mr. Pruitt a question. As I understand it, earlier in this hearing you said that Mr. Trump was wrong in suggesting, in stating over and over again that climate change was a “hoax.” Is that in fact the case?

Mr. PRUITT. That is correct, Senator.

Senator SANDERS. OK. Let me ask you this. As you may know, some 97 percent of scientists who have written articles for peer-reviewed journals have concluded that climate change is real, it is caused by human activity, and it is already causing devastating problems in our country and around the world. Do you believe that climate change is caused by the emission, by carbon emissions by human activity?

Mr. PRUITT. Senator, you weren’t here during my opening statement, but as I indicated in my opening statement, the climate is changing and human activity contributes to that in some manner.

Senator SANDERS. In some manner.

Mr. PRUITT. Yes, sir.

Senator SANDERS. Ninety-seven percent of the scientists who wrote articles in peer-reviewed journals believe that human activity is the fundamental reason we are seeing climate change. You disagree with that?

Mr. PRUITT. I believe the ability to measure with precision the degree of human activity’s impact on the climate is subject to more debate on whether the climate is changing or the human activity contributes to it.

Senator SANDERS. While you are not certain, the vast majority of scientists are telling us that if we do not get our act together and transform our energy system away from fossil fuel, there is a real question as to the quality of the planet that we are going to be leaving our children and our grandchildren. So you are applying for a job as Administrator for the EPA to protect our environment. Overwhelming majority of scientists say we have got to act boldly, and you are telling me that there needs to be more debate on this issue and that we should not be acting boldly.

Mr. PRUITT. No, Senator. As I have indicated, the climate is changing and human activity impacts that.

Senator SANDERS. But you haven’t told me why you think the climate is changing.

Mr. PRUITT. Well, Senator, the job of the Administrator is to carry out the statutes as passed by this body and to—

Senator SANDERS. Why is the climate changing?

Mr. PRUITT. Senator, in response to the CO<sub>2</sub> issue, the EPA Administrator is constrained by statutes—

Senator SANDERS. I am asking you a personal opinion.

Mr. PRUITT. My personal opinion is immaterial—

Senator SANDERS. Really?

Mr. PRUITT [continuing]. To the job of carrying out—

Senator SANDERS. You are going to be the head of the agency to protect the environment, and your personal feelings about whether climate change is caused by human activity and carbon emissions are immaterial?

Mr. PRUITT. Senator, I have acknowledged to you that the human activity impacts the climate.

Senator SANDERS. Impacts.

Mr. PRUITT. Yes.

Senator SANDERS. Scientific community doesn't tell us it impacts; they say it is the cause of climate change, and we have to transform our energy system. Do you believe we have to transform our energy system in order to protect the planet for future generations?

Mr. PRUITT. I believe the EPA has a very important role at regulating the emissions of CO<sub>2</sub>.

Senator SANDERS. You didn't answer my question. Do you believe we have to transform our energy system away from fossil fuel, to do what the scientific community is telling us, in order to make sure that this planet is healthy for our children and grandchildren?

Mr. PRUITT. Senator, I believe that the Administrator has a very important role to perform in regulating CO<sub>2</sub>.

Senator SANDERS. Can you tell me, as I think all of us know, Oklahoma has been subjected to a record breaking number of earthquakes. Scientists say that Oklahoma is almost certain to have more earthquakes with heightened risk of a large quake probable to endure for a decade and that the cause of this is fracking. Picking up on Senator Harris's discussion with you, can you point me to any opinion that you wrote, any enforcement actions you took against the companies that were injecting waste fracking water?

Mr. PRUITT. Senator, let me say I am very concerned about the connection between activity in Oklahoma and—

Senator SANDERS. And therefore you must have taken action, I guess. Can you tell me who you fined for doing this, if you are very concerned?

Mr. PRUITT. The Corporation Commission in Oklahoma is vested with the jurisdiction, and they have actually acted on that.

Senator SANDERS. And you have made public statements expressing your deep concern about this.

Mr. PRUITT. We have worked with, through our—

Senator SANDERS. You have made public statements. You are in a State which is seeing a record breaking number of earthquakes. You are the Attorney General. Obviously, you have stood up and said you will do everything you can to stop future earthquakes as a result of fracking.

Mr. PRUITT. Senator, I have acknowledged that I am concerned about—

Senator SANDERS. Acknowledged that you are concerned. Your State is having a record number of—well, if that is the kind of Administrator for the EPA, your State is having a record breaking number of earthquakes, you acknowledge that you are concerned. If that is the kind of EPA Administrator you will be, you are not going to get my vote.

Senator BARRASSO. Senator Inhofe.

Senator INHOFE. Mr. Chairman, a UC request. I ask at this point in the record that we reprint the Wall Street Journal op-ed piece that was written by two outstanding scientists called "The Myth of the Climate Change Ninety-Seven Percent."

Senator BARRASSO. Without objection.

[The referenced information follows:]

6/9/2016

*Innote*

Joseph Bast and Roy Spencer: The Myth of the Climate Change '97%' - WSJ

4/7/16

## THE WALL STREET JOURNAL

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<http://www.wsj.com/articles/SB10001424052702303480304579578462813553136>

COMMENTARY

### The Myth of the Climate Change '97%'

What is the origin of the false belief—constantly repeated—that almost all scientists agree about global warming?

By JOSEPH BAST And ROY SPENCER

May 26, 2014 7:13 p.m. ET

Last week Secretary of State John Kerry warned graduating students at Boston College of the “crippling consequences” of climate change. “Ninety-seven percent of the world’s scientists,” he added, “tell us this is urgent.”

Where did Mr. Kerry get the 97% figure? Perhaps from his boss, President Obama, who tweeted on May 16 that “Ninety-seven percent of scientists agree: #climate change is real, man-made and dangerous.” Or maybe from NASA, which posted (in more measured language) on its website, “Ninety-seven percent of climate scientists agree that climate-warming trends over the past century are very likely due to human activities.”

Yet the assertion that 97% of scientists believe that climate change is a man-made, urgent problem is a fiction. The so-called consensus comes from a handful of surveys and abstract-counting exercises that have been contradicted by more reliable research.

One frequently cited source for the consensus is a 2004 opinion essay published in *Science* magazine by Naomi Oreskes, a science historian now at Harvard. She claimed to have examined abstracts of 928 articles published in scientific journals between 1993 and 2003, and found that 75% supported the view that human activities are responsible for most of the observed warming over the previous 50 years while none directly dissented.

<http://www.wsj.com/articles/SB10001424052702303480304579578462813553136>

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Ms. Oreskes's definition of consensus covered "man-made" but left out "dangerous"—and scores of articles by prominent scientists such as Richard Lindzen, John Christy, Sherwood Idso and Patrick Michaels, who question the consensus, were excluded. The methodology is also flawed. A study published earlier this year in *Nature* noted that abstracts of academic papers often contain claims that aren't substantiated in the papers.



GETTY IMAGES/IMAGEZOO

Another widely cited source for the consensus view is a 2009 article in *Eos*, *Transactions American Geophysical Union* by Maggie Kendall Zimmerman, a student at the University of Illinois, and her master's thesis adviser Peter Doran. It reported the results of a two-question online survey of selected scientists. Mr. Doran and Ms. Zimmerman claimed "97 percent of climate scientists agree" that global temperatures have risen and that humans are a significant contributing factor.

The survey's questions don't reveal much of interest. Most scientists who are skeptical of catastrophic global warming nevertheless would answer "yes" to both questions. The survey was silent on whether the human impact is large enough to constitute a problem. Nor did it include solar scientists, space scientists, cosmologists, physicists, meteorologists or astronomers, who are the scientists most likely

to be aware of natural causes of climate change.

The "97 percent" figure in the Zimmerman/Doran survey represents the views of only 79 respondents who listed climate science as an area of expertise and said they published more than half of their recent peer-reviewed papers on climate change. Seventy-nine scientists—of the 3,146 who responded to the survey—does not a consensus make.

In 2010, William R. Love Anderegg, then a student at Stanford University, used Google Scholar to identify the views of the most prolific writers on climate change. His findings were published in *Proceedings of the National Academies of Sciences*. Mr. Love Anderegg found that 97% to 98% of the 200 most prolific writers on climate change believe "anthropogenic greenhouse gases have been responsible for 'most' of the

'unequivocal' warming." There was no mention of how dangerous this climate change might be; and, of course, 200 researchers out of the thousands who have contributed to the climate science debate is not evidence of consensus.

In 2013, John Cook, an Australia-based blogger, and some of his friends reviewed abstracts of peer-reviewed papers published from 1991 to 2011. Mr. Cook reported that 97% of those who stated a position explicitly or implicitly suggest that human activity is responsible for some warming. His findings were published in *Environmental Research Letters*.

Mr. Cook's work was quickly debunked. In *Science and Education* in August 2013, for example, David R. Legates (a professor of geography at the University of Delaware and former director of its Center for Climatic Research) and three coauthors reviewed the same papers as did Mr. Cook and found "only 41 papers—0.3 percent of all 11,944 abstracts or 1.0 percent of the 4,014 expressing an opinion, and not 97.1 percent—had been found to endorse" the claim that human activity is causing most of the current warming. Elsewhere, climate scientists including Craig Idso, Nicola Scafetta, Nir J. Shaviv and Nils-Axel Morner, whose research questions the alleged consensus, protested that Mr. Cook ignored or misrepresented their work.

Rigorous international surveys conducted by German scientists Dennis Bray and Hans von Storch—most recently published in *Environmental Science & Policy* in 2010—have found that most climate scientists disagree with the consensus on key issues such as the reliability of climate data and computer models. They do not believe that climate processes such as cloud formation and precipitation are sufficiently understood to predict future climate change.

Surveys of meteorologists repeatedly find a majority oppose the alleged consensus. Only 39.5% of 1,854 American Meteorological Society members who responded to a survey in 2012 said man-made global warming is dangerous.

Finally, the U.N.'s Intergovernmental Panel on Climate Change—which claims to speak for more than 2,500 scientists—is probably the most frequently cited source for the consensus. Its latest report claims that "human interference with the climate system is occurring, and climate change poses risks for human and natural systems." Yet relatively few have either written on or reviewed research having to do with the key question: How much of the temperature increase and other climate changes observed in the 20th century was caused by man-made greenhouse-gas emissions? The IPCC lists only 41 authors and editors of the relevant chapter of the Fifth Assessment Report addressing "anthropogenic and natural radiative forcing."

Of the various petitions on global warming circulated for signatures by scientists, the

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one by the Petition Project, a group of physicists and physical chemists based in La Jolla, Calif., has by far the most signatures—more than 31,000 (more than 9,000 with a Ph.D.). It was most recently published in 2009, and most signers were added or reaffirmed since 2007. The petition states that “there is no convincing scientific evidence that human release of . . . carbon dioxide, methane, or other greenhouse gases is causing or will, in the foreseeable future, cause catastrophic heating of the Earth’s atmosphere and disruption of the Earth’s climate.”

We could go on, but the larger point is plain. There is no basis for the claim that 97% of scientists believe that man-made climate change is a dangerous problem.

*Mr. Bast is president of the Heartland Institute. Dr. Spencer is a principal research scientist for the University of Alabama in Huntsville and the U.S. Science Team Leader for the Advanced Microwave Scanning Radiometer on NASA’s Aqua satellite.*

Senator BARRASSO. I have a little bit of time left in my questioning from the first round. I just wanted to talk about some of the concerns I have with overregulation. Do you have the same concerns with the overregulation of U.S. manufacturing over the last 8 years? I believe we have exported manufacturing jobs overseas, the jobs that go with them in terms of the manufacturing of those goods to places like China and India that are going to produce those products in a less environmentally friendly way. Do you agree with this notion that this approach harms not just the environment but also our own U.S. economy?

Mr. PRUITT. I believe, Senator, that it puts us in an economic disadvantage when we don't hear all voices in the rulemaking process with respect to these issues, absolutely.

Senator BARRASSO. I would also like to submit for the record an op-ed on CNN by Jeb Bush, saying, "Scott Pruitt is ready to turn around the EPA. I cannot think of a person more suited to lead the Environmental Protection Agency than Oklahoma Attorney General Scott Pruitt. He has acknowledged human impact on the climate and supports a robust discussion about its effects and what the Government should and shouldn't do to address it."

And then also submitting for the record a report that I did as Ranking Member of the Subcommittee on Clean Air and Nuclear Safety of this Committee; this was a couple of years ago, called "Red Tape Making Americans Sick." I put this together as a physician where we talk about unemployment, long-term unemployment increases the likelihood of hospital visits, illnesses, premature deaths in communities due to joblessness; it hurts children's health, hurts family well being, and quote scientists who point that the unemployment rate is well established as a risk factor for elevated illness and mortality rates in epidemiological studies performed since the 1980s. Additionally, there is influencing on mental disorders, on suicide, alcohol abuse, alcoholism. We also see it with spouse abuse, drug abuse.

So that the regulations that come out of the EPA that do cut into employment of hardworking Americans actually contribute to a deterioration of their health.

I don't know if you have any comments on that or what you may have seen in Oklahoma at times of unemployment.

Mr. PRUITT. Senator, we have seen similar issues in Oklahoma. We have prescription drug abuse that occurs at rates that are unprecedented, as other parts of the country, so there is a similar concern that we have in Oklahoma.

Senator BARRASSO. I appreciate your patience, your honesty, your forthright presentation this morning. We are going to go to a second round. I now have about 12:45. If it is all right with you, Ranking Member Carper, we will come back in an hour. We will take an hour break and come back and resume with a second round of questioning at 1:45.

[The referenced information follows:]



## **CNN: Jeb Bush: Scott Pruitt is ready to turn around the EPA**

**Jeb Bush, Former Florida Governor**

Published: Tuesday, Dec. 20, 2016

When Scott Pruitt and I assembled a Restoring Federalism Task Force last year, he headlined the plan: "Putting Washington In Its Place." Those five words sum up exactly what the American people were clamoring for in this election: a dramatic shift of power out of a broken Washington and back into the hands of the people.

I cannot think of a person more suited to lead the Environmental Protection Agency than Oklahoma Attorney General Scott Pruitt, someone who understands how to rein in an out-of-control bureaucracy and ensure that Washington focuses solely on its core functions.

Pruitt and I share a common vision for empowering the states and limiting the intrusion of the federal government in every area of our lives. He understands that a government closest to the people is best able to serve their interests.

Our country has been held back over the past eight years because the appropriate balance between federal and state powers has become totally skewed. Individual liberty and our constitutional order have been threatened. People's aspirations have been capped by a federal government that overextended its reach, and in no place has this been more apparent than at the EPA. The EPA has become a one-agency job killer, putting working people out of a job and increasing costs for everyone.

The far left has tried to distort Pruitt's views in a lame attempt to make him into an anti-science boogeyman. The Scott Pruitt I know is far from it. Unlike liberals who want to shut down any rational debate about climate change, Pruitt has acknowledged human impact on the climate and supports a robust discussion about its effects and what the government should and shouldn't do to address it.

In a 2013 speech, Pruitt demonstrated that he understood the proper role of the EPA, completely repudiating Democrats' ludicrous claims about how he would lead the agency:

"May I say this to you and please hear my heart on this. ... It's not good for us to say that the EPA doesn't have any role. Because just think about it, you have a power plant in Arkansas that's burning coal irresponsibly or inconsistent with the statute, and it comes over to Oklahoma and Texas. So there is a role for the EPA, it's just that they assert themselves in ways that are above that role."

At the EPA, Pruitt will balance the importance of protecting our environment -- ensuring clean air and water and being good stewards of our natural resources -- with maximizing the ability of free people to innovate and create without interference from the federal government.



I know Pruitt will be successful because I went through this process firsthand running for governor in Florida. Many Democrats claimed that my views were extreme and that I would ruin our beautiful and unique habitat. What they found was exactly the opposite. Applying conservative principles, we streamlined the bureaucracy, saved the state money and invested in Florida's environment, including setting out on a historic effort to restore America's Everglades – something the federal government had failed to do.

This model can be replicated in Washington under an Administrator Scott Pruitt. He will put long overdue limits on the rule makers and roll back those that are choking economic growth. He will ensure that we conserve our natural habitats and resources, while unleashing an energy revolution that will bring millions of jobs to our country.

There have been several strong appointments by President-Elect Donald Trump, and Scott Pruitt is among the very best because I know he will pursue meaningful reforms that will improve people's lives. I hope all senators can put partisanship aside and resoundingly confirm this proven leader.

**Red Tape Making Americans Sick**  
*A New Report on the Health Impacts of High  
Unemployment*



*Studies Show EPA Rules Cost Americans Their Jobs and Their  
Health*

**Minority Subcommittee Staff Report**  
Subcommittee on Clean Air and Nuclear Safety  
Senator John Barrasso, M.D.  
Ranking Member  
March 2012

## ***EPA Red Tape Increases Unemployment While Worsening Public Health***

### Key Findings and Recommendations:

- Congressional testimony and scientific research reveals that unemployment from Environmental Protection Agency (EPA) regulations:
  - ✓ Increases the likelihood of hospital visits, illnesses, and premature deaths in communities due to joblessness.
  - ✓ Raises healthcare costs, raising questions about the claimed health savings of EPA's regulations.
  - ✓ Hurts children's health and family well-being.
- EPA claims of health benefits from current and future Clean Air Act regulations are misleading and incomplete. The agency must adequately examine the negative health implications of unemployment into their cost-benefit analysis before making health benefit claims to the public and Congress.
- The Full Senate Environment and Public Works Committee and the Subcommittee on Clean Air and Nuclear Safety should conduct additional hearings to responsibly investigate the health implications of higher unemployment as a result of federal regulations.

### Executive Summary:

President Obama's Administration continues to claim that new EPA Clean Air Act regulations for ozone, greenhouse gases, electric utilities, domestic oil and gas producers, and manufacturers deliver significant economic benefits. Specifically, the agency says that these regulations will yield billions of dollars in benefits for the U.S. economy in the form of fewer premature deaths, sick days, hospital visits, cases of bronchitis, and heart attacks.

### According to the EPA:

*"The benefits of avoiding early death, preventing heart attacks and asthma attacks, and reducing the number of sick days for employees far exceed costs of implementing clean air protections. These benefits lead to a more productive workforce, and enable consumers and businesses to spend less on health care – all of which help strengthen the economy."*

However, the Administration's predictions do not take into account how regulations will increase unemployment and therefore negatively impact public health. A broad range of experts over

decades of research say that unemployment will hurt public health. A study published in 1985 in the *American Journal of Public Health* by Margaret W. Linn, PHD, Richard Sandifer, BS, and Shaya Stein, PHD, entitled "Effects of unemployment on mental and physical health", concluded:

*"After unemployment, symptoms of somatization, depression, and anxiety were significantly greater in the unemployed than employed.*



*"[U]nemployed men made significantly more visits to their physicians, took more medications, and spent more days in bed sick than did employed individuals ... unemployment had an adverse impact on psychological function, with the unemployed becoming more anxious, depressed, and concerned with bodily symptoms than those who continued to work."*

Over the last few decades other studies have been conducted to investigate the detrimental effects of high unemployment rates:

- **"The Effects of Unemployment on Mortality following Workplace Downsizing and Workplace Closure: A Register-based Follow-up Study of Finnish Men and Women during Economic Boom and Recession"** - *American Journal of Epidemiology*, 2006

*"Unemployment is strongly associated with mortality on the individual level."*

- **"Effects of Unemployment on Health in a Community Survey: Main, Modifying, and Mediating Effects"** - *Journal of Social Issues*, 1988

*"Results from a community survey in a sample of high-unemployment census tracts ... showed significant elevations of depression, anxiety, somatization [a chronic condition in which persons experience physical symptoms, but no physical symptoms can be found], and self-reported physical illness among the currently unemployed.*

*"Unemployment had health-damaging effects...severe enough to be considered clinically significant."*

EPA has faced charges that their wide ranging estimates of public health benefits from their regulations show uncertainty and that the regulations actually cost jobs. EPA has not adequately responded to these charges. Recent research and testimony in Congress continues to bolster the argument that unemployment leads to poor public health and both Democrats and Republicans agree some jobs will be lost because of EPA's regulations. No matter what the predictions are for jobs losses from these regulations, those who lose their jobs will suffer negative health effects. Those effects must be counted in any benefit-cost analysis by EPA.

**Unemployment from EPA Regulations:**

Whether Americans believe a net increase or decrease in jobs will occur because of EPA's regulations, the fact is that all sides agree that some jobs will be lost.

In 2010, then Senator Blanche Lincoln wrote a column in the *National Journal* entitled "Regulating Small Businesses Out of Business." In it, she states:



*"The significant increase in regulations being handed down by Washington is having real consequences. A recently released Gallup poll found that compliance with government regulations is now the single biggest problem facing small business owners. The same report indicated that about one in three small companies is concerned about going out of business in 2012. Similarly, earlier this year the rate of new startup businesses reached a 25 year low largely due to the uncertainty created by the government's regulatory agenda."*

President Obama has stated since his original campaign that jobs would be lost in the coal industry if he were elected because of his support for cap and trade policies to address greenhouse gases. According to then Presidential Candidate Barack Obama in a 2008 interview he stated regarding the U.S. coal industry that –

*"So if somebody wants to build a coal-powered plant, they can; it's just that it will bankrupt them because they're going to be charged a huge sum for all that greenhouse gas that's being emitted."*

The actual number of Americans who will lose their jobs as a result of EPA's rules varies. According to the Senate Republican Policy Committee in 2011, an estimated 11.5 million Americans are projected to lose their jobs as a direct result of several proposed EPA rules:

Obama Policy	Potential Jobs Lost
New Ozone Standards	7,300,000
EPA Greenhouse Gas Regulations	1,400,000
New Utility Regulations	1,400,000
New Coal Ash Regulations	316,000
Offshore Drilling - Permits/Leases	187,000
Onshore Oil and Gas Lease Delays	69,000
New Boiler Regulations	60,000
Alaska Drilling Delays	54,700
New Cement Kiln Regulations	15,000

EPA Administrator Lisa Jackson and others strongly dispute these figures and her agency has stated that their regulations create jobs in the long run -- these are the so called "green jobs" that would result as businesses are created to manufacture and install new green technologies.

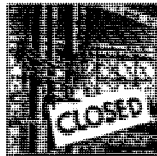
For example, in March of 2011 the EPA released a presentation on their proposed Mercury Air Toxics Rule that said:

*"This rule will provide employment for thousands, by supporting 31,000 short-term construction jobs and 9,000 long-term utility jobs."*

Director of the George Washington University Regulatory Studies Center Susan Dudley refutes this claim in a December 20, 2011, column in The Hill:

*"Also disingenuous is the EPA's claim that the 'rule will provide employment for thousands, by supporting 31,000 short-term construction jobs and 9,000 long-term utility jobs.' First, this estimate quantifies only the jobs necessary to comply with the new rules, and ignores jobs lost, despite its recognition that 'the industries that use electricity will face higher electricity prices as the result of the toxics rule, reduce output, and demand less labor.'"*

It is true that some jobs will be created by EPA's slew of regulations to make and install new required pollution control equipment for coal fired power plants, industrial boilers and cement plants.



But as Dudley points out, the Administration ignores the thousands of jobs that will be eliminated at the plants and factories that shut down due to higher energy and construction costs of installing that equipment. The end result is thousands of jobs being crushed to create a few green jobs, which leads to higher unemployment.

An article in the liberal magazine *Think Progress* entitled "EPA Regulations Will Create New Jobs, Says American Electric Power CEO: 'No Question About That'" even stated on November 14, 2011 that there will be some job losses in the energy industry as a result of EPA's rules regardless of what jobs will be created by them:

*"Net job creation is a bit harder to gauge, as there will be jobs lost in some areas of the (energy) industry in a shift away from coal to natural gas and renewables."*

#### Unemployment's Impact on Public Health:

In 2011, several respected health experts and scientists testified before the Senate Environment and Public Works Committee about the impact of unemployment on a person's health.

On June 15, 2011, Dr. Harvey Brenner of Johns Hopkins University testified before the Senate Environment and Public Works Committee:



*"The unemployment rate is well established as a risk factor for elevated illness and mortality rates in epidemiological studies performed since the early 1980s. In addition to influences on mental disorder, suicide and alcohol abuse and alcoholism, unemployment is also an important risk factor in cardiovascular disease and overall decreases in life expectancy."*

On June 8, 2011, Margaret Thorning, Chief Economist with the American Council for Capital Formation, testified before the joint subcommittees on Clean Air and Children's Health. While discussing the negative relationship between job insecurity and worker health, she referenced an article in *Social Science and Medicine* magazine by professors from the University of Michigan and the University of California, Los Angeles. The scholarly article, "Perceived job insecurity and worker health in the United States," presents findings consistent with prior studies, demonstrating a correlation between persistent insecurity of employment and poor health:

*"Even after adjusting for sociodemographic and job characteristics, health prior to baseline, neuroticism, hypertension and smoking status, and objective employment insecurity...perceived job insecurity remains a significant predictor of subsequent health."*

Adult workers are not the only ones affected by unemployment and widespread job loss. The National Center for Health Statistics described how poverty affects children's health:

*"Children in poor families were four times as likely to be in fair or poor health as children in families that were not poor."*

As Americans continue to deal with the impact of high unemployment, such studies have been in the forefront of the news since the recession began:

*The Washington Post* on July 8, 2011 in an article entitled "The long term impact of unemployment" referenced a June 23, 2006 report by Yale researcher Dr. William T. Gallo entitled "The Impact of Late-career Job Loss on Myocardial Infarction and Stroke: A 10-year Follow-up Using the Health and Retirement Survey". The report stated –



*"Results suggest that the true costs of late career unemployment exceed financial deprivation, and include substantial health consequences. Physicians who treat individuals who lose jobs as they near retirement should consider the loss of employment a potential risk factor for adverse vascular health changes."*

*The Washington Post* went on to say –

*"Being laid off has serious long-term health effects. [P]eople who are laid off near retirement are twice as likely to have a stroke or heart attack...[Unemployment] increases one's likelihood of depression."*

*"...Persistent high unemployment, like the kind we're experiencing, does not just hurt people in the here and now. It hurts people decades in the future, even if the economy has recovered by then."*

A March 2010 *Atlantic Monthly* story entitled "[How a New Jobless Era Will Transform America](#)" referenced a report entitled "[Job Displacement and Mortality: An Analysis using Administrative Data](#)" by researchers Daniel Sullivan of the Federal Reserve Bank of Chicago and Till von Wachter of Columbia University. The report states –

*"We use administrative data on the quarterly employment and earnings of Pennsylvanian workers in the 1970s and 1980s matched to Social Security Administration death records covering 1980-2006 to estimate the effects of job displacement on mortality. We find that for high-seniority male workers, mortality rates in the year after displacement are 50-100% higher than would otherwise have been expected. The effect on mortality hazards declines sharply over time, but even 20 years after displacement, we estimate a 10-15% increase in annual death hazards."*

*Atlantic Monthly* went on to say –

*"A large and long-standing body of research shows that physical health tends to deteriorate during unemployment, most likely through a combination of fewer financial resources and a higher stress level. The most-recent research suggests that poor health is prevalent among the young, and endures for a lifetime. Till Von Wachter, an economist at Columbia University, and Daniel Sullivan, of the Federal Reserve Bank of Chicago, recently looked at the mortality rates of men who had lost their jobs in Pennsylvania in the 1970s and '80s. They found that particularly among men in their 40s or 50s, mortality rates rose markedly soon after a layoff. But regardless of age, all men were left with an elevated risk of dying in each year following their episode of unemployment, for the rest of their lives."*

*The Huffington Post* in a November 5, 2010 article entitled "[Study: Longterm Unemployment Has Disastrous Effects On Health And Longevity](#)" quoted Dr. Elise Gould, director of health policy research at the Economic Policy Institute who stated –

*"After wage losses, the most direct impact of unemployment is loss of health insurance coverage for those who had it in the first place," she said. "But this is only tip of the iceberg when we think about people's health. It's clear that many Americans are still hurting and will be hurting for a very long time."*

*The Huffington Post* went on to say –

*"[R]esearch shows that losing one's job can have a 'powerful and negative impact' on the health of the jobless, leading to feelings of failure, depression, anxiety, notably*



*increasing the risks of strokes, heart attacks and catastrophic illnesses, and potentially leading to premature mortality.*

*"...[E]ven the risk or fear of losing one's job was just as strong a predictor as the actual job loss on an older person's overall health because of internal psychological issues."*

On May 8<sup>th</sup>, 2009, the *New York Times* in an article entitled "**Unemployment May Be Hazardous to Your Health**" referenced a study entitled "**Job Loss and Health in the U.S. Labor Market**" by Kate Strully with the University of Albany. The study states --

*"Losing a job because of an establishment closure increased the odds of fair or poor health by 54%, and among respondents with no preexisting health conditions, it increased the odds of a new likely health condition by 83%. This suggests that there are true health costs to job loss, beyond sicker people being more likely to lose their jobs."*

The *New York Times* went on to say --

*"Workers who lost a job through no fault of their own...were twice as likely to report developing a new ailment like high blood pressure, diabetes or heart disease over the next year and a half, compared to people who were continuously employed."*

**Uncertainty and Omissions in EPA Public Health Analyses:**

EPA's March 2011 report, "**The Benefits and Costs of the Clean Air Act from 1990 to 2020**" claims billions of dollars in benefits due to Clean Air Act regulations. This report has been cited at hearings in the full Senate Environment and Public Works Committee as well as the House Energy and Commerce Committee by **EPA Administrator Lisa Jackson** and **EPA's Assistant Administrator of the Office of Air and Radiation, Gina McCarthy**. Administration officials regularly tout this report as proof that increased EPA regulations would be a boon for public health and the economy.

According to outside experts at National Economic Research Associates (NERA), this EPA report is flawed, misleading and contains major uncertainties. NERA's report entitled "**Assessment of the Obama Administration's Cost-Benefit Analysis of Clean Air Act Regulations**," outlines the specific problems with EPA's analysis:

*"The methodology behind these numbers is suspect, and the magnitude is greatly exaggerated."*

*"Existing regulations are unquestionably slowing economic growth today. Whether the environmental benefits of those regulations might be worth the cost is a policy question, but there is no denying that the cost takes the form of lower production of goods and services that go into consumption and investment."*

Diane Katz of the Heritage Foundation raises serious concerns about the uncertainty behind EPA's numbers. According to her March 3, 2011 report entitled "Coming Clean on Regulatory Costs and Benefits," she states:

*"Predicting the future effects of regulation can be exceedingly complex given the array of confounding factors at play and thus the multitude of assumptions that must be employed. The benefit estimates in the report range from \$250 million to \$5.7 trillion - a vast difference that indicates vast uncertainty about the EPA's claims."*

*"The research design is only one of myriad flaws underlying the EPA's claims. In fact, 14 elements of the study that bear directly on the valuation of regulatory benefits are unreliable and constitute 'major uncertainties' —i.e., differences in benefit estimates of \$100 billion or more, according to the authors of the report."*

*"The three most 'significant' of the major uncertainties relate directly to the calculation of lives saved by regulation, which accounts for the largest proportion of economic benefit and thus the basis of the agency's contention that regulatory benefits dwarf costs. Simply put, the EPA's claim that the CAA Amendments of 1990 will save 230,000 lives and generate \$2 trillion in economic benefits in 2020 is rife with 'significant' and 'major uncertainties,' according to the authors of the report."*

As demonstrated earlier in this report, studies show that unemployment leads to serious health effects for individuals. Both NERA and Katz question the accuracy of the number of lives saved in the March report. NERA also specifically questions the claim that increasing regulations have a positive economic outcome for businesses and the economy. If in fact these regulations are having a negative effect on the economy, then there will be subsequent negative health effects for the public that must be taken into account by EPA.

The March 2011 report is not the only instance where EPA has been criticized for not accurately representing the benefits versus costs to public health from their regulations. A September 22, 2011, letter signed by seven members of Congress, who are also doctors, made this key point in a letter to EPA Administrator Lisa Jackson about the EPA's Utility MACT rule:

*"EPA, as a federal agency, is required to perform a regulatory impact assessment with cost-benefit findings of any proposed major regulatory action. With respect to the Utility MACT rule, EPA claims that, 'significant annual health benefits will far outweigh any costs associated with implementation.' Unfortunately, EPA's benefits appear to be based on limited quantitative and qualitative analysis."*

The letter goes on to say:

*"Contrary to its purpose, the proposed Utility MACT rule may actually present profound challenges to public health."*

The letter points out that the EPA failed to consider the impact on healthcare affordability as a result of increased electricity costs on hospitals.

*"Hospital administrators have no choice but to pay attention to the cost of energy. U.S. healthcare facilities consume four percent of the total energy consumed in the U.S. spending, on average, \$8.5 billion annually on energy, often equaling between one and three percent of a hospital's operating budget. Additionally, EPA estimates, in the U.S., the health sector is the most energy-intensive commercial sector resulting in more than \$600 million per year in direct health costs and over \$5 billion in indirect costs. Under EPA's proposed rules, electricity costs in some regions may increase over 20 percent as soon as 2016. The surging cost of energy will squeeze tight hospital budgets making access to affordable healthcare all the more difficult."* - September 22, 2011 letter to EPA Administrator Lisa Jackson from Rep. Michael Burgess, Rep. Phil Gingrey, Rep. Bill Cassidy, Rep. John Fleming, Rep. Paul Broun, Rep. Paul Gosar, and Rep. Larry Bucshon.



The Minority notes that the EPA's report and subsequent claims of health benefits of their rules all fail to adequately calculate the negative health impacts of their regulations. The EPA has not adequately responded to the concerns raised about the uncertainty in their numbers. The EPA also refuses to acknowledge in their analyses and reports the inevitable increase in healthcare costs due to unemployment – billions of dollars in time and resources. This raises questions about the true environmental health benefits that are the supposed goal of new costly EPA Clean Air Act regulations.

Experts agree that understanding the impact that job loss and income has on health is vital to understanding the true representation of what a regulation's affect on public health will be. According to a 1999 report in the publication *Risk: Health, Safety & Environment* entitled "Health Transfers: An Application of Health-Health Analysis to Assess Food Safety Regulations" by Fred Kuchler, Jacqueline L. Teague, Richard A. Williams & Don W. Anderson, job loss and income are key factors in understanding health impacts:

*"Economists take for granted that income influences individual risk choices and thereby influences health. In tallying regulatory costs and benefits, analysts usually know who will bear the costs, and analysts can estimate the cost bearers' income. However, to estimate the number of fatalities a proposed regulation might induce, analysts need to know how income loss is likely to affect the health of those who will bear regulatory costs."*

The Minority agrees with this assessment. Any detailed cost-benefit analysis conducted by the EPA should incorporate the latest and best scientific analysis to understand and quantify the negative health effects of unemployment and lost income. It should also factor in the high energy costs for healthcare providers that result from costly regulations.

**Conclusion:**

It is undeniable that there is a negative relationship between unemployment and health status.

Today, many Americans continue to lose their jobs or live in constant fear of becoming unemployed. Losing a good paying job is devastating for families across the country who are struggling to get by.

It is fiscally and socially irresponsible for the Obama Administration to ignore how their regulations impact public health by driving up unemployment. Out of work Americans are increasingly likely to suffer: heart attack and stroke, while other effects can include increased mortality, alcoholism, cardiovascular disease, or mental ill-health: anxiety, depression, and somatization. Secondary effects extend to family members, including children, who are directly and indirectly impacted by job loss. Higher unemployment may result in poorer health across the country, leading to a higher mortality rate and an increase in hospital and emergency department visits.

According to New York Times reporter John Broder in a November 17<sup>th</sup>, 2011, article entitled **"Policy and Politics Collide as Obama Enters Campaign Mode"** a meeting occurred between the American Lung Association and then White House Chief of Staff William Daley over the EPA's proposed ozone regulations.

In that meeting, Daley asked a simple question when confronted with the argument that additional Clean Air Act regulations would improve public health. Daley asked, "What are the health impacts of unemployment?"

The Minority agrees with former White House Chief of Staff Daley that the EPA must consider and address this question as it pushes new regulations. The Full Senate Environment and Public Works Committee and the Subcommittee on Clean Air and Nuclear Safety should also conduct additional hearings on these issues to responsibly investigate the health implications of high unemployment.

The Minority recommends that all health impacts be considered equally and transparently.

Senator BARRASSO. The Committee is in recess.

Mr. PRUITT. Thank you, Senator.

[Recess.]

Senator BARRASSO. Let us resume the confirmation hearing for Scott Pruitt to be EPA Administrator.

Attorney General Pruitt, let me start by saying sometimes you get a chance to sit down over lunch, and you say, I have been answering questions for over 2 and a half hours. I wish I had said something differently about something or other. Is there anything you would like to clarify?

Mr. PRUITT. I have just one point of clarification in response to Senator Whitehouse's questions this morning about different environmental enforcement steps we have taken with respect to the leaky underground storage and double dipping in our State. I have officially initiated three cases there with respect to Valero, BP and Conoco. Exxon, and a number of other cases are still in settlement discussions. Those cases have not materialized in actual litigation just yet.

Senator BARRASSO. Thank you for that clarification.

I have a couple quick questions. In the city of Cheyenne, Wyoming, it was discovered that trichloroethylene, a chemical that has been used by the military to degrease the engines of rocket motors, was seeping into the city's drinking water supply. The Army Corps of Engineers, which was in charge of a nearby former Atlas nuclear missile site, refused to even admit that the site was the cause of the pollution. I fought the Corps on this to do testing needing to prove what was obvious to everyone who looked at it. The test results showed a large plume coming from the Atlas site directly into the city's wells. The Corps is now addressing the pollution of the city's water supply. It is now protected through a state of the art water treatment facility that was installed by the Corps.

Can you perhaps give me an example from when you served as Oklahoma's State Attorney General where you went after polluters and held them accountable in that same way?

Mr. PRUITT. Yes, Senator. As I indicated earlier—I think this was indicated earlier in this morning's testimony—I mentioned the case with the hen producing, the CAFO. That was something we actually initiated. I know there was some question that Senator Carper raised in that regard. That was both with respect to Federal and State violations. We actually joined the State of Texas and the EPA in that enforcement action.

I have submitted for the record, as you know, a list of cases where we have worked with the Wildlife Commission in Oklahoma, the DEQ around CERCLA matters and enforcement of our State laws.

Senator BARRASSO. What was troubling to many of us in the previous Administration was when officials within the Obama administration went to extraordinary lengths to avoid disclosing their official written communications under the Freedom of Information Act. This is the law that allows public access to Government records. For example, EPA Administrator Lisa Jackson, at the time, used an EPA e-mail account under the name of Richard Windsor, Richard Windsor, as opposed to her own e-mail account.

If confirmed, will you refrain from taking any such action that makes it difficult or impossible for the public to access your official written communications under the Freedom of Information Act?

Mr. PRUITT. Yes, Mr. Chairman. As I indicated in my opening statement, I really believe that public participation and transparency in rulemaking is very important. I think that extends to this matter as well.

Senator BARRASSO. Thank you.

I will reserve the remainder of my time.

Senator Carper.

Senator CARPER. Thanks, Mr. Chairman.

As we discussed before, you are a part, I think, of at least three lawsuits, Mr. Pruitt; I think one is pending on the EPA's efforts to reduce mercury emissions from power plants. We know that 50 percent of our Nation's mercury emissions comes from power plants, not nuclear plants, but generally fossil fuel plants, largely coal-fired plants. We know there are more fish consumption advisories in the U.S. for mercury than I think all other contaminants combined, including in your own State of Oklahoma.

If you believe that the EPA should not move forward on the Mercury and Air Toxics rule, how do States clean up mercury? What do you think are the health impacts of mercury emissions?

Mr. PRUITT. Senator, I actually have not stated that I believe the EPA should not move forward on regulating mercury or adopting rulemaking in that regard. Our challenge was with regard to the process that was used in that case and how it was not complicit with the statutes as defined by Congress.

There is not a statement, nor a belief that I have, that mercury is something that should not be regulated under section 112 as a hazardous air pollutant, a HAP. As you know, that section directly deals with health concerns of our citizens. That is the reason why there is control technology that is very heightened in that statute, maximum achievable control technology that is required. So I believe that mercury should be dealt with and dealt with in a meaningful way by the EPA but subject to the processes this body has outlined.

Senator CARPER. Senator Lamar Alexander and I worked together for a number of years on Clear Skies legislation. The George Bush administration had proposed Clear Skies dealing with sulfur dioxide, nitrogen oxide, and mercury. Several colleagues of my own, including Senator Alexander, worked on legislation similar. One of the differences between what we proposed and the Bush administration's proposal was with respect to reducing the emissions of mercury. I do not recall exactly what the Bush proposal called for in terms of emissions reductions from power plants and others from mercury, but it was not very aggressive.

I proposed a reduction of 80 percent over a certain number of years; Senator Alexander said he thought folks could do better than 80 percent and he proposed a 90 percent reduction schedule.

We literally had here at this table witnesses from utilities and one witness from a trade association representing technology companies that focused on reducing emissions of harmful substances into our air and into our water. Every utility representative said, we cannot meet an 80 percent reduction in mercury. The witness

from the trade association representing the industry which was in business just to try to reduce emissions like mercury said, not only can the industry meet those reductions over the stipulated period of time, they could exceed them.

As it turns out, they exceeded them. They actually did better than 80 percent, actually did better than 90 percent and did it more quickly than I think was anticipated.

Is that instructive to you in any way on this question? Is there any lesson there for you or for us from that experience?

Mr. PRUITT. As I have indicated, Senator, I really believe that it is important, and it is a partnership between the EPA and the States. I made reference to the phrase earlier of national standards and neighborhood solutions. I think that shows the EPA can be involved and should be involved in setting standards and setting objective, science-based standards to improve air quality and protecting the health of our citizens but also to be a meaningful partner with the States in implementing those laws.

Senator CARPER. Let me just stop you there, please. I like to say that in adversity lies opportunity. That is not me. That is Albert Einstein. There is economic advantage to be gained from cleaning up pollution. We have seen there are companies that worked on mercury emissions. They make money doing that and starting that technology around the world. Similarly, there has been money made from the Diesel Emission Reduction Act, the American technology reducing emissions from old diesel engines.

Do you ever give any thought to the economic gain, the economic advantage that can flow from developing that technology to reduce emissions? I actually think sometimes of setting regulations, clear regulations.

I will never forget a conversation I had when we were working on our Clear Skies legislation addressing four pollutants, meeting with a bunch of utility CEOs, and talking about how to go forward on that issue. At the end of the conversation one of the utility CEOs, I think a curmudgeon-like older fellow. I do not remember where he was from. He said at the end of the day, here is what you need to do, Congress and the EPA. You need to tell us what the rules are going to be, you need to give us some time and flexibility, and you need to get out of the way. That was what he said. Tell us what the rules are going to be, give us some flexibility, and get out of the way.

Do you believe that actually setting standards, whether it happens to be mercury reductions, CAFE standards, fuel efficiency requirements, that we are actually setting those standards, making it clear that we actually provide certainty and actually open a door for economic production?

Mr. PRUITT. I do, Senator, actually.

Senator CARPER. Can you give us an example where you actually saw that happen, were helpful in making that happen?

Mr. PRUITT. In Oklahoma, this is not widely known because we are known as an oil and gas State, but in the generation of electricity in our State, 17 percent of our electricity is generated through wind. We have had a heavy emphasis on renewables. That puts us in the top three in the country.

Our Corporation Commission—I actually have obligations to appear before the Corporation Commission in the setting of rates. As utility companies are looking at modifying their facilities to comply with environmental statutes, there is great discussion about how to do that more economically and to achieve the air quality objectives we have under EPA and State mandates. I have been very involved in that process through that part of my office.

Senator CARPER. Thanks, Mr. Chairman.

Senator BARRASSO. Thank you, Senator Carper.

Senator Capito.

Senator CAPITO. Thank you, Mr. Chairman.

Thank you again for being before us. Congratulations on your nomination.

Mr. PRUITT. Thank you, Senator.

Senator CAPITO. I think, as you can tell from this committee and the country is divided on a lot of the issues in and around involving what you are endeavoring to headline here at the EPA. I think understanding one another is extremely important. No matter how many times I might say the same thing and somebody else on the other side might say the same thing, it gives me a greater understanding of where they live and how they think best way to pursue environmental issues are.

In the crowd that just joined us here after lunch are several coal miners who traveled all morning, have been waiting in the hall, and made some new friends in the audience. I want to thank them for coming because those are the faces of the issues that I try to address when we are talking about the different facets of the regulatory environment that we see that has been put forth over the last several years. This question is for you all.

In my very first hearing as a United States Senator on this Committee, we had the Assistant Administrator, Janet McCabe. She came to testify about the EPA CO<sub>2</sub> rules. When I pressed her about why in the public meetings on the existing plant rules EPA had not bothered to come to West Virginia or for that matter any of the other States that most heavily rely on coal for electricity generation, this is what she said: “We tried to. When we were scheduling national level meetings, we wanted to have those in locations where people were comfortable coming.”

Mr. Attorney General, I want you to be comfortable coming anywhere in this country to talk about whether it is Rhode Island, West Virginia, or Alaska. People need to know you are listening, that you care, and that you are understanding the ramifications for the decisions that you make.

So this did not sit very well for me. We had a meeting after that in Beckley, West Virginia, which is the birthplace of the Ranking Member. We had Bo Copley there, who was a laid-off coal miner. He talked about all the hardships of his friends and neighbors. We had the county commissioner who talked about the loss of revenue to the county and how it was impacting the school systems, the real estate values, and the bankruptcies of all the different coal companies and people who had been out of work.

I would implore you to commit today to visit West Virginia, both sides of West Virginia, and talk to our coal miners and their families to talk about the job and economic impacts and how we can



work together with both sides to try to get to the intended goal of cleaner air and cleaner water.

Mr. PRUITT. Senator, I really appreciate you sharing that. That is the reason I mentioned in my opening statement the importance of listening and leading. This process I have been a part of obviously is very new, but I spent time with each of you, many of you, in individual meetings. Senator Gillibrand talked about issues important to her around CERCLA. You cited concerns and issues that are important to you in West Virginia. I think it is very important, if confirmed as Administrator, that I spend time responding, learning, and listening to you and your respective States and trying to be helpful with regard to the environmental issues you face.

Senator CAPITO. Thank you. That means a lot.

I would like to get some clarification on a topic has been coming up about how many times you, as Attorney General, sued the EPA. You began your statement by saying the rule of law is very important to you. Then you talked about several of the cases, and probably most of the cases you brought forward as not challenging the regulations so much as the process or whether the rule of law has been overstepped and the boundaries of the EPA has been the intent of Congress by legislating to the EPA, has been overstepped. The courts have agreed, in some cases, that this is the case.

Could you kind of restate that position on the different actions?

Mr. PRUITT. Senator, as I indicated I think in response to Senator Sullivan, probably more so than most statutes that are passed by Congress, this body has recognized the very important and vibrant role the States play in partnership with the EPA in implementing and enforcing our environmental statutes. Many of you talked about that in your offices and how your DEQ works with the Regional Administrator.

So when we talk about rule of law, as you deal with mercury, as you deal with CO<sub>2</sub>, as you deal with water issues around WOTUS and the definition in those cases, it is important that you do so consistent with the framework that has been established by this body and that it is respected. That gives confidence to the people that are regulating it.

When you have an administrative agency of any type that acts inconsistent or tries to enlarge its authority, it does not inspire confidence in those that are regulated. You are seeing a matter of picking winners and losers and being against certain things as opposed to protecting people. That rule of law is not something that is academic in my view. It is not something that is just legal; I think it is important to ensuring good outcomes as far as improving our air and protecting our waters.

Senator CAPITO. Thank you.

Senator BARRASSO. Senator Whitehouse.

Senator WHITEHOUSE. Thank you, Mr. Chairman.

Mr. Pruitt, when we left off, we were talking about things that, to quote the Chairman, "might place you in a conflict of interest but have not been disclosed." We were talking about the dark money operation that supports the Republican Attorney Generals Association.

Before we get back into that, let me ask you this as a hypothetical. If you had raised significant amounts of money for the

Rule of Law Defense Fund from corporations who will be subject to EPA's regulation, before EPA, with matters before EPA, might that place you in a conflict of interest?

Mr. PRUITT. The EPA Ethics Counsel has said—by the way these are career individuals as you know, Senator. Justina Fugh is a career person at EPA Ethics. So as they have reviewed these potential conflicts, I have disclosed all entities I have been affiliated with.

Senator WHITEHOUSE. I understand that, but I am asking you if you think it might place you in a conflict of interest, because we both understand that the ethics rules that the EPA is enforcing predate Citizens United, predate dark money. They have said in the letter that they are not even looking at that because they do not have the authority to. That does not mean it is not a conflict of interest. It means that the regulatory authority on Government ethics has not caught up with this post-Citizens United, dark money world.

My question is, you are a lawyer; you know conflicts of interest. You have been an Attorney General. Might it be a conflict of interest within your definition of the term if you had raised significant amounts of money for this Rule of Law Defense Fund, and they will have business before EPA with you? Is that a potential conflict of interest?

Mr. PRUITT. I think if you actually did address those entities to the degree that I was never an officer of the super PAC you are referred to earlier, the Liberty 2.0.

Senator WHITEHOUSE. The question was fund raising. That is the question we do not have any answers on, is what you raised.

Mr. PRUITT. They looked at those entities to determine the nature of my relationship and indicated those would have to be evaluated in the future as certain cases arose.

Senator WHITEHOUSE. Right now, the Chairman asked you a question which is, are there matters that might place you in a conflict of interest that you have not disclosed. You answered no.

Might not having raised significant money, let's say \$1 million. Let's say you made a call to Devon Energy and said, I did your letter for you. RAGA needs a lot of money. We have this dark money thing where we can launder your identity, clean off it, and the money will go into RAGA. I need \$1 million out of you. Might that not create a conflict of interest for you if that were the facts?

Mr. PRUITT. Ms. Fugh has indicated in her letter to me—again, these are career individuals at EPA Ethics—that if particular matters involving specific parties arise in the future, it will be evaluated at that point.

Senator WHITEHOUSE. How will they know if you are not willing to disclose that you raised a hypothetical \$1 million from Devon Energy?

Mr. PRUITT. Those aren't even covered entities under her letter at this point.

Senator WHITEHOUSE. That is my point. That may very well create a conflict of interest, mightn't it?

Mr. PRUITT. Senator, I did not serve in an office or capacity at that entity in any way.

Senator WHITEHOUSE. That also is not the question. The question is a very simple one. Did you raise money for the Rule of Law Defense Fund, front entities that will appear before EPA as potential defendants in subjects of regulation? If so, how much, and what did you tell them, and what did you ask? It seems to me that is not an unusual or—

Mr. PRUITT. The Rule of Law Defense Fund, according to Ms. Fugh, would need to be a party in the future for that to be an issue. That is what she has indicated in her letter to me. At the time—if it should arise in the future, I will seek the counsel of EPA Ethics and follow the advice of those career folks to make a decision and recuse if necessary. That is something I commit to doing.

Senator WHITEHOUSE. At this point, what I deduce from your statement is that if that set of hypothetical facts were true, if you had raised \$1 million from a big energy corporation to go through the Rule of Law Defense Fund to support your efforts at RAGA, that is not something anybody should care about, even if that corporation is before you at EPA and subject to your regulation?

Mr. PRUITT. I think it is something that if presented in the future, Justina Fugh, myself, and EPA Ethics would evaluate that, and I would take the appropriate steps to recuse if they told me to do so.

Senator WHITEHOUSE. But how would it be presented in the future if you are not willing to present it now? Why does it matter in the future and not now?

Mr. PRUITT. If there is a matter or case that comes before the EPA's authority, that would be something. There is ongoing, as you know, Senator, Ms. Fugh indicated this in her letter; there are ongoing obligations that I will have, if confirmed as Administrator, to bring those kinds of matters to the attention of EPA Ethics.

Senator WHITEHOUSE. For what it is worth, I think the Senate has a role in policing this as well, that the whole purpose of advise and consent and the reason there are these Government ethics filings is so we can look at this exact question. The fact they haven't been updated to take into account dark money and all these big political organizations that have been created with dark money doesn't take away our Senate obligation to find out what conflicts of interest you will bring to the position of Administrator. It gives me very little comfort that you are not willing to answer those questions here.

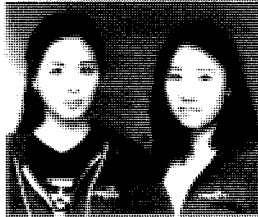
My time has expired. I will continue in another round.

Senator BARRASSO. Thank you very much, Senator Whitehouse.

I would like to introduce for the record an article in the Associated Press in the Seattle Times headlined, "Ethics Officials Clear Trump EPA Nominee." It says, "The Office of Government Ethics on Monday released the personal financial disclosure report for Scott Pruitt, currently Oklahoma's Attorney General. The Ethics Office affirmed that Pruitt's disclosures comply with applicable Federal laws and rules." "His finances," it says, "are among the least complicated of Trump's Cabinet nominees."

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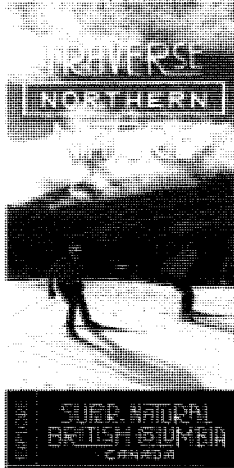
### Ethics officials clear Trump EPA nominee



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Senate Majority Leader Mitch McConnell, R-Ky., left, meets with Environmental Protection Agency (EPA) Administrator-designate Scott Pruitt, right, on Capitol Hill in Washington, Thursday, Jan. 6, 2017. (AP Photo/Zach Gibson)



By MICHAEL BIESECKER  
The Associated Press

WASHINGTON (AP) — Federal ethics officials have cleared President-elect Donald Trump's nominee for the Environmental Protection Agency to be confirmed by the Senate.

The Office of Government Ethics on Monday released the personal financial disclosure report for Scott Pruitt, currently Oklahoma's attorney general. The ethics office affirmed that Pruitt's disclosures comply with applicable federal laws and rules.



No date has been set for Pruitt's Senate confirmation hearing.

His finances are among the least complicated of Trump's Cabinet nominees, a group that includes several billionaires. In just four pages, Pruitt disclosed an investment portfolio valued between \$420,000 and \$1 million, held primarily in mutual funds, bonds and a state retirement plan. ☆☆☆

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Pruitt, 48, also listed debt of between \$500,000 and \$1 million on a mortgage on his Oklahoma home.

Senate Democrats and environmental groups have criticized Pruitt for what they term cozy political ties with the oil and gas industry. Like Trump, Pruitt has also been a vocal denier of the science showing that the planet is warming and that man-made carbon emissions are to blame.

Pruitt, a Republican, has repeatedly sued the EPA since becoming attorney general in 2011. He joined with other Republican attorneys general in opposing the Clean Power Plan, which seeks to limit planet-warming carbon emissions from coal-fired power plants. Pruitt also sued over the agency's recent expansion of water bodies regulated under the federal Clean Water Act, which has been opposed by industries that would be forced to clean up polluted wastewater.

Though Pruitt ran unopposed for a second term in 2014, campaign finance reports show he raised more than \$700,000, much of it from people in the energy and utility industries. Among those who gave the maximum contribution of \$5,000 to Pruitt's campaign was Continental Resources Chairman and CEO Harold Hamm, an Oklahoma oil tycoon who has been advising Trump.

On his disclosure forms, Pruitt is also listed as chairman of the Rule of Law Defense Fund, a Washington-based tax-exempt organization founded in 2014. The group's website describes it as a public policy organization for the study of issues relevant to the nation's Republican attorneys general and to promote "the rule of law, federalism, and freedom in a civil society."

In a letter sent to an EPA ethics official last week, Pruitt said he has resigned from the group effective Dec. 8.

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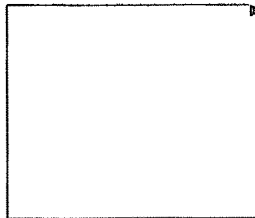
Pruitt is also listed on his disclosure form as a member of the boards for The Southern Baptist Theological Seminary in Louisville, Kentucky, and The Windows Ministry, a small Oklahoma City non-profit organization that describes its sole mission as "promoting the gospel of Jesus Christ."

In his letter to the EPA, Pruitt said he would also resign from those boards if he is confirmed to lead the agency.

Charlie Spies, an Oklahoma attorney for two political action committees tied to Pruitt said Monday he is in the process of filing the required paperwork with the Federal Election Commission required to dissolve them and distribute any remaining funds. Oklahoma Strong is Pruitt's leadership PAC to raise money for like-minded conservative candidates, while Liberty 2.0 was set up by Pruitt's supporters to support any future bids he might make for public office.

Spies said the political fundraising entities, which are likely to be criticized by Democrats for raising money from corporations and individuals who profit from fossil fuel production, have missions that are "no longer relevant."

"We don't want them to be a distraction during the confirmation hearings," Spies said.



Associated Press writer Sean Murphy contributed from Oklahoma City.

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Senator BARRASSO. Senator Boozman.

Senator BOOZMAN. Thank you, Mr. Chairman.

I really do find it ironic and hypocritical that we are in a situation that my friends on the other side of the aisle in this Committee, using their definition of dark money as elected officials, have literally raised millions of dollars of so-called dark money.

I'd like to talk a little bit about some of the over-regulatory burden that the States are facing. Air quality in Arkansas is among some of the cleanest in the Nation. Despite the progress that the State has made in looking forward, trying to do the right thing, the Regional Haze Federal Plan is going to produce a tremendous economic burden on them.

I think it is a prime example of the haphazard regulatory atmosphere that we have had in the past with little input from the States and stakeholders. For years the regulatory uncertainty has prevented businesses from hiring new employees and stunting economic growth. In fact information from the National Small Business Association that was just released found that more than half of small businesses have held off on hiring because they don't know what the rules are going to be.

You have mentioned it several times. Can you talk a little bit more about the impact that you have seen in regard to regulatory uncertainty in the State of Oklahoma and the experiences you have had?

Mr. PRUITT. Senator, the Visibility Program—we have had similar challenges in Oklahoma. The Regional Haze Program under the Clean Air Act, that section of the Clean Air Act is really quite a bit different than other provisions of the Clean Air Act. It gives primacy to the States in adopting plans to increase or improve visibility.

That particular section of the law says by the year 2064 we should have natural visibility in some key areas across the country. Oklahoma several years ago, actually in 2010 under a different Administration, both Governor and Attorney General submitted a State implementation plan that beat that deadline by decades. Despite that the EPA came in and rejected that State implementation plan and forced a Federal implementation plan on the State, costing the consumers quite a bit of money.

One thing I would add that I didn't talk about earlier is we talked about cooperative federalism and the importance of partnership. I have talked about that; you've talked about that. Under this past Administration the use of Federal implementation plans, if you combine President Bush, President Clinton, and President George W. Bush, those three Administrations combined issued five Federal implementation plans under the Clean Air Act in three Administrations. This Administration has issued 56. So it shows an attitude of indifference, an attitude of trying to be dictatorial in some respects toward the State's role or manipulative of the State's role in a way that is, I think, counterproductive for air quality.

Senator BOOZMAN. When you and fellow Attorney Generals and other stakeholders sue the Federal Government, whether it is regional haze or waters of the U.S. or whatever, your goal is not to do away with the regulation; your goal is to make it such that the EPA follows their regulatory authority, is that correct?

Mr. PRUITT. Yes, Senator. In that example I provided to you where the State implementation plan of Oklahoma that was rejected, we actually satisfied the statutory mandate that was under the regionalized program. We reached natural visibility a couple of decades ahead of schedule. The methodology that was used, the EPA simply disagreed with it. So they used their authority to displace the State plan costing consumers in the State hundreds of millions of dollars in increased utility costs.

Senator BOOZMAN. One of the things I think we have also seen in the last 8 years is tremendous mission creep on the part of the EPA where they have gotten into areas where they don't have the expertise. I think expertise would be the best word in regard to coming out with some of the things they have done where they lack jurisdiction and haven't really been in the past.

Can we count on you to work with the other agencies and take their expertise into careful consideration as we come out with the rules and regulations?

Mr. PRUITT. I think interagency cooperation is very, very important. Obviously with rulemaking, that is something that occurs and should occur, I think, in a very collaborative way. So yes, Senator, I believe it is very important as the EPA conducts its business that it works with the Corps and works with other agencies at the Federal level to ensure that it is doing all it can to advance and protect water quality and air quality and do so within the framework established by Congress.

Senator BOOZMAN. Does it feel like it is the ultimate decider again when they sometimes do not have the expertise of the other agency?

Mr. PRUITT. Yes, Senator. I agree.

Senator BOOZMAN. Thank you.

Mr. PRUITT. Thank you.

Senator BOOZMAN. Thank you, Mr. Chairman.

Senator BARRASSO. Thank you, Senator Boozman.

Senator Merkley.

Senator MERKLEY. Thank you, Mr. Chairman.

Mr. Pruitt, are you familiar with this piece of medical equipment?

Mr. PRUITT. Yes, an inhaler, it looks like.

Senator MERKLEY. Yes, an asthma inhaler. Are you familiar with how many Americans have asthma?

Mr. PRUITT. No, Senator, I am not.

Senator MERKLEY. It's about 1 out of 10 Americans, including over 7 million children. It is a pretty significant health problem across the country. I know I have been fortunate not to have asthma, but some folks I know who have it and have asthma attacks feel like they are suffocating. Sometimes they go into crisis. People go into crisis with asthma. Sometimes they die from it. It is a terrifying condition.

The EPA, in October 2015, strengthened the National Ambient Air Quality Standards for ground level ozone. They strengthened it to 70 ppb, adjusting it from 75 ppb, because they argued that it was an attainable standard that would save \$3 billion to \$6 billion and in addition, of course, greatly improve the quality of life by diminishing the amount of asthma attacks and deaths.

You challenged this. You launched a lawsuit against this standard. Was the basis of your lawsuit cost benefit analysis, that they didn't follow their process?

Mr. PRUITT. It was not, Senator. As you know, under the NAAQS Program, the Whitman decision, cause cannot be considered in a criteria pollutant.

Senator MERKLEY. What was the standard you were challenging?

Mr. PRUITT. It was a records-based challenge that the need to ratchet down from 75 parts per billion to 70 parts per billion. As you know, the 75 parts per billion had only been in operation for 2 years. I think, Senator, it is important from a priority perspective or the resource perspective of the EPA when 40 percent of the country is in nonattainment for one of those criteria pollutants, perhaps there should be focus on how to meet the level already in statute or already in rule.

Senator MERKLEY. So you challenged this based on the attainability standard? I already know that—

Mr. PRUITT. The records-based challenge, yes.

Senator MERKLEY. Yes, the attainability standard. There were numerous groups that weighed in and said no, this is totally attainable. I will submit a list for the record of that, Mr. Chairman.

Senator BARRASSO. Without objection.

[The referenced information was not received at time of print.]

Senator MERKLEY. The key to this is that by implementing that, by the time it is implemented, it would save annually 230,000—an estimate of course—asthma attacks among children, 160,000 missed school days, a tremendous number of missed work days, 630 emergency room visits, and 340 cases of acute bronchitis. But it also would save, best estimate, 320 to 660 premature deaths.

Here is something that profoundly affects the health of folks in Oklahoma, folks across the country, folks in my home State of Oregon, something that expert after expert said is fully attainable, and you challenged it not on a process issue, that is not on whether or not there was a cost-benefit analysis because as you rightly pointed out, cost is not allowed to be a factor, but whether it was attainable. Why fight so hard on the side of the oil industry rather than fighting on the side of the health of the people of Oklahoma?

Mr. PRUITT. Senator, let me say to you with respect to the NAAQS Program, when you look at the nonattainment we have in this country, it is presently around 40 percent, I think increasing the nonattainment percentage as opposed to focusing resources to get nonattainment into attainment is a very important role of the EPA. We should be taking those marginal and moderate areas on our map that are in nonattainment and work with local officials, those counties, through monitoring and assistance to help move from nonattainment to attainment. That is a very important goal of the EPA in each of these criteria.

Senator MERKLEY. Thank you. You have made your point clear. I just simply disagree with you. None of these standards, when they are set, are attained. That is the point. It is an objective to be worked at over time. There was a strategy that this might take until 2025 to be fully implemented.

But in the course of laying out that vision and having folks across the country work toward that vision, you end up saving a

tremendous amount of money and a tremendous amount of lives. I, as a Senator from Oregon, fighting for the quality of life of Oregonians, deeply resent folks fighting for oil industry that are trying to damage the health of my constituents and Americans across this country. It is a question of values and valuing profits of companies over the health of our citizens, it is a character issue, and that is what these hearings are all about. We are charged with Hamilton to determine whether or not an individual is of fit character. To me this is a character issue, valuing profits over people's health.

Thank you, Mr. Chair.

Senator BARRASSO. Thank you, Senator Merkley.

I am submitting for the record a report by the National Black Chamber of Commerce titled Potential Impact of Proposed EPA Regulations on Low Income Groups and Minorities. The report goes from 2015 and goes on to say that EPA regulations, including its regulation on carbon dioxide emissions, would result in the year 2020 in nearly 200,000 black jobs would be lost, and more than 300,000 Hispanic jobs would be lost. Additionally, commensurate with this, there would be median household income significant decreases throughout the communities listed in the report.

[The referenced report follows:]

*Harry Edwards, Pres. of NBCC testimony*

**NBCC** | National Black  
Chamber of Commerce®

POTENTIAL IMPACT OF PROPOSED EPA REGULATIONS  
ON LOW INCOME GROUPS AND MINORITIES

*\*probably not increase in it*  
*\* See 11/15, p. xi*

**JUNE 2015**

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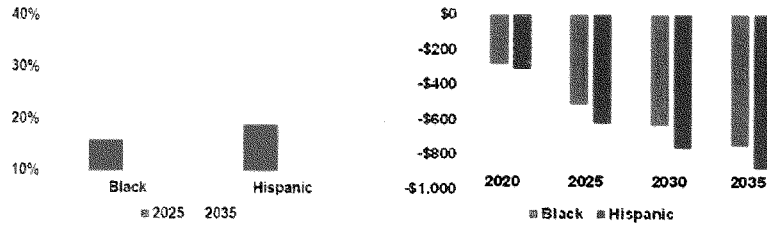
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**ABSTRACT**

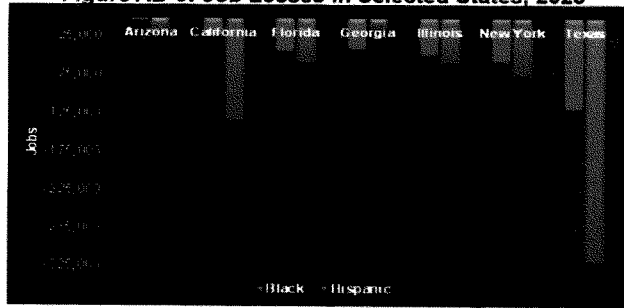
EPA is proposing new regulations, including guidelines to reduce CO<sub>2</sub> emissions from existing fossil-fueled power plants. These regulations would have serious economic, employment, and energy impacts at the national level and for all states, and the impacts on low-income groups, Blacks, and Hispanics would be especially severe. The EPA rules would: 1) Significantly reduce U.S. GDP every year over the next two decades – over \$2.3 trillion; 2) Destroy millions of jobs; 3) More than double the cost of power and natural gas to over \$1 trillion; 4) Require the average family to pay over \$1,225 more for power and gas in 2030 than in 2012.

The EPA regulations will increase Hispanic poverty by more than 26% and Black poverty by more than 23%. The energy burdens for Blacks and Hispanics will increase and large numbers of both groups will be forced into energy poverty (Figure AB-1), and Black and Hispanic household incomes will decline by increasing amounts each year (Figure AB-2). There would be increasing job losses: By 2035, cumulative job losses for Blacks will total about 7 million and for Hispanics will total 12 million. Most job losses would occur in the states in which Blacks and Hispanics are most heavily concentrated (Figure AB-3).

**Figure AB-1: Increases in Energy Burdens**    **Figure AB-2: Losses in Median Household Incomes**



**Figure AB-3: Job Losses in Selected States, 2025**



**The EPA regulations will thus disproportionately harm**

### EXECUTIVE SUMMARY

*"There are a lot of people on the lower end of the socioeconomic spectrum that are going to die." Senator Joe Manchin (D-WV) commenting on EPA's Clean Power Plan.*

*"It's the green movement's new Jim Crow law," Deneen Borelli, FreedomWorks.*

*"This rule will impact African-Americans more severely than any other group," Harry Alford, President and CEO of the National Black Chamber of Commerce.*

In June 2014, EPA proposed guidelines to reduce CO<sub>2</sub> emissions from existing fossil-fueled power generating units in the electric power sector – the Clean Power Plan (CPP). This Plan, and other proposed EPA regulations, would place restrictions on the availability and increase the prices of energy, especially electricity. The economic impacts of the EPA regulations in terms of GDP, incomes, industrial activity, jobs, and other indicators would likely be severe. Due to their economic vulnerability, the impacts on low-income groups, Blacks, and Hispanics would be disproportionate and especially serious. This report analyzes the likely economic, employment, and energy market impacts of the EPA Plan with special emphasis on the impacts on low-income groups, Blacks, and Hispanics.

#### **Economic and Energy Impacts**

The EPA regulations would have serious economic, employment, and energy market impacts at the national level and for all states, and that the impacts on low-income groups, Blacks, and Hispanics would be especially severe. We estimated that implementation of the EPA regulations would:

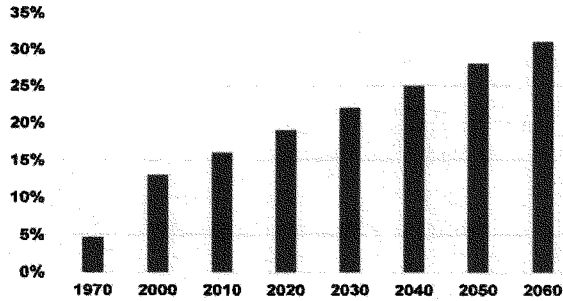
- Require incremental costs of nearly ½ trillion dollars (Table EX-1)
- Significantly reduce U.S. GDP every year over the next two decades, and GDP could be reduced by over \$2.3 trillion compared to the reference case – which assumed no EPA carbon restrictions
- Destroy millions of jobs over the next two decades
- Significantly reduce U.S. household incomes over the next two decades

In addition, the EPA Plan would greatly increase U.S. energy costs, and by 2030 these increases (above the reference case) could:

- More than double the cost of power and gas to over \$1 trillion
- Cost the U.S. economy \$565 billion more per year in 2030 than it did in 2012, representing a 121 percent increase (Table EX-2)
- Require the average family to pay over \$1,225 more for power and gas in 2030 than they did in 2012.



**Figure EX-1: Percent Hispanic of the Total U.S. Population: 1970 - 2060**



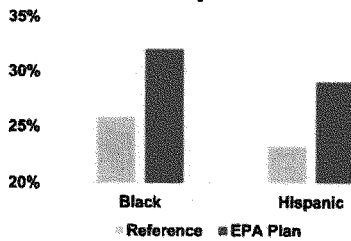
**Impact on Poverty Rates**

The EPA regulations will impact minorities disproportionately, both because they have lower incomes to begin with, but also because they have to spend proportionately more of their incomes on energy, and rising energy costs inflict great harm on minority families.

Black and Hispanics will be adversely affected threefold if the EPA Plan is implemented: Their incomes will be less than they would without the regulations, their rates of unemployment will increase substantially, and it will take those who are out of work longer to find another job. These impacts on earnings and employment will increase the rates of poverty among Blacks and Hispanics, and we estimate that one of the impacts of implementing the EPA regulations will be to, by 2025 (Figure EX-2):

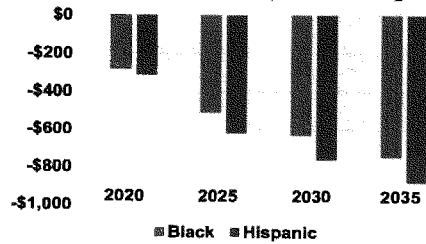
- Increase the poverty rate for Hispanics from 23 percent to about 29 percent. This represents an increase in Hispanic poverty of more than 26 percent.
- Increase the poverty rate for Blacks from 26 percent to about 32 percent. This represents an increase in Black poverty of more than 23 percent.

**Figure EX-2: Increases in 2025 Poverty Rates Caused by the EPA Regulations**



**EX-2**

**Figure EX-3: Losses in Black and Hispanic Median Household Incomes Caused by the EPA Regulations**



**Jobs Impacts**

The unemployment rates of Blacks and Hispanics have consistently been much higher than average and higher than those for Whites. Blacks and Hispanics are also at a disadvantage in the labor force when they are employed, for they tend to be disproportionately concentrated in lower paid jobs. Nationwide, implementation of the EPA regulations would result in the loss of an increasingly large number of Black and Hispanic jobs (Figure EX-4):

- In 2020, nearly 200,000 Black jobs would be lost and more than 300,000 Hispanic jobs would be lost.
- In 2025, more than 400,000 Black jobs would be lost and nearly 700,000 Hispanic jobs would be lost.
- In 2030, 470,000 Black jobs would be lost and more than 800,000 Hispanic jobs would be lost.
- In 2035, 535,000 Black jobs would be lost and nearly 900,000 Hispanic jobs would be lost.

*Read*

**Figure EX-4: Black and Hispanic Job Losses Caused by the EPA Regulations**

- Hispanics spend 90 percent more of their income on food, five percent more on housing, 40 percent more on clothing, and 10 percent more on utilities than do Whites.

Implementing the EPA regulations will likely exacerbate this situation by forcing Blacks and Hispanics to spend an even more disproportionate share of their incomes -- which will have been reduced due to the effects of the CO<sub>2</sub> restrictions -- on basic necessities.

Finally, the cumulative impact of increased unemployment, reduced incomes, and increased prices for housing, basic necessities, energy, and utilities resulting from the EPA regulations will be to further reduce Black and Hispanic discretionary incomes. Discretionary income is the money that remains for spending or saving after people pay their taxes and purchase necessities. It is an important concept both because of the financial flexibility it gives individuals and because many businesses depend on discretionary spending for sales and profits. Implementing the EPA Plan will reduce the average discretionary incomes of both Blacks and Hispanics.

#### **Increased Energy Poverty**

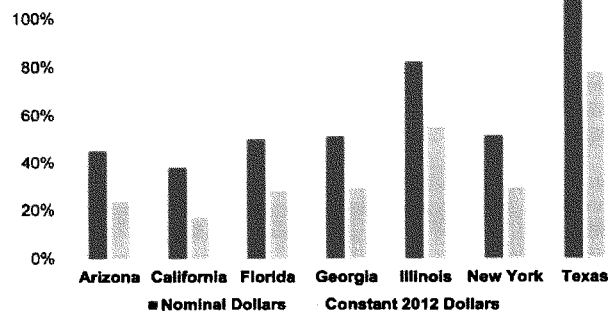
One of the more serious, but less recognized effects of implementing the EPA regulations will be to significantly increase the energy burdens for Blacks, and Hispanics and increase the numbers of Blacks and Hispanics suffering from "energy poverty." For tens of millions of low-income households, higher energy prices will intensify the difficulty of meeting the costs of basic human needs, while increasing energy burdens that are already excessive. At the same time, the EPA regulation will threaten low-income access to vital energy and utility services, thereby endangering health and safety while creating additional barriers to meaningful low-income participation in the economy.

The price increases resulting from the Plan would be highly regressive -- they would place a relatively greater burden on lower-income households than on higher-income ones. In addition to health risks, excessive energy burdens cause a variety of difficulties for low-income households, and "Inability to pay utilities is second only to inability to pay rent as a reason for homelessness."

A major negative effect of the EPA regulations would be to significantly increase the energy burdens for Blacks and Hispanics and to force large numbers of both groups into energy poverty. Implementing the regulations would (Figure EX-5):

- In 2025, increase the energy burden of Blacks by 16 percent and Hispanics by 19 percent
- By 2035, increase the energy burden of Blacks by more than one-third and Hispanics by more than 35 percent

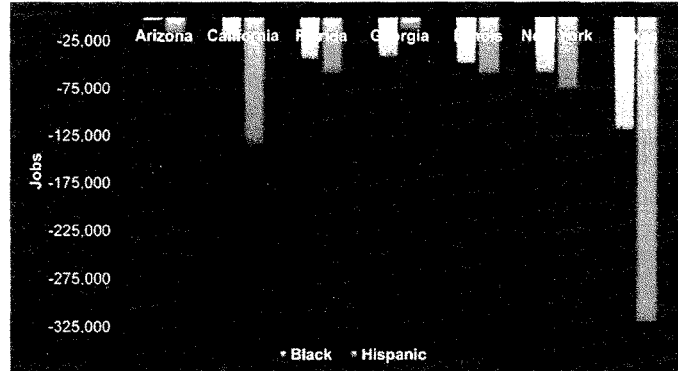
**Figure EX-5: Increases in Black and Hispanic**



Nevertheless, since the EPA regulations would require continuing and increasingly severe reductions in the use of fossil energy to produce electricity in the states and cause large energy price increases. If the regulations are implemented all states will suffer substantial and increasingly severe economic and jobs impacts:

- Residents of all states will face increased costs for energy, utilities, and for other goods and services and will experience increased costs of living.
- Energy and electricity prices in each state would increase substantially, but to different degrees.
- The growth rates of state wages and incomes would be negatively affected over the next two decades, and by 2025 states' per capita personal incomes would be significantly lower than in the absence of the EPA regulation.
- Millions of jobs would be lost in the states, employment would be lower, and unemployment higher.
- Industries and firms will relocate among states, thus causing a further loss of jobs in many states.
- New firms will hesitate to locate in some states, thus causing a reduction in the number of new jobs created.
- The combination of reduced economic activity in the states, decreased personal incomes for states' residents, and increased unemployment will strain state and local government budgets and result in reduced public services and increased taxes.

Blacks and Hispanics are disproportionately located in certain states, and their population concentration in these states will increase over time. We estimated the impacts of the EPA regulations on incomes in the seven states with the highest concentrations of Blacks and Hispanics: Arizona, California, Florida, Georgia, Illinois, New York, and Texas (Figure EX-7). In all states (except Georgia), the impacts on Hispanic incomes exceed the impacts on Black incomes, since there are more



The largest job losses for Blacks caused by the EPA regulations will also occur in Texas, and in 2025 the Plan will result in nearly 125,000 additional Blacks being unemployed in the state. Nevertheless, the job losses resulting from the EPA Plan are substantial in every state. For example, in 2025, Hispanic job losses will total:

- 135,000 in California
- More than 75,000 in New York
- 60,000 in Florida
- 60,000 in Illinois
- Nearly 25,000 in Arizona

In 2025, average Black job losses will total:

- 60,000 in New York
- 50,000 in Illinois
- 45,000 in Florida
- 43,000 in Georgia
- 26,000 in California

While Hispanic jobs losses exceed Black job losses in all of the states except Georgia, in some states the differences in total job losses for the two groups are relatively small – for example, in Florida, Illinois, and New York.

We estimated the increases in Hispanic and Black energy burdens in the states in 2025 resulting from the EPA regulations and found that (Figures EX-9):

- The energy burdens for both Blacks and Hispanics increase.
- For each group, the increased energy burdens are the largest in Texas.

Senator BARRASSO. Senator Fischer.

Senator FISCHER. Thank you, Mr. Chairman. Here we go again on round two.

I am happy that we have an opportunity to continue questioning with you, General Pruitt.

Nebraska, much like Oklahoma, is a rural State. In many cases the closest town or the neighbor can be located miles and sometimes hours away. In Nebraska one in four jobs is directly tied to production agriculture. Under this Administration farmers and ranchers felt especially targeted by the EPA. For example, in 2011 and 2012 EPA Region 7 conducted aerial surveillance or flyovers of feed yards in my State. While flying over my State EPA documented these facilities with photographs.

This was very disconcerting to me given that many livestock producers in Nebraska also live and raise their families on these properties. Not only were these producers not informed beforehand but the EPA has already delegated the authority to carry out the Clean Water Act in Nebraska to the State Department of Environmental Quality.

What will you do to ensure that the EPA sticks to its core mission? Furthermore, how will you work with the regulated community, including agriculture, to build trust among constituencies that have been, I would say, the subject of bullying tactics by this EPA that we have now?

Mr. PRUITT. Senator, I indicated in my opening statement some core themes, if confirmed as Administrator, that I would seek to comply with. One is public participation, full participation to ensure that all voices are heard as the EPA conducts its activities with respect to rulemaking particularly. I think perhaps what you are referring to is the lack of that voice or opportunity in the last several years. So I would work to build a collaborative relationship with those States. As I have indicated I think the Departments of Environmental Quality at the State level are valuable partners, that we need to restore their confidence in the partnership with the EPA and then seek to listen to the community concerns in addressing and responding to environmental issues.

Senator FISCHER. Thank you.

In one of her exit interviews, EPA Administrator Gina McCarthy has admitted that she has had a bad relationship with agriculture and with the agriculture community. She listed it as one of her regrets. I think a bad relationship is an understatement in this case.

This Administration's EPA philosophy is diametrically opposed to the idea that farmers can be good stewards of our land, our water, our environment. Instead, it seemed that this Administration's EPA wanted to regulate. In some cases, it looked like they wanted to prevent farming. The agriculture community is looking forward to a new leadership at the EPA and working with you.

Mr. Chairman, I have here some statements from agriculture officials and groups I would like inserted into the record.

Senator BARRASSO. Without objection.

[The referenced information follows:]

## Adam Putnam: Scott Pruitt will unravel mess at EPA



Scott Pruitt (Andrew Hamik / AP)

By **Adam Putnam**  
My Word columnist

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Adam Putnam: Scott Pruitt will unravel mess at EPA

JANUARY 4, 2017

**S**ince President Obama took office in 2009, the Environmental Protection Agency has published more than 4,000 new rules and finalized 186 new regulations, a legacy of which no one should be proud.

Collectively, the EPA's new regulations require Americans to spend 33 million additional hours filing paperwork with the federal government and cost Americans more than \$344 billion, according to the

American Action Forum, a center-right policy institute. For that amount of money, we could buy 300 stealth bombers and 2,000 military tanks and still have plenty left over for a round-trip to the moon.

In reality, though, this EPA's financial blow affects every American, as it negatively impacts our gross domestic product, kills thousands of jobs and increases the cost of living in our country.

Not only do the EPA rules have serious economic consequences, but they are far outside the EPA's scope of authority, violating states' rights and, in many cases, violating the U.S. Constitution. The end of the Obama EPA cannot come soon enough.

Thankfully, appointed EPA Administrator Scott Pruitt has the experience, understanding of the law and courage to get this out-of-control federal agency back on track.

I joined Oklahoma's Attorney General Pruitt in February 2015 to testify before Congress about one of the EPA's worst rules of the past eight years — the Waters of the United States Rule. This rule was, in no uncertain terms, an expansion of federal jurisdiction, infringement on states' rights and an unscientific approach to improving the quality of lakes, streams and rivers in the United States.

The EPA had made claims this rule was a simple clarification of what bodies of water were subject to the Clean Water Act, and that these clarifications would have little impact on communities. Its actions speak louder than words, however.

In 2014, the EPA threatened to fine a Wyoming man \$75,000 a day in noncompliance penalties over a stock pond on his eight-acre farm. Anyone can understand why we could not take the EPA for its word.

During this joint congressional hearing of the House and Senate, I witnessed firsthand Pruitt's balanced approach to regulation, one that conserves our natural resources and protects the environment, while also fostering economic growth and, most important, protecting states' rights. He has a clear understanding where it is appropriate for the EPA to assert a role when it is necessary to protect our natural resources.

The numbers don't lie: 4,000 new rules, 33 million hours of paperwork and \$334 billion in damages resulting from the egregious, overstepping regulations rolled out by Obama's EPA over the past eight years.

But this nightmare is almost over. With Scott Pruitt in charge, we can finally unravel the mess of the EPA, and begin developing and implementing thoughtful policies that will make measurable improvements to our natural resources and unleash an energy revolution that will bring jobs and higher wages to Americans.



***Adam Putnam, a member of the Florida Cabinet, is commissioner of agriculture.***

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**This article is related to:** U.S. Environmental Protection Agency, Scott Pruitt, Barack Obama, Donald Trump

# Minot Daily News

**BREAKING NEWS** Newspaper delivery suspended outside of Minot

## **Scott Pruitt will refocus the EPA's mission**

North Dakota Farm Bureau has vigorously opposed President Obama's activist EPA, and for good reason. In the last eight years, EPA has repeatedly targeted North Dakota's economic drivers: agriculture and energy. That's why NDFB supports incoming Environmental Protection Agency Administrator Scott Pruitt. We believe he will work to curb the agency's overreach and end the regulatory nightmare.

Under the Obama administration, EPA has imposed more than 4,000 new regulations costing billions of dollars of compliance costs for farmers, ranchers and small business owners across the country.

In 2015, the EPA finalized the Waters of the United States rule, which expanded the definition of U.S. waters within the Clean Water Act. Under WOTUS, streams, creeks, ditches, brooks and even ponds are all under the purview of the EPA. A sizeable portion of private land in North Dakota would be under federal jurisdiction. If a farmer wanted to build a pond on his property he'd first have to go through the government or face heavy fines. This rule is not only unconstitutional, it is a direct attack on farmers.

North Dakota's energy sector has been similarly hard-hit. The EPA has published a litany of rules and regulations to fundamentally alter the state's energy infrastructure. The EPA Power Plan, for example, requires North Dakota to reduce its carbon dioxide emission rate by 44.9 percent,

even though North Dakota is one of only 12 states that achieves all of EPA's air quality standards for public health.

The nomination of Oklahoma Attorney General Scott Pruitt to serve as administrator of the Environmental Protection Agency is a welcome reprieve. He will bring a reasoned and balanced approach back to an agency run amok with unnecessary and flawed regulations which have done more to hurt our environment than help it.

As attorney general, he helped develop robust regulations at the state level to implement economically viable conservation efforts. He reached across the aisle to pass meaningful regulations to protect Oklahoma waters and has aggressively pursued litigation against polluters. He's a stalwart defender of the EPA's mission to protect human health and the environment.

The Obama administration's aggressive regulatory agenda has harmed the economy, destroyed jobs, and hurt communities across America. Scott Pruitt would pursue a different path, one that emphasizes collaboration and innovative problem-solving. Pruitt has proven that he will be a tough, responsible steward. He will safeguard the environment. He will follow law and process and distinguish between federal government mandates and that of the states. Most importantly, he will ensure that the EPA is charged with protecting all people. Republicans and Democrats in the new Congress should work to confirm Scott Pruitt as head of EPA in the same bipartisan spirit which he has demonstrated in his home state.

Daryl Lies is president of the North Dakota Farm Bureau.



ph. 202.406.3600  
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www.fb.org

January 4, 2017

The Honorable John Barrasso  
Chairman  
The U.S. Senate Committee on Environment and Public Works  
410 Dirksen Senate Office Building  
Washington, D.C. 20510-6176

The Honorable Tom Carper  
Ranking Member  
The U.S. Senate Committee on Environment and Public Works  
456 Dirksen Senate Office Building  
Washington, D.C. 20510-6175

Dear Chairman Barrasso and Ranking Member Carper:

The American Farm Bureau Federation strongly supports the nomination of Scott Pruitt as Administrator of the U.S. Environmental Protection Agency (EPA) and urges you to vote in favor of his confirmation.

Scott Pruitt is an ideal nominee for EPA Administrator for many reasons, but his nomination should command respect from Senators for one reason above all: he has profound respect for the laws written by Congress. In contesting EPA's 'waters of the US' (WOTUS) rule, Mr. Pruitt is in fact defending the bipartisan view of Congress that the agency has illegally overstepped its bounds and ignored the U.S. Supreme Court. Similarly, in the stance he has taken on the Clean Power Plan, he is defending Congress: in 2009, the Senate failed even to take up for debate the cap-and-trade plan narrowly approved by the House. Mr. Pruitt very soundly takes the view that Congress has not authorized the sweeping attempt by EPA to coerce action by the states.

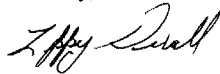
No one cares more about the responsible stewardship of our land, air, and water than American farmers and ranchers. Our livelihoods depend on it. In recent years, farmers and ranchers have suffered under burdensome, unnecessary and, too often, unlawful federal regulations promulgated by the EPA. We desperately need an administrator who understands the challenges our farmers and ranchers face in producing safe, wholesome and affordable food for our nation and the world.

Some activists are attempting to characterize this as a debate over environmental goals. Nothing could be further from the truth. It is about respect for the law and for an agency that will live within the statutory programs Congress has authorized. AFBF supports Scott Pruitt for EPA administrator because he will restore respect for the law and enforce it fairly. Further, he understands how and when federal power should be exercised. We support him because he has

demonstrated a keen understanding of the devastating economic implications of federal overreach.

Scott Pruitt will put the EPA back on track and ensure that federal decisions are based on sound science, not politics. He will produce a fair regulatory environment that respects the rule of law. We urge his confirmation.

Sincerely,

A handwritten signature in black ink, appearing to read "Zippy Duvall". The signature is fluid and cursive, with the first name "Zippy" being more prominent than the last name "Duvall".

Zippy Duvall  
President

cc: The United States Senate

# ALFA supports Trump's pick to lead EPA

Published: Tuesday, December 13th 2016, 7:37 pm EST  
Updated: Tuesday, December 13th 2016, 9:51 pm EST

By Allen Henry, Reporter **CONNECT**



(Source: WSFA 12)

MONTGOMERY, AL (WSFA) - As President-Elect Donald Trump continues to fill his cabinet, some organizations, like ALFA, are keeping track of who he appoints to see how these new officials could impact Alabama.

"We're watching that very closely and there are certain positions that we're very interested in as it could affect farmers in the state of Alabama. One of those is the EPA administrator," said Brian Hardin, Director of Governmental and Agriculture Programs at ALFA.

Last week, Trump nominated Oklahoma Attorney General Scott Pruitt to lead the Environmental Protection Agency.

His official biography describes him as "a leading advocate against the EPA's activist agenda."

Hardin says that's a stance that could also benefit local farmers.

"Pruitt has a history of challenging the EPA and their overreaching regulations, to challenge and push back what they're trying to do through the EPA to impact poultry farmers and other livestock farmers," he said.

And with fewer regulations, Alabama farmers could do more.

"When farmers are able to do more with their land, expand and give them a reason to expand and grow and not be putting that expense or that cost toward accommodating additional regulations, that's good for the state," Hardin said.

At \$70 billion a year, agriculture is Alabama's largest industry.

But Trump's pick for the person who could have the most impact on Alabama's farmers, the Secretary of Agriculture, hasn't been announced yet.

Pruitt would need to be confirmed in the senate to take the EPA job but Democrats have vowed to fight his appointment.

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Ron Hays, Director of Farm Programming Radio Oklahoma Network | 7401 N. Kaley Ave. Oklahoma City, OK 73111 | (405) 841-3675 | Fax: (405) 841-3674

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**Beef Buzz News**

**Trump Hits a Home Run for Agriculture with Scott Pruitt Nomination - But will Dems Block the Plate?**  
Wed, 04 Jan 2017 15:02:07 CST

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President-elect Donald Trump has proven he has a knack for turning heads this year. Even after his dramatic campaign, Trump's recent actions have still managed to conjure strong emotions from different interest groups. One of his latest controversies - nominating Oklahoma's Attorney General Scott Pruitt to lead the Environmental Protection Agency, National Cattlemen's Beef Association's Vice President of Governmental Affairs Colin Woodall told Radio Oklahoma Ag Network Farm Director Ron Hays in a recent conversation, this move is a "home run" in his book.

"We're actually excited about a lot of the names we have seen including Scott Pruitt as EPA Head," Woodall said. "We know that he is going to bring probably a much different approach than what we have seen for quite some time and that's spanning multiple administrations."

Woodall says he and his colleagues are excited about this fresh opportunity to work with an ag-friendly EPA, to roll back many of the environmental rules and regulations the agency passed over the last eight years that many consider to be bold measures of governmental overreach, such as the Waters of the United States rule.

Still, there are hoops that must be jumped through before Pruitt can officially take the reins. Congress must first approve all of Trump's nominees before they can be formally installed to their appointed positions. Pruitt has a long track record of fighting the Obama administration on environmental policy and Woodall says he expects the Democrats on his hearing committee will not make it easy for him.

"They're absolutely going to throw up every kind of road block out there," Woodall predicted. "He has done a lot of good things for agriculture and that's one thing we are all going to have to do is link arms and get behind him, because we expect that his nomination hearing will be a hairy one."

Listen to Hays and Woodall discuss Scott Pruitt's nomination to head the EPA, on today's Beef Buzz.

The Beef Buzz is a regular feature heard on radio stations around the region on the Radio Oklahoma Network and is a regular audio feature found on this website as well. Click on the LISTEN BAR below for today's show and check out our archives for older Beef Buzz shows covering the gamut of the beef cattle industry today.

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*"Working for Nebraska beef producers - pasture to plate."*

January 10, 2017

The Honorable John Barrasso, Chairman  
Senate Environment and Public Works Committee  
410 Dirksen Senate Office Bldg.  
Washington, DC 20510-6175

The Honorable Tom Carper, Ranking Member  
Senate Environment and Public Works Committee  
456 Dirksen Senate Office Bldg  
Washington, DC 20510-6175

Nebraska Cattlemen strongly supports the nomination of Oklahoma Attorney General (AG) Scott Pruitt for Administrator of the United State Environmental Protection Agency (EPA). In the United States, the cattle industry represents the largest segment of agriculture and cattle farmers and ranchers represent the largest land owner group. We are pleased to see General Pruitt as the nominee for EPA Administrator.

General Pruitt will bring a science based, common sense approach to the strategies and objectives of the EPA. Mr. Pruitt understands the importance of sound win-win policy that will translate into EPA strategies that work to protect the environment while improving America's agriculture productivity. He knows firsthand that farmers and ranchers are the original stewards of the environment with an unparalleled commitment to responsible natural resource management that yields multi-generational improvement. Simply put, Mr. Pruitt sees clearly that agriculture and environment are not opposing terms but rather are complementary. He will work to cultivate that relationship which will lead to the United States leading in food and fiber production while improving the environment in which it is accomplished.

We encourage your support for Attorney General Scott Pruitt and we look forward to working with him as a partner for shared strategies and solutions that benefit the environment and agriculture productivity.

Sincerely,

A handwritten signature in cursive script, appearing to read "Troy Stowater".

Troy Stowater, NC President



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NEWS

## American Farm Bureau Says EPA Nominee Good for Agriculture

1 MONTH AGO IN AGRICULTURE



PHOTO: WNAX

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American Farm Bureau Federation officials say the President-elect's pick of Scott Pruitt to head up the EPA is welcome news for farmers and ranchers. South Dakota Farm Bureau President Scott VanderWal who also serves as AFBF Vice President says Pruitt will be good for both business and agriculture and will reign in the agency's regulatory overreach.

He says Pruitt will make sure any EPA regulation doesn't cause undue harm or cost to businesses or agriculture.

VanderWal thinks they can work with Pruitt to build support for renewable fuels and the need for the RFS and other biofuels policies.

VanderWal is also optimistic Pruitt will bring a new degree of fairness for agriculture.

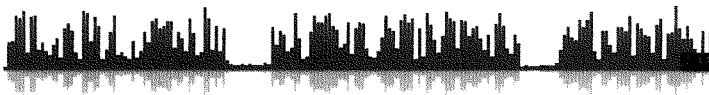


WNAX Radio

Scott VanderWal On EPA Pick

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Friday, January 13, 2017

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Current Issue

1/12/2017

### Oklahoma Secretary of Agriculture Happy With Trump's EPA Selection

12/14/2016

OKLAHOMA CITY — Secretary of Agriculture Jim Reese has issued the following statement after President-elect Donald Trump recently nominated Oklahoma Attorney General Scott Pruitt to lead the Environmental Protection Agency:

"Scott Pruitt is a great selection to be administrator of EPA. The ultra-green environmental groups are predicting Armageddon over his nomination. It won't be Armageddon, but a major dust up would be great. The EPA has been running over Congress, cities and towns, businesses, private landowners and even the courts for many years. The proposed Waters of the US (WOTUS) is the best example of EPA somewhat apologizing for running over everyone, but continuing to run over us. Finally a court stopped them.

"Environmentalists didn't need Congress, the President, or even promulgated rules.

They would just sue the EPA — "sue and settle" and get their way. Not every environmental improvement was conceived at EPA HQ. Many of our environmental improvements are state or locally driven. We have more EPA success stories, removing phosphorus and nutrients from streams more than any other state.

"We need the EPA. They have assisted Oklahoma and America in improving and protecting our air, water and land. Scott Pruitt will continue EPA's efforts to protect our environment, but with respect towards land owners, taxpayers, municipalities, businesses, and Congress," said Reese.

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January 17, 2017

The Honorable John Barrasso  
 Chairman, U.S. Senate Committee on Environment and Public Works  
 410 Dirksen Senate Office Building  
 Washington, D.C. 20510-6176

The Honorable Thomas Carper  
 Ranking Member, U.S. Senate Committee on Environment and Public Works  
 456 Dirksen Senate Office Building  
 Washington, D.C. 20510-6176

Dear Chairman Barrasso and Ranking Member Carper:

The National Cattlemen's Beef Association (NCBA) urges you to vote in favor of confirmation of Scott Pruitt as Administrator of U.S. Environmental Protection Agency (EPA). NCBA is a trade association that represents U.S. cattle producers, with more than 30,000 direct members. Through state affiliates NCBA represents 175,000 of America's farmers and ranchers who provide a significant portion of the nation's food supply.


As Oklahoma's Attorney General, Mr. Pruitt led the fight to bring common sense back to environmental regulation and he was an unrivaled defender of private property rights. In fact, in 2015 the Oklahoma Cattlemen's Association honored Mr. Pruitt with its Distinguished Service Award for his dedication to those principles. Likewise, cattle producers across the country have rallied in support of Mr. Pruitt's nomination to be the next EPA Administrator, as memorialized in the enclosed letter. His legal background and experience as Attorney General ensures the EPA will follow the rule of the law while fulfilling its important mission of protecting human health and the environment. Agency decisions grounded in science, constrained by the law and Congress will achieve long-lasting success.

Mr. Pruitt brings with him an opportunity to reinvigorate the cooperative federalism approach that is embodied in our nation's environmental statutes - namely that States are the primary enforcers and implementers of environmental programs while the federal government retains a backstop and support role - as mandated by Congress. In recent years we have seen a shift away from the approach mandated by Congress and movement toward a policy of federal usurpation of state programs through increasingly burdensome regulation and enforcement. The Senate can restore the balance by confirming Mr. Pruitt.

Cattle producers want a healthy environment and are personally invested in keeping the land, water, and air clean for their children and grandchildren. Agriculture cannot be viewed merely as a regulatory target when improvements can be realized by treating farmers and ranchers as partners. Outgoing Administrator McCarthy stated that her top regret was failing to connect with rural America. With Pruitt at the helm, NCBA is confident that the EPA can excel at its mission and foster an agency culture that engages rural Americans as partners in our nation's effort to protect the environment.

267

Sincerely,

A handwritten signature in black ink that reads "Tracy Brunner". The signature is written in a cursive style with a large, prominent initial "T".

Tracy Brunner  
President

cc: U.S. Senate



January 10, 2017

The Honorable John Barrasso, Chairman  
410 Dirksen Senate Office Bldg.  
Washington, DC 20510-6175

The Honorable Tom Carper, Ranking Member  
456 Dirksen Senate Office Bldg  
Washington, DC 20510-6175

On behalf of cattlemen and women, the undersigned organizations strongly support the nomination of Oklahoma Attorney General (AG) Scott Pruitt for Administrator of the United State Environmental Protection Agency (EPA). In the United States, the cattle industry represents the largest segment of agriculture and cattle farmers and ranchers represent the largest land owner group. We are pleased to see General Pruitt as the nominee for EPA Administrator.

General Pruitt will bring a science based, common sense approach to the strategies and objectives of the EPA. Mr. Pruitt understands the importance of sound win-win policy that will translate into EPA strategies that work to protect the environment while improving America's agriculture productivity. He knows firsthand that farmers and ranchers are the original stewards of the environment with an unparalleled commitment to responsible natural resource management that yields multi-generational improvement. Simply put, Mr. Pruitt sees clearly that agriculture and environment are not opposing terms but rather are complementary. He will work to cultivate that relationship which will lead to the United States leading in food and fiber production while improving the environment in which it is accomplished.

We encourage your support for Attorney General Scott Pruitt and we look forward to working with him as a partner for shared strategies and solutions that benefit the environment and agriculture productivity.

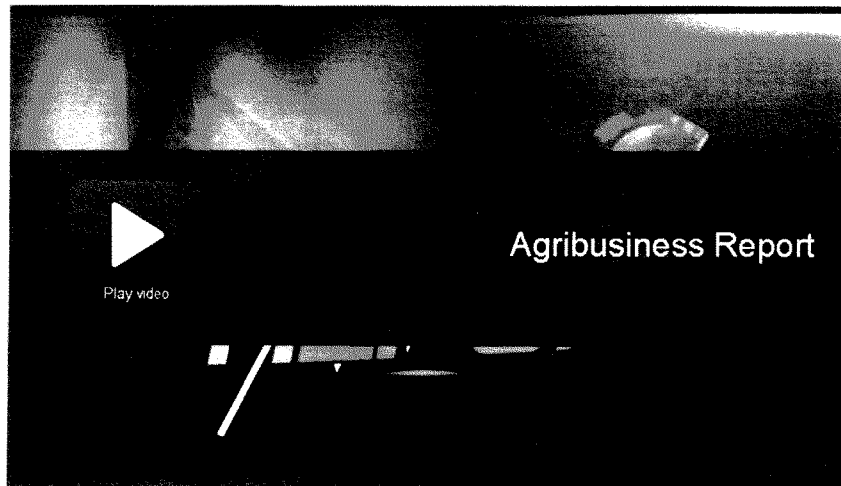
Sincerely,

Alabama Cattlemen's Association  
 Arizona Cattle Feeders Association  
 Arizona Cattle Growers' Association  
 Arkansas Cattlemen's Association  
 California Cattlemen's Association  
 Colorado Cattlemen's Association  
 Colorado Livestock Association  
 Florida Cattlemen's Association  
 Georgia Cattlemen's Association  
 Hawaii Cattlemen's Association  
 Illinois Beef Association  
 Iowa Cattlemen's Association  
 Indiana Beef Association  
 Kansas Livestock Association  
 Kentucky Cattlemen's Association  
 Michigan Cattlemen's Association  
 Mississippi Cattlemen's Association  
 Missouri Cattlemen's Association  
 Montana Stockgrower's Association

Nebraska Cattlemen  
 Nevada Cattlemen's Association  
 New Mexico Cattle Growers' Association  
 New Mexico Wool Growers, Inc.  
 New York Beef Producer's Association  
 North Carolina Cattlemen's Association  
 North Dakota Stockman's Association  
 Ohio Cattlemen's Association  
 Oklahoma Cattlemen's Association  
 Oregon Cattlemen's Association  
 Pennsylvania Cattlemen's Association  
 South Carolina Cattlemen's Association  
 South Dakota Cattlemen's Association  
 Tennessee Cattlemen's Association  
 Texas and Southwestern Cattle Raisers  
 Texas Cattle Feeders Association  
 Virginia Cattlemen's Association  
 Wyoming Stock Growers Association

# Iowa Farm Bureau Supportive of New EPA Administrator

POSTED 4:55 AM, DECEMBER 21, 2016, BY STAFF WRITER



President-Elect Donald Trump chose Scott Pruitt , the attorney general for Oklahoma, to be the next EPA Administrator.

The Iowa Farm Bureau supports the decision, calling Pruitt a leading advocate against an activist EPA, specifically noting how he's against the Waters of the U.S. rule.

But Pruitt is also against the Renewable Fuel Standard (RFS), a rule forcing blends of ethanol into the fuel system.

Iowa is a leader of ethanol, the nearly 43 plants in the state can produce up to 4 billion gallons of the fuel.

IFB President Craig Hill says the RFS was drafted legitimately by congress, so implementing it is not an EPA over reach.

Hill says, "We have the legislation, we just need to execute and implement the law and the EPA has a role in that with limited discretion. So we hope the new administrator adheres to the law and follows the rule of law."

Hill adds, in the confirmation hearing, pro-ethanol Senators like Iowa's Chuck Grassley and Joni Ernst will have the opportunity to question Pruitt on his Renewable Fuel stances.

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**EPA Nominee to Follow Renewable Fuel Standard**

**New EPA Administrator Chosen**



[http://qctimes.com/news/opinion/editorial/columnists/guest/guest-view-pruitt-would-be-a-friend-to-ag-atop/article\\_2690b847-d1cf-55ce-abf9-a14c28df2a3c.html](http://qctimes.com/news/opinion/editorial/columnists/guest/guest-view-pruitt-would-be-a-friend-to-ag-atop/article_2690b847-d1cf-55ce-abf9-a14c28df2a3c.html)

## **Guest view: Pruitt would be a friend to ag atop EPA**

Tom Buchanan Dec 16, 2016



Dustin Mielke, Oklahoma  
Farm Bureau

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The first time I heard Scott Pruitt speak at a Farm Bureau event, I felt hope. Hope that the farming and ranching community had an effective advocate that understood we were seeing our livelihood slip away at the hands of an imperialist, out-of-control EPA.

Scott came across as a disciplined legal mind and strategist that had a plan to begin dismantling harmful, unnecessary regulations that would liberate the family farm and ranch from overzealous regulators and to focus once again on producing our nation's food supply.

In the past few years, my neighbors and friends have collectively spent more time battling federal regulators trying to assert control over our ponds, dry creeks and waterways - and regulators working to thwart our ability to use our principal asset, our land, due to an irrational and outdated Endangered Species Act - than we have cutting wheat and selling livestock.

However, since becoming Oklahoma attorney general, Pruitt has successfully led the litigation that led to an injunction on the proposed Waters of the U.S. Rule, and he negotiated agreements that brought common sense and relief for agriculture communities over the potential listing of the Lesser Prairie Chicken. These are just a few examples of his leadership abilities and his desire to see the rule of law restored.

Beyond these policy successes, I have found Pruitt to be a genuine man filled with integrity. He is quick to listen, and slow to speak. He's a consensus builder that wants to understand the truth and find middle ground.

With regards to the Renewable Fuel Standard, I know there are questions about how this will be addressed in the next administration with expiration coming in 2022. President-elect Donald Trump has said that he is a strong supporter of the RFS. Based on experience, I know Scott Pruitt will bring an open and fair-minded approach to this and every issue.

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Most importantly, he will certainly will be a tireless and welcome advocate for

agriculture.

I am confident that Attorney General Pruitt would not only bring common sense and sanity back to what has become a lawless agency, he would restore that agency to its original mission: assisting the states in achieving cleaner air and cleaner water.

I urge all in the agriculture community to vigorously support his nomination to head the EPA by contacting your senators. America's farmers and ranchers will have a more prosperous future with Scott Pruitt at the helm.

Tom Buchanan is president of Oklahoma Farm Bureau.

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*The*  
**Fertilizer Institute**  
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Chris Jahn  
President

January 17, 2017

The Honorable John Barrasso  
Chairman  
U.S. Senate Committee on Environment and Public Works  
410 Dirksen Senate Office Building  
Washington, D.C. 20510-6176

The Honorable Tom Carper  
Ranking Member  
U.S. Senate Committee on Environment and Public Works  
456 Dirksen Senate Office Building  
Washington, D.C. 20510-6175

Dear Chairman Barrasso and Ranking Member Carper:

I am writing to you on behalf of the members of The Fertilizer Institute (TFI) to strongly endorse the nomination of Scott Pruitt as Administrator of the U.S. Environmental Protection Agency (EPA). Attorney General Pruitt's vast experience in both the public and private sectors makes him well qualified for this important position.

TFI represents the nation's fertilizer industry including producers, importers, retailers, wholesalers and companies that provide services to the fertilizer industry. The U.S. fertilizer industry is one of the world's largest. The United States is the fourth-largest producer of nitrogen-based fertilizers in the world and the second largest producer of phosphate. The U.S. fertilizer industry generates more than \$139 billion in economic benefit and provides 80,099 direct jobs and 372,603 indirect jobs for a total of more than 452,702 U.S. jobs.

TFI's members are committed to enhancing their environmental stewardship efforts, as evidenced by the voluntary program created by the industry called the 4R Nutrient Stewardship Program. 4R Nutrient Stewardship is a framework designed to help farmers achieve cropping system goals, such as increased production, increased farmer profitability, enhanced environmental protection and improved sustainability. The success of this program is highly dependent on partnerships between farmers, agricultural retailers, federal, state and local governments and environmental organizations all working together with a shared goal of ensuring that fertilizer is applied by using the Right Source at the Right Rate at the Right Time and in the Right Place.

Mr. Pruitt can attest, water quality and other long-term environmental challenges, are most effectively addressed by federal and state governments via the "cooperative federalism" partnership model as embodied in the Clean Water Act. Few individuals understand the

2

importance of this model like Mr. Pruitt. He has been a consistent advocate for ensuring the appropriate balance between the need for federal regulations and the sovereignty of states. Mr. Pruitt is also mindful that the benefits of regulatory actions must outweigh their costs. He has demonstrated a commitment to this ideal and we believe he will work to ensure its reality as the EPA Administrator.

TFI and its members similarly support common-sense regulations based on peer-reviewed sound science. Working in partnership with all stakeholders, we believe Mr. Pruitt will ensure that American agriculture is able to continue growing the food, fuel and fiber to feed the world. At the same time, we will work to ensure that our precious natural resources are safeguarded for generations to come.

For the aforementioned reasons, we strongly support Attorney General Pruitt to be the Administrator of the U.S. Environmental Protection Agency and we urge your support of his confirmation.

Sincerely,

A handwritten signature in black ink, appearing to read 'C. Jahn', with a long horizontal flourish extending to the right.

Chris Jahn  
President  
The Fertilizer Institute

CC: Members of the United States Senate

Senator FISCHER. If I may, I would close by quoting a few of those. Jim Reese, the Oklahoma Secretary of Agriculture, says that "Scott Pruitt will continue EPA's efforts to protect our environment but with respect toward landowners, taxpayers, municipalities, businesses, and Congress." That is nice to hear, sir.

Troy Stowater, Nebraska Cattlemen president, stated, "Simply put, Mr. Pruitt sees clearly that agriculture and environment are not opposing terms, but rather they are complementary. He will work to cultivate the relationships which will lead to the United States leading in food and fiber production while improving the environment in which it is accomplished." Again, I am happy to look forward to that relationship being established again so that all parts of our society here in this country can participate and receive the recognition that we are good stewards of the land.

If confirmed, what will be your relationship with the agriculture community? Are you going to enforce current laws and will you also respect the limits that we have on those laws?

Mr. PRUITT. Yes, on both counts, Senator, and also the theme I mentioned in my opening statement that I would highlight again, is that we need to reject this paradigm that if you are pro-energy, you are anti-environment or if you are pro-environment; you are anti-energy. I believe that we, as a country, have demonstrated that, and we have made great progress since the 1970s in improving our air quality and protecting our waters. We can grow an economy and also protect and be a good steward of our environment. We need to restore that proper balance and commitment to both as we seek to do our job.

Senator FISCHER. Thank you. As I said earlier, every member of this Committee believes in clean air and clean water. We want an environment that is respected where we can manage our natural resources in a responsible manner. Thank you, sir.

Senator BARRASSO. Thank you, Senator Fischer.

Senator Cardin.

Senator CARDIN. Thank you, Mr. Chairman.

Mr. Pruitt, I want to try to get your understanding. I heard you say that you wanted to see the regulations and the laws predictable so that stakeholders know exactly what is required so there is no confusion.

I want to concentrate on the waters of the U.S. because ever since the Supreme Court decisions there has been an uncertainty as to what waters are, in fact, subject to regulation by the Federal Government and what waters are not. Do you believe that priority should be set by statute or should it be set by regulations from the EPA?

Mr. PRUITT. Senator, I think that is a great question. If you look at the series of cases going back to Bayview all the way to Rapanos, I think you are exactly right. The definition in the Clean Water Act says that navigable waters are waters of the United States. That doesn't provide a great deal of clarity to those that administer the law. I think the EPA taking steps to provide clarity is important absent Congress responding. I think that perhaps there is a time and place for Article 1 response, congressional response, to what this body means when it says navigable waters are waters of the United States.

Senator CARDIN. Of course, the Congress, for whatever reasons, for a long period of time, has not been able to respond as to what we think the definition of the waters of the U.S. should be. The Administration did come forward with proposed regulations which were resisted by many of the stakeholders that you are aware of.

How would you define the waters of the U.S.? What was wrong in the regulation? I don't want to go through all the details. Tell me, where do you think we should regulate? You already said more than just navigable. How do we define it? How do you do it? What did the Administration do wrong?

Mr. PRUITT. The challenge up until now with respect to the current rule, this involves actually an air case, the UARG case, where Justice Scalia talked about the counterbalance to *Massachusetts v. EPA* where the steps taken by the EPA to take the endangerment finding in 2009 that dealt with title II mobile sources and then link that over the PSD Program was something Justice Scalia said transformed the statute and was not lawful or constitutional.

I think the same thing perhaps is going on with the current rule. When you are classifying dry creek beds in southeast Oklahoma that are dry 90 percent of the year as a water of the United States, that clearly is something that is—

Senator CARDIN. The Administration, in its regulation, had certain exceptions that tried to deal with that. You obviously didn't think those exceptions were clear enough.

Mr. PRUITT. Actually, the Sixth Circuit said that those clarifications were not sufficient. I would agree with you, Senator Cardin, that I believe the clarity around this definition, the jurisdiction of the EPA, is essential to get right and to address. As I indicated earlier to some questions, the Supreme Court has actually taken up a matter from last Friday; it is more jurisdictional and not merit-based. But the response by Congress, the response to provide clarity, perhaps is a very important step to take.

Senator CARDIN. I want to pursue this. I think we have asked questions for the record as to specific provisions you believe should be in that rule that would be different than the proposed rule. I would appreciate a response to that so we can try to see where we are heading in your thought process as to how you define the regulated waters of the U.S. That would be helpful to us.

Mr. PRUITT. I think, Senator, the reason that is difficult, as you know, is because in that process, whatever process that would take place, that would be rulemaking which means there would be comment.

Senator CARDIN. I understand that. I am not trying to get every I dotted and every T. I just want to get your philosophy as to where the waters of the U.S. lines would be drawn and where you took exception to the regulatory efforts of the Obama administration.

Let me get to the second point, if I might, on fracking. Fracking is an interesting area because it is State-regulated principally. There are very few Federal regulations. My State has gas deposits that could be subject to fracking. Pennsylvania, our neighboring State, has done that. There have been some problems with pollution of water. We know about the gas releases that have already been talked about. There is some concern particularly with deep well drilling that when you inject the fluids back into the cavities,

that it may cause instability. In your State, I know there were a lot of earthquakes, and there has been talk about whether these earthquakes were motivated by the fracking activities or not.

How well have the States regulated fracking? Where do you see the Federal role should be in protecting our environment from fracking?

Mr. PRUITT. I am glad you mentioned the State role because we actually have been regulating hydraulic fracturing in Oklahoma since the late 1940s, early 1950s. It is not a new process. Horizontal drilling is, but the hydraulic fracturing process is not. Many States have been very aggressive in regulating it for a number of decades.

With response to the seismicity issue you are talking about, the earthquakes in Oklahoma, the Corporation Commission has actually declared off limits certain drilling activity in hot spots already. They have taken a very aggressive approach. I, too, share their concern. I have been in conversation with the commissioners at the Corporation Commission; that is who has jurisdiction in this matter. They have taken very meaningful steps to declare off limits certain drilling activity to try to see if it will help reduce the number of earthquakes happening in Oklahoma. It has helped.

Senator CARDIN. Thank you.

Thank you, Mr. Chairman.

Senator BARRASSO. Thank you, Senator Cardin.

Senator Inhofe.

Senator INHOFE. Thank you, Mr. Chairman.

I have two unanimous consent requests, so don't start my clock yet.

One is I really believe, and perhaps am overly sensitive to this, that Mr. Pruitt's integrity has been put into question with the accusations of contributions to his campaign. I would like to keep in mind that the oil industry is a huge industry in my State of Oklahoma. They have things called PACs where the middle income people will say yes, they support me also.

I think we need to have in the record that there are some things that are going on that should not be going on. This affects the Democrats and not the Republicans. There is a guy named Tom Steyer, I want to put this in the record, who actually said he was going to put \$100 million into campaigns of individuals talking about global warming and what he expected. In 2014 he didn't do that. He only put in \$75 million of his own money. In 2016 he was the largest contributor putting in \$86 million of his own money. I am not going to read this because it does reflect the names of people who are at this dais.

I ask unanimous consent that this be entered into the record.

Senator BARRASSO. Without objection.

[The referenced information follows:]



Inhofe

POLITICO

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16-86  
UC  
Walter Styer

Steyer hosted Sen. Whitehouse & Sen. Reid at his home in 2014 to strategize how to spend \$100M to elect democrats to Senate to support environmental agenda.

In 2014, Steyer donated \$500M to political races, according to watchdog group OpenSecrets.org



Steyer hopes to make climate change a top-tier issue in the election.

2014  
Jan 7 est

### Steyer plans \$100M campaign push

By ANDREW RESTUCCIA | 02/18/14 09:36 AM EST | Updated 02/18/14 02:41 PM EST

Liberal billionaire Tom Steyer is laying plans to go big in the 2014 election.

The former hedge fund manager is hoping to spend \$100 million — \$50 million from his personal fortune and \$50 million from other donors — to make climate change a top-tier issue in the election, The New York Times is reporting.

A person close to Steyer confirmed the \$100 million figure to POLITICO but cautioned that it is not a ceiling.

Steyer and his group NextGen Climate Action have emerged over the last year as a major player in the growing world of money and politics, a realm in which court decisions such as

Senator INHOFE. The other thing—

Senator CARPER. I'd like to object. I'd like to ask for clarification from my friend from Oklahoma. The moneys that you are referring to, were those donations that were disclosed, fully disclosed?

Senator INHOFE. Oh, yes, I believe they were.

Senator CARPER. Then that does not sound like dark money to me.

Senator INHOFE. All right.

On the last question that Mr. Pruitt concerning the earthquakes, I'd like to make this a part of the record because it will surprise you guys that the Oklahoma Corporation Commission has really focused in on this thing and talked about it. This is wastewater in disposal wells that we are concerned with. They clamped down on it, and you are exactly right in your response to the question except you didn't go far enough. In 2016 they actually reduced the earthquakes by 31 percent.

So we are doing, in the State of Oklahoma, something that we have been complimented about, the fact we are taking these actions. I'd like to make this a part of the record.

Senator BARRASSO. Without objection.

[The referenced information follows:]

Innote

Responding to Sanders: Earthquakes

- Sen. Sanders said fracking is the cause of Oklahoma's earthquakes. This is not true.
- The Oklahoma Corporation Commission and Oklahoma Geological Survey has said the focus of recent heightened seismic activity has been surround the use of wastewater disposal wells.
- When the Commission came to this conclusion using available data and research, they moved to put caps on disposal well activity. As a result, Oklahoma as reduced earthquakes by 31% in 2016 from the previous trend, and researchers and experts say they expect this trend will continue.
- Oklahoma Corporation Commission's Chair-elect Dana Murphy told CNN that "industry compliance" with their directives "has thus far been outstanding, and there has been no need to request assistance from the attorney general."
- Isn't that the goal here? For industry to quickly respond to state efforts, to be in compliance and not put up a fight when public health is of concern? Furthermore, when an earthquake took place near Osage County, which is EPA-managed land, EPA turned to the state of Oklahoma on how to handle disposal wells in Osage county. And they followed Oklahoma's advice
- **We are clearly doing something right. Mr. Pruitt, do you have a role on seismicity as Attorney General?**
- **Do you think the state is taking appropriate action?**

Senator INHOFE. The other thing I want to bring out, and I have done this before, but I wasn't going to do it until people kept talking about the science is settled, the science is settled, the science is settled. I know people want to believe that.

I remember so well—every year the U.N. has a big party, and they invite everyone to come in. I was going to go to Copenhagen to be the one-man truth squad which I did and went over there. But during that time, right before I left, I asked the Administrator of the EPA—the job I believe you are going to have—Lisa Jackson, I said I have a feeling once I leave town you are going to come up with an endangerment finding, and you are going to give your justification for getting involved in this issue. She smiled so I could tell it was true. I said, when you do this, it has to be based on science. Tell me the science that you are going to use for this. She said, well, the IPCC, the Intergovernmental Panel on Climate Change.

Now, as luck would have it—my luck and not theirs—right after that is when ClimateGate came. That's when it was disclosed that the individuals, the scientists in IPCC rigged the numbers and came up with such an outrageous lie in terms of what causes global warming, all of that. I will just read a couple of them. One of the physicists in the IPCC said "ClimateGate was a fraud on a scale I have never seen before." Clive Cooke with the Financial Times said "The closed-mindedness of these supposed men of science is surprising even to me. The stink of intellectual corruption is overpowering." The U.K. Telegraph—that is one of the largest publications in the UK—said, "It's the worse scientific scandal of our generation." Nobody talks about that but that is the science they are talking about. I really believe it is necessary to have that as a part of this record of this meeting.

General Pruitt, in 2012, the EPA and the National Highway Traffic Safety Administration issued updated fuel economy standards that were result of a compromise. That compromise was between the Obama administration, the automakers, and the State of California. Part of this deal required a review of these regulations in 2018 before—these are their words and not mine—any new standards were put in place. After losing the election, however, the Obama administration broke the deal by prematurely issuing new regulations. This decision was made unexpectedly and well over a year before the EPA said they would make the determination. This shortened the timeframe and process, and this is concerning.

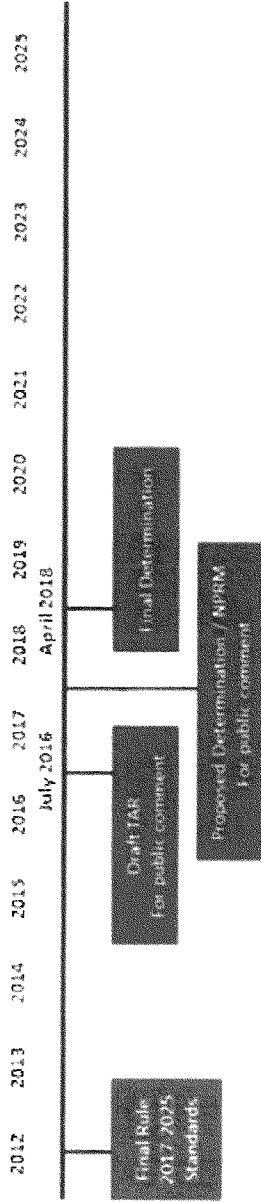
Mr. Chairman, I do ask unanimous consent that the previous EPA timeline for the expected action on the midterm review be included in the record.

Senator BARRASSO. Without objection.  
[The referenced information follows:]

Inhoffe

EPA MTE TERM REVIEW TIMELINE

MTE Schedule



Senator INHOFE. Attorney General Pruitt, as Administrator, will you look into this matter to see whether this extreme action was appropriate or a hasty political decision?

Mr. PRUITT. Senator, as you indicated, the obligation was to meet the November 2018 midterm review. I think the study that was completed was finished December 30, and they issued their findings within 14 days. That time period is something I am not sure normally happens as far as the time, the velocity of 14 days, but it merits review. I would review that, yes.

Senator INHOFE. The follow up question would be, would you commit to sitting down with the Transportation Secretary, Elaine Chao? I have already talked to her about this, incidentally. Both will be confirmed, I am convinced, and you are working to address the impacts of the EPA's decision on automobile manufacturers and consumers. Will you work with her on that issue?

Mr. PRUITT. Absolutely.

Senator INHOFE. Very good.

Thank you, Mr. Chairman.

Senator BARRASSO. Thank you, Senator Inhofe.

Senator Booker.

Senator BOOKER. Thank you very much.

Thank you, Mr. Pruitt. I want to jump into one of the areas that you said is a principal part of one of your achievements. In your opening statement, you said that as Attorney General you were confronted with an important water quality issue on the scenic Illinois River, the high phosphorus levels that were causing a range of problems that come from the manure principally from farm animals. You go on to state that this was a historic agreement to clean up the river. It was in your opening statement and a number of the other documents that you provided.

You also described the agreement with Arkansas as an important agreement to reduce the pollution again that was the result from poultry growers that was "occurring as a result of pollution from poultry growers." Are you familiar with this?

Mr. PRUITT. Yes, also discharge from municipalities in northwest Arkansas as well.

Senator BOOKER. I think that is an important point, yes. I would like to ask you some questions about this, but I think it is important. I really dug into this and did some research. I want to go through with my colleagues what the fact pattern is that led to this moment where you intervened.

It really starts with a Supreme Court decision way back in 1992, *Arkansas v. Oklahoma*. I imagine you are familiar with this Supreme Court decision that resolved the lawsuit between these two States that held that basically upriver States, such as Arkansas, must comply with water quality standards adopted by downriver States and then approved by the EPA. You are familiar with that?

Mr. PRUITT. I am familiar with the litigation, yes.

Senator BOOKER. After that Supreme Court decision effective July 1, 2002, Oklahoma actually did adopt a .037 water quality standard for phosphorus. Importantly, they gave a decade, 10-year phase-in period before full compliance was required. Then in 2003 your predecessor, Drew Edmondson, negotiated an agreement with Arkansas, which I have read, called the Statement of Joint Prin-

ciples and Actions. Mr. Chairman, I'd like to enter that into the record.

Senator BARRASSO. Without objection.  
[The referenced information follows:]

STATEMENT OF JOINT PRINCIPLES AND ACTIONS

WHEREAS the States of Arkansas and Oklahoma share a number of streams and rivers that flow from Arkansas into Oklahoma, six (6) of which are designated as Scenic Rivers in the State of Oklahoma;

WHEREAS the States of Arkansas and Oklahoma share a common goal of improving water quality within the States' shared watersheds;

WHEREAS the States of Arkansas and Oklahoma agree that excess nutrients from point and non-point sources can result in nutrient surplus for phosphorus and nitrogen;

WHEREAS excess phosphorus in watersheds is known to degrade water quality and threaten aquatic life;

WHEREAS Arkansas and Oklahoma agree that reducing the amount of phosphorus present in the States' shared watersheds will further the States' shared goal of improving water quality;

WHEREAS, in an effort to reduce the amount of phosphorus present in its Scenic Rivers, the State of Oklahoma has passed, and submitted to the United States Environmental Protection Agency for approval under Section 303(c) of the Clean Water Act, a total phosphorus criterion of .037 mg/l for its six (6) Scenic Rivers, modified by an implementation schedule that allows dischargers to undertake interim actions designed to improve water quality in the Scenic Rivers consistent with achieving compliance with the State of Oklahoma's .037 mg/l criterion for phosphorus, by 2012;

WHEREAS, Arkansas has steadfastly insisted and maintains that the .037 mg/l criterion for total phosphorus is neither attainable nor appropriate;

WHEREAS, Arkansas and Oklahoma agree that individual but coordinated strategies to meet water quality goals is in the best interest of both States;

The States of Arkansas and Oklahoma, acting through their environmental agencies, including, but not limited to, the Arkansas Department of Environmental Quality, the Arkansas Soil and Water Conservation Commission, the Oklahoma Secretary of Environment, the Oklahoma Water Resources Board, the Oklahoma Department of Environmental Quality and the Oklahoma Scenic Rivers Commission, are working together to reduce phosphorus in the shared Scenic Rivers Watersheds. In furtherance of that goal, the States of Arkansas and Oklahoma, acting through their environmental agencies, enter into this Statement of Joint Principles and Actions.



ARKANSAS LEGISLATION

In furtherance of the States' shared phosphorus reduction goals, the Arkansas General Assembly enacted significant legislation to improve the States' shared watersheds. Consequently, the Arkansas Soil and Water Conservation Commission is committed to developing regulations to implement the following recently passed Arkansas legislation:

- Act 1059 of 2003, requiring the Arkansas Soil and Water Conservation Commission to develop and implement programs to certify the minimal competence and knowledge of persons preparing nutrient management plans and of persons making nutrient application, including the proper utilization of litter,
- Act 1060 of 2003, requiring the Arkansas Soil and Water Conservation Commission to operate an annual registration program to assemble and maintain information on the number, composition, and practices of poultry feeding operations in the state, including the land application practices used by each individual poultry feeding operation, as well as the amount of litter stored, applied and transferred by each operation, and
- Act 1061 of 2003, declaring certain areas, including the Illinois River Watershed, to be nutrient surplus areas for phosphorus and nitrogen, and making it a violation of State law to apply designated nutrients within a nutrient surplus area except in compliance with a nutrient management plan approved by the Arkansas Soil and Water Conservation Commission or at a protective rate established by Arkansas Soil and Water Conservation Commission.

LITTER REMOVAL/REUSE TECHNIQUES

The States of Arkansas and Oklahoma, acting through their environmental agencies, will jointly pursue funding, including federal grants or other federal funding, for various litter removal and reuse techniques, such as:

- the development of a litter bank;
- burning litter for energy;
- the use of biological treatment (e.g. the Stamper Project);
- pelletization to produce a marketable fertilizer product: and

- transportation of excess litter from the affected watersheds.

#### JOINT PHOSPHORUS INDEX

The States of Arkansas and Oklahoma, acting through their environmental agencies, are working together toward development of a Joint Phosphorus Index by August 2004. The States will consider utilization of the Joint Phosphorus Index for the development of Nutrient Management Plans.

#### DATA COLLECTION

Although information collected pursuant to Act 1060 of the 2003 Arkansas General Assembly, quantifying the amount of litter stored, applied and transferred by individual poultry feeding operations is made confidential under the statute, the Arkansas Soil and Water Conservation Commission will prepare detailed compilations and summaries of this information and make these compilations and summaries available upon request to the public, the Oklahoma Environmental Agencies and EPA .

The Arkansas Soil and Water Conservation Commission will work with Oklahoma in determining the format for these compilations and summaries (e.g., information by county, geographic area or watershed), as well as the amount of detail necessary to address Oklahoma's reasonable concerns. Similarly, Oklahoma will work with Arkansas to provide comparable information for poultry operations in Oklahoma.

#### WATERSHED MONITORING

The States of Arkansas and Oklahoma, acting through their environmental agencies, will coordinate monitoring in partnership with the Arkansas/Oklahoma Arkansas River Compact Commission throughout the shared Oklahoma Scenic Rivers Watersheds based on a common protocol and will share all information/data resulting from such monitoring. The States will hold discussions aimed at arriving at the agreed upon monitoring protocol by August 2004.

The States will submit the agreed upon design to EPA for review and endorsement.

EPA has committed to seek to obtain federal funding for the agreed upon monitoring.

#### REOPENER PROVISION

Oklahoma periodically reevaluates all of its water quality standards. In particular,

## STATEMENT OF JOINT PRINCIPLES AND ACTIONS

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Oklahoma will reevaluate Oklahoma's .037 mg/l criterion for total phosphorus in Oklahoma's Scenic Rivers by 2012, based on the best scientific information available at that time, and with the full, timely inclusion of officials from the State of Arkansas representing both point and non point source dischargers.

CONTROLS ON LARGER ENTITIES

The States of Arkansas and Oklahoma, acting through their environmental agencies, understand that point source dischargers will need time to achieve water quality improvements in the affected watersheds consistent with Oklahoma's criterion for total phosphorus. Therefore, the States, acting through their environmental agencies, will issue to the point source dischargers to the shared Oklahoma Scenic Rivers Watersheds with a design capacity of greater than 1 MGD, specifically the Cities of Fayetteville, Rogers, Springdale, Siloam Springs and Bentonville, Arkansas, National Pollutant Discharge Elimination System ("NPDES") permits reflecting an effluent limit for total phosphorus of 1 mg/l (30 day average) pursuant to the implementation schedule set out below. The City of Tahlequah, Oklahoma received an NPDES permit issued in 1992 requiring it to meet a total phosphorus effluent limit of 1 mg/l.

The States of Arkansas and Oklahoma, acting through their environmental agencies, will reissue the above-specified cities' NPDES permits on a normal five (5) year reissuance cycle, with the understanding that NPDES permits for these point source dischargers to the shared Oklahoma Scenic Rivers Watersheds issued in the year 2012 or beyond must include phosphorus limits stringent enough to meet applicable water quality standards.

Schedule for Large Cities

- Rogers – to meet 1 mg/l limit starting in 2004
- Springdale – expansion to meet 1 mg/l limit starting in 2007
- Siloam Springs – expansion to meet 1 mg/l limit starting in 2009
- Fayetteville – existing facility already complies; new facility to meet 1 mg/l limit once operational (circa 2005)
- Bentonville – new facility to meet 1 mg/l limit once operational (date unknown).

CONTROLS ON SMALLER ENTITIES

The State of Arkansas, acting through its environmental agencies, will work aggressively throughout the implementation period with those existing Arkansas entities with design capacities of less than 1 MGD but greater than or equal to .5 MGD to reduce the level of phosphorus in their discharges to the maximum extent possible through voluntary controls aimed at reaching either 1 mg/l total phosphorus or a phosphorus loading limit based on 1 MGD x 1 mg/l by the year 2012. The City of

## STATEMENT OF JOINT PRINCIPLES AND ACTIONS

PAGE 5

Westville, Oklahoma is currently under a compliance order to meet a 1 mg/l limit within two (2) years.

NOTE: The States of Arkansas and Oklahoma, acting through their environmental agencies, understand that the above described controls do not apply to facilities, such as cooling water intake facilities, whose discharges do not contribute phosphorus to the receiving stream, so long as those facilities discharges do not contain increased concentrations of phosphorus.

WATERSHED PLAN

The States of Arkansas and Oklahoma, acting through their environmental agencies, will work together in partnership with the Arkansas-Oklahoma Arkansas River Compact Commission toward the goal of producing a Watershed Plan.

NOTE: EPA's Clean Water Act Section 319 guidance sets out nine (9) elements for a Watershed Plan.

GENERAL PROVISIONS

The parties understand that this document is not intended to create, diminish or waive any legal rights or obligations among the parties or any other person or entity not a party to this document, including individual farmers. Nothing in this document creates any rights of causes of action for any person, whether party to this document or not.

The parties recognize that a request by Oklahoma for more stringent NPDES permit concentration limits than those set out in this document, or a challenge by Arkansas to Oklahoma's phosphorus standard, would terminate this document. If a third party brings a lawsuit inconsistent with the terms of this document, both parties will indicate to the Court their support for the terms of this document.

EPA has told the parties this document represents a very positive step by the States, acting through their environmental agencies, toward improving water quality in the shared Oklahoma Scenic Rivers Watersheds, which is consistent with achieving compliance with the State of Oklahoma's .037 mg/l criterion for total phosphorus in the State's Scenic Rivers.

The States of Arkansas and Oklahoma, acting through their environmental agencies, understand that as parties to this document, they intend to respect and follow the commitments made herein, and that so long as all commitments made herein are

met, the parties will continue to seek progress under this document toward achieving improvements in water quality. \_




Marcus C. Devine  
Executive Director  
Arkansas Department of Environmental Quality

December 18, 2003  
Date

STATEMENT OF JOINT PRINCIPLES AND ACTIONS

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\_\_\_\_\_  
J. Randy Young, P.E.  
Executive Director  
Arkansas Soil & Water Conservation Commission

12/18/03  
Date

**STATEMENT OF JOINT PRINCIPLES AND ACTIONS**

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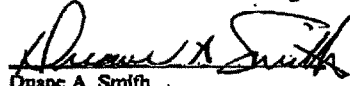
Miles Tolbert  
Oklahoma Secretary of Environment

12/18/03  
Date



STATEMENT OF JOINT PRINCIPLES AND ACTIONS

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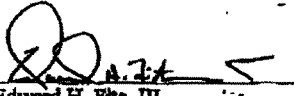


Duane A. Smith  
Executive Director  
Oklahoma Water Resources Board

12/18/03  
Date

**STATEMENT OF JOINT PRINCIPLES AND ACTIONS**

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\_\_\_\_\_  
Edward H. Pite, III  
Executive Director  
Oklahoma Scenic Rivers Commission

12/18/2003  
Date

**STATEMENT OF JOINT PRINCIPLES AND ACTIONS**

**PAGE 12**



Steven A. Thompson  
Executive Director  
Oklahoma Department of Environmental Quality

12-18-03  
Date

**SECOND STATEMENT OF JOINT PRINCIPLES AND ACTIONS**

WHEREAS, this Second Statement of Joint Principles and Actions (Second Statement), dated this 20th day of February, 2013, is intended to extend and augment the Statement of Joint Principles and Action (First Statement) entered in 2003 among named Arkansas and Oklahoma Environmental Agencies, which with the addition of the Oklahoma Conservation Commission and Oklahoma Department of Agriculture, Food and Forestry, are herein after referred to as the "Parties"; and

WHEREAS, the States of Arkansas and Oklahoma share a common goal of improving water quality in the designated Scenic Rivers;

WHEREAS, in an effort to avoid costly and protracted litigation and administrative proceedings which would further strain relationships between the two States and distract from cooperative efforts needed to protect and improve water quality in the designated Scenic Rivers, the two States entered into a Statement of Joint Principles and Actions in 2003 (the "First Statement");

WHEREAS, under the First Statement, both states agreed to undertake interim actions designed to improve river clarity and substrate quality in the designated Scenic Rivers and their Watersheds including substantial upgrades to wastewater treatment plants and the development and implementation of regulations restricting the use of nutrients to fertilize lands within the Scenic River Watersheds lands;

WHEREAS, Oklahoma agreed in the First Agreement to re-evaluate, by 2012, the 0.037 mg/L Numeric Phosphorus Criterion based on the best scientific information available.

WHEREAS, the two States believe it is in their best interests to continue to work cooperatively to protect and improve water quality in the designated Scenic Rivers and to avoid costly and protracted litigation and administrative proceedings which would further strain relationships between the two States and distract from those cooperative efforts.

NOW THEREFORE, the Parties enter into this Second Statement of Joint Principles and Actions.

**THREE YEAR EXTENSION OF COMMITMENTS**

For a period of three years commencing February 20, 2013 and ending February 20, 2016 (the "Term"), the Parties make the following commitments:

The States, through the appropriate Parties, will continue to require existing point source dischargers to the Illinois River Watershed with a design capacity of greater than 1 MGD to operate under existing National Pollutant Discharge Elimination System ("NPDES") permits reflecting an effluent limit for total phosphorus of not more than 1mg/L based upon a 30 day average, assuming the U.S. Environmental Protection Agency does not object. Oklahoma's law prohibits increased loading from existing dischargers and the permitting of new dischargers in Oklahoma into its Scenic River watersheds; existing dischargers may expand and new dischargers may be permitted in Arkansas provided that the cumulative permitted loading of phosphorus (in pounds per day) in the watersheds of any of the six Scenic Rivers will not be increased during the Term of this Second Statement.

The States, through the appropriate Parties, will continue implementation and enforcement of regulations governing the use of nutrients to fertilize lands within the designated Scenic River Watersheds. Subject to the limitations of the Parties to bind their respective legislatures, the Parties shall not seek to modify current law or regulations governing the use of nutrients to fertilize lands unless the

requested modification is at least as restrictive as current law applicable to that State's respective portion of the designated Scenic River Watersheds. To the extent funding is available, the Parties agree to maintain inspectors and nutrient management plan writers for their respective nutrient management regulatory programs for the designated Scenic River Watersheds equal to, if not greater than, current agency staffing levels.

Although information collected pursuant to Act 1060 of the 2003 Arkansas General Assembly, quantifying the amount of poultry litter stored, applied and transferred by individual poultry feeding operations is made confidential under the statute, the Arkansas Natural Resources Commission will prepare detailed compilations and summaries of this information and make these compilations and summaries available on at least an annual basis to Oklahoma environmental agencies and EPA. The Arkansas Natural Resources Commission will work with appropriate Oklahoma Parties in determining the format for these compilations and summaries (e.g., information by county, geographic area or watershed), as well as the amount of detail necessary to address reasonable concerns by Oklahoma Parties. Similarly, Oklahoma Parties will work with Arkansas Parties to provide comparable information for poultry operations in Oklahoma.

#### **JOINT PHOSPHORUS CRITERIA STUDY**

**COST OF JOINT STUDY** -- The Arkansas Parties agree to use best efforts to secure appropriate funding in the amount of Six Hundred Thousand dollars (\$600,000) to complete a three-year water quality study of the designated Scenic Rivers and their watersheds.(the "Joint Study"). Although the Arkansas Parties agree to use best efforts to secure the funding for the Joint Study, the willingness of the State of Arkansas to fund the Joint Study is not, and shall not be, construed by any signatory to this document as a legal obligation of the State of Arkansas. Although the Arkansas Parties have explored some options and believe currently that a sufficient source of funds is available to undertake the Joint Study, the Arkansas Parties may also pursue state, federal and private grants which may be available to fully or partially satisfy the willingness of the Arkansas Parties to undertake the task of finding the funding for the Joint Study under this Second Statement. Failure to secure the funding necessary to complete the Joint Study within the Term of this Second Statement shall provide just cause for termination of the Second Statement.

The funds collected to pay for the Joint Study will be placed in the Arkansas-Oklahoma Arkansas River Compact Commission ("CC"). The CC will act solely as a repository for the funds and will disperse the funds at the direction of the Joint Study Committee.

**MANDATORY STUDY COMPONENTS** -- The primary purpose of the Joint Study is to determine the Total Phosphorous threshold response level, in milligrams per liter (mg/L), at which any statistically significant shift occurs in algal species composition or algal biomass production resulting in undesirable aesthetic or water quality conditions in the Designated Scenic Rivers. The Joint Study shall be completed in accordance with U.S. EPA Rapid Bio-assessment Protocols, incorporate quality assurance and control provisions consistent with EPA Guidance on Quality Assurance and Quality Control, and follow EPA's most recent guidance "Using Stressor-response Relationships to Derive Numeric Nutrient Criteria" (EPA 820-S-10-001, November 2010). The Joint Study shall include a sampling population that is adequate to determine the frequency and duration component of the numeric criterion. To the extent data from reference streams or sites is incorporated into the Joint Study, reference streams or sites shall, to the fullest extent possible, be limited to streams or rivers within the same EPA eco-region and comparable to the streams in the designated Scenic River watersheds in terms of stream order and watershed land uses.

**JOINT STUDY COMMITTEE** -- The Joint Study will be funded by Arkansas and managed by a committee of six (6) individuals - 3 appointed by the Governor of the State of Oklahoma, 3 appointed by the Governor of the State of Arkansas (the "Joint Study Committee"). Each representative shall be qualified to design and conduct water quality studies. This committee will be authorized to select qualified scientific professionals to conduct the Joint Study and to formulate the specific scope of work for the Joint Study. The qualified scientific professionals selected or any professionals hired by the Joint Study Committee shall not reside in, nor have their principal place of business in, the States of Arkansas or Oklahoma. The Joint Study Committee members will be entitled to solicit input from stakeholders on aspects of the Joint Study such as proposed scopes of work, study protocols, sampling plans, candidate reference streams or sites and the selection of water quality indicators for the purpose of minimizing or avoiding future disputes about the methods and findings of the Joint Study. The Joint Study Committee will establish a reasonable schedule of project deliverables including at least two (2) interim written reports and at least one public meeting each year with stakeholders to provide a measure of transparency and public comment opportunities during the completion of the Joint Study. The final report and all data collected or reviewed during the Joint Study shall be made publicly available.

Failure of the Joint Study Committee to reach agreement on the procurement, execution or conduct of the Joint Study within the Term of this Second Statement shall provide just cause for termination of the Second Statement.

**USE OF STUDY FINDINGS AND RESULTS** -- The final report will provide an objective analysis of the water quality data and identify relationships, if any, between various concentrations of phosphorus in the designated Scenic Rivers and multiple ecological response levels commonly used in the scientific community to describe undesirable aesthetic and water quality conditions. The committee and the scientific professionals employed to complete the Joint Study will be asked to make specific recommendations as to what phosphorus levels, and what frequency and duration components of measure, are necessary to protect the aesthetics beneficial use and scenic river (Outstanding Resource Water) designations assigned to the designated Scenic Rivers, and based on overall stream health which shall include evaluating the relationship, if any, between phosphorous concentrations in the designated Scenic Rivers and biotic indicators of water quality, including primarily algal taxonomic composition and periphyton biomass. The purpose of the Joint Study is to provide reliable and objective data and analysis that will then form the basis for the Parties and EPA to make informed decisions about the scientific merit of any proposed revisions to the phosphorus criterion for the designated Scenic Rivers.

The Parties recognize that Oklahoma's total phosphorus criterion of 0.037 mg/L was adopted by Oklahoma to protect its designated Scenic Rivers' "aesthetic beneficial uses." Oklahoma's Water Quality Standards state the phosphorus criterion applies to protect the aesthetic use of the Scenic Rivers. OAC 785:45-5-19(c). Under the federal Clean Water Act, Arkansas has no aesthetic designated use for any waters of the state. Therefore, this Joint Study designed to help identify the phosphorus levels necessary to protect the aesthetic beneficial use of Oklahoma's designated Scenic Rivers shall not be binding upon or applicable to any study to develop nutrient criteria necessary to protect aquatic life or fish communities within any waters of the State of Arkansas.

The States of Arkansas and Oklahoma, acting through their respective Parties, agree to be bound by the findings of the Joint Study. Oklahoma, through the Oklahoma Water Resources Board, agrees to promulgate any new Numeric Phosphorus Criterion, subject to applicable Oklahoma statutes, rules and regulations if significantly different than the current 0.037 mg/L standard. "Significantly different" means the new Numeric Phosphorous Criterion exceeds -.010 or +.010 than the current .037 criterion. If the new Numeric Phosphorous Criterion is at or between .027 and .047, then the State of Oklahoma is not required to promulgate the new criterion in its water quality standards. Arkansas agrees to be bound by and to fully comply with the Numeric Phosphorous Criterion at the Arkansas-Oklahoma State line,

whether the existing 0.037 mg/L standard is confirmed or a new Numeric Phosphorus Criterion is promulgated. Parties for the States of Arkansas and Oklahoma shall forego any legal or administrative challenges to the Joint Study.

#### **SUSPENSION OF ADMINISTRATIVE PROCESSES AND COVENANT NOT TO SUE**

In consideration of the commitments by each Party to cooperate in completing the Joint Study, the Parties agree to the following terms which are intended to avoid costly and distracting legal proceedings while preserving all Parties' legal rights.

Oklahoma, through the Oklahoma Water Resources Board, will propose a rule amendment that removes the date to achieve full compliance with the Numeric Phosphorus Criterion set forth in Oklahoma Administrative Code 785:45-5-19 and 785:45-5-25(d), provided that such rule amendment will have to be promulgated pursuant to law. Parties for both States will continue cooperative efforts to improve and protect water quality in the Scenic Rivers, and Parties for both States covenant and agree during the Term of this Second Statement not to institute or maintain administrative enforcement actions, judicial proceedings or to take regulatory actions contrary to this Second Statement.

The Parties reserve any and all rights, claims or causes of action that presently exist or which may arise during the Term of this Second Statement related to the First Statement, the Numeric Phosphorus Criterion and the TMDL (the "Tolled Claims") but covenant and agree not to initiate legal or administrative proceedings against any other Party to this Agreement related to the Tolled Claims.

The Term of this Second Statement shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by a Party to this Second Statement relating to the Tolled Claims. Any defense of laches, estoppel, waiver or other similar equitable defense to the Tolled Claims based on the running or expiration of any time period shall not include the Term of this Second Statement. The foregoing tolling agreement does not constitute any admission or acknowledgement of any fact, conclusion of law, or liability by any Party to this Second Statement. Nor does the foregoing tolling agreement constitute any admission or acknowledgement by any Party that any statute of limitations, or similar defense concerning the timeliness of commencing a legal or administrative action, is applicable to the Tolled Claims. The Parties reserve the right to assert that no statute of limitations applies to any of the Tolled Claims and that no other defense based upon the timeliness of commencing a legal or administrative action is applicable.

#### **GENERAL PROVISIONS**

Nothing in this Second Statement creates any rights or causes of action for any person who is not a Party to this Second Statement.

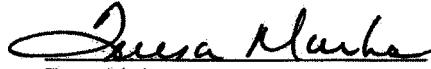
This Second Statement is not intended to affect any claims by or against a third party. However, if a third party initiates a legal or administrative proceeding related to water quality in the designated Scenic Rivers which is inconsistent with the terms of this Second Statement, the Parties shall take necessary steps to indicate to the Court their support for this document.

This Second Statement is effective upon execution by the Parties and without the requirement of filing with any Court and may be signed in counterparts.

This Second Statement, together with any provisions of the First Statement not superseded herein, contains the entire understanding between the Parties, and no statement, promise, or inducement made by

any Party that is not set forth in this Second Statement, together with any provisions of the First Statement not superseded herein, shall be valid or binding, nor shall it be used in construing the terms of this Second Statement.

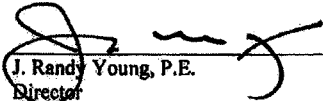




Teresa Marks  
Director  
Arkansas Department of Environmental Quality

2/19/13

Date



J. Randy Young, P.E.  
Director  
Arkansas Natural Resources Commission

2/19/13

Date

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Teresa Marks  
Director  
Arkansas Department of Environmental Quality

\_\_\_\_\_  
Date

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J. Randy Young, P.E.  
Director  
Arkansas Natural Resources Commission

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Date

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*Gary Sherrer*  
Gary Sherrer  
Oklahoma Secretary of the Environment

\_\_\_\_\_  
*Feb 12, 2013*  
Date

\_\_\_\_\_  
*J.D. Strong*  
J.D. Strong  
Executive Director  
Oklahoma Water Resources Board

\_\_\_\_\_  
*Feb 12, 2013*  
Date

\_\_\_\_\_  
*Steven A. Thompson*  
Steven A. Thompson  
Executive Director  
Oklahoma Department of Environmental Quality

\_\_\_\_\_  
*Feb. 12, 2013*  
Date

\_\_\_\_\_  
*Edward H. Fite, III*  
Edward H. Fite, III  
Administrator  
Oklahoma Scenic Rivers Commission

\_\_\_\_\_  
*February 20, 2013*  
Date

\_\_\_\_\_  
*Jim Keese*  
Jim Keese  
Secretary and Commissioner of Agriculture  
Oklahoma State Board of Agriculture

\_\_\_\_\_  
*Feb 15, 2013*  
Date

\_\_\_\_\_  
*Mike Thralls*  
Mike Thralls  
Executive Director  
Oklahoma Conservation Commission

\_\_\_\_\_  
*Feb 15, 2013*  
Date

It is my opinion that approval of this Second Statement is within the authority of the Oklahoma officials and agencies executing the same.

  
\_\_\_\_\_  
E. Scott Pruitt, Attorney General of Oklahoma

2/20/2013  
Date

It is my opinion that approval of this Second Statement is within the authority of the Arkansas officials and agencies executing the same.

  
\_\_\_\_\_  
Dustin McDaniel, Attorney General of Arkansas

2-19-13  
Date

Senator BOOKER. In 2003, to give more teeth to this—this goes to what you were saying about municipalities—it created phosphorus limits for municipal discharges. That 2003 agreement that I have also read through also states that Oklahoma will reevaluate the .037 criteria for total phosphorus in Oklahoma's rivers by 2012.

Then—this is the big part—in accordance with the instructions, the mandates of the Supreme Court, the EPA gave its approval to Oklahoma's .037 phosphorus standard. This was critical because under the Supreme Court decision, now Oklahoma had a water quality standard approved by the EPA that was now enforceable against up-States like Arkansas.

Let's fast forward to April 2012. Oklahoma's Water Resources Board reviewed the best scientific information available in 2012. It reevaluated and reaffirmed the .037 phosphorus standard.

Mr. Chairman, I want to put in an executive summary of that review.

Senator BARRASSO. Without objection.  
[The referenced information follows:]

**Final Report**

**Oklahoma Scenic Rivers  
Phosphorus Criteria  
Review – Majority Report**



March 30<sup>th</sup>, 2012

## **Final Report**

### **Oklahoma Scenic Rivers Phosphorus Criteria Review – Majority Report**

#### **Executive Summary**

As required in the 2003 Statement of Joint Principles and Actions agreement, in concert with an EPA grant, as well as Oklahoma's continual review of the Oklahoma Water Quality Standards (OWQS), staff of the Oklahoma Water Resources Board (OWRB) convened an interstate/tribal/EPA technical advisory group (TAG). The objective of this TAG was to re-evaluate, by 2012, the 0.037 mg/L total phosphorus (TP) criterion assigned to all of Oklahoma's Scenic Rivers. This review process involved state agency staff from both Oklahoma and Arkansas representing WQS staff, point and nonpoint source control staff, US EPA Region 6 staff, and the Cherokee Nation. During 2011, all submitted information and over 100 specific technical publications were reviewed (Appendix A), and 10 of those were determined to constitute "best scientific information available" by the TAG for purposes of the criterion review effort. After several face to face meetings and conference calls of this group, no consensus was reached on the recommendations. The majority of the TAG concluded that the best scientific information currently available supports the current criterion; therefore, no change in the criterion is necessary. It further recommends that an additional study documenting chemical, physical and biological integrity should occur to guide future water quality management of these waters. The Arkansas members of the TAG have prepared a separate report titled "Arkansas TAG Members' Minority Report to OWRB," which is being submitted as a separate document.

### Introduction

The Oklahoma Legislature resolved to protect a handful of treasured streams when, in 1970, it passed the “Scenic Rivers Act” (82 O.S. 1451-1471) as a means to identify and preserve the unique characteristics and uses of the state’s most scenic streams. This same legislation identified four streams to be designated as “Scenic River Areas”: Flint Creek, Illinois River, Barren Fork Creek, and Upper Mountain Fork River. In 1975, the Legislature added Lee Creek and Little Lee Creek (Figure 1). The primary purpose of the Scenic Rivers Act, and the subsequent Water Quality Standards (WQS) regulations promulgated pursuant thereto, is to preserve the high quality and unique characteristics of these outstanding resource waters.

*“The Oklahoma Legislature finds that some of the free-flowing streams and rivers of Oklahoma possess such unique natural scenic beauty, water conservation, fish, wildlife and outdoor recreational values of present and future benefit to the people of the state that it is the policy of the Legislature to preserve these areas for the benefit of the people of Oklahoma. For this purpose there are hereby designated certain “scenic river areas” to be preserved as a part of Oklahoma’s diminishing resource of free-flowing rivers and streams.”*

A body of statute and rule has been subsequently established to protect Oklahoma’s six Scenic Rivers. Rules are now in place limiting loading from point sources, placement of septic tanks, placement of poultry houses, disposal of poultry waste, and disposal of biosolids. Substantial resources have been dedicated to limiting nutrients in the watersheds with Best Management Practices (BMP) demonstrations, incentives and education. Antidegradation protection for scenic rivers, in place since 1973, adds basis to implement the statutory policy to preserve the Scenic Rivers as a part of Oklahoma’s diminishing resource of free-flowing rivers and streams.

In 2001, it was recognized that both empirical and anecdotal evidence over the preceding two decades indicated that, Illinois River status as a “Scenic River” pursuant to Title 82 Chapter 21 of Oklahoma Statute, was seriously threatened by excess nutrients. These nutrients – primarily phosphorus – were seen to be causing accelerated primary productivity in the Illinois River and

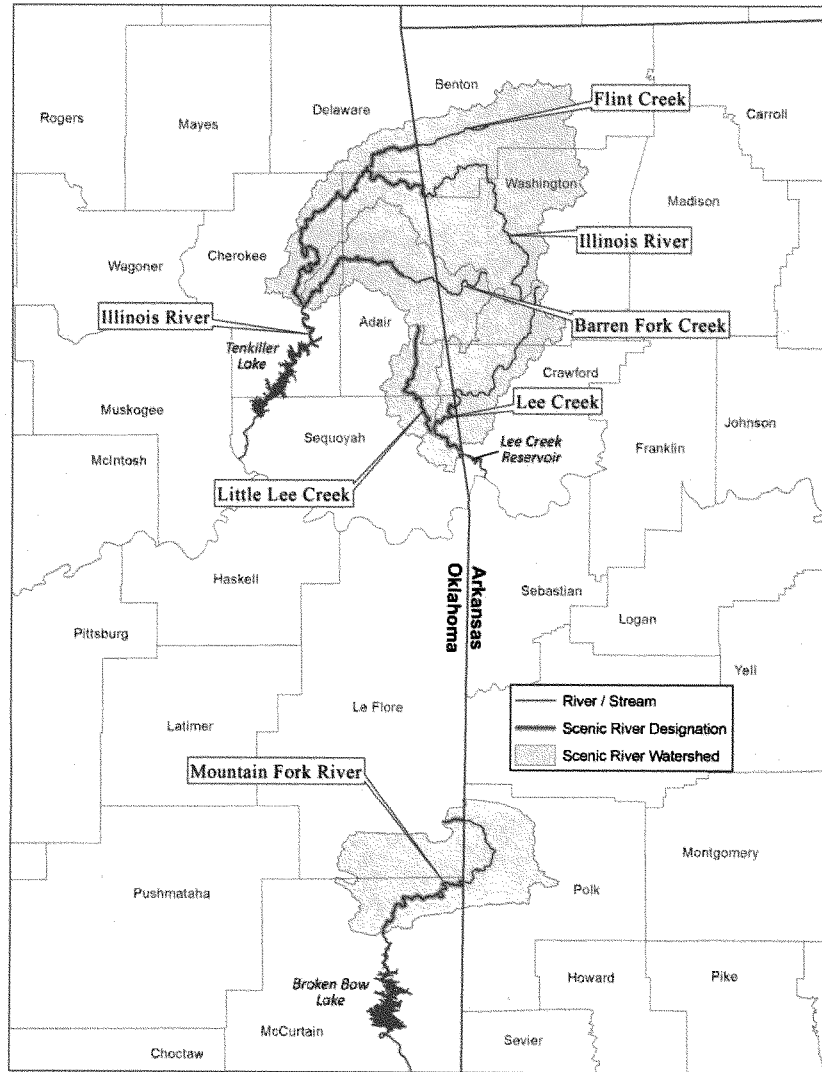


Figure 1. Map of the six Oklahoma Scenic Rivers and their watersheds.



Lake Tenkiller, resulting in significant growths of both attached algae (periphyton) and suspended algae (phytoplankton). As a consequence, historical river clarity and substrate quality were being adversely affected to such an extent that, without intervention, the Illinois River's exceptional ecological and recreational significance were in jeopardy. Further reviews of the data identified that similar problems with ecological and recreational integrity were also present in the other five Scenic Rivers. Although less pronounced and obvious to the public, the Barren Fork River, Flint Creek, Lee Creek, Little Lee Creek and the Upper Mountain Fork River above Broken Bow Reservoir were all showing signs of adverse impacts from excess nutrients.

To holistically address these problems and protect Oklahoma's six Scenic Rivers, it was proposed that a numerical criterion be incorporated into Oklahoma's WQS applicable to total phosphorus (TP) for all six Scenic Rivers. While water quality management programs were already in place to protect designated beneficial uses, this numerical value should assure that water quality greater than that necessary to support beneficial uses is achieved. Based upon input received through personal communications and at informal water quality standards meetings in late 2001, the general consensus was that Oklahoma's six Scenic Rivers should be "better than average."

OWRB staff investigated statistical techniques appropriate for historical data (Figure 2). EPA's July 2000 *Nutrient Criteria Technical Guidance Manual for Rivers and Streams* (EPA-822-B-00-002) based a substantial portion of their recommended nutrient criteria on the premise that the 25<sup>th</sup> percentile of nutrient concentrations on all streams in a given region is roughly equivalent to the 75<sup>th</sup> percentile of

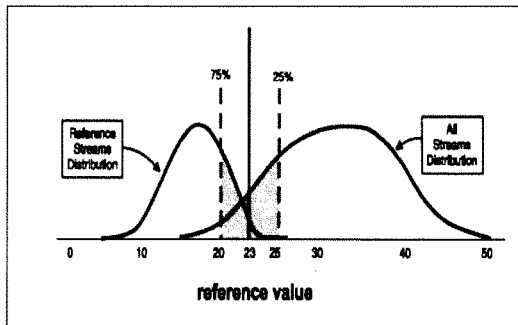


Figure 2. EPA statistical technique for using historical data. From *Nutrient Criteria Technical Guidance Manual for Rivers and Streams* (EPA-822-B-00-002)

concentrations in least impacted or reference quality streams (Figure 3). An analysis of nutrient values in relatively un-impacted basins is found in *Nutrient Concentrations and Yield in Undeveloped Stream Basins of the United States* (Gregory M Clark, David K. Mueller and M. Alisa Mast; *Journal of the American Water Resources Association* Volume 36, No. 4 August 2000). This research was the basis for this comparison as it evaluates TP data on least impacted/reference sites. In this report, 75% of the streams assessed in least impacted areas had a flow weighted TP concentration of 0.037 mg/L or less. This value was similar to the median TP concentration seen in the Barren Fork River and the relatively un-impacted Mountain Fork River from Oklahoma’s Beneficial Use Monitoring Program (BUMP) (0.045 mg/L and 0.028 mg/L,

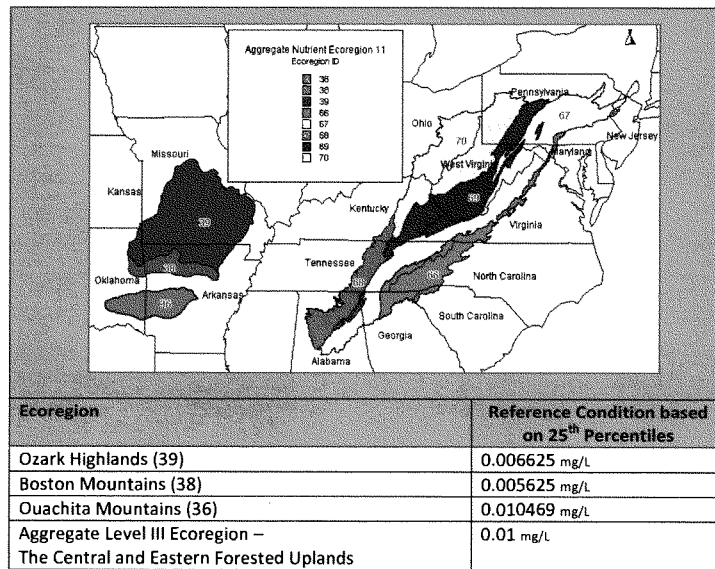


Figure 3. EPA ecoregions and recommended criteria. From *Nutrient Criteria Technical Guidance Manual for Rivers and Streams* (EPA-822-B-00-002)

respectively). It is also consistent with USGS monitoring of the Barren Fork River which resulted in a median phosphorus concentration of 0.03 mg/L. The OWRB staff therefore, recommended

that 0.037 mg/L of TP be promulgated as a numerical criterion to protect our Scenic Rivers. The specific rule states:

***“785:45-5-19(c)(2) Nutrients; numerical criterion applicable to waters designated Scenic Rivers. The thirty (30) day geometric mean total phosphorus concentration in waters designated “Scenic River” in Appendix A of this Chapter shall not exceed 0.037 mg/L. The criterion stated in this subparagraph applies in addition to, and shall be construed so as to be consistent with, any other provision of this Chapter which may be applicable to such waters. Such criterion became effective July 1, 2002 and shall be implemented as authorized by state law through Water Quality Standards Implementation Plans and other rules, permits, settlement agreements, consent orders, compliance orders, compliance schedules or voluntary measures designed to achieve full compliance with the criterion in the stream by June 30, 2012”.***

Revisions of the Oklahoma Water Quality Standards (OWQS) must follow the process required by the Oklahoma Administrative Procedures Act. Prior to adoption, a Notice of Rule Making Intent was published in the Oklahoma Register that initiated a 45 day comment period. A Rule Impact Statement was filed and the formal rule revisions were available for public review. After the 45 day comment period, a formal hearing was held. In the process, over 600 comments were received supporting the criterion or asking for a more stringent criterion. Sixty Five (65) comments were received opposed to the criterion. Subsequent to the public review process, OWRB staff recommended that the Board adopt a not-to-be-exceeded 30 day geometric mean total phosphorus criterion of 0.037 mg/L for the Scenic Rivers in both the Antidegradation section and the Aesthetics beneficial use section of the OWQS.

Recognizing the impacts and the revolutionary nature of the criterion, the nine-member Oklahoma Water Resources Board added the caveat: *“such criterion shall be fully implemented within ten (10) years as provided in a separate rule promulgated by the Board”*. The OWRB then followed through with its requirement of an additional rule and promulgated an emergency rule and a final rule in February 2003.

A consequence of the criterion is that the discharge of phosphorus to Oklahoma's Scenic Rivers must be strictly controlled. The point and nonpoint source phosphorus dischargers of northwest Arkansas, in particular, have steadfastly maintained that the 0.037 mg/L for TP is neither attainable nor appropriate, and was based upon faulty science. EPA negotiated the December 2003, "Statement of Joint Principles and Actions" signed by Oklahoma and Arkansas, stating that "Oklahoma periodically re-evaluates all of its water quality standards. In particular, Oklahoma will re-evaluate Oklahoma's 0.037 mg/L criterion for total phosphorus in Oklahoma's Scenic Rivers by 2012, based on the best scientific information available at that time, and with the full, timely inclusion of officials from the State of Arkansas representing both point and nonpoint source dischargers." Following this agreement EPA approved the Oklahoma criterion on December 29, 2003.

Prior to its approval, EPA reviewed the TP criterion in light of the USGS study previously referenced (Clark et. al.), EPA's national nutrient criteria recommendations, and Ozark Highlands ecoregion stream data for TP presented in another USGS report entitled *Percentile Distributions of Median Nitrite Plus Nitrate as Nitrogen, Total Nitrogen, and Total Phosphorus Concentrations in Oklahoma Streams, 1973-2001 (Report 03-4084)*. Based upon this analysis and the record before it, EPA determined that Oklahoma's TP criterion of 0.037 mg/L for its Scenic Rivers was "sufficient to protect the designated uses of the affected rivers" (including Fish and Wildlife Propagation, Recreation, and Aesthetic beneficial uses).

### **Objectives**

The objective of this project was to re-evaluate the Oklahoma Scenic Rivers phosphorus criterion to reaffirm its appropriateness or to recommend if a revised phosphorous criterion might better serve to restore and protect the integrity of Oklahoma's Scenic Rivers. Because the current criterion has three components, including a magnitude (0.037 mg/L), duration (30-day geometric mean), and frequency (shall not exceed), all three of these components were considered as part of the criterion re-evaluation. The process, embodied in the Quality

Assurance Project Plan (QAPP), facilitated the review of the “best scientific information available” utilizing a technical advisory group (TAG) which included appropriate technical staff designated by officials from EPA, Cherokee Nation and the States of Oklahoma and Arkansas representing both point and nonpoint source dischargers.

**Process and Method of the Re-evaluation**

The Technical Advisory Group (TAG) was assembled to review the relevant “best scientific information available” regarding the phosphorus criterion and develop final recommendations to OWRB staff regarding whether additional action should be taken to revise the phosphorus criterion (See Table 1 for a schedule of TAG meetings).

The TAG was comprised of:

Derek Smithee, Chief of the Water Quality Programs Division of the Oklahoma Water Resources Board (Facilitator),

Shanon Phillips, Director of the Water Quality Division of the Oklahoma Conservation Commission,

Shellie Chard-McClary, Director of the Water Quality Division of the Oklahoma Department of Environmental Quality,

Quang Pham of the Oklahoma Department of Agriculture, Food and Forestry,

Cara Cowan Watts of the Cherokee Nation,

Melinda McCoy with Region 6 of the U.S. Environmental Protection Agency,

Ed Swaim, Chief of the Water Resources of the Arkansas Natural Resources Commission,

Steve Drown, Chief of the Water Division of the Arkansas Department of Environmental Quality.

A Secondary Data Quality Assurance Project Plan (QAPP) was prepared, reviewed by the TAG, and approved by EPA. The process established in this QAPP addressed: acquisition of scientific information relevant to the Oklahoma Scenic Rivers criterion, the process for determining which of this information represents the “best scientific information available” for purposes of the criterion review effort, and then review of the best scientific information to recommend action regarding the criterion.

“Best Scientific Information Available” was solicited from the public by way of public announcements on June 10<sup>th</sup>, 2011 utilizing e-mail lists and newspaper publications throughout the Oklahoma Scenic River’s watersheds. A public meeting was also held on August 11<sup>th</sup>, 2011 to allow the general public an opportunity to submit additional scientific information. Information was compiled and reviewed by the TAG. Staff of the OWRB compiled summaries of the information reviewed and recommendations made by the TAG to advise the OWRB. Based on the information from the scientific literature review, the phosphorus criterion was re-evaluated.

Table 1. Timeline of meetings regarding the criteria re-evaluation.

January 2011	TAG meeting	Oklahoma City, OK
April 2011	TAG Conference Call	
May 2011	TAG Meeting	Rogers, AR
August 2011	Public Meeting	Tahlequah, OK
October 2011	TAG Conference Call	
November 2011	TAG Meeting	Sallisaw, OK
February 2012	TAG Conference Call	

#### **Studies Summary**

The following summaries are of relevant scientific studies that were reviewed as part of the re-evaluation of the Oklahoma Scenic Rivers Phosphorus Criteria.

#### **Current Total Phosphorus (TP) Values and Trends**

The following three summaries provide a view of the current phosphorus values and trends in some of Oklahoma’s Scenic Rivers. These research articles show that the TP values in the Illinois River watershed have decreased since the implementation of point source controls. This research also indicates that while TP values and loading have been reduced, high TP values still remain.

Haggard, B., J. Masoner and C. Becker. 2003. Percentile Distributions of Median Nitrite Plus Nitrate as Nitrogen, Total Nitrogen, and Total Phosphorus Concentrations in Oklahoma Streams, 1973–2001. USGS Water-Resources Investigations Report 03-4084.

Percentile distributions of median nitrite plus nitrate as nitrogen, total nitrogen, and total phosphorous concentrations were calculated from 563 sites in Oklahoma and 4 sites in Arkansas near the Oklahoma and Arkansas border to facilitate development of nutrient criteria for Oklahoma streams. The 50th percentiles of median nitrite plus nitrate as nitrogen, total nitrogen, and total phosphorus concentrations were greater in the Ozark Highland ecoregion and were less in the Ouachita Mountains ecoregion when compared to other geographic areas used to group sites. Nitrate as nitrogen and total phosphorus concentrations currently (2002) used in the Use Support Assessment Protocols for Oklahoma were greater than the 75th percentiles of median nitrite plus nitrate as nitrogen and total phosphorus concentrations calculated for this report.

Haggard, B. 2010. Phosphorus Concentrations, Loads, and Sources within the Illinois River Drainage Area, Northwest Arkansas, 1997–2008. *J. Environ. Qual.* 39: pp. 2113-2120.

