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United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

RICHARD M. RUSSELL, MAJORITY STAFF DIRECTOR
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July 21, 2019

Charles J. Sheehan
Acting Inspector General
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Acting Inspector General Sheehan:

Enclosed please find a report documenting the extensive influence wielded by the law firm Hunton Andrews Kurth LLP (“Hunton”) and EPA during the Trump Administration. As you are aware, Hunton is the former law firm of William Wehrum, who until recently was Assistant Administrator in EPA’s Office of Air and Radiation, and David Harlow, currently senior counsel in that same office. We bring this report to your attention because of the pending ethics complaints about Mr. Wehrum and Mr. Harlow you are reviewing. The report raises new and serious concerns about Mr. Wehrum’s and Mr. Harlow’s compliance with federal ethics requirements. It also raises concerns about the agency’s ethics program generally, which merit your attention. We request that you review this report carefully.

More broadly, we urge you in the strongest possible terms not to abandon or decline to pursue work on this matter in the wake of Mr. Wehrum’s departure from the agency. These are institutional concerns that are capable of repetition in the future, yet will evade your review should you abdicate your responsibility to conduct and complete an evidence-based investigation. Moreover, the ethical failings and absence of accountability that pervade the Trump Administration should not be aided by an implicit message that one can avoid investigation if one simply resigns before the investigation is complete.

Section 1 of this report demonstrates that multiple Hunton-represented industry groups such as the Utility Air Regulatory Group (UARG) have sought sweeping regulatory changes that would increase air pollution, exacerbate climate change, and reduce the amount of pollution information available to the public. Among the dozens of changes, Hunton and its organizations have asked EPA to weaken greenhouse gas requirements for new and existing coal-fired power plants; to allow the largest polluters to release more toxic air pollution; and to allow upwind power plants to pollute more downwind communities. These Hunton-represented industry groups have also made highly technical and novel arguments that EPA has adopted or is in the process of adopting, such as how to account for certain types of benefits when conducting economic analyses for mercury regulations; how to sideline independent scientists on scientific advisory boards; or even how to redefine what counts as “ambient air” protected by the Clean Air Act in the first place.

While researching the policy outcomes, however, we repeatedly uncovered apparent violations of ethical rules. Some of these violations have been previously described, while others are being revealed for the first time. Section 2 of this report describes those extensive ethical failings. Specifically:

- ***Mr. Wehrum and Mr. Harlow appear to have violated the terms of the Trump Ethics Pledge and Ethics in Government Act regulations by participating in the development of the DTE Memo.*** Although Mr. Wehrum and Mr. Harlow were both recused from working on “any particular matter” in which a recent former client is a party, or in which Hunton “represents a party,” Mr. Wehrum and Mr. Harlow appear to have violated this ethical requirement by involving themselves in the

development of the DTE Memo. In the Memo, EPA (1) analyzed litigation in which DTE, a former client of Mr. Harlow, was represented by Hunton, and in which Mr. Wehrum entered an appearance on behalf of UARG; (2) reversed EPA policy on the eve of the Supreme Court's consideration of this litigation, adopting Hunton's position that the agency should not "second-guess" polluters' own calculations of how much pollution they expect to emit; (3) directly copied language submitted to EPA by Hunton on behalf of the Air Permitting Forum into the DTE Memo; and (4) cited the Hunton-DTE litigation as the basis for that shift in policy. Although EPA previously stated that Mr. Wehrum was not involved in developing the DTE Memo,¹ Mr. Wehrum subsequently acknowledged this was false.²

- ***In his recusal statement, Mr. Wehrum failed to disclose at least three former clients that he previously represented in court – the Alliance of Automobile Manufacturers; the Minnesota Trucking Association; and the Minnesota Automobile Dealers Association³ – then had at least six meetings with one of those undisclosed former clients in apparent violation of Ethics in Government Act regulations and the Trump Ethics Pledge.⁴*** Under the terms of his ethics agreement, Mr. Wehrum was supposed to be recused from "any meetings or communications relating to the performance of [his] official duties" with his former clients or employer – the only exception being meetings with at least five parties present where the discussion is limited to matters of general applicability. Mr. Wehrum's failure to disclose his recent former clients frustrates the "screening arrangement" in his recusal statement, which stated that his subordinates would "assist in screening EPA matters" involving the entities he listed to ensure his compliance with ethical rules. None of these meetings appear to have been "open to all interested parties" as the Office of Government Ethics defines that term, and were thus impermissible even if Mr. Wehrum only spoke about generally applicable regulations affecting his former clients' interests.
- ***Mr. Wehrum repeatedly met with other clients he worked with in private practice – actions that appear to violate the intent of the Trump Ethics Pledge and Mr. Wehrum's own ethics agreement. To accomplish this, Mr. Wehrum (and potentially Mr. Harlow) appears to have artificially – and perhaps improperly – limited his list of former clients from which he was recused.*** Although Mr. Wehrum and Mr. Harlow were nominally recused from certain meetings with "UARG," their recusal statements imposed no limits on discussions with *UARG members* (1) who paid hefty UARG "dues" that went almost exclusively to Hunton (and thus to Mr. Wehrum and Mr. Harlow as Hunton partners), or (2) with whom Mr. Wehrum and Mr. Harlow may have developed an attorney-client or other privileged relationship, even absent direct billing. Under D.C. attorney ethics rules it is "well

