

May 26, 2015

The Honorable Gina McCarthy  
Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

Dear Administrator McCarthy:

I write regarding recent media reports that the Environmental Protection Agency (EPA) orchestrated a lobbying and public relations campaign to build support for its proposed rule to expand the definition of “waters of the United States” (WOTUS) under the Clean Water Act. This news offers yet another example of the EPA’s collusion with far-left environmental groups to promote a policy that would hurt small businesses and substantially harm the American economy.

As you know, the Department of Justice (DOJ) has counseled federal agencies for nearly thirty years to avoid lobbying the general public in order to build political support for policies that are being promoted by the Executive Branch. However, from nearly the moment that the proposed rule was unveiled, the EPA took to social media to promote it in an effort to build political support for it at the same time that EPA was supposed to be listening to the feedback of the American public – especially American small businesses – and incorporating it into the proposal.

Furthermore, not only did the EPA work side by side with environmental groups to promote the proposal, it worked hand in hand with “Organizing for Action,” a remaining vestige of President Obama’s 2012 reelection campaign, which now works to build support for the president’s political objectives. As you are well aware, using campaign tactics to promote the President’s agenda is highly uncommon and pushes up against the limits of the Anti-Lobbying Act and the above-referenced, long-standing legal opinions from the DOJ.

Additionally, as Chairman of the Committee on Small Business and Entrepreneurship, I find it outrageous that the EPA is engaging in such conduct while at the same time ignoring its requirements under the Regulatory Flexibility Act (RFA) to avoid undue economic impacts to small businesses in the rulemaking process. The fact that EPA certified that the WOTUS rule will not harm small entities, while at the same devoting itself to political advocacy on behalf of the White House, demonstrates that EPA places a higher priority on the president’s environmental agenda than it does on protecting the interests of America’s small businesses, as required by law.

The American public deserves to know the extent to which federal regulatory agencies are now lobbying for the President's political agenda, employing campaign tactics and operatives at the highest levels of government to promote policies that could have disastrous impacts for the American people and economy. As such, I request that you provide responses to the following questions and informational requests no later than Friday, June 12, 2015:

1. You have stated that the website promoting comment to EPA and Congress was open to all. Which stakeholders, among those opposed to this proposed regulation, did you work with to promote access to this website? Please provide all communications, emails, and other documents showing that those opposed to your rule were equal partners in developing messaging and tools that promoted comments to EPA and Congress.
2. Please produce all documents, information and emails between EPA employees and employees or associates of Organizing for Action discussing the proposed WOTUS rule from February 2014 to the present;
3. Please produce all emails, documents, and other information among EPA employees discussing outreach, messaging, publicity, and/or strategy related to the proposed WOTUS rule, and the involvement of Organizing for Action;
4. Please produce a list of all environmental nonprofits and constituent groups that EPA met with, consulted with, worked with or was otherwise involved with in the promotion, outreach, strategy, and/or messaging regarding the proposed EPA WOTUS rule;
5. Please produce all emails and documents to or from Thomas Reynolds regarding the messaging, outreach, strategy, and/or promotion underlying the proposed WOTUS rule.

I appreciate your cooperation in this matter. EPA's proposed WOTUS rule as written would have a major economic impact on America's small businesses at a time when our economy needs no further instability and uncertainty. Before the Agency moves forward with the proposed rule, we must first confirm that EPA properly followed all relevant laws – including the Anti-Lobbying Act and RFA – during the rule-making process.

Please direct responses to my staff on the Committee on Small Business and Entrepreneurship, Senate Russell Office Building, Room 428A. If you have any questions, feel free to call (202) 224-5175.

Sincerely,



---

David Vitter

Chairman

Senate Small Business and Entrepreneurship Committee