

Senate Committee on Environment and Public Works
Hearing entitled “Hearing on the Nominations of Kathleen Hartnett White to be Member of the Council on Environmental Quality and Andrew Wheeler to be Deputy Administrator of the Environmental Protection Agency.”

November 8, 2017

Questions for the Record for Mr. Andrew Wheeler

Ranking Member Carper:

Please provide a response to each question, *including each sub-part*.

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 must be shielded from political influence and spared even the appearance of being subject to political influence or considerations?

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- b. Will you commit to restricting communications between EPA and the White House staff regarding specific matters under the authority of EPA?

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

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

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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 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 EPA to make lawful disclosures, including their right to speak with Congress?

- b. Will you commit to communicate employees’ whistleblower rights via email to all EPA employees within a week of being sworn in?

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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=.a2bfc5e54d95

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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 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?

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- 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?

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4. Your ethics agreement states that you “for a period of one year after my resignation, I also will not participate personally and substantially in any particular matter involving

² <http://www.miamiherald.com/news/weather/hurricane/article174097351.html> <http://www.sun-sentinel.com/news/weather/hurricane/fl-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>

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

specific parties in which I know the firm is a party or represents a party, unless I am first authorized to participate, pursuant to 5 C.F.R. 2635.502(d). In addition, I 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).”

- 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.

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- b. 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 you or your firm’s representation of clients in particular matters that are before EPA 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 particular matter itself or in an administrative action designed to accomplish the identical outcome the particular matter was intended to accomplish? Why or why not?

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5. Do you intend to seek a waiver to participate in non-public meetings with your former clients or your firm’s clients if you are confirmed? If so, please list which clients you

intend to seek such waivers to meet with and explain will why this would not cause a reasonable person with knowledge of the relevant facts to question your impartiality in the matter at hand.

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6. 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:
- i) 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.
 - ii) 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.
 - iii) 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.

- a. If you are confirmed, do you commit to ensure that career staff at EPA will receive appropriately documented, rather than verbal, direction from political officials before they take action? If not, why not?

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

- b. You said in the hearing that it would be wrong to direct career staff to break the law. Assuming that the events described to my staff occurred as described (and understanding that you don't have any specific knowledge about these events), is it your view that this may have been an instance in which career staff were directed to break the law? Why or why not?

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7. 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?

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8. 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?

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9. 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? Why or why not?

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10. 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

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

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

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 Do you agree with these statements? Why or why not?

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11. 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? If so, please provide details.

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12. 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.”¹⁰ Do you agree with this statement? Why or why not?

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13. 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 mercury exposure is essential to optimal child health.”¹¹
- 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.

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- 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?

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

¹⁰ <https://www.cadc.uscourts.gov/internet/opinions.nsf/284AC47088C07D0985257CB8004F0795/%24file/12-1100-1488346.pdf>

¹¹ https://www.epw.senate.gov/public/_cache/files/4/3/4324fd62-dc89-4820-bd93-ff3714fcbe30/01AFD79733D77F24A71FEF9DAFCC8056.41712hearingwitnessstestimonyjpaolson.pdf

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- c. Do you agree it is currently difficult 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? If these costs cannot be calculated, are the risks still real?

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14. 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?

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15. Do you agree that the EPA’s recent consideration of the costs of the Mercury and Air Toxics Standards 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?

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16. The Edison Electric Institute (EEI), the association that represents all U.S. investor-owned electric companies, has told my staff that, to its knowledge, all of its member companies have fully implemented the Mercury and Air Toxics Standards Rule. EPA staff has reported to my staff something similar. The Mercury and Air Toxics Standards 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 you dispute reports that nearly all covered facilities are already in compliance with the Mercury and Air Toxics Standards? If so, please explain.

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- 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.”¹² This means the near universal compliance of the Mercury and Air Toxics Standards 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?

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- 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, and if so, why?

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- 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 Standards Rule, what does that mean for all the pollution control technology that has been bought, paid for and running on our power plants that is helping the industry be in full compliance of the rule?

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17. 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. Please respond to each sub-part below:
 - a. 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?

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- b. 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”? If you do not agree, why not?

¹² <http://www.bcse.org/wp-content/uploads/2017-Sustainable-Energy-in-America-Factbook-Executive-Summary.pdf>

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- c. Do you agree that the Trump Administration’s November 6, 2017 announcement that “the Clean Air Act requires EPA to issue designations [for non-attainment areas] no later than 2 years after the agency sets a new National Ambient Air Quality Standard or revises an existing standard. The Administrator may extend this deadline up to 1 year, if there is insufficient information to designate areas by the 2-year deadline”¹³ is accurate? If not, why not?

