

United States Senate

WASHINGTON, DC 20510

June 7, 2018

Inspector General Arthur A. Elkins Jr.
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (2410T)
Washington, D.C. 20460

Dear Inspector General Elkins,

We write to request that you initiate an audit into how the Environmental Protection Agency (EPA) responds to congressional inquiries and Freedom of Information Act (FOIA) requests. The practices that we have observed at best show a breakdown of internal EPA procedures for reviewing agency records when responding to congressional oversight requests, sloppy management of the Administrator's Outlook calendar, and improper use of FOIA redactions. At worst, they demonstrate an intent to mislead Congress and the public by concealing meetings of interest on the Administrator's calendar and concealing documents unless ordered by a court to disclose them. What follows are two examples that illustrate our concerns.

Murray Action plan

It has been widely reported that Bob Murray, the president of Murray Energy, drafted an energy "action plan" which he widely shared with the Trump administration. Mr. Murray first acknowledged the existence of the plan in a PBS *Frontline* documentary that aired in October 2017.¹

The following is a chronology of our efforts to obtain the plan and related communications from EPA:

- On October 27, 2017, Senators Carper and Whitehouse wrote to Administrator Pruitt asking for a copy of the action plan and any communications related to it. (Attached as Exhibit A.)
- On November 8, 2017, Senator Whitehouse asked Andrew Wheeler, former lobbyist for Murray Energy and now EPA's Deputy Administrator, for a copy of the plan during his confirmation hearing before the Senate Environment and Public Works Committee (EPW). Mr. Wheeler said he had seen a copy of the plan but claimed not to have a copy of it.
- On November 28, 2017, EPA responded to the Carper-Whitehouse letter of October 27, stating that the agency had "already conducted centralized Outlook searches of EPA officials that would have been engaged on this topic" and that "these searches did not capture any instances of the 'action plan.'" (Attached as Exhibit B).
- On December 6, 2017, *In These Times* released photos of a meeting between Secretary Perry and Robert Murray. These photos show Secretary Perry

¹ Frontline, *War on the EPA*. <https://www.pbs.org/wgbh/frontline/film/war-on-the-epa/>

- reviewing a version of Robert Murray's/Murray Energy's action plan and cover letter dated March 23, 2017, addressed to Secretary Perry.
- At the beginning of January 2018, Senator Whitehouse's office obtained a copy of the action plan, this one addressed to Vice President Pence.
 - On January 10, 2018, Senator Whitehouse sent another letter to Administrator Pruitt, among other federal officials, again asking for any copies of the action plan (which was attached to the letter) and associated communications between EPA staff and Mr. Murray and his representatives. (Attached as Exhibit C.)
 - On February 1, 2018, EPA replied to the January 10, 2018 request, stating: "Now knowing specific phrases used in the action plan, we again searched through the Outlook accounts of relevant officials. These searches did not capture any instances of the 'action plan.'" (Attached as Exhibit D.)
 - On or about May 30, 2018, EPA made public a voluminous production of emails pursuant to a FOIA request made by the Sierra Club. Included in that production was an email exchange on March 22-27, 2017, between EPA staffer Sydney Hupp and Michael Carey, Vice President of Government Affairs at Murray Energy, scheduling a meeting between Administrator Pruitt and Mr. Murray on Wednesday, March 29, 2017 at 11:00. (Attached as Exhibit E.) The meeting was the same day Mr. Murray met with Secretary Perry to discuss his action plan.² On March 22, Mr. Carey tells Ms. Hupp he is "sending him a memo now."
 - EPA had previously and separately made available the Outlook calendars of Administrator Pruitt pursuant to another FOIA request. His calendar for March 29 shows Administrator Pruitt was at EPA that morning but does not show a meeting with Mr. Murray. It also does not show the time as being occupied with any other meeting or event. (Attached as Exhibit F.)
 - On or about June 6, 2018, a tranche of documents was released by the Department of Energy to E&E News,³ including two documents relevant to our previous inquiries but never disclosed:
 1. a copy of the Murray action plan addressed to Administrator Pruitt dated March 23, 2017;
 2. a letter addressed to Administrator Pruitt dated March 28, 2017 transmitting six executive orders and one memorandum related to President Trump's Energy Independence Executive Order. (Both are attached as Exhibit G.)

In sum, it appears to us that EPA had documents responsive to our request as early as March 2017 in the form of scheduling emails and documents provided by Mr. Murray's staff to Administrator Pruitt. While we do not know for certain whether the Murray-Pruitt meeting took place on March 29, it was confirmed by Ms. Hupp on March 27, and

² Steven Mufson, "An American energy plan straight from coal country," *Washington Post*, Dec. 8, 2017, https://www.washingtonpost.com/business/economy/an-american-energy-plan-straight-from-coal-country/2017/12/08/1f207a26-d6ab-11e7-a986-d0a9770d9a3e_story.html?utm_term=.bafa721ef97c

³ Hannah Northey and Benjamin Storrow, "Bob Murray drafted 6 orders on coal, climate for Trump," *E&E News*, June 6, 2018. <https://www.eenews.net/stories/1060083703>

Administrator Pruitt was at EPA at the time of the meeting with nothing else scheduled on his Outlook calendar.

Other Omissions from Administrator Pruitt's Calendar

Also contained in the Sierra Club emails were exchanges between Administrator Pruitt's scheduler Millan Hupp and the organizers of the Concordia Summit, which Administrator Pruitt attended in New York City on September 19, 2017.⁴ The emails indicate that while at the conference, Administrator Pruitt met with Andrew Littlefair⁵ and T. Boone Pickens,⁶ George Logothetis,⁷ former Spanish President Jose Maria Aznar and John Negroponte. (Attached as Exhibit H). Administrator Pruitt's Outlook calendars show no such meetings. Instead, they indicate he arrived in New York on September 18 on a flight from Tulsa, OK with no business scheduled that day and that on September 19, his only official business consisted of two television appearances, participating in a 30-minute session at the conference, and a meeting with a *New York Times* reporter. The block of time during which these meetings were scheduled is redacted pursuant to a "(b)(6)" FOIA exemption.⁸

In addition, the *New York Times* has reported that EPA officials took steps to hide the fact the Administrator had dinner with Cardinal George Pell on June 9, 2017 in Rome.⁹ After Cardinal Pell was charged with sexual assault later that month by Australian authorities, EPA took steps to conceal Cardinal Pell's attendance at the dinner, according to EPA whistleblower Kevin Chmielewski. At least four EPA documents about Administrator Pruitt's trip to Italy, two with names of attendees at the Pruitt-Pell dinner, have been made public by EPA. None identify Cardinal Pell.¹⁰ Moreover, Administrator Pruitt's

⁴ Mr. Pruitt's wife Marlyn was paid \$2,000 plus travel expenses to provide "logistics" at the summit. Juliet Eilperin, Brady Dennis and Josh Dawsey, "Scott Pruitt enlisted an EPA aide to help his wife find a job — with Chick-fil-A," *Washington Post*, June 5, 2018.

https://www.washingtonpost.com/national/health-science/scott-pruitt-enlisted-an-epa-aide-to-help-his-wife-find-a-job--at-chick-fil-a/2018/06/05/b798e4e4-5eac-11e8-9ee3-49d6d4814c4c_story.html?utm_term=.d8ae15293dda

⁵ Littlefair is the President and CEO of Clean Energy, a company that provides natural gas and associated equipment to the transportation industry. <https://www.cleanenergyfuels.com/about-us/board-of-directors-leadership/board-of-directors/andrew-j-littlefair/>

⁶ Pickens, an oil and gas industry executive, is a major fundraiser for the Trump-aligned America First Action PAC. <https://www.politico.com/story/2017/10/22/trump-texas-fundraising-244047>

⁷ Logothetis is the chairman and CEO of the Libra Group, which has interests in renewable energy and shipping. <https://www.libra.com/en/what-we-do/>

⁸ FOIA exemption 6 a protects from disclosure information about individuals in "personnel and medical files and similar files" when the disclosure of such information "would constitute a clearly unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(6)

⁹ Eric Lipton and Lisa Friedman, "Pruitt's Dinner With Cardinal Accused of Abuse Was Kept Off Public Schedule," *New York Times*, May 11, 2018.

<https://www.nytimes.com/2018/05/11/climate/pruitt-cardinal-pell-dinner.html>

¹⁰ *Id.*

Outlook calendars show only two meetings while he is in Rome, both of which were redacted pursuant to a “(b)(6)” FOIA exemption.

These episodes leave us with two primary questions, both of which we believe are appropriate for review by your office:

- When faced with congressional or Freedom of Information Act requests for documents, are the practices EPA has established to locate and provide responsive documents adequate to ensure that the responses will be complete and accurate, and not subject to improper interference by political staff?
- Are EPA’s practices associated with maintaining and disclosing copies of the Administrator’s calendar adequate to ensure that those records are complete, accurate, and not subject to inappropriate redactions or deletions when released to Congress or the public or otherwise improper interference by political staff?

Thank you for considering our request for a thorough review of these issues. Should you have any questions about this request, please contact Michal Freedhoff (michal_freedhoff@epw.senate.gov) or Joe Gaeta (joe_gaeta@whitehouse.senate.gov).

Sincerely



Thomas R. Carper
United States Senator



Sheldon Whitehouse
United States Senator

cc: Senator John Barrasso, Chairman, Senate Environment and Public Works Committee

Exhibit A

United States Senate
WASHINGTON, DC 20510

October 27, 2017

The Honorable Scott Pruitt
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, D.C. 20460

Dear Administrator Pruitt:

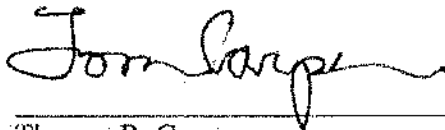
In the PBS *Frontline* documentary "*War on the EPA*," Murray Energy CEO Robert Murray stated that he had given to President Trump "an action plan, very early, about three and a half pages about what he needed to do in his Administration." *Frontline* reported that at the top of the list was repealing the Clean Power Plan. As you know, President Trump has nominated longtime Murray Energy lobbyist Andrew Wheeler to serve as your deputy. That nomination is expected to come before the Senate Environment and Public Works Committee within weeks.

So that the two of us and other members of the EPW Committee may have all relevant information to consider Mr. Wheeler's nomination, we request the following not later than November 3, 2017:

- A copy of the Robert Murray's/Murray Energy's "action plan"
- Any correspondence between Robert Murray, Andrew Wheeler, or any other employee or representative of Murray Energy, and EPA since January 20, 2017, that is related to the action plan or any item included in the plan.

Thank you for your prompt attention to this request.

Sincerely,



Thomas R. Carper
United States Senator



Sheldon Whitehouse
United States Senator

Cc: Troy Lyons, Associate Administrator, Office of Congressional & Intergovernmental Relations, U.S. Environmental Protection Agency

Exhibit B



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

NOV 28 2017

OFFICE OF
CONGRESSIONAL AND
INTERGOVERNMENTAL
RELATIONS

The Honorable Sheldon Whitehouse
United States Senate
Washington, D.C. 20510

Dear Senator Whitehouse:

Thank you for your letter of October 27, 2017, to the U.S. Environmental Protection Agency Administrator regarding to the review of the Clean Power Plan. The Administrator asked that I respond on his behalf.

Due to previously received Freedom of Information Act (FOIA) requests inquiring about the Murray Energy "action plan," the Agency has already conducted centralized Outlook searches of EPA officials that would have been engaged on this topic. These searches did not capture any instances of the "action plan."

The Agency is in the process of conducting additional searches that may yield documents responsive to your request. We will be in touch if and when responsive documents are available for release.

Again, thank you for your letter. If you have further questions, please contact me, or your staff may contact Kyle Aarons in my office at Aarons.Kyle@epa.gov or (202) 564-7351.

Sincerely,

A handwritten signature in black ink, appearing to read "Troy Lyons".

Troy M. Lyons
Associate Administrator

cc: The Honorable John Barrasso
Chairman

Exhibit C

SHELDON WHITEHOUSE
RHODE ISLAND

COMMITTEE
ON
ENVIRONMENT AND PUBLIC WORKS
HEALTH, EDUCATION, LABOR, AND PENSIONS
MEMBERS

United States Senate

WASHINGTON, DC 20510-3905

http://www.whitehouse.gov
202-456-2477
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202-456-2500

January 10, 2018

The Honorable Scott Pruitt
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, D.C. 20460

Dear Administrator Pruitt:

On October 27, 2017, I requested from you a copy of Robert Murray's/Murray Energy's "action plan," which Murray Energy CEO Robert Murray claimed to have given to President Trump early in his administration. On November 28, 2017, Troy Lyons, Associate Administrator of the Environmental Protection Agency (EPA) Office of Congressional and Intergovernmental Affairs, replied on your behalf that that searches of Outlook for instances of the action plan given to President Trump yielded no results.

On December 6, 2017, *In These Times* released photos of a meeting between Secretary of Energy Rick Perry and Robert Murray. These photos show Secretary Perry reviewing a version of Robert Murray's/Murray Energy's action plan and cover letter dated March 23, 2017, addressed to Secretary Perry.

I recently obtained the attached copy of the action plan that Robert Murray/Murray Energy sent to the White House on March 1, 2017, which appears to differ from the plan given to Secretary Perry. The discrepancies in these action plans suggest that Robert Murray/Murray Energy may have distributed versions of the plan tailored to specific agencies.

