

Questions for the Record for Dr. Nancy Beck
U.S. Senate Committee on Commerce, Science, and Transportation
“Nominations Hearing”
June 16, 2020

Questions submitted by the Hon. Maria Cantwell to Dr. Nancy Beck, Nominated to be Chair the Consumer Product Safety Commission.

Failure to Respond to Pre-Hearing Questions. On May 13, 2020, I sent you letter, attached for reference, requesting further information related to your work on chemical regulation and other health issues in your positions at the Environmental Protection Agency, the National Economic Council, and the Office of Management and Budget (OMB). I asked for an answer to the letter no later than May 27, 2020, but to date have not received any response from you. In fact, the only update the Committee has received was your “Five Day Letter” stating that you are now detailed to OMB as a “Senior Advisor” to the Director but not providing further detail.

Question 1. Please provide a complete response to my May 13, 2020, letter including separate answers to each question. For this, and any other question you refuse to answer, please provide a basis for the refusal including any specific privilege you are invoking and who, if anyone directed you to invoke such privilege.

Answer.

Please see Attachment A.

COVID-19 Guidance. On May 8, 2020, the Associated Press published a story revealing emails where you apparently used your position at the NEC to have OMB block the release of guidance from the Centers for Disease Control and Prevention (CDC) regarding guidance to states and localities on reopening measures in response to the COVID-19 outbreak.

Question 1. What was your exact role in terms of editing, publishing, and producing the CDC’s “Guidance for Implementing the Opening Up America Again Framework?”

Answer.

I did not block the release of the guidance. My role was to coordinate interagency review, a function that OIRA performs for thousands of regulatory actions every year. As noted in my email, the document was being reviewed by the Coronavirus Task Force principals. I am not and was not a member of the task force.

Question 2. Did you directly or indirectly work to reduce the original 60-page document to less than 20 pages? Please answer this question YES or NO.

Answer.

No.

Question 3. After CDC was finally allowed to publish the shorter and less detailed version of the COVID-19 guidance document, it turned out that it was edited, yet again, by the White

House to remove direction to limiting choirs at religious services, despite unambiguous evidence showing that a choir meeting in Skagit County, Washington was responsible for infecting 53 of the 61 people who had been present at one of the choir practices. Did you direct or in any way participate (including as part of any interagency decisional process) in the direction to CDC to remove guidance on ways to keep COVID-19 infections down when resuming church and other religious services? Please answer this question YES or NO.

Answer.

No.

Question 4. Please detail any other efforts, actions, or activities you have taken at the EPA, NEC, or OMB related to COVID-19 activities (including any guidance, policies, or spending decisions).

Answer.

At OMB, I help coordinate review of the high-priority CARES Act and other stimulus measures rules and guidance. I did not work on the response efforts to the COVID-19 pandemic while I was at NEC or EPA.

PFAS Regulation. On June 22, 2020, the EPA issued a final rule implementing a requirement from section 7321 the FY 2020 National Defense Authorization Act that required the addition of 172 per- and polyfluoroalkyl substances (PFAS) to the Toxics Release Inventory (TRI). The final rule, however, does not classify PFAS as “chemicals of special concern, and contains a loophole that allows companies to avoid reporting releases of less than 100 pounds if PFAS are present in the mixture, as long as any single PFAS does not make up more than one percent of that mixture.

Question 1. Were you involved in the drafting, revision, or any other interagency deliberation involving this rule? If so, please detail your involvement.

Answer.

No. I had no involvement in the drafting, revision, or any other interagency deliberation involving this rule.

Question 2. Do you support the exception that allows companies to avoid reporting releases of less than 100 pounds if PFAS are present in the mixture, as long as any single PFAS does not make up more than one percent of that mixture?

Answer.

As I had no involvement in the drafting, revision, or any other interagency deliberation involving this rule, I have not read the final rule and its underlying analysis and justification.

Perchlorate. On June 17, 2020, the EPA published a final decision not to impose any limits on perchlorate, a toxic chemical compound found in rocket fuel that contaminates water and has been linked to a number of serious health impacts, including fetal and infant brain damage. A

number of media reports indicate that this decision was sent to OMB for review shortly after you began your latest detail to the OMB Director as a “Senior Advisor.”

Question 1. Were you involved in the drafting, revision, or any other interagency deliberation involving this decision? If so, please detail your involvement.

Answer.

No. I was not involved in drafting, revision or any other interagency deliberation regarding this decision.

Question 2. Do you support the decision not to impose any limits on perchlorate?

Answer.

As I had no involvement in the drafting, revision, or any other interagency deliberation involving this rule, I have not read the final rule and its underlying analysis and justification.

Support for Additional CPSC Authority. Last December, I released a report detailing how the U.S. Consumer Product Safety Commission (CPSC) addressed three recent product safety hazards. These included jogging strollers that had wheels fall off during use causing serious injuries, reclined infant sleepers associated with over 30 deaths, and residential elevators with gaps in the doors that have caused a number of injuries and several child deaths. While some of the problems we identified with the Commission’s handling of these incidents came from a lack of statutory authority, others stem from the failure of the Commission to use the authority it already has.

Question 1. When the CPSC receives reports of serious injuries or deaths that are associated with a defect in a consumer product, do you believe the public should be immediately informed about that product and the potential hazard?

Answer.

I believe it is important to share important health and safety information with the public as soon as possible.

Question 2. Do you support modifying section 6(b) of the Consumer Product Safety Act, which generally prohibits the release of any information about a product defect without the consent of the manufacturer, to make it easier for the public to learn of these hazards before additional injuries or deaths occur?

Answer.

I believe consumers should have important health and safety information as soon as possible. If Congress amends section 6(b), if confirmed to CPSC, I would ensure the law is followed.

Preemption of State Chemical and Product Safety Laws. As you may know, Washington has several state laws that provide state residents with additional protections against toxic chemicals, like PFAS and flame retardants in consumer products. During your time working at the American Chemistry Council (ACC), that industry group generally opposed state laws that

sought to restrict toxic chemicals. In some cases, ACC also supported federal preemption of these state laws.

