

Message

From: Executive Director [ExecutiveDirector@nationalenergyresources.com]
Sent: 6/3/2017 9:29:25 PM
To: Bolen, Brittany [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31e872a691114372b5a6a88482a66e48-Bolen, Brit]
Subject: Tuesday, June 6 NERO Annual Awards Dinner - Reply Requested

Importance: High

Brittany ---

Are you able to join us for the **Tuesday, June 6 NERO Annual Awards Dinner** at the Capitol Hill Hyatt Regency? (*invitation below*)

As this is a seated dinner, I am checking on people who have been requested by a NERO member(s) to sit at their table.

Please do not hesitate to give me a call if you have any questions.

All the best,

Carole

Carole Goeas, Executive Director
National Energy Resources Organization (NERO)
Cell: [redacted] Ex. 6
ExecutiveDirector@NationalEnergyResources.com
www.nationalenergyresources.com



Please let us know as soon as possible if you are able to join us for the Tuesday, June 6th NERO Annual Awards Dinner!



NERO ANNUAL AWARDS DINNER



National Energy Resources Organization
is pleased to present the
2017 Distinguished Service Award
to
U.S. Senator John Barrasso
Chairman, Senate Republican Policy Committee

Tuesday, June 6, 2017

Pre-Dinner Cocktail Reception
5:30-6:45 p.m.
Dinner & Awards Program 7 p.m.

Hyatt Regency on Capitol Hill
400 New Jersey Avenue, NW
Washington, DC

Telephone: 703-548-1764
Email: ExecutiveDirector@NationalEnergyResources.com
#NERO2017

Invitations are not transferable.

2017 NERO EXECUTIVE COMMITTEE

Joy Dato, Chairman
Utilities Technology Council
Laura Marshall Schepis, President

Bree Raum, Senior Vice President
American Gas Association
Marnie Funk, V.P. Awards
Shell Oil Company
Kerry Caulton, V.P. Membership
American Petroleum Institute
Jeanne Mitchell, Treasurer
ExxonMobil
Kelly Chapman, Secretary
Dominion

Randall Davis, Counsel
Stutz, Davis & Staffer, PC
Christopher Guith, Chairman Emeritus
US Chamber of Commerce/
Institute for 21st Century Energy
Carole Gosso, Executive Director
Carole Gosso & Associates, LLC

2017 NERO BOARD OF DIRECTORS

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Jackie Carney, Enbridge
Brenda Esterson, Salt River Project
Allison Groves, Entergy
Allison Hall, Sempra Energy
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Joy Martin, Constellation Energy
Chris Pannella, Valero
Mike Sewell, Duke Energy
Kathy Steckelberg, Edison Electric Institute
Majida Umar, Telfer Investments
Lisa Van Vorst, Nuclear Energy Institute
Andrew Wheeler, Fortra80
Brendan Williams, PBF Energy
Monique Wynn, NRECA

Please Note: Counsel has advised that under House and Senate rules this is a "widely-attended event." Under these rules, only NERO may extend invitations to House and Senate Members or staff to attend this event. Individual members of NERO are not permitted to extend invitations. Violations of these rules may result in criminal liability.

Message

From: Dravis, Samantha [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=ECE53F0610054E669D9DFFE0B3A842DF-DRAVIS, SAM]
Sent: 7/21/2017 5:42:57 PM
To: Pagano, Peter A [peter.a.pagano@boeing.com]
CC: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]; Bolen, Brittany [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31e872a691114372b5a6a88482a66e48-Bolen, Brit]; Martella, Roger(GE Corporate) [Roger.Martella@ge.com]; Fitzpatrick, Michael (GE Corporate) [michael.fitzpatrick@ge.com]; Prowitt, Peter (GE Corporate) [Peter.Prowitt@ge.com]; Austell, Theodore [theodore.austell@boeing.com]; Moloney, John M [John.M.Moloney@boeing.com]
Subject: RE: Thank you and peer review request fyi

Thank you for this information, Peter. We will look into this.

Good to see you at the meeting.

From: Pagano, Peter A [mailto:peter.a.pagano@boeing.com]
Sent: Friday, July 21, 2017 12:52 PM
To: Dravis, Samantha <dravis.samantha@epa.gov>
Cc: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>; Martella, Roger(GE Corporate) <Roger.Martella@ge.com>; Fitzpatrick, Michael (GE Corporate) <michael.fitzpatrick@ge.com>; Prowitt, Peter (GE Corporate) <Peter.Prowitt@ge.com>; Austell, Theodore <theodore.austell@boeing.com>; Moloney, John M <John.M.Moloney@boeing.com>
Subject: Thank you and peer review request fyi

Hi Samantha,

Thank you again for setting up the meeting with the Administrator for us and GE. We thought it was a very constructive discussion and look forward to working with you and the rest of the team in the future to advance aviation manufacturing in the US.

I did want to take this opportunity to followup on one question that was raised regarding work on the aircraft proposal by OTAQ and make sure you were aware of a request sent to one of our engineers. Just to be clear, we have not had a face to face meeting with OTAQ since last Fall, but we understand that they have engaged a contractor (EnDyna) to facilitate a peer review of a technical report that was cited in the previous actions regarding aircraft that the program took in 2015 and 2016. We learned of this when one of our technical fellows was recently sent an email by the contractor asking if he was interested in participating in a document review. Unfortunately, he did not feel he was the right fit for this opportunity and declined. However, we believe if this type of work is proceeding industry should be represented in the peer review process. Although we have not been asked to propose names of possible alternate reviewers we intend to forward additional potential candidates (with and without a Boeing connection) for consideration for this activity. Please let me know if you have any questions or concerns and we look forward to speaking with you again soon.

All the best,

Peter A. Pagano
Director, Environment
The Boeing Company

Ex. 6

Email: peter.a.pagano@boeing.com

Message

From: Dravis, Samantha [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=ECE53F0610054E669D9DFFE0B3A842DF-DRAVIS, SAM]
Sent: 9/11/2017 12:52:30 PM
To: Martella, Roger(GE Corporate) [Roger.Martella@ge.com]
CC: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]; Bolen, Brittany [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31e872a691114372b5a6a88482a66e48-Bolen, Brit]; Pagano, Peter A [peter.a.pagano@boeing.com]; Inge, Carolyn [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7f763e42702a4f468cdf42323ee94520-Cinge]; Kime, Robin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7ef7b76087a6475b80fc984ac2dd4497-RKime]
Subject: RE: Thank you and peer review request fyi

Thanks, Roger. I should have some availability to meet both of those days. Copying in Robin and Carolyn who can find a good time.

From: Martella, Roger(GE Corporate) [mailto:Roger.Martella@ge.com]
Sent: Monday, September 11, 2017 8:22 AM
To: Dravis, Samantha <dravis.samantha@epa.gov>
Cc: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>; Pagano, Peter A <peter.a.pagano@boeing.com>
Subject: Re: Thank you and peer review request fyi

Samantha—I hope you are doing well. Thank you again for all the work EPA is doing regarding the ICAO fuel efficiency standards. We have updates for you regarding the follow up questions. Would you be available to visit with Boeing and GE on Monday, September 18, or Tuesday, September 19? Thank you -- Roger

From: "Dravis, Samantha" <dravis.samantha@epa.gov>
Date: Friday, July 21, 2017 at 1:43 PM
To: "Pagano, Peter A" <peter.a.pagano@boeing.com>
Cc: "Gunasekara, Mandy" <gunasekara.mandy@epa.gov>, "Bolen, Brittany" <Bolen.brittany@epa.gov>, "Martella, Roger(GE Corporate)" <Roger.Martella@ge.com>, "Fitzpatrick, Michael (GE Corporate)" <michael.fitzpatrick@ge.com>, "Prowitt, Peter (GE Corporate)" <Peter.Prowitt@ge.com>, "Austell, Theodore" <theodore.austell@boeing.com>, "Moloney, John M" <John.M.Moloney@boeing.com>
Subject: EXT: RE: Thank you and peer review request fyi

Thank you for this information, Peter. We will look into this.

Good to see you at the meeting.

From: Pagano, Peter A [mailto:peter.a.pagano@boeing.com]
Sent: Friday, July 21, 2017 12:52 PM
To: Dravis, Samantha <dravis.samantha@epa.gov>
Cc: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>; Martella, Roger(GE Corporate) <Roger.Martella@ge.com>; Fitzpatrick, Michael (GE Corporate) <michael.fitzpatrick@ge.com>; Prowitt, Peter (GE Corporate) <Peter.Prowitt@ge.com>; Austell, Theodore <theodore.austell@boeing.com>; Moloney, John M <John.M.Moloney@boeing.com>
Subject: Thank you and peer review request fyi

Hi Samantha,

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I did want to take this opportunity to followup on one question that was raised regarding work on the aircraft proposal by OTAQ and make sure you were aware of a request sent to one of our engineers. Just to be clear, we have not had a face to face meeting with OTAQ since last Fall, but we understand that they have engaged a contractor (EnDyna) to facilitate a peer review of a technical report that was cited in the previous actions regarding aircraft that the program took in 2015 and 2016. We learned of this when one of our technical fellows was recently sent an email by the contractor asking if he was interested in participating in a document review. Unfortunately, he did not feel he was the right fit for this opportunity and declined. However, we believe if this type of work is proceeding industry should be represented in the peer review process. Although we have not been asked to propose names of possible alternate reviewers we intend to forward additional potential candidates (with and without a Boeing connection) for consideration for this activity. Please let me know if you have any questions or concerns and we look forward to speaking with you again soon.

All the best,

Peter A. Pagano
Director, Environment
The Boeing Company

Ex. 6

Email: peter.a.pagano@boeing.com

To: Paul Bailey[pbailey@americaspower.org]
From: Paul Bailey
Sent: Tue 3/13/2018 5:16:31 PM
Subject: "Coal Facts" Attached
[Coal Facts March 2018.pdf](#)

Attached is a short paper we call "Coal Facts" because it includes information related to coal-fired electricity and the coal fleet. We hope you find it useful as a reference. Most of the data are taken from independent sources, in particular, the Energy Information Administration (EIA). The paper relies on the most current information available as of this month.

Paul Bailey

President & CEO

American Coalition for Clean Coal Electricity

T: [Ex. 6] | M: [Ex. 6]

pbailey@americaspower.org

COAL FACTS

We call this paper “Coal Facts” because it includes information related to coal-fired electricity and the coal fleet. Most of the data are taken from independent sources, in particular, the Energy Information Administration (EIA). The paper relies on the most current information available as of March 2018.

ELECTRICITY SOURCES —

- ✓ Coal was responsible for 30.1% of electricity generated in the U.S. during 2017. Natural gas was responsible for 31.7%, nuclear power 20%, and renewable energy (including hydroelectric power) 17.1%. Non-hydroelectric renewables (wind, solar, geothermal, and biomass) were responsible for 9.7%.¹
- ✓ Coal is projected by EIA to provide 28.6% of U.S. electricity in 2018 and 28.5% in 2019. Natural gas is projected to generate 33.9% of U.S. electricity in 2018 and 34.2% in 2019.²
- ✓ In 2030, coal is projected to provide 29% of U.S. electricity generation, with natural gas providing 31%.³

COAL FLEET —

- ✓ At the end of 2016, there were 381 coal-fired power plants in the U.S.⁴ As of February 2018, there were 810 individual coal-fired electric generating units (EGUs) at these power plants representing a total of approximately 260,000 megawatts (MW) of electric generating capacity.⁵ For perspective, there were 317,000 MW of coal-fired electric generating capacity in 2010.⁶
- ✓ About two-thirds of the nation’s coal-fired electric generating capacity is located in RTO/ISO regions. The regions with the largest amounts of coal capacity are MISO (63,000 MW), PJM (60,000 MW), SPP (26,000 MW), and ERCOT (15,000 MW).⁷
- ✓ EIA projects that the U.S. coal fleet will total 190,000 MW by 2028 and thereafter.⁸
- ✓ The average capacity factor of the U.S. coal fleet was 53.5% in 2017, whereas it was 68% in 2010.⁹
- ✓ As of December 2017, the average coal plant burning subbituminous coal had a stockpile that represented 94 days of burn; plants burning bituminous coal had a stockpile representing 87 days of burn. Over the last five years, the average subbituminous coal plant had a stockpile of

- 74 days of burn; the average bituminous plant had a stockpile of 81 days of burn.¹⁰
- ✓ Since 2010, owners of coal-fired EGUs have announced that almost 111,000 MW of coal-fired generating capacity has retired, will be retiring, or will be converting to other fuels, with nearly two-thirds of these shutdowns occurring by the end of 2017. Ohio, Indiana, Pennsylvania, Texas, Illinois, Alabama, Florida, Michigan, North Carolina, and Kentucky have the most retirements.¹¹
 - ✓ The average age at the time of retirement for the coal units that have retired through 2017 was 59 years, and the average size of these units was 141 MW. The average age of the remaining coal fleet (units greater than 25 MW) is 42 years, and the average size is 353 MW.¹²

COAL AND NATURAL GAS PRICES —

- ✓ The table below compares EIA-projected coal and natural gas prices (\$ per MMBtu) delivered to the electric power sector:¹³

	2018	2019	2020	2030	2040
Natural gas	\$3.61	\$3.45	\$4.14	\$4.61	\$4.85
Coal	\$2.21	\$2.21	\$2.24	\$2.31	\$2.41

- ✓ EIA projects that natural gas prices for electric power generation will increase by 34% in real terms (excluding inflation) between 2018 and 2040. Coal prices are projected to rise 9% over the same period.¹⁴

CLEANER COAL —

- ✓ Emissions per kilowatt-hour (kWh) of sulfur dioxide (SO₂), nitrogen oxides (NO_x), and particulate matter (PM) from the coal fleet have been reduced by 93% over the period 1970-2017.¹⁵
- ✓ Approximately \$122 billion had been invested in emission controls through 2017. Owners of coal-fired power plants are expected to spend an additional \$5 billion for emission controls through 2020.¹⁶
- ✓ Virtually all U.S. coal-fired electric generating capacity has installed advanced controls to reduce emissions of SO₂, NO_x, PM, mercury, acid gases, and non-mercury metals.¹⁷

STATES —

- ✓ Coal is used to generate electricity in 48 states. Only Rhode Island (mostly natural gas) and Vermont (mostly renewables) do not generate any electricity from coal.¹⁸
- ✓ Coal provides at least half the electricity in 13 states and at least one quarter of the electricity in 24 states.¹⁹

- ✓ During 2017, the ten states that generated the most kWhs of electricity from coal were Texas, Indiana, Ohio, West Virginia, Missouri, Illinois, Kentucky, Pennsylvania, Michigan, and Wyoming.²⁰
- ✓ During 2017, the ten states with the highest percentage of electricity generated by coal were West Virginia (93%), Wyoming (86%), Missouri (81%), Kentucky (79%), Indiana (72%), Utah (72%), North Dakota (66%), Nebraska (60%), Ohio (58%), and Wisconsin (55%).²¹

COAL PRODUCTION —

- ✓ Coal is mined in 25 states and is responsible for over 500,000 U.S. jobs.²² In 2016, Wyoming was the largest coal-producing state, followed by West Virginia, Pennsylvania, Illinois, and Kentucky.²³ Approximately 60% of coal was produced west of the Mississippi River and 40% from the east.²⁴
- ✓ According to EIA, domestic coal production totaled 728 million tons in 2016 and 772 million tons in 2017. EIA projects U.S. coal production to be 736 million tons in 2018 and 745 million tons in 2019.²⁵

March 2018

¹ U.S. Energy Information Administration (EIA), *Electric Power Monthly*, February 2018 edition, with data through December 2017. Percentages are for utility-scale generation and do not include EIA's estimate of distributed solar generation.

² EIA, *Short Term Energy Outlook*, March 6, 2018.

³ EIA, *Annual Energy Outlook 2018*.

⁴ EIA, "Count of Electric Power Industry Power Plants By Sector, by Predominant Energy Sources Within Plant, 2006-2016," *Electric Power Annual 2016*, December 2017.

⁵ EIA *Electric Power Monthly*, February 2018; SNL Energy data accessed March 5, 2018. Units includes those 10 MW or greater in size.

⁶ EIA, *Electric Power Annual 2015*, November 2016.

⁷ SNL Energy data accessed March 6, 2018

⁸ EIA, *Annual Energy Outlook 2018*. Capacity represents EIA's reference case.

⁹ EIA, *Electric Power Monthly*, February 2018; February 2014 (for 2010 data).

¹⁰ EIA, *Electricity Monthly Update* with data for December 2017, February 27, 2018.

¹¹ ACCCE, *Retirement of Coal-Fired Electric Generating Units as of January 17, 2018*. Sources for the retirements are EIA, SNL Energy, and company announcements.

¹² ACCCE, *Retirement of Coal-Fired Electric Generating Units as of January 17, 2018*; SNL Energy data as of March 6, 2018.

¹³ For 2018 and 2019, EIA, *Short Term Energy Outlook*, February 2018. For 2020, 2030, and 2040, EIA, *Annual Energy Outlook 2018*. (STEO \$ are nominal; AEO \$ are 2017\$.)

¹⁴ EIA, *Annual Energy Outlook 2018*.

¹⁵ EIA, *Electric Power Monthly*, February 2018; U.S. EPA, *National Emissions Inventory, Air Pollutant Emissions Trends Data, 1970-2016, Fuel Combustion Electric Utilities*; EPA Air Markets Program data queried March 7, 2018.

¹⁶ Energy Ventures Analysis, Inc., *Capital Investments in Emission Control Retrofits in the U.S. Coal-fired Generating Fleet through the Years – 2016 Update*, January 26, 2016.

¹⁷ SNL Energy data.

¹⁸ EIA, *Electric Power Monthly*, February 2018.

¹⁹ *Ibid.*

²⁰ *Ibid.*

²¹ *Ibid.*

²² EIA, *Annual Coal Report*, November 2017, Table 1, Coal Production and Number of Mines by State and Mine Type; National Mining Association, *The Economic Contributions of U.S. Mining (2015 Update)*, September, 2016.

²³ EIA, *Annual Coal Report*, November 2017.

²⁴ *Ibid.*

²⁵ EIA, *Short Term Energy Outlook*, March 2018.

To: Paul Bailey[pbailey@americaspower.org]
From: Paul Bailey
Sent: Wed 10/25/2017 5:27:30 PM
Subject: Coal Retirements (Update Attached)
[Coal Unit Retirements Oct 2017.pdf](#)

Attached is a one-pager and a table that summarize Vicky's ongoing compilation of coal retirements. (You'll notice that we've changed the format slightly and added information specifically on retirements in the ISO/RTO regions.) This is an update since the last one in June. Since that time, an additional 7,000 MW of retiring coal capacity (13 units) have been announced. In total, some 108,000 MW of coal-fired capacity in 43 states have retired or announced retirement.

The top ten states for coal retirements are (in order) Ohio, Indiana, Illinois, Pennsylvania, Texas, Alabama, North Carolina, Michigan, Kentucky and Georgia. President Trump carried all of these except Illinois in last year's election.

Paul Bailey
President & CEO
American Coalition for Clean Coal Electricity
T: M:
pbailey@americaspower.org

RETIREMENT OF U.S. COAL-FIRED GENERATING UNITS¹

Status as of October 24, 2017

Retirements —

Since 2010, power plant owners have announced the retirement, or conversion to other fuels, of a large number of coal-fired electric generating units.² The table on the following page summarizes all publicly announced retirements through 2030. The table shows that 599 coal-fired generating units in 43 states — totaling almost 108,000 megawatts (MW) of generating capacity — have retired or announced plans to retire. (This represents the retirement of an additional 7,000 MW and 13 coal-fired generating units since the last ACCCE update in June.) These retirements comprise slightly more than one-third of the U.S. coal fleet that existed in 2010. So far, approximately 66,000 MW of coal-fired generating capacity have retired. Between 2018 and 2020, an additional 23,000 MW are expected to retire, bringing total retirements to 89,000 MW by the end of 2020.

EPA-Attributed Retirements —

The table also includes retirements that have been explicitly attributed, at least in part, to EPA regulations and policies. These EPA-caused retirements total 454 units and represent almost 76,000 MW of coal-fired electric generating capacity, with 54,000 MW having already retired.

ISO/RTO Retirements —

Some 45,000 MW of coal-fired generating capacity in ISO/RTO regions have retired. An additional 14,000 MW in these regions are slated to retire over the period 2018 to 2020, of which 8,400 MW have been attributed to wholesale electricity market conditions. The regions with the most retirements from 2010 through 2020 are PJM (30,300 MW); MISO (12,900 MW), ERCOT (5,700 MW), and SPP (4,300 MW).

¹ These retirements and conversions is based primarily on public announcements by the owners of the coal units. We also use other information sources that are reliable. These retirements and conversions are *not* based on modeling projections. We do not include small (less than 25 MW) cogeneration units. Since most of these units are retiring, not converting to another fuel, we use the term “retirements” in this paper to characterize units that may be either retiring or converting.

² In 2010, according to EIA, the U.S. coal fleet was comprised of 1,396 electric generating units located at 580 power plants for a total generating capacity of approximately 317,000 MW.

	MW RETIRING	UNITS RETIRING
1. Ohio	11,491 ³ / 6,421 ⁴	58 / 40
2. Indiana	6,569 / 6,129	39 / 34
3. Illinois	6,173 / 3,076	22 / 14
4. Pennsylvania	5,737 / 5,548	33 / 30
5. Texas	5,672 / 1,399	10 / 3
6. Alabama	5,166 / 5,166	26 / 26
7. North Carolina	4,615 / 2,783	37 / 20
8. Michigan	4,500 / 4,075	39 / 31
9. Kentucky	3,896 / 3,471	18 / 16
10. Georgia	3,752 / 3,249	17 / 15
11. Arizona	3,482 / 3,482	8 / 8
12. Florida	3,150 / 1,568	10 / 7
13. Virginia	3,120 / 2,354	27 / 16
14. West Virginia	2,740 / 2,740	18 / 18
15. Nevada	2,689 / 0	8 / 0
16. Tennessee	2,659 / 2,659	17 / 17
17. Colorado	2,405 / 1,699	16 / 13
18. Missouri	2,372 / 2,355	24 / 23
19. Minnesota	2,288 / 2,150	17 / 15
20. Montana	2,248 / 154	5 / 1
21. Utah	2,072 / 272	7 / 5
22. Oklahoma	1,954 / 1,954	4 / 4
23. Iowa	1,832 / 1,564	32 / 28
24. South Carolina	1,768 / 1,768	14 / 14
25. Massachusetts	1,663 / 1,408	8 / 6
26. Arkansas	1,659 / 1,659	2 / 2
27. New York	1,588 / 475	13 / 3
28. New Jersey	1,543 / 268	6 / 2
29. Wisconsin	1,525 / 1,287	23 / 16
30. Washington	1,376 / 0	2 / 0
31. New Mexico	1,375 / 1,375	5 / 5
32. Nebraska	757 / 637	6 / 5
33. Mississippi	706 / 706	2 / 2
34. Oregon	585 / 585	1 / 1
35. Louisiana	575 / 575	1 / 1
36. Connecticut	566 / 0	2 / 0
37. Kansas	478 / 478	6 / 6
38. Delaware	360 / 0	4 / 0
39. Maryland	250 / 115	3 / 2
40. North Dakota	189 / 0	1 / 0
41. California	129 / 0	3 / 0
42. Wyoming	49 / 49	4 / 4
43. South Dakota	22 / 22	1 / 1
43 / 37 States	107,745 / 75,675 MW	599 / 454 Units

³ Total coal retirements.

⁴ Coal retirements attributed to EPA regulations and policies.

To: Bolen, Brittany[bolen.brittany@epa.gov]
From: Paul Bailey
Sent: Thur 8/17/2017 6:20:23 PM
Subject: CCR letter attached
[EPA CCR Letter August 16.pdf](#)

FYI.

Paul Bailey

President & CEO

American Coalition for Clean Coal Electricity

T: M:

pbailey@americaspower.org



August 16, 2017

Mr. E. Scott Pruitt
Administrator
United States Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Administrator Pruitt:

We are writing to urge that the United States Environmental Protection Agency ("EPA") take immediate steps to postpone the compliance deadlines under the Coal Combustion Residuals ("CCR") rule. Although EPA has just issued guidance to the states on implementation of the CCR rule, the guidance does nothing to avoid the additional coal plant retirements that will result from this rule over the next few years.

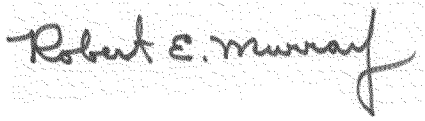
An estimated sixty percent (60%) (about 150,000 megawatts) of the U.S. coal fleet's electric generating capacity relies on unlined surface impoundments and, therefore, is at risk because of the CCR rule. Many electric utilities that operate coal-fired power plants will undertake compliance steps soon that could lead to plant retirement decisions within a year unless the compliance deadlines are postponed.

Besides the threat of these coal-fired generating unit retirements, the required compliance steps will likely be unnecessary and wasteful for many coal plants because there are likely to be changes to the CCR Rule. These changes are expected as a result of the pending petition for reconsideration filed by the Utility Solid Waste Activities Group and the passage of the WIIN Act to authorize implementation of the CCR rule through state permit programs.

As you know, we are very appreciative of the efforts by you and President Donald J. Trump to help the coal industry. Thank you for considering our request that the EPA postpone the CCR compliance deadlines.

Sincerely,

The American Coalition for Clean Coal Electricity

Handwritten signature of Robert E. Murray in black ink.

Robert E. Murray
Chairman

Handwritten signature of Paul Bailey in black ink.

Paul Bailey
President and CEO

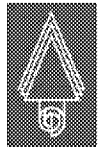
Message

From: Noe, Paul [Paul_Noel@afandpa.org]
Sent: 3/20/2018 1:59:22 PM
To: Bolen, Brittany [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31e872a691114372b5a6a88482a66e48-Bolen, Brit]
Subject: Testimony on Regulatory Transparency
Attachments: Testimony Regulatory Transparency NOE House COGR 031418.pdf

Flag: Follow up

Brittany: FYI, attached is my testimony from last week's hearing on regulatory transparency before the House Committee on Oversight and Government Reform. See Section II, p. 11.

Paul



**American
Forest & Paper
Association**



AMERICAN WOOD COUNCIL

**Statement of Paul R. Noe
Vice President, Public Policy
American Forest & Paper Association
American Wood Council**

Before

**House Committee on Oversight and Government Reform
“Shining Light on the Federal Regulatory Process”
March 14, 2018**

Chairman Gowdy, Ranking Member Cummings, and Members of the Committee, my name is Paul Noe, and I am the Vice President for Public Policy for the American Forest & Paper Association and the American Wood Council. Thank you for the honor to testify before you on regulatory transparency. This is a fundamentally important issue that goes to the heart of our governmental system -- due process, fundamental fairness and accountability, and we applaud the Committee for doing the hard work of addressing it.

I have been involved in regulatory policy in Washington for over 32 years, including the privilege of having served as counsel to Chairmen Fred Thompson, Ted Stevens and Bill Roth on the Senate Governmental Affairs Committee, and as a drafter of agency good guidance practices when I served as Counselor to Administrator John Graham at the Office of Information and Regulatory Affairs (OIRA) in the White House Office of Management and Budget (OMB). My experience working for the heavily regulated forest products industry for the last nine years further reinforces my appreciation of the importance of transparency and accountability in our regulatory process. Today, I would like to focus on a handful of specific agency problems and offer some solutions regarding the need for: (1) better compliance with good guidance practices; (2) stronger compliance with presidential orders on benefit-cost analysis, such as Executive Order 12866, by interpreting regulatory statutes to allow for balancing the benefits and costs of regulations to maximize societal well-being; (3) greater transparency about the key information supporting regulatory decisions; and (4) better compliance with the Congressional Review Act.

The American Forest & Paper Association (AF&PA) serves to advance a sustainable U.S. pulp, paper, packaging, tissue and wood products manufacturing industry through fact-based public policy and marketplace advocacy. AF&PA member companies make products essential for everyday life from renewable and recyclable resources and are

committed to continuous improvement through the industry's sustainability initiative - *Better Practices, Better Planet 2020*. The forest products industry accounts for approximately 4 percent of the total U.S. manufacturing GDP, manufactures over \$200 billion in products annually, and employs approximately 900,000 men and women. The industry meets a payroll of approximately \$50 billion annually and is among the top 10 manufacturing sector employers in 47 states.