So there is no confusion, I write to confirm that your original search covered any version of the plan, regardless of addressee. If not, please provide the following by February 1, 2018:

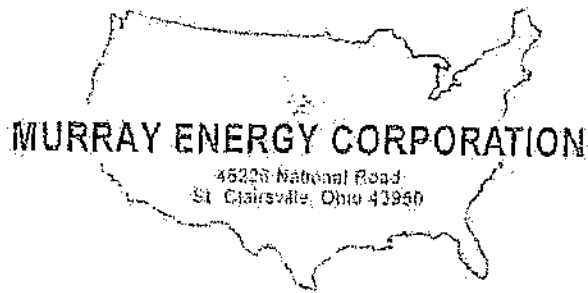
- A copy of any "action plan" that Robert Murray/Murray Energy provided to EPA.
- Copies of all other communications between Robert Murray, Murray Energy, or any individuals working on their behalf, and EPA since January 20, 2017, related to any such action plan or any item included in the plan.

If you have any questions about this request, please contact Joe Gaeta (joe_gaeta@whitehouse.senate.gov) of my office.

Sincerely,



Sheldon Whitehouse
United States Senator



ROBERT E. MURRAY
Chairman, President &
Chief Executive Officer

PHONE (740) 338-3100
FAX (740) 696-7011
EMAIL: bobmurray@coalsource.com
WEBSITE: www.murrayenergycorp.com

March 1, 2017

The Honorable Michael R. Pence
Vice President of the United States of America
The White House
1600 Pennsylvania Avenue, NW
Washington, D.C. 20500

Dear Vice President Pence:

Enclosed is an Action Plan for the Administration of President Donald J. Trump, which will help in getting America's coal miners back to work. We have listed our suggested actions in order of priority.

We are available to assist you and your Administration in any way that you request.

Sincerely,

MURRAY ENERGY CORPORATION

Robert E. Murray
Chairman, President & Chief Executive Officer

REM:plj
Enclosures

ACTION PLAN FOR THE ADMINISTRATION OF
PRESIDENT DONALD J. TRUMP

• CLEAN POWER PLAN

The so-called Clean Power Plan must be eliminated. Murray Energy Corporation obtained a stay of this rule before the Supreme Court of the United States on February 3, 2016. This illegal rule will close an additional fifty-six (56) coal-fired electric generating plants, totaling 53,000 megawatts, on top of the 101,000 megawatts (411 coal-fired plants) that President Barack Obama and his Democrat supporters have already closed.

• "ENDANGERMENT FINDING" FOR GREENHOUSE GASES

With the overturning of the Clean Power Plan, there must be a withdrawal and suspension of the implementation of the so-called "endangerment finding" for greenhouse gases.

EPA's "endangerment finding" under the Clean Air Act serves as the foundation for the agency's far reaching regulation of the economy in the form of emission limitations for greenhouse gases, including carbon dioxide. The high degree of uncertainty in the range of data relied upon by EPA combined with the enormous regulatory costs without concomitant benefits merit revisiting the "endangerment finding".

According to EPA's finding, the "root cause" of recently observed climate change is "likely" the increase in anthropogenic greenhouse gas emissions. EPA relied upon computer-based-climate-model simulations and a "synthesis" of major findings from scientific assessment reports with a significant range of uncertainty related to temperatures over 25 years. The climate model failures are well documented in their inability to emulate real-world climate behavior. Models that are unable to simulate known climate behavior cannot provide reliable projections of future climate behavior. As for the scientific assessments underlying the "synthesis" of findings used by EPA, many were not peer reviewed, and there are multiple instances where portions of peer reviewed literature germane to the "endangerment finding" were omitted, ignored or unfairly dismissed.

• ELIMINATE THE THIRTY (30) PERCENT PRODUCTION TAX CREDIT FOR WINDMILLS AND SOLAR PANELS IN ELECTRICITY GENERATION

Electricity generated by windmills and solar panels costs twenty-six (26) cents per kilowatt hour with a four (4) cent per kilowatt hour subsidy from the American taxpayers. These energy sources are unreliable and only available if the wind blows or the sun shines. Coal-fired electricity costs only four (4) cents per kilowatt hour. Low cost electricity is a staple of life, and we must have a level playing field in electric power generation without the government picking winners and losers by subsidizing wind and solar power.

**ACTION PLAN FOR THE ADMINISTRATION OF
PRESIDENT DONALD J. TRUMP (CONTINUED)**

• **WITHDRAW FROM THE ILLEGAL UNITED NATIONS COP 21 PARIS CLIMATE ACCORD**

The United Nation's COP 21 Paris Climate Accord, to which Barack Obama has already committed one (1) billion dollars of America's money, is an attempt by the rest of the world to obtain funding from our Country. It is an illegal treaty never approved by Congress, and it will have no effect on the environment.

• **END THE ELECTRIC UTILITY MAXIMUM ACHIEVABLE TECHNOLOGY AND OZONE REGULATIONS**

We have won these issues in the United States Supreme Court, and these rules must be completely overturned.

• **FUND THE DEVELOPMENT OF CERTAIN CLEAN COAL TECHNOLOGIES**

The Federal government must support the development of some Clean Coal Technologies, including: ultra super critical combustion; high efficiency, low emission coal firing; combined cycle coal combustion; and others. It should not fund so-called carbon capture and sequestration ("CCS"), as it does not work, practically or economically. Democrats and some Republicans use CCS as a political cover to insincerely show that they are proposing something for coal. But, carbon capture and sequestration is a pseudonym for "no coal".

• **OVERHAUL THE BLOATED AND POLITICALIZED MINE SAFETY AND HEALTH ADMINISTRATION OF THE U. S. DEPARTMENT OF LABOR**

This Federal agency, over the past eight (8) years, has not been focused on the coal miner safety, but on politics, bureaucracy, waste, and violation quotas. While coal mine employment has been cut in half, the Federal Mine Safety and Health Administration has continued to hire inspectors every year. But, the government has nowhere to put them. Murray Energy Corporation received an average of 532 Federal inspectors per month in 2016. We must send a Company manager with every one of these inspectors, taking us away from our employee safety inspections and safety training.

• **CUT THE STAFF OF THE U.S. ENVIRONMENTAL PROTECTION AGENCY IN AT LEAST HALF**

Tens of thousands of government bureaucrats have issued over 82,000 pages of regulations under Obama, many of them regarding coal mining and utilization. The Obama EPA, alone, wrote over 25,000 pages of rules, thirty-eight (38) times the words in our Holy Bible.

ACTION PLAN FOR THE ADMINISTRATION OF
PRESIDENT DONALD J. TRUMP (CONTINUED)

• OVERTURN THE RECENTLY ENACTED CROSS-STATE AIR POLLUTION RULE

This regulation particularly punishes states in which coal mining takes place to the benefit of other wealthier east coast states.

• REVISE THE ARBITRARY COAL MINE DUST REGULATION OF THE MINE SAFETY AND HEALTH ADMINISTRATION OF THE DEPARTMENT OF LABOR

This regulation provides no health benefit to our coal miners, and threatens the destruction of thousands of coal mining jobs.

• OBTAIN LEGISLATION TO FUND BOTH THE RETIREE MEDICAL CARE AND PENSIONS FOR ALL OF AMERICA'S UNITED MINE WORKERS OF AMERICA (UMWA) - REPRESENTED, RETIRED COAL MINERS

For four (4) years, Senate Majority Leader Mitch McConnell has refused to address this issue. Some say that this is because the UMWA wrongly opposed him in his recent election. This must be taken care of. And the legislation enacted must address not just those recently orphaned through company bankruptcies and mine closures, but the medical benefits and pensions that were promised to all retired miners by the Federal government itself.

• OVERTURN THE MINE SAFETY AND HEALTH ADMINISTRATION, DEPARTMENT OF LABOR, PATTERN OF VIOLATIONS RULE

This rule is a punitive action of the Mine Safety and Health Administration under its Director for the past eight (8) years, the former Safety Director of a labor union.

• APPOINT JUSTICES TO THE SUPREME COURT OF THE UNITED STATES WHO WILL FOLLOW OUR UNITED STATES CONSTITUTION AND OUR LAWS

We must offset the liberal appointees who want to redefine our Constitution and our laws.

• MEMBERS OF THE FEDERAL ENERGY REGULATORY COMMISSION MUST BE REPLACED

The current Federal Energy Regulatory Commission has a record of favoring actions of the Obama Administration that have destroyed the reliability of America's electric power grid and which have led to skyrocketing electric power costs, as Mr. Obama, who appointed them, stated would occur in 2008.

ACTION PLAN FOR THE ADMINISTRATION OF
PRESIDENT DONALD J. TRUMP (CONTINUED)

- MEMBERS OF THE TENNESSEE VALLEY AUTHORITY BOARD OF DIRECTORS MUST BE REPLACED

The Board of Directors of this government agency has followed the mandates of the Obama Administration, rather than assure reliable, low cost electricity for the Tennessee Valley Authority's rate payers, whom they are mandated to serve in this manner.

- REPLACE THE MEMBERS OF THE NATIONAL LABOR RELATIONS BOARD ("NLRB")

Eliminate the antiemployer bias of the NLRB by appointing members and staff, particularly in the General Counsel's office, who will fairly consider the employer's position and needs and not automatically accede to the unions or unionized employees in every matter considered.

Exhibit D



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

FEB 01 2018

OFFICE OF
CONGRESSIONAL AND
INTERGOVERNMENTAL
RELATIONS

The Honorable Sheldon Whitehouse
United States Senate
Washington, D.C. 20510

Dear Senator Whitehouse:

Thank you for your letter of January 10, 2018, to the U.S. Environmental Protection Agency Administrator regarding the Robert Murray/Murray Energy "action plan." The Administrator asked that I respond on his behalf.

As mentioned in our November 28, 2017 letter, the agency has already conducted centralized Outlook searches of EPA officials that would have been engaged on this topic. Now knowing specific phrases used in the action plan, we again searched through the Outlook accounts of relevant officials. These searches did not capture any instances of the "action plan."

As also referenced in our November 28, 2017 letter, we are conducting additional searches and continuing to locate and review documents relating to the Clean Power Plan, including those that may yield documents responsive to this request. We will be in touch if and when responsive documents are available for release.

Again, thank you for your letter. If you have further questions, please contact me, or your staff may contact Kristien Knapp in my office at Knapp.Kristien@epa.gov or (202) 564-3277.

Sincerely,

A handwritten signature in black ink, appearing to read "Troy Lyons", with a horizontal line extending to the right.

Troy M. Lyons
Associate Administrator

cc: The Honorable John Barrasso
Chairman

Exhibit E

To: Hupp, Sydney[hupp.sydney@epa.gov]; Jenkins, Patsy[pjenkins@coalsource.com]
From: Carey, Michael
Sent: Mon 3/27/2017 12:26:02 PM
Subject: RE: Times with Administrator Pruitt

It appears that it will just be Mr. Murray and myself. Do you need our DOB or SSN?

Mike

Sent from my Verizon Wireless 4G LTE smartphone

----- Original message -----

From: "Hupp, Sydney" <hupp.sydney@epa.gov>
Date: 03/23/2017 10:11 (GMT-05:00)
To: "Carey, Michael" <mcarey@coalsource.com>, "Jenkins, Patsy" <pjenkins@coalsource.com>
Subject: RE: Times with Administrator Pruitt

That works great! I just need list of attendees and a topic from you and we should be good.

Thank you!

From: Carey, Michael [mailto:mcarey@coalsource.com]
Sent: Thursday, March 23, 2017 9:51 AM
To: Hupp, Sydney <hupp.sydney@epa.gov>; Jenkins, Patsy <pjenkins@coalsource.com>
Subject: RE: Times with Administrator Pruitt

I was just emailing you. We would like to do the Wednesday time. Thank you. What all do you need from us? I am cc'ing Patsy Jenkins to this note.

Mike

Sent from my Verizon Wireless 4G LTE smartphone

----- Original message -----

From: "Hupp, Sydney" <hupp.sydney@epa.gov>
Date: 03/23/2017 09:46 (GMT-05:00)
To: "Carey, Michael" <mcarey@coalsource.com>
Subject: RE: Times with Administrator Pruitt

Mr. Carey—I am now needing to hold Tuesday for the White House. How is Wednesday looking?

Thank you!

Sydney

From: Carey, Michael [<mailto:mcarey@coalsource.com>]
Sent: Wednesday, March 22, 2017 1:44 PM
To: Hupp, Sydney <hupp.sydney@epa.gov>
Subject: RE: Times with Administrator Pruitt

Thank you I am sending him a memo now.

Sent from my Verizon Wireless 4G LTE smartphone

----- Original message -----

From: "Hupp, Sydney" <hupp.sydney@epa.gov>
Date: 03/22/2017 09:40 (GMT-05:00)
To: "Carey, Michael" <mcarey@coalsource.com>

Subject: Times with Administrator Pruitt

Mr. Carey—thank you for your time on the phone just now. Please let me know at your convenience if one of the following days works for you and Mr. Murray.

Tuesday, March 28th at 11:00AM

Wednesday March 29th at 11:00AM

We look forward to having you here!

