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SENATE
STATE OF COLORADO
DENVER

July 20, 2020

Docket ID No. EPA-HQ-OAR-2020-00044

RE: Increasing Consistency and Transparency in Considering Benefits and Costs in the Clean Air Act Rulemaking Process

The Environmental Protection Agency's proposed rule governing how cost-benefit analyses (CBA) are conducted and applied when imposing regulations under the Clean Air Act represents one of the most meaningful reform actions in recent memory.

Two hundred years ago, Chief Justice John Marshall declared, "...the power to tax is the power to destroy."

https://www.ourdocuments.gov/print_friendly.php?flash=false&page=&doc=21&title=McCulloch+v.+Maryland+%281819%29

The same can be said of regulation. In recent years, government agencies have gone a step further and acted as if the power to regulate is tantamount to an obligation to destroy. Red tape, duplication, and litigation have created a regulatory environment that has become a weapon for activists and lawyers and a headache for businesses of all kinds, including farmers and ranchers. Regulatory overreach and the uncertainty that comes with it drives up costs that average citizens and consumers ultimately shoulder in the form of high prices and sluggish job creation.

I commend EPA Administrator Wheeler for identifying the dysfunction in the CBA process and resolving to address it. The failure of offices within the agency

https://www.epa.gov/sites/production/files/2019-05/documents/memorandum_05_13_2019_increasing_consistency_and_transparency_in_considering_benefits_and_costs_in_rulemaking_process.pdf

to use the same language, standards and procedures regarding CBA underscores how confusing and arbitrary the process has become for the businesses affected by the regulations. But this is only the tip of the iceberg.

After 40 years, policymakers have not been able to establish clear metrics for costs and benefits and transparent procedures for providing public input. Every step in the process is an invitation for environmental activists to go back to square one. Delay often translates into stalled or cancelled development and economic activity that would benefit workers and their families. In essence, the regulatory process bends toward curtailing economic activity. This is unsustainable as the population increases. The demand for manufactured products, food, and infrastructure will continue to collide directly with a regulatory environment designed to thwart our capacity to meet that demand.

I have long been concerned that federal rules and regulations have been put in place without any thought to the impact they would have on the livelihoods of thousands of people. This was illustrated by the Waters of the U.S. rules https://www.coloradopolitics.com/coronavirus/trump-environmental-emergency-order-stirs-up-colorado-advocates/article_6f3d7890-a6b2-11ea-9dd3-370cfd51e00c.html that created a huge burden for farmers and ranchers in Colorado. But that far reaching statute is just one of many cases of federal regulatory presumption run amok.

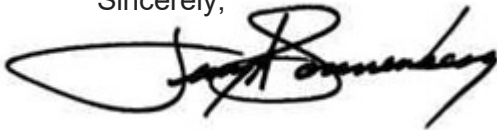
The proposed rule to address this mess is based on common-sense concepts that the EPA should prepare a cost-benefit analysis for all future significant proposed and final regulations under the Clean Air Act and the CBAs must be developed using sound science and best practices, plus additional steps to ensure a transparent procedure. These guidelines follow directly from executive orders and policy initiatives from the last two Democrats to occupy the White House, Bill Clinton https://www.reginfo.gov/public/jsp/Utilities/EO_12866.pdf?sm_au=iVVjk5TSZ7rq3JTR01TfKK3Qv3fc4 and Barack Obama <https://newrepublic.com/article/81990/obama-cost-benefit-revolution>. In that regard, Wheeler is not making an abrupt departure from past policies but instead making the law function as intended and consistent with relevant rulings from the U.S. Supreme Court.

In a 2015 case involving the regulation of mercury emissions from power plants the late Justice Antonin Scalia <https://www.supremecourt.gov/opinions/14pdf/14-46_10n2.pdf> explained that the EPA had to consider relevant factors in imposing regulations – and costs of \$10 billion or more would certainly qualify as a relevant factor. As it stands, regulations, taken together, cost American businesses close to \$2 trillion a year <https://www.uschamberfoundation.org/smallbizregs/>, according to a Chamber of Commerce study. With the EPA's vast reach over every industry, <https://www.epa.gov/regulatory-information-sector> the American people have the right to know the net benefits of such massive costs. The proposed rule will enable us to better understand the trade-offs and ensure that regulations are warranted and fairly applied.

It might be impossible to eliminate completely the tension between regulator and regulated. Free enterprise by its nature is resistant to the reins of government. The current state of affairs, however, exacerbates that tension and calls into question the legitimacy of government actions. If the government finally establishes clear, science-based means for evaluating costs and sets up a review process that is orderly, transparent and inclusive of all public input, as the rule envisions, then private sector interests and the public more broadly will have more trust in policymaking.

Requiring a cost-benefit analysis be completed before imposing any further regulation will help the federal government to become more of a partner, rather than an adversary, to American agriculture, manufacturing, transportation and other sectors. That is the only way to ensure America will grow and prosper economically while preserving sound environmental standards that are created rationally and implemented in a balanced fashion.

Sincerely,

A handwritten signature in black ink, appearing to read "Jerry Sonnenberg". The signature is stylized with a large, sweeping initial "J" and a long, horizontal flourish extending to the right.

Jerry Sonnenberg
Colorado Senate