The American Wood Council (AWC) is the voice of North American wood products manufacturing, representing over 75 percent of an industry that provides approximately 400,000 men and women in the United States with family-wage jobs. AWC members make products that are essential to everyday life from a renewable resource that absorbs and sequesters carbon. Staff experts develop state-of-the-art engineering data, technology, and standards for wood products to assure their safe and efficient design, as well as provide information on wood design, green building, and environmental regulations. AWC also advocates for balanced government policies that affect wood products. AF&PA and AWC work together to advance policies of issues of mutual concern, including regulatory reform.

I. The Need for Better Good Guidance Practices.

The forest products industry has seen both sides of the coin on agency guidance. In some instances, questions of implementation can be appropriately, effectively and efficiently resolved through guidance. In others, the use of agency guidance may lack appropriate transparency and due process, even to the point of inappropriately and unlawfully substituting for regulation. Accordingly, AF&PA and AWC support legislative and administrative efforts that ensure transparency, due process and effective management for significant agency guidance.

A. Background¹

President Reagan's Executive Order 12291, which firmly established OMB review of rules, was quite broad in scope and applied to virtually all "rules" -- including both regulations (legally binding legislative rules) and agency guidance (non-binding interpretive rules and policy statements). When President Clinton replaced the Reagan Order in 1993 with Executive Order 12866, it honed in on "significant" regulatory actions. Given the vastness of federal regulatory activity, and the limited resources of OIRA, it was eminently sensible to try to sort the significant agency activity from the insignificant. The problem is that while the Clinton Order applied to significant regulations, it neglected guidance documents -- covering only rules that "the agency intends to have the force and effect of law." But there is no doubt that guidance documents can be quite significant. In fact, agencies issue over 3400 regulations

¹ See John D. Graham and Paul R. Noe, "Due Process and Management for Guidance Documents: Good Governance Long Overdue," 1 Yale J. on Reg. 103 (2008).

annually, but the volume of guidance documents is orders of magnitude larger,² and nobody actually knows how many there are.

Starting in 2002, as part of its obligation to provide recommendations for reform under the “Regulatory Right-to-Know Act,” OIRA requested public comment on problematic agency guidance and regulations, and received public nominations of 49 problematic guidance documents in need of reform.³ OIRA received further public comments on problematic guidance in response to its request for public comment on its draft Report to Congress on the Costs and Benefits of Federal Regulation in 2004 and 2005⁴ and on the proposed Bulletin.⁵ The public response was striking – hundreds of comments from a wide array of groups raised concerns – small businesses, farmers, state and local governments, homebuilders, colleges and universities, large businesses, hospitals, trade associations, funeral directors, public interest groups, think tanks, bird watchers, and others. A cursory review of the Preamble to the OMB Bulletin, the comments that OMB received and posted on its website, and the scholarly literature⁶ provide many examples.

Although guidance documents may not properly carry the force of law, they are a key component of regulatory programs. As the scope and complexity of regulatory programs has grown, agencies increasingly have relied on guidance documents to provide direction to their staff and to the public. That generally is to the good, and I want to clearly acknowledge that agency guidance often is both very important and very helpful to the regulated community and others. As OMB stated:

² See, e.g., Peter L. Strauss, *The Rulemaking Continuum*, 41 Duke L.J. 1463, 1469 (1992) (noting that the formally adopted rules of the Federal Aviation Administration are two inches thick, but the corresponding guidance materials, over forty feet; Part 50 of the Nuclear Regulatory Commission's regulations on nuclear plant safety, in loose-leaf edition, is 3/16 of an inch, but the supplemental technical guidance is 9 3/4 inches; and the formally adopted regulations of the IRS occupy one foot of shelf space, but Revenue rulings and similar publications, about twenty feet); see also H. Comm. on Gov't. Reform, “Non-Binding Legal Effect of Agency Guidance Documents,” H.R. Rep. No. 106-1009 (2000) (noting that between March 1996 through 1999, NHTSA had issued 1225 guidance documents, EPA 2653, and OSHA 1641).

³ OMB, Key to Public Comments, https://www.whitehouse.gov/omb/inforeg_key_comments (last visited June 24, 2016); see also, OMB, *Stimulating Smarter Regulation: 2002 Report to Congress on the Costs and Benefits of Regulations and Unfunded Mandates on State, Local and Tribal Entities*, at pp. 75-85 https://www.whitehouse.gov/sites/default/files/omb/assets/omb/inforeg/2002_report_to_congress.pdf (last visited June 24, 2016).

⁴ OMB, *Peer Review and Public Comments on the 2005 Draft Report to Congress on the Costs and Benefits of Federal Regulations and Unfunded Mandates on State, Local, and Tribal Entities*, http://www.whitehouse.gov/omb/inforeg/2005_cb/toc.html (last visited June 24, 2016); OMB, *Public Comments on 2004 Draft Report to Congress on the Costs and Benefits of Federal Regulations and Unfunded Mandates on State, Local, and Tribal Entities*, https://www.whitehouse.gov/omb/inforeg_2004_cb_list_2004cb/ (last visited June 24, 2016).

⁵ OMB, *Comments on Proposed Bulletin on Good Guidance Practices*, https://www.whitehouse.gov/omb/regpol_good_guid_c-index/ (last visited June 24, 2016).

⁶ See, e.g., Robert A. Anthony, “Interpretive Rules, Policy Statements, Guidances, Manuals and the Like –Should Federal Agencies Use Them to Bind the Public?” 41 Duke L.J. 1311 (1992); Robert A. Anthony, “‘Interpretive’ Rules, ‘Legislative’ Rules and ‘Spurious’ Rules: Lifting the Smog,” 8 Admin. L.J. (Spring 1994).

“Agencies may properly provide guidance to interpret existing law through an interpretative rule, or to clarify how they will treat or enforce a governing legal norm through a policy statement. . . . Guidance documents, properly used, can channel the discretion of agency employees, increase efficiency by simplifying and expediting agency enforcement efforts, and enhance fairness by providing the public clear notice of the line between permissible and impermissible conduct while ensuring equal treatment of similarly situated parties.”⁷

Unfortunately, many concerns have been raised that agency guidance practices should be better managed, more consistent, transparent and accountable. These concerns are reinforced by the GAO report that Congress requested on implementation of the OMB Bulletin by four cabinet departments.⁸ Moreover, there is growing concern that, in some cases, guidance documents essentially are being used in lieu of regulations -- without observing the procedural safeguards for regulations. As the D.C. Circuit put it:

“The phenomenon we see in this case is familiar. Congress passes a broadly worded statute. The agency follows with regulations containing broad language, open-ended phrases, ambiguous standards and the like. Then as years pass, the agency issues circulars or guidance or memoranda, explaining, interpreting, defining and often expanding the commands in regulations. One guidance document may yield another and then another and so on. Several words in a regulation may spawn hundreds of pages of text as the agency offers more and more detail regarding what its regulations demand of regulated entities. Law is made, without notice and comment, without public participation, and without publication in the Federal Register or the Code of Federal Regulations.”⁹

The concern about the need for better management, transparency and due process for the development and use of guidance documents inspired OIRA to develop the OMB Bulletin for Agency Good Guidance provisions, supplemented by a provision in Executive Order 13422 for OMB review of agency guidance. In pertinent part, E.O. 13422 provided:

“Significant Guidance Documents

Each agency shall provide OIRA, at such times and in the manner specified by the Administrator of OIRA, with advance notice of any significant guidance documents. . . . Upon the request of the Administrator, for each matter identified as, or determined by the

⁷ OMB, *Stimulating Smarter Regulation: 2002 Report to Congress on the Costs and Benefits of Regulations and Unfunded Mandates on State, Local, and Tribal Entities*, at p. 72

https://www.whitehouse.gov/sites/default/files/omb/assets/omb/infoereg/2002_report_to_congress.pdf

⁸ U.S. Government Accountability Office, *Regulatory Guidance Processes: Selected Departments Could Strengthen Internal Control and Dissemination Practices*, GAO-15-368 (April 2015) (reviewing implementation of OMB Bulletin for Agency Good Guidance Practices by the departments of Health and Human Services, Labor, Education and Agriculture and finding significant deficiencies).

⁹ *Appalachian Power Co. v. EPA*, 208 F.3d 1015, 1019 (D.C. Cir. 2000) (striking down emissions monitoring guidance as requiring notice and comment through legislative rulemaking procedures).

Administrator to be, a significant guidance document, the issuing agency shall provide to OIRA the content of the draft guidance document, together with a brief explanation of the need for the guidance document and how it will meet that need. The OIRA Administrator shall notify the agency when additional consultation will be required before the issuance of the significant guidance document.”

Together, Executive Order 13422 and the OMB Bulletin establish the first government-wide “rules of the road” to manage the development and use of guidance documents. The E.O. 13422 gave clear authority to OMB to review significant agency guidance documents, a streamlined version of how OMB reviews significant agency regulations. The agencies, in turn, were required to give OMB advance notice of their upcoming significant guidance documents. OMB would be responsible for ensuring that other interested agencies in the federal family received notice, and occasionally, an opportunity to provide input into the most important guidance documents.

The OMB Bulletin on Good Guidance Practices fit hand in glove with E.O. 13422. First, agencies must implement written procedures for the approval of significant guidance documents by appropriate senior officials. Agency employees should not depart from significant guidance documents without appropriate justification and supervisory concurrence. Second, significant guidance documents must have standard elements, such as information identifying the document as guidance, the issuing office, the activity and persons to whom it applies, the date of issuance, title and docket number.

Most notably, agencies are directed to avoid inappropriate mandatory language. This provision was intended to help curb the problem of “regulation by guidance document” criticized in the Appalachian Power decision and others. It also will obviate wasteful litigation and increase fairness and accountability in the exercise of regulatory power.

The Bulletin also establishes public access and feedback procedures. For example, agencies are required to maintain on their Web sites a current list of their significant guidance documents, and to provide a means for the public to electronically submit comments on significant guidance documents, or to request that they be created, reconsidered or modified. Finally, the Bulletin establishes pre-adoption notice and comment requirements for guidance documents that rise to the level of being “economically” significant.

When President Obama took office, he retained the OMB Bulletin, but he rescinded E.O. 13422. To substitute for the good guidance provisions of E.O. 13422, the OMB Director issued a memo to restore the regulatory review process to what it had been under Executive Order 12866 between 1993 and 2007. The memo stated: “During this period, OIRA reviewed all significant proposed or final agency actions, including significant policy and guidance documents. Such agency actions and documents remain subject to OIRA’s review under Executive Order 12866.”

My understanding is that, under that approach, OIRA reviewed little guidance, and when it did, the practice was ad hoc and disorganized. This comes as no surprise since there

was no written authority for the practice -- and no procedures governing it. The problem is that:

- OIRA desk officers had to already know the guidance existed, and
- They had to get permission to call in a guidance.

The shortcomings of this approach are obvious. It is impossible to review what you don't know exists. The review process is broken when the first time OIRA desk officers know about an important guidance document is when they read about it in the Washington Post. How many significant guidance documents do you think an OIRA desk officer might not know about before it was issued? Plenty, I can assure you. And would it be clearly unreasonable for agencies to feel that OMB had no business looking at their draft guidance without any explicit authorization? It was no accident that the provision for OIRA review of guidance was elevated into an Executive Order rather than simply being added to the Bulletin.

Ignoring guidance inadvertently can undermine OMB's authority to review regulations, similar to how it undermines court review, as the D.C. Circuit explained in Appalachian Power. The agency could issue broad, open-ended legislative rules that pass through interagency review (and court review, and for that matter, Congressional review). Then the agency could follow with guidance "expanding the commands in the regulations" to a degree that would have raised concerns if those details had appeared in the regulations. In fact, one might wonder how OMB's abstention from managing and coordinating significant guidance documents may have contributed to the growth in "spurious rules" cases in the courts, which increasingly have criticized agencies for issuing binding rules without observing the public notice and comment procedures that Congress required in the Administrative Procedure Act.¹⁰

B. The Precedent for Good Guidance Practices

Even before the OMB public comment process, there was a strong foundation for the good guidance practices in E.O. 13422 and the OMB Bulletin that was rooted in the recommendations of leading authorities that stood for decades. This foundation

¹⁰ The growth in so-called "spurious rule" court cases in the 1990s may not be a coincidence. See, e.g., Gen. Elec. Co. v. EPA, 290 F.3d 377 (D.C. Cir. 2002) (striking down PCB risk assessment guidance as a spurious rule requiring notice and comment); Appalachian Power Co. v. EPA, 208 F.3d 1015 (D.C. Cir. 2000) (striking down emissions monitoring guidance as spurious rule requiring notice and comment); U.S. Chamber of Commerce v. Dep't of Labor, 174 F.3d 206 (D.C. Cir. 1999) (striking down OSHA Directive as a spurious rule requiring notice and comment). See also, OMB, *Final Bulletin for Agency Good Guidance Practices*, 72 Fed. Reg. 3432, 3435 (Jan. 25, 2007); OMB, *Key to Public Comments*, https://www.whitehouse.gov/omb/regpol/good_guid_c-index/ (last visited June 24, 2016).

includes the work of many authorities – including the Executive Branch,¹¹ Congress,¹² the courts,¹³ the American Bar Association,¹⁴ and legal scholars.¹⁵

First, the Administrative Conference of the United States (ACUS)¹⁶ issued recommendations for the development and use of agency guidance documents. As far back as the mid-1970s, for example, ACUS recognized the importance of ensuring a notice and comment process for the most significant guidance documents. ACUS Recommendation 76-5 states:

“Before an agency issues, amends or repeals an interpretive rule of general applicability or statement of general policy which is likely to have a substantial impact on the public, the agency normally should utilize the procedures set forth

¹¹ Recommendations of the Administrative Conference of the United States, *Agency Policy Statements*, Rec. 92-2, 1 C.F.R. § 305.92-2 (1992), available at <http://www.law.fsu.edu/library/admin/acus/305922.html> (stating that agencies should not issue statements of general applicability intended to be binding without using legislative rulemaking procedures and that agencies should afford the public a fair opportunity to challenge the legality or wisdom of policy statements and to suggest alternative choices); Recommendations of the Administrative Conference of the United States, *Interpretive Rules of General Applicability and Statements of General Policy*, Rec. 76-5, 1 C.F.R. § 305.76 (1992), available at <http://www.law.fsu.edu/library/admin/acus/305765.html> (stating that agencies should utilize APA notice and comment procedures for interpretive rules of general applicability or statements of general policy likely to have a substantial impact on the public); *The Food and Drug Administration's Development, Issuance, and Use of Guidance Documents*, 62 Fed. Reg. 8961 (Feb 27, 1997) (notice) (establishing FDA's original good guidance practices); OMB, *Draft Report to Congress on the Costs and Benefits of Federal Regulations*, 67 Fed. Reg. 15,014, 15,034-35 (Mar. 28, 2002) (detailing concerns over soliciting public comments on problematic agency guidance practices and specific examples of guidance documents in need of reform).

¹² See, e.g., U.S. Government Accountability Office, *Regulatory Guidance Processes: Selected Departments Could Strengthen Internal Control and Dissemination Practices*, GAO-15-368 (April 2015); Congressional Review Act of 1996, 5 U.S.C. §§ 801-808 (2000) (providing fast-track procedures for Congressional resolutions of disapproval of rules and incorporating the APA definition of "rule" to cover guidance documents); *Food and Drug Administration Modernization Act of 1997*, 21 U.S.C. § 371(h) (2000) (establishing FDA good guidance practices as law); Congressional Accountability for Regulatory Information Act, H.R. 3521, 106th Cong. § 4 (2000) (proposing to require agencies to notify the public of the non-binding effect of guidance documents), H. Comm. on Government Reform, *Non-Binding Legal Effect of Agency Guidance Documents*, H.R. Rep. No. 106-1009 (2000) (criticizing "backdoor" regulation); *Food and Drug Administration Modernization and Accountability Act of 1997*, S. Rep. No. 105-43, at 26 (1997) (raising concerns about the lack of transparency and consistency in the use of guidance documents).

¹³ See, e.g., *supra* note 10.

¹⁴ ABA, *Annual Report Including Proceedings of the Fifty-Eighth Annual Meeting* 57 (1993) (recommending notice and comment for guidance documents likely to have a significant impact on the public); ABA, *Recommendation on Federal Agency Web Pages* 1 (2001), <http://www.abanet.org/adminlaw/federa02.pdf> (recommending that agencies post on their Websites, *inter alia*, all important policies and interpretations).

¹⁵ See, e.g., Robert A. Anthony, "Interpretive" Rules, "Legislative" Rules and "Spurious" Rules: *Lifting the Smog*, 8 Admin. L.J. 1 (1994); Robert A. Anthony, *Interpretive Rules, Policy Statements, Guidances, Manuals and the Like—Should Federal Agencies Use Them to Bind the Public?* 41 Duke L.J. 1311 (1992); see also, OMB, *Final Bulletin for Agency Good Guidance Practices*, at pp. 2-3 & n. 2, 6.

¹⁶ ACUS is a federal advisory agency charged with providing recommendations on administrative procedure issues. ACUS has made hundreds of recommendations on administrative procedure issues, and most were adopted by agencies or by Congress. See Florida State University College of Law, *ABA Administrative Procedure Database*, www.law.fsu.edu/library/admin/acus/acustoc.html (last visited June 24, 2016).

in the Administrative Procedure Act subsections 553(b) and (c) Where there has been no prepromulgation notice and opportunity for comment, the publication of an interpretive rule of general applicability or a statement of general policy... should include ... an invitation to interested persons to submit written comments."¹⁷

ACUS Recommendation 92-2 later added:

"Agencies should not issue statements of general applicability that are intended to impose binding substantive standards or obligations upon affected persons without using legislative rulemaking procedures.... Policy statements of general applicability should make clear that they are not binding.... Agencies that issue policy statements should examine, and where necessary, change their ... procedures ... to allow as an additional subject requests for modification or reconsideration of such statements."¹⁸

In 1993, the American Bar Association (ABA) reaffirmed the ACUS recommendations on the use of informal notice and comment procedure for significant guidance documents.¹⁹ In 2001, the ABA further recommended that agencies "explore means to maximize the availability and searchability of existing law and policy on their websites" and include "their governing statutes, all agency rules and regulations, and all important policies, interpretations, and other like matters which members of the public are likely to request."²⁰

Moreover, Congress produced what became a model for OMB's Good Guidance Practices.²¹ In the Federal Food and Drug Administration Modernization Act of 1997, Congress directed the FDA to issue regulations establishing good guidance practices.²² Congress was particularly concerned about public knowledge of, and access to, FDA guidance documents; the lack of a systematic process for adopting guidance

¹⁷ Recommendations of the Administrative Conference of the United States, *Interpretive Rules of General Applicability and Statements of General Policy*, Rec. 76-5, 1 C.F.R. § 305.76-5 (1992), available at <http://www.law.fsu.edu/library/admin/acus/305765.html>.

¹⁸ ACUS, *Agency Policy Statements*, Rec. 92-2, 1 C.F.R. § 305.92-2 (1992), available at <http://www.law.fsu.edu/library/admin/acus/305922.html>

¹⁹ ABA, *Annual Report Including Proceedings of the Fifty-Eighth Annual Meeting* 57 (1993) ("[T]he American Bar Association recommends that: Before an agency adopts a nonlegislative rule that is likely to have a significant impact on the public, the agency provide an opportunity for members of the public to comment on the proposed rule and to recommend alternative policies or interpretations, provided that it is practical to do so; when nonlegislative rules are adopted without prior public participation, immediately following adoption, the agency afford the public an opportunity for post-adoption comment and give notice of this opportunity.").

²⁰ ABA, *Recommendation on Federal Agency Web Pages* 1 (2001), <http://www.abanet.org/adminlaw/federa02.pdf>.

²¹ As OMB stated in its Preamble (pp. 4-5), FDAMA and FDA's implementing regulations, as well as the recommendations of the former Administrative Conference, informed the development of the Bulletin.

²² *Food and Drug Administration Modernization Act of 1997*, 21 U.S.C. § 371(h) (establishing FDA good guidance practices as law).

documents and for allowing public input; and inconsistency in the use of guidance documents.²³ Those same concerns apply to other agencies as well.

C. The Need for Action²⁴

The case for Congressional action is strong. The OMB Bulletin has been in effect since early 2007 in both Republican and Democratic administrations. Over eleven years is more than enough time for the agencies to have fully complied with basic good guidance practices. Yet clearly they have not, as shown by Congressional oversight, including hearings by Senator Lankford²⁵ and others. Moreover, in 2015, the U.S. Government Accountability Office issued a report²⁶ on how four major departments – the Departments of Agriculture, Education, Health and Human Services, and Labor and their 25 component agencies – have complied with the OMB Bulletin. The report showed those departments and their component agencies generally had a long track record of failing to comply with basic good government requirements of the Bulletin, including the following:

- All components claimed they did not issue any economically significant guidance (and thus were not required to conduct pre-adoption notice and comment);
- Only six of 25 components had written procedures to ensure consistent application of guidance (p.25);
- HHS had no written procedures for approval of significant guidance, and DOL's procedures were not available to its staff;
- Nearly half of the components did not regularly evaluate whether issued guidance remained effective;
- HHS did not post significant guidance was not posted on a departmental website as required by OMB;
- Public online access to guidance was difficult to find and they failed to use of metrics to improve dissemination.

GAO concluded with the following recommendations:

- HHS and DOL should ensure consistent application of OMB requirements for significant guidance; and

²³ *Food and Drug Administration Modernization and Accountability Act of 1997*, S. Rep. 10543, at 26 (1997).

²⁴ See Paul Noe, "Shining the Light on Regulatory Dark Matter," AF&PA Blog (Feb. 6, 2018), <http://www.afandpa.org/media/blog/blog/2018/02/06/shining-the-light-on-regulatory-dark-matter-due-process-and-management-for-agency-guidance-documents>

²⁵ See, e.g., U.S. Senate Committee on Homeland Security & Governmental Affairs, Subcommittee on Regulatory Affairs and Federal Management, *Hearing on Examining the Use of Agency Regulatory Guidance, Part II (June 30, 2016)*, 114th Cong. 2nd Sess., Washington DC.

²⁶ U.S. Government Accountability Office, *Regulatory Guidance Processes: Selected Departments Could Strengthen Internal Control and Dissemination Practices*, GAO-15-368 (April 2015).

- All four departments should strengthen use of internal controls in guidance production processes and improve online guidance dissemination.

It is evident that more should be done to improve the development and use of agency guidance. For example, Congress could elevate good guidance practices into statute. An excellent first step would be enactment of the “Guidance Out Of Darkness Act,” H.R. 4809, sponsored by Congressman Walker. The GOOD Act would require federal agencies to post all of their guidance in a centralized, accessible location on their website. This is a common sense and long overdue requirement of the OMB Bulletin that the agencies have failed to comply with.²⁷

The Administration also could do more to promote good guidance practices. In fact, the Department of Justice (DOJ) recently provided leadership by issuing a memorandum in November to prohibit improper guidance documents at DOJ²⁸ and also by more recently issuing a memorandum to curb improper use of guidance in civil enforcement cases.²⁹

Yet, more can and should be done. For example, the Office of Management and Budget could do more to promote good guidance practices on a government-wide basis by updating the Bulletin. First, OMB should have procedures for the agencies to inform it and other agencies about their intentions to use guidance, coordinate with other interested agencies, receive input, and be transparent. Basic procedures are needed for OMB and other agencies to get a “heads up” during the development of agency guidance. Also, the resources should be provided to do the job right. Second, the agencies could follow the recommendations of the Administrative Conference of the United States and the ABA Administrative Law Section to provide streamlined pre-adoption notice-and-comment for significant guidance documents – not just “economically significant” guidance – or allow public comment after issuance where there is a need for prompt action. My understanding is that FDA does this already and the practice has been generally successful.

²⁷ Congress also might want to investigate whether agencies have complied with the requirement in 5 U.S.C. 552(a)(1)(D) to publish in the Federal Register statements of general policy and interpretations of general applicability.

²⁸ Memorandum from Attorney General Jeff Sessions to all Components, “Prohibition on Improper Guidance Documents” (Nov. 16, 2017), <https://www.justice.gov/opa/press-release/file/1012271/download>

²⁹ Memorandum from Associate Attorney General Rachel Brand to Heads of Litigating Components, “Limiting Use of Agency Guidance Documents in Affirmative Civil Enforcement Cases” (Jan. 25, 2018), <https://www.justice.gov/file/1028756/download>

II. Curtail the Evasion of Presidential Orders on Benefit-Cost Analysis by Interpreting Regulatory Statutes to Allow for Full Benefit-Cost Balancing.

A. Background

While efforts to promote the use of benefit-cost analysis³⁰ have been longstanding, over time a remarkable consensus has emerged. In the Executive Branch, there is a striking similarity among the principles for benefit-cost balancing and centralized review of regulation required by every president for over 37 years, from Ronald Reagan to Donald Trump. The Judicial Branch, and the Supreme Court in particular, has clarified that benefit-cost analysis can have a central role in a host of regulatory programs, and if agencies ignore this invitation, they could jeopardize the very regulations they want to promote. In Congress, there is a renewed interest in requiring benefit-cost analysis by statute that is greater than any time in the past 20 years.

On their face, probably the greatest consensus on the “cost-benefit state”³¹ is reflected in the Executive orders governing regulatory analysis and review. Going back to 1981, President Reagan’s Executive Order 12291 established general requirements that, “to the extent permitted by law:

- “[r]egulatory action shall not be undertaken unless the **potential benefits to society for the regulation outweigh the potential costs to society**,” and
- “[r]egulatory objectives shall be chosen to **maximize the net benefits to society**” (Emphasis added).

Similarly, President Clinton’s E.O. 12866, issued in 1993 and still in effect, requires that agencies, to the extent permitted by law:

- “propose or adopt a regulation only upon a reasoned determination that the **benefits of the intended regulation justify its costs**,” and
- “in choosing among alternative regulatory approaches, . . . select those approaches that **maximize net benefits** (including potential economic, environmental, public health and safety, and other advantages; distributive

³⁰ Benefit-cost analysis (BCA) is “[a] systematic quantitative method of assessing the desirability of government projects or policies when it is important to take a long view of possible side-effects.” OMB Circular A-94, “Guidelines and Discount Rates for Benefit-Cost Analysis of Federal Programs,” Appendix A (1992). BCA involves calculating and comparing the benefits and costs of regulatory options, including an account of foregone alternatives and the status quo, with the goal of identifying the option that would maximize societal welfare. As Justice Breyer explained, “every real choice requires a decisionmaker to weigh advantages against disadvantages, and disadvantages can be seen in terms of (often quantifiable) costs.” *Entergy Corp. v. Riverkeeper, Inc.*, 556 U.S. 208 (2009). The term “benefit-cost analysis” can be used interchangeably with “cost-benefit analysis.”

³¹ I adopt the definition of the “cost-benefit state” advanced by President Obama’s former OIRA Administrator, Cass Sunstein – “that government regulation is increasingly assessed by asking whether the benefits of regulation justify the costs of regulation.” Cass R. Sunstein, *The Cost-Benefit State: The Future of Regulatory Protection*, Chicago, IL, American Bar Association, Section of Administrative Law and Regulatory Practice (2002).

effects; and equity) unless a statute requires another regulatory approach” (Emphasis added).

President Obama’s E.O. 13563 (2011) reaffirms the Clinton order and reiterates virtually verbatim the two provisions listed above, as well as others. E.O. 13563 also more strongly embraces quantitative benefit-cost balancing than the Clinton order by elevating both provisions to general principles” that the agencies “must” execute and by adding a new principle promoting quantitative benefit-cost analysis and risk assessment:

- “In applying these principles, each agency is directed to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.”

Thus, there has been strong bipartisan consensus that benefit-cost balancing should play a central role in the question of whether and how to regulate. As the Clinton Administration explained in OMB’s first Report to Congress on the Costs and Benefits of Federal Regulation (Sept. 30, 1997):

“[R]egulations (like other instruments of government policy) have enormous potential for both good and harm. Well-chosen and carefully crafted regulations can protect consumers from dangerous products and ensure they have information to make informed choices. Such regulations can limit pollution, increase worker safety, discourage unfair business practices, and contribute in many other ways to a safer, healthier, more productive and more equitable society. Excessive or poorly designed regulations, by contrast, can cause confusion and delay, give rise to unreasonable compliance costs in the form of capital investments, labor and on-going paperwork, retard innovation, reduce productivity, and accidentally distort private incentives.

