

Senate Environment and Public Works Committee
Hearing entitled, “Hearing on the Nominations of Kristine Svinicki (Reappointment), Annie Caputo and David Wright to be Members of the U.S. Nuclear Regulatory Commission, and the Nomination of Susan Bodine to be Assistant Administrator of the Office of Enforcement and Compliance Assurance of the U.S. Environmental Protection Agency.”

Tuesday, June 13, 2017

Questions for the Record for Susan Bodine

Ranking Member Carper:

1. The EPA’s Office of Enforcement and Compliance Assurance (OECA) is responsible for the civil and criminal enforcement of the nation’s environmental laws, a responsibility that all agree must be carried out with absolute impartiality. In fact, for decades, both Republican and Democratic administrations alike have had written policies limiting White House contacts with agencies that have investigatory and enforcement responsibilities. These policies have recognized that even a simple phone call from the White House to an agency inquiring about or flagging a specific matter can upset the evenhanded application of the law. We recently learned that Devon Energy, a strong political supporter of Scott Pruitt’s, informed the EPA just 5 days after Scott Pruitt was sworn in as Administrator that it was no longer willing to install air pollution technology or pay a high penalty to EPA for its illegal air emissions of cancer-causing benzene and other chemicals. We also know that Trump family casinos, hotels and golf courses have been the subject of EPA enforcement actions for violations of the Clean Air Act and Clean Water Act. Do you agree that it is essential that in making decisions, such as whether to launch an investigation, continue an investigation, proceed with an enforcement action, or close a matter OECA must be shielded from political influence and spared even the appearance of being subject to political influence or considerations?

Yes.

2. Will you commit to prevent any and all political efforts by the White House, the Administrator or others seeking to water down or prevent EPA enforcement actions against polluters who break the law? To that end,
 - a. Will you commit to restricting communications between OECA and the White House staff regarding specific investigations and enforcement matters?

Yes.

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

Yes.

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

Yes.

3. In the past, the EPA Enforcement Office has led significant national enforcement cases. For example, EPA responded forcefully in response to Volkswagen's sale of cars that emitted illegal levels of air pollutants because they cheated on their emissions testing in all 50 States. The Tesoro Corporation, to cite another example, was in violation the Clean Air Act in refineries located in six states, from Hawaii to North Dakota. Do you agree that it would have made no sense for all 50 States to file separate enforcement actions against VW, or for the Tesoro refinery in Hawaii to be subject to a different settlement from one that was reached separately in North Dakota?

Yes.

Do you believe that avoiding duplicative and conflicting State efforts is one reason that that EPA enforcement should be providing national leadership, not abdicating it?

I do not believe that EPA is abdicating national leadership. I agree that EPA plays an important role in avoiding duplicative and conflicting enforcement efforts and ensuring there is a level playing field across the country.

4. For years, in lieu of the payment of fines, EPA and companies found to have violated environmental laws have entered into agreements to establish Supplemental Environmental Projects, which are projects that improve the environment. Do you agree that these are a valuable tool that should remain in the enforcement toolbox?

Yes, consistent with existing OECA policy on SEPs.

5. My colleagues and I have sent 14 oversight letters to Scott Pruitt – and ten of them have not been answered. Moreover, we have learned that the White House has actually told agencies not to answer Democrats' mail. Do you agree that federal agencies should fully answer their mail, and do you commit to providing all Members with the information they request of you if you are confirmed?

It is my understanding that Administrator Pruitt has responded to 11 of 21 letters sent by EPW members.

As I stated in my hearing, I believe that Congressional oversight is very important. If confirmed as the Assistant Administrator for Enforcement and Compliance Assurance, I intend to be consistent with past agency practices with respect to responding to individual members of Congress. This includes complying with EPA's long-standing policy of not releasing confidential enforcement information – no matter who is asking for such information

6. If Congress adopts the fiscal year 2018 Trump Budget for OECA, 757 full time employees, or FTEs, will need to be fired. All those employees won't depart EPA the minute Congress enacts the appropriations bill – layoffs of that magnitude would take some time. The Trump Budget only provides \$419 million dollars in total for the Enforcement office – even though paying just the salaries for the employees cost \$440 million dollars last year. Do you agree that the fiscal year 2018 Trump Budget proposal

for EPA's Enforcement office can't be implemented as written, because there isn't even enough money in it to make payroll, let alone conduct the enforcement activities for which the office is currently responsible?

The President's budget is seeking \$12 million for voluntary early retirement. In addition, 20 percent of the workforce is at or over retirement age. Accordingly, as Administrator Pruitt stated on June 15, 2017 before the Interior, Environment, and Related Agencies Subcommittee of the House Appropriations Committee, it is my understanding that EPA expects to see significant reductions in FTEs due to buyouts, retirements and a hiring freeze.

7. The President proposed a 24% budget cut to the EPA Enforcement office, saying that EPA will "take a step back from enforcing laws to protect clean air and water in most cases," under the assumption that in most cases, States will do that work themselves. The fiscal year 2018 budget proposal *cuts* the grants that States have used to supplement their own enforcement efforts by 44%. Do you agree that if there are double-digit cuts to the EPA enforcement office and double-digit cuts to State enforcement and compliance grants, there will be less enforcement and compliance capacity to avoid, deter and correct environmental crimes?

Categorical grants to support state implementation of the Clean Air Act, the Clean Water Act, and RCRA are proposed to be reduced by 30%, in the President's budget request. These grants often come with conditions that limit state flexibility.

The states are the primary enforcers of most environmental laws and I believe that EPA's enforcement program should respect that strong role. As the Environmental Council of the States (ECOS) noted in the cooperative federalism paper they released on June 12, 2017, states should be the primary enforcement authority for delegated programs and EPA should step in only when needed or appropriate. If confirmed, I will work closely with state agencies who have delegated authority to implement federal law to increase flexibility in the use of federal categorical grants and avoid duplicative efforts and wasted resources.

I agree with the statement in the ECOS paper that recasting the state-federal relationship to embrace cooperative federalism can result in:

- *"Equal or greater environmental and public health protection and outcomes through smart deployment of resources on critical priorities;*
- *Reduced operating costs due to a more efficient division of services, streamlined operating relationships, best practice sharing, and elimination of redundancies across states and divisions of EPA;*
- *More effective allocation of limited resources by determining the best roles and functions states and EPA are each best suited to perform; and,*
- *With time, fewer disputes over who should take credit for successes and achievements, and who is responsible for decisions and actions that result in setbacks."* <https://www.ecos.org/documents/cooperative-federalism-2-0/>

8. Do you agree that having a central enforcement office at EPA headquarters is needed to pursue national and significant enforcement actions, provide technical assistance to States and ensure consistency among State enforcement efforts?

Yes.

Senator Cardin:

In a May 2013 Senate EPW Hearing on Water Quality Trading and Nutrient Management in front of the Water and Wildlife Subcommittee that I Chaired at the time,¹ you testified in favor of nutrient pollution trading, and in particular in favor of transferring public taxpayer dollars to agricultural businesses in exchange for their installing pollution controls. You also testified, however, that it would be unnecessary to check whether the farmers actually installed those controls.

However, as an attorney at Barnes and Thornburg you advised the State Ag and Rural Leaders group that basic regulations for agricultural pollution - such as water quality criteria and total maximum loads for nutrient pollution - were unnecessary and too much of a financial burden on business.²

Since the Chesapeake Bay TMDL was established in Dec. 2010, the Bay has seen significant improvements to water quality flowing from initiatives including the Chesapeake Bay total maximum daily load program.

