We are witnessing a U.S. Administration and U.S. Environmental Protection Agency (EPA) leadership that appear to be at war with the agency itself, and with the core values that have guided EPA under both Republican and Democratic administrations. The resulting harm to communities and families across the nation who depend on clean air and clean water could be deep and irreparable.
For the first time in decades, we are witnessing an administration and EPA leadership that appear to be at war with the agency itself, and with the core values that have guided EPA under both Republican and Democratic administrations. The resulting harm to communities and families across the nation who depend on clean air and clean water could be deep and irreparable.

In this article, we review recent developments that illustrate why we are so alarmed for EPA as an institution—and why we believe the last few months are a wake-up call for all Americans to demand that EPA leadership restore the agency's commitment to the protection of human health and the environment, through transparent processes guided by science and the law. More than any discrete policy intervention, a return to normalcy at EPA must be the agency's top priority.

Subordinating Human Health and the Environment to Polluter Interests

Although Scott Pruitt has only been EPA Administrator for a few months, The New York Times recently identified more than 30 health and environmental protections that he has moved to delay or roll back. Often, these deregulatory measures have been taken after closed meetings with the affected industries, with no or minimal public notice and comment, and with no consideration given to the impacts these actions will have for human health.

Given President Trump's statements on the campaign trail suggesting he would dismantle EPA, these developments are not surprising, but they are nonetheless shocking. Further, they are qualitatively different from the routine shifts in priorities and policy that normally accompany a change in administration.
The first few months of the Trump Administration have witnessed an unprecedented assault on bedrock protections for human health and the environment.

has taken to suspend standards for emissions of methane and volatile organic compounds (VOCs) from new and modified oil and gas facilities under Section 111(b) of the U.S. Clean Air Act—actions that already led to an early legal setback for Administrator Pruitt in the U.S. Court of Appeals for the D.C. Circuit. Promulgated in June 2016, these standards require that owners and operators of well sites and compressor stations implement cost-effective measures, already required in major energy-producing states like Colorado and Wyoming, to detect and repair leaks. Even though oil and natural gas facilities are the nation’s largest industrial source of methane and contribute to harmful ground-level ozone pollution in many areas of the country, the Administrator summarily imposed a 90-day stay of these and other requirements two days after the June 3, 2017 compliance deadline. This retroactive stay was issued without notice and comment, and was announced just weeks after the Administrator met behind closed doors with the board of directors of the American Petroleum Institute. On June 13, EPA followed this action by issuing two proposed rules that would extend the stay for a total of two years.

Remarkably, the Administrator failed to even assess, much less give any weight to, the climate and public health impacts of these actions—even though the 90-day stay alone would affect more than 18,000 wells nationwide and cause substantial additional methane and VOC emissions at the height of the summer ozone season. The only basis cited by the Administrator for these stays was a desire to reconsider aspects of these requirements that he asserted had not been subject to notice and comment—an assertion that a three-judge panel of the D.C. Circuit concluded was “inaccurate and thus unreasonable,” requiring that the entire 90-day stay be vacated.

This incident is part of a far larger pattern. On May 31, EPA issued a similar 90-day stay of stronger emissions standards for new and existing municipal solid waste landfills—standards that have not been significantly revised since 1996, and are long overdue for an update. Like the oil and gas stay, this action was taken without public comment and without any assessment of health or environmental impacts, and is being accompanied by a proposed rule to extend the stay. On June 28, EPA took final action—which was subsequently withdrawn—to delay the implementation of the 2015 National Ambient Air Quality Standards (NAAQS) for ozone, making the extraordinary claim that it had insufficient data to make final determinations as to which areas are in attainment. And on June 14, EPA issued a two-year delay of critical updates to accident prevention and chemical safety standards—the first such updates in over 20 years—despite EPA’s record findings that the revisions were necessary to address long-standing deficiencies in the current program, and would help mitigate or prevent the over 200 chemical safety incidents that occur each year across the nation.

Disregard for Science

Administrator Pruitt has drawn widespread condemnation—and prompted a review by EPA’s Inspector General—for his statements questioning the role that anthropogenic emissions of carbon dioxide play in causing dangerous climate change. Unfortunately, Administrator Pruitt’s contempt for science goes far beyond his statements to the press. EPA has taken several extraordinary and disturbing actions over the last few months that have the effect of withholding important scientific information from the public, curbing scientific input on agency decisions, and undermining the agency’s ability to generate useful science:

• In April 2017, EPA removed major portions of its website providing scientific information relating to climate change, including resources that had been available for almost two decades under both Republican and Democratic administrations. One of the pages removed directly contradicted Pruitt’s statements on the causes of climate change.
• In May 2017, EPA began dismissing dozens of scientists from the agency’s Board of Scientific Counselors as they completed their terms of service, despite a long agency
practice of renewing those appointments. These dismissals mean that the 68-member board will only have 11 remaining members as of September 1, crippling the Board’s ability to conduct business in 2017.

- The Trump Administration’s proposed FY 2018 budget, if enacted into law, would cut funding for the agency’s Office of Research and Development by 48 percent, and would entirely eliminate climate-related research programs. The cuts to climate programs are so extreme that three Republican former EPA Administrators have called it a “policy of willful ignorance…that is destructive of responsible government.”

- In June 2017, Administrator Pruitt announced at a board meeting of a coal industry trade association that EPA was preparing to convene rival panels of experts to debate the science of climate change—a decision that underscores the Administrator’s hostility to the established scientific consensus, and appears designed to give climate skeptics credibility that they have not been able to attain through the normal peer review process.