The only way we know how to distinguish between regulations that do good and those that cause harm is through careful assessment and evaluation of their benefits and costs. Such analysis can also often be used to redesign harmful regulations so they produce more good than harm and redesign good regulations so they produce even more net benefits.” (p. 10)

While this remarkable political consensus is laudatory, insufficient progress has been made over the last 37 years. There are many reasons why presidential orders directing agencies to implement regulatory statutes through benefit-cost balancing have been far less effective than intended. This includes the severe and chronic under-funding of OIRA (which now has far more responsibilities and less than half the staff it had under President Reagan);³² institutional limitations of the agencies and OMB; and political

³² When OIRA was created in fiscal year 1981, it had a full-time equivalent (FTE) ceiling of about 97 staff; by fiscal year (FY) 2016, OIRA had about 47 staff. See Susan Dudley & Melinda Warren, G.W. Regulatory Studies Center and Washington University in St. Louis, “Regulators’ Budget from Eisenhower to Obama: An Analysis of the U.S. Budget

dysfunctions, including interest group dynamics and Presidential electoral politics.³³ But one of the greatest yet most readily addressable impediments to the cost-benefit state is that ***the regulatory agencies have interpreted their statutes to limit their ability to fully engage in benefit-cost balancing and to maximize societal well-being, as required by the President.***³⁴

Why? Agencies have interpreted their regulatory statutes in ways that circumvented the presidential orders and the requirement to maximize net benefits to society, sometimes relying on selected pieces of legislative history to limit their interpretations of the statutory text. Of course, none of that legislative history met the Bicameralism and Presentment requirements for legislation and thus did not require or authorize non-compliance with the presidential benefit-cost orders.

While only a small minority of statutes explicitly ***mandate*** benefit analysis-cost,³⁵ and a very small minority ***prohibit*** it,³⁶ the challenge has been what agencies should do when implementing the large majority of regulatory statutes that are ***silent or ambiguous*** on cost-benefit balancing. One problem that may have contributed to agency evasion of the presidential orders is that, in earlier Supreme Court case law from 1981 and 2001, there was some misleading dicta that some claimed established a “presumption” against

for Fiscal Years 1960 through 2017” (May 2016), at p. 20 (Table A-3). In contrast, the agency staff dedicated to writing, administering and enforcing regulations rose from 146,000 in FY1980 to over 278,00 in FY2016. As OIRA’s budget was reduced from about \$14 million in 1981 to \$8 million in FY2016 in constant 2009 dollars, the agencies’ budgets increased from about \$16.4 billion in FY1980 to over \$61 billion in FY2016 in constant 2009 dollars. At the same time, OIRA’s statutory responsibilities have grown through a wide variety of requirements, including: the Small Business Regulatory Enforcement Fairness Act, the E-Government Act, the Unfunded Mandates Reform Act, the Congressional Review Act, the Information Quality Act, the Regulatory Right-to-Know Act, the Small Business Paperwork Relief Act, and a variety of appropriations riders. See Comment Letter on Federal Regulatory Review from Paul R. Noe, American Forest & Paper Association, to OMB’s Office of Information and Regulatory Affairs (March 16, 2009), citing Comment Letter on Federal Regulatory Review from Rosario Palmieri, National Association of Manufacturers, to OMB’s Office of Information and Regulatory Affairs (March 16, 2009).

³³ See, e.g., John D. Graham and Paul R. Noe, “Beyond Process Excellence: Enhancing Societal Well-Being,” in Achieving Regulatory Excellence, Brookings Institution Press (2016) (discussing the institutional impediments in the Executive Branch to ensuring that regulations do more good than harm -- such as bureaucratic turf battles among the agencies, failure to utilize both internal and external expertise, bias, the mismatch between the vast volume of regulation and OIRA’s shrinking resources, the large volume of “stealth regulation” such as guidance not submitted for OIRA review, lack of support for OIRA by varying administrations or leaders, and lack of judicial review for benefit-cost balancing – as well as the political impediments in the Executive Branch and Congress to ensuring that regulations do more good than harm).

³⁴ John D. Graham and Paul R. Noe, “A Paradigm Shift in the Cost-Benefit State,” University of Pennsylvania Law School RegBlog (April 26, 2016). <https://www.regblog.org/2016/04/26/graham-noe-shift-in-the-cost-benefit-state/>

³⁵ See Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) (providing for EPA to mitigate unreasonable environmental effects).

³⁶ See Whitman v. American Trucking Associations, 531 U.S. 457 (2001) (Section 109 of Clean Air Act does not grant EPA the authority to consider cost in setting National Ambient Air Quality Standards).

benefit-cost balancing unless it was clearly authorized in the regulatory statute.³⁷ But more recently, the Supreme Court has made quite clear that agencies have broad discretion to implement their regulatory statutes through benefit-cost balancing.³⁸

Shortly after President Reagan's groundbreaking Executive Order 12291 imposed a cost-benefit test on regulations -- and three years before the Chevron USA v. Natural Resources Defense Council (1984)³⁹ decision deferring to EPA's interpretation of an ambiguous statute -- the Supreme Court held, in American Textile Manufacturers Institute v. Donovan (1981),⁴⁰ that the Occupational Safety and Health Administration was not **required** to engage in cost-benefit analysis in setting "feasible" public health and safety standards. But the majority also asserted in dicta that "when Congress has intended that an agency engage in cost-benefit analysis, it has clearly indicated such intent on the face of the statute."⁴¹

Twenty years later, in Whitman v. American Trucking Associations (2001), an unanimous Supreme Court found it "implausible" that the modest standard to set national ambient air quality standards at a level "requisite to protect public health with an adequate margin of safety" gave the EPA the discretion to determine whether costs should moderate the health standards. Writing for the Court, Justice Scalia stated that, to prevail in their quest to have the EPA take costs into account, the industry respondents would have to show a "textual commitment" of authority for the EPA to consider costs in standard setting, and "*that textual commitment must be a clear one.*" Yet, in a prescient concurring opinion, Justice Stephen Breyer warned that the Court should resist

"a presumption, such as the Court's presumption that any authority the [Clean Air] Act grants the EPA to consider costs must flow from a "textual commitment" that is "clear." ... In order better to achieve regulatory goals- for example, to allocate resources so that they save more lives or produce a cleaner environment- regulators must often take account of all of a proposed regulation's adverse effects, at least where those adverse effects clearly threaten serious and disproportionate public harm. Hence, I believe that, other things being equal, we should read silences or ambiguities in the language

³⁷ See, e.g., Jonathan Cannon, "The Sounds of Silence: Cost-Benefit Canons in Entergy Corp. v. Riverkeeper, Inc.," 34 *Harv. Envir. L. Rev.* 425 (2010); Amy Sinden, "Cass Sunstein's Cost-Benefit Lite: Economics for Liberals," 29 *Colum. J. Envtl. L.* 191, 240 (2004).

³⁸ E.g., compare John D. Graham and Paul R. Noe, "A Paradigm Shift in the Cost-Benefit State," *University of Pennsylvania Law School RegBlog* (April 26, 2016). <https://www.regblog.org/2016/04/26/graham-noe-shift-in-the-cost-benefit-state/> with Amy Sinden, "Supreme Remains Skeptical of the 'Cost-Benefit State,'" *University of Pennsylvania Law School RegBlog* (Sept. 26, 2016) <http://www.regblog.org/2016/09/26/sinden-cost-benefit-state/>; and see John D. Graham and Paul R. Noe, "A Reply to Amy Sinden's Critique of the 'Cost-Benefit State,'" *University of Pennsylvania Law School RegBlog* (Sept. 27, 2016) <http://www.regblog.org/2016/09/27/graham-noe-reply-critique-cost-benefit-state>.

³⁹ 467 U.S. 837 (1984).

⁴⁰ 452 U.S. 490 (1981).

⁴¹ 452 U.S. at 509.

of regulatory statuses as permitting, not forbidding, this type of rational regulation.⁴² (Emphasis added).

Finally, in Entergy Corp. v. Riverkeeper, Inc. (2009), the Supreme Court disposed of the dicta relating to a purported “presumption” against cost-benefit balancing.⁴³ Riverkeeper involved a challenge to an EPA regulation under section 316(b) of the Clean Water Act, which required that the EPA adopt a standard to “reflect the best technology available for minimizing adverse environmental impact.” The EPA, with the strong encouragement of the White House Office of Management and Budget (OMB), based its standard on cost-benefit analysis. Although the statutory provision was silent on the use of cost-benefit analysis, the Supreme Court applied Chevron deference in holding that “it was well within the bounds of reasonable interpretation for the EPA to conclude that cost-benefit analysis is not categorically forbidden.” Aligning the issue of agency authority to use cost-benefit analysis with Chevron, the Court reasoned that “it is eminently reasonable to conclude that” the Clean Water Act’s “silence is meant to convey nothing more than a refusal to tie the agency’s hands as to whether cost-benefit analysis should be used, and if so to what degree.” In so doing, the Court disavowed the purported “presumption” against benefit-cost analysis embodied in American Textile and limited American Trucking to “the rather unremarkable proposition that sometimes statutory silence, when viewed in context, is best interpreted as limiting agency discretion.” The Court concluded that the Clean Water Act’s silence “cannot bear that interpretation.”⁴⁴

Riverkeeper raised the ante for agencies that ignore cost-benefit analysis. Although Riverkeeper did not *require* the agency to use cost-benefit analysis, its logical corollary is that an agency must now provide a reasoned explanation if it should choose to regulate in a way that would do more harm than good, or provide a reasoned explanation why the agency is indifferent to that outcome. Otherwise, the agency’s regulation could be vulnerable to an arbitrariness challenge under the Administrative Procedure Act.

That became quite clear in the Supreme Court’s decision in Michigan v. EPA (2015),⁴⁵ which involved a challenge to the EPA’s decision to regulate hazardous air pollutants, such as mercury, from power plants. Section 112(n) of the Clean Air Act authorizes the EPA to regulate hazardous air pollutants from power plants only if it concludes that regulation is “appropriate and necessary.” In reaching that conclusion, the EPA had said that cost was irrelevant. The Court held that the EPA strayed beyond the bounds of reasonable interpretation in concluding that cost is not a relevant factor in determining whether to regulate under the “capacious” phrase, “appropriate and necessary.”

⁴² 531 U.S. at 490.

⁴³ 556 U.S. 208 (2009).

⁴⁴ 129 S. Ct. at 1508.

⁴⁵ 135 S. Ct. 2699 (2015).

Writing for a 5-4 majority in Michigan, Justice Antonin Scalia bluntly stated, “no regulation is ‘appropriate’ if it does significantly more harm than good.” Quoting Justice Breyer’s concurring opinion in Riverkeeper, Justice Scalia further reasoned that:

“Agencies have long treated cost as a centrally relevant factor when deciding whether to regulate. Consideration of cost reflects the understanding that reasonable regulation ordinarily requires paying attention to the advantages *and* the disadvantages of agency decisions. It also reflects the reality that “too much wasteful expenditure devoted to one problem may well mean considerably fewer resources available to deal effectively with other (perhaps more serious) problems.” Against the backdrop of this established administrative practice, it is unreasonable to read an instruction to an administrative agency to determine whether “regulation is appropriate and necessary” as an invitation to ignore cost.”⁴⁶

Notably, although the dissenters argued that the EPA could (and did) consider cost at the later stage in developing its regulation, all nine Justices agreed on the principle that, unless Congress states otherwise, “an agency ***must take costs into account*** in some manner before imposing significant regulatory burdens.” (Emphasis added).⁴⁷

The wisdom in Justice Breyer’s American Trucking concurrence supporting cost-benefit balancing has prevailed. The Supreme Court now defers to agency interpretations of “silences or ambiguities in the language of regulatory statutes as ***permitting, not forbidding***, this type of rational regulation.”⁴⁸

B. The Need for Action

The importance of clarifying agency authority to use cost-benefit balancing should not be underestimated. The majority of environmental statutes -- and, to my knowledge, the majority of ***all*** regulatory statutes -- are silent or ambiguous on cost-benefit analysis. And agencies too often interpret such statutes as only allowing limited consideration of costs and benefits.

Within the broad range of relevant ambiguous statutes, three categories merit consideration – statutory provisions that: (1) are silent or ambiguous on the consideration of costs and lack a broad “omnibus factor,”⁴⁹ (2) do not explicitly require benefit-cost analysis but authorize consideration of costs and/or contain one or more

⁴⁶ 576 U.S. at ___, Slip Op. at 7-8 (emphasis added).

⁴⁷ Under longstanding principles of administrative law, an agency may not lawfully neglect an important aspect of a problem. Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43 (1983). Michigan v. EPA made clear that, unless Congress states to the contrary, cost is an important aspect of the problem of whether or not to regulate.

⁴⁸ American Trucking, 531 U.S. at 490 (Justice Breyer, concurring) (emphasis added).

⁴⁹ The term “omnibus factor” is used to capture broad, open-ended statutory decisional criteria that typically are intended to allow the regulatory agency to consider any factor important for determining the regulatory standard that might not otherwise be captured in the other decisional criteria specified by Congress.

broad omnibus factors, such as anything that the agency head considers “appropriate,” “necessary,” “relevant,” “feasible,” “reasonable,” “in the public interest,” etc., and (3) authorize benefit-cost analysis but are ambiguous on the extent or rigor of the benefit-cost balancing that may be done. (For examples of statutory provisions in each of these categories, see the Appendix attached to this testimony.) I believe that the Supreme Court decisions in Entergy Corp. v. Riverkeeper, Inc. and Michigan v. EPA advance benefit-cost balancing in interpreting all three subcategories of ambiguous statutes.

President Trump should take an historic step to enhance societal well-being by directing agencies, including independent agencies, to reexamine their statutory interpretations in light of Riverkeeper and its progeny and -- unless prohibited by law -- implement those statutes through cost-benefit balancing. As the Supreme Court has concluded, it is “eminently reasonable” to ensure that regulations do more good than harm.⁵⁰

III. Greater Transparency on Information Supporting Regulatory Decisions.

Agencies should be more transparent about key information – whether developed by third parties or by the agency -- supporting regulatory decisions. Key agency information and analyses that support important regulatory decisions, such as benefit-cost analyses and risk assessments, should be reproducible. Congressman Meadows’ “CLEAR” Act (the “Comprehensive Listing of Evidence for Assessments of Regulations Act,” H.R. 4230) relates to that concern. The CLEAR Act requires disclosure of research source code and data used by a Federal agency in assessing the costs and benefits of new regulations. It is important to protect personal and confidential information from disclosure, as section 2(a)(2) acknowledges.

Benefit estimates can be very hard for the public to understand, given the complexities and facets that are often hidden in the “black box.” This challenge is especially true for benefit assessments under various environmental statutes, such as the Clean Air Act. In fact, according to the recent 2017 annual report from the Office of Management and Budget, \$182 to \$684.1 billion⁵¹ or 80% of monetized benefits⁵² (and 70% of costs) associated with Federal regulations reviewed by OMB over the last decade come from air regulations. The report goes on to caution that aggregate estimates of benefits and costs are “subject to some methodological variations and differing assumptions” over time that is especially true for EPA’s air pollution regulations.⁵³ This observation highlights the importance of Agencies revealing the various inputs to these analyses working backwards from the monetized estimate to the underlying assumptions about

⁵⁰ Riverkeeper, 129 S. Ct. at 1508.

⁵¹ Office of Management and Budget, Office of Information and Regulatory Affairs, Draft Report to Congress on the Benefits and Costs of Federal Regulations and Agency Compliance with the Unfunded Mandates Reform Act (2017), at p. 11.

⁵² *Id.*, p. 12;

⁵³ *Id.*, p. 21 & note 39.

studies used, cause and effect assumptions, model choices, treatment of confounding variables in modeling approaches, and distinguishing between associations and true causality, which has a much higher scientific standard to demonstrate.

IV. Better Compliance with the Congressional Review Act.

A. Background

Congress intended the reach and power of the Congressional Review Act (CRA) to be great because it felt there was an imbalance between Congress and the regulatory state – the so-called “fourth branch of government.” Article I, Section 1 of the Constitution is quite clear: “**All legislative powers** herein granted shall be vested in a Congress of the United States . . .” (emphasis added). The legislative and policymaking power of the regulatory state has become enormous. The vast majority of “laws” governing our country are no longer enacted by the people’s elected representatives in Congress, but are promulgated by agencies as regulations.

To put this in context, the Competitive Enterprise Institute publishes a chart they call the “Unconstitutionality Index,” which compares the annual output of agency rules versus Congressional statutes. The contrast is quite striking: over a 15-year period, agency rulemaking output exceeded Congressional legislation by a factor varying from 12-fold to 51-fold, as shown in the following chart:

<i>The Unconstitutionality Index</i>			
Public Laws vs. Agency Rulemakings			
Year	Final Rules	Public Laws	THE "INDEX"
2003	4148	198	21
2004	4101	299	14
2005	3975	161	25
2006	3718	321	12
2007	3595	188	19
2008	3830	285	13
2009	3503	125	28
2010	3573	217	16
2011	3807	81	47
2012	3708	127	29
2013	3659	72	51
2014	3554	224	16
2015	3410	115	30
2016	3853	211	18
2017	3281	117	28

Index: <https://cei.org/blog/2018-unconstitutionality-index-28-federal-agency-rules-every-law-congress-passes>

Moreover, the Judiciary has upheld practically every delegation by Congress to the agencies over the past 80 years so long as Congress identifies “an intelligible principle.” The courts also have accorded great deference to agency interpretations of their statutes under Chevron⁵⁴ and deference to agency interpretations of their regulations under Auer v. Robbins.⁵⁵

During the New Deal, Congress developed the legislative veto to curb the administrative state and added legislative veto provisions to hundreds of different statutes,⁵⁶ but the the Supreme Court declared the one-House legislative veto unconstitutional in INS v. Chadha (1983).⁵⁷ Consistent with the Bicameralism and Presentment Clauses of the Constitution, the Congressional Review Act was an effort to restore Congress’ legislative and policymaking authority. As the joint statement of the bill managers stated:

⁵⁴ 467 U.S. 837 (1984).

⁵⁵ 519 U.S. 452 (1997).

⁵⁶ See Paul J. Larkin, Jr., “Reawakening the Congressional Review Act, 41 Harv. J. of Law & Pub. Policy 187 (2017), at 194-96.

⁵⁷ 462 U.S. 919 (1983).

“As more and more of Congress’ legislative functions have been delegated to federal regulatory agencies, many have complained that Congress has effectively abdicated its constitutional role as the national legislature in allowing federal agencies so much latitude in implementing and interpreting congressional enactments. In many cases, this criticism is well founded. Our constitutional scheme creates a delicate balance between the appropriate roles of the Congress in enacting laws, and the Executive Branch in implementing those laws. This legislation will help to redress that balance, reclaiming for Congress some of its policymaking authority, without at the same time requiring Congress to become a super regulatory agency.”⁵⁸

In the CRA, Congress created a new chapter in the Administrative Procedure Act, chapter 8, of Title 5 of the United States Code. The CRA provides expedited procedures for Congress to review and possibly invalidate agency rules. After Congress receives a rule, a member can introduce a resolution to disapprove the rule, and the resolution is referred to the relevant committee. However, only 30 Senators or Representatives can discharge the resolution of disapproval from committee to the floor. In the Senate, there is no filibuster. A resolution can be brought up at any time, and it is not subject to amendment, point of order, or motion to postpone consideration. Debate is limited to a maximum 10 hours, evenly divided, and a motion to further limit debate is in order and not debatable.⁵⁹

If a resolution of disapproval is signed into law by the President, the rule is invalidated, and “a new rule that is ***substantially the same*** as such a rule may not be issued” unless specifically authorized by a new statute.⁶⁰

The CRA also is very broad in scope. First, the CRA adopts the definition of “agency” in the Administrative Procedure Act (APA), 5 USC § 551(1). This includes independent regulatory agencies. Moreover, the CRA adapts the APA definition of a “rule” at 5 USC § 551(4). While the CRA has an exclusion for rules of particular applicability, a covered “rule” includes “the whole or part of an agency statement of general . . . applicability and future effect designed to ***implement, interpret, or prescribe law or policy***” This includes not only legally binding regulations developed through notice and comment (known as “legislative rules”), but also ***agency guidance*** (known as interpretive rules or policy statements). As the legislative history states, the definition of a covered “rule” does not turn on whether a given agency must normally comply with the notice-and-comment provisions of the APA. Covered rules include those developed through: (1) formal rulemaking, under 5 USC § 556, § 557; (2) “informal” rulemaking, under 5 USC § 553; (3) ***“publication rules” -- statements of general policy and interpretations of general applicability required to be published in the Federal***

⁵⁸ Cong. Rec. S. 3683 (daily ed. April 18, 1996).

⁵⁹ 5 U.S.C. § 802(d)(2).

⁶⁰ 5 USC § 801(b).

Register under 5 USC § 552(a)(1)(D); and (4) all other rules that do not meet the procedural specifications of the first three classes (including guidance documents such as agency memoranda, frequently asked questions, letters, bulletins, circulars, manuals, etc.).⁶¹

In the CRA, Congress exercised broad authority over all of those rules. The first provision of the CRA states: “**Before** a rule can **take effect**, the Federal agency promulgating such rule shall submit” to each House of Congress and to GAO a report containing a copy of the rule and a concise statement relating to the rule, including whether it is major, and the proposed effective date of the rule.⁶² Moreover, **the clock to introduce a joint resolution of disapproval** using Congress’ expedited review procedures **does not start to run** until “the **later of** the date on which the rule is published in the Federal Register or **Congress receives the report submitted under § 801(a)(1)**.”⁶³ In short, ***every “rule” -- legislative rule, interpretive rule, and policy statement -- that has not yet been properly submitted to Congress for its review is available for being considered under the Congressional Review Act today.***⁶⁴ ***Moreover, agency non-compliance with the CRA submission requirement has called into question whether any rule that was not been submitted to Congress since the CRA was enacted is legally in effect.***⁶⁵

B. The Need for Action

Various reports indicate that agencies have failed to comply with the Congressional Review Act. In many cases, agencies have submitted their major regulations to Congress, but this commonly does not appear to be the case for many guidance (interpretive rules and policy statements), and to a lesser extent for non-major regulations. Most frequently, agencies have failed to submit to Congress rules that were not published in the Federal Register (which is common for informal agency interpretive rules and policy statements). Some researchers have counted thousands of rules that were not sent to Congress as required by the CRA.⁶⁶ The Pacific Legal Foundation

⁶¹ See Cong. Rec., S 3687 (daily ed. April 18, 1996).

⁶² 5 USC § 801(a)(1)(A).

⁶³ 5 USC § 802(b)(2).

⁶⁴ See Larkin, “Reawakening the Congressional Review Act,” *supra* note 56, at 214-15, 252; Todd F. Gaziano, Pacific Legal Foundation, Congressional Testimony, “Rulemakers Must Follow the Rules, Too: Oversight of Agency Compliance with the Congressional Review Act,” before the House Subcommittee on Regulatory Reform, Commercial and Antitrust Law, Committee on the Judiciary (Sept. 28, 2017).

⁶⁵ *Id.*

⁶⁶ See, e.g., Curtis W. Copeland, “Congressional Review Act: Many Recent Final Rules Were Not Submitted to GAO and Congress” (July 15, 2014), available at <https://www.redtaperollback.com/wp-content/uploads/2017/05/CurtisCopelandCongressionalReviewActManyRecentFinalRulesWereNotSubmittedtoGAOandCongress07-15-2014.pdf>; Congressional Research Service, “Congressional Review Act: Rules Not Submitted to GAO and Congress,” Report R40997, (Dec. 29, 2009), available at <https://redtaperollback.com/wp-content/uploads/2017/04/CRS122909.pdf>; U.S. Government Accountability Office, “Federal Rulemaking:

launched a project tracking rules that have not been submitted to Congress, and they list on their website about 17 such significant rules.⁶⁷ The Brookings Institution also has issued a report finding that about 348 significant rules issued during the last two decades were not properly submitted to both Houses of Congress and the U.S. General Accountability Office (GAO), as required under the CRA.⁶⁸ Thus, the issue of agency non-compliance with the Congressional Review Act is ripe for Congressional inquiry.

V. Conclusion.

In summary, the lack of transparency and accountability in our rulemaking process is longstanding and ripe for reform. To name just a handful of examples: (1) agencies should follow good guidance practices in developing and using guidance; (2) unless prohibited by law, agencies should interpret their regulatory statutes to fully comply with the longstanding presidential orders to ensure that their regulations provide benefits that justify the costs and maximize societal well-being; (3) agencies should disclose to the public the key information underlying important regulatory decisions; and (4) agencies should better comply with the Congressional Review Act.

Regulatory transparency is foundational to good government and long overdue. Thank you again for the honor to testify before you. I would be happy to address any questions you may have.

Perspectives on 10 Years of Congressional Review Act Implementation,” GAO-06-601T (March 30, 2016), available at <http://www.gao.gov/assets/120/113245/pdf>

⁶⁷ See <https://www.redtaperollback.com/rules/>

⁶⁸ See Philip A. Wallach & Nicholas W. Zeppos, “How Powerful is the Congressional Review Act,” Brookings Institution (April 4, 2017), available at <https://www.brookings.edu/research/how-powerful-is-the-congressional-review-act/>.

APPENDIX – Categories of Regulatory Statutes

1. Silent or Ambiguous on Costs and Lack an Omnibus Factor		
Statue	U.S. Code	Regulatory Authority
Clean Water Act	33 USC § 1326(b)	<p>“... reflect the best technology available for minimizing adverse environmental impact.”</p> <p><u>Entergy v. Riverkeeper</u>: “best” in § 1326(b) can mean most cost-effective; benefit-cost balancing upheld.</p>
Resource Conservation and Recovery Act	42 USC § 6901	<p>“establish such standards . . . as may be necessary to protect human health and the environment”</p> <p><u>See MI v. EPA</u>: refusal to consider cost in determining whether Clean Air Act regulation was “appropriate and necessary” was arbitrary and capricious under that “capacious” phrase.</p>
2. Authorize Consideration of Cost and/or Include an Omnibus Factor		
Clean Air Act	42 USC § 7412(n)	<p>determine whether regulation is “appropriate and necessary”</p> <p><u>MI v. EPA</u>: refusal to consider cost was arbitrary and capricious under the “capacious” phrase of § 7412(n), “appropriate and necessary.” “No regulation is ‘appropriate’ if it does significantly more harm than good.”</p>
Clean Water Act	33 USC § 1314(b)(2)	<p>use “best technology economically achievable” (BAT). In assessing BAT, “take into account . . . the cost of achieving such effluent reduction, non-water quality environmental impacts (including energy requirements), and such other factors as the Administrator deems appropriate.”</p>

3. Clearly Authorizes Benefit-Cost Analysis, But Ambiguous on Extent or Rigor of Benefit-Cost Balancing		
Energy Policy Conservation Act	42 USC § 6295(o)	Energy conservation standards must be “. . . <i>economically justified</i> . . . considering . . . (I) the <i>economic impact</i> . . . ; (II) the <i>savings</i> in operating costs . . . <i>compared to any increase in the price of, or in the initial charges for, or maintenance expenses</i> . . . ; (III) . . . <i>savings</i> likely to directly result from the imposition of the standard . . . (IV) any <i>lessening of the utility or performance</i> of the covered products . . . ; (V) the impact of <i>any lessening of competition</i> . . . ; (VI) the <i>need for national energy and water conservation</i> ; and (VII) <i>other factors as the Secretary considers relevant.</i> ”
Dodd-Frank Act	15 USC § 78c(f)	Whenever SEC is required to consider whether an action is “ <i>necessary and appropriate in the public interest</i> , the Commission shall also consider, in addition to the protection of investors, whether the action will promote <i>efficiency, competition, and capital formation.</i> ” <u>Business Roundtable v SEC</u> , 647 F.3d 1144, 1148-49 (D.C. Cir. 2011) (SEC’s “failure to apprise itself – and hence the public and Congress – of the economic consequences of a proposed regulation makes promulgation of the rule arbitrary and capricious”).

Message

From: Franklin, Charles [CFranklin@cement.org]
Sent: 5/10/2018 3:08:05 PM
To: Letendre, Daisy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b691cccca6264ae09df7054c7f1019cb-Letendre, D]; Shaw, Nena [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=2ae00b27ec1544ef8331567ce532bdd3-Shaw, Nena]; Bolen, Brittany [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31e872a691114372b5a6a88482a66e48-Bolen, Brit]
Subject: Thanks yet again!

Daisy, Nena, Brittany:

I will keep this short as I feel we have been taking more than our share of bandwidth lately. Great meeting yesterday. Thank you for including PCA at the table and thanks for all the work you and the Administrator are doing on engagement and reg reform.

You have a great team.

Thanks!



