

Via Regulations.gov

Administrator Scott Pruitt

U.S. Environmental Protection Agency

Ariel Rios Building

1200 Pennsylvania Avenue, NW

Washington, DC 20460

RE: EPA-HQ-OAR-2017-0533; Draft FY 2018-2022 EPA Strategic Plan: Public Review Draft

Dear Administrator Pruitt:

On behalf of the more than two million members of Environmental Defense Fund we respectfully provide the following comments on the “Draft FY 2018-2022 EPA Strategic Plan: Public Review Draft” (Draft Strategic Plan). We have serious concerns about the Draft Strategic Plan and the course it maps for our nation. The Draft Strategic Plan does not appear to fulfill EPA’s core mission to protect public health and the environment. The public strongly supports environmental protection and wants more protections, not fewer. Respect for the “rule of law” means giving full effect to the protections Congress has enacted to protect public health and welfare. The Draft Strategic Plan also comes at a time when the Administration is proposing drastic cuts to the EPA budget, which greatly jeopardize EPA’s ability to achieve its goals.

Our comments are not an exhaustive assessment of the Draft Strategic Plan and reflect just some of the areas of concern with the Draft Strategic Plan.

Goal 1: Core Mission

Discussion of the Draft Strategic Plan’s first goal to “refocus the Agency back to its core mission” and to “deliver real results to provide Americans with clean air, land, and water”¹ does not include enough detail or ambition to achieve the core mission of the Agency. As EPA notes, we have made extraordinary progress improving our air, land, and water, all while enjoying strong economic growth, and we have more work to do. However, the remaining burden of

¹ U.S. Environmental Protection Agency, “Draft FY 2018-2022 EPA Strategic Plan,” 3 (October 2, 2017), *available at*: <https://www.regulations.gov/document?D=EPA-HQ-OA-2017-0533-0002>.

pollution and the urgent, existential threat of climate change mean that additional measures to reduce hazardous air pollutants, greenhouse gases, and criteria pollutants must be swiftly adopted by EPA and should be articulated in the Draft Strategic Plan. EPA must also include ambitious, scientifically sound plans to address toxic chemicals, safe drinking water, water quality, and cleanup of and protection of lands. Details about some specific concerns regarding Goal 1 are below.

Addressing Toxic Chemicals

EDF provides these comments in response to the Draft Strategic Plan, but they should not be construed as a comprehensive discussion of all of EPA's obligations to implement the new TSCA.

EPA's Draft Strategic Plan identifies as a top priority implementation of the new Frank R. Lautenberg Chemical Safety for the 21st Century Act. The draft plan also identifies some relevant—if incomplete—strategic measures, such as timely completing the EPA-initiated TSCA risk evaluations for existing chemicals. While meeting deadlines is important, EPA's goals should emphasize ensuring chemical safety and achieving overall compliance with the law. As EDF previously expressed in its comments on the ten scopes for the initial risk evaluations now underway, EPA's current approach to those risk evaluations is contrary to law and insufficient to protect public health. Among other things, EPA will likely be ignoring circumstances leading to ongoing exposures, and as a result, will fail to evaluate the risks the chemicals actually pose to human health and the environment, including to potentially exposed or susceptible subpopulations. EPA's measure in this area should be to complete *comprehensive* risk evaluations of the chemical substances as required by law, not to ignore evidence of potential risk because of self-imposed blinders. EPA will fail to achieve the goals of this draft plan unless it shifts its approach to these risk evaluations.

The Draft Strategic Plan also identifies the need to implement some of the substantive changes to the new chemicals program, but again puts the emphasis on meeting deadlines, with only scant mention of ensuring the safety of such chemicals or conforming the program to the requirements of the law. While the draft plan notes the agency “establishes risk reduction/management techniques” for new chemicals “as necessary,” it fails to describe the mechanisms by which that is to be done or the requirements such measures must meet.² For example, the draft plan does not acknowledge the law's requirement that EPA issue orders whenever: (1) its review finds a new chemical may present unreasonable risk under its conditions of use, which expressly includes known, intended, and reasonably foreseen circumstances of manufacture, processing, distribution in commerce, use, and disposal; or (2) there is insufficient information available to the agency to conduct a reasoned evaluation of the potential risk. The order issued must be sufficient “to protect against the unreasonable risk, without consideration of costs or other nonrisk factors,

