

October 10, 2018

President Donald Trump  
The White House  
1600 Pennsylvania Ave. NW  
Washington, DC 20500

Dear President Trump:

I write to you concerning Environmental Protection Agency (EPA) Assistant Administrator for the Office of Air and Radiation Bill Wehrum. You nominated Mr. Wehrum on September 7, 2017, and he was confirmed by the Senate on November 9, 2017.

As is the case for other executive branch appointees, Mr. Wehrum is subject to your ethics pledge, which states, in relevant part:

“I will not for a period of 2 years from the date of my appointment participate in any particular matter involving specific parties that is directly and substantially related to my former employer or former clients, including regulations and contracts.”<sup>1</sup>

Your ethics pledge defines “particular matter involving specific parties” as having:

“the same meaning as set forth in section 2641.201(h) of title 5, Code of Federal Regulations, except that it shall also include any meeting or other communication relating to the performance of one’s official duties with a former employer or former client, unless the communication applies to a particular matter of general applicability and participation in the meeting or other event is open to all interested parties.”<sup>2</sup>

As interpreted by the Office of Government Ethics (OGE), the phrase “open to all interested parties” does not require that a meeting be open to every comer. Recognizing the difficulty of organizing meetings that are truly open to everyone, OGE’s interpretation simply prohibits executive branch appointees from attending meetings with former employers or clients unless at least four additional parties who are not former employers or clients are present.<sup>3</sup>

Despite multiple inquiries by my office, Mr. Wehrum did not provide a signed recusal letter listing the former employers and clients with whom he would be prohibited from meeting under your

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<sup>1</sup> E.O. 13770, available at <https://www.whitehouse.gov/presidential-actions/executive-order-ethics-commitments-executive-branch-appointees/>

<sup>2</sup> *Id.*

<sup>3</sup> OGE DO 09-11, available at [https://www.oge.gov/Web/OGEnsf/0/1231E7FF31E2E54985257E96005FBB7E/\\$FILE/DO-09-011.pdf](https://www.oge.gov/Web/OGEnsf/0/1231E7FF31E2E54985257E96005FBB7E/$FILE/DO-09-011.pdf)

ethics pledge. Indeed, Mr. Wehrum told *The New York Times* that he refused to sign a recusal letter because he claimed that he had received conflicting advice from ethics officials.<sup>4</sup>

It remains unclear what that conflicting advice may have been. EPA's now-former designated agency ethics official Kevin Minoli explained in a September 29, 2018 letter to me that Mr. Wehrum was advised pursuant to OGE legal advisories that apply to all members of the Trump administration. Mr. Wehrum also was advised about the "importance of signing a recusal statement" but nevertheless he "*chose to use other tools that he deemed effective* in helping him comply with the ethics requirements...."<sup>5</sup>

To address Mr. Wehrum's refusal to sign a recusal letter, I filed an amendment to the Blocking Regulatory Interference from Closing Kilns Act of 2018 (BRICK Act), legislation that would delay national emissions standards for hazardous air pollutants from brick kilns. Since Mr. Wehrum represented the Brick Industry Association prior to becoming Assistant Administrator and since he continued to lobby EPA on behalf of the Brick Industry Association even after he knew you were to nominate him, it seemed appropriate to amend this bill to compel Mr. Wehrum to sign and produce his long-missing recusal letter.

I filed my amendment on Friday, September 14, 2018, and just two business days later (and an hour before a scheduled markup of the BRICK Act by the Environment and Public Works Committee), I finally received a recusal letter signed by Mr. Wehrum on September 17, 2018.

Mr. Wehrum's recusal letter lists the former clients with whom he is prohibited from meeting under your ethics pledge, and the list reads like a who's who of the fossil fuel industry: ExxonMobil, Koch Industries, Chevron, the American Petroleum Institute (API), the American Fuel & Petrochemical Manufacturers, Phillips 66, Kinder Morgan, Duke Energy, and the Utility Air Regulatory Group (UARG), among others. It also includes the Brick Industry Association. As I said at the markup of the BRICK Act, Mr. Wehrum is a walking conflict of interest.

