AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

MANAGEMENT FAILURES: OVERSIGHT OF THE EPA

HEARING

BEFORE THE

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRTEENTH CONGRESS

SECOND SESSION

JUNE 25, 2014

Serial No. 113–138

Printed for the use of the Committee on Oversight and Government Reform

Available via the World Wide Web: http://www.fdsys.gov
http://www.house.gov/reform

U.S. GOVERNMENT PRINTING OFFICE

89–897 PDF WASHINGTON : 2014

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2104 Mail: Stop IDCC, Washington, DC 20402–0001

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

DARRELL E. ISSA, California, *Chairman*

JOHN L. MICA, Florida
MICHAEL R. TURNER, Ohio
JOHN J. DUNCAN, JR., Tennessee
PATRICK T. MCHENRY, North Carolina
JIM JORDAN, Ohio
JASON CHAFFETZ, Utah
TIM WALBERG, Michigan
JAMES LANKFORD, Oklahoma
JUSTIN AMASH, Michigan
PAUL A. GOSAR, Arizona
PATRICK MEEHAN, Pennsylvania
SCOTT DESJARLAIS, Tennessee
TREY GOWDY, South Carolina
BLAKE FARENTHOLD, Texas
DOC HASTINGS, Washington
CYNTHIA M. LUMMIS, Wyoming
ROB WOODALL, Georgia
THOMAS MASSIE, Kentucky
DOUG COLLINS, Georgia
MARK MEADOWS, North Carolina
KERRY L. BENTIVOLIO, Michigan
RON DESANTIS, Florida

ELIJAH E. CUMMINGS, Maryland, *Ranking Minority Member*
CAROLYN B. MALONEY, New York
ELEANOR HOLMES NORTON, District of Columbia
JOHN F. TIERNEY, Massachusetts
WM. LACY CLAY, Missouri
STEPHEN F. LYNCH, Massachusetts
JIM COOPER, Tennessee
GERALD E. CONNOLLY, Virginia
JACKIE SPEIER, California
MATTHEW A. CARTWRIGHT, Pennsylvania
TAMMY DUCKWORTH, Illinois
ROBIN L. KELLY, Illinois
DANNY K. DAVIS, Illinois
PETER WELCH, Vermont
TONY CARDENAS, California
STEVEN A. HORSFORD, Nevada
MICHELLE LUJAN GRISHAM, New Mexico
Vacancy

LAWRENCE J. BRADY, *Staff Director*
JOHN D. CUADERES, *Deputy Staff Director*
STEPHEN CASTOR, *General Counsel*
LINDA A. GOOD, *Chief Clerk*
DAVID RAPALLO, *Minority Staff Director*

CONTENTS

	Page
Hearing held on June 25, 2014	1

WITNESSES

The Hon. Sheldon Whitehouse, a U.S. Senator from the State of Rhode Island	
Oral Statement	6
Written Statement	8
The Hon. David Vitter, a U.S. Senator from the State of Louisiana	
Oral Statement	10
Written Statement	13
The Hon. Gina McCarthy, Administrator, U.S. Environmental Protection Agency	
Oral Statement	17
Written Statement	19

APPENDIX

June 13, 2014 letter to EPA from Rep. Issa and Sen. Vitter submitted by Rep. Chaffetz	70
Questions for the Record from Chairman Issa	72
Questions for Administrator McCarthy, U.S. EPA, from Reps. McHenry and Meadows	74
Additional questions regarding EPA negligence in responding to Beale Fraud	86

MANAGEMENT FAILURES: OVERSIGHT OF THE EPA

Wednesday, June 25, 2014,

HOUSE OF REPRESENTATIVES,
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,
WASHINGTON, D.C.

The committee met, pursuant to call, at 9:35 a.m., in Room 2154, Rayburn House Office Building, the Honorable Darrell E. Issa [chairman of the committee] presiding.

Present: Representatives Issa, Mica, Turner, Duncan, McHenry, Jordan, Chaffetz, Walberg, Amash, Gosar, DesJarlais, Gowdy, Lummis, Woodall, Collins, Meadows, Bentivolio, Cummings, Maloney, Tierney, Clay, Connolly, Speier, and Lujan Grisham.

Staff Present: Melissa Beaumont, Majority Assistant Clerk; Will L. Boyington, Majority Deputy Press Secretary; Molly Boyl, Majority Deputy General Counsel and Parliamentarian; Lawrence J. Brady, Majority Staff Director; Joseph A. Brazauskas, Majority Counsel; David Brewer, Majority Senior Counsel; Caitlin Carroll, Majority Press Secretary; Drew Colliatie, Majority Professional Staff Member; John Cuaderes, Majority Deputy Staff Director; Adam P. Fromm, Majority Director of Member Services and Committee Operations; Linda Good, Majority Chief Clerk; Tyler Grimm, Majority Professional Staff Member; Ryan M. Hambleton, Majority Professional Staff Member; Erin Hass, Majority Senior Professional Staff Member; Christopher Hixon, Majority Chief Counsel for Oversight; Michael R. Kiko, Majority Legislative Assistant; Mark D. Marin, Majority Deputy Staff Director for Oversight; Katy Rother, Majority Counsel; Laura L. Rush, Majority Deputy Chief Clerk; Jessica Seale, Majority Digital Director; Andrew Shult, Majority Deputy Digital Director; Katy Summerlin, Majority Press Assistant; Sarah Vance, Majority Assistant Clerk; Rebecca Watkins, Majority Communications Director; Jaron Bourke, Minority Director of Administration; Krista Boyd, Minority Deputy Director of Legislation/Counsel; Beverly Britton Fraser, Minority Counsel; Jennifer Hoffman, Minority Communications Director; Chris Knauer, Minority Senior Investigator; Julia Krieger, Minority New Media Press Secretary; Una Lee, Minority Counsel; Juan McCullum, Minority Clerk; Dave Rapallo, Minority Staff Director; and Ilga Semeiks, Minority GAO Detailee.

Chairman ISSA. Good morning. This hearing will come to order.

Without objection, the chair is authorized to declare a recess of the committee at any time. Without objection, so ordered.

The Oversight Committee exists to secure two fundamental principles: first, Americans have a right to know that the money Wash-

ington takes from them is well spent and, second, Americans deserve an efficient, effective Government that works for them. Our duty on the Oversight and Government Reform Committee is to protect these rights. Our solemn responsibility is to hold Government accountable to taxpayers, because taxpayers have a right to know what they get from their Government. It is our job to work tirelessly in partnership with citizen watchdogs to deliver the facts to the American people and bring genuine reform to the Federal bureaucracy.

Today's hearing is in fact critical to our core oversight responsibility. The Environmental Protection Agency is a massive Federal bureaucracy that employs thousands of people and regulates approximately 11 percent of the economy directly, but its impact on energy effectively regulates the prospect for competitiveness of our entire economy. It is an agency with far reaching influence impacting the largest and the smallest corporations in America.

While the vast majority of EPA employees are honest and follow the rules, a troubling trend has emerged: a lack of overall supervision and accountability for those employees who cheat the taxpayers. Let's consider some examples.

For years, the top EPA official masqueraded as a secret agent. Can't write this in a script. As a secret agent, a CIA man, while running up bogus vacations and other charges, airline tickets and the like, on taxpayers. In order to do that, he had to have the willing cooperation of many people, including the EPA administrator herself.

Another top former EPA official received a discount on a new Mercedes worth thousands of dollars from a lobbyist with business before the EPA.

EPA employees have been found watching mind-boggling amounts of pornography while in the office. EPA supervisors signed off on clearly fraudulent time claims for years. And I repeat, EPA supervisors knowingly signed off on time sheets for people they knew could not work, did not work, and in fact never even logged into their computers.

Critical evidence about possible employee wrongdoing often goes missing and investigators lack the necessary cooperation and, in fact, find a hostile environment when they try to do their job.

Even top EPA leadership has, in too many cases, demonstrated a willingness to turn a blind eye to egregious wrongdoing rather than confront the problem.

I appreciate the administrator appearing here today to discuss the committee's concerns. We are already dealing with one agency, the IRS, that has suffered a devastating loss of confidence of and from the American people. My fear is the EPA, without major changes, and those changes include how supervisors deal with responsibility for the money and the core rights of the American people, will suffer a similar loss of confidence that hinders their ability to carry out their mission.

I am also concerned that these problems, which the committee has detailed in numerous letters and hearings, are not being related to top officials with whom the responsibility ultimately lies. Just last week, under oath in a transcribed interview with our staff, an EPA top congressional affairs person told us that not all

letters sent by members or even committee chairmen and ranking members actually are seen by the administrator herself.

It is troubling to me that with the well documented concerns raised by this committee and others may not even reach the eyes and ears of the person who in fact was nominated by the President and confirmed to have that responsibility. If problems known by this committee cannot reach the person with the statutory authority, then clearly there is a problem at the very top. Moreover, the more we learn about the internal workings of the EPA, the more it needs oversight, and an abundance of it.

Our committee is not the only watchdog that has faced obstruction tactics from employees of the EPA. At a hearing last month, the Office of Inspector General described the dysfunctional relationship they are experiencing with the EPA's Office of Homeland Security. And I want to make sure I say this correctly. The EPA's Office of Homeland Security has absolutely no statutory relationship with Homeland Security and in fact is a creation within EPA that does not have statutory authority in any way, shape, or form that exceeds or preempts the Inspector General's Office. And yet Homeland Security has disrupted and prevented the IG from fully investigating employee malfeasance at the Agency.

The administrator, in response, sent a letter to the Office of Inspector General that further complicates the relationship between the offices and allows the Office of Homeland Security to continue conducting investigations without OIG involvement. They don't have the statutory authority, they will not quit, and the administrator herself has blessed the reduction in the lawful rights and responsibility of her own inspector general.

With or without the administrator's knowledge, the EPA has continued to obstruct congressional investigation by refusing to provide subpoenaed documents.

During a hearing last month, I made a very simple request to Deputy Administrator Bob Perciasepe with respect to a subpoena I served to you, Administrator McCarthy, in November of 2013. Comply with it. The failure to comply has illustrated an apparent disregard for congressional oversight and an unwillingness to accept responsibility for the problems currently plaguing the EPA. As chairman of this committee, I intend to use every tool at my disposal to ensure that accountability and credibility is restored.

Administrator McCarthy, you are here to tell us what the EPA can and should be doing to aid in this effort and prevent the waste, fraud, and abuse that threaten the Agency's reputation.

Additionally, we are joined today, and I am very pleased to be joined by Senator Vitter and Senator Whitehouse. We welcome them today and we look forward to their testimony.

We are going to run just a short video to kick this off. I know Senator Whitehouse has one too.

[Video shown.]

Chairman ISSA. I now recognize the distinguished ranking member, Mr. Cummings, for his opening statement.

Mr. CUMMINGS. Thank you very much, Mr. Chairman. I want to remind everyone that this is our watch. We are on the earth today. The question is whether we will guard our environment so that, when our children's children's children inherit it, it will be a better

environment than the one that was in existence when we lived upon this earth.

Mr. Chairman, today's hearing is significant because it marks the first time that the administrator of the Environmental Protection Agency, Ms. McCarthy, will testify before any committee of Congress since the EPA issued its proposed rule to limit carbon pollution from power plants.

The rule, which is part of the President's Climate Action Plan, is a landmark step towards addressing climate change. The time for our Nation to take action on climate change is right now; not tomorrow, not next week, but now. The science is abundantly clear and the evidence is simply overwhelming. This is our watch.

So I welcome Administrator McCarthy and I look forward to hearing more about the Agency's action on this very critical issue.

I also welcome Senator Whitehouse and Senator Vitter. It is good to have you both here today. Just last week Senator Whitehouse, who chairs the Senate Subcommittee on Clean Air and Nuclear Safety, held a remarkable hearing with testimony from our four previous EPA administrators. They were all appointed by Republican presidents. Let me say that again. They were all appointed by Republican presidents. And they all, all four of them, testified about the urgent need for the United States to act on climate change right now; not tomorrow, not next year, now.

These four Republican administrators wrote an op ed in the New York Times on August 1st, 2013, and let me tell you what they said. I didn't say this, they said it. "Each of us took turns over the past 43 years running the Environmental Protection Agency. We served Republican presidents, but we have a message that transcends political affiliation: the United States must move now on substantive steps to curb climate change at home and internationally."

These four Republican administrators endorsed President Obama's Climate Action Plan, and here is what they also wrote: "A market-based approach, like a carbon tax, would be the best path to reducing greenhouse gas emissions, but that is unachievable in the current political gridlock in Washington. Dealing with this political reality, President Obama's June Climate Action Plan lays out achievable actions that would deliver real progress."

This is our watch. These words came from officials who served in the Nixon Administration, the Reagan Administrations, and both Bush Administrations. But the question is is Congress listening. Are we listening? Are we hearing the urgent warnings? Unfortunately, it appears that the answer is no. Republicans have designated this week in the House of Representatives as Energy Week. Yet they refuse to consider any legislation to address climate change. This is our watch. Instead, they vote over and over and over and over again to protect the interest of the fossil fuel industry.

This is our watch. We have a duty to pass on a cleaner environment than the one we found when we came upon this earth. As a result, this week the House of Representatives will take its 500th anti-environment vote since Republicans took the majority in the 112th Congress. Unfortunately, the actions of this committee seem to reflect the same priorities. The official purpose of today's hearing

is not to address climate change or the response of Federal agencies to one of the most enormous challenges facing our Nation and our entire world. Instead, the committee will focus on what appears to be an effort to block EPA at every turn and to prevent the Agency from getting anything done.

Since 2011, Chairman Issa has launched an unprecedented 18 separate investigations into EPA activities. He has sent 49 letters, issued two subpoenas, and held 15 hearings, including this one. Today some committee members will accuse Administrator McCarthy of obstructing congressional oversight. But the facts show this simply is not true. The EPA employees have testified at more than a dozen hearings; they have participated in numerous transcribed interviews, depositions, and briefings; and they have produced more than 200,000 pages of documents to the committee since 2011.

This is our watch. So I want to be clear that some of these investigations are worthwhile. The actions by John Beale, for example, of pretending to be a CIA agent while working at EPA are criminal, and they deserve to be investigated and prosecuted, and he should be brought to justice. But eventually I believe the committee must turn from oversight to reform, because this is our watch. At some point history calls on us to take on the greatest challenge of our generation, the greatest challenge our generation has ever faced in global warming. Ladies and gentlemen, we simply do not have the right to remain silent.

Mr. Chairman, you said in your opening that the EPA regulates businesses and affects the economy. I don't think you mentioned its core mission. Its core mission: to protect the human health and the environment. I just wanted to make that clear.

Finally, EPA must fulfill its mission of protecting human health and our environment, and Congress should do everything in our power during our watch to make sure that they have the resources and the tools necessary to do so.

With that, I yield back.

Chairman ISSA. I thank the gentleman.

As we go to our witnesses, I might remind the witnesses that the hearing has been designated as Management Failures: Oversight of the EPA, which is within our jurisdiction, not global warming.

Members may have seven days to submit opening statements for the record.

We now welcome our distinguished first panel. As is the usual practice of the committee, the Senators will be excused immediately following the testimony and will not be sworn.

The Honorable David Vitter from Louisiana is the Ranking Member of the Senate Committee on Environmental and Public Works, and has been highly involved in the oversight process with this committee.

The Honorable Sheldon Whitehouse, from Rhode Island, is a member of the Senate Committee on Environment and Public Works.

Senator Whitehouse, I think you won the straw. You get to go first.

WITNESS STATEMENTS

STATEMENT OF THE HONORABLE SHELDON WHITEHOUSE

Senator WHITEHOUSE. Thank you, Chairman, Ranking Member Cummings.

The Environmental Protection Agency is far more popular than Congress, and its mission, to protect human health and the environment, is one of the most fundamental and popular responsibilities of the Federal Government. Bad actors like John Beale can be found in large institutions, and should be dealt with by the proper authorities. But we don't, in America, impugn the integrity of an entire agency and its thousands of public servants. That is a disservice to the American people who rely on the EPA to protect public health.

Earlier this month, EPA used its Clean Air Act authority, as established by Congress and affirmed by the Supreme Court, to propose carbon pollution standards for the Country's existing power plants. The approach taken in the standards was based on unprecedented public engagement. The EPA held more than 300 public meetings, working with stakeholders of all kinds and all across the political spectrum.

EPA has put States in the driver's seat to come up with their own best plan to meet State-specific targets. States and power companies will have a wide variety of options to achieve carbon reductions, like boosting renewable energy, establishing energy savings targets, investing in efficiency, or joining one of the existing cap and trade programs, each of which strategies has been proven successful in our States. States can develop plans that create jobs, plans that cut electricity costs by boosting efficiency, plans that achieve major pollution reduction. As proposed, the rule will reduce carbon pollution while providing as much as $93 billion in public benefit per year by 2030.

A recent Washington Post ABC News poll found that 70 percent of the public supports Federal standards to limit greenhouse gas pollution. And just last week the Wall Street Journal and NBC News released a poll showing that two-thirds of Americans support President Obama's new carbon pollution standard. More than half say the U.S. should address climate change even if it means higher electricity bills for them.

EPA's proposal is also supported by major utilities like National Grid, faith organizations like the U.S. Conference of Catholic Bishops, and nameplate corporations like Mars, Nike, Starbucks, and countless others.

As the ranking member indicated, four former EPA administrators who served under Presidents Nixon, Reagan, George H.W. Bush, and George W. Bush testified recently before my Senate Environment and Public Works Subcommittee on clean air and nuclear safety. They explained that carbon pollution needs to be addressed immediately, that EPA's rule is a reasonable way to reduce carbon pollution, and that industry has a history of developing innovative ways to comply with environmental regulations in ways that cost significantly less than industry's initial estimates. Indeed, some say that those initial estimates are often exaggerated.

The Clean Air Act, according to a 2011 EPA assessment, will benefit Americans more than its costs by a ratio of 30 to 1, $30 of value in the lives of regular Americans for every $1 the polluters had to pay in cleanup costs. That is a good deal for America.

I am grateful to Administrator McCarthy for working diligently to do what Congress and the Supreme Court told EPA to do, and what the American people want EPA to do, to reduce harmful carbon pollution in accordance with the law and the vast preponderance of the best available science. Whatever questions may need to be answered, it does not serve the public to interfere with the EPA in its performance of this vital, popular, and beneficial task. Indeed, it would be a dereliction of duty on, as the ranking member said, our watch.

Thank you very much, Mr. Chairman. Thank you, Ranking Member Cummings.

[Prepared statement of Senator Whitehouse follows:]

Senator Sheldon Whitehouse – Opening Statement
House Oversight and Government Reform Hearing
"Management Failures: Oversight of the EPA"
Wednesday, June 24, 2014

The Environmental Protection Agency's mission—to protect human health and the environment—is one of the most fundamental and popular responsibilities of the federal government.

Bad actors, like John Beale, can be found in large institutions and should be dealt with by the proper authorities. But we don't in America impugn the integrity of the entire agency and its thousands of public servants. That's a disservice to the American people who rely on the EPA to protect public health.

Earlier this month, EPA used its Clean Air Act authority, as established by Congress and affirmed by the Supreme Court, to propose carbon pollution standards for the country's existing power plants. The approach taken in the standards was based on unprecedented public engagement. EPA held more than 300 public meetings, working with stakeholders of all kinds and all across the political spectrum.

EPA has put states in the driver's seat, to come up with their own best plan to meet state-specific targets. States and power companies will have a wide variety of options to achieve carbon reductions, like boosting renewable energy, establishing energy savings targets, investing in efficiency, or joining one of the existing cap-and-trade programs. States can develop plans that create jobs, plans that cut electricity costs by boosting efficiency, plans that achieve major pollution reduction. As proposed, the rule will reduce carbon pollution while providing as much as $93 billion in public benefit per year by 2030.

A recent Washington Post-ABC News poll found that 70 percent of the public supports federal standards to limit greenhouse gas pollution. And just last week, the Wall Street Journal and NBC News released a poll showing that two-thirds of Americans support President Obama's new carbon pollution standard. More than half say the U.S. should address climate change even if it means higher electricity bills for them.

EPA's proposal is also supported by major utilities like National Grid, faith organizations like the U.S. Conference for Catholic Bishops, and nameplate corporations like Mars, Nike, Starbucks, and countless others.

Four former EPA administrators who served under Presidents Nixon, Reagan, George H.W. Bush, and George W. Bush testified before the Senate Environment and Public Works Subcommittee on Clean Air and Nuclear Safety last week. They explained that carbon pollution needs to be addressed immediately; that EPA's rule is a reasonable way to reduce carbon

pollution; and that industry has a history of developing innovative ways to comply with environmental regulations in ways that cost significantly less than industry's initial estimates.

The Clean Air Act, according to a 2011 EPA assessment, will benefit Americans more than its costs—by a ratio of 30 to one. Thirty dollars of value in the lives of regular Americans for every one dollar the polluters had to pay in cleanup costs. That's a good deal for America.

I am grateful to Administrator McCarthy for working diligently to do what Congress and the Supreme Court told EPA to do with the Clean Air Act—to reduce harmful pollution in accordance with the law and the best available science.

Mr. WALBERG. [Presiding.] Thank you, Senator Whitehouse.

Now, Senator Vitter, we look forward to your comments.

STATEMENT OF THE HONORABLE DAVID VITTER

Senator VITTER. Thank you, Mr. Chairman and Ranking Member Cummings and all members, for inviting me to testify before your committee today. And I am going to break from the previous two speakers. I am going to actually talk about the topic of this hearing; "entitled Management Failures: Oversight of the EPA."

As the ranking member of the Senate Environment and Public Works Committee, I have a responsibility to oversee the EPA. Unfortunately, under the current majority in the Senate, our committee has yet to hold a single oversight hearing on this important matter, contending instead that a perfunctory member's briefing was sufficient. That is why your work and your effort is so incredibly important.

Now, while there are certainly serious policy debates about the Agency and its role in regulating our energy supply, that is not what I am here to discuss. That is not what the hearing is about. Rather, my testimony will focus on my work over the last year that has uncovered what appears to be a systematic breakdown in EPA operations that have wasted millions of taxpayer dollars.

Now, at the very beginning let me emphasize three key points. First of all, I am not saying I have never said that all or most EPA employees are dishonest or incompetent. I have never said that and I have never impugned their integrity. Secondly, I have never said that these problems started under this Administration and existed under this Administration alone. I have never said that; I am not saying that today. But number three, the statement by others, including the head of the EPA, that John Beale was a lone wolf and a completely isolated incident, is clearly not true; and the facts clearly contradict that. The Beale saga has uncovered major systemic management failures at EPA and has also led to the uncovering of other significant time and attendance fraud, other unrelated cases that you have heard about, including in your May 7th hearing.

Let me give you the history of my work on this matter. In July 2013, I was contacted by a whistleblower who described serious and systemic time and attendance fraud at the EPA. Some of these problems involved situations where senior EPA managers discouraged remedial action against chronic offenders because it was easier to ignore the problem than to fix it. Based on this information, I requested EPA's Office of Inspector General to brief me on the time and attendance problems they were investigating at the Agency. I was expecting an account of the instances reported by the whistleblower, but instead I learned of another case, the bizarre tale of John Beale, the fake CIA agent who pled the Fifth in this hearing room.

When we made the Beale saga public, I was aware of the underlying symptoms of abuse going on at the Agency. Therefore, it was immediately apparent to me that the Agency's claim that Beale was a lone wolf or an isolated case was just flat out completely false, and anybody who argued that he was a solo actor was just flat out distorting the truth.

Since then, I have been focused on uncovering the circumstances and management weaknesses that allowed Beale's fraud to continue for so long, literally for decades. These management failures have facilitated wasting millions upon millions of taxpayer dollars and undermine congressional oversight.

In August 2013, I requested the OIG to immediately launch an investigation into the Agency's policies and process that facilitated Beale's fraud and to make recommendations to ensure this never happens again. When the OIG issued its report in December 2013 on Beale's travel and pay issues, the findings were, in my opinion, rather scant and prompted more questions, such as who knew or should have known what Beale was up to and when did they first reason to believe that Beale was defrauding the Agency. So I asked the OIG to show me their work. My staff then poured through all of the OIG's documents and interview notes in hopes of answering these key questions. The results of our review were the subject of a series of reports issued in February and March of this year, which are attached to my testimony today.

The key findings of these reports include, one, Beale could not have accomplished his massive fraud without assistance, knowingly or unknowingly, from former and current EPA officials who have in no way been held accountable; two, one of the key facilitators of Beale's fraud was Deputy Administrator Perciasepe, who signed key documents and contributed to the delay in reporting Beale to the OIG; three, the time line offered by the EPA and the OIG that concluded Administrator McCarthy was the first person to report suspicions of Beale is highly suspect; and, four, other EPA employees had an opportunity to be proactive and should have done more to prevent the fraud, but chose to defer to senior officials rather than report their concerns to the OIG.

Now, as I said at the beginning, and I want to emphasize, Beale's fraud stretched through several administrations, Republican and Democrat, so it is easy to second guess their actions with the benefit of hindsight. But this does not change the fact that many individuals at EPA had knowledge or were woefully ignorant of Beale's ongoing fraud. These individuals have never been held accountable.

I also emphasize that certainly most EPA employees are not bad apples, are not incompetent, are not defrauding the public; they are dedicated public servants. However, when an agency is in the process of aggressively expanding its jurisdiction, regulating something as significant as our energy supply, they have a key responsibility to make sure that their own house is in order, and EPA's is clearly not.

Aside from the Beale case, I have learned more about the dysfunction of the EPA, again, thanks to courageous whistleblowers, and this has made it abundantly clear again that John Beale was not a lone wolf and his case is not an isolated instance. You heard about other significant cases of time and attendance fraud at your May 7th hearing. In addition, a whistleblower has informed my staff that there was a dispute between the Office of Homeland Security and the OIG. When I learned of the dispute, I was immediately struck by the coincidence that the same actors who delayed providing the OIG with critical information about Beale were the same individuals involved in an altercation with an OIG investi-

gator. We now know there are additional instances where EPA employees refused to cooperate with OIG investigations and received no reprimand. And I understand that as recently as yesterday, this issue is completely unresolved in the eyes of the OIG.

Because of our joint efforts, a veil has been pulled back revealing that wasted taxpayer resources and mismanagement permeates the Agency. Given that much of our efforts to uncover waste, fraud, and abuse at the Agency derive from the voice of undaunted whistleblowers, I encourage additional concerned EPA staff to come forward at any juncture. We can work together to reform and rehabilitate the troubled agency.

As my testimony today demonstrates, representatives in Congress do listen and do take action based on information whistleblowers provide.

In closing, I want to commend this committee for taking the issue of waste, fraud, and abuse at the EPA seriously and for holding today's hearing. It is important that this story come out and, because of your work, additional stories of this systematic problem have come out and it has demonstrated that John Beale and his crimes were just, unfortunately, the tip of the iceberg.

Thank you very much.

[Prepared statement of Senator Vitter follows:]

WRITTEN TESTIMONY OF THE HONORABLE DAVID VITTER
RANKING MEMBER, ENVIRONMENT AND PUBLIC WORKS COMMITTEE
BEFORE THE
HOUSE COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
"MANAGEMENT FAILURES: OVERSIGHT OF EPA"
JUNE 25, 2014

Chairman Issa, Ranking Member Cummings – thank you for inviting me to testify before your Committee today about Management Failures: Oversight of the EPA. As the Ranking Member of the Senate Environment and Public Works Committee, I have a responsibility to oversee the Environmental Protection Agency (EPA). Unfortunately, under the current leadership in the Senate, our committee has yet to hold a single oversight hearing on this matter – contending that a perfunctory Member's briefing was sufficient. That is why your work and your efforts are incredibly important. While there are some serious policy debates about the Agency and its role in regulating our energy supply, that is not what I am here to discuss or what today's hearing is about. Rather, my testimony will focus on my work over the last year that has uncovered what appears to be a systematic breakdown in EPA operations that have wasted millions of taxpayer dollars. I am pleased to have this opportunity today to share my findings alongside my colleague from the Environment and Public Works Committee.

