

Additional Questions for the Record
House Committee on Energy and Commerce
Subcommittee on Environment and Climate Change
May 17, 2022, Hearing on “The Fiscal Year 2023 EPA Budget”

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Additional Questions for the Record

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Ranking Member Pallone (D-NJ)

Superfund Tax/Brownfields:

1. **Pallone:** Thank you again, Administrator Regan, for coming before us today to discuss EPA’s budget request and funding priorities. I would like to focus my questions on the impact of the partial reinstatement of the Superfund tax included in the Bipartisan Infrastructure Law.

This is an issue of particular importance to me and my home state of New Jersey. The Superfund tax lapsed in 1995, and I have been working to reinstate this polluter pays tax ever since. Taxpayers should not have to foot the bill to clean up these toxic sites; that responsibility should fall on those polluters who created the problem in the first place.

Administrator Regan, **by reestablishing a dedicated funding stream, how will the partial reinstatement of the Superfund tax speed up, or increase the number of cleanups started and completed by the EPA in the near future?**

Response: No community deserves to have contaminated sites near where they live, work, pray, and go to school. Thanks to Congress, the Bipartisan Infrastructure Law (BIL) invests \$3.5 billion in cleaning up Superfund sites and reinstates the Superfund chemical taxes, making it one of the largest investments in American history to address thousands of contaminated sites that exist nationally due to hazardous waste being dumped, left out in the open, or otherwise improperly managed.

These Superfund chemical taxes are available to carry out CERCLA and include cleanups started and completed as well as other activities currently funded by the Superfund appropriation. As a result, in FY 2023, EPA will have access to Superfund tax revenues that are collected as of September 30, 2022, or about \$413 million.

The revenue will fund additional CERCLA activities in FY 2023 and better position EPA to speed up and increase cleanups started and completed by the Agency. EPA is working to update project planning for Superfund sites to accelerate or complete work at ongoing cleanup projects and begin cleanup of additional projects across the country. Once we’ve reviewed the project plans, we will determine the timing and focus of additional announcements as appropriate.

2. **Pallone:** While a great step forward, the Bipartisan Infrastructure Law *only* reinstated the

Superfund tax on certain chemicals and chemical feedstocks. Our work is not done. That is why the House-passed Build Back Better legislation includes a full reinstatement of the tax: to ensure companies that create contaminated sites are paying their fair share to clean them up.

How would full reinstatement of the Superfund tax enhance EPA’s ability to address the National Priorities List backlog and better manage future sites and cleanups?

Response: EPA is already moving at full speed to deploy the \$3.5 billion in appropriated funds and will begin deploying the tax revenue in FY 2023. With our first wave of BIL funding, we announced that we will commit \$1 billion to initiate cleanup, clear the backlog of 49 Superfund National Priorities List sites with previously unfunded construction work, and accelerate cleanup at dozens of other sites across the country. The petroleum tax started collection on January 1, 2023. Receipts from this tax will be available to EPA in FY 2024. In FY 2024, the Agency will know how much money will be received from the petroleum tax and can commit additional resources to the NPL backlog.

3. **Pallone:** I was also pleased the Bipartisan Infrastructure Law included an additional \$1.5 billion for EPA’s Brownfields program. This program is a perfect example of how cleaning up contaminated sites can be good for public health, safety, and economic development.

Administrator Regan, how is the agency prioritizing the distribution of these Brownfields funds, and how will the Bipartisan Infrastructure Law investments help environmental justice communities?

Response: The Brownfields Program will continue to foster federal, state, tribal, local, and public-private partnerships to return properties to productive economic use, including in historically disadvantaged and environmental justice communities. The FY 2023 President’s Budget requested \$11.5 million and 65.1 regional FTE to provide an expanded technical assistance program and build capacity in at least 250 additional small, rural, EJ, and other historically disadvantaged communities. Additional FTE will ensure the historic investment received through the BIL is successful in reaching the most communities.

EPA has developed a Brownfields BIL Marketing Strategy with national and regional components to promote the availability of BIL funds, especially to ‘new’ communities that do not have a previous relationship with EPA or the Brownfields Program and disadvantaged, rural and communities experiencing environmental justice challenges. The Program will continue to prioritize the expansion of technical assistance funded by BIL to help build local capacity for the full range of eligible brownfield activities. The Agency will also prioritize distribution of funds in our assessment, cleanup and multipurpose programs to ensure a broad range of communities have the opportunity to receive grant funding and address their brownfield sites.

National Recycling Strategy:

4. **Pallone:** As you are aware, recycling is a significant issue both globally and in the United States. On November 15, 2021, EPA released Part One of its National Recycling Strategy that outlines a “transformative vision for our waste management system.” Within this strategy, EPA outlines

various strategic objectives with the goal of improving recycling and working towards a circular economy. I was surprised to see chemical recycling included in the Strategy, especially as an unscalable and unproven solution to the plastic waste crisis. Unlike mechanical recycling, which uses physical processes such as washing, grinding, separating, and re-granulating, chemical recycling employs heat, chemical reactions, or a combination of both, to break down used plastics into raw materials for new plastic, fuel, or other chemicals.

There are serious concerns regarding the environmental and public health impacts of chemical recycling due to its large emissions footprint and hazardous byproducts. **How is EPA going to address these concerns as it moves forward with further developing and implementing the National Recycling Strategy?**

Response: EPA is currently researching the inputs and outputs of processes in the United States that are often considered “chemical recycling.” EPA plans to develop a description of the processes, their resource use, and releases to the environment. However, until EPA has better data on the lifecycle impacts of these technologies, EPA can neither promote nor judge negatively chemical recycling as an option for addressing plastic wastes.

5. **Pallone:** EPA is currently undertaking a rulemaking that is reviewing whether pyrolysis and gasification units, which are used in chemical recycling processes, should continue to be classified as “municipal waste combustion units” under the Clean Air Act. If reclassified, the outcome of this rulemaking could have serious public health and environmental impacts, specifically on the environmental justice communities that are frequently located near these facilities.

How is EPA planning to address the adverse environmental and public health impacts of chemical recycling that are experienced by environmental justice communities and how will EPA ensure these communities are adequately protected from the harms caused by this practice in its ongoing rulemaking on pyrolysis and gasification?

Response: EPA is currently researching the inputs and outputs of processes in the United States that are often considered “chemical recycling.” EPA plans to develop a description of the processes, their resource use, and releases to the environment. However, until EPA has better data on the lifecycle impacts of these technologies, EPA can neither promote nor judge negatively chemical recycling as an option for addressing plastic wastes. In addition, EPA considers EJ issues in its rulemaking processes.

Rep. Tonko (D-NY)

TSCA New Chemicals Division:

1. **Tonko:** Administrator Regan, I am aware that much of the time and resources of OCSPP’s New Chemicals Division is taken up dealing with questions and demands from industry. EPA has 90 days to determine whether a chemical can go on to the market without posing an unreasonable risk, whether there is insufficient information to make such a determination, or whether it cannot

go onto the market without testing and/or restrictions in place. I understand that EPA is working to make new chemicals reviews more efficient and protective of public health. Along with additional resources for the New Chemicals Division, **is there more that companies can do when they submit applications to provide EPA with information on the health and safety of new chemicals undergoing review?**

Response: The statutory requirements of the 2016 TSCA Amendments dramatically increased the TSCA new chemicals program's capacity needs. The Lautenberg Act requires EPA to make an affirmative determination pertaining to the likelihood that each new chemical substance for which it receives a notice under Section 5(a)(1) presents an unreasonable risk to human health or the environment under known, intended or reasonably foreseen conditions of use. Prior to the Lautenberg Act, EPA made such determinations on about 20% of new chemicals. Despite this increased workload in the new chemicals program as well as the other parts of EPA's TSCA program, the budget for TSCA implementation remained flat for four years following passage of the Lautenberg Act. An office reorganization on October 25, 2020, in which 15% of the new chemicals staff was moved to the existing chemicals program, compounded the challenge initially as the new staff had to be onboarded, trained, and acclimated.

EPA received only partially what was requested in FY 22, which was to serve as the initial down payment to meet statutory deadlines under TSCA. EPA's FY 2023 budget request reflected what the agency believes it will take to implement TSCA the way Congress and the American public expect and deserve, and for that, we requested an additional \$59.2 million over the FY 22 enacted budget, including resources which would have funded an additional 176 employees to support both new chemical and existing chemical reviews. As it was for the FY 22 request, the EPA did not receive most of the resources it requested in the FY 23 President's Budget. The FY 2023 enacted budget includes a modest increase of \$19.8 million for EPA's TSCA efforts.

Beyond EPA resource constraints, EPA has identified two main reasons for delays in EPA's review of new chemicals, both of which are within the direct control of the companies that apply to EPA for approval of new chemical substances. They are: (1) the information provided in the initial submission often lacks specific details, and (2) additional information that would aid EPA with refining its risk assessments is not provided by the submitter in the original notice or is not generated until after the initiation or completion of EPA's review. Submissions that lack detail typically result in follow-up or additional interaction with submitters, which in turn, adds time to the New Chemical Review process. If the submitter provides additional information after the initial submission, EPA will generally have to conduct additional analyses and/or reevaluate the completed work, or "rework," in light of the additional information. To ensure that EPA's review of new chemical submissions is not delayed, EPA has undertaken additional efforts to provide improved guidance and information on what submitters should include in their initial submissions, so they understand the utility of submitting complete information with the original submission.

On June 29, 2022, EPA began a broad outreach effort to describe and discuss with stakeholders how the Agency evaluates data provided for new chemicals submissions and common issues that cause EPA to have to reconduct risk assessments for these submissions. The goal of this effort is to reduce rework of initial risk assessments for new chemicals submissions that is caused by

submitters supplementing incomplete initial new chemicals review submissions, which has contributed to delays in EPA's review of these chemicals and stretched already limited resources. Both EPA and stakeholders share an interest in reducing process inefficiencies while also ensuring a protective review of new chemical risks. EPA anticipates this outreach effort will be particularly helpful for Low Volume Exemptions (LVEs), which constitute about 60% of TSCA section 5 submissions annually.

On July 27, 2022, EPA conducted the first webinar that provided an in-depth look at EPA's analysis of common issues that cause EPA to have to rework risk assessments. EPA held a second webinar on October 18, 2022, that communicated EPA's review process for new chemicals, considerations EPA makes when evaluating data, and clarifications of common misconceptions in EPA's new chemical assessments. EPA has a third webinar planned in February 2023 that will communicate commonly missed information in new chemical submissions and how EPA evaluates environmental releases when the operation occurs at a non-submitter site. Additional information on this effort can be located on EPA's website: <https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-new-chemical-engineering>.

Energy Star:

2. **Tonko:** According to the EPA's FY23 budget justification, for 2019 alone, Energy Star helped American families and businesses save nearly 500 billion kilowatt-hours of electricity and avoid \$39 billion in energy costs. This resulted in emission reductions of nearly 390 million metric tons of GHGs and more than 470,000 tons of criteria air pollutants. The budget justification suggests a planned expansion in terms of program outcomes, such as emission reduction targets, product specification updates, and application emerging technologies. However, that growth is likely not possible should the program continue to see a reduction in its annual budget, similar to what has been experienced over the last ten years, including for FY22, which is down from \$34.9 million in FY21. **What additional resources, including personnel and funding, may be necessary to grow outcomes for the successful, voluntary Energy Star program?**

Response: The enacted budget (personnel and operational spending) for the ENERGY STAR program was \$33.9 million in FY 2022. ENERGY STAR is funded under the Climate Protection Program, via EPA's Environmental Program Management (EPM) Appropriation. Since FY 2010, the climate protection program's enacted budget has been reduced by approximately \$15 million, while core ENERGY STAR needs (e.g., data systems, IT, up-to-date energy efficiency specifications, ENERGY STAR scores and program integrity) have grown substantially. These core program needs take up a significant part of the current ENERGY STAR budget and the program has a significant backlog of needed work.

The President's FY 2023 budget provides an approximate increase of \$28 million to the climate protection program, which funds ENERGY STAR and other climate programs. Additional funding for ENERGY STAR would generally go towards two broad uses. First, additional resources would be used to address program backlogs and deferred activities to restore core program functions and integrity. These efforts would include, for example: addressing the growing backlog in ENERGY STAR efficiency specs for the range of products, industrial performance indicators, and score development for commercial buildings; major enhancements

to Portfolio Manager to maintain its credibility as a business standard tool; data integrity improvements; addressing deferred maintenance (e.g., to IT system configurations, security requirements and enterprise architecture); website enhancements to keep up with best practices, technology platforms and a growing focus on a mobile-first approach; restoring comprehensive oversight and third-party oversight of certification bodies and labs; and addressing program sectors in which to implement a 2015 Congressionally mandated tenant recognition program (e.g., office spaces, retail spaces, warehouse spaces).

Second, the resources requested for Climate Protection Program could help ENERGY STAR develop and launch new initiatives to help achieve climate goals, including delivering solutions to underserved communities. To ensure these new programs are developed at the scale and pace needed, ENERGY STAR would need consistent funding above FY 2022 levels over several years. New efforts to advance GHG reductions could include:

- Expanded capacity to support the significant reliance on ENERGY STAR in residential and commercial tax credits, rebates, and other incentives under the IRA
- Expanded ENERGY STAR Home Upgrade to deliver priority energy efficiency and efficient electric investments to millions of homes, including a new service provider partnership offering to leverage existing ENERGY STAR infrastructure and market relationships
- Additional ENERGY STAR product spec updates to accelerate reaching climate goals
- Launch of ENERGY STAR Next Gen to drive construction of efficient electric new homes
- ENERGY STAR Most Efficient and Emerging Technology to help drive advanced energy efficiency solutions
- Installer training for priority products (e.g., heat pumps, HVACs, and water heaters) that are essential to deliver GHG emission reductions
- Support for the growing number of state and local governments that have adopted or are considering Building Performance Standards, benchmarking mandates, and/or building benchmarking and disclosure policies
- Launching a new emissions-based building and plant recognition program, accelerating the pathway to zero-carbon building standards
- Additional enhancements to ENERGY STAR Portfolio Manager to add energy efficiency metrics in industrial facilities and hard to reach commercial sectors and to add refrigerant tracking to the tool
- Expanded ENERGY STAR engagement to new industrial sectors to advance efficiency and decarbonization across the economy
- Partnering with DOT and GSA on reducing emissions in concrete and cement (per IJIA and IRA)
- Program support activities (e.g., research, program evaluation, and metrics) to inform additional future program directions

New efforts to advance delivery of climate equity could include:

- Targeted education and outreach to improve access to ENERGY STAR products among underserved communities
- Expanding Inclusive Utility Investment programs in conjunction with the ENERGY STAR Home Upgrade to deliver priority efficiency upgrades at scale to underserved populations, including designing for consumer protections

- Coordinating with DOE and state energy offices on state-level residential upgrade and electrification incentive programs to ensure delivered effectiveness by leveraging ENERGY STAR and the ENERGY STAR Home Upgrade as a platform
- Addressing affordability in key appliance categories in strategic collaboration with manufacturers, retailers, and utilities
- Expanding ENERGY STAR Best Value Finder to highlight additional products available at the best prices
- Improving energy efficiency and efficient electrification in disadvantaged school districts through ENERGY STAR and the EPA regions while delivering improved health and reduced costs
- Promoting updated ENERGY STAR certification requirements for manufactured homes
- Working to increase the energy efficiency of existing multifamily housing
- Outreach to State Housing Finance Agencies to encourage adoption of incentives for energy efficiency (and ENERGY STAR certification) in their “Qualified Allocation Plans”
- Coordination with federal agencies on energy efficiency in federally funded affordable housing
- Increasing the energy efficiency of worship facilities through ENERGY STAR tools and resources

RFS:

3. **Tonko:** Administrator Regan, as you know, there is quite an interest in new technologies, and pathways for those technologies, to be included in the Renewable Fuel Standard program. As EPA works to reevaluate program rules for 2023 and beyond, **how do you intend to incorporate transformational technologies that can have a meaningful impact on greenhouse gas emission reductions to be allowed to apply for a pathway under the program?**

Response: Stakeholders have shown continued interest in EPA taking action under the RFS program to allow for the generation of Renewable Identification Numbers (RINs) from new pathways. EPA is committed to moving forward in this area, and EPA staff continue to evaluate new renewable fuel production pathways as new technologies develop. We anticipate adding new pathways to the RFS program when these pathways satisfy the statutory requirements.

Rep. Ruiz (D-CA)

Arsenic in the Drinking Water:

1. **Ruiz:** I want to ask you about the communities in my district whose drinking water has been contaminated with arsenic and other contaminants. As we both know, eight communities in the Eastern Coachella Valley are under Emergency Orders issued by the EPA due to unsafe levels of arsenic in their water.

I’ve seen what is happening in my district firsthand, and I believe an article in the Desert Sun, the local newspaper in my district, captures what this situation is doing to the residents.

According to the article, one resident at the Arellano Mobile Home Park said the water, “looks dirty. It smells rotten and looks like it has sand in it.” A longtime resident of a different community, the St. Anthony Trailer Park said that, “when she was six, she watched in horror as her three-year-old brother’s skin started ‘peeling off’ after a shower.” I submitted that article to be part of the record.

As a physician and public health expert, I am far too aware of the dangerous effects of long-term exposure to high levels of arsenic like those found in the Arellano and St. Anthony Mobile Home Parks. That is why I have been working on this issue since 2019, when the EPA issued their first Emergency Order against the Oasis Mobile Home Park in Thermal.

- a. In April, I sent a letter to the EPA asking specific questions to help us identify long-term, sustainable solutions to the issue, as well as asking you to work with my staff and these affected communities to ensure they have access to these programs. **What progress have you made on the answers to these questions, and do you commit to continuing to work with Coachella Valley stakeholders towards a joint plan to advance environmental justice?**

Response: On May 18, 2022, EPA provided a written response to your April 6, 2022, letter which was referenced in your question. EPA understands the continuing impact this drinking water environmental justice challenge is having in your district and is committed to working with your staff on this important issue in the Coachella Valley.

- b. Beyond the letter, my staff continues to work with stakeholders like the local water district to identify barriers that are preventing funding from going to these communities. **Do you commit to continuing to work with my staff and local stakeholders to overcoming any obstacles that we identify in getting funding to these communities?**

Response: EPA will continue to meet regularly with your staff and work closely with the Bureau of Indian Affairs, Torres Martinez Band of Desert Cahuilla Indians, California EPA, Riverside County, Coachella Valley Water District, and local community organizations as necessary.

- c. I applaud the EPA for putting words into actions and including in your budget major investments in the health and well-being of local communities. **Can you detail how the budget will help communities like those in my district whose water is contaminated with arsenic, and how your agency will ensure that the funding will be used in a way that reflects the administration’s environmental justice priorities?**

Response: EPA understands that drinking water contamination is one of the many environmental and economic burdens these communities face. The Bipartisan Infrastructure Law has provided unprecedented funding to water infrastructure, including \$11 billion in supplemental funding over five years for the Drinking Water State Revolving Fund. EPA is committed to ensuring that those funds benefit the communities that need it most and that disadvantaged communities benefit equitably from this historic investment in water infrastructure. In FY22, EPA allocated \$544 million in funding to California to support its drinking water state revolving loan programs, including significant grant funding to support infrastructure investments in small and disadvantaged communities. Those programs continue to fund water consolidation efforts in the

Coachella Valley that will connect communities affected by arsenic contamination to reliable sources of drinking water. EPA continues to coordinate closely with California and the local water district to ensure funding is prioritized for these projects.

The Agency will remain vigilant in the oversight and enforcement responsibility of drinking water and wastewater systems in the Valley and investigate next steps to bring both the water and wastewater systems into compliance.

Environmental Justice and Justice 40:

2. **Ruiz:** As chair of the Congressional Hispanic Caucus (CHC), I know firsthand how important environmental justice is to the caucus and the constituents we serve. **Will you commit to briefing the caucus on the environmental justice aspects of the EPA’s proposed budget, with a particular focus on the Justice 40 Initiative?**

Response: I had the privilege of attending a meeting with the CHC on September 15, 2022, to discuss Justice40 and the EPA’s environmental justice work. The Agency will continue working with the CHC to provide you any additional information.

3. **Ruiz:** In your testimony, you stated that nearly 22 percent of Americans live within three miles of a Superfund site. **What are the demographics of these communities, and what percentage of the people living within three miles of a Superfund site are African American, Latino, Native American, economically disadvantaged, or otherwise vulnerable?**

Response: That percentage has increased to 24% of the U.S. population as approximately 78 million people live within 3 miles of a Superfund site. That includes:

- 24% of all children in the U.S. under the age of 5
- 23% of all children in the U.S. under 18
- 27% of all blacks in the U.S.
- 30% of all Hispanics in the U.S.
- 29% of all minorities in the U.S.
- 26% of all households in the U.S. below the poverty level
- 26% of all people with less than a high school education in the U.S.
- 33% of the linguistically isolated people in the U.S.

(Source: Data collected from EPA Superfund site information; site boundary data from EPA Shared Enterprise Geodata Service; and population data from the 2016-2020 American Community Survey.)

eRINS Rulemaking:

4. **Ruiz:** **What is the status of the eRIN rulemaking – which is expected to clarify how the pathway will work and how the Agency will review registration applications – and what timeline we can expect for finalization of this rule? Will this rule be finalized in 2022? Will this rule allow for generation of eRINS in 2022, or 2023, or later?**

Response: On December 1, 2022, EPA announced a proposed rule to establish required Renewable Fuel Standard (RFS) volumes and percentage standards for 2023, 2024, and 2025, as well as to propose a series of important modifications to strengthen and expand the RFS

program. This rulemaking includes new provisions governing the generation of renewable electricity under the program. EPA is currently on target to meet the court-ordered deadline of a consent decree entered by the D.C. Circuit on July 26, 2022, which requires the final rule by June 14, 2023.

5. **Ruiz: Will the EPA engage in rulemaking that makes use of empirical data from charging systems to ensure that that RINS are only generated for electricity that was actually used in transportation—thereby ensuring compliance with existing statutory requirements? Please elaborate on how the EPA plans use empirical data in its rulemaking.**

Response: EPA’s proposed rule lays out provisions that govern the generation of RINs for renewable electricity under the RFS program. The proposed rule includes new regulations that comprehensively address multiple design parameters of the program, including how various empirical data will be used in program implementation and administration.

Diversity in the EPA:

6. **Ruiz: The proposed EPA budget seeks funding for over 1,900 new Full Time Equivalents to diversity in the hiring ranks, and please elaborate on how the EPA will better actively recruit minorities and disadvantaged individuals.**

Response: EPA is committed to rebuilding EPA’s workforce over the next year with an ambitious goal of increasing our staff by approximately 14 percent over current levels in order to ensure the Agency has the capacity and skills necessary for our mission. The *FY 2022-2026 EPA Strategic Plan* guides the Agency’s workforce planning in two ways: through the Evidence Act Learning Agenda, to ensure that workforce strategy is effectively data-driven, and through a Long-Term Performance Goal to achieve a “Leading and Sustaining” maturity level of fostering Diversity, Equity, Inclusivity, and Accessibility (DEIA). As EPA works towards increasing staffing levels, the Agency will remain focused on DEIA, through efforts such as hosting virtual outreach events targeting diverse networks, including veterans, Historically Black Colleges and Universities (HBCUs), Tribal Colleges and Universities (TCUs), Hispanic Serving Institutions (HSIs) and other Minority Serving Institutions (MSIs), and Returned Peace Corps Volunteers.

EPA’s FY 2023 budget includes a \$9 million investment to support key DEIA initiatives, including, a Senior Executive Service Candidate Development Program to ensure future EPA executives reflect the diversity of the American people and are prepared to lead a diverse workforce, and the establishment of a paid internship program to expand Federal work experience opportunities for underrepresented and underserved populations. We will ensure that the Agency’s workforce reflects the diversity of the Nation by increasing recruiting and outreach to diverse networks, leveraging all available hiring authorities, and implementing programs to support EPA opportunities for historically underrepresented populations.

7. **Ruiz: Will you commit to working with the CHC to ensure diversity in the EPA’s workforce?**

Response: EPA welcomes the opportunity to discuss this matter further with the CHC.

Rep. Dingell (D-MI)

PFAS Strategic Roadmap:

1. **Dingell:** Administrator Regan, **will the EPA’s FY23 budget request allow EPA to meet all the deadlines outlined in the agency’s PFAS Strategic Roadmap?**

Response: As part of the President’s commitment to tackling PFAS pollution, the President’s FY23 budget for EPA would provide approximately \$126 million in FY 2023 for EPA to increase its understanding of human health and ecological effects of PFAS, restrict uses to prevent PFAS from entering the air, land, and water, and remediate PFAS that have been released into the environment. The President’s FY23 budget included an increase of \$51 million for EPA’s PFAS work and would set a foundation for EPA fully realizing its Roadmap commitments. However, EPA’s recent funding levels for its PFAS work – reflecting largely flat funding between FY21 and FY22 – limit EPA’s ability to fully realize the bold actions EPA announced in the PFAS Roadmap. EPA will continue to act on the Agency’s PFAS Strategic Roadmap to safeguard communities from PFAS contamination.

On December 29, 2022, President Biden signed the Consolidated Appropriations Act, 2023, which provides appropriations to EPA for the remainder of Fiscal Year 2023. EPA is currently developing an operating plan to implement the Act.

2. **Dingell:** Administrator Regan, the EPA PFAS Strategic Roadmap sets a Spring 2022 deadline to issue a rule to close loopholes in the Toxic Release Inventory that allow polluters to hide PFAS releases from the public. **Will the EPA meet that deadline?**

Response: EPA’s proposed rule to remove exemptions and exclusions from PFAS reporting under TRI was published in the Federal Register on December 5, 2022.

