

To: Lyons, Troy[lyons.troy@epa.gov]; Ringel, Aaron[ringel.aaron@epa.gov]; Palich, Christian[palich.christian@epa.gov]
Cc: Gunasekara, Mandy[Gunasekara.Mandy@epa.gov]
From: Wehrum, William L.
Sent: Mon 10/9/2017 4:54:40 PM
Subject: First Draft QFR Responses
Wehrum All QFRs 10.04.2017-c.docx

Attached is my first cut at QFR responses. There was progression in my thinking and approach as I worked my way through the questions. So, I will focus next on editing for consistency. Also, there are two issues for which I included place holders. One involves the question of **Ex. 5 - Deliberative Process**

Ex. 5 - Deliberative Process

That was asked twice. I defer to you as to how to respond. The

other deals with **Ex. 5 - Deliberative Process** I am

working on a table that I intend to attach to the response. Otherwise, the answers are complete.

HUNTON & WILLIAMS Bill Wehrum

Partner

wwehrum@hunton.com

p 202.955.1637

[bio](#) | [vCard](#) | [blog](#) | [LinkedIn](#)

Hunton & Williams LLP
2200 Pennsylvania Avenue, NW
Washington, DC 20037

hunton.com

Senate Committee on Environment & Public Works
Hearing entitled, “Hearing on the Nominations of Michael Dourson, Matthew Leopold, David Ross, and William Wehrum to be Assistant Administrators of the Environmental Protection Agency, and Jeffery Baran to be a Member of the Nuclear Regulatory Commission.”

October 4, 2017

Questions for the Record for Mr. William Wehrum

Ranking Member Carper:

1. For decades, both Republican and Democratic administrations alike have had written policies limiting White House contacts with agencies that have investigatory and enforcement responsibilities. These policies have recognized that even a simple phone call from the White House to an agency inquiring about or flagging a specific matter can upset the evenhanded application of the law. I recently learned that Devon Energy, a strong political supporter of Administrator Pruitt’s, informed the EPA just 5 days after Mr. Pruitt was sworn in as Administrator that it was no longer willing to install air pollution technology or pay a high penalty to EPA for its illegal air emissions of cancer-causing benzene and other chemicals. We also know that Trump family casinos, hotels and golf courses have been the subject of EPA enforcement actions for violations of the Clean Air Act and Clean Water Act.
 - a. Do you agree that it is essential that in making decisions, EPA’s OAR must be shielded from political influence and spared even the appearance of being subject to political influence or considerations?
 - b. Will you commit to restricting communications between OAR and the White House staff regarding specific matters under the authority of OAR?
 - c. Will you commit to ensuring the staff of OAR is familiar with those restrictions?
 - d. Will you commit to advising this Committee within one week if any inappropriate communications from White House staff to OAR staff, including you, occur?

WLW

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

2. Recently, EPA conducted “anti-leaking” training for its employees¹. According to EPA sources, the briefing stated that “Prohibitions we will discuss do not refer to “Whistleblowing”. Agency employees have the right to make lawful disclosures to anyone, including, for example, management officials, the Inspector General, and/or the Office of Special Counsel. Employees may make disclosures to the EPA Office of the Inspector General through the EPA OIG Hotline at 888-546-8740.” This presentation evidently failed to note the rights of federal employees have to make disclosures to Congress.
5 U.S.C. § 7211, provides that: The right of employees, individually or collectively, to petition Congress or a Member of Congress or to furnish information to either House of

¹ https://www.washingtonpost.com/politics/whitehouse/federal-employees-are-ordered-to-attend-anti-leaking-classes/2017/09/21/032b40d6-9edd-11e7-b2a7-bc70b6f98089_story.html?utm_term=.e2bfc5e54d95

Congress, or to a committee or Member thereof, may not be interfered with or denied. Pursuant to 5 U.S.C. § 2302(b)(8), it is a violation of federal law to retaliate against whistleblowers. That law states: Any employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority ... take or fail to take, or threaten to take or fail to take, a personnel action with respect to any employee or applicant for employment because of. ... (A) any disclosure of information by an employee or applicant which the employee or applicant reasonably believes evidences- (i) a violation of any law, rule, or regulation, or (ii) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, any disclosure to the Special Counsel, or to the Inspector General of an agency or another employee designated by the head of the agency to receive such disclosures, of information which the employee or applicant reasonably believes evidences a violation of any law, rule, or regulation... " In addition, pursuant to 18 U.S.C. § 1505, it is against federal law to interfere with a Congressional inquiry: Whoever corruptly, or by threats or force, or by any threatening letter or communication influences, obstructs, or impedes or endeavors to influence, obstruct, or impede the due and proper administration of the law under which any pending proceeding is being had before any department or agency of the United States, or the due and proper exercise of the power of inquiry under which any inquiry or investigation is being had by either House, or any committee of either House or any joint committee of the Congress.

- a. If you are confirmed, will you commit to protect the rights of all career employees in OAR to make lawful disclosures, including their right to speak with Congress?
- b. Will you commit to communicate employees' whistleblower rights via email to all OAR employees within a week of being sworn in?

WLW: **Ex. 5 - Deliberative Process**
Ex. 5 - Deliberative Process

3. In the wake of Hurricane Irma, at least 11 deaths and numerous injuries have been reported in Florida due to accidental carbon monoxide poisoning from gasoline-powered portable generators.² One additional death has also been reported in North Carolina, along with other injuries throughout the Southeastern United States.³ Many of these deaths and injuries could have been prevented had stronger safety standards been in place for portable gasoline generators. In November 2016, the U.S. Consumer Product Safety Commission (CPSC), following years of work on the issue, voted to issue a Notice of Proposed Rulemaking (NPRM) to implement a mandatory safety standard for portable generators.⁴ Since then, Administrator Pruitt and Acting CPSC Chairman Buerkle have separately opined that section 213 of the Clean Air Act precludes CPSC action.
 - a. Section 213 of the Clean Air Act is intended to regulate emissions from non-road

² <http://www.miamiherald.com/news/weather/hurricane/article174097351.html> <http://www.sun-sentinel.com/news/weather/hurricane/sfl-carbon-monoxide-deaths-20170914-story.html>

³ <http://www.charlotteobserver.com/news/article173612361.html>

⁴ <https://www.federalregister.gov/documents/2016/11/21/2016-26962/safety-standard-for-portable-generators>

engines or vehicles when the EPA determines that such emissions “are significant contributors to ozone or carbon monoxide concentrations in more than 1 area which has failed to attain the national ambient air quality standards for ozone or carbon monoxide.” In your opinion, would the occasional indoor use of portable generators following a power outage be likely to be a significant contributor to ambient carbon monoxide concentrations in more than 1 area that has failed to attain the national ambient air quality standards for carbon monoxide? Why or why not?

- b. There are currently no areas in the United States that have failed to attain the national ambient air quality standards for carbon monoxide, and this has been the case since 2010⁵. As a matter of law, could section 213 of the Clean Air Act be used to regulate carbon monoxide emissions due to the indoor use of portable generators if there are no areas in the United States that fail to attain the national ambient air quality standards for carbon monoxide? Why or why not?

WLW: I do not have experience with interpreting or applying CAA § 213 to these circumstances. If confirmed, I will work with Administrator Pruitt as needed to properly implement this section of the Act.

- 4. Your public financial disclosure material lists, among others, several clients such as the American Petroleum Institute and others that are trade or other associations that consist of individual member companies. For each such association or organization listed on your financial disclosure form, please provide a complete list of the individual companies and other entities that comprise its members.

WLW:

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

- 5. In addition to employees or representatives of the trade associations or organizations listed as your clients, have you met or otherwise communicated with employees or representatives of the companies that are members of the associations or organizations as part of your work for the client itself? If so, which ones?

WLW:

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

- 6. Your ethics agreement states that you “will not participate personally and substantially in any particular matter involving specific parties in which I know a former client of mine is a party or represents a party for a period of one year after I last provided service to that client, unless I am first authorized to participate, pursuant to 5 C.F.R. 2635.502(d).”

⁵ <https://www.epa.gov/green-book/green-book-carbon-monoxide-1971-area-information>

- a. Please provide a list of all such particular matters involving specific parties that you will either need to recuse yourself from or seek authorization to participate in. For each such particular matter, please also indicate whether you plan to seek authorization to participate.
- b. If that list does not include particular matters involving the list of individual companies and other entities described in question 4, why not?
- c. 5 C.F.R 2635.502(a) states that

“where an employee knows that a particular matter involving specific parties is likely to have a direct and predictable effect on the financial interest of a member of his household, or knows that a person with whom he has a covered relationship is or represents a party to such matter, and where the employee determines that the circumstances would cause a reasonable person with knowledge of the relevant facts to question his impartiality in the matter, the employee should not participate in the matter unless he has informed the agency designee of the appearance problem and received authorization from the agency designee in accordance with paragraph (d) of this section.”

Do you agree that your representation of numerous industry clients in litigation to repeal or weaken EPA regulations would cause a reasonable person with knowledge of the relevant facts to question your impartiality if you are confirmed and continue to participate either in the litigation or in an administrative action designed to accomplish the identical outcome – repeal or weakening of an EPA regulation – that the litigation sought to accomplish? Why or why not?

WLW:

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

7. Do you intend to participate in non-public meetings with your former clients or their member companies (as applicable) if you are confirmed, even if the meetings are about the repeal or weakening of the very same EPA regulations you sought, on behalf of those clients, to repeal or weaken through litigation? If so, please explain why this would not cause a reasonable person with knowledge of the relevant facts to question your impartiality in the matter at hand.

WLW:

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

8. Your Ethics Agreement also states that you will either recuse yourself from or seek authorization to participate in “any particular matter involving specific parties in which I know the law firm [Hunton & Williams] is a party or represents a party.” Please provide a list of all the EPA-related particular matters involving specific parties in which Hunton & Williams is a party or represents a party, and indicate whether you plan to seek authorization to participate in each such matter.

Ex. 5 - Deliberative Process

9. On February 28, 2017, President Trump directed EPA and the Army Corps to review and possibly rescind or repeal the Clean Water Rule in Executive Order 13776. EPA recently ended the public comment process on the first step of a two-step process to repeal the rule and replace it with a rule that will protect far fewer sources of drinking water. Individuals with first-hand knowledge of the process EPA utilized to prepare its have informed my staff that:
- a) When EPA first submitted the proposed repeal rule to OMB, the draft stated that the agency would undertake a new cost-benefit analysis as part of the second step of its process.
 - b) OMB interpreted EPA's first proposal to mean that the rule's repeal would not avoid any costs to industry or have any economic impact at all. EPA's political staff then directed the career staff to undertake a new economic analysis. In response to this direction from OMB, EPA career staff reportedly changed the table included in the 2015 rule to a) reflect 2016 dollars instead of 2014 dollars, b) convert "annual costs incurred" under the Clean Water Rule to "annual costs avoided" due to its repeal and c) convert "annual benefits gained" under the Clean Water Rule to "annual benefits forgone" due to its repeal. This new table was sent to OMB on June 8, 2017.
 - c) OMB correctly concluded from EPA's June 8 submittal that repealing the rule would cost more in lost benefits than it would save industry in compliance costs. On June 13, 2017, presumably to avoid such an admission on the part of EPA, EPA career staff were verbally directed by political staff to solve this 'problem' by simply deleting the majority of the benefits of the rule from the table and re-submitting it to OMB, which they did⁶.