Question 1. What is your position on preemption of state laws regulating toxic chemicals in consumer products?

Answer.

While at ACC, I was not involved in discussions regarding whether or not preemption of state chemical laws should occur. When it comes to preemption, if confirmed to CPSC, I would ensure that the Commission is following the requirements in the relevant statutes.

Question 2. If confirmed, will you commit to opposing the preemption of state laws that protect consumers from hazardous and toxic chemicals?

Answer.

If confirmed, I will ensure that CPSC follows the statutory requirements regarding preemption as mandated by Congress.

Questions submitted by the Hon. Amy Klobuchar to Dr. Nancy Beck, Nominated to be Chair the Consumer Product Safety Commission.

Question 1. Carbon monoxide poisoning causes over 400 deaths and 20,000 emergency room visits each year. I introduced the Nicholas and Zachary Burt Memorial Carbon Monoxide Poisoning Prevention Act with Senator Hoeven to encourage states to require carbon monoxide detectors in homes and schools and to help states carry out carbon monoxide education programs. Our bill passed this Committee in November.

Do you believe that legislation like this would be helpful in protecting Americans from carbon monoxide poisoning?

Answer.

I believe it is very important to protect the public from carbon monoxide poisonings. Educational programs and carbon monoxide detectors play an essential role in increasing awareness and decreasing poisonings. If confirmed, I would look forward to working with you and other members of the Committee on this important issue.

Question 2. Last month, Minnesota became the first state to ban trichloroethylene (TCE)—a toxic substance that is used for purposes including removing grease and in dry cleaning, which has been linked to severe health problems. Reports have noted that you helped draft rules in 2017 to allow the Environmental Protection Agency to consider only a person’s direct exposure when evaluating the risks of TCE and other chemicals, prohibiting it from considering other ways people are exposed to these substances, such as air through pollution or contaminated drinking water.

Do you believe it is sufficient to only evaluate direct exposure to toxic chemicals when there are indirect ways that these same chemicals can harm people?

Answer.

In 2016, after years of hard work, Congress took an important step when the Frank R. Lautenberg Chemical Safety for the 21st Century Act was passed. I believe Agencies must follow the requirements set forth in their implementing statutes. While I was at EPA, I worked to ensure that EPA was implementing the requirements of the statute, to ensure the highest level of protection for the public. For instance, I worked to ensure that the final rules were consistent with the high scientific standards required by Section 26 in the Lautenberg Act. The Lautenberg Act does not parse chemicals by direct or indirect exposure, but requires EPA to look at potential risks that may result for the specific conditions of use for a chemical. While I was not involved in production and release of the draft TSCA risk evaluation for TCE, according to the publicly available draft document, EPA evaluated 54 potential conditions of use for TCE and evaluated dermal and inhalation exposures related to these conditions of use.

**Written Questions Submitted by the Hon. Richard Blumenthal to Dr. Nancy Beck,
Nominated to be Chair of the Consumer Product Safety Commission.**

Blumenthal: The Consumer Product Safety Act states that “the President shall consider individuals who, by reason of their background and expertise in areas related to consumer products and protection of the public from risk to safety, are qualified to serve as members of the Commission.”

Question 1. What makes you qualified to hold this position?

Answer.

I have spent my career committed to promoting public safety through policies supported by objective and transparent scientific analysis. I am a PhD toxicologist with over twenty years of applied public health experience, the majority of which was spent working for state and federal government agencies. I have led a large Federal workforce (over 1,200 FTE and a budget of \$240 Million) at EPA, and played a critical role in implementing bipartisan legislation to improve how the Federal Government ensures the safety of chemicals in commerce. In addition, I have almost a decade of experience at the Office of Management and Budget (OMB), working across administrations. As a career civil servant, I worked to establish science as an integral pillar of good regulation. I have significant expertise in risk assessment and regulatory policy, and extensive experience advancing public health. I have focused not just on the general public, but also in ensuring the protection of vulnerable populations, those who may have the greatest risks. Coupling my decades of experience with my strong understanding of the regulatory process and risk evaluation and toxicology, I have the skills and ability to be an effective leader at the CPSC.

Question 2. Given your record at EPA, which is most notable for your failure to protect workers, children, and other vulnerable populations, how will you, as Chair, lead the agency to fulfill its mission to protect consumers?

Answer.

I disagree with the premise your question. During my time at EPA, I helped to protect millions of Americans from the risks of hazardous chemicals. If confirmed to the Commission, I will make it a priority to ensure that the CPSC takes appropriate and timely action to protect the public from risks. I will work collaboratively with the other Commissioners and CPSC staff experts to make sure the Commission is using the best available scientific information and data to inform timely decisions to protect the public. I will also ensure that CPSC has the risk communication and outreach tools to protect our most vulnerable populations considering the changing ways through which consumers purchase, and receive, important information regarding consumer products.

Question 3. Can you explain how you plan to prioritize and finalize the numerous standards currently under review at the CPSC?

Answer.

To address the prioritization of the numerous standards under review, if confirmed, I will first have discussions with the career staff experts and the other Commissioners to understand the

status of each standard. Armed with the necessary data and information, I will prioritize those actions that will have the greatest public safety benefit.

Blumenthal: PFAS are used in firefighting foam by civilian and military fire departments as well as in household consumer products—such as carpets and cookware—across the nation. A review from the U.S. Centers for Disease Control and Prevention outlined a host of hazardous health effects associated with PFAS exposure including cancer, liver damage, decreased fertility, and increased risk of asthma and thyroid disease.

Question 1. Do you have any concerns about the use of PFAS in a wide variety of consumer products that lead to high levels of human exposure?

Answer.