3. **Dingell:** Administrator Regan, the EPA PFAS Strategic Roadmap set a Spring 2022 deadline to issue health advisories for GenX and PFBS. **Will the EPA meet that deadline?**

Response: On June 15, 2022, EPA issued final health advisories for PFBS and for HFPO-DA (often referred to as GenX) chemicals. At the same time, EPA issued interim updated drinking water health advisories for perfluorooctanoic acid (PFOA) and perfluorooctane sulfonic acid (PFOS) that replace those EPA issued in 2016.

4. **Dingell:** Administrator Regan, the EPA PFAS Strategic Roadmap set a Spring 2022 deadline to issue draft IRIS assessments for four other PFAS. **Will the EPA meet that deadline?**

Response: EPA first released the draft PFHxA IRIS assessment for public comment and peer review in February 2022 and anticipates releasing the draft IRIS assessments for three additional PFAS (PFDA, PFHxS and PFNA) in 2023. EPA will continue to provide updates on the status of the PFAS IRIS assessments through the IRIS Program Outlook, available at <https://www.epa.gov/iris/iris-program-outlook>.

5. **Dingell:** Administrator Regan, the EPA PFAS Strategic Roadmap set a Summer 2022 Deadline to close the door on abandoned uses of PFAS. **Will the EPA meet that deadline?**

Response: EPA's PFAS Roadmap includes a commitment to take steps to close the door on abandoned PFAS and uses. On January 20, 2023, EPA proposed a Significant New Use Rule for inactive PFAS. A copy of the proposed rule is available here: <https://www.epa.gov/eg/current-effluent-guidelines-program-plan>

6. **Dingell:** Administrator Regan, the EPA PFAS Strategic Roadmap set a Fall 2022 deadline to finish studies on several industry categories, including electrical components and textile mills, in order to develop limits on industrial releases of PFAS. **Will the EPA meet that deadline?**

Response: The PFAS roadmap commits EPA to restrict PFAS discharges from industrial sources through a multi-faceted Effluent Limitations Guidelines program. On January 20, 2023, EPA released its final *Effluent Guidelines Program Plan 15*, which provides information about the results of several studies and EPA's decisions on whether or not to initiate rulemakings.

7. **Dingell:** Administrator Regan, the EPA PFAS Strategic Roadmap set a Fall 2022 deadline to evaluate measures to reduce PFAS pollution into the air, including a potential designation as Hazardous Air Pollutants. **Will the EPA meet the deadline?**

Response: The PFAS Roadmap commits EPA to building the technical foundation to address PFAS air emissions and to evaluating mitigation options, including listing certain PFAS as hazardous air pollutants and/or pursuing other regulatory and non-regulatory approaches. EPA looks forward to sharing updates on this effort this fall.

8. **Dingell:** Administrator Regan, the EPA PFAS Strategic Roadmap includes a Winter 2022 deadline to include PFAS in EPA-issued NPDES permits and also to issue guidance for state permit writers. **Will the EPA meet that deadline?**

Response: The PFAS Roadmap commits EPA to leveraging NPDES permitting to reduce PFAS discharges into waterways. EPA met the first portion of this commitment by releasing a memo to EPA Regions in April 2022, and the second portion through a memo to states in December 2022. The December memo provides EPA's guidance to states for addressing PFAS discharges when they are authorized to administer the NPDES permitting program and/or pretreatment program. These recommendations reflect EPA's commitments in the PFAS Roadmap to leverage NPDES permits to reduce PFAS discharges to waterways at the source and obtain more comprehensive information through monitoring on the sources of PFAS and quantity of PFAS discharged by these sources.

9. **Dingell:** Administrator Regan, the EPA PFAS Strategic Roadmap includes a Summer 2023 deadline to proposed limits in industrial releases by chemical companies. **Will the EPA meet that deadline?**

Response: The PFAS roadmap commits EPA to restrict PFAS discharges from industrial sources through a multi-faceted Effluent Limitations Guidelines program. EPA released its final *Effluent Guidelines Program Plan 15* on January 20, 2023, which includes additional details on EPA's

work to undertake rulemaking or gather additional data to support rulemaking decisions for specific industry sectors, including planned rulemakings for organic chemicals, plastics and synthetic fibers (OCPSF), metal finishing, and electroplating.

GHG Emissions Standards:

10. **Dingell:** In addition, within the next two years EPA aims to finalize GHG standards for Model Year 2027 vehicles and beyond. For the last 40 years, EPA and automakers have focused on vehicle technology feasibility when setting GHG standards. We know electric vehicles are not only feasible, but they are the future. And the EV technologies—from manufacturing to battery development— are getting better every day.
 - a. Administrator Regan, given all the electric vehicles on our roads and with more on the way, **how does EPA intend to craft future light-duty vehicle standards that provide the lead-time necessary to both develop and apply electric vehicle technologies giving due consideration to the cost of compliance, including vehicle affordability, EV supply chains, and EV charging infrastructure?**

Response: The President has established some clear goals for EPA in this area through his Executive Orders. Among other things, Executive Order 14037 *Strengthening American Leadership in Clean Cars and Trucks*, called on EPA to develop a rule to establish multi-pollutant emission standards under the Clean Air Act for model year 2027 and later light duty and medium duty vehicles. The light-duty standards we established in December 2021 through model year 2026 provide a strong launch point for this next phase of standards for 2027 and beyond. As with past rules setting emissions standards, EPA will engage in a thorough technical analysis to consider costs of compliance, availability of technologies and other relevant factors in determining appropriate standards. As EPA considers emissions standards for greenhouse gases and criteria pollutants for the light-duty and medium-duty vehicle sectors in this longer-term rule, we will also consider the effect of the incentives provided by the Inflation Reduction Act (IRA) to help tackle climate change and improve air quality in communities. EPA is ready to advance President Biden’s bold environmental agenda, ensure investments from this legislation reach the communities that need them most, and make people’s lives healthier today and in the future. There are many IRA provisions that will support the ZEV transition by making the purchase of a ZEV more affordable for consumers, and benefit vehicle manufacturers and suppliers through a series of tax credits and other incentives for advanced automotive technologies, manufacturing, and infrastructure.

Furthermore, EPA is engaging with the full spectrum of stakeholders around vehicle emissions standards as part of the rule development process which will continue through the public comment period for the proposal. This input from stakeholders and the public will be critical in helping EPA give due consideration to all factors and better understand the opportunities and challenges that the ZEV revolution provides.

EPA Workforce Ventilation Issue in Ann Arbor:

11. **Dingell:** I would like to raise an issue that has been brought to my attention recently that I would like to work with you on addressing. It concerns the air quality at some of the employee workspaces at the EPA's office in Ann Arbor, Michigan. It is my understanding that AFGE Council 238 and the Agency negotiated a return to office MOU Safety Plan requiring offices to meet ventilation standards from ASHRAE (known as the American Society of Heating, Refrigerating and Air-Conditioning Engineers).

Those ASHRAE standards layout requirements on how air moves within buildings. When air circulates in an area that could degrade its quality that air should not be then transferred to an area of higher quality. In Ann Arbor, lower-quality rated warehouse air supplies 100 percent of the air to some warehouse offices, which poses a real public health threat to the EPA employees. Immediately outside the offices are parts cleaners, chemical waste drums, flammable storage cabinet, forklifts, engine storage, testing sheds, EPA equipment storage—cars even drive right by the office doors in this warehouse.

Since the hearing, I commend EPA for allowing all Region 5 employees, including non-union members, to exercise full-time telework as an option until further notice. With that said, the air quality issue still remains and needs to be addressed for the long-term health and safety of these employees.

- a. Administrator Regan, **will the EPA commit to correcting the Region 5 Ann Arbor office to comply with the ASHRAE standard? Additionally, will the EPA allow employees to continue teleworking until the portafab office is compliant with the ASHRAE standard?** I find this situation very concerning and urge you to do everything possible to find a swift and safe resolution for these EPA employees and my constituents.

Response: The Agency is committed to resolving the issues at our Region 5 Ann Arbor office and ensuring that our facilities are compliant. EPA values the health and wellbeing of every employee and is committed to maintaining a safe workplace for our employees. EPA will continue to work with our labor partners to explore options for the Region 5 Ann Arbor employees, while leveraging telework and remote work.

GLRI Report Delays:

12. **Dingell:** The Great Lakes Restoration Initiative continues to receive broad bipartisan support in Congress and throughout the Great Lakes region. Part of the reason for this support has been the great transparency that EPA provides regarding the use of GLRI funds each fiscal year. However, in its annual reporting requirement to Congress and the President, the most recent report, which was released in December of 2021, is for FY 2018, which is three years behind the last full fiscal year.

These annual reports serve as an important tool in highlighting all of the great victories EPA and its partner agencies are achieving through the GLRI and help demonstrate why the GLRI is an effective use of federal funds.

- a. Administrator Regan, **can you shed light on the long delays of these reports, as well as the status of the next report, and can we expect the EPA to produce annual GLRI reports in a more timely manner in the future?**

Response: EPA remains steadfast in providing more recent funding data in the Agency’s annual reports and is hopeful that we have overcome prior constraints in gathering this data for Congress. Development of the reports has been delayed pending the resolution of processing issues stemming from previous GLRI Reports to Congress. The 2019 Report was provided to Congress on November 7, 2022, and the combined 2020 and 2021 Report is expected to be sent to Congress by April 2023. Now that those issues have been resolved, future GLRI Reports to Congress are expected to be delivered more promptly.

Rep. Rochester (D-DE)

Air Quality Monitoring:

1. **Rochester:** I was glad to see that EPA’s discretionary budget request allocated \$1.1 billion to improve air quality—but the first step in improving air quality is accurate and complete data. Earlier this year, I worked with Rep Castor and Rep Torres to introduce the Environmental Justice Air Quality Monitoring Act, which would help identify hotspots for multiple pollutants and provide data to local communities.

What is EPA doing to ensure more air quality monitoring at the community and hyperlocal levels? And how can EPA make air monitoring data more transparent and accessible to community stakeholders so that they can better understand their local health risks?

Response: In November of last year, with grant funding from the American Rescue Plan and additional funding available through the Inflation Reduction Act, EPA announced the selection of 132 air monitoring projects in 37 states to receive \$53.4 million in funding. Funds will be used to enhance air quality monitoring in communities across the United States with environmental and health outcome disparities stemming from pollution and the COVID-19 pandemic. Reliable information about the quality of the air they breathe is critical to people across the country, especially in communities already bearing more than their share of air pollution. Administrator Regan made sure that a significant percentage of the resources were used for those communities. The same kind of information is essential to states and air quality management districts in meeting air quality goals. That’s why 40% of the funds are dedicated to a competitive grant program open to communities themselves, and 40% is being dedicated to upgrading the current air quality monitoring network.

Cumulative Impacts:

2. **Rochester:** As you know, a key component to advancing environmental justice is understanding and mitigating the effects of cumulative impacts, where environmental burdens pile up on top of each other over time.

How will EPA use its budget to advance the science that informs cumulative impact work while also addressing these multi-layered harms directly in the communities where they occur?

Response: EPA is currently developing a framework for considering cumulative impacts in relevant EPA decisions and operationalizing that framework within EPA’s programs and activities. The Office of Research and Development developed the draft report, “Cumulative Impacts: Recommendations for ORD Research,” which focuses on identification of research needs to inform and guide ORD’s scientific research efforts in the coming years, consistent with ORD’s mission to conduct research for EPA that provides the foundation for credible decision-making to protect human health and the environment. The report developed a broad categorical approach for how to support cumulative impact assessments and provides recommendations for each step of that approach. It includes establishing the decision context and stakeholder engagement, addressing scientific considerations for meeting partner needs, empowering local decisions and actions through science, supporting science translation and delivery, and providing research management support for cumulative impact assessment.

The draft report focuses on identifying priorities to improve scientific understanding of cumulative impacts, including how the confluence of problems in a community can exacerbate the health impacts of pollution exposure. Cumulative impacts accrue from interactions between chemical (environmental pollutants) and non-chemical (e.g., noise and long-term exposure to violence) stressors. Non-chemical stressors can have measurable biological impacts that affect an individual’s susceptibility to environmental pollution. Different individuals or communities, with different histories of such burdens, may require different levels of interventions to achieve a given level of health outcome.

ORD has planned research that will address many of the recommendations in the report. It combines expertise in the physical and natural sciences with our growing social science expertise and emphasis on community capacity building and community-engaged research to inform Agency and community decisions. We will collaborate with other EPA Program and Regional Offices to support their implementation of cumulative impacts assessments. The Regional-ORD Applied Research Program is an internal mechanism to collaborate directly with Regional Offices and work on the ground with communities to address their cumulative impacts research needs. EPA continues to evaluate its existing authorities, as well as associated science, policy, and legal issues, in order to more consistently integrate cumulative impact considerations into our decision-making.

Startup, Shutdown, Malfunction:

3. **Rochester:** We appreciate the steps forward EPA has started to take this year on the serious problem of excessive pollution during periods of startup, shutdown, and malfunction. The Clean Air Act requires air toxics rules, new source performance standards, and state implementation plans to apply at all times, because communities need clean air all the time. Courts have repeatedly found the SSM loopholes illegal, yet for years many have stayed on the books, allowing the release of hazardous and even deadly pollution that is the worst in communities of color and low-income communities. **What is EPA doing to remove all remaining startup,**

shutdown, and malfunction loopholes as soon as possible, including in all 112 and 111 rules or SIP actions under review?

Response: The FY 2023 President’s Budget includes an increase to support the regulation of stationary sources of air pollution through developing and implementing emissions standards, regulations, and guidelines in accordance with Executive Order 13990: *Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis*. EPA is committed to deploying all available authorities and tools under the Clean Air Act to secure clean and healthy air for all communities, especially communities of color and low-income communities that for too long have disproportionately suffered from harmful air pollution and poor air quality. This includes taking steps to ensure that our Clean Air Act regulations properly address emissions during startup, shutdown, and malfunction periods (SSM).

As a result of the D.C. Circuit’s 2008 decision in *Sierra Club v. EPA*, SSM exemptions became null and void for any rule that relies on the General Provisions under CFR part 63. In 2021, EPA issued a rule that amended the General Provisions in the Code of Federal Regulations to reflect the 2008 court decision for all CAA section 112 rules that relied on the General Provisions for such provisions.

In addition, as part of ongoing periodic reviews required by the CAA, EPA has been working to modify the regulatory text for each section 112 rule in the Code of Federal Regulations to codify the removal of SSM exemptions for all CAA section 112 rules. This includes removing any SSM exemptions in CAA section 112 rules that independently contain the exemptions (rather than relying on the General Provisions).

EPA has interpreted the court decision to also apply to CAA section 111 and 129 rules as well and has been working to ensure that SSM exemptions are not permitted for any new, modified, or reconstructed facility that must comply with CAA section 111 NSPS or section 129 subparts. During ongoing periodic reviews required by the CAA, EPA has made progress in removing the SSM exemptions from these programs. While EPA has made substantial progress since 2008 with almost 100 NESHAP SSM revisions, and about 25 NSPS and section 129 rule revisions, we are striving to remove SSM exemptions from all remaining rules in conjunction with periodic technical reviews.

EPA is also working to ensure that State Implementation Plans (SIPs) meet Clean Air Act requirements with respect to SSM provisions. On September 30, 2021, EPA Deputy Administrator Janet McCabe issued a memorandum titled “*Withdrawal of the October 9, 2020, Memorandum Addressing Startup, Shutdown, and Malfunctions in State Implementation Plans and Implementation of the Prior Policy*,” which withdrew the memorandum issued by Administrator Wheeler in October 2020, and reinstated EPA’s SSM Policy as described in a 2015 national SSM SIP call Action. The 2021 Memorandum provides information about additional SSM related actions that EPA is moving forward with including: (1) expeditiously revisiting through notice-and-comment rulemaking the three state-specific SSM SIP call withdrawals that occurred in 2020 (for North Carolina, Texas, and Iowa), and also reconsidering whether any of the findings underlying those actions should be retained in light of the Agency’s reaffirmation of EPA’s SSM Policy; and (2) implementing EPA’s SSM Policy on an ongoing

basis through notice-and-comment actions on SIP submissions, including implementing the 2015 SIP call and taking additional SIP actions consistent with the EPA's SSM Policy.

Rep. Castor (D-FL)

Energy Star:

1. **Castor:** The Energy Star program is essential to help families and businesses save money on their energy bills—it helped consumers save about \$42 billion in 2020. Communities across the country benefit from the Portfolio Manager program to help them with local energy efficiency initiatives, and small businesses use it to manage their energy bill. However, the Energy Star program does not have the resources and staff to meet the needs of all of these communities. Its budget has been whittled away until today in real terms it is just half of what it was two decades ago. **Could you please describe how the Energy Star program could help more families, businesses, and communities cut their energy bills with additional funding?**

Response: Additional funding for ENERGY STAR would generally go towards two broad uses. First, additional resources would be used to address program backlogs and deferred activities to restore core program functions and integrity. These efforts would include, for example: addressing the growing backlog in ENERGY STAR efficiency specs for the range of products, industrial performance indicators, and score development for commercial buildings; major enhancements to Portfolio Manager to maintain its credibility as a business standard tool; data integrity improvements; addressing deferred maintenance (e.g., to IT system configurations, security requirements and enterprise architecture); website enhancements to keep up with best practices, technology platforms and a growing focus on a mobile-first approach; restoring comprehensive oversight and third-party oversight of certification bodies and labs; and addressing program sectors in which to implement a 2015 Congressionally mandated tenant recognition program (e.g., office spaces, retail spaces, warehouse spaces).

Second, the resources requested for Climate Protection Program could help ENERGY STAR develop and launch new initiatives to help achieve climate goals, including delivering solutions to underserved communities. To ensure these new programs are developed at the scale and pace needed, ENERGY STAR would need consistent funding above FY 2022 levels over several years. New efforts to advance GHG reductions could include:

- Expanded capacity to support the significant reliance on ENERGY STAR in residential and commercial tax credits, rebates, and other incentives under the IRA
- Expanded ENERGY STAR Home Upgrade to deliver priority energy efficiency and efficient electric investments to millions of homes, including a new service provider partnership offering to leverage existing ENERGY STAR infrastructure and market relationships
- Additional ENERGY STAR product spec updates to accelerate reaching climate goals
- Launch of ENERGY STAR Next Gen to drive construction of efficient electric new homes
- ENERGY STAR Most Efficient and Emerging Technology to help drive advanced energy efficiency solutions
- Installer training for priority products (e.g., heat pumps, HVACs, and water heaters) that are essential to deliver GHG emission reductions

- Support for the growing number of state and local governments that have adopted or are considering Building Performance Standards, benchmarking mandates, and/or building benchmarking and disclosure policies
- Launching a new emissions-based building and plant recognition program, accelerating the pathway to zero-carbon building standards
- Additional enhancements to ENERGY STAR Portfolio Manager to add energy efficiency metrics in industrial facilities and hard to reach commercial sectors and to add refrigerant tracking to the tool
- Expanded ENERGY STAR engagement to new industrial sectors to advance efficiency and decarbonization across the economy
- Partnering with DOT and GSA on reducing emissions in concrete and cement (per IJJA and IRA)
- Program support activities (e.g., research, program evaluation, and metrics) to inform additional future program directions

New efforts to advance delivery of climate equity could include:

- Targeted education and outreach to improve access to ENERGY STAR products among underserved communities
- Expanding Inclusive Utility Investment programs in conjunction with the ENERGY STAR Home Upgrade to deliver priority efficiency upgrades at scale to underserved populations, including designing for consumer protections
- Coordinating with DOE and state energy offices on state-level residential upgrade and electrification incentive programs to ensure delivered effectiveness by leveraging ENERGY STAR and the ENERGY STAR Home Upgrade as a platform
- Addressing affordability in key appliance categories in strategic collaboration with manufacturers, retailers, and utilities
- Expanding ENERGY STAR Best Value Finder to highlight additional products available at the best prices
- Improving energy efficiency and efficient electrification in disadvantaged school districts through ENERGY STAR and the EPA regions while delivering improved health and reduced costs
- Promoting updated ENERGY STAR certification requirements for manufactured homes
- Working to increase the energy efficiency of existing multifamily housing
- Outreach to State Housing Finance Agencies to encourage adoption of incentives for energy efficiency (and ENERGY STAR certification) in their “Qualified Allocation Plans”
- Coordination with federal agencies on energy efficiency in federally funded affordable housing
- Increasing the energy efficiency of worship facilities through ENERGY STAR tools and resources

Air Quality Monitoring:

2. **Castor:** Communities of color and low-income Americans have long been disproportionately harmed by legacy pollution. I’m leading legislation with Representative Blunt Rochester and Representative Torres to improve access to air quality data, so we can address widespread

disparities and ensure our clean energy future improves the lives of all Americans, especially those whose communities are burdened by the air pollution caused by the burning of fossil fuels.

Could you please discuss how additional resources could help EPA's improve air quality monitoring so that communities have access to "hyperlocal" or block-level data?

Response: The President's FY 2023 budget request includes \$100 million for a new community air quality monitoring and notification program to support efforts to deliver environmental justice for overburdened and marginalized communities by providing real-time data to the public in areas with greatest exposure to harmful levels of pollution. This funding will increase air quality monitoring nationwide and will provide community members with crucial access to the data that was previously not as readily accessible or ascertainable.

3. **Castor: How could hyperlocal air quality monitoring data help empower communities?**

Response: This vital information can provide the public with tools and resources to help states, communities, and public health officials research their air quality and the corresponding health impacts. These tools and resources include real-time, accessible air quality information, supporting communication documents, and websites to identify potential sources of pollution.

Lead Smelter Pollution:

4. **Castor: In May 2022, Tampa Bay Times reporters won the Pulitzer Prize for their investigative work exposing dangers at the Gopher Resources facility - Florida's only lead smelter – to its workers and the surrounding community. How can we protect workers and communities from these kinds of hazards?**

Response: EPA's Region 4 Office in Atlanta continues to investigate this matter, meet with community members and local and state authorities, and consult with EPA HQ. Multiple EPA offices have worked to support the local government's monitoring efforts. Residents and workers should not be exposed to elevated levels of lead, and the Agency is committed to addressing these public health concerns.

Phosphogypsum Monitoring:

5. **Castor: In April 2021, the Piney Point phosphogypsum stack south of Tampa failed and started to spill millions of gallons of toxic, nutrient-rich, and possibly radioactive wastewater into Tampa Bay and the Gulf of Mexico. Phosphogypsum is a waste product from fertilizer production and is subject to state regulation because there is an exemption from the key Federal law on hazardous waste – the Resources Conservation and Recovery Act. Clearly, enforcement of existing state laws has been inadequate. How can EPA help ensure that Floridians are protected from inadequate enforcement of existing environmental laws?**

Response: As stated, phosphogypsum and process wastewater are excluded from regulation as a hazardous waste under RCRA regulation as such, state regulation is the governing law. However, the Agency and the state together have been able to mitigate present and future potential environmental harm at several sites in Florida from wastes associated with fertilizer

production. Specifically, this effort is highlighted in a consent decree entered by the United States with Florida Department of Environmental Protection as a co-plaintiff: <https://www.epa.gov/sites/default/files/2016-03/documents/florida-cd.pdf>.

Mitigation efforts include, among others, the installation of engineered barriers (“liners”) between the phosphogypsum/process wastewater and groundwater, recovery of phosphate through reclamation systems, groundwater monitoring and corrective action triggers, contingency plans, water management plans, and engineered barriers covering gypsum upon closure, and financial assurance for closure. The Agency continues to work with Florida on addressing other similar sites in the state.

6. **Castor: Should Congress remove the exemption for phosphogypsum waste products from the Federal RCRA?**

Response: EPA welcomes formal Technical Assistance requests on this matter, but the Agency has not taken a position on this legislative issue.

Water Infrastructure:

7. **Castor: As the climate warms, more extreme rainfall and flooding events could damage or overwhelm water systems, leaving entire communities without safe water supplies for days or weeks. This takes a disproportionately heavy toll on communities of color and low-income families. In the FY 2023 Budget, EPA proposes approximately \$4.4 billion for water infrastructure programs. What are EPA’s plans to prioritize climate resiliency investments for frontline communities and to ensure that water infrastructure is sited and designed to withstand the more extreme rainfall and flooding?**

Response: For decades, EPA has administered billions of dollars in water investment through a range of programs – from the flagship Drinking Water and Clean Water State Revolving Fund (SRF) programs that are the foundation of our investments to large loan programs like WIFIA and targeted programs that stretch from coast to coast. The Bipartisan Infrastructure Law added historic increases in investments for the SRF and other infrastructure funding. EPA is committed to investments that deliver clean, reliable water to communities across the country, benefiting the economy, businesses, and public health. The Agency wants to ensure that communities that have not traditionally benefited from these programs, whether small or large, urban or rural, get their fair share of these funds and to do so, EPA also requested additional funding in FY23 to target their specific challenges and needs more directly.

As these funding programs address critical public health, water quality, and community needs, EPA is also focused on ensuring that projects will help mitigate the impacts of climate change. That is why funding is available for storm water projects that employ green infrastructure as well as traditional hard infrastructure. Additionally, EPA's Creating Resilient Water Utilities initiative (<https://www.epa.gov/crwu>) provides drinking water and wastewater utilities with practical tools, training, and technical assistance needed to integrate resiliency into planned and on-going infrastructure improvement projects, including those financed through SRF programs. The Agency is also developing new tools to help communities better understand potential hazards and providing utilities with training and technical assistance so they can assess their own

risks and identify solutions. For example, EPA is implementing the Federal Flood Risk Management Standard across its portfolio of infrastructure funding programs.