² U.S. Environmental Protection Agency, “Draft FY 2018-2022 EPA Strategic Plan,” 16 (October 2, 2017), available at: <https://www.regulations.gov/document?D=EPA-HQ-OA-2017-0533-0002>.

including an unreasonable risk to a potential exposed or susceptible subpopulation identified as relevant by the Administrator under the conditions of use.” TSCA § 5(e). The draft plan also fails to identify the need to bring greater transparency to the new chemicals program, despite explicit legal obligations to do so. TSCA § 5(d)(1) requires that pre-manufacture notices shall be made available, subject to the limitations of TSCA § 14, for examination by interested persons. EPA has not met this obligation. Similarly TSCA § 26(j)(1) requires that *all* notices, determinations, findings, agreements, and orders shall be made available to the public. EPA has failed to implement these directives, and as a result the new chemicals program remains particularly opaque. For example, EPA has not been disclosing all the determinations and findings made under that program.

EPA repeatedly refers to the general goal of increasing transparency in the Draft Strategic Plan, but fails to identify any of the measures needed to do so. In this context, EPA needs to fulfill its disclosure obligations with respect to the new chemicals program, and yet transparency goes unmentioned in the draft plan’s discussion of that program.

On this note, the Draft Strategic Plan acknowledges the requirement that EPA review confidential business information (CBI) claims under TSCA, but EPA again fails to identify concrete strategic measures or even steps it will take to show the public that those reviews are taking place or the outcome of the reviews. Nor does it address how EPA will meet its obligation to provide the public with non-confidential information after that review. By EPA’s own acknowledgment, the CBI provisions of the Lautenberg Act took effect upon passage on June 22, 2016. 82 Fed. Reg. 6522, 6523 (January 19, 2017). TSCA requires that EPA review CBI claims within 90 days of receipt of the claim. But despite the fact that over 16 months have elapsed since passage, it is not clear that EPA has been reviewing CBI claims, what the outcomes of those reviews were, and what information did or did not qualify as CBI. In the draft plan, EPA notes that, as of July 17, 2017, EPA had received 4,096 CBI claims which EPA has determined need review under TSCA’s requirements.³ The review of those claims should have been completed no later than October 15, 2017, but we are not aware of any public account describing the progress of that review or any information about what claims were denied or granted. EPA’s draft plan lacks any strategic measure relating to the need for reviewing claims of confidentiality and disclosing all information that does not meet the requirements for non-disclosure under TSCA § 14.

EPA needs to proceed expeditiously with a rulemaking to collect fees to defray the costs related to administering sections 4, 5, 6, and 14. The Lautenberg Act authorized the collection of those fees to offset the costs of the program, and yet EPA has taken no public action even to initiate the rulemaking. EPA will need those funds to meet all of its obligations under amended TSCA, and it is disconcerting that based on the draft strategic plan EPA appears to be taking no steps

³ U.S. Environmental Protection Agency, “Draft FY 2018-2022 EPA Strategic Plan,” 17 (October 2, 2017), available at: <https://www.regulations.gov/document?D=EPA-HQ-OA-2017-0533-0002>.

towards collecting them. Even more disconcertingly, the draft plan states that EPA “has no control over how much revenue the fees will generate.”⁴ Not so. First, EPA needs to promulgate a rule requiring those fees, or else the revenue will continue to be zero. Second, while EPA argues that “how the fee-paying community responds to the new fees”⁵ will determine revenue, the law, not the regulated community, expressly establishes the level of fees to be collected:

(4) AMOUNT AND ADJUSTMENT OF FEES; REFUNDS.—In setting fees under this section, the Administrator shall—

(B) set the fees established under paragraph (1) at levels such that the fees will, in aggregate, provide a sustainable source of funds to annually defray—