Thank you,

Sydney Hupp

Exhibit F

Subject News Channel 8 (Washington DC, Sinclair) with Michelle Macaluso
Location EPA Studio
Show Time As Busy
Attendees

Name <E-mail>	Attendance
(b)(6) Pruitt Cal. Acct. <(b)(6) Pruitt Cal. Acct.>	Organizer
Freire, JP <Freire.JP@epa.gov>	Required
Konkus, John <konkus.john@epa.gov>	Required
Ferguson, Lincoln <ferguson.lincoln@epa.gov>	Required

Time 5:10 PM – 5:20 PM
Subject WCHS (Charleston, WV) with Kallie Cart/Whitney Wetzel
Location EPA Studio
Show Time As Busy
Attendees

Name <E-mail>	Attendance
(b)(6) Pruitt Cal. Acct. <(b)(6) Pruitt Cal. Acct.>	Organizer
Freire, JP <Freire.JP@epa.gov>	Required
Ferguson, Lincoln <ferguson.lincoln@epa.gov>	Required
Konkus, John <konkus.john@epa.gov>	Required

Time 5:20 PM – 5:30 PM
Subject WAVE (Louisville, KY) with Shannon Cogan
Location EPA Studio
Show Time As Busy
Attendees

Name <E-mail>	Attendance
(b)(6) Pruitt Cal. Acct. <(b)(6) Pruitt Cal. Acct.>	Organizer
Ferguson, Lincoln <ferguson.lincoln@epa.gov>	Required
Freire, JP <Freire.JP@epa.gov>	Required
Konkus, John <konkus.john@epa.gov>	Required

Time (b) (6), (b) (7)(C)
Subject [REDACTED]
Show Time As [REDACTED]

Wednesday, March 29, 2017

Time (b) (6), (b) (7)(C)
Subject (b) (6), (b) (7)(C)
Location (b) (6), (b) (7)(C)
Recurrence (b) (6), (b) (7)(C)

Show Time As Busy

Time 8:05 AM – 8:20 AM
Subject Interview with Hugh Hewitt
Location EPA Studio
Show Time As Busy
Topic: Energy Independence EO and EPA Originalism
POC: Cathy Milbourn; 202-564-7849 (office); (b) (6)
Milbourn.cathy@epa.gov <mailto:Milbourn.cathy@epa.gov>

Time 8:45 AM – 9:00 AM
Subject Briefing re: Meeting with Maxim Pasik
Location Administrator's Office
Show Time As Busy
Handling:

Attendees	Name <E-mail>	Attendance
	(b)(6) Pruitt Cal. Acct. <(b)(6) Pruitt Cal. Acct.>	Organizer
	Greenwait, Sarah <greenwait.sarah@epa.gov>	Required

Time 9:00 AM – 9:30 AM
Subject Coffee with Ken Cuccinelli
Location Administrator's Office
Show Time As Busy
Topic: Administrator's request
Location: Administrator's Office
Staffing: Ryan Jackson
Attendees: Admin. Pruitt, Ryan, Ken
POC: Ken; (b) (6)

Attendees	Name <E-mail>	Attendance
	(b)(6) Pruitt Cal. Acct. <(b)(6) Pruitt Cal. Acct.>	Organizer
	Jackson, Ryan <jackson.ryan@epa.gov>	Required

Time 9:30 AM – 10:00 AM
Subject Meeting with Maxim Pasik
Location Administrator's Office
Show Time As Busy
Topic: WaterGen
Location: Administrator's Office
Staffing: Sarah
Attendees: Admin Pruitt, Ryan, Maxim Pasik, Yehuda Kaploun
POC: Maxim Pasik (b) (6)

Note: This came as a request of Sheldon Adelson

Attendees	Name <E-mail>	Attendance
	(b)(6) Pruitt Cal. Acct. <(b)(6) Pruitt Cal. Acct.>	Organizer
	Greenwait, Sarah <greenwait.sarah@epa.gov>	Required

Eric Vance (Vance.Eric@epa.gov) <Vance.Eric@epa.gov> Required

Time 10:15 AM – 10:30 AM
Subject Varney and Co. on Fox Business
Location EPA Studio
Show Time As Busy

Attendees	Name <E-mail>	Attendance
	(b)(6) Pruitt Cal. Acct. <(b)(6) Pruitt Cal. Acct.>	Organizer
	Ferguson, Lincoln <ferguson.lincoln@epa.gov>	Required
	Freire, JP <Freire.JP@epa.gov>	Required
	Konkus, John <konkus.john@epa.gov>	Required

Time 11:45 AM – 12:00 PM
Subject Depart for (b) (7)(C), (b) (6)
Show Time As Busy

Time 12:00 PM – 1:00 PM
Subject (b)(6) with Okla. Farm Bureau Reps and Ryan Jackson
Show Time As Busy
Administrator Pruitt, Ryan Jackson, Tom Buchanan, John Collison, Monica Leah Wilke
POC: John.collison@okfb.org <mailto:John.collison@okfb.org>

(b) (7)(C), (b) (6)
Reservation made

Time 1:00 PM – 1:45 PM
Subject Speaking Engagement: Oklahoma Farm Bureau
Location Green Room
Show Time As Busy

Topic: Discuss Administrator Pruitt's new position and how this change effects rural farmers and ranchers, etc.; Oklahoma Farm Bureau takes an annual legislative trip to DC with some of their members, in order to meet with Senators, Congressman, AFBF, etc.
Location: Green Room
Staffing: Millan, Lincoln
Attendees: Approximately 55 Oklahoma Farm Bureau members & staff
Point of Contact: Tasha Duncan, tasha.duncan@okfb.com <mailto:tasha.duncan@okfb.com>, (b) (6)

Run of Show
12:50PM: Farm Bureau members arrive and are escorted to Green Room by Cheryl
1:00PM: Administrator arrives in Green Room
1:00 – 1:15: Mingle
1:15: Tom Buchanan introduces the Administrator
1:15 – 1:30: Remarks
1:30 – 1:45: Q&A

1:45: Administrator takes his leave and members escorted out of building

Attendees	Name <E-mail>	Attendance
	(b)(6) Pruitt Cal. Accl. <(b)(6) Pruitt Cal. Accl.>	Organizer
	Hupp, Millan <hupp.millan@epa.gov>	Required
	Ferguson, Lincoln <ferguson.lincoln@epa.gov>	Required
	Eric Vance (Vance.Eric@epa.gov) <Vance.Eric@epa.gov>	Required
	Wagner, Kenneth <wagner.kenneth@epa.gov>	Required

Time 1:45 PM – 2:00 PM
Subject Briefing re: Meeting with Canadian Minister Carr
Location Administrator's Office
Show Time As Busy
Handling: Janie

Attendees	Name <E-mail>	Attendance
	(b)(6) Pruitt Cal. Accl. <(b)(6) Pruitt Cal. Accl.>	Organizer
	Nishida, Jane <Nishida.Jane@epa.gov>	Required

Time 2:00 PM – 2:45 PM
Subject Meeting with Canadian Minister Carr
Location Administrator's Office
Show Time As Busy
Topic: second meeting with Minister James Carr, Minister of Natural Resources Canada (NRCan), having first met with him on March 9 at CERAWEEK in Houston. (b) (5) DPP
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
Location: Administrator's Office
Staffing: Jane and Ryan
Attendees: Admin. Pruitt, Minister Carr, Jane, Ryan, Kristien,
POC: Jane Nishida

Attendees	Name <E-mail>	Attendance
	(b)(6) Pruitt Cal. Accl. <(b)(6) Pruitt Cal. Accl.>	Organizer
	Eric Vance (Vance.Eric@epa.gov) <Vance.Eric@epa.gov>	Required
	Nishida, Jane <Nishida.Jane@epa.gov>	Required
	Jackson, Ryan <jackson.ryan@epa.gov>	Required

Knapp, Kristien <Knapp.Kristien@epa.gov>

Required

Time 2:45 PM – 3:00 PM

Subject Briefing re: Meeting with National Association of Home Builders Senior Officers

Location Administrator's Office

Show Time As Busy

Handling: Byron and Sarah

Attendees Name <E-mail>

Attendance

(b)(6) Pruitt Cal. Acct. (b)(6) Pruitt Cal. Acct.

Organizer

Greenwalt, Sarah <greenwalt.sarah@epa.gov>

Required

Brown, Byron <brown.byron@epa.gov>

Required

Fonseca, Silvina <Fonseca.Silvina@epa.gov>

Required

Time 3:00 PM – 3:30 PM

Subject Meeting with National Association of Home Builders Senior Officers

Location A1m Room

Show Time As Busy

Topic: overall regulatory reform, stormwater, lead-based paint, and WOTUS

Location: Administrator's Office

Attendees:

* Granger MacDonald, Chairman of the Board, a Kerrville, Texas-based builder and developer with 40 years of experience in the home building industry.

* Randy Noel, MIRM, CGB, CMP, First Vice Chairman of the Board, a Louisiana-based custom home builder with more than 30 years of experience in the residential construction industry. Noel founded Reve Inc., a custom home building firm in LaPlace, La., in 1985.

* Greg Ugalde, CGP, GMB, Second Vice Chairman of the Board, a Connecticut builder and developer. Ugalde is president and chief legal officer of Torrington-based T&M Building Co., Inc., one of the largest home builders in the state. T&M Homes has built more than 3,500 new single-family attached and detached homes in over 40 Connecticut communities.

* Dean Mon, Third Vice Chairman of the Board, a New Jersey-based builder and developer with more than 30 years of experience in the home building industry. Mon is president of the D.R. Mon Group, Inc., which specializes in the development and construction of green urban living projects throughout New Jersey.

* Gerald M. Howard, Chief Executive Officer, has more than 25 years of lobbying and association experience in Washington, D.C.

* Dave Ledford, EVP, Housing Finance and Regulatory Affairs, NAHB

* Michael Mittelholzer, AVP, Environmental Policy, NAHB

Staffing: Byron, Sarah, Sam, Ken

POC: Susan Amus; (b) (6)

Attendees Name <E-mail>

Attendance

(b)(6) Pruitt Cal. Acct. <(b)(6) Pruitt Cal. Acct.> Organizer
 Brown, Byron <brown.byron@epa.gov> Required
 Fonseca, Silvina <Fonseca.Silvina@epa.gov> Required
 Greenwalt, Sarah <greenwalt.sarah@epa.gov> Required
 Dravis, Samantha <dravis.samantha@epa.gov> Required
 Wagner, Kenneth <wagner.kenneth@epa.gov> Required

Time (b) (5) DPP, (b)(6)
 Subject
 Location
 Show Time As
 Attendees


Thursday, March 30, 2017

Time 7:45 AM – 8:00 AM
 Subject Briefing for Bob Murray
 Location Administrator's Office
 Show Time As Busy
 Handling: Ryan
 Attendees Name <E-mail> Attendance
 (b)(6) Pruitt Cal. Acct. <(b)(6) Pruitt Cal. Acct.> Organizer
 Jackson, Ryan <jackson.ryan@epa.gov> Required
 Brown, Byron <brown.byron@epa.gov> Required

Time 8:00 AM – 8:30 AM
 Subject Meeting with Bob Murray
 Location Administrator's Office
 Show Time As Busy
 Attendees Name <E-mail> Attendance
 (b)(6) Pruitt Cal. Acct. <(b)(6) Pruitt Cal. Acct.> Organizer
 Brown, Byron <brown.byron@epa.gov> Required
 Jackson, Ryan <jackson.ryan@epa.gov> Required

Time 8:00 AM – 8:45 AM
 Subject Chief of Staff Meeting
 Location Alm Room

Exhibit G



MURRAY ENERGY CORPORATION

46210 National Road
St. Clairsville, Ohio 43960

ROBERT E. MURRAY
Chairman, President &
Chief Executive Officer

PHONE: (740) 336-3100
FAX: (740) 686-7014
EMAIL: bobmurray@coalsource.com
WEBSITE: www.murrayenergycorp.com

March 23, 2017

The Honorable E. Scott Pruitt
Administrator
United States Environmental Protection Agency
1200 Pennsylvania Ave. NW
Washington, D.C. 20460

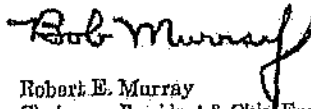
Dear Director Pruitt:

Enclosed is an Action Plan for achieving reliable and low cost electricity in America and to assist in the survival of our Country's coal industry, which is essential to power grid reliability and low cost electricity.

We are available to assist you in any way that you request.

Sincerely,

MURRAY ENERGY CORPORATION



Robert E. Murray
Chairman, President & Chief Executive Officer

REM:ims
Enclosures

**ACTION PLAN FOR RELIABLE AND LOW COST ELECTRICITY
IN AMERICA AND TO ASSIST IN THE SURVIVAL OF OUR
COUNTRY'S COAL INDUSTRY**

• **SUSPEND THE COAL-FIRED POWER PLANT EFFLUENT
LIMITATION GUIDELINES (ELG) AND COAL COMBUSTION
RESIDUALS (CCR) RULES OF THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY**

The compliance deadlines for both regulations must be suspended. The illegal ELG rule needs to be rescinded. The CCR regulation needs to be rewritten delegating the authority to the states in light of the new legislation passed in December.

• **IMPLEMENT EMERGENCY ACTIONS RELATIVE TO THE
SECURITY AND RESILIENCY OF THE ELECTRIC POWER GRIDS**

The Department of Energy ("DOE") must issue an emergency directive to have an immediate study done of the security and resiliency of our electric power grids. DOE will direct that no power plants having an available fuel supply of at least forty-five (45) days be closed during the study period, or a minimum of two (2) years.

• **"ENDANGERMENT FINDING" FOR GREENHOUSE GASES**

There must be a withdrawal and suspension of the implementation of the so-called "endangerment finding" for greenhouse gases.

EPA's "endangerment finding" under the Clean Air Act serves as the foundation for the agency's far reaching regulation of the economy in the form of emission limitations for greenhouse gases, including carbon dioxide. The high degree of uncertainty in the range of data relied upon by EPA combined with the enormous regulatory costs without concomitant benefits merit revisiting the "endangerment finding".

According to EPA's finding, the "root cause" of recently observed climate change is "likely" the increase in anthropogenic greenhouse gas emissions. EPA relied upon computer-based-climate-model simulations and a "synthesis" of major findings from scientific assessment reports with a significant range of uncertainty related to temperatures over 25 years. The climate model failures are well documented in their inability to emulate real-world climate behavior. Models that are unable to simulate known climate behavior cannot provide reliable projections of future climate behavior. As for the scientific assessments underlying the "synthesis" of findings used by EPA, many were not peer reviewed, and there are multiple instances where portions of peer reviewed literature germane to the "endangerment finding" were omitted, ignored or unfairly dismissed.

