

**Attorneys General of New York, California, Illinois, Iowa, Maine,
Maryland, Massachusetts, Oregon, Rhode Island, Vermont, Virginia,
and the District of Columbia, and the Secretary of the Pennsylvania
Department of Environmental Protection**

December 20, 2017

The Honorable Mitch McConnell
Majority Leader
United States Senate
317 Russell Senate Office Building
Washington, DC 20510

The Honorable Charles E. Schumer
Minority Leader
United States Senate
322 Hart Senate Office Building
Washington, DC 20510

The Honorable Paul D. Ryan
Speaker
U.S. House of Representatives
1233 Longworth House Office Building
Washington, DC 20515

The Honorable Nancy Pelosi
Minority Leader
U.S. House of Representatives
233 Cannon House Office Building
Washington, DC 20515

Re: House and Senate FY 2018 Appropriations for EPA

Dear Majority Leader McConnell and Minority Leader Schumer; Speaker Ryan
and Minority Leader Pelosi:

We are writing to express our strong opposition to deep and damaging proposed cuts to the fiscal year 2018 budget for the Environmental Protection Agency (“EPA” or “Agency”) and the anti-environmental riders contained in the federal government appropriation legislation in both the United States Senate and House of Representatives. We understand that the Senate will likely bypass regular order with its appropriations bills, and negotiate with the Trump Administration and the House on a final EPA budget based on the House-passed Interior, Environmental, and Related Agencies FY 2018 appropriations bill (H.R. 3354) and the Senate Appropriations Committee Chairman’s Mark for FY 2018 appropriations for these agencies.

While the Senate bill offers greater funding for the EPA and includes fewer anti-environmental riders than its House counterpart, the budget cuts and riders contained in both bills would undermine EPA, the agency responsible for implementing and enforcing federal laws that protect and enhance public health and the environment. Americans depend on EPA to be a strong and committed partner, working shoulder-to-shoulder with states and local communities to ensure safe drinking water, healthy recreational waters, clean air and land, and a safe environment. For almost a half century, this partnership has been founded on EPA's active co-enforcement of laws, support of state regulatory programs, and provision of grants and other financial assistance.

Grossly underfunding EPA – as the House and Senate bills do in their current form – directly impacts states and harms our ability to protect our residents. Since EPA was established, our nation's air, water and other natural resources have become much cleaner, and the health and quality of life for Americans have greatly improved. The unprecedented budget cuts and anti-environmental riders contained in the Senate and House bills for FY2018 would undo decades of environmental improvements. Depriving EPA of necessary funding to do its job, and to assist our states with enforcement of the nation's environmental laws, threatens to take us back to the dark days before EPA's establishment – a time when air and water pollution was rampant, contaminated sites frequently jeopardized the health of communities, and the presence of unregulated toxic chemicals in food, water, and the environment were a constant threat to the safety of Americans.

Overall Budget Cuts

Notwithstanding EPA's critical role in protecting the health and the safety of the country's water, air, and communities, the House-passed budget bill would cut EPA's FY2018 budget by \$650 million from its 2017 budget. The Senate Appropriations Committee Chair's Mark would cut the Agency's budget by \$150 million. While both houses have soundly rejected the Trump Administration's misguided \$2.4 billion proposed cut in EPA funding, even the Senate funding cuts, which are the least draconian of the three proposals, would still leave the Agency with its smallest budget since 1986, adjusting for inflation. These cuts will be taken from an agency that already operates with one of the most modest budgets in the federal government.

For years, the Agency has struggled with budgets that have not kept pace with its needs and obligations. In fact, there is a strong argument to be made that more – not less – funding for the Agency is needed to address pressing environmental and public health issues, and the new responsibilities assigned to EPA by Congress over the years. For example, while neither the Senate nor House budgets would reduce EPA funding for local drinking water and wastewater infrastructure, it is clear that the Agency's prior funding has been insufficient to help states and municipalities keep pace with the burgeoning challenge of providing safe drinking water and properly treating wastewater. Nationally, EPA

estimates at least \$271 billion is needed for wastewater infrastructure over the next 25 years and, according to the American Water Works Association, our nation's drinking water infrastructure will require an estimated \$1 trillion.¹ In New York alone, over the next 20 years, the American Society of Civil Engineers estimates that over \$38 billion will be needed to repair, replace, and update the state's drinking water infrastructure and over \$36 billion will be needed to repair, replace, and update its wastewater infrastructure.²

Dramatically cutting EPA's already chronically underfunded budget will severely undercut the Agency's ability to meet its needs and obligations, and to be a reliably strong and committed partner with states and local communities in protecting Americans' health and environment.