(i) the lower of—

(I) 25 percent of the costs to the Administrator of carrying out sections 4, 5, and 6, and of collecting, processing, reviewing, and providing access to and protecting from disclosure as appropriate under section 14 information on chemical substances under this title, other than the costs to conduct and complete risk evaluations under section 6(b); or

(II) \$25,000,000 (subject to adjustment pursuant to subparagraph (F)); and

(ii) the costs of risk evaluations specified in subparagraph (D);

(C) reflect an appropriate balance in the assessment of fees between manufacturers and processors, and allow the payment of fees by consortia of manufacturers or processors;

(D) notwithstanding subparagraph (B)—

(i) except as provided in clause (ii), for chemical substances for which the Administrator has granted a request from a manufacturer pursuant to section 6(b)(4)(C)(ii), establish the fee at a level sufficient to defray the full costs to the Administrator of conducting the risk evaluation under section 6(b);

(ii) for chemical substances for which the Administrator has granted a request from a manufacturer pursuant to section 6(b)(4)(C)(ii), and which

⁴ U.S. Environmental Protection Agency, “Draft FY 2018-2022 EPA Strategic Plan,” 17 (October 2, 2017), available at: <https://www.regulations.gov/document?D=EPA-HQ-OA-2017-0533-0002>.

⁵ Ibid.

are included in the 2014 update of the TSCA Work Plan for Chemical Assessments, establish the fee at a level sufficient to defray 50 percent of the costs to the Administrator of conducting the risk evaluation under section 6(b); and

(iii) apply fees collected pursuant to clauses (i) and (ii) only to defray the costs described in those clauses;

TSCA § 26(b)(4). It is EPA's inaction that currently has resulted in zero fee revenue.

Finally, entirely missing from the Draft Strategic Plan is any discussion of, let alone strategic measures or strategies for, how EPA plans to exercise its expanded authorities to require the development and submission of information under the amendments to TSCA §§ 4 and 8. Enhanced authority to obtain more and better chemical information was among the key reforms instituted by the Lautenberg Act. Yet in the months since passage, EPA has failed to initiate or even announce its intent to use these authorities, and if anything has intimated that it may rarely use them for anything other than short-term testing even in the context of prioritization and risk evaluation. Hence the omission of any discussion of this issue in the Draft Strategic Plan is highly disturbing.

Meeting National Ambient Air Quality Standards

The Draft Strategic Plan, laudably, aspires to reduce the number of areas in nonattainment with the National Ambient Air Quality Standards (NAAQS) in its FY 2018-2019 Agency goals and discusses air quality under Goal 1. EPA's recent actions call into question how and whether EPA will achieve this in a manner that ensures public health is protected, consistent with the requirements of the Clean Air Act. For example, EPA attempted to delay designations of areas for the Ozone 2015 National Ambient Air Quality Standards, and despite having reversed that decision to delay implementation, has missed the October 1, 2017 statutory deadline. EPA's recent report issued pursuant to Executive Order 13783⁶ outlined steps that would potentially delay realization of the public health benefits from the Ozone 2015 NAAQS, jeopardizing communities' health. In the report, EPA indicated its Ozone Cooperative Compliance Task Force "is reviewing administrative options to enable states to enter into cooperative agreements with EPA to provide regulatory relief and meaningfully improve ozone air quality."⁷ However, it is clear that the cooperative agreements approach EPA has attempted before have failed to meet

⁶ U.S. Environmental Protection Agency, "Final Report on Review of Agency Actions that Potentially Burden the Safe, Efficient Development of Domestic Energy Resources Under Executive Order 13783," (October 2017), available at: <https://www.epa.gov/sites/production/files/2017-10/documents/eo-13783-final-report-10-25-2017.pdf>.

⁷ Ibid., 5.

legal requirements under the Clean Air Act and EPA's own assessment of a similar program (Early Action Compact)⁸ raises doubts about the effectiveness and efficiency of such a program.

EPA is also proposing to repeal and revisit a number of highly cost-effective measures that were in place that could help states achieve the NAAQS. These measures include the proposed repeal of the Clean Power Plan, the delay in implementation of standards for the oil & gas industry, the decision to revisit standards for cars, and the proposal to eliminate standards that reduce pollution from gliders—all of which would provide emissions reductions of one or more NAAQS (or precursor) pollutants.