This study evaluated (i) annual phosphorus (P) loads at the Illinois River at Arkansas Highway 59 from calendar year 1997 through 2008, (ii) the relative contribution of effluent P sources to annual riverine P transport, (iii) longitudinal gradients in water column P concentrations downstream from several wastewater treatment plant effluent discharges, and (iv) changes in monthly P loads over the last decade. The relative contribution of P inputs from municipal facilities has decreased from 40% of the annual P load at the Illinois River at Arkansas Highway 59 to <15% in recent years. Flow adjusted monthly P loads showed two distinct trends over time. Flow-adjusted loads significantly increased from 1997 through 2002 and significantly decreased from 2002 through 2008. The concentrations and transport of P within the Illinois River drainage area are significantly decreasing from all the watershed management changes that have occurred.

Haggard, B. 2005. Proceedings Report – 3<sup>rd</sup> Annual Total Maximum Daily Load Conference. Effect of Reduced Effluent Phosphorus Concentrations at the Illinois River, Northwest Arkansas, 1997-2004.

Spatial distribution of dissolved P concentrations was evaluated using multiple water quality monitoring sites from the Illinois River, South of Siloam Springs upstream to the effluent discharges in Mud/Clear Creeks, Osage Creek and Spring Creeks. Dissolved P concentrations as great as 10 mg SRP L<sup>-1</sup> were observed on one sampling in March 2002 at Spring Creek, and dissolved P concentrations throughout the IRDA were generally several orders of magnitude greater than concentrations which typically limit Periphyton growth in streams or that are observed in relatively undeveloped basins. Dissolved P concentrations at the Illinois River, South of Siloam Springs, Arkansas, were less than the Oklahoma Scenic Rivers TP criterion on one sampling date in Feb 2004, and dissolved P concentrations were close to the criterion in April 2004. The results observed in summer 2003 and 2004 show some mechanism of internal P loading exists in streams draining the IRDA because ambient P concentrations often increase downstream through selected stream reaches. Dissolved P concentrations at the Illinois River, South of Siloam Springs, Arkansas, were generally around 0.10 SRP L<sup>-1</sup> and still almost three times greater than the Oklahoma Scenic Rivers TP Criterion.

#### **Nutrient Thresholds & Distributions**

Nutrient thresholds are one of EPA's recommended ways of developing nutrient criteria. The following research summaries relate to nutrient thresholds and distributions from various watersheds of various sizes. It is of particular interest to note that while many of these streams are geographically different, the distributions and thresholds appear to follow very similar patterns.



Stevenson, et al. 2006. Comparing Effects of Nutrients on Algal Biomass in Streams in Two Regions with Different Disturbance Regimes and with Applications for Developing Nutrient Criteria. *Hydrobiologia* 561: pp. 149-165.

Responses of stream algal biomass to nutrient enrichment were studied in two regions where differences in hydrologic variability cause great differences in herbivory (Kentucky and Michigan). Many measures of algal biomass and nutrient availability were positively correlated in both regions, however the amount of variation explained varied with measures of biomass and nutrient concentration and with region. Most observed responses in benthic algal biomass occurred in nutrient concentrations between 10 and 30  $\mu\text{g TP /L}$  and between 400 and 1000  $\mu\text{g TN /L}$ .<sup>1</sup> High algal biomasses were rare (less than 10% of streams) in both regions, if TP was less than 30  $\mu\text{g l}^{-1}$  and TN was less than 1000  $\mu\text{g l}^{-1}$ . The 30  $\mu\text{g l}^{-1}$  target was also recognized by Dodds et al. (1998) as a concentration that constrained chlorophyll *a* (*chl a*) to less than 15  $\mu\text{g chl a cm}^{-2}$  in a *Cladophora* dominated stream. Higher probabilities of more extensive *Cladophora* growths were observed with increasing nutrient levels. Thus, 30  $\mu\text{g TP l}^{-1}$  and 1000  $\mu\text{g TN l}^{-1}$  could be considered as targets to prevent a high probability of nuisance accrual of *Cladophora*.

Stevenson, et al. 2008. Algae–P Relationships, Thresholds, and Frequency Distributions Guide Nutrient Criterion Development. *J. N. Am. Benthol. Soc.*, 27(3): pp. 783-799.

This study used complementary information collected using different conceptual approaches to develop recommendations for a stream nutrient criterion based on responses of algal assemblages to anthropogenic P enrichment. Benthic algal attributes, water chemistry, physical habitat, and human activities in watersheds were measured in streams of the Mid-Atlantic Highlands region. Regression models showed that TP concentrations were  $\sim 10 \mu\text{g/L}$  in streams with low levels of human activities in watersheds and that TP increased with % agriculture and urban land uses in watersheds.

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<sup>1</sup> Total Phosphorus concentration units in the summaries are written as reported in the original research articles.

The 75th percentile at reference sites was 12 µg TP/L. Thresholds in these responses occurred between 10 and 20 µg/L. Multiple lines of evidence indicate that a nutrient criterion of 10 to 12 µg/L can be justified for Mid-Atlantic Highlands wadeable streams based on reference conditions and benthic algal responses to nutrients. Increases in TP from 10 to 30 µg/L were associated with responses of benthic diatom assemblages that indicated release from nutrient limitation. Extensive, long-lasting nuisance growths of the filamentous green alga, *Cladophora* that are unaesthetic and a problem for fishing and recreational use can be prevented by maintaining an average of 30 µg TP/L (Dodds et al. 1997, Stevenson et al. 2006). On the other hand, higher stressor criteria, such as between 30 and 60 µg TP/L, could be interpreted as protective of “fish, shellfish, and wildlife” that would correspond to the lower, interim goal of the US Clean Water Act.

Justus, B.G., et al. 2009. A Comparison of Algal, Macroinvertebrate, and Fish Assemblage Indices for Assessing Low-level Nutrient Enrichment in Wadeable Ozark Streams. *Ecol. Indicat.*

Seventy-three algal metrics, 62 macroinvertebrate metrics, and 60 fish metrics were evaluated for each of the three biotic indices. Biotic metric scores were inversely related to nutrients and were generally highest when TN and TP concentrations were less than about 0.40 mg/L and about 0.018 mg/L (respectively), but were generally lowest when concentrations were higher. These TN and TP concentrations are comparable to background concentrations from sites across the United States (Clark et al., 2000; Smith et al., 2003; Herlihy and Sifneos, 2008). Other studies have indicated that substantial changes in macroinvertebrate assemblage structure (Smith et al., 2007) and algal biomass (Stevenson et al., 2006) may occur near these concentrations. The algal index had a much stronger relation to low- to moderate-level nutrient enrichment than did the macroinvertebrate or fish index but all three indices were negatively correlated to nutrient enrichment.

Smith, A.J. and C.P. Tran. 2010. A Weight-of-Evidence Approach to Define Nutrient Criteria Protective of Aquatic Life in Large Rivers. *J. N. Am. Benthol. Soc.*, 29(3): pp. 875-891 (2010)

Based on percentile analysis (median value of the 75<sup>th</sup> percentile of the reference sites and the 25<sup>th</sup> percentile of the test sites), numeric nutrient criteria would be: 0.023 mg TP/L. Cumulative probability distributions suggested that threshold responses of biological community metrics occurred between 0.009 and 0.07 mg TP/L. For site clusters based on macroinvertebrate data these values were 0.037 mg TP/L. For clusters based on diatom data these were 0.037 mg TP/L. The multiple lines of evidence used were percentiles, metrics that yielded significant change points, and cluster analyses. Results from metrics established specifically for or directly related to nutrients in the water were weighted more heavily than those associated with general pollution or, in the case of percentile analysis, had no connection with biological responses. Based on the weight-of-evidence approach and results from all 3 methods, the proposed guidance values for nutrients in large rivers are 0.03 mg TP/L. These values are similar to those derived by others and provide meaningful nutrient endpoints that would be protective of aquatic life in large rivers.

#### **Stressor-Response Studies**

There has been much discussion of the need for stressor-response studies to provide information to truly evaluate the current phosphorus criterion. The following summaries include a study looking at small rivers and streams in Ohio, wadeable streams in the Cross Timbers region of Texas, and a stressor-response study conducted on the Illinois River Watershed. It is very important to note that while the King (2009) paper researched streams in Texas; these streams share many similarities to Oklahoma's Scenic Rivers. These Texas streams have limestone substrates comprised of gravel, cobble, boulder, and bedrock. The Stevenson research paper was very worthy of note since it was a stressor-response study that was conducted on one of Oklahoma's Scenic Rivers (ie, Illinois River). This study especially looks at threshold responses in cover of stream bottoms by filamentous green algae. This particular

focus of research directly relates to the assigned Aesthetics beneficial use of the Scenic Rivers. It is also very interesting to note that these studies correspond well to what Dodds et al. (1997) found; that accrual of benthic algae from streams throughout the world, measured as chlorophyll a, was saturated at approximately 30 µg TP/L.

Miltner, R.J., A Method and Rationale for Deriving Nutrient Criteria for Small Rivers and Streams in Ohio. Environmental Management, January 2010.

This study describes relationships among primary nutrients (phosphorus and nitrogen), benthic chlorophyll a concentrations, daily dissolved oxygen (DO) concentrations, and the condition of macroinvertebrate and fish communities in small rivers and streams in Ohio, USA. Clear associations between nutrients, secondary response indicators (i.e., benthic chlorophyll and DO), and biological condition were found, and change points between the various indicators were identified for use in water quality criteria for nutrients in small rivers and streams (<1300 km<sup>2</sup>). A change point in benthic chlorophyll a density was detected at an inorganic nitrogen concentration of 0.435 mg/l (±0.599 SD), and a total phosphorus (TP) concentration of **0.038 mg/l** (±0.085 SD). 0.078 mg/l (i.e., the 90th percentile) approximates an upper limit for the change point.

King, R.S., et al. 2009. Final Report: Linking Observational and Experimental Approaches for the Development of Regional Nutrient Criteria for Wadeable Streams.

Shifts from periphyton communities comprised of sensitive diatoms, calcareous cyanobacteria, and other non-chlorophyll bearing microbes to communities with higher chlorophyll content and more filamentous algae was repeatedly demonstrated at concentrations of surface-water TP above **20 µg/L**. Streams with TP > 200-1000 µg/L likely represent a second tier of degradation, and appear at greater risk for nuisance algal growth. However, results from the P dosing experiment suggest that concentrations as low as 20 µg/L (PO<sub>4</sub>-P) can lead to high levels of *Cladophora* biomass in as little as 28 days. Aquatic macrophyte cover consistently declined in streams with

TP > 25-50 µg/L. These submersed plants serve as important refugia for juvenile fishes and macroinvertebrates, and provide a source of dissolved oxygen during low flows. Their decline likely represents a key structural and functional change in these streams ecosystems. Minimum dissolved oxygen levels are highly dependent upon an interaction between flow and nutrient enrichment. This study suggests that TP levels >20-30 µg/L, coupled with low flows, will cause detrimental declines in minimum dissolved oxygen levels. Based on the weight of evidence from the coupling of the field stream study and the experimental stream study suggests that there is a very high probability that streams exposed to surface-water TP levels exceeding 20 µg/L, and possibly 15 µg/L, will experience a sharp decline in biological integrity, including loss of characteristic structure (periphyton and macrophytes), loss of numerous species (algae and macroinvertebrates), minimum dissolved oxygen levels unsuitable for supporting native fauna during low flows, and increase likelihood of nuisance algal growth that limits recreational use of streams.

Stevenson, R.J., et al., Phosphorus Regulates Stream Injury by Filamentous Green Algae, Thresholds, DO, and pH. (manuscript in press – *Hydrobiologia* 2011)

Nutrient concentrations, benthic algal biomass, dissolved oxygen, and pH were measured in 70 or more streams during spring and summer in the Illinois River Watershed (IRW) to determine injury to streams that was related to spreading poultry waste on fields. Molar N:P ratios were high and indicated that phosphorus was the most likely limiting nutrient. A threshold response in cover of stream bottoms by filamentous green algae (FGA): *Cladophora*, *Rhizoclonium*, and *Oedogonium*, during spring was observed at 27 µg TP/L, with increases from averages of 4 to 36 percent cover in streams with TP less than and greater than the TP threshold. Thresholds in algal biomass response to nutrients have often been observed close to this TP concentration. Filamentous green algae (FGA) cover in minimally disturbed, low P streams usually had less than 10 percent FGA cover. When TP was greater than 27 µg/L, FGA cover averaged 36% cover.

Table 2. Summary of literature values found to be relevant for this review.

Literature Reviewed	Study Area	Concentration (mg/L)
Haggard, Masoner & Becker (2005)	Oklahoma Streams	Statistical analysis shows that the 75 <sup>th</sup> percentile of TP concentrations were greater than the criterion.
Haggard (2005)	Illinois River Drainage Area	Dissolved P in the Illinois River (South of Siloam Springs) was generally around 3 times greater than the TP criterion
Stevenson et al (2006)	Kentucky and Michigan	0.010 – 0.030 (responses in benthic algal biomass)
Stevenson et al (2008)	Mid-Atlantic Highlands	0.010 – 0.020 (threshold responses occurred)
		0.010 – 0.012 (recommended P criterion)
		0.030 (to prevent Caldocphora)
Justus, et al (2009)	Wadeable Ozark Streams	<0.018 (biotic metric scores were highest)
King (2009)	Brazos River Watershed, Texas	0.020 (shifts in periphyton communities)
		>0.025 – 0.050 (aquatic macrophyte cover declines)
		>0.020 – 0.030 (coupled with low flows will cause DO declines)
Haggard (2010)	Illinois River Drainage	The concentrations and transport of P within the Illinois River drainage area are significantly decreasing
Smith and Tran (2010)	Large Rivers	0.023 (numeric criteria based on percentile analysis)
		0.009 – 0.07 (threshold responses occurred)
		0.037 (based on macroinvertebrate data)
		0.030 (recommended nutrient criteria based on a weight-of-evidence approach)
Miltner (2010)	Ohio	0.038 (a change point in benthic chlorophyll a)
Stevenson, et al (2011)	Illinois River Watershed	0.027 (a threshold response in cover of stream bottoms by filamentous green algae)

A spreadsheet was compiled of recommended criteria and ecological change points from the literature reviewed by the TAG (Appendix B – Phosphorus Values Assembled from Literature Review). The median value of all of these recommendations was 0.036 mg/L and the mode was 0.020 mg/L.

The current “best scientific information available” signified that the Oklahoma Scenic River Total Phosphorus criterion of 0.037 mg/L is within the range of the current and relevant scientific literature. The majority of the new scientific information reviewed indicated 0.037 mg/L phosphorus is appropriate as a criterion protective of the Aesthetics beneficial use.

The TAG members from the Oklahoma Water Resources Board, Oklahoma Conservation Commission, Oklahoma Department of Environmental Quality, Oklahoma Department of Agriculture Food and Forestry, EPA Region 6, and The Cherokee Nation support the following findings. A separate body of findings has been provided by the TAG members from the Arkansas Department of Environmental Quality and the Arkansas Natural Resources Commission which can be found in the report titled "*Arkansas TAG Members' Minority Report to OWRB.*"

**Findings of the TAG Majority based upon "Best Scientific Information Available"**

- 1) After reviewing the "best scientific information available" as of the date of this report, no information was found that refuted the criterion. The TAG did not find information that the 0.037 mg/L total phosphorus (TP) criterion is outside of the acceptable range of the TP concentrations necessary to inhibit or limit algae growth to protect the Aesthetics beneficial use of Oklahoma's Scenic Rivers. Limited scientific information suggests TP concentration could be up to 0.040 mg/L and still limit algae growth sufficiently. Other scientific information suggests that TP concentration should be closer to 0.010 mg/L to sufficiently inhibit algae growth to protect the aesthetics of the free flowing streams.

The majority of the Oklahoma Scenic Rivers Total Phosphorus Criterion TAG concludes that no change in the criterion is necessary due to the fact that the best scientific information currently available supports the current criterion.

- 2) The TAG finds that the results of monitoring of TP concentration in the water for most Scenic Rivers in Oklahoma shows results of greater than 0.037 mg/L. However, the TAG also finds that TP concentrations in the water for most Scenic Rivers in Oklahoma has decreased by varying degrees after the efforts and progress made by Arkansas and Oklahoma environmental agencies and interests to limit TP concentrations in point source discharges and with Best Management Practices (BMPs) for nonpoint pollution sources in the watersheds of Oklahoma's Scenic Rivers.

- 3) The TAG finds that continuing the efforts and progress made by Arkansas and Oklahoma environmental agencies and interests to limit TP concentrations in point and nonpoint source discharges in the watersheds of Oklahoma's Scenic Rivers, should result in continued reduction in TP concentrations in Oklahoma's Scenic Rivers.
- 4) The TAG further suggests that a comprehensive monitoring program be implemented to further evaluate the efforts and progress made by Arkansas and Oklahoma environmental agencies and interests to limit the TP concentrations in point and nonpoint source discharges in the watersheds of Oklahoma's Scenic Rivers.
- 5) Finally, the TAG concludes that as new scientific information is acquired through the suggested comprehensive monitoring program and other monitoring and research programs, such information should be considered by Oklahoma and Arkansas in the review of their respective Water Quality Standards.

**Further Findings Concerning Duration and Frequency**

The OWRB selected a 30 day geometric mean as the appropriate measure for implementing the Scenic Rivers phosphorus criterion despite the fact that the specific criterion reference used in part as justification for the criteria was based upon a flow weighted annual mean. After the 30 day criterion was adopted, the need for an assessment protocol became evident because the promise of data suitable for calculation of 30 day geometric means faded with inadequate funds for monitoring. In 2004, through an Oklahoma environmental agency working group with participation by EPA Region 6 and ADEQ, Oklahoma developed and adopted an assessment rule that used data collected over 90 days as a proxy for data collected over 30 days, to better represent the uptake of nutrients by algae. This assessment rule required a minimum number of storm events to be included in the data set and allowed a 25% excursion rate for geometric means calculated on a monthly basis. The assessment rule essentially was established to



balance the adopted criterion, technical information and the practical constraints of data collection into a single rule.

A common complaint against the currently promulgated duration and frequency is the data intensive nature of a 30 day geometric mean. EPA assessment staff, based upon settlement of the Florida impaired waters rule lawsuits, now requires assessment in strict accord with the WQS.

The latest effort by EPA to promulgate criteria for the State of Florida provides a good starting place for this discussion. The stream criteria that EPA promulgated are implemented as an annual geometric mean with an allowed excursion of once every 3 years. EPA expressed in their justification that:

*“Appropriate duration and frequency components of criteria should be based on how the data used to derive the criteria were analyzed and the implications for protecting designated uses given the effects of exposure at the specified criterion concentration for different periods and recurrence patterns.”*

The annual geometric mean and 1 in 3 years allowable excursion rate ostensibly is appropriate for protecting the *“longer term shifts in biological conditions”* in Florida streams. The special status of Oklahoma Scenic Rivers dictates that not only *“longer term shifts in biological conditions”* must be prevented, but also, short term events of excessive algae growth and perturbations of the biota at the algal community level must be prevented as well. The Oklahoma criterion with a 30 day averaging period is more appropriate to help prevent these short term impacts.

***Oklahoma’s 30 day Averaging Period.***

In considering the effects of nutrients, the factors that influence growth of algae must be considered. Scouring events from storm flow essentially resets a stream and then the recovery rate is partially controlled by the availability of nutrients. Turbidity and canopy cover have strong influence on the recovery and the final standing crop. The seasonal presence or absence of canopy cover has also been demonstrated to effect algal growth. The accrual time after a

scouring event can also affect the standing crop. Streams with stable substrate and very stable flows can experience substantial growth of filamentous algae even at low nutrient concentrations. The presence of macrophytic grazers greatly affects algae re-growth and the standing crop in exclusion studies. When protected from grazing fishes and invertebrates, cyanobacterial felts are overgrown by turfs of benthic diatoms within 4-10 days (Power et al 1988).

It is generally accepted that after a scouring event, maximum standing crop of periphyton is reached in around 6-8 weeks. To prevent aesthetic problems, the growth of algae and thus the nutrient concentrations in that time period are critical to control. To protect from effects on benthic invertebrates, the concentrations of nutrients should be evaluated over a time frame that would sustain elevated algal biomass over a full life cycle of the benthic invertebrates. For only protecting the invertebrates, assessment with a full year's averaging would be appropriate. For protecting fish, the assessment should look for concentrations that sustain elevated algal biomass over several years. Longer term averaging periods protective of fish and macro-invertebrates would fail to prevent episodic algal growth.

Acute effects from elevated algae biomass must also be prevented. Nutrients should be evaluated over time frames which would allow accrual of algae to the point where dissolved oxygen diurnal swings stress or kill the aquatic community.

Lavoie, et al. (2008) showed that in mesotrophic rivers, the diatom indices show a response after only 2 weeks, and that in eutrophic rivers, the diatoms respond within 5 weeks. Their research stated:

*"...3. Along a large phosphorus gradient, the IDEC [Indice Diatomees de l'Est du Canada (a diatom-based index of integrity)] was highly correlated with averaged water chemistry data. Along with in-stream phosphorus gradients, the IDEC integrated phosphorus over various periods of time, depending on the trophic status of the site studied (Boyer, Nicolet or Ste. Anne river) and variability in nutrient concentration.*

*4. In the Ste. Anne River, where nutrient concentrations were low and generally stable, an input of phosphorus induced a rapid change in diatom community structure and IDEC*

*value within the following week. In the mesotrophic Nicolet River, the observed integration period was approximately 2 weeks. Diatom communities in the eutrophic Boyer River appeared to be adapted to frequent and significant fluctuations in nutrient concentrations. In this system, the IDEC therefore showed a slower response to short term fluctuations and integrated nutrient concentrations over a period of 5 weeks."*

In a study where tiles from a degraded river and a relatively pristine river were switched to examine the response to higher nutrients and recovery from the same, Lacoursie, et al. 2011 found:

*"...the present study provides strong evidence for an accelerated response of diatoms to a degradation (within a week in certain cases) and a slower path to recovery (up to 4 weeks for the Nicolet Sud-Ouest River)."*

The 30 day averaging period presupposes the availability of daily or weekly data which represents the full range of concentrations the algae are exposed to and that the daily concentrations are related to the growth rate. No studies have been found determining whether the maximum, simple average, geometric mean or median is the best descriptor for nutrient data in relation to algae growth. Literature evaluating algal growth generally uses arithmetic means or single nutrient values compared to single algal chlorophyll a or AFDM values. In establishing the original criterion, a simple 30 day average was proposed. It was pointed out by the Oklahoma Dept. of Environmental Quality (ODEQ) that since nutrient data is rarely normally distributed, the arithmetic average was inappropriate. OWRB concurred and revised the proposed criterion to use a 30 day geometric mean.

Substantial comment from TAG members has stemmed from the 30 day assessment period. Much of this comment is caused from discomfort between the assessment protocol that recognizes the paucity of data and the promulgated 30 day geometric mean. While extended averaging periods could be justified for protecting macroinvertebrates and fisheries, the bulk of the literature shows that maximum biomass of the periphyton accrue in time periods of less

than 30 days. And it is clear that the 30 day time period would be protective of the Scenic Rivers. A strategy to address inadequate data will be discussed in subsequent paragraphs.

#### **Frequency**

The Oklahoma Scenic Rivers criterion, as promulgated, does not allow *any* exceedance. For the Florida nutrient criteria, however, EPA promulgated a one in three year allowable excursion frequency for the annual geometric mean similar to the EPA Guidelines for Controlling Toxic Discharges.

*"A no more than one in three year frequency of excursions avoids unacceptable effects on aquatic life as it will allow the stream ecosystem enough time to recover from the occasionally elevated year of nutrient loadings (Chung et al. 1993; Huchens et al. 1998; Minshall 2003; Stephan et al. 1985; Tikkanen et al. 1994; Vieira et al. 2004; Wallace 1990; Wallace et al. 1986, 1991)."*

These events from which EPA justifies the recovery period are toxic pesticide spills and stream reconstruction. The nature of the impact from toxic events by far eclipses the nature and extent of the impact from excessive algae. In examining the appropriate allowable excursion frequency, the biological effect of an excursion must be considered. The one in three year frequency allowed excursion of an annual geometric mean could, in essence, allow unchecked algal growth and sustained major impacts to the stream 33% of the time. In the Oklahoma Scenic Rivers, this frequency would be unacceptable and would not be protective of the scenic rivers special status.

For criteria in the range that controls algae growth, the effect of a single excursion (one day) should be imperceptible. That single excursion would allow luxury uptake of the nutrient that would drive a slight elevation of biomass and a slight change in the community metrics. Lacoursiere (2011) showed that the recovery of the diatom community after a stone or tile is moved from high nutrient waters to low nutrient waters was a few weeks. The consequence of a single excursion in the short term is minimal. Cumulative effects of multiple short term excursions, however, should be prevented. Frequent short term excursion and luxury uptake

can result in a prolonged increase in algal standing crop followed by shifts in grazer communities and ultimately the fish community. Preventing the cumulative impacts makes it imperative that the 30 day geometric mean should not be exceeded. It should be noted, however; a geometric mean in itself does allow a frequency of exceedance because it renders single values as a descriptor of the data set. Furthermore, a geometric mean reduces the influence of extremely high values.

Oklahoma has implemented an assessment protocol that allows monthly geometric means to exceed no more than 25% of the time. This implementation, however, is not promulgated as part of the OWQS, and contrary to the promulgated criterion which says that "*The thirty (30) day geometric mean total phosphorus concentration in waters designated "Scenic River" in Appendix A of this Chapter shall not exceed 0.037 mg/L.*" The assessment protocol was developed by a working group made up of Oklahoma agencies with EPA Region 6 and Arkansas DEQ participating via telephone. The allowed 25% excursions frequency of monthly geometric means was adopted to reduce the likelihood of false positives in light of the limited data sets available to calculate 30 day geometric means. The assessment reality is that current technology and funding cannot practically provide data that represents the full range of conditions available to drive algae growth. As a side note, the working group favored extending the data sets to 3 months and included a requirement for storm flow data to bolster the data sets for the monthly calculation of the geometric mean. The allowed 25% exceedance was adopted to offset potential error introduced by limited data and compounded influence of the 90 day data set reassessed every 30 days.

In this review effort, the Arkansas TAG members recommend that an "appropriate allowable exceedance frequency should be included in the TP criterion" because of the variability in phosphorus concentrations. EPA has also recommended that OWRB reconcile the assessment protocol and the approved criterion. EPA suggested that reconciliation could be achieved through modification of either the assessment protocol or the approved criterion such that the same averaging period and frequency are reflected in both places. (EPA noted that doing so would entail further OWRB analysis.) EPA also suggested that OWRB consider adding a

statement or footnote in the water quality standards at OAC 785:45-5-19(c)(2) to clarify that applicability or implementation of the averaging period and frequency in light of the data representativeness issues described by OWRB. To resolve these issues, the 30 day geometric mean could be preserved in the Scenic River's criterion language. Modification of the standards language could be considered to add a provision that would allow the calculated 30 day geometric mean to exceed the numerical criterion when the available data is not representative of full range of conditions in the preceding 30 days.

**Consideration of the Protectiveness of the Scenic River Criterion for Downstream Waters**

Tenkiller and Broken Bow Reservoirs in Oklahoma and Lee Creek Reservoir in Arkansas are each downstream of an Oklahoma Scenic River(s). EPA requires that criteria must be protective not only of in-stream uses but of downstream uses as well. This principle is established in 40 CFR 131.10(6). OWRB solicited information regarding this issue. There was no information submitted regarding the protectiveness of the criterion regarding these particular downstream waters. The ongoing Total Maximum Daily Load (TMDL) development schedule for the Illinois River is planned to include modeling for Tenkiller Reservoir. This modeling effort is not complete and any results have yet to be made available. Therefore, there is no data to consider at this time.

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**Appendix A**

Bibliography of Reviewed Literature



**Scientific Literature Reviewed**

Over the past 10 years, OWRB staff have continually reviewed the major scientific literature and guidance related to nutrient criteria. Staff has continually reviewed all new editions of: *Hydrobiologia*, *Journal of North American Benthological Society*, *Journal of American Water Resources Association*, *Limnology and Oceanography*, *Canadian Journal of Fisheries and Aquatic Sciences*, as well as any other relevant literature and state or EPA documents that relate to nutrient criteria development.

The Technical Advisory Group reviewed information and reports that were submitted in response to the “Best Scientific Information” request. Included in the information submitted was a report completed by Wright Water Engineers, Inc. on behalf of the Northwest Arkansas Council. Also included in this information was a technical memorandum from GBMc & Associates on behalf of the City of Siloam Springs, Arkansas. The University of Arkansas as well as the United States Geological Survey (USGS) submitted information and research to be included in the TAG’s review. In addition to these technical reports, there were also several comment letters from cities in northwest Arkansas. Reports and information from the Oklahoma Attorney General’s files were also reviewed by the TAG. (All information reviewed is available at [www.owrb.ok.gov/quality/standards/scenicrivers.php](http://www.owrb.ok.gov/quality/standards/scenicrivers.php))

In addition to the submitted information, the TAG also reviewed the results from an EPA “N-steps” review. This review included abstracts from over 900 research articles related to nutrients and nutrient criteria development.

The following are journal articles that were found to be relevant and were reviewed by the OWRB and the TAG:

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**Appendix B**

Phosphorus Values Assembled from Literature Review

Reference	TP (mg/L)	Statistical Measure	Benthic Chi a (mg/m <sup>2</sup> )	Area Studied	Citation	Additional Comments
1 Baker, M.A., and R.S. King 2010		Threshold Indicator Taxa Analysis (TITAN)			Methods in Ecology and Evolution. 2010. 1(1):25-37	
2 Biggs 2000			9.1 - 396	25 Temperate New Zealand streams and rivers		
3 Biggs 2000			0.73 - 81	25 Temperate New Zealand streams and rivers		
4 Bourassa and Cattaneo 1998	0.005 - 0.054	Average of 3 Replicates for 2 Sampling Days for Actual Conditions	4.8 - 54.6	12 Snowmelt Fed Streams in the Lower Laurentian Mountains of Quebec		
5 Caskey, Brian J., Jeffrey W. Frey, and Shivi Selvaratnam 2010	0.042			Ohio	Biological Breakpoints of the Stream Variables and Implications for Developing Nutrient Criteria Scientific Investigations Report 2010-5026	These findings indicate that a TP concentration target of 0.042 mg/L based upon striped shiner biomass might be an appropriate concentration for showing changes from eutrophic or mesotrophic stream classification
6 Chetelat et al. 1999	0.006 - 0.130	Mean Concentration Range for Actual Conditions for 30 Samples	9.0 - 470	13 Temperate Lowland Rivers in Southern Ontario & Western Quebec		
7 Chetelat et al. 1999	0.56	Mean Concentration for Actual Conditions for 30 Samples		13 Temperate Lowland Rivers in Southern Ontario & Western Quebec		
8 Chetelat et al. 1999	0.02			13 Temperate Lowland Rivers in Southern Ontario & Western Quebec		
9 Chetelat, J., F.R. Pick, and P. B. Hamilton 2006				Canada	Limnology and Oceanography 51(1, part 2), 2006, 681-689	Potamoplankton size structure and taxonomic composition: influence of river size and nutrient concentrations.
10 Chin 2006	< 0.02			Unknown		
11 Clark Fork River Tri-State Council, MT	0.02	Noisance growth is defined as 250 mg/m <sup>2</sup> Periphyton Maximum		Streams		
12 Clark, Mueller and Mast 2000	0.022	Relative undeveloped, flow-weighted median		U.S.		
13 Dodds 2006			> 100	Rivers and streams	Limnol. Oceanogr., 51(1, part 2), 2006, 671-680	

14	Dodds 2007	-	-	-	-	TRENDS in Ecology and Evolution Vol. 22 No. 12	Trophic State, Eutrophication and Nutrient Criteria in Streams
15	Dodds and Oakes 2004	0.059	Intercept of Multiple Linear Regression Models Based on Actual Land Use	-	Ecoregion IV		
16	Dodds and Oakes 2004	0.031	Intercept of Multiple Linear Regression Models Based on Actual Land Use	-	Ecoregion IX		
17	Dodds and Oakes 2004	0.043	Intercept of Multiple Linear Regression Models Based on Actual Land Use	-	Ecoregion XI		
18	Dodds and Oakes 2004	0.06	Maximum for Streams and Rivers	-	Overall recommendation		
19	Dodds and Oakes 2004	0.059	Forested Streams in Lesser Developed Basins	-	Nutrient Ecotone IV		
20	Dodds and Oakes 2004	0.031	Forested Streams in Lesser Developed Basins	-	Nutrient Ecotone IX		
21	Dodds and Oakes 2004	0.043	Forested Streams in Lesser Developed Basins	-	Nutrient Ecotone XI	Limnol. Oceanogr.: Methods 2, 2004, 333-341.	
22	Dodds and Oakes 2006	-	-	-	Flint Hills of Kansas	Environmental Management Vol. 37, No. 5, pp. 624-646.	This research suggests that nutrient criteria may not be met only by managing permanently flowing streams.
23	Dodds and Welch 2000	0.06	Benthic Chl a < 100 mg/m <sup>3</sup> 'most of the time'	Most of the Time' < 100	Literature review findings	J. N. Am. Benthol. Soc., 2000, 19(1):186-196	Establishing nutrient criteria in streams
24	Dodds and Welch 2000	0.02	Tri-State Implementation Council, Clark Fork Voluntary Nutrient Reduction Program	-	Clark Fork River, Montana		
25	Dodds and Welch 2000	literature compilation excellent background reading			Literature review findings	J. N. Am. Benthol. Soc., 2000, 19(1):186-196	<a href="http://www.k-state.edu/doddslab/journals/arts/dodds%20and%20welch%20nabs%202000.pdf">http://www.k-state.edu/doddslab/journals/arts/dodds%20and%20welch%20nabs%202000.pdf</a>
26	Dodds et al. (2006)	0.08			Data from North American, Australian, New Zealand and European temperate streams		
27	Dodds et al. 1998	0.075	Eutrophy is defined as 200 mg/m <sup>2</sup> Periphyton Maximum	-	Streams		
28	Dodds et al. 2008	0.087	Current Median Concentration for 65 River Stations during Summer Months with 100% Exceeding EPA Reference Median	-	Ecotone IV		
29	Dodds et al. 2008	0.08	Current Median Concentration for 274 River Stations during Summer Months with 99% Exceeding EPA Reference Median	-	Ecotone IX		

			Current Median Concentration for 290 River Stations during Summer Months with 94% Exceeding EPA Reference Median				
30	Dodds et al 2008	0.022	Nuisance growth is defined as 100-200 mg/m <sup>2</sup> Periphyton Max	100 - 200 Maximum	Clark Fork River, Montana	Ecoregion XI	
31	Dodds, Smith and Zander 1997	0.038 - 0.09	Mean Reference Level & Suggested Target Level to Control Algae	< 150	Clark Fork River, Montana		
32	Dodds, Smith and Zander 1997	0.03	Global Data Regression Analysis for Max 100 mg/m <sup>2</sup> Chl a	< 100	Clark Fork River, Montana		
33	Dodds, Smith and Zander 1997	0.035	Breakpoint in Algal Response - No Risk of 150 mg/m <sup>2</sup> Chl a	<< 150	Clark Fork River, Montana		
34	Dodds, Smith and Zander 1997	0.02	Mean Benthic Chl a < 50 mg/m <sup>2</sup>	Mean < 50			
35	Dodds, Smith and Zander 1997	0.055	breakpoint on periphyton biomass				
36	Dodds, W. K., V. H. Smith, and K. Lohman 2002	0.03					Dodds, W. K., V. H. Smith, and K. Lohman. 2002. Nitrogen and phosphorus relationships to benthic algal biomass in temperate streams. Can. J. Fish. Aquat. Sci. 59: 855-874
37	Dodds, W. K., V. H. Smith, B. Zander 1997	0.03			Clark Fork River, Montana		W.K. Dodds, V.H. Smith, B. Zander. Developing nutrient targets to control benthic chlorophyll levels in streams: A case study of the Clark Fork River. Water Research, Volume 31, Issue 7, July 1997
38	Dodds, et al (2008)				Kansas River		Dodds, W. K., et al. (2008). Nitrogen cycling and metabolism in the thalweg of a prairie river, J. Geophys. Res., 113, G04029, doi:10.1029/2008JG000696.
39	Dojlido and Best 1993	< 0.01				Surface waters	
40	Dojlido and Best 1993	####				Surface waters	
41	Dojlido and Best 1993	> 0.035				Surface waters	
42	EPA	0.02				Agg Ecor IX	Ambient Water Quality Criteria Recommendations Information Supporting the Development of State and Tribal Nutrient Criteria Rivers and Streams in Nutrient Ecoregion XI (Dec 2000)
43	EPA 2000	0.008				Agg Ecor VIII	Ambient Water Quality Criteria Recommendations Information Supporting the Development of State and Tribal Nutrient Criteria Rivers and Streams in Nutrient Ecoregion XI (Dec 2000)

4) EPA 2000	0.008				Agg Ecor XI	Ambient Water Quality Criteria Recommendations for Use Supporting the Development of State and Tribal Nutrient Criteria for Rivers and Streams in Nutrient Ecoregion XI (Dec 2000)	
5) EPA 2000	0.008				Agg Ecor XIV	Ambient Water Quality Criteria Recommendations for Use Supporting the Development of State and Tribal Nutrient Criteria for Rivers and Streams in Nutrient Ecoregion XIV (Dec 2000)	
6) EPA 2000	0.00875				Agg Ecor II	Ambient Water Quality Criteria Recommendations for Use Supporting the Development of State and Tribal Nutrient Criteria for Rivers and Streams in Nutrient Ecoregion II (Dec 2000)	
7) EPA 2000	0.01				Agg Ecor X	Ambient Water Quality Criteria Recommendations for Use Supporting the Development of State and Tribal Nutrient Criteria for Rivers and Streams in Nutrient Ecoregion X (Dec 2000)	
8) EPA 2000	0.01475				Agg Ecor VII	Ambient Water Quality Criteria Recommendations for Use Supporting the Development of State and Tribal Nutrient Criteria for Rivers and Streams in Nutrient Ecoregion VII (Dec 2000)	
9) EPA 2000	0.017				Agg Ecor III	Ambient Water Quality Criteria Recommendations for Use Supporting the Development of State and Tribal Nutrient Criteria for Rivers and Streams in Nutrient Ecoregion III (Dec 2000)	
10) EPA 2000	0.0175				Agg Ecor XII	Ambient Water Quality Criteria Recommendations for Use Supporting the Development of State and Tribal Nutrient Criteria for Rivers and Streams in Nutrient Ecoregion XII (Dec 2000)	
11) EPA 2000	0.02				Agg Ecor IV	Ambient Water Quality Criteria Recommendations for Use Supporting the Development of State and Tribal Nutrient Criteria for Rivers and Streams in Nutrient Ecoregion IV (Dec 2000)	



52	EPA 2000	0.033			Agg Ecor V	Ambient Water Quality Criteria Recommendations Information Supporting the Development of State and Tribal Nutrient Criteria Rivers and Streams in Nutrient Ecoregion XI (Dec 2000)	
53	EPA 2000	0.0375			Agg Ecor VI	Ambient Water Quality Criteria Recommendations Information Supporting the Development of State and Tribal Nutrient Criteria Rivers and Streams in Nutrient Ecoregion XI (Dec 2000)	
54	EPA 2006c		Human Health		Any water		
55	EPA 2006c	0.1	Criteria Continuous Concentration (CCC)		Sea water		
56	EPA 2010	0.01			Clear lakes, Acidic	Has been proposed by EPA for the State of Florida. January 2010.	
57	EPA 2010	0.03			Clear lakes, Alkaline	Has been proposed by EPA for the State of Florida. January 2010.	
58	EPA 2010	0.042			Canals	Has been proposed by EPA for the State of Florida. January 2010.	
59	EPA 2010	0.043			Panhandle Region	Has been proposed by EPA for the State of Florida. January 2010.	
60	EPA 2010	0.05			Colored lakes	Has been proposed by EPA for the State of Florida. January 2010.	
61	EPA 2010	0.107			Peninsula	Has been proposed by EPA for the State of Florida. January 2010.	
62	EPA 2010	0.359			North Central	Has been proposed by EPA for the State of Florida. January 2010.	
63	EPA 2010	0.739			Bone Valley	Has been proposed by EPA for the State of Florida. January 2010.	
64	EPA Region 7 & 8 November 2008	0.03 - 0.050			Big Sioux [South Dakota] Periphyton and Nutrient Study	Info from a presentation given at an EPA Region 7 & 8 meeting in Denver in November 2008.	
65	Evans-White, M.A., W.K. Dodds, D.G. Huggins, D.S. Baker				Central Plains streams	J. N. Am. Benthol. Soc., 2009, 28(4):855-868	results suggest that changes in resource quality could contribute to large-scale losses in biodiversity in nutrient-enriched lotic ecosystems. Within shredder and collector-gatherer macroinvertebrate feeding groups, P-rich food might allow faster growing taxa with high body P demands to out-compete slower growing taxa adapted to lower quality food resources. This pattern suggests that biotic integrity is directly linked to nutrients in streams and that toxicity, low dissolved O <sub>2</sub> , and increased turbidity might not be the only mechanisms leading to reductions in diversity as nutrient concentrations increase.
66	Fifield and Haines 1995	2.2	Nitrate, Nitrite, Ammonia & Kejidahl Nitrogen Summed		1989 UK Standards		
67	Godwin, C.M., M.A. Anbur, and H.J. Carrick				Pennsylvania streams	Hydrobiologia (2009) 623:141-152	Periphyton communities were analyzed for nutrient status and elemental composition.

6) Haggard 2005	no recommendation							effect of reduced effluent phosphorus concentrations at the Illinois river near Arkansas, 1997-2004. Proceedings report TNDDI conference ASAE Atlanta, GA - March, 2005
6) Haggard, Mosser and Becker 2003	0.003 - 0.103	75th Percentile of Median Concentrations for All Data Actual Median	Illinois River and Tributaries Ozark Highland Ecoregion 39 Oklahoma only					
7) Becker 2003	0.0 - 0.770	Concentrations (Min./Max.) for All Data	Ozark Highland Ecoregion 39 Oklahoma only					
1) Haggard, Mosser and Becker 2003	0.01 - 0.069	25th Percentile of Median Concentrations for All Data Actual Median	All Oklahoma and Part of Arkansas					
2) Becker 2003	0.0 - 1.315	Concentrations (Min./Max.) for All Data	All Oklahoma and Part of Arkansas					
7) Haggard 2010		Trends	NW Arkansas					J. Environ. Qual. 39:2113-2120 (2010)
Merthy, A.T. and J.C. Siffers								Our analysis and the literature strongly suggest that US national nutrient strategies are too coarse to account for natural variation in stream nutrient concentrations. Getting appropriate national nutrient criteria will require river-scale typology or classification of sites that better controls for natural variation.
14) Hill, W.F., and S.E. Fanta (2008)	0.022 threshold		Wettable streams in the lower 48 state					Journal of the North American Benthological Society Vol. 27, No. 4, pp. 932-948.
14) Hill, W.F., S.E. Fanta and B.J. Roberts (2009)	0.025 threshold		Experimental streams					Freshwater Biology (2008) 53: 215-225
17) Hill, W.F. et al (2011)			Experimental streams					Phosphorus and light control periphyton growth at subsaturating irradiances
7) Justus, B.G. et al. 2009	0.015 (median)	Comparison of indices across a nutrient gradient	Orank streams					Limnol. Oceanogr., 54(7), 2005, 3683-3690
King, R.S. and C.J. Richardson, 2003	0.02 - 0.035 will cause degradation to macro inverte		Everglades canals					Quantifying phosphorus and light effects in stream algae
								Resource synergism in stream periphyton communities
								Journal of Ecology 2011, 99, 484-493
								B.G. Justus et al. Ecological Indicators 10 (2010) 627-638
								King, R.S. and C.J. Richardson, 2003. Integrating bioassessment and ecological risk assessment: a conceptual framework for numerical water-quality criteria. Environmental Management 31: 793 - 808

80	King, R.S., et al. 2009	0.015 - 0.020	maximum, threshold	"sharp decline in biological integrity"	Texas/Cross Timbers Ecoregion	R.S. King et al. 2009 (Baylor University) 104(b)(3) report to EPA region 6
81	Maidment 1993	0.02 – 6.0	"Range and Typical Concentrations for Water Quality Parameters in Streams and Rivers"		1963 Data	
82	Maidment 1993	0.02 – 6.0	Tables 11.1.3 "Range and Typical Concentrations for Water Quality Parameters in Streams and Rivers"		Data sites are unknown but appear to exclude heavily polluted rivers.	
83	Maidment 1993	0.01 - 3.0	Tables 11.1.3 "Range and Typical Concentrations for Water Quality Parameters in Streams and Rivers"		Data sites are unknown but appear to exclude heavily polluted rivers.	
84	Miltner & Rankin (1998)	0.06			Ohio	Miltner & Rankin (1998)
85	Miltner 2010	0.04	protective cap?	.04 mg/ l TP for protection based upon the change point in periphyton	Small rivers and streams in Ohio	environmental management published on line January 28 2010
86	Montana Department of Environmental Quality	0.006			Canadian Rockies	(November 2008) Scientific and Technical Basis of the Numeric Nutrient Criteria for Montana's Wadeable Streams and Rivers,
87	Montana Department of Environmental Quality 20008	0.048			Middle Rockies	(November 2008) Scientific and Technical Basis of the Numeric Nutrient Criteria for Montana's Wadeable Streams and Rivers, Montana Department of Environmental Quality
88	Montana Department of Environmental Quality 20008	0.123			Northwestern Glaciated Plains	(November 2008) Scientific and Technical Basis of the Numeric Nutrient Criteria for Montana's Wadeable Streams and Rivers, Montana Department of Environmental Quality

	Montana Department of Environmental Quality	0.124		Northwestern Great Plains, Wyoming Basin	(November 2008) Scientific and Technical Basis of the Numeric Nutrient Criteria for Montana's Wadeable Streams and Rivers, Montana Department of Environmental Quality	
89	2008					
	Montana Department of Environmental Quality	0.011		Idaho Batholith	(November 2008) Scientific and Technical Basis of the Numeric Nutrient Criteria for Montana's Wadeable Streams and Rivers, Montana Department of Environmental Quality	
90	2008					
	Montana Department of Environmental Quality	0.012		Northern Rockies	(November 2008) Scientific and Technical Basis of the Numeric Nutrient Criteria for Montana's Wadeable Streams and Rivers, Montana Department of Environmental Quality	
91	2008					
	Morgan, A.M., T.V. Royer, M.B. David, and L.E. Gentry (2006)			Agricultural streams in Illinois	Journal of Environmental Quality, Vol. 35, July - August 2006	Relationships among Nutrients, Chlorophyll-a, and Dissolved Oxygen in Agricultural Streams in Illinois
92						
	Mueller and Spahr 2006	~ 0.01	Flow-weighted 25th Percentile Concentrations Regression Models Based on Actual NAWQA Data (Undeveloped/Reference Watersheds)	Ecoregion IV		
93						
	Mueller and Spahr 2006	~ 0.150	Flow-weighted 25th Percentile Concentrations Regression Models Based on Actual NAWQA Data (Undeveloped/Reference Watersheds)	Ecoregion IV		
94						
	Mueller and Spahr 2006	~ 0.03	Flow-weighted 25th Percentile Concentrations Regression Models Based on Actual NAWQA Data (Undeveloped/Reference Watersheds)	Ecoregion IX		
95						
	Mueller and Spahr 2006	~ 0.08	Flow-weighted 25th Percentile Concentrations Regression Models Based on Actual NAWQA Data (Undeveloped/Reference Watersheds)	Ecoregion IX		
96						
	Mueller and Spahr 2006	~ 0.022	Flow-weighted 25th Percentile Concentrations Regression Models Based on Actual NAWQA Data (Undeveloped/Reference Watersheds)	Ecoregion XI		
97						
	Mueller and Spahr 2006	~ 0.05	Flow-weighted 25th Percentile Concentrations Regression Models Based on Actual NAWQA Data (Undeveloped/Reference Watersheds)	Ecoregion XI		
98						

99	Vuillee and Sghir 2006	-	~ 0.075	Undeveloped Land Use 75th Percentile	All data for undeveloped watersheds	Ecological Engineering 27 (2004) 197-207		
100	Wardlock et al (2004)	-	-	-	Urban streams	J. Am. Water Resour. Assoc. 40(3):331-345		Dynamic influences of nutrients and grazing fish on periphyton during recovery from a flood
101	Wardlock, E. et al (2011)	-	-	-	Northeastern Kansas riparian streams			Beckie effective July 2, 2001
102	McIntosh, Bley (2002)	-	0.29	none	Iterative review			
103	Shively (2006)	-	0.937	-	Oklahoma State Univ			
104	Rier, S.T. and R.J. Stevenson	-	-	-	Kentucky	Hydrobiologia (2006) 561: 131-147		Response of periphytic algae to gradients in nitrogen and phosphorus in streamside meadows
105	Robertson, Shad and 100 Wahlen 2001	-	0.01 - 2.16	Actual Mid-Monthly Median Concentrations (Min/Max) for All Data Reported	Data from 234 sites across 14 Midwest Ecoregions in upper Midwest U.S. temperate streams for watersheds ranging from 1.5 to 11,628.9 square miles			
106	Robertson, Shad and 100 Wahlen 2001	-	0.02 - 0.11	25th Percentile Range for General Population	Data from 234 sites across 14 Midwest Ecoregions in upper Midwest U.S. temperate streams for watersheds ranging from 1.5 to 11,628.9 square miles			
107	Robertson, Shad and 100 Wahlen 2001	-	0.17	Mean for General Population	Data from 234 sites across 14 Midwest Ecoregions in upper Midwest U.S. temperate streams for watersheds ranging from 1.5 to 11,628.9 square miles			
108	Robertson, Shad and 100 Wahlen 2001	-	0.11	Median for General Population	Data from 234 sites across 14 Midwest Ecoregions in upper Midwest U.S. temperate streams for watersheds ranging from 1.5 to 11,628.9 square miles			
109	Roehm et al. 2002	-	0.082	Median for General Population	Nutrient Ecoregions over 52 sample sites			
110	Roehm et al. 2002	-	0.094	Median for General Population	Nutrient Ecoregion IX over 227 sample sites			
111	Roehm et al. 2002	-	0.022	Median for General Population	Nutrient Ecoregion XI over 164 sample sites			

112	Schneider, Susanne C. and Eli-Anne Lindström 2011	0.01		Norway	Hydrobiologia Volume 665, Number 1, 143-155	>500 samples from >350 sites from the Norwegian mainland and can be used to describe trophic status at a river site.
113	Sheeder, S.A., and B.M. Evans 2004	0.07	Midpoint between impaired and unimpaired watersheds	Pennsylvania	Journal of the American Water Resources Association, August 2004, pp 881-888	Estimating Nutrient and Sediment Threshold Criteria for Biological Impairment in Pennsylvania Watersheds
114	Smith and Christopher P. Tran 2010	clusters based on macroinvertebrate data 0.037 mg TP/L clusters based on diatom data 0.037 mg TP/L		40 large river sites throughout New York State	J. N. Am. Benthol. Soc., 2010, 29(3):875-891	A weight-of-evidence approach to define nutrient criteria protective of aquatic life in large rivers
115	Smith et al. 2003	0.06	Fully Forested Streams in Undeveloped Basins	-	Nutrient Ecoregion IV	
116	Smith et al. 2003	0.048	Fully Forested Streams in Undeveloped Basins	-	Nutrient Ecoregion IX	
117	Smith et al. 2003	0.02	Fully Forested Streams in Undeveloped Basins	-	Nutrient Ecoregion XI	
118	Smith et al. 2003	0.06	Fully Forested Streams in Undeveloped Basins	-	Nutrient Ecoregion IV	
119	Smith et al. 2003	0.048	Fully Forested Streams in Undeveloped Basins	-	Nutrient Ecoregion IX	
120	Smith et al. 2003	0.02	Fully Forested Streams in Undeveloped Basins	-	Nutrient Ecoregion XI	
121	Soranno, P.A., et al. 2008	0.008 - 0.018	predictive model of biological thresholds, algorithm		374 Michigan lakes	Limnol. Oceanogr., 53(2), 2008, 773-787
122	Stevenson et al 2006	0.03	Maximum nutrient to avoid nuisance algae risks.	> 20% avg. & > 40% max.	104 streams over 2 month period for 1st through 4th order streams in North Central U.S. and northwest Kentucky and Michigan	
123	Stevenson et al 2006	0.01 - 0.03	Observed Nutrient Inputs Creating an Algal Response		104 streams over 2 month period for 1st through 4th order streams in North Central U.S. and northwest Kentucky and Michigan	Hydrobiologia (2006) 561:149- 165 Comparing effects of nutrients on algal biomass in streams in two regions with different disturbance regimes and with applications for developing nutrient criteria.
124	Stevenson et al 2006	≤ 0.011	Oligotrophic Reference Value for Streams and Rivers	10.0 - 20.0	104 streams over 2 month period for 1st through 4th order streams in North Central U.S. and northwest Kentucky and Michigan	

125	Stevenson unpublished data (EPA 2009d)	0.01 - 0.02	Cladophora Nuisance Growth		Streams	
126	Stevenson, R. Jan., Brian H. Hill, Alan T. Herlihy, Lester L. Yuan, and Susan B. Norton. (2008)	0.01 - 0.012	Thresholds and responses		High-quality biological conditions in streams of the Mid-Atlantic Highlands	R. Jan Stevenson, Brian H. Hill, Alan T. Herlihy, Lester L. Yuan, and Susan B. Norton. (2008) Algae-P relationships, thresholds, and frequency distributions guide nutrient criterion development. Journal of the North American Benthological Society 27:3, 783-799
127	Stevenson, R. Jan, et al. (2006)	.010 - .030				R. Jan Stevenson et al., Hydrobiologia (2006) 561:149-165. Comparing effects of nutrients on algal biomass in streams in two regions with different disturbance regimes and with applications for developing nutrient criteria
128	Stevenson, R. Jan, et al. (2008)	.010 - .020			Mid-Atlantic Highlands	R. Jan Stevenson et al. (2008) Journal of the North American Benthological Society. Algae-P relationships, thresholds, and frequency distributions guide nutrient criterion development
129	STEVENSON, R.J., ET AL. 2008	P criterion between 0.01 and 0.012 TP/L to protect highquality biological conditions in streams of the Mid-Atlantic Highlands	median and average?		Mid-Atlantic Highlands.	J. N. Am. Benthol. Soc., 2008, 27(3):783-799
130	Suplee, M.W., A. Varghese, J. Cleland 2007				Montana streams	Suplee, Michael W., Arun Varghese, and Joshua Cleland, 2007. Developing Nutrient Criteria for Streams: An Evaluation of the Frequency Distribution Method. Journal of the American Water Resources Association (JAWRA) 43(2):453-472. DOI: 10.1111/j.1752-1688.2007.00036.x
131	Stevenson et al 2010	0.027	Threshold Response with filamentous algae		Illinois River Watershed	Manuscript is in press - Hydrobiologia

Van Krevelen and Jones 1978 111	0.048	Calculated summer (May-September) arithmetic mean 25 <sup>th</sup> Percentile		116 temperate streams from across the world but primarily from North America for phytoplankton response		
Wang et al. (2007) 113	0.073			Wisconsin		
120 Welch et al. 1988	0.016 - 1.38		C-300	22 Northwestern U.S. and Swedish Streams 155 Massachusetts USGS 1st through 4th order River and Stream Locations with Varied	Hydrobiologia 177:241-248 (1988)	
Zimmerman and Campo 137 2007	0.019	25th Percentile of Median Concentrations for All Data	6.0 Closed Canopy 7.2 Open Canopy	155 Massachusetts USGS 1st through 4th order River and Stream Locations with Varied		
Zimmerman and Campo 138 2007	0.017 - 0.037	25th Percentile of Median Concentrations Rangs for All Data	4.225 - 8.225 Closed Canopy 4.725 - 8.725 Open Canopy	155 Massachusetts USGS 1st through 4th order River and Stream Locations with Varied Anthropogenic Impacts		



**Appendix C**

TAG Member's Comment Letters Regarding Draft Report



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
 REGION 6  
 1445 ROSS AVENUE, SUITE 1200  
 DALLAS, TX 75202-2733

MAR 26 2012

Mr. Derek Smithee, Chief  
 Water Quality Programs Division  
 Oklahoma Water Resources Board  
 3800 North Classen Blvd.  
 Oklahoma City, OK 73118

Dear Mr. Smithee:

I appreciate the opportunity to have participated in the Technical Advisory Group (TAG) assembled by the Oklahoma Water Resources Board (OWRB) in January 2011 to advise OWRB in its review of the Oklahoma Scenic Rivers total phosphorus criterion. This letter provides the U.S. Environmental Protection Agency (EPA) Region 6's general input on key aspects of the review, while the enclosure to this letter provides additional, more specific comments on OWRB staff's document titled *Draft Final Report: Oklahoma Scenic Rivers Phosphorus Criteria Review* which was provided to TAG members for review on March 12, 2012.

In light of EPA's role under Clean Water Act (CWA) Section 303(c) to review and approve or disapprove new and revised State water quality standards (WQS), EPA would like to separate its TAG member input from the overarching TAG recommendations included in OWRB staff's draft final report. Accordingly, I request that OWRB include this EPA letter as a separate appendix within OWRB staff's final version of the report (as has been done for the Arkansas TAG members' minority report). In addition to incorporating this letter in an appendix to the final OWRB staff report, I request that OWRB incorporate the revisions identified in the enclosure to this letter prior to finalizing the report.

Oklahoma's Scenic Rivers total phosphorus criterion is established in the *Oklahoma Administrative Code* (OAC) at OAC 785:45-5-19(c)(2) and provides that, "The thirty (30) day geometric mean total phosphorus concentration in waters designated 'Scenic River' in Appendix A of this Chapter shall not exceed 0.037 [milligrams per liter] mg/L" (brackets added). Because the objective of the TAG's effort was to review all three components of the Oklahoma Scenic Rivers total phosphorus criterion (including magnitude, duration, and frequency), EPA's input below focuses on each of these criterion components.

#### Magnitude

In adopting the Scenic Rivers total phosphorus criterion in 2002, OWRB used a 2000 United States Geological Survey (USGS) report titled *Nutrient Concentrations and Yields in Undeveloped Basins of the United States* as part of the scientific basis for the criterion. In the report, summary statistics were calculated for percentile values (10%, 25%, 50%, 75%, and 90%) of the flow-weighted mean stream values for several nutrient descriptors, including total

phosphorus. OWRB adopted a total phosphorus concentration of 0.037 mg/L, based on the values included in the report as Table 1, representing the 75<sup>th</sup> percentile value of undeveloped streams.

In reviewing Oklahoma's submittal of the Scenic Rivers total phosphorus criterion, EPA reviewed not only Oklahoma's scientific basis, but independently considered several other sources of data and information to address whether the outcome of Oklahoma's analysis is representative, scientifically defensible, and protective. EPA reviewed its national nutrient criteria recommendations for the Level III ecoregions occupied by the Scenic Rivers, as well as Ozark Highlands ecoregion stream data for total phosphorus presented in another USGS report titled *Percentile Distributions of Median Nitrite Plus Nitrate as Nitrogen, Total Nitrogen, and Total Phosphorus Concentrations in Oklahoma Streams, 1973-2001*. Based upon the record before it, EPA determined that Oklahoma's total phosphorus criterion is sufficient to protect the designated uses of the Scenic Rivers and approved the criterion on December 29, 2003.

Limited scientific information, additional to that available in 2003, has been gathered as a result of the 2011-2012 TAG criterion review effort and is described in OWRB's final report. The additional information does not indicate that a revision to the 0.037 mg/L magnitude component of the current criterion is necessary to ensure the criterion is sufficient to protect the designated uses of the Scenic Rivers.

Additionally, the Quality Assurance Project Plan (QAPP) developed by OWRB to guide the TAG's review effort explains that a "no change" recommendation should result from the review effort if there is either a "lack of adequate information" or if the "best scientific information supports the criterion." Arkansas TAG members' input stresses the lack of adequate information (e.g., need for a quantitative ecological endpoint; need for a stressor-response study on the Illinois River), while Oklahoma TAG members' input emphasizes that the "best scientific information supports the criterion." OWRB's QAPP provides that either of these conclusions should result in a "no change" recommendation to OWRB's nine-member Board. Therefore, OWRB's recommendation to retain the current 0.037 mg/L criterion appears consistent with the QAPP.

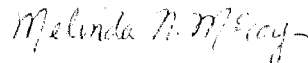
#### Duration and Frequency

EPA believes that a consistent phosphorus criterion and assessment protocol is necessary to manage the Scenic River watersheds. In previous EPA TAG member comments, EPA suggested that reconciliation of the phosphorus criterion and assessment protocol could be achieved through modification of either the assessment protocol or the approved criterion such that the same averaging period and frequency are reflected in both places. EPA also suggested that OWRB consider adding a statement or footnote in the Oklahoma WQS at OAC 785:45-5-19(c)(2) to clarify the applicability or implementation of the averaging period and frequency in light of the data representativeness issues described by OWRB. Either approach is likely to require additional data analysis and review of scientific information. EPA recommends that future work be completed to reconcile the differing durations and frequencies found in the phosphorus criterion and assessment protocol.

In summary, I would like to commend OWRB staff for their commitment, hard work, and transparency in completing this task of reviewing the Oklahoma Scenic Rivers total phosphorus

criterion, as well as each of the TAG members for their time, attention, and contributions throughout the review. EPA recognizes how important the shared watersheds of the Scenic Rivers are to both the States of Oklahoma and Arkansas. Ultimately, EPA believes that successful management of nutrients in these interstate watersheds will result from the availability of scientifically defensible and protective numeric nutrient criteria, supported by robust and carefully considered implementation, in both the States of Oklahoma and Arkansas. If you have any questions or concerns, please contact me at (214) 665-8055.

Sincerely,



Melinda N. McCoy  
Environmental Scientist  
Watershed Management Section

Enclosure

cc: Shellie Chard-McClary, Oklahoma Department of Environmental Quality  
Shannon Phillips, Oklahoma Conservation Commission  
Quang Pham, Oklahoma Department of Agriculture, Food and Forestry  
Steve Drown, Arkansas Department of Environmental Quality  
Ed Swaim, Arkansas Natural Resources Commission  
Cara Cowan Watts, Cherokee Nation

**Additional EPA Comments on OWRB Staff's Document Titled *Draft Final Report: Oklahoma Scenic Rivers Phosphorus Criteria Review***  
(Provided to TAG members for review on March 12, 2012)

1. (Page 2.) Given Arkansas' minority report and EPA's comment #5 below, we request the following revision to the second to last sentence in the "Executive Summary" on page 2:

After several face to face meetings and conference calls of this group, the majority of the TAG concluded that the best scientific information currently available supports the current criterion; therefore, no change in the criterion is necessary.

2. (Page 2.) The last sentence in the "Executive Summary" on page 2 states that the TAG "recommends that a *holistic study* documenting chemical, physical and biological integrity should occur to guide future water quality management of these waters" (emphasis added). However, the 4<sup>th</sup> and 5<sup>th</sup> "Findings of the TAG" found at the top of page 20 "suggest that a *comprehensive monitoring program* be implemented." In light of the Arkansas TAG members' recommendation for "completion of stressor-response studies on the Illinois River...", OWRB should clarify its reference to "holistic study" in the Executive Summary. Is the "holistic study" referring to OWRB's original suggestion for a "comprehensive monitoring program" or to Arkansas TAG members' recommendation for a "stressor-response study"?
3. (Page 8.) In the last sentence in the "Introduction" on page 8, an opening quotation mark should be inserted before the word "sufficient."
4. (Page 10.) The TAG Conference Call held in February 2012 (the 17<sup>th</sup>) should be added to Table 1 on page 10.
5. (Page 19.) EPA requests the following revisions to the second paragraph of the 1<sup>st</sup> finding within the "Findings of the TAG" section on page 19:

The majority of the Oklahoma Scenic Rivers Total Phosphorus Criterion Technical Advisory Group concludes that no change in the criterion is necessary due to the fact that the best scientific information currently available supports the current criterion. ~~However,~~ ~~the~~ the Arkansas members of the TAG have provided separate, contrary, recommendations which are included as Appendix C. EPA TAG member input is provided separately from the overarching TAG recommendation and is included in Appendix D of this report.

6. (Page 25.) Within the section titled "Further Findings Concerning Duration and Frequency," we would like to request that the last two sentences under the subsection titled "Frequency" (near bottom of page 25) be replaced with new language.

**These statements:**

EPA also has called for a review of alternative assessment periods or to adopt rules that eliminate the inconsistency between the assessment protocol and the approved criterion.

*Enclosure*

EPA recommends modification of the Scenic Rivers criterion with a proviso that would allow some exceedance when limited data are available.

**should be replaced with the following statements:**

EPA has also recommended that OWRB reconcile the assessment protocol and the approved criterion. EPA suggested that reconciliation could be achieved through modification of either the assessment protocol or the approved criterion such that the same averaging period and frequency are reflected in both places. (EPA noted that doing so would entail further OWRB analysis.) EPA also suggested that OWRB consider adding a statement or footnote in the water quality standards at OAC 785:45-5-19(c)(2) to clarify the applicability or implementation of the averaging period and frequency in light of the data representativeness issues described by OWRB.

7. (Page 25.) Within the section titled "Further Findings Concerning Duration and Frequency," we would like to request that the subsection heading titled "Recommendation" (near bottom of page 25) be revised to "OWRB Recommendation" or "OWRB Recommendation in Light of Arkansas and EPA TAG Member Comments." We request this revision, since the recommendation is an OWRB recommendation that has not been discussed or agreed to by the full TAG. Additionally, EPA would need to review and take action on any WQS revisions that could be adopted as a result of OWRB's recommendation.



STEVEN A. THOMPSON  
Executive Director

OKLAHOMA DEPARTMENT OF ENVIRONMENTAL QUALITY

MARY FALLIN  
Governor

March 20, 2012

Mr. Derek Smithee, Chief  
Water Quality Programs Division  
Oklahoma Water Resources Board  
3800 N. Classen Blvd.  
Oklahoma City OK 73118

RE: Draft Final Report - Oklahoma Scenic Rivers Phosphorus Criteria Review

Dear Mr. Smithee:

The Oklahoma Department of Environmental Quality (DEQ) would once again like to thank you and all of the members of the Technical Advisory Group (TAG) for the extensive effort put forth in the review of the Oklahoma Scenic Rivers phosphorus criterion. The Oklahoma DEQ concurs with the conclusions set forth in the Oklahoma Scenic Rivers Phosphorus Criteria Review Draft Final Report. We would, however, like to offer comments on the Minority Report submitted by the Arkansas TAG members (Appendix C).

The focus of the Arkansas TAG members' Minority Report is that the 0.037 mg/L TP criterion is not substantiated by the available information and the implementation of the standard should be delayed for a minimum of 10 years. The 0.037 mg/L criterion is not only appropriate, but is on the high end of the range supported by the studies reviewed during the re-evaluation process. The Arkansas TAG members' report states their belief that "there is a significant lack of data specific to the Oklahoma Scenic Rivers and the Oklahoma portion of the Illinois River in particular." Based on the review of the available scientific literature, the studies indicate that algal growth response to total phosphorus concentrations is relatively constant across the globe. The opinions expressed in the Minority Report seem to be unfounded.

The Arkansas TAG members' recommend a 10 year delay in implementation of the current standard to complete stressor-response studies on the Illinois River, allow for completion of the EPA's Illinois River Watershed Model, provide time for "legacy phosphorus" to work through the system, and include an allowable exceedance frequency to the TP criterion. The "completion of stressor-response studies on the Illinois River to provide a scientific basis to determine the appropriate numeric standard for the river" as recommended in the Minority Report is not necessary in this case. Although fish and invertebrate evaluation is important in determination of the overall biological integrity of the stream, the designated use protected by the phosphorus



March 20, 2012  
Mr. Derek Smithee  
page 2

criterion is "Aesthetics" which is not dependent on the status of fish and invertebrate communities. Additionally, completion of the EPA's Illinois River Watershed Model and allowing time to allow the effects of "legacy pollutants" to work through the system are not relevant to the task of establishing a total phosphorus criterion.

The Arkansas TAG members raised the inconsistency between the total phosphorus criterion in Chapter 45 of Oklahoma's Water Quality Standards and the assessment methodology established in Chapter 46. The assessment methodology is not in question during the re-evaluation of the total phosphorus criterion. The total phosphorus criterion established in Chapter 45 is the criterion approved by EPA.

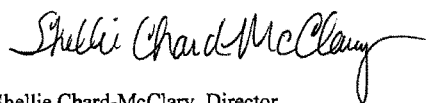
Three additional recommendations proposed by the Minority Report are requiring implementation of Nutrient Management Plans, delaying controls specified for point source dischargers until 2022, and continuing to encourage implementation of voluntary programs to reduce in-stream concentrations of total phosphorus in the shared Scenic Rivers. This appears to simply delay until 2022 the point source controls without regard to the EPA approved Scenic Rivers Phosphorus criterion.

The Minority Report suggests that "both states should continue to encourage implementation of voluntary programs to reduce in-stream concentrations of total phosphorus in the Shared Scenic Rivers." While DEQ agrees with encouraging voluntary programs, these voluntary programs should be implemented in concert with regulatory restrictions on dischargers and poultry litter applications in order to achieve the clean water goals we all share.

Once again, DEQ supports the decision of the Technical Advisory Group to retain the current Total Phosphorus criterion of 0.037 mg/L for Scenic Rivers in Oklahoma and appreciates the significant effort and hard work invested in this review by the OWRB and the other members of the TAG in the review of this criterion.

If you need any additional information on this issue, please contact me at 405-702-8174 or have your staff contact Mark Derichsweiler at 405-702-8188.

Sincerely,



Shellie Chard-McClary, Director  
Water Quality Division  
Oklahoma Department of Environmental Quality





State of Oklahoma  
Secretary of Agriculture

Mary Fallin  
Governor

Jim Reese  
Secretary of Agriculture

March 26, 2012

Mr. Derek Smithee, Chief  
Water Quality Program Division  
Oklahoma Water Resources Board  
3800 N. Classen Blvd  
Oklahoma City, OK 73118

Dear Mr. Smithee:

I appreciate the opportunity of participating in the Technical Advisory Group (TAG) for the re-evaluation of the total Phosphorus criterion of 0.037 mg/l established to protect Scenic Rivers of our State. Your staff has provided the TAG with more than hundred technical documents and studies regarding the effect of Phosphorus on stream water quality. These documents and studies were reviewed and evaluated; the relevant scientific information indicated that the above criterion is within the range of values protective of outstanding resources waters or scenic rivers.

We support the OWRB's recommendation to maintain the current total Phosphorus criterion of 0.037 mg/l for Scenic Rivers. The time and effort that you and your staff dedicated to this task are highly commendable. We are looking forward to working with you and other members of TAG in the protection and improvement of water quality of Oklahoma's streams and lakes.

Sincerely;

A handwritten signature in black ink that reads "Quang Pham".

Quang Pham, P.E.  
Environmental Programs Manager  
Agricultural Environmental Management Services Division

MARY FALLIN  
GOVERNOR

TODD LAMB  
LIEUTENANT GOVERNOR



MIKE THRALLS  
EXECUTIVE DIRECTOR

BEN POLLARD  
ASSISTANT DIRECTOR

Responsible Care For Oklahoma's Natural Resources

Feb. 8, 12

Phil Moershel  
Water Quality Standards Section  
Oklahoma Water Resources Board  
3800 N Classen Blvd.  
Oklahoma City, OK 73118

Dear Phil,

The Oklahoma Conservation Commission has greatly appreciated the opportunity to participate with the Interstate/Tribal/EPA Technical Advisory Group charged with re-evaluation of the 0.037 mg/L total phosphorus criterion for Oklahoma's Scenic Rivers. We must commend the OWRB staff including Jason Childress, yourself, Derek Smithee, and others for the efforts made in coordinating the review and offering opportunity for review and input from the TAG as well as the tremendous efforts made to collect, evaluate, and summarize current and otherwise relevant scientific studies pertinent to the review.

Certainly, if given unlimited resources, any scientist would envision a strategy for such a review that would involve a literature review and then specific field sampling program that studied the relationship between the biotic response and instream nutrient concentrations and cycling in the Scenic River watersheds. However, what that scientist would probably assume was that they already knew where the literature review would lead them and that literature review would not necessarily deter their path toward additional field work. Perhaps the most rewarding and educational experience of this exercise from my perspective was that the literature review reaffirmed that we had been following the most appropriate policy all along, even though we had limited in-situ data from Scenic Rivers when the state set the policy back in 2002. The literature review reaffirmed that whether you are in Texas, Kansas, Oklahoma, Canada, or New Zealand, the algal response to nutrient concentrations, especially phosphorus, was within the same range and that the Oklahoma Scenic River Criterion was conservatively within that range. So, the literature review confirmed that, although additional field investigations within the site specific conditions of the Scenic Rivers would certainly be valuable given

the need for repeatability in science, there was no reason to suspect that such an investigation would lead us toward a significantly different number to protect this resource from eutrophication.

The second topic of consideration was whether the current review based on a 30-day geometric mean of the data was appropriate. The geometric mean and averaging period were both topics of consideration and discussion, as was the case when they were originally developed. When Oklahoma first began to develop the standard in the early 2000s, OCC "ran the numbers" using our available data from the scenic river watersheds to consider what impact varying averaging periods would have on evaluation of the criterion. Based on that review, we concurred with OWRB's recommendation for a 30 day averaging period because the longer 90 day or annual averaging period greatly reduced the impact of large, primarily NPS-driven loading events on the ability to meet the criteria. We felt that a longer averaging period placed the burden of meeting the criterion squarely on the shoulders of point sources while giving nonpoint source a pass or waiver.

Additional concerns about the appropriateness of the 30 day averaging period relate toward the misconception that sampling schedules generally mean that only one sample is collected in each reach per month so there really isn't anything to average. In fact, our network of various agency sampling in the watershed plus additional targeted storm event sampling results in multiple samples from each reach being collected during the 30 day period.

The literature review related to the 30-day averaging period considered many different factors that affect algal biomass growth and accumulation other than or in concert with nutrient concentrations. Although longer averaging periods may be more appropriate to consider in terms of pollutant impacts on different aspects of the biological community, with respect to the impact of nutrient concentrations on algal biomass accumulation, the 30 day window is more closely tied to the time period for algae to respond to a loading and/or scouring event.

Finally, as natural resources agencies, our mission cannot be to merely maintain the status quo, it must be to protect and improve the quality of natural resources. The State recognized the value of these scenic river unique resources in 1970 and since that time, water quality, in terms of algal biomass accumulations has continued to degrade. To protect that resource, we must adopt a criterion that will

not enable the status quo, but will push toward protection against anti-degradation and work toward improved water quality.

In closing, we respect our partners in Arkansas who are working to protect their natural resources and suggest that we are all working toward the same goal. Arkansas has focused substantial efforts toward protecting water quality in Beaver Lake and the White River where USGS reports (Analysis of Ambient Conditions and Simulation of Hydrodynamics and Water-Quality Characteristics in Beaver Lake, Arkansas, 2001 through 2003, by Joel M. Galloway and W. Reed Green) median in-stream phosphorus concentrations of 0.02 – 0.04 mg/L for multiple sites between 2001 and 2003 and in-lake concentrations near or below detection for surface and metalimnion sites. Compare these numbers to the 2003 Oklahoma Beneficial Use Monitoring Program summary where the Illinois River geometric mean was 0.119 mg/L at Tahlequah and 0.225 mg/L at Watts. Lakewide average total phosphorus in Lake Tenkiller was reported in the OWRB 2003 BUMP report at 0.063 mg/L at the surface and ranged from 0.006 - 0.156 mg/L. Concentrations in the White River watershed have increased over time, although median values for the last two years of record are approximately 0.047 and seem to be fairly constant at that level since 2009. We applaud Arkansas for their efforts to protect this valuable resource, and value their partnership in our efforts to protect our Scenic Rivers.

In summary, we support the OWRB recommendations that the current Oklahoma Scenic River total phosphorus criterion of 0.037 mg/L is a scientifically defensible number and conservatively within the range of what should be an appropriate goal for the river. We also agree that the 30 day geometric mean is the appropriate means by which to assess this criterion. You and your staff are to be commended for your efforts in this review process and we look forward to working with all partners involved in the TAG toward the continued improvement of water quality in these important resources.

Sincerely,...



Shanon Phillips

Water Quality Division Director



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 Claremore, OK 74018  
 Email: [cara@caracowan.com](mailto:cara@caracowan.com)

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 Tahlequah, OK 74465  
[www.cherokee.org](http://www.cherokee.org)  
 (918) 453-5000

March 26, 2012

Re: Comments on OWRB's Draft Report for Scenic Rivers TP Criterion Review

Dear Oklahoma Scenic Rivers Technical Advisory Group Members:

I am honored to be an active member of the Interstate/Tribal/EPA Technical Advisory Group (TAG) to review the Oklahoma Scenic Rivers Standard (OSRS) for Total Phosphorus (TP) of 0.037 mg/L TP. The work is required as stated in the 2004 Joint Principles and Actions agreement between the State of Oklahoma and the State of Arkansas. I appreciate the EPA for funding the work of this group and the dedication of the Oklahoma Water Resources Board (OWRB) staff for making the work happen.

Overall, I found the report is excellent. Work on the OSRS is an on-going effort where I am sure all governments involved will strive to protect our water ways for future generations. Based on the work of the TAG, I find no reason to lower the standard by increasing the allowable TP levels within our Scenic Rivers. No one on the TAG offered either relevant literature, existing studies or new data which would cause the standard to be less stringent. The literature suggests to me our standard should be stronger and lower than 0.037 mg/L TP.

With respect to the objective of the TAG to re-evaluate the 0.037 mg/L total phosphorus (TP) Oklahoma Water Quality Standard (WQS) criterion assigned to all six Oklahoma Scenic Rivers, I offer the following comments on the OWRB's Draft Report for Scenic Rivers TP Criterion Review.

1. There are six Scenic Rivers and little to no work by the TAG was done to consider the other Scenic Rivers. Most of the focus was on the Illinois River and consideration of the TP standard for the one river body.
2. On page 3, Oklahoma's Scenic Rivers should be more than "better than average," Oklahoma's Scenic Rivers should be or should strive to be pristine and remarkable.
3. The EPA's Numerical Nutrient Criteria recommendations from 2000 should be included in a table within the report for comparison. As an example, I have included a table from my dissertation work as an attachment.
4. Since this is a TAG, we should include the technical qualifications of each participant on page 6 for transparency to both the public and the technical and academic communities who need to better understand the outcomes of the TAG reports.
5. I am concerned the TAG never reached consensus on the acceptable level of risk before moving forward with actual data and plans for future work together to protect our waters of national significance. Without a numerical threshold of risk, I believe it is difficult to determine the feasibility or effectiveness of any WQS.
6. A visual needs to be included on the actual implementation of the OSRS, so duration and frequency of sampling as applied to the OSRS is clear.
7. The information at the top of page 19 concerning toxic pesticide spills needs to be framed more within the context of our report.

• Page 2

March 26, 2012

8. More work could be included involving luxury uptake, nutrient response thresholds and such but there seemed to be little interest amongst many of the TAG participants to really delve into the science of nutrient uptake mechanisms involved with understanding nutrient response thresholds and more which impact the determination of numerical nutrient criteria.

Please acknowledge the contribution from my literature review as I have not, yet, defended my dissertation and do not want any confusion about the source of the work completed.

Please note the Choctaw and Chickasaw Nations were not included in the TAG and possibly have jurisdiction and interests concerning the (Upper) Mountain Fork River. The Cherokee Nation does not speak for the Choctaw Nation or Chickasaw Nation.

The Cherokee Nation is participating in this TAG in an effort to reach a science based consensus regarding whether 0.037 mg/L TP is sufficiently protective of water quality for our Scenic Rivers. In no way does the Cherokee Nation acknowledge the right of the State of Oklahoma to set water quality standards for waters located within the traditional treaty boundaries of the Cherokee Nation, nor does the Cherokee Nation acknowledge the regulatory role or any other claims the State of Oklahoma may assert over such waters.

Wado (Thank you) to everyone who has contributed to this report and the OWRB staff who did an excellent job in compiling our work and providing additional scientific depth from the literature.

Sincerely,



Cara Cowan Watts  
Deputy Speaker  
Cherokee Nation Tribal Council



STEVEN A. THOMPSON  
Executive Director

OKLAHOMA DEPARTMENT OF ENVIRONMENTAL QUALITY

MARY FALLIN  
Governor

February 1, 2012

Mr. Derek Smithee, Chief  
Water Quality Programs Division  
Oklahoma Water Resources Board  
3800 N. Classen Blvd.  
Oklahoma City OK 73118

Dear Mr. Smithee:

The Oklahoma Department of Environmental Quality would like to thank you and all of the members of the Technical Advisory Group (TAG) for the extensive effort put forth in the review of the Oklahoma Scenic Rivers phosphorus criterion. The Oklahoma DEQ believes that the phosphorus criterion is critically important to protect the water quality of our Scenic Rivers. The considerable effort put forth by the Oklahoma and Arkansas state agencies, EPA Region 6, and the Cherokee Nation demonstrates the importance of protecting these waters.

OWRB staff compiled over 150 documents pertaining to the review of the phosphorus criterion. These documents included numerous scientific studies, water quality data, and other documents submitted by concerned parties. DEQ staff conducted an extensive review of the identified relevant scientific literature provided by the OWRB. Our review of the data and scientific studies led us to the conclusion that the current 0.037 mg/L Total Phosphorus criterion is within the range of values consistently demonstrated as protective of the concerned waters. Although we believe the 0.037 mg/L criterion occurs at the upper portion of the protective range, the literature reviewed does not indicate that the 0.037 mg/L Total Phosphorus criterion for Scenic Rivers should be modified. DEQ's opinion is that the studies confirm that the current Scenic Rivers criterion is scientifically supported.

Based on the available scientific studies, DEQ supports the decision of the TAG to retain the current Total Phosphorus criterion of 0.037 mg/L for Scenic Rivers in Oklahoma. We appreciate the significant effort and hard work invested in this review by the OWRB and the other members of the TAG in the review of this criterion.

Sincerely,

Shellie Chard-McClary, Director  
Water Quality Division  
Oklahoma Department of Environmental Quality





March 16, 2012

Mr. Derek Smithee, Chief  
Water Quality Programs Division  
Oklahoma Water Resources Board  
3800 N. Classen Boulevard  
Oklahoma City, Oklahoma 73118

Re: Draft Final Report, "Oklahoma Scenic Rivers Phosphorus Criteria Review,"  
March 30th, 2012

Dear Mr. Smithee,

We are in receipt of the Oklahoma Water Resources Board (OWRB) Draft Final Report entitled, "Oklahoma Scenic Rivers Phosphorus Criteria Review," and dated March 30, 2012. We are writing to document the Arkansas TAG members' objections to this final draft.

There is no consensus on the recommendations contained in the final draft. The members of the TAG representing Arkansas do not agree with the recommendations contained in the final draft. This fact is not discussed until page 19 (of a 27 page report). On page 19, the Arkansas TAG members' position is summarized as having "provided separate, contrary, recommendations..." It appears to the Arkansas TAG members that no good reason exists for characterizing our separate recommendations as "contrary" and for not clearly identifying throughout the final draft whose opinions and recommendations are reflected in the report.

As discussed during the TAG's first meeting, it was your stated goal that you hoped a consensus could be reached at the conclusion of this process. However, if a consensus could not be reached, the Arkansas TAG members understood that a "Majority Report" and a "Minority Report" would be prepared and would be submitted as companion documents to the OWRB Board. There was no consensus reached on the total phosphorus criterion review. Accordingly, the Arkansas TAG members prepared a Minority Report, which clearly identifies the authors, their separate recommendations, and the fact that the report is a minority report. Our report is entitled, "*Arkansas TAG Members' Minority Report to OWRB.*" Further, the first paragraph of the report states:

The following report is prepared by the Arkansas TAG members as a Minority Report in response to OWRB staff's report to OWRB. The Arkansas TAG members appreciate the opportunity to participate in the process to develop a recommendation to the OWRB on Oklahoma's total phosphorus criterion. However, because the Arkansas TAG members cannot agree with the OWRB staff's report recommendations to maintain the total phosphorus standard for Oklahoma's Scenic Rivers as adopted without modification, we have prepared this Minority Report to OWRB.



(Page 3 of Minority Report.) The Arkansas TAG members also clearly asked in the first section of the document that the Minority Report be submitted to the OWRB as a separate stand-alone document (see page 5). Nonetheless, the Minority Report is attached as the last appendix of the 87-page final draft document.

For purposes of clarification, the Arkansas TAG members insist on the following changes to the final draft:

- The Final Report must clearly be identified as a Majority Report and titled as such;
- The Final Report must clearly articulate at the beginning that no consensus was reached on the recommendations to the OWRB, and a Majority Report and a Minority Report were drafted and submitted to OWRB as separate documents;
- The TAG members who support the recommendations contained in the Majority Report must be clearly identified throughout the Final Report to eliminate any confusion about who supports the recommendations and who does not;
- The last sentence in paragraph 2, on page 19, which states, "However, the Arkansas members of the TAG have provided separate, contrary, recommendations which are included as Appendix C" should be deleted; and
- Appendix C should be deleted so the Arkansas TAG Members' Minority Report is not attached to the Majority Report.

The Arkansas TAG members ask OWRB staff to submit the Majority Report and the Minority Report as separate documents to the OWRB.

If these requests cannot be accommodated, then the Arkansas TAG Members ask you to delete from the Final Report any reference to the Arkansas TAG members' participation in this process.

Finally, the Arkansas TAG members note that the final draft contains revisions, including new information. Without adequate time to conduct a substantive review, the Arkansas TAG members are not commenting on the revisions or new information.

Sincerely,



Steven L. Drown  
Chief, Water Division  
ADEQ

cc: Teresa Marks, Director ADEQ  
Randy Young, Director, ANRC  
Ryan Benefield, PE, Deputy Director, ADEQ  
Melinda McCoy, U.S. EPA, Region 6

Senator BOOKER. Then on June 30th, 2012, the 10-year phase-in going back to the Supreme Court decision, the actions by Oklahoma, the 10-year phase-in period was completed in full compliance and the .037 became required. It became now what was required by the States.

Just to recap all of this, because it is a lot, 20 years, Oklahoma's EPA approved a .037 phosphorus standard more than two decades in the making. It had just been reaffirmed by the Oklahoma Water Resources Board, and then the 10-year compliance period phase-in had expired.

So when you said that you had entered into a second agreement with Arkansas that in your words was a historic agreement to clean up the river, that would reduce pollution from poultry growers, this is the question that I have, sincerely, I pulled that 2013 agreement and read it, and it was stunning to see that it actually didn't take any steps to reduce pollution but actually only proposes another unnecessary study and attempts to suspend compliance that was two decades in the making with the .037 standard. It suspended compliance for yet another 3 years of pollution.

Isn't it true that is what the agreement did?

Mr. PRUITT. It isn't, Senator. There was actually no enforcement of the .037 standard taking place on Arkansas' side of the border. You referred to the Memorandum of Understanding, and I actually have the second Statement of Principles here before me as well, that expired in the 2012–2013 timeframe. That is what presented my office with the opportunity to go to Arkansas to ensure that the .037 standard would actually be enforced from a State law perspective on that side of the border. That had never taken place in history.

You mentioned the EPA. There was no enforcement authority that had taken place on that phosphorus level by the EPA. Oklahoma had it, as you have indicated, as a standard, but it was not being enforced upstream in Arkansas. That is what the agreement addresses.

Senator BOOKER. Mr. Pruitt, I don't have the seniority or the stature or the grandchildren of Senator Inhofe so I can't go over my time, but I will say this. In my next round, I will go back into this, because the documents don't seem consistent at all with what you are saying. In my next round of questioning, I'd like to go a little bit deeper into this historic settlement.

Thank you, Mr. Chairman.

Senator BARRASSO. Thank you, Senator Booker.

I would introduce for the record an article that appeared in the Tulsa World this past January 12th, 2017, going way beyond the 20 years of that panel, but 33 years. It is by Ed Fite who served as the agency administrator of the Oklahoma Scenic Rivers Commission from September 1983 until June 2016, 33 years. His statement in this op-ed that he wrote is, "I have found that Pruitt has always done right by our scenic rivers. For the first time ever, he has gotten the State of Arkansas, which happens to have parts of the streams we have designated as scenic rivers originating in and flowing through their State, to agree to Oklahoma's scenic rivers phosphorus standard, an incredible environmental accomplishment, the effect of which cannot be understated."

[The referenced information follows:]

Ed Fite: I welcome Scott Pruitt to run the EPA - Tulsa World: Homepagelatest

Page 1 of 2

## Ed Fite: I welcome Scott Pruitt to run the EPA

By Ed Fite | Posted: Thursday, January 12, 2017 9:38 am

We have all heard much yammering, left and right, about President-elect Donald Trump having selected Oklahoma Attorney General Scott Pruitt as the next head of the Environmental Protection Agency. As a conservationist and riverologist, I have worked firsthand with Pruitt and know a good deal more about him than those nationally who are attempting to malign him.

I have made it my life's work and my career to look after our state's designated scenic rivers. As a state employee and a resource facilitator (I cannot take care of these valued-treasured water resources by myself), I always find myself arguing for the middle ground, for the workable solution upon which both sides of an issue can agree. I have looked and worked for real solutions, and have implemented them with help from all sides.



Ed Fite  
Fite

*Read* ↓  
I have found that Pruitt has always done right by our scenic rivers. He has done every constructive

thing that he told me he would do. Furthermore, for the first time ever, he has gotten the state of Arkansas, which happens to have parts of the streams we've designated as "scenic rivers" originating in and flowing through their state, to agree to Oklahoma's scenic rivers phosphorus standard — an incredible environmental accomplishment, the effect of which cannot be understated.

Instead of engaging in years of interstate litigation, he did this by negotiating an agreement with Arkansas Attorney General Dustin McDaniel, a practical and economical approach that will yield enormous environmental benefits.

To understand the magnitude of this agreement, one must consider that Oklahoma and Arkansas have litigated over Illinois River water quality for more than three decades. The latest action brought by Oklahoma, about abating water quality degradation from the land-application of poultry waste in the Illinois River watershed, has languished for more than six years in federal

<http://www.tulsaworld.com/homepagelatest/ed-fite-i-welcome-scott-pruitt-to-run-the-epa/a...> 1/16/2017

District Court. Many thought that when Pruitt took office he would abandon this suit because he is also known for his staunch support of farming and ranching communities.

However, not only did Pruitt allow the case to be fully litigated, he proactively sought this joint state solution to let science determine the phosphorus standard for the Illinois River. In the end, a study conducted by Baylor University reinforced that the phosphorus standard Oklahoma sought to protect would remain.

Last, I have not seen him advocate dismantling the EPA. Rather, he has rightfully supported necessary laws but has challenged the agency when it has written rules without Congress having given it authority to do so. An administrative agency should not decide what the law is in the absence of legislation.

And so, my middle-of-the-river view is that Scott Pruitt is one who is committed to finding a balance that protects and preserves our environment while at the same time affords an opportunity for a robust economy to exist. Achievement of one doesn't have to be exclusive of the other.

---

*Ed Fite served as the agency administrator of the Oklahoma Scenic Rivers Commission from September 1983 through June 2016. He wrote this for InsideSources.com.*

33 yrs.  
Ed Fite

Senator BARRASSO. Senator Rounds.

Senator ROUNDS. Thank you, Mr. Chairman.

Attorney General Pruitt, in August 2016 the EPA Inspector General found the EPA had failed to follow through with its commitment to update its 2010 life cycle analysis for corn ethanol and has also failed to perform its legally required comprehensive study on the environmental effects of the RFS, the Renewable Fuel Standard. EPA's information on ethanol's life cycle emissions is inaccurate, and it is outdated. Today's best available science shows that blending ethanol into gasoline can significantly reduce greenhouse gases. However, the EPA has failed to update its own science with the most recent, best science that is available and continues to rely on outdated, inaccurate science when setting national policy, regulatory biofuels policy.

What are your thoughts on the EPA relying on outdated, inaccurate science to set Federal regulatory policy?

Mr. PRUITT. Senator, I think it is the obligation of the EPA in taking steps, rulemaking and otherwise, to ensure that it has the most up to date, objective scientific data possible.

Senator ROUNDS. Let me follow up a little bit. The current EPA process for considering the scientific information underpinning major regulations, I believe, is flawed, and it is unbalanced. For example, the Scientific Advisory Board, or the SAB, is to provide scientific advice to the EPA Administrator and Congress. But there is a significant lack of geographic diversity in State, local, and tribal representation on the SAB.

Can you explain to us what your views are on the agency science and what you envision as the role of agency science at the EPA?

Mr. PRUITT. Senator, as you and I talked about in our meeting, I think it is important to have that geographical representation better represented, and there are some conflicts of interest application with the Science Advisory Board that need to be addressed as well, and also with the Clean Air Science Advisory Committee, which is a standing committee of the Science Advisory Board.

Senator ROUNDS. I have got a chart that shows the geographic makeup of the 2015 chartered SAB. Of the 54 members the majority of them come from East or West Coast States. I also have a chart that shows the number of States that have government representatives on the SAB.

How would you broaden the geographic scope of SAB members to make certain that States and various governmental entities are represented? The one on the left shows the lack of diversity with regard to the actual members on the board. The one on the right actually shows that we have a grand total of two States with representation for State and local units of government on those boards.

Mr. PRUITT. Senator, if confirmed, it is an issue as I have indicated, and we talked about in your office, that is important to address to ensure there is confidence that science is driving rule-making, that it is objective and tethered to the rules adopted by the EPA. So this is a very important issue that needs to be evaluated and discussed to ensure the efficacy of the science that occurs at the EPA.

Senator ROUNDS. Would you commit to us that you would make an effort to see that the Science Advisory Board actually reflects some fairness with regard to geographic diversity as well as recognizing the important role that local and regional governments and State and local governments have in determining or at least participating in these boards and commissions?

Mr. PRUITT. If confirmed, I look forward to working with you on that issue.

Senator ROUNDS. Thank you.

Let me finish quickly with just one other item. We have listened a lot to whether you are working on behalf of industries, whether you are working on behalf of the folks from Oklahoma, and your role as an administrator with regard to clean air, water, and so forth. As the Attorney General you have represented the interests of your State and both your State's economy and your State's environment. Just because you are pro-economic development and pro-economic development growth does not mean that you have to be anti-environment. Preserving the environment and preserving the economy I don't believe are mutually exclusive. I don't think you have to choose between the two.

How would you balance economic growth with making certain that we have clean air and clean water?

Mr. PRUITT. I think part of it is inherent in the statutes and the process that the EPA is supposed to conduct. I know sometimes rulemaking is seen as something that is not terribly important or something laborious, but the reason rulemaking, the reason Congress has said you offer notice on a proposed rule and you take comment is it is needed to make sure all voices are heard and that there is an informed decision that regulators are making before they finalize rules, because of the impact it has on the economy and on the environment in this instance.

Rulemaking is something we should take seriously and that we should do so consistent with the framework outlined by Congress so that all those voices are heard that you are referring to, Senator, in the rulemaking process.

Senator ROUNDS. Thank you.

Thank you, Mr. Chairman.

Senator BARRASSO. Thank you very much, Senator Rounds.

Senator Markey.

Senator MARKEY. Thank you, Mr. Chairman.

Mr. Pruitt, earlier today you said the EPA has an important role in regulating carbon dioxide because of the 2007 landmark Supreme Court ruling in Massachusetts v. EPA. The EPA Administrators for both President Bush and President Obama made a decision that carbon pollution poses a danger to America, otherwise known as the Endangerment Finding.

Will you promise to keep on the books the scientific finding that carbon pollution poses a danger to the American public health and welfare?

Mr. PRUITT. Two things, Senator. First, with respect to Massachusetts v. EPA, the Supreme Court said to the EPA that they had to make a decision.

Senator MARKEY. That's right.

Mr. PRUITT. To determine whether CO<sub>2</sub> posed a risk, and as you indicated in 2009 they did so. That is the law of the land, those two cases. There is an obligation of the EPA Administrator to do his or her job in fulfilling *Massachusetts v. EPA* and that endangerment finding from 2009.

Senator MARKEY. So you will keep that scientific finding on the books?

Mr. PRUITT. That the endangerment finding is there and needs to be enforced and respected.

Senator MARKEY. You will not review that scientific finding?

Mr. PRUITT. There is nothing that I know that would cause a review at this point.

Senator MARKEY. That's very good.

*Massachusetts v. EPA* made it possible for States like California and Massachusetts to set higher standards for the fuel economy of vehicles using their authority under the Clean Air Act. This is a powerful tool for States to reduce emissions and address global warming.

As a direct result of the Clean Air Act authority combined with my 2007 fuel economy law the Obama administration reached a historic agreement, with the auto industry's support, to increase fuel economy standards to 54.5 miles per gallon by 2025. Those standards are projected to reduce our dependence on foreign oil by more than 2 million barrels a day, prevent 6 billion tons of carbon pollution, and save consumers more than \$1.7 trillion at the gas pump because their cars will be so much more efficient.

Those standards are also unleashing a TESLA revolution, clean energy vehicles all across the country. Ten thousand people are going to be employed, for example, in Nevada in this technology area.

You have said you want States to play a larger role in environmental regulation. In your 2015 testimony before the House Science Committee you wrote, "The EPA was never intended to be our Nation's front line environmental regulator. The States were to have regulatory primacy." But earlier today, you wouldn't commit to maintaining California, Massachusetts, and other States' ability to have regulatory primacy as the leaders of the effort to protect their own States to do what is best for global warming in their own States.

So I am going to ask you again, will you support the statutory right of States to do more to reduce dependence on foreign oil, reduce global warming, pollution, save money at the gas pumps, and create tens of thousands, hundreds of thousands of jobs in the clean car job business?

Mr. PRUITT. I think, Senator, generally, the answer to that would be yes. But in application with the California waiver that was discussed earlier, that is an adjudicatory process that I can't prejudge what would occur there. As you know previous Administrators have either granted or denied that based upon a record that was made. I do respect and do believe that States have a very important role. We've acknowledged that, or I have acknowledged that today with respect to the Chesapeake Bay situation, as an example.

I will look at that issue, like others, to make sure that it is respected but also is consistent with the statutory framework that you have outlined.

Senator MARKEY. Do you support the law that says California has a right to ask for a waiver?

Mr. PRUITT. It is statutory, and it is something the Administrator has an obligation to do. So yes, I do respect it.

Senator MARKEY. Do you support the current California waiver for greenhouse gas standards?

Mr. PRUITT. Senator, that is what would be evaluated. I think it is very difficult, and we shouldn't prejudge the outcome in that regard if confirmed as Administrator.

Senator MARKEY. So you are questioning the current waiver? You don't think they're entitled to the current waiver?

Mr. PRUITT. The waiver is something that is granted on an annual basis. The Administrator would be responsible for making that decision.

Senator MARKEY. You say you are going to review it?

Mr. PRUITT. Yes, Senator.

Senator MARKEY. When you say review, I hear undo the rights of the States. I think to a certain extent that is troublesome. Because obviously, what we have heard all day is how much you support States' rights when it comes to these issues, but now when it comes to the right of California, Massachusetts, and other States to be able to reduce carbon pollution, you are saying you are going to review that.

My problem really goes to this double standard that is created that when you sue, from the Oklahoma perspective, from the oil and gas industry perspective, and you represent Oklahoma, you say they have a right to do what they want to do in the State of Oklahoma. When it comes to Massachusetts or California, and it comes to the question of those States' wanting to increase their protection of the environment, protect their victimization from carbon pollution, you say there you are going to review.

I think the history of the agency in granting reviews that have been necessary for Massachusetts, for California, and other States to improve the environment are still valid. The science hasn't changed, the new clean energy technologies have not changed, the danger to the public from environmental exposure to carbon pollution has not changed. So from our perspective, we are fearful of what a review would actually result in. From my perspective, I think it is going to lead to you undoing that right of the States to be able to provide that protection.

Senator BARRASSO. The Senator's time has expired. Thank you, Senator Markey.

I am going to introduce for the record a report from the National Energy Assistance Directors Association. These are the State officials who oversee the financial assistance programs for people to heat their homes.

The report says that when energy prices go up, higher energy prices result in 24 percent of the recipients who go without food for at least a day, 37 percent go without medical or dental care, 34 percent didn't fill a prescription, and 19 percent had someone in



their home become sick because the house was cold due to increased energy costs.

[The referenced information follows:]

**NATIONAL ENERGY ASSISTANCE  
DIRECTORS' ASSOCIATION**

**2011 NATIONAL ENERGY ASSISTANCE SURVEY  
SUMMARY REPORT**

Final Report  
November 2011

## **The National Energy Assistance Directors' Association**

The National Energy Assistance Directors' Association (NEADA) represents the state directors of the Low Income Home Energy Assistance Program (LIHEAP). NEADA is a nonprofit educational and policy organization based in Washington, DC. Its mission is to support the delivery of LIHEAP services by state agencies and programs.

This report has been prepared by APPRISE for NEADA under Grant No. 90XP0249 through the Administration for Children and Families (ACF), U.S. Department of Health and Human Services. The statements, findings, conclusions, and recommendations do not necessarily reflect the views of ACF.

**Jo-Ann Choate**  
**Chairman**

**Mark Wolfe**  
**Executive Director**

**NEADA**  
**Suite 800**  
**1615 M Street, NW**  
**Washington, D.C. 20036**  
**202-237-5199**  
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**Acknowledgements**

NEADA would like to thank the many individuals and organizations that provided assistance and time in developing this study and its findings. In particular, we would like to thank Jackie Berger, Matthew Swartz, Jennifer Frenett, and Colleen Driscoll of APPRISE for conducting the research and preparing the study report. We would like to thank Lynne Snyder of NEADA for guidance on questions related to health issues. We would like to thank the many people who took time to review and comment on the draft report.

The study would not have been possible without the participation of the directors and staff at the state LIHEAP offices in:

California	Iowa	Montana	New York
Connecticut	Maine	North Carolina	Ohio
Delaware	Minnesota	New Mexico	Pennsylvania
Georgia			

Mark Wolfe  
Executive Director  
National Energy Assistance Directors' Association

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## Executive Summary

The National Energy Assistance Directors' Association (NEADA), representing the state LIHEAP directors, received a grant through the Administration for Children and Families (ACF), U.S. Department of Health and Human Services to update the information about LIHEAP-recipient households that was collected in the 2003, 2005, 2008 and 2009 NEA Surveys. This survey documented changes in the affordability of energy bills, the need for LIHEAP, and the choices that low-income households make when faced with unaffordable energy bills.

The 2011 Survey included 13 states with an oversample in Connecticut, as in the 2009 Survey. Stratified samples of fiscal year 2011 LIHEAP recipients were chosen from each of the state LIHEAP databases. This report presents the findings from the 2011 NEA Survey and provides comparisons to the 2003, 2008, and 2009 NEA Surveys. The survey and report were prepared for NEADA by APPRISE.

During the period of study, low-income households across the country continued to face a difficult economic climate and continued to deal with high energy costs. The survey substantiated these issues – showing that 35 percent were unemployed at some point during the year and that 52 percent reported it was more difficult to pay energy bills than it was the previous year.

### LIHEAP Recipient Households

The study confirmed that LIHEAP recipient households are likely to be vulnerable to temperature extremes.

- 40 percent had a senior in the household aged 60 or older.
- 42 percent had a disabled household member.
- 41 percent had a child 18 or younger.
- 89 percent had at least one vulnerable household member.

The study also provided information on challenges that these households faced.

- 35 percent were unemployed at some point during the previous year.
- 72 percent had a serious medical condition.
- 26 percent used medical equipment that requires electricity.

### Energy Costs

LIHEAP recipients reported that they faced high energy costs.

- 45 percent reported that their energy bills were more than \$2,000 in the past year.

- Pre-LIHEAP energy burden averaged 16 percent and post-LIHEAP energy burden averaged 12 percent for these households, compared to 7 percent for all households in the U.S. and 4 percent for non low-income households in the U.S.<sup>1</sup>
- 52 percent said that energy bills were more difficult to pay than in the previous year.
- 48 percent of those who said that it was more difficult to pay their energy bills reported that the main reason was their financial situation.

LIHEAP benefits decreased since the previous year due to the smaller appropriation in FY 2011. Mean heating benefits were \$429 in FY 2011, compared to \$483 in FY 2009.

#### **Responses to High Energy Costs**

Households reported that they took several actions to make ends meet.

- 39 percent closed off part of their home.
- 23 percent kept their home at a temperature that was unsafe or unhealthy.
- 21 percent left their home for part of the day.
- 33 percent used their kitchen stove or oven to provide heat.

#### **Inability to Pay Energy Bills**

Many LIHEAP recipients were unable to pay their energy bills.

- 49 percent skipped paying or paid less than their entire home energy bill.
- 37 percent received a notice or threat to disconnect or discontinue their electricity or home heating fuel.
- 11 percent had their electric or natural gas service shut off in the past year due to nonpayment.
- 24 percent were unable to use their main source of heat in the past year because their fuel was shut off, they could not pay for fuel delivery, or their heating system was broken and they could not afford to fix it.
- 17 percent were unable to use their air conditioner in the past year because their electricity was shut off or their air conditioner was broken and they could not afford to fix it.

#### **Housing and Financial Problems**

Many LIHEAP recipients had problems paying for housing in the past five years, due at least partly to their energy bills.

- 31 percent did not make their full mortgage or rent payment.
- 6 percent were evicted from their home or apartment.
- 4 percent had a foreclosure on their mortgage.
- 14 percent moved in with friends or family.
- 4 percent moved into a shelter or were homeless.

<sup>1</sup> Source: 2008 LIHEAP Notebook.

- 13 percent got a payday loan in the past five years.

#### Medical and Health Problems

Many of the LIHEAP recipients faced significant medical and health problems in the past five years, partly as a result of high energy costs.

- 24 percent of recipients went without food for at least one day.
- 37 percent went without medical or dental care.
- 34 percent did not fill a prescription or took less than the full dose of a prescribed medication.
- 19 percent had someone in the home become sick because the home was too cold.

#### The Need for LIHEAP

Households reported enormous challenges despite the fact that they received LIHEAP. However, they reported that LIHEAP was extremely important.

- 65 percent of those who did not keep their home at unsafe or unhealthy temperatures said they would have done so if LIHEAP had not been available.
- 63 percent of those who did not have their electricity or home heating fuel discontinued said that they would have if it had not been for LIHEAP.

It is clear that many of these households will continue to need LIHEAP to meet their energy and other essential needs.



## I. Introduction

The National Energy Assistance Directors' Association (NEADA), representing the state LIHEAP directors, received a grant through the Administration for Children and Families (ACF), U.S. Department of Health and Human Services to update the information about LIHEAP-recipient households that was collected in the 2003, 2005, 2008, and 2009 NEA Surveys. This survey documented changes in the affordability of energy bills, the need for LIHEAP, and the choices that low-income households make when faced with unaffordable energy bills.

The 2011 NEA Survey selected a new sample of 2011 LIHEAP recipients to document changes in the need for LIHEAP and changes in the choices that low-income households make when faced with unaffordable energy bills. This report presents the findings from the 2011 NEA Survey and provides comparisons to the 2003, 2008 and 2009 NEA Surveys. The survey and report were prepared for NEADA by APPRISE.

### A. *Low Income Home Energy Assistance Program (LIHEAP)*

The Low Income Home Energy Assistance Program (LIHEAP) is administered by the U.S. Department of Health and Human Services (HHS). The purpose of LIHEAP is "to assist low-income households, particularly those with the lowest incomes, that pay a high proportion of household income for home energy, primarily in meeting their immediate home energy needs." The LIHEAP statute defines home energy as "a source of heating or cooling in residential dwellings."<sup>2</sup>

Federal dollars for LIHEAP are allocated by the U.S. Department of Health and Human Services to the grantees (i.e., the 50 states, District of Columbia, 128 tribes and tribal organizations, and five insular areas) as a block grant. Program funds are distributed by a formula, which is weighted towards relative cold-weather conditions.

### B. *2011 National Energy Assistance Survey*

The 2011 NEA Survey aimed to update the information about LIHEAP-recipient households that was collected in the 2003, 2008, and 2009 NEA Surveys. Stratified samples of 2011 LIHEAP recipients were selected to collect new information about the consequences of high energy bills for low-income households. The 2011 National Energy Assistance Survey collected the following information from LIHEAP-recipient households:

- Demographic, energy expenditure, and income information
- Healthy home behaviors

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<sup>2</sup> The statutory intent of LIHEAP is to reduce home heating and cooling costs for low-income households. However, information on total residential energy costs is more accessible and more apparent to LIHEAP-recipient respondents. Moreover, any reduction in home heating and cooling costs leads to a direct reduction in total residential energy costs. Therefore, this report addresses total residential energy costs.

- History of LIHEAP participation
- Constructive actions taken to meet energy expenses
- Signs of unaffordable energy bills
- Health and safety consequences of unaffordable energy bills
- Effects of unaffordable energy bills on housing
- Changes in financial situation and affordability of home energy bills
- Impact and importance of LIHEAP benefits for recipient households

The 2011 Survey included the 13 states that were included in the 2009 Survey and a larger sample of CT LIHEAP recipients, as a result of additional funding that was allocated for a special study in CT.

### ***C. Organization of the Report***

This report has four sections that follow this introduction.

- *Section II: Survey Methodology:* Presents the methodology used.
- *Section III: LIHEAP Recipients:* Presents demographic and income information LIHEAP-recipient households that completed the 2011 NEA Survey.
- *Section IV: Problems Faced in Meeting Energy Needs:* Presents information about actions that LIHEAP-recipient households take to meet their energy needs, household necessities, and health and wellness in the face of significant financial constraints.
- *Section V: Conclusion:* Presents a summary of the key findings in this report.

## II. Survey Methodology

This section summarizes the methodology for the 2011 NEA Survey.

### A. Survey Implementation

A survey advance letter was sent to the sample of LIHEAP recipients. This letter announced the survey, explained the purpose of the survey, and gave potential respondents the option to call the phone center to complete the survey.

Telephone interviews were conducted between May 2, 2011 and July 3, 2011. During this time period, 1,768 interviews were completed.

### B. Sample Selection and Response Rates

LIHEAP recipients were selected from each of the 13 states chosen to participate in the survey. Because of a special congressional earmark for Connecticut, a special study was conducted for Connecticut.

Table II-1 displays the number of interviews completed by state. The response rate ranged from 41 percent in New York to 69 percent in New Mexico.

**Table II-1**  
Number of Completed Interviews by State

State	Total Selected	Completed Interviews	Response Rate
California	260	103	48%
Connecticut	1,290	495	48%
Delaware	220	100	63%
Georgia	220	105	59%
Iowa	220	102	65%
Maine	220	133	68%
Minnesota	220	105	60%
Montana	220	102	62%
New Mexico	220	102	69%
New York	450	101	41%
North Carolina	270	97	60%
Ohio	220	111	67%
Pennsylvania	220	112	62%
<b>TOTAL</b>	<b>4,250</b>	<b>1,768</b>	<b>56%</b>

### III. LIHEAP Recipient Households

The 2011 National Energy Assistance Survey included a series of questions about household demographics.

Table III-1 displays information on the presence of vulnerable household members. The table shows that 40 percent have a senior in the home, 42 percent have a disabled household member, 41 percent have a child age 18 or younger, and 21 percent have a child age five or younger. Eight-nine percent had at least one vulnerable member (elderly, disabled, or child).

**Table III-1**  
Vulnerable Groups

	Senior ≥60	Disabled	Child ≤18	Young Child ≤5	Single Parent
<b>Yes</b>	40%	42%	41%	21%	15%
<b>No</b>	59%	56%	58%	78%	85%
<b>Don't Know/ Refused</b>	2%	2%	2%	2%	—

Table III-2 displays the annual household income distribution for LIHEAP-recipient households. The table shows that 36 percent have income of less than or equal to \$10,000 and only two percent have income above \$40,000.

**Table III-2**  
Annual Income

Annual Income	Percent of Respondents
≤ \$ 10,000	36%
\$ 10,001 - \$ 20,000	41%
\$ 20,001 - \$ 30,000	16%
\$ 30,001 - \$ 40,000	5%
More than \$ 40,000	2%
Don't Know	1%

Table III-3 shows that 19 percent had income at or below 50 percent of the poverty level and 61 percent had income at or below the poverty level. Only 11 percent had income above 150 percent of the poverty level.

**Table III-3**  
**Poverty Level**

Poverty Level	Percent of Respondents
0%-50%	19%
51%-100%	42%
101%-125%	15%
126%-150%	13%
>150%	11%

Respondents were asked whether they had been unemployed at some time during the year. Table III-4 shows that 35 percent reported that they had been unemployed at some point during the past year. This compares to 31 percent in 2003, 29 percent in 2008, and 36 percent in 2009.

**Table III-4**  
**Unemployed During the Year**

	2003	2008	2009	2011
Yes	31%	29%	36%	35%
No	69%	70%	63%	62%
Don't Know / Refused	0%	1%	1%	3%

Table III-5 displays the percent of respondents who were unemployed during the past year by vulnerable group. The table shows that households with children under 18 and non-vulnerable households were most likely to report that they had been unemployed. Fifty-three percent of households with children reported that they had been unemployed.

**Table III-5**  
**Unemployed During the Year**  
**By Vulnerable Group**

	Senior	Disabled	Child ≤18	Non-Vulnerable
Number of Respondents	705	738	722	195
Yes	17%	26%	53%	49%
No	81%	72%	46%	35%
Don't Know / Refused	2%	1%	1%	15%

## IV. Problems Meeting Energy Needs

This section examines the financial challenges and difficult choices made by the LIHEAP recipients to manage their total residential energy costs.

### A. Increased Utility Bills and Increased Need

Respondents were asked to report their annual energy costs. Table IV-1 shows that 45 percent of the respondents reported that their bills were over \$2,000.

**Table IV-1**  
Annual Total Residential Energy Costs

Annual Energy Costs	Percent of Respondents
Less than \$500	2%
\$501 - \$1,000	8%
\$1,001 - \$1,500	10%
\$1,501 - \$2,000	12%
Over \$2,000	45%
Don't Know/Refused	22%

Table IV-2 displays the distribution of LIHEAP heating benefits in FY2008, FY2009 and FY2011. Twenty-eight percent received \$250 or less in FY2011, compared with 18 percent who received \$250 or less in FY2009.

**Table IV-2**  
LIHEAP Heating Benefits Distribution

Benefit Amount	Percent Received		
	2008	2009	2011
Number of Respondents	1,256	1,828	1,667
≤ \$100	6%	<u>5%</u>	<u>7%</u>
\$101-\$250	25%	<u>13%</u>	<u>21%</u>
\$251-\$500	39%	45%	43%
\$501-\$750	11%	21%	15%
\$751-\$1,000	6%	7%	6%
≥ \$1,000	2%	6%	5%
Did Not Receive Heating Benefit	<u>9%</u>	4%	<u>3%</u>

Note: 2011 statistically significant differences at the 95% level from 2008 and 2009 are underlined.

Pre-LIHEAP energy burden was calculated by dividing the respondents' energy costs by their total household income and post-LIHEAP energy burden was calculated by subtracting LIHEAP benefits from energy costs and then dividing these net energy costs by total household income. Table IV-3 shows that LIHEAP benefits had a big impact on the households' energy burden. Prior to receiving LIHEAP, 22 percent of households had an energy burden higher than 20 percent. After receiving LIHEAP, 13 percent had an energy burden that was this high. Additionally, LIHEAP benefits increased the percentage with burdens below five percent from 9 percent of recipients to 26 percent.

**Table IV-3**  
**Total Residential Energy Burden**

	Total Residential Energy Burden	
	Pre-LIHEAP	Post-LIHEAP
<b>Number of Respondents</b>	1,275	1,275
<b>0-5%</b>	9%	26%
<b>6%-10%</b>	32%	32%
<b>11-15%</b>	23%	20%
<b>16-20%</b>	13%	9%
<b>21-25%</b>	9%	5%
<b>&gt;25%</b>	13%	8%

Respondents were asked whether they had a more or less difficult time paying their energy bills in the past year, as compared to the previous year. Table IV-4 shows that 52 percent said they had a more difficult time and 12 percent said they had a less difficult time.

**Table IV-4**  
**Change in Difficulty in Paying Energy Bills**

Change in Difficulty in Paying Energy Bills	Percent of Respondents
<b>More Difficult</b>	52%
<b>Same</b>	31%
<b>Less Difficult</b>	12%
<b>Don't Know/Refused</b>	5%

Respondents who said that they had a more difficult time paying their energy bills were asked why it was more difficult. Table IV-5 shows that 48 percent said it was due to a worse financial situation and 42 percent said it was due to an increased energy bill.

**Table IV-5**  
**Reasons for Increased Difficulty in Paying Energy Bills**

	Main Reason (Unprompted)
Number of Respondents	940
Lower Income/Lost Job/ Worse Economic Situation	48%
Increased Energy Bill	42%
Increased Other Bills	6%
Increased Medical Expenses	2%
Other	1%
Don't Know/Refused	1%

### ***B. Signs of the Problem***

Respondents were asked whether they reduced expenses for household necessities due to not having enough money to pay their energy bill during the past year. Table IV-6 compares responses to questions about signs of unaffordable energy bills for the 2003, 2008, 2009 and 2011 surveys. The table shows that approximately the same percentage of respondents faced these problems in all three years.

**Table IV-6**  
**Signs of the Problem**  
**Comparison of Survey Results**

	2003	2008	2009	2011
Number of Respondents	2,161	1,256	1,828	1,768
Reduced Expenses for Household Necessities	78%	80%	79%	72%

### ***C. Responses to the Problem***

This section examines how households have responded to the problem of unaffordable energy bills. Table IV-7 shows that the following percent of households faced these problems in 2011.

- 39 percent closed off part of their home.
- 23 percent kept their home at a temperature that they felt was unsafe or unhealthy.
- 21 percent left their home for part of the day.
- 33 percent used their kitchen stove or oven to provide heat.

The percentages are approximately the same as in 2009.



**Table IV-7**  
**Responses to the Problem**  
**Comparison of Survey Results**

	2003	2008	2009	2011
Number of Respondents	2,161	1,256	1,828	1,768
Closed Off Part of Home	39%	<u>44%</u>	36%	<u>39%</u>
Kept Home at Temperature You Felt was Unsafe or Unhealthy	<u>25%</u>	<u>28%</u>	<u>26%</u>	<u>23%</u>
Left Home for Part of the Day	<u>24%</u>	23%	20%	<u>21%</u>
Used Kitchen Stove or Oven to Provide Heat	31%	33%	33%	33%

Note: 2011 statistically significant differences at the 95% level from 2003, 2008 and 2009 are underlined.

#### **D. Inability to Pay Energy Bills**

Respondents were asked several questions about the inability to pay their home energy bill. Table IV-8 shows that the following percent of households faced these problems in 2011.

- 49 percent skipped paying or paid less than their entire home energy bill.
- 37 percent received a notice or threat to disconnect or discontinue electricity service or home heating fuel.
- 11 percent had their electricity or gas shut off due to nonpayment.
- 13 percent were unable to use their heating system because it was broken and they could not afford to pay for repair or replacement.
- 14 percent were unable to use their air conditioner because it was broken and they were unable to pay for its repair or replacement.

**Table IV-8**  
**Inability to Pay Energy Bills During Past Year**  
**Comparison of Survey Results**

	2003	2008	2009	2011
Number of Respondents	2,161	1,256	1,828	1,768
Skipped Paying or Paid Less than Entire Home Energy Bill	52%	47%	50%	49%
Received Notice or Threat to Disconnect or Discontinue Electricity or Home Heating Fuel	38%	37%	36%	37%
Electricity Shut off Due to Nonpayment	8%	9%	9%	9%
Gas Shut off Due to Nonpayment	--	6%	7%	6%
Electricity or Gas Shut off Due to Nonpayment	--	12%	12%	11%
Heating System Broken and Unable to Pay for Repair or Replacement	<u>10%</u>	13%	13%	<u>13%</u>
Unable to Use Main Source of Heat Because Unable to Pay for a Fuel Delivery	10%	13%	11%	10%
Unable to Use Main Source of Heat Because Utility Company Discontinued Gas or Electric Service Due to Nonpayment	<u>11%</u>	13%	11%	<u>7%</u>

## Problems Meeting Energy Needs

	2003	2008	2009	2011
Number of Respondents	2,161	1,256	1,828	1,768
Unable to Use Air Conditioner Because it was Broken and Unable to Pay for Repair or Replacement	12%	12%	12%	14%
Unable to Use Air Conditioner Because Utility Company Discontinued Electric Service Due to Nonpayment	6%	<u>7%</u>	<u>8%</u>	<u>5%</u>
Had to Use Candles or Lanterns Due to Lack of Lights	<u>8%</u>	<u>7%</u>	<u>8%</u>	<u>5%</u>

Note: 2011 statistically significant differences at the 95% level from 2003, 2008, and 2009 are underlined.

### E. Housing Problems

This section examines housing problems that respondents have faced in the past five years due to unaffordable energy bills. Table IV-9 shows that the following percent of respondents faced these problems.

- 31 percent did not make a full rent or mortgage payment.
- 14 percent moved in with friends or family.
- 4 percent moved into a shelter or were homeless.

Table IV-9  
Housing Problems During Past Five Years  
Comparison of Survey Results

	2003	2008	2009	2011
Number of Respondents	2,161	1,256	1,828	1,768
Did Not Make Full Rent or Mortgage Payment	<u>28%</u>	28%	31%	<u>31%</u>
Evicted from Home or Apartment	<u>4%</u>	<u>4%</u>	5%	<u>6%</u>
Moved in with Friends or Family	<u>9%</u>	<u>11%</u>	12%	<u>14%</u>
Moved into Shelter or Was Homeless	4%	3%	3%	4%

Note: 2011 statistically significant differences at the 95% level from 2003, 2008 and 2009 are underlined.

### F. Medical and Health Problems

This section examines the medical and health problems that respondents faced in the past five years due to unaffordable energy bills. Table IV-10 shows that the following percent of households faced these problems.

- 24 percent went without food for at least one day
- 37 percent went without medical or dental care
- 34 percent did not fill a prescription or took less than their full dose of prescribed medication.
- 19 percent became sick because the home was too cold.
- 6 percent became sick because the home was too hot.

**Table IV-10**  
**Medical and Health Problems During the Past Five Years**  
**Comparison of Survey Results**

	2003	2008	2009	2011
<b>Number of Respondents</b>	2,161	1,256	1,828	1,768
<b>Went Without Food for At Least One Day</b>	22%	<u>32%</u>	<u>30%</u>	<u>24%</u>
<b>Went Without Medical or Dental Care</b>	38%	<u>42%</u>	<u>41%</u>	<u>37%</u>
<b>Did Not Fill Prescription or Took Less Than Full Dose</b>	<u>30%</u>	<u>38%</u>	33%	<u>34%</u>
<b>Became Sick Because Home was Too Cold</b>	21%	<u>24%</u>	<u>25%</u>	<u>19%</u>
<b>Became Sick Because Home was Too Hot</b>	7%	6%	<u>4%</u>	<u>6%</u>

Note: 2011 statistically significant differences at the 95% level from 2003, 2008 and 2009 are underlined.

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## V. Conclusion

The 2011 NEADA study confirmed that LIHEAP recipient households are likely to be vulnerable to temperature extremes. They are likely to have seniors, disabled members, or children in the home. Over 89 percent of LIHEAP recipients had at least one of these vulnerable household members. The study also showed that these households face many challenges in addition to their energy bills, including unemployment, unhealthy home conditions, and medical issues.

### Energy Costs

LIHEAP recipients reported that they faced high energy costs. Forty-five percent of the respondents reported energy costs over \$2,000 in the past year and 52 percent said that their energy bills were more difficult to pay. Almost half of those who said that their energy bills were more difficult to pay said that the increased difficulty was due to a worsened financial situation.

### Responses to High Energy Costs

Households reported that they took several actions to make ends meet, including closing off part of the home and leaving the home for part of the day. Some of the actions were unsafe and could lead to injury or illness, such as keeping the home at a temperature that was unsafe or unhealthy or using the kitchen stove or oven to provide heat.

### Inability to Pay Energy Bills

Despite the assistance that they received, many LIHEAP recipients were unable to pay their energy bills. Almost half of the respondents reported that they had skipped paying or paid less than their entire home energy bill in the past year and more than one third said that they received a notice or threat to disconnect or discontinue their electricity or home heating fuel.

Households went without utility service and sacrificed heating and cooling their home. Eleven percent had their electric or natural gas service shut off in the past year due to nonpayment. Almost one quarter reported that they were unable to use their main source of heat in the past year because their fuel was shut off, they could not pay for fuel delivery, or their heating system was broken and they could not afford to fix it. Seventeen percent reported that they were unable to use their air conditioner in the past year because their electricity was shut off or their air conditioner was broken and they could not afford to fix it.

### Housing and Financial Problems

Many LIHEAP recipients had problems paying for housing in the past five years, due at least partly to their energy bills. Almost one third did not make their full mortgage or rent payment. Six percent were evicted from their home or apartment and four percent had a foreclosure on their mortgage.

**Medical and Health Problems**

Many of the LIHEAP recipients faced significant medical and health problems in the past five years, partly as a result of high energy costs. Nearly one quarter reported that they went without food, 37 percent sacrificed medical/dental care, and one fifth had someone in the home become sick because the home was too cold.

**The Need for LIHEAP**

Households reported enormous challenges despite the fact that they received LIHEAP. However, they reported that LIHEAP was extremely important. Many reported that they would have kept their home at unsafe or unhealthy temperatures and/or had their electricity or home heating fuel discontinued if it had not been for LIHEAP.

It is clear that many of these households will continue to need LIHEAP to meet their energy and other essential needs.

Senator BARRASSO. Senator Ernst.

Senator ERNST. Thank you, Mr. Chairman.

Again, Attorney General Pruitt, thank you for being here today.

I would like to go back to something a colleague, Senator Duckworth, mentioned earlier today, and that is the point of obligation. The proposal to change the point of obligation under the RFS is an example of regulatory change that would destabilize the policy environment if adopted. What is interesting with the point of obligation, we have two sides that normally oppose each other that have actually come together. Both biofuel producers and the American Petroleum Institute oppose this change, both groups.

I would like to submit a letter for the record showing the united opposition to moving the point of obligation. Mr. Chair, if we could have that entered into the record?

Senator BARRASSO. Without objection.

[The referenced letter follows:]

November 30, 2016

The Honorable Gina McCarthy  
Administrator  
Environmental Protection Agency  
William Jefferson Clinton Federal Building  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

Dear Administrator McCarthy,

The undersigned associations represent a significant majority of participants across the United States' transportation fuels value chain. While each association has an individual, unique position – often conflicting – regarding the broader Renewable Fuel Standard (RFS) program, we write to express our unified position in opposition to efforts by petitioners to move the point of obligation for RFS compliance. It is unprecedented for all of these undersigned groups to unite in a single letter to express a uniformly held position.

Each of the undersigned associations strongly supports the Environmental Protection Agency's (EPA) proposed denial of petitions for a rulemaking to change the point of obligation under the RFS. There is no sound public policy rationale for moving the point of obligation and further, such a change would add complexity and uncertainty to the current RFS program.

We urge EPA to finalize its conclusion and deny the petitions to move the point of obligation.

Sincerely,



Senator ERNST. I'd like to revisit this. If you can, yes or no, as Administrator, will you oppose changes to the point of obligation?

Mr. PRUITT. Senator, as I indicated in my meeting with you, and I think in response to Senator Duckworth earlier, there is a comment period in process now at the EPA about the point of obligation. I think prejudging the outcome of that process at this point is unwise.

I can say to you as I said to you in the office, any steps that I would take as EPA Administrator with respect to any issues as far as the RNS program, the Monitor Net Program, point of obligation, all these various issues that we discussed, the job of the EPA Administrator is to make sure that the statute is upheld and enforced and not undermined. The vitality of the RFS Program has been defined by Congress dating back to 2005. Any steps the EPA Administrator takes need to be done in such a way to further the objectives of Congress in that statute, not undermine the objectives of Congress in that statute.

Senator ERNST. I do appreciate your being objective. I am sure that Senator Duckworth and I will look forward to continuing to educate you on those issues. Thank you very much.

I would like to show a chart of the State of Iowa. I would like to go back to some of Senator Cardin's comments about who should define what the expanded definition of Waters of the U.S. is. This is a chart of the State of Iowa. As you can see, with the expanded definition, as provided by the EPA, 97 percent of the State of Iowa is now considered Waters of the U.S. If you are in area like mine in southwest Iowa here, I live in a Water of the U.S. Most of the State is covered by the waters of the U.S. I bring that up, because in a moment, I am going to show you another picture of the consequences of the EPA defining what a Water of the U.S. is.

Last Congress this Committee examined the scope of the Federal Clean Water Act jurisdiction EPA and the Corps of Engineers claim today, even without the new WOTUS Rule. The committee found that EPA and the Corps are already expanding their jurisdiction using the concepts that they codified in WOTUS. They are just doing it on a case by case basis.

The jurisdictional claims already being made are very troubling. For example, the Obama EPA told the public that they will not regulate puddles. They will not regulate puddles. However, we learned that the Corps is already regulating puddles by claiming that a puddle in a gravel parking lot is "a degraded wetland." A degraded wetland.

The Obama EPA also told farmers not to worry about being regulated because ordinary farming activities have a statutory exemption. We learned that the Corps of Engineers and the Department of Justice have decided that plowing is not an ordinary farming activity. Explain that to my dear deceased grandfather and my father whose activities in farming include plowing.

According to the Obama administration, any plowing that pushes soil into furrows is not an exempt farming activity because the tops of plowed furrows can dry out. According to a brief filed by the United States, "the furrow tops now serve as small mountain ranges." Right there, folks, small mountain ranges. "These furrow tops now provide conditions that are not conducive to growth and



development of wetland plant species. They are mini-uplands." This is a picture of these small mountain ranges from the Government's expert report.

Mr. Pruitt, will you commit to me that if confirmed, EPA will work with the Corps and DOJ to make sure that Federal agencies stop trying to regulate ordinary farming practices?

Mr. PRUITT. Yes, Senator.

Senator ERNST. Thank you for that very concise answer.

Thank you, Mr. Chairman.

Senator BARRASSO. Thank you, Senator Ernst.

Senator Duckworth.

Senator DUCKWORTH. Thank you, Mr. Chairman.

Mr. Pruitt, I want to come back to this question again. Let me just tell you, I played second base as well. This is a hanging curve ball. You can knock this out of the park with a yes.

Will you commit, yes or no, to reversing the EPA's current interpretation that available infrastructure should limit the requirements to blend biofuels into our fuel supply, given that it runs counter to congressional intent?

Mr. PRUITT. I don't want to take any steps to undermine the objectives in the statute of the RFS as Administrator of EPA.

Senator DUCKWORTH. Will you commit to opposing any attempts to move the point of obligation from the farmer, the soybean producers, the corn producers and biofuel manufacturers away from them and toward the blenders? Because that would be counter to congressional intent.

Mr. PRUITT. Senator, that is something, as I have indicated, that there is an open comment period on that very issue. If confirmed, I would be dealing with that issue and need to respond to the comments that have been made as part of the record. It would be unwise to prejudice that outcome. I can say to you that any steps that I would take as Administrator would be in furtherance of the RFS and not to undermine the RFS.

Senator DUCKWORTH. But the comment period has nothing to do with congressional intent. Earlier today you said you would abide by congressional intent. The congressional intent is to keep that point of obligation with the soybean and corn producers and the biofuel manufacturers and not to move away from it, regardless of what the open comment period says. So you are saying that you are willing, that your answer is no, because you would be open to moving it away from the soybean and corn growers, the farmers, toward the blenders if that is what comes out of the comment period? Is that what you are saying? That would be against congressional intent, though.

Mr. PRUITT. Senator, I think with respect to congressional intent and the statute, the intent, as far as the point of obligation, is not addressed in the statute itself. That is a decision and the Administrator has been involved in that process historically. It's been subject to much discussion. In fact the EPA has dealt with this issue before.

What I am saying to you is, it is the job of the Administrator to enforce the program, to administer the program, to ensure that the intent of Congress as far as the RFS is upheld. I will do that.

To prejudge the outcome of that particular comment period is something that I can't do and shouldn't do at this point. I would need to respond to that only after being confirmed and going through the rest of the process.

Senator DUCKWORTH. You're saying that you would be open to moving the point of obligation away from the corn and soybean producers and the ethanol manufacturers, if that is what the open comment period says? If that is the result, then you would be open to moving it away from the farmers?

Mr. PRUITT. No. I am saying, Senator, that any actions taken as Administrator that would jeopardize and endanger the RFS as intended by Congress, I would not take. That is different from prejudging an outcome in that particular matter.

Senator DUCKWORTH. But the intent of Congress is to keep the point of obligation with the producers.

Mr. PRUITT. That's something I am not aware of, Senator.

Senator DUCKWORTH. OK. Let's move on. I am very concerned, and we will follow up with this in the future.

Let's go to safe drinking water. I sat on the Government and Oversight Committee in the House where in a bipartisan manner we explored what happened in Flint, Michigan. I was actually flabbergasted earlier today when in response to my colleague, Senator Cardin, on whether you believe there is any safe level of lead that children can consume, you responded by saying, "Senator, that is not something I have reviewed or know about. I believe there is some concern but I have not looked into the scientific research on that."

You are about to become the EPA Administrator. You are seeking to be the EPA Administrator, and you've not looked into the issue of lead in our drinking water supply? I think that is something, especially in the aftermath of Flint, that is a serious oversight on your part. Have you even studied the Flint water crisis in preparing for this hearing? Do the names Mary Gade and Susan Hedman ring a bell to you?

Mr. PRUITT. In the situation in Flint, as I indicated earlier, the EPA should have acted more expeditiously in responding to Flint and did not. There was indication at the regional level that there were concerns, and there was not a response.

I think that the EPA bears responsibility for what happened in Flint and would seek to, in the future, avoid those kinds of situations by being more proactive through the regional administrators and the States and municipalities in ensuring the quality of our drinking water.

Senator DUCKWORTH. As EPA Administrator will you commit to appointing a permanent regional administrator to the Midwest region based out of Chicago, but they cover Michigan? We have issues with lead in Galesburg, Illinois, for example. And will you give them the responsibility and the ability to act proactively so that they can step in when they see that the State is not doing its job in protecting the safe water drinking supply for its citizens?

Mr. PRUITT. As you know, Senator, the answer is yes. The EPA has emergency order authority to respond to situations like you describe. I think the EPA should step in, in those situations in a very meaningful way.

Senator DUCKWORTH. That's good news, because they did not do it in the case of Flint.

Thank you.

I am out of time, Mr. Chairman.

Senator BARRASSO. Thank you very much.

I would like to introduce for the record an article from The Oklahoman by Rick Green that says J.D. Strong, Director of the State Wildlife Conservation Department, says of Attorney General Pruitt, "Attorney General Pruitt has been a really good partner and ally in making sure we have adequate protections in place for the quality and quantity of water," said Strong, who previously led the Oklahoma Water Resources Board and was State Secretary of the Environment. "I have never seen him put us in a position where we had to compromise anything to protect the waters of Oklahoma."

[The referenced information follows:]

NEWSOK

## The Oklahoman: Oklahoma officials support Pruitt for EPA and have their own problems with federal regulators

Rick Green, Oklahoman Reporter

Published: Monday, Jan. 2, 2017

The head of the Sierra Club says selecting Attorney General Scott Pruitt as administrator of the Environmental Protection Agency is like "appointing Darth Vader to lead the Rebel Alliance."

But within Oklahoma, the state's top prosecutor gets high marks from environmental officials.

In tapping Pruitt for the Cabinet-level post, President-elect Donald Trump picked someone who rails against federal overreach and has sued the EPA.

Michael Brune, executive director of the Sierra Club, used the Darth Vader comparison. He also compared Pruitt to an arsonist being put in charge of fighting fires.

"Pruitt is not only a climate science denier and fossil fuel apologist, he's cast himself as a sworn enemy of the very agency he would be in charge of," Brune said.

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State environmental officials, on the other hand, like the idea of Pruitt leading the EPA. They have their own problems with federal regulators.

J.D. Strong, director of the state Wildlife Conservation Department, said states are in a better position to protect the environment than federal officials.

"Attorney General Pruitt has been a really good partner and ally in making sure we have adequate protections in place for the quality and quantity of water," said Strong, who previously led the Oklahoma Water Resources Board and was state secretary of the environment.

"I have never seen him put us in a position where we had to compromise anything to protect the waters of Oklahoma."

Pruitt has fought against new federal regulations on water pollution, but he has also acted to limit pollution in the Illinois River in eastern Oklahoma, Strong said.

"He worked really hard with us and Arkansas to come up with a sort of compromise agreement that would avoid litigation but put us on an aggressive path to increased protection on pollution in the Illinois River," he said.

Runoff from chicken waste and water treatment plants has harmed water quality and fish habitat in the river, which draws large numbers of tourists.

Strong said Pruitt helped Oklahoma and Arkansas officials work together to limit this pollution. State officials, not the EPA, led the way.

"It is a success story, but there is also more work to be done," Strong said.

"It's time we have someone in there willing to listen to all sides and someone in particular who feels very strongly that states are in a strong position to protect the environment, more so than the federal government."

Scott Thompson, executive director of the Oklahoma Department of Environmental Quality, praised Pruitt for another case.

"Mr. Pruitt was essential in negotiating a historic water rights settlement with Indian tribes in southeast Oklahoma that preserved the ecosystems of scenic lakes and rivers," Thompson said. "This settlement, when Mr. Pruitt first arrived in office, seemed impossible due to conflict among the parties involved."

The water rights settlement was announced in August by the state of Oklahoma, Oklahoma City, and the Chickasaw and Choctaw Nations. It is expected to double the city's future water supply by granting an average of 110,000 acre feet per year of water from the Sardis Lake reservoir in southeastern Oklahoma.

The tribes had sued the state to protect their rights to water in the 22 counties comprising their historic land. The settlement was reached after five years of mediation and ensures tribal input into decisions about various bodies of water.

When Trump tapped Pruitt for the post on Dec. 7, the attorney general signaled the EPA would act differently under his leadership. His appointment will be subject to Senate confirmation.

"The American people are tired of seeing billions of dollars drained from our economy due to unnecessary EPA regulations, and I intend to run this agency in a way that fosters both responsible protection of the environment and freedom for American businesses," Pruitt said.

In testimony before Congress, Pruitt acknowledged that EPA has an essential role.

"I'm not one who believes the EPA has no role; the agency has played a very important role historically in addressing water and air quality issues that traverse state lines," he said.

His disputes with the agency typically center on what he characterizes as federal overreach.

"Quite simply, the EPA does not possess the authority under the Clean Air Act to do what it is seeking to accomplish in the so-called Clean Power Plan," he testified. "The EPA under this administration treats states like a vessel of federal will.

"The EPA believes states exist to implement the policies the administration sees fit regardless whether the laws, like the Clean Air Act, permit such actions."

Senator BARRASSO. Senator Boozman.

Senator BOOZMAN. Thank you, Mr. Chairman.

Again, I was the Congressman in the district with the Arkansas-Oklahoma Illinois River situation. I was elected in a special election in 2001 and inherited this. This had been going on for about 10 years. In 2001, from that time on until recently, we probably worked on this, it seems like every week.

What happened was in 2003 the EPA came out and said the standard was such that by 2013 the river needed to have an attainment of .037 standard of phosphorus. Arkansas worked very, very hard, changed out all of its treatment plants in that area. That is one of the fastest growing areas in the country. The ratepayers paid for all of that, hauled out chicken litter and all those kinds of things, and made a dramatic improvement in the attainment.

The problem was, though, Arkansas, and you mentioned, my good friend, Senator Booker, and he is a good friend, mentioned a lot about Oklahoma this and that. Arkansas never agreed to any of that. So they were going forward but they felt they could not attain the .037 standard because the first national river is in Arkansas, the Buffalo River, and it was not at .037, it is pristine.

In good faith in 2005, I believe, the Attorney General in Oklahoma sued Arkansas. You can correct me if I am wrong on some of these things. In 2010, in that case, all of the stuff was put in place, but the Federal judges never ruled on it so it was open.

Fast forward, 2013 is arriving. Arkansas does still not agree that the .037 standard is the appropriate one, so they were squaring off getting ready to sue each other again. Attorney General Pruitt and Attorney General McDaniel, a Democrat in my State, got together and said, let's not waste a ton of money with lawyers; let's use science and things like this to figure this out.

They chose a neutral site, Baylor University, which has an excellent water department. They came in and did a study and came back and said .037 is the standard. Right now the States are living with that. It was a tremendous effort, took a long time, and it was a very, very difficult situation. So I applaud you.

I want to put in the record a letter from our former Attorney General McDaniel that again outlines this. It was very, very complimentary of the Attorney General.

Senator BARRASSO. Without objection.

[The referenced letter follows:]



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January 18, 2017

The Honorable John Barrasso  
Chairman, U.S. Senate Committee  
on Environment & Public Works  
410 Dirksen Senate Office Building  
Washington, D.C. 20510

The Honorable Tom Carper  
Ranking Member, U.S. Senate Committee  
on Environment & Public Works  
456 Dirksen Senate Office Building

*Re: Attorney General Scott Pruitt's  
Nomination To Serve As Director of the  
Environmental Protection Agency*

Dear Chairman Barrasso, Ranking Member Carper, and Members of the U.S. Senate  
Environment and Public Works Committee,

My name is Dustin McDaniel. I am an attorney in Little Rock, Arkansas. I served as the Democratic Attorney General of the State of Arkansas from 2007-2015. During that time, I served for three years as the Co-Chair of the Democratic Attorneys General Association. I am a member of the Democratic National Committee and was a strong supporter of Secretary Clinton's campaign for President. I am grateful for your work on this committee. I believe in the core mission of the Environmental Protection Agency. I believe that climate change is real and overwhelmingly the result of human activity. I believe that the United States has a moral obligation to lead the world in shaping climate policy. These challenges in a hostile political environment will be acutely felt by the next director of the EPA.

As you consider the nomination of my friend Scott Pruitt, I respectfully ask that you enter this letter into the record so that I may attempt to clarify what I believe to be unfair criticisms of the historic agreement negotiated between myself on behalf of the State of Arkansas and Attorney General Pruitt on behalf of the State of Oklahoma regarding water quality in the Illinois River watershed.

Prior to the elections of General Pruitt or myself, Oklahoma grappled with Arkansas municipal water systems and Arkansas industry, primarily poultry companies, over increased phosphorous levels in the Illinois River watershed. Pollution was substantially impacting the water quality in one of Oklahoma's most scenic waterways. In 2003, an agreement was executed that would require that the phosphorus levels be reduced over the next 10 years to a level .037 parts per million. As a result, all parties on both sides of the state line worked diligently to substantially improve the water quality.



Dustin McDaniel letter to U.S. Senate  
Environment and Public Works Committee  
January 17, 2017  
Page 2 of 2

At the same time, then-Oklahoma Attorney General Drew Edmondson filed suit using an out of state plaintiffs' firm against Arkansas's poultry industry. Many criticized the litigation as taking the focus away from the environment and placing it on money damages. The State of Oklahoma's outside counsel presented their case to U.S. District Court Judge Gregory Frizzell. Almost all the claims were dismissed by the court. The evidence was fully submitted to the judge in March of 2010 on the remaining question regarding injunctive relief. To this day, no ruling in that litigation has been handed down.

As 2013, the ten-year deadline for the reduced phosphorus levels, was approaching, two things were evident: 1.) despite huge improvements in water quality, the phosphorus levels in the river would not be at .037 parts per million before the deadline, and 2.) research into the standard itself called into question its origin and basis in hard science.

The States of Arkansas and Oklahoma were facing a point of litigating against one another (again) over this issue to the detriment of all concerned. I approached General Pruitt to ask if we could reach a solution that would protect the environment and demonstrate to our citizens that we were committed to working together on their behalf rather than litigating against one another using taxpayer dollars for lawyers instead of scientists.

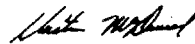
The resulting agreement reflects that Oklahoma enhanced, not relaxed, its enforcement of environmental protections. Scientists were appointed to establish the proper water quality metrics, establish a binding standard, and at no time were phosphorous abatement measures relaxed. It was an historic moment that demonstrated that cooperation in pursuit of environmental protection yielded better results than litigation. The resulting report was recently released from the commission and is available for your review. (*See, [www.ok.gov/conservation/documents/IR%202016.12.19%20Final%20Report.pdf](http://www.ok.gov/conservation/documents/IR%202016.12.19%20Final%20Report.pdf)*)

Recent press accounts regarding these efforts unfairly mischaracterize the work that was done by General Pruitt and his team. He was a staunch defender of sound science and good policy as appropriate tools to protect the environment of his state. I saw firsthand how General Pruitt was able to bridge political divides and manage multiple agency agendas to reach an outcome that was heralded by most credible observers as both positive and historic.

As I am sure that this committee will have questions about this matter, I wanted to take this opportunity to add facts and context to an accomplishment that should stand as a credit to General Pruitt's career and qualifications for this nomination.

I sincerely appreciate the opportunity to submit this letter to you and to your committee and to be a part of the record in these proceedings. I thank you for your service to our nation.

Respectfully submitted,



Dustin McDaniel

DM/bw

Senator BOOZMAN. Thank you.

Let me quote one of the final paragraphs: "Recent press accounts regarding these efforts unfairly mischaracterize the work that was done by General Pruitt and his team. He was a staunch defender of sound science and good policy as appropriate tools to protect the environment of the State. I saw firsthand how General Pruitt was able to bridge political divides and manage multiple agency agendas to reach an outcome that was heralded by most credible observers as both positive and historic."

Again, as someone who was intimately involved in that, more involved than I wanted to be in things, there really was a heroic effort by yourself and the people in Arkansas trying to resolve a difficult situation.

Mr. PRUITT. Thank you, Senator.

Senator BOOZMAN. Thank you.

That's really all I have, Mr. Chair.

Senator BARRASSO. Thank you very much, Senator Boozman.

Senator Sullivan.

Senator SULLIVAN. Thank you, Mr. Chairman and General Pruitt.

I wanted to focus on—a number of us talked earlier about the frustrations that the American people have with the EPA. We talked about anger; Senator Ernst talked about fear. I believe it extends to a couple reasons underlying that.

One is the agency currently feels that it is empowered to regulate literally every nook and cranny of American life. Related to that, they seem to have very little respect for the rule of law. Let me touch on those.

Senator Ernst talked about the WOTUS rule. Literally the EPA has claimed the ability to regulate puddles. As a State with—pre-WOTUS by the way—65 percent of America's wetlands in Alaska, we have very significant concerns about this.

I want to actually address an earlier comment by Senator Whitehouse where he said there is nothing in your record that shows that you have the background to help America's fishing industry. Well, I couldn't disagree more with Senator Whitehouse, who is a friend and colleague. My State has a fishing industry like Rhode Island's. It is a little bigger. Sixty percent of all the seafood that is—

Senator WHITEHOUSE. It's considerably bigger.

Senator SULLIVAN. Thank you.

[Laughter.]

Mr. Chairman, would you please acknowledge that for the record?

Senator BARRASSO. With no objection.

Senator SULLIVAN. Almost 60 percent of all seafood harvested in the United States comes from the waters of Alaska, and it is considered the best, most sustainable, best managed from an environmental standpoint, fishery in the world.

Do you know what the No. 1 issue is, the top issue of the fishermen of Alaska is? It is EPA overreach. Let me give you a specific example.

This is a regulation, 200 pages, on America's fishermen, the ultimate small businessmen and women. This actually requires that

every fisherman in Alaska, commercial fisherman, requires a discharge permit to literally hose off the deck of a ship. Think about that.

If you are gutting fish and fish guts or pieces of a fish fall on the deck of your ship, and you hose it down, fish back into the water of the oceans, you need a permit, 200 pages. This is the kind of thing where the trust between Americans and the EPA has eroded so much because of these kinds of issues.

If confirmed, will you work with me and others on this Committee to make sure that these kinds of regulations are balancing environmental needs with jobs that are so important? You mentioned it as a cost. Will you work with us on that, and would you care to comment on a regulation like this, fish back into the ocean requiring a permit? Congress, by the way, has extended this twice, the implementation of this, so there is bipartisan agreement that we need to do something about this overreach. Would you care to comment on this?

Mr. PRUITT. Senator, I think it is exemplary of a lack of priority. We have many, like I indicated earlier, 40 percent of our country is in nonattainment under the NAAQS Program. We have over 1,300 CERCLA sites in this country that need attention to move those areas into remediation and restore those areas for environmental related issues. I think in some respects what you cite there is just missed priorities, trying to focus on something like that as opposed to focusing on these other areas that will really improve tangibly the environmental protections for people across the country.

Senator SULLIVAN. Let me talk next about the rule of law. I am glad you emphasized it as a priority. I believe it is one of the principal reasons again why, again, there is such a lack of trust between the American people and the EPA. But it is not just a Republican issue. As a matter of fact, there are a number of examples where this is viewed as a bipartisan issue that we need to address. You may have seen with regard to the Clean Power Plan, Laurence Tribe, not known as a strong staunch Republican, Harvard law professor, stated, "The EPA is attempting to exercise lawmaking that belongs to the Congress and judicial power that belongs to the Federal courts. EPA is attempting an unconstitutional trifecta usurping the prerogatives of the States, Congress, and the Federal courts all at once with its Clean Power Plan." Then he stated, "Burning the Constitution should not become part of our national energy policy."

You've been involved in some of these cases, the Clean Power Plan, the Waters of the U.S. In both of these cases, courts have stayed the EPA's rule. Why do you think the courts have done that? Do you think the rule of law that has been ignored by the EPA is something that if confirmed, you will work on to regain the trust between the EPA and the American people?

Mr. PRUITT. As I indicated earlier, Senator, I think at times perhaps there those in law and the courts that look at rule of law as something that is academic and technical. But it is real. It affects people in very real ways. When you have agencies of any type that act inconsistent with the statutory authority given to them by Congress, it creates the kind of uncertainty that you are talking about.

People don't know what is expected of them, and paralysis happens.

And so rule of law is important to economic development, it is important to send messages of certainty, it is important so that people can plan and allocate resources. There are many laws that people look at and say, I don't really like that. So long as they know what is expected of them, they can plan and allocate resources to comply. I think that is what is important about rule of law.

Senator SULLIVAN. And as one of the lead litigators on the WOTUS rule and the Clean Power Plan and the fact that the Supreme Court and the Sixth Circuit have put stays on those rules, what do you think that indicates the courts' view is of those two rules issued by the EPA at this moment?

Mr. PRUITT. Well, it is unprecedented for the Supreme Court to have done what they did in the Clean Power Plan.

Senator SULLIVAN. Never happened in the history—

Mr. PRUITT. Never happened in the history of jurisprudence before the U.S. Supreme Court. That says a lot.

Senator SULLIVAN. Thank you, Mr. Chairman.

Senator BARRASSO. Thank you very much.

Senator Moran.

Senator MORAN. Mr. Chairman, I yield to somebody ahead of me if they would yield back to me for the next question.

Senator BARRASSO. That would be fine. I have some time that I haven't gotten to yet in this second round. We will go shortly to a third round.

I wanted to talk a little about the Mercury Rule that the Supreme Court overturned. They overturned the EPA's Mercury Rule, finding that the EPA did not appropriately consider the costs of the rule. Noting that between the time that the rule is issued and the Supreme Court decision 3 years passed, the EPA Administrator Gina McCarthy was on a television show a couple days before the Supreme Court made its ruling, and they said, well, what if the Supreme Court says you are wrong? And essentially, she said, well, the majority of the power plants have already decided and invested in a path, because it is been 3 years, to achieve compliance with the Mercury Air Toxic Standards. In other words, she had already gotten her result, even though what she had done was found by the courts to be illegal.

So I would ask you your thoughts on her statement, and do you believe that her statement shows respect for the rule of law?

Mr. PRUITT. Well, Senator, this is speculation to a certain degree, and one of my favorite philosophers is Yogi Berra, and he said, "Predictions are pretty tough, particularly about the future." So I don't want to be too speculative here. But when you look at the response of the Supreme Court and the Clean Power Plan, I think largely the reason they acted in an unprecedented way is because of what you just addressed, Mr. Chairman, that in response to the Michigan and the EPA case, there were some comments made that they had achieved the outcome despite the fact that it acted inconsistent with the framework under the law.

So I think rule of law is something, as I indicated to Senator Sullivan, it is not something that is academic. I think it is meaningful.

It inspires confidence in those that are regulated. It gives them assurance that regulators are acting consistent with their authority, and it allows them to plan and allocate resources to meet the standards and meet the objectives that Congress and regulators established.

Senator BARRASSO. Senator Moran.

Senator MORAN. Mr. Chairman, thank you very much.

General, you can see by where I sit on the dais that I haven't been in the Senate a terribly long time. But one of my causes upon my arrival and the discovery of how the Senate works is to try to work with my colleagues to reassert congressional authority. In my view there is a number of ways we could do that. One, Congress could quit passing huge pieces of legislation and delegating authorities to agencies and departments. Another one that we could pursue—and I hope we will this year—is an appropriations process, by which we have the opportunity to influence decisions made at the Environmental Protection Agency and every other agency and department.

One of the things—when we do that by developing a relationship with an agency head, knowing that, and I guess part of that is that Members of Congress need to have greater levels of expertise on the subject matter of their jurisdiction. One of the subcommittee I chair is in the Commerce Committee. It has jurisdiction over the National Highway Traffic Safety Administration. The Environmental Protection Agency just last week finalized its greenhouse gas standards for light duty cars and trucks for 2022 to 2025.

Now, the law says that it is to coordinate that effort with the National Highway Traffic Safety Administration. And that agency is still developing its own process to determine appropriate fuel standards. I raise this as an example of where, once again, two agencies instructed by Congress to work together to find a solution or the right answer to an issue ignore the law. I assume you would assure me or members of this Committee that the Environmental Protection Agency, to the best of your ability, will obey the law.

But I also assume that you are willing to assure me that when directed by the law to cooperate with other agencies, to have the input of an agency that our subcommittee has jurisdiction over, as the person in the Senate responsible for these issues, I go to the agency that I have the most influence over, and they say, well, EPA's already done its thing. I assume we can bring those kinds of practices to an end.

Mr. PRUITT. Absolutely, Senator. I think that interagency discussion, that collaboration to ensure that there is meaningful discussion, review of action, takes place. I want to speak generally to your delegation reference, because I do think that that is a very important issue that you raise. I think a lot of times what has happened is that Congress has spoken in very general ways, I will not say vague, but approaching vagueness, and giving carte blanche or substantial authority to agencies without providing the kind of framework that is necessary for them to make their decision.

From a separation of powers issue, I think that is very important. I think it is important for Congress, article 1, to exercise its authority and to give the direction to these agencies on how they should conduct their business. Senator Cardin, in his comments

and questions earlier about the Waters of the United States Rule, I think that is a problem, presently, largely because the definition of Waters of the United States in the statute is so vague and so general, it creates uncertainty.

So I think making sure that Congress performs its role and the executive branch performs its role in enforcing laws, and we try to do less delegation and respect separation of powers, is very, very important.

Senator MORAN. I appreciate your reassurance of how you would conduct, if confirmed, the agency. It also is a reflection upon the need for Congress to do its job better. Perhaps, I guess you'd have nothing to do with that. But for me and my colleagues, we need to be much more precise and clear in legislation and much more likely to deal in smaller bite-size pieces. Too often I think Congress is interested, and I don't want to be derogatory to any of my colleagues, but too often we look for the headline, we solved a problem, and yet we complain about what an agency's decisions are, and we have given them so much authority they have the ability to make what I would consider, some of us may consider a bad decision.

Mr. PRUITT. And there are important steps that have been taken. We've mentioned TSCA this morning, where you've done just that, in his past year. So I think that is a very important item that you raise, Senator.

Senator MORAN. Thank you.

Thank you, Mr. Chairman.

Senator BARRASSO. Thank you very much, Senator Moran.

We'll now move to a third round of questions.

Attorney General Pruitt, you just mentioned TSCA. You sent a letter to this Committee in April 2015 supporting the Frank Lautenberg Chemical Safety Act. In fact, the timing of your letter was less than a month after the bill was introduced, and you were the first Attorney General of the United States to support the bill.

The bill ultimately received overwhelming bipartisan support in Congress. It would be your job to implement the bipartisan reforms and ensure we have consistent regulation throughout the country. Would you discuss the plans that you might have to implement this legislation, and will you commit to implementing the legislation in a timely manner?

Mr. PRUITT. Senator, and Mr. Chairman, yes. I think in response to obligations of the EPA, this body has put timelines before the EPA to carry out certain rulemaking, the Prioritization Rule, the Risk Evaluation Rule, fees that need to be established, all those are mid-term in 2017. And I think it is a matter of the EPA Administrator making that a priority at the agency.

I also think that in response to Senator Gillibrand earlier, and others have raised this too, there are certain, like PFOA, that need to be addressed in evaluating that listing under TSCA or perhaps the Safe Drinking Water Act as well. So I think there are specific actions that need to be taken but also the rulemaking process and the deadlines be adhered to.

Senator BARRASSO. You made reference to, and I did in my opening statements as well, to Flint. There was give and take on Flint a little earlier. The other thing I brought up was the Gold Key

Mine spill in Colorado, an environmental disaster caused by the EPA. Last Friday, the EPA announced that it has denied all claims for the \$1.2 billion in lost income, loss of use of property and damage to the businesses and the property suffered by 73 tribes, by land owners, local businesses, local governments as a result of the spill. The EPA's excuse was its legal interpretation of the Federal Tort Claims Act. According to the EPA, if a Federal agency hurts someone through a discretionary action, then the Federal Tort Claims Act does not apply. This doesn't sound right to me.

So if confirmed, will you commit that you will review that decision and use whatever authority is available to you under the law to help the people who have been harmed by the EPA's negligence?

Mr. PRUITT. Yes, Mr. Chairman.

Senator BARRASSO. Thank you.

Senator Carper.

Senator CARPER. Thanks very much.

A question. Mr. Chairman, I know you did not use, when we started this round of questioning, you did not use like 2 minutes and 30 seconds of your time. When you comment like you have just commented, are you drawing down on that 2 minutes and 30 seconds?

Senator BARRASSO. I am now in the third round of questioning, yes, sir. And I would reflect that looking back at EPA nomination hearing processes, when Gina McCarthy was nominated, came to this Committee, Chairman Barbara Boxer, two rounds, first round 5 minutes, second round, 2 minutes. We are now in a third round of 5 minutes, so I think that the Chairman has tried to listen to our discussions with other members to make sure that all the Democrats and every member had a chance to have as many questions as possible.

Senator CARPER. Thank you. I want to go back to something you said about one of our colleagues with respect to EPA actually visiting States and participating in meetings in those States with respect to the Clean Power Plan. I think it was said that West Virginia, my native State, native State of my friend from West Virginia, that was not visited. We have heard since then from Joe Goffman, who was counsel to John McCain, EPA Assistant Administrator for Air, as you may know, he said he personally participated in meetings on the Clean Power Plan in West Virginia, also in Kentucky, Texas, Pennsylvania, Nevada, Washington, California, Wyoming, North Dakota, Colorado, Illinois, and I think Nebraska.

I wrote a letter to Gina McCarthy on January 11th. You may recall, Mr. Pruitt, I wrote a letter to you on December 28th, and posed a series of questions to you and asked for your responses by January 9th. I have yet to receive those responses. I wrote a letter to her on January 11th, again, to Gina McCarthy and to Assistant Secretary Darcy of the Department of the Army. I wrote because we were getting and hearing on our office a whole list of assertions about the Waters of the U.S. I think this is maybe instructive for all of us. The things that we were hearing, people were calling in, in Delaware. It led us to ask these questions.

One of the questions was, are the EPA and the Corps currently implementing a new Clean Water Rule? The assertion was that in-

deed, that has been happening. So we asked, is that really the case. And 2 days later, 2 days later, we received a response, no, the agencies are not now implementing the new Clean Water Rule. Implementation of the new rule is temporarily stayed by the Sixth Circuit Court of Appeals. September 2015, the agencies immediately directed their field offices to stop using the new rule, and instead resume implementing regulations interpreting the guidance prior to the new rule. That was one of the questions we asked.

We also asked, because we were hearing assertions otherwise, are the EPA and the Corps currently pursuing enforcement actions pursuant to the new Clean Water Rule? And we got on the same date, January 13th, this response, that said no, the agencies are not pursuing any enforcement actions pursuant to the new Clean Water Rule and will not enforce this rule unless and until the Sixth Circuit Court of Appeals stay is lifted.

The next question we asked, because we were hearing assertions otherwise, does anything in the Clean Water Rule revoke or otherwise modify the Clean Water Act's statutory or regulatory exemptions for farming and ranching? Response, 2 days later, January 13th, was no, the Clean Water Rule makes absolutely—absolutely no changes to normal farming, ranching, and forestry exemptions established under the Clean Water Act in implementing regulations.

So question No. 4, some have claimed that landowners will no longer be able to rely on the Clean Water Act's statutory and regulatory exemptions for farming and ranching, should the Clean Water Rule go into effect, because while the statute and regulations remain unchanged, the agency has narrowed those exemptions in practice through the actions in the field. Is that true? And the answer is, not surprisingly, the assertion that the agencies have no application in statutory and regulatory exemptions for farming, ranching, and forestry is untrue. The agencies have taken no steps intended to reduce the scope of the exemptions. We have not observed changes by field offices in the way they interpret or implement these exemptions. In fact the Corps has re-emphasized publicly that these exemptions are self-implementing. Farmers, ranchers, and foresters are not required to get approval from the agencies prior to using the exemptions.

I raise this because sometimes what people assert to be true, sometimes it is over the Internet, sometimes it is on television, sometimes it is on the radio, newspapers. Assertions are made. And in this case there is a whole long list of assertions that were made, and none of them were true. They are distortions, untruths about what the EPA is doing with respect to a regulation that was stayed.

I would ask to, for the record, Mr. Chairman, to be able to submit for the record the questions that we posed to EPA on January 11th and also the responses that we have received.

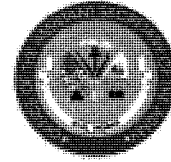
Senator BARRASSO. Without objection.

[The referenced information follows:]





JAN 13 2017



The Honorable Tom Carper  
U.S. Senate  
Washington, D.C. 20510

Dear Senator Carper:

Thank you for your January 11, 2017, letter regarding the status of the U.S. Department of the Army (Army) and U.S. Environmental Protection Agency (EPA) Clean Water Rule. We share your concerns about misinformation being reported about the rule and appreciate the opportunity to respond.

The Clean Water Rule was promulgated in response to requests the agencies received from thousands of stakeholders who asked us to replace existing confusion, delay, and inconsistency with improved regulations defining the scope of the Clean Water Act (CWA) consistent with the law and the best available science. Our goals were to make the process of identifying waters covered, and not covered, by the statute more understandable, transparent, and effective and to accomplish this without changing any of our longstanding exemptions for farmers, ranchers, and foresters. After years of work involving an unprecedented level of public outreach and benefitting from the latest peer reviewed science, the final Clean Water Rule was published in the *Federal Register* in June 2015. The rule was subsequently challenged in federal court and its implementation temporarily stayed by the 6<sup>th</sup> Circuit Court of Appeals in October 2015.

Your letter raises important questions regarding the status of the rule and how the agencies are currently implementing the CWA. We hope you and your constituents find our answers responsive and helpful.

**Question 1: Are the EPA and the Corps currently implementing the new Clean Water Rule?**

*Answer: No, the agencies are not now implementing the new Clean Water Rule. Implementation of the new rule was temporarily stayed by the 6<sup>th</sup> Circuit Court of Appeals in September 2015. The agencies immediately directed their field offices to stop using the new rule and instead, resume implementing regulations and interpretive guidance in place prior to the new rule.*

**Question 2: Are the EPA and the Corps currently pursuing enforcement actions pursuant to the new Clean Water Rule?**

*Answer: No, the agencies are not pursuing any enforcement actions pursuant to the new Clean Water Rule and will not enforce this rule unless and until the 6<sup>th</sup> Circuit Court of Appeals stay is lifted.*

**Question 3: Does anything in the Clean Water Rule revoke or otherwise modify the CWA's statutory and regulatory exemptions for farming and ranching?**

*Answer: No, the Clean Water Rule makes absolutely no changes to normal farming, ranching, and forestry exemptions established under the CWA and implementing regulations.*

**Question 4: Some have claimed that landowners will no longer be able to rely on the CWA's statutory and regulatory exemptions for farming and ranching should the Clean Water Rule go into effect because, while the statute and regulations remain unchanged, the agency has narrowed those exemptions "in practice" through their actions in the field. Is that true?**

*Answer: The assertion that the agencies have narrowed application of the statutory and regulatory exemptions for farming, ranching and forestry is untrue. The agencies have taken no steps intended to reduce the scope of the exemptions and we have not observed changes by field offices in the way they interpret or implement these exemptions. In fact, EPA and the Corps have reemphasized publicly that these exemptions are self-implementing. Farmers, ranchers, and foresters are not required to get approval from the agencies prior to using the exemptions.*

**Question 5: Several case studies related to farming practices – including examples related to plowing, discing, construction of stock ponds, and new uses of cropland – have been presented to members of Congress to suggest that the Clean Water Rule is expanding the agencies' jurisdiction under the CWA. If you are familiar with the aforementioned case studies, are any of them examples of new enforcement actions under the Clean Water Rule?**

*Answer: The agencies are aware of case studies being presented in support of assertions that the Corps and EPA are already using the Clean Water Rule and its principles to expand jurisdiction under the Act and to narrow the scope of farming, ranching, and forestry exemptions under CWA section 404(f). The fact is that ALL of the case studies that we have seen were initiated prior to the Clean Water Rule, and many represent decisions made in the previous administration. This means the agencies' actions were taken under the regulations and guidance (e.g., the Corps 1986 Regulatory Program regulations, and the 2008 Joint Guidance) in place prior to the Clean Water Rule. In addition, implementation of the Clean Water Rule has been temporarily stayed by the 6<sup>th</sup> Circuit Court of Appeals. The agencies have not, and will not, enforce or implement the Clean Water Rule during the stay.*

**Question 6: Are some or all of the cases highlighted actually federal enforcement cases conducted in accordance with agency regulations promulgated prior to the Clean Water Rule?**

*Answer: Yes, all the cases presented (including enforcement actions, jurisdictional determinations, and Section 404(f) exemptions) represent actions and decisions which were made using the regulations and guidance in place prior to promulgation of the Clean Water Rule. These cases reflect actions taken under agency regulations in place for as long as 30 years (e.g., Corps 1986 Regulatory Program regulations).*

**Question 7: Considering all of the agencies' jurisdictional determinations since the SWANCC (2001) and Rapanos (2006) cases, is it fair to characterize the Clean Water Act's current geographic scope as narrower than it was prior to those decisions?**

*Answer: Yes. The Supreme Court decision in SWANCC reduced the geographic scope of jurisdiction under the Clean Water Act. After SWANCC and Rapanos, consistent with guidance and Corps and EPA regulations, the agencies have asserted jurisdiction under the CWA more narrowly than was the case prior to those decisions.*

**Question 8: Are Prior Converted Croplands still excluded from Clean Water Act jurisdiction?**

*Answer: Yes. Prior Converted Croplands (PCC) remain non-jurisdictional under EPA and Corps Clean Water Act regulations. EPA and the Corps promulgated final regulations in 1993 (58 Federal Register 45008) excluding PCC from CWA jurisdiction and these rules remain in effect without change.*

**Question 9: Are permafrost soils considered waters under the Clean Water Act?**

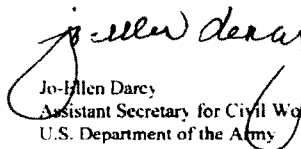
*Answer: No. The presence of permafrost is itself NOT determinative of the existence of wetlands or waters of the United States. Permafrost is a permanently frozen layer of soil, sediment, or rock at varying depths below the surface and found in polar regions.*

Thank you again for your letter. Please call us if you have any questions or your staff may contact Denis Borum in the EPA's Office of Congressional and Intergovernmental Relations at [borum.denis@epa.gov](mailto:borum.denis@epa.gov) or 202-564-4836; or Gib Owen in the Office of the Assistant Secretary of the Army (Civil Works) at [gib.a.owen.civ@mail.mil](mailto:gib.a.owen.civ@mail.mil) or (703) 695-4641.

Sincerely,



Joel Beauvais  
Deputy Assistant Administrator for Water  
U.S. Environmental Protection Agency



Jo-Allen Darey  
Assistant Secretary for Civil Works  
U.S. Department of the Army

**United States Senate**  
WASHINGTON, DC 20510

January 11, 2017

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

The Honorable Jo-Ellen Darcy  
Assistant Secretary of the Army  
Department of the Army, Civil Works  
108 Army Pentagon  
Washington, DC 20310

Dear Administrator McCarthy and Assistant Secretary Darcy,

We write to seek assurances regarding the scope and implications of the EPA's Clean Water Rule. As you know, the rule, finalized and published in the Federal Register on June 29, 2015, was stayed by the U.S. Court of Appeals for the Sixth Circuit on October 9, 2015. Acknowledging that the rule is currently undergoing review in the courts and cannot legally be enforced by EPA, we continue to hear concerns from constituents and read claims from industry that suggest the Rule's reach is more expansive than EPA has indicated. Consequently, we are requesting responses to several claims, outlined below, so our offices can provide additional clarity to our constituents regarding the reach of the Clean Water Rule should it go into effect in the future. The specific questions we are seeking clarity on are as follows:

- 1) Are the EPA and the Corps currently implementing the new Clean Water Rule?
- 2) Are the EPA and the Corps currently pursuing enforcement actions pursuant to the new Clean Water Rule?
- 3) Does anything in the Clean Water Rule revoke or otherwise modify the Clean Water Act's statutory and regulatory exemptions for farming and ranching?
- 4) Some have claimed that landowners will no longer be able to rely on the Clean Water Act's statutory and regulatory exemptions for farming and ranching should the Clean Water Rule go into effect because, while the statute and regulations remain unchanged, the agency has narrowed those exemptions "in practice" through their actions in the field. Is that true?
- 5) Several case studies related to farming practices -- including examples related to plowing, discing, construction of stock ponds, and new uses of cropland -- have been presented to Members of Congress to suggest that the Clean Water Rule is expanding the agencies' jurisdiction under the Clean Water Act. If you are familiar with the aforementioned case studies, are any of them examples of new enforcement actions under the Clean Water Rule?

- 6) Are some or all of the case studies highlighted actually federal enforcement actions conducted in accordance with prior agency regulations promulgated before the Clean Water Rule?
- 7) Considering all of the agencies' jurisdictional determinations since the *SWANCC* (2001) and *Rapanos* (2006) cases, is it fair to characterize the Clean Water Act's geographic scope as narrower than it was prior to those decisions?
- 8) Are prior converted croplands still excluded from Clean Water Act jurisdiction?
- 9) Are permafrost soils considered waters under the jurisdiction of the Clean Water Act?

