

UNITED STATES OFFICE OF GOVERNMENT ETHICS



October 15, 2018

The Honorable Sheldon Whitehouse
United States Senate
530 Hart Senate Office Building
Washington, DC 20510

Dear Senator Whitehouse:

This responds to your letter dated September 4, 2018, which raises concerns that Mr. William Wehrum, the Environmental Protection Agency's (EPA) Associate Administrator for the Office of Air and Radiation, has failed to follow certain agency and Office of Government Ethics (OGE) ethics guidelines, based on a recent news article.¹

Specifically, your letter raises concerns regarding Mr. Wehrum's compliance with his ethics pledge made pursuant to Executive Order 13770. In general, Executive Order 13770 requires additional ethics commitments for certain senior political appointees. It is important to note that OGE's role with regard to Executive Order 13770 is to provide interpretative guidance as requested by the White House to ethics officials who are responsible for administering the pledge requirements as to appointees at their agencies. Through this guidance, OGE provides ethics officials with uniform guidance to help them offer consistent advice.² Beyond providing interpretative guidance, OGE has no authority to either administer or enforce potential violations³ of the pledge at other agencies. However, if OGE becomes aware of a concern regarding compliance with provisions under the ethics pledge, its staff will make an inquiry with the agency. As with most ethics requirements, agencies are in the best position to ascertain the relevant facts, develop remedies, and monitor compliance of their appointees because of their knowledge of the duties of and matters before each appointee.

Within its role of providing guidance on the pledge, OGE has provided interpretive guidance which may be relevant to your inquiry. In particular, your letter concerns the requirement that appointees will not, for a period of two years from the date of their appointment, participate in any particular matter involving specific parties that is directly and substantially related to their former employer or former clients, including regulations and contracts.⁴ Given the issues raised in your letter, it is important to note that "former client" is defined as any person for whom the appointee served personally as agent, attorney, or consultant within the two years prior to the date of his or her appointment, but does not include clients of the appointee's former employer to whom the appointee did not personally provide services.⁵ Additionally, section 2 of the order defines the term "particular matter involving specific parties" to have the same meaning as set forth in OGE's regulations. As your letter notes, this includes any meeting or other communication relating to the performance of one's official duties with a former employer or former client, unless the communication applies to a particular matter of general applicability and participation in the meeting or other event is open to all interested parties.⁶ OGE has advised that an event

¹ See Eric Lipton, *As Trump Dismantles Clean Air Rules, an Industry Lawyer Delivers for Ex-Clients*, N.Y. TIMES (Aug. 19, 2018).

² See, e.g., OGE Legal Advisory, LA-17-02 (2017); OGE Legal Advisory, LA-17-03 (2017).

³ See Exec. Order No. 13770 sections 4(a), 5 (Jan. 28, 2017).

⁴ See Exec. Order No. 13770 sec. 1(6) (Jan. 28, 2017).

⁵ See Exec. Order No. 13770 sec. 2(i) (Jan. 28, 2017).

⁶ See Exec. Order No. 13770 sec. 2(s) (Jan. 28, 2017).



may be considered open to all interested parties if it includes a multiplicity of parties, such as five or more stakeholders.⁷

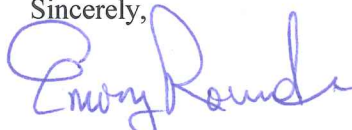
Within its role in tracking appointees' overall compliance with their ethics agreements, OGE recently instituted a requirement that Presidential appointees who are Senate-confirmed complete a Certification of Ethics Agreement Compliance (Certification). This requirement places the duty on appointees to directly and transparently attest to their individual compliance with their ethics commitments. The Certification clarifies and makes uniform the process for reporting and monitoring appointee compliance with ethics agreements.

With respect to the application of these requirements to the conduct of Mr. Wehrum, the EPA is in the best position to ascertain the relevant facts and is responsible for the direct and ongoing monitoring of its appointees' compliance with ethics requirements, including those established under Executive Order 13770. With regard to your specific concern about Mr. Wehrum's recusal statement, the EPA has made the statement public.⁸ OGE has also followed-up with EPA and collected an amended Certification in which Mr. Wehrum provides his explanation as to why he completed the form as he did; this document is available on OGE's website.⁹

With regard to your broader concern regarding EPA's ethics program, OGE routinely conducts reviews of agency ethics programs. These reviews focus on evaluating agency systems and procedures for implementing the federal ethics requirements. As part of this review function, OGE continues to work with EPA to improve the overall effectiveness of its ethics program as a result of OGE's 2017 review of EPA's program.¹⁰

I am forwarding a copy of this letter, as well as your letter to OGE, to the EPA Designated Agency Ethics Official. If you have further inquiries regarding this matter, please contact the EPA.

Sincerely,



Emory A. Rounds, III
Director

cc. EPA Designated Agency Ethics Official

⁷ See Memo from Robert I. Cusick, Director, U.S. Office of Gov't Ethics, to Designated Agency Ethics Officials, *Ethics Pledge: Revolving Door Ban--All Appointees Entering Government*, DO-09-011 (2009).

⁸ Memorandum from William L. Wehrum, EPA Assistant Administrator, *Subject: Recusal Statement* (September 17, 2018), available at <http://src.bna.com/BUA>.

⁹ See page 3 of the revised Certification of Ethics Agreement Compliance submitted by William L. Wehrum on September 27, 2018 ("I answered "N/A" to No. 6 because I have no existing conflicts and I do not expect to have any in the future, so this question does not apply to my situation."), available at <https://goo.gl/6HZLTc>.

¹⁰ OGE Report No. 17-16, *Ethics Program Review: U.S. Environmental Protection Agency* (2017), available at <https://goo.gl/gzywPx>.