

**Testimony of Gwendolyn Keyes Fleming,
Former Chief of Staff and Former Regional Administrator, Region 4
for the U.S. Environmental Protection Agency
Before the House Committee on Energy and Commerce
Subcommittee on Oversight and Investigations
March 10, 2021**

Madam Chair DeGette, Ranking Member Griffith, distinguished Members of the Subcommittee, my name is Gwen Keyes Fleming. I had the distinct honor and privilege to serve as the United States Environmental Protection Agency's (EPA) Regional Administrator for Region 4, the Southeast Region, from September 2010 until May 2013, and then as the Chief of Staff for the agency from May 2013 until June 2015. Thank you for the opportunity to testify today about "The Path Forward: Restoring the Vital Mission of EPA."

During my five years with the agency, I had the privilege to work alongside thousands of dedicated public servants, many of whom could be classified as the top scientific and technical professionals in their respective fields. Together with the other appointees, we worked tirelessly to advance the agency's mission to protect public health and the environment. In recent years, some have questioned whether EPA has lost its footing or whether the agency still has the heft and credibility to do what is necessary in the environmental space. I believe that it does because the agency still has a strong foundation of a dedicated team of knowledgeable, highly qualified career professionals, albeit substantially fewer than when I worked there. Combining the experience of the new appointees with the existing foundation at EPA will rebuild, restore, and re-energize the agency and enable it to recommit to its bipartisan mission of protecting human health and the environment. There is certainly much work to be done, and my goal today is to provide some thoughts on what is needed for the agency to be successful. My thoughts are my own and were informed by my time as the Regional Administrator in EPA's Southeast Region and as Chief of Staff for the agency in Washington. These thoughts do not reflect the opinions of my employer nor any of its clients. In addition, although I am a Board member of the Environmental Protection Network (EPN), a bipartisan organization comprised of almost 550 EPA alumni volunteering their time to protect the integrity of EPA, human health and the environment, and some of my testimony references data and recommendations in EPN's "Resetting the Course of EPA," I am here in my personal capacity.

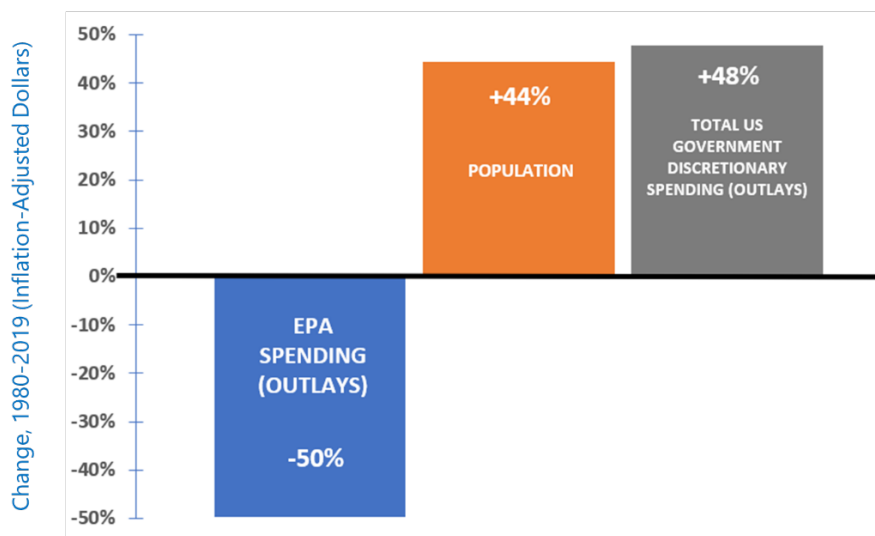
Based on my experiences both in Atlanta, GA, and Washington D.C., I came to understand and appreciate both the policy-making decisions performed at headquarters and how best to implement those policies in the regions, alongside state, local, tribal and community leaders. In order for the EPA to work in a way that provides national consistency, while also recognizing the uniqueness of each of its ten regions, it must remain true to its traditional guideposts: **Follow the Science; Follow the Law;** and **Provide Transparency** in its decision-making. However, to meet the urgent needs of the moment—specifically, addressing climate change and providing relief to environmental justice communities overburdened by pollution and suffering under the vestiges of environmental racism—the agency must amplify two additional premises. The first, **Engage All Stakeholders**, is built into the fabric of the agency's rules and laws. The second, **Synergize Resources to Maximize Impact**, is a general principle of leadership when an organization is faced with a daunting list of needs and constrained resources to meet them.