Yes. As part of a stewardship plan put in place by EPA in 2006, there has been a significant decrease in the manufacturing of certain PFAS chemicals. As a result of this phase out, there has been a significant decrease in the levels of some PFAS chemistries in human blood samples. However, due to the persistence of these chemistries and potential human health risks, as you mention, concerns still exist.

Question 2. If confirmed, what is your plan for how the CPSC will use its authority to remove PFAS from household items to protect the public from health threats posed by PFAS?

Answer.

As with any potential hazard in household items, or any consumer product, I am committed to working with Commission staff experts and Commissioners to ensure that consumers and the public are protected from unreasonable risk. If confirmed to CPSC, I will ask the Commission to inventory consumer products that are known or suspected to contain PFAS. I will be happy to work with you as well as other members of the Committee on a CPSC response to PFAS.

Blumenthal: The CPSC has moved much too slowly in addressing the hazard posed by infant inclined sleep products—only engaging in voluntary recalls after dozens of additional infant deaths became public. While the CPSC unanimously voted in October 2019 to approve a new standard that would effectively ban inclined infant sleep products and require them to meet certain safety standards, it must now quickly adopt this rule.

Question 1. After how many fatalities, do you think these products should have been taken off the market? What is the threshold for a CPSC recall?

Answer.

Through its standards work, education activities, and enforcement actions, CPSC should be working to prevent deaths and unreasonable risks. I agree with you that it is important to address the hazards posed by inclined sleep products. CPSC released a proposed rule in November 2019 to address these concerns. If confirmed, I would work closely with the staff and other Commissioners to learn about this rule and to expeditiously finalize the rulemaking to prevent further fatalities.

Question 2. Do you believe that infant inclined sleep products are a category of products that can be considered safe for sleep?

Answer.

If confirmed, I will look to the CPSC staff experts to provide me with the data and scientific analysis regarding the safety of inclined sleep products as a category to inform whether these products can be considered safe for sleep. I will be happy to follow-up with you to discuss this question.

Question 3. Given your long record of blocking, weakening and delaying health protections, why should we expect that if confirmed you would quickly finalize this rule, in its current form, to prevent any more infant deaths?

Answer.

I disagree with the premise of the question. That is an inaccurate characterization of my record. My record consists of helping to ensure robust, well-supported health protections. If confirmed, I can commit to you that I will be guided by the scientific information, the data, and the law to ensure that robust protections are put in place to protect infants. I will work to ensure this rulemaking is finalized quickly.

Question 4. When it comes to advancing CPSC standards for infant sleep products, would you defer to the product manufacturers, as you have to chemical manufactures, or would you only support standards that are consistent with safe sleep best practices agreed upon by consumer advocates and pediatricians? If no, why not?

Answer.

I have never deferred to any specific group in the past. If confirmed, I would not defer to any specific group while at CPSC. I would be guided by the scientific information, the data, and the law to ensure that robust protections are put in place to protect infants.

Blumenthal: Parents who have lost a child to a tip-over have been working to establish a stronger, mandatory standard for more than a decade. Unless we pass the STURDY Act, it could take the CPSC a decade or more to finish a rule to prevent dresser tip-overs.

Question 1. Do you support the STURDY Act?

Answer.

I am concerned about the tip-overs that result from furniture, particularly dressers. If confirmed, I will work with CPSC staff experts and Commissioners to ensure appropriate action is being taken by CPSC and to evaluate the need for legislative action.

Blumenthal: The CPSC, alone among safety agencies, has a provision – Section 6(b) of the Consumer Product Safety Act – that typically prevents the CPSC from sharing product specific safety information with consumers without express permission from the company in question. It is often stated that this delays consumers from getting vital information they could use to keep

their families safe- and maintains the status quo- so families keep using a product that the CPSC and the manufacturer know pose a hazard.

Question 1. In order to prevent harm or even death to children and toddlers, will you ensure that the CPSC does not restrict the disclosure of information more than is required by statute?

Answer.

If confirmed, I will not restrict the disclosure of information more than is required by statute.

Question 2. Do you think Section 6(b) hinders the agency's safety mission?

Answer.

As directed by Congress, Section 6(b) has always been part of CPSC's implementing statute. As I am not at the CPSC, I am unable to evaluate Section 6(b)'s impact on the agency's safety mission. If confirmed, after conducting such an evaluation, I would be happy to discuss this topic with you and other Committee members.

Question 3. Do you support the CPSC only restricting the disclosure of information about a product or company to no greater an extent than required by statute?

Answer.

If confirmed, I will not restrict the disclosure of information more than is required by statute.

Blumenthal: In early May, there were reports about the White House burying detailed guidance by the CDC to help states and localities safely re-open during the COVID-19 pandemic. While the White House and CDC have claimed that the head of the CDC had not given final approval on this document, the Associated Press obtained emails contradicting that assertion including one from you telling the CDC that its guidance document on reopening the country was still under review.

Question 1. Please describe with specificity what other decisions and policy discussion on COVID-19 have you been involved with, whether or not you were the final decision-maker.

Answer.

At OMB, I help coordinate review of the high-priority CARES Act and other stimulus measures, rules, and guidance. I am not a decision-maker on any items related to COVID-19.

Blumenthal: During your recent tenure at EPA, you refused to finalize a commercial ban on paint strippers containing methylene chloride. The proposed ban was set for finalization when you took charge of the Office of Chemical Safety, but was delayed for years, and during that time, at least four more people died while using these toxic paint strippers.

Question 1. Do you believe the chemical methylene chloride poses a health risk to consumers and to workers?

Answer.

Yes. While I was at EPA, the Agency put in place a final rule that banned all manufacture, processing, and distribution of methylene chloride, to and by retailers to consumers for paint and coating removal. The acute fatalities that were caused by methylene chloride were tragic. By banning distribution to consumers, EPA removed methylene chloride from the big box stores and similar hardware and paint stores where it was being purchased. Many retail outlets stopped selling these products even before the rule was finalized.