Thank you for your consideration of these questions. We look forward to your prompt response.

Sincerely,

Robbie Stetson

Tom Carpen

Jon Tustin

Mazzi K. Diano

William

Brian Schoof

Bob Carey, Jr.

Chris Coan

Min F. R. A.

Patrick Leahy

Robert Manning

Sharon Brown

Senator CARPER. Thank you.

I'd like to look at a chart, if you don't mind. This is a report card that lists 17 counties. How many counties do you have in Oklahoma?

Mr. PRUITT. Seven—seventy-seven.

[Laughter.]

Mr. PRUITT. Mr. Chairman, can I refer to Senator Inhofe for these questions?

[Laughter.]

Senator CARPER. I was watching; his lips are barely moving as you speak.

Thank you.

At the same time you've been suing EPA on its ozone standards, all the counties in Oklahoma for which data is collected earned an F from the American Lung Association for not meeting ozone health standards. You have 60 counties that the American Lung Association does not have data on the progress made or not made with respect to ozone. These are the ones we have information on, 17. Seventeen counties from Adair to Tulsa. You live in Tulsa, I expect? Tulsa County. They all got Fs. This is last year, 2016. My question to you is, what did you do about it? What did you do about it before or since? Sometimes people may not believe what we say, but they will believe what we do. What have you done about this?

Mr. PRUITT. Senator, two things. I really believe there needs to be a tremendous effort made by counties across this country to move nonattainment into attainment. Over 40 percent of the country—presently 40 percent of the country approximately is in nonattainment. There needs to be great prioritization with EPA and local officials in achieving attainment.

Senator CARPER. But that wasn't my question, Mr. Pruitt. What did you do about it? You have 17 counties for which we have data from last year. What did you do about it? Before or since? That's what I am asking you.

Mr. PRUITT. As indicated in our meeting individually, the primary enforcement responsibility in Oklahoma with respect to air quality permits and the rest is the Department of Environmental Quality. And there have been actions taken by DEQ, and they continually work with those counties to reach attainment. And we provide general counsel advice to that agency in the performance of their role.

Senator CARPER. I am not the Attorney General of Delaware, never had any intention to be, but if 17 of our counties in Delaware—we only have 3—if 17 of them or all 3 of them got Fs, I promise you, I would do something about it.

Thank you.

Senator BARRASSO. Senator Inhofe.

Senator INHOFE. Thank you, Mr. Chairman.

Congress recently passed a bipartisan bill—many of us up here supported it, I know I did—as part of the Water Infrastructure Bill to allow States to lead implementation and enforcement of EPA's coal ash rule through the State-based permit program. That rule is already in effect, and it is important that the EPA move quickly on this. If you are confirmed, are you going to get right on this thing?

Mr. PRUITT. Yes, Senator Inhofe.

Senator INHOFE. All right.

Sue and settle, we all know what that is, we know that groups, maybe some of the environmentalist extremist groups will file lawsuits against the EPA. The EPA, instead of defending against the lawsuits, will enter into a resolution behind closed doors without any public input or participation. These settlements result in new sets of legally binding priorities and duties for the EPA that achieve demands of special interests. Can you share your thoughts on sue and settle?

Mr. PRUITT. Senator, this issue came up earlier. And it is a concern. Because it is regulation through litigation. There is a place for consent decrees in our litigation system, but to use a consent decree to bypass Congress, bypass the regulatory requirements that you've placed upon those agencies, to engage in rulemaking through litigation is something I think should not occur.

Senator INHOFE. And that is the part that did not come up earlier. I appreciate that very much.

Last, the cost of regulations. As you know the Supreme Court overturned EPA's Mercury and Air Toxics Rule in 2015 because the EPA failed to—ignored the fact that the cost was \$9.6 billion annually of the rule. Now, in fact, the EPA's regularly issued rules over the past 8 years are very costly for our industries and our job creators. According to the CRS, now, the CRS, when they make an evaluation, are much more conservative. The figure is always a very conservative figure. But they said the Clean Power Plan would be at least \$5 billion to \$8 billion a year. The figures I have heard on that are far greater because it wouldn't be that much different than the old systems they tried to do through legislation.

The methane standards on oil and gas facilities, \$315 million a year. The new ozone standards, \$1.4 billion. The 2015 coal ash standards, \$587 million a year. And the 2011 sulfur dioxide standards, \$1.5 billion a year. Now, when you hear this, all this money is being spent on compliance costs by our job creators, people out there that are working for a living, and they are hiring people. What are your thoughts, and what do you believe should be the role of the costs of EPA's decisionmaking?

Mr. PRUITT. I think it is very important in the rulemaking process, Senator. And the Supreme Court and courts have recognized that very important factor.

I mentioned earlier the case that we were involved in in Oklahoma involving the regional haze program. That was an example where Oklahoma actually complied and met and satisfied the requirements under the statute and the rule. But the steps that were taken were displaced by the EPA, adding hundreds of millions of dollars of cost to consumers in the generation of electricity. So costs are very important. We need to make sure that they are considered. In certain areas of the statute, as I indicated earlier, they can't be, under the title I NAAQS program. But in that case that you are referring to, it is an obligation of the EPA to actually engage in a cost-benefit analysis, make a record before it made its decision.

Senator INHOFE. Do you think that the laws that are in the books right now adequately handle this situation?

Mr. PRUITT. I do, largely, Senator. I think it is mostly an application issue that the agency and the regulator is doing its job under the statute as provided by Congress.

Senator INHOFE. Thank you very much.

Senator BARRASSO. Senator Whitehouse.

Senator WHITEHOUSE. And presumably, Mr. Pruitt, it goes without saying that if the EPA is going to consider cost to the industry of confirming to pollution guidelines it should also consider benefits to the public from cleaner air, cleaner water and the results of that compliance, right?

Mr. PRUITT. It should, Senator.

Senator WHITEHOUSE. So we have been talking about fundraising done by you for the rule of law defense fund during the time when you were both a board member and for a full year the chairman of the Rule of Law Defense Fund and the fact that we have exactly zero information in this Committee about that fundraising. We also have zero—and let me ask unanimous consent for the page from the filing that discloses that he was in fact a member of the board of directors and chairman of the Rule of Law Defense Fund.

Senator BARRASSO. Without objection.

[The referenced information follows:]



**UNITED STATES SENATE**  
**COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS**  
**STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES**

**Memberships:**

List significant memberships and offices held in professional, fraternal, business, scholarly, civic, charitable and other organizations. Attach additional pages if necessary.

<b>Organization</b>	<b>Office held (if any)</b>	<b>Dates</b>
Southern Theological Seminary	Board of Trustee	11/2012- 11/2017
The Windows Ministry Incorporated	Board of Directors	12/2009- Present
Republican Attorneys General Association	Member	1/2011- Present
Rule of Law Defense Fund	Member of the Board of Directors	11/2016- 12/2016
District Attorneys Council	Member	1/2011- Present
Board of Equalization	Member	1/2011- Present
Rule of Law Defense Fund	Chairman	11/2015-11/2016
Rule of Law Defense Fund	Board Member	11/2013-11/2015
Republican Attorneys General Association	Executive Committee Member	11/2013-11/2015
State of Oklahoma	Attorney General	1/2011- Present

**Qualifications:**

State fully your qualifications to serve in the position to which you have been nominated.

I am a licensed attorney with significant experience in constitutional law, the Administrative Procedures Act, and most major Environmental Protection Agency administered statutes. This body has recognized my expertise in EPA related matters on several occasions, inviting me to testify

Senator WHITEHOUSE. We also have a meeting agenda from the Republican Attorney Generals Association during the time that you were executive committee member of the Republican Attorney Generals Association meeting at the Greenbrier, which I will stipulate to my friend from West Virginia is a lovely place to go. The agenda, which I would like to take this page of and put into the record, mentions a private meeting with Murray Energy. It mentions a private meeting with Southern Company. It mentions a private meeting with the American Fuel Petrochemical Manufacturers. If you will show the graphic, these are all the same groups that I have been asking about in terms of your fundraising for the Rule of Law Defense Fund. And there is Murray Energy, and there is Southern Company, and I am sure the American Fuel Petrochemical Manufacturers represent a lot of the others.

As I understand it, we know nothing, no minutes, no statements, no reports about what took place in those meetings that are described as private meetings on a sheet that is stamped confidential. Correct? We know nothing about the content of those meetings?

Mr. PRUITT. Senator, I did not generate the document. I know nothing about how that document got generated or what—

Senator WHITEHOUSE. Are you denying that those private meetings took place?

Mr. PRUITT. No, Senator. I just didn't generate the document and don't know about the content, other than what you have represented.

Senator WHITEHOUSE. OK, and we don't know. And because you were on the executive committee of RAGA, that is information that we could get, right? I mean, it is available, if there were minutes or reports out of those meetings, notes taken. But we don't have them, correct?

Mr. PRUITT. Senator, that would be a request made to the Republican Attorney Generals Association. I might add, the Republican Attorney Generals Association, there is a Democrat Attorney Generals Association as well.

[Simultaneous conversations.]

Senator WHITEHOUSE. I am not faulting that. I am talking about private meetings at the time that you were on the executive committee with some of the really, really big polluters with whom you have been very closely politically associated.

Mr. PRUITT. There is a Conference, if I may, Senator, of Western Attorneys General. There is a national association. And they talk about water.

Senator WHITEHOUSE. I know.

Mr. PRUITT. And there are meetings that take place at each of those as well.

Senator WHITEHOUSE. The rest of the Attorney Generals avoid that because we don't want to talk about water.

Let's talk about FOIA. You have had a conversation with the Chairman about FOIA. As I understand it, there is a FOIA request to the Oklahoma Attorney General's office, to your office, for e-mails between your office and Devon Energy and Koch Industries and Americans for Prosperity, the Koch front group, and Murray Energy and the American Petroleum Institute. And the information that I have is that that Open Records Act request was filed more

than 740 days ago. More than 2 years ago. That in response to it, your office has conceded that there are 3,000 responsive documents. Three thousand e-mails and other documents between your office and these companies. And that in 740 days, exactly zero of those documents have been produced.

Is that acceptable turnaround on a FOIA request, and should we not be concerned that your office is not complying with a FOIA request that relates so specifically to so many of these companies that are going to be before you as EPA Administrator if you are confirmed?

Mr. PRUITT. Senator, I actually have a general counsel and an administrator in my office that are dedicated to performing or providing responses to Open Records requests.

Senator WHITEHOUSE. Not very dedicated, if it takes 740 days. That is still zero.

Mr. PRUITT. But I am not involved in that process. That is handled independently by the administrator and that general counsel in responding. So I can't speak to the timeline and why it is taking that length of time. But I will tell you that our office works—we actually go across the State of Oklahoma in training with officials locally in compliance with FOIA and Open Records laws.

[Simultaneous conversations.]

Senator WHITEHOUSE [continuing]. Your own training, because it doesn't seem to be sticking very well.

Mr. PRUITT. The representation you made about the timeline, I don't know.

Senator WHITEHOUSE. Given how many of these groups have important financial interests before the EPA, do you not think that 3,000 e-mails back and forth between you and your office and them are relevant to potential conflict of interest as an administrator and should be before us as we consider this?

Mr. PRUITT. Again, I think the EPA ethics counsel has put out a very clear process with respect to covered entities, as we described it earlier, and on particular matters and specific cases, I will follow the advice of that EPA career person, ethics, to make sure that there—

[Simultaneous conversations.]

Senator WHITEHOUSE. You keep saying that.

Senator BARRASSO. The Senator's time has expired.

Senator WHITEHOUSE. Will you let me finish my sentence?

Senator BARRASSO. Please do.

Senator WHITEHOUSE. The problem with that is that if you haven't disclosed any of this information, then the EPA ethics counsel would have no idea to even look. They would have no idea what the risks are. You can't say, nobody can look at whether I did this, but by the way, they're going to look at it. It just doesn't add up. Sorry about going over my time.

Senator BARRASSO. Thank you, Senator.

I would like to point out, we had a report read that was just brought up. And I would like to introduce for the record a letter from each of the five Members of Congress from the State of Oklahoma with their steadfast support for Scott Pruitt, saying, we are proud of his service to our State and are very confident that he will

do a superb job serving our Nation and our citizens in this new role.

Also as a follow up for the first round of questions, there was a dispute about a lawsuit against Mahard Egg Firm and who it was filed by. I have here the complaint in the case, and it was filed May 18th, 2011, and if you read it, it says, in the State of Oklahoma, by and through Attorney General Scott Pruitt. So you are the one that filed the suit, along with the Attorney General of Texas against Mahard Egg Firm. This will be submitted for the record as well.

[The referenced information follows:]



## 2015 Summer National Meeting

Luther Strange (AL)	Lawrence Wasden (ID)	Doug Peterson (NE)	Alan Wilson (SC)
Leslie Rutledge (AR)	Greg Zoeller (IN)	Adam Laxalt (NV)	Marty Jackley (SD)
Cynthia Coffman (CO)	Buddy Caldwell (LA)	Wayne Stenehjem (ND)	Ken Paxton (TX)
Pam Bondi (FL)	Bill Schuette (MI)	Mike DeWine (OH)	Sean Reyes (UT)
Sam Olens (GA)	Tim Fox (MT)	Scott Pruitt (OK)	Brad Schimel (WI)
			Patrick Morrissey (WV)

To: **Attorney General Lawrence Wasden, State of Idaho**  
 From: Scott Will, RAGA Executive Director  
 Date: July 27, 2015  
 Re: **RAGA Summer National Meeting, White Sulphur Springs, WV**

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Following are the final details for the upcoming RAGA events in White Sulphur Springs, West Virginia. We are pleased you will be joining us and look forward to a great meeting. A copy of the updated Agenda for the meeting is enclosed.

**Flight Information:** Attached is a copy of your flight confirmation.

**Hotel Information:**

The Washington Dulles Airport Marriott  
 Check-In Date: Friday July 31, 2015  
 Check-Out Date: Saturday August 1, 2015  
 Hotel Confirmation: [REDACTED]  
*(There will be a shuttle every 15 minutes from IAD to the Washington Dulles Airport Marriott)*

The Greenbrier Resort  
 Check-In Date: Saturday August 1, 2015  
 Check-Out Date: Tuesday August 4, 2015  
 Hotel Confirmation Number: [REDACTED]

**Ground Transportation:** Upon arrival the car service, **The Greenbrier Transportation**, will meet you outside of baggage claim. They will be identified by holding a sign with your name on it. If you have any problems locating your driver, please contact 304-536-1110 ext 7259. Your arrival transportation confirmation number is [REDACTED].

You are scheduled to depart The Greenbrier on **Tuesday August 4, 2015**, The Greenbrier Transportation will meet you in the Front Main Entrance at **12:00PM**. They will be identified by holding a sign with your name on it. If you have any problems locating your driver, please contact **304-536-1110** ext 7259. Your departure confirmation number is [REDACTED].

**Agenda:** Please be prepared to attend **ALL** of the meetings and activities on your agenda. In order to support the continuous growth of RAGA it will be critical to spend as much time as possible with as many different members as possible. Please note, this agenda serves as your line by line for the meeting.

**Sunday Night Dine Aroun:** You are confirmed to attend the dinner at the **Sam Sneads** location. A dinner fact sheet including a full list of attendees and menu will be provided in your folder at the business meeting.

**Monday Activity:** You are confirmed to participate in the **Bunker Tour**.

**AG Fundraisers:** Attached is a booklet of AG and candidate fundraiser invitations. You are welcome to attend any and all of them. I know they would love to see you there.

**Attire:** The attire for the meeting is business casual (Taste of West Virginia Closing Reception is resort casual). Denim and exercise attire are not permitted in the main dining room for breakfast. After 7:00 p.m., some venues enforce a strict dress code (jacket and tie). Further information on the dress code is enclosed.

Contact Information		
<b>Scott Will</b> Executive Director <a href="mailto:swill@republicanags.com">swill@republicanags.com</a> (c) 515.783.7582	<b>Amanda Gonzalez</b> Deputy Executive Director <a href="mailto:agonzalez@republicanags.com">agonzalez@republicanags.com</a> (c) 205.799.7122	<b>Jessica Medeiros Garrison</b> Senior Advisor <a href="mailto:ygarrison@republicanags.com">ygarrison@republicanags.com</a> (c) 205.568.4371
<b>Ashley Montenegro</b> Finance Director of Corporate Membership <a href="mailto:amontenegro@republicanags.com">amontenegro@republicanags.com</a> (c) 239.404.0853	<b>Jason Heath</b> Director of Operations <a href="mailto:jheath@republicanags.com">jheath@republicanags.com</a> (c) 860.608.9922	<b>Rob Simpson</b> Deputy Political Director <a href="mailto:rsimpson@republicanags.com">rsimpson@republicanags.com</a> (c) 203.513.1101
<b>Lee Russell</b> Chief Financial Officer <a href="mailto:lrussell@republicanags.com">lrussell@republicanags.com</a> (c) 601.842.1453	<b>Courtney Anglin</b> Operations & Administrative Assistant <a href="mailto:canglin@republicanags.com">canglin@republicanags.com</a> (c) 205.344.3410	<b>Elizabeth Brumleve</b> Political & Policy Assistant <a href="mailto:ebrumleve@republicanags.com">ebrumleve@republicanags.com</a> (c) 502.774.0255

Encl. AG Agenda, Flight, Attendee list, Dine around fact sheet, AG Fundraiser, and Dress code



## MEETING AGENDA

The Greenbrier • 300 West Main Street, White Sulphur Springs, WV • (855) 616-2441

### Saturday, August 1, 2015

A Cyber Lounge and Hospitality Suite are provided all day for your convenience by Rent-A-Center in the Chesapeake Bay Room

5:40PM	<b>Load Shuttles for West Virginia Host Committee Dinner</b> Location: Front Main Entrance of the Hotel
6:00PM - 8:00PM	<b>West Virginia Host Committee Reception &amp; Dinner</b> Location: Kate's Mountain Lodge Special Guest: Homer Hickam - American author, Vietnam veteran, and a former NASA engineer. His autobiographical novel <i>Rocket Boys: A Memoir</i> , was a No. 1 New York Times Best Seller, and was the basis for the 1999 film <i>October Sky</i> .

### Sunday, August 2, 2015

A Cyber Lounge and Hospitality Suite are provided all day for your convenience by Rent-A-Center in the Chesapeake Bay Room

7:00AM - 10:30AM	<b>Breakfast (on your own)</b> Location: Main Dining Room <i>*Breakfast is included, please provide your room key to the waiter. Please note: denim and exercise attire are not permitted</i>
11:00AM - 12:30PM	<b>AG Business Meeting</b> <i>*Attorneys General and Staff Only</i> Location: Eisenhower A & B
12:30 PM - 2:00PM	<b>RAGA ERC &amp; Capital Club Lunch: <i>What Difference Does it Make? Measuring the Success of Republican AGs</i></b> Location: Chesapeake Room Speaker: Attorney General Pam Bondi, Florida
2:00PM - 5:30PM	<b>Private Meetings with Attorneys General and Staff</b> <i>*Attorneys General and Staff Only</i> Location: Eisenhower A & B
2:00PM - 2:40PM	<b>Private meeting with Murray Energy</b> <i>*Attorneys General and Staff Only</i> Location: Eisenhower A & B
2:50PM-3:10PM	<b>Private meeting with Microsoft</b> <i>*Attorneys General and Staff Only</i> Location: Eisenhower A & B
3:15PM - 3:35PM	<b>Private meeting with Southern Company</b> <i>*Attorneys General and Staff Only</i> Location: Eisenhower A & B
3:40PM - 4:00PM	<b>Private meeting with American Fuel Petrochemical Manufacturers</b> <i>*Attorneys General and Staff Only</i> Location: Eisenhower A & B

<b>4:05PM - 4:25PM</b>	<b>Private meeting with 21<sup>st</sup> Century Fox</b> <i>*Attorneys General and Staff Only</i> Location: Eisenhower A & B
<b>4:30PM - 4:50PM</b>	<b>Private meeting with Bruning Law Group</b> <i>*Attorneys General and Staff Only</i> Location: Eisenhower A & B
<b>5:30PM - 6:00PM</b>	<b>New Member Private Reception with Attorneys General and Staff</b> Location: Colonial Lounge
<b>6:00PM - 7:30PM</b>	<b>Welcome Reception</b> Location: Colonial Terrace
<b>7:30PM - 9:00PM</b>	<b>ERC, Capital Club, Roundtable &amp; Sponsors Breakout Dinners with Attorneys General</b>

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**Monday, August 3, 2015**

A Cyber Lounge and Hospitality Suite are provided all day for your convenience by Rent-A-Center in the Chesapeake Bay Room

7:00AM - 8:45AM	<b>Breakfast (on your own)</b> Location: Main Dining Room <i>*Breakfast is included, please provide your room key to the waiter. Please note: denim and exercise attire are not permitted</i>
9:00AM - 10:00AM	<b>Political Update</b> Location: Chesapeake Room Panelists: Scott Will, Executive Director, RAGA Mike Hurst, Candidate, Mississippi Attorney General Guy Harrison, Partner, On Message Inc. Doug McAuliffe, Chairman, Doug McAuliffe Strategic + Creative Jim McLaughlin, President and Partner, McLaughlin & Associates
10:00AM* - 11:00AM	<b>Issue Briefing I: The Dangerous Consequences of the Clean Power Plan &amp; Other EPA Rules</b> Location: Chesapeake Room Moderator: Attorney General Patrick Morrisey, West Virginia Panelists: Attorney General Scott Pruitt, Oklahoma Attorney General Ken Paxton, Texas Geoffrey Barnes, Counsel, Murray Energy Mike Duncan, President & CEO, ACCCE
11:00AM - 12:00PM	<b>Issue Briefing II: Under My Thumb - The Executive Branch's Assault on Federalism</b> Location: Chesapeake Room Moderator: Attorney General Tim Fox, Montana Panelists: Attorney General Lawrence Wasden, Idaho Attorney General Leslie Rutledge, Arkansas Attorney General Pam Bondi, Florida
12:00PM - 1:30PM	<b>Lunch</b> Location: Cameo Room
1:00PM - 6:00PM	<b>Golf Tournament</b> (prior registration required) <i>*Shuttles depart the North Entrance at 12:45</i> Location: The Old White TPC at the Greenbrier
1:30PM - 4:30PM	<b>Clay Shooting Tournament Sponsored by the National Rifle Association</b> (prior registration required) <i>*Shuttles depart the Front Main Entrance at 1:15</i> Location: The Greenbrier Gun Club
1:45PM - 4:00PM	<b>Tour of the Greenbrier Bunker</b> (prior registration required) <i>*Participants meet in the Trellis Lobby on the first level of the hotel at 1:30</i> Location: The Greenbrier Bunker
1:30PM - 4:00PM	<b>Kayaking</b> (prior registration required) <i>*Vans depart the North Entrance at 1:15</i> Location: The Jackson River
6:00PM - 8:00PM	<b>Taste of West Virginia Closing Reception</b> <i>*Attire: Resort Casual</i> Location: Chesapeake Terrace

**Tuesday, August 4, 2015**

A Cyber Lounge and Hospitality Suite are provided all day for your convenience by Rent-A-Center in the Chesapeake Bay Room

7:00AM - 10:30AM	<b>Breakfast (on your own)</b> Location: Main Dining Room <i>*Breakfast is included, please provide your room key to the waiter. Please note: denim and exercise attire are not permitted</i>
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**RAGA 2015 NATIONAL MEETING SCHEDULE**

2015 Winter National Meeting February 22nd – 23rd, Park Hyatt: Washington, DC  
2015 Summer National Meeting August 1st – 4th, The Greenbrier: White Sulphur Springs, WV  
2015 Fall National Meeting November 14th – 17th, The Phoenician: Scottsdale, AZ

**RAGA MEMBERSHIP LEVELS**

Edmund Randolph Club (ERC) (\$125,000 annual contribution)  
Attorneys General Capital Club (\$50,000 annual contribution)  
Attorneys General Roundtable (\$25,000 annual contribution)  
Attorneys General Committee (\$15,000 annual contribution)  
Attorneys General Forum (\$10,000 annual contribution)

**RAGA SPONSORSHIP LEVELS**

National Host Committee (\$50,000)  
West Virginia Host Committee (\$25,000)  
Platinum Sponsor (\$25,000)  
Gold Sponsor (\$10,000)  
Silver Sponsor (\$5,000)

CONFIDENTIAL

**Congress of the United States**  
Washington, DC 20515

January 10, 2017

The Honorable Mitch McConnell  
Senate Majority Leader  
317 Russell Senate Office Building  
Washington, D.C. 20510

The Honorable Charles Schumer  
Senate Minority Leader  
322 Hart Senate Office Building  
Washington, D.C. 20510

Dear Senator McConnell and Senator Schumer,

We write to express our steadfast support for President-elect Trump's nominee for Administrator of the Environmental Protection Agency (EPA), Oklahoma Attorney General Scott Pruitt, and to urge his swift confirmation by the Senate.

Scott Pruitt is an accomplished leader in the state of Oklahoma, where he has earned respect and admiration from both sides of the aisle for his understanding of constitutional law and the role federal regulations ought to play in our nation's government.

As Administrator of the EPA, Mr. Pruitt will serve America well by protecting our citizens' air and water through lawful and commonsense regulations that follow congressional intent, fulfilling the original role of the agency. In doing so, he will ensure that the federal government does not propose rules with little to no health or environmental benefit at the cost of middle-class jobs and economic growth.

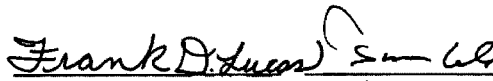
Mr. Pruitt has considerable experience working on environmental and regulatory issues, and we have no doubt that he will bring a principled, balanced perspective to the EPA. We are proud of his service to our state, and we are confident he will do a superb job serving our nation and our citizens in this new role.

Again, we urge Mr. Pruitt's swift confirmation so he can get to work protecting human health and the environment. The Oklahoma delegation is more than happy to meet with you, or members of the appropriate committees, to further discuss his confirmation. Thank you for your consideration.

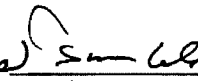
Sincerely,



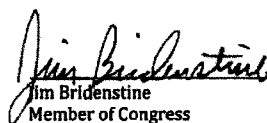
Markwayne Mullin  
Member of Congress



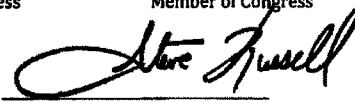
Frank D. Lucas  
Member of Congress



Tom Cole  
Member of Congress



Jim Bridenstine  
Member of Congress



Steve Russell  
Member of Congress

During the first round of questions there was some dispute over when the lawsuit against Mahard Egg Farm Inc. was filed. I have here the complaint in that case- it was filed on May 18, 2011 by the EP, Attorney General Scott Pruitt and the Attorney General of Texas.

FC- 11-0047  
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MAY 23 2011

ATTORNEY GENERAL

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS

UNITED STATES OF AMERICA, )  
THE STATE OF TEXAS, and )  
THE STATE OF OKLAHOMA )  
Plaintiffs, )  
v. )  
MAHARD EGG FARM, INC., )  
Defendant. )

Civil Action No. \_\_\_\_\_

COMPLAINT

1. The United States of America, through its undersigned attorneys, acting at the request of the Administrator of the Environmental Protection Agency ("EPA"); the State of Texas, by and through the Attorney General of Texas, on behalf of the Texas Commission on Environmental Quality ("TCEQ"); and the State of Oklahoma, by and through Attorney General, Scott Pruitt, and the Oklahoma Department of Agriculture, Food and Forestry ("ODAFF") and by and through their undersigned counsel, file this Complaint and allege as follows:

I. NATURE OF ACTION

2. This is a civil action for injunctive relief and civil penalties against Defendant Mahard Egg Farm, Inc. ("Mahard" or "Defendant"), brought pursuant to Sections 309(b) and (d) of the Clean Water Act ("CWA" or "the Act"), 33 U.S.C. § 1319(b) and (d), for the discharge of pollutants from Concentrated Animal Feeding Operations ("CAFOs") without a permit in violation of CWA Section 301, 33 U.S.C. § 1311; for failure to

Senator BARRASSO. Senator Capito.

Senator CAPITO. Thank you, Mr. Chairman.

Since the Ranking Member mentioned that Mr. Joe Goffman had visited, I call to the attention in beseeching you that when you are successfully the Administrator at the EPA that you will listen to everybody and come to States that are most directly affected. He mentioned that the Associate Assistant Administrator had made the long list that he had said.

I would like to point out a clarification. The EPA announced on September 30th, a day I will remember because that is the birthday of my youngest child, they announced where they were going to be going for their listening sessions. They went to Boston, they went to New York City, they went to Philadelphia, they went to Atlanta, they went to Denver, they went to Lenaxa, Kansas, and I wish our Kansas Senator was here, which I have looked up is a part of the Kansas City metropolitan area. They went to San Francisco. They went to Washington, DC. They went to Dallas, they went to Seattle, they went to Chicago.

My State in the last 5 years has lost 10,000 jobs, not wholly because of this, but some of this plays a large part. So I will go back to my original request, that the people that are affected by this environmentally and health-wise are just as important as the people who stand to lose their jobs over this, who then are plunged into poverty, who then have hopelessness around and in their communities, who then become addicted to drugs and other opioids. It is just a cascading issue. Their lives are just as important. So that is my plea on that.

Now, last question from me.

Senator CARPER. Mr. Chairman, could I ask a unanimous consent request?

Senator BARRASSO. Yes.

Senator CARPER. I am sorry for interrupting. But the document with respect to the outreach that the EPA did, in conjunction with the Clean Power Plan, it shows from October, I think October 16th, 2014, something like this, the document records nearly 1,000 meetings, calls, presentations, conferences, consultations, 1,000, and other outreach with stakeholders. The document shows these post-proposal interactions included more than 300 meetings with State and local stakeholders, had 30 discussions with tribes, 450 meetings with industry stakeholders, 150 discussions in environmental justice and scientific stakeholders, dozens more discussions with conveners. And this goes on and on and on.

In total, the agency received almost 4.3 million comments about all aspects of the proposed rule, more than any rule in EPA history, and thousands of people participated in the agency's public hearings, Webinars, listening sessions, and so forth, all across the country. The agency made many revisions in the final rule in response to those comments. Thank you.

Senator BARRASSO. Thank you. I would ask that once a questioner starts, they be allowed to continue. We could get into a lengthy discussion. The EPA was found guilty of covert propaganda for soliciting information through a number of environmental groups. It continues to be a blot on the record of the EPA, and the question of this entire Administration and their approach toward

abilities toward the rule of law versus an EPA out of control. So we are going to allow the questioner to continue.

Back to you, Senator Capito.

Senator CAPITO. Thank you.

Not to beat a dead horse, but to try—

[Laughter.]

Senator CAPITO. I will say that the Assistant Administrator McCabe, when she was telling me that they only wanted to go where places were comfortable, she looked at me and said, Senator, we are going to Pittsburgh. Gee. Thanks a lot. Which is not in West Virginia, I will make that point.

In any event, my question is—you have said a lot about States, and I agree, the States should have the primacy, it is in the law. And that is something that, part of why you have brought suit and part of the reason you have been successful with other attorneys general.

Let me ask you a question. Let's say you have a State where you are the administrator of the EPA, and you deem that that State's Office of Environmental Quality, or DEP, which is what it is in West Virginia, just doesn't measure up. They are not protecting their people's health, they are not enforcing the law. They are, in your judgment and folks that you are working with, are not up to the task and are letting their people down.

What avenues of correction would you have at the EPA, and do you have, and what would you exercise in that kind of category, and what kind of judgments would have to be made for those things to occur?

Mr. PRUITT. Senator, I really appreciate the question. I think there are times where States are recalcitrant, that they don't perform the obligations that they have, let's say, under the Clean Air Act, in adopting a State implementation plan, or as they adopt the State implementation plan they don't take into consideration all the factors that Congress had put in the statute and the EPA requires. In those instances it is very appropriate for the EPA to use its authority like a Federal implementation plan to take over that jurisdiction and to ensure that the safety and health of our citizens is protected, and the air quality is maintained, and water quality is maintained.

So there is a time and place for that. I think in many instances, however, over the last several years, it has been the first response as opposed to cooperation. And a Federal implementation plan is absolutely in order at times.

Senator CAPITO. Thank you.

Senator BARRASSO. Senator Merkley.

Senator MERKLEY. Mr. Chairman, before you start my clock, I would like to follow up on Senator Inhofe's strategy here of submitting certain facts back for the record. I would ask unanimous consent to submit for the record an article from the Union of Concerned Scientists related to the so-called ClimateGate that the Senator referred to earlier. That notes that the manufactured controversy over e-mails stolen from the university has generated a lot of heat but not light. The e-mail content being quoted does not indicate climate data research has been compromised. Most importantly, nothing in the content of the stolen e-mails has any impact

on our overall understanding of human activities driving dangerous levels of global warming. Media reports and contrarian claims that they do are inaccurate.

Senator BARRASSO. Without objection.  
[The referenced information follows:]



# **Union of Concerned Scientists**

**Science for a healthy planet and safer world**

## **1. FIGHT MISINFORMATION**

### **Debunking Misinformation About Stolen Climate Emails in the "Climategate" Manufactured Controversy**

The manufactured controversy over emails stolen from the University of East Anglia's Climatic Research Unit has generated a lot more heat than light. The email content being quoted does not indicate that climate data and research have been compromised. Most importantly, nothing in the content of these stolen emails has any impact on our overall understanding that human activities are driving dangerous levels of global warming. Media reports and contrarian claims that they do are inaccurate.

#### **Investigations Clear Scientists of Wrongdoing**

Six official investigations have cleared scientists of accusations of wrongdoing.

- A three-part Penn State University cleared scientist Michael Mann of wrongdoing.
- Two reviews commissioned by the University of East Anglia "supported the honesty and integrity of scientists in the Climatic Research Unit."
- A UK Parliament report concluded that the emails have no bearing on our understanding of climate science and that claims against UEA scientists are misleading.
- The National Oceanic and Atmospheric Administration Inspector General's office concluded there was no evidence of wrongdoing on behalf of their employees.

- The National Science Foundation's Inspector General's office concluded, "Lacking any direct evidence of research misconduct...we are closing this investigation with no further action."  
Other agencies and media outlets have investigated the substance of the emails.
- The Environmental Protection Agency, in response to petitions against action to curb heat-trapping emissions, dismissed attacks on the science rooted in the stolen emails.
- Factcheck.org debunked claims that the emails put the conclusions of climate science into question.
- Politifact.com rated claims that the emails falsify climate science as "false."
- An Associated Press review of the emails found that they "don't undercut the vast body of evidence showing the world is warming because of man-made greenhouse gas emissions."

#### **Background Information**

- Scientists Statement—An Open Letter to Congress from U.S. Scientists on Climate Change and Recently Stolen Emails (pdf)
- Letter from James McCarthy, a former Intergovernmental Panel on Climate Change lead author, to Barbara Boxer (D-Calif.) (pdf)

#### **Press Releases and Factchecks**

- Nov. 23, 2009—Contrarians Using Hacked E-mails to Attack Climate Science
- Dec. 02, 2009—Members of Congress Advance Climate Change Conspiracy Theories
- Dec. 02, 2009—More Scientists Join Call to Reject Stolen E-mail Claims
- Dec. 04, 2009—Top U.S. Scientists Tell Congress Stolen Emails Have No Bearing on Climate Science
- Dec. 17, 2009—Factcheck: Sen. Inhofe Can't Even Get the Dates Right on Stolen Emails

- Dec. 18, 2009—UCS Urges Rep. Sensenbrenner to Stop Attacking Scientists
- Dec. 23, 2009—Patrick Michales Falsely Blames Content of Stolen Emails for Resignations at Climate Science Journal

**Additional Resources**

- Real Climate has been following the hacked e-mail story with posts from scientists explaining what phrases in various e-mails mean.
- Phil Jones did an interview with the The Guardian on the e-mails.
- Michael Mann covered several of the claims on DeSmog Blog.
- Michael Mann responded to an op-ed by former Alaska Governor Sarah Palin in the Washington Post.

Some news organizations have misreported critical aspects of the stolen email story. There is no evidence scientists did anything with temperature data they weren't already doing openly in peer-reviewed papers.

At this time, there is no evidence that scientists "fudged," "manipulated" or "manufactured" data. These unsupported claims, based on taking the emails out of context, are being promoted by long-time anti-science opponents of climate change legislation. The U.N. Intergovernmental Panel on Climate Change (IPCC), the University of East Anglia and Penn State University are separately looking into the contents of the stolen emails to assess these claims.

While the emails have raised some concerns, the email content being quoted does not indicate that climate data and research have been compromised. Most importantly, nothing in the content of these stolen emails has any impact on our overall understanding that human activities are driving dangerous levels of global warming. Media reports and contrarian claims that they do are inaccurate.

University of East Anglia Climatic Research Unit Director Phil Jones wasn't "hiding" anything that wasn't already being openly discussed in scientific papers. He was using a "trick"—a technique—published in the peer-reviewed scientific literature.

This email exchange from 1999 seems to refer to scientists examining past climate data and communicating with one another about it. In particular, Jones is talking about how scientists compare temperature data from thermometers with temperature data derived from tree rings. Comparing that data allows scientists to derive past temperature data for several centuries before accurate thermometer measurements were available. The global average surface temperature since 1880 is based on thermometer and satellite temperature measurements.

The "trick" is actually a technique (in other words, a "trick of the trade") used in a peer-reviewed, academic science journal article published in 1998. "Hiding the decline," another phrase that has received much attention, refers to another technique used in another academic science journal article. In any case, no one was tricking anyone or hiding anything. Rather, this email exchange shows scientists communicating about different ways to look at the same data that were being discussed at the time in the peer-reviewed literature. Later the same data were discussed at length in a 2007 IPCC report.

In some parts of the world, tree rings are a good substitute for temperature record. Trees form a ring of new growth every growing season. Generally, warmer temperatures produce thicker tree rings, while colder temperatures produce thinner ones. Other factors, such as precipitation, soil properties, and the tree's age also can affect tree ring growth.

The "trick," which was used in a paper published in 1998 in the science journal *Nature*, is to combine the older tree ring data with thermometer data. Combining the two data sets can be difficult, and scientists are always interested in new ways to make temperature records more accurate.

Tree rings are a largely consistent source of data for the past 2,000 years. But since the 1960s, scientists have noticed there are a handful of tree species in certain areas that appear to indicate temperatures that are warmer or colder than we actually know they are from direct thermometer measurement at weather stations.

"Hiding the decline" in this email refers to omitting data from some Siberian trees after 1960. This omission was openly discussed in the latest climate science update in 2007 from the IPCC, so it is not "hidden" at all.

Why Siberian trees? In the Yamal region of Siberia, there is a small set of trees with rings that are thinner than expected after 1960 when compared with actual thermometer measurements there. Scientists are still trying to figure out why these trees are outliers. Some analyses have left out the data from these trees after 1960 and have used thermometer temperatures instead.

Techniques like this help scientists reconstruct past climate temperature records based on the best available data.

In another email, Kevin Trenberth, a climate scientist at the National Center for Atmospheric Research in Colorado, wrote that systems for observing short-term annual climate variation are inadequate and complained: "The fact is that we can't account for the lack of warming at the moment, and it is a travesty that we can't.... Our observing system is inadequate."

Scientists have high confidence about global temperature trends over recent decades because those observations are based on a massive amount of data. That's why we can say with certainty that over the past several decades, the Earth has warmed. We can also say with certainty that continuing to overload the atmosphere with carbon dioxide will cause it to warm further.

But scientists are still trying to understand how the climate shifts in the short term, on a year-to-year basis for instance. In this email, Trenberth is bemoaning the lack of monitoring equipment in the ocean and atmosphere around the world that would give scientists more information to help understand exactly how short-term climate variation happens. In particular, he references 2008, which was cooler than scientists expected, but still among the 10 warmest years since instrumental records began.

The sentiments in Trenberth's private email reflect his public communication. Trenberth talked about this same issue in a scientific paper in 2009 (pdf), in which he addresses this exact question.

There is no clear evidence to date that scientists violated important principles of scientific integrity. And the emails do not undermine the science.

Some emails relating to avoiding freedom of information requests and keeping articles out of journals have raised concerns about scientific integrity. Scientists should always be as open as possible with their data and methods. Transparency is critical for accountability on all sides. For his part, Phil Jones claims he didn't delete any email messages in response to freedom of information requests. If he did, that conduct would be wrong. But to date, there is no evidence that any emails were deleted.

Science must be viewed in context. When one places the emails in context, they don't amount to much—and as noted above, they do not undermine climate data or research. Likewise, it is important to understand the scientific integrity claims against the scientists in context.

Regardless of whether the University of East Anglia's Climatic Research Unit staff complied with freedom of information requests, their data is still rigorous and matches the three other independent temperature data sets at NASA, the National Oceanic and Atmospheric Administration and the Japanese Meteorological Society.

Much has been made about emails regarding a certain paper that some scientists did not think should have been published in a peer-reviewed academic journal. These emails focus on a paper on solar variability in the climate over time. It was published in a peer-reviewed journal called *Climate Research*, but under unusual circumstances. Half of the editorial board of *Climate Research* resigned in protest against what they felt was a failure of the peer review process. The paper, which argued that current warming was unexceptional, was disputed by scientists whose work was cited in the paper. Many subsequent publications set the record straight, which demonstrates how the peer review process over time tends to correct such lapses. Scientists later discovered that the paper was funded by the American Petroleum Institute.

In a later e-mail, Phil Jones references two other papers he didn't hold in high esteem. "I can't see either of these papers being in the next IPCC report.

Kevin and I will keep them out somehow - even if we have to redefine what the peer-review literature is!"

Yet, the papers in question made it into the IPCC report, indicating that no restrictions on their incorporation were made. The IPCC process contains hundreds of authors and reviewers, with an exacting and transparent review process.

The fact that groups opposing action on climate change are crying "conspiracy" shows how desperate they are to discredit scientists.

The thousands of stolen emails span more than a decade. Whoever stole them could only produce a handful of messages that, when taken out of context, might seem suspicious to people who are not familiar with the intimate details of climate science.

Opponents of climate action have been attacking climate science for years. The fact that out-of-context personal attacks on scientists are the most successful argument they can offer speaks volumes about their failure to gain any traction by arguing against the evidence.

Their strategy has unfortunate consequences, too. On December 8, the Guardian reported that University of East Anglia scientists have been receiving death threats.

The timing of the publication of these emails should make us suspicious about the motivations of the people who hacked them.

The stolen emails were published just two weeks ahead of a major U.N. climate change conference in Copenhagen. According to a British newspaper, they were originally hacked in October. Whoever published these emails likely wanted to spread misinformation about climate science to try to undermine the conference. The University of East Anglia, which housed the emails, has launched an investigation to determine who stole them.

Scientists are as human as anybody else.

Some of the other emails simply show scientists expressing frustration and—in one email—even talking (not seriously, we hope) about beating up

someone who had, in his view, made an unfair, public attack on his colleague. Such chatter is not surprising to find in private emails. But they have generated widespread attention in part because they don't mesh with the public's image of scientists.

Scientists have a wide array of dispositions. But regardless of how scientists act, they should all advance their arguments through evidence and valid scientific interpretations. The process of science is what is important. Over time, rigorous analyses, vetted through expert peer review, tend to weed out poorly substantiated arguments. And only the best explanations for how the world works—such as the obvious evidence that excess carbon dioxide emissions are driving global warming—survive the process.



Senator MERKLEY. Thank you.

Senator INHOFE. Mr. Chairman, since my name was invoked, let me respond. Were you listening when I talked about the various publications that have come and talked about how fraudulent it was? These are publications, science publications, they have gone in and made their own evaluations. And for the U.K. Telegraph to say it is the worst scientific scandal for our generation, that is very extreme.

Senator MERKLEY. We could have an entire day dedicated to the review of the scientific literature on this, and it would weigh very heavily on the scales in the direction I have indicated in support of the information presented by the Union of Concerned Scientists. We may just have to agree to disagree. That is why I submitted it for the record; we will let the public decide.

Senator INHOFE. And that is why the statement is repeated over and over again about the science is settled, that is not an accurate statement.

Senator BARRASSO. I would invite the Senator to question the witness.

Senator MERKLEY. The beauty of the Senate is we get to have our own opinions.

Meanwhile, I also wanted to submit for the record in response, when I was speaking about asthma, Mr. Chairman, you submitted a study from the National Black Chamber of Commerce. And it is important to note that that organization has been funded by the American Petroleum Institute, by a Koch Brothers front group, and by Exxon, and that there is a series of responses that invoke the opposite side of that, and the NAACP, which certainly speak for a broad swath of African Americans, takes a very, very different stance. And it had endorsed the Clean Power Plan.

Senator BARRASSO. Without objection.

[The referenced information follows:]

**Union of  
Concerned Scientists**  
Science for a healthy planet and safer world

National Black Chamber of Commerce  
Report on Clean Power Plan

*Fact: The NBCC study relies on misleading claims cut-and-pasted from several previously debunked reports.*

NBCC | National Black  
Chamber of Commerce®

POTENTIAL IMPACT OF PROPOSED EPA REGULATIONS  
ON LOW INCOME GROUPS AND MINORITIES

**NOT SCIENCE**

JUNE 2015

A misleading report by the National Black Chamber of Commerce (NBCC) has been frequently cited by opponents of the Environmental Protection Agency's (EPA) Clean Power Plan, including in the Wall Street Journal.

Our review of the NBCC report found that it relies on misleading claims cut-and-pasted from several previously debunked reports. For example, the NBCC's analysis relies on false claims from a 2014 U.S. Chamber of Commerce report that received scant attention in the media after a fact check by the Washington Post concluded politicians "should have avoided using the Chamber's numbers in the first place."

Harry Alford, president and CEO of the NBCC, is also a leading member of the U.S. Chamber, which opposes minimum wage increases and living wage laws. Alford acknowledges that his group has received funding from wealthy fossil fuel interests, including \$1 million from ExxonMobil. NBCC commissioned Roger Bezdek of Management Information Services, Inc., to author its report. Bezdek's client list includes Peabody Energy, one of the world's largest producers of industrial carbon emissions.

Elsewhere, Alford has falsely claimed that "there is no sound science to support the claims of global warming." Bezdek has likened concerns raised by climate advocates to "the old Nazi theory, that if you repeat a big lie loud enough and long enough, people believe it."

In contrast, the NAACP, U.S. Black Chamber, and other leading organizations support the Clean Power Plan for providing ways to address the disproportionate risks African-American communities face from air pollution and climate change. These include the Clean Energy Incentive Program in the final Clean Power Plan, which is designed to spur new investment in energy efficiency and help low-income communities create jobs and save money. Other African-American and Latino leaders have also spoken out against the NBCC's misleading claims.

**Learn more:**

- [New Flawed Study of the Clean Power Plan: How the NBCC Study Gets It So Wrong \(The Equation\)](#)
- [National Black Chamber of Commerce joins oil industry's op-ed campaign against the EPA Climate Plan](#)
- [ExxonMobil is still spending millions of dollars on climate science deniers](#)

*Last revised date: August 19, 2015*

Senator MERKLEY. Thank you.

I would also like to submit for the record two articles or two statements from the National Congress of American Indians and from Latino organizations, a whole group of Latino organizations, that are very concerned about this nomination.

Senator BARRASSO. Without objection.

[The referenced information follows:]

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**NATIONAL CONGRESS OF AMERICAN INDIANS**

January 18, 2016

The Honorable John Barrasso  
*Chairman*  
 U.S. Senate Committee on Environment  
 and Public Works  
 410 Dirksen Senate Building  
 Washington, DC 20510

The Honorable Thomas Carper  
*Ranking Member*  
 U.S. Senate Committee on Environment  
 and Public Works  
 456 Dirksen Senate Building  
 Washington, DC 20510

**Re: Indian Country's Concerns with EPA Administrator Nominee Scott Pruitt**

Dear Chairman Barrasso and Ranking Member Carper:

On behalf of the National Congress of American Indians (NCAI), the oldest, largest, and most representative American Indian and Alaska Native organization serving the broad interests of Tribal governments and communities, I am writing to express our deep concern with the nomination of Oklahoma Attorney General Scott Pruitt to be the Administrator of the Environmental Protection Agency (EPA) based on his history of fighting environmental regulations and the new Administration's statements denying the existence of climate change. The continuing impacts of climate change are a major concern of Tribal Nations and, before this Committee votes to move forward with Attorney General Pruitt's nomination to lead the EPA, it must thoroughly consider the potential impacts that his nomination will have on climate change, the protection of natural resources, and protection of Tribal trust and treaty rights.

American Indians and Alaska Natives are disproportionately impacted by climate change due to our geographical areas and direct connection and reliance on the surrounding environments. It is threatening to destroy our lands, waters, and natural resources, which will impact our traditional and customary ways of life that has been sustainable for thousands of years. The well-documented plight of Alaska Native villages is probably the most profound manifestation of the climate crisis and requires focused, high priority attention from the federal government. NCAI's Tribal leadership and members have spoken strongly on climate change by passing four resolutions in the past four years calling for action and setting Tribal Climate Change Principles calling on further federal action and partnership with Tribal governments.

The federal government's treaty and trust responsibilities to protect Indian lands includes the duty to protect lands from the impacts of climate change, which requires not only that sufficient federal resources be equitably allocated to address climate change, but that Tribes be included as partners to solve these issues. Federal programs and policies must allow Tribal Nations to engage effectively in adaptation and mitigation strategies that will help ensure the integrity of our cultures, homelands, infrastructures, and services. Further, it is imperative that federal agencies enforce Tribal treaty and reserved rights to both on- and off-reservation resources.

**NCAI Letter – Climate Change Concerns Regarding Pruitt EPA Administrator Nomination**

Page 2 of 2

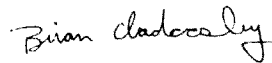
The EPA's mission to protect human health and the environment means that it plays an essential role in fighting climate change-related impacts. Due to its charge, EPA also has a sacred responsibility to uphold and protect Tribal trust and treaty rights through the protection of Tribal natural resources. In fact, the EPA acknowledges the importance of reviewing how agency actions will impact treaty rights in its recent policy guidance *EPA Policy on Consultation and Coordination with Indian Tribes: Guidance for Discussing Tribal Treaty Rights*.

Since the EPA is critical to combating climate change and protecting Tribal trust and treaty rights, Indian Country is deeply concerned with Attorney General Pruitt's nomination to head the Agency. It is our understanding that, in his role as Attorney General for the State of Oklahoma, Pruitt has repeatedly filed suits against the EPA for its regulations seeking to protect the environment. Further, his nomination comes from an incoming Administration which claims that climate change is a "hoax" and questions whether the EPA should continue to exist.

This Committee must ensure that Attorney General Pruitt understands and acknowledges the realities of human impacts on global climate change, the need for the EPA and federal regulations to protect the environment, and the importance of EPA's role in protecting Tribal lands, waters, and natural resources. We must get his commitment on the record to sustain the EPA's role in fighting climate change and protecting Tribal trust and treaty rights. Without these acknowledgments, Indian Country cannot support Attorney General Pruitt's nomination for Administrator of the EPA.

We are at a critical moment in combating the increasing climate changes effects from human-made sources. Indian Country, the United States, and the world cannot afford to take a backseat role in fighting climate change.

Sincerely,



Brian Cladoosby  
*President*

Enclosed:

NCAI Resolution #PHX-16-058 – *United States Federal Agency Consultation, Consent, Funding, and Actions to Address Climate Change Impacts to Tribal Treaty and Trust Resources*

NCAI Resolution #SD-15-007 – *Calling on the United Nations Framework Convention on Climate Change to Adopt an Agreement that Upholds the Rights of Indigenous Peoples*

NCAI Resolution #SD-15-024 – *Support for the Tribal Climate Change Principles: Responding to Federal Policies and Actions to Address Climate Change document and its Swift Implementation by the Federal Government*

NCAI Resolution #REN-13-020 – *Adopting Guidance Principles to Address the Impacts of Climate Change*



NATIONAL CONGRESS OF AMERICAN INDIANS

The National Congress of American Indians  
Resolution #PHX-16-058

**TITLE: United States Federal Agency Consultation, Consent, Funding, and Actions to Address Climate Change Impacts to Tribal Treaty and Trust Resources**

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**WHEREAS**, we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the health, safety and welfare of the Indian people, do hereby establish and submit the following resolution; and

**WHEREAS**, the National Congress of American Indians (NCAI) was established in 1944 and is the oldest and largest national organization of American Indian and Alaska Native tribal governments; and

**WHEREAS**, Indigenous peoples in the U.S., including 567 federally-recognized Tribes, are facing immediate and significant impacts from climate change; and

**WHEREAS**, a growing body of literature illustrates the unique issues facing Tribes regarding climate change, including the recently developed *Primer on Climate Change and Indigenous Peoples*, *Guidelines for Considering Traditional Knowledges (TKs) in Climate Change Initiatives*, and the special issue of the peer-reviewed journal *Climatic Change, Climate Change and Indigenous Peoples in the United States: Impacts, Experiences and Actions*; and

**WHEREAS**, furthermore, the federal government is beginning to acknowledge the disproportionate threats of climate change to Indigenous Peoples through administrative and congressional reports such as the 3<sup>rd</sup> *National Climate Assessment* and the *2014 President's State, Local, and Tribal Leaders Task Force on Climate Preparedness and Resilience* (Task Force); and

**WHEREAS**, where the Northwest Tribes commit to the development of guiding principles and exploration of the possibility of creating a unified mechanism to incorporate the principles into an action plan to address the impacts of climate change that will protect our treaty rights, inherent and indigenous rights, including those contained in the United Nations Declaration on the Rights of Indigenous Peoples (Declaration), our health and the health of the environment, economies, and way of life; and



**WHEREAS**, based upon eight principles developed by the Northwest Tribes to guide the federal government in the development and implementation of administrative and legislative actions related to Indigenous Peoples and climate change; and

**WHEREAS**, the principles address many of the recommendations made by the Task Force and these principles pertain directly to federally-recognized Tribes, but may also apply indirectly to state-recognized Tribes and unrecognized Tribes as they are also in need of support to address immediate and projected climate impacts and to ensure access to climate resources; and

**WHEREAS**, adequate response to the threat of climate change requires action by Tribes and federal, state and local governments and the U.S. federal government's trust responsibility to federally-recognized Tribes includes the protection of Indian lands and Tribal rights to access those lands as well as those lands in which treaty and trust resources are held; and

**WHEREAS**, the trust responsibility includes the duty to protect lands from the impacts of climate change. Federal resources to address climate change must be allocated to Tribes equitably and in sufficient quantity so that Tribes can engage effectively in adaptation and mitigation strategies that will help ensure the integrity of their cultures, homelands, infrastructures, and services; and enforce Tribal treaty and reserved rights to both on- and off-reservation resources; and

**WHEREAS**, in FY 2016, the Department of Interior awarded \$8.6 million through the Tribal Climate Resilience Program, but the total amount requested from tribes exceeded \$25.5 million and these requested funds do not take into account the needs among tribes facing displacement and relocation, emergency management and infrastructure, impacts to culturally important plants, fish and wildlife species, and public health impacts, among others; and

**WHEREAS**, the current Administration has taken strides that support Tribal measures to cope with climate change and environmental justice, including, but not limited to, the November 5, 2009, Executive Memo directing agency heads to submit a detailed plan of actions that agencies will take to implement the policies; Executive Order 13175 - Consultation and Coordination with Indian Tribal Governments; and Department of Interior Secretarial Order 3289 - Addressing the Impacts of Climate Change on America's Water, Land, and Other Natural and Cultural Resource; and Executive Order 12898 - Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations; and

**WHEREAS**, pursuant to Executive Order 13175, U.S. federal agencies have a legal obligation to effectively engage in Government-to-Government consultations with consent from Tribes on all climate change issues, including representation in international organizations, formal consultation in the extraction, transport and export of coal, oil and natural gas, and representation on federal climate change adaptation and mitigation initiatives including the United Nations Framework Convention on Climate Change (UNFCCC) COP 21 Paris Agreement.

**NOW THEREFORE BE IT RESOLVED**, that the National Congress of American Indians does strongly urge that U.S. federal agencies immediately engage and work with individual tribes on a Government-to-Government basis and conduct formal and effective consultations to reach and agree to consent to address the climate change issues unique to each tribe including treaty and reserved rights, and the management of and access to trust resources on ceded and ancestral lands; and

**BE IT FURTHER RESOLVED**, that NCAI calls upon Congress and the Administration to work with federal agencies, the Office of Management and Budget, the Government Accountability Office and others to identify the full costs facing tribes from the impacts of climate change and to ensure that federal budget allocations for tribes to address climate are adequate; and

**BE IT FURTHER RESOLVED**, that NCAI also calls upon all federal agencies, specifically the Department of Interior and Bureau of Indian Affairs, with tribal climate change programs, to work with tribes to review the categories for fund dispersal and ensure their effectiveness for meeting tribal goals and needs; specifically, NCAI recommends Tribes and intertribal consortia conduct a review of the 9 categories for the BIA Climate Change Grants and provide feedback about the efficacy of those categories, establish priorities where funds should be allocated, and recommendations for strengthening and sustaining Tribal capacity including:

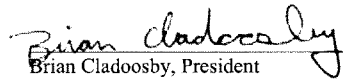
- Sustained and long-term funding to support the needs of tribes to engage in climate change adaptation and mitigation.
- Concept of coordinated block funding – multiple sources of funding that are coalesced to reduce the burden to tribes and increase flexibility of tribal allocation of funds.
- Capacity building funding to focus on engaging tribal leadership and building the knowledge of tribal leaders.
- Engaging and building the knowledge of tribal leadership and native communities through education and outreach.
- Dedicated funding for tribal staff to work on climate change to build internal tribal capacity; and

**BE IT FURTHER RESOLVED**, that NCAI in consultation with regional consortia and Tribal governments, organize and establish a National Tribal Climate Change Workgroup to develop strategies and coordinate actions to ensure effective implementation of the *Tribal Climate Change Principles: Responding To Federal Policies And Actions To Address Climate Change* and Government-to-Government consultations with and consent from Tribes related to climate change impacts, adaptation, mitigation, and funding to meet the needs of Tribal governments and communities; and

**BE IT FINALLY RESOLVED**, that this resolution shall be the policy of NCAI until it is withdrawn or modified by subsequent resolution.

**CERTIFICATION**

The foregoing resolution was adopted by the General Assembly at the 2016 Annual Session of the National Congress of American Indians, held at the Phoenix Convention Center, October 9<sup>th</sup>- 14<sup>th</sup> 2016, with a quorum present.

  
Brian Cladoosby, President

**ATTEST:**

  
Aaron Payment, Recording Secretary



NATIONAL CONGRESS OF AMERICAN INDIANS

The National Congress of American Indians  
Resolution #SD-15-007

**TITLE: Calling on the United Nations Framework Convention on Climate Change to Adopt an Agreement that Upholds the Rights of Indigenous Peoples**

**EXECUTIVE COMMITTEE**

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**WHEREAS**, we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the health, safety and welfare of the Indian people, do hereby establish and submit the following resolution; and

**WHEREAS**, the National Congress of American Indians (NCAI) was established in 1944 and is the oldest and largest national organization of American Indian and Alaska Native tribal governments; and

**WHEREAS**, climate change is one of the greatest threat facing the peoples of the world today; and

**WHEREAS**, the United Nations Special Rapporteur on the Right to Food stated in 2010 that Climate Change is the single biggest threat to global food security in the future; and

**WHEREAS**, the Intergovernmental Panel on Climate Change (IPCC), composed of thousands of scientists from around the world, has found that Indigenous Peoples are among the peoples most vulnerable to climate change and are disproportionately affected by it; and

**WHEREAS**, Indigenous Peoples depend upon the health of their ecosystems and natural resources for social, economic, and cultural vitality; and climate change threatens to destroy indigenous ways of life that have been sustainable for thousands of years; and

**WHEREAS**, climate change thus poses a serious threats to the inherent and Treaty rights of Indigenous Peoples as affirmed in the United Nations Declaration on the Rights of Indigenous Peoples, including, *inter alia*, rights to subsistence, traditional lands and resources, health, productive capacity of the environment, cultural heritage, sacred sites and free prior and informed consent; and

**WHEREAS**, the Parties to the United Nations Framework Convention on Climate Change (UNFCCC) will meet in Paris at the end of 2015 to reach a universally binding agreement to address climate change; and

**WHEREAS**, the goal of the UNFCCC as stated in its Article 2 is: “to achieve . . . stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system. . . .;” and

**WHEREAS**, that goal as presently contemplated by States is to keep temperature rise within 2 degrees C, however, Indigenous Peoples and many scientists consider this goal to be inadequate to protect the ways of life of Indigenous Peoples as well as the survival of small island states and Peoples; and

**WHEREAS**, in connection with an ongoing review of the adequacy of the 2 degree C goal, the Structured Expert Dialog, (SED) report concludes that at 2 degrees C of warming, “...indigenous people[s] would be at risk of loss of land and cultural and natural heritage, and cultural practices embedded in livelihoods would be disrupted”; therefore Indigenous Peoples are calling for that goal to be lowered to no more than 1.5 degrees C of warming at COP 21.

**NOW THEREFORE BE IT RESOLVED**, that the National Congress of American Indians (NCAI) calls on the Parties to the UNFCCC at the 21<sup>st</sup> Conference of the Parties (COP 21) in Paris to adopt an agreement with a strong human rights based approach reflected in the operative provisions of the agreement and which covers all aspects of the agreement such as mitigation, adaptation, finance, technology transfer, transparency and capacity building, and specifically recognizes the rights of Indigenous Peoples; and

**BE IT FURTHER RESOLVED**, that NCAI calls on the State Parties to adopt a goal of a temperature rise of no more than 1.5 degrees C of warming, with a review to ascertain if that should be further lowered to no more than 1 degree C of warming; and

**BE IT FURTHER RESOLVED**, that NCAI calls upon the States Parties to recognize in the final agreement respect for and use, with free, prior, and informed consent and full participation, of Indigenous Peoples’ traditional ecological knowledge; and

**BE IT FURTHER RESOLVED**, that any Conference Of the Parties (COP) decision at Paris should acknowledge the obligation to guarantee full and effective participation of Indigenous Peoples in all processes, programs and actions at all levels, including *inter alia* access to funding mechanisms, financing, capacity building, monitoring, reporting and verification (MRV) and guaranteed and enforceable safeguards and all other evolving climate change-related mechanisms; and

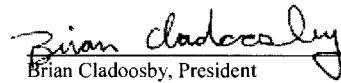
**BE IT FURTHER RESOLVED**, that any funds created through the United Nations for Indigenous People’s for mitigation and adaptation to climate change be available on an equal basis for Indigenous Peoples from all regions, including North America; and

**BE IT FURTHER RESOLVED**, that the Intended Nationally Determined Contributions (INDCs) to be submitted prior to Paris as each Party's commitment to address climate change should include, along with commitments to reduce emissions, commitments on adaptation, finance, technology transfer, and capacity building as well as indicators on the extent to which Indigenous Peoples' rights and safeguards are respected, and non-carbon benefits, including cultural, spiritual and subsistence values are ensured; and

**BE IT FINALLY RESOLVED**, that this resolution shall be the policy of NCAI until it is withdrawn or modified by subsequent resolution.

#### CERTIFICATION

The foregoing resolution was adopted by the General Assembly at the 2015 Annual Session of the National Congress of American Indians, held at the Town and Country Resort, San Diego, CA, October 18-23, 2015, with a quorum present.

  
Brian Cladoosby, President

ATTEST:

  
Aaron Payment, Recording Secretary



## NATIONAL CONGRESS OF AMERICAN INDIANS

The National Congress of American Indians  
Resolution #SD-15-024

**TITLE: Support for the Tribal Climate Change Principles: Responding to Federal Policies and Actions to Address Climate Change document and its Swift Implementation by the Federal Government**

## EXECUTIVE COMMITTEE

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## NCAI HEADQUARTERS

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**WHEREAS**, we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the health, safety and welfare of the Indian people, do hereby establish and submit the following resolution; and

**WHEREAS**, the National Congress of American Indians (NCAI) was established in 1944 and is the oldest and largest national organization of American Indian and Alaska Native tribal governments; and

**WHEREAS**, Indigenous Peoples in the United States, including 567 federally-recognized tribes, are facing immediate and significant impacts from climate change and a growing body of literature illustrates the unique issues facing Indigenous Peoples from climate change, including: the recently developed *Primer on Climate Change and Indigenous Peoples*; *Guidelines for Considering Traditional Knowledges (TKs) in Climate Change Initiatives*; and the special issue of the peer-reviewed journal *Climatic Change*, "*Climate Change and Indigenous Peoples in the United States: Impacts, Experiences and Actions*;" and

**WHEREAS**, the federal government is beginning to acknowledge the disproportionate threats of climate change to Indigenous Peoples through administrative and congressional reports such as the 3rd National Climate Assessment and the 2014 President's State, Local, and Tribal Leaders Task Force on Climate Preparedness and Resilience (Task Force); and

**WHEREAS**, federal action must be taken to support the efforts of Indigenous Peoples to adapt to climate change impacts and to reduce their carbon footprints through a range of mitigation approaches, including renewable energy development and energy efficiency, and provide Indigenous Peoples access to the financial and technical resources that are required to assess the impacts of climate change on their cultures, air, land and water, economies, community health, and ways of life; and

**WHEREAS**, adequate response to the threat of climate change requires action by tribal, federal, state, and local governments; and

**WHEREAS**, the federal government's treaty and trust responsibilities to protect Indian lands includes the duty to protect lands from the impacts of climate change, which requires that sufficient federal resources be equitably allocated to address climate change so Indigenous Peoples can engage effectively in adaptation and mitigation strategies that will help ensure the integrity of their cultures, homelands, infrastructures, and services; as well as enforce tribal treaty and reserved rights to both on- and off-reservation resources; and

**WHEREAS**, the Task Force led an effort to reach out to Indigenous leaders across the country to solicit their recommendations on how the federal government can better support their nations and communities in preparing for the impacts of climate change and proposed further federal and state consultation and cooperation with Indigenous Peoples on all aspects of federal climate preparedness and resilience efforts; and

**WHEREAS**, the Task Force recommendations focus on inclusion and participation of Indigenous Peoples in federal climate change programs, including access to data, programs and federal funds; education; and long-term planning for natural resources and ecosystem health; water safety and security; housing infrastructure; and food and energy security; and

**WHEREAS**, many individual tribes, regional and national tribal organizations, and partner non-Native organizations recognized the need to develop a document identifying tribal specific principles and, to varying degrees, engaged in drafting, reviewing, and providing input to develop the "Tribal Climate Change Principles: Responding to Federal Policies and Actions to Address Climate Change," which sets forth eight principles to guide the federal government in the development and implementation of administrative and legislative actions related to Indigenous Peoples and climate change.

**NOW THEREFORE BE IT RESOLVED**, that the National Congress of American Indians (NCAI) supports the following eight principles of the *Tribal Climate Change Principles: Responding to Federal Policies and Actions to Address Climate Change* as a guiding policy for U.S. federal agencies and that all federal agencies actively engage NCAI and Indigenous Peoples in the United States in plans to implement these principles:

**Strengthen Tribal Sovereignty in the Climate Change Era**

1. Federally-recognized Tribes and other Indigenous Peoples and Indigenous communities must be partners with full and effective participation in assessing and addressing the problems of climate change at the local, regional, national, and international levels and must be accorded at least the status and rights recognized in the U.N. Declaration on the Rights of Indigenous Peoples and other international standards relevant to Indigenous Peoples.
2. Tribes must have fair and equitable representation on all federal climate committees, working groups, and initiatives in which states, local governments, and other stakeholders are represented.
3. The federal government should establish a high-level interagency Tribal government task force to examine and propose solutions to close gaps across the federal agencies' relationships and programs with Tribes, and to develop, recommend, and implement Tribal-specific solutions that enable the agencies to support and foster Tribal climate-resilient planning and investment.



**Support Tribes Facing Immediate Threats from Climate Change**

4. Indigenous Peoples must have direct, open access to funding, capacity-building, and other technical assistance, with their free, prior and informed consent, to address the immediate and long-term threats from climate change.

**Ensure Tribal Access to Climate Change Resources**

5. Tribes must have fair and equitable access to federal climate change programs.
6. Tribes must be made eligible for existing and future federal natural resource funding programs for which states are eligible, but from which Tribes are currently, or might be, excluded.
7. A fair and equitable set-aside of direct monies or allowances must be made available for distribution to Tribes through legislation, administrative actions, and existing and future federal natural resource funding programs.

**Traditional Knowledges and Climate Change**

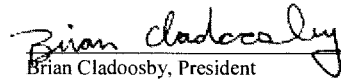
8. Indigenous traditional knowledges, with the free, prior, and informed consent of Indigenous Peoples, must be acknowledged, respected, and promoted in federal policies and programs related to climate change; and

**BE IT FURTHER RESOLVED**, that NCAI urges the United States government agencies, taskforces, and their partner organizations to comply with and implement the November 5, 2009, Executive Memo, Executive Order 13175, and Secretarial Order 3289, and partner with American Indians as sovereign nations as co-decision makers all policy, regulations and laws related to climate change on or off each nation's respected reservations, ceded lands and usual and accustomed areas; and

**BE IT FINALLY RESOLVED**, that this resolution shall be the policy of NCAI until it is withdrawn or modified by subsequent resolution.

**CERTIFICATION**

The foregoing resolution was adopted by the General Assembly at the 2015 Annual Session of the National Congress of American Indians, held at the Town and Country Resort, San Diego, CA, October 18-23, 2015, with a quorum present.

  
Brian Cladoosby, President

ATTEST:

  
Aaron Payment, Recording Secretary



NATIONAL CONGRESS OF AMERICAN INDIANS

The National Congress of American Indians  
Resolution #REN-13-020

**TITLE: Adopting Guidance Principles to Address the Impacts of Climate Change**

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*Chickasaw Nation*

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**ROCKY MOUNTAIN**  
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**SOUTHERN PLAINS**  
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**SOUTHWEST**  
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**WESTERN**  
Ned Norris, Jr  
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**EXECUTIVE DIRECTOR**  
Jacqueline Johnson Pata  
*Tlingit*

**NCAI HEADQUARTERS**  
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202.466.7767  
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**WHEREAS**, we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the health, safety and welfare of the Indian people, do hereby establish and submit the following resolution; and

**WHEREAS**, the National Congress of American Indians (NCAI) was established in 1944 and is the oldest and largest national organization of American Indian and Alaska Native tribal governments; and

**WHEREAS**, American Indian and Alaska Natives are leaders in the nation on the protection of ecosystems and the environment since time immemorial and have a sacred responsibility to protect our resources and ways of life for generations to come; and

**WHEREAS**, American Indian and Alaska Natives depend upon the health of their ecosystems and natural resources for social, economic, and cultural vitality; and

**WHEREAS**, American Indians and Alaska Natives are place-based people and recognize that climate change is one of the most critical issues we face since it is threatening and can destroy in the future, indigenous ways of life that has been sustainable for thousands of years.

**NOW THEREFORE BE IT RESOLVED**, that NCAI commits to collaborating with ATNI to develop an action plan which lays guiding principles and action steps a to address the impacts of climate change upon tribal governments, cultures, and lifeways; that will protect and advancing our treaty, inherent and indigenous rights, tribal lifeways and ecological knowledge; and

**BE IT FURTHER RESOLVED**, that in the action plan, NCAI shall collaborate with ATNI to evaluate effectiveness of Executive Order 13175, and Secretarial Order 3289, and the United Nation Declaration of Indigenous Peoples (UNDRIP), in protecting and advancing the principles in the action plan; and

**BE IT FURTHER RESOLVED**, that NCAI collaborates with ATNI and calls upon the federal government to provides tribes equitable opportunities and funding to participate meaningfully in the development and implementation of federal climate change policies and programs; and

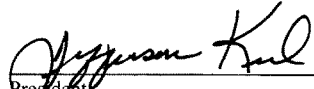
**BE IT FURTHER RESOLVED**, that NCAI collaborates with ATNI and calls upon Congress and relevant federal agencies to explore and advocate for tribal eligibility for federal energy and natural resource management programs that provide funding to states and local governments but exclude tribal governments and intertribal consortia by law, regulation, or practice; and

**BE IT FURTHER RESOLVED**, that NCAI collaborates with ATNI and commits to create a Tribal Climate Change Task Force, composed of tribal governments, intertribal organizations, and non-tribal partners to develop and implement the plan of action; and

**BE IT FURTHER RESOLVED**, that this resolution shall be the policy of NCAI until it is withdrawn or modified by subsequent resolution.

#### CERTIFICATION

The foregoing resolution was adopted by the General Assembly at the 2013 Midyear Session of the National Congress of American Indians, held at the Atlantis Casino from June 24 - 27, 2013 in Reno, Nevada with a quorum present.

  
President

ATTEST:

  
Recording Secretary

## LATINOS OPPOSE SCOTT PRUITT FOR EPA ADMINISTRATOR

January 17, 2017

Dear Senator:

As Latino leaders, members and representatives of the undersigned organizations committed to efforts that support our communities' health, advancement, safety and well-being, and on behalf of the concerned communities we represent, we strongly urge you to oppose the president-elect's nominee to lead the U.S. Environmental Protection Agency, Oklahoma Attorney General Scott Pruitt.

Mr. Pruitt has made a career of suing the Environmental Protection Agency, and has used his office to attack lifesaving public health protections time and time again. His record exhibits a reckless disregard for public health and a deeply troubling contempt for the very mission of the agency he has been nominated to lead. Mr. Pruitt denies the science of climate change, suing to block national standards to fight this crisis; he has fought against clean air protections, opposing the Mercury and Air Toxics standard which would prevent premature deaths and asthma attacks; he has sued the EPA to overturn clean water safeguards for more than half of the nation's waterways, including streams that feed into the drinking water supplies of hundreds of millions of Americans. Scott Pruitt is simply unfit to lead the EPA and, if confirmed, would pose a danger to our communities.

Latinos overwhelmingly support actions to fight climate change. We recognize the importance of protecting the environment: 97 percent of Latinos agree we have a moral obligation to take care of our environment. In December, the National Hispanic Leadership Agenda, a coalition of 40 of the leading Latino organizations nationwide, voiced their opposition to Mr. Pruitt's nomination, stating that they were "particularly troubled by this choice," and pointing to the prevalence of asthma and other respiratory diseases among Latinos living near polluting power plants, truck routes, and factories; as well as the large number of Latinos who are employed in outdoor occupations, including agriculture, where they are exposed to health hazards, bad air quality, and the impacts of extreme weather.

Americans did not vote for more air pollution, toxics, or dirty water, nor did they vote to undo critical protections that safeguard our children and communities. We did not vote for more climate change or dirty energy. Putting the EPA in Mr. Pruitt's hands does just that: he will threaten our children's health, turn back the clock on landmark efforts to clean up our air, water and climate, and imperil the United States' position as a global clean energy leader.

We call on you to publicly declare your commitment to stand up for our right to breathe clean air, drink clean water, and be protected from pollution. We urge you to vote against all legislative proposals that would in any way repeal, weaken or undermine these rights, laws and safeguards. Our community is counting on you to protect us by voting to reject Scott Pruitt's nomination for Administrator of the U.S. EPA.

Sincerely,

Mildred Real  
Founder and CEO  
America Verde

Marce Graudins  
Founder / Director  
Azul

Irene Vilar  
Founder and CEO  
Americas for Conservation + the Arts

Vanessa Smith  
Publisher  
Chica Magazine

Arturo Carmona  
Arturo for Congress Campaign

Lisa Hoyos  
Director  
Climate Parents

Ronald Blackburn Moreno  
President and CEO  
ASPIRA Association

Omar Gomez  
Director of Programs and Public Policy  
Council of Mexican Federations (COFEM)

Soledad Haren  
Producer  
Epoca Verde, Green Living, Green Times

Virginia Ruiz  
Director of Occupational and Environmental Health  
Farmworker Justice

Mark Magana  
President & CEO  
GreenLatinos

Laura Esquivel  
Director of National Advocacy  
Hispanic Federation

Cristóbal Alex  
President  
Latino Victory Project

Luis Torres  
Director of Policy and Legislation  
League of United Latin American Citizens

Brent Wilkes  
National Executive Director  
League of United Latin American Citizens

Amy I. Hinojosa  
President and CEO  
MANA, A National Latina Organization

Ben Monterroso  
Executive Director  
Mi Familia Vota

Samuel Molina  
California State Director  
Mi Familia Vota

Eduardo Sainz  
Arizona Deputy Director  
Mi Familia Vota Arizona

Carla Castedo  
Colorado State Director  
Mi Familia Vota Colorado

Esteban Garces  
Florida State Director  
Mi Familia Vota Florida

Ben Monterroso  
Executive Director  
Mi Familia Vota

Carlos Duarte  
Texas State Director  
Mi Familia Vota Texas

Elena Rios, MD, MSPH, FACP  
President & CEO  
National Hispanic Medical Association

Sergio Rimola, MD  
National Hispanic Medical Association

Olga Trujillo  
Director of Public Policy  
National Latin@ Network of Casa de Esperanza

Erika Castro  
Progressive Leadership Alliance of Nevada

Hilda Nucete  
Protégete Program Director  
Protégete: Nuestro Aire, Nuestra Salud

Carlos Zegarra  
Director  
Sachamama

Alejandra Nunez  
Sierra Club

Dr Mary A Haberl  
Owner  
SolarFour LLC

Tony DeFalc  
Deputy Director  
Verde

Ana Lucia Garcia  
Concerned Citizen

Paty Romero Lankao, PhD  
UNCR

Gerald Torres  
Professor / Concerned Citizen

Fernando Cazares  
Urban Planner / Concerned Citizen

Graciela Cabello  
Concerned Citizen

Voto Latino

The Staff and Board Members of  
Voces Verdes

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

Then I would like to turn to a question that has puzzled me over time. And it is in the context of how one evaluates, how one views the world. I heard one of my colleagues once present it this way. If you go to a doctor and they say you have cancer, you decide you had better get a second opinion. You go to a hundred doctors, and 97 of them say you have cancer and you had better act, most people feel like, 97 doctors said I should act, 3 said I should go take some health care supplement. Maybe I had better have the operation.

And that is really the place where we are in climate science now, where the overwhelming weight of the scientific community weighs in and says, yes, it is very logical, you can do it in the laboratory, as Senator Whitehouse noted, that carbon dioxide traps heat. You can do it in a laboratory that methane traps heat. You can track the change in the environment of the concentration of those gases. You can see the impacts on the ground now.

In my home State you have an impact on the oysters, because the Pacific Ocean is 30 percent more acidic than it was before we started burning coal. That is a scary thing, when shellfish have trouble forming shells. It has an economic impact. Our pine beetles are thriving because the winter is not cold enough to kill them, and so it is having a huge impact on our forests. That is an economic impact on rural America.

The southern part of my State has had three worst ever droughts in the last 15 years. It is a huge impact on agricultural communities. The streams in Oregon coming from the snow packs have been declining in size and raising in temperature, very bad for trout, very bad for salmon. That is an impact on our fishing community.

So the global warming that is taking place and being driven by the burning of fossil fuels is having a huge economic impact on the citizens of my State, my rural citizens, my citizens who depend on timber, who depend on fishing, who depend on farming. Should the citizens seek to address this problem? Because we are just on the front end of this happening.

Ten years ago we were talking about models that led to the conversation Senator Inhofe had about ClimateGate, about assumptions and models. We don't need models now. We have facts on the ground. The moose are dying because the ticks are not being killed by the winter being cold enough. The fish are migrating on the Atlantic coast and Maine is losing its lobsters to Canada.

These facts on the ground are extraordinarily real. They have a huge economic impact. And shouldn't we take a very serious approach to the urgency of this problem, as we see it descending upon us?

Mr. PRUITT. Senator, I think the EPA, and if confirmed as Administrator, there is currently an obligation to deal with the issue. The Massachusetts v. EPA case says that CO<sub>2</sub> is a pollutant under the Clean Air Act. And as such that is what generated the 2009 endangerment finding. So I think there is a legal obligation presently for the EPA Administrator to respond to the CO<sub>2</sub> issue through proper regulations.

Senator MERKLEY. I believe you are acknowledging in that, which I am glad to hear, that it is a serious problem and that the EPA, that carbon dioxide is a pollutant and we have a legal obligation to take it on.

Mr. PRUITT. I think Massachusetts v. EPA says that. Counterbalance, by the UARG decision, that came out a few years later, that you can't transform a statute, as the EPA sought to do with the PSD program. So I think the court has spoken very emphatically about this issue. And the EPA has a legal obligation to respond.

Senator MERKLEY. And as you kind of rank the urgency with which you bring to this, do you see it as something that you wake up every day being, like, the next generation will weigh whether or not we acted promptly? Or is it more, I have a legal obligation because of this court decision, so I will have to have some folks pay some attention to it?

Mr. PRUITT. I think the importance, Senator, it is very difficult to prioritize. Senator Gillibrand is not here, but when she talks to me about PFOA and the threat that she is facing in New York, is that any less important than the CO<sub>2</sub> issue? It is not. So the EPA deals with very weighty issues, as you know, water and air quality. It is a matter of prioritizing the resources to achieve better outcomes in each. And I think it is very important to do so as Administrator.

Senator MERKLEY. I do feel like perhaps you don't understand the gravity of the situation, from your response. Because there are feedback mechanisms that are starting to occur with the open bluewater in the Arctic, feedback from methane bubbling up from the permafrost, bubbling up from the peat bogs, bubbling up from what was previously frozen methane on the bottom of the ocean that has incredibly accelerating impact on global warming.

Our rate of carbon dioxide pollution is not decreasing globally. It has doubled in rate from one part per million per year to two parts per million per year. So we are on an accelerating curve as a human civilization. And if human civilization doesn't get it together very quickly, we are in very deep trouble. I would hope at some point perhaps the urgency of the situation would be something you will grab hold of.

Thank you.

Senator BARRASSO. Thank you.

Senator Rounds.

Senator ROUNDS. Thank you, Mr. Chairman.

Attorney General Pruitt, last year at an oversight hearing, we heard reports of the EPA regional offices who are sending companies information collection requests, or ICRs, pursuant to section 114 of the Clean Air Act, regarding their operations, with no explanation as to the reason for the ICRs. These ICRs, which companies are legally obligated to respond to, can cost the companies millions of dollars to collect the information to respond to the request. They often hear no follow up from the EPA regarding whether their response was adequate or what the information would be used for.

Last year, I requested from the EPA a record of the ICRs that had been sent to U.S. companies throughout the various regions.

I was told by the EPA staff that there was no way to get this information, because they didn't have it.

Second, in 2015 I wrote a letter to the EPA Administrator Gina McCarthy requesting the economic information that forms the basis of the Clean Power Plan and the ozone NO<sub>x</sub> standards. These are the major regulations that were being quickly imposed on American taxpayers. The response which I received, it took 2 and a half months to get the response, but I understand that I am one of the few recipients of an actual letter back from the EPA, and I would ask that it be included as part of the record of the meeting today, Mr. Chairman. The letter was basically nothing short of referring me to an Internet link that directed me to a Web page, the same Web page which generated the questions in the first place. Essentially, they just simply suggested that I Google it. Not hardly a response that you would expect back from a Federal agency, at least one that was trying to be responsive with regard to major proposed rules.

Working as a United States Senator I have found it nearly impossible to easily access the information that I am looking for. I can't imagine the difficulty of a small business, a farmer or a rancher, when they are seeking to get information from the Environmental Protection Agency. As the EPA Administrator, the role which you are seeking, do you believe that this is an adequate way to communicate what the public and elected officials, and where are your views on making agency communication and record-keeping more transparent and accessible?

Mr. PRUITT. Senator, this is actually a common theme. As I met with many of you on this Committee, both Democrats and Republicans, it was expressed to me that concern about the lack of response by the EPA at all, in response to inquiries, let alone the time of response. So I believe it is very important, as I indicated in my opening statement, to listen not only to the voices of the American people, but listen to Members of Congress, listen to members of this body with respect to the issues that are of concern to them in their respective States. That is something I take very seriously and would seek to respond very expeditiously to you and to others in this body with responses.

Senator ROUNDS. The Ranking Member had asked, and was following up with questions in terms of your role as the Attorney General with regard to fracking issues in Oklahoma, but also with regard to clean air attainment levels and so forth. It seemed to me that what you were trying to portray at the time, and I would like you to expand on this, because I think this is important, is that you have a different role as an Attorney General than you would be if you were responsible as the agency within the State who had the direct statutory authority to respond to those issues. It seems to me that that is one of the roles that the EPA Administrator has which would be different than that of Attorney General, which is the execution of the laws that we have passed.

Could you expand a little bit? Because I think this is really important in terms of the way you perceive your duties with regard to executing the laws that this Congress has passed.

Mr. PRUITT. Yes, Senator, and I appreciate the question. The role of Administrator is to perform an executive role, an executive pol-



icymaking role and carrying out the functions and the statutes that Congress has passed. That is much different than my current role as Attorney General. As I tried to indicate to Senator Carper, in respect to enforcement actions in the State of Oklahoma, that is vested specifically in the Department of Environmental Quality. They are the ones that bring enforcement actions against companies who do not comply with air permits, et cetera. We provide general counsel to them in that process, but it is not our responsibility. But more, it is not our jurisdiction. And that is important to me, because it goes back to rule of law; it goes back to process.

I think oftentimes what we see in this country is that folks kind of disregard the authority or jurisdiction that has been given to them by the statute of the Constitution, and they act anyway. That is what creates, I think, a lack of confidence in the American people. So I try to respect those boundaries. I try to respect my role as Attorney General, stay in my lane, if you will, and provide the counsel and perform the job that we are supposed to perform to that agency, but then allow that agency to enforce as required by law.

Senator ROUNDS. And then very quickly, that also means that with regard to determining the science behind the laws that we create, as the Administrator, you are not going to make the determination yourself. You expect that sound science and the scientists with that background would be making the recommendations that you would then face a decision on?

Mr. PRUITT. Yes, Senator, objective and transparent in that process.

Senator ROUNDS. Thank you.

Thank you, Mr. Chairman.

Senator BARRASSO. Thank you, Senator Rounds.

Senator Booker.

Senator BOOKER. Mr. Chairman, if you would gracefully hold the clock for a second, because I want to respond very succinctly to something that you and Senator Boozman said. First of all, to you, sir, this is my first time going through nomination hearings. You have been very generous with the way you have been conducting these hearings. I think it is important that we note that, and I appreciate the number of rounds that you are doing.

And then to Senator Boozman, I really do appreciate him adding to the line of inquiry I am having, he referred to me as a friend, which means a lot to me. People around here, your colleagues, know that you have a deep respect for the kind of kindness and just decency that you represent, a level to which I aspire but have not attained. Thank you for that. Thank you for indulging me.

Senator BARRASSO. Thank you.

Senator BOOKER. And again, with respect to my colleague, who is a really good man, if this was between Delaware and New Jersey, I am the up-State, I would be very happy with the agreement that it seems that you, you are the down-State. So that is what I don't understand. You said earlier in your testimony in regard to this matter that you have a copy of the 2003 agreement. Do you have that?

Mr. PRUITT. I have the second agreement, Senator.

Senator BOOKER. OK, let's just look at the 2000 agreement. I know you claimed in your testimony earlier that the 2003 agreement had expiration on it.

Mr. PRUITT. There was a 10-year period. But that needed to be reevaluated. This is the second statement I have here, Senator.

Senator BOOKER. I just want to clarify that it is a contradiction. There is no expiration on the 2003 agreement. It had a reevaluation, a period in which it would be reevaluated. And it was reevaluated by your State with involvement of the EPA and the involvement of Arkansas, and they came up with the same .037 standard. And if you look at the provisions of what you do have in front of you, the 2013 agreement, and I have a blow-up of page 4 of that agreement, it states that—starting here, it states that Oklahoma, through the Water Resources Board, will propose a rule amendment that removes the date to achieve full compliance with a numeric phosphorus criterion set forth in Oklahoma administrative code. Then it lists these two codes.

If you look at those two codes, what those two codes do, you know what they are, they said the sections of phosphorus concentration shall not exceed .037 by June 30th. It is removing the June 30th deadline in these two statutes.

So that is what is frustrating to me, is that this is what you are heralding as a great agreement. But you already had in the year 2013 agreement—it is clear that you are doing, to me, and I don't know any other way of reading the facts, is that you take a binding rule of law and you suspend it for another 3 years, allowing more pollution to take place.

Mr. PRUITT. Senator, that is not—the issue here was not whether Oklahoma could enforce its .037 standard; it was whether Arkansas was going to adopt that standard on that side of the border. That had never taken place in history. That was the concern of Oklahomans. That was the concern of Mr. Fite at the Seneca-Illinois River.

Senator BOOKER. So I am going to stipulate to what you said, because I am running out of time, sir. I agree with you, whether Arkansas was going to be able to live up to that standard. But you are the Oklahoma Attorney General. And this is what I want to say. As soon as you did this so-called historic agreement that set it back, you basically turned to the EPA with a rule, with the power of law of the Supreme Court and said, OK, back off my corporations.

Why do I say that so confidently? Because I pulled a letter from Tyson Foods that literally 6 days after your so-called historic agreement of suspending this rule for 3 years, they are delighted. They write to the EPA and say, hey, you may have not only heard of the February 20th agreement by Oklahoma and Arkansas officials to jointly conduct a comprehensive study of concentrations and impacts in the Illinois rivershed. They are excited. They literally say, compliance, however, with the now .037 has been suspend. So lay off us, EPA, under this agreement, until the study process is completed. In conclusion, the bi-State agreement has suspended implementation date of .037 during the term of the agreement.

Industry is really happy about this, and believes—and of course this letter, you are saying Tyson is wrong; they believe that what

you did is give them, the EPA, with the power of the Supreme Court and 20 years of work that predecessors of yours had done, the power to suspend that power over them to comply with the law.

So that is really what I am struggling with. On one hand you say that you filed lawsuits against 14 people, against the EPA. It is this idea of federalism, of Oklahoma sovereignty, Oklahoma States' rights, you are fiercely fighting for Oklahoma. And on the side of the polluters. You say the EPA is attempting to do things.

But then on the other hand, in this case that you are talking about, you switch suddenly to say, well, Oklahoma's water quality standard for phosphorus, that has been worked on for 25 years, armed with an EPA approval, armed with a Supreme Court decision, on point saying that up-river States are bound, industries believe that they are bound, but suddenly you are no longer fighting for Oklahoma. You are fighting to protect industry, on the side of industry again.

Mr. PRUITT. I can assure you, Senator, that industry didn't think they were bound.

Senator BOOKER. Why did Tyson write the letter, sir?

Mr. PRUITT. I don't know why they sent that. Because as Senator Boozman indicated earlier, the phosphorus level at .037 was unenforceable on the Arkansas side of the border. That was the concern. Until this agreement that we have here was negotiated and signed by Arkansas, that had never occurred in the history of Oklahoma.

Senator BOOKER. But sir, Arkansas was party to the 2012 scientific investigation. They are bound by the Supreme Court case which I pointed out to you already, and I can read you the binding paragraphs, [unclear] by the EPA and obviously understood by industry that they were bound by that standard. Your agreement didn't stop it. It extended the period in which people could pollute. I don't understand how that could be historic.

Mr. PRUITT. Senator, I think as you look at what was achieved between Arkansas and Oklahoma, you had the Arkansas Attorney General, Ed Fite, who had been involved in these issues, as indicated earlier, since 1983, trying to enforce and obtain water quality that improved the Seneca-Illinois River; he cited the historic results in this matter.

So I am unaware of the letter that you are referring to, but I can assure that industry was not, not at all excited about .037 being enforced on the Arkansas side of the border.

Senator BOOKER. And I will conclude just by saying, sir, it is clear that industry was excited about the 3-year delay that you bought them to continue to pollute. It is written there in a letter. It seems to me the theme in your work is not federalism and States' rights, but deregulation in siding with polluters against the environment and public health standards. It is unfortunate to me that , unless you can show me something different in the way that this actually helped to clean up the river quicker, but I just don't see that at all in the evidence and the facts that I have before me.

Senator BARRASSO. Thank you very much, Senator Booker.

Our next questioner is actually Senator Boozman. Since we have Oklahoma and Arkansas both here, I don't know if you have a question, Senator Boozman, or if you just want to make a comment

about this agreement, since both of the States are here. You represent the congressional district directly adjacent.

Senator BOOZMAN. I want to make a quick comment, and then after that, I think all of my questions have been answered. I would yield back if we can have agreement.

I think the thing, Senator Booker, to understand is that first of all, the water was not being polluted at that point. Arkansas had made tremendous improvement over the years, and had just—our discharge in Springdale, Fayetteville, Rogers, Bentonville, the major communities there that have grown tremendously during that timeframe, their discharges were down to very admirable levels. So all of that was being done.

The question was, was .037 fair versus .04 or .05. As I mentioned earlier our most pristine river in Arkansas was not at .037. So we didn't feel like we could do that. So Oklahoma was happy with all this stuff. Arkansas is not. And because of that, in 2013, as the agreement ran out, they were prepared to go back to court again. This thing had been litigated since the Supreme Court finding back in the 1990s all along the line.

To be honest, I am not happy with the .037. I think it is too stringent. I would challenge to find a river in New Jersey that meets that standard, and you can't do it. It is a very, very stringent standard.

So it wasn't continuing to pollute and things like that. Tremendous progress made on the Arkansas side. Everyone agrees with that. It was, where do you draw the limit.

So often with the EPA, and this is so important, we have had on the Committee, we have had the gentleman that represents the water district for this huge area. They spent a billion dollars doing a great job of cleaning things up, raising everybody's rates. EPA has come back and wants them to spend another billion dollars for a tiny fraction that everybody agrees would not have any impact on the water quality in the river. These are the kinds of things that you get into.

So again, I am really not happy at all about the .037. I think that Tyson and the industry were happy in the sense that you would have a situation where you would have some finality, you would have some resolution so that everybody could go forward.

Senator BARRASSO. Senator Ernst, any final comments or thoughts or questions?

Senator ERNST. Thank you, Mr. Chairman. I don't have any further questions. Whatever additional questions I have, I will submit for the record.

But I do have some closing comments. I do want to push back a little bit on the Ranking Member's comments earlier. I had gone through a series of examples of overreach by the Government with the expanded definition of Waters of the U.S. And the Ranking Member had stated that he had a letter that he had received from Administrator Gina McCarthy. And I have no doubt that she was answering those questions honestly, because she wasn't the one making the statements. The statements that I presented came from the Corps of Engineers and the Department of Justice.

Now, I know this to be true: these are not as implied from some obscure Web site off of the Internet done by some blogger in a base-

ment somewhere. The comments actually came from this Committee, case studies from this Committee, September 2016. These are examples of case studies from all across the United States. I will cite just one that I opened up to.

A landowner in California received an investigation letter from the Corps informing him that disking performed by a tenant farmer on his land may have resulted in an unauthorized discharge into WOTUS and that regulators had opened a case against the landowner. They are being implemented, case by case. This letter came as a surprise to the landowner, who had been disking this particular site periodically over the last 15 years to sustain grazing conditions for his cattle, a practice he believed was normal, until he received this notice.

The court told the landowner's consultant that all disking for any purpose and at any depth with any potential WOTUS is a discharge into WOTUS, and in the absence of a permit represents an unauthorized discharge in violation of the Clean Water Act. This is an actual letter from the Corps that was submitted to this Committee, the EPW Committee, last year.

So this is not made up. This is a very real impact to all Americans. So I appreciate your stance, Attorney General Pruitt, that if you are confirmed, you will work with those that wish to continue farming and normal practices. But this is not made up, folks. We just need everyone to understand that the Corps, the DOJ, and the EPA have gone beyond what we consider to be reasonable application of the law.

Thank you very much.

Senator CARPER. Mr. Chairman, if I could just respond very briefly. The letter that I sent on January 11th was not just to the EPA. It was to the head of the EPA and also the Assistant Secretary at the Army, Department of the Army, who is in charge of the Army Corps of Engineers. So it was really to both, both EPA and the Army Corps of Engineers. I gave them a half-dozen or more questions and said, these assertions that we are hearing, what is the truth? And they responded jointly.

Senator ERNST. And if I can respond to that, I apologize, because I was going to use Senator Rounds' letter as a prop. I had not seen a letter from the EPA. I had written Administrator Gina McCarthy nearly 2 years ago on some issues that I was wanting addressed for Iowa. And I invited her to come to Iowa and visit. She never, ever responded to me or my staff.

Thank you, Mr. Chairman.

Senator BARRASSO. Senator Markey.

Senator MARKEY. Thank you, Mr. Chairman.

Mr. Pruitt, you have criticized the Obama administration on a number of occasions for allegedly "colluding with environmental groups to engage in sue and settle tactics." You just reiterated your concern to Senator Inhofe.

But in December many of your co-plaintiff attorneys general, who are suing the EPA over the Clean Power Plan, sent a letter to President-Elect Trump, urging him to settle their lawsuits related to the Clean Power Plan. That sure sounds like an invitation to engage in sue and settle to me.

To avoid the appearance of entering into sweetheart settlements on the Clean Power Plan cases will you commit to recusing yourself from all ongoing litigation that you are involved in?

Mr. PRUITT. Senator, I would say to you that the sue and settle practice, whether by this Administration or future administrations, is a practice that should not be followed. I believe that regulation through litigation is wrong. I believe that the rulemaking process that Congress has established should be respected by agencies, not only the EPA but across the board.

I would mention one case to you.

Senator MARKEY. It looks a lot like that is what the attorneys general are doing, who are suing. And you are a co-plaintiff in this case on the Clean Power Plan. Will you recuse yourself from any role in the settling of these cases, in the negotiation on a settling of these cases?

Mr. PRUITT. The sue and settle practice should not be used by any administration to regulate. We have experienced in Oklahoma a case involving the Fish and Wildlife and Endangered Species Act in the relisting of the lesser prairie-chicken that impacted our State. So sue and settle is wrong.

Senator MARKEY. Are you giving me a yes, that you will not settle with these attorneys general?

Mr. PRUITT. I will not engage in a sue and settle practice, if confirmed as EPA Administrator, at any time.

Senator MARKEY. Will you negotiate with them to reach a settlement, such as has been recommended by the attorneys general who are the plaintiffs in this case against the Clean Power Plan?

Mr. PRUITT. Senator, it is a belief of mine that the use of sue and settle is a practice that should not be done by any agency of the U.S. Government.

Senator MARKEY. Right. So will you recuse yourself from any involvement in this litigation as it is being decided?

Mr. PRUITT. As I have indicated to you, Senator, the EPA ethics counsel, career staff at the EPA, has said that a particular matter, a specific case that those will be evaluated at the time. I will seek their counsel and comply with their counsel.

Senator MARKEY. Honestly, Mr. Pruitt, there is no bigger case than the Clean Power Plan. It goes to the promise that the United States is making to the world that we are going to reduce significantly our greenhouse gases. So this just goes to you as an individual saying that since you brought the case with these other attorneys general that you will now recuse yourself. Since you are in fact the plaintiff and defendant in this case if you are confirmed as the EPA Administrator.

Mr. PRUITT. Senator, as I indicated to you earlier, and I am sorry to interrupt you, but as I indicated to you earlier, I will recuse if directed by the EPA ethics counsel, career staff at EPA ethics. You know these individuals. They have been there, and I will follow their counsel and guidance.

Senator MARKEY. All right. I know I am not going to get you to recuse yourself from any of these cases, but I am just telling you, it is going to wind up being a huge conflict of interest if these attorneys general get to settle on their terms with the Trump adminis-

tration and you are sitting there in the middle of the room as that occurs.

Now, let me go to another subject, and that is this bottle of Trump water. Trump water, natural spring water. On the label it says, "pure, fresh and free from contaminants. This is water the way it was meant to be." Trump hotel guests have the luxury of drinking this water if they don't trust what comes out of the tap. Low income communities across our country do not have the same luxury. Do you agree that the EPA plays a critical role in ensuring that all Americans, regardless of racial, ethnic, or economic backgrounds, have a right to clean water, free from contaminants?

Mr. PRUITT. Absolutely. In fact, Senator Booker and I talked about environmental justice in our meeting.

Senator MARKEY. That is great. As the widespread lead contamination in Flint, Michigan's water supply tragically reminds us, low income and minority communities often bear far greater environmental burdens. Yet you told Senator Cardin earlier today that you didn't know if there is any safe level of lead. But scientific experts, including the CDC and World Health Organization, have concluded that there is no safe level of lead exposure.

Will you commit to making environmental justice for poor and minority communities an immediate priority of the EPA, if you are confirmed as Administrator?

Mr. PRUITT. I believe it is a very important role of the EPA Administrator.

Senator MARKEY. Well, minority communities often don't have the money—

Senator BARRASSO. The Senator's time has expired in the third round. Thank you.

Senator Sullivan.

Senator SULLIVAN. General Pruitt, I just have one final question. We talked about some of the challenges that we have; this Committee has been working on infrastructure issues. There were a lot of discussions last year about Flint, Michigan, and aging infrastructure, which I think is a concern at the State and local and Federal levels.

There is also a challenge in certain parts of the country on no infrastructure. None. No clean water and sewer. My State has over 30 communities that don't have any clean water and sewer. In terms of the diseases and the living conditions in communities like that, as you can imagine it can be very difficult. So in a bipartisan way, this Committee acted last year, established a new program for disadvantaged communities, small communities, to work on those kinds of issues for different communities, whether Alaska or other parts of the country, that literally live in third world conditions in some communities. So that would be administered by the EPA, this new program. I just want to get your commitment to work with us to fully fund that new program to work on those kinds of issues.

Mr. PRUITT. As we talked about in our meeting, Senator, I believe sometimes when infrastructure is referenced we think roads and bridges, and we don't think water infrastructure. I think all those are important, and I would make that a priority interfacing with Congress if confirmed as EPA Administrator.

Senator SULLIVAN. Great. Thank you.

Senator BARRASSO. Thank you, Senator Sullivan.

I want to thank all the members for the respectful way in which the business was conducted today. Members may also submit follow up written questions, but it seems that everyone had plenty of opportunity to ask oral questions. Schedule for the close, the recording for the close of business Thursday, January 19th—Senator Carper.

Senator CARPER. I thought we were going to do one more.

Senator BARRASSO. I thought three rounds was the longest in the history of this. The last, the only other time there were three rounds was Christie Todd Whitman in 2001. Those were three rounds of 5 minutes each. And the reason that she as a Republican nominee was given three rounds is that the Chairman of the Committee was Harry Reid. So three rounds, the witness has been here since 10. It is now 4:30, so he has been 6 and a half hours, and three rounds. By any criteria that one would use, each of 5 minutes, when Gina McCarthy was nominated, and I had significant numbers of questions, Barbara Boxer limited me to one 5-minute round and one 2-minute round. We have more than doubled today that amount of time for questioning.

Senator WHITEHOUSE. Mr. Chairman.

Senator BARRASSO. Senator Whitehouse.

Senator WHITEHOUSE. I am certainly not saying that you've been unfair with us, but until this very minute, I don't think it has been clear to anyone that there was a three round limit. I believe you opened the hearing by saying that we would go on until people's questions were answered.

So this is a bit of a novelty. But again, please don't take it as a criticism of your fairness. I think that you have been fair. This is just news. And I do have a bunch of questions right here that I'd hoped to ask as what I expected to be a final fourth round.

Senator BARRASSO. Then I would invite you to please submit those follow up written questions by tomorrow close of business.

Senator CARPER. Mr. Chairman, could I be recognized?

Senator BARRASSO. Yes, sir. Senator Carper, and then Senator Booker.

Senator CARPER. I appreciate the way you've conducted this hearing today. I appreciate all the members coming and coming back again and again. When we were talking a week or two ago about the hearing, whether to have 1 day of hearings or 2 days of hearings, our side was interested in having 2 days of hearings. We were interested in having an outside panel, and it was explained to us that that is not really the tradition of the Committee, to have an outside panel.

But you, Senator, preferred to have it in 1 day, and we'll stay as long as people have questions, I think those were almost exactly your words. And that is hard to argue with, to stay as long as people have questions. Some of the folks have some more questions. I know I do. And we are not running out the clock on those questions. I would just ask that you think back on our earlier conversation, and you see your way clear to have one more round, and we'll call it a day.

Senator BARRASSO. Yes, well, I would say a couple of things. One is, I offered to start the Committee meeting earlier today because



there are many of us who have commitments into the evening, people from our home States who are here for the inauguration activities. We have commitments for our home States. And the idea of starting at 9 was rejected. And we wanted to go along, right before the third round, I said, now, if there is going to be ongoing, maybe we should take a break, give the witness an opportunity to take a break, you said, no, let's plow on.

The witness has been sitting there now for just about 3 hours. And depending on wishes of the Committee, my preference is to say, we have done more than ever done in the last 16 years or 17 years for nominees. If people have one or two questions I would want to give the witness an opportunity to stretch his legs. I will be happy to stay. And we can come back with a 3-minute round.

But I just think—people have obligations and commitments. And we thought we would be completed by now. It does seem by many of the end, and for people who are here now, they could go. So we have three members, if you want to go 2 to 3 minutes or one or two questions, I think we would be able to accommodate. But to bring back the entire Committee and go into the night—

Senator CARPER. I am not suggesting we bring back the entire Committee. Let me just suggest that if we can, we can agree here. Those that are here today, right this moment, if they have questions, give them 5 minutes. And then when they're done, we are done.

Senator BARRASSO. Any objection from our side?

Senator Inhofe.

Senator INHOFE. Though we would be able to yield back any time that we had, if we didn't want to use it.

Senator BARRASSO. Sure.

Senator CARPER. Or you could yield to us.

[Laughter.]

Senator INHOFE. I can only say that I have chaired this Committee for quite a number of years. I have been through this once before, and there is always an effort by those who are perhaps not really satisfied, as some of the others might be, to try to make it continue on and on and on.

I would prefer to go ahead. I think we have all had adequate time and be prepared to vote.

Senator BARRASSO. Well, we don't have a vote scheduled for today on this. We don't have an agreement on that. So it wouldn't be a vote. I would say, if we—

Senator INHOFE. Well, if that is the case, then we can confine it for the record, any questions that they have.

Senator BARRASSO. Any other suggestions?

Senator SULLIVAN. Mr. Chairman, I think you've been exceedingly fair, particularly relative to the confirmation of Gina McCarthy. And I think it is purely within your call to have additional questions be submitted for the record. The opportunity for the witness to answer all the questions, he'll still have to do it before his confirmation. But relative to any other EPA Administrator hearing, you've been very generous, very fair, and I think that in retrospective, I think that is a very fair outcome, to still ask the questions, just submit the questions for the record.

Senator CARPER. Can I respond to our colleague from Alaska? I don't know if you remember a year or 2 ago, there was a joint session of the House and Senate committees, environment committees. And the witness was Gina McCarthy. And I arrived 4 hours into the hearing. And after a while, I was recognized to ask a question. And my first question of Gina McCarthy was, you've been here for 4 hours, haven't you? She said yes. And I said, is there any question you haven't been asked that you wish you had been asked? And she said yes. I said, what is it? She said, I wish I'd been asked if I needed a bathroom break.

[Laughter.]

Senator CARPER. I don't know if the witness could use a bathroom break. But if you need one for a couple minutes, we could arrange that.

Here's what we are asking for. Five minutes, Cory Booker, Sheldon Whitehouse, Tom Carper. We ask our questions and we are done. That's it. Can you handle that? Why don't you say yes? We're wasting a lot of time here.

Senator BARRASSO. As you said, you have a couple of questions. Let's go 3 minutes each and we'll call it good. You're up.

Senator BOOKER. Mr. Chairman.

Senator BARRASSO. Senator Booker.

Senator BOOKER. I'd asked to be recognized earlier. I do want to—

Senator BARRASSO. I apologize. Yes, sir.

Senator BOOKER. I just want to repeat, I do think what Senator Sullivan said, you have been very, very generous, it is true. I appreciate what seems like an accord right now of a few minutes now. I'd appreciate that.

One thing you didn't mark, which I think should be really important, is I have no sympathy for the nominee and his endurance. I do have for his family, behind him, who has sat through this. I just want to mark for the record that they are true champs. I think that is important to know. I thank them for their indulgence. Not the nominee, but them.

Senator INHOFE. I would just say that is more evidence that he cares for the children of Oklahoma.

[Laughter.]

Senator BARRASSO. I would just say, more people vote for me because of my wife than vote for me, and I would suggest for you as well, in the case of this nominee.

Senator CARPER. Let me yield to Senator Whitehouse.

Senator WHITEHOUSE. I just want to touch on two things, and then we'll wrap up. The first is that on your questionnaire you listed an e-mail address with a me.com domain as your business e-mail. You also have an OAG.ok.gov address. Are there other e-mail addresses that you have, and are the other e-mail addresses that you use for business other than your me.com and your OAG.ok.gov e-mail addresses?

Mr. PRUITT. I am sorry, Senator. The "me" address is not a business e-mail address. I am not sure why it was designated as such.

Senator WHITEHOUSE. Well, maybe we can just correct the filing on that.

Mr. PRUITT. There are no other e-mail addresses, if that is your question, Senator.

Senator WHITEHOUSE. We have gone through the cases that you list as your environmental cases. When we take out the cases that were started by your predecessor, Drew Edmonson, and when you take out the cases that are fish kill cases, which I understand is a formulaic matter that is resolved by letter at the staff level, you count the fish, you pay the fee, and when you take out the qui tam cases, which are, for those who aren't lawyers, a private individual who brings an action, and then the Attorney General can step in and take the action over if they want, but it is brought in the first instance by a private individual. And then if you take out the cases in which you sued EPA, there is virtually nothing left.

And in addition to that we have that you closed the environmental protection unit in Oklahoma as a free standing unit. You told me when we met that you had rolled it into your federalism unit. But I was just on the federalism unit's Web site, and the word "environmental" doesn't even appear on that. It appears to be run by the Solicitor General. It says over and over again that it is involved in appellate litigation. And of course if you are bringing an action you are not starting at the appellate level.

Mr. PRUITT. Senator, if I may, the Deputy Solicitor General, Clayton Eubanks, was actually employed by the previous Attorney General. He has been designated the Deputy Solicitor General and is responsible for environmental related advice and consent to those agencies.

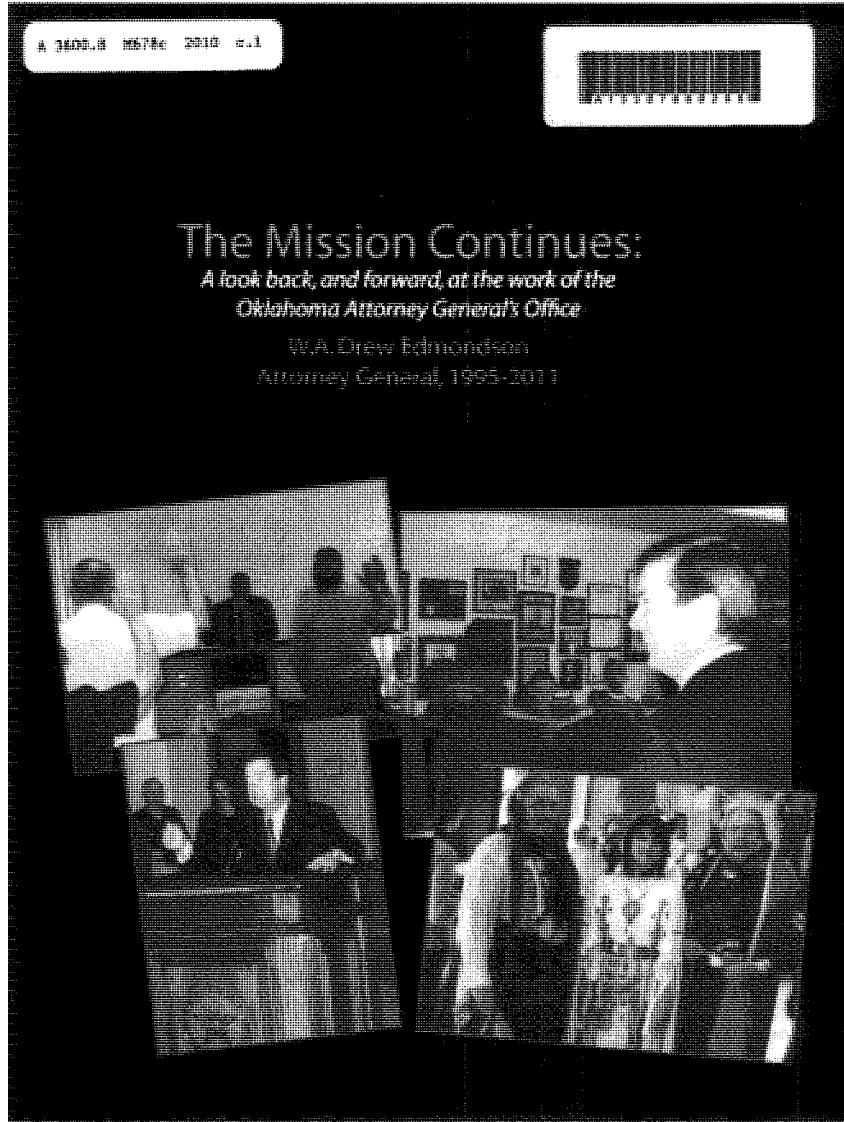
Senator WHITEHOUSE. Yes. That's a different function, though. That's a different function than to bring an action. I have been an Attorney General, too. I know the difference. The Attorney General has an obligation to provide lawyers, to give advice to agencies. But you also have the authority to bring criminal actions if you wish. And you have the authority to bring civil actions if you wish. And it is those authorities that I believe have not gotten much attention.

And the last piece of that, because you will have a chance to respond, but I am on a short clock, is that there was in Oklahoma an environmental crimes task force that your predecessor led. It describes, and I would ask to have these documents put into the record, from 1997 to 2010 the OECTF, the Environmental Crimes Task Force or the Environmental Protection Unit, in conjunction with EPA and other entities, conducted 142 criminal investigations, resulting in 56 prosecutions. Criminal cases resulted in individual convictions on 110 felonies, 21 misdemeanor counts, corporate convictions, 10 felony and 3 misdemeanor counts, \$8 million in fines, 28 years of jail time. We can put it in the record.

Do you even participate in the Oklahoma Environmental Crimes Task Force still?

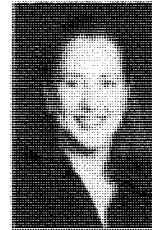
Senator BARRASSO. Without objection.

[The referenced information follows.]



## Environmental Protection Unit

The Environmental Protection Unit works to protect Oklahoma's natural resources and provides legal representation to state environmental agencies.



*Kelly Foster, Chief*

Attorney General Edmondson created the Environmental Protection Unit (EPU) in 1996 to provide the state and its agencies with specialized legal advice and representation on environmental issues. Soon after forming the EPU, the attorney general added a criminal investigator to the staff in order to work with local, state and federal agencies to investigate the most egregious violations of Oklahoma's environmental laws. Attorneys in the EPU have been assigned to work with cabinet officials and state environmental agencies on a broad range of issues affecting the environment, including assistance with administrative enforcement, civil litigation and general counsel. Attorneys in the EPU have also drafted numerous Attorney General Opinions on environmental issues such as biomedical waste, waste tires, animal feeding operations, groundwater use, environmental setbacks, county zoning authority, solid waste and wildlife issues. The EPU has focused many of its efforts on pollution of Oklahoma's land and water caused by agricultural operations. For example, the EPU:

- Initiated a federal lawsuit against fourteen poultry companies to stop and cleanup pollution of the Illinois River Watershed caused by the annual disposal of more than 300,000 tons of animal waste in the watershed. The case was tried from September 2009 through February 2010 and a ruling by the trial court is pending. The EPU also assisted in successfully opposing the State of Arkansas' motion for leave to file an original action in the U.S. Supreme Court to enjoin Oklahoma's lawsuit against the poultry companies.
- Obtained a settlement with Simmons Foods to establish phosphorus and other pollutant limits in its Missouri poultry processing plant permit to discharge wastewater to Cave Springs Branch, a tributary of Honey Creek and Grand Lake. Simmons also agreed, among other things, to pay \$300,000 to resolve the state's monetary claims, including \$50,000 for residents to improve private water wells in the watershed.
- Obtained a settlement with Moark Productions, Inc. and contractor James Childers to close and clean up an unpermitted and unregistered poultry feeding operation near Miami.
- Challenged issuance of a Seaboard Farms Inc.'s swine CAFO permit to operate next to the Beaver River Wildlife Management Area before the Board of Agriculture and in district court obtaining a settlement that resulted in replacement of waste lagoons, modified land application practices, monitoring and odor-abatement practices.
- Conducted an administrative enforcement action against the Hanor Roberts Ranch swine

CAFO for numerous alleged violations of state law including illegal waste discharges, land application and lagoon leakage resulting in substantial modifications of the facility, prohibition on further land application and a fine of \$360,000.

- Reached a settlement with Seaboard Farms, Inc. to address challenges to its water and CAFO permits at Wakefield Sow Farm that placed limits on land application, modified lagoon leak detection, required covering of certain lagoons and required certain odor-control technology.
- Conducted an investigation and enforcement action with the Department of Agriculture against Seaboard Foods swine facilities in Major and Kingfisher Counties alleging 11 violations involving management of wastewater and animal waste. The action was estimated to result in Seaboard investing about \$6.9 million in environmental improvements at seven facilities and a payment of \$180,000 in penalties and damages.
- Conducted an investigation and enforcement action against Cimarron Pork, Inc. alleging improper carcass disposal and illegal wastewater discharges resulting in a settlement wherein the company spent nearly \$1 million for clean up.
- Conducted an administrative action with the Department of Agriculture against Alan Ritchey Dairy in Yuba resulting in a settlement closing and cleaning up the site, a \$100,000 fine, and \$45,000 for construction of an outdoor classroom.
- Assisted the Oklahoma Secretary of Environment in negotiating an agreement with the State of Arkansas to reduce phosphorus pollution in the Illinois River Watershed, including placing phosphorus limits on wastewater treatment plants that were estimated to reduce loading by 75 percent.
- Provided oral and written testimony to the U.S. House Energy and Commerce Subcommittee on Environment and Hazardous Materials on proposed exemptions of animal waste from CERCLA and coordinated a multi-state letter from attorneys general in California, Connecticut, Kentucky, New Jersey, New Mexico, Oklahoma, and Wisconsin expressing concerns with the exemptions.

The EPU has worked to cleanup contamination at a number of former industrial and other sites across Oklahoma. At the Tar Creek Superfund Site, the EPU represents the DEQ and the Secretary of Environment on cleanup, cost recovery and natural resource damages. The EPU assisted in the formation of the Oklahoma Trustee Council and the Tri-State Partnership to facilitate cooperation between three states, eight tribal governments and two federal agencies on natural resource damage issues. The EPU, in conjunction with the other governments, settled the state's claims against one of the responsible mining companies, Asarco, L.L.C., in a bankruptcy proceeding recovering \$8.8 million for cleanup costs and Oklahoma specific NRD and more than \$28.6 million in joint NRD for the Oklahoma Trustees. In addition, the EPU:

- Finalized a settlement allowing a claim for \$700,000 to resolve the State's claims for natural resources damages caused by the release of petroleum and hazardous substances at the abandoned Cyril Refinery from the APCO Liquidating Trust in a Delaware bankruptcy proceeding.

- Worked with the EPA and Department of Justice in handling the litigation involving the Double Eagle Superfund Site in Oklahoma City. The EPU represents the ODEQ in its response cost claim and the Oklahoma Secretary of Environment for natural resource damage at the former refinery. Following years of litigation, the DOJ and EPU recently negotiated settlements in the Double Eagle case with Union Pacific and other responsible parties for approximately \$24.7 million for the federal and state parties.
- Handled litigation against North Tulsa Landfill to close the facility until required upgrades estimated at \$3.7 million could be implemented to bring it into compliance with state law.
- Challenged a plan to decommission and reclaim a uranium conversion facility before the Nuclear Regulatory Commission and the 10th Circuit Court of Appeals resulting in a mediated settlement requiring offsite transfer of certain waste and other modifications to protect human health and the environment.
- Challenged a permit to mine gravel from a scenic river by successfully obtaining an agreement to keep the operation out of the stream channel.
- Assisted the DEQ with several enforcement actions including actions to address out-of-state waste transfers, raw sewage overflows, and unsafe public water supplies.

The EPU has also been involved in issues involving the use of groundwater or surface water across Oklahoma. For example, attorneys in the EPU:

- Assisted the office in defending the constitutionality of a state law protecting the Arbuckle Simpson aquifer as a sole source groundwater aquifer in the case of *Jacobs Ranch, L.L.C. v. Smith, et al.*, 2006 OK 34, 148 P. 3d 842 (2006).
- Filed an amicus brief in the case of *Messer-Bowers Co., Inc. v. State*, 2000 OK 54, 8 P.3d 877 (2000), arguing that the Water Board was required to determine whether waste by pollution would occur from all groundwater uses at a swine operation and the Oklahoma Supreme Court so held remanding the case for such a determination by the Board.
- Represented the Department of Wildlife before the Water Board in a challenge to the issuance of a permit to withdraw water from a scenic river resulting in the first and only minimum in-stream flow limit on a water permit in Oklahoma.
- Filed a brief in the case of *Heldermon v. Wright*, 2006 OK 86, 152 P. 3d 855 (2006) successfully arguing in the Oklahoma Supreme Court that the OWRB must receive notice of cases involving stream water rights so that the attorney general may intervene to protect the public interest.

**In 1997, the EPU assisted in forming the Oklahoma Environmental Crimes Task Force (OECTF) in partnership with numerous local, state and federal agencies.**

An attorney in the EPU served as Chairperson of the OECTF from its inception in 1997 until 2003 and the EPU criminal investigator worked on joint investigations with participating agencies. From 1997 through 2010, the OECTF or the EPU in conjunction with the U.S. EPA Criminal Investigation Division or other entities have conducted 142 criminal investigations resulting in 56 prosecutions by state or federal prosecutors. Criminal cases have resulted in individual convictions on 110 felony and 21 misdemeanor counts and corporate convictions on 10 felony and three misdemeanor counts. Criminal sentences include more than \$8 million in fines and 28 years of jail time.

Cases include:

- Worked with the U.S. EPA, U.S. Department of Justice and the U.S. Attorney's Office for the Northern District of Oklahoma to investigate Sinclair Tulsa Refining Company for violations of the Clean Water Act relating to wastewater discharges from its refinery in Tulsa resulting in a federal prosecution and guilty pleas by Sinclair to two felony counts and two managers to one felony count each for manipulating wastewater discharges into the Arkansas River. Sinclair was sentenced to two years probation and ordered to pay a \$5 million fine and \$500,000 for community service. The managers were both sentenced to six months home detention and three years probation, as well as ordered to pay fines and to do community service.
- Worked with the Multicounty Grand Jury Unit and the U.S. EPA to investigate and prosecute Kerrville Painting Company and its owner, Nick Muskie, on one felony count of unlawful disposal of hazardous blasting waste containing lead. He was ordered to serve a two-year sentence and pay \$100,000 in restitution after pleading guilty.
- Worked with the Multicounty Grand Jury Unit and the Oklahoma Department of Environmental Quality to investigate and prosecute Keith Jones, President of Environmental River Erosion Control, resulting in a guilty plea and convictions for fraudulently billing the Oklahoma Tax Commission for reimbursement from the Waste Tire Indemnity Fund. He was ordered to pay more than \$110,000 in restitution, serve 60 days in jail and perform 100 hours of community service.
- Worked with the U.S. Environmental Protection Agency and the Oklahoma Department of Environmental Quality to investigate two Elk City officials for violations of the Clean Air Act for using inmates to remove asbestos at the Rock Island Railroad Depot in Elk City. The investigation resulted in a federal prosecution and a conviction of the city manager for negligent endangerment of the inmates and a city supervisor for negligent endangerment and a felony count of making false statements to investigators. The city manager was sentenced to serve six months in federal prison and a \$15,000 fine. The city supervisor was sentenced to eight months in federal prison, two years of supervised release and 104 hours of community service.



Mr. PRUITT. Senator, as I have indicated, we work each day with our Department of Environmental Quality on enforcement along with other agencies. I guess it is a matter of “who takes the credit” for that type of enforcement. But those individuals have offered statements to this body. They are a matter of the record. You’ve heard statements that the Chairman has referred to that we have worked diligently with those agencies to enforce appropriately. And I would refer to their statements in response.

Senator BARRASSO. Thank you, Senator.

Senator Booker.

Senator BOOKER. Thank you very much.

First of all, I appreciate your talking about environmental justice and mentioning that. We did talk about that, and I felt good about your personal commitment, at least to me, that you would pursue that.

I just want to go through this last point. I want to put together a fact pattern here to let you have at it and dispute it. I know there is at least one point in here you dispute, and I really want to get to what I draw from the facts. And you can, again, have the last word.

So what I am seeing, that I put together all the facts, just a pattern. There’s a litigation from your predecessor that you declined to conclude when you got in against polluting poultry producers who were dumping hundreds of thousands of tons of chicken waste into the Illinois River watershed. You shut down the environmental enforcement unit in your office. This is the one I know you do not agree with me on. But I see it as that you also attempted to suspend Oklahoma’s water quality standard for 3 years.

But the last fact, and again, you have the last word here, sir, is that you also supported a constitutional amendment, State Question 777, the so-called Right to Farm amendment, that would have made it more difficult for the Oklahoma State Legislature, again, you talk about federalism, now trying to take the teeth out of the Oklahoma State Legislature and local governments to enact their own environmental laws in the future,

And this kind of support, and I looked all throughout the magazines, you are going in support of this, it is clear. Here you are in the pro and con about supporting 777. Here is—most of the editorial boards were against you on this in your State. Here’s one from Tulsa World Endorsement that said the measure would prevent future State and local regulation on farming and livestock activities unless the State has a compelling State interest, a very high legal standard, as I know, not the lawyer that you are, sir, but I know that is a very hard one—standard—to meet.

So this is the challenge, this idea that you are supporting federalism versus, it seems to me, a pattern of you being on the side of the polluters, and even trying to take the teeth out of the State legislature’s ability to regulate these harmful environmental toxins. I am happy that this ballot initiative was overwhelmingly defeated by Oklahoma voters. But as I see you ascending potentially to this very important position, sir, I just worry about whose side you are going to be on, given the fact pattern that I have about big industry, about big pollution, especially as I know the billions of animals

that we have in CAFOs that are poisoning rivers all over this country.

I really just want you to respond to that, sir. And I will say, because this will be my last word, you will have it. I want to thank you for your indulgence. And I want to thank your family as well.

Mr. PRUITT. Thank you, Senator. And let me respond. There's been some confusion about the litigation. You made reference to several things there, and if I may respond to a couple. The litigation to which you refer, Senator Boozman actually referred to it as well; my predecessor did bring an action, approximately 2007 timeframe, against the poultry industry and many other defendants in the Northern District of Oklahoma. That case had been fully litigated, submitted to the court for decision before I ever came into office. It was an example of potentially regulation through litigation. And I have talked about that earlier in response to questions.

I had every authority to dismiss that case when I came into office. I did not. That case is still pending today, awaiting a Federal judge's decision. I have taken no action to undermine that case. I have done nothing but file briefs in support of the court making a decision. So that is a point of clarity on the litigation.

With respect to our office, I submitted this in response to Senator Whitehouse's request. We met last week and he asked about FTEs and budget. I have submitted response to him. We have almost a \$700,000 budget that the Administrator of our office has attributed to environmental-related activities and seven FTEs that are associated with that as well. So I want to make sure that those two items were shared with you in response to your comments.

Senator BOOKER. You have nothing to respond to on the State Question 777?

Mr. PRUITT. The State Question 777, we are actually involved in the ballot drafting of those things. So though you represented that I was actively involved in an endorsement, I really was not as far as the actual vote. Now, there was some op-ed and some decisions. But I have tried to make sure that I didn't get involved in that because of our other obligations in the office.

Senator BARRASSO. Senator Carper.

Senator BOOKER. And I can submit this for the record, sir?

Senator BARRASSO. Without objection.

[The referenced information follows:]

## Syllabus

ARKANSAS ET AL. *v.* OKLAHOMA ET AL.CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR  
THE TENTH CIRCUIT

No. 90-1262. Argued December 11, 1991—Decided February 26, 1992\*

The Clean Water Act provides for two sets of water quality measures: effluent limitations, which are promulgated by the Environmental Protection Agency (EPA or Agency), and water quality standards, which are promulgated by the States. The Act generally prohibits the discharge of effluent into a navigable body of water unless the point source obtains a National Pollution Discharge Elimination System (NPDES) permit from a State with an EPA-approved permit program or from the EPA itself. A Fayetteville, Arkansas, sewage treatment plant received an EPA-issued permit, authorizing it to discharge effluent into a stream that ultimately reaches the Illinois River upstream from the Oklahoma border. Respondents, Oklahoma and other Oklahoma parties, challenged the permit before the EPA, alleging, *inter alia*, that the discharge violated Oklahoma water quality standards, which allow no degradation of water quality in the upper Illinois River. The EPA's Chief Judicial Officer remanded the initial affirmance of the permit by the Administrative Law Judge (ALJ), ruling that the Act requires an NPDES permit to impose any effluent limitations necessary to comply with applicable state water quality standards, and that those standards would be violated only if the record shows by a preponderance of the evidence that the discharge would cause an actual *detectable* violation of Oklahoma's water quality standards. The ALJ then made detailed findings of fact, concluding that Fayetteville had satisfied the Chief Judicial Officer's standard, and the Chief Judicial Officer sustained the permit's issuance. The Court of Appeals reversed, ruling that the Act does not allow a permit to be issued where a proposed source would discharge effluent that would contribute to conditions currently constituting a violation of applicable water quality standards. It concluded that the Illinois River was already degraded, that the Fayetteville effluent would reach the river in Oklahoma, and that the effluent would contribute to the river's deterioration even though it would not detectably affect the river's water quality.

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\*Together with No. 90-1266, *Environmental Protection Agency v. Oklahoma et al.*, also on certiorari to the same court.

## Syllabus

*Held:* The EPA's action was authorized by the Clean Water Act. Pp. 98–114.

(a) Where interstate discharge is involved, both federal common law of nuisance, *Milwaukee v. Illinois*, 451 U. S. 304, and an affected State's common law, *International Paper Co. v. Ouellette*, 479 U. S. 481, 493, are pre-empted. Affected States may not block a permit, but must apply to the EPA Administrator, who may disapprove a plan if he concludes that the discharge will have an undue impact on interstate waters. *Id.*, at 490–491. Pp. 98–101.

(b) The EPA has construed the Act as requiring that EPA-issued permits comply with the requirements for a permit issued under an approved state plan and with § 401(a) of the Act, which appears to prohibit the issuance of a federal permit over the objection of an affected State unless compliance with the affected State's water quality requirements can be insured. Pp. 101–103.

(c) The EPA's requirement that the Fayetteville discharge comply with Oklahoma's water quality standards is a reasonable exercise of the substantial statutory discretion Congress has vested in the Agency. There is no need to address the question whether the Act requires compliance with affected States' standards, for it clearly does not limit the EPA's authority to mandate such compliance. EPA regulations, which since 1973 have required that an NPDES permit not be issued when compliance with affected States' water quality standards cannot be insured, are a reasonable exercise of the Agency's discretion and are a well-tailored means of reaching the Act's goal of achieving state water quality standards. The EPA's authority is not constrained by the limits in *Ouellette, supra*, concerning an affected State's direct input into the permit process, does not conflict with the Act's legislative history and statutory scheme, and is not incompatible with the balance among competing policies and interests that Congress struck in the Act. Pp. 104–107.

(d) Contrary to the Court of Appeals' interpretation, nothing in the Act mandates a complete ban on discharges into a waterway that is in violation of existing water quality standards. Instead, the Act vests in the EPA and the States broad authority to develop long-range, area-wide programs to alleviate and eliminate existing pollution. Pp. 107–108.

(e) The Court of Appeals exceeded the legitimate scope of judicial review of an agency adjudication when it invalidated the EPA's issuance of the permit on the ground that the Agency misinterpreted Oklahoma's water quality standards. It substituted its own reading of the law for the EPA's. Thus, it failed to give substantial deference to the Agency's reasonable, consistently held interpretation of its own regulations, which incorporate the Oklahoma standards. It also disregarded well-

## Syllabus

established standards for reviewing factual findings of agencies by making its own factual findings when the ALJ's findings were supported by substantial evidence. See generally *Universal Camera Corp. v. NLRB*, 340 U. S. 474. As a result, the court's conclusion that the river's degradation was an important and relevant factor which the EPA failed to consider was based on its own erroneous interpretation of the controlling law. Had it been properly respectful of the EPA's permissible reading of the Act—that what matters is not the river's current status, but whether the proposed discharge will have a detectable effect on that status—it would not have adjudged the Agency's decision arbitrary and capricious. Pp. 109–114.

908 F. 2d 595, reversed.

STEVENS, J., delivered the opinion for a unanimous Court.

*Edward W. Warren* argued the cause for petitioners in No. 90–1262. With him on the briefs were *Winston Bryant*, Attorney General of Arkansas, *Mary B. Stallcup*, *Angela S. Jegley*, *David G. Norrell*, *James N. McCord*, *Walter R. Niblock*, and *Nancy L. Hamm*. *Deputy Solicitor General Wallace* argued the cause for petitioner in No. 90–1266. With him on the briefs were *Solicitor General Starr*, *Assistant Attorney General Stewart*, *Harriet S. Shapiro*, *Michael A. McCord*, *Anne S. Almy*, *Gary S. Guzy*, and *E. Donald Elliott*.

*Robert A. Butkin*, Assistant Attorney General of Oklahoma, argued the cause for respondents in both cases. With him on the brief for respondents State of Oklahoma et al. were *Susan B. Loving*, Attorney General, *Brita Haugland Cantrell*, Assistant Attorney General, and *Julian Fite*. *Theodore E. Dinsmoor* and *Susan Hedman* filed a brief for respondent Oklahoma Wildlife Federation.†

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†Briefs of *amici curiae* urging reversal were filed for the State of Colorado by *Gale A. Norton*, Attorney General, *Raymond T. Slaughter*, Chief Deputy Attorney General, *Timothy M. Tymkovich*, Solicitor General, *Martha E. Rudolph*, Assistant Attorney General, and *Martha Phillips Allbright*; for the State of Nevada et al. by *Nicholas J. Spaeth*, Attorney General of North Dakota, *Frankie Sue Del Papa*, Attorney General of Nevada, *John P. Arnold*, Attorney General of New Hampshire, and *Mark*

## Opinion of the Court

JUSTICE STEVENS delivered the opinion of the Court.

Pursuant to the Clean Water Act, 86 Stat. 816, as amended, 33 U. S. C. § 1251 *et seq.*, the Environmental Protection Agency (EPA or Agency) issued a discharge permit to a new point source in Arkansas, about 39 miles upstream from the Oklahoma state line. The question presented in this litigation is whether the EPA's finding that discharges from the new source would not cause a detectable violation of Oklaho-

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*Barnett*, Attorney General of South Dakota; for the Association of Metropolitan Sewerage Agencies et al. by *Lee C. White*, *Benjamin L. Brown*, *Howard Holme*, *Don A. Zimmerman*, *Geoff Wilson*, *Thomas W. Kelty*, *James M. Kaup*, *Fred G. Stickel III*, *Robert E. Johnson*, *John E. Gotherman*, *Mark I. Wallach*, *Roy D. Bates*, *Ogden Stokes*, *Thomas S. Smith*, *Robert J. Alfton*, and *John Dodge*; for Champion International Corp. et al. by *J. Jeffrey McNealey*, *Michael K. Glenn*, *Theodore L. Garrett*, *Corinne A. Goldstein*, *Charles R. Nestrud*, *Richard A. Flye*, *Jerry C. Jones*, and *Jess Askew III*; for the Colorado Water Congress by *Mark T. Pipher*; and for the Mountain States Legal Foundation et al. by *William Perry Pendley*.

Briefs of *amici curiae* urging affirmance were filed for the State of Illinois et al. by *Roland W. Burris*, Attorney General of Illinois, *Rosalyn Kaplan*, Solicitor General, and *James L. Morgan*, Assistant Attorney General, *Charles W. Burson*, Attorney General of Tennessee, *John Knox Walkup*, Solicitor General, and *Michael D. Pearigen*, Deputy Attorney General, *Jimmy Evans*, Attorney General of Alabama, *Grant Woods*, Attorney General of Arizona, *Daniel E. Lungren*, Attorney General of California, *Richard Blumenthal*, Attorney General of Connecticut, *Charles M. Oberly III*, Attorney General of Delaware, *Robert A. Butterworth*, Attorney General of Florida, *Michael E. Carpenter*, Attorney General of Maine, and *Jon H. Edwards*, Assistant Attorney General, *Frank J. Kelley*, Attorney General of Michigan, *Mike Moore*, Attorney General of Mississippi, *Robert J. Del Tufo*, Attorney General of New Jersey, and *T. Travis Medlock*, Attorney General of South Carolina; for the Cherokee Nation of Oklahoma by *Jim Wilcoxon*; for the Natural Resources Defense Council et al. by *Jessica C. Landman* and *Mark Van Putten*; for the Scenic Rivers Association of Oklahoma et al. by *Kathy Carter-White*, *Joel Glenn Richardson*, *Harvey Chaffin*, and *Bill J. Ballard*; for the Sierra Club by *Stephan C. Volker*; for the U. S. Senator from Oklahoma, *Don Nickles*, et al. by *James George Jatras*; and for *Mike Synar*, Member of Congress, *pro se*.

## Opinion of the Court

ma's water quality standards satisfied the EPA's duty to protect the interests of the downstream State. Disagreeing with the Court of Appeals, we hold that the Agency's action was authorized by the statute.

## I

In 1985, the city of Fayetteville, Arkansas, applied to the EPA, seeking a permit for the city's new sewage treatment plant under the National Pollution Discharge Elimination System (NPDES). After the appropriate procedures, the EPA, pursuant to § 402(a)(1) of the Act, 33 U. S. C. § 1342(a)(1), issued a permit authorizing the plant to discharge up to half of its effluent (to a limit of 6.1 million gallons per day) into an unnamed stream in northwestern Arkansas.<sup>1</sup> That flow passes through a series of three creeks for about 17 miles, and then enters the Illinois River at a point 22 miles upstream from the Arkansas-Oklahoma border.

The permit imposed specific limitations on the quantity, content, and character of the discharge and also included a number of special conditions, including a provision that if a study then underway indicated that more stringent limitations were necessary to ensure compliance with Oklahoma's water quality standards, the permit would be modified to incorporate those limits. App. 84.

Respondents challenged this permit before the EPA, alleging, *inter alia*, that the discharge violated the Oklahoma water quality standards. Those standards provide that "no degradation [of water quality] shall be allowed" in the upper Illinois River, including the portion of the river immediately downstream from the state line.<sup>2</sup>

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<sup>1</sup>The permit also authorized the plant to discharge the remainder of its effluent into the White River, a river that does not flow into Oklahoma; this aspect of the permit is not at issue in this litigation.

<sup>2</sup>Section 5 of the Oklahoma water quality standards provides:

"All streams and bodies of water designated as (a) are protected by prohibition of any new point source discharge of wastes or increased load

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Following a hearing, the Administrative Law Judge (ALJ) concluded that the Oklahoma standards would not be implicated unless the contested discharge had “something more than a mere *de minimis* impact” on the State’s waters. He found that the discharge would not have an “undue impact” on Oklahoma’s waters and, accordingly, affirmed the issuance of the permit. App. to Pet. for Cert. in No. 90–1262, pp. 101a–103a (emphasis deleted).

On a petition for review, the EPA’s Chief Judicial Officer first ruled that § 301(b)(1)(C) of the Clean Water Act “requires an NPDES permit to impose any effluent limitations necessary to comply with applicable state water quality standards.”<sup>3</sup> *Id.*, at 116a–117a. He then held that the Act

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from an existing point source except under conditions described in Section 3.

“All streams designated by the State as ‘scenic river areas,’ and such tributaries of those streams as may be appropriate will be so designated. Best management practices for control of nonpoint source discharge should be initiated when feasible.” App. 46–47.

Oklahoma has designated the portion of the Illinois River immediately downstream from the state line as a “scenic river.” Okla. Stat., Tit. 82, § 1452(b)(1) (Supp. 1989); see also App. 54.

Section 3 of the Oklahoma water quality standards provides, in relevant part:

“The intent of the Anti-degradation Policy is to protect all waters of the State from quality degradation. Existing instream water uses shall be maintained and protected. No further water quality degradation which would interfere with or become injurious to existing instream water uses shall be allowed. Oklahoma’s waters constitute a valuable State resource and shall be protected, maintained and improved for the benefit of all the citizens.

“No degradation shall be allowed in high quality waters which constitute an outstanding resource or in waters of exceptional recreational or ecological significance. These include water bodies located in national and State parks, Wildlife Refuges, and those designated ‘Scenic Rivers’ in Appendix A.” App. 27–28.

<sup>3</sup> Section 301(b)(1)(C) provides, in relevant part, that “there shall be achieved—



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and EPA regulations offered greater protection for the downstream State than the ALJ's "undue impact" standard suggested. He explained the proper standard as follows:

"[A] mere theoretical impairment of Oklahoma's water quality standards—*i. e.*, an infinitesimal impairment predicted through modeling but not expected to be actually detectable or measurable—should not by itself block the issuance of the permit. In this case, the permit should be upheld if the record shows by a preponderance of the evidence that the authorized discharges would not cause an actual *detectable* violation of Oklahoma's water quality standards." *Id.*, at 117a (emphasis in original).

On remand, the ALJ made detailed findings of fact and concluded that the city had satisfied the standard set forth by the Chief Judicial Officer. Specifically, the ALJ found that there would be no detectable violation of any of the components of Oklahoma's water quality standards. *Id.*, at 127a–143a. The Chief Judicial Officer sustained the issuance of the permit. *Id.*, at 145a–153a.

Both the petitioners in No. 90–1262 (collectively Arkansas) and the respondents in this litigation sought judicial review.<sup>4</sup> Arkansas argued that the Clean Water Act did not require an Arkansas point source to comply with Oklahoma's water quality standards. Oklahoma challenged the EPA's determination that the Fayetteville discharge would not produce a detectable violation of the Oklahoma standards.

The Court of Appeals did not accept either of these arguments. The court agreed with the EPA that the statute required compliance with Oklahoma's water quality standards,

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"(C) not later than July 1, 1977, any more stringent limitation, including those necessary to meet *water quality standards . . . established pursuant to any State law or regulations . . . or required to implement any applicable water quality standard established pursuant to this chapter.*" 33 U. S. C. § 1311(b)(1)(C) (emphasis added).

<sup>4</sup>The Arkansas petition was filed in the Court of Appeals for the Eighth Circuit and transferred to the Tenth Circuit where it was consolidated with the petition filed by the respondents.

## Opinion of the Court

see 908 F. 2d 595, 602–615 (CA10 1990), and did not disagree with the Agency’s determination that the discharges from the Fayetteville plant would not produce a detectable violation of those standards. *Id.*, at 631–633. Nevertheless, relying on a theory that neither party had advanced, the Court of Appeals reversed the Agency’s issuance of the Fayetteville permit. The court first ruled that the statute requires that “where a proposed source would discharge effluents that would contribute to conditions currently constituting a violation of applicable water quality standards, such [a] proposed source may not be permitted.” *Id.*, at 620. Then the court found that the Illinois River in Oklahoma was “already degraded,” that the Fayetteville effluent would reach the Illinois River in Oklahoma, and that that effluent could “be expected to contribute to the ongoing deterioration of the scenic [Illinois R]iver” in Oklahoma even though it would not detectably affect the river’s water quality. *Id.*, at 621–629.

The importance and the novelty of the Court of Appeals’ decision persuaded us to grant certiorari. 499 U. S. 946 (1991). We now reverse.

## II

Interstate waters have been a font of controversy since the founding of the Nation. *E. g.*, *Gibbons v. Ogden*, 9 Wheat. 1 (1824). This Court has frequently resolved disputes between States that are separated by a common river, see, *e. g.*, *Ohio v. Kentucky*, 444 U. S. 335 (1980), that border the same body of water, see, *e. g.*, *New York v. New Jersey*, 256 U. S. 296 (1921), or that are fed by the same river basin, see, *e. g.*, *New Jersey v. New York*, 283 U. S. 336 (1931).

Among these cases are controversies between a State that introduces pollutants to a waterway and a downstream State that objects. See, *e. g.*, *Missouri v. Illinois*, 200 U. S. 496 (1906). In such cases, this Court has applied principles of common law tempered by a respect for the sovereignty of the States. Compare *id.*, at 521, with *Georgia v. Tennessee Copper Co.*, 206 U. S. 230, 237 (1907). In forging what “may

## Opinion of the Court

not improperly be called interstate common law,” *Illinois v. Milwaukee*, 406 U. S. 91, 105–106 (1972) (*Milwaukee I*), however, we remained aware “that new federal laws and new federal regulations may in time pre-empt the field of federal common law of nuisance.” *Id.*, at 107.

In *Milwaukee v. Illinois*, 451 U. S. 304 (1981) (*Milwaukee II*), we held that the Federal Water Pollution Control Act Amendments of 1972 did just that. In addressing Illinois’ claim that Milwaukee’s discharges into Lake Michigan constituted a nuisance, we held that the comprehensive regulatory regime created by the 1972 amendments pre-empted Illinois’ federal common law remedy. We observed that Congress had addressed many of the problems we had identified in *Milwaukee I* by providing a downstream State with an opportunity for a hearing before the source State’s permitting agency, by requiring the latter to explain its failure to accept any recommendations offered by the downstream State, and by authorizing the EPA, in its discretion, to veto a source State’s issuance of any permit if the waters of another State may be affected. *Milwaukee II*, 451 U. S., at 325–326.

In *Milwaukee II*, the Court did not address whether the 1972 amendments had supplanted *state* common law remedies as well as the federal common law remedy. See *id.*, at 310, n. 4. On remand, Illinois argued that § 510 of the Clean Water Act, 33 U. S. C. § 1370, expressly preserved the State’s right to adopt and enforce rules that are more stringent than federal standards.<sup>5</sup> The Court of Appeals accepted Illinois’ reading of § 510, but held that that section did “no more than

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<sup>5</sup> Section 510 provides in relevant part:

“Except as expressly provided in this [Act], nothing in this [Act] shall (1) preclude or deny the right of any State or political subdivision thereof or interstate agency to adopt or enforce (A) any standard or limitation respecting discharges of pollutants, or (B) any requirement respecting control or abatement of pollution [with exceptions]; or (2) be construed as impairing or in any manner affecting any right or jurisdiction of the States *with respect to the waters (including boundary waters) of such States.*” 33 U. S. C. § 1370 (emphasis added).

## Opinion of the Court

to save the right and jurisdiction of a state to regulate activity occurring within the confines of its boundary waters.” *Illinois v. Milwaukee*, 731 F. 2d 403, 413 (CA7 1984), cert. denied, 469 U. S. 1196 (1985).

This Court subsequently endorsed that analysis in *International Paper Co. v. Ouellette*, 479 U. S. 481 (1987), in which Vermont property owners claimed that the pollution discharged into Lake Champlain by a paper company located in New York constituted a nuisance under Vermont law. The Court held the Clean Water Act taken “as a whole, its purposes and its history” pre-empted an action based on the law of the affected State and that the only state law applicable to an interstate discharge is “the law of the State in which the point source is located.” *Id.*, at 493, 487. Moreover, in reviewing § 402(b) of the Act, the Court pointed out that when a new permit is being issued by the source State’s permit-granting agency, the downstream State

“does not have the authority to block the issuance of the permit if it is dissatisfied with the proposed standards. An affected State’s only recourse is to apply to the EPA Administrator, who then has the discretion to disapprove the permit if he concludes that the discharges will have an undue impact on interstate waters. § 1342(d)(2). . . . Thus the Act makes it clear that affected States occupy a subordinate position to source States in the federal regulatory program.” *Id.*, at 490–491.<sup>6</sup>

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<sup>6</sup>This description of the downstream State’s role in the issuance of a new permit by a source State was apparently consistent with the EPA’s interpretation of the Act at the time. The Government’s *amicus curiae* brief in *Ouellette* stated that “the affected neighboring state [has] only an advisory role in the formulation of applicable effluent standards or limitations. The affected state may try to persuade the federal government or the source state to increase effluent requirements, but *ultimately possesses no statutory authority to compel that result, even when its waters are adversely affected by out-of-state pollution.* See 33 U. S. C. § 1341(a)(2), 1342(b)(3) and (5) . . . .” Brief for United States as *Amicus Curiae*, O. T. 1986, No. 85–1233, p. 19 (emphasis added; footnote omitted).

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Unlike the foregoing cases, this litigation involves not a state-issued permit, but a federally issued permit. To explain the significance of this distinction, we comment further on the statutory scheme before addressing the specific issues raised by the parties.

## III

The Clean Water Act anticipates a partnership between the States and the Federal Government, animated by a shared objective: “to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.” 33 U. S. C. §1251(a). Toward this end, the Act provides for two sets of water quality measures. “Effluent limitations” are promulgated by the EPA and restrict the quantities, rates, and concentrations of specified substances which are discharged from point sources. See §§1311, 1314. “[W]ater quality standards” are, in general, promulgated by the States and establish the desired condition of a waterway. See §1313. These standards supplement effluent limitations “so that numerous point sources, despite individual compliance with effluent limitations, may be further regulated to prevent water quality from falling below acceptable levels.” *EPA v. California ex rel. State Water Resources Control Bd.*, 426 U. S. 200, 205, n. 12 (1976).

The EPA provides States with substantial guidance in the drafting of water quality standards. See generally 40 CFR pt. 131 (1991) (setting forth model water quality standards). Moreover, §303 of the Act requires, *inter alia*, that state authorities periodically review water quality standards and secure the EPA’s approval of any revisions in the standards. If the EPA recommends changes to the standards and the State fails to comply with that recommendation, the Act authorizes the EPA to promulgate water quality standards for the State. 33 U. S. C. §1313(c).

The primary means for enforcing these limitations and standards is the NPDES, enacted in 1972 as a critical part of Congress’ “complete rewriting” of federal water pollution

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law. *Milwaukee II*, 451 U. S., at 317. Section 301(a) of the Act, 33 U. S. C. § 1311(a), generally prohibits the discharge of any effluent into a navigable body of water unless the point source has obtained an NPDES permit. Section 402 establishes the NPDES permitting regime, and describes two types of permitting systems: state permit programs that must satisfy federal requirements and be approved by the EPA, and a federal program administered by the EPA.

Section 402(b) authorizes each State to establish “its own permit program for discharges into navigable waters within its jurisdiction.” 33 U. S. C. § 1342(b). Among the requirements the state program must satisfy are the procedural protections for downstream States discussed in *Ouellette* and *Milwaukee II*. See §§ 1342(b)(3), (5).<sup>7</sup> Although these provisions do not authorize the downstream State to veto the issuance of a permit for a new point source in another State, the Administrator retains authority to block the issuance of any state-issued permit that is “outside the guidelines and requirements” of the Act. § 1342(d)(2).<sup>8</sup>

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<sup>7</sup> Section 402(b) requires state permit programs

“(3) [t]o insure that . . . any other State the waters of which may be affected . . . receive notice of each application for a permit and to provide an opportunity for public hearing before a ruling on each such application;

“(5) [t]o insure that any State (other than the permitting State), whose waters may be affected by the issuance of a permit may submit written recommendations to the permitting State (and the Administrator) with respect to any permit application and, if any part of such written recommendations are not accepted by the permitting State, that the permitting State will notify such affected State (and the Administrator) in writing of its failure to so accept such recommendations together with its reasons for so doing.” 33 U. S. C. § 1342(b).

Although § 402(b) focuses on state-issued permits, § 402(a)(3) requires that, in issuing an NPDES permit, the Administrator follow the same procedures required of state permit programs. See 33 U. S. C. § 1342(a)(3); see also § 1341(a)(2).

<sup>8</sup> Section 402(d)(2) provides:

“(2) No permit shall issue (A) if the Administrator within ninety days of the date of his notification under subsection (b)(5) of this section objects

## Opinion of the Court

In the absence of an approved state program, the EPA may issue an NPDES permit under § 402(a) of the Act. (In these cases, for example, because Arkansas had not been authorized to issue NPDES permits when the Fayetteville plant was completed, the permit was issued by the EPA itself.) The EPA's permit program is subject to the "same terms, conditions, and requirements" as a state permit program. 33 U. S. C. § 1342(a)(3). Notwithstanding this general symmetry, the EPA has construed the Act as requiring that EPA-issued NPDES permits also comply with § 401(a). That section, which predates § 402 and the NPDES, applies to a broad category of federal licenses, and sets forth requirements for "[a]ny applicant for a Federal license or permit to conduct any activity including, but not limited to, the construction or operation of facilities, which may result in any discharge into the navigable waters." 33 U. S. C. § 1341(a). Section 401(a)(2) appears to prohibit the issuance of any federal license or permit over the objection of an affected State unless compliance with the affected State's water quality requirements can be ensured.<sup>9</sup>

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in writing to the issuance of such permit, or (B) if the Administrator within ninety days of the date of transmittal of the proposed permit by the State objects in writing to the issuance of such permit as being outside the guidelines and requirements of this chapter. Whenever the Administrator objects to the issuance of a permit under this paragraph such written objection shall contain a statement of the reasons for such objection and the effluent limitations and conditions which such permit would include if it were issued by the Administrator." 33 U. S. C. § 1342(d)(2).

<sup>9</sup>Section 401(a)(2) provides, in relevant part:

"Whenever such a discharge may affect, as determined by the Administrator, the quality of the waters of any other State, the Administrator . . . shall so notify such other State, the licensing or permitting agency, and the applicant. If, within sixty days after receipt of such notification, such other State determines that such discharge will affect the quality of its waters so as to violate any water quality requirements in such State, and within such sixty-day period notifies the Administrator and the licensing or permitting agency in writing of its objection to the issuance of such license or permit and requests a public hearing on such objection, the licensing or permitting agency shall hold such a hearing. The Administra-

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## IV

The parties have argued three analytically distinct questions concerning the interpretation of the Clean Water Act. First, does the Act require the EPA, in crafting and issuing a permit to a point source in one State, to apply the water quality standards of downstream States? Second, even if the Act does not *require* as much, does the Agency have the statutory authority to mandate such compliance? Third, does the Act provide, as the Court of Appeals held, that once a body of water fails to meet water quality standards no discharge that yields effluent that reach the degraded waters will be permitted?

In these cases, it is neither necessary nor prudent for us to resolve the first of these questions. In issuing the Fayetteville permit, the EPA assumed it was obligated by both the Act and its own regulations to ensure that the Fayetteville discharge would not violate Oklahoma's standards. See App. to Pet. for Cert. in No. 90-1262, pp. 116a-117a, and n. 14. As we discuss below, this assumption was permissible and reasonable and therefore there is no need for us to address whether the Act requires as much. Moreover, much of the analysis and argument in the briefs of the parties relies on statutory provisions that govern not only federal permits issued pursuant to §§ 401(a) and 402(a), but also state permits issued under § 402(b). It seems unwise to evaluate those arguments in a case such as these, which only involve a federal permit.

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tor shall at such hearing submit his evaluation and recommendations with respect to any such objection to the licensing or permitting agency. Such agency, based upon the recommendations of such State, the Administrator, and upon any additional evidence, if any, presented to the agency at the hearing, shall condition such license or permit in such manner as may be necessary to insure compliance with applicable water quality requirements. If the imposition of conditions cannot insure such compliance such agency shall not issue such license or permit." 33 U. S. C. § 1341(a)(2).



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Our decision not to determine at this time the scope of the Agency's statutory *obligations* does not affect our resolution of the second question, which concerns the Agency's statutory *authority*. Even if the Clean Water Act itself does not require the Fayetteville discharge to comply with Oklahoma's water quality standards, the statute clearly does not limit the EPA's authority to mandate such compliance.

Since 1973, EPA regulations have provided that an NPDES permit shall not be issued "[w]hen the imposition of conditions cannot ensure compliance with the applicable water quality requirements of all affected States."<sup>10</sup> 40 CFR § 122.4(d) (1991); see also 38 Fed. Reg. 13533 (1973); 40 CFR § 122.44(d) (1991). Those regulations—relied upon by the EPA in the issuance of the Fayetteville permit—constitute a reasonable exercise of the Agency's statutory authority.

Congress has vested in the Administrator broad discretion to establish conditions for NPDES permits. Section 402(a) (2) provides that for EPA-issued permits "[t]he Administrator shall prescribe conditions . . . to assure compliance with the requirements of [§ 402(a)(1)] and *such other requirements as he deems appropriate*." 33 U. S. C. § 1342(a)(2) (emphasis added). Similarly, Congress preserved for the Administrator broad authority to oversee state permit programs:

"No permit shall issue . . . if the Administrator . . . objects in writing to the issuance of such permit as being outside the guidelines and requirements of this chapter." § 1342(d)(2).

The regulations relied on by the EPA were a perfectly reasonable exercise of the Agency's statutory discretion. The application of state water quality standards in the interstate context is wholly consistent with the Act's broad purpose "to restore and maintain the chemical, physical, and

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<sup>10</sup>This restriction applies whether the permit is issued by the EPA or by an approved state program. See 40 CFR § 123.25 (1991).

## Opinion of the Court

biological integrity of the Nation's waters." 33 U. S. C. § 1251(a). Moreover, as noted above, § 301(b)(1)(C) expressly identifies the achievement of state water quality standards as one of the Act's central objectives. The Agency's regulations conditioning NPDES permits are a well-tailored means of achieving this goal.

Notwithstanding this apparent reasonableness, Arkansas argues that our description in *Ouellette* of the role of affected States in the permit process and our characterization of the affected States' position as "subordinate," see 479 U. S., at 490–491, indicates that the EPA's application of the Oklahoma standards was error. We disagree. Our statement in *Ouellette* concerned only an affected State's input into the permit process; that input is clearly limited by the plain language of § 402(b). Limits on an affected State's direct participation in permitting decisions, however, do not in any way constrain the EPA's authority to require a point source to comply with downstream water quality standards.

Arkansas also argues that regulations requiring compliance with downstream standards are at odds with the legislative history of the Act and with the statutory scheme established by the Act. Although we agree with Arkansas that the Act's legislative history indicates that Congress intended to grant the Administrator discretion in his oversight of the issuance of NPDES permits,<sup>11</sup> we find nothing in that history to indicate that Congress intended to preclude the EPA from establishing a general requirement that such permits be conditioned to ensure compliance with downstream water quality standards.

Similarly, we agree with Arkansas that in the Clean Water Act Congress struck a careful balance among competing policies and interests, but do not find the EPA regulations con-

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<sup>11</sup> See, *e. g.*, 1 Legislative History of Water Pollution Control Act Amendments of 1972 (Committee Print compiled for the Senate Committee on Public Works by the Library of Congress), Ser. No. 93–1, pp. 322, 388–389, 814 (1973); see also 33 U. S. C. § 1342(d)(3).

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cerning the application of downstream water quality standards at all incompatible with that balance. Congress, in crafting the Act, protected certain sovereign interests of the States; for example, § 510 allows States to adopt more demanding pollution-control standards than those established under the Act. Arkansas emphasizes that § 510 preserves such state authority only as it is applied to the waters of the regulating State. Even assuming Arkansas' construction of § 510 is correct, cf. *id.*, at 493, that section only concerns *state* authority and does not constrain the EPA's authority to promulgate reasonable regulations requiring point sources in one State to comply with water quality standards in downstream States.

For these reasons, we find the EPA's requirement that the Fayetteville discharge comply with Oklahoma's water quality standards to be a reasonable exercise of the Agency's substantial statutory discretion. Cf. *Chevron U. S. A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U. S. 837, 842–845 (1984).

## V

The Court of Appeals construed the Clean Water Act to prohibit any discharge of effluent that would reach waters already in violation of existing water quality standards.<sup>12</sup> We find nothing in the Act to support this reading.

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<sup>12</sup> “[W]e hold that the Clean Water Act prohibits granting an NPDES permit under the circumstances of this case (i. e., where applicable water quality standards have already been violated) and reverse EPA's decision to permit Fayetteville to discharge any part of its effluent to the Illinois River Basin.” 908 F. 2d 595, 616 (CA10 1990).

“Congress cannot reasonably be presumed to have intended to exclude from the CWA's ‘all-encompassing program,’ 451 U. S., at 318, a permitting decision arising in circumstances such as those of this case. It is even more unfathomable that Congress fashioned a ‘*comprehensive . . .*’ policy for the *elimination* of water pollution,’ *id.*, which sanctions continued pollution once minimum water quality standards have been transgressed. More likely, Congress simply never contemplated that EPA or a state would consider it permissible to authorize further pollution under such

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The interpretation of the statute adopted by the court had not been advanced by any party during the Agency or court proceedings. Moreover, the Court of Appeals candidly acknowledged that its theory “has apparently never before been addressed by a federal court.” 908 F. 2d, at 620, n. 39. The only statutory provision the court cited to support its legal analysis was § 402(h), see *id.*, at 633, which merely authorizes the EPA (or a state permit program) to prohibit a publicly owned treatment plant that is violating a condition of its NPDES permit from accepting any additional pollutants for treatment until the ongoing violation has been corrected. See 33 U. S. C. § 1342(h).

Although the Act contains several provisions directing compliance with state water quality standards, see, *e. g.*, § 1311(b)(1)(C), the parties have pointed to nothing that mandates a complete ban on discharges into a waterway that is in violation of those standards. The statute does, however, contain provisions designed to remedy existing water quality violations and to allocate the burden of reducing undesirable discharges between existing sources and new sources. See, *e. g.*, § 1313(d). Thus, rather than establishing the categorical ban announced by the Court of Appeals—which might frustrate the construction of new plants that would improve existing conditions—the Clean Water Act vests in the EPA and the States broad authority to develop long-range, area-wide programs to alleviate and eliminate existing pollution. See, *e. g.*, § 1288(b)(2).

To the extent that the Court of Appeals relied on its interpretation of the Act to reverse the EPA’s permitting decision, that reliance was misplaced.

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circumstances. We will not ascribe to the Act either the gaping loophole or the irrational purpose necessary to uphold EPA’s action in this case.” *Id.*, at 632 (footnotes omitted).

## Opinion of the Court

## VI

The Court of Appeals also concluded that the EPA's issuance of the Fayetteville permit was arbitrary and capricious because the Agency misinterpreted Oklahoma's water quality standards. The primary difference<sup>13</sup> between the court's and the Agency's interpretation of the standards derives from the court's construction of the Act. Contrary to the EPA's interpretation of the Oklahoma standards, the Court of Appeals read those standards as containing the same categorical ban on new discharges that the court had found in the Clean Water Act itself. Although we do not believe the text of the Oklahoma standards supports the court's reading (indeed, we note that Oklahoma itself had not advanced that interpretation in its briefs in the Court of Appeals), we reject it for a more fundamental reason—namely, that the Court of Appeals exceeded the legitimate scope of judicial review of an agency adjudication. To emphasize the importance of this point, we shall first briefly assess the soundness of the EPA's interpretation and application of the Oklahoma

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<sup>13</sup>The court identified three errors in the EPA's reading of the Oklahoma standards. First, the court correctly observed that the ALJ and the Chief Judicial Officer misinterpreted § 4.10(c) of the standards as governing only the discharge of phosphorus into lakes, rather than the discharge of phosphorus into lakes and into all "perennial and intermittent streams." *Id.*, at 617 (emphasis omitted). This error was harmless because the ALJ found that the discharge into Lake Francis would comply with § 4.10(c) and it is undisputed that that discharge produced a greater threat to the slow-moving water of the lake than to the rapid flow in the river.

The second flaw identified by the court was the ALJ's mistaken reliance on the 1985, rather than the 1982 version, of the Oklahoma standards. We agree with the Chief Judicial Officer, who also noted this error, that the portions of the two versions relevant to this case "do not differ materially." App. to Pet. for Cert. in No. 90-1262, p. 150a. Therefore, this error was also harmless.

Because these two errors were harmless, we have focused in the text on the major difference between the court's and the EPA's readings of the Oklahoma standards: the "no degradation" provision.

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standards and then comment more specifically on the Court of Appeals' approach.

As discussed above, an EPA regulation requires an NPDES permit to comply "with the applicable water quality requirements of all affected States." 40 CFR § 122.4(d) (1991). This regulation effectively incorporates into federal law those state-law standards the Agency reasonably determines to be "applicable." In such a situation, then, state water quality standards—promulgated by the States with substantial guidance from the EPA<sup>14</sup> and approved by the Agency—are part of the federal law of water pollution control.

Two features of the body of law governing water pollution support this conclusion. First, as discussed more thoroughly above, we have long recognized that interstate water pollution is controlled by *federal law*. See *supra*, at 98–100. Recognizing that the system of federally approved state standards as applied in the interstate context constitutes federal law is wholly consistent with this principle. Second, treating state standards in interstate controversies as federal law accords with the Act's purpose of authorizing the EPA to create and manage a uniform system of interstate water pollution regulation.

Because we recognize that, at least insofar as they affect the issuance of a permit in another State, the Oklahoma standards have a federal character, the EPA's reasonable, consistently held interpretation of those standards is entitled to substantial deference. Cf. *INS v. National Center for Immigrants' Rights*, 502 U. S. 183, 189–190 (1991); *Chevron U. S. A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U. S. 837 (1984). In these cases, the Chief Judicial Officer ruled that the Oklahoma standards—which require that there be "no degradation" of the upper Illinois River—would

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<sup>14</sup> See *supra*, at 101. Oklahoma's water quality standards closely track the EPA's model standards in effect at that time. Compare § 3 of the Oklahoma standards with 40 CFR § 35.1550(e)(1) (1981).

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only be violated if the discharge effected an “actually detectable or measurable” change in water quality. App. to Pet. for Cert. in No. 90–1262, p. 117a.

This interpretation of the Oklahoma standards is certainly reasonable and consistent with the purposes and principles of the Clean Water Act. As the Chief Judicial Officer noted, “unless there is some method for measuring compliance, there is no way to ensure compliance.” *Id.*, at 118a, n. 16 (internal quotation marks omitted; citation omitted). Moreover, this interpretation of the Oklahoma standards makes eminent sense in the interstate context: If every discharge that had some theoretical impact on a downstream State were interpreted as “degrading” the downstream waters, downstream States might wield an effective veto over upstream discharges.

The EPA’s application of those standards in these cases was also sound. On remand, the ALJ scrutinized the record and made explicit factual findings regarding four primary measures of water quality under the Oklahoma standards: eutrophication,<sup>15</sup> esthetics,<sup>16</sup> dissolved oxygen,<sup>17</sup> and met-

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<sup>15</sup> Eutrophication is the “normally slow aging process by which a lake evolves into a bog or marsh . . . . During eutrophication the lake becomes so rich in nutritive compounds (especially nitrogen and phosphorus) that algae and other microscopic plant life become superabundant, thereby ‘choking’ the lake . . . .” App. 57–58. With regard to eutrophication, the ALJ found that the Fayetteville plant would discharge 30 pounds of phosphorus per day, only about 6 pounds of which would reach the Arkansas/Oklahoma border, and that such a small amount would not result in an increase in eutrophication. App. to Pet. for Cert. in No. 90–1262, p. 129a.

<sup>16</sup> With regard to esthetics, the ALJ concluded that the only discharged compound that would affect esthetics was phosphorus and that, again, the amount of that substance crossing the border would not affect the esthetic quality of Oklahoma’s waters. *Id.*, at 135a–136a.

<sup>17</sup> With regard to dissolved oxygen, the ALJ found that in the 39 miles between discharge and the border the effluent would experience “complete oxygen recovery” and therefore would not affect the dissolved oxygen levels in the river. *Id.*, at 140a.

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als.<sup>18</sup> In each case, the ALJ found that the Fayetteville discharge would not lead to a detectable change in water quality. He therefore concluded that the Fayetteville discharge would not violate the Oklahoma water quality standards. Because we agree with the Agency's Chief Judicial Officer that these findings are supported by substantial evidence, we conclude that the Court of Appeals should have affirmed both the EPA's construction of the regulations and the issuance of the Fayetteville permit.

In its review of the EPA's interpretation and application of the Oklahoma standards, the Court of Appeals committed three mutually compounding errors.

First, the court failed to give due regard to the EPA's interpretation of its own regulations, as those regulations incorporate the Oklahoma standards. Instead the court voiced its own interpretation of the governing law and concluded that "where a proposed source would discharge effluents that would contribute to conditions currently constituting a violation of applicable water quality standards, such [a] proposed source may not be permitted." 908 F. 2d, at 620. As we have already pointed out, that reading of the law is not supported by the statute or by any EPA regulation. The Court of Appeals sat in review of an agency action and should have afforded the EPA's interpretation of the governing law an appropriate level of deference. See generally *Chevron, supra*, at 842-844.

Second, the court disregarded well-established standards for reviewing the factual findings of agencies and instead made its own factual findings. The troubling nature of the court's analysis appears on the face of the opinion itself: At least four times, the court concluded that "there was substantial evidence before the ALJ to support" particular findings which the court thought appropriate, but which were

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<sup>18</sup> With regard to metals, the ALJ concluded that the concentrations of metals would be so low as not to violate the Oklahoma standards. *Id.*, at 143a.



## Opinion of the Court

contrary to those actually made by the ALJ. 908 F. 2d, at 620, 625, 627, 629. Although we have long recognized the “substantial evidence” standard in administrative law, the court below turned that analysis on its head. A court reviewing an agency’s adjudicative action should accept the *agency’s* factual findings if those findings are supported by substantial evidence on the record as a whole. See generally *Universal Camera Corp. v. NLRB*, 340 U. S. 474 (1951). The court should not supplant the agency’s findings merely by identifying alternative findings that could be supported by substantial evidence.

Third, the court incorrectly concluded that the EPA’s decision was arbitrary and capricious. This error is derivative of the court’s first two errors. Having substituted its reading of the governing law for the Agency’s, and having made its own factual findings, the Court of Appeals concluded that the EPA erred in not considering an important and relevant fact—namely, that the upper Illinois River was (by the court’s assessment) already degraded.

As we have often recognized, an agency ruling is “arbitrary and capricious if the agency has . . . entirely failed to consider an important aspect of the problem.” *Motor Vehicle Mfrs. Assn. of United States, Inc. v. State Farm Mut. Automobile Ins. Co.*, 463 U. S. 29, 43 (1983). However, in these cases, the degraded status of the river is only an “important aspect” because of the Court of Appeals’ novel and erroneous interpretation of the controlling law. Under the EPA’s interpretation of that law, what matters is not the river’s current status, but rather whether the proposed discharge will have a “detectable effect” on that status. If the Court of Appeals had been properly respectful of the Agency’s permissible reading of the Act and the Oklahoma standards, the court would not have adjudged the Agency’s decision arbitrary and capricious for this reason.

In sum, the Court of Appeals made a policy choice that it was not authorized to make. Arguably, as that court sug-

## Opinion of the Court

gested, it might be wise to prohibit any discharge into the Illinois River, even if that discharge would have no adverse impact on water quality. But it was surely not arbitrary for the EPA to conclude—given the benefits to the river from the increased flow of relatively clean water<sup>19</sup> and the benefits achieved in Arkansas by allowing the new plant to operate as designed—that allowing the discharge would be even wiser. It is not our role, or that of the Court of Appeals, to decide which policy choice is the better one, for it is clear that Congress has entrusted such decisions to the Environmental Protection Agency.