Each of these concepts is discussed in more detail below, along with some historic budget and staffing data which confirm that EPA will need more resources to deliver on these basic principles. If confirmed, Michael Regan will not only take the helm of an agency facing a long list of complex, urgent and necessary actions that touch constituents in all 50 states, U.S. territories, and Tribal Nations within our borders, but also, he will do so with fewer real resources than the agency had in the 1980s—before the 1984 Resource Conservation and Recovery Act reauthorization, before the 1986 Superfund reauthorization, before the 1987 Water Quality Act, before the 1990 Clean Air Act Amendments, before the 1996 Safe Drinking Water Act Amendments, before the 2016 amendments to the Toxic Substances Control Act, and before this moment in time when the need to address climate change and environmental justice is greater than ever. This dearth of resources did not happen overnight; it is the result of decades of insufficient funding in the face of growing environmental needs. While the historic challenges cannot be rightsized overnight, it is my hope that Congress will take concrete steps to provide the necessary resources to increase funds for core programs and activities, while also providing what is needed to launch new initiatives to meet the current demands of our country and new statutory responsibilities.

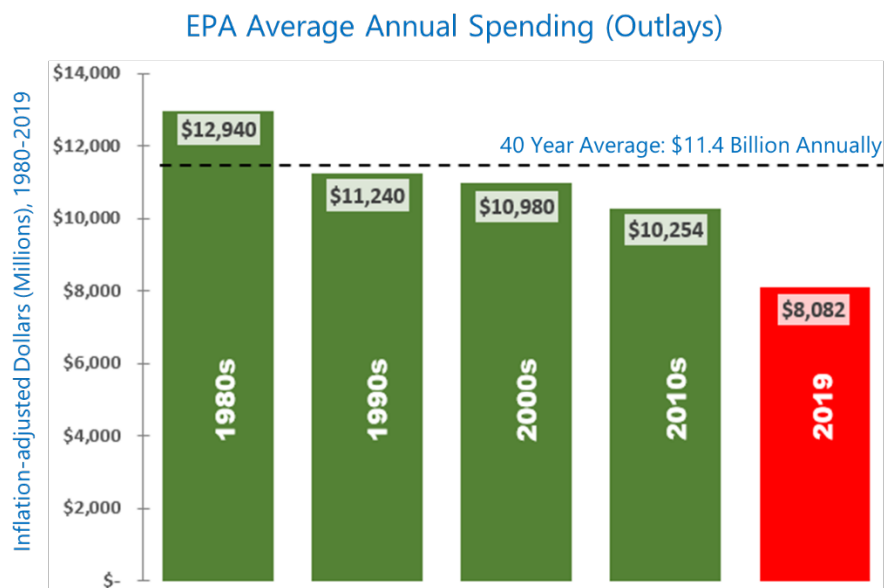
Budget and the Workforce

Data from the Environmental Protection Network shows that the EPA is woefully under resourced due to years of declining investments. Today, EPA spending in terms of real dollars is less than half of what the agency spent in 1980. The decline happened despite our population increasing 44% and total government discretionary spending increasing by 48% over that same time frame. In the face of a growing list of environmental concerns, if EPA spending had just kept pace with the increases in discretionary federal spending, its budget would be three times what it is today. When looking at the 40-year budget averages for EPA individually, independent of the other government agencies, EPA's budget needs to be increased by over 40% to reach the baseline.

In Real Dollars, EPA Spending Has Been Cut in Half Since 1980



Sources: OMB, [Historical Tables](#), "Table 4.1—Outlays by Agency: 1962–2025" (adjusted to real dollars using U.S. Bureau of Economic Analysis' [implicit price deflator](#)); "Table 8.8 – Outlays for Discretionary Programs."