9. How would you approach this issue as head of OECA? Do you intend to implement and enforce those regulatory controls faithfully and advice while working with industry?

If confirmed, I would enforce applicable regulatory requirements, including those in the Chesapeake Bay TMDL, which was upheld by the Third Circuit in July 2015.

Senator Markey:

10. There is tremendous diversity across states in this country, and occasionally states have difference of opinions on how to approach a problem. One of the roles of the federal government is to be an arbiter among states.
 - a. What is your philosophy on how interstate pollution conflicts should be handled?

I believe that OECA plays an important role in maintaining a level regulatory playing field by ensuring states enforce the federal laws that they are authorized to carry out. That can include taking action in the absence of state action.

- b. What is the EPA's role in resolving interstate pollution conflicts?

¹ <https://www.epw.senate.gov/public/index.cfm/hearings?ID=AD7B2064-9A2F-0F47-5E2D-581F6FC46468>

² "Environmental Challenges Facing the Agricultural Community," Legislative Agriculture Chairs Summit, presentation dated January 16, 2011

Under our environmental laws, EPA approves or establishes standards and controls at a level that protects other states. For example, water quality standards under the Clean Water Act must protect downstream waters. Under the Clean Air Act, states must establish controls sufficient to avoid contributing to nonattainment of a national ambient air quality standard in a downwind state. The Office of Water reviews and approves state water quality standards. The Office of Air and Radiation reviews and approves state implementation plans. OECA’s job is to ensure states enforce the standards and plans that the EPA program offices have approved, and to step in to take federal enforcement action where necessary and appropriate.

11. Shortly after taking office as Oklahoma Attorney General in 2011, Scott Pruitt dismantled the office's Environmental Protection Unit, established to pursue violators of the state's environmental laws. In his FY18 budget, President Trump has proposed to cut the office of enforcement and compliance budget by 24% while also cutting state categorical grants by 44%. Categorical grants are funds spent to implement pollution control programs and are used to monitor pollution releases and enforce pollution limitations.

- a. Are you concerned that the EPA administrator may decide to similarly dismantle the EPA office of compliance, as he did in Oklahoma?

No.

- b. The reduction in staffing and resources that you will face if Trump’s budget is enacted as proposed will surely hamper the ability of the office to accomplish its stated goals. What do you expect will be most challenging operating with such a limited budget?

Changing the relationship between EPA and states to embrace cooperative federalism will be a challenge, but I agree with ECOS that such a change can result in:

- *“Equal or greater environmental and public health protection and outcomes through smart deployment of resources on critical priorities;*
- *Reduced operating costs due to a more efficient division of services, streamlined operating relationships, best practice sharing, and elimination of redundancies across states and divisions of EPA;*
- *More effective allocation of limited resources by determining the best roles and functions states and EPA are each best suited to perform; and,*
- *With time, fewer disputes over who should take credit for successes and achievements, and who is responsible for decisions and actions that result in setbacks.”* <https://www.ecos.org/documents/cooperative-federalism-2-0/>

- c. Do you think it will be easier or harder to catch and hold polluters accountable if the categorical grants given to states to implement and oversee environmental programs is cut by nearly half?

I expect EPA and states to use all tools in the toolbox to ensure compliance with federal environmental laws. By avoiding duplication of effort and increasing coordination and communication, I believe that EPA and states can maintain enforcement and compliance assurance efforts in a time of constrained budgets.

- 12. As the widespread lead contamination of Flint Michigan's water supply starkly reminds us, environmental burdens are often borne disproportionately by low income and minority communities. Yet the Trump FY18 budget proposed to completely eliminate the Environmental Justice Program within OECA.

- a. How do you expect this budget cut will affect the office of compliance's focus on environmental justice issues?

I do not expect it to have any effect. Addressing disproportionate adverse impacts on low income and minority communities is carried out by each EPA program office including OECA. In OECA, that function is not performed by the Office of Environmental Justice.

- b. What are your plans on reducing toxic pollution and disproportional burden of pollutants in communities of color?

EPA writes regulations and sets standards to protect everyone. To avoid disproportionate adverse effects it is important to understand whether a community has a disproportionate level of exposure. This requires information and communication. Using a mapping tool like EJSCREEN, EPA can identify locations where additional information collection is appropriate to determine if a disproportionate adverse effect exists.

- c. What will you do to increase enforcement and oversight in communities that are bearing the burden of environmental hazards?

If confirmed, I would expect OECA to continue to use tools like EJSCREEN to identify locations that are appropriate for an increased focus on enforcement and compliance assurance.

- 13. 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 your office? Please explain.

I am not familiar with EPA’s EJ2020 action agenda. If confirmed, I will seek a briefing on this guidance.

14. Last year entitled, “The ABCs of PCBs: A Toxic Threat to America’s Schools.”³ 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. There are multiple local education agencies and schools that have been seeking the advice and assistance of the EPA in complying with PCB laws and regulations. Will you commit to assisting these agencies and schools with their compliance efforts? How will you ensure that the guidance EPA provides across all Regions of EPA is consistently and proactively provided?

EPA’s guidance on PCBs in building materials was issued by the Office of Land and Emergency Management (OLEM) and that office and the Regional PCB coordinators are the primary implementers of that guidance.

https://www.epa.gov/sites/production/files/2016-03/documents/pcbs_in_building_materials_questions_and_answers.pdf

That guidance points out that EPA’s goal is to reduce exposure and that enforcement may not be the best tool to achieve that goal. If confirmed, I will seek to ensure there is communication with OLEM and the Regions to identify situations where there are significant risks to public health that are not being addressed, where enforcement may be appropriate.

15. Explain your philosophy on cooperating with other federal agencies enforcement programs. How will you institute and continue cooperative enforcement work?

If confirmed, I would ensure that EPA continues to work closely with the Department of Justice (DOJ) to enforce federal environmental law. For judicial enforcement actions, DOJ represents the United States. EPA also needs to communicate with agencies that share enforcement authority. For example, the Coast Guard implements CERCLA, the Oil Pollution Act, and section 311 of the Clean Water Act in the coastal zone, while EPA implements these authorities in the inland zone. The Corps of Engineers has authority to enforce violations of section 404 of the Clean Water Act. Federal land management agencies also have authority to issue orders under CERCLA relating to hazardous substance releases on the property they manage. If I am confirmed, I will ensure that there is continued communication with agencies that share enforcement authority with EPA.

16. What is your plan on increasing capacity and focus on ensuring compliance with existing and new TSCA regulations?

The Lautenberg Act requires EPA to issue a number of new regulations. If I am confirmed, I will work with the Office of Chemical Safety and Pollution Prevention to ensure the regulated community is aware of their new obligations and will take

³ <https://www.markey.senate.gov/imo/media/doc/2016-10-05-Markey-PCB-Report-ABCsofPCBs.pdf>

enforcement action where appropriate.

17. According to the EPA website “The mission of EPA is to protect human health and the environment.” If confirmed, do you commit to upholding the EPA mission of protecting human health and the environment?

Yes.

18. The EPA’s website also states that its purpose is to ensure “the U.S. plays a leadership role in working with other nations to protect the global environment.” If confirmed, do you commit to upholding the EPA purpose of ensuring the U.S is a leader in protecting the global environment?

If confirmed, I will enforce U.S. law.