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- d. Do you agree that the agency set a new National Ambient Air Quality Standard for ozone on October 1, 2015¹⁴, as was also stated in the Trump Administration’s November 6, 2017 announcement? If not, why not?

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- e. Do you agree that the November 6, 2017 announcement by the Trump Administration stated that “EPA is not extending the time provided under section 107 of the Clean Air Act [to designate non-attainment areas] but is not yet prepared to issue designations”?

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- f. Do you agree that the Trump Administration has failed to comply with the Clean Air Act by failing to designate ozone non-attainment areas by October 1, 2017 while also choosing not to extend the deadline for such designations to be made?

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- g. If confirmed, will you commit to not further delay the implementation of the 2015 ozone NAAQS? If not, why not?

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

¹³ https://www.epa.gov/sites/production/files/2017-11/documents/fact_sheet_for_final_ozone_designations_round_1.pdf

¹⁴ <https://www.epa.gov/ozone-pollution/2015-revision-2008-ozone-national-ambient-air-quality-standards-naaqs-supporting>

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19. 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).”¹⁵ 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.”¹⁶
- 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?

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- 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?

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- 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.¹⁷ 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?

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¹⁵ <https://www.whitehouse.gov/the-press-office/2017/05/01/statement-president-trump-paris-climate-accord>

¹⁶ <http://www.nera.com/news-events/press-releases/2017/nera-economic-consultings-study-of-us-emissions-reduction-polic.html>

¹⁷ <http://news.mit.edu/2017/mit-issues-statement-research-paris-agreement-0602>

20. As you may know, American Indians and Alaska Natives share a unique relationship with the federal government. As part of that relationship, the federal government has a duty to perform meaningful consultation with Indian Tribes and Alaska Native villages regarding issues that affect tribal communities and tribal members. Do you commit to engage in essential and honest consultation with tribes and tribal governments?

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21. An article¹⁸ about the President's decision to leave the Paris Climate Agreement in Inside Climate News stated that "Other hardliners include Murray Energy's chief executive Robert Murray and his coal company's lobbyist, Andrew Wheeler, who helped enlist Pruitt to talk to the National Mining Association before it joined the rejection lobby." Is this excerpt accurate? If so, please describe the manner in which you helped "enlist Pruitt to talk to the National Mining Association" and provide any documents you prepared or received that are related to this effort. If not, please describe the inaccuracies.

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22. Please provide me with a copy of the following presentations that are listed in the materials you sent the Committee: **Attached are the available presentations as noted.**
- How to Conduct Congressional Oversight (2017) **[a copy of handouts used]**
 - Preparing for the New Administration (2017) **[no materials available]**
 - The Air Up There: Developments and Opportunities for Clean Air, Coal, Energy and Climate (2016) **[no materials available, agenda attached]**
 - Preparing for the Change in Administration (2016) **[a copy of handouts used]**
 - Focusing on What Really Should be Debated: The Cases of Boiler MACT, Utility MACT and CSPAR (2012) **[copy of Powerpoint attached]**
 - The Waxman-Markey American Clean Energy and Security Act: Cap-and-Trade (2009) **[copy of Powerpoint attached]**

23. Earlier this year, the fiscal year 2018 budget proposal¹⁹ submitted to Congress sought to eliminate the \$20 million in funding the EPA provides for the Justice Department's Environment and Natural Resources Division. EPA has historically provided about 27 percent of that office's budget. Do you support such a reduction in funding? Please provide your reasoning and any information you have supporting your answer.

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¹⁸ <https://insideclimatenews.org/news/05052017/paris-agreement-climate-change-donald-trump-jared-kushner-steve-bannon-clean-power-plan>

¹⁹ <https://www.documentcloud.org/documents/4061910-EPA-Superfund-reimbursements-to-DOI-documents.html#document/p7/a378119>

24. Since 1987, how much funding has been provided to ENRD by EPA? How much money has DOJ secured through fines, penalties, and commitments to remediate contamination and pollution during this same time period?

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25. In September, the EPA Inspector General issued a report titled “EPA’s Distribution of Superfund Human Resources Does Not Support Current Regional Workload.” It concluded, among other things, that one of the impediments to progress in cleaning up Superfund sites is lack of adequate EPA staff. Do you agree with and accept the conclusions of the IG in this regard? If not, why not?