Sources: OMB, [Historical Tables](#), "Table 4.1—Outlays by Agency: 1962–2025" (adjusted to real dollars using U.S. Bureau of Economic Analysis' [implicit price deflator](#))

This gap between where the agency would be with sustained investment and where it is today is adversely affecting EPA's ability to meet its mission and the growing demand for protections in communities around the country. The Environmental Programs and Management (EPM) account that funds basic salary and expense costs for EPA's core responsibilities and for most of EPA's programs was down more than 31% in 2020 compared to the 2010 levels in real dollars. The Science and Technology (S&T) Account that funds core scientific activities received 40% more funding in 2010 compared to 2020 in real dollars. Superfund and Brownfields funding needs to be increased in order to remedy contamination and promote economic development in communities that have been hard hit by pollution.

Comprehensive and thorough environmental protection involves a network of partners. In addition to EPA's technical assistance, states, as co-regulators, rely on EPA for more than 25% of their operating budgets on average. In some states, the percentage of this reliance is much higher. Tribal Nations rely on EPA for an even greater percentage of their operating budgets. Unfortunately, however, the State and Tribal Assistance Grants available in 2010 were 23% higher than those available in 2020 in real dollars.

These core programs must be supported and restored to appropriate levels. Even more importantly, these core programs cannot be sacrificed as the agency launches new initiatives to respond to calls to meet current pressing challenges like climate and assisting environmental justice communities. Standing alone, either of these environmental concerns have produced detrimental consequences for communities. And when combined—as they are at this current point in history—the compounded effects cannot be denied and should not be ignored. Poor air quality in overburdened communities has led to chronic adverse health conditions that resulted in higher COVID-19 infection and mortality rates for low-income communities and people of color. Increased intensity and frequency of

storms resulting from our changing climate pose a greater threat to unprotected coastal areas and put more communities at risk for waste and chemical exposure due to flooding. Global warming impacts every stage of the water cycle thereby causing drought conditions, putting pressure on already compromised drinking water supplies and limiting food production. Furthermore, water quality, water scarcity and sea-level rise concerns are exacerbated in disadvantaged, low-income communities. Recognizing the interconnectivity, addressing climate and environmental justice concerns simultaneously to deliver the necessary relief and redress will require drafting and executing complex multi-faceted, intergovernmental solutions within the agency's authorities. Congress can play a critical role by ensuring that EPA is provided the necessary funds and resources to undertake these critical efforts.

In addition, programs and funding cannot be effectively utilized without the agency's greatest asset: the employees. Unfortunately, staffing declines have made the tightened budget situation even worse. In 1999, EPA had 28% more employees than it does today. Today's staffing levels are at a 30-year low. Not only does EPA need to recruit and hire the next generation of environmental professionals, but the agency also needs to do so with an eye towards diversifying its ranks and its leadership. While the agency, in past years, took some initial steps by providing implicit bias training to the Senior Executive Service (SES) corps and incorporating diversity goals into their annual review processes, in 2018 56% of the SES managers were male and 80% were white. There is a plethora of diverse talent both inside and outside the agency, and dedicated steps need to be taken to recruit, hire and train these individuals so that EPA can better reflect the diversity of the constituency it serves.

With a larger and more diverse team of employees in place and the historic pattern of providing insufficient funding halted and reversed, EPA will be poised to tackle the challenges ahead by adhering to the following principles:

Follow the Science

Science has been, and needs to continue to be, the foundation of EPA's decision-making and actions going forward. With that as the core principle, it is worth noting that "science" at EPA means many things. Sometimes it is basic research by the scientists in the Office of Research and Development. Sometimes it is the translation of cutting-edge science into policy recommendations by staff in EPA's national program offices. And sometimes it is applied science, practiced with great skill by experts in EPA's Regional laboratories in support of field investigations to apply and enforce the law. When I was the Regional Administrator, I was fortunate to supervise the team at our Laboratory Services and Applied Science Division in Athens, GA, and relied heavily on their findings in all of the described ways to set the course in numerous matters, such as restoration of water quality in the Everglades and appropriate methods and targets for cleaning up Superfund sites.