Senator Sanders:

Lake Champlain TMDLs

19. Lake Champlain is one of Vermont’s most treasured environmental features. Tourism and property values are tied to the health of the lake—swimmable, fishable and drinkable waters. Run-off—including from lawns, paved roads and parking lots, waste-water treatment facilities, and farmlands—contributes to high levels of phosphorus that spur toxic algae growth. In 2016, EPA released new phosphorus limits for the lake by establishing a TMDL (Total Maximum Daily Load). If confirmed, will you enforce clean-up of Lake Champlain through this TMDL?

If confirmed, I will enforce the regulatory features of any TMDL that is in effect. That includes the Lake Champlain TMDL.

Climate change

20. President Trump has suggested in the past that climate change is a hoax. Is the President correct? Is climate change a hoax?

The climate has always been changing.

21. Do you agree with the vast majority of scientists that climate change is real, is caused by human activity, and that we must aggressively transition away from fossil fuels toward energy efficiency and sustainable energy like wind, solar, and geothermal?

OECA is charged with assuring compliance with environmental laws and enforcing those laws when there is non-compliance. That includes enforcing any regulations that are in effect that are related to greenhouse gases. These include:

- **Greenhouse Gas Reporting Rule;**
- **Greenhouse Gas/CAFE standards for cars and trucks;**

- **Prevention of Significant Deterioration and New Source Reviews for major sources that already need to obtain Clean Air Permits pursuant to the Supreme Court’s 2014 decision in *Utility Air Regulatory Groups v EPA*.**

If confirmed, I will work to ensure compliance with all applicable regulations, including climate-related regulations.

22. Do you agree with the vast majority of scientists that the combustion of fossil fuels contributes to climate change?

See my response to question 21, above.

23. Do you believe that the EPA has a role in reducing the public health harms caused by the extraction and use of fossil fuels as defined under the 2009 Endangerment Finding?

Extraction and use of fossil fuel are regulated under a variety of federal environmental statutes and if confirmed I would enforce those statutes.

24. If confirmed, how will you work to address climate change at EPA?

See my response to question 21, above.

25. Do you support President Trump’s decision to leave the Paris climate agreement?

Yes. Given the uncertainty over the accuracy of the climate models, particularly over sensitivity of temperature to CO₂, I do not believe it is appropriate to mandate a complete overhaul of the U.S. energy portfolio and constrain our gross domestic product – actions that some have estimated could cost the U.S. economy nearly \$3 trillion over the next several decades --- while leaving U.S. manufacturing at a competitive disadvantage with other countries that are not similarly constrained.

Budget cuts and changing EPA priorities

26. The Office of Enforcement and Compliance Assurance ensures compliance with environmental laws and regulations. The office is facing: 1) proposed cuts of more than 20% in the FY18 budget compared to FY17, and 2) new stated agency priorities, such as primary environmental enforcement by the states.

Under these severe financial constraints and shifting priorities, if confirmed, how will you ensure that OECA is able to effectively address civil and criminal lawsuits against environmental polluters and ensure compliance with environmental laws?

If confirmed, I will work closely with state agencies who have delegated authority to implement federal law to avoid duplicative efforts and wasted resources.

I agree with the statement in the ECOS paper that recasting the state-federal relationship to embrace cooperative federalism can result in:

- *“Equal or greater environmental and public health protection and outcomes through smart deployment of resources on critical priorities;*
- *Reduced operating costs due to a more efficient division of services, streamlined operating relationships, best practice sharing, and elimination of redundancies across states and divisions of EPA;*
- *More effective allocation of limited resources by determining the best roles and functions states and EPA are each best suited to perform; and,*
- *With time, fewer disputes over who should take credit for successes and achievements, and who is responsible for decisions and actions that result in setbacks.”* <https://www.ecos.org/documents/cooperative-federalism-2-0/>

If I am confirmed, I expect that OECA will continue to take enforcement where appropriate or necessary. In particular, OECA is uniquely qualified and situated to take enforcement action against companies or sectors with facilities in multiple states who are violating the law. OECA also is uniquely qualified and situated to bring criminal actions against egregious violators.

27. Given the proposed budget cuts, if confirmed, how will you ensure enforcement of clean-up activities at sites identified under the Comprehensive Environmental Response, Compensation, and Liability Act, Resource Conservation and Recovery Act, and other key environmental laws?

If I am confirmed, OECA will continue to pursue and enter into settlements with parties responsible for cleanup action. The amount varies from year to year as enforcement actions are resolved. For example, in 2016, EPA settlements resulted in commitments by private parties to perform \$1 billion worth of cleanup work. In 1984, Congress gave EPA the authority to collect and spend, without appropriation, monies collected from responsible parties to fund future cleanup actions. Currently, the Superfund Trust Fund is holding \$3.6 billion in special account (and some state cost share) funds as a result of successful OECA enforcement actions.

28. In February, it was reported by *Inside EPA* that the new administration was considering closing OECA and reverting enforcement duties to program offices. If confirmed, do you foresee returning any enforcement duties to EPA program offices? If so, which programs and areas of enforcement are most likely to be affected?

I am not aware of any plans to close OECA and return enforcement duties to the program offices.

29. The public depends on compliance and reporting data traditionally gathered by EPA to aid in identifying exposure to hazardous substances and areas for enforcement. If confirmed, how will you ensure the full and accurate collection of compliance and reporting data in light of proposed budget cuts?

If confirmed, I expect to continue to maintain, and, working with states on data quality, hopefully improve the Enforcement and Compliance History Online (ECHO) database.

30. With the Environmental Protection Agency planning to offer early retirement and buyout packages this year to comply with the President's effort to reorganize the federal government, reprioritization of the agency's goals, and proposed agency budget cuts of 30% compared to FY17, it has been widely reported that morale at the agency is at a new low. As one of the leaders of the agency, if confirmed, what will you do to address these reported declines in workplace satisfaction?

I have a deep respect for the EPA career staff. If confirmed, I will employ the same management style that I employed when I was the Assistant Administrator for the Office of Solid Waste and Emergency Response by seeking input from and listening to the career staff.

Conflicts of interest

31. As a lobbyist with Barnes & Thornburg between 2009 and 2015, you represented Saint-Gobain Containers. In 2010, Saint-Gobain agreed to pay a \$2.25 million civil penalty in a settlement of a case alleging 15 company facilities for glass bottle manufacturing violated the Clean Air Act and individual State Implementation Plans (SIPs). In addition, one of the firm's Performance Plastics division sites is now being considered for a Superfund designation. On September 9, 2016 EPA proposed to add the Saint-Gobain site in Hoosick Falls, New York to the National Priorities List (NPL), the nation's most contaminated hazardous waste sites targeted for long-term cleanup. Vermont's Chemfab factory in North Bennington is also a former Performance Plastics division site that has allegedly been linked to drinking water well contamination.

If confirmed, you would be in charge of making sure that companies like Saint-Gobain install the necessary pollution control technologies and conduct waste clean-ups.

As Assistant Administrator of OECA, would you have any active conflicts of interest with Saint-Gobain?

If confirmed, I would have no problem taking appropriate enforcement action against any company.

In connection with the nomination process, I have consulted with the Office of Government Ethics and EPA ethics officials to identify potential conflicts of interest under federal law and Executive Order 13770. I have entered into an ethics agreement that was approved by both EPA and the Office of Government Ethics and presented to this Committee. The EPA ethics counsel and the Office of Government Ethics confirm that I have no conflicts of interest.

Further, as I stated during my confirmation hearing, my representation of Saint Gobain Containers related to the encouragement of glass recycling, not regulatory matters. Saint Gobain Containers was formerly a corporation headquartered in Muncie, Indiana. The Saint Gobain Performance Plastics company referred to in your question is a separate entity that I have never represented. Saint Gobain Containers was purchased by Ardagh Glass in 2014.