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26. The Administration’s budget request proposes to reduce the size of EPA’s workforce by approximately 3000 Full Time Employees (FTEs) in FY 2018, including just under 600 FTEs in the Superfund program. Administrator Pruitt has stated that he would like to greatly accelerate the cleanup of hazardous waste sites, in particular Superfund sites. Do you believe that reducing the Superfund workforce by 23 percent will accelerate or reduce the pace of cleanups at Superfund sites across the country?

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27. This country just suffered three unusually intense hurricanes in quick succession – including one in your home state of Texas and one that has left the majority of Puerto Rico without electricity and water for weeks. Over 137 wildfires have raged in the West, costing hundreds of billions of dollars in damages and dozens of lost lives. Two weeks ago, the Trump White House released a final (i.e., not draft, as was inaccurately asserted at the hearing) report²⁰ that concluded that, quote, “it is extremely likely that human activities, especially emissions of greenhouse gases, are the dominant cause of the observed warming since the mid-20th century.” The report also documented increases in sea levels, heatwaves, wildfires, and flooding, and said that, quote, “Changes in the characteristics of extreme events are particularly important for human safety.”
- a. Do you accept the evidence that carbon dioxide pollution is causing the earth to warm, that human activity is responsible for that warming, and that with increased warming comes an increased frequency and intensity of extreme flooding,

²⁰ <https://science2017.giobalchange.gov/>

hurricanes and wildfires? If not, please fully document the basis for such rejection.

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- b. Do you agree with the report's conclusion that "it is extremely likely that human activities, especially emissions of greenhouse gases, are the dominant cause of the observed warming since the mid-20th century?" If not, please fully document the basis for your disagreement.

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- c. Do you agree with the report's documentation that demonstrated increases in sea levels, heatwaves, wildfires, and flooding? If not, please fully document the basis for your disagreement.

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28. The CO2 Coalition²¹ is a group that promotes misinformation about climate science. In February of this year, Ms. White spoke on a panel hosted by the CO2 Coalition. There she described the CO2 Coalition as, a "very, very meaningful source [of information]," and said that she is "very hopeful because of organizations like the CO2 Coalition." The group also produces 30 second cartoons extolling the virtues of increased levels of CO2 in the atmosphere²². Do you agree with Ms. White's statements, and do you agree that the CO2 Coalition is a meaningful source of information on climate change? If not, why not?

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29. 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?

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²¹ <http://co2coalition.org/>

²² <https://youtu.be/5Oapr4fopul>

30. Are there any other EPA regulations – not a voluntary or grant program - that are on the books today that you support? If so, which ones?

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Senator Gillibrand:

31. Cleaning up Superfund sites is a core function of the EPA. However, the Trump Administration proposed cutting the Superfund budget by 30 percent in this year's budget. If enacted, those cuts would imperil the ability of the EPA to clean up the most hazardous contamination in New York and across the country. The longer it takes to clean up Superfund projects, the longer the health of children and families who live near these toxic sites are put at risk. This is immoral, and an abdication of the EPA's responsibility to protect public health. Do you support the cuts to the Superfund program that were in President Trump's budget request?

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Senator Inhofe:

32. In 2016, President Obama signed a bi-partisan provision of the WIIN Act allowing states to develop risk-based programs to manage coal ash from power plants. Unfortunately, before the WIIN Act became law, EPA had issued self-implementing coal ash regulations under the RCRA program. Accordingly, the existing EPA regulations do not contain the flexibility and protections established by the WIIN Act. Many groups -- including electric co-ops and public power -- have repeatedly asked EPA to harmonize its existing regulations with the WIIN Act. There is increasing urgency for EPA to act now to allow states the ability regulate coal ash. It is the desire of the states that regulate electric power generating plants to exercise their rights under the WIIN Act. If confirmed, will you pledge to work with me to address this issue?

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Senator Merkley:

33. 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?

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34. In the final version of the Fourth National Climate Assessment Report (Volume 1) (found here: <https://science2017.globalchange.gov/downloads/>), scientists from EPA and 12 other agencies find that “Global annual average temperature has increased by more than 1.2°F (0.7°C) for the period 1986– 2016 relative to 1901–1960.” (Figure ES.1)
- Do you agree with this finding?
 - If you do not agree with this finding, please explain why, and please provide at least one peer reviewed study supporting your stated position.

