

OPENING STATEMENT

Ranking Member Suzanne Bonamici

Subcommittee on Environment

Joint Subcommittee on Oversight and Subcommittee on Environment hearing:

“Destruction of Records at EPA – When Records Must Be Kept,”

Thursday, March 26, 2015, 10:00 a.m.

Thank you Mr. Chair. As someone who strongly believes transparent government, I would certainly take issue with any government agency unlawfully destroying records.

However, the title of today’s hearing, “Destruction of Records at EPA – When Records Must Be Kept,” makes it appear that we have reached a verdict before we have examined any evidence.

Given that the EPA Inspector General is just beginning an investigation into this issue at the request of Chairman Smith, it would have been more prudent to wait until the investigation had something to report before holding this hearing.

Just yesterday, the Chairman issued a subpoena to Administrator McCarthy requiring that the Agency turn over billing records and text messages, without redaction, for the past six years. EPA has been responsive to the numerous Committee requests for information on this topic, so the issuance of this subpoena seems quite premature and hard to justify.

Nevertheless, I am pleased that both the EPA's Assistant Inspector General and the Chief Records Officer of the National Archives and Records Administration are here today to provide us with some background on the preservation of federal records. I am also interested in reviewing the actions taken by EPA in response to the Inspector General's 2013 report on the Agency's email practices.

It is my understanding that EPA steadfastly maintains that the Agency did not use private or secondary emails to circumvent federal record management responsibilities, a

claim that was validated by the 2013 report, and reiterated in a letter to our Senate colleagues in 2014. I am attaching both the report and the letter to my statement.

In this modern age of rapid, often electronic communication, important questions are rightly raised about the nature of federal records.

Is a note passed between colleagues at a meeting a federal record? What about a text message from an assistant to a supervisor about ordering donuts for a breakfast meeting?

The process of conducting business within the government is complex and nuanced, and it stands to reason that the law governing the retention and preservation of the records of such business is equally nuanced. Both the Federal Records Act and NARA provide guidance on how such items should be preserved and when they can properly be destroyed.

Having had an opportunity to review the testimony, I am somewhat puzzled about why we are hearing from one of the witnesses called to this hearing. It is easy to understand why both the EPA IG and NARA have been asked to testify. But I'm wondering what Dr. Schnare's role is today. Is he here as General Counsel of E&E Legal, the group that apparently sent the FOIA request to the EPA asking for text messages? I see that Dr. Schnare says he has years of experience responding to FOIA requests, but is he here claiming to be an expert on record retention? His testimony is quite accusatory; I do hope that any opinions are clearly conveyed as just that – opinions – like the place in the testimony when Dr. Schnare state, ostensibly as fact, that EPA senior management is “pleased” when they allegedly destroy public records.

And I am already concerned based on the written testimony that some of these accusations could be

considered defamatory. Dr. Schnare is a Phd and a lawyer, but he is neither judge nor jury.

I will be listening carefully, as I hope all members will do, to determine what specific evidence Dr Schnare has to support such serious accusations.

Make no mistake: willfully and unlawfully destroying or deleting, or attempting to destroy or delete, federal records carry severe fines and prison terms. I am wholly supportive of efforts to ensure the proper preservation of government records, and equally supportive of holding accountable those who have intentionally and unlawfully destroyed Federal Records. But let us not be quick to condemn until we have fully understood if the obligations and actions were consistent with the law.

I yield back.