The direction that was reportedly provided to the EPA career staff to make the various revisions to what was submitted to OMB was verbal, not written. If you are confirmed, do you commit to ensure that career staff in OAR will receive appropriately documented, rather than verbal, direction from political officials before they take action? If not, why not?

Ex. 5 - Deliberative Process

10. As Attorney General of Oklahoma, Administrator Pruitt copied and pasted materials sent to him by industry onto his own letterhead and sent them to EPA. Similarly, when you last served in EPA's air office, language drafted by your old law firm found its way into an EPA mercury regulation that you helped write. You also repeatedly prevented EPA

⁶ https://www.epa.gov/sites/production/files/2017-06/documents/economic_analysis_proposed_step1_rule.pdf
See Table 1

employees from verifying the public health benefits of reducing mercury exposure.

- a. If confirmed, do you commit that you will not allow industry to exert an undue influence on any of the regulatory and policy efforts you will be charged with leading? If not, why not?
- b. Do you commit not to censor or exclude the dedicated and knowledgeable career EPA staff? If not, why not?

WLW: **Ex. 5 - Deliberative Process**
Ex. 5 - Deliberative Process

11. Do you agree to provide complete, accurate and timely responses to requests for information submitted to you by any Member of the Environment and Public Works Committee? If not, why not?

WLW: [OCIR **]

12. Recently, EPA announced that Administrator Pruitt would be publishing brief summaries of his calendars biweekly, after dozens of Freedom of Information Act requests for this information as well as a March request by me and my colleagues that he do so. During the Obama Administration, the Administrator, regional Administrators and all those serving in confirmed roles published their calendars daily⁷. If you are confirmed, will you commit to publishing your calendars daily? If not, why not?

WLW: **Ex. 5 - Deliberative Process**

13. In 2006, when you were last nominated to lead the Office of Air and Radiation (OAR), the then-Bush Administration requested for FY 2007 \$1.33 billion (adjusting to 2017 dollars) for State and Tribal Assistance Grants, of which \$250 million (in 2017 dollars) was for Air and Radiation programs. Earlier this year, the Trump Administration requested for FY 2018 \$597 million, of which \$168 million was for Air and Radiation programs. This is more than 50% less for the STAG program in general, and almost 1/3 less for Categorical Grants for OAR programs.
 - a. Did you support the request for FY 2007, and do you support the request for FY 2018? Why, or why not?
 - b. If you support both the requested levels in FY 2007 and FY 2018, why do you believe that a 1/3 cut to the funding levels in FY 2018 from FY 2017 levels is appropriate?

WLW: **Ex. 5 - Deliberative Process**
Ex. 5 - Deliberative Process

14. How many legal cases have you filed, or joined others in filing against the EPA, since leaving the agency? Please provide a full list with the outcome of each case, including those cases in which the court disagreed with your argument, agreed with your argument,

⁷ <https://yosemite.epa.gov/opa/admpress.nsf/Calendars?OpenView>

and those in which the court refused to hear the matter.

WLW: [need case table **]

15. You've represented industry in at least thirty-one cases against the EPA since you left the agency. Can you name one Clean Air Act regulation that was promulgated by the Obama Administration – not a voluntary or grant program – that you do support and why? If you support more than one, please name these as well.

WLW:

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

16. Delaware is already seeing the adverse effects of climate change with sea level rise, ocean acidification, and stronger storms. While all states will be harmed by climate change, the adverse effects will vary by state and region. Would you comment on why it is imperative that we have national standards to reduce carbon pollution? If you do not believe it is imperative, why not?

WLW:

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

17. In a *per curiam* opinion, the U.S. Circuit Court of Appeals for the District of Columbia affirmed the Endangerment Finding and the U.S. Supreme Court declined to issue a writ of certiorari on the D.C. Circuit's decision. The Endangerment Finding set in motion EPA's legal obligations to set greenhouse gas emissions standards for mobile and stationary sources, including those established by the Clean Power Plan in August 2015.⁸ During an exchange with Senator Gillibrand during Administrator Pruitt's confirmation hearing before the Environment and Public Works Committee, he stated, "I believe that the EPA, because of the *Mass v. EPA* case and the endangerment finding, has obligations to address the CO2 [carbon dioxide] issue."
- Do you agree with Administrator Pruitt's statement?
 - If the Clean Power Plan is withdrawn, and if confirmed, how will you lead the agency to fulfill its legal obligations to address climate change?

WLW:

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

18. EPA policy prohibits the use of non-EPA e-mail accounts and instructs employees to: "not use any outside e-mail system to conduct official Agency business. If, during an emergency, you use a non-EPA e-mail system, you are responsible for ensuring that any e-mail records and attachments are saved in your office's recordkeeping system." When last at the EPA, did you ever use personal email to conduct official EPA business? Did you ever use an email alias to conduct official EPA business when you

⁸ <https://www.epa.gov/climatechange/us-court-appeals-dc-circuit-upholds-epas-action-reduce-greenhouse-gases-under-clean>

last served at the agency? Do you commit that if confirmed, you will not use an email alias or use personal email addresses to conduct EPA business?

WLW: **Ex. 5 - Deliberative Process**
Ex. 5 - Deliberative Process

19. Clean car standards save consumers money at the pump and help reduce oil imports. Automakers are complying with vehicle standards ahead of schedule. If confirmed, will you commit to support, defend and enforce EPA's current programs to address greenhouse gas emissions from vehicles?

WLW: **Ex. 5 - Deliberative Process**
Ex. 5 - Deliberative Process

20. For the most part, patients and their families only participate in scientific trials and studies once they know their privacy - and any resulting health-related information - will remain confidential and secure. If confirmed, do you commit to respecting confidentiality agreements that exist between researchers and their subjects? Will you protect the health information of the thousands of people that have participated in health studies in the past?

WLW: **Ex. 5 - Deliberative Process**
Ex. 5 - Deliberative Process

21. In December 2007, President Bush's EPA proposed to declare greenhouse gases as a danger to public welfare through a draft Endangerment Finding, stating, "The Administrator proposes to find that the air pollution of elevated levels of greenhouse gas (GHG) concentrations may reasonably be anticipated to endanger public welfare...Carbon dioxide is the most important GHG (greenhouse gas) directly emitted by human activities, and is the most significant driver of climate change."⁹

- a. Do you agree with these statements, if not, why not?
- b. Did you participate in drafting the proposed Bush Endangerment Finding document in any way? If so, how?

WLW: **Ex. 5 - Deliberative Process**
Ex. 5 - Deliberative Process

22. When you last served in the EPA OAR office, did the EPA ever propose to disapprove state mercury emissions control programs that were stronger than the Clean Air Mercury? If so, please provide how many times this happened and what your role was in these actions. Please also provide how this fits in Administrator Pruitt's views of

⁹https://insideclimatenews.org/sites/default/files/2007_Draft_Proposed_Endangerment_Finding.pdf

“cooperative federalism.”

WLW:

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

23. The Rule of Law Defense Fund is an affiliate of the Republican Attorneys General Association. Have you ever contributed any money or time to the Rule of Law Defense Fund?

WLW:

24. Have you ever contributed any money or time to two election fundraising groups, Oklahoma Strong PAC and Liberty 2.0 PAC?

WLW:

25. How many legal cases have you filed, or joined others in filing, that involved the Renewable Fuel Standard, biofuels or biodiesel since leaving the EPA? Please provide a summary of your argument and the outcome of each case, including those cases in which the court disagreed with your argument.

WLW:

Ex. 5 - Deliberative Process

26. Have you ever argued in court, or been part of a legal argument, that the Renewable Fuel Standard, as being implemented by the EPA, will lead to an increase in the overall demand for corn, which will lead to an increase in the price of corn? If so, please cite the case and the data used for the argument.

WLW:

Ex. 5 - Deliberative Process

27. In your 2005 EPW confirmation hearing, you answered a question, with the following, “I was barred for 1 year starting September 29, 2001, from participating in the particular matters listed in Attachment A of the memorandum and from taking official action on any particular matter in which my former clients, listed in Attachment B, were or represented a party to the matter. The ethics memorandum also addressed the general rulemakings on which I had represented various clients... With respect to the ethylene MACT rule and the semiconductor MACT rule, he [Kenneth J. Wernick, EPA's then Alternate Agency Ethics Official] concluded that it would be prudent for me not to handle these matters during my first year at EPA. Subsequent to that time, there was no bar to my participating as an EPA official in these rulemakings... In accordance with the ethics memorandum referenced above, I refrained for 1 year starting September 29, 2001, from participating in the particular matters identified by the memorandum and from taking official action with respect to any particular matter involving the entities listed in the memorandum. I also did not participate in the ethylene and semiconductor MACT rules in my first year at EPA.”¹⁰

¹⁰ <https://www.gpo.gov/fdsys/pkg/CHRG-109shrg42275/pdf/CHRG-109shrg42275.pdf>

- a. Please provide a full list of the cases you filed, joined others in filing, or participated in some way related to the ethylene and semiconductor MACT rules prior to you joining the EPA in 2001. Please include any other work that you may have done while employed at Latham and Watkins – or any other organization – prior to coming to the EPA in 2001 that was related to the ethylene and semiconductor MACT rules.
- b. What led Kenneth J. Wernick, EPA's then Alternate Agency Ethics Official to conclude it wouldn't "be prudent" for you to handle the ethylene MACT rule and the semiconductor MACT rule during your first year at EPA?
- c. In 2001, what other issues and rulemakings did you have to recuse yourself for one year to meet the ethical standards set by the EPA?

WLW:

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

28. How many legal cases have you filed, or joined others in filing, since leaving the EPA that challenged rules the Obama EPA had to re-write because the courts said the original rules written by the Bush Administration were illegal?

WLW:

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

29. On July 8, 2003, Jeff Holmstead, then-EPA Assistant Administrator for Air and Radiation provided the following remarks in his written testimony to the House Energy and Air Quality Subcommittee of the Energy and Commerce Committee, "Clear Skies would also reduce mercury emissions from power plants. EPA is required to regulate mercury because EPA determined that mercury emissions from power plants pose an otherwise unaddressed significant risk to health and the environment, and because control options to reduce this risk are available."¹¹ At the time Mr. Holmstead provided these remarks, you were serving as his chief counselor within the EPA OAR office.
- a. Did you agree at the time with Mr. Holmstead's determination, if so why? If not, why not?
 - b. Did you ever provide legal counsel to Mr. Holmstead, or others within the EPA, that helped provided the legal basis for these remarks?
 - c. Do you agree with Mr. Holmstead's remarks today?

