

August 13, 2018

Andrew Wheeler
Acting Administrator
United States Environmental Protection Agency

Re: Comments on Advanced Notice of Proposed Rulemaking for Increasing Consistency and Transparency in Considering Costs and Benefits in the Rulemaking Process, Docket Number EPA-HQ-OA-2018-0107

Dear Acting Administrator Wheeler:

We are a diverse group of 85 public interest, labor, and grassroots organizations representing millions of Americans, and we write to urge you to withdraw the Environmental Protection Agency's (EPA) Advance Notice of Proposed Rulemaking on "Increasing Consistency and Transparency in Considering Costs and Benefits in the Rulemaking Process" (RIN: 2010-AA12) [hereinafter "ANPRM"]. The ANPRM reflects a failure to recognize the strong evidence that rules protecting public health and the environment often result in benefits 13 times greater than costs, routinely underestimate benefits, and instead imposes additional burdens that fail to substantively improve the analysis of regulatory benefits and costs.

EPA safeguards have saved lives and improved health nationwide by reducing pollution in the air we breathe, the water we drink and use, food we eat, and the communities we live in. During the 1960s and 1970s, rivers caught fire, millions of children were afflicted with high levels of lead poisoning from environmental sources, and chemical haze settled over the industrial zones of the nation's cities and towns. But today, the most visible manifestations of these threats are under control, millions of people have been protected from death and debilitating illness, and environmental degradation has been slowed and even reversed in some cases.

EPA implementation of these safeguards has coincided with significant economic growth and job creation. Between 1970 and 2011, the U.S. Gross Domestic Product (GDP) increased 212 percent, and the number of private sector jobs increased by 88 percent.¹

In short, the United States is much better off because of EPA regulations adopted over the past 40 years.

Various efforts to compare the quantified and monetized benefits and costs of EPA's regulations have consistently shown that they produce significant net benefits. For example, year after year, the Office of Management and Budget (OMB) submits reports to Congress showing that the quantified and monetized benefits of EPA regulation vastly exceed the costs. In its most recent draft report, OMB found that from Fiscal Year 2007 through Fiscal Year 2016, the benefits of all of EPA's major rules exceeded the costs by a ratio of as much as 13 to 1.²

¹ Env'tl. Protection Agency, *The Clean Air Act and the Economy*, https://www.epa.gov/clean-air-act-overview/clean-air-act-and-economy#_ednref6 (last visited July 24, 2018).

² OFFICE OF MGMT. & BUDGET, EXECUTIVE OFFICE OF THE PRESIDENT, 2017 DRAFT REPORT TO CONGRESS ON THE BENEFITS AND COSTS OF FEDERAL REGULATIONS AND AGENCY COMPLIANCE WITH THE UNFUNDED MANDATES

Yet, as impressive as these results are, they reflect just a tiny fraction of the total benefits that EPA's regulations produce – namely, those positive impacts that the agency is able to quantify and monetize. Entire categories of crucial benefits are simply left out, either because they involve values like dignity or equality that cannot be measured in dollar terms, or because we lack the data or models necessary to quantify the relevant public health and environmental risks. A recent study shows that in over three-quarters of the cost-benefit analyses prepared by EPA for significant rules over a 13-year period, the monetized benefits estimate excluded categories of benefits that the agency itself described as either actually or potentially “important,” “significant,” or “substantial” because these benefits were unquantifiable due to data limitations.³

The ANPRM, however, largely glosses over these concerns with EPA's past experience with cost-benefit analysis. It makes no mention of the widespread consensus in the academic and policy literature that the systematic undercounting of benefits poses a significant problem for the practical utility of cost-benefit analysis.⁴ Nor does the ANPRM address the retrospective studies of regulatory costs that have found that the initial cost estimates are often too high, rather than too low.⁵

Even though this ANPRM seeks to make drastic changes to the manner in which EPA conducts its cost-benefit analyses, it fails to identify any real problems that the rulemaking is intended to address. At most, the ANPRM highlights a handful of anecdotal concerns raised by industry about EPA's cost-benefit practices in prior rulemakings, many of which appear to be aimed at advancing the specious claim that EPA's cost-benefit analyses have overestimated benefits and underestimated costs, leading to inappropriately strong regulatory safeguards.

This ANPRM is another action by the administration that would undermine justifications for protections that safeguard our health and welfare. Despite the tremendous record of success demonstrated by EPA safeguards, and the enormous benefits they provide for the health and welfare of the American public, the current administration has consistently taken actions that will undermine and dismantle these life-saving protections. In recent months alone, this administration has proposed to restrict the science that EPA can consider in its decision-making, shortchange the review process for developing national air quality standards, and roll back numerous important air and water quality safeguards, among other attacks.