Do you commit to recuse yourself in cases where there is a conflict of interest, or the appearance of a conflict of interest?

In connection with the nomination process, I have consulted with the Office of Government Ethics and EPA ethics officials to identify potential conflicts of interest under federal law and Executive Order 13770. I have entered into an ethics agreement that was approved by both EPA and the Office of Government Ethics and presented to this Committee. The EPA ethics counsel and the Office of Government Ethics confirm that I have no conflicts of interest. If a situation arises where there may be an appearance of a conflict of interest, then I will consult with the EPA ethics counsel to determine the appropriate course of action.

32. You have also represented the American Forest and Paper Association (AFPA). Members of the AFPA have hundreds of EPA enforcement actions against them, including International Paper, which is co-owner of the Curtis Specialty Paper Superfund Site in New Jersey. As Assistant Administrator of OECA, would you have any active conflicts of interest with members of AFPA?

In connection with the nomination process, I have consulted with the Office of Government Ethics and EPA ethics officials to identify potential conflicts of interest under federal law and Executive Order 13770. I have entered into an ethics agreement that was approved by both EPA and the Office of Government Ethics and presented to this Committee. The EPA ethics counsel and the Office of Government Ethics confirm that I have no conflicts of interest.

My representation of AFPA involved working with EPA to ensure that the forest products industry can continue to use secondary material like biomass as a fuel in their boilers. In states with a large forest products industry, like Maine, New Hampshire, Vermont, Washington, and Oregon, biomass from forest products residuals is an important fuel source. For example, it is used by the city of Burlington, VT, as well as by my son's alma mater, Middlebury College.

33. Do you commit to recuse yourself in cases where there is a conflict of interest, or the appearance of a conflict of interest?

In connection with the nomination process, I have consulted with the Office of Government Ethics and EPA ethics officials to identify potential conflicts of interest under federal law and Executive Order 13770. I have entered into an ethics

agreement that was approved by both EPA and the Office of Government Ethics and presented to this Committee. The EPA ethics counsel and the Office of Government Ethics confirm that I have no conflicts of interest. If a situation arises where there may be an appearance of a conflict of interest, I will consult with EPA ethics counsel to determine the appropriate course of action.

OECA staffing conflicts of interest

34. Patrick Traylor has just been named OECA's deputy assistant administrator. He has worked at Hogan Lovells since 1997—and as a partner since 2004—serving clients such as Dominion Energy, Koch Industries, and TransCanada. These three clients alone have been subject to numerous civil penalties for environmental violations (see below). If confirmed, what requirements will you put in place so that Traylor does not participate in OECA activities related to his previous clients? Do you commit to requiring him to recuse himself in cases where there is a conflict of interest, or the appearance of a conflict of interest?
- a. Since 2011, TransCanada has paid \$183,100 in penalties for seven cases of environmental violations for its pipelines, including one at the EPA. The agency has also been critical of environmental impact statements conducted on behalf of TransCanada projects. In September 2016, OECA sent a letter to the Federal Energy Regulatory Commission criticizing its environmental impact statement for a TransCanada compressor station and gas pipelines through Ohio, Pennsylvania, West Virginia and Kentucky. The EPA also criticized the State Department's environmental impact study of TransCanada's Keystone XL pipeline.
 - b. In April 2013, Dominion Energy agreed to pay a \$3.4 million civil penalty and spend approximately \$9.8 million on environmental mitigation projects to resolve Clean Air Act violations.
 - c. In 2000, Koch Industries paid the largest civil fine ever imposed on a company under any federal environmental law—a \$30 million civil penalty and \$5 million on environmental projects—to resolve claims related to more than 300 oil spills from its pipelines and oil facilities in six states. Since 2012, Koch Industries has generated another 25 EPA violations with total penalties of more than \$5 million.

If confirmed, I will make sure that all OECA staff recuse themselves from cases in which they have a conflict of interest and abide by their obligations under federal ethics laws and regulations and, where applicable, Executive Order 13770. If an appearance of a conflict of interest arises, I will consult with the EPA ethics counsel to determine the appropriate course of action.

Most pressing challenges

35. EPA's FY18 budget lists the following as priorities: clean water and drinking water infrastructure, work at Brownfield and Superfund projects, improving and protecting air quality, and ensuring the safety of chemicals. If confirmed, would these also be the most

pressing challenges that would deserve your and OECA's attention? If confirmed, how will you ensure OECA will do better to address these challenges?

If I am confirmed: OECA will continue to encourage investment in drinking water and clean water infrastructure by ensuring compliance with the Safe Drinking Water Act and the Clean Water Act; OECA will encourage brownfields redevelopment by making developers aware of the liability protections under the 2002 Brownfields Law as well as OECA's enforcement discretion policies; OECA will continue to seek settlements with Superfund responsible parties to secure cleanup commitments and cash out settlements; and OECA will continue to enforce Clean Air Act mobile source standards and work with states on compliance with stationary source Clean Air Act obligations. Finally, if I am confirmed, OECA will work with the Office of Chemical Safety and Pollution Prevention on assistance with the new TSCA regulations being developed under the Lautenberg Act.

Primary environmental enforcement by the states

36. Administrator Pruitt has said the states should take the lead in enforcing environmental laws. In Flint, Michigan, the lack of state enforcement put thousands of children at risk of lead poisoning due to prolonged exposure through the contamination of the city's drinking water. If confirmed, how will you ensure that states and EPA regional offices avoid another Flint-like public health disaster through appropriate enforcement of environmental laws?

I agree with the assessment of many that Flint was a failure of government at every level. If confirmed, I would make it clear that when EPA staff learn of risks to public health, like the Flint drinking water, they need to inform senior managers if their immediate supervisors fail to act. According to the EPA IG report on Flint, OECA headquarters staff did not know about the Flint drinking water until September 2015. OECA issued an emergency order directing state and local action in January 2016.

The failure of the City of Flint to act in a timely manner was in part due to perceived ambiguities in the regulatory responsibilities under the SDWA Lead and Copper rule. OECA is on the workgroup that is developing a revision of that rule. If confirmed, I will ensure that the obligations under the revised rule are clear.

In addition, the EPA IG recommended changing OECA's guidance on when to use section 1431 emergency orders under the SDWA. It is my understanding that OECA is currently implementing that recommendation. If confirmed, I will ensure that all enforcement staff are aware of it.

37. How do you see the agency's preference for enforcement at the state- instead of federal-level affecting cases in which the states and the EPA share enforcement authority, such as under the Clean Air Act?

For example, the Clean Air Act's "good neighbor" provision requires EPA and states to address interstate transport of air pollution that affects downwind states' ability to attain and maintain National Ambient Air Quality Standards (NAAQS). Specifically, the Clean Air Act requires each state in its State Implementation Plans (SIPs) to prohibit emissions that will significantly contribute to nonattainment of a NAAQS, or interfere with maintenance of a NAAQS, in a downwind state. The Act requires EPA to backstop state actions by promulgating a Federal Implementation Plan (FIP) in the event that a state fails to submit a SIP, or if EPA disapproves a SIP.

I do not foresee an impact. The Office of Air and Radiation has the responsibility to review and approve SIPs based on the requirements of the Clean Air Act. OECA has backstop authority to enforce a SIP if a state fails to act. If I am confirmed, I will inform states of planned EPA actions, but will continue to undertake federal enforcement where necessary and appropriate.

38. If confirmed, how will you enforce non-compliance against companies that operate in multiple states and may have environmental violations in multiple states?

