

Congress of the United States

House of Representatives

COMMITTEE ON SCIENCE, SPACE, AND TECHNOLOGY

2321 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6301

(202) 225-6371
www.science.house.gov

February 3, 2015

The Honorable Gina McCarthy
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20004

Dear Administrator McCarthy,

The Committee on Science, Space, and Technology is continuing its oversight of the Environmental Protection Agency's regulatory activities. As part of this oversight, I wrote to you on August 27, 2014, requesting documents and information related to maps of waters and wetlands in all 50 states that the EPA hired a private contractor to assemble and that the agency hid from public view until they were discovered by my staff.¹

More than four months later, on January 8, 2015, EPA responded to my request, providing documents and a staff briefing that, despite its extreme tardiness, I had hoped signaled a new effort by the agency to cooperate with the Committee's requests. Unfortunately, the response instead continues EPA's long pattern of obstruction of the Committee's jurisdictional and Constitutionally-obligated oversight responsibilities.² Rather than providing full transparency about the maps, the motivations behind their creation and the reason for them being kept from public view, the agency's response only raises additional questions at a time when the Agency is attempting to re-write Clean Water Act jurisdiction.

Deputy Assistant Administrator for Water Ken Kopocis personally delivered the long-overdue response and a briefing to Committee staff on January 8. During that briefing, Mr. Kopocis and other EPA staff noted, as the agency has done previously on multiple occasions, that the maps were not created to be used in furtherance of agency rulemaking.³ Additionally,

¹ See Letter from Chairman Lamar Smith to EPA Administrator Gina McCarthy, August 27, 2014.

² The Science Committee has jurisdiction over the core technical and scientific issues underpinning the EPA's proposed "Definition of 'Waters of the United States' Under the Clean Water Act" rulemaking. The Committee's authority includes: environmental research and development; marine research; and scientific research, development, and demonstration, and projects therefor. House Rule X(1)(p).

³ Meeting between House Science, Space, and Technology Staff, EPA Office of Water, and EPA Office of Congressional and Intergovernmental Affairs, January 8, 2015.

Mr. Kopocis assured Committee staff that the arrangement made with the contractor to create the maps was initiated by junior EPA staff without the knowledge of senior EPA Office of Water officials.⁴

Documents produced by EPA in response to my August 27 request appear to tell a different story. In particular, an email between an EPA Office of Water employee and the contractor the agency engaged to create the maps reveals that not only was the work directly connected to EPA's regulatory agenda, it was pushed by the head of Office of Water. The email states:

Sorry for the long delay, but here is the revised SOW [Statement of Work] for Vulnerable Waters... We'll have to set up a call/meeting to discuss remaining work and prioritization. I know that Nancy Stoner has been very eager to get results to the NPDES analysis...⁵

The "NPDES" is code for the most powerful regulatory program the Office of Water controls. Later, in the same email chain discussing the work EPA is asking the contractor to perform, the EPA employee writes: "We're eager here to get the work going again, particularly to finish the NPDES analysis (we have a QA run that we'd like to do to target NPDES dischargers that might be discharging on state borders and thus may be mapping to the wrong state) and finalizing our intermittent/ephemeral/perennial numbers for NHD high and medium at the county-level, as I've been getting some requests from our management for some final numbers."⁶

Again, contrary to EPA's assertions to the Committee, senior EPA officials appear to have been actively engaged in the work between the Office of Water and the contractor engaged to produce the maps. Additional documents appear to provide further evidence that EPA created the maps to aid in its efforts to expand its regulatory reach over private property owners across the nation.

For the Committee to properly exercise its oversight responsibilities, EPA must provide fully transparent and timely responses to our inquiries; to date, this has not been the agency's practice. In addition to the long-delayed response to my August 27 request letter, the agency has failed to respond to the Committee's official Questions for the Record (QFRs) following a Committee hearing in July 2014, despite repeated requests by my staff for updates.

The time for delay and partial explanations in responding to the Committee's requests on this matter is done. In order to assist the Committee with its continuing oversight, I ask that the agency produce the following documents, in electronic format:

1. All documents and communications referring or relating to the "Vulnerable Waters" project.

⁴ *Id.*

⁵ E-mail from Rose Kwok to Liz Bolak, August 23, 2012.

⁶ *Id.*

2. Full responses to the Committee's official Questions for the Record from the July 9, 2014, full Committee hearing entitled "Navigating the Clean Water Act: Is Water Wet?"
3. All documents and communications, including but not limited to those between and among the EPA Office of Congressional and Intergovernmental Relations, the Office of General Counsel, and the Office of Water referring or relating to:
 - a. The EPA's preparation of responses to the Committee's official Questions for the Record from the July 9, 2014, full Committee hearing entitled "Navigating the Clean Water Act: Is Water Wet?";
 - b. The EPA's July 28, 2014 response to the Committee's requests for certain detailed state-by-state maps of water features;
 - c. The EPA's January 8, 2015 response to the Committee's August 27, 2014 request letter.

In addition, I request that you make EPA employee Rose Kwok, an environmental scientist in the Office of Water, available for a transcribed interview with Committee staff no later than Friday, February 20, 2015.

I request that you provide the requested documents and information as soon as possible, but no later than 5:00 p.m. on Tuesday, February 17, 2015. When producing documents to the Committee, please deliver production sets to the Majority Staff in Room 2321 of the Rayburn House Office Building and the Minority Staff in Room 394 of the Ford House Office Building. The Committee prefers, if possible, to receive all documents in electronic format.

If you require clarifications, please contact Rachel Jones of my staff at (202) 225-6371.

Sincerely,



Lamar Smith
Chairman
Committee on Science, Space, and
Technology

cc: The Hon. John McHugh, Secretary, U.S. Army
The Hon. Eddie Bernice Johnson, Ranking Member, Committee on Science, Space, and
Technology