**ACTION PLAN FOR RELIABLE AND LOW COST ELECTRICITY
IN AMERICA AND TO ASSIST IN THE SURVIVAL OF OUR
COUNTRY'S COAL INDUSTRY (CONTINUED)**

• **ELIMINATE THE THIRTY (30) PERCENT PRODUCTION TAX
CREDIT FOR WINDMILLS AND SOLAR PANELS IN ELECTRICITY
GENERATION**

Electricity generated by windmills and solar panels costs twenty-six (26) cents per kilowatt hour with a four (4) cent per kilowatt hour subsidy from the American taxpayers. Those energy sources are unreliable and only available if the wind blows or the sun shines. Coal-fired electricity costs only four (4) cents per kilowatt hour. Low cost electricity is a staple of life, and we must have a level playing field in electric power generation without the government picking winners and losers by subsidizing wind and solar power.

• **WITHDRAW FROM THE ILLEGAL UNITED NATIONS COP 21 PARIS
CLIMATE ACCORD**

The United Nation's COP 21 Paris Climate Accord, to which Barack Obama has already committed one (1) billion dollars of America's money, is an attempt by the rest of the world to obtain funding from our Country. It is an illegal treaty never approved by Congress, and it will have no effect on the environment.

• **END THE ELECTRIC UTILITY MAXIMUM ACHIEVABLE
TECHNOLOGY AND OZONE REGULATIONS**

We have won these issues in the United States Supreme Court, and those rules must be completely overturned.

• **FUND THE DEVELOPMENT OF CERTAIN CLEAN COAL
TECHNOLOGIES**

The Federal government must support the development of some Clean Coal Technologies, including: ultra super critical combustion; high efficiency, low emission coal firing; combined cycle coal combustion; and others. It should not fund so-called carbon capture and sequestration ("CCS"), as it does not work, practically or economically. Democrats and some Republicans use CCS as a political cover to insincerely show that they are proposing something for coal. But, carbon capture and sequestration is a pseudonym for "no coal".

• **OVERHAUL THE BLOATED AND POLITICALIZED MINE SAFETY
AND HEALTH ADMINISTRATION OF THE U. S. DEPARTMENT OF
LABOR**

This Federal agency, over the past eight (8) years, has not been focused on the coal miner safety, but on politics, bureaucracy, waste, and violation quotas. While coal mine employment has been cut in half, the Federal Mine Safety and Health Administration has continued to hire inspectors every year. But, the government has nowhere to put them. Murray Energy Corporation received an average of 532 Federal inspectors per month in 2016.

**ACTION PLAN FOR RELIABLE AND LOW COST ELECTRICITY
IN AMERICA AND TO ASSIST IN THE SURVIVAL OF OUR
COUNTRY'S COAL INDUSTRY (CONTINUED)**

We must send a Company manager with every one of these inspectors, taking us away from our employe safety inspections and safety training.

• **CUT THE STAFF OF THE U.S. ENVIRONMENTAL PROTECTION AGENCY IN AT LEAST HALF**

Tens of thousands of government bureaucrats have issued over 82,000 pages of regulations under Obama, many of them regarding coal mining and utilization. The Obama EPA, alone, wrote over 25,000 pages of rules, thirty-eight (38) times the words in our Holy Bible.

• **OVERTURN THE RECENTLY ENACTED CROSS-STATE AIR POLLUTION RULE**

This regulation particularly punishes states in which coal mining takes place to the benefit of other wealthier east coast states.

• **REVISE THE ARBITRARY COAL MINE DUST REGULATION OF THE MINE SAFETY AND HEALTH ADMINISTRATION OF THE DEPARTMENT OF LABOR**

This regulation provides no health benefit to our coal miners, and threatens the destruction of thousands of coal mining jobs.

• **OBTAIN LEGISLATION TO FUND BOTH THE RETIREE MEDICAL CARE AND PENSIONS FOR ALL OF AMERICA'S UNITED MINE WORKERS OF AMERICA (UMWA) - REPRESENTED, RETIRED COAL MINERS**

For four (4) years, Senate Majority Leader Mitch McConnell has refused to address this issue. Some say that this is because the UMWA wrongly opposed him in his recent election. This must be taken care of. And the legislation enacted must address not just those recently orphaned through company bankruptcies and mine closures, but the medical benefits and pensions that were promised to all retired miners by the Federal government itself.

• **OVERTURN THE MINE SAFETY AND HEALTH ADMINISTRATION, DEPARTMENT OF LABOR, PATTERN OF VIOLATIONS RULE**

This rule is a punitive action of the Mine Safety and Health Administration under its Director for the past eight (8) years, the former Safety Director of a labor union.

• **APPOINT JUSTICES TO THE SUPREME COURT OF THE UNITED STATES WHO WILL FOLLOW OUR UNITED STATES CONSTITUTION AND OUR LAWS**

We must offset the liberal appointees who want to redefine our Constitution and our laws.

**ACTION PLAN FOR RELIABLE AND LOW COST ELECTRICITY
IN AMERICA AND TO ASSIST IN THE SURVIVAL OF OUR
COUNTRY'S COAL INDUSTRY (CONTINUED)**

• **MEMBERS OF THE FEDERAL ENERGY REGULATORY
COMMISSION MUST BE REPLACED**

The current Federal Energy Regulatory Commission has a record of favoring actions of the Obama Administration. That has systematically devalued base load generation as a result of the Obama "war on coal". These actions have put the future security and reliability of America's electric power grid at risk. Immediate action needs to be taken to require organized power markets to value fuel security, fuel diversity, and ancillary services that only base load generating assets, especially coal plants, can provide.

• **MEMBERS OF THE TENNESSEE VALLEY AUTHORITY BOARD OF
DIRECTORS MUST BE REPLACED**

The Board of Directors of this government agency has followed the mandates of the Obama Administration, rather than assure reliable, low cost electricity for the Tennessee Valley Authority's rate payers, whom they are mandated to serve in this manner.

• **REPLACE THE MEMBERS OF THE NATIONAL LABOR RELATIONS
BOARD ("NLRB")**

Eliminate the antiemployer bias of the NLRB by appointing members and staff, particularly in the General Counsel's office, who will fairly consider the employer's position and needs and not automatically accede to the unions or unionized employees in every matter considered.



ROBERT E. MURRAY
President & Chief Executive Officer

46226 NATIONAL ROAD
ST. CLAIRSVILLE, OHIO 43850
PHONE: (740) 338-8100
FAX: (740) 885-7014
bobmurray@coalsource.com
www.murrayenergycorp.com

March 28, 2017

The Honorable E. Scott Pruitt
Administrator of the Environmental Protection Agency
Office of the Administrator - 1101A
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Dear Administrator Pruitt:

We join you in applauding President Donald J. Trump's "Energy Independence Executive Order" ("Executive Order"), which directs his Administration to review, rewrite, and rescind various anti-coal regulations illegally promulgated by the Obama Administration.

There is absolutely no doubt that this Executive Order will preserve coal jobs and low cost electricity in the United States.

In furtherance of this Executive Order, we have developed the enclosed materials for your review and consideration, consisting of six (6) Executive Orders further rescinding anti-coal regulations of the Obama Administration; and one (1) memorandum outlining the legal rationale for each of these actions, and others. These materials are organized as follows:

1. Exhibit 1 - Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category; Final Rule; Final Rule (the "ELG Rule");
2. Exhibit 2 - Hazardous and Solid Waste Management System; Disposal of Coal Combustion Residuals From Electric Utilities ("CCR Rule");
3. Exhibit 3 - Supplemental Finding That It Is Appropriate and Necessary To Regulate Hazardous Air Pollutants From Coal- and Oil-Fired Electric

Administrator E. Scott Pruitt
March 28, 2017
Page 2

Utility Steam Generating Units; Final Supplemental Finding ("Utility MACT Rule");

4. Exhibit 4 - Final Rule on National Ambient Air Quality Standards for Ozone ("NAAQS Standard");
5. Exhibit 5 - Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS; Final Rule ("CSAPR Update Rule");
6. Exhibit 6 - Presidential Executive Order on The Paris Climate Accord ("Paris Climate Agreement");
7. Exhibit 7 - A Comprehensive Memorandum which details the legal rationale for each of these executive actions, and others.

We respectfully request that you review these materials, and enact them, as you deem appropriate.

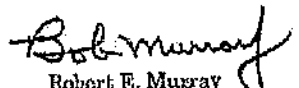
As you know, for many years now, we at Murray Energy Corporation have been leading the fight against the disastrous and illegal anti-coal regulations of the Obama Administration, the vast majority of which remain in effect. We have developed expertise in this regard and offer our assistance to you.

If there is any other way which we may help, please contact the undersigned directly at bobmurray@coalsource.com or 740-338-3299 or Mr. Michael T. W. Carey, our Vice President - Government Affairs, at mcarey@coalsource.com or 740-338-3100.

Again, we appreciate your leadership in combatting the ongoing destruction of the United States coal industry, as caused by the previous Administration. We stand prepared to assist you in any way that we can.

Sincerely,

MURRAY ENERGY CORPORATION


Robert E. Murray
Chairman, President and
Chief Executive Officer

Enclosure

Exhibit 1

Presidential Executive Order - ELG Rule

Presidential Executive Order on Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the Final Rule on Effluent Limitations Guidelines and Standards For the Steam Electric Power Generating Point Source Category Published on November 3, 2015 By the United States Environmental Protection Agency (The "ELG Regulations"), 80 Fed. Reg. 67837 (2015)

EXECUTIVE ORDER

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. Policy. It is in the national interest to ensure that the Nation's navigable waters are kept free from pollution, while at the same time promoting economic growth, minimizing regulatory uncertainty, and showing due regard for the roles of the Congress and the States under the Constitution.

Sec. 2. Suspension and Review of the Final Rule On ELG Regulations. (a) The operation and implementation of the Final Rule on ELG Regulations shall be suspended pending further action of the Administrator of the Environmental Protection Agency (Administrator) taken pursuant to this executive order.

(b) The Administrator and the Assistant Secretary of the Army for Civil Works (Assistant Secretary) shall review the Final Rule On ELG Regulations for consistency with the policy set forth in section 1 of this order and publish for notice and comment a proposed rule rescinding or revising the rule, as appropriate and consistent with law.

(c) The Administrator, the Assistant Secretary, and the heads of all executive departments and agencies shall review all orders, rules, regulations, guidelines, or policies implementing or enforcing the final rule listed in subsection (a) of this section for consistency with the policy set forth in section 1 of this order and shall rescind or revise, or publish for notice and comment proposed rules rescinding or revising, those issuances, as appropriate and consistent with law and with any changes made as a result of a rulemaking proceeding undertaken pursuant to subsection (b) of this section.

(d) With respect to any litigation before the Federal courts related to the final rule listed in subsection (a) of this section, the Administrator and the Assistant Secretary shall promptly notify

the Attorney General of the pending reviews under subsections (b) and (c) of this section so that the Attorney General may, as he deems appropriate, inform any court of such review and take such measures as he deems appropriate concerning any such litigation pending the completion of further administrative proceedings related to the rule.

Sec. 3. Policy Assessment. In connection with the reviews described in sections 2(b) and (c) of this order, the Administrator and the Assistant Secretary shall consider whether the final rule referenced in section 2(a) above sets overly stringent effluent pollution limitations for the hundreds of existing coal-fired generating facilities in the United States that are neither technically feasible nor economically feasible.

Sec. 4. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

DONALD J. TRUMP

THE WHITE HOUSE

[DATE]

Presidential Executive Order on Restoring the Rule of Law, Federalism, Economic Growth, and Reducing Regulatory Costs by Reviewing the Final Rule on Disposal of Coal Combustion Residuals From Electric Utilities (the "CCR Rule"), Published on April 17, 2015 By the United States Environmental Protection Agency, 80 Fed. Reg. 21302 (2015)

EXECUTIVE ORDER

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. Policy. It is in the national interest to control solid waste pollution, while at the same time promoting economic growth, minimizing regulatory uncertainty, reducing unnecessary regulatory costs, and showing due regard for the roles of the Congress and the States under the Constitution.

Sec. 2. Suspension and Review of the Final CCR Rule. (a) The operation and implementation of the final CCR Rule shall be suspended pending further action of the Administrator of the Environmental Protection Agency (the "Administrator") taken pursuant to this executive order.

(b) The Administrator shall review the final CCR Rule for consistency with the policy set forth in section 1 of this order and publish for notice and comment a proposed rule rescinding or revising the rule, as appropriate and consistent with law.

(c) The Administrator and the heads of all executive departments and agencies shall review all orders, rules, regulations, guidelines, or policies implementing or enforcing the CCR Rule for consistency with the policy set forth in section 1 of this order and shall rescind or revise, or publish for notice and comment proposed rules rescinding or revising, those issuances, as appropriate and consistent with law and with any changes made as a result of a rulemaking proceeding undertaken pursuant to subsection (b) of this section.

(d) With respect to any litigation before the federal courts related to the CCR Rule, the Administrator shall promptly notify the Attorney General of the pending review under subsections (b) and (c) of this section so that the Attorney General may, as he deems appropriate, inform any court of such review and take such measures as he deems appropriate concerning any such litigation pending the completion of further administrative proceedings related to the rule.

Sec. 3. Policy Assessment. In connection with the reviews described in sections 2(b) and (c) of

this order, the Administrator and heads of all executive departments and agencies shall consider whether under the CCR Rule (i) the USEPA should be responsible for enforcement of the rule, rather than providing for a private cause of action; and (ii) the states should be authorized to develop and enforce their own plans for disposal of coal combustion residuals for coal-fired electric generating facilities within their borders, rather than the USEPA imposing federal solid waste requirements on the coal-fired electric generation facilities.