Charles L. Franklin
Vice President and Counsel, Government Affairs
Portland Cement Association
t. [Ex. 6] [Ex. 6]
e. cfranklin@cement.org w. cement.org

From: Letendre, Daisy [mailto:letendre.daisy@epa.gov]
Sent: Tuesday, May 08, 2018 1:51 PM
Cc: Woodward, Cheryl <Woodward.Cheryl@epa.gov>; Shaw, Nena <Shaw.Nena@epa.gov>; Sachs, Robert <Sachs.Robert@epa.gov>; Sharpe, Kristinn <Sharpe.Kristinn@epa.gov>; Corona, Elizabeth <Corona.Elizabeth@epa.gov>; Lovell, Will (William) <lovell.william@epa.gov>; Gordon, Stephen <gordon.stephen@epa.gov>; McMurray, Forrest <mcmurray.forrest@epa.gov>
Subject: Tomorrow - 2:30PM @EPA HQ

All – if you are receiving this email your attendance has been confirmed for tomorrow’s event at EPA HQ. Please plan to arrive at 2:00pm to allow adequate time for security screening. Further arrival instructions are below.

Directions: EPA’s address is 1200 Pennsylvania Avenue, NW. If you are coming by taxi/vehicle, you want to be dropped off on 12th Street NW, between Pennsylvania and Constitution Avenue. It is almost exactly half way between the two avenues by the Federal Triangle Metro stop. From 12th Street, facing the building with the EPA and American flags, walk toward the building (under the flags) and take the glass door on your left hand side. This is **the South Lobby entrance to the William Jefferson Clinton building**.

Once inside the building, security will prompt you to scan all items such as bags, coats etc., and we will escort you to the meeting with the Administrator. Security will have the visitors passes for everyone.

Daisy C. Letendre
Senior Advisor for Policy and Strategic Communications
U.S. Environmental Protection Agency
Office of the Administrator
Office of Policy

202.564.0410 (O)

Ex. 6 (C)

From: Ghanta, Venu G [Venu.Ghanta@duke-energy.com]
Sent: 4/25/2017 4:34:04 PM
To: Bolen, Brittany [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31e872a691114372b5a6a88482a66e48-Bolen, Brit]
Subject: follow-up
Attachments: Edwardsport IGCC Issue paper 2017 04 11 v.2.docx
Flag: Follow up

Hi Brittany-

Thanks for taking the time out to meet with me yesterday. Per our discussion, here is additional information on a couple of issues. Please feel free to call any time with questions.

ELG issue with Duke's Edwardsport plant in Edwardsport, IN (more background is in the attached file, which was sent to Ryan Jackson on 4/11)

- Edwardsport is a state-of-the art integrated gasification combined cycle (IGCC) plant which began operation in June 2013.
- It is the cleanest and one of the most efficient coal plants in the nation.
- The final ELG rule established limits for gasification wastewater which are unreasonably stringent and cannot be achieved by this plant.
- As a result, Duke Energy submitted a request for variance from the final ELG limits to EPA Region 5 nearly one year ago. Indiana's Department of Environmental Management (IDEM) supports the approval of this request; however, Region 5 has yet to act on it.
- While Duke Energy supports EPA's action to reconsider aspects of the ELG rule, the rulemaking process would not be complete in time to provide relief for the Edwardsport facility. (We would need to begin work soon to install an additional control system to meet the limits in the final ELG rule.)
- We ask that you approve Duke Energy's variance request and the alternative limits proposed in the application submitted to Region 5 to provide immediate relief to the Edwardsport plant.

CSAPR Update Indiana issue

- EPA finalized the CSAPR Update rule last October, lowering the CSAPR Phase 2 NOx emission budgets during ozone season for power plants in 22 Eastern states, including Indiana.
- While most state budgets increased from the proposal to the final rule, Indiana was one of a few states whose budget decreased. In Indiana's case, the budget went down by nearly 18%, or almost 5,000 tons from proposal to final.
- The Indiana budget is insufficient based on how our power plants operate, and EPA arrived at this unreasonable number by relying on erroneous assumptions and an incorrect methodology.
- If this budget is not adjusted, additional costs will have to be borne by the electric customers of Indiana.
- In March, we joined the Indiana Utility Group (IUG) and the Indiana Energy Association (IEA) in submitting a petition for reconsideration in which we articulated the errors EPA made in its calculation of the final Indiana budget, and requested that EPA correct the errors in the final rule and revise the Indiana budget accordingly. (Link is here: <https://www.epa.gov/airmarkets/csapr-update-petition-reconsideration-indiana-utility-group-and-indiana-energy>)
- We ask that you act upon this reconsideration petition as soon as is practicable. We believe that these fixes are technical in nature, and could be made with little administrative burden.

Thanks, Venu

Venu Ghanta
Federal Environmental & Energy Policy Director
Duke Energy
325 7th Street NW, Suite 300, Washington, DC 20004
Office: [REDACTED] Ex. 6
Cell: [REDACTED] Ex. 6
venu.ghanta@duke-energy.com

Edwardsport – Gasification Wastewater Effluent Limits

Executive Summary

Duke Energy Indiana owns and operates the Edwardsport IGCC Station, an integrated gasification combined cycle (“IGCC”) electric generation facility, located in Edwardsport, Indiana. The Edwardsport IGCC Station began commercial operation in June 2013 and is the only operational “IGCC” clean coal plant and one of the most efficient coal plants in the country.

In September 2015, EPA issued the Steam Electric Effluent Limitations Guidelines (ELG) final rule, finalizing limits for IGCC plants that are not achievable, even with the most current, state-of-the-art equipment and which would apply only to Edwardsport. Additional control technology to meet the current ELG limits has not been identified, but could result in the complete replacement of the treatment system, which could cost upwards of \$100M. This is despite the fact that the facility is already environmentally protective, reducing key pollutants to a level lower than that required by federal drinking water standards.

As a result, Duke Energy submitted a variance request to Indiana’s Department of Environmental Management (IDEM) and EPA Region 5 on April 28, 2016, to provide immediate relief from the ELG rule’s overly burdensome limits for Edwardsport. While IDEM supports the variance request, EPA has refused to act on it for nearly one year.

Recommendation

EPA should expeditiously approve Duke Energy’s variance request and the alternative limits proposed in the variance application. If this were to occur, EPA could defer reconsideration of the IGCC issues, as they will be addressed by the variance approval. Duke Energy would then remove the IGCC issues from the consolidated litigation.

This will:

- Prevent the higher bills for electric customers of Indiana by avoiding \$100M for an additional control system that will provide virtually no additional environmental benefit.
- Promote cooperative federalism by deferring to the state’s request for approval of the variance.
- Provide regulatory certainty to Duke Energy and its customers and reduce the regulatory/litigation burden for EPA.
- Protect the country’s only operational IGCC “clean coal” plant.

Background on Edwardsport Facility

Duke Energy's Edwardsport IGCC Station began commercial operation in June 2013 and is one of the most efficient coal plants in the country, utilizing state-of-the-art treatment technology.

Edwardsport was only the third IGCC unit in the country at the time the final ELG Rule was issued: the other two were TECO's Polk Power Station in Florida and Wabash River Station in Indiana. Southern Company's Kemper station is still under construction (anticipated commercial operation April 30, 2017).

Following the finalization of the ELG rule, Wabash Valley Power Association announced IGCC operations would cease at Wabash River. The Polk Power Station does not discharge the gasification wastewater to surface water and therefore the ELG Rule is not applicable. Kemper is also not planning to discharge any gasification wastewater, leaving Edwardsport as the only unit in the country that is affected by these limits.

Highlights of Duke Energy's Variance Application

- ⇒ Discusses and provides references to statements in the final Steam Electric ELGs and the Technical Development Document for the Final ELGs (TDD) identifying evaporation technology as the model technology in treating gasification wastewater. Polk Station, Wabash River IGCC facility, and Edwardsport IGCC facility are identified in the TDD as employing this technology.
- ⇒ Includes succinct descriptions of each of the three facilities' gasification wastewater processes and treatment to **emphasize the fundamental differences** between the units.
 - Differences in fuels (and fuel constituents used)
 - Differences in preliminary cooling and cleaning of syngas
 - Differences in the type and configuration of the evaporative processes employed in treatment of gasification wastewater
- ⇒ The **need for an FDF variance** is shown by a comparison of monitoring data from mainly 2015 for the gasification wastewater generated by the Edwardsport IGCC facility with the BAT ELGs for gasification wastewater. Edwardsport IGCC Station cannot meet the ELGs for mercury or TDS. Arsenic limits could be problematic as well.
- ⇒ **Data Exclusions and Calculation of Limitations (Synopsis):**
 - Wabash data for arsenic and mercury were excluded from consideration by EPA since that data failed EPA's long-term average test.
 - Also, because EPA concluded that the data collected from the forced circulation (crystallizer) evaporator condensate at Polk did not demonstrate pollutant removal rates considered well treated by evaporation, EPA rejected use of the crystallizer condensate data from Polk in setting ELGs.
 - Thus, the ELGs for arsenic and mercury in gasification wastewater were determined from only four samples from the falling film evaporator at Polk.
 - EPA was unable to compare weekly sampling to the monthly average limitations since Polk's gasification wastewater was not sampled frequently enough.
- ⇒ **Compliance Costs:** EPA concluded that there would be no capital compliance costs associated with the ELGs for gasification wastewater since all IGCC plants currently operate

what they consider the Best Available Technology (BAT) treatment system – evaporation technology. Duke believes that this conclusion was reached prematurely and with inadequate information.

Timeline of Events

- 2010-2012 EPA collected data to inform the proposed rule
- April 19, 2013 EPA issued a proposed rule to revise the technology-based effluent limits
- June 2013 Edwardsport began commercial operation
- Sept. 19, 2013 Duke submitted comments on rule, which included comments on the IGCC gasification wastewater limits
- Sept. 29, 2015 Duke met with OMB to discuss IGCC limits
- Sept. 30, 2015 EPA issued final rule to meet a court-ordered deadline
- Nov. 10, 2015 Wabash River news release that they were shutting down their IGCC unit
- Nov. 19, 2015 UWAG filed legal challenge to the rule which included IGCC limits
- March 16, 2016 Duke Energy Indiana files separate legal challenge to IGCC limits
- April 28, 2016 Duke submitted the Fundamentally Different Factors (FDF) variance request to IDEM and EPA Region 5
- Oct. 4, 2016 IDEM submits letter to EPA Region 5 supporting our variance request, including the proposed limits
- Oct. 28, 2016 Administrative deadline for EPA to rule on variance request - 180 days from application filing [CWA Section 301(n)(3)]
- Dec. 2016 & Jan. 2017 EPA HQ requested additional data for variance request – Duke submitted info shortly after requests
- March 24, 2017 UWAG submitted Petition for Reconsideration of ELG Rule

Proposed Alternative ELG Limits

	Final ELG IGCC Limits ¹		Current Permit ² – Interim Limits		Variance Proposed Limits	
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Monthly Avg	Daily Max
Arsenic	--	4 µg/l	report	report	--	8 µg/l
Mercury ³	1.3 ng/l	1.8 ng/l	report	report	12.4 ng/l	30 ng/l
Selenium ⁴	0.227 mg/l	0.453 mg/l	report	report	0.227 mg/l	0.453 mg/l
Total dissolved solids (TDS)	22 mg/l	38 mg/l	report	report	36 mg/l	78 mg/l

¹ Edwardsport Permit currently has an applicability date for the final ELG limits of April 1, 2021.

² Edwardsport NPDES permit was renewed last year and included the new ELG limits for IGCC wastewater – effective date of permit is April 1, 2016.

³ Mercury ELG limit is below drinking water standard of 2 ng/l (ng/l also known as ppt - parts per trillion); Ohio River’s water quality limit is 12 ppt.

⁴ No limit change requested for selenium.

Message

From: Executive Director [ExecutiveDirector@nationalenergyresources.com]
Sent: 8/14/2018 3:47:06 PM
To: Bolen, Brittany [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31e872a691114372b5a6a88482a66e48-Bolen, Brit]
Subject: NERO Luncheon Series - Chairman Greg Walden - 9/12/18

Hope to see you there! RSVP requested by 9/6 requested.

National Energy Resources Organization (NERO)

Cordially invites you to attend the

2018 NERO Luncheon Series

Energy & Commerce Committee

Chairman

Greg Walden

Wednesday, September 12, 2018

Doors Open at 11:45 a.m.

Hyatt Regency on Capitol Hill

400 New Jersey Avenue, NW, Washington, DC

RSVP by Thursday, Sept. 6: ExecutiveDirector@NationalEnergyResources.com or
703-548-1764

Invitation not transferable. Please do not forward.

Please Note: Counsel has advised that under House and Senate rules, this event is a "widely attended event". Under these rules, only NERO may extend invitations to House or Senate Members or staff to attend this event. Individual members of NERO are not permitted to extend invitations. Violations of these rules may result in criminal liability.

NERO is a non-profit, non-partisan organization bringing together individuals and groups actively engaged in fostering our national energy activities.

www.nationalenergyresources.com

Message

From: Executive Director [ExecutiveDirector@nationalenergyresources.com]
Sent: 7/25/2018 1:36:16 PM
To: Bolen, Brittany [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31e872a691114372b5a6a88482a66e48-Bolen, Brit]
Subject: NERO Wheels Up Happy Hour - RSVP by noon tomorrow
Attachments: ATT00001.txt

Hi Brittany,

We hope you can join us for happy hour next Thursday! Please RSVP before NOON tomorrow.

National Energy Resources Organization



WHEELS UP

Happy Hour

Thursday, August 2, 2018

5:00 – 7:00 pm

NRECA Townhouse

208 A Street, NE

Washington, DC

(By Invitation Only)

Please do not forward.

RSVP: ExecutiveDirector@NationalEnergyResources.com or 703-548-1764

You will receive an email confirming receipt of your RSVP.

Please Note: Counsel has advised that under House and Senate rules, this event is a “widely attended event”. Under these rules, only NERO may extend invitations to House or Senate Members or staff to attend this event. Individual members of NERO are not permitted to extend invitations. Violations of these rules may result in criminal liability.

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www.nationalenergyresources.com

Message

From: Executive Director [ExecutiveDirector@nationalenergyresources.com]
Sent: 7/18/2018 7:44:05 PM
To: Bolen, Brittany [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31e872a691114372b5a6a88482a66e48-Bolen, Brit]
Subject: NERO Wheels-Up Happy Hour - 8.2.18
Attachments: ATT00001.txt

Whether you are recessing or not, we hope you will join us for one more happy hour! Please RSVP by Noon on 7/26. Hope to see you there!

National Energy Resources Organization



WHEELS UP

Happy Hour

Thursday, August 2, 2018

5:00 – 7:00 pm

NRECA Townhouse

208 A Street, NE

Washington, DC

(By Invitation Only)

Please do not forward.

RSVP: ExecutiveDirector@NationalEnergyResources.com or 703-548-1764

You will receive an email confirming receipt of your RSVP.

Please Note: Counsel has advised that under House and Senate rules, this event is a “widely attended event”. Under these rules, only NERO may extend invitations to House or Senate Members or staff to attend this event. Individual members of NERO are not permitted to extend invitations. Violations of these rules may result in criminal liability.

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www.nationalenergyresources.com

Message

From: Executive Director [ExecutiveDirector@nationalenergyresources.com]
Sent: 7/6/2018 1:20:30 PM
To: Bolen, Brittany [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31e872a691114372b5a6a88482a66e48-Bolen, Brit]
Subject: LAST CALL - Lunch with David Banks & Michael Catanzaro - 7.12.18

Noon today is the deadline to RSVP for next Thursday's luncheon. We hope to see you there!

National Energy Resources Organization (NERO)

**Cordially invites you to attend the
2018 NERO Luncheon Series**

**Perspectives on U.S. Energy:
Domestic and International**

**G. David Banks *and*
Michael Catanzaro**

Thursday, July 12, 2018

Doors Open at 11:45 a.m.

Hyatt Regency on Capitol Hill
400 New Jersey Avenue, NW, Washington, DC

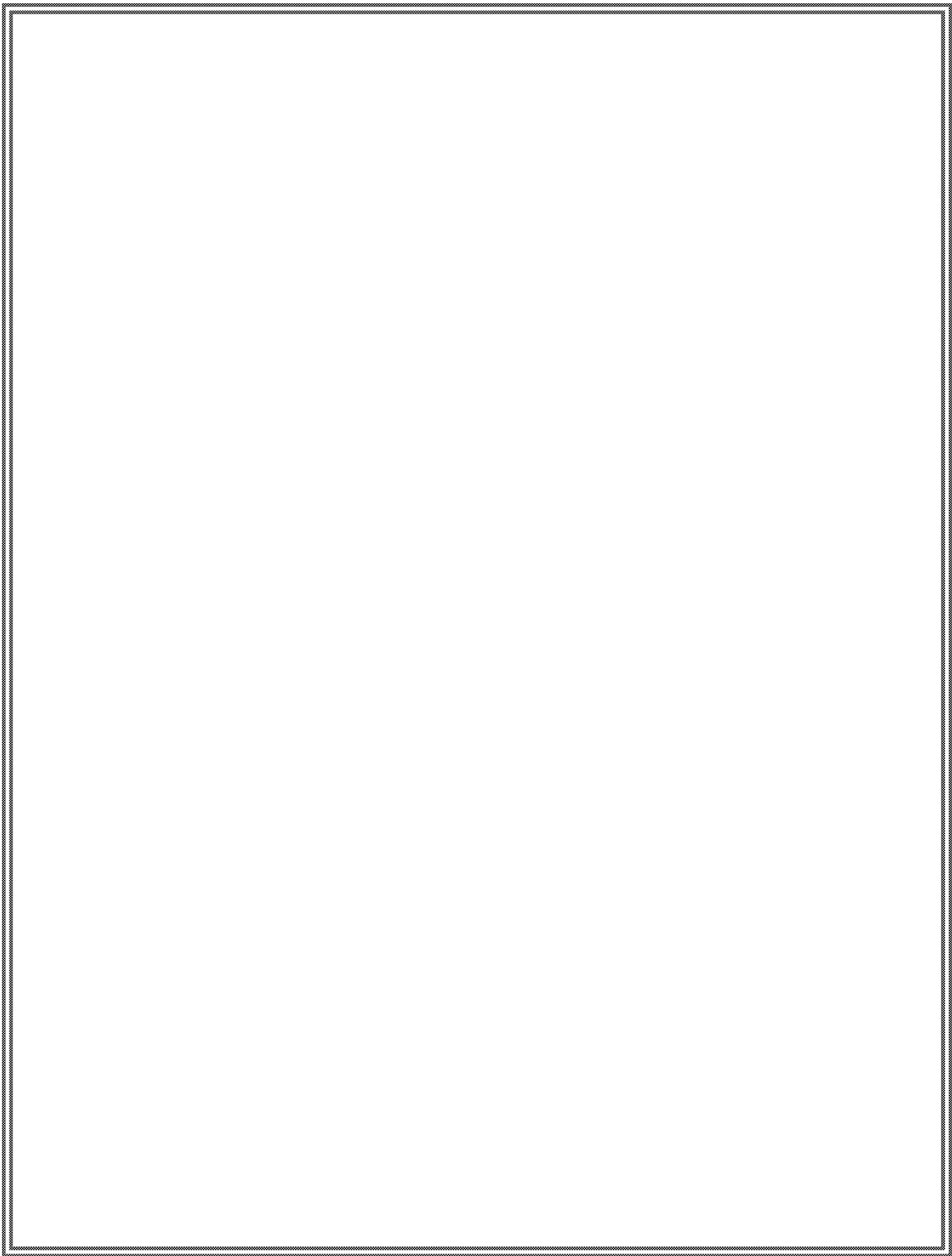
RSVP: ExecutiveDirector@NationalEnergyResources.com or 703-548-1764
You will receive an email confirming receipt of your RSVP.

Please Note: Counsel has advised that under House and Senate rules, this event is a "widely attended event".

*Under these rules, only NERO may extend invitations to House or Senate Members or staff to attend this event.
Individual members of NERO are not permitted to extend invitations. Violations of these rules may result in criminal liability.*

**NERO is a non-profit, non-partisan organization bringing together individuals
and groups actively engaged in fostering our national energy activities.**

www.nationalenergyresources.com



Message

From: Executive Director [ExecutiveDirector@nationalenergyresources.com]
Sent: 6/4/2018 1:21:56 PM
To: Bolen, Brittany [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31e872a691114372b5a6a88482a66e48-Bolen, Brit]
Subject: Invitation to NERO Annual Awards Dinner
Attachments: ATT00001.txt

Hi Brittany,

We hope you can join us at our Annual Awards Dinner to honor **Rep. Scalise and Sen. Heitkamp!** **Please RSVP by Noon this Friday, June 8.** We will confirm receipt of your RSVP by return email.

This invitation is not transferable. Please do not forward.

Message

From: Executive Director [ExecutiveDirector@nationalenergyresources.com]
Sent: 6/7/2018 1:11:23 PM
To: Bolen, Brittany [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31e872a691114372b5a6a88482a66e48-Bolen, Brit]
Subject: Confirmation of RSVP - NERO Annual Awards Dinner 6.21.18

Hi Brittany,

This is to confirm receipt of your RSVP for NERO's Annual Awards Dinner. We are happy you can join us!

As this is a seated dinner, seating and a meal will be reserved for you. If your plans should change between now and then and you are no longer able to attend, please let us know.

We look forward to seeing you on the 21st!

Jo Ann Pawela
National Energy Resources Organization

Message

From: Baer, Louis [LBaer@cement.org]
Sent: 5/4/2018 8:26:29 PM
To: Bolen, Brittany [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31e872a691114372b5a6a88482a66e48-Bolen, Brit]
CC: Franklin, Charles [CFranklin@cement.org]; Derby, Rachel [RDerby@cement.org]
Subject: Thank You - PCA
Attachments: PCA Thank You_Bolen_05022017.pdf

Brittany,

The Portland Cement Association would like to thank you for taking the time to speak with us and our members during our meeting with Administrator Pruitt on April 24. Attached is our formal thank you letter. We very much appreciate your work and efforts at EPA and look forward to continuing working with you. Have a great weekend.

Best,
Louis Baer

Louis A. Baer, Esq., CPEA
Director/Assistant Counsel, Government Affairs
Portland Cement Association
1150 Connecticut Avenue NW, Suite 500
Office:
Cell:
lbaer@cement.org
www.cement.org



America's Cement Manufacturers™

Portland Cement Association
1150 Connecticut Avenue, NW, Suite 500
Washington, DC 20036-4104
202.408.0400 Fax 202.408.0077
www.cement.org

May 2, 2018

Brittany Bolen
Acting Associate Administrator
Office of Policy
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, D.C. 20460

Dear Brittany:

On behalf of the Portland Cement Association, I wish to thank you for taking the time to speak with us and our members during our meeting with EPA Administrator Scott Pruitt on April 24. You have developed a great team and I was pleased to have the chance to introduce them to my members. Your willingness to join the meeting was particularly appreciated given the many competing priorities you face.

As our country and our industry work towards the common goals of sustainability, economic growth, innovation and excellence in environmental stewardship, discussions like these help advance our efforts. We hope to continue on this dialogue in the future.

Again, thank you for taking the time to meet with us.

Sincerely

Charles Franklin
Vice President and Counsel, Government Affairs

Message

From: E. Blair Shipp [bshipp@wvalisllc.com]
Sent: 6/6/2018 8:05:41 PM
To: Bolen, Brittany [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31e872a691114372b5a6a88482a66e48-Bolen, Brit]
CC: 'Noe, Paul' [Paul_Noel@afandpa.org]
Subject: Invitation to Meet with the Leaders of the TALC/MAC/RIC on Tuesday, June 12th
Attachments: 2018 MAC LIST.pdf; 2018 RIC LIST.pdf; 2018 TALC LIST.pdf

Dear Brittany,

After talking to our mutual good friend Paul Noe, Wayne and I would like to formally invite you to speak to the leaders of the Manufacturing Action Council, Trade Association Liaison Council, and Regulatory Improvement Council (please see enclosed membership list and mission statement) on Tuesday, June 12th at 10:30AM, at the American Forest & Paper Association, 1101 K Street, NW, Suite 700, Washington, DC 20005.

You have been kind enough to meet with these leaders a number of times with Samantha Dravis and Administrator Pruitt, and we are eager for the Bolen-eye view of where and how the EPA regulatory landscape will continue to change in 2018 and beyond. I believe a roundtable discussion with these leaders would be mutually beneficial to you, the trade associations, and to President Trump's regulatory agenda. I am enclosing the current list of attendees below.

Thank you Brittany, and I look forward to hearing positively from you. Please do not hesitate to contact me if you need further information. My email/phone numbers are included in my signature.

With best regards,

Blair Shipp

E. Blair Shipp
Director of Communications

Valis Associates, LLC

1101 17th Street, NW, Suite 608, Washington DC 20036
(O) 202.393.5055 (C) 703.350.2021

Amanda	Nguyen	Director of Government Affairs & Legal	International Fragrance Association--North
Betsy	Natz	President	Kitchen Cabinet Manufacturers Association
Billy	Johnson	Chief Lobbyist	The Institute of Scrap Recycling Industries
Dan	Glucksman	Public Affairs Director	International Safety Equipment Association
David	Hickey	Vice President, Government Affairs	International Sign Association
Doug	Troutman	General Counsel and Vice President, Government Affairs	American Cleaning Institute
Elizabeth	Bartheld	Vice President, Government Affairs	American Forest & Paper Association
Heidi	Brock	President & CEO	The Aluminum Association
Jennifer	MacDonald	Assistant Vice President, Government Affairs	Association of American Railroads
Jennifer	Abril	President & CEO	Society of Chemical Manufacturers and Affi
Jessica	Bennett	Vice President of External Affairs	Renewable Fuels Association
Joe	McGuire	President & CEO	American Home Appliance Manufacturers
Joe	Quinn	Vice President, Public Affairs	Aluminum Association
John	Guzik	Government Affairs	Precision Metalforming Association
Justin	Ailes	Vice President of Government and Regulatory Affairs	American Land Title Association

Ken	Trepeta	President	Real Estate Services Providers Council, Inc.
Michelle	Korsmo	President	American Land Title Association
Patty	Long	Executive Vice President – Industry Affairs	Plastics Industry Association
Paul	Noe	Vice President for Public Policy	American Forest & Paper Association
Rich	Ward	Director of National Security Policy	Edison Electric Institute
Scott	DeFife	Chief Lobbyist	Plastics Industry Association
Stephen	Sandherr	Chief Executive Officer	Associated General Contractors of America
Tom	Hammer	President & CEO	National Oilseed Processors Association
Tony	Eberhard	Vice President of Legislative Affairs	International Dairy Foods Association
Wayne	Valis	President	Valis Associates LLC
E. Blair	Shipp	Director of Communications	Valis Associates LLC
Maura	Valis Lint	Vice President	Valis Associates LLC

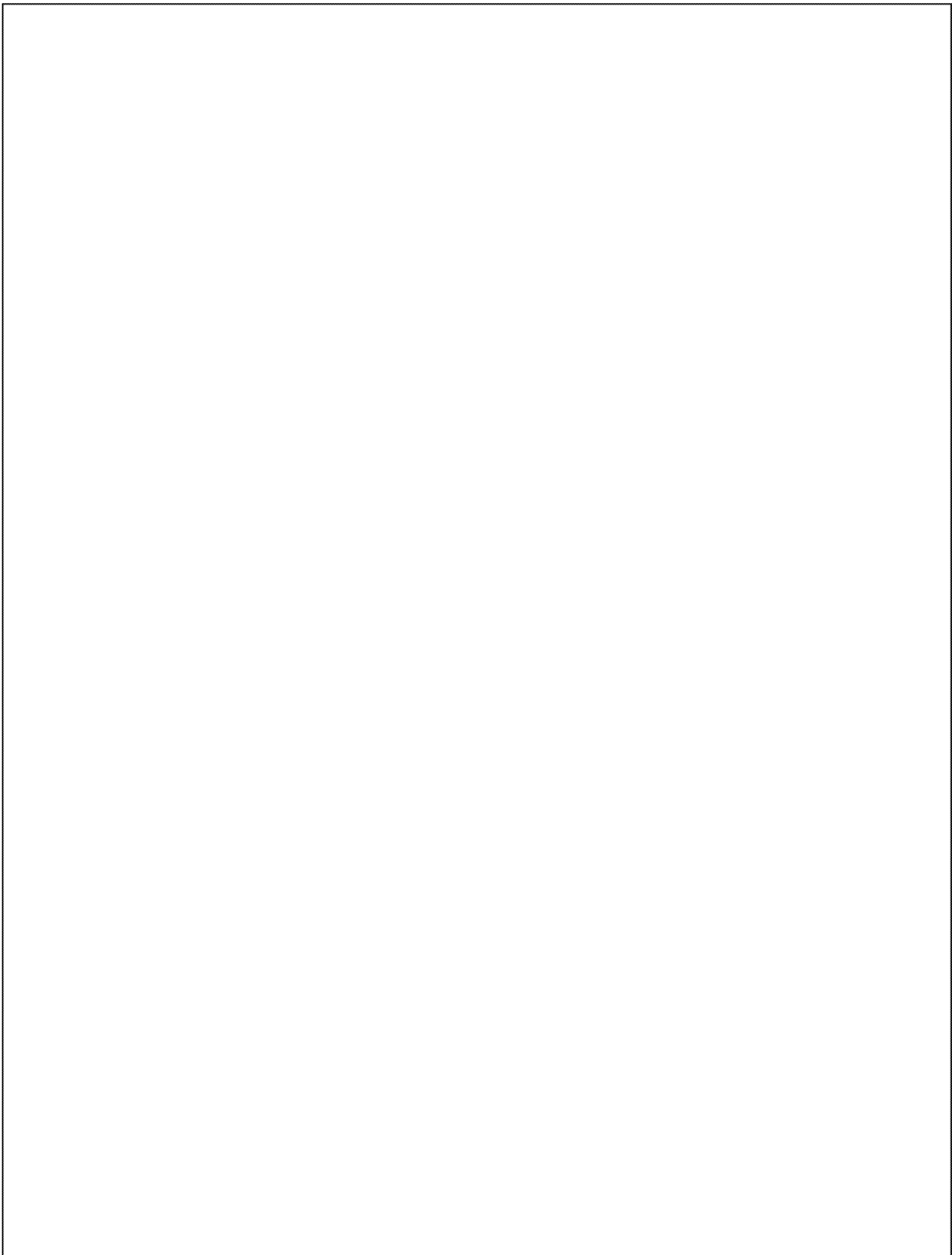
The Manufacturing Action Council (MAC)

Mission Statement: MAC's goal is to increase awareness by policy-makers of the critical role that manufacturing plays in the U.S. economy. MAC will foster public policy that supports a robust and growing domestic manufacturing sector. MAC arranges individual meetings between industry trade association executives and Members of Congress, Administration officials, opinion leaders and others. MAC membership is open to trade association executives representing manufacturing industries.