Given concerning statements and actions by Administrator Scott Pruitt on issues like the Ozone NAAQS, it is important that the Draft Strategic Plan reflect EPA's understanding that it must adhere to the law and protect public health in implementing the NAAQS. The NAAQS was established to protect public health and plays a critical role in informing Americans whether their air is safe to breathe. EPA must not weaken implementation of the NAAQS to reduce the areas designated nonattainment.

Draft Plan Fails to Address EPA's Critical Role in Addressing Climate Change

Unlike the previous EPA Strategic Plan⁹, the Draft Strategic Plan fails to discuss climate change and EPA's legal obligation to address climate change. This is the first EPA Strategic Plan in *decades*, spanning both Republican and Democratic Administrations, that does not mention climate change or greenhouse gas emissions. EPA is responsible for administering our nation's clean air laws for the benefit of the American people—laws that the Supreme Court has now held on three separate occasions¹⁰ clearly apply to pollutants that are driving destructive climate change. It is incontrovertible that climate change is seriously impacting Americans' health and welfare and represents one of the greatest environmental challenges of our lives. Extreme weather events like flooding and deadly storms, the spread of disease, sea level rise, increased food insecurity, and other disasters are among the devastating impacts of climate change occurring now.

These climate impacts cost businesses, families, governments and taxpayers hundreds of billions of dollars through rising health care costs, destruction of property, reduced productivity, increased food prices, and more. A federal government study released by the Government Accountability Office just this month highlights the stark economic and humanitarian costs of

⁸ U.S. Environmental Protection Agency, "Early Action Compact Program for Ground-Level Ozone: A Study," (June 2009), *available at*: <https://archive.epa.gov/airquality/eac/web/pdf/eaccasestudy2009.pdf>.

⁹ U.S. Environmental Protection Agency, "FY 2014-2018 EPA Strategic Plan," (April 2014), *available at*: https://www.epa.gov/sites/production/files/2014-09/documents/epa_strategic_plan_fy14-18.pdf.

¹⁰ Environmental Defense Fund, "Yes, Administrator Pruitt, EPA does have the obligation to protect America from climate pollution," (October 19, 2017), *available at*: http://blogs.edf.org/climate411/2017/10/19/yes-administrator-pruitt-epa-does-have-the-obligation-to-protect-america-from-climate-pollution/?_ga=2.197854703.1145875027.1508782909-383468789.1454952534.

climate change to Americans.¹¹ The report noted that extreme weather and fire events cost federal taxpayers \$350 billion over the past decade. GAO also cited a report that showed, in addition to costing American lives, climate change could hit our economy with an annual cost of up to \$150 billion in just lost lifetime labor supply by the end of the century.¹² EPA must revise its Draft Strategic Plan to meaningfully address the threat of climate change and outline how the Agency will address it, as it is obligated under the law to do so.

Toxic Air Pollutants

The Draft Strategic Plan also does not indicate what measures it will take to continue reducing toxic air pollution from the industrial sector. Air toxics, or hazardous air pollutants, are pollutants that can cause cancer, birth defects, and/or harmful environmental impacts. EPA has made significant progress in reducing some of the most toxic pollutants from major sources through standards like the Mercury and Air Toxics Standards for Coal- and Oil-fired Power Plants (MATS) and other sector-specific standards, but additional, stringent controls for toxic air pollution are necessary to protect public health and the environment. We are also gravely concerned about recent actions and statements from the Administration that indicate a willingness to revisit landmark toxic pollution standards, like MATS. These cost-effective standards are fully in effect and providing tremendous health and environmental benefits to Americans. EPA must not weaken these standards.

Other Air Quality Issues

The Draft Strategic Plan indicated EPA will operate programs like the Acid Rain Program and the Cross-State Air Pollution Rule. However, EPA has sought to delay litigation related to the Cross-State Air Pollution Update Rule. The Draft Strategic Plan should also reflect that an additional Cross-State Air Pollution Update Rule may be needed to ensure states can meet the 2015 Ozone NAAQS.