¹ <https://thehill.com/policy/energy-environment/364015-epa-works-to-ease-air-pollution-permitting-process>

² Juliet Eilperin, *EPA regulator skirts the line between former clients and current job*, Wash. Post (Feb. 25, 2019).

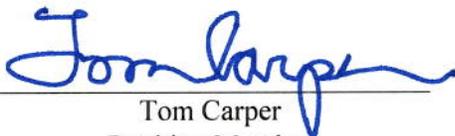
³ See, e.g., Mem. of Law in Support of Mot. For Partial Summary Judgment, Doc. 47 at *27, *Minn. Trucking Ass'n et al. v. Stine et al.*, No. 15-cv-2045-JRT-KMM (D. Minn. Sept. 29, 2016) (listing Mr. Wehrum and five other lawyers, including two others from Hunton, as "Attorneys for Plaintiffs Minnesota Trucking Association, Minnesota Automobile Dealers Association, Alliance of Automobile Manufacturers, American Petroleum Institute, and American Fuel & Petrochemical Manufacturers").

⁴ Mr. Wehrum had at least six small meetings with his former client the Alliance for Automobile Manufacturers to discuss regulatory policy: 11/27/2017 (with one other entity); 12/27/2017 (alone with board); 2/21/2018 (with lawyers/lobbyists); 4/16/2018 (alone); 5/22/2018 (alone); 5/23/2018 (alone), and 7/16/2018 (with one other entity).

established” that “neither a written agreement nor the payment of fees is necessary to create an attorney-client relationship.”⁵ In fact, Hunton and UARG have successfully argued in court that Hunton lawyers and UARG members have attorney-client privileged conversations, adding further credence to the notion that Mr. Wehrum and Mr. Harlow should have listed more UARG members as former clients in their recusal statements. A review of Mr. Wehrum’s calendars shows that at least 10 different UARG members have been in attendance at nine separate meetings with Mr. Wehrum (American Electric Power; Dominion Energy; Duke Energy; Minnesota Power; Otter Tail Power; Southern Company; the American Coalition for Clean Coal Electricity; the Edison Electric Institute; the National Mining Association; and the National Rural Electric Cooperative Association). On December 7, 2017, the same day EPA issued the DTE Memo, Mr. Wehrum gave a closed-door briefing on Clean Air Act regulatory developments at his former employer Hunton. This presentation occurred during a two-day set of meetings at Hunton that appears to have been a pre-planned gathering of UARG’s membership. Such a gathering raises the prospect that the event was really a meeting before a single entity, UARG, which Mr. Wehrum was prohibited from meeting with alone – not a meeting with five parties. In any event, the meeting was also not “open to all interested parties” as required by the Trump Ethics Pledge, because Hunton only invited its own clients to this closed-door meeting. In addition to numerous meetings with UARG members, Mr. Wehrum also held two private meetings with his former client General Electric (which is also a member of the Air Permitting Forum).

Thank you very much for your attention to this matter. We look forward to your prompt response. Should you have any questions, please contact Michal Freedhoff (michal_freedhoff@epw.senate.gov) of Senator Carper’s Environment and Public Works Committee staff, or Joe Gaeta (joe_gaeta@whitehouse.senate.gov) of Senator Whitehouse’s staff.

Sincerely yours,



Tom Carper
Ranking Member
Committee on Environment and
Public Works



Sheldon Whitehouse
Ranking Member
Subcommittee on Clean Air and
Nuclear Safety

cc: David Cozad, Acting Designated Agency Ethics Official and Acting Deputy General Counsel,
Office of General Counsel, Environmental Protection Agency

⁵ *In re Lieber*, 442 A.2d 153, 156 (D.C. 1982).