

Congress of the United States
Washington, DC 20515

December 12, 2019

The Honorable Andrew Wheeler
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, D.C. 20460

Dear Administrator Wheeler:

We write to you concerning a troubling report issued by the Office of the Inspector General (OIG) of the Environmental Protection Agency (EPA) on December 10, 2019.¹ This report describes efforts by EPA's leadership to obstruct the work of the Inspector General. Our Committees were first made aware of this issue through a Seven Day Letter from the OIG, which you transmitted to our offices on November 5, 2019.

According to the Seven Day Letter, your Chief of Staff, Ryan Jackson, has shown "open defiance" towards the Office of Inspector General (OIG).² This letter was sent pursuant to a law requiring Congress to be notified within seven days of "particularly serious or flagrant problems, abuses, or deficiencies" identified by the Inspector General.³ OIG's December 10 report makes apparent that EPA has failed to take corrective actions to address these concerns.

As Administrator of the EPA, you must ensure that Agency employees cooperate with the Inspector General's independent investigations, as required by law. Congress and the American people rely on the Inspector General's work to root out waste, fraud, abuse, and mismanagement at the EPA.

¹ Environmental Protection Agency, Office of Inspector General, *Report: Despite Requirements of Inspector General Act, Chief of Staff Refuses to Provide Agency Information for OIG Evaluation; EPA Whistleblower Training Does Not Address Interference with or Intimidation of Congressional Witnesses*, (Dec. 10, 2019), <https://www.epa.gov/office-inspector-general/report-despite-requirements-inspector-general-act-chief-staff-refuses>.

² Letter from Acting Inspector General Charles J. Sheehan, Environmental Protection Agency, to Administrator Andrew R. Wheeler, Environmental Protection Agency (Oct. 29, 2019), https://www.epa.gov/sites/production/files/2019-11/documents/_epaig_7dayletter_11-6-19.pdf.

³ 5 U.S.C. App. § 5(d).

According to the Inspector General, your Chief of Staff has obstructed multiple inquiries, including by refusing to provide information in an audit requested by the House Committee on Science, Space, and Technology⁴ and refusing to submit to an interview with the OIG regarding an ongoing administrative investigation. This lack of cooperation appears to follow a pattern. For example, a recent *Politico* article reported instances of the same senior official not cooperating with the Inspector General and directing others within the Agency to withhold information.⁵

In response to the Seven Day Letter, on November 5 you sent our offices a memorandum from the EPA General Counsel that asserts sweeping claims of legal authority for EPA to obstruct or ignore Inspector General investigations and audits. The memorandum includes dubious legal claims that, if accepted, would eviscerate the authority of the Inspector General and undermine the ability of EPA to function in a transparent manner.⁶

For example, the memo erroneously claims: “It is ultimately the Administrator that maintains control of the information sought and decides what constitutes an adequate accommodation by the Agency of an OIG request insofar as it is practicable.”⁷

To the contrary, the Inspector General Empowerment Act — passed unanimously by both Houses of Congress in 2016 — authorizes Inspectors General to receive “timely access to all records, reports, audits, reviews, documents, papers, recommendations, or other materials” within an IG’s areas of responsibility.⁸ Federal law also provides that when the Inspector General requests “information or assistance” from a federal agency, the head of that agency “shall” provide that information “insofar as is practicable and not in contravention of any existing law.”⁹ The Administrator’s compliance with requests from the Inspector General’s office is required, except in those limited instances in which compliance would be illegal or impractical.

The EPA General Counsel’s memo also claims that the Inspector General Act “does not authorize the OIG to take oral interviews.”¹⁰ This is inaccurate. Interviews — including with

⁴ Letter from Ranking Member Eddie Bernice Johnson, Committee on Science, Space and Technology, Ranking Member Suzanne Bonamici, Subcommittee on Environment, and Ranking Member Donald S. Beyer, Jr., Subcommittee on Oversight, to Inspector General Arthur A. Elkins, Jr. Environmental Protection Agency (June 26, 2017), <https://science.house.gov/news/press-releases/ranking-members-johnson-bonamici-and-beyer-request-investigation-into-epa-interference-with-environmental-scientists-testimony-to-committee> (requesting investigation into EPA interference with environmental scientist’s testimony to Committee).

⁵ *EPA Bulldog Stares Down Agency Watchdog*, *Politico* (Nov. 14, 2019), <https://www.politico.com/news/2019/11/14/epa-jackson-watchdog-070993>.

⁶ Memorandum from General Counsel Matthew Z. Leopold, Environmental Protection Agency, to Administrator Andrew R. Wheeler, Environmental Protection Agency (Nov. 5, 2019), https://www.epa.gov/sites/production/files/2019-11/documents/epa_general_counsel_opinion_on_oig_7-day_letter.pdf.

⁷ *Id.*

⁸ 5 U.S.C. App. § 6(a)(1)(a) (emphasis added).