In July 2013, I was contacted by a whistleblower who described serious and systematic time and attendance problems at the EPA. Some of these problems involved situations where senior EPA managers discouraged remedial action against chronic offenders because it was easier to ignore the problem than fix it. Based on this information I requested the EPA's Office of Inspector General (OIG) brief me on the time and attendance problems they were investigating at the Agency. I was expecting an account of the instances reported by the whistleblower, but instead I learned the bizarre tale of John Beale – the fake CIA agent who pled the 5th in this hearing room.

When we made the Beale saga public, I was aware of the underlying symptoms of abuse going on at the Agency. Therefore, it was immediately apparent to me that the Agency's claim that Beale was a "lone wolf" was completely false and that anyone who argued he was a solo actor was glossing over the truth. Since then, I have been focused on uncovering the circumstances and management weaknesses that allowed Beale's fraud to continue for so long – literally for decades. These management failures have facilitated wasting millions upon millions of taxpayer dollars and undermined congressional oversight.

In August 2013, I requested the OIG immediately launch an investigation into the Agency's policies and process that facilitated Beale's fraud, and to make recommendations to ensure this never happens again. When the OIG issued reports in December 2013 on Beale's travel and pay issues, the findings were scant and prompted more questions, such as who knew or should have known what Beale was up to and when did they first have reason to believe Beale was defrauding the Agency. So I asked the OIG to "show their work." My staff then poured through all of the OIG's supporting documentation and interview notes in hopes of answering these key questions. The results of our review were the subject of a series of memoranda issued in February and March of this year, which are attached to my written testimony today.

The key findings of these memoranda include:

1. Beale could not have accomplished his massive fraud without assistance, knowingly or unknowingly, from former and current EPA officials who have not been held accountable.

2. One of the key facilitators of Beale's fraud was Deputy Administrator Perciasepe, who signed key documents and contributed to the delay in reporting Beale to the OIG.

3. The timeline offered by EPA and the OIG that concluded Administrator McCarthy was the first person to report suspicions of Beale is suspect.

4. Other EPA employees had an opportunity to be proactive and should have done more to prevent the fraud, but chose to defer to senior officials rather than report their concerns to the OIG.

In addition to these memoranda, my investigation went beyond Beale's monetary fraud and uncovered a plethora of questionable, but lasting, policymaking decisions Beale made during his tenure at EPA, which were detailed in a Committee report issued in March titled *EPA's Playbook Unveiled: A Story of Fraud, Deceit and Secret Science*.

I acknowledge Beale's fraud stretched through several Administrations, both Republican and Democratic, and that it is easy to second guess their actions with the benefit of hindsight. However, this does not change the fact that many individuals at EPA had knowledge, or were willfully ignorant, of Beale's ongoing fraud. These individuals have never been held accountable. I also accept that not every EPA employee is a bad apple and that we have dedicated public servants working long hours to protect our air and our water. However – when an agency is in the process of aggressively expanding its jurisdiction and regulating something as significant as our energy supply, they have a keen responsibility to make sure that their own house is in order. Regretfully, EPA's house is not.

Aside from the case of Beale, I have learned more about the dysfunction of the EPA – again – thanks to courageous whistleblowers. As an example, a whistleblower informed my staff that there was a dispute between the Office of Homeland Security and the OIG. When I learned of the dispute, I was immediately struck by the "coincidence" that the same actors who delayed providing the OIG with critical information about Beale were the same individuals involved in an altercation with the OIG investigator. We now know there are

additional instances where EPA employees refused to cooperate with OIG investigations, and received no reprimand. I understand that as recently as yesterday – this issue remains unresolved.

Because of our joint efforts, a veil has been pulled back revealing that wasted taxpayer resources and mismanagement permeates the Agency. Given that much of our efforts to uncover waste, fraud, and abuse at the Agency derive from the voice of undaunted whistleblowers, I encourage additional concerned EPA staff to come forward at any juncture. We can work together to reform and rehabilitate the troubled agency. As my testimony today demonstrates – representatives in Congress do listen and do take action based on information you provide.

In closing, I would like to commend this Committee for taking issues of waste, fraud, and abuse at the EPA seriously and for holding today's hearing. I believe that as Congressional investigators, many of you instinctively knew that there was more to the story than what the Agency represented to the public and Congress. Those instincts were correct. John Beale and his crimes were just the tip of the iceberg.

Chairman ISSA. [Presiding.] Thank you, Senator. We appreciate your coming here to give us testimony, and once again I want to thank you for your entire team's effort in this joint investigation.

We will now take a very short recess in place for the administrator to be seated.

[Pause.]

Chairman ISSA. Our second panel today is Administrator of the United States Environmental Protection Agency, the Honorable Gina McCarthy. Pursuant to the committee rules, Madam Administrator, would you please rise to take the oath?

Do you solemnly swear or affirm that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth?

[Witness responds in the affirmative.]

Chairman ISSA. Thank you very much. Please be seated.

As you know after so long doing this job as a deputy and as the administrator, your entire prepared statement will be in the record. You may choose to read it or use your five minutes in any way you choose. The gentlelady is recognized.

STATEMENT OF THE HONORABLE GINA MCCARTHY, ADMINISTRATOR, U.S. ENVIRONMENTAL PROTECTION AGENCY

Ms. MCCARTHY. Thank you very much, Chairman Issa, Ranking Member Cummings, and members of the committee. I appreciate the opportunity to testify today.

The EPA's mission is to protect public health and the environment. It is important to every one of us, and I understand and appreciate this committee's keen interest in the EPA's work. In order to best achieve EPA's mission, one of the themes for my tenure as administrator has been to embrace EPA as a high performing organization. This means using our limited resources effectively so that EPA employees have the tools they need to do the important work that we ask of them every day.

Effective oversight is an important assurance that the Agency's work remains faithful to its mission and its mandates. In support of congressional oversight, the EPA works daily to respond to letters and various requests for information from this committee and others. Over the last six months, the EPA has produced thousands of documents, tens of thousands of pages to this committee alone. Cooperation with our overseers is not just EPA's policy, but it has and has always been part of EPA's culture.

EPA employees have always provided extensive information and support to facilitate the oversight work of EPA's inspector general. The inspector general plays a special role in helping me to ensure that the Agency is operating at its best, and I, along with my entire leadership team, remain committed to supporting the important work of that office.

The responsible and accurate reporting of time and attendance agency-wide has been a significant focus for both the EPA, as well as our inspector general. Through investigations of the conduct of John Beale, the former EPA employee who defrauded the agency and is now serving time in jail, we identified several weaknesses in Agency systems that allowed that fraud to occur and persist.

Based on those findings, EPA has taken extensive steps to ensure this type of fraud cannot be repeated.

It is also important to note that even though John Beale has been criminally prosecuted and is currently serving time in jail, the Agency continues to seek restitution for the fraud that he perpetrated. In addition to the $1.4 million already recovered from Mr. Beale during the criminal process, the Agency is seeking to recover costs related to unwarranted retention incentives and fraudulent travel costs, and we are working to lower his retirement annuity.

Eliminating waste, fraud, and abuse is critically important to me for two reasons: first, as administrator, I believe it is my obligation to provide the leadership and stewardship needed to ensure the kind of organization that the public servants at EPA deserve; and, second, because the work at EPA is so important, the health and environmental protections we administer benefit every person in the United States. We do this work with public trust and public resources, and we simply cannot afford to fail.

Nowhere is that more true than in our work to address climate change. Climate change is one of the greatest challenges that we face. The science is clear, the risks are clear, and the high costs of climate inaction are clear: we must act, which is why President Obama laid out a Climate Action Plan. And why on June 2nd I signed the proposed Clean Power Plan to cut carbon pollution, build a more resilient Nation, and lead the world in our global climate fight.

EPA's proposed Clean Power Plant is a critical step forward. It will cut hundreds of millions of tons of carbon pollution and hundreds of thousands of tons of other harmful air pollutants. Together, these reductions will provide important health benefits to our most vulnerable citizens, including our children.

All told, in 2030, when States meet their individual goals through their own flexible compliance path, our proposal will result in a 30 percent reduction in carbon pollution compared to our levels in 2005. In 2030, the Clean Power Plan will deliver climate and health benefits of up to $90 billion. And because energy efficiency is such a smart cost-effective strategy, we predict that in 2030 average electricity bills for American families will actually be 8 percent cheaper.

This is the kind of remarkable progress we can make when we have forward-looking policy, when we have engaged stakeholders, and when EPA is a high performing, high functioning agency.

I look forward to answering the questions you may have. Thank you, Mr. Chairman.

[Prepared statement of Ms. McCarthy follows:]

OPENING STATEMENT OF
GINA McCARTHY
ADMINISTRATOR
U.S. ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
U. S. HOUSE OF REPRESENTATIVES

June 25, 2014

Chairman Issa, Ranking Member Cummings, and members of the Committee, thank you for the opportunity to testify today. It is an honor to serve as Administrator of the United States Environmental Protection Agency (EPA). The EPA's mission, to protect human health and the environment, is important to every one of us, and our families, and I understand and greatly appreciate this Committee's keen interest in the EPA's work.

In order to best achieve EPA's mission, one of the themes for my tenure as Administrator has been "embracing EPA as a high performing organization." This means using our limited resources effectively, supporting our talented and dedicated workforce so that EPA employees have the tools they need to do the important work we ask of them every day, and ensuring that the Agency continues to rely on a faithful application of the law and science.

Effective oversight is an important assurance that the Agency's work remains faithful to its mission and mandates. In support of Congressional oversight, the EPA works daily to respond to letters and various requests for information from this Committee and others. Over the last six months, the EPA has produced thousands of documents -- tens of thousands of pages -- to this Committee alone. Cooperation with our overseers is not just EPA's policy, but is, and has always been, part of EPA's culture.

EPA employees have also provided extensive information and support to facilitate the oversight work of EPA's Inspector General. The Inspector General plays a special role in helping me to ensure the Agency is operating at its best, and I, along with my entire leadership team, remain committed to supporting the important work of that office to prevent, detect and correct any fraud, waste, or abuse in Agency programs or operations.

The responsible and accurate reporting of time and attendance Agency-wide has been a significant focus for both the EPA and our Inspector General. Through investigations of the conduct of John C. Beale, the former EPA employee who defrauded the Agency and is now serving time in jail, we identified several weaknesses in Agency systems that allowed that fraud to occur and persist.

In December 2013, the EPA released its *Report of Evaluation and Corrective Actions* related to that case. Based on those findings, EPA has taken extensive steps to ensure this type of fraud cannot be repeated. In April, the EPA completed a broader analysis entitled *Report on Internal Control Assessments of EPA's Sensitive Payment Areas*. This 50+ page report used an assessment process informed by the Government Accountability Office's *Standard for Internal Controls of the Federal Government* to analyze seven key areas: Executive Payroll Approvals, Employee Departures, Statutory Pay Limits, Parking and Transit Subsidy, Retention Incentive, Travel Reimbursements Above the Per Diem Rate, and Executive Travel Approval.

It is also important to note that even though John Beale has been criminally prosecuted and is currently serving time in jail, the Agency continues to seek restitution for the fraud he perpetrated against the Agency and the taxpayer. In addition to the $1.4 million recovered from Mr. Beale during the criminal process the Agency is seeking to recover costs related to unwarranted retention incentives, fraudulent travel costs, and we are working with the Office of Personnel Management to lower his retirement annuity.

Eliminating waste fraud and abuse is critically important to me for two key reasons: First, as Administrator, I believe it is my obligation to provide the leadership and stewardship needed to ensure we grow the kind of organization that the dedicated, hardworking, professional public servants at EPA deserve: I am proud of them, and I want each of them to be proud of EPA.

And second: Because the work we at EPA have to do is so important. The health and environmental protections we administer benefit every person in the United States, strengthen or economy, and preserve our environmental resources for generations to come. We do this work with public trust and public resources, and we cannot afford to fail.

Nowhere is that more true than in our work to address climate change. Climate change is one of our greatest challenges, indeed, one of the greatest challenges of our time. It already threatens human health and welfare and economic well-being, and without decisive action, it will have devastating impacts on the United States and the planet.

The science is clear. The risks are clear. And the high costs of climate inaction are clear. We must act. That's why President Obama laid out a Climate Action Plan and why on June 2, I signed the proposed Clean

Power Plan -- to cut carbon pollution, build a more resilient nation, and lead the world in our global climate fight.

EPA's proposed Clean Power plan is a critical step forward. It will cut hundreds of millions of tons of carbon pollution and hundreds of thousands of tons of other harmful air pollutants. Together these reductions will provide important health benefits to our most vulnerable citizens, including our children.

The EPA's stakeholder outreach and public engagement in preparation for this rulemaking was unprecedented. We held eleven public listening sessions around the country. We participated in hundreds of meetings with a broad range of stakeholders, and we talked with every state. Our plan is built on advice and information from states, cities, businesses, utilities, and thousands of people about the actions they are already taking to reduce carbon dioxide emissions.

All told, in 2030 when states meet their individual goals through their own flexible compliance path, our proposal would result in about 30 percent less carbon pollution from the power sector across the United States, as compared with 2005. That is 730 million metric tons of carbon dioxide out of our air. In addition, we will cut pollution that causes smog and soot by 25

percent. The first year that these standards go into effect, we'll avoid up to 100,000 asthma attacks and 2,100 heart attacks -- and those numbers go up from there.

In 2030, the Clean Power Plan will deliver climate and health benefits of up to $90 billion dollars. And for soot and smog reductions alone, that means for every dollar we invest in the plan, families will see $7 dollars in health benefits. And because energy efficiency is such a smart, cost-effective strategy, we predict that, in 2030, average electricity bills for American families will be 8 percent cheaper.

This is the kind of remarkable progress we can make when we have forward-looking policy, engaged stakeholders, and a high-functioning EPA.

I look forward to answering any questions you may have.

Chairman ISSA. Thank you.

Before I ask my round of questioning, your assistant was asked this question more than 30 days ago. I made it clear—you were in the back; hopefully you saw the video—that I would hold you in contempt if I did not receive one of the two events within 30 days, either compliance with the November 2013 subpoena lawfully served on you or item by item privilege logs claiming executive privilege from the President. Are you prepared to deliver those documents here today?

Ms. MCCARTHY. Mr. Chairman, EPA remains interested in working with the committee on the accommodation we have put forward——

Chairman ISSA. Ma'am, that is a yes or no.

Ms. MCCARTHY. I am answering the question, sir, as best I can.

Chairman ISSA. No, ma'am. You are talking about the same things you did in your opening statement. You are talking about your commitment to comply. I will let you answer fully, but I caution you you have been threatened with contempt for not complying with a subpoena from November of 2013. Your deputy was warned. You are back here today because in fact no compliance with this has happened and no executive privilege has been claimed and no log has been produced. So I ask you again are you prepared today to deliver the documents consistent with the subpoena of November 7th, 2013.

Ms. MCCARTHY. Mr. Chairman, it is my understanding that the staff have had discussions as early as just a short time ago about this issue. You know we have worked hard to recognize the interests of this committee in ensuring that there is no White House interference in the work between us and delivering documents that you require. We have provided an accommodation which we actually shared with your staff this morning, and we are looking to make sure that that addresses your needs so that we can avoid institution problems with the request that you made and hopefully move on to continue our work together.

Chairman ISSA. Ma'am, this morning an in camera review of a document we knew existed, demanded, was shown. It changes nothing. The subpoena calls for you to deliver the document and documents. You have not done so. Are you prepared, not to negotiate with Minority staff or Majority staff, are you prepared to deliver the documents or provide an item-by-item privilege log with an executive privilege?

Ms. MCCARTHY. Mr. Chairman, EPA has made no decision to not work with you on this issue. In fact, we have been trying very hard to do just that, which we know is your responsibility.

Chairman ISSA. Could you imagine if I just went ahead and set up a coal energy plant without a permit and started burning raw coal to produce electricity, and then told you for month after month after month that I look forward to working with you? The fact is this was a lawfully served subpoena. I am informing you today that it is my intention to hold the Environmental Protection Agency in contempt and to schedule a business meeting to do so at the first business day available to this committee, which will be after next week.

Ms. MCCARTHY. Mr. Chairman, I think our accommodation addressed the interests of the committee. I would like to just make sure that we can continue these discussions and get a final look at that document. Minority staff have looked at it, nor the Majority have.

Chairman ISSA. Ma'am, the President of the United States said elections have consequences. During the Minority's time in the majority under President Obama, no oversight was done. This is my watch. This is my time. Elections have consequences. You have not complied with the subpoena I am telling you the time to comply is now. If it is not complied with, I will, today, schedule a business meeting. I will hold that business meeting. This committee will consider and vote on contempt at that business meeting unless we have full compliance by that time. And, ma'am, there is no negotiation. Negotiation time has expired long ago. It is contemptible for months to pass and have you say that you are negotiating. That in camera offer, quite frankly, was insufficient.

Ms. MCCARTHY. I am sorry, Mr. Chairman, I didn't say I was negotiating. What I am trying to indicate is I certainly respect the important interests that your committee has put on the table that led to that subpoena being issued. You were very clear. I am trying to indicate that there is clear documentation that there was no White House interference. And if that can be agreed, then I think we can all agree that the important institutional considerations at EPA and of the Executive Branch should also be considered and hopefully resolved through this process.

Chairman ISSA. Ma'am, I appreciate that. It is not clear that there was no White House interference, so your statement is, in fact, your position. It is not clear. So we will have no preconditions that there was no White House interference. There is a large office at the White House that was formed to, in fact, handle it. The legislative liaisons that we deal with every day work for the White House more than they work for you, and that is true of all the cabinet positions.

So I want to get past that. Obviously we are not going to see those documents today.

Does the ranking member have any comment on the——

Mr. CUMMINGS. I do.

Chairman ISSA. Please.

Mr. CUMMINGS. In all fairness, I just want to make sure. So, I understand the chairman is saying no negotiations and you said you understand that. Why don't we have the documents today? Why don't we? They were available in camera, is that right?

Ms. MCCARTHY. Well, actually, you have——

Mr. CUMMINGS. Well, hold on. I am asking her.

Ms. MCCARTHY. The entire request that started this process and raised concerns, all of those documents have been provided to the committee. The question that was raised to us was related to a separate email exchange between EPA and the White House. We have certainly shared that in camera with now both sides of the committee, and that clearly shows there was no White House intervention.

And that was the sole reason for the subpoena, which requires five years of any communication between the Executive Branch,

the Executive Office of the President and EPA relative to any congressional inquiries, which, to me, is a very large task, significant taxpayer dollars. And if we have accommodated this request by showing that the reason the concern was raised is no longer justified or appropriate and we have addressed that concern, we see no reason why we would want to expend significant taxpayer dollars on that search.

Mr. CUMMINGS. Well, obviously the chairman doesn't feel the same way you feel, is that right?

I yield to the chairman. You don't agree with what she just said?

Chairman ISSA. The in camera document indicated I left you a voicemail. That is certainly not something we can further verify. And this investigation has everything to do with White House interference with the discovery process. When we issue a subpoena, the 106 documents that we became aware of because of a whistleblower, when we issue a subpoena, to then go into a series of negotiations, what is going to be redacted and so on, with people at the White House is, in fact, now part of the subpoena request. We are requesting the communications that went into the production.

Now, if the President wishes to say that every time he micro manages whether we get our documents pursuant to our oversight, and he wants to claim executive privilege, he may do so.

Ms. MCCARTHY. Mr. Chairman, this is a longstanding practice, and I am more than happy——

Chairman ISSA. Ma'am, ma'am, practices are written in the Constitution. There is no precedent for this. And, quite frankly, the longstanding practice that you speak of is a longstanding practice that I inherited because for two years the Minority, when they were in the majority, did no oversight. My first request for documents was greeted with a please submit a FOIA, as though we were the public or a newspaper and had no further constitutional oversight. So we have issued a subpoena. It has been lawfully issued; it has been out there for a long time. My folks want to get to other questions as to your failure to manage those limited resources——

Ms. MCCARTHY. Well, Mr. Chairman, I am more than——

Chairman ISSA.—so I would like to get past it.

Mr. Cummings, did you have any other questions?

Mr. CUMMINGS. She was about to say something.

Ms. MCCARTHY. I was just going to say I am more than happy, if the concern is that we just showed it to you and didn't provide it, I am more than happy to provide this email if that addresses the accommodation that we need to protect both of our institutional considerations.

Chairman ISSA. You certainly could make an in camera presentation of all the emails, all of them. And that would allow for staff to fully evaluate whether or not the production of all of the emails or some of the emails would be necessary. One chosen email is not in fact sufficient to take care of it. There has been multiple correspondence. I will never get the voicemail left, but I certainly am entitled for my staff to look at all the correspondence with the White House related to the production of these 106 documents. If that can be done, then we can make an evaluation. We can't do it based on one selected document. I am sure you understand.

Ms. MCCARTHY. Well, it is just my understanding that this was the document that raised the committee's concern. We addressed this——

Chairman ISSA. No, ma'am. This was the document that we had an advanced copy of that we knew existed that we asked for because we found out it existed because of a whistleblower. The fact is there were many more. We want all the documents that exist. Now, if there has been hard drive crashes, laptop disappearances or other failures or losses, we also want to know about those immediately since, pursuant to the subpoena, there was a requirement to preserve documents. And we have done a lot of that this week.

With that——

Mr. CUMMINGS. One last thing.

Chairman ISSA. Of course.

Mr. CUMMINGS. It is my understanding that your staff offered, months ago, to show these documents to the Majority staff. What happened, do you know?

Ms. MCCARTHY. They did not take us up on that offer, sir. And the concern I have is obvious. There are balance of power issues here. I am trying to address the issue that was raised to us tat raised concern. If this is a larger concern than EPA, I doubt that any production we can provide you would quell that concern. And I think there are legitimate issues that the Constitution recognizes on balance of power, and the appropriation we have offered is what we are supposed to do and what we are supposed to have a good discussion about and try to reach an accommodation to not tip the balance there, because we believe that we need to have confidential communications with the White House in a way that allows us to be efficient and effective. This would quell that.

Chairman ISSA. I appreciate that. My staff indicates that no such offer to see all the documents was ever given.

Ms. MCCARTHY. I am sorry, let me clarify. The offer was to show you the document you indicated that raised your concern.

Mr. CUMMINGS. Not the 106.

Chairman ISSA. Right. And that document raises my questions than answers, and it was only shown today in camera. I asked for them to look at it in camera, but we never presupposed that we see one document; and if it raises more questions than answers, we won't want to see more.

I am going to go to the ranking member and let him ask his questions, but the fact is, Madam Administrator, your entire power base, everything you do is in fact a power of the House and Senate that has been essentially loaned to the Executive Branch. The decision to decide a new ruling on any part of Clean Air or Clean Water, to grant permits, these are all powers of law. So I appreciate you talking about balance of power, but you only exist because a power of this branch has been loaned to the Executive Branch. EPA is not an inherent power of the second article branch.

But I am going to take a break and not ask my own line of questions yet. Mr. Cummings, please ask yours.

Mr. CUMMINGS. Thank you very much.

Administrator McCarthy, I want to pick up on this. I have listened to the chairman and I simply disagree with his characterization, but I do not believe you are obstructing anything. I do not be-

lieve there is a conspiracy with the White House. I believe that the EPA has been responsive. You produced more than 208,000 pages of documents and the Agency has been trying in good faith to cooperate in all 18 of the committee investigations. However, I would like to give you a chance again to respond to any question you may not have been able to fully address. Would you like to raise any additional points?

Ms. MCCARTHY. Well, the only thing I would like to mention is that this issue arose significantly through an earlier request for information. We spent considerable time and effort to respond to a variety of information requests that were made of us. These 106 emails were produced within seven days of us receiving the subpoena. The one issue that is outstanding was the committee's concern about whether or not there was White House intervention on the basis of this one email exchange, which we have now shown the staff.

So we think this should alleviate the concern and allow us to get to our operation, our business at hand. And if we do that, we work very hard with this committee; we take every request seriously. We work with staff to prioritize as best we can so we meet the most immediate needs. We have produced hundreds of thousands of pages of information over the past few years, and I think we will continue to try to do that as best we can and hopefully work with the committee through this process as well.

Mr. CUMMINGS. Well, thank you. With that, I want to ask you about a much more important issue. As we heard last week, Senator Whitehouse held an amazing hearing with four of your predecessors, all Republican administrators, testifying about climate change. They all agreed that our Nation needs to act now. One former administrator, William Ruckelshaus, was appointed by President Nixon. He said, "The four former EPA administrators sitting in front of you found that we were convinced by the overwhelming verdict of scientists that the earth was warming and that the humans were the only controllable contributor to that phenomenon."

Ms. McCarthy, how significant is it that all of the administrators came together to advocate for action on climate change?

Ms. MCCARTHY. I think it is very significant, sir, and I also am not surprised by it, frankly, because the science has been clear for quite some time. I think the best thing about it was in hopes of getting partisan politics out of the science debate and moving forward to take a look at actions. Clearly, Republicans were some of the first conservationists in the U.S. We had Teddy Roosevelt that created the national park system. President Nixon is actually the father of EPA. The first President Bush actually signed the Clean Air Act amendments.

So we have worked together for years to find out how we can preserve and protect both public health and the natural resources, and continue to grow the economy. We are going to do exactly the same with the challenge of carbon pollution and climate change, and, indeed, the time is now to take action. And the best part of the action, sir, is that they will benefit the economy; they will spark American innovation; they will continue to keep us in a leadership position on clean energy. And I am very much looking forward to

having this discussion on our comment period of the proposal we released a few weeks ago.

Mr. CUMMINGS. Now, all four of these Republican administrators endorsed the President's Climate Action Plan. They said, "President Obama's June Climate Action Plan lays out achievable actions that would deliver real progress." Your proposed rule has also received praise from State governors. For example, Rhode Island Governor Lincoln Chafee said this, "Thank you to the President and the EPA for taking a step forward to reduce pollution from power plants, which nationally is a large source of carbon emissions."

Why is it that States, in particular, favor the approach you have taken in the proposed rule and what work have you done with States to ensure that their concerns are addressed?

Ms. MCCARTHY. Well, as many of you may know, I actually worked for State government for a number of years under both Republican, actually, mostly Republican administrations. So when we started down this venture of trying to respond to the commitment that the President asked us to fulfill for the American public, which is to develop rules for existing power plants, we actually did unprecedented outreach. We spent considerable amount of time with the States and, as a result, we have a proposal that is as respectful of States as it possibly can. It has maximum flexibility and actually sets standards for those States that are practicable and affordable and achievable, but it allows them to create their own path forward so that it is done in a way that is most respectful of their own economies and their own energy needs, and where they are today and what they can do moving forward.

So I am excited about moving forward with this. We are going to continue that spirit of outreach during this 120-day comment period and will continue to work with States, who are our greatest ally, in bringing these carbon pollution reductions to the table and ensuring that our communities stay safe and our public is protected.

Mr. CUMMINGS. Chairman, just one more question.