In support of this and other scientific work, and recognizing that science is an evolving discipline, EPA needs to be well positioned to address emerging areas of science. Specifically, EPA needs additional financial, staffing and scientific equipment to ensure that its scientists can connect to the newest and best research, as well as up-to-date information technology to access the vast datasets relevant to the various complex issues the agency will face. In addition, many of EPA's existing guidelines need to be updated to reflect the new and better science as well as new interpretations of scientific principles.

Recognizing that datasets and tools must be analyzed by qualified staff in order to be useful, EPA needs to ensure that it continues to hire, train and deploy the next generation of environmental and public health scientists. President Biden has already announced his plans for prioritizing and bolstering scientific integrity across the federal government in several Presidential Memoranda and

Executive Orders, including appointing diverse qualified individuals to serve in key scientific roles. Congress can help EPA meet these requirements by providing the necessary funds for two specific programs: First, in order to train the next generation of scientific leaders, EPA needs funding to reinvigorate and expand the Science to Achieve Results (STAR) Fellowship Program. Second, EPA needs additional funding in order to use its Title 42 authority to directly recruit and hire world-renowned scientists and engineers from academia, industry and other government agencies. Tapping into this expanded network will not only augment EPA's capabilities, but will also build relationships and synergies that will maximize the agency's ability to deliver analysis and results that can help support the Biden Administration's cross-cutting initiatives and benefit communities in need.

Lastly, in terms of communities most in need, the staff needs to redouble its commitment to deploy the agency's scientific tools to focus on under-resourced areas like environmental justice and children's health. The science and modeling of climate change data in addition to the development of more granular data, mapping, and screening tools can be used to layer information about climate-vulnerable geographical areas over social, economic, environmental, and census data to provide a more complete description of the challenges and burdens that residents may face. This information can also identify the areas where there has been a history of cumulative environmental impacts and possible violations of environmental laws. In addition, more funding can be directed to understand the impacts pollutants have on our children, support the production of annual reports and recommendations and expand the collaborative work performed with public health officials in support of Pediatric Environmental Health Specialty Units around the country.

Follow the Law

I was a prosecutor for 17 years prior to joining EPA and learned that the best way to build and maintain confidence and integrity in any legal system is to follow the law. Trying to game the system or taking short cuts to get to a predetermined result not only undermines and taints the case at hand, but also erodes trust in our democracy. EPA is responsible for administering over twenty major environmental laws and is affected by many other related statutes. However, even the best rules are simply words on paper if they are not or cannot be enforced. As this Subcommittee knows, these statutes require EPA to make many judgments about rules to govern their proper implementation, but that cannot be done if the agency is not properly resourced with qualified EPA staff. EPA staff must have sufficient funding and resources to effectively administer the rules and law in a way that provides notice to the regulated community about the expectations for compliance. When violations occur, in conjunction with state and tribal partners, the agency must have the necessary tools to inspect, investigate and understand the facts in order to arrive at just enforcement results for aggrieved fence-line communities. Lastly, decision makers should use enforcement discretion where appropriate—free of political influence—to consider Supplemental Environmental Projects as part of mitigation strategies, as well as weave innovation and new technologies into monitoring and compliance plans, especially when doing so will support the notions of transparency. EPA's success in these endeavors requires increasing the full-time equivalent employees (FTEs) dedicated to enforcement work, updating essential data systems, making investments in advanced monitoring apparatus and fully funding the National Enforcement Investigations Center. Insufficient tools and resources to effectuate any of these key elements of the environmental legal process can result in inconsistent application of the laws, as staff is forced to make priority decisions in the face of financial constraints.

In addition to the first-order environmental laws, EPA must also identify more ways to utilize Title VI of the 1964 Civil Rights Act as part of its suite of legal tools to provide redress for discriminatory actions and disparate impacts in the environmental space. Funding the development of effective case

investigation and resolution strategies presents another opportunity for EPA to work with the Department of Justice, tribal, state, local, and environmental justice leaders to identify workable and effective paths forward. Special attention and funding should be dedicated to eliminating case backlogs, creating a publicly accessible database of civil rights cases handled by the agency, and training federal grant recipients on their Title VI responsibilities and the consequences for failing to meet same.