OECA is uniquely qualified and situated to take enforcement action against companies with facilities in multiple states that are failing to comply with federal environmental law. If I am confirmed, I will coordinate with states but continue to undertake such multi-state actions.

39. If confirmed, how will you ensure enforcements against states that refuse to enforce criminal environmental laws?

Under our environmental laws and the 10th amendment to the Constitution, EPA does not take enforcement action against a state for failing to implement a federal law. Rather, EPA has backstop authority to take action itself when a state fails to act. If confirmed, I will ensure that OECA continues to backstop state enforcement or lack of enforcement, including the enforcement of criminal laws.

Enforcement and regulatory repeal process

40. In March, Administrator Pruitt announced the establishment of a Regulatory Reform Task Force to make recommendations on regulations that could be repealed, replaced, or modified. A group of Republican attorneys general—including the Administrator's replacement as Oklahoma's Attorney General—has asked that 20 rules be considered. One of these regulations is the Cross-State Air Pollution Rule that was finalized in September, and was to go into effect in May 2017. If confirmed, will you continue to enforce rules, such as the Cross-State Air Pollution Law, that may be under consideration for repeal, replacement, or modification?

If I am confirmed, I will enforce regulations that are in effect.

41. According to the EPA, power plants are currently the primary emitters of mercury (50 percent). Methylmercury, found in the fish and shellfish that people eat, is a powerful neurotoxin that causes adverse health effects. In 2016, EPA issued a final finding that it is appropriate and necessary to set standards for emissions of air toxics from coal- and oil-fired power plants through the Mercury and Air Toxics Standards (MATS), as the public benefits far outweigh the costs. Yet, the EPA said this spring that it will be reviewing the costs assessment made in the 2016 finding.

Do you believe that there is a benefit to industry and regulators in having stability and regulatory certainty? Power plants — mostly coal-powered ones — had to comply with the MATS rule starting in April 2015, and the majority have already either adopted controls or converted to natural gas-powered facilities.

Will you continue to enforce the MATS rule while they are under review by the EPA?

If I am confirmed, I will enforce regulations that are in effect.

Lautenberg Chemicals Safety Act

42. A critical part of implementing the Frank R. Lautenberg Chemical Safety for the 21st Century Act effectively is assuring that EPA gets complete and accurate information about how chemicals are manufactured and used. The Chemical Data Reporting (CDR) rule is an essential information gathering tool and particularly important for the initial 10 chemicals, including asbestos, that are subject to risk evaluations under the new law. If confirmed, will you commit to enforcing the CDR rule as a high priority and that your office will pursue violations promptly and vigorously?

If I am confirmed, I will enforce regulations that are in effect.

Enforcement of environmental laws on tribal lands

43. 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 primary enforcement authority.

Do you intend to encourage tribes to develop their own enforcement regimes under approved programs, much as the states do? What will be your goals in working with tribes on compliance monitoring, enforcement, compliance assistance, and environmental justice?

It is my understanding that the Navajo Nation has been approved to implement several environmental statutes on Navajo land. I am not familiar with capabilities of other tribes to receive approval to carry out federal environmental laws in tribal lands. If confirmed, I will ask for a briefing on this issue. In parts of Indian Country where the tribe has not been approved to implement federal law, if I am

confirmed, OECA will continue to take the lead in enforcing environmental laws and will work with the relevant EPA program offices and with other relevant federal agencies, such as the Bureau of Indian Affairs, on compliance issues.

Environmental justice

44. The Office of Environmental Justice (OEJ) sits within OECA. Environmental pollution is not distributed uniformly across the United States. Many studies have found that high polluting industrial and waste disposal facilities are more frequently located near poor and minority neighborhoods, where they harm the health and welfare of residents. In your opinion, what is the role of EPA in addressing inequalities in exposure to environmental pollution, including through its enforcement of environmental laws?

EPA writes regulations and sets standards to protect everyone. To avoid disproportionate adverse effects it is important to understand whether a community has a disproportionate level of exposure. This requires information and communication. Using a mapping tool like EJSCREEN, EPA can identify locations where additional information collection is appropriate to determine if a disproportionate adverse effect exists.

If confirmed, I would expect OECA to continue to use tools like EJSCREEN to identify locations that are appropriate for an increased focus on enforcement and compliance assurance.

45. In EPA's environmental justice strategic plan for 2016-2020, OECA is identified as the program leading environmental justice compliance and enforcement. The following strategies in the plan are below. If confirmed, will you commit to implementing each of these strategies in your leadership of the office? If not, why?
- a. Direct more EPA enforcement resources to the most overburdened communities;
 - b. work with federal, state, tribal, and local co-regulatory partners to pursue vigorous enforcement for violations in overburdened communities and leverage limited compliance resources by improving joint planning and targeting of enforcement activities; and
 - c. strengthen communication so enforcement cases can benefit from the knowledge of local communities, and empower communities with information about pollution and violations that affect them.

I am not familiar with the environmental justice strategic plan for 2016-2020. If I am confirmed I will seek a briefing on it. As I stated above, I agree that communication is important.

46. The President's FY18 budget eliminates the OEJ within OECA. The OEJ and the Office of Civil Rights have traditionally addressed environmental justice mandates under Executive Order 12898 and adherence to Title VI prohibitions of discrimination on the basis of race, color or national origin. How would you describe OECA's current responsibilities for environmental justice compliance and enforcement?

It is my understanding that the Office of Environmental Justice that is currently housed in OECA serves as the federal official for the National Environmental Justice Advisory Committee, participates in the Interagency Working Group on Environmental Justice, maintains the GIS mapping tool called EJSCREEN, and makes about \$1.2 million in grants. According to the President's budget request, the cross-program functions of OEJ will be incorporated into the future policy work of the Integrated Environmental Strategy Program within the Office of the Administrator.

The incorporation of environmental justice into OECA's enforcement and compliance assistance actions is performed by employees who are not part of the Office of Environmental Justice. If confirmed, I will see that OECA continues to carry out its environmental justice responsibilities.

47. Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) has been described as the most important provision of federal law with respect to the implementation of environmental justice and the remediation of environmental discrimination. What importance will you ascribe to the law for the purposes of EPA's enforcement and compliance, should you be confirmed?

In December 2016, EPA reorganized the functions of the formerly Office of Civil Rights (OCR) with respect to its External Compliance and Complaints Program. This external civil rights enforcement function now resides organizationally within the External Civil Rights Compliance Office, which is located in EPA's Office of General Counsel.

48. If the OEJ is defunded by Congressional appropriations in FY18 per the President's budget recommendations, how would you recommend that environmental justice mandates in Executive Order 12898 and Title VI be addressed by EPA?

As I noted above, consideration of environmental justice in OECA enforcement and compliance assistance actions is not performed by employees of the Office of Environmental Justice. Accordingly, if I am confirmed, I do not expect these considerations in OECA's work to be affected by the President's budget request.

49. The Federal Interagency Working Group on Environmental Justice was created within the EPA's Office of Environmental Justice under Executive Order 12898 to facilitate the implementation of the order across federal agencies and to collectively advance environmental justice principles. If confirmed, will you support EPA's continued leadership of this interagency effort?

Yes.

50. Since 1993, the National Environmental Justice Advisory Council of the OEJ has provided a critical forum to meaningfully engage with communities and interested members of the public across the country, while promoting the integration and

consideration of environmental issues at the EPA and within federal agencies. If confirmed, will you support EPA's continued leadership of this effort?

Yes.