More troubling still is evidence that Mr. Wehrum has flouted the terms of your ethics pledge on multiple occasions. A review of Mr. Wehrum's calendars disclosed as a result of Freedom of Information Act (FOIA) requests shows that on several occasions, he met with former clients and/or employers in one-on-one or small group settings, which your ethics pledge prohibits. Any "other tools" that Mr. Wehrum may have employed to ensure he complied with federal ethics requirements appear to have been ineffective. For example:

- On December 7, 2017, Mr. Wehrum spoke at his old employer, Hunton & Williams, to American Electric Power (AEP), Southern Company, Duke Energy, Dominion Energy, and UARG. Duke Energy, Dominion Energy subsidiary Dominion Resources Services, and UARG are all former clients on Mr. Wehrum's recusal list. As such, this would qualify as a

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<sup>4</sup> Eric Lipton, "As Trump Dismantles Clean Air Rules, and Industry Lawyer Delivers for Ex-Clients," *The New York Times* (Aug. 19, 2018), <https://www.nytimes.com/2018/08/19/us/politics/epa-coal-emissions-standards-william-wehrum.html>

<sup>5</sup> Letter from Kevin Minoli to Senator Sheldon Whitehouse; Sept. 29, 2018. (Emphasis added).

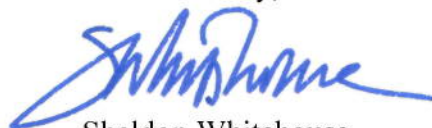
meeting with four former employers or clients and only two parties that are not former employers or clients<sup>6</sup> and therefore would be prohibited under your ethics pledge.

- On January 23, 2018, Mr. Wehrum met with General Electric, a former client on his recusal list. Although he also met with representatives of Boeing at this same meeting, this meeting would also be prohibited under your ethics pledge.
- On January 26, 2018, Mr. Wehrum met with Ann Klee and Roger Martella of General Electric. This meeting would also be prohibited under your ethics pledge.
- On February 12, 2018, a meeting with former clients Duke Energy and UARG and former employer Hunton & Williams as well as AEP, Tri-State Generation, and Southern Company<sup>7</sup> appears in Mr. Wehrum's calendar. While this calendar entry indicates that the meeting was delegated to Mandy Gunasekara, the Principal Deputy Assistant Administrator for EPA's Office of Air and Radiation, it also indicates that Mr. Wehrum was one of the attendees. Should Mr. Wehrum have participated in this meeting, it would also have been prohibited under your ethics pledge.
- On February 16, 2018, a meeting with former clients Duke Energy and UARG and former employer Hunton & Williams as well as AEP, Southern Company, Tri-State Generation, and Vistra Energy<sup>8</sup> appears in Mr. Wehrum's calendar. This calendar entry indicates that meeting was also delegated to Mandy Gunasekara but also lists Mr. Wehrum as one of the attendees. Should Mr. Wehrum have participated in this meeting, it would also have been prohibited under your ethics pledge.

In light of these numerous potential violations of your ethics pledge, I would urge you to put in place procedures to guarantee that your ethics pledge is respected by all executive branch appointees to whom it applies. You might also consider instituting a system to sanction those who do not comply with its terms.

You campaigned on a promise to “drain the swamp” of corruption in Washington, D.C. While you and I may disagree as to whether appointing lobbyists and lawyers to oversee the industries they used to represent constitutes draining the swamp, we can certainly agree that *your* appointees should comply with *your* ethics pledge. Allowing appointees to openly flout the terms of your ethics pledge only serves to make a mockery of it.

Sincerely,



Sheldon Whitehouse  
United States Senator

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<sup>6</sup> UARG is a trade association representing electric utilities. As it does not disclose its members, it is entirely possible that both AEP and Southern Company are also members.

<sup>7</sup> Once again, AEP, Southern Company, and Tri-State Generation may be members of UARG.

<sup>8</sup> AEP, Southern Company, Tri-State Generation, and Vistra Energy may be members of UARG.