

United States Senate

WASHINGTON, DC 20510-3905

April 25, 2018

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

Dear Administrator Pruitt,

I write to inquire about unexplained delays in the disclosure of a recusal statement for William Wehrum, Associate Administrator for the Office of Air and Radiation [OAR] at the Environmental Protection Agency [EPA]. Based on my review of Office of Government Ethics [OGE] regulations and public records, Mr. Wehrum should have, by now, come into full compliance with his August 28, 2017, ethics agreement with EPA. If that is not yet the case, it would suggest a breakdown in the ethics compliance process at EPA and could mean Mr. Wehrum has been working on matters from which he should be recused.

The Associate Administrator for OAR is a Senate-confirmed position. Accordingly, prior to his nomination hearing before the Senate Environment and Public Works Committee, Mr. Wehrum entered into an agreement with EPA to recuse himself from participating in particular matters in which he may have a conflict of interest due to his financial holdings, or matters involving his former law firm or clients. He promised to document his compliance with his ethics agreement within 90 days of his confirmation. Mr. Wehrum was confirmed by the United States Senate on November 9, 2017 and according to OGE, Mr. Wehrum was due to come into compliance with his ethics obligations by February 14, 2018.

Mr. Wehrum's "Certification of Ethics Agreement Compliance" is available on OGE's website.¹ It is signed by him and dated December 7, 2017. On that form, Mr. Wehrum represented the following:

- With respect to whether he had recused himself from particular matters in which he would have a personal or imputed financial interest, Mr. Wehrum originally indicated "no," then revised his form on December 19, 2017, creating by hand a new option—"n/a"—that is not available on OGE's official form.
- With respect to whether he had recused himself from particular matters related to former employers or clients, Mr. Wehrum indicated "yes."

It is my understanding that the recusals are memorialized in "recusal statements" negotiated between career ethics officials and nominees once they are confirmed. Presumably, Mr.

¹ Mr. Wehrum's certification form can be retrieved at <https://extapps2.oge.gov/201/Presiden.nsf/201+Request?OpenForm>.

Wehrum's recusal statement was complete when he signed his "Certification of Ethics Agreement Compliance" on December 7, 2017.

My office first requested Mr. Wehrum's recusal statement on February 21, 2018 from ethics officials in your Office of General Counsel. That request was transferred to the Office of Congressional and Intergovernmental Relations. My staff repeated its request for this document on March 16, 2018, March 22, 2018, and April 23, 2018. To date, that document still has not been produced.

Recusal statements are important documents because they memorialize, after a particularized analysis by agency ethics officials, which matters EPA staff cannot participate in to remain in compliance with federal ethics laws and regulations. They also memorialize whether any waivers have been granted to these rules, and if so, why.

Mr. Wehrum was an attorney with the law firm of Hunton & Williams prior to his appointment, at which he and his law partners represented utilities and others with business before, and in litigation against, EPA, particularly on matters related to the Clean Air Act. Mr. Wehrum now interprets and enforces that Act. This litigation has obviously continued during Mr. Wehrum's tenure, and the agency has issued guidance and policies, like its December 7, 2017 memo on New Source Review Preconstruction Permitting Requirements,² closely related to matters Mr. Wehrum handled in private practice. The public does not know whether the agency has concluded that Mr. Wehrum has conflicts of interest in these matters and if so, what steps have been taken to address them.

I request that you provide my office with a copy of Mr. Wehrum's recusal statement by May 2, 2018. If you cannot, or if the statement is dated after December 7, 2017, I request you explain how Mr. Wehrum's ethical obligations have been policed since that date. Finally, I request an explanation of why Mr. Wehrum was authorized to assert that recusals related to his personal or imputed financial interests did not apply to him, and how that has affected the agency's ethics analysis. Please contact Joe Gaeta (joe_gaeta@whitehouse.senate.gov) of my staff with any inquiries you have about this request.

Sincerely,



Sheldon Whitehouse
United States Senator

cc: Kevin Minoli, Designated Agency Ethics Official, U.S. Environmental Protection Agency

Troy Lyons, Associate Administrator, Office of Congressional and Intergovernmental Relations, U.S. Environmental Protection Agency

² Memorandum from E. Scott Pruitt, Administrator, to EPA Regional Administrators, dated Dec. 7, 2017, available at <https://www.epa.gov/nsr/new-source-review-preconstruction-permitting-requirements-enforceability-and-use-actual>