Question 2. Why have you minimized concerns about the toxicity of this chemical? And why have you failed to finalize the proposed ban on commercial sales and use, when EPA found a) that workers are at much greater risk of exposure and harm from methylene chloride in paint strippers and b) that consumers are still also at risk from the commercial sales and use that you have failed to take action on?

Answer.

EPA is addressing these uses following the process set out in the Lautenberg Chemical Safety Act. In June 2020, EPA released the final risk evaluation for methylene chloride. The final risk evaluation identifies unreasonable risks to workers, occupational non-users, consumers, and bystanders from methylene chloride exposure under 47 conditions of use. The next step in the process required by TSCA is for EPA to address these risks.

Question 3. What assurances have you sought from companies that continue to make methylene chloride available to consumers to make sure their products do not lead to anymore unnecessary deaths?

Answer.

Companies are required by law to adhere to the ban and are subject to EPA enforcement.

Blumenthal: In 2015, Courts vacated the CPSC safety standard to prevent the sale of unsafe magnets, allowing them to pose an ongoing threat to children. That is why I introduced the *Magnet Injury Prevention Act of 2019*, which would reinstate the CPSC's rule to ban certain small, high-powered magnet sets.

Question 1. Do you support the Magnet Injury Prevention Act and efforts to resurrect the CPSC ban on high-powered magnets that we know can save children from harm?

Answer.

If confirmed, I will work with CPSC staff experts and Commissioners to evaluate Commission actions to address these risks and whether legislation is needed.

Question 2. Do you agree that government regulation is necessary, if not critical, in protecting children from dangerous consumer products, such as high-powered magnets?

Answer.

I do believe that regulation is an important tool and will work with the Commission staff and other commissioners to determine how best to address the very serious risk from high-powered magnets.

Blumenthal: In 2013, California updated its furniture flammability standard – TB117 – to ensure fire safety from the most common sources of furniture fires without the use of toxic flame retardant chemicals. The updated standard is known as TB 117-2013. You were the Director or Regulatory Science Policy at the American Chemistry Council at the time the ACC was actively opposed to the update to California’s standard. Revising the California standard has been a catalyst for furniture manufacturers to move away from using flame retardants in their furniture and for California and other states to ban the use of flame retardants in certain categories of consumer products. ACC opposed the laws enacted in California and Maryland banning the use of flame retardants in furniture, children’s products, and mattress foam. The CPSC has also acted to restrict the use of organohalogen flame retardants (OFRs). The CPSC granted a petition by organizations including the International Association of Fire Fighters, the American Academy of Pediatrics, the National Hispanic Medical Association and the Learning Disabilities Association of America to enact a ban on the use of OFRs in four consumer product categories: children’s products, mattresses, residential furniture and the outer cases of TVs and other electronics. The CPSC has initiated the first steps toward enacting the ban. The CPSC also adopted Guidance published in September 2017 advising consumers, product manufacturers and retailers to avoid, buying, selling or using OFRS in these product categories. The ACC strongly opposed both the petition and the guidance while you were the Director of Regulatory Science Policy. In October 2015, the [American Home Furnishings Alliance formally petitioned the CPSC to make TB 117-2013 a national furniture flammability standard](#), which CPSC denied in 2016.

Question 1. Do you support making TB117-2013 the national flame retardant flammability standard? If not, why not?

Question 2. Do you still hold the position of the ACC opposing the CPSC’s rulemaking to ban the use of OFRs in four consumer product categories?

Question 3. Given your role as the Director of Regulatory Science Policy at the time the ACC was opposing the CPSC granting the citizen petition on OFRs, will you agree to recuse yourself from any decision, action or activity that the Commission may take regarding the rulemaking to ban the use of OFRs in four consumer product categories?

Question 4. Do you commit to not interfering with, slowing, weakening, delaying or blocking the rulemaking process if confirmed to the CPSC?

Question 5. Given the ACC’s opposition to the CPSC issuing the Guidance on OFRs, will you agree to recuse yourself from any decision, action or activity that the Commission may take regarding the Guidance?

Question 6. Do you commit to not attempting to withdraw, amend, disavow, or otherwise reverse or undermine the CPSC’s position taken in the OFR Guidance?

Question 7. Should the CPSC avoid taking actions that undermine state bans on uses of flame retardants?

Question 8. Given that ACC opposed state restrictions on flame retardants while you were the Director of Regulatory Science Policy, will you agree to recuse yourself from any decision, action or activity that the Commission may take regarding flame retardants that could undermine state bans?

Question 9. Do you commit to not taking any actions that will undermine state bans on uses of flame retardants if confirmed to the CPSC?

Answers 1-9.

While I was at ACC I was not engaged in activities related to updating California's standard. At ACC I worked as a technical expert to assist in improving risk assessment methods and approaches. I have never held a position on the TB117 2013 rulemaking. If confirmed, I will seek the advice and counsel of the CPSC's Designated Ethics Official and will follow that advice on recusal obligations. As Chair, I will seek to address all regulations and guidance expeditiously.

Blumenthal: The CPSC engaged in a 10-year process to examine the health effects and prohibit the use of certain plasticizer chemicals known as phthalates, following the requirements of the Consumer Product Safety Improvement Act of 2008. The law required the CPSC to appoint a panel of scientific experts, called a Chronic Hazard Advisory Panel or CHAP, to look at the science and determine whether it was necessary to ban the use of certain phthalates in toys and children's products to ensure a "reasonable certainty of no harm." The National Academy of Sciences helped the CPSC select the science panelists to serve on the CHAP. The CHAP's final report recommended that the CPSC ban certain phthalates from use in toys and children's products, based in particular on the scientific evidence that exposure to phthalates was associated with birth defects in males, including infertility, decreased sperm count, and malformation of the penis. In response, while you were the Director of Regulatory Science Policy, the ACC pressed the CPSC to have the CHAP's final report "peer-reviewed" by the White House Office of Management and Budget (OMB), where you used to work. Nothing in the Consumer Product Safety Improvement Act required the CPSC to have the CHAP report reviewed and while agencies sometimes seek peer review of their science, I'm unaware of any agency considering OMB review to constitute "peer review." Moreover, the CPSC is an independent Commission whose work is not subject to review or approval by OMB.