Another Republican former Bush Administration Treasury Secretary, Hank Paulson, wrote an op ed this week asserting that the climate crisis we now face rivals the global economic crisis of 2008. He said this: "This is a crisis we can't afford to ignore. I feel as if I am watching as we fly in slow motion on a collision course toward a giant mountain. We can see the crash coming and yet we are sitting on our hands rather than altering our course." He went on to say, "We need to act now. Even though there is much disagreement, including from members of my own Republican party, we must not lose sight of the profound economic risks of doing nothing."

So my last question, Ms. McCarthy, is his argument to this Republican colleagues is that the economic costs of inaction far outweigh the costs of acting now. Do you agree with that?

Ms. MCCARTHY. I do, sir. And President Obama, I think, was very wise in developing this comprehensive plan and bringing together the entire Administration. He knew that climate change wasn't just an environmental issue. It is a significant economic issue for this Country that we need to face, as well as a national

security challenge. And when this body is asked to figure out how to pay $110 billion in costs associated with national disasters in 2012 alone that is not accommodated through the budget process, then we have a problem here that we need to address; and the great thing is we can do it in actions that are actually going to grow the economy and keep our communities safer.

Mr. CUMMINGS. Thank you, Mr. Chairman.

Chairman ISSA. Thank you.

If you will put up the IG's statement.

Administrator, we received an email after this attempt, supposed attempt to accommodate the IG. In a nutshell, your IG is not satisfied that in fact the continued use of your Office of Homeland Security undermines the Office of Inspector General, statutorily responsible to both this body and to the President. Will you commit today to fully allow the IG to do their job and cease having this investigative process going on by your Office of Homeland Security?

Ms. MCCARTHY. Mr. Chairman, I listened very closely to the hearing earlier that you had on this and I thank you for that. It became very clear that I needed to intervene personally on this issue and I have. Since you last met on this issue, we have made tremendous progress. We actually have staff in the OIG and OHS working together. The memo that he is talking about is our first step forward in this process——

Chairman ISSA. Ma'am, ma'am, the email from the inspector general says the progress has not been made. Homeland Security, this creation of your department——

Ms. MCCARTHY. Actually, I am not sure that is what that said, sir. We have made tremendous progress, but clearly we have not completely resolved all of our issues.

Chairman ISSA. But nothing has changed to me means nothing has changed, and that is what it says.

Here is the problem, administrator. You cannot, in my understanding, have failures, particularly human resource failures, abusive work environment, sexual harassment, fraud, you cannot have it investigated by your Homeland Security people who work for you. The IG exists to be independent.

Now, if you choose to have some of your own investigations going on, I can't take away your ability to do it. I can tell you that taking away the IG's authority, or in any way having the IG not know about it, which has been testified before this committee that under your watch that happens and happens regularly, including the Beale situation, where, when you discovered that for years you had been duped, you had gone to lunch with Mr. Beale, he had been a pal of yours from all indications, this is somebody you regularly have optional meetings with.

He fooled you. When you discovered, after his supposed retirement and non-retirement, that you and your agency had been fooled, and we are not holding you responsible for that kind of a failure; this man apparently was very good at his con work, he probably should have worked for the CIA instead of the EPA, but the fact is, when you discovered it, you did not immediately go to the IG; you went and did additional work.

That policy flies in the face of the reason the IG Act was passed by Congress and signed by the President.

Ms. MCCARTHY. Mr. Chairman, I would do nothing to interfere with the ability of the OIG to do their jobs. The OIG actually requested that we take a look at defining roles and responsibilities between the OIG and OHS. And if you look at the memo that transferred this new process, where we were trying to work these issues diligently together as one EPA, it will verify that I have strongly supported this, and my process changes are exactly to ensure that the OIG can do its job while our national security issues are resolved.

Chairman ISSA. Ma'am, this comment is related to the memo. So I guess we are going to ask the OIG to come back again, because he just doesn't agree with you.

Ms. MCCARTHY. Well, we haven't had a chance to fully discuss it, Mr. Chairman. It was presented as a work in progress. It was presented to address some issues, and not all. I am very confident that if you give us the ability to work these issues, we clearly will.

Chairman ISSA. Did the inspector general tell you, when you gave him the memo, that it was unacceptable?

Ms. MCCARTHY. No. He told me it had not fully resolved his issues. I totally agreed with him and I understood that.

Chairman ISSA. Okay, we will consider those to be synonymous.

Let me go through a couple of things. Do you remember Mr. Martin Townsend?

Ms. MCCARTHY. I do not know a Martin Townsend personally. I am familiar with his name, yes.

Chairman ISSA. Okay. And you know who Susan Strassman-Sundy was?

Ms. MCCARTHY. I do not know that person personally, no.

Chairman ISSA. Well, for many years Martin Townsend falsely signed and claimed that Susan Strassman-Sundy was in fact working when she was in a nursing home. She wasn't working. Now, we can understand the sad situation that Susan Strassman-Sundy might be in, but what have you done to ensure that there is zero tolerance for falsifying and claiming—you say you have limited resources. These people were squandering your resources, and doing so as a practice that repeated itself. What have you done to make sure it never happens again?

Ms. MCCARTHY. In general, sir, we have taken steps to make sure that our time and attendance is handled differently so it can be better monitored. We are also pursuing administrative action against Mr. Townsend and diligently pursuing that as well. We are trying to systematically make sure that our system is in place to catch these issues earlier and to work through these processes. I am very committed to making sure that waste, fraud, and abuse is pursued as diligently as we can, and I have in no way tolerated any lack of accountability or these types of issues. It is a disservice to the vast majority of people at my agency who work very hard——

Chairman ISSA. And you realize that the IG's strongest point is, in fact, if you stay out of his way and let him do this, even if your Homeland Security people think that they should be doing the investigations.

Obviously, we could deal with the people who are on administrative leave being paid full-time because of their addiction to pornog-

raphy being too much for you to allow them to be on the job. I would hope that the EPA and other Government agencies would try to come to us with a request for authority to more quickly sever people who are so flagrantly flaunting good judgment and law.

Ms. MCCARTHY. Anything that we can do to expedite these resolutions would be great.

Chairman ISSA. Lastly, although I chastised you, and will continue to, for your failure to comply with the November subpoena, I want to thank you or thank your people on behalf of some cooperation we received on the Pebble Mine issue. It is clear, though, that as long as individuals who were part of the process that caused your agency to unilaterally attempt to preempt the application for a mine to comply with clean water, that we will find it unacceptable.

We have tried to serve a subpoena on your former employee and we have asked for the failed hard drive from this Alaskan individual, who now is in New Zealand and seems to never be returning. We might strongly suggest that without the underlying science that you used to support your unprecedented, or nearly unprecedented, preemption of somebody's ability to apply for a permit to your agency, that you reconsider and allow the application to go forward, since the underlying science now is not just in question, it is unavailable. If you would respond, and then we will go to the——

Ms. MCCARTHY. Just to make it clear, sir, I believe that our science assessment has been out in the public for quite some time; it was properly peer reviewed a couple of times. But I would also caution that the decision to move forward under 404(c) is not preempting that project from moving forward; it is creating a very public process to discuss this issue, and no decision has been made whatsoever as to whether or not EPA is going to utilize this authority under the Clean Water Act.

Relative to the failed hard drive, I am happy to have our staff talk. I did not realize that that was being requested, but I am sure we can talk about that and work through these issues as we have on the other issues.

Chairman ISSA. We have new appreciation for failed hard drives.

I will say that since the people requested the 404 action before they did the science to support their conclusion, and which they did the request for 404 before, that, in fact, that prejudging that it was not going to be ever able to happen is a little bit like somebody holding their finger in the air and saying I understand there is a tornado coming. A tornado hasn't come, but they are now asking us all to go to the shelters. The reality is that the documents indicate they made a decision and asked for the 404, and then did the science.

Ms. MCCARTHY. I am sorry, sir, I don't know who would have made that decision, but my understanding is——

Chairman ISSA. We will provide you the documents.

Ms. MCCARTHY. My understanding is that the petitions came in, EPA chose to do the science assessment before they responded to the petitions, and then the decision was made to move together.

Chairman ISSA. Ranking member.

Mr. CUMMINGS. Just a friendly follow-up. Probably one of the most important things to be answered here today the chairman asked, and I just want to make sure we get a clear answer on this. The Beale situation, what has been put in place to make sure—the chairman asked that but I didn't hear the answer—to make sure that doesn't happen again? Because I think every single member of this committee was very upset about it. I just want to know what now is in place to make sure somebody isn't able to dupe an agency out of that kind of money for so long.

Thank you, Mr. Chairman.

Chairman ISSA. Sure.

Ms. MCCARTHY. Thank you for asking. We have put in place a number of significant changes to the way we look at time and attendance, the way in which we approve travel. We actually now have a system that we switched to that is going to provide a hard stop for retention bonuses. We are requiring different levels of approval in requirements for approval of time and attendance. I am happy to provide a full documentation of all the steps we have taken to make sure that human error can't happen and that managers don't have an ability and a responsibility to hold their employees accountable.

Chairman ISSA. Thank you.

I am delighted to call on the gentleman from Missouri, who was here before the gavel, Mr. Clay.

Mr. CLAY. Thank you, Mr. Chairman.

Administrator McCarthy, I want to ask about the case of John Beale, a former senior policy advisor who worked for you when you were assistant administrator of EPA's Office of Air and Radiation. As you know, this man lied to his friends, family, and EPA colleagues for 13 years by claiming that he worked for the CIA in order to avoid doing work for the EPA and to steal time from the Government.

Mr. Beale got away with this for years under both Republican and Democratic administrations until you started the process of investigating his supposed CIA assignment. This man is now sitting in a Federal prison serving 32 months and has been required to pay nearly $1.4 million in restitution and forfeiture. Mr. Beale claimed that he was able to deceive colleagues at the EPA because he earned their trust and respect over the years, and they did not think to question him.

Ms. McCarthy, when you first joined the EPA, did senior officials tell you that Mr. Beale worked for the CIA?

Ms. MCCARTHY. I was led to believe that he did, yes.

Mr. CLAY. And during your tenure as assistant administrator of Air and Radiation, were you unhappy with the fact that Mr. Beale was spending so much time supposedly working for the CIA?

Ms. MCCARTHY. I was, sir. I did my best to get him back to EPA so we could utilize our Federal funds as appropriately as we could, recognizing at that point that I thought he had obligations to another agency as well.

Mr. CLAY. During this committee's deposition of Mr. Beale in December 2013, Mr. Beale stated that you halted his work on a project he started in 2005 under one previous assistant administrator and supported by two more after that. Mr. Beale stated dur-

ing his deposition that you asked him to stop working on that project, come back to working full-time, and resume his position at the Office of Air and Radiation. Is that true?

Ms. MCCARTHY. My main goal was to get him back to EPA for as many hours as I possibly could, and I think his deposition might indicate that I was a bit of a pest about that. But I am glad I was; it led to a referral to the OIG and they did a great job with DOJ in putting him in jail and getting back Federal funds that belonged to the public.

Mr. CLAY. And just for the committee's sake, Beale said that you told him things were so busy that we just cannot afford having somebody out there doing an academic project, and we need all hands on deck. Is that accurate?

Ms. MCCARTHY. That is correct.

Mr. CLAY. Administrator McCarthy, the plea agreement that Mr. Beale signed with the U.S. Attorney's Office only covered his fraudulent actions from 2000 to 2013. I believe there must be unauthorized bonuses and travel expenses that the Federal Government and American taxpayers paid which Mr. Beale has not given back. Do you agree?

Ms. MCCARTHY. Yes, I do.

Mr. CLAY. And is EPA making efforts to collect these additional monies from Mr. Beale?

Ms. MCCARTHY. EPA is continuing to seek additional reimbursement and restitution, as well as taking steps to reduce his retirement annuity. We are attempting to get back everything that this convicted felon fraudulently took from the United States of America.

Mr. CLAY. And he is still eligible for his retirement?

Ms. MCCARTHY. Well, he is. As far as I know, that is what the law indicates. Even if we had successfully fired him, he would still be eligible for retirement.

Mr. CLAY. I wonder if he gets one from the CIA.

Ms. MCCARTHY. I am not sure he is spending it in the place where he would choose, but he has it.

Mr. CLAY. You know, during this committee's interview in March with Mr. Hooks, the assistant administrator for the Office of Administration Resources Management, he told us that you sought his assistance with Mr. Beale in December of 2010 or January of 2011. I understand that personnel issues are within Mr. Hooks's portfolio, is that correct?

Ms. MCCARTHY. I did, yes.

Mr. CLAY. And he stated that you were frustrated that EPA was paying for Mr. Beale's salary when he was supposedly working 100 percent for the CIA. He said you wanted Mr. Beale back doing work for you. He also said you were concerned that his retention bonuses were not recertified and he was being paid over the statutory limit. Is that correct?

Ms. MCCARTHY. That is correct.

Mr. CLAY. Mr. Chairman, I see my time has expired, and I yield back.

Mr. CHAFFETZ. [Presiding.] I thank the gentleman.

I will now recognize myself for five minutes.

Thank you for being here. Madam Administrator, you say that you are cooperating with the Office of Inspector General, yet in July of 2013 they highlighted to Congress that you had not issued an all-hands memorandum to your employees encouraging them to participate. Why not do that?

Ms. MCCARTHY. I actually was a bit appalled to think that I had to send out a memo on one particular legal obligation of my expectations to staff, and I knew that there were a lot of challenges they were facing in terms of updating our systems.

Mr. CHAFFETZ. Are you doing to do that? Are you going to issue an all-hands memorandum to your employees?

Ms. MCCARTHY. I am sorry, I will answer more quickly. I actually, instead of doing a memo, I did an all-hands video and speech where we talked about both accountability where I confirmed my expectation that people would be accountable and that the OIG was important and should be fully brought in to any issues of waste, fraud, and abuse.

Mr. CHAFFETZ. I think to satisfy the OIG's concerns, to issue a memorandum to make it clear to employees to help participate would be much appreciated.

I ask unanimous consent to enter into the record the June 13th, 2014 letter from Chairman Issa and Senator Vitter to this effect.

Ms. MCCARTHY. Sir, can I just point out that I send a lot of mass mailers out? I do very full town hall meetings——

Mr. CHAFFETZ. Without objection, so ordered.

Ms. MCCARTHY.—and that is what I did this town hall meeting to actually impress upon it.

Mr. CHAFFETZ. It obviously didn't satisfy their concerns.

Let me ask you. Prior to your being named the administrator, you were, my understanding is, the assistant administrator of the Office of Air and Radiation from 2009 to 2013, correct?

Ms. MCCARTHY. Yes.

Mr. CHAFFETZ. And during that time it is my understanding that you had three people that were direct reports to you, correct?

Ms. MCCARTHY. I actually had quite a few more than that, sir.

Mr. CHAFFETZ. How many direct reports to you?

Ms. MCCARTHY. Let me look. I had probably 10 or so. Actually, 11, 12, something like that.

Mr. CHAFFETZ. A dozen or slightly less than. Is it against department policy to view pornography on official work computers during official time?

Ms. MCCARTHY. Yes.

Mr. CHAFFETZ. What is the consequence if you get caught doing that?

Ms. MCCARTHY. You either take criminal or administrative action, or both.

Mr. CHAFFETZ. Can you be fired?

Ms. MCCARTHY. Yes, you can.

Mr. CHAFFETZ. We have three instances here. For instance, we have a GS–14 EPA employee within the Office of Air and Radiation, something that you oversaw, who had been accused of viewing pornography two to six hours a day since 2010. This person is on administrative leave with pay. Why didn't you fire this person?

Ms. MCCARTHY. I actually have to work through the administrative process, as you know, and there is still an ongoing OIG criminal investigation, is my understanding. We have actually banned him from the building. He no longer has access to any EPA equipment. But administrative leave——

Mr. CHAFFETZ. We have another person at the EPA within the Office of Policy who admitted, they have admitted, viewing pornography while at work for at least two hours at a time. You have another person, an EPA employee at the Chicago Regional Office, who had child pornography files on his work computer and viewed them on a regular basis.

Ms. MCCARTHY. Actually, that gentleman was fired and was actually put in prison.

Mr. CHAFFETZ. I just don't understand why—at one point the OIG walks into the office, they are actually viewing pornography when they walk into the office, and that person has not been fired. I don't understand.

Ms. MCCARTHY. Well, we just had an exchange with the chairman that I would like to point out, which is any way that we can make these processes move more quickly, I am all for it. But there is an administrative process we must follow, because it is one thing to get upset; it is a second thing to successfully go through both criminal and administrative procedures to address the issue——

Mr. CHAFFETZ. And I think that is something we are going to have to address, because why these people aren't fired on the spot I just do not know.

Ms. MCCARTHY. I would welcome Congress taking up some of those challenges; it would be great.

Mr. CHAFFETZ. And I also, with all due respect, need to understand why you had issued a memo. This is an email that you sent on March 29th of 2012. This gets into knowing when John Beale was a problem. I mean, at one point you say, "I thought he had already retired," and yet he continued on the payroll for some time. You knew about his issues with his payroll problems and his other things for years, and you didn't do anything about it.

In fact, your own agency department here issued this report saying from the beginning of 2001 it appears Mr. Beale began not to appear in the office as much as one day per week, although he was not approved to leave. Second, beginning in the mid-2000s, Mr. Beale began not to appear in the office for more lengthy periods of time. According to the EPA's Office of Inspector General, those abuses ranged from weeks to several months in the mid-2000s to the end of Mr. Beale's career. He didn't even appear at work. He is one of your less than 12 employees. Why wasn't he fired at that point? If he doesn't show up to work for months, did you not know that?

Ms. MCCARTHY. I think that we have discussed the fact that it was my understanding from day one that he had obligations to other agencies as well. I did the best that I could to try to keep track of him and to bring him to justice and, frankly, I am very appreciative of the work of the OIG and DOJ to actually——

Mr. CHAFFETZ. Why did it take you so long? The OIG said it took him one week to figure it out. You knew it was a problem for years

and you didn't think to call or ask anybody? Why is it that the OIG could find it out in one week?

Ms. MCCARTHY. Actually, I did refer it to the OIG when I had the information available to me that I had been requesting for quite some time and working diligently to——

Mr. CHAFFETZ. You referred it to the general counsel; you did not refer it to the OIG, which you were supposed to do. And you got promoted because of all this.

Ms. MCCARTHY. I am sorry, sir, that is not correct. That is not correct. I actually referred it as a human resources issue to OARM, which is our office that handles that. It became clear that there were other issues involved. They referred it to OHS to do some communication through the intelligence agencies because they are our liaison. When information was understood that this was more than a time and attendance issue, then it was referred to the OIG appropriately. This was a time and attendance issue and other things.

Mr. CHAFFETZ. We will spend some more time on this issue. My time is well passed and expired.

I believe we now go to Mr. Tierney now, from Massachusetts, for five minutes.

Mr. TIERNEY. Thank you, Mr. Chairman.

I think perhaps you wanted to go somebody else? I am fine with that.

[Pause.]

Mr. TIERNEY. Ms. McCarthy, how are you?

Ms. MCCARTHY. I like the way you say my name, sir.

Mr. CONNOLLY. Hey, I can do it too.

[Laughter.]

Mr. TIERNEY. So, look, thanks for throwing out the first pitch to the Red Sox this year. We have some more work to go on that, but——

Ms. MCCARTHY. I did better than Fitty Cent.

Mr. TIERNEY. You did. You did.

[Laughter.]

Ms. MCCARTHY. You like the way I said that?

Mr. TIERNEY. I like the way you said that as well.

I want to shift gears a little bit here because I think there are some important things being done that we have to talk about here. One is the clean power plan that EPA put out. It really has the potential to drive technological innovation and the clean energy and energy efficient technologies. I think that is critical on that and I am sure you will agree. It is going to be a huge benefit to our economy, especially in the long-term, but also in the more recent term.

So one of the elements of that proposal is the option for States to use electricity more efficiently. You base and the Agency based its proposal on what States are already doing to implement energy efficiency measures. I want to ask you to tell us a little bit more about the best performing measures that States are already using to improve energy efficiency and reduce electricity demand.

Ms. MCCARTHY. Well, what is most exciting about this is the fact that States and cities—I was just at the U.S. Conference of Mayors, and they know they have been dealing with these for a while and

they have developed a bunch of different techniques that can address carbon pollution and put money in people's pocketbooks. So they are pretty excited, as am I.

There are energy efficiency initiatives that can be brought to the table. I think you will know from Massachusetts they have a robust energy efficiency program. They also have a renewable fuel standard program. They have been a leader in energy efficiency, I am proud to say, for years, and they also are participating in the regional greenhouse gas initiative, because the other flexibility that we allowed in this proposal to States is not just go it alone, but if you want to join with other States or work on regional initiatives so that you get better reductions for your money, that is wide open to you.

So I think this will indeed spark innovation in renewables and energy efficiency technologies. It will be a leader in 21st century energy generation and I am pretty pumped.

Mr. TIERNEY. And are you working to make sure that other States have the advantage of knowing what the best practices are in those States that are really aggressive in those areas?

Ms. MCCARTHY. We are. Actually, if you take a look at this proposal, we give examples of State leadership here that others can work from. We also are meeting with States and energy officials and environmental officials from those States so that everybody gets to see what the best practices are that they can take advantage of, especially the efficiency ones, which pay off for everybody consistently. It is just a way of getting pollution reduction that is sustainable, and that is what we are really looking for here because you can continue to grow the economy while you cut those pollution levels down. That is what EPA does.

Mr. TIERNEY. Look, in my district I know people are talking about jobs, and I suspect it is not different elsewhere on that. So talk to us a little bit about the number of jobs that could be created by making these kind of investments on that and just how we are going to boost the economy that way.

Ms. MCCARTHY. Well, we know that this will actually create thousands of jobs, and those jobs are going to be created in the clean energy economy. We are talking about jobs related to both renewable energy, as well as a wealth of energy efficiency programs. If you are heavily reliant on coal, it also can be expenditures that you make at those facilities to deliver that energy more efficiently. So there is a lot of choices that States get to make here. We wanted to take each State where they were so that this wasn't an attempt to preclude any generation from being utilized effectively. But it is to open up the table to all kinds of new choices to States that would continue to grow jobs.

Mr. TIERNEY. Did you find any parts of the Country that didn't have a potential to boost their use of clean energy?

Ms. MCCARTHY. Well, one of the reasons we did individual State standards and then allowed the States to develop their own plans as a proposal was because we recognized that each State was in a different place. So some have looked at that kind of funny. If you look at percentages, you will see that West Virginia, which emits a considerable amount of carbon from their coal-based system, they

have a little bit less percentage reduction because their opportunities aren't as great for inexpensive reductions.

Where you have the State of Washington that does very well, we are asking a large percentage. We just looked at what they were doing anyways, where they were. This is not a stretch goal for any State; it is an opportunity to turn climate risk into business opportunity, job growth, and economic growth.

Mr. TIERNEY. It seems pretty clear that you are giving incentive to States to put in more solar panels, to erect more wind turbines, weatherize more homes, install more energy-efficient appliances and machinery. I mean, this is the direction that we are heading. These are jobs that pay well. They can't be exported. They are here to stay, is that right?

Ms. MCCARTHY. That is exactly right.

Mr. TIERNEY. So I just think that you are heading in the right direction I think not only for the clean air aspect of it and all the other economic and even national security issues we are talking about, but the jobs, jobs, jobs part of it on that and the allowance of States with the flexibility to innovate and do it in the way that makes more sense to them. I thank you and the Agency for your hard work in that regard and I yield back my time.

Ms. MCCARTHY. Thank you, sir.

Mr. MEADOWS. [Presiding.] I thank the gentleman from Massachusetts. The chair recognizes the gentleman from North Carolina, Mr. McHenry.

Mr. MCHENRY. I thank the gentleman from North Carolina.

Administrator McCarthy, I thank you for being here today and I certainly appreciate your willingness to answer questions. I want to ask you about a Superfund site in my district, in Buncombe County, Region 4. And there is TCE contamination, and TCE is often called sinker, right? And what we found with studies, and what I have been told from the experts, is that this TCE contamination is also a floater, because there is a petroleum element to it, so it is on the surface of the groundwater. So, therefore, finding that out is a positive thing because it makes the cleanup easier and means that we can actually take action now. So that is what I want to ask you about, is about that very issue.

The EPA can require CTS, which is the company that did the polluting, to move forward immediately to address the floating contamination while it continues to investigate the sinker contamination. Will the EPA urge CTS and direct them to do that?

Ms. MCCARTHY. Well, I don't know, sir, what the next step is. I do know that progress is being made, and I really appreciate your interest in this site. This is actually a site that can significantly impact public health. So I think it is important that we keep moving this forward. I am glad it has been listed on the Superfund list, finally, so that we can move it forward, and our next steps are actually to conduct some follow-up air sampling studies to define the extent of the contamination in the air and in nearby homes, which is something that I think you have been very focused on. And the study will expand and move away from the site so we can identify the full extent of the release of the volatile organic compounds and we can properly address both the immediate public health challenge, as well as the environmental cleanup challenges.

Mr. MCHENRY. So this has been 20 years in the making, long before you and I had our current roles and long before Congressman Meadows and I represented this county. We have only represented this county for 18 months. But what we need is action from you. And from what we understand from CTS officials, and my constituents have heard from board members of that company, they said they have asked and the quote is they are doing everything that EPA has asked them to do. Right? So there is a credibility problem for the EPA at stake here, both on the time frame it took to get this site on the national priorities list, as well as that type of message coming from the company.

We also know that administrative orders of consent in 2004 and 2012 say that the EPA has the authority to direct the company in very extraordinary ways. So I ask you to do that. There is immediate action that can take place that would be good for the public health of my constituents and Congressman Meadows' constituents, good for western North Carolina, and is a meaningful step that can be taken in the short-term to clean up what we know is achievable, even though the more difficult issue may still remain.

So what I ask you to do, what I urge you to do is to work through these issues and deal with that and take action.

Ms. MCCARTHY. I would be happy to take a look at this. Why don't I make sure that your staff and ours talk about this? And I will do the very best I can to make sure that this cleanup addresses both the immediate concerns, as well as the long-term pollution issues that we are trying to address.

Mr. MCHENRY. Thank you. I thank you. We have worked extensively with Region 4 staff. Look, we all want clean water. We all want clean air. And what my families that I represent in western North Carolina want is action taken.

So, with that, I would like to yield the balance of my time to Congressman Meadows on this issue, because he has worked extensively on this matter as well.

Mr. MEADOWS. I thank the gentleman. I thank the gentleman from North Carolina. Congressman Mica would like me to yield just a couple minutes.

Mr. MICA. Well, thank you. I will be very brief. I came late and I am leaving early.

I would just like if you could provide to the committee, since it is such an important issue, any changes in the definition of wetland. I know by regulation you are changing the rules. It is going to have a huge impact. I have not been happy with any changes from either this committee or the Transportation Committee. If you could provide that timeline to the chair and the committee, I would appreciate it.

I yield back.

Mr. MCHENRY. Reclaiming my time. I ask unanimous consent that Congressman Meadows be yielded 50 seconds, since that subject matter didn't have anything to do with the water pollution issue we have in our district.

Mr. MEADOWS. Without objection.

Ms. McCarthy, I have worked extensively with Congressman McHenry and your office in Region 4. The frustration that I have experienced, if I was to be as passionate as the people that I rep-

resent this morning, it wouldn't be something that C–Span could cover. Truly, the inaction of the EPA to protect the health and well-being of the citizens of Buncombe County at best has been thwarted and at worst has been ignored, and it is incumbent upon the EPA, if the mission is the health and well-being of the citizens, that we get an action plan that not only talks about the short-term, but that cleans it up. This is a 25-year problem that still exists today and cleanup hasn't started.