Wayne H. Valis MAC Founder & Executive Director Valis Associates, LLC wvalis@wvalisllc.com 202.393.5055

2018 Membership List:

Adhesive and Sealant Council	Matthew Croson
Alliance of Automobile Manufacturers	Mitch Bainwol
Aluminum Association	Heidi Brock
American Cleaning Institute	Melissa Hockstad
American Coatings Association	Andy Doyle
American Composites Manufacturers Association	Tom Dobbins
American Forest and Paper Association	Donna Harman
American Iron and Steel Institute	Tom Gibson
Association of Equipment Manufacturers	Nick Yaksich
Color Pigments Manufacturers Association	David Wawer
Institute of Scrap Recycling Industries	Robin Wiener
International Fragrance Association - North America	Farah K. Ahmed
International Safety Equipment Association	Charles Johnson
International Sign Association	Lori Anderson
Kitchen Cabinet Manufacturers Association	Betsy Natz
Manufacturers Alliance/MAPI	Stephen Gold
National Electrical Manufacturers Association	Kevin J. Cosgriff
National Oilseed Processors Association	Tom Hammer
National Pavement Association	Jay Hansen
Plastics Industry Association	Bill Carteaux
Recreation Vehicle Industry Association	Jay Hansen
Society of Chemical Manufacturers and Affiliates	Jennifer Abril
Textile Rental Services Association of America	Kevin Schwalb
Vinyl Association	Dick Doyle



The Regulatory Improvement Council Organized By Valis Associates, LLC

Valis Associates, LLC 1101 17th Street, NW Washington, DC 20036 202.393.5055

2018 Membership:

American Cleaning Institute	National Association of Manufacturers
American Coatings Association	National Cotton Council
American Forest and Paper Association	National Stone, Sand and Gravel Association
Association of American Railroads	North American Millers Association
American Trucking Associations	Personal Care Products Council
Capital Alpha Partners, LLC	Phillips 66
Color Pigments Manufacturers Association	Precision Metalforming Association
Commodity Markets Council	Recreation Vehicle Industry Association
Construction Industry Roundtable	Renewable Fuels Association
Edison Electric Institute	Textile Rental Services Association
International Fragrance Association-North America	Toyota - North America
Kimberly Consulting, representing Kimberly-Clark	US Apple Association
Kitchen Cabinet Manufacturers Association	US Mortgage Insurers Association
National Asphalt Pavement Association	Vinyl Institute

Mission Statement – The Regulatory Improvement Council members endorse the following:

I. Regulation: Environmental, health and safety regulations have led to dramatic improvements in the environment and have significantly reduced human health risk; however, many of the Federal regulations that have led to these improvements have been more costly and less effective than they could have been; too often regulatory priorities have not been based upon a realistic consideration of risk, risk reduction opportunities, and costs.

The public and private resources available to address health, safety, and environmental concerns are not unlimited; those resources need to be allocated to address the greatest needs in the most cost-effective manner so that the incremental costs of regulatory options are reasonably related to be incremental benefits.

To provide more cost-effective and cost-reasonable protection to human health and the environment, regulatory priorities should be based upon realistic consideration of risk; the priority-setting process must include scientifically sound, objective, and unbiased risk assessments, comparative risk analysis, and risk management choices that are grounded in cost-benefit principles.

Risk assessment has proven to be a useful decision making tool; however, improvements are needed in both the quality of assessments and the characterization and communication of findings; scientific and other data must be better collected, organized, and evaluated; most importantly, the critical information resulting from a risk assessment must be effectively communicated in an objective and unbiased manner to decision makers, and from decision makers to the public.

The public stakeholders must be fully involved in the risk decision-making process. They have the right to know about the risks addressed by regulation, the amount of risk to be reduced, the quality of the science used to support decisions, and the cost of implementing and complying with regulations. This knowledge will allow for public scrutiny and promote quality, integrity, and responsiveness of agency decisions.

II: Intellectual Property Protection: Successful innovation promotes technologies and products that fuel economic development and improve the worldwide human condition. Without strong protection and enforcement of intellectual property, much of private investment initiative, research and human invention would be stolen and evaporate. Multinational business and research-intensive industry in particular, depend upon the assurance and predictability of intellectual property protection. The regulatory regime and legal system must defend intellectual property as the cornerstone of creativity, development, and scientific advance. IP protected innovation is the crown jewel of the American economic system.

III. Financial Services Regulation: The recent financial crisis has reminded us that appropriate financial services regulations are necessary to curb systemic risk and for the orderly functioning of the financial markets and the economy. However, now that we are in a global climate that encourages stricter financial regulation, it is imperative to ensure that extreme, onerous and burdensome rules are not implemented on market participants.

It is crucial for policymakers and regulators to understand that regulations imposed on financial markets have immediate and powerful impacts on the economy. It must be the goal of the regulatory community to preserve open and competitive financial markets. In an era of increasing international competition, America risks being left behind if our financial markets are strangled by overregulation. RIC believes there must be greater emphasis on cost-benefit analyses before financial services rulemakings are promulgated by the regulatory agencies or the legislative branch.

To be clear, the Regulatory Improvement Council is not opposed to regulation. We believe that appropriate governmental oversight has a justified and valid place in society, including of course and importantly, the financial marketplace. We strive to educate policymakers and regulators about the adverse socioeconomic consequences of rules that stifle capital formation, restrict job creation, slow economic growth, and diminish America's leading place on the rostrum of nations in this world.

The Trade Association Liaison Council (TALC)

Mission Statement: The Trade Association Liaison Council (TALC) was created in 1981 as the bi-partisan coalition arm of President Reagan. For over 30 years, TALC members have worked with Members of Congress and Administration officials to promote U.S. job growth, cost-effective and reasonable federal regulations, fair and free international trade policy, a broad based federal tax policy and a strong American economy. Members are CEOs, Presidents and leaders of trade associations and companies.

Wayne H. Valis TALC Founder & Executive Director Valis Associates, LLC

Aluminum Association, Inc.
American Beverage Association
American Coatings Association
American Composites Manufacturers Assn.
American Council of Engineering Companies
American Gas Association
American Iron and Steel Institute
American Land Title Association
Associated General Contractors of America
Association of American Railroads
Association of Home Appliance Manufacturers
Commodity Markets Council
Construction Industry Round Table
Corn Refiners Association
Credit Union National Association
Edison Electric Institute
The Fertilizer Institute
Fuel Cell Hydrogen and Energy Association
Independent Bakers Association

Heidi Brock
Susan Neely
Andy Doyle
Tom Dobbins
David Raymond
Rick Shelby
Thomas Gibson
Michelle Korsmo
Steve Sandherr
Ed Hamberger
Joe McGuire
Gregg Doud
Mark Casso, Esq.
John Bode
Jim Nussle
Tom Kuhn
Chris Jahn
Morry Markowitz
Nicholas Pyle

International Association of Plumbing and Mechanical Officials
International Dairy Foods Association
International Fragrance Association - North America
International Safety Equipment Association
International Sign Association
International Wood Products Association
National Asphalt Pavement Association
National Association of Manufacturers
National Association of Chain Drug Stores
National Automobile Dealers Association
National Council of Farmer Cooperatives
National Electrical Manufacturers Association
National Marine Manufacturers Association
National Stone, Sand & Gravel Association
Plastics Industry Association
Recreational Vehicle Industry Association
Real Estate Services Providers Council
Renewable Fuels Association
Textile Rental Services Association
Toyota North America
Vinyl Institute

Dain Hansen
Michael Dykes
Farah Ahmed
Charles Johnson
Lori Anderson
Cindy Squires
Jay Hansen
Jay Timmons
Steve Anderson
Peter Welch
Chuck Conner
Kevin Cosgriff
Nicole Vasilaros
Michael Johnson
Bill Carteaux
Jay Landers
Ken Trepeta
Bob Dinneen
Kevin Schwalb
Mark Johnson
Dick Doyle

The Trade Association Liaison Council (TALC)

Mission Statement: The Trade Association Liaison Council (TALC) was created in 1981 as the bi-partisan coalition arm of President Reagan. For over 30 years, TALC members have worked with Members of Congress and Administration officials to promote U.S. job growth, cost-effective and reasonable federal regulations, fair and free international trade policy, a broad based federal tax policy and a strong American economy. Members are CEOs, Presidents and leaders of trade associations and companies.

Wayne H. Valis TALC Founder & Executive Director Valis Associates, LLC

Message

From: Hilary Moffett [moffetth@api.org]
Sent: 5/3/2018 9:06:17 PM
To: Bolen, Brittany [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31e872a691114372b5a6a88482a66e48-Bolen, Brit]
CC: Lauren N. Coughlin [CoughlinL@api.org]
Subject: Invitation for Brittany Bolen to Join RFS Panel
Attachments: WGR RFS Panel Invitation Letter_BB.pdf

Hi Brittany,

I was asked to send this invite along on behalf of WGR (Women in Government Relations). They would love to have you speak alongside representatives from interested congressional offices on a "policy solutions" panel for the RFS.

Please let me know if you are able and willing to join this fantastic group. Feel free to reach out to Lauren Coughlin, cc'd here, or myself.

Thanks for your consideration.

Regards,
Hilary



Brittany Bolen
Deputy Associate Administrator, The Office of Policy, EPA
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

May 3, 2018

Dear Deputy Associate Administrator Bolen,

The Women in Government Relations (WGR) Energy, Environment, and Agriculture Task Force cordially invites you to speak on a lunchtime panel on the Renewable Fuel Standard targeted for June 2018.

WGR is one of the most respected non-profit, non-partisan government relations associations in the DC metro area. The Energy, Environment, and Agriculture Task Force focuses on educational programming and networking opportunities around timely federal and state policy issues and functional training for professional development. The Task Force seeks to provide a balanced perspective on a variety of issues that affect the membership.

The Energy, Environment, and Agriculture Task Force is planning to hold a one-time event that includes two panels of experts on the Renewable Fuel Standard. The first "industry" panel will feature representatives from a diverse group of organizations, balanced between competing interests in the future of the program. The second "government" panel will include speakers from the EPA and congressional offices currently involved in the administration and potential reform of the program. A light lunch will be served. This event is off-the-record and closed to the press.

The Task Force would be delighted if you could participate in the second, government-focused panel. Fellow panel participants may include staff in related congressional offices, (the offices of Sen. Cornyn and Rep. Shimkus have been invited). The event will be hosted at the offices of the American Petroleum Institute at 1220 L St. NW. The entire event will run from 12:00pm to 2:00pm. The second panel will begin at 1:15pm.

Please indicate your interest in participating and availability on any of these targeted June dates:

- Wednesday, June 6
- Thursday, June 14
- Thursday, June 21
- Thursday, June 28

Thank you in advance for your consideration! We hope you can share your knowledge and expertise with WGR members and guests. Please respond to with your tentative availability by May 11, 2018.

Best regards,

Megan Ekstrom (EEA Task Force Co-Chair)
Lauren Coughlin (EEA & WGR Member)

Message

From: Nolan, Robert M [robert.m.nolan@exxonmobil.com]
Sent: 5/23/2018 3:08:14 PM
To: Bolen, Brittany [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31e872a691114372b5a6a88482a66e48-Bolen, Brit]
Subject: ExxonMobil Press Release
Attachments: ExxonMobil Release - EMBARGOED Until 8 AM CDT 05-23-2018.pdf

Good morning Brittany, I thought you might find this of interest

Regard, Robert

Ex. 6	(Office)
Ex. 6	(Cell)

EMBARGOED UNTIL 8 AM CDT, WEDNESDAY, MAY 23, 2018

News Release

ExxonMobil

Exxon Mobil Corporation
5959 Las Colinas Boulevard
Irving, TX 75039-2298
972 940 6007 Telephone
972 940 6143 Facsimile

CONTACT: ExxonMobil Media Relations
(972) 940-6007

EMBARGOED UNTIL 8 AM CDT, WEDNESDAY, MAY 23, 2018

ExxonMobil Announces Greenhouse Gas Reduction Measures

- Methane emissions to drop 15 percent, flaring reduced by 25 percent by 2020
- Improving industry-leading energy efficiency in refining and chemical manufacturing

IRVING, Texas – ExxonMobil today announced greenhouse gas reduction measures that are expected to lead to significant improvements in emissions performance by 2020, including a 15 percent decrease in methane emissions and a 25 percent reduction in flaring. The company also announced its intention to improve its industry-leading energy efficiency in refining and chemical manufacturing facilities.

ExxonMobil invests in lower-emission energy solutions such as cogeneration, flare reduction, energy efficiency, biofuels, carbon capture and storage and other technologies. ExxonMobil has spent more than \$9 billion on lower-emission energy solutions since 2000.

“We have a longstanding commitment to improve efficiency and mitigate greenhouse gas emissions,” said Darren W. Woods, chairman and chief executive officer. “Today’s announcement builds on that commitment and will help further drive improvements in our business.”

ExxonMobil is undertaking a number of initiatives to significantly reduce methane emissions. XTO Energy’s leak-detection-and-repair efforts and operational improvements at U.S. production and midstream sites have reduced estimated methane emissions across ExxonMobil operations by 2 percent in the past year. Combined with additional measures outside the U.S. focused on the most significant sources of methane, ExxonMobil expects to achieve a 15 percent reduction of methane emissions by 2020 compared with 2016.

ExxonMobil is one of eight global energy companies that supports guiding principles on methane reduction. The principles focus on continually reducing methane emissions, advancing strong performance across gas value chains, improving accuracy of methane emissions data and advocating sound policies and regulations on methane emissions. ExxonMobil is a founding member of the API’s Environmental Partnership, which is focused initially on reducing methane and volatile organic compound emissions.

Efforts associated with oil and gas production and processing are expected to lower natural gas flaring across ExxonMobil operations by about 25 percent by 2020 compared with 2016. The most significant reductions are expected to occur in operations in West Africa and include use of third-party infrastructure.

ExxonMobil is a charter member of the Global Gas Flaring Reduction Public-Private Partnership, which is committed to developing commercial opportunities to reduce flaring. The partnership is comprised of oil-producing countries, international and state-owned oil companies and the World Bank.

Further greenhouse-gas emissions reduction efforts will target ExxonMobil's global refining and chemicals manufacturing network with the goal of improving existing industry-leading energy efficiency performance.

ExxonMobil is the most energy efficient refining company in the U.S. and internationally. The company has achieved a 10 percent improvement in energy efficiency across its global refining operations following an effort launched in 2000. ExxonMobil refining operations ranked in the first quartile for energy efficiency in every Solomon Refining Industry Survey over the past decade. Advanced efficiency technologies and techniques have helped ExxonMobil's chemical business reduce its net greenhouse gas emissions intensity by nearly 7 percent since 2013.

ExxonMobil remains committed to mitigating emissions from its operations and helping consumers reduce their emissions, including through efficient fuels, lubricants and lightweight plastics.

ExxonMobil continues to support research that leads to technology breakthroughs and participates in constructive dialogue on policy options.

About ExxonMobil

ExxonMobil, the largest publicly traded international oil and gas company, uses technology and innovation to help meet the world's growing energy needs. ExxonMobil holds an industry-leading inventory of resources, is one of the largest refiners and marketers of petroleum products, and its chemical company is one of the largest in the world. For more information, visit www.exxonmobil.com or follow us on Twitter at www.twitter.com/exxonmobil.

Cautionary Statement: Statements of future events or conditions in this release are forward-looking statements. Actual future results, including emission reductions, timing and costs and efficiency gains, could differ materially depending on political or regulatory developments; technical or operating factors; timely completion of planned projects; and other factors described under the caption "Factors Affecting Future Results" on the Investors page at exxonmobil.com.

Message

From: Executive Director [ExecutiveDirector@nationalenergyresources.com]
Sent: 3/9/2018 2:24:25 PM
To: Bolen, Brittany [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31e872a691114372b5a6a88482a66e48-Bolen, Brit]
Subject: NERO Lunch - DOE Deputy Secretary Dan Brouillette - 3.23.18

Hi Brittany,

We hope you will join us! Please RSVP before 3/19.

**National Energy Resources Organization
(NERO)**

**Cordially invites you to attend the
2018 NERO Luncheon Series
With**

**United States Department of Energy
Deputy Secretary**

Dan Brouillette

Friday, March 23, 2018

Doors Open at 11:45 a.m.

**Hyatt Regency on Capitol Hill
400 New Jersey Avenue, NW, Washington, DC**

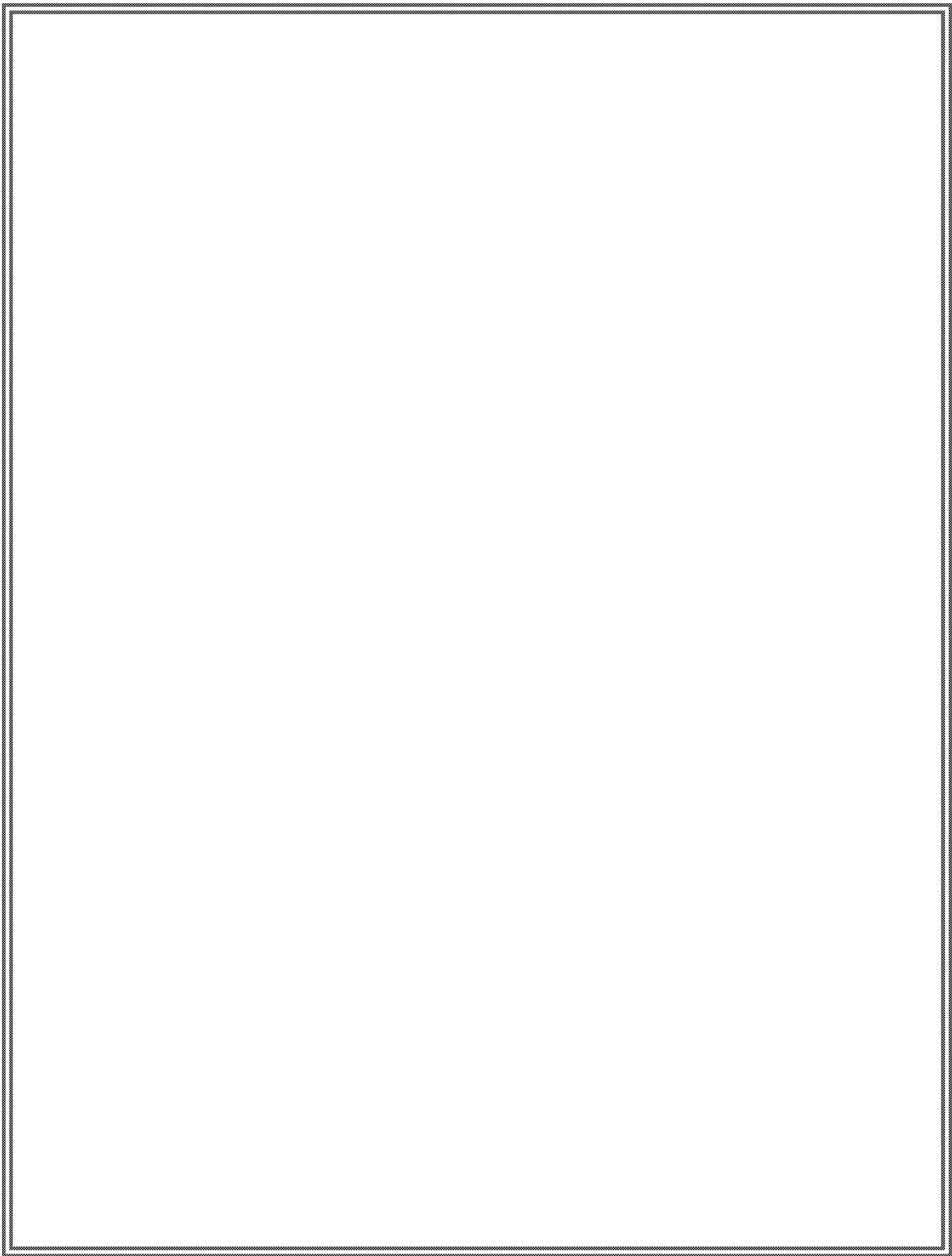
RSVP by Noon on Monday, 3/19

ExecutiveDirector@NationalEnergyResources.com or 703-548-1764

Please Note: Counsel has advised that under House and Senate rules, this event is a "widely attended event".

Under these rules, only NERO may extend invitations to House or Senate Members or staff to attend this event. Individual members of NERO are not permitted to extend invitations.

Violations of these rules may result in criminal liability.
NERO is a non-profit, non-partisan organization bringing together individuals
and groups actively engaged in fostering our national energy activities.
www.nationalenergyresources.com



Message

From: Broome, Shannon S. [SBroome@hunton.com]
Sent: 11/30/2017 4:38:01 PM
To: Bolen, Brittany [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31e872a691114372b5a6a88482a66e48-Bolen, Brit]
Subject: RE: Today

I would love that. I am here until my 7:30 pm flight from Dulles tomorrow night. I am free tonight after the reception or early tomorrow before my 9:30 am meeting (which is here at the office so I'd need to be leaving anywhere I am by 9 unless we meet here) or between 2:30 and 4:30 pm before I head to the airport. I get nervous about Friday traffic in DC!

Do any of those times work for you?

Best regards,



Shannon S. Broome

Partner
sbroome@hunton.com
415.975.3718 (SF)
Ex. 6 (DC)
Ex. 6 (cell)

Hunton & Williams LLP
50 California Street
Suite 1700
San Francisco, CA 94111
hunton.com

Check out Hunton's new Environmental and Energy Law Blog! <https://www.huntonnickelreportblog.com/>

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From: Bolen, Brittany [mailto:bolen.brittany@epa.gov]
Sent: Thursday, November 30, 2017 11:26 AM
To: Broome, Shannon S.
Subject: RE: Today

Shannon – looking forward to seeing you, too. Unfortunately, my schedule today doesn't provide me extra time to attend the program or reception. How long will you be in town? I have some availability tomorrow to meet for coffee.

Brittany

From: Broome, Shannon S. [mailto:SBroome@hunton.com]
Sent: Thursday, November 30, 2017 8:49 AM
To: Bolen, Brittany <bolen.brittany@epa.gov>; Knauss, Chuck <CKnauss@hunton.com>
Cc: Teresa A. Gorman (Ex. 6) <Ex. 6>; Lovell, Will (William) <lovell.william@epa.gov>
Subject: RE: Today

Brittany – thank you so much for doing this. Looking forward to seeing you again. I hope you can stay to observe other parts of the program or return for the reception if your time allows.

Best regards,



Shannon S. Broome

Partner

sbroome@hunton.com

415.975.3718 (SF)

Ex. 6 (DC)

Ex. 6 (cell)

Hunton & Williams LLP
50 California Street
Suite 1700
San Francisco, CA 94111
hunton.com

Check out Hunton's new Environmental and Energy Law
Blog! <https://www.huntonnickelreportblog.com/>

This communication is confidential and is intended to be privileged pursuant to applicable law. If the reader of this message is not the intended recipient, please advise by return email immediately and then delete this message and all copies and backups thereof.

From: Bolen, Brittany [<mailto:bolen.brittany@epa.gov>]

Sent: Thursday, November 30, 2017 8:48 AM

To: Knauss, Chuck

Cc: Broome, Shannon S.; Teresa A. Gorman (tagorman@mindspring.com); Lovell, Will (William)

Subject: Re: Today

Thank you, Chuck. I'm looking forward to it. I'm copying my colleague, Will Lovell, who can get you those items and help set up a short call for us this morning.

Best,

Brittany

Sent from my iPhone

On Nov 30, 2017, at 8:33 AM, Knauss, Chuck <CKnauss@hunton.com> wrote:

Brittany: We are delighted you can carve out some time this afternoon to join our session. Please see the attached agenda. Can you send us a bio (and photo if you have one handy)? Also, do you want to talk with me beforehand about my set up questions?

Best regards – Chuck

Cell: Ex. 6

<Insights into Env Law and Policy - Draft Agenda (11.28.17)_66686475_21 (3)-c.docx>

Message

From: Executive Director [ExecutiveDirector@nationalenergyresources.com]
Sent: 6/18/2018 1:52:13 PM
To: Bolen, Brittany [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31e872a691114372b5a6a88482a66e48-Bolen, Brit]
Subject: Reminder: NERO Annual Awards Dinner Thursday, 6/21

Hi Brittany,

Just three days until NERO's Annual Awards Dinner! We are expecting a great crowd. All of the evening's activities will be in the ballroom on the lower level - cocktail reception beginning at 5:30; dinner begins promptly at 7:00. If for some reason you are no longer able to attend, please let us know.

We look forward to seeing you Thursday!

Jo Ann Pawela
National Energy Resources Organization

Message

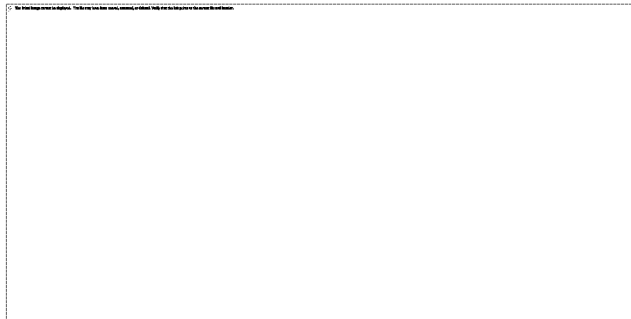
From: Executive Director [ExecutiveDirector@nationalenergyresources.com]
Sent: 5/7/2018 2:01:29 PM
To: Bolen, Brittany [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31e872a691114372b5a6a88482a66e48-Bolen, Brit]
Subject: NERO Happy Hour - May 24 - 5-7pm
Attachments: ATT00001.txt

Hi Brittany,

Hope you will join us! Please RSVP before Noon on Friday, 5/18.

This invitation is not transferable. Please do not forward.

National Energy Resources Organization



Spring into Summer with

NERO!

HAPPY HOUR

Thursday, May 24, 2018

5:00 – 7:00 pm

NRECA Townhouse

208 A Street, NE

Washington, DC

IMPORTANT NOTICE Counsel has advised that under House and Senate rules, this event is a "widely attended event".
Under these rules, only NERO may extend invitations to House or Senate Members or staff to attend this event.
Individual members of NERO are not permitted to extend invitations. Violations of these rules may result in criminal liability

This invitation is not transferable. Please do not forward.