Sec. 4. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:

- (i) the authority granted by law to an executive department or agency, or the head thereof; or
- (ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

DONALD J. TRUMP

THE WHITE HOUSE

[DATE]

Exhibit 3

Presidential Executive Order - Utility MACT Rule

Presidential Executive Order on Restoring the Rule of Law, Economic Growth, and Reducing Regulatory Costs by Reviewing the Supplemental Finding That It Is Appropriate and Necessary To Regulate Hazardous Air Pollutants from Coal- and Oil-Fired Electric Utility Steam Generating Units; Final Rule (the "Utility MACT Rule"), Published on April 25, 2016 By the United States Environmental Protection Agency, 81 Fed. Reg. 24,420 (2016)

EXECUTIVE ORDER

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. Policy. It is in the national interest to ensure that the Nation's air is kept free from excessive pollution, while at the same time promoting economic growth, minimizing regulatory uncertainty, reducing unnecessary regulatory costs, and showing due regard for the roles of the Congress and the States under the Constitution.

Sec. 2. Suspension and Review of the Final Utility MACT Rule. (a) The operation and implementation of the Final Utility MACT Rule shall be suspended pending further action of the Administrator of the Environmental Protection Agency (the "Administrator") taken pursuant to this executive order.

(b) The Administrator shall review the Utility MACT Rule for consistency with the policy set forth in section 1 of this order and publish for notice and comment a proposed rule rescinding or revising the rule, as appropriate and consistent with law.

(c) The Administrator and the heads of all executive departments and agencies shall review all orders, rules, regulations, guidelines, or policies implementing or enforcing the Utility MACT Rule for consistency with the policy set forth in section 1 of this order and shall rescind or revise, or publish for notice and comment proposed rules rescinding or revising, those issuances, as appropriate and consistent with law and with any changes made as a result of a rulemaking proceeding undertaken pursuant to subsection (b) of this section.

(d) With respect to any litigation before the federal courts related to the Utility MACT Rule, the Administrator shall promptly notify the Attorney General of the pending review under

subsections (b) and (c) of this section so that the Attorney General may, as he deems appropriate, inform any court of such review and take such measures as he deems appropriate concerning any such litigation pending the completion of further administrative proceedings related to the rule.

Sec. 3. Policy Assessment. In connection with the reviews described in sections 2(b) and (c) of this order, the Administrator and heads of all executive departments and agencies shall consider whether the Utility MACT Rule sets overly-stringent air pollution limitations that are neither technically feasible nor economically feasible for the hundreds of existing coal-fired electric generating facilities in the United States to which the Utility MACT Rule may apply.

Sec. 4. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:

- (i) the authority granted by law to an executive department or agency, or the head thereof; or
- (ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

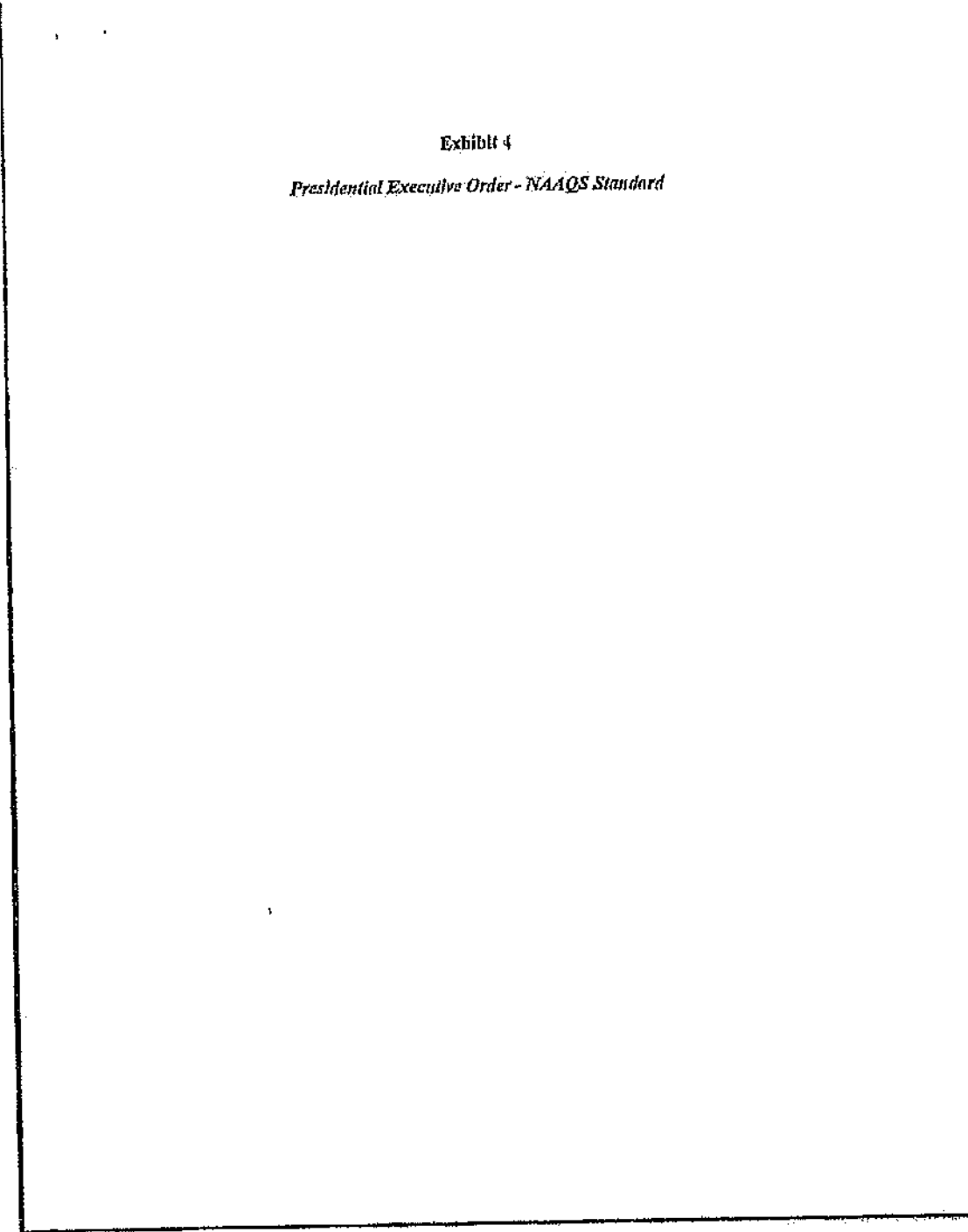
DONALD J. TRUMP

THE WHITE HOUSE

[DATE]

Exhibit 4

Presidential Executive Order - NAAQS Standard



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Presidential Executive Order on Restoring the Rule of Law, Economic Growth, and Reducing Regulatory Costs by Reviewing the Final Rule on National Ambient Air Quality Standards for Ozone (the "NAAQS Standard"), Published on October 26, 2015 by the United States Environmental Protection Agency, 80 Fed. Reg. 65292 (2015)

EXECUTIVE ORDER

By the authority vested in me as President by the Constitution and the Laws of the United States of America, it is hereby ordered as follows:

Section 1. Policy. It is in the national interest to ensure that the Nation's air is kept free from excessive pollution, while at the same time promoting economic growth, minimizing regulatory uncertainty, reducing unnecessary regulatory costs, and showing due regard for the roles of the Congress and the States under the Constitution.

Sec. 2. Suspension and Review of the Final Rule on the NAAQS Standard. (a) The operation and implementation of the Final Rule on the NAAQS Standard shall be suspended pending further action of the Administrator of the Environmental Protection Agency (the "Administrator") taken pursuant to this executive order.

(b) The Administrator shall review the Final Rule on NAAQS Standard for consistency with the policy set forth in section 1 of this order and publish for notice and comment a proposed rule rescinding or revising the rule, as appropriate and consistent with law.

(c) The Administrator and the heads of all executive departments and agencies shall review all orders, rules, regulations, guidelines, or policies implementing or enforcing the NAAQS Standard for consistency with the policy set forth in section 1 of this order and shall rescind or revise, or publish for notice and comment proposed rules rescinding or revising, those issuances, as appropriate and consistent with law and with any changes made as a result of a rulemaking proceeding undertaken pursuant to subsection (b) of this section.

(d) With respect to any litigation before the federal courts related to the NAAQS Standard, the Administrator shall promptly notify the Attorney General of the pending review under subsections (b) and (c) of this section so that the Attorney General may, as he deems appropriate, inform any court of such review and take such measures as he deems appropriate concerning any such litigation pending the completion of further administrative proceedings related to the rule.

Sec. 3. Policy Assessment. In connection with the reviews described in sections 2(b) and (c) of this order, the Administrator and heads of all executive departments and agencies shall consider whether the NAAQS Standard sets overly-stringent air pollution limitations that are neither technically feasible nor economically feasible for the hundreds of existing coal-fired electric generating facilities in the United States to which the NAAQS Standard may apply.

Sec. 4. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:

- (i) the authority granted by law to an executive department or agency, or the head thereof; or
- (ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

DONALD J. TRUMP

THE WHITE HOUSE

[DATE]

Exhibit 5.

Presidential Executive Order - CSAPR Update Rule

Presidential Executive Order on Restoring the Rule of Law, Economic Growth, and Reducing Regulatory Costs by Reviewing the Final Rule on Cross-State Air Pollution Rule Update (the "CSAPR Update"), Published on October 26, 2016 By the United States Environmental Protection Agency, 81 Fed. Reg. 74504 (2016)

EXECUTIVE ORDER

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. Policy. It is in the national interest to ensure that the Nation's air is kept free from excessive pollution, while at the same time promoting economic growth, minimizing regulatory uncertainty, reducing unnecessary regulatory costs, and showing due regard for the roles of the Congress and the States under the Constitution.

Sec. 2. Suspension and Review of the Final Rule on the CSAPR Update. (a) The operation and implementation of the Final Rule on the CSAPR Update shall be suspended pending further action of the Administrator of the Environmental Protection Agency (the "Administrator") taken pursuant to this executive order;

(b) The Administrator shall review the Final Rule on CSAPR Update for consistency with the policy set forth in section 1 of this order and publish for notice and comment a proposed rule rescinding or revising the rule, as appropriate and consistent with law.

(c) The Administrator and the heads of all executive departments and agencies shall review all orders, rules, regulations, guidelines, or policies implementing or enforcing the CSAPR Update for consistency with the policy set forth in section 1 of this order and shall rescind or revise, or publish for notice and comment proposed rules rescinding or revising, those issuances, as appropriate and consistent with law and with any changes made as a result of a rulemaking proceeding undertaken pursuant to subsection (b) of this section.

(e) With respect to any litigation before the federal courts related to the CSAPR Update, the Administrator shall promptly notify the Attorney General of the pending review under subsections (b) and (c) of this section so that the Attorney General may, as he deems appropriate, inform any court of such review and take such measures as he deems appropriate concerning any such litigation pending the completion of further administrative proceedings related to the rule.

Sec. 3. Policy Assessment. In connection with the reviews described in sections 2(b) and (c) of

this order, the Administrator and heads of all executive departments and agencies shall consider whether the CSAPR Update sets overly-stringent air pollution limitations that are neither technically feasible nor economically feasible for the hundreds of existing coal-fired electric generating facilities in the United States to which the CSAPR Update may apply.

Sec. 4. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:

- (i) the authority granted by law to an executive department or agency, or the head thereof; or
- (ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

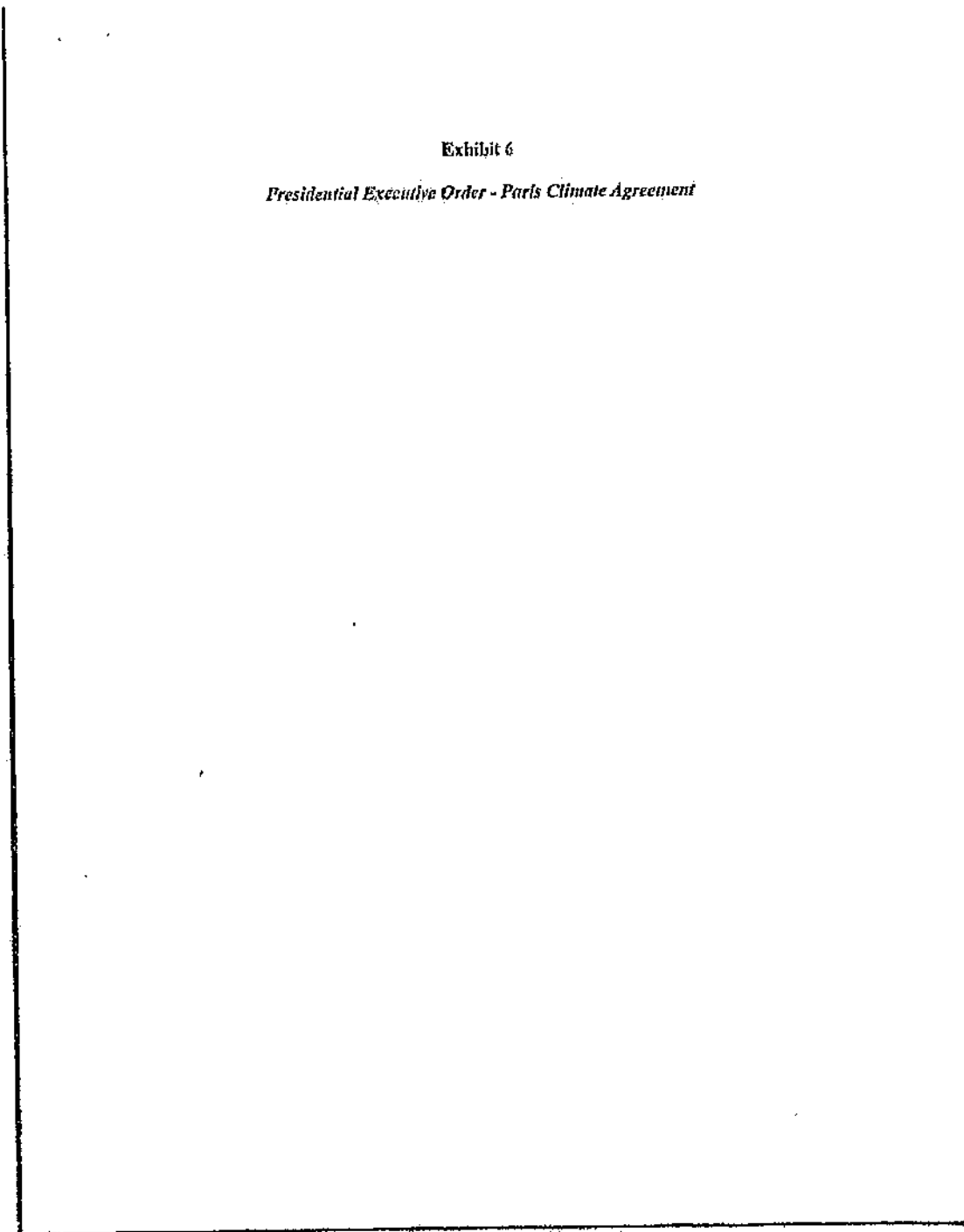
DONALD J. TRUMP

THE WHITE HOUSE

[DATE]

Exhibit 6

Presidential Executive Order - Paris Climate Agreement



Presidential Executive Order on The Paris Climate Accord

EXECUTIVE ORDER

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. Policy. It is in the Nation's interest to pursue policies and initiatives that strengthen the economic and competitive interests of the United States and its citizens on both a domestic and international stage.