Cuts to Core Programs

EPA's core environmental programs augment state budget and technical capacities, providing essential assistance to state and local efforts to protect the health of communities, and keep water, land, and air clean and safe. States rely on EPA to provide scientific and technical assistance on emission and discharge standards, testing and monitoring methods, emission control and remediation systems, and pollution prevention and best management practices. EPA's oversight of state programs ensures uniform enforcement of national pollution standards and averts a "race to the bottom." EPA core programs serve a critical regulatory role in addressing complex multi-state and multi-facility pollution problems. And EPA's Office of Environmental Justice directly supports the efforts by states and historically disadvantaged communities to improve health and environment in these communities, and reverse decades of disparate treatment.

Cuts to EPA's core programs will directly impact states and communities. For example, a reduction in funding for EPA's oversight of Clean Air Act compliance endangers the health of millions of Americans, especially the most vulnerable, such as children, the elderly, and those with existing respiratory ailments. The transport of air pollution across state borders is a persistent challenge for downwind states, making it difficult for them to attain and maintain compliance with health-based air quality standards and, thus, protect their residents. This problem requires continuing and substantial federal government engagement to address, as Congress recognized when it passed the current version of the Clean Air Act. The Clean Air Act's "good neighbor" provision requires the EPA and states to partner in addressing the interstate transport of air pollution. Cutting funds of the federal partner so that citizens of downwind states are not being

¹ American Society of Civil Engineers, *2017 Infrastructure Report Card* (available at <https://www.infrastructurereportcard.org/>).

² American Society of Civil Engineers' New York State Council, *Report Card for New York's Infrastructure 2015*, September 2015 (available at <https://www.infrastructurereportcard.org/state-item/new-york/>).

protected will likely result in wasteful, lengthy, and costly inter-state litigation and delay achievement of the Act's purpose.

Additionally, EPA funds provide direct grant and other dollars to states to run state delegated programs. The Pennsylvania Department of Environmental Protection, for example, derives one-third of its funding from EPA dollars to run fundamental programs like clean water, safe drinking water, and remediation. Absent this funding or with significant reductions in these funds going directly to states, state agencies will not be able to run or administer programs that are vital to public health, environmental sustainability, and environmental protection.

Despite the essential role of EPA's core environmental programs, the bulk of the EPA cuts proposed by both the Senate and House fall on central activities of the Agency – environmental enforcement and compliance assurance, setting environmental standards, issuing permits, monitoring emissions, and providing technical and legal assistance to enforcement, compliance, and oversight. The House-passed bill cuts funding for EPA's core environmental programs and management account by 24 percent – an even deeper cut for these programs than proposed in the Trump Administration's budget. As this account pays for two-thirds of EPA's workforce, this cut could require laying off more than a thousand additional employees from an agency that has already lost over 14 percent of its workforce since 2014. The House would also cut funds for science and technology – used to assess the health and environmental risk of pollutants – by 16 percent. Similarly, the Senate Appropriations Committee Chairman's Mark also disproportionately cuts EPA's environmental programs and management account, reduces funding for core clean air, water, compliance, enforcement, and scientific review programs by 10 percent, and cuts science and technology funding by 10 percent. The Senate bill also provides funding to cut EPA's workforce by one-quarter.

Stripping hundreds of millions of dollars from EPA's core programs and depleting its workforce would hamstring the Agency, and directly jeopardize not only its central activities but also the partnership that our states depend upon – with the net result being diminished protection of our air, water, and land, and the health and safety of our residents.