EPA also has several pending petitions before it, including from the state of Maryland, that seek relief from emission sources in upwind states that interfere with the state's ability to meet the 2008 Ozone NAAQS. EPA should grant these petitions and chart a course that does more to address upwind pollution that interferes with downwind states' ability to meet the NAAQS (more on these petitions below).

We also note that, though EPA indicates continued support for grants and technical assistance to states, local, and Tribal air pollution control agencies for air quality programs, the proposed budget for EPA for FY 2018 would substantially cut such available funding and funding for related research programs. Funding for these critical programs has not been materially increased

¹¹ Government Accountability Office, "Climate Change -- Information on Potential Economic Effects Could Help Guide Federal Efforts to Reduce Fiscal Exposure," (September 2017), *available at*: <http://www.gao.gov/assets/690/687466.pdf>.

¹² Ibid.

in decades—providing resource challenges to states, Tribes and others seeking to implement air quality programs.

Goal 2: Cooperative Federalism

EPA’s Strategic Plan states that its second goal is to “restore power to the states through cooperative federalism.”¹³ However, Administrator Pruitt’s appeal to cooperative federalism is one-sided, aiming to provide cover for states and industries that seek weaker or no safeguards—while also undermining states that aim to provide more protective environmental and health programs for their citizens. Additionally, the Plan’s intention to “restore” state power and to “rebalance” the federal-state relationship ignores EPA’s established history of cooperation with states.

Administrator Pruitt’s vision of cooperative federalism shortchanges any role for the federal government in protecting human health and the environment, all in service of empowering states and industries that seek the lowest common denominator for pollution control. As just one example, Administrator Pruitt has opposed and failed to address downwind states’ concerns over pollution emitted from upwind states—a textbook scenario of the important role of a federal EPA in protecting Americans from harmful pollution. In his prior role as Oklahoma Attorney General, Scott Pruitt litigated to oppose EPA’s 2011 Cross-State Air Pollution Rule (“CSAPR”)—claiming that rule “ignore[d] the law,” even *after* the Supreme Court upheld the program 6-2.¹⁴ More recently, three downwind states (Delaware, Connecticut, and Maryland) have called upon EPA and Administrator Pruitt to aid them in protecting their citizens from upwind pollution via Clean Air Act Section 126 suits, which call on EPA to step in and help protect downwind states that cannot address pollution floating in from other jurisdictions. However, the Administrator has not acted to answer each states’ separate Section 126 petitions (three in total), and litigation is now pending as a result of this failure to fulfill his statutory duties.¹⁵

Meanwhile, Administrator Pruitt’s concern for federalism has not included strong support for states that wish to enact more protective programs for their citizens. In particular, Administrator Pruitt has shown troubling ambivalence towards California’s authority to set its own, more

¹³ U.S. Environmental Protection Agency, “Draft FY 2018-2022 EPA Strategic Plan,” 3 (October 2, 2017), *available at*: <https://www.regulations.gov/document?D=EPA-HQ-OA-2017-0533-0002>.

¹⁴ Paul Monies, “U.S. Supreme Court Ruling on emissions could affect Oklahoma coal plants,” NewsOK (April 29, 2014) (quoting Scott E. Pruitt), *available at*: <http://newsok.com/article/4744359>.

¹⁵ See Petition for Review, *Delaware v. EPA*, No. 17-1099 (D.C. Cir. March 24, 2017), *available at*: https://www.eenews.net/assets/2017/03/29/document_gw_06.pdf; Complaint, *Connecticut v. Pruitt*, No. 3:17-cv-00796 (D. Conn. May 16, 2017), *available at*: http://www.ct.gov/deep/lib/deep/air/section126/2017-05-16_-_ct_v_epa_brunner_126_complaint_17cv796.pdf; Complaint for Injunctive Relief, *Maryland v. Pruitt*, No. 1:17-cv-02873 (September 27, 2017), *available at*: <https://www.courthousenews.com/wp-content/uploads/2017/09/md-EPA.pdf>. Additionally, New York recently submitted a Notice of Intent to sue EPA and Administrator Pruitt for failing to promulgate Federal Implementation Plans (“FIPs”) to address air pollution that is coming from upwind states and entering New York. See Eric T. Schneiderman, Attorney General of New York, “Notice of Intent to Sue,” (October 26, 2017), *available at*: https://ag.ny.gov/sites/default/files/ozone_fip_noi_letter_to_epa.pdf.