Section 2. Suspension of Activity in Furtherance of the Paris Agreement. The United States and its executive agencies and executive officials shall immediately cease all activities that are implemented, or are being implemented, for the purpose of effecting compliance with that certain Paris Agreement, effective November 4, 2016 (the "Paris Climate Accord") to which the United States became a party through previous executive action.

(b) The United States' commitments to providing monetary and other economic benefits to the parties, committees, agencies, and other affiliates, of the Paris Climate Accord (the "Climate Accord Parties"), are hereby suspended indefinitely.

(c) The United States will provide formal notice to the necessary Climate Accord Parties on November 4, 2019 of its intent to withdraw from the Paris Climate Accord, to be effective, consistent with the Paris Climate Accord's terms, one year later on November 4, 2020.

Section 3. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:

- (i) the authority granted by law to an executive department or agency, or the head thereof; or
- (ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

DONALD J. TRUMP

THE WHITE HOUSE

[DATE]

Exhibit 7
Comprehensive Memorandum

CONFIDENTIAL MEMORANDUM

Confidential Attorney-Client Privileged Communication
Attorney Opinion Work Product

FROM: Robert E. Murray, Chairman, President, and Chief Executive Officer of Murray Energy Corporation

CC: Benesch Friedlander Coplan & Aronoff LLP

DATE: March 28, 2017

SUBJECT: STRATEGY TO PROMOTE RELIABLE AND LOW COST ELECTRICITY IN AMERICA AND TO ASSIST IN THE SURVIVAL OF OUR COUNTRY'S COAL INDUSTRY

For eight years, the Obama Administration's hostility toward the American coal industry hindered our economic growth, cost tens of thousands of jobs, and threatened our way of life. Affordable and reliable electricity is essential to our collective prosperity. Swift and decisive action by your administration may be able to undo some of the harm caused by President Obama and his allies.

Below is a holistic strategy to help to bring American Coal back from the precipice of extinction. The Trump Administration has the power to exercise its executive authority and to exert political pressure to effectuate critical changes to help to resurrect our embattled industry. Where the President can effect necessary changes by presidential executive orders, we have provided drafts of such orders. In those instances, where presidential executive orders cannot effect the necessary change, we provide alternative recommended strategies to bring change that will enhance the ability of coal-fired electric generation to resume its appropriate position as a cornerstone of America's ability to deliver reliable, affordable electricity to its citizens.

We begin by addressing necessary changes in America's energy policies that can be quickly, and meaningfully, addressed by executive order.

SPECIFIC CHANGES THAT CAN BE EFFECTED BY EXECUTIVE ORDER

I. SUSPEND THE COAL-FIRED POWER PLANT EFFLUENT LIMITATION GUIDELINES (ELG) AND COAL COMBUSTION RESIDUALS (CCR) RULE OF THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Summary of Issues and Effects Related to ELG Regulations:

- On November 3, 2015, the United States Environmental Protection Agency ("EPA") published its Final Rule on Effluent Limitations Guidelines and

Standards for the Steam Electric Power Generating Point Source Category (the "ELG Guidelines"), 80 Fed. Reg. 67837 (2015). The ELG Guidelines set new, stringent effluent limitations for hundreds of existing coal-fired electric generation facilities.

- It is not economically feasible for coal-fired generation facilities to meet these new effluent limitations. EPA obtained its projected cost data from self-interested vendors who "low-balled" the cost estimates because the vendors stood to gain enormous revenues from selling effluent control equipment to the regulated coal-fired generation plants if EPA adopted more stringent limitations. In fact, the actual costs of compliance would be seven to eight times higher than EPA estimates.
- The new effluent limitations are not technologically feasible. Again, EPA went to self-interested vendors for assessments of the technical capabilities of the vendors' products. This technology simply will not work at most coal-fired generation facilities.
- The ELG Guidelines have been challenged in federal court by certain coal-fired generators.
- The ELG Guidelines seriously threaten to put coal-fired electric generation out of business. Meeting the new limitations is neither economically nor technologically feasible.

Recommended Action:

- President Trump should issue an executive order suspending the ELG Guidelines and directing EPA to review, and rescind or revise, the Guidelines.

Summary of Issues And Effects Related To The CCR Rule:

- On April 17, 2015, EPA published its Final Rule on the Disposal of Coal Combustion Residuals From Electric Utilities (the "CCR Rule"), 80 Fed. Reg. 21302 (2015). The CCR Rule regulates the disposal of coal combustion residuals, or "coal ash," produced by coal-fired electric generation facilities.
- The CCR Rule contains some provisions that supporters of coal-fired electric generation favor. For instance, the Rule does not categorize coal ash as a "hazardous waste," as environmental advocates had urged EPA to do. The Rule also permits "cup-and-close-in-place" impoundments that are supported by the coal industry and opposed by environmentalists.
- Conversely, the CCR Rule is enforceable only by citizen suits, not by regulatory action of the EPA. This puts a "target on the back" of coal-fired generators.

inviting environmentalists to engage the generators in costly, years-long litigation that is likely to prevent profitable operation of the targeted coal-fired facilities. Moreover, the CCR Rule imposes inflexible federal solid waste requirements on coal-fired generators, instead of allowing the states to regulate the disposal of coal ash by their local coal-fired generators.

- EPA should be enforcing this Rule, not private parties motivated by a desire to put the coal industry out of business. Further, the Rule should be changed to allow states to develop and apply their own plans for the disposal of coal ash by local coal-fired generation facilities.

Recommended Action:

- President Trump should issue an executive order suspending the CCR Rule and directing the EPA to review, and rescind or revise, the Rule.

II. END THE ELECTRIC UTILITY MAXIMUM ACHIEVABLE TECHNOLOGY AND OZONE NATIONAL AMBIENT AIR QUALITY STANDARD (OZONE NAAQS)

Summary of Issues and Effects Related To The Electric Utility Maximum Achievable Technology Regulations:

- EPA's Mercury and Air Toxics Standards rule (the "MATS Rule") established standards for the emission of hazardous air pollutants from coal plants that required the use of Maximum Achievable Control Technology ("MACT"). This, in turn, doomed many coal-fired power plants to closure and prevented the construction of new plants. The Supreme Court held that EPA erred in finding these standards "appropriate and necessary" because EPA did not consider the cost of complying with the standard. However, the Supreme Court did not vacate the standards, and virtually every utility has now fully complied with the Rule.
- Following the Supreme Court's decision, EPA conducted a remand proceeding and determined that, even considering the cost, it was "appropriate and necessary" to adopt the MATS Rule, and issued the Utility MACT Rule, 81 Fed. Reg. 24,420 (Apr. 25, 2016).
- The Utility MACT Rule's standards for coal-powered electricity plant emissions are virtually impossible to achieve, dooming many coal-fired plants to closure and preventing construction of new plants. Between the cost of compliance and the loss of affordable electricity generators, the Rule will significantly increase energy costs and will serve only to further the Obama Administration's goal of destroying coal-fired energy generation in the United States.
- EPA's new "appropriate and necessary" finding is now on appeal in the D.C. Circuit. Briefing is underway, and oral argument is not yet scheduled.

Recommended Action:

- President Trump should issue an executive order suspending the MACT Rule and directing EPA to review, and rescind or revise, the Rule.

Summary of Issues and Effects Related To The Ozone NAAQS

- The Ozone NAAQS is EPA's standard for safe levels of ground-level ozone. States are required to develop plans to lower ground-level ozone concentrations to the amount specified in the Ozone NAAQS, regardless of the cost of doing so. EPA has set the Ozone NAAQS at a level that is far lower than is necessary to protect public health. The draconian standard requires coal-fired generators to install overly stringent compliance equipment, at very high cost, to meet the standard.
- The Ozone NAAQS has been challenged by Murray Energy, ten different states, the U.S. Chamber of Commerce and other industry groups, and by certain environmental groups. Briefing on the Ozone NAAQS in the D.C. Circuit was recently completed and oral argument is scheduled for April 19, 2017.
- The impact of the Ozone NAAQS on the U.S. economy is devastating. Not only will it reduce the Gross Domestic Product and will cost an untold number of jobs. It also will lead to the premature retirement of many coal-fired power plants, and substantially increase the average residential cost of electricity.

Recommended Action:

- President Trump should issue an executive order suspending the Ozone NAAQS and directing EPA to review, and rescind or revise, the Ozone NAAQS.

III. OVERTURN THE RECENTLY ENACTED CROSS-STATE AIR POLLUTION RULE (CSAPR)

Summary of Issues and Effects Related To The CSAPR:

- On August 8, 2011, EPA published the original CSAPR. 76 Fed. Reg. 48208 (2011). The CSAPR established a new regulatory program to limit the emission of so-called "ozone pollutants" (measured by the emission of NOX) in 22 identified states in the eastern United States, including Ohio, based on EPA's assessment that such emissions from one state contributed to excessive ozone pollution in "downwind" states.
- The original CSAPR required ozone pollutants in "upwind" states (e.g., Ohio) to be reduced so that the ambient air in "downwind" states (e.g., Pennsylvania and

New York) would meet EPA's 1997 Ozone National Ambient Air Quality Standards (Ozone NAAQS).

- On October 26, 2016, the USEPA published the final rule for its CSAPR Update. 81 Fed. Reg. 74504. The CSAPR Update adopts even more stringent limitations on ozone emissions from Ohio and other sources, requiring that the ambient air in the 22 covered states meet EPA's 2008 Ozone NAAQS.
- The stringent limitations on ozone emissions the CSAPR Update effectively imposed on coal-fired electric generation facilities in Ohio and surrounding states will put those facilities out of business. The CSAPR Update limitations, combined with similar initiatives, is simply another mechanism adopted by the Obama Administration to kill coal-fired energy generation in the United States.

Recommended Action:

- President Trump should issue an executive order suspending the CSAPR Update and directing EPA to review, and rescind or revise, the CSAPR Update.

IV. REVISE THE ARBITRARY COAL MINE DUST REGULATION OF THE MINE SAFETY AND HEALTH ADMINISTRATION OF THE DEPARTMENT OF LABOR

Summary of Issues and Effects Related To Coal Mine Dust Regulation:

- On May 1, 2014, MSHA published its Final Rule on Lowering Miners' Exposure to Respirable Coal Mine Dust, including Continuous Personal Dust Monitors (the "Dust Rule"), 79 Fed. Reg. 24814 (2014).
- The Dust Rule phased in a series of significant and damaging changes to coal dust regulations beginning in August 2014 and ending in October 2016. Those changes most significantly included (1) increasing the time period for mine operators to take air samples, (2) requiring miners to use bulky and awkward Continuous Personal Dust Monitors ("CPDMs") to measure dust concentrations, and (3) reducing the concentration limit of respirable dust to 1.5 milligrams per cubic meter, a decrease of 25% from the previous standard.
- On January 25, 2016, the Eleventh Circuit Court of Appeals upheld the Dust Rule despite a well-reasoned and well-supported challenge to both the validity of the Rule and to MSHA's authority to enact it. The Eleventh Circuit ruled only MSHA had a rational basis for enacting the Rule; not MSHA was in some way obligated to enact the Rule. For that reason, executive action on the Dust Rule is permitted.
- The stringent limitations of the Dust Rule will put many coal mines out of business. The limitations for respirable dust cannot be achieved by a longwall shearer or a continuous miner. Further, there is no evidence that the stringent levels set in the Dust Rule actually decrease rates of disease among miners. The

cost of work stoppages alone as a result of the Dust Rule, will be approximately \$1.6 billion per year.

Recommended Action:

- President Trump should issue an executive order suspending the Dust Rule and directing MSHA to review, and rescind or revise, the Rule.