So, with that, I would recognize Mr. Connolly, the gentleman from Virginia.

Mr. CONNOLLY. I thank my friend from North Carolina.

You know, Ms. McCarthy, I thought I heard you say earlier to the chairman that the subpoena in question subpoenaed all communications regarding congressional inquiries between the White House and the EPA for a five-year period?

Ms. MCCARTHY. That is correct.

Mr. CONNOLLY. And I think you said that was a pretty wide net.

Ms. MCCARTHY. It is a pretty broad search.

Mr. CONNOLLY. Generally, when nets are that wide, what is going on is called a fishing expedition. Do I also understand that what is at dispute and why you were threatened with contempt at the beginning of this hearing, which, by the way, makes for an awfully nice headline, and I am sure the press at the press table will be once again accommodating and provide such a headline and, of course, substance with respect to EPA will be set aside or lost in the noise. It is kind of a pattern around here; get a witness, pillory the witness, interrupt the witness, threaten the witness, tell the witness she or he is not cooperating, interrupt the witness when the witness actually starts to have a relevant answer to a question, and focus often on the extraneous to make sure, however important that extraneous might be in its own right, but to make sure that we are not actually talking about something of substance like global warming. In fact, a warning at the beginning of this hearing that it is not about global warming, after one of the most momentous regulatory decisions in the history of the EPA and after a very interesting Supreme Court ruling which I want to talk to you about this week.

So I am sorry you are getting the treatment; it is par for the course. We have done it, unfortunately, with a lot of consistency for the last four years. It is not pretty. My friend, Jackie Speier, read into the record yesterday even the speaker, Speaker Boehner, warning that witnesses coming before committees here in Congress need to be treated with respect. I find it really interesting, by the way, that we would also, some of us, apparently, would focus on people who have obviously abused or misused their position at the EPA by watching pornography or engaging in other things that are illegal or certainly inappropriate.

It was just announced yesterday that a chief of staff to a member of Congress, Republican member, had to resign after it was revealed he had had a long-term affair with a porn star and had inappropriate pictures of his physique posted. And we have members of Congress who have been in the books of madames of brothels. We have had members of Congress selling or buying cocaine. We have our own peccadillos and we can focus on those too, and maybe

we need a special prosecutor or maybe we need to be investigated as to how long did we know and whether Government property was used, and whether, when somebody learned of it, they appropriately responded in a relevant period of time.

I say Congress itself is hardly clean here. And that doesn't mean we want to, in any way, shape or form, condone inappropriate activity, but to somehow pretend in our questioning that it is unique to you and to the EPA is really a bit much.

If I may ask, in the time limited, about Justice Scalia's opinion this last week. Is it fair to say that the endangerment finding is now settled law after that ruling?

Ms. MCCARTHY. I don't want to speak as a lawyer, sir, but it seems pretty settled to me, yes.

Mr. CONNOLLY. The court did nothing to roll back the landmark decision in 2007 that EPA has the authority to regulate greenhouse gas emissions. Would we maybe agree that EPA's authority to regulate greenhouse gas emissions is now settled law based on that opinion?

Ms. MCCARTHY. It certainly appears that way to me, sir.

Mr. CONNOLLY. The court was looking specifically at EPA's program for regulating carbon pollution for large new industrial facilities. The court took issue with the EPA's legal approach but basically came very near to the same result in terms of which facilities could be regulated. Is that your understanding?

Ms. MCCARTHY. It basically confirmed what we are already doing, yes.

Mr. CONNOLLY. Justice Scalia reportedly said, in announcing the opinion, it bears mention that EPA is getting almost everything it wanted in the case; it sought to regulate sources that it said were responsible for 86 percent of all greenhouse gases emitted from stationary sources. Under our holdings, EPA will be able to regulate sources responsible for 83 percent. Do you believe the Supreme Court's decision validates your efforts to responsibly regulate carbon emissions from large new facilities?

Ms. MCCARTHY. Oh, very much so.

Mr. CONNOLLY. Does anything in the court's decision last week, or this week, really, impact your authority to cut carbon emissions from existing power plants?

Ms. MCCARTHY. No, sir. It is a confirmation that EPA has been on the right track and that the Clean Air Act is an appropriate tool and that we can use it wisely and effectively.

Mr. CONNOLLY. And how many members of the Supreme Court joined Justice Scalia's opinion in that ruling?

Ms. MCCARTHY. Seven to two, sir.

Mr. CONNOLLY. Seven to two. So a decisive opinion by the Supreme Court validating your role and the regulation just issued.

I thank the chair and I thank you, Ms. McCarthy, for your service to your Country. By the way, where in Boston do you come from?

Ms. MCCARTHY. I actually live in Jamaica Plain.

Mr. CONNOLLY. Jamaica Plain.

Ms. MCCARTHY. Yes. I was born and brought up in Kenton.

Mr. CONNOLLY. All right. My family is in West Roxbury, and I can talk like that too. And I love the Red Sox; they are working good and I am hoping they win.

Mr. MEADOWS. I thank the gentleman from Virginia.

[Laughter.]

Mr. MEADOWS. Needing no translator, we will go to the gentleman from Ohio.

Mr. JORDAN. I thank the chairman.

Ms. McCarthy, I understand your agency is not the agency that ultimately decides, although you are pretty heavily involved. When do you think the American people can expect a decision on the Keystone pipeline?

Ms. MCCARTHY. My understanding is that there are certain issues with the location of the pipeline that needs to be resolved, so I cannot anticipate that.

Mr. JORDAN. Do you know when the application for the Keystone pipeline was first submitted?

Ms. MCCARTHY. No, I do not.

Mr. JORDAN. September 2008. Almost six years ago. You are familiar with the fact that the governor of Nebraska said he is fine with the new proposed route?

Ms. MCCARTHY. It is not my decision, sir.

Mr. JORDAN. But don't you have a critical part in the ultimate decision? Didn't you guys do an environmental impact report from your agency which said there are no significant impacts to have this pipeline come through the United States?

Ms. MCCARTHY. Actually, EPA's role is to comment on that impact reported. It actually was developed by the Department of State.

Mr. JORDAN. And you guys gave it a thumbs up, isn't that correct?

Ms. MCCARTHY. EPA has just provided comments. We have no authority to do up or down on this one.

Mr. JORDAN. And your comments were clear back in 2011. It is my understanding August 2011 is when you gave the comments that there are no significant impact, no significant environmental impact.

Ms. MCCARTHY. It is not clear to me that that was a comment from EPA.

Mr. JORDAN. Have you had any conversations with the State Department since that August 26, 2011 report, where you said no significant environmental impacts? Have you had conversation with the State Department about the Keystone pipeline? Do you know if your agency has?

Ms. MCCARTHY. I personally have not. We have staff that——

Mr. JORDAN. In your time at the agency, have you had conversations with the State Department about the Keystone pipeline?

Ms. MCCARTHY. I may have.

Mr. JORDAN. Have you had conversations with the White House about the Keystone pipeline?

Ms. MCCARTHY. Yes.

Mr. JORDAN. How recently?

Ms. MCCARTHY. Oh, we received information on the Keystone pipeline when the pipeline issue and the route question arose, and

they actually sent a memo to us indicating that we should hold off on submitting our comments. I think that was probably four months ago or so.

Mr. JORDAN. So in the past four months. Since that time have you had any conversation with the White House and/or the State Department regarding the Keystone pipeline?

Ms. MCCARTHY. Not that I can recall.

Mr. JORDAN. No conversation in the last four months with either the White House or the State Department?

Ms. MCCARTHY. Not that I can recall.

Mr. JORDAN. How long do you think is appropriate for a decision to take? Is six years too long, too short? Can you hazard a guess at what point the Administration is going to say, okay, six years is long enough, we have to make a decision? How long do you think is an appropriate time frame?

Ms. MCCARTHY. There is no timeline, sir.

Mr. JORDAN. There is no timeline?

Ms. MCCARTHY. Not that I am aware of.

Mr. JORDAN. Do you think it is okay if it took eight years?

Ms. MCCARTHY. It is not a project that I am proposing.

Mr. JORDAN. I am asking your opinion, though. The whole issue has been the environmental concerns. You head the Environmental Protection Agency. I am saying is eight years okay to wait after an application has been submitted?

Ms. MCCARTHY. There is no timeline, sir.

Mr. JORDAN. Ten years would be okay?

Ms. MCCARTHY. There is no timeline.

Mr. JORDAN. So forever. It could take 20, 30 years, and that would be fine.

Ms. MCCARTHY. It is a project that goes through its own work to get the project developed. It goes through an impact statement development, EPA comments. We have nothing more to do with it other than a commenter on somebody else's project that is being evaluated by another agency.

Mr. JORDAN. And you said there is no significant environmental impact, and what I am trying to get at is——

Ms. MCCARTHY. I do not believe that was actually what we said. We raised issues relative to the analysis that we thought could be improved. I think work has been done since then, but we have not seen——

Mr. JORDAN. One last thing. Just for the record, so in the last four months you have had no conversations, there has been no input from the EPA to the White House and/or the State Department regarding the approval or some kind of decision made on the Keystone pipeline application.

Ms. MCCARTHY. I think you asked me about my own personal communication since we received the memo that we should hold off.

Mr. JORDAN. Right.

Ms. MCCARTHY. I have not had personal conversations about this.

Mr. JORDAN. Well, then let's ask. Has your agency had any conversations with the White House? To your knowledge, has your

agency had any conversation with the White House or the State Department in the last four months?

Ms. MCCARTHY. I do not know the answer to that question, sir.

Mr. JORDAN. Okay.

Mr. Chairman, I yield back.

Mr. MCHENRY. I thank the gentleman from Ohio and we go to the gentlewoman from California, Ms. Speier.

Ms. SPEIER. Mr. Chairman, thank you.

And thank you, Administrator McCarthy, for being here. I would like to, at the outset, point out that this committee has made 18 separate committee investigations of the EPA; that in making requests of the EPA, your office has provided 208,000 documents; that you have testified three times; and that you have sat for a transcribed hearing. So I believe all of that suggests that you are a very compliant witness, that you have been very accommodating to this committee, and that for members to throw around the threat of contempt, when there has been this much attention paid by you and your agency to this committee, is without merit.

Now, your clean power plan has gotten some rave reviews recently, none the least of which is from The Wall Street Journal, which says it strikes a balance between environmentalists and utilities in terms of what they all want. Nike and Levi and Starbucks have all commented on how they saw it as valuable.

In California, unlike some of my colleagues on the other side of the aisle that suggest that curbing carbon dioxide emissions kills jobs, California, as you know, has a cap and trade environment in which we are operating, and in the last couple of years we boasted some of the greatest economic turnarounds ever. As long as cap and trade has been in effect, California now ranks in the top 10 States in employment growth and 4 of the top 20 U.S. regions for job growth. So I think in California we believe that you can have a healthy economy and a healthy environment, as well.

So my question to you, with the understanding that the Government Accountability Office considers climate change to be high risk to taxpayers, it appears we have just an outstanding responsibility to address it. Would you tell us what you believe the relative costs and benefits of the EPA's proposed rule on existing power plants is?

Ms. MCCARTHY. I am happy to do that. And I think I will just point out that the President indicates that this is a moral obligation to act, and I couldn't agree with him more.

Ms. SPEIER. So does the Pope.

Ms. MCCARTHY. The power plant rule that we put out, the proposal, looks at a $55 billion to $93 billion a year in benefits in 2030 alone, which far outweighs the costs that are estimated at $7.3 billion to $8.8 billion. This is clearly a winning opportunity, not just in terms of a cost benefit analysis for today, but in terms of the future it will provide for our children. And this is all about public health. It is all about protecting our children and keeping our communities safe today.

Ms. SPEIER. In fact, your reference to public health is worth restating. I am told that anywhere between 2700 people to 6600, on the high end, are not going to be subject to dying prematurely be-

cause of this plan, and that between 140,000 and 150,000 children will not have asthma attacks as a result.

Let me shift gears for a minute. In an interchange with one of my colleagues, who somehow objected to the fact that you didn't go immediately to the inspector general on the Beale case, you indicated that you went first to the Office of General Counsel. Can you explain to us why you did that?

Ms. MCCARTHY. Well, originally my understanding and my goal was to make sure that he was appropriately utilizing his time, whether it was with us or with another agency. When I had concerns about him not being at EPA, as well as concerns about whether or not he was effectively working for another agency, I brought it to the——

Ms. SPEIER. Can we say what the other agency is? I think it is——

Ms. MCCARTHY. I believe it is the Central Intelligence Agency.

Ms. SPEIER. All right. So that is why there was some mystery.

Ms. MCCARTHY. But at that point in time I did not know that that arrangement wasn't real. I knew I had a problem. I went to the correct agency. That agency themselves brought in our Office of General Counsel and they also made a decision to go to our Office of Homeland Security because, programmatically, it is our liaison with the intelligence community. And the first question was did he have a relationship and an obligation to another entity, and when that progressed far enough for us to know that we had bigger problems than we originally anticipated, I brought to the issue to the inspector general and asked them to do a thorough investigation.

And I have to say as much as there are questions about whether we support the OIG, is that clearly I do; the agency does. There is a culture of embracing the Office of the Inspector General, knowing that EPA needs to be high-performing. Anything less wouldn't do service to the public and to protecting public health and the environment, which is clearly our mission, as well as our passion.

Ms. SPEIER. Thank you for your leadership.

I yield back.

Mr. MCHENRY. I thank the gentlewoman from California.

The chair recognizes the gentleman from Michigan, Mr. Walberg.

Mr. WALBERG. Thank you, Mr. Chair.

Ms. McCarthy, in EPA's recent proposed rule to reduce greenhouse gas emissions, each State has a different target for emission reductions. That is right?

Ms. MCCARTHY. That is correct.

Mr. WALBERG. The target was determined by analyzing four criteria, as I understand it, one of which was demand-side energy efficiency programs. What does demand-side energy efficient program mean?

Ms. MCCARTHY. Well, basically it means looking at opportunities for consumers to retrofit their homes, to buy more energy-efficient appliances. It is everything you can do to reduce energy demand, which reduces draw on fossil fuel energy, which in turn reduces carbon pollution.

Mr. WALBERG. But my follow-up would be EPA does not, does not have authority to directly regulate demand-side efficiency programs, does it?

Ms. MCCARTHY. Well, actually, we are not doing that with this rule, sir. We are actually regulating the pollution from the fossil fuel——

Mr. WALBERG. It doesn't appear that way. The fact is in establishing those subjective criteria for each State, you are attempting to regulate demand-side. I mean, the facts are the facts.

Ms. MCCARTHY. I can understand where you would look at it that way, and actually we have specifically called out this issue in the rule itself. We are doing here what States actually asked us to do, was to allow them maximum flexibility to design their own plans on the basis of what they could do to reduce carbon pollution at the source, which is what we are regulating.

Mr. WALBERG. But directly pushing demand-side.

Ms. MCCARTHY. No.

Mr. WALBERG. Let me go on. EPA has said the rule not increase the cost of electricity, but under this proposed rule the cost of electricity per kilowatt hour will actually increase. Isn't that correct?

Ms. MCCARTHY. Well, we have indicated that the monthly cost of electricity at its peak will be somewhere around a gallon of milk cost. But we also recognize that when demand-side reduction is used, which is the easiest, quickest, and usually the preferred approach of States, that it actually reduces the bill itself, because while the rates go up slightly——

Mr. WALBERG. But it reduces it based upon Americans using less electricity; not the fact that the cost of electricity goes down, but making it impossible for Americans to use electricity as they ought to be allowed to use electricity.

Ms. MCCARTHY. Actually, the amount of increase in the rates is well within the range of fluctuation that we have been seeing. So we are quite convinced——

Mr. WALBERG. Through scarcity. Through scarcity. That is happening in my district.

Ms. MCCARTHY. I am sorry?

Mr. WALBERG. That is through scarcity. The push is to reduce electricity by saying to the consumer don't use electricity.

Ms. MCCARTHY. Actually, no.

Mr. WALBERG. It is not by reducing the cost of production of it.

Ms. MCCARTHY. It is actually by providing them more opportunities to reduce waste, which I think——

Mr. WALBERG. Well, does the Clean Air Act give EPA the authority to regulate American electricity consumption?

Ms. MCCARTHY. We are not suggesting that we do regulate that. We are regulating pollution at the source.

Mr. WALBERG. Well, now that I got that off my chest, because we are entitled to our opinion, but not to the facts, and the facts are very much different than that when we are pushing consumption as the issue; and in America that isn't the normal way of doing it.

Let me go back to some of the Administration questions that I have concern with.

Does Beth Craig, who served as former deputy assistant administrator in the EPA's Office of Air and Radiation, still work and receive salary from the EPA?

Ms. MCCARTHY. Yes, she does.

Mr. WALBERG. You, of course, we already know from testimony, are aware that she cost the Government by not overseeing the special agent man, Mr. Beale, at least $200,000 of cost to the taxpayers that were fraudulent. In your agency's website it says, To meet our mission as a high-performing organization, EPA must maintain and attract the workforce of the future, modernize our business practices, and take advantage of new tools and technologies.

Can you explain how Beth Craig, a current EPA director who has cost the Government nearly $200,000, is part of the workforce of the future?

Ms. MCCARTHY. Well, I want to first point out, sir, that there is no indication, and the OIG has confirmed this, there is no evidence that she actually contributed to any fraudulent activity or she was involved in any. Now, clearly Beth Craig is now being looked at in terms of whether or not she diligently looked at time and attendance sheets and travel. That administrative process is proceeding.

Mr. WALBERG. The OIG confirmed $200,000, and her management of that, her administration of that allowed that to happen over the course of a decade.

Ms. MCCARTHY. Whether or not Beth did——

Mr. WALBERG. And she is still being paid by the taxpayer. And if that is the workforce of the future——

Ms. MCCARTHY. Well, she has not been accused of any fraudulent activity. The question was whether she was diligent enough——

Mr. WALBERG. And I am over time, I yield back, but the question is why not.

Mr. MEADOWS. I thank the gentleman from Michigan.

The chair recognizes the gentleman from Arizona, Dr. Gosar.

Mr. GOSAR. Thank you very much.

Administrator McCarthy, in August 2011, President Obama acknowledged in a letter to Speaker Boehner that seven new proposed regulations would each cost the economy at least a billion dollars annually. In fact, out of those seven, four of those regulations were put forth by the EPA. I repeat, four. How many new regulations has the EPA proposed this year that will cost the economy at least a billion dollars annually?

Ms. MCCARTHY. I don't have that figure, sir.

Mr. GOSAR. Can you provide those names and those numbers and estimates to the committee?

Ms. MCCARTHY. Of course.

Mr. GOSAR. Now, as you know, Congress has repeatedly rejected previous cap and tax energy plans proposed by the President and his big government allies, knowing he can lawfully enact a carbon tax plan, he can't, he has instructed you to circumvent Congress and to impose these new regulations by fiat. Do you believe the EPA should follow the intent of Congress when implementing new regulations?

Ms. MCCARTHY. I believe that EPA is actually following the law that Congress enacted in a way that we are supposed to implement

it, and I think that has been confirmed by the Supreme Court every time it has been asked of them relative to carbon pollution.

Mr. GOSAR. Well, 83 percent, so remember that carefully here. And I am glad you bring that up. So will you return the new waters of the U.S. proposed rule to your agency in order to address the legal, scientific, and economic deficiencies of that proposal?

Ms. MCCARTHY. I am sorry, I didn't understand the question.

Mr. GOSAR. So citing the Supreme Court again, I want to just give you a little background. The Supreme Court has issued four decisions that reinforce the limits of the EPA's jurisdiction on waters of the U.S.

Ms. MCCARTHY. Yes.

Mr. GOSAR. Yet you seem to have another effect that you want to violate this with this current set of rules. So I am asking you will you return the new waters of the U.S. proposed rule to your agency to address the legal, the scientific, and economic deficiencies of your proposal?

Ms. MCCARTHY. Well, it is out for public comment now, sir, and it was specifically put out in order to address the concerns raised by the Supreme Court in terms of the jurisdiction of the Clean Water Act.

Mr. GOSAR. Once again, it has been identified legally with economic deficiencies and scientific deficiencies, yes it has. There are four Supreme Court rulings. You just acknowledged the gentleman from Virginia that the Supreme Court had the rule of the land. There are four jurisdictions from the Supreme Court that limit the EPA and its jurisdiction of the waters of the U.S. Will you return it to your agency?

Ms. MCCARTHY. I am happy to have more discussions about this, sir, but the reason we put out the waters of the U.S. was exactly to address the issues that the Supreme Court has put squarely in front of us.

Mr. GOSAR. I don't think that is true.

Ms. MCCARTHY. Okay.

Mr. GOSAR. Furthermore, David Sundling, the founding director of the Berkeley Water Center and professor in the College of Natural Resources of the University of California, Berkeley, found major flaws in your agency's economic analysis of the waters of the U.S. proposed rule and claimed the errors in the study are so extensive as to render it unusable for determining the true costs of the proposed rule. Once again, does your agency have any plans to correct this flawed economic analysis? When you put stuff out, you have to cede proper information to the public, and you are not.

Ms. MCCARTHY. Certainly we are in a comment period where we will take a look at that criticism and whether or not it is substantive and how we would address it. We have recently extended the comment period 90 days exactly because we know that there are concerns raised about the proposal and we want to provide clear public opportunity to comment on this so we can understand the issues that have been raised.

Mr. GOSAR. It is interesting that you keep doing that, but you have to provide the public proper information, and this is completely flawed.

Now, I have limited time.

Ms. MCCARTHY. Okay.

Mr. GOSAR. Your greenhouse gas rule proposed to threaten the close of the Navaho Generating Station and kill 1,000 jobs in Page, Arizona. Approximately 80 percent of those positions are good paying jobs for Native Americans in a very rural area. Besides being a critical employer, the Navaho Generating Station provides the power that delivers more than 500 billion gallons of Colorado River water to more than 80 percent of Arizona's population. Do you believe, yes or no, that the Navaho Generating Station should be closed?

Ms. MCCARTHY. I have no such belief, no.

Mr. GOSAR. Okay. Do you share my belief that this power plant is a special situation due to the Tribal Indian Congressional Dialogue Trust obligations that were constituted by Congress in directing the construction, the direction, the obligations, water settlements, labor law directives associated with that plant?

Ms. MCCARTHY. My understanding of that plant is it is one of the most complicated situations that we have to deal with, so it is fairly unique, yes.

Mr. GOSAR. It is very unique because of where it sits on tribal land and congressional oversight.

Ms. MCCARTHY. I agree. Yes.

Mr. GOSAR. So it deserves special attention instead of what it has been getting lately.

Ms. MCCARTHY. Actually, sir, we have been giving it special attention because the proposal that we put out on our clean power plan actually didn't speak to the Navaho Generating Station. We actually left the tribal units so that we could do a much more extensive analysis. There are three, one of which is Navaho.

Mr. GOSAR. I understand. And in the trust obligations the jurisdiction over the tribes in those contracts is this body here, Congress. Have you directed those conversations with Congress as well?

Ms. MCCARTHY. Actually, I don't know what conversations you are referring to. EPA definitely has been given the obligation to regulate pollution from that facility if we feel like it is necessary for public health. We have actually worked through a lot of tough issues with Navaho Generating Station, working with the Navajos, working with the other tribes that have an interest, the Hopi and the Healer River. We have actually worked very closely with the State, Salt River project. I understand how complicated this issue is. We have worked through some pretty big challenges in creative ways and I am sure we can work through this when the time comes. But we have not yet proposed any regulation of carbon pollution from that facility.

Mr. GOSAR. Well, I would caution the lady that there is also another jurisdictional aptitude, and that is this body, this body of Congress that oversees the trust obligations of the tribal entities, and that has not occurred. So, fyi, include us.

I yield back the balance of my time.

Mr. DUNCAN. [Presiding.] Thank you very much.

Mr. Collins is next.

Mr. COLLINS. Thank you, Mr. Chairman.

Thank you for being here this morning. I know there are a lot of management issues at EPA, which has been discussed, and I know there is a lot more of oversight from basically John Beale to Pebble Mine to employees not being fired for watching pornography, all these other issues. But I want to really take another step, take my five minutes and sort of continue some of the conversation you just had, but from a different perspective, from the northeast order perspective about the Clean Water Act and affecting the waters of the United States.

The rule would vastly expand EPA's regulatory jurisdiction and in turn would impugn businesses and families in Georgia's 9th Congressional District and across the Country. If this rule is allowed to go into effect, basically dry ditches, rainwater runoffs, low lying areas, and seemingly any area that would hold water would be subject to EPA's jurisdiction. This would force northeast storages, cattle ranchers to move their herds, chicken farmers to move their chicken houses, and average citizens to sell to the EPA for permission to build on their land.

Actually, it takes it a step further, and I think this is the concern that I have. Not just the production being done now, but in many of my areas, my farmers, my grandparents, who dairy farm, and I know there is an example just down the road from where I live, where a gentleman has 100 acres of land. Most of it grew up in dry gulches like we most know. But under these kind of rules basically would make his land unsellable because of this process. And this is a very real concern to what we have.

So just a question, administrator. Do you have a dollar value on the impact this proposed rule would have? Any kind of a guess?

Ms. McCarthy. Actually, I do not believe there was an economic analysis associated with this because it is a jurisdictional question. But I would point out—and I am happy to have further conversations in Georgia about this—we have done, I think, a very good job at trying to not just recognize the exemptions that exist in the Clean Water Act relative to agriculture, but to try to expand those in this, and to not write this in a way that would expand the jurisdiction of the Clean Water Act and, in fact, try to make it narrower on the basis of real science. So I do think there is a large gap between our intent and I think how we wrote it and how it is being perceived; and EPA has a big job to do to close that gap.

Mr. Collins. And I think what you have stated here is the dialogue that goes on that I have all the time with our constituents that I have been facing myself, and I think it goes back also to an issue here of and you talked about it is a jurisdictional issue, not a cost issue. Well, I think that is the problem that we are having right now, is that there is regulation after regulation or jurisdictional fights, whatever you want to call it, but the bottom line is it affects the taxpayers, it affects the people who fund the Government who want to say why is the Government so affecting in my life, especially in areas in which they, frankly, for some of our even given some of the Supreme Court rulings, there is an overreach here. I do believe there is a balance between carrying out your role as an administrator and then also balancing the intent of Congress, and I think it goes to Congress being not very good at giving you direction.

Ms. MCCARTHY. I appreciate your concerns, and the more that we can actually talk and even meet with your constituents to understand where it feels like two ships passing in the night, and I need to bring those together and we have to have a better understanding. And I am entirely open to comment on this. That is why we extended the comment period.

Mr. COLLINS. I have a couple of quick questions I would like to get in.

Under the proposed rule, it is understood that farmers will only qualify for Section 404 exemptions if they meet national resources conservation and NRCS standards that are currently optional. Yes or no, is that true or false?

Ms. MCCARTHY. No, it is not.

Mr. COLLINS. It is false. Okay, under current law would a farmer be required to the NRCS compliant in order to be exempted? Do they have to currently?

Ms. MCCARTHY. No.

Mr. COLLINS. So no. If a farmer or rancher has questions on how this rule would affect their property or operation, how does the EPA respond to these questions?

Ms. MCCARTHY. We work collaboratively usually with USDA and the farmer to understand what their concerns are and to address them so they can continue to farm appropriately.

Mr. COLLINS. What is the average response time?

Ms. MCCARTHY. I don't have an answer to that, sir.