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35. In the hearing you said, “I believe that man has an impact on the planet. What’s not completely understood is what the impact is.” Yet the Fourth National Climate Assessment finds that “human activities are the primary driver of recent global temperature rise” (Figure ES. 2).
- Do you agree with this finding?
 - If you do not agree with this finding, please explain why, and please provide at least one peer reviewed study supporting your stated position.

Deliberative Process / Ex. 5

36. You told me in our conversation that when it comes to scientific matter, you would defer to career staff and independent scientists. However, recently the EPA banned scientists who have received EPA funding from sitting on the agency’s science advisory boards. As a result, many independent scientists were dismissed before they even completed their terms. EPA has not raised similar concerns about potential conflicts of interest for scientists who work for industries that EPA regulates. At the same time, EPA is replacing these scientists with people from the very industries that the EPA is support to regulate.
- Do you agree that EPA should bar scientists from serving on its advisory boards simply because they have received funding through EPA grants?

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

- b. Do you think it is acceptable for someone who receives money from Exxon-Mobil or even from a foreign government to serve but not someone who receives a grant from the agency itself?

Deliberative Process / Ex. 5

- c. How is EPA supposed to carry out its mission to protect human health and the environment when it receives scientific advices from the industries that the agency is supposed to regulate?

Deliberative Process / Ex. 5

37. As a lobbyist for Murray Energy, you were present for the preliminary discussions that led to the crafting of the Department of Energy's cost recovery proposal for coal and nuclear plants. You also viewed a three-page memo drafted by Murray to the White House to revive the domestic coal sector. Additionally, you admitted to attending two meetings with DOE and the House Energy and Commerce committee staffers. As the EPA Deputy Administrator, you would be in charge of regulating companies like Murray Energy, one of your former clients. Moving forward, how will you guarantee that the EPA will act in the best interests of the American people rather than in the interests of your former clients?

Deliberative Process / Ex. 5

Senator Sanders:

Climate Change

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

Deliberative Process / Ex. 5

39. Do you agree with the vast majority of scientists that climate change is real, it 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?

Deliberative Process / Ex. 5

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

Deliberative Process / Ex. 5

41. This past year, we have seen unprecedented devastation from hurricanes Harvey, Irma and Maria plus dozens of wildfires that have ravaged the West.

- a. Do you believe, as the scientific community does, that climate change contributes to the frequency and devastation of these natural disasters?

Deliberative Process / Ex. 5

- b. Congress has already appropriated \$51.8 billion to address these disasters, and we intend to continue to work to rebuild communities devastated by the impacts of these disasters. A recent study published in the journal *Science* found that for every degree Celsius the planet warms, there is a loss of roughly 1.2% GDP in the United States. Do you believe that addressing climate change is good economics?

Deliberative Process / Ex. 5

Fossil Fuels

42. In your view, how important is it for the United States to reduce our reliance on fossil fuels?

Deliberative Process / Ex. 5

43. You previously worked at Murray Energy Corporation, a privately-owned coal company. Do you believe the federal government needs to invest more in polluting, finite fossil fuel resources like coal?

Deliberative Process / Ex. 5

44. EPA is tasked with ensuring the health and safety of working people, their families, and the communities in which they live. If confirmed, will you commit to refusing undue influence from special interests and instead fight to protect the environment?

Deliberative Process / Ex. 5

Energy Future

45. In your view, what is the role of renewable energy in our energy future?

Deliberative Process / Ex. 5

46. If confirmed, how will you work to support renewable energy like wind, solar, and geothermal?

Deliberative Process / Ex. 5

47. In your view, what should the United States' energy infrastructure look like at the end of this century? Specifically, what should be our main sources of energy?

Deliberative Process / Ex. 5

Past Career/Conflicts of Interest

48. In the past, you worked for Murray Energy Corporation, which brought suit against the EPA for its enforcement of the clean air and water protections. Can you explain why federal courts should be in the position of determining safe levels of air 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?

Deliberative Process / Ex. 5

49. Your former clients include Whirlpool Corporation, Bear Head LNG Corporation, Celanese Corporation, Coalition For Domestic Medical Isotope Supply, Darling International, Domestic Fuel Solutions Group, Enterprises Swanco LLC, ICOR International, Insurance Auto Auctions, Inc, KAR Holdings, Murray Energy, Nuclear Energy Institute, Sargento Foods Inc, South Coast Air Quality Management District, and Underwriters Laboratories. If confirmed as Deputy Administrator of the EPA, would you have any conflicts of interest with these companies, or any other companies you represented during your time as a lobbyist? 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?