EJ in Enforcement:

8. **Castor:** Ensuring compliance and enforcement of the nation’s environmental laws is foundational to achieving the EPA’s mission. **How is EPA integrating environmental justice and climate change considerations throughout its enforcement and compliance assurance work?**

Response: EPA is using the full breadth of its authorities to increase its presence in overburdened and vulnerable communities, provide comprehensive and timely relief, remediate past harm, foster meaningful engagement, and assist crime victims. EPA is advancing environmental justice principles through all of its enforcement programs.

In the civil enforcement program, EPA is providing early and more frequent engagement with pollution-burdened communities; increasing the number of facility inspections in overburdened communities throughout the country to monitor compliance with environmental requirements; increasing such inspections from a baseline of less than 30% to 45% in FY 2022 that will increase over time to reach a goal of 55% in FY 2026; and using the full array of policy and legal tools available to return facilities to compliance and provide tangible benefits to impacted communities.

To increase transparency, EPA launched “ECHO Notify,” which allows community members to receive customizable, weekly notifications of enforcement-related activities within their geographic area based on their zip code. Also, EPA’s “Compliance Advisor” program is providing hands-on technical assistance to small or rural towns or Tribes that own or operate drinking water and wastewater systems in underserved communities. This assistance will help them meet drinking water and wastewater protection requirements.

In the criminal enforcement program, EPA is strengthening detection of environmental crimes in overburdened communities by using innovative web-based tools to solicit tips from the public to identify criminal behavior. EPA is also seeking remedies to redress the harm impacting communities caused by the offense, such as restitution and community service. Our efforts to address criminal acts impacting communities have thus far been productive. In 2021, nearly 30% of the defendants charged had committed crimes that impacted communities with environmental justice concerns.

In the cleanup enforcement program, EPA is taking steps to speed up negotiations with polluters for Superfund cleanups, and we revised our model settlement agreements to include new provisions to increase community engagement and ensure that communities’ concerns are addressed in a meaningful manner at toxic waste sites. More information about OECA’s efforts to address EJ is available on OECA’s Environmental Justice in Enforcement and Compliance Assurance website (<https://www.epa.gov/enforcement/environmental-justice-enforcement-and-compliance-assurance>), including information on recent enforcement and compliance assurance activities benefiting overburdened and vulnerable communities.

EPA has an important role in mitigating climate change impacts through enforcement of laws and rules that result in the reduction of GHG emissions and other harmful pollutants, and the integration of adaptation principles into our compliance and enforcement work to enhance communities' resilience to climate change. Many of OECA's longstanding tools to address noncompliance and obtain injunctive relief that remediates pollution and harm to communities can also provide tangible climate benefits.

Under this Administration, OECA began two new activities focused on addressing the climate crisis: (1) developing a Climate Adaptation Implementation Plan and (2) the new hydrofluorocarbon (HFC) enforcement program. The OECA Climate Adaptation Implementation Plan identifies specific priority actions in FY 2022 and FY 2023 that support the Agency and the Administration's climate adaptation goals while building the foundational capacity within OECA that, in subsequent years, we will utilize and build upon to further integrate climate change considerations into EPA's enforcement and compliance program nationally. OECA is also in the process of starting a new enforcement program under the American Innovation and Manufacturing (AIM) Act (P.L. 116-260), that was enacted in December 2020 to phase down HFC production and consumption by 85% by 2036 and, combined with the global phasedown of HFCs, is projected to avoid up to 0.5°C of global warming by 2100. OECA is a co-lead with the Office of Air and Radiation (OAR) and Customs and Border Protection on a new multi-agency HFC task force charged with implementing and enforcing the AIM Act.

Chair Rodgers (R-WA)

Coal Ash and Transparency:

- 1) **Rodgers:** When you first became Administrator, you issued a memo to all EPA employees that stated: “[i]t is crucial that we apply the principles of transparency and openness to the rulemaking process.” Recently, the organization representing State hazardous and solid waste officials publicly rebuked EPA for its lack of transparency and process concerning clarifying several interpretative issues involving Part A of the Coal Combustion Residual Closure Standards.
 - a) **Please state why EPA used an informal process here – meaning no notice and public comment -- when these clarifications are a significant policy shift from long standing rules, guidance, and closure requirement interpretations under multiple laws that EPA implements.**

Response: The interpretive statements made in the Part A decisions did not require notice and comment because they merely reflect the application of the plain language of the regulations to the facility or re-state EPA's consistently held positions, in particular, that surface impoundments have not met the requirements of 40 C.F.R. § 257.102(d) when the coal ash in the closed unit will remain in contact with groundwater. Nevertheless, EPA provided a 60-day comment period on these interpretations as part of seeking comment on the proposed Part A decisions from January 25, 2022, through March 25, 2022.

- b) **Please state whether you will commit to requiring a more formal approach (i.e., rulemaking, policy memo, guidance document) to establish such interpretations.**

Response: With the backdrop of EPA’s commitment to transparency, the Agency will evaluate each interpretation on a case-by-case basis and comply with any applicable legal obligations.

- c) Congress expressly encouraged states that wanted to develop their own coal ash permitting programs. Considering EPA’s back-and-forth with Georgia over its coal combustion residuals program, however, it would seem some at the Agency want to undo that law. **Please state whether you are concerned if EPA is taking actions that disincentivize your former state colleagues from adopting their own coal ash permitting programs.**

Response: EPA is working closely with states that expressed an interest in developing their own coal ash permitting programs to ensure that the state programs meet the standard for approval under RCRA 4005(d). In addition, EPA will continue to review approved state programs as required by RCRA 4005 (d)(1)(D) and will take appropriate action if EPA identifies any of the deficiencies outlined in RCRA 4005 (d)(1)(D)(ii).

Budgeting and Staffing:

- 2) **Rodgers:** EPA proposes as part of its Fiscal Year 2023 budget to increase full-time employees (FTEs) by 1,900.

- a) **Please state how EPA plans to do this, especially considering the anticipated increased number of retirements at EPA and the challenging market for employers.**

Response: EPA is committed to rebuilding the Agency workforce over the next year with an ambitious goal of increasing our staff by approximately 14 percent over current levels in order to ensure we have the capacity and skills necessary for our mission. This request is the first step to increase the workforce to offset the 25 percent of all EPA employees who are eligible to retire now and the additional 19 percent eligible to retire within the next 5 years.

- b) **Please state whether EPA will even be able to stay “flat” to make up for retirements and competition.**

Response: EPA continues to use all available hiring authorities and flexibilities, including Schedule A, which streamlines the hiring process for persons with disabilities, alongside recruitment incentives and engagement with institutions and organizations, to recruit its workforce. Additionally, in FY 2023, EPA requests \$65.5 million, an increase of \$13.1 million, for its Human Resources Program to quickly increase staff levels in key offices and programs as well as support other Agency investments (e.g., new paid internship program, EPA’s Learning Agenda, etc.).

- c) **Please state what the intended geographic distribution of the expected new hires will be.**

Response: Hiring is specific and unique to each program’s needs to allow EPA to adapt to

changing priorities, needs, and resource levels. EPA anticipates that a significant number of these new hires will be located in EPA's Regional Offices and laboratories outside of Washington, DC. The FY 2022-2026 EPA Strategic Plan guides the Agency's workforce planning in two ways: through the Evidence Act Learning Agenda, to ensure that workforce strategy is effectively data-driven, and through a Long-Term Performance Goal to achieve a "Leading and Sustaining" maturity level of fostering Diversity, Equity, Inclusivity, and Accessibility (DEIA).

Superfund, Brownfields, and USTs:

- 3) **Rodgers:** EPA acknowledges that it received \$3.5 billion under the Infrastructure Bill for the Superfund program as well as receiving the receipts from the newly reinstated (and increased) Superfund tax. Yet, your budget still asks for \$456 million in annual appropriations – just \$51 million less than last year. In addition, EPA has billions of dollars available in Superfund Special Accounts and the cost recovery from responsible parties equaling billions of dollars.
- a) **Why is EPA asking for further appropriations in the budget considering the very substantial funding provided by the Infrastructure Act (IIJA), including the reinstatement of the tax?**

Response: As part of the FY 2023 request, the Superfund Remedial program will be reduced by a total of \$135 million. This reduction recognizes the additional funding invested in the Superfund Remedial Program by the Bipartisan Infrastructure Law and availability of Superfund chemical tax revenues beginning in FY 2023.

- b) **Please state what the plans are for the expenditure of the \$3.5 billion from IIJA.**

Response: In December 2021, EPA announced plans to fund new cleanup projects at 49 Superfund sites on the NPL using BIL funds. Funding will be focused on clearing the backlog of new cleanup construction projects at Superfund NPL sites; accelerating or completing cleanup at ongoing construction projects; and starting construction projects when ready in the next 2-5 years to avoid another backlog of unfunded construction projects. The Bipartisan Infrastructure Law provided EPA funding to initiate work on 49 backlogged sites in 24 states and territories and all 10 EPA regions, including some communities who have been waiting for cleanup for more than four years. More than 60 percent of the sites are in historically underserved communities. EPA is working to update project planning for Superfund sites to accelerate or complete work at ongoing cleanup projects and begin cleanup of additional projects across the country. Once we've reviewed the project plans, we will determine the timing and focus of additional announcements as appropriate.

- c) **Please state what the plans are for the receipts from the Superfund tax.**

Response: Receipts from the Superfund Tax will be paid into the Hazardous Substance Superfund Trust Fund without further appropriation and be available to carry out CERCLA activities.

- d) **What is EPA doing to optimize the spending of funds in Superfund Special Accounts?**

Response: EPA actively manages and monitors the use of the \$3.5 billion available in site-specific special accounts in order to maximize the use of special account funds to clean up Superfund sites. EPA has multi-year plans to spend the \$3.5 billion currently available for response actions at those sites and for those uses specified in the legal settlement agreements, with \$1.4 billion planned to be obligated in the next five fiscal years. Special account funds allow EPA to focus annually appropriated funds and funds provided by the Bipartisan Infrastructure Law to address sites where no viable parties have been identified. EPA regions and Headquarters offices review special account balances and plans for each special account at a minimum of twice per fiscal year or as site activities change to monitor the use of special accounts and ensure these funds are being used to further work at the sites for which they were collected.

- e) **Please state how this will impact the slow pace of expenditures from the Special Accounts for the Abandoned Uranium Mines on the Navajo Nation (that are over \$1 billion).**

Response: EPA understands the long-standing and profound impacts of uranium mining on the Navajo people. It is a prime example of an environmental and public health injustice. The FY 2023 President's Budget reflects an increase of approximately \$3 million to support the Navajo Nation. We continue to work closely with the Navajo Nation to advance cleanup on 230 of over 500 abandoned mines, with a focus on 46 sites that have higher radiation and are closer to people. We will continue to closely coordinate with the Department of Energy Legacy Management Defense Related Uranium Mines Program to assess approximately 300 mine sites in 2022 and 2023 that are not covered under existing settlements. EPA can only use special account funds at the site(s) specified in CERCLA settlement agreements, which specify how the money can be used. Since most of these mines are not covered under existing settlements, the Special Accounts would not be a proper avenue for those sites.

- 4) **Rodgers: What percentage of the annual, appropriated Superfund expenditures is EPA planning to spend on Superfund field work at Fund-lead sites? Of that amount, how much is meant for actual remedial and removal activities?**

Response: All programs that receive Superfund appropriations are essential to support CERCLA site response work, either directly or indirectly. Approximately 75 percent of the FY 2023 President's Budget request for the Superfund appropriation is for programs that directly support site work, including the Superfund Remedial program, the Superfund Emergency Response and Removal program, the Superfund Enforcement program, the Superfund Federal Facilities program, and the Superfund Federal Facilities Enforcement program. The other 25 percent is for necessary expenses that provide critical operational and administrative support to the cleanup and enforcement programs.

Of the total annual Superfund appropriation, approximately 57 percent of the FY 2023 President's Budget request will be used for the Superfund Remedial program and the Superfund Emergency Response and Removal program which address NPL sites and emergency and short-term CERCLA response actions, respectively.

- 5) **Rodgers:** Cleanup is the goal for Superfund. **Why does EPA’s budget propose to spend \$33 million less on Emergency Response and Removal – actual emergency cleanup – than in FY 2021?**

Response: EPA did not request less funding for the Emergency Response and Removal Program. The proposed FY 2021 budget request for Emergency Response and Removal was \$171 million. In FY 2021, the final enacted appropriation level was \$190.0 million. The proposed FY 2023 budget request for Emergency Response and Removal is \$199.8 million. Further, the FY 2023 budget request reflects the following increases over the FY 2022 Annualized Continuing Resolution:

- \$1.8 million for recalculation of base workforce costs for existing FTE due to annual payroll increases, adjustments to provide essential workforce support, and changes to benefits costs.
- \$3 million to support implementation of the Navajo mining work in support of tribal and disadvantaged communities, including providing additional assistance to Navajo Nation to advance cleanup through removal actions.
- \$5 million to support removal of hazardous waste from communities, with an emphasis on advancing environmental justice and equitable outcomes.

Additionally, the FY 2023 budget request provided FY 2021 actuals, \$233.1 million, which represent FY 2021 obligated resources including available prior year resources.

- 6) **Rodgers:** Leaking Underground Storage Tank (LUST) Cooperative Agreement funding has been at \$55 million a year for a while and this funding goes to states and tribes. Many states are behind on UST cleanups and leaking USTs are more prevalent and closer to people’s home than Superfund sites.
- a) **In view of the dramatic increases in other programs, why isn’t EPA proposing to increase LUST Cooperative Agreement funding?**

Response: The cleanup of LUST sites continues to be an important priority for the EPA. In the process of developing the FY 2023 Budget, EPA was conscious of the need to balance financial requests across many competing Administration priorities. As a result, EPA chose to request resources to help address the growing challenge posed from retail fuel locations storing E15 with incompatible equipment. EPA estimates that only 2% of the nation’s roughly 125,000 retail fuel locations have the appropriate equipment to store higher ethanol blends such as E15.

- b) **Is this program effective? If so, please explain. If not, why?**

Response: Due to significant support from our state, Tribal, and industry partners, EPA recently completed the 500,000th cleanup of a LUST site, which was a major milestone for the Agency. However, there are still upwards of 60,000 LUST sites remaining to be cleaned up and many of the remaining sites pose significant technical and financial challenges over sites that have already been cleaned up. EPA will continue to work with our state, Tribal, and industry partners to overcome these challenges as resources allow.

7) **Rodgers:** EPA proposes to add 60 FTEs (full-time employees) to the Brownfields program.

a) **Please state where EPA proposes these additional FTEs will be located.**

Response: The Brownfields program is consistently held-up as the Agency's premier community support program – our impact is driven by person-to-person interactions with disadvantaged communities to help move revitalization projects forward. But without the ability to foster and sustain trust in these historically underserved communities, the Brownfields Program will not fully achieve its mission of community revitalization. The Agency will utilize the Brownfields Workload Model to distribute all 60 FTE to regional brownfields programs in each of the ten regions to continue the important work of engaging in communities, to uphold the Agency's fiduciary responsibilities as Project Officers and perform capacity-building for equitable development, underserved communities, applying for brownfields grants, land revitalization, and performing outreach to new communities.

b) **If any of the FTEs will be located in the Regions, is there an expectation that these positions will meet with local officials, community groups in person? If not, why?**

Response: Yes, the same EPA brownfields staff that are overseeing approximately 1,000 open cooperative agreements funded under both BIL and regular appropriations are also managing land revitalization projects, providing one-on-one financial planning support and educating tribal, rural, and underserved communities on how to address brownfields. They are boots-on-the-ground in communities, building relationships and providing technical assistance to local officials, community groups and others interested in revitalizing their communities. This is why securing additional needed FTE in the regional brownfields programs is critical to the successful implementation of BIL and the long-term success of the brownfields program.

Water Sector Cybersecurity:

8) **Rodgers:** As you know, and as Congressman Palmer highlighted, the cybersecurity of our nation's water systems continues to get attention. We want to consider effective steps to improve water sector cybersecurity, but EPA seems to be moving in a troubling direction that could increase vulnerabilities as result of poorly thought-out regulatory proposals.

For example, last year EPA announced plans to issue an interpretive rule that would expand public water system sanitary surveys – which are periodic reviews of water system operations by state and tribal officials – to include a review of cybersecurity practices.

a) **Why is EPA choosing to add a cybersecurity component to sanitary surveys via an interpretive rule, rather than through a formal rulemaking? Please state whether the latter, established approach would provide a more legally defensible opportunity for public notice and comment through which these shortcomings could be better addressed.**

Response: Cybersecurity represents an immediate risk to the nation's water systems and therefore EPA is considering an approach that would leverage the Agency's existing statutory

and regulatory authorities with the objective of mitigating this risk *in the short-term*. The approach under consideration at EPA would provide both states and water systems more flexibility than would be typically associated with a national drinking water regulation. This is because EPA's sanitary survey regulations leave states with discretion in carrying out their obligations.

- b) Administrator Regan, **please state whether you were personally aware that you were sent a letter on December 9, 2021, from the American Water Works Association, the Association of Metropolitan Water Agencies, the National Association of Water Companies, the National Rural Water Association, and the Water Environment Federation.**

Response: Yes.

- c) **Please state whether EPA ever replied to the letter. If not, why?**

Response: EPA is deeply committed to working with stakeholders across the water sector on cybersecurity. In response to this letter and the request for EPA to engage with the water industry associations, EPA has continued to connect with the water industry associations, states, and directly with water systems in discussing what steps the Agency might take and how to leverage existing authorities. EPA also has discussed these matters on a regular basis with the leadership of the Water Sector Coordinating Council to which the letter's signatories belong as well as with the Water Government Coordinating Council. Further, EPA intends to solicit feedback from the water industry associations and the states in the course of developing any future actions.

- d) Public releases of vulnerability information or emergency response efforts defeats the ability of facilities to protect themselves from attack.

- i) **Please state whether you agree that it would be problematic if a sanitary survey identified a particular cyber vulnerability at a water system, and then that information was made widely available, including to potential hackers.**

Response: It is important, and states are aware of and currently take precautions to ensure that sensitive information about water systems is safeguarded today.

- ii) **Please state what specific measures EPA is undertaking to avoid this outcome.**

Response: EPA plans to offer separate guidance, training, and technical assistance to states and public water systems on cybersecurity to avoid this outcome.

- iii) **Please state if EPA is both able to use (and if "yes," is using) any of the exemptions provided in 5 U.S.C. 552(b).**

Response: 5 U.S.C. 552(b) would pertain to instances where EPA in its Direct Implementation capacity under SDWA collects information directly from water systems during a sanitary survey conducted by EPA. In this scenario, EPA would assert any applicable Freedom of Information Act (FOIA) exemption to withhold exempt portions of any sanitary survey report submitted to EPA that deals with a public water system's cybersecurity practices, if requested under FOIA. Applicable exemptions under FOIA for withholding such information may include Exemption 4

(confidential business information or CBI) and Exemption 7(f) (law enforcement records whose disclosure could reasonably be expected to endanger the life or physical safety of any individual).

For sanitary surveys conducted by a state, tribal, or territorial government, the applicable laws of the government entity that holds the report will govern the withholding of sensitive cybersecurity information from public disclosure. Many states have adopted information laws like FOIA under state law, and EPA recommends that states withhold such information if requested to the extent allowable under state law. In upcoming guidance to sanitary survey surveyors, EPA would recommend approaches to identifying and segregating cybersecurity information that may be exempt from public disclosure in sanitary survey reports.

- iv) **Please state if EPA is both able to use (and if “yes,” is using) the exemptions provided in 5 U.S.C. 552(b)(1).**

Response: EPA would assert any applicable Freedom of Information Act (FOIA) exemption to withhold exempt portions of any sanitary survey report submitted to EPA that deals with a public water system’s cybersecurity practices, if requested under FOIA. Applicable exemptions under FOIA for withholding such information may include Exemption 4 (confidential business information or CBI) and Exemption 7(f) (law enforcement records whose disclosure could reasonably be expected to endanger the life or physical safety of any individual).

- (1) **If EPA is able to use this section, please state when EPA will issue guidance for compliance with 5 U.S.C. 552(b)(1)(B).**

Response: Please refer to the response above.

- (2) **If EPA is unable to use this section, please state whether EPA has formally asked the White House for an Executive Order that will permit compliance with 5 U.S.C. 552(b)(1)(A).**

Response: Please refer to the response above.

- v) **Please state the qualifications of present state primacy agency staff that makes them responsible for carrying out sanitary surveys.**

Response: States employ a variety of people with different backgrounds and qualifications to conduct sanitary surveys. For individuals in states that require additional guidance, training, and technical assistance to develop the technical capacity to include cybersecurity in their sanitary survey programs, EPA will provide training opportunities.

For example, EPA intends to work collaboratively with the Water Government Coordinating Council and Water Sector Coordinating Council to issue guidance and conduct training in all states for sanitary survey surveyors on evaluating cybersecurity practices at public water systems. In addition, EPA expects to provide corresponding guidance materials and training to help public water systems understand and strengthen the cybersecurity practices that may be assessed during a sanitary survey.

EPA's sanitary survey regulations allow states discretion in carrying out their obligations, which provides states with implementation flexibility.

- vi) **Please state whether these same state officials all currently have expertise in water treatment and distribution processes, AND critical infrastructure cybersecurity. If not, please state what gives you confidence that they would be qualified to expertly and expeditiously assess the cyber posture of a water system.**

Response: States employ a variety of people with different backgrounds and qualifications to conduct sanitary surveys. For individuals in states that require additional guidance, training, and technical assistance to develop the technical capacity to include cybersecurity in their sanitary survey programs, EPA will provide training opportunities.

Additionally, EPA will work with states to develop flexible approaches to determining, through sanitary survey questions, whether a drinking water system needs technical assistance to put in place protections against cyber intrusion. EPA will work to ensure that systems in need receive technical assistance.

- vii) **Please state how EPA will prevent a particular cyber vulnerability at a water system that is identified in a sanitary survey conducted by a state from becoming public under a state "sunshine" or Freedom of Information Act-like law.**

Response: It is important, and states are aware of and currently take precautions to ensure that sensitive information about water systems is safeguarded today.

- viii) Delegation, from EPA to a state, of primary enforcement of the Safe Drinking Water Act (SDWA) is codified in SDWA section 1413. While SDWA section 1413 covers the "title", it focuses – especially as it relates to section 1413(c) -- on items related to primary drinking water regulations under SDWA section 1412 and related compliance and enforcement mechanisms. Of note, it does not use the terms "terrorism", "cybersecurity", or "malevolence" nor explicitly refer to SDWA section 1433.

- (1) **Please state where EPA derives its legal authority to delegate inspection and enforcement responsibilities for cybersecurity and anti-terrorism efforts to States under SDWA.**

Response: EPA authorizes states to implement the public water system program under Section 1413 of the SDWA. To obtain primacy, states must, among other things, show that they have adopted drinking water regulations for public water systems which are no less stringent than EPA's and that they have adopted and are implementing adequate procedures for enforcement of these state drinking water regulations. States are also required to adopt and implement an adequate plan for provision of safe drinking water under emergency circumstances.

- (2) Though SDWA section 1413(a)(5) does not use the terms "terrorism", "cybersecurity", or "malevolence" nor explicitly refer to SDWA section 1433, **please state whether all States "have adopted and can implement an adequate plan for the provision of safe drinking water under emergency circumstances."**

Response: States have developed emergency drinking water supply plans as a condition of receiving primacy pursuant to 40 CFR 142, Subpart B.

- (3) If every state has not adopted or isn't able to implement an adequate plan for provision of safe drinking water under emergency circumstances, **please state how EPA broadly forcing 48 states to use sanitary surveys is not a prohibited commandeering of State resources that violates the holding in New York v. United States, 505 U.S. 144, 175 (1992).**

Response: Sanitary survey requirements are part of a state's primary enforcement program (primacy), and states do not have to seek primacy, nor retain it once they have obtained it (although they must notify EPA in writing of any decision to relinquish primacy 90 days beforehand, per EPA regulations at 40 CFR 142.17(b)). Since states can decide whether to apply for and retain primacy, which includes the sanitary survey responsibilities, there is no commandeering of state resources.

Cooperative Federalism:

- 9) **Rodgers:** Last year, when we had our budget hearing, you talked a great deal about partnering with the States – mostly to disburse grant funding, but you avoided directly articulating your views on regulatory cooperation. Of note, you stated that you planned to “look at cooperative federalism for what it is”.

- a) **What did you mean when you said: “look at cooperative federalism for what it is?”**

Response: Cooperative federalism is centered around transparent, collaborative partnerships between EPA, states, and tribes as co-regulators with defined roles and responsibilities that foster successful protection of human health and the environment.

- b) **Please state whether you have taken that look and what have you found?**

Response: EPA's 401 Rule proposal restores state and tribal authority to protect vital water resources while promoting certainty and efficiency in the water quality certification process. It exemplifies cooperative federalism at its best. This revised proposal will restore the intent and purpose of Section 401 by respecting the role of states and tribes. It will promote a predictable, stable, and transparent certification process that aligns with the water quality protection and cooperative federalism principles central to the CWA.

- 10) **Rodgers:** There is a fine line between cooperative federalism and coercive federalism.

- a) **How do you demarcate between the two?**

Response: EPA believes in working in partnership without eroding the rights of states and tribes.