WLW:

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

30. On July 8, 2003, Jeff Holmstead, then-EPA Assistant Administrator for Air and

¹¹ https://archive.epa.gov/ocir/hearings/testimony/108_2003_2004/web/pdf/2003_0708_jh.pdf

Radiation provided the following remarks in his written testimony to the House Energy and Air Quality Subcommittee of the Energy and Commerce Committee:

“Mercury, a potent toxin, can cause permanent damage to the brain and nervous system, particularly in developing fetuses when ingested in sufficient quantities. People are exposed to mercury mainly through eating fish contaminated with methylmercury... EPA estimates that 60% of the mercury falling on the U.S. is coming from current man-made sources. Power generation remains the largest man-made source of mercury emissions in the United States...Mercury that ends up in fish may originate as emissions to the air. Mercury emissions are later converted into methylmercury by bacteria. Methylmercury accumulates through the food chain: fish that eat other fish can accumulate high levels of methylmercury”.¹² At the time Mr. Holmstead provided these remarks, you were serving as his chief counselor within the EPA OAR office.

- a. Did you have any involvement in the drafting of these remarks? If so, what was your involvement?
- b. Did you agree at the time with Mr. Holmstead’s remarks, if so why? If not, why not?
- c. Do you still agree with Mr. Holmstead’s remarks today? If not, why not?

WLW:

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

31. In the *White Stallion Energy Center v. EPA, February 2012*, industry argued, “the record does not support EPA’s findings that mercury, non-mercury HAP metals, and acid gas HAPs [hazardous air pollutants] pose public health hazards.”¹³ Do you agree with this statement? Did you have any involvement with this case, if so, please explain.

WLW:

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

32. On April 17, 2012, Dr. Jerome Paulson, Chair, Council on Environmental Health, American Academy of Pediatrics, testified before the EPW Committee, stating, “Methyl mercury causes localized death of nerve cells and destruction of other cells in the developing brain of an infant or fetus. It interferes with the movement of brain cells and the eventual organization of the brain... The damage it [methylmercury] causes to an individual’s health and development is permanent and irreversible. ... There is no evidence demonstrating a “safe” level of mercury exposure, or a blood mercury concentration below which adverse effects on cognition are not seen. Minimizing

¹² https://archive.epa.gov/ocir/hearings/testimony/108_2003_2004/web/pdf/2003_0708_jh.pdf

¹³ <https://www.cadc.uscourts.gov/internet/opinions.nsf/284AC47088C07D0985257CBB004F0795/%24file/12-1100-1488346.pdf>

mercury exposure is essential to optimal child health.”¹⁴

- a. Do you agree with the American Academy of Pediatrics’ finding on the importance of minimizing mercury exposures for child health? If not, please cite the scientific studies that support your disagreement.
- b. Do you agree the record supports EPA’s findings that mercury, non-mercury hazardous air pollutant metals, and acid gas hazardous air pollutants emitted from uncontrolled power plants pose public health hazards? If not, why not?

WLW:

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

33. On July 8, 2003, Jeff Holmstead, then-EPA Assistant Administrator for Air and Radiation provided the following remarks in his written testimony to the House Energy and Air Quality Subcommittee of the Energy and Commerce Committee, “We have not developed methodologies for quantifying or monetizing all the expected benefits of Clear Skies... These estimates [for Clear Skies] do not include the many additional benefits that cannot currently be monetized but are likely to be significant, such as human health benefits from reduced risk of mercury emissions, and ecological benefits from improvements in the health of our forests, lakes, and coastal waters.”¹⁵ At the time Mr. Holmstead provided these remarks, you were serving as his chief counselor within the EPA OAR office.

- a. Did you have any involvement in the drafting of these remarks? If so, what was your involvement?
- b. Did you agree at the time with Mr. Holmstead’s remarks, if so why? If not, why not?
- c. Do you agree with Mr. Holmstead’s remarks today that it is currently difficult, or impossible, to monetize the reduced risk of human health and ecological benefits from reducing mercury emissions from power plants? If so, please explain. If not, why not?

WLW:

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

34. In 2005 GAO report that reviewed EPA’s cost-benefit analysis for the Clean Air Mercury Rule, which you have testified you were heavily involved in writing, GAO identified, “four major shortcomings in the economic analysis underlying EPA's proposed mercury control options that limit its usefulness for informing decision makers about the economic trade-offs of the different policy options.”¹⁶

¹⁴ https://www.epw.senate.gov/public/_cache/files/4/3/4324fd62-dc89-4820-bd93-ff3714fcb30/01AFD79733D77F24A71FEF9DAFCCB056.41712hearingwitness testimony paulson.pdf

¹⁵ https://archive.epa.gov/ocir/hearings/testimony/108_2003_2004/web/pdf/2003_0708_jh.pdf

¹⁶ <http://www.gao.gov/products/GAO-05-252>

- a. Can you explain the cost-benefit analysis used for the proposed Clean Air Mercury Rule and why it was used?
- b. Can you explain why the GAO found short-comings with this approach?
- c. Do you agree that co-benefit pollution reductions should be considered when EPA is quantifying the benefits and costs of regulations? If not, why not?
- d. While you were at EPA, did the agency ever use co-benefits to justify a clean air rule and has this approach ever been used in the past?

WLW:

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

35. You were substantially involved in EPA’s proposal and adoption of the Clean Air Mercury Rule and accompanying Delisting Rule. In 2005, for your EPW confirmation hearing you were asked the following question for the record: “With regard to trading of mercury, in your view, would it have been legally acceptable for EPA, taking into account the requirements of the Clean Air Act, to propose and adopt a facility specific mercury MACT that did not allow trading?” You answered, “After considering the utility unit emissions that would remain following imposition of the requirements of the Act, EPA determined that it was neither appropriate nor necessary to regulate utility units under section 112 of the Clean Air Act. Once EPA made that determination, it would not have been legally appropriate for EPA to issue a MACT standard.” Three years later, the D.C. Circuit vacated the EPA’s decision to delist power plants as a source under Section 112. Six years later under the Obama Administration, the EPA issued the Mercury and Air Toxics Rule to address mercury and air toxic emissions from power plants under the Section 112 of the Clean Air Act.
- a. Did you disagree with the court’s ruling and legal reasoning against the EPA’s actions while you were at the agency on mercury and air toxic power plant emissions? Do you continue to disagree today?
 - b. Do you still hold the position that it is not “appropriate nor necessary” for the EPA to regulate utility units under Section 112 of the Clean Air Act and therefore, still agree it is not legally appropriate for EPA to issue a MACT standard, as the EPA did through the Mercury and Air Toxics Standard? If so, please explain.
 - c. If you do not agree that EPA has met the “necessary and appropriate” criteria found in Section 112(n), what is your understanding of what that would mean for the Mercury and Air Toxics Rule?

WLW:

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

36. The US Supreme Court has expressly declined to consider whether EPA should have

chosen some other mechanism “under section 112” in regulating power plant mercury and all the other HAPs emitted by the industry. What is your position on that precedent?

WLW: **Ex. 5 - Deliberative Process**

37. Do you agree that the EPA’s recent consideration of the costs of the Mercury and Air Toxics Rule shows that the agency has met the "necessary and appropriate" criteria Congress provided under 112(n) to direct the EPA to regulate power plant mercury (and other air toxic) emissions under Section 112, and more specifically under Section 112(d)? If not, why not?

WLW: **Ex. 5 - Deliberative Process**

Ex. 5 - Deliberative Process

38. The Edison Electric Institute (EEI), the association that represents all U.S. investor-owned electric companies, has told my staff that, to their knowledge, about five facilities received an approval from the EPA to operate for up to an additional year, which was through April 2017. According to EEI, to their knowledge all of their member companies have fully implemented the Mercury and Air Toxics Standard Rule. EPA staff has reported to my staff something similar. The Mercury and Air Toxics Rule protects our children from harmful mercury and air toxics pollution; and by industry accounts is already being met with technology that is already bought, paid for and running on almost all our power plants.
- a. Do dispute reports that nearly all covered facilities are already in compliance with the Mercury and Air Toxics Standard? If so, please explain.
 - b. According to a recent report by Bloomberg New Energy Finance Report and the Business Council for Sustainable Energy, “consumers now pay 3% less per kilowatt-hour for electricity than in 2007.”¹⁷ This means the near universal compliance of the Mercury and Air Toxics Rule has been achieved without significant impacts to electricity reliability or affordability, in fact electricity prices have gone down. Do you agree? If not, why not?
 - c. Even though industry has achieved near universal compliance with the Mercury and Air Toxics Standards and electricity prices have gone down, not up, Administrator Pruitt is currently reviewing whether it is “appropriate and necessary” to issue the standards in the first place. Do you agree that the EPA should be conducting this review, if so, why?
 - d. If the EPA determines the agency has not met the “necessary and appropriate” criteria found in Section 112(n), and revokes the Mercury and Air Toxics Rule, what does that mean for all the pollution control technology that has been bought, paid for and running on our power plants helping the industry be in full compliance of the rule?
 - e. When you were last at the EPA, or after, do you know of any instances when a power plant bought and installed air control technology and decided not to run the technology? If so, please explain the instance. Please include in your explanation

¹⁷ <http://www.bcse.org/wp-content/uploads/2017-Sustainable-Energy-in-America-Factbook-Executive-Summary.pdf>

if there were any impacts to downwind states or to air pollution levels.

WLW: **Ex. 5 - Deliberative Process**

Ex. 5 - Deliberative Process

39. In a 2016 Law 360 article, you are quoted as saying, “The reason this [the Mercury and Air Toxics Standards Rule] was such a big issue for us is because by EPA’s own analysis, if you look at the benefits generated by the hazardous air pollutant reductions this rule would achieve, the costs vastly outweigh the benefits. So from our perspective, it’s a regulation that made no sense and wasn’t justified.”¹⁸ In April 2017, the EPA asked the D.C. Circuit Court of Appeals to delay oral arguments scheduled for the Mercury and Air Toxics Standards (MATS) as it reviews the rule.
- It is clear from this statement you already have a formed view of the validity of the Mercury and Air Toxics Standard going into the agency. Will you commit to this Committee that you will recuse yourself from the review and any possible rewriting of the Mercury and Air Toxics Rule? If not, why not?
 - Do you continue to believe the Mercury and Air Toxics Standards is a regulation that made no sense and wasn’t justified? If so, why?

WLW: **Ex. 5 - Deliberative Process**

Ex. 5 - Deliberative Process

40. Will you commit, that if confirmed, you will not act to weaken the Mercury and Air Toxics Standards, if not, why not?

WLW: **Ex. 5 - Deliberative Process**

41. This year, you represented the American Petroleum Institute as an intervenor in defense of Administrator Pruitt’s 90-day stay of oil and gas pollution standards, which the D.C. Circuit found violated the Clean Air Act. In my office, you refused to recuse yourself from participating in this rule, is that still true and how do you justify that, if confirmed, you will come into the EPA as impartial regulator as it relates to this issue? Do you agree with the court’s decision, and why not?

