

United States Senate

WASHINGTON, DC 20510

July 23, 2018

Peter C. Wright
Special Counsel to the Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Dear Mr. Wright:

It has come to our attention that you have recently been appointed to the position of “special counsel to the Administrator” at the Environmental Protection Agency (EPA). This appointment was made while your nomination to serve as EPA’s Assistant Administrator for the Office of Land and Emergency Management (OLEM) remains under consideration by the Senate. Your appointment raises several concerns that we request you address.

The Federal Vacancies Reform Act of 1998 provides, with limited exceptions, the “exclusive means for temporarily authorizing an acting official to perform the functions and duties of any office of an Executive agency ... for which appointment is required to be made by the President, by and with the advice and consent of the Senate....” 5 U.S.C. § 3347. Further, as the Supreme Court held in *Buckley v. Valeo*, “any appointee exercising significant authority pursuant to the laws of the United States is an ‘Officer of the United States,’ and must, therefore, be appointed in the manner prescribed” in Article II, Section 2, clause 2 of the Constitution. 424 U.S. 1, 126 (1976). Accordingly, while you serve as “special counsel” it would be unlawful for you to assume any of the delegated authorities of the OLEM AA prior to the Senate’s confirmation of your nomination.

Your appointment runs the serious risk of circumventing the Senate’s constitutional advice and consent responsibility for the position to which you have been nominated. Your involvement in certain EPA decisions could provide grounds for subjects of EPA regulations and oversight to challenge the legal validity of those decisions in court.¹ To ensure your appointment complies with the requirements of the Federal Vacancies Reform Act of 1998, please respond to the following:

- What is your official job title and type of appointment (e.g., non-career SES, Schedule C, administratively-determined)? Who, if anyone, are you supervising? What is your relationship with the Acting OLEM AA? If you have a written job description, please provide a copy.
- Have any duties with the OLEM AA been formally delegated to you by the Administrator? Which, if any, OLEM AA duties are you presently performing?
- During your confirmation process, you entered into an ethics agreement dated March 7, 2018, that was approved by both EPA and the Office of Government Ethics and

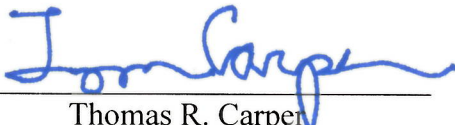
¹ See, e.g., *National Labor Relations Board v. SW General*, 137 S. Ct. 929 (2017) (vacating an NLRB unfair labor practices complaint because the NLRB general counsel at the time had been appointed in violation of the Federal Vacancies Reform Act).

presented to the Senate Environment and Public Works Committee. As part of that agreement you stated that upon confirmation you would resign from The Dow Chemical Company and that within 90 days you would receive a severance payment and divest from your DowDuPont stock. Are you governed by the same ethics agreement in your current position? If not, what steps will you be taking to avoid actual or apparent conflicts of interest while your nomination remains pending in the Senate?

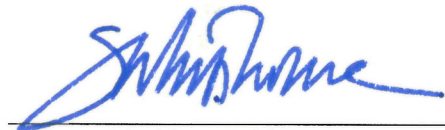
- Please provide a copy of your signed Trump ethics pledge, and copies of any waivers to the pledge or recusal statements you signed.
- Before your confirmation hearing, you submitted a June 19, 2018 draft of the recusal statement you planned to sign upon confirmation that, notably, stated you would recuse yourself from working on DowDupont Superfund sites. Have you signed this statement, and if not, why not, and when do you plan to do so?
- Do you commit to conducting all business using official email addresses or other official means and to refrain from any mediums that are outside the Freedom of Information Act's reach? Please provide all email addresses you have used since starting at EPA and any new ones within seven days of their use.
- In many of your responses to questions for the record, which were submitted after you began work at EPA, you noted your lack of familiarity with the subject matter and a commitment to seek more information following confirmation. Please provide substantive responses to questions 10, 11, 18, 19, 20, 27, 28, 29, 30, 31, 32, 33, 34, 35, 37, 38, 39, 42, 56, 57 and 58.

We look forward to your prompt responses as it will help inform how we engage with your nomination.

Sincerely,



Thomas R. Carper
United States Senator



Sheldon Whitehouse
United States Senator



Bernard Sanders
United States Senator



Edward J. Markey
United States Senator