Mr. COLLINS. If you don't respond in a timely manner, is that farmer or rancher protected from fines or punitive actions by the EPA if they are not in compliance?

Ms. MCCARTHY. Could I just clarify one thing?

Mr. COLLINS. Go ahead.

Ms. MCCARTHY. EPA is often not the permitting entity here, so it is very often a State or Army Corps.

Mr. COLLINS. Well, you have hit something for me perfectly. I believe this is more of a State issue, and not a national EPA issue. We have just probably a fundamental difference in national; in fact, EPA exposure and States are doing some of this. I think you perfectly hit it for me, but we just honestly disagree.

Ms. MCCARTHY. I actually don't think we have any disagreement in hopefully how we do this rule.

Mr. COLLINS. Except maybe in the fact that I don't believe your position should even exist. I think the States can do it now.

Ms. MCCARTHY. Well, that may be a difference between us.

Mr. COLLINS. Now we have an interesting issue. But I just want you to know——

Ms. MCCARTHY. It might be a fundamental difference as well.

Mr. COLLINS. That is a fundamental difference at that point. But I have already commented in opposition to this proposal. I know that many in Georgia in my district are. But I have one quick question, and maybe you can clarify this for me. In your conversation with my good colleague, Ms. Speier, just a moment ago, did I hear you say that you went to the CIA first?

Ms. MCCARTHY. No, I never talked to the CIA about anything, not directly, no.

Mr. COLLINS. Okay. I believe I heard you say in discussion on the bill that you went to the CIA first.

Ms. MCCARTHY. No. What I indicated was I went to our office that deals with our human resource issues. They actually brought in our Office of General Counsel. They referred this to our Homeland Security Office, which is the liaison with the intelligence community. They actually communicated with the CIA in seeking verification of whether or not John Beale worked for them in some way and under what circumstances that occurred.

Mr. COLLINS. Just wanted to make sure for the record that I heard you correctly.

Mr. Chairman, I yield back.

Ms. MCCARTHY. Could I just answer one question? I want to make sure——

Mr. MEADOWS. [Presiding.] The time has expired, but, yes, you can answer.

Ms. MCCARTHY. I just want to clarify. When we were talking about the Clean Water Act exemptions, I want to make sure that I understood your questions, because the Clean Water Act exemptions clearly indicate where there is agricultural exemptions, the additional work that we tried to do with USDA to identify other work that was exempted, as long as it is conservation efforts working with USDA, was in addition to those exemptions. And I just wanted to make sure I answered you correctly.

Mr. COLLINS. And I appreciate that.

Mr. Chairman, if I can have just a moment.

Because this is the problem, and it exists, because you have people who have real issues and real problems, they see EPA from State level or national level. They can't get the answers, and I think this is the problem that develops around this whole thing. Again, we forget the end result is not about a building up here in Washington that turns out rules; it is about the people that get up every day and want to have their own way to do their living and make their life, and do with as least interference in the way that they can.

Mr. Chairman, I appreciate it.

Ms. MCCARTHY. And I also understand that there was an economic analysis done with this rule, so I apologize. We will get that to you.

Mr. MEADOWS. Okay, the time has expired. I thank the gentleman from Georgia.

The chair recognizes the gentleman from Michigan, Mr. Bentivolio.

Mr. BENTIVOLIO. Thank you very much, Mr. Chairman.

Administrator McCarthy, thank you for being here today. Do you know the current location former EPA employee Phil North?

Ms. MCCARTHY. No, I do not, sir.

Mr. BENTIVOLIO. Administrator McCarthy, are you aware that Mr. North left the country, traveling to New Zealand, when this committee had a pending request to voluntarily attend a transcribed interview?

Ms. MCCARTHY. No, sir, I don't know that.

Mr. BENTIVOLIO. Has the EPA produced to the committee all of Mr. North's emails since 2002 regarding his work on the Pebble Mine in Bristol Bay?

Ms. MCCARTHY. We have submitted all that we have identified, and we continue to search.

Mr. BENTIVOLIO. Okay. Are you aware that the EPA cannot produce all of Mr. North's emails to the committee because his hard drive crashed and the EPA did not back up Mr. North's emails?

Ms. MCCARTHY. I am aware that Mr. North was stationed actually in a pretty remote area of Alaska. We are aware and we notified the committee as soon as we were aware that there are some gaps, but we have already submitted a significant amount. So it is not clear how much we might have missed, but we are looking at it.

Mr. BENTIVOLIO. Let's see, I got the IRS and the EPA. What is it with bureaucrats and Government agencies when this committee is investigating, trying to find out about their personal emails or emails on an EPA or Government computer, the hard drives crash?

Is the EPA in possession of Mr. North's failed hard drive?

Ms. MCCARTHY. I am not aware. I don't know, sir, but I can find out.

Mr. BENTIVOLIO. Did Mr. North ever receive a bonus?

Ms. MCCARTHY. I don't know the answer to that question.

Mr. BENTIVOLIO. Did John Beale, fraudulent CIA, EPA employee get a bonus?

Ms. MCCARTHY. Not under my watch. I don't know what happened prior to that.

Mr. BENTIVOLIO. Ever?

Ms. MCCARTHY. I don't know.

Mr. BENTIVOLIO. Okay. Did Beth Craig, who lied to special agents investigating John Beale, get a bonus?

Ms. MCCARTHY. I don't know exactly.

Mr. BENTIVOLIO. How about the employee who had 7,000 pornography files on his EPA computer ever receive a bonus?

Ms. MCCARTHY. I don't know, sir.

Mr. BENTIVOLIO. Susan Strassman-Sundy, who produced no work in the last five years working from her home, did she ever receive a bonus?

Ms. MCCARTHY. I do not know her or the facts of that.

Mr. BENTIVOLIO. Ms. Renee Page, selling jewelry and weight loss products from her EPA office, get a bonus?

Ms. MCCARTHY. I do not know the answer to that.

Mr. BENTIVOLIO. Unnamed EPA employee receiving paychecks while in a nursing home for two years. By the way, is he still getting paid?

Ms. MCCARTHY. I do not know the answer to that question, sir. I don't know the issue you are referring to.

Mr. BENTIVOLIO. I have working middle-class Americans in my district who are struggling to make ends meet, and employees at the EPA are playing James Bond, watching porno movies on EPA computers at EPA time. Nothing is getting done. They are struggling and you don't know where your money is being spent.

Thank you very much, Mr. Chairman. I yield back.

Mr. MEADOWS. The gentleman yields back.

The chair recognizes the gentleman from Tennessee, Mr. Duncan.

Mr. DUNCAN. Well, thank you very much, Mr. Chairman. Mr. Chairman, I think most of us, at least on this side, realize that there is more anger and resentment and disgust with the Federal Government probably today than any time in our history because almost every day people are reading stories or hearing stories about tremendous, ridiculous waste, inefficiency, over-regulation by the Federal Government. Also, I think they resent the fact that almost nobody or very few in the bureaucracy have ever spent any time running a small or medium-sized business, and they have no idea or understanding of the pressures, how hurtful it can be to have to lay off people during slow times, and things of that nature.

But the disgust I think probably hit its height when they heard and read about a high EPA up official receiving $900,000 over a several year period for doing no work and even taking paid vacations on the taxpayer dollar; and I want to get back into that in just a moment. We were given background material that says before the President nominated McCarthy to head the EPA, she served as assistant administrator of the Office of Air and Radiation from 2009 to 2013. While McCarthy was aware of Beale's frequent absences and lack of work product, she never adjusted Beale's pay or discontinued the unauthorized retention incentive bonuses which made Beale the highest paid employee in OAR during her tenure.

And then it goes on, In fact, EPA officials wrote an entire report entitled John Beale Pay Issues in July 2010, which McCarthy was aware of by at least January 2011. Despite recommendations to cancel Beale's bonuses, McCarthy halted the internal revenue and permitted the unauthorized bonuses to continue. Both McCarthy and Bob Perciasepe attended Brenner and Beale's joint retirement cruise in 2011.

And now we hear Ms. McCarthy say that Mr. Beale received no bonuses. But we have an email here, and I think they put up on the board there, in which this was Ms. McCarthy's response to an OAR official asking, "Has Craig"—that is Craig Hooks—"gotten back to you about the pay issue yet? I am eager to move ahead with canceling the bonus." McCarthy replied, No, he hasn't. It is now in his hands, as far as I am concerned, showing, really, a hands off attitude about bonuses for this man who did no work and who defrauded the taxpayers out of $900,000. And the title of this hearing is Management Failures: Oversight of the EPA.

And that, I think, shows why this hearing was necessary. But I will tell you, Ms. McCarthy, as concerned as I am about that, I am more concerned about something else. President Obama said, a few years ago, he said, Under my plan of a cap and trade system, electricity rates would necessarily skyrocket, regardless of what I say about whether coal is good or bad, because I am capping greenhouse gases.

The problem with that is, and we don't have enough people at the EPA because they have these high-paying jobs, they don't understand that a lot of people in my district and around the Country have trouble paying their utility bills And if we triple or quadruple

these utility bills, it is going to hurt a lot of poor and lower income and working people; and I don't think the people at the EPA keep that in mind and I don't think they realize, too, that if you come out with more and more regulations, it helps the big giants. It helps the big, big companies, but it hurts the little guys.

Overregulation by the Federal Government, not only by the EPA, but a lot of it by the EPA, a lot of it has run small and medium-sized businesses out of business or forced them to merge or forced them to go to other countries. We have sent millions of good jobs to other countries. For the last 40 or 50 years, we have ended up now with the highest paid waiters and waitresses in the world, and a lot of it, in fact, I think the majority of it is because of environmental overregulation and red tape.

That is all I have to say, Mr. Chair.

Ms. MCCARTHY. Might I clarify something?

Mr. DUNCAN. Yes, ma'am.

Ms. MCCARTHY. I just wanted to clarify that the bonus issue I was answering I didn't realize that they were talking about a retention bonus. And that bonus I did not give; it was actually awarded earlier. It continued to be on the payroll. I sought that to be off the payroll on numerous occasions. And that is one of the issues we are trying to get compensation back.

Mr. DUNCAN. Well, you were the head of this OAR in 2009, right?

Ms. MCCARTHY. I did, and I alerted——

Mr. DUNCAN. And 2010?

Ms. MCCARTHY. My understanding——

Mr. DUNCAN. And 2011.

Ms. MCCARTHY. My understanding at that point——

Mr. DUNCAN. And Mr. Beale was employed by that agency, the highest paid employee of that agency——

Ms. MCCARTHY. Right.

Mr. DUNCAN.—during 2009, 2010, and 2011.

Ms. MCCARTHY. It was just my recollection that when I brought this to his attention, he advised me not to take action because he needed to communicate it to the Office of Inspector General, and that I should not alert Mr. Beale to any potential investigation. That is what that email reflected.

Mr. DUNCAN. If the chairman would allow me just one other thing, though. I will tell you this. Johnny Pesky was a real close friend of mine, and he has had me in the dugout at Fenway Park.

Ms. MCCARTHY. Really?

Mr. DUNCAN. And I was glad a few times, and I am sure if are a Red Sox fan you have heard of Johnny Pesky.

Ms. MCCARTHY. I sure have.

Mr. DUNCAN. He was a great man. You and I can at least agree on that.

Ms. MCCARTHY. He is spoken in the same breath as Ted Williams, and it is great. Thank you.

Mr. MEADOWS. The gentleman from Tennessee's time has expired.

The chair would recognize the gentlewoman from Wyoming, Mrs. Lummis.

Mrs. LUMMIS. Thank you, and welcome, Ms. McCarthy.

Ms. MCCARTHY. Thank you.

Mrs. LUMMIS. We have been waiting, as I understand it, for about seven months for a response about the scientific and other bases for regulations that will increase energy costs on low and middle income Americans, as well as the cost of doing business, and will lead to some job losses, certainly; and I am curious. You received a set of science committee questions for the record, after you testified last November. When will you be responding to those?

Ms. MCCARTHY. Actually, if this has to do with House Science and Technology, we did receive a subpoena. We did respond to that and we believe that issue has been closed out.

Mrs. LUMMIS. And could you tell me when that was? Because I am on the Science Committee, as well as this committee. These were questions for the record submitted to you on December 17th regarding the peer review process behind the new source performance standard, the integrity of the EPA's ongoing hydraulic fracturing study, revisions to ozone regulations, sue and settle, lack of data transparency, and some other——

Ms. MCCARTHY. I am sorry, I didn't realize that you were asking about questions for the record, which they are in the process now. I will get back to you in terms of the timing on responding to those.

Mrs. LUMMIS. Okay.

Ms. MCCARTHY. I apologize, I didn't realize what you were referring to.

Mrs. LUMMIS. And I apologize, I am just sort of breezing in from another committee.

Ms. MCCARTHY. That is okay.

Mrs. LUMMIS. These were given to you on December 17th of 2013 and were questions for the record. I am the Energy Subcommittee chair——

Ms. MCCARTHY. Thank you. I will look into it and we will get right back.

Mrs. LUMMIS. That would be great. Any chance we could hear back by July 14th, about three weeks from now?

Ms. MCCARTHY. Let me see what the status is and we will get back to you by the end of the day in terms of what we think our timeline might be. I have certainly noted that you are interested in having it by then.

Mrs. LUMMIS. Thank you very, very much.

Another question. Under the EPA's proposed rule to restrict carbon emissions from existing power plants, does the cost per kilowatt hour go up or down?

Ms. MCCARTHY. The cost per kilowatt hour by 2030 is estimated to go up slightly in some areas.

Mrs. LUMMIS. Okay. And those areas are areas that are currently——

Ms. MCCARTHY. Actually, it depends. What we do is we look at what kind of response we anticipate States to take, but one of the issues that we are looking at, and clearly reliability and affordability of the energy supply is one reason why we did this as flexibly as possible with individual State standards and individual plans, was to hear back during the comment period on what States thought was their path forward so we could do a good job on the final in estimating those costs.

Mrs. LUMMIS. Now, is it true that in order to make the claim that the rule lowers energy cost, the EPA has to rely on an assumption that, overall, electricity consumption will be reduced?

Ms. MCCARTHY. It is actually recognizing that over that period of time the most cost-effective strategy to achieve the reductions at these fossil fuel plants is to actually look at demand reduction; and that provides an opportunity not just for reduced carbon, but also continued opportunity for economic growth. This is not a cap program; this is an intensity goal. So it doesn't limit the ability to grow economically; it looks at how you produce energy in a way that says low carbon, less waste, better use of low carbon sources.

Mrs. LUMMIS. So in order to say that the rule lowers energy costs, you have to assume that consumers will be paying more for electricity per kilowatt hour, but using less power overall, is that true?

Ms. MCCARTHY. We don't have to make those assumptions. We are recognizing that there will be some fluctuation in cost; it will be fairly minor over time. But we also recognize that this concern about affordability, and if you balance the way in which States have to achieve these standards, they could do it in a way that actually lowered bills for people and consumers in the end of this process.

Mrs. LUMMIS. Well, I am terribly concerned about how this rule is going to affect consumers in Wyoming. There are so many middle and lower income people just trying to make ends meet, and when the cost of electricity goes up over our current coal-fired power plants, most of which are fully depreciated and are being retired prior to the end of their useful life.

For example, because of these rules, the Neal Simpson Plant in Campbell County, Wyoming, its Unit 1 was recently retired fully 10 years before its useful life had expired. And had it been able to carry on for the entirety of its useful life, the consumers in Wyoming would have been able to enjoy lower utility rates. Now it will be replaced by a higher cost brand new plant and, hence, my concern about the average American consumer.

Thank you, Mr. Chairman. I yield back. I apologize for running over.

Mr. MEADOWS. I thank the gentlewoman from Wyoming.

The chair recognizes himself to ask a few questions, Ms. McCarthy.

As I stated earlier, I could go on and on CTS and we would be here long after. It has been a long morning, so I am going to abbreviate some of those. Dot Rice and CTS have become a household name over the last 13 or 14 months for me. It didn't start on your watch, it didn't start on my watch, but it will finish on our watch; and I need your assurances that not only will we do additional testing, but that we will get the site cleaned up. Can I have your assurances of that today?

Ms. MCCARTHY. Well, that will be our shared goal, sir.

Mr. MEADOWS. I know that is your goal, but it has been your goal for 25 years that it would be cleaned up, and nothing has started. Do we have your assurances that it will get cleaned up?

Ms. MCCARTHY. I can't give you a timeline for that, sir. It would be something totally out of my control.

Mr. MEADOWS. So let me ask you what is a reasonable amount of time? Knowing that the public health is your central focus.

Ms. MCCARTHY. It is.

Mr. MEADOWS. And this has been 25 years contaminating the groundwater and air of people that I represent. How long does it take to come up with an action plan?

Ms. MCCARTHY. I don't know in this instance. I understand it is complicated, but I also understand your frustration. Why don't we just get together and figure out how you can be confident that we are moving with as much speed and as diligently as we can?

Mr. MEADOWS. Okay. Ms. Rice has given me 10 questions that I need answered. If I submit those to you, can you have those back to this committee within the next 30 days?

Ms. MCCARTHY. I will do the very best I can.

Mr. MEADOWS. So let me go on a little bit further. Today we have talked about the EPA mission and how important it is. So let's look at Superfund sites. There are currently 1,164 sites on the Superfund priority list. Eighty-one percent of those have been there over 20 years. Eight-one percent of them. So we have been dealing with most of those sites for over 20 years. If the EPA is very effective of cleaning up what we know are a priority because it is a priority list, and it is toxic, many of them toxic, is it not hypocritical that we continue to pass new rules trying to do something and clean up the air and water when we have known areas that we are not cleaning up? What is the issue?

Ms. MCCARTHY. Well, I think we try to address the priorities as they come up. I don't want folks to think that Superfund sites have made no progress that have been in the system for a long time.

Mr. MEADOWS. Well, I have the records. Three hundred sixty-three of them have come off of the list out of 1527.

Ms. MCCARTHY. Right. That is a complete cleanup.

Mr. MEADOWS. So that is a batting average of 237. Even the Boston Red Sox wouldn't trade a draft pick for that.

Ms. MCCARTHY. Well, one of the challenges we face is to make sure that we take care of the immediate impacts on public health. One of the first things——

Mr. MEADOWS. But you haven't done that in my district.

Ms. MCCARTHY. Well, we need to talk about that. But one of the first things we do at these Superfund sites is to ensure that they are not continuing to pose a health threat——

Mr. MEADOWS. But you didn't do that in my district.

Ms. MCCARTHY.—while we work long-term to clean it up.

Mr. MEADOWS. You know. You have been briefed on mine because they have told me in Region 4 they briefed you before you were coming here today.

Ms. MCCARTHY. Well, they sent me a couple pages, yes.

Mr. MEADOWS. You know that that didn't happen, is that correct?

Ms. MCCARTHY. I know that there has been some immediate effort to take care of some vapor intrusion issues, and I think that was a long process.

Mr. MEADOWS. Only in the last 60 days.

Ms. MCCARTHY. We will work together. I don't know what to tell you.

Mr. MEADOWS. Do I have your commitment today that you will work with me and keep my office informed before you inform the WLOS or any of the others? Because I am learning about it from the news media, and I have been working on this for 13 months. Do I have your commitment today?

Ms. MCCARTHY. We will do our best job to have no surprises for you, sir.

Mr. MEADOWS. Do I have your commitment, yes or no?

Ms. MCCARTHY. We will do the best job we can.

Mr. MEADOWS. Okay, so I would take that as a no.

Ms. MCCARTHY. No. In the issue that you are referring to, it had to do with some private information——

Mr. MEADOWS. No it did not, Ms. McCarthy.

Ms. MCCARTHY. That was my understanding.

Mr. MEADOWS. I know that is what they are telling you. What is private about the EPA going to do a test? It has nothing to do with tax records; it has nothing to do with health. It has to do with our actions. There is no constitutional right to privacy for that, Ms. McCarthy.

Ms. MCCARTHY. We do everything we can to not surprise the folks that represent the people——

Mr. MEADOWS. Well, I would disagree with you. So let me go on a little bit further.

Ms. MCCARTHY. Let me tell you we will do better.

Mr. MEADOWS. Okay.

Ms. MCCARTHY. I mean, I will work hard to do better. I don't want surprises because I know this is an issue——

Mr. MEADOWS. Well, it will continue to come up until we get it cleaned up.

Ms. MCCARTHY. Okay.

Mr. MEADOWS. Okay. So let me go back to the public mines that Mr. Bentivolio brought up. He brought up this thing about Pebble Mine in terms of—it sounds like we have another missing hard drive, is that correct, Ms. McCarthy?

Ms. MCCARTHY. I do not know whether that is the case.

Mr. MEADOWS. Does your counsel behind you? I think he is shaking his head yes. Do we have a missing hard drive?

Ms. MCCARTHY. I don't believe this is a missing hard drive issue. There is a challenge getting access to the data on it——

Mr. MEADOWS. So is it a crushed hard drive? What does your counsel tell you? I mean, you brought your counsel here. I assume he is here to tell you.

Ms. MCCARTHY. He just told me we are having trouble getting the data off of it and we are trying other sources to actually supplement that, but we are working through the issue.

Mr. MEADOWS. So do you believe you can get the data?

Ms. MCCARTHY. We are increasingly getting information in different ways and we are taking a look at it.

Mr. MEADOWS. All right, so the Federal Records Act came up yesterday in a hearing.

Ms. MCCARTHY. Yes.

Mr. MEADOWS. I noticed it didn't get brought up today, but it looks like the Federal Records Act has been violated by the EPA.

Did the gentleman that was involved from Alaska, did he print out his emails?

Ms. MCCARTHY. That is not required, sir.

Mr. MEADOWS. Did he preserve his emails? That is required by the Federal Records Act.

Ms. MCCARTHY. I can't know where the failure occurred. We are talking about a series of emails where it is not one particular incident, it is an individual that is located in the Kenai Peninsula.

Mr. MEADOWS. So you are saying you can't collect stuff because it is a long ways away?

Ms. MCCARTHY. No, no. I am just saying that we are challenged in terms of trying to figure out where those small failures might have occurred and what caused them to occur. But we have produced a lot of information. These are pretty old documents——

Mr. MEADOWS. I understand. I heard very similar testimony yesterday that a lot of documents had been produced. You gave a great answer to a question I didn't ask.

Ms. MCCARTHY. Okay, what is your question, then?

Mr. MEADOWS. My question is were all his emails preserved according to the Federal Records Act? Were they all preserved or was a law violated?

Ms. MCCARTHY. Originally you asked me if he preserved them. That is what I was——

Mr. MEADOWS. Were they all preserved?

Ms. MCCARTHY. I think we have notified the appropriate authorities that we may have some emails that we cannot produce that we should have kept, and we have notified——

Mr. MEADOWS. So I am not aware that you——

Ms. MCCARTHY.—whether we can recover all these or not.

Mr. MEADOWS. So did you notify the National Archives?

Ms. MCCARTHY. Yes, we did.

Mr. MEADOWS. When did you do that?

Ms. MCCARTHY. Yesterday.

Mr. MEADOWS. After the hearing.

Ms. MCCARTHY. Well, it became clear that——

Mr. MEADOWS. So yesterday it became clear that you didn't have emails?

Ms. MCCARTHY. Actually, no. We informed the committee when we identified this problem, and we kept them abreast; and I, in the end, am not sure whether or not we won't recover all of it. The question I understood you might ask was whether we have already identified, and we did and we are where I think we need to be, but I am still hoping that we recover all those emails. And this is not a broad swath of emails over a series of years; these are very selective failures that we haven't yet understood why those records weren't kept, but it appears that people did what they were supposed to do.

Mr. MEADOWS. Okay, so yesterday you informed the National Archivist.

Ms. MCCARTHY. That is correct.

Mr. MEADOWS. The Federal Records Act actually requires that you would notify them at the time that you noticed that you had a problem. So it was either that you violated the law or yesterday

you notified them because you saw it on a hearing and you said, oops.

Ms. McCarthy. No, we notified them without telling them that we have confirmed that there is a problem, but there is a suspicion that we may not be able to locate all of them. And we have properly identified that information.

Mr. Meadows. And that happened yesterday.

Ms. McCarthy. It did.

Mr. Meadows. Wow. Okay, let me go on a little bit further.

Really, as we start to look at this, you do know that the IG has an investigation looking into all this.

Ms. McCarthy. I do, yes.

Mr. Meadows. All right. And do you also know that the committee has been asking for over two years for these documents?

Ms. McCarthy. Which?

Mr. Meadows. Many of the documents, requesting additional during the subpoenas investigation during that.

Ms. McCarthy. We actually have complied with some earlier request for information, and we continue to respond as the committee looks for additional information.

Mr. Meadows. Okay. Are you aware that with the EPA with regards to a recommended 404 action, kind of the preemptive 404 veto, are you aware that there might have been some collusion that was going on?

Ms. McCarthy. I am aware that people have expressed concern about that and it has been referred to the inspector general and he is looking into it.

Mr. Meadows. Does that concern you, that there might be collusion?

Ms. McCarthy. I have seen no evidence of it so far, but certainly——

Mr. Meadows. I didn't ask you that. I just said would it concern you if there was collusion.

Ms. McCarthy. I am actually happy the inspector general is looking at this, and I look forward to his report when it is produced.

Mr. Meadows. All right. So if you have a crushed hard drive, are you willing to produce that and give that to the committee as well?

Ms. McCarthy. I will be happy to get back to you on that. I just want to make sure that I have this right, because the challenge we have been having is, again, that this is—we are not sure where the failure came from and what it is attributed to, but we will be happy to share whatever we have available to the committee.

Mr. Meadows. All right, so it sounds like we just have a whole lot of unknowns here as it relates to Pebble Mine, right? I mean, with all of this going back and forth and investigation, it sounds like there is just a whole lot of uncertainty.

Ms. McCarthy. Actually, what you have expressed——

Mr. Meadows. Or are you certain what is going to happen?

Ms. McCarthy.—uncertainty about a fish biologist who provided input into his expertise on Bristol Bay. I think the thing I want to make sure that everybody understands was he is not a decision maker in this process; he inputted into the science assessment. That has been fully peer reviewed. We have not made any decision

on Bristol Bay; we have just taken a first step, and it will be a fully engaged public process.

Mr. MEADOWS. But he could have been one of the ones that colluded on this. In fact, there have been innuendos made that he may very well have been the one.

Ms. MCCARTHY. Which is why it is important that the inspector general conduct their investigation and that we be mindful of the report and we take appropriate action.

Mr. MEADOWS. Well, in light of that, then, wouldn't you think that it would be prudent to cease the 404(c) action at this point, until we get all the facts?

Ms. MCCARTHY. Well, there is no——

Mr. MEADOWS. Are you willing to cease that 404(c) action until we get the facts?

Ms. MCCARTHY. No, sir. I don't see any evidence that there was collusion here. And I want to again point out that he is a fish biologist, he is not a decision maker for the Agency.

Mr. MEADOWS. Well, but collusion by this biologist is still collusion.

Ms. MCCARTHY. That decision is made on the basis of the science.

Mr. MEADOWS. All right, so let me close with this. What about the money that we are spending there on Pebble Mine? What if we took that money and we brought it over and cleaned up the CTS site? Don't you think that would be a great idea?

Ms. MCCARTHY. We all have our priorities, sir.

Mr. MEADOWS. And CTS is mine.

Ms. MCCARTHY. That has been made abundantly clear.

Mr. MEADOWS. I want to be sympathetic to Mr. Cummings, if he has some additional questions he would like to ask.

Mr. CUMMINGS. I promise you I won't take 12 minutes.

