

**June 11**

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**Written Testimony**  
**House Committee on Energy and Commerce**  
**Subcommittee on Oversight and Investigations**

Thank you to Chairman Pallone and Ranking Member Walden for holding this hearing. Thank you to Chair DeGette and Ranking Member Guthrie for asking me to speak about the important work of the U.S. Environmental Protection Agency and to voice my deep appreciation and gratitude for the dedicated career staff keeping the agency going during the agency's most tumultuous time in its nearly 50 year history.

Throughout my career, I have worked for environmental agencies at all levels of government, including six governors (five Republicans and one Democrat), prior to the eight years I worked for President Obama. Throughout that time my goal has been to protect people's health from the dangers of pollution in our air, water, and land, as well as dangerous chemicals that find their way into our bodies through the food we eat, the products we produce and the places we live, work and play. Local and state environmental agencies and EPA are essentially public health agencies. What these agencies do matters. What EPA does matters. It matters to every single person living in this country and beyond because EPA's job – its mission - is to protect public health and the natural resources we depend on. EPA's measures its success based on human lives saved, fewer kids with asthma attacks, how well we ensure that all people, especially those most vulnerable, are protected against harmful exposure to pollution and communities are empowered with information and opportunities to build healthier, safer, more just and sustainable communities..

EPA was established by Richard Nixon, a Republican president. The Clean Air Act Amendments of 1990 championed by President George H.W. Bush, a Republican president. Pollution as we all know, doesn't respect political boundaries and that includes political parties. Pollution is non-partisan as is environmental protection. Which is why every leader of EPA must do their best to ensure that the work of EPA is non-partisan and driven not by party politics but by an unwavering commitment to the mission of the agency using the law, science, transparency, accountability and robust public engagement as its guideposts.

I cannot tell you how disconcerting it is to me that I am sitting here with three colleagues all of whom served as Administrators of EPA during Republican administrations – not because I don't like or respect them – I do. In fact, I admire each of them and offer my sincere gratitude for all their efforts to build an increasingly stronger, smarter and more effective EPA that I very gratefully inherited from them and others like Bill Ruckelshaus who I believe has submitted written testimony to the Subcommittee.

But I find it disconcerting because this collection of past EPA Administrators feel obligated to testify together and individually to make the case that what is happening at EPA today is simply put, not normal and to solicit your help to get it on a more productive path.

In my opinion, our beloved EPA is in serious trouble and if I am right, it means that American families are facing increasing risks to their health and wellbeing, especially the very young, the elderly and those living in poverty that are most vulnerable to the impacts of pollution. And I am hoping this subcommittee will hold EPA accountable to its duty to American families across this country who expect that laws will be

implemented, science will be followed and people across this country will have the opportunity to understand and engage in decisions that matter to their children's health and the health of future generations.

Collectively we are here to make the case that EPA's core mission remains as relevant and critical to the health of all Americans today as it has ever been. While pollution is not as visible as it was 50 years ago and EPA has over the past decades been a big part of that success, we have not completed our mission to protect public health and natural resources from the dangers of pollution.

We all know from experience that making progress on EPA's mission means respecting the enormously talented and dedicated career staff at EPA and protecting them from political interference. It means fully engaging career employees in efforts to advance the agency's mission by designing policies, programs and rules that are smart, reasonable and produce cost effective results that continue to build on EPA's solid record of success in demonstrating that a clean, healthy environment goes hand in hand with growing a strong economy. And it means the agency must fully embrace the challenge of climate change, which is the most significant threat to public health and wellbeing that humanity has ever faced.

EPA was the gold standard in environmental protection for many decades; we must strive to emulate that again. For the first time in U.S. history, our children are expected to live shorter life spans than their parents. We cannot allow ourselves to go backwards – we must go forwards.

I for one am here to implore the Subcommittee to use its authority to ensure that EPA is focused on its mission. To question whether the agency is appropriately including career staff in decision-making, is protecting scientists from political interference, and is taking actions that make our lives healthier and our natural resources cleaner. Evidence so far suggests that today's EPA is not focused on the agency's mission but is instead focused on specific results which will deliver on President Trump's campaign promises to dismantle the EPA.

With every passing day, EPA seems to be losing valuable career staff while agency leadership has been on a seemingly unstoppable crusade to rollback rules with seemingly little regard to the health impacts of their rollbacks. In short, EPA is going backwards on health protections in favor of lowering costs to polluting industries at every turn.