Specific Program Cuts

Notwithstanding the overall inadequacy of the proposed EPA funding, we acknowledge that in several important instances – e.g., funding for Superfund, drinking water and wastewater treatment, and continuation of the EnergyStar program – the Senate and House bills reject the Trump Administration's misguided budget proposal for the Agency. However, in other important instances, such as significant cuts in funding for the Chesapeake Bay Program, the House bill endorses the Trump Administration's proposed severe cuts. Moreover, both the Senate and House follow the Administration's lead in

proposing a 10 percent and 15 percent cut, respectively, in funding for the EPA Office of Environmental Justice.

Both the Senate and House budget bills contain a number of specific cuts to EPA's budget that would be damaging to our states' environmental and public health protection efforts. We believe that these cuts are ill considered and shortsighted, and should be rejected. We highlight two of the most troubling below.

Reductions in EPA Enforcement Budget

The Senate Appropriation Committee Chair's Mark contains a 10 percent cut in the EPA's enforcement budget, and the House Committee on Appropriations in its Report on H.R. 3354 recommends a 15 percent cut in this budget. As mentioned above, EPA's ability to initiate a parallel enforcement action in the context of federally delegated programs provides another critical EPA function – the Agency thus serves as a “watch dog” to ensure that federal law is implemented on a consistent, baseline level across the country. Cutting EPA's enforcement budget threatens to remove the federal law enforcement “floor,” creating a situation where violations of federal law are enforced differently in different states. This would create competitive imbalances for businesses and catalyze a “race to the bottom” by states toward providing reduced public health and environmental protections. Such a race to the bottom can have particularly severe and adverse impacts on disadvantaged communities.

There is already evidence of a troubling retreat in the enforcement of our nation's environmental laws by the Trump Administration. A recent analysis by the Environmental Integrity Project³ found that the Administration has collected, on average, 60 percent less in civil penalties from environmental violators than the Obama, George W. Bush, and Clinton administrations by the end of July in their first year of office. The analysis also identified a significant drop in the number of environmental enforcement settlements lodged by the Trump Administration, compared to similar periods in the past three administrations. This reduction of core enforcement activity is directly at odds with the EPA Administrator's stated “back to basics” agenda. Any reduction by Congress in the budget for enforcement would send the wrong message to the Agency, which instead should be told that Congress strongly supports the EPA's enforcement of this nation's environmental laws.

³ Environmental Integrity Project, *Environmental Enforcement Under Trump*, August 10, 2017 (available at: <http://www.environmentalintegrity.org/wp-content/uploads/2017/08/Enforcement-Report.pdf>). A New York Times investigation confirmed the substantial drop-off in enforcement actions and penalties sought under the Trump Administration. “Under Trump, E.P.A. Has Slowed Actions Against Polluters, and Put Limits on Enforcement Officers,” New York Times, Dec. 10, 2017 (available at <https://www.nytimes.com/2017/12/10/us/politics/pollution-epa-regulations.html>).

Elimination of the Integrated Risk Information System (IRIS)

The Senate Appropriation Committee Chairman's Mark cut of more than \$15 million from EPA's chemical safety and sustainability research effort – which includes the elimination of the IRIS program – is another particular concern. The IRIS program conducts scientific review and analysis, providing the scientific backbone for understanding the health and environmental impacts of toxic chemicals. Information generated by the IRIS program is critical to the development and implementation of many federal, state, and local public health protection activities. The cleanup of hazardous waste sites, performance of emergency and rapid response, and assessment of risks from air emissions, and establishment of drinking water standards all depend on IRIS. The elimination of IRIS will undermine these activities – thereby directly imperiling the health and safety of our residents.

For example, the elimination of IRIS will likely impede or block the establishment of federal drinking water standards for perfluorooctanoic acid (PFOA) and perfluorooctane sulfonate (PFOS), industrial chemicals that many states across the country have discovered in public drinking water supplies. A 2016 Harvard University School of Public Health led study, based on EPA data, found drinking water supplies for 6 million U.S. residents exceed the Agency's health advisory for these chemicals.⁴ In New York, EPA advisories based on PFOA and PFOS health risks – including birth defects, cancer, hormone disruption and other serious health problems – have driven the remediation of drinking water supplies in the Town of Hoosick/Village of Hoosick Falls, the Town of Petersburg and the City of Newburgh. These chemicals have also been identified in water supplies on Long Island, where groundwater serves as the sole source of drinking water to nearly 3 million residents. In Massachusetts, concentrations of PFOA and PFOS exceeding EPA's health advisory have been found in several wells, including those serving private water supplies and the public drinking water supply in the Towns of Mashpee and Westfield, resulting in these wells being subject to treatment or removed from service. Nonetheless, PFOA and PFOS are currently unregulated under the federal Safe Drinking Water Act, with no national monitoring or enforcement mechanism in place to ensure that people are not exposed at levels that can cause adverse health effects.