But let me say this, Ms. McCarthy, as I close, because I have to get to a meeting. You have a tough job. You have a tough job. And when you are trying to protect the health and the safety of all Americans and keep the environment and the water clean, you have a tough job. On the one hand we hear folks say don't regulate us too much, but I keep thinking about that situation in West Virginia with the water, and they had to bring in bottled water. And I ask myself the question if that happened in various districts throughout the Country, that would be a major, major, major problem. So I just want to leave you with two things.

One, I don't know if you heard my opening statement when I said that this is our watch. And it is our watch to make sure that we keep our environment clean, safe, all the things that you try to do; our water; all the things you do, the mission of the EPA. But at the same time, you know, sometimes if an organization has problems within itself, it is kind of hard for it to carry out its mission. When I hire people, I always check with them to make sure they are not drama people, because a drama person can mess up a whole office. And when you have a drama person, it takes away from the ability to accomplish what you set out to do.

At the same time, when we hear about situations like Beale, it really just rubs everybody the wrong way. And the reason why I had asked Chairman Issa to let me interject my questions earlier,

and I have been here for 99 percent of this hearing, is because I wanted to make sure that you all, in this moment, this is a critical moment, had gotten the wake-up call or calls to take action to make sure that we did every single thing in our power to make sure another Beale did not happen. And I remember, as I was raising my kids, I used to tell them you are going to be punished today because I realized that if I allow this moment to come and you did something improper and I don't correct it, it is usually going to get worse. And what I am saying to you is those critical moments come along, and Beale is the poster child for a critical moment. The question is whether we will take that moment, learn from it, correct it, and put in all the safeguards that are necessary so that it does not happen again; but, just as significantly, so that it doesn't get worse.

So while it is our watch, it is our watch to guard our environment, to take care of our water, to do all those things to keep our people safe, but it is also our watch to make,to help the Agency be the very, very, very best that it can be.

The other thing that happens is this: that takes away from that is when we have hearings and legitimate questions, but the time that we spend dealing with those kinds of issues also takes away. But we have to do that. You understand that. This is not personal. We have to look into the Beales. We have to do those things. You have to ask the critical questions like the chairman was just asking. But we have to also make sure that we do all that we can to minimize the problems within so that we can address the problems that we are supposed to be addressing. Does that make sense?

Ms. MCCARTHY. Everything you say is absolutely on target, and I want to just verify that I understand the importance of this committee and the work that you do. I understand the importance of the Office of Inspector General at EPA. We have challenges to keep up with modern times in terms of our systems of accountability. We are working through those.

I was handed a John Beale when I got in there. While I would have loved to have corrected that situation and known right out of the gate. He is sitting in a jail right now; we got money back and I am getting more. I had a town hall just in May on this very issue. Two reasons: one is to enforce accountability in our Agency, but, secondly, to let my Agency know that I know what we are dealing with here is out of 16,000 people I am dealing with a handful; and I cannot let that handful of people destroy the morale of my Agency and our ability to get done what the public expects us to do. I am surrounded by incredibly dedicated, talented people, and I want them to be rewarded for what they do and know that when there is a bad apple there it is coming out. I am finding it and it is coming out as quickly as I can get it.

Mr. CUMMINGS. And as I close, in your town hall meeting I hope that you addressed the issue of whistleblowing, because I think that is the way we can get to some of this. Somebody has to know something. So I think that is important.

But the last thing you said, and I have to end on this, is a lot of times we criticize Federal employees, but I have often said that when I talk to Federal employees, particularly I have talked to people in your Agency and others, and a lot of these folks, most of

them, as a matter of fact, they come in and they do these jobs. They could make a lot more money outside of Government, but they come because it feeds their souls, because they see something greater than them. And I see that over and over again with EPA employees. So I just want to—and others. But we are talking about your Agency today. And I want to thank them because a lot of them have sacrificed a lot because they know that it is our watch and they are good watch persons trying to make a difference for the future.

Ms. MCCARTHY. Thank you. And it is an honor for me to represent them.

Mr. CUMMINGS. Thank you.

Thank you, Mr. Chairman.

Chairman ISSA. [Presiding.] Thank you.

Administrator, by our standards, you have done well, and quickly. As we bring it to a close for today, we began with the question of the outstanding subpoena. Clearly, I hope that over the next few days that our folks and your folks can resolve this with all the emails being known and understood. If we can't, we have already had that discussion. But I hope that we can. I am sure that when you mentioned in your dialogue at the opening, that you talked about the balance of power, that you appreciate that we too have an obligation, as Article I, to do that balance fully and freely; that the documents we are asking for a court under FOIA would undoubtedly order. And that is really what we are asking for, is to be as never less than a FOIA discovery would arrive at, and this committee has a recent history in the case of Benghazi investigation of knowing that in fact correspondence from the White House is often protected, shielded, and not disclosed to the committee, but ultimately a Federal judge seems to be respected.

As I look at Article I, Article II, and Article III, and I have just been over in my other role at Judiciary, I realize that Article I and II need to resolve as many things as they can before we go to Article III, before we go to the courts. That is my goal; that is the reason that I would like to have you seriously relook at the issue of all of the documents, not just one, since that document, I think if you relook at it, you will realize if you have a suspicious nature, as my investigators are required to, they could say it asks more questions than it answers and it leads to their wanting to see more for that reason. So I hope we are able to do this.

Obviously, we are still trying to get the Pebble Mine question of the documentation, the order, and individuals who are not available to us resolved, and we will continue to do that with other committees.

Lastly, the committee has begun doing interrogatories, whenever possible, in order to not need to bring witnesses back. This allows you to use a vast portion of your staff to get us answers to questions. There were a number of questions asked today that, by nature, you can't fully answer, so what we will do is we are going to recess. We will present you interrogatories that are consistent either with the discovery questions that we mentioned, and call them just questions to EPA, they are either related to today's hearing or they are related to the outstanding subpoenas, and we would ask

that you respond to them in a timely fashion. Then, once they are responded to, we will close the record on this.

So we will stand in recess on this hearing pending the response to all of those. And again I want to thank you for your presence.

Ms. MCCARTHY. Thank you very much for the hearing and the courteous way in which you have run it, and we certainly hope we can resolve these issues together. Thank you.

Chairman ISSA. I do too. Thank you.

[Whereupon, at 12:28 p.m., the committee was recessed.]

APPENDIX

Material Submitted for the Hearing Record

Congress of the United States
Washington, DC 20515

June 13, 2014

The Honorable Gina McCarthy
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20004

Dear Administrator McCarthy:

On June 2, 2014, the Office Inspector General (OIG) of the U.S. Environmental Protection Agency issued its semiannual report to Congress.[1] In the report, the OIG included a section entitled "Impediments to OIG Efforts," which raised concerns that EPA employees were erecting barriers that hampered its ability to conduct its congressionally mandated responsibilities. The report also revealed that you have failed to reinforce the Agency's policy on employee cooperation with the OIG despite Agency precedent and the OIG's July 2013 request to issue an "all-hands memorandum."[2] As such, it appears your failure to issue a memorandum on this policy may have led EPA employees to mistakenly believe that noncooperation is permissible. To prevent any further impediments to the OIG, it is incumbent upon you to take immediate steps to remedy these problems.

As required by the Inspector General Act, §5(a)(5), semiannual reports issued by the Inspectors General must include a summary of reports made under §6(b)(2), which includes information that is, in the judgment of an IG, unreasonably refused or not provided.[3] Pursuant to this responsibility, the OIG reported that multiple offices within EPA have been obstructing the OIG. Specifically, several EPA offices, including the Office of Homeland Security, the Office of Chief Financial Officer, the Office of Chemical Safety, as well as the Office of General Counsel reportedly failed to cooperate with the OIG.[4] These reports are very concerning as instances of

[1] INSPECTOR GEN., U.S. ENVT'L PROT. AGENCY, SEMIANNUAL REPORT TO CONGRESS OCTOBER 1, 2013-MARCH 31, 2014, EPA-350-R-14-001 (May 2014), *available at* http://www.epa.gov/oig/reports/2014/Semiannual_Report_to_Congress-March_2014.pdf.
[2] *Id.*
[3] Inspector General Act of 1978, as amended, 5 U.S.C. App., *available at* https://www.oig.dot.gov/sites/dot/files/IG%20Act%20Booklet-with%202008%20Reform%20Act.pdf
[4] "Sometimes our efforts to root out fraud, waste and abuse were thwarted by impediments from the agency. The most significant of these, which is ongoing, was the refusal of the EPA's Office of Homeland Security, a unit established by the Office of the Administrator to handle national security issues, to cede or share jurisdiction on allegations of employee misconduct and other matters for which the OIG is charged responsibility under the Inspector General Act. On other fronts, an Office of General Counsel attorney refused to speak with the auditors examining agency wide pay issues, creating a potential gap in information. And auditors who requested financial statements for two pesticide funds did not receive sufficient and timely information." INSPECTOR GEN., U.S. ENVT'L PROT. AGENCY, SEMIANNUAL REPORT TO CONGRESS OCTOBER 1, 2013-MARCH 31, 2014, EPA-350-R-14-001 (May 2014) at 3.

PRINTED ON RECYCLED PAPER

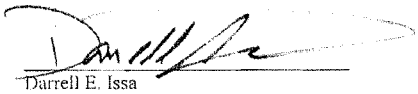
an agency failing to cooperate with its OIG appears to be extremely rare. Indeed, a review of OIG semiannual reports for six federal agencies over the last five years did not uncover any other examples of an OIG reporting internal agency obstruction pursuant to §5(a)(5).[5]

It is wholly unacceptable for federal employees to refuse to cooperate with the OIG. Accordingly, we request that you promptly issue an agency-wide memorandum that requires EPA employees cooperate with the OIG. Moreover, we respectfully request that you report back to the House Oversight and Government Reform Committee and the Senate Committee on Environment and Public Works as soon as possible on all personnel actions taken against individuals who have refused to cooperate with the EPA OIG.

Thank you for your prompt attention to this matter. If you have any questions, please contact Kristina Moore with the Senate Committee on Environment and Public Works at (202) 224-6176 and Tyler Grimm with the House Committee on Oversight and Government Reform at (202) 225-5074.

Sincerely,

David Vitter
Ranking Member
Senate Committee on
Environment and Public Works



Darrell E. Issa
Chairman
House of Representatives Committee
on Oversight and Government Reform

cc: The Honorable Barbara Boxer, Chairman, Committee on Environment and Public Works

The Honorable Elijah Cummings, Ranking Member, Committee on Oversight and Government Reform

[5] EPW staff reviewed semiannual reports over the last five years from the OIG of the following agencies: HHS, VA, EEOC, IRS, DOJ, and ED.

House Committee on Oversight and Government Reform
Hearing on "Management Failures: Oversight of the EPA"
June 25, 2014
Questions for the Record

Questions from Chairman Darrell Issa

1. When will the 2014 Renewable Fuel Standard (RFS) requirement be finalized?

EPA continues to work on the 2014 Renewable Fuel Standard (RFS) requirements final rule, which will establish the required applicable volumes and percentage standards. The rule is a priority for us, and we hope to finalize it soon.

2. Why does EPA continue to miss Congressionally-mandated deadlines for issuing RFS requirements?

The deadlines that Congress established for issuing annual rules under the RFS program are aggressive. The challenges involved with proposing and finalizing even a minor rulemaking can be significant, and in the case of RFS rulemakings, where the issues and analysis involved are often complex, the challenges are typically even more substantial. The RFS touches a range of complex environmental, energy, and agricultural issues, and a broad range of stakeholders are interested and engaged in the policy process. Furthermore, the fact that the rules establishing the RFS standards are required by law to be issued on an annual basis exacerbates these challenges.

Nevertheless, EPA has met with multiple stakeholders to listen to their input on the proposed rule and to solicit any new and relevant data that should be factored into setting the volume standards for 2014. These stakeholders include representatives from the biofuel sector, the agricultural sector, petroleum refiners, environmental groups, and various other organizations and sectors. The EPA also received over 340,000 comments on the 2014 RFS proposal, which we are currently evaluating. EPA is committed to improving our internal processes and we will continue to strive to better our performance in meeting the statutory deadlines.

3. Will EPA commit to getting the 2015 RFS requirements issued by November?

We intend to act as quickly as possible to propose the rule that will establish the volume requirements and standards under the RFS for 2015. EPA shares the goal of getting back on the statutory schedule for issuing the annual standards rulemakings.

4. Is EPA still planning to exercise its waiver authority for the 2014 RFS?

The EPA did propose to exercise various waiver authorities under the Clean Air Act for the proposed 2014 volume rulemaking, and we received significant comment on this issue. We are unable, however, to comment on policy decisions that will be made as part of the final rule to

establish the 2014 required volumes under the RFS, as we are still in the process of finalizing that rulemaking.

5. Will EPA increase the biodiesel requirement for 2014?

While the EPA proposed to maintain the biomass-based diesel standard at 1.28 billion gallons for 2014, whether and to what degree the biomass-based diesel standard for 2014 will be increased above 1.28 billion gallons is an issue that will be decided in and announced with the 2014 annual RFS standards final rulemaking.

Enclosure

Questions for Administrator McCarthy
U.S. Environmental Protection Agency

Questions from Congressman McHenry and Congressman Mark Meadows
House Committee on Oversight and Government Reform

June 25, 2014 Full Committee Hearing:
"Management Failures: Oversight of the EPA"

We received the following questions from our constituents regarding the CTS cleanup site (EPA ID: NCD003149556) in Asheville, North Carolina.

We ask that you fully consider and respond to each concern, in as timely a manner as possible, that the impacted families of Western North Carolina have directly identified to me. I appreciate your attention to this serious matter and please feel free to contact me with any inquiries that you may have.

1. Why is there a shortage of canisters to test the air when so many homes should be tested?

There is not a shortage of canisters to test the air. EPA determined that the residents at risk from any site related air contamination had been identified and that not every home in the community was at risk or needed to be tested. During each of the air sampling events (described below), scientifically based work plans were developed and included a specific number of sample canisters needed for each sampling event. Sample canisters are rented from a laboratory and certified as clean and functional prior to the lab shipping canisters to the contractor. Therefore, only the exact number of sample canisters planned for a sampling event are ordered and obtained for that event.

Per EPA's direction, CTS Corporation's contractor, AMEC Environment & Infrastructure, Inc. (AMEC), developed work plans to evaluate potential air contamination in homes near the CTS of Asheville, Inc. Superfund site (CTS site). The EPA approved AMEC's Vapor Intrusion Assessment Work Plan, Revision 2, on September 13, 2012. During October 16-18, 2012, AMEC, with EPA contractor oversight, conducted the vapor intrusion assessment on properties surrounding the Site where access had been granted [properties to the west of the CTS site]. The sampling results were within acceptable risk ranges.

In November 2013, the property owners for homes adjacent to the eastern border of the CTS site provided written permission for air sampling on their properties. AMEC revised the Vapor Intrusion Assessment Work Plan (VI Work Plan) to include inside the home air samples. AMEC submitted Revision 4 of the VI Work Plan on March 14, 2014, which EPA approved on March 28, 2014. During April 21-24, 2014, AMEC, with EPA staff and contractor oversight, collected air samples at three homes on properties east of the CTS site. On June 4, 2014, AMEC informed EPA that the analytical results had

been reviewed and data validation was complete. Trichloroethylene (also known as trichloroethene or TCE) concentrations detected in air samples collected inside of all three homes exceeded EPA Region 4's chemical/site-specific removal management level and posed a potential risk to residents in those homes. On June 6, 2014, EPA and North Carolina Department of Health representatives traveled to Asheville to inform the residents of these three homes about the sample results, answer health related questions and offer temporary relocation. All three households accepted the relocation offer and on June 7, 2014, the 13 occupants of the three homes were relocated.

EPA directed CTS Corporation to widen the circle of homes to be evaluated for air contamination and conduct additional air sampling at those homes to determine the extent of air contamination. On June 11, 2014, AMEC submitted a supplement to the VI Work Plan. On June 13, 2014, EPA conditionally approved the supplement. During June 23-25, 2014, AMEC conducted air sampling, with EPA staff and contractor oversight, at additional homes and properties near the three homes that were sampled in April. The analytical results were all within acceptable risk ranges at these additional homes and EPA determined that the residents at risk from any site related air contamination had been identified.

2. When can families expect to see movement on cleanup of springs?

On July 10, 2014, EPA issued written direction pursuant to the 2004 Administrative Order on Consent for Removal Action (AOC for Removal) for CTS Corporation to take immediate steps to mitigate threats associated with air contamination emanating from the springs on the Rice family's property, adjacent to the eastern border of the CTS site. Per the terms of the AOC for Removal, CTS Corporation has 30 days to submit a detailed work plan with a schedule for accomplishing this objective. The work plan was submitted to EPA on August 11, 2014. EPA reviewed the draft work plan and it was approved on September 9, 2014. Fieldwork began on September 10, 2014.

3. Why can't cleaning the source be done at the same time that cleaning of the springs occurs?

The EPA is using its removal and remedial authorities to simultaneously address both the source area and the springs at the CTS site. However, cleanup of the source will be more complex and will involve a longer timeframe. The EPA is using removal authority to direct CTS Corporation to undertake a time-critical removal action to promptly address the air contamination from the springs, which is providing a direct and immediate pathway for contaminants to impact the health of nearby residents.

In addition to the time-critical removal action for the springs, the EPA is using remedial authority to direct CTS Corporation to develop a Focused Feasibility Study to identify an interim remedial action to address the Non-Aqueous Phase Liquid (NAPL) source area delineated in the recently completed NAPL Investigation conducted as a part of the Remedial Investigation (RI). A RI determines the nature and extent of contamination, which means that it identifies contaminants of concern, where these contaminants have come to be located, and how the contaminants are moving within the environment. A Feasibility Study (FS) uses the information from the RI to develop and evaluate options for remedial

action, which means it reviews a variety of different alternatives for cleanup. As part of the overall RI/FS, CTS recently completed the Non-Aqueous Phased Liquid (NAPL) source area investigation, which delineated the NAPL source area. As a result of having this source area defined, the EPA has determined that while the overall RI/FS is moving forward, it is possible to take certain interim steps to clean up the NAPL source area. Therefore, the EPA has directed CTS to move ahead with a Focused Feasibility Study (FFS) to identify an appropriate interim remedial action to commence cleanup of the source area with the goal of reducing the mass of TCE, petroleum and other contaminants pending the selection of a final site remedy. Ultimately, a final remedial action(s) will be required to address any remaining NAPL and other contamination that has moved beyond the source area, but this interim action should greatly reduce the mass of contaminants available for further migration.

The interim remedial action to address the TCE/light petroleum NAPL mass is a complex, multi-year undertaking. The known technologies for this type of contamination include dual-phase extraction, flooding (surfactant, co-solvent, and steam), in-situ chemical oxidation, and thermal treatment. These technologies have been used at other sites across the country; however, each site is unique and has varying geology and contaminants. It may be necessary to conduct bench testing and pilot testing to determine which technology is best suited to address the TCE/light petroleum NAPL at this site.[1]

4. Why EPA did not require CTS to clean up the contamination when the plant was sold and contamination was listed on their deed?

The sale of the plant in 1987 was a private real estate transaction for which the owner had no obligation to notify the EPA regarding the sale of the property. Generally, the EPA does not monitor real estate transactions and is not required to perform such activity.

5. Why have citizens had to live with continuous contamination running onto their property all these years?

Since the time that contamination was identified in drinking water in 1999, EPA, the Potentially Responsible Parties (PRPs), state and local authorities have taken several significant actions to protect citizens at and around the CTS site. These actions include provision of municipal water to homes with contaminated drinking water, installing a fence around the contaminated springs, conducting quarterly well water sampling, installing whole house well water filtration systems in over 100 homes, operating a soil vapor extraction system, and conducting an ozonation pilot study for the contaminated springs.

EPA and the PRPs performed response actions, listed above, to address the immediate threats that met the National Oil and Hazardous Substances Contingency Plan (NCP) criteria for a removal action. EPA Finalized the site on the NPL in March 2012. Now that the site is on the NPL, EPA is using remedial authority to perform a comprehensive remedial investigation and feasibility study that will lead to an overall site cleanup plan.

---

[1] Bench testing refers to conducting evaluations in a laboratory. Pilot testing refers to trying the technology at the site in a small area to evaluate whether the technology will be effective for site-specific geological conditions.

With respect to the air contamination and as discussed in the answer to Question #1, the EPA collected air samples related to the CTS site in December 2007 and August 2008. Analytical results from these sampling events were below levels that would trigger EPA removal action and/or temporary relocation. In 2011, the EPA changed the toxicity values for trichloroethylene (TCE) concentrations based on a new review of the science related to the health effects of TCE (http://www.epa.gov/iris/subst/0199.htm). After the change in toxicity values and after other science based changes to the EPA's method of assessing vapor intrusion, EPA started the process of re-assessing the potential of TCE vapor intrusion near the CTS site. The EPA required CTS Corporation to perform an additional vapor intrusion study in 2012 and in 2014.

Based on the new toxicity values, none of the homes sampled in 2012 west of the site had levels of TCE that exceeded EPA Region 4's chemical/site-specific removal management level. However, all of the homes sampled east of the site in April 2014 had air concentrations of TCE which triggered an emergency removal action of temporary relocation of the occupants, and a time-critical removal action to mitigate the air contamination emanating from the springs located on the adjacent residential property east of CTS' former manufacturing facility.

6. Why were documents removed from the library before lawsuits against CTS that could have helped families?

After the Administrative Record was created, the EPA delivered boxes of documents to the Asheville library to create a local information repository. About a month later, EPA delivered another box of documents to the library to be added to the site repository. With the arrival of the additional box of documents, the librarian in charge of the North Carolina section of the library determined that the documents were taking too much shelf space and requested that EPA provide all the documents on compact disks (CDs) instead. Therefore, EPA removed the hard copies and provided the library with CDs of all the documents that were previously at the library; additional documents were also included. The EPA also posted some documents on the EPA On Scene Coordinator (OSC) website www.epaosc.org. These documents and many others were and continue to be housed in EPA's regional office and may be viewed during business hours at EPA Region 4, 61 Forsyth Street, SW, Atlanta, GA 30303.

7. Why would EPA secretly designate properties as a CERCLA Superfund site in 1999, right when CTS was the source of contamination and already a CERCLA Site?

EPA did not secretly designate properties as a CERCLA Superfund site in 1999. On August 16, 1999, the North Carolina Department of Environment and Natural Resources (NCDENR) sent a letter to EPA's Emergency Response and Removal Branch (ERRB) requesting an immediate removal action evaluation. The letter specifically stated, "The NC Superfund Section requests that the U.S. EPA evaluate the Mills Gap Road Groundwater Contamination site for a possible removal action." The information that NCDENR provided to EPA supported the need for an emergency removal action to provide alternate drinking water to four homes that were drinking contaminated water supplied by one

spring and one well. Therefore, EPA created the Mills Gap Road Groundwater Contamination site, as NCDENR called it, in the Comprehensive Environmental Response, Compensation, and Liability Information System (CERCLIS) database so the On-Scene Coordinator could access the funding necessary to supply safe drinking water to the families. After EPA established that the CTS site was the source of the contamination, the Mills Gap Road Groundwater Contamination site was rolled into the CTS site.

8. Why did it take 9 years for impacted families to be rightfully informed about the EPA's 1991 groundwater, surface water, and air testing results? Who at the EPA handled the EPA's CTS site results in 1991? And which EPA employees removed the site, in 1995, from the Superfund hazardous cleanup program?

As a result of the environmental assessment conducted by CTS in 1987, and in an effort to evaluate the site for listing on the National Priorities List (NPL), in 1989, the EPA conducted a site screening inspection phase I for the CTS facility which involved reviewing the state and federal files regarding the site. In 1990, the EPA conducted phase II of the investigation, which involved taking eighteen samples of soils, sediments, surface water, and one private well, which was three quarters of a mile away from CTS. While the sampling did indicate the presence of some contamination, based on the analysis of the migration pathways, the sampling data, the file materials, and the lack of known impacted receptors (such as drinking water wells with contamination from CTS), the investigation resulted in a determination of "no further action" for the CTS facility. In 1999, after the state discovered contamination in a nearby spring and a nearby drinking water well, it requested the EPA to review the facility for a federal removal action.

On January 25, 1995, the EPA Administrator announced the removal of approximately 25,000 sites from the CERCLIS inventory as part of the Brownfields Redevelopment Initiative.

CERCLIS is the database of site information for potential or confirmed hazardous waste sites addressed under the federal Superfund program. In CERCLIS, sites were given a designation of No Further Remedial Action Planned (NFRAP) if no additional federal steps under CERCLA would be taken at the site. Prior to 1995, the active CERCLIS database included both sites with the NFRAP designation as well as sites *needing* further evaluation or cleanup, which created a perceived threat of Superfund liability that was associated with many sites no longer of federal Superfund interest. In 1995, as part of the Agency's Brownfields Economic Redevelopment Initiative, the EPA addressed this perception problem by removing these NFRAP'ed sites from the active CERCLIS database and placing them in an archived sites database. The date that was used to memorialize this action was the NFRAP date in CERCLIS.

On February 15, 1995 the EPA headquarters removed nearly 24,000 sites from the national active CERCLIS inventory and placed them in an archived database. The CTS site was one of those sites. The NFRAP date was assigned in 1991, but the site was not placed into the archive database until 1995 as part of the Brownfields Redevelopment Initiative. On September 16, 1999, following the discovery of contaminated drinking water near the site, and because the CTS facility was identified as the probable source of that contamination, the EPA changed the CERCLIS site status designation for the CTS of

Asheville, Inc. Site from NFRAP to "Further Assessment Needed under CERCLA." For more information on this Superfund Reform Initiative, please go to http://www.epa.gov/superfund/programs/reforms/reforms/2-4c.htm .

9. Has EPA issued a contract to do the job?

EPA currently employs two contractors for the CTS site: Oneida Total Integrated Enterprises (OTIE) is performing oversight support of the work being performed by AMEC; and Environmental Restoration (ER) is assisting EPA with temporary relocation activities. In years past, EPA has contracted for certain response actions such as connection of five homes to the municipal water supply system after learning that their drinking water was contaminated with TCE.

When there is a Potentially Responsible Party (PRP), EPA makes every effort to compel the PRP to perform the work before the EPA performs it with taxpayer funds. This is why CTS Corporation is performing the Remedial Investigation/Feasibility Study (RI/FS) and removal actions, and why the EPA will use its enforcement tools to compel CTS Corporation to implement interim and final remedial actions, as appropriate.

10. Do other studies clearly show the area to be cleaned up?

Previous studies at the site have provided valuable data, but the full extent of contamination has not yet been defined. CTS Corporation has begun the remedial investigation process.

The remedial investigation serves as the mechanism for collecting data to:

- characterize site conditions;
- determine the nature of the waste;
- assess risk to human health and the environment; and
- conduct treatability testing to evaluate the potential performance and cost of the treatment technologies that are being considered.

Ground water assessment has included sampling conducted in monitoring wells at the CTS site and quarterly well water sampling within a mile radius of the CTS site. Additional sampling is needed during the remedial investigation to better define the extent of ground water contamination.

Soil sampling has been performed over years with the most recent events including the Soil Vapor Extraction Confirmation sampling which was performed in November 2013, and the NAPL Investigation that was conducted during September 2013 through February 2014.

Air sampling has been conducted in 2007, 2008, October 2012, April 2014 and June 2014. The extent of air contamination is fairly well defined, but additional sampling may be needed.