- b) **Please state whether EPA has a guidance that explicitly forbids crossing into the coercive territory. If yes, please provide this guidance to the committee for the record.**

Response: EPA is guided by our Memorandum of Agreement (MOA) with the Environmental Council of the States (ECOS) and the Association of State and Territorial Health Officials (ASTHO) to advance cooperative initiatives in pursuit of environmental health. In 2021, EPA, ECOS, and ASTHO extended our MOU to collaborate in developing tools, reports, workshops, meetings, communications pathways, and other initiatives that will leverage resources and advance a mutually shared mission of protecting the public’s health from environmental threats and hazards and advancing health and environmental equity for all Americans.

- 11) **Rodgers:** At our EPA budget hearing last year, you stated: “[c]ommunities and states know themselves much better than the federal government ever could.” **Is that still your position? Please explain.**

Response: Yes. On a daily basis, community and state stakeholders see firsthand events occurring locally, decisions made at the local level, and the subsequent impacts on their communities, to which the federal government may not be privy.

Lead & Copper Rule:

- 12) **Rodgers:** Administrations that replace an administration of a differing political party generally tend to reverse some of the policies of their predecessors. I want to explore what the Biden Harris Administration did with the Lead and Copper Rule. Administrator Wheeler signed off on significant long-term revisions to the Lead and Copper Rule. These revisions were published on January 15, 2021; and they became effective on March 21, 2021. President Biden stopped this regulation and EPA reopened the regulatory process. Then, you, Administrator Regan, delayed the effective date until June 17, 2021 – six months after the regulation was first printed in the Federal Register. Ultimately, EPA made no changes to the Lead and Copper Rule and let it become effective; but announced that it would open a separate, new rulemaking process on it.

- a) **Please state the criteria used to determine which laws needed to be paused and reviewed by the incoming Biden Harris Administration.**

Response: President Biden issued the “Executive Order on Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis.” (86 FR 7037, January 25, 2021) (Executive Order 13990). Section 1 of Executive Order 13990 states that our nation has an abiding commitment to empower our workers and communities; promote and protect our public health and the environment; and conserve our national treasures and monuments, places that secure our national memory. Where the Federal Government has failed to meet that commitment in the past, it must advance environmental justice. In carrying out this charge, the Federal Government must be guided by the best science and be protected by processes that ensure the integrity of Federal decision-making. It is, therefore, the policy of the Administration to listen to the science, to improve public health and protect our environment, to ensure access to clean air and water, to limit exposure to dangerous chemicals and pesticides, to hold polluters accountable, including those who disproportionately harm communities of color and low-income communities, to reduce greenhouse gas emissions, to bolster resilience to the impacts of climate change, to restore and expand our national treasures and monuments, and to prioritize both

environmental justice and the creation of the well-paying union jobs necessary to deliver on these goals.

The delay in the effective date was consistent with presidential directives issued on January 20, 2021, to the heads of Federal agencies to review certain regulations, including the LCRR. The delay allowed time for EPA to complete its review of the rule in accordance with those directives and to conduct important consultations with affected parties. The delay in the compliance date of the LCRR ensured that any delay in the effective date would not reduce the time provided for drinking water systems and primacy states to take actions needed to assure compliance with the LCRR.

b) What were the specific public health benefit(s), if any, that increased from this delay?

Response: The delay enabled EPA to engage with communities, stakeholders, tribes, and states to gather more information about their concerns with the LCRR and to share information about actions that can reduce drinking water lead exposure. The LCRR virtual engagement process provided benefits in three ways. First, the engagement increased public and community awareness of the potential harmful health effects of lead and the ways individuals and communities may proactively reduce their exposure. Because the effective implementation of drinking water lead reduction requirements, such as LSL replacement, depends on the actions of both water systems and private citizens, the increased awareness fostered by EPA's LCRR review outreach activities will improve the implementation of the LCRR and future regulatory actions to address lead in drinking water. Second, the information gained by the agency from listening to the public and communities that have been dealing with lead in drinking water issues across the country provided EPA with new information that will help in the development of more effective implementation guidance for the LCRR and future revisions of the LCRR. Information gathered from this process was especially useful for developing the *Guidance for Developing and Maintaining a Service Line Inventory*. Third, the delay of the effective date to engage with communities allowed the agency to identify regulatory revisions that EPA will propose under the Lead and Copper Improvements Rule. These revisions will further advance the reduction of lead in drinking water and help the agency better target actions in communities affected by this issue, including disadvantaged underserved communities.

c) What were the adverse health impacts, if any, as a result of EPA's delay of this rule?

Response: EPA's economic analysis of the LCRR supports the conclusion that the relatively-short delay in the effective date and compliance dates for the LCRR would not significantly reduce the benefits of the LCRR. EPA further notes that there is an existing National Primary Drinking Water Rule, the Lead and Copper Rule, that continues to provide public health protection and benefits during the short delay in the most recent revisions to that rule. Water systems have continued to implement the LCR, which includes requirements to monitor for lead and optimize corrosion control treatment. EPA has also emphasized the importance of preparing the lead service line inventory required under the LCRR and recently released a Guidance (<https://www.epa.gov/ground-water-and-drinking-water/revise-lead-and-copper-rule>) that will help communities and water utilities identify lead pipes that connect drinking water service to homes and other buildings. An inventory provides critical information on the locations of

potentially high drinking water lead exposure within and across a public water system, which will allow for quick action to reduce exposure. By preparing an LSL inventory, water systems will be able to target communication to residents in homes with LSLs about the actions they can take to reduce their lead exposure. Preparing the initial inventory will allow systems to assess the extent of the LSLs within their system, better identify sampling locations, and begin planning for LSLR actions, including applying for state and federal grants and loans. LSL inventories will allow water systems, states, tribes, and the Federal government to determine the prevalence of these lead sources and to target lead risk communication and lead removal programs where they are needed most.

d) **Why did EPA take so long in delaying the Lead and Copper Rule if the Agency ultimately was going to make changes to the rule through a different rulemaking?**

Response: Given the paramount significance of addressing lead in drinking water under the SDWA to protect public health, and the concerns raised by stakeholders about the LCRR, it was critically important that EPA's review of the LCRR be deliberate. It was also essential for the agency to have the benefit of meaningful engagement with the affected public, including overburdened and underserved communities disproportionately affected by exposure to lead, prior to the rule going into effect. EPA carefully considered whether to allow the LCRR to take effect while postponing the compliance dates for only certain aspects of the rule. EPA considered it important not to pre-determine the outcome of the public stakeholder process and delayed the effective date to avoid creating confusion for implementing authorities and regulated entities; imposing potentially unnecessary costs; and undermining the re-evaluation process by diverting EPA and stakeholder resources. Moreover, stakeholders had raised concerns with nearly all aspects of the LCRR. It was critically important to hear from stakeholders to make an informed decision about how to move forward.

13) **Rodgers:** The previous Administration used an Agency wide metric know as LEAN to track the efficiency and effectiveness of every office and program, including the Regions.

a) **Is EPA still using the LEAN process?**

Response: EPA still uses a Lean Management System to track performance, improve processes, and solve problems. This is part of the Continuous Improvement Program managed by the Office of Continuous Improvement (OCI), which was created in the previous administration and still operates within the Office of the Chief Financial Officer (OCFO).

b) **If EPA is still using the LEAN process, does it apply to the Agency as a whole or is it only used on a case-by-case basis?**

Response: In 2021, EPA announced changes to the Lean management system and continuous improvement program. The entire agency is still encouraged to use Lean to get results and improve processes, but changes to the program have provided more flexibility to Regions and Programs to determine when and where to apply Lean.

The updates to the continuous improvement program preserve the agency's longstanding philosophy and commitment to continuous improvement and takes advantage of the considerable expertise and tools developed in OCFO and throughout the agency over the past 6 years.

- c) **If EPA is not using LEAN, what metric is the Agency using to measure its work, including productivity, timeliness, and effectiveness?**

Response: Nearly all Regions and National Program Offices still use the Lean Management System and report regularly to OCFO on processes improved. Metric progress in priority areas is tracked and monitored monthly and quarterly at performance reviews.

- d) **Does EPA track the increments in actual environmental or public health protection that each program achieves annually? If so, please explain.**

Response: EPA annually provides data on numerous performance metrics for its enforcement and compliance assurance program. Those metrics include, among others, the number of cases initiated, injunctive relief obtained, penalties assessed, criminal cases opened, and environmental benefits achieved. The annual results are provided along with ten-year trend data, where available. The annual results webpage also provides a short summary of other accomplishments as well as a number of case-specific highlights.

- e) **Does EPA have a succession plan in place for when EPA faces a large number of retirements? If yes, please share this plan with the Committee.**

Response: EPA continually works to improve business processes for critical human capital management functions including recruitment, hiring, and workforce planning. EPA operates and maintains the Talent Enterprise Diagnostic (TED) tool which allows EPA to make data-driven, strategic workforce decisions. TED data will serve a crucial role in EPA's Workforce Planning and Succession Management activities by identifying potential competency gaps across the Agency and by increasing management's understanding of where needed skill sets should reside within EPA. Additionally, EPA maintains and operates dashboards related to Mission Critical Occupations, Workforce Demographics, and Diversity. These dashboards provide data visualizations and easy-to-understand information about the current workforce, assisting EPA with succession planning by identifying workforce gaps due to anticipated retirements and attrition trends, which is critical considering that approximately 25 percent of EPA's workforce is retirement eligible, and another 19 percent of the current workforce will become retirement eligible over the next five years.

- f) **How much environmental or public health protection does each dollar allocated to EPA buy? Does doubling the budget double that protection?**

Response: EPA is unable to fully capture the environmental and public health protection that each dollar buys without risking significant underestimation. An increased budget would subsequently lead to increased staff, monitoring, enforcement, assistance, outreach, and grants in order to further its mission of protecting human health and the environment. The Agency's environmental and public health protection accomplishments include: awarding \$5.5 billion

through the Bipartisan Infrastructure Law to modernize the nation's infrastructure, create good-paying jobs, combating the climate crisis, and advancing environmental justice; working to stabilize Jackson, Mississippi's public drinking water system after years of neglect; protecting communities from contamination created by decades of coal ash disposal, supporting disaster response efforts to ensure Puerto Rico continues to recover from Hurricane Fiona; releasing 20 Climate Adaptation Implementation Plans to protect human health and the environment and to increase the resilience of the entire nation as we face increasingly harmful impacts of climate change; progress restoring and protecting Great Lakes water quality and ecosystem health.

Decision Making:

14) **Rodgers: Who is the ultimate policy decider at the Agency?**

Response: As Administrator, I am.

15) **Rodgers: Who is the final science decider at the Agency?**

Response: As Administrator, I am.

16) **Rodgers: Who is the ultimate policy decider in the program offices?**

Response: The decision will be made collaboratively by me as Administrator, the program's Assistant Administrator, our Office of Policy Associate Administrator, and our Chief of Staff.

17) **Rodgers: Who is the final science decider in the program offices?**

Response: The decision will be made collaboratively by me as Administrator, the program's Assistant Administrator, the Office of Research and Development Assistant Administrator, and our Chief of Staff.

18) **Rodgers: Please state whether EPA career staff have the authority to overrule the decisions of political appointees that lead program offices or the Agency.**

Response: EPA is unaware of any such authority.

a) **If yes, please state whether EPA career staff have overruled the decisions of political appointees that lead program offices or the Agency.**

Response: As EPA is not aware of any such authority, no response to this question is required.

b) **If yes, please state those instances.**

Response: As EPA is not aware of any such authority, no response to this question is required.

19) **Rodgers: Who is ultimately responsible for the management of the Agency and its programs – the career staff or the political appointees confirmed by the Senate?**

Response: As Administrator, I am.

AIM Act Implementation:

20) **Rodgers:** When Congress passed Section 103 of Division S of the Consolidated Appropriations Act, 2021 (also known as the American Innovation in Manufacturing or AIM Act), the phase down was exclusively directed at newly produced and consumed hydrofluorocarbons (HFCs). Congress did this to prevent price shocks to consumers from supply chain, inflation, or other market issues. In order to prevent consumer harm, EPA must fully implement the provisions of the AIM Act related to HFCs recovery and reclamation, as Congress intended.

Starting in 2024, there will be a 40 percent reduction in virgin HFC production pursuant to the AIM Act. I am very concerned, though, that EPA is not doing enough to ensure consumers will have access to affordable refrigerants because consumer access to refrigerants that have been reclaimed and cleaned in the installed base so they can be reused.

The AIM Act specifically requires EPA to consider strategies to increase refrigerant reclamation in every rulemaking pursuant to the AIM Act. Yet, it appears EPA has failed to take any action. In fact, the only action I understand that EPA has taken is to add additional reporting requirements on EPA-certified reclaimers.

a) **Please state those steps EPA has taken to increase reclamation.**

Response: Under the Clean Air Act, EPA has largely phased out ozone-depleting substances (ODS) including chlorofluorocarbons (CFCs) and hydrochlorofluorocarbons (HCFCs) so that only reclaimed ODS and allowances for new HCFC-123 and HCFC-124 through 2029 are available for use in the United States. Similarly, EPA anticipates that the phasedown of HFC production and consumption required by the AIM Act – including the allowance allocation framework that EPA promulgated in 2021 and rules that EPA is currently developing to accelerate technology transitions in key sectors and to establish the allocation framework for 2024 and later years - will incentivize the development of a robust market for reclaimed HFCs.

In addition, as part of its work to carry out the AIM Act, EPA is in the process of developing a proposed rulemaking that we intend to issue this summer that will implement subsection (h) of the AIM Act, “Management of Regulated Substances.” The subsection authorizes EPA to promulgate certain regulations maximizing reclaiming and minimizing the release of a regulated substance from equipment and ensuring the safety of technicians and consumers. These regulations are to “control, where appropriate, any practice, process, or activity regarding the servicing, repair, disposal, or installation of equipment.”

EPA has engaged regularly with entities interested in HFC recovery and reclamation as it has worked to implement the AIM Act and will continue to do so in order to ensure that impacts on the market for reclaimed HFCs are appropriately considered.

b) **Please state whether EPA is considering allowing reclaimers to receive allowances.**

Response: Reclaimers are among the entities that have received allowances. The Agency has allocated allowances following the methodology laid out in the final rule, “Phasedown of Hydrofluorocarbons: Establishing the Allowance Allocation and Trading Program Under the American Innovation and Manufacturing Act” (86 FR 55116). These allowance allocations are documented in 86 FR 55841, 87 FR 19683, and 87 FR 61314 and on our website at <https://www.epa.gov/climate-hfcs-reduction/phasedown-hydrofluorocarbons-hfcs-issuing-allowance-allocations>.

c) **Why wasn’t reclamation addressed in EPA’s 2022 allocation rule?**

Response: In the HFC Allocation Framework rule published in 2021, the Agency noted it did consider the potential to increase opportunities for reclamation of regulated substances used as refrigerants. Specifically, the Agency noted that “the HFC phasedown in and of itself will result in an increased reliance on reclaimed HFCs, regulated substances or blends with lower exchange values, as the volume of newly manufactured or imported HFCs continues to reduce consistent with the Congressionally mandated schedule” and that it “intends to evaluate further how it could continue to increase opportunities for reclamation under the AIM Act’s authority in subsection (h)(2)(A) in future actions.” Additionally, as indicated in the response to question (a) above, reclamation is specifically addressed in subsection (h) of the AIM Act and EPA is actively developing a proposed rulemaking that we intend to issue this summer.

d) **Please provide the committee with a specific timeline by which the EPA will propose strategies to increase reclamation along with steps the EPA is taking to solicit input from relevant stakeholders.**

Response: In October 2022, EPA issued a Notice of Data Availability (NODA) making available a draft report, *Analysis of the U.S. Hydrofluorocarbon Reclamation Market: Stakeholders, Drivers, and Practices*, which analyzes the United States' hydrofluorocarbon reclamation market and describes the reclamation process, factors affecting costs of reclamation, incentives, and barriers to refrigerant reclamation. See 87 FR 62843. As indicated in the response to question (a) above, EPA is planning a proposed rulemaking for summer 2023 that will implement subsection (h), “Management of Regulated Substances,” of the AIM Act. With both of these actions, we will solicit input from stakeholders.

e) **Has EPA assessed the economic impact to consumers of excessive cost increases from supply shortages of reclaimed HFCs? If so, please explain. If not, is the Agency planning on assessing the economic impact?**

Response: EPA published a Regulatory Impact Analysis (RIA) with the publication of the final rule, “Phasedown of Hydrofluorocarbons: Establishing the Allowance Allocation and Trading Program Under the American Innovation and Manufacturing Act” (86 FR 55116). With the rulemakings identified in the response to question (a) above, EPA will provide additional information on costs and benefits.

- f) **Has EPA assessed the public health impacts of health-related illnesses from the inability to afford or the loss of refrigeration and air conditioning? If so, please explain. If not, is the Agency planning on assessing those public health impacts?**

Response: In the RIA published with the final rule “Phasedown of Hydrofluorocarbons: Establishing the Allowance Allocation and Trading Program Under the American Innovation and Manufacturing Act” (86 FR 55116), the Agency noted that the rule resulted in cumulative compliance saving for industry, with net benefits to U.S. society of more than \$272 billion from 2022 – 2050. In the AIM Act, Congress directed EPA to address HFCs by: phasing down production and consumption, maximizing reclamation and minimizing releases from equipment, and facilitating the transition to next-generation technologies through sector-based restrictions. American consumers are expected to benefit from transitioning from HFCs to environmentally safer alternatives and more energy-efficient cooling technologies. EPA conducted analysis that determined overall reductions in GHG emissions from this rule will benefit populations that may be especially vulnerable to damages associated with climate change, such as the very young, elderly, economically disadvantaged, disabled, and indigenous populations.

Carbon Capture Utilization and Storage (CCUS):

- 21) **Rodgers:** The deployment of carbon capture utilization and storage (CCUS) is essential to maintaining good manufacturing jobs, avoiding disruptions to supply chains, keeping consumer prices lower, and reducing greenhouse gas emissions.

- a) **What actions has the Biden EPA taken to encourage and facilitate the deployment of CCUS?**

Response: EPA recognizes the importance of CCUS in reducing climate pollution. Further, EPA recognizes it is equally important to ensure that CCUS projects are implemented responsibly and in a manner that reflects the input and needs of local communities. EPA has taken a number of actions related to CCUS deployment. As described in a later response to your question, EPA has taken actions to implement the USE IT Act. EPA has also proposed revisions to the Greenhouse Gas Reporting Program that would further increase transparency associated with CCUS activities.

On January 19, 2023, EPA announced the availability of \$50 million in grant funding from President Biden’s Bipartisan Infrastructure Law to help states, Tribes and territories develop and implement Underground Injection Control (UIC) Class VI programs. Under the Safe Drinking Water Act, Class VI programs ensure that groundwater resources are protected while supporting geologic sequestration of carbon dioxide (CO₂) to reduce greenhouse gas emissions and mitigate climate change. PA supports efforts by states, Tribes, and territories to implement existing primacy programs and seek primary enforcement and permitting responsibility (primacy) for Class VI programs. EPA is inviting states, Tribes and territories to submit letters of intent to indicate their interest in this new funding, and interested parties have until March 20, 2023 to submit their letters. After receiving submissions, EPA will determine funding allocations and award the full \$50 million in a one-time distribution.

- b) **Please describe the efforts EPA is taking under Part C of SDWA to encourage and streamline state primacy delegations for Class VI underground injection wells.**

Response: Over the past several years, EPA’s UIC program has developed operating procedures for the review of state Class VI primacy applications. The operating procedures facilitate transparency and consistency. EPA’s UIC program has also examined and implemented procedural improvements that the EPA UIC program has implemented to streamline the process. States interested in applying for Class VI primacy are encouraged to engage with EPA early in their process to schedule “pre-application” discussions. During these discussions, EPA can provide technical assistance and share lessons learned from previously approved primacy programs. EPA may also work with the state to review the state’s draft UIC statutes and regulations and complete a crosswalk which is used to compare the state’s program with the federal UIC regulations. Further, EPA developed the *UIC Program Class VI Primacy Manual* and the *UIC Program Class VI Implementation Manual for UIC Program Directors* to help states apply for UIC program primacy for Class VI wells.

- c) **Please describe what actions EPA has taken to implement the Utilizing Significant Emissions with Innovative Technologies (USE IT) Act, which was enacted as part of Division S of the Consolidated Appropriations Act, 2021.**

Response: Last year, EPA collaborated with CEQ and other federal agencies in the development of a Report to Congress on Carbon Capture, Utilization and Sequestration required by the USE IT Act, and is implementing interim guidance required by the USE IT Act that was issued by CEQ earlier this year. EPA is also developing a report to Congress on deep saline formations required by the USE IT Act.

Journey to Justice Tour, Justice 40, and EJECR:

- 22) **Rodgers:** Administrator Regan, earlier this year you announced that EPA would be taking "bold actions to protect communities" following your Journey to Justice tour.

- a) **What are these "bold actions" specifically?**

Response: As Administrator, I have made clear EPA will center its mission on advancing equity and justice across all that we do. To do so, our actions must be rooted in community members’ realities, needs, and visions of a better future. The Journey to Justice allows me to see these challenges and hear Americans’ perspectives firsthand from their stoops, street corners and playgrounds. That enables me to lift their needs up for attention and action by EPA and our partners across federal, state, and local governments. I am proud that as a result of my Journey, EPA and our partners have taken an array of actions, including making sure that enforcement resources are allocated to benefit those who need it most, funding activities such as monitoring, and collaborating with our governmental partners on specific challenges.

- b) **What statutory or regulatory authorities are these actions based upon?**

Response: EPA’s core principles are to follow the law, follow the science, be transparent, and advance justice and equity. EPA takes seriously its obligation to ground all actions in existing legal

authorities. EPA's commitment to follow the law includes all relevant federal environmental and civil rights statutes. For example, Congress recently added section 138 to the Clean Air Act to establish the Environmental and Climate Justice Block grant program which substantially expanded EPA's ability to fund actions that benefit disadvantaged communities. All of EPA's actions, including those taken as a result of on-the-ground engagement through the Journey, adhere to these principles.

- c) **Do these "bold actions" constitute new policy, regulatory, enforcement, etc., actions? If so, please explain.**

Response: EPA's priority to advance justice and equity is founded upon a commitment that we integrate the realities and needs of the country's most overburdened and vulnerable communities into our policies, programs, and actions. In certain instances, the Journey has resulted in the prioritization or elevation of actions specific to circumstances witnessed on the ground, just as other opportunities to engage with or hear directly from communities on the ground result in instances where our policies, programs, and decisions change in response to what we learn through engagement.

- d) **If applicable, how do these "bold actions" fit in with any enforcement initiatives of the Agency?**

Response: EPA's compliance and enforcement activities are regularly informed by feedback directly from communities, including communities that are overburdened and vulnerable. EPA is committed to engaging with you so that you understand our enforcement goals and our National Compliance Initiatives. Notably, in 2021, I directed all offices to strengthen enforcement of violations of cornerstone environmental statutes and civil rights laws in communities overburdened by pollution and in 2021, EPA began incorporating environmental justice and evaluating opportunities to address climate change in its implementation of the National Compliance Initiatives. In addition, EPA is committed to strengthening its enforcement of the federal civil rights laws and to use the full extent of its enforcement authority under federal civil rights laws, including Title VI of the Civil Rights Act of 1964.

- 23) **Rodgers:** The Journey for Justice tour only stopped in a couple states. Is this initiative limited only to those states or that region of the country, or is it a national initiative?

Response: I will continue to visit other communities across the country that have also experienced disproportionate impacts as he continues to highlight environmental justice concerns and hear directly from communities. The first leg of the tour stopped in Mississippi, Louisiana, and Texas. The second leg of the tour was to Puerto Rico, which included San Juan, Loíza, Caguas and Guayama. Our next journey took us to Appalachia. EPA actions taken in relation to the tours will begin to help not only those communities I visited, but also others across the country who have suffered from environmental injustices. In direct response to concerns from residents in those overburdened communities, EPA has announced specific actions with implications in those communities and nationwide.

24) **Rodgers:** The EPA’s proposed budget for fiscal year 2023 calls for the creation of “a new National Program Manager for environmental justice and external civil rights compliance, to be headed by a Senate-confirmed Assistant Administrator, to coordinate and maximize the benefits of the agency’s programs and activities for underserved communities.”

a) **Is this proposal to create a new office or elevate one EPA employee into a coordinating role?**

Response: EPA launched a new Program Office dedicated to environmental justice and external civil rights on September 24, 2022. EPA’s External Civil Rights Compliance Office and Office of Environmental Justice are at the center of this new Program Office, fostering even greater agency coordination and increasing the level of integration of environmental justice and civil rights throughout EPA. The new program also includes the Conflict Prevention and Resolution Center.

b) **Please detail those statutes and regulations that the National Program Manager for environmental justice and external civil rights will handle that are unique and specific to its mission?**

Response: The environmental justice and external civil rights programs intersect with all EPA’s requirements and responsibilities under both the environmental and civil rights laws. These two programs share a deep connection and ability to reinforce and leverage one another to make significant progress in identifying and addressing, as appropriate, disproportionate adverse impacts burdening communities through the just implementation of the environmental laws throughout EPA’s actions and ensuring full compliance with civil rights requirements by recipients of EPA financial assistance. The National Program Manager for environmental justice and external civil rights will also be specifically responsible for the enforcement of several federal civil rights laws, including Title VI of the Civil Rights Act of 1964. Robust enforcement of civil rights laws, taken together with EPA’s EJ efforts, provides a strong tool to address discrimination on the basis of race, color, and national origin.