51. Are you aware of criticism—including a 2016 United States Commission on Civil Rights report—that EPA has historically done a poor job of enforcing Title VI? Do you agree or disagree? If you agree, what changes would you make? If you disagree, what evidence suggests to you that environmental justice enforcement has been adequate?

I am not familiar with that report. If I am confirmed I will seek a briefing on this issue. As I noted above, in December 2016, EPA reorganized the functions of the formerly Office of Civil Rights (OCR) with respect to its External Compliance and Complaints Program. This external civil rights enforcement function now resides organizationally within the External Civil Rights Compliance Office, which is located in EPA's Office of General Counsel.

Senator Whitehouse:

52. According to EPA's website, "The Office of Enforcement and Compliance Assurance (OECA) goes after pollution problems that impact American communities through vigorous civil and criminal enforcement. Our enforcement activities target the most serious water, air and chemical hazards. As part of this mission, we work to advance environmental justice by protecting communities most vulnerable to pollution." Do you agree with and commit to fulfilling this mission by bringing "vigorous civil and criminal enforcement"?

Yes.

53. Please provide a list of all clients you represented before and after your time last serving at the Environmental Protection Agency, the dates you represented them, EPA matters you worked on, and a description of all your EPA-related lobbying activities that includes the entity you lobbied for, issue(s) you lobbied on, and dates you represented them.

In connection with the nomination process, I have consulted with the Office of Government Ethics and the EPA's agency ethics officials to identify potential conflicts of interest under federal law and Executive Order 13770. Given the fact that I have been employed by the Senate Environment and Public Works Committee for the past 2 ½ years, I am advised that I have no conflicts of interest. If any potential conflicts of interest should arise, they will be resolved in accordance with the terms of an ethics agreement that I have entered into with the Agency's designated agency ethics official and that has been provided to this Committee. In addition, I assure you that I am aware of, and will abide by, the obligations under the bar rules of professional conduct that apply to me, including rules 1.6, 1.9 and 1.11, and will work closely with Agency ethics officials.

As an associate at the law firm Covington & Burling from August 1988 to January 1995, I did not have any clients of my own.

As a non-capital partner at Barnes & Thornburg from March 2009 through January 15, 2015, I registered to lobby for several clients and I was engaged by a number of clients to represent them in EPA-related matters. Information about my EPA- related representations that is public is attached. Also attached is information regarding clients whom I represented in EPA-related matters that can be made public in accordance with applicable bar rules.

54. How will you separate your history representing polluters in enforcement actions, to bringing these proceedings against polluters?

If confirmed, I would have no problem taking appropriate enforcement action against any company.

55. Early feedback from states, tribes, and associations to the Office of Enforcement and Compliance Assurance's FY2018-2019 National Program Managers Guidance includes a call for the EPA to further "streamline the process for states to gain approval of Alternative Compliance Monitoring Strategies that include allowances for different inspection frequencies and alternative monitoring approaches and to explicitly recognize in the National Program Managers Guidance opportunities for states to use ACMSs."
- a. How can OECA streamline the process for allowing states to use ACMSs under the CAA, CWA, and RCRA?
 - b. How will EPA ensure the ACMSs are meeting overarching enforcement and compliance goals?

I am not familiar with the issues that states, tribes, and associations are raising in their comments. If confirmed, I will request a briefing on these issues.

56. Under the Clean Water Act, the EPA has allowed municipalities to use an integrated planning approach to help undertake and finance a series of wastewater/stormwater improvements in a manner that reduces inefficiencies and prioritizes the most serious upgrades needed to come into compliance. Integrated planning has been included in consent decrees with municipalities subjected to enforcement actions due to CSOs and SSOs.
- a. Do you believe integrated planning is a useful approach in bringing municipalities into CWA compliance for stormwater and waste water discharges?

Yes.

- b. What role can green infrastructure play in these integrated plans?

I believe that green infrastructure can be a successful control measure to reduce stormwater flows, CSOs, and SSOs in ways that can be less costly for municipalities than traditional grey infrastructure, like concrete holding

tanks. I also believe that green infrastructure can provide additional environmental benefits not provided by grey infrastructure.

- c. How can the OECA better shepherd and monitor the development and implementation of integrated plans?

If confirmed, I would ensure OECA staff continue to inform municipalities about the opportunity to develop and use integrated plans to achieve compliance with Clean Water Act requirements. Implementation of integrated plans can be through permits monitored by states or the Office of Water, or through administrative orders or consent decrees monitored by OECA.

57. What role should states play in developing integrated plans under the CWA or other alternative compliance strategies?

If confirmed, I would encourage authorized states to allow the use of integrated plans in permits, orders or consent decrees.

58. How should the OECA coordinate with and utilize expertise within EPA regional offices and state enforcement agencies in bringing compliance or enforcement actions against polluters?

If confirmed, I would ensure robust communication with EPA regional offices regarding compliance and enforcement actions.

59. Under your leadership, will you push for greater inclusion of technology-based tools for compliance monitoring and implementation, including electronic reporting and additional air or water quality monitors?

If confirmed, I will request a briefing on “Next Generation” compliance tools.

60. What is the role of Regional Administrators in bringing enforcement actions against polluters?

It is my understanding that EPA Regional Administrators have been delegated significant authority for certain actions. If I am confirmed, I will seek a briefing to fully understand the OECA delegations of authority.

61. Have you heard anything to suggest that EPA may close or consolidate any Regional Offices? If so, what is your opinion about that proposal?

I am not aware of any such plans and the President’s budget requests no funds for such actions.

62. If a Regional Office were closed, how would that effect the ability of OECA to do its job and what adjustments would you make?

See my response to question 61, above.

63. The President's budget request proposed to reduce the OECA budget by 24% to \$419 million. This will give you an excuse to scale back EPA's work enforcing environmental laws and regulations. The proposed 44% cut to categorical grants to the states, which provides them with monitoring and enforcement resources, will hamstring the states. Do these cuts worry you? How do you think these cuts, if enacted, will affect EPA and the states abilities to enforce environmental laws?

The states are the primary enforcers of most environmental laws and I believe that EPA's enforcement program should respect that strong role. If confirmed, I will work closely with state agencies who have delegated authority to implement federal law to increase flexibility in the use of federal categorical grants and avoid duplicative efforts and wasted resources.

I agree with the statement in the ECOS paper that recasting the state-federal relationship to embrace cooperative federalism can result in:

- *“Equal or greater environmental and public health protection and outcomes through smart deployment of resources on critical priorities;*
- *Reduced operating costs due to a more efficient division of services, streamlined operating relationships, best practice sharing, and elimination of redundancies across states and divisions of EPA;*
- *More effective allocation of limited resources by determining the best roles and functions states and EPA are each best suited to perform; and,*
- *With time, fewer disputes over who should take credit for successes and achievements, and who is responsible for decisions and actions that result in setbacks.”* <https://www.ecos.org/documents/cooperative-federalism-2-0/>

64. On June 5, Attorney General Sessions circulated a [memo](#) to all component heads and United States Attorneys barring DOJ attorneys from “enter[ing] into any agreement on behalf of the United States in settlement of federal claims or charges, including agreements settling civil litigation, accepting plea agreements, or deferring or declining prosecution in a criminal matter, that directs or provides for a payment or loan to any non-governmental person or entity that is not a party to the dispute” with limited exceptions.

- a. Do you see this limitation impeding the OECA's work with DOJ in bringing quick and comprehensive enforcement actions against violators?

No. It is my understanding that EPA's policy on supplemental environmental projects (SEPs) already prohibits payments to third parties and anything that would augment or supplement EPA's or another agency's appropriations.