Over time, many of the early rollbacks failed due to process fouls or simply an inability to make sound legal arguments that the Obama rules were somehow flawed. In other cases, like the Obama Clean Car Rules, Mercury and Air Toxics Standards, Clean Power Plan and Clean Water Rule often referred to as WOTUS, EPA leadership shifted to more dangerous and insidious strategies in the design of their rollback proposals. These strategies essentially unravel decades of established "rules of the road" that guide how the agency does its business by attacking the science, changing how the agency estimates costs and benefits, and undermining implementation and enforcement of current rules. These fundamental changes to the ways in which the agency conducts its work present the gravest threat to EPA and to the health of American families. If successful, those efforts will, over time, weaken or even eliminate the ability of the agency to do its job for the American people.

It seems pertinent to note that in a few cases, the agency's appetite for rollbacks has been so voracious that EPA leadership has shown a total disregard to the concerns of the affected regulated industries who view the rollbacks as a source of unnecessary uncertainty and recommended that the agency either withdraw or moderate them. For example, Electric Edison Institute asked the EPA Administrator to not reconsider the MATS since it was essentially already complied with and any rollback could create

stranded assets. The Auto Manufacturers recently expressed their grave concerns about EPA's proposed Clean Car rollback which they see as a threat to their profits and a source of untenable instability given the timeline needed to plan model revisions. And the companies in the U.S. that manufacture chemicals that offer alternatives to highly global warming hydrofluorocarbons are seeking EPA support for SNAP rulemaking or Congressional and White House ratification of the Kigali Amendment which they estimate would add thousands of new jobs. So far, EPA seems to be turning deaf ears to these pleas and instead looking at the changes in the rules of the road as perhaps the more important, longer lasting and damaging path forward – rather than its mission.

### **Is EPA Doing Its Job?**

There seem to be a number of ways that EPA is undermining its own mission to protect public health and our precious natural resources. With the help of public information provided by the Harvard Law School Environmental & Energy Law Program that I paraphrased and embellished below, I have outlined issues that I would ask the Subcommittee to consider.

**Denying Health Benefits of Pollution Reduction:** The White House Office of Management and Budget's annual report on the costs and benefits of Obama era rules found them to be hugely cost beneficial and therefore harder to abandon (2006-2016: Benefits between \$216B and \$685B v costs between \$59B and \$88B). So if the goal of EPA is to rollback Obama rules, EPA is likely to take steps that limit the consideration of health benefits in ways that support rollbacks and erode EPA's ability and its responsibility to require more stringent pollution standards when all costs and benefits are considered. And that is exactly what we see happening.

**EX:** Even though science tells us that climate change is a global public health emergency and there is no safe level of particulate matter pollution, the *CPP Rollback Rule (ACE)* doesn't count co-benefits, doesn't count health benefits to PM pollution reductions below the NAAQS standards, limits consideration of benefits to direct U.S. carbon mitigation benefits which effectively slashes climate benefits by ignoring the effect our pollution has on other countries and applies the highest discount rate (7%) to discount the benefits climate actions provide to future generations, and shifts energy efficiency from a benefit to a cost. Even EPA's ACE analysis shows the rule would result in more pollution with carbon dioxide emissions increasing by 20 to 60 million tons per year. Similarly, emissions of pollutants like SO<sub>2</sub> and NO<sub>x</sub> would increase by 25,000 to 50,000 tons per year each as compared to the CPP. That means more emergency room visits, increased asthma rates, worsening allergies and more threats from extreme weather. This is part of a pattern of denial of climate science and its health impacts, reflecting a callous disregard for EPA's mission and an inexcusable indifference to the consequences for carbon and other pollution.

**EX:** The health impacts of mercury, a potent neurotoxin, are large and disproportionately affect children and other vulnerable populations. Children exposed to methylmercury during a mother's pregnancy can experience persistent and lifelong IQ and motor function deficits. In adults, high levels of methylmercury exposure have been associated with adverse cardiovascular effects, including increased risk of fatal heart attacks. Other adverse health effects include endocrine disruption, diabetes risk, and compromised immune function. But rather than leave the MATS Rule in place as a done deal - done well, EPA's has proposed revising the MATS appropriate and necessary finding which would completely undermine it by removing the legal prerequisite for the standards. To allow the agency to propose this change, the agency had to take positions that are contrary to OMB guidance, sound

science, and common sense, and the law. The MATS rollback excludes consideration of co-benefits, limited direct benefits to children of freshwater recreational anglers in the U.S., recent science which increased the MATS benefits to \$4.8B in 2017, and recent data that changes the \$10M estimate of annualized benefits in 2011 to an annual value between \$24B and \$80B.

**Subverting the Process of Setting Health-Based Air Quality Standards:** In addition to rollbacks, EPA leadership used a memo to change the way National Ambient Air Quality Standards are set, to consider both science and costs simultaneously when setting what has been health-based standards, which runs contrary to agency policy and practice as well as a DC Circuit opinion. In addition, EPA dismantled the PM Expert Panel right before the start of CASAC's PM NAAQS review prompting objections by a few of the newly appointed CASAC.