RSVP by Noon on Friday, May 18

ExecutiveDirector@NationalEnergyResources.com or (703) 548-1764

www.nationalenergyresources.com

Message

From: Executive Director [ExecutiveDirector@nationalenergyresources.com]
Sent: 6/27/2018 1:58:49 PM
To: Bolen, Brittany [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31e872a691114372b5a6a88482a66e48-Bolen, Brit]
Subject: NERO Luncheon with G. Dave Banks & Mike Catanzaro - Thursday 7/12/18

Hello Brittany!

Our next luncheon will be held on Thursday, July 12. We hope to see you there! Please RSVP before Noon 7/6/18.

National Energy Resources Organization (NERO)

**Cordially invites you to attend the
2018 NERO Luncheon Series**

**Perspectives on U.S. Energy:
Domestic and International**

**G. David Banks *and*
Michael Catanzaro**

Thursday, July 12, 2018

Doors Open at 11:45 a.m.

Hyatt Regency on Capitol Hill
400 New Jersey Avenue, NW, Washington, DC

RSVP: ExecutiveDirector@NationalEnergyResources.com or 703-548-1764

You will receive an email confirming receipt of your RSVP.

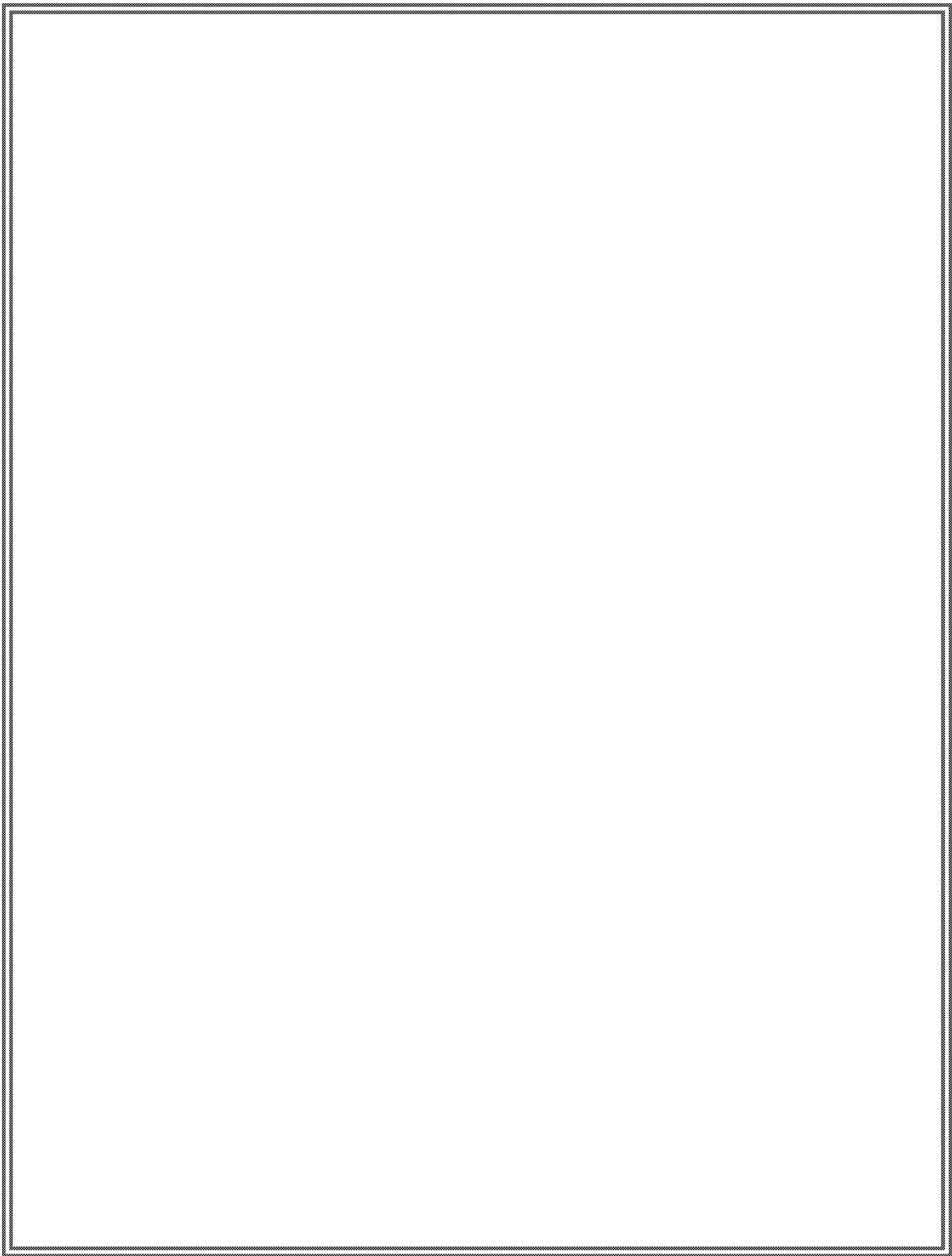
Please Note: Counsel has advised that under House and Senate rules, this event is a "widely attended event".

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and groups actively engaged in fostering our national energy activities.

www.nationalenergyresources.com



Message

From: Knauss, Chuck [CKnauss@hunton.com]
Sent: 11/30/2017 1:32:27 PM
To: Bolen, Brittany [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31e872a691114372b5a6a88482a66e48-Bolen, Brit]
CC: Broome, Shannon S. [SBroome@hunton.com]; Teresa A. Gorman ([Ex. 6] [tagorman@mindspring.com])
Subject: FW: Today
Attachments: Insights into Env Law and Policy - Draft Agenda (11.28.17)_66686475_21 (3)-c.docx

Brittany: We are delighted you can carve out some time this afternoon to join our session. Please see the attached agenda. Can you send us a bio (and photo if you have one handy)? Also, do you want to talk with me beforehand about my set up questions?

Best regards – Chuck

Cell: [Ex. 6]

Insights into Environmental Law & Policy: A Conversation with Key Regulators

November 30, 2017 | Washington, DC
1:00 p.m. – 5:30 p.m. | Reception 5:30 p.m. – 7:30 p.m.

- 1:00 p.m. – 1:30 p.m. **Registration**
- 1:30 – 1:45 p.m. **Opening Remarks, Samuel Brown, Office of General Counsel, US EPA and Office of Regional Counsel, US EPA Region 9 (San Francisco)**
- 1:45 – 2:25 p.m. **Which Way Does the Wind Blow: Priorities and Developments in Air Quality and Climate Change Regulation**
Mandy Gunasekara, Principal Deputy Assistant Administrator, Office of Air and Radiation, US EPA

Moderators: **Shannon Broome, Former Global Head of Air Programs, General Electric Company, Vice-Chair and past Co-Chair ABA Climate Change, Sustainable Development, and Ecosystems Committee; Aaron Flynn, Former Associate General Counsel, White House Office of Science and Technology Policy, Former Legislative Attorney, Congressional Research Service**
- 2:25 – 2:55 p.m. **Administration Priorities**
Mary Neumayr, Chief of Staff, The Council on Environmental Quality

Moderator: **Joseph Stanko, Former Counsel, Energy and Commerce Committee, US House of Representatives**
- 2:55 – 3:20 p.m. **Cross-Cutting Perspective: EPA Policy Office**
Brittany Bolen, Deputy Associate Administrator, Office of Policy, US EPA

Moderator: **Chuck Knauss, Former Counsel, Energy and Commerce Committee, US House of Representatives and Lead Republican Counsel on the Clean Air Act Amendments of 1990**
- 3:20 – 3:30 p.m. **Break**
- 3:30 – 4:15 p.m. **Where The Wild Things Are: Wetlands, Species and Land Management**

Aurelia Skipwith, Deputy Assistant Secretary for Fish, Wildlife and Parks, US DOI

Lee Forsgren, Deputy Assistant Administrator for Water, US EPA

Moderators: **Deidre Duncan**, Former Assistant General Counsel of the Army at the Pentagon; **Andrew Turner**, Former Chief of General Law, US Coast Guard Headquarters and Attorney, NOAA General Counsel

4:15 – 4:45 p.m..... **The Perspective of the “In-House” Lawyer in the Trump Administration**

Kevin Minoli, Acting General Counsel, US EPA

Moderators: **J. Tom Boer**, Former Attorney, Office of General Counsel, US EPA and Environment and Natural Resources Division, US DOJ; **Todd S. Mikolop**, Former Federal Prosecutor, Environment and Natural Resources Division, US DOJ and Judge Advocate, US Coast Guard

4:45 – 5:30 p.m..... **Administration Plans to Review and Improve Agency Decision Making**

Jeff Harris, Associate Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget

Moderator: **Chuck Knauss**, Former Counsel, Energy and Commerce Committee, US House of Representatives and Lead Republican Counsel on the Clean Air Act Amendments of 1990

5:30 – 7:30 p.m. **Networking Reception**

Message

From: Franklin, Charles [CFranklin@cement.org]
Sent: 3/23/2018 7:11:51 PM
To: Bolen, Brittany [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31e872a691114372b5a6a88482a66e48-Bolen, Brit]
CC: Kime, Robin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7ef7b76087a6475b80fc984ac2dd4497-RKime]; Letendre, Daisy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b691cccca6264ae09df7054c7f1019cb-Letendre, D]; Baer, Louis [LBaer@cement.org]
Subject: Invitation to Speak at PCA/NACA's Fly-In event on April 25, 2018.
Attachments: PCA Invite for Bolen_Panel_03222018.pdf

Flag: Follow up

Brittany:

This is a follow up to my voice mail earlier today. The Portland Cement Association (PCA) and the North American Concrete Alliance (NACA) will be conducting their annual DC Fly-In on April 24-25, bringing in CEOs and high-level government affairs officials from a wide range of concrete and cement industry groups and their member companies.

As part of that, we are holding a morning policy panel to discuss administrative regulatory reform priorities between 8 a.m. and 9 a.m. and were hoping you could speak on the Agency's broader regulatory reform agenda, including but not limited to the Smart Sector program and activities related to the regulatory reform report. These are issues that are very important to our members and they provided us with very positive feedback when we conducted this session last year. A formal invitation is attached.

Feel free to reach out to me directly at [Ex. 6](#) or through my colleague, Louis Baer, Director of Government Affairs for Environment and Energy, at [Ex. 6](#). I hope you will be able to join us.



Charles L. Franklin
Vice President and Counsel, Government Affairs
Portland Cement Association
t. [Ex. 6](#) c. [Ex. 6](#)
e. cfranklin@cement.org w. cement.org



America's Cement Manufacturers™

Portland Cement Association
1150 Connecticut Avenue, NW, Suite 500
Washington, DC 20036-4104
202.408.0494 Fax 202.408.0877
www.cement.org

March 22, 2018

Brittany Bolen
Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, D.C. 20460

Dear Deputy Associate Administrator Bolen:

On behalf of the Portland Cement Association (PCA) and the North American Concrete Alliance (NACA), I am pleased to invite you to be on a policy panel to discuss EPA regulatory reform priorities during the Morning Session at the Second Annual Cement and Concrete Washington, D.C. Fly-In. The event will take place on April 25th, 2018, and you are invited to speak between 8-9 am.

Founded in 1916, PCA is the widely-recognized authority on the technology, economics, and applications of cement and concrete. The association advocates for sustainability, economic growth, sound infrastructure investment, and overall innovation and excellence in construction. The Portland Cement Association represents 92 percent of U.S. cement production capacity that has facilities in all 50 states.

The Second Annual Cement and Concrete Fly-In will be attended by trade associations and their membership (including CEOs) that are a part of the North American Concrete Alliance (NACA). NACA is comprised of the following groups: The American Concrete Pavement Association, American Concrete Pipe Association, American Concrete Pumping Association, American Concrete Pressure Pipe Association, Concrete Foundations Association, Concrete Reinforcing Steel Institute, National Concrete Masonry Association, National Precast Concrete Association, Precast/Prestressed Concrete Institute, Portland Cement Association, National Ready Mixed Concrete Association, Tilt-Up Concrete Association. The Cement and concrete product manufacturing indirectly employs approximately 500,000 people in our country, and our collective industries contribute approximately \$100 billion to our economy.

As the second most consumed product on Earth, behind water, it is critical that our industry maintain high environmental standards. Fly-In attendees would appreciate hearing about your current and long term goals on regulatory reform for the Office of Policy. The Fly-In Morning Session will take place on Wednesday, April 25th at the Hyatt Regency Washington on Capitol Hill (400 New Jersey Ave NW) from 8:00-9:00 am.

Deputy Associate Administrator Bolen, it is our sincere hope that you will be able to join us as our industry comes to Washington. Your participation will make this a truly memorable event for NACA members and senior company representatives. Please respond to this invitation by Wednesday, April 4, 2018. Rachel Derby, PCA's Vice President of Government Affairs, will contact your office shortly to provide any additional information that might be helpful. She can also be reached directly at Ex. 6 or rderby@cement.org.

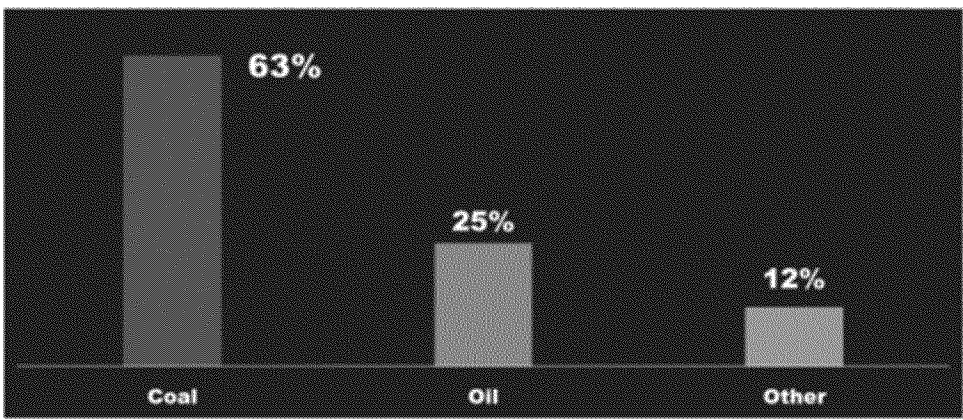
Sincerely,

A. Todd Johnston
Executive Vice President of Government Affairs

To: Paul Bailey[pbailey@americaspower.org]
Cc: Michelle Bloodworth[mbloodworth@americaspower.org]
From: Paul Bailey
Sent: Thur 4/5/2018 6:30:35 PM
Subject: DOE/NETL Report on Resilience
[NETL Blog April 4.pdf](#)

Recently, DOE’s National Energy Technology Laboratory (NETL) issued a report analyzing the resilience of different electricity sources in six RTOs/ISOs during the Bomb Cyclone. NETL evaluated resilience based on how much each electricity source contributed to meeting electricity demand during the Bomb Cyclone. The coal fleet was the most resilient source of electricity (see chart below based on NETL data). The attached blog (“More Proof That We Need a Coal Fleet”) mentions a few other things in the report we thought you might find interesting.

Chart 1: Contribution to Meeting Incremental Electricity Demand in the Six RTOs



Paul Bailey
President & CEO
American Coalition for Clean Coal Electricity
T: [Ex. 6](#) M: [Ex. 6](#)
pbailey@americaspower.org

More Proof That We Need a Coal Fleet

Paul Bailey
ACCCE

Recently, DOE's National Energy Technology Laboratory (NETL) issued a report analyzing the resilience of different electricity resources — coal, oil, natural gas, nuclear and renewables — in six RTOs/ISOs during the Bomb Cyclone (December 27, 2017 through January 8, 2018).¹ To evaluate their resilience, NETL used the National Infrastructure Advisory Council's definition of resilience which says in part, "... *The effectiveness of a resilient infrastructure or enterprise depends on its ability to anticipate, absorb, adapt to, and/or rapidly recover from a potentially disruptive event.*" In this case, NETL evaluated resilience based on the contribution of each electricity source to meeting incremental electricity demand during the Bomb Cyclone. Incremental refers to the additional demand for electricity during the Bomb Cyclone as compared to a typical winter day. Here are just a few things in the report that we thought are worth mentioning.

The coal fleet was the most resilient source of electricity.

- ✓ *"... across RTOs, coal is the most resilient form of generation ..."* (p. 18 of NETL report)
- ✓ *"In PJM, the largest of the ISOs, coal provided the most resilient form of generation, due to available reserve capacity and on-site fuel availability, far exceeding all other sources ... without available capacity from partially utilized coal units, PJM would have experienced ... blackouts."* (p. 1)
- ✓ *"In PJM, of the three major sources of electricity generation, only coal-fired generation exhibited significant resilience in response to the extreme weather event."* (p. 4)
- ✓ *"The most prominent example of generation resilience occurred in PJM ... some coal-fired units were suddenly brought on line and others ramped up to accommodate the rapid increase in PJM electricity demand ... coal units in PJM were uniquely positioned to provide the resilience needed at this critical point in time."* (p. 12)

¹ *Reliability, Resilience and the Oncoming Wave of Retiring Baseload Units Volume 1: The Critical Role of Thermal Units During Extreme Weather Events*, March 13, 2018, DOE/NETL-2018/1881.

- ✓ *Chart 1 (all six RTOs) and Chart 2 (PJM only) below show the percentage contribution of electricity sources to meeting incremental electricity demand during the Bomb Cyclone. These charts are based on data in the NETL report.*

Chart 1: Contribution to Meeting Incremental Electricity Demand in the Six RTOs

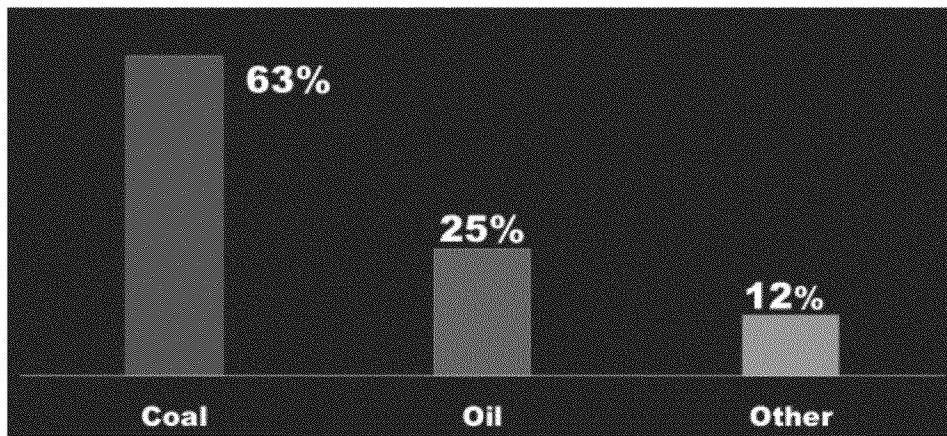
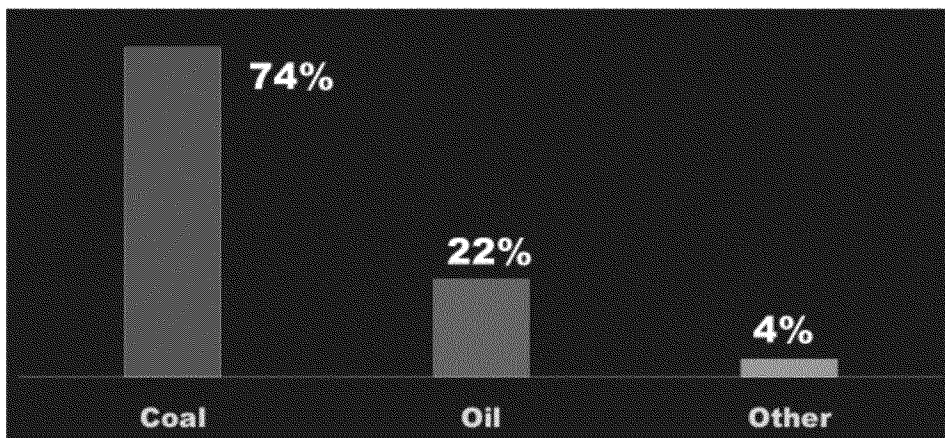


Chart 2: Contribution to Meeting Incremental Electricity Demand in the PJM Region



NETL valued resilience at \$3.5 billion in PJM alone.

- ✓ *In PJM "... it was primarily coal that responded resiliently, with some contribution from oil-firing units." (p. 16)*

- ✓ In PJM, “The increase in the cost of energy services [during the Bomb Cyclone]...was \$288M per day ... This, in effect, represents a value of resilience ... [of] \$3.5 billion. Simulating the event ... with future coal retirements is expected to produce higher energy costs and subsequently a higher value of resilience.” (p.16)

Natural gas prices were very high.

- ✓ “... in eastern PJM, ISO-NE, and NYISO, gas and electric transmission were severely constrained, leading to all-time high gas prices in New York and elevated natural gas and electricity prices across each region.” (p. 6)
- ✓ “... spot [gas] prices in New Yor” reached \$175/MMBtu” (p. 8)
- ✓ “... natural gas prices in PJM spi”ed from a normal level near \$3/MMBtu to \$96/MMBtu at the Texas Eastern M3 interface ... on January 5.” (p. 14)
- ✓ Increases in spot gas prices for ISO-NE, PJM and NYISO were higher during the Bomb Cyclone than during the Polar Vortex. See Exhibit 1-20, p. 23.

Renewables were detrimental to resilience.

- ✓ “... cloud cover and wind speeds outside of operational parameters caused a reduction in average daily contribution from intermittent renewables ... essentially imparting a resilience penalty to the system. This resulted in a need for dispatchable fossil generation to make up this generation in addition to its resiliency role in meeting the greater demand during the [Bomb Cyclone].” (p. 4)
- ✓ “Available wind energy was 12% lower during the Bomb Cyclone than for a typical winter day” (p. 2)
- ✓ “Wind and solar had declines of 19% in MISO, 29% in SPP and 32% in ERCOT.” (p. 5)

Retirements may be underestimated.

- ✓ “Retirement of aging coal and nuclear generation infrastructure may be underestimated which could give rise to reliability concerns and an inability to meet pro’ected electricity demand ...” (p. 2)
- ✓ “... coal units will experience repeated cycling ... as cycling increases, economic damage escalates, leading to premature retirement.” (pp. 25, 28)

To our way of thinking, the NETL report demonstrates two things. First, the coal fleet performed very well, that is, it was very resilient. In fact, the coal fleet performed better than other resources when electricity was needed the most. This seems like an incontrovertible argument for preserving the coal

fleet. Second, a diverse mix of resources is really the best “source” of electricity. As we have said before, there is no single source of electricity that is the best all, or even most, of the time. Each resource has its own relative advantages. However, the continued retirement of coal-fueled generation leads inevitably to less resource diversity.

April 4, 2018

Message

From: Franklin, Charles [CFranklin@cement.org]
Sent: 5/2/2018 8:28:06 PM
To: Letendre, Daisy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b691cccca6264ae09df7054c7f1019cb-Letendre, D]
CC: Bolen, Brittany [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31e872a691114372b5a6a88482a66e48-Bolen, Brit]; Shaw, Nena [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=2ae00b27ec1544ef8331567ce532bdd3-Shaw, Nena]
Subject: RE: Save the Date - Smart Sectors Update and Reg Agenda Preview w/ Adm Pruitt

Daisy, I owe you, Brittany, Nena, and the whole SS team a huge thanks your support and attention over the last two weeks (and formal letters of thanks are coming), but in the meantime I wanted to let you know that I and one of our PCA members will be honored to attend the roundtable with Adm. Pruitt. We are just trying to lock down who it will be.

I know we are just one piece of your portfolio so I (and our members) truly appreciate all of your hard work on our behalf.

Best



Charles L. Franklin
Vice President and Counsel, Government Affairs
Portland Cement Association
t. Ex. 6 f. Ex. 6
e. cfranklin@cement.org w. cement.org

From: Letendre, Daisy [mailto:letendre.daisy@epa.gov]
Sent: Tuesday, May 01, 2018 9:49 AM
To: Letendre, Daisy <letendre.daisy@epa.gov>
Cc: Bolen, Brittany <bolen.brittany@epa.gov>; Gordon, Stephen <gordon.stephen@epa.gov>; Shaw, Nena <Shaw.Nena@epa.gov>; Sachs, Robert <Sachs.Robert@epa.gov>; Sharpe, Kristinn <Sharpe.Kristinn@epa.gov>; Corona, Elizabeth <Corona.Elizabeth@epa.gov>
Subject: Save the Date - Smart Sectors Update and Reg Agenda Preview w/ Adm Pruitt

Sectors Partners,

On behalf of the Smart Sectors Team, Administrator Pruitt, and EPA Senior Political Leadership, I'd like to invite you to **save the date** for a roundtable at EPA HQ with the Administrator and Senior Staff.

More information and a formal invite will follow in the next couple of days.

WHO: Sectors Partners – if you're receiving this email, the invitation extends to two (total) representatives from your trade association.

WHAT: A roundtable with Administrator Pruitt and Senior Political Leadership to discuss our continued partnership vis-à-vis Smart Sectors as well as EPA's upcoming regulatory agenda.

WHERE: EPA HQ – 1200 Pennsylvania Ave NW

WHEN: Wednesday, May 9, 2018 at 2:30pm.

I will collect RSVPs following the formal invitation. We hope to see you next week.

In the meantime, feel free to contact me or the sectors team with any additional questions. I've listed sector leads below as an FYI.

Best,

Daisy C. Letendre

Senior Advisor for Policy and Strategic Communications

U.S. Environmental Protection Agency

Office of the Administrator

Office of Policy

202.564.0410 (O)

Ex. 6 (C)

Nena Shaw – Automotive; Utilities

Bob Sachs – Aerospace; Iron and Steel; Mining

Kristinn Sharpe – Agriculture; Electronics and Technology

Elizabeth Corona – Chemical Manufacturing; Forestry, Paper and Wood Products; Ports and Maritime Transportation

Daisy Letendre – Cement; Concrete; Construction; Oil and Gas

Message

From: Richard Moskowitz [RMoskowitz@afpm.org]
Sent: 12/11/2017 1:07:43 PM
To: Bolen, Brittany [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31e872a691114372b5a6a88482a66e48-Bolen, Brit]
Subject: RE: catch up

Tuesday should work well, if you're still available.

Richard Moskowitz
General Counsel

**American
Fuel & Petrochemical
Manufacturers**
1667 K Street NW
Suite 700
Washington, DC 20006
Ex. 6

rmoskowitz@afpm.org

Learn more about AFPM at afpm.org

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From: Bolen, Brittany [mailto:bolen.brittany@epa.gov]
Sent: Wednesday, December 6, 2017 6:42 PM
To: Richard Moskowitz
Subject: RE: catch up

Hey Rich – it was nice to see you, too. Thanks for the email, it would be good to catch up. What does next Tuesday or Wednesday look like for you?

Best,
Brittany

From: Richard Moskowitz [mailto:RMoskowitz@afpm.org]
Sent: Tuesday, December 5, 2017 7:39 AM
To: Bolen, Brittany <bolen.brittany@epa.gov>
Subject: catch up

Hey Brittany,
It was nice running into each other at the Hunton event last week. I'd love to catch up. Any chance you're available to grab a drink after work?

Richard Moskowitz

General Counsel

**American
Fuel & Petrochemical
Manufacturers**

1667 K Street NW
Suite 700
Washington, DC 20006

Ex. 6

rmoskowitz@afpm.org

Learn more about AFPM at afpm.org

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Message

From: Hilary Moffett [moffetth@api.org]
Sent: 10/6/2017 2:32:28 PM
To: Bolen, Brittany [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31e872a691114372b5a6a88482a66e48-Bolen, Brit]
Subject: Re: API HEC Invitation Bolen

Great—So glad you'll be able to join us. Have a great weekend.

On Oct 5, 2017, at 5:50 PM, Bolen, Brittany <bolen.brittany@epa.gov> wrote:

Hey Hilary –

Thanks for the note, [Ex. 6] In regards to the Nov. 2nd meeting, I appreciate the invite and am available to attend. Please work with Will and Robin (cc'd) on timing and logistics.

Best,
Brittany

From: Hilary Moffett [mailto:moffetth@api.org]
Sent: Wednesday, October 4, 2017 2:34 PM
To: Bolen, Brittany <bolen.brittany@epa.gov>
Subject: API HEC Invitation Bolen

Hi Brittany,

I hope this email finds you well! Great to see you yesterday!

[Ex. 6]

[Ex. 6]

On a more official note....

As I mentioned yesterday, API's Health and Environment Committee has a meeting scheduled on November 2 here at API. We would like to invite you to speak to this group about the EPA's regulatory reform efforts. Attached is a more formal invitation. We are flexible on time, so please let me know if you have any availability and would be willing to come chat with the group.