- b. In administrative enforcement actions that do not require DOJ attorney support, will the OECA under your leadership continue to use third-party payments in settlements, plea agreements, and other enforcement actions?

As noted above, EPA’s policy on SEPs already prohibits third-party payments.

- c. Do you interpret Attorney General Sessions’ memo to prohibit payments to states, tribes, or local governments as part of a settlement, plea agreement, or other such arrangement?

With three exceptions, the memo prohibits payments to non-party, non-governmental entities. Thus, it does not appear to apply to payments to governmental entities. If I am confirmed, I will seek a briefing on the intended effect of this memo.

- d. Do you interpret Attorney General Sessions’ memo to prohibit settlement from including provisions like the \$2 billion for zero emission vehicle development and \$2.7 billion in a trust for states to undertake projects that reduce emissions from vehicles in the VW settlement?

If I am confirmed, I will seek a briefing on the intended effect of this memo.

- e. In your experience, do you feel settlement funds in environmental cases have gone to “bankroll third-party special interest groups or the political friends of whoever is in power” as Attorney General Sessions stated in the [press release](#) accompanying his June 7 memo? If so, please provide examples that illustrate your concerns.

If I am confirmed, I will seek a briefing on the actions that this memo is intended to preclude.

- f. Will you revise or eliminate OECA’s Supplemental Environmental Projects Policy to align with Attorney General Sessions’ prohibition on third party payments?

I believe that OECA’s SEPs policy already conforms to the June 7 memo because it already precludes third party payments. If I am confirmed, I will seek a briefing on the actions that this memo is intended to preclude.

- 65. The increased concentration of animal feeding operations along waterways has led to a number of pollution problems associated with the large amounts of untreated waste from these facilities. One of the EPA’s National Enforcement Initiatives is “Preventing Animal Waste from Contaminating Surface and Ground Water.” However, the EPA has steadily decreased the number of federal inspections of and enforcement actions against concentrated animal feeding operations by more than half. What steps will you take to

meaningfully meet the EPA's enforcement initiative regarding animal waste and ensure that concentrated animal feeding operations located in distressed watersheds or over drinking water aquifers that exceed maximum contaminant levels for primary drinking water standards are complying with EPA-administered laws and regulations?

Concentrated animal feeding operations are point sources under the Clean Water Act and if they discharge to waters of the United States, they require a discharge permit. All but four states and the District of Columbia are authorized to carry out their own permitting programs in lieu of the federal program. Those authorized states have the lead in enforcing the Clean Water Act. If I am confirmed, OECA will work with states to avoid duplicative inspections and enforcement efforts in authorized states and would continue to be the primary enforcement authority in states that are not authorized.

66. During your confirmation hearing, you committed to producing the annual enforcement report. If confirmed, do you commit to assess and publish all of the enforcement metrics included in the last report?

Yes

67. In your written testimony, you state the Office of Enforcement and Compliance Assurance has an "important role in making sure that there is clarity and consistency in how our environmental laws are interpreted, and providing assistance when the laws are less than clear." As several regulations are currently under review by the courts, and, by order of President Trump, under reconsideration, how will you ensure "clarity" and "consistency" for regulated parties?

If I am confirmed, OECA will continue to participate in agency workgroups that develop rules.

68. 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 agree that NEPA is a bedrock environmental law and I am aware of no proposal at EPA that would weaken NEPA's public participation or informed decision-making provisions.

69. In an interview with the Providence Journal last year, 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.

- a. What have you done in your career to demonstrate lead contamination of drinking water will be a priority if you are confirmed? Please cite specific examples.

Last Congress, I drafted amendments to the Senate energy bill (S. 2012) to address the emergency situation in Flint, Michigan, and worked on the bill introduced by Senator Stabenow and Senator Inhofe on the same subject (S. 2579).

Last Congress, as the lead majority staffer for title 7 of the Senate WRDA bill (S. 2848), I worked to include provisions related to lead contamination in that bill. During negotiations with the House of Representatives I worked to retain those provisions in the enacted Water Infrastructure Improvements for the Nation (WIIN) Act (P.L. 114-322).

These provisions are:

SECTION 2105. REDUCING LEAD IN DRINKING WATER

Authorizes a grant program for replacement of lead service lines, testing, planning, corrosion control, and education. Excludes partial lead service line replacement from eligibility. Authorizes \$60 million a year for fiscal years 2017 through 2021.

SECTION 2106. NOTICE TO PERSONS SERVED

Revises the notification requirements of the Safe Drinking Water Act to require notice to the persons served by the system of exceedances of lead action levels. Requires the Administrator to provide notice of lead monitoring results in certain circumstances. Requires EPA, working with States and water systems, to establish a strategic plan for outreach, education, technical assistance, and risk communication.

SECTION 2107. LEAD TESTING IN SCHOOL AND CHILD CARE PROGRAM DRINKING WATER

Authorizes \$20 million a year for fiscal years 2017 through 2021, totaling \$100 million, for grants to carry out a voluntary school and child care lead testing program.

SECTION. 2201. DRINKING WATER INFRASTRUCTURE

Authorizes \$100 million in additional Drinking Water State Revolving Loan funding for a state with an emergency declaration due to the presence of lead or other contaminants in a public drinking water supply system, to be used at a water system that is the subject of such an emergency. This assistance may

include principal forgiveness.

Directs ATSDR to use its current authorities to establish a lead exposure registry for communities with drinking water related emergencies and to provide health consultations for the citizens of such communities, if requested.

SECTION. 2203. REGISTRY FOR LEAD EXPOSURE AND ADVISORY COMMITTEE

Authorizes HHS to establish a voluntary lead exposure registry using ATSDR or another relevant agency, or through a grant or contract, applicable to any city whose citizens are exposed to lead contamination in drinking water. Authorizes \$17,500,000 for this activity.

Authorizes an advisory committee coordinated through CDC or other relevant agencies to review federal programs that address lead exposure, and identify research needs, best practices, and effective services. Authorizes \$2,500,000 for this activity.

SECTION. 2204. OTHER LEAD PROGRAMS

Authorizes funding for the following programs:

- **\$15,000,000 for the childhood lead poisoning prevention program authorized under section 317A of the Public Health Service Act (42 U.S.C. 247b-1).**

- **\$15,000,000 to carry out the Healthy Start Initiative under section 330H of the Public Health Service Act (42 U.S.C. 254c-8).**

b. How will you prioritize lead abatement in schools and among the most vulnerable populations?

If I am confirmed, OECA will continue to enforce the Safe Drinking Water Act, including the Lead and Copper Rule. OECA will also continue to participate in the EPA workgroup that is developing revisions to the Lead and Copper Rule, to ensure the regulatory obligations are clear. Finally, if I am confirmed, I will ensure that Regional enforcement staff are aware of the new guidance on the applicability and use of emergency orders under section 1431 of the Safe Drinking Water Act.

70. 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, will you uphold the tenets of this memorandum?

If I am confirmed, I will ensure that EPA will continue to not bring enforcement actions using the June 2015 WOTUS rule. If I am confirmed, I also will ensure that the OECA members of the workgroup developing a new WOTUS rule support improvements in transparency and coordination with other agencies.

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 I am confirmed, OECA will work collaboratively with the Corps of Engineers and with the Office of Water in carrying out responsibilities of EPA and the Corps under the Clean Water Act. Section 1134 of the WIIN Act directs the Corps of Engineers to develop a database for the electronic submission and tracking of 404 permit applications.

71. 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?

I am not familiar with the issue raised in this question. If I am confirmed, I will seek a briefing on it.