Question 1. Were you involved in developing the ACC's strategy of pressing the CPSC to have its expert science report reviewed by OMB?

Answer.

No. At ACC, I worked on improving cross-cutting risk assessment methods and approaches. I did not work for the ACC panel that was focused on phthalates.

Question 2. How can we be sure that if you are confirmed you will respect and protect the independence of the CPSC, and follow the laws as written by Congress?

Answer.

If confirmed, I will be guided by the scientific information, the data, and the statutory requirements of CPSC, including the Commission's status as an independent agency, to ensure that robust protections are put in place to protect the public, including vulnerable populations.

Question 3. Given your role as the Director of Regulatory Science Policy at the time the ACC was opposing the rulemaking banning the use of certain phthalates in toys and other children's

products, will you agree to recuse yourself from any rulemaking or other Commission action that may be required if the phthalates ban is remanded to the CPSC?

Answer.

If confirmed, regarding the rulemaking on phthalates in toys and other children's products, I will seek the advice and counsel of the CPSC's Designated Ethics Official and will follow that advice.

Question 4. How can we be sure that if you are confirmed you won't work to reverse the CPSC's previous decision – which was based on the peer-reviewed science report that was mandated by Congress – and simply impose the policies that you developed and advocated while at the ACC?

Answer.

If confirmed, I will be guided by the scientific information, the data, and the statutory requirements of CPSC to ensure that robust protections are put in place to protect the public, including vulnerable populations.

Questions submitted by the Hon. Edward Markey for Dr. Nancy Beck, Nominated to be Chair of the Consumer Product Safety Commission.

Markey: Trichloroethylene, or TCE, is a chemical known to cause cancer as well as damage to the brain, kidneys, and immune system. Yet the Environmental Protection Agency (EPA) is ignoring the risks that TCE poses to infants and children by refusing to set appropriate limits that would protect infant health.

Question 1. Did you review the TCE draft risk evaluation during the interagency review process? If yes: Did you provide any comments on EPA's decision not to rely on fetal heart malformations as the most sensitive endpoint for assessing the risks posed by TCE? Please provide the dates and details of your involvement with the TCE draft risk evaluation. Please describe whether this work was part of your position at the EPA, at the Office of Management and Budget (OMB), as part of your detail to the National Economic Council (NEC), or in multiple roles.

Answer.

While I was at EPA, the TCE scope and problem formulation documents were released and I participated in their development. However, the draft TCE risk evaluation was released while I was on detail to NEC. I did not participate in the development of individual drafts while at EPA.

As part of the development process of the risk evaluations, EPA conducts an interagency review and the draft document was shared with many Agencies, including OMB and NEC. EPA made all determinations regarding what comments were accepted, rejected or otherwise addressed. I had no decision-making authority over this document.

At OMB, I have not been engaged in any TCE reviews.

Question 2. Recent reporting in the online journal Reveal stated that you and others under your supervision re-wrote portions of the EPA risk assessment for TCE to remove references to a linkage between TCE and fetal heart defects.¹ Do you agree or disagree with the statements in this article? If you disagree, please explain any disagreement in detail.

Answer.

I disagree. I had no decision-making authority over this document, and I did not supervise anyone that contributed to this review. EPA controlled what was in this document and EPA made the determinations regarding what comments from interagency reviewers were accepted, rejected or otherwise addressed.

Question 3. Please identify any work, consultation, or direction you provided to the U.S. Department of Defense (DOD) as part of its process to establish a new occupational exposure

¹ Elizabeth Shogren, *EPA scientists found a toxic chemical damages fetal hearts. The Trump White House rewrote their assessment*, Reveal (Feb. 28, 2020), <https://www.revealnews.org/article/epa-scientists-found-a-toxic-chemical-damages-fetal-hearts-the-trump-white-house-rewrote-their-assessment/>.

limit (OEL) for TCE, including in what role (at the American Chemistry Council, EPA, OMB, NEC, other, or in some combination of roles) that work took place.

Answer.

During my time at ACC, I worked on improving cross-cutting risk assessment methods and approaches. I did not work for the ACC panel that was focused on TCE. While at EPA, my work on TCE was related to the development of the scoping and problem formulation documents. While at EPA, OCSPP did receive a briefing from DOD on its OEL development and its systematic review approach. However, I have not done any work for DOD, neither at EPA nor NEC, nor have I provided consultation to DOD regarding TCE.

Markey: The EPA decided not to issue a protective drinking water standard for perchlorate, a chemical which has been found to cause neurological damage in utero and in infants and young children. The EPA's own flawed modeling, which underestimates the risk, shows that this decision will result in anticipated IQ losses in children: a level of 56 parts per billion is linked to a two-point average decrease in IQ. This decision not to regulate this chemical goes directly against the recommendation of the American Academy of Pediatrics and it contravenes a 2018 court order, which requires a final standard for this dangerous chemical.

Question 1. Did you have any input into or review the agency's potential actions with respect to the perchlorate decision, or the models or studies used to estimate risk, including the question of whether any IQ-point loss is acceptable? If yes, please provide the dates and details of your involvement, including in which role and what capacity you worked on this proposal.

Answer.

No.

Markey: On October 31, 2017, EPA Administrator Scott Pruitt signed what is known as the "Pruitt Directive," which declared that academic scientists receiving research grants from the EPA could no longer serve on the EPA's Science Advisory Panels. The Pruitt Directive is almost identical to legislation that had been introduced in the House of Representatives several times, called the Science Advisory Board Reform Act. Those bills first appeared and were supported by the American Chemistry Council while you were the ACC's Director of Regulatory Science Policy. At least three lawsuits were filed to overturn the Pruitt Directive. Two of those cases were successful, with the courts finding that the EPA offered no basis to support its notion that academic research scientists and grant recipients are somehow "financially conflicted."