Comprehensive rules of ethics govern the transition from private practice to government service. If confirmed, I will work closely with EPA ethics officials to understand and strictly comply with my ethical obligations.

¹⁸ <https://www.law360.com/articles/742955/environmental-group-of-the-year-hunton-williams>

42. Section 109 of the Clean Air Act is very clear. It requires EPA to review the NAAQS for six common air pollutants including ground-level ozone, particulate matter, sulfur dioxide, nitrogen dioxide every 5 years. The Clean Air Act requires EPA to set these standards that "are requisite to protect the public health," with "an adequate margin of safety," and secondary standard necessary to protect public welfare.
- If confirmed, will you continue to hold to the five-year National Ambient Air Quality Standards review time period that the Clean Air Act requires of the EPA?
 - The science was clear that the 2008 ozone standard was not protecting public health, so EPA was required to Act. Is that not your understanding of the Clean Air Act?
 - If confirmed, will you commit to not further delay the implantation of the 2015 ozone NAAQS? If not, why not?
 - Do you agree with Justice Scalia's opinion in *Whitman v. American Trucking Associations* that it is "fairly clear that [the Clean Air Act] does not permit the EPA to consider costs in setting the standards" and if so, will you commit not to include consider costs when setting the National Ambient Air Quality Standards? If you do not agree, why not?

WLW:

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

43. In 2006, while you served as Acting Assistant Administrator for Air, the EPA proposed to eliminate lead as a criteria pollutant under the Section 109 Clean Air Act National Ambient Air Quality Standard (NAAQS) process. Did you have any involvement in this proposal? If so, please explain.

WLW:

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

44. Like you, I am an avid runner. In Delaware during the summer, we often have code orange days warning about the high levels of ozone for that day. Much of Delaware's ozone pollution is coming across the state boundary from upwind states.
- Can you describe how high levels of ozone could damage my lungs if I were to take a long run during a code orange day?
 - Do you agree that ground-level ozone is a dangerous pollutant that causes respiratory and cardiovascular harm? If not, on what basis do you disagree?
 - If confirmed, how would you direct states to work together to reduce ozone pollution?

Ex. 5 - Deliberative Process

45. Clean Air Act section 110(a)(2)(D)(i)(I), also known as the “Good Neighbor” provision, requires that state implementation plans to address air pollution “contain adequate provisions prohibiting, consistent with the provisions of this subchapter, any source or other type of emissions activity within the State from emitting any air pollutant in amounts which will contribute significantly to nonattainment in, or interfere with maintenance by, any other State with respect to any such national primary or secondary ambient air quality standard.” Under this provision of the Clean Air Act, “[w]henver the Administrator finds that the applicable implementation plan for any area is substantially inadequate . . . to mitigate adequately [] interstate pollutant transport . . . or to otherwise comply with any requirement of this chapter, the Administrator shall require the State to revise the plan as necessary to correct such inadequacies.”
- a. Do you support the “Good Neighbor Provision” in the Clean Air Act and agree that this provision does not “encroach upon state sovereignty”? If not, why?
 - b. If confirmed, do you commit to fully apply and enforce the Good Neighbor provision?

Ex. 5 - Deliberative Process

46. Currently, under the Clean Air Act section 110(a)(2)(D)(i)(I), also known as the “Good Neighbor” provision, Delaware has sent four petitions to the EPA that identify facilities in other states that are emitting air pollution that are significantly contributing to Delaware’s air quality and impacting Delaware’s ability to maintain or be in attainment for the 2008 national ambient air quality standards (NAAQS) for ozone and the 2015 ozone NAAQS. The petitions are for: 1) Brunner Island facility's electric generating units located near York, Pennsylvania; 2) Homer City Generating Station's electric generating units located in Indiana County, Pennsylvania; 3) Harrison Power Station's electric generating units located near Haywood, Harrison County, West Virginia; and 4) Conemaugh Generating Station's electric generating units located in Indiana County, Pennsylvania. In addition, Maryland has filed a petition that requests EPA make a finding that 36 electric generating units located in the states of Indiana, Kentucky, Ohio, Pennsylvania, and West Virginia are emitting air pollutants that significantly contribute to nonattainment or interfere with maintenance of the 2008 and the 2015 ozone NAAQS in Maryland. The EPA has granted itself six months extension on every petition and has done nothing after that. All of the extensions have long since expired.
- a. If confirmed, will you commit to promptly act on Good Neighbor petitions so states, like Delaware and Maryland, can protect their citizens from upwind

- pollution in neighboring and distant states? If not, why not?
- b. If confirmed, will you support, defend and enforce EPA’s Good Neighbor provisions to address air pollution that crosses state borders? If not, why not?
 - c. In some of these situations, like the Harrison Power Station near Haywood in West Virginia, the power plant in question has the needed technology on the facility to help reduce ozone pollution in downwind Delaware and West Virginia ratepayers are already paying for the technology, but the pollution control isn’t running. If confirmed, what will you do to ensure pollution control technology already on facilities runs to ensure downwind states have clean air?
 - d. If confirmed, will you fully implement the Cross State Air Pollution Rules?
 - e. If the Mercury and Air Toxics Rule is revoked, do you expect there will be an increase in upwind ozone and particulate pollution and have an impact on downwind states? If so, please explain. If not, why?

WLW: **Ex. 5 - Deliberative Process**

Ex. 5 - Deliberative Process

47. Just last month, you argued against an Obama Administration Occupational Safety and Health Administration indoor air rule that protects construction workers against silica dust, a type of dust that is linked to cancer and lung disease. During your arguments, you are quoted as saying, “People are designed to deal with dust — people are in dusty environments all the time, and it doesn’t kill them.”¹⁹The American Industrial Hygiene Association has stated that delaying the full enforcement of this rule will put – and this is their words, quote “2.3 million workers at greater risk to exposure, especially the construction industry — the backbone of our economy”
 - a. Please provide the scientific studies that provided the basis for your argument in this case.
 - b. When you stated “people are designed to deal with dust,” what did you mean by that statement?
 - c. When you were last in the EPA, did you ever work on a rule was deemed later to ignore all of the science dealing with particle matter pollution?
 - d. Do you agree that there is robust science linking small particle pollution to negative health impacts, even death? If so, why is the science here different than for silica pollution?

WLW: **Ex. 5 - Deliberative Process**

Ex. 5 - Deliberative Process

¹⁹ <https://www.eenews.net/greenwire/stories/1060061731/search?keyword=silica>

Ex. 5 - Deliberative Process

48. Do you agree with President Trump’s decision to withdraw the United States from the International Paris Climate Accord? If so, please explain.

WLW: Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

49. In part of his justifications for withdrawing from the Paris Climate Agreement, President Trump stated the Paris Accord could, “cost America as much as 2.7 million lost jobs by 2025 according to the National Economic Research Associates (NERA).”²⁰ This economic statistic and others linked to the NERA study were also distributed in White House materials as reasons the President was deciding to withdraw from the Paris Accord. Soon after the President’s speech, NERA stated, “In a set of talking points distributed by the White House in conjunction with its announcement of the US withdrawal from the Paris Agreement, the Trump Administration selectively used results from a NERA Economic Consulting study, “Impacts of Greenhouse Gas Regulations on the Industrial Sector.” ... Use of results from this analysis as estimates of the impact of the Paris Agreement alone mischaracterizes the purpose of NERA’s analysis, which was to explore the challenges of achieving reductions from US industrial sectors over a longer term. Selective use of results from a single implementation scenario and a single year compounds the mischaracterization.”²¹

- a. In light of the NERA statement, do you think the President misspoke when he wrongly cited information from the NERA study in his Paris speech? If not, why not?
- b. If confirmed, will you commit that you will not distort the NERA study – or any other economic study - to justify the U.S. withdrawing from the Paris Climate Accord or to justify the elimination or delay of climate policies?
- c. After the President’s Paris Climate Accord speech, MIT’s Joint Program on the Science and Policy of Global Change issued a statement stating the President’s characterization of their analysis of the Paris Accord to be misleading.²² If confirmed, will you commit that you will not distort the climate science studies to justify the U.S. withdrawing from the Paris Climate Accord or to justify the elimination or delay of climate policies?

WLW: Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

50. In a Law360 interview, you were asked, “What is the most challenging case you have worked on and what made it challenging?” You responded, “Without a doubt, it would

²⁰ <https://www.whitehouse.gov/the-press-office/2017/06/01/statement-president-trump-paris-climate-accord>

²¹ <http://www.nera.com/news-events/press-releases/2017/nera-economic-consultings-study-of-us-emissions-reduction-polic.html>

²² <http://news.mit.edu/2017/mit-issues-statement-research-paris-agreement-0602>

be Massachusetts v. EPA. I was at the EPA at the time, working as counsel to the assistant administrator for air, Jeff Holmstead.”²³ Please explain in detail, what your involvement was while in the EPA regarding regulations that led to, and the agency’s defense of the Massachusetts v. EPA case.

WLW:

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

Senator Cardin

51. On December 15, 2016, EPA extended by six months the deadlines to respond to petitions submitted by the state of Maryland under section 126 of the Clean Air Act. The petition from Maryland requests that EPA make a finding that 36 electric generating units located in the states of Indiana, Kentucky, Ohio, Pennsylvania, and West Virginia are emitting air pollutants that significantly contribute to nonattainment or interfere with maintenance of the 2008 and the 2015 ozone NAAQS in Maryland. On September 27, 2017, the State of Maryland filed a complaint in the United States District Court of the District of Maryland against the EPA because of the lack of response in regard to the 2016 Good Neighbor petition.

Will you commit to urge the EPA to approve the petition and enforce the air pollution controls already in place in Maryland at upwind out-of-state facilities that directly impede efforts to attain and maintain federal health-based air quality standards in Maryland?

WLW:

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

Senator Duckworth:

52. The Renewable Fuel Standard (RFS) program passed Congress with broad bipartisan support and was signed into law by President George W. Bush because it strengthens our nation’s energy independence and security. The RFS supports rural communities and American farmers, while reducing greenhouse gas emissions. In my home State of Illinois alone, the RFS has helped create 4000 jobs and more than \$5 billion in economic impact.

²³ <https://www.law360.com/articles/427231/q-a-with-hunton-williams-bill-wehrum>

I am concerned Administrator Pruitt, who reassured Congress that he would execute the program as Congress intended, will break his promise and implement the law in such a way as to limit or cap the growth in renewable fuels – directly violating the RFS program’s statutory goals to increase American energy independence and security through increased production of biofuels. As the U.S. Environmental Protection Agency (EPA) has repeatedly affirmed, any policy that decreases or limits growth in biofuels is inconsistent with the statutory goals that Congress enshrined in the law.

Do you believe that Congress intended the RFS to promote long-term growth in all biofuels fuels, including cellulosic ethanol? If confirmed, will you commit that EPA will issue Renewable Volume Obligations that increase production of renewable fuels across the board?

WLW: **Ex. 5 - Deliberative Process**

Ex. 5 - Deliberative Process

53. During your nomination hearing you stated that you will seek guidance from EPA ethics officials on whether or not you should recuse yourself from issues for which you have previously been engaged in. However, as a regulator and a public servant, you can and should use your own discretion on recusal to avoid even the appearance of conflict of interest.