For a detailed review of legal authorities under environmental and civil rights statutes administered by EPA that inform the Agency’s efforts to advance environmental justice, please see *EPA Legal Tools to Advance Environmental Justice* (May 2022), available at: <https://www.epa.gov/system/files/documents/2022-05/EJ%20Legal%20Tools%20May%202022%20FINAL.pdf>. Additionally, we anticipate that the National Program Manager will be responsible for implementing the Environmental and Climate Justice Grant Program authorized by section 138 of the Clean Air Act as part of the Inflation Reduction Act.

25) **Rodgers:** One of EPA’s budget documents states “EPA will implement the President’s Justice40 Initiative with the goal of delivering at least 40 percent of the overall benefits of relevant federal investments to underserved and overburdened communities.”

a) **Are the “benefits” only monetary or would they encompass non-monetary “benefits”?**

Response: As outlined in EO 14008 the Justice40 Initiative is a whole of government approach and describes, “certain Federal investments might be made toward a goal that 40 percent of the

overall benefits flow to disadvantaged communities.” Further, examples of benefits were provided in the M-21-28 Interim Implementation Guidance for the Justice40 Initiative. Examples of additional benefits that might be associated with Justice40 commitments EPA also will provide are: technical assistance, pollution reduction, toxic waste cleanups, job creation, and improved health outcomes.

- b) **What criteria will EPA use in awarding this 40 percent in benefits, i.e. will this be competitively awarded and will there be any additional priorities placed on award decisions?**

Response: EPA’s Justice40 Initiative covered programs include activities associated with direct funding decisions but are not limited to grant programs. The White House released a screening tool, the Climate and Economic Justice Screening Tool (CEJST) version 1.0, to map which communities will be considered “disadvantaged” for the purposes of Justice40. EPA is considering the use of that tool as a baseline or component of our efforts to identify disadvantaged communities to the extent permitted by law.

- c) **Concerning the other 60 percent of “benefits,” what criteria will be used for their awarding?**

Response: EPA will distribute benefits to protect human health and the environment. The relevant criteria depend on the human health or environmental protections we are trying to advance. The Justice40 Initiative is a way to ensure that all people benefit equitably from EPA’s activities. The Justice40 Initiative commits all relevant agencies across the federal government to ensure that at least forty percent of the benefits of covered programs flow to disadvantaged communities. Following the M-21-28, EPA’s programs covered by Justice40 include but are not limited to programs that provide direct funding through programs such as grant programs. EPA will of course provide further details regarding the criteria used for awarding grants – whether covered by the Justice40 Initiative or not – upon request.

- d) **How strictly will EPA adhere to its benefits allocation policy if there are more serious environmental and public health risks in communities it does not consider to be covered within the Justice40 Initiative?**

Response: We are directing our funding resources to maximize benefits in the communities that need them the most. This includes working to maximize other benefits, such as pollution reduction, toxic waste cleanups, job creation, and improved health outcomes, as appropriate. This commitment in no way prohibits or limits EPA’s ability to adequately respond and allocate resources to specific communities confronting serious environmental and public health risks regardless of their designation as disadvantaged or not disadvantaged.

- e) **How does EPA intend to prevent this policy from making communities that are not overburdened or underserved into communities that are?**

Response: The goal of the Justice40 Initiative is to ensure that the overall benefits of certain federal investments flow to disadvantaged communities including those that face

disproportionately high and adverse health and environmental impacts. The Justice40 Initiative in no way prohibits or limits EPA's ability to adequately respond and allocate resources to other communities confronting serious environmental and public health risks regardless of their designation as disadvantaged or not disadvantaged.

26) **Rodgers:** EPA has been involved in helping local governments make zoning and permitting decisions and you have testified that we need to space out the locations of industrial facilities.

a) **Would a policy like this also insist that existing transportation and manufacturing infrastructure also be abandoned or relocated into virgin areas (i.e. greenfields)?**

Response: No, such a policy would not insist that existing transportation and manufacturing infrastructure be abandoned or relocated. When making permitting decisions, we should weigh the environmental costs and the benefits, as well as the prevalence of already existing industrial facilities.

b) **Are brownfields, in the context of this effort, only a tool to clean up sites but not to rehabilitate economic activity in areas that have lost it?**

Response: EPA brownfields funds are used to assess the extent of the environmental hazards and cleanup needed while also making investment less risky for developers and lenders who may then rehabilitate economic activity. While EPA brownfields funding is used for the planning, assessment, and cleanup of brownfield sites, this seed money has leveraged over \$36 billion in other public and private investment in revitalization, as well as over 192,000 jobs.

27) **Rodgers:** My staff has requested a briefing on your Journey for Justice initiative. **Will you commit to have EPA staff meet promptly with my staff to help us better understand your Journey for Justice initiative?**

Response: Yes, EPA has provided a written response to the questions posed by your staff and is happy to discuss the initiative further with your staff.

Supplemental Environmental Projects:

28) **Rodgers:** **Without the use of Supplemental Environmental Projects in settlements with violators, does EPA have the authority under its statutes to compel compensatory relief?**

Response: EPA has authority to seek restitution, penalties, mitigation, other injunctive relief, and to remedy imminent and substantial endangerments under its environmental enforcement authorities. Supplemental Environmental Projects that meet the legal and policy guidelines in EPA and DOJ policies also may be available to provide relief not otherwise required by law. More information on enforcement remedies is available at <https://www.epa.gov/enforcement/basic-information-enforcement>. More information on SEPs is available at <https://www.epa.gov/enforcement/supplemental-environmental-projects-seps>.

- 29) **Rodgers:** **Would additional notices of violation during a settlement negotiation be considered appropriate enforcement or exerting maximum leverage for extra-legal assurances of relief?**

Response: Some statutes require EPA to issue notices of violation (NOVs) prior to pursuing certain enforcement actions. EPA often issues NOVs for additional violations to try and resolve noncompliance without imposing litigation costs and burdens. Numerous publicly available enforcement response policies guide EPA in determining what type of enforcement actions are appropriate and include consideration of the seriousness of the violation and other factors. More information on EPA's enforcement response policies is available at <https://www.epa.gov/enforcement/enforcement-policy-guidance-publications#additional>.

CASAC/NAAQS and SIPs:

- 30) **Rodgers:** On December 23, 2020, EPA completed its review of the full body of currently available scientific evidence and exposure/risk information and decided to retain the existing ozone NAAQS. This Administration, rather than initiate a new five-year review cycle, decided to revisit the previous decision.

EPA staff recently determined that that 2020 decision should not be changed. In May 2022, the Clean Air Scientific Advisory Committee paused its deliberations concerning this decision.

- a) **Given the staff's determination, should you and CASAC abandon the reconsideration and return to the regular five-year scientific and policy review process required in the Clean Air Act?**

Response: In April 2022, the draft Policy Assessment for the Reconsideration of the Ozone NAAQS, which included preliminary staff conclusions regarding the appropriateness of retaining the existing standards, was provided to the CASAC for its review. As you note, in May 2022, the CASAC postponed its review of the Ozone NAAQS draft policy assessment (PA) until it discussed certain scientific issues related to the Integrated Science Assessment (ISA). CASAC held a series of meetings to discuss those scientific issues, and on November 22, 2022, CASAC sent a letter to the Administrator stating, among other things, that "CASAC finds that the existing scientific evidence summarized in the 2020 ISA provides a scientifically sound foundation for the Agency's reconsideration of the 2020 Ozone NAAQS decision." The next step in the Ozone NAAQS Reconsideration is for the CASAC to review the revised draft PA, which EPA anticipates will reflect the CASAC advice and comments on the draft PA provided in their final letter on the ISA on November 22.

- b) **If not, please explain what you assess this review of the prior Administrator's decision will mean for timing of the next ozone NAAQS review and the impact on states seeking predictable time frames and timely approval of ozone State Implementation Plans to implement ozone NAAQS.**

Response: Now that CASAC has concluded its discussion on the ISA and provided the EPA Administrator a letter conveying its views, as indicated in the response to part (a) above, EPA

intends to move forward in the reconsideration as expeditiously as possible. Accordingly, EPA intends to prepare a revised draft PA that will reflect the CASAC advice and comments on the draft PA provided in their final letter on the ISA on November 22 and to provide an opportunity for public comment and CASAC review.

Improving air quality is a partnership between the federal government, states, and Tribes. EPA is committed to working closely with states as they develop and submit approvable SIPs within the timelines provided in the Clean Air Act.

- 31) **Rodgers:** After EPA issues air quality standards, it then must issue timely guidance so States can put together so-called state implementation plans (SIPs) outlining how the states will implement the standards. When EPA falls behind in approving SIPs, states are unable to implement the plans that would drive further air quality improvements.

During the Obama Administration, the backlog of SIP approvals reached record levels, meaning States were unable to implement clean air standards. The last administration made a priority of reducing the backlog, but available information indicates that backlog is growing—and EPA is acting on fewer SIPs.

Clearing the backlog and enabling states to implement existing standards will do more for Americans than focusing on creating new standards—that may not even get implemented for a decade or more. It is a serious problem that, rather than work with states, EPA has used sue-and-settle lawsuits filed by activist groups to deny SIPs in favor of Federal Implementation Plans.

Federal plans remove local social and economic consideration as well as the waste valuable limited resources, and time) of state agencies.

- a) **Why is EPA not working with states and not approving their submitted implementation plans at a faster pace?**

Response: EPA continues its longstanding practice of working closely with states to help them develop approvable SIPs and allow EPA to provide states with early feedback as they develop their plans. EPA continues to prioritize taking action on SIPs, including backlogged submissions as well as newly submitted SIPs. Using this approach, EPA is both reducing the backlog as well as ensuring it is taking simultaneous timely action on newly submitted SIPs. In addition, EPA continues its longstanding practice of working closely with states to help them develop approvable SIPs and allow EPA to provide states with early feedback as they develop their plans. With regard to SIP actions per year, in FY2022—the first full fiscal year in the Biden Administration—EPA took action on 446 SIPs. This compares favorably to number of SIP actions per fiscal year as compared to the prior 5 fiscal years where SIP actions taken were as follows: FY2021, action taken on 358 SIPs; FY2020, action taken on 437 SIPs; FY2019, action taken on 393 SIPs; FY2018, action taken on 368 SIPs; and FY2017, action taken on 383 SIPs. As this information indicates, EPA continues to prioritize both reducing the SIP backlog and taking timely action on SIPs.

b) **Please provide a list all current deadlines that have been determined by consent decrees settling lawsuits.**

Response: Courts have entered consent decrees during this and prior administrations in instances where the agency lacks legal defenses because statutory deadlines have passed. Consent decrees currently set the following deadlines for actions regarding implementation plans:

- *Sierra Club et. al. v. Regan*, 4:21-cv-06956 (N.D. Cal.) – various deadlines for final action on SIP submissions in response to SIP calls issued by EPA in 2015 related to SIP provisions concerning periods of Startup, Shutdown, and Malfunction (SSM)
 - 12/23/2022: Sign a final action on SSM SIP Call submittal from Mississippi
 - 2/22/2023: Sign a final action on SSM SIP Call submittal from Alaska, West Virginia, Georgia, Minnesota, Indiana, Michigan, Imperial, Eastern Kern, certain Delaware provisions
 - 4/21/2023: Sign a final action on certain provisions in SSM SIP call submission from Louisiana
 - 5/31/2023: Sign a final action on SSM SIP Call submittal from Colorado
 - 6/22/2023: Sign a final action on SSM SIP Call submittal from Maine, Virginia, South Carolina, Kentucky, Florida, Tennessee, New Mexico, Albuquerque, Kansas, Missouri, and North Dakota
 - 10/20/2023: Sign a final action on SSM SIP Call submittal from certain provisions in submission from Delaware, New Jersey, Oklahoma, certain provisions in submission from Louisiana, and Washington
- *Center for Biological Diversity v. EPA*, 4:22-cv-02285 (N.D. Cal.) - Proposal by 2/9/2024 and final by 12/10/2024 for secondary NO_x, SO_x, and PM review
- *Center for Biological Diversity v. Regan*, 3:20-cv-06020 (N.D. Cal.) - Sign a final action by 12/15/2022 on the Eastern Kern nonattainment NSR portion of the 2008 ozone nonattainment plan
- *Center for Biological Diversity v. Regan*, No. 20-5436 (N.D. Cal.) - Sign a final action by 3/1/2023 on the Alton, Illinois 2010 SO₂ attainment plan
- *Downwinders at Risk v. EPA*, No. 21-3551 (N.D. Cal) – Sign a final action by 1/31/2023 on the SIP revisions submitted by, Arkansas, Illinois, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, New Jersey, New York, Ohio, Oklahoma, Tennessee, Texas, West Virginia, and Wisconsin to satisfy their 2015 ozone NAAQS good neighbor obligations pursuant to CAA section 110(a)(2)(D)(i)
- *New York et al. v. Regan*, No. 21-252 (S.D.N.Y.) – Sign a final action by 1/31/2023 on the SIP revisions submitted by Indiana, Kentucky, Michigan, Ohio, Texas, and West Virginia to satisfy their 2015 ozone NAAQS good neighbor obligations pursuant to CAA section 110(a)(2)(D)(i)
- *OCEF. v. Regan*, No. 20-8232 (S.D.N.Y.) – various deadlines for final actions on SIP submissions from the State of New York
 - Sign a final action by 1/31/2023 on the SIP revision submitted by New York to satisfy its 2015 ozone NAAQS good neighbor obligations pursuant to CAA section 110(a)(2)(D)(i)
 - Sign a final action by 2/29/2024 on the Portland Cement Plants and Glass Plants – RACT Determinations SIP

- Sign a final action by 2/29/2024 on the 2008 and 2010 Single-Source State Implementation Plan Revisions, RACT Determinations SIP submissions
- Sign a final action by 2/29/2024 on the Emission Standards for Motor Vehicles and Motor Vehicle Engines SIP submission

c) **Why did EPA fail to provide states with an opportunity to correct the deficiencies in their Cross-State Air Pollution Rule SIPs before proposing a FIP?**

Response: The cooperative framework of CAA Section 110 provides states with the primary responsibility to implement air quality planning requirements under CAA Section 110 for interstate transport obligations (also known as “good neighbor” obligations). Once states submit their state implementation plans (SIPs), EPA must evaluate whether those plans meet applicable requirements of the Act. Where EPA finds that a state has not submitted a good neighbor SIP, or if the EPA disapproves the SIP, the EPA must issue a Federal Implementation Plan (FIP) to assure downwind states are protected. Moreover, D.C. Circuit case law interpreting CAA Section 110 has made abundantly clear that EPA must ensure reductions in interstate air pollution take place within the attainment deadlines for the NAAQS.

For the 2015 ozone NAAQS, states were required to submit SIPs addressing ozone transport obligations by October 1, 2018. EPA issued Findings of Failure to Submit for 7 states, and for an additional 21 states, EPA has proposed to disapprove the submitted good neighbor SIPs and sought public comment on the basis for disapproval. To address its FIP obligation, the EPA Administrator signed a proposed FIP on February 28, 2022. EPA intends to finalize the FIP regarding 2015 ozone NAAQS good neighbor obligations in early 2023; the FIP will only cover states for which EPA has issued a final disapproval of the 2015 ozone NAAQS good neighbor SIP or issued a Finding of Failure to Submit regarding the state’s 2015 ozone NAAQS good neighbor SIP. States can submit a SIP revision to replace the requirements in the FIP at any time following promulgation of the FIP. In the meantime, timely issuance of a FIP is essential to meet Clean Air Act requirements to provide relief from ozone-forming pollution significantly contributing to nonattainment or interfering with maintenance in other downwind areas. In particular, courts have directed EPA to ensure that required emissions reductions are achieved in a timeframe consistent with the attainment schedule for the 2015 ozone NAAQS in downwind nonattainment and maintenance areas.

d) **Why does EPA believe it is justified in immediately proposing a FIP when it has a long history of failing to act on SIP submittals in a timely manner?**

Response: As previously noted, courts have directed EPA to resolve good neighbor obligations within timeframes specified by the statute; EPA proposed a FIP in order to be positioned to resolve good neighbor obligations in the timeframe provided by Congress.

e) **Does EPA believe that the proposal reflects the principle of “cooperative federalism reflected in Section 101(a)(3) of the CAA which states “that air pollution prevention (that is, the reduction or elimination, through any measures, of the amount of pollutants produced or created at the source) and air pollution control at its source is the primary responsibility of States and local governments?”**

Response: EPA believes that the good neighbor process follows the cooperative framework of CAA Section 110. As previously noted, good neighbor SIPs for the 2015 ozone NAAQS were due on October 1, 2018. EPA did not propose the good neighbor FIP until February 2022. As noted above, states also retain the ability to replace the FIP by submitting their own good neighbor SIPs at any time after the FIP is issued.

- f) **Will you commit to devoting resources to reducing the backlog of SIPs by working directly with states and provide states the time, consistent with the statutory requirements, to revise and resubmit SIPs EPA determines are not sufficient?**

Response: EPA is committed to working closely with states as they develop and submit approvable SIPs within the timelines provided in the Clean Air Act.

NAAQS:

- 32) **Rodgers:** What are your plans to provide the resources to CASAC so it can follow the law and evaluate welfare and economic impacts of any regulations to implement NAAQS standards?

Response: As stated in the CASAC charter and in accordance with the provisions of the Federal Advisory Committee Act (FACA), EPA is “responsible for financial and administrative support. Within EPA, this support will be provided by the EPA Science Advisory Board Staff Office, Office of the Administrator.”

Gasoline and Refineries:

- 33) **Rodgers:** The press has widely reported that the Administration is asking refineries to restart idled older refineries to address record high prices and potential refined product shortages. Diesel prices have risen 70 percent over the past year from \$3.26 to \$5.54 per gallon.

This is a cost increase that all Americans are paying for in higher consumer goods and products. And yet, EPA is now proposing to issue several regulations (including the recently proposed Cross-State Air Pollution Rule and potential revisions to the NAAQS for both fine particulate matter and ozone) that will impose additional costs and restrictive permitting requirements on refineries.

These policies will do exactly opposite to what the White House is asking of refineries. They will discourage refinery expansions, add to the cost of refined products such as diesel and gasoline, increase inflationary pressures, and discourage the expansions and the restarting of idled units.

- a) Has EPA coordinated these regulatory initiatives with the White House? If so, please explain.

Response: Regulations will be subject to interagency review, which entails review and consultation with all relevant/interested Agencies.

- b) Is EPA currently considering greenhouse gas regulations for the refinery sector? If so, what is the timeline for those rules?

Response: EPA is not currently considering greenhouse gas regulations for the refinery sector.

- c) Has EPA evaluated the potential impact on recently proposed energy related regulations of industry's willingness to restart idled plants? If so, please explain.

Response: EPA operates under statutory authority that directs how the Administrator balances environmental, economic, and other considerations. Within the contours of that authority, EPA conducts risk assessments, benefit-cost analysis, environmental justice reviews, and other analysis to inform the Administrator and the public about environmental and economic impacts of policy. Those evaluations are guided by statutes and OMB guidance with respect to how costs and benefits should be evaluated.

- d) What air permitting requirements will be triggered with restarting idled plants? How will those permitting requirements be impacted if EPA revises the current NAAQS?

Response: Air permitting requirements for restarting an idled refinery will depend on the status of the existing refinery (i.e., whether it was permanently shut down or temporarily idled), the extent of changes needed to restart operations, and the location of the refinery. As such, air permitting requirements could range from none to a Prevention of Significant Deterioration (PSD) permit and/or a Nonattainment NSR permit. The applicability of these New Source Review (NSR) air permitting programs is defined in the Clean Air Act and implemented through EPA and state regulations. If the EPA revises a NAAQS, PSD permit applicants would be required to demonstrate that their proposed emissions increases would not cause or contribute to a violation of the revised standard on an after the effective date of that standard.

For areas already designated as "nonattainment" for the NAAQS pollutant (e.g., PM_{2.5} or ozone), the permitting requirements would remain largely the same, with the exception of potentially lower permitting thresholds and higher emissions offset ratios depending on the nonattainment classification. In areas designated attainment or unclassifiable for a NAAQS, if the EPA revises that NAAQS, some of these areas could subsequently be designated nonattainment for that pollutant, and thus would be subject to the nonattainment NSR program on and after the effective date of such a designation. Operating permits issued to major sources under title V do not add substantive requirements to new or restarted facilities. It is important to note that because most refineries are already subject to title V permitting requirements, any change in the applicable NSR major source threshold for an area, such as could occur if a nonattainment area classification changes as an outcome of changing a NAAQS standard, is unlikely to have an effect on the requirement to get a title V permit.

- e) Has EPA completed an assessment of the potential of any existing refineries to close under the weight of expected EPA regulations? If so, please explain and provide the assessment.

Response: As a matter of course in Agency rulemakings and per relevant federal Executive Orders and guidance, EPA performs regulatory impact analyses to quantify, to the extent

feasible, the likely benefits and costs of certain regulatory options. When relevant to the rulemaking, EPA examines industry compliance costs, impacts on fuel and electricity prices, and impacts on electricity bills. To the extent allowed by law, EPA takes these quantified costs and benefits into account when choosing a regulatory path.

EGU Strategy, CSAPR, Reliability, and NSR:

- 34) **Rodgers:** According to the recent Summer-season assessment by the North American Electric Reliability Corp. (NERC), regions of the country, including the central and upper Midwest, Texas and Southern California, face an increased risk of power outages due to a combination of weather or climate related events and the accelerated transition from traditional fossil fuel generators to carbon-free renewable power.

At the same time, the United States faces this significant threat, EPA is rapidly moving to issue an array of standards that will impose higher costs primarily on fossil energy electric generating units – including coal and natural gas units -- which are likely to be of critical importance in reducing the threat of blackouts.

The Administration has publicly discussed an “EGU strategy” that includes several major new regulations now under development (Cross-State Air Pollution Rule, Regional Haze, Risk and Technology Review for the Mercury Air Toxics Rule, a new set of GHG performance standards and a legacy coal combustion residue rule that would affect new and existing units). This will encourage more units to retire at a time when the U.S. may need them the most.

- a) In developing the EGU strategy, has EPA evaluated the cumulative impact of the strategy in accelerating plant closures? If so, please provide us with these assessments.

Response: NERC’s report anticipating the possibility of blackouts and brownouts in areas of the country this summer did not identify EPA regulations as creating a reliability issue. EPA has a history of delivering public health and environmental protections while protecting grid reliability. Both past and present rules reflect robust resource adequacy and reliability considerations in our analysis, as well as implementation safeguards to ensure that health and environmental protections are carried out without compromising grid reliability.

EPA’s regulations do not require plant closures. Rather, our power sector modeling estimates how much capacity may find it more economic to retire rather than make pollution control investments or operational changes to and comply with environmental requirements. EPA quantifies the impact of each initiative individually, and also includes all final rules in the modeling assessment of any new rule. This provides a system-wide assessment of the cumulative effects of final regulations. Moreover, EPA often conducts sensitivity analyses that include proposed initiatives to assess the combined impact of existing and future regulations.

- b) What is the estimated number and capacity of existing coal and gas plants that could retire under the added weight of these requirements?

Response: EPA released modeling for the proposed Good Neighbor Plan indicating that an additional 18 GW of coal capacity would choose to retire by 2030 rather than operate and comply with the proposed requirements. This is equivalent to a 13% reduction in coal capacity relative to the baseline. These retirements represent an incremental ~2.25 GW of coal retirements per year, which is relatively minor compared to average coal retirements of 11 GW per year from 2015–2020. EPA is in the process of considering public comments on its proposed analysis.

(i) If EPA has not conducted an assessment, please explain why not.

Response: (See response above to subpart b)

c) Has EPA evaluated the potential effect of these closures on increasing the risk of regional blackouts? If so, please explain. If not, why?

Response: EPA takes reliability concerns very seriously. EPA actively engages directly with the electricity sector including system operators, state regulators, DOE, Federal Energy Regulatory Commission (FERC), and other parties that have the responsibility for ensuring reliability and affordability. We also carefully evaluate reports and analyses from the North American Electric Reliability Corporation (NERC) and integrate them into our regulatory analyses. As noted above, EPA’s previous rules for the power sector reflected robust analysis of resource adequacy and reliability considerations, as well as implementation safeguards to ensure that health and environmental protections are carried out without compromising grid reliability. EPA will continue to engage with stakeholders and give these issues careful consideration as it develops new health and environmental protections to ensure that power companies can continue to deliver reliable and affordable electricity for families and businesses.

d) Has EPA evaluated the potential health and safety impacts of a blackout? If so, please explain. If not, why?

Response: EPA has a responsibility to address the harmful health and environmental impacts resulting from power plant pollution. EPA is committed to using its authorities to address these impacts, as our nation’s environmental laws require, while also prioritizing reliability and affordability for families and the electricity sector. EPA actively engages directly with the electricity sector including system operators, state regulators, DOE, FERC, and other parties that have the know-how and responsibility for ensuring reliability and affordability.

e) Please list all consultations EPA has conducted with the Department of Energy, FERC, Independent System Operators, and states in connection with impacts of planned or proposed rules affecting the nation’s power sector?

