



September 17, 2018

The Honorable Donald Beyer Jr.  
U.S. House of Representatives  
1119 Longworth House Office Building  
Washington, DC 20515

The Honorable Pramila Jayapal  
U.S. House of Representatives  
319 Cannon House Office Building  
Washington, DC 20515

The Honorable Jamie Raskin  
U.S. House of Representatives  
431 Cannon House Office Building  
Washington, DC 20515

The Honorable Raja Krishnamoorthi  
U.S. House of Representatives  
515 Cannon House Office Building  
Washington, DC 20515

Dear Representatives Beyer, Jayapal, Raskin, and Krishnamoorthi:

This responds to your letter dated July 27, 2018, which asks the Office of Government Ethics (OGE) to investigate Acting Environmental Protection Agency (EPA) Administrator Wheeler's involvement with past lobbying clients to determine whether his previous meetings may have violated his ethics pledge made pursuant to Executive Order 13770.

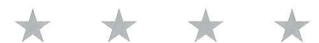
In general, Executive Order 13770 requires additional ethics commitments for certain senior political appointees. OGE's role with regard to Executive Order 13770 is to provide interpretative guidance as requested by the White House to ethics officials who are responsible for administering the pledge requirements as to appointees at their agencies. OGE has no authority to either administer or enforce potential violations<sup>1</sup> of the pledge at other agencies. 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 our role of providing guidance on the pledge, OGE has provided interpretive guidance which may be relevant to your inquiry. Specifically, 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.<sup>2</sup> 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.<sup>3</sup> 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. 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

<sup>1</sup> See Exec. Order No. 13770 sections 4(a), 5 (Jan. 28, 2017).

<sup>2</sup> See Exec. Order No. 13770 sec. 1(6) (Jan. 28, 2017).

<sup>3</sup> See Exec. Order No. 13770 sec. 2(i) (Jan. 28, 2017).



other event is open to all interested parties.<sup>4</sup> OGE has advised that an event may be considered open to all interested parties if it includes a multiplicity of parties, such as five or more stakeholders.<sup>5</sup>

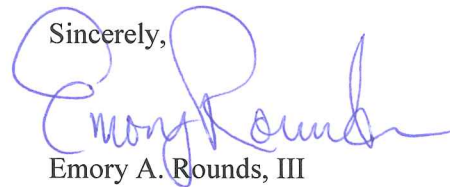
Also relevant to the issues raised in your letter is the requirement that appointees who were registered lobbyists within the two years before the date of their appointment will not, for a period of two years after the date of their appointment, participate in any particular matter on which they lobbied within the two years before the date of their appointment or participated in the specific issue area in which that particular matter falls.<sup>6</sup> The Counsel to the President's office has advised OGE that the term "specific issue area" means a "particular matter of general applicability," which would include regulations and their subsequent interpretation.<sup>7</sup>

With respect to the application of these requirements to the conduct of Acting Administrator Wheeler, the EPA is in the best position to ascertain the relevant facts and is responsible for monitoring its appointees' compliance with ethics requirements, including those established under Executive Order 13770. The EPA has publicly released its analysis as it concerns the sections of the Executive Order outlined above and, with respect to the three entities mentioned in your letter, concluded that they do not meet the definition of "former clients" set forth in Executive Order 13770.<sup>8</sup>

Your letter also asks OGE to clarify which clients, and which regulatory matters affecting them, merit future recusals by the Acting Administrator in order to comply with both the spirit and the letter of ethics rules. The EPA is also in the best position to ascertain which clients, and which regulatory matters affecting them, merit future recusals by the Acting Administrator. The EPA has publicly released Acting Administrator Wheeler's written recusal statement, detailing the specific issue areas from which he is recused.<sup>9</sup>

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

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<sup>4</sup> See Exec. Order No. 13770 sec. 2(s) (Jan. 28, 2017).

<sup>5</sup> 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).

<sup>6</sup> See Exec. Order No. 13770 sec. 1(7) (Jan. 28, 2017); see also OGE Legal Advisory LA-17-03 (2017).

<sup>7</sup> See OGE Legal Advisory LA-17-03 (2017).

<sup>8</sup> See Timothy Cama, *EPA ethics official defends Wheeler over meetings*, The Hill (July 27, 2018), available at <http://thehill.com/policy/energy-environment/399177-epa-ethics-official-defends-wheeler-over-meetings>.

<sup>9</sup> Memorandum from Andrew R. Wheeler, EPA Deputy Administrator, *Subject: Recusal Statement* (May 24, 2018), available at <http://src.bna.com/z2o>.