⁹ 5 U.S.C. App. § 6(c)(1) (emphasis added).

¹⁰ Memorandum from General Counsel Matthew Z. Leopold, Environmental Protection Agency, to Administrator Andrew R. Wheeler, Environmental Protection Agency (Nov. 5, 2019),

agency employees — have been an essential investigative tool for Inspectors General across federal agencies during both Republican and Democratic administrations.¹¹ Conducting interviews is also well within the broad statutory authority of Inspectors General. The Act authorizes Inspectors General to “request such information or assistance as may be necessary for carrying out the duties and responsibilities provided by this Act” and “to administer to or take from any person an oath, affirmation, or affidavit.”¹²

In a response to the General Counsel’s memo, the EPA OIG released a memo on November 7, 2019, affirming its authorities under the Inspector General Act to receive records and conduct interviews. The November 7 memo explains that the Act guarantees the Inspector General’s independence and that the EPA General Counsel’s interpretation of the Act “subverts our independence.”¹³ On December 10, EPA OIG warned that if the General Counsel’s position stands, “the IG Act falls.”¹⁴

Your prior public statements suggest agreement with the Inspector General. In August 2018, you issued a message to all EPA employees confirming the Inspector General’s authority and warning that compliance with requests from the OIG is not optional. You wrote:

The OIG is an independent office within the EPA and, to meet its statutory mandate under the Inspector General Act, the OIG requires information and assistance from EPA managers and staff on a regular basis. It is imperative and expected that agency personnel provide the OIG with access to personnel, facilities and records or other information or material that is needed by the OIG to accomplish its mission.¹⁵

You also acknowledged that the OIG “follows generally accepted protocols for questioning employees and gathering evidence.”¹⁶

Furthermore, EPA’s own internal manual setting forth the authorities of the Inspector General also requires cooperation by Agency employees. The manual states that “EPA managers and supervisors must ensure that all EPA employees cooperate with the OIG during audits and

https://www.epa.gov/sites/production/files/2019-11/documents/epa_general_counsel_opinion_on_oig_7-day_letter.pdf.

¹¹ See, e.g., Environmental Protection Agency, *Semiannual Report to Congress, October 1, 2018 – March 31, 2019* (identifying at least ten investigations during the most recent six-month period in which the EPA OIG conducted interviews), https://www.epa.gov/sites/production/files/2019-05/documents/_epaig_201904-epa-350-r-19-001.pdf.

¹² 5 U.S.C. App. § 6(a).

¹³ Environmental Protection Agency, Office of Inspector General, *Reply of Acting EPA Inspector General to General Counsel Memorandum – Seven Day Letter* (Nov. 7, 2019) (online at https://www.epa.gov/sites/production/files/2019-11/documents/_epaig_igresponsetogencounselletterabout7dayletter_11-7-19.pdf).

¹⁴ Environmental Protection Agency, Office of Inspector General, *Report: Despite Requirements of Inspector General Act, Chief of Staff Refuses to Provide Agency Information for OIG Evaluation; EPA Whistleblower Training Does Not Address Interference with or Intimidation of Congressional Witnesses* (Dec. 10, 2019) (online at https://www.epa.gov/sites/production/files/2019-12/documents/_epaig_20191210-20-e-0053.pdf).

¹⁵ Environmental Protection Agency, *Message from the Acting Administrator* (Aug. 8, 2018), <https://www.epa.gov/sites/production/files/2018-08/documents/wheeler-messageonoig-august082018.pdf>.

¹⁶ *Id.*

investigations.” It further states that employees should be instructed to “[d]isclose and provide information pertaining to matters under review.”¹⁷

The OIG must remain unencumbered in its ability to conduct independent investigations. We are extremely concerned that you are creating an environment at EPA that directly contradicts your 2018 message to employees, is hostile towards accountability, and enables the very waste, fraud, abuse, and mismanagement that Congress has charged the Inspector General to investigate.

We urge you to immediately withdraw the Agency’s baseless legal memorandum and instruct all staff at EPA to cooperate with the OIG.

In addition, we request that the Agency provide a briefing for our staffs by December 20, 2019, on the steps you are taking to address the serious issues raised in the Seven Day Letter and December 10 OIG report.

Sincerely,



Eddie Bernice Johnson
Chairwoman
Committee on Science, Space and Technology



Frank Pallone Jr.
Chairman
Committee on Energy & Commerce



Carolyn B. Maloney
Chairwoman
Committee on Oversight and Reform

Cc:

The Honorable Frank Lucas, Ranking Member, Committee on Science, Space and Technology
The Honorable Greg Walden, Ranking Member, Committee on Energy and Commerce
The Honorable Jim Jordan, Ranking Member, Committee on Oversight and Reform

¹⁷ EPA Manual 6500, *Functions and Activities of the Office of Inspector General* (1994 ed.).