If confirmed, will you commit to recusing yourself on any issue related to biofuels or the renewable fuels standard given your past work on behalf of industry interests? What other steps will you take to guarantee that your financial and political interests do not influence your work on the RFS?

Ex. 5 - Deliberative Process

54. Will you submit for the record a full list describing any action you performed in your professional career related to the RFS program and identify the client or clients on whose behalf you were acting for each action?

WLW: **Ex. 5 - Deliberative Process**

Ex. 5 - Deliberative Process

55. The Mercury and Air Toxics Rule, or MATS, is an EPA success story about protecting our most vulnerable – our children. After decades of delayed action, EPA implemented the MATS rule to protect our children and our pregnant women from our country’s number one source of unregulated mercury and other air toxic pollution: power plants.

Today, EPA says very few power plants in the country are not meeting the MATS pollution reduction timelines. Dr. Goldman, a world-renowned epidemiologist, pediatrician and Dean of the School of Public Health at George Washington University, testified earlier this year that we are seeing the public health benefits of MATS faster than predicted. Simply put, compliance for industry has been easier than opponents of this rule predicted and children are better protected than doctors expected – a real win-win that would never have occurred had corporate special interests prevailed in killing this critical public health rule.

Despite these successes, you continue to lead industry lawsuits against the MATS Rule, falsely claiming that EPA has yet to prove it is appropriate and necessary to regulate mercury and air toxic emissions from power plants, a decision made almost two decades ago. You have argued that the price of our children’s mental development is worth less than running pollution control technology that is already bought, paid for and running on our power plants.

How can you assure us you will be impartial – you will choose our children over industry - when it comes to the Mercury and Air Toxics rule? How can you assure the American public that you will do the right thing to protect the children of Illinois and the children of all Americans?

WLW

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

56. As you know Administrator Pruitt, like Secretary Zinke and former Secretary Price have spent millions of dollars combined flying on private jets across the country. This is a gross waste of taxpayer dollars.

Yes or no, as a taxpayer, do you approve of Administrator Pruitt’s travel practices on the public dime, and will you commit to utilizing commercials flights in your position?

WLW

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

Senator Ernst:

57. Administrator Pruitt has made engagement with rural America a priority and he has expressed particular concern over how EPA regulations, such as the Waters of the United States (WOTUS) rule, impact these local communities. In cases like WOTUS, the previous EPA did not fully analyze the costs associated with the regulation, particularly for rural communities. At the same time, the benefits of this rule, and others, were often overstated. How will you work to assure transparency when documenting the costs and benefits associated with EPA actions under your office?

WLW: **Ex. 5 - Deliberative Process**

Ex. 5 - Deliberative Process

58. At multiple times over the course of your career you have represented clients such as API, GMA and others in cases intended to undermine the RFS. The questions you have argued in those cases are relevant to the current RVO rule making for 2018 and 2019, as well as those statutorily required going forward. Additionally, they are relevant to the regulatory decisions related Reid Vapor Pressure waivers, biofuel pathway approval, and topics you will have oversight of, if confirmed. Given this, will you recuse yourself from RFS rulemaking, administering the program or some portions of the program if confirmed, and if you do, who will administer the RFS?

WLW: **Ex. 5 - Deliberative Process**

Ex. 5 - Deliberative Process

59. If you are confirmed, will you commit to have an open door policy for all interest groups, including those representing biofuels, to ensure that their perspectives are taken into consideration by yourself, the Administrator, and the rest of political leadership at EPA?

WLW: **Ex. 5 - Deliberative Process**

60. Do you believe it is fair and appropriate to use only the input of parties regulated by the Clean Air Act when making regulatory decisions?

WLW: **Ex. 5 - Deliberative Process**

Ex. 5 - Deliberative Process

Senator Fischer:

61. Mr. Wehrum, during questioning you stated that you did not have an in depth understanding around the Renewable Fuels Standard (RFS). Were you ever counsel for any clients involved in lawsuits around the RFS or ethanol-blended fuels? Can you state what your role was in that case(s) and who you represented?

WLW:

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

62. As a follow-up, were you serving in the position you are currently nominated to serve in again during the George W. Bush Administration while the RFS1 was implemented?

WLW:

Ex. 5 - Deliberative Process
Ex. 5 - Deliberative Process

63. Do you plan to recuse yourself from any items on the RFS or ethanol-blended fuels that you litigated on while in private practice?

WLW:

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

Senator Markey:

Mr. Wehrum, because of the Landmark 2007 Supreme Court ruling in Massachusetts v. EPA the EPA made a finding that carbon pollution poses a danger to America, known as the endangerment finding. This ruling made it possible for states like California and Massachusetts to use their Clean Air Act Authority to set higher fuel economy emissions standards for vehicles. State action combined with my 2007 fuel economy law, resulted in an auto industry approved increase of the fuel economy emissions standards to 54.5 miles per gallon by 2025. Those standards will save nearly 2.5 million barrels of oil a day by 2030, are the single largest step any nation has taken to reduce global warming pollution and will save consumers more than \$1 trillion. And the auto industry has added 700,000 new jobs since these standards began to take effect.

Administrator Pruitt in his confirmation hearing before this Committee stated that the Endangerment Finding “needs to be enforced and respected.” Administrator Pruitt also said earlier this year that “the Clean Air Act focused on mobile sources over the last several years I think has made a substantial difference with respect to GHG and CO2.”

64. Mr. Wehrum, yes or no, do you agree with Administrator Pruitt that the endangerment finding needs to be enforced and respected?

WLW:

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

65. Mr. Wehrum, yes or no, do you support EPA’s continued regulation of greenhouse gases from cars under the Clean Air Act?

WLW: I

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

Senator Merkley:

66. If you are confirmed as the Assistant Administrator of EPA’s Office of Air and Radiation, you will be responsible for implementing the Clean Air Act, which, according to the Supreme Court in *Massachusetts vs EPA*, EPA has the authority to regulate greenhouse gases. Therefore, your understanding of the most basic principles of climate change science will be essential to your role in the regulation of greenhouse gases. In the Intergovernmental Panel on Climate Change’s 5th Assessment Report, entitled, “Climate Change 2014 Synthesis Report Summary for Policymakers” (found here: http://www.ipcc.ch/pdf/assessment-report/ar5/syr/AR5_SYR_FINAL_SPM.pdf) the finding under “SPM1” that is labeled “{1}” (note that the labels {x} immediately follow the findings they refer to), states “Human influence on the climate system is clear, and recent anthropogenic emissions of greenhouse gases are the highest in history. Recent climate changes have had widespread impacts on human and natural systems. {1}”. Do you agree with that finding?

a. If you do not agree with this finding, please explain why, and provide at least one peer reviewed study supporting your stated position.

WLW:

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

67. In that same report, the finding under “SPM 1.1” labeled “{1.1}” states “Warming of the

climate system is unequivocal, and since the 1950s, many of the observed changes are unprecedented over decades to millennia. The atmosphere and ocean have warmed, the amounts of snow and ice have diminished, and sea level has risen. {1.1}.” Do you agree with that finding?

- a. If you do not agree, please explain why, and provide at least one peer reviewed study supporting your stated position.

WLW

Ex. 5 - Deliberative Process

68. In that same report, the finding under “SPM 1.2” labeled “{1.2, 1.3.1}” states “Anthropogenic greenhouse gas emissions have increased since the pre-industrial era, driven largely by economic and population growth, and are now higher than ever. This has led to atmospheric concentrations of carbon dioxide, methane and nitrous oxide that are unprecedented in at least the last 800,000 years. Their effects, together with those of other anthropogenic drivers, have been detected throughout the climate system and are *extremely likely* to have been the dominant cause of the observed warming since the mid-20th century.” Do you agree with this finding?

- a. If you do not agree with this finding, please explain why, and provide at least one peer reviewed study supporting your stated position.

WLW

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

69. In that same report, the finding under “SPM 2” labeled “{2}” states “Continued emission of greenhouse gases will cause further warming and long-lasting changes in all components of the climate system, increasing the likelihood of severe, pervasive and irreversible impacts for people and ecosystems. Limiting climate change would require substantial and sustained reductions in greenhouse gas emissions which, together with adaptation, can limit climate change risks. {2}”. Do you agree with this finding?

- a. If you do not agree with this finding, please explain why, and provide at least one peer reviewed study supporting your stated position.

WLW

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

70. In that same report, the finding under “SPM 3” labeled “{3.2, 3.3, 3.4}” states “Adaptation and mitigation are complementary strategies for reducing and managing the risks of climate change. Substantial emissions reductions over the next few decades can

reduce climate risks in the 21st century and beyond, increase prospects for effective adaptation, reduce the costs and challenges of mitigation in the longer term and contribute to climate-resilient pathways for sustainable development. {3.2, 3.3., 3.4}”.

Do you agree with this finding?

- a. If you do not agree with this finding, please explain why, and provide at least one peer reviewed study supporting your stated position.

WLW:

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

71. In that same report, the finding under “SPM 3.2” labeled “{3.2, 3.4}” states “Without additional mitigation efforts beyond those in place today, and even with adaptation, warming by the end of the 21st century will lead to high to very high risk of severe, widespread and irreversible impacts globally (high confidence). Mitigation involves some level of co-benefits and of risks due to adverse side effects, but these risks do not involve the same possibility of severe, widespread and irreversible impacts as risks from climate change, increasing the benefits from near-term mitigation efforts. {3.2, 3.4}”.

Do you agree with this finding?

- a. If you do not agree with this finding, please provide at least one peer reviewed study supporting your stated position.

WLW:

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

72. In that same report, the finding under “SPM 4” labeled “{4}” states “Many adaptation and mitigation options can help address climate change, but no single option is sufficient by itself. Effective implementation depends on policies and cooperation at all scales and can be enhanced through integrated responses that link adaptation and mitigation with other societal objectives. {4}”.

Do you agree with this finding?

- a. If you do not agree with this finding, please explain why, and provide at least one peer reviewed study supporting your stated position.

WLW:

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

73. What are the annual emissions of greenhouse gases from power plants in the United

States?

- a. Are power plants one of the largest sources of greenhouse gas emissions?

WLW: **Ex. 5 - Deliberative Process**
Ex. 5 - Deliberative Process

74. Mr. Wehrum, in your testimony, you said that human's contribution to climate change is "an open question". Please name which of these major scientific organizations have stated that human activity is the major driver of climate change.