V. WITHDRAW FROM THE ILLEGAL UNITED NATIONS PARIS CLIMATE ACCORD

Summary of Issues and Effects Related To the Paris Climate Accord:

- The Paris Climate Accord is an agreement within the United Nations Framework Convention on Climate Change (UNFCCC) dealing with greenhouse gases (GHG) emissions mitigation, adaptation and finance. The Climate Accord went into effect on November 4, 2016. As of December, 194 UNFCCC members have signed the Accord, 134 of which have formally ratified it.
- The Climate Accord obligates its signatories to: pursue domestic policies and regulations designed to reduce GHG emissions; provide scientific and regulatory evidence to the Climate Accord body of how they plan to achieve their emissions goals; and provide economic support to nations which cannot produce green technology at this time.
- The Climate Accord exploits the American taxpayers by sending their tax dollars to the United Nations to be spent assisting less-developed nations in their efforts to become "green." Indeed, the Climate Accord will foist upon American industry and American citizens more expensive green energy technologies, while less-developed nations lag behind and are permitted to use less expensive energy technologies. The Climate Accord undermines American industry by creating an unfair and unbalanced playing field.

Recommended Action:

- The Constitution provides that the president "shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two-thirds of the Senators present concur" (Article II, section 2). This is the appropriate way that the American government and its citizenry become subject to controlling law. The Senate approves or rejects a resolution of ratification in order for a treaty to become law. This never occurred with the Climate Accord. As a result, and as the Obama administration acknowledged, the Climate Accord is "solely] [an] executive agreement." Therefore, it is not a ratified treaty that creates mandatory American law.
- The Climate Accord states that: "At any time after three years from the date on which this Agreement has entered into force for a Party, that Party may withdraw

from this Agreement by giving written notification to the Depository." Withdrawal takes effect one year after written notification. If the United States were to follow the process laid out in the Accord, notice of withdrawal could be given on November 4, 2019, and the withdrawal would be effective on November 4, 2020.

- President Trump should issue an executive order to withdraw from the Paris Climate Accord, and/or to direct the relevant federal agencies that they shall not require coal-fired electric generators to take action to comply with the Accord.

SPECIFIC CHANGES THAT CANNOT BE EFFECTED THROUGH EXECUTIVE ORDER

VI. "ENDANGERMENT FINDING" FOR GREENHOUSE GASES (GHG)

Summary of Issues and Effects Related To "Endangerment Finding":

- EPA has issued a flawed "endangerment finding" that GHG emissions, by causing climate change, endanger the public health or welfare. That endangerment finding is the predicate for EPA's regulation of GHG emissions under a number of Clean Air Act programs. EPA Administrator Scott Pruitt and 14 other states unsuccessfully challenged the EPA's "endangerment finding" in the D.C. Circuit. In his confirmation hearing, Administrator Pruitt stated that pursuant to the U.S. Supreme Court's 2014 endangerment finding in the *Massachusetts v. EPA* case, EPA has an obligation to take some action to control CO₂ pollution. However, in doing so, EPA must follow applicable processes established by Congress.
- Administrator Pruitt may have acknowledged a little wiggle room -- but not much -- for EPA to review the endangerment finding when he told Congressional lawmakers that "[t]here is nothing I know that would cause a review at this point." But even with the endangerment finding, the Administrator believes there are limits to EPA's authority to regulate CO₂ emitted by power plants.

Recommended Action:

- The endangerment finding is based on flawed science and should be withdrawn or suspended. However, it is doubtful, based on Administrator Pruitt's confirmation hearing testimony, that EPA will withdraw the endangerment finding. Nonetheless, the Administrator's testimony indicates that he does feel that EPA's powers are more limited by Congress than the Obama Administration believed. The Administration should direct the EPA and Congress to take appropriate action.

VII. ELIMINATE THE THIRTY (30) PERCENT PRODUCTION TAX CREDIT FOR WINDMILLS AND SOLAR PANELS IN ELECTRICITY GENERATION

Summary of Issues and Effects Related To Wind/Solar Power Tax Credit:

- The federal Business Energy Investment Tax Credit ("ITC"), created a thirty (30) percent production tax credit for investments in wind and solar technologies used to generate electricity.
- The Consolidated Appropriations Act signed in December 2015 included several amendments to the ITC that are applicable to wind and solar generation technologies. Notably, the expiration date for the tax credits for investments in these technologies was extended, with a gradual step-down of the credits between 2019 and 2022.
- There simply is no reason for the federal government, through tax credits, to be providing an artificial economic advantage to inefficient and ineffective power generation technologies. Such artificial advantages disrupt the appropriate allocation of costs in the competitive electric generation market. Moreover, in the competitive global market, the exorbitant costs associated with this wrong-headed government interference puts U.S. energy producers at an extreme disadvantage with foreign competitors. As artificially-inflated domestic energy costs are priced into American goods and services, those goods and services cannot compete in the global market place. The damage to American commerce is enormous.

Recommended Action:

- The Trump Administration must persuade Congress to end tax credits for investments in wind and solar energy technologies. Eliminating these disruptive tax credits will lower the cost of American goods and services, providing essential price relief for American consumer and enabling American businesses to compete effectively against global competitors.

VIII. FUND THE DEVELOPMENT OF CERTAIN CLEAN COAL TECHNOLOGIES

Summary of Issues and Effects Related To Clean Coal Technologies:

- Coal is the United States' most abundant fuel source, with enough reserves to power the nation for another 200-300 years. According to the Department of Energy, one-fourth of the known coal in the world is located in the United States, which has more coal reserves than any other country in the world. There is more recoverable coal in the United States than there is pumpable oil in the rest of the world.
- The coal industry is a major source of jobs in the United States. Currently, coal is mined in 26 states. According to statistics compiled by the United States Energy Information Administration, in 2015, the last year for which statistics are

available, the coal industry employed approximately 66,000 miners nationwide. Thanks to the Obama Administration's "war on coal," that number was down 12% from just the prior year, and down 50% from 1980 levels. The industry provides another 90,000 jobs in coal transportation and coal-fired power plant operation, and indirectly supports tens of thousands of additional jobs nationwide.

- The National Energy Technology Laboratory has found that new coal-fired power plants already emit 90% less pollutants than plants built in the 1970s. Emissions-reducing technologies in these new plants include fluidized-bed combustion, integrated gasification combined cycle, flue gas desulfurization, low nitrogen oxide burners, selective catalytic reduction, and electrostatic precipitators.
- Promising new technologies that may further reduce emissions by as much as 30% include improvements to existing clean coal technologies, and new technologies such including high-efficiency fuel cells, advance high-efficiency combustion, hydrogen production through gasification, and ultra-supercritical pulverized coal combustion.
- The Obama Administration's "war on coal" included not only the promulgation of unreasonable and unworkable environmental regulations, but also cuts to funding for research and development of clean coal technologies in favor of commitments to so-called "green energy" such as wind and solar power. The Obama Administration even reduced funding for its favored technology of carbon capture and sequestration ("CCS"), which has proven both technologically and economically unfeasible.
- The Trump Administration's preliminary budget proposal includes a 6% reduction in funding for the Department of Energy, including the proposed elimination of the Department's Advanced Research Projects Agency, through which clean coal technology has been funded in the past.
- The federal government should adequately fund the research and development of clean coal technology that would permit the United States to take advantage of its abundant supply of this reliable fuel source and to preserve innumerable American jobs.
- Such funding should focus on technologies that appear both technologically promising and economically feasible—such as high-efficiency fuel cells, advance high-efficiency combustion, hydrogen production through gasification, and ultra-supercritical pulverized coal combustion—rather than expensive and unworkable technology—such as CCS.

Recommended Action:

- During the campaign, President Trump signaled support for the development of clean coal technology.

- President Trump should strongly urge Congress to amply fund research and development of clean coal technologies, either through federal grants or tax credits.

IX. OVERHAUL THE BLOATED AND POLITICALIZED MINE SAFETY AND HEALTH ADMINISTRATION OF THE U.S. DEPARTMENT OF LABOR

Summary of Issues and Effects Related To MSHA Politicization:

- Concurrent with President Trump's March 13, 2017 Executive Order titled "Comprehensive Plan for Reorganizing the Executive Branch," a similar approach is needed with regard to the federal Mine Safety and Health Administration (MSHA). While mine worker employment has decreased dramatically in recent years, MSHA's budget has not. Indeed, from 2010 to 2015, the number of coal miners in the United States decreased from 89,838 to 65,971 (a nearly 27% decrease). However, MSHA did not experience proportional cuts in investigators or its budget during that time frame.
- Compared to some other industries, coal mining has a significantly lower employee fatality rate. The Bureau of Labor Statistics reported that in 2015, the "mining, quarrying, and oil and gas extraction" industry sector had an employee fatality rate of 11.4% per 100,000 full-time workers. Breaking down that rate, the oil and gas extraction industries accounted for 74% of those fatal injuries, thereby making the employee fatality rate for coal miners dramatically lower than the reported 11.4%. In contrast, the transportation and warehousing industry had an employee fatality rate of 13.8% per 100,000 full-time workers, and the agriculture, forestry, fishing and hunting industry had an employee fatality rate of 22.8% per 100,000 full-time workers.
- Despite this lower employee fatality rate, the coal mining industry is more heavily regulated than virtually all other industries. Indeed, the MSHA allows an inspector to temporarily shut down a working mine unilaterally due to a perceived imminent danger to workers, leading to disruption and loss of productive time. A new standard requires operators to inspect mines before workers start their shifts.
- Even the federal courts have recently begun issuing rulings recognizing that MSHA is overreaching. For example, The Sixth Circuit Court of Appeals overturned the findings of the MSHA Review Commission, which held that an equipment and parts shop which did not extract coal and did not prepare coal or any other mineral for use was a "coal or other mine," and therefore subject to MSHA's jurisdiction.
- In 2016, Murray Energy Corporation received an average of 532 MSHA inspectors per month.

Recommended Action:

- The number of MSHA investigators should be made proportional to the number of actual mine workers in the United States. Therefore, a certain number of MSHA investigators' positions should be eliminated.
- The reduced MSHA funds should be allocated to education and training programs that help identify, avoid, and prevent unsafe working conditions in the country's mines, along the lines of the Brookwood-Sago grant program.
- To the extent that any MSHA regulation is found to be unconstitutional, the President should issue an Executive Order instructing the Secretary of the Department of Labor to cease enforcement of the regulation and hold all pending and outstanding enforcement proceedings in abeyance until it can be determined that continued enforcement will not violate mine operators' constitutional rights.
- There should be a review of all MSHA regulations promulgated since 1996 (the year in which the Congressional Review Act was passed), and determine which regulations failed to meet the reporting to Congress requirement. If a report on a regulation is not submitted to Congress, Congress can pass a resolution to rescind the regulation, essentially nullifying and voiding the regulation.
- Clearer and more limited guidelines and duties should be created for MSHA investigators, and MSHA enforcement and regulations should be structured to have less of a punitive effect on coal companies. In this regard, the MSHA could follow the lead of recent legislation in states like West Virginia and Kentucky, which have taken steps such as requiring that mine operators receive "compliance assistance notices" before issuing citations and imposing steep fines, permitting inspectors to issue notices of violations only when they can prove imminent danger of death or serious harm, and utilizing "individual personal assessments" which target specific mine employees -- rather than mine operators or coal companies -- for violations, fines, and revocation of certifications or licenses needed to work in the industry.

X. CUT THE STAFF OF THE U.S. ENVIRONMENTAL PROTECTION AGENCY IN AT LEAST HALF

Summary of Issues and Effects Related To the Size of EPA Staffing:

- Under the Obama Administration, EPA issued nearly 4,000 regulations, averaging almost 500 annually, and amounting to over 33,000 new pages in the Federal Register. The almost 15,000 person workforce of EPA has greatly contributed to the unnecessarily large and burdensome number of issued regulations.
- President Obama allowed and encouraged EPA regulators to stretch the legal limits of the U.S. Constitution and the Agency's statutorily-granted authority. Under the Obama Administration, the annual compliance costs associated with

EPA regulations grew by over \$50 billion. These high costs crippled the U.S. economy by impacting the GDP, killing thousands of jobs, and increasing the cost of consumer goods.

- EPA regulations enacted under the Obama Administration also have inhibited the advancement and growth of the coal industry. A host of EPA permit requirements have delayed construction of new coal plants, led to fuel switching, and resulted in withdrawn permit applications.
- Many of the EPA regulations promulgated during the Obama Administration are based on a weak scientific foundation and have greatly increased compliance costs for existing coal plants, increased the cost of mining coal, and effectively barred the construction of new coal plants. The consulting group ICF International estimates that 20% of America's coal power plants could be retired as soon as 2020 because of the EPA's air, waste, and water regulations.

Recommended Action:

- We support President Trump's proposed cuts to EPA's budget. The President's Budget Blueprint, delivered to Congress on March 16, 2017, proposes to cut EPA's budget by 31%. If this proposed budget is approved by Congress, it would have the effect of cutting 3,200 positions, or more than 20%, of the agency's current workforce of about 15,000. In order to achieve the desired reduction of at least 50% of EPA's workforce, President Trump should propose an even greater cut to the EPA budget. The current proposed budget still must go through Congressional approval. The White House can ensure congressional approval by working to achieve bipartisan support.

XI. OBTAIN LEGISLATION TO FUND BOTH THE RETIREE MEDICAL CARE AND PENSIONS FOR ALL OF AMERICA'S UNITED MINE WORKERS OF AMERICA (UMWA) -- REPRESENTED, RETIRED COAL MINERS

Summary of Issues and Effects Related to Retiree Medical Care:

- The Obama Administration and its regulations have dismantled the Coal Industry. Since 2012, over three dozen coal companies have filed for bankruptcy, resulting in thousands of lost jobs for American coal miners.
- Seventy years ago, the United Mine Workers of America (UMWA) sought to secure better employee benefits for coal miners. The then-President, Harry Truman, issued an Executive order directing Secretary of the Interior, Julius Krug, to take possession of all bituminous coal mines and to negotiate "appropriate changes in the terms and conditions of employment" of miners with the UMWA, which led to the Krug-Lewis Agreement. Through the Krug-Lewis Agreement and subsequent labor agreements between the UMWA and mine operators, funds were established to provide health and pension benefits to coal miners.