EPA is evaluating the establishment of national drinking water standards for PFOA and PFOS pursuant to the Safe Drinking Water Act. By identifying and characterizing the health hazards of chemicals in the environment, the IRIS program plays a fundamental role in the setting of protective standards. Accordingly, EPA added the evaluation of PFOA and PFOS to its IRIS multi-year agenda in 2015, initiating the program's assessment of these chemicals' hazards. Even if, as the Senate proposes, a small subset of the IRIS program's

⁴ Xindi Hu, et. al., *Detection of Poly- and Perfluoroalkyl Substances (PFASs) in U.S. Drinking Water Linked to Industrial Sites, Military Fire Training Areas, and Wastewater Treatment Plants*, Environ. Sci. Technol. Lett. 2016, 3, 344–350 (available at <http://pubs.acs.org/doi/pdf/10.1021/acs.estlett.6b00260>).

responsibilities survive to help implement the Lautenberg Chemical Safety Act, it is likely the work of the Office of Water – which uses IRIS to set national drinking water standards – will be significantly impacted by the proposal to eliminate IRIS. As a result, the elimination or reduction of the IRIS program will likely delay, if not end, progress toward effective, science-based regulation of these dangerous chemicals, and toward ensuring the health and safety of the water Americans drink.

Anti-Environmental Budget Riders

Finally, the House and Senate legislation contain several troubling policy riders, including:

- Both the House and Senate budget bills would allow EPA to withdraw the “Waters of the United States” rule and replace it with prior regulations without compliance with the federal Administrative Procedures Act (APA). This rider would also create a dangerous precedent for by-passing the APA, which requires public input and participation before repealing rules or adopting replacements for them, and reasonable justifications for such repeal and replacement. As the EPA has recognized on numerous occasions, the scope of the “Waters of the United States” definition is of tremendous national importance. Rather than allowing a deviation from long-established administrative rulemaking, any changes to the definition of “Waters of the United States” should include public input and participation as part of the normal agency rulemaking process.
- The House-passed budget bill would delay the implementation of the 2015 national ambient air quality standards for ozone for 10 years. More than one-third – 36 percent – of Americans currently live in areas with levels of ozone pollution that EPA has determined to be unhealthy. EPA conservatively estimated that meeting the new smog standards would result in net annual public health benefits of up to \$4.5 billion starting in 2025 (not including California), while also preventing up to 660 premature deaths, 230,000 asthma attacks in children, 160,000 missed school days, and 28,000 missed work days each year. While the Senate bill does not specifically delay the ozone standards, it does express concern about the economic impact of the 2015 standards, signaling a clear inclination to likewise delay these standards. A delay in the implementation of these scientifically-founded, health-based standards will result in direct and serious damage to the health of millions of Americans.
- The House-passed budget bill would block the BLM Methane Rule, a regulation which controls the leaking, venting, and flaring of the highly potent greenhouse gas, methane, from oil and natural gas developments on public lands. The Senate has already endorsed the rule, voting this past spring against voiding this cost-effective, common-sense regulation under

the Congressional Review Act. Eliminating the BLM Methane Rule would potentially result in an additional 180,000 tons of methane emissions per year, roughly equivalent to pollution of up to 950,000 vehicles – or roughly 2.5% of New York’s total annual emissions of greenhouse gases. It would also result in an addition of approximately 250,000 tons of smog-forming volatile organic compounds (VOCs) emissions each year. In addition to allowing more pollution, such a step would also be financially harmful. Rolling back this rule would cost states, tribes, and federal taxpayers up to \$14 million annually in royalty revenues as a result of uncontrolled venting, flaring, and leaking. Overall, the blocking the BLM Methane rule would forfeit millions of dollars of benefits – including reduced public health costs and industry savings from the recovery and sale of natural gas – over the next decade.