Question 1. Were you involved in the discussions, preparation and/or drafting of the Pruitt Directive? If yes, please describe your involvement in detail.

Answer.

No.

Question 2. Were you involved in any way in the development of ACC's policies, testimony and statements in support of the Science Advisory Board Reform Act? If yes, please describe your involvement in detail.

Answer.

Throughout my career, predominantly as part of my civil service work, I have observed many Science Advisory Board (SAB) in-person meetings and teleconferences and have read many SAB reports. As such, I shared with ACC colleagues my knowledge of the SAB report development process. This includes information regarding the multi-step process for the nomination of experts, the panel formation process, and public involvement in the process. This information is all publicly available on the SAB webpages. I had no other involvement in the development of the ACC's policies, statements or testimony in support of that Act.

Question 3. Were you involved in the court cases challenging the Pruitt Directive in any way, including developing the arguments, reviewing the briefs, or engaging in any discussions in support of the EPA's position? If yes, please describe your involvement in detail.

Answer.

No.

Question 4. Do you believe that academic research scientists who receive research grants from EPA are "financially conflicted" and therefore should not be allowed to serve on Science Advisory Panels? If yes, please explain your view. If no, did you ever communicate your disagreement with that policy to anyone at EPA, or at the ACC, and, if so, is there any record of your dissenting view?

Answer.

I have always supported the National Academies (NAS) Policy on Committee Composition and Balance and Conflicts of Interest (NAS, 2003). This Policy notes that committees should not be compromised by issues of bias and lack of objectivity and states that there is a way to balance biases such that they do not disqualify experts who are necessary due to their expertise. The Policy also notes that committees should not be compromised by any significant conflicts of interest. The Policy describes the term "conflict of interest" to mean "any financial or other interest which conflicts with the service of the individual because it (1) could significantly impair the individual's objectivity or (2) could create an unfair competitive advantage for any person or organization. Except for those situations in which the institution determines that a conflict of interest is unavoidable and promptly and publicly discloses the conflict of interest, no individual can be appointed to serve (or continue to serve) on a committee of the institution used in the development of reports if the individual has a conflict of interest that is relevant to the functions to be performed".

Questions submitted by the Hon. Kyrsten Sinema for Dr. Nancy Beck, Nominated to be Chair of the Consumer Product Safety Commission.

Question 1. Under the Toxic Substances Control Act, the Environmental Protection Agency (EPA) has authority to require manufacturers and processors of products containing per- and polyfluoroalkyl substances (PFAS) to release information about exposure and manufacturing of chemical substances. 15 U.S.C. § 2607(a).

Please explain why information about exposure and manufacturing of PFAS was not required to be made public while you served in EPA's Office of Chemical Safety and Pollution Prevention.

Answer.

PFAS information is available to the public. When EPA approves a new chemical for use, including a PFAS chemical, based on the results of the evaluation, EPA can limit or prohibit the manufacture, processing and distribution in commerce of a substance. In addition, as EPA has done for more than 400 PFAS chemicals, Section 5 allows EPA to issue a Significant New Use Rule (SNUR) that requires notice to the Agency before chemical substances and mixtures are manufactured (including imported) or processed for significant new uses. The limitations put in place for each chemical, are publicly available through EPA's ChemView database. In addition to the existing PFAS significant new use designations, on June 22, 2020, EPA finalized a SNUR for the long-chain PFAS compounds.

Section 313 of the Emergency Planning and Community Right-to-know-Act (EPCRA) created the Toxic Release Inventory (TRI) Program to provide the public with information about chemical releases from facilities. On June 22, 2020, EPA finalized a rule adding 172 PFAS compounds to the TRI. This means that covered facilities that manufacture, process or otherwise use these chemicals in amounts above 100 pounds must submit annual reporting forms for each chemical. This information will all be made publicly available.

Question 2. As an Independent Regulatory Agency, the Consumer Product Safety Commission (CPSC)'s rulemaking activities do not include compliance with Executive Order 12866's cost-benefit analysis requirements. Instead, only a small subset of rulemakings conducted by the CPSC are directed to consider costs and benefits – those regulations promulgated under section 9 of the Consumer Product Safety Improvement Act (CPSIA). An important component of Executive Order 12866 is the centralized review of significant rules by the Office of Information and Regulatory Affairs (OIRA). While OIRA is not called upon to review 'significant' rules, they are required to engage on other administrative activities performed by the CPSC, especially compliance with the Paperwork Reduction Act (PRA) and the Congressional Review Act (CRA).

As the chairwoman of the CPSC, what steps will you take to improve both qualitative and quantitative assessments of proposed CPSC rules and voluntary standards?

Answer.

If confirmed, I will be guided by the scientific information, the data, and the statutory requirements of CPSC to make certain that all CPSC rules and voluntary standards are of the highest quality. I have almost a decade of experience at OMB, working in OIRA under both

President Bush and President Obama. As a career civil servant, I worked to establish science as an integral pillar of good regulation. I have significant expertise in risk assessment and regulatory policy and extensive experience advancing public health by ensuring that regulations are grounded in objective science. I am very familiar with what a good regulatory analysis looks like, both quantitative and qualitative. If confirmed, I would make it a priority to work with the CPSC staff to ensure high quality rules and standards.

Question 3. From your experience at EPA, an agency that receives significant oversight from OIRA, do you believe that OIRA engagement should move beyond actions like the CRA and the PRA to include review of CPSC cost-benefit analysis?

Answer.

Based on my experiences both at EPA and OIRA, I see the value that OIRA plays when working with agencies such as EPA. If I am confirmed, I would be happy to have further discussions with you on this topic.

Question 4. Under Section 3507(c) of the PRA, the commission of an Independent Regulatory Agency can overrule “the [Office of Management and Budget] Director’s disapproval or exercise of authority” via a majority vote. Would you be willing to exercise this power to overrule a determination of the Director that you found to be made in error?