Deliberative Process / Ex. 5

50. Murray Energy Corporation paid millions in fines and penalties for contaminating waterways in Ohio, West Virginia and Pennsylvania with coal slurry and discharge during your tenure.

- a. Were you aware this type of environmental contamination was occurring? If you were aware, what actions did you take to address this water contamination? If you were aware of the contamination and did not act, why not? If you were not aware, why not? Do you think it is acceptable for a senior corporate official to lack knowledge of their company's pollution?

Deliberative Process / Ex. 5

- b. Do you believe this type of environmental contamination endangers the health and wellbeing of American citizens?

Deliberative Process / Ex. 5

- c. If confirmed, how will you ensure corporate environmental polluters like Murray Energy Corporation are held accountable?

Deliberative Process / Ex. 5

51. In 2015, Federal regulators accused Murray Energy of attempting to silence whistleblowers and said that "Murray Energy chided 3,500 workers for making too many confidential safety complaints to regulators and -- at one of the mines -- threatened to retaliate by closing down operations."

- a. If confirmed, how will you work to prevent retaliation against whistle blowers who help the federal government enforce the nation's environmental laws?

Deliberative Process / Ex. 5

- b. Were you aware of this behavior? If you were aware, what did you do to ensure Murray complied with environmental laws and took whistleblower complaints seriously? If you were not aware, how will you ensure EPA employee's concerns are taken seriously, if confirmed?

Deliberative Process / Ex. 5

52. You criticized the Paris Climate Agreement, calling it a "sweetheart deal" for China that gave the United States' competitor a manufacturing edge. China is still in the deal, and their climate policies are rapidly outpacing ours. China is moving away from dirty fossil fuels at a rate much quicker than the United States, and they are on track to more than double their renewable energy infrastructure and get a fifth of their energy from non-fossil fuel sources by 2030.

- a. If both countries remain on their current paths, China will soon replace us as the world's technological and economic leader in the fields of climate science and energy generation. Do you believe we should continue to allow China to out-compete us in these areas?

Deliberative Process / Ex. 5

- b. Should the U.S. be concerned that China is rapidly outpacing us in these areas? Do you recognize that China's leadership in these fields represents a threat to our economy and national security?

Deliberative Process / Ex. 5

- c. The Carnegie Mellon Institute estimates that air pollution from energy production caused at least \$131 billion in damages in the U.S. alone. Do you think this financial drain threatens our ability to compete with countries like China on the international scale?

Deliberative Process / Ex. 5

Science

53. If confirmed, do you commit to relying on independent scientists with relevant expertise to evaluate and review the data that the EPA uses when making decisions related to the implementation of environmental regulations?

Deliberative Process / Ex. 5

Most Pressing Challenges

54. In your opinion, what are the most pressing environmental challenges that deserve the attention of the EPA? If confirmed, what will you do at the EPA to better address these challenges?

Deliberative Process / Ex. 5

Environmental Regulations

55. 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”?

Deliberative Process / Ex. 5

56. Do you support EPA Administrator Pruitt’s decision to rescind the Clean Power Plan?

Deliberative Process / Ex. 5

57. According to the EPA, the Clean Power Plan will lead to climate and health benefits “worth an estimated \$55 billion to \$93 billion in 2030, including avoiding 2,700 to 6,600 premature deaths and 140,000 to 150,000 asthma attacks in children.”
- a. Do you agree with the EPA’s findings? If you do agree or are unfamiliar with these data, do you agree that, if the EPA’s estimations are correct, we have a moral imperative to maintain the Clean Power Plan and protect the thousands of people that it positively impacts? If you do not agree with the EPA’s findings, on which data or scientific studies do you base your opinion?

Deliberative Process / Ex. 5

- b. If confirmed, what will you tell the parents who have children with asthma that will be adversely impacted by Administrator Pruitt’s decision to rescind the Clean Power Plan?

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

58. Oil and natural gas extraction by way of hydraulic fracturing, or “fracking,” has expanded rapidly in the United States. The EPA conducted a study of the drinking water impacts and released a final report in December 2016. The Agency found “hydraulic fracturing activities can impact drinking water resources under some circumstances.”
- a. Do you concur with the conclusions of the EPA’s final report on fracking and drinking water?