protective vehicle emissions standards. Under Section 209(b) of the Clean Air Act, California may set more stringent vehicle emission standards (which other states can opt to follow), in light of its severe air pollution challenges and history of leadership in implementing vital protections, with EPA responsible for granting a preemption waiver.¹⁶ As part of his confirmation process, when Administrator Pruitt was asked if he would continue to grant California's waiver to protect its citizens from greenhouse gas emissions from vehicles, he did not answer affirmatively but instead stated that he would review the waiver on a "case-by-case basis,"¹⁷ and additionally that he "agree[d] to review that [the 209(b) waiver] as each administrator before me has. It has been granted at times and denied at times."¹⁸ The claim however is misleading—the waiver was only denied once, and even in that instance it was later granted.¹⁹ Moreover, since then, Pruitt's Administration has taken adverse action against protective California standards in *Dalton Trucking, Inc. v. EPA*.²⁰ The case was initially brought by industry petitioners as a challenge to EPA's 2013 grant of a waiver to California for in-use nonroad diesel engine standards.²¹ On May 5th, 2017, Administrator Pruitt requested—over California's opposition—that the Ninth Circuit Court of Appeals continue oral argument in order to give EPA time to review the waiver grant, a request that was granted by the Court.²² EPA continues to evaluate its position and has not yet

¹⁶ See Robinson Meyer, "The Coming Clean Air War Between Trump and California," *The Atlantic* (March 6, 2017), available at: <https://www.theatlantic.com/science/archive/2017/03/trump-california-clean-air-act-waiver-climate-change/518649/>; Coral Davenport, "Trump to Undo Vehicle Rules That Curb Global Warming," N.Y. Times (March 3, 2017), available at: <https://www.nytimes.com/2017/03/03/us/politics/trump-vehicle-emissions-regulation.html?action=click&contentCollection=us®ion=rank&module=package&version=highlights&contentPlacement=1&pgtype=sectionfront&r=0>; see also U.S. Environmental Protection Agency, Vehicle Emissions California Waivers and Authorizations (last visited October 30, 2017), available at: <https://www.epa.gov/state-and-local-transportation/vehicle-emissions-california-waivers-and-authorizations>.

¹⁷ Hearing on Nomination of Attorney General Scott Pruitt to be Administrator of the U.S. Environmental Protection Agency Before the S. Comm. on Env't. and Pub. Works, 115th Cong. 1 (2017) (statement of Scott E. Pruitt), available at: <https://www.scribd.com/document/345738661/SENATE-HEARING-115TH-CONGRESS-HEARING-ON-NOMINATION-OF-ATTORNEY-GENERAL-SCOTT-PRUITT-TO-BE-ADMINISTRATOR-OF-THE-U-S-ENVIRONMENTAL-PROTECTION-AGENCY>.

¹⁸ Hearing on Nomination of Attorney General Scott Pruitt to be Administrator of the U.S. Environmental Protection Agency Before the S. Comm. on Env't. and Pub. Works, 115th Cong. 1 (2017) (statement of Scott E. Pruitt), available at: https://www.epw.senate.gov/public/_cache/files/1/2/1291a5e0-b3aa-403d-8ce3-64cb2ef86851/62966C8BB3CC564D876991952DF74905.spw-011817.pdf.

¹⁹ See Robinson Meyer, "The Coming Clean Air War Between Trump and California," *The Atlantic* (March 6, 2017), available at: <https://www.theatlantic.com/science/archive/2017/03/trump-california-clean-air-act-waiver-climate-change/518649/>.

²⁰ *Dalton Trucking, Inc. v. EPA*, No. 13-74019 (Ninth Cir.).