The American Association for the Advancement of Science (AAAS)

American Chemical Society

American Geophysical Union;

American Institute of Biological Sciences;

American Meteorological Society;

American Public Health Association;

American Society of Agronomy;

American Society of Ichthyologists and Herpetologists;

American Society of Naturalists;

American Society of Plant Biologists;

American Statistical Association;

Association for the Sciences of Limnology and Oceanography;

Association for Tropical Biology and Conservation;

Association of Ecosystem Research Centers;

BioQUEST Curriculum Consortium;

Botanical Society of America;

Consortium for Ocean Leadership;

Crop Science Society of America;

Ecological Society of America;

Entomological Society of America;

Geological Society of America;

National Association of Marine Laboratories;

Natural Science Collections Alliance;

Organization of Biological Field Stations;

Society for Industrial and Applied Mathematics;

Society for Mathematical Biology;

Society for the Study of Amphibians and Reptiles;

Society of Nematologists;

Society of Systematic Biologists;

Soil Science Society of America;

University Corporation for Atmospheric Research.

WLW: **Ex. 5 - Deliberative Process**

75. Mr. Wehrum, in your testimony, you declined to comment on the graphs I presented depicting the natural forces on observed temperature, and of greenhouse gases on observed temperature, saying you would need to see the underlying data. This website provides a clear presentation of the data, <https://www.bloomberg.com/graphics/2015-whats-warming-the-world/>, as well as an explanation of the methodology for these charts, including links to the models and data. Now that you have the time to review the methodology and data, can you please provide your own interpretation of these data sets?
- Do you agree with NASA's finding that human activity is the primary driver of climate change as shown by these data sets?
 - If you do not agree with NASA's finding from these data sets that human activity is the primary driver of climate change, please explain, in detail, your critiques of these data sets, and please cite at least one peer reviewed study that informs your critique.

WLW:

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

76. You responded to my question about ocean acidification with the response that you are familiar with the “allegation of ocean acidification.” The definition of allegation, according to Merriam-Webster, is “1. The act of alleging something”, where “alleging” means “to assert without proof or before proving”, and “2. A positive assertion especially of misconduct”, and “3. An assertion unsupported and by implication regarded as unsupportable”. Given that NOAA has directly measured changes in the pH of the oceans, showing that ocean water has become more acidic over time, do you believe that “ocean acidification” is an assertion “without proof”?
- If you believe ocean acidification is an allegation, do you doubt scientists' ability to measure the pH of water?
 - If you do not believe that “ocean acidification” is an assertion “without proof”, then will you retract your use of the word “allegation” to describe ocean acidification?
 - Scientists from both NOAA and the EPA have published information and data sets on ocean acidification, found here: <https://www.epa.gov/ocean-acidification> and here: <https://pmel.noaa.gov/co2/story/A+primer+on+pH> Can you please describe both NOAA and EPA's conclusion on the causes of ocean acidification?
 - In your testimony, you said you would defer to EPA scientists and career staff on matters of science. Will you defer to EPA career staff on the science of climate change and ocean acidification?
 - Please describe your current understanding of ocean acidification in detail,

and provide at least one peer reviewed study supporting your stated position.

WLW:

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

77. In a recent public disclosure of Administrator Pruitt's calendar of meetings, less than 3% of his meetings were with public health and environmental advocacy organizations, whereas over 25% of his meetings were with industry representatives. Do you believe this reflects fair and balanced input from public health and environmental advocacy organizations?

WLW:
it.

Ex. 5 - Deliberative Process

78. Will you commit to a fair and balanced ratio of input from public health and environmental advocacy organizations?

WLW:

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

Senator Sanders:

Climate Change

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

WLW:

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

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

WLW:

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

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

WLW:

Ex. 5 - Deliberative Process

climate change.

82. If confirmed, what will you do to ensure that OAR addresses climate change?

WLW:

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

Background

83. As a lobbyist with Hunton and Williams, you have represented a host of fossil fuel and chemical companies in lawsuits, some of which are still active, against the EPA. If confirmed, you would be in charge of making sure that these industries install necessary pollution control technologies and conduct waste cleanup.

As Assistant Administrator for the Office of Air and Radiation, would you have any active conflicts of interests with these companies? If so, will you commit to recuse yourself for the full course of any matter in which any of your former clients is a party? If not, why not?

WLW:

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

84. While serving as Assistant Administrator for the Office of Air and Radiation under President Bush, you attempted to roll back environmental protections under the Clean Air Act. These rollback attempts were eventually defeated in the Supreme Court. If confirmed, will you commit to carrying out the Office of Air and Radiation's obligations under the law, including as decided by the Supreme Court?

WLW:

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

85. In your past career, you have brought suit against the EPA for its enforcement of the Clean Air Act. Can you explain why federal courts should be in the position of determining safe levels of pollution to protect the health and welfare of Vermonters, as opposed to the federal Agency whose mission it is to protect human and environmental health?

WLW:

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

obligations.

Science

86. At the EPA, science provides the foundation for Agency policies, actions, and decisions made on behalf of the American people. What should the role of science be in the development of EPA policies, rules, and regulations?

WLW:

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

Most Pressing Challenges

87. In your opinion, what are the most pressing air quality challenges that deserve the attention of the EPA? What will you do at the EPA to better address these challenges?

WLW:

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

Environmental Regulations

88. If confirmed, do you commit to upholding the goal of the Clean Air Act, which according to the EPA website is “to address the public health and welfare risks posed by certain widespread air pollutants”?

WLW:

89. The EPA has adopted many cost-effective safeguards in the past eight years that would significantly reduce the pollution that contributes to asthma in children. If confirmed, will you commit to addressing threats from air pollution to America’s children?

WLW:

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

Environmental Justice

90. If confirmed, will you commit to addressing the growing environmental and economic justice issues associated with air quality?

WLW:

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

91. If confirmed, will you commit to addressing issues of environmental justice in Native American communities and offer a voice to those most affected by the environmental

consequences of industrialization, especially in regard to resources protected by treaties?

WLW:

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

92. Latino children are twice as likely as non-Latino white children to die from asthma while, from 2012-2014, African American children had a death rate ten times that of non-Latino white children. African American children are three times as likely to suffer an asthma attack.

As Assistant Secretary of Air, will you commit to ensuring that vulnerable low-income communities and communities of color are protected from the harmful impacts of air pollution?

WLW:

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

Senator Whitehouse:

93. You have been leading the fight against EPA air standards so it's unclear to me how you're capable of serving in this position consistent with the requirements of Executive Order 13770, "Ethics Commitments by Executive Branch Employees," otherwise known as the Trump ethics pledge. The pledge prohibits appointees from "participat[ing] in any particular matter involving specific parties that is directly and substantially related to [their] former employer or former clients" for the first two years after their appointment. Your ethics agreement states you intend to sign the pledge. We are aware of dozens of separate air cases you've worked on for clients regulated by EPA during your time at Hunton & Williams. Further, your law firm has performed millions of dollars worth of lobbying for Exxon Mobil, Koch Companies, Southern Company, and several other companies regulated by EPA.

a) To ensure compliance with the pledge, please provide for the record all of Hunton & Williams clients, cases, regulatory matters, and issues/legislation on which its lobbied from the past two years, noting all clients with whom you've worked, cases on which you've worked, regulatory work you've done, and any issues/legislation on which you've lobbied.

b) Your financial disclosure or 278 form does not require disclosure of pro bono work. For the past two years, please provide a list of all Hunton & Williams pro bono work, including the clients, cases, regulatory matters, and lobbying, noting all pro bono clients with whom you've worked, pro bono cases on which you've worked, pro bono regulatory work you've done, and pro bono lobbying you've preformed.

WLW:

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

94. Your ethics statement suggests to me that you will be seeking waivers to ethics requirements. You may be allowed to seek a waiver, which I find troubling given your extensive history attacking clean air regulations on behalf of companies regulated by EPA.
- Please identify all particular matters which you believe at this time may require you to seek a waiver.
 - For each of these matters, please state why it would be in the public interest to grant you a waiver.
 - For any matters that you have not identified in response to this question, will you commit to not seeking a waiver from ethics requirements?

WLW: **Ex. 5 - Deliberative Process**

95. Through documents produced from Oklahoma Open Records Act requests, we also know that Hunton & Williams staff worked with industry in key states to get other state Attorneys General on a comment letter Pruitt was leading to EPA opposing the carbon pollution standards for new power plants. Hunton & Williams staff also worked with Pruitt's staff to discuss who to approach about signing on, and coached them on how and when to submit the comments. Which client or clients did Hunton and Williams bill for this work?

WLW: **Ex. 5 - Deliberative Process**

96. According to a separate set of documents, some of which are marked "confidential", Hunton & Williams arranged a Summit on Federalism and the Future of Fossil Fuels convened by then-Oklahoma Attorney General Pruitt, sponsored by the George Mason School of Law's Law & Economics Center. Which client or clients did Hunton and Williams bill for this work?

WLW: **Ex. 5 - Deliberative Process**

97. Hunton & Williams, directly contributed to Scott Pruitt's campaign in 2010 and contributed over \$200,000 to RAGA and RAGA's predecessor organization, the Republican State Leadership Committee during Scott Pruitt's time as board chair and on the executive committee.
- Between November 1, 2011 and February 17, 2017, how much have you or Hunton & Williams contributed to the Rule of Law Defense Fund (RLDF)?
 - While Scott Pruitt was Attorney General of Oklahoma, what, if any, fundraising events for Scott Pruitt did you attend?
 - While Attorney General of Oklahoma, did Scott Pruitt ever solicit money from you or Hunton & Williams for his campaign, his Oklahoma Strong or Liberty 2.0 PACs, RAGA, or the RLDF?
 - If yes, please describe each solicitation and how much you and Hunton & Williams

contributed as a result of each solicitation.

- e. Please provide a list of all RAGA or RLDF contributions, calls, meetings, events, or activities of yours or Hunton & Williams since November 1, 2011 and February 17, 2017.

WLW: **Ex. 5 - Deliberative Process**

Ex. 5 - Deliberative Process

98. Please describe any role you or Hunton & Williams played in the establishment of or financial contributions to America Rising, America Rising Squared, Protecting America Now, and any other organizations that funded efforts to get Scott Pruitt confirmed as EPA Administrator.

WLW: **Ex. 5 - Deliberative Process**

Ex. 5 - Deliberative Process

99. EPA Administrator Pruitt recently told CNBC that “I would not agree that [carbon dioxide’s] a primary contributor to the global warming that we see.” Based on the scientific findings from experts such as NOAA and statements on EPA’s website, including “Carbon dioxide is the primary greenhouse gas that is contributing to recent climate change,” Politifact determined that statement to be false. Do you agree with Administrator Pruitt or scientific experts regarding whether carbon dioxide is the primary greenhouse gas that is contributing to climate change?

WLW: **Ex. 5 - Deliberative Process**

Ex. 5 - Deliberative Process

100. In 2009, as mandated by the Supreme Court and backed by a robust scientific and technical review, the Environmental Protection Agency produced the Endangerment and Cause or Contribute Findings for Greenhouse Gases (GHGs) under Section 202(a) of the Clean Air Act. It found six greenhouse gases - carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride - "taken in combination endanger both the public health and the public welfare of current and future generations."
- Do you agree with the EPA's endangerment finding? Why or why not?
 - Do you commit to not take any steps to narrow the scope or otherwise weaken the endangerment finding?

