UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JAN 3 0 2020

OFFICE OF CONGRESSIONAL
AND INTERGOVERNMENTAL RELATIONS

The Honorable Harley Rouda
Chairman
Subcommittee on Environment
Committee on Oversight and Reform
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

On behalf of the U.S. Environmental Protection Agency, I am writing in response to your letter dated January 17, 2020, to Administrator Andrew Wheeler, regarding the Agency's use of ethics waivers and ethical obligations. The Agency believes the allegations stated in the Committee's letter are inaccurate.

The Committee's initial May 16, 2019 letter requested documents and information relating to ethics waivers and authorizations for each "appointee," as it is defined in Executive Order 13770. The Agency has devoted considerable time and resources to fulfill the Committee's request for these documents. The Agency responded to the Committee's request with three letters and document productions. On June 5, 2019, the Agency responded to your request with numerous ethics waivers, recusal statements, and impartiality determinations for appointees at the Agency. On August 2, 2019 and October 4, 2019, the Agency provided rolling productions with additional ethics documents.

As indicated in all of the Agency's previous letters, EPA staff have offered to provide Committee staff with answers to any questions they may have regarding the productions, and the Agency had committed to provide updates on a routine basis. The Committee's last communication with Agency staff on this inquiry was a confirmation of receipt of our most recent production. Committee staff did not contact the Agency regarding any of the concerns raised in the January 17, 2020 letter. It is concerning that the Committee chose to amplify its allegations through a press release without any communication with the Agency. In doing so, the Committee failed to ensure the accuracy of its claims or ascertain the details behind common Agency practices, which were assumed by the Committee to be inadequate or unethical.

Career EPA ethics officials did not find a basis for the litany of allegations contained in the January 17, 2020 letter. Moreover, Agency staff immediately reached out to Committee staff to gain an understanding of any factual information that may support the Committee's allegations identified in its letter.

The Agency specifically requested the names of the five individuals the Committee identified as failing to sign the pledge. At that time, Committee staff was only able to identify four individuals. Committee staff have now refused to identify the fifth individual, even though they agreed to provide the Agency with additional information to explain the Committee's allegations. Unfortunately, the Committee has now refused to provide any additional context to support any of the claims.

Upon the date of receipt of the Committee's January 17, 2020 letter, three of the four individuals identified by Committee staff in our recent phone call were not political appointees but rather Administratively Determined (AD) appointees. As you are aware, only political appointees are required to sign the ethics pledge. The EPA Ethics Office determined, and the Office of Government Ethics concurred, that AD appointees are not covered by Executive Order 13770 and therefore are not required to sign the ethics pledge. The Committee's initial May 16, 2019 letter requested documents and information relating to ethics waivers and authorizations for each "appointee," as it is defined in Executive Order 13770. One of the three AD appointees identified by Committee staff was converted to a political appointment last week. Following Agency practice, the EPA obtained the appointee's signed ethics pledge after the conversion.

Career ethics officials within the EPA's Ethics Office carefully reviewed the Committee's claims about the effectiveness of the Agency's ethics program concerning these obligations. They did not find support for these claims. Ethics requirements apply to all employees, including appointees, the moment they become an employee, regardless of the timing of issuing any recusal statement. When new appointees join the Agency, the EPA Ethics Office administers initial ethics training in person to review their obligations under all applicable federal ethics laws and regulations, specifically the Standards of Ethical Conduct for Employees of the Executive Branch, the federal conflict of interest laws, the Hatch Act, and Executive Order 13770, as applicable. For some appointees, a recusal statement is prepared to help ensure that other employees have notice of their recusals. However, these rules apply to all employees upon entry to federal service, irrespective of whether they have a recusal statement or when they submit their financial disclosure report. The Committee's claims that the EPA allowed senior Agency officials to avoid or delay meeting ethics requirements is completely false.

In the recent letter, the Committee claims that the EPA allowed officials to delay the finalizations of recusal statements for significant periods of time after joining the Agency. These allegations display a complete lack of understanding of ethics obligations and what is required under current rules or federal law. A recusal statement is a memorandum that formally notifies others of an employee's continuing ethical obligations. However, employees are subject to ethics laws and regulations from their very first day at the Agency. Employees are required to adhere to those obligations both before and after any recusal statement is finalized. Even if appointees do not have or need a signed recusal statement, the EPA Ethics Office counsels them to consult with Agency ethics officials if there are changes in their financial interests, personal or business relationships, or official duties. All appointees understand that they remain subject to the ethics rules at all times.

The EPA takes its commitment to ethics very seriously. In fact, in the beginning of FY 2019, Administrator Wheeler doubled the number of FTE in the EPA Ethics Office from 3.0 to 6.0, thus

creating the largest dedicated ethics office in the EPA's history. This action also addressed a principal recommendation from a 2017 program review by the Office of Government Ethics. As previously stated, all political appointees consult with the career ethics officials in the Office of General Counsel and have been advised about their ethics obligations. The Designated Agency Ethics Official has reviewed and confirmed the accuracy of the information contained in this letter.

In response to the Committee's briefing request, the Agency will make available the EPA's Designated Agency Ethics Official for a briefing on these matters. However, as we noted in discussions with Committee staff, even though Committee staff initially agreed to provide the Agency with additional information to explain the Committee's allegations, the Committee has now refused to provide any additional context to support the claims. The requested context and details surrounding the Committee's claims is necessary in order for the Agency to be able to adequately and appropriately brief the Committee. Should the Committee continue to refuse to provide information needed for the Agency's staff to respond to its allegations, the Committee will be setting the stage for its own continued misunderstanding about the EPA's ethics program.

Please note that the attached additional production contains documents that reveal internal Agency information. Therefore, we have added a header and footer to these documents that reads "Internal Document of the U.S. EPA; Disclosure Authorized Only to the Committee on Oversight and Reform for Oversight Purposes." Through this accommodation, the EPA does not waive any confidentiality interests in these documents or similar documents in other circumstances.

The EPA respectfully requests that the Committee and staff protect the documents and the information contained in them from further dissemination. Should the Committee determine that its legislative mandate requires further distribution of this confidential information outside the Committee, we request that such need is first discussed with the EPA to help ensure the Executive Branch's confidentiality interests are protected.

The EPA recognizes the importance of the Committee's need to obtain information necessary to perform its legitimate oversight functions and is committed to continuing to work with your staff on how best to accommodate the Committee's interests. If you have further questions, you may contact me, or your staff may contact Kristien Knapp in the EPA's Office of Congressional and Intergovernmental Relations at Knapp.Kristien@epa.gov or (202) 564-3277.

Sincerely,

Joseph A. Brazauskas, Jr.
Acting Associate Administrator

Enclosures

cc: The Honorable James Comer, Ranking Member