²¹ See *Dalton Trucking, Inc. v. EPA*, No. 13-1283 (D.C. Cir. December 18, 2015), available at: http://blogs2.law.columbia.edu/climate-change-litigation/wp-content/uploads/sites/16/case-documents/2015/20151218_docket-13-1283-13-1287_opinion.pdf; see also 78 Fed. Reg. 58089 (September 20, 2013), available at: <https://www.federalregister.gov/documents/2013/09/20/2013-22930/california-state-nonroad-engine-pollution-control-standards-off-road-compression-ignition>.

²² See Order, *Dalton Trucking, Inc. v. EPA*, No. 13-74019 (Ninth Cir. May 10, 2017), available at: http://blogs2.law.columbia.edu/climate-change-litigation/wp-content/uploads/sites/16/case-documents/2017/20170510_docket-13-74019_order.pdf; see also Jessica Wentz, June 2017 Updates to the Climate Case Charts, Columbia University, Sabin Center for Climate Change Law (June 7, 2017), available at: <http://blogs.law.columbia.edu/climatechange/2017/06/07/june-2017-updates-to-the-climate-case-charts/>.

moved ahead with oral argument to defend the grant of a waiver to California—as it appropriately should.

Finally, EPA’s implementation of federal environmental laws has a long history of supporting cooperative relationships with states. Administrator Pruitt’s efforts to frame his goal of cooperative federalism as one that would “restore” and “rebalance” power to the states are misleading.²³ Numerous EPA programs are designed as cooperative, shared federal and state partnerships. The Clean Air Act requires the EPA Administrator to set the NAAQS, but provides under Section 110 that the states have full discretion to determine how these standards are to be met through State Implementation Plans (SIPs). More recently, EPA’s Clean Power Plan gives states flexibility in how and what measures they can take in meeting their pollution reduction goals, and even allows for states to develop plans together.²⁴ Furthermore, the Clean Water Act is also grounded on federal-state cooperation. States have authority and responsibility to adopt antidegradation policies²⁵ and water quality standards.²⁶ One method of compliance with water quality based effluent limitations is through water quality trading.²⁷ In 2003 EPA provided (and has continued to provide) guidance for states in how they can facilitate and manage these trading programs.²⁸

The Strategic Plan should abandon its misleading rhetoric and instead re-commit to EPA’s long history of shared federal and state partnerships, as well as EPA’s mandate to protect the environment and public health.

Increasing Transparency and Public Participation

The Draft Strategic Plan aims to increase transparency and public participation. We strongly support EPA efforts to improve transparency and to provide significant, meaningful

²³ U.S. Environmental Protection Agency, “Draft FY 2018-2022 EPA Strategic Plan,” 3, 18 (October 2, 2017), available at: <https://www.regulations.gov/document?D=EPA-HQ-OA-2017-0533-0002>.

²⁴ See 80 Fed. Reg. 64509, 64666 (October 23, 2015), available at: <https://www.gpo.gov/fdsys/pkg/FR-2015-10-23/pdf/2015-22842.pdf>.

²⁵ 33 U.S.C. § 1313(d)(4)(B).

²⁶ 33 U.S.C. § 1313(a)(3)(A).

²⁷ See U.S. Environmental Protection Agency, Water Quality Trading (last updated July 8, 2016), available at: <https://www.epa.gov/npdes/water-quality-trading>.

²⁸ See U.S. Environmental Protection Agency, “Water Quality Trading Policy,” (January 13, 2003), available at: <https://archive.epa.gov/ncer/events/calendar/archive/web/pdf/finalpolicy2003.pdf>; U.S. Environmental Protection Agency, “Water Quality Trading Toolkit for Permit Writers,” (August 2007), available at: https://www3.epa.gov/npdes/pubs/wqtradingtoolkit_fundamentals.pdf; U.S. Environmental Protection Agency, “Water Quality Trading Assessment Handbook,” (November 2004), available at: <https://nepis.epa.gov/Exe/ZyNET.exe/30005XSX.txt?ZyActionD=ZyDocument&Client=EPA&Index=2000%20Thru%202005&Docs=&Query=&Time=&EndTime=&SearchMethod=1&TocRestrict=n&Toc=&TocEntry=&QField=&QFieldYear=&QFieldMonth=&QFieldDay=&UseQField=&IntQFieldOp=0&ExtQFieldOp=0&XmlQuery=&File=D%3A%5CZYFILES%5CINDEX%20DATA%5C00THRU05%5CTXT%5C00000008%5C30005XSX.txt&User=ANONYMOUS&Password=anonymous&SortMethod=h%7C-&MaximumDocuments=1&FuzzyDegree=0&ImageQuality=r75g8/r75g8/x150y150g16/i425&Display=hpfr&DefSeekPage=x&SearchBack=ZyActionL&Back=ZyActionS&BackDesc=Results%20page&MaximumPages=1&ZyEntry=3>.