REFORM ACT 10, available at https://www.whitehouse.gov/wp-content/uploads/2017/12/draft_2017_cost_benefit_report.pdf.

³ Amy Sinden, *The Problem of Unquantified Benefits*, 49 ENVTL. L. — (forthcoming 2019).

⁴ See Thomas O. McGarity & Ruth Ruttenberg, *Counting the Cost of Health, Safety, and Environmental Regulation*, 80 TEX. L. REV. 1997, 2011, 2044-50 (2002).

⁵ See PUTNAM, HAYES, & BARTLETT INC., COMPARISONS OF ESTIMATED AND ACTUAL POLLUTION EXPENDITURES FOR SELECTED INDUSTRIES (Report prepared for the Office of Planning & Evaluation, Env'tl. Protection Agency, 1980); OFFICE OF TECHNOLOGY ASSESSMENT, GAUGING CONTROL TECHNOLOGY AND REGULATORY IMPACTS IN OCCUPATIONAL SAFETY AND HEALTH: AN APPRAISAL OF OSHA'S ANALYTICAL APPROACH 58 (1995); Eban Goodstein & Hart Hodges, *Polluted Data: Overestimating Environmental Costs*, 8 AM. PROSPECT 64 (Nov./Dec. 1997); Winston Harrington, Richard D. Morgenstern, & Peter Nelson, *On the Accuracy of Regulatory Cost Estimates* 14-15 (Resources for the Future, Discussion Paper 99-18, 1999), available at <http://www.rff.org/documents/RFF-DP-99-18.pdf>.

The continued pursuit of this unnecessary and misguided regulatory action would represent a grievous waste of EPA's dwindling budgetary resources, particularly at a time when the agency faces so many critical challenges related to its mission. For these reasons, we urge EPA to withdraw this ANPRM and cease this rulemaking immediately, and to instead dedicate the agency's limited resources toward actions that will affirmatively advance protections of the public health and the environment.

We appreciate your attention to these comments.

Sincerely,

AFL-CIO
Alliance of Nurses for Healthy Environments
Altamaha Riverkeeper, Inc.
American Association for Justice
Animas Riverkeeper
Atchafalaya Basinkeeper
Audubon Naturalist Society
Bayou City Waterkeeper
Boulder Waterkeeper
Breast Cancer Prevention Partners
Cahaba River Society
Cahaba Riverkeeper
Californians for Pesticide Reform
Center for Media and Democracy
Center for Progressive Reform
Chattahoochee Riverkeeper
Clean Water Action
Clean Water Fund
Coming Clean
Community Housing and Empowerment Connections Inc.
Earthjustice
Endangered Species Coalition
Environmental Health Strategy Center
Environmental Integrity Project
Farmworker Association of Florida
Friends of the Kaw - Kansas Riverkeeper
Green Riverkeeper
Gulf Restoration Network
Harpeth Conservancy
Healthy Building Network
Healthy Schools Network
In the Public Interest
Institute for Agriculture and Trade Policy
Interfaith Worker Justice San Diego
International Chemical Workers Union Council (ICWUC)

Kentucky Resources Council, Inc.
Kentucky Waterways Alliance
Kootenai Environmental Alliance
Labor of Love Safety Training
Little River Waterkeeper
Lower Susquehanna Riverkeeper Association
Made Safe
Massachusetts Rivers Alliance
Matanzas Riverkeeper
Mattawoman Watershed Society
Milwaukee Riverkeeper
Minority Workforce Development Coalition
Mississippi River Collaborative
Missouri Confluence Waterkeeper
Mountain Watershed Association
MountainTrue
National Center for Health Research
Natural Resources Defense Council
New Hampshire Rivers Council
Northwest Watershed Institute
Ohio River Foundation
Pequabuck River Watershed Association
Pesticide Action Network
Potomac Riverkeeper Network
Prairie Rivers Network
Project on Government Oversight
Public Citizen
Public Justice Center
Puget Soundkeeper Alliance
Rivanna Conservation Alliance
River Network
Rural Coalition
SafeWork Washington
Save The Poudre: Poudre Waterkeeper
Sciencecorps
Snake River Waterkeeper
Suncoast Waterkeeper
Tennessee Riverkeeper
Texas Campaign for the Environment
Union of Concerned Scientists
Upper Missouri Waterkeeper
Virginia Conservation Network
Waterkeeper Alliance
Waterkeepers Chesapeake
West Virginia Rivers Coalition
Winyah Rivers Foundation, Inc.

WisCOSH, Inc.
Women's Voices for the Earth
Worksafe, Inc
Yukon River Inter-Tribal Watershed Council