

# Congress of the United States

## House of Representatives

COMMITTEE ON SCIENCE, SPACE, AND TECHNOLOGY

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WASHINGTON, DC 20515-6301

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March 25, 2015

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

Dear Administrator McCarthy,

On January 27, 2015, the Committee first wrote to the Environmental Protection Agency (EPA) requesting information relating to whether over 5,000 text messages were improperly deleted from Administrator Gina McCarthy's agency phone.<sup>1</sup> The EPA provided a partial response to the Committee's request on February 26, 2015.<sup>2</sup> On March 6, 2015, the Committee sent a second letter reiterating its previous request for a complete response.<sup>3</sup> The EPA subsequently provided additional partial responses on March 10,<sup>4</sup> 13,<sup>5</sup> and 20.<sup>6</sup> On numerous occasions, Committee staff has attempted to follow up with your staff regarding the Committee's request, including unredacted cellular telephone billing records for Administrator McCarthy's agency phone, and unredacted agency e-mails. Those documents and information are central to the Committee's oversight.

The Committee's concern about the EPA allegedly misplacing or deleting text messages originated when *The Hill* reported that over 5,000 text messages may have been improperly deleted from Administrator Gina McCarthy's agency cellular phone.<sup>7</sup> According to the report, "[EPA] has decided to formally notify the National Archives and Records Administration

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<sup>1</sup> Letter from Hon. Lamar Smith, Chairman, H. Comm. on Science, Space & Technology, to Hon. Gina McCarthy, Adm'r, EPA (Jan. 27, 2015).

<sup>2</sup> Letter from Renee Wynn, Acting Assistant Adm'r, EPA, to Hon. Lamar Smith, Chairman, H. Comm. on Science, Space & Technology (Feb. 26, 2015).

<sup>3</sup> Letter from Hon. Lamar Smith, Chairman, H. Comm. on Science, Space & Technology, to Hon. Gina McCarthy, Adm'r, EPA (Mar. 6, 2015).

<sup>4</sup> Letter from Laura Vaught, Assoc. Adm'r, EPA, to Hon. Lamar Smith, Chairman, H. Comm. on Science, Space & Technology (Mar. 10, 2015).

<sup>5</sup> E-mail from EPA Leg. Affairs Staff to Comm. Staff (Mar. 13, 2015).

<sup>6</sup> E-mail from EPA Leg. Affairs Staff to Comm. Staff (Mar. 20, 2015).

<sup>7</sup> Timothy Cama, *EPA Tells Court it May Have Lost Text Messages*, THE HILL October 8, 2014, available at <http://thehill.com/policy/energy-environment/220162-epa-may-have-lost-text-messages>.

(NARA) about the potential loss of federal records relating to text messages.”<sup>8</sup> In the same article, an EPA spokeswoman was quoted as saying, “[d]espite the filing...the agency maintains that the text messages neither had to be preserved nor were subject to disclosure. Text messages can legally be deleted.”<sup>9</sup> The Committee wrote to the EPA in January seeking further information about EPA employees’ use of text messaging and its archiving practices for such communications.

Committee staff has contacted EPA staff on at least ten occasions in an attempt to obtain the information required for its oversight in a number of different ways—from letters and e-mails asking the EPA to produce the documents, to requesting the information during a briefing with our staffs on March 10, to reiterating the request during a telephone call with our staffs on March 13. Additionally, Committee staff contacted your staff on February 4, February 6, February 13, February 18, February 19, February 24, February 27, March 2, March 3, March 4, March 11, March 12, March 17, March 19, and March 20. The EPA, however, has yet to produce all requested documents and information in unredacted format.

Moreover, on March 20, EPA notified the Committee that the production of your agency cellular telephone records was delayed because the agency was redacting phone numbers associated with your “friends.”<sup>10</sup> Excluding phone numbers of “friends” raises serious concerns and is insufficient for the Committee’s oversight purposes. According to the EPA, you have received only one text message that qualifies as a federal record during your tenure at EPA.<sup>11</sup> Coincidentally, that one text message was preserved nine days after receiving the Committee’s January 27, 2015 letter. The text, from Gene Karpinski, President of the League of Conservation Voters, stated “[g]reat job on the EPA comments on keystone. I feel like the end is very near...”<sup>12</sup> After receiving Mr. Karpinski’s text, you responded, via e-mail, “Gene-I received your text message earlier today but I do not use text messaging for work purposes. Please make sure in the future to use my email address.”<sup>13</sup> Five days later, on February 10, you forwarded Mr. Karpinski’s text message via e-mail to your assistant and asked him to preserve it as a federal record.<sup>14</sup>

EPA and the League of Conservation Voters, and you and Mr. Karpinski in particular, have often worked toward similar goals. In 2013, Mr. Karpinski and the League of Conservation Voters led an effort to secure your Senate confirmation as EPA Administrator.<sup>15</sup> On April 11, 2013, Mr. Karpinski wrote in *The Huffington Post* that “[w]e need Gina McCarthy’s leadership

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<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> EPA E-mail, *supra* note 6.