Surface water and sediment sampling has been conducted over the years, but additional sampling may be needed to define the extent of contamination.

The RI/FS Work Plan will identify data gaps to determine whether additional sampling of air, ground water, surface water, soil and sediment are needed.

11. How does EPA propose to actually clean up the site? Through removing TCE? Other methods?

CTS Corporation has already used soil vapor extraction (SVE) technology to remove approximately 6,473 pounds of volatile organic compounds (including TCE) in the soil in the source area that lies above the ground water. Further potential cleanup actions are being developed, screened, and evaluated in the Feasibility Study portion of the RI/FS. After the RI/FS is completed, EPA will inform the community about the different cleanup actions evaluated, will propose one or more options to use for the cleanup of the site, and will seek input from the public about the proposed options.

12. Will the cleanup involve removing dirt from the site?

It is unknown at this time whether soil removal will be a part of the site cleanup. The NAPL investigation and Soil Vapor Extraction (SVE) confirmation sampling reports were received from CTS Corporation's contractor on May 5, 2014. Together these reports constitute the most comprehensive effort yet to define the horizontal and vertical extent of contamination beneath the CTS site. The SVE Confirmation Sampling Report concludes that the SVE system was effective in cleaning up the soil above the water table. The remaining contamination is below the water table and extends to the top of bedrock, which varies across the site from 28 feet to 81 feet below the surface. The suspected NAPL contamination itself is an estimated 10 to at least 45 feet thick, depending on location. Excavation with heavy equipment in soil below the water table and at such depths is extremely problematic due to the extensive shoring and dewatering that would be required, the very large soil stockpiles that would have to be placed nearby, excavation difficulties when bedrock is encountered, and the large volume of soil that would have to be transported somewhere for disposal. Although excavation will be an alternative that is evaluated, other technologies may prove to be more promising. Some examples include multi-phase extraction, in-situ chemical oxidation, steam injection, and electrical resistive heating. All of these technologies have limitations, however, and will likely require bench and/or pilot scale testing prior to full scale implementation.

13. If so, how much dirt would have to be removed?

See answer to question 12, above.

14. How does EPA propose to clean up the underground streams that flow through the site?

EPA assumes that by "underground streams" this question refers to ground water that flows through fractures. Once all the investigation data has been obtained for the Remedial Investigation (RI), a remedy will be developed that will address the ground water cleanup. Various remedies will be evaluated depending on the contaminant location and composition.

15. Does EPA know the source of the streams before entering the site?

EPA assumes that by "underground streams" this question refers to ground water that flows through fractures. Once the Remedial Investigation (RI) is complete, a conceptualization of the site will be developed that informs the source of ground water coming onto the site. Knowledge of the fracture system will be obtained during the RI that will aid in understanding the ground water flow onto and from the site.

16. Does EPA know where the streams are on the site?

EPA assumes that by "underground streams" this question refers to ground water that flows through fractures. Presently there is a preliminary understanding of ground water flow on the site. Monitoring wells are on the site; some are shallow, and some are deeper within the top of bedrock. Knowledge of the fracture system is the missing component from a complete understanding. The Remedial Investigation (RI) will provide a better understanding of the fracture system.

17. Does EPA know how far down the streams are from the surface?

EPA assumes that by "underground streams" this question refers to ground water that flows through fractures and that the question is referring to the depth to ground water. Depth to ground water varies across the site and also varies depending on when measurements are taken. In September 2013 water levels ranged from 1.7 feet above the ground surface to 43.11 feet below ground surface.

18. What is the depth of the contaminated soil?

The full extent of the depth of the contaminated soil has not yet been determined. The deepest soil samples that have been collected to date at the site were collected during the 2013-2014 NAPL Investigation. The deepest soil sample was collected at 49 feet below the land surface and had a TCE concentration of 3,170 micrograms per kilogram (µg/kg). TCE concentrations vary across the site. TCE concentrations range from "not detected" in some of the shallow soil samples collected during previous investigations to 1,200,000 µg/kg in a sample collected at 28 feet below the land surface during the NAPL Investigation.

19. Does EPA know of a neutralizer that can be used?

EPA assumes that your term "neutralizers" means the use of chemical and biological treatment reagents that are among the available technologies that can treat contaminants to reduce volume, toxicity or mobility. All of these technologies have limitations, however, and will likely require bench and/or pilot scale testing prior to full scale implementation. EPA has issued written direction pursuant to the 2012 RI/FS Order for CTS to undertake a Focused Feasibility Study (FFS) to evaluate and choose a technical approach for an interim remedial action to reduce contaminant mass in the source area identified in the recently completed NAPL Investigation. On August 11, 2014, CTS submitted a draft FFS Work Plan that the EPA is currently reviewing.

20. Does the cleanup also involve the affected residents' soil that is allegedly contaminated?

The full extent of contamination has not yet been determined. After the RI/FS and risk assessments are completed, cleanup plans will be developed for the site. Cleanup options will be evaluated if data review and risk assessments indicate that a cleanup is needed for residential properties.

21. What is the name of the contractor for the cleanup?

CTS Corporation's contractor AMEC, formerly known as MACTEC, operated a soil vapor extraction (SVE) system at the site years ago. Since that time, CTS has thus far employed AMEC to develop work plans and other deliverables requested of CTS by EPA. AMEC has contracted with other vendors, such as Culligan, Zebra Environmental and A&D Environmental Services to conduct certain aspects of the work. Other cleanup plans have not yet been developed nor have they been awarded to a specific contractor.

22. Is the EPA paying for the cleanup? If not, it should be the one to pay, due to its negligence over the past one quarter of a century.

The EPA is not paying for the cleanup. The EPA has a long-standing "enforcement first" policy. When there is a Potentially Responsible Party (PRP), EPA makes every effort to compel the PRP to perform the work before the EPA performs it with taxpayer funds. This is why CTS Corporation is performing the RI/FS and removal actions, and why the EPA will use its enforcement tools to compel CTS Corporation to implement interim and final remedial actions, as appropriate. Fund-lead remedial actions can be implemented if enforcement is not successful.

23. How was it decided that the cleanup will be complete in 2016?

It has not been decided that the cleanup will be complete in 2016.

Targets for 2016, and beyond, included in APPENDIX B, Projected Future Activities and Schedule, of the CTS OF ASHEVILLE SUPERFUND, INC. SITE STATUS AND FUTURE PLANS document last provided to local congressional office on July14, 2014 were listed as follows:

- Spring 2016 - Begin design/construction of interim action remedy for NAPL remediation.
- Fall 2016 - Complete construction of the NAPL interim remedial action remedy (could be sooner or later depending on the technology selected). This constructed remedy may then have to be operated for months or years before completion.
- Fall 2016 - Finalize/approve the Site-wide RI/FS, complete public participation and Issue Record of Decision for Site-wide remedy.
- Spring-summer 2017 - Begin design/construction of Site-wide remedy.
- Spring-summer 2018 - Complete construction of Site-wide remedy (could be sooner depending on the technology selected). This constructed remedy may then have to be operated for numerous years before cleanup can be declared "complete" based on achieving cleanup levels in ground water.

It is possible that certain interim remedial action projects will be completed prior to 2016, but full site-wide remediation to achieve acceptable cleanup levels will take longer.

24. What is the estimated total cost?

It is not possible to estimate what the total cost for the cleanup will be at this point in time because the full extent of the contamination has not yet been defined, and the cleanup technology has not been selected. During the Feasibility Study, different cleanup options will be evaluated and cost estimates created. A Proposed Plan, which evaluates alternatives, and identifies the EPA's preferred alternative, will then be distributed for public review and comment. This Proposed Plan will present the cost estimates as part of the evaluation of clean up alternatives.

25. What assurance is there that, this time, the cleanup will be truly effective?

The cleanup of this site involves addressing contamination in the soils, surface water, groundwater (including drinking water), ambient air, and possible sediments. To date at this site, the EPA has taken action to protect the citizens of this area from contamination and/or potential contamination of their drinking water by providing bottled water as a temporary measure and connecting homes to the municipal supply as a permanent measure. In 2004, CTS Corporation under EPA direction took action to remove contamination from the soil beneath the former CTS plant via soil vapor extraction technology. As previously discussed in the answers to Questions #1, and #5, at the present time, the EPA is reviewing CTS's draft work plans to address the contamination in the springs and to conduct an FFS for the NAPL source area.

The EPA measures the effectiveness of a cleanup by whether the goals of the cleanup are met. In general, these goals are to eliminate, reduce or control risks to human health and the environment from the contamination. Each action involved in the overall cleanup has a particular goal, for example, by providing bottled water and then municipal water supply, the goal is to eliminate any risk from using private wells with potentially contaminated water. EPA evaluates each action to ensure its respective goal(s) are met and, if not, determines whether other actions are needed.

26. Why is there is no mention of the DNAPL removal actions for the source? And why have many suggested that the timeline is so flawed, beginning with it starting in 1999?

The NAPL investigation and Soil Vapor Extraction (SVE) confirmation sampling reports received from CTS Corporation's contractor on May 5, 2014, show unequivocally that the "source" of contamination at the CTS site is located below the water table and thus in the ground water. In fact, levels of contamination above the water table are low and do not serve as a significant continuing source of contamination of the ground water. The NAPL study does show very high levels of contamination in the ground water and deeper soils and confirms the presence of NAPL in the ground water system. EPA does not typically conduct removal actions to address contaminated ground water and/or NAPL. Therefore, as part of the RI/FS process, EPA has directed CTS to conduct a Focused Feasibility Study (FFS) to identify and evaluate cleanup alternatives for the ground water source area on and around the former CTS facility. This FFS will be followed by an Interim Record of Decision that will lay out a cleanup plan.

We are not aware that many have suggested the timeline is flawed and are unable to answer this question without additional information.

27. Why is EPA stating its position on digging up the source as not viable when, according to some sources, EPA accepted, from CTS and its contractor, digging up the source as one of two viable actions in May 2004?

The NAPL investigation and Soil Vapor Extraction (SVE) confirmation sampling reports were received from AMEC on May 5, 2014. Together these reports constitute the most comprehensive effort yet to define the horizontal and vertical extent of contamination beneath the CTS site. The SVE Confirmation Sampling Report concludes that the SVE system was effective in cleaning up the soil above the water table. The remaining contamination is below the water table and extends to the top of bedrock, which varies across the site from 28 feet to 81 feet below the surface. The suspected NAPL contamination itself is an estimated 10 to at least 45 feet thick, depending on location. Excavation with heavy equipment in soil below the water table and at such depths is extremely problematic due to the extensive shoring and dewatering that would be required, the very large soil stockpiles that would have to be placed nearby, excavation difficulties when bedrock is encountered, and the large volume of soil that would have to be transported somewhere for disposal. The cleanup in 2004 was conducted as a removal action and was therefore limited to the soil above the water table. Excavation was considered as a viable alternative to address this relatively shallow contamination; however, the SVE system was ultimately chosen to address soil contamination.

28. When can we expect EPA to honor/enforce the terms of the AOCs?

The EPA has been, is now, and plans to continue enforcing both the 2004 Administrative Order on Consent for Removal Action (AOC for Removal) and the 2012 Administrative Settlement Agreement and Order on Consent for Remedial Investigation/Feasibility Study (AOC for RI/FS). At the direction of the EPA, CTS is addressing the air contamination from the springs as a time-critical removal action under the "Additional Removal Actions" provision in the AOC, which allows the EPA to require CTS to take actions beyond those described in the original Scope of Work as necessary to protect public health, welfare, or the environment. CTS is complying with the AOC for RI/FS by conducting a Focused Feasibility Study.

29. We understand that the main contaminant – T C E - is often called "sinker" by environmental experts because it usually sinks way down into the bedrock where it is hard to find and even harder to cleanup. We also understand, however, that recent studies at the CTS site have shown that the TCE contamination is also acting as a "floater" because it is bound up with petroleum contamination floating at the surface of the groundwater. Unlike "sinkers", we understand that "floaters" are comparatively easy to cleanup. Since this is the case, why isn't EPA requiring CTS to move forward immediately to address the floating contamination while the work to investigate the sinker contamination is ongoing?

Data from the NAPL investigation indicates that, on portions of the site, the NAPL is a mixture of TCE and petroleum products. The ground water concentrations in the deeper wells indicate there

could be a DNAPL nearby so the initial shallow NAPL investigation is only part of the data set that will develop a comprehensive cleanup plan. The EPA has directed CTS Corporation to conduct an interim remedial action by first developing a Focused Feasibility Study to address the NAPL plume at the site.

30. NAPL as a whole is addressed but not LNAPL (floater) and DNAPL (sinker). According to experts, both can be handled in different ways, at the same time. Thus, the question is whether the EPA has the legal documents that give it the authority to make CTS address remedies now. If so, will the EPA exercise its authority to ensure CTS to begin cleanup in the near future?

The EPA has the authority under CERCLA to select and implement cleanup at the CTS site. Data gathered to date does not fully characterize the nature and extent of the contamination. An RI still needs to be completed to inform a remedy selection for DNAPL, LNAPL, and dissolved phase groundwater contamination. The FS, which evaluates remedial options and provides the analysis to select the best/protective remedy, is developed after the RI. Under the remedial process, an RI/FS must be completed before EPA can select an overall cleanup plan for the site. The EPA has directed CTS Corporation to conduct an interim remedial action by first developing a Focused Feasibility Study to address the NAPL plume at the site. After the FFS is completed, EPA will select a cleanup alternative and will use its authority to request that CTS Corporation implement the cleanup action.

31. Why not advocate for a comprehensive remediation that works on removing both LNAPL (floaters) and DNAPL (sinkers)? These types of treatments exist. Also, is the Agency aware whether AMEC (who has been identified to us as CTS's contractor) has done either (or both removals) in the past?

There are remedy combinations that can simultaneously address both LNAPL and DNAPL contamination. Once the deeper remedial investigation is completed EPA will have an in-depth assessment of the fracture system beneath the CTS site, and will have sufficient information to develop a comprehensive treatment strategy. AMEC has experience working on NAPL sites.

BARBARA BOXER, CALIFORNIA, CHAIRMAN

MAX BAUCUS, MONTANA
THOMAS R. CARPER, DELAWARE
BENJAMIN L. CARDIN, MARYLAND
BERNARD SANDERS, VERMONT
SHELDON WHITEHOUSE, RHODE ISLAND
TOM UDALL, NEW MEXICO
JEFF MERKLEY, OREGON
KIRSTEN GILLIBRAND, NEW YORK
CORY A. BOOKER, NEW JERSEY

DAVID VITTER, LOUISIANA
JAMES M. INHOFE, OKLAHOMA
JOHN BARRASSO, WYOMING
JEFF SESSIONS, ALABAMA
MIKE CRAPO, IDAHO
ROGER WICKER, MISSISSIPPI
JOHN BOOZMAN, ARKANSAS
DEB FISCHER, NEBRASKA

BETTINA POIRIER, MAJORITY STAFF DIRECTOR
ZAK BAIG, REPUBLICAN STAFF DIRECTOR

United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
WASHINGTON, DC 20510-6175

MEMORANDUM

TO:	Republican Members of the Senate EPW Committee
FROM:	Republican Committee Staff
DATE:	February 4, 2014
RE:	Additional Questions Regarding EPA Negligence in Responding to Beale Fraud

John Beale, a long-time member of the Environmental Protection Agency's (EPA) senior staff, perpetrated fraud against the Agency and against American taxpayers from at least 2000 through his voluntary retirement in 2013, masquerading as a CIA agent in order to take advantage of the Agency's lax internal controls. As the EPA Office of Inspector General (OIG) noted in its Early Warning Report, issued pursuant to U.S. Senate Environment and Public Works Committee Ranking Member David Vitter's (R-La.) request, EPA management did not take timely effective action to address Beale's erroneous retention bonuses and pay in excess of statutory limits.[1] However, "lack of timely effective action" is a generalized statement that fails to adequately reflect actual events surrounding those responsible for managing Beale. In an effort to further inform the public on how Beale got away with his fraud for so long, EPW Republicans have conducted an exhaustive review of materials obtained through its own investigatory efforts to untangle the web of unaccountability that permeated the Agency. This focuses on Beale's most recent manager, Gina McCarthy, to articulate what she knew, when she knew it, and what she did with the information when it became available to her.

Managing John Beale

McCarthy's contact with John Beale began when she assumed management of the Office of Air and Radiation (OAR) in June 2009. Shortly after her confirmation as the Assistant Administrator for OAR, she met Beale for a lunch to discuss his work at the Agency, at which point he represented that he also worked for the CIA.[2] During her recent interview with the OIG, McCarthy represented that she had concerns about Beale since the moment he was hired; however, it is not clear from the available facts that she ever acted on her initial concerns.

Despite her stated "concerns," documents and correspondence show that McCarthy took his word at face value and worked closely with Beale, letting him into her inner circle and consulting frequently with him. In the beginning of her term, McCarthy had three Deputy Assistant Administrators, including Beale, and roughly thirty staff in her immediate office. According to calendar appointments, between June 2009 and June 2010, McCarthy and Beale

[1] EPA Inspector General Early Warning Report at 14
[2] Beale Dep. 18:15-18:12 Dec. 19, 2013.

PRINTED ON RECYCLED PAPER

had periodic one-on-one meetings.[3] In December 2010, McCarthy sent a note to OAR staff announcing that Beale would be resuming his role as the immediate office's lead for all of OAR's international work, and added that she was "very excited to finally get the opportunity to work closely with him."[4]

Beale continued to take days off for CIA work during this period of time,[5] during which McCarthy received emails from Beale, like the following in May 2010, "Contrary to what I believed when we spoke last Thursday, I do have to travel out of the country next week. Events last week have made this trip necessary."[6] In December 2010, Beale sent an email referring to events in Pakistan keeping him away from his responsibilities at EPA.[7] Throughout this time, evidence suggests that McCarthy did not take any steps to confirm whether Beale was indeed an undercover spy working at the EPA.

Failing to Take Action

EPA staff, including those in OAR as well as the Office of Administration and Resource Management (OARM), began to uncover problems related to Beale's pay in mid-2010.[8] In an interview with the OIG, McCarthy represented that she was not aware of recommendations made by OAR and OARM staff on how to resolve the retention bonus and statutory pay issues concerning Beale. However, there is a significant body of evidence that suggests she was aware, or had been informed by her staff, but that she declined to take action.

For example, by December 15, 2010, an OAR official was already discussing ways to terminate Beale's bonus:

---

[3] E-mail meeting request from Teri Porterfield,Envtl. Prot. Agency, to John Beale, Senior Policy Advisor, Envtl. Prot. Agency; e-mail meeting reschedule notification from Shela Poke-Williams, Envtl. Prot. Agency, to John Beale, Senior Policy Advisor, Envtl. Prot. Agency; e-mail Meeting Notification from Cindy Huang, Envtl. Prot. Agency, to John Beale, Senior Policy Advisor, Envtl. Prot. Agency; e-mail meeting reschedule notification from Teri Porterfield, Envtl. Prot. Agency, to John Beale, Senior Policy Advisor, Envtl. Prot. Agency; e-mail meeting request from Teri Porterfield, Envtl. Prot. Agency to John Beale, Senior Policy Advisor, Envtl. Prot. Agency.
E-mail from Gina McCarthy, Adm'r, Office of Air and Radiation, Envtl. Prot. Agency, to Office of Air and Radiation, Envtl. Prot. Agency (Dec. 3, 2010 07:44 AM EST).

[4] E-mail from Gina McCarthy, Adm'r, Office of Air and Radiation, Envtl. Prot. Agency, to Office of Air and Radiation, Envtl. Prot. Agency (Dec. 3, 2010 07:44 AM EST).

[5] Beale's electronic calendar entries reflect a total 9 days off for "D.O. Oversight" from Jan. 2009 to May 2011.

[6] E-mail from John Beale, Senior Policy Advisor, Office of Air and Radiation, Envtl. Prot. Agency, to Gina McCarthy, Assit. Adm'r, Office of Air and Radiation, Envtl. Prot. Agency (May 8, 2010 07:19 AM EST).

[7] E-mail from John Beale, Senior Policy Advisor, Office of Air and Radiation, Envtl. Prot. Agency, to Gina McCarthy, Assist. Adm'r, Office of Air and Radiation, Envtl. Prot. Agency (Dec. 18, 2010, 02:26 PM EST).

[8] Office of Inspector Gen., Envtl. Prot. Agency, Report No. 14-P-0036, Early Warning Report: Internal Controls and Management Actions Concerning John C. Beale Pay Issues, 19 (Dec. 11, 2013).

> "I'm writing to ask not about the corrections but about 2011. Specifically, I would like to intervene with the AA now to prevent the bonus from taking effect in 2011. I do not expect the AA to support continuation and in any event the employee has not produced any bona fide offer that I'm aware of."[9]

Later that month, the OAR official issued a memo, which instructed that unless Beale met criteria for a retention bonus, it should be stopped for 2011.[10] On January 12, 2011, the official sent McCarthy a memo informing her that Beale's salary exceeds the statutory threshold and that he and the Office of General Counsel recommended she cancel Beale's bonus.[11] Documents obtained by EPW Republicans show that at that time, the OAR official also prepared a draft letter under McCarthy's name requesting information to stop the bonuses. Despite these recommendations, McCarthy did not follow through with any actions to stop the bonus payments for 2011. In fact, EPW Republicans learned that McCarthy was "reluctant to finalize [cancelation of Beale's bonuses] unless OARM [Assistant Administrator] Craig [Hooks] gives her the okay that the White House is aware and there will not be any political fallout."[12] Moreover, it remains unclear whether McCarthy or someone else at EPA took an affirmative action to reauthorize the bonus for 2011, as Agency protocols normally require certification that the circumstances necessitating the bonus still existed.

According to the OIG, McCarthy deferred to OARM on how to handle the situation, but according to McCarthy she "was advised to stand down on the matter since it was a criminal matter and that [OARM] would refer it to the IG." Documents and correspondence show that EPA staff viewed the Beale pay situation as a human resources matter and never as a criminal matter, and Hooks has denied ever characterizing the matter as a criminal one. These conflicting statements do not explain why McCarthy would have made such a representation to the OIG that is inconsistent with what was perceived by her coworkers at the time. This hands-off attitude is also reflected in her response to an OAR official asking, "Has Craig [Hooks at OARM] gotten back to you about the pay issue yet? I'm eager to move ahead with canceling the bonus." McCarthy replied, "No he hasn't. It's now in his hands as far as I am concerned."[13]

In addition to the questions regarding Beale's pay, it appears that at the same time McCarthy put Beale in charge of OAR's international portfolio, she was also on notice that Beale's claim to be a CIA operative was highly questionable. According to an OIG interview

---

[9] Email from Scott Monroe, Dir. Of Human Res., Office of Air and Radiation, Envtl. Prot. Agency, to Susan Smith, Office of Admin. and Res. Mgmt, Envtl. Prot. Agency (Dec. 15, 2010, 11:58 AM EST).

[10] Memorandum from Scott Monroe, Office of Human Res., Office of Air and Radiation, Envtl. Prot. Agency (Dec. 20, 2010).

[11] Memorandum from Scott Monroe, Office of Human Res., Envtl. Prot. Agency, to Gina McCarthy, Assistant Adm'r, Office of Air and Radiation, Envtl. Prot. Agency (Jan. 12, 2011).

[12] E-mail from Susan Smith, Envtl. Prot. Agency, to Karen Higginbotham, Envtl. Prot. Agency (Feb. 1, 2013 01:09 PM).

[13] E-mail from Gina McCarthy, Adm'r, Office of Air and Radiation, Envtl. Prot. Agency, to Scott Monroe, Dir. of Human Res., Office of Air and Radiation, Envtl. Prot. Agency (Jan. 27, 2011 08:24PM EST).

with Deputy Administrator Bob Perciasepe, McCarthy and Hooks approached him in early 2011 and asked whether Beale worked for the CIA. Documents obtained by EPW Republicans show that Perciasepe informed them at that time that EPA had no CIA employees – almost two years before anyone at EPA took steps to verify his claim.

Beale's Lingering Retirement

On May 4, 2011, McCarthy approved a draft email to be sent to all OAR staff announcing Beale's imminent retirement from the Agency:

> I'd like to express my appreciation to JB for managing OAR's international efforts these past months while we worked through an important period of leadership transition.... John will now turn his attention to a few projects where his expertise and experience can continue to add significant value. As you know - John has been a vital part of EPA and the OAR leadership for more years than he cares to remember. He is beginning to look forward to his retirement in the near future - but thankfully has agreed to work on some key efforts in the near term.[14]

This arrangement, with an indefinite termination date, allowed Beale enough ambiguity to continue his fraud. According to Beale's sentencing memorandum, beginning in June 2011, and for the next 18 months, "the scale of his fraud and deception became even more egregious."[15] On September 22, 2011, McCarthy and others attended his retirement party. However, he never officially retired and instead continued to report his time to his assistant, was paid his salary plus bonus, and continued to use his EPA blackberry.

On March 29, 2012, an OAR official raised concerns about Beale's expanded fraud when he asked McCarthy about the status of Beale's retirement. McCarthy responded that she "thought he had retired,"[16] then turned to OARM to take action.[17] Despite being aware of the fact in March 2012 that one of her employees was collecting his paycheck without providing any work product, this arrangement continued for seven more months before McCarthy contacted Beale in November 2012.

Around this same time frame, according to documents obtained by EPW Republicans, officials at EPA began to investigate whether Beale was actually an undercover CIA agent. On

---

[14] E-mail from Gina McCarthy, Assistant Adm'r, Office of Air and Radiation, Envtl. Prot. Agency, to John Beale, Deputy Assist. Adm'r, Office of Air and Radiation, Envtl. Prot. Agency (May 04, 2011 12:00 EST).

[15] Sentencing Memorandum of John C. Beale, *United States v. John C. Beale*, Cr. No. 13-247 ESH (D. D.C.Filed Dec. 9. 2013).

[16] E-mail from Scott Monroe, Envtl. Prot. Agency to Gina McCarthy, Assist. Adm'r, Office of Air and Radiation, Envtl. Prot. Agency, (Mar. 29, 2012 09:59 AM EST); E-mail from Gina McCarthy, Assist. Adm'r, Office of Air and Radiation, Envtl. Prot. Agency, to Scott Monroe, Envtl. Prot. Agency (Mar. 29, 2012 05:48 PM EST).

[17] E-mail from Gina McCarthy, Assist. Adm'r Office of Air and Radiation, Envtl. Prot. Agency to Craig Hooks, (Apr. 02, 2012 10:53 AM EST).

December 12, 2012, McCarthy was informed by staff at EPA's Office of Homeland Security that it was highly unlikely that Beale was a CIA agent, even though Perciasepe had already told her the same thing. With the knowledge that Beale is likely not CIA and had been collecting a paycheck for over a year while performing no EPA-related work, McCarthy met with Beale, over a year after attending his retirement party, who informed her that because the real estate market tanked, he was no longer planning on retiring.[18] Two more months passed before McCarthy on February 5, 2013, informed Beale that she will be cancelling his retention bonus as she had "found no documentation from you or elsewhere that would support reauthorization" – information she had been aware of for nearly two years. Even after this series of events, the OIG did not receive notice of concerns with Beale until February 11, 2013.[19] On April 30, 2013, McCarthy allowed Beale to voluntarily retire with full benefits.

