

Congress of the United States
Washington, DC 20515

May 26, 2015

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

Dear Administrator McCarthy:

According to a recent news report in *The New York Times*, the U.S. Environmental Protection Agency (EPA) is engaged in a practice of grassroots solicitation for public comments on the proposed rule on Waters of the United States (WOTUS).¹ This practice is disturbing on its face and may violate federal law. The article reports that EPA partnered with the Sierra Club, an environmental group that engages in grassroots lobbying, and a grassroots organization, Organizing for Action, to promote the proposed rule on WOTUS via social media websites with the goal of generating public comments in support of the rule.² In your testimony before the Senate Committee on Environment and Public Works, you cited the number of public comments received in support of the proposed rule as an endorsement of the rule itself.³ Given the magnitude and controversy surrounding EPA's rulemaking agenda, it is very troubling that EPA has engaged in a propaganda campaign to inflate the number of public comments submitted in support of specific proposed rules.

The fact that the EPA would take the drastic and unprecedented measure of partnering with advocacy groups in order to promote a particular regulatory action raises serious questions about the integrity of the agency's rulemaking process. Additionally, this "grassroots" effort to solicit comments may violate the Anti-Lobbying Act.⁴ The Anti-Lobbying Act, as you may

¹ Eric Lipton and Coral Davenport, *Critics Hear E.P.A.'s Voice in 'Public Comments'*, N.Y. Times, May 18, 2015, available at http://www.nytimes.com/2015/05/19/us/critics-hear-epas-voice-in-public-comments.html?_r=2.

² *Id.*

³ *Id.*

⁴ 18 U.S.C. § 1913, states in pertinent part:

No part of the money appropriated by any enactment of Congress shall, in the absence of express authorization by Congress, be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a Member of Congress, a jurisdiction, or an official of any government, to favor, adopt, or oppose, by vote or otherwise, any legislation, law, ratification, policy, or appropriation, whether before or after the introduction of any bill, measure, or resolution proposing such legislation, law, ratification, policy, or appropriation; but this shall not prevent officers or employees of the United States or of its departments or agencies from communicating to any such Member or official, at his

know, prohibits any funds appropriated by an act of Congress to be used in furtherance of influencing public policy.⁵ According to opinions written by the U.S. Department of Justice, federal agencies should not engage in grassroots lobbying efforts with the intention of persuading the general public to communicate with elected representatives on an issue that concerns the executive branch.⁶ EPA Deputy Associate Administrator for the Office of Public Affairs Liz Purchia admitted in a recent blog post that the campaign undertaken by the agency on the WOTUS rule was for “increasing awareness and support of the [proposed rule],” which is *prima facie* lobbying.⁷

While it is clear that EPA engaged in this practice with regard to the proposed rule on WOTUS, the extent to which the agency has undertaken these measures with other controversial regulatory actions is unknown. The *New York Times* report suggests that it is becoming a common practice for the EPA to engage with groups supportive of its regulatory agenda in an effort to build grassroots support throughout the notice and comment process.⁸ In fact, EPA specifically hired former President Obama campaign official, Thomas Reynolds, as Associate Administrator for the Office of Public Affairs.⁹

In order to ascertain the extent to which the EPA has engaged in the practice of grassroots advocacy to advance its regulatory agenda, the Committees request the following documents and information.

1. All documents and communications referring or relating to any decision to engage with the Sierra Club to solicit comments from the public for any rule proposed by EPA.
2. All documents and communications referring or relating to any decision to engage with Organizing for Action to solicit comments from the public for any rule proposed by the EPA.
3. All documents and communications referring or relating to any decision to engage with Natural Resources Defense Council to solicit comments from the public for any rule proposed by the EPA.

request, or to Congress or such official, through the proper official channels, requests for any legislation, law, ratification, policy, or appropriations which they deem necessary for the efficient conduct of the public business ...

⁵ *Id.*

⁶ U.S. Dep’t of Justice, Memorandum Guidelines on 18 U.S.C. § 1913, Apr. 14, 1995.

⁷ Liz Purchia, The Importance of Education and Outreach, U.S. EPA, May 18, 2015, *available at* <https://blog.epa.gov/epaconnect/2015/05/importance-of-education/>.

⁸ Eric Lipton and Coral Davenport, *Critics Hear E.P.A.’s Voice in ‘Public Comments’*, N.Y. Times, May 18, 2015, *available at* http://www.nytimes.com/2015/05/19/us/critics-hear-epas-voice-in-public-comments.html?_r=2.

⁹ *Id.*

4. All documents and communications referring or relating to any decision to engage with Trout Unlimited to solicit comments from the public on any rule or policy matter proposed by the EPA.
5. All documents and communications, including but not limited to internal EPA legal opinions and memoranda, referring or relating to EPA's compliance with the Anti-Lobbying Act regarding the solicitation for public comments.
6. An accounting of the total amount of federal funds spent by EPA on soliciting comments in support of EPA rules and other grassroots lobbying efforts. Please provide the amount spent on each specific rule and include in that amount the salaries for employees who worked on each project.

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 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 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 June 9, 2015. When producing documents to the Committees please deliver production sets to the following locations:

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

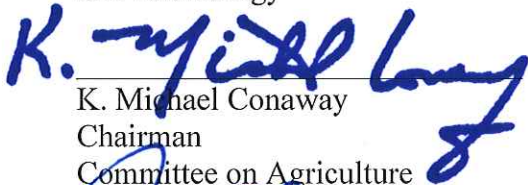
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If you have any questions about this request, please contact Joseph Brazauskas of the Science, Space, and Technology Committee staff at 202-225-6371, Ashley Callen of the Agriculture Committee staff at 202-225-2171, or William McGrath of the Oversight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

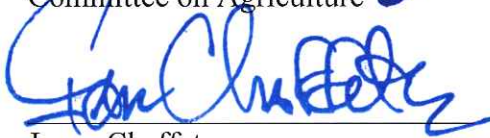
Sincerely,



Lamar Smith
Chairman
Committee on Science, Space,
and Technology



K. Michael Conaway
Chairman
Committee on Agriculture



Jason Chaffetz
Chairman
Committee on Oversight and
Government Reform



Jim Bridenstine
Chairman
Subcommittee on Environment



Glenn Thompson
Chairman
Subcommittee on Conservation
and Forestry



Cynthia Lummis
Chairman
Subcommittee on Interior

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

The Honorable Suzanne Bonamici, Ranking Minority Member, Subcommittee on Environment

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

The Honorable Michelle Lujan Grisham, Ranking Minority Member, Subcommittee on Conservation and Forestry

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

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The Honorable Brenda L. Lawrence, Ranking Minority Member, Subcommittee on
Interior