Accordingly, the judgment of the Court of Appeals is

*Reversed.*

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<sup>19</sup> Justice Holmes recognized this potential benefit years ago:

“There is no pretence that there is a nuisance of the simple kind that was known to the older common law. There is nothing which can be detected by the unassisted senses—no visible increase of filth, no new smell. On the contrary, it is proved that the great volume of pure water from Lake Michigan which is mixed with the sewage at the start has improved the Illinois River in these respects to a noticeable extent. Formerly it was sluggish and ill smelling. Now it is a comparatively clear stream to which edible fish have returned. Its water is drunk by the fisherman, it is said, without evil results.” *Missouri v. Illinois*, 200 U. S. 496, 522 (1906).

2002



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
 REGION 6  
 1445 ROSS AVENUE, SUITE 1200  
 DALLAS, TX 75202-2733

DEC 29 2003

Mr. Duane A. Smith  
 Executive Director  
 Oklahoma Water Resources Board  
 3800 North Classen Street  
 Oklahoma City, OK 73118

Attn: 1st page

Phil Moershel

Dear Mr. Smith:

This letter and attachment constitute the results of the U.S. Environmental Protection Agency's (EPA) review of the Oklahoma Water Quality Standards (OWQS, OAC Title 785, Chapter 45) interim revisions, received November 6, 2002, as required under federal regulations at 40 CFR § 131.5. We apologize for the length of time it has taken to conclude this review, but as you aware, we have been working closely with senior officials in Oklahoma as well as in Arkansas on issues related to those standards and their implementation. The "Statement of Joint Principles and Actions", signed by representatives from both states on December 18, 2003, represents an important step forward toward achievement of the standards we are approving today.

Based on the record before it, EPA Region 6 has determined that Oklahoma's total phosphorus criterion for its Scenic Rivers is consistent with the requirements for water quality standards established under the Clean Water Act (CWA). EPA also believes that the compliance schedule provision, which was included as a modification to the numerical phosphorus criterion, represents a reasonable approach to addressing the phosphorus problem in Oklahoma's Scenic Rivers, by allowing dischargers additional time, if needed, to come into compliance with permit limits based on the criterion.

I would like to commend the hard work and efforts put forth by the Oklahoma Water Resources Board (OWRB) and its staff in the preparation of the interim revision package and in addressing many of the previously disapproved revisions to the State's water quality standards. We anticipate working with you to resolve the remaining issues, and to bring the Oklahoma Water Quality Standards into full compliance with the CWA.

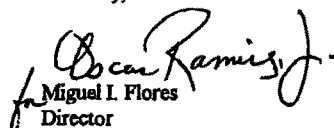
Section 303(c) of the Clean Water Act requires EPA to review and approve or disapprove new or revised water quality standards. In today's action, EPA is approving the majority of the new and revised elements of these standards pursuant to the CWA and the federal implementing regulations at 40 CFR Part 131; however, EPA is disapproving four new and revised provisions that are inconsistent with the requirements of the CWA and its implementing regulations. EPA believes that no federal action is required on one provision because it is not a "water quality standard" for purposes of the Clean Water Act. A detailed explanation of the basis for EPA's decision is enclosed.

EPA initiated consultation with the U.S. Fish and Wildlife Service under section 7(a)(2) of the ESA on the Oklahoma water quality standards on November 21, 2002. Section 7(a)(2) requires that federal agencies, in consultation with the Services, ensure that their actions are not likely to jeopardize the existence of federally listed species or result in the adverse modification of designated critical habitat of such species. It is EPA's finding that approval of these standards revisions will have no effect on endangered/threatened species or critical habitat.

This letter constitutes our formal notification of the results of EPA's water quality standards review pursuant to 40 CFR § 131.22. The State is advised of the requirement to adopt replacement water quality standards for OAC Title 785, Chapter 45, consistent with the CWA and federal regulations within 90 days of the receipt of this letter. In the event the State does not take appropriate action, EPA will propose replacement water quality standards for Oklahoma pursuant to Section 303(c)(4) of the CWA and its implementing regulations at 40 CFR Part 131.

If you have any questions or concerns, please contact me at (214) 665-7101 or Jane Watson at (214) 665-7135.

Sincerely,

  
for Miguel I. Flores  
Director  
Water Quality Protection Division

**Enclosure**

cc: Fred Luetner, Office of Science and Technology  
Susan Lepow, Office of General Counsel  
Jerry Brabander, U.S. Fish and Wildlife Service  
Derek Smithee, OWRB  
Jon Craig, ODEQ

**SUMMARY OF DECISION****EPA Actions on the July 1, 2002 Revisions to the Oklahoma Water Quality Standards****SUBCHAPTER 1. GENERAL PROVISIONS****OAC 785:45-1-2, Definitions -**

In the definitions section, prior to the initial definition, a statement is included directing the reader to use the following definitions unless the content clearly indicates otherwise. Oklahoma Water Resources Board (OWRB) has since determined the word "content" was intended to be "context" and has made the substitution.

**Action:** EPA approves the change.

**"Acute test failure"** - The OWRB has revised the two definitions, one pertaining to lakes and the other pertaining to streams, to return to the language previously in place prior to the adoption of an "acute mixing zone." Subsequent to adoption of the acute mixing zone it was determined that the implementation of the acute mixing zone was problematic. To prevent problems in the implementation and issuance of Oklahoma Pollutant Discharge Elimination System permits, the OWRB decided to return the definition of acute toxicity to the same definition used previously.

**Action:** EPA approves the change.

**"Acute toxicity"** - The OWRB has revised the definition of acute toxicity to mirror the endpoint described in the definition of acute test failure.

**Action:** EPA approves the change.

**"Best Available Technology"** - The OWRB has adopted a definition of Best Available Technology, which is not substantially different from the federal definition. Although the new definition is not written in the exact words as the federal definition, it is acceptable.

**Action:** EPA approves the change.

**"Conservative Element"** - The OWRB has made a spelling change to correct "volatilization."

**Action:** EPA approves the change.

**"Degradation"** - The OWRB has made a change to the definition to reflect the applicability to activities of humans which result in the prolonged impairment of a water body.

**Action:** EPA approves the change.

**"EPA"** - The OWRB has several references within the codified water quality standards, implementation procedures and various state policies, guidance and notices to the acronym EPA. With this definition, the OWRB has provided clarification as to the organization to which the acronym refers.

**Action:** EPA approves the change.

**"Fecal coliform"** - The OWRB has provided a clarification that all humans, not only man, contribute fecal coliform bacteria.

**Action:** EPA approves the change.

**"Fresh groundwater"** - The OWRB has revised the definition of fresh groundwater to double the concentration of total dissolved solids. Region 6 is concerned that the definition may be misleading to many lay people who may consider "fresh groundwater" to mean groundwater of higher quality, not to include contaminated groundwater. However, this definition is outside of the water quality standards programs and not subject to action by EPA Region 6 under this review.

**Action:** EPA Region 6's Water Quality Standards Program has no authority over groundwater issues that are unrelated to surface water, and thus cannot approve or disapprove of the change.

**"MDL"** - The OWRB has adopted the industry standard (and EPA's) definition of and acronym for method detection limit.

**Action:** EPA approves the change.

**"Natural source"** - The OWRB has provided a clarification that all humans, not only man, may be a source of contamination.

**Action:** EPA approves the change.

**"NTU"** - The OWRB has included the acronym and definition for nephelometric turbidity units which is used to report results from the Nephelometric Method, commonly used to measure the scattering of light by particles in a water sample.

**Action:** EPA approves the change.

**"PQL"** - The OWRB has adopted a definition and acronym for practical quantitation limit, which is five times the MDL. EPA objected to this definition and provided comments to the OWRB concerning the applicability of PQL to tests such as dissolved oxygen, pH and B.O.D.<sub>5</sub>. Because these regulations use the term "PQL" solely for regulating groundwater, EPA Region 6

does not consider this term to be applicable to the water quality standards program as it relates to surface waters, including wetlands.

**Action:** EPA Region 6's Water Quality Standards Program has no authority over groundwater issues that are unrelated to surface water, and thus cannot approve or disapprove the change.

**"Salinity"** - The OWRB has changed the definition to correctly reflect salinity as a measurement of concentration and not degrees.

**Action:** EPA approves the change.

**"Seasonal seven-day, two-year low flow"** - The OWRB has changed this definition substantially by deleting the description of how the low flow is calculated and by referring to the use of the low flow in permitting. Because the new definition does not describe the precise meaning of low flows, there is possible confusion about whether the flows are calculated on the receiving stream's flow or the effluent flow. The latter would be inappropriate because low flow conditions are used in permitting and site-specific criteria development as a gauge of the dilution attributable to a waterbody during critical conditions, i.e., usually the middle to end of the summer months.

**Action:** EPA disapproves the change.

To correct the disapproval OWRB must adopt a definition which clearly refers to receiving water, not effluent flow, or reinstate the previous definition.

**"Seasonal 7Q2"** - Same as above.

**Action:** EPA disapproves the change.

To correct the disapproval OWRB must adopt a definition which clearly refers to receiving water, not effluent flow, or reinstate the previous definition.

**"Seven-day, two-year low flow"** - Same as above.

**Action:** EPA disapproves the change.

To correct the disapproval OWRB must adopt a definition which clearly refers to receiving water, not effluent flow, or reinstate the previous definition.

**"7Q2"** - Same as above.

**Action:** EPA disapproves the change.

To correct the disapproval OWRB must adopt a definition which clearly refers to receiving water, not effluent flow, or reinstate the previous definition.

**"Standard Methods"** - The OWRB has added as a definition the common phrase used to describe the publication *Standard Methods for the Examination of Water and Wastewater*, an industry publication referenced by EPA and all Region 6 states, concerning both the drinking water program and the water quality standards program.

**Action:** EPA approves the change.

**OAC 785:45-1-4, Testing procedures**

The OWRB has made changes to reflect the titular nature of the reference to 40 CFR Part 136.

**Action:** EPA approves the change.

**OAC 785:45-5-3, Beneficial uses: default designations**

b) **Lakes. (2)** - This provision establishes a beneficial use of Public and Private Water Supplies to be designated for certain lakes as provided in Appendix A of this Chapter. OWRB has removed "otherwise" which followed "Chapter" in the sentence noted above.

**Action:** EPA approves the change.

**OAC 785:45-5-4, Applicability of narrative and numerical criteria**

(a) The OWRB has added the clause "or establishing site specific criteria" to the applicability of using the greater of 1.0 cfs or 7Q2 as the streamflow used in establishing "permit conditions," unless otherwise provided in OAC 785:45 or OAC 785:46. These changes are consistent with other aspects of the water quality standards.

**Action:** EPA approves the change.

(e) - The OWRB has revised the references to the numeric criteria for human health protection from fish flesh consumption alone or with ingestion of water as related to water column or fish tissue concentrations to reflect the relocation of the criteria to Appendix G.

**Action:** EPA approves the change.

**PART 3. BENEFICIAL USES AND CRITERIA TO PROTECT USES**

**OAC:785:45-5-10. Public and private water supplies**

**(1) Raw Water numerical criteria.**

The OWRB has revised this section to reflect the relocation of the criteria to Appendix G.

**Action:** EPA approves the change.



**(6) Water Column criteria to protect for the consumption of fish flesh and water.**  
The OWRB has revised this section to reflect the relocation of the criteria to Appendix G.

**Action:** EPA approves the change.

**OAC:785:45-5-12 Fish and wildlife propagation**

**(f)(1)(C)** - The OWRB has revised this section to reflect the relocation of the criteria to Appendix G.

**Action:** EPA approves the change.

**(f)(6)(C)** - The OWRB has revised this section to reflect the relocation of the criteria to Appendix G.

**Action:** EPA approves the change.

**(f)(6)(D)** - The OWRB has revised this section to reflect the relocation of the criteria to Appendix G.

**Action:** EPA approves the change.

**(f)(6)(G)** - The OWRB has revised this section to reflect the relocation of the criteria to Appendix G.

**Action:** EPA approves the change.

**(f)(6)(G)(i)** - The OWRB has revised this section to reflect the relocation of the criteria to Appendix G.

**Action:** EPA approves the change.

**(f)(6)(G)(ii)** - The OWRB has revised this section to reflect the relocation of the criteria to Appendix G.

**Action:** EPA approves the change.

**(f)(6)(H)** - The OWRB has revised this section to reflect the relocation of the criteria and conversion factors to Appendix G.

**Action:** EPA approves the change.

**(f)(7)(A)(i)** - The OWRB has substituted the acronym for the actual name of nephelometric turbidity units (NTUs), the nephelometric measurement for turbidity.

**Action:** EPA approves the change.

**(f)(7)(A)(ii)** - The OWRB has substituted the acronym for the actual name of nephelometric turbidity units (NTUs), the nephelometric measurement for turbidity.

**Action:** EPA approves the change.

**(f)(7)(A)(iii)** - The OWRB has substituted the acronym for the actual name of nephelometric turbidity units (NTUs), the nephelometric measurement for turbidity.

**Action:** EPA approves the change.

**(f)(7)(C)** - The OWRB has changed the reference from criteria listed "above" to criteria listed "in (A) of this paragraph" to prevent confusion.

**Action:** EPA approves the change.

**(f)(7)(E)** - The OWRB has eliminated this provision and added the language that defines NTUs as a definition in OAC:785:45-1-2.

**Action:** EPA approves the change.

**OAC:785:45-5-13 Agriculture: livestock and irrigation**

**(d)** - The OWRB is changing a citation from "the table following subsection (g) of this Section and 785-1-2 calculated for that segment" to "the table in Appendix F of this Chapter".

**Action:** EPA approves the change.

**OAC:785:45-5-16 Primary Body Contact Recreation**

**(c)(2)** - The OWRB has added the terms "body contact" to this subsection when referring to primary recreation, which is consistent with the previously adopted language and OWRB's description of primary recreation.

**Action:** EPA approves the change.

**(c)(3)** - The OWRB has added the terms "body contact" to this subsection when referring to primary recreation. See above.

**Action:** EPA approves the change.

**OAC:785:45-5-19 Aesthetics**

**(a)** - The OWRB has revised the language in this subsection from "water of the State" to "waters of the state".

**Action:** EPA approves the change.

**(c)(1) Color.** - The OWRB has changed the term "State" to "state".

**Action:** EPA approves the change.

**(c)(2) Nutrients.** -

**(A) Narrative criterion applicable to all waters of the state.** The OWRB has revised this subsection to identify that the in-place narrative criterion is applicable to all waters of the state.

**Action:** EPA approves the change.

**(B) - Numerical criterion applicable to waters designated Scenic Rivers.** Through revisions to Section 785:45-5-19 of the Oklahoma Administrative Code (OAC), OWRB has adopted a nutrient criterion for total phosphorus of 0.037 mg/L for all Oklahoma water bodies designated as Scenic Rivers. Attainment will be based on the thirty (30) day geometric mean total phosphorus concentration in waters designated Scenic Rivers in Appendix A of Chapter 45. Additional language in the rule states that "such criterion shall be fully implemented within ten (10) years as provided in a separate rule promulgated by the Board." OAC § 785:45-5-19(c)(2)(B). The separate rule promulgated by the Board is OAC Section 785:45-2-28, which at the time of the OWRB's submittal was an emergency rule effective May 6, 2002. The emergency rule was promulgated to clarify the July 1, 2002, effective date of the 0.037 mg/L numerical criterion established by OAC Section 785:45-5-19 and the June 30, 2012, deadline for full implementation of the criterion.

OAC Sections 785:45-5-19 and 785:45-5-28 establish effective July 1, 2002, a numerical water quality standard for total phosphorus of 0.037 mg/L for Oklahoma's six (6) Scenic Rivers, modified by a compliance schedule provision allowing point source dischargers up to ten (10) years from July 1, 2002, or until June 30, 2012, to come into compliance with effluent limitations based on the numerical criterion. Once approved by EPA, the 0.037 mg/L standard is fully effective for CWA purposes. Compliance schedules will be available as needed not only for dischargers within Oklahoma, but for dischargers located in neighboring states as well.

OWRB explained the need for a numerical phosphorus criterion for its Scenic Rivers in its water quality standards revision package. The agency stated that both empirical and anecdotal evidence over the past twenty (20) years indicates that excess nutrients, primarily excess phosphorus, "are causing accelerated primary productivity in the Illinois, resulting in significant growths of both attached algae (periphyton) and suspended algae (phytoplankton). As a consequence, historical river clarity and substrate quality are being adversely affected to such an extent that, without intervention, the Illinois River's exceptional ecological and recreational significance is in jeopardy." Justification for Revisions to Oklahoma's Water Quality Standards QAC 785:45: Rationale for Promulgation of an 0.037 mg/L Total Phosphorus Criteria for Scenic River Protection, Page 1 of Tab 11 to OWRB's November 6, 2002, submittal. OWRB noted that, although less pronounced and obvious to the public, similar signs of adverse impacts from excess nutrients had been noted in Oklahoma's other five (5) Scenic Rivers. Id., Page 1.

Adoption of nutrient criteria by the State of Oklahoma is consistent with EPA's Notice of National Strategy for Development of Regional Nutrient Criteria, published in the Federal Register of June 25, 1998 (Volume 63, Number 122, pages 34648-64650). EPA expects all States and Tribes to adopt and implement numerical nutrient criteria into their water quality standards by December 31, 2003.

The OWRB cited as the basis for justification of its 0.037 mg/L total phosphorus criterion the United States Geological Survey (USGS) study and report, *Nutrient Concentrations and Yields in Undeveloped Basins of the United States*. In the report summary statistics were calculated for percentile values (10%, 25%, 50%, 75%, and 90%) of the flow-weighted mean stream values for several nutrient descriptors, including total phosphorus. OWRB adopted a total phosphorus concentration, based on the values included in the report as Table 1, of 0.037 mg/L representing the 75<sup>th</sup> percentile value of undeveloped streams, analogous to the methodology sanctioned by EPA in developing its recommended ecoregion based nutrient criteria, except that it is not tailored to any particular ecoregion nor inclusive of data from the ecoregion to which it is applied.

Under 40 CFR § 131.11, EPA has recommended three options for developing numeric nutrient criteria: 1) based on 304(a) Guidance, or 2) based on 304(a) Guidance modified to reflect site-specific conditions, or 3) based on other scientifically defensible methods. The state utilized the third option, employing a method similar to the EPA methodology, but developed using a national database of reference (undeveloped or "least impacted") streams. EPA used ecoregion data for all streams and reference streams as the basis for nutrient criteria. If nutrient concentrations were considered for all streams in an ecoregion, EPA selected the 25<sup>th</sup> percentile value for the criterion value. If nutrient concentrations were used from only reference streams, the 75<sup>th</sup> percentile value was chosen. Considering undeveloped watersheds as analogous to reference streams, EPA would expect, as the OWRB did, to adopt a criterion using the 75<sup>th</sup> percentile value.

Portions of the six Oklahoma Scenic Rivers are included in the five Level III ecoregions that were utilized by EPA in development of the national recommended nutrient criteria. For these five ecoregions, the range of the recommended criteria was from 0.005 mg/L to 0.05 mg/L [EPA-822-B-00-019, EPA-822-B-00-020]. Oklahoma's adopted criteria of 0.037 mg/L falls within the range recommended.

It is important to note that EPA reviews a state water quality criterion to determine whether the proposed standards are stringent enough to comply with the requirements of the CWA and meet the states' designated uses. States are free to adopt a water quality criterion that is more stringent than necessary to comply with the minimum requirements of the CWA. The CWA allows states to force technological advancement to attain higher water quality through the enactment of stringent water quality goals. See *City of Albuquerque v. Browner*, 97 F.3rd 415 (10<sup>th</sup> Cir. 1996). Based on the record before it, EPA has determined that Oklahoma's total phosphorus criterion of 0.037 mg/L for its Scenic Rivers is sufficient to protect the designated uses of the affected rivers<sup>1</sup> and is consistent with the requirements for water quality standards established by the CWA and 40 CFR Part 131.

To address whether the outcome of Oklahoma's analysis is representative, scientifically defensible, and protective of Oklahoma's waters, EPA independently considered several other sources of data and information. One important source of information was a USGS report entitled *Percentile Distributions of Median Nitrite Plus Nitrate as Nitrogen, Total Nitrogen, and Total Phosphorus Concentrations in Oklahoma Streams, 1973-2001 (Report 03-4084)*. This report included total phosphorus data for streams in the Ozark Highlands ecoregion. The appropriate percentile values of median concentrations for various stream groups fully support Oklahoma's adopted criterion value. The 75<sup>th</sup> percentile of high gradient smaller streams (stream orders 1, 2 and 3), where data may be more representative of reference quality conditions and the effects of human development activities are likely to be minimal, is 0.040 mg/L. The 25<sup>th</sup> percentile of low gradient smaller streams and all larger streams (stream order 4 and above), where data are likely to be more representative of general conditions and the effects of human development activities are likely more than minimal, is 0.035 mg/L and 0.050 mg/L, respectively. These reported values corroborate that Oklahoma's adopted criterion is scientifically defensible and protective. In a separate analysis, USGS, in conjunction with EPA Region 6, calculated percentiles for different stream sizes in the Illinois basin using data collected from 1990 to 2001. The data indicated that small streams have lower criteria than larger ones if calculated separately, and that when various stream sizes are combined, the criterion is consistent with that adopted by the state.

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<sup>1</sup>A December 9, 2003, letter from the Arkansas Attorney General's Office raised the issue of how different uses of a stream should be considered. That issue relates to use designations, not to the question of whether a criterion is protective of a given designated use. Today's approval concerns a criterion, not a designation of use.

Because, as noted above, Oklahoma's 0.037 mg/L criterion for total phosphorus in its Scenic Rivers is modified by a compliance schedule provision allowing point source dischargers up to ten (10) years from July 1, 2002, or until June 30, 2012, to come into compliance with permit limits based on the criterion, EPA must review not only the numerical criterion, but the compliance schedule provision as well to ensure consistency with the CWA and its implementing regulations. Regulations at 40 CFR § 122.47 provide for CWA schedules of compliance for NPDES permit limitations reflecting water quality standards when appropriate, but mandate that such schedules require compliance with the limitations as soon as possible.

Further work remains to be done to support implementation of Oklahoma's 0.037 mg/L phosphorus criterion. TMDLs have not been completed and neither the regulatory authorities nor the point sources themselves have all the data necessary to fully understand the exact nature and location of all phosphorus loadings to the watersheds or what the appropriate loadings for every individual discharger should be. Experts are still discussing the appropriate phosphorus index to be used, as well as the best approach for removing existing excess phosphorus. Putting the final pieces of this puzzle in place will take time, and even after final decisions are made regarding appropriate loadings for all dischargers, the cost of implementing necessary treatment or other controls may be high. Given the complexity of the issue, the amount of data yet to be gathered and the costs involved, EPA believes the compliance schedule provision included by OWRB as a modification to its numerical phosphorus criterion augments rather than undercuts the 0.037 mg/L standard by allowing dischargers the additional time to comply if it is needed.

In implementing this compliance schedule provision, Oklahoma, in conjunction with the State of Arkansas<sup>2</sup>, has arrived at a tiered approach to addressing the problem of excess phosphorus in Oklahoma's Scenic Rivers. Under this tiered approach, the existing point source dischargers to the shared Oklahoma Scenic Rivers watersheds with a design capacity of greater than 1 million gallons per day (MGD), specifically the cities of Fayetteville, Rogers, Springdale, Siloam Springs and Bentonville, Arkansas, will be issued NPDES permits containing an effluent limit for total phosphorus of 1 mg/L pursuant to the schedule of compliance set out below. The city of Tahlequah, Oklahoma already meets this limit pursuant to an NPDES permit issued in 1992. In addition, the city of Westville, Oklahoma has a permitted design capacity of 0.28 MGD, however, it is under a compliance order to achieve a 1 mg/L phosphorus effluent limit and a 2.34 lb/day phosphorus loading limit by 2004. EPA believes such limits are allowable under Oklahoma's 0.037 mg/L phosphorus criterion as modified by the compliance schedule.

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<sup>2</sup>Five of the six Scenic Rivers currently affected by Oklahoma's 0.037 mg/L criterion for total phosphorus flow from Arkansas into Oklahoma and Arkansas has a number of point and non point source dischargers to the Oklahoma/Arkansas shared Scenic Rivers watersheds.

Schedule for large cities to comply with 1 mg/L effluent limit:

Rogers – to meet 1 mg/L limit starting in 2004  
 Springdale – expansion to meet 1 mg/L limit starting in 2007  
 Siloam Springs – expansion to meet 1 mg/L limit starting in 2009  
 Fayetteville – existing facility already complies; new facility to meet 1 mg/L limit once operational (circa 2005)  
 Bentonville – new facility to meet 1 mg/L limit once operational (date unknown)

In addition, the States of Oklahoma and Arkansas will work aggressively with those Arkansas and Oklahoma entities with existing design capacities of less than 1 MGD but greater than or equal to 0.5 MGD to reduce the level of phosphorus in their discharges to the maximum extent possible through voluntary controls aimed at reaching either 1 mg/L total phosphorus or a phosphorus loading limit based on 1 MGD of flow and an effluent concentration of 1 mg/L total phosphorus. The intent to implement these limits and controls is memorialized in a “Statement of Joint Principles and Actions” signed by the Oklahoma Secretary of Environment, the Oklahoma Water Resources Board, the Oklahoma Department of Environmental Quality, the Oklahoma Scenic Rivers Commission, the Arkansas Department of Environmental Quality and the Arkansas Soil and Water Conservation Commission on December 18, 2003.

EPA believes the commitments made by the States of Oklahoma and Arkansas, acting through their environmental agencies, and as reflected in the Statement of Joint Principles and Actions signed by those agencies on December 18, 2003, represent very positive steps toward improving water quality in the shared Oklahoma Scenic Rivers Watersheds, which is consistent with achieving compliance with the State of Oklahoma’s 0.037 mg/L criterion for total phosphorus in that State’s Scenic Rivers.

At this time, and in light of the other phosphorus reducing measures currently being implemented, and to be implemented, in the affected waterways (as discussed below), EPA supports the decision made by Oklahoma and Arkansas to allow the point source dischargers covered by the Statement of Joint Principles and Actions to initially reduce their effluent concentrations through permit limits of 1 mg/L total phosphorus or through voluntary measures. Considering loadings to the affected watershed are greatly affected by non point source discharges (likely greater than 50% of the phosphorus loading) and because measures are underway to reduce those non point source loadings, EPA believes it is reasonable to limit the specified point source dischargers as agreed to in that this should result in reasonable further progress toward achieving the 0.037 mg/L instream goal by the June 30, 2012, deadline.

EPA believes the tiered approach to implementing Oklahoma’s proposed compliance schedule provision, including the implementation of the above discussed measures, is a reasonable approach to beginning to address the phosphorus problem in Oklahoma’s Scenic Rivers and to achieving water quality goals. EPA expects reasonable further progress in meeting water quality goals if the specified measures are put in place. Preliminary estimates made by

researchers at the University of Arkansas indicate that four major point source dischargers in the Illinois River Drainage Area, identified in Nelson et. al. (2002)<sup>3</sup>, account for about 40% of the output of phosphorus in the Illinois River just upstream of the river's flow into Oklahoma, where the criterion is applicable. These same estimates indicate that reductions in the phosphorus concentration of their discharges to 1.0 mg/L as a sole measure would likely reduce concentrations in the Illinois River as it enters Oklahoma by 30%.

The tiered approach toward achieving water quality goals is bolstered by the implementation of various other measures aimed at further reducing phosphorus in the affected watersheds by Oklahoma, as well as neighboring States. These measures include a commitment by the Oklahoma Secretary of the Environment, the Oklahoma Attorney General, the Arkansas Department of Environmental Quality and the Arkansas Soil & Water Conservation Commission to develop a joint phosphorus index between the States of Oklahoma and Arkansas. This commitment was reflected in a letter dated April 4, 2003, from those four entities to Oklahoma State University and the University of Arkansas, requesting technical assistance from the two universities in crafting an appropriate index. With regard to nonpoint sources, the State of Arkansas recently enacted legislation declaring certain areas, including the Illinois River Watershed, to be nutrient surplus areas for phosphorus and nitrogen. The new legislation makes it a violation of State law to apply designated nutrients within a nutrient surplus area except in compliance with a State approved nutrient management plan or at a protective rate established by the State. Arkansas also enacted legislation requiring the certification of persons preparing nutrient management plans and of persons making nutrient application, as well as legislation mandating the establishment of an annual registration program to assemble and maintain information on the number, composition, and practices of poultry feeding operations in the State, including the land application practices used by each individual poultry feeding operation, and the amount of litter stored, applied and transferred by each operation. EPA expects substantial progress will result from the nonpoint measures stemming from this Arkansas enabling legislation. For example, reducing by half the application of animal manure, litter and sludge in the Illinois River Drainage Area in favor of nitrogen fertilizer, in concert with the point source controls, could achieve a 60% reduction in phosphorus concentrations in the Illinois River.

In addition to the other measures discussed, there will be actions internal to both Oklahoma and neighboring States as they work to develop Total Maximum Daily Loads (TMDLs) or Watershed Plans for streams listed as impaired on the federal CWA 303(d) list. EPA believes implementation of these various measures, in conjunction with the phosphorus reductions ultimately achieved by the point source dischargers to the affected watersheds, should ensure reasonable and steady progress toward meeting the 0.037 mg/L instream goal by the June 30, 2012, deadline for compliance provided by OWRB.

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<sup>3</sup>Reference: Nelson, M. A., K. L. White, and T. S. Soerens. 2002. Illinois River phosphorus sampling results and mass balance computation. Proceedings from Arkansas Water Resources Center Conference on "Adequate Quality Water Supplies to Meet Our Growing Needs: Scientific, Regulatory, and Public Perspectives", Fayetteville, AR.



As a result, EPA believes not only that the compliance schedule provision included by OWRB as a modification to its numerical phosphorus criterion augments rather than undercuts the 0.037 mg/L standard by allowing dischargers additional time, if needed, to come into compliance with permit limits based on the criterion, but also that the tiered approach toward implementation of the numerical criterion as modified by the compliance schedule provision adopted by Oklahoma is a reasonable approach to addressing the phosphorus problem in Oklahoma's Scenic Rivers and ultimately achieving compliance with the 0.037 mg/L phosphorus standard.

Although EPA believes this tiered approach, including the limits and controls to be met by point source dischargers to the shared Oklahoma Scenic Rivers watersheds, is a reasonable approach to achieving water quality goals, EPA realizes the success of the approach is dependent on many inter-related factors. EPA will be monitoring the situation over the course of the compliance period to ensure that sufficient progress toward achieving these goals by the June 30, 2012, deadline is indeed being made.

**Action:** EPA has determined a numerical criterion for total phosphorus of 0.037 mg/L for Oklahoma Scenic Rivers, modified by a provision for compliance schedules of up to ten (10) years from July 1, 2002, or until June 30, 2012, as needed to attain compliance as soon as possible with effluent limitations reflecting the numerical criterion, is consistent with the requirements for water quality standards established by the CWA and 40 CFR Part 131. EPA approves the change.

**OAC:785:45-5-20. Fish Consumption**

**(a) General.** The OWRB has revised this subsection to reflect the relocation of the criteria from the individual subsections to the tables in Appendix G.

**Action:** EPA approves the change.

**(b) Water column criteria to protect for the consumption of fish flesh.** The OWRB has revised this subsection to reflect the relocation of the criteria from the individual subsections to the tables in Appendix G.

**Action:** EPA approves the change.

**PART 5. SPECIAL PROVISIONS**

**OAC:785:45-5-25(d). Implementation Policies for the Antidegradation Policy Statement.**

As discussed above, through revisions to Sections 785:45-5-19 and 785:45-5-28 of the Oklahoma Administrative Code (OAC), the OWRB has adopted a thirty (30) day geometric mean total phosphorus criterion of 0.037 mg/L applicable to all water bodies designated as "Scenic Rivers" modified by a provision allowing for compliance schedules of up to ten (10)

years from July 1, 2002, for dischargers to come into compliance with regulatory limitations necessary for instream achievement of that criterion. The OWRB has also revised OAC Section 785:45-5-25(d) to incorporate the same criterion and compliance schedule in the State's Antidegradation Policy Statement.

EPA's review of implementation procedures is limited to ensuring that procedures are included that describe how the State will implement the required elements of the antidegradation review. The EPA is approving the adoption of the criterion and compliance schedule in OAC Sections 785:45-5-19 and 785:45-5-28. However, we find the procedures in this provision do not specify how the State will determine on a case-by-case basis whether, and to what extent, assimilative capacity in the States waters may be preserved or used. Specifically, if a water body has a lower total phosphorous concentration than established by the criterion, water quality may be lowered to that level, effectively circumventing the intent and purpose of the antidegradation policy.

Given the qualifying statement that it "applies in addition to, and shall be construed so as to be consistent with, any other provision of this chapter," and appropriate inclusion of the same criterion and compliance schedule provision elsewhere in the standards, EPA regards Section 785:45-5-25(d) as conceptually foreign to an antidegradation policy as that term is understood under the Clean Water Act. As such, OAC Section 785:45-5-25(d) is not a "water quality standard" at all and CWA Section 303(c)(3) does not require EPA to either approve or disapprove it.

**Action:** This provision in the State's regulation is not "a water quality standard" for purposes of the Clean Water Act, and does not require EPA action.

**Appendix A**  
**DESIGNATED BENEFICIAL USES FOR SURFACE WATERS**

**OAC:785:45 APPENDIX A**

**(b) Beneficial Use Designations.** OWRB has clarified the use of a (●) to indicate the inclusion of the beneficial use, represented by the column wherein the use is specified, for a segment or waterbody.

**Action:** EPA approves the change.

**Garland Creek, Segment No. 410100**

OWRB has revised the beneficial uses for Garland Creek to return the beneficial uses previously designated for Garland Creek. In March, 2000 EPA Region 6 disapproved the change in the beneficial use designation from warm water aquatic community to habitat limited aquatic community. Subsequent studies determined that Garland Creek was not habitat limited and the

OWRB is now correcting that decision to reflect the expectation that Garland Creek should provide adequate habitat to support a warm water aquatic community.

**Action:** EPA approves of the change.

**Mine Creek, Segment No. 410210**

OWRB is correcting an omission from a previous water quality standards revision. In this correction OWRB is incorporating a beneficial use designation of aesthetics, as previously determined, but omitted from the previous revision.

**Action:** EPA approves of the revision.

**Appendix E**

**Site-Specific Criteria for Copper on North Canadian (OG&E)**

Region 6 has reviewed the document and additional information submitted by OWRB and USGS. The site-specific criterion is acceptable as prepared in the water effect ratio document submitted by OG&E.

**Action:** EPA approves the change.



February 26, 2013

Mr. Ron Curry  
 USEPA Region 6 Administrator  
 1455 Ross Ave. Suite 1200  
 Dallas, Texas 75202

Dear Mr. Curry,

Thank you for meeting with my colleagues and me during our recent visit to Region 6 to discuss mutual opportunities for engagement to enhance the on-going environmental stewardship efforts of Tyson Foods, Inc. We were pleased to engage a broad range of topics including environmental management systems, community engagement, environmental justice, and the Agency's current focus on developing a Total Maximum Daily Load (TMDL) for the Illinois River in Oklahoma.

You may have heard by now of the February 20 agreement by Arkansas and Oklahoma officials to jointly conduct a comprehensive study of phosphorous concentrations and impacts in the Illinois River watershed. In short, in the interest of improving water quality in the region, a "Second Statement of Joint Principles and Actions" have been developed as a framework for advancing phosphorous science through a stressor response study to be conducted over the next three years. The study will be overseen by a six member committee, three members selected by the governors of each state, and performed by an independent vendor. Specifically, science will be used to determine the relationship between in-stream phosphorus concentrations, algal production, temperature, flow, beneficial use, etc. This study could reaffirm the original .037 mg/L standard or result in an entirely different standard being adopted. Compliance, however, with .037 mg/L has been suspended under this agreement until the study process is completed.

In light of this new development, we urge Region 6 to consider placing its current TMDL work on hold pending the outcome of the above-mentioned stressor response study. This would be a pragmatic move to save resources while awaiting the results of an important study that can only help the proper scientific outcome of the TMDL process. If the Agency moves ahead with implementing a TMDL based upon .037 mg/L, it could result in costly changes in Arkansas that are ultimately deemed to have been unnecessary under the on-going study which could provide more ~~scientifically sound insights into the proper regulation of phosphorous.~~

In conclusion, the bi-state agreement has suspended the implementation date of .037 during the term of the agreement. It only makes sense for the Agency to do the same.



We would enjoy further conversation on this matter and would be happy to travel to Dallas in the near future to do so.

Thank you again for your time and commitment to improving our environment.

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin J. Iglil".

Kevin J Iglil  
SVP and Chief Environmental, Health & Safety Officer  
Tyson Foods, Inc.

## PROTECT FAMILY FARMS FROM ONEROUS INTRUSION

**T**o those who think it unnecessary to amend the Oklahoma Constitution to afford protections to agriculture and farming, you need only look at how interference from out-of-state interests and the federal government have made it more difficult for the family farm to survive and thrive. On the ballot this fall is State Question 777, which will present Oklahoma the opportunity to take significant steps to protect family farming and ranching operations in this state.



**SCOTT  
PRUITT**

*Attorney general  
of Oklahoma*

President Ronald Reagan famously said, "The nine most terrifying words in the English language are: I'm from the government, and I'm here to help." Few people understand that pearl of wisdom more than Oklahoma farmers and ranchers. Farmers and ranchers routinely face burdensome and intrusive rules from government regulators. These regulations often fail to achieve the stated health, safety and environmental goals. Instead, the regulations are aimed

at advancing a political agenda and accomplish nothing more than making the job of farming and ranching more difficult and expensive.

Just as harmful are out-of-state interests that seek to force Oklahoma farmers and ranchers to comply with the rules and regulations of other states to do business. A farming law in California would force Oklahoma farmers to comply with strict regulations on egg-laying hens to sell their products in California. That law is being challenged by Oklahoma and other states to protect the ability of farmers to sell their products in all 50 states without fear of other states imposing burdensome new requirements.

The family farm is an intricate part of the fabric that makes up Oklahoma. Farming and ranching is a fickle and noble endeavor and requires resiliency and toughness — traits for which our state is known. But the reach is far beyond cultural. Agriculture in Oklahoma provides more than 208,000 jobs and has an economic impact of \$39.6 billion. Oklahoma farmers and ranchers are feeding the world, providing us with the safest, most secure, most abundant and affordable food supply. But that work is undermined and threatened by the constant barrage of unlawful and burdensome regulations. Current law is proving insufficient to provide the necessary tools to protect the legacy of the family farm.

Unless as a state we think it unnecessary to protect this essential part of our identity and unless we want to give up protecting this important part of our state's economy, Oklahomans should take necessary steps to protect farming and ranching from unlawful regulations and intrusion into the operations of family farms and ranches.

The founders of our state recognized the importance of agriculture to the future success of Oklahoma. To protect farming and ranching from unfair competition, Article 2, Section 31 of the Oklahoma Constitution prohibits the state from engaging in agriculture, except for educational or scientific purposes. Article 13, Section 7 instructs the Legislature to provide for the teaching of agriculture in public schools. And Article 6,

SEE FOR 110

TULSAWORLD.MAGAZINE.COM

## THIS DOG WON'T HUNT: THE CASE AGAINST SQ 777

**O**n the ballot this November is a measure that is not needed, is poorly written and carries in its wording the potential for creating great harm. State Question 777, the so-called "Right to Farm" measure, might better be labeled 666, the "Right to Harm."

This measure amends Article 2 of the Oklahoma Constitution, which is our Bill of Rights, by adding a new right: "The Legislature shall pass no law which abridges the right of citizens and lawful residents of Oklahoma to employ agricultural technology and livestock production and ranching practices without a compelling state interest."



**DREW  
EDMONDSON**

*Former attorney  
general  
of Oklahoma,  
chairman of  
the Oklahoma  
Stewardship  
Council*

"Compelling state interest" is a legal term. It is a description the courts have attached to measures that require "strict scrutiny," such as laws that discriminate on the basis of race or religion or restrict voting rights. You could consult law books on these terms or just Google them. The Legislature apparently did neither.

This is important: Where a compelling state interest is required, any measure passed by the Legislature or a municipality or by a vote of the people, pertaining to agriculture, would be presumed to be unconstitutional. It also applies to municipalities because the next paragraph of the measure refers to ordinances, and SQ 777 creates a constitutional protection for agriculture. If the state cannot violate it, neither could a city or a county.

For the law or ordinance or zoning regulation to be upheld, its defenders must not only prove a compelling state interest, they must also prove that no less restrictive means would accomplish the purpose. This is a very heavy, virtually impossible burden.

By contrast, the vast majority of legislative enactments, if challenged in court, are (1) presumed to be constitutional, and (2) must only show a "legitimate" state interest, not "compelling," and (3) must be rationally related to meeting that interest.

Oklahoma passed a law several years ago banning the cultivation of castor plants, grown and sold as decorative plants for yards. The rationale for the law was that ricin, a chemical that can be used by terrorists, might be manufactured from the beans of this plant. Based on my 16 years of reviewing statutes as attorney general, it is my opinion that this statute would not have survived lawsuits if 777 had been on the books.

More important, new protections to prevent waste from massive hog and chicken farms running into our waters could be challenged and thrown out. If Oklahoma abandons its ability to pass reasonable laws regulating agriculture and protecting the environment, we would see more federal involvement from the EPA and other agencies in these areas, not less.

Nothing in 777 would prevent the Legislature from repealing measures to protect our waters or land, as was done in North Dakota after a similar measure passed in that state. And, if repealed, neither a future Legislature nor a vote of the people could put them back.

SEE AGAINST 110

TULSA WORLD MAGAZINE 109



**VERSUS.**

**EXPERTS TAKE A SIDE, AND FACE OFF ON THE FIGHT'S ISSUES**

**THE  
ISSUE:  
RIGHT  
TO  
FARM**

**EDITED BY WAYNE GREENE**  
TULSA WORLD MAGAZINE

**TWO SIDES TO THE STORY**

Right to Farm. It's a word that's been used with increasing frequency in recent years. But what does it mean?

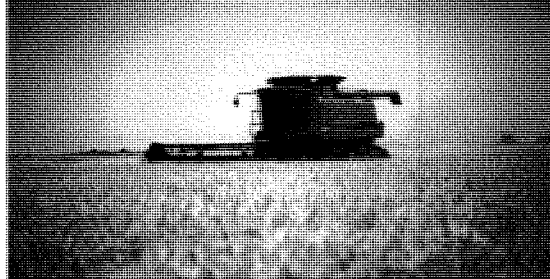
State Representative Timmy Boudreau says, "The legislature has passed laws that would allow farmers to sue if they are forced to sell their land to a developer or if they are forced to sell their land to a developer."

Proposed law 777 would prevent "the legislature from passing laws that would allow farmers to sue if they are forced to sell their land to a developer or if they are forced to sell their land to a developer."

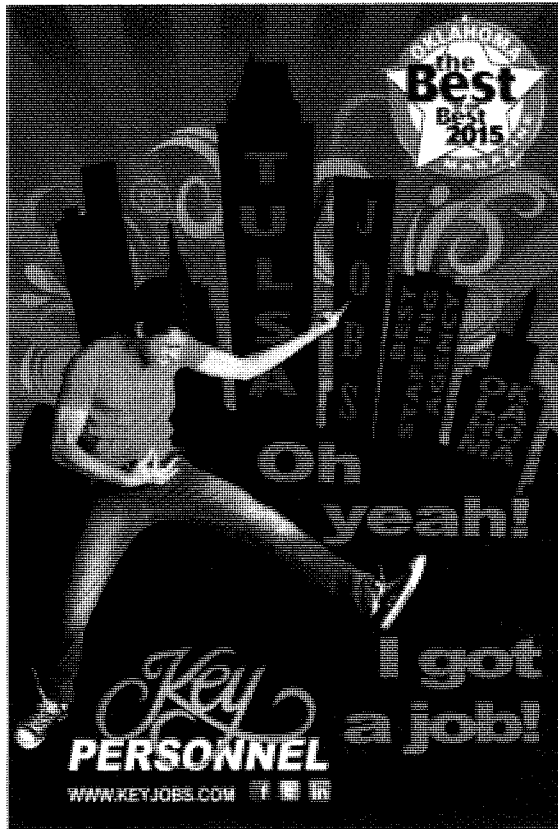
Opponents say it will do more to protect family farms, which have long been vital to Oklahoma's culture and economy.

Opponents say it will do more to protect family farms, which have long been vital to Oklahoma's culture and economy.

Opponents say it will do more to protect family farms, which have long been vital to Oklahoma's culture and economy.



State Question 777 will appear on the Nov. 8 general election ballot. Tulsa World Magazine



110 TULSA WORLD MAGAZINE

**FOR FROM 109**

Section 31a established a Board of Regents for agricultural and mechanical schools and colleges. Our founders took these deliberate steps to promote and protect agriculture. The time has come for Oklahoma to build upon those protections for farming and ranching in Oklahoma.

State Question 777 would afford Constitutional guarantees to farmers and ranchers to engage in agricultural operations. It would also prohibit the Legislature from passing laws obstructing the right to farm without a compelling state interest. The hyperbole has reached epic levels by those who oppose State Question 777. This question is not an effort to empower corporate farms to operate without regulation in Oklahoma. Of the 80,100 farms in Oklahoma, more than 73,000 are family farming operations. State Question 777 doesn't end all regulation of farming and ranching in Oklahoma, nor does it give farmers and ranchers a license to pollute. Farmers and ranchers are stewards of the land; they have every incentive to ensure the land and water will be able to sustain future generations of farmers and ranchers. State Question 777 simply protects the ability of family farmers and ranchers in Oklahoma to continue to do what they've done for generations: feed the world. When voters go to the polls in November, they should support State Question 777 and protect the legacy of Oklahoma agriculture.

**AGAINST FROM 109**

"Agricultural technology" and "livestock production practices" are not defined in the measure and change with time. Are we so certain that no technology or practice, no new chemicals or genetic modifications, no additives to feed or seed, will ever be invented that we might want to regulate or control? The backers of SQ 777 ask us to give up our right to do so.

Even the people, by initiative petition, could not enact reasonable regulations pertaining to the future practices of the agricultural industry. Nor would the legislature or the people be able to enact protections for small farm operations against the predatory practices of the food processors and livestock collectives.

In 2008, Oklahoma added to its Bill of Rights the right to hunt and fish but that was subject to "reasonable regulation as prescribed by the Legislature and the Wildlife Conservation Commission." It received more than 80 percent of the vote. SQ 777 says clearly by the compelling state interest standard it requires: "subject to no future reasonable regulation by the Legislature, municipalities or the people of this state." That absolute freedom to harm, enjoyed by no other industry or interest in the state, should be rejected. Vote "No" on 777.

TULSAWORLD MAGAZINE C



## Tulsa World endorsement: Against State Question 777

By World's Editorial Writers | Posted: Sunday, October 2, 2016 12:00 am

Both sides in the debate over State Question 777 — the so-called Right to Farm proposal — have been guilty of excesses in their arguments.

The proponents have suggested that only a state constitutional measure could shield cherished rural values of decent working farmers from the meddling hands of bureaucrats and lunatic eco-extremists.

The opponents have claimed that, were the measure to pass, almost any imaginable cruelty — up to and including ramming a steel rod down a puppy's throat to “debarb” it — would become legal and have the same protection as free speech in Oklahoma.

We don't think either nightmare scenario is likely, and chalk up the exaggerated rhetoric to the need to get voters excited ... and the desire to raise money.

A rational review of SQ 777 comes to these conclusions: It solves no pressing problem in the state, and it could create some.

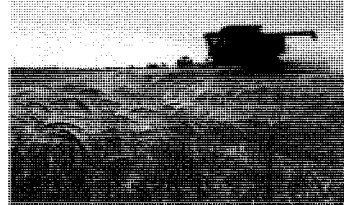
The measure would prevent future state and local regulation on farming and livestock activities unless the state has a compelling state interest, a very high legal standard shared by basic civil rights. Rules that were on the books before Dec. 31, 2014, and regulations in several areas — trespassing laws, for example — are exempt.

It wouldn't wipe animal cruelty laws off the books. Neither would it effectively protect the lifestyles of grandpa's farm. In fact, the measure would give enormous legal protections to big-time corporate agriculture, which is a greater threat to the iconic homestead than the Legislature.

Agriculture remains an amazingly powerful interest group at the state Capitol, and Exhibit A is the legislative vote to put SQ 777 on the ballot in the first place. Frankly, farmers have little to fear from state lawmakers messing with their business.

And when that's not true, shouldn't the people through their elected representatives, be able to regulate an industry that affects land, water and food? You say the state shouldn't regulate those things. Why not?

The first rule of constitutional amendments should be: First, do no harm, and in its potential for unintended consequences — especially in the state's ability to protect its own environment — we fear harm in SQ 777.



SQ 777

Crews harvest wheat on Adkins Farm off of State Highway 9 in Goldsby in June 2015.  
STEVE SISNEY/The Oklahoman

1/19/2017

Tulsa World endorsement: Against State Question 777 - Tulsa World: Editorials

Farming is very important, but SQ 777 doesn't solve any real Oklahoma problems, and its potential to create new problems in the future makes it bad policy.

Senator BOOKER. Thank you, sir.

Senator CARPER. Mr. Pruitt, earlier today I mentioned that had submitted a list of about 50 questions to you shortly after Christmas, asked for a response by January 9th and got none. I asked my staff this morning if we had gotten written responses to those questions as of today. And I understand that we have not.

You're going to receive a number of questions for the record from us, Democrats and Republicans. And I am anxious to see what your responses are to those questions. We need your answers, and we need good answers. And the idea of waiting 2 or 3 weeks and not providing anything is just unacceptable. So just to put that out there.

And I would like to ask you a question.

Mr. PRUITT. If I may offer this, I tried to, and I talked to the Chairman about this, with respect to your questions I submitted, I was respecting the protocol of the Chair in responding to those questions and committed that those questions would be answered for the record post the hearing. And that is what I was directed to do by the Chairman.

Senator CARPER. All right.

Second, based on your other statements, I just want to clarify something. If confirmed, can we have your assurances that the EPA will continue to regulate mercury emissions from power plants under section 112 of the Clean Air Act, and you will not defer to the States?

Mr. PRUITT. Mercury, under the section 112, is something that EPA should deal with and regulate.

Senator CARPER. Thank you. I came across a quote from you that said—I think you stated the following about an EPA rule involving cross-State smog pollution. And the EPA rule, I think you were quoted as saying, “threatened the competitive edge Oklahoma has enjoyed for years with low cost and reliable electric generation. This low cost energy not only benefits Oklahoma manufacturers but gives our State a considerable edge in recruiting new jobs.” And the question I would ask, at the peril of those of us who live in States that are downwind from where Oklahoma might be, as you lower your energy costs to benefit Oklahomans, I just want to ask you, in the spirit of the Golden Rule, keep in mind what that means for us. Keep in mind what that means for us.

Because in my State, I said earlier on, I can shut down my State's economy, and we still would be out of compliance on any number of Clean Air requirements. And that was not because of anything we put up in the air but because of what folks out to the west put up in the air. It eventually came down to the end of America's tailpipe. I would just ask that you do that.

And last, we have a chart, you see this chart. It's an interesting chart. This is what we call a busy chart. It's a busy chart. It looks at the issue of cross-border pollution, as you can see, with this chart, smog, pollution in our country moves all over the place. I mean, all over the place. As I mentioned, as Delaware's Governor, we shut down my State in order to come in compliance with Clean Air challenges. Under your vision for EPA it sounds like States will be left on their own to deal with this very complex problem that we see demonstrated right here. I would just ask, how do States

address this kind of pollution you see demonstrated here without the assistance of the EPA?

Mr. PRUITT. Well, Senator, as I indicated earlier today, I believe that as an example, the Cross-State Air Pollution Rule, to which you just referred, is a very important authority that the EPA needs to exercise. It needs to do so within the processes that have been provided by the statute. But it is something that is very important for the EPA to perform and execute.

Senator CARPER. All right. Mr. Chairman, I have a unanimous consent request to submit for the record, Mr. Chairman, a number of letters with concerns about and many letters in opposition to, some cases for, other cases opposition to Mr. Pruitt's nomination. There are 14 in all.

Senator BARRASSO. Without objection.

[The referenced letters follow:]

AG Pruitt Opposition Letters

- 1) Former State Environmental Agency Heads
- 2) National Parks Conservation Association (NPCA)
- 3) Green Groups
- 4) BlueGreen Alliance
- 5) League of Conservation Voters
- 6) African American Environmental Justice Organizations
- 7) Clean Water Action
- 8) Faith Organizations
- 9) Health Professionals
- 10) Latino Organizations
- 11) Asbestos Disease Awareness Organization (ADAO)
- 12) National Congress of American Indians
- 13) Campaign Legal Center

**Achieving Community Tasks Successfully • Air Alliance Houston**  
**Coalition of Community Organizations • Community In-power & Development Association**  
**Concerned Citizens of Melia • Connecticut Coalition for Environmental Justice**  
**Cooperation Jackson • East New Orleans Advisory Commission**  
**Education, Economics, Environmental, Climate & Health Organization (“EECHO”)**  
**Deep South Center for Environmental Justice • Global Environmental Justice Project**  
**Green Door Initiative • Harambee House, Inc. • Hip Hop Caucus • Jesus People Against Pollution**  
**Kingdom Living Temple • Lower Ninth Ward Center for Sustainable Engagement**  
**Mobile Environmental Justice Action Coalition**  
**NAACP - Environmental and Climate Justice Committee • NAACP – Flint, Michigan Branch**  
**RoadMap Consulting • Unity in the Family Ministry • Urban Planning and Environmental Policy**  
**WeACT for Environmental Justice**

January 17, 2017

Honorable John Barrasso  
 Chairman  
 Committee on Environment and Public Works  
 United States Senate  
 Washington, DC 20510

Honorable Thomas R. Carper  
 Ranking Member  
 Committee on Environment and Public Works  
 United States Senate  
 Washington, DC 20510

Dear Senators Barrasso and Carper:

Please name one achievement by Scott Pruitt, as Oklahoma State Attorney General, that has improved the environment or protected civil rights. Don't bother to Google it because the answer is NONE.

As the African American leaders of environmental justice organizations, we urge the Senators serving on the Environment and Public Works Committee to oppose the confirmation of Scott Pruitt as Administrator of the U.S. Environmental Protection Agency. We are outraged that Mr. Pruitt promises to set back and dismantle the policies and programs we have worked for more than 30 years to develop with community organizations across the nation. These policies were developed pursuant to both federal civil rights laws and environmental laws in order to remove racial disparities in environmental protection.<sup>1</sup>

As you know, the Senate's Environment and Public Works Committee has scheduled a hearing on January 18, 2017 to examine the nomination of Mr. Pruitt to the office of the EPA Administrator by President-Elect Donald Trump. There is nothing in Mr. Pruitt's record as the current Oklahoma State Attorney General to demonstrate that he would be dedicated to the mission of the EPA, which is to protect human health and the environment. Nor does his career indicate any action to improve environmental conditions in people of color communities, who are disproportionately burdened with pollution.

Mr. Pruitt seeks to rise to the position of EPA Administrator as a reward for his efforts to block the EPA from mitigating the harmful effects of pollution “outside the fence-line” of toxic industries.<sup>2</sup>

<sup>1</sup> See, for example, Obama Administration's Memorandum of Understanding on the President's Executive Order No. 12,898 (August 4, 2011). President's Executive Order No. 12,898, Federal Actions to Address Environmental Justice in Minority Populations and Low-income Populations (February 11, 1994). Presidential Memorandum to the Heads of All Departments and Agencies (February 11, 1994). The U.S. Environmental Protection Agency's regulations implementing Title VI of the Civil Rights Act of 1964 are found in 40 C.F.R. part 70.

<sup>2</sup> Comment from the Attorneys General of the States of Oklahoma . . . on Proposed EPA Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units, U.S. EPA Docket No. EPA-HQ-OAR-2013-

Let's be clear: the people who live beyond the fence of polluting industrial facilities and suffer the acute, chronic, cumulative and synergistic effects of exposure to pollution are predominantly African American and other people of color.

Mr. Pruitt appears to relish the opportunity to remove standards that are protective of our basic rights to a healthy and safe environment. Case in point: Mr. Pruitt's dogged effort to axe the Obama Administration's Clean Power Plan would have devastating effects on predominantly African American communities. The Clean Power Plan requires the reduction of carbon pollution from power plants. It is the first federal air quality standard to establish requirements for states to achieve environmental justice.<sup>3</sup> These requirements are based on the egregious fact that 78% of power plants are disproportionately located in close proximity to people of color and poor communities.<sup>4</sup> The Clean Power Plan recognizes the vulnerability of people of color and poor communities to the disastrous effects of climate change, which is brought on by the burning of fossil fuels.<sup>5</sup> In the U.S., the largest source of pollution driving climate change is power plants. Additionally, this air quality standard directs states to ensure meaningful and effective participation of vulnerable communities in developing state plans for reducing power plant pollution.<sup>6</sup>

We recognize that the biggest climate and environmental threats to our nation and planet are fueled, in part, by racial disparities in environmental protection. Industrial sites and major transportation routes are disproportionately located in and around predominantly African American neighborhoods, where residents are daily exposed to the smokestack and vehicle emissions that warm the planet as well as trigger asthma attacks and cause other severe health problems. We cannot effectively confront the threats of climate change by confirming Mr. Pruitt, a climate denier, to the post of EPA Administrator. We also cannot pursue remedies for racial disparities in environmental protection with Mr. Pruitt at the helm of the EPA, as he has shown himself to be hostile to preventing pollution that occurs disproportionately in communities of color.

We need an EPA Administrator who will work to remedy the persistent and pervasive problem of environmental racism that results in:

- 79% of African Americans living in polluted neighborhoods;<sup>7</sup>
- African American children being three to five times more likely than white children to be hospitalized or die from asthma;<sup>8</sup>
- African Americans in 19 states being more than twice as likely as whites to live in neighborhoods with high pollution levels, compared to Hispanics in 12 states and Asians in 7 states;<sup>9</sup>

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0602, November 14, 2014. *See also* Complaint filed in Oklahoma v. Gina McCarthy, US EPA Administrator, U.S. District Court (Northern District, Oklahoma), Case No. 15-CV-369-CVE-FHM, Complaint filed on July 1, 2015, pp. 8 and 13.

<sup>3</sup> In the Clean Power Plan, the EPA explains that communities located in close geographic proximity to power plants have a higher percentage of people of color and people with low-incomes than national averages (Federal Register, Vol. 80, No. 205, Part III, October 23, 2015, p. 64670). The EPA recognizes that communities of color and poor communities are disproportionately affected by, and less resilient to the impacts of climate change (*id.* at pp. 64670, 64915).

<sup>4</sup> U.S. Environmental Protection Agency, *EJ Screening Report for the Clean Power Plan*, July 30, 2015, p. 113.

<sup>5</sup> *See* note 3.

<sup>6</sup> *Id.*

<sup>7</sup> David Pace, *Minorities Suffer Most from Industrial Pollution*, ASSOCIATED PRESS, December 14, 2005.

<sup>8</sup> American Lung Association, *Key Facts about Asthma*. *See also* Asthma and Allergy Foundation of America, *Information about Asthma, Allergies, Food Allergies*, 2015.

<sup>9</sup> *Id.*

- more than 68% of African Americans living within 30 miles of a coal-fired power plant – the distance within which the maximum negative health effects of the smokestack plume are expected to occur – compared with 56% of whites and 39% of Latinos who live in the same proximity to a coal-fired power plant;<sup>10</sup>
- African Americans being more vulnerable than whites to climate change, and less likely than whites to recover from disastrous weather events;<sup>11</sup>
- the percentage of African Americans living near the fence line of a chemical plant is 75% greater than for the US as a whole, and the percentage of Latinos is 60% greater;<sup>12</sup> and
- predominantly African American neighborhoods with households incomes between \$50,000 and \$60,000 being more polluted than predominantly white neighborhoods with households incomes below \$10,000.<sup>13</sup>

There is nothing in Mr. Pruitt's record as Oklahoma State Attorney General to indicate that he would be sensitive to and willing to help communities throughout the United States, where African Americans and other people of color disproportionately suffer and die from unhealthy environmental conditions, which also contribute to climate change. For all of the reasons stated above, we urge you to take a stand in opposing the confirmation of Mr. Pruitt as EPA Administrator.

Should you have any questions, please do not hesitate to contact Dr. Beverly Wright, Executive Director of the Deep South Center for Environmental Justice, Inc., 1631 Elysian Fields Avenue, New Orleans, LA 70118, BeverlyLWright@gmail.com, 504-383-3563.

Sincerely,

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Ms. Francis Gilreast, President  
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Dr. Charlotte Keys, Executive Director  
Jesus People Against Pollution  
P.O. Box 464  
Colombia, MS 39429

<sup>10</sup> Clean Air Task Force for Clear the Air, *Air of Injustice: African Americans and Power Plant Pollution*, 2002.

<sup>11</sup> J. Andrew Hoerner and Nia Robinson, *A Climate of Change: African Americans, Global Warming, and a Just Climate Policy for the U.S.*, Environmental Justice & Climate Change Initiative, 2008.

<sup>12</sup> Environmental Justice and Health Alliance for Chemical Policy Reform, *Who's in Danger? Race, Poverty, and Chemical Disasters: A Democratic Analysis of Chemical Disaster Vulnerability Zones*, 2014.

<sup>13</sup> Liam Downey and Brian Hawkins, *Race, Income and Environmental Inequality in the United States*, SOCIOLOGICAL PERSPECTIVE, December 1, 2008, 51 (4): 759-781.



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January 17, 2017

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Tony Rich

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The Honorable John Barrasso  
Chairman, U.S. Senate Environment and  
Public Works Committee  
307 Dirksen Senate Office Building  
Washington DC 20510

The Honorable Tom Carper  
Ranking Member, U.S. Senate Environment and  
Public Works Committee  
513 Hart Senate Office Building  
Washington DC 20510

Dear Chairman Barrasso and Ranking Member Carper,

On behalf the Asbestos Disease Awareness Organization (ADAO), we oppose the nomination of Oklahoma AG Scott Pruitt as U.S. Environmental Protection Agency (EPA) Administrator. We are deeply concerned that he lacks the qualifications and understanding to lead the EPA and urge the Senate to deny his confirmation.

The EPA is paramount in protecting the American public and our environment from toxic and destructive pollutants — like deadly asbestos — yet the President-elect's nominee to run this agency vehemently disagrees. Pruitt is openly pro-business, anti-regulation, and anti-science. In fact, Scott Pruitt's own LinkedIn profile<sup>1</sup> proudly boasts having filed 14 lawsuits against the EPA and its "activist agenda." He has no formal training, education or professional experience in any of the physical sciences.

Even more concerning than Pruitt's lack of relevant scientific background is his exhibited willingness to be a mouthpiece and champion for corporate interests. His penchant for siding with industry is of significant concern to the public health and environmental communities. The asbestos industry has dumped millions into funding "independent research" that claims asbestos to be safe. This junk science — aided by weak chemical regulation laws — foiled a 1989 attempt by the EPA to ban<sup>2</sup> the known human carcinogen.

This summer, Congress delivered a huge win to public health when it passed the Lautenberg Chemical Safety Act (LCSA)<sup>3</sup>, an historic bipartisan and bicameral bill that finally empowered the EPA to evaluate and regulate toxic chemicals. However, a Pruitt-led EPA would be more susceptible than ever to industry-backed junk science that could derail progress toward meaningful chemical regulations. The chemical industry is already positioning itself to exert influence over the Lautenberg Act implementation process, as evidenced by their August 24, 2016 letter to EPA.

ADAO urges the U.S. Senate vote against confirming AG Scott Pruitt's nomination. America needs an EPA Administrator with the education, understanding, willingness to stand up against corporate interests in order to ensure TSCA is implemented based on the best possible science, in the best interest of public health and the environment. Scott Pruitt's background and experience prove he is unqualified to serve this role.

Sincerely,

Linda Reinstein, CEO/Co-Founder, Asbestos Disease Awareness Organization (ADAO)

<sup>1</sup> <https://www.linkedin.com/in/e-scott-pruitt-3b771653>

<sup>2</sup> <https://www.epa.gov/asbestos/us-federal-bans-asbestos>

<sup>3</sup> <http://1.usa.gov/28TTzSL>



January 13, 2017

United States Senate  
Washington, DC 20510

Dear Senator:

As members of the BlueGreen Alliance, a coalition of the nation's largest labor unions and environmental groups, collectively representing millions of members and supporters, we urge you to oppose the nomination of Scott Pruitt to be Administrator of the Environmental Protection Agency (EPA).

As Attorney General of Oklahoma, Scott Pruitt has sued the EPA numerous times over its efforts to provide Americans with clean air, clean water, and a safe and healthy environment. This includes a lawsuit challenging common-sense methane pollution safeguards. Plugging these wasteful methane leaks will not only protect communities, workers, and the environment, but will create and sustain thousands of good-paying jobs finding and fixing leaked natural gas that could be powering homes. He also has targeted clean water, suing the EPA over pollution standards for more than half of the nation's waterways, some of which feed into the drinking water supplies of 117 million citizens. Someone who has dedicated his career to going after our nation's bedrock environmental and public health laws - the very health protections that the EPA is mandated to protect - is not suited to run the EPA.

Scott Pruitt has also consistently ignored the well-established science showing that our climate is changing, claiming that it is "far from settled." Climate change is real and is threatening communities and livelihoods around the world. We have an opportunity to create and maintain good-quality, family-sustaining jobs in the clean economy. Policies that stimulate investment in clean energy and energy-efficient technologies will help spur innovation, investment, and manufacturing while ensuring that the U.S. does not fall behind in the development and commercialization of these technologies that are driving a growing share of economic growth around the world. America should be a leader in addressing climate change and domestically

deploying the innovative clean technology of the future. Someone who recognizes neither the threat nor the opportunity of climate change is not suited to run the EPA.

Unfortunately, Scott Pruitt's shortcomings are not limited to environmental protection but extend to protecting workers' rights as well. As an Oklahoma State Senator, Pruitt voted for a Constitutional Amendment to make Oklahoma a right-to-work state. Additionally, while employees of the state were being laid off and Oklahoma faced a \$1.3 billion budget deficit, Pruitt increased the Attorney General's office expenses by 40 percent and added nearly 60 employees to sue the administration over a variety of worker and environmental protections. While other agencies downsized, Pruitt moved one of his offices near his home into the luxurious Bank of America Tower, more than tripling its rent and increasing its space to more than 10,000 square feet. Someone who used his office in this manner when he should have been protecting working people and the environment is not suited to run the EPA.

We cannot afford to reverse the progress we've made in cutting pollution, reducing exposure to toxic chemicals in the workplace, addressing climate change, and in creating and sustaining quality jobs through cleaner energy and energy efficiency. Stopping that progress or backsliding—whether by backing out of the Paris agreement, weakening the implementation of the Lautenberg Chemical Safety Act (LCSA) and other critical safeguards, or reversing policies that are driving manufacturing recovery, innovation, and job creation while reducing pollution and greenhouse gas emissions—would be a terrible decision for workers and the environment.

Allowing Scott Pruitt—a man who has spent his entire career demonizing attempts to protect our environment and the health and safety of working people—to become our next EPA Administrator would be a large step backward.

We need to fight together for an economy that works for all of us. We can safeguard workers and grow quality jobs. We can protect our environment by making our energy cleaner and our homes and businesses more energy efficient—all while creating the kinds of jobs Americans need to get ahead. We don't have to choose between safe workplaces or a clean environment and good jobs. We can and must have both.

We urge you to vote against the confirmation of Scott Pruitt as EPA Administrator.

Sincerely,

United Steelworkers (USW)  
Sierra Club  
Natural Resources Defense Council (NRDC)

Service Employees International Union (SEIU)  
Environmental Defense Action Fund  
Union of Concerned Scientists (UCS)  
International Union of Bricklayers and Allied Craftworkers (BAC)



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[www.campaignlegalcenter.org](http://www.campaignlegalcenter.org)

January 18, 2017

Mr. Kevin S. Minoli  
Principal Deputy General Counsel &  
Designated Agency Ethics Officer  
U.S. Environmental Protection Agency  
Mail Code: 2355A  
1200 Pennsylvania Ave., NW  
Washington, DC 20460

Dear Mr. Minoli:

On behalf of the Campaign Legal Center, we write concerning the January 3, 2017, ethics agreement addressed to you from Edward Scott Pruitt, nominee to be the Administrator of the Environmental Protection Agency (EPA).<sup>1</sup> A copy of this letter is also being sent to Mr. Walter M. Shaub, Jr., Director of the Office of Government Ethics.

Whatever policy agenda the President's nominee has for the EPA, it is a central feature of our government that the agenda be pursued free of legal conflicts of interest. Presumably, in an effort to satisfy that obligation, Mr. Pruitt's ethics agreement describes certain steps he will take if confirmed as EPA Administrator to limit his participation in litigation against the agency that he initiated or joined as Oklahoma Attorney General.

However, given Mr. Pruitt's role in leading and coordinating litigation against the same agency he hopes to lead, the plan described in his ethics agreement is insufficient to avoid actual or apparent conflicts of interest, and would cause members of the public to question his impartiality in the conduct of his duties, contrary to his obligation to "ensure that every citizen can have complete confidence in the integrity of the Federal Government." 5 C.F.R. § 2635.101(a).

According to Mr. Pruitt's personal campaign website (<http://scottpruitt.com/meet-scott/>), as Oklahoma Attorney General he has been "a national leader in the fight against . . . the EPA's intrusion into property rights." Mr. Pruitt's website boasts that:

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<sup>1</sup> Available on the Office of Government Ethics website, [https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/1D30B3387FC4E8C0852580A1002C7D1E/\\$FILE/Pruitt.%20Edward%20Scott%20%20%20finalEA.pdf](https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/1D30B3387FC4E8C0852580A1002C7D1E/$FILE/Pruitt.%20Edward%20Scott%20%20%20finalEA.pdf)

Mr. Kevin S. Minoli  
1-18-17

p. 2

“Pruitt led a coalition of thirty states who have obtained an injunction barring the EPA’s ‘Waters of the United States’ rule, which seeks to greatly expand the federal governments regulatory jurisdiction under the Clean Water Act.”

Mr. Pruitt’s campaign website also states:

“Pruitt has led a nearly thirty state coalition of states who obtained an unprecedented injunction from the Supreme Court barring the EPA’s ‘Clean Power Plan’ from going into effect. The *Wall Street Journal* Editorial Board noted that ‘Oklahoma AG Scott Pruitt deserves particular credit for developing the federalist arguments and exposing how the Clean Power Plan commandeers states.’”

Both of the cases against EPA described on Mr. Pruitt’s campaign website are ongoing, active cases. If confirmed as the head of the EPA, Mr. Pruitt will be in a position to decide to defend—or settle—the same cases that he initiated or supported in his role as Oklahoma Attorney General. According to some estimates, as Oklahoma Attorney General Mr. Pruitt has been involved in litigation opposing the EPA in at least 26 cases; nine of those cases appear to ongoing.

For Mr. Pruitt now to participate as EPA Administrator in litigation he initiated, organized, or otherwise supported would present an actual and apparent conflict of interest.

Mr. Pruitt’s ethics agreement does not explicitly address these lawsuits, but suggests that, one year after being confirmed, he may attempt to participate as EPA Administrator in ongoing matters he initiated and supported as Oklahoma Attorney General—and that he will seek waivers to participate in those matters before that period expires. The agreement also raises the possibility he would be free as EPA Administrator to participate in these lawsuits if Oklahoma were to withdraw or waive any conflicts.

The relevant paragraph states:

Upon confirmation, I will resign from my position as Attorney General of the State of Oklahoma. For a period or one year after my resignation, I will have a “covered relationship” under 5 C.F.R. § 2635.502 with the State of Oklahoma. Pursuant to 5 C.F.R. § 2635.502(d), I will seek authorization to participate personally and substantially in particular matters involving specific parties in which I know the State of Oklahoma is a party or represents a party.

The actions he proposes are unacceptable, and will not resolve the conflicts that would arise from his participating as EPA Administrator in litigation against the EPA that he initiated or otherwise participated in.

5 C.F.R. § 2635.502, often known as the “impartiality rule,” requires recusal when an employee has a “covered relationship” with a party to a particular matter, and the circumstances are such that a reasonable person would question the employee’s impartiality were they to participate in the matter.

Mr. Kevin S. Minoli  
1-18-17

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An employee has a "covered relationship" with a person if within the last year, they served as an officer of, or attorney for, that person. 5 C.F.R. § 2635.02(b)(1)(iv). Mr. Pruitt's ethics agreement acknowledges that, given his role as Attorney General of Oklahoma within the past year, he has a "covered relationship" with the state.<sup>2</sup> And given Mr. Pruitt's role in litigation against the EPA, the circumstances are such that a reasonable person would question his impartiality as EPA Administrator in that same litigation.

However, by limiting Mr. Pruitt's recusal obligations to a one-year period, his ethics agreement ignores the purpose of the relevant regulations and adopts an overly narrow view of their application.

The Standards of Ethical Conduct for Executive Branch Employees, of which the impartiality rule is part, require that employees avoid any actions that create the appearance of a conflict of interest, 5 C.F.R. § 2635.101(b)(14), so that the public can have complete confidence in the integrity and appearance of administrative decisionmaking, *id.* § 2635.101(a).

The impartiality rule, 5 C.F.R. § 2635.502, is not intended to be read in the narrow and mechanical manner reflected in Mr. Pruitt's ethics agreement. Indeed, the rule expressly anticipates "circumstances other than those specifically described in this section [that] would raise a question regarding [an employee's] impartiality," and indicates that an agency may require an employee to recuse in such circumstances. 5 C.F.R. § 2635.502(a)(2); *see also* OGE DO-06-029 at 7.

By any reasonable standard, the circumstances here require Mr. Pruitt's recusal for the duration of the litigation, and regardless of whether Oklahoma withdraws from a suit or waives any conflict.

The conflict or appearance of a conflict arising from Mr. Pruitt participating as EPA Administrator in litigation that he initiated or supported against the agency does not diminish by the passage of one year. Pruitt's "covered relationship" with Oklahoma triggers the application of 5 C.F.R. § 2635.502, but given that the lawsuits in question may endure for several years, the application of the rule in this instance must endure as well.

Mr. Pruitt also must continue to recuse himself from EPA lawsuits that he initiated or supported even if Oklahoma were to withdraw or waive any conflicts. The actual or apparent conflicts that would arise from Mr. Pruitt's participation in these matters are less about his previous relationship with Oklahoma, and more about his central role in advancing the litigation against the EPA. Mr. Pruitt has gone beyond merely representing Oklahoma in these cases: as described on his campaign website, Mr. Pruitt was a driving force behind the suits and personally held himself out as an opponent of the EPA and the challenged rules.

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<sup>2</sup> It is beyond dispute that litigation is a "particular matter involving specific parties" for purposes of 5 C.F.R. § 2635.502. *See* Memorandum from the OGE Director Robert I. Cusick to Designated Agency Ethics Officials, DO-06-029, [http://www.usoge.gov/pages/daeograms/dgr\\_files/2006/do06029.html](http://www.usoge.gov/pages/daeograms/dgr_files/2006/do06029.html); *see also* 5 C.F.R. § 2640.102(f).



Mr. Kevin S. Minoli  
1-18-17

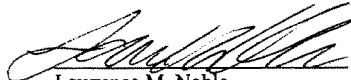
p. 4

Finally, given the real and apparent conflicts posed by the unique circumstances described above, any request from Mr. Pruitt for a waiver should be denied pursuant to 5 C.F.R. § 2635.502(d).

As EPA's designated ethics official, we respectfully request that you take steps to prevent the actual and apparent conflicts of interest that would arise were Mr. Pruitt allowed to participate as EPA Administrator in litigation that he previously initiated or supported against the EPA.

At a minimum, Mr. Pruitt must agree to recuse from participating as EPA Administrator in litigation matters where he previously supported an adverse interest as Oklahoma Attorney General; that such recusal will last for the duration of the litigation, and regardless of whether the State of Oklahoma withdraws or waives any conflicts; and that he will not apply, or be considered eligible, for any waivers from these recusal requirements.

Respectfully submitted,



Lawrence M. Noble  
General Counsel  
Campaign Legal Center  
1411 K Street, NW, Suite 1400  
Washington, DC 20005  
(202) 736-2200

cc: Walter M. Shaub  
Director  
U.S. Office of Government Ethics  
1201 New York Avenue, N.W., Suite 500  
Washington, D.C. 20005

**CREW** | citizens for responsibility  
and ethics in washington

January 17, 2017

Mr. Kevin S. Minoli  
Principal Deputy General Counsel &  
Designated Agency Ethics Officer  
U.S. Environmental Protection Agency  
Mail Code: 2355A  
1200 Pennsylvania Ave., NW  
Washington, DC 20460

**By first class mail**

Re: Ethics Agreement of Edward Scott Pruitt dated January 3, 2017

Dear Mr. Minoli:

Citizens for Responsibility and Ethics in Washington (CREW) writes to express our concern regarding the January 3, 2017, letter to you from Edward Scott Pruitt, available on the website of the Office of Government Ethics, concerning his possible nomination to be Administrator of the United States Environmental Protection Agency (EPA).<sup>1</sup> A copy of this letter is also being sent to Mr. Walter M. Shaub, Jr., Director of the Office of Government Ethics.

In his letter, Mr. Pruitt acknowledges his covered relationship with the State of Oklahoma arising out of his current position as Attorney General of that state, as defined under 5 C.F.R. § 2635.502. He also indicates that he “*will seek* authorization to participate personally and substantially” in “particular matters involving specific parties in which [he] know[s] the State of Oklahoma is a party or represents a party” (emphasis supplied). This deviation from the standard language employed in ethics agreements raises a concern that Mr. Pruitt intends to “switch sides” in the litigation and seek to participate as EPA Administrator, if confirmed, which would present both an actual and an apparent conflict of interest, and therefore would be improper under the governing ethics rules.

As Oklahoma Attorney General, Mr. Pruitt sued EPA at least 14 times,<sup>2</sup> and reportedly has filed briefs opposing EPA in suits brought by others in a number of other cases, at least some of which appear to be ongoing. For Mr. Pruitt now to switch sides and participate as EPA Administrator in any of these matters would present an actual and apparent conflict of interest that is improper under the governing ethics rules. Many factors are present that would cause “a reasonable person with knowledge of the relevant facts to question his impartiality in these matters” and “to question the integrity of the agency’s programs and operations” if he were now

<sup>1</sup>[https://extapps2.oge.gov/201/Presiden.nsf/PAS+index/1D30B3387FC4E8C0852580A1002C7D1E/\\$FILE/Pruitt,%20Edward%20Scott%20%20%20finalEA.pdf](https://extapps2.oge.gov/201/Presiden.nsf/PAS+index/1D30B3387FC4E8C0852580A1002C7D1E/$FILE/Pruitt,%20Edward%20Scott%20%20%20finalEA.pdf)

<sup>2</sup><https://www.documentcloud.org/documents/3290872-Pruitt-v-EPA-a-Compilation-of-Oklahoma-14.html>

to participate in these cases as Administrator. *See* 5 C.F.R. § 2635.502(a), (d). These factors include Mr. Pruitt's leading role in and vigorous prosecution of these cases against EPA; his many public statements demonstrating his fixed and firm views opposed to the EPA rules and standards at issue in these cases; and his close alignment with and aggressive fundraising from private sector parties involved in these cases and opposed to EPA.

As discussed below, any interest the Government may have in Mr. Pruitt's participation in these cases cannot outweigh the concern over these actual and apparent conflicts of interest that would lead reasonable persons to doubt his impartiality and question the integrity of the agency's programs and operations. *Id.* The rules further state that "[a]n employee's reputation for honesty and integrity is not a relevant consideration for purposes of any determination required by this section." 5 C.F.R. § 2635.502(e).

It is essential, therefore, that Mr. Pruitt be recused from any participation in these lawsuits if confirmed.

1. *Necessity of recusal regardless of whether Oklahoma remains a party.* Mr. Pruitt acknowledges that, absent a waiver issued by you pursuant to 5 C.F.R. § 2635.502(d), he may not participate personally and substantially as Administrator in particular matters involving specific parties to which the State of Oklahoma is a party. That necessarily includes the lawsuits at issue here. That undertaking, however, leaves open the possibility that he could participate in such lawsuits if Oklahoma were to withdraw from them. That would hardly eliminate the actual conflict and appearance of conflict.

As Oklahoma Attorney General, Mr. Pruitt initiated, participated in, and pursued each of these lawsuits jointly with his counterparts in as many as 26 other states (the number depending on the matter), and with lawyers representing dozens of companies, trade associations, and other organizations subject to the EPA rules and standards at issue. Mr. Pruitt has acknowledged in many public statements that he prepared, brought, and pursued these matters jointly with these other attorneys general, often operating through the Republican Attorneys General Association (RAGA), of which he was previously chairman or a principal officer. Mr. Pruitt has held numerous meetings related to these cases and the underlying rulemakings with industry co-litigants and other companies and trade associations benefited by his litigation. He has solicited and accepted funds to support such activities from co-litigants and other private parties aligned with his lawsuits, including through RAGA and the associated Rule of Law Defense Fund.

It is therefore essential that Mr. Pruitt be required to recuse himself entirely from each of these matters even if Oklahoma were to withdraw from them or to waive any conflict.

2. *Necessity for recusal to last the full length of litigation.* Mr. Pruitt has committed not to participate in these matters (in the absence of a waiver) only for one year following his resignation as Oklahoma Attorney General. These litigation matters, however, could easily extend more than one year into the future. There would be serious actual and apparent conflicts leading to reasonable doubts about Mr. Pruitt's impartiality if he were to participate in these lawsuits as EPA Administrator at *any point* in their lifetime. It is therefore essential that Mr. Pruitt's recusals last through the full course of each matter.

3. *No grounds for waivers under 5 C.F.R. § 2635.502(d)*. As noted above, Mr. Pruitt's letter indicates that he plans to seek waivers to participate in the matters discussed above despite the real and apparent conflicts that his participation would pose. Mr. Pruitt's waiver request for any of these matters should be denied based on consideration of the relevant factors listed under that regulation.

The factors to be considered by the agency designee under 5 C.F.R. § 2635.502(d) include:

- (1) The nature of the relationship involved;
- (2) The effect that resolution of the matter would have upon the financial interests of the person involved in the relationship;
- (3) The nature and importance of the employee's role in the matter, including the extent to which the employee is called upon to exercise discretion in the matter;
- (4) The sensitivity of the matter;
- (5) The difficulty of reassigning the matter to another employee; and
- (6) Adjustments that may be made in the employee's duties that would reduce or eliminate the likelihood that a reasonable person would question the employee's impartiality.

**Factor (1).** The nature of the relationship involved weighs strongly against a waiver. Mr. Pruitt's prior position as Oklahoma Attorney General made him the principal, top-level official who determined the state's position in each of these cases. Mr. Pruitt's joint prosecution of each case with his fellow attorneys general and other allied parties made him a principal determinant of the position of all the allied parties in each of the cases. In none of these matters was he a lower-level functionary or delegate carrying out a higher Oklahoma official's decisions. And, indeed, it is possible that Mr. Pruitt's failure to recuse himself from these cases would violate the Oklahoma Rules of Professional Conduct for attorneys, further demonstrating that Mr. Pruitt's relationship to these cases argues against the propriety of a waiver, and that Mr. Pruitt's participation would create a significant appearance of a conflict of interest. 5 O.S. § 1-App. 3A, at Rule 1.9. These facts lead to the strongest possible real and apparent conflicts of interest, and the strongest possible basis for a reasonable person to question his impartiality if he were to participate as EPA Administrator.

**Factor (3).** The nature of his role and the exercise of discretion in it weigh strongly against a waiver. As EPA Administrator, Mr. Pruitt would occupy EPA's most substantive and visible role, and if granted a waiver, he would have the most central task in the agency of directing its position in these cases. To the extent that EPA has legal discretion in any of these matters, for Mr. Pruitt to exercise that discretion in making or directing decisions relevant to the litigation would create an actual conflict. It would also create the strongest possible appearance

of conflict, as well as the strongest possible basis for a reasonable person to question his impartiality.

Factor (4). The lawsuits Mr. Pruitt filed or participated in against the EPA, by their nature, challenge a wide variety of rules and policies that represent the EPA's exercise of its most significant statutory obligations. A real or perceived conflict of interest, therefore, in the agency's conduct of these lawsuits presents a significant risk to the agency's credibility and ongoing ability to comply with the will of Congress, in these areas and perhaps in others as well.

Factor (5) and (6). Neither of these factors would justify a waiver. Another EPA appointee or another agency official could be assigned to participate in these cases, provided that person did not also have either real or apparent conflicts of interest causing a reasonable person to question that person's impartiality. Further, there is no feasible adjustment in the Administrator's duties other than total recusal from these matters that could reduce or eliminate the actual or apparent conflicts that would be presented by Mr. Pruitt's participation.

For the foregoing reasons, we respectfully request that you take the necessary steps as EPA's designated ethics official to avoid what would be severe actual and apparent conflicts of interest, as well as to avoid the concern about impartial decision-making that would present a significant risk to the agency's ongoing ability to meet its statutory obligations, by publicly clarifying that if confirmed as Administrator:

- (1) Mr. Pruitt will be recused from participating on EPA's behalf in each of the litigation matters listed on the attachment;
- (2) His recusal will extend to all parties in each such matter;
- (3) His recusal will last the life of each such matter; and
- (4) He will not be granted waivers from such recusal in any of these matters.

Sincerely,



Noah Bookbinder, Executive Director  
Citizens for Responsibility and Ethics in Washington

cc: Walter M. Shaub, Jr.  
Director  
U.S. Office of Government Ethics  
1201 New York Avenue, N.W., Suite 500  
Washington, DC 20005



January 17, 2017

Dear Chairman Barrasso, Ranking Member Carper, and members of the Senate Environment and Public Works Committee:

Clean Water Action, on behalf of our nearly one million members, urges you to reject Oklahoma Attorney General Scott Pruitt for Environmental Protection Agency (EPA) Administrator. Mr. Pruitt has a long record of siding with industry polluters instead of protecting communities from pollution. This alarming conflict of interest clearly makes him unqualified to head an agency whose very mission is to protect public health and the environment.

Americans expect and deserve an EPA administrator who demonstrates a commitment to protect our health and environment. Scott Pruitt has made a career out of suing EPA to prevent the agency from doing its job to protect our air, land, and water. Many of these lawsuits have been unsuccessful, such as his failed attempt to block EPA requirements for coal-fired power plants in Oklahoma to install air pollution control scrubbers to reduce harmful emissions.

Scott Pruitt does not support commonsense clean water protections. As Oklahoma Attorney General, Mr. Pruitt was one of the first state AGs to sue EPA to overturn long overdue safeguards for vital water resources that feed the drinking water sources for at least one in three people, including 2.3 million people in Oklahoma.

Scott Pruitt has repeatedly brought these types of lawsuits against EPA claiming the agency is trampling on states' rights, yet his own record reveals that he does not respect the right of citizens in his own state to clean water. Since taking office as AG in 2010, Mr. Pruitt halted a lawsuit to force Arkansas chicken farmers to abide by Oklahoma's water pollution standards for the Illinois River. His inaction has put the profits of out-of-state agribusiness over the health of his own state.

Americans expect and deserve an EPA administrator who will make policy decisions guided by science. Not only does Scott Pruitt deny the overwhelming scientific consensus that climate change is real and human-driven, he unsuccessfully tried to block EPA's endangerment finding that carbon dioxide, methane and other green house gases are harmful. Mr. Pruitt also lacks understanding of basic hydrology. He has said publically that the Clean Water Act should only cover waterways large enough to

float a boat – ignoring the critical role that wetlands and streams play in protecting water quality in larger bodies of water.

Americans expect and deserve an EPA administrator who will stand up to egregious polluters. Mr. Pruitt joined the Farm Bureau, the Fertilizer Institute and other industrial agricultural interests to sue EPA over its enforcement of Total Maximum Daily Load (TMDL) limits for nutrient and sediment pollution choking the Chesapeake Bay. EPA's enforcement of these pollution limits is essential to restoring the health of the Bay.

Our country faces numerous complex environmental challenges and we need an EPA administrator who is prepared and committed to following science and law to make meaningful progress toward continuing to clean-up our nation's air, land, and water. Scott Pruitt has made a career out of handing out free passes to some of the biggest polluting industries in the country – allowing these polluters to cause real, direct harm to public health and the environment - all while raking in huge profits.

Mr. Pruitt as EPA administrator would reverse over forty years of progress of cleaning up our environment and holding industries accountable for their pollution. We urge you to reject his nomination to head EPA.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert Wendelgass". The signature is fluid and cursive, with a prominent initial "R" and a long, sweeping underline.

Robert Wendelgass  
President & CEO  
Clean Water Action

January 17, 2017

Dear Senator:

On behalf of our millions of members and activists, we urge you to stand up for clean air, clean water, healthy communities and a safe climate by insisting that the Environmental Protection Agency must be headed by an individual who is qualified for the office and dedicated to these values.

President-elect Trump's nominee to head the EPA, Oklahoma Attorney General Scott Pruitt, has actively worked against the mission of the agency he has been nominated to lead and he should be rejected by the Senate.

Mr. Pruitt has repeatedly sued the EPA to block clean air and clean water standards that will protect the health and well-being of millions of Americans.

For example, he has sued the EPA to overturn standards to curb mercury and other toxic air pollutants that will prevent up to 11,000 premature deaths and 130,000 asthma attacks per year. He has sued to void standards to reduce soot and smog pollution projected to prevent up to 15,000 non-fatal heart attacks, 34,000 premature deaths, and 400,000 asthma attacks every year. These lawsuits are bad news for all Americans, but especially the more than 24 million Americans with asthma.

Mr. Pruitt denies the overwhelming scientific consensus that climate change is real and is driven by human-made air pollution. He sued unsuccessfully to overturn the EPA's scientific endangerment determination that carbon dioxide and other heat-trapping air pollutants are harmful. And he has sued to block the EPA from setting any limits on carbon pollution from power plants, the nation's largest polluter.

Mr. Pruitt has repeatedly argued that EPA should have little or no role in protecting Americans' health and well-being from air and water pollution. Thus, he apparently rejects fundamental provisions of the Clean Air Act that require the EPA to set national public health standards—standards that guarantee protection to all Americans, regardless of where they live, and protect states from a "race to the bottom" in which they are pressured to compete for industry by offering lax health and environmental standards.

Mr. Pruitt has sued the EPA to overturn clean water safeguards for more than half the nation's waterways, including streams that feed into the drinking water supplies of 117 million Americans. He even sued to block limits on water pollution into the Chesapeake Bay, which has no known connection to Oklahoma.

There is a long bipartisan history in this country of supporting clean air, clean water and a healthy environment. The American public did not vote for more air and water pollution, for more pesticides in our foods or for more toxic chemicals in toys. The American people did not vote to put the EPA in the hands of someone who has recklessly worked against its mission to protect Americans' health and the natural environment.



Scott Pruitt's views and actions run counter to the EPA's critical mission to protect our health and the environment. This makes him unfit to administer the laws he would be entrusted to enforce. The Senate should reject his nomination.

Sincerely,

350.org  
350PDX  
Air Alliance Houston  
Alaska Community Action on Toxics  
Alaska Wilderness League  
Alliance for Citizenship  
Alliance for Democracy  
Alliance for Energy Democracy  
Alliance of Nurses for Healthy Environments  
American Rivers  
Apostolic Faith Center  
Appalachian Mountain Club  
Appalachian Mountain Advocates  
Appalachian Voices  
Ashurst Bar/Smith Community Organization  
Battlement Concerned Citizens  
BECAUSE  
Bold Alliance  
Breast Cancer Action  
California Kids IAQ  
Cancer Prevention and Treatment Fund  
Center for Biological Diversity  
Center for Environmental Health  
Center for Food Safety  
Center for International Environmental Law  
Center for Science in the Public Interest  
Central Valley Air Quality Coalition (CVAQ)  
Chesapeake Climate Action Network  
Chesapeake Physicians for Social Responsibility  
Citizens Action Coalition of IN  
Citizens' Environmental Coalition  
Clean Air Task Force  
Clean and Healthy New York  
Clean Water Action  
Clean Wisconsin  
Climate Action Alliance of the Valley  
Climate Law & Policy Project  
ClimateTruth.org Action  
Coalition For A Safe Environment  
Coalition for Clean Air  
Community Dreams  
Concerned Residents of Portland, NY + People Like Us (CropPlus)

Conservation Colorado  
Conservation Voters New Mexico & CVNM Education Fund  
Defenders of Wildlife  
Downwinders at Risk  
Earth Action, Inc.  
Earthjustice  
Earthworks  
Eco-Justice Collaborative  
Ecology Center  
Ecology Center (Michigan)  
Elders Climate Action  
Emerald Cities Collaborative  
EMERGE  
eNRG - Energizing Renewable Growth in Holston Valley  
Environment America  
Environment Arizona  
Environment California  
Environment Colorado  
Environment Connecticut  
Environment Florida  
Environment Georgia  
Environment Illinois  
Environment Iowa  
Environment Maine  
Environment Maryland  
Environment Massachusetts  
Environment Michigan  
Environment Minnesota  
Environment Missouri  
Environment Montana  
Environment Nevada  
Environment New Hampshire  
Environment New Jersey  
Environment New Mexico  
Environment New York  
Environment North Carolina  
Environment Ohio  
Environment Oregon  
Environment Rhode Island  
Environment Texas  
Environment Virginia  
Environment Washington  
Environmental Advocates of New York  
Environmental Defense Fund  
Environmental Health Strategy Center  
Environmental Integrity Project  
Environmental Law and Policy Center  
Environmental Working Group

Farmworker Justice  
French Broad Riverkeeper  
Friends of the Earth  
Gasp  
Grand Canyon Trust  
Green America  
Green For All  
GreenLatinos  
Heal the Bay  
Health Care Without Harm  
Hispanic federation  
Institute for Agriculture and Trade Policy  
Interfaith Power & Light  
Iowa Citizens for Community Improvement  
Iowa Interfaith Power & Light  
Labadie Environmental Organization (LEO)  
Latino Decisions  
League of Conservation Voters  
Let's Talk Climate  
Louisiana Bucket Brigade  
Maine Audubon  
Maine Wilderness Guides Organization  
Mass Audubon  
Missouri Coalition for the Environment  
Moms Clean Air Force  
Montana Conservation Voters  
Montana Environmental Information Center  
National Audubon Society  
National Parks Conservation Association  
Natural Resources Defense Council  
Nevada Conservation League  
New Virginia Majority  
NextGen Climate  
North Carolina League of Conservation Voters  
Northern Plains Resource Council  
Ocean Futures Society  
Oceana  
Ohio Citizen Action  
Ohio Environmental Council  
Ohio Valley Environmental Coalition  
Oil Change International  
Oregon Aviation Watch  
Oregon Environmental Council  
Partnership for Policy Integrity  
PennEnvironment  
PennFuture  
People's Action  
Pesticide Action Network

Physicians for Social Responsibility  
Potomac Riverkeeper Network  
Prevent Harm  
Public Citizen  
Renew Missouri  
RESTORE: The North Woods  
Rochester People's Climate Coalition  
Rootskeeper.org  
Safe Climate Campaign  
Safer Chemicals Healthy Families  
San Pedro & Peninsula Homeowners Coalition  
Save The Bay, Oakland, CA  
Sierra Club  
South Portland Air Quality  
Southern Maine Conservation Collaborative  
St. Philomena Social Justice Ministry  
Students for a Just & Stable Future  
Texas League of Conservation Voters  
The Alaska Center  
The Climate Reality Project  
The Climate Trust  
The Environmental Justice Center at Chestnut Hill United Church  
The Greenlining Institute  
The Trustees  
Union of Concerned Scientists  
Virginia Organizing  
Voices for Progress  
WaterWatch of Oregon  
Western Colorado Congress  
Western Organization of Resource Councils  
Wholly H2O  
Wilmington Improvement Network  
Wiscon League of Conservation Voters  
Wisconsin Environment  
Young Fresnans for the Environment

January 17, 2017

Dear Senator:

Our faith traditions value inclusivity, justice, peace, ecological stewardship, and the common good. It is through this lens that we review the recent nominations from President-elect Trump, including the nomination of Oklahoma Attorney General Scott Pruitt to head the Environmental Protection Agency.

President-elect Trump indicated his intention to protect clean air and water. Yet, Pruitt, his nominee for EPA Administrator, has worked against protecting the environment and human health. Pruitt, as Oklahoma Attorney General, brought multiple lawsuits against the EPA to counter measures that would safeguard our public health, land and water. In addition, Pruitt has cast doubt on the science of climate change, helping to create an atmosphere that has delayed action on climate and placed communities, particularly low-income and minority communities, at risk for increased disease and other climate impacts.

President-elect Trump promised to drain the swamp of Washington from special interest influence. Yet, Trump's nominee to head EPA collected more than \$300,000 in campaign contributions from the fossil fuel industry. Your duty as Senator is to assure the preservation of this republic and provide for the general welfare of the people, not for self-serving special interests.

We are concerned that Pruitt as head of the EPA would put vulnerable communities at risk for environmental harm and prioritize polluters over human health. As faith organizations, we therefore urge you to carefully investigate, thoroughly question and consider rejection of the appointment of Oklahoma Attorney General Scott Pruitt, who has a demonstrated history of ties to special-interest groups, has fought against the very agency he may head, and has worked at cross purposes for healthy communities and a healthy environment.

Sincerely,

Arizona Interfaith Power & Light  
Arkansas Interfaith Power & Light  
Creation Justice Ministries  
Delaware Interfaith Power & Light  
Disciples Center for Public Witness  
Earth Ministry  
Georgia Interfaith Power & Light  
Green Chalice Christian Church (Disciples of Christ)  
Hazon  
Interfaith Power & Light (DC.MD.NoVA)

Iowa Interfaith Power & Light  
Kentucky Interfaith Power & Light  
Maryknoll Office for Global Concerns  
Massachusetts Interfaith Power & Light  
National Council of Churches USA  
New York Interfaith Power & Light  
Oklahoma Interfaith Power & Light  
Pennsylvania Interfaith Power & Light  
Rhode Island Interfaith Power & Light  
Sojourners  
Tri-State Coalition for Responsible Investment (Roman Catholic)  
Unitarian Universalist Service Committee  
Vermont Interfaith Power & Light  
Wisconsin Interfaith Power & Light  
Young Evangelicals for Climate Action

January 16, 2017

Dear Chairman Barrasso, Ranking Member Carper, and members of the Senate Environment and Public Works Committee:

As former heads of state environmental protection agencies, we have had the honor – and the responsibility – of ensuring that our states’ residents enjoy clean air, safe water, and access to conservation land. We write to express our views on the nomination of Scott Pruitt to be Administrator of the United States Environmental Protection Agency (EPA) – and thank the Committee for this opportunity.

While we have worked under both Republican and Democratic Governors, reflect a range of political views, and come from diverse states, we share a common concern about Mr. Pruitt’s nomination. His record, particularly as a litigator against many EPA rules, causes us to question whether he: 1) appropriately respects science-based decision making, and 2) understands the important role that EPA must play in the “cooperative federalism” model that undergirds our nation’s environmental laws.

#### **Respect for Science**

As heads of state environmental protection agencies, all of us have had to make difficult judgment calls. Good science must be the touchstone for those and all regulatory decisions. The fundamental mission of protecting public health, safety, and the environment requires that science not be ignored and that regulatory decisions build on the best available data and rigorous analysis.

Based on his record, it appears that Mr. Pruitt does not share this view. One example which troubles us greatly is his legal challenge to EPA’s finding in 2009 that greenhouse gases endanger public health and welfare. In this lengthy finding, the EPA reviewed the extensive scientific literature, including reports on climate change issued by the Intergovernmental Panel on Climate Change (IPCC, established by the United Nations, which synthesizes the work of thousands of scientists), the U.S. Climate Change Science Program (CCSP, a Bush administration body of 13 federal agencies that issued 21 reports on climate change), and the National Research Council (NRC, the research arm of the National Academy of Sciences). All of these bodies affirmed that climate change is occurring and that the primary cause is fossil fuel combustion. EPA also relied upon multiple lines of additional evidence that all point to the same conclusion.

While this finding was wholly unremarkable from a science perspective, it provided the foundation for a number of regulations to reduce emissions from various greenhouse gas sources. It also inspired legal challenges from the oil and gas industry in concert with Attorney General Pruitt.

Despite the thorough record supporting this conclusion (and the overwhelming consensus of scientists), in an unsuccessful lawsuit, Attorney General Pruitt and others argued that this finding was “arbitrary and capricious.” The primary argument he advanced is that EPA should not have relied upon the multiple reports issued by the IPCC and other scientific bodies, and that there was too much lingering uncertainty to draw any hard conclusions about climate change.

We find this deeply troubling. EPA did what any reasonable science-based agency would have done — review the scientific literature to determine whether the most credible experts on the subject had arrived at a consensus, and perform its own independent review to determine whether the consensus view was supported by verifiable, replicable evidence. The fact that Attorney General Pruitt attacked

this finding suggests a lack of understanding as to how environmental protection agencies make science-based decisions or, even worse, an inclination to set science aside when the outcome is at odds with his predetermined political point of view.

#### **The Role of Federal and State Regulators**

Attorney General Pruitt has often justified his many lawsuits against EPA as an effort to protect states' rights against EPA overreaching.

As state regulators, we are justifiably proud of the work that our agencies perform. However, we also understand that there is a need for regulation at the federal level, and we see EPA as our partner in the important work of protecting environmental public health and ecosystem vitality. For example, pollutants do not know or respect state borders, yet states have limited ability to reduce air and water pollution that emanate from other states. Thus, federal regulation is necessary at a minimum to address the problem of interstate air and water pollution, put in place national standards that prevent a race to the bottom of environmental protection, and help to create a level playing field in which all states enjoy the benefits of clean water, air and land – and pay their fair share of pollution control costs. We also have learned first-hand that states alone often do not have the resources to independently address the complex environmental challenges we all face. By sharing scientific and technical resources among the states and federal government, we can reduce the cost and increase the effectiveness of states' pollution control efforts. EPA plays a critical role in supporting the states by coordinating these important state/federal environmental protection efforts.

We are concerned that Mr. Pruitt does not seem to appreciate this critical role that EPA plays. In fact, he has filed multiple lawsuits seeking to stop EPA from addressing interstate air pollution. For example, he led the fight against the cross-state air pollution rule, which was rejected on a 6-2 vote at the Supreme Court. Similarly, he unsuccessfully challenged the regional haze rule, which seeks to ensure that our national parks, monuments, and most pristine lands are not compromised by interstate air pollution. He also challenged federal rules that create minimum standards, such as the Mercury and Air Toxics rule which sought to ensure that approximately forty percent of lagging coal plants met the same emission control standards as the other sixty percent.

Rather than EPA acting as our partner in state-led efforts to ensure clean air and water for our residents, we fear that an EPA under Mr. Pruitt would undermine the rules that help to make sure that our state regulations are successful.

For all these reasons, we respectfully recommend that this Committee reject Mr. Pruitt's nomination.

Sincerely,

Linda S. Adams  
Former Secretary  
California Environmental Protection Agency

Winston H. Hickox  
Former Secretary  
California Environmental Protection Agency



Alan C. Lloyd  
Former Secretary  
California Environmental Protection Agency

Daniel Esty  
Former Commissioner  
Connecticut Department of Energy and Environmental Protection

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Former Deputy Director for Environmental Health  
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Massachusetts Department of Environmental Protection

Kenneth Kimmell  
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Massachusetts Department of Environmental Protection

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Vermont Agency of Natural Resources

Jay Manning  
Former Director  
Washington Department of Ecology

Ted Sturdevant  
Former Director  
Washington Department of Ecology

January 17, 2017

Dear Senator,

**We the undersigned health professionals and members of health and public health organizations call on you to reject the nomination of Oklahoma Attorney General Scott Pruitt to be the next EPA Administrator.**

The EPA is responsible for implementing the laws that protect our nation's air, water, and climate. Its work is critical to improving Americans' health and saving lives. Yet Mr. Pruitt has shown himself to be openly hostile to the EPA's mission of environmental and health protection. In fact, his own website calls him "a leading advocate against the EPA's activist agenda." As Oklahoma Attorney General, Mr. Pruitt:

**Worked to undermine the EPA's vital contributions to public health:**

- Sued the EPA to halt the Regional Haze Rule that helps protect us from ozone, a dangerous air pollutant that causes irreversible lung damage. Yet the American Lung Association's 2016 "State of the Air" report gave all Oklahoma counties surveyed an "F" for ozone levels and found that the number of high ozone days had increased in most counties compared to 2010-2012.
- Sued the EPA to weaken the Waters of the U.S. Rule, which protects one-third of the sources of surface water that people drink.
- Sued the EPA to halt the Mercury and Air Toxics Standards that reduce air pollution from coal- and oil-fired power plants rule. Mercury is a neurological toxin that causes brain damage in developing fetuses and children.

**Sought to undercut protections from climate change:**

- Promoted inaccurate and dangerous misinformation about climate change. Pruitt wrote, for example, "Scientists continue to disagree about the degree and extent of global warming and its connection to the actions of mankind." This is untrue. An overwhelming scientific consensus upholds that climate change is real, is happening now, and that human activity plays a significant role.
- Sued to overturn the EPA's scientific "endangerment" finding that carbon dioxide and other heat-trapping air pollutants are harmful to human health and well-being.
- Sued to block the EPA from setting limits on carbon dioxide emissions from power plants, the nation's largest source of this climate change-accelerating pollution.

**Served as an instrument of the oil and gas industry:**

- As a public official, signed and sent letters drafted by industry lawyers and lobbyists to the Environmental Protection Agency, the Interior Department and even President Obama. According to the *New York Times*, Pruitt took one such letter and, after changing just 37 words in the 1,016-word draft, copied it onto his state government letterhead and sent it to Lisa Jackson, EPA Administrator.

- Was investigated by the *New York Times* as part of an "unprecedented, secretive alliance" with large fossil fuel companies.
- Received more than \$300,000 during his state office candidacy from the fossil fuel industry.
- The laws and standards that protect the environment are essential to the health of all Americans. The office of EPA Administrator must be held by someone who will defend the air we breathe, the water we drink, and the climate we live in. Yet Mr. Pruitt has shown by his views and actions that he is willing to sacrifice the environment and endanger human lives.

**Given the severity of that threat, and in accordance with our responsibility as healthcare professionals and allies, we call on Congress to reject Scott Pruitt's nomination to lead the EPA.**

Signed,

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 Polly Tarpley, Poulsbo  
 Rae Pearson, Seattle  
 Rafe Dimmitt, Seattle  
 Raul De La Rosa, Olympia  
 Rebecca McDonough, Eastsound  
 Rebecca Canright, Olympia  
 Richard Rust, MD, Seattle  
 Richard & Elizabeth Blakney, MPH,  
 Seattle  
 Richard W. Emmons, MD, Vashon

Robert Thompson, MD, Enumclaw  
 Robert Gabriel, PhD, Olympia  
 Robert Brown, Fircrest  
 Robert B. Kaplan, PhD, Port Angeles  
 Ruth Darden, JD, Seattle  
 Ruthe Rugh, FNP, Bothell  
 Sally Sheck, LMT, Seattle  
 Sammy Low, Stanwood  
 Sarah Salter, Lynnwood  
 Seth Snapp, PT, Bellingham  
 Sharon Fetter, Puyallup  
 Sheri Staley, Shelton  
 Stan Freidberg, MD, Vancouver  
 Stephanie Jaeger, MD, Lynden  
 Stephen Durbin, EMT, Coupeville  
 Susan Crampton, MD, Twisp  
 Susan Doederlein, MD, Seattle  
 Susan Bigda, RN, Seattle  
 Susan Wilson, Kent  
 Susan Danver, Olympia  
 Susan Arndt, Mount Vernon  
 T J Thompson, MD, Gig Harbor  
 Teresa Bryan, Kelso  
 Terry Cook, PhD, Seattle  
 Tim Burns, Federal Way  
 Toniann Reading, Sultan  
 Tonya Stiffler, Shoreline  
 Tracy Ouellette, MD, Bow  
 William Waldman, MD, Seattle  
 William P. Ostrander, Jr., Bellingham  
 William F. Nerin MA, Gig Harbor

#### Wisconsin

Joseph A. Meyer, LCSW, Amery  
 John And Martha Stoltenberg, Elkhart  
 Lake  
 Alexandra Bryant, Medical Student,  
 Madison  
 Anne Slaughter-Perrote, PA, Madison  
 Beth Beck, Madison  
 Charlotte Serazio, Milwaukee  
 Claire Russell, Oconomowoc  
 Cynthia Betts, Kenosha  
 Daniel Mason, EMT, Madison  
 David Henning, DrPH, Marshfield  
 David Wyatt, MD, Milwaukee

David And Betty Knutzen, MD. Waunakee  
 Delene Hanson, Hales Corners  
 Denise Merino, Elm Grove  
 Don Ferber, Madison  
 Donette Erdmann, RN. Sheboygan  
 Eric Robson, Madison  
 George Perkins, VMD. Madison  
 Grace Golata, Milwaukee  
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 Fitchburg  
 Keith Johnson, Muscoda  
 Kelvin S. Rodolfo, PhD. Viroqua  
 Lowell Huber, Cornell  
 Lynn Shoemaker, Whitewater  
 Marcia Bringardner, RN. Wind Lake

Marcia Halligan, Viroqua  
 Mark M. Giese, Mount Pleasant  
 Mary Koller, RN. West Allis  
 Michael Iltis, PhD. Madison  
 Michele Brogunier, MD. Madison  
 Mike E. Miley, MD. Madison  
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 Peter Sigmann, MD. Sturgeon Bay  
 Richard Ouren, Muscoda  
 Rick Redfield, PA. Soldiers Grove  
 Steven Rogers, Cornell  
 Susan Michetti, Mount Horeb  
 Terry Gunning, Madison  
 Thomas Chisholm, MD. Chippewa Falls  
 Thomas Paulsen, MD. Ladysmith

**West Virginia**

Jenni Kovich, Leon  
 Mary A Borchers, Romney

**Wyoming**

Diane Verna, Alta  
 Jessica Eastman, OTR. Jackson

**LATINOS OPPOSE SCOTT PRUITT FOR EPA ADMINISTRATOR**

January 17, 2017

Dear Senator:

As Latino leaders, members and representatives of the undersigned organizations committed to efforts that support our communities' health, advancement, safety and well-being, and on behalf of the concerned communities we represent, we strongly urge you to oppose the president-elect's nominee to lead the U.S. Environmental Protection Agency, Oklahoma Attorney General Scott Pruitt.

Mr. Pruitt has made a career of suing the Environmental Protection Agency, and has used his office to attack lifesaving public health protections time and time again. His record exhibits a reckless disregard for public health and a deeply troubling contempt for the very mission of the agency he has been nominated to lead. Mr. Pruitt denies the science of climate change, suing to block national standards to fight this crisis; he has fought against clean air protections, opposing the Mercury and Air Toxics standard which would prevent premature deaths and asthma attacks; he has sued the EPA to overturn clean water safeguards for more than half of the nation's waterways, including streams that feed into the drinking water supplies of hundreds of millions of Americans. Scott Pruitt is simply unfit to lead the EPA and, if confirmed, would pose a danger to our communities.

Latinos overwhelmingly support actions to fight climate change. We recognize the importance of protecting the environment: 97 percent of Latinos agree we have a moral obligation to take care of our environment. In December, the National Hispanic Leadership Agenda, a coalition of 40 of the leading Latino organizations nationwide, voiced their opposition to Mr. Pruitt's nomination, stating that they were "particularly troubled by this choice," and pointing to the prevalence of asthma and other respiratory diseases among Latinos living near polluting power plants, truck routes, and factories; as well as the large number of Latinos who are employed in outdoor occupations, including agriculture, where they are exposed to health hazards, bad air quality, and the impacts of extreme weather.

Americans did not vote for more air pollution, toxics, or dirty water, nor did they vote to undo critical protections that safeguard our children and communities. We did not vote for more climate change or dirty energy. Putting the EPA in Mr. Pruitt's hands does just that: he will threaten our children's health, turn back the clock on landmark efforts to clean up our air, water and climate, and imperil the United States' position as a global clean energy leader.

We call on you to publicly declare your commitment to stand up for our right to breathe clean air, drink clean water, and be protected from pollution. We urge you to vote against all legislative proposals that would in any way repeal, weaken or undermine these rights, laws and safeguards. Our community is counting on you to protect us by voting to reject Scott Pruitt's nomination for Administrator of the U.S. EPA.

Sincerely,

Mildred Real  
Founder and CEO  
America Verde

Irene Vilar  
Founder and CEO  
Americas for Conservation + the Arts

Arturo Carmona  
Arturo for Congress Campaign

Ronald Blackburn Moreno  
President and CEO  
ASPIRA Association

Marce Graudi?  
Founder / Director  
Azul

Vanessa Smith  
Publisher  
Chica Magazine

Lisa Hoyos  
Director  
Climate Parents

Omar Gomez  
Director of Programs and Public Policy  
Council of Mexican Federations (COFEM)

Soledad Haren  
Producer  
Epoca Verde, Green Living, Green Times

Virginia Ruiz  
Director of Occupational and Environmental Health  
Farmworker Justice

Mark Magana  
President & CEO  
GreenLatinos

Laura Esquivel  
Director of National Advocacy  
Hispanic Federation

Cristóbal Alex  
President  
Latino Victory Project

Luis Torres  
Director of Policy and Legislation  
League of United Latin American Citizens

Brent Wilkes  
National Executive Director  
League of United Latin American Citizens

Amy L. Hinojosa  
President and CEO  
MANA, A National Latina Organization

Ben Monterroso  
Executive Director  
Mi Familia Vota

Samuel Molina  
California State Director  
Mi Familia Vota

Eduardo Sainz  
Arizona Deputy Director  
Mi Familia Vota Arizona

Carla Castedo  
Colorado State Director  
Mi Familia Vota Colorado

Esteban Garces  
Florida State Director  
Mi Familia Vota Florida

Ben Monterroso  
Executive Director  
Mi Familia Vota

Carlos Duarte  
Texas State Director



Mi Familia Vota Texas

Elena Rios, MD, MSPH, FACP  
President & CEO  
National Hispanic Medical Association

Sergio Rimola, MD  
National Hispanic Medical Association

Olga Trujillo  
Director of Public Policy  
National Latin@ Network of Casa de Esperanza

Erika Castro  
Progressive Leadership Alliance of Nevada

Hilda Nucete  
Protégete Program Director  
Protégete: Nuestro Aire, Nuestra Salud

Carlos Zegarra  
Director  
Sachamama

Alejandra Nunez  
Sierra Club

Dr Mary A Haberl  
Owner  
SolarFour LLC

Tony DeFalc  
Deputy Director  
Verde

Ana Lucia Garcia  
Concerned Citizen

Paty Romero Lankao, PhD  
UNCR

Gerald Torres  
Professor / Concerned Citizen

Fernando Cazares  
Urban Planner / Concerned Citizen

Graciela Cabello  
Concerned Citizen

Voto Latino

The Staff and Board Members of  
Voces Verdes

**LEAGUE OF CONSERVATION VOTERS**

January 12, 2017

United States Senate  
Washington, DC 20510**Re: Oppose Scott Pruitt for Administrator of the Environmental Protection Agency**

Dear Senator:

On behalf of our millions of members, the League of Conservation Voters (LCV) works to turn environmental values into national, state, and local priorities. Each year, LCV publishes the *National Environmental Scorecard*, which details the voting records of members of Congress on environmental legislation. The *Scorecard* is distributed to LCV members, concerned voters nationwide, and the media.

We urge you to oppose the nomination of Scott Pruitt for Administrator of the Environmental Protection Agency (EPA), and we want to be unequivocal that we will score this vote. This is a departure from our standard procedure of sending a letter to the full Senate when a floor vote is imminent and noting a given vote will be considered for inclusion in the *National Environmental Scorecard*. Given Scott Pruitt's radical record and the far-reaching damage he could do at the helm of the EPA, this is not the time for standard protocol.

The mission of the Environmental Protection Agency is to protect human health and the environment – our air, water, and land. Unfortunately, Scott Pruitt's record is completely antithetical to this vitally important mission. Not only does he deny the overwhelming scientific consensus that climate change is real and caused by human activity, as Oklahoma Attorney General he has sued the EPA on numerous occasions to block efforts to cut carbon pollution and weaken safeguards for our air and water.

In addition, Pruitt has extremely close ties to fossil fuel interests, which have donated more than \$340,000 in campaign contributions to him during his political career and nearly \$3.5 million to the Republican Attorneys General Association during the time he was at the helm of that organization. Not only did he defend and echo groups like ExxonMobil's denial of climate science, he literally sent letters to the EPA and other government agencies that were written almost entirely by fossil fuel lobbyists.

Pruitt fails the basic test of basing decisions on sound science and upholding our nation's bedrock environmental and public health laws. We urge you in the strongest possible terms to oppose his nomination and assure you this vote will definitely be included in the 2017 *Scorecard*. If you need more information, please call my office at (202) 785-8683 and ask to speak with a member of our Government Relations team.

Sincerely,

Gene Karpinski  
President1920 L Street NW, Suite 800 • Washington, DC 20036 • 202-785-8683 • Fax: 202-835-0491  
lcv@lcv.org • www.lcv.org



**NATIONAL CONGRESS OF AMERICAN INDIANS**

January 18, 2016

The Honorable John Barrasso  
*Chairman*  
 U.S. Senate Committee on Environment  
 and Public Works  
 410 Dirksen Senate Building  
 Washington, DC 20510

The Honorable Thomas Carper  
*Ranking Member*  
 U.S. Senate Committee on Environment  
 and Public Works  
 456 Dirksen Senate Building  
 Washington, DC 20510

**EXECUTIVE COMMITTEE**

**PRESIDENT**  
**Brian Cladoosby**  
*Swinomish Tribe*

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*Quinault Indian Nation*

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*Sault Ste. Marie Tribe of Chippewa  
 Indians of Michigan*

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*Jameson Oklallam Tribe*

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*Spirit Lake Nation*

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*Pokagon Band of Potawatomi*

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*Tulalip Tribes*

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**Darvin Old Coyote**  
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**Liane Onnen**  
*Prairie Band of Potawatomi Nation*

**SOUTHWEST**  
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**WESTERN**  
**Bruce Ignacio**  
*Ute Indian Tribe*

**EXECUTIVE DIRECTOR**  
**Jacqueline Pata**  
*Tlingit*

**NCAI HEADQUARTERS**  
 1516 P Street, NW  
 Washington, DC 20005  
 202.466.7767  
 202.466.7797 fax  
 www.ncai.org

**Re: Indian Country's Concerns with EPA Administrator Nominee Scott Pruitt**

Dear Chairman Barrasso and Ranking Member Carper:

On behalf of the National Congress of American Indians (NCAI), the oldest, largest, and most representative American Indian and Alaska Native organization serving the broad interests of Tribal governments and communities, I am writing to express our deep concern with the nomination of Oklahoma Attorney General Scott Pruitt to be the Administrator of the Environmental Protection Agency (EPA) based on his history of fighting environmental regulations and the new Administration's statements denying the existence of climate change. The continuing impacts of climate change are a major concern of Tribal Nations and, before this Committee votes to move forward with Attorney General Pruitt's nomination to lead the EPA, it must thoroughly consider the potential impacts that his nomination will have on climate change, the protection of natural resources, and protection of Tribal trust and treaty rights.

American Indians and Alaska Natives are disproportionately impacted by climate change due to our geographical areas and direct connection and reliance on the surrounding environments. It is threatening to destroy our lands, waters, and natural resources, which will impact our traditional and customary ways of life that has been sustainable for thousands of years. The well-documented plight of Alaska Native villages is probably the most profound manifestation of the climate crisis and requires focused, high priority attention from the federal government. NCAI's Tribal leadership and members have spoken strongly on climate change by passing four resolutions in the past four years calling for action and setting Tribal Climate Change Principles calling on further federal action and partnership with Tribal governments.

The federal government's treaty and trust responsibilities to protect Indian lands includes the duty to protect lands from the impacts of climate change, which requires not only that sufficient federal resources be equitably allocated to address climate change, but that Tribes be included as partners to solve these issues. Federal programs and policies must allow Tribal Nations to engage effectively in adaptation and mitigation strategies that will help ensure the integrity of our cultures, homelands, infrastructures, and services. Further, it is imperative that federal agencies enforce Tribal treaty and reserved rights to both on- and off-reservation resources.

**NCAI Letter – Climate Change Concerns Regarding Pruitt EPA Administrator Nomination**

Page 2 of 2

The EPA's mission to protect human health and the environment means that it plays an essential role in fighting climate change-related impacts. Due to its charge, EPA also has a sacred responsibility to uphold and protect Tribal trust and treaty rights through the protection of Tribal natural resources. In fact, the EPA acknowledges the importance of reviewing how agency actions will impact treaty rights in its recent policy guidance *EPA Policy on Consultation and Coordination with Indian Tribes: Guidance for Discussing Tribal Treaty Rights*.

Since the EPA is critical to combating climate change and protecting Tribal trust and treaty rights, Indian Country is deeply concerned with Attorney General Pruitt's nomination to head the Agency. It is our understanding that, in his role as Attorney General for the State of Oklahoma, Pruitt has repeatedly filed suits against the EPA for its regulations seeking to protect the environment. Further, his nomination comes from an incoming Administration which claims that climate change is a "hoax" and questions whether the EPA should continue to exist.

This Committee must ensure that Attorney General Pruitt understands and acknowledges the realities of human impacts on global climate change, the need for the EPA and federal regulations to protect the environment, and the importance of EPA's role in protecting Tribal lands, waters, and natural resources. We must get his commitment on the record to sustain the EPA's role in fighting climate change and protecting Tribal trust and treaty rights. Without these acknowledgments, Indian Country cannot support Attorney General Pruitt's nomination for Administrator of the EPA.

We are at a critical moment in combating the increasing climate changes effects from human-made sources. Indian Country, the United States, and the world cannot afford to take a backseat role in fighting climate change.

Sincerely,



Brian Cladoosby  
*President*

Enclosed:

NCAI Resolution #PHX-16-058 – *United States Federal Agency Consultation, Consent, Funding, and Actions to Address Climate Change Impacts to Tribal Treaty and Trust Resources*

NCAI Resolution #SD-15-007 – *Calling on the United Nations Framework Convention on Climate Change to Adopt an Agreement that Upholds the Rights of Indigenous Peoples*

NCAI Resolution #SD-15-024 – *Support for the Tribal Climate Change Principles: Responding to Federal Policies and Actions to Address Climate Change document and its Swift Implementation by the Federal Government*

NCAI Resolution #REN-13-020 – *Adopting Guidance Principles to Address the Impacts of Climate Change*



NATIONAL CONGRESS OF AMERICAN INDIANS

The National Congress of American Indians  
Resolution #PHX-16-058

**TITLE: United States Federal Agency Consultation, Consent, Funding, and Actions to Address Climate Change Impacts to Tribal Treaty and Trust Resources**

**EXECUTIVE COMMITTEE**

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Brian Claudioosby  
Swinomish Tribe

**FIRST VICE-PRESIDENT**  
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Quinault Indian Nation

**RECORDING SECRETARY**  
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Stuart Ste. Marie Tribe of Chippewa  
Indians of Michigan

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Jamestown S'Klallam Tribe

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Native Village of Tanacross

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Spokan Nation

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Pokagon Band of Pottawatomi

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Shinnecock Indian Nation

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Tulalip Tribes

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Redding Rancheria

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Chisay-Owengah Pueblo

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Ute Indian Tribe

**EXECUTIVE DIRECTOR**  
Jacqueline Pata  
Tlingit

**NCAI HEADQUARTERS**

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202.466.7767  
202.466.7797 fax  
www.ncai.org

**WHEREAS**, we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the health, safety and welfare of the Indian people, do hereby establish and submit the following resolution; and

**WHEREAS**, the National Congress of American Indians (NCAI) was established in 1944 and is the oldest and largest national organization of American Indian and Alaska Native tribal governments; and

**WHEREAS**, Indigenous peoples in the U.S., including 567 federally-recognized Tribes, are facing immediate and significant impacts from climate change; and

**WHEREAS**, a growing body of literature illustrates the unique issues facing Tribes regarding climate change, including the recently developed *Primer on Climate Change and Indigenous Peoples*, *Guidelines for Considering Traditional Knowledges (TKs) in Climate Change Initiatives*, and the special issue of the peer-reviewed journal *Climatic Change, Climate Change and Indigenous Peoples in the United States: Impacts, Experiences and Actions*; and

**WHEREAS**, furthermore, the federal government is beginning to acknowledge the disproportionate threats of climate change to Indigenous Peoples through administrative and congressional reports such as the 3<sup>rd</sup> *National Climate Assessment* and the 2014 *President's State, Local, and Tribal Leaders Task Force on Climate Preparedness and Resilience* (Task Force); and

**WHEREAS**, where the Northwest Tribes commit to the development of guiding principles and exploration of the possibility of creating a unified mechanism to incorporate the principles into an action plan to address the impacts of climate change that will protect our treaty rights, inherent and indigenous rights, including those contained in the United Nations Declaration on the Rights of Indigenous Peoples (Declaration), our health and the health of the environment, economies, and way of life; and

**WHEREAS**, based upon eight principles developed by the Northwest Tribes to guide the federal government in the development and implementation of administrative and legislative actions related to Indigenous Peoples and climate change; and

**WHEREAS**, the principles address many of the recommendations made by the Task Force and these principles pertain directly to federally-recognized Tribes, but may also apply indirectly to state-recognized Tribes and unrecognized Tribes as they are also in need of support to address immediate and projected climate impacts and to ensure access to climate resources; and

**WHEREAS**, adequate response to the threat of climate change requires action by Tribes and federal, state and local governments and the U.S. federal government's trust responsibility to federally-recognized Tribes includes the protection of Indian lands and Tribal rights to access those lands as well as those lands in which treaty and trust resources are held; and

**WHEREAS**, the trust responsibility includes the duty to protect lands from the impacts of climate change. Federal resources to address climate change must be allocated to Tribes equitably and in sufficient quantity so that Tribes can engage effectively in adaptation and mitigation strategies that will help ensure the integrity of their cultures, homelands, infrastructures, and services; and enforce Tribal treaty and reserved rights to both on- and off-reservation resources; and

**WHEREAS**, in FY 2016, the Department of Interior awarded \$8.6 million through the Tribal Climate Resilience Program, but the total amount requested from tribes exceeded \$25.5 million and these requested funds do not take into account the needs among tribes facing displacement and relocation, emergency management and infrastructure, impacts to culturally important plants, fish and wildlife species, and public health impacts, among others; and

**WHEREAS**, the current Administration has taken strides that support Tribal measures to cope with climate change and environmental justice, including, but not limited to, the November 5, 2009, Executive Memo directing agency heads to submit a detailed plan of actions that agencies will take to implement the policies; Executive Order 13175 - Consultation and Coordination with Indian Tribal Governments; and Department of Interior Secretarial Order 3289 - Addressing the Impacts of Climate Change on America's Water, Land, and Other Natural and Cultural Resource; and Executive Order 12898 - Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations; and

**WHEREAS**, pursuant to Executive Order 13175, U.S. federal agencies have a legal obligation to effectively engage in Government-to-Government consultations with consent from Tribes on all climate change issues, including representation in international organizations, formal consultation in the extraction, transport and export of coal, oil and natural gas, and representation on federal climate change adaptation and mitigation initiatives including the United Nations Framework Convention on Climate Change (UNFCCC) COP 21 Paris Agreement.

**NOW THEREFORE BE IT RESOLVED**, that the National Congress of American Indians does strongly urge that U.S. federal agencies immediately engage and work with individual tribes on a Government-to-Government basis and conduct formal and effective consultations to reach and agree to consent to address the climate change issues unique to each tribe including treaty and reserved rights, and the management of and access to trust resources on ceded and ancestral lands; and

**BE IT FURTHER RESOLVED**, that NCAI calls upon Congress and the Administration to work with federal agencies, the Office of Management and Budget, the Government Accountability Office and others to identify the full costs facing tribes from the impacts of climate change and to ensure that federal budget allocations for tribes to address climate are adequate; and

**BE IT FURTHER RESOLVED**, that NCAI also calls upon all federal agencies, specifically the Department of Interior and Bureau of Indian Affairs, with tribal climate change programs, to work with tribes to review the categories for fund dispersal and ensure their effectiveness for meeting tribal goals and needs; specifically, NCAI recommends Tribes and intertribal consortia conduct a review of the 9 categories for the BIA Climate Change Grants and provide feedback about the efficacy of those categories, establish priorities where funds should be allocated, and recommendations for strengthening and sustaining Tribal capacity including:

- Sustained and long-term funding to support the needs of tribes to engage in climate change adaptation and mitigation.
- Concept of coordinated block funding – multiple sources of funding that are coalesced to reduce the burden to tribes and increase flexibility of tribal allocation of funds.
- Capacity building funding to focus on engaging tribal leadership and building the knowledge of tribal leaders.
- Engaging and building the knowledge of tribal leadership and native communities through education and outreach.
- Dedicated funding for tribal staff to work on climate change to build internal tribal capacity; and

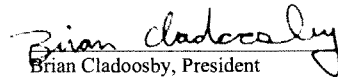
**BE IT FURTHER RESOLVED**, that NCAI in consultation with regional consortia and Tribal governments, organize and establish a National Tribal Climate Change Workgroup to develop strategies and coordinate actions to ensure effective implementation of the *Tribal Climate Change Principles: Responding To Federal Policies And Actions To Address Climate Change* and Government-to-Government consultations with and consent from Tribes related to climate change impacts, adaptation, mitigation, and funding to meet the needs of Tribal governments and communities; and

**BE IT FINALLY RESOLVED**, that this resolution shall be the policy of NCAI until it is withdrawn or modified by subsequent resolution.



**CERTIFICATION**

The foregoing resolution was adopted by the General Assembly at the 2016 Annual Session of the National Congress of American Indians, held at the Phoenix Convention Center, October 9<sup>th</sup>- 14<sup>th</sup> 2016, with a quorum present.

  
Brian Cladoosby, President

**ATTEST:**

  
Aaron Payment, Recording Secretary



NATIONAL CONGRESS OF AMERICAN INDIANS

The National Congress of American Indians  
Resolution #SD-15-007

**TITLE: Calling on the United Nations Framework Convention on Climate Change to Adopt an Agreement that Upholds the Rights of Indigenous Peoples**

**EXECUTIVE COMMITTEE**

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Brian Cludonby  
Seneca Tribe

**FIRST VICE-PRESIDENT**  
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**RECORDING SECRETARY**  
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Sault Ste. Marie Tribe of Chippewa  
Indians of Michigan

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**WHEREAS**, we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the health, safety and welfare of the Indian people, do hereby establish and submit the following resolution; and

**WHEREAS**, the National Congress of American Indians (NCAI) was established in 1944 and is the oldest and largest national organization of American Indian and Alaska Native tribal governments; and

**WHEREAS**, climate change is one of the greatest threat facing the peoples of the world today; and

**WHEREAS**, the United Nations Special Rapporteur on the Right to Food stated in 2010 that Climate Change is the single biggest threat to global food security in the future; and

**WHEREAS**, the Intergovernmental Panel on Climate Change (IPCC), composed of thousands of scientists from around the world, has found that Indigenous Peoples are among the peoples most vulnerable to climate change and are disproportionately affected by it; and

**WHEREAS**, Indigenous Peoples depend upon the health of their ecosystems and natural resources for social, economic, and cultural vitality; and climate change threatens to destroy indigenous ways of life that have been sustainable for thousands of years; and

**WHEREAS**, climate change thus poses a serious threats to the inherent and Treaty rights of Indigenous Peoples as affirmed in the United Nations Declaration on the Rights of Indigenous Peoples, including, *inter alia*, rights to subsistence, traditional lands and resources, health, productive capacity of the environment, cultural heritage, sacred sites and free prior and informed consent; and

**WHEREAS**, the Parties to the United Nations Framework Convention on Climate Change (UNFCCC) will meet in Paris at the end of 2015 to reach a universally binding agreement to address climate change; and

**WHEREAS**, the goal of the UNFCCC as stated in its Article 2 is: “to achieve . . . stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system. . . .;” and

**WHEREAS**, that goal as presently contemplated by States is to keep temperature rise within 2 degrees C, however, Indigenous Peoples and many scientists consider this goal to be inadequate to protect the ways of life of Indigenous Peoples as well as the survival of small island states and Peoples; and

**WHEREAS**, in connection with an ongoing review of the adequacy of the 2 degree C goal, the Structured Expert Dialog, (SED) report concludes that at 2 degrees C of warming, “...indigenous people[s] would be at risk of loss of land and cultural and natural heritage, and cultural practices embedded in livelihoods would be disrupted”; therefore Indigenous Peoples are calling for that goal to be lowered to no more than 1.5 degrees C of warming at COP 21.

**NOW THEREFORE BE IT RESOLVED**, that the National Congress of American Indians (NCAI) calls on the Parties to the UNFCCC at the 21<sup>st</sup> Conference of the Parties (COP 21) in Paris to adopt an agreement with a strong human rights based approach reflected in the operative provisions of the agreement and which covers all aspects of the agreement such as mitigation, adaptation, finance, technology transfer, transparency and capacity building, and specifically recognizes the rights of Indigenous Peoples; and

**BE IT FURTHER RESOLVED**, that NCAI calls on the State Parties to adopt a goal of a temperature rise of no more than 1.5 degrees C of warming, with a review to ascertain if that should be further lowered to no more than 1 degree C of warming; and

**BE IT FURTHER RESOLVED**, that NCAI calls upon the States Parties to recognize in the final agreement respect for and use, with free, prior, and informed consent and full participation, of Indigenous Peoples’ traditional ecological knowledge; and

**BE IT FURTHER RESOLVED**, that any Conference Of the Parties (COP) decision at Paris should acknowledge the obligation to guarantee full and effective participation of Indigenous Peoples in all processes, programs and actions at all levels, including *inter alia* access to funding mechanisms, financing, capacity building, monitoring, reporting and verification (MRV) and guaranteed and enforceable safeguards and all other evolving climate change-related mechanisms; and

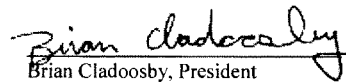
**BE IT FURTHER RESOLVED**, that any funds created through the United Nations for Indigenous People’s for mitigation and adaptation to climate change be available on an equal basis for Indigenous Peoples from all regions, including North America; and

**BE IT FURTHER RESOLVED**, that the Intended Nationally Determined Contributions (INDCs) to be submitted prior to Paris as each Party's commitment to address climate change should include, along with commitments to reduce emissions, commitments on adaptation, finance, technology transfer, and capacity building as well as indicators on the extent to which Indigenous Peoples' rights and safeguards are respected, and non-carbon benefits, including cultural, spiritual and subsistence values are ensured; and

**BE IT FINALLY RESOLVED**, that this resolution shall be the policy of NCAI until it is withdrawn or modified by subsequent resolution.

#### CERTIFICATION

The foregoing resolution was adopted by the General Assembly at the 2015 Annual Session of the National Congress of American Indians, held at the Town and Country Resort, San Diego, CA, October 18-23, 2015, with a quorum present.

  
Brian Cladoosby, President

ATTEST:

  
Aaron Payment, Recording Secretary



NATIONAL CONGRESS OF AMERICAN INDIANS

The National Congress of American Indians  
Resolution #SD-15-024

**TITLE: Support for the Tribal Climate Change Principles: Responding to Federal Policies and Actions to Address Climate Change document and its Swift Implementation by the Federal Government**

**EXECUTIVE COMMITTEE**

**PRESIDENT**  
Brian Claudiooby  
Swinomah Tribe

**FIRST VICE-PRESIDENT**  
Randy Noka  
Narragansett Tribe

**RECORDING SECRETARY**  
Aaron Payment  
Sault Ste. Marie Tribe of Chippewa  
Indians of Michigan

**TREASURER**  
W. Ron Allen  
Jamesstown-Skiaman Tribe

**REGIONAL VICE-PRESIDENTS**

**ALASKA**  
Jerry Isaac  
Native Village of Tanacross

**EASTERN OKLAHOMA**  
Joe Byrd  
Cherokee Nation

**GREAT PLAINS**  
Leander McDonald  
Spirit Lake Nation

**MIDWEST**  
Roger Rader  
Pokagon Band of Potawatomi

**NORTHEAST**  
Lance Gumbs  
Shinnecock Indian Nation

**NORTHWEST**  
Fawn Sharp  
Quamuit Indian Nation

**PACIFIC**  
Jack Potter, Jr.  
Redding Rancheria

**ROCKY MOUNTAIN**  
Darrin Old Coyote  
Crow Nation

**SOUTHEAST**  
Larry Townsend  
Lumbee Tribe

**SOUTHERN PLAINS**  
Liana Orwen  
Prairie Band of Potawatomi Nation

**SOUTHWEST**  
Joe Garcia  
Ojibay Owingeh Pueblo

**WESTERN**  
Bruce Ignacio  
Ute Indian Tribe

**EXECUTIVE DIRECTOR**  
Jacqueline Pata  
Tiger

**NCAI HEADQUARTERS**  
1516 P Street, N.W.  
Washington, DC 20005  
202.466.7767  
202.466.7797 fax  
www.ncai.org

**WHEREAS**, we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the health, safety and welfare of the Indian people, do hereby establish and submit the following resolution; and

**WHEREAS**, the National Congress of American Indians (NCAI) was established in 1944 and is the oldest and largest national organization of American Indian and Alaska Native tribal governments; and

**WHEREAS**, Indigenous Peoples in the United States, including 567 federally-recognized tribes, are facing immediate and significant impacts from climate change and a growing body of literature illustrates the unique issues facing Indigenous Peoples from climate change, including: the recently developed *Primer on Climate Change and Indigenous Peoples*; *Guidelines for Considering Traditional Knowledges (TKs) in Climate Change Initiatives*; and the special issue of the peer-reviewed journal *Climatic Change*, "*Climate Change and Indigenous Peoples in the United States: Impacts, Experiences and Actions*;" and

**WHEREAS**, the federal government is beginning to acknowledge the disproportionate threats of climate change to Indigenous Peoples through administrative and congressional reports such as the 3rd National Climate Assessment and the *2014 President's State, Local, and Tribal Leaders Task Force on Climate Preparedness and Resilience* (Task Force); and

**WHEREAS**, federal action must be taken to support the efforts of Indigenous Peoples to adapt to climate change impacts and to reduce their carbon footprints through a range of mitigation approaches, including renewable energy development and energy efficiency, and provide Indigenous Peoples access to the financial and technical resources that are required to assess the impacts of climate change on their cultures, air, land and water, economies, community health, and ways of life; and

**WHEREAS**, adequate response to the threat of climate change requires action by tribal, federal, state, and local governments; and

**WHEREAS**, the federal government's treaty and trust responsibilities to protect Indian lands includes the duty to protect lands from the impacts of climate change, which requires that sufficient federal resources be equitably allocated to address climate change so Indigenous Peoples can engage effectively in adaptation and mitigation strategies that will help ensure the integrity of their cultures, homelands, infrastructures, and services; as well as enforce tribal treaty and reserved rights to both on- and off-reservation resources; and

**WHEREAS**, the Task Force led an effort to reach out to Indigenous leaders across the country to solicit their recommendations on how the federal government can better support their nations and communities in preparing for the impacts of climate change and proposed further federal and state consultation and cooperation with Indigenous Peoples on all aspects of federal climate preparedness and resilience efforts; and

**WHEREAS**, the Task Force recommendations focus on inclusion and participation of Indigenous Peoples in federal climate change programs, including access to data, programs and federal funds; education; and long-term planning for natural resources and ecosystem health; water safety and security; housing infrastructure; and food and energy security; and

**WHEREAS**, many individual tribes, regional and national tribal organizations, and partner non-Native organizations recognized the need to develop a document identifying tribal specific principles and, to varying degrees, engaged in drafting, reviewing, and providing input to develop the "Tribal Climate Change Principles: Responding to Federal Policies and Actions to Address Climate Change," which sets forth eight principles to guide the federal government in the development and implementation of administrative and legislative actions related to Indigenous Peoples and climate change.

**NOW THEREFORE BE IT RESOLVED**, that the National Congress of American Indians (NCAI) supports the following eight principles of the *Tribal Climate Change Principles: Responding to Federal Policies and Actions to Address Climate Change* as a guiding policy for U.S. federal agencies and that all federal agencies actively engage NCAI and Indigenous Peoples in the United States in plans to implement these principles:

**Strengthen Tribal Sovereignty in the Climate Change Era**

1. Federally-recognized Tribes and other Indigenous Peoples and Indigenous communities must be partners with full and effective participation in assessing and addressing the problems of climate change at the local, regional, national, and international levels and must be accorded at least the status and rights recognized in the U.N. Declaration on the Rights of Indigenous Peoples and other international standards relevant to Indigenous Peoples.
2. Tribes must have fair and equitable representation on all federal climate committees, working groups, and initiatives in which states, local governments, and other stakeholders are represented.
3. The federal government should establish a high-level interagency Tribal government task force to examine and propose solutions to close gaps across the federal agencies' relationships and programs with Tribes, and to develop, recommend, and implement Tribal-specific solutions that enable the agencies to support and foster Tribal climate-resilient planning and investment.

**Support Tribes Facing Immediate Threats from Climate Change**

4. Indigenous Peoples must have direct, open access to funding, capacity-building, and other technical assistance, with their free, prior and informed consent, to address the immediate and long-term threats from climate change.

**Ensure Tribal Access to Climate Change Resources**

5. Tribes must have fair and equitable access to federal climate change programs.
6. Tribes must be made eligible for existing and future federal natural resource funding programs for which states are eligible, but from which Tribes are currently, or might be, excluded.
7. A fair and equitable set-aside of direct monies or allowances must be made available for distribution to Tribes through legislation, administrative actions, and existing and future federal natural resource funding programs.

**Traditional Knowledges and Climate Change**

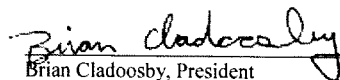
8. Indigenous traditional knowledges, with the free, prior, and informed consent of Indigenous Peoples, must be acknowledged, respected, and promoted in federal policies and programs related to climate change; and

**BE IT FURTHER RESOLVED**, that NCAI urges the United States government agencies, taskforces, and their partner organizations to comply with and implement the November 5, 2009, Executive Memo, Executive Order 13175, and Secretarial Order 3289, and partner with American Indians as sovereign nations as co-decision makers all policy, regulations and laws related to climate change on or off each nation's respected reservations, ceded lands and usual and accustomed areas; and

**BE IT FINALLY RESOLVED**, that this resolution shall be the policy of NCAI until it is withdrawn or modified by subsequent resolution.

**CERTIFICATION**

The foregoing resolution was adopted by the General Assembly at the 2015 Annual Session of the National Congress of American Indians, held at the Town and Country Resort, San Diego, CA, October 18-23, 2015, with a quorum present.

  
Brian Cladoosby, President

ATTEST:

  
Aaron Payment, Recording Secretary



NATIONAL CONGRESS OF AMERICAN INDIANS

The National Congress of American Indians  
Resolution #REN-13-020

**TITLE: Adopting Guidance Principles to Address the Impacts of Climate Change**

**EXECUTIVE COMMITTEE**

**PRESIDENT**

**Jefferson Keel**  
*Chickasaw Nation*

**FIRST VICE-PRESIDENT**

**Juana Majel Dixon**  
*Piute Band of Mission Indians*

**RECORDING SECRETARY**

**Edward Thomas**  
*Central Council of Tlingit & Haida  
Indian Tribes of Alaska*

**TREASURER**

**W. Rob Allen**  
*Jamestown S'Klallam Tribe*

**REGIONAL VICE-PRESIDENTS**

**ALASKA**

**Mike Williams**  
*Alutaiq Native Community*

**EASTERN OKLAHOMA**

**S. Joe Crittenden**  
*Cherokee Nation*

**GREAT PLAINS**

**Robert Shepherd**  
*Sisseton Wahpeton*

**MIDWEST**

**Matthew Wesaw**  
*Potawatomi Band of Potawatomi*

**NORTHEAST**

**Lance Gumbis**  
*Shawnee Indian Nation*

**NORTHWEST**

**Fawn Sharp**  
*Quinalt Indian Nation*

**PACIFIC**

**Bon Arnold**  
*Siskiyou Valley Band of Pomo Indians*

**ROCKY MOUNTAIN**

**Ivan Poney**  
*Shoshone Tribe*

**SOUTHEAST**

**Larry Townsend**  
*Lumbee Tribe*

**SOUTHERN PLAINS**

**George Thurman**  
*Sacand Paw Nation*

**SOUTHWEST**

**Joe Garcia**  
*Okla' Chongch*

**WESTERN**

**Ned Norris, Jr**  
*Tribune O'odham Nation*

**EXECUTIVE DIRECTOR**

**Jacqueline Johnson Pata**  
*Tongva*

**NCAI HEADQUARTERS**

1516 P Street, N.W.  
Washington, DC 20005  
202.466.7767  
202.466.7797 fax  
www.ncai.org

**WHEREAS**, we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the health, safety and welfare of the Indian people, do hereby establish and submit the following resolution; and

**WHEREAS**, the National Congress of American Indians (NCAI) was established in 1944 and is the oldest and largest national organization of American Indian and Alaska Native tribal governments; and

**WHEREAS**, American Indian and Alaska Natives are leaders in the nation on the protection of ecosystems and the environment since time immemorial and have a sacred responsibility to protect our resources and ways of life for generations to come; and

**WHEREAS**, American Indian and Alaska Natives depend upon the health of their ecosystems and natural resources for social, economic, and cultural vitality; and

**WHEREAS**, American Indians and Alaska Natives are place-based people and recognize that climate change is one of the most critical issues we face since it is threatening and can destroy in the future, indigenous ways of life that has been sustainable for thousands of years.

**NOW THEREFORE BE IT RESOLVED**, that NCAI commits to collaborating with ATNI to develop an action plan which lays guiding principles and action steps a to address the impacts of climate change upon tribal governments, cultures, and lifeways; that will protect and advancing our treaty, inherent and indigenous rights, tribal lifeways and ecological knowledge; and

**BE IT FURTHER RESOLVED**, that in the action plan, NCAI shall collaborate with ATNI to evaluate effectiveness of Executive Order 13175, and Secretarial Order 3289, and the United Nation Declaration of Indigenous Peoples (UNDRIP), in protecting and advancing the principles in the action plan; and



**BE IT FURTHER RESOLVED**, that NCAI collaborates with ATNI and calls upon the federal government to provides tribes equitable opportunities and funding to participate meaningfully in the development and implementation of federal climate change policies and programs; and

**BE IT FURTHER RESOLVED**, that NCAI collaborates with ATNI and calls upon Congress and relevant federal agencies to explore and advocate for tribal eligibility for federal energy and natural resource management programs that provide funding to states and local governments but exclude tribal governments and intertribal consortia by law, regulation, or practice; and

**BE IT FURTHER RESOLVED**, that NCAI collaborates with ATNI and commits to create a Tribal Climate Change Task Force, composed of tribal governments, intertribal organizations, and non-tribal partners to develop and implement the plan of action; and

**BE IT FURTHER RESOLVED**, that this resolution shall be the policy of NCAI until it is withdrawn or modified by subsequent resolution.

#### CERTIFICATION

The foregoing resolution was adopted by the General Assembly at the 2013 Midyear Session of the National Congress of American Indians, held at the Atlantis Casino from June 24 - 27, 2013 in Reno, Nevada with a quorum present.

ATTEST:

  
Recording Secretary

  
President

January 11, 2017

Dear Senator:

Since 1919, the National Parks Conservation Association (NPCA) has been the leading voice of the American people in protecting and enhancing our National Park System. On behalf of our more than one million members and supporters nationwide, we urge you to reject the nomination of Oklahoma Attorney General Scott Pruitt for Administrator of the Environmental Protection Agency (EPA). Mr. Pruitt has a track record of undermining the stewardship of America's national parks, extraordinary places that must have the clearest air and cleanest water in the country.

The National Park Service (NPS) depends in part on the EPA to protect waterways and air in and around national parks for the millions of people that visit our parks each year. From the rivers and waterfalls of Yosemite to the skies over the Grand Canyon, protecting these natural resources and values is essential to preserve and enhance our national treasures for current and future generations.

In order to protect our nation's parks, clean air, clean water, and laws that protect them, the EPA should not be led by someone who has a history of active opposition to the mission, science, and values the agency is tasked to uphold. From air quality in parks, to waterways that flow through parks, to the most pressing challenge our parks face today, climate change, Mr. Pruitt has a long record of litigation against and opposition to strong stewardship of these resources.

When the Clean Air Act amendments were passed in 1977, Congress included a national goal of eliminating human-caused pollution that creates haze in our oldest national parks and wilderness areas, referred to as Class 1 areas. The Act mandates the restoration of natural air quality in these areas—this mandate is implemented through the Regional Haze Rule. In 2011, Mr. Pruitt suggested that the Oklahoma regional haze plan “does nothing to address air quality with respect to public health...” despite medical opinion that concluded the plan would reduce deaths and provide a cost benefit of over a million dollars annually due to reduced instances of asthma. In 2013 in the Tenth Circuit of Appeals, Mr. Pruitt argued that EPA abused the discretion that Congress afforded states to make retrofit technology determinations (*Oklahoma v. EPA* 723 F.3d 1201 (2013)), but the Court affirmed the duty of the EPA to ensure state plans comply with the Clean Air Act. And in 2016, Mr. Pruitt supported strident opposition to the EPA amendments clarifying the Regional Haze Rule—to further enhance visibility and reduce air pollution in national parks—by signing a letter that also outlined plans for a legal challenge to the revisions once final.

On clean water, Mr. Pruitt sued the EPA to overturn clean water safeguards for our nation's waters including those in and around national parks. After an incredibly lengthy and comprehensive process, the EPA published the Clean Water Rule, which protects national park waters by providing a clearer and more predictable science-based and legal framework for determining which waters are protected by the Clean Water Act (CWA). Mr. Pruitt has also joined efforts to impede limits on water pollution into the Chesapeake Bay, our nation's largest and most productive tidal estuary, with a 64,000 square mile watershed that includes almost 18 million people—two-thirds of whom get their drinking water from the watershed's rivers and streams.

In addition, Mr. Pruitt denies climate science, calling it “speculative,” a perspective that would jeopardize our nation’s most treasured places, compromising them for future generations. Our national parks are a testament to the reality of climate change. Air pollution obscures many scenic views that are the hallmark of a national park visit, and can transform outdoor recreation into a health hazard. Climate change greatly impacts wildlife habitat forcing species outside the boundaries of national parks designed to protect them. Changing ocean temperatures combined with human-caused pollution ravage coral reefs. Disappearing glaciers, shifting migration patterns for alpine birds, and coastal erosion of historic places are just some of the many effects of climate change.

Outgoing NPS Director Jon Jarvis called climate change the biggest challenge facing NPS in its second century, stating “I think the science is very clear that humans are causing the planet to warm, and that is driving climate change.” In fact, according to NPS, over the next 100 years sea level rise and storm vulnerability from climate change threatens to damage or destroy national park infrastructure and historic and cultural resources totaling more than \$40 billion. What Jarvis and the NPS Climate Change Response Program confirm is not only consensus with overwhelming scientific opinion, but the scope of the challenge we face and the importance of sound science to help parks understand, manage, and adapt to climate change.

The nomination of Mr. Pruitt comes at a critical time for addressing air and water pollution and climate change in our national parks. It is the duty of EPA to help safeguard park resources; national parks and the communities surrounding them deserve a leader of the EPA that is committed to protecting and enhancing them. NPCA is confident that Mr. Pruitt is not that nominee.

For our parks and the people they support and represent, we urge you to oppose Mr. Pruitt’s nomination. Please contact Ani Kame’enui at 202.360.6437 with questions regarding NPCA’s position.

Sincerely,

Theresa Pierno  
President & CEO

Senator CARPER. Thank you so much.

And again, to Mr. Pruitt, to your family, thank you all for joining us today. I see Cage, your son, right behind you, I could barely see Cage's lips moving when you spoke. So I suspect he has a future in law, I am not sure.

[Laughter.]

Mr. PRUITT. We'll see. Thank you, Senator.

Senator BARRASSO. Attorney General Pruitt, I do want to follow up; as you said, you were instructed by the Committee. I have a copy for the record of a January 9th letter which is the day that you were asked to submit the 52 answers to the questions. It's a letter from me to the Ranking Member saying, please note the EPW Committee does not require nominees to respond to questions in advance of a hearing. And I know you'll be responding to the written questions that will be submitted by tomorrow night.

Senator CARPER. Mr. Chairman, could I just add a short thing? That's a conversation between you and the Chairman, I understand that. But again I would just reiterate, you have received a lot of questions, including some that have been unanswered that I had submitted 2 or 3 weeks ago. We need your responses. We need your responses. And I hope the Chairman will give you a reasonable amount of time to respond to those questions, because there will be quite a few of them. They are not going to be like multiple choice answers. They won't be true and false. They will be more complete.

Thank you.

Senator BARRASSO. Additionally, I am going to introduce for the record an article from The Economist about mercury and the Mercury Rule. And it is interesting that it says rulemaking is being made to look more beneficial under Barack Obama, but it goes to say, "A casual listener would have assumed that all these benefits came from reduced mercury. In fact, reduced mercury explained none of the purported future reduction in deaths, heart attacks and asthma, and less than 0.01 percent of the monetary benefits. Instead, almost all the benefits came from concomitant reductions in a pollutant that was not the principal target of the Mercury Rule, namely, fine particles."

And I will submit that for the record as we look at the issues going into the future.

[The referenced information follows:]

## United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS  
WASHINGTON, DC 20510-6176

January 9, 2017

Ranking Member Thomas R. Carper  
513 Hart Senate Building  
Washington, DC 20510

Dear Ranking Member ~~Carper~~ *Tom*:

I would like to reaffirm the process by which the Environment and Public Works Committee considers nominations.

Under long-standing Committee practice, the Committee requires two sets of documents for a nominee:

- From the nominee: a completed Committee Questionnaire (which is unchanged from the 114<sup>th</sup> Congress),
- From the Office of Government Ethics: a copy of the nominee's completed Financial Disclosure Report, a copy of the letter from the nominee to his or her agency's ethics officer outlining how the nominee will meet his or her ethics responsibilities and a letter from the Office of Government Ethics to the Chairman stating that the nominee is in compliance with applicable laws and regulations regarding conflicts of interest.

The Committee can report a nomination without a hearing. I do not plan to do so except with the concurrence of the Ranking Member and unless the Committee has received the documents itemized above. In addition, by unanimous consent the Committee can seek to be discharged from acting on a nomination.

Please note that the EPW Committee does not require nominees to respond to questions in advance of a hearing. While in the past both Republican and Democrat members of the Committee have submitted questions to nominees before a nomination hearing, questions submitted by an individual member of the Committee are not formal requests from the Committee.

The authority to schedule hearings rests within the sole discretion of the Chairman. I will follow the Committee rules and also will consult with the Ranking Member. There is no requirement for the Committee to formally receive a nomination before holding a hearing. For example, hearings in the Committee on the nominations for EPA Administrator at the beginning of the Clinton, Bush, and Obama administrations all took place before the inauguration. In all three administrations, the EPA Administrator was in office before the end of January.

The timing of the transmittal of questions for the record and the deadline for responses also lies within the discretion of the Chairman. Please note that when the Committee considered the nomination of Lisa Jackson in 2009, Chairman Boxer asked members to submit their questions for the record by close of business the same day as the nomination hearing. Chairman Boxer also required Ms. Jackson to complete her responses within two days.

For Attorney General Pruitt's nomination, we have received all the paperwork that the Committee requires from nominees. It is my hope that Committee members work with me to ensure that when the Committee considers his nomination, Attorney General Pruitt receives the same consideration as was given the nominees for EPA Administrator at the beginning of the Clinton, Bush, and Obama administrations. It is particularly important to allow a new President to get his appointees in place to ensure a smooth transition and continued operation of government.

Sincerely,

A handwritten signature in black ink, appearing to read "John Barrasso", written over a horizontal line.

John Barrasso, M.D.  
Chairman  
Committee on Environment and Public Works  
United States Senate



## Measuring the impact of regulation

# The rule of more

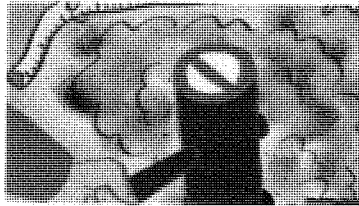
**Rule-making is being made to look more beneficial under Barack Obama**

Feb 18th 2012 | Washington, dc

IN DECEMBER Barack Obama trumpeted a new standard for mercury emissions from power plants. The rule, he boasted, would prevent thousands of premature deaths, heart attacks and asthma cases. The Environmental Protection Agency (EPA) reckoned these benefits were worth up to \$90 billion a year, far above their \$10 billion-a-year cost. Mr

Obama took a swipe at past administrations for not implementing this “common-sense, cost-effective standard”.

A casual listener would have assumed that all these benefits came from reduced mercury. In fact, reduced mercury explained none of the purported future reduction in deaths, heart attacks and asthma, and less than 0.01% of the monetary benefits. Instead, almost all the



benefits came from concomitant reductions in a pollutant that was not the principal target of the rule: namely, fine particles.

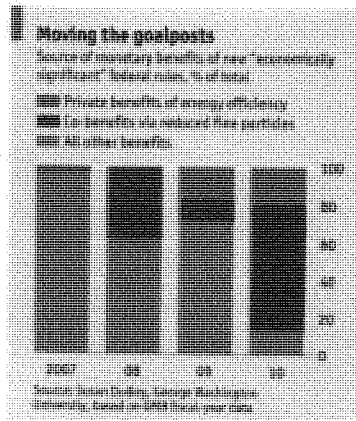
The minutiae of how regulators calculate benefits may seem arcane, but matters a lot. When businesses complain that Mr Obama has burdened them with costly new rules, his advisers respond that those costs are more than justified by even higher benefits. His Office of Information and Regulatory Affairs (OIRA), which vets the red tape spewing out of the federal apparatus, reckons the “net benefit” of the rules passed in 2009-10 is greater than in the first two years of the administrations of either George Bush junior or Bill Clinton.

But those calculations have been criticised for resting on assumptions that yield higher benefits and lower costs. One of these assumptions is the generous use of ancillary benefits, or “co-benefits”, such as reductions in fine particles as a result of a rule targeting mercury.

Mr Obama's advisers note that co-benefits have long been included in regulatory cost-benefit analysis. The logic is sound. For instance, someone may cycle to work principally to save money on fuel, parking or bus fares, but also to get more exercise. Both sorts of benefit should be counted.

The controversy arises from the overwhelming role that co-benefits play in assessing Mr Obama's rule-making. Fully two-thirds of the benefits of economically significant final rules reviewed by OIRA in 2010 were thanks to reductions in fine particles brought about by regulations that were actually aimed at something else, according to Susan Dudley of George Washington University, who served in OIRA under George Bush (see chart). That is double the share of co-benefits reported in Mr Bush's last year in office in 2008.

If reducing fine particles is so beneficial, it would surely be more transparent and efficient to target them directly. As it happens, federal standards for fine-particle concentrations already exist. But the EPA routinely claims additional benefits from reducing those concentrations well below levels the current law considers safe. That is dubious: a lack of data makes it much harder to know the effects of such low concentrations.





Another criticism of the Obama administration's approach is its heavy reliance on "private benefits". Economists typically justify regulation when private market participants, such as buyers and sellers of electricity, generate costs—such as pollution—that the rest of society has to bear. But fuel and energy-efficiency regulations are now being justified not by such social benefits, but by private benefits like reduced spending on fuel and electricity.

Private benefits have long been used in cost-benefit analysis but Ms Dudley's data show that, like co-benefits, their importance has grown dramatically under Mr Obama. Ted Gayer of the Brookings Institution notes that private benefits such as reduced fuel consumption and shorter refuelling times account for 90% of the \$388 billion in lifetime benefits claimed for last year's new fuel-economy standards for cars and light trucks. They also account for 92% and 70% of the benefits of new energy-efficiency standards for washing machines and refrigerators respectively.

The values placed on such private benefits are highly suspect. If consumers were really better off with more efficient cars or appliances, they would buy them without a prod from government. The fact that they don't means they put little value on money saved in the future, or simply prefer other features more. Mr Obama's OIRA notes that a growing body of research argues that consumers don't always make rational choices; Mr Gayer counters that regulators do not make appropriate use of that research in their calculations.

Under Mr Obama, rule-makers' assumptions not only enhance the benefits of rules but also reduce the costs. John Graham of Indiana University, who ran OIRA under Mr Bush, cites the new fuel-economy standards as an example. They assume that electric cars have no carbon emissions, although the electricity they use probably came from coal. They also assume less of a "rebound effect"—the tendency of people to drive more when their cars get better mileage—than was the case under Mr Bush.

Mr Bush's administration was sometimes accused of the opposite bias: understating benefits and overstating costs. At one point his EPA considered assigning a lower value to reducing the risk of death for elderly people since they had fewer years left to live; it eventually backed down. Mr Obama's EPA has considered raising the value of cutting the risk of death by cancer on the ground that it is a more horrifying way to die than others.

More consistent cost-benefit analysis would reduce such controversies. Michael Greenstone of the Hamilton Project, a liberal-leaning research group, thinks that could be done through the creation of a non-partisan congressional oversight body using the best evidence available to vet regulations, much as the Congressional Budget Office vets fiscal policy. It would also re-evaluate old regulations to see if the original analysis behind them was still valid. Rule-

making would still require judgment, but it would be less subject to the whims of the people in power.

This article appeared in the Finance and economics section of the print edition.

Senator BARRASSO. I want to thank all the members of the Committee for your patience. I certainly want to thank the nominee for his time and his testimony today. The hearing is adjourned.

[Whereupon, at 4:55 p.m., the hearing was adjourned.]

[Additional information follows:]

**United States Senate**  
WASHINGTON, DC 20510

December 27, 2016

The Honorable Scott Pruitt  
Attorney General of Oklahoma  
Oklahoma Attorney General's Office  
313 NE 21<sup>st</sup> Street  
Oklahoma City, OK 73105

Dear Mr. Pruitt,

As members of the Senate Environment and Public Works Committee, we look forward to discussing with you your nomination to be Administrator of the Environmental Protection Agency (EPA). Since its inception in 1970, EPA has played an integral role in federal and state efforts to protect public health and ensure we all have clean air to breathe and water to drink. It has long been the expectation of this Committee that the EPA Administrator put the public's interest first and commit to running the agency in a fully transparent manner.

We have been troubled that as Attorney General of Oklahoma you used, nearly verbatim, industry talking points in official correspondence your office sent to EPA concerning EPA's estimation of methane pollution in your state. Thanks to news reporting prior to your nomination, we now know about your close relationship with Devon Energy and that you appear to have been willing to accept its representations about its business practices without independent confirmation or analysis. That reporting, based on documents produced by your office pursuant to Freedom of Information Act requests, also documented how you and members of your staff have worked closely with fossil fuel industry lobbyists to craft positions taken by your office. What that conduct says about your ability to lead EPA in a manner that is not beholden to special or secret interests is a subject that we expect will receive a full airing during your confirmation hearing.

Your relationship with the Rule of Law Defense Fund (the Fund) has received less attention but is no less troubling. According to its website, the Fund is a "public policy organization for issues relevant to the nation's Republican attorneys general." The Fund's annual IRS 990 reports list you as a member of its board and news reporting indicates you were instrumental in efforts to organize the Fund and you have participated in retreats organized by the Fund as recently as this year. Its organization under section 501(c)(4) of the Internal Revenue Code means the Fund need not disclose the identities of its donors, though Freedom Partners, which funds initiatives supported by the Koch brothers, has given the Fund at least \$175,000 since 2014. The Fund's activities, and your relationship to it, also require a full examination during your confirmation process.

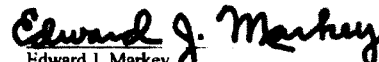
Before the Senate votes to confirm you to run EPA, it is important that you provide a full disclosure of your relationship with the energy industry so we can determine how that will influence your ability to run the agency. Accordingly, we request you provide the following information before your confirmation hearing before the Committee:

- A written explanation of the role you or any person under your supervision has played in the establishment and operation of the Fund;
- A list of all donors who have contributed to the Fund since its inception, total donated, and their affiliations;
- A list of all requests you have made for funding and what was given and from whom in response;
- A list of all expenditures of over \$1,000 made by the Fund since its inception;
- Details of any Fund expenditures over \$100 that have benefited you or any person under your supervision, including travel;
- All communications, including e-mails, between you and the Fund and between you and any individuals related to the establishment of the Fund or the conduct of the Fund's activities;
- A list of all meetings and fundraisers organized by or sponsored in whole or in part by the Fund that you or any person under your supervision attended, including the dates, locations, agendas and attendees; and
- A list of all federal and state legislation or regulations the Fund has taken a position on, Fund-organized legal briefs and letters to federal lawmakers, and all actions you have taken with respect to those matters.

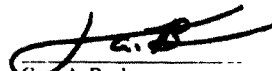
The confirmation process, starting with your responses to Committee questions before your hearing, is an opportunity for you to dispel the notion that the advocacy you have undertaken on environmental issues as Attorney General of Oklahoma has been directed by and for the benefit of the energy industry. Accordingly, we look forward to your timely response to this request.

Sincerely,


  
Sheldon Whitehouse  
United States Senator

  
Edward J. Markey  
United States Senator

  
Jenny A. Markey  
United States Senator

  
Cory A. Booker  
United States Senator

  
Bernard Sanders  
United States Senator

  
Benjamin L. Cardin  
United States Senator

**Science and the Public Interest**

*An Open Letter to President-Elect Trump and the 115th Congress*

Scientific knowledge has played a critical role in making the United States a powerful and prosperous nation and improving the health and well-being of Americans and people around the world. From disease outbreaks to climate change to national security to technology innovation, people benefit when our nation's policies are informed by science unfettered by inappropriate political or corporate influence.

To build on this legacy and extend the benefits of science to all people, including Americans who have been left behind, the federal government must support and rely on science as a key input for crafting public policy. Policy makers and the public alike require access to high-quality scientific information to serve the public interest. There are several actions Congress and the Trump administration should take to strengthen the role that science plays in policy making.

First, creating a strong and open culture of science begins at the top. Federal agencies should be led by officials with demonstrated track records of respecting science as a critical component of decision making. Further, recognizing that diversity makes science stronger, administration officials should welcome and encourage all scientists regardless of religious background, race, gender, or sexual orientation.

Second, Congress and the Trump administration should ensure our nation's bedrock public health and environmental laws—such as the Clean Air Act and the Endangered Species Act—retain a strong scientific foundation, and that agencies are able to freely collect and draw upon scientific data to effectively carry out statutory responsibilities established by these laws. They should also safeguard the independence of those outside the government who provide scientific advice.

Third, Congress and the Trump administration should adhere to high standards of scientific integrity and independence in responding to current and emerging public health and environmental threats. Decision makers and the public need to know what the best-available scientific evidence is, not what vested interests might wish it to be. Federally funded scientists must be able to develop and share their findings free from censorship or manipulation based on politics or ideology. These scientists should, without fear of reprisal or retaliation, have the freedom and responsibility to:

- conduct their work without political or private-sector interference;
- candidly communicate their findings to Congress, the public, and their scientific peers;
- publish their work and participate meaningfully in the scientific community;
- disclose misrepresentation, censorship, and other abuses of science; and
- ensure that scientific and technical information coming from the government is accurate.

Finally, Congress and the Trump administration should provide adequate resources to enable scientists to conduct research in the public interest and effectively and transparently carry out their agencies' missions. The consequences are real: without this investment, children will be more vulnerable to lead poisoning, more people will be exposed to unsafe drugs and medical devices, and we will be less prepared to limit the impacts of increasing extreme weather and rising seas.

These steps are necessary to create a thriving scientific enterprise that will strengthen our democracy and bring the full fruits of science to all Americans and the world. The scientific community is fully prepared to constructively engage with and closely monitor the actions of the Trump administration and Congress. We will continue to champion efforts that strengthen the role of science in policy making and stand ready to hold accountable any who might seek to undermine it.

## Signatories

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†National Medal of Science

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January 17, 2017

Dear President-elect Trump and Members of the United States Congress,

We, the undersigned leaders of higher education institutions throughout the United States, recognize our academic and ethical responsibilities to current and future generations to take aggressive climate action; to reduce our sector's carbon pollution, to support interdisciplinary climate education, and to continue research that expands our understanding of rapidly changing earth systems. We are committed to developing and deploying innovative climate solutions that provide a prosperous future for all Americans.

We join our colleagues in the business and investment communities in supporting the science-based targets outlined in the Paris Climate Agreement. In fact, many of our institutions have voluntarily set even more aggressive carbon reduction goals to lead our sector forward and to demonstrate what is possible for others.

Therefore, we ask that you support the following:

1. Participation in the Paris Agreement, with the resulting national carbon reduction and clean energy targets, to protect the health of our current communities and our future generations.
2. Research in our academic institutions and in federal agencies to ensure that our national climate, energy, and security policies are based on leading scientific and technical knowledge.
3. Investments in the low carbon economy as part of a resilient infrastructure to ensure the country can adapt to changing climate hazards. These investments will also help grow American jobs and businesses.

The upcoming transition of federal leadership presents a unique opportunity to address head-on the challenges of climate change by accelerating the new energy economy and creating strong, resilient communities. This is particularly important for those in our communities most vulnerable to climate change. Your support for these three areas is a

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critical investment in the future of the millions of students we serve. We will continue to prepare graduates for the workforce as well as lead in world-class research and innovation in order to secure a healthier and more prosperous future for all.

We stand ready to assist your incoming Administration and congressional representatives to embrace this opportunity for the nation to meet these unprecedented global challenges.

Respectfully,

- Raymond Crossman, President, Adler University
- Elizabeth Kiss, President, Agnes Scott College
- Don Bantz, President, Alaska Pacific University
- James Mullen, President, Allegheny College
- Karan Powell, President, American Public University System
- Sara Wenger Shenk, President, Anabaptist Mennonite Biblical Seminary
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- William Groves, Interim Chancellor, Antioch University
- Melinda Treadwell, Provost, Antioch University New England
- Michael Crow, President, Arizona State University
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- Lendley Black, Chancellor, University of Minnesota-Duluth
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Senator John Boozman  
141 Hart Senate Office Building  
Washington, DC 20510

Dear Senator Boozman,

As President of The Poultry Federation, a tri-state trade association that represents the poultry industry in Arkansas, Oklahoma and Missouri, I am very familiar with the Arkansas-Oklahoma lawsuit filed by former attorney general Drew Edmonson. I take serious issue with the most recent New York Times article.

We want you to know that some of the facts in The New York Times' recent expose on Scott Pruitt and the poultry industry were wrong.