<sup>11</sup> Briefing between Comm. Staff & EPA Leg. Affairs Staff (Mar. 10, 2015).

<sup>12</sup> Text message from Gene Karpinski, President, The League of Conservation Voters, to Hon. Gina McCarthy, Adm’r, EPA (Feb. 5, 2015).

<sup>13</sup> E-mail from Hon. Gina McCarthy, Adm’r, EPA, to Gene Karpinski, President, The League of Conservation Voters (Feb. 5, 2015).

<sup>14</sup> E-mail from Hon. Gina McCarthy, Adm’r, EPA, to EPA Staff (Feb. 10, 2015).

<sup>15</sup> Gene Karpinski, *We Need Gina McCarthy’s Leadership at the EPA*, HUFF POST, Apr. 11, 2013, available at [http://www.huffingtonpost.com/gene-karpinski/we-need-gina-mccarthys-le\\_b\\_3061097.html](http://www.huffingtonpost.com/gene-karpinski/we-need-gina-mccarthys-le_b_3061097.html).

at the EPA.”<sup>16</sup> Additionally, he wrote that “Republicans and Democrats should do in the weeks ahead what they did just a few years ago—come together and confirm Gina McCarthy.”<sup>17</sup>

Beginning in 2014, it appears the League of Conservation Voters started an effort to block Keystone XL.<sup>18</sup> On February 24, 2015, Mr. Karpinski stated that “[w]e’re thrilled that President Obama has taken the very important step of vetoing the bill to approve the dirty and dangerous Keystone XL tar sands pipeline.”<sup>19</sup> Similarly, on February 2, EPA sent a letter to the State Department citing risks of Keystone approval.<sup>20</sup> The next day, the League of Conservation Voters issued a press release titled “EPA Confirms Keystone XL Fails President Obama’s Climate Test.”<sup>21</sup> Coincidentally, this Committee sent you a letter the following week regarding the independence, integrity, accuracy, and independence of EPA’s letter citing risks of Keystone; EPA has yet to produce to the Committee any documents responsive to that request.<sup>22</sup>

EPA would have the Committee believe that of the more than 5,000 texts sent or received by you on your agency phone, the only one that was related to official business and required consideration for archiving was received less than ten days after the Committee wrote to the agency requesting information about your text messages and archiving practices. Additionally, EPA insists that the Committee’s oversight obligations are satisfied by the production of heavily redacted phone records that do not allow the Committee to verify the agency’s claims. As a federal judge determined in a related matter, “it is implausible that EPA administrators would not have suspected the destruction of any federal records with the removal of over 5,000 agency text messages.”<sup>23</sup> Because EPA has refused to provide a complete production of records in response to the Committee’s repeated requests, I am left with no alternative but to issue a subpoena to compel you to produce, among other things, unredacted cellular phone billing records and e-mails relevant to the Committee’s oversight.

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<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> See Letter from Gene Karpinski, President, The League of Conservation Voters, to U.S. House of Rep., Jan. 8, 2014, available at <http://www.lcv.org/issues/lcv-legislative-letters/hr-2279.pdf>.

<sup>19</sup> The League of Conservation Voters, Press Release, *LCV Statement on Keystone Veto*, Feb. 24, 2015, available at <http://www.lcv.org/media/press-releases/LCV-Statement-on-Keystone-Veto.html>.

<sup>20</sup> Letter from Cynthia Giles, Assistant Adm’r, EPA to Amos Hochstein, Special Envoy for Int’l Energy Affairs, Bureau of Energy Resources & Judith G. Garber, Acting Sec’y, Oceans & International Environmental and Scientific Affairs, Feb. 2, 2015, available at <http://www.epa.gov/compliance/nepa/20140032.pdf>.

<sup>21</sup> The League of Conservation Voters, Press Release, *LCV: EPA Confirms Keystone XL Fails President Obama’s Climate Test*, Feb. 2, 2015, available at <http://www.lcv.org/media/press-releases/LCV-EPA-Confirms-Keystone-XL-Fails-President-Obama-s-Climate-Test.html>.

<sup>22</sup> Letter from Hon. Lamar Smith, Chairman, H. Comm. on Science, Space & Technology, to Hon. Gina McCarthy, Adm’r, EPA (Feb. 12, 2015).

<sup>23</sup> Stephen Dinan, *Doing an IRS? EPA Can’t Find Top Officials Text Messages*, WASH. TIMES, Oct. 8, 2014, available at <http://www.washingtontimes.com/news/2014/oct/8/epa-to-admit-it-lost-agency-chiefs-text-messages/?page=all>.

The Honorable Gina McCarthy

March 25, 2015

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If you have any questions about this request, please contact Committee Staff at 202-225-6371. Thank you for your attention to this matter.

Sincerely,

A handwritten signature in cursive script that reads "Lamar Smith". The signature is written in black ink and is positioned above the printed name.

Lamar Smith  
Chairman

cc: The Honorable Eddie Bernice Johnson, Ranking Minority Member