**Misleading on Climate Science:** Climate Science has been taken off the webpage and what's left is in archives and hard to find. Political employees have given climate change talking points to staff that sow doubt on climate science, and a climate skeptic was appointed to the Science Advisory Board. A new panel is planned at the White House to talk about Climate Security, headed by a climate skeptic. And it has been reported that the White House is curtailing the scope of federal reports, like the National Climate Assessment, by excluding information on the future impacts of climate change which can be the most damaging by far. And lastly, climate executive orders that guide agency purchases and decision-making under NEPA have been rescinded.

**Diminishing Public Accountability:** A directive has been issued that makes it harder to reach settlements on mandatory duty suits and tilts the scale in favor of regulated industry, making it harder for communities and impacted individuals to push the agency to do its job in a timely way.

**Curtailing High Quality Scientists and Science – Air Pollution:**

High quality scientists across EPA, most notable at EPA's Office of Research and Development (ORD), as well as programs including the Integrated Risk Information System and the National Center for Environmental Assessment have been in EPA leadership's firing line. While efforts to defund ORD research have been unsuccessful, scientists at management levels across the agency, including ORD have been transferred to new offices and given new assignments that are at times far afield of their current responsibilities.

Scientific advisors have been removed from panels and replaced with industry scientists and at least one of those industry scientists is a known climate skeptic.

EPA leadership has redefined conflict of interest to preclude scientists who have received an EPA agency grant from serving as an advisor but no exclusion for scientists working for regulated industry. Under the guise of *Transparency*, the kind of science that EPA can take into consideration has changed, eliminating from consideration any studies that do not make all raw data public to allow researchers to reproduce results. This directive targets in particular two peer-reviewed studies called the Harvard Six-Cities Study and the American Cancer Society Prevention Study that relied on confidentiality agreements and the collection of HIPPA protected personal data that cannot be made public. While these studies were thoroughly peer reviewed and the Harvard study was independently reanalyzed using the raw data accessed through a confidentiality agreement, EPA plans to preclude both studies from consideration even though – or more likely because - they provide the data that enables EPA to represent the health benefits

of reducing pollution in terms of dollar values and provide meaningful cost benefit information that allows EPA to roughly capture the scale of the benefits. This directive will also make it impossible to utilize analysis of unique events as well as some older studies where raw data may not be available. In sum, the Transparency rule is not about transparency, it is a poorly disguised attack on cost-benefit analysis to weaken the ability of the agency to consider the best science and the full health benefits associated with pollution reductions. It flies in the face of a 2002 DC circuit decision that preserved the agency's ability to consider these studies, recognizing the impracticality and unreasonableness of requiring raw data to be made publicly available.

EPA is also proposing to broadly – even beyond the ACE rule discussed above - to eliminate consideration of benefits below NAAQS thresholds by eliminating the weight of the evidence approach currently used to assess the existence and strengths of links between air pollution and health. At the request of the new SAB Chair, the SAB is considering a shift away from the consideration of multiple lines of evidence across different disciplines and instead rely solely on a specific narrow approach to inform causality determinations which the Chair has developed. This proposed shift in framework has raised significant concern to SAB members and other scientists who believe that the Cox method has not been sufficiently tested or proven and places a nearly unattainable burden of proof which could limit protections for those who need protections most. The SAB appears to be having significant discussions about the Cox proposal and the full SAB has decided to review the Transparency rule given its broad impacts on the agency's ability to consider the benefits of reducing PM. Reductions in PM pollution accounts for 1/3<sup>rd</sup> to 1/2 of all monetized benefits of all major federal rules. If agency leadership were looking to weaken the ability of the agency to do its job, I can see no more effective way to accomplish this than by seeking to make these changes to the way science is taken into considered by the agency. These arguments are expressed in more detail in "Don't abandon evidence and process on air pollution policy" by Gretchen T. Goldman and Francesca Dominici in Science Magazine.

**EX:** The newly reconstituted SAB is currently reviewing the WOTUS rollback. Recent news articles report that the SAB members were somewhat perplexed when they were told that their review should consider the rule a policy determination, not a science matter so they should limit their scope of review. According to an *E&E News* article, members of the SAB have significant concerns that the WOTUS rollback was inconsistent with the science summarized in the Connectivity Report that the SAB produced during the Obama Administration and instead failed to include protections for ephemeral streams and other water features that the SAB had identified as warranting protections. It is hard to understand how EPA leadership can separate policy from science when making what are essentially science decisions. As David Gray at IIASA once said, "Science with policy is science, policy without science is gambling."