WLW: **Ex. 5 - Deliberative Process**

Ex. 5 - Deliberative Process

101. Four Republican former EPA Administrators – Bill Reilly, Bill Ruckelshaus, Lee Thomas, Governor Christine Todd Whitman – testified before EPW that climate change is real and EPA has clear authority under the Clean Air Act to curb carbon dioxide?
- Do you agree that climate change is real?

- b. Do you agree that EPA has authority under the Clean Air Act to reduce carbon dioxide?

WLW: I a **Ex. 5 - Deliberative Process**
Ex. 5 - Deliberative Process

102. Industry frequently talks about compliance costs while ignoring the costs to people harmed by the effects of pollution. In Rhode Island these effects cannot be ignored as we see them through bad air days and other problems. Because Rhode Island ozone air quality issues are largely due to transported emissions from upwind states leading to ozone formation that pollutes the air and lungs of people in downwind states like mine. Over the past two years in Rhode Island, the 8-hour standard ozone standard exceeded 0.07 ppm 10 times in 2015 and 6 times in 2016.
- a. With respect to ozone, do you believe EPA should look at only the costs to industry when undertaking its regulatory impact analysis?
 - b. Should the costs to families, such as children sent to emergency rooms due to asthma attacks triggered by smog, be included in the analysis?
 - c. If so, should those costs be given a different weight than those claimed by industry?

WLW: **Ex. 5 - Deliberative Process**

Ex. 5 - Deliberative Process

103. Ozone levels in RI are strongly affected by the transport of pollutants emitted in upwind states into RI. Although RI is currently designated as an unclassifiable/attainment area for the ozone NAAQS, monitored ozone levels in the state still exceed the standard on a number of days in the summer months because of out of state pollution.
- a. What, if any steps, have you taken in your career to help reduce the transport of pollution from upwind states into downwind states like Rhode Island?
 - b. If confirmed, what steps will you take to address the transport of pollutants emitted in upwind states that contribute to exceedances of the ozone standard in RI and other downwind states?

WLW: **Ex. 5 - Deliberative Process**

Ex. 5 - Deliberative Process

104. According to EPA, 49% of coal units lack the most advanced NOx controls (Selective Catalytic Reduction systems or SCR). Several units that have SCR or other NOx emission control technology installed are not optimizing their use. For example, these six coal units have SCR installed but are not using it to optimize NOx reductions.

In 2015, these facilities' NOx emissions were significantly higher than 2009 because they are not using the systems they have in place to reduce NOx.

Facilities with Increasing NOx

Facility	NOx Emission Increase	NOx Rate Increase
Harrison Power Station, West Virginia	13,139 tons (277%)	0.22 lb/mmBtu (220%)
Keystone, Pennsylvania	10,594 tons (285%)	0.22 lb/mmBtu (296%)
Pleasants Power Station, West Virginia	8,734 tons (341%)	0.24 lb/mmBtu (284%)
Homer City, Pennsylvania	7,522 tons (72%)	0.20 lb/mmBtu (107%)
Montour, Pennsylvania	5,889 tons (109%)	0.24 lb/mmBtu (207%)
St. Johns River Power, Florida	4,262 tons (60%)	0.23 lb/mmBtu (142%)

- a. Why would this be the case?
- b. Do you think these facilities should be required to keep on their NOx controls on?

WLW: I am not familiar with these particular power plants and do not know why they emit at the levels you report.

105. EPA's independent science advisers, leading medical groups like the American Medical Association, American Academy of Pediatrics, American Thoracic Society, American Lung Association, American Heart Association, and leading public-interest groups such as the NAACP called for a 60 ppb standard instead of the 70 ppb standard EPA finalized last year.

- a. What do you believe is a health-protective standard for ozone?
- b. Do you agree that one of the goals of the Clean Air Act is to set NAAQS standards to address the public health and welfare risks of NAAQS pollutants?
- c. When considering setting NAAQS limits, should cost be considered?

WLW:

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

106. According to the EPA, it has been estimated that the Clean Air Act has a history of reducing air pollution, while creating jobs. Since 1970 aggregate emissions of common air pollutants dropped 72 percent, while the U.S. gross domestic product grew 219 percent. Total private sector jobs increased by 101 percent over the same period. In 2020, EPA estimates that the standards will create the equivalent of over 104,000 new jobs including 17,000 new jobs building renewable energy facilities and over 78,000 jobs in improving demand-side energy efficiency.

- a. Do you agree that regulations under the Clean Air Act since 1970 have helped grow the economy?
- b. If not, can you provide your analysis, materials used, and people you solicited to come to this conclusion?

WLW:

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

country.

107. How will you separate your history representing polluters in challenging environmental protections to defending EPA's mission of protecting public health and the environment?

WLW:

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

108. Have you heard anything to suggest that EPA may close or consolidate any Regional Offices? What is your opinion of such a proposal?

WLW: I

Ex. 5 - Deliberative Process

109. During previous administrations, senior EPA managers' schedules have been available to the public and Administrator Pruitt recently started releasing his. If confirmed, do you agree to make your schedule available as well?

WLW

Ex. 5 - Deliberative Process

110. I found it extremely troubling that when asked about ocean acidification during your confirmation hearing, that you, a chemical engineer, said you were "aware of the allegation." The definition of "allegation" is "a claim or assertion... typically one made without proof." According to the following experts, ocean acidification is real and occurring:

National Academies of Sciences, Engineering and Medicine 2013 Review of the Federal Ocean Acidification Research and Monitoring Plan:

"The world's ocean has already experienced a 30% rise in acidity since the industrial revolution, with acidity expected to rise 100 to 150% over preindustrial levels by the end of this century. Potential consequences to marine life and also to economic activities that depend on a healthy marine ecosystem are difficult to assess and predict, but potentially devastating."

EPA 2016 Report on Climate Change Indicators in the U.S.:

"As the concentration of carbon dioxide in the atmosphere increases, the ocean absorbs more of it. Over the past 250 years, oceans have absorbed about 28% of the carbon dioxide produced by human activities that burn fossil fuels. Rising levels of carbon dioxide dissolved in the ocean negatively affect some marine life, because carbon dioxide reacts with sea water to produce carbonic acid. The increase in acidity changes the balance of minerals in the water and makes it more difficult for corals and plankton to produce the mineral calcium carbonate, which is the primary component of their hard skeletons and shells. Resulting declines in coral and plankton populations can change marine ecosystems and ultimately affect fish populations and the people who depend on them. Signs of damage are already starting to appear in certain areas."

Measurements made over the last few decades have demonstrated that ocean carbon dioxide levels have risen in response to increased carbon dioxide in the atmosphere, leading to an increase in acidity.”

NOAA Ocean Acidification Program:

“Ocean acidification is occurring because our ocean is absorbing carbon dioxide from the atmosphere, leading to lower pH and greater acidity. This is causing a fundamental change in the chemistry of the ocean.

Since the industrial revolution, the atmospheric concentration of carbon dioxide has increased from 280 to over 400 parts per million due to the burning of fossil fuels such as coal, gas, and oil, along with land use change. Ocean acidification refers to a change in ocean chemistry in response to the uptake of increasing carbon dioxide (CO₂) in the atmosphere. The world’s surface ocean is tightly linked with the atmosphere and absorbs huge amounts of carbon dioxide each year. This exchange, in part, helps to regulate the planet’s atmospheric CO₂ concentrations, but comes at a cost for the oceans and life within it; from the smallest, single celled algae to the largest whales. Were it not for ocean uptake of CO₂, atmospheric CO₂ levels would be increasing at an even greater rate than they are now.”

NOAA Pacific Marine Environmental Laboratory Carbon Program:

“Since the beginning of the Industrial Revolution, the pH of surface ocean waters has fallen by 0.1 pH units. Since the pH scale, like the Richter scale, is logarithmic, this change represents approximately a 30% increase in acidity. Future predictions indicate that the oceans will continue to absorb carbon dioxide and become even more acidic. Estimates of future carbon dioxide levels, based on business as usual (BAU) emission scenarios, indicate that by the end of this century the surface waters of the ocean could be nearly 150% more acidic, resulting in a pH that the oceans haven’t experienced for more than 20 million years.”

Do you accept the findings of these experts that:

- a. The human-caused increase in atmospheric carbon pollution is directly related to decreases in ocean pH (ocean acidification)?
- b. Oceans are currently acidifying at a rate unprecedented in tens of millions of years?
- c. Ocean acidification is damaging coral reefs worldwide, important habitats for recreation, tourism, and commercial fishing?
- d. Ocean acidification is harmful to marine ecosystems, negatively affecting fish populations and the communities who depend on them?
- e. If you do not agree with any of these statements, please identify the evidence, studies, or analyses you are relying upon to justify your position.

WLW:

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

111. Since 2009, the states participating in the Regional Greenhouse Gas Initiative (RGGI) have seen carbon pollution fall by 18% while their economies grew by 9.2%. Emissions in the other 41 states fell by 4% while their economies grew by 8.8%.
- Do you agree that RGGI has developed a successful model for growing our states' economies and cutting carbon pollution at the same time?
 - Do you believe funding levels for EPA grant programs that fund state level initiatives to reduce their emissions should remain level, be increased, or be decreased?

WLW:

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

112. EPA operates multiple networks to monitor compliance with the Clean Air Act's National Ambient Air Quality Standards and to track hazardous air pollutants regulated under the act. These networks include, among others, the State and Local Air Quality Monitoring Network, the National Air Monitoring Network (which targets areas of high population density with a variety of air pollution sources), Special Purpose Monitoring Stations (used for short-term studies and other purposes), Photochemical Assessment Monitoring Stations (used to measure pollutants that contribute to ground-level ozone, a harmful air pollutant), and the National Air Toxics Trends Stations.
- What is your vision for air monitoring?
 - Do you believe funding at EPA for these important monitoring networks should remain level, be increased, or decreased?
 - Under your leadership, will you push for greater inclusion of technology-based tools for compliance monitoring and implementation, including electronic reporting and additional air monitors?

WLW:

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

113. Section 105 grants provide significant funding to states for implementing the Clean Air Act requirements. EPA is proposing a new formula for how the 105 grants are distributed to each of the regional offices (and subsequently to the states). Region 1, where Rhode Island receives its funding from, will receive a smaller percentage of the total 105 funds under this revised formula. EPA is proposing an implementation approach that would limit regional losses to no more than 2.5% from each region's prior year amount. Region 1 will lose 2.5% for, at least, each of the next five fiscal years and possibly ten years, under this proposed approach. Will you commit to not implementing the new formula until and unless there is sufficient overall funding such that no Region

will see reduced funding from the prior year's amount?

WLW:

Ex. 5 - Deliberative Process

114. The Clean Air Act regulates air emissions from stationary and mobile sources, protecting public health and ensuring Americans have safe air to breathe. Concentrated animal feeding operations (CAFOs) may emit air pollutants in high enough quantities to subject them to CAA and other statutory requirements.
- Do you believe CAFOs pollute the air?
 - Do you believe it is important for EPA, state and local agencies, and the public to know what air quality and health risks are posed by animal feeding operations?
 - Will you commit to ensuring that the law is enforced with regards to CAFOs.