Response: EPA has discussed the proposed Good Neighbor Plan with Independent System Operators and states at the following meetings:

- DE 4/13/22
- MD 4/13/22
- MD and NESCAUM 8/10/21
- MD and NESCAUM 8/17/21

- MD, NJ, and NESCAUM 10/14/21
- MD, NJ, and NESCAUM 11/2/21
- NY, OK, NC, WRAP, MARAMA, GA, NH, LADCO, CenSARA, TCEQ (Non-EGU focused mtg) 4/13/22
- PA 12/16/21
- EGU Workgroup meetings (with the attendance of states and MJOs nationwide) 3/24/22, 4/13/22, 4/28/22
- LADCO 9/12/21
- MISO 6/23/22
- PJM 6/17/22
- PJM 7/7/22

Additionally, EPA held a series of meetings with reliability authorities that submitted comment on the proposal, with the explicit purpose of fully understanding the reliability concerns raised during the GNP comment period. These meetings were held per the following dates and times:

- 9/20: MISO
- 9/20: SPP
- 9/22: ERCOT and Texas PUC
- 9/27: BHE and IPC
- 10/4: PJM
- 10/6: Southern Company, TVA, and LGEKU
- 11/10: EEI, PJM, MISO, SPP

Also, DOE participated in interagency review of EPA's Good Neighbor Plan proposal before it was published, and EPA participated in a meeting with FERC on November 4, 2022, to discuss power sector regulations under development at both FERC and EPA.

35) **Rodgers:** EPA's Proposed Cross-State Air Pollution Rule proposes to regulate electric generating units and more than five large and disparate energy intensive industrial source categories at the same time without having done the detailed technical work that the Agency usually conducts when proposing controls for individual source categories. Specifically, the proposal would apply controls to:

1. Reciprocating internal combustion engines in Pipeline Transportation of Natural Gas;
2. Kilns in Cement and Cement Product Manufacturing;
3. Boilers and furnaces in Iron and Steel Mills and Ferroalloy Manufacturing;
4. Furnaces in Glass and Glass Product Manufacturing; and
5. High-emitting, large boilers in Basic Chemical Manufacturing, Petroleum and Coal Products Manufacturing, and Pulp, Paper, and Paperboard Mills.

Public comments have emphasized numerous errors in the Proposed Rule that begin with the emission inventories which are the key inputs to the air quality modeling used by the Agency in determining upwind contributions and remedies. Iron and steel manufacturers also noted that the Agency failed to make even rudimentary distinctions between different types of steel production.

- a) **How does the Agency plan to resolve the questions regarding the emission inventories, applicability criteria, covered sources in the short time allotted before the controls are required to be in place?**

Response: EPA is reviewing the comments received during the public comment period on the proposed Good Neighbor FIP, including feedback on emissions inventories, modeling, applicability criteria and covered sources. EPA will consider this information as we work towards finalizing this rule in March 2023.

- b) **Why did the Agency extend the comment period for the rule by only two weeks?**

Response: EPA extended the comment period on the proposed Good Neighbor FIP to allow additional time for interested stakeholders to review the proposed rule. The two-week extension balances the requests for additional time with EPA's legal deadlines in accordance with judicial directives to fully address Good Neighbor obligations by the relevant attainment date.

- c) **Is the Agency accelerating its process to issue this proposal so it can apply control requirements by the start of next year?**

Response: EPA's regulatory development schedule is driven by EPA's legal deadline and judicial directives to fully address Good Neighbor obligations by the relevant attainment date. For Good Neighbor obligations for the 2015 ozone NAAQS, meeting the relevant attainment date means that emissions reduction measures be implemented in the 2023 ozone season prior to the August 2024 attainment date for areas classified as Moderate nonattainment for the 2015 ozone NAAQS, and achieving additional needed reductions as soon as possible thereafter through the 2026 ozone season, prior to the August 2027 attainment date for areas classified as Serious nonattainment for the 2015 ozone NAAQS.

- 36) **Rodgers:** The Proposed Cross-State Air Pollution Rule proposes to impose additional costs on high-intensity industrial sectors of the economy that are already experiencing higher energy fuel costs. Many of the covered source categories, including cement, steel, and glass manufacturing, are also critical to building materials that are up 36 percent in costs since the start of the pandemic.

- a) **What steps has the Agency taken to evaluate the inflationary impacts of the proposed rule?**

Response: EPA issued the proposed Good Neighbor FIP in order to carry out the Agency's obligation under the Clean Air Act to ensure that states prohibit emissions that significantly contribute to nonattainment or interfere with maintenance of the NAAQS in downwind communities. EPA prepared a regulatory impact analysis (RIA) to quantify the likely benefits and costs of certain regulatory options when the agency proposed the rule. Describing the effects of EPA rules is an important part of our obligation to be transparent in how we conduct our analyses. Each RIA is prepared in accordance with Executive Orders and OMB guidance, and the Agency's guidelines for economic analyses. Before issuing a final rule this year, EPA will carefully consider all comments and information submitted on the proposal.

- b) **Did EPA evaluate how the proposed rule will affect housing affordability and the cost of new home construction? If so, please explain. If not, why?**

Response: EPA issued the proposed Good Neighbor FIP in order to carry out the Agency's obligation under the Clean Air Act to ensure that states prohibit emissions that significantly contribute to nonattainment or interfere with maintenance of the NAAQS in downwind communities. EPA prepared a regulatory impact analysis (RIA) to quantify the likely benefits and costs of certain regulatory options when the agency proposed the rule. Describing the effects of EPA rules is an important part of our obligation to be transparent in how we conduct our analyses. Each RIA is prepared in accordance with Executive Orders and OMB guidance, and the Agency's guidelines for economic analyses. Before issuing a final rule this year, EPA will carefully consider all comments and information submitted on the proposal.

- c) **Could the proposed rule accelerate retirements in the covered industrial sectors and lead to further shortages of materials?**

Response: EPA issued the proposed Good Neighbor FIP in order to carry out the Agency's obligation under the Clean Air Act to ensure that states prohibit emissions that significantly contribute to nonattainment or interfere with maintenance of the NAAQS in downwind communities. This proposed rule follows the long-established Cross-State Air Pollution Rule (CSAPR) framework, using highly cost-effective pollution control approaches that states, the power sector, and other industries have traditionally relied on to address nitrogen oxide (NO_x) emissions. The proposed standards for non-EGU sources are based on cost-effective, proven technologies that many similar facilities have been using for years and provide substantial lead time for compliance. EPA is working with industry stakeholders to better understand whether there are any control-technology limitations at specific non-EGU facilities covered by the proposed rule. EPA appreciates stakeholder engagement on this topic to inform a final rule that reduces NO_x emissions from non-EGU sources in a cost-effective and workable manner. Before issuing a final rule this year, EPA will carefully consider all comments and information submitted on the proposal.

- 37) **Rodgers:** During the previous Administration, EPA Administrator Wheeler made several positive reforms to the EPA's New Source Review guidance to modernize the permitting process by removing unnecessary impediments to installing innovative upgrades at facilities that increase efficiency and actually improve air quality. **Do you plan to maintain these important NSR reforms?**

Response: In 2022, EPA focused on reviewing two NSR guidance memoranda and a related rulemaking from the previous Administration. On December 7, 2017, former EPA Administrator Scott Pruitt issued a memorandum titled: "Enforceability and Use of the Actual-to-Projected-Actual Applicability Test in Determining Major Modification Applicability." EPA reviewed that memorandum pursuant to Executive Order 13990 and on December 9, 2022, EPA issued a memorandum that rescinds in its entirety the December 7, 2017, memorandum from Administrator Pruitt.

On March 13, 2018, Administrator Pruitt issued a memorandum titled “Project Emissions Accounting Under the New Source Review Preconstruction Permitting Program” and on November 24, 2020, EPA issued a final rule that made corresponding revisions to the NSR regulations. On January 22, 2021, the EPA received a petition for reconsideration of project emissions accounting final rule and a request for withdrawal of March 2018 memorandum. On October 12, 2021, EPA denied the petition for reconsideration but stated that the Agency planned to undertake a discretionary rulemaking to address the concerns raised by petitioners and to consider withdrawal or revision of the March 2018 Memorandum if necessary. EPA expects to issue a proposal on this topic in 2023.

Social Cost:

38) **Rodgers:** On March 8, 2022, Senator Capito and I wrote you seeking information relating to the stay on use of Social Cost of Greenhouse Gases and related oversight questions.

a) **Do you intend to provide the information requested in our letter?**

Response: Yes, EPA sent a response to the letter on November 15, 2022.

b) **Has EPA been using Social Cost of Greenhouse Gas or related Social Cost of Carbon estimates in any EPA NEPA reviews of agency actions since our letter of March 8? If so, please list the comments.**

Response: EPA is required under Section 309 of the Clean Air Act to review the environmental impact statements (EIS) of other federal agencies. To ensure the environmental impacts of proposed actions with substantive greenhouse gas (GHG) emissions are adequately disclosed, EPA has consistently recommended that agencies quantify those emissions and that the resulting net climate impacts be appropriately disclosed. EPA has recommended that agencies use estimates of the social cost of greenhouse gas (SC-GHG) to assess climate impacts and help weigh their significance in cost-benefit balancing for a proposed project. Estimates of the SC-GHG reflect the best available peer-reviewed science and methodologies to monetize the value of net changes in direct and indirect GHG emissions resulting from a proposed action to society in a meaningful way for the public and the decision maker as required under National Environmental Policy Act (NEPA).

c) **In NEPA related comments to FERC, EPA recommended that FERC include a detailed consideration of a pipeline project’s carbon lock-in. What is EPA’s policy on carbon lock-in?**

Response: EPA has consistently offered recommendations to lead agencies that have prepared Environmental Impact Statements for major fossil fuel projects that consideration be given to the long-term demand for such a project in light of an evolving market. EPA has also consistently recommended that agencies quantify and adequately disclose the Greenhouse Gas (GHG) emissions of such proposed projects. In doing so EPA has highlighted that to fully assess the reasonably foreseeable GHG emissions from a proposed project whose expected capital lifetime

is measured in decades, an analysis should consider the long-term market incentives the project creates and the resulting environmental impacts

RFS:

- 39) **Rodgers:** As it relates to the Renewable Fuels Standard (RFS), what is the Agency’s plan for the RFS after 2022, particularly with respect to Renewable Volume Obligations (RVO)? **After 2022, will the RVOs be set in a way that constrains the supply of affordable liquid transportation fuels?**

Response: On December 1, 2022, EPA announced a proposed rule to establish required Renewable Fuel Standard (RFS) volumes and percentage standards for 2023, 2024, and 2025. Under the requirements of a consent decree entered by the D.C. Circuit on July 26, 2022, EPA will sign a final rule finalizing the RFS volume requirements for 2023 by June 14, 2023. RFS volume requirements for years after 2022 were determined based on a review of the implementation of the program through 2022 and an analysis of economic and environmental factors enumerated in the statute. One of the statutory factors that EPA analyzes is the expected annual rate of future commercial production of renewable fuels, and EPA set future RFS volumes that can be achieved with available projected production. The use of renewable fuel expands the total supply of domestic transportation fuel, enhancing our energy security while reducing GHG emissions.

RPM Act:

- 40) **Rodgers:** Concerning the RPM Act and the use of Clean Air Act section 203(a)(3), EPA had a policy to not enforce against people who modify their cars to race them, but not otherwise use them. Unfortunately, because some groups are using Clean Air Act authority to sue these racing enthusiasts there is a desire to close the question of how this provision applies.
- a) **I have heard EPA is concerned about avoiding a need to prove intent in order to pursue violators and wants the violation attached to the auto being driven. Is this correct? If yes, does EPA intend for any change to address motorsports competition to contain strict and joint and several liability?**

Response: EPA must have the ability to stop the surge of aftermarket defeat devices that are undermining the rule of law and our air quality standards. To achieve this goal, the burden to prove eligibility for the exemption rests on the regulated party. Any legislative exemption to the tampering or defeat device prohibitions must place the burden on those seeking the exemption. Placing the burden on EPA would interfere with its ability to enforce the prohibition on the manufacture, distribution, and sale of aftermarket defeat devices. This position is consistent with existing CAA exemptions, such as the exemption for converting motor vehicles to operate on alternative fuels. This would also ensure EPA has the authority to promulgate adequate rules and the capacity to investigate noncompliance.

- b) **For a permissible use of a motor vehicle on public roads, who would decide whether such an automobile is “authorized” for use: EPA or the State and any political subdivision of the state?**

Response: An authorized vehicle would include a vehicle that has passed the requisite state inspection and is registered by a state motor vehicle department with valid license plates to operate on public roads. Such a vehicle would not get any exemption.

Rep. McKinley (R-WV)

Carbon Capture and Class VI Wells:

1) **McKinley:** The Intergovernmental Panel on Climate Change’s (IPCC) recent climate mitigation report concluded that achieving net-zero emissions would be “virtually impossible” without carbon capture. The Environmental Protection Agency (EPA) plays a critical role in the deployment of carbon capture and storage through its Class VI well program.

a) **Do you agree that reaching net-zero emissions will be impossible without carbon capture, utilization, and storage (CCUS) technologies?**

Response: To reach the President’s ambitious domestic climate goal of net-zero emissions economy-wide by 2050, CCUS technologies can play an important role. Further, EPA recognizes the vital importance of ensuring that CCUS projects are implemented responsibly and in a manner that reflects the input and needs of local communities.

Carbon capture and injection is one of the tools that will be employed as we work to reach net-zero emissions.

b) **Do you support increased funding for the Underground Injection Control (UIC) program, related to Class VI, wells to support carbon dioxide (CO2) sequestration, and help develop expertise and capacity at the Agency?**

Response: EPA has developed expertise and within the agency staff, EPA is supportive of efforts to increase the expertise and capacity at the Agency as we expect the number of applications for Class VI UIC permits to increase substantially. Additionally, EPA is interested in ensuring that states that have expressed interest in obtaining primacy for this program have the staffing and skills necessary to properly operate the program. Section 40306 of the Infrastructure Investment and Jobs Act (IIJA) included \$50 million to help states establish their own Class VI permitting programs. Currently, two states have obtained Class VI primacy. Louisiana has submitted a Class VI primacy application that is currently under review and several others, including West Virginia, are engaged in early efforts to develop primacy applications. Section 40306 also appropriated \$25 million to support EPA’s permitting of Class VI wells. These funds are used to support the Agency’s efforts in making effective and timely review of Class VI permit applications. EPA currently has over 20 Class VI applications that are undergoing technical review.

What actions has EPA taken to date to implement Section 40306?

Response: EPA is developing a new Class VI grant program to implement the provision. The Agency is conducting stakeholder outreach and tribal consultation and anticipates releasing the implementation memorandum after the consultation and review has been completed. In addition to work on the grant, EPA has been developing resources to support agency review of Class VI permit applications and providing resources to support applicants in submitting robust Class VI permit applications.

- 2) **McKinley:** Section 1422(b)(2) of SDWA requires EPA to decide on a state primacy application or notice of additional requirements within 90 days of receipt and “after reasonable opportunity for presentation of views.” EPA has taken well beyond 90 days to act on certain State requests, however.

- a) **What does EPA consider a “reasonable opportunity for presentation of views?”**

Response: EPA’s regulations for program approval and revision in Part 145 provide EPA’s interpretation of section 1422(b)(2) of the SDWA and the statutory timeline for reviewing state UIC primacy applications. See 40 CFR §§ 145.22(b) and 145.31(e).

- b) **Will EPA commit to reviewing and approving state primacy applications within that 90-day period?**

Response: EPA has taken steps to streamline the process for state Underground Injection Control (UIC) Class VI program development and improve EPA’s process for review of state Class VI primary enforcement authority (primacy) applications.

- c) **What other actions are being undertaken by the Agency to ensure that the domestic deployment of CCUS is not hindered by permitting timelines?**

Response: The Class VI UIC permitting program was developed to protect underground sources of drinking water from contamination. The process of evaluating applications must take into account several important technical aspects of the proposals to ensure that the wells are constructed in such a way as to protect our drinking water. That said, over the past several years, EPA’s UIC program has developed operating procedures for the review of state Class VI primacy applications. The operating procedures not only protect our drinking water, but also facilitate transparency and consistency. EPA’s UIC program has also examined and implemented procedural improvements that the EPA UIC program has implemented to streamline the process. States interested in applying for Class VI primacy are encouraged to engage with EPA early in their process to schedule “pre-application” discussions. During these discussions, EPA can provide technical assistance and share lessons learned from previously approved primacy programs.

- 3) **McKinley:** In 2021, the White House Environmental Justice Advisory Council (WHEJAC) found in their report that carbon capture “does not benefit a community.”

- a) **Do you agree with this recommendation?**

Response: EPA’s Class VI regulations are a part of the U.S. regulatory regime for carbon capture, utilization and storage and will be required for the geologic sequestration components of carbon dioxide removal approaches. These regulations are essential for geologic sequestration deployment that is protective of underground sources of drinking water (USDWs) and human health.

- b) **What role does the WHEJAC’s finding have in EPA’s processing of state primacy requests for Class VI permitting programs?**

Response: To reach the President's ambitious domestic climate goal of net-zero emissions economy-wide by 2050, the United States will likely have to capture, transport, and permanently sequester significant quantities of carbon dioxide (CEQ, 2021). The successful widespread deployment of responsible carbon capture, utilization and storage, as well as carbon dioxide removal approaches (e.g., direct air capture and sequestration, bioenergy generation with carbon capture and sequestration), will require strong and effective permitting and efficient regulatory regimes to safeguard public health and the environment with meaningful public engagement. EPA’s Class VI regulations, which are a part of the U.S. regulatory regime for carbon capture, utilization and storage and will be required for the geologic sequestration components of carbon dioxide removal approaches, are essential for geologic sequestration deployment that is protective of underground sources of drinking water (USDWs) and human health.

PFAS Designations:

- 4) **McKinley:** Public drinking water and wastewater utilities are increasingly concerned that designating certain per- and polyfluoroalkyl substances (PFAS) as hazardous under the CERCLA could leave them liable to bear the costs of contamination – putting the onus on local communities and households. Public water and wastewater utilities did not produce or benefit from PFAS, but since it flowed through their systems could be left holding the bag.
- a) **If a designation moves forward, can EPA commit to ensuring public wastewater utilities and local communities are not held liable under CERCLA for PFAS contamination?**

Response: On September 7, 2022, EPA published a proposed rule in the Federal Register to designate two of the most widely used PFAS – PFOA and PFOS – as hazardous substances under CERCLA, or Superfund. This rulemaking would increase transparency around releases of these harmful chemicals and help to hold polluters accountable for cleaning up their contamination. Many known and potential sources of PFAS contamination are near communities already overburdened with pollution. If finalized, the rulemaking would trigger reporting of certain PFOA and PFOS releases, providing the Agency with improved data and the option to require cleanups and recover cleanup costs to protect public health and encourage better waste management.

EPA is focused on holding responsible those who have manufactured and released significant amounts of PFOA and PFOS into the environment. EPA will use enforcement discretion and other approaches to ensure fairness for minor parties who may have been inadvertently impacted by the contamination. EPA is also committed to doing further outreach and engagement to hear

from impacted communities, wastewater utilities, businesses, farmers and other parties during the consideration of the proposed rule.

- b) **Can EPA use its regulatory authority to reinforce existing federal exclusions under CERCLA, including the federally permitted release and the normal application of fertilizer, by clarifying that these apply to public drinking water and wastewater utilities adhering to their permits and requirements?**

Response: EPA is focused on holding responsible those who have manufactured and released significant amounts of PFOA and PFOS into the environment. EPA will use enforcement discretion and other approaches to ensure fairness for minor parties who may have been inadvertently impacted by the contamination. EPA is also committed to doing further outreach and engagement to hear from impacted communities, drinking water and wastewater utilities, businesses, farmers and other parties during the consideration of the proposed rule.

- c) **Will Congress need to ultimately provide an exemption to public drinking water and wastewater utilities to protect local communities from liability?**

Response: EPA is focused on holding responsible those who have manufactured and released significant amounts of PFOA and PFOS into the environment. EPA recognizes that there are PFAS situations that may present equity concerns, including significant concerns by some stakeholders, particularly public service entities like water utilities and municipal airports, so we are considering the implications if EPA takes final action to designate PFOA and PFAS. Although EPA generally does not have authority to exempt particular entities from liability, the Agency is considering whether it can address some concerns with various enforcement tools. For example, EPA may use enforcement tools to minimize financial burdens on certain parties, such as by entering into settlements agreements that provide contribution protection from claims by other responsible parties.

To accommodate the high level of interest stakeholders have expressed, EPA will conduct outreach in the near future. EPA plans to hold listening sessions in the coming months to receive input about enforcement considerations for certain stakeholders, such as drinking water and wastewater utilities, businesses, municipalities (including municipal airports) and other parties.

TSCA Risk Evaluations:

- 5) **McKinley:** In June 2021, EPA announced policy changes surrounding risk evaluations issued under the Toxic Substances Control Act (TSCA), including reopening and re-reviewing the 10 risk evaluations that were finalized in 2021. In 2022, EPA released updated risk evaluation information for HBCD and PV-29.
- a) **Please provide the respective cost EPA has spent since June 2021 to re-review the HBCD and PV risk evaluations.**

Response: EPA believes the risk evaluations for HBCD and PV-29 are sufficient to inform the risk management approaches being considered and, consistent with the requirements of TSCA

section 6, these approaches will address the unreasonable risk. EPA spent approximately \$200,000 in pay and non-pay resources to revise certain aspects of the unreasonable risk determinations for these two chemicals, specifically 1) to make the determination for each chemical substance as a whole, rather than making separate determinations on each condition of use of each chemical substance, based on consideration of the specific circumstances of each chemical substance, and 2) to explicitly acknowledge that the risk determination does not reflect an assumption that all workers always appropriately wear personal protective equipment (PPE) and that EPA instead will consider use of PPE during risk management.

- 6) In recent comments, EPA had indicated plans to significantly increase the fees associated with the TSCA program when it releases its supplemental fees rule later this year.
- a) **How is your office quantifying the costs of implementing TSCA and when will you provide a report to Congress summarizing this information?**

Response: EPA quantified the program costs for implementing relevant activities under TSCA sections 4, 5, and 6, and relevant information management activities under section 14, by accounting for the direct costs, both intramural and extramural for those activities, indirect costs, and cost estimates based on a comprehensive analysis conducted in 2021, including anticipated efforts and resources. The cost estimate is informed by the Agency's experience administering TSCA since 2016, factors in the Agency's failure to meet the statutory deadlines for 9 of the first 10 existing chemical risk evaluations and consistent challenges meeting the requirements associated with reviewing new chemicals, risk management activity costs, and thus includes what the Agency believes is a much more reliable estimate of the resources needed for the anticipated implementation efforts than the inaccurate cost estimate that was previously used.

Under section 26(m) of TSCA as amended, EPA was required to submit an initial report to Congress not later than six months after the date of enactment of the Lautenberg Act and is required to submit updated reports not less frequently than once every five years thereafter. EPA's "Report to Congress on the EPA's Capacity to Implement Certain Provisions of the Frank R. Lautenberg Chemical Safety for the 21st Century Act" was prepared and submitted to Congress in October 2022.

- 7) **McKinley:** In accordance with the TSCA statute, the Administrator shall biennially prepare and submit to the Committee on Environment and Public Works of the Senate and the Committee on Energy and Commerce of the House of Representatives a report that includes an accounting of the fees paid and amounts disbursed for TSCA, including the reasonableness of the fees to meet current and projected costs of administering the program.
- a) **When was the last report provided to Congress and when will the next report be provided to Congress?**

Response: EPA will prepare and submit its first biennial report pursuant to TSCA section 26(b)(3)(D), to Congress that includes an accounting of TSCA fees paid and disbursed. EPA is currently finalizing the biennial report and will submit it to Congress in early 2023.

b) **What steps are being taken to ensure that EPA meets its statutory mandate to complete reviews of new chemicals in a timely fashion?**

Response: Congress gave EPA a relatively short window of time to review and assess risks from new chemicals and ensure that they are safe before they can enter commerce. This is no small task, as the program receives hundreds of submissions each year. Under TSCA, EPA is required to review and make an affirmative determination on the safety of new chemicals before they can enter the market. EPA uses an integrated approach that draws on knowledge and experience across disciplinary and organizational lines as part of new chemical reviews. EPA conducts a full life-cycle risk assessment of the substance, including chemistry, environmental fate, exposure and hazard (human and ecological) assessments, and then integrates those assessments to determine whether the chemical may pose an unreasonable risk to human health or the environment under the conditions of use. If unreasonable risks are identified, EPA must take actions to mitigate these risks through regulatory actions such as a Section 5 order, and when applicable, EPA may issue a significant new use rule. Unfortunately, the TSCA program has been historically underfunded. For example, the TSCA new chemicals program has been operating with less than 50 percent of the resources it needs to carry out the program.

Despite these challenges, EPA is taking steps to get the new chemicals program back on track, including ensuring new chemical reviews are scientifically robust, consistent and completed in a timely manner. To effectuate this, EPA has implemented an aggressive recruitment and hiring plan, focusing on areas with the greatest staffing needs. For example, EPA is targeting to onboard as many as eight human health risk assessors. The New Chemicals program is also using detailed employees to quickly fill critical gaps with experienced staff members. The program has developed a comprehensive hiring/recruitment plan with the immediate focus on recruiting toxicologists/biologists to support the human health risk assessments for new chemical submissions. The recruitment effort is leveraging all available recruitment platforms, including USA Jobs, EPA Talent Hubs, outreach to hundreds of universities, and work with other federal partners.

In addition, EPA is enhancing its training and mentoring program, with an initial focus on providing more cross-training on foundational statutory and program requirements for risk assessment and management, including emerging areas such as the application of new assessment methods (NAMs). EPA is also prioritizing development of science policies, guidance and standard operating procedures to ensure new chemical reviews are streamlined, consistent and apply best available science and tools. Under this effort, EPA intends to develop additional approaches for different new chemical categories and sectors similar to its new biofuels effort, for which the program formed a dedicated team to collaborate on the review of premanufacture notices (PMNs) for biobased or waste-derived feedstocks used to make transportation fuel substitutes with the goals to use the best available science while creating a consistent and efficient review process. This approach provides an integrated process for risk assessment and risk management that is scientifically robust, consistent and streamlined. Lastly, EPA is working to stabilize and modernize its IT infrastructure such as the CBI LAN, which is integral to the new chemicals program's workflow, recordkeeping, and transparency commitments.