The Times reported that Mr. Pruitt negotiated a deal with Arkansas "and the poultry companies" to conduct an environmental study, rather than push a judge for a decision on a lawsuit against the companies. The truth is the agreement had nothing to do with the lawsuit and the poultry companies were not part of it.

The Times also incorrectly reported that Mr. Pruitt allowed the expiration of a 2003 agreement "...to reduce poultry waste pollution." The deal actually involved northwest Arkansas cities, not the poultry industry. It wasn't renewed because the cities had already made the wastewater improvements and were operating within permit limits.

The reporters also failed to explain to readers that chicken manure is a valuable fertilizer and its use on farm land is regulated by state rules designed to protect waterways. In addition, independent farmers – not the poultry companies – own and manage the manure.

The editorial from the Wall Street Journal more accurately describes General Pruitt's philosophy and efforts to protect the environment.

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

Sincerely,

A handwritten signature in cursive script, appearing to read "Marvin Chilton". The signature is written in dark ink and is positioned below the word "Sincerely,".

## WSJ Editorial: Scott Pruitt's Chick-fil-EPA

Scott Pruitt's Chick-fil-EPA

Allow us to clean up the facts about liberal tales of chicken waste.

Liberals are waxing apocalyptic to stop Scott Pruitt's confirmation to run the Environmental Protection Agency. But what they really fear is a restoration of the cooperative federalism he's championed as Oklahoma Attorney General.

Democrats will have sound bites ready for Mr. Pruitt's Senate hearing Wednesday, and one talking point will be a report this weekend by the liberal Environmental Working Group that Mr. Pruitt dropped a pollution lawsuit against 13 poultry companies after accepting \$40,000 in campaign contributions from the industry. This is as unbelievable as it sounds.

In 2005 Mr. Pruitt's Democratic predecessor Drew Edmonson charged out-of-state poultry producers with dumping more than 300,000 pounds of manure into the Illinois River Basin each year, causing algae blooms and other health hazards. Poultry farms are a ripe political target in the cattle-rich state, though cattle and urban runoff and sewage are also polluters.

Plaintiff firms including Motley Rice shopped the lawsuit to Oklahoma. The firms would finance the litigation and receive up to 50% of the monetary damages. Yet after hearing testimony and evidence from both sides, federal Judge Gregory Frizzell was skeptical.

The state "has not yet met its burden of proving that bacteria in the waters" are "caused by the application of poultry litter rather than by other sources, including cattle manure and human septic systems," the judge wrote in dismissing Mr. Edmonson's motion for a preliminary injunction. Bacteria levels in state waterways were similar regardless of proximity to chicken farms.

Judge Frizzell also doubted the credibility of some of the state's "experts" whose scientific work hadn't been peer-reviewed or published. And he scored the state's attempt to supplement the evidentiary record "with reports of alleged 'consulting experts' whose identity and opinions have been shielded [by disclosure rules]."

Then there was the fact that Mr. Edmonson in 1998 had given the state Department of Agriculture, Food & Forestry authority to seek an injunction against chicken companies that it believed were violating water-quality standards. The state agency never did.

The chicken case fell apart in 2009 when Judge Frizzell ruled that Oklahoma couldn't seek monetary damages—more than \$800 million not including punitive damages—unless the Cherokee Nation, whose land surrounds the watershed, joined the suit. Otherwise, plaintiff attorneys might get 50% of the award while the Cherokee got nothing. Judge Frizzell barred the state's monetary claims, and he was upheld by the Tenth Circuit Court of Appeals. Whereupon Mr. Pruitt dropped the case.

Meantime, poultry producers voluntarily agreed to export their waste out of the region. In 2013 Mr. Pruitt negotiated an agreement with Arkansas to enforce regulations on fertilizer runoff and study the

effect of phosphorus on algae blooms. The goal was to avoid costly litigation and obtain more data before imposing more stringent regulations. According to a state study last month, phosphorus levels in the Illinois River declined by roughly 50% over the last decade as municipalities and chicken farms cleaned up their waste.

Consent decrees have been a favorite tool of the Obama EPA to conscript businesses and local governments. But Mr. Pruitt's chicken coup shows that a cooperative approach can be more effective and less costly than litigation. Mr. Pruitt will do far more environmental good at EPA by making states partners rather than prosecuting them.



January 5, 2017

Dear President-elect Donald J. Trump:

We write to you as evangelical and mainline Protestant, Roman Catholic, and Jewish scientists, economists, legal scholars, policy experts, and religious leaders in support of your nomination of Oklahoma Attorney General Scott Pruitt to the office of Administrator of the federal Environmental Protection Agency.

The EPA has the crucial task of writing and enforcing regulations that apply statutes passed by Congress and signed by the President to protect the life and health of Americans. Its work necessarily integrates science, economics, law, politics, and ethics, all of which are rooted in religious worldviews. A good Administrator must demonstrate expertise in at least some of these, and mature understanding of and receptivity to the insights of all. Scott Pruitt does.

As Oklahoma Attorney General, Mr. Pruitt has demonstrated his legal expertise in successful litigation to require corporations—including the energy corporations so prominent in his state's economy—to abide by environmental laws and regulations. He has publicly expressed his conviction that the EPA's role is not to create law through regulations that exceed the scope of enabling legislation but to implement the intent of that legislation and nothing more. That is, he recognizes that environmental policy should be determined by the people's elected representatives, not by unelected, unaccountable members of the federal bureaucracy. He has also publicly opposed the abuse of the court system by use of "sue-and-settle" to reach sweetheart deals between the EPA and environmental advocacy groups. These are some of the obvious ways in which his legal expertise qualifies him for Administrator.

Mr. Pruitt has also demonstrated understanding of and open-mindedness toward scientific insights crucial to the formulation and implementation of environmental regulation. He is prepared to hear all sides in debates over the risks and benefits of various activities that come under the purview of the EPA.

Finally, as a committed evangelical Christian, Mr. Pruitt has an unbending commitment to human life and health, especially to the protection of the most vulnerable in society. We are pleased to note that a large group of religious leaders, including presidents of some of America's largest and most prestigious theological seminaries, has also written to you in his support for this reason, and we add our voices to theirs.

Some radical environmentalists and religious activists oppose Mr. Pruitt because he does not embrace their exaggerated fears of human-induced global warming—fears that go well beyond the empirical evidence crucial to genuine science—or their antipathy to the development of the abundant, reliable, affordable energy indispensable to lifting and keeping whole societies out of poverty and the disease and premature death that invariably accompany it. We urge you therefore to stand firmly behind your nominee, and we commit ourselves to supporting him in the confirmation process that lies ahead. We welcome you and your Administration to call on us to assist in any way we can.

Sincerely,

[Institutional associations are for identification and do not imply institutional endorsement. Add your signature and see additional signers at <http://bit.ly/2hW33pQ>.]

1. Raymond P. Adams, M.Div. (Pastoral Theology), D.D (Honorary), member, Grace Community Church of Sun Valley, Arcadia, CA
2. Gary L. Anderson, MA (History), Colonel, USAF (retired), Aviation and Civil Engineering, Fruita, CO

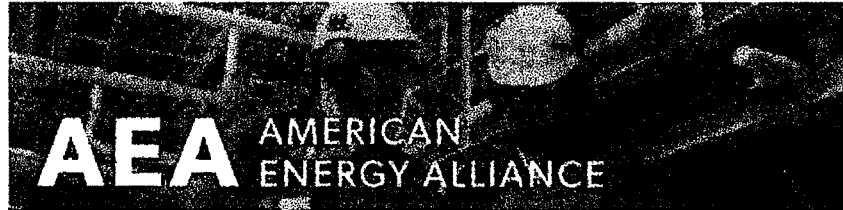
3. William L. Anderson, Ph.D. (Economics), Professor of Economics, Frostburg State University, Frostburg, MD
4. William D. Balgord, Ph.D. (Geochemistry), President, Environmental & Resources Technology, Inc., Middleton, WI
5. Tim Bell, Ph.D. (Climatology), Professor, University of Winnipeg, and Adjunct Professor, University of Manitoba (retired)
6. Paul Barber, B.S. (Civil Engineering); President of the Board, Barber Brothers Contracting Co. LLC, Baton Rouge, LA
7. Charles G. Battig, M.S.E.E., M.D., Heartland Institute policy expert on environment; Virginia Scientists and Engineers for Energy and Environment (VA-SEE), Charlottesville, VA
8. Timothy Beard, Th.M. (Theology), retired missionary/pastor, Calvary Bible Church, Toppenish, WA
9. E. Calvin Belser, Ph.D. (History), Founder and National Spokesman, The Cornwall Alliance for the Stewardship of Creation
10. Victoria Blodgett, New England Regional Director, Aglow International, Southbridge, MA
11. Carl W. Bogue, Jr., Th.D. (Theology), Pastor Emeritus, Faith Presbyterian Church, Akron, OH
12. James A. Borland, (Th.D.), Theology, Professor of Theology, Liberty University, Lynchburg, VA
13. David J. Buffalo, B.S. (Civil Engineering), Licensed Professional Engineer, Denver, CO
14. Danny J. Burrows, Lt. Col. (Ret.), USAF, Big Oaks Ranch, Kilgore TX
15. Roger L. Burtner, Ph.D. (Geology), former National Science Foundation Fellow; former Adjunct Professor, Case Western Reserve University; Principal, Remote Sensing Exploration, Fullerton CA
16. Ronald S. Carson, Ph.D. (Nuclear Engineering), Affiliate Assistant Professor, University of Washington; retired Technical Fellow, The Boeing Company; Adjunct Professor, Seattle Pacific University; Renton, WA
17. Kenneth Chilton, Ph.D. (Economics), retired Associate Professor of Management and Director of the Institute for Study of Economics and the Environment, Lindenwood University, St. Louis, MO
18. Rev. Charles Clough, M.S. (Atmospheric Physics); retired chief, U.S. Army Atmospheric Effects Team, Aberdeen Proving Ground, MD; retired Lt. Col., U.S. Air Force Reserve Weather Officer; President, Biblical Framework Ministries; adjunct professor, Chaffetz Theological Seminary, Albuquerque, NM
19. Mark Coppinger, Ph.D. (Philosophy), Professor of Christian Apologetics, Southern Baptist Theological Seminary, Louisville, KY
20. Donald R. Crowe, P.E., B.S. (Mechanical Engineering), Founder & President, The Absaroke Corporation, Plantation, FL
21. Claude C. Cutross, Ph.D. (Organic Chemistry), Staff Chemist (retired), ExxonMobil, Baton Rouge, LA
22. Doon Dears, B.S. (Engineering), retired GE Company Senior Executive, The Villages, FL
23. Mr. Terry W. Donze, B.S. (Geological Engineering), author, *Climate Realism: Alarmism Exposed*, Wheat Ridge, CO
24. John Droz, M.S. (Physics), Independent Scientist, Founder, Alliance for Wise Energy Decisions (AWED), Morehead City, NC
25. Trent England, J.D. (Law), David and Ann Brown Distinguished Fellow, Oklahoma Council of Public Affairs, Oklahoma City, OK
26. Carl Ernstrout, Philadelphia, PA
27. Gordon Evans, M.S. (Soil Science), Environmental Manager, The Texas A&M University System, College Station, TX
28. Joseph Farah, Founder and CEO, WND.com, WND Books, and WND Films
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30. John Freeman, B.S. (Engineering) AFTS, retired Anglican priest, Hillcrest, KwaZulu Natal, South Africa
31. Kevin D. Freeman, CFA, B.S., B.A. (Economics), Founder, NSIC (National Security Investment Consultant) Institute, Bartlesville, OK
32. Martin P. Fricke, Ph.D. (Nuclear Physics), Senior Fellow, American Physical Society, San Diego, CA
33. Jim Garlow, Ph.D. (Historical Theology), Pastor, Skyline Church, San Diego; Oversight Pastor, The Jefferson Gathering, US Capitol Building, Washington, DC
34. Albrecht Glatzle, Ph.D. (Agriculture), Retired Director of Research, INTAS (Iniciativa para la Investigación y Transferencia de Tecnología Agraria Sostenible), Filadelfia, Paraguay
35. Alan W. Gomes, Ph.D. (Theology), Professor of Theology, Talbot School of Theology, La Mirada, CA
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37. Rev. Paul S. Gould, Ph.D. (Religious Studies), missionary, writer, Christian Layman's Missionary Evangelism Association, Prosser, WA
38. Jay Grimstead, D.Min. (Theology), Founder/Director, Coalition on Revival; Founder, International Council on Biblical Inerrancy, Coordinator, International Church Council Project, Murphys, CA
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41. Eugene S. Harsh, M.S. (Meteorology), Lt. Col. USAF (Retired), Colorado Springs, CO
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44. Rev. Ron Heffield, M.M. (Bible), Pastor, New Life Community Church, Orlando, FL
45. Thomas D. Hennigan, M.S. (Environmental and Forest Biology), Associate Professor of Organism Biology, Truett McConnell University, Cleveland, GA
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57. Rev. Mark J. Larson, Ph.D. (Historical Theology), Pastor, Peace Reformed Church, Garner, IA
58. Willes K. Lee, President, National Federation of Republican Assemblies
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69. Mark P. Martin, LCSW-C (Social Work), Clinical Social Worker, Brook Lane Health Services, Hagerstown, MD
70. Rod D. Martin, J.D., Founder and CEO, The Martin Organization, Destin, FL; Distinguished Visiting Professor of History and Government, Hannibal LaGrange University, Hannibal, MO
71. The Most Rev. William Mikler (Ph.D., Biblical Philosophy), Archbishop, Communio Christiana, Sanford, FL
72. Tracy Miller, Ph.D. (Economics), Falls Church, VA
73. Craig Vincent Mitchell, Ph.D. (Philosophy/Ethics), Associate Professor of Philosophy, Politics and Economics, Criswell College, Dallas, TX
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75. R. Mark Mussar, M.Div., Pastor and Missionary, Grace Redeemer Bible Church, Olympia, WA
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77. Rev. Erik V. Myhrberg, Ph.D. (International Business), Tactical Chaplain, Quantico, VA
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80. Philip Pennance, Ph.D. (Chemical Physics), M.Sc. (Geophysics), Professor of Mathematics, University of Puerto Rico, Rio Piedras, Puerto Rico
81. Ricki Pepin, Author, Lecturer, Instructor, Institute on the Constitution, Springfield, OH
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83. Joseph A. Pipa Jr., Ph.D. (Theology), President and Professor of Systematic Theology, Greenville Presbyterian Theological Seminary, Greenville, SC
84. Everett Piper, Ph.D., President, Oklahoma Wesleyan University, Bartlesville, OK
85. Ronald W. Pritchett, M.S. (MOTM—Master of Technology Management), B.S. (Geological

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86. Jay W. Richards, Ph.D. (Philosophy), Research Professor, Catholic University of America, Washington, DC
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  88. Caleb Stewart Rossiter, Ph.D. (Policy Analysis), Adjunct Professor, American University, Washington, DC
  89. Fred P. Rumak B.S. (Geology), P. Geo; CPG; P. Geol; Energy Consultant, Calgary, Alberta, Canada
  90. James H. Rust, Ph.D. (Engineering), Professor of Nuclear Engineering (retired), Georgia Tech, Atlanta, GA; policy advisor, The Heartland Institute, Chicago, IL
  91. Anthony J. Sadar, M.S. (Environmental Science, Air Pollution Control), Certified Consulting Meteorologist, Adjunct Associate Professor, Geneva College, Beaver Falls, PA
  92. Daryl Sas, Ph.D. (Biology), Professor of Biology, Geneva College, Beaver Falls, PA
  93. Mark R. Saucy Ph.D (Theology), Professor of Systematic Theology, Talbot School of Theology, La Mirada, CA
  94. Richard L. Sauer, M.S. (Environmental Engineering), Col., U.S. Air Force Reserve (ret.), NASA (ret.), League City, TX
  95. Herbert Schlossberg, Ph.D. (History), Fellow, Ethics and Public Policy Center, Washington, DC
  96. Kelly Shackelford, J.D. (Law), President and CEO, First Liberty Institute, Plano, TX
  97. Thomas P. Sheahan, Ph.D. (Physics), retired research scientist specializing in energy issues, formerly with several different national laboratories
  98. David Shorman, Ph.D. (Aquatic Science), President, DIVE, LLC, Haleiwa, HI
  99. Willie Soon, Ph.D. (Aerospace Engineering), independent scientist, Cambridge, MA
  100. Roy W. Spencer, Ph.D. (Meteorology), Principal Research Scientist, Earth System Science Center, University of Alabama, Huntsville, AL, and Lead Scientist, NASA Aqua AMSR-3 Satellite Remote Sensing Program
  101. Rev. Larry H. Stallard, M.Div., Retired Pastor, Edgemont Presbyterian Church, Bristol, TN
  102. Nicholas Stehls, B.A. (Political Science), CEO, The Stehle Organization; President, Campaign for America's Future; Little Rock, AR
  103. Frank Stevenson, J.D. (Law), retired President, NCF Title, Jacksonville, FL
  104. Richard F. Storm, PE, CEM, retired engineer, Hilton Head, SC
  105. Owen D. Strachan, Ph.D. (Theology), Professor, Midwestern Baptist Theological Seminary, Kansas City, MO
  106. Rev. Kenneth G. Talbot, Ph.D., Th.D. (Divinity), President and Professor of Theology and Apologetics, Whitefield Theological Seminary and College; Pastor, Christ Presbyterian Church (RPCGA), Lakeland, FL
  107. Timothy D. Terrell, Ph.D. (Economics), Associate Professor, Wofford College, Spartanburg, SC
  108. David J. Theroux, M.S. (Mechanical Engineering), M.B.A. (Business Economics), Founder and President, Independent Institute, Oakland, CA
  109. C. Joseph Touhill, Ph.D. (Environmental Engineering), P.E., DEE, F. AICbE, F.ASCE, President, Touhill Technology Management, Jamison, PA
  110. Rev. Reverend Thomas Trouwborst, M.B.A., M.Div., Pastor, Calvary Orthodox Presbyterian Church, Glenside, PA
  111. Gary Tuck, Ph.D. (Bible Exposition), Professor of Biblical Literature, Western Seminary, Los Gatos, CA
  112. L.L. (Don) Veinot Jr., President, Midwest Christian Outreach, Inc., Wonder Lake, IL
  113. Jeffery J. Ventrella, J.D., Ph.D. (Law), Senior Counsel, Alliance Defending Freedom, Scottsdale, AZ
  114. James A. Wantlis, Ph.D. (Physics), Professor of Physics, Presbyterian College, Clinton, SC
  115. Anthony Watts, American Meteorological Society-certified television and radio meteorologist (retired), owner of WattsUpWithThat.com, Chico, CA
  116. David F. Wells, Ph.D. (Theology), Distinguished Research Professor, Gordon-Conwell Theological Seminary, South Hamilton, MA
  117. Scott E. Williams, Ph.D. (Applied Mathematics), Monument, Colorado, USA
  118. Peter W. Wood, Ph.D. (Anthropology), President, National Association of Scholars, New York, NY
  119. Thomas H. Wymwiler, B.A., Meteorologist, NASA (Ret.); Chair, Water Day 2013, UNESCO JHE Water Research Institute, Delft, The Netherlands; Chair, Oceanographic Section, 2016 World Congress of Ocean, Qingdao, China; NASA TRCS charter member, Ogunquit, ME
  120. V. William Zmislowski, Jr., AIA, NCARB, IIDA, B.S. (Architecture, Land Planning, Urban Design, Environmental Design), International Design Consultant, Boulder, CO
  121. Benjamin Zycher, Ph.D. (Economics), John G. Searle Chair, American Enterprise Institute, Washington, DC

[Add your signature and see additional signers at <http://bit.ly/2hW31pQ>. Contact: Megan Toombs, Director of Communications, Cornwall Alliance for the Stewardship of Creation, [Megan@CornwallAlliance.org](mailto:Megan@CornwallAlliance.org).]





## AEA Leads Coalition Urging Pruitt Confirmation

01/12/17

Today, the American Energy Alliance released a coalition letter signed by more than 20 organizations urging the Senate to confirm Scott Pruitt as the next EPA Administrator. Below is an excerpt from the letter:

Attorney General Pruitt has consistently fought for Oklahoma families and communities and has been a stalwart defender against federal intrusion into state and individual rights. Notably, Mr. Pruitt led a multi-state effort opposing the EPA's unlawful attempt to take over the nation's electricity grid under section 111(d) of the Clean Air Act. The EPA's plan would shutter an estimated 40 GW of reliable and affordable energy, unnecessarily harming American families for little to no environmental benefit.

In recent years, the EPA has been chronically late on complying with deadlines. In a study assessing 1,000 deadlines across the four major stationary source programs, the Competitive Enterprise Institute found that the EPA missed 84 percent of their Clean Air Act deadlines and was late by an average of 4.3 years. Mr. Pruitt will work to get the EPA back on track and in compliance with its statutory Clean Air Act responsibilities.

Attorney General Pruitt has stood up for states, families, and the Constitution by opposing the Administration's unconstitutional regulatory overreach through the re-definition of the "waters of the United States." This rule was so invasive that small ditches on family farms or near businesses could have been subject to federal regulation. Mr. Pruitt filed suit against the EPA, refusing to subject Oklahomans and other Americans to this unconstitutional regulation without exhausting all legal pathways.

...

Mr. Pruitt has demonstrated his commitment to upholding the Constitution and ensuring the EPA works for American families and consumers. Under Mr. Pruitt, we hope the EPA will follow the laws set forth by Congress and cooperate with states to advance its mission

of keeping our air clean and our water pure. We fully support Mr. Pruitt for the position of EPA Administrator and encourage the Senate to swiftly approve his nomination.

*Doug MacGillivray*  
*Director of Federal Affairs*

January 12, 2017

**AEA** AMERICAN ENERGY ALLIANCE

Dear Senators,

**HERITAGE ACTION FOR AMERICA****AMERICANS FOR TAX REFORM****FreedomWorks****THE CLUB FOR GROWTH**

AMERICAN COMMITMENT

**TAXPAYERS PROTECTION ALLIANCE****INSTITUTE FOR LIBERTY**

We, the undersigned, express our strong support for the nomination of Edward Scott Pruitt to the position of Administrator of the Environmental Protection Agency (EPA). Mr. Pruitt is highly qualified to lead the nation's chief air and water regulatory agency. We fully endorse his selection and urge the Senate to confirm Mr. Pruitt as the next EPA Administrator.

Attorney General Pruitt has consistently fought for Oklahoma families and communities and has been a stalwart defender against federal intrusion into state and individual rights. Notably, Mr. Pruitt led a multi-state effort opposing the EPA's unlawful attempt to take over the nation's electricity grid under section 111(d) of the Clean Air Act. The EPA's plan would shutter an estimated 40 GW of reliable and affordable energy, unnecessarily harming American families for little to no environmental benefit.<sup>1</sup>

In recent years, the EPA has been chronically late on complying with deadlines. In a study assessing 1,000 deadlines across the four major stationary source programs, the Competitive Enterprise Institute found that the EPA missed 84 percent of their Clean Air Act deadlines and was late by an average of 4.3 years.<sup>2</sup> Mr. Pruitt will work to get the EPA back on track and in compliance with its statutory Clean Air Act responsibilities.

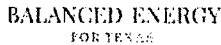
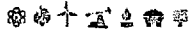
Attorney General Pruitt has stood up for states, families, and the Constitution by opposing the Administration's unconstitutional regulatory overreach through the re-definition of the "waters of the United States." This rule was so invasive that small ditches on family farms or near businesses could have been subject to federal regulation. Mr. Pruitt filed suit against the EPA, refusing to subject Oklahomans and other Americans to this unconstitutional regulation without exhausting all legal pathways.

Attorney General Pruitt understands that air quality in the United States has dramatically improved over the years. According to the EPA, since 1970 alone air pollution emissions have fallen by 70 percent even as we have used more coal, natural gas, oil, and grew the economy by 240 percent. Mr. Pruitt is committed to continuing these trends.

Some claim that Mr. Pruitt opposes clean air and water. This could not be further than the truth. Mr. Pruitt respects and upholds the Constitution, and understands that many of the nation's challenges regarding clean air and water are best met at the state and local level. It is, in fact the states that implement many of the nation's environmental laws, and for good reason.

<sup>1</sup> <https://www.eia.gov/analysis/requests/powerplants/cleanplan/>

<sup>2</sup> <https://cei.org/content/epa%E2%80%99s-derelection-duty>



The federal government is not the end-all, be-all solution. Empowering states to take their own steps in addressing environmental concerns promotes responsiveness, the responsible use of taxpayer resources, and ensures that the people closest to the issues and with the most knowledge of what is needed are given the power to do just that.

Mr. Pruitt has demonstrated his commitment to upholding the Constitution and ensuring the EPA works for American families and consumers. Under Mr. Pruitt, we hope the EPA will follow the laws set forth by Congress and cooperate with states to advance its mission of keeping our air clean and our water pure. We fully support Mr. Pruitt for the position of EPA Administrator and encourage the Senate to swiftly approve his nomination.

Sincerely,

- Thomas Pyle, American Energy Alliance
- Michael Needham, Heritage Action for America
- Grover Norquist, Americans for Tax Reform
- Kent Lassman, Competitive Enterprise Institute
- Adam Brandon, FreedomWorks
- David McIntosh, Club for Growth
- Phil Kerpen, American Commitment
- Craig Richardson, Energy and Environment Action Team
- David Williams, Taxpayers Protection Alliance
- Harry Alford, National Black Chamber of Commerce
- Jim Martin, 60 Plus
- Andrew Langer, Institute for Liberty
- Independence Institute
- Richard Martin, Americans for Limited Government
- Coalition Opposed to Additional Spending and Taxes (COAST)
- Brett Healy, MacIver Institute
- Joseph Bast, Heartland Institute
- George Landriith, Frontiers of Freedom
- Randy Eminger, Energy Policy Network
- Paul Gessing, Rio Grande Foundation
- Mike Nasi, Balanced Energy for Texas
- Brent Mead, Montana Policy Institute
- Forest Thigpen, Mississippi Center for Public Policy

January 17, 2017

The Honorable John Barrasso  
Chairman  
Committee on Environment and Public Works  
United States Senate  
Washington, DC 20510

Dear Chairman Barrasso:

The undersigned agriculture and associated organizations write to urge your support for confirmation of Scott Pruitt to be Administrator of the Environmental Protection Agency (EPA).

Mr. Pruitt has distinguished himself as a thoughtful attorney dedicated to disciplined adherence to the rule of law. Further, he has a reputation for careful consideration of differing perspectives as preparation for taking measured actions. We respectfully submit that Mr. Pruitt possesses the skills to ensure EPA rules and actions are rooted in law and guided by science.

Please support confirmation of Scott Pruitt to be EPA Administrator.

Sincerely,

Agricultural Retailers Association  
American Bakers Association  
American Farm Bureau Federation  
American Seed Trade Association  
California Specialty Crops Council  
Corn Refiners Association  
CropLife America  
International Franchise Association  
National Association of Wheat Growers  
National Cattlemen's Beef Association  
National Cotton Council  
National Council of Farmer Cooperatives  
National Grain and Feed Association  
National Oilseed Processors Association  
National Onion Association  
National Pork Producers Council  
National Potato Council  
National Turkey Federation  
National Sorghum Producers  
North American Export Grain Association  
North American Meat Institute  
Northwest Horticultural Council  
Southeastern Lumber Manufacturers Association  
United Egg Producers  
United Fresh Produce Association  
U.S. Apple Association  
USA Rice  
Western Growers Association



January 9, 2017

The Honorable John Barrasso  
Chairman  
Committee on Environment & Public Works  
United States Senate  
410 Dirksen Senate Office Building  
Washington, D.C. 20510-6176

The Honorable Tom Carper  
Ranking Member  
Committee on Environment & Public Works  
United States Senate  
456 Dirksen Senate Office Building  
Washington, D.C. 20510-6175

Dear Chairman Barrasso and Ranking Member Carper:

On behalf of the Agricultural Retailers Association (ARA), I urge you to support the nomination of Scott Pruitt as Administrator of the U.S. Environmental Protection Agency (EPA) and encourage a Yes vote in favor of his confirmation.

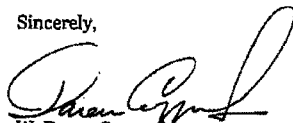
Mr. Pruitt, currently serving as Attorney General for the state of Oklahoma, has earned bipartisan respect and recognition for his expertise in constitutional law and the federal regulatory system. He is an ideal nominee who would provide much-needed balance at the helm of EPA between environmental regulation and economic growth. He would ensure that the Agency follows the laws written by Congress and enforces them fairly, understands the challenges faced by American agribusinesses and their farmer customers, and will work with the states and regulated industries in a cooperative manner to help protect the environment.

ARA members create tens of thousands of jobs and contribute billions of dollars in economic activity across the nation. Over the past several years EPA has issued unnecessary, burdensome, and on many occasions, unlawful federal regulations that have caused significant economic hardship on American farmers and agribusinesses. On occasion the Agency has departed from its statutory foundation of science-based risk assessment. The Agency blatantly conducted a social media campaign in support of its "Clean Water Rule" (otherwise known as WOTUS), which was conduct unbecoming a science-based regulatory agency and was perhaps even illegal.

America needs an EPA Administrator that will ensure decisions are based on risk-based analysis and peer-reviewed science, not based on politics and social media campaigns. Attorney General Pruitt will provide the proper balance urgently needed at the EPA.

ARA fully supports his nomination and encourages you to vote to confirm him as the next EPA Administrator. Thank you for your review and consideration of this request!

Sincerely,



W. Daren Coppock  
President & CEO

1156 15th Street NW, Suite 500 | Washington, D.C. 20005  
Phone: (202) 457-0825 | Fax: (202) 457-0864  
Info@aredc.org | www.aredc.org



January 10, 2017

The Honorable John Barasso, Chairman  
410 Dirksen Senate Office Bldg.  
Washington, DC 20510-6175

The Honorable Tom Carper, Ranking Member  
456 Dirksen Senate Office Bldg.  
Washington, DC 20510-6175

On behalf of cattlemen and women, the undersigned organizations strongly support the nomination of Oklahoma Attorney General (AG) Scott Pruitt for Administrator of the United State Environmental Protection Agency (EPA). In the United States, the cattle industry represents the largest segment of agriculture and cattle farmers and ranchers represent the largest land owner group. We are pleased to see General Pruitt as the nominee for EPA Administrator.

General Pruitt will bring a science based, common sense approach to the strategies and objectives of the EPA. Mr. Pruitt understands the importance of sound win-win policy that will translate into EPA strategies that work to protect the environment while improving America's agriculture productivity. He knows firsthand that farmers and ranchers are the original stewards of the environment with an unparalleled commitment to responsible natural resource management that yields multi-generational improvement. Simply put, Mr. Pruitt sees clearly that agriculture and environment are not opposing terms but rather are complementary. He will work to cultivate that relationship which will lead to the United States leading in food and fiber production while improving the environment in which it is accomplished.

We encourage your support for Attorney General Scott Pruitt and we look forward to working with him as a partner for shared strategies and solutions that benefit the environment and agriculture productivity.

Sincerely,

Alabama Cattlemen's Association  
Arizona Cattle Feeders Association  
Arizona Cattle Growers' Association  
Arkansas Cattlemen's Association  
California Cattlemen's Association  
Colorado Cattlemen's Association  
Colorado Livestock Association  
Florida Cattlemen's Association  
Georgia Cattlemen's Association  
Hawaii Cattlemen's Association  
Illinois Beef Association  
Iowa Cattlemen's Association  
Indiana Beef Association  
Kansas Livestock Association  
Kentucky Cattlemen's Association  
Michigan Cattlemen's Association  
Mississippi Cattlemen's Association  
Missouri Cattlemen's Association  
Montana Stockgrower's Association

Nebraska Cattlemen  
Nevada Cattlemen's Association  
New Mexico Cattle Growers' Association  
New Mexico Wool Growers, Inc.  
New York Beef Producer's Association  
North Carolina Cattlemen's Association  
North Dakota Stockman's Association  
Ohio Cattlemen's Association  
Oklahoma Cattlemen's Association  
Oregon Cattlemen's Association  
Pennsylvania Cattlemen's Association  
South Carolina Cattlemen's Association  
South Dakota Cattlemen's Association  
Tennessee Cattlemen's Association  
Texas and Southwestern Cattle Raisers  
Texas Cattle Feeders Association  
Virginia Cattlemen's Association  
Wyoming Stock Growers Association



Electric  
Reliability  
Coordinating  
Council

2001 M Street, NW – Suite 900  
Washington, DC 20036  
(202) 828.5800

January 17, 2017

Sen. John A. Barrasso, Chairman  
Senate Committee on Environment and Public Works  
410 Dirksen Senate Office Building  
Washington, DC 20510-6175

Sen. Thomas R. Carper, Ranking Minority Member  
Senate Committee on Environment and Public Works  
456 Dirksen Senate Office Building  
Washington, DC 20510-6175

Re: Consideration of the Hon. E. Scott Pruitt for the Post of Administrator,  
U.S. Environmental Protection Agency

Dear Chairman Barrasso and Ranking Member Carper:

It is our understanding that the Senate Committee on Environment and Public Works (EPW) will hold a hearing on Wednesday, January 18, 2017, to consider the nomination Oklahoma Attorney General Scott Pruitt for the post of Administrator of the U.S. Environmental Protection Agency (EPA). As an organization representing electric power companies in various regions of the United States on Clean Air Act and other environmental issues, the Electric Reliability Coordinating Council and its members have worked with Attorney General Pruitt and his team on various topics including the EPA Clean Power Plan (CPP). Having found him to be highly professional, thoughtful, and effective at representing the interests of his state, ERCC is pleased to offer its endorsement for his swift confirmation.

There is little doubt that Attorney General Pruitt has fully immersed himself in the intricacies of the environmental statutes that form the basis of EPA's authorization as an administrative agency. Too often, as in the case of CPP, the Agency has strayed from its original purpose, its statutes, and the intent Congress had in mind as it assigned EPA tasks. The public at large, the environment, and EPA itself are better served when the Agency adheres closely to the statutes that define its mission without attempt to stretch those statutes beyond their logical breaking point. Attorney General Pruitt's noteworthy commitment to the rule of law and transparency in the administrative process should ensure that all sides are heard and that resulting regulations are firmly grounded and effective.




Some have suggested that Attorney General Pruitt's previous opposition to particular EPA rules should form the basis for a recusal should he join EPA. We believe this argument to be inaccurate. First, Attorney General Pruitt was not pursuing personal interests, private matters or defending enforcement actions. His efforts constitute an open contesting of rules of general applicability, little different from rulemaking comments or other attempts at appropriate participation in the process. In the case of CPP, nearly all the states have taken a position in court that may differ from where EPA ultimately comes out on the rule. Surely, it cannot be the case that legal officers and environmental officials from all states are somehow disqualified. As the current EPA Administrator Gina McCarthy has noted on several occasions, she too participated in litigation against the EPA in her previous state role before joining the Agency. In any event, Attorney General Pruitt does not seek to join as a lawyer representing the Agency, but rather as its Administrator. Glib citations to legal conflicts rules are not applicable.

Some have questioned whether Attorney General Pruitt can keep an open mind on issues before the Agency in light of past positions taken or familiarity with the energy industry writ large. Our experience observing Attorney General Pruitt has led us to an opposite conclusion. He takes his role very seriously and does not adopt positions until he has put the various interests fully through their paces. Correctly, he views the administrative process as an iterative one where all can make their legal, policy and scientific points as relevant to the outcome. We would remind his detractors that to oppose the CPP or any particular rule is not to doubt the importance or existence of the underlying environmental condition such rules seek to address.

Over the last decade and a half, ERCC has argued that EPA should, as President Obama clearly stated in his January 18, 2011 Executive Order 13563, "tailor its regulations to impose the least burden on society," and that it should "propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs." In the area of electric power, failure to calibrate our environmental standards correctly may result in no greater real protection but may inflict significant damage on those in society least able to afford it, such as those living in poverty or on fixed incomes. If Attorney General Pruitt is confirmed, we have every confidence he will be able to strike an appropriate balance of environmental and economic objectives.

Thank you for your consideration of our views.



Scott Segal  
Director

cc: United States Senators



STATE OF ALABAMA  
OFFICE OF THE ATTORNEY GENERAL

LUTHER STRANGE  
ATTORNEY GENERAL

501 WASHINGTON AVENUE  
MONTGOMERY, AL 36130  
334-242-7300  
WWW.AGO.ALABAMA.GOV

January 4, 2017

The Honorable John Barrasso  
307 Dirksen Senate Office Building  
Washington, District of Columbia 20510

The Honorable Tom Carper  
513 Hart Senate Office Building  
Washington, District of Columbia 20510

Dear Chairman Barrasso and Ranking Member Carper:

As the attorneys general of our respective states, we write to express our unqualified support for our colleague and the Attorney General of Oklahoma, E. Scott Pruitt, as Administrator of the U.S. Environmental Protection Agency.

As attorneys general, we understand the need to work collaboratively to address threats to our environment that cross state lines, as well as the importance of a federal counterpart in the EPA Administrator who possesses the knowledge, experience, and principles to work with our states to address issues affecting our environment. We believe that no one exemplifies these qualities more than Scott Pruitt.

As the Attorney General of Oklahoma, Mr. Pruitt developed expertise in environmental law and policy. He negotiated a historic water rights settlement with Indian tribes that preserved the ecosystems of scenic lakes and rivers; he worked with his Democrat counterpart in Arkansas to reduce pollution in the Illinois River; and he represented the interests of Oklahomans in rate cases against utility companies and in numerous actions against those who contaminated his state's air and water.

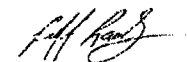
Attorney General Pruitt is committed to clean air and clean water, and to faithfully executing the environmental laws written by Congress. He believes that environmental regulations should be driven by State and local governments--a notion endorsed by Congress in the Clean Air Act and Clean Water Act. When our nation is confronted with issues affecting the environment that are not covered by a particular statute, Scott will come to Congress for a solution, rather than inventing power for his agency. He wholeheartedly believes in a strong Environmental Protection Agency that carries out its proper duties, providing a backstop to state and local regulators as they develop environmental regulations suited to the needs of their own communities.

The Honorable John Barrasso  
The Honorable Tom Carper  
January 4, 2017  
Page Two

Scott Pruitt is more than just an exemplary state attorney general, he is also our friend. A man of deep faith who is committed to his family and to his friends, Scott seeks always to do the right thing. His friendship and leadership have been invaluable to us over the years.

The Administrator of the Environmental Protection Agency plays a critical role in our Nation's government. Attorney General Pruitt has proven over the course of his career that he has the right character, experience, and knowledge to serve as the Administrator of the EPA. We urge the Senate to confirm his nomination.

Sincerely,



Jeff Landry  
Attorney General  
State of Louisiana



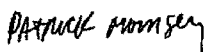
Alan Wilson  
Attorney General  
State of South Carolina



Luther Strange  
Attorney General  
State of Alabama



Marty Jackley  
Attorney General  
State of South Dakota



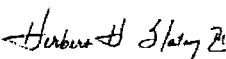
Patrick Morrisey  
Attorney General  
State of West Virginia



Adam Laxalt  
Attorney General  
State of Nevada



Mark Brnovich  
Attorney General  
State of Arizona



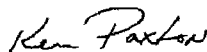
Herbert Slatery  
Attorney General  
State of Tennessee



Curtis Hill  
Attorney General  
State of Indiana



Brad Schimel  
Attorney General  
State of Wisconsin

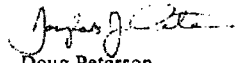


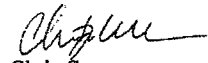
Ken Paxton  
Attorney General  
State of Texas

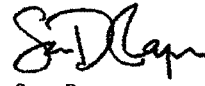


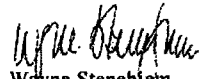
Bill Schuette  
Attorney General  
State of Michigan

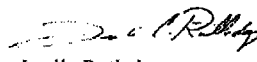
The Honorable John Barrasso  
The Honorable Tom Carper  
January 4, 2017  
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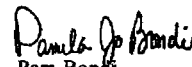
  
Doug Peterson  
Attorney General  
State of Nebraska

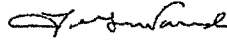
  
Chris Carr  
Attorney General  
State of Georgia


  
Sean Reyes  
Attorney General  
State of Utah

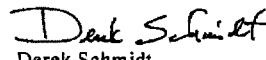
  
Wayne Stenehjem  
Attorney General  
State of North Dakota

  
Leslie Rutledge  
Attorney General  
State of Arkansas


  
Pam Bondi  
Attorney General  
State of Florida

  
Lawrence Wasden  
Attorney General  
State of Idaho

  
Tim Fox  
Attorney General  
State of Montana

  
Derek Schmidt  
Attorney General  
State of Kansas

  
Josh Hawley  
Attorney General  
State of Missouri

  
Peter Michael  
Attorney General  
State of Wyoming

  
Mike DeWine  
Attorney General  
State of Ohio



**MATTHEW G. BEVIN**  
Governor

**ENERGY AND ENVIRONMENT CABINET**

300 SOWER BOULEVARD  
FRANKFORT, KENTUCKY 40601  
TELEPHONE: 502-564-3350  
TELEFAX: 502-564-7484

**CHARLES G. SNAVELY**  
Secretary

**R. BRUCE SCOTT**  
Deputy Secretary

January 17, 2017

The Honorable John Barrasso  
307 Dirksen Senate Office Building  
Washington, District of Columbia 20510

The Honorable Tom Carper  
513 Hart Senate Office Building  
Washington, District of Columbia 20510

Dear Chairman Barrasso and Ranking Member Carper:

As the Secretary of the Energy and Environment Cabinet for the Commonwealth of Kentucky, I am offering support for the appointment of Attorney General of Oklahoma E. Scott Pruitt to the position of Administrator of the Environmental Protection Agency (EPA). As you are well aware, the EPA led by the Administrator is a powerful regulatory agency that can impact the landscapes of energy, environment, and the everyday lives of Americans. The Administrator must evaluate these impacts for all citizens of the United States and not limit the evaluations to select interest groups to promote their ideologies.

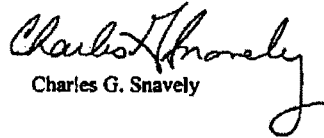
It is our opinion formed from past actions that Attorney General Pruitt will offer a pragmatic, reasonable approach to environmental protection through appropriate regulatory development. Mr. Pruitt's positions on the Water of the United States (WOTUS) and the Clean Power Plan (CPP) are aligned with the Commonwealth's desire for "cooperative federalism." Mr. Pruitt's recognition of the states' abilities to carry out the obligations of the Clean Water Act and Clean Air Act is also a shared understanding. During the previous administration, EPA ignored many states' concerns and comments regarding WOTUS and CPP. Ultimately, states will carry the overwhelming burden of implementing and enforcing EPA regulations. The expertise of state officials should not be ignored and substituted with the opinions of third party interest groups. As a state Attorney General, Mr. Pruitt recognizes the critical role of state environmental agencies.

The Honorable John Barrasso  
The Honorable Tom Carper  
January 17, 2017  
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Another area of agreement with Mr. Pruitt is the consideration of the devastating economic impacts from recent EPA rulemaking. It is our opinion that the EPA has been allowed to ignore the balance between costs and benefits for the past eight years. When promulgating the new source performance standards (NSPS) to regulate greenhouse gases from electric generating units, EPA admitted that the proposed rule was expected "... to have no, or negligible, costs or monetized benefits associated with it."<sup>1</sup> I am certain and confident that Attorney General Pruitt will not propose such regulatory actions that fail to account for the costs and identify any associated benefits.

In closing, I request that you consider this letter of support for Attorney General Scott Pruitt and confirm his nomination as the Administrator of EPA. If you have specific questions to this letter of support, please do not hesitate to contact me at your convenience.

Sincerely,

  
Charles G. Snavely

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<sup>1</sup> Regulatory Impact Analysis for the Proposed Standards of Performance for Greenhouse Gas Emissions for New Stationary Sources: Electric Utility Generating Units (EPA-452/R12-001, March 2012).

[View this email in your browser](#)



**For Immediate Release**

*January 5, 2017*

**Media Contact:** [Media@plt.gov](mailto:Media@plt.gov)

**Statement from U.S. Senator Joe Manchin and EPA  
Administrator-Designate Scott Pruitt**

(Washington, DC) – U.S. Environmental Protection Agency Administrator-designate Scott Pruitt today met with U.S. Senator Joe Manchin (WV-D) on Capitol Hill to discuss Mr. Pruitt's upcoming hearing before the U.S. Senate Environment and Public Works committee.

Below is a statement from EPA Administrator-designate Pruitt:

"Senator Joe Manchin and I had a very good and productive meeting today. Senator Manchin has long been a leader in advancing a balanced energy policy that both protects the environment and enables economic growth. We discussed the many ways the EPA can help the people and protect the natural environment of West Virginia and our nation. If confirmed by the Senate, I look forward to working with Senator Manchin and his colleague Senator Capito as we find the right balance that works best for the people and the environment of their very special state."

Below is a statement from Senator Manchin:

"Attorney General Pruitt and I had a very productive conversation today about his plans for the Environmental Protection Agency and ways we can work together. We both come from energy producing states and have a great deal in common. He committed to visiting West Virginia and working with me on some of the clean water challenges that we have experienced in recent years in cities like Vienna, Parkersburg and Charleston. I believe the Attorney General has the right experience for the position and look forward to his confirmation process."

A photo of Senator Manchin and Mr. Pruitt is below.



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All media requests should be directed to [Media@ptt.gov](mailto:Media@ptt.gov)





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**National Association of Home Builders**

1201 15th Street NW  
Washington, DC 20005

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F 202 266 8400

www.nahb.org

**Government Affairs**

James W. Tobin III  
Executive Vice President & Chief Lobbyist  
Government Affairs and Communications Group

January 12, 2017

The Honorable John Barrasso  
United States Senate  
307 Dirksen Senate Office Building  
Washington, DC 20510

Dear Chairman Barrasso:

On behalf of the 140,000 members of the National Association of Home Builders (NAHB), I am writing to express NAHB's strong support for the nomination of General Scott Pruitt to be the Administrator of the Environmental Protection Agency (EPA). We believe that General Pruitt will restore common sense to the regulatory process by ensuring that federal regulations are based on sound science, respecting states' rights, and balancing the economic impact they will have on small businesses.

Every day, our nation's home builders must work to understand and comply with complex regulatory requirements. Environmental regulations such as the "waters of the US" rule, the Clean Power Plant Rule, and the Lead: Renovation, Repair and Painting Rule all impose unnecessary burdens on NAHB members. The development of these regulations have lacked transparency, not been based on sound science, and the input from small business entities was largely ignored. In recent years, the agency has also failed to respect the formal rulemaking process and bypassed many of the safeguards designed to ensure a fair and balanced rulemaking.

It is difficult for home builders to keep up with the national demand for housing under the current regulatory regime. Regulations account for up to 25% of the price of a single-family home. These costs are passed on to homeowners, negatively impacting housing affordability, which can often position American families further away from the dream of homeownership. We need practical regulations that strike a balance between protecting our environment and allowing our businesses to thrive.

General Pruitt has a long history of fighting many of these onerous regulations, and we are confident that he has the ability to guide the EPA towards more sensible actions. We also believe that he will respect the proper rulemaking process and provide transparency with any regulation action. We strongly believe that the burdens that home builders face will be eased under General Pruitt's leadership.

For these reasons, we respectfully urge members of the Senate Environment and Public Works Committee to support General Scott Pruitt's nomination. Thank you for considering our views.

Sincerely,

A handwritten signature in black ink, appearing to read "James W. Tobin III".

James W. Tobin III



**For Immediate Release**

**Scientists, Economists, Ethicists, other Scholars  
Support EPA Administrator Nominee Scott Pruitt**

Burke, VA, January 16, 2017—The Cornwall Alliance for the Stewardship of Creation today released an Open Letter to the U.S. Senate Environment and Public Works Committee supporting the nomination of Oklahoma Attorney General Scott Pruitt to head the federal Environmental Protection Agency. Pruitt's confirmation hearing is scheduled for Wednesday, January 18, 2017.

"Some environmental activists are determined to prevent Mr. Pruitt's confirmation, painting him as a 'science denier' or a 'climate-change denier,'" said Cornwall Alliance Founder and National Spokesman Dr. E. Calvin Beisner. "He is neither. He's a solid, common-sense attorney general who will bring much-needed reform to the EPA."

Signed by 130 evangelical, mainline Protestant, Roman Catholic, and Jewish scientists, economists, legal scholars, policy experts, and religious leaders, and over 230 other citizens to date, the Open Letter says that as Oklahoma Attorney General, Mr. Pruitt has demonstrated his legal expertise in successful litigation to require corporations—including the energy corporations so prominent in his state's economy—to abide by environmental laws and regulations. He has publicly expressed his conviction that the EPA's role is not to create law through regulations that exceed the scope of enabling legislation but to implement the intent of that legislation. His Christian faith underlies his commitment to protecting human health and life through pollution controls firmly based in sound science and cost/benefit analysis.

The Open Letter counters some radical environmentalists and religious activists who oppose Mr. Pruitt because he questions exaggerated fears of human-induced global warming—fears based on global climate computer models not validated by the empirical evidence crucial to genuine science—or their antipathy to the development of the abundant, reliable, affordable energy indispensable to lifting and keeping whole societies out of poverty and the disease and premature death that invariably accompany it.

Signers therefore urge Pruitt's confirmation.

"Those who signed our Open Letter include climate scientists, physicists, geologists, ecologists, environmental and developmental economists, theologians, philosophers, religious leaders, and legal scholars," Beisner says. "We think that's important because climate and energy policy must be addressed in light of insights from all these fields of expertise. Science is important, but it can only tell us what is, and climate scientists on all sides acknowledge myriad major uncertainties about the magnitude and consequences of human influence on global climate. It cannot tell us what should be. For that, you need economics and ethics."

Some of the 130 expert signers include:

- William L. Anderson, Ph.D. (Economics), Professor of Economics, Frostburg State University, Frostburg, MD
- James A. Borland, (Th.D.), Theology, Professor of Theology, Liberty University, Lynchburg, VA
- Roger L. Burtner, Ph.D. (Geology), former National Science Foundation Fellow; former Adjunct Professor, Case Western Reserve University; Principal, Remote Sensing Exploration, Fullerton CA
- Neil L. Frank, Ph.D. (Meteorology), former Director, National Hurricane Center (1974–1987), Chief Meteorologist, KHOU-TV Houston (1987–2008)
- Bruce L. Gordon, Ph.D. (History and Philosophy of Science), Associate Professor, History and Philosophy of Science, Houston Baptist University, Senior Fellow, Center for Science and Culture, Discovery Institute, Richmond, TX
- William Happer, Ph.D., Cyrus Fogg Brackett Professor of Physics, Emeritus, Princeton University, Princeton, NJ
- David Legates, Ph.D. (Climatology), Professor of Climatology and Geography, University of Delaware

- Richard S. Lindzen, Ph.D. (Applied Mathematics), Alfred P. Sloan Professor of Atmospheric Sciences Emeritus, MIT
- Anthony R. Lupo, Ph.D. (Atmospheric Science), Professor, University of Missouri, Columbia, MO
- Mathew Malkan, Ph.D. (Astrophysics), Professor of Physics & Astronomy, University of California at Los Angeles (UCLA), Los Angeles, CA
- Craig Vincent Mitchell, Ph.D. (Philosophy/Ethics), Associate Professor of Philosophy, Politics and Economics, Criswell College, Dallas, TX
- Everett Piper, Ph.D., President, Oklahoma Wesleyan University, Bartlesville, OK
- Kelly Shackelford, J.D. (Law), President and CEO, First Liberty Institute, Plano, TX
- Willie Soon, Ph.D. (Aerospace Engineering), independent scientist, Cambridge, MA
- Roy W. Spencer, Ph.D. (Meteorology), Principal Research Scientist, Earth System Science Center, University of Alabama, Huntsville, AL, and Lead Scientist, NASA Aqua AMSR-3 Satellite Remote Sensing Program
- Timothy D. Terrell, Ph.D. (Environmental Regulatory Economics), Associate Professor, Wofford College, Spartanburg, SC
- C. Joseph Touhill, Ph.D. (Environmental Engineering), P.E., DEE, F. AICHe, F. ASCE, President, Touhill Technology Management, Jamison, PA
- James A. Wanliss, Ph.D. (Physics), Professor of Physics, Presbyterian College, Clinton, SC
- Anthony Watts, American Meteorological Society-certified television and radio meteorologist (retired), owner of WattsUpwithThat.com, Chico, CA
- David F. Wells, Ph.D (Theology), Distinguished Research Professor, Gordon-Conwell Theological Seminary, South Hamilton, MA

The Open Letter and a list of all 130 expert signers is attached. The letter is online at <http://cornwallalliance.org/landmark-documents/open-letter-supporting-scott-pruitt-for-epa-administrator/>.

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Media contact: Megan Toombs, Director of Communications, [Megan@CornwallAlliance.org](mailto:Megan@CornwallAlliance.org), 703-569-4653

**Congress of the United States**  
Washington, DC 20515

January 10, 2017

The Honorable Mitch McConnell  
Senate Majority Leader  
317 Russell Senate Office Building  
Washington, D.C. 20510

The Honorable Charles Schumer  
Senate Minority Leader  
322 Hart Senate Office Building  
Washington, D.C. 20510

Dear Senator McConnell and Senator Schumer,

We write to express our steadfast support for President-elect Trump's nominee for Administrator of the Environmental Protection Agency (EPA), Oklahoma Attorney General Scott Pruitt, and to urge his swift confirmation by the Senate.

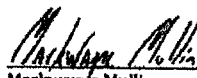
Scott Pruitt is an accomplished leader in the state of Oklahoma, where he has earned respect and admiration from both sides of the aisle for his understanding of constitutional law and the role federal regulations ought to play in our nation's government.

As Administrator of the EPA, Mr. Pruitt will serve America well by protecting our citizens' air and water through lawful and commonsense regulations that follow congressional intent, fulfilling the original role of the agency. In doing so, he will ensure that the federal government does not propose rules with little to no health or environmental benefit at the cost of middle-class jobs and economic growth.


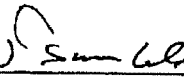
Mr. Pruitt has considerable experience working on environmental and regulatory issues, and we have no doubt that he will bring a principled, balanced perspective to the EPA. We are proud of his service to our state, and we are confident he will do a superb job serving our nation and our citizens in this new role.

Again, we urge Mr. Pruitt's swift confirmation so he can get to work protecting human health and the environment. The Oklahoma delegation is more than happy to meet with you, or members of the appropriate committees, to further discuss his confirmation. Thank you for your consideration.

Sincerely,

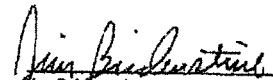


Markwayne Mullin  
Member of Congress

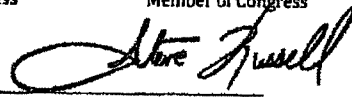
 

Frank D. Lucas  
Member of Congress

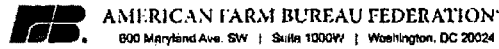
Tom Cole  
Member of Congress



Jim Bridenstine  
Member of Congress



Steve Russell  
Member of Congress



ph. 202.408.3600  
 f. 202.408.3606  
 www.fb.org

January 4, 2017

The Honorable John Barrasso  
 Chairman  
 The U.S. Senate Committee on Environment and Public Works  
 410 Dirksen Senate Office Building  
 Washington, D.C. 20510-6176

The Honorable Tom Carper  
 Ranking Member  
 The U.S. Senate Committee on Environment and Public Works  
 456 Dirksen Senate Office Building  
 Washington, D.C. 20510-6175

Dear Senator Barrasso and Senator Carper:

The American Farm Bureau Federation strongly supports the nomination of Scott Pruitt as Administrator of the U.S. Environmental Protection Agency (EPA) and urges you to vote in favor of his confirmation.

Scott Pruitt is an ideal nominee for EPA Administrator for many reasons, but his nomination should command respect from Senators for one reason above all: he has profound respect for the laws written by Congress. In contesting EPA's 'waters of the US' (WOTUS) rule, Mr. Pruitt is in fact defending the bipartisan view of Congress that the agency has illegally overstepped its bounds and ignored the U.S. Supreme Court. Similarly, in the stance he has taken on the Clean Power Plan, he is defending Congress: in 2009, the Senate failed even to take up for debate the cap-and-trade plan narrowly approved by the House. Mr. Pruitt very soundly takes the view that Congress has not authorized the sweeping attempt by EPA to coerce action by the states.

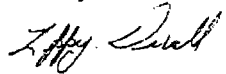
No one cares more about the responsible stewardship of our land, air, and water than American farmers and ranchers. Our livelihoods depend on it. In recent years, farmers and ranchers have suffered under burdensome, unnecessary and, too often, unlawful federal regulations promulgated by the EPA. We desperately need an administrator who understands the challenges our farmers and ranchers face in producing safe, wholesome and affordable food for our nation and the world.

Some activists are attempting to characterize this as a debate over environmental goals. Nothing could be further from the truth. It is about respect for the law and for an agency that will live within the statutory programs Congress has authorized. AFBF supports Scott Pruitt for EPA administrator because he will restore respect for the law and enforce it fairly. Further, he understands how and when federal power should be exercised. We support him because he has

demonstrated a keen understanding of the devastating economic implications of federal overreach.

Scott Pruitt will put the EPA back on track and ensure that federal decisions are based on sound science, not politics. He will produce a fair regulatory environment that respects the rule of law. We urge his confirmation.

Sincerely,

A handwritten signature in black ink, appearing to read "Zippy Duvall". The signature is written in a cursive, slightly slanted style.

Zippy Duvall  
President

January 13, 2017

The Honorable John A. Barrasso  
Chairman  
U.S. Senate Committee on Environment  
and Public Works  
410 Dirksen Senate Office Building  
Washington, DC 20510-6175

The Honorable Thomas R. Carper  
Ranking Minority Member  
U.S. Senate Committee on Environment  
and Public Works  
456 Dirksen Senate Office Building  
Washington, DC 20510-6175

Dear Senators Barrasso and Carper:

The Specialty Equipment Market Association (SEMA) requests your support for Scott Pruitt as Administrator of the U.S. Environmental Protection Agency (EPA).

SEMA represents the \$39 billion specialty automotive aftermarket industry and is made up of over 6,600 mostly small businesses nationwide that manufacture, distribute and retail specialty parts and accessories for vehicles. The industry produces performance, restoration and styling enhancement parts for use on passenger cars and trucks, collector vehicles, racecars and off-highway vehicles.

As Oklahoma's Attorney General, Mr. Pruitt has sought a balanced approach to protecting the environment that is consistent with economic realities. He has taken on regulatory overreach while demonstrating restraint and an understanding that the law both empowers and limits government. We believe Mr. Pruitt would help affirm a regulatory approach that is reasoned, concise and enforceable.

For decades, SEMA has had great success in working with the EPA to help craft industry regulations that achieve clean air goals. Nevertheless, there have been several occasions when there has been a difference of opinion on how the law is applied. In 2015, and counter to the intent of the Clean Air Act, the EPA issued a proposed rule stating that it is illegal to transform a motor vehicle into a race vehicle used exclusively in competition. While the EPA withdrew the problematic language from the final rulemaking last year, the agency still maintains the position that such conversions are unlawful.

On behalf of the industry and consumer community we represent, SEMA respectfully urges the Committee to support the nomination of Mr. Pruitt to be the next EPA Administrator. We believe that Mr. Pruitt's experience as an executive and consistency in carrying out his duties as Attorney General of Oklahoma make him uniquely qualified to lead the agency into the future.

**Specialty Equipment Market Association (SEMA)**  
1317 F Street, NW; Suite 500; Washington, DC 20004  
Telephone: 202/783-6007; Fax: 202/783-6024





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Thank you for your consideration. Please feel free to contact me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'C. Kersting', with a stylized flourish at the end.

Christopher J. Kersting  
President & CEO

cc: Members of the U.S. Senate Environment  
and Public Works Committee

*The*  
**Fertilizer Institute**

Nourish, Replenish, Grow

Chris Jahn  
President

January 17, 2017

The Honorable John Barrasso  
Chairman  
U.S. Senate Committee on Environment and Public Works  
410 Dirksen Senate Office Building  
Washington, D.C. 20510-6176

The Honorable Tom Carper  
Ranking Member  
U.S. Senate Committee on Environment and Public Works  
456 Dirksen Senate Office Building  
Washington, D.C. 20510-6175

Dear Chairman Barrasso and Ranking Member Carper:

I am writing to you on behalf of the members of The Fertilizer Institute (TFI) to strongly endorse the nomination of Scott Pruitt as Administrator of the U.S. Environmental Protection Agency (EPA). Attorney General Pruitt's vast experience in both the public and private sectors makes him well qualified for this important position.

TFI represents the nation's fertilizer industry including producers, importers, retailers, wholesalers and companies that provide services to the fertilizer industry. The U.S. fertilizer industry is one of the world's largest. The United States is the fourth-largest producer of nitrogen-based fertilizers in the world and the second largest producer of phosphate. The U.S. fertilizer industry generates more than \$139 billion in economic benefit and provides 80,099 direct jobs and 372,603 indirect jobs for a total of more than 452,702 U.S. jobs.

TFI's members are committed to enhancing their environmental stewardship efforts, as evidenced by the voluntary program created by the industry called the 4R Nutrient Stewardship Program. 4R Nutrient Stewardship is a framework designed to help farmers achieve cropping system goals, such as increased production, increased farmer profitability, enhanced environmental protection and improved sustainability. The success of this program is highly dependent on partnerships between farmers, agricultural retailers, federal, state and local governments and environmental organizations all working together with a shared goal of ensuring that fertilizer is applied by using the Right Source at the Right Rate at the Right Time and in the Right Place.

Mr. Pruitt can attest, water quality and other long-term environmental challenges, are most effectively addressed by federal and state governments via the "cooperative federalism" partnership model as embodied in the Clean Water Act. Few individuals understand the

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importance of this model like Mr. Pruitt. He has been a consistent advocate for ensuring the appropriate balance between the need for federal regulations and the sovereignty of states. Mr. Pruitt is also mindful that the benefits of regulatory actions must outweigh their costs. He has demonstrated a commitment to this ideal and we believe he will work to ensure its reality as the EPA Administrator.

TFI and its members similarly support common-sense regulations based on peer-reviewed sound science. Working in partnership with all stakeholders, we believe Mr. Pruitt will ensure that American agriculture is able to continue growing the food, fuel and fiber to feed the world. At the same time, we will work to ensure that our precious natural resources are safeguarded for generations to come.

For the aforementioned reasons, we strongly support Attorney General Pruitt to be the Administrator of the U.S. Environmental Protection Agency and we urge your support of his confirmation.

Sincerely,

A handwritten signature in black ink, appearing to read 'CJahn', with a long horizontal flourish extending to the right.

Chris Jahn  
President  
The Fertilizer Institute

CC: Members of the United States Senate



January 17, 2017

The Honorable John Barrasso  
 Chairman, U.S. Senate Committee on Environment and Public Works  
 410 Dirksen Senate Office Building  
 Washington, D.C. 20510-6176

The Honorable Thomas Carper  
 Ranking Member, U.S. Senate Committee on Environment and Public Works  
 456 Dirksen Senate Office Building  
 Washington, D.C. 20510-6176

Dear Chairman Barrasso and Ranking Member Carper:

The National Cattlemen's Beef Association (NCBA) urges you to vote in favor of confirmation of Scott Pruitt as Administrator of U.S. Environmental Protection Agency (EPA). NCBA is a trade association that represents U.S. cattle producers, with more than 30,000 direct members. Through state affiliates NCBA represents 175,000 of America's farmers and ranchers who provide a significant portion of the nation's food supply.

As Oklahoma's Attorney General, Mr. Pruitt led the fight to bring common sense back to environmental regulation and he was an unrivaled defender of private property rights. In fact, in 2015 the Oklahoma Cattlemen's Association honored Mr. Pruitt with its Distinguished Service Award for his dedication to those principles. Likewise, cattle producers across the country have rallied in support of Mr. Pruitt's nomination to be the next EPA Administrator, as memorialized in the enclosed letter. His legal background and experience as Attorney General ensures the EPA will follow the rule of the law while fulfilling its important mission of protecting human health and the environment. Agency decisions grounded in science, constrained by the law and Congress will achieve long-lasting success.

Mr. Pruitt brings with him an opportunity to reinvigorate the cooperative federalism approach that is embodied in our nation's environmental statutes - namely that States are the primary enforcers and implementers of environmental programs while the federal government retains a backstop and support role - as mandated by Congress. In recent years we have seen a shift away from the approach mandated by Congress and movement toward a policy of federal usurpation of state programs through increasingly burdensome regulation and enforcement. The Senate can restore the balance by confirming Mr. Pruitt.

Cattle producers want a healthy environment and are personally invested in keeping the land, water, and air clean for their children and grandchildren. Agriculture cannot be viewed merely as a regulatory target when improvements can be realized by treating farmers and ranchers as partners. Outgoing Administrator McCarthy stated that her top regret was failing to connect with rural America. With Pruitt at the helm, NCBA is confident that the EPA can excel at its mission and foster an agency culture that engages rural Americans as partners in our nation's effort to protect the environment.

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Sincerely,

A handwritten signature in black ink that reads "Tracy Brunner". The signature is written in a cursive, flowing style.

Tracy Brunner  
President

cc: U.S. Senate



January 13, 2017

The Honorable John Barrasso  
Chairman  
U.S. Senate Committee on Environment & Public Works  
410 Dirksen Senate Office Building  
Washington, D.C. 20510

The Honorable Tom Carper  
Ranking Member  
U.S. Senate Committee on Environment & Public Works  
456 Dirksen Senate Office Building  
Washington, D.C. 20510

Dear Chairman Barrasso and Ranking Member Carper:

Western Energy Alliance strongly supports the confirmation of Attorney General Scott Pruitt as Environmental Protection Agency (EPA) Administrator. His willingness to stand for the rule of law in regulatory actions makes him the right person to implement President-Elect Trump's agenda of creating jobs while refocusing EPA on real environmental protection of air and water.

Western Energy Alliance represents over 300 companies engaged in all aspects of environmentally responsible exploration and production of oil and natural gas in the West. Alliance members are independents, the majority of which are small businesses with an average of fifteen employees.

The oil and natural gas industry adopted an environmental ethic decades ago, and protecting the environment is a primary consideration for all activities that potentially may have an impact. The success of the environmental movement in inculcating that ethic throughout our society has not led to a situation of coming together and working constructively toward further environmental improvements, however. Rather, the environmental lobby now opposing AG Pruitt's confirmation has become concerned with imposing further federal control and dominance over all aspects of American life and the economy, not with real environmental protection. The overregulation resulting from this agenda is not better protecting our environment, but rather reorienting our government away from cooperative federalism. AG Pruitt has taken a stand not against the environment, as his opponents would have you believe, but rather against regulatory overreach that not only kills jobs and economic prosperity but perversely harms the environment and public health. EPA best protects the environment when it works cooperatively with states and actually implements the laws passed by Congress, not when it wastes effort exerting control over the economy and ignoring real environmental problems.

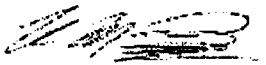
After years of fixation on miniscule environmental improvements a hundred years in the future while ignoring real environmental degradation today in places like Flint, or actually causing environmental disaster with the Gold King mine, EPA needs to be refocused back to its core mission of protecting air and water. AG Pruitt understands that EPA best protects the environment not when it conjures new powers for itself using overly expansive interpretations of federal authority, but when it actually implements already strict laws like the Clean Air Act and the Clean Water Act.

Many studies have shown that those with economic means score better on just about every health outcome than those without. From nations and states to cities and neighborhoods on down to individual citizens, those with financial means do the most to protect the environment. Public health and the environment are best served by a strong, vibrant economy and a fully employed workforce, not by overarching regulations that expand federal power and choke off job creation. When AG Pruitt has taken a stand against unlawful expansion of federal authority, he has done so not in opposition to the environment, but in support of it.

The Waters of the U.S. rule is one such example. The rule as finalized would simply expand federal control beyond navigable waters, as Congress intended, to nearly every piece of dry land upon which water may flow. Diluting federal resources away from real environmental degradation such as at Superfund sites to permitting standard farming activities on dry land does nothing to protect water, but does harm rural economies. Likewise, AG Pruitt has taken a stand against an ozone standard imposed without full consideration of science. It would put vast areas of the country into nonattainment with concomitant negative economic impacts but without commensurate environmental benefit. Rather than spending resources helping states with truly bad air quality like California clean it up, EPA would be expending resources trying to achieve marginal improvements in ozone reduction in areas with clean air.

AG Pruitt will reorient EPA back to an agency that respects the rule of law and works constructively with states to protect air and water quality. Restoring the proper federalism balance with the states will result in better environmental protection without squelching economic opportunity. Western Energy Alliance urges swift confirmation.

Sincerely,



Kathleen M. Sgamma  
President

**WESTERN ENERGY ALLIANCE**

## **ATTORNEYS GENERAL IN SUPPORT OF PRUITT**

### ***24 Attorneys General***

**In A Letter To Sens. John Barrasso (R-WY) And Tom Carper (D-DE), 24 Republican Attorneys General Wrote That Pruitt “Exemplifies” The “Knowledge, Experience, And Principles To Work With Our States” At EPA.** “As the attorneys general of our respective states, we write to express our unqualified support for our colleague and the Attorney General of Oklahoma, E. Scott Pruitt, as Administrator of the U.S. Environmental Protection Agency. As attorneys general, we understand the need to work collaboratively to address threats to our environment that cross state lines, as well as the importance of a federal counterpart in the EPA Administrator who possesses the knowledge, experience, and principles to work with our states to address issues affecting our environment. We believe that no one exemplifies these qualities more than Scott Pruitt.” (State Of Alabama Office Of The Attorney General, “AGs Support Pruitt,” 1/4/17)

- **The Attorneys General Wrote That Pruitt “Wholeheartedly Believes In A Strong” EPA.** “When our nation is confronted with issues affecting the environment that are not covered by a particular statute, Scott will come to Congress for a solution, rather than inventing power for his agency. He wholeheartedly believes in a strong Environmental Protection Agency that carries out its proper duties, providing a backstop to state and local regulators as they develop environmental regulations suited to the needs of their own communities.” (State Of Alabama Office Of The Attorney General, “AGs Support Pruitt,” 1/4/17)

### ***Former Attorney General Mike Turpen (D-OK)***

**Former Democratic Attorney General Of Oklahoma, Mike Turpen Said That Scott Pruitt “Will Be A Thoughtful Leader Of The EPA, And One Capable Of Striking The Balance Between Protecting The Environment And Our Economy.”** “As a Democrat, I take seriously the threats to our environment, and I believe we must work to address issues such as pollution, climate change, and ensuring clean air and water. Scott Pruitt’s background in constitutional law, combined with a nuanced understanding of how environmental regulations affect the economy, mean that he will be a thoughtful leader of the EPA, and one capable of striking the balance between protecting the environment and our economy.” (Mike Turpen, “Pruitt Is A Balanced Selection For EPA Chief,” *Inside Sources*, 12/12/16)

- **Mike Turpen: “I Am Convinced Scott Pruitt Will Work To Protect Our Natural Habitats, Reserves, And Resources.”** “I am convinced Scott Pruitt will work to protect our natural habitats, reserves, and resources.” (Mike Turpen, “Pruitt Is A Balanced Selection For EPA Chief,” *Inside Sources*, 12/12/16)

### ***Attorney General Herbert H. Slatery III (TN)***

**Tennessee Attorney General recently said that “Here’s why I think General Pruitt is a good pick: He is a lawyer, a lawyer who understands the Constitution, in particular the limitations placed on the executive branch and its agencies.”**

**Slatery explained that Tennessee has joined Oklahoma in several lawsuits challenging broad, overreaching actions by federal agencies:** “We do not join these cases lightly, to ‘make a statement’, or for some political motivation. We do it to protect the State of Tennessee, its citizens and its sovereign right to govern.”

- **Herbert Slatery:** “As EPA administrator, Scott Pruitt will bring a reasoned and balanced approach back to the agency. He is a constitutional conservative. He has reached across the aisle to pass meaningful regulations to protect Oklahoma waters and has aggressively pursued



litigation against polluters.” (Herbert H. Slaterly III, “Scott Pruitt’s a good pick for EPA administrator,” *Theennessean*, 01/12/17)

#### ***Attorney General Patrick Morrisey (R-WV)***

**In A Recent Radio Interview West Virginia Attorney General Patrick Morrisey Defended Scott Pruitt, Saying “Pruitt Is In Favor Of Clean Air And Clean Water.”** “Some of the attacks that have been launched against him are just rubbish,” Morrisey said, noting that he knows Pruitt is in favor of clean air and clean water.” (Harper Nellig, “Pruitt Ally Defends Trump’s EPA Pick From ‘Rubbish’ Attacks,” *The Hill*, 12/11/16)

**Morrisey Praised Scott Pruitt As A “Good Manager” Who Can “Bring Discipline To The Bureaucrats” At The EPA.** “Morrisey praised Pruitt as a good manager who can ‘bring discipline to the bureaucrats.’ The West Virginia attorney general also praised the rest of the nascent Trump administration, saying ‘people are pretty excited’ that the president-elect is looking to shake things up after eight years of President Obama.” (Harper Nellig, “Pruitt Ally Defends Trump’s EPA Pick From ‘Rubbish’ Attacks,” *The Hill*, 12/11/16)

#### ***Arkansas Attorney General Leslie Rutledge***

**Attorney General Leslie Rutledge (R-AR) Said Pruitt Is “Just The Person” To Rein In The “Excesses” Of The EPA.** “It is incredibly important to the success of the EPA’s primary mission that the agency regains the bipartisan and widespread respect it once had. And this can only be accomplished by reigning in the significant and lawless excesses of the agency. Attorney General Pruitt is just the person to accomplish this feat. His knowledge of the limitations placed on the EPA by statutes and by the U.S. Constitution is exhaustive, as is his understanding of the importance of working with as opposed to against state agencies in areas of regulatory overlap.” (Attorney General Leslie Rutledge, “Arkansas Attorney General: Why Scott Pruitt Is The Right Choice For The EPA,” Op-Ed, *Fox News*, 12/15/16)

#### ***Attorney General Tim Fox (R-MT)***

**Attorney General Tim Fox, Of Montana, Wrote Pruitt Stood Up “For The Rights Of His State” Against The EPA.** “Under federal law, the states have a significant role to play in the realm of environmental protection. Throughout President Obama’s tenure in office, the EPA regularly ignored congressional prescription of states’ environmental protection role. Legal challenges to unlawful regulations such as Waters of the U.S. (WOTUS) and the so called ‘Clean Power Plan’ are examples of General Pruitt standing up for the rights of his state when the EPA adopted public policy that circumvented the proper process.” (Tim Fox, “Zinke, Pruitt Both Deserve Swift Confirmation,” Op-Ed, *Bozeman Daily Chronicle*, 1/1/17)

- **Fox Also Said Pruitt Has A “High Regard For The Rule Of Law In America.”** “Congressman Zinke’s and General Pruitt’s high regard for the rule of law in America is invaluable. I call on Sen. Daines, Sen. Tester and the rest of the U.S. Senate to support swift confirmation of both men to their new positions, as our nation is best served if they are allowed to get to work as soon as possible. A vote against confirmation is a vote against Montana.” (Tim Fox, “Zinke, Pruitt Both Deserve Swift Confirmation,” Op-Ed, *Bozeman Daily Chronicle*, 1/1/17)

#### ***Attorney General Alan Wilson (R-SC)***

**Attorney General Alan Wilson (R-SC) Wrote That Pruitt “Is Deeply Respected In Oklahoma And Among His Colleagues Nationwide.”** “Scott Pruitt is deeply respected in Oklahoma and among his colleagues nationwide for his integrity, intellect and knowledge of constitutional law. It is exactly these qualities that are necessary to rein in an out-of-control EPA and focus it on its original mission of working with states and at the direction of Congress to protect our air, water and land. Sadly, the EPA has become an agency synonymous with ineffective policies that stall our energy and manufacturing production and delay much-needed job growth. Scott Pruitt knows the EPA has a critical role to play in ensuring we all benefit from a cleaner environment.” (Alan Wilson, “Scott Pruitt And The End Of EPA Overreach,” *The State*, 1/2/17)

**Attorney General-Elect Curtis Hill (R-IN)**

**Attorney General-Elect Curtis Hill (R-IN) Wrote Pruitt “Has Earned National Recognition For His Expertise In Constitutional Law.”** “Scott Pruitt has earned national recognition for his expertise in constitutional law, the federal regulatory system and his dogged determination in taking on tough fights on behalf of his constituents. One example that impacted us here in Indiana was General Pruitt’s work to successfully block the EPA’s attempts to harass America’s farmers and ranchers by redefining what the term ‘navigable’ water means under the Clean Water Act. He also stood up to the Obama Administration’s unconstitutional executive orders, like those that led the War on Coal.” (Curtis Hill, “Flashpoint: Pruitt Has Toughness, Expertise To Control EPA,” *Op-Ed, Tribune-Star*, 12/20/16)

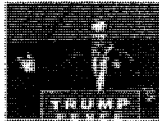
- **More From Hill: Pruitt “Took On The Big Oil Companies.”** “While federalism and the rule of law will always be his guiding star, General Pruitt has also demonstrated a commitment to unleashing an energy revolution in this country and doing so in a way that protects our natural resources, ensuring clean air and clean water. ... We can balance that policy while ensuring that our environment is protected. In Oklahoma, General Pruitt took on the big oil companies when he found that they knowingly double-dipped by collecting reimbursements for corrective action environmental costs for sites they polluted.” (Curtis Hill, “Flashpoint: Pruitt Has Toughness, Expertise To Control EPA,” *Op-Ed, Tribune-Star*, 12/20/16)
- **And More From Hill: Pruitt “Will Be The Regulatory Watchdog We Have Long Needed.”** “So, while the far left will try to sully his reputation, Republicans and even moderate Democrats will support General Pruitt in his confirmation, confident that he will succeed in his mission to protect the environment while also protecting the rights of Americans and the rule of law. Too often people go to Washington trying to advance their own agenda and become just another member of the swamp. I am thrilled because I know that General Pruitt will do just the opposite. He will be the regulatory watchdog we have long needed.” (Curtis Hill, “Flashpoint: Pruitt Has Toughness, Expertise To Control EPA,” *Op-Ed, Tribune-Star*, 12/20/16)

**Former Attorney General Ken Cuccinelli (R-VA)**

**Former Attorney General Ken Cuccinelli Said Of Pruitt: “He Doesn’t Flap In The Wind.”** “Ken Cuccinelli, former attorney general of Virginia, who worked with Pruitt in the past, said, ‘Even opponents, if they get to work with him, will find they will be treated well and respectfully no matter how strongly opinions are felt on either side. He doesn’t flap in the wind, but he does incorporate what people say to him.’” (Benjamin Storrow and Niina Heikkilä, “Trump’s EPA Pick Left Okla. Water Pollution Case Haunting,” *EE&E Publishing*, 1/3/17)

## Schuetz: Want to stop EPA overreach?

Bill Schuetz 10:50 p.m. ET Jan 15, 2017



(Photo: Robin Buckman / Detroit News)

As the confirmation process for the members of President-elect Donald Trump's cabinet moves forward, the positive direction of our new cabinet is taking shape. Trump has committed to draining the swamp and will change and reform the way government is done for the better.

When Trump named Oklahoma Attorney General Scott Pruitt as his pick to run the Environmental Protection Agency, he selected a highly qualified leader who is committed to restoring the proper balance between the power of the states and federal government to protect our environment.

As the head of the EPA, Pruitt will reverse this trend of bypassing Congress and ignoring the will of the people and the courts and return the agency to its original goal: keeping our air clean and our water safe.

Pruitt has been a strong voice for stopping the out-of-control Obama-era EPA regulations that have destroyed millions of American jobs and cost consumers their hard earned dollars.

Pruitt and I have stood together on numerous important environmental issues. During the Obama administration, the EPA frequently overstepped its boundaries, ignoring each state's energy resources and forcing a nationalized energy agenda.

Under the Obama administration, the EPA has attempted to classify even the smallest body of water as able to be regulated by the EPA, including ponds in the middle of a farm field, as part of the Waters of the United States Rule. They ignored the need to examine the energy needs and sources of specific states with the Clean Power Plan. Closer to home, in Michigan v. EPA, the U.S. Supreme Court said that the EPA must consider costs and that it interpreted the Clean Air Act unreasonably when it determined that it did not need to consider costs when it implemented regulation.

Failure to take into account the cost of regulation was a recurring theme during the Obama administration. The EPA also tried to regulate methane in an attempt to find a problem where there isn't one. The oil and natural gas industry has made a point to reduce methane emissions on their own. Why? Because they have a financial incentive to capture and sell the methane gas produced through drilling.

Imagine the costs of the regulatory environment created by the Obama EPA on the average Michigan resident, the increased cost of food and starting a business. The era of a job killing EPA will soon be over.

We stood together, not against the environment, but against the wasteful spending and harmful regulation put forth by bureaucrats in Washington.

With Pruitt at the helm of the EPA, no more will we see the agency ignoring the laws passed by congress or rulings handed down by the U.S. Supreme Court cast aside.

Pruitt will protect our environment while ensuring that you and I can still afford to turn the lights on and fill our cars up with gas.

I encourage the U.S. Senate — and Michigan's senators — to hire Scott Pruitt by confirming him as the administrator of the EPA.

Bill Schuetz is the attorney general of Michigan.

Read or Share this story: <http://detroit.com/2017/01/15/schuetz-wants-to-stop-epa-overreach/>



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## Scott Pruitt's a good pick for EPA administrator

Herbert H. Staley III Published 7:05 a.m. CT Jan. 12, 2017 | Updated 2 hours ago



(Photo Submitted)

The selection of Oklahoma Attorney General Scott Pruitt to serve as Environmental Protection Agency administrator is bold. It is also encouraging.

It has attracted a lot of notice and criticism, the hue and cry is loud. "He does not believe in climate change; he does not believe in the EPA's mission; he favors the oil and gas industry." I do not think he fits any of those descriptions.

Here's why I think General Pruitt is a good pick: He is a lawyer, a lawyer who understands the Constitution, in particular the limitations placed on the executive branch and its agencies. Our Office has worked with General Pruitt and other attorneys general on a number of issues ranging from immigration to education to the environment to health care.

We have joined several lawsuits challenging broad, overreaching actions by federal agencies. We do not join these cases lightly, to "make a statement", or for some political motivation. We do it to protect the State of Tennessee, its citizens and its sovereign right to govern.

My recollection is that General Pruitt was a leader in bringing a number of these cases. Here is an example: One case challenged an executive directive, a written order, by the Director of Homeland Security saying the federal government would not prosecute (the legal term is that they would ~~defer~~ prosecution) more than 4 million parents of minors who were legal residents or citizens, even though the parents were in the country illegally.

Now if you are, like me, completely frustrated by Congress's failure to address immigration reform, this directive may sound all right. But the executive branch cannot change the law; that is solely up to Congress. General Pruitt understands this. I recall a conversation in which he said that at the very least DHS should have complied with the minimal notice and hearing provisions of the Administrative Procedures Act. DHS did not even do that; it just wrote a directive and sent it out.

General Pruitt's position on these matters is consistent. He took the same position on education, health care and environmental issues. When a federal agency takes the voice of the people and their elected representatives out of the process, that is a problem. The framers of the Constitution probably had no idea the federal government would morph into this administrative state under which we all operate, but they certainly did not provide for removing the voice of the people altogether from these issues.

Here is another example: Tennessee has over 67,000 farm operations. Farmland covers almost 11 million acres in Tennessee. The production of livestock and key field crops like soybeans, cotton, and corn are significant sources of revenue. Farmers represent one of the state's core constituencies.

The EPA under the current administration unveiled the Waters of the U.S. (WOTUS) rule. WOTUS expands the definition of waterways regulated by the EPA to include any body of water that has a bed, bank and high water mark. Streams, creeks, ditches, brooks, and even ponds are arguably all under EPA regulation because of this rule. So a sizeable percentage of private land in Tennessee is under the EPA's regulation.

When the rule came out, Lacy Upchurch, then President of the Farm Bureau, said "farmers are doing a good job with their conservation practices. We just think it's overreach from the EPA." All farmers want clean water, but under WOTUS, farmers may have to obtain new permits from either of two federal agencies, the EPA or the Army Corps of Engineers. This would require surveys, assessments, wait times and fees. Building a pond might become a regulatory nightmare. Disturbing a stream without a federal permit in Tennessee could cost a farmer up to \$61,570 per day in civil penalties. If he or she could pay that, the only way to recoup it would be to charge higher prices, leaving consumers with higher grocery bills.

Scott Pruitt would weigh all of this before issuing a rule like WOTUS. Protecting an individual's property rights would be important to him, when faced with how to determine modifications of a waterway.

As EPA administrator, Scott Pruitt will bring a reasoned and balanced approach back to the agency. He is a constitutional conservative. He has reached across the aisle to pass meaningful regulations to protect Oklahoma waters and has aggressively pursued litigation against polluters.

As a state attorney general he developed sophisticated and practical ecological protections. He understands the EPA's mission to guard human health and the environment. At the same time, he understands the bigger picture that regulations affect our property rights, our ability to compete, and our livelihoods.

He understands that notwithstanding the ubiquity of federal agency involvement, the Constitution, in particular the Tenth Amendment, reserves significant

rights to the States.

Frankly, I find refreshing the thought that someone who really understands the importance of States' rights and the separation of powers will be leading a large federal agency like the EPA. There may be a whole new set of questions being asked: Can the executive branch do this without Congress? What is the effect of this action on the economy? Property rights?

Scott Pruitt will be a tough and responsible steward of the environment. Scott Pruitt is a good pick and should be quickly confirmed so he can get to work.

*Herbert H. Slatery III is the attorney general of the State of Tennessee.*



Environmental Protection Agency (EPA) Administrator-designate Scott Pruitt answers a reporter's question during his meeting with Sen. Shelby Moore Capito, R-W.Va., on Capitol Hill in Washington, Wednesday, Jan. 4, 2017. (AP Photo/Chris Owen) (Photo: Chris Owen, AP)

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January 4, 2017

The Honorable John Barrasso  
307 Dirksen Senate Office Building  
Washington, District of Columbia 20510

The Honorable Tom Carper  
513 Hart Senate Office Building  
Washington, District of Columbia 20510

Dear Chairman Barrasso and Ranking Member Carper:

As the attorneys general of our respective states, we write to express our unqualified support for our colleague and the Attorney General of Oklahoma, E. Scott Pruitt, as Administrator of the U.S. Environmental Protection Agency.

As attorneys general, we understand the need to work collaboratively to address threats to our environment that cross state lines, as well as the importance of a federal counterpart in the EPA Administrator who possesses the knowledge, experience, and principles to work with our states to address issues affecting our environment. We believe that no one exemplifies these qualities more than Scott Pruitt.

As the Attorney General of Oklahoma, Mr. Pruitt developed expertise in environmental law and policy. He negotiated a historic water rights settlement with Indian tribes that preserved the ecosystems of scenic lakes and rivers; he worked with his Democrat counterpart in Arkansas to reduce pollution in the Illinois River; and he represented the interests of Oklahomans in rate cases against utility companies and in numerous actions against those who contaminated his state's air and water.

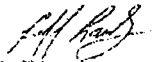
Attorney General Pruitt is committed to clean air and clean water, and to faithfully executing the environmental laws written by Congress. He believes that environmental regulations should be driven by State and local governments--a notion endorsed by Congress in the Clean Air Act and Clean Water Act. When our nation is confronted with issues affecting the environment that are not covered by a particular statute, Scott will come to Congress for a solution, rather than inventing power for his agency. He wholeheartedly believes in a strong Environmental Protection Agency that carries out its proper duties, providing a backstop to state and local regulators as they develop environmental regulations suited to the needs of their own communities.


The Honorable John Barrasso  
The Honorable Tom Carper  
January 4, 2017  
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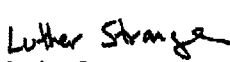
Scott Pruitt is more than just an exemplary state attorney general, he is also our friend. A man of deep faith who is committed to his family and to his friends, Scott seeks always to do the right thing. His friendship and leadership have been invaluable to us over the years.


The Administrator of the Environmental Protection Agency plays a critical role in our Nation's government. Attorney General Pruitt has proven over the course of his career that he has the right character, experience, and knowledge to serve as the Administrator of the EPA. We urge the Senate to confirm his nomination.


Sincerely,


  
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Attorney General  
State of Louisiana


  
Alan Wilson  
Attorney General  
State of South Carolina

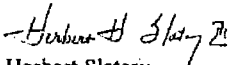
  
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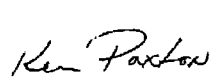
  
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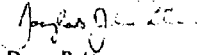
  
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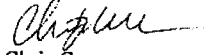
  
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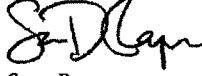
  
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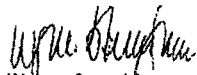
  
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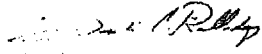
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January 4, 2017  
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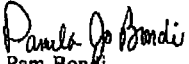
  
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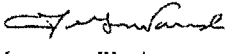
  
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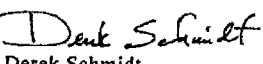
  
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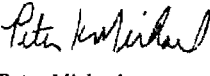
  
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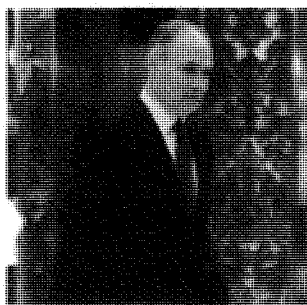
  
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## **Pruitt Is a Balanced Selection for EPA Chief**

Posted to [Energy](#)

Attorney General Scott Pruitt (Republican of Oklahoma) is seen in the lobby of the Trump Tower in New York, New York, on November 28, 2016. Credit: Anthony Behar / Pool via CNP /MediaPunch/IPX

[\(http://www.insidesources.com/category/energy/\)](http://www.insidesources.com/category/energy/) December 12, 2016 by [Mike Turpen](http://www.insidesources.com/author/turpen/) (<http://www.insidesources.com/author/turpen/>)

With all the fireworks of the 2016 campaign now silenced, President-elect Donald Trump is getting to work assembling a government. As a lifelong Democrat, I may not agree with all of the President-elect's policies or nominees, but I do know that Oklahoma Attorney General Scott Pruitt is a good choice to head up the Environmental Protection Agency.

As a Democrat, I take seriously the threats to our environment, and I believe we must work to address issues such as pollution, climate change, and ensuring clean air and water. Scott Pruitt's background in constitutional law, combined with a nuanced understanding of how environmental regulations affect the economy, mean that he will be a thoughtful leader of the EPA, and one capable of striking the balance between protecting the environment and our economy.

Scott Pruitt understands that an American energy revolution is a means of new jobs and new wealth in our country. Of course, the energy industry, just like any other industry, should be subject to appropriate scrutiny to make sure laws are followed, our environment is protected, and Americans are safe. The potential for the energy industry to contribute to an economic renaissance is enormous: half a million jobs each year and \$30 billion in higher wages, according to one [study](http://instituteenergyresearch.org/wp-content/uploads/2016/01/IER-Mason-Study.pdf) (<http://instituteenergyresearch.org/wp-content/uploads/2016/01/IER-Mason-Study.pdf>).

Finally, the job of the EPA is the essential mission of guaranteeing clean air and clean water. Scott Pruitt has never compromised those critical components of a healthy population with any actions he has taken. "We drink the water, we breathe the air here in Oklahoma. To think that we don't care about that, and somehow are being led to sacrifice those things... not accurate," Pruitt [told](https://www.ft.com/content/e4743b9e-e25e-11e4-bb7f-00144feab7de) (<https://www.ft.com/content/e4743b9e-e25e-11e4-bb7f-00144feab7de>) the Financial Times. I am

convinced Scott Pruitt will work to protect our natural habitats, reserves, and resources. His vision for a proper relationship between protection and prosperity makes him superbly qualified to serve as our next EPA administrator.



About the Author  
**Mike Turpen**

**(<http://www.insidesources.com/author/turpen/>)**

Mike Turpen is the former Attorney General of Oklahoma.

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Herbert H. Slatry III Published 7:05 a.m. CT Jan. 12, 2017 | Updated 23 hours ago



(Photo: Submitted)

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*Herbert H. Slatery III is the attorney general of the State of Tennessee.*



Environmental Protection Agency (EPA) Administrator-designate Scott Pruitt answers a reporter's question during his meeting with Sen. Shelley Moore Capito, R-W.Va., on Capitol Hill in Washington, Wednesday, Jan. 4, 2017. (AP Photo/Cliff Owen) (Photo: Cliff Owen, AP)

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## Arkansas Attorney General: Why Scott Pruitt is the right choice for the EPA

By General Leslie Rutledge

Published December 15, 2016 | FoxNews.com

Before the ink dried on the press release announcing President-elect Donald Trump's nomination of Oklahoma Attorney General Scott Pruitt to be the Administrator of the Environmental Protection Agency (EPA), liberal special interest groups lined up to oppose the nomination.

Can anyone honestly imagine an EPA nominee by the president-elect that these groups would have supported? Once we get beyond the activist-partisan political games, it becomes clear that the president-elect's choice is the right person at the right time—a decision I fully support.

Despite what you hear from the left side of the aisle, Republicans actually do want clean air and water.

Attorney General Pruitt, like most conservatives, wants our regulatory agencies run with common sense and not a political agenda.

In a 2013 speech, he stated unequivocally that "there is a proper role" for the EPA to regulate on "issues with respect to clean water and air that cross state lines."

Having spent years evaluating the legality, necessity and impact of EPA regulations, he has been at the forefront of challenging the EPA when necessary.

When the EPA acts in excess of its legal authority, and where the agency adopts unnecessary and arbitrary rules that do incredibly little to aid the environment while doing a lot to harm the economy, Attorney General Pruitt has been strong in fighting the agency which he hopes to lead.

Of the numerous regulations that the EPA published during his tenure as Attorney General of Oklahoma, he has only challenged the handful of regulations that he believed were far outside the legal parameters of the agency. It is just this type of balanced approach that Americans need steering the wheel at the EPA.

The EPA has earned its reputation as the most lawless executive agency. Over the last eight years, it has again and again painted far outside the lines of its legal authority under statutes passed by Congress.

This type of conduct has garnered numerous rebukes from the U.S. Supreme Court and multiple lower courts, not to mention the ire of Congress and state attorneys general, like myself and Attorney General Pruitt.

It is incredibly important to the success of the EPA's primary mission that the agency regain the bipartisan and widespread respect it once had. And this can only be accomplished by reigning in the significant and lawless excesses of the agency. Attorney General Pruitt is just the person to accomplish this feat. His knowledge of the limitations placed on the EPA by statutes and by the U.S. Constitution is exhaustive, as is his understanding of the importance of working with as opposed to against state agencies in areas of regulatory overlap.

The president-elect was sent to Washington by the American people to drain the swamp. Of all the entrenched bureaucracies in Washington, D.C., with which I have dealt, the EPA is probably the most egregious.

Its career staff is more of a satellite office of the Sierra Club and other coastal elite organizations than a fair arbiter between all citizens and all viewpoints.

For too long the EPA has had a stranglehold on our nation's economy. The magnitude of the problem requires more than just the usual change of leadership that comes with a new administration — it requires a leader that can re-focus the agency on its core mission and steer it away from a culture of legally dubious action.

Scott Pruitt is the right person at the right time to lead the EPA.

*Leslie Rutledge is the 56th Attorney General of Arkansas. Elected on Nov. 4, 2014, she is the first woman and first Republican in Arkansas history to be elected to the office.*

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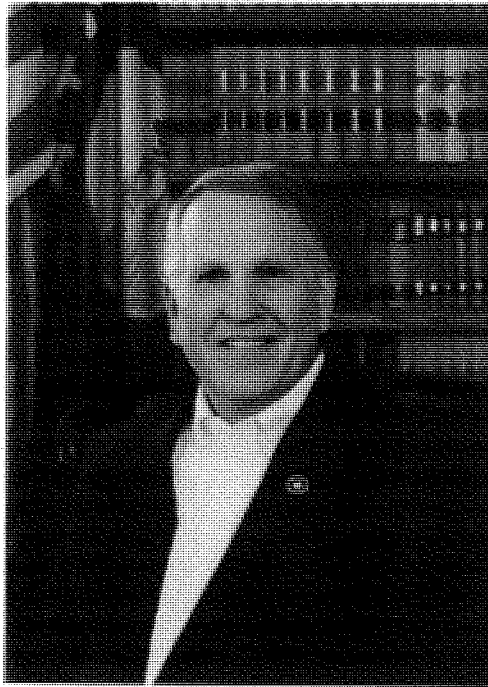
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## **Zinke, Pruitt both deserve swift confirmation**

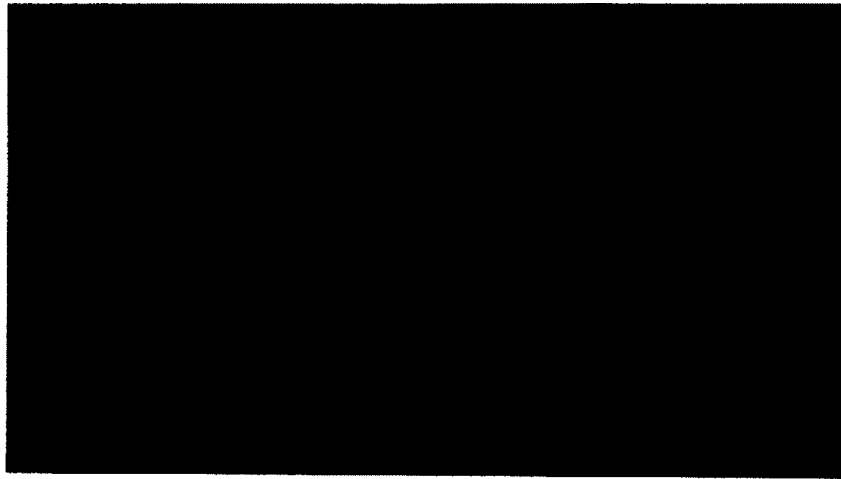
By Tim Fox, guest columnist Jan 1, 2017



**"America is a nation of laws, not of men and women."**

These words, spoken countless times throughout our nation's history, should always be a guiding principle for policymakers in America. As citizens of this great nation, we must ask those who lead our country to respect the supremacy of law, as it's only then that differences of opinion can coexist peacefully.

Two individuals recently selected to help lead our country embody this necessary characteristic, and we would be lucky to have their service.



I am pleased by President-elect Trump's nomination of Montana's congressman, Ryan Zinke, to serve as secretary of the U.S. Department of Interior, and Oklahoma's attorney general, Scott Pruitt, to serve as administrator of the U.S. Environmental Protection Agency. I have the privilege of knowing both individuals personally, and I believe they will continue to serve our country well in their new roles.

Congressman Zinke has been a steadfast supporter of responsible natural resource development, sensible environmental protections, balancing access to public lands with private property rights, and has worked tirelessly to maintain positive and productive relationships with tribal nations across Montana. And perhaps most importantly, I am confident Congressman Zinke will respect the legal limitations of his new post, and adhere to our nation's lawmaking process. I look forward to his swift and decisive confirmation by the U.S. Senate.

I have the same hopes for the confirmation of Attorney General Pruitt.

Unfortunately, opponents of General Pruitt's nomination see fit to misrepresent his work as Oklahoma's attorney general to rally opposition to his confirmation. In an attempt to portray him as an "out-of-touch extremist," detractors characterize his opposition to certain Obama administration policy initiatives as "anti-science." These claims couldn't be further from the truth.

Under federal law, the states have a significant role to play in the realm of environmental protection. Throughout President Obama's tenure in office, the EPA regularly ignored congressional prescription of states' environmental protection role. Legal challenges to unlawful regulations such as Waters of the U.S. (WOTUS) and the so called "Clean Power Plan" are examples of General Pruitt standing up for the rights of his state when the EPA adopted public policy that circumvented the proper process.

It's illogical to claim an individual is somehow opposed to scientific realities simply because they are dedicated to preserving the rule of law in our country. Public policy rooted in science must still be enacted through the proper channels, and in the United States, that means recognizing the reality that is the separation of powers and the principles of federalism.

Simply put, we all must play by the rules of the game. If we don't, it's just a matter of time before "the shoe is on the other foot," and those championing unilateral policymaking one day become those voicing outrage the next.

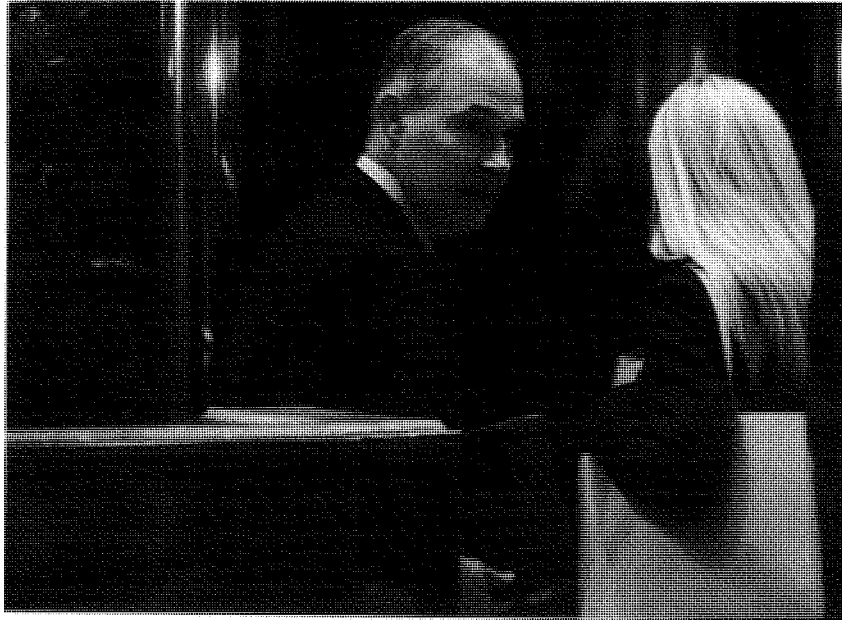
Congressman Zinke's and General Pruitt's high regard for the rule of law in America is invaluable. I call on Sen. Daines, Sen. Tester and the rest of the U.S. Senate to support swift confirmation of both men to their new positions, as our nation is best served if they are allowed to get to work as soon as possible. A vote against confirmation is a vote against Montana.

*Tim Fox is the attorney general of Montana.*



LETTERS TO THE EDITOR JANUARY 2, 2017 4:55 PM

## Scott Pruitt and the end of EPA overreach



COLUMBIA, SC — Since President-elect Donald Trump nominated Oklahoma Attorney General Scott Pruitt to be the next administrator of the Environmental Protection Agency, extremists have attempted to malign him as anti-environment. It's time to set the record straight.

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**The Trump Cabinet: Bonfire of the agencies**

**'War on coal'? Trump EPA nominee says natural gas is the winner, not regulators**

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Since Republicans took control of the House and Senate in 2011, President Barack Obama circumvented Congress and used his agencies to create policy he could not get passed by the people's representatives. The EPA has been one of the worst offenders, sometimes even stepping outside its authority to impose on states a regulatory regime that Congress explicitly rejected.

That's why I joined with Pruitt and a bipartisan majority of attorneys general to oppose Obama's Clean Power Plan. It's why I've joined numerous other lawsuits against the EPA, many led by Pruitt. Our opposition was not founded in any antagonism toward the environment. Instead, it was out of fidelity to the law and Constitution, which forbid these top-down mandates on the states.

“

**SADLY, THE EPA HAS BECOME AN AGENCY SYNONYMOUS WITH INEFFECTIVE POLICIES THAT STALL OUR ENERGY AND MANUFACTURING PRODUCTION AND DELAY MUCH NEEDED JOB GROWTH.**

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As stewards of the environment, it is our responsibility to protect it and ensure that we leave it in great condition for years to come. However, the environment should be protected through sound regulation and laws that are responsible, predictable and accountable.

Scott Pruitt is deeply respected in Oklahoma and among his colleagues nationwide for his integrity, intellect and knowledge of constitutional law. It is exactly these qualities that are necessary to rein in an out-of-control EPA and focus it on its original mission of working with states and at the direction of Congress to protect our air, water and land.

Sadly, the EPA has become an agency synonymous with ineffective policies that stall our energy and manufacturing production and delay much-needed job growth. Scott Pruitt knows the EPA has a critical role to play in ensuring we all benefit from a cleaner environment. He also knows that there is an essential role for Congress and the states, and that new regulations must be weighed against the costs they impose on our economy and pocketbooks.

I look forward to continuing to work with him to protect the rule of law and reform the EPA.

*ATTORNEY GENERAL ALAN WILSON*

*COLUMBIA*



**MORE LETTERS TO THE EDITOR**



[http://www.tribstar.com/opinion/flashpoint/flashpoint-pruitt-has-toughness-expertise-to-control-epa/article\\_218fa927-f565-5aee-85a5-062a452de053.html](http://www.tribstar.com/opinion/flashpoint/flashpoint-pruitt-has-toughness-expertise-to-control-epa/article_218fa927-f565-5aee-85a5-062a452de053.html)

## Flashpoint: Pruitt has toughness, expertise to control EPA

Dec 21, 2016



By Curtis Hill

Indiana State Attorney General-Elect

Washington rule makers and regulators have long needed policing by someone who understands the Constitution and is unbowed by special interests. If I could pick one guy for that job, it would be Attorney General Scott Pruitt of Oklahoma. I am thrilled to see that he is likely to have the opportunity to oversee the department with the most out-of-control regulatory agenda — the Environmental Protection Agency. It is absolutely critical that our United States senators — including Joe Donnelly — confirm him for that role.

Scott Pruitt has earned national recognition for his expertise in constitutional law, the federal regulatory system and his dogged determination in taking on tough fights on behalf of his constituents. One example that impacted us here in Indiana was General Pruitt's work to successfully block the EPA's attempts to harass America's farmers and ranchers by redefining what the term "navigable" water means under the Clean Water Act. He also stood up to the Obama Administration's unconstitutional executive orders, like those that led the War on Coal.

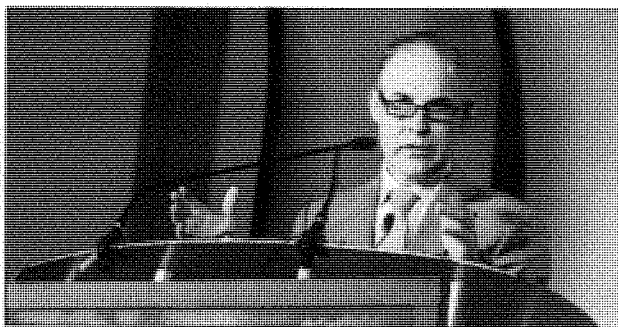
This commitment to the Tenth Amendment and pushing back government overreach has extended to other issues. General Pruitt has worked on lawsuits that challenged Obamacare and the new unconstitutional taxes being levied by the Obama Administration.

While federalism and the rule of law will always be his guiding star, General Pruitt has also demonstrated a commitment to unleashing an energy revolution in this country and doing so in a way that protects our natural resources, ensuring clean air and clean water.

## EPA

**Trump's pick left Okla. water pollution case hanging**

Benjamin Storrow and Niina Heikkinen, E&E News reporters  
Published: Tuesday, January 3, 2017



Oklahoma Attorney General Scott Pruitt (R), President-elect Donald Trump's pick to head U.S. EPA, speaks to the Oklahoma Farm Bureau's annual meeting in 2014. Throughout his years in Oklahoma politics, Pruitt took in large contributions from agricultural interests. The Oklahoma Farm Bureau has contributed \$10,750 to his campaigns. Photo by the Oklahoma Farm Bureau, courtesy of Flickr.

In 2005, the state of Oklahoma filed a lawsuit against 14 poultry producers, claiming the companies were dumping "hundreds of thousands of tons" of chicken waste into the Illinois River watershed.

The Illinois River feeds into Tenkiller Ferry Lake, a 12,900-acre body of water described in the suit as the "emerald jewel in Oklahoma's crown of lakes." Some claimed the lake's water was once so clear, a person could see to the bottom.

But by that time, the algae bloom was so thick, it appeared a person could walk across the northeastern Oklahoma waterway.

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The case was argued in federal court in 2009. After a 52-day trial, the two sides rested on Feb. 18, 2010. And then: nothing. The suit remains undecided to this day.

The inaction coincides with Scott Pruitt's ascension to the Oklahoma attorney general's office. Pruitt, a Republican whom Donald Trump has nominated to serve as U.S. EPA administrator, won an election to replace the Sooner State's outgoing Democratic attorney general in 2010.

In the six years since, Pruitt has chosen not to take any further legal action in the case.

The suit offers a window into how Pruitt may approach the job of EPA administrator. Critics of the Oklahoma attorney general say it demonstrates his lax approach to environmental regulations. Supporters maintain that it illustrates his preference for negotiation over litigation.

"I suspect if at any time [Pruitt] had chose to prod the judge, he would have issued the decision," said Gary Allison, a professor at the University of Tulsa College of Law. "Scott had told folks that public policy shouldn't be decided through the courtroom and litigation."

Pruitt told *The Oklahoman* as much in 2015.

"Regulation through litigation is wrong in my view," he told the newspaper. "That was not a decision my office made. It was a case we inherited."

### A polluter's dream or a protector against overreach?

Pruitt is mostly known at the national level for his legal challenges to EPA rules. He has initiated or joined at least 14 cases against EPA, according to a review by the Environmental Defense Fund.

He is perhaps best known for his opposition to the Clean Power Plan and Clean Water Rule. His litigation has also targeted EPA regulations on methane, mercury and smog, as well as the agency's finding that greenhouse gases endanger public health and welfare.

Environmental groups claim that the lawsuits deny basic science and favor industry interests.

Two federal political action committees aligned with Pruitt have received large contributions from energy companies and executives, Federal Election Commission filings show. They include a \$50,000 contribution from Murray Energy Corp., a coal company that has challenged the Clean Power Plan; \$30,000 from the family of Joseph Craft, CEO of Alliance Resource Partners, a Tulsa-based coal company; and \$15,000 from Continental Resources Inc., an Oklahoma City-based oil and gas firm.

"He's carved out a very extreme view of EPA and its role and meaning of its statutes. It's a view that is couched in high-minded federalism terms about supposed rules that govern federal and state relations," said David Doniger, director of the Natural Resources Defense Council's climate and clean air program. "But his opinions line up 100 percent with the objectives and interests of some of the biggest polluters."

Pruitt's supporters say he will bring a measured leadership approach to EPA's top job if he is confirmed.

David Rivkin, a partner at BakerHostetler who has worked on Pruitt's challenge to the Clean Power Plan, said the Oklahoman's focus will be on creating regulations that are firmly backed by the Constitution.

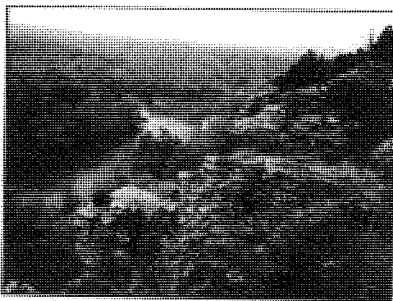
"Environmental protection is important, protection of employees is important, there are many important policy goals," Rivkin said. "However, the overarching thing has to be following the Constitution. These lawsuits weren't brought for policy differences."

Ken Cuccinelli, former attorney general of Virginia, who worked with Pruitt in the past, said, "Even opponents, if they get to work with him, will find they will be treated well and respectfully no matter how strongly opinions are felt on either side. He doesn't flap in the wind, but he does incorporate what people say to him."

#### Inside the Ark. agreement

Among the first challenges Pruitt faced upon becoming Oklahoma's top lawyer in 2011 was the Sooner State's fraught relationship with neighboring Arkansas.

The headwaters of the Illinois River begin in Arkansas, which has long been at odds with Oklahoma over the pollution standards governing the watershed. In 1992, the Supreme Court ruled Arkansas, as the upstream state, had to abide by Oklahoma's pollution standards. A decade later, the Oklahoma Legislature set phosphorus limits for scenic rivers, including the Illinois and its tributaries.



The Illinois River at the upper end of Tenkiller Ferry Lake in Oklahoma. Pruitt has a mixed record in protecting those waterways throughout his tenure as state attorney general. Photo courtesy of Wikipedia.

Arkansas agreed to work with Oklahoma to reduce phosphorus levels in 2003, but the relationship between the two states deteriorated after the poultry lawsuit brought by Pruitt's predecessor, Drew Edmondson.

In 2012, Arkansas regulators issued a report questioning Oklahoma's phosphorus standard. Pruitt chose to negotiate with his Arkansas counterparts. They agreed to hire a team of researchers from Baylor University to study the standards.

The researchers reached a conclusion last month, largely affirming Oklahoma's pollution limits.

"He played a critical role in getting us all around the table," said J.D. Strong, former head of the Oklahoma Water Resources Board. "During his time as attorney general, I think we have made great strides when it comes to actual efforts to clean up scenic rivers in Oklahoma."

Others are less sure.

Water quality in the Illinois River has improved, but it still doesn't meet Oklahoma's phosphorus standards, said Mark Derichsweller, who recently retired from the state's Department of Environmental Quality.

Arkansas and Oklahoma had already agreed to pollution standards for the Illinois River watershed by the time Pruitt came to office, he noted.

Of the agreement Pruitt struck with his Arkansas counterparts, Derichsweller said, "It was just an agreement to just go back and second-guess Oklahoma's water quality standard, to study that to see if it needed to be weakened."

#### A hands-off approach?

Throughout his years in Oklahoma politics, Pruitt also has raked in large contributions from agricultural interests. The Oklahoma Farm Bureau has contributed \$10,750 to his campaigns. Members of the Tyson family gave \$12,500 to Pruitt's 2010 election bid, according to FollowTheMoney.org.

The family company, Tyson Foods Inc., was named a defendant in the waste case.

This fall, Pruitt backed a failed ballot initiative that would have made it more difficult for the state Legislature to pass laws regulating farming and ranching practices. The measure was opposed by a range of conservation and recreation groups, which feared it would weaken the state's water quality standards.

Lincoln Ferguson, a Pruitt spokesman, said critics have mischaracterized the Oklahoma attorney general's record. He noted Pruitt has not sought the dismissal of the poultry case. He also pointed to the Baylor study, saying it confirmed Oklahoma's phosphorus standards were supported by the best available science. The study ensured they would not be relaxed, as Arkansas sought, Ferguson said.

"This team has held bad actors accountable and protected stewardship of Oklahoma's natural resources," Ferguson said.

But Pruitt's critics worry his approach to the poultry case could spell a laissez-faire approach to environmental regulation. Many who had hoped to clean up the waters of eastern Oklahoma were left disappointed by his decision not to seek a resolution to the case, said Allison, the University of Tulsa professor.

"If there was a desire on the part of the president-elect for lax environmental regulation, it would match what Scott Pruitt has done here," he said.

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# Pruitt ally defends Trump's EPA from 'rubbish' attacks

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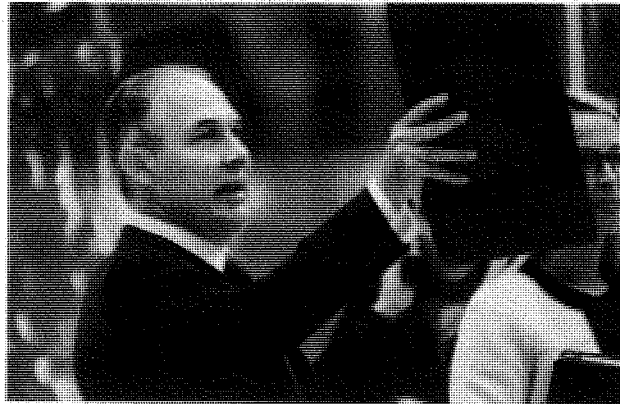
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An ally of Scott Pruitt, Donald Trump's pick to run the Environmental Protection Agency, defended the Oklahoma attorney general on Sunday against "rubbish" attacks.

During a radio interview with John Catsimatidis on 970 AM in New York, West Virginia attorney general Patrick Morrisey (R) lauded Pruitt, calling him a "terrific man."

"Some of the attacks that have been launched against him are just rubbish," Morrisey said, noting that he knows Pruitt is in favor of clean air and clean water.

Environmental advocates have lashed out at Pruitt, who doubts the science of climate change and has previously sued the agency he has been nominated to run.

"Tough for them," Morrisey said.

Morrisey praised Pruitt as a good manager who can "bring discipline to the bureaucrats."



The West Virginia attorney general also praised the rest of the nascent Trump administration, saying "people are pretty excited" that the president-elect is looking to shake things up after eight years of President Obama.

"They're gonna move the country in a different direction, and it's not just going to be this uber-regulatory, statist approach," he said.

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## **FARMERS IN SUPPORT OF PRUITT**

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### ***Zippy Duvall, American Farm Bureau Federation President***

**The American Farm Bureau Endorsed Pruitt In A Press Release. President Zippy Duvall Said Pruitt "Will Restore Respect For The Law."** "The American Farm Bureau Federation has formally endorsed the nomination of Scott Pruitt as administrator of the U.S. Environmental Protection Agency. AFBF President Zippy Duvall called Pruitt, Oklahoma's attorney general, 'an ideal nominee' who 'has profound respect for the laws written by Congress.' ... 'Scott Pruitt will restore respect for the law and enforce it fairly,' Duvall said. 'He understands how and when federal power should be exercised. We support him because he has demonstrated a keen understanding of the devastating economic implications of federal overreach. Scott Pruitt will put the EPA back on track and ensure that federal decisions are based on sound science, not politics. He will produce a fair regulatory environment that respects the rule of law.'" (American Farm Bureau, "American Farm Bureau Strongly Endorses Pruitt For EPA," Press Release, 1/4/17)

### ***Colin Woodall, VP Of Government Affairs For The National Cattlemen's Beef Association***

**Colin Woodall, Of The National Cattlemen's Beef Association, Said Donald Trump's Pick Of Scott Pruitt Is A "Home Run."** "National Cattlemen's Beef Association's Vice President of Governmental Affairs Colin Woodall told Radio Oklahoma Ag Network Farm Director Ron Hays in a recent conversation, this move is a 'home run' in his book. 'We're actually excited about a lot of the names we have seen including Scott Pruitt as EPA Head,' Woodall said. 'We know that he is going to bring probably a much different approach than what we have seen for quite some time and that's spanning multiple administrations.'" ("Trump Hits A Home Run For Agriculture With Scott Pruitt Nomination - But Will Dems Block The Plate?" Oklahoma Farm Report, 1/4/17)

### ***Daryl Lies, President Of The North Dakota Farm Bureau***

**North Dakota Farm Bureau President Daryl Lies Wrote Pruitt "Will Bring A Reasoned And Balanced Approach Back" To The EPA.** "The nomination of Oklahoma Attorney General Scott Pruitt to serve as administrator of the Environmental Protection Agency is a welcome reprieve. He will bring a reasoned and balanced approach back to an agency run amok with unnecessary and flawed regulations which have done more to hurt our environment than help it. As attorney general, he helped develop robust regulations at the state level to implement economically viable conservation efforts. He reached across the aisle to pass meaningful regulations to protect Oklahoma waters and has aggressively pursued litigation against polluters. He's a stalwart defender of the EPA's mission to protect human health and the environment." (Daryl Lies, "Scott Pruitt Will Refocus The EPA's Mission, Op-Ed, *Minot Daily News*, 1/11/17)

- **Lies Also Said Pruitt Will Emphasize "Collaboration And Innovative Problem-Solving."** "The Obama administration's aggressive regulatory agenda has harmed the economy, destroyed jobs, and hurt communities across America. Scott Pruitt would pursue a different path, one that emphasizes collaboration and innovative problem-solving. Pruitt has proven that he will be a tough, responsible steward. He will safeguard the environment. He will follow law and process and distinguish between federal government mandates and that of the states. Most importantly, he will ensure that the EPA is charged with protecting all people. Republicans and Democrats in the new Congress should work to confirm Scott Pruitt as head of EPA in the same bipartisan spirit which he has demonstrated in his home state." (Daryl Lies, "Scott Pruitt Will Refocus The EPA's Mission, Op-Ed, *Minot Daily News*, 1/11/17)

### ***Oklahoma Secretary Of Agriculture Jim Reese***

**Oklahoma Secretary Of Agriculture Jim Reese Said Pruitt “Will Continue EPA’s Efforts To Protect Our Environment, But With Respect Towards Land Owners, Taxpayers, Municipalities, Businesses, And Congress.”** “Scott Pruitt is a great selection to be administrator of EPA. The ultra-green environmental groups are predicting Armageddon over his nomination. It won’t be Armageddon, but a major dust up would be great. ... We need the EPA. They have assisted Oklahoma and America in improving and protecting our air, water and land. Scott Pruitt will continue EPA’s efforts to protect our environment, but with respect towards land owners, taxpayers, municipalities, businesses, and Congress.” (Oklahoma Secretary Of Agriculture Jim Reese, “Secretary of Agriculture Jim Reese Statement On Appointment Of Attorney General Scott Pruitt To EPA,” *Press Release*, 12/12/16)

### ***Florida Agriculture Commissioner Adam Putnam (R)***

**Florida Agriculture Commissioner Adam Putnam Wrote That Pruitt “Has The Experience, Understanding Of The Law And Courage To Get” EPA “Back On Track.”** “Thankfully, appointed EPA Administrator Scott Pruitt has the experience, understanding of the law and courage to get this out-of-control federal agency back on track. ... I witnessed firsthand Pruitt’s balanced approach to regulation, one that conserves our natural resources and protects the environment, while also fostering economic growth and, most important, protecting states’ rights. He has a clear understanding where it is appropriate for the EPA to assert a role when it is necessary to protect our natural resources.” (Adam Putnam, “Scott Pruitt Will Unravel Mess At EPA,” *Orlando Sentinel*, 1/4/17)

- **Putnam Also Wrote That Pruitt “Can Finally Unravel The Mess Of The EPA.”** “But this nightmare is almost over. With Scott Pruitt in charge, we can finally unravel the mess of the EPA, and begin developing and implementing thoughtful policies that will make measurable improvements to our natural resources and unleash an energy revolution that will bring jobs and higher wages to Americans.” (Adam Putnam, “Scott Pruitt Will Unravel Mess At EPA,” *Orlando Sentinel*, 1/4/17)

### ***Tom Buchanan, President Of Oklahoma Farm Bureau***

**Oklahoma Farm Bureau President Tom Buchanan Said Pruitt Gives Him “Hope.”** “The first time I heard Scott Pruitt speak at a Farm Bureau event, I felt hope. Hope that the farming and ranching community had an effective advocate that understood we were seeing our livelihood slip away at the hands of an imperialist, out-of-control EPA.” (Tom Buchanan, “Guest View: Pruitt Would Be A Friend To Ag Atop EPA,” *Op-Ed, Quad-City Times*, 12/16/16)

- **Buchanan: Pruitt Is “A Disciplined Legal Mind.”** “Scott came across as a disciplined legal mind and strategist that had a plan to begin dismantling harmful, unnecessary regulations that would liberate the family farm and ranch from overzealous regulators and to focus once again on producing our nation’s food supply.” (Tom Buchanan, “Guest View: Pruitt Would Be A Friend To Ag Atop EPA,” *Op-Ed, Quad-City Times*, 12/16/16)
- **Buchanan: Pruitt Is “A Genuine Man Filled With Integrity.”** “Beyond these policy successes, I have found Pruitt to be a genuine man filled with integrity. He is quick to listen, and slow to speak. He’s a consensus builder that wants to understand the truth and find middle ground.” (Tom Buchanan, “Guest View: Pruitt Would Be A Friend To Ag Atop EPA,” *Op-Ed, Quad-City Times*, 12/16/16)

### ***Iowa Farm Bureau***

**The Iowa Farm Bureau Called Pruitt “A Leading Advocate Against An Activist EPA.”** “President-Elect Donald Trump chose Scott Pruitt, the attorney general for Oklahoma, to be the next EPA Administrator. The Iowa Farm Bureau supports the decision, calling Pruitt a leading advocate against an activist EPA, specifically noting how he’s against the Waters of the U.S. rule.” (Iowa Farm Bureau Supportive Of New EPA Administrator,” *NBC Des Moines*, 12/21/16)

***South Dakota Farm Bureau President Scott VanderWal***

**South Dakota Farm Bureau President Scott VanderWal Said Pruitt's Leadership Of The EPA Would Be "Good For Both Business And Agriculture."** "American Farm Bureau Federation officials say the President-elect's pick of Scott Pruitt to head up the EPA is welcome news for farmers and ranchers. South Dakota Farm Bureau President Scott VanderWal who also serves as AFBF Vice President says Pruitt will be good for both business and agriculture and will reign in the agency's regulatory overreach." (Staff, "American Farm Bureau Says EPA Nominee Good For Agriculture," *WYAX*, 12/12/16)

- **VanderWal Predicts Pruitt's Leadership Will Bring A New "Degree Of Fairness For Agriculture."** "He says Pruitt will make sure any EPA regulation doesn't cause undue harm or cost to businesses or agriculture. VanderWal thinks they can work with Pruitt to build support for renewable fuels and the need for the RFS and other biofuels policies. VanderWal is also optimistic Pruitt will bring a new degree of fairness for agriculture." (Staff, "American Farm Bureau Says EPA Nominee Good For Agriculture," *WYAX*, 12/12/16)

***Alabama Farmers Federation (ALFA)***

**Brian Hardin Of The Alabama Farmers Federation (ALFA) Said Farmers Will Be "Able To Do More With Their Land" With Pruitt At EPA.** "Pruitt has a history of challenging the EPA and their overreaching regulations, to challenge and push back what they're trying to do through the EPA to impact poultry farmers and other livestock farmers,' [Hardin] said. And with fewer regulations, Alabama farmers could do more. 'When farmers are able to do more with their land, expand and give them a reason to expand and grow and not be putting that expense or that cost toward accommodating additional regulations, that's good for the state,' Hardin said." (Allen Henry, "ALFA Supports Trump's Pick To Lead EPA," *WYRC*, 12/13/16)



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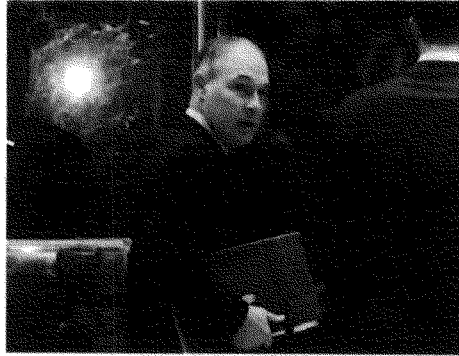
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## AMERICAN FARM BUREAU STRONGLY ENDORSES FRUITT FOR EPA

BY AFBF Press Release | January 4, 2017

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Scott Pruitt Attorney General of Oklahoma arrives to meet with U.S. President-elect Donald Trump (Reuters Image)

The American Farm Bureau Federation has formally endorsed the nomination of Scott Pruitt as administrator of the U.S. Environmental Protection Agency. AFBF President Zippy Duvall called Pruitt, Oklahoma's attorney general, "an ideal nominee" who "has profound respect for the laws written by Congress."

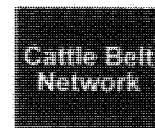
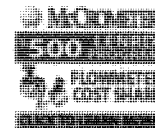
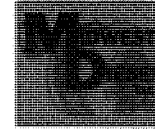
Duvall today conveyed that endorsement in a letter to Senate Environment and Public Works Committee Chairman John Barrasso (R-Wyo.) and Ranking Member Tom Carper (D-Del.). In the letter, Duvall cited Pruitt's contesting of the EPA's Waters of the U.S. rule when he defended "the bipartisan view of Congress that the agency has illegally overstepped its bounds and ignored the U.S. Supreme Court."

The letter also referenced Pruitt's work to defend Congress regarding the Clean Power Plan and cap-and-trade provisions, in which the nominee soundly took the view "that Congress has not authorized the sweeping attempt by EPA to coerce action by the states."

"In recent years, farmers and ranchers have suffered under burdensome, unnecessary and, too often, unlawful federal regulations promulgated by the EPA," Duvall said. "We desperately need an administrator who understands the challenges our farmers and ranchers face in producing safe, wholesome and affordable food for our nation and the world."

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Duvall said Farm Bureau's support for Pruitt is based on the nominee's "respect for the law" and his understanding of the need for an agency to "live within the statutory programs Congress has authorized."



"Scott Pruitt will restore respect for the law and enforce it fairly," Duvall said. "He understands how and when federal power should be exercised. We support him because he has demonstrated a keen understanding of the devastating economic implications of federal overreach. Scott Pruitt will put the EPA back on track and ensure that federal decisions are based on sound science, not politics. He will produce a fair regulatory environment that respects the rule of law."

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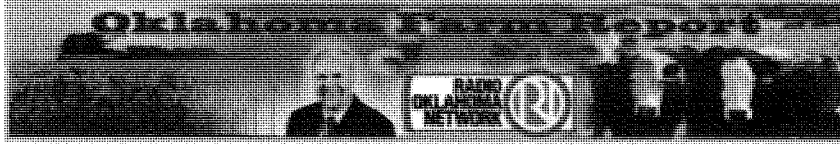
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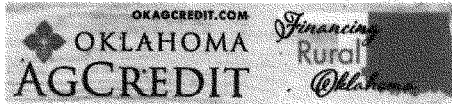
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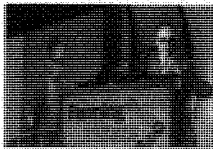
**Beef Buzz News**

**Trump Hits a Home Run for Agriculture with Scott Pruitt Nomination - But will Dems Block the Plate?**  
Wed, 04 Jan 2017 15:02:07 CST

88bars



President-elect Donald Trump has proven he has a knack for turning heads this year. Even after his dramatic campaign, Trump's recent actions have still managed to conjure strong emotions from different interest groups. One of his latest controversies - nominating Oklahoma's Attorney General Scott Pruitt to lead the Environmental Protection Agency, National Cattlemen's Beef Association's Vice President of Governmental Affairs, Collin Woodall told Radio Oklahoma Ag Network Farm Director Ron Hays in a recent conversation, this move is a "home run" in his book.



"We're actually excited about a lot of the names we have seen including Scott Pruitt as EPA Head," Woodall said. "We know that he is going to bring probably a much different approach than what we have seen for quite some time and that's spanning multiple administrations."

Woodall says he and his colleagues are excited about this fresh opportunity to work with an agency-friendly EPA, to roll back many of the environmental rules and regulations the agency passed over the last eight years that many consider to be bold measures of governmental overreach, such as the Waters of the United States rule.

Still, there are hoops that must be jumped through before Pruitt can officially take the reins. Congress must first approve all of Trump's nominees before they can be formally installed to their appointed positions. Pruitt has a long track record of fighting the Obama administration on environmental policy and Woodall says he expects the Democrats on his hearing committee will not make it easy for him.

"They're absolutely going to throw up every kind of road block out there," Woodall predicted. "He has done a lot of good things for agriculture and that's one thing we are all going to have to do is link arms and get behind him, because we expect that his nomination hearing will be a hairy one."

Listen to Hays and Woodall discuss Scott Pruitt's nomination to head the EPA, on today's Beef Buzz.

The Beef Buzz is a regular feature heard on radio stations around the region on the Radio Oklahoma Network and is a regular audio feature found on the website as well. Click on the LISTEN BAR below for today's show and check out our archives for older Beef Buzz shows covering the gamut of the beef cattle industry today.



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# Minot Daily News

**BREAKING NEWS** Newspaper delivery suspended outside of Minot

## **Scott Pruitt will refocus the EPA's mission**

North Dakota Farm Bureau has vigorously opposed President Obama's activist EPA, and for good reason. In the last eight years, EPA has repeatedly targeted North Dakota's economic drivers: agriculture and energy. That's why NDFB supports incoming Environmental Protection Agency Administrator Scott Pruitt. We believe he will work to curb the agency's overreach and end the regulatory nightmare.

Under the Obama administration, EPA has imposed more than 4,000 new regulations costing billions of dollars of compliance costs for farmers, ranchers and small business owners across the country.

In 2015, the EPA finalized the Waters of the United States rule, which expanded the definition of U.S. waters within the Clean Water Act. Under WOTUS, streams, creeks, ditches, brooks and even ponds are all under the purview of the EPA. A sizeable portion of private land in North Dakota would be under federal jurisdiction. If a farmer wanted to build a pond on his property he'd first have to go through the government or face heavy fines. This rule is not only unconstitutional, it is a direct attack on farmers.

North Dakota's energy sector has been similarly hard-hit. The EPA has published a litany of rules and regulations to fundamentally alter the state's energy infrastructure. The EPA Power Plan, for example, requires North Dakota to reduce its carbon dioxide emission rate by 44.9 percent,



even though North Dakota is one of only 12 states that achieves all of EPA's air quality standards for public health.

The nomination of Oklahoma Attorney General Scott Pruitt to serve as administrator of the Environmental Protection Agency is a welcome reprieve. He will bring a reasoned and balanced approach back to an agency run amok with unnecessary and flawed regulations which have done more to hurt our environment than help it.

As attorney general, he helped develop robust regulations at the state level to implement economically viable conservation efforts. He reached across the aisle to pass meaningful regulations to protect Oklahoma waters and has aggressively pursued litigation against polluters. He's a stalwart defender of the EPA's mission to protect human health and the environment.

The Obama administration's aggressive regulatory agenda has harmed the economy, destroyed jobs, and hurt communities across America. Scott Pruitt would pursue a different path, one that emphasizes collaboration and innovative problem-solving. Pruitt has proven that he will be a tough, responsible steward. He will safeguard the environment. He will follow law and process and distinguish between federal government mandates and that of the states. Most importantly, he will ensure that the EPA is charged with protecting all people. Republicans and Democrats in the new Congress should work to confirm Scott Pruitt as head of EPA in the same bipartisan spirit which he has demonstrated in his home state.

Daryl Lies is president of the North Dakota Farm Bureau.

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Current Issue

1/12/2017

## Oklahoma Secretary of Agriculture Happy With Trump's EPA Selection

12/14/2016

OKLAHOMA CITY — Secretary of Agriculture Jim Reese has issued the following statement after President-elect Donald Trump recently nominated Oklahoma Attorney General Scott Pruitt to lead the Environmental Protection Agency:

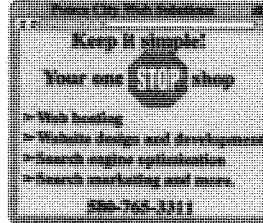
"Scott Pruitt is a great selection to be administrator of EPA. The ultra-green environmental groups are predicting Armageddon over his nomination. It won't be Armageddon, but a major dual up would be great. The EPA has been running over Congress, cities and towns, businesses, private landowners and even the courts for many years. The proposed Waters of the US (WOTUS) is the best example of EPA somewhat apologizing for running over everyone, but continuing to run over us. Finally a court stopped them.

"Environmentalists didn't need Congress, the President, or even promulgated rules. They would just sue the EPA — "sue and settle" and get their way. Not every environmental improvement was conceived at EPA HQ. Many of our environmental improvements are state or locally driven. We have more EPA success stories, removing phosphorus and nutrients from streams more than any other state.

"No need the EPA. They have existed Oklahoma and America in improving and protecting our air, water and land. Scott Pruitt will continue EPA's efforts to protect our environment, but with respect towards land owners, taxpayers, municipalities, businesses, and Congress," said Reese.

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## Adam Putnam: Scott Pruitt will unravel mess at EPA



Scott Pruitt (Andrew Hamik / AP)

By Adam Putnam  
My Word columnist

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Adam Putnam: Scott Pruitt will unravel mess at EPA

JANUARY 4, 2017

**S**ince President Obama took office in 2009, the Environmental Protection Agency has published more than 4,000 new rules and finalized 186 new regulations, a legacy of which no one should be proud.

Collectively, the EPA's new regulations require Americans to spend 33 million additional hours filing paperwork with the federal government and cost Americans more than \$344 billion, according to the

American Action Forum, a center-right policy institute. For that amount of money, we could buy 300 stealth bombers and 2,000 military tanks and still have plenty left over for a round-trip to the moon.

In reality, though, this EPA's financial blow affects every American, as it negatively impacts our gross domestic product, kills thousands of jobs and increases the cost of living in our country.

Not only do the EPA rules have serious economic consequences, but they are far outside the EPA's scope of authority, violating states' rights and, in many cases, violating the U.S. Constitution. The end of the Obama EPA cannot come soon enough.

Thankfully, appointed EPA Administrator Scott Pruitt has the experience, understanding of the law and courage to get this out-of-control federal agency back on track.

I joined Oklahoma's Attorney General Pruitt in February 2015 to testify before Congress about one of the EPA's worst rules of the past eight years — the Waters of the United States Rule. This rule was, in no uncertain terms, an expansion of federal jurisdiction, infringement on states' rights and an unscientific approach to improving the quality of lakes, streams and rivers in the United States.

The EPA had made claims this rule was a simple clarification of what bodies of water were subject to the Clean Water Act, and that these clarifications would have little impact on communities. Its actions speak louder than words, however.

In 2014, the EPA threatened to fine a Wyoming man \$75,000 a day in noncompliance penalties over a stock pond on his eight-acre farm. Anyone can understand why we could not take the EPA for its word.

During this joint congressional hearing of the House and Senate, I witnessed firsthand Pruitt's balanced approach to regulation, one that conserves our natural resources and protects the environment, while also fostering economic growth and, most important, protecting states' rights. He has a clear understanding where it is appropriate for the EPA to assert a role when it is necessary to protect our natural resources.

The numbers don't lie: 4,000 new rules, 33 million hours of paperwork and \$334 billion in damages resulting from the egregious, overstepping regulations rolled out by Obama's EPA over the past eight years.

But this nightmare is almost over. With Scott Pruitt in charge, we can finally unravel the mess of the EPA, and begin developing and implementing thoughtful policies that will make measurable improvements to our natural resources and unleash an energy revolution that will bring jobs and higher wages to Americans.

***Adam Putnam, a member of the Florida Cabinet, is commissioner of agriculture.***

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**This article is related to:** U.S. Environmental Protection Agency, Scott Pruitt, Barack Obama, Donald Trump

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## **Guest view: Pruitt would be a friend to ag atop EPA**

Tom Buchanan Dec 16, 2016



Dustin Mielke, Oklahoma  
Farm Bureau

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The first time I heard Scott Pruitt speak at a Farm Bureau event, I felt hope. Hope that the farming and ranching community had an effective advocate that understood we were seeing our livelihood slip away at the hands of an imperialist, out-of-control EPA.

Scott came across as a disciplined legal mind and strategist that had a plan to begin dismantling harmful, unnecessary regulations that would liberate the family farm and ranch from overzealous regulators and to focus once again on producing our nation's food supply.

In the past few years, my neighbors and friends have collectively spent more time battling federal regulators trying to assert control over our ponds, dry creeks and waterways - and regulators working to thwart our ability to use our principal asset, our land, due to an irrational and outdated Endangered Species Act - than we have cutting wheat and selling livestock.

However, since becoming Oklahoma attorney general, Pruitt has successfully led the litigation that led to an injunction on the proposed Waters of the U.S. Rule, and he negotiated agreements that brought common sense and relief for agriculture communities over the potential listing of the Lesser Prairie Chicken. These are just a few examples of his leadership abilities and his desire to see the rule of law restored.

Beyond these policy successes, I have found Pruitt to be a genuine man filled with integrity. He is quick to listen, and slow to speak. He's a consensus builder that wants to understand the truth and find middle ground.

With regards to the Renewable Fuel Standard, I know there are questions about how this will be addressed in the next administration with expiration coming in 2022. President-elect Donald Trump has said that he is a strong supporter of the RFS. Based on experience, I know Scott Pruitt will bring an open and fair-minded approach to this and every issue.

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Most importantly, he will certainly will be a tireless and welcome advocate for

agriculture.

I am confident that Attorney General Pruitt would not only bring common sense and sanity back to what has become a lawless agency, he would restore that agency to its original mission: assisting the states in achieving cleaner air and cleaner water.

I urge all in the agriculture community to vigorously support his nomination to head the EPA by contacting your senators. America's farmers and ranchers will have a more prosperous future with Scott Pruitt at the helm.

Tom Buchanan is president of Oklahoma Farm Bureau.

## Currents



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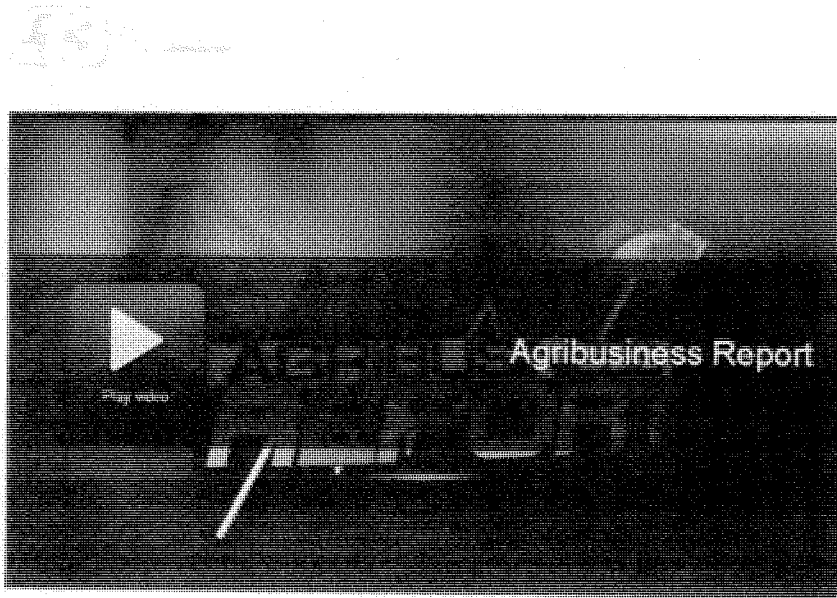
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## Iowa Farm Bureau Supportive of New EPA Administrator

POSTED 4:55 AM, DECEMBER 21, 2016, BY STAFF WRITER



President-Elect Donald Trump chose Scott Pruitt, the attorney general for Oklahoma, to be the next EPA Administrator.

The Iowa Farm Bureau supports the decision, calling Pruitt a leading advocate against an activist EPA, specifically noting how he's against the Waters of the U.S. rule.

But Pruitt is also against the Renewable Fuel Standard (RFS), a rule forcing blends of ethanol into the fuel system.

Iowa is a leader of ethanol, the nearly 43 plants in the state can produce up to 4 billion gallons of the fuel.

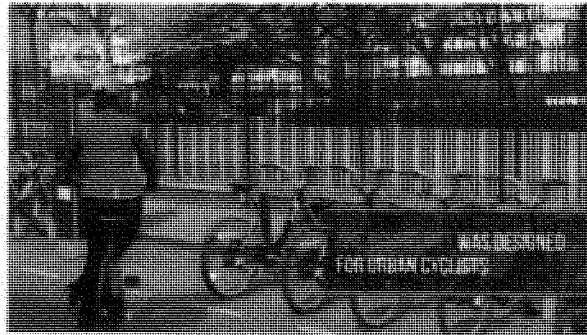
IFB President Craig Hill says the RFS was drafted legitimately by congress, so implementing it is not an EPA over reach.

Hill says, "We have the legislation, we just need to execute and implement the law and the EPA has a role in that with limited discretion. So we hope the new administrator adheres to the law and follows the rule of law."

Hill adds, in the confirmation hearing, pro-ethanol Senators like Iowa's Chuck Grassley and Joni Ernst will have the opportunity to question Pruitt on his Renewable Fuel stances.

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**EPA Nominee to Follow Renewable Fuel Standard**



**New EPA Administrator Chosen**

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NEWS

## American Farm Bureau Says EPA Nominee Good for Agriculture

1 MONTH AGO IN AGRICULTURE



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American Farm Bureau Federation officials say the President-elect's pick of Scott Pruitt to head up the EPA is welcome news for farmers and ranchers. South Dakota Farm Bureau President Scott VanderWal who also serves as AFBF Vice President says Pruitt will be good for both business and agriculture and will reign in the agency's regulatory overreach.

He says Pruitt will make sure any EPA regulation doesn't cause undue harm or cost to businesses or agriculture.

VanderWal thinks they can work with Pruitt to build support for renewable fuels and the need for the RFS and other biofuels policies.

VanderWal is also optimistic Pruitt will bring a new degree of fairness for agriculture.

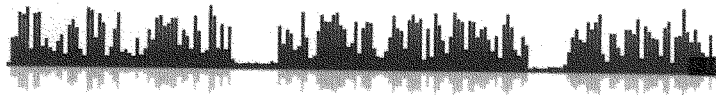


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Scott VanderWal On EPA Pick

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# ALFA supports Trump's pick to lead EPA

Published: Tuesday, December 13th 2016, 7:37 pm EST

Updated: Tuesday, December 13th 2016, 9:51 pm EST

By Allen Henry, Reporter CONNECT



(Source: WSFA 12)

MONTGOMERY, AL (WSFA) - As President-Elect Donald Trump continues to fill his cabinet, some organizations, like ALFA, are keeping track of who he appoints to see how these new officials could impact Alabama.

"We're watching that very closely and there are certain positions that we're very interested in as it could affect farmers in the state of Alabama. One of those is the EPA administrator," said Brian Hardin, Director of Governmental and Agriculture Programs at ALFA.

Last week, Trump nominated Oklahoma Attorney General Scott Pruitt to lead the Environmental Protection Agency.

His official biography describes him as "a leading advocate against the EPA's activist agenda."

Hardin says that's a stance that could also benefit local farmers.

"Pruitt has a history of challenging the EPA and their overreaching regulations, to challenge and push back what they're trying to do through the EPA to impact poultry farmers and other livestock farmers," he said.

And with fewer regulations, Alabama farmers could do more.

"When farmers are able to do more with their land, expand and give them a reason to expand and grow and not be putting that expense or that cost toward accommodating additional regulations, that's good for the state," Hardin said.

At \$70 billion a year, agriculture is Alabama's largest industry.

But Trump's pick for the person who could have the most impact on Alabama's farmers, the Secretary of Agriculture, hasn't been announced yet.

Pruitt would need to be confirmed in the senate to take the EPA job but Democrats have vowed to fight his appointment.

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**Senate Environment and Public Works Committee  
Hearing entitled, "Nomination of Attorney General Scott Pruitt to be  
Administrator of the U.S. Environmental Protection Agency"  
January 18, 2017  
Questions for the Record for the Honorable E. Scott Pruitt**

**Senator Booker:**

1. For many years I have worked with the EPA on the Passaic River superfund clean-up project in my home city of Newark. In 2016, the EPA announced an historic plan to remediate the Passaic River from toxic chemicals, PCBs, and other contaminants that resulted from the production of Agent Orange. The project will remove 3.5 million cubic yards of toxic sediment from the lower eight miles of the Passaic River in New Jersey—the largest environmental dredging project in the history of the federal Superfund program.

a. If confirmed do you commit to make implementation of the Passaic River cleanup project a priority?

b. If confirmed do you commit to carrying out the EPA Region II March 3, 2016 "Record of Decision" for the Lower 8.3 miles of the Lower Passaic River in a timely and efficient manner?

**I am not familiar with the details of the remedy that has been selected for the Passaic River Superfund site, but if confirmed, I expect to make clean up of contaminated sites one of my priorities and will seek input from Congress and relevant stakeholders before taking action in this matter.**

2. As the former Mayor of Newark, I have seen how low-income and minority communities living in close proximity to the port of Newark are exposed to high levels of air pollution resulting in serious health problems. Across the nation 13 million people—3.5 million of whom are children—live near major marine ports or rail yards. What is your plan to address the pressing environmental justice concerns regarding poor air quality near major seaports and other congested nodes in our nation's freight network? I have been a champion of the bipartisan Diesel Emissions Reduction Act (DERA) Program that helps replace diesel engines and helps make major sea ports and inland transportation hubs cleaner and more efficient. If confirmed can you commit to supporting the DERA program?

**As I committed to you during the meeting in your office, I understand there are wide ranging variety of environmental justice issues affecting urban and rural America. In fact, as you will recall, I've committed to work with your office and visit impacted areas with you. I am also aware that the Diesel Emissions Reduction Act Program has received bipartisan support from**

**members of the Environment and Public Works Committee. If confirmed, I would like to work with members of Congress to best direct resources to bipartisan initiatives.**

3. Climate change is one of the most pressing issues currently facing the planet. Rising sea levels and extreme weather are currently threatening the safety and security of my constituents in New Jersey. Lower income and vulnerable communities are disproportionately impacted by the extreme heat and flooding events that are becoming more common and more severe. Given the immediate and increasing threat to my constituents and to people everywhere, what is your plan to address climate change?

**If confirmed, I will work to achieve the objectives of EPA-administered laws consistent with the process and framework established by Congress. I will work closely with the states in establishing and implementing regulatory standards to ensure a meaningful and effective advancement of these objectives.**

4. In 2016, troubling reports of lead contamination in school drinking water in New Jersey and other areas of the country made clear the urgent need to test school drinking water and remediate school drinking water infrastructure that is contaminating the water our children drink.

a. What is your plan to prioritize and expedite the EPA's efforts to eliminate lead contamination in school drinking water?

**If confirmed, I will fully carry out EPA's authorities, including its authorities under the Safe Drinking Water Act. I note that in the WIIN Act, Congress amended the Safe Drinking Water Act to authorize funding for voluntary school lead testing. If confirmed and if funding is provided, I will carry out that program.**

5. If you are confirmed, how would EPA respond when a state permits pollution to be discharged into a smaller waterway that leads to contamination of drinking water supplies in a downstream state?

**If confirmed, I would follow the processes set forth in the Clean Water Act and its implementing regulations.**

6. How do you define "environmental justice"? Do you think it's a serious issue?

**I am familiar with the concept of environmental justice. As I testified, the Administrator plays an important role regarding environmental justice. I agree that it is important that all Americans be treated equally under the law, including the environmental laws.**

7. Decades of peer-reviewed academic and government research demonstrate that low-income communities and communities of color disproportionately experience environmental burdens compared to other populations in the United States. Do you agree with this conclusion? If not, why?

**As I testified at the hearing, I am familiar with the concept of environmental justice and believe the Administrator plays an important role in this regard. I agree that it is important that all Americans be treated equally under the law, including the environmental laws.**

8. What do you believe are the legal obligations of EPA to ensure that recipients of EPA funds comply with Title VI of the Civil Rights Act of 1964?

**The obligations of recipients of federal funds are defined by the statutes and regulations to which you refer. Those statutes and regulations speak for themselves.**

9. There are currently hundreds of unresolved Title VI civil rights complaints before EPA. Recent reports from EPA's OIG and independent organizations have documented EPA's long-standing failure to enforce Title VI. If confirmed, what will you do as EPA Administrator to address this?

**If confirmed, I would expect to be briefed by staff and review any recommendations by the Office of Inspector General before taking action on this issue.**

10. Indigenous communities are consistently targeted for energy extraction, nuclear waste, uranium mining and/or oil and natural gas pipelines. How will you address this moving forward?

**If confirmed, I will faithfully execute all laws enacted by Congress relating to protection of indigenous communities.**

11. Children living in communities of color and low-income communities have the highest blood lead levels of all children in the United States, and even some developing countries. As Administrator, what steps would you take to address this?

**I am concerned about high-blood levels in children and children's health generally. As I testified, the Administrator has a significant role regarding environmental issues. If confirmed, I would expect to be briefed to learn about EPA's legal authorities and ongoing programs and outstanding recommendations from the Inspector General, if any, concerning this issue before taking action.**



12. As Administrator will you continue to convene and implement the advice and recommendations of the National Environmental Justice Advisory Council, a federal advisory committee to EPA since 1993?

**As I testified, the Administrator plays an important role regarding environmental justice. I am not personally familiar with the legal authorities or activities concerning this advisory committee but I would expect, if confirmed, to be briefed by staff about ongoing programs and activities before taking any action. If confirmed, I would work to faithfully execute the laws EPA is responsible for administering, in order to protect human health and the environment for all Americans. If confirmed, I would expect EPA to operate in an open and transparent manner, consider the views of stakeholders as appropriate, act based on sound science, and follow the laws as established by Congress.**

13. As Administrator, will you work to have of EPA's EJ 2020 Plan fully implemented?

**As I testified, the Administrator plays an important role regarding environmental justice. I am personally unfamiliar with the details of current initiatives regarding environmental justice referenced in the question, but I would expect, if confirmed, to be briefed by staff about ongoing programs and activities before taking any action.**

14. Do you intend to meet minority community members and leaders who have concerns about an environmental or health issue within your EPA jurisdiction?

**Yes, if confirmed.**

15. Public participation is the cornerstone of a healthy democracy and a basic component of good US policy development and enforcement. What are your plans to maximize inclusion and participation in decision-making processes by historically marginalized communities of color?

**As I testified, the Administrator plays an important role regarding environmental justice. If confirmed, I would expect EPA to operate in an open and transparent manner, consider the views of stakeholders as appropriate, act based on sound science, and follow the laws as established by Congress, including the Civil Rights Act. If confirmed, I would work to faithfully execute the laws EPA is responsible for administering, in order to protect human health and the environment for all Americans.**

16. Illegal solid waste dumping sites where hundreds of thousands of pounds of trash and waste tires harbor disease-carrying vectors and pests such as mosquitoes, which transmit life threatening diseases like dengue, west Nile and zika viruses can be found all over the United States. These dumping sites

disproportionally affect low income and minority communities. What will you do to address this health threat to these communities?

**I understand the Resource Conservation and Recovery Act prohibits open dumping, and under this law states have primary responsibility to regulate solid waste disposal. If confirmed, I would expect to be briefed by staff and to hear the views of states and other stakeholders before taking any action consistent with EPA's legal authorities.**

17. Monitoring of our coastal waters is critical to ensure the health and safety of its swimmers and bathers. Many coastal communities, especially low-income and minority communities have limited free recreational opportunities other than spending the day at the beach. As EPA administrator will you commit to continuing EPA's BEACHES program, which provides funding for state water quality monitoring programs that ensure healthy and safe recreation?

**I am not personally familiar with the BEACHES program, but I would expect, if confirmed, to be briefed by staff about the program. If confirmed, I would work to faithfully execute the laws EPA is responsible for administering, including those authorizing the BEACHES program, in order to protect human health and the environment for all Americans. If confirmed, I would expect EPA to operate in an open and transparent manner, consider the views of stakeholders as appropriate, act based on sound science, and follow the laws as established by Congress.**

18. A 2014 study by scientists at Lawrence National Laboratory at Berkeley reported that an estimated 10 % of chemicals used in fracking fluid are known to be toxic to humans and aquatic life. Fracking practices commonly are conducted in fringe low-income and working class communities. Since these toxics are known to leach into waterways how will you ensure this is prevented?

**As was affirmed by Congress in drafting the Lautenberg Act, hazard is only one characteristic of risk and simply stating a chemical substance has toxicity does not mean there is exposure. EPA is tasked with carrying out laws as directed by Congress and if I am confirmed, I will use the authorities vested in me to protect drinking water under the Safe Drinking Water Act.**

19. Nationally, 13 percent of the population lives within three miles of a Superfund site while in New Jersey, 50 percent of the population lives within three miles—the highest percentage in any state. New Jersey has 113 Superfund sites on the National Priority List—more than any other state. These sites are the most heavily contaminated properties in the country, and are the areas that pose the greatest potential risk to public health and the environment. What is your plan to strengthen the EPA's superfund program?

**If confirmed, I would expect to prioritize the cleanup of contaminated land. I would also expect to be briefed by staff and to receive the views of relevant stakeholders on ways to improve the operation of the Superfund program, if confirmed. I also understand the Government Accountability Office and the EPA Inspector General regularly review the operation and activities of the Superfund program and, if confirmed, I would expect to look to their recommendations for additional areas for improvement, if confirmed.**

20. If confirmed do you commit to working to include substantial funding for Superfund cleanups in the new administration's request for a large national infrastructure package?

**If confirmed, I expect to make cleanup of contaminated sites one of my priorities.**

21. In 2003, Arkansas and Oklahoma signed an agreement, the Statement on Joint Principles to take several measures to reduce phosphorus pollution in the Illinois River Watershed. One requirement was for Oklahoma to revise its 0.037 mg/L phosphorus criterion by 2012, which it did. Why, instead of supporting the conclusion of your own state Water Resources Board, did you delay implementation an additional three years by negotiating another agreement to conduct yet another study?

**The "Statement of Joint Principles and Actions" did not require Oklahoma to "revise" its criterion, but rather stated that "Oklahoma will reevaluate Oklahoma's .037 mg/l criterion for total phosphorus in Oklahoma's Scenic Rivers by 2012, based on the best scientific information available at that time, and with the full, timely inclusion of officials from the State of Arkansas representing both point and non point source dischargers." As of 2012, which was the final date for the reevaluation to occur, Arkansas maintained its objection that Oklahoma's .037 mg/l criterion was inappropriate, and not based on the best scientific information available at that time. Rather than protract a now decades long dispute that appeared to again be headed towards litigation once again, I instead negotiated an agreement whereby Arkansas agreed to be finally bound to the results of a new study that would use the best scientific information available at the time to determine the appropriate criterion. This agreement avoided the prospect of more litigation, and ultimately resolved the dispute (with Oklahoma getting the stringent standard that it wanted).**

22. In your testimony before the Senate Environment and Public Works Committee, you said that the 2003 agreement expired during your term? Where exactly in the agreement do you see any expiration to the agreement?

The "Statement of Joint Principles and Actions" stated that "Oklahoma will reevaluate Oklahoma's .037 mg/l criterion for total phosphorus in Oklahoma's Scenic Rivers by 2012, based on the best scientific information available at that time, and with the full, timely inclusion of officials from the State of Arkansas representing both point and non point source dischargers." As of 2012, which was the final date for the reevaluation to occur, Arkansas maintained its objection that the .037 mg/l criterion was inappropriate, and not based on the best scientific information available at that time. Therefore, the 2013 Agreement was reached with Arkansas whereby it agreed to be bound by the results of a new study that would use the best scientific information available at the time to determine the appropriate criterion.

23. The 2003 agreement says that, "The state of AR and OK, acting through their environmental agencies, will reissue the above-specified cities' NPDES permits on a normal five (5) year resistance cycle, with the understanding that NPDES permits for these point source dischargers to the shared Oklahoma Scenic Rivers Watershed issued in the year 2012 or beyond must include phosphorus limits stringent enough to meet applicable water quality standards."

a. Do you agree that the 2003 agreement places obligations on NPDES permitted facilities in Arkansas beyond 2012?

b. Because Oklahoma reevaluated its criterion in 2012, does this section require that NPDES permits issued in Arkansas have to be stringent enough to meet Oklahoma's .037 mg/L phosphorus water quality standard by 2012 and then beyond 2012?

c. In your testimony before the Environment and Public Works committee, you testified that the agreement was "historic" and OK's phosphorus limit would be implemented for the first time in history on both sides of the river. Do you agree that the .037 mg/L phosphorus criterion was enforceable on both sides of the border under the terms of the 2003 agreement?

**Yes. No. No.**

24. In the 2013 agreement between Arkansas and Oklahoma, you agreed "not to institute or maintain administrative enforcement actions, judicial proceedings or take regulatory actions contrary to this second statement."

a. Why did you agree to suspend your enforcement authority?

b. How many enforcement actions did you suspend?

c. Do you interpret "judicial proceedings" to include any judgment in the pending case your predecessor brought against 14 poultry polluters? Was this agreement intended to suspend enforcement of any judicial resolution of that case?

**I did not agree to suspend enforcement authority. The Agreement simply acknowledged that neither state would take actions that would violate the terms of the agreement. I do not know if any enforcement proceedings were suspended, as my office is not the entity that would be involved in such**

**actions. I do not interpret "judicial proceedings" in that manner, and the agreement was not so intended.**

25. In 2013, you negotiated an agreement with Arkansas that allowed those municipal dischargers to continue discharging at 1 mg/l phosphorus, agreed to remove the 2012 deadline for complying with Oklahoma's phosphorus standard, and agreed to reopen Oklahoma's phosphorus water quality standard. Since Arkansas had already agreed, in 2003, to ensure that its large municipal dischargers would fully comply with Oklahoma's phosphorus standard starting in 2012, why did you let them out of that agreement in 2013? Please identify any provision of your 2013 agreement that requires these dischargers to meet Oklahoma's phosphorus standards after February 20, 2016.

a. Since the U.S. EPA approved Oklahoma's Phosphorus Standard in 2003, what legal basis do you think Arkansas had to file a lawsuit challenging since the time for filing a legal challenge had expired? If you do not believe the time for filing a legal challenge had expired, please explain the basis for your belief.

b. Do you agree that Arkansas is required to ensure that its point source discharge permits comply with all Oklahoma water quality standards that have been approved by the U.S. EPA under the case of Arkansas v. Oklahoma, including the phosphorus standard approved in 2003? Please state the basis for your belief.

c. The Joint Study Committee authorized by your 2013 agreement recommended a standard different from Oklahoma's existing phosphorus water quality standard. Please explain whether this recommended standard will supplant Oklahoma's current water quality standard, and why you have state that the study confirmed Oklahoma's existing 30-day geometric mean 0.037 mg/l phosphorus standard. What is your understanding of the impact of excluding samples taken during conditions where surface runoff is the dominant influence of total flow and stream ecosystem processes?

**The 2013 Agreement did not "let anyone out" of the 2003 Agreement. Arkansas believed that it had legal recourse to resist a criterion to which it objected. Without that additional context as to the claims to which you refer, I am unable to answer your question relating to time bar of Arkansas' hypothetical claims. With regard to Arkansas's obligations, pursuant to the 2013 Agreement, Arkansas is now obligated to adopt and implement a stringent phosphorus standard. The study "used a weight of evidence approach to recommend a six-month average total phosphorus level of not to exceed 0.035 milligrams per liter based on water samples collected during critical conditions was necessary[.]" As I've stated, this confirmed that Oklahoma's 0.037mg/l standard was--despite Arkansas's arguments that it was unnecessarily stringent--necessary to protect the watershed. I am not familiar with the "the impact of excluding samples taken during conditions where surface runoff is the dominant influence of total flow and stream ecosystem processes," to which you refer, and thus cannot offer an opinion on that statement.**

26. You stated in your EPW Questionnaire that you negotiated an agreement with Arkansas to reduce phosphorus pollution in the Illinois River watershed that was occurring as a result of poultry growers. Please explain how the agreement reduces pollution from poultry growers.

**Runoff from poultry farms contribute to increased phosphorous levels in the Illinois River. The agreement imposed on Arkansas the requirement that it adopt a stringent phosphorous standard, which will necessarily require Arkansas to stringently regulate sources of phosphorous, such as poultry farms, in order to meet that standard.**

27. You stated that Oklahoma's phosphorus standard was not being enforced on the Arkansas side of the border prior to your 2013 Agreement. Are you aware that, in April of 2009, the EPA required the Arkansas Department of Environmental Quality to ensure that the discharge permit for the Northwest Arkansas Conservation Authority include an enforceable final effluent limitation for phosphorus stringent enough to meet Oklahoma's phosphorus water standard by June 30, 2012, and that the final NPDES permit for Northwest Arkansas Conservation Authority issued by Arkansas included that requirement? Given the fact that Oklahoma's phosphorus standard was being enforced in Arkansas prior to your 2013 agreement, please explain the benefit to Oklahoma from entering into the agreement.

**However, upon reviewing it, I note that Arkansas reserved the right to revise the 0.1 mg/l phosphorus permit limit ("The Department reserves the right to revise the permit limit of 0.1 mg/l for Total Phosphorus upon submission of data which indicates that a Total Phosphorus limit other than 0.1 mg/l is appropriate"). Further, I am aware that Arkansas continued to dispute the validity of Oklahoma's 0.037 mg/l limit, a dispute that is now resolved with Arkansas agreeing that 0.037 mg/l phosphorus standard is appropriate. That agreement greatly benefits Oklahoma.**

28. It appears that the last call or meeting that EPA has on the long delayed TMDL for the Illinois River and Lake Tenkiller watersheds occurred on November 14, 2013. Please explain how your 2013 Agreement is related to the TMDL or cleanup of Lake Tenkiller. What steps have you taken with the U.S. EPA to encourage completion of the Illinois River and Lake Tenkiller TMDLs and oppose further delay?

**I would certainly encourage the EPA to fulfill any obligations it might have to complete those TMDLs, but I have not taken any legal actions to force the EPA to do so.**

29. What steps have you taken to implement and enforce the 0.037 mg/L criterion for phosphorus pollution just approved by the Scenic Rivers Joint Commission in Oklahoma? What measures has Arkansas agreed to in light of the study results?

**I have not personally taken any steps to implement or enforce that water quality standard, because the authority to do so is vested in Oklahoma's environmental regulators, such as the Oklahoma Department of Environmental Quality, and Oklahoma Water Resources Board.**

30. In 1992 the US Supreme Court in Arkansas v Oklahoma, 503 U.S. 91 (1992), resolved a lawsuit between Oklahoma and Arkansas related to water pollution in the Illinois River and held that upriver states must comply with water quality standards that are adopted by downriver states and approved by EPA. After that Supreme Court decision, effective July 1, 2002, Oklahoma adopted a nutrient criterion for total phosphorous of .037 mg/l for all Oklahoma water bodies designated as Scenic Rivers, codified at Oklahoma Administrative Code 785:45-5-19(c)(2). This new water quality standard had a ten year phase in period before full compliance was required on June 30, 2012. EPA approved Oklahoma's .037 mg/l phosphorous standard, as codified at Oklahoma Administrative Code 785:45-5-19(c)(2), on December 29, 2003.

a. Given this history, do you agree that as of July 1, 2012 Oklahoma's .037 mg/l phosphorous standard was in effect and was binding on upriver states such as Arkansas?

b. More specifically, do you agree that as of July 1, 2012 compliance with Oklahoma's .037 mg/l phosphorous standard was required for the portion of the Illinois River in Arkansas?

c. If you do not agree that as of July 1, 2012 compliance with Oklahoma's .037 mg/l phosphorous standard was required for the portion of the Illinois River in Arkansas, please explain the legal basis for your disagreement.

**Oklahoma water quality standards do not automatically apply to upstream dischargers in other states. In 1992, in Arkansas v. Oklahoma, a case that pre-dated Arkansas' authorization to carry out its own Clean Water Act permitting program, the Supreme Court held that it was in EPA's discretion to issue a permit for a publicly owned treatment plant in Fayetteville, Arkansas that required compliance with downstream (Oklahoma) water quality standards. The Court took no position regarding when the Clean Water Act compelled such compliance, only that it was reasonable for EPA to assume that a section 401 water quality certification applied to federally issued NPDES permits. Please note that section 401 applies only to federal permits and as such would not apply to an Arkansas permit now that Arkansas is an authorized state. Under 40 CFR 131.10 state water quality standards are supposed to ensure "attainment and maintenance" of standards applicable to downstream states, but EPA is the arbiter of that when it approves state standards. Under section 402(b) of the Clean Water Act a state that is downstream of an authorized state gets notice of permits**

and the opportunity to file recommendations, but has no veto authority. Under section 402(d) of the CWA, EPA has the authority to review state issued permits and impose additional conditions. Interpreting this section, in *International Paper Co. v. Ouellette*, 479 U.S. 481, 493, 490-91 (1987), the Supreme Court found that the only law applicable to a point source in an authorized state is the law of the source state. A downstream state is subordinate to a source state and its only recourse is to ask EPA to veto or condition a permit.

31. Please identify any investigations and/or lawsuits the Office of Attorney General initiated after January 17, 2011 to address groundwater contamination associated with swine animal feeding operations and any publicly available data in your possession regarding levels of groundwater contamination at any swine animal feeding operations, as well as any communications that the Office of Attorney General has had with the owners or operators of swine animal feeding operations after January 17, 2011.

**The Oklahoma Department of Agriculture regulates Concentrated Animal Feeding Operations (CAFOs) and swine operations generally under the Oklahoma Agriculture and Environmental codes. The Oklahoma Department of Agriculture and the Oklahoma Office of the Attorney General already had several large swine feeding operations under Consent Decree or Settlement Agreement by the time I took office in 2011. (Hanor Roberts & Seaboard Foods, for example) The terms of those Consent Decrees and Settlement Agreements required the swine operations to make regular reports to the Department of Agriculture and the Office of the Attorney General. These reports included monitoring well data, lagoon data and other terms to be carried out by the operators pursuant to the agreements. My office has continued to monitor these operations to confirm compliance with the Consent Decree and Settlement Agreements.**



**Senator Cardin:**

1. Please provide your definition of EPA's "activist agenda" as stated on your professional biography on the State of Oklahoma's official website. Please provide a list of all environmental laws and regulations that you consider to comprise the federal agency's "activist agenda" and how each environmental law or regulation listed in response to this question meets this definition.

**I firmly believe that the EPA has a vital role, but it must do so within the bounds of its legal authority. The actions undertaken by the Office of Attorney General have been out of concern that EPA had exceeded its legal authority in those specific actions, not out of animosity toward the mission of the Agency or any specific regulation or statute. Regulations that are not on solid legal foundation and that cannot survive judicial review will not result in environmental protections.**

2. For what purpose other than to handle the State of Oklahoma's legal challenges against the EPA did you create the Federalism Unit and defund the Environmental Protection Unit?

**The Federalism Unit within the Attorney General's Office serves to protect the State of Oklahoma's sovereign interests in our republican form of government, with a particular focus on issues related to the vertical and horizontal separation of powers demanded by our Constitution. It is headed by the Solicitor General. With regard to the environmental protection unit, it is misleading to say that it was "defunded." Consistent with the practice of every Attorney General save one, I determined that a standalone unit was operationally inefficient. I opted to combine the Environmental Protection Unit and the Consumer Protection Unit into a single unit called the "Public Protection Unit." The Public Protection Unit continued the work of the Environmental Protection Unit, and that work continues to this day, headed by the very same attorney who worked in the Environmental Protection Unit under the prior Attorney General.**

3. Do you intend to create a Federalism Unit within the EPA similar to Oklahoma's? Explain why or why not.

**My understanding is that the Department of Justice, working in coordination with the EPA Office of General Counsel, represents EPA in litigation, and would thus serve to protect such federalism related interests.**

4. Would you support budget cuts to the EPA in similar scope (10% or higher) to those made to Oklahoma Department of Environmental Quality appropriations since FY2009<sup>1</sup>?

**I am not familiar with Oklahoma Department of Environmental Quality's budget. I have no first-hand knowledge of EPA's development of its FY 2018 budget request. If confirmed, I look forward to working with EPA's budget staff and program offices and officials with the Office of Management and Budget on EPA's request. I will work to ensure that the limited resources appropriated to EPA by Congress are managed wisely in pursuit of that important mission and in accordance with all applicable legal authorities.**

5. Of the lawsuits filed against the EPA in which you participated personally and substantially as Attorney General for Oklahoma, do you intend to recuse yourself from decision making regarding litigation in which you represented the State of Oklahoma as an adversarial party? Do you intend to recuse yourself for the entirety of each case?