- The UMWA's health and pension funds support approximately 120,000 former miners and their families nationwide. In 1992 and 2006, Congress intervened to assist retired miners and to secure their health benefits. In 2016, seeing that thousands of miners were at risk of losing their benefits, Congress provided a four-month extension in health benefits for orphaned retired miners and their dependents. This extension ends on April 30, 2017.
- Rather than revisiting this issue, every ten years, the Congress needs to provide coal miners with a permanent solution to secure their health and pension benefits, which was promised to them decades ago.
- As a result of extensive regulations, especially those imposed by the previous Administration, there are far fewer mine operators. Accordingly, there is a decline in contributions into the Combined Fund. With an increasing number of miners requiring these benefits, the funds are decreasing rapidly. Without Congress' intervention, the Fund will no longer be able to support the benefits for the retired coal miners and the miners will be left without health and pension benefits, which was promised to them.

Recommended Action:

- Currently, there are two bills pending in the Senate and one bill pending in the House of Representatives relating to providing coal miners with health and/or pension benefits. The Administration should support S. 175 and H.R. 179. However, S. 716 should not be supported, as its extension for *only* health care funding (with no treatment of pension funding) will not lead to the desired outcome.

XII. OVERTURN THE MINE SAFETY AND HEALTH ADMINISTRATION, DEPARTMENT OF LABOR, PATTERN OF VIOLATIONS RULE

Summary of Issues and Effects re Pattern of Violations Rule:

- On January 23, 2013, the Federal Mine Safety and Health Administration ("MSHA") published its Pattern of Violations regulation ("POV Rule"), 78 Fed. Reg. 5073-5074; 30 C.F.R. 104, et seq. The POV Rule greatly expanded the original direction regarding pattern of violations contained in Section 104(e) of the Federal Mine Safety and Health Act of 1977 (the "Act") and the 1990 Rule regarding pattern of violations ("1990 Rule") by enlarging the scope of what the MSHA would consider to identify a pattern.
- Potential harm to mine operators identified as POV violators is significant. Once the MSHA identifies a pattern of significant and substantial ("S&S") violations at a mine, the operator receives written notice from the MSHA, 30 C.F.R. 104.3(a). If the MSHA finds any S&S violation within 90 days after issuance of the notice, the MSHA will order the withdrawal of all persons from the affected area (with

few exceptions) until the violation is abated. 30 CFR 104.3(c). The POV notice only terminates (1) if the MSHA does not issue a withdrawal order within 90 days after issuing the POV notice or (2) when an MSHA inspection of the entire mine finds no S&S violations. 30 C.F.R. 104.4(a).

- Under the 1990 Rule, the scope of what the MSHA would consider was limited to S&S violations, orders and enforcement measures implemented by the MSHA in response to confirmed violations, a mine operator's lack of good faith in correcting a safety issue, accident, injury, or illness records that demonstrate a serious safety or health management problem, and mitigating circumstances. 55 Fed. Reg. 31136. But this scope was greatly expanded under the 2013 revision, which now includes consideration of "citations for S&S violations" and "citations and withdrawal orders ... resulting from an unwarranted failure to comply." 30 CFR 104.2. The POV Rule greatly expands mine operator exposure by allowing the MSHA to consider unproven allegations and non-final citations rather than finalized orders. Currently, mine operators are not afforded due process in the form of a notice or hearing before they are deprived of their rights via a withdrawal order.
- A challenge to the POV Rule is pending in the Southern District of Ohio. *Ohio Coal Ass'n v. Perez*, 192 F. Supp. 882 (S.D. Ohio 2016). Plaintiffs in that case claim that the POV Rule exceeds the statutory authority granted to the MSHA, and that it violates the Due Process Clause because it eliminates the safeguards in the 1990 Rule.

Recommended Action:

- The Administration should ask Congress to pass a joint resolution of disapproval to rescind the POV Rule. Under the Congressional Review Act ("CRA"), a Federal agency promulgating a rule or regulation is required to submit a report regarding the new regulation to both the House of Representatives and the Senate (which the Department of Labor did not do here). 5 U.S.C. 801(a)(1)(A). If the report is not submitted, Congress can pass a resolution to rescind the regulation, essentially nullifying and voiding the regulation. 5 U.S.C. 802(b)(1) ("A rule shall not take effect (or continue), if the Congress enacts a joint resolution of disapproval ... of the rule."). Once rescinded, the regulation cannot be presented to Congress in substantially the same form. 5 U.S.C. 802(b)(2) ("A rule that does not take effect (or does not continue) under paragraph (1) may not be reissued in substantially the same form, and a new rule that is substantially the same ... may not be issued").

XIII. APPOINT JUSTICES TO THE SUPREME COURT OF THE UNITED STATES WHO WILL FOLLOW OUR UNITED STATES CONSTITUTION AND OUR LAWS

Summary of Issues And Effects of Supreme Court Composition:

- The Supreme Court of the United States currently has four justices who, instead of following the Constitution and the laws of the United States as they are written, seek to redefine our Constitution and create new laws to implement their liberal agenda.

Recommended Action:

- President Trump should appoint reliably conservative justices if and when vacancies on the Supreme Court arise. The President's nomination of Neil Gorsuch is an excellent first step. The Administration should continue to identify conservative candidates that President Trump can promptly nominate whenever vacancies arise.

XIV. MEMBERS OF THE FEDERAL ENERGY REGULATORY COMMISSION (FERC) MUST BE REPLACED

Summary of Issues and Effects Related To FERC Membership:

- FERC members are appointed by the President with the advice and consent of the Senate. FERC is composed of up to five commissioners who serve five-year terms. Currently, there are only two commissioners: acting chair Cheryl A. LaFleur, an Obama appointee whose term expires on June 30, 2019, and Colette D. Honourable, another Obama appointee whose term expires on June 30, 2017.

Recommended Action:

- There are up to 3 vacant positions on FERC that may be immediately filled by President Trump. The terms of the two current commissioners expire within the next 2 years, but those positions also may be immediately replaced by President Trump.

XV. MEMBERS OF THE TENNESSEE VALLEY AUTHORITY (TVA) BOARD OF DIRECTORS MUST BE REPLACED:

Summary of Issues and Effects Related To TVA Board Replacement:

- TVA Board Members are appointed by the President and confirmed by the Senate. Each director serves a five-year term. When their term expires, serving directors may remain on the Board until the end of the then-current Congressional session (typically in December), or until their successor takes office, whichever occurs first.

Recommended Action:

- All of the current directors' terms expire during the next three years. President Trump will be able to appoint coal-friendly directors during his term.

XVII: REPLACE THE MEMBERS OF THE NATIONAL LABOR RELATIONS BOARD ("NLRB")

Summary of Issues and Effects of NLRB Composition:

- In the past eight years, the Obama Administration's National Labor Relations Board (the "Board") has engaged in a no-holds-barred campaign to bolster private sector union membership and decimate management rights. It did so primarily in two ways: (1) by overturning a collective 4,105 years of precedential case law; and (2) by adopting overreaching regulations to facilitate union organizing.
- Currently, the Board has three members—Acting Chairman Philip A. Miscimarra, a Republican whose term ends Dec. 26, 2017, and Members Mark Gaston Pearce and Lauren McFerran, both Democrats whose terms end Aug. 27, 2018, and Dec. 16, 2019, respectively—and two vacancies. Pursuant to the National Labor Relations Act ("NLRA"), the President can only remove a Board member for neglect of duty or malfeasance in office. 29 U.S.C. § 153(a).
- The General Counsel has final authority to investigate charges and issue complaints. He also supervises all Board attorneys and all officers and employees in the Board's Regional Offices. The current General Counsel is Richard Griffin, Jr., a Democrat who has been a driving force behind the Obama Board's agenda. His four-year term ends Nov. 3, 2017. The NLRA is silent on whether the President can remove the General Counsel before the end of his term. 29 U.S.C. § 153(d).
- The Board has 1,596 full-time workers, the vast majority of whom are pro-union, classified employees. They work in the Board's Washington D.C. headquarters and 32 Regional Offices. Each Regional Office is supervised by a Regional Director appointed by the Board. Each Subregional Office is headed by an Officer in Charge, who is also appointed by the Board. The General Counsel, subject to civil service rules, may demote and discharge nearly all Board personnel; however, the demotion or discharge of any Regional Director or Officer in Charge must be approved by the Board. 20 F.R. 2175.

Recommended Action:

- President Trump should fill the two Board vacancies with pro-management members as soon as practical. Within a short period of time, the Trump Administration's Board could set a pro-management tone that will filter down to the Administrative Law Judges, who hear complaints, and to the General Counsel's Office and the Regional Offices. Furthermore, when the terms of Members Gaston Pearce and McFerran expire, President Trump should appoint

two additional pro-management members to the Board. Traditionally, the Board's membership is a 3 to 2 majority in favor of the president's party. However, there is no law preventing President Trump from appointing Republicans to fill the posts vacated by Gaston Pearce and McVerran.

- President Trump should consider replacing General Counsel Griffin before his term ends in November 2017. While no General Counsel has ever been removed, there is persuasive authority that the President has plenary power to remove the General Counsel. Indeed, the Constitution generally empowers the President to keep executive officers accountable by removing them from office, if necessary. *Myers v. United States*, 272 U.S. 52 (1926). This power is not unlimited, as the Supreme Court has curbed the President's power in certain circumstances, such as when Congress creates an independent agency run by principal officers appointed by the President, whom the president may not remove but for good cause. *Humphrey's Executor v. United States*, 295 U.S. 602 (1935). Here, the NLRA is silent on this issue of removing the General Counsel, so although it may be argued that the President retains the power to do so, the attempt might lead to protracted litigation.
- Once the Board's vacancies are filled and the General Counsel is replaced (at the latest, when his term ends this November), President Trump should direct the General Counsel to demote or discharge the Regional Directors and the Officers in Charge of Subregional Offices. Many of them are life-long, pro-union Board employees, and they should be replaced by pro-management personnel.
- President Trump should cut the Board's current \$273 million budget in order to reduce the number of pro-union employees at the Board. Because it is difficult to discharge federal employees, even for cause, the most expedient way to make wholesale changes to the workforce is through a reduction in force due to a shortage of funds. Although the goal would be to hire management-minded personnel, any hiring must be delayed for at least two years to avoid having to rehire the hold-off employees, who have first priority in the event that the agency seeks to fill a position within two years of their separation. 5 C.F.R. §536.208. Once that time period passes, President Trump could increase the Board's budget and reconstitute the workforce with management-minded employees.

Exhibit H

To: Paul Roveda[proveda@concordia.net]
Cc: Maria Correa[mcorrea@concordia.net]; McMurray, Forrest[mcmurray.forrest@epa.gov];
Steven Groves [Personal Email/Ex. 6]
From: Hupp, Millan
Sent: Tue 9/19/2017 9:55:32 AM
Subject: Re: Meetings for Tuesday

Thank you!

Sent from my iPhone

On Sep 19, 2017, at 5:46 AM, Paul Roveda <proveda@concordia.net> wrote:

Great do let me know if you need anything else today.

On Tue, Sep 19, 2017 at 5:43 AM Hupp, Millan <hupp.millan@epa.gov> wrote:

Paul -- understood on the meeting with President Aznar. We just unfortunately won't have much time with him.

We are set on the 130 meeting with Mr. Negroponte in room 1416.

Sent from my iPhone

On Sep 19, 2017, at 4:20 AM, Paul Roveda <proveda@concordia.net> wrote:

Hi Millan,

Unfortunately President Aznar isn't able to do much earlier than 11:15 (maybe a few minutes) because his strategic dialogue runs until 11am downstairs and then he would have to come upstairs.

Please do let me know if you have any questions regarding the meeting with Mr. Negroponte. Thanks.

Paul

On Mon, Sep 18, 2017 at 7:50 AM, Hupp, Millan <hupp.millan@epa.gov> wrote:

Paul -- the meeting with the president may need to start closer to 11 as the administrator needs to be down in the green room by about 1140.

We could do you a 130 meeting with Mr. Negroponte but I think that would carry over on our allotted time in the meeting room. Would first want to ensure that is alright with Stephen as it would take us up to 2PM.

Thank you so much,
Millan

Sent from my iPhone

On Sep 18, 2017, at 6:41 AM, Paul Roveda <proveda@concordia.net> wrote:

Hi Millan,
The meeting with President Aznar is confirmed for 11:15am.

Would you be able to provide availability for the meeting with John Negroponte? because the 1pm timeframe won't work. Thank you.

Kind regards,
Paul

On Mon, Sep 18, 2017 at 12:38 AM, Paul Roveda <proveda@concordia.net> wrote:

Hi Millan,
Yes these should be confirmed. I've cc'd Maria to ensure accuracy, but I don't suspect any issues.

I've emailed Andrew Littlefair and Boone Pickens' team to confirm the 9:45, but I don't expect any changes there. I believe it was the intention to have Mr. Pickens join that meeting as well. Please do let me know if you have any further questions.

The Administrator will have room 10 on the 14th floor for these meetings.

Kind regards,
Paul

On Sun, Sep 17, 2017 at 11:01 PM, Hupp, Millan <hupp.millan@epa.gov> wrote:

Paul,

Just wanted to confirm this schedule.

945 - Andrew Littlefair
1045 - George Logothetis
1100 - President Azanar

John Negroponte? We don't have him scheduled anywhere.

We also have scheduled a separate meeting at 1PM. We have been assured we will be able to use the same meeting room and that we will be responsible for escorting this person up to our room.

Thank you so much,
Millan

Sent from my iPhone

--
Paul Roveda
Staff Coordinator

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