

# Congress of the United States

Washington, DC 20515

May 18, 2015

The Honorable Gina McCarthy  
Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue NW  
Washington, D.C. 20460

Dear Administrator McCarthy:

On May 5, 2015, we received the Environmental Protection Agency's response to our March 27, 2015, request for information related to the proposed rule on Waters of the U.S. (WOTUS or "the proposed rule"). Your response is wholly inadequate. It consisted of 18 PowerPoint presentations, webinars, or webcasts ("the presentations"), most of which are publicly available. EPA failed to provide full and complete answers to the questions we posed and to provide the documents we requested.

Your letter stated that the agency has "begun the process of collecting some of the specific documents" asked for by the Committees, but it also advised that many of the documents requested are "part of an ongoing rulemaking" and "likely to reflect internal advice, recommendations, and analysis among agency staff and senior policy makers."<sup>1</sup> While your position has been noted, these types of legal arguments are not legitimate bars to withhold information from the Congress. With that said, in an effort to accommodate EPA's stated interests, we are willing to entertain a privilege log. The log should (1) identify the author and recipient(s) and (2) the general subject matter of the record being withheld; (3) state the basis for the assertion of the privilege; and, (4) describe the decision-making process to which the document contributed, by, for example, identifying the decision, policy, or action under consideration in the document, whether or not the decision, policy or action, was eventually adopted or undertaken.

Hand-in-hand with the powers expressly granted to Congress by the Constitution to legislate and to appropriate funds is the implicit responsibility to perform rigorous oversight of the Executive Branch.<sup>2</sup> The oversight powers of Congress have been codified by both the Legislative Reorganization Act of 1946 (P.L. 79-601), which directed House and Senate Committees to "exercise continuous watchfulness" over Executive Branch programs under their jurisdiction, and the Legislative Reorganization Act of 1970 (P.L. 91-510), which authorized committees to "review and study, on a continuing basis, the application, administration and execution" of laws.<sup>3</sup>

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<sup>1</sup> Letter from Rep. K. Michael Conaway, Chairman, H. Comm. on Agric.; Rep. Jason Chaffetz, Chairman, H. Comm. on Oversight & Gov't Reform; Rep. Lamar Smith, Chairman, H. Comm. on Science, Space, & Tech

<sup>2</sup> CRS Report R41079, Congressional Oversight: An Overview, by Walter J. Oleszek, 2010.

<sup>3</sup> CRS Report 97-936, Congressional Oversight, by Frederick M. Kaiser, 2006.

If the Committees do not receive a substantive and responsive production on or before May 28, 2015, the Committees will consider the use of compulsory process to obtain the outstanding documents and information. Following are the Committee's original questions and requests for documents and information posed six weeks ago:

1. How often, if at all, does EPA meet with the U.S. Army Corps regarding WOTUS?
2. Has EPA been in contact with the Office of Management and Budget and specifically, the Office of Information and Regulatory Affairs related to WOTUS?
3. All documents and communications, including e-mails, between and among employees of EPA and the USDA related to the proposed rule.
4. All documents and communications, including e-mails, between and among employees of EPA and the U.S. Army Corps of Engineers related to the proposed rule.
5. All documents and communications, including e-mails, between and among employees of EPA headquarters and employees of EPA regional offices related to the effects of WOTUS.
6. All documents and communications, including e-mails, between and among employees of EPA and employees of any state agricultural department, state environmental department, and/or state water department related to WOTUS, except any documents and communications filed as part of the public comment period on the proposed rule.
7. All documents and communications, including e-mails, between and among employees of EPA and employees of the U.S. Small Business Administration related to WOTUS.
8. All documents and communications, including e-mails, related to any WOTUS cost-benefit analysis performed by EPA as required under the Administration Procedures Act.

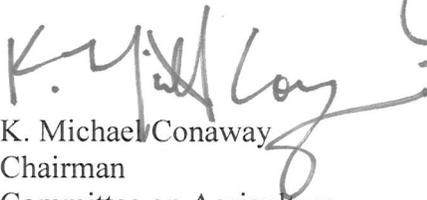
The Committee on Agriculture is the principal authorizing committee for all matters related to agriculture in the House of Representatives and "shall have general oversight responsibilities" as set forth in House Rule X. The Committee on Oversight and Government Reform is the principal oversight committee of the House of Representatives and may at "any time" investigate "any matter" as set forth in House Rule X. The Committee on Science, Space, and Technology has jurisdiction over environmental and scientific programs and "shall review and study on a continuing basis laws, programs, and Government activities" as set forth in House Rule X.

The Committees request that you provide the requested documents and information, in electronic format, as soon as possible, but no later than 5:00 p.m. on May 28, 2015. When producing documents to the Committee, please deliver production sets to the following locations:

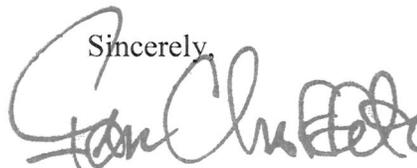
- Majority Staff of the Agriculture Committee in Room 1301 of the Longworth House Office Building;
- Minority Staff of the Agriculture Committee in Room 1010 of the Longworth House Office Building;
- Majority Staff of the House Oversight Committee in Room 2157 of the Rayburn House Office Building;
- Minority Staff of the House Oversight Committee in Room 2471 of the Rayburn House Office Building;
- Majority Staff of the House Science Committee in Room 2321 of the Rayburn House Office Building; and,
- Minority Staff of the House Science Committee in Room 394 of the Ford House Office Building

If you have any questions about this request, please contact Ashley Callen of the Agriculture Committee staff at 202-225-2171, William McGrath of the Oversight and Government Reform Committee staff at 202-225-5074, or Joe Brazauskas of the Science Committee at 202-225-6371. Thank you for your attention to this matter.

Sincerely,



K. Michael Conaway  
Chairman  
Committee on Agriculture



Jason Chaffetz  
Chairman  
Committee on Oversight  
and Government Reform



Lamar Smith  
Chairman  
Committee on Science,  
Space, and Technology

cc: The Honorable Collin C. Peterson, Ranking Minority Member  
House Committee on Agriculture

The Honorable Elijah E. Cummings, Ranking Minority Member  
House Committee on Oversight and Government Reform

The Honorable Eddie Bernice Johnson, Ranking Minority Member  
House Committee on Science, Space, and Technology