**As a lawyer, I am bound by the rules of professional conduct not to "switch sides" in any litigation in which I represented the State of Oklahoma, unless my former client gives its informed consent.**

6. Do you believe the State of Oklahoma and the EPA should be regarded as the same or different "clients" for conflicts of interest purposes? Explain why or why not.

**The State of Oklahoma and the federal government are separate sovereign authorities; representing one does not entail representing the other. In addition, while the State of Oklahoma has been my client as a lawyer during my service as Attorney General, if confirmed as EPA Administrator I will not be acting as a lawyer with clients.**

7. The American Bar Association (ABA) Model Rules of Professional Conduct, Rule 1.1, Special Conflicts Of Interest for Former and Current Government Officers and Employees, Comment 5 discusses the balancing of interests. On the one hand, where the successive clients are a government agency and another client, public or private, the risk exists that power or discretion vested in that agency might be used for the special benefit of the other client. A lawyer should not be in a position where benefit to the other client might affect performance of the lawyer's professional functions on behalf of the government. Also, unfair advantage could accrue to the other client by reason of access to confidential government information about the client's adversary obtainable only through the lawyer's government service. In the spirit of Rule 1.11, what previous lawsuits

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<sup>1</sup> [http://okpolicy.org/wp-content/uploads/2016\\_Budget\\_Highlights.pdf?997616#page=7&x42044](http://okpolicy.org/wp-content/uploads/2016_Budget_Highlights.pdf?997616#page=7&x42044)

might affect your performance of the Administrator's professional functions on behalf of the EPA?

**Because I will follow the guidance of ethics officials and my own professional responsibilities in determining whether and how to participate in a particular matter, I do not expect any previous lawsuits to adversely affect my performance as EPA Administrator if confirmed.**

8. On the other hand, the rules governing lawyers presently or formerly employed by a government agency should not be so restrictive as to inhibit transfer of employment to and from the government. The government has a legitimate need to attract qualified lawyers as well as to maintain high ethical standards. Thus a former government lawyer is disqualified only from particular matters in which the lawyer participated personally and substantially. The provisions for screening and waiver in paragraph (b) are necessary to prevent the disqualification rule from imposing too severe a deterrent against entering public service. The limitation of disqualification in paragraphs (a)(2) and (d)(2) to matters involving a specific party or parties, rather than extending disqualification to all substantive issues on which the lawyer worked, serves a similar function. Please provide a list of federal lawsuits filed against the EPA in which you participated personally and substantially as Attorney General for Oklahoma.

**As Attorney General of Oklahoma, I have participated personally and substantially in the following suits against the EPA:**

- **EME Homer City Generation v. EPA, No. 12-1182 (U.S.S.C.)**
- **Michigan v. EPA, No. 14-46 (U.S.S.C.)**
- **Murray Energy Corp. v. EPA, Nos. 14-1112, 14-1151 (D.C. Cir.)**
- **Murray Energy Corp. v. EPA, Nos. 15-1385, 15-1392, 15-1490, 15-1491 & 15-1494 (D.C. Cir.)**
- **Oklahoma v. EPA, Nos. 12-9526, 12-9527 (10th Cir.)**
- **Oklahoma ex rel. Pruitt v. EPA, No. 16-5038 (10th Cir.).**
- **Oklahoma ex rel. Pruitt v. McCarthy, No. 15-cv-369 (N.D. Okla.).**
- **Oklahoma v EPA, No, 13-cv-00726 (W.D. Okla.)**
- **West Virginia v. EPA, No. 14-1146 (D.C. Cir.)**
- **West Virginia v. EPA, No. 16-1264 (D.C. Cir.)**

9. Do you accept a screen is appropriate for EPA strategic decisions specific to those lawsuits in which you represented an adversarial party? Explain why or why not.

**I will consult with relevant ethics officials and review relevant rules of professional conduct to determine whether a screen is appropriate in a particular matter.**

10. Comment 5 discusses a lawyer who moves between different government entities. When a lawyer has been employed by one government agency and then

moves to a second government agency, it may be appropriate to treat that second agency as another client for purposes of this Rule, as when a lawyer is employed by a city and subsequently is employed by a federal agency. However, because the conflict of interest is governed by paragraph (d), the latter agency is not required to screen the lawyer as paragraph (b) requires a law firm to do. The question of whether two government agencies should be regarded as the same or different clients for conflict of interest purposes is beyond the scope of these Rules. Do you believe two government agencies—the State of Oklahoma and the EPA—should be regarded as the same or different “clients” for conflicts of interest purposes? Explain why or why not.

**As explained above, the State of Oklahoma and the federal government are separate sovereign authorities. While the State of Oklahoma was my client as a lawyer, if confirmed as EPA Administrator I will not be acting as a lawyer with clients.**

11. How might the spirit of Rule 1.11's conflicts of interest provisions apply if those government entities were adversarial parties to a lawsuit?

**If two government entities are adversarial parties to a lawsuit, then under ABA Model Rule 1.11 a lawyer's previous representation of one entity in the litigation will preclude his later representation of the other entity in the same litigation, unless the former client gives its informed consent. As explained above, if confirmed as EPA Administrator I will not be acting as a lawyer with clients.**

12. ABA Rule 1.7 Conflict Of Interest: Current Clients provides that a “lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if the representation of one client will be directly adverse to another client; or there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.” In the spirit of Rule 1.7, do you reasonably believe that you will be able to provide competent and diligent leadership to the EPA, an agency you “don't like” and have sued several times? Explain why or why not.

**I will provide diligent and competent leadership to the EPA if confirmed as Administrator. As I explained in my testimony to the Committee, I am a firm believer in the EPA's mission to protect the environment and look forward to the opportunity to lead the agency to help provide our future generations with a better and healthier environment.**

13. Please explain how your litigation position in each case is or is not at odds with the mission of the EPA, to protect human health protect human health and the environment—air, water, and land.

**The EPA's mission is defined by the laws passed by Congress granting it the authority to act. Any action by the EPA that exceeds the authority granted to it by Congress, by definition, cannot be consistent with the Agency's mission. In each case filed against the EPA, in the view of the State of Oklahoma, the EPA had acted in excess of the authority granted to it by Congress.**

14. Do you accept that EPA, state, local and tribal agencies work together to ensure compliance with environmental laws passed by Congress, state legislatures and tribal governments?

**I agree it is essential for the federal government, state governments, and tribal governments to work together to provide the environmental protection that our laws demand and that the American people deserve. As I explained in my testimony to the Committee, I strongly support cooperative federalism. If confirmed, I will make every effort to partner with the EPA's counterparts in state, local, and tribal governments to further these goals.**

15. In 2005, former Attorney General Drew Edmondson filed a federal lawsuit in 2005 seeking to prohibit the spreading of chicken waste over land in the Illinois River Basin in northeastern Oklahoma. Companies named in *State of Oklahoma v. Tyson Foods Inc.* (No. 4:05-cv-00329) include Tyson Foods Inc., Tyson Poultry Inc., Tyson Chicken Inc., Cobb-Vantress Inc., Cal-Maine Foods Inc., Cargill Inc., Cargill Turkey Production L.L.C., George's Inc., George's Farms Inc., Peterson Farms Inc., Simmons Foods Inc., Cal-Maine Farms Inc. and Willow Brook Foods Inc. On December 9, 2015, the State of Oklahoma filed brief amici curiae along with 21 other states in support of the petitioners in *American Farm Bureau Federation v. EPA* (No. 15-599). The *Tyson Foods* defendants did not participate in the Bay TMDL lawsuit, and the American Farm Bureau was not a party to the Oklahoma suit. However, Tyson Foods Inc., headquartered in Springdale, Arkansas—the largest poultry producing company in the world—is a member of the Arkansas Farm Bureau. Do you accept that the American Farm Bureau, a national organization, represents the interests of the Arkansas Farm Bureau and its members, including Tyson Foods? Explain why or why not.

**It is my understanding that the American Farm Bureau Federation is a distinct corporate entity from the Arkansas Farm Bureau, which is a distinct corporate entity from Tyson Foods. Accordingly, I do not believe one can ignore corporate form and conflate the American Farm Bureau Federation with either the Arkansas Farm Bureau or Tyson Foods. I observe that the Pennsylvania Farm Bureau filed suit against EPA in the challenge to the Chesapeake Bay TMDL on its own behalf, notwithstanding the fact that American Farm Bureau Federation also was a plaintiff.**

16. In 2013, despite the lack of a verdict in the *Tyson Foods* case, you added the State of Oklahoma to the American Farm Bureau/poultry industry backed lawsuit

against the EPA's efforts to enforce a TMDL to restore water quality in the Chesapeake Bay. You sided with the American Farm Bureau, the Fertilizer Institute, the National Chicken Council, the National Pork Producers Council and other farming interests. The lawsuit claimed EPA was exceeding its authority in enforcing "total maximum daily load," or TMDL, standards in Chesapeake Bay, limitations on nitrogen, phosphorus and sediments. In what ways did you balance the interests of your client, the State of Oklahoma, as Counsel for Amicus Curiae in *American Farm Bureau* while *Tyson Foods*, in which you represented the State of Oklahoma as Plaintiff, was ongoing?

**These are two different lawsuits regarding different parties and different matters. There also is no issue conflict because the issues raised in the two lawsuits also are distinct.**

17. In 2016, more than six years after arguments concluded in *Tyson Foods*, there has been no final ruling from U.S. District Court Judge Gregory K. Frizzell. Do you find the six-year delay in *Tyson Foods* to be acceptable or reasonable, and if so, why?

**It would not be appropriate for me as an attorney to comment on the acceptableness or reasonableness of the actions of a judge before whom the Office of the Attorney General has a pending case.**

18. Please provide a list of all confidential government documents related to the Chesapeake Bay TMDL to which you would not have access but for your status as counsel to the State of Oklahoma as amicus curiae in *American Farm Bureau*.

**I am not aware of any such documents. A request for such documents can be made to the Office of the Attorney General pursuant to the Oklahoma Open Records Act.**

19. If the Supreme Court were to grant certiorari in *American Farm Bureau*, or a case like it challenging the Chesapeake Bay TMDL, how would you direct the EPA as Administrator to rigorously defend its own rule?

**Any TMDL should be a cooperative effort. If confirmed as EPA Administrator and if the litigation challenging the Chesapeake Bay TMDL reached the Supreme Court during my time in office, I would expect to consult with the States and other interested stakeholders about the issues raised in such litigation.**

20. In what ways did you balance the interests of your client, the State of Oklahoma, as Amicus Curiae in *American Farm Bureau* and as Plaintiff in *Tyson Foods*?

**These are two different lawsuits regarding different parties and different matters. As Attorney General of Oklahoma, I represent the interests of the State of Oklahoma when I seek to ensure that federal law is followed such that Oklahoma retains its sovereign authority to regulate where federal law allows such state regulation..**

21. Do you accept that the Chesapeake Bay TMDL could still fail to significantly reduce pollution flowing to the Chesapeake Bay if the EPA steps back from its role in holding states accountable for their cleanup commitments? Explain why or why not.

**It is my understanding that recent quality data shows that the water quality of the Chesapeake Bay is improving. Further, it is my understanding that the United States Geological Survey and other researchers have found that the time lag between measures taken on the ground and water quality response can be years, decades or even longer. Accordingly, today's improvements in water quality are likely the result of measures taken before the effective date of the Bay TMDL. These measures, as well as state plans to require treatment plants upgrades that also pre-date the effective date of the Bay TMDL, will continue to improve water quality. That said, the Bay TMDL represents a cooperative effort of all states in the watershed and EPA has a role in overseeing its implementation.**

22. The TMDL approach hinges on numeric water quality standards that set a qualitative number for pollution limits, rather than a qualitative description of how healthy waters should be. As Administrator, how would you promote effective numeric standards?

**I agree with the Mach 2011 nutrient framework issued by the Assistant Administrator for the Office of Water entitled "Working in Partnership with States to Address Phosphorus and Nitrogen Pollution through Use of a Framework for State Nutrient Reductions," which prioritizes state action to encourage on the ground activities over establishment of numeric nutrient limits. According to the State of Florida, based on their experience with the imposition of federal numeric nutrient limits, controversy over the validity of a number can actually delay pollutant reduction activities, delaying water quality improvements.**

23. In the Mississippi River watershed, the Obama Administration defended a lawsuit against the EPA from environmentalists seeking numeric nutrient criteria. The United States District Court for the Eastern District of Louisiana ruled in favor of the EPA, finding "Presumably, there is a point in time at which the agency will have abused its great discretion by refusing to concede that the current approach [...] is simply not going to work." But for now, "EPA is entitled to judgment as a

matter of law in its favor." As Administrator, would you continue to waste resources on a qualitative, voluntary approach?

**I was not involved in the litigation your reference, and am not familiar with the details of the case.**

24. As Administrator, do you intend to make enforcement of the Chesapeake Bay cleanup plan a priority? How? Do you acknowledge that it will be even more difficult to make progress without EPA?

**The Chesapeake Bay TMDL has been upheld by the Third Circuit Court of Appeals. If confirmed, I will continue to enforce the law and will continue EPA's leadership role as a member of the Chesapeake Bay Executive Council. I agree that progress would be difficult without a collaborative process.**

25. Would you deny the political will in the states of the Chesapeake Bay watershed to protect the Bay?

**I would listen to the views of all interested stakeholders including the States.**

26. In a 2013 speech, you said "There are issues with respect to clean water and air that cross state lines. There is a role, and I think it's important for conservatives, for us to recognize, that though I don't like the EPA [...] I think it's not good for us to say that the EPA doesn't have any role." How would you characterize the EPA's role in mediating cross-state air and water pollution disputes?

**I certainly agree that EPA plays a leadership role in mediating cross-state air and water pollution disputes.**

27. In 1992, the Supreme Court held in *Arkansas v. Oklahoma* (No. 90-1262), a case challenging the EPA's issuance of a National Pollution Discharge Elimination System (NPDES) permit to a publicly owned treatment plant in Fayetteville, Arkansas for a discharge into a river flowing into Oklahoma, that the Clean Water Act authorizes the EPA to require that point sources in upstream states not violate water quality standards in downstream states.<sup>2</sup> Is the EPA interpreting this Supreme Court precedent correctly? If not, how would you change its interpretation through NPDES?

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<sup>2</sup> <https://www.epa.gov/sites/production/files/2015-01/documents/waterpollution-ludwiszewski-memo.pdf>



**Arkansas v. Oklahoma** involved an EPA-issued permit because at the time of the litigation the Fayetteville wastewater treatment plant began operation Arkansas did not have an approved state permitting program. Oklahoma is authorized to implement its own NPDES permitting program, in lieu of the federal program. As such, I am not familiar with how EPA is applying **Arkansas v. Oklahoma** when it issues permits in the handful of states without such approved permitting programs.

28. After the *Arkansas* decision, you agreed to a three-year delay in 2012 to allow for an independent study of the science behind the standard. What specific factors motivated your decision to delay enforcement of Oklahoma's standard?

The "Second Statement of Joint Principles and Actions" that Oklahoma entered into with Arkansas in 2012 actually required that "[t]he States, through the appropriate Parties, will continue to require existing point source dischargers to the Illinois River Watershed with a design capacity of greater than 1 MGD to operate under existing National Pollutant Discharge Elimination System ("NPDES") permits reflecting an effluent limit for total phosphorus of not more than 1 mg/L based upon a 30 day average, assuming the U.S. Environmental Protection Agency does not object" and likewise required that "Parties for both States will continue cooperative efforts to improve and protect water quality in the Scenic Rivers."

29. Please provide all communications you had had with representatives of agricultural and other companies regarding water quality litigation between Arkansas and Oklahoma.

**Such communications can be requested from the Oklahoma Office of the Attorney General through a request made to that office pursuant to the Oklahoma Open Records Act.**

30. Do you commit to fully apply and enforce the Good Neighbor provision if confirmed as EPA Administrator?

**Yes. If I am confirmed as Administrator, I will exercise my authority in this area consistent with Congress's intent in enacting the Act. Specifically with respect to Section 110(a)(2)(D) and the "good neighbor" obligations of Section 110, I intend to engage in a transparent process that will allow states to have a meaningful opportunity to understand their obligations with regard to reducing emissions that cause or contribute to nonattainment or interference with maintenance in other states through the SIP process and to act consistent with my authority under Section 110(c) if states fail to do so.**

31. What is your understanding of the role of climate change in algal blooms?

**EPA identifies the following as causes of harmful algal blooms: sunlight, slow-moving water, and excess nutrients. For climate change to have a role, it would first have to have an impact on one of these three causes.**

32. Please provide a list of water treatment plants under consent order from the Oklahoma Department of Environmental Quality during your tenure as Attorney General. Please identify funding sources other than federal funding that are available to bring these treatment plants into compliance with the Clean Water Act.

**This question should be directed to the Oklahoma Department of Environmental Quality, as I have no personal knowledge of such matters.**

33. Of the 1,677 public water supplies under the purview of the Oklahoma Department of Environmental Quality, 19 had recent elevated detections of lead in March, 2016. Please describe any action you took to address lead contamination as Attorney General.

**As the question indicates, the Oklahoma Department of Environmental Quality as opposed to the Office of Attorney General has primary responsibility for implementing and enforcing environmental laws in Oklahoma.**

34. When more than 10 percent of tap water samples in a local system contain lead levels of at least 15 parts per billion, the state steps in to review the water system's treatment for corrosive properties and update the sampling schedule as necessary. How have budget cuts to the Oklahoma Department of Environmental Quality impacted sampling?

**I have no personal knowledge of the Oklahoma Department of Environmental Quality's budget, or how any budget cuts may have impacted that office.**

35. EPA and the Centers for Disease Control and Prevention (CDC) agree that there is no known safe level of lead in a child's blood. Lead is harmful to health, especially for children. Do you accept that there is no safe level of lead in a child's blood?

**I am concerned about the health of children. I have not myself reviewed the scientific studies correlating blood lead levels to impacts in children. However, it is my understanding that neither EPA nor CDC have identified a "safe" level of exposure, but instead have adopted levels appropriate for action under their specific statutory authorities.**

36. Please provide any information relating to enforcement actions for Lead and Copper Rule violations undertaken during your tenure as Attorney General for Oklahoma.

**Such enforcement actions would have been undertaken by Oklahoma's environmental and water regulators, at agencies like the Oklahoma Department of Environmental Quality or the Oklahoma Water Resources Board. This question should be directed to those agencies so that can describe to you the relevant actions taken by the State of Oklahoma.**

37. The Safe Drinking Water Act (SDWA) requires EPA to establish and enforce standards that public drinking water systems must follow. EPA delegates primary enforcement responsibility (also called primacy) for public water systems to states and tribes if they meet certain requirements. In a letter to Oklahoma Secretary of the Environment Gary Sherrer, EPA Regional Administrator Ron Curry said the State had until June 1, 2013 to fully implement the Stage 1 and Stage 2 Disinfectants and Disinfection Byproducts Rules. Please provide all information related to Oklahoma's primacy under the Public Water System Supervision Program during your tenure as Attorney General.

**As your question indicates, such matters would be within the purview of Oklahoma's environmental regulators, not the Office of Attorney of General.**

38. Do you concur that persistent drinking water safety problems indicate the need to strengthen, not weaken, the federal law designed to ensure the safety of Americans' drinking water? Explain why or why not.

**I believe that persistent drinking water problems largely stem from a failure to comply with current laws and regulations. If confirmed, I will work to increase compliance with the law, which will require effective enforcement and oversight, technical assistance, and infrastructure improvements. It also may require changes to existing regulations to improve oversight tools and eliminate ambiguities that lead to compliance issues.**

39. At the same time, deteriorated lead paint and elevated levels of lead-contaminated house dust are present in an estimated 24 million U.S. houses, according to the Centers for Disease Control and Prevention. The long-term effects that lead poisoning can cause include learning disabilities, hyperactivity, impaired hearing and brain damage. Infants and young children are most susceptible to lead poisoning. EPA's Lead Renovation, Repair and Painting Rule (RRP Rule) requires that firms performing renovation, repair, and painting projects that disturb lead-based paint in homes, child care facilities and pre-schools built before 1978 have their firm certified by EPA (or an EPA authorized State), use certified renovators who are trained by EPA-approved training providers and follow lead-safe work practices. Do you believe the RRP Rule should be a voluntary standard? Explain why or why not.

**No. Oklahoma is an authorized state. The Oklahoma Lead-Based Paint Management Act designates the Department of Environmental Quality as the official agency for implementing the Lead-Based Paint Management Program.**

40. EPA is addressing lead contamination and resulting hazards under these laws in many ways, including by issuing and enforcing regulations. Do you find this regulatory authority appropriate for EPA, and not the States? Why or why not.

**It is appropriate for EPA to faithfully enforce federal law. With respect to the RRP rule, it is my understanding that there have been issues with EPA implementation of the RRP rule in states that are not authorized due to delays in certifying firms.**

41. Title IV of the Toxic Substances Control Act (TSCA), as well as other authorities in the Residential Lead-Based Paint Hazard Reduction Act of 1992, directs EPA to regulate lead-based paint hazards. As Administrator, how would you implement Title IV of TSCA?

**Congress enacted both TSCA Title IV to create a national program to achieve the national goal of eliminating lead-based paint hazards from housing as expeditiously as possible and TSCA Title V to authorize the establishment of a state grant program to provide technical assistance on EPA environmental programs for schools and to implement school environmental health programs. If confirmed, I will faithfully discharge my responsibility to protect human health and the environment for all Americans with the highest possible dedication and commitment in accordance with the legal authorities established by Congress.**

42. The CWA prohibits anyone from discharging pollutants, including lead, through a point source into a water of the United States unless they have a National Pollutant Discharge Elimination System (NPDES) permit. As part of their water quality standards regulations, states and authorized tribes adopt ambient water quality criteria with sufficient coverage of parameters, such as lead, and of adequate stringency to protect the designated uses of their surface waters. What changes, if any, would you make to the NPDES permit?

**I have not contemplated any changes to the NPDES permit program, if confirmed.**

43. Please provide all confidential government information regarding the 2010 consent order with the Making Money Having Fun (MMHF, LLC), a coal combustion waste mine fill operator in Bokoshe, Oklahoma, that you obtained as Attorney General.

**I did not become Attorney General until January 2011. The Oklahoma Department of Environmental Quality has responsibility for administering and enforcing environmental laws in Oklahoma, along with other agencies like the Water Resources Board and the Corporation Commission. Those agencies may be able to provide you information about the 2010 consent order your reference.**

44. The EPA finalized the first federal coal ash disposal rules in 2015, but the rules did not include any direct mechanism to implement or enforce the rules. Now, Congress has provided the mechanism in S. 612-114<sup>th</sup>, the WINN Act, which was passed with bipartisan support. Senate Majority Leader Mitch McConnell also issued a press release stating his approval of several of the bill's provisions, including the coal ash language. As you may know, if states create a coal ash permitting program, or amend their current programs to incorporate federal standards and get EPA approval, they will be able to implement the rules themselves. If they do not, the EPA is directed either put into place a federal permitting system, or have the authority to directly enforce the requirement. Do you intend to enforce the coal ash language in S. 612-114<sup>th</sup>, the WINN Act, that received bipartisan report?

**If confirmed as Administrator, I will faithfully execute all laws enacted by Congress, including the WIIN Act provisions regarding coal ash.**

45. Please provide an explanation of any modification you would make to the coal ash provision in S. 612-114<sup>th</sup>, the WINN Act.

**I have not had occasion to review in depth this new statutory. Congress, not the Administrator of EPA, has authority to modify statutory language such as the coal ash provision in the WIIN Act. I do not at this time have any opinion whether Congress should modify the statute in question.**

46. Kentucky is already in the process of working on regulations governing coal ash disposal. The state's proposal would modify the concept of "permit-by-rule," and allow utilities to build their own coal ash landfills or ponds without prior permitting or review by regulators. The utilities could be fined by regulators or sued by individuals for violations. Energy and Environment Cabinet spokesman John Mura has said the Cabinet believes this would qualify as a "permitting program" as required by the WINN Act. As Administrator, would you allow the Kentucky Energy and Environment Cabinet's "permit by rule" program to qualify as a permitting program under the bipartisan WIIN Act? Why or why not?

**I am not familiar with how Kentucky regulates coal ash disposal. It would be inappropriate for me to prejudge an issue that may come before me for decision if I am confirmed as Administrator. If the issue comes before me, I will ensure that the issue is fully and fairly considered with input from staff and in accordance with applicable legal requirements.**

47. What is the goal of your lawsuit asking to strike down EPA's "Waters of the United States" rule under the CWA? What will the states be empowered to do that they can't do with the rule in place? (be specific)

**The goal of the lawsuit I brought to advance the State of Oklahoma's interest in protecting its regulatory authority is to have the courts vacate the WOTUS rule. If the WOTUS rule is vacated, we will return the status quo, and the State of Oklahoma's sovereign authority to regulate waters within its border will not be diminished.**

48. The brief filed on behalf of states argues that states need to "protect" waters. Are you aware of the legal concept under the Clean Water Act that provides for states to be more protective than the Clean Water Act, not less—that the Act sets a minimum standard of protection and cleanliness?

**The state brief filed in the WOTUS case argues that the WOTUS rule fails to recognize the limits on federal authority that Congress adopted when it enacted the CWA over forty years ago. Under the Act, Congress "chose to 'recognize, preserve, and protect the primary responsibilities and rights of States . . . to plan the development and use . . . of land and water resources.'" *Solid Waste Agency of N. Cook Cnty. v. U.S. Army Corps of Eng'rs*, 531 U.S. 159, 174 (2001) ("SWANCC") (quoting 33 U.S.C. § 1251(b)). As noted in the state brief: "The Rule likewise reaches and even exceeds the outer bounds of Congress's constitutional authority. The Rule's expansion of federal authority over intrastate waters will "impinge[] o[n] the States' traditional and primary power over land and water use," and "readjust the federal-state balance." *SWANCC*, 531 U.S. at 174. The Rule's coverage of intermittent waters, ephemeral waters, and isolated sometimes-wet lands "presses the envelope of constitutional validity," *Rapanos*, 547 U.S. at 738 (Scalia, J., plurality) (citation omitted), far more than the challenged agency actions in *Rapanos* and *SWANCC*. That is, states have exclusive, not additional, authority over all land and non-navigable, wholly intrastate waters.**

49. Do you believe that states should be free to allow more pollution or fewer waters to be protected from pollution and development than described in the Waters of the United States Rule?

**The litigation brought by the states was premised on a concern that EPA had exceeded its statutory authority as established by Congress. Additionally, the WOTUS rule is a jurisdictional rule, not a substantive rule as your question suggests.**

50. Are there waters that you believe should not be protected under the Clean Water Act? What specifically are they? Why do you think that the rule covers those waters now? Why do you think they should not be protected?

**As I stated in my testimony before the Committee, I believe that the Clean Water Act regulates more than navigable waters. But, it does not regulate all waters. How much more would best be answered by Congress. Absent Congressional action, it is the role of EPA to seek to provide clarity on the scope of federal jurisdiction. What that is has to be determined and assessed through notice and comment rulemaking. The WOTUS rule exceeded the authority granted by Congress by allowing federal regulation of land if rainwater collects on the surface and seeps into the ground or if rainwater runs over the land as ephemeral flows. It also exceeded CWA authority by regulating isolated ponds and wetlands. Such non-navigable, wholly intrastate water should be protected, as appropriate, under state, not federal, law. For example, isolated bodies of water have not been subject to federal regulation since the 2001 Supreme Court decision in SWANCC struck down earlier agency attempts to expand federal jurisdiction beyond the limits of the Act. The WOTUS rule would reverse that decision and regulate the same waters that the Supreme Court has already said are subject to exclusive state regulation.**

51. In your lawsuit against the Clean Water Rule you argue against what you perceive as an undue federal intrusion on local control of decisions about water quality. You have also argued that cities in towns in Oklahoma should not be able to control their water quality by issuing local regulations for the activities of oil and gas companies. How is your stance in favor of local control under the Clean Water Act consistent with your position against local control when it comes to the water polluting activities of oil and gas companies? What legal underpinning is there for that difference?

**State concerns regarding the WOTUS rule are based on the limitations on federal authority under the Clean Water Act. Oklahoma concerns over the regulation of commercial activities including oil and gas company operations by local governments are based on the limitations of local authority under state law and federal law. Respect for the rule of law underpins both concerns, and both seek to ensure that laws enacted by the relevant legislatures—Congress on one hand, the Oklahoma Legislature on the other—are followed.**

52. Wetland ecosystems provide significant environmental and economic benefits to American citizens including water purification, flood and erosion control, and

habitat for wildlife and commercial fish species. In fact, over fifty percent of commercial fish and shellfish stocks in the Southeastern United States rely on coastal wetlands. Section 404 of the Clean Water Act protects wetland ecosystems by regulating the discharge of dredging and fill material. If confirmed, what is your plan to improve the biological condition of wetlands?

**If confirmed, I will take care to faithfully execute all environmental laws enacted by Congress, including Section 404 of the Clean Water Act.**

53. As of 2014 Oklahoma had nearly 14,000 miles of rivers and nearly 1,000 square miles of lakes that are so polluted they don't meet the state's water quality standards. That's approximately 42% of all the delineated stream miles in Oklahoma, and almost 1,600 of those were added during your time as Attorney General. Only 107 miles of rivers in Oklahoma – about a third of one percent – were classified as meeting Oklahoma's water quality standards. The other 58% are classified as having insufficient data to enable the state to say they're meeting state standards. As Oklahoma's Attorney General, what did your office do to ensure that the companies were complying with the state's clean water laws?

**The Oklahoma Department of Environmental Quality and the Oklahoma Water Resources Board have primary responsibility for implementing and enforcing environmental laws in Oklahoma. Such questions should be directed to those environmental regulators.**

54. How many water pollution enforcement actions did your office file, and how many of those resulted in orders to halt or reduce pollution discharges? Please provide a comprehensive list.

**The Oklahoma Department of Environmental Quality and the Oklahoma Water Resources Board have primary responsibility for implementing and enforcing environmental laws in Oklahoma. Those agencies are thus best situated to provide a comprehensive list of enforcement actions take by the State of Oklahoma. The Office of Attorney General has on occasion assisted those environmental regulators by providing legal representation in cases under the CWA for pollution to groundwater, streams and other waterways. Other cases included pollution that caused fish kills and CERCLA Superfund sites that damaged Oklahoma groundwater and or streams. Those cases are EPA, States of Oklahoma & Texas v Mahard Egg Farm; EPA, State of Oklahoma v. Doe Run Mining et al.; ODWC v. Kent Feeds; ODWC v. Southern Towing; State Of Oklahoma, ODWC v Kelco Manufacturing; and State of Oklahoma & Cherokee Nation v. Sequoyah Fuels Corp.**

55. President Reagan's EPA adopted the "Stream Buffer Zone" rule to protect streams, and the Obama administration has replaced that rule with the "Stream Protection Rule." Do you think Reagan's rule was a more straightforward way to



protect streams? Why or why not? What specifically about it was more "straightforward?"

**The stream buffer zone rule and stream protection rule are not EPA rules. They were issued by the Office of Surface Mining Reclamation and Enforcement of the Department of the Interior.**

56. The American Society of Civil Engineers states that decrepit, decades-old municipal wastewater systems are at fault for the discharge of 900 billion gallons of untreated sewage and wastewater into U.S. waterways each year, enough to cover New York City under a layer 127 feet deep. According to a New York Times report, municipal sewer systems are the nation's biggest violators of the U.S. Clean Water Act, and more than one-third of them have violated pollution laws at least once since 2006. This worn-out, faulty infrastructure requires new investments in order to protect public health and the environment. As the leader of the Agency in charge of protecting human health and US waterways, how will you help states and municipalities modernize their wastewater infrastructure?

**If confirmed, I will continue support for the Clean Water State Revolving Loan Funds and the new Water Infrastructure Financing Innovation Act loan program. In addition, I would continue to implement EPA's Integrated Planning Framework to provide municipalities with flexibility to prioritize actions they take to come into compliance.**

57. The American Society of Civil Engineers states that decrepit, decades-old municipal wastewater systems are at fault for the discharge of 900 billion gallons of untreated sewage and wastewater into U.S. waterways each year, enough to cover New York City under a layer 127 feet deep. According to a New York Times report, municipal sewer systems are the nation's biggest violators of the U.S. Clean Water Act, and more than one-third of them have violated pollution laws at least once since 2006. This worn-out, faulty infrastructure requires new investments in order to protect public health and the environment. As the leader of the Agency in charge of protecting human health and US waterways, how will you help states and municipalities modernize their wastewater infrastructure?

**If confirmed, I will continue support for the Clean Water State Revolving Loan Funds and the new Water Infrastructure Financing Innovation Act loan program. In addition, I would continue to implement EPA's Integrated Planning Framework to provide municipalities with flexibility to prioritize actions they take to come into compliance.**

58. Given the President-elect's concerns about EPA's slow and inadequate response to lead in drinking water problems and the lack of adequate testing, what specifically would you do to prevent a Flint-like disaster from happening elsewhere?

**If confirmed, I will focus EPA's resources and attention on its core missions, including ensuring safe drinking water.**

59. Would you commit to undertaking stronger EPA oversight and enforcement of drinking water rules, such as stronger enforcement of the lead and copper rule that wasn't enforced in Flint, MI?

**Yes.**

60. What specific lessons did you draw from the Flint, MI tragedy, regarding EPA's proper role in overseeing the States' administration of delegated federal programs?

**I believe that EPA staff should be encouraged to notify their managers when they identify issues and managers must take those issues seriously when brought to their attention. I agree with the assessments of others that the Flint tragedy was a failure at every level of government, but I am particularly disturbed that EPA did not take action until long after they became aware of the elevated lead levels in Flint drinking water.**

61. What are your views on when EPA should step in to take enforcement or emergency action where a state is authorized to administer a program under one of the federal environmental laws but is failing its duty to protect the public?

**If confirmed, I will follow the process outlined in section 1414 of the Safe Drinking Water Act, as recently amended in section 2106 of the WIIN Act, to notify persons of elevated lead levels in their drinking water and will carry out the recommendations of the EPA Inspector General in his October 2016 Management Alert to update the guidance on Safe Drinking Water Act emergency authority and require training on the use of that authority.**

62. Did EPA do an adequate job in the instance of the lead crisis in Flint, MI? If not, what specifically would you do differently?

**No. If confirmed and faced with a similar situation, I would inform the state that EPA will take action if they fail to do so, and use EPA's emergency authority if the state fails to act.**

63. How specifically would you strengthen EPA's lead and copper rule for drinking water to ensure, as Mr. Trump suggested, that water is adequately tested and treated before children are exposed to lead?

**It would be inappropriate for me to prejudge the outcome of a matter that may come before me if confirmed as Administrator. If confirmed I would request a full briefing by EPA staff on potential revisions consistent with EPA legal authorities.**

64. House Republican leadership said in 2016 that EPA should get new lead-in-water rules proposed as soon as possible, and criticized the agency for being too slow when it promised to get them out by 2017. By what date would you commit to get a new rule issued? How would you ensure that final improvements to this rule are issued and implemented quickly?

**If confirmed, I will make issuing revisions to the Safe Drinking Water Act Lead and Copper Rule a priority. As I am not at the Agency, I do not know what is the soonest feasible date.**

65. An independent advisory group of experts including state regulators and water industry representatives recommended to EPA that all old lead service lines that pump water into homes from water mains should be replaced. The water utility trade associations support this. Do you support that recommendation? In your view, what would be the best way to pay for these replacements—Congressional Appropriations, issuance of debt by cities and states, a combination, or other? Please explain.

**It is my understanding that, if properly implemented, corrosion control treatment of water protects public health from exposure to lead from lead service lines. EPA's highest priority should be to ensure that this treatment is being properly employed. Replacement of lead service lines is a long term goal that municipalities should incorporate into their capital improvement plans, which are generally implemented through state and local funds. Federal assistance through the Drinking Water State Revolving Funds and the new WIFIA program can provide additional assistance.**

66. Do you agree that removing lead from gasoline was an important and successful EPA rulemaking? Why or why not?

**I have not evaluated this issue.**

67. Lead has no safe level of human exposure, particularly for children. What actions will you take to require lead to be removed from children's environment to reduce their exposure to lead in air, water, soil, and paint?

**If confirmed, I will faithfully carry out the authorities granted to EPA by Congress to reduce exposure to lead.**

68. In March 2016 it was reported that 19 drinking water systems in Oklahoma had elevated lead levels. Of the 100 water systems with the highest self-reported lead levels between 2013 and 2015, seven are located in Oklahoma. One exceeded the federal action level by 1,175 parts per billion - many times greater than the amount of lead needed to cause the death of a fetus or spontaneous abortion, or

permanent severe developmental problems. As Oklahoma A.G., what specific actions did your office take to protect children against lead poisoning?

**The Oklahoma Department of Environmental Quality and the Oklahoma Water Resources Board have primary responsibility for implementing and enforcing environmental laws in Oklahoma. Questions relating to actions taken by the State of Oklahoma with regard to lead in water systems should thus be directed to those environmental regulators.**

69. How will you ensure that required evaluation of state drinking water primacy programs is conducted and how will you use EPA authority and resources to help states carry out their Safe Drinking Water Act primacy responsibilities?

**If confirmed, I will focus on EPA's core missions, including oversight of state implementation of the Safe Drinking Water Act.**

70. Will you direct EPA to continue and follow up on findings from 2016 increased oversight of state implementation of the Safe Drinking Water Act Lead and Copper Rule?

**Yes.**

71. What are your expectations for the 2017 Proposed Revisions to the Safe Drinking Water Act Lead and Copper Rule?

**It is my understanding that EPA expects to issue that proposed rule in 2017.**

72. In our conversation in my office, I asked for your thoughts on the Paris Agreement and the US commitment to the Paris Agreement. You pointed out that the Paris Agreement commitments are non-binding and when I asked you whether you thought the US should stay in the Paris Agreement you did not want to comment because you felt that the Paris Agreement is a matter handled in full by the State Department. Is that a fair characterization of your comments to me?

**I believe I stated that a decision as to whether the U.S. stayed in the Paris Agreement would be a decision for the State Department.**

73. Does that mean that you would advise the EPA to refrain from engaging with the State Department on US engagements with the UNFCCC and the execution process around the Paris Agreement?

**Interagency cooperation is very important. Should the Administration decide to continue to participate in the Paris Agreement, and if I am confirmed as Administrator, I will collaborate with all involved agencies to ensure that commitments made on behalf of the United States are**

**achievable and consistent with requisite legal authorities delegated by Congress.**

74. How does your position that EPA should ostensibly recuse itself from State Department responsibilities and engagements on the Paris Agreement comport with any plans that you, as the next EPA administrator, may execute to rescind or alter domestic policies that affect the US National Determined Contribution (NDC) to the Paris Agreement?

**As I stated in a previous answer, should the State Department decide to continue to participate in the Paris Agreement and if I am confirmed as Administrator, I will work with all involved agencies to ensure that commitments made on behalf of the United States are achievable and consistent with requisite legal authorities delegated by Congress.**

75. Recently at the World Economic Forum in Davos, Switzerland, Chinese President Xi Jinping expressed China's great interest in being the world's leader on a number of issues including action to address climate change. Do you believe it is the U.S.'s national interest to cede leadership to the Chinese on global action to address climate change?

**It is the mission of the State Department to advance our national interests within the realm of foreign policy. If confirmed, I will work to advance the mission of the EPA, which is to protect human health and the environment, consistent with the State Department's strategy for international engagement on climate change.**

76. Do you believe climate change is a real and serious threat to the planet?

**The climate is changing and human activity impacts our changing climate in some manner. The ability to measure with precision the degree and extent of that impact, and what to do about it, are subject to continuing debate and dialogue.**

77. Do you accept the scientific consensus that should average global temperatures reach or exceed +2 degrees Celsius that many regions of the world will very likely experience catastrophic changes in the environment that may very likely impact the safety and prosperity of many people?

- Do you believe that uncertainty in climate science warrants greater study before the U.S. takes significant action to reduce greenhouse gas pollution?
- If so, are you aware that the portion of the scientific community that claims there is uncertainty in the science is limited to limited to about 5% of climate science communities?
- If you believe that the very small portion of the world's climate science community who hold outlier opinions on the severity of climate change justifies inaction, why wouldn't you give similar credence to other outlying opinions in the

climate science community that hold that global average temperatures may exceed 10 degrees Celsius and that catastrophic events may occur as soon as five or ten years?

**The climate is changing and human activity impacts our changing climate in some manner. The ability to measure with precision the degree and extent of that impact, and what to do about it, are subject to continuing debate and dialogue. If confirmed, I will work to ensure that any regulatory actions are based on the most up to date and objective scientific data.**

78. Our ability to predict the weather has improved dramatically over the last 20 years with the advent of supercomputers, new satellite monitoring options, and vastly superior atmospheric models. But still floods, droughts, hurricanes and similar phenomena occur and cause damage with sometimes only limited warning. What precision of prediction do you require before you are willing to accept the scientific community's overwhelming consensus that unchecked increases in greenhouse gas emissions will very likely have catastrophic effects, many of which the National Climate Assessment has described in detail every 4 years since 1990?

**The ability to measure with precision the degree and extent of human activity on our changing climate, and what to do about it, are subject to continuing debate and dialogue. If confirmed, I will work to ensure that any regulatory actions are based on the most up to date and objective scientific data.**

79. Do you believe that science should guide our nation's environmental policy?

**Congress has made it very clear in the Clean Air Act, the Clean Water Act and other major environmental laws that the regulatory actions of the EPA should be based on the most up to date and objective scientific data. If confirmed, I will follow the directives of Congress to set science-based standards to protect the environment and human health.**

80. What would have to change about our ability to predict the effect of increasing greenhouse gas emissions in Earth's atmosphere for you to consider it adequate?

**If confirmed, I will work to ensure that any regulatory actions are based on the most up to date and objective scientific data, including the ever-evolving understanding of the impact increasing greenhouse gases have on our changing climate.**

81. Would you support making those changes in sufficient time to ward off any negative effects of increasing those emissions?

**The ability to measure with precision the degree and extent of human activity on our changing climate, and what to do about it, are subject to continuing debate and dialogue. If confirmed, I will make sure the agency's regulatory actions are based on the most up to date and objective scientific data.**

82. What is your scientific background and what expertise do you have in environmental science?

**My degrees are in communications, political science, and law. As with prior EPA Administrators who held bachelor of arts degrees, I completed science courses as a prerequisite to requiring my degree. Also, I understand that six of the 12 people who have been confirmed as EPA Administrator (including the first four individuals) had law degrees.**

83. How do you square your opinion that air regulation is a matter for the states and that EPA has limited authority to mandate regulation of air pollution, with the court's overwhelming opinions that EPA has exclusive authority to regulate air pollution including greenhouse gases?

**The concept of cooperative federalism is a bedrock principle of the Clean Air Act, the Clean Water Act and other EPA-administered laws. Whether working to improve air quality, water quality or other important environmental objectives, Congress made achieving these a shared responsibility between the EPA and the states. If confirmed, I will respect the intention of Congress and relative statutory framework.**

84. Given that you are one of the lead attorneys challenging the clean power plan, a regulation promulgated by EPA in part due to the court's decision in landmark cases that determining EPA authority and responsibility to regulate greenhouse gases for domestic sources, in you rescind the Clean Power Plan:

**It is unclear what question is being asked.**

85. What policies would you promulgate to replace the Clean Power Plan, which you would have to do to ensure the EPA is in compliance with the court orders to regulate greenhouse gases?

**It would be inappropriate for me to prejudge an issue that may come before me for decision if I am confirmed as Administrator. If the issue comes before me, I will ensure that the issue is fully and fairly considered with input from staff, as part of a transparent process that seeks input from stakeholders, and that is consistent with EPA's statutory authorities.**

86. What assurances will you give the public that your proposed replacement rules will withstand the tests established in the case law determining EPA's endangerment finding is adequate and legal and sufficiently regulates carbon pollution to protect public health and safety?

**It would be inappropriate for me to prejudge an issue that may come before me for decision if I am confirmed as Administrator. If the issue comes before me, I will ensure that the issue is fully and fairly considered with input from staff, as part of a transparent process that seeks input from stakeholders, and that is consistent with EPA's statutory authorities.**

87. Do you trust the analysis, concerns and recommendations of security experts at the State Department, Department of Defense, Central Intelligence Agency, The Navy War College, UN Security Council, and the World Bank, who have expressed growing concerns over the threat climate change poses to national and global security?

**I have no reason to disagree with the statements from the listed security experts, although I have not made any attempt to independently verify their accuracy.**

88. U.S. national security experts that are working to incorporate climate modeling and climate change assessments into our national security planning apparatus rely on sound scientific analysis, modeling data, and technical assistance from the EPA in interpreting the data. Will you commit to continuing EPA's engagements with the agencies and departments responsible for protecting our national security and advancing our understanding and preparedness for the security risks climate change poses to the United States?

**Interagency cooperation is very important. If I am confirmed as Administrator, I will collaborate with any agency or department that may require the EPA's technical expertise to strengthen their own administrative actions.**

89. What assurances can you provide the public, particularly vulnerable communities at greatest risk from pollution, that you will represent their interests fairly as administrator when your personal political campaigns, as well as organizations that you have held leadership positions within - like the Republican Attorneys General Association, has received hundreds of thousands of dollars in contributions from the fossil fuel industry because of your working championing their interests by challenging laws regulating these industries?

**As I explained in my testimony to the Committee, I am a firm believer in the EPA's mission to protect the environment and look forward to the opportunity to lead the agency to help provide our future generations with a better and healthier environment for all Americans.**

90. You have lost many of the lawsuits challenging EPA's authorities, including the Chesapeake Bay TMDL and the lawsuit challenging the endangerment finding on greenhouse gases. Given the difficulty you've had winning cases, what



assurances can you provide the committee of your sound judgment when it comes to understanding our nation's environmental statutes?

**As Attorney General of Oklahoma, my focus has been on examining federal environmental statutes and relevant case law to evaluate the legality of the EPA's actions and the impact of those actions on Oklahoma. Oklahoma filed a friend of the court brief with the U.S. Court of Appeals for the Third Circuit in part to inform the court how EPA's interpretation of TMDL and other matters involved in the challenge would impact other states, including Oklahoma. If I am confirmed, I will apply those lessons which I have developed in the performance of my duties as Attorney General and would continue to do so if confirmed as Administrator.**

91. Will you work with all stakeholders and the State Department on execution of the Kigali Amendment to the Montreal Protocol to phasedown hydrofluorocarbons (HFCs) and will you commit to ensuring that any actions EPA may take to modify or rescind the Safe New Alternatives Program (SNAP) rules on HFCs coincide with the U.S.'s acceptance or ratification of the Kigali Amendment?

**Should the State Department decide to advance the Kigali Amendment to the Montreal Protocol and if I am confirmed as Administrator, I will work with all involved agencies and impacted stakeholders to ensure that EPA's actions related to hydrofluorocarbons (HFCs) are coordinated accordingly.**

**Ranking Member Carper:**

1. Please list all public speeches or presentations you have made that included references to any issue related to energy or the environment since 1998, and please provide copies (written, audio, or video) of any such speeches or presentations. Please also indicate whether you received compensation for any such speech or presentation (whether stipend, travel, lodging expenses, or other form of remuneration) along with the name of the entity that provided such compensation and the amount thereof.

**Please see attached list of speeches and enclosed copies of speeches in response to this request.**

2. Please provide a list of the skills and experiences you bring to the EPA Administrator position and why you believe that you would be a good fit for the position.

**I am a licensed attorney with significant experience in constitutional law, the Administrative Procedure Act, and Environmental Protection Agency administered statutes. This body has recognized my expertise in EPA related matters on several occasions, inviting me to testify before this and other committees on matters relating to the EPA. My legal education and profession has trained me to ask probing questions and think critically regardless of the subject.**

3. Please define the Environmental Protection Agency (EPA)'s mission and the role you believe that sound science plays in fulfilling that mission.

**The mission of EPA is to protect human health and the environment. Where Congress directs the EPA to act based upon scientific findings, the EPA should rely on well-reasoned, and sound, scientific findings.**

4. In a 2006 article in The Oklahoman, you were described as someone that "believes in negotiating, but not compromising." Do you feel this continues to be an accurate description of you? If so, why? Do you agree with President Nixon's articulation of the principal roles and functions of the EPA? If you do not agree, please explain the aspects with which you disagree and why.

**Based on the limited information provided in the question, I am uncertain about the article to which the question refers. The content and context of**

**the article and quote are not readily apparent. However, if confirmed as Administrator, I will take my responsibility to protect human health and the environment for all Americans with the highest possible dedication and commitment in accordance with the legal authorities established by Congress. I have a record of working on a bipartisan basis.**

5. Do you think it is constitutional for Congress to direct EPA to set national standards that protect public health? Is it constitutional for Congress to do that even if the pollution only harms citizens of a single state?

**The constitutionality of laws enacted by Congress depends on the particulars of the particular law, and will typically be decided by a court. Courts have generally recognized that Congress has the authority to create the EPA and vest certain powers in it.**

6. Mr. Pruitt, your official biography on the website of the Oklahoma Attorney General's office says that you are "...a leading advocate against the EPA's activist agenda." The EPA, the agency you have been nominated to lead, has the critical mission "to protect human health and the environment" for all Americans. When you sued the EPA over the Good Neighbor Rule (Cross-state Rule), how did that protect human health and the environment for downwind states?

**I firmly believe that the EPA plays an important role in addressing interstate water and air quality issues, but it must do so within the bounds of its legal authority. The actions undertaken by the Office of Attorney General challenging the Cross State Air Pollution Rule related to whether EPA had properly accounted for and allocated pollution from upwind states, as mandated by Congress. Regulations that are not on solid legal foundation and that cannot survive judicial review will not result in environmental protections.**

7. You've been part of numerous lawsuits against the EPA – against clean air, clean water and climate regulations. However, you also have stated you are for clean air and clean water. Can you name one Clean Air Act regulation – not a voluntary or grant program – that is on the books today that you do support?

**I firmly believe that the EPA plays an important role, especially as it relates to cross-state air and water pollution, but EPA must do so within the bounds of its legal authority as provided by Congress. Regulations that are not on solid legal foundation and that cannot survive judicial review will not result in environmental protections.**

8. Are there any other EPA regulations that are on the books today that you do support?

**I have not conducted a comprehensive review of existing EPA regulations. As Attorney General, I have brought legal challenges involving EPA regulations out of concern that EPA has exceeded its statutory authority based on the record and law in that matter.**

9. President-elect Donald Trump has said repeatedly—at least half a dozen times—on the campaign trail that he would starve the EPA of funding or completely eliminate the agency. In March last year, the President-elect stated in reference to the EPA:

“We are going to get rid of it in almost every form. We’re going to have little tidbits left but we’re going to take a tremendous amount out,”

After the election, the President-elect didn’t seem to change his tune. President-elect Trump stated two days after the election again in reference to the EPA:

“Environmental protection, what they do is a disgrace; every week they come out with new regulations,”

You also have a history attacking the agency. Please tell us why we should disregard the President-elect’s statement on the EPA, disregard your actions and only believe your words that you will support clean air and clean water laws?

**As I testified, I support the EPA’s mission to protect human health and the environment. If confirmed, I will faithfully execute the environmental laws enacted by Congress.**

10. As Administrator, will you take into account the true costs of air pollution including the adverse health and environmental impacts on states that are adversely affected by upwind pollution sources?

**As I stated at the hearing, costs are important in the rulemaking process and the Courts have recognized that important factor. The Clean Air Act prescribes when costs should be considered and to what extent in a**

**rulemaking. If confirmed, I commit to faithfully executing the law as enacted by Congress.**

11. As Administrator, will you take into account the full economic and job benefits that result from clean air protections such as the economic benefits to communities from clean air and American leading businesses that manufacture advanced technologies?

**As I stated at the hearing, the EPA should consider the benefits of cleaner air for the public. The Clean Air Act prescribes certain instances where the EPA is obligated to conduct a cost-benefit analysis as part of the rulemaking process. If confirmed, I commit to faithfully execute the law as enacted by Congress.**

12. If it is technologically and economically feasible to eliminate the release of a particular pollutant, do you agree that we should do so?

**Environmental statutes prescribe certain instances where technological or economic feasibility is a relevant factor to consider in a rulemaking. If confirmed, I commit to faithfully execute the law as enacted by Congress.**

13. I have often found that environmental regulations can and often drive innovation. We have seen that with the Acid Rain Program, CAFÉ, Clean Diesel standards, RFS and most recently with the mercury standards. Do you agree environmental regulations often drive innovation? If so, why? If not, why not?

**The factors that lead to technological innovation can be complex and varied, and legal requirements may be one such factor.**

14. Who serves or has served as your scientific advisor for climate change related issues during your time as attorney general? Please provide their names, their titles, and when they served as your science advisors.

**The Office of Attorney General does not have a science advisor to advise on climate change related issues.**

15. Mr. Pruitt, my State of Delaware is already seeing the adverse effects of climate change with sea level rise, ocean acidification, and stronger storms. While all states will be harmed by climate change, the adverse effects will vary by

state and region. Can you comment on why it is imperative that we have national standards for the reduction in carbon pollution?

**If confirmed, I will fulfill the duties of the Administrator consistent with Massachusetts v. EPA and the agency's Endangerment Finding on Greenhouse Gases respective of the relative statutory framework established by Congress.**

16. Pruitt, will you agree that there will be no retaliation against EPA employees who work on climate change issues?

**If confirmed, yes.**

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

**Congress has enacted numerous statutes directly or indirectly affecting transportation fuels, transportation fuel infrastructure, and the vehicles that consume those fuels. Congress committed many of those statutes to the EPA Administrator's responsibility. If confirmed as Administrator, I would administer each of those statutes in accordance with Congress's statutory objectives, and in light of the administrative record in each given proceeding. And I would work with Congress to ensure that its statutes continue to provide the best possible legal framework for governing American fuels, fuel infrastructure, and vehicles, and for promoting American energy independence, energy security, and environmental protection.**

18. What is your definition of sound science?

**Sound science is that which complies with applicable laws and federal guidance regarding scientific integrity, peer review, information quality, and transparency.**

19. Prior to your nomination, how have you acquired scientific information relevant to the missions of the EPA? And since your nomination?

**As Attorney General of Oklahoma, my focus has been on examining federal environmental statutes and relevant case law to evaluate the legality of the EPA's actions. Legal education is rooted in the Socratic method, which trains law students through probing questions and critical thinking and I apply those lessons and skills in the performance of my duties as Attorney General and would continue to do so if confirmed as Administrator.**

20. Please list all undergraduate and postgraduate science courses that you have taken. Please describe any other science education that you have completed over the years beyond high school.

**My degrees are in communications, political science, and law. As with prior EPA Administrators who held bachelor of arts degrees, I completed science courses as a prerequisite to requiring my degree.**

21. President Nixon articulated that an important role for EPA is "The conduct of research on the adverse effects of pollution . . . the gathering of information on pollution, and the use of this information in strengthening environmental protection programs and recommending policy changes." Do you agree with President Nixon that EPA has an important role to play in researching any emerging risks from pollution as well as strengthening protections and recommending policy changes based on the science?

**Yes.**

22. Do you think the U.S. National Academy of Sciences is a reliable authority on scientific matters?

**I have no reason to think otherwise, but I have not had occasion as Attorney General to consider this issue.**

23. What degree of scientific certainty should the EPA have about a potential health or environmental threat before acting to protect people from that threat?

**EPA actions are governed by statutes such as the Clean Air Act and other legal authorities and relevant case law, which establish applicable legal and scientific standards for the Administrator to act. If confirmed, I will adhere to these authorities to fulfill EPA's mission to protect human health and the environment for all Americans.**

24. Do you support legislative efforts to change the independent nature of the EPA's Science Advisory Board? If so, please explain why.

**I am unfamiliar with the legislative efforts being referred to in this question. If confirmed, I expect to be briefed by EPA staff before taking any position on such matters.**

25. If confirmed, do you plan to propose or advocate for budget cuts to the EPA's FY 2018 budget? If so, for which programs would you reduce funding? Would you target the EPA's research programs? Are there areas of agency action where you believe additional financial resources are needed?

**I have no first-hand knowledge of EPA's development of its FY 2018 budget request. If confirmed, I look forward to working with EPA's budget staff and program offices to develop a budget and will work to ensure that the resources appropriated to EPA by Congress are managed wisely in pursuit of the Agency's important mission and in accordance with all applicable legal authorities.**

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

**If confirmed, it will be my privilege to work with EPA scientists and the thousands of other dedicated public servants at EPA who have chosen to devote their careers to improving public health and our environment. I have no first-hand knowledge of EPA's policies or practice concerning the confidentiality of health information. If confirmed, I would expect to learn more about the existing practice and I commit to follow applicable legal authorities regarding the confidentiality of health information.**

27. If confirmed, how will you ensure that EPA maintains independent science, transparent decision-making, and scientific free speech?

**If confirmed, it will be my privilege to work with EPA scientists and the thousands of other dedicated public servants at EPA who have chosen to**



**devote their careers to improving public health and our environment. I also commit, if confirmed, to follow applicable laws and federal guidance on scientific integrity, information quality, and transparency.**

28. Mr. Pruitt, when Congress passed our bedrock environmental laws, we directed EPA to periodically review and update the federal minimum health protection standards based on the best available scientific evidence. Do you agree that these federal minimum standards must be based on the best available science?

**I agree that EPA regulatory actions must be based on the best available science in accordance with the law. If confirmed, I commit to faithfully execute the law as enacted by Congress.**

29. Mr. Pruitt, conflicts of interest threaten the integrity of science and public trust in the agency's scientific determinations. Scientists are not immune from having their work and conclusions influenced by their financial interests. Allowing scientists with conflicts of interest to serve as peer reviewers is contrary to widely accepted scientific integrity practices, including those of the National Academies of Sciences, the National Institutes of Health, and other scientific bodies. Industry funded scientists who may have unique expertise can be invited to present information to peer reviewers or an advisory committee, but should not actually serve as a reviewer or member of the committee. Can you explain what steps you would take as Administrator to ensure that scientists with financial conflicts of interest do not threaten the independent peer review process at EPA?

**Independent peer review is critical to ensuring the scientific integrity of EPA actions. If confirmed, it will be my privilege to work with EPA's scientists and the thousands of other dedicated public servants at EPA who have chosen to devote their careers to making a healthier and cleaner environment. I commit, if confirmed, to follow applicable legal authorities regarding conflicts of interests in the scientific peer review process.**

30. Mr. Pruitt, do you agree that for scientific research to be credible, it must be subject to objective, independent peer review before it is published and remain subject to scrutiny after it is published?

**Independent peer review is critical to ensuring the integrity of scientific research. If confirmed, it will be my privilege to work with EPA's scientists and the thousands of other dedicated public servants at EPA who have chosen to devote their careers to making a healthier and cleaner**

**environment. I commit, if confirmed, to follow applicable legal authorities regarding the peer review process for scientific research.**

31. Mr. Pruitt, do you agree that for scientific research to be credible, scientists must disclose all sources of funding for their research?

**Credible scientific research is critical to the EPA's mission and, if confirmed, I commit to follow applicable legal authorities regarding scientific research.**

32. In the 1970 and 1990 Clean Air Act Amendments, Congress delayed older coal power plants air control requirements because Congress thought that most of the old plants would be shuttered in the decade after the legislation passed. Congress thought there was no need to invest in new technologies at these old, dying plants. Did many of these coal plants actually retire? Do you know the average age of our coal fleet?

**I understand that the U.S. Energy Information Administration's Electric Power Annual 2015 report released in November 2016 indicated that between 2005 and 2015 more than one-third of U.S. coal-fired power plants retired and the remaining fleet has an average age of 38 years.**

33. Do you know what the role the price of natural gas plays in industry decisions to retire coal plants and fuel switch to natural gas?

**I am aware that market conditions, such as the reduced price of natural gas, and costly environmental regulations have been causing coal-fired power plants to prematurely shut-down or convert to natural gas.**

34. In your cases against the EPA's Mercury and Air Toxics Rule, who served as your scientific advisor for the case?

**Oklahoma's petition to review the Mercury and Air Toxics Rule was a legal challenge brought on the administrative record and argued that EPA acted contrary to law and arbitrarily and capriciously by not considering the costs of regulation in determining whether it was necessary and appropriate to regulate mercury from fossil fuel power plants within the meaning of Section 112(n). The Supreme Court ultimately agreed with Oklahoma's argument that EPA failed to act in accordance with the rule of law when it ignored costs in its determination and remanded the matter to the D.C. Circuit.**

35. Mr. Pruitt, ten percent of American women have dangerous levels of mercury in their bodies. But recent data shows that since the United States started cleaning up emissions from coal power plants, not only has mercury pollution in the North Atlantic fallen dramatically, so has the concentration of mercury in Atlantic fisheries. Mercury in Atlantic bluefin tuna is down 19% in only eight years. Given this resounding confirmation that regulation works, how firmly can you assure us that if you are confirmed, EPA's recent successful crackdown on all sources of mercury emissions, including coal power plants will accelerate, rather than pulling back?

**As I stated in my testimony, mercury is listed as a hazardous air pollutant under section 112 of the Clean Air Act and is subject to regulation from listed source categories of hazardous air pollutants. If I am confirmed as Administrator, I will regulate under Section 112 in a manner that is consistent with Congress's intent in enacting that provision. I will also faithfully administer other federal statutes that regulate mercury to the extent that they are under my jurisdiction, including the Mercury Export Ban Act of 2008, the Mercury-Containing and Rechargeable Battery Management Act of 1996, the Clean Water Act, the Emergency Planning and Community Right-to-Know Act, the Resource Conservation and Recovery Act, and the Safe Drinking Water Act.**

36. As you may remember, we had three exchanges over the issue of whether EPA should regulate toxic air emissions, including mercury, from power plants, specifically through the provisions authorized under Section 112 of the Clean Act. We also discussed your lawsuits, one pending, against the recent EPA rule that again addresses regulation of power plant mercury and other toxic air emissions under Section 112. Below is a direct quote from our second exchange, when I asked you directly about regulating power plant toxic air emissions:

"Senator, I actually have not stated that I believe the EPA should not move forward on regulating mercury or adopting rulemaking in that regard. Our challenge was with regard to the process that was used in that case and how it was not complicit with statutes as defined by congress. So there is not a statement or belief that I have that mercury is something that shouldn't be regulated under section 112 as a hazardous air pollution. A HAP."

These statements conflict directly with the language in the brief that you filed on June 2012 in *White Stallion Energy, et al. v EPA*: which says: "Finally, the record does not support EPA's findings that mercury, non-mercury HAP metals, and acid gas haps pose public health hazards."

These statements also conflict directly with language in the brief in the pending case that you filed April 25, 2016 with Murray Energy Corporation, et al v EPA: "EPA cannot properly conclude that it is "appropriate and necessary to regulate HAPs under Section 112."

These written statements quite clearly directly contradict your statements before our committee. Which statement is false, the verbal before our committee or the legal documents you filed pending in court? If confirmed, will you recuse yourself from any involvement in questions or cases related to regulating air toxic emission from power plants under Section 112(d) of the Clean Air Act?

**As I stated in my testimony, mercury is listed as a hazardous air pollutant under Section 112 of the Clean Air Act and is subject to regulation from listed source categories of hazardous air pollutants. Electric utility steam generating units are subject to regulation under Section 112 only upon a lawful showing that their regulation is appropriate and necessary. In Michigan v. EPA, the Supreme Court agreed with Oklahoma's legal position when it concluded that EPA interpreted Section 112(n) unreasonably by failing to consider costs in its appropriate and necessary determination. That challenge was made by Oklahoma on the specific administrative record before the court in that matter and all statements regarding the sufficiency of regulation in that case relate only to the material in the record before the Agency. If I am confirmed as Administrator, I will apply the Clean Air Act faithfully in all matters before me and will follow the advice of the EPA Ethics Counsel in determining any recusals.**

37. As you may remember, we had three exchanges over the issue of whether EPA should regulate mercury (and other air toxic) emissions from power plants, specifically through the provisions authorized under Section 112 of the Clean Act. We also discussed your lawsuits, one pending, against the recent EPA rule that implement regulations to regulate power plant mercury emissions under Section 112. As you may remember, I specifically asked you at the end of the hearing:

"Based on your earlier statements, that if confirmed we can have your assurances that the EPA will continue to regulate mercury emissions from power plants under Section 112 of the Clean Air Act and you will not defer to the states."

You answered:

"Mercury under Section 112 is something that EPA should deal with and regulate."

You stated this many times. I was very clear in my questioning that I was asking about mercury emissions and of course, the many other air toxic emissions, which the courts have said must be regulated under Section 112(d) from power plants. However, in this answer, you only mentioned mercury and not power plant mercury emissions, and you completely disregarded the other air toxics that are emitted by power plants, which include acid gases and carcinogenic metals like arsenic, nickel and cadmium. So please clarify, if confirmed, can we have your assurance that the EPA will continue to regulate power plants using the technology based standards required by Section 112(d) of the Clean Air Act and you will not defer to the states. Please answer in regards to all power plant air toxic emissions, not just on the question of mercury itself, and not just with respect to whether mercury should be regulated, but as to whether power plant mercury and other air toxics must be regulated.

**As I stated in my testimony, mercury is listed as a hazardous air pollutant under Section 112 of the Clean Air Act and is subject to regulation from listed source categories of hazardous air pollutants. Electric utility steam generating units are subject to regulation under Section 112 only upon a lawful showing that their regulation is appropriate and necessary. In Michigan v. EPA, the Supreme Court agreed with Oklahoma's legal position when it concluded that EPA interpreted Section 112(n) unreasonably by failing to consider costs in its appropriate and necessary determination. The Mercury and Air Toxics Standard has not been vacated by the Supreme Court or the D.C. Circuit and currently regulates both mercury and other air toxics. As Administrator, I will enforce the Mercury Air Toxics Rule so long as that Rule remains in force.**

38. As you may remember, we had three exchanges over the issue of whether EPA should regulate mercury (and other air toxic) emissions from power plants, specifically through the provisions authorized under Section 112 of the Clean Act. We also discussed your lawsuits, one pending, against the recent EPA rule that implement regulations to regulate power plant mercury emissions under Section 112. After our first exchange, you stated:

"There was no argument that we made from a state perspective that mercury is not a hazardous air pollutant under Section 112. Our argument focused upon the cost-benefit analysis that the EPA failed to do and the Michigan v EPA case the Supreme Court actually agreed. It was more about the process again that the EPA was supposed to go through in regulating mercury to provide certainty to

those in the workplace, not a statement in respect whether mercury should be regulated or not under section 112.”

Mr. Pruitt, in this exchange, did you mean to avoid the question whether power plant mercury and other HAPs must be regulated under the technology based requirements of maximum achievable control, under Section 112(d)? Or do you agree the Supreme Court, which expressly declined to consider this question, leaving the MATs Rules Section 112(d) regulations in place? Please fully explain your previous statements.

**Neither statement is false. As I stated in my testimony, mercury is listed as a hazardous air pollutant under Section 112 of the Clean Air Act and is subject to regulation from listed source categories of hazardous air pollutants, and Oklahoma was not challenging mercury’s status as a HAP in the case you reference. Electric utility steam generating units are subject to regulation under Section 112 only upon a lawful showing that their regulation is appropriate and necessary. In Michigan v. EPA, the Supreme Court agreed with Oklahoma’s legal position when it concluded that EPA interpreted Section 112(n) unreasonably by failing to consider costs in its appropriate and necessary determination. The Mercury and Air Toxics Standard has not been vacated by the Supreme Court or the D.C. Circuit and currently regulates both mercury and other air toxics. As Administrator, I will enforce the Mercury Air Toxics Rule so long as that Rule remains in force.**

39. As you may remember, we had three exchanges over the issue of whether EPA should regulate mercury (and other air toxic) emissions from power plants, specifically through the provisions authorized under Section 112 of the Clean Act. We also discussed your lawsuits, one pending, against the recent EPA rule that implement regulations to regulate power plant mercury emissions under Section 112. As you may remember, I specifically asked you at the end of the hearing:

“Based on your earlier statements, that if confirmed we can have your assurances that the EPA will continue to regulate mercury emissions from power plants under Section 112 of the Clean Air Act and you will not defer to the states.”

You answered:

“Mercury under Section 112 is something that EPA should deal with and regulate.”

You stated this many times during our exchanges. I was very clear in my questioning that I was asking about mercury emissions from power plants. And of course as well the many other air toxics emitted by this industry and listed by congress for regulation. However, in this answer, you only mentioned mercury and not power plant mercury emissions, or other air toxics at all. So please clarify,

- Do you agree that the EPA's recent consideration of the costs of the Mercury and Air Toxics Rule that shows that the agency has met the "necessary and appropriate" criteria Congress provided under 112(n) to direct the EPA to regulate power plant mercury (and other air toxic) emissions under Section 112, and more specifically under Section 112(d)? If not, why not?
- If you do not agree that EPA has met the "necessary and appropriate" criteria found in Section 112(n), what is your understanding of what that would mean for the Mercury and Air Toxics Rule?
- If the pending case you brought before the DC Circuit challenging EPA's cost analysis (Murray Energy Corporation, et al v EPA), is successful what is your view of what EPA would have to do to regulate mercury and other hazardous air pollutant power plant emissions under Section 112?

**As I stated in my testimony, mercury is listed as a hazardous air pollutant under Section 112 of the Clean Air Act and is subject to regulation from listed source categories of hazardous air pollutants. Electric utility steam generating units are subject to regulation under Section 112 only upon a lawful showing that their regulation is appropriate and necessary. In Michigan v. EPA, the Supreme Court agreed with Oklahoma's legal position when it concluded that EPA interpreted Section 112(n) unreasonably by failing to consider costs in its appropriate and necessary determination. In my capacity as Attorney General of the State of Oklahoma, on remand the petitioner group has argued that EPA's supplemental finding regarding costs is contrary to law and arbitrary and capricious for the reasons stated in that brief. If the D.C. Circuit finds against EPA, I am confirmed as Administrator and the matter comes before me at that time, I will seek and follow the advice of EPA Ethics Counsel in determining whether I may participate in that matter. If I do participate in that matter, I will apply the Clean Air Act faithfully and use my best efforts to take appropriate action in light of the administrative record before the Agency at that time.**

40. In the pending case you brought before the DC Circuit challenging EPA's cost analysis (Murray Energy Corporation, et al v EPA), the following statement is included in your brief:

"EPA also claims that, even though it was able to quantify highly uncertain IAQ benefits purportedly resulting from mercury emissions, other health and

environmental benefits of reducing EGU mercury, acid gas, and non-mercury metals emissions simply could not be quantified. But these purported benefits are to speculative to support "appropriate and necessary" finding for the same reasons the Agency cannot quantify them: they are not supported by the scientific literature."

As you probably know, the health benefits of cleaning up hazardous air pollutants are many, although many are difficult to quantify and certainly difficult or impossible to monetize. There are, however, several studies on how to quantify loss of IQ from mercury exposure and some early studies on how to quantify long-term effects of exposure. If confirmed, how do you recommend the EPA calculate the health risks to the unborn that may be exposed to mercury-laden fish because of power plant mercury emissions? How would you quantify the health risks of the Oklahomans living near the forty lakes that have mercury fish consumption advisories? There are also emerging studies quantifying the health impacts of the toxic metals and acid gases emitted by power plants, although monetizing the precise health costs of each pollutant are not possible as they are emitted in the toxic soup. How would you justify not protecting people living near these emissions if it were not possible to precisely quantify the health risks of exposure to power plant emissions of hydrochloric acid, hydrofluoric acid, nickel, arsenic, chromium and other heavy metals?

**If I am confirmed as Administrator, I look forward to working with EPA staff to arrive at a transparent and scientifically sound process for determining the health risks associated with any activity that is properly before me at the Agency, including those related to mercury exposure, and regulating those activities as appropriate consistent with Congress's intent in enacting the Clean Air Act.**

41. What industry is the largest emitter of mercury air emissions in this country? The second? The third? Please provide peer-reviewed data and sources for this answer.

**EPA's technical support document (v2) for the 2011 National Emissions Inventory indicates that the industries that are the three largest point source emitters of mercury in the U.S. are (1) utility coal boilers, (2) electric arc furnaces, and (3) industrial, commercial institutional boilers and process heaters.**

42. What impacts do mercury power plant air emissions have on unborn children? Can you explain how power plant mercury emissions settle in water bodies and eventually can impact the unborn?



**Some portion of mercury emitted into the air by power plants is deposited directly or indirectly into a watershed. Once present in the watershed, it can be naturally converted into methylmercury, which can then be absorbed by aquatic organisms, such as fish, and consumed by humans. The unborn children of pregnant women can be exposed to methylmercury if their mothers consume those fish.**

43. How much of our nation's mercury air emissions come from the natural environment, vs manmade emissions? Please provide peer-reviewed data and sources for this answer.

**J.M.Pacyna et al.: Current and future levels of mercury atmospheric pollution on a global scale, Atmos. Chem. Phys., 16, 12495–12511, 2016, indicates that approximately 30% of worldwide mercury emissions are manmade and 70% come from primary natural mercury emissions and re-emissions.**

44. Mr. Pruitt, do you understand that EPA's data show that power plants emit not only 50 percent of all US emissions of mercury, but that they also emit 82% of hydrochloric acid gas, 62% of hydrofluoric acid gas as well as many listed heavy metals, which are emitted as particulate matter, including Selenium (83% of domestic emissions), Nickel (28% of domestic emissions), Arsenic (62% of domestic emissions), Chromium (22% of domestic emissions), and others? The cite for those statistics is found in EPA's record at 76 Fed. Reg. Page 25006 Table 5. Given that Section 112(d) as interpreted by the US Courts for many years requires the regulation of all listed hazardous air pollutants from listed industries, would you not agree that power plant hazardous air pollutants must all be regulated under the technology based requirements of section 112(d)?

**The Mercury and Air Toxics Standard has not been vacated by the Supreme Court or the D.C. Circuit and currently regulates both mercury and other air toxics. If confirmed, I will enforce the Mercury Air Toxics Rule so long as that Rule remains in force.**

45. Given that the statute requires a showing that not one power plant emits hazardous air pollutants in amounts greater than required to cause a lifetime risk of cancer greater than one in a million to the most exposed persons, and for non-carcinogenic air toxics, to exceed a level which is adequate to protect public health with an ample margin of safety and no adverse environmental effects, and given that EPA's long standing record shows that the coal- and oil-fired power industry cannot make either of those showings what other regulatory mechanism do you believe is available "under section 112"?

**The Mercury and Air Toxics Standard has not been vacated by the Supreme Court or the D.C. Circuit and currently regulates both mercury and other air toxics. If confirmed, I will enforce Mercury Air Toxics Rule so long as that Rule remains in force. If I am confirmed as Administrator and am presented with information showing that EPA has discretion to regulate power plants in a manner that is consistent with the Clean Air Act but that differs from the Mercury and Air Toxics Standard, or that power plants meet the standard for de-listing under Section 112(c)(9), I would consider that matter in due course as I would consider any other matter under my jurisdiction in due course.**

46. The joint brief filed by your state and the regulated industry in the most recent round of appeals of EPA's decision making on power plant air toxics suggests that you are not aware of recent court precedent upholding EPA's evaluation of all the benefits, including so-called 'co-benefits' of EPA's rulemaking on particulate matter reductions that would be the direct result of the rule. What is your position on the importance of judicial precedent in governing the Agency's actions under the same statutes as have been previously interpreted by the courts?

**If confirmed, I would faithfully comply the Clean Air Act in accordance with congressional intent. Judicial precedent is undoubtedly an important guide to congressional intent but Congress has also delegated interpretive authority to the Administrator of the Clean Air Act, consistent with judicial review. If I am confirmed as Administrator and form the judgment that a judicial decision is incorrect, I would consider seeking an appeal or petition for certiorari to the Supreme Court seeking reversal of that decision. Likewise, EPA recently promulgated regional consistency regulations that address the implication of adverse federal court decisions that result from challenges to locally or regionally applicable actions and I would exercise my discretion under those regional consistency regulations unless and until they are changed.**

47. As I am sure you are aware, the US Supreme Court has expressly declined to consider whether EPA should have chosen some other mechanism "under section 112" in regulating power plant mercury and all the other HAPs emitted by the industry. What is your position on that precedent?

**In the White Stallion decision, the D.C. Circuit held that EPA's interpretation of Section 112(n) that Sections 112(c) and -(d) provided the appropriate mechanism for regulating power plants under Section 112 after the appropriate and necessary determination was made was entitled to deference. As your question indicates, the Supreme Court did not grant**

**discretionary review of that question. So long as the White Stallion decision is not reversed by the D.C. Circuit and the underlying agency action is not vacated, it remains a valid judicial precedent on this point.**

48. Given that you have been actively suing the EPA over the Mercury and Air Toxics Rule and have one pending lawsuit, will you recuse yourself from participating in any decision making that may reopen the EPA's decision regarding the fact that it is "necessary and appropriate" to regulate power plants under Section 112 of the Clean Air Act?

**As I stated in my testimony to the Committee, I will follow the advice of EPA Ethics Counsel in all recusal matters.**

49. If confirmed, will you continue with EPA's assertion that it is "necessary and appropriate" to regulate mercury and other hazardous air pollutants from power plants under Section 112 – specifically under the technology based maximum achievable control requirements of Section 112(d)?

**The Mercury and Air Toxics Standard has not been vacated by the Supreme Court or the D.C. Circuit and currently regulates both mercury and other air toxics. As Administrator, I will enforce all aspects of the Mercury Air Toxics Rule so long as that Rule remains in force.**

50. Do you agree with the *Whitman v. American Trucking Associations, Inc.*, 531 U.S. 457 (2001) decision written by Justice Antonin Scalia that states that the EPA cannot consider implementation costs when setting primary and secondary National Ambient Air Quality Standards? If you do not agree, please explain.

**As I stated in my testimony to Congress, there are instances where consideration of costs is not a factor. Setting the NAAQS for criteria pollutants is one such instance.**

51. In 2015, you stated that in implementing the tighter ozone NAAQS, the EPA "failed to achieve the goals to protect air quality; the agency did not "articulate how the rule would further protect public health"; and was another "attempt by the administration to use executive agencies like the EPA to bypass Congress." Can you please explain what you meant by these statements?

**Based on the limited information in the question, the source or context of the quote to which the questions refers is not readily apparent. Oklahoma**

joined four other states in a petition for review of EPA's 2015 decision to lower the National Ambient Air Quality Standard for ozone from 75 ppb to 70 ppb. The legal question raised by the state petitioners in the case is whether EPA set the standard at a level than can be achieved by states given the background concentrations and uncontrollable sources of ozone in many parts of the country. The briefs filed by the many State petitioners to that rule fully explain the States' position and speak for themselves. The case remains pending before the U.S. Court of Appeals for the District of Columbia Circuit.

52. As many of my colleagues know, I am an avid runner. I especially love to run with my 22-year son, who is a triathlete. In Delaware during the summer, we often have code orange days warning about the high levels of ozone for that day. Can you take a minute or two to describe how high levels of ozone could damage my lungs if I were to take a long run during a code orange day? Does ozone pollution cross state boundaries? If confirmed, how would you direct states to work together to reduce ozone pollution?

**As I indicated at my nomination hearing, the Cross-State Air Pollution Rule is important, as pollution does cross state boundaries. An upwind state that contributes to a downwind state's inability to meet air quality standards should take responsibility.**

53. In 2013, you argued that the EPA's decision to impose a Federal Implementation Plan on Oklahoma to address Regional Haze would cost more than \$1 billion over five years. It is three years later. Do you still agree with this cost assessment? If not, why not?

**The cost estimates referenced in this question were developed in connection with the Oklahoma State Implementation Plan that EPA rejected and EPA's subsequent decision to implement a Federal Implementation Plan. Oklahoma and a state utility filed legal challenges against the Federal Implementation Plan decision. The 10th Circuit initially stayed the rule pending judicial review. A split panel of the 10th Circuit upheld the Federal Implementation Plan in 2013. As Attorney General, I have not had reason to revisit the specific cost estimate at issue in this case.**

**If I am confirmed as Administrator, I will use my best efforts to hold to the five-year NAAQS review period prescribed by the Clean Air Act.**

54. If confirmed, will you continue to hold to the five-year National Ambient Air Quality Standards review time period that the Clean Air Act requires of the EPA?

**If I am confirmed as Administrator, I will use my best efforts to hold to the five-year NAAQS review period prescribed by the Clean Air Act.**

55. In previous hearings in this committee, we have had a few economists testify questioning EPA's science linking small particle pollution to negative health impacts. Can you just take a moment and talk about what you know about small particles and how they impact our lungs? Is the science robust in this area?

**The science linking adverse health impacts and fine particulate matter pollution is well established. Accordingly, EPA has promulgated a National Ambient Air Quality Standard for particulate matter pollution that limits the concentration of small particulates, including those smaller than 2.5 microns, in the ambient air that at the level that the agency has determined is requisite to protect public health and welfare from adverse effects, while allowing an adequate margin of safety.**

56. Mr. Pruitt, Section 109 of the Clean Air Act is very clear. It requires EPA to review the NAAQS for six common air pollutants including ground-level ozone, particulate matter, sulfur dioxide, nitrogen dioxide every 5 years. The Clean Air Act requires EPA to set these standards that "are requisite to protect the public health," with "an adequate margin of safety," and secondary standard necessary to protect public welfare. The science was clear that the 2008 ozone standard was not protecting public health, so EPA was required to Act. Is that not your understanding of the Clean Air Act?

**Section 109 of the Clean Air Act requires EPA to set NAAQS at the level that is requisite to protect against adverse health and welfare effects, while allowing an adequate margin of safety. The Act includes a regular review cycle for criteria pollutants.**

57. The EPA updated the Cross-State Air Pollution Rule in September 2016, which is within the time period for the rule to be subject to the Congressional Review Act (CRA). As Administrator, would you support the President signing a CRA resolution of disapproval that would reject these new standards?

**Although I am familiar with the update to the Cross-State Air Pollution Rule and generally familiar with the Congressional Review Act, I have not**

**reviewed any potential legislation which may reject these new standards. If I am confirmed, I will thoroughly review any resolution of disapproval which may be filed pursuant to the Congressional Review Act on this issue.**

58. Mr. Pruitt, the Clean Air Act recognizes that air pollution does not respect state boundaries and directs EPA to set minimum national standards to protect the health of the nation, including protecting downwind states.

- Do you agree that EPA should set minimum national standards?
- Do you agree that EPA must protect downwind states?

**As I indicated during my nomination hearing, I believe the Cross State Air Pollution Rule is important and should be enforced by the EPA. An upwind state that contributes to a downwind state's nonattainment should take responsibility for that contribution.**

59. Mr. Pruitt, my State of Delaware is a downwind state, and most of the air pollution in my state is coming from upwind states.

- Do you agree that it is EPA's role to ensure equity between where air pollution is produced and where it is received?
- Do you agree that to remedy this unfairness, the upwind states must do more to control their emissions to avoid exporting the pollution (and the costs to the health and welfare) to the downwind states?

**As I indicated during my nomination hearing, I believe the Cross State Air Pollution Rule is important and should be enforced by the EPA. An upwind state that contributes to a downwind state's nonattainment should take responsibility for that contribution.**

60. As you are well aware, on April 2, 2007, in *Massachusetts v. EPA*, 549 U.S. 497 (2007), the Supreme Court determined that sufficient information existed then for EPA to make an endangerment finding with respect to the combined emissions of six greenhouse gases from new motor vehicles and new motor vehicle engines under CAA section 202(a). On December 7, 2009, the Administrator determined that those gases/sources contribute to greenhouse gas pollution that endangers public health and welfare. How do you plan to execute your legal authority to protect the public health and welfare from greenhouse gas pollution?

**The Supreme Court held that GHGs are an air pollutant under the Clean Air Act. It did not address the question of whether regulation of GHGs under the Clean Air Act is warranted. In the subsequent UARG decision, the**

**Supreme Court cautioned EPA that there are significant limits on EPA's authority to regulate GHGs under the Clean Air Act. The unprecedented Supreme Court stay of EPA's so-called "Clean Power Plan" was predicated upon a finding that the plaintiffs in the case were likely to prevail on the merits. In light of these holdings, I will hew closely to the text and intent of the Clean Air Act when considering further regulation of GHGs under that law if confirmed as Administrator.**

61. Building off Congress's work on CAFE, the Obama Administration has updated emission standards for light and heavy-duty vehicles. These rules have had very little effect on the purchase price of new vehicles, but have saved consumers millions of dollars in fuel costs, vastly improved our energy security by slowing petroleum use and reduced a lot of pollution. If confirmed, do you support further strengthening vehicle emission standards? And with your federalism view, how do states address carbon pollution from vehicles themselves?

**In making each of its decisions regarding light- and heavy-duty vehicle emission standards, the EPA has made decisions based on the administrative record at hand and Congress's statutory objectives. If confirmed, I would take care to make such decisions regarding vehicle emissions standards in furtherance of Congress's statutory objectives, based on the evidence in the administrative record. With respect to federalism, the Supreme Court stressed in *Massachusetts v. EPA* that States play a crucially important role in promulgating vehicle emission standards under the Clean Air Act: each "State has an interest independent of and behind the titles of its citizens, in all the earth and air within its domain." To that end, "Congress has ordered EPA to protect [the States and their people] by prescribing standards applicable to the 'emission of any air pollutant from any class or classes of new motor vehicle engines, which in [the Administrator's] judgment cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare.'" Furthermore, the Clean Air Act and other federal administrative laws give each affected State "a concomitant procedural right to challenge the rejection of its rulemaking petition as arbitrary and capricious," and the Supreme Court affords States "special solicitude" to challenge the resulting standards in court. If confirmed, I would take care to ensure that States continue to play a central role in the administrative process giving rise to the EPA's vehicle emissions standards.**

62. The EPA promulgated phase two of the heavy-duty vehicles greenhouse gas emissions standards in August 2016, which is within the time period for the rule to be subject to the Congressional Review Act (CRA). As Administrator, would you support the President signing into law a CRA resolution of disapproval that would

reject these new standards? What is your view of whether the EPA would be able to re-issue any heavy-duty vehicle greenhouse gas emission standards given the CRA's language that would prohibit the agency from issuing regulations that are "substantially similar?"

**Although I am familiar with the regulations on heavy vehicle greenhouse gas emissions standards which were published in August 2016, I have not reviewed any potential legislation which may reject these standards. If I am confirmed, I will thoroughly review any resolution of disapproval which may be filed pursuant to the Congressional Review Act on this issue. In terms of re-issuing other heavy-duty vehicle greenhouse gas emission standards, I would have to be briefed in detail on the regulations which have been published, and the provisions of the Congressional Review Act which prohibit the Agency from issuing any regulations which are substantially similar to the initial rules in order to determine what options the Agency may have in terms of proposing and finalizing additional regulations in this space.**

63. As you know, the Renewable Fuels Standard, as amended by Congress in 2007, requires the blending of 36 billion gallons of renewable fuel into conventional gasoline and diesel by 2022. In order to add that many renewable fuel gallons to our fuel supply, do you agree that EPA must approve the sale of fuels blended with greater than 10-percent renewable content?

**While Congress included "applicable volume" levels in the RFS statute, Congress also took care to expressly authorize the EPA Administrator to reduce volumetric requirements below the statute's default levels in light of real-world conditions from year to year. Specifically, the Administrator may waive the statute's volume requirements if he determines "that implementation of the requirement would severely harm the economy or environment of a State, a region, or the United States, or "that there is an inadequate domestic supply." The EPA already has granted such waivers based on real-world conditions in recent years and, if confirmed, I would take care to administer the statute in accordance with the statutory objectives. While no statute mandates the sale of fuels blended with greater than 10 percent renewable content, statutes do vest the Administrator with discretion to authorize a variety of fuel blends.**

64. In October 2010, EPA approved the use of a 15-percent renewable fuel blend for cars built in 2007 or later. In the following January, EPA extended the use of that blend to model years 2001 to 2006. Do you support the decision by the EPA to allow 15-percent renewable fuel blends? If confirmed, would you commit to



using the discretion give to you by the Clean Air Act to evaluate even higher blends?

**The EPA's 2010 and 2011 decisions to grant "partial waivers" for the use of E15 fuel for some vehicles were premised upon the EPA's conclusions (based on the administrative record) regarding E15's potential impacts on exhaust emissions (both immediate and long-term), evaporative emissions, "materials compatibility," and "drivability and operability." If confirmed, I would take care to administer the law in accordance with Congress's statutory objectives and the administrative record.**

65. The Renewable Fuels Standard was designed to reduce dependence on foreign oil at a time that the U.S. was importing well more than half of its demand and concerns about energy and national security were paramount. It also was designed to reduce greenhouse gas emissions from the transportation sector.

Now that the United States supplies 76 percent of its oil domestically, do you believe the program continues to have an important role in enhancing the energy and environmental security of our country?

**As Congress indicated in the Energy Independence and Security Act of 2007, domestic production of renewable fuel contributes to our nation's "greater energy independence and security."**

67. As you heard in my opening statement, the EPA's record demonstrates that strong environmental policies create economic opportunities. An undeniable example of this is the impact of the Renewable Fuels Standard in rural America. According to the Renewable Fuels Association, in 2015, 14.8 billion gallons of ethanol was produced, supporting 85,967 direct jobs, while net petroleum import dependence fell to just 24 percent, and would have been 32 percent without the addition of domestically produced ethanol. In addition, the Association says the use of ethanol in gasoline in 2015 reduced greenhouse gas emissions from transportation by 41.2 million metric tons — equivalent to removing 8.7 million cars from the road for an entire year. Do you agree that the Renewable Fuels Standard has supported rural economies in America while allowing for the production of cleaner transportation fuels?

**I agree that the RFS's promotion of renewable fuels contributes to economic growth in agricultural communities, and promotes the production and consumption of transportation fuels providing many environmental benefits.**

68. Some of my colleagues believe removing the corn ethanol mandate, but keeping the advanced biofuel mandate in the RFS is the best way forward. Do you have concerns with this approach?

**The RFS statute neither expressly mandates the blending of corn ethanol nor prohibits its blending. In enacting the RFS statute, Congress took care to expressly authorize the EPA Administrator to reduce the volumetric requirements below the statute's default levels, in light of real-world conditions. Specifically, Congress authorized the Administrator to waive the volume requirements if he or she determines "that implementation of the requirement would severely harm the economy or environment of a State, a region, or the United States, or "that there is an inadequate domestic supply." The EPA already has granted such waivers based on real-world conditions in recent years and, if I am confirmed, I would take care to administer the statute in accordance with the statutory objectives.**

69. As you may know, in recent years we have seen significant swings in Renewable Identification Number (RINs) prices. RINs are used by the EPA to track and ensure refineries are in compliance with the Renewable Fuel Standard. Many small and mid-range refineries are having difficulties with the price spikes of the RIN prices because many are buying some, if not all, their RINs off the market. As a result, high and volatile RIN prices have had a financial impact on these refineries. As the RFS continues to be implemented, what do you believe the agency should do – if anything - to assist with RIN prices?

**As I indicated in my testimony, the EPA's RIN framework is currently the subject of a pending comment period. If confirmed as Administrator, I would take care to administer the RFS program, including the RIN framework, in accordance with Congress's statutory objectives, and based on the evidence in the EPA's administrative record, as well as the expertise of EPA staff and the expertise of other federal agencies relevant to the RIN framework and affected markets. The EPA already has entered into a "memorandum of understanding" with the CFTC, "on the sharing of information available to EPA related to the functioning of renewable fuel and related markets."**

70. Mr. Pruitt, do you agree that the burden should be on a chemical facility operator to show that the design and operation of the facility is as safe as possible to protect workers and the public from explosions, fires, and other releases of toxic chemicals?

**I believe that every American should be provided safe home and work environments and people who live or work in and around chemical facilities are no exception to that.**

71. Mr. Pruitt, when there are feasible measures that chemical companies can take to prevent explosions and fires that release toxic chemicals into surrounding communities that can kill people, do you agree that the companies should take such measures?

**I believe that chemical companies should take actions to prevent explosions and fires as well as other safety incidents.**

72. Do you support the "not net loss of wetlands" policy? George H.W. Bush initiated this critical policy in 1988 to protect our remaining wetlands habitat and all of the critical ecological and economic functions it supports. It has been U.S. Government policy ever since.

**Yes.**

73. A GAO report published on December 5, 2013 found that "more than 40 years after Congress passed the Clean Water Act [...] EPA reported that many of the nation's waters are still impaired, and the goals of the act are not being met. Without changes to the act's approach to nonpoint source pollution, the act's goals are likely to remain unfulfilled." If confirmed, how will you work to address surface water quality impairments, including from non-point source pollutants?

**Congress did not grant EPA authority to regulate non-point sources because regulation of non-point sources is the regulation of land, a traditional state authority. Instead, Congress created a planning process under section 208 of the Clean Water Act and authorized funding for state non-point source management plans under section 319. If confirmed, I will implement the authorities granted to EPA by Congress.**

74. You have attacked the Obama Administration's "Waters of the United States" regulation, objecting to "the significant negative impact such a rule would inflict on states and the landowners within their borders." Oklahoma's major streams and rivers lie within two river basins, the Red and the Arkansas, both of which flow into other states. And Oklahoma receives most of its waters from upstream neighbors, particularly Texas. Without national regulation, how would you suggest that that Oklahoma's downstream neighbors - Arkansas and Louisiana -

guarantee the quality of the water that flows across their boundaries? And how would you suggest that Oklahoma protects the quality of the water that it receives from upstream neighbors like Texas? You appear to believe that the only parties with an interest in water are those within a state, not downstream neighbors. Why?

**Federal jurisdiction exists over navigable water, interstate water, and tributaries that can transport pollutants to navigable waters, and jurisdiction over the interstate rivers that are the subject of your question is not in dispute.**

75. Communities across the country are facing the economic and health consequences of contaminated ground water, which impacts water systems and private well owners. How will you work to ensure communities are protected from drinking contaminated ground water? How will you address and strengthen the EPA's response to groundwater contamination and ensure homeowners and water systems are taking the steps to diagnose, treat, and remediate their groundwater resources?

**For drinking water wells that are public water systems, the requirements of the Safe Drinking Water Act apply and EPA has authorities to provide small systems with technical assistance through circuit rider programs. For private well owners, the WIIN Act provided authority for EPA to support a drinking water technology clearinghouse for well owners. If confirmed, I will use the authorities and resources granted by Congress to help both public water systems and well owners.**

76. This question is of interest to Senator Manchin and me: We must do everything we can to ensure that every American has access to safe and clean water. West Virginia has had issues with chemicals like PFOA in our drinking water as recently as last year. In fact, the State had to ship in alternative water supplies to the city of Vienna. Martinsburg and Parkersburg also had serious challenges. And, in 2014, the Elk River Chemical Spill left 300,000 West Virginians without access to potable water, so I know Senator Manchin looks forward to working with you to promote federal clean water initiatives. He also appreciates your commitment in your meeting together to working to address these challenges. Please outline how you intend to expand efforts to promote safe drinking water and support the modernization of our nation's water infrastructure.

**If confirmed, I will focus on EPA's core missions, including, as appropriate, use of EPA's emergency order authority under the Safe Drinking Water Act.**

**I also will implement the newly revised TSCA statute to address chemicals and will continue implementation of monitoring, review, and regulation of contaminants under the SDWA if confirmed.**

77. One of the tools within the Clean Water Act that communities can use to restore the quality of polluted waters is through the development and implementation of a Total Maximum Daily Load (TMDL) plan. The GAO also found that funding for TMDLs has been insufficient in meeting national needs, with more than 50% of the nation's waters being identified as impaired. Will you advocate for funding to match the needs for the TMDL program? How do you plan to support and strengthen the Total Maximum Daily Load (TMDL) regulatory framework?

**If confirmed, I will support continued funding of State programs authorized under section 106 of the Clean Water Act, which states use in part for TMDL development. I also will support flexibility for state use of 106 funds to allow states to focus on priorities such as impaired waters requiring TMDLs. If confirmed, I also will support the continued development of tools to help states develop TMDLs. Finally, I would note that neither GAO nor EPA has said that 50% of the nation's waters are identified as impaired. For example, states have assessed about 32% of rivers and streams. Of those assessed waters, states have identified about 54% as impaired. That means states have data showing that 17% of rivers and streams are impaired. You cannot extrapolate the data from assessed waters to all waters because most states target their monitoring to focus on waters they have reason to believe are impaired, so they can target their resources where they are needed the most.**

78. You expressed great pride in your role in resolving the Mahard Egg Farm enforcement, indicating that it demonstrates your commitment to enforce environmental law. When was the complaint in the litigation filed, and how did that date correspond to the date of the proposed consent decree? Based on your responses to these questions, how well investigated and developed was this case when you took office? Can you explain your personal involvement in either the complaint or the consent decree?

**The complaint was filed on May 23, 2011. The consent decree was entered into on August 10, 2011. There was no filed case when I took office, but the matter had been investigated by the Office of Attorney General, the Oklahoma Department of Agriculture, the EPA, and the State of Texas. I authorized the filing of the case once in office. The complaint and consent decree were handled by the attorneys in the Office of Attorney General responsible for environmental matters.**

79. Mr. Pruitt, the Clean Water Act requires EPA to review and revise its national water quality standards for pollutants based on the best available science. EPA has proposed or finalized more stringent standards for ammonia, nutrients, selenium, and dental offices. Do you agree that these standards must be based on the best available science?

**Under section 303(c)(1) of the Clean Water Act, states are required to, every three years "hold public hearings for the purpose of reviewing applicable water quality standards and, as appropriate, modifying and adopting standards." Proposed changes to state water quality standards are submitted to EPA. Under 303(c)(3), EPA is to approve the state standards if they meet the requirements of the Clean Water Act. Under section 304, EPA establishes water quality criteria that provide guidance for state water quality standards. The Clean Water Act directs EPA to review these criteria documents "from time to time" except for criteria to protect public health from pathogens in recreational coastal waters, which must be reviewed every 5 years. Unlike the Safe Drinking Water Act, the Clean Water Act does not require the use of best available science. That said, I believe it is always important to use best available science, particularly for science documents like water quality criteria documents.**

80. Last Congress, our committee worked together to pass the Frank R. Lautenberg Chemical Safety for the 21st Century Act, a bill overhauling the toothless Toxic Substances Control Act, that was signed into law earlier this year. EPA is now responsible for implementing the law, which will require a significant amount of resources. If confirmed, do you commit to ensuring EPA will prioritize implementation and has sufficient resources to comply with the requirements and timelines established by Congress?

**As you are likely aware, I wrote this body a letter urging passage of the Lautenberg Chemical Safety Act. If confirmed as EPA Administrator, I will take care that the Act is faithfully executed. A copy of that letter is attached.**

81. Last year, the Toxic Substances Control Act was signed into law. There was little doubt that this bipartisan legislation was overdue and very necessary to protect our constituents. EPA has already announced they are fast-tracking five chemicals under the authority of the new TSCA regime. You mentioned during our meeting earlier this month that you were concerned with some of the more aggressive timelines included in this legislation. Please elaborate. Please also outline how you intend to support the Agency in ensuring they have the resources to comprehensively implement this landmark legislation.

**The Lautenberg Act has a number of statutory deadlines that must be met by the Agency when carrying out the law. If confirmed I fully intend to pick up the process where the previous administration left off with completing the required rulemakings and initial chemical reviews as well as subsequent prioritizations. The updated law also allowed for updating the industry user fees used to fund the program, a process started by the previous administration, and one which I intend to quickly evaluate.**

82. You have publicly supported the recent updates to the TSCA law. Since this legislation pre-empts state actions, how does that align with your views on states rights and federalism? Do you agree that federal environmental laws – such as the Mercury and Air Toxics Rule, TSCA and Clean Power Plan – also provide certainty to businesses that have to do business across the country?

**Article 1, Section 8, Clause 3 of the U.S. Constitution, which gives Congress the power “to regulate commerce with foreign nations, and among the several states, and with the Indian tribes.” Unlike the Clean Water and Clean Air Acts which regulate pollutants TSCA regulates chemical substances manufactured for commerce in not only all 50 states but often globally. Federal preemption of states is appropriate when dealing with interstate commerce issues and the Lautenberg Act’s preemption provisions comport to my views on states’ rights and federalism for those reasons.**

83. Do you think that companies that work in the U.S. and around the world should be able to hide chemical information here that they have given to governmental regulators elsewhere?

**The Lautenberg Act amended Section 14 of TSCA to delineate a process by which to protect, review, and possibly make public chemical information. If confirmed I intend to implement the law as passed by Congress.**

84. In a 2005 U.S. Senate Committee on Homeland Security and Governmental Affairs hearing, President-elect Trump publicly praised asbestos, calling it “the greatest fireproofing material ever made.” Every major independent scientific organization, including the World Health Organization, the International Agency on Research for Cancer (IARC), and others, acknowledges asbestos as a known human carcinogen with no safe level of exposure. The US EPA spent years studying the dangers of asbestos, and ultimately attempted to ban most uses. Just last month, the EPA redoubled its stance on the dangerous nature of asbestos by designating it as a top-ten high-risk chemical for priority TSCA action. If confirmed, will you heed the decades of conclusive science about asbestos or

will you allow the President-elect's personal opinion skew the EPA's actions on asbestos?

**The Lautenberg Act has extensive requirements for risk evaluations and the use of sound science in decisions throughout the chemical review and potential regulatory process. If confirmed I will implement the law following those statutory requirements.**

85. You may be aware that asbestos use has drastically declined among industries that once used it heavily, including the construction and automotive sectors, as those industries began switching to safer substitutes. As a result, one industry now accounts for 90% of all asbestos consumed in the U.S. — the chlor-alkali industry, which uses asbestos diaphragms in its chlorine manufacturing process. The chlor-alkali industry has been the only point of public pushback against an asbestos ban under TSCA, and they have asked the EPA to exempt the chlor-alkali industry's use from any regulation on asbestos. Exempting the primary user from a restriction or ban, of course, would result in negligible impact. Will you commit to ensuring that any regulation or restriction on asbestos does not allow for any exemptions for the chlor-alkali industry or any other industry?

**Asbestos has been identified by the EPA as a high-priority chemical that requires a risk evaluation following the process established by the Lautenberg Act to determine whether conditions of use of the chemical substance pose an unreasonable risk. Prejudging the outcome of that risk evaluation process would not be appropriate.**

86. The EPA promulgated a ban on asbestos in 1989, after a decade of research, risk evaluation, and rulemaking. In 1991, the asbestos ban was overturned by the 5th Circuit Court of Appeals on the grounds that the ban fell short of EPA's requirement to impose regulations that are "least burdensome" to industry. Under the Lautenberg Act reforms to TSCA, the EPA is now empowered to ban and regulate chemicals that are "toxic, persistent, and bioaccumulative," like asbestos, without concern for industry cost or any other non-risk factor. Will you commit to ensuring that industry concerns are not considered during the risk evaluation and rule making processes regarding asbestos?

**The Lautenberg Act requires notice and comment be provided at multiple stages of the chemical review process including prior to publishing a final risk evaluation and through any potential subsequent regulatory rulemaking. This notice and comment is designed to get the input of a wide range of stakeholders to ensure sound and inclusive rulemakings and not to produce or dismiss comments from one particular entity or interest.**



87. On April 9, 2015, you wrote a letter in support of the Lautenberg Act reforms to TSCA. In this letter, you expressed your support for the EPA: "I believe the agency, within the boundaries of its authorities as provided by Congress, serves a valuable mission to protect human health and preserve the environment." During the writing, negotiations, and passage of the Lautenberg Act, Congress — and the sitting President — made explicitly clear their intentions that the newly empowered EPA should swiftly ban asbestos and other deadly toxins. How will you ensure the EPA is able to meet statutory TSCA deadlines set forth by Congress?

**I am committed to implementing the Lautenberg Act as required by law including meeting the statutory deadlines enumerated in the law including the required rulemakings, risk evaluations, and future chemical prioritizations.**

88. In your April 9, 2015 letter in support of the Lautenberg Act reforms, you specifically praised the bill's explicit protection of vulnerable populations, including workers. Asbestos is one of the leading workplace carcinogens, responsible for approximately half of all occupational cancer deaths, according to the World Health Organization (WHO). During 1999 - 2014, the CDC NIOSH National Occupational Respiratory Mortality System (NORMS) database, there were 62,956 Americans who died from mesothelioma and asbestosis. These are just two of many deadly asbestos-related diseases. Given this data and your self-expressed concern for protecting workers, will you commit now to ensuring the EPA bans the import and use of asbestos under TSCA should you be confirmed?

**Asbestos has been identified by the EPA as a high-priority chemical that requires a risk evaluation following the process established by the Lautenberg Act to determine whether conditions of use of the chemical substance pose an unreasonable risk. Prejudging the outcome of that risk evaluation process would not be appropriate.**

89. Your home state of Oklahoma leads the nation in pesticide-related illnesses and deaths. At a time when pesticide/herbicide usage is on the rise across the country, how would you protect American workers, consumers, and landscapes from the toxic effects of agricultural chemicals?

**If confirmed as Administrator, I would faithfully execute the laws administered by EPA. I would expect to be briefed by staff before taking any action on this issue.**

90. What will you do to ensure EPA is conducting a transparent process regarding pesticide regulation? Please specify how you will approach notifying the public regarding pesticides in terms of notice of actions, publication of information (including studies and data) in the dockets, or timely responses to requests under the Freedom of Information Act. If you do not believe in a transparent process, why not?

**If confirmed, transparency and openness will be priorities, and I will work to ensure that the pesticide registration process complies with all public notice and transparency requirements under the law.**

91. In June 2016 the White House Pollinator Health Task Force, which was co-chaired by the EPA, released the Pollinator Partnership Action Plan. Do you support this plan and EPA's role in it? If not, why not? Mr. Pruitt, do you agree that vulnerable populations, like pregnant women, infants, and children, must be specifically considered in the study of the impacts of toxic chemicals on human health? Why is this important?

**I am not personally familiar with the report referenced in this question. In considering the health effects of chemicals, if confirmed as Administrator, I would expect to be briefed by EPA staff before taking action and would work to ensure EPA followed all applicable legal requirements and made its decisions based on sound science. If confirmed, I would also follow legal requirements regarding the use of science and consideration of health impacts on specific subpopulations.**

92. For nearly a decade, a state-permitted coal ash disposal pit in Bokoshe, OK, operated by a company named "Making Money Having Fun," has caused severe air pollution through releases of fugitive dust, which have harmed residents of the town of Bokoshe. Encompassing 458 acres, the Making Money Having Fun pit covers 259 acres of a former coal mine with enough coal ash to fill the 70-foot-deep pit and create a miniature mountain stacked 50 feet high. The site is permitted to rise another 550 feet over the next 20 years. By 2036, the coal ash pit could hold 9.2 million tons of toxic waste. Since 1998, residents have complained about the toxic dust to state regulators. Residents of Bokoshe, particularly children, have experienced extremely high rates of asthma that are linked to high levels of fugitive dust. In addition, residents experience elevated cancer rates that may be linked to the dump site. In 2011, the CBS Nightly News covered the exposure of the community to toxic dust. See <http://abcnews.go.com/US/oklahoma-town-fears-cancer-asthma-linked-dump-site/story?id=13303440>. In 2014, the U.S. Environmental Protection Agency acknowledged that there was a problem with fugitive dust at the site. Ash samples

collected in Bokoshe contained elevated levels of the carcinogens hexavalent chromium and arsenic, among other toxic metals. The Making Money Having Fun pit is not the only unlined coal ash dump in a former mine in Oklahoma. Seven miles west of Bokoshe, in McCurtain, OK, coal ash protrudes like an iceberg from a water-soaked pit. McCurtain residents have complained about dust clouds, spurring two state notices alleging violations — one in 2011 and another in 2015. State records show seven similar coal ash dump sites permitted in the county where Bokoshe is located.

•Did the Oklahoma AG Office ever investigate the Making Money Having Fun pit for environmental violations?

•Did your office take any actions to require Making Money Having Fun to control fugitive emissions at the site?

•As Oklahoma AG, what did your office do to investigate coal ash dumps in Oklahoma for violation of environmental or health standards?

**The matter you reference was handled by Oklahoma's environmental regulators at the Department of Environmental Quality.**

93. Mr. Pruitt, do you believe that all citizens in the U.S. should be equally protected from the threats posed by the dumping of coal ash? Currently, communities near municipal solid waste landfills and abandoned mines where millions of tons of toxic coal ash are disposed are not protected by the new federal coal ash rule. Do you think these communities deserve equal protection from pollution of their air, water and communities from coal ash?

**I do not question the importance of clean air, land, and water, and I believe all Americans should be treated equally under the law.**

94. Mr. Pruitt, do you think it is important for communities to know what hazardous substances are stored and disposed in their neighborhoods? Do you think it is important for citizens to know what hazardous substances are in their drinking water? If so, as head of EPA, will you guarantee that all coal ash permit programs approved by EPA will be as protective as the federal coal ash rule, including requiring communities be kept informed regarding the condition of toxic dumpsites near their homes and the safety of their drinking water?

**As discussed in my testimony, public participation and transparency will be among my priorities if confirmed as Administrator. I do not question the importance of clean drinking water. It would be inappropriate for me to prejudge an issue that may come before me for decision if I am confirmed as Administrator. If the issue comes before me, I will ensure that the issue is**

**fully and fairly considered with input from staff, as part of a transparent process that seeks input from stakeholders, and that is consistent with EPA's statutory authorities, including the coal ash provision in the WIIN Act.**

95. Mr. Pruitt, environmental justice organizations have noted that 70 percent of coal ash dumps are located in low-income, disadvantaged communities. Do you agree that these communities deserve to know if coal ash ponds are leaking toxic substances into their drinking water supplies? Do you agree that these citizens have a right to expect that their drinking water be free of pollution from coal ash impoundments?

**I am not familiar with the reports referenced in the question. As my testimony indicates, if confirmed as Administrator, I will prioritize public participation and transparency. I believe all Americans should be treated equally under the law.**

96. In recent years, spills, leaks and collapses of coal ash impoundments have become a greater and greater hazard to clean water. In fact, more than half of the total toxic water pollution found in America's rivers, lakes and streams comes from such impoundments. Do you believe that coal ash from power plants and other coal-burning facilities should be regulated as a hazardous pollutant, given that its chemical composition includes lead, mercury, cadmium and arsenic? What would you do as Administrator to ensure that the kinds of ash spills recently devastating Kingston, Tennessee and Dan River, North Carolina, never again occur, anywhere?

**I am generally aware that EPA has recently determined that coal ash from power plants should be regulated as a non-hazardous waste under Subtitle D of the Resource Conservation and Recovery Act and supports that decision. I understand provisions of the WIIN Act recently passed by Congress and signed into law provides EPA and states additional authority concerning the regulation of coal ash through permit programs. If confirmed, I will work to ensure this new authority is implemented.**

97. Mr. Pruitt, a growing body of scientific evidence has shown that people living near mountaintop removal coal mines face a number of increased health risks, including greater risk of cancer, birth defects, and premature death. If you are confirmed as EPA Administrator, how would your agency consider these health concerns?

**If confirmed, I would consider human health in accordance with EPA's legal authorities.**

98. Mr. Pruitt, do you believe that the people who live downstream from surface coal mining operations deserve to have their sources of drinking protected from contamination from toxic chemicals such as arsenic, selenium and lead?

**I strongly believe in the importance of safe drinking water, and if confirmed as Administrator, will work to implement EPA's statutory authorities in this regard.**

99. Mr. Pruitt, the Manhattan Project and the Cold War triggered a boom in uranium mining in the United States. Uranium mining was carried out under the 1872 Mining Law, which did not require mining companies to clean up the mines. Abandoned uranium and other hardrock mines litter the West. These abandoned mines leach toxic chemicals, including uranium, radium, radon, and arsenic into surface and ground waters that are sources of drinking water.

•Do you agree that there is insufficient funding to address the huge problem of abandoned uranium and other hardrock mines?

•Do you agree that the 1872 Mining Law must be reformed to provide funding for the cleanup of abandoned mines?

**I have not studied the issue of whether the 1872 Mining Law should be reformed or whether there is sufficient funding to address the cleanup of abandoned mines. I am generally aware of questions about whether current environmental laws inhibit the cleanup of abandoned mines by Good Samaritans, but I would expect to be briefed by staff before considering any actions on this topic.**

100. The EPA is responsible for overseeing the cleanup of some of our nation's most contaminated lands. One such site is the West Lake Landfill, a Superfund site located in Bridgeton, Missouri. This site has been contaminated since 1973 when soils were mixed with residues from the Manhattan Project and used as daily cover in the landfilling operation. Local residents are rightfully concerned and frustrated by delays at the EPA in determining a proper course of action for handling this radioactive waste. In the 114th Congress the Senate unanimously passed legislation that would transfer the remediation authority for West Lake to the Army Corps of Engineers' Formerly Utilized Sites Remedial Action Program (FUSRAP). FUSRAP is already successfully overseeing the cleanup of nuclear contamination at other sites in the St. Louis area. However, as of this moment, the authority over the West Lake site remains with the EPA. Please explain your

views on the EPA's authority and responsibility with regard to the cleanup of Superfund sites.

•If you are confirmed as the next EPA Administrator, would you support transferring the cleanup of sites like the West Lake Landfill to FUSRAP? Why or why not?

•If you support cleanup authority remaining with the EPA, what concrete steps would you pursue as Administrator to ensure that the agency is progressing toward a real solution at the site that protects both the environment and the health of area residents?

**I am not familiar with this particular issue or the legislation that is referenced in the question, but I appreciate the interests that residents have in the efficient operation of the Superfund program and the clean up of contaminated sites in their community. It would be inappropriate for me to prejudge an issue that may come before me for decision if I am confirmed as Administrator. If the issue comes before me, I will ensure that the issue is fully and fairly considered, as part of a transparent process that seeks input from all stakeholders.**

101. Do you believe that if safer technologies or chemicals are available for a facility to use, that could prevent a serious chemical disaster, that the facility should be required to implement them to save lives, prevent injuries of workers, first-responders, and community members, and prevent serious economic damages from a disaster?

**I believe workplace safety is very important and any potential regulatory decisions should be carefully examined through a open and transparent process to ensure facilities are not shifting to new chemicals or technologies that improve safety in one area but shift risks to create new and potentially more serious concerns.**

102. Do you believe that federal agencies like the EPA have an obligation to consult Native American tribes when actions by the agencies could impact tribal sovereignty or the tribal trust relationship?

**Yes, I believe that consultation is a sound practice that should occur whenever possible.**

103. Indigenous communities are consistently targeted for energy extraction, nuclear waste, uranium mining and/or oil and natural gas pipelines. How will you address this moving forward?

**If confirmed as Administrator, I will faithfully execute all laws enacted by Congress imposing obligations on me in this regard. Whenever possible, I will consult with Indian Tribes prior to taking actions that may affect their sovereign interests.**

104. As Administrator, what steps will you take to ensure that EPA and other federal agencies are complying with Executive Order 12989 on Environmental Justice?

**I am not familiar with what steps EPA has or has not taken undertaken to implement this Executive Order. If confirmed, I will work to ensure that EPA complies with all applicable Executive Orders.**

105. In January 2015, EPA issued its final rule under the Resource Conservation and Recovery Act defining what is a solid waste for purposes of ensuring that the recycling of hazardous materials does not increase the risk of harm to people or the environment, known as the "Definition of Solid Waste" or "DSW" rule. As an integral part of the rulemaking on the DSW rule, EPA conducted an environmental justice analysis of the rule's protectiveness for minority and low-income populations. EPA published its detailed environmental justice analysis report on the DSW Rule with the final rule. Will you ensure that EPA conduct detailed environmental justice analysis on all significant rules that may have adverse impacts on minority and low-income populations and publish such reports along with the final rules?

**I am not familiar with the environmental justice analysis referenced in this question. If confirmed, I will work to ensure EPA conducts the required analysis to support its regulatory actions in accordance with applicable statutory requirements and Executive Orders.**

106. There are currently some forty pending civil enforcement actions in which EPA is discussing possible settlement terms or pursuit of litigation. In the past during a transition in power such pending actions have proceeded unimpeded. Will you follow this precedent and let them progress at their own pace or will you intervene? And, if you do opt to intervene on a case-by-case basis, what criteria will you use to determine which enforcement cases go forward and which do not?

**I am unfamiliar with the specific details of the actions referenced in the question. I would expect to be briefed by staff, in consultation with the Department of Justice as appropriate, before taking any action.**

107. Please provide a list of all financial contributors to your attorney general and state senate campaigns, including their total donations and affiliations.

**A full list of contributors to my campaigns for the state senate and attorney general may be found at the Oklahoma Ethics Commission's websites. For state campaign committees from 2002-2014, please use this site: <https://www.ok.gov/ethics/public/candidate.php>. For 2015 to the present, the Commission uses this site: <http://guardian.ok.gov/PublicSite/SearchPages/Search.aspx?SearchTypeCodeHook=1F26BA5E-71EA-48E4-8D50-C1013E9FE0A7>. Attached is a letter from the Oklahoma Ethics Commission regarding materials prior to 2002.**

108. Why did you initially refuse a formal, independent audit of your office's finances from the Oklahoma State Auditor and Inspector as mandated by Oklahoma law? Please provide a copy of the findings of the 2016 audit.

**I did not refuse an audit. I requested that an independent auditor conduct the audit, rather than the State Auditor. The State Auditor ultimately agreed to not participate in the audit, and the audit was completed. The results are publicly available.**

109. Do you know Mr. Fount Holland of A.H. Strategies? If so, what is your relationship?

**I am familiar with Mr. Holland. I have no relationship with him.**

110. Do you know Continental Resources CEO Harold Hamm and if so, what is your relationship with him?

**Yes. Harold Hamm is a friend.**

111. You were a board member of the Rule of Law Defense Fund from November 2015 to November 2016. As a nonprofit, that organization doesn't have to disclose its donors. But the tax filings of the Koch brothers' Freedom Partners Foundation show that it contributed \$175,000 of the group's \$885,000 in 2014, nearly 20



percentage the total. Was the Koch brothers' Freedom Partner's Foundation the largest contributor to the Rule of Law Defense Fund? Did that Foundation have any say with respect to the Fund's activities?

**I have no knowledge of whether the Freedom Partners' donation was the largest contributor to Rule of Law Defense Fund. I have resigned as Chairman and as a board member, and those records are kept by the staff of Rule of Law Defense Fund. RLDF's policies at the time I was a board member were that donors did not have any say with respect to the fund's activities.**

112. The Rule of Law Defense Fund is an affiliate of the Republican Attorneys General Association, which has received more than \$2.25 million in funding from fossil fuel interests since 2015—money that goes primarily to help elect GOP attorneys general, according to an analysis of its activities by the Center for Media and Democracy. What are the fossil fuel-related activities of the Fund? Has the Fund supported or undertaken any public interest or environmental protection activities?

**To my knowledge, RLDF has facilitated policy discussion on a wide range of issues, including many public interest and environmental protection issues, some of which may have some nexus to matters involving fossil fuels.**

113. The Huffington Post reported this week that two election fundraising groups, Oklahoma Strong and Liberty 2.0, both linked to you spent at least \$637,034 since the start of 2015, even though you couldn't run for re-election as Oklahoma attorney general. These groups disbursed an average of roughly \$26,543 per month, both of which announced plans last week to shut down. Would you describe for the Committee where these funds went? Is the Huffington Post's characterization that these funds money went to consultants and travel correct? And what were the specific activities conducted with these funds?

**I do not have any knowledge of where remaining funds from Oklahoma Strong PAC or Liberty 2.0 went after the entities closed. Both entities are managed by a staff and decisions are made independently of me.**

114. Has Oklahoma Strong or Liberty 2.0 taken money from the fossil fuel industry?

**This question would have to be directed to those that operate those entities.**

115. Has any of the special interest money gone to other Attorneys General that may or may not sue the EPA if you are confirmed?

**Without additional context to help me understand your question, I cannot answer it.**

116. Has any of this special interest money gone to any member of the EPW Committee that will vote on your confirmation and serve as your oversight committee in the Senate if you are confirmed?

**Without additional context to help me understand your question, I cannot answer it. In any event, I have no knowledge of the fundraising activities of the members of this committee.**

117. Before being confirmed, will you disclose who has contributed to the Oklahoma Strong PAC and Liberty 2.0 Super PAC?

**I do not personally have records of who has contributed to Oklahoma Strong PAC or Liberty 2.0 Super PAC. That information is publicly available on campaign finance reports, and in the possession of the staff of those entities.**

118. Please provide the dates and the name of every event you attended as attorney general that was hosted by energy companies, energy representatives, energy lobbyists, or political action committees (PACs) that have energy donors.

**Please see attached list.**

119. For each listed matter in which the State of Oklahoma has been a litigant or petitioner against the EPA, please provide any and all documents (including any and all written or electronic correspondence, audiotapes, electronic records, videotapes, photographs, telephone messages, voice mail messages, e-mails, facsimiles, daily agendas and calendars, information about meetings and/or discussions, whether in-person or over the telephone, agendas, minutes and a list of participants for those meetings and/or discussions, and transcripts and notes of any such meetings and/or discussions) from the date on which your office first began to prepare the litigation at hand, to the date of this letter, between you (or other employees of your office) and each representative of each non-

governmental entity with whom you (or your office) communicated about the litigation.

**In order for you to receive a comprehensive response to a voluminous request of that nature, I would direct you to make a request of the Oklahoma Attorney General's Office under the Oklahoma Open Records Act.**

120. Of the total outlays from the Attorney General's office during your tenure, what percentage of your office's expenditures in Oklahoma went toward suing the federal government or challenging federal regulations?

**My understanding is that less than one percent of the Office of the Attorney General's budget has been for litigation involving legal challenges to federal actions.**

121. How many legal cases did your predecessor bring against industry in Oklahoma or other states for violating federal or state environmental protections? How many similar cases have you brought during your tenure? Please identify each such case brought under your tenure, the nature of the violation alleged, and the result achieved, including any penalties assessed and collected.

**I do not know how many cases were brought by my predecessor. The Department of Environmental Quality is primarily responsible for implementing and enforcing environmental laws in Oklahoma. The Office of Attorney General has historically had a limited role, compared to the Department of Environmental Quality, in litigating environmental enforcement cases. Information about environmental cases attorneys in my office have litigated during my tenure is included in this response.**

122. Do the Oklahoma Strong PAC and Liberty 2.0 Super PAC continue to operate from your state campaign headquarters in Tulsa? What is your connection to either of these political action committees? Do any of your former campaign employees work for either of these political action committees, if so, who and for what period of time?

**It is my understanding that both entities have been wound down. I previously served as Honorary Chairman of Oklahoma Strong PAC, I have not served in any similar role with Liberty 2.0. My understanding is that there have been common vendors between Oklahoma Strong PAC and my previous campaigns, but I am not personally aware of any contracts those**

**vendors might have with the PACs, so your question regarding the details of any such relationships would need to be directed to the PACs or the vendors.**

123. How much money have fossil fuel interests given to the Republican Attorneys General's Association during the duration of your service in the leadership of that organization?

Other issues

**Records of fundraising for that organization are kept with the staff of the Republican Attorneys General Association, and are also disclosed on campaign finance reports filed by that entity. I am not aware how much money has been donated to RAGA or from whom.**

124. At a time of state budget cuts in Oklahoma, why did the attorney general's office expenditures increase from \$28 million to \$37.5 million under your leadership?

**The budget cuts you refer to relate to reductions in the appropriations that each agency receives from the Legislature. I believe the Office of Attorney General has seen its appropriation from the Legislature cut every year since 2014, culminating in an appropriation of \$0 this last fiscal year. What can lead to confusion is the fact that the appropriation from the Legislature makes up only a portion of the Office of Attorney General's budget, and the Office's budget and expenditures can fluctuate greatly year over year depending on the timing of case settlements and related distributions. For example in fiscal year 2014, the Attorney General's Office distributed higher than normal case settlement funds that inflated the budget over typical levels. Conversely, that total came down in fiscal years 2015 and 2016. Thus, fluctuations such as the one assumed by your question do not accurately reflect the size of the Office's budget. In my tenure as Attorney General, the Oklahoma Office of the Attorney General streamlined legal services for dozens of agencies, returned \$29 million to the General Revenue Fund, distributed mortgage settlement restitution funds to impacted citizens, strengthened tobacco enforcement, and led the Office in such a fiscally responsible manner that the Office was able to forego all \$6.4 million in state-appropriated operating funds for fiscal year 2017--that in addition to the Office having its annual appropriation cut in every prior year. The Office of Attorney General was the only state agency to voluntarily do this. During my tenure, the Office assumed the statutory duties of the Human Rights Commission through our Office of Civil Rights Enforcement, strengthened tobacco settlement enforcement efforts, and launched the Solicitor General's Unit. The Office also increased by one third the number**

**of agencies, commissions, or boards which it represents. This has led to a precipitous decline in state agency usage of costly private counsel. It is these and other efforts that have permitted the Office to contribute approximately \$29 million to the General Revenue Fund over the last six years.**

125. Do you think the upwind or upstream states of Oklahoma would be willing to impose more stringent environmental protections because of the adverse impacts certain activities in their state might have on Oklahomans? Have they ever done so on their own?

**The Department of Environmental Quality has primary responsibility for implementing and enforcing environmental laws in Oklahoma. As Attorney General, I do not have responsibility or authority for setting environmental policy for the State and do not have the specific information at issue in this question.**

126. Do your views on federalism expand beyond the EPA? For example, were you against the recently passed legislation that pre-empted states from labeling GMO foods? If not, why not?

**I did not have an opinion on the GMO labeling legislation, however, I view that it is a similar matter to the Lautenberg Act reforms to TSCA which we supported despite its pre-empting state regulation, because it provides certainty nation-wide to regulations and often a consensus federal standard.**

127. You campaigned in 2010 against a "one-size-fits-all strategy" towards environmental protection. That phrase is sometimes used to imply that whether American children should be adequately - or inadequately - protected against poisonous air, water and food should be based on the political jurisdiction in which they happen to live. Is that what you meant - that air and water health standards should vary from state to state? Do children's hearts or senior's lungs vary in their vulnerability to pollution between Oklahomans and Californians? Do you accept the premise at the heart of the Clean Air and Clean Water Acts that every American, wherever they live, should have a science based, legally guaranteed right to clean air, pure water and healthy food? Or do you think these decisions should be made by local politicians based on interest group lobbying?

**I strongly believe in the importance of clean air, water, and land. Many of the environmental laws passed by Congress, including the Clean Air Act, are based on a framework of cooperative federalism by which states**

**administer programs authorized or delegated by EPA in order to implement these authorities. If confirmed, I will support open and transparent regulatory processes and base decisions on sound science in accordance with EPA's legal authorities.**

128. How do you plan to consider costs in reviewing national ambient air quality standards? Do you agree with Justice Scalia's opinion in *Whitman v. American Trucking Associations* that it is "fairly clear that [the Clean Air Act] does not permit the EPA to consider costs in setting the standards."

**I agree that the Supreme Court's decision in *Whitman v. American Trucking Associations* confirms that the Clean Air Act does not allow the Administrator to consider costs in setting the NAAQS.**

129. Do you believe that economic or cost-benefit analysis should ever be used to decide how much toxic pollution children should breathe or drink; how many lives EPA should save; how many children should get cancer or asthma just because they live near a polluting factory?

**As I stated in my testimony, I fundamentally believe in EPA's core mission of protecting the American people. Environmental statutes, such as the Clean Air Act and the Clean Water Act, prescribe certain instances where a cost-benefit analysis may be considered in a rulemaking. If confirmed, I commit to fully carry out EPA's core mission and follow the law as provided by Congress.**

130. Every year during your tenure as Oklahoma Attorney General, the American Lung Association gave Oklahoma counties a failing grade for not meeting ozone air pollution health standards. In fact, your home town of Tulsa is ranked 18th out of 228 metropolitan areas for high alert ozone days. Are you concerned about the impacts of soot and smog pollution on Oklahoma citizens? What efforts have you undertaken as Oklahoma Attorney General to protect Oklahomans from soot and smog pollution?

**While I am concerned about children's health, matters of the sort you reference would be handled by Oklahoma's environmental regulators at the Department of Environmental Quality and the Oklahoma Water Resources Board.**

131. If confirmed, do you commit to protecting scientific research conducted and funded by the EPA? Will you continue EPA's long-standing practice of protecting the confidentiality of health records of individual patients that participate in scientific studies?

**If confirmed, it will look forward to working with EPA's scientists and the thousands of other public servants at EPA. If confirmed, I would expect to learn more about the existing practice and relevant legal authorities concerning the confidentiality of scientific data before taking action.**

132. Do you agree with this statement from NASA: "97 percent or more of actively publishing climate scientists agree: Climate-warming trends over the past century are extremely likely due to human activities." If not, please explain why you do not agree.

**I have no reason to disagree with NASA's statement, although I have not made any attempt to independently verify its accuracy.**

133. Please provide a list of all the cases, briefs and other legal actions that your office has filed while you have served as attorney general.

**Please see attached list.**

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

**Enclosed is a list of the relevant cases. The relevant court opinions, judgments, or orders are the best source of information about how these cases were disposed.**

135. It is my understanding that you currently have nine cases pending against the EPA on behalf of the State of Oklahoma. Is this correct? Will you recuse yourself from participation in these cases if you are confirmed? If not, why not? Will you recuse yourself from settlement discussions? If not, why not? Will you recuse yourself from decision making on altering or revising the regulations that are impacted by these pending cases? If not, why not? What are the recusal requirements of the Oklahoma Bar Association governing similar situations?

**Please see attached list of cases. Immediately upon my nomination, I was walled off from all involvement in any litigation or other matters the State of Oklahoma is pursuing involving the EPA. I have disclosed relevant matters to the Office of Government Ethics and EPA ethics officials. As EPA Administrator I will recuse from participation in litigation in matters in which I represented the State of Oklahoma, unless I receive informed consent from the State of Oklahoma and the permission of relevant federal ethics officials. It is my understanding that recusal obligations do not extend to regulatory rulemaking of general applicability, which does not create a conflict under applicable rules.**

136. If confirmed, do you plan on proposing or advocating for budget cuts to the EPA's FY 2018 budget? If so, in which programs would you reduce funding? Would you target the EPA's research programs? Are there areas of agency action where you believe additional financial resources are needed?

**I have no first-hand knowledge of EPA's development of its FY 2018 budget request. If confirmed, I will work to ensure that the limited resources appropriated to EPA by Congress are managed wisely in pursuit of that important mission and in accordance with all applicable legal authorities.**

137. It is my understanding that prior to you taking office, there was an Environmental Protection Unit within the Oklahoma Attorney General's office. Is that correct?

**The Oklahoma Department of Environmental Quality is the State agency responsible for implementing and enforcing environmental laws in Oklahoma.**

138. It is my understanding that after you took office, the Environmental Protection Unit within the Oklahoma Attorney General's office was eliminated. Is that correct? Can you explain why the work of this unit was discontinued? Did the work continue in another section of your office? If so, who continued to do that work and for what period of time?

**My office continues to employ attorneys vested with responsibilities related to environmental protection, including the attorney who served as the lead attorney on the previous attorney general's "environmental protection unit." That attorney's responsibilities remain unchanged (he has been promoted, in fact), and he pursues exactly the kind of cases that he pursued under the previous attorney general. The only thing that changed was the internal**



organization of the attorneys vested with those responsibilities, because I concluded (consistent with the practices of every attorney general in the State's history but for my immediate predecessor) that it was not operationally efficient to have a separate unit for such work. Thus, I chose to house that work in the Office's Public Protection Unit and then later in the Solicitor General's Unit. As I explained in my testimony to the committee, my office continues to pursue environmental cases. I do not possess lists of cases pursued by my predecessor so I cannot provide the comparative that you request. I am aware that many environmental cases take many, many years to litigate to completion, so some of the actions that my Office continues to pursue were initiated prior to my taking office. Please see attached list of cases.

139. In your cases against the EPA's Mercury and Air Toxics Rule, who served as your scientific advisor for the case?

**The Office of Attorney General does not have a science advisor.**

140. Please provide your definition of cooperative federalism.

**Cooperative federalism occurs when the federal government works cooperatively with state and local governments to address issues of national concern. Federalism is not cooperative when the federal government mandates or coerces state and local governments into effectuating federal policies.**

141. Provide examples of times the EPA has intervened and required a state to do more than the state intended and you supported the EPA's actions.

The water quality crisis in Flint is one where EPA should have acted faster in accordance with its legal authorities in consultation with the State.

142. You are quoted in an interview this past November saying "we hope there is going to be regulatory rollback...Well when you look at the EPA, and the role it's played over the last several years, there's going to be substantial change in that agency." Which EPA regulations do you believe should be rolled back? What changes do you believe should occur in the EPA? Which EPA regulations should be maintained?

**Based on the limited information provided in the question, I am uncertain what interview it is referring to. However, if confirmed as Administrator, I**

**will take my responsibility to protect human health and the environment for all Americans with the highest possible dedication and commitment. The actions undertaken by the Office of Attorney General challenging certain EPA regulations have been because EPA exceeded its legal authorities as established by Congress and interpreted by the courts. Regulations that are not on solid legal foundation and that cannot survive judicial review will not result in environmental protections.**

143. In your testimony before the Senate Environment and Public Works Committee in May 2015, you stated that the EPA "has played an important role in addressing water and air quality issues that transverse state lines." Since you became attorney general, hasn't your state sued against EPA regulations that address cross-state air and water pollution? What are the most significant sources of interstate pollution and what are the most important actions the EPA can take to address them?

**As my testimony indicates, I firmly believe that the EPA plays an important role in addressing interstate water and air quality issues, but it must do so within the bounds of its legal authority. The actions undertaken by the Office of Attorney General challenging certain EPA regulations have been because EPA exceeded its legal authorities as established by Congress and interpreted by the courts.**

144. Do you believe the EPA has, in your words "exceeded the constraints placed upon the agency by Congress" by issuing the Mercury and Air Toxics Rule? If so, please explain.

**Based on the limited information in the question, the source or context of the quote to which the question refers is not readily apparent. Twenty one states filed a petition with the Supreme Court to review EPA's Mercury Air Toxics Standards. The Supreme Court held that the EPA was required to consider costs as part of its decision whether to regulate power plants under section 112. I agree with the Supreme Court's conclusion.**

145. Do you support states taking further public health protective actions beyond those required by EPA regulations?

**Yes—if authorized under the law and not preempted or displaced by federal law.**

146. Do you agree with the EPA's legal interpretation of the Clean Water Act and share the view the agency has federal jurisdiction over wetlands and streams that impact the health of downstream navigable waters? If you do not agree, please explain.

**The EPA takes a broader view of its jurisdiction under the Clean Water Act than the question suggests. A federal court appeals has held that the EPA's interpretation of its jurisdiction under the Clean Water Act is likely unlawful. I agree with that court's conclusion.**

147. Would you explain the basis for your recent challenges to EPA's finding that it is appropriate and necessary to regulate the emissions of carbon dioxide and hazardous air pollutants from power plants?

**The particular matters being asked about are unclear from the limited information in the question. As discussed in response to Questions 27 and 35, the state of Oklahoma, along with many other states, filed petitions for review challenging EPA regulations in matters where EPA has exceeded its statutory authority as established by Congress and interpreted by the courts. The standard for regulating under section 111 of the Clean Air Act is whether in the Administrator's judgment a category of sources "causes, or contributes significantly, to air pollution which may reasonably be anticipated to endanger public health or welfare." The standard for regulating under section 112(n) of the Clean Air Act is if "the Administrator finds such regulation is appropriate and necessary after considering the results of the study required by this subparagraph." The briefs filed by the state petitioners are the best statements of the legal arguments being made and speak for themselves.**

148. As attorney general, what types of environmental justice cases have you pursued? Please provide a list of cases and outcomes. What is your view of EPA's mission in regard to environmental justice?

**As discussed elsewhere in these responses, the Oklahoma Department of Environmental Quality is the state agency with primary responsibility for implementing and enforcing environmental laws in Oklahoma. As I testified, I believe the Administrator plays an important role regarding environmental justice. Attached is a list of environmental cases brought under my tenure.**

149. In a 2013 press statement, you stated “the evidence is clear that the current ethanol fuel mandate is unworkable.” Would you explain what you meant at this time?

**Based on the limited information in the question, the context of the quote referenced in the question is not readily apparent. If confirmed, my duty as EPA Administrator would be to enforce the laws passed by this body.**

150. In your joint brief against the Mercury and Air Toxics Standards, it stated “human exposure to methylmercury resulting from coal fired EGUs (Electric Generating Units) is exceedingly small.” What is the scientific basis for this statement? Do you continue to agree with this assessment?

**Based on the limited information in the question, the source or context of the quote to which the question refers is not readily apparent. Twenty one states filed a petition with the Supreme Court to review EPA’s Mercury Air Toxics Standards. The legal question in that case was a narrow one focused on whether EPA was required to consider costs before it imposed regulations on power plants under section 112 of the Clean Air Act.**

151. The EPA is responsible for administering two of the nation's most important infrastructure investment programs- the Clean Water and Safe Drinking Water State Revolving Loan Funds (SRFs). Unfortunately, water and sewer infrastructure in this country continues to deteriorate and investment is sorely needed. The American Society of Civil Engineers rates our wastewater and drinking water infrastructure a “D.” If confirmed, what will you do to ensure that the federal government is adequately investing in our nation’s wastewater and drinking water infrastructure?

**If confirmed, I will continue support for the Clean Water State Revolving Loan Funds and the new Water Infrastructure Financing Innovation Act loan program. In addition, I would continue to implement EPA’s Integrated Planning Framework to provide municipalities with flexibility to prioritize actions they take to come into compliance.**

**Senator Duckworth:**

1. During your confirmation hearing, we discussed the ongoing petitions requesting EPA initiate a rulemaking to reconsider or change the regulations identifying refiners and importers of gasolines and diesel fuel as the entities responsible for complying with the annual percentage standards adopted under the Renewable Fuel Standard (RFS) program. I am specifically concerned with harmful proposals to move the point of obligation from refiners and importers to entities that blend renewable fuel into transportation fuel. Moving the point of obligation from refiners to blenders would disrupt a component of the RFS program that has worked well for the past 10 years. This harmful proposal is opposed by a broad range of stakeholders, including organizations that represent blenders, and it would undermine Congress' goal in creating the RFS program by likely decreasing the production, distribution and use of renewable fuels in the United States.

- If confirmed as EPA Administrator, will you commit to denying any petition requesting EPA change the RFS point of obligation, including requests to move the point of obligation from refiners to blenders?
- Please provide all statements you have made, whether in writing or verbally, expressing your view on the RFS point of obligation.

**As I indicated in my testimony, the EPA's RIN framework is currently the subject of a pending notice-and-comment rulemaking. If confirmed as Administrator, I would take care to administer the RFS program, including the RIN framework, in accordance with Congress's statutory objectives, and based on the evidence in the EPA's administrative record, as well as the expertise of EPA staff and the expertise of other federal agencies relevant to the RIN framework and affected markets. The EPA already has entered into a "memorandum of understanding" with the CFTC, "on the sharing of information available to EPA related to the functioning of renewable fuel and related markets."**

**Senator Gillibrand:**

1. Assuming that costs should be considered in rulemakings, do you believe that externality costs – for example costs to society from impacts of a pollutant -- should be considered in addition to the financial costs of compliance?

**As I stated at the hearing, costs are important in the rulemaking process and the Courts have recognized that important factor. Environmental statutes, such as the Clean Air Act, prescribe when costs should be considered in a rulemaking. If confirmed, I commit to fully follow the law as provided by Congress.**

2. New York has the toughest acid rain regulations for power plants in the nation, but the acid rain that has affected the Adirondacks is predominately caused by emissions from Midwestern coal-fired power plants. The scientific data collected as part of a long-term and robust acid rain monitoring program of Adirondack lakes and streams provides the evidence that the sulfur dioxide trading program under the Clean Air Act has been a cost effective method to reduce sulfur dioxide from the atmosphere. This regulatory strategy was implemented without a detrimental economic effect. Is the regulatory strategy outlined above: strong federal standards coupled with even stronger state standards an example of the “meaningful role” you envision for EPA and the “useful role of the states?”

**As I stated at the hearing, costs are very important in the rulemaking process and the Courts have recognized that important factor. Environmental statutes, such as the Clean Air Act, prescribe when costs should be considered in a rulemaking. If confirmed, I commit to fully follow the law as provided by Congress.**

3. EPA promulgated the Cross State Air Pollution Rule (CSAPR) in 2011 and an update to the rule in September 2016. How will you implement CSAPR and the update rules?

**The Cross-State Air Pollution Rule is a regulation that is currently in effect and, as such, constitutes a binding regulation. So long as that rule remains in force, I will faithfully execute the law and enforce obligations under it.**

4. What strategy will you pursue to ensure upwind emissions do not affect the ability of downwind states to meet air quality standards, per Section 110(a)(2)(D) of the Clean Air Act?

**As I stated in my testimony before the Committee, I agree that the Clean Air Act gives EPA an important role in addressing interstate pollution issues, among many other things. If I am confirmed as Administrator, I will exercise my authority in this area consistent with Congress's intent in enacting the Act. Specifically with respect to Section 110(a)(2)(D) and the "good neighbor" obligations of Section 110, I intend to engage in a transparent process that will allow states to have a meaningful opportunity to understand their obligations with regard to reducing emissions that cause or contribute to nonattainment or interference with maintenance in other states through the SIP process and to act consistent with my authority under Section 110(c) if states fail to do so.**

5. What is EPA's role in resolving disputes regarding the transport of pollutants between states?

**As I stated in my testimony before the Committee, I agree that the Clean Air Act gives EPA an important role in addressing interstate pollution issues, among many other things. I strongly believe in states working collaboratively to address crossborder environmental challenges and did so when I was the Attorney General of Oklahoma, including negotiating a historic agreement with my Democratic counterpart in the State of Arkansas to reduce pollutants into the scenic Illinois River. As Administrator, I intend to provide assistance to states as they work collaboratively in these issues. Where the Act contemplates a more direct role for EPA, such as with respect to Section 110(a)(2)(D) and the "good neighbor" obligations of Section 110, I intend to engage in a transparent process that will allow states to have a meaningful opportunity to understand their obligations with regard to reducing emissions that cause or contribute to nonattainment or interference with maintenance in other states through the SIP process**

6. What specific actions have you taken as Oklahoma Attorney General to protect Oklahoma's children from exposure to air pollution?

**While I am also concerned about children's health, environmental regulation in Oklahoma is the responsibility of Oklahoma's environmental regulators at agencies like the Oklahoma Department of Environmental Quality. That agency would likely be better situated to answer your question by actions taken by the State with regard to air pollution.**

7. Does state sovereignty include a state's authority to combat impacts to air and water from pollution generated in other states?

Yes.

8. The EPA Clean Air Science Advisory Committee currently fills a role that The Clean Air Act requires; this role is that of an independent scientific committee to advise the Administrator regarding any possible revisions to the national standards (NAAQS). That advisory committee has stated on record that the ozone NAAQS should be more protective than the current standards. Will you follow the advice of the advisory committee as Administrator?

**I agree that the Clean Air Act assigns the advisory committee a role in advising the Administrator regarding the promulgation and revision of NAAQS. If confirmed as Administrator, I will follow a transparent process that is legally and scientifically sound in all NAAQS decisions, including consideration of the views of the advisory committee.**

9. What role will the opinions of that advisory committee play in any decision-making you might have to do regarding review of and revisions to the NAAQS?

**I agree that the Clean Air Act assigns the advisory committee a role in advising the Administrator regarding the promulgation and revision of NAAQS. If confirmed as Administrator, I will follow a transparent process that is legally and scientifically sound in all NAAQS decisions, including consideration of the views of the advisory committee.**

10. In the April 22, 2016 State Petitioners' Opening Brief that you signed seeking to vacate EPA's primary NAAQS of 70 ppm, you wrote that "that EPA must consider the burden of a NAAQS." What did you mean by the burden of a NAAQS?

**The Clean Air Act requires the Administrator to establish NAAQS that protect public health and welfare from adverse effects, allowing an adequate margin of safety, and to revise those standards as appropriate. This includes establishing NAAQS at a level that is "requisite," which the Supreme Court has interpreted as being neither more nor less stringent than necessary to protect public health. The State Petitioners' Opening Brief, particularly in Section II of the Argument portion, the part of the brief to which the quotation in your question is relevant, argues that the ozone NAAQS is arbitrary and capricious because it fails to interpret the Act in a manner that ensures the standard is "requisite." As I have explained elsewhere in my testimony to the Committee and in response to the Committee's written questions, all legal positions that I took in my capacity as Attorney General for the State of Oklahoma were in an advocacy**



**capacity. If confirmed as Administrator, I will consider all matters presented to me with an open mind and will work to reach conclusions that are reflected in the administrative record of each matter and that comport with Congress's intent in enacting the Act.**

11. What is the burden on individuals who are exposed to, and suffer health effects from, air pollution if NAAQS are not strong enough to protect public health?

**The Clean Air Act requires the Administrator to establish NAAQS that protect public health and welfare from adverse effects, allowing an adequate margin of safety, and to revise those standards as appropriate. Individuals exposed to pollutant concentrations that are above the NAAQS may suffer adverse health effects, the specifics of which vary depending on the pollutant at issue.**

12. How will you take into consideration the cost of pollution on human health when taking regulatory action?

**As I stated in my testimony, if confirmed, my primary goal would be to protect the American people through lawful regulations. I also indicated at the hearing that costs are very important in the rulemaking process and the Courts have recognized that important factor. I understand environmental statutes, such as the Clean Air Act and Clean Water Act, prescribe when costs should be considered in the rulemaking process. If confirmed, I commit to fully follow the law as provided by Congress.**

13. New York is very concerned with the interstate transport of ozone and particulate matter, which cause death and illness in our state and damages our natural resources, but also interferes with New York's ability to meet its legal obligation to attain the national standards set by EPA. Can ground-level ozone or its precursor, nitrogen oxides, can be generated in one state and reduce air quality in another state?

**Yes.**

14. Can fine particulate matter or its precursors, nitrogen oxides and sulfur dioxide, be generated in one state and reduce air quality in another state?

**Yes.**

15. EPA's regulatory impact analysis enumerated numerous important categories of mercury benefits that the agency found couldn't be monetized, such as the impacts of mercury on non-IQ neurological impacts (including developmental

delays, effects on attention/behavior, effects on motor skills, effects on memory); cardiovascular impacts; genotoxic, immunologic, and other toxic effects.

- Do you agree that mercury has these impacts?
- Do you agree that the benefits of reducing these impacts are valuable?
- Do you think that avoided harms, like reducing childhood development delays, need to be monetized to count as part of a cost-benefit analysis?
- Do you agree that consideration of a monetized cost-benefit analysis that does not include these benefits because they cannot be monetized is an incomplete picture of the costs and benefits of reducing mercury emissions?

**I agree that as Administrator, it is appropriate to consider both the monetized benefits of regulation and benefits that cannot be monetized. Likewise, where appropriate in light of Congress's intent in enacting each Clean Air Act provision, I agree that it is appropriate to consider both the monetized costs of regulation and any other negative impacts, regardless of whether those can be monetized. If I am confirmed as Administrator, I will exercise my authority consistent with Congress's intent in enacting the Act.**

16. In your comments at the EPW nomination hearing, you claimed that your challenges to the mercury standards were entirely procedural in nature.

- In your brief challenging the original mercury standard, you asserted that “the record does not support EPA’s findings that mercury, non-mercury HAP metals, and acid gas HAPs pose public health hazards.” Explain how this is a procedural claim.
- In your brief challenging the original mercury standard, you asserted that “EPA’s EGU MACT standards are unlawful under §112(n)(1)(A).” Explain how this is a procedural claim.
- In signing the original petitioners’ brief, were you just advocating for a client? Or do you continue to believe all the positions argued in the original petitioners’ brief are correct?
- In your brief challenging EPA’s supplemental finding, you asserted that “EPA must consider costs in relation to benefits to justify its ‘appropriate and necessary’ determination.” Explain how this is a procedural claim.
- In your brief challenging EPA’s supplemental finding, you asserted that EPA’s “‘alternative’ benefit-cost approach is also invalid because it is based on the ‘Co-Benefits’ of reducing pollutants other than HAPs.” Explain how this is a procedural claim.
- In your brief challenging EPA’s supplemental finding, you asserted that “EPA’s refusal to consider alternative control strategies and all relevant costs, is contrary

to the statute and the Supreme Court's direction." Explain how this is a procedural claim.

**In my testimony, when I stated that Oklahoma's challenges were procedural in nature, I was referring to whether EPA acted consistent with law and the record in following the procedure set forth for regulating electric utility steam generating units under Section 112(n) of the Act. That procedure required EPA, taking into account certain information, to determine whether regulating the sources under Section 112 is appropriate and necessary.**

17. When filing briefs for Oklahoma in the Mercury and Air Toxics Standard litigation, Clean Power Plan litigation, and other litigation against EPA that you joined as Attorney General, were you just advocating for a client? Or do you continue to believe all the positions argued in your briefs are correct?

**As I stated in my testimony to the committee, all legal positions that I took in my capacity as Attorney General for the State of Oklahoma were in an advocacy capacity. If confirmed as Administrator, I will consider all matters presented to me with an open mind and will work to reach conclusions that are reflected in the administrative record of each matter and that comport with Congress's intent in enacting the Act.**

18. The Great Lakes Restoration Initiative (GLRI) was launched in 2010 to accelerate efforts to protect and restore the largest system of fresh surface water in the world — the Great Lakes. EPA is a critical member and lead of the GLRI Task Force and Regional Working Group. This coordination in partnership with the states has produced unprecedented results, with GRLI resources funding over 2,000 projects to improve water quality, protecting and restoring native habitat and species, preventing and controlling invasive species, and addressing other Great Lakes environmental problems. Under your leadership, will the GLRI continue to be a top priority?

**If confirmed, I will continue EPA's support for the Great Lakes Restoration Initiative, which was formally authorized by Congress in December 2016.**

19. Will you support an annual appropriation of at least \$300 million for the Great Lakes Restoration Initiative?

**I note that \$300 million has been the annual appropriation for the Great Lakes Restoration Initiative for the past several years, even though the prior Administration proposed to cut that funding to \$250 million. Three hundred**

**million also is the Congressional authorized level of funding. If confirmed, I will take into account that funding history and Congressional authorization when making recommendations to the Office of Management and Budget regarding EPA's appropriations.**

20. New York is suffering from infestations of invasive species such as the emerald ash borer and zebra mussel, which have large impacts in the state. EPA has been an important ally in our efforts, and has a number of programs that fight invasive species. What is your view on EPA's role in fighting invasive species, and do you believe EPA should commit more resources, fewer resources, or about the same amount of resources to this issue?

**I am not aware of the state of invasive species in New York. If confirmed, I would expect to be briefed by staff on this issue before taking any action consistent with EPA's legal authorities.**

21. Does climate change have an impact on the spread of invasive species, such as the emerald ash borer, in New York State?

**I am not familiar with the state of invasive species in New York.**

22. Should states continue to have the sovereign authority to set their own ballast water discharge standards to protect the environment from the spread of invasive species?

**The issue of federal preemption of state ballast water discharge regulations is a question for Congress, not the Administrator of the EPA. If confirmed, I will carry out the authorities granted to EPA by Congress.**

23. Approximately 200 miles of the Hudson River are classified by the EPA as one of the largest Superfund sites in the country when 1.3 million pounds of PCBs were discharged by two General Electric plants into the Hudson River over a 30-year period. The EPA has required targeted dredging between 2009 and 2015. Last year, the Commissioner of the New York State Department of Environmental Conservation repeatedly advised the EPA of the State's concerns that EPA's remedy for the Hudson River left in place substantial levels of PCB contamination. The EPA is slated to release its five-year review of the project this spring. Independent and objective quantitative analyses are essential in order to determine whether the remedy is protective of human health and the environment. Will you agree to work with New York State to evaluate the sufficiency of the remedy selected in the EPA's Record of Decision?

**I appreciated hearing about this Superfund site in our meeting and your staff followed up with us concerning the consent decree in this situation. If confirmed, I intend for EPA to work collaboratively with New York State to assess the sufficiency of the remedy. I understand that EPA intends to provide data and analysis related to a review of the remedy to the site related to all stakeholders, including New York, federal partners, and the environmental community. I also understand the State and other stakeholders will have the opportunity to present information to EPA through that process. I confirmed, I would work to ensure that EPA's decision will be informed by such information provided through such process.**

24. With regard to the Hudson River, will you thoroughly quantify the trends based on all available fish, water, and sediment data and make reasonable and conservative assumptions regarding future trends?

**I believe EPA actions should be based on sound science and taken in accordance with applicable statutory requirements, including consideration such as those you identify.**

25. As of 2014, New York had the third largest number of Superfund sites among all states, with 87 sites. One in four Americans lives within three miles of a contaminated disposal site that poses serious risks to human health and the environment. In recent years, EPA has allocated approximately \$250 million per year for Superfund cleanup. The agency estimates that much greater amounts – from \$355 million to over \$600 million per year – will be needed in the future. What changes should be made to the Superfund statute to help facilitate these important clean-up projects?

**If confirmed, I would expect to prioritize the cleanup of contaminated land. Prior to suggesting any legislative proposals, I would expect to be briefed by staff and to receive the views of relevant stakeholders on ways to improve the operation of the Superfund program, including any changes to its statutory authority, if confirmed.**

26. Do you support restoring the tax on petroleum products that funded the Superfund trust fund, but was discontinued in 1995?

**This is a matter for Congress to decide.**

27. What would you do, if confirmed, to facilitate and improve Superfund clean-ups in the absence of new legislation?

**If confirmed, I would expect to prioritize the cleanup of contaminated land. I would also expect to be briefed by staff and to receive the views of relevant**

**stakeholders on ways to improve the operation of the Superfund program, absent new statutory authority, if confirmed. I also understand the Government Accountability Office and the EPA Inspector General also regularly review the operation and activities of the Superfund program, and I would expect to look to their recommendations for additional areas for improvement, if confirmed.**

28. The EPA's Brownfields Program provides grants and technical assistance to assess, clean up, and reuse contaminated properties. Cleaning up and reinvesting in brownfields protects human health and the environment, reduces blight, and takes development pressures off agricultural and other working lands. Through fiscal year 2013, on average, \$17.79 was leveraged for each EPA Brownfields dollar and 7.3 jobs leveraged per \$100,000 of EPA brownfields funds expended on assessment, cleanup, and revolving loan fund cooperative agreements. Unfortunately, only about 1/3 of all applicants to the program are successful. Do you support expanding the resources for the Brownfields Program to adequately support these communities in need?

**I am aware EPA's Brownfields program has enjoyed bipartisan support in Congress. If confirmed as Administrator, I expect cleanup of contaminated land to be among my priorities and to be briefed by staff about the Brownfields programs activities and resources before taking any action.**

29. In 2005, New York State, Connecticut, and the EPA and Army Corps reached an agreement to eliminate or reduce the amount of dredged sediment dumped in the open waters of Long Island Sound. The New York State Department of Environmental Conservation and Department of State have repeatedly urged the EPA and Army Corps not to move forward with the permanent designation of an open water dumping site in Eastern Long Island Sound, raising concerns that the sediment has not been properly tested and could negatively impact the economic and environmental state of Long Island Sound, which was designated in 1987 by Congress as an Estuary Of National Significance. Will you work to enforce NYS's right to protect Long Island Sound from additional open water dumping of dredged material?

**The designation by EPA of an area as a site for dredged material disposal must follow the rigorous process set forth in the Marine Protection, Research, and Sanctuaries Act to ensure protection of the environment. As I stated in my testimony before the Committee, I support following the administrative processes set forth in law, including the National Environmental Policy Act, to ensure that EPA's statutory responsibilities are fully carried out.**

30. Will you commit to assisting the states with determining upland alternatives to the open water disposal of dredged material?

**Disposal of dredged material is not an EPA mission or responsibility. That lies with the Corps of Engineers.**

31. Will you continue the Long Island Sound Study office and ensure it receives the necessary resources from EPA?

**As I noted in my testimony before the Committee, I support collaborative efforts to achieve environmental protection. The Long Island Sound Study is a collaborative effort among EPA, New York, and Connecticut. EPA's Long Island Sound Study office was authorized by Congress in 1990 under section 119 of the Clean Water Act. If confirmed, I will carry out all responsibilities given to EPA by Congress.**

32. Will you support annual appropriations of at least \$10 million for the EPA's Long Island Sound geographic program?

**If confirmed, I will seek budgetary resources to carry out all responsibilities given to EPA by Congress. I note that the most recent appropriation for the Long Island Sound program was about \$3.9 million and the most recent budget request was about \$2.9 million.**

33. How do you intend to handle existing EPA enforcement actions initiated prior to January 20, 2017?

**I am unfamiliar with the specific details of the actions referenced in the question. I would expect to be briefed by staff, in consultation with the Department of Justice as appropriate, before taking any action.**

34. Municipal landfills that are non-compliant with the Resource Conservation and Recovery Act (RCRA) have created public health and environmental problems on the island of Puerto Rico, contributing to water, ground and air contamination. How will you address non-compliant landfills in Puerto Rico?

**I am not familiar with the details of this specific issues but, if confirmed as Administrator, I would expect to be briefed by staff about EPA's ongoing involvement and role at these sites. If confirmed, I expect to make cleanup of contaminated land one of my priorities. I also believe in the importance of hearing the views of all stakeholders and would welcome the opportunity to discuss this further.**

35. I have been working with EPA Region 2 to address the significant environment and public health crisis in the Caño Martín Peña in San Juan, Puerto Rico. As we discussed during our meeting in my office, EPA must take aggressive action to work with the Army Corps of Engineers to clean up hazardous waste, which is threatening the lives of children and families, who do not have full representation in the Congress. Will you continue EPA's aggressive push to clean up the Caño?

**As discussed, I am not familiar with the details of this specific matter but, if confirmed as Administrator, I would expect to be briefed by staff about EPA's ongoing involvement and role at this site. If confirmed, I expect to make cleanup of contaminated land one of my priorities.**

36. If confirmed, will you visit San Juan and tour Caño Martín Peña during your first year as Administrator?

**As we discussed in your office, I would be pleased to accompany you on this trip at a mutually convenient time if I am confirmed as Administrator.**

37. What is the scientific basis for sea level rise, which we have experienced along the coast of New York State?

**If confirmed as Administrator, I will work to ensure EPA regulatory actions are based on the most up to date and objective scientific data, including the ever-evolving understanding of the changes in our climate and sea level rise.**

38. Do you agree with the National Climate Assessment that human-induced climate change has already increased the number and strength of extreme weather events?

**I am aware of the broad range of views within the scientific community regarding the relationship between human activity on changes in the climate and any resulting impact on extreme weather events. If confirmed as Administrator, I will work to ensure EPA regulatory actions are based on the most up to date and objective scientific data.**

39. Why did you eliminate the environmental protection unit of the Oklahoma Attorney General's office?

**My office continues to employ attorneys vested with responsibilities related to environmental protection, including the attorney who served as the lead attorney on the previous attorney general's "environmental protection unit." That attorney's responsibilities remain unchanged (he has been promoted, in fact), and he pursues exactly the kind of cases that he pursued under the**



previous attorney general. The only thing that changed was the internal organization of those vested with those responsibilities, because I concluded (consistent with the practices of every attorney general in the State's history but for my immediate predecessor) that it was not operationally efficient to have a separate unit for such work. Thus, I chose to house that work in the Office's Public Protection Unit and then later in the Solicitor General's Unit.

40. How many staff does the Oklahoma Attorney General's office have dedicated, full time, to enforcing federal environmental laws in Oklahoma? Do not include in that number staff working on lawsuits against the EPA.

**The Office of the Attorney General's employs seven attorneys whose responsibilities include environmental-related matters, with a primary focus on enforcing Oklahoma law, rather than the federal law that your question presumes. These duties substantially include representing the environmental agencies of the State of Oklahoma or providing counsel to those environmental agencies in actions they determine to pursue.**

41. Perfluorooctanoic acid (PFOA) is listed as an unregulated contaminant under the Safe Drinking Water Act. PFOA was discovered in the municipal water supply and private wells in the Village of Hoosick Falls and Towns of Hoosick and Petersburg, NY and in North Bennington, Pownal, Vermont. Perfluorooctane sulfonate (PFOS) was found in Newburgh New York.

In 2014, PFOA and PFOS were found in public drinking water wells in Horsham, Warminster, and Warrington, Pennsylvania. They were found by the federal Environmental Protection Agency, as part of the Unregulated Contaminant Monitoring Rule. The amounts of PFOA and PFOS found in the public wells in the area were among the 10 highest samples anywhere in the country based on the provisional health advisory level set by EPA in 2009.

In 2009, EPA set a provisional health advisory level of .4 parts per billion. In May, 2016, EPA set a Lifetime Health Advisory level for PFOA at 70 parts per trillion. How will you work to ensure that drinking water sources are monitored for PFOA and PFOS, particularly in small communities under 10,000 people?

**If confirmed, I will carry out the authorities and responsibilities given to EPA by Congress. Congress did not make monitoring eligible for Safe Drinking Water Act State Revolving Loan Fund assistance because it is considered operation and maintenance that is local responsibility. However, Congress recently authorized a grant program to assist small and disadvantaged communities provide safe drinking water. Testing of unregulated**

**contaminants is eligible for assistance under this authority. If funding is provided by Congress, I will carry out that program.**

42. How will EPA continue to evaluate the health effects of PFOA on all communities that were exposed, in particular vulnerable populations including infants and fetuses during pregnancy?

**As I stated at my confirmation hearing, PFOA is a chemical substance that the Agency should address quickly and I will look to continue evaluating the health effects of PFOA through TSCA and the Safe Drinking Water Act.**

43. Will you work collaboratively with other agencies, including the Centers for Disease Control and Prevention, the National Institutes of Health, and the Department of Defense, to ensure that the public is informed about the health effects of contamination?

**As I stated at my confirmation hearing I believe collaboration between federal agencies to protect and better inform the public.**

44. Will you work collaboratively with states and local governments to ensure that information on PFOA and PFOS are communicated in a transparent and timely manner to the public?

**Cooperative federalism and collaboration between EPA and officials at the state and local level is something I feel very strongly about and if I am confirmed I will work collaboratively with state and local governments.**

45. In the absence of federal drinking water standards, what role should EPA play in assisting communities whose drinking water supplies have become contaminated by PFCs or other emerging contaminants?

**Congress recently authorized a grant program to assist small and disadvantaged communities provide safe drinking water. Testing of unregulated contaminants is eligible for assistance under this authority. If confirmed and if funding is provided by Congress, I will carry out that program.**

46. The latest EPA survey of capital improvement needs indicates that public water systems need to invest \$384.2 billion on infrastructure improvements over 20 years to ensure the provision of safe tap water. The needs estimate generally excludes costs associated with addressing unregulated contaminants or the costs of replacing lead service lines. What funding level do you view as effective for the

EPA Drinking Water State Revolving Fund (DWSRF) capitalization grant program?

**The federal government offers some financial assistance but the vast majority of the investments in public water systems will be made by the public and private entities that own and operate those systems. The Safe Drinking Water Act State Revolving Loan Funds leverage federal investment at about 1.76 to 1. That is, a federal dollar leverages about 1.76 dollars in loan assistance. The new WIFIA program can leverage federal investment at a level of up to 60 to 1. I fully support the Drinking Water SRF and would not support any cuts to that program. However, if Congress provides additional funds I am excited by the opportunities the new WIFIA program presents.**

47. How would you use the "precautionary principle" to bring to bear cutting edge science on emerging contaminants to ensure decisions are technically valid, while also not delaying regulatory decisions to wait for every potential detail to be addressed when health impacts may be occurring during the delay?

**If confirmed agency decisions will be based on sound science and I will work to protect health and the environment as expeditiously as possible.**

48. What is your view on EPA's role in overseeing response actions undertaken by DOD at U.S. military facilities, including where PFOA, PFOS, or other PFCs may have been released?

**EPA's role is governed by the statutory and regulatory authorities, including section 120 of the Comprehensive Environmental Response, Compensation and Liability Act and the National Contingency Plan.**

49. As you know, Congress passed a provision in law that exempts hydraulic fracturing from the Safe Drinking Water Act. Do you think that hydraulic fracturing chemicals should be exempt or do you believe that this law has merit?

**Article 1 Section 8 of the Constitution vests in Congress the authority to make our nation's laws and, if confirmed, as a member of the Executive Branch I will faithfully execute my duty to implement and enforce the laws written by Congress.**

50. How will you address the disproportionate effect of environmental contamination on low-income communities of color?

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**If confirmed, I will expect to be briefed by staff about EPA's programs and statutory authorities in this area.**

**Senator Markey:**

1. There is tremendous diversity across states in this country, and occasionally states have differences of opinion on how to approach a problem. One of the roles of the federal government is to be an arbiter among states.

- What is your philosophy on how interstate pollution conflicts should be handled?
- Should a state be able to pollute a river for which another state relies on for drinking water?
- What is the EPA's role in resolving interstate pollution conflicts?
- How would you determine when EPA should be involved in interstate pollution disputes?

**As I testified in the hearing, I have pursued opportunities to address interstate environmental quality matters. One of the examples I have highlighted is the work that Arkansas Attorney General Dustin McDaniel and I took to address an enforceable water quality standard between Arkansas and Oklahoma. I have also discussed how Texas should be responsible when air quality issues affect Oklahoma and my experience with that. When negotiations among and between states breakdown EPA has a role to set environmental standards. However, that is should be a last course of action instead of the first. I believe environmental statutes are designed with states as a primary implementer. Environmental statutes envision that states have the delegated enforcement and primacy to implement and enforce environmental statutes. Only when that is not happening or when negotiations between and among states breakdown should EPA determine a dispute and only after attempting to assist states negotiate a local solution. I am fond of saying that we need national standards and neighborhood solutions. I think that should shape the work of the EPA.**

2. During the hearing, you repeatedly underscored the need to make regulation "regular" for regulated entities.

- How do you reconcile that goal with the mission of EPA, which is "to protect human health and the environment"?
- If confirmed as EPA Administrator will your highest priorities be to protect human health and the environment?

**As I testified, I believe in the rule of law and that process matters. I do not view these as being contrary to EPA's mission to protect human health and the environment.**

3. Please list any deductible or nondeductible charitable donations you made in the last three years, including, for each contribution, the name of the recipient and the amount.

**I have complied with the reporting obligations from the Office of Government Ethics and the EPW Committee.**

4. As attorney general, you made Freedom of Information Act (FOIA) requests, and expected a fast response. Do you commit to respond to FOIAs as quickly as possible, if you are confirmed?

**If confirmed, I will commit to tasking my staff with responding to FOIA requests in a timely manner.**

5. During Mr. Trump's campaign, there were reports that even volunteers were required to sign non-disclosure agreements. After his election, President-elect Trump's team demanded lists of career officials who worked on climate science issues at the Energy Department and women's and gender issues at the State Department. It is against the law to retaliate against career officials for following lawful policy directives. It is also against the law to interfere with career employees communicating with Congress. I have included a summary of these laws below.

Any suggestion that the incoming administration is targeting career officials for retaliation simply because they worked on policies that the new President disagrees with threatens to create a chilling effect on employees who are simply trying to do their jobs.

5 U.S.C. § 7211, provides that: The right of employees, individually or collectively, to petition Congress or a Member of Congress, or to furnish information to either House of Congress, or to a committee or Member thereof, may not be interfered with or denied. Pursuant to 5 U.S.C. § 2302(b)(8), it is a violation of federal law to retaliate against whistleblowers. That law states: Any employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority ... take or fail to take, or threaten to take or fail to take, a personnel action with respect to any employee or applicant for employment because of. ... (A) any disclosure of information by an employee or applicant which the employee or applicant reasonably believes evidences- (i) a violation of any law, rule, or regulation, or (ii) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, any disclosure to the Special Counsel, or to the Inspector General of an agency or another employee designated by the head of the agency to receive such disclosures, of information which the employee or applicant reasonably believes evidences a violation of any law, rule, or regulation... " In addition, pursuant to 18 U.S.C. § 1505, it is against federal law to interfere with a

Congressional inquiry: Whoever corruptly, or by threats or force, or by any threatening letter or communication influences, obstructs, or impedes or endeavors to influence, obstruct, or impede the due and proper administration of the law under which any pending proceeding is being had before any department or agency of the United States, or the due and proper exercise of the power of inquiry under which any inquiry or investigation is being had by either House, or any committee of either House or any joint committee of the Congress.

- If you are confirmed, will you commit to protect the rights of all career employees of the EPA, including their right to speak with Congress?
- Will you commit to communicate employees' whistleblower rights via email to all EPA employees within a week of being sworn in?

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

6. The President-elect appears to be planning to ignore the advice he was given by bipartisan ethics experts to divest himself from his business interests. In the United States, he has hundreds of business interests, which include everything from vineyards, golf courses, hotels and casinos. Some of these interests could be impacted by EPA regulations or enforcement actions – for example, Donald Trump's New Jersey casino flunked air pollution tests, his hotel in Chicago has had a Clean Water Act violation and his New Jersey Golf Club violated the Safe Drinking Water Act.

- Do you commit to ensure that no employee of the EPA is pressured to take - or not take - any regulatory or enforcement action or decision because that action or decision would adversely affect business interests associated with the president-elect or his family?
- Considering that the president-elect has stated he will not release his tax returns anytime soon, how will you know exactly what all of the Trump family interests are without his tax returns?

**If confirmed as Administrator, I will take care that all environmental laws enacted by Congress are faithfully executed without regard to identity of the owners of any regulated business that might be affected by such execution of the laws.**

7. The following series of questions relate to Title 74 Section 20i of the Oklahoma Statutes. As Attorney General of Oklahoma, you were responsible for complying with this law. For your ease of reference, Section 20i is provided below:

*74 Okl. St. § 20i (2016)*

**§ 20i. Legal Representation of Agency or Official of Executive Branch--Contracts**

**A.** An agency or official of the executive branch may obtain legal representation by one or more attorneys by means of one of the following:

1. Employing an attorney as such if otherwise authorized by law;
2. Contracting with the Office of the Attorney General; or
3. If the Attorney General is unable to represent the agency, or official due to a conflict of interest, or the Office of the Attorney General is unable or lacks the personnel or expertise to provide the specific representation required by such agency or official, contracting with a private attorney or attorneys pursuant to this section.

**B.** When entering into a contract for legal representation by one or more private attorneys, an agency or official of the executive branch shall select an attorney or attorneys from a list of attorneys maintained by the Attorney General. An agency may contract for legal representation with one or more attorneys who are not on the list only when there is no attorney on the list capable of providing the specific representation and only with the approval of the Attorney General. The list shall include any attorney who desires to furnish services to an agency or official of the executive branch and who has filed a schedule of fees for services with and on a form approved by the Attorney General. An agency or official may agree to deviate from the schedule of fees only with the approval of the Attorney General.

**C.** Before entering into a contract for legal representation by one or more private attorneys, an agency or official of the executive branch shall furnish a copy of the proposed contract to the Attorney General and, if not fully described in the contract, notify the Attorney General of the following:

1. The nature and scope of the representation including, but not limited to, a description of any pending or anticipated litigation or of the transaction requiring representation;
2. The reason or reasons for not obtaining the representation from an attorney employed by the agency or official, if an attorney is employed by the agency or official;
3. The reason or reasons for not obtaining the representation from the Attorney General by contract;
4. The anticipated cost of the representation including the following:
  - a. the basis for or method of calculation of the fee including, when applicable, the hourly rate for each attorney, paralegal, legal assistant, or other person who will perform services under the contract, and
  - b. the basis for and method of calculation of any expenses which will be reimbursed by the agency or official under the contract; and
5. An estimate of the anticipated duration of the contract.