Answer.

Consistent with the PRA authority, and working collaboratively with the other CPSC Commissioners, I would be willing to exercise this power.

Question 5. If it is determined that CPSC cost-benefit analysis requires centralized review from OIRA would it be beneficial to carry over this provision from the PRA to ensure that the commission of the CPSC has the ability to override the determination of the Administrator and preserve its status as an independent regulatory agency?

Answer.

As I am not at the CPSC and no such obligation applies to the agency, it is difficult for me to address your question. If confirmed, I would look forward to learning about how CPSC has used this authority and I would be happy to have further discussions with you on this topic.

ATTACHMENT A:

The Honorable Maria Cantwell
Ranking Member
Committee on Commerce, Science, and Transportation
United States Senate
511 Hart Senate Office Building
Washington, DC 20510

July 13, 2020

Dear Senator Cantwell,

Thank you for your letter of May 13, 2020 regarding my nomination and to serve as Chairman and Commissioner of the U.S. Consumer Product Safety Commissions (CPSC). I agree with you that the mission of CPSC is critically important. My skill set and experiences will allow me to contribute greatly to the CPSC mission to protect the public from unreasonable risks of injury associated with consumer products and to also promote the research and investigation into the cause and prevention of product-related deaths and injuries. If confirmed, I would look forward to working with CPSC's dedicated staff to fulfill this mission.

Below are responses to the questions you posed to me. I welcome the opportunity to meet with you or your staff in person, or via video or phone, to discuss any questions you may have.

1) Your Committee questionnaire and your current resume both list your current position of employment as "Principal Deputy Assistant Administrator, Office of Chemical Safety and Pollution Prevention" and "Policy Advisor, National Economic Council, Executive Office of the President." Please address the following questions:

a. What agency or entity is currently paying your salary?

The Environmental Protection Agency (EPA) pays my salary.

b. What is the official title, grade, and/or classification of that position (i.e., Schedule C or other schedule and grade, classification, and salary)

My official title is "Principal Deputy Assistant Administrator, Office of Chemical Safety and Pollution Prevention". This is an Administratively Determined position and my salary is \$170,800.

c. What is your current job location?

My current job location is in Washington DC. I am on detail to the Executive Office of the President.

d. What agency or entity are you currently required to file ethics forms (OGE and/or recusal arrangement) with?

My ethics forms continue to be filed with EPA and are shared with the Executive Office of the President.

e. Why has your detail to the NEC lasted this long?

My detail to the NEC lasted approximately 9 months.

2) Please explain, in detail, the current scope of your duties in your position with the EPA.

As Principal Deputy Assistant Administrator (PDAA), I report to the Assistant Administrator (AA), Alexandra Dunn. In this capacity, I serve as principal deputy and first assistant to the AA in the management, operation, decision-making, planning, programming, policy development and implementation, and direction of the technical and administrative aspects of the Office of Chemical Safety and Pollution Prevention (OCSPP). As noted, I have not been at OCSPP since June 2019 as I am on a detail.

3) Please explain the nature of your detail to the NEC. Specifically, what is the scope of your responsibilities?

As a detail at NEC, I served as an advisor on energy and environmental issues.

4) Please identify what work you have done, or any involvement you have had, with the Administration's response to the COVID-19 pandemic. This question specifically includes any efforts related to the COVID-19 response, including efforts to relax or suspend enforcement of laws or regulations or block guidance from any agency or entity.

Since March 28, 2020 I have been on detail to the Office of Management and Budget (OMB). I help coordinate review of high-priority CARES Act and other stimulus measures rules and guidance. In this coordinating role, I have not taken any efforts to relax or suspend enforcement of laws or regulations or block guidance from any agency or entity. I did not work on the response efforts to the COVID-19 pandemic while I was at NEC.

5) Please identify what work you have done, or your supervisory or other involvement, with regard to the Administration's efforts to address the issue of contamination by the group of chemicals collectively known as PFAS. Is the description of your role as the Administration's "point person" on PFAS policy accurate?

No. As you know, many agencies are impacted by PFAS. The White House has always played an important role in coordinating across agencies, and for PFAS, it is no different. Due to the importance of this issue, I helped facilitate this coordination across the many agencies while I was on detail at NEC. I have never been the point person on PFAS. My role was one of coordination and did not include decision making authority.

6) Please identify what work you have done, and any work you are currently involved with, regarding the EPA's draft risk evaluation for the solvent trichloroethylene (TCE). Was this work conducted as part of your position at the EPA, as part of your detail to the NEC, or both?

I am not currently involved in any work regarding EPA's draft risk evaluation for TCE. While I was at EPA, the TCE scope and problem formulation documents were released and I participated in their development. However, the draft TCE risk evaluation was released while I was on detail to NEC. I did not participate in the development of individual drafts while at EPA.

As part of the development process of the risk evaluations, EPA conducts an interagency review and the draft document was shared with many Agencies, including OMB and NEC. EPA made all determinations regarding what comments were accepted, rejected or otherwise addressed. I had no decision-making authority over this document.

7) On February 28, 2020, the online journal *Reveal* published an article titled, "EPA Scientists Found a Toxic Chemical Damages Fetal Hearts. The Trump White House Rewrote Their Assessment."² The article states that you and others under your supervision re-wrote portions of the EPA risk assessment for TCE to weaken findings showing a linkage between TCE and fetal heart defects. Do you agree or disagree with the statements in this article? If you disagree, please explain any disagreement in detail.

I disagree. I had no decision-making authority over this document, and I did not supervise anyone that contributed to this review. EPA controlled what was in this document and EPA made the determinations regarding what comments from interagency reviewers were accepted, rejected or otherwise addressed.

8) Please identify any additional work or consultation you have provided regarding TCE for any other federal agency or entity during your time at ACC, EPA, or the NEC. For the purpose of this question, your response should specifically identify any work, consultation, or direction provided to the U.S. Department of Defense (DOD) as part of its process to establish a new occupational exposure limit (OEL) for TCE, as well as copies of this work, communication, or direction to the other federal agency or entity.

