

Congress of the United States

House of Representatives

COMMITTEE ON SCIENCE, SPACE, AND TECHNOLOGY

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October 29, 2019

The Honorable Andrew Wheeler
Administrator
Environmental Protection Agency
1301 Constitution Ave. NW
Washington, D.C., 20460

Dear Administrator Wheeler,

I write this letter as my final request for materials requested on EPA's Integrated Risk Information System (IRIS) program. Since my July letter,¹ the Agency has made claims of privilege on an item of interest and has flooded the Committee with thousands of irrelevant documents while positioning itself as fully responsive to my requests. The Committee is now prepared to issue subpoenas for the requested materials should the Agency fail to meet the deadlines outlined in this letter.

EPA's Unresponsive Document Productions

The day after my July 18 letter, EPA responded with three documents, totaling eight pages. These documents were already in the Committee's possession through requests placed to the Government Accountability Office (GAO) and these documents had already been made publicly available. The Agency continued to provide documents on a rolling basis. Three sets were issued between August 16 – over five months after the initial March 4 request – and August 30.² Of the 2,551 pages shared:

- 770 pages (30 percent) are communications prior to the Trump administration, though the letter explicitly asked for documents “prepared for and obtained by Trump administration EPA political officials, or regarding Trump Administration EPA political officials”;
- 241 pages (10 percent) are scans of morning news clips from Politico; and
- 226 pages comprised five separate reprints of a health effects study funded by the formaldehyde industry.

¹ Letter from Chairwoman Eddie Bernice Johnson to Administrator Andrew Wheeler, July 18, 2019, accessed here: <https://science.house.gov/imo/media/doc/7.18.19%20Letter%20to%20Wheeler%20regarding%20IRIS.pdf>

² Letter to Administrator Wheeler from Chairwoman Johnson and Senators Carper, Markey, and Whitehouse, March 4, 2019, accessed here: https://www.carper.senate.gov/public/_cache/files/d/8/d85d2332-eb76-457b-9357-0ca9287941d4/CAABAB95A210F123C71A45FA3DB8D84C.letter-to-administrator-wheeler-3-4-18.pdf

The majority of the documents that could be considered responsive and relevant were redacted to the point of uselessness. EPA marked the redactions “Deliberative Process / Ex. 5.” I would like to remind the Agency that Exemption 5 is a provision of Freedom of Information Act (FOIA), which is the mechanism by which the general public can review federal agency documents. This Committee’s inquiry is being conducted pursuant to Congress’s Article I powers under the U.S. Constitution, and has no relationship whatsoever to the Freedom of Information Act. Congress does not recognize any sort of “deliberative process privilege” as a legitimate basis for withholding documents from a Congressional inquiry.

Considering the inappropriate redactions of relevant materials and the sheer volume of non-responsive documents transmitted, only 6 percent of the documents received are responsive to the Committee’s request. It is apparent that the productions submitted to date were provided in bad faith.

EPA’s Specious Claims of Privilege on the OCHP Survey

As noted above, Congress does not recognize a “deliberative process privilege” as a valid justification for withholding information requested in a Congressional inquiry. Nonetheless, I feel compelled to point out that the specific claim of deliberative privilege over the Office of Children’s Health Protection’s (OCHP) response to the second-round IRIS prioritization survey is demonstrably false. EPA staff made this claim in a July 2019 email.³ Then, in response to a question for the record to Dr. Jennifer Orme-Zavaleta about OCHP’s survey responses, EPA said that “OCHP submitted priorities after the list of priority IRIS assessments had been finalized.”⁴ Thus, EPA is simultaneously claiming that the OCHP survey response came in too late to be considered in the deliberative process of IRIS prioritization, and also that the document in question is deliberative and therefore covered by a deliberative privilege. EPA clearly hasn’t even correctly invoked a privilege which, in any event, doesn’t apply to Congress. There is no legally supportable basis for withholding this information from the Committee.

EPA’s Failure to Provide Briefings

As outlined in my July letter, EPA has repeatedly dodged Committee requests for a briefing on the decision to deprioritize formaldehyde and then, later, to prioritize it for review under the Toxic Substances Control Act (TSCA).⁵ Since February, the Committee has requested briefings from various individuals at EPA, including Mr. David Dunlap. These requests have been repeatedly ignored by the EPA.

In order for the Committee to better understand Mr. Dunlap’s involvement in decisions relating to formaldehyde (both before and after his recusal from formaldehyde issues) and the IRIS program generally, I request that you make him available for a transcribed interview by Committee staff.

³ Appendix Item 1

⁴ Appendix Item 2

⁵ Letter from Charwomen Eddie Bernice Johnson and Mikie Sherrill, April 3, 2019, accessed here: <https://science.house.gov/imo/media/doc/4.3.19%20Wheeler%20letter%20EPA%20IRIS.pdf>

Please contact my staff by November 5, 2019 to schedule these transcribed interviews to be conducted by December 6, 2019.

By November 5, 2019, please provide the Committee with the following:

- The response of the Office of Children's Health Protection (OCHP) to the second-round survey on IRIS priorities.⁶
- Any and all materials compiled and work products prepared by the EPA Scientific Integrity Official pertaining to the request in my March 4, 2019 letter with Senators Carper, Markey and Whitehouse.⁷

On July 24, you sat down with me in my office and assured me that you would be responsive to the Committee's oversight requests. Based in part on your personal assurances, the Committee has allowed the EPA considerable time to respond to our requests. Unfortunately, the EPA's responses to the Committee's requests on this issue are completely lacking. The Committee will be forced to take compulsory action to obtain these items and the interview if they are not provided by November 5. Please contact Janie Thompson at 202-225-6375 with any questions.

Sincerely,


EDDIE BERNICE JOHNSON
Chairwoman
Committee on Science, Space, and Technology

⁶ As described on page 25 of the Government Accountability Office (GAO) March 2019 report "Chemical Assessments: Status of EPA's Efforts to Produce Assessments and Implement the Toxic Substances Control Act." Available at <https://www.gao.gov/products/GAO-19-270>.

⁷ Letter to Administrator Wheeler from Chairwoman Johnson and Senators Carper, Markey, and Whitehouse, March 4, 2019, accessed here: https://www.carper.senate.gov/public/_cache/files/d/8/d85d2332-eb76-457b-9357-0ca9287941d4/CAABAB95A210F123C71A45FA3DB8D84C.letter-to-administrator-wheeler-3-4-18.pdf