opportunities for all members of the public to participate in EPA decision-making processes. Unfortunately, there are many recent examples where EPA has not been transparent about its activities, including the extensive delay in publicly releasing the schedule of the Administrator, and the continued failure to release any information on the activities of senior managers as well as a meaningful level of disclosure of the Administrator's activities. EPA has failed to conduct outreach on a variety of rulemakings to members of the environmental, conservation, or environmental justice communities; in several instances the agency has suspended safeguards altogether without any opportunity for public comment whatsoever.

For example, during the lead-up to the development of the proposed Clean Power Plan, Administrator Gina McCarthy conducted unprecedented outreach to the public to solicit ideas and input on how to approach power sector carbon reductions. EPA held 11 listening sessions across the country and heard from hundreds of stakeholder groups, including states, utilities/power companies, labor unions, nongovernmental organizations (NGOs), consumer groups, industry and others.

By comparison, in seeking to unwind the Clean Power Plan and other critical health protections, EPA has done limited outreach, particularly to affected communities or NGOs. The release of the Administrator's calendar has underscored that EPA leadership is meeting regularly with members of regulated industry, but not members of at-risk communities, environmental, and health advocates. Decisions made by EPA in recent months appear to be happening without engagement of *all* stakeholders, and in some cases without any meaningful public engagement. The Draft Strategic Plan should articulate how EPA will ensure all stakeholders are given the opportunity to engage with the Agency on matters of public interest.

Goal 3: Rule of Law and Process

The Draft Strategic Plan includes a section on the Rule of Law, which particularly emphasizes the importance of providing regulatory certainty to the regulated community.

It is deeply troubling that this section does not even mention EPA's legal duty to protect the public from harmful pollution. EPA is a creature of statute, and is commanded to protect the public under laws passed by Congress—often, as with the Clean Air Act Amendments of 1990, with overwhelming bi-partisan support. For example, the Clean Air Act Section 101 articulates that the purpose of the law is to “to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population.” EPA must follow the rule of law and carry out its responsibilities under the law to protect the public from dangerous pollution.

This section of the strategic plan is particularly problematic because it fails to recognize how the current Administration's wholesale and unsupported rollbacks of important protections has introduced tremendous uncertainty for affected businesses. As just one example, Administrator

Pruitt and the broader Administration’s attempts to suspend and rollback oil and gas standards “is stoking industry uncertainty.”²⁹

The strategic plan should recognize the importance of properly following law and protecting Americans, and reject misleading messaging that attempts to portray wholesale rollbacks of important safeguards with business certainty.

Using Science to Inform Decision-making

The Draft Strategic Plan also discusses the importance of using robust science to underpin its decision-making processes. Again, we are concerned that the current EPA administration is doing the opposite—dismantling long-established processes, used by EPA under both Republican and Democratic administrations, that help ensure the best science is guiding agency decisions. Administrator Pruitt’s statements on climate science; unscientific approaches to quantifying the impacts of deadly soot in the proposed repeal of the Clean Power Plan; removal of information related to climate science from the EPA website; press reports that the agency is planning to issue a directive barring scientists from serving on its advisory boards if they have received EPA grants; and support for a “Red-team, Blue-team” exercise in which opposing teams of government-selected experts debate climate science are just a few of the indications that the agency is not currently relying on the best available science in decision-making.

Thank you for the opportunity to comment on these important issues.

Sincerely,

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²⁹ See, e.g., Amy Harder, “Finding a method to the methane madness,” Axios (October 30, 2017), *available at*: <http://axios.link/NKAQ>.