Deliberative Process / Ex. 5

- b. What further studies—if any—do you believe would be appropriate for the EPA to conduct on the effects of fracking on water quality?

Deliberative Process / Ex. 5

- c. If confirmed, would you support implementing a requirement to provide full, well-specific public disclosure of all information related to oil and gas development involving fracking’s possible impacts on groundwater, surface water, public health and safety, and habitat potential impacts?

Deliberative Process / Ex. 5

59. Data shows that mercury pollution in the North Atlantic and mercury concentrations in our fisheries have fallen dramatically since the United States started requiring stronger emission controls from coal power plants.

Given this scientific confirmation of the positive effects of these regulations, what will you do, if confirmed, to continue to accelerate the clean-up of all sources of mercury emissions, including from coal power plants?

Deliberative Process / Ex. 5

60. Changes in weather patterns, such as heavier precipitation events that increase run-off and flooding, are affecting lakes, rivers, and reservoirs nationwide. Water quality, quantity, and the integrity of our water infrastructure are at risk. Recent studies in the Northeast have found that degraded water quality on lakes can cost lakeside communities millions of dollars in losses from both tourism and taxable income due to reduced property values. If confirmed, how will you work as Deputy Administrator to support water resource management programs that address these issues?

Deliberative Process / Ex. 5

Environmental Justice

61. How do you define “environmental justice”?

Deliberative Process / Ex. 5

62. Do you think environmental justice is a serious issue that the EPA should address?

Deliberative Process / Ex. 5

63. If confirmed, will you commit to addressing the growing environmental and economic justice issues associated with exposure to environmental pollution?

Deliberative Process / Ex. 5

64. 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 Deputy Administrator, how will you work to protect vulnerable low-income communities and communities of color from the harmful impacts of air pollution?

Deliberative Process / Ex. 5

65. Describe how you will, if confirmed, ensure that EPA’s Environmental Justice 2020 plan is fully implemented.

Deliberative Process / Ex. 5

66. If confirmed, do you commit to meeting with community members and leaders who have concerns about environmental or health issues within the EPA’s jurisdiction?

Deliberative Process / Ex. 5

67. If confirmed, what steps will you take as Deputy Administrator to ensure that the EPA and other federal agencies are complying with Executive Order 12989 on Environmental Justice?

Deliberative Process / Ex. 5

68. 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?

Deliberative Process / Ex. 5

Vermont

69. Lake Champlain is one of Vermont’s most treasured environmental features. Tourism and property values are tied to the health of the lake—keeping its waters swimmable, fishable and drinkable is important to Vermonters. Run-off – including from farmlands, lawns, and paved roads and point source pollution – contributes to high levels of phosphorus that spur algae growth. The algae turns the lake green and can be toxic. In 2016, the EPA released new phosphorus limits for the lake by establishing a Total Maximum Daily Load (TMDL).

a. If confirmed, do you commit to continuing the Agency’s support for the clean-up of Lake Champlain through this new TMDL and federal funding?

Deliberative Process / Ex. 5

b. Will you, if confirmed, support increased funding and support from the EPA to crack down on pollution? If not, how will you ensure Clean Water Act obligations are satisfied?

Deliberative Process / Ex. 5

Senator Sullivan:

Permitting:

70. The EPA has jurisdiction over permitting for discharges of effluent into water and emissions into the air. They also administer registration and use safety testing for chemicals in commerce as well as tracking disposal of waste cradle to grave to sanitary landfills as opposed to open dumps. Permits and authorizations pursuant to these authorities add time and regulatory requirements to business and infrastructure project. A key concern in recent years has been the increasing amount of delays to do extended permitting application reviews and environmental challenges to issued permits. EPA

must find ways to more efficiently permit projects in a manner that can survive legal scrutiny and provide greater certainty to project proponents and citizens.

- a. Will you work as Deputy Administrator to modernize EPA's permitting reviews while maintaining adequate environmental protections?

Deliberative Process / Ex. 5

- b. Will you work with other agencies to ensure interagency coordination is done in a timely manner?

Deliberative Process / Ex. 5

- c. How can the EPA, ensure that it makes timely decisions while limiting environmental impacts from a permitted discharge?