During my time at ACC, I was not a lobbyist. I worked on improving cross-cutting risk assessment methods and approaches. I did not work for the ACC panel that was focused on TCE. While at EPA, my work on TCE was related to the development of the scoping and problem formulation documents. While at EPA, OCSPP did receive a briefing from DOD on its OEL development and its systematic review approach. However, I have not done any work for DOD, neither at EPA nor NEC, nor have I provided consultation to DOD regarding TCE.

² Elizabeth Shogren, *EPA Scientists Found a Toxic Chemical Damages Fetal Hearts. The Trump White House Rewrote Their Assessment*, REVEAL NEWS, Feb. 28, 2020, available at <https://www.revealnews.org/article/epa-scientists-found-a-toxic-chemical-damages-fetal-hearts-the-trump-white-house-rewrote-their-assessment/>.

9) Please identify any work you have done, either at ACC, EPA, or the NEC, involving any of the chemicals in the group collectively known as phthalates. For the purpose of this question, your response should mention any work done regarding specific individual phthalates, multiple phthalates, or the class of chemicals referred to collectively as phthalates.

During my time at ACC, I was not a lobbyist. At ACC, I worked on improving cross-cutting risk assessment methods and approaches. I did not work for the ACC panel that was focused on phthalates. While I was at EPA, certain phthalates were chosen to be part of the next set of 20 high priority chemicals and I played a role in this draft determination. In addition, while I was at EPA, EPA received a manufacturer requested risk evaluation for certain phthalates.

10) Please identify any work you have done, either at ACC, EPA, or at the NEC, involving chlorpyrifos, a pesticide that studies have found harms children's brain development and increases the risk of autism.

While at ACC I did not work on chlorpyrifos. In March 2017, EPA announced that it was rejecting the petition to ban chlorpyrifos. This decision was made before I arrived at EPA. However, while I was at EPA, the Office of Pesticide Programs (OPP) continued to evaluate the chlorpyrifos science and continued to have dialogue with researchers regarding obtaining important data sets. In July 2019, in an action signed by OCSPP Assistant Administrator Alexandra Dunn, EPA denied the objections to EPA's 2017 order denying the petition to ban chlorpyrifos. I did not work on chlorpyrifos while at NEC.

11) Please identify what work you have done, either at ACC, EPA, or the NEC, involving the group of chemicals collectively known as organohalogen flame retardants (OFRs).

At ACC, I worked on improving cross-cutting risk assessment methods and approaches. I did not work for the ACC panel that was focused on OFRs. While I was at EPA, the agency released the problem formulation, scoping document, and draft risk evaluation for the Cyclic Aliphatic Bromide Cluster. I also worked on the proposed rule on persistent bioaccumulative and toxic chemicals, which included decabromodiphenyl ether. In addition, EPA also released the 40 chemistries that were included for the next round of prioritization while I was at EPA. This list did include some flame retardants. I have not worked on OFRs while at NEC.

12) Please identify what work you have done, or your involvement, if any, with the Administration's and/or EPA's efforts to address environmental issues that fall outside the jurisdiction of the EPA Office of Chemical Safety and Pollution Prevention, including but not limited to, issues that fall within the jurisdiction of EPA's Office of Water (OW), Office of Air and Radiation (OAR), Office of Research and Development (ORD), Office of Land and Emergency Management (OLEM), and Office of Enforcement and Compliance Assurance (OECA).

As the Principal Deputy in OCSPP, as part of the standard EPA process, I did participate in internal EPA meetings regarding environmental issues. In this capacity, I would have been representing any OCSPP equities and positions, if any. Decision making authority regarding these issues resides with the leadership of the individual offices and the EPA Administrator.

13) On April 17, 2020, Ranking Member Tom Carper of the U.S. Senate Committee on the Environment and Public Works sent EPA Administrator Andrew Wheeler a letter detailing your apparent efforts to weaken EPA's proposed Significant New Use Rule (SNUR) that is designed to restrict the use of certain long-chain PFAS chemicals (including PFOA and PFOS) in products. Do you agree with the assessment of your involvement in this matter? If not, please explain in detail.

No. OMB coordinates interagency review on important Agency documents. As with all rulemakings, the agency has the ultimate pen and is the decision-maker on the rulemaking so EPA determined what was in the draft proposed rule that was released to the public.

14) Please identify what work you have done, either at ACC, EPA, or at the NEC, involving the CPSC, including any letters written to the CPSC or to any other agency, including but not limited to OMB, concerning any issue or action before or involving the CPSC.

I do not have any recollection of sending any letters to the CPSC, or any other agency, concerning any issue or action before or involving the CPSC.

15) Please provide the Committee with an accounting and documentation of all communications you have had with parties outside the government, pertaining to any work-related issue or matter, since you began your detail to the NEC. This should include any communications using any government or personal accounts or devices including phone calls, emails, text messages, or any other form of messaging, and should include communication with any individual who has a direct or indirect financial interest in matters related to the Toxic Substances Control Act (TSCA) or any other laws or policies with which you have been involved, including any matter related to PFAS, pesticides, or science and risk assessment policy. This includes not only individuals employed directly by chemical companies (including chemical manufacturers, importers, processors, distributors, and retailers), but also anyone employed by or consulting for a company, trade association, or consulting firm including but not limited to ACC, the National Association of Chemical Distributors (NACD), the American Cleaning Institute (ACI), the Household and Commercial Products Association (HCPA), and Exponent, Toxicological Excellent in Risk Assessment (TERA).

Requests related to document and communications while I was on detail at the NEC should be referred to the White House Counsel's Office.

Thank you again for your interest in my nomination to the CPSC. As noted, I would welcome the opportunity to meet with you or your staff in person, or via video or phone, to discuss any questions you may have.

Sincerely,

Nancy B. Beck, PhD, DABT