**Stepping Back from Air Program Enforcement:** The Assistant Administrator for the Office of Air & Radiation has issued non-binding guidance, exchanged letters with outside parties, and responded directly to industry inquiries to provide direction that in essential and consequential ways, changes the way the agency is implementing CAA permitting without - or prior to in some cases - soliciting any public comment. These informal directives and clarifications allow companies to break up their facilities into smaller units to avoid major permitting obligations, change the way emissions are calculated to avoid the need for pollution controls to avoid increases in emissions, and tell the agency career staff that they can no longer scrutinize industry emissions estimates in certain permit applications which they have always double checked to ensure compliance – leaving emission estimates solely in the hand of the regulated industries. This directive flies in the face of ruling in the

DC circuit that confirmed the agency's authority to check those numbers. The Assistant Administrator must remember that decision clearly since he was the lawyer on the losing side of that argument.

Other memos and informal guidance have weakened the Good Neighbor Provisions under the CAA and abandoned the "Once in Always in Policy" to allow major sources of hazardous air pollutants that were required to install modern technology to meet the levels of reductions of the best industry performers, to emit more than the equipment is capable of reducing rather than the reductions required at the time of permitting.

EPA is also stepping back from enforcement undermining the rule of law that has set EPA apart from environmental protection efforts in many other countries. Contrary to the rhetoric in the 2018 Year in Review and the impressive Obama Administration accomplishments reflected in Trump EPA's 2017 enforcement numbers, the Trump EPA enforcement numbers are abysmal. Civil penalties dropped dramatically in Trump's first two years to the lowest levels since 1994. In the two decades before Trump, EPA civil penalties averaged higher than \$500M when adjusted for inflation. Last year, civil penalties totaled \$72M, 85% lower than the average of the last two decades. That is the lowest amount on record since the Office of Enforcement and Compliance Assistance was established.

**Impairing Critical Information-Gathering:** A new EPA directive was issued requiring that all requests for information from polluters be sent to headquarters for approval, adding a significant barrier to investigations and enforcement – with no assurance that the review will be insulated from political influence.

**Politicizing Grants and More:** While EPA grants are relatively modest in size, it's important that the grantmaking process be free political influence for what seems like obvious reasons. However, EPA chose to send all grants to a political appointee who was engaged in the Trump campaign for final review. It was reported that he advised colleagues that he would be looking for certain phrases like climate change when conducting his review. Clearly that opens up concerns that EPA funds are being politically directed. But the potential for politicization of grants seems to pail in significance to the potential for conflicts of interest among the EPA senior management. To outsiders like me, it sure looks like the fox is minding the henhouse.

In addition, the current Administrator spent years as an energy industry lobbyist. His former clients created an action plan which calls for cutting the agency and overturning rules limiting mercury, carbon and air pollution- which he is now acting on. Political leadership worked for industry lobbying groups like the National Mining Association, the American Petroleum Institute, the American Fuel & Petrochemical Manufacturers, the American Chemistry Council, and the National Association of Manufacturers. They've worked for oil and gas companies, electric utilities, Koch subsidiaries and affiliated organizations and others whose priorities are profits over people. Behind-the-scenes, the Utility Air Regulatory Group, run by Hunton & Williams, participated in advocacy for over 40 electric companies and trade associations, fighting EPA's climate rules and mercury standards and permitting for conventional pollutants, especially ozone. And the current Assistant Administrator and General Counsel for EPA's Office of Air and Radiation were both lawyers at that firm and are now using their current positions to try and rollback or change regulations throughout the agency.

### **Why EPA's Rigorous Pursuit of Its Mission Matters**

The ability and willingness of EPA to do its job matters to me, as does the ability of the U.S. to once again actively participate in the Paris Agreement and lead a worldwide effort to get to zero carbon emissions in

the timeline science demands. And it should matter to each and every one of you regardless of your party affiliation. Why? Because we all love our families. We want to protect them and keep them healthy and safe – now and in the future. And we all have a moral responsibility to our children to protect them from pollution today while we act on climate to protect their future. We cannot let EPA turn its back on its mandate to protect human health and the environment.

I fully realize that as hard as the four of us on this panel have worked, we still have a lot more to do to address our pollution and public health challenges. We cannot allow our country to put the needs of special interests above the health and future of our kids. In the onslaught of controversies this administration is creating that threaten to overwhelm us, we cannot lose sight of the core values that bind us together. Surely one of those values must be protecting the health and wellbeing of our kids.

Thank you for your attention and I look forward to working with the Subcommittee in its important efforts to keep federal agencies focused on the job Congress gave them.