- 8) **McKinley:** In some cases, EPA is undertaking multiple, simultaneous hazard and dose-response assessments of the same chemical.
- a) **How will EPA ensure that there aren't duplicative efforts and resources spent for the same chemical?**

Response: Different statutes may address the same issues (or even the same chemical substances) in different ways that, together, serve to protect people and the environment. For that reason, chemical assessment activities are sometimes conducted in different EPA offices, sometimes on the same chemical substance. However, EPA has mechanisms in place to avoid duplication of efforts. For example, in developing its scientific support for TSCA decisions, EPA coordinates across the agency through its TSCA Risk Evaluation Committee (TREC), an intra-agency committee comprised of representatives from all major program offices at EPA as well as EPA's Office of Research and Development, to avoid duplication of effort in the completion of TSCA risk evaluations.

Energy Security:

- 9) **McKinley:** When calculating the costs and benefits of regulatory actions that impact U.S. oil demand, EPA typically assigns an "oil security premium" benefit associated with reduced demand. For example, the automobile greenhouse (GHG) standards finalized in December 2021 assign a regulatory benefit of between \$3.63 and \$5.57 per barrel of oil demand reduced as a result of this rule. Historically, however, when EPA regulatory actions potentially restrict production and/or supply of oil (such as methane regulations, for example), no similar energy security cost is estimated. **Will you commit to ensuring that EPA regulatory actions that restrict domestic oil production analyze and quantify the negative impacts on U.S. energy security?**

Response: EPA is committed to carrying out its responsibility under our nation's laws to protect people from the full array of climate, health, and environmental impacts associated with fossil fuel-fired power plants – impacts that all too often fall hardest on communities that are already overburdened by pollution. EPA will meet this challenge by working in a transparent manner with a broad range of stakeholders, engaging with other federal agencies, states, and tribal nations, and pursuing a well-coordinated approach. EPA and this Administration are committed to using our authorities in a sensible and coordinated way to protect public health and the environment while ensuring U.S. energy security and affordable electricity for families and businesses. EPA will meet this challenge by engaging in a transparent manner with a broad range of stakeholders, working with other federal agencies, states, and tribal nations, and undertaking rigorous and transparent analysis of our regulatory actions to ensure they are anchored in science and the law. When preparing a Regulatory Impact Analysis (RIA) for major regulations, EPA evaluates costs and benefits in accordance with Executive Orders and OMB guidance, and the Agency's guidelines for economic analyses.

Nationally Determined Contribution:

10) **McKinley:** In April 2021, President Biden formally announced the United States’ “Nationally Determined Contribution” (NDC) under the Paris Agreement, which commits to reducing net economy-wide GHG emissions 50 – 52% below 2005 levels by 2030.

- a) The U.S. NDC states that development of the NDC resulted from “a bottom-up analysis of existing and potential policies and measures at the federal level...[that] considered multiple pathways across all sources of greenhouse gas emissions,” including the electricity, transportation, buildings, and industrial sectors. **Please list all actions and regulatory authorities EPA intends to use in support of this emissions reduction goal.**

Response: The National Climate Advisor and the White House Office of Domestic Climate Policy developed the NDC as part of a whole-of-government approach that included consultation with relevant departments and agencies across the federal government and consideration of a range of pathways for each sector of the economy that produces greenhouse gases. The National Climate Advisor and the White House Office of Domestic Climate Policy conducted a detailed analysis that assessed technology availability, current costs, future cost reductions, and the role of enabling infrastructure. The relevant federal agencies, including EPA, have an important role to play in meeting this goal by designing and implementing policies within their respective statutory authorities.

As EPA proposes new regulations to reduce carbon pollution from stationary and mobile sources, we will be fully transparent and provide a thorough, detailed analysis of these proposals and solicit robust public comment. The agency will consult all the relevant stakeholders, including representatives from state and local governments; environmental justice leaders; the business, science, and education communities; and experts focused on questions of pollution reduction.

- b) **Please also detail:**

- (i) **The expected emissions reductions in 2030 that would result from regulatory actions that have been announced or finalized;**

Response: The emissions reductions that will be needed to meet the U.S. Nationally Determined Contribution GHG emissions reduction goal will be driven by action across the U.S. Government including action by the Executive Branch and action by Congress, as well as action by State and local governments. EPA actions are one piece of this puzzle, and the emissions reductions associated with specific EPA actions are best seen in the detailed analyses EPA conducts of proposed regulations that can be found in Regulatory Impact Analyses in the Federal Register. To see the broader picture of U.S. progress towards our NDC goal it is necessary to look beyond analyses of individual regulatory actions and see how net U.S. GHG emissions are impacted by the broad set of U.S. actions including the *Inflation Reduction Act* and the *Bipartisan Infrastructure Law*. The DOE Office of Policy finds that, “the *Inflation Reduction Act* and the *Bipartisan Infrastructure Law*, in combination with past actions, are projected to drive 2030 economy wide GHG emissions to 40% below 2005 levels.” This finding is in line with outside estimates of emissions under the IRA and BIL from the Princeton REPEAT project, (42% below 2005) the Rhodium Group (32-42% below 2005), and Energy Innovation (37-43% below 2005).

- i) **The emissions reduction gap necessary to achieve the President’s NDC commitment; and**

Response: While the *Inflation Reduction Act* and the *Bipartisan Infrastructure Law* will deliver historic GHG emissions reductions, they are not estimated to fully put the U.S. on a path to meet our Nationally Determined Contribution goal of reducing net economy-wide GHG emissions to 50-52% below 2005 levels. Using the DOE Office of Policy estimate that the IRA and BIL bring the U.S. onto a path to reduce emissions 40% below 2005 levels that puts us within striking distance to achieve the U.S. NDC commitment of 50-52% reduction from 2005 levels by 2030.

- ii) **Expected forthcoming actions to close the gap using both GHG and non- GHG regulatory authorities.**

Response: Forthcoming regulatory actions that will deliver additional emissions reductions and help the U.S. reach our NDC goal can be found in the Spring 2022 Unified Agenda of Regulatory and Deregulatory Actions at [reginfo.gov](https://www.reginfo.gov), and the next set of future regulatory actions were updated in the Fall 2022 Unified Agenda of Regulatory and Deregulatory Actions. In addition to Federal regulatory actions, the IRA and BIL enable and catalyze State and local government actions on climate change that will deliver GHG emissions reductions above and beyond what the IRA and BIL are estimated to achieve on their own. As one example, since the passage of the IRA, California has passed legislation that will require all new cars, trucks and SUVs sold in the state to run on electricity or hydrogen by 2035 and approved \$54 billion for climate programs that will support electric vehicles, battery-powered school buses, transit, rail and port projects, electric grid stabilization projects, and projects to reduce wildfire risk.

Rulemakings and Economic Factors:

- 11) **McKinley: With many sectors and businesses challenged by supply chain constraints, rising inflation, and labor shortages; how is the agency balancing its desire to make environmental progress with these challenges in mind?**

Response: Supply chain challenges can often be specific to sectors or even commodity specific and we consider those conditions on a case specific basis. EPA has also established a Supply Chain/Critical Minerals Working Group within the Agency to respond to E.O. 14017 which includes participants from the national program offices, regions, and EPA’s National Mining Team.

- 12) **McKinley: How is EPA quantifying these factors in their regulatory benefit-cost analysis and considering these factors in the agency’s decision-making?**

Response: In Agency rulemakings, EPA takes into consideration factors as authorized by its statutory authorities to ensure that environmental standards and requirements are feasible, achievable, and effective. In addition, EPA prepares a regulatory impact analysis (RIA) to quantify the likely benefits, costs, and economic impacts of regulatory options when undertaking economically significant rulemakings, in accordance with relevant statutes, Executive Orders, OMB guidance, and the Agency’s Guidelines for Preparing Economic Analyses. Understanding

and describing the anticipated effects of EPA rules is an important part of evidence-based decision making and our obligation to be transparent.

- 13) **McKinley:** The COVID-19 pandemic illustrated the need for regulatory flexibility and provisions that allowed for consideration of emergency situations. **Is the agency adding provisions in their regulations that would allow for the reevaluation of a regulation’s stringency or compliance timeline if the cost or other burden were to impose disproportionate economic hardship on a state, region, or the nation as a whole?**

Response: EPA has issued some regulations that have built-in provisions for economic hardship. The Agency evaluates emergency situations on a case-by-case basis to determine the appropriate response.

- 14) **McKinley:** Executive Order 13563, issued in January 2011, requires agencies to “tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations.” EPA’s ambitious regulatory agenda will impose new requirements on a vast array of businesses and sectors promising to protect the environment; however, **what is the agency doing to consider the cumulative regulatory burden of these new and existing requirements in their cost-benefit analysis?**

Response: EPA takes into consideration factors as authorized by its statutory authorities to ensure that environmental standards and requirements are feasible, achievable, and effective. In addition, EPA prepares a regulatory impact analysis (RIA) to quantify the likely benefits, costs, and economic impacts of regulatory options when undertaking economically significant rulemakings, in accordance with relevant statutes, Executive Orders, OMB guidance, and the Agency’s Guidelines for Preparing Economic Analyses.

- 15) **McKinley:** Executive Order 12866 requires agencies “to confirm that regulations are both compatible with each other and not duplicative or inappropriately burdensome in the aggregate.” EPA submitted a proposed rulemaking to the Office of Management and Budget that the agency indicated would change the requirements for the Risk Management Program designed to mitigate the effect of accidental releases from chemical facilities. **With EPA’s own data showing steady declines in the number of incidents over time and other agencies already imposing standards to reduce such incidents, how will the agency avoid duplicative regulations and be able to issue cost effective regulations?**

Response: Accident prevention is a top priority at EPA. The Risk Management Program (RMP) rule has been successful in reducing the frequency of accidental releases at regulated facilities. The number of accidents at RMP facilities has declined by more than 50 percent since the Program went into effect in 1999. However, serious accidents still occur, and EPA believes there may be opportunities to improve the RMP to further protect communities. Amendments in the August 2022 proposed rule are expected to foster safer communities, especially those vulnerable and overburdened communities living near RMP facilities, by reducing the frequency of accidental chemical releases and their adverse effects. EPA is proposing to require some facilities to do more to prevent chemical accidents, particularly targeting those industries that

have the most frequent or severe accidents. In order to ensure the RMP rule reflects focused, cost-effective changes that avoid duplication, EPA coordinated these proposed provisions with other agencies having similar regulations such as OSHA and DHS.

Waters of the United States:

16) **McKinley:** EPA recently shared public information about its plan to hold regional stakeholder roundtable meetings to discuss its rewrite of the “Waters of the United States” (WOTUS) rule. EPA has said that it only picked ten “winning” stakeholder proposals for these events but failed to provide any information regarding how the Agency picked these “winners.”

a) **What engagement has EPA had with the private-sector stakeholders who will be most impacted by changes to the rule?**

Response: EPA and the Army (the agencies) held initial public meetings in August and September 2021 to hear from interested stakeholders on their perspectives on defining “waters of the United States” and how to implement that definition as the agencies pursued this process. The agencies also held federalism and tribal consultations and further engaged with States, Tribes, and local governments throughout the rulemaking process. Additionally, the agencies accepted written pre-proposal recommendations from members of the public from August 4, 2021, to September 3, 2021, and held a 60-day public comment period from December 7, 2021, to February 7, 2022. The agencies held three virtual public hearings during the comment period. The Office of Advocacy of the U.S. Small Business Administration hosted EPA and Army staff in January 2022 to discuss the proposed rule with small entities at its Small Business Environmental Roundtables.

b) **How did EPA select these roundtable “winners?”**

Response: EPA and the Army (the agencies) selected roundtable organizers that satisfied the criteria identified in the *Federal Register* notices and maximized geographic diversity within each of the identified regions. The agencies sought roundtables that would allow the agencies to best learn about stakeholders’ experiences, challenges, and opportunities under different regulatory regimes and different parts of the country, with the goal of engaging diverse perspectives. Each roundtable organizer was required to include a proposed slate of participants representing perspectives of the following stakeholders: agriculture; conservation groups; developers; drinking water/wastewater management; environmental organizations; communities with environmental justice concerns; industry; and other key interests in that region. The agencies also sought at least one roundtable from each of the Northeast, Southeast, Midwest, West and Southwest regions, and prioritized roundtables that best highlighted how different regions are affected by the implementation of the definition of “waters of the United States.” The agencies considered each of the nominees’ descriptions of key topics related to “waters of the United States” implementation in their region and used that as a basis for selecting the most appropriate roundtable organizers.

The agencies publicly identified the selection criteria used to select the ten roundtable organizers in the *Federal Register* notices published in October and November 2021, available at

<https://www.epa.gov/wotus/public-outreach-and-stakeholder-engagement-activities>, and in press releases, such as one dated October 13, 2021 (<https://www.epa.gov/newsreleases/epa-army-announce-regional-roundtables-wotus>).

- c) **Will the other stakeholders – who, by default, are losers in EPA’s process – have a meaningful opportunity to be heard and have their comments fully considered?**

Response: EPA and the Army (the agencies) held initial public meetings in August and September 2021, pre-proposal federalism and tribal consultations, as well as additional meetings with States, Tribes, local governments, and small entities throughout the rulemaking process, accepted written pre-proposal recommendations, and held a 60-day public comment period to provide co-regulators, all stakeholders, and the general public an opportunity to be heard and have their comments fully considered. Additionally, the agencies remain committed to engaging with and accepting feedback from States, Tribes, local governments, and a broad array of stakeholders and the public across the nation regarding “waters of the United States” implementation.

- d) **How would you classify these roundtables?**

Response: These roundtables provided the agencies with a unique and unprecedented opportunity to hear stakeholders coming from a wide range of perspectives in dialogue about geographic similarities and differences, particular water resources that are characteristic of or unique to each region, and regionally specific feedback about “waters of the United States” implementation concerns.

- e) **Do they more closely resemble informal listening or informational sessions, or do stakeholder comments made during these roundtables contribute to the formal rulemaking process?**

Response: EPA and Army emphasized at the beginning of each roundtable that they were looking forward to hearing the roundtable participants’ feedback and experiences with the agencies’ implementation of “waters of the United States.” At the same time, the agencies noted that the roundtables were not part of the rulemaking process for the proposed rule to revise the definition of “waters of the United States,” 86 Fed. Reg. 69372 (Dec. 7, 2021). The comment period for that proposed rule closed on February 7, 2022.

In these publicly available documents, the agencies encouraged roundtable participation by all stakeholders, and are pleased to report that all the roundtables included participants from small entities and underrepresented areas, including one roundtable that was organized by a small business. Links to recordings of past roundtables (including agendas for each roundtable) can be found on EPA’s website at <https://www.epa.gov/wotus/public-outreach-and-stakeholder-engagement-activities>.

- 17) **McKinley:** In the first regional roundtable held on May 9th, EPA stated that the agency would not be considering comments made during the roundtable in the rulemaking process. But when you testified in front of the Senate Appropriations Subcommittee on Interior, Environment, and

Related Agencies, you said that EPA will indeed use the information from the roundtables in the rulemaking process.

a) **Can you specify which approach EPA is taking?**

Response: While the roundtables were not part of the rulemaking process for the proposed rule for which the public comment period closed on February 7 of this year, 86 Fed. Reg. 69372 (Dec. 7, 2021), they are just one manifestation of the agencies' continuing commitment to transparency, engaging with stakeholders, and protecting public health and the environment.

b) **Does EPA plan to open a formal docket on the roundtables to ensure comments are part of the administrative record?**

Response: At this time the EPA and the Army (the agencies) do not intend to open a formal docket on the roundtables. As noted above, the agencies have provided many opportunities for public comment to ensure that the definition of "waters of the United States" takes into account the experiences and perspectives of members of the public.

18) **McKinley:** EPA is also taking aggressive action on other Clean Water Act (CWA) regulations and policies, but it all comes back to the fundamental issue of what waters fall under federal jurisdiction.

a) **Is it premature, even reckless, for EPA and the U.S. Army Corp of Engineers to act on other Clean Water Act regulatory actions, like the CWA section 401 rewrite and the new proposed rule for worse case discharges, because the application of those rules depends on the U.S. Supreme Court's pending legal decision on jurisdictional waters under the statute?**

Response: See below

b) **Does the agency plan to force through changes to the existing WOTUS rule before the high court makes its decision on the rule?**

Response: See below

c) **Why is EPA going ahead on rewrites and reinterpretations of all these water regulations before you even know what waters you can regulate?**

Response: See below

d) **If the Supreme Court does not rule in EPA's favor, do you commit to us here today that EPA will follow, not only the high court's decision, but also the intents of that decision?**

Response: See below

- e) **Can you confirm that EPA will not develop, propose, finalize, implement, enforce, or administer any change to regulations that will cause the United States to import larger quantities of steel or hardrock minerals from countries that have weaker environmental or labor standards?**

Response to all subparts of this question: Given the case is pending, we do not have a comment on this litigation. EPA and the Department of the Army remain committed to establishing a durable definition of “waters of the United States” that protects public health, the environment, and downstream communities while supporting economic opportunity, agriculture, and industries that depend on clean water.

CCR Extensions:

- 19) **McKinley:** There is justifiable concern having to do with threats to electricity reliability and the lack of coordination between state regulators, Regional Transmission Operators (RTOs) and EPA in the implementation of the Agency’s September 28, 2020, regulations on “Hazardous and Solid Waste Management Systems – Disposal of Coal Combustion Residuals from Electric Utilities; A Holistic Approach to Closure Part A: Deadline to Initiate Closure” (85 Fed. Reg. 53516).

59 coal-fired power plants applied for deadline extensions. Currently EPA is working on 54 extension requests continuing to open dockets on the applications for public comment. EPA has denied three applications and only conditionally approved one application. Of the current 54 applications, EPA is conducting further technical analyses to propose determinations and receive public comment. Previously, Members of Congress and RTOs issued public comments questioning the denial of EPA’s extensions and raising concerns about direct threats to electricity reliability in the 21 states served by the 59 utilities.

Can you commit today that the EPA will grant applications from utilities for extensions allowed under the regulations until states and RTOs certify no threats to electricity reliability in the areas under their jurisdiction?

Response: EPA’s proposed process (in the January 11th proposed decisions) is designed to ensure that grid reliability will not be impaired. There is a wide array of tools available to utilities, systems operators, and state and federal regulators to address situations where the outage of a generating unit might otherwise affect reliability conditions. EPA is sensitive to the importance of maintaining enough electricity generating capacity to meet the country’s energy needs, including meeting specific, localized issues. EPA proposed to rely on existing procedures established by the grid reliability experts (regional transmission organizations and balancing authorities) to determine whether there would be any adverse effects on grid reliability as a consequence of a temporary outage at the facility that may result from denying an extension request. If the grid reliability authority determines that the temporary outage cannot proceed without causing adverse effects on reliability, EPA proposed that the facility could obtain additional time to continue to operate the CCR unit. EPA worked closely with PJM in developing the recent denial, and will continue to work with PJM and MISO to fully understand the comments submitted on the January 11th proposed decisions.

Coal and Transport Rule:

- 20) **McKinley:** On multiple occasions you have made specific reference to the many options available to the Biden Administration to drastically reduce the use of coal for energy, pressure early power facility retirements, and ensure no new coal power capacity comes online, and we are indeed seeing a coordinated onslaught of rules under the Clean Air Act (CAA), CWA, and Resource Conservation and Recovery Act (RCRA) specifically targeting coal powered utilities. You previously stated, “We don’t have to overly rely on any one rule. It’s a look at the full suite of authorities...” and even said that this ‘suite’ of regulatory changes are “...being made at a time where [EPA] can inform the power sector on what the best investment strategies are...” which clearly means divesting from coal. Further, Acting Assistant Administrator for Air & Radiation – and pending nominee before this Committee - Joe Goffman bragged that you, the Administrator, have directed EPA offices to, quote, “think broadly across the different pollutants in the different media that are affected by the power sector” to develop an electric industry “strategy.”
- a) At this time of unprecedented market instability, record inflation and global reconsideration of the critical need for fossil fuels and minerals, **please describe for the Committee the Biden Administration’s ill-timed strategy to regulate away the use of coal at a time when the global energy market never needed it more.**

Response: EPA has a responsibility to address the harmful health and environmental impacts resulting from power plant pollution. I am committed to using EPA’s authorities to address these impacts, as our nation’s environmental laws require, while also prioritizing reliability and affordability for families and the electricity sector. EPA actively engages directly with the electricity sector including system operators, state regulators, DOE, FERC, and other parties that have the know-how and responsibility for ensuring reliability and affordability.

Our power plants regulations do not require the shutdown of power plants. EPA has a history of delivering public health and environmental protections in ways that are fully consistent with maintaining grid reliability. Both past and present rules reflect robust resource adequacy and reliability considerations in our analysis, as well as implementation safeguards to ensure that new health and environmental protections can be carried out without compromising grid reliability.

- b) Given EPA’s clear intention to use this coordinated strategy to transform the power sector and stop coal use for energy, **will the Biden Administration plan to do a cumulative, economy-wide assessment of the strategy’s impacts on the domestic marketplace and costs to consumers? If not, please explain why EPA would go ahead with such a dramatic, disruptive plan without fully understanding its impacts on an already unstable domestic energy market.**

Response: As a matter of course in Agency rulemakings and per relevant federal executive orders and guidance, EPA performs regulatory impact analyses (RIA) to quantify the likely benefits and costs of certain regulatory options. Describing the effects of EPA rules is an important part of our obligation to be transparent in how we conduct our analyses. Each RIA is prepared in accordance with Executive Orders and OMB guidelines for economic analyses.

EPA's regulations do not require plant closures. Rather, our power sector modeling estimates how much capacity would choose to retire rather than operate and comply with environmental requirements. While EPA does quantify the impact of each initiative individually, the Agency includes all final rules in the modeling assessment of any new rule. This provides a system-wide assessment of the cumulative effects of final regulations. Moreover, EPA often conducts sensitivity analyses that include proposed initiatives to assess the combined impact of existing and future regulations.

- c) In January, the Midcontinent Independent System Operator (MISO) submitted public comments about EPA's interim decision on requests from the Dallman, Erickson, Meramec, Ottumwa, and Sioux power plants to extend their closure deadlines under the CCR rule. MISO is an RTO, supervised by the Federal Energy Regulatory Commission (FERC), which provides reliability and market services in fifteen states and one Canadian province. Among other responsibilities, MISO monitors the transmission system, provides tariff administration, and serves as the reliability coordinator for its regional area of operations, supplying real-time operational monitoring and control of the transmission system. The five plants contained in MISO's comments lie within this region where MISO serves. MISO believes that EPA denying the requested extensions will result in, quote, "withdrawal of service by the five generators" and that "such interruptions of service...could result in withdrawn generation for plants in close time proximity to one another rather than the more normal situation where generator outages result from individual decisions by their owners." Further, MISO believes that quote, "loss of these generators will further tighten supply across the entire MISO region and could exacerbate already dangerously thin coverage of demand in certain subregions in the North and Central Regions of MISO." In other words, the government would be shutting down a viable energy source before the marketplace can compensate for the loss of capacity in power generation.

Are you familiar with MISO's point of view on EPA's new interpretation of CCR rules and closure timeframes?

Response: Yes, I am familiar.

- d) Has EPA considered MISO's concerns about grid reliability if the extensions are not granted?

Response: EPA is currently reviewing these comments and continues to consult with both MISO and PJM in advance of issuing final decisions. EPA proposed that in the event of a denial, facilities would have 135 days to operate until they must cease receipt of waste. During that time, a facility may consult with their Regional Transmission Organization (or balancing authority) to determine if the temporary outage would adversely affect reliability. EPA proposed that in such a case, EPA could authorize continued use of the impoundment.

- e) Does EPA plan to grant these reasonable extension requests for these utility facilities?

Response: EPA is working expeditiously to announce proposed determinations for the remaining facilities that have requested more time to use unlined CCR surface impoundments. EPA will announce determinations on the remaining applications in the coming months.

21) **McKinley:** As proposed, the CAA Interstate Transport Rule for the 2015 ozone National Ambient Air Quality Standards (NAAQS) would dramatically, disproportionately affect the smaller utilities and electric cooperatives relied on by small towns and rural communities. Further, and for the first time ever, the rule would include western states like Wyoming and Utah. This regulatory burden to utilities in these mostly rural states would be tremendous, and like nearly every other regulation coming out of this administration, threaten energy generation and grid reliability at the worst possible time.

a) **Has EPA meaningfully assessed and considered the proposed Interstate Transport Rule’s impact on small utilities, cooperatives, and rural communities? If so, please elaborate on the agency’s rationale.**

Response: EPA issued the proposed Good Neighbor FIP to carry out the Agency’s obligation under the Clean Air Act to ensure that states prohibit emissions that significantly contribute to nonattainment or interfere with maintenance of the NAAQS in downwind communities. In crafting power sector regulations such as the proposed Good Neighbor rule, preserving the power sector’s ability to deliver reliable and affordable electricity is a paramount consideration. EPA has an excellent track record of delivering public health and environmental protections in ways that are fully consistent with protecting grid reliability. Both past and present rules reflect robust resource adequacy and reliability considerations in our analysis, as well as implementation safeguards to ensure public health and environmental protections can be carried out without compromising grid reliability.