Provide Transparency

To further build and maintain trust in EPA's actions and initiatives, the agency needs to be transparent in its decision-making processes. In addition to the prescribed notice and public comment provisions of the Administrative Procedures Act, this includes making public the calendars of senior officials (provided safety and security protocols are satisfied), eliminating preferential access and committing to inclusive interactions with a diverse range of stakeholders (as discussed more below) to understand geographic perspectives, economic differences and disparities, along with cultural considerations. Congress can assist by providing the necessary funding and staffing for the Office of General Counsel and the Regional Freedom of Information Act (FOIA) teams to ensure that responses to requests about the documents supporting agency decision-making are provided in a timely and appropriate manner. The dockets for rulemaking are already public and searchable, but funding could also be dedicated to creating a similar public searchable database for FOIA requests.

In addition, EPA needs funding to be able to capitalize on the latest innovations to ensure that the many sources of data the agency collects are available for public consumption in ways that are easy to understand. This has been challenging because many of EPA's legacy data systems still rely on outdated 20th century software due to past funding constraints. Likewise, more funding can support community-driven science efforts, which allow constituents to capture and upload information about their local waterways, air quality and waste to provide valuable community perspectives and help inform the agency's decision-making.

The public, however, does not just need access to the information or the ability to document what they observe, they need to be able to understand that information, how the resulting policies will impact their lives, and what is being done to lower their environmental risk. When I was the Regional Administrator in Atlanta, recognizing that an overwhelming number of constituents, including myself, did not have backgrounds in chemistry, environmental science, engineering, or toxicology, we focused on translating the scientific data and educating the communities so they could be empowered to act upon the information they were receiving. These engagements took a significant amount of staff time and resources, but institutionalizing this model also presents another opportunity for Congress to provide dedicated funding to advance and support these efforts.

Funding for the personal interaction that supports transparency efforts is also important because EPA must realize that not everyone has access to the internet, its website or the electronic dockets. Grassroots efforts to share and gather information are still critical to ensure proper access and transparency for all communities.

Engage All Stakeholders

Successful, large-scale environmental protection requires engaging EPA's co-partners and stakeholders. Specifically, the agency needs to reframe and better communicate the roles, responsibilities, and relationships between the EPA, states, tribes, and local governments. These conversations should happen early in policy-setting, budgetary, rulemaking and enforcement decisions and regularly throughout the process. Special attention, effort and funding should be devoted to redoubling the commitment to recognize tribal sovereignty, meet federal treaty obligations and trust

responsibilities, support the efforts of indigenous communities to build their own environmental programs and respect the special status of tribal communities. In addition, understanding the complexities and differences of communities' concerns and working collaboratively with local leaders should remain a priority. In my view, this level of engagement means getting out of the office, and possibly one's comfort zone, to meet constituents where they live, work and play when the pandemic safety protocols allow for more direct interaction. Speaking from my regional experience, the agency should augment its regional resources, because regional offices are in the best position to build the trusted relationships that yield results and thereby effectively resolve the inherent tensions involved in promoting both national consistency and local flexibility.

The relationship between EPA and states is essential for the American environmental enterprise to succeed. It mischaracterizes federalism to argue that to have strong states you need a weak EPA and vice versa; the truth is we need strong states and a strong EPA to enable the American environmental enterprise to succeed.

A recent thoughtful letter from 41 recently retired state environmental secretaries made this point very clearly. They said,

"The cooperative federalism embedded in our nation's major environmental laws has always included a healthy dose of "creative tension" between EPA and the states, which often has resulted in the robust exchange of ideas and improved outcomes. For cooperative federalism to succeed states must be vital partners, not just end-of-the-line implementers, when it comes to carrying out our federal environmental laws. This will require a transformative model of shared governance in which the EPA and the states work together to streamline and modernize environmental programs, identify priorities, solve problems, and enhance and improve overall program performance.