Thanks Brittany.

Hilary

Hilary Moffett
Director, Federal Relations
American Petroleum Institute
[Ex. 6] (desk)
[Ex. 6] (cell)
MoffettH@api.org

Message

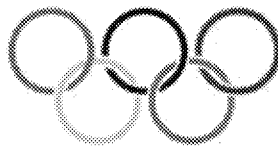
From: Executive Director [ExecutiveDirector@nationalenergyresources.com]
Sent: 2/12/2018 9:07:40 PM
To: Bolen, Brittany [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31e872a691114372b5a6a88482a66e48-Bolen, Brit]
Subject: Invitation to NERO Happy Hour / Reception
Flag: Follow up

Hi Brittany

You are invited to NERO's Olympic Happy Hour / Reception on Thursday, February 22. We hope you can make it! Please **RSVP by Monday, 2/19**.

Gentle reminder to all invitees: Invitations to NERO events are *not transferable*. Please do not forward.

National Energy Resources Organization



2018 WINTER NEROlympics Happy Hour

Thursday, February 22, 2018

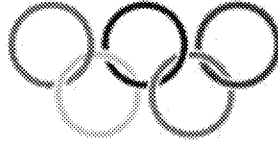
5:30 – 7:30 pm

**Offices of Entergy
101 Constitution Avenue, NW, Suite 200 East
Washington, DC**

RSVP by Noon on Monday, February 19 to
ExecutiveDirector@NationalEnergyResources.com or (703) 548-1764

This invitation is not transferable. Please do not forward.

Please Note: Counsel has advised that under House and Senate rules, this event is a "widely attended event". Under these rules, only NERO may extend invitations to House or Senate Members or staff to attend this event. Individual members of NERO are not permitted to extend invitations. Violations of these rules may result in criminal liability



Message

From: Stanko, Joseph [jstanko@hunton.com]
Sent: 4/24/2018 3:05:57 PM
To: Bolen, Brittany [/o=ExchangeLabs/ou=Exchange Administrative Group
(FYDIBOHF23SPDLT)/cn=Recipients/cn=31e872a691114372b5a6a88482a66e48-Bolen, Brit]

Brittany:
Would you have any time for a brief call, thanks.
Joe

Message

From: Jack Gerard [registrar@api.org]
Sent: 12/20/2017 3:02:15 PM
To: Bolen, Brittany [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31e872a691114372b5a6a88482a66e48-Bolen, Brit]
Subject: Last Chance to Register for The State of American Energy 2018

STATE OF AMERICAN ENERGY 2018 HOW NATURAL GAS & OIL ARE POWERING PAST IMPOSSIBLE

Today is the **last chance to register** for API's 2018 State of American Energy luncheon on **Tuesday, January 9, 2018** from 11:30 A.M.-1:00 P.M. Please RSVP at Registrar@api.org if you have any questions.

Sincerely,

JACK N. GERARD,
President and CEO, API

This event has been designed to comply with the gifts and ethics rules of the U.S. Senate and House of Representatives as a "widely attended event." Employees of the executive branch may wish to consult their Designated Agency Ethics Official about any rules that may apply to their attendance at this event.



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cvent

To: Paul Bailey[pbailey@americaspower.org]
Cc: Michelle Bloodworth[mbloodworth@americaspower.org]
From: Paul Bailey
Sent: Tue 4/3/2018 1:11:50 PM
Subject: Responses to FERC Resilience Questions
Grid Operator Responses April 2 Final.pdf

When FERC terminated the DOE fuel-security NOPR in early January, the commission initiated a new proceeding about grid resilience. The first step in the new FERC proceeding was to ask the RTOs/ISOs (grid operators) to respond to 25 questions. We thought you might be interested in what these grid operators had to say. This is our takeaway from their comments:

- **ISO-NE** has a fuel-security problem because of the region's dependence on natural gas and the retirement of coal and nuclear generating capacity.
- **PJM** supports further steps by FERC to address grid resilience.
- **MISO, SPP** and **ERCOT** basically said their grids are resilient. (Note: They said this even though there is no universally agreed-on definition of resilience, nor criteria or metrics for determining whether a grid is resilient. This is part of the reason why FERC initiated the new proceeding.)

The attached blog provides a few excerpts from the 295 pages of comments filed by the five grid operators.

Paul Bailey
President & CEO
American Coalition for Clean Coal Electricity
T: | M:
pbailey@americaspower.org

What Five Grid Operators Said about Resilience

Paul Bailey & Michelle Bloodworth
ACCCE

On January 8, FERC issued an order that did two things: first, it terminated its rule on Grid Reliability and Resilience Pricing that was proposed by DOE last October to help prevent the premature retirement of coal and nuclear power plantsⁱ and, second, it initiated a new proceeding to evaluate the resilience of the bulk power system (BPS) in wholesale electricity markets.ⁱⁱ (The BPS is comprised of electricity generation and transmission facilities but not local electricity distribution networks.) As the first step in the new grid resilience proceeding, FERC asked the RTOs/ISOs (grid operators) to answer 25 questions by March 9. Comments from other stakeholders are due May 9.

Because two-thirds of the nation's coal fleetⁱⁱⁱ is located in five RTO/ISO regions, we reviewed the comments of these five grid operators. These are our big-picture, nuance-free takeaways from their comments:

- **ISO-NE** has a major fuel-security risk because of the region's dependence on natural gas and the retirement of coal and nuclear generating capacity.
- **PJM** supports further steps by FERC to address grid resilience.
- **MISO, SPP** and **ERCOT** said, in so many words, that their grids are resilient. (Note: There is no universally agreed-on definition of resilience, nor are there any criteria or metrics for determining whether the grid is resilient. This is part of the reason for the new FERC proceeding.)

We also excerpted below a few statements from their comments^{iv}:

ISO-NE —

- *"The most significant resilience challenge is fuel security – or the assurance that power plants will have or be able to obtain the fuel they need to run."* (p. 1 of ISO-NE comments)
- *"ISO-NE recognizes that fuel security is just one aspect of the bulk power system's resilience; however, it is the most significant challenge for the New England bulk power system's resilience, and it currently has no defined long-term solution."* (p. 4)

- *“C’allenges w’th fuel procure-ent, transportat’ion and storage are –ost acute with natural gas ...”* (p. 5)
- *“T’ e s’ ‘ft away fro- generators w’th on-site fuel to natural gas-fired generators rely’ng on “ust-in-t’-e’ fuel-delivery infrastructure has further exposed the l’- ‘tat’ion of New England’s ex’st’ng fuel-delivery system and heightened the reg’on’s fuel secur’ty r’s”.* (p. 28)
- *“... New England continues to see the retirement of coal, oil, and nuclear power plants, which are needed to maintain reliability when the natural gas-fuel infrastructure is unavailable to the generators.”* (p. 7)

PJM –

- *“T’ e Co- – ‘ss’ion needs to prov’de ... –etr’cs ... to apply to res’l’ence vulnerab’l’ty and t’reat analys’.*” (p. 5 of PJM comments)
- FERC should *“[r]equest that all RTOs sub- ‘t ... tar’ff a- end- ents, for any proposed market reforms to address resilience within nine to twelve months from t’ e ‘ssuance of a F’nal Order ‘n t’ ‘s doc”et.”* (p. 6)
- FERC should *“[a]rt’culate ‘n t’ ‘s doc”et t’ at t’ e ... RTOs ... [have] an obligation to assess res’l’ence.”* (p. 5)
- *“[T]’ e spec’f’c [res’l’ence] r’s’s to be analyzed and t’ e – easur’ng cr’ter’a need to be furt’er developed.”* (p. 19)
- *“[T]’ ere ‘s add’t’onal wor” to be done ... ‘n order to address t’ ese [res’l’ence] risks that go beyond what is needed for – eet’ng ex’st’ng rel’ab’l’ty standards.”* (p. 19)
- *“RTO w’ olesale electr’c’ty, Ancillary Service markets, capac’ty – ar”ets ... were not or’g’nally des’gned w’th res’l’ence ‘n – ‘nd.”* (p. 66)

MISO –

- *“MISO’s gr’d ‘s res’l’ent.”* (p. 2 of MISO comments)
- *“... MISO does not ‘ave any ‘- – ‘nent or ‘- – ed’ate res’l’ence concerns ...”* (p. 2)
- *“[T]’ e MISO reg’on ‘as successfully ensured res’l’ence (and rel’ab’l’ty) for decades.”* (p. 6)
- *“... MISO recently initiated an in-depth study to identify potential consequences that may occur in the event of natural gas pipeline contingencies.”* (p. 23)
- *“[R]es’l’ence ‘s not “ust a fuel secur’ty – atter.”* (p. 3)
- *“Future res’l’ence endeavors – ust balance r’s” w’th costs to consu- ers.”* (p. 6)
- *“Gr’d res’l’ence ‘s a nat’onal ‘ssue t’ at broadly ‘- pacts t’ e bul” power syste- .”* (p. 2)

SPP –

- *“SPP bel’eves t’ e current NERC construct for cont’nually – on’tor’ng and enhancing the NERC reliability standards is sufficient to address current and future needs with regard to enhancing resilience ...”* (p. 18 of SPP comments)

- The risk of over-dependence on any particular fuel type *“has been thus far – ‘n’– al ‘n SPP ...”* (p. 5)
- *“SPP supports furt’ er d’ scuss’ on on w’ ‘c’ types of extre– e scenar’ os s’ ould be considered in studies that RTOs perform ...”* (p. 7)
- *“SPP ‘s ‘n t’ e early stages of develop’ ng a study process t’ at w’ ll focus on generat’ on ret’ re– ent’s ‘– pact to rel’ ab’ l’ ty and res’ l’ ence.”* (p. 8)
- *“Changes to requirements to address resilience could increase the costs of trans– ‘ss’ on owners’ syste– s, and t’ ose ‘ncreased costs would ult’– ately ‘– pact transmission customers and their end-use customers.”* (p. 19)

ERCOT –

- *“ERCOT’s scarc’ ty pr’ c’ ng – ec’ an’s– s are des’ gned to allev’ ate t’ e need for many resilience-based regulatory controls.”* (p. 5 of ERCOT comments)
- *“One of t’ e – ost cr’ t’ cal ele– ents of syste– res’ l’ ence ‘s ensur’ ng t’ at t’ e transmission system is planned in such a way as to ensure continued operations follow’ ng an unexpected outage ...”* (p. 7)
- *“If ERCOT deter– ‘nes t’ at [a] ret’ re– ent would cause a [proble–], t’ en ERCOT may seek to negotiate a reliability-must-run (RMR) agreement with the generat’ on owner ... The availability of RMR agreements thus provides an important reliability backstop ...”* (p. 12)
- *“Anc’ llary serv’ ces play a cr’ t’ cal role ‘n ensur’ ng syste– res’ l’ ence.”* (p. 13)
- Black-start generators *“... provide resilience by enabling restoration of the ERCOT system in the event of a partial or complete loss of power.”* (p. 15)

Recently, DOE issued a report that highlights the resilience of the coal fleet during the Bomb Cyclone.^v The report is a case study for why we need to preserve coal-fueled generation. However, more than a third of the coal fleet nationwide has retired or is expected to retire.^{vi} DOE thinks these retirements may be underestimated.^{vii}

There are any number of steps FERC could take next to ensure the BPS is resilient. However, if FERC does not act with urgency, more of the coal fleet will retire, and the resilience of the BPS will be diminished.

April 2, 2018

ⁱ Grid Resiliency Pricing Rule, 82 Fed. Reg. 46,940 (Oct. 10, 2017).

ⁱⁱ Order Terminating Rulemaking Proceeding, Initiating New Proceeding, and Establishing Additional Procedures, Docket No. AD18-7-000, FERC, January 8, 2018.

ⁱⁱⁱ The coal fleet totaled approximately 256 GW as of January 2018. EIA, *Electric Power Monthly*, Release Date March 23, 2018. Coal-fueled generating capacity in the five RTO/ISO regions total 167 GW: MISO 63 GW, PJM 62 GW, SPP 26 GW, ERCOT 15 GW and ISO-NE 1.1 GW.

^{iv} *Response of ISO New England, Inc. March 9, 2018; Comments and Responses of PJM Interconnection, L.L.C., March 9, 2018; Responses of the Midcontinent Independent System Operator, March 9, 2018; Joint Comments of the Electric Reliability Council of Texas, Inc. and the Public Utility Commission of Texas, March 9, 2018; Comments of Southwest Power Pool, Inc. on Grid Resilience Issues, March 9, 2018.*

^v *Reliability, Resilience and the Oncoming Wave of Retiring Baseload Units Volume 1: The Critical Role of Thermal Units During Extreme Weather Events*, March 13, 2018, DOE/NETL-2018/1881. (“DOE/NETL report”)

^{vi} ACCCE, *Retirement of U.S. Coal-Fired Generating Units*, January 2018.

^{vii} See Chapter 2 (“The Prospect of Further Large-Scale Retirements”) of the DOE/NETL report.

Message

From: Hilary Moffett [moffetth@api.org]
Sent: 10/4/2017 6:33:48 PM
To: Bolen, Brittany [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31e872a691114372b5a6a88482a66e48-Bolen, Brit]
Subject: API HEC Invitation Bolen
Attachments: API HEC Invitation Bolen.docx

Hi Brittany,

I hope this email finds you well! Great to see you yesterday!

Ex. 6

Ex. 6

On a more official note....

As I mentioned yesterday, API's Health and Environment Committee has a meeting scheduled on November 2 here at API. We would like to invite you to speak to this group about the EPA's regulatory reform efforts. Attached is a more formal invitation. We are flexible on time, so please let me know if you have any availability and would be willing to come chat with the group.

Thanks Brittany.

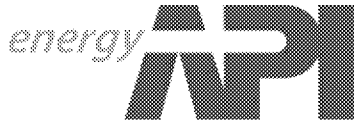
Hilary

Hilary Moffett
Director, Federal Relations
American Petroleum Institute

Ex. 6 (desk)

Ex. 6 (cell)

MoffettH@api.org



Howard J. Feldman
Senior Director

Regulatory and Scientific Affairs

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Washington, DC 20005-4070
USA
Telephone 202-682-8340
Fax 202-682-8270
Email Feldman@api.org
www.api.org

Oct 4, 2017

Ms. Brittany Bolen
Deputy Associate Administrator
Office of Policy, Office of Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Ave, NW
Washington, DC 20004

Re: API Health and Environment Committee meeting

Dear Ms. Bolen,

On November 2, 2017, senior health and environmental leaders of companies in the oil and gas industry will be convening in Washington at the headquarters of the American Petroleum Institute (API). API represents over 625 oil and natural gas companies, leaders of a technology-driven industry that supplies most of America's energy, supports more than 10.3 million jobs and nearly 8 percent of the U.S. economy, and, since 2000, has invested nearly \$2 trillion in U.S. capital projects to advance all forms of energy, including alternatives.

We believe that the meeting could serve as an excellent opportunity for companies across the industry to hear more about the regulatory reform efforts that EPA has undertaken. We hope that you will be able to join us on November 2nd. Please let us know if you have any time constraints.

Please feel free to contact me if you have questions or need more information.

Sincerely,

Howard J. Feldman

Message

From: Executive Director [ExecutiveDirector@nationalenergyresources.com]
Sent: 4/9/2018 7:17:07 PM
To: Bolen, Brittany [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31e872a691114372b5a6a88482a66e48-Bolen, Brit]
Subject: NERO Lunch - FERC Chairman Kevin J. McIntyre - May 1st, 2018

Hello Brittany,

We hope you are able to join us. RSVP requested before Noon on Wednesday, 4/25.

National Energy Resources Organization (NERO)

**Cordially invites you to attend the
2018 NERO Luncheon Series
With**

**Federal Energy Regulatory Commission
Chairman**

Kevin J. McIntyre

Tuesday, May 1, 2018

Doors Open at 11:45 a.m.

**Hyatt Regency on Capitol Hill
400 New Jersey Avenue, NW, Washington, DC**

RSVP: ExecutiveDirector@NationalEnergyResources.com or 703-548-1764

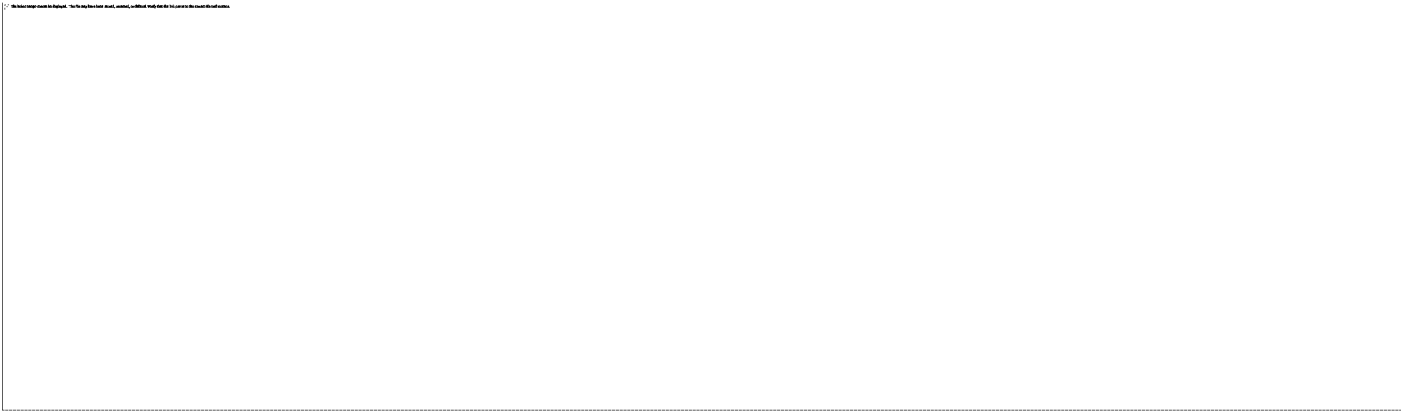
*Please Note: Counsel has advised that under House and Senate rules, this event is a "widely attended event". Under these rules, only NERO may extend invitations to House or Senate Members or staff to attend this event. Individual members of NERO are not permitted to extend invitations. Violations of these rules may result in criminal liability.
NERO is a non-profit, non-partisan organization bringing together individuals and groups actively engaged in fostering our national energy activities.*

www.nationalenergyresources.com

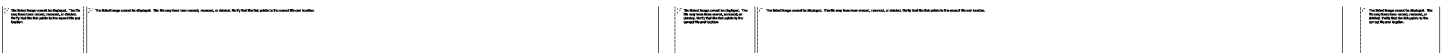
*Please RSVP by e-mail: ExecutiveDirector@NationalEnergyResources.com
Or by phone: (703) 548-1764*

Message

From: Jack Gerard [registrar@api.org]
Sent: 12/11/2017 4:02:08 PM
To: Bolen, Brittany [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31e872a691114372b5a6a88482a66e48-Bolen, Brit]
Subject: You're Invited to API's State of American Energy 2018



STATE OF AMERICAN ENERGY 2018 | HOW NATURAL GAS & OIL ARE POWERING PAST IMPOSSIBLE



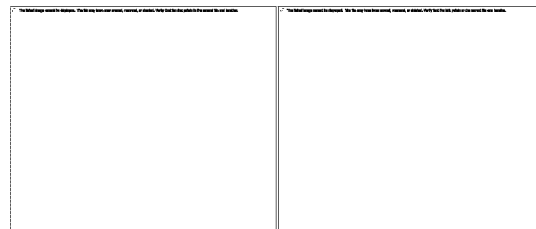
Please join us for the American Petroleum Institute's 2018 State of American Energy luncheon. As the midterm election year begins we will remind lawmakers, policymakers and the public that America's domestic energy abundance is helping to meet the ever-growing demand for energy, but also how those same resources are the building blocks for many of the products that make our modern society safer, advance the medical arts, and spur creativity and scientific innovation through our *Power Past Impossible* advertising campaign.

From energy that keeps our homes, offices, and schools lit and warm, to the modern fuels that not only power our vehicles but also help to improve our environment, to the modern pharmaceuticals that improve the health and well-being of millions. *Power Past Impossible* makes the connection between natural gas, oil and their derived products and their fundamental role in our society, which is essential to positively advance the national energy policy discussion.

Sincerely,

RSVP
BY DECEMBER 22ND

This invitation is non-transferable.



When
TUESDAY, JANUARY 9, 2018
11:30 A.M.-1:00 P.M.

Where
Ronald Reagan Building and
International Trade Center
Atrium Ballroom
1300 Pennsylvania Avenue, NW
Washington, DC 20004

Please use entrance on 14th Street

JACK N. GERARD
President and CEO, API



This event has been designed to comply with the gifts and ethics rules of the U.S. Senate and House of Representatives as a "widely attended event." Employees of the executive branch may wish to consult their Designated Agency Ethics Official about any rules that may apply to their attendance at this event.



powered by
cvent

Message

From: Richard Gupton [Richard@aradc.org]
Sent: 9/21/2017 6:23:21 PM
To: Jeff Gunnulfsen [JGunnulfsen@afpm.org]; Richard Moskowitz [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=user2443f1e7]; Bolen, Brittany [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31e872a691114372b5a6a88482a66e48-Bolen, Brit]; Jennifer Gibson [JGibson@NACD.com]; Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]; Peter Lidiak [PLidiak@ilta.org]; Dominguez, Alexander [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5ced433b4ef54171864ed98a36cb7a5f-Dominguez,]; sjflanagan@ime.org [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5f1fdaeb7ec4490eaf50453bf2bb8d57-sjflanagan@ime.org]; Lovell, Will (William) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3b150bb6ade640f68d744fadcb83a73e-Lovell, Wil]; Gershman, Lorraine [lgershman@nopa.org]; Traylor, Patrick [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b6d06c6b766c4b4b8bfd6b0fea4b998-Traylor, Pa]; Kyle Harris [kharris@corn.org]; Richard Gupton [Richard@aradc.org]; Hunter Carpenter [hunter@aradc.org]
Subject: FW: 9/27 EPA Meeting
Importance: High

I received the note posted below from EPA to see if we can move up our meeting scheduled for Tuesday, September 26, 2017 at 2:30 p.m. to 11:30 a.m.

Please let me know the following:

- 1) Name of individuals and organizations that plan to attend so I can provide a list to EPA before the meeting for security purposes.
- 2) Are you able to meet at 11: 30 a.m. where we may have more time OR should we keep it at 2:30 p.m.?

Thanks again for all your help! I recommend a pre-meeting where we get together about 1 hour ahead of the scheduled meeting time. Does anyone have an office located near EPA willing to host the meeting or would a local coffee shop work?

Just let me know. Thanks!

Best regards,

Richard

Richard Gupton
Senior Vice President, Public Policy & Counsel
Agricultural Retailers Association

Suppliers to America's Farmers

1156 15th Street, NW | Suite 500 | Washington, D.C. 20005

Direct: Ex. 6 | Main: 202.457.0825 | Fax: Ex. 6

richard@aradc.org

www.aradc.org

Connect on [Ag Retail Exchange](#), the ARA online community.

Save the Date

ARA Conference & Expo >> November 27-30, 2017

Arizona Biltmore: A Waldorf Astoria Resort >> Phoenix, Arizona.

From: Kime, Robin [mailto:Kime.Robin@epa.gov]

Sent: Thursday, September 21, 2017 2:14 PM

To: Richard Gupton

Subject: 9/27 EPA Meeting

Hi Richard,

I am looking at Samantha's calendar and seeing meetings fill up around your meeting with her next Tuesday. Is there any chance your folks can make the meeting same day but at 11:30 a.m. instead? If not, let's leave it alone for now, I will keep an eye on things. Take care.

Robin

Message

From: Bolen, Brittany [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=31E872A691114372B5A6A88482A66E48-BOLEN, BRIT]
Sent: 5/23/2018 4:41:44 PM
To: Nolan, Robert M [robert.m.nolan@exxonmobil.com]
Subject: RE: ExxonMobil Press Release

Thank you, Robert.

From: Nolan, Robert M [mailto:robert.m.nolan@exxonmobil.com]
Sent: Wednesday, May 23, 2018 11:08 AM
To: Bolen, Brittany <bolen.brittany@epa.gov>
Subject: ExxonMobil Press Release

Good morning Brittany, I thought you might find this of interest

Regard, Robert

(Office)
 (Cell)

Message

From: Bolen, Brittany [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=31E872A691114372B5A6A88482A66E48-BOLEN, BRIT]
Sent: 3/30/2018 12:42:32 AM
To: Hilary Moffett [moffetth@api.org]
Subject: Re: RMP

Hey Hilary! Seeing this now. Will call you tomorrow AM.

Sent from my iPhone

> On Mar 29, 2018, at 9:19 AM, Hilary Moffett <moffetth@api.org> wrote:
>
> Hey lady,
>
> I hope all is well. I have a quick question about RMP. Do you have a sec to chat today?
>
> Thanks,
> Hilary
>

Message

From: Bolen, Brittany [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=31E872A691114372B5A6A88482A66E48-BOLEN, BRIT]
Sent: 1/19/2018 2:14:17 PM
To: Richard Moskowitz [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=user2443f1e7]
Subject: Re: catch up

Hey, ugh I can't make lunch today work. Let me get you some times for next week.

Sent from my iPhone

On Jan 18, 2018, at 5:33 PM, Richard Moskowitz <RMoskowitz@afpm.org> wrote:

Hey there,
I penciled in tomorrow for lunch and now realize that I never responded to your email. Are you still available to get together?

Richard Moskowitz
General Counsel

American
Fuel & Petrochemical
Manufacturers
1667 K Street NW
Suite 700
Washington, DC 20006

Ex. 6

rmoskowitz@afpm.org
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From: Bolen, Brittany [<mailto:bolen.brittany@epa.gov>]
Sent: Thursday, January 11, 2018 4:55 PM
To: Richard Moskowitz <RMoskowitz@afpm.org>
Subject: Re: catch up

No problem, Rich. I could meet up next Tuesday after work or Friday for lunch.

Sent from my iPhone

On Jan 11, 2018, at 4:02 PM, Richard Moskowitz <RMoskowitz@afpm.org> wrote:

Hey there,
I think we are scheduled to grab a drink after work. Ex. 6
Ex. 6 Can we reschedule for next week?

Richard Moskowitz
General Counsel

American
Fuel & Petrochemical
Manufacturers
1667 K Street NW
Suite 700
Washington, DC 20006

Ex. 6

rmoskowitz@afpm.org
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From: Bolen, Brittany [<mailto:bolen.brittany@epa.gov>]
Sent: Friday, December 15, 2017 8:52 AM
To: Richard Moskowitz <RMoskowitz@afpm.org>
Subject: Re: catch up

No. Ex. 6

Sent from my iPhone

On Dec 15, 2017, at 8:50 AM, Richard Moskowitz <RMoskowitz@afpm.org> wrote:

Uggg. I'm out of the office on Tues/Wed. Are you around on Thursday?

Richard Moskowitz
General Counsel

American
Fuel & Petrochemical
Manufacturers
1667 K Street NW
Suite 700
Washington, DC 20006

Ex. 6

rmoskowitz@afpm.org
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From: Bolen, Brittany [<mailto:bolen.brittany@epa.gov>]
Sent: Thursday, December 14, 2017 7:08 PM

To: Richard Moskowitz <RMoskowitz@afpm.org>

Subject: RE: catch up

Rich – unfortunately, I now have a meeting that is scheduled to run until 1230 followed by a 1pm on Monday so it will be a packed lunch kind of day. What about coffee Tuesday sometime between 2-330pm or Wednesday between 830-9:45am?

From: Richard Moskowitz [<mailto:RMoskowitz@afpm.org>]

Sent: Thursday, December 14, 2017 4:53 PM

To: Bolen, Brittany <bolen.brittany@epa.gov>

Subject: RE: catch up

Sorry for the delayed response – I was on vacation yesterday.

Let's plan on lunch Monday (11:45).

Richard Moskowitz
General Counsel

American
Fuel & Petrochemical
Manufacturers
1667 K Street NW
Suite 700
Washington, DC 20006

Ex. 6

rmoskowitz@afpm.org

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From: Bolen, Brittany [<mailto:bolen.brittany@epa.gov>]

Sent: Tuesday, December 12, 2017 6:56 PM

To: Richard Moskowitz <RMoskowitz@afpm.org>

Subject: Re: catch up

Hi Rich - unfortunately, I did not have any availability today. I could meet tomorrow at roughly 530pm; Thursday morning for coffee between 930-1015; next Monday 1145-1245.

Best,
Brittany

On Dec 11, 2017, at 8:08 AM, Richard Moskowitz
<RMoskowitz@afpm.org> wrote:

Tuesday should work well, if you're still available.