**D.** Before entering into a contract for legal representation by one or more private attorneys where the agency has reason to believe that the case, transaction or matter will equal or exceed Twenty Thousand Dollars (\$ 20,000.00) or after employment when it becomes apparent that the case, transaction or matter will equal or exceeds Twenty Thousand Dollars (\$ 20,000.00), an agency or official of the executive branch shall obtain the approval of the Attorney General when the total cost, including fees and expenses, of all contracts relating to the same case, transaction, or matter will equal or exceed Twenty Thousand Dollars (\$ 20,000.00). Any amendment, modification, or extension of a contract which, had it been a part of the original contract would have required approval by the Attorney General, shall also require approval by the Attorney General.

**E.** When an agency or official of the executive branch enters into a contract for professional legal services pursuant to this section, the agency shall also comply with the applicable provisions of *Section 85.41 of Title 74 of the Oklahoma Statutes*.

**F.** The provisions of this section shall not apply to the Oklahoma Indigent Defense System created pursuant to *Section 1355 et seq. of Title 22 of the Oklahoma Statutes*.

**G.** The Attorney General shall, on or before February 1 of each year, make a written report on legal representation obtained pursuant to paragraphs 2 and 3 of subsection A of this section. The report shall include a brief description of each contract, the circumstances necessitating each contract, and the amount paid or to be paid under each contract. The report shall be filed with the Governor, the President Pro Tempore of the Senate, the Speaker of the House of Representatives, the Chair of the Appropriations and Budget Committee of the House of Representatives, and the Chair of the Appropriations Committee of the Senate.

- The Oklahoma Governor considers the Office of Attorney General a state agency, and includes the Attorney General on a comprehensive list of Oklahoma state agencies available at <https://www.ok.gov/portal/agency.php>. Do you agree that the Office of Attorney General is an agency under Oklahoma state law? If not, please explain.

**Generally speaking, the Office of Attorney General is a state agency. Whether it is an "agency" for purposes of any particular statute requires an analysis of that statute.**

- Subsection G of Title 74 Section 20i of the Oklahoma Statutes requires the Attorney General to report annually on any contracts for legal representation that state agencies have entered into with private attorneys over the course of the prior year. For the avoidance of doubt, no exception is provided under Section 20i for contracts for legal representation entered into by the Attorney General with private attorneys. Do you agree that Subsection G of Title 74 Section 20i required

you, as Attorney General, to report contracts for legal representation that you entered into with private attorneys over the course of the prior year? If not, please explain.

**No. The purpose of Section 20i, as demonstrated by its text, is to place the Office of Attorney General in the role of approving contracts for outside counsel that other agencies wish to enter into rather than utilizing the services of the Office of Attorney General. Subsection G requires a report be made of contracts entered into "pursuant to this section," as Subsection A(3) makes clear. Because the Office of Attorney General is not required to seek permission from itself "pursuant to" that section of law, it has no applicable contracts to report pursuant to Subsection G. The Office of Attorney General has, however, routinely disclosed contracts it has entered into with outside counsel, when requests for such contracts are made.**

•The last fiscal year in which payments from the Office of Attorney General to private attorneys were recorded in the report submitted pursuant to Subsection G of Title 74 Section 20i of the Oklahoma Statutes was FY 2011. No payments from the Office of Attorney General to private attorneys were recorded in the reports you filed for FY 2012, FY 2013, FY 2014, or FY 2015. As Oklahoma Attorney General, did you enter into any verbal or written contracts with private attorneys for legal representation (whether or not such contracts provided compensation to private attorneys) other than those listed in the reports you submitted for fiscal years 2011 through 2015? Please provide a brief description of each such contract you entered into, the date you entered into the contract, the circumstances necessitating the contract, and the amount—if any—paid under the contract (including details of any non-monetary benefits that you may have obtained, offered, been offered, or delivered in connection with the contract).

**Yes. Such information can be requested from the Office of Attorney General through a request made pursuant to Oklahoma's Open Records Act.**

•Subsection B of Title 74 Section 20i of the Oklahoma Statutes requires that—when entering into a contract for legal representation by one or more private attorneys—an agency or official of the executive branch must select an attorney or attorneys from a list maintained by the Attorney General. If there are no listed attorneys capable of providing the specific representation, then the agency must obtain the approval of the Attorney General in order to enter into the contract.

◦Please describe your process, as Attorney General, for evaluating a request submitted by a state agency to enter into a contract for legal representation by a private attorney not on the approved list. Please provide any documents detailing this process (which you or your staff relied on in making such evaluations) or indicate if this process was undocumented.

- Please provide any documents submitted to you by state agencies requesting approval to enter into a contract for legal representation by a private attorney not on the approved list, as well as your written responses to such requests.
- Please provide any papers documenting decisions made by you or the Office of Attorney General to enter into contracts for legal representation by private attorneys that did not originate with requests submitted to you by state agencies.
- Do you agree that Subsection B of Title 74 Section 20i required you, as Attorney General, to enter into contracts for legal representation only with private attorneys included on the list referred to in that subsection unless there were no listed attorneys capable of providing the specific representation? If not, please explain.

**Such information can be requested from the Office of Attorney General through a request made pursuant to Oklahoma's Open Records Act. With regard to your question, because the Office of Attorney General maintains the referenced list, and is authorized to allow representation from attorneys not on the list, the Office of Attorney General plainly has the discretion to allow representation from attorneys not on the list.**

Did you—at any time during your term as Attorney General—enter into a written or verbal contract for legal representation (whether compensated or pro bono) by one or more private attorneys not included on the list referenced in Subsection B of Title 74 Section 20i of the Oklahoma Statutes? If so, for each such contract:

- Please provide a brief description of the contract, the circumstances necessitating the contract, and the amount—if any—paid under the contract (including details on any non-monetary benefits that you may have obtained, offered, been offered, or delivered in connection with the contract).
- Please indicate if you entered into the contract with a private attorney not on the approved list because there were no attorneys on the approved list capable of providing the specific representation or for another reason. Please describe the process you followed in reaching a decision to enter into a contract with a private attorney not on the approved list. Please list the attorneys on the approved list that you considered hiring (and deemed incapable of providing the specific representation) before deciding to enter into a contract with a private attorney not on the approved list. For each attorney on the approved list that you considered and rejected, please describe the deficiencies in their capabilities that led you to reject them in favor of a private attorney not on the approved list.

**Such information can be requested from the Office of Attorney General through a request made pursuant to Oklahoma's Open Records Act.**

- As of January 18, 2017, neither David Rivkin, Jr. (nor any other attorney employed by Baker Hostetler) appeared on the "Approved Attorney List | 201" accessible on your website at <https://www.oag.ok.gov/litigation/1917atty.nsf/wfindatty.html?OpenView>.
- Did David Rivkin Jr. represent the State of Oklahoma in its Clean Power Plan case against EPA?
- To the best of your knowledge, did David Rivkin Jr. or Baker Hostetler receive any compensation or funds from any third party in conjunction with this or any other litigation in which it represented the State of Oklahoma on your behalf? If so, please provide the names of any such third parties.
- Did you enter into a written or verbal contract for legal representation (whether compensated or pro bono) with David Rivkin, Jr. of the Washington, D.C.-based law firm Baker Hostetler? If so, please provide:
  - a brief description of the contract;
  - the date you entered into the contract;
  - the circumstances necessitating the contract;
  - the deficiencies in the capabilities of attorneys on your approved list that led you to reject them in favor of David Rivkin Jr.—an attorney not on your approved list; and
  - the amount—if any—paid under the contract (including details on any non-monetary benefits that you may have obtained, offered, been offered, or delivered in connection with the contract).
- Please list any contributions made by David Rivkin Jr. or any employee of Baker Hostetler to you, your campaign, or any organizations or entities for which you engaged in fundraising, along with the dates of such contributions.

**Yes. No. Yes. Information relating to the contract can be requested from the Office of Attorney General through a request made pursuant to Oklahoma's Open Records Act. A full list of contributors to my campaigns for the state senate and attorney general may be found at the Oklahoma Ethics Commission's websites. For state campaign committees from 2002-2014, please use this site: <https://www.ok.gov/ethics/public/candidate.php>. For 2015 to the present, the Commission uses this site: <http://guardian.ok.gov/PublicSite/SearchPages/Search.aspx?SearchTypeCodeHook=1F26BA5E-71EA-48E4-8D50-C1013E9FE0A7>. Attached is a letter from the Oklahoma Ethics Commission regarding materials prior to 2002.**

- During your term as Attorney General, did you ever enter into an arrangement whereby a private attorney or attorneys represented the State of Oklahoma on your behalf on a pro bono basis while being compensated by a third party? If so, please list the legal matters in which you entered into such arrangements, and, for each matter, the third party or parties that compensated the private attorneys, the amounts paid, and any monetary or non-monetary benefits that you may have

obtained in connection with the arrangement. During your term as Attorney General, did you have a process in place for ensuring that any private attorneys that represented the State of Oklahoma on a pro bono basis did not receive compensation from a third party for the legal services they provided to the state? If so, please describe this process.

**No. Our Office would not enter into any such agreement for representation if it believed that the attorney was not truly working pro bono, and the Office would seek assurances from the attorney that they were.**

8. The Online Lenders Alliance is “a trade group for online payday and short-term lenders and the companies that steer customers to them,” according to a recent Los Angeles Times article describing actions by the Consumer Financial Protection Bureau to protect consumers from misleading advertising claims made by certain members of the payday lending industry.

•Have you, your campaign, or any organizations or entities for which you engaged in fundraising ever received or solicited donations from the Online Lenders Alliance or any other trade, industry, advocacy, or other group representing companies making payday, title, installment, or short-term loans to consumers? If so, please list the amounts and dates of such donations or solicitations.

**I am not aware of any such solicitations or donations.**

•Have you, your campaign, or any organizations or entities for which you engaged in fundraising ever received or solicited donations from any company making payday, title, installment, or short-term loans to consumers? If so, please list the amounts and dates of such donations or solicitations.

**I am not aware of any such solicitations or donations.**

•Have you, your campaign, or any organizations or entities for which you engaged in fundraising ever received or solicited donations from any principal, senior executive, officer, or director of a company making payday, title, installment, or short-term loans? If so, please list the amounts and dates of such donations or solicitations.

**I am not aware of any such solicitations or donations.**

•Have you, your campaign, or any organizations or entities for which you engaged in fundraising ever received or solicited donations from any member of the Board of Directors of the Online Lenders Alliance? For your convenience, the members

of the Board of Directors of the Online Lenders Alliance, along with their business affiliations, are listed below. For each of these individuals, please provide the amounts and dates of their donations, or, if you unsuccessfully solicited donations from them, the dates of such solicitations.

- Kim Anderson, Strategic Link Consulting
- Samantha Bentson, Cashland Online
- Kirk Chartier, Enova Financial
- Doug Clark, Axxcess Financial
- Mark Curry, MacFarlane Group
- John Dalton, LeadFlash
- Steve Hotz, The Lead Group
- Clive Kinross, MoneyKey
- Glenn McKay, Selling Source, LLC.
- Bart Miller, Centrinex
- Greg Rable, FactorTrust, INC.
- Ken Rees, Elevate
- Walt Wojciechowski, MicroBilt

**I am not aware of any such solicitations or donations.**

●On June 16, 2015, you, as Attorney General, sent a letter to Richard Cordray, Director of the Consumer Financial Protection Bureau (hereinafter, "CFPB"), expressing concerns about certain rules the CFPB proposed to regulate payday, vehicle title, and installment lending.

○Was the text of this letter partially or substantially drafted by the Online Lenders Alliance or any other trade, industry, advocacy, or other group representing companies making payday, title, installment, or short-term loans to consumers?

○Did the Online Lenders Alliance or any other trade, industry, advocacy, or other group representing companies making payday, title, installment, or short-term loans to consumers participate in the drafting of this letter in any other way? If so, please explain.

○Did you ask the Online Lenders Alliance or any other trade, industry, advocacy, or other group representing companies making payday, title, installment, or short-term loans to consumers review or provide comments on a draft of this letter before it was sent? If so, please provide any records related to your outreach.

○Did the Online Lenders Alliance or any other trade, industry, advocacy, or other group representing companies making payday, title, installment, or short-term

loans to consumers review or provide comments on a draft of this letter before it was sent? If so, please provide any communications between you or your office and any such group regarding this letter.

**As far as I am aware, no as to all.**

9. The Consumer Federation of America is an association of non-profit consumer organizations devoted to advancing the consumer interest through research, advocacy, and education.

• Did you ask the Consumer Federation of America or any other interest or advocacy group representing Oklahoma's consumers review or provide comments on a draft of this letter before it was sent? If so, please provide any records related to your outreach.

• Did the Consumer Federation of America or any other interest or advocacy group representing Oklahoma's consumers review or provide comments on a draft of this letter before it was sent? If so, please provide any communications between you or your office and any such group regarding this letter.

**As far as I am aware, no as to all.**

10. As you may know, Oklahoma has one of the highest usage rates for payday loans in the country and allows payday lenders to charge consumers interest rates of up to 390 percent on annual basis for a 14-day term loan. In November 2016, the CFPB reported that consumers in Oklahoma submitted debt collection complaints at a rate of 36 percent (higher than the 27 percent national average). In addition, the CFPB found that average monthly complaints from Oklahomans increased 17 percent from August through October 2015 (higher than the national rate of 13 percent).

• Have you, your campaign, or any organizations or entities for which you engaged in fundraising ever received or solicited donations from the Consumer Federation of America or any other interest or advocacy group representing Oklahoma's consumers? If so, please list the amounts and dates of such donations or solicitations.

• Have you, your campaign, or any organizations or entities for which you engaged in fundraising ever received or solicited donations from any member of the Board of Directors of the Consumer Federation of America? If so, please provide the amounts and dates of their donations, or, if you unsuccessfully solicited donations from them, the dates of such solicitations.

**I am not aware of any such solicitations or donations.**

11. You have pursued at least twenty legal actions against the EPA on clean water, clean air and climate change related regulations, including multiple lawsuits that are ongoing. You have additionally criticized the EPA and its scientists on a range of scientific facts and regulations that aim to protect public health.

- Please identify EPA regulations or standards that you do support in their current form.
- In many of your legal actions and activities as Oklahoma AG, you have endorsed positions or signed letters that were drafted by oil and gas industry paid lobbyists. Please identify areas in which your views differ significantly from those of the oil and gas industry?

**When negotiations among and between states breakdown EPA has a role to set environmental standards. However, that should be a last course of action instead of the first. I believe environmental statutes are designed with states as a primary implementer. Environmental statutes envision that states have the delegated enforcement and primacy to implement and enforce environmental statutes. Only when that is not happening or when negotiations between and among states breakdown should EPA determine a dispute and only after attempting to assist states negotiate a local solution. I am fond of saying that we need national standards and neighborhood solutions. I think that should shape the work of the EPA. As I also testified at the hearing, when it was appropriate to pursue legal actions or settlement negotiations specifically with the oil and natural gas industry I have done so. When considering new regulations on oil and natural gas production and practices, I have joined other co-regulators in Oklahoma advocating those changes.**

12. Your Ethics Agreement states that for a one-year period, you “*will* seek authorization to participate personally and substantially in particular matters involving specific parties in which I know the State of Oklahoma is a party or represents a party.”

- Why does this language assume that you “will” seek authorizations for all such instances?
- Why is your recusal limited to a one-year period, when in some cases the “particular matters” will not be resolved within that timeframe?
- Will you commit to recusing yourself from participating in all such particular matters, without requesting or receiving a waiver, until the matter is fully resolved? If not, why not?
- These ‘particular matters’ are all litigation in which your Ethics Agreement contemplates you switching from plaintiff in your capacity as Attorney General of Oklahoma (in which you were a principal decision-maker on the part of those litigating against EPA), to defendant as EPA Administrator (in which you would be the principal decision-maker on the response to the lawsuit you filed). Why do



you not believe this creates an unresolvable conflict of interests that makes it impossible for you to properly, lawfully and ethically represent the interests of the EPA, while simultaneously upholding your professional duty to your former client, the State of Oklahoma?

**My Ethics Agreement was drafted in close consultation with ethics experts at the Office of Government Ethics and EPA ethics officials, and reflects a diligent effort to ensure that I seek authorization before participating in any matter involving specific parties in which I know the State of Oklahoma is a party or represents a party for one year after my resignation as Oklahoma Attorney General. I believe you may be misreading the language in my Ethics Agreement regarding prior authorization. If, during the relevant time period, I would like to consider participating in a particular matter involving specific parties in which I know the State of Oklahoma is a party or represents a party, I will seek advance authorization to do so. With respect to my professional obligations as a member of the bar, I am not permitted to "switch sides" as counsel in any matter in which I participated as a lawyer. The standards that would apply to me as EPA Administrator are different, however, as I will not be representing the EPA as a lawyer if I am confirmed.**

13. During the hearing, you refused to unequivocally recuse yourself from litigation that you brought against the EPA, repeatedly stating that you would follow the direction of agency ethics officials' guidance in this area on a case-by-case basis. Isn't it true that if you are confirmed, the agency ethics officials that you are referring to will report to you, and this reporting relationship could be perceived to have the potential to influence the guidance they provide you with? In light of this, will you commit to the modification of your Ethics Agreement, using your own discretion and authority to do so and prior to any vote on your confirmation, in order to provide more clarity about your intentions for recusal related to each matter involving specific parties in which the State of Oklahoma is a party? If not, why not?

**My Ethics Agreement was drafted in close consultation with ethics experts at the Office of Government Ethics and EPA ethics officials, and reflects a diligent effort to ensure I comply with all applicable federal ethics rules. I will abide by the commitment I made in that letter. I am confident in the former staff of the EPA and have no reason to believe they will give me anything other than their best advice on ethics matters. Moreover, not all officials who may consider a request for authorization to participate in a matter will necessarily report to me. Before participating in matters involving specific parties in which I am concerned where there may be a question regarding my impartiality, I would expect, where they deem it appropriate, that EPA ethics officials may consult with ethics experts at OGE before making a recommendation.**

14. I am attaching a January 17, 2017 letter from Citizens for Responsibility and Ethics in Washington (CREW) and a January 18, 2017 letter from The Campaign Legal Center (CLC), both sent to the EPA Designated Agency Ethics Official, for the record and for your review. The CREW letter references several factors related to your refusal to unequivocally recuse yourself from participating in any of these matters as EPA Administrator that would cause a reasonable person with knowledge of the relevant facts “to question his [your] impartiality in these matters” and “to question the integrity of the agency’s programs and operations.” The CLC letter states that “the plan described in his [your] ethics agreement is insufficient to avoid actual or apparent conflicts of interest, and would cause members of the public to question his impartiality in the conduct of his [your] duties, contrary to his [your] obligation to “ensure that every citizen can have complete confidence in the integrity of the Federal Government.””

- The CREW letter states that ethics regulations demand your recusal from participating personally and substantially as Administrator in particular matters involving specific parties in which the State of Oklahoma is a party, even if the State of Oklahoma withdraws from the matter. Do you agree to make such a recusal for each such matter, even if the State of Oklahoma withdraws from the matter? If not, why not?

- The CREW letter states that “there would be serious and apparent conflicts leading to reasonable doubts about Mr. Pruitt’s impartiality if he were to participate in these lawsuits as EPA Administrator *at any point* in their lifetime. It is therefore essential that Mr. Pruitt’s recusals last through the full course of each matter.” Do you agree to recuse yourself for the full course of each matter involving specific parties in which the State of Oklahoma is a party? If not, why not?

- The CREW letter states that any waiver request you might make from recusal from any of these matters “should be denied based on consideration of the relevant factors listed under” 5 C.F.R. 2635.502(d). Do you agree not to request a waiver from recusal from any such matter? If not, why don’t you agree with the analysis of the factors listed in the regulations as they apply to your past litigation history against the Agency that CREW described in the letter should result in a denial of the waiver request?

**As discussed above, my Ethics Agreement was drafted in close consultation with ethics experts at the Office of Government Ethics and EPA ethics officials, and reflects a diligent effort to ensure I comply with all applicable federal ethics rules. If confirmed, I will ask relevant federal ethics officials to fully review the issues raised in the CREW letter and, if appropriate, take them into account in determining the proper legal course of action in particular instances.**

15. Some of the legal cases that you brought against the agency remain open, and there may be legal decisions that require EPA regulatory action as they are resolved; for example, a court could uphold the EPA regulation and require it to be enforced, or a court could direct such a regulation's revision. Since such regulatory actions would be a direct consequence of the litigation, any conflict of interests associated with your participating in the legal matter should extend to any EPA regulatory or enforcement action taken as a result of court action on the litigation. Do you agree to recuse yourself without waiver and for the entirety of your tenure at the EPA from all such regulatory or enforcement actions that are taken as a result of court action on a specific legal matter from which you were recused? If not, why not?

**As EPA Administrator I will recuse from participation in litigation in matters in which I represented the State of Oklahoma, unless I receive informed consent from the State of Oklahoma and the permission of relevant federal ethics officials. It is my understanding that recusal obligations do not extend to regulatory rulemaking of general applicability, which does not create a conflict under applicable rules.**

16. If you are confirmed, you will also have the ability to accomplish through *regulation* as EPA Administrator what you have been seeking to accomplish through *litigation* as Attorney General. For example, instead of waiting for a court to decide whether to grant your lawsuit's request to overturn EPA's smog standard, you could start to write a regulation to do just that on your very first day on the job. Will you commit to recuse yourself from working on the revision or elimination of any *regulation* regarding issues on which you have sued the EPA? If not, why not?

**It is my understanding under federal ethics rules that regulatory rulemaking of general applicability does not create a conflict.**

17. I am also attaching, for the record and for your review, the Ethics Agreement signed by Carol Browner, former EPA Administrator during the Clinton Administration. In her Ethics Agreement, she agreed to recuse herself from participating "personally and substantially in any EPA matter which involves the State of Florida as a specific party and in which I was personally and substantially involved as Secretary, Department of Environmental Regulations, State of Florida". I note that this agreement was not limited to one year in duration and not subject to waivers. I am also attaching, for the record and for your review, the Obama Administration Ethics Pledge that each nominee agreed to uphold, which states, in part, "I will not for a period of 2 years from the date of my appointment participate in any particular matter involving specific parties that is directly and substantially related to my former employer or former clients, including regulations and contracts." If the response to any part of questions 2, 3 or 4 is no, please

also explain why in light of the stronger Ethics Agreements and pledges made by past EPA Administrators?

**I am not familiar with the facts and circumstances surrounding Ms. Browner's Ethics Agreement. In my Ethics Agreement, which was drafted in close consultation with ethics experts at the Office of Government Ethics and EPA ethics officials, I agreed to abide by federal regulations that require my recusal from particular matters involving specific parties in which the State of Oklahoma is a party for a period of one year after my resignation as Attorney General, unless I receive a waiver. I will abide by the commitment in that letter, in addition to any other obligations imposed by the Trump Administration as well as my obligations as a member of the bar.**

18. In addition to your participation in specific litigation and regulatory matters that raise conflicts of interests, there may be pending enforcement matters at EPA in which donors to you or your political action committees are the subjects. For example, records indicate that Tyson Foods has been the subject of an EPA Clean Air Act enforcement action<sup>3</sup> and reportedly "faces an ongoing criminal investigation by the EPA for its release of toxic pollutants into waterways".<sup>4</sup> Do you commit to recusing yourself from participation in any enforcement matter in which the subject is an entity that has previously made a donation to you or any of your political action committees? If not, why not?

**I will consult with relevant federal ethics officials to determine whether to participate in a particular matter.**

19. *Miss. Comm'n on Env'tl. Quality v. EPA*, 790 F.3d 138 (D.C. Cir. 2015) stated that "Decisionmakers violate the Due Process Clause and must be disqualified . . . when they act with an 'unalterably closed mind.'" One of your filings stated that the agency's record "does not support EPA's findings that mercury, non-mercury HAP metals, and acid gas HAPs pose public health hazards." Do you have an "unalterably closed mind" on the question of whether mercury and acid gas HAPs pose public health hazards? If not, please explain your current view on this question.

**As I stated in my testimony to the committee, all legal positions that I took in my capacity as Attorney General for the State of Oklahoma were in my capacity as an advocate. If confirmed as Administrator, I will consider all**

<sup>3</sup> <https://www.epa.gov/enforcement/tyson-foods-inc>

<sup>4</sup> [http://www.meatpoultry.com/articles/news\\_home/Business/2016/08/Tyson\\_investors\\_call\\_for\\_envir.aspx?ID=%7B4E28BCD7-045D-489C-8A41-48A6DDDBE99F%7D&cck=1](http://www.meatpoultry.com/articles/news_home/Business/2016/08/Tyson_investors_call_for_envir.aspx?ID=%7B4E28BCD7-045D-489C-8A41-48A6DDDBE99F%7D&cck=1)

**matters presented to me with an open mind and will work to reach conclusions that are reflected in the administrative record of each matter and that comport with Congress's intent in enacting the Act.**

20. Section 301(a) of the Clean Air Act prohibits the Administrator from delegating authority over many regulatory proceedings. To the extent that you are recused from participating in such decisions, who could lawfully make them?

**If I am recused from participating in a matter, the Federal Vacancies Reform Act and other federal law provide a mechanism for another EPA official to perform such functions in an acting capacity. Under current policy, the EPA Deputy Administrator would typically serve this function.**

21. Each case in which you litigated on behalf of your former client requested that the court compel EPA to take a specific action; for example, one pending suit asks a court to compel EPA to maintain the ozone standard at 75 ppb instead of lowering it to 70 ppb. A court may direct EPA to take specific actions as these cases are resolved, which will require changes to EPA regulations. Moreover, as EPA Administrator, you could simply direct the Agency to amend its regulations to do the very thing your lawsuit asked a court to do in the first place. This also creates an unresolvable conflict of interests.

• Will you recuse yourself, without waiver and for the entirety of your tenure as EPA Administrator, from any agency proceedings that a) directly result from the resolution of or b) are related to the "particular matters" that your Ethics Agreement agrees you should be recused from? If not, why not, and why do you not believe that such agency proceedings would be covered by your recusal under the applicable Standards of Ethical Conduct for Employees of the Executive Branch?

**As EPA Administrator I will recuse from participation in litigation in matters in which I represented the State of Oklahoma, unless I receive informed consent from the State of Oklahoma and the permission of relevant federal ethics officials. I understand that this does not extend to regulatory rulemaking of general applicability, which would not create a conflict under applicable rules.**

22. Our oceans are essential for life, and much of what happens on land ultimately ends up in our oceans. There are many ways in which our actions on land can both positively and negatively affect marine life and the marine environment. Under the Marine Protection, Research and Sanctuaries Act (MPRSA), the EPA ensures that harmful substances are not dumped into the

marine environment. Additionally, reducing ocean pollution is a global goal in which the U.S. is an active participant.

- In your opinion, what role does the EPA have in protecting our oceans and the marine life within?
- How specifically will the EPA, under your administration, ensure that harmful manmade substances do not end up in our oceans?
- How will the EPA continue to ensure the U.S. is a leader in reducing ocean pollution, and assisting other countries in reducing pollution that makes it into our oceans?

**If confirmed, I will carry out the authorities and responsibilities given to EPA by Congress. These include responsibilities under the Marine Protection, Research and Sanctuaries Act.**

23. The greenhouse gas effect traps outgoing longwave radiation causing a radiative imbalance of Earth, ultimately leading to the warming of the globe. The fundamental physics of climate change are well settled.

- Are you aware of the theory of radiative balance of the Earth? Can you briefly describe it?
- Do you understand Planck's law and the difference between shortwave vs. longwave radiation, and how that relates to Earth's energy balance?
- Do you agree that disturbances to this equilibrium can warm or cool the Earth?
- Are you aware of the atmospheric circulation and oceanic currents that transport heat from the Equator to the poles?
- Due to the complexity of the climate system, there are lag times between changes in certain conditions, such as the amount of carbon dioxide in the atmosphere, and other observable changes, such as the temperature of the deep ocean. If an action by the United States or world today, could positively or negatively benefit the future, say 50 to 100 years down the road, is that an important consideration?
- Are you aware that there is less ice on land in such places as Antarctica and Greenland than in previous years since the Industrial Revolution? What do you believe is causing this decrease in mass of ice on land?
- To where do you believe the water from ice melt on land goes, and do you believe that could cause global sea levels to rise?
- Do you disagree that additional greenhouse gases in Earth's atmosphere, such as carbon dioxide, will cause a smaller magnitude outgoing longwave radiation to escape to space? Please explain.
- Do you disagree that the burning of fossil fuels, such as oil or natural gas, cause carbon dioxide to be released into the atmosphere? Please explain.
- Do you disagree that if fossil fuels were not extracted and burned, less carbon dioxide would be released into the atmosphere? Please explain.
- Therefore, is it possible, if not probable, that humans releasing greenhouse gases into the atmosphere could cause more heat to be trapped by the atmosphere? Please explain.

- Do you understand that the concept address is the previous question is the basis of human-caused climate change? Please explain.
- If not human burning of fossil fuels, how do you explain the observed increase in carbon dioxide in atmosphere?
- What is a safe level of carbon dioxide in the atmosphere? Please provide this number in parts per million. Please explain.
- If states want to individually take measures to curb greenhouse gas emissions will you allow them to do so? If yes, how will you support them? If not, why does the EPA have the authority to stop a state from implementing measures to curb greenhouse gases?

**If confirmed, I will work to ensure that any regulatory actions are based on the most up to date and objective scientific data, including the ever-evolving understanding of the impact increasing greenhouse gases have on our changing climate. I will also adhere to the applicable statutory authorities to fulfill EPA's mission to protect human health and the environment consistent with the process and rule of law established by congress. I also believe the Administrator has an important role when it comes to the regulation of carbon dioxide, which I will fulfill consistent with *Massachusetts v. EPA* and the agency's Endangerment Finding on Greenhouse Gases respective of the applicable statutory framework established by Congress. I believe the most effective path towards achieving these objectives is through close partnership with the states granting them regulatory leeway as ascribed by the rule of law.**

24. If states want to individually take measures to curb greenhouse gas emissions will you allow them to do so? If yes, how will you support them? If not, why does the EPA have the authority to stop a state from implementing measures to curb greenhouse gases?

**Yes, states are free to pursue regulatory measures to address greenhouse gas emissions under state legal authority.**

25.A recently released report by *Solar Power Rocks* gave Oklahoma a grade of "F" and found that the "solar industry has been stymied at every turn."

- The length of return for a 5-kilowatt solar array installation is 16 years in Oklahoma, compared to the just 4 years in Massachusetts. Why do you believe that is the case?
- In 2014, the Oklahoma legislature passed legislation putting a surcharge on rooftop solar. Do you support this? Why or why not?

**I am not familiar with "lengths of return" or the potential differences in such lengths of return between states, and thus have no opinion as to the cause**

**of any such differences. I am not familiar with the legislation you reference, and have formulated no opinion with regard to the wisdom of it as a matter of Oklahoma policy.**

26. Last week, in his nomination hearing, Rex Tillerson dismissed the importance of America being energy independent. If you are confirmed as EPA Administrator, you will oversee tailpipe standards for cars and SUVs and the renewable fuel standard, two important policies that support energy independence by reducing oil consumption in America. In your view, should achieving energy independence be a priority for America?

**As Congress indicated in the Energy Independence and Security Act of 2007, domestic production of renewable fuel contributes to our nation's "greater energy independence and security." Our energy independence will best be achieved by an "all-of-the-above" strategy without the government picking winners and losers. Setting motor vehicle emissions standards is a complex task that requires careful balancing of several competing factors. Setting such standards also requires coordination with NHTSA, which continues to administer the CAFE program. I will consider the relevant factors carefully and will coordinate closely with NHTSA on any motor vehicle emissions standards that will be addressed during my tenure if I am confirmed as Administrator.**

27. A cornerstone of science is impartiality and following the facts. This is what has allowed the United States to be a world leader in science.

- Do you commit to allowing EPA scientists to do their jobs and not interfere with their science?
- How will you ensure that scientists, such as those employed by EPA, are allowed to continue their work unimpeded by potential challenges due to their topic of research?
- Do you agree that only scientists and technical experts, not impeded by political influence, should edit scientific work? If not, why?
- In your opinion, what is the role that a public affairs office has in editing any potential publically available statement or information?
- Do you pledge that your all of your work as EPA Administrator will be guided by the best available science?
- Do you commit to maintaining EPA's Scientific Integrity Policy regardless of research area?

**If confirmed, it will be a privilege to work with EPA scientists and the thousands of other public servants at EPA. I have no first-hand knowledge of the role of the public affairs office as referenced in the question and, if confirmed, I expect to learn more about the office. Indeed, I fully believe, as former EPA administrators have stated, that sound, objective science must**



serve as "the backbone" of EPA actions. I have no first-hand knowledge of the specific scientific integrity policy referenced in the question and, if confirmed, I commit to thoroughly reviewing the policy and to follow applicable laws and federal guidance regarding scientific integrity, information quality, and transparency.

28. It has been reported by *Wired* that President-elect Trump plans to undo President Obama's June 2013 Climate Action Plan, and remove materials from EPA websites. While we understand revising policies from administration to administration, the reports of removing environmental data from EPA websites is troubling. Will you commit to keeping environmental records, data, and records provided as part of previous rulemakings publically available on the EPA's website?

- Will you commit to ensuring that any current publically available dataset remains available and easy to access? If not, please explain.
- Will you ensure that all data interpretation tools available on the EPA website remain publically available and easy to access? If not, please explain.

**I have not been briefed on any changes to the EPA website following the transfer of power from the Obama Administration to the Trump Administration. That being said, I commit to reviewing the materials that are included on the EPA site if I am confirmed.**

29. I have heard that EPA's Fiscal Year 2018 budget request may include a 17% budget cut. I am troubled by this reported planned cut to EPA budget and urge you to reconsider this drastic move. Will you maintain robust funding for scientific research at EPA, and to ensure that environmental data continues to be collected?

**I have no first-hand knowledge of EPA's development of its FY 2018 budget request. If confirmed, I will work to ensure that the limited resources appropriated to EPA by Congress are managed wisely in pursuit of that important mission and in accordance with all applicable legal authorities.**

30. Hydraulic fracturing (fracking) now provides more than half of the United States oil output. In 2000, fracking provided less than 2% of America oil. This has dramatically changed the energy landscape of the United States.

- Do you believe that hydraulic fracturing (or fracking) is the cause of the increased frequency and strength of earthquakes in Oklahoma? Please explain.
- As Attorney General have you taken any actions related to earthquakes caused by fracking?
- In May 2016, you testified that the decline in the coal industry was due to the price drop of natural gas and not EPA regulation. Do you stand by this statement? If not, why have your views changed?

•Do you believe that fracking can contaminate drinking water supplies? Please explain.

**Scientists from the state level up to the National Research Council have found that the act of hydraulic fracturing itself poses very little risk of creating seismic events. Seismicity concerns related to the oil and natural gas industries are more commonly tied to the underground injection of wastewater which is regulated by the Safe Drinking Water Act. As I stated in my testimony, in Oklahoma the Corporation Commission has jurisdiction over this matter and I have been in contact with that agency that has taken very meaningful steps to address seismic concerns. I believe that there is not one single factor that has precipitated the decline in the coal industry alone. Finally, I agree with EPA's Dr. Thomas Burke who, following the release of EPA's final hydraulic fracturing water study, reiterated that the Agency only found a small number of confirmed cases of contamination. With well over one million wells that have been hydraulically fractured in the United States the evidence found by EPA suggests a very low likelihood of drinking water contamination from hydraulic fracturing or its associated activities.**

31. This past December, the EPA released a report entitled, "Hydraulic Fracturing for Oil and Gas: Impacts from the Hydraulic Fracturing Water Cycle on Drinking Water Resources in the United States." The EPA found scientific evidence that fracking activities can affect drinking water supplies.

•Have you read this report?

•What steps will you take as Administrator to reduce the possibility of drinking water contamination due to hydraulic fracturing activities?

•Of those chemicals used in hydraulic fracturing activities, the EPA found that nearly 200 might pose a public health risk. Will you commit to continuing to study these identified chemicals and the potential health risks, as well as identify other potential harmful chemicals used in hydraulic fracturing activities?

**I am familiar with the report and if confirmed as EPA Administrator I will faithfully execute my legal duties to administer laws as authorized by Congress including the Safe Drinking Water Act. Understanding and studying risks to local communities is something central to the role as Administrator and I will continue to study potential risk using the Agencies many tools.**

32. Do you agree the Clean Air Act health benefits significantly outweigh costs? For example, a peer-reviewed study found that in 2010 alone the Clean Air Act Amendments of 1990, which reduced fine particulate pollution and ozone, avoided more than 160,000 premature deaths, 130,000 heart attacks, prevented 13 million missed workdays, and avoided 3.2 million missed school days by children.

**Based on the limited information provided, it is unclear as to the specific study referenced. However, as I indicated in my testimony, I am incredibly proud of the progress the U.S. has made to provide public health protections and improve our environmental stewardship while also growing our economy. If confirmed, I commit to continue this progress and protect the American people through commonsense and lawful regulations.**

33. According to the Consumer Reports National Research Center survey completed in June 2016, 84 percent of Americans feel that automakers should continue to improve fuel economy for all vehicle types. About three-quarters of survey respondents specifically indicated that the U.S. government should require vehicle manufacturers to improve the fuel economy of their vehicles over time. As you may know, when the government stopped increasing fuel economy standards for two decades in the mid-1980s, vehicle fuel economy stopped improving. Now that we are once again making progress, what will you do to make sure that vehicle fuel economy continues to improve as Americans expect?

**While the EPA regulates emissions under the Clean Air Act, it is true that Congress vested authority to regulate fuel economy through the Corporate Average Fuel Economy (CAFE) standards" framework set forth originally in the Energy Policy and Conservation Act. Congress vested responsibility for the CAFE program in the Department of Transportation, not the EPA; accordingly, I take no position on Congress's policy decision on this subject, or on the Department of Transportation's administration of the CAFE program. If confirmed as EPA Administration, I would administer the Clean Air Act in accordance with the terms of the Act, including Congress's statutory policy objectives, and would do so on the basis of the factual record in any given proceeding.**

34. After conducting its Midterm Evaluation of fuel economy standards for model years 2022 through 2025, the EPA determined that automakers were well-positioned to meet the standards at lower costs than previously estimated. In fact, the EPA chose to retain the current standards to provide regulatory certainty for the auto industry despite a technical record suggesting that standards could be made more stringent.

Among the technologies that the EPA considered in reaching its determination that fuel economy standards could be readily achieved were so-called "off-cycle technologies." Off-cycle technologies are innovations such as more efficient air conditioning through enhanced window glass that reduces solar load, stop-start systems, solar panels, active aerodynamics, and adaptive cruise control. By reducing the energy demands placed on the engine, these technologies serve to improve fuel economy and reduce tailpipe emissions of carbon pollution. Vehicle manufacturers may claim "off-cycle credits" for these carbon pollution-reducing technologies which may have benefits not adequately captured as part the

standard fuel economy testing procedures.

Americans in Massachusetts, Ohio, Tennessee, North Carolina, Michigan, Indiana and across the country have good-paying jobs that depend on vehicle manufacturers continuing to demand these innovative technologies.

In your hearing, you explained how important it is for the EPA to consider jobs and economic impacts as part of its analysis and decision-making. If confirmed, would you support the "off-cycle credit" mechanism included that the EPA included in its fuel economy standards—a mechanism that drives American innovation and job growth? If not, please explain your position.

**If confirmed, my job as Administrator would be to administer the statutes that Congress has enacted, including the statutory objectives that Congress incorporates into those statutes. If Congress chooses to enact legislation to promote certain technologies, such as "off-cycle" vehicle technologies, then those statutory priorities would fall within the EPA Administrator's responsibility. If confirmed, I would look forward to working with Congress on any such statutory proposals that it legislates.**

35. Is the carbon dioxide that comes out of car tailpipes physically or chemically different from the carbon dioxide that comes out of power plant smokestacks? If so, how?

**As a matter of law, Congress elected to enact different statutory frameworks for regulating emissions from stationary sources and mobile sources: Title I of the Clean Air Act for the former, Title II for the latter. As the Supreme Court recognized in *Utility Air Regulatory Group v. EPA* (2013), these two frameworks have significant differences.**

36. Would the impact on the climate system of carbon dioxide from power plants be any different from that of carbon dioxide from tailpipe emissions? If so, in what way?

**As noted above, Congress elected to enact different statutory frameworks for regulating emissions from stationary sources and mobile sources: Title I of the Clean Air Act for the former, Title II for the latter. As the Supreme Court recognized in *Utility Air Regulatory Group v. EPA* (2013), these two frameworks have significant differences.**

37. Do you agree that the power sector and the transportation sectors each contribute at least a quarter of U.S. carbon dioxide emissions?

**According to the EPA (<https://www.epa.gov/ghgemissions/sources-greenhouse-gas-emissions>), in 2014 electricity generation accounted for 30% of total greenhouse gas emissions (quantified in terms of metric tons of CO2 equivalent), and transportation accounted for 26%.**

38. Congress established protections for the air in national parks and wilderness areas in the Clean Air Act amendments of 1977. The quality of the air in New England parks like Cape Cod national seashore and Acadia national park suffers from pollution blown in from elsewhere. Last summer you joined other Attorneys General in comments objecting to the EPA's amendments to the Regional Haze Rule. Given your previous objection, if confirmed as EPA administrator, what will you do to fulfill the 40-year directive from Congress to protect and restore the air quality of national parks like Cape Cod and Acadia even if it requires states from outside the region to reduce their air pollution?

**As I stated in my testimony before the Committee, I agree that the Clean Air Act gives EPA an important role in addressing interstate pollution issues, among many other things. All legal positions that I took in my capacity as Attorney General for the State of Oklahoma were in my capacity as an advocate. If confirmed, I will consider all matters presented to me with an open mind and will work to reach conclusions that are reflected in the administrative record of each matter and that comport with Congress's intent in enacting the Act.**

39. The 1977 Clean Air Act amendments also provide a role for federal land managers in protecting the air quality of national parks and wilderness areas. If confirmed as EPA Administrator, how will you make sure that EPA honors the obligations federal land managers have under the Clean Air Act and that their expertise is incorporated into the policies necessary to achieve the goal of natural air quality?

**I am confirmed, I will exercise my authority consistent with Congress's intent in enacting the Act. This includes acting transparently in a manner that takes into account the views of the federal land managers where the Act calls for their views, such as in assessing visibility impacts from new major sources in the preconstruction permitting process.**

40. When Congress passed the original Renewable Fuels Standard (RFS) in 2005, "inadequate domestic supply" and "severe harm" to the economy were the only conditions under which the general waiver authority allowing the EPA to waive the RFS could be invoked. Despite this clear direction from Congress, in its 2014-2015-2016 final Renewable Volume Obligation (RVO), EPA used "available refueling infrastructure" as a condition to waive the standard even though Congress expressly rejected it. Do you believe that EPA's use of this reason for

granting a waiver in the 2014-2015-2016 RVO is consistent with Congressional intent and the law?

**As I stated at my hearing, I believe the EPA Administrator should use its waiver authority judiciously and not to undermine or question the commitments made by Congress when enacting the RFS.**

41. The Renewable Fuels Standard (RFS) is one of our country's most important tools to reduce carbon pollution from the transportation sector. The 2007 amendments to the RFS included increasing volumes of cellulosic and advanced biofuels. If confirmed, will you increase the blending targets for cellulosic and advanced biofuels, including biodiesel, given Congressional intent? What role can EPA play to facilitate the expansion of cellulosic and advanced biofuels, including biodiesel?

**Section 211(0) of the Clean Air Act contains enumerated tables of applicable target volumes of renewable fuel, specifically cellulosic and advanced, for calendar years 2006 through 2022. As I indicated in my nomination hearing, it is not the job of the Administrator of the EPA to do anything other than administer the program according to the intent of Congress. If confirmed, I will work to administer this program in accordance with statute and Congressional intent.**

42. In response to an Inspector General report, the EPA announced in August that it would update the estimates of carbon pollution reduction from renewable fuels. If confirmed as Administrator, will you commit to completing this update and using the best available commercial and scientific information, including a recent USDA report on the emissions profile of renewable fuels?

**I have not had an opportunity to review the referenced report, but, if confirmed, I will review it.**

43. In a response to a Renewable Fuels Standard question, you stated during the hearing that "we have less consumption today." Please provide the annual U.S. consumption of gasoline since 2005 as well as forecasts for 2017 and 2018. Is U.S. consumption of gasoline declining or increasing?

**In the course of my nomination hearing, I referenced market conditions that have changed since 2005, when the initial RFS program was enacted. When the program was updated in 2007, Congress could not predict how the**

**market conditions would further change, from decreased consumption to more fuel-efficient vehicles, and therefore provided the Administrator with the ability to waive certain provisions contained in the Act. As I stated at my hearing, I do not believe the EPA Administrator should use this waiver authority to undermine the commitments made by Congress when enacting the RFS.**

44. EPA set out to reduce mercury, arsenic, and other toxic chemicals from coal and oil-fired power plants through a rule that you sued to block. Power plants account for half of the mercury emissions in the United States and EPA's Mercury and Air Toxins Standards rule could save up to 11,000 lives and save \$90 billion on health costs each and every year across the United States.

- The World Health Organization states that mercury has a toxic effect on humans, and in particular poses a significant threat to child development. Do you agree that mercury is a toxic substance and exposure to it should be limited? Please explain.

- Most people are exposed to mercury from eating fish and shellfish. Do you agree that we should take appropriate steps that reduce the amount of mercury in fish and shellfish? Please explain.

**As I stated in my testimony before the Committee, mercury is appropriately regulated as a hazardous air pollutant under Section 112 of the Clean Air Act. If I am confirmed as Administrator, I will regulate under Section 112 in a manner that is consistent with Congress's intent in enacting that provision. I will also faithfully administer other federal statutes that regulate mercury to the extent that they are under my jurisdiction, including the Mercury Export Ban Act of 2008, the Mercury-Containing and Rechargeable Battery Management Act of 1996, the Clean Water Act, the Emergency Planning and Community Right-to-Know Act, the Resource Conservation and Recovery Act, and the Safe Drinking Water Act.**

45. Donald Trump recently bemoaned "you're not allowed to use hair spray anymore because it affects the ozone." Hairspray is still available for sale, just without the chemical responsible for the ozone hole.

The ozone hole was first discovered in the mid-1980s. The world quickly came together to address the ozone hole through the Montreal Protocol. Actions were taken prior to confirmation of the hypothesis that chlorofluorocarbons (CFCs) due to human emissions, that chemical Donald Trump alluded to in his statement, to address the ozone hole. The treaties to address the ozone hole were the first universally ratified treaties in the history of the United Nations.

- Do you agree with the overwhelming scientific evidence that CFCs are the cause of the historic depletion of the ozone layer? If not, why not?

- Do you consider the “Montreal Protocol on Substances that Deplete the Ozone Layer” to be a success? If not, why not?
- Considering the success of the world coming together to solve an environmental problem in that instance, do you believe that such a framework could be used as an example to solve other global environmental problems? If not, why not?

**I consider the Montreal Protocol to be a successful example of the world coming together to solve an important environmental problem and that the Montreal Protocol could serve as an example to the President as he exercises his foreign affairs powers and to the Senate as it considers ratification of any treaty that may come before it.**

46.Mr. Pruitt, you have repeatedly sued EPA to overturn regulations that seek to protect Americans from the effects of soot, ozone, greenhouse gases, mercury, arsenic and other air pollutants. These toxic air pollutants are often blown east from large industrial and energy sources in the Midwest, particularly impacting air quality and public health from Maine and Massachusetts to the Smoky Mountains.

- EPA’s Clean Air Scientific Advisory Committee, which provides independent scientific advice to EPA on its air pollution standards, said that ozone causes a “decrease in lung function, increase in respiratory symptoms, and increase in airway inflammation.” Do you agree with this scientific conclusion? Please explain.
- EPA projected that its final Cross State Air Pollution Rule would avoid up to 34,000 premature deaths, 15,000 non-fatal heart attacks and 400,000 asthma attacks – every year. Do you agree with this conclusion? Please explain.
- The EPA concluded that the health effects associated with fine soot particles include premature death, more ER visits and increased frequency of chronic respiratory disease. Do you agree with this conclusion? Please explain.

**As I stated in my testimony to the committee, all legal positions that I took in my capacity as Attorney General for the State of Oklahoma were in my capacity as an advocate. If confirmed as Administrator, I will consider all matters presented to me with an open mind and will work to reach conclusions that are reflected in the administrative record of each matter and that comport with Congress’s intent in enacting the Act.**

47.Lead is not just a problem in Flint, Michigan, but all over the United States including Oklahoma. In your capacity as Attorney General of Oklahoma, what did you and your office do to prevent childhood lead exposure?

**While I am concerned about children’s health, matters of the sort you reference would be handled by Oklahoma’s environmental regulators at the**



**Department of Environmental Quality and the Oklahoma Water Resources Board.**

48. During your confirmation hearing before the Environment and Public Works Committee, in response to a question, you indicated that you did not know if there is a safe level of lead. Scientific experts at the Centers for Disease Control and Prevention (CDC) and the World Health Organization, among other leading scientific bodies have repeatedly warned of the dangers of lead, specifically to children, concluding that there is no level of lead exposure that is safe.

- Do you agree that exposure to lead is dangerous and that no level of exposure should be considered safe?
- If confirmed, will you commit to making reducing childhood lead exposure a priority?
- What specific strategies will you implement to reduce lead exposure?
- Will you advocate for more funding for the programs that reduce lead exposure risk, especially in children?

**I have not myself reviewed the scientific studies correlating blood lead levels to impacts in children. However, it is my understanding that neither EPA nor CDC have identified a "safe" level of exposure, but instead have adopted levels appropriate for action under their specific statutory authorities. If confirmed I will carry out EPA's authorities to reduce exposure to lead, including exposures by children.**

49. The EPA is tasked with implementing the Safe Drinking Water Act (SDWA), and ensuring that the drinking water supply for many Americans is safe. Given the Flint, Michigan drinking water crisis, many Americans that took clean water for granted are now being faced with questions about a basic necessity.

- The Water Infrastructure Improvement for the Nation (WIIN) Act of 2016, or WIIN Act, passed Congress was signed by the President, and became public law on December 12, 2016. Will you commit to, as expedient as practicable, implementing the changes to the Safe Drinking Water Act?
- The human-caused drinking water crisis in Flint, Michigan has highlighted the widespread concern of lead in drinking water pipes across the nation. Additionally, nearly 4 million Americans may be unknowingly drinking unsafe water. Are you aware of how many public water systems in the United States have issues with lead in drinking water above safe levels?
- If a public official knowingly exposes their community to dangerous levels of contaminants, such as lead, should that official be held accountable for such actions? What do you think are acceptable punishments for such an action?
- If confirmed as EPA Administrator, what will you do to ensure that communities across America have safe drinking water that is not contaminated with lead?

**If confirmed I will fully implement the changes to the Safe Drinking Water regulatory requirements made by the WIIN Act, including the changes to the notification requirements relating to lead levels in drinking water. If funding is provided, I will also implement the assistance programs authorized in that Act. I also will fully implement the existing authorities under the SDWA, including, as appropriate, EPA's authority to take emergency action. If confirmed I will seek a briefing from EPA staff on the number of public water systems that are not in compliance with the SDWA Lead and Copper Rule. I am unaware of EPA authorities to punish individuals other than to seek the resignation of responsible EPA officials, such as the resignation of the former Regional Administrator of EPA Region 5 who resigned after her failure to act upon information regarding the lead levels in the Flint water system became public.**

50. The updated Toxic Substances Control Act (TSCA) requires that EPA evaluate the risks to "potentially exposed or susceptible subpopulations" and take action to protect these subpopulations from all identified risks. Do you commit to follow this statutory requirement?

**Yes.**

51. As Oklahoma Attorney General, you have consistently advocated for the rights of states in the area of environmental protections. Will you apply the preemption provisions in TSCA in a manner that is consistent with the statute and your pre-stated philosophy when it comes to state leadership on environmental protection matters?

**As I stated in my letter to Senators Inhofe and Boxer from April 9, 2016, I believe the Lautenberg Act ensures states have an important voice at the table and I will apply the law as enacted by Congress.**

52. The new law greatly increases transparency and provides EPA with an obligation to protect against unjustified claims of confidentiality by industry. Do you commit to uphold the bill's statutory requirements in this area?

**As I stated in my letter to Senators Inhofe and Boxer from April 9, 2016, I believe public dissemination of information about chemicals is critical to ensure public health and safety is upheld. In my view the Lautenberg Act struck a common sense balance between protecting confidential business information and informing the public and I intend to apply the law as enacted by Congress.**

53. Do you agree that transparency is important to meaningful public participation in EPA's work on chemicals under TSCA? Do you commit to increasing transparency by fully implementing the provisions in the new law to prevent unjustified claims of confidentiality by industry?

**As I have previously stated I believe the Lautenberg Act struck an appropriate balance between protecting confidential business information and informing the public and I intend to apply the law as enacted by Congress.**

54. One of the reasons Congress was able to agree on a major re-write of TSCA was because of the fundamental agreement we made to clarify the law to ensure that costs could not be considered when EPA decided whether a chemical was safe or what level of a chemical was safe. Costs could only be a factor when deciding what type of regulation to require to meet that safe standard. Do you continue to support this approach? Would you oppose any effort to change this reformed approach to regulation?

**If confirmed I intend to faithfully execute all provisions of the Lautenberg Act as enacted by Congress.**

55. Nearly three decades ago, President George H. W. Bush attempted unsuccessfully to ban asbestos. Asbestos is banned in 55 countries across the globe and the World Health Organization says, quote, "all forms of asbestos are carcinogenic to humans". More than 30 Americans die each day from diseases like asbestosis and cancer caused by asbestos. Yet, in his 1997 book, *The Art of the Comeback*, President-elect Trump stated, that asbestos is, quote, "100 percent safe, once applied" and that he, quote, "believe[s] that the movement against asbestos was led by the mob." Do you agree with Mr. Trump that asbestos is 100 percent safe once applied or that the movement against asbestos was led by the mob?

**Asbestos has been identified by the EPA as a high-priority chemical that requires a risk evaluation following the process established by the Lautenberg Act to determine whether conditions of use of the chemical substance pose an unreasonable risk. Prejudging the outcome of that risk evaluation process would not be appropriate.**

56. In 2015, I released a report entitled, "Failing the Grade: Asbestos in America's Schools."<sup>5</sup> Asbestos is still found in schools across America, and the true scope of the problem is still hard to ascertain. More than 53 million American children and six million American adults spend large portions of their days in school buildings that may contain dangerous environmental hazards. My report laid out recommendations on how to address the findings of the report.

- Millions of students attend schools that may have asbestos and this is clearly a widespread problem. How would the EPA under your direction, if confirmed, begin to assess the true scope of the problem?
- Will you commit to raising awareness among students, parents, teachers, and other employees about persistent asbestos hazards in school buildings? If not, why not?
- Do you support periodic reporting requirements for schools to report their progress related to the management and abatement of asbestos? If not, why not?
- Do you support additional funding for enforcement actions for schools that do not follow the law and may be exposing children to asbestos? If not, why not?
- Do you support public access to information about where asbestos can be found in products, school buildings, and elsewhere to empower the public to avoid preventable asbestos exposures? If not, why not?
- Do you support providing consumers with access to current information about asbestos-containing products? If not, why not?
- Do you support schools that are known to have asbestos updating their reports of where asbestos is located within a school? If not, why not?
- Do you support states communicating information to the EPA on their progress with implementation of asbestos response plans? If not, why not?
- Do you support continued research and outreach to improve public awareness of the danger of asbestos exposure? If not, why not?

**If confirmed I will take the responsibility of protecting human health and the environment very seriously and in accordance with the legal authorities established by Congress. EPA has identified asbestos as a high-priority chemical and is now required to set the scope of review as well as conduct a risk evaluation of the conditions of use of the substance. Without prejudging that review process any conditions of use of asbestos or any other chemical substance that pose an unreasonable risk are required to be addressed under the law and appropriate communication of chemical reviews as well as transparency in the process is an important aspect of the law as passed by Congress. In addition to the Lautenberg Act, in 1986, Congress enacted the Asbestos Hazard Emergency Response Act (AHERA) and then later amended the act in 1990 to modify EPA's school asbestos remediation program. While I have not assessed the appropriateness of periodic reporting requirements, if confirmed I intend to use the authorities granted to the Agency by Congress under TSCA and other statutes to**

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<sup>5</sup> <http://www.markey.senate.gov/imo/media/doc/2015-12-Markey-Asbestos-Report-Final.pdf>

**assess potential dangers as well as inform and protect the public as appropriate.**

57. Last year entitled, "The ABCs of PCBs: A Toxic Threat to America's Schools."<sup>6</sup> Although Congress and the EPA banned the production and most uses of PCBs in 1979, the toxic chemical is still found in many schools across this country. In addition, my report laid out six recommendations.

- Since up to 30% of students may be exposed to PCBs, this is a widespread problem. How would the EPA under your direction, if confirmed, begin to assess the true scope of the problem?
- PCBs are found within caulk and fluorescent light ballast in American schools. How would you encourage the removal of PCB-containing materials? Since these ballasts are nearing the end of their useful life, EPA has said that it "recommends all PCB-containing FLBs be removed from lighting fixtures". Would you support the promulgation of a regulation under section 6(e) of TSCA that updates EPA's current regulations for PCBs and includes a requirement that all PCB-containing ballast be removed from schools and daycare facilities? If not, why not?
- There are multiple local education agencies and schools that have been seeking the advice and assistance of the EPA in dealing with PCB issues. Will you commit to assisting these agencies and schools and ensuring that the guidance EPA provides across all Regions of EPA is consistently and proactively provided? If not, why not?
- Do you support a requirement that each school that was built or retrofitted between 1950 and 1979 (and therefore may contain PCBs) undergo a survey (to be administered by the local educational agency) in order to determine whether and where PCBs may be located within a school? If not, why not?
- Do you support a requirement for recordkeeping by state and local educational agencies of testing for, response to, and remediation of PCB hazards in schools? If not, why not?
- Do you support the EPA updating its testing guidance to encourage inspections of all schools built or retrofitted between 1950 and 1979, and improve its efforts to proactively and consistently communicate testing guidance to states, local education agencies, and schools with potential PCB hazards? If not, why not?
- Do you support the EPA developing guidance regarding the means by which parents, teachers, and employees should be notified of potential PCB hazards by schools and daycare facilities, including the manner in which such hazards should be described? If not, why not?
- Do you support the development and provision of updated guidance on the proper remediation of PCBs by EPA for schools, daycare facilities and other entities to use? If not, why not?
- Do you support the EPA proactively and regularly sharing best practices and other information outreach to states and school districts, and enforcement

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<sup>6</sup> <https://www.markey.senate.gov/imo/media/doc/2016-10-05-Markey-PCB-Report-ABCsofPCBs.pdf>

activities, related to PCB hazards in schools and daycare facilities across all EPA regions? If not, why not?

- Do you support EPA regional offices increasing their outreach to states and local education agencies to make them aware of available EPA's PCB regulations, guidance and resources? If not, why not?

- Do you support the EPA updating its current guidance on PCB hazards in schools to incorporate lessons learned from previous remediation projects and best available science? If not, why not?

- Do you support schools having detailed plans on how a school specifically plans to ensure the proper removal of PCBs before starting a PCB remediation project? Please explain.

- Do you support the authorization and appropriations of money for the testing for, response to, and remediation of PCB hazards and other environment hazards in schools? Please explain.

**Addressing the issues of possible harmful exposures to chemicals in schools is an issue I would take very seriously if confirmed as EPA Administrator. While protecting children from exposure to chemical substances of concern it is important to have all the facts and ensure that an action does not create unintended consequences or put children at potentially greater peril via risk shifting or the possibility of remedial actions resulting in greater exposure to a substance. While I would not prejudge a regulatory outcome under the TSCA or any other law, I will work collaboratively with state and local governments and citizens to address issues and ensuring EPA regions are consistent and performing their legally required duties will be a priority if confirmed.**

58. The Environmental Working Group reported that Oklahoma led the nation in pesticide-related illness and deaths between 2000 and 2010 based on data from the Center for Disease Control and Prevention.<sup>7</sup>

- Are you aware that your state, Oklahoma, leads the United States in pesticide-related illness and deaths? Why do you think this is the case?

- Recent reports have suggested that the increased use of pesticides is linked to the rapid decline in the bee population. What is your understanding of the science explaining the cause of the decline in bees in the United States?

**I am not personally familiar with the report referenced in this question or generally the rate of pesticide usage in Oklahoma. I am generally aware of the important role bees play as pollinators, but it is unclear from the information provided in the question what specific reports are being discussed. If confirmed as Administrator, I would expect to be briefed by EPA staff before taking action on this issue and would work to ensure EPA**

<sup>7</sup> <http://www.ewg.org/agmag/2016/12/pruitt-s-home-state-leads-nation-pesticide-illnesses-and-deaths>

**followed all applicable legal requirements and made its decisions based on sound science.**

59. Racial minorities and low-income communities are disproportionately affected by environmental pollution, siting of waste disposal facilities, and other industrial pollution causing activities. In many instances, the combination of poverty and race as well as lax enforcement and oversight of industrial activities results in worsened health outcomes by these communities.

- How will you address environmental justice and equity for minority and poor communities through EPA programs?
- What will you do to improve health equity as administrator of the EPA?
- What are your plans on reducing toxic pollution and disproportional burden of pollutants in communities of color?
- What will you do to increase enforcement and oversight in communities that are bearing the burden of environmental hazards?
- In your confirmation hearing, you committed to making environmental justice a top priority. If confirmed, will you commit to dedicating funding to assist minority and poor communities with resources and technical assistance to better engage with the EPA and industry about pollution activities and concerns occurring in their communities?
- What will you do to improve the EPA's office of Civil Rights to ensure that the EPA is in compliance with the Civil Rights Act of 1964?
- Will you uphold and make a top priority throughout the agency's work, Executive order 12898, which requires federal agencies to 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."
- Do you vow to ensure that environmental justice activities throughout the agency remains focused on poor and minority communities?
- EPA recently developed the agency's EJ2020 action Agenda to better deliver on its historical promises of reducing disparities in environmental protection. Will you utilize and uphold this guidance and procedures outlined in this document throughout the work of the agency? Please explain.

**As I testified, the Administrator plays an important role regarding environmental justice. If confirmed, I would work to faithfully execute the laws EPA is responsible for administering, in order to protect human health and the environment for all Americans. If confirmed, I would expect EPA to operate in an open and transparent manner, consider the views of stakeholders as appropriate, act based on sound science, and follow the laws as established by Congress, including the Civil Rights Act. I am personally unfamiliar with the operations of EPA's Office of Civil Rights and details of current indicatives regarding environmental justice referenced in the question, but I would expect, if confirmed, I would be briefed by staff about ongoing programs and activities before taking any action.**

60. If you are confirmed, do you commit not to direct the cessation of or otherwise impede the investigations or actions of the EPA Office of Enforcement and Compliance Assurance? If not, why not?

**I am unfamiliar with the specific details of the actions referenced in the question. I would expect to be briefed by staff, in consultation with the Department of Justice as appropriate, before taking any action.**

61. For each year since 1995, please provide information regarding the State of Oklahoma's environmental enforcement efforts. Specifically, for each year, please provide a list that includes:

- A brief description of each environmental enforcement action (including investigations and enforcement proceedings) initiated by the AG's office, including the date the action was initiated, the name of the subject of the action, and the nature of the action and environmental violation that led thereto.
- The annual budget of the Office of Environmental Enforcement, both in dollar terms and as a percentage of the AG's annual budget.
- The number of employees in the Office of Environmental Enforcement and in the AG's office writ large.
- A description of each environment enforcement action (including investigations and enforcement proceedings) that was closed, including a description of the resolution of the matter, whether a fine or penalty was levied (and if so the amount of such fine or penalty), whether non-monetary remedies were required (and if so, what), and whether a criminal prosecution was initiated in the matter (and if so what the resolution of the prosecution was).

**In order for you to receive a comprehensive response to a voluminous request of that nature, I would direct you to make a request of the Oklahoma Attorney General's Office under the Oklahoma Open Records Act.**



**Senator Merkley:**

1. In an interview with The Oklahoman in 2015, you were talking about Oklahoma's environmental lawsuit against poultry producers who were polluting the Illinois River basin, and you said that in your view, regulation through litigation is the wrong approach. However, you have been highly active in bringing lawsuits against the EPA, whose regulations typically incorporate information gathered as a result of the kind of extensive stakeholder outreach that you seem to value. What have your experiences in suing the EPA taught you about how to lead the agency?

**My experiences suing the EPA have taught me the value of ensuring that the EPA acts lawfully so that the regulations it promulgates are actually put to work protecting the environment, rather than being invalidated by courts.**

2. The legal actions that you have brought against the EPA suggest that you feel the agency does not have the expertise or skill to make adequate assessments about how to maintain environmental standards. How do you propose to improve the EPA's capabilities so that the agency can achieve its goals in the proper manner?

**The legal challenges I have brought have been to protect the interests of Oklahoma. If confirmed, I expect to learn more about EPA's workforce needs and ensure that the Agency is working towards achieving its goals in a proper manner.**

3. You have said that the "American people are tired of seeing billions of dollars drained from our economy due to unnecessary EPA regulations". In a poll taken in December 2016 of 2,000 supporters of President-elect Trump, 64% of Trump voters support maintaining or increasing the federal budget for environmental protection and conservation. 78% of the Trump voters said they supported air pollution regulations generally, and 61% said companies should be required to reduce their carbon emissions. These are the people who supported Donald Trump, the man who nominated you for this position. Do you share the view of the majority of Trump voters and support maintaining or increasing the federal budget for environmental protection and conservation? Do you share the view of the majority of the President-elect's supporters that companies should be required to reduce their carbon emissions?

**If confirmed as Administrator, I look forward to working with President Trump to achieve his environmental priorities using the tools authorized by Congress and respectful of the rule of law.**

4. Several states, including Oregon, Washington, and California, have taken steps to regulate and reduce greenhouse gas emissions. Would you, as the leader of the EPA, attempt to undermine state-led attempts to combat climate change?

**I respect and believe the states have a very important role in setting and implementing environmental standards that reflect the needs, challenges and expectations of their local communities. Congress established a clear process by which states may set more stringent standards subject to the approval of the Administrator and based on the specific request made and the corresponding record submitted. If confirmed and if I receive any such requests, I will consider them consistent with applicable statutory framework established by Congress.**

5. The EPA produces a wide range of scientific documents. Are you committed to allowing EPA scientists the right of last review of all reports, executive summaries, press releases and websites related to purely science-based documents?

**If confirmed, it will be my privilege to work with EPA scientists and the thousands of other dedicated public servants at EPA who have chosen to devote their careers to improving public health and our environment. Scientific documents are critical to EPA's decision-making and I commit, if confirmed, to ensure EPA scientific documents follow applicable laws and federal guidance on scientific integrity, information quality, and transparency.**

6. Are you committed to transparency at EPA? If so, will you commit to making sure that EPA data is proactively made available to the public, consistent with privacy and confidential business information laws? Will you ensure that all data and data interpretation tools that are currently on EPA websites continue to be publicly available, and, if they become out of date, are archived in an accessible manner?

**Yes, I am committed to transparency at EPA. I commit to making sure that EPA data is made available to the public consistent with privacy and confidentiality laws, and I will ensure that all EPA tools currently available to the public will remain accessible to the public and will be archived appropriately.**

7. How would you incorporate independent science in your decision making?

**If confirmed, it will be my privilege to work with EPA scientists and the thousands of other dedicated public servants at EPA who have chosen to devote their careers to improving public health and our environment. I believe EPA decision-making should be based on sound, independent science, and if confirmed, my decision-making will follow applicable laws and federal guidance on scientific integrity, information quality, and transparency.**

8. Are you familiar with the scientific integrity policies of the EPA? Can you commit to adhering to EPA's scientific integrity policies?

**If confirmed, I expect to learn more about EPA's scientific integrity policies and I commit to follow applicable laws regarding scientific integrity.**

9. How will you work with the White House Office of Science and Technology Policy to ensure that the work of scientists at the EPA, and scientists that provide input to the EPA, is free from political and financial influence?

**If confirmed, it will be my privilege to work with EPA scientists and the thousands of other dedicated public servants at EPA who have chosen to devote their careers to improving public health and our environment. I have no first-hand knowledge of the EPA's consultation with the White House Office of Science and Technology Policy and, if confirmed, I would expect to learn more about EPA's work with the office. Indeed, EPA actions must be based on sound, objective science. I commit, if confirmed, to follow applicable laws and federal guidance on scientific integrity, information quality, and transparency.**

10. Pacific coast shellfish aquaculture is estimated to be a \$278 million industry, but over the last decade, oyster growers have struggled to maintain yields because the water in the hatcheries is becoming too acidic for oysters to survive. The oceans are becoming more acidic because they are absorbing more and more CO<sub>2</sub> from the atmosphere. The impact of this acidification on oyster farming has been documented in the scientific literature. On numerous occasions, you've expressed skepticism about climate change, but there is no doubt in the minds of these shellfish growers about the reality that increased CO<sub>2</sub> levels are threatening their livelihoods. As EPA Administrator, how would you address this issue?

**If confirmed, I will implement the laws that EPA is charged to administer. Under section 304 of the CWA EPA establishes water quality criteria to protect aquatic life, including shellfish. Certain EPA programs also include authorities that can support projects that may benefit the shellfish industry, including the National Estuary Program under section 320 of the CWA, the Long Island Sound programs under section 119 of the CWA, and the Chesapeake Bay program under section 117 of the CWA. Finally, section 319 of the CWA can support programs and projects to reduce runoff that may impact oyster beds..**

11. There are many groups within the Christian community -- and groups from other faiths -- in the United States who agree with the overwhelming scientific consensus that climate change is a danger to our country, and who strongly support taking action to mitigate the causes and impacts of climate change. For example, the Southern Baptist Convention made a statement in 2007 saying that Christians are responsible for caring for creation, and emphasized the importance of acting to prevent climate change. The President of the Southern Baptist Theological Seminary, has also issued a statement echoing these views. As EPA Administrator, would you share the view that, in the interest of caring for creation, that action should be taken to prevent climate change?

**I believe we can grow our economy, harvest the resources God has blessed us with, while also being good stewards of the air, land, and water by which we have been favored. If confirmed, I will work to advance the mission of EPA to protect human health and the environment within the framework established by Congress.**

12. The EPA is required to follow the best available science in its rule-making process. Given that every major scientific institution in the United States agrees with the position that the warming trend over the past century is due to human activity, do you have any reason to disagree with the position of every major scientific institution in the United States? Please explain.

**I agree EPA's rulemaking process must be based on the best available science. However, I have no first-hand knowledge of the specific institutions or findings referenced in the question. If confirmed, I commit EPA's rulemaking process will be based on the best available science and will follow applicable laws and federal guidance on scientific integrity, information, and transparency.**

13. 97% of publishing climate scientists support the idea the climate change is real and man-made. You are an attorney, but have questioned the reality of climate change. Do you currently agree that climate change is real and man-made? If not do you believe the 97% of climate scientists that do hold that view are wrong, or lying?

**The ability to measure with precision the degree and extent of human activity on our changing climate, and what to do about it, are subject to continuing debate and dialogue. If confirmed, I will make sure the agency's regulatory actions are based on the most up to date and objective scientific data.**

14. What scientific organizations do you personally trust when it comes to the science of climate change? Please explain why you trust any organization(s) you list.

**If confirmed as EPA Administrator, I will adhere to the applicable statutory authorities to fulfill EPA's mission to protect human health and the environment and will base my decisions on sound science, including advice provided by agency experts and advisory personnel.**

15. Below is a list of statements from the Intergovernmental Panel on Climate Change's Fifth Assessment Report. For each statement, please indicate your agreement or disagreement and explain your reasoning: • "Warming of the climate system is unequivocal."

- "The atmosphere and ocean have warmed, the amounts of snow and ice have diminished, sea level has risen, and the concentrations of greenhouse gases have increased."
- "The atmospheric concentrations of carbon dioxide, methane, and nitrous oxide have increased to levels unprecedented in at least the last 800,000 years."
- "Carbon dioxide concentrations have increased by 40% since pre-industrial times, primarily from fossil fuel emissions and secondarily from net land use change emissions."
- "The ocean has absorbed about 30% of the emitted anthropogenic carbon dioxide, causing ocean acidification."
- "The largest contribution to total radiative forcing is caused by the increase in the atmospheric concentration of CO<sub>2</sub> since 1750."
- "It is extremely likely that human influence has been the dominant cause of the observed warming since the mid-20th century."
- "Continued emissions of greenhouse gases will cause further warming and changes in all components of the climate system."
- "It is very likely that the Arctic sea ice cover will continue to shrink and thin and that Northern Hemisphere spring snow cover will decrease during the 21st century"

as global mean surface temperature rises. Global glacier volume will further decrease.”

- “Global mean sea level will continue to rise during the 21st century.... [T]he rate of sea level rise will very likely exceed that observed during 1971 to 2010 due to increased ocean warming and increased loss of mass from glaciers and ice sheets.”
- “Limiting climate change will require substantial and sustained reductions of greenhouse gas emissions.”

**There is a diverse range of views regarding the key drivers of our changing climate among scientists. I believe that these differences should be the subject of robust and open debate free from intimidation. If confirmed, I will continue to encourage an honest debate on our changing climate, the role of human activity, our ability to measure the degree and extent of human activity, and what to do about it. If confirmed, I will work to ensure that any regulatory actions are based on the most up to date and objective scientific data. I will also adhere to the applicable statutory authorities to fulfill EPA's mission to protect human health and the environment consistent with the process and rule of law established by congress.**

16. Are you aware that each of the past three decades has been warmer than the one before, and warmer than all the previous decades since record keeping began in the 1880s? This trend is based on actual temperature measurements. Do you believe that there is uncertainty in this warming trend that has been directly measured? If so, please explain.

**I am aware of a diverse range of conclusions regarding global temperatures, including that over the past two decades satellite data indicates there has been a leveling off of warming, which some scientists refer to as the "hiatus." I am also aware that the discrepancy between land-based temperature stations and satellite temperature stations can be attributed to expansive urbanization within in our country where artificial substances such as asphalt can interfere with the accuracy of land-based temperature stations and that the agencies charged with keeping the data do not accurately account for this type of interference. I am also aware that 'warmest year ever' claims from NASA and NOAA are based on minimal temperature differences that fall within the margin of error. Finally, I am aware that temperatures have been changing for millions of years that predate the relatively short modern record keeping efforts that began in 1880.**

17. Is there a scientific basis, based on the best available science and the weight of scientific evidence, for revoking or revising the finding that greenhouse gases endanger public health and welfare?

**To my knowledge, there is nothing currently pending before the EPA that would require I take any additional actions on the Endangerment Finding on Greenhouse Gases and if there were, it would not be wise to prejudge the outcome.**

18. Last year, Oklahoma's Department of Environmental Quality added eight lakes to what is now a list of 40 lakes where people should limit their fish consumption due to the dangerous levels of mercury. Do you believe that coal fired power plants contributed to the mercury contamination in those 8 lakes? Do you believe coal fired power plants contribute to mercury contamination in the environment?

**I agree with the Oklahoma Department of Environmental Quality's determinations regarding fish advisories. As discussed elsewhere in my written responses to the Committee, coal fired power plants are the largest point source emitters of mercury into the air in the United States. I do not have direct knowledge of whether these fish advisories were caused by coal fired power plants or other sources, and if so whether those sources are located in the United States or elsewhere.**

19. Do you agree that fish consumption is a leading source of mercury exposure and that the source of mercury in fish comes largely from the burning of fossil fuels? If you disagree, please explain why, including citations of the authoritative bodies that support your position.

**I agree that fish consumption is a leading source of mercury exposure, particularly in certain subpopulations, such as unborn children.**

20. Do you agree with the American Academy of Pediatrics' finding on the importance of minimizing mercury exposures for child health? If you disagree, please explain why, including citations of the authoritative bodies that support your position.

**I agree with the American Academy of Pediatrics' finding. As I stated in my testimony before the Committee, mercury is appropriately regulated as a hazardous air pollutant under Section 112 of the Clean Air Act. If I am**

**confirmed as Administrator, I will regulate under Section 112 in a manner that is consistent with Congress's intent in enacting that provision. I will also faithfully administer other federal statutes that regulate mercury to the extent that they are under my jurisdiction, including the Mercury Export Ban Act of 2008, the Mercury-Containing and Rechargeable Battery Management Act of 1996, the Clean Water Act, the Emergency Planning and Community Right-to-Know Act, the Resource Conservation and Recovery Act, and the Safe Drinking Water Act**

21. You are currently representing Oklahoma in challenging the EPA's supplemental finding that it is necessary and appropriate to regulate emissions of mercury and other hazardous air pollutants from power plants. Do you agree that nearly all covered facilities are already in compliance with EPA's Mercury and Air Toxics Standard? If not, explain why not.

**The Mercury and Air Toxics Standard has not been vacated by the Supreme Court or the D.C. Circuit and currently regulates both mercury and other air toxics. I do not have personal knowledge of whether any facilities are out of compliance with the Mercury and Air Toxics Standard. If I am confirmed as Administrator, I will exercise my authorities as Administrator to enforce all laws administered and regulations promulgated by the Administrator, including the Mercury and Air Toxics Standard, against sources that are out of compliance.**

22. Do you agree that ground-level ozone is a dangerous pollutant that causes respiratory and cardiovascular harm? If no, on what basis do you disagree? If you disagree, please explain why, including citations of the authoritative bodies that support your position.

**I agree that ground-level ozone is a dangerous pollutant that can cause respiratory and cardiovascular harm,**

23. You are currently pursuing a lawsuit against the EPA over the agency's new ozone limits, which the EPA is required to review at least every five years. The new limit is 70 parts per billion; the previous limit, set in 2008, was 75 parts per billion. Prior to the announcement of the new limit, officials at the Oklahoma Department of Environmental Quality said that the state would be able to meet the 70 ppb level, however you have taken the position that EPA's standard is unachievable, and you have criticized the agency's data collection and its scientific processes. Could you please describe why you feel the EPA is unqualified to assess the safety and necessity of the new ozone levels? Could



you please also describe why your state's Department of Environmental Quality was wrong to say that they could meet the new ozone safety levels?

**Oklahoma joined four other states in a petition for review of EPA's 2015 decision to lower the National Ambient Air Quality Standard for ozone from 75 ppb to 70 ppb. The legal question raised by the state petitioners in the case is whether EPA set the standard at a level than can be achieved by states given the background concentrations and uncontrollable sources of ozone in many parts of the country. The briefs filed by the many State petitioners to that rule fully explain the States' position and speak for themselves. The case remains pending before the U.S. Court of Appeals for the District of Columbia Circuit.**

24. In a 2013 interview, you said: "The evidence is clear that the current ethanol fuel mandate is unworkable. The decision by the EPA to lower that standard is good news for Oklahoma consumers. It's good the Administration finally recognized the concerns of consumers and a variety of industries and took steps to correct this flawed program." Please explain what you meant by "unworkable" and "flawed program". Do you still hold this view? If not, what caused you to change your view?

**As I indicated during my nomination hearing, the Administrator and the EPA routinely missed the statutory targets in publishing the Renewable Volume Obligations each year, creating great uncertainty in the marketplace. In fact, in some years they missed the timeline, as far as submitting those targets, by over a year; in some cases over two years. The EPA failed to adhere to statutory requirements, resulting in a flawed and unworkable program.**

25. In December 2015, the President-elect said of Senator Ted Cruz' opposition to the RFS, "...oil pays him a lot of money, he's got to be for oil, right? The oil companies give him a lot of money. So, but I'm with you. I'm with everybody. I'm with everybody. Look, I'm self-funding. I have no oil company. I have no special interest." In contrast, you have received over \$300,000 from the fossil fuel industry, and have sent at least one letter to EPA on your own letter head that was drafted by the oil industry. If you are confirmed as EPA Administrator, will you commit to ensuring that your previous donors will not exert undue influence over the regulatory process and your decision-making at EPA with regard to the Renewable Fuels Standard?

**If confirmed, I will work to administer the RFS in accordance with statute and Congressional intent.**

26. If the Sixth Circuit and the Supreme Court approve EPA's "Waters of the United States" rule defining the jurisdictional extent of the Clean Water Act, would you direct the EPA to amend that rule? If so, how? If the courts invalidate EPA's "Waters of the United States" rule, how would you direct the EPA to define which waterways and wetlands are protected by the Clean Water Act?

**If I am confirmed, I will seek to make changes to the WOTUS rule following all appropriate administrative procedures, including the requirements of notice and comment under the Administrative Procedure Act.**

27. In your opinion, under what circumstances should the Clean Water Act apply to pollution being discharged into groundwater? If the Ninth Circuit's forthcoming decision in Hawai'i Wildlife Fund v. County of Maui conflicts with your view, would you direct the EPA to write a new regulation overruling the 9th Circuit?

**I believe that the Clean Water Act applies only to discharges to surface water, not groundwater. In contrast, the Safe Drinking Water Act requires permits for underground injection into certain aquifers. I cannot speculate on a judicial decision that has not been issued.**

28. You've taken money from Monsanto, one the world's largest sellers of pesticides, in your previous electoral campaigns. How will you ensure that the safety of pesticides is vetted and regulated by the EPA according to the best science on risk and potential harm, rather than the profit-making interests of your campaign financiers? In your role as EPA administrator, how will ensure the agency is not unduly influenced by the political power of these large corporations?

**If confirmed as Administrator, I would expect EPA's regulatory process relating to pesticides to be open and transparent and based on sound science in accordance with EPA's legal authorities.**

29. What will you do to ensure EPA is conducting a transparent process regarding pesticide regulation? Please specify how you will approach notifying the public regarding pesticides in terms of notice of actions, publication of information (including studies and data) in the dockets, or timely responses to requests under the Freedom of Information Act. If you do not believe in a transparent process, why not?

**I am committed to transparency at EPA. I commit to making sure that EPA data is made available to the public consistent with applicable privacy and**

**confidentiality laws, and I will work to ensure that EPA uses a variety of tools and methods to keep the public informed about EPA activities as they relate to pesticide regulation if I am confirmed.**

30. What will you do to work with pesticide manufacturers, distributors, conservation organizations, farmers, and beekeepers to ensure pesticide labels are clear and enforceable? Will you commit to enforcing these labels? If you will not work on this issue, why not?

**If confirmed as Administrator, I would expect EPA's regulatory process relating to pesticides to be open and transparent and based on sound science in accordance with EPA's legal authorities.**

31. EPA defines environmental justice as "the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income, with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies." Would you as EPA administrator advance the goal of environmental justice and if so, how?

**If confirmed, I would work to faithfully execute the laws EPA is responsible for administering in order to protect human health and the environment for all Americans. As I testified, the Administrator plays an important role in regarding environmental justice.**

32. Exposure to air toxicity, water pollution, lead, and hazardous waste sites results in disproportionate levels of disease, disability, and mortality amongst communities of color. As Administrator, what will you do to protect America's most vulnerable and underrepresented communities from environmental hazards and reduce the burden of toxicity shouldered by these communities?

**As I testified, the Administrator plays an important role in regarding environmental justice. If confirmed, I would work to faithfully execute the laws EPA is responsible for administering in order to protect human health and the environment for all Americans. If confirmed, I would expect EPA to operate in an open and transparent manner, consider the views of stakeholders as appropriate, act based on sound science, and follow the laws as established by Congress**

33. President-Elect Trump has stated that the drinking water crisis in Flint, Michigan, would never have happened if he was president. If appointed, what

measures do you plan to take to protect drinking water across the country and particularly for the most vulnerable populations?

**If confirmed, I will return EPA's focus to carrying out its core missions, including, as appropriate, use of EPA's emergency order authority under the Safe Drinking Water Act.**

34. Oklahoma has seen a massive increase in earthquakes recently (907 (>magnitude 3.0) in 2016 and 585 in 2015 - which is more than the previous 35 years combined). The Oklahoma Geological Survey released a report in 2015 linking the disposal of fracking wastewater with earthquakes in Oklahoma. As recently as November 2016, a 5.0 magnitude earthquake struck Cushing, Oklahoma. Forty to fifty buildings were reported to have been damaged; Governor Mary Fallin felt the damage was substantial enough to declare a state of emergency for Payne County, where Cushing is located (a first step towards being granted federal aid).

- What was the incidence of earthquakes in Oklahoma prior to widespread use of hydraulic fracturing in the past decade?
- What has been the incidence of earthquakes in Oklahoma in the past 10 years, since widespread use of hydraulic fracturing?
- What have been the economic and health impacts of earthquakes in Oklahoma in the past 10 years?
- What was your rationale for not using the office of the Attorney General to change the disposal practices of wastewater from hydraulic fracturing to protect the citizens of Oklahoma?

**As I discussed at my confirmation hearing, the State of Oklahoma has taken seismicity issues very seriously and has taken proactive and aggressive actions. Oklahoma, as have other states, been successfully regulating hydraulic fracturing since the 40's and 50's. State and federal geologists have largely confirmed that the while the act of hydraulic fracturing itself poses little seismicity risk, the underground injection of wastewater at certain pressures and volumes can result in some seismic activity. While earthquakes have increased in frequency in recent years, the State has taken aggressive actions and reports have indicated the rate of seismic events has recently declined. Seismic activity can of course have significant impacts on communities and the activities linked to seismicity concerns in Oklahoma are regulated under state law by other agencies that my office works with as appropriate under Oklahoma law.**

35. The EPA is the front line agency serving or assisting Indian Country with environmental protection and recognition of treaty rights. As EPA Administrator, would the you commit to the protection of tribal treaty rights in agency decision making processes in situations where rights may be affected by EPA actions

- including federal approval of:
- state water quality standards (CWA)
  - state 401 water quality certifications
  - state distribution and use of pesticides (FIFRA)
  - oil spill program countermeasures (SPCC)?

**If confirmed, I will commit to ensuring that the United States meets all treaty obligations that it has pursuant to treaties with Indian Tribes.**

36. Will you support current efforts to establish federal baseline water quality standards for Indian Reservations that do not currently have Clean Water Act standards in place? Please explain why or why not. An advanced notice of proposed rulemaking on this initiative was published in the Federal Register on September 29, 2016.

**Because an advance notice of proposed rulemaking has been published, this matter will come before me for decision if I am confirmed as Administrator. Thus, I will not prejudge the outcome, but rather will commit to fairly evaluating the matter and reaching a sound decision.**

37. The 2016 Frank R. Lautenberg Chemical Safety for the 21st Century Act (TSCA) requires the EPA Administrator to identify "potentially exposed or susceptible subpopulations" in chemical assessments to ensure their protection. Tribal and local populations in the Pacific Northwest consume high quantities of fish that can result in greater exposure to chemical contaminants. How will the new Administration implement TSCA reform to ensure that tribes and vulnerable populations unique to individual states are protected by federal rules on toxic substances?

**The Lautenberg Act defined the term "potentially exposed or susceptible subpopulations" as "a group of individuals within the general population identified by the Administrator who, due to either greater susceptibility or greater exposure, may be at greater risk than the general population of adverse health effects from exposure to a chemical substance or mixture, such as infants, children, pregnant women, workers, or the elderly." Protecting citizens that are either more susceptible or who have greater exposure to a substance is an important aspect of the law and I will take great care to ensure the Act is faithfully executed if I am confirmed.**

38. Will you commit to continue EPA's Treaty Rights Guidance and that initiative's implementation? Will you commit to continue EPA's Policy on Consultation and Coordination with Tribes?

**If confirmed as Administrator, I will evaluate all guidance documents and policies to ensure that they represent faithful execution of the duties imposed on me, and powers granted to me, by Congress. If the guidance and policy you referenced, I will keep them in place.**

39. The 2014 U.S. National Climate Assessment concludes that climate change will impact every community in the United States, and that low-income communities and communities of color will be the hardest hit. These vulnerable communities will feel the impacts of climate change more severely due to lower quality housing, which is often less equipped to safely weather severe storms, severe heat, and freezing temperatures. How will you work to reduce climate change risks in low-income communities and communities of color?

**I believe environmental justice for low-income and minority communities is an important role of the EPA Administrator. If confirmed, I will adhere to the applicable statutory authorities to fulfill EPA's mission to protect human health and the environment for all of our nation's citizens.**

40. I understand that there are two political action committees affiliated with you. A spokesperson has made the statement that both PACs will be closed by the end of the month. Can you confirm that that both PACs will be closed by then?

**I do not control either of the political action committees to which you refer, and thus cannot confirm their intentions. As you have heard, however, I have also heard that both entities have announced that they will wind down their activities.**

41. It has also been reported that a 501(c)(4) organization called Protecting America Now has been created to raise funds to support your confirmation. If you are confirmed, will you make sure that Protecting American Now is disbanded? Please provide a list of Protecting America Now's donors.

**I am not affiliated in any way with "Protecting America Now," and thus have no ability to disband the organization. For the same reason, I have no knowledge of the group's donors.**

42. When is it appropriate for the Federal government to regulate pollution rather than states?

**Many federal environmental statutes were designed with the idea that the states would be the principal implementer. I believe it is essential to begin with that model. There are instances where the federal government approves or disapproves state programs or issues implementation plans in lieu of the state involved. However, this should be the vast exception to the rule. Some environmental statutes like CERCLA place the principal responsibility with the federal government for the important remediation activities under that statute. However, even with statutes like CERCLA, EPA still have an obligation with work with states and localities in designating sites which need remediation and most importantly in developing remediation plans.**

43. Do you personally disagree with any existing Federal environmental law, or any provisions of any existing Federal environmental laws? If so, please explain which and why.

**If confirmed, I will faithfully execute the laws as enacted by Congress.**

44. Which EPA regulations do you believe should instead be left to states to implement, and why?

**I believe federal environmental statutes are designed with states as a primary implementer. Environmental statutes envision that states have the delegated enforcement and primacy to implement and enforce environmental statutes. Only when that is not happening or when negotiations between and among states breakdown should EPA determine a dispute and only after attempting to assist states negotiate a local solution. I am fond of saying that we need national standards and neighborhood solutions. I think that should shape the work of the EPA.**

45. When states or local governments regulate pollution with different sets of standards, various industry groups have raised the concern that it creates a patchwork of regulatory policies that make compliance difficult. Do you share this concern, and why?

**As I testified in the hearing, I have pursued opportunities to address interstate environmental quality matters. One of the examples I have highlighted is the work that Arkansas Attorney General Dustin McDaniel and I took to address an enforceable water quality standard between Arkansas and Oklahoma. I have also discussed how Texas should be responsible when air quality issues affect Oklahoma and my experience with that. When**

**negotiations among and between states breakdown EPA has a role to set environmental standards. However, that is should be a last course of action instead of the first. I believe environmental statutes are designed with states as a primary implementer. Environmental statutes envision that states have the delegated enforcement and primacy to implement and enforce environmental statutes. Only when that is not happening or when negotiations between and among states breakdown should EPA determine a dispute and only after attempting to assist states negotiate a local solution. I am fond of saying that we need national standards and neighborhood solutions. I think that should shape the work of the EPA.**

46. Do you believe that the Renewable Fuel Standard is an appropriate regulatory role for the EPA versus states?

**Section 211(o) of the Clean Air Act provides the Administrator of the EPA with the authority and responsibility to administer the RFS program. If confirmed, I will work to administer the RFS in accordance with statute and Congressional intent.**

47. Do you agree that there should be national fuel economy standards to reduce tailpipe pollution from cars and make vehicles more fuel efficient? Please explain.

**While the EPA regulates emissions under the Clean Air Act, it is true that Congress vested authority to regulate fuel economy through the Corporate Average Fuel Economy (CAFE) standards" framework set forth originally in the Energy Policy and Conservation Act. Congress vested responsibility for the CAFE program in the Department of Transportation, not the EPA; accordingly, I take no position on Congress's policy decision on this subject.**

48. Do you support California's authority under the Clean Air Act to receive a waiver from the EPA to set emissions standards for vehicles that are stronger than EPA standards?

**In the Clean Air Act, Congress provided that the EPA Administrator may waive the Clean Air Act's preemptive effect over some of California's state air quality standards for mobile sources, when certain specific statutory criteria are met. If confirmed as EPA Administrator, I will administer this program in accordance with Congress's objectives, on a case-by-case basis in accordance with the law and with the administrative record in any given case, upon proper petition by California.**



49. You are currently representing Oklahoma as one of 13 petitioners challenging EPA's standards limiting conventional, toxic, and greenhouse gas pollutants from new oil and gas facilities. Please describe how Oklahoma would prefer to handle these pollutants in the absence of EPA regulation. If your proposed pollution standards are more lax than the EPA's standards, please provide information supporting the why your standards are preferable from a public health standpoint.

**As Attorney General, I sought to ensure that the Oklahoma Legislature retained its power to make policy for Oklahoma. Policymaking is the province of the legislature. Thus, I have no opinion with regard to what environmental policy might be appropriate.**

50. Please also describe, and provide the same information, for what Oklahoma's policies would be should Oklahoma and its fellow petitioners be successful in challenging the EPA's implementation of the Cross-State Air Pollution Rule.

**As my testimony indicates, I firmly believe that the EPA plays an important role in addressing interstate air quality issues, but it must do so within the bounds of its legal authority and justified by a record of support. The actions undertaken by the Office of Attorney General challenging certain EPA regulations have been because EPA exceeded its legal authorities as established by Congress and interpreted by the courts. The Department of Environmental Quality is responsible for implementing and enforcing environmental laws in Oklahoma.**

51. You also represent Oklahoma as a petitioner in ongoing litigation against the EPA's 111(b) standards for CO<sub>2</sub> emissions for new, modified, and reconstructed power plants. Should you win your suit, will Oklahoma take any steps to regulate power plant CO<sub>2</sub> emissions, or does the state plan to continue not regulating CO<sub>2</sub> emissions?

**I will not prejudge the outcome of any rule that is the subject of ongoing litigation if I am confirmed.**

52. As Attorney General, your role was also to prosecute environmental cases within Oklahoma. Please list all environmental cases you have originated as Oklahoma's Attorney General, and provide all documents related to those cases and a summary of the outcomes of those cases.

**Please see the list of cases attached to this response.**

53. The Environmental Protection Unit was eliminated as a group within the Attorney General's office once you became Attorney General. This appears to indicate a decrease in support, or at least priority, for pursuing environmental cases within your office compared to your predecessor. To clarify if you have continued to pursue environmental cases as Oklahoma Attorney General, please provide description and documentation of all the environmental cases that were handled by your office versus the AG's office during Drew Edmondson's tenure. Please also describe the work your office did on any environmental cases that were begun during your predecessor's tenure but were continued or completed by your office.

**My office continues to employ attorneys vested with responsibilities related to environmental protection, including the attorney who served as the lead attorney on the previous attorney general's "environmental protection unit." That attorney's responsibilities remain unchanged (he has been promoted, in fact), and he pursues exactly the kind of cases that he pursued under the previous attorney general. The only thing that changed was the internal organization of the attorneys vested with those responsibilities, because I concluded (consistent with the practices of every attorney general in the State's history but for my immediate predecessor) that it was not operationally efficient to have a separate unit for such work. Thus, I chose to house that work in the Office's Public Protection Unit and then later in the Solicitor General's Unit. As I explained in my testimony to the committee, my office continues to pursue environmental cases. I do not possess lists of cases pursued by my predecessor so I cannot provide the comparative that you request. I am aware that many environmental cases take many, many years to litigate to completion, so some of the actions that my Office continues to pursue were initiated prior to my taking office. Please see attached list of cases.**

54. As part of the Water Infrastructure Improvements for the Nation (WIIN) Act of 2016, Congress passed the Columbia River Restoration Act, a program which gives the EPA authority to create a competitive grant program to address environmental cleanup and restoration in the Columbia River Basin. This program empowers states and local communities to better coordinate and implement local cleanup and restoration efforts. Will you, as EPA administrator, work to advance and implement this bipartisan effort to empower local entities and states?

**While I am not familiar with the Columbia River Basin restoration program, I support collaborative efforts and neighborhood solutions. I also respect**

**Congressional authorizations. If confirmed, I will ask the EPA staff to brief me on this program and the new authority granted by Congress.**

55. In January, 2017, the EPA announced \$17 million in credit assistance for the Water Infrastructure Finance and Innovation Act (WIFIA). This program, initially passed into law as part of the 2014 WRDA bill, now has the funding needed to allow EPA to make approximately \$1 billion in loans and leverage a total \$2 billion in total water-infrastructure investment. As you mentioned in your hearing, water infrastructure is critically needed, but often overlooked. Will you, as EPA administrator, work to ensure adequate resources to implement the WIFIA loan program, and seek further funding and assistance for other water infrastructure programs and initiatives, such as the Drinking Water State Revolving Fund?

**Yes, if confirmed.**

56. The Federal Government has a long history of activities within Portland Harbor, which in 2000 was designated a Superfund site and is now one of the largest and most complex Superfund sites in the country. The history of Federal activities within the Superfund site includes ship building, repairing, and dismantling, as well as a variety other activities that likely led to some amount of contamination of the river. Today, the Willamette river sediment within the Portland Harbor Superfund site is contaminated with compounds associated with the activities carried out by the Federal government over the course of many decades. Now that the Environmental Protection Agency has issued its final Record of Decision for this Superfund site, there will be a process to divide up cleanup responsibilities among parties responsible for the contamination. Can you commit to work with the appropriate Federal agencies, such as the Department of Defense and Department of Justice, to ensure that the Federal government engages proactively with relevant stakeholders during the allocation process, takes ownership for its share of the contamination, and pays its fair share of the cleanup?

**I am not familiar with the details of the remedy that has been selected for the Portland Harbor Superfund site. If confirmed, I expect to make clean up of contaminated sites one of my priorities and would be interested in hearing the views of the Congressional Delegation and other stakeholders on the issues raised by this cleanup plan.**

**Senator Sanders:**

The Environmental Protection Agency (EPA) has approximately 15,000 employees. The following questions ask how you, as Administrator, would treat civil servants and make human resource decisions.

1. Do you support--and promise to uphold--the merit system principles set forth in Chapter 23 Title 5 U.S. Code, which prohibit factors other than merit from consideration in civil service employment decisions?

**If confirmed, I commit to implementing the law as enacted by Congress.**

2. As Administrator, do you support use of the Holman Rule, which allows any member of Congress to propose amending an appropriations bill to single out a government employee or cut a specific program? Will you support Congress in passing an amendment under the Holman Rule?

**If confirmed as Administrator, I would implement the law and work with the Agency in accordance with the laws passed by Congress.**

3. Is retention and recruitment of a high quality scientific workforce at EPA a priority for you?

**Yes.**

4. As Administrator, do you believe that you will be better able to recruit and retain top talent at the EPA under conditions where Congress is able to individually target employees based on political considerations?

**If confirmed as Administrator, I would implement the law and work with the Agency in accordance with the laws passed by Congress.**

5. As Administrator, do you support Congress targeting and altering the salaries of individuals within the EPA?

**If confirmed as Administrator, I would implement the law and work with the Agency in accordance with the laws passed by Congress.**

6. As Administrator, how will you generally view the division of responsibility and authority between Congress and your Department on personnel issues?

**In my view, Congress passes the laws governing executive branch personnel.**

On June 14 2016, EPA Administrator Gina McCarthy signed an order on "Transgender and Gender Non-Conforming Employees" (<http://src.bna.com/f0T>) and said at the time that it "reinforces that discrimination of any kind in the EPA workplace is unacceptable, including discrimination on the basis of gender identity, expression or perceived non-conformity." Among other things, the order states that an "employee should be permitted to use the [sanitary and related] facilities that correspond with their gender identity." This is in stark contrast to the suit you filed with 10 other attorneys general challenging the guidance issued under President Obama on accommodating transgender students in public schools.

7. Will you as EPA Administrator ensure that Administrator McCarthy's order is vigorously implemented, and continue to ensure that transgender and gender non-conforming employees are not discriminated against on the basis of their gender-identities?

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

As Attorney General, you disbanded your office's Environmental Protection Unit and reduced your office's funding for environmental law to zero.

8. In your personal opinion, what are the most pressing air and water quality challenges that deserve the attention of the EPA? What would you do at the EPA to better address these challenges, if anything?

**As discussed, the Oklahoma Department of Environmental Quality -- not the Office of Attorney General -- has primary responsibility for implementing and enforcing environmental laws in Oklahoma. Consistent with the practice of every Attorney General save one, I determined that a standalone unit was operationally inefficient. I opted to combine the Environmental Protection Unit and the Consumer Protection Unit into a single unit called the "Public Protection Unit." The Public Protection Unit continued the work of the Environmental Protection Unit, and that work continues to this day, headed by the very same attorney who worked in the Environmental Protection Unit under the prior Attorney General. As discussed, I believe EPA plays an**

**important role in addressing cross-state pollution, and if confirmed, I would expect to work cooperatively with states to address the problems of environmental pollution.**

The Keystone Sanitary Landfill (KSL) is an existing 714-acre landfill located in the boroughs of Dunmore and Throop, Pennsylvania. KSL has submitted an application to the Pennsylvania Department of Environmental Protection (DEP) for a permit modification to expand the facility's disposal capacity by approximately 145 million cubic yards. The permitting and approval of this process is strictly under the jurisdiction of the Pennsylvania DEP.

Under Subtitle D of the Resource Conservation and Recovery Act of 1976, states play a lead role in ensuring the federal criteria for operating municipal solid waste and industrial waste landfills regulations are met, and they may set more stringent requirements. Under the Hazardous and Solid Waste Amendments of 1984, EPA was authorized to determine the adequacy of the state permit programs. In the absence of an approved state program, the federal requirements must be met by waste facilities.

9. Are you committed to maintaining the process to determine the adequacy of a state's municipal solid waste management plan as required under the Hazardous and Solid Waste Amendments of 1984?

**If confirmed, I commit to faithfully executing the laws I would be responsible for administering as EPA Administrator.**

10. Further, if a state does not have an approved state program, are you committed to inspecting and enforcing federal requirements including the prohibition on open dumping?

**If confirmed, I commit to faithfully executing the laws I would be responsible for administering as EPA Administrator.**

11. Constituents have expressed concerns regarding the potential impact on the environment, quality of life, health and traffic congestion as a result of the Keystone Sanitary Landfill. How do you intend to work collaboratively with states in the event that a state violates the federal Clean Water Act or the Safe Drinking Water Act or a state requests assistance from EPA?

**I believe states play an important role in administering environmental laws such as the Clean Water Act, and if confirmed, I would expect to work cooperatively with states toward our shared goal of protecting human health and the environment consistent with EPA's legal authorities.**

During your hearing, you stated that climate change was not a hoax, but you also were reluctant to discuss your views on the causes of climate change. You stated that your personal views were not relevant. However, as Attorney General, you challenged EPA's 2009 finding that greenhouse gases, including those from fossil fuels, endanger public health and welfare, due to anthropogenic climate change. The EPA went through an exhaustive scientific review and public comment process prior to issuing the Endangerment Finding, but in the lawsuit you labeled it "arbitrary and capricious." The Endangerment Finding references more than 100 published scientific studies and reports by the U.S. Climate Change Science Program/U.S. Global Change Research Program, the Intergovernmental Panel on Climate Change (IPCC), and the National Research Council of the U.S. National Academy of Sciences.

12. As Administrator, will you recognize the findings of the U.S. Climate Change Science Program/U.S. Global Change Research Program and the National Research Council of the U.S. National Academy of Sciences on the science of climate change, including its anthropogenic causes?

**If confirmed, I will work to ensure that any regulatory actions are based on the most up to date and objective scientific data, including the ever-evolving understanding of the impact increasing greenhouse gases have on our changing climate.**

In 2014, the Gund Institute for Ecological Economics and the University of Vermont released the Vermont Climate Assessment report. The report found that many of our state's communities have already been highly impacted by climatic changes and are engaged in processes to respond to these transitions. Some populations and regions of the state are particularly vulnerable, including rural areas and those increasingly exposed to extreme weather events. Flooding, such as experienced under Tropical Storm Irene, has been devastating to some of our state's communities. EPA partnered with Vermont in incorporating smart growth policies to increase flood resilience after the tropical storm. Under direction from Executive Order 13653, Preparing the United States for the Impacts of Climate Change, EPA and New England's EPA Region 1 both have developed climate adaptation plans that assist our region in preparing for these changes.

13. Will you support EPA's continued climate adaptation planning and implementation in accordance with Executive Order 13653?

**If confirmed, I will work to ensure the agency complies with and operates according to all applicable Executive Orders.**

14. Do you support the Paris Climate Agreement?

**The role of the United States in the Paris Agreement is a State Department matter. If confirmed, I will work to advance the mission of the EPA, which is to protect human health and the environment, consistent with the State Department's strategy for international engagement on climate change.**

15. What are your plans for implementing the Paris Climate Agreement?

**Should the government decide to continue to participate in the Paris Agreement and if I am confirmed as Administrator, I will collaborate with all involved agencies to ensure that commitments made on behalf of the United States are achievable and consistent with requisite legal authorities delegated by Congress.**

You have written that the climate change "... debate is far from settled. Scientists continue to disagree about the degree and extent of global warming and its connection to the actions of mankind."

16. What would it take for you to admit that all three of these allegations are incorrect?

**If confirmed, I will work to ensure that any regulatory actions are based on the most up to date and objective scientific data, including the ever-evolving understanding of the impact increasing greenhouse gases have on our changing climate.**

17. Which scientists, saying what, would change your mind?

**If confirmed, I will work to ensure that any regulatory actions are based on the most up to date and objective scientific data, including the ever-evolving**



**understanding of the impact increasing greenhouse gases have on our changing climate.**

18. If Harold Hamm told you he was no longer a climate change denier, would you believe him?

**I do not believe he is a climate change "denier."**

19. President Elect Trump's Secretary of State nominee, Rex Tillerson, is no longer a climate change denier. Why do you disagree with Tillerson?

**There is a diverse range of views regarding the key drivers of our changing climate among scientists, policy-makers and President Trump's nominees. I believe that these differences should be the subject of robust and open debate free from intimidation. If confirmed, I will continue to encourage an honest debate on our changing climate, the role of human activity, our ability to measure the degree and extent of human activity, and what to do about it.**

The Clean Air Act, and its amendments, sets limits on harmful pollutants like mercury and sulfur dioxide. As Oklahoma's Attorney General, you have repeatedly brought lawsuits against the EPA for their enforcement of the Clean Air Act, stating that the federal government has overstepped its authority to regulate and that these decisions are best left to the states. Pollution, like mercury and sulfur dioxide, from Midwest coal-fired power plants is blown right into New England. Mercury is a potent neurotoxin that bio-accumulates in the fish in our streams and lakes, and places our pregnant women and young children at particular health risk. Sulfur dioxide contributes to acid rain that that harms the forests and waters of New England.

20. If you do not believe that the EPA should have the regulatory authority that would protect states such as Vermont from interstate pollution, that leaves these science and public health decisions to the courts. Can you explain why federal courts should be in the position of determining safe levels of pollution to protect the health and welfare of Vermonters, as opposed to the federal agency whose mission it is to protect human health and the environment -- air, water, and land?

**As I stated in my testimony before the Committee, I agree that the Clean Air Act gives EPA an important role in addressing interstate pollution issues, among many other things. If I am confirmed as Administrator, I will exercise**

**my authority in this area consistent with Congress's intent in enacting the Act.**

Data shows that mercury pollution in the North Atlantic and mercury concentrations in our fisheries have fallen dramatically since the United States started requiring stronger emission controls from coal power plants.

21. Given this scientific confirmation of these regulations working how can you assure us that if you are confirmed to lead the EPA you will continue to accelerate the clean-up of all sources of mercury emissions, including coal power plants?

**I agree that there has been a consistent downward trend in mercury concentrations, but note that this trend began well before EPA promulgated the Mercury and Air Toxics Standards. As I stated in my testimony before the Committee, mercury is appropriately regulated as a hazardous air pollutant under Section 112 of the Clean Air Act. If I am confirmed as Administrator, I will regulate under Section 112 in a manner that is consistent with Congress's intent in enacting that provision. I will also faithfully administer other federal statutes that regulate mercury to the extent that they are under my jurisdiction, including the Mercury Export Ban Act of 2008, the Mercury-Containing and Rechargeable Battery Management Act of 1996, the Clean Water Act, the Emergency Planning and Community Right-to-Know Act, the Resource Conservation and Recovery Act, and the Safe Drinking Water Act.**

It is widely reported that EPA's Clean Power Plan (CPP) will be one of the first policies to be dropped under the new administration.

22. Do you envision that you will seek to replace the CPP with some other program that also would promote the reduction of greenhouse gas emissions nationally?

**While I will not prejudge the outcome of any Rule that is the subject of ongoing litigation, if confirmed, I will work to achieve the objectives of EPA-administered laws consistent with the process and rule of law set out by Congress.**

23. According to the EPA, "The Clean Power Plan will lead to climate and health benefits worth an estimated \$55 billion to \$93 billion in 2030, including avoiding 2,700 to 6,600 premature deaths and 140,000 to 150,000 asthma attacks in

children." What do you say to parents who have children with asthma who are worried that the dismantling of the CPP?

**If confirmed, I will administer environmental laws that protect human health and the environment within the framework established by Congress. I will follow explicit cost-benefit obligations to ensure the benefits are associated with the pollutant being regulated and the costs are reflective of market realities.**

President-elect Trump has stated that the water poisoning that happened in Flint Michigan "would never have happened if I were president." More than 1,000 communities have lead poisoning levels higher than those found in Flint Michigan.

24. If you were head of EPA what actions would you take to ensure that every community has clean water to drink?

**If confirmed, I will focus on EPA's core missions, including, as appropriate, use of EPA's emergency order authority under the Safe Drinking Water Act. I also will implement the newly revised TSCA statute to address chemicals and will continue implementation of monitoring, review, and regulation of contaminants under the SDWA.**

25. What federal financial commitments would you need and what changes in environmental laws, policies and regulations would you need to ensure that a Flint-like situation never happens again?

**It is my understanding that some requirements in the Safe Drinking Water Act Lead and Copper Rule relating to monitoring and when corrosion control treatment is mandated are ambiguous and need to be clarified to make both compliance and enforcement easier and prevent a Flint-like situation from happening again. If confirmed, I will ensure that the revisions to that rule proceed expeditiously. As to resources, I will return EPA's focus, including resources, to carrying out its core missions. In addition, I believe that the new WIFIA program offers significant opportunities to leverage additional infrastructure investments.**

Lake Champlain is one of Vermont's most treasured environmental features. Tourism and property values are tied to the health of the lake—keeping its waters swimmable, fishable and drinkable. Run-off—including from lawns, paved roads and parking lots, and farmlands—contributes to high levels of phosphorus that spur algae growth. The algae turns the lake green and can be toxic. In 2016, EPA released new phosphorus limits for the lake by establishing a TMDL (Total

Maximum Daily Load). We are concerned that you, as Attorney General, have opposed other clean-ups similar to that of Lake Champlain. You signed an amicus brief opposing EPA's clean-up of the Chesapeake Bay under the Clean Water Act.

26. As Administrator, will you continue the agency's support for the clean-up of Lake Champlain through these new TMDLs?

**A TMDL under section 303(d) of the Clean Water Act does not establish a water quality standard. It is a tool for achieving a water quality standard by determining how much of a particular pollutant, like phosphorus, that a body of water can assimilate and achieve the water quality standard. EPA recently issued new phosphorus TMDLs for Lake Champlain to implement Vermont's water quality standards. These replace a prior TMDL that EPA had approved in 2002 and then disapproved 9 years later after being sued by the Conservation Law Foundation. I am not familiar with the details of either the original Vermont TMDL that EPA approved or the new TMDLs that EPA developed after being sued. I believe TMDLs can only be successful if developed in a collaborative fashion. It is my hope that the new Lake Champlain TMDLs were developed in such a fashion and in accordance with the law. If so, I am not aware of any reason that I would not support their implementation, if confirmed as EPA's administrator.**

27. Specifically, should Vermont fail to make satisfactory progress toward meeting the TMDL, would you support EPA's prior pledge to ramp up federal oversight of Vermont programs and crack down on pollution from wastewater treatment facilities? If not, how will you ensure Clean Water Act obligations are satisfied?

**Under Clean Water Act regulations (40 CFR 122.44), limits in a NPDES permit for a point source must be consistent with any waste load allocation for the discharge set forth in a TMDL and once these limits are part of a permit, they are federally enforceable. Vermont is authorized to carry out its own permitting program in lieu of the federal permitting program. If confirmed, I will work with the State of Vermont to see that the requirements of the Clean Water Act are met.**

The EPA works with other state and federal agencies in developing contingency plans in the event of an oil spill. These plans identify and coordinate the activities of the different government agencies and private organizations involved in the response. Vermonters are concerned about the potential for oil spills, particularly from rail accidents, that might adversely affect the state's waters. We view the EPA as a critical partner in developing plans for, and responding to, the case of an oil spill with potential impacts to a water body or other area subject to the

jurisdiction of the Environmental Protection Agency under the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.).

28. Do you as Administrator commit to the EPA's partnership with the states in developing plans for, and responding to, the case of an oil spill that affects waters under its jurisdiction, such as Lake Champlain?

**EPA, in partnership with other federal agencies on the National Response Team, has a significant role in carrying out the National Oil and Hazardous Substances Pollution Contingency Plan. EPA is the lead agency for responses under the Oil Pollution Act to spills into inland waters (other than the Great Lakes) and the Coast Guard is the lead agency for coastal waters and the Great Lakes). If confirmed, I will support EPA's continued implementation of the oil spill response authorities given to it by Congress.**

At EPA, science provides the foundation for Agency policies, actions, and decisions made on behalf of the American people.

29. What should be the role of science in the development of EPA policies, rules, and regulations?

**I fully believe, as former EPA administrators have stated, that science must serve as "the backbone" of EPA actions.**

U.S. Secretary of the Interior Sally Jewell has observed that "consumer spending for outdoor recreation is greater than household utilities and pharmaceuticals combined — and yet the federal government has never fully recognized or quantified these benefits." Outdoor recreation is not just an issue of concern to the Department of the Interior, it depends on clean air and water, which are under the purview of the EPA. The health and welfare of Americans is dependent on their ability to be actively engaged outdoors, breathing clean air and drinking clean water.

30. If under your watch, the EPA seeks to reduce regulations, will you take into account the economic losses from recreation to places like Vermont before doing so?

**As I indicated in my testimony, if confirmed, my primary goal would be to protect the American people through lawful regulations. I understand environmental statutes, such as the Clean Air Act and the Clean Water Act,**

**prescribe in certain instances that the EPA consider economic impacts in the rulemaking process. If confirmed, I commit to fully follow the law as provided by Congress.**

Much of the nation's and the world's attention has been focused in recent months on the Dakota Access Pipeline, the construction of which crosses multiple states. Many pipelines on Indian lands are located entirely within a single state, however. Here EPA is not always the primary regulator, and state laws do not always apply. The health and environmental consequences of pipeline failures, however, can be enormous.

31. Will you commit to work with this Committee and other agencies to address the environmental and public health and safety issues associated with the operation of pipelines on Indian lands, including purely intrastate pipeline facilities?

**If confirmed, I will faithfully execute all applicable laws as Administrator. As was discussed at my confirmation hearing I have worked successfully with Oklahoma Tribes and I would use my role to address environmental and public health and safety issues on state, federal, and tribal lands.**

Yesterday, the Obama Administration took the final step in laying out a process for the next administration to provide a full environmental review for the Dakota Access pipeline.

32. Will you commit to fully supporting the Army Corps of Engineers as it conducts reviews of alternative routes and to meaningful consultation with Native American tribes when a project could affect their tribal treaty rights?

**I cannot speak to the actions of the Army Corps of Engineers but if confirmed I will carry out any legal duties required by the Administrator of the EPA.**

Oil and natural gas extraction by way of hydraulic fracturing, or "fracking," has expanded rapidly in the United States, including in your state of Oklahoma. As you know, there are increasing concerns about water and air contamination, including the seismic activity associated with wastewater disposal. EPA conducted a study of hydraulic fracturing's drinking water impacts and released a final report in December 2016. The agency found "hydraulic fracturing activities can impact drinking water resources under some circumstances." The report identifies certain conditions under which impacts from hydraulic fracturing activities can be more frequent or severe. Both Vermont and New York have

banned hydraulic fracturing out of concerns for its public health and environmental effects.

33. Do you concur with the conclusions of the EPA's final report on hydraulic fracturing and drinking water?

**As I discussed at my confirmation hearing, states like my home state of Oklahoma have been successfully regulating hydraulic fracturing for decades. As EPA officials have indicated the number of identified cases of drinking water contamination related to hydraulic fracturing activities is small particularly compared to the large number of hydraulically fractured wells and I agree with that assessment.**

34. Are there gaps in available data that make it difficult for the EPA to fully assess hydraulic fracturing effects on drinking water as well as air quality?

**Hydraulic fracturing has been extensively studied by state, federal, and non-governmental bodies.**

35. What further studies—if any—do you believe would be appropriate for EPA to conduct on the effects of hydraulic fracturing on air and water quality?

**I am not aware of any urgent need for new studies of hydraulic fracturing but if confirmed I commit to review any new information on the subject.**

36. Do you agree, as EPA scientists found, that of the 1,606 chemicals injected for hydraulic fracturing, 173 chemicals are a proven risk to public health?

**Risk encompasses both hazard as well as a likelihood of exposure. EPA found that 173 of the chemicals listed can be hazardous but did not speak to their risk likely because of their very low probability of exposure.**

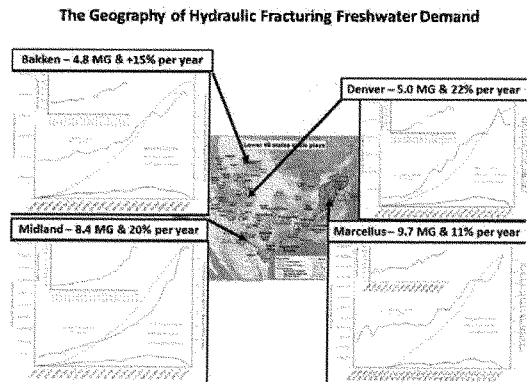
To date communities have been absorbing the costs of damage from oil and gas operations, whether that is in terms of health impacts, contaminated soils and water, which depress property values and destroy businesses, residential neighborhoods turned into industrial zones, earthquakes caused by injection wells (which are increasingly being excluded from homeowner insurance policies) and more.

37. What would be your approach as Attorney General to ensuring that communities do not absorb these costs, and operators become responsible for the full costs of their operations, including damages?

**As discussed at my confirmation hearing as Attorney General I have taken on oil and natural gas companies who violated Oklahoma laws and regulations. If confirmed, I will uphold and execute the laws as established by Congress.**

38. Given that High Volume Hydraulic Fracturing (HVHF), or fracking gas wells, currently require an average of 4.8-9.7 million gallons of fresh water to fracture a single well (Note: This demand is growing by 11-20% per year), and only 4.5-7.5% of this water is being recycled, would you consider modern-day oil and gas drilling to be a long-term, sustainable solution to our country's energy needs?"

**EPA's final report on hydraulic fracturing and drinking water found that in most cases hydraulic fracturing constituted "generally less than 1% of total water use" in counties and stated that their findings suggested "that hydraulic fracturing operations represented a relatively small user of water in most counties." I agree with these specific EPA conclusions.**



39. When did you first find out that fracking could cause earthquakes in Oklahoma under certain geological conditions? Did you publicly call on industry to alter their practices?



**As I stated at my confirmation hearing the Oklahoma Corporation Commission is vested with the jurisdiction of regulating oil and gas activities, they have acted to address seismicity concerns in the state and I have worked with and supported the Commission and other state agencies as required by state law.**

40. What percentage of injection wells in Oklahoma is monitored for pollution (in groundwater, deep and shallow)? In those that were monitored, what was the concentration of pollutants?

**Wastewater disposal through underground injection is regulated by the State of Oklahoma through delegated powers from the EPA pursuant to the Safe Drinking Water Act and to the best of my knowledge the State appropriately follows all requirements under the law.**

The "Hockey Stick Moment" is when a variable of interest hits an exponential point in its growth with respect to time. The most notable "Hockey Stick Moment" is the rising levels of atmospheric CO<sub>2</sub>, N<sub>2</sub>O, and CH<sub>4</sub> resulting from anthropogenic forces. However, a moment closer to Oklahoma is the exponential increase in earthquake activity even the USGS has shown is a function of the disposal of nearly 20% of US fracking waste into Oklahoma and Kansas' Class II Injection wells.

41. Do you agree that this growth in quake activity is a function of excessive and irresponsible oil and gas waste generation and disposal and is worthy of more research and monitoring by the EPA?

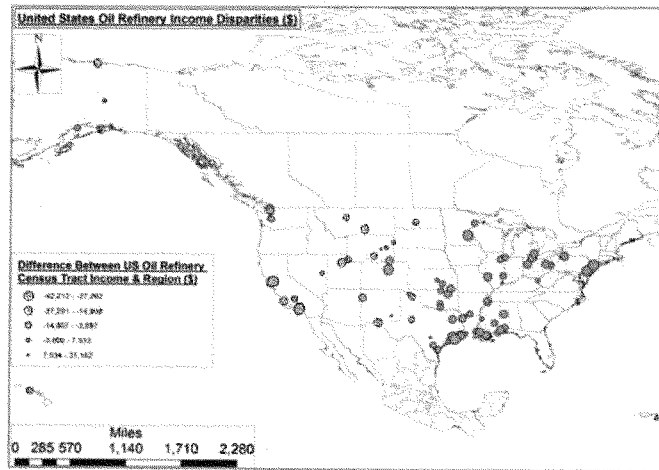
**As previously mentioned, wastewater disposal through underground injection is regulated by the State of Oklahoma under delegated powers from EPA pursuant to the Safe Drinking Water Act. Underground injection is not unique to the oil and natural gas industries as EPA has regulations on six different classes of underground injections. Underground injection of wastewater from oil and natural gas activities has been conducted safely in a number of states for decades, and, in a previous EPW hearing, Senator Cardin complimented "the actions taken" in Oklahoma with regard to oil and gas wastewater disposal. He went so far as to say the State "provided a good model that should be used in other States," lauding Oklahoma's actions as an example of "the Federal Government working with the State to develop the right framework for dealing with natural gas extraction." The State of Oklahoma has acted on local seismicity concerns and, to the best of my knowledge, follows all applicable SDWA requirements in regulating class 2 injection wells within the state.**

42. You at first belittled the idea that oil and gas operations could cause human induced seismicity in Oklahoma, so did Harold Hamm. Do you now believe that you were both wrong?

**As new information becomes available on a number of issues it should always be evaluated and taken into consideration. The State of Oklahoma has taken actions to address seismicity concerns related to the oil and natural gas industry and I support the state taking action.**

43. How would a Trump/Pruitt EPA address growing environmental and economic justice issues associated with existing oil refineries and associated unconventional oil and gas infrastructure proposals?

**As I stated at my confirmation hearing I believe addressing environmental justice in poor and minority communities is an important role of the EPA Administrator. If confirmed I intend to enforce laws under EPA jurisdiction with uniformity regardless of which industry a potential violation of law comes from.**



44. Would you support implementing a requirement to provide full, well specific, public disclosure of all information related to oil and gas development involving

hydraulic fracturing that informs understanding groundwater, surface water, public health and safety, and habitat potential impacts?

**If confirmed I would review both EPA's legal authorities as well as the potential need for new requirements and regulations.**

With regards to decommissioning a former nuclear power plant, a fair amount of confusion appears to exist in regulating non-radiological hazardous materials during active plant demolition. Most agencies, including the EPA, will defer to the Nuclear Regulatory Commission (NRC) for anything at a nuclear power plant site. However, the NRC does not regulate the non-radiological aspects of nuclear power plant operation--e.g., the NRC does not regulate chemical or oil spills that occur at a nuclear power plant site.

45. How active of a role should the EPA play during the hazardous material survey and active demolition phases of power plant decommissioning to assure that public health and the environment are not impacted by a site's prior use as a nuclear power plant?

**In 2002, the EPA and the NRC signed a Memorandum of Understanding entitled "Consultation and Finality on Decommissioning and Decontamination of Contaminated Sites." The EPA's responsibilities with regard to the regulation of non-radiological hazardous materials are address in sections V.C.3, V.D.4, and VI. If confirmed, I will carry out EPA's responsibilities under the law.**

The National Environmental Policy Act (NEPA) requires all federal agencies to consider the potential environmental impact of any industrial project while the agencies assess their regulatory authority specific projects. While the Nuclear Regulatory Commission (NRC) does conduct Environmental Assessments for nuclear power plant construction, operations, modifications and decommissioning activities, these assessments are frequently conducted after all other technical assessments for a nuclear power plant project have been evaluated; meaning that they are not an integral part of the NRC's regulatory decision-making process.

46. As Administrator, how will you encourage or require the NRC to more rigorously include NEPA requirements in its "technical" regulatory evaluations?

**I am not familiar with how the Nuclear Regulatory Commission conducts its analyses under the National Environmental Policy Act. Under section 309 of**

**the Clean Air Act, EPA reviews and comments on the NEPA analyses of other agencies. If confirmed, I will ensure that EPA continues to carry out this statutory responsibility.**

Changes in weather patterns, such as heavier precipitation events that increase run-off and flooding, are affecting lakes, rivers, and reservoirs nationwide. Water quality, quantity, and the integrity of our water infrastructure are at risk. Recent studies in the Northeast have found that degraded water quality on lakes can cost lakeside communities millions of dollars in losses from both tourism and taxable income due to reduced property values.

47. How will the EPA support water resource management programs to address these issues?

**If confirmed, I will continue to implement the water quality protection authorities granted to EPA by Congress. These include regulatory and financial and technical assistance programs. The Clean Water Act expressly leaves the allocation of water quantity to states. I further note that Congress has not given EPA water resources management authorities. Instead, such programs are carried out by the Corps of Engineers and, in the 17 Western states, the Bureau of Reclamation.**

48. How would you address EPA's permitting backlog, e.g. the National Pollutant Discharge Elimination System (point source water dischargers) program?

**Making sure permits are current is one of core functions under the statutory responsibilities given to EPA and in turn carried out by authorized states. However, in recent years states have been asked to shift their focus and resources to other activities. If confirmed, I would focus on ensuring EPA is able to carry out its core functions under our environmental.**

Federal regulations such as the Clean Water Act and the Clean Air Act set national standards to protect our natural resources and safeguard public health. In 2010 you campaigned against a "one-size-fits-all strategy" towards environmental protection.

49. What did you mean by that and how would you, as EPA Administrator, ensure that all Americans are adequately protected against poisonous water and air regardless of where they happen to live?

**As I said in my testimony before the committee, I support national standards and neighborhood solutions. That means there may be one standard that applies nationally, but not only one way to achieve that standard. If confirmed, I will bring this philosophy to my role as EPA Administrator.**

50. Do you support and stand behind the premise of the Clean Water and Clean Air Acts that every American has the right to clean water and air?

**I fully support the Clean Water Act and the Clean Air Act.**

In a court filing opposing the Waters of the United States you wrote "This regulation usurps the state's authority over its land and water use, and triggers numerous and costly obligations under the [Clean Water] Act for the state and its citizens."

51. Without national regulations how would you guarantee the quality of water that flows across state boundaries?

**Regulation of rivers and streams that form the boundaries of states or flows from one state to another is not an issue raised by states in the WOTUS litigation.**

52. Do you believe that the only people with an interest in water are those within a state and not downstream neighbors?

**No.**

53. Every national science organization, not to mention the Pentagon, lists climate change as a critical threat to our planet, our economy, and our national health. The Pentagon considers Climate Change a "Threat Multiplier" and a "Growing Security Threat." Do you agree with the Pentagon and our National Security advisors regarding the severity of this crisis?

**I have no reason to disagree with the statements from the listed security experts, although I have not made any attempt to independently verify their accuracy.**

54. Please describe your plan, process, or other information that the EPA may be able to provide to the Pentagon to mitigate or mollify the threats our military describes.

**Interagency cooperation is very important. I believe the development of military readiness and response plans are best left to our military and national security experts. If confirmed, I will provide technical expertise to other agencies as appropriate.**

55. Will you be promoting greater use of carbon-based fossil fuels?

**I do not believe it is the mission of the EPA to promote one type of energy source over another. If confirmed as Administrator, I will fairly and equitably enforce the laws within the framework established by Congress and not pick winners and losers.**

56. Do you think the EPA has any role in helping our nation decrease or end the consumption of carbon fuels?

**The mission of EPA is to set standards that protect the environment and the health and welfare of our citizens. While setting national energy policies are not within the statutorily ascribed purview of the agency, EPA regulatory actions often impact the ability of those charged with generating our nation's energy to do their job. If confirmed, I will listen to all impacted stakeholders when developing EPA actions. I will also coordinate with impacted agencies, such as the Federal Energy Regulatory Commission, to ensure EPA's actions do not undermine their equally important missions and statutory objectives.**

57. Do you see any reason for reducing carbon emissions that come from using fossil fuels like oil, coal, and natural gas?

**I believe the Administrator has an important role when it comes to the regulation of carbon dioxide. If confirmed, I will fulfill the duties of the Administrator consistent with Massachusetts v. EPA and the agency's Endangerment Finding on Greenhouse Gases respective of the relative statutory framework established by Congress.**

58. What do you think are the most reliable sources for scientific news and information?

**If confirmed as EPA Administrator, I will adhere to the applicable statutory authorities to fulfill EPA's mission to protect human health and the environment and will base my decisions on sound science, including advice provided by agency experts and advisory personnel.**

59. Do you plan to request regular briefings from government science and/or intelligence sources? If so, how often? If not, why?

**If confirmed, I will make decisions based on sound science reflective of diverse, objective and unbiased views conducted in a transparent manner reliant on public engagement and consistent with the framework established by Congress.**

60. Do you intend to have meetings with or receive regular briefings from private industrial sources? If so, how often? If not, why?

**If confirmed, I intend to operate the agency consistent with the statutory framework established by Congress and follow associated processes, which require extensive outreach with the public and regulated community.**

The President-Elect has positioned himself as a champion of coal miners. You may be aware of the crisis facing the nation's largest multi-employer health and pension plans serving coal miner retirees, administered by the UMWA. The pension plan is facing insolvency within 10 years and, more immediately, over 20,000 retired coal miners and their dependents are facing an imminent loss of health care coverage. Senator Manchin developed a bi-partisan legislative response to this crisis called the Miners Protection Act that I co-sponsored. It was marked up and passed by the Senate Finance Committee last September on an 18-8 vote. We were expecting the Senate and House Republican leadership to work with us to include the MPA in the Continuing Resolution package that we deliberated on during the lame duck session. We also asked the President-Elect to express his support for this legislation given his abundant pro-coal miner rhetoric during the Presidential campaign. Senate Democrats sent him a letter imploring him to publicly express his support. We got no response. The outcome was a Continuing Resolution that included nothing more than a 4 month extension of health benefits for the retirees who now face a termination of benefits in April instead of this month.

61. How will you work with the President-elect and the rest of his cabinet to work with Congress to pass the MPA and fulfill the nation's commitment to the coal miners whose work powered this country for generations?

**I am not familiar with the proposed legislation referenced in the question or EPA's authorities and responsibilities for pension and health care plans for miners.**

As you may know, each federal agency, including EPA, has an important role in enforcing Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color and national origin by recipients of federal funds. This is an accountability law — before the law was passed, federal funds were subsidizing agencies and organizations, from schools to hospitals to other agencies of government that discriminated. The case that led to the passage of Title VI was *Simkins v. Moses Cone Memorial Hospital*, a 1963 case in which a circuit court finally, 9 years after *Brown v. Board*, struck down a provision of federal law that allowed federally subsidized hospitals to have separate wings for “whites” and “colored” people under a “separate but equal” provision of a federal law called the Hill Burton Act.

62. Are you familiar with Title VI?

**Yes.**

63. Are you familiar with the Moses Cone Memorial Hospital case?

**Yes.**

64. If confirmed, will you commit to enforcing Title VI and the regulations promulgated by EPA to enforce Title VI?

**If confirmed as Administrator, I will faithfully execute all laws enacted by Congress that impose duties or grant authority to me as Administrator, including the Civil Rights Act.**

Title VI (at 42 USC 2000d-1) specifically empowers “each federal department and agency” that distributes federal funds to effectuate Title VI and then authorizes each agency to issue rules, regulations and orders to implement the law. Thus, the authority and responsibility to enforce Title VI and to ensure that recipients of



federal funds are not discriminating rests with each federal agency, including EPA. As you may know, federal enforcement is all the more important because affected communities can't go to court to enforce claims unless they can prove intentional discrimination under a case that arose out of Alabama — *Alexander v. Sandoval*, 532 U.S. 275 (2001).

65. Are you familiar with the text of Title VI, 42 USC 2000d, which prohibits discrimination on the basis of race, color or national origin?

**Yes.**

66. What is your vision for Title VI enforcement at EPA? What reforms need to be made? What concrete steps do you envision to strengthen civil rights enforcement at EPA?

**If confirmed as Administrator, I will faithfully execute Title VI. I will expect my staff to evaluate any areas that might need reform, and I will take appropriate actions based on the recommendations made to me.**

67. Are you familiar with the Supreme Court decision in *Alexander v. Sandoval* (2001)?

**Yes.**

68. To your knowledge, does the text of the law define or limit the meaning of "discrimination"?

**I cannot answer this question without additional context as to what text of what law you refer to.**

69. Are you familiar with regulations promulgated by EPA to implement this language, found at 40 CFR Part 7?

**I cannot answer this question without additional context as to what you are referring to when you say "this language."**

70. In your opinion, does this language further define what is meant by "discrimination"?

**I cannot answer this question without additional context as to what you are referring to when you say "this language."**

71. In fact, the regulations prohibit actions with an unjustified disparate impact. Do you agree?

**The regulations speak for themselves.**

72. Are you aware of criticism that EPA has historically done a "poor" job of enforcing Title VI and its regulations?

**I am not.**

73. If so, do you agree or disagree with criticisms that EPA has historically done a "poor" job of enforcing Title VI and its regulations?

**Because I have not heard those criticisms, I cannot say whether I disagree or not.**

74. Are you familiar with the Deloitte Report (2011), see <https://assets.documentcloud.org/documents/723416/epa-ocr-audit.pdf>, which documented problems with EPA's enforcement of Title VI? If so, what is your past experience with the Deloitte Report?

**I am not familiar with the report you reference.**

75. Were you aware that the Deloitte Report made the following findings:

- The Office has not adequately adjudicated Title VI complaints – those addressing allegations of discrimination against communities of citizens affected to environmental rules promulgated by the EPA.
- OCR has not completed compliance checks of EPA grantees, in a timely or effective manner, to ensure that grantees are not engaging in discrimination in their work.

**I am not familiar with the report you reference.**

76. If so, what is your past experience with the findings?

**I am not familiar with the findings.**

77. In your opinion, what has the EPA already done to address these issues?

**I do not know what EPA has or has not done to address any such issues.**

78. Do you know whether these steps have been effective?

**Because I am not aware of the steps taken--if any--I cannot judge their effectiveness.**

79. In your opinion, what more could the EPA do to address these issues?

**It would be inappropriate for me to prejudge an issue that may come before me for decision if I am confirmed as Administrator. If the issue comes before me, I will ensure that the issue is fully and fairly considered, as part of a transparent process that seeks input from all stakeholders.**

80. If confirmed, will you commit to taking action to address these issues?

**If confirmed as Administrator, I will faithfully execute all laws enacted by Congress and imposing upon EPA duties or powers.**

81. Do you believe that recipients of federal funds — across this whole country — are making any decisions that are discriminatory?

**I do not doubt that some recipients of federal funding engage in behaviors that violate federal anti-discrimination laws.**

82. Under Title VI and its regulations, should recipients of federal funds review whether a decision has a disproportionate adverse impact to ensure that it is in compliance with civil rights law?

**Recipients of federal funds should take all actions required by law to ensure that they are in compliance with federal civil rights laws.**

83. Do you have plans for pre-award compliance reviews? When would any such plans go into effect? And post-award compliance reviews? What would such reviews involve?

**If confirmed as Administrator, I will ensure that federal funds are awarded in compliance with federal law.**

**84.**What is your understanding of the obligations of recipients under Title VI and EPA implementing regulations? Do you think those obligations are sufficient?

**The obligations of recipients of federal funds are defined by the statutes and regulations to which you refer. Those statutes and regulations speak for themselves.**

Energy burdens above six percent of a household's income are typically considered unaffordable, but low income households spend an average of 15 to 20 percent of their income on energy bills. Low income families are also more likely to live in older, inefficient housing. The Clean Power Plan provides incentives to states to invest in energy efficiency improvements in low income communities.

**85.**Are you concerned about the lack of access to energy efficient, affordable housing for low income families?

**I am unfamiliar with EPA's role and statutory authorities as they relate to affordable housing. I am concerned about the impact regulations can have on the cost of energy for consumers.**

**86.**As EPA Administrator, how would you help low income working families reduce their energy burdens and access energy-efficient affordable housing?

**I am unfamiliar with EPA's role and statutory authorities as they relate to affordable housing.**

Low-income rural and urban communities and people of color are disproportionately live near, are exposed to, and die from environmental risks/hazards. As of February 27, 2014, there were 1322 Superfund sites on the National Priorities List in the United States. Fifty-three additional sites have been proposed for entry on the list. Communities of color breathe in nearly 40 percent more polluted air than whites. Sixty-eight percent of African-Americans live within thirty miles of a coal-fired power plant, the zone of maximum exposure to pollutants that cause an array of ailments, from heart disease to birth defects. Half of all U.S. Latinos live in the country's most polluted cities. Hispanic children are twice as likely as non-Hispanic white children to die from asthma while, from 2012-2014, African American children had a death rate ten times that of non-Hispanic white children. African-American children are three times as likely to suffer an asthma attack.

87. As EPA Administrator, how would you ensure that vulnerable low-income communities and communities of color are not overburdened by the harmful impacts of pollution?

**If confirmed, I expect to make the cleanup of contaminated land one of my priorities. I believe the nation's environmental laws apply to all Americans.**

88. Would you say there is anything you will do, if confirmed, to help these Americans? Will you push to reduce smog and particulate matter that causes more asthma attacks and other lung problems? Or is that a matter for the states and not the EPA?

**If confirmed, I will work to ensure human health is protected by implementing Clean Air Act provisions, such as the National Ambient Air Quality Standards for criteria pollutants, including for ground-level ozone and particulate matter, which prioritize protection of human health and welfare. I will also work to ensure all Americans are treated equally under the law in furtherance of EPA's mission to protect human health and the environment.**

EPA has adopted many cost-effective safeguards in the past eight years that would significantly reduce the pollution that contributes to asthma attacks in children -- many of which you challenged as Attorney General of Oklahoma.

89. Can you explain how you will protect the interests of these and other children that suffer from asthma?

**As I stated in my testimony to the committee, all legal positions that I took in my capacity as Attorney General for the State of Oklahoma were in an the capacity of an advocate. If confirmed as Administrator, I will consider all matters presented to me with an open mind and will work to reach conclusions that are reflected in the administrative record of each matter and that comport with Congress's intent in enacting the Act.**

90. Will you commit to working to further reduce pollution, including pollution that disproportionately burdens Hispanic and Environmental Justice communities?

**If confirmed, I will work to ensure all Americans are treated equally under the law in furtherance of EPA's mission to protect human health and the environment.**

91. Do you think the EPA has done enough to ensure that low-income communities near brownfields receive the same amount of attention as high-

income communities? Will you give priority to the safety and health of our children and future generations over short-term current economic gains of few?

**I do not know what EPA has or has not done on this issue. If confirmed as Administrator, I will work to ensure the brownfields program is operated in accordance with applicable legal requirements.**

92. Municipal electric utilities depend on the municipal bond tax-exempt status. For Vermont Municipal electric utilities, this is particularly true with regard to utility investments. Do you support tax-exempt bonding as one important tools to improve utility infrastructure (electric, water, wastewater, etc)?

**As Attorney General for Oklahoma, I have not studied the issues related to tax-exempt bonds for utility infrastructure. I am not familiar with EPA's role and legal authorities as they relate to municipal tax-exempt bonds.**

Your state of Texas is part of a market (ERCOT) that is not Federal Energy Regulatory Commission jurisdictional. This means that Texas does not comply with the same requirements as electric utilities in Vermont and other ISO regions face. ERCOT seems to have embraced wind and other renewable sources.

93. What are the strengths of the ERCOT approach?

**I am Attorney General for Oklahoma, not Texas, and do not have an opinion on the Texas electric grid.**

94. How would you contrast those with the strengths and weaknesses of the New England ISO?

**I am not familiar with the electric grid in New England.**

"Green infrastructure" (forests, wetlands, natural floodplains, etc.) can play a critical role in reducing impacts of flooding from extreme weather events like Tropical Storm Irene, and in helping to meet essential water quality requirements/improvements such as the EPA-approved Lake Champlain Total Maximum Daily Load (TMDL) plan. Also, green infrastructure is often much more cost effective than updating or investing in new traditional "gray infrastructure." EPA has played an important role in providing training, technical and financial assistance related to capitalizing green infrastructure.

95. What do you see as EPA's role going forward related to green infrastructure?

**Green infrastructure is a good example of a neighborhood solution that can achieve compliance with national standards. I believe EPA should be supportive of such efforts. If confirmed, I will work to break down barriers within EPA to the use of green infrastructure.**

In your own state of Oklahoma, wastewater disposal from fracking and drilling has induced thousands of earthquakes, threatening lives and destroying property. Joe and Mary Reneau suffered through a 5.7 magnitude quake (Nov. 6, 2011) near Prague, Oklahoma – their chimney fell into the living room, right on top of a favorite spot of Mary's to sit. Luckily for them, Mary wasn't sitting there at the time, they had earthquake insurance, and they had \$200,000 of repairs done on their house. Joe jokes that he won the earthquake lottery. Jerry and John Loveland weren't so lucky, they had \$50,000 worth of damage done on their house, no insurance, and no way to pay for the damage. Oklahoma is an oil and gas state. Joe Reneau said he wouldn't bring any claims against the oil company, because if he did, he would be "run out of town." Oklahoma regulators have done next to nothing to help those harmed by oil industry induced quakes or prevent more destruction.

96. As EPA administrator, what will you do to help the Amos family, John and Catherine Fenton, or all those in Oklahoma threatened by oil industry induced earthquakes?

**As I have previously stated, underground injection is regulated by the State of Oklahoma under delegated authority from EPA under the Safe Drinking Water Act. The State has taken action to address seismicity concerns and, if I am confirmed, I will continue working with States and within EPA's legal authorities to address public health and environmental concerns.**

In September 2016, the EPA recommended a moratorium on the underground injection of fracking wastewater in certain earthquake-prone parts of Oklahoma because regulations had not successfully addressed the problem.

97. Will you uphold the EPA's recommendation—yes or no?

**The State of Oklahoma has worked collaboratively with the EPA to address seismicity concerns and state regulators have shut down dozens of**

**underground injection wells and, if confirmed, I will continue this cooperative approach to addressing such future issues as they might arise.**

98. Specifically, EPA's recommendation arose out of the agency learning that the Oklahoma Corporation Commission, the body overseeing the underground injection control program in a primacy agreement with the EPA, has illegally permitted restricted wells to return to normal operations. While EPA cannot order Oklahoma to impose a moratorium, it can revoke the state's authority and take over regulation of the wells itself. As EPA Administrator, will you regulate these wells in compliance with the Safe Drinking Water Act and in addressing the seismic catastrophe occurring in your state—yes or no?

**If confirmed as EPA Administrator I will review relevant information, including EPA's legal authorities, to ensure drinking water protections in Oklahoma and across the nation.**

99. Do you think local communities have the right to protect themselves from pollution and other threats to public health?

**Yes, if authorized under the law and not preempted or displaced by state or federal law.**

100. Will you, as EPA Administrator, support these state and local regulations by not intervening or challenging them—yes or no?

**I believe in cooperative federalism and I will work with States and local communities to protect citizens consistent with our nations laws.**

101. How do you reconcile challenging these rules with your view of respecting and giving deference to state and local environmental regulation?

**It is not clear to me what rules are being referred to in this question, however, I believe that environmental and public health protections are the strongest when there is collaboration across all levels of government consistent with applicable laws.**

The FracTracker Alliance has shown that 11% of organic farms are within 1/2 mile of oil and gas development, and 100% of farms within the San Joaquin Valley and Southern California are within 8 miles of oil and gas operations (59,840 wells),



and that produced water is being used to irrigate crops (and also organic crops). California feeds 50% of the country.

102. What is your response to the US maintaining food independence and food safety when the majority of its food sheds are threatened by oil and gas contamination?

**I have seen no evidence or information that proximity to oil and natural gas development has contaminated or threatened to contaminate our nation's food safety. The State of California would be better able to address their laws and regulations with regards to the location of oil and gas development in their State as well as their irrigation policies.**

103. Why is energy independence more important than food independence?

**I have not made any statements ranking the importance of these two issues critical to our nation's health and welfare.**

104. We have the opportunity to be both energy independent and food independent without poisoning people and the planet. Why should the US be dependent on other countries to supply its food, but not be dependent on other countries to supply its energy?

**I support both the goals of domestic energy independence as well as protecting our domestic food supply and working collaboratively with our nation's farmers and ranchers.**

105. From your Great Plains perspective how do you feel the advent of High Volume Hydraulic Fracturing (HVHF) will affect the growing concerns about food security/safety relative to energy infrastructure?

**Oklahoma, as a rural state, has long successfully balanced safe energy production as well as farming and ranching.**

106. How can the public trust the oil and gas industry when it is exempt from so many environmental regulations?

**Any statutory exemptions come from Congress and if confirmed I will uphold the laws as directed by the Constitution.**

107. How can rural communities trust oil and gas operators when rural gas gathering lines are exempt from federal pipeline safety regulations (because of the exemption, states also cannot regulate rural gas gathering lines, and therefore because they are not regulated the operators do not have an obligation to report on incremental failures along the pipelines, they are only required to report if there is a need for an evacuation).

**The State of Oklahoma has worked well with both rural communities and the domestic energy industry (including alternative energy producers as well as conventional) and, if confirmed, I will continue working to foster safe domestic energy development and maintain trust with our nation's communities both rural and urban.**

The conventional food supply is sufficiently burdened by a toxic load from pesticides, herbicides, fertilizers, and genetic modification. It doesn't need yet another toxic burden.

108. How can consumers trust the food in restaurants and grocery stores when it may be grown near oil and gas operations?

**If confirmed, I would expect to be briefed by staff to before taking action and would work to ensure EPA followed all applicable legal requirements and made decisions based on sound science.**

109. How can parents trust the food that is being served to their kids in school cafeterias?

**If confirmed, I would expect to be briefed by staff to assess what role, if any, EPA plays concerning the safety of food served in school cafeterias.**

Many of our environmental laws were designed to permit regulation and enforcement by the states so long as state programs meet minimum federal standards established by EPA. Since state laws, however, do not always have general effect or application on Indian lands, Congress has amended several of our environmental statutes to permit tribes themselves to assume primacy of enforcement.

110. Do you intend to encourage tribes to develop their own enforcement regimes under approved programs, much as the states do? Or do you expect EPA itself to

provide direct regulation and enforcement of federal environmental laws on Indian lands throughout the country?

**If confirmed as Administrator, I would ensure that Indian lands were subject to adequate environmental regulation, whether that be through tribes utilizing regulatory powers as contemplated by Congress, or through direct regulation by the EPA.**

Much of the nation's and the world's attention has been focused in recent months on the Dakota Access Pipeline, the construction of which crosses multiple states. Many pipelines on Indian lands are located entirely within a single state, however. Here EPA is not always the primary regulator, and state laws do not always apply. The health and environmental consequences of pipeline failures, however, can be enormous.

111. Will you commit to work with this Committee and other agencies to address the environmental and public health and safety issues associated with the operation of pipelines on Indian lands, including purely intrastate pipeline facilities?

**If confirmed as Administrator, I would faithfully execute any obligations imposed on EPA by Congress to ensure the environmental soundness of pipelines on Indian lands.**

Many of the nation's Superfund sites are on Indian lands. We are still dealing with clean-up issues from our uranium industry's legacy from the 1940s and 1950s. The nation's largest open pit uranium mine--Jackpile Mine on Laguna--was only recently added to the Superfund list. The largest Superfund site in the country in your own state is largely on Indian lands: Tar Creek on Quapaw. We have not fully addressed abandoned uranium mill tailings piles and the failure of the Church Rock Dam that dumped irradiated mill tailings into Navajo lands and waters. More recently the failure of the dam below the Gold King Mine in Colorado turned the San Juan River on the Navajo Reservation red all the way to Utah. Today, and nearly every day, fugitive coal dust emissions from trains silt over spawning grounds of treaty-protected fisheries. Ongoing dumping threatens subsistence lifeways throughout Alaska and the Pacific Northwest. Newer and more virulent strains of black lung disease are overwhelming public health facilities in mining communities. These are just a few examples of major environmental issues that impact disproportionately the poor and the underrepresented elements of our society, including Indian communities and tribal lands.

112. Can you assure us that under your leadership the EPA will address issues of environmental justice in Native American communities and offer a voice to those most affected by the environmental consequences of industrialization?

**If confirmed as Administrator, I will faithfully execute all environmental laws enacted by Congress, and will do so in all communities, including Native American communities.**

These questions extend to resources protected by treaties such as water rights and compacts, forestry, hunting and trapping, fishing, etc. Some treaties have language that doesn't apply any longer and needs to be updated. Other language needs updating to reflect cultural realities. For example, "hunting" rights do not include "trapping rights" in the letter of the treaty unless trapping is explicitly mentioned, even though the tribes did not differentiate between both.

113. Please describe the relationship between the federal government and American Indian Tribes as it relates to sovereignty the trust responsibility.

**Pursuant to federal law, the federal government has a trust responsibility to American Indian Tribes.**

114. What obligations do federal agencies have to formally consult with American Indian tribes? What about independent federal agencies?

**The obligations of federal agencies--independent or otherwise--to formally consult with American Indian tribes are defined by federal law. If confirmed as Administrator, I will faithfully execute all laws enacted by Congress requiring or authorizing formal consultation with American Indian tribes.**

115. What procedures should the EPA follow regarding permitting of infrastructure projects that could potentially impact American Indian tribes and their citizens?

**If confirmed as Administrator, I will faithfully execute all laws enacted by Congress requiring that procedures be followed with regard to infrastructure projects that could potentially impact American Indian tribes and their citizens**

116. How do you interpret the United Nations Declaration on the Rights of Indigenous Peoples, especially as it relates to obligations of the federal government?

**The federal government's obligations with respect to Indian tribes is defined by federal law.**

117. Do you believe federal funding should be block granted to states to then disburse to tribes? Alternatively, should tribes receive their full and fair allocation of federal funding without being beholden to cumbersome state bureaucracy?

**Federal funding should be disbursed to States and tribes in the manner directed by Congress.**

118. What is the federal government's role in permitting extraction of mineral resources on federal Indian lands?

**As trustee of federal Indian lands, the federal government's role is to act in the best interest of the tribes with regard to permitting extracting of mineral resources on those lands.**

119. How will you promote economic development within Indian country?

**If confirmed as Administrator, I will faithfully execute all laws enacted by Congress directing or authorizing me to promote economic development within Indian country.**

120. How will you ensure the Bureau of Indian Education provides quality education to American Indian students?

**The Bureau of Indian Education is overseen by the Department of the Interior, not EPA.**

121. What is the role of the federal government to promote renewable energy development on American Indian lands?

**The federal government's role in promoting renewable energy development on American Indian lands is determined by Congress. If confirmed as Administrator, I will faithfully execute all laws enacted by Congress imposing upon EPA duties relating to promoting renewable energy development on American Indian lands.**

122. What is the role of inter-agency cooperation to work across agencies on American Indian issues?

**If confirmed as Administrator, I will faithfully execute all laws enacted by Congress imposing upon EPA duties relating to American Indian issues, and if faithful execution of those laws requires cooperation with other federal agencies, I will ensure that such cooperation occurs.**

123. Will you work with the White House Inter-Agency Working Group on American Indian issues?

**If confirmed as Administrator, I will faithfully execute all laws enacted by Congress requiring or authorizing me to work with the White House Inter-Agency Working Group on American Indian issues.**

Federal Indian law has long recognized that tribes maintain authority over Indian country to the exclusion of states. Oklahoma has 38 federally recognized Indian tribes and those tribes exert jurisdiction over their lands throughout the state. But as Oklahoma Attorney General, your office has never filed a brief in support of tribal jurisdiction. Instead, your office filed briefs in *ODEQ v. EPA*, the Dollar General case, and several other cases OPPOSING tribal jurisdiction.

124. How can you hope to serve as a protector of tribal lands when you have, over and over again, advocated to deny tribal governments the right to regulate and protect their OWN resources?

**As Oklahoma Attorney General, my duty was to ensure that the State of Oklahoma's jurisdiction was fully realized, and sometimes took legal actions in pursuit of that duty. If confirmed as Administrator, I will faithfully execute all laws enacted by Congress directing or authorizing me serve as a protector of tribal lands.**

Indian lands outside reservation boundaries. The EPA has, since at least 1984, recognized the federal government's trust responsibility, which is built upon the longstanding historical and legal relationship between the federal government and Indian tribes. The EPA has also acknowledged that treaties, as part of the supreme law of the land, have the same legal force as federal statutes and must be considered when making agency decisions.

125. How will you work to protect tribal treaty lands and resources that lie outside of reservation boundaries, and how will you help expand tribal authority over those lands and resources?

**If confirmed as Administrator, I will faithfully execute all laws enacted by Congress directing or authorizing me to regulate tribal treaty lands and resources and directing or authorizing me to seek to expand tribal authority over those lands and resources.**

Tribal communities, especially those in Alaska, have borne the brunt of the impacts of climate change. Several Native Alaskan villages have seen their entire way of life vanish as their homes have begun to erode away beneath their feet due to rising sea levels. Others have seen vital food supplies contaminated and sacred species of fish devastated by climate change.

126. How do you plan to protect native peoples from the effects of climate change?

**If confirmed as EPA Administrator, I will adhere to the applicable statutory authorities to fulfill EPA's mission to protect human health and the environment for all of our nation's citizens.**

127. There are established consultation processes set up for Indian Nations. Will you have "meaningful" talks with them? Will your Agency be transparent in all dealings with Tribal Nations? Will you be honest and fair?

**If confirmed as Administrator, I will faithfully execute all laws enacted by Congress requiring consultation processes for Indian tribes. I will engage all who have business before the EPA--including Indian tribes--in meaningful, transparent, honest, and fair processes.**

**Senator Sullivan:**

1. Alaska's seafood industry is the nation's largest and is one of major employer's in the Alaska economy. In fact, over 60 percent of the nation's commercially harvested fishery resources are caught and processed in Alaska. Alaska's waters remain some of the cleanest and most pristine in the nation. Most of the seafood processors who process these great resources are located in remote areas of Alaska. Each of those processors hold Clean Water Act discharge permits for the small amounts of seafood waste produced during procession operations.

EPA has delegated the management of those discharge permits to the State of Alaska Department of Environmental Conservation as directed by the CWA. In spite of that delegation, EPA remains actively involved in deciding issues that impact the ability of the state agency to accomplish its mission. For example, the EPA is currently considering a rule change that would dramatically impact the operation of seafood processing plants in those remote areas. That change could result in some of those operations having to cease processing because they cannot comply with this rule change. The current rule has been in place for almost 35 years and there is no water quality problem in the locations to justify such a rule change.

Will you commit to reviewing this proposal and confer with the Alaska Congressional Delegation prior to making any change to the current status?

**If confirmed, I will review this proposal and confer with the Alaska Congressional Delegation prior to changing the Clean Water Act regulations currently applicable to seafood processors.**

The Alaska Department of Environmental Conservation has recently issued a draft Clean Water Act APDES permit to allow seafood processors to continue discharging small amounts of waste pursuant to the Clean Water Act. Unfortunately, EPA is objecting to some of the permit conditions. Again, they are doing so with no known water quality issues or public concern about those conditions. Rather, it appears as though the EPA does not approve of the manner in which our state agency is pursuing its obligations. As a former State of Alaska Department of Natural Resources Commissioner, I have great faith in the ability of state employees to make solid permitting decisions that will protect the state's environment while allowing operations and employment to continue that are compliant with the Clean Water Act.



2. Will you commit to reviewing these EPA actions and allow the state to issue its permit?

**Yes, if confirmed, I will review EPA's actions as they relate to Alaska seafood processing permits. As I stated in my testimony, I support national standards and neighborhood solutions.**

3. CERCLA Financial Assurance Requirements under Section 108(b):

On December 1, 2016 the Environmental Protection Agency issued a proposed rule under Section 108(b) of the Comprehensive Environmental Response, Compensation and Liability Act that would require hard rock mines to obtain additional and duplicate financial assurance requirements for copper, gold, iron, zinc and other hard rock mines. If this proposed rule is finalized, the financial assurance requirements would likely result in significant redundant costs for mining corporations. EPA has indicated that these regulations will expand to the oil and gas sector next. If confirmed would you work to ensure that any new rules or regulations are not duplicative of rules imposed by other federal agencies or states?

**I am not familiar with the details of this rulemaking action and would not want to prejudge the issue prior to being confirmed as Administrator. However, if confirmed I will work to ensure EPA complies with all applicable legal requirements, including those related to analyzing impacts on small businesses, as part of this or any other rulemaking.**

4. Section 404(c) of the Clean Water Act:

Do you believe that EPA's use of a preemptive veto of a project under section 404(c) of the Clean Water Act may create the opportunity for overreach by the agency and could undermine administrative process and the rule of law?

**As I stated in my testimony, I believe that it is very important that federal agencies follow the appropriate legal process when taking any actions. Any preemptive action before the completion of a statutorily mandated process could undermine both the administrative process and the rule of law.**

**Senator Whitehouse:**

1. Estuaries are important coastal habitats that sustain unique wildlife and plant species, serve as nurseries for commercially important fish, buffer coastal communities from coastal storms, and filter water as it flows into the ocean. The EPA manages a network of 28 estuaries of national significance around the country. Last Congress, the National Estuary Program (NEP) was reauthorized through 2021 (Public Law No. 114-162) in a bipartisan effort and charged with providing grants to support projects that address a number of problems facing estuarine and coastal environments, including seagrass habitat loss, harmful algal blooms, invasive species, and sea level rise. Coming from a non-coastal state, please describe in detail how you will acquaint yourself with 1) the NEP, and 2) coastal issues the NEP helps address.

**If confirmed, I would expect to be briefed by EPA staff on the relevant statutory authority and any EPA programs established pursuant to this authority.**

2. Each NEP must institute a Comprehensive Conservation and Management Plan (CCMP) to guide management and conservation decisions at the NEP. The effects of climate change on estuaries (i.e., saltwater inundation, increased rainfall-driven runoff, warming waters) are included in these CCMPs. Would you direct the NEPs to disregard the consequences of climate change in the CCMPs and other decision-making reports and tools?

**If confirmed, I would expect to be briefed by EPA staff on the relevant statutory authority and any EPA programs established pursuant to this authority. If confirmed, I will follow all as enacted by Congress.**

3. The Climate Ready Estuaries program coordinates with the NEP to educate managers on how to assess the effects of climate change on U.S. estuaries. It also provides recommendations and toolkits to help design climate change adaptation and risk identification capabilities. Will you direct the Climate Ready Estuaries program to remove any materials, cancel any webinars or presentations, or stop its coordinated work on climate change with the NEPs?

**I am not familiar with the details of the specific program referenced in your question. If confirmed, I would expect to be briefed by EPA staff on the relevant statutory authority and any EPA programs established pursuant to this authority.**

4. Marine debris is a growing problem around the world, with plastic debris being the most troublesome component due to its pervasiveness and persistence in the marine environment. The EPA is currently a co-chair of the federal Interagency Marine Debris Coordinating Committee. Under your direction, will the EPA to maintain a leadership role on the committee? How will you continue EPA's

coordinated work with NOAA and other agencies to prevent marine debris, conduct education outreach, and support research efforts?

**I am not familiar with the details of the specific program referenced in your question. If confirmed, I would expect to be briefed by EPA staff on the relevant statutory authority to better understand EPA's role compared to those of other federal agencies on this issue.**

5. EPA completed a State of the Science White Paper in December entitled "A Summary of Literature on the Chemical Toxicity of Plastics Pollution to Aquatic Life and Aquatic-Dependent Wildlife." The white paper identified four key areas where additional research is needed: 1) "the fate of chemicals both sorbed to and in plastics under differing environment conditions and within an organism after ingestion;" 2) "the relative role plastics play in chemical contaminant transfer to the tissues of organisms compared to other exposure pathways (aqueous dermal exposure and ingestion from natural prey);" 3) "the relative impacts of physical and chemical effects of ingested plastic particles on a wide range of organisms;" and 4) "whether the relatively high surface area of nanoplastics compared to microplastics and their potential to permeate membranes with increased retention time may increase their toxicological risk to organisms." What is EPA's role and responsibility in finding answers to these research questions?

**I am not familiar with the report referenced in this question. If confirmed as Administrator, I would expect to be brief by staff to learn more about EPA's authorities and responsibilities before taking any actions referenced in the question.**

6. Do you accept the science of ocean acidification that has directly connected the increase in human-caused carbon dioxide emissions with decreases in ocean pH?

**First, I would note that the oceans are alkaline and are projected to remain so. Second, it is my understanding that the degree of alkalinity in the ocean is highly variable and therefore it is difficult to attribute that variability to any single cause.**

7. Do you accept that the oceans are currently acidifying at a rate unprecedented in tens of millions of years?

**First, I would note that the oceans are alkaline and are projected to remain so. Second, it is my understanding that the degree of alkalinity in the ocean is highly variable and therefore it is difficult to attribute that variability to any single cause. I am unaware of tens of millions of years of data on the pH of oceans.**

8. Do you accept ocean acidification's predicted toll on coral reefs worldwide, important habitats for recreation, tourism, and commercial fishing?

**I am aware that there is a relationship between the alkalinity of water and the calcification process that grows shells and reefs and that a decrease in alkalinity can impair that process.**

9. What is the EPA's role in helping states and coastal communities mitigate or adapt to the challenges projected for the shellfish industries or the thousands of individuals that make their living off of this billion-dollar resource?

**If confirmed, I will implement the laws that EPA is charged to administer. Under section 304 of the CWA EPA establishes water quality criteria to protect aquatic life, including shellfish. Certain EPA programs also include authorities that can support projects that may benefit the shellfish industry, including the National Estuary Program under section 320 of the CWA, the Long Island Sound programs under section 119 of the CWA, and the Chesapeake Bay program under section 117 of the CWA. Finally, section 319 of the CWA can support programs and projects to reduce runoff that may impact oyster beds.**

10. What do you understand to be the consequences of sea level rise, increased storm surge, and warming ocean waters on coastal communities and estuaries?

**If confirmed, I would expect to be briefed by staff on the impact sea level rise, storm surge, and warming ocean waters on consequences on coastal communities and estuaries.**

11. Both states and some Members of Congress have for years criticized EPA for "one-size-fits-all approaches" and failing to give adequate flexibility to states. Yet in challenging EPA's Clean Power Plan, you attacked EPA for just that – giving states and regions too much latitude in administering the Clean Air Act. Wouldn't that take the Agency in the wrong direction?

**I, along with the Supreme Court, which issued a stay against the Clean Power Plan in February 2016, believe the EPA exceeded the bounds of authority established by Congress in the Clean Air Act. In particular, the Rule attempted to supplant decisions traditionally preserved for the states, including the establishment of intrastate energy policies, for agency mandated alternatives that would have increased the price of electricity for local citizens and reduced reliability. The notion of flexibility in the Clean Power Plan was conceptual at best. If confirmed, I will work to achieve the objectives of EPA-administered laws consistent with the process and framework established by Congress abiding by the bedrock principle of cooperative federalism, which relies on meaningful collaboration between the EPA and the states to achieve important environmental objectives.**

12. According to the EPA, it has been estimated that the Clean Air Act has a history of reducing air pollution, while creating jobs. Since 1970 aggregate emissions of common air pollutants dropped 72 percent, while the U.S. gross domestic product grew 219 percent. Total private sector jobs increased by 101 percent over the same period. In 2020, EPA estimates that the standards will create the equivalent of over 104,000 new jobs including 17,000 new jobs building renewable energy facilities and over 78,000 jobs in improving demand-side energy efficiency. Do you agree that regulations under the Clean Air Act since 1970 have grown the economy? If not, can you provide your analysis, materials used, and people you solicited to come to this conclusion?

**The success of the Clean Air Act is a direct result of the important partnership between the EPA and the states in developing and implementing its key programs. State regulators best understand the needs and uniqueness of local environmental challenges while the EPA is well positioned to set and adjust environmental safeguards that continue to improve the nation's air, land and water and protect public welfare. If confirmed as Administrator, I will adhere to the clear directives and process set out by Congress so that the agency can once again focus on fulfilling its core mission.**

13. In 2014, four Republican former EPA Administrators – Bill Reilly, Bill Ruckelshaus, Lee Thomas, Governor Christine Todd Whitman – testified before EPW that climate change is real, EPA regulations do not end up costing as much as industry initially estimates, and EPA has clear authority under the Clean Air Act to curb carbon pollution. In a 2015 interview with Climate Progress, Governor Whitman said: “The idea the EPA is a job killer is false” and with regard to the Clean Power Plan “what EPA did was to allow as much flexibility as frankly I’ve ever seen them be able to create in a regulation.” Do you think that the former Administrators are correct in their assessment that regulations do not cost as much as industry initially estimates? If not, can you explain why not?

**I am not sure what specific regulations the former EPA Administrators were referring to and accordingly lack sufficient information to answer the specific question. Generally speaking, if confirmed, I will work to ensure that EPA regulatory actions accurately account for the costs and benefits across all impacted stakeholders.**

14. Carbon Capture Utilization and Storage is a bipartisan policy area that I am working on with my Republican colleagues. Senator Graham and I visited the world's first Carbon Capture project in Canada that has been operational since 2014. In 2016, SaskPower successfully captured and injected 800,000 metric tons of carbon dioxide and the facility has operated nearly 85 percent of the time. Recently, Petra Nova in Texas became the first United States first post-

combustion carbon capture project to begin operation. SaskPower and Petra Nova are listed in the Clean Power Plan as viable options for helping states reach their Clean Power Plan targets. Do you believe that CCUS is a viable technology for reducing emissions from power plants?

**I believe CCUS technology can play an important role in the development of our future coal fleet, however it is not yet a viable option. Both the SaskPower and Petra Nova plants referenced in your question relied on significant support from their respective governments to become operational. Forcing private businesses to use unproven, expensive technology would be unfair, which is why Congress provided for protections against the EPA embracing such a practice in the Energy Policy Act of 2005.**

15. In Rhode Island we have BioProcess H2O in Portsmouth and Agcore Technologies, LLC in Cranston that do carbon utilization—the conversion of carbon dioxide into useable products and fuels. These technologies not only capture carbon pollution, but can ease the demand of over-fishing by offering an alternative source of oils and protein. The carbon pollution from the algae production is creating and delivering algae-derived fish and animal feed. These utilization technologies are available now and are reducing carbon emissions. We also have retrofitted coal facilities using CCUS (SaskPower and Petra Nova). Do you believe that CCUS should be pursued as an emission reduction technology for the power sector and industrial sector?

**Congress established clear directives the Administrator must consider when setting new source performance standards under the Clean Air Act. These directives are not technology specific, but instead require the Administrator set standards based on the best system of emission reduction that is technically feasible, achievable, adequately demonstrated and considerate of costs. If confirmed, I will follow the Clean Air Act process respective of the framework set by Congress.**

16. According to the U.S. Energy Information Administration, in 2014, Oklahoma ranked fourth in the nation in net electricity generation from wind, which provided nearly 17% of the state's net generation. The American Wind Energy Association also estimates that wind power saved electricity customers in Oklahoma more than \$1.2 billion in 2013 and a study from the Oklahoma State University found that wind companies have paid close to \$134 million in property taxes to the state since 2004, producing revenues for the state. Do you agree that wind energy has saved Oklahomans money and brought revenues to the state? Do you agree that wind energy is an important part of our future clean energy economy?

**As I discussed at my nomination hearing, 17 percent of Oklahoma's electricity is generated from wind, and as a state, we have a heavy emphasis**

**on renewables in addition to oil and gas. Wind energy can be part of successful, diverse, energy portfolio.**

17.AWEA also found that the wind farms provided an additional \$2.8 billion in societal benefits each year to Southwest Power and that the wind power helped save 3 billion in gallons of water in Oklahoma in 2013. The Windfall Coalition, a group created by Continental Resources Inc. founder and CEO Harold Hamm is trying to get rid of the Oklahoma's incentives for wind energy, as they believe it is a mature technology and doesn't need incentives. Do you support the Coalition's efforts?

**The decision on how to address state tax incentives for Oklahoma lies with the State Legislature and, ultimately, the Governor.**

18.According to the Wind Energy Association and Solar Energy Industries Association, in 2016 the United States had 400,000 wind and solar jobs—310,000 solar, 88,000 wind. In contrast, according to 2016 DOE Energy Employment Report, employment in oil and gas extraction was 388,000 and 53,000 in coal mining. The Energy Information Administration (EIA) just found that coal production continued to decline in 2016 down nearly 17% from 2015 production. Its Annual Energy Outlook in 2017 reports that declining cost of natural gas is still encouraging utilities to shift away from coal over the long-term. The change is expected under our existing policies regardless of the Clean Power Plan. Do you believe that dismantling the Clean Power Plan and cutting back on environmental regulations will bring back the coal industry? Specifically, will it bring back coal jobs and make coal the dominate source of electricity in the U.S. again?

**I am unable to say whether United States utilities and electric cooperatives would or would not return to coal as a predominant portion of their fuel mix if the Clean Power Plan were revoked or other regulations were cut back. The federal Energy Information Administration projects that coal will be an important part of the American fuel mix for the foreseeable future.**

19.The Clean Air Act requires the EPA to consult with an independent scientific body, the Clean Air Scientific Advisory Committee, on air quality standards. Congress has also directed EPA to establish and seek advice from an independent Science Advisory Board. Do you intend to deviate from the current appointment process for this advisory committee? Will you disclose professional and political affiliations and political contributions of members that you appoint to the committee? Do agree to maintain the existing structure of this committee and current rules that are in place for the decision making of this committee?

**I understand and appreciate the important role of EPA's independent scientific bodies. I have no first-hand knowledge of the existing processes or rules of the advisory committees referenced in the question and, if**

**confirmed, I expect to learn more about these committees and commit to follow applicable legal authorities.**

20. Improved environmental quality and economic growth aren't mutually exclusive. Since 2009, the states participating in the Regional Greenhouse Gas Initiative (RGGI) have seen carbon pollution fall by 18% while their economies grew by 9.2%. Emissions in the other 41 states fell by 4% while their economies grew by 8.8%. Do you agree that RGGI has developed a successful model for growing our states' economies and cutting carbon pollution at the same time? Will you commit to maintaining funding levels for EPA grant programs that fund state level initiatives to reduce their emissions?