WLW:

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

115. On September 19, 2017, the EPA Office of Inspector General (OIG) released a report on EPA's attempts to develop reliable emission estimation methods (EEMs) to determine whether animal feeding operation are subject to or comply with Clean Air Act permit requirements or emission reporting requirements under CERCLA or EPCRA (Report No. 17-P-0396). On June 23, 2017, the Office of Air and Radiation agreed with OIG's recommendations and OIG has accepted its planned corrective actions. If confirmed, do you commit to ensuring EPA fulfills its commitment to implement the actions laid out in OAR's June 23, 2017 letter to OIG?

WLW:

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

116. OIG's September 19, 2017 report (Report No. 17-P-0396) on animal feeding operations cited a lack of EPA agricultural air expertise and committed resources as a factor in delays in developing emission estimating methodologies.
- Given President Trump's proposed cuts to EPA's budget, how do you envision implementing the actions agreed to by OAR in Report No. 17-P-0396?
 - What is your vision for protecting public health by ensuring animal feeding operations are meeting CAA and other statutory requirements?

WLW:

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

117. Until recently, Carl Icahn served as a special advisor to the President on overhauling regulations. Carl Icahn is also a majority owner of CVR Energy which is an oil refiner that has a compliance obligation under the RFS to blend its oils with renewable fuels. Icahn's company has repeatedly benefited when he has proposed changes to the RFS that would benefit CVR and through speculation in the Renewable Identification Numbers (RINs) market. For example, in February of 2017 Mr. Icahn reportedly presented the White House with draft Executive Order language that would reform the RFS to benefit CVR energy. The same day, CVR's stock value increased by 3.5%, representing a multi-million dollar windfall to Icahn.

- a. Please describe any interactions you've had with Carl Icahn, CVR Energy, Valero, or other entities about the RFS in the past two years.
- b. Do you think it is appropriate for an Administration official like Mr. Icahn to propose making changes to EPA regulations that clearly benefit a company he owns?
- c. If you are confirmed as AA of OAR, and Carl Icahn or CVR Energy approaches you about a matter related to the RFS, do you think would be appropriate to talk with him?
- d. Will you commit to not talking with Carl Icahn about the RFS?

WLW: **Ex. 5 - Deliberative Process**

Ex. 5 - Deliberative Process

118. Since July, EPA has submitted two different proposals that would lower the volumes for biodiesel and renewable diesel. Congress told EPA to increase the volumes of biodiesel and renewable diesel, and both the President and Administrator Pruitt have pledged their support for the RFS. How do you explain EPA's actions?

WLW: **Ex. 5 - Deliberative Process**

Ex. 5 - Deliberative Process

119. In your professional career you have specifically worked against the interests of biofuels and have represented the petroleum sector in multiple law suits. As Assistant Administrator how would the biodiesel and renewable diesel industries get a fair hearing from you?

WLW: **Ex. 5 - Deliberative Process**

Ex. 5 - Deliberative Process

120. In July, the DC Circuit Court in ACE vs. EPA said, EPA can't use general waive authority to regulate supply under the RFS. Yet in the most recent proposal from EPA,

EPA is proposing exactly that and is working to use general waive authority to decrease the volumes based on supply. Clearly we have billions of gallons of biodiesel and renewable diesel that qualify for the program and are ready to be produced here in the United States, in Canada and throughout the world. Isn't EPA setting itself up for another lawsuit?

WLW:

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

121. The EPA has signaled its planned rejection of the proposal to change the point of obligation under the law. The Agency has yet to issue a decision. If confirmed, will you finalize and issue the Agency's rejection of this proposal, and if so, when? Have you ever expressed a view on proposals to change the point of obligation and if so, what was it?

WLW:

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

122. On September 26, the EPA issued a Notice of Data Availability that proposed to make significant, substantial changes to its proposed 2018 RVO and provided for a 15-day comment period. NODAs are generally used to provide data and supplement information in the record. In this case, the EPA has proposed to make material changes to its original proposal, offering stakeholders only 15 days to comment on something that, if adopted, would negatively impact the U.S. biodiesel industry and set the stage for unjustified reductions in perpetuity. In your experience, is this a typical use of a NODA, and can you give me another example when the EPA has used a NODA in this manner? Do you believe that 15 days is an appropriate comment period for a proposed rule under the RFS? In your opinion, is inventing a new methodology to justify a pre-determined outcome an appropriate process to apply in EPA rulemakings under the RFS?

WLW:

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

123. Do you believe methane is a greenhouse gas? What is methane's global warming potential, and from what source does that number come?

WLW:

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

124. Is it your understanding that EPA will enforce the methane rule on a case-by-case basis? Please explain how EPA’s case-by-case approach to compliance with the Methane Rule is consistent with EPA’s “No Action Assurance” policy, which dates back to 1984.

WLW: **Ex. 5 - Deliberative Process**
Ex. 5 - Deliberative Process

125. Which states have been delegated enforcement authority over the Methane Rule? What oversight and/or assistance will EPA provide these states to ensure that regulated entities are complying with the rule?

WLW: **Ex. 5 - Deliberative Process**
Ex. 5 - Deliberative Process

126. What types of reports and notifications should EPA require states with delegated enforcement authority to submit to the agency to ensure that the states are enforcing the methane rule?

WLW: **Ex. 5 - Deliberative Process**
Subpart A.

127. Administrator Pruitt has been criticized for spending a disproportionate amount of his time meeting with industry and virtually no time with public-interest groups. If confirmed, will you commit to meet with and listen to all parties, including environmental and public health groups, in a balanced fashion?

WLW: **Ex. 5 - Deliberative Process**

128. If confirmed, do you commit to notifying the Committee of all of the email addresses you plan to use upon confirmation and within seven days of using a new email address, including any aliases or pseudonyms? Do you commit to conducting all business using official email addresses and other means and to refrain from any mediums that are outside the Freedom of Information Act’s reach?

WLW: **Ex. 5 - Deliberative Process**
Ex. 5 - Deliberative Process

129. Do you believe the U.S. should remain a party to the United Nations Framework Convention on Climate Change?

WLW: **Ex. 5 - Deliberative Process**
Ex. 5 - Deliberative Process

130. Do you believe the U.S. should remain a party to the Paris Agreement?

WLW:

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

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

WLW: [OCIR? **]

132. Do you think there should be a standardized social cost of carbon? Is the social cost of carbon greater than zero dollars per metric ton? If so, what is the most accurate social cost of carbon in 2017 and what is the best way to calculate this number?

WLW:

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

133. A 2007 legal challenge prompted the courts to direct the government to further quantify the costs and benefits of a ton of carbon pollution in federal government rulemakings. Specifically, the U.S. Court of Appeals for the 9th Circuit agreed that in quantifying the benefit of cutting carbon pollution but admonished that the value is “certainly not zero.”²⁴ The Court asked National Highway Traffic Safety Administration to do a new rule that addressed this issue. This court decision has led the Bush and Obama Administrations to further refine a value for the SCC. Do you agree with the reasoning in this decision?

a. If no, please explain why not and how that would affect how you would approach your responsibilities.

WLW:

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

134. In 2009, the Obama administration created an interagency working group (IWG) in an effort to create a governmental value for the social cost of carbon, which based its calculations on peer-reviewed economic models and expert opinions. The models included in their analysis were the Dynamic Integrated Climate-Economy (DICE)²⁵, Policy Analysis of the Greenhouse Effect (PAGE)²⁶, Climate Framework for Uncertainty,

²⁴ *Center for Biological Diversity v. National Highway Traffic Safety Administration*, 508 F.3d 508, U.S. Court of Appeals for the 9th Circuit (2007), available at <http://caselaw.findlaw.com/us-9th-circuit/1024716.html>.

²⁵ Dynamic Integrated Climate-Economy model (DICE), <http://www.econ.yale.edu/~nordhaus/homepage/dicemodels.htm>

²⁶ Policy Analysis of the Greenhouse Effect (PAGE), <http://climatecolab.org/resources/-/wiki/Main/PAGE>

Negotiation and Distribution (FUND)²⁷, and World Induced Technical Change Hybrid (WITCH)²⁸ models. The IWG was comprised of scientists and economists from the Office of Management Budget, the Council for Environmental Quality, the National Economic Council, the EPA, the U.S. Department of Agriculture, Energy, Transportation, and Treasury.

- a. Can you discuss whether you think the models used by the IWG are appropriate and credible tools for calculating the social cost of carbon?
- b. Can you comment on whether the IWG was comprised of the right governmental stakeholders and actors?

WLW: **Ex. 5 - Deliberative Process**
Ex. 5 - Deliberative Process

135. On March 28, 2017, the President issued a Presidential Executive Order on Promoting Energy Independence and Economic Growth, which disbanded the IWG, withdrew the guidance it issued, and reverted to OMB Circular A-4 of September 17, 2003 (Regulatory Analysis). This in effect requires each agency to estimate the value of changes in greenhouse gas emissions resulting from regulations. Do you believe the regulatory process will be more effective and efficient in the absence of unified guidance on how to monetize the value of changes in greenhouse gas emissions?

WLW: **Ex. 5 - Deliberative Process**
Ex. 5 - Deliberative Process

136. Part of the social cost of carbon calculation assumes a value for discount rates. The IWG after reviewing past OMB guidance recommended using a 3% discount rate²⁹.
- a. Do you have an opinion on what the discount rate value should be when calculating the social cost of carbon?
 - b. Scientific research has found that it would be more accurate to use a declining discount rate instead of a fixed one. Do you agree that a declining discount rate would be more accurate?
 - c. Do you have an opinion on what the discount rate value should be used for inter-generational impacts?

WLW: **Ex. 5 - Deliberative Process**

137. Do you believe that it is appropriate for a cost-benefit analysis to consider the harm caused in other countries from pollution emitted in the United States?

WLW: **Ex. 5 - Deliberative Process**
Ex. 5 - Deliberative Process

²⁷ The Climate Framework for Uncertainty, Negotiations and Distribution (FUND), <http://www.fund-model.org/>

²⁸ World Induced Technical Change Hybrid model (WITCH), <http://www.witchmodel.org/>

²⁹ Interagency Working Group on Social Cost of Greenhouse Gases, *Technical Support Document*, pp. 15–16.

Senator Wicker:

138. As you consider policies at the EPA that affect emissions, will you consider the future uses of biomass in the U.S. as part of the power generation mix? Will you consider and institute policies related to emissions that will allow new market opportunities for American biomass and wood pellet resource?

WLW

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

139. For most of its existence, the ENERGY STAR program has been housed at EPA. Since a 2009 MOU between EPA and DOE, EPA has been administering the voluntary ENERGY STAR program on home appliances.

I am concerned about the proposals to move the ENERGY STAR program for home appliances to DOE. There is the potential that this change could result in inefficiencies and lead to additional regulatory burdens. In particular, DOE may not update specifications to incorporate evolving technologies as EPA has through the voluntary program in partnership with stakeholders.

Can you share your perspective on this issue?

WLW

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process