Richard Moskowitz
General Counsel

American
Fuel & Petrochemical
Manufacturers
1667 K Street NW
Suite 700
Washington, DC 20006

Ex. 6

rmoskowitz@afpm.org
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From: Bolen, Brittany [<mailto:bolen.brittany@epa.gov>]
Sent: Wednesday, December 6, 2017 6:42 PM
To: Richard Moskowitz <RMoskowitz@afpm.org>
Subject: RE: catch up

Hey Rich – it was nice to see you, too. Thanks for the email, it would be good to catch up. What does next Tuesday or Wednesday look like for you?
Best,
Brittany

From: Richard Moskowitz
[<mailto:RMoskowitz@afpm.org>]
Sent: Tuesday, December 5, 2017 7:39 AM
To: Bolen, Brittany <bolen.brittany@epa.gov>
Subject: catch up

Hey Brittany,
It was nice running into each other at the Hunton event last week. I'd love to catch up. Any chance you're available to grab a drink after work?

Richard Moskowitz
General Counsel

American
Fuel & Petrochemical
Manufacturers
1667 K Street NW
Suite 700
Washington, DC 20006

Ex. 6

rmoskowitz@afpm.org

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Message

From: Bolen, Brittany [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=31E872A691114372B5A6A88482A66E48-BOLEN, BRIT]
Sent: 12/15/2017 1:52:27 PM
To: Richard Moskowitz [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=user2443f1e7]
Subject: Re: catch up

No. Ex. 6

Sent from my iPhone

On Dec 15, 2017, at 8:50 AM, Richard Moskowitz <RMoskowitz@afpm.org> wrote:

Uggg. I'm out of the office on Tues/Wed. Are you around on Thursday?

Richard Moskowitz
General Counsel

American
Fuel & Petrochemical
Manufacturers
1667 K Street NW
Suite 700
Washington, DC 20006

Ex. 6

rmoskowitz@afpm.org
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From: Richard Moskowitz [<mailto:RMoskowitz@afpm.org>]
Sent: Thursday, December 14, 2017 4:53 PM
To: Bolen, Brittany <bolen.brittany@epa.gov>
Subject: RE: catch up

Sorry for the delayed response – I was on vacation yesterday.
Let's plan on lunch Monday (11:45).

Richard Moskowitz
General Counsel

American
Fuel & Petrochemical
Manufacturers
1667 K Street NW
Suite 700
Washington, DC 20006

Ex. 6

rmoskowitz@afpm.org

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To: Richard Moskowitz <RMoskowitz@afpm.org>

Subject: Re: catch up

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Best,
Brittany

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Tuesday should work well, if you're still available.

Richard Moskowitz
General Counsel

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From: Bolen, Brittany [<mailto:bolen.brittany@epa.gov>]

Sent: Wednesday, December 6, 2017 6:42 PM

To: Richard Moskowitz <RMoskowitz@afpm.org>

Subject: RE: catch up

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Best,
Brittany

From: Richard Moskowitz [<mailto:RMoskowitz@afpm.org>]

Sent: Tuesday, December 5, 2017 7:39 AM

To: Bolen, Brittany <bolen.brittany@epa.gov>

Subject: catch up

Hey Brittany,

It was nice running into each other at the Hunton event last week. I'd love to catch up. Any chance you're available to grab a drink after work?

Richard Moskowitz
General Counsel

American
Fuel & Petrochemical
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1667 K Street NW
Suite 700
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Message

From: Bolen, Brittany [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=31E872A691114372B5A6A88482A66E48-BOLEN, BRIT]
Sent: 5/4/2018 10:20:31 PM
To: Baer, Louis [LBaer@cement.org]
CC: Franklin, Charles [CFranklin@cement.org]; Derby, Rachel [RDerby@cement.org]
Subject: Re: Thank You - PCA

Thank you, Louis. Have a good weekend.
Best,
Brittany

On May 4, 2018, at 4:26 PM, Baer, Louis <LBaer@cement.org> wrote:

Brittany,

The Portland Cement Association would like to thank you for taking the time to speak with us and our members during our meeting with Administrator Pruitt on April 24. Attached is our formal thank you letter. We very much appreciate your work and efforts at EPA and look forward to continuing working with you. Have a great weekend.

Best,
Louis Baer

Louis A. Baer, Esq., CPEA
Director/Assistant Counsel, Government Affairs
Portland Cement Association
1150 Connecticut Avenue NW, Suite 500
Office: **Ex. 6**
Cell: **Ex. 6**
lbaer@cement.org
www.cement.org

<PCA Thank You_Bolen_05022017.pdf>

Message

From: Bolen, Brittany [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=31E872A691114372B5A6A88482A66E48-BOLEN, BRIT]
Sent: 6/9/2017 3:55:33 PM
To: Schon, Michael [mschon@cement.org]
CC: Kime, Robin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7ef7b76087a6475b80fc984ac2dd4497-RKime]
Subject: Re: Call

Mike today is crazy I can't keep up with the emails. Please coordinate with robin. I'm not free st 330.

Sent from my iPhone

> On Jun 9, 2017, at 11:39 AM, Schon, Michael <mschon@cement.org> wrote:

>
> I'm actually in a meeting in your building that is scheduled to go until 3:00. Is 3:30 an option for you?

>
> Michael Schon
> Vice President and Counsel, Government Affairs
> Portland Cement Association
> 1150 Connecticut Avenue, NW<x-apple-data-detectors://0/2>
> Suite 500<x-apple-data-detectors://0/2>
> Washington, DC 20036<x-apple-data-detectors://0/2>
> Phone: [Ex. 6] <tel:[Ex. 6]>
> mschon@cement.org<mailto:mschon@cement.org>

>
> On Jun 9, 2017, at 10:05 AM, Bolen, Brittany <bolen.brittany@epa.gov<mailto:bolen.brittany@epa.gov>>> wrote:

> Would 230 be better for you?

> Sent from my iPhone

> On Jun 9, 2017, at 10:04 AM, Schon, Michael <mschon@cement.org<mailto:mschon@cement.org>> wrote:

> Unfortunately, no.

> Michael Schon
> Vice President and Counsel, Government Affairs
> Portland Cement Association
> 1150 Connecticut Avenue, NW<x-apple-data-detectors://0/2>
> Suite 500<x-apple-data-detectors://0/2>
> Washington, DC 20036<x-apple-data-detectors://0/2>
> Phone: [Ex. 6] <tel:[Ex. 6]>
> mschon@cement.org<mailto:mschon@cement.org><mailto:mschon@cement.org>

> On Jun 9, 2017, at 10:01 AM, Bolen, Brittany <bolen.brittany@epa.gov<mailto:bolen.brittany@epa.gov>>> wrote:

> You free now? I just got off another call.

> Sent from my iPhone

> On Jun 9, 2017, at 9:39 AM, Schon, Michael <mschon@cement.org<mailto:mschon@cement.org><mailto:mschon@cement.org>> wrote:

> Yes. I'll be in a meeting, but I'll step out when you call.

> Michael Schon
> Vice President and Counsel, Government Affairs
> Portland Cement Association
> 1150 Connecticut Avenue, NW<x-apple-data-detectors://0/2>
> Suite 500<x-apple-data-detectors://0/2>
> Washington, DC 20036<x-apple-data-detectors://0/2>
> Phone: [Ex. 6] <tel:[Ex. 6]>
> mschon@cement.org<mailto:mschon@cement.org><mailto:mschon@cement.org><mailto:mschon@cement.org>

> On Jun 9, 2017, at 9:31 AM, Bolen, Brittany
<bolen.brittany@epa.gov<mailto:bolen.brittany@epa.gov><mailto:bolen.brittany@epa.gov><mailto:bolen.brittany@epa.gov>> wrote:
>
> Sure. 2pm work?
>
> Sent from my iPhone
>
> On Jun 9, 2017, at 9:03 AM, Schon, Michael
<mschon@cement.org<mailto:mschon@cement.org><mailto:mschon@cement.org><mailto:mschon@cement.org>> wrote:
>
> Hi Brittany,
>
> I have a quick follow up. Any chance you have a couple of minutes this afternoon? My mobile # is [Ex. 6]
> [Ex. 6].
>
> Michael Schon
> Vice President and Counsel, Government Affairs
> Portland Cement Association
> 1150 Connecticut Avenue, NW<x-apple-data-detectors://0/2>
> Suite 500<x-apple-data-detectors://0/2>
> Washington, DC 20036<x-apple-data-detectors://0/2>
> Phone: [Ex. 6] tel:[Ex. 6]
>
> mschon@cement.org<mailto:mschon@cement.org><mailto:mschon@cement.org><mailto:mschon@cement.org><mailto:mschon@cement.org><mailto:mschon@cement.org>
> chon@cement.org>
>
>
> On May 30, 2017, at 1:10 PM, Bolen, Brittany
<bolen.brittany@epa.gov<mailto:bolen.brittany@epa.gov><mailto:bolen.brittany@epa.gov><mailto:bolen.brittany@epa.gov>> wrote:
>
> Mike, so sorry I got pulled in another meeting. Can I call you later this afternoon?
>
> Sent from my iPhone

Message

From: Bolen, Brittany [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=31E872A691114372B5A6A88482A66E48-BOLEN, BRIT]
Sent: 6/9/2017 2:05:52 PM
To: Schon, Michael [mschon@cement.org]
Subject: Re: Call

Would 230 be better for you?

Sent from my iPhone

> On Jun 9, 2017, at 10:04 AM, Schon, Michael <mschon@cement.org> wrote:

>
> Unfortunately, no.
>
> Michael Schon
> Vice President and Counsel, Government Affairs
> Portland Cement Association
> 1150 Connecticut Avenue, NW<x-apple-data-detectors://0/2>
> Suite 500<x-apple-data-detectors://0/2>
> Washington, DC 20036<x-apple-data-detectors://0/2>
> Phone: [Ex. 6] <tel:[Ex. 6]>
> mschon@cement.org<mailto:mschon@cement.org>

>
> On Jun 9, 2017, at 10:01 AM, Bolen, Brittany <bolen.brittany@epa.gov<mailto:bolen.brittany@epa.gov>> wrote:

> You free now? I just got off another call.

> Sent from my iPhone

> On Jun 9, 2017, at 9:39 AM, Schon, Michael <mschon@cement.org<mailto:mschon@cement.org>> wrote:

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> Michael Schon
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> On Jun 9, 2017, at 9:31 AM, Bolen, Brittany <bolen.brittany@epa.gov<mailto:bolen.brittany@epa.gov>> wrote:

> Sure. 2pm work?

> Sent from my iPhone

> On Jun 9, 2017, at 9:03 AM, Schon, Michael <mschon@cement.org<mailto:mschon@cement.org>> wrote:

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[Ex. 6]

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> mschon@cement.org<mailto:mschon@cement.org><mailto:mschon@cement.org><mailto:mschon@cement.org>

> On May 30, 2017, at 1:10 PM, Bolen, Brittany
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Sent: 6/9/2017 2:01:54 PM
To: Schon, Michael [mschon@cement.org]
Subject: Re: Call

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> Phone: [REDACTED] Ex. 6 <tel:[REDACTED] Ex. 6 >
> mschon@cement.org<mailto:mschon@cement.org>

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> [REDACTED] Personal Cell / Ex. 6

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Sent: 5/8/2017 11:05:37 PM
To: Noe, Paul [Paul_Noel@afandpa.org]
Subject: RE: Follow up

Hi Paul – thanks for your email. I will be at the meeting tomorrow with Samantha. Look forward to speaking with you then.

Best,
Brittany

From: Noe, Paul [mailto:Paul_Noel@afandpa.org]
Sent: Monday, May 8, 2017 1:25 PM
To: Bolen, Brittany <bolen.brittany@epa.gov>
Subject: Follow up

Hi Brittany:

Thank you for your participation in the AF&PA meeting with the Administrator last Thursday. I wanted to follow up with you and see if you have a little time to discuss a couple of the issues that were raised. In fact, I will be in a meeting of the Regulatory Improvement Council with Samantha Dravis Tues 5/9 at 10am. Will you be attending that? Otherwise, do you have time for a brief call?

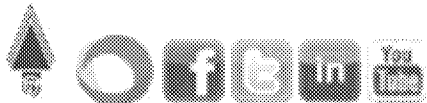
Thank you

Paul

Paul Noe
Vice President for Public Policy
Paul_Noel@afandpa.org

Ex. 6

AMERICAN FOREST & PAPER ASSOCIATION
1101 K Street, N.W., Suite 700
Washington, D.C. 20005



Message

From: Bolen, Brittany [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=31E872A691114372B5A6A88482A66E48-BOLEN, BRIT]
Sent: 6/9/2017 1:32:13 PM
To: Schon, Michael [mschon@cement.org]
Subject: Re: Call

Sure. 2pm work?

Sent from my iPhone

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[Ex. 6]

> Michael Schon

> Vice President and Counsel, Government Affairs

> Portland Cement Association

> 1150 Connecticut Avenue, NW<x-apple-data-detectors://0/2>

> Suite 500<x-apple-data-detectors://0/2>

> Washington, DC 20036<x-apple-data-detectors://0/2>

> Phone: [Ex. 6] ;tel:[Ex. 6]

> mschon@cement.org<mailto:mschon@cement.org>

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Sent: 5/8/2017 11:04:43 PM
To: Schon, Michael [mschon@cement.org]
Subject: RE: Checking in re PCA Panel Discussion

Great. I wanted to confirm the panel is scheduled for Wednesday - not tomorrow. I see the Administrator is speaking to PCA at lunchtime tomorrow, so I wanted to make sure there wasn't a mix up with the date. FYI it's the administrator's birthday tomorrow.

-----Original Message-----

From: Schon, Michael [mailto:mschon@cement.org]
Sent: Monday, May 8, 2017 1:38 PM
To: Bolen, Brittany <bolen.brittany@epa.gov>
Subject: Re: Checking in re PCA Panel Discussion

Perfect. Thank you. Looking forward to seeing you Wednesday morning. Please let me know if you have any questions in the meantime.

Michael Schon
Vice President and Counsel, Government Affairs Portland Cement Association
1150 Connecticut Avenue, NW<x-apple-data-detectors://0/2> Suite 500<x-apple-data-detectors://0/2>
Washington, DC 20036<x-apple-data-detectors://0/2>
Phone: [redacted] Ex. 6 <tel:[redacted] Ex. 6> mschon@cement.org<mailto:mschon@cement.org>

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Mike - I need to put more thought into my updated bio, but this should be enough for you to rework with and refine. This is a little sloppy, I was rushed. Thank you!

Brittany Bolen is currently the Deputy Associate Administrator for Policy at the Environmental Protection Agency. In that role, Ms. Bolen oversees the Agency's rulemaking process and coordinates interagency review of regulatory actions. Ms. Bolen was also selected by Administrator Pruitt to serve on the EPA's Regulatory Reform Task Force, which is responsible for implementing the President's executive order on regulatory reform, as well as presidential initiatives on energy independence and permit streamlining. Prior to joining EPA, Ms. Bolen served on the Senate Republican Policy Committee as Policy Counsel for Energy, Environment and Agriculture, and the Senate Environment and Public Works Committee as oversight counsel. Early in her career, Ms. Bolen served on the U.S. House of Representatives Committee on the Judiciary as well as the U.S. House of Representatives Committee on Oversight and Government Reform. Bolen holds a J.D. from the George Mason University School of Law and a B.A. in both Criminology and Political Science from the University of Florida. She is admitted to practice law in the State of Florida.

-----Original Message-----

From: Schon, Michael [mailto:mschon@cement.org]
Sent: Monday, May 8, 2017 10:41 AM
To: Bolen, Brittany <bolen.brittany@epa.gov<mailto:bolen.brittany@epa.gov>>
Subject: Re: Checking in re PCA Panel Discussion

No problem and thanks.

Michael Schon
Vice President and Counsel, Government Affairs Portland Cement Association
1150 Connecticut Avenue, NW<x-apple-data-detectors://0/2> Suite 500<x-apple-data-detectors://0/2>
Washington, DC 20036<x-apple-data-detectors://0/2>
Phone: [redacted] Ex. 6 <tel:[redacted] Ex. 6>
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Brittany,

Sorry to pester you. Do you have an updated bio I can crib from?

Michael Schon
Vice President & Counsel, Government Affairs Portland Cement Association
1150 Connecticut Ave NW
Washington, DC 20036
Ex. 6

On 5/3/17, 8:28 PM, "Bolen, Brittany"
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I will send you one, sure.

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Brittany,

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Thanks,

Mike

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Phone: Ex. 6 <tel:Ex. 6>
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Yes, that works fine. Talk to you at 3pm

Michael Schon
Vice President & Counsel, Government Affairs Portland Cement Association
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Washington, DC 20036
Ex. 6

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Regards,

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Vice President & Counsel, Government Affairs Portland Cement Association
1150 Connecticut Ave NW
Washington, DC 20036
Ex. 6 (direct)
Ex. 6 (mobile)

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Sent: 12/5/2017 7:35:07 PM
To: Johnston, A. Todd [atjohnston@cement.org]
Subject: RE: call

Hey Todd –

I am so sorry for not responding to this email earlier. I have very limited control over my email these days. This was just brought to my attention in a stack of older, non-priority emails. Certainly, if you have something time sensitive, please call my direct Ex. 6

Hope all is well.

Brittany

From: Johnston, A. Todd [mailto:atjohnston@cement.org]
Sent: Friday, October 6, 2017 11:42 AM
To: Bolen, Brittany <bolen.brittany@epa.gov>
Subject: call

Brittany –

Good seeing you at the sectors event. If you have a few minutes for a call, I have an issue that I'd like to bring to your attention.

Thanks,

Todd

A. Todd Johnston
Executive Vice President
Portland Cement Association

Ex. 6 (o)

Ex. 6 (c)

Message

From: Bolen, Brittany [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=31E872A691114372B5A6A88482A66E48-BOLEN, BRIT]
Sent: 5/8/2017 5:32:26 PM
To: Schon, Michael [mschon@cement.org]
Subject: RE: Checking in re PCA Panel Discussion

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1150 Connecticut Ave NW
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[redacted] Ex. 6

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Ex. 6 (direct)
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>> Michael Schon
>> Vice President & Counsel, Government Affairs
>> Portland Cement Association
>> 1150 Connecticut Ave NW
>> Washington, DC 20036
>> (direct)
>> **Ex. 6** (mobile)
>>
>>
>
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From: Bolen, Brittany [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=31E872A691114372B5A6A88482A66E48-BOLEN, BRIT]
Sent: 12/5/2017 12:00:27 AM
To: Brown, Samuel L. [SIBrown@hunton.com]
Subject: RE: Thank you!

Hi Sam –
Thank you for the kind email. I'm glad the discussion was well received.
Best,
Brittany

Brittany Bolen
Deputy Associate Administrator, Office of Policy
U.S. Environmental Protection Agency
(202) 564-3291
Bolen.Brittany@epa.gov

From: Brown, Samuel L. [mailto:SIBrown@hunton.com]
Sent: Saturday, December 2, 2017 3:05 AM
To: Bolen, Brittany <bolen.brittany@epa.gov>
Subject: Thank you!

Hi Brittany,

I just want to thank you again for participating in our *Insights into Environmental Law & Policy: A Conversation with Key Regulators* event on Thursday. We received great feedback from the participants and your contribution was greatly appreciated.

Thanks! – Sam



Samuel Brown
Senior Attorney
slbrown@hunton.com

p
f **Ex. 6**
[bio](#) | [vCard](#)

Hunton & Williams LLP
50 California Street
Suite 1700
San Francisco, CA 94105
hunton.com

To: Paul Bailey[pbailey@americaspower.org]
From: Bolen, Brittany
Sent: Thur 8/17/2017 6:30:18 PM
Subject: Re: CCR letter attached

Thank you for sharing, Paul. Hope all is well.
Best,
Brittany

On Aug 17, 2017, at 2:22 PM, Paul Bailey <pbailey@americaspower.org> wrote:

FYI.

Paul Bailey

President & CEO

American Coalition for Clean Coal Electricity

T: [Ex. 6] M: [Ex. 6]
pbailey@americaspower.org

<EPA CCR Letter August 16.pdf>

Message

From: Bolen, Brittany [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=31E872A691114372B5A6A88482A66E48-BOLEN, BRIT]
Sent: 11/30/2017 7:52:07 PM
To: Knauss, Chuck [CKnauss@hunton.com]
Subject: Re: Today

Almost there. Sorry, traffic is really bad because of the Christmas tree lighting. I should have taken the metro...

Sent from my iPhone

On Nov 30, 2017, at 8:33 AM, Knauss, Chuck <CKnauss@hunton.com> wrote:

Brittany: We are delighted you can carve out some time this afternoon to join our session. Please see the attached agenda. Can you send us a bio (and photo if you have one handy)? Also, do you want to talk with me beforehand about my set up questions?

Best regards – Chuck

Cell: Ex. 6

<Insights into Env Law and Policy - Draft Agenda (11.28.17)_66686475_21 (3)-c.docx>

Message

From: Bolen, Brittany [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=31E872A691114372B5A6A88482A66E48-BOLEN, BRIT]
Sent: 8/15/2017 4:24:27 PM
To: Schon, Michael [mschon@cement.org]
CC: Kime, Robin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7ef7b76087a6475b80fc984ac2dd4497-RKime]
Subject: Re: Personal Update

Absolutely, Mike. I'm tied up this afternoon, but I can call you after 430.

Sent from my iPhone

On Aug 15, 2017, at 10:36 AM, Schon, Michael <mschon@cement.org> wrote:

Brittany,

I hope you are well. Would you let me know when you might have 5 minutes to chat? I just want to share some news with you. I'd be happy to coordinate with Robin, cc'd, to coordinate.

Best,

Mike

Michael Schon
Vice President and Counsel, Government Affairs
Portland Cement Association
1150 Connecticut Avenue, NW
Suite 500
Washington, DC 20036
Phone: Ex. 6
mschon@cement.org

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From: Bolen, Brittany [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=31E872A691114372B5A6A88482A66E48-BOLEN, BRIT]
Sent: 4/19/2017 1:47:36 PM
To: bolen.brittany@epa.gov; Johnston, A. Todd [atjohnston@cement.org]
CC: Campbell, Heather [hcampbell@cement.org]; Carolyn Inge (Inge.Carolyn@epa.gov) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7f763e42702a4f468cdf42323ee94520-Cinge]; Kime, Robin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7ef7b76087a6475b80fc984ac2dd4497-RKime]
Subject: RE: Panel Discussion; Meeting

Todd –

Thanks for your patience. Our ethics counsel was out on leave, but she just approved my participation on the panel. Please work with Carolyn and Robin (cc'd) on scheduling details for the panel, and follow-up on scheduling a separate regulatory meeting with Samantha and I in the coming weeks.

Thank you again for the invitation. I look forward to it.

Best,

Brittany

From: bolen.brittany@epa.gov [mailto:bolen.brittany@epa.gov]
Sent: Wednesday, April 12, 2017 10:51 PM
To: Johnston, A. Todd <atjohnston@cement.org>
Cc: Campbell, Heather <hcampbell@cement.org>; Carolyn Inge (Inge.Carolyn@epa.gov) <Inge.Carolyn@epa.gov>
Subject: Re: Panel Discussion; Meeting

Hi Todd -

Thanks for reaching out. I would be happy to participate on the panel, but I need to get approval first. I hope to have an answer for you by Friday.

On the other request, Carolyn please work with Todd and Heather to schedule a meeting with Samantha and I next week.

Best,

Brittany

On Apr 12, 2017, at 12:15 PM, Johnston, A. Todd <atjohnston@cement.org> wrote:

Brittany,

I hope you are well. I'm writing to see if you would be interested in speaking on a panel discussion for our members and also to see if we can set up a separate meeting with you.

First, we'd be honored to have you speak on a regulatory reform panel discussion that we're hosting for our members. The panel would speak on Wednesday May 10th at 8:30 before an audience of approximately 60 representatives of PCA's member companies, including CEOs and key decision makers. They will be in town for PCA's annual Fly-in. I don't think it would require much preparation. We'd like you to give a brief introduction of EPA's regulatory/regulatory reform priorities and to be able to answer soft questions from my colleague Mike Schon who will moderate. We'd be honored to have you.

Second, I was hoping to set up a meeting with you, Samantha Dravis, me, and my environment and regulatory affairs lead (Mike Schon) to talk about pending issues before EPA and some of our key ideas for improving and streamlining permitting and regulations that affect the cement industry. Please let me know when you might have time to do so and we'll work our schedules around yours.

Thanks,

Todd

A. Todd Johnston
Executive Vice President
Portland Cement Association

Ex. 6 (o)

Ex. 6 (c)

To: Paul Bailey[pbailey@americaspower.org]
Cc: Vicky Sullivan[vsullivan@americaspower.org]
From: Bolen, Brittany
Sent: Mon 4/3/2017 9:44:53 PM
Subject: RE: CCR/ELG

Thanks, Paul.

From: Paul Bailey [mailto:pbailey@americaspower.org]
Sent: Monday, April 3, 2017 6:21 AM
To: Bolen, Brittany <bolen.brittany@epa.gov>
Cc: Vicky Sullivan <vsullivan@americaspower.org>
Subject: CCR/ELG

Brittany –
Thanks for meeting with us. Attached is a short piece on CCR/ELG. It doesn't go into detail but explains the basic steps to fix both rules. Hope it's helpful.
Paul

Paul Bailey
President & CEO
American Coalition for Clean Coal Electricity
T: Ex. 6 M: Ex. 6
pbailey@americaspower.org

www.americaspower.org
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Message

From: Bolen, Brittany [bolen.brittany@epa.gov]
Sent: 5/10/2017 12:22:27 PM
To: mschon@cement.org
Subject: On my way!

Sent from my iPhone

Message

From: Bolen, Brittany [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=31E872A691114372B5A6A88482A66E48-BOLEN, BRIT]
Sent: 5/9/2017 3:46:36 PM
To: Schon, Michael [mschon@cement.org]
CC: Kime, Robin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7ef7b76087a6475b80fc984ac2dd4497-RKime]; Inge, Carolyn [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7f763e42702a4f468cdf42323ee94520-Cinge]
Subject: Re: Tomorrow Morning

Mike, I can't keep up with all these emails. Please coordinate with Robin and Carolyn.

Sent from my iPhone

> On May 9, 2017, at 11:45 AM, Schon, Michael <mschon@cement.org> wrote:

>

> Hi Brittany,

>

> I just wanted to make sure you're good with logistics for tomorrow morning. I'll plan on meeting you and David Langdon in the lobby of the Marriott Metro Center around 8:15 to chat for a few minutes and show you to the conference room where we'll be meeting. Please feel free to call my mobile (Ex. 6

Ex. 6 with any issues.

>

> Mike

>

> Michael Schon

> Vice President & Counsel, Government Affairs

> Portland Cement Association

> 1150 Connecticut Ave NW

> Washington, DC 20036

> Ex. 6

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From: Bolen, Brittany [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=31E872A691114372B5A6A88482A66E48-BOLEN, BRIT]
Sent: 6/21/2017 12:46:22 AM
To: Nolan, Robert M [robert.m.nolan@exxonmobil.com]
Subject: Re: FYI Only - ExxonMobil Technology Announcement

Hi Robert, believe it or not I am just now reading this email. Today was a full day. Any chance tomorrow between 9-930am would work for a call?

Thanks,
Brittany

Sent from my iPhone

On Jun 20, 2017, at 9:46 AM, Nolan, Robert M <robert.m.nolan@exxonmobil.com> wrote:

Hi Brittany, do you have 5 minutes to chat today ...

From: Bolen, Brittany [<mailto:bolen.brittany@epa.gov>]
Sent: Tuesday, June 20, 2017 9:39 AM
To: Nolan, Robert M <robert.m.nolan@exxonmobil.com>
Subject: Re: FYI Only - ExxonMobil Technology Announcement

Thanks, Robert.

On Jun 20, 2017, at 7:18 AM, Nolan, Robert M <robert.m.nolan@exxonmobil.com> wrote:

Thought you may find this of interest:

- <!--[if !supportLists]--><!--[endif]-->Algae strain developed and modified by Synthetic Genomics more than doubled oil production
- <!--[if !supportLists]--><!--[endif]-->Additional research and testing required before commercial application
- <!--[if !supportLists]--><!--[endif]-->Results published in peer-reviewed journal *Nature Biotechnology*

For more information, please find a link below to view ExxonMobil media Info.

<http://news.exxonmobil.com/press-release/exxonmobil-and-synthetic-genomics-report-breakthrough-algae-biofuel-research>

Regard, Robert

Ex. 6 (Office)
Ex. 6 (Cell)