Deliberative Process / Ex. 5

ANCSA Contaminated Lands

71. In 1971, Congress enacted the Alaska Native Claims Settlement Act to settle aboriginal land claims. Earlier this year this Committee held a hearing regarding the legacy of federal contaminated lands and the challenge we face in cleaning them up. One of the witnesses at that hearing testified about the particular challenges in addressing contaminated lands that were conveyed under ANCSA to Alaska native corporations and villages. These are lands the government gave to these Native Alaskans as a settlement that were in fact contaminated before the native corporations and villages took possession. 46 years later, the majority of those contaminated sites have not been remediated and, under current law, Alaska Native entities that received those lands can be liable under for costs associated with cleaning up those lands.

- a. Do you recognized that these issues are fundamental problem for the Alaska Native community?

Deliberative Process / Ex. 5

- b. Can you commit to work to address and prioritize cleanup of ANCSA contaminated lands within the EPA and coordinating/communicating with other federal agencies including The Army Corps and Department of the Interior?

Deliberative Process / Ex. 5

Senator Whitehouse:

72. You agreed in your ethics agreement that if confirmed you will sign 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. The pledge also prohibits you from participating in any particular matter, and more broadly the issue area in which that particular matter falls, on which you lobbied within the two years before your appointment.
- a. Do you commit to abide by the pledge and not seek a waiver to participate in matters that you would otherwise be recused from?

Deliberative Process / Ex. 5

- b. You’ve worked against EPA during your time at Faegre Baker Daniels LLP. To ensure compliance with the pledge, please provide all of Faegre Baker Daniels LLP clients and cases or work from the past two years, noting all clients with whom you’ve worked, cases on which you’ve worked, and regulatory work you’ve done?

Deliberative Process / Ex. 5

- c. Will you also recuse yourself from matters that your client Bob Murray included on his three-page environmental agenda?

Deliberative Process / Ex. 5

73. Energy Secretary Rick Perry directed FERC to initiate a rulemaking that would effectively subsidize the coal industry in the name of ensuring grid reliability. The proposal has been criticized by environmental groups, natural gas companies, solar and wind companies, former Republican FERC commissioners, the American Petroleum Institute, and even the regional grid operators. And research by the Center for American Progress outline that ratepayers would be on the hook for this bailout.

- a. At your confirmation hearing, you acknowledged that you knew about this proposal in your role as a Murray Energy lobbyist. What exactly was your involvement in the development of this proposal?

Deliberative Process / Ex. 5

- b. If the proposal comes before EPA in any manner, will you recuse yourself from any role or involvement on it?

Deliberative Process / Ex. 5

- c. In your opinion, how would Perry's proposal, if approved by FERC, benefit Murray's coal mining assets?

Deliberative Process / Ex. 5

74. EPA Administrator Pruitt recently told CNBC that "I would not agree that [carbon dioxide is] a primary contributor to the global warming that we see." Do you agree with his statement?

Deliberative Process / Ex. 5

75. Have you reviewed EPA's endangerment finding for carbon dioxide? If not, will you commit to reviewing it before the Committee votes on your nomination?

Deliberative Process / Ex. 5

76. Do you agree with each of the following statements included in the U.S. Global Change Research Program's recent Climate Science Special Report?
- "Human-caused climate change has made a substantial contribution to [sea level rise] since 1900, contributing to a rate of rise that is greater than during any preceding century in at least 2,800 years." (page 10)
 - "The magnitude of climate change beyond the next few decades will depend primarily on the amount of greenhouse gases (especially carbon dioxide) emitted globally." (page 11)
 - "There is broad consensus that the further and faster the Earth system is pushed towards warming, the greater the risk of unanticipated changes and impacts, some of which are potentially large and irreversible." (page 11)

- d. “The world’s oceans are currently absorbing more than a quarter of the CO₂ emitted to the atmosphere annually from human activities, making them more acidic (*very high confidence*), with potential detrimental impacts to marine ecosystems.” (page 28)
- e. “The rate of acidification is unparalleled in at least the past 66 million years.” (page 28)
- f. “This assessment concludes, based on extensive evidence, that it is extremely likely that human activities, especially emissions of greenhouse gases, are the dominant cause of the observed warming since the mid-20th century. For the warming over the last century, there is no convincing alternative explanation supported by the extent of the observational evidence.” (page 10)
- g. “Human activities are now the dominant cause of the observed trends in climate.” (page 36)
- h. “[T]here are no suggested factors, even speculative ones that can explain the timing or magnitude and that would somehow cancel out the role of human factors.” (page 37)

Deliberative Process / Ex. 5