**Disregard for the Law**

Administrator Pruitt has also shown a disregard for our nation’s bipartisan clean air and water laws and settled judicial precedent interpreting these laws. One pointed example of this trend is his persistent questioning of EPA’s authority to regulate greenhouse gas emissions under the Clean Air Act, claiming the agency lacks the tools to address this pressing problem and that Congress has never addressed the issue. That view is flatly inconsistent with multiple decisions of the U.S. Supreme Court, all of which have affirmed EPA’s authority to address this harmful air pollution under the Clean Air Act.

Administrator Pruitt’s alarming steps to roll back other public health and environmental safeguards, some of which are described above, evince an equally disturbing disregard for the rule of law. The D.C. Circuit’s recent decision vacating the Administrator’s 90-day suspension of oil and gas protections, for example, found that EPA’s action was unauthorized and methodically demonstrated that each of the justifications presented for the stay were contradicted by the record. As of this writing, EPA has proposed to extend this unlawful suspension for an additional two years, without citing any legal authority to support such an action or providing any basis beyond an open-ended intention to reconsider the standards.

EPA’s disregard for the law even extends to implementing badly needed reforms to the Toxic Substances Control Act (TSCA) that were enacted just last year on a broad bipartisan basis. In June 2017, the Administrator signed a final rule that narrowly interpreted the scope of chemical risk evaluations in a manner that is contrary to the statutory text, and that departed without notice from the prior administration’s proposed interpretation.

**Lack of Transparency and Public Input**

The lack of public input on decisions to suspend health protections is emblematic of a broader lack of transparency Administrator Pruitt has brought to his role as head of EPA. There is a longstanding tradition—across Republican and Democratic administrations alike—that EPA operate transparently to enhance public confidence in the agency’s decision-making process. In 1983, EPA Administrator William Ruckelshaus authored the “Fishbowl Memo,” which recognized the critical importance of public transparency and recommended that appointment calendars be publicly available. The memo further underscores that “EPA will not accord privileged status to any special interest group, nor will it accept any recommendation without careful examination.”

Administrator Pruitt has largely ignored these conventions, shielding from public view his meetings with outside organizations. When those meetings have been disclosed through Freedom of Information Act requests, they reveal that the Administrator’s calendar has been “filled” with meetings with officials from industries that EPA regulates.

The Administrator has demonstrated a similar lack of transparency and openness in his decision-making process. For instance, he withdrew an action designed to gather more information on pollution from the oil and natural gas sector just one day after the Attorneys General of Texas, Oklahoma, and other states requested that he do so. When the Administrator transmitted a letter to municipal solid waste industry officials apprising them of his intent to reconsider EPA’s landfill standards, he only made it available to the public weeks later.

Where the Administrator has sought public input on his decisions, it has been hurried. For instance, the Administrator provided a brief 30-day comment period in response to Executive Order 13777—directing agencies to broadly review existing regulations that can be repealed, replaced, or modified—that ended on the same day that EPA offices were required to submit their regulatory reform recommendations to an agency “task force.” Even though the public weighed in overwhelmingly in support of EPA’s clean air and clean water safeguards, it is still unclear whether or how this public input was ever considered in EPA’s regulatory review.

**Undermining Institutional Capacity**

The Trump Administration and EPA Administrator Pruitt have...
put forward a budget that would cut EPA's funding by 31 percent, eliminate nearly 50 of the agency's programs, and eliminate 3,200 EPA staff positions. In June, EPA moved to begin downsizing its workforce by announcing it would buy out 1,200 employees (approximately 8 percent of the agency's workforce) over the summer of 2017. If enacted into law, the Administration's cuts would severely undermine programs to ensure Americans have clean air and water and to promote climate protection. Among other things, they would inhibit the agency's ability to enforce our nation's health and environmental laws and would structurally harm EPAs ability to perform its core functions going forward. As President George W. Bush's first EPA Administrator, Christine Todd Whitman, observed, "the unprecedented budget cuts to the EPA would pose a great danger to Americans' lives if enacted."

Even if Congress does not ultimately enact budget cuts at the scale the Administration has requested, the proposed budget is a stark demonstration of the Administration's intentions to dismantle EPA—and an alarming sign that vital safeguards and institutional functions are now at risk.

EPA's history is one forged from bipartisan congressional action, recognizing the critical importance of protecting public health and the environment. EPA has faithfully carried out these laws across Republican and Democratic administrations, carefully guided by science, the law, and a commitment to transparent and participatory policymaking. This time-tested approach has secured deep pollution reductions and improvements in environmental quality, protecting families and communities, while the American economy has continued to thrive. Recent developments, however, flout these bipartisan laws and disregard this longstanding approach. EPA must return to the core values that have faithfully guided the agency over the last several decades to ensure the agency can effectively address the serious threats to human health and the environment that we face as a nation going forward.

References

1. See, e.g., The Fox News GOP Debate Transcript, Annotated, The Washington Post (Mar. 3, 2017) ("Department of Environmental Protection. We are going to get rid of it in almost every form. We're going to have little tidbits left, but we're going to take a tremendous amount out."); available at https://www.washingtonpost.com/news/fox/wp/2016/03/03/the-fox-news-gop-debate-transcript-annotated/?utm_term=.661aded1617e.
5. Clean Air Council v. EPA, supra n. 3.