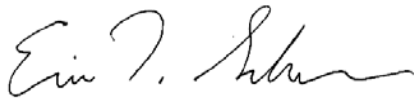
- The House-based bill also would block EPA from implementing the “Methane Rule,” the first-ever limits on methane pollution from new sources in the oil and natural gas sector. Oil and natural gas operations – production, processing, transmission, and distribution – are the largest single industrial source of methane emissions in the U.S. The Methane Rule is expected to prevent the emission of 300,000 tons of methane in 2020 and 510,000 tons in 2025. The controls required by the rule are also expected to reduce emissions of smog-forming VOCs, and hazardous air pollutants, including benzene and formaldehyde. EPA’s analysis of the costs and benefits of the rule, including the revenues from recovered natural gas that would otherwise be vented, determined that the rule would result in a net benefit estimated at \$35 million in 2020 and \$170 million in 2025.
- The House-passed bill would deny funding to EPA to “prepare, propose, or promulgate any regulation or guidance that references or relies on the analysis” of the social cost of carbon contained in several technical support documents issued by the Interagency Working Group on Social Cost of Carbon between 2010 and 2016, and revised draft guidance issued by the Council on Environmental Quality in December 2014, thereby blinding the agency entrusted with protecting the nation’s environment to the increasing economic damage caused by climate change.
- The House-passed bill would prohibit EPA from applying its “Phase 2 rules” on greenhouse gas emissions standards for medium and heavy-duty trucks to “glider kits” and classifying glider vehicles as “new vehicles.” According to EPA, glider vehicles – heavy-duty trucks that are built by pairing a new chassis with an old diesel engine and transmission – irresponsibly prolong the use of outdated, dirty diesel engines that emit 20 to 40 times more pollution than other new trucks containing cleaner engines. EPA estimated that gliders sold in a single year would generate pollution over their lifetime that could result in between 350 and 1,600 premature deaths related to particulate emissions, and that the Phase 2

rules would generate between \$1.5 billion and \$11 billion in monetized benefits associated with reduced particulate emissions. The Senate bill expresses concern about EPA’s rulemaking to classify “Glider kits” as new motor vehicles, and urges the Agency to expedite its reconsideration of the rule. This concern conflicts with the facts and law: if glider emissions remain unchecked, they will constitute one-third of the truck fleet emissions of nitrogen oxides in the U.S. – gases that result in harmful smog and acid rain. We believe that the Agency should affirm the Phase 2 rules and regulate glider vehicles the same way that other new vehicles are regulated in order to ensure that older, dirtier engines are phased out and air quality continues to improve.

* * *

Citizens of our states and across the country need EPA to play a strong and committed role in protecting their health and that of their environment. We firmly believe that, if adopted, the deep budget cuts to core EPA programs and anti-environmental riders, as currently proposed by both the House and Senate bills, will lead to more pollution of our air, water, and communities, and an accompanying increase in damage to public health. The deep and damaging budget cuts and anti-environmental riders that the House-passed budget bill and the Senate Appropriations Committee Chairman’s budget propose, if adopted, would profoundly undermine EPA and its vital mission of protecting public health and the environment. We strongly urge Congress to reject that approach and instead pass a budget for EPA that fully funds its programs and omits any anti-environmental riders.

Sincerely,



ERIC T. SCHNEIDERMAN
Attorney General of New York



XAVIER BECERRA
Attorney General of California



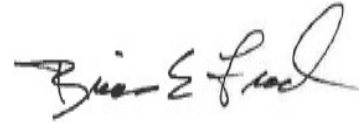
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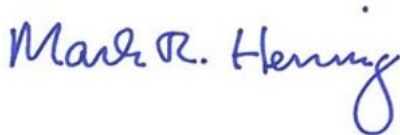
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Rodney Frelinghuysen, Chairman, House Committee on Appropriations
Nita Lowey, Ranking Member, House Committee on Appropriations