**While the agreement between the states participating in RGGI appears to be successful, what works for the Northeast may not achieve the same success in, for example, the Southwest. If confirmed, I look forward to working with EPA's budget staff and program offices to develop a budget focused on protecting human health and the environment for all populations. I will work to ensure that the limited resources appropriated to EPA by Congress are managed wisely in pursuit of that important mission and in accordance with all applicable legal authorities.**

21. EPA operates multiple networks to monitor compliance with the Clean Air Act's National Ambient Air Quality Standards and to track hazardous air pollutants regulated under the act. These networks include, among others, the State and Local Air Quality Monitoring Network, the National Air Monitoring Network (which targets areas of high population density with a variety of air pollution sources), Special Purpose Monitoring Stations (used for short-term studies and other purposes), Photochemical Assessment Monitoring Stations (used to measure pollutants that contribute to ground-level ozone, a harmful air pollutant), and the National Air Toxics Trends Stations. During our meeting you mentioned a desire to increase resources for the Office of Research and Development, specifically mentioning monitoring equipment in non-attainment areas. What is your vision for monitoring? Do you plan to increase funding at EPA for these important monitoring networks?

**I agree that monitoring compliance with the National Ambient Air Quality Standards is important to EPA's mission because it provides EPA with concrete and policy relevant data concerning the attainment status of communities throughout the country. If I am confirmed as Administrator, I expect to assess the Agency's resource usage and regulatory priorities and increased funding for air monitoring will be an area where I will consider deploying additional resources.**

22. Section 105 grants provide significant funding to states for implementing the Clean Air Act requirements. Beginning in FY 2017, EPA is proposing a new formula for how the 105 grants are distributed to each of the regional offices (and subsequently to the states). Region 1, where Rhode Island receives its funding from, will receive a smaller percentage of the total 105 funds under this revised



formula. EPA is proposing an implementation approach that would limit regional losses to no more than 2.5% from each region's prior year amount. Region 1 will lose 2.5% for, at least, each of the next five fiscal years and possibly ten years, under this proposed approach. Will you commit to not implementing the new formula until and unless there is sufficient overall funding such that no Region will see reduced funding from the prior year's amount?

**If I am confirmed as Administrator, I will consider this and other resource allocation issues and will use my best efforts to ensure that regional funds are allocated equitably.**

23. The National Environmental Policy Act has been a bedrock of our nation's environmental laws, ensuring that the environmental and community impacts of major federal actions are properly understood, that alternatives are appropriately considered, and that the public has the opportunity to actively participate in the environmental review process. What is your view of NEPA and its associated regulations, and will you commit to ensuring that the law, including the processes it establishes to ensure meaningful public participation and informed decision making, is in no way weakened?

**I understand the National Environmental Policy Act established the White House Council on Environmental Quality and generally a process for considering the environmental impacts of federal actions. If confirmed, I will faithfully execute all applicable laws as Administrator.**

24. The EPA's Office of Civil Rights has a long history of failing to comply with the Civil Rights Act of 1964. To date, the office has never found a violation of Title VI, which prohibits recipients of federal funding from acting in discriminatory ways. It has also allowed complaints to linger for years without a response. What will you do to ensure compliance by the EPA with the Civil Rights Act and to improve the track record of the Office of Civil Rights?

**If confirmed as Administrator, I would expect to be briefed by staff and review any recommendations by the Office of Inspector General before taking action on this issue.**

25. EPA and States are co-implementers of many of our federal environmental laws and programs. We believe that the tools used to implement these programs should be updated, particularly at the State level, to ensure effective implementation. Are there approaches, systems, or tools that you have considered to improve these programs and investments you would like to make in improvements that would benefit both federal and state environmental programs?

**As I testified in the hearing, I have pursued opportunities to address interstate environmental quality matters. One of the examples I have highlighted is the work that Arkansas Attorney General Dustin McDaniel and**

**I took to address an enforceable water quality standard between Arkansas and Oklahoma. I have also discussed how Texas should be responsible when air quality issues affect Oklahoma and my experience with that. When negotiations among and between states breakdown EPA has a role to set environmental standards. However, that is should be a last course of action instead of the first. I believe environmental statutes are designed with states as a primary implementer. Environmental statutes envision that states have the delegated enforcement and primacy to implement and enforce environmental statutes. Only when that is not happening or when negotiations between and among states breakdown should EPA determine a dispute and only after attempting to assist states negotiate a local solution. I am fond of saying that we need national standards and neighborhood solutions. I think that should shape the work of the EPA.**

26. Under Section 111(b) of the Clean Air Act ("CAA"), in 2012, EPA issued New Source Performance Standards (NSPS) to limit emissions of VOCs from new, reconstructed, and modified sources in the oil and gas industry and finalized the rule in August of 2015. EPA developed a regulatory impact analysis of the regulation that estimated that the final standards for new and modified methane sources will yield benefits of \$690 million in 2025, which will outweigh estimated costs of \$530 million in 2025. Do you disagree with EPA's regulatory analysis? If you do, can you specify what information and analytics you use to justify your position?

**I am familiar with the rule and understand that regulatory impact analyses play an important role in the EPA's rulemaking process. I also understand certain statutes, executive orders, and federal guidance documents inform the development of regulatory impact analyses. If confirmed, I commit to work with EPA staff to ensure regulatory impact analyses follow the relevant legal authorities.**

27. In 2009, as mandated by the Supreme Court and backed by a robust scientific and technical review, the Environmental Protection Agency produced the Endangerment and Cause or Contribute Findings for Greenhouse Gases (GHGs) under Section 202(a) of the Clean Air Act. It found six greenhouse gases - carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride - "taken in combination endanger both the public health and the public welfare of current and future generations." You challenged the endangerment finding in court and lost. Do you agree with the EPA's finding? Do you commit to not take any steps as Administrator to narrow the scope or otherwise weaken this finding?

**If confirmed, I will fulfill the duties of the Administrator consistent with Massachusetts v. EPA and the agency's Endangerment Finding on Greenhouse Gases respective of the relative statutory framework established by Congress. To my knowledge, there is nothing currently**

**pending before the EPA that would require I take any additional actions on the Endangerment Finding and if there were, it would not be wise to prejudge the outcome.**

28. There appears to be clear benefit from the regulation of methane emissions from the oil and gas sector. Can you discuss your views on the techniques used in the regulatory impact analysis for the NSPS for new oil and gas wells to quantify the cost and benefits of the regulation? Do you commit to maintaining the same metrics like emissions reductions, monetized climate benefits and health co-benefits, economic effects, employment benefits when designing new rulemakings?

**I am familiar with the role and understand that regulatory impact analyses play an important role in the EPA's rulemaking process. I also understand certain statutes, executive orders, and federal guidance documents inform the development of regulatory impact analyses. If confirmed, I commit to work with EPA staff to ensure regulatory impact analyses follow relevant legal authorities.**

29. The regulatory impact analysis for the methane emissions estimates that the rule could also reduce 210,000 short tons of ozone-forming VOCs in 2025, along with 3,900 tons of air toxics, such as benzene, toluene, ethylbenzene and xylene. Industry frequently talks about the costs to polluters of meeting public health standards while ignoring the costs to people harmed by the effects of pollution like the formation of ozone. Do you believe EPA should look at only the costs to the polluters when undertaking its regulatory impact analysis? Should the costs to families, such as children sent to emergency rooms due to asthma attacks triggered by smog, be included in the analysis? If so, should those costs be given a different weight than those claimed by industry?

**I am familiar with the rule and understand that regulatory impact analyses play an important role in the EPA's rulemaking process. I also understand certain statutes, executive orders, and federal guidance documents inform the development of regulatory impact analyses. If confirmed, I commit to work with EPA staff to ensure regulatory impact analyses follow relevant legal authorities.**

30. As you know, methane emissions from industry are as much as 90% higher than EPA had initially estimated, as has been demonstrated by academic peer-reviewed studies. New information is currently being sent to EPA, as part of the Information Collection Request (ICR), on methane emissions from existing sources. How do you plan to use the information collected? How do you plan to lead the agency in addressing this significant spike in known methane emissions?

**Section 114 of the CAA provides the Administrator of the EPA to collect emissions data from existing sources. If confirmed, I will review the ICR**

**currently underway regarding methane emissions and examine the submitted data to determine the appropriate next steps.**

31. You have been quoted previously, "my concern is that EPA is employing its flawed methodology in order to rationalize new and unjustified federal regulations to solve a methane-emissions problem that simply does not exist." Science has shown us that methane's effect on climate change is up to 34 times greater than that of CO<sub>2</sub> when averaged over a 100-year time period and even greater when considered over the first 20 years after it is emitted. Additionally, a recent Geophysical Research Letter article found that the U.S. could be responsible for the 30% to 60% increase in atmospheric methane emissions since 2002. Can you clarify what you mean that a methane-emissions problem does not exist? Do you refute the argument that human's development of oil and gas has led to more methane emissions? The U.S., Canada, and Mexico have all pledged to work together in reducing methane emissions from the oil and gas sector between 40% to 45% by 2025. If you are confirmed as Administrator, do you intend to work with the State Department to honor our international methane commitments?

**It is my understanding that even EPA's revised methane data shows a decrease in methane emissions from oil and natural gas development since 2005, during a time period of a large increase in domestic energy development. EPA's data is based on a number of assumptions that, if confirmed, I will review carefully prior to making any prejudgments of future actions.**

32. The State Department and others have assessed life-cycle emissions for various crude oils and found tar sands crude is one of the dirtiest crudes on the planet from a GHG perspective. Do you agree tar sands crude has significantly higher life-cycle emissions than Oklahoma Sweet and most other crude oils?

**The lifetime emissions of any energy source should be considered in the context of necessary extraction techniques as well as transportation of the fuel, among other issues. For example, transporting crude via pipeline clearly creates fewer emissions than transporting it via other sources in terms of fossil fuel energy. Without knowing the specifics of all of these factors in a given instance, it is difficult to identify which sources may result in greater emissions.**

33. The State Department conducted a comprehensive economic and environmental analysis of the project and determined that under the current market conditions and those projected for the next few years, Keystone XL is key to getting tar sands crude to market. The EPA agreed with this conclusion. Do you agree? If not, why?

**I am not familiar with the State Department study but with over 2.4 million miles of pipeline in the United States as well as other transportation methods for moving goods and energy resources it is my understanding that oil sands development has continued despite the lack of approval for the Keystone XL's cross-border permit.**

34. Many of Keystone XL's proponents suggested that rejecting the project would simply divert more tar sands to rail to the Gulf Coast. Were you aware that according to the Energy Information Administration, shipments of Canadian crude by rail to the Gulf Coast have declined since Keystone XL was rejected, from 64,000 barrels per day in 2015 to 45,000 barrels per day in 2016?

**I am not familiar with that particular EIA data.**

35. The State Department found that the emissions associated with the production, refining and combustion of the tar sands in Keystone XL would result in 147 to 168 million metric tons (MMT) CO<sub>2</sub>e per year (equivalent to the emissions from as many as 35.5 million cars). The State Department also found that by displacing conventional crude with dirtier tar sands, the project would result in 1.3 - 27.4 MMT CO<sub>2</sub>e of additional emissions (equivalent to the emissions from as many as 5.7 million cars). Do you agree? If you disagree, please identify any research studies or experts you have consulted to form your opinion.

**I am familiar with multiple State Department determinations that the Keystone XL pipeline would not significantly impact climate change.**

36. In a recent study, the National Academy of Sciences (NAS) concluded that diluted bitumen—the type of crude that would be primarily transported by Keystone XL—has a series of properties that, taken together, make tar sands spills of greater concern for spill responders than spills of other, commonly transported crude oils. Both EPA and the Coast Guard advised the scientists on the NAS committee. Do you agree with their conclusion that tar sands spills pose greater risks and challenges for spill responders than other crude oil spills? If you disagree, please identify any research studies or experts you have consulted to form your opinion.

**Diluted bitumen has been transported safely by pipeline in the United States for more than 40 years. It is my understanding that the NAS report did not infer that the Keystone XL pipeline posed significant concerns or that diluted bitumen could not be safely transported via pipelines or other forms of transportation.**

37. The NAS committee also found that there are no known, effective strategies for recovering tar sands bitumen that has been spilled in a waterbody and sunk. Do

you agree? If you disagree, please identify any research studies or experts you have consulted to form your opinion.

**I have no information in supporting or challenging this assertion.**

38. The NAS committee also found that regulations and agency practices do not take the unique properties of diluted bitumen tar sands into account, nor do they encourage effective planning for spills of diluted bitumen. Do you agree? If you disagree, please identify any research studies or experts you have consulted to form your opinion.

**EPA is not the primary regulator of pipelines, this question would more appropriately be posed to the Pipeline and Hazardous Materials Safety Administration.**

39. The State Department's EIS found that Keystone XL's leak detection system is unlikely to identify leaks smaller than half a million gallons a day. Given the increased risks of tar sands spills and Keystone XL's proposed route through the Ogallala aquifer, should the EPA play an active role in ensuring that the water our nation's ranchers and farmers rely on is protected?

**EPA should play an active role in ensuring protection of our domestic water supply.**

40. The Environmental Protection Agency (EPA) has raised concerns regarding the effect that Keystone XL and the tar sands it carries will have on the air quality of Gulf Coast refinery communities. Do you believe that the EPA should take a role to ensure that projects like Keystone XL do not put our communities at risk of asthma, cancer and other serious illnesses?

**I am aware that EPA has a role in implementing the National Environmental Policy Act, and other statutory responsibilities as it relates to infrastructure projects like pipelines. If confirmed as Administrator, I will work to faithfully execute the laws EPA is responsible for administering in order to protect human health and the environment for all Americans.**

41. Do you believe that Native Americans, landowners, farmers, ranchers and communities affected by projects like Keystone XL should have the opportunity to have their concerns considered and address as part of an environmental review process?

**Yes.**

42. Based on the climate change implications, spill potential, and other factors, the Obama Administration determined Keystone XL isn't in our nation's best interest. Do you agree? If not, why?

**While the Obama Administration failed to grant the cross-border permit required to complete the Keystone XL pipeline, much of the pipeline was built in accordance with applicable laws and permits both federal and state. A large portion of the Keystone XL pipeline safely operates through Oklahoma and I believe that safely and efficiently moving natural resources through the country is very important.**

43. If confirmed, do you commit to ensuring EPA fully considers and articulates the environmental implications, based on the best-available science and in accordance with EPA's authority under the National Environmental Policy Act, when determining how to proceed on the Keystone XL Pipeline and any other projects?

**If confirmed, I will faithfully execute all applicable laws as Administrator.**

44. According to EPA 49% of coal units lack the most advanced NOx controls (Selective Catalytic Reduction systems or SCR). Several units that have SCR or other NOx emission control technology installed are not optimizing their use. For example, these six coal units have SCR installed but are not using it to optimize NOx reductions. In 2015, these facilities' NOx emissions were significantly higher than 2009 because they are not using the systems they have in place to reduce NOx. EPA estimates it costs facilities \$500/ton NOx pollution to optimize the reduction of NOx from an SCR and \$1300/ton to restart a SCR unit. Do you think these facilities should be regulated to keep on their NOx controls on?

**If I am confirmed as Administrator, I will consider all matters presented to me with an open mind and will work to reach conclusions that are reflected in the administrative record of each matter and that comport with Congress's intent in enacting the Act. That includes evaluating your concerns regarding the use of post-combustion NOx controls if and when they are presented to me in a matter before the Agency.**

45. Industry frequently talks about the costs to polluters of meeting public health standards while ignoring the costs to people harmed by the effects of pollution. In Rhode Island these effects cannot be ignored as we seen them through rising seas and bad air days for Rhode Islanders. Because Rhode Island ozone air quality issues are largely due to transported emissions from upwind states leading to ozone formation that pollutes the air and lungs of people in downwind states like mine. Over the past two years in Rhode Island, the 8-hour standard ozone standard exceeded 0.07 ppm 10 times in 2015 and 6 times in 2016. With respect

to ozone, do you believe EPA should look at only the costs to the polluters when undertaking its regulatory impact analysis? Should the costs to families, such as children sent to emergency rooms due to asthma attacks triggered by smog, be included in the analysis? If so, should those costs be given a different weight than those claimed by industry?

**Under the Clean Air Act, while setting NAAQS for criteria pollutants, cost cannot be considered. This is because human health is the primary focus of these standards. EPA's regulatory impact analyses have typically addressed what you describe as "costs to families" in the benefits portion of the analysis (i.e., the value of public health and environmental effects avoided).**

46. EPA's independent science advisers, leading medical groups like the American Medical Association, American Academy of Pediatrics, American Thoracic Society, American Lung Association, American Heart Association, and leading public-interest groups such as the NAACP called for a 60 ppb standard instead of the 70 ppb standard EPA finalized last year. What was your scientific basis for concluding that the old standard, 75 ppb, was sufficient to protect public health? Can you explain what sources you consulted? What groups you discussed this with?

**Due to a number of factors and steps taken by the previous Administration, implementation of the 2008 ozone NAAQS did not begin until years later. States had only recently begun to implement the 75ppb standard for ground-level ozone when EPA changed it; considering that approximately 40 percent of the country was in nonattainment for the 2008 standard, I believe EPA should focus on helping those areas meet that standard. Oklahoma's challenge to the most recent ozone NAAQS was based, in part, on concerns that EPA has not adequately assessed the available science. It is EPA's obligation to properly justify any change to an existing NAAQS.**

47. Rhode Island ozone air quality issues are largely due to transported emissions from upwind states leading to ozone formation that pollutes the air and lungs of people in downwind states like mine. The Rhode Island Department of Environmental Management told me that there remain a number of power plants located in upwind states that have pollution control equipment installed to reduce nitrogen oxides emissions that either do not use that equipment during the ozone season or do not use it in a way that optimizes the reduction of nitrogen oxides emissions. Why would this be the case?

**I am unfamiliar with the specifics as to why certain sources upwind of Rhode Island may not be using control devices in particular ways. CSAPR and related rules are designed to address emissions from upwind states**



**that significantly contribute to nonattainment in downwind states. EPA presumably considered emissions from the upwind power plants referenced in your question in formulating the existing requirements.**

48. Each year, RIDEM issues "ozone alerts" to warn vulnerable Rhode Islanders to stay indoors to protect their health on hot days when air quality is poor. This is a problem that cannot be solved in the state because masses of polluted air are coming from upwind. The health of Rhode Island citizens depends on a strong federal EPA program to impose pollution controls on NO<sub>x</sub>, particulates, and other mobile and stationary sources of pollution. What will you do to support the federal air quality programs? Will you commit to keep existing funding levels for the clean air programs that impose and regulate pollution controls and protect Rhode Islanders?

**If confirmed, I will work to administer the statute and applicable federal programs in accordance with Congressional intent. I look forward to working with EPA's budget staff and program offices to develop a budget focused on fulfilling EPA's mission to protect human health and the environment for all populations. I will work to ensure that the resources appropriated to EPA by Congress are managed wisely in pursuit of the Agency's important mission and in accordance with all applicable legal authorities.**

49. Ozone levels in RI are strongly affected by the transport of pollutants emitted in upwind states into RI. Although RI is currently designated as an unclassifiable/attainment area for the ozone NAAQS, monitored ozone levels in the State still exceed the standard on a number of days in the summer months. The Ozone Transport Region (OTR) states, including RI, have implemented a number of programs to reduce pollutant emissions from mobile and stationary sources in their states, as required by the Clean Air Act (CAA). RI and other OTR states were required by the CAA to implement emissions control programs not mandated in upwind states, resulting in increased energy costs and an inequitable economic burden to industry in the OTR states. Any additional emissions reduction programs that could be adopted in the OTR to further reduce ozone levels in the region would be less cost-effective than implementing OTR controls in upwind states and would further this inequity. What steps will you take to address the transport of pollutants emitted in upwind states that contribute to exceedances of the ozone standard in RI and other OTR states?

**Interstate transport of pollutants is a concern. An upwind state that contributes to a downwind state's inability to meet air quality standards should take responsibility. It is EPA's responsibility to address such issues, and, if confirmed, I look forward to working on this issue.**

50. The intent of the establishment of the RFS in the Energy Policy Act was to enhance U.S. energy security by displacing some imported petroleum with domestically produced ethanol. In your estimation, has the RFS reduced imports of foreign oil?

**As Congress indicated in the Energy Independence and Security Act of 2007, domestic production of renewable fuel contributes to our nation's "greater energy independence and security."**

51. President-elect Trump has said, "The RFS, which is Renewable Fuel Standard, is an important tool in the mission to achieve energy independence for the United States. I will do all that is in my power as president to achieve that goal....Energy independence is a requirement of America's to become great again. My theme is "Make America Great Again"; it's an important part of it." Do you hold the same beliefs as President-elect Trump about the RFS? If not, can you be specific where your views differ on this policy?

**As Congress indicated in the Energy Independence and Security Act of 2007, domestic production of renewable fuel contributes to our nation's "greater energy independence and security." To that end, if confirmed, I will work to administer the RFS program in accordance with statute and Congressional intent.**

52. Agriculture Secretary Tom Vilsack, who has been supportive of the RFS, made a statement in Bloomberg Markets, "There's going to be a lot of saber-rattling, but it supports too many jobs and too much rural infrastructure is set up for it. The Renewable Fuel Standard is solid." Do you agree that the RFS has supported jobs . and helped develop our rural infrastructure?

**Yes.**

53. You have been quoted, "It should come as no surprise that I am working diligently with Oklahoma energy companies, the people of Oklahoma and the majority of attorneys general to fight the unlawful overreach of the EPA and other federal agencies." Do you think that the renewable fuel standard is one of those unlawful overreach regulations from the EPA? Can you explain in more detail the type of overreach you are talking about when it comes to the EPA and other federal agencies?

**The RFS was first enacted by Congress in 2005 and updated and expanded in 2007 to promote domestic production and achieve energy independence. Therefore, I do not consider it to be "one of those unlawful overreach regulations from the EPA." The EPA needs to better administer this program**

**to provide involved entities with the certainty they need, and, if confirmed, i will administer the RFS in accordance with statute and Congressional intent.**

54. You have been quoted in the press saying, "The American people are tired of seeing billions of dollars drained from our economy due to unnecessary EPA regulations, and I intend to run this agency in a way that fosters both responsible protection of the environment and freedom for American businesses." Do you see the RFS as one of those unnecessary EPA regulations that is draining money from our economy?

**The RFS was first enacted by Congress in 2005 and updated and expanded in 2007 to promote domestic production and achieve energy independence. The EPA needs to better administer this program to provide involved entities with the certainty they need, and, if confirmed, I will administer the RFS in accordance with statute and Congressional intent.**

55. The RFS has been a significant factor in growing the volumes of biodiesel and other advanced biofuels. In light of the uncertainty surrounding the Biodiesel Tax Credit and the increased volume of biodiesel imported from Argentina, do you intend to support the RFS and continue to increase the Renewable Volume Obligations (RVOs) that provide the long term market stability to support investment and increase the jobs available in a growing domestic industry? Do you commit to making all economic and pricing models used in developing the annual blending targets under the RFS available to the public? If you come across models that were used in the past that were left out of the public record, will you make those available? Do you intend to use EIA data in conjunction with your administration of the RFS? Are there other data sources that you intend to rely on?

**If confirmed, I will administer the RFS in accordance with statute and Congressional intent. There has been significant investment that has gone into the infrastructure following the enactment of the RFS in 2005, and these individuals need certainty that the EPA has failed to provide in the past, from the trading program to monitoring the fraud in the system, to faith that the program will be enforced and administered as Congress intended. The Clean Air Act requires the Administrator of the EIA to submit annual projections of transportation fuel, biomass-based diesel, and cellulosic biofuel to be sold or introduced into commerce into the United States, and I will commit to continue relying on EIA data projections to set annual volume obligations.**

56. It has been estimated that the RFS supports roughly 850,000 jobs across the country and many of those jobs rely on certainty from the EPA setting its volume

requirements for the renewable fuels each year. If confirmed to serve as EPA Administrator, will you carry out the Energy Policy Act as passed in 2005 and updated in 2007, particularly adopting the statutory volume requirements for renewable fuels?

**Section 211(0) of the Clean Air Act contains enumerated tables of applicable target volumes of renewable fuel for calendar years 2006 through 2022. If confirmed, I will work to administer the RFS program in accordance with statute and Congressional intent.**

57. The RFS has driven investment in low carbon biofuels in our country. Are you committed to working to achieve the gains in advanced and cellulosic biofuels promised under the statute?

**Section 211(0) of the Clean Air Act contains enumerated tables of applicable target volumes of renewable fuel, specifically cellulosic and advanced, for calendar years 2006 through 2022. If confirmed, I will work to administer this program in accordance with statute and Congressional intent.**

58. Following the Sixth Circuit's stay of the Clean Water Rule in 2015 pending further court action, the EPA and Army Corps issued a joint memorandum that states the agencies 1) "look forward to vigorously defending the merits of the Clean Water Rule, which we continue to believe is fully consistent with the law and based on the best available peer-reviewed science," 2) "intend to move forward with measures to improve implementation of the national CWA section 404 program that were announced concurrent with the Rule," 3) will continue their commitment to improve transparency through making section 404 decisions public and making a number of other improvements to the section 404 permit program, 4) strengthen coordination between the agencies, and 5) "work closely with the Department of Justice to ensure [their] actions remain consistent with the stay." If confirmed as EPA Administrator, will you uphold the tenets of this memorandum? If not, what would you change in the EPA's pursuance of clean water and cooperative relationship with the Army Corps of Engineers? Will you commit to working collaboratively with the Army Corps under its corresponding section 404 and other Clean Water Act authorities to ensure clean water for all Americans? If confirmed as EPA Administrator, would you advise DOJ to stop defending the rule and instead ask the court to set aside the rule and send it back to the agencies for reconsideration? Do you disagree with the process the EPA used in developing the Clean Water Rule, which involved incorporating the best available science and feedback received through around 400 public meetings and over 1 million public comments?

**If confirmed I will support efforts of the Corp to improve transparency through making section 404 decisions public and to strengthen**

coordination between the agencies. However, I do not support the WOTUS rule and do not believe that it is consistent with the Clean Water Act. Accordingly, if confirmed, I will take appropriate steps, in accordance with the Administrative Procedure Act, to withdraw the rule and replace it with a rule that is within the authority granted to EPA and the Corps under the Clean Water Act and is promulgated in compliance with the APA, the Regulatory Flexibility Act, the Small Business Regulatory Enforcement Fairness Act, the Unfunded Mandates Reform Act, Executive Order 13132 on Federalism, and Executive Order 12866 on regulatory planning and review, procedural requirements that I believe were not met in the promulgation of the WOTUS rule. If confirmed, I also would inform the appropriate courts of these actions.

59. In the wake of SWANCC, Rapanos, and other decisions, how would you shape regulations and internal EPA policy to provide more certainty for regulated parties on how the agency will make section 404 permitting decisions?

**EPA does not make 404 permitting decisions. Section 404 of the Clean Water Act grants that authority to the Secretary of the Army, who carries it out acting through the Corps of Engineers. Under section 404(c) EPA has the authority to veto a Corps-issued permit if it EPA determines the discharge will have unacceptable adverse effects. If confirmed, I will seek to clarify when it is appropriate for EPA to use its 404 veto authority.**

60. If you choose to pursue a renewed rulemaking to clarify "waters of the United States," will you follow the same procedure and commit to at least the same level of outreach the EPA undertook in developing the Clean Water Rule in developing a new rule?

**If confirmed, I will ensure that the outreach performed by EPA is not only extensive, but meaningful.**

61. Extreme weather events put water and wastewater infrastructure at risk. In Rhode Island, Super Storm Sandy almost caused Narragansett Bay to breach the water supply for the City of Newport. The March 2010, storms flooded the Pawtuxet River, overtopping the Warwick Wastewater Treatment facility and sending untreated wastewater into surrounding neighborhoods, the River and Narragansett Bay. What do you see as EPA's role in helping cities and towns respond to these increasingly frequent extreme weather events and ensure the safety of the nation's critical water and wastewater infrastructure?

**EPA provides water and wastewater infrastructure assistance through the Clean Water Act and Safe Drinking Water Act revolving loan funds and through the new WIFIA loan program.**

62. What role can green infrastructure play in helping municipalities manage and prevent sewer overflows and other storm water and wastewater treatment concerns?

**Green infrastructure is a neighborhood solution that can help meet national standards.**

63. In making recommendations for revisions to state shares of Clean Water State Revolving Fund (CWSRF) money, do you support increasing allocations for states with the oldest infrastructure?

**No. I am not aware of any analysis that suggests that age of infrastructure is an appropriate metric that predicts funding needs for wastewater infrastructure. It was not suggested in the May 2016 Report to Congress from EPA on its review of the CWSRF allotment formula, required by section 5005 of the Water Resources Reform and Development Act (WRRDA) of 2014. I also note that the formula is established by law and only Congress can change it.**

64. Sea level in Newport, RI has risen over 10 inches since 1930, Rhode Island experiences significantly more rain and more intense storms than in past decades, and Superstorm Sandy and the Flood of 2010 destroyed roads and buildings. The RI Department of Environmental Management is finalizing an assessment of the vulnerability of each wastewater treatment facility in the state from damage due to flooding and storm surge. Will states have the ability to choose to use State Revolving Fund monies to finance resiliency projects under the next Administration? What restrictions, if any, would you foresee putting on the use of these funds for this purpose?

**The eligibilities for the use of CWSRF funds are established in the Clean Water Act. If confirmed, I will manage that program as authorized by Congress.**

65. States rely on EPA funding, technical assistance, and other resources to help keep the air, water, and soil clean, particularly through the State and Tribal Assistance Grants and Categorical Grants. State agencies like the RIDEM have delegated authority to carry out federal pollution control laws. Based on what you know about the EPA, do you believe states and tribes are getting enough money from the federal government to support clean air and clean water investments and

enforcement? If confirmed, will you commit to ensuring states and tribes continue to receive at least the amounts of funding they do now? Are there programs that support states and tribes that you would consider cutting or increasing financial support for?

**I support the federalism structure of our federal environmental laws, which includes state delegation or authorization of most programs, and EPA STAG grants to help states implement those programs. If confirmed, I will seek to reduce the workload on states by refraining from adding more and more requirements for them to implement and to instead allow them to focus on implementing core environmental programs relating to air, water, and waste. I am not familiar with the development of EPA's FY 2018 budget so I cannot comment on that proposal, but please be assured that I support funding for states.**

66.A 2016 Associated Press study of EPA data identified Providence, RI as “one of the largest [drinking water systems] in the country to exceed a federal lead standard since 2013.” Almost 20 percent of all retail customers' homes were found to be serviced by utility-owned lead lines. EPA's lead limit before corrective action is required is currently 15 parts per billion. The city's water supply was found to be over this limit six times since 2010. Providence's water hit 30 parts per billion in tests in 2009 and 2013. Providence has shown marked improvement since those peaks, but there is still millions of dollars of investment needed in the city's drinking water infrastructure to reduce the risk of lead. What role do you believe EPA should play supporting these investments?

**I would urge the City to explore funding opportunities available from the new WIFIA loan program, which is implemented by EPA.**

67.What have you done in your career to demonstrate lead contamination of drinking water will be a priority if you are confirmed as EPA Administrator? Please cite specific examples.

**I am concerned about children's health, but the Oklahoma Department of Environmental Quality and the Oklahoma Water Resources Board have primary responsibility for implementing and enforcing environmental laws in Oklahoma, so issues relating to lead contamination of drinking water would fall within their responsibilities. If confirmed as Administrator, I will faithfully execute all environmental laws enacted by Congress, including the Safe Drinking Water Act.**

68.In an interview with the Providence Journal last April, Rhode Island's chief of the Center for Drinking Water Quality at the RI Department of Health stated that “[i]n the last monitoring period, we had six small water systems exceed the lead action level. Five were school systems.” These systems were brought back into

compliance, but the concern remains. How will you prioritize lead abatement in schools and among the most vulnerable populations?

**If confirmed, I will fully carry out EPA's authorities, including its authorities under the Safe Drinking Water Act. I note that in the WIIN Act, Congress amended the Safe Drinking Water Act to authorize funding for voluntary school lead testing. If confirmed and if funding is provided, I will carry out that program.**

69. EPA's regulations on lead in drinking water, otherwise known as the Lead and Copper Rule, were last revised in 2007. In its October 2016 white paper on revising the rule, the EPA recognized "[t]here is a compelling need to modernize and strengthen implementation of the rule—to strengthen its public health protections and to clarify its implementation requirements to make it more effective and more readily enforceable." Do you agree the Rule is in need of updating to reflect the latest science?

**Yes.**

70. Do you believe all covered water systems should follow EPA's drinking water analytical methods when testing drinking water for contamination? If so, what efforts will you undertake to ensure all water systems are brought into compliance?

**If confirmed, I will fully carry out EPA's authorities, including its authorities under the Safe Drinking Water Act. To achieve this, I will focus on EPA's core missions, such as provision of safe drinking water.**

71. In a November 2016 interview with the New York Times, President-elect Trump specifically called out "crystal clear water" as a priority. Do you agree "crystal clear water" should be a priority of the EPA? If so, please list the specific steps you would take as Administrator to make the President-elect's vision a reality.

**Yes, I agree that clean water is a priority of the EPA. If confirmed, I will ensure that EPA focuses on the core missions as directed under laws enacted by Congress, including clean water and safe drinking water.**

72. Over 40,000 water bodies in the United States are considered "impaired" under Section 303(d) of the Clean Water Act, meaning they do not meet water quality and health standards. Six hundred and thirty-five of these are in Oklahoma. What specific steps did you take as Attorney General and as a state legislator to improve the water quality in these impaired waters in Oklahoma?



**Regulation of water quality in Oklahoma is the responsibility of Oklahoma's environmental regulators at agencies like the Oklahoma Water Resources Board and Oklahoma Department of Environmental Quality. Those agencies would be best situated to describe the actions taken by Oklahoma to improve water quality in impaired waters.**

73. What clean water initiatives undertaken by the EPA in the last five years do you support?

**I support the March 2011 nutrient framework issued by the Assistant Administrator for the Office of Water entitled "Working in Partnership with States to Address Phosphorus and Nitrogen Pollution through Use of a Framework for State Nutrient Reductions," which prioritizes state action to encourage on the ground activities over establishment of numeric nutrient limits. I support EPA's May 2012 Integrated Municipal Stormwater and Wastewater Planning Framework, which directs EPA enforcement and permitting officials to allow municipalities to integrate multiple CWA responsibilities in a single plan and prioritize the actions with the greatest health and environmental benefits, and to allow extended compliance schedules to carry out that prioritization. I support EPA's efforts to promote green infrastructure to meet Clean Water Act requirements. Green infrastructure can be a neighborhood solution to meet national standards. I support the new Water Infrastructure Finance and Innovation Act loan program authorized by Congress in 2014 that recently received its first appropriations. The WIFIA program creates tremendous opportunities to increase water and wastewater infrastructure investment because every federal dollar appropriated can leverage as much as \$60 in infrastructure investments.**

74. How will you address EPA's National Pollutant Discharge Elimination System permitting backlog without undermining any environmental protections or subverting the goals of the Clean Water Act?

**First, I would note that at the end of FY 2016, 96.9 percent of Oklahoma's permits were current. Making sure permits are current is one of core functions under the statutory responsibilities given to EPA and in turn carried out by authorized states. However, in recent years states have been asked to shift their focus and resources to other activities. If confirmed, I would return EPA's focus to ensuring that core functions under our environmental laws are carried out.**

75. Factory farming of animals is known to cause multiple forms of pollution, such as contaminating local groundwater with nitrates, contributing to hypoxia and "dead zones" in rivers and coastal waters, and releasing the potent greenhouse

gas methane. Considering your close ties with the animal agriculture industry in Oklahoma, your previous history of unsuccessfully prosecuting lawsuits against states with animal welfare laws, your opposition of EPA's attempt to conduct a survey of CAFOs, and your pursuit of punitive yet failed investigations of nonprofit advocacy groups working for animal welfare, do you believe you should recuse yourself from any decisions related to enforcing the CWA and CAA to the fullest extent of the law against these facilities? If not, will you commit to disclosing to the EPW Committee any solicitations you have made to interested parties before you make any decisions related to this topic? If not, what assurances can you provide that you will be able to discharge your duties in this area impartially?

**If confirmed, I will faithfully execute the Clean Water Act and Clean Air Act as enacted by Congress. My track record with regard to CAFOs, which includes suing a CAFO together with EPA and collecting what EPA at the time said was the largest civil penalty ever assessed against a CAFO for CWA violations, demonstrates that I can, and will, approach such issues with a fair and open mind.**

76. Explain your reasons for opposing EPA's 2012 attempt to conduct a survey of CAFOs. Has your thinking changed since then? Please explain why or why not.

**For the purpose of this response, I am assuming that you are referring to EPA's 2011 proposed animal feeding operation reporting rule, published at 76 Fed. Reg. 65431 (October 21, 2011), and the January 19, 2012 comments on that proposed rule filed by 12 state attorneys general, including myself. This proposed rule is an example of an attempt to impose new regulatory requirements without complying with either the law or proper administrative process. Under the Clean Water Act, only facilities that discharge pollutants can be regulated. Despite this limitation on EPA's authority, it had twice before attempted to regulate non-discharging facilities. In 2005, the Second Circuit vacated parts of EPA's 2003 CAFO rule that purported to require non-discharging CAFOs to apply for permits. *Waterkeeper Alliance, Inc. v. United States Environmental Protection Agency*, 399 F. 3d 486. In 2011, the Fifth Circuit vacated the part of EPA's 2008 CAFO rule that would have required all CAFOs "proposing to discharge" to apply for NPDES permits regardless of whether they had actual discharges. *National Pork Producers Council v. United States Environmental Protection Agency*, 635 F. 3d 738 (5th Cir. 2011). Further, EPA's authority to require reporting (section 308 of the CWA) applies only to point sources that discharge. That was made clear by the 8th Circuit in *Service Oil, Inc. v. Environmental Protection Agency*, 590 F. 3d 545 (8th Cir. 2009). Despite the clear limitations of the Clean Water Act, in the CAFO reporting rule EPA proposed to require facilities that are not subject to the Clean Water Act to submit reports to EPA. As such, that proposed rule exceeded EPA's authority.**

77. According to the CDC, in 2014 Oklahoma reported the second highest rate of exposure to pesticides in the nation. At a time when pesticide/herbicide usage is on the rise across the country, how would you protect American workers, consumers, and landscapes from the toxic effects of agricultural chemicals?

**I am not personally familiar with the data referenced in this question or generally the rate of pesticide usage in Oklahoma. If confirmed as Administrator, I would expect to be briefed by EPA staff before taking action on this issue and would work to ensure EPA followed all applicable legal requirements and made its decisions based on sound science in an open and transparent process.**

78. Your close ties to the fossil fuel industry have given a strong appearance of pay-to-play politics favorable to that industry. As you well know, the agricultural and seed biotechnology industry has a similar history of major lobbying, campaign financing, and maintaining close relationships with lawmakers and agency administrators. Monsanto, the Oklahoma Farm Bureau, and other agricultural interests contributed more than \$90,000 to your previous campaigns. Do you believe you should recuse yourself from any decisions related to this industry? If not, will you commit to disclosing to the EPW Committee any solicitations you have made to interested parties before you make any decisions related to this topic? If not, what assurances can you provide that you will be able to discharge your duties in this area impartially?

**It is my understanding that recusal obligations do not extend to regulatory rulemaking of general applicability, which does not create a conflict under applicable rules. In any matters involving specific parties where I believe that my impartiality may be questioned, I will consult with relevant federal ethics officials to determine whether to participate in a particular matter, provide them with all relevant facts, and follow their guidance. Following these procedures, along with all the other commitments I have made to comply with applicable ethics rules, will ensure that I discharge my duties impartially.**

79. How should the EPA consider the synergistic effects of chemicals when considering approval of these chemicals under FIFRA?

**If confirmed, I would expect to be briefed by staff about EPA's relevant legal authorities concerning pesticide registration and current practices in this area before taking any action.**

80. The Fish and Wildlife Service recently listed the rusty patched bumble bee as endangered, the first wild bee in the lower 48 states to receive this distinction. Pesticides were listed as part of the blame for the bee's current status. Other

bumble bee species are also at risk due to increased pesticide use and other environmental challenges. How can the EPA assist in bettering the understanding of pesticides' role in declining bee and other pollinator species?

**I am generally aware of the important role bees play as pollinators, but I am not personally familiar with the details of the Endangered Species Act listing decision referenced in the question. If confirmed as Administrator, I would expect EPA to be briefed on the matter concerning EPA's legal authorities and any ongoing activities in this area before taking action.**

81. Under your leadership, what role will EPA play in the management and control of vector borne illnesses like Zika?

**If confirmed, I would expect to be briefed by staff about EPA's relevant legal authorities and operations in this area before taking any action.**

82. With respect to the Rule of Law Defense Fund, please provide the following: A written explanation of the role you or any person under your supervision has played in the establishment and operation of the Fund; a list of all donors who have contributed to the Fund since its inception, total donated, and their affiliations; a list of all requests you have made for funding and what was given and from whom in response; a list of all expenditures of over \$1,000 made by the Fund since its inception; details of any Fund expenditures over \$100 that have benefited you or any person under your supervision, including travel; all communications, including e-mails, between you and the Fund and between you and any individuals related to the establishment of the Fund or the conduct of the Fund's activities; a list of all meetings and fundraisers organized by or sponsored in whole or in part by the Fund that you or any person under your supervision attended, including the dates, locations, agendas and attendees; and a list of all federal and state legislation or regulations the Fund has taken a position on, Fund-organized legal briefs and letters to federal lawmakers, and all actions you have taken with respect to those matters.

**I did not play a role in founding or forming the Rule of Law Defense Fund, and no one on my staff played such a role. My understanding from the time I was a member of that entity's board is that its staff operates the fund. A list of contributors to the Fund since its inception is in the custody of RLDF and I do not personally have records of or have knowledge of that information. Expenditures by the fund are in the custody of RLDF, and I do not personally have records of or have knowledge of that information. Any records relating to requests for funding to individuals or to corporate entities would be in the possession of RLDF. RLDF has paid for flights and accommodations when I attended RLDF events or panel discussions.**

**Because those flights or accommodations were booked directly by RLDF staff, I am not in possession of any receipts for such flights or accommodations.**

83. Please list all matters you or your office has had with the US EPA since you became Attorney General of Oklahoma. For the purposes of this and the following questions, "matters" refers to lawsuits (including lawsuits in which your office filed a "friend of the court" brief), enforcement actions, investigations, rulemakings, or any other matter which included an adjudication between parties.

**In order for you to receive a comprehensive response to a voluminous request of that nature requesting information on all matters, I would direct you to make a request of the Oklahoma Attorney General's Office under the Oklahoma Open Records Act.**

84. For each matter you identify in the previous question, please list the following: The names of the attorneys in your office who worked on the matter, and the names and affiliations of all attorneys with whom you or the attorneys in your office had communications about the matter. The names and affiliations of any person with whom you had communications about the matter, and the dates of the communications, and a summary of the substance of that communication. For any person listed the previous subpart, or corporation represented by that person, any contribution or payment made to Scott Pruitt for Attorney General, the Republican Attorney General Association, the Republican Attorney Generals Association, the Rule of Law Defense Fund, Liberty 2.0, Oklahoma Strong, or any other political action committee or 501(c)(4) organization with which you are or have been affiliated in any way.

**In order for you to receive a comprehensive response to a voluminous request of that nature requesting information on all matters, I would direct you to make a request of the Oklahoma Attorney General's Office and the Oklahoma Ethics Commission under the Oklahoma Open Records Act and the individual political organizations.**

85. Please list all matters you or your office has had with the US Department of Interior since you became Attorney General of Oklahoma. For the purposes of this and the following questions, "matters" refers to lawsuits (including lawsuits in which your office filed a "friend of the court" brief), enforcement actions, investigations, rulemakings, or any other matter which included an adjudication between parties.

**In order for you to receive a comprehensive response to a voluminous request of that nature requesting information on all matters, I would direct**

**you to make a request of the Oklahoma Attorney General's Office under the Oklahoma Open Records Act.**

86. For each matter you identify in the previous question, please list the following: The names of the attorneys in your office who worked on the matter, and the names and affiliations of all attorneys with whom you or the attorneys in your office had communications about the matter. The names and affiliations of any person with whom you had communications about the matter, and the dates of the communications, and a summary of the substance of that communication. For any person listed the previous subpart, or corporation represented by that person, any contribution or payment made to Scott Pruitt for Attorney General, the Republican Attorney General Association, the Republican Attorney Generals Association, the Rule of Law Defense Fund, Liberty 2.0, Oklahoma Strong, or any other political action committee or 501(c)(4) organization with which you are or have been affiliated in any way.

**In order for you to receive a comprehensive response to a voluminous request of that nature requesting information on all matters, I would direct you to make a request of the Oklahoma Attorney General's Office and the Oklahoma Ethics Commission under the Oklahoma Open Records Act and the individual political organizations.**

87. Please list all matters in which your office participated in any way challenging a law, rule, or regulation of a state other than Oklahoma. For each matter listed, please include the following: Your understanding of the effect of that law, rule, or regulation on the people of Oklahoma. The names of the attorneys in your office who worked on the matter, and the names and affiliations of all attorneys with whom you or the attorneys in your office had communications about the matter. The names and affiliations of any person with whom you had communications about the matter, and the dates of the communications, and a summary of the substance of that communication. For any person listed the previous subpart, or corporation represented by that person, any contribution or payment made to Scott Pruitt for Attorney General, the Republican Attorney General Association, the Republican Attorney Generals Association, the Rule of Law Defense Fund, Liberty 2.0, Oklahoma Strong, or any other political action committee or 501(c)(4) organization with which you are or have been affiliated in any way.

**In order for you to receive a comprehensive response to a voluminous request of that nature requesting information on all matters, I would direct you to make a request of the Oklahoma Attorney General's Office and the Oklahoma Ethics Commission under the Oklahoma Open Records Act and the individual political organizations.**

88. As Attorney General you have played a major role challenging EPA's Clean Power Plan and seven other major rules protecting the public from air pollution, water pollution, and toxic threats. Professional ethics rules prohibit attorneys from changing sides, as you would be doing if confirmed. Federal ethical guidelines specifically require that a public official should not act on a matter if a reasonable person who knew the circumstances of the situation could legitimately question his or her fairness. Will you commit to recusing yourself from substantive matters that include EPA's climate rules, its mercury and air toxics rules, its most recent clean water rule, and others related to the eight pending cases you have against EPA as an Attorney General?

**It is my understanding that recusal obligations do not extend to regulatory rulemaking of general applicability, which does not create a conflict under applicable rules. With respect to my professional obligations as a member of the bar, I am not permitted to "switch sides" as counsel in any matter in which I participated as a lawyer. The standards that would apply to me as EPA Administrator are different as I would not be representing the EPA as a lawyer. Nonetheless, in any matters involving specific parties where I believe that my impartiality may be questioned, I will consult with relevant federal ethics officials to determine whether to participate in a particular matter and provide them with all relevant facts.**

89. You have taken credit for the lawsuit State of Oklahoma et al. v. Mahard Egg Farm. What was the date on which the complaint in that case was filed? What are the dates of the allegations in the case? Had any Oklahoma state agencies taken any steps to investigate that matter before you became Attorney General? If so, please specify the agencies, their roles investigating the case, and the dates on which they were taken. Did the Oklahoma Attorney General's office take any steps to investigate that matter before you became Attorney General? If so, please specify what was done and when. Please indicate the date on which the Attorney General's office first contacted defendant(s) in this matter.

**As I have testified, it was a lawsuit that I initiated together with the State of Texas and the EPA. The complaint was filed on May 23, 2011. The consent decree was entered into on August 10, 2011. There was no case when I took office, but the matter had been investigated by the Office of Attorney General, the Oklahoma Department of Agriculture, the EPA, and the State of Texas. I do not know the first date that the Office of Attorney General first contacted the defendants in that matter.**

90. Have you ever met or spoken with Richard "Rick" Berman, who has been affiliated with Center for Consumer Freedom? If so, please describe the substance and dates of your communications with him. Did you or the Attorney General's Office during your tenure ever receive communications of any sort from

Mr. Berman or the Center for Consumer Freedom? If so, please specify the date and content of those communications.

**I do not recall ever having met Mr. Berman. I am not aware of any communications with Mr. Berman, but a request for such information can be made to the Office of Attorney General pursuant to Oklahoma's Open Records Act.**

91. Before March 12, 2014, had your office received any complaints about the Humane Society of the United States [HSUS] from a resident of the State of Oklahoma? If so, please identify the date of the complaint, the allegations in the complaint, and the city or town of residence of the complainant.

**I believe that our office had received such a complaint, but I do not know the residency of any such complainant. A request for such information can be made to the Office of Attorney General pursuant to Oklahoma's Open Records Act.**

92. In March 2014, your office issued a consumer warning about HSUS. Based on what evidence did you issue this warning? Did you or your office communicate to any person or entity outside the Attorney General's Office about the timing or substance of your consumer warning about HSUS before it was issued? If so, please state the names of those with whom you or your office communicated, the dates, and the substance of those communications.

**The consumer warning was based on information suggesting that HSUS's solicitations for contributions might be misleading Oklahoma consumers. A request for communications can be made to the Office of Attorney General pursuant to Oklahoma's Open Records Act.**

93. On July 1, 2014, your office issued a Civil Investigative Demand (CID) to HSUS. Based on what evidence did you issue that CID?

**The purpose of a CID is to gather such evidence.**

94. On or about July 21, 2014, after the New York Attorney General entered into a settlement with the direct mailing firm Quadriga Art, you were quoted as saying "We believe what happened in New York potentially has happened in Oklahoma." Based on what evidence did you make that statement? Did you issue a Civil Investigative Demand or subpoena to any organizations other than HSUS as a result in whole or in part because of the NYAG's Quadriga Art settlement? If so, please specify the names of the organizations, the dates of the CID, and the result of any investigation conducted pursuant thereto. If not, what evidence did you have that distinguished HSUS from any of the other clients of Quadriga Art?



**As I recall, the Office believed that Quadriga Art may have been the vendor for direct mailers used by HSUS in Oklahoma. I am not aware of any other CIDs issued as a result of the Quadriga Art settlement. I am not aware of the Office having received any complaints or having any open investigations relating to other Quadriga Art clients.**

95. During the 2010 election cycle, did Devon Energy and Koch Industries max out to your campaign? During the 2014 election cycle, when you ran unopposed, did Devon, Koch Industries, and ExxonMobil max out to your campaign? How much total money has "Scott Pruitt for Attorney General" received from fossil fuel and agricultural interests? Please list your fossil fuel and agricultural donors, dates, and amounts.

**A full list of contributors to my campaigns for the state senate and attorney general may be found at the Oklahoma Ethics Commission's websites. For state campaign committee from 2002-2014, please use this site: <https://www.ok.gov/ethics/public/candidate.php>. For 2015 to the present, the Commission uses this site: <http://guardian.ok.gov/PublicSite/SearchPages/Search.aspx?SearchTypeCodeHook=1F26BA5E-71EA-48E4-8D50-C1013E9FE0A7>. Attached is a letter from the Oklahoma Ethics Commission regarding materials prior to 2002.**

96. How much total money did Oklahoma Strong, your leadership PAC, receive from fossil fuel and agricultural interests? Please list your fossil fuel and agricultural donors, dates, and amounts.

**I do not manage or control Oklahoma Strong PAC. Questions relating to its donors would need to be directed to those who do.**

97. How much total money did Liberty 2.0, the SuperPAC created to help get you elected, receive from fossil fuel and agricultural interests? Please list your fossil fuel and agricultural donors, dates, and amounts.

**I do not manage or control Liberty 2.0. Questions relating to its donors would need to be directed to those who do.**

98. Did you or anyone working for you or on your behalf ever solicit money for Oklahoma Strong or Liberty 2.0 from fossil fuel and agricultural interests? If so, when, from whom, and what was the result? Please note any solicitations that were made in which you mentioned work done in your official capacity as Attorney General of Oklahoma and what that work was.

**I solicited funds for Oklahoma Strong PAC from a broad array of individuals and corporations representing many different industries. While I do not recall specific solicitations, given my state's deep ties to farming and oil and**

gas, I do not doubt that I at some point fundraised from individuals with some connection to those industries. Staff members of the Oklahoma Strong PAC may have records of such solicitations, so requests for details would have to be made to that entity. I have on occasion solicited funds for Liberty 2.0, and records of those solicitations may be maintained by the staff of that organization, so requests for details would have to be made to that entity. I do not recall the contents of any specific conversations that I may have had in this context.

99. During the hearing, I asked if you led the Rule of Law Defense Fund. In response, you stated you had "been an officer of the organization [Rule of Law Defense Fund] for 2016." Your EPW questionnaire states you were a board member or chairman at the Rule of Law Defense Fund between November 2013 and December 2016 while your OGE disclosure says you were a member of the board or Chair between April 2014 and December 2016. Please clarify when you were you a board member of the Rule of Law Defense and when were you the Chair.

**I served on the Board of Directors of the Rule of Law Defense Fund from April 2014 until November 2016. I served as Chairman of the Board of Directors of the Rule of Law Defense Fund from November 2015 to November 2016.**

100. During the hearing, I asked if you've ever solicited funds for RAGA and you stated you "did not serve in an officer capacity at that entity [RAGA]." On your EPW disclosure form you stated you were a member of the executive committee between November 2013 and November 2015. As discussed, OGE doesn't require you to disclose your relationship with RAGA or other 527 political organizations. Your LinkedIn and campaigns pages state you were chair of RAGA for two terms and RAGA's website indicates you were the RAGA chair in 2012 and 2013. Please clarify when you've been chair of RAGA and when you've been on RAGA's executive committee. Did you provide any information about your relationship with RAGA to OGE or EPA when they were reviewing your conflicts of interest?

**I served as Chairman of the Republican Attorney Generals Association from November 2011 to November 2013. These dates represent "two terms" of serving as Chairman. Thereafter, I was a member of the Executive Committee from November 2013 to November 2015. I made all required disclosures to OGE and EPA ethics counsel, including disclosures about my relationship to RAGA.**

101. RAGA has given other Republican attorneys general call sheets to solicit on its behalf. Have you or any person working on your behalf ever received call sheets from RAGA asking you to solicit money or event sponsorships? If so, when, for what purpose, who was on your list to contact, who if anyone did you or

any member of your staff make contact any of the listed people/entities, and how much money and which sponsorships was given to RAGA as a result?

**I did receive call sheets to solicit funds and/or event sponsorships for RAGA and I did make contact with the listed people/entities. The exact dates, the purpose, and who was called are records that are kept by RAGA, and those requests would need to be made to RAGA. Similarly, I do not have records of how much money or sponsorships were raised as a result - those records are kept by the Republican Attorneys General Association.**

102. Besides call sheet efforts, did you or any person working on your behalf ever solicit money for RAGA? If so, when, from whom, for what purpose, and what was the result?

**No one else working on my behalf has solicited funds for RAGA. In addition to call sheet efforts, I have asked for funds from individuals/entities in person for RAGA. Records of exact dates, names of individuals and entities and how much money was solicited are kept by the staff of RAGA.**

103. In 2015, you were on the agenda to speak on a panel entitled, "The Dangerous Consequences of the Clean Power Plan and other EPA Rules" during RAGA's National Summer meeting that included several fundraisers. The agenda for that meeting included private meetings with attorneys general and Murray Energy, Southern Company, and American Fuel Petrochemical Manufacturers. According to RAGA's 2015 and 2016 member benefits descriptions, donors that contribute \$50,000 or more have an "annual opportunity to lead private briefings with Republican attorneys general during RAGA events" and attend other private events, including private dinners and retreats, at which Republican attorneys general are present. Did you or any person working on your behalf attend any of the private meetings with Murray Energy, Southern Company, and/or the American Fuel Petrochemical Manufacturers during the 2015 Summer National RAGA meeting? If yes, please provide a list of meeting attendees, any minutes/notes taken, and describe any conversations about EPA matters.

**I do not recall which meetings I attended at the event you reference.**

104. During your time as a member of RAGA, have you or any person working on your behalf attended any private meetings or functions with co-plaintiffs or amici for any of the 14 cases you brought against EPA? If yes, please provide a description of the meeting, the date, a list of meeting/event attendees, any minutes/notes taken, and describe any conversations about EPA matters.

**I do not recall private meetings or functions with a co-plaintiff or amici while at a RAGA event, and do not know of any instance where a person working on my behalf attended such a meeting. In instances where a case is being litigated, counsel for each plaintiff or amici will routinely speak about matters related to the litigation, as court rules and other procedural matters often require such communications.**

105.RAGA indicates that it raises and spends considerable amounts of money to support the election campaigns of Republican attorneys general. Please detail all expenditures from RAGA used to support your position in office, including but not limited to election campaign spending, contributions to other groups and PACs, and opposition research. Please detail any actions that you or your staff have taken to support the fundraising of RAGA for its campaign spending.

**RAGA's Oklahoma PAC contributed \$5,000 to Scott Pruitt for Attorney General in April, 2014. Inquiries about what other groups and third parties RAGA may have contributed to, or research they conducted would have to be directed to RAGA.**

106.RAGA has indicated it has chartered flights for Republican attorneys general. Have you ever been a passenger on a RAGA-chartered flight? If so, when and where did you travel to and from? Did RAGA ever cover or reimburse you for transportation and accommodation? If so, please itemize when, for what, and the value.

**Yes, I recall I was a passenger on a chartered flight to and from Las Vegas, Nevada in the fall timeframe of 2014. RAGA has covered the cost of flights and accommodations for me when I have attended RAGA meetings. I do not keep itemized records of these expenses, flights and accommodations are booked directly by RAGA staff.**

107.While you were on the board of RLDF, did it cover any chartered flights on which you were a passenger or any of your transportation and accommodation costs? Please itemize any chartered or commercial flights, accommodations, and other travel-related expenses that exceed \$100, and the value that RLDF covered.

**As far as I am aware, RLDF has never covered the cost of chartered flights for me or my staff. RLDF has covered costs of transportation and accommodations when I traveled on behalf of RLDF for meetings, panels, and other policy-related events. The staff of RLDF booked travel and accommodations for me directly, and records of the costs and expenses are kept by Rule of Law Defense Fund staff and are not in my possession.**

108. In 2014 and 2015, while you were on the board or Chairman of RLDF, it contributed over half a million dollars to RAGA. Please list each transaction and the purpose of the transaction.

**Records of transactions between those entities are held by Republican Attorneys General Association staff and Rule of Law Defense Fund staff and are not in my possession.**

109. As Attorney General, you have jointly signed numerous letters with other Republican attorneys general, such as your letter of June 15 2016 outlining your opposition to state investigations of ExxonMobil. What role did the Rule of Law Defense Fund have in preparing and coordinating release of any letters signed by you as Attorney General? What role did the Republican Attorneys General Association have in preparing and coordinating release of any letters signed by you as Attorney General? What role did any corporate funder of Rule of Law Defense Fund or Republican Attorneys General Association have in preparing and coordinating release of any letters signed by you as Attorney General?

**I am not aware of what steps may have been taken by the Rule of Law Defense Fund in preparing or coordinating letters. Day to day operations of the Rule of Law Defense Fund are delegated to staff of the organization. I am unaware of any role by RAGA in preparing or coordinating release of letters. My understanding is that such letters are typically released by the office who took the lead on preparing the letter. I am unaware of any corporate funder of either RAGA or RLDF having any role in preparing or coordinating the release of letters signed by my office.**

110. During your time on the board or as Chairman of Rule of Law Defense Fund, did corporate donors to that organization participate in any meeting of the executive committee, including board meetings, phone calls or retreats, during which any EPA matters were discussed? If yes, which corporations participated, what was the nature of the event, and how did they participate (e.g., in person, by phone)?

**During my time as Chairman of Rule of Law Defense Fund, I cannot ever recall a time when "corporate donors" participated in a meeting of the executive committee, including board meetings, phone calls or retreats during which EPA matters were discussed. However, members and funders of the Rule of Law Defense Fund were invited to attend large group panel discussions hosted by RLDF where several EPA matters were discussed. Any records of attendees at those meetings would be in the possession of the Rule of Law Defense Fund staff.**

111. During your time as attorney general, have you received gifts or in-kind donations that exceed \$100 from any entities besides RAGA and RLDF? If so, please list when, from whom, and describe if it was related to a specific event or commitment.

**I do not recall receiving gifts with a value of more than \$100 from RAGA and/or RLDF. I have, as stated before, had travel and accommodations provided for me when I traveled to and from RAGA or RLDF meetings.**

112. Will you commit to recusing yourself from matters before EPA involving any party from whom you have solicited funds during your time as Attorney General of Oklahoma?

**Before participating in any matters involving specific parties where I believe that my impartiality may be questioned, I will consult with relevant federal ethics officials and provide them with all relevant facts.**

113. Under your predecessors, senior EPA managers' schedules have been available to the public. If confirmed, do you agree to make senior managers' schedules available as well?

**If confirmed, I will commit to following applicable laws concerning the public availability of schedules for senior managers.**

114. How many email addresses have you used since becoming Attorney General of Oklahoma? How many do you still use? Please provide the domains of all email addresses you've used during your time as Attorney General of Oklahoma, along with the dates used, and note whether they were personal, professional, or both.

**I have used two e-mail addresses since becoming Attorney General of Oklahoma. I use a personal e-mail address for personal e-mail, and an official e-mail address for official business. The domain of my personal e-mail address is me.com and the domain of my official e-mail address is oag.ok.gov.**

115. Have you ever conducted business using your personal email accounts, non-official Oklahoma Attorney General email accounts, text messages, instant messenger, voicemails, or any other medium? If yes, please provide all business-related emails, texts, from those mediums and any others you've used to conduct official business.

**I use only my official OAG email address and government issued phone to conduct official business.**

116. In a recent Oklahoma Strong fundraising email, you said: "...As Chairman of the Rule of Law Defense Fund, the policy arm for Republican Attorneys General, I asked my fellow AGs to sign onto a letter urging Senate Majority Leader McConnell and Judiciary Chairman Grassley to stand strong and continue to hold fast against this [Merrick Garland] nomination." What email address did you use to get the other attorneys general to sign onto this letter? What if any groups solicited signatures from other attorneys general? Did you ask Democrats to sign the letter or just Republicans?

**I do not recall using any email address to solicit signatures. I have no knowledge of what other groups may have solicited signatures from attorneys general. I do not recall asking any Democrats to support the letter.**

117. If confirmed, do you commit to notifying the Committee of all of the email addresses you plan to use upon confirmation and within seven days of using a new email address, including any aliases or pseudonyms? Do you commit to conducting all business using official email addresses and other means and to refrain from any mediums that are outside the Freedom of Information Act's reach?

**If confirmed, I commit to notifying the Committee of the e-mail address I use for official business. I will use my official e-mail address for official EPA related business.**

118. The office of the Oklahoma AG's budget and FTEs have grown significantly while you've been in office and you indicated you have seven FTEs, accounting for \$679,000 in salaries, focused on "environmentally-related responsibilities." What is the breakdown of budget and FTEs dedicated to challenging EPA vs. criminal and civil environmental cases?

**The Office's budget and expenditures can fluctuate greatly year over year depending on the timing of case settlements and related distributions. For example in fiscal year 2014, the Attorney General's Office distributed higher than normal case settlement funds that inflated the budget over typical levels. Conversely, that total came down in fiscal years 2015 and 2016. Thus, fluctuations such as the one assumed by your question do not accurately reflect the size of the Office's budget. In my tenure as Attorney General, the Oklahoma Office of the Attorney General streamlined legal services for dozens of agencies, returned \$29 million to the General Revenue Fund, distributed mortgage settlement restitution funds to impacted citizens, strengthened tobacco enforcement, and led the Office in such a fiscally responsible manner that the Office was able to forego all \$6.4**

million in state-appropriated operating funds for fiscal year 2017--that in addition to the Office having its annual appropriation cut in every prior year. The Office of Attorney General was the only state agency to voluntarily do this. During my tenure, the Office assumed the statutory duties of the Human Rights Commission through our Office of Civil Rights Enforcement, strengthened tobacco settlement enforcement efforts, and launched the Solicitor General's Unit. The Office also increased by one third the number of agencies, commissions, or boards which it represents. This has led to a precipitous decline in state agency usage of costly private counsel. It is these and other efforts that have permitted the Office to contribute approximately \$29 million to the General Revenue Fund over the last six years. With regard to FTEs related "to challenging EPA vs. criminal and civil environmental cases," the Office currently has four FTEs whose responsibilities would include (among many other things) challenges to EPA rulemakings or other actions.

119.As submitted for the record, here are some statistics from Drew Edmonson's Environmental Unit (1997 to 2010): Criminal matters  
142 criminal investigations; 56 federal or state prosecutions; 110 felony counts convictions of individuals; 21 misdemeanor count convictions of individuals; 10 felony counts convictions of corporations; 3 misdemeanor count convictions of corporations; 28 years of jail time; \$8M in fines. Is it still your position that the Environmental Protection Unit was only handling one case when you took office?

**I am not familiar with the cases being handled prior to my taking office. As I have stated, when I took Office, the primary focus of the "environmental protection unit" was a single lawsuit relating to poultry farms.**

120.We reviewed the Oklahoma Attorney General's website between when you took office and the present and found no press releases on criminal or civil environmental enforcement matters. For this review, we did not include lawsuits by Oklahoma against EPA. Why were there no environmental enforcement matters listed on your website as of January 17, 2017?

**I have not reviewed the website, so I am not familiar with what matters are or are not listed.**

121.What specific reductions in air, water, or solid waste pollution have resulted from your environmental enforcement actions as Attorney General?

**Environmental regulation in Oklahoma is the responsibility of Oklahoma's environmental regulators at agencies like the Oklahoma Department of Environmental Quality and the Oklahoma Water Resources Board. The**



**Office of Attorney General sometimes provides legal services to those agencies with regard to environmental issues, and in that capacity the Office has, for example, negotiated a consent decree requiring a large concentrated animal feeding operation to clean up its operations to prevent water pollution, and negotiated an agreement whereby Arkansas agreed to a stringent phosphorous standard in the Illinois River.**

122. How many criminal investigations, federal prosecutions, state prosecutions, felony count convictions of individuals, misdemeanor count convictions of individuals, felony count convictions of corporations, misdemeanor count convictions of corporations, years of jail time, and cumulative fines resulted from environmental cases you initiated? Please list and describe any civil suits and actions you initiated.

**To list and describe every civil suit and action initiated by the Office of Attorney General would be all but impossible. Each attorney is responsible for maintaining their own case files, and the Office employs many attorneys across many different units who litigate civil matters of all kinds. In order for you to receive a comprehensive response to a voluminous request of that nature requesting information on all matters, I would direct you to make a request of the Oklahoma Attorney General's Office under the Oklahoma Open Records Act, and to the extent it is even possible to compile such a list, the Office would make efforts to do so.**

123. The Center for Media and Democracy ORA request is dated on or about January 5, 2015. During the hearing, you said, "I actually have a general counsel and an administrator in my office that are dedicated to performing or providing responses to open records requests." In response to questions about the January 5, 2015 request, your general counsel apologized for the delayed response and explained she was busy with other duties. What percentage of time do each of the two staff you mentioned dedicate to responding to Open Records Act requests? Have you communicated with your office's general counsel or any other attorney handling ORA requests to discuss the timing of your office's response to any specific request? If so, please identify which requests you discussed, the dates of those discussions, and the substance of your discussions.

**The Office of Attorney General employs a paralegal who intakes requests, opens files, and searches for documents responsive to each Open Records Act request. Once the search is complete, the office's general counsel must review each document to ensure it does not contain information required to be kept confidential under state and federal laws. Along with overseeing the Open Records Act process, the office's general counsel is responsible for overseeing many other programs and statutory duties with which the Office is tasked. I am unaware of what percentage of time is spent solely on Open Records Act requests. I do not recall any conversations with individuals in my office regarding the timing of Open Records Act responses.**

124. In a letter regarding this request, your general counsel stated your office processes "these requests in the order in which they are received." How long has that been the policy of your office? Have you fulfilled any ORA requests submitted since at least January 5, 2015?

**To my knowledge, that is how the office has historically processed such requests. I am not aware of which requests submitted since January 5, 2015 have or have not been responded to.**

125. According to a recent E&E article, your office has 52 outstanding open records requests. Please provide a list of all pending FOIA, Open Records Act or other similar information requests under Oklahoma state law, by whom, and when each was a filed.

**I am not familiar with the pending requests. Such a requests should be directed to the Office of Attorney General's general counsel, who can provide such a list.**

126. The public and this Committee, in fulfilling our constitutional advice and consent duties, have a right to see information pursuant to the Open Records Act. Please produce all of the following material that has been requested under the Open Records Act prior to November 8, 2016: related to RAGA, RLDF, Liberty 2.0, Oklahoma Strong, and any other 527s, 501(c)(3), and 501(c)(4)s, including the State Policy Network and ALEC; correspondence with the fossil fuel and agriculture industries and any other industries regulated by EPA; any other material related to energy, environment, agriculture, and EPA.

**If Open Records Act requests for such information have been made, as your question suggests, those requests will be answered in the normal course.**

127. Please provide a list of all Open Records Act requests your office has received during your tenure, from whom and when, the number of days it took to produce the requested documents or decline the request, the outcome of those requests including whether any decisions have been or currently are being challenged in court, and share the following material that has been disclosed as a result of those requests with the Committee: related to RAGA, RLDF, Liberty 2.0, Oklahoma Strong, and any other 527s, 501(c)(3), and 501(c)(4)s, including State Policy Network and ALEC; correspondence with the fossil fuel and agriculture industries and any other industries regulated by EPA; any other material related to energy, environment, agriculture, and EPA.

**In order for you to receive a comprehensive response to a voluminous request of that nature, I would direct you to make a request of the Oklahoma Attorney General's Office under the Oklahoma Open Records Act.**

128. What was the average length of time it took your office to fulfill open record act requests to your office between January 2011 and December 6, 2014? What was the average length of time it took your office to fulfill open record act requests to your office from December 7, 2014 to the present? What, if any, steps has your office taken to improve the timeliness of your open records act responses?

**I am not aware of what the average length of time my office took to fulfill open record act requests is. I have directed my staff to respond to all open records act requests in a timely and efficient manner.**

129. Under what circumstances would it be appropriate for EPA to fail to respond to a FOIA request for 700 days?

**I am not in a position to render an opinion a hypothetical given that different open record requests raise issues specific to the particular requests at issue. However, I appreciate the importance of openness and transparency, and if confirmed I will work to ensure EPA complies with all legal requirements concerning the implementation of the Freedom of Information Act and other statutes EPA is responsible for administering.**

130. Why did you fail to disclose records on your office's expenditures on outside attorneys, as is required under Oklahoma state law, until contacted by a reporter? Why did you not hold your own office's spending practices to the same standard expected of other Oklahoma state offices?

**The Office of Attorney General complies with its legal obligations relating to outside counsel, and discloses any outside counsel contracts when asked.**

131. Is it correct that your office has spent over \$1 million in outside lawyer expenses during your tenure? Please explain the unreported increase in expenses.

**The bulk of the outside counsel expenses incurred by the Office during my tenure relate to a single dispute over water rights in southeastern Oklahoma. The Legislature specially appropriated funds to my office for the specific purpose of retaining outside counsel with expertise relevant to that tribal water law issue.**

132. Oklahoma state law requires that state agencies select attorneys from a pre-approved list. Several of the outside attorneys that your office has hired are not included on the list of approved attorneys. Why didn't you comply with this requirement?

**Because the Office of Attorney General maintains the referenced list, and is authorized to allow representation from attorneys not on the list, the Office of Attorney General plainly has the discretion to allow representation from attorneys not on the list.**

133. You have not released records on your contracts with outside attorneys, as required under Oklahoma state law. Please provide all contracts, including any related to pro-bono work. Have any private interests been funding outside attorneys representing your office in lawsuits against the federal government? If so, who, why, and in what amounts? For any pro-bono work, is that an in-kind donation that should be recorded and accounted for in your office's accounting? Has your office done so? Please provide a list of these in-kind donations, from whom, when the work was done, and the value.

**A requests for such contracts can made to the Office of Attorney General pursuant to Oklahoma's Open Records Act. When my office retains outside counsel to assist on a matter, it either compensates those attorneys itself, or the outside counsel provides the services pro bono. I am not aware of any outside funding of pro bono counsel, and would not retain any pro bono counsel if they were being so funded. I am not aware of any requirement that pro bono legal services be considered an in kind donation to the Office of Attorney General.**

134. You received campaign contributions from at least one of the attorneys that provided outside representation for Oklahoma—David Rivkin, of D.C. law firm BakerHostetler. Is there a prohibition on receiving campaign contributions from those in a contractual relationship with your office? Was your contribution from Mr. Rivkin in compliance with such requirements?

**I am not aware of any such requirements. In any event, Mr. Rivkin received no compensation from the Office for the legal services he provided.**

135. Are you aware of any payments made to Mr. Rivkin from other parties in return for his representation of your state?

**I am unaware of any payments made to Mr. Rivkin from any other parties in return for his representation.**

136. Did you contact Mr. Rivkin about representing the State of Oklahoma, did he contact you, or did a third-party made the connection? Please explain.

**I cannot recall the exact circumstances leading to Mr. Rivkin's representation, or who initiated the contact. Mr. Rivkin has represented over half of our Nation's states on various matters, and is a well-recognized expert on constitutional questions, particularly those relating to States and their federalism interests.**

137. According to your questionnaire, you've given dozens of environment-related speeches in Oklahoma and around the country, many to industry groups. Have you ever given one to a public health group, environmental NGO, or scientific society? You've received various awards, several from industry groups. Have you ever received an award from a public health or environmental group for protecting public health? How about environmental quality? Have you ever received an award from a scientific society?

**I have given dozens of speeches on a wide variety of topics to many different groups and industries. I do not recall a specific public health group, NGO or scientific society I have spoken to. I do not recall receiving awards from a public health or environmental group or a scientific society.**

138. Please provide any correspondence or details about other communication between you or anyone working on your behalf concerning the establishment or activities of America Rising, America Rising Squared, and Protecting America Now, and any other organizations that are funding efforts to get you confirmed as EPA Administrator.

**I am not aware of any such correspondence.**

139. You wrote an op-ed attacking efforts to investigate whether Exxon deliberately misled investors and the public despite internal research confirming that climate change is real. Please describe any conversations you've had with political donors to you or your affiliated political action committees, RAGA, Rule of Law Defense Fund, or co-plaintiffs or amici in your cases against EPA about ExxonMobil's potential liability under federal or state law regarding climate change (e.g., federal RICO, New York state's Martin Act, etc.), including the date and substance of those conversations.

**I do not recall any such conversations.**

140. During your time as the Attorney General of Oklahoma, have you or anyone in your immediate family owned any stocks of companies that were co-plaintiffs or amici in any of your 14 cases against the EPA, including ExxonMobil, Devon Energy, Murray Energy, Southern Company, and Continental Resources. If yes, please list the stock, dates held, and amount.

**To my knowledge, no, and a list of my investments has been provided as part of my financial disclosures.**

141. In implementing the Lautenberg Act, EPA, consistent with congressional intent, issued a notice making it clear that substantiation of all non-exempt confidential business information (CBI) claims is required upfront. Do you commit to ensuring the EPA follows and upholds that requirement?

**As I have previously stated I believe the Lautenberg Act struck an appropriate balance between protecting confidential business information and informing the public and I intend to apply the law as drafted by congress.**

142. In a speech at Hillsdale College on June 30, 2016, you referred to a three-hour private, basement meeting with Supreme Court Justices Scalia and Thomas, Leonard Leo of the Federalist Society, and other unidentified people. Referring to Justice Scalia, you said: Leonard [Leo] blessed me on a number of occasions to spend some quality time, personal time, with the previous justice. In fact, I remember one year about three years ago, I was here for a Federalist Society event, their annual meeting that occurs in November. Leonard said 'Scott, stay over, I'd like for you to go dinner on Friday night'... we went to a basement in Washington DC, there were about ten of us in attendance. Two of those folks in attendance were Justice Scalia and Justice Thomas. And we spent three hours talking about the constitution and things that were involved in as attorneys general. It was a fabulous time.

What was the date of this basement meeting? Please provide a complete list of the participants. Please list all cases pending before the Supreme Court at the time of this meeting in which the State of Oklahoma was a party and/or on which you or an attorney in your office was counsel of record. During the basement meeting, was there any discussion or mention of EPA, the environment, public health, environmental or public health regulations, environmental laws including but limited to the Clean Air Act, the Clean Water Act, NEPA, mercury, cross-state air pollution, Renewable Fuels Standards, ozone standards, endangerment from GHGs, regional haze, or climate change. If so, please identify the specific topics that were discussed or mentioned. Have you ever had any other private meetings with any other state or federal judges or justices while you had cases pending before their courts? Which cases? Please describe any such meeting, including the dates, locations, attendees, and topics discussed.

**I do not recall the date of the dinner to which you refer, but I believe it was in November 2013. It was a private dinner. I am not aware of any matters that my office had pending before the Supreme Court at the time. As far I recall, none of the topics you mentioned was discussed, nor was any specific matter of any sort discussed. I am not aware of any other meetings of the sort to which you refer. In my capacity as attorney general, I am often at events with judges or justices of various sorts, but no discussion of pending matters would ever occur in any social interactions we might have.**

143. The lifetime emissions of any energy source should be considered in the context of necessary extraction techniques as well as transportation of the fuel, among other issues. For example, transporting crude via pipeline clearly creates fewer emissions than transporting it via other sources in terms of fossil fuel energy. Without knowing the specifics of all of these factors in a given instance, it is difficult to identify which sources may result in greater emissions.

**The role of the United States in the Paris Agreement is a State Department matter. If confirmed, I will work to advance the mission of the EPA, which is to protect human health and the environment, consistent with the State Department's strategy for international engagement on climate change.**

144. Do you support the amendment to the Montreal Protocol to phase down HFCs?

**Should the State Department decide to advance the Kigali Amendment to the Montreal Protocol and if I am confirmed as Administrator, I will work with all involved agencies and impacted stakeholders to ensure that EPA's actions related to hydrofluorocarbons (HFCs) are coordinated accordingly.**

List of cases General Pruitt joined, initiated, and amicus

- *Alaska v. Jewel*, SCOTUS No. 13-562, 2013 WL 6493517,
  - Filed December 6, 2013. Oklahoma was an amicus. 13 states and Arizona Dept of Water Resources involved.
- *American Electric Power Co. v. Connecticut*, 2011 WL 465735
  - Filed February 7, 2011; Oklahoma joined 23 other states as amici in support of Defendants/Petitioners
- *American Farm Bureau Federation v. EPA*, (SCOTUS No. 15-599), 2015 WL 8758154
  - Filed Dec. 9, 2015; Oklahoma was amicus along with 21 other states in support of certiorari.
  - Appeal of 3rd Circuit case above, *Am. Farm Bureau Fed. v. EPA*.
- *American Farm Bureau Federation v. EPA*, (3rd Cir. Case No. 13-4079), 2014 WL 505475
  - Filed February 3, 2014; Oklahoma and 21 other states were amici.
- *American Nurses Ass'n v. Jackson, Utility Air Regulatory Group Defendant-Intervenor*, (D.D.C. Case No. 08-2198)
  - Filed October 13, 2011. Oklahoma joined as Amici, 25 States and Guam Joined the Amicus Brief
- *Aurora Energy Services, LLC v. Alaska Community Action*, 2015 WL 1501921
  - Filed April 2, 2015. Oklahoma was an amicus. Alaska and West Virginia also joined.
- *Building Industry Assoc. Of the Bay Area v. United States*, 2016 WL 3136680
  - Filed June 2, 2016; Oklahoma was one of 23 amici states supporting Petitioner and urging the court to hear the case
- *Decker v. NW Enviro. Defense Center*, SCOTUS No. 11-338 (Cert)
  - Filed October 14, 2011. State of Oklahoma joined as Amici, 26 States joined the Amici Brief in support of cert.
- *Decker v. NW Environmental Defense Center*, Nos 11-338, 11-347 (Merits)
  - Filed September 4, 2012; Oklahoma and 25 other states were amici.
- *EME Homer City Generation v. EPA*, (D.C. Circuit) -- Challenging Cross State Air Pollution Rule
  - Brief filed in DC Circuit on December 20, 2014. Oklahoma was a party with 12 other states.
- *Florida et al v. EPA*, Case No. 15-1267 (D.C. Circuit)
  - Filed August 11, 2015. Oklahoma is a party, Florida is lead State (17 States joined the case)
- *Grocery Mfrs. of America v. EPA*, 2011 WL 2941301 (D.C. Circuit)
  - Filed July 20, 2011. Oklahoma and three other states were amici. Corrected brief filed on 7/21/11
- *Grocery Mfrs. Ass'n v. U.S. Environmental Protection Agency*, 2013 WL 1329310 (2013)
  - Filed February 29, 2013. Oklahoma was an amicus. Alabama and Virginia also joined.
- *In Re: Murray Energy Corporation*, 2014 WL 2885937 (2014)
  - Filed June 25, 2014. Oklahoma was an amicus. Eight other states joined.
- *Luminant Generation Co. v. EPA*, SCOTUS No. 12-1484
  - Filed July 24, 2013. Oklahoma joined as Amici, 18 States Joined the Amicus Brief.
- *Michigan v. Environmental Protection Agency*, 2015 WL 309090 (2015)
  - Filed January 20, 2015. Oklahoma was a party. 21 States in total.
- *Michigan, et al., Petitioners, v. Environmental Protection Agency*, 2016 WL 1043192
  - Filed March 14, 2016. Oklahoma was a petitioner. 19 States in total.
- *Mingo Logan Coal Co. v. EPA*, 2013 WL 6678603
  - Filed December 16, 2013; Oklahoma was an amicus along with 26 other states in support of cert.



- *Murray Energy Corporation, Petitioner, v. United States Environmental Protection Agency and Regina A. McCarthy, Administrator, Respondents*, 2015 WL 1064058 (D.C. Cir. No. 14-1112) (Clean Power Plan Case)
  - Filed March 9, 2015. Oklahoma intervened. 12 States in total.
- *Murray Energy Corp. et al. v. EPA*, 2016 WL 6565997 (C.A.6) (WOTUS case)
  - Filed September 9, 2016. Oklahoma was a party. 31 States in total.
- *Murray Energy Corp. V. EPA*, (D.C. Circuit Case No. 15-1385 (consolidated with 15-1392, 15-1490, 15-1491 & 15-1494) (Challenge to the EPA NAAQS Ozone Rule)
  - Filed October 27, 2015. Oklahoma is a party, Arizona is lead state (5 States joined the appeal)
- *Murray Energy Corp. v. EPA*, (D.C. Cir. No. 16-1127) (Challenging limits on Mercury)
  - Opening brief filed November 18, 2016. Oklahoma is a party.
- *National Mining Ass'n v. Perciasepe*, (D.C. Circuit Nos. 12-5310, -5311)
  - Filed July 22, 2013. Oklahoma joined as Amici, 11 States Joined.
- *Oklahoma; Oklahoma Industrial Energy Consumers; Oklahoma Gas and Electric Company, Petitioners, v. United States Environmental Protection Agency; Sierra Club, Respondents*, 2014 WL 411561 (U.S.) (Regional Haze Case)
  - Filed January 29, 2014. Oklahoma was a petitioner.
- *Oklahoma ex rel. Pruitt v. EPA*, (10th Cir No. 15-cv-00381) (WOTUS case)
  - Appeal Filed April 19, 2016. Oklahoma is a party; case is consolidated with US Chamber.
- *Oklahoma ex rel. Pruitt v. McCarthy*, (N.D. Okla No. 15-cv-369) 2015 WL 4414384 (Clean Power Plan)
  - Filed July 1, 2015. Oklahoma was the plaintiff.
- *Oklahoma et al v EPA* (W.D. Okla. Case 13-cv-00726) (FOIA Case)
  - Oklahoma was lead, 11 States joined.
- *Sierra Club v. McCarthy*, 2015 WL 5076258 (Ninth Cir.)
  - Filed August 17, 2015. Oklahoma was amicus; 17 other states joined.
- *United States Army Corps of Engineers v. Hawkes*, 2016 WL 860553
  - Filed March 2, 2016. Oklahoma was an amicus along with 22 other states.
- *Utility Air Regulatory Group, et al v EPA* (SCOTUS Case No. 12-1146) (Greenhouse Gas Case)
  - Oklahoma was a party, Texas was lead State (12 States and Louisiana DEQ joined)
- *West Virginia, et al., Petitioners, v. United States Environmental Protection Agency, Respondent, City of New York, et al. Intervenor*, 2014 WL 6687575 (C.A.D.C.)
  - Filed November 26, 2014. Oklahoma was a petitioner. 12 States in total.
- *West Virginia et al v EPA*, (D.C. Cir. Case No. 15-1364) (consolidated) (111b Case)
  - Filed November 3, 2015. Oklahoma is a party, cases were consolidated (23 States on the Petition for Review)
- *White Stallion Energy Center, LLC, et al., Petitioners, v. United States Environmental Protection Agency, et al., Respondents*, 2012 WL 6762633 (C.A.D.C.) (Mercury/MATS case)
  - Filed October 23, 2012. Oklahoma was a petitioner. 21 States in total.
- *Wildearth Guardians v. Bidegian*, 2013 WL 1869747
  - Filed April 23, 2013. Oklahoma joined 11 other states as amici.
- *Wildearth Guardians v EPA*, (D.C. Colo. Case No. 13-cv-02748
  - Filed February 5, 2014; (State of Oklahoma Intervened).
- *Wyoming v. EPA*, 2015 WL 128482
  - Filed January 5, 2015. Oklahoma and 9 other states filed as amici in support of Petitioners as to standard of review.

**Speeches or Presentations that included reference to any issue related to energy or the environment since 1998.**

General Pruitt did not keep records on speeches given during service in the State Legislature. The following are speeches where he referenced issues rather to energy and the environment. General Pruitt rarely prepared formal remarks for his speeches. However, when prepared remarks were prepared, those are attached. Further General Pruitt nor the OAG has records on the cost of commercial airfare or hotel accommodations as the inviting organizations covered those expenses.

OK State Chamber 2/15/11  
 OK Railroad Association 3/21/11  
 OK Corporation Commission Public Hearing 3/23/11  
 OK Federation of Republican Women 3/29/11  
 Stephens County GOP 4/5/11  
 Tulsa Regional Day at the Capitol 4/6/11  
 Farmers Insurance Legislative Conference 4/19/11  
 Small Business Day at the Capitol 5/3/11  
 OK GOP Convention 5/7/11  
 OK Conservative PAC 5/11/11  
 Tulsa Republican Club 6/14/11  
 OK Cattlemen's Association 6/29/11  
 Lions Club of Downtown OKC 6/26/11  
 Tulsa Area Republican Assembly 8/16/11  
 Ada-Seminole Tea Party 8/29/11  
 Weatherford Rotary Club 10/18/11  
 Grady County Tea Party 11/3/11  
 OKC Republican Women 1/9/12  
 Conference of Western Attorneys General 2/17/12 (commercial airfare and hotel reimbursed by organization)  
 Senate Testimony 6/28/12  
 National Policy Summit 8/20/12  
 RNC Republican Attorneys General Assn Brunch 8/29/12 (commercial airfare and hotel reimbursed by organization)  
 Heritage Foundation 9/14/12 (commercial airfare and hotel reimbursed by organization)  
 OIPA Fall Conference 10/21/12  
 Midcontinental Oil and Gas Assoc. 12/12/12  
 Delaware County Republican Lincoln-Reagan Dinner 4/5/13  
 Federalist Society Midwest Leaders 4/20/13 (commercial airfare and hotel reimbursed by organization)  
 ALEC Energy Workshop 5/3/13 (commercial airfare and hotel reimbursed by organization)  
 Tulsa Republican Club - 8/16/13  
 Sons and Daughters of Liberty - 9/17/13  
 OCPAC Meeting - 9/18/13  
 OCPA Energy Panel - 9/25/13  
 OCPA Energy Summit - 10/17/13  
 IOGCC Annual Meeting - 11/5/13  
 OG&E Annual Leadership Meeting - 12/11/13  
 AFPM Speech  
 CPAC Panel - 3/8/14

Concord 51 - 3/12/14  
 George Mason University School of Law Panel - 4/7/14  
 CWAG Panel: Role of AGs between Local/State/Federal Regulators - 4/16/14 (commercial airfare and hotel reimbursed by organization)  
 American Tort Reform Association - 7/10/14  
 ALEC Annual Meeting - 7/31/14  
 ALEC Panel - 7/31/14  
 AFP Oklahoma Dinner - 8/29/14  
 AFP Panel - 8/22/14  
 Dallas Conservatives Luncheon - 12/15/14  
 Cooperating Oil and Gas Associations - 1/9/15  
 Kentucky Environmental Conference - 2/10/15 (commercial airfare and hotel reimbursed by organization)  
 Tulsa Republican Club - 2/20/15  
 CPAC 10th Amendment Panel - 2/28/15  
 Oklahoma City Republican Women - 3/2/15  
 Tulsa 912 Club - 4/9/15  
 RAGA Law & Liberty Dinner - 4/13/15 (commercial airfare and hotel reimbursed by organization)  
 EPW Testimony - 5/5/15  
 Heritage Foundation Panel - 5/6/15  
 New Horizon Council - 5/13/15  
 Southern Republican Leadership Convention - 5/22/15  
 SRLC Panel - 5/22/15  
 Western District Federalist Society - 6/6/16 (commercial airfare and hotel reimbursed by organization)  
 OKC Downtown Club - 6/16/15  
 Faith and Freedom Coalition - 6/19/15  
 FreedomWorks Restore Liberty - 6/26/15  
 RAGA Clean Power Plan Panel - 8/3/15  
 Heartland Republican Women - 8/20/15  
 Muskogee Chamber - 8/26/15  
 Great Plains Republican Women - 9/16/15  
 Western Farmers "Emerging Technology" Conference - 9/22/15  
 Broken Arrow Chamber - 10/22/15  
 Federalist Society - 1/30/16 (commercial airfare and hotel reimbursed by organization)  
 CPAC Energy Panel - 3/3/16  
 CPAC 10th Amendment Panel - 3/3/16  
 OK Farm Bureau Conference - 3/7/16  
 OU Law Lunch & Learn - 3/9/16  
 Bartlesville Day at the Capitol - 4/13/16  
 Piedmont Chamber Legislative Update - 4/14/16  
 OIPA Wildcatter Luncheon - 5/4/16  
 FreedomWorks Facebook Livestream - 6/30/16  
 Hillsdale College - 6/30/16 (commercial airfare and hotel reimbursed by organization)  
 Tulsa Federalist Society - 7/1/16  
 Tulsa Medical Society Board - 7/13/16  
 Edmond Republican Women - 9/19/16  
 State Policy Network Energy Panel - 10/3/16  
 State Policy Network Federalism Panel - 10/3/16

Noble County Republicans - 10/25/16

Kiwanis Club of Tulsa - 11/7/16

OK Farm Bureau Convention - 11/11/16

Cozen O'Connor and Assoc. for Corporate Counsel - 11/17/16 (commercial airfare and hotel reimbursed by organization)

Bartlesville Chamber Eggs & Issues - 12/8/16

## Oklahoma Environmental Cases

Cases Initiated by AG Drew Edmondson but continued under AG Scott Pruitt

State of Oklahoma v. Tronox -  
 State Of Oklahoma v Kelco Manufacturing  
 State of Oklahoma & EPA v. Apco -  
 State of Oklahoma v. Michelin/BFG -  
 State of Oklahoma & ODEQ v Blackwell Zinc  
 State of Oklahoma & NRC v. Fansteel  
 State of Oklahoma & Cherokee Nation v. Sequoyah Fuels Corp  
 EPA, State of Oklahoma v. Doe Run Mining et al. Tar Creek -  
 ODWC v. Kent Feeds El Reno Fish Kill:  
 State of Oklahoma v Tulsa Fuels -  
 State of Oklahoma v Tyson Foods et al,

Cases or Investigations initiated by AG Scott Pruitt

EPA, States of Oklahoma & Texas v Mahard Egg Farm (AG Pruitt filed the case and Consent Decree)  
 Plains & Eastern Clean Line  
 FEMA Flood Zone  
 ODWC v. Southern Towing  
 State of Oklahoma v Conoco Phillips  
 State of Oklahoma v BP  
 Scenic Rivers Joint Study Committee -  
 Tulsa County Smelter Complex -  
 Handled numerous citizen complaints regarding environmental and pollution issues

Oklahoma Environmental CasesMahard Egg Farm - Oklahoma Concentrated Animal Feeding Operation Act Claims

Joint case with Oklahoma, Texas and EPA to clean up a large laying hen operation that was over applying poultry waste to land and failing to follow both State and Federal CAFO anti-pollution laws. Case is now closed other than continued monitoring for Mahard's compliance with the Consent Decree. Case resulted in a \$1.9 million dollar penalty and lagoon closures, better carcass management, ground water monitoring and restricted grazing and field testing at numerous Mahard sites.

Tronox - \_\_\_\_\_

Large multi-state environmental Bankruptcy Case  
 Numerous Environmental Statutes involved  
 Natural Resource Damage Claims on behalf of State and Secretary of Environment arising from legacy contamination from Kerr McGee at

5 Sites in Oklahoma and numerous old service station sites  
 Resulted in approximately \$17,000,000 payout to the State of Oklahoma for Natural Resource Damages.

Kelco Manufacturing : Represented ODWC for mussel kill in the Deep Fork River related to pollution released into the river by Kelco in its manufacturing process. Title 27A O.S. § 1-3-101 (H)(1) and 29 O.S. § 7-401a, \$30,000 payout to the State of Oklahoma and requires Kelco to restock approximately 15,000 freshwater mussels.

Plains & Eastern Clean Line

700 mile wind transmission line from Oklahoma Panhandle to Tennessee. Research and meetings with Clean Line and citizens to discover potential environmental and other issues regarding the proposed project

Kent Feeds El Reno Fish Kill: Represented ODWC for fish kill caused by waste grain discharge into North Canadian River \$5000 payout to the State of Oklahoma

FEMA Flood Zone - Research and meet with citizens regarding issues regarding FEMA flood zone redistricting

Southern Towing - Port of Catoosa Fish Kill: Represent ODWC for fish kill (37,000 pounds of fish) that occurred from a chemical leak from a barge in the Port of Catoosa. Resulted in a payment to the ODWC for the fish killed

State of Oklahoma v Tyson Foods et al: Poultry litigation case filed and tried before Judge Frizzell by former AG Drew Edmondson. Have continued to monitor the case and meet with the parties throughout AG Pruitts tenure.

Apco -CERCLA Superfund Cleanup Case

Represented ODEQ & Sec of Environment for response costs & NRD for the cleanup of a shuttered oil refinery. Cleanup included removing the refinery structure and the remediation of oil waste pits and other contaminants. Case is now closed, resulted in a \$700,000 settlement with the State of Oklahoma for Natural Resource damages and \$900,000 to the State of Oklahoma and ODEQ for response costs settlement.

Michelin/BFG - Environmental clean up case RCRA & CERCLA, represent ODEQ and Sec of Environment in ongoing remediation efforts to clean up contamination and benzene plume at the closed BFG tire plant in Miami, OK. Also working with the City of Miami. (Case is ongoing, demolition of many structures is complete, Michelin agreed under a Consent Decree and Tolling Agreement to clean up the site, work is ongoing.)

Blackwell Zinc - Represented and worked with ODEQ and Secretary of Environment in cleanup of Blackwell Zinc smelter site. (Resulted in remediation of affected soils and yards in Blackwell, also blood lead level testing of children in Blackwell.

Fansteel: Represented the State in cleanup of Fansteel site along the Arkansas River near Muskogee. Also worked with Nuclear Regulatory Comm. In 2012/2013, Fansteel continued to have difficulty meeting its obligations to FMRI. In order to facilitate ongoing remediation, beginning in 2014, the NRC, DOJ, and Oklahoma DEQ entered into a series of Forbearance Agreements with Fansteel and FMRI that detailed financial and technical expectations while offering Fansteel temporary financial relief. Despite these and other actions taken by Fansteel, in September 2016 Fansteel again filed for bankruptcy protection under Chapter 11.

Sequoyah Fuels Corp. - Ongoing remediation efforts in conjunction with the Nuclear Regulatory Commission. Represent ODEQ and Sec of Environment in implementing site restoration plan and cleanup of radioactive materials at former fuel plant. Ongoing efforts to either remove or dispose on site raffinate sludge material and then closure of the disposal cell.

Tulsa Fuels - CERCLA Superfund Site, Collinsville, OK Cleanup of former zinc smelter site, hazardous chemicals in soil, sediment and surface water. A zinc smelter operated at the site from 1914 to 1925. Historical smelting operations contaminated soil, sediment and surface water with hazardous chemicals. EPA selected a cleanup plan for the site. Construction of the remedy began in August 2014 and was completed in September 2016.

State of Oklahoma v Conoco Phillips

State of Oklahoma v BP

Underground storage tank indemnity fund cases. Resulted in a settlement with Conoco Phillips

Tar Creek - CERCLA Superfund Case, NRD Claim, represent ODEQ & OSE

Member/Legal Representation of Tar Creek Trustee Counsel & Tri-State Counsel

Ongoing negotiations with mining companies on response costs settlement and drafting NRD restoration plan. Also represent the State in the Peabody Energy Bankruptcy for claims arising at the Tar Creek site. Large Superfund site contaminated with lead, zinc from an old mining district. Ongoing

Scenic Rivers Joint Study Committee - Drafted the 2nd Statement of Joint Principles and Actions Agreement with the State of Arkansas to conduct an independent stressor response study of phosphorus levels in Oklahoma's Scenic Rivers. Represent the Oklahoma members of the Joint Study Committee. The study is complete and final recommendations are set to be made in December 2016. The study supports Oklahoma's contention that its .037 mg/L phosphorous standard in its scenic rivers is supported by the best available science.

Representation of the Environmental Quality Board, the rulemaking body for the Oklahoma Department of Environmental Quality

Tulsa County Smelter Complex - Recently entered into a joint MOU with US DOI and the Cherokee Nation to begin a Natural Resource Damage Assessment and Restoration Plan for

990

the Tulsa County Smelter Complex -Also represent the State in the Trustee Council for the site.  
Ongoing

Handled numerous citizen complaints regarding environmental and pollution issues





E. SCOTT PRUITT  
ATTORNEY GENERAL

2015 APR 10 10:21

April 9, 2015

The Honorable James Inhofe  
Chair, Committee on Environment and Public Works  
410 Dirksen Senate Office Building  
Washington, DC 20510

The Honorable Barbara Boxer  
Ranking Member, Committee on Environment and Public Works  
456 Dirksen Senate Office Building  
Washington, DC 20510

Re: Support for the Frank R. Lautenberg Chemical Safety for the 21<sup>st</sup> Century Act

Dear Chairman Inhofe and Ranking Member Boxer:

On March 17, 2015, several attorneys general wrote to express their support for S. 697, The Frank R. Lautenberg Chemical Safety for the 21<sup>st</sup> Century Act (the "Act"). This Act will reform the Toxic Substances Control Act ("TSCA"). The TSCA has not been substantively amended since its passage in 1976. I write to you today to echo their sentiments and share my thoughts on the measure.

This Act proposes significant changes to the TSCA by giving EPA tools to ensure the safety of chemicals used in U.S. commerce and enhancing the protection of public health and the environment. Though I have challenged the EPA on various issues, I believe the agency, within the boundaries of its authorities provided by Congress, serves a valuable mission to protect human health and preserve the environment.

The Frank R. Lautenberg Chemical Safety for the 21<sup>st</sup> Century Act is a bipartisan approach that will address issues within our national chemical management system. The Act will ensure that new and existing chemicals, including those grandfathered under TSCA, receive an EPA safety review. Such review will strengthen the standard for the public health and our environment. S. 697 guarantees protection of the most vulnerable by placing emphasis on the effects of exposure to chemicals on infants, children, pregnant women, workers, and the elderly.

Public dissemination of information about chemicals is critical to ensure public health and safety is upheld. S. 697 clarifies the restrictions on public dissemination by establishing a common sense balance

between a company's confidential business information (CBI) claim and informing the public about a particular chemical's risks.

As a defender of the primary role given to states under environmental law, I commend Senators David Vitter and Tom Udall for ensuring states have a voice at the table. We cannot allow for a one-size fits all approach on this matter, as each state has a variety of factors that make their environmental regulations unique. Giving states the ability to preemptively apply for a waiver in order to address local conditions, even when the EPA has already made a determination on a chemical, is essential. In addition, when EPA has not provided review to certain chemicals, it is vital that states retain the authority to regulate, as needed.

All of these changes will guarantee that EPA is balancing the interests of multiple stakeholders while making significant improvements to chemicals management and regulation. S. 697 will help EPA establish a consistent, national chemical regulatory program, while still preserving Oklahoma's ability to address local and pressing concerns.

As Oklahoma's Attorney General, I am responsible for protecting the welfare of Oklahoma citizens. This Act will give my constituents and Oklahoma businesses confidence that the chemicals used throughout our society are safe.

I encourage your committee to quickly consider the measure.

Sincerely,



E. Scott Pruitt  
Attorney General of Oklahoma

Cc: Senator Tom Udall  
Senator David Vitter



## OKLAHOMA ETHICS COMMISSION

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January 23, 2017

Glenn Coffee & Associates  
Attn: Ms. Denise Lawson  
*Via Email: denise@glenncoffee.com*

**Re: Open Records Request – Scott Pruitt 1998 Campaign**

Dear Ms. Lawson:

We received your open records request this morning for all reports filed with the Oklahoma Ethics Commission by Scott Pruitt's 1998 campaign. Files from those years are stored in off-site storage with limited hours of access. Because of this, we are unable to fulfill your request immediately. I appreciate your patience as we process your request.

Kind regards,

A handwritten signature in black ink, appearing to read "Geoffrey D. Long".

Geoffrey D. Long  
GENERAL COUNSEL

Testimony before the Subcommittee on Technology, Information Policy,  
Intergovernmental Relations and Procurement Reform of the House  
Committee on Oversight and Government Reform

“Mandate Madness: When Sue and Settle Just Isn’t Enough”

June 28, 2012

E. Scott Pruitt  
Attorney General  
State of Oklahoma

Dear Chairman Lankford, Ranking Member Connolly, and Members of the Subcommittee,

Thank you for allowing me to present my concerns on the legal and policy implications of the U.S. Environmental Protection Agency's actions regarding Regional Haze Regulations ("RHR"). There are three main points that cause concern among members of my staff, state leadership and Oklahoma stakeholders in relation to the EPA's actions: (1) the arbitrary and capricious nature of the EPA's preemption and disapproval of the Oklahoma State Implementation Plan ("SIP"); (2) the EPA's abrogation of notice and comment requirements when it imposes Federal Implementation Plans ("FIP") under the Regional Haze Regulations; and (3) the economic cost to states, industry and utility customers from the EPA's illegal actions under the Regional Haze Regulations. The EPA's refusal to follow its own rules has denied states due process and ignored the foundation of cooperative federalism set forth by Congress under the Clean Air Act. With the backing of the Obama Administration, the EPA is engaging in super legislative activity that Congress has not authorized, resulting in unchecked rule-making through questionable consent decrees. These issues are of great importance to the State of Oklahoma because Oklahomans value our state's natural resources, which provide sustenance to Oklahoma citizens and fuel our economic development. We take seriously our responsibility to preserve and protect these valuable natural assets so they may be enjoyed by future generations. This responsibility requires a delicate balance between environmental and economic interests. We must craft our environmental protection objectives with due consideration of the burden those objectives place on our economic development and overall well-being. With these considerations in mind, the State of Oklahoma submits that Oklahoma stakeholders, not the federal agency, should make decisions where outcomes directly affect Oklahomans.

**Background on Oklahoma's Battle against the EPA and the Agency's Abuse of  
Regional Haze Regulations**

In Section 169A of the 1977 Amendments to the Clean Air Act (CAA), Congress created a program for protecting visibility in the nation's national parks and wilderness areas. This section establishes as a national goal the "prevention of any future, and the remedying of any existing, impairment of visibility in mandatory Class I federal areas which impairment results from manmade air pollution." 42 U.S.C. § 7491(a)(1). Congress recognized that this program requires a delicate balance that considers the timing, cost and economic impact of alternative methods to achieve such goals. 42 U.S.C. § 7491(g)(1) ("In determining reasonable progress there shall be taken into consideration the costs of compliance, the time necessary for compliance, and the energy and nonair quality environmental impacts of compliance . . .").

Congress added Section 169B to the Act in 1990 to address regional haze issues, and in 1999, EPA promulgated regulations addressing regional haze, 70 Fed. Reg. 39,104 (July 6, 2005), codified at 40 C.F.R. part 51, subpart P ("Regional Haze Regulations" or "RHR"). In Section 169B, Congress made clear its intent to delegate significant power to States to develop, review, approve, and implement site-specific implementation plans designed to make reasonable progress in achieving regional haze goals while balancing each State's unique economic and power needs. *See, e.g.*, 123 Cong. Rec. 13,696, 13,709 (1977). EPA has recognized that, because the issues to be balanced are uniquely State and source specific, "the State must determine the appropriate level of BART (best available retrofit technology) control for each source subject to BART." 70 Fed. Reg. at 39,107.

Ultimately, the CAA requires deference to State decision-making. The structure of CAA and RHR create distinct and defined duties of the State and EPA. The EPA is, for instance,

charged with promulgating general regulations designed to "assure ... reasonable progress toward meeting the national goal." *Id.* § 7491(a)(4). The EPA must also promulgate the list of "mandatory Class I Federal areas" which are to receive visibility protection under the Act. *Id.* § 7491(a)(2). Further, the statute tasks the EPA with providing support to the states by, for instance, studying methods for redressing visibility impairment and then providing "guidelines" to the states suggesting such appropriate methods. Similarly, under section 169B of the Act, the EPA is tasked with studying regional visibility impairment, and convening regional commissions comprised of state authorities. *Id.* § 7492(a)(1), (c). The CAA does not give the EPA authority to question the wisdom of a state's choices of emission limitations if they are part of a plan that satisfies the standards of the Act.

For more than a decade, Oklahoma Gas & Electric (OG&E) has voluntarily burned low sulfur coal with the electrical generating units ("EGUs") at the Muskogee and Sooner Generating Stations ("OG&E Units") in order to limit sulfur dioxide emissions (SO<sub>2</sub>). OG&E is Oklahoma's largest electricity provider and serves approximately 789,000 customers in 268 communities in Oklahoma and western Arkansas. Oklahoma Industrial Energy Consumers (OIEC) is a non-partisan, unincorporated association of large consumers of energy with facilities located in the State of Oklahoma. OIEC members are engaged in energy price-sensitive industries such as pulp and paper, cement, refining, glass, industrial gases, plastic, film, and food processing. OIEC members employ thousands of Oklahomans.

On February 17, 2010, the State of Oklahoma submitted to EPA its regional haze revisions to the Oklahoma State Implementation Plan ("Oklahoma SIP"). *See* Oklahoma SIP, Doc. ID No. EPA-R06-OAR-2010-0190-0002 (relevant portions attached hereto as Exhibit 3). After properly balancing the statutory factors related to regional haze, Oklahoma determined that

low sulfur coal constituted BART for SO<sub>2</sub> emissions from the OG&E Units and proposed a SIP that would have made OG&E's continued use of that low sulfur coal a mandatory condition of operation. In balancing the BART factors, Oklahoma had before it both a 2008 cost analysis for the OG&E Units — one that both the EPA and the Oklahoma Department of Environmental Quality (“ODEQ”) had stated was prepared in conformity with the EPA Air Pollution Control Cost Manual (“CCM”) — and a 2009 cost analysis prepared at ODEQ's and EPA's request that was more robust and site-specific than the 2008 cost estimate. *See id.* Both the 2008 Cost Analysis and the 2009 Cost Analysis were prepared with the assistance of OG&E's engineering consultant, Sargent & Lundy LLC (“S&L”). Oklahoma concluded, based on this and other information, that scrubbers were not cost effective for the OG&E Units.

On March 22, 2011, more than one year after Oklahoma submitted its SIP to the EPA, EPA published a proposed rule in the Federal Register proposing to approve in part and disapprove in part the Oklahoma SIP. *See Proposed Rule, 76 Fed. Reg. 16,168.* In the same notice, and without waiting for its proposed disapproval of parts of the Oklahoma SIP to become final — i.e., without waiting for and considering public comments on its proposed disapproval of portions of the Oklahoma SIP — EPA proposed a FIP to substitute its judgment for the judgment of Oklahoma on certain key issues statutorily delegated to Oklahoma, including the BART determinations for the OG&E Units.

On May 23, 2011, the State of Oklahoma, OIEC, and OG&E (among others) separately submitted extensive legal, policy, and technical comments to EPA opposing its proposed action and arguing that, for numerous reasons, the EPA's proposed action was contrary to the CAA and RHR and was otherwise arbitrary and capricious. Despite these comments, EPA published the Final Rule with respect to the Oklahoma SIP on December 28, 2011, disapproving the State's



SO<sub>2</sub> BART determinations for the OG&E Units and for two units at another facility in the State. *See* 76 Fed. Reg. 81,728. EPA then simultaneously finalized the Oklahoma FIP that imposed an SO<sub>2</sub> emission limit of 0.06 lbs/MMBtu for each OG&E Unit, which would require the installation of a scrubber at each affected unit by January 27, 2017. Moreover, in support of the FIP, EPA adopted entirely new approaches not contained within its proposed rule without proper notice and the opportunity to comment, in violation of APA requirements.

On December 28, 2011, EPA published a final rule with respect to the Oklahoma SIP, disapproving the State's SO<sub>2</sub> BART determinations for the four OG&E units and for two units at another facility in the State based on EPA's own balancing of the five statutory factors. *See* Partial Approval of Oklahoma SIP and Promulgation of FIP, 76 Fed. Reg. 81,728 (Dec. 28, 2011) ("Final Rule"), JA 23. Petitioners filed requests for reconsideration with EPA in February 2012, but no action has been taken on those requests. The Final Rule both disapproved the Oklahoma SIP provisions that set out BART for the OG&E Units and promulgated a FIP, substituting EPA's own BART determination in place of the State's.

On February 24, 2012, the State of Oklahoma filed its Petition for Review in the Tenth Circuit Court of Appeals. On April 4, 2012, the State of Oklahoma filed a Joint Motion for a Stay of the Final Rule.

On June 15, 2012, Oklahoma filed its Joint Opening Brief in the Tenth Circuit Court of Appeals to resolve the pressing issues surrounding the EPA's abuse of the RHR, CAA, and rulemaking procedures. On June 22, 2012, the Tenth Circuit Court of Appeals granted the Petitioners Joint Motion for Stay of the Final Rule, concluding that the stay factors had been

met.<sup>1</sup> The stay was granted pending a hearing by the Tenth Circuit Court of Appeals merits panel.

**a. The Role of the States**

The role of the states under the CAA's visibility program is unique, as provided by sections 169A and 169B of the CAA. Unlike other programs where the states' role is to implement federally established standards, under the visibility program, the states have primary responsibility for establishing standards. In particular, the states are charged with developing emissions limitations after balancing a number of factors. The EPA's role under this program is simply one of support. Accordingly, the EPA must treat with special deference the determinations of a state, as embodied in a state's proposed Regional Haze SIP. States also are tasked with determining "such emission limits, schedules of compliance and other measures as may be necessary to make reasonable progress toward meeting the national goal ...." *Id.* § 7491(b)(2). States are responsible for determining best available retrofit technology for BART-eligible facilities. *Id.* § 7491(b)(2)(A). The states define the long-term strategy for making reasonable progress toward the national visibility goal. *Id.* § 7491(b)(2)(B). And it is the states, in consultation with one another, who are directed to assess the interstate transport of visibility impairing emissions and to decide what measures are necessary to address regional haze. *Id.* § 7492(d). Congress believed it important that states retain wide latitude in choosing how best to achieve national standards, given local needs and conditions. In addition to plain statutory language and the case law interpreting this language, the legislative history behind the Regional Haze Rule also is clear that Congress intended to vest individual states with broad authority to make BART determinations. For example, the following exchange occurred during the U.S.

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<sup>1</sup> The stay factors are" I. Petitioners Are Likely To Succeed on the Merits II. Petitioners Will Suffer Irreparable Harm Absent a Stay III. The Balance of Equities Favors Granting Petitioner' Stay Request, and Granting a Stay is in the Public Interest.

Senate debate preceding adoption of the Conference Agreement behind Section 169A of the CAA:

*Mr. McClure:* Under the conference agreement, does the state retain the sole authority for identification of sources for the purpose of visibility issues under this section?

*Mr. Muskie:* Yes; the State, not the Administrator, identifies a source that may impair visibility and thereby falls within the requirement of section 128.

*Mr. McClure:* And does this also hold true for determination of "Best Available Retrofit Technology?"

*Mr. Muskie:* Yes; here again it is the State which determines what constitutes "Best Available Retrofit Technology," as defined in section 128. . . .

123 CONG. REC. S13696, S13709 (1977).

Consistent with this legislative intent, EPA itself has explained that "the State must determine the appropriate level of BART control for each source subject to BART." 70 Fed. Reg. at 39, 107. The EPA has even acknowledged that "[i]n some cases, the State may determine that a source has already installed sufficiently stringent emission controls for compliance with other programs . . . such that no additional controls would be needed for compliance with the BART requirement." *Regional Haze Regulations*, 64 Fed. Reg. 35,714, 35,740 (July 1, 1999). The EPA also has acknowledged that "the State retains the primary responsibility of developing a viable visibility program" consistent with the goal established in section 169 A (a). This responsibility includes "final authority for the development of the SIP, BART determinations, and implementation of the visibility program" in light of the goals of the Act. See *Am. Corn Growers Ass'n v. E.P.A.*, 291 F.3d 1 (D.C. Cir. 2002).

**b. Limitations on EPA's authority**

The content of the EPA's regulations and guidance and their deference to State decision-making is no accident. These rules stem from the 2002 opinion of the D.C. Circuit in *American Corn Growers*. That case involved a challenge to EPA's 1999 regional haze rules. See 64 Fed. Reg. 35714 (July 1, 1999). The court confirmed the primacy of the states by invalidating EPA's rule on the grounds that it impermissibly constrained state authority. See *Am. Corn Growers Ass'n*, 291 F.3d at 8 (EPA's rule is invalid because it is "inconsistent with the Act's provisions giving the states broad authority over BART determinations"). The D.C. Circuit relied on, in part, the legislative history of the CAA's visibility provisions in reaching this conclusion.

Summarizing H.R. CONF. REP. NO. 95-564, the court stated:

The Conference Report thus confirms that *Congress intended the states to decide* which sources impair visibility and *what BART controls should apply to those sources*. The Haze Rule attempts to deprive the states of some of this statutory authority, in contravention of the Act. *Id.* (emphasis added).

The EPA therefore, cannot, through either approving or disapproving a SIP, interfere with the state's primary role in determining how national ambient air quality standards should be met under the CAA. 42 U.S.C.A. §§ 7401 et seq. As long as the ultimate effect of a state's choice of emission limitations is compliant with the national standards for ambient air, the state is at liberty to adopt whatever mix of emission limitations it deems best suited to its particular situation. Reviewing the history of section 110, and judicial interpretations of it, the court in *Commonwealth of Virginia v. Environmental Protection Agency*, noted that as section 110 stood in 1975, and as it stood after the 1977 and 1990 amendments, the provision did not confer upon the EPA authority to condition approval of a state implementation plan on the state's adoption of specific control measures. See 108 F.3d 1397(D.C. Cir. 1997). Although the EPA has the authority to determine whether a state's plan meets the Act's requirements for approval (42

U.S.C.A. § 110(a)(2)), courts have held that the agency cannot tell the states what measures they should employ in meeting the requirements. (42 U.S.C.A. § 7410)

In *Train v. Natural Resources Defense Council, Inc.*, 421 U.S. 60 (1975) the U.S. Supreme Court found that although the CAA plainly charges the EPA with the responsibility for setting the national ambient air quality standards, the Act, just as plainly, relegates the EPA to a secondary role in the process of determining and enforcing the specific, source-by-source emission limitations that are necessary if the national standards are to be met. According to the Court, the Act gives the agency no authority to question the wisdom of a state's choices of emission limitations if they are part of a plan that satisfies the standards of §110(a)(2), and the agency may devise and promulgate a specific plan of its own only if a state fails to submit an implementation plan that satisfies those standards. The Court stated;

“So long as the ultimate effect of a State's choice of emission limitations is compliance with the national standards for ambient air, the State is at liberty to adopt whatever mix of emission limitations it deems best suited to its particular situation.”

*Id* at 79.

The CAA then “establishes a partnership between EPA and the states for the attainment and maintenance of national air quality goals.” *Natural Res. Def. Council, Inc. v. Browner*, 57 F.3d 1122, 1123 (D.C. Cir. 1995). “Air pollution prevention . . . at its source is the primary responsibility of States and local governments. . . .” 42 U.S.C. § 7401(a)(3). Congress “carefully balanced State and national interests by providing for a fair and open process in which State and local governments, and the people they represent, will be free to carry out the reasoned weighing of environmental and economic goals and needs.”

The CAA specifically vests states with the primary authority to determine BART by weighing the five statutory criteria set forth in 42 U.S.C., section 7491(g)(2). CAA Section

169A provides that “in determining [BART] the State (or the Administrator in determining emission limitations which reflect such technology) shall take into consideration [the five BART factors].” 42 U.S.C. § 7491 (g)(2). Section 169A also provides that sources subject to BART “shall procure, install, and operate, as expeditiously as practicable (and maintain thereafter) the [BART], as determined by the State (or the Administrator in the case of a plan promulgated under section 7410(c) of this title) . . . .” 42 U.S.C. §§ 7491(b)(2)(A). The EPA may disapprove a SIP and issue a FIP under section 7410(c) only where the State’s SIP fails to meet minimum CAA requirements. 42 U.S.C. § 7410(k)(3). In the case of regional haze, the CAA requires only that States weigh the five statutory factors and arrive at a reasonable understanding of BART requirements. 42 U.S.C. § 7491 (g)(2).

As stated above, the U.S. Court of Appeals for the D.C. Circuit has reviewed the EPA’s authority under the Regional Haze program and agreed that the CAA “calls for states to play the lead role in designing and implementing regional haze programs.” *Am. Corn Growers Ass’n*, 291 F.3d 1, at 2. In 2002, the court reversed a portion of the EPA’s original Regional Haze Rule that required states to analyze visibility improvements from multiple sources, rather than on a source-by-source basis, when determining BART requirements. The court held that the EPA could not require the states to evaluate one BART factor collectively while mandating that the other four factors be evaluated separately for individual sources. In addition to distorting the statutory factors, the court thought the EPA’s approach was “inconsistent with the Act’s provisions giving the states broad authority over BART determinations.” *Id.* at 8; *see also Utility Air Regulatory Group v. E.P.A.*, 471 F.3d 1333, 1336 (D.C. Cir. 2006) (The second step in a BART determination “requires states to determine the particular technology that an individual source subject to BART must install.”)

**I. The Arbitrary and Capricious Nature of the EPA's Preemption and Disapproval of Oklahoma's SIP**

The CAA directs the States — not the EPA — to determine the appropriate level of BART to regulate regional haze. The EPA's proposed Federal Implementation Plan ("FIP") as it pertains to the disapproval of portions of the State Implementation Plan ("SIP") as to best available retrofit technology ("BART") and the long-term strategy ("LTS") is in violation of the Clean Air Act (CAA) and the discretion and authority granted to the State under that Act. In its quest to issue a Federal Implementation Plan ("FIP") that requires Oklahoma Gas and Electric Company ("OG&E") to spend over \$1.2 billion to install dry flue gas desulfurization technology ("scrubbers") on four electric generating units in the next five years to address aesthetic concerns about regional haze, the Environmental Protection Agency ("EPA") eviscerated the authority and discretion given to the State of Oklahoma by the Clean Air Act ("CAA" or "Act"). In substituting its judgment for the judgment of the State, EPA illegally usurps the broad authority given by Congress to the States to make best available retrofit technology ("BART") determinations for regional haze. *See* 42 U.S.C. § 7491. The Oklahoma SIP included a state-specific balancing of BART factors that considered Oklahoma's unique energy and economic needs; a balancing that EPA is neither equipped nor authorized to conduct. Instead, EPA improperly mandated its desired outcome in place of Oklahoma's considered judgment as to the appropriate BART for facilities in the state.

The CAA and RHR set forth the process that must be followed in determining BART, but neither requires any specific outcome. Thus, the CAA and RHR require, in part, that a State balance five factors in making a BART determination for each qualifying facility.<sup>2</sup> EPA

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<sup>2</sup> The five BART factors are: (i) the costs of compliance; (ii) the energy and nonair quality environmental impacts of compliance; (iii) any existing pollution control technology in use at the source; (iv) the

recognizes that “States are free to determine the weight and significance to be assigned each factor.” Proposed Oklahoma BART Rule, 76 Fed. Reg. 16,168, 16,174 (Mar. 22, 2011) (“Proposed Rule”). EPA further acknowledges that “[i]n some cases, the State may determine that . . . no additional controls would be needed for compliance with the BART requirement.” Original Regional Haze Regulations, 64 Fed. Reg. 35,714, 35,740 (July 1, 1999).

The CAA and RHR require that *States*, not EPA, have the primary role in implementing the regional haze program, including making BART determinations. *See, e.g.*, CAA § 169A(b)(2)(A), (g)(2), 42 U.S.C. § 7491(b)(2)(A), (g)(2) (“in determining [BART] *the state* (or the Administrator in determining emission limitations which reflect such technology) shall take into consideration [the BART factors]”) (emphasis added). The states are directed to define the long-term strategy and BART, one component of the long-term strategy, under the Act. It is the states that are required to consider and balance the five factors relevant to a BART determination. *See id.* § 7491(g)(2). The scope of state discretion is further confirmed in EPA guidance, which states that “[*t*]he glidepath [*to the national goal*] is not a presumptive target, and States may establish a RPG [*reasonable progress goal*] that provides for greater, lesser, or equivalent visibility improvement as that described by the glidepath.” *Guidance for Setting Reasonable Progress Goals Under the Regional Haze Program* at 1-3 (June 1, 2007)(emphasis added).

The EPA Proposed Rule ignores the plain language of the CAA and the Court of Appeals’ recognition of the states’ dominant role in determining BART in an effort to advance EPA’s preference for scrubbers on all EGUs. EPA does not have authority to disapprove a SIP simply because it disagrees with a state’s choice in emission control measures for specific

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remaining useful life of the source; and (v) the degree of improvement in visibility that may be expected as a result of such technology. 2 U.S.C. § 7491(g)(2); 40 C.F.R. § 51.308(e)(1)(ii).



sources. *Florida Power & Light Co. v. Costle*, 650 F.2d 579, 581 (5th Cir. 1981) (“If an [sic] SIP or a revised SIP meets the statutory criteria, however, the EPA must approve it”).

The EPA is proposing to take an action that usurps authority granted to Oklahoma in the Clean Air Act. The Clean Air Act created a Regional Haze program to improve visibility in certain national parks and wilderness areas. The EPA can set national goals and guidelines for the program, but individual states have the authority to craft plans specific to and appropriate for their state's citizens and interests. Each state has the right to select the best control technology (“BART”) for sources of emissions that contribute to regional haze, taking into consideration five specific factors, including costs of control. Oklahoma chose the technologies that are appropriate for its sources in light of these five factors and submitted an implementation plan to EPA in February 2010. In particular, Oklahoma determined that low sulfur coal was the cost effective way to control sulfur dioxide emissions to address haze issues. A benefit of this determination is that it gives state utilities greater flexibility to switch to generating electricity with natural gas or renewable sources. The state determined that installing scrubbers now is not cost effective and would lock the utilities into burning coal for the next 20 years.

On March 22, 2011, EPA proposed to reject the state's determination and substitute its own judgment for the state's via implementation of its proposed FIP.<sup>3</sup> The EPA proposed to select scrubbers as the best technology for the relevant sources in Oklahoma. The adoption of a Federal Plan would go beyond the authority granted to the EPA by the Clean Air Act because the

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<sup>3</sup> On March 23, 2011 The State of Oklahoma submitted to the Administrator of the EPA a Notice of Intent to file suit pursuant to Clean Air Act section 304 (b)(2), 42 U.S.C. section 7604 (b)(2) and 40 C.F.R. Part 54, for the EPA's failure to perform nondiscretionary duties. The suit against the EPA will be filed because the EPA was not authorized to propose a FIP for regional haze in Oklahoma on March 22, 2011, as no final action has been taken regarding Oklahoma's SIP. In addition, the window for EPA to propose a regional haze FIP was not open on March 22<sup>nd</sup>. The EPA has violated its nondiscretionary duty to honor the time constraints provided in Section 110 (c) of the CAA and 42 U.S.C. § 7410(c) regarding the promulgation of a FIP.

EPA does not have the power to question the state's determination as long as the state relied on the proper factors in making it, which Oklahoma did. It is estimated that the emission controls required by EPA will cost approximately \$2 billion to install and result in a 15% - 20% increase in residential electric rates.

EPA may disapprove a SIP and promulgate a FIP only where a State's SIP fails to meet minimum CAA requirements. 42 U.S.C. § 7410(k)(3); *see also Train v. Natural Res. Def. Council*, 421 U.S. 60, 79 (1975). The RHR and BART guidelines issued by EPA, 70 Fed. Reg. 39,104 (July 6, 2005), require only that States engage in the process of weighing the five statutory factors in determining BART for eligible sources in a manner consistent with the RHR, and that "States are free to determine the weight and significance to be assigned to each factor." *See* 76 Fed. Reg. 16,168, 16, 174 (Mar. 22, 2011). As the Oklahoma SIP clearly shows, Oklahoma did properly engage in that process in making its BART determinations for the OG&E Units.

Oklahoma submitted its' SIP to EPA long before EPA proposed the Oklahoma FIP, and with a full record. Since ODEQ applied the statutory factors in promulgating the Oklahoma SIP, EPA was not free to reject Oklahoma's BART determinations with respect to the OG&E Units and promulgate a FIP substituting its judgment for that of the State.

As previously set forth, the U.S. Court of Appeals for the D.C. Circuit has affirmed that EPA's role in determining regional haze plans is limited, stating that the CAA "calls for states to play the lead role in designing and implementing regional haze programs." *Am. Corn Growers Ass'n v. EPA*, 291 F.3d 1, 2 (D.C. Cir. 2002). The Court reversed a portion of EPA's original RHR because it found that EPA's method of analyzing visibility improvements distorted the statutory factors and was "inconsistent with the Act's provisions giving the *states* broad authority

over BART determinations.” *Id.* at 8 (emphasis added); *see also Utility Air Group v. EPA*, 471 F.3d 1333, 1336 (D.C. Cir. 2006) (The second step in a BART determination “requires states to determine the particular technology that an individual source ‘subject to BART’ must install”). EPA lacks the authority to disapprove the Oklahoma SIP merely because it disagrees with Oklahoma’s choice in emission controls for specific sources.

The CAA gave Oklahoma the right to conduct this analysis and make a determination without being second-guessed by EPA. Oklahoma exercised the authority granted by the CAA and determined that “[t]he cost for [scrubbers] is too high, the benefit too low and these costs, if borne, further extend the life expectancy of coal as the primary fuel in the Sooner facility for at least 20 years and beyond. BART is the continued use of low sulfur coal.” *See Ex. 3, Oklahoma SIP*, App. 6-5, Item 1, Sooner BART Review at p. 29, and Muskogee BART Review at p. 29.

EPA second guessed Oklahoma’s authority by rejecting significant portions of the 2009 site-specific costs estimates, in many instances simply assuming, without verifying, that they resulted in the double counting of expenses. While OG&E disputes EPA’s conclusion regarding the 2009 cost estimates, once EPA reached the conclusion that the CCM estimates should control, the proper response by EPA should have been to return to the 2008 cost estimates, which both EPA and ODEQ had stated complied with the CCM and which support the State’s BART determinations for the OG&E Units. EPA’s attempt to create a hybrid cost estimate by selectively modifying the 2009 estimate resulted in cost estimates that were neither site-specific and real (like OG&E’s 2009 cost estimates) nor reflective of the CCM general estimates (like OG&E’s 2008 cost estimates). EPA’s “cherry-picking” approach to the cost estimates for the OG&E Units in order to justify its predetermined conclusion that scrubbers were BART was, therefore, arbitrary and capricious.

Despite the Act's exclusive assignment to the States of the authority to weigh the statutory factors, EPA nonetheless disputes Oklahoma's cost effectiveness analysis and seeks to use the assumptions and speculation of its consultant as the basis for disapproval of the Oklahoma SIP. EPA's principle contention is that the 2009 site-specific cost estimates considered by Oklahoma did not comply with the CCM. To reach that result, however, EPA (i) ignored the 2008 cost estimates that it had acknowledged were prepared in accordance with the CCM; (ii) rejected the 2009 estimates by giving preference to the assumptions and speculation of its consultant over the judgment of the State; and (iii) manipulated the inputs for the cost effectiveness calculation by ignoring the requirements of its own guidelines and basic engineering principles. Even beyond these fundamental flaws in EPA's cost effectiveness review of the Oklahoma SIP, the separate cost analysis conducted by EPA's consultant was not supported by the record and was arbitrary in its approach. At the same time, EPA took an improper approach to visibility improvement designed to overstate the benefits from the installation of scrubbers. The fundamental flaws in EPA's cost-effectiveness analysis not only demonstrate that its disapproval of the Oklahoma SIP was arbitrary and capricious, but also preclude a finding that EPA had a reasoned and proper basis for the FIP.

"States have flexibility in how they calculate costs." 70 Fed. Reg. at 39,127. Where the RHR give States flexibility and Congress has designated that States take the dominant role in determining BART, EPA is not free to undercut the State's reasonable exercise of that flexibility, particularly by substituting its own arbitrary approach. EPA illegally usurped State authority in violation of the plain language of the Act when it rejected Oklahoma's BART determination for the OG&E Units and, thus, the FIP is unlawful. In addition, because EPA published a notice that certain States, including Oklahoma, had initially failed to meet the deadline for submitting

regional haze SIPs, the CAA unequivocally imposed a two-year requirement for EPA to issue a FIP. *See* 42 U.S.C. § 7410(c); *Gen. Motors v. United States*, 496 U.S. 530, 537 (1990) (citing CAA §110(c) as an example of “explicit deadlines” established by the CAA). It is undisputed that EPA failed to promulgate a FIP within that two-year window. Thus, EPA’s attempt to promulgate the Oklahoma FIP outside that two-year window, without first providing a new notice to re-open the two-year window for doing so, was contrary to the Act. Clearly, the EPA is going beyond its authority and abusing its power by overregulating in areas statutorily regulated by the States.

As previously noted, Oklahoma has the primary authority to determine BART and, pursuant to EPA’s own guidelines, this primacy extends to the cost analysis, where the State is given “flexibility in how [it] determines costs.” 70 Fed. Reg. at 39,127. Oklahoma’s cost analysis, set forth in the Oklahoma SIP, clearly meets statutory requirements. Even if EPA was authorized to second guess Oklahoma’s judgment, EPA has not articulated any sound or reasonable basis for rejecting Oklahoma’s considered judgment regarding the appropriate costs to consider.

## **II. The EPA’s Abrogation of Notice and Comment Requirements When Imposing FIP’s**

The Final Rule violates the Administrative Procedure Act (“APA”), 5 U.S.C. § 551, *et seq.*, because it introduces and relies upon rules or approaches not previously discussed in the proposed rule. *See* 5 U.S.C. § 553(b)(3) (requiring agencies to give notice of “the terms or substance of the proposed rule or a description of the subjects and issues involved.”). “To satisfy the APA’s notice requirement, . . . an agency’s final rule need only be a logical outgrowth of its notice.” *CSX Transp., Inc. v. Surface Transp. Bd.*, 584 F.3d 1076, 1079 (D.C. Cir. 2009) (internal

quotations and citations omitted). However, “a final rule fails the logical outgrowth test and thus violates the APA’s notice requirement where interested parties would have had to divine the agency’s unspoken thoughts because the final rule was surprisingly distant from the proposed rule.” *Id.* (vacating portion of agency’s final rule for violating APA’s notice requirements) (internal quotations and citations omitted). Here, Oklahoma had no means by which to divine EPA’s introduction of several new outcome determinative approaches set forth for the first time in the Final Rule and, therefore, had no opportunity to properly comment on or present evidence regarding them. The issues raised by the use of these new approaches are particularly important in this case because they tread on areas that the CAA commits to the discretion of the State in the first instance.

EPA’s issuance of the Oklahoma FIP was also procedurally defective because of its timing. First, the CAA does not give EPA authority to propose a FIP prior to final disapproval of the Oklahoma SIP. The Act, moreover, requires that EPA give Oklahoma a reasonable opportunity to cure any alleged defects in a disapproved SIP. CAA Section 110(c)(1)(A) allows promulgation of a FIP after EPA “finds that the plan or plan revision submitted by the State does not satisfy the minimum criteria established under subsection (k)(1)(A) of this section or . . . disapproves a State implementation plan submission in whole or in part.” 42 U.S.C. § 7410(c)(1). Section 110(c) also states that EPA shall propose a FIP “unless the State corrects the deficiency,” thereby reflecting Congress’s intention for States to have the power to design their own SIP and have an opportunity to correct a SIP before a FIP is issued. § 7410(c). Simultaneous promulgation of the FIP is also inconsistent with the Act’s definition of a FIP. A FIP is defined as a plan “to fill all or a portion of a gap or otherwise correct all or a portion of an inadequacy in

a State implementation plan.” § 7602(y). Thus, a FIP cannot properly exist until after final action has been taken on a State’s SIP.

CAA § 307(d)(3) requires that “[t]he statement of basis and purpose” that must accompany each proposed FIP include a summary of “the factual data on which the proposed rule is based” and “the major legal interpretations and policy considerations underlying the proposed rule.” 42 U.S.C. § 7607(d)(3). EPA cannot credibly claim to be able to present the relevant factual, legal, and policy information and rationale to justify a proposed FIP before it has: (1) determined whether and to what extent the Oklahoma SIP may be deficient and un-approvable; (2) provided the public with an adequate explanation of any such determination in a proposed EPA rule on SIP approval or disapproval that is published for public review and comment; (3) received, considered, and responded to public comments on the proposed action; and (4) made a final determination and taken final action to disapprove the SIP in whole or in part.

This due order of action by EPA is important because, as demonstrated by the discussion above regarding cost effectiveness, EPA’s authority when reviewing a Regional Haze SIP is much different than its authority when promulgating a FIP. Because the CAA delegates the power to determine BART exclusively to the States, the fact that EPA would take a different approach or reach a different conclusion is irrelevant to its approval or disapproval of a Regional Haze SIP. Yet, if EPA is allowed to take final action on such a SIP at the same time that it issues a FIP, it can blur this distinction and impermissibly use the FIP process to impose its preferences with respect to the five statutory BART factors onto the States.

Second, because EPA published a notice that States, including Oklahoma, had failed to meet the statutory deadline for submitting regional haze SIPs, it is undisputed that the CAA

unequivocally imposes a two-year limit on EPA's ability to take such action. *See* 42 U.S.C. § 7410(c)(1); *Gen. Motors v. United States*, 496 U.S. 530, 537 (1990) (citing CAA § 110(c) as example of "explicit deadlines" established by the CAA). It is also undisputed that EPA failed to promulgate a FIP within that two-year window. Thus, EPA's attempt to promulgate the Oklahoma FIP outside that two-year window, without first providing a new notice to re-open the two-year window for doing so, was contrary to the Act.

The new "overnight" cost method used by EPA to determine the cost effectiveness of scrubbers is at the core of EPA's Final Rule, both in disapproving the Oklahoma SIP and in justifying its FIP. EPA's failure to raise these new approaches as justification for its proposed actions in the Proposed Rule deprived Petitioners of the right and opportunity to comment on them. It was, therefore, improper under the APA and it deprived the State of the authority delegated to it by the CAA to determine the reasonable and appropriate methods for evaluating costs in making BART determinations. EPA's Final Rule is fatally defective because of its failure to provide notice of this new approach and allow comment on it.

The Final Rule also reveals, for the first time, EPA's new methodology to determining visibility improvement—the so-called "number of days" approach. 76 Fed. Reg. at 81,736. Again, because this approach was not raised by EPA in the Proposed Rule, the Final Rule is fatally defective. Because the Final Rule fails the logical outgrowth test, Petitioners' challenges to the Oklahoma FIP are likely to succeed, justifying a stay of the FIP.

The administrative record shows that EPA's "nothing but scrubbers" approach led it to reject a final regional haze state implementation plan ("SIP") that Oklahoma sent to EPA over a year before EPA proposed to adopt the FIP. The only way that EPA could achieve this predetermined outcome was to ignore the Act and its own guidance and violate the



Administrative Procedures Act (“APA”) by raising and relying on new rules and methodologies for the first time in its final rule adopting the FIP. For EPA to accomplish this objective, it had to ignore its own policies and procedures for making these determinations and, in the Final Rule, use new approaches regarding cost effectiveness and visibility improvement that it had not identified in the proposed rule. This approach precluded public comment and violated Petitioners’ procedural rights.

The RHR require States to submit their BART determinations, along with other required elements, as SIP revisions to EPA for approval (“Regional Haze SIPs”). EPA may disapprove a Regional Haze SIP and issue a FIP only when a SIP fails to meet all of the applicable requirements of the Act. 42 U.S.C. § 7410(k)(3). In this instance, the applicable requirements are that the emission limitations developed to address regional haze be developed pursuant to the evaluation process and balancing of the BART factors set out in the CAA and RHR. 42 U.S.C. § 7491(b).

### **III. Economic Costs Associated with the EPA’s Illegal Actions Under the Regional Haze Program**

The EPA’s action is sure to raise the costs of electricity to consumers, with a corresponding loss of jobs and economic activity. EPA’s illegal adoption of the Final Rule will have an immediate and irreparable impact on the State whose CAA authority has been eviscerated by EPA’s actions. Likewise, electricity consumers in Oklahoma will face significant electricity rate increases as a result of the costs imposed by the Final Rule.

Oklahoma has demonstrated the substantial economic impact EPA’s Final Rule would have on the State. OG&E will be required to expend significant resources immediately in order to implement the installation of the scrubbers with any chance of meeting the five year deadline,

and just in the first two years, the costs will exceed \$200 million. Even if OG&E were able to roll some of those costs into its rate structure, this will have an obvious adverse effect on the citizens of Oklahoma who have to pay those higher electricity rates. In today's economic climate, those very real economic impacts of EPA's FIP cannot and should not be ignored.

#### **IV. Conclusion**

First, as noted above, Congress designated the State as the principle decision maker for BART determinations and regional haze programs. The EPA's actions here deprive Oklahoma of the ability to fashion a regional haze program that balances costs and visibility improvement in a manner that is appropriate for the citizens and economy of this State. The EPA's actions undermine the State's authority and damage the ability of Oklahoma to fulfill its regulatory function as created by Congress.

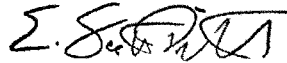
Second, as noted above, the EPA's abrogation of notice and comments when imposing FIP's on Oklahoma violates key and foundational principles of rulemaking.

Finally, if some of these costs are imposed on consumers in Oklahoma, the increased electricity rates will have an adverse economic impact with consumers paying higher rates directly and businesses looking to pass their higher costs to their customers. Indeed, as a large electricity consumer, the State too will feel the direct economic impact of higher rates. Neither the State nor its citizens has recourse for such unnecessary costs. Thus, irreparable harm will result from continuation of the current effective date for the Oklahoma FIP.

The State of Oklahoma has properly exercised its discretion under the CAA's visibility program to establish a long-term strategy for the reduction of visibility impairing pollutants, including the selection of BART. The EPA's proposed action disregards clear congressional intent that primary regulatory authority under the visibility program rests with the States. The

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EPA's proposal would impose the EPA's policy judgments based on the EPA's balancing of factors where it has no authority to do so. The EPA does not have the right under the Clean Air Act to substitute its judgment for that of the state when it comes to determination of the best control technology for sources in the state.

A handwritten signature in black ink, appearing to read "E. SCOTT PRUITT". The signature is stylized and somewhat cursive.

E. SCOTT PRUITT  
ATTORNEY GENERAL OF OKLAHOMA



Testimony before the Committee on Oversight and Government Reform Subcommittee on Energy Policy, Health Care and Entitlements

**“Oversight of IRS’s Legal Basis for Expanding Obamacare’s Taxes and Subsidies”**

July 31, 2013

E. Scott Pruitt  
Attorney General  
State of Oklahoma

Chairman Lankford, Ranking Member Speier, and Members of the Subcommittee,

Good morning, and thank you for inviting me to appear before you today to present concerns on the implementation of the Affordable Care Act, and the legal and economic implications of actions taken by the U.S. Internal Revenue Service, the Treasury Department and the U.S. Department of Health and Human Services.

This is a critical issue for Oklahoma and for every one of the 34 states that chose not to establish a state health care exchange – a choice that was provided to us by Congress and affirmed by the United States Supreme Court.

Because of the serious ramifications facing our states, I appreciate the attention that this subcommittee is giving to these concerns with this matter.

First, I would like to be clear about my intentions today regarding health care policy and the law.

My comments will not focus on the need for health care reform or the wisdom of the policy choices embodied in the ACA. Our responsibility as attorneys general is to preserve the rule of law; is to give meaning and affect to that which you have passed in Congress while protecting the rights and interests of our citizens.

When Congress passed the health care act, they provided states a choice. That choice was whether to establish a state health care exchange or to opt for a federal exchange. The ACA included with that choice a set of consequences and benefits that states had to consider. As the Chairman indicated, our policymakers did in fact go through that process in a very deliberative fashion. Among the outcomes of a state choosing not to establish a state exchange is a consequence of no subsidies flowing into that state. The law also provided a benefit of no penalties in the employers mandate arena for large employers.

Our Governor Mary Fallin and other state stakeholders thoughtfully and thoroughly reviewed the options provided them under the Affordable Care Act, and ultimately chose not to establish a state health care exchange.

But after the decision was made, the IRS finalized a rule that would strip states of the main benefit of their choice – no large-employer penalty. Congress provided this choice to states, and now the IRS is attempting to take that away by rule.

The IRS is acting as a super legislative body in this capacity by enacting regulations that Congress did not authorize. Their actions conflict with the ACA, and when informed of this, the regulators ignored public warnings and concerns that pointed out the problem. In fact, many months before the rule went final in May 2012, the record was made as early as November 2011 with respect to these concerns.

The IRS does not have the authority to expand access to subsidies beyond what is clearly written in the law. As the Chairman indicated, that's billions of dollars that will be flowing unauthorized by Congress. The regulation appears geared more toward enacting the agency's own policies than faithfully following implementation of the law passed by Congress.

That is why in September of last year, I filed a lawsuit in the Eastern District of Oklahoma challenging the IRS rule and its lack of authority under the Affordable Care Act. Our unique position allowed us to lead the charge against rogue agencies misusing the law to advance their own agenda.

As we have stated in our lawsuit, Oklahoma's position has been clear from the very beginning – that the large-employer penalty not only violates the law when implemented in states without a state health care exchange, but cripples businesses with burdensome and onerous requirements and penalties.

For a medium-sized company, already struggling to meet the needs of its thousands of employees, the penalty equates to millions annually when only one of its employees qualifies for a subsidy under subpart A.

Until now, the Obama Administration has argued in court that the mandate is uncomplicated and easy, but its recent sudden reversal and delay of the mandate, clearly demonstrates and acknowledges that the large-employer mandate is in fact a complex, job killing and harmful mandate on businesses, and again Oklahoma is considered a large business under the statute.

Exactly where these burdens fall is a serious matter, and if the ACA exempts employers in states foregoing the establishment of their own exchange, that exemption should be recognized and enforced, and we appreciate the committee's focus on that.

These issues are of great importance to the Great State of Oklahoma because we value our state's economic stability and growth, and the rule of law.

Our fight continues on behalf of Oklahoma citizens to confront the Administration when it seeks to overreach its authority and circumvent the law. We hope to obtain relief in this matter through the Courts, but we also welcome Congressional oversight being brought to bear on these agencies.

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I look forward to answering any questions you may have and I thank you for your time this morning, Mr. Chairman.

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Testimony before the Senate Environmental and Public Works Subcommittee  
on Clean Air and Nuclear Safety

“Legal Implications of the Clean Power Plan”

May 5, 2015

E. Scott Pruitt  
Attorney General  
State of Oklahoma

Chairwoman Capito, Ranking Member Carper, Chairman Inhofe, and Members of the Subcommittee,

Thank you for the invitation to discuss the legal ramifications of the EPA's proposed Clean Power Plan.

This is an issue of major importance to states like Oklahoma.

Quite simply, Madam Chairwoman, the EPA does not possess the authority under the Clean Air Act to do what it is seeking to accomplish in the so-called Clean Power Plan.

The EPA, under this administration, treats States like a vessel of federal will. The EPA believes the States exist to implement the policies the Administration sees fit, regardless of whether laws like the Clean Air Act permit such action.

In their wisdom, Congress gave States a primary role in emissions regulation, noting in the statement of policy of the Clean Air Act that "air pollution control at its source is the primary responsibility of States and local governments."

That statement respects the constitutional limits on federal regulation of air quality, and the reality that States are best suited to develop and implement such policies.

States are able to engage in a cost-benefit analysis to strike the necessary balance between protecting and preserving the environment, while still creating a regulatory framework that does not stifle job growth and economic activity. The States are partners with the federal government in regulating such matters.

Therefore, the Clean Air Act hinges on "cooperative federalism" by giving States the primary responsibility and role for regulation while providing a federal backstop if the States should fail to act.



When the EPA respects the role of the States, the cooperative relationship works well. When the EPA exceeds the constraints placed upon the agency by Congress, the relationship is thrown out of balance and the rule of law and state sovereignty both suffer.

The Clean Power Plan proposal throws the cooperative relationship between the States and the Federal government off balance.

The EPA claims the proposal gives States flexibility to develop their own plans to meet the national goals of reducing carbon dioxide emissions. In reality, the Clean Power Plan is nothing more than an attempt by the EPA to expand federal bureaucrats' authority over States' energy power generation mixes.

The plan requires each State to submit a plan to cut carbon-dioxide emissions by a nationwide average of 30 percent by 2030.

In Oklahoma, 40.5 percent of energy generation comes from coal-fired power plants while 38.1 percent comes from natural gas. Oklahoma ranks fourth in the nation with 15 percent of power generation coming from wind.

This begs the question, how does the EPA expect States like Oklahoma to meet the goals of the Clean Power Plan? There are only so many ways Oklahoma can achieve the 30 percent reduction demanded by the EPA. The plan, therefore, must be viewed as an attempt by the EPA to force States into shuttering coal-fired power plants and eventually other sources of fossil-fuel-generated electricity.

Additionally, the proposed rule, through its building block four, would require States to use demand-side energy efficiency measures that would reduce the amount of generation required. However, States are limited to emission standards that can actually be achieved by existing industrial sources through source-level, "inside-the-fence-line" measures.

The proposal's attempt to force States to regulate energy consumption and generation throughout their jurisdictions, in the guise of reducing emissions from fossil fuel-fired power plants, violates Section 111(d)'s plain-text requirement that the performance standards established for existing sources by the States must be limited to measures that apply at existing power plants themselves.

EPA's approach converts the obscure, little-used Section 111(d) into a general enabling act, giving EPA power over the entire grid from generation to light switch. By going beyond source-level, "inside-the-fence-line" measures, EPA's proposal would expand 111(d), and specifically the underlying statutory term "best system of emission reduction," into "a whole new regime of regulation": one that regulates not only pollutant emission by sources, but a State's entire resource and energy sectors.

To meet the objectives of the EPA's proposed rule, States will be forced to rework their energy generation market. To account for the loss of coal-fired generation, States will be forced into changing their energy mix in favor of renewables. States would also be forced to alter existing regulatory framework which would threaten energy affordability and reliability for consumers, industry and energy producers.

Finally, there is substantial concern that the EPA – before the Clean Power Plan rule is even finalized – will issue a uniform federal implementation plan that will be forced upon those States that don't acquiesce to the unlawful Clean Power Plan.

Such a move by the EPA would be the proverbial "gun to the head" of the States, demanding the States to act as the EPA sees fit or face punitive financial sanctions.

Madam Chairwoman, I can say with great confidence that if the EPA does in fact move forward with the "uniform FIP," the EPA will be challenged in court by Oklahoma and like-minded states.

Madam Chairwoman, I am not one who believes the EPA has no role. The agency has played an important role historically in addressing water and air quality issues that traverse state lines.

However, with this rule, the agency is now being used to pick winners and losers in the energy context, by elevating renewable power generation at the expense of fossil-fuel fired generation.

No State should comply with the Clean Power Plan if it means surrendering decision-making authority to the EPA, a power that has not been granted to the agency. States should be left to make decisions on the fuel diversity that best meets their power generation needs.

States like Oklahoma care about these issues because we breathe the air, drink the water, and want to preserve the land for future generations.

And we have developed a robust regulatory regime that has successfully struck a balance between maintaining and preserving air and water quality, while still considering the economic impact of such regulations.

Madam Chairwoman, states like Oklahoma are simply opposed to the Clean Power Plan because it is outside the authority granted to the EPA by the law. We only ask that State authority under the Clean Air Act be respected and preserved and that decisions on power generation and how to achieve emissions reductions be made at the local level rather than at the federal level.

I again appreciate the opportunity to discuss these issues with you.

Sincerely,

A handwritten signature in black ink, appearing to read "E. Scott Pruitt", with a long horizontal line extending to the right.

E. SCOTT PRUITT

ATTORNEY GENERAL OF OKLAHOMA



E. SCOTT PRUITT  
ATTORNEY GENERAL OF OKLAHOMA

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*Joint Hearing of the Senate Committee on Environment and Public Works and House Committee on Transportation and Infrastructure*

*"Impacts of the Proposed Waters of the United States Rule on State and Local Government"*

Chairmen Inhofe and Shuster, Ranking Members Boxer and DeFazio, Members of the Senate Committee on Environment and Public Works and House Committee on Transportation and Infrastructure, thank you for this opportunity to discuss the Environmental Protection Agency's proposed rule to redefine the "Waters of the United States" and the significant negative impact such a rule would inflict on states and the landowners within their borders.

Respect and protection of private property rights sets the United States apart from other nations and has fueled the greatest expansion of economic freedom the world has ever known. Indeed, private property rights are among the foundational rights of any functional democracy, not just ours.

President Obama's Environmental Protection Agency currently stands poised to strike a blow to private property rights, through a proposed rule that radically expands EPA jurisdiction by placing virtually all land and water under the heavy regulatory hand of the federal government.

The Proposed Rule aims to redefine what constitutes "navigable waters" or "waters of the United States" – a term that long been understood to include only significant bodies of water capable of serving as conduits for interstate commerce. The proposed rule redefines those terms to now include virtually every body of water in the nation, right down to the smallest of streams, farm ponds and ditches. This is a naked power grab by the EPA.

Messrs. Chairmen, the EPA should undoubtedly have a role in solving interstate water quality issues. That role should not, however, be so expansive so as to render virtually every property owner in the nation subject to often unpredictable, unsound, and Byzantine federal regulatory regimes. When the states are cut out of the loop in favor of federal regulators, landowners are left lobbying distant federal bureaucrats when the system wrongs them – and wrong them it will.

Simply put, the proposed rule is a classic case of overreach, and flatly contrary to the will of Congress, who, with the passing of the Clean Water Act, decided that it was the states who should plan the development and use of local land and water resources.

The EPA has been generally dismissive of these concerns brought by states, local governments and individual citizens, with their primary tactic being an ineffective public relations campaign

to sway opinions in rural America. EPA Administrator Gina McCarthy has been documented as dismissing many concerns wholesale — calling them “ludicrous” and “silly” — while also asserting that the proposed rule is all about “protecting waters” and providing clarification.

To Administrator McCarthy, who appeared before you today, I say: pardon my skepticism, but these reassurances are from the same administration that preyed on the “ignorance” (their words, not mine) of the American voters to sell them on a federal takeover of healthcare, with lies like “if you like your insurance, you can keep your insurance.” So, just as President Reagan told us, “Trust, but verify,” we would like to trust you, but something does not add up. This rule smells like far more than mere clarification; indeed, it reeks of federal expansion, overreach, and interference with local land use decisions.

Notably, there are several United States Supreme Court decisions illustrating that the intended regulatory jurisdiction of the EPA has been limited primarily to the “navigable waters” of the United States, with all other waters rightly left for the states to regulate.

At the time the Clean Water Act (CWA) was passed, the Supreme Court had previously defined the “navigable waters of the United States” as interstate waters that are navigable in fact or readily susceptible of being rendered so. [The *Daniel Ball*, 10 Wall. 557, 563 (1871)]. More recently, the Court decided *Solid Waste Agency of Northern Cook County v. Army Corps of Engineers* [531 U.S. 159 (2001)], known as SWANCC, and *Rapanos v. United States* [574 U.S. 715 (2006)]. These two cases more clearly specify the limits of federal jurisdiction under the CWA, placing two significant limitations on federal jurisdiction. First, the Court has made clear that any examination of federal jurisdiction must begin with the understanding that Congress intended the States to retain primacy over the development and use of local land and water resources. Second, the Court made clear that federal jurisdiction is only proper over water that has a continuous surface connection to a “core” water.

In *SWANCC*, the Court ruled that the Army Corps of Engineers exceeded its authority by attempting to regulate “non-navigable, isolated, intrastate waters,” such as seasonal ponds. The Court explained that in enacting the CWA, Congress intended to preserve the States’ historical primacy over the management and regulation of intrastate water and land management.

In *Rapanos*, the Court described two different tests for when a secondary water can be considered a “water of the United States.” A four-Justice plurality thought the question turned on whether the water has a continuous surface connection to a core water, while Justice Kennedy’s concurring opinion examined whether a water has a “significant nexus” to a core water.

With this Proposed Rule, the EPA has attempted to transform Justice Kennedy’s concurring opinion in *Rapanos* into a regulatory blank check for themselves. But the Proposed Rule’s *ad hoc* approach is certainly contrary to the test adopted by the *Rapanos* plurality and is broader than even Justice Kennedy would permit.

In addition, and critically, the proposed rule’s inclusion of this vague, catch-all category defeats the EPA’s claimed purpose of the rule of bringing “transparency, predictability and consistency” to the scope of CWA jurisdiction and land-use decisions. Instead, the EPA has simply redefined the meaning of “navigable waters” in an extraordinarily broad way, so that any land owner may

be subject to onerous permitting requirements or severe civil penalties if violated, even if unknowingly.

Oklahoma has seen firsthand how the federal government, specifically the EPA, abuses its regulatory power in states that have interests in energy, farming and ranching. The states are not, and should not be used as, a vessel to carry out the misguided visions of bureaucrats in Washington, who often seem to have little regard for how their actions negatively impact the economy and private property rights.

During the comment period for this rule, Oklahoma filed its objections to the rule. Additionally, as the chief law officer of the state of Oklahoma, I can say with confidence that if the EPA continues forward with this rule as proposed, the rule will be challenged in court.

If this rule is issued as proposed, we will all live in a regulatory state where farmers must go before the EPA to seek permission to build a farm pond to keep their livestock alive, where home builders must seek EPA approval before beginning construction on a housing development that contains a dry creek bed, and where energy producers are left waiting for months or even years to get permits from the EPA, costing the producers tens, if not hundreds, of thousands of dollars that inevitably will be passed on to consumers.

Messrs. Chairmen, the EPA's proposed rule is unlawful and must be withdrawn. We urge the EPA to meet with state-level officials who can help the agency understand the careful measures that states already have in place to protect and develop the lands and waters within their borders. We urge the EPA to listen to Congress regarding the intent of the law to limit the regulation of non-navigable waters. But most of all, we urge the EPA to take note of the harm that its rule will do to the property rights of the average American and their ability to make land use decisions.

Thank you for the opportunity to speak to your committees.

**The Next Supreme Court Justice**

By Scott Pruitt

When Justice Antonin Scalia passed away this February, talk almost immediately turned to who would replace him. But it's hard to fathom how such a man could be "replaced." Justice Scalia was without a doubt the most influential jurist in our generation. Even those who vehemently disagreed with him acknowledge his profound impact. His scholarship and judicial opinions, through brilliance and wit, transformed how we think about the law and the Constitution. He inspired a generation of law students and lawyers. He provided the foundation for the works of judges and legislators, as well as attorneys general like myself. And he challenged those opposed to his ideas to sharpen their arguments to meet the force of his logic.

Many of those who knew Justice Scalia will attest that his brilliance was matched only by his warmth, cheer, and grace. I personally was privileged to experience this truth. I was visiting Washington, D.C. last year, about to head back to Oklahoma, when my good friend Leonard Leo, Executive Vice President for the Federalist Society, invited me to stay some extra time to have dinner with a few friends. One of them was Justice Scalia. I cannot express the joy I experienced having the opportunity to pray over a meal with this man, whom I greatly admired, and to break bread with him as we shared stories and our mutual love for this country and its Constitution. He will be deeply missed.

As I've had time to reflect on his legacy, and my hopes for the person who will take his seat on the Supreme Court, I wanted to share with you some of the principles I believe Justice Scalia stood for, and that I pray the next Justice will share. First, as a scholar and a judge, Justice Scalia championed the idea that the law, from statutes to the Constitution, must be applied according to its text, and only its text. Judges should not apply the law based on what is good policy or what they guess Congress may have wanted (but did not express) in passing a law. This idea may be simple and obvious to us now, but before Justice Scalia, it was rare for courts to faithfully apply the law as written and only as written. Through the force of argument and relentless dedication, Justice Scalia was able to transform the legal culture into paying attention first and foremost to the text of the law. As his colleague liberal Justice Elena Kagan declared, thanks to Scalia, "we're all Textualists now." The next Justice must have the humility and rigor to be faithful to the text of the law.

Determining the meaning of that text led Justice Scalia to the second great cause of legal career, Originalism. In Justice Scalia's view, the words of the law should be understood just as they were understood by the people when the law was enacted—also known as the "original public meaning." For example, if you strike a bargain with someone, and later there is a dispute about that bargain, how do you interpret the words of your contract? Do you look to what the words of the contract meant at the time you agreed to them? Or do you look to what those words mean to someone else ten or fifty years after the fact? There are some who believe that the meaning of words in the law change over time, untethered to history or any objective inquiry. What is legal one day could be illegal the next without any changes to the words of the law. Justice Scalia rejected that notion and

held fast to the idea that the meaning of the words of the law is fixed, and it is the meaning ascribed to the words by the people at the time they were enacted. *That* is the law the people or their representatives agreed to and voted on, and no other. If later the people see fit to change the law, finding the text outdated or ill-advised, it is for them to change it, not for unelected judges. The next Justice must be an Originalist.

These two principles—Textualism and Originalism—are ultimately rooted in a third characteristic of Justice Scalia’s jurisprudence: An unwavering respect for the institution of Democracy. Laws, including the Constitution, are only legitimate to the extent that they emanate from the people. The Constitution is not an autonomously evolving document that sprouts forth new rights and obligations that the people never intended nor voted to include. Accordingly, like Justice Scalia, judges should reject the invitation to discover new “rights” in the Constitution. They should respect the constitutional prerogatives of the people to pass laws through their democratically-elected legislatures, limited only by the restraints actually put in the Constitution by vote of the people. The next Justice should stay strong against the temptation to exalt his or her own wisdom over the wisdom of the people. Doing any less fails to recognize that we live ultimately in a democracy, not in a society in which judges are our rulers.

This caution against creative interpretation of the Constitution must be balanced with a fourth characteristic of Justice Scalia’s life work: Vigorous and tenacious enforcement of the rights and provisions actually written in the Constitution. When a right was firmly rooted in the Constitution’s text and history, there was no more ardent advocate for that right than Justice Scalia. He was often more passionate in defense of such rights than even his liberal colleagues. From the right of free speech to the rights of criminal defendants—like the right to freedom from unwarranted searches or the right to confront your accuser—Justice Scalia was unmatched in his defense of constitutional liberties. Beyond enumerated individual liberties, Justice Scalia also recognized that the Constitution’s primary protection of liberty is its structure—of checks and balances between branches, of the separation of powers between the federal government and the states. He consistently held the government to account in ensuring that it was acting pursuant to proper authority and procedure. In short, Justice Scalia rejected the judicial activism of inventing law while embracing judicial engagement by ensuring that the limits on government are strictly enforced. The next Supreme Court Justice must be similarly engaged.

Having a Justice in the mold of Justice Scalia on the Supreme Court may be more important now than it has been in half a century. If you are a legal conservative—a Textualist, an Originalist, a Constitutionalist—there is some to gain, but an enormous amount to lose, in the appointment of next Associate Justice. Not since the New Deal has the country had a conservative majority on the Supreme Court. During the last sixty years, the Court has either been decidedly liberal or has been split between liberals and conservatives. This means that over the last 25 years, the Court’s most controversial and closely-divided decisions sometimes led to a liberal outcome, sometimes to a conservative one. This was the case at the time of Justice Scalia’s death—four unwaveringly liberal Justices (Ginsburg, Breyer, Sotomayor, and Kagan), three solidly conservative Justices (Scalia,



Thomas, and Alito), a fourth who votes conservative much of the time (Chief Justice Roberts), and one swing-vote (Justice Kennedy). Replacing Justice Scalia with a liberal would fundamentally alter that balance, providing the liberal wing of the Court with a solid five-justice majority that will ensure all controversial decisions will have only one possible outcome. By contrast, if Justice Scalia is replaced by a conservative like himself, the status quo remains a closely-divided Court where ideologically-charged cases could come out either way.

Make no mistake: The liberal Justices of the Court vote as a solid block, rarely departing from one another. Whereas a conservative Justice may occasionally for reasons of judicial philosophy depart from what some might consider the “conservative” outcome—as Justice Scalia often did—one is hard-pressed to find many decisions where a liberal Justice’s vote is ever in question. For example, in the Supreme Court’s 2014-2015 term, all four liberal Justices agreed with each other over 90% of the time—more agreement than any single conservative Justice had with another conservative Justice. By contrast, Chief Justice Roberts agreed with Justice Thomas in only 70% of cases. If the liberal wing of the Court has a five-Justice majority, we would be wise to expect that no controversial decision of the Supreme Court will ever cut in conservatives’ favor.

From a broad perspective, this is what is at stake with the appointment of the next Supreme Court Justice. But assigning labels like “liberal” and “conservative” can sometimes be unhelpful when speaking of an institution as complex as the U.S. Supreme Court and cases as nuanced as those before the Court. So I want to provide a survey of the issues that the Court might decide in the upcoming years once a ninth Justice is appointed.

It might be appropriate to begin with one of our core liberties, without which our democracy cannot function: The freedom of speech. At issue these days is the freedom to spend—or not spend—money on political speech. For example, before Justice Scalia passed away, the Supreme Court voted to grant review of a case called *Friedrichs v. California Teachers Association*, in which public-sector employees wanted the right to be free from paying compulsory union dues. This case asked an important question about free speech: Can the government force you to contribute money to a political cause you oppose? But Justice Scalia died before the case was decided. The Court split evenly 4-4, leaving the issue to ultimately be resolved by a future Supreme Court—and the deciding vote to be cast by the future ninth Justice.

On the other side of the political speech coin is the continued vitality of the Supreme Court’s *Citizens United* decision. Let me clarify a common misconception: *Citizens United* did *not* hold that corporations may give unlimited amounts to political candidates. In fact, the laws limiting the amount of campaign contributions to a few thousand dollars are still valid and in place. Rather, in *Citizens United*, the Supreme Court held that the government may not limit the amount of money anyone—including individuals, unions, and corporations—spends on their own, independent political advocacy and speech. But this decision was decided 5 to 4, with Justice Scalia in the majority. If his vote is replaced with someone who disagreed with *Citizens United*, it very well might be overturned.

The First Amendment also protects our religious liberty—another core right at stake in the coming years. For example, before Justice Scalia passed away, the Supreme Court granted review in *Trinity Lutheran Church of Columbia v. Pauley*, which is to decide whether certain state laws called “Blaine Amendments” are constitutional. Blaine Amendments, if you are not familiar with them, are provisions added to state constitutions during a time of anti-Catholic fervor that prevent any state funds from being used to benefit a church or a religion for *any* reason. This means that if a state government is running a program that provides resources to private institutions, it must discriminate against those institutions that happen to be religious, even if the program that is being funded is not at all religious. In this case, the State of Missouri ran a program providing scrap tires for flooring in playgrounds to make them more safe for children. But because of the Blaine Amendment, the State refused to provide tires for a Church’s playground. With other Attorneys General, I filed a brief supporting the effort to get these discriminatory Blaine Amendments struck down. The new justice is likely to cast the deciding vote on whether to remove this legacy of bigotry and hostility to religion from our laws.

The freedom of religious conscience may also hang in the balance. We have seen this in the *Hobby Lobby* case, where the Supreme Court protected the right of religious employers not to fund abortions. So too in the *Little Sisters of the Poor* case, where the Supreme Court has, for now, narrowly avoided the question of whether Catholic nuns can be required to have their health insurance plan cover contraception. On the horizon are other cases where our freedom of conscience is at issue. One case recently appealed to the Supreme Court involves pharmacists objecting to a Washington law that requires them to sell abortion drugs even when supporting abortion violates their beliefs. Similarly, whether civil rights laws can be used to force, for example, a Christian photographer to use her artform to celebrate a same-sex wedding may also reach the Court soon. All of these First Amendment issues, from freedom of speech to freedom of religion, need a new Supreme Court Justice that is dedicated to ensuring that those freedoms are vigorously protected.

Moving from the from the First Amendment to the Second, the next Justice will likely cast the deciding vote on whether to continue to recognize an individual right to keep and bear arms, or whether to make that right so narrow that it is, for practical purposes, read out of existence. For example, the Ninth Circuit Court of Appeals in California just this month held that the Second Amendment does not forbid laws that effectively prohibit most people from carrying a firearm in public. Without a Justice willing to stand up for an effective right to bear arms, the Second Amendment might very well be a dead letter.

Numerous more issues hang in the balance at the Supreme Court. My office defended the most recent case challenging the death penalty and forms of execution, but with an additional liberal Justice on the Court, the death penalty might soon meet its own swift demise. The list can go on: affirmative action, the regulation of the abortion industry, and voting laws are all potential subjects of a deciding vote from the person filling Justice Scalia’s seat on the Supreme Court.

But I want to focus on one final set of constitutional questions that have reached their tipping point in recent years and could be in the hands of the future ninth Justice. Those questions have to do with the structure of our Constitution. Contrary to what might be popular belief, the primary guarantee of our liberty in the Constitution is not the Bill of Rights, but that the Constitution has set up a structure that prevents accumulation of power and oppression of the people. It does so in part by separating power between organs of government. Power is divided between the states and the federal government. Within the federal government, it is further divided between the Executive, Legislative, and Judicial branches. The founders expected that those in the different organs of government would be jealous for their own power, zealously defending it from other parts of government that would attempt to seize it. In this manner, the structure of the Constitution provides the greatest and broadest guarantee of liberty—by limiting power at the root.

But these structural protections are under threat. Since at least the New Deal, the President has been accumulating more and more power, and the current administration has taken this quest for unilateral authority to new levels. For example, the President has engaged in numerous attempts to effectively rewrite existing laws—the job of Congress—when Congress refuses to pass laws that he desires. Last year the President’s Environmental Protection Agency instituted a new “Clean Power Plan,” which is his attempt to fight climate change absent any authority granted by Congress, by effectively attempting to put the coal industry out of business. The State of Oklahoma, along with 28 other States, sued to have this rule blocked. In his last act on the bench, Justice Scalia voted to put this Clean Power Plan temporarily on hold while it is being litigated, providing a good indication that five of the Justices thought it to be unlawful. But with Justice Scalia gone, it will likely be his replacement that finally decides this important issue of executive power and energy policy.

The President’s attempts to rewrite laws doesn’t end there. The EPA and the Army Corps of Engineers recently rewrote the definition of the Clean Water Act’s term “Waters of the United States” (WOTUS) to include almost every puddle and pond in the country, meaning that the Executive will seize authority to regulate that water away from the states. Again, Oklahoma and 26 other States have challenged this power grab. Most recently, the President and his agencies have decided to unilaterally create mandatory accommodations for transgender people by rewriting laws like Title IX, which prohibits discrimination based on “sex.” In the President’s world, the word “sex” in the law no longer means biological sex, but rather means “gender identity,” which the administration defines as a person’s “internal sense of gender.” A new Justice will likely cast the deciding vote on whether courts should check this type of executive overreach.

In addition to virtually inventing new laws to enforce, the second way in which the President has expanded his power is by deciding not to enforce laws he simply does not like. This effectively gives him the power to make law by repealing it. He has done so with the immigration laws by designating entire classes of people as having “legal status” and therefore cannot be deported, even though the law very clearly states that these people are unlawfully present. Similarly, the Administration has effectively legalized marijuana in certain states by refusing to enforce federal laws prohibiting it in states that promote its recreational use. The extent to which the President must follow his

constitutional mandate to “take care that the laws be faithfully executed” is a hotly contested issue on which the next Supreme Court justice might provide the pivotal vote.

One final note on what is at stake with the next Supreme Court Justice. The next Justice will not only decide the outcome in pending cases, he or she will influence the *type* of cases that make it to the Court in the first place. Businesses are less likely to challenge exorbitant or unfair rulings against them knowing they have a majority of Justices hostile to their interests. Conservatives will be less likely to put their time and resources in defending the Constitution if they know the Court won’t enforce it. Meanwhile, liberal groups will be emboldened to bring cases that attempt to rollback the progress made in the last decade on First Amendment and Second Amendment rights, among others. They will also attempt to bring cases attempting to establish new constitutional requirements, such as a property right to government welfare payments, a right to a free attorney in civil (not just criminal) cases, a right to greater funds for public schools, a prohibition on racial disparities in criminal justice outcomes, an exception to the First Amendment for so-called “hate speech,” or a prohibition on all sex-segregated restrooms.

I do not mean to be alarmist, but it can hardly be doubted that the appointment of the next Supreme Court Justice could be the most legally-significant event for our country in a generation. If the next Justice is in the mold of Justices Ginsburg or Sotomayor, the rulings of the Court will shift dramatically to the left. If, on the other hand, the next Justice takes his principles and philosophy from Justice Scalia, the ideologically-balanced Court that we have grown accustomed to in the last quarter-century is likely to remain. As somebody whose job it is to defend the rights of my State before the courts, this turning point is obviously very important to me. But as I hope I have explained, the next Supreme Court Justice will also make decisions that touch on the rights of every American, from the most mundane portions of their daily life to their most important decisions. The next Justice’s decisive vote may come to define the nature of our government and our democracy for many years to come. That is what is at stake.