The proposed Good Neighbor rule underwent interagency review, which entailed review and consultation with all relevant/interested Agencies. As a matter of course in Agency rulemakings and per relevant federal executive orders and guidance, EPA prepared a regulatory impact analysis (RIA) to quantify the likely benefits and costs of certain regulatory options. Describing the effects of EPA rules is an important part of our obligation to be transparent in how we conduct our analyses. Each RIA is prepared in accordance with Executive Orders and OMB guidance, and the Agency’s guidelines for economic analyses.

Moreover, EPA subjects its proposal and final rules to an assessment of whether the regulatory requirements are appropriately calibrated to the scale of businesses, organization, and governmental jurisdictions – consistent with the Small Business Regulatory Enforcement Fairness Act (SBREFA).

Finally, EPA will carefully consider comments from all stakeholders on the Good Neighbor proposal, including comments and information on reliability issues and comments from a diverse range of power companies representing every segment of the industry, to craft a final rule that complies with the Clean Air Act while allowing power companies to continue delivering reliable and affordable electricity.

Renewable Fuel Standard:

22) **McKinley:** Per-gallon compliance costs with the Renewable Fuel Standard (RFS) have grown 69% (from \$0.13 to \$0.22) since the EPA published its December 7th proposal to eliminate small refinery exemptions (SREs). If the EPA moves forward on June 3rd with its stated intention to deny all pending SRE petitions, we can expect per gallon compliance costs to rise another 50% (to ~\$0.33). President Biden has repeatedly pledged to use every lever at his disposal to reduce gasoline prices.

a) **Why won't he make good on his pledge to reduce pump prices by issuing SREs?**

Response: On June 3, 2022, EPA announced the denial of 69 petitions from small refineries seeking SREs from the RFS program for one or more of the compliance years between 2016 and 2021. EPA did not consider granting small refinery petitions and providing exemptions to lower pump prices in part because small refinery exemptions have no impact on the price consumers pay at the pump. The impact of the RFS program on fuel costs and prices is directly related to the volume of biofuels that are required in the program. Granting or denying small refinery petitions doesn't change that volume because under EPA regulations, any exempted volumes from small refineries are reallocated to the rest of the industry. With no change in overall volumes, whether petitions are granted or denied is irrelevant to fuel prices.

Rep. Johnson (R-OH)

Transport Rule:

1. **Johnson:** EPA recently proposed a "Federal Implementation Plan Addressing Regional Ozone Transport for the 2015 Ozone National Ambient Air Quality Standard."

a. **What is the total cost of the rule on the Electricity Generators subject to the rule?**

Response: EPA issued the proposed Good Neighbor rule to carry out the Agency's obligation under the Clean Air Act to ensure that states prohibit emissions that significantly contribute to nonattainment or interfere with maintenance of the NAAQS in downwind communities. This proposed rule follows the long-established Cross-State Air Pollution Rule (CSAPR) framework, using highly cost-effective pollution control approaches that states, the power sector, and industry have traditionally relied on to address nitrogen oxide (NOx) emissions. As presented in the *Regulatory Impact Analysis for Proposed Federal Implementation Plan Addressing Regional Ozone Transport for the 2015 Ozone National Ambient Air Quality Standard*, the present value of costs on electric generators over 2023-2042 using a 3% discount rate from the proposed rule is \$17 billion (in 2016\$). The equivalent annualized cost for electric generators over 2023-2042 is \$1.1 billion annually (in 2016\$). For comparison, the present value of total monetized benefits from the proposed rule (reflecting reductions from both electric generators and other sources) over the 2023-42 period is \$250 billion (in 2016\$). The equivalent annualized value, over the 2023-2042 period of the total monetized benefits is \$17 billion annually (2016\$).

b. **The rule also applies to other industrial sectors. What is the total cost of implementation on the other industrial sources?**

Response: As presented in the *Regulatory Impact Analysis for Proposed Federal Implementation Plan Addressing Regional Ozone Transport for the 2015 Ozone National Ambient Air Quality Standard*, the present value of costs on other industrial sectors over 2026-2042 from the proposed rule is \$4.8 billion (in 2016\$). The equivalent annualized value on the other industrial sectors over 2026-2042 is \$320 million annually (in 2016\$). As noted above, the estimated benefits of the proposed rule – including lives saved and a range of other health benefits – exceed these costs by more than an order of magnitude.

c. **Will the proposed Federal Implementation Plan force Electric Generating Units to shut down? Other industrial sources?**

Response: The proposed rule does not propose to require any sources to shut down. Further, the emission reduction requirements that EPA has proposed for both electric generating units and other industrial sources are based on proven, cost-effective emissions control technologies that have already been installed at many facilities. EPA’s power sector modeling of the proposed rule estimates how much capacity operators may choose to retire and replace with lower emitting electricity-generation resources as the most economically efficient strategy after taking account of additional requirements. However, those decisions will be made by operators of the covered sources themselves.

d. **How do the emissions limitations compare to regulations in other industrialized countries?**

Response: EPA’s regulations generally reflect emissions reduction approaches commonly used in the United States. The proposed Good Neighbor FIP includes emissions reduction measures for both electric generating units and other industrial sources. The identified proposed standards for these source types reflect proven, cost-effective pollution reduction measures and are, in many cases, consistent with standards that sources in downwind states have long implemented for similar sources.

e. **Do you expect states to challenge this proposed Federal Implementation Plan? Were States surprised by the inclusion of other industrial sources?**

Response: EPA has included other industrial sources in prior actions implementing the Good Neighbor provision of the Clean Air Act and has also stated that emissions from such sources might need to be regulated in order to meet Good Neighbor obligations in the future. For example, EPA included certain non-EGU sources in the 1997 NO_x SIP Call. In national transport rules developed since that time, EPA has not required emissions reductions from non-EGUs for the following two reasons. First, in rules promulgated after the 1997 NO_x SIP Call and prior to the 2022 proposed Good Neighbor FIP, the Agency determined that reductions from non-EGU sources were not necessary to fully resolve good neighbor obligations for the standards that were at issue for the respective rules. Second, in those rules, the Agency determined that available emissions reductions from non-EGU controls, at a cost threshold similar to the required EGU controls, did not provide comparable improvements in air quality at the downwind receptors.

We have, however, articulated in these rules that reductions from non-EGU sources may be required in the future. And in the proposed Good Neighbor FIP, EPA proposed NO_x emission standards for a limited subset of industrial sources based on analyses indicating that these sources have a significant impact on downwind air quality and can cost-effectively reduce emissions using available controls. EPA is currently evaluating the comments received on the proposed Good Neighbor FIP and will carefully consider all the information and analysis it has received from the public in developing a final rule.

2. **Johnson:** In previous EPA regulations to address ozone interstate air pollution, **did EPA ever include source categories beyond electric generating units and large industrial boilers?**

Response: EPA included certain non-EGU sources (primarily large boilers) in the 1997 NO_x SIP Call.

- a. **If not, do you find it appropriate to provide a Notice of Proposed Rulemaking to gather accurate data for potential and plausible emissions reductions?**

Response: EPA has multiple mechanisms that it can use to gather data to support proposed emissions reductions measures. The proposed Good Neighbor FIP, signed on February 28, 2022, and published on April 6, 2022 (87 FR 20036) was a Notice of Proposed Rulemaking. Publication of the proposal in the Federal Register initiated a notice and comment period during which the Agency received data, information and feedback that EPA is currently reviewing and considering as we develop the final rule.

3. **Johnson:** **Did EPA conduct the necessary technical analyses to determine feasibility of reductions beyond what is already required by the Clean Air Act’s New Source Review program?**

Response: As a matter of course in Agency rulemakings and per relevant federal executive orders and guidance, EPA prepares a regulatory impact analysis (RIA) to quantify the likely benefits and costs of certain regulatory options. Describing the effects of EPA rules is an important part of our obligation to be transparent in how we conduct our analyses. Each RIA is prepared in accordance with Executive Orders and OMB guidance, as well as the Agency’s guidelines for economic analyses. Before issuing a final rule this year, EPA will carefully consider all comments and information submitted on the proposal.

- a. **Please explain how emissions from Mississippi are causing or contributing to ozone problems in Houston and Dallas, Texas.**

Response: As we conveyed in meetings with Senator Wicker’s staff and representatives from the state of Mississippi in June 2022 and in follow-up discussions with representatives from the state of Mississippi, EPA followed our established 4-step interstate transport framework to identify air quality problems, determine which upwind states are “linked” to the downwind air quality problems, define significant contribution and implement necessary emissions reductions measures. The results of this analysis identified that Mississippi was linked to air quality receptors in Houston and Dallas. Partially in response to specific questions from the state, EPA

conducted additional technical analyses that showed that transport from the east, northeast, and north is typical for days with exceedances at the Brazoria, Houston-Bayland Park, and Dallas-Denton receptors. As indicated by the meteorological transport patterns shown in EPA's analysis, Mississippi is often upwind of these receptors on days with measured exceedances. EPA has shared this information with the state of Mississippi both verbally and in writing.

Rep. Richard Hudson (R-NC)

Waters of the United States:

1) **Hudson:** In May, EPA held the first of its ten regional roundtables on Waters of the United States. At the beginning of the roundtable, one of the agency staff (*either from the EPA or the Corps*) said that the WOTUS rulemaking comment period had ended and that nothing at the roundtable would impact rulemaking. My understanding is that's not what Congress was told in hearings or what had been explained to stakeholders. In fact, just the other week, at the House Appropriations Committee, you said that these ten roundtables were being hosted because "we are continuing to collect information and data."

a) **If EPA and the Corps aren't going to consider the input from these roundtables in the current rulemaking, what is their actual purpose? It seems to me that this is clearly just a box checking exercise and nothing more.**

Response: These roundtables provided EPA and the Army (the agencies) with a unique and unprecedented opportunity to hear stakeholders coming from a wide range of perspectives in dialogue about geographic similarities and differences, particular water resources that are characteristic of or unique to each region, and regionally specific feedback about implementation concerns related to the definition of "waters of the United States" that will inform future actions related to this definition

2) **Hudson:** Are the EPA and the Corps still planning on a so-called "Step 2" rulemaking if and after the current proposed rule is finalized? I would hope that EPA isn't using these roundtables as a pre-text to limit input on another future expansion of the WOTUS definition.

Response: The agencies remain committed to engaging with and accepting feedback from states, tribes, local governments, and a broad array of stakeholders and the public across the nation in "waters of the United States" implementation.

RPM Act:

3) **Hudson:** Administrator Reagan, as the co-chair of the Global Road Safety Caucus, I want to make sure motorsports competition continues at racetracks throughout the U.S. and not on public roads. This is one of the reasons why, I'm a strong supporter of the RPM Act, which clarifies in the Clean Air Act that you can legally convert motor vehicles into dedicated racers that are used solely on the track.

- a) **Does the EPA support an exemption to protect racers who compete using converted motor vehicles and businesses that produce and sell race parts as long as they are used exclusively on the track?**

Response: In the Clean Air Act's 50-year history, EPA, in its discretion, has never taken an enforcement action against any person for converting his or her vehicle into a dedicated race car, and EPA has no intention to do so in the future under this longstanding enforcement policy. EPA's civil enforcement program also routinely asks companies for information to support claims that the products they sell are in fact being used solely in motorsports and declines enforcement when a company can make that showing. Given EPA's longstanding enforcement policy, a legislative exemption to the Clean Air Act's tampering prohibition would have little practical impact on individuals who drive their dedicated competition vehicles only in competition.

A legislative exemption to the tampering prohibition also could undermine efforts to ensure compliance with the Clean Air Act, because it could compromise ongoing civil and criminal enforcement cases and significantly hinder future enforcement in this area. In just six of EPA's larger concluded defeat device cases, companies were collectively found to have manufactured and sold over 1 million aftermarket defeat devices. The scale of this illegal conduct, in comparison to industry estimates of the number of motor vehicles being used as dedicated racing vehicles in the United States, demonstrates that EPA's enforcement efforts have been directed at persons who are facilitating the removal of emissions controls from a vast number of conventional motor vehicles operating on the nation's roads.

Rep. Crenshaw (R-TX)

Chlorpyrifos:

1. **Crenshaw:** In August of 2021, despite an April 29, 2021, Court Decision by the Ninth Circuit that would have allowed EPA to maintain some food tolerances, EPA revoked all food tolerances of Chlorpyrifos, a crop protection tool that has historically treated 80 variations of food crops for pests. It's my understanding that prior to EPA's decision to revoke food tolerances, USDA scientists pointed out that EPA's own science, as recent as 2020, supported continued, safe and limited uses of Chlorpyrifos on 11 high-benefit crops, including Texas alfalfa, soybeans, citrus, and wheat.
- a) **Why do you act as though EPA didn't have any other choice than to cancel all food tolerances, when EPA was clearly given the choice to revoke or modify uses by the Ninth Circuit? Was this a political decision, given you had science as recent as 2020 that supported a modification of the label, versus a blanket cancellation? Why do you use the courts as a shield and mislead farmers into thinking you had no other choice than to cancel the label?**

Response: EPA revoked all chlorpyrifos tolerances because it could not determine that there is a reasonable certainty of no harm from aggregate exposure, including food, drinking water, and

residential exposure, to chlorpyrifos, based on available data and taking into consideration all registered uses registered for chlorpyrifos.

- b) It is also my understanding that EPA has requested voluntary cancellation from the registrants of Chlorpyrifos. I understand that these cancellations happened for all except for the 11 uses that EPA deemed safe. **How quickly is EPA working to approve a label for these 11 uses?** As EPA noted, these are vital uses with few alternatives and are vital to this growing season.

Response: The August 2021 final rule is the Agency’s final decision on chlorpyrifos tolerances. The December 2020 Proposed Interim Decision was a proposed determination as part of registration review – a separate, ongoing process under FIFRA – and did not represent EPA’s final position on which uses, if any, could be retained for chlorpyrifos. For the final rule revoking chlorpyrifos tolerances, the Agency considered all currently registered uses of chlorpyrifos in order to assess aggregate exposures, as required by the FFDCA, and was not able to make the required statutory safety finding to retain tolerances for chlorpyrifos. As of February 2022, there are no longer any tolerances for residues of chlorpyrifos, so chlorpyrifos can no longer be registered for use on food, and the Agency is not in a position to approve labels for the 11 uses proposed in the PID. The Agency is working to ensure that registered chlorpyrifos products are consistent with the lack of tolerances, through both the processing of the voluntary cancellation requests and label amendments and initiating cancellation of products containing food uses for which such requests were not submitted.

Reliability and Transport Rule:

2. **Crenshaw:** As EPA moves to electrify the commercial vehicle fleet within the United States, **has EPA conducted an analysis of the carrying capacity of the national electrical grid to provide sufficient electrical power to the vehicles that are anticipated to be on the roads under EPA’s plan? Also, has EPA analyzed the infrastructure capability and supply chain to build the infrastructure to charge a future majority electric fleet?**

Response: As automakers have begun to ramp up electric vehicle production, the power sector is also modernizing. EPA expects that the additional needs for vehicle charging will be a key part of that ongoing modernization. A variety of public and private entities—including automakers, electric companies, and multiple levels of government—are investing in charging infrastructure and more funding is available under the Bipartisan Infrastructure Law and the Inflation Reduction Act. As EPA moves forward with the development of our next generation of on-road regulations, understanding the potential opportunity that zero-emitting vehicles play in meeting those rules as well as the implications of increasing zero emitting vehicles are necessary elements of our rule development process.

3. **Crenshaw:** The Clean Air Act explicitly requires EPA to consider reliability impacts for its regulations. I have heard of significant concerns from Texas environmental regulators, grid operators, and power generators about EPA’s proposed ozone Transport Rule Federal Implementation Plan. Not only are the dramatic emission reductions being imposed by EPA unwarranted given the already low emissions of Texas power plants, but it could result in the

premature closure of up to 18,000 MWs of much-needed coal- and natural-gas generation in Texas and significantly impact grid reliability.

- a) **When was your first meeting with the Electric Reliability Council of Texas (ERCOT) and/or the Public Utility Commission of Texas (PUCT) specifically on the proposed ozone Transport Rule?**

Response: EPA staff met with ERCOT and PUCT on September 22, 2022, to discuss the reliability concerns raised in their comment submissions on the proposed ozone transport rule. This meeting marks the first time EPA staff has met with ERCOT and PUCT specifically to discuss their comments on the proposal.

- b) **How many meetings have you had with ERCOT and/or the PUCT specifically on the proposed ozone Transport Rule?**

Response: EPA staff met with ERCOT and PUCT on September 22, 2022, to discuss the reliability concerns raised in their comment submissions on the proposed ozone transport rule. This meeting marks the first time EPA staff has met with ERCOT and PUCT specifically to discuss the proposal.

- c) **Will you commit to pausing the proposed ozone Transport Rule until there has been a formal and transparent consultation with ERCOT and/or the PUCT?**

Response: EPA issued the proposed Good Neighbor FIP to carry out the Agency's obligation under the Clean Air Act to ensure that states prohibit emissions that significantly contribute to nonattainment or interfere with maintenance of the NAAQS in downwind communities. In crafting power sector regulations such as the proposed Good Neighbor FIP, preserving the power sector's ability to deliver reliable and affordable electricity is a paramount consideration. EPA has an excellent track record of delivering public health and environmental protections in ways that are fully consistent with protecting grid reliability. Both past and present rules reflect robust resource adequacy and reliability considerations in our analysis, as well as implementation safeguards to ensure that public health and environmental protections can be carried out without compromising grid reliability.

EPA will carefully consider comments from all stakeholders on the Good Neighbor proposal, including comments and information on reliability issues, in order to craft a final rule that complies with the Clean Air Act while allowing power companies to continue delivering reliable and affordable electricity. EPA is also engaging with grid operators and other stakeholders on reliability issues, including PUCT and ERCOT, as it works to develop a final rule.

- d) **How will you ensure that any grid reliability concerns raised by ERCOT and/or the PUCT are addressed in proposed ozone Transport Rule?**

Response: Ensuring that power producers can continue to provide reliable and affordable electricity is paramount, and EPA has an excellent track record of crafting public health and environmental protections for the power sector that meet this objective. As noted above, EPA's

prior regulations for the power sector have reflected robust analysis and consideration of reliability issues, as well as implementation safeguards to ensure that public health and environmental protections can be carried out without compromising reliability. The electric power industry has repeatedly demonstrated its capability to comply with EPA rules while fulfilling critical electric reliability responsibilities.

EPA actively engaged with system operators, state regulators, DOE, FERC, and other parties that have the know-how and responsibility for ensuring reliability and affordability. EPA also met with ERCOT and PUCT in the context of the proposed Good Neighbor rule to discuss reliability issues. This process of engagement with stakeholders and experts is important to informing the rulemaking process and to developing a final rule that protects public health while preserving the industry's ability to deliver affordable and reliable power. Providing state and federal energy regulators, power companies, and grid operators with well-timed information about power plants' environmental obligations can support the kind of planning and investment needed to ensure reliability going forward.

CASAC:

4. **Crenshaw:** Shortly after you became Administrator you took the unprecedented step of firing all members of EPA's major advisory committees, including the clean air scientific advisory committee, or CASAC. This led many people to be concerned you were only seeking people you thought would give you the policy choice -- rather than the objective science advice -- you wanted. Last month the career scientists at EPA came out with a science policy assessment that your predecessor Andrew Wheeler and the Trump EPA were correct that the existing standards for Ozone are adequate and don't need to be tightened any further.
 - a) **Will you commit to follow the science and respect the career staff's recommendation? If not, what would be the criteria for you or one of your deputies to overrule the career staff?**

Response: As EPA Administrator, I must ensure the CASAC is fully equipped to provide me the advice I need to make the best decision possible. On March 31, 2021, I announced my decision to reestablish the membership of the EPA's Science Advisory Board (SAB) and CASAC, to reorient the SAB standing committees and to return to the established practice of augmenting the CASAC with pollutant-specific review panels. This decision reversed deficiencies caused by decisions made in recent years. I followed the suggestions of career staff and followed established EPA processes to select world-renowned scientific experts for these committees. Resetting these two scientific advisory committees ensures the agency will receive the best possible scientific insight to support our work to protect human health and the environment. Scientific integrity is one of EPA's foundational values – and as Administrator, I am committed to ensuring that every decision we make meets rigorous scientific standards.

- b) **How do you respond to those who are reluctant to trust you after you purged anyone who might dissent with your policy?**

Response: Our decision to reset the CASAC and SAB membership corrected several procedural deficiencies, including our adherence to Section 1 of Administrator Pruitt’s October 2017 directive, which prohibited recipients of EPA grants from concurrently serving on EPA advisory committees. The U.S. District Court for the Southern District of New York vacated and remanded this grants directive in April 2020. In July 2019, the Government Accountability Office (GAO) found that EPA did not follow its established committee appointment process for SAB and CASAC. GAO recommended that EPA return to the prior process of “developing and including draft membership grids in appointment packets with staff rationales for proposed membership.” The prior administration did not comply with this recommendation; however, we did. On October 10, 2018, EPA Administrator Pruitt dismissed the CASAC Particulate Matter (PM) Review Panel, depriving CASAC of valuable input from epidemiologists and a diverse expertise in other critical scientific disciplines. He also announced that a CASAC Ozone Review Panel would not be formed. These actions were contrary to decades of standard practice of forming pollution-specific review panels to support the CASAC members.

Additionally, the new members include five women and two men, including three people of color, making it the most diverse CASAC since the committee was established. The new members include four prior members of the committee, including two members selected by the previous administration.

Rep. Burgess (R-TX)

Title 42:

1. **Burgess:** In August of 2021, despite an April 29, 2021, Court Decision by the Ninth Circuit that would have allowed EPA to maintain some food tolerances, EPA revoked all food tolerances of Chlorpyrifos, a crop protection tool that has historically treated 80 variations of food crops for pests. It’s my understanding that prior to EPA’s decision to revoke food tolerances, USDA scientists pointed out that EPA’s own science, as recent as 2020, supported continued, safe and limited uses of Chlorpyrifos on 11 high-benefit crops, including Texas alfalfa, soybeans, citrus, and wheat. Administrator Regan, I have introduced my bill, the Health and Human Services Hiree Clarification Act, for the last several Congress’ to prohibit the Environmental Protection Agency from using the Title 42 special pay authority. The Title 42 hiring authority gives the Department of Health and Human Services the ability to incentivize and expedite the recruitment of scientists and other experts working on the cutting edge of public health. A 2015 report by the EPA’s Office of Inspector General discovered that the EPA did not demonstrate a need to use this authority, nor did it provide a convincing justification for its continued use.
 - a. **How do you justify EPA’s continued use of the Title 42 special pay authority?**

Response: The Title 42 hiring authority granted to EPA has allowed EPA to recruit and hire top notch experts who have been vital to important scientific work on some of the most urgent current environmental events and might otherwise not have chosen to work at EPA. Our Title 42 employees are leading EPA’s efforts to protect people from impacts of wildfire smoke, and air pollution; meet the new requirements under the Frank R. Lautenberg Chemical Safety for the

21st Century Act; and respond to local emergency events related to water safety including the increasing occurrence of lead in drinking water and harmful algal blooms in water supplies and recreational waters.

Renewable Fuel Standard:

2. **Burgess:** I have introduced the Leave Ethanol Volumes at Existing Levels or LEVEL Act to revise the renewable fuel program and renewable fuel standard. Specifically, this bill decreases the volume of renewable fuel that must be contained in gasoline to 7.5 billion gallons each year and prohibits the sale of gasoline that contains greater than 10 percent ethanol.

Administrator Regan, in April 2022, the EPA issued an emergency fuel waiver for E15 sales to allow gasoline that uses a 15 percent ethanol blend to be sold during the summer driving season. According to the Department of Energy, only 2,300 fueling stations in the US offer E15 gas.

- a. **Why does the Clean Air Act require a waiver for the use of E15 in the summer?**

Response: Under Section 211(h) of the Clean Air Act (CAA), E15 gasoline does not meet the 1-psi Reid Vapor Pressure (RVP) volatility limit and therefore requires a waiver in order to be sold in the summer. The 1-psi RVP waiver under the statute is limited to E10 blends. This was done to allow for the increased RVP that occurs when ethanol is blended into the gasoline blendstocks otherwise produced to meet the statutory RVP limits without the presence of ethanol. The EPA Administrator issued the emergency fuel waiver this summer to remove the 10 percent cap on ethanol blending eligible for the 1 psi waiver and raised it to 15 percent ethanol.

- b. **Has this action so far been successful in reducing gas prices as the administration claimed it would?**

Response: E15 commonly sells at a discount compared to E10 and this action successfully removed the gasoline RVP standard as a hurdle in supplying E15 fuel during the extreme and unusual fuel supply circumstances that were caused by the war in Ukraine and affected all regions of the U.S.

- c. **Is this action worth the increase in pollution?**

Response: We do not believe there to be any increase in pollution associated with the action.

3. **Burgess:** Administrator Regan, in December of last year, the EPA proposed a series of rules for the Renewable Fuel Standard that would increase the volume of renewable fuels to include 20.77 billion gallons by 2022.

- a. **With all the current events straining the agricultural industry at this time, do you still think continuing with this biofuels increase is a good idea?**

Response: On June 3, 2022, EPA finalized the renewable fuel obligations for 2020-2022 in keeping with the statutory authority provided to the Agency under the CAA. 87 *Fed. Reg.* 39,600 (Jul. 1, 2022). EPA did so by carefully evaluating and weighing all the many factors that Congress explicitly directed the Agency to consider in setting these standards.