72. In your article entitled "EPA Issues Final Revisions to Non-Hazardous Secondary Materials Rule, but Questions Remain" in the ABA Section of Environment, Energy, and Resources TRENDS journal in spring of 2013, you say "[g]iven the draconian consequences to a combustor of misclassifying a NHSM, EPA is likely to find itself in the business of making non-waste determinations for a very long time." Do you continue to consider the regulations governing the combustion of non-hazardous secondary materials under RCRA and the CAA to be "draconian"?

My article does not describe the rule as draconian. The quoted statement refers to the consequences to an operator if he or she combusts material that is later determined to meet the definition of solid waste. Those consequences – a requirement to shut down-- are described in the third paragraph of the article:

If a boiler located at a commercial or industrial facility burns a waste it triggers regulation as a commercial and industrial solid waste incineration (CISWI) unit. In fact, if a combustion unit burns a NHSM and the operator does not keep records demonstrating that the NHSM is not a waste, the combustion unit becomes regulated as a CISWI unit. 40 C.F.R. §§ 60.2265 and 60.2875. Once a

boiler becomes a CISWI unit, it stays regulated as a CISWI unit for six months. Thus, if a boiler inadvertently burns a waste material and cannot meet the CISWI emissions standards, the combined impact of the NHSM Rule and the CISWI Rule is to shut down that boiler for six months.

The point I was making was that boiler operators are likely to seek case-by-case non-waste determinations to avoid any ambiguity about the legality of their fuels.

73. In your article entitled “Nutrient Trading & Water Quality” in Issue #113 of The Water Report from July 2013, you state that “EPA’s recommended criteria developed under CWA section 304(a) and some state standards are based on the level of nutrients found in pristine waters and those levels in many cases are not attainable.” You go on to describe the costs of meeting TMDL reduction goals for waterbodies like the Chesapeake Bay.
- a. Do you believe TMDL limits are attainable?

I do not know if the Chesapeake Bay TMDL limits are attainable.

- b. Should economics limit environmental goals, standards, and the regulations to meet clean water goals and standards?

The Clean Water Act allows for the consideration of affordability in setting water quality standards. Under 40 CFR 131.10(g) a state may change the designated use of a water body if the standard is not attainable or if the controls needed to attain the existing standard would result in substantial and widespread social and economic impact. Approval of state water quality standards and use attainability analyses is a function of the Office of Water, not OECA.

- c. Why shouldn’t we aim for all waters to meet “pristine” standards?

Under the Clean Water Act, states designate uses of water which can include agricultural use, drinking water use, recreational use, aquatic life use, etc. The state then establishes criteria to meet the designated use. The designated use and water quality criteria together make up the water quality standard. If a state wants to adopt a use that does not include the “fishable, swimmable” goal, EPA requires a demonstration through a use attainability analysis that meeting the fishable, swimmable goal is not attainable. Approval of state water quality standards and use attainability analyses is a function of the Office of Water, not OECA.

- d. What role should nutrient trading play in meeting TMDL limits?

If the body of water does not meet a water quality standard due to nitrogen or phosphorus levels, then nutrient trading can play a role in meeting TMDL limits. The TMDL establishes the maximum amount of the pollutant (such as nitrogen or phosphorus) that the water body can assimilate and still achieve water quality standards. Under a TMDL, the controls needed to stay

under the overall limit can be achieved in a variety of ways and can allow regulated sources to get credit for reductions from sources that are not regulated, as long as the overall limit is met. A TMDL also can allow trading among regulated sources such that one source stays below its allocation, allowing another source to exceed its allocation. Again, the overall limits must be met. Because cost of reduction in pollutant discharges can be highly variable, this flexibility can reduce the costs of achieving water quality standards. The Office of Water, not OECA, has the responsibility to review and approve TMDLs.

74. Please provide a copy of “A View from the Field: The 2011 Draft Guidance Regarding Identification of Waters Protected by the Clean Water Act.”

A copy is attached.

75. 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.”

a. Do you believe climate change is real?

Yes.

b. If so, what causes it?

Please see my response to question 21, above.

c. 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?

I am aware that in 2010 the National Research Council of the National Academy of Sciences issued a report titled: “Ocean Acidification: A National Strategy to Meet the Challenges of a Changing Ocean.” In that report the NRC stated that “Ocean acidification research is still in its infancy.” The report also states: “Present knowledge is insufficient to guide federal and state agencies in evaluating potential impacts for management purposes.”

d. 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?

It depends on the rule. In a 2005 retrospective analysis of the accuracy of agency regulatory impact analyses, OMB found that agency estimates tend to

overestimate both costs and benefits, but benefits are more often overestimated than costs. Out of 47 regulations, OMB found:

- **Eighteen rules with accurate benefit estimates, 19 rules with overestimates and two rules with underestimates.**
- **Twelve rules with accurate cost estimates, 16 with overestimates, and 12 with underestimates.**
- **Eleven cases of accurate benefit to cost ratios, 22 overestimates, and 14 underestimates.**

https://georgewbush-whitehouse.archives.gov/omb/infoereg/2005_cb/final_2005_cb_report.pdf

76. 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. Information produced through these networks play a key role in informing enforcement and compliance decisions. Given the drastic cuts proposed in the President's budget, what is your vision for monitoring?

I agree that monitoring is appropriate. If confirmed, I would work with the Office of Air and Radiation to establish monitoring priorities.

77. 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 reports 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 do not know. If confirmed, I will request a briefing on this issue.

78. During previous administrations, senior EPA managers' schedules have been available to the public. If confirmed, do you agree to make your schedule available as well?

If confirmed, I would make my schedule publicly available pursuant to the Freedom of Information Act.

79. 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?

Yes

80. 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 am not familiar with those projects. If confirmed, I would defer to the Office of Air and Radiation for an assessment of the viability of CCUS.

81. Carl Icahn has reportedly been serving as a special advisor to the President on overhauling regulations. Carl Icahn is also a majority owner of CVR Energy which is an oil refiner that has a compliance obligation under the RFS to blend its oils with renewable fuels. Icahn's company has repeatedly benefited when he has proposed changes to the RFS that would benefit CVR and through speculation in the Renewable Identification Numbers (RINs) market. For example, in February of 2017 Mr. Icahn reportedly presented the White House with draft Executive Order language that would reform the RFS to benefit CVR energy. The same day, CVR's stock value increased by 3.5%, representing a multi-million dollar windfall to Icahn. Do you think it is appropriate for an Administration official like Mr. Icahn to propose making changes to EPA regulations that clearly benefit a company he owns? If you are confirmed as AA of OECA, and Carl Icahn approaches you about a matter related to the RFS, do you think would be appropriate to talk with him? Will you commit to not talking with Carl Icahn about the RFS?

If confirmed, I will not talk to Mr. Icahn about the RFS.

82. 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 the Deputy Administrator for Enforcement at EPA, will you carry out the Energy Policy Act as passed in 2005 and updated in 2007, particularly in ensuring that states adopt the statutory volume requirements for renewable fuels as finalized by the EPA?

If confirmed, I will work to ensure compliance with applicable laws.

83. If confirmed, do you commit to providing complete and accurate responses to inquiries from EPW members in a timely fashion?

As I stated in my hearing, I believe that Congressional oversight is very important. I do not intend to change past agency practices with respect to responding to individual members of Congress, including EPW members. However, if confirmed as the Assistant Administrator for Enforcement and Compliance Assurance please be aware that I would not release confidential enforcement information –no matter who is asking for such information. That has been EPA’s long-standing policy.