(Memorandum to EPA Administrator-Select Michael Regan and Executive Team, from Former State Environmental, Health, and Natural Resources Commissioners, Secretaries, and Directors, December 21, 2020)

It is also important to engage the regulated community. Prior regulatory and legislative efforts, combined with investor-driven sustainability and environmental, social and governance (ESG) initiatives have created market shifts such that many companies have developed cutting-edge innovations to reduce pollution and waste. EPA has launched numerous public-private partnerships that recognize these developments and need the funding and staff to continue to engage with industry to learn more about and amplify "win-win" opportunities.

In its engagement strategy with any constituency, EPA needs to recognize that the process involves more than unilaterally sharing the agency's knowledge and expertise. As important and valuable as that information is, the agency must also be positioned to absorb and consider input from the audience, particularly communities who are exercising their right to self-determination, about the specific needs and desired paths forward.

Synergize Resources to Maximize Impact

To augment protection and service to communities, EPA needs funding to institutionalize integrated strategies and remove silos across its program offices. In addition, an often-overlooked opportunity in the engagement process is outreach to, and coordination with, other federal government agencies, particularly at the regional level. In order to successfully execute President Biden's whole-of-government approach to focus on climate change and environmental justice, EPA needs to expand its inter-agency interactions to identify creative effective solutions to these and other pressing concerns.

The success of three projects in Region 4 demonstrates how EPA can catalyze the revitalization of communities burdened by pollution. In founding the ReGenesis Project in Spartanburg, SC, former State Representative Harold Mitchell, Jr., organized his community and turned a \$20,000 environmental justice grant from EPA into more than \$270 million in community investments including clean up, housing, job training, Federally Qualified Health Centers and infrastructure that was supported and facilitated by several other federal government agencies. In North Birmingham, AL, the EPA Region 4 team not only applied a multi-program approach to address the communities' air, water and soil contamination concerns, but leaders also orchestrated a whole-of-government approach and founded a Regional Environmental Justice Inter-Agency Working Group (IWG) mirrored after the federal model outlined in Executive Order 12898. The collaboration not only resulted in time-critical clean-up actions, but also the deployment of state and federal Department of Transportation resources to build a pedestrian bridge in the Collegeville Community that was named in honor of the late Councilwoman Maxine Herring Parker who tirelessly advocated for the revitalization of the area. Construction of the bridge ended the problem of Collegeville being completely cut off from the rest of the city by at-grade railroad crossings, the previous condition of which resulted in the death of a couple in a house fire because a fire truck was delayed waiting for a train to clear the tracks.

Lastly, as a creative way to provide technical assistance to underserved communities, Region 4 began the College/Underserved Community Partnership Program (CUPP) in 2011. This program enlisted college students through practicums and internships and partnered them with seasoned federal employees in an effort to enhance the quality of life for communities in need by addressing their most challenging concerns. The communities in need received free assistance and the students gained practical experience and college credit for their work. The program began at EPA with four schools in 2013 and has grown to encompass 90 academic institutions and almost a dozen federal agencies. It has served 70 communities and provided services valued at over \$45 million to disadvantaged communities to address issues including assessing the prominence of lead and asbestos in properties to facilitate their safe rehabilitation for economic development. Congress should continue to support these types of impactful programs by expanding funding for environmental justice small grants, Community Action for a Renewed Environment (CARE) grants as well as the Technical Assistance Services for Communities Program and encouraging the integration of services and expertise across the federal government for the benefit of communities across the country.

In Conclusion

The EPA team has become very adept and doing more and more with less and less. However, this is not a sustainable model. In order to sufficiently address core programing requirements while tackling challenging issues like climate change and environmental justice, the agency needs an increase in funding. Modest increases will not be enough to address the historic shortfalls and token additions to the budget for new initiatives will fall well below the mark. Therefore, based on my experience at the agency, I respectfully urge the Committee to do all that it can to ensure that EPA has the full measure of funding that is needed to advance its mission and, in doing so, **Follow the Science; Follow the Law;** and **Provide Transparency** with the additional commitments to **Engage All Stakeholders,** and **Synergize Resources to Maximize Impact.** This will enable the agency to meet the demands of the moment and improve quality of life in the future for all of the constituents it serves, but especially those most in need and traditionally left behind.

Thank you for this opportunity to share my thoughts.