Troubling Inconsistencies

When asked, "In your opinion, is it possible that this fraud could have gone undiscovered if it were not for Administrator McCarthy's actions?" Patrick Sullivan with the OIG testified that, "I think it's highly likely that had not been Ms. McCarthy raising the alarm, this never would have been discovered."[20]

Sullivan's statement ignores the work performed by OARM and OAR officials who spent months pressing McCarthy to take action on Beale's undeserved bonus income. Moreover, the OIG glosses over the fact that Beale did not show up for work at the EPA for six months, while continuing to receive full pay and benefits, before OAR officials alerted McCarthy to the fact. It took another eight months before EPA began to inquire the veracity of Beale's status as a CIA operative.

The testimony of Perciasepe has also misled the characterization of McCarthy's role. When asked to explain the delay for reporting Beale to the OIG, Perciasepe responded:

> "When the- when Assistant Administrator McCarthy who I want to point out once again, no one ever questioned this for over a decade. This question is, the first thing she wanted to do and the first thing she wanted to see was whether or not this person had any of these relationships that-that are being discussed or she asked in the General Counsel and the Office of Resource Management where our personnel-our folks are, they asked the Office of Homeland Security who has relationships with the intelligence community. And when nothing could be found

---

[18] Early Warning Report, *supra*, note 1.

[19] Elkins testimony before OGR, p. 5. *Secret Agent Man? Oversight of EPA's IG Investigation of John Beale Before the H. Comm. on Oversight and Government Reform*, 113th Cong. (2013) (Testimony of Arthur A. Elkins Jr. . Inspector General, Envtl. Prot. Agency).

[20] *Secret Agent Man? Oversight of EPA's IG Investigation of John Beale Before the H. Comm. on Oversight and Government Reform*, 113th Cong. (2013) (Testimony of Patrick Sullivan, Assist. Inspector General for Investigations, Envtl. Prot. Agency).

> there, I think it was quickly-and confirmed then quickly as Mr. Sullivan just mentioned, it was quickly referred to the Inspector General."[21]

Much of the confusion stems from the EPA OIG's focus on Beale's status as a CIA agent and when officials were first suspicious of his cover story, which allowed him to perpetrate his massive fraud. But the fact remains, Beale was tried and convicted for stealing time and money from the Agency, not for impersonating an undercover CIA operative.[22] His actions were fraudulent, regardless of the circumstances surrounding his CIA status. These actions were known within EPA as early as 2010, but senior officials, including McCarthy, did not take action until the problem grew so large it could no longer be ignored.

---

[21] *Secret Agent Man? Oversight of EPA's IG Investigation of John Beale Before the H. Comm. on Oversight and Government Reform*, 113th Cong. (2013) (Testimony of Hon. Bob Perciasepe, Deputy Adm'r, Envtl. Prot. Agency).

[22] Statement of the Offense, *United States v. John C. Beale*, Cr. No. 13-247 ESH (D. D.C. Signed Sept. 27 2013).

BARBARA BOXER, CALIFORNIA, CHAIRMAN

MAX BAUCUS, MONTANA
THOMAS R. CARPER, DELAWARE
BENJAMIN L. CARDIN, MARYLAND
BERNARD SANDERS, VERMONT
SHELDON WHITEHOUSE, RHODE ISLAND
TOM UDALL, NEW MEXICO
JEFF MERKLEY, OREGON
KIRSTEN GILLIBRAND, NEW YORK
CORY A. BOOKER, NEW JERSEY

DAVID VITTER, LOUISIANA
JAMES M. INHOFE, OKLAHOMA
JOHN BARRASSO, WYOMING
JEFF SESSIONS, ALABAMA
MIKE CRAPO, IDAHO
ROGER WICKER, MISSISSIPPI
JOHN BOOZMAN, ARKANSAS
DEB FISCHER, NEBRASKA

BETTINA POIRIER, MAJORITY STAFF DIRECTOR
ZAK BAIG, REPUBLICAN STAFF DIRECTOR

United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
WASHINGTON, DC 20510-6175

MEMORANDUM

TO:	Republican Members of the Senate EPW Committee
FROM:	Republican Committee Staff
DATE:	February 5, 2014
RE:	Additional Questions Relating EPA Negligence in Responding to Beale Fraud (Perciasepe)

Background

On February 4, 2014, the Committee on Environment and Public Works (EPW) Republicans issued a memorandum sharing previously undisclosed information about Environmental Protection Agency (EPA) Administrator Gina McCarthy's response to questions raised internally about former senior EPA official, John Beale, a felon convicted of stealing upwards of a million dollars from the Agency. The memorandum highlighted the fact that McCarthy was slow to react to reports that Beale was being paid a 25% bonus without appropriate documentation and certifications, warnings that his pay was in excess of the statutory threshold, and information that seriously called into question Beale's claims to be an undercover CIA agent. The purpose of this memorandum is to share additional information EPW Republicans have obtained regarding EPA Deputy Administrator Bob Perciasepe's role in the Beale saga.

Perciasepe's Relationship with Beale

It appears that Bob Perciasepe first developed a relationship with Beale during his tenure at EPA under the Clinton Administration. In 1998, President Clinton appointed Perciasepe to serve as the Assistant Administrator (AA) for the Office of Air and Radiation (OAR), at which point he worked with and supervised John Beale. According to documents obtained by EPW Republicans, Beale's long-term personal assistant recalled that then-AA Perciasepe often had closed-door meetings with Beale.[1] During a recent Congressional hearing after Beale's fraud was exposed, "It's painful for me to go through this. But this was a person who had a reputation-a positive reputation in the federal government, both inside EPA and outside EPA in that time period."[2]

[1] Memorandum of Interview from Mark Kaminsky, Special Agent, Office of Inspector Gen., Envtl. Prot. Agency, Interview with Addie Johnson 3 (Apr. 10, 2013).

[2] *Secret Agent Man? Oversight of EPA's IG Investigation of John Beale Before the H. Comm. on Oversight and Government Reform*, 113th Cong. 73 (2013) (Testimony of Hon. Bob Perciasepe, Deputy Adm'r, Envtl. Prot. Agency).

PRINTED ON RECYCLED PAPER

As Beale's supervisor, Perciasepe provided the final approval for the reauthorization of Beale's Retention Incentive Bonus in June 2000.[3] According to the EPA Office of Inspector General (OIG), this bonus provided Beale an annual 25% raise that should have expired in 2003, but continued uninterrupted until 2013, accruing nearly $500,000 in excess pay to Beale.[4] In August 2000, Perciasepe also approved Beale's promotion to Senior Leader (SL), a position equivalent to Senior Executive Service that exponentially increased Beale's salary. According to Beale, Perciasepe was an advocate for the promotion, "In the '98 – '99 time period there were discussions about a promotion for me, and Bob Perciasepe and then Administrator Carol Browner, and we had a number of discussions and go-arounds about that."[5] Once Beale was appointed to SL, he held an equivalent title as his colleague and close friend Robert Brenner, Deputy Assistant Administrator, and Perciasepe became his direct supervisor.[6]

Problems with the Retention Bonus

As the OIG has reported, Beale received improper payments as a result of the bonus Perciasepe authorized in 2000.[7] According to Perciasepe, the problem with the bonus was the failure to stop the bonuses, not with his original authorization:

> One was based on the original one and one was based on the one that I did. Those are legitimate years that he could have gotten a retention bonus under the rules of the agency. The problem we have is it was nothing that stopped it. It just kept going.[8] (emphasis added)

Perciasepe reiterated this point later:

> The problem is not in the original rationale for that back in the '90s. The problem is that it kept getting re-certified without any re-certification process. So it went on through the time period that, I think, the Inspector General was talking about, so the issue was that when he was at work and not at work or not during the initial granting of the retention.[9]

However, evidence has emerged that suggests there were serious flaws with the bonus Perciasepe authorized in 2000. According to the OIG, "A written offer is not required although most packages do have a written offer attached. What is required, the supervisor recommending the

---

[3] Memorandum from Bob Perciasepe, Assist. Adm'r, Office of Air & Radiation to Romulo Diaz, Assist. Adm'r, Office of Admin. & Res. Mgmt. 1-2 (June 22, 2000).
[4] *Secret Agent Man? Oversight of EPA's IG Investigation of John Beale Before the H. Comm. on Oversight and Government Reform*, 113th Cong. 2 (2013) (Written Testimony of Patrick Sullivan, Assist. Inspector Gen. for Investigations, Envtl. Prot. Agency).
[5] Beale Dep.39:20-40:1 Dec. 19, 2013.
[6] Beale Dep.59:1-59:5.
[7] *Secret Agent Man? Oversight of EPA's IG Investigation of John Beale Before the H. Comm. on Oversight and Government Reform*, 113th Cong. 2 (2013) (Written Testimony of Patrick Sullivan, Assist. Inspector Gen. for Investigations, Envtl. Prot. Agency).
[8] *Secret Agent Man? Oversight of EPA's IG Investigation of John Beale Before the H. Comm. on Oversight and Government Reform*, 113th Cong. 74 (2013) (Testimony of Hon. Bob Perciasepe, Deputy Adm'r, Envtl. Prot. Agency).
[9] *Id. at* 51.

incentive bonus has to assert that he or she did due diligence to confirm there was an offer."[10] In the case of Beale's bonus application in 2000, Perciasepe's due diligence should have included taking steps to confirm – in writing – that Beale had in fact received an outside offer of employment. Yet, the OIG has confirmed that no such documentation exists and Beale conceded he had not received any written offer of employment to support the bonus in 2000.[11]

Also, Beale's deposition raises important questions about and Perciasepe's due diligence in approving the 2000 bonus. Under oath, Beale stated that he could not recall anyone at the EPA asking him for either a phone number or a written letter to confirm that he in fact had a tangible offer.[12] Beale elaborated:

> A: My recollection is that all the other offers were verbal, and although I kind of listened to them initially, they never got to the seriousness where I would have had to talk to the ethics folks about it.
>
> Q: And no one ever asked for proof of an outside offer. It was just generally known; is that correct?
>
> A: To the best of my recollection, that's correct. I can't say for sure, but that's my recollection.[13] (emphasis added)

Accordingly, there are serious unresolved questions regarding the due diligence that Perciasepe performed prior to authorizing Beale's 2000 retention bonus.

In addition to a lack of due diligence, it appears there is a material falsehood contained within the application itself. By signing the document, both Perciasepe and Robert Brenner affirmed that Beale had not received previous bonuses, in response to question 10e.[14] Brenner, having been the previous requestor of Beale's 1991 bonus knew this statement was untrue, but Perciasepe has maintained that he "had no knowledge of any previous [bonus] at this particular moment."[15] The penalty for forging or falsifying official government records or documents carries ranges from written reprimand to removal.[16] While evidence suggests that a document was falsified knowingly, no one at EPA has been held accountable.

In addition to the problems identified with the 2000 bonus, it looks as if Perciasepe was also a barrier to resolving questions that arose in 2010, when EPA administrative staff discovered that Beale was continuing to receive a 25% bonus, without appropriate certifications.

---

[10] *Id.* at 69 (Testimony of Patrick Sullivan, Assist. Inspector Gen. for Investigations, Envtl. Prot. Agency).
[11] Beale Dep. 38:12-38:15.
[12] Beale Dep.38:3-39:3.
[13] Beale Dep.38:12-38:15, 38:21-39:3.
[14] Memorandum from Bob Perciasepe, Assist. Adm'r, Office of Air & Radiation to Romulo Diaz, Assist. Adm'r, Office of Admin. & Res. Mgmt. 1-2 (June 22, 2000).
[15] *Secret Agent Man? Oversight of EPA's IG Investigation of John Beale Before the H. Comm. on Oversight and Government Reform*, 113th Cong. 73 (2013) (Testimony of Hon. Bob Perciasepe, Deputy Adm'r, Envtl. Prot. Agency).
[16] Internal Memorandum, Envtl. Prot. Agency, *EPA Conduct and Discipline Manual* 17.

In a memorandum released on February 4, 2014,[17] EPW staff revealed that McCarthy failed to take action with regard to Beale's bonus in large part because she had deferred that responsibility to the Office of Administration and Resource Management (OARM).[18] The Committee has also obtained documents which demonstrate that part of the obstacle to OARM resolving the bonus issue was in fact Perciasepe. An email to an OARM official on December 15, 2010, further illustrates this point:

> RE: the OAR employee we've discussed who is receiving the retention bonus, I understand that you may not yet have all the information needed to address past overpayments. I'm writing to ask not about the corrections but about 2011. Specifically, I would like to intervene with the AA now to prevent the bonus from taking effect in 2011. I do not expect the AA to support continuation and in any event the employee has not produced any bona fide offer that I'm aware of. I have not spoken to the AA about this. What do I need to do to stop the bonus?[19] (emphasis added)

To which the OARM official replied on February 2, 2011:

> I checked with Karen Higginbotham, ERD Director, and she said that Craig Hooks asked to meet with Kim Lewis, OHR Director, on this matter and Karen provided Kim with info from my briefing document. Since Bob P. signed the last retention bonus memo, it is Karen's understanding that Craig was going to speak with him about this employee before advising OAR.[20] (emphasis added)

This email was followed by a note in an OAR official's memorandum dated February 9, 2011, stating, "I'm waiting for OARM to tell me it's OK for Gina to sign the memo to end the incentive."[21] These emails reveal that EPA staff wanted to clear the matter with Perciasepe first before advising McCarthy to take corrective action.

Perciasepe Inconsistencies on CIA story

Conflicting evidence has also emerged regarding when Perciasepe learned about Beale's CIA cover story. This is particularly relevant because it contradicts the timeline of when McCarthy reported her suspicions of Beale to the OIG, supposedly as soon as she was aware that there was a problem.[22] According to OIG, "The first executive that ever questioned him working

---

[17] Memorandum from Republican Members of S. Envt. & Pub. Works Comm. to Republican Comm. Staff, on Facts Regarding Beale Fraud (Feb. 4, 2014).
[18] *Id.*
[19] E-mail from Scott Monroe, Dir. Human Res. Office of Air and Radiation, Envtl. Prot. Agency to Susan Smith, Envtl. Prot. Agency (Dec. 15, 2010 11:58 AM).
[20] E-mail from Susan Smith, Envtl. Prot. Agency, to Scott Monroe, Dir. Human Res. Office of Air & Radiation, Envtl. Prot. Agency (Feb. 1, 2011 01:50 PM).
[21] Notes of Bill Spinazzola, Office of Inspector Gen., Envtl. Prot. Agency, on Interview with Scott Monroe , (Nov. 12, 2013).
[22] The IG states that McCarthy notified the OIG on February 11, 2013; *See Secret Agent Man? Oversight of EPA's IG Investigation of John Beale Before the H. Comm. on Oversight and Government Reform*, 113th Cong. 5 (2013) (Written Testimony of Hon. Arthur A. Elkins, Jr., Inspector Gen., Envtl. Prot. Agency) (discussing the timeline for when McCarthy notified the OIG).

for the CIA was in fact Gina McCarthy. Beyond her suspicions, everyone else we interviewed flat-out believed he worked for the CIA."[23] Perciasepe echoed this narrative, stating that he first heard about Beale's claim to be a CIA agent in mid-2012 – around the same time McCarthy first became suspicious.[24]

> Meadows: Thank you, Mr. Chairman. Mr. Perciasepe, I'm intrigue by your testimony because you said earlier that Mr. Beale never represented to you that he worked for the CIA. So is that to follow up that you were-you never heard of him working for the CIA? Because there's a difference. Right, when this unfolded.
>
> Perciasepe: Right, when this unfolded.
>
> Meadows: Before it unfolded. Had you ever heard of that because-so no one ever shared what he was doing?
>
> Perciasepe: No, I didn't see Mr. Beale for 13 years. I don't know what went on from 2001 to -- 2000 till I came back to the agency.[25]

However, when Perciasepe was interviewed by EPA OIG, he informed investigators that he first became aware of problems with Beale in 2011, when McCarthy and Craig Hooks at OARM came to him asking whether Beale worked for the CIA.[26] At that time, Perciasepe informed both of them that "there are no CIA employees working for EPA, so it was important to find out."[27] Additionally, Perciasepe viewed Beale's status as a CIA operative as a Human Resources or Personnel matter, and treated it as such. This decision allowed Beale to increase the scale of his fraud in the years to come.

Conclusion

As the Deputy Administrator, and then the Acting Administrator at EPA during the height of Beale's fraud, Perciasepe was in the unique position to shine a light on Beale's activities and to act on the concerns that were brought to his attention. However, instead of demonstrating leadership, he has publicly shared a confusing narrative of what he knew and when he knew it, while simultaneously characterizing McCarthy as a hero for finally questioning Beale's outrageous claims. Most recently, he extolled her role in a memorandum to EPA staff:

> By now you are most likely aware that the end of this episode was brought about by the alertness and diligence of current Administrator McCarthy -- in her former role as

---

[23] *Secret Agent Man? Oversight of EPA's IG Investigation of John Beale Before the H. Comm. on Oversight and Government Reform*, 113th Cong. 45 (2013) (Testimony of Patrick Sullivan, Assist. Inspector Gen. for Investigations).
[24] *Secret Agent Man? Oversight of EPA's IG Investigation of John Beale Before the H. Comm. on Oversight and Government Reform*, 113th Cong. 45 (2013) (Testimony of Hon. Bob Perciasepe, Deputy Adm'r, Envtl. Prot. Agency).
[25] *Id.*
[26] Notes of Robert Adachi, Office of Inspector Gen., Envtl. Prot. Agency, on Interview with Bob Perciasepe 3 (Nov. 18, 2013).
[27] *Id.*

> Assistant Administrator for the Office of Air and Radiation -- and the careful work of many professional staff and investigators.[28]

The evidence presented in this memorandum questions Perciasepe's leadership and management competence at EPA, as shown through his years of deflecting responsibility and failing to be alert and diligent as Beale's supervisor, even when the cracks in Beale's story became clearly evident.

[28] E-mail from Bob Perciasepe, Assist. Adm'r, Envtl. Prot. Agency, to Bob Perciasepe, Assist. Adm'r, Envtl. Prot. Agency (Dec. 20, 2013 4:28 PM).

BARBARA BOXER, CALIFORNIA, CHAIRMAN

MAX BAUCUS, MONTANA
THOMAS R. CARPER, DELAWARE
BENJAMIN L. CARDIN, MARYLAND
BERNARD SANDERS, VERMONT
SHELDON WHITEHOUSE, RHODE ISLAND
TOM UDALL, NEW MEXICO
JEFF MERKLEY, OREGON
KIRSTEN GILLIBRAND, NEW YORK
CORY A. BOOKER, NEW JERSEY

DAVID VITTER, LOUISIANA
JAMES M. INHOFE, OKLAHOMA
JOHN BARRASSO, WYOMING
JEFF SESSIONS, ALABAMA
MIKE CRAPO, IDAHO
ROGER WICKER, MISSISSIPPI
JOHN BOOZMAN, ARKANSAS
DEB FISCHER, NEBRASKA

BETTINA POIRIER, MAJORITY STAFF DIRECTOR
ZAK BAIG, REPUBLICAN STAFF DIRECTOR

United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
WASHINGTON, DC 20510-6175

MEMORANDUM

TO:	Republican Members of the Senate EPW Committee
FROM:	Republican Committee Staff
DATE:	February 6, 2014
RE:	Additional Facts Regarding EPA Negligence in Responding to Beale Fraud (Robert Brenner)

Background

On February 4, 2014, the Committee on Environment and Public Works (EPW) Republican Staff issued a memorandum sharing previously undisclosed information about Environmental Protection Agency (EPA) Administrator Gina McCarthy's response to questions raised internally about former senior EPA official, John Beale, a felon convicted of stealing upwards of a million dollars from the Agency. The memorandum highlighted that McCarthy was slow to react to reports that Beale was being paid an annual 25% bonus without appropriate documentation and certifications; warnings that his pay was in excess of the statutory threshold; and information that seriously called into question Beale's claims to be an undercover CIA agent.[1] On February 5, 2014, EPW Republican staff issued a second memorandum highlighting inconsistencies in the public record with regard to what Deputy Administrator Bob Perciasepe knew and how he responded to information regarding Beale.[2] This memorandum will focus on additional information the Committee has obtained regarding the role former Deputy Assistant Administrator Robert Brenner played in the Beale fraud, which suggests that Beale could not have accomplished the magnitude of his fraud without the assistance, either knowing or unknowing, of his best friend Brenner.

[1] Memorandum from Republican Staff, S. Comm. on Env't & Pub. Works, to Republican Members, S. Comm. on Env't & Pub. Works, Additional Facts Regarding EPA Negligence in Responding to Beale Fraud (Gina McCarthy) (Feb. 4, 2014).

[2] Memorandum from Republican Staff, S. Comm. on Env't & Pub. Works, to Republican Members, S. Comm. on Env't & Pub. Works, Additional Facts Regarding EPA Negligence in Responding to Beale Fraud (Bob Perciasepe) (Feb. 5, 2014).

PRINTED ON RECYCLED PAPER

Beale's "Best Friend" Robert Brenner

When the opportunity arose to help develop the new Clean Air Act, I was able to convince my best friend from those days, John Beale M.P.A. '77 to join me in the effort - Robert Brenner[3]

Everyone in life has a best friend. For nearly four decades, Robert Brenner and John Beale have — in their own words — been "best friends."[4] Beale and Brenner met and became friends as classmates in graduate school at Princeton University's Woodrow Wilson School of Public and International Affairs in 1975.[5] In 1977, they both graduated with Master's Degrees in Public Affairs,[6] but remained very close even as Brenner stayed employed with Princeton's Center for International Studies and Beale pursued a law degree.[7] Over the course of Beale's "nomadic" post-graduate work experience,[8] he and Brenner maintained close contact. In 1983, they purchased a two-bedroom vacation home in Cape Cod from Beale's parents, which had been in the Beale family since the 1960's.[9] While Beale has claimed he and Brenner only used the home as a rental,[10] Brenner has explained that until about 1989, the two vacationed at the home roughly once a year.[11]

---

[3] *Robert Brenner Graduate Alumni Profile*, PRINCETON UNIVERSITY WOODROW WILSON SCHOOL OF PUBLIC AFFAIRS, http://wws.princeton.edu/qzalumni/testimonials/brenner/ (last visited Sept. 9, 2013) (on file with Committee).

[4] *Compare Robert Brenner Graduate Alumni Profile*, PRINCETON UNIVERSITY WOODROW WILSON SCHOOL OF PUBLIC AFFAIRS, http://wws.princeton.edu/qzalumni/testimonials/brenner/ (last visited Sept. 9, 2013) (documenting Brenner referring to his "best friend from those days, John Beale M.P.A. '77."), *with* Email from Robert Brenner to John Beale (June 1, 2011, 04:34 EST) (on file with Committee) ("Back in '88, I thought I'd get to spend 2 or 3 years working with you on a pretty cool political/policy project. I still can't believe it turned into 23 years of working with my best friend to try to make some good things happen--I lucked out.").

[5] *Secret Agent Man? Oversight of EPA's IG Investigation of John Beale: Hearing Before the H. Comm. on Oversight & Gov't Reform*, 113th Cong. (Oct. 1, 2013) (testimony of Robert Brenner) ("John and I met in graduate school . . . ."); *id.* (statement of Patrick Sullivan) ("Mr. Brenner and Mr. Beale had attended graduate school together at Princeton University from 1975 to 1979 . . . ."); Transcript of John C. Beale Deposition at 11–12, H. Comm on Oversight & Gov't Reform, 113th Cong. (Dec. 19, 2013) [hereinafter Deposition of John C. Beale], *available at* http://oversight.house.gov/wp-content/uploads/2014/01/Beale-Deposition.pdf ("We [Beale and Brenner] had been friends. We were in graduate school together and had known each other since about 1975.").

[6] *See* Sentencing Memorandum of John C. Beale at 4, United States v. Beale, No. 1:13-cr-00247-ESH (D.D.C. Sept. 27, 2013); John C. Beale, Application for Vacancy Announcement Number EPA-00-SL-OAR-6174 (Apr. 13, 2000); *2013 Brenner Alumnus Profile* (mentioning "John Beale M.P.A. '77."); *Alumnus Profile: Robert Brenner*, PRINCETON UNIVERSITY WOODROW WILSON SCHOOL OF PUBLIC & INTERNATIONAL AFFAIRS, http://wws.princeton.edu/alumni/stay-connected/what-alumni-are-up-to/brenner-robert (last visited Jan. 29, 2014).

[7] *See* Sentencing Memorandum of John C. Beale, *supra* note 4, at 4; John C. Beale, Application for Vacancy Announcement Number EPA-00-SL-OAR-6174 (Apr. 13, 2000); *Welcome to the NYU Law Alumni Online Community!*, NYU LAW, https://securelb.imodules.com/s/1068/GroupLaw/index.aspx?sid=1068&gid=3&pgid=8&cid=46&logout=1 (search "Beale") (last visited Feb. 5, 2014) (listing John Beale as a 1979 alumnus).

[8] Deposition of John C. Beale, *supra* note 3, at 12 ("I tended not to hold jobs for a very long period of time. I tended to be a very nomadic type of person.").

[9] Search for Property Records of John C. Beale (LEXIS); *see also Search for Property Records of John C. Beale*, MASSACHUSETTS LAND RECORDS, http://www.masslandrecords.com.

[10] *See* Deposition of John C. Beale Deposition, *supra* note 3, at 32.

[11] *Secret Agent Man? Oversight of EPA's IG Investigation of John Beale: Hearing Before the H. Comm. on Oversight & Gov't Reform*, 113th Cong. (Oct. 1, 2013) (testimony of Robert Brenner) ("[F]rom the early 1980's

It was well known within EPA that Brenner and Beale "spen[t] a lot of time together outside of work going out to eat, playing golf and going on vacations together."[12] This fact is corroborated by several email exchanges obtained by the Committee. For example, in one email exchange from November 2011, Brenner says Beale:

> It would be great to see you Saturday night-- we'll have the Razor episode queued up and ready to roll! Do I remember correctly--Nancy is travelling[sic]?[13]

This email was forwarded to Beale with a renewed request for the pleasure of his company by Brenner's wife:

> John! You're here? Please come over...I'll make brownies. Barb[14]

Beale and Brenner also scheduled regular breakfasts and lunches that continued through the end of their tenures at EPA and continued into 2012, after Beale had allegedly retired from EPA.[15] In an email sent on February 14, 2012, Beale wrote Brenner this note:

> We made it back and had a great time. If you have the time breakfast would be great. Is there a morning that works best for you?[16]

In another email sent on April 7, 2012, Beale asked Brenner, "Would Tues or Wed work for y to have breakfast?"[17] Moreover, Beale, Brenner, and their respective wives socialized frequently, arranging get-togethers ranging from frequent dinners[18] to Valentine's Day celebrations[19] to volunteering for the Obama presidential campaign.[20] For example, in an email exchange starting on December 15, 2011, Beale asks Brenner, "Are you and Barb able to do a Friday night this

---

until about 1989, we [Brenner and Beale] saw each other about once a year at a vacation home we co-owned in Massachusetts").

[12] *See, e.g.*, Memorandum of Interview of Addie Johnson from Off. of Inspector Gen, U.S. Envtl. Protection Agency 3 (Apr. 10, 2013) (on file with Committee).

[13] *See* E-mail from Barbara Brenner to John Beale (Nov. 29, 2007, 14:49 EST) (on file with Committee).

[14] *Id.*

[15] *See, e.g.*, Email from John Beale to Robert Brenner (Apr. 7, 2012, 10:01 EST) (on file with Committee); E-mail from John Beale to Robert Brenner (Feb. 14, 2012, 12:32 EDT) (on file with Committee); E-mail from John Beale to Robert Brenner (Jan. 25, 2012, 04:22 EDT) (on file with Committee); Email from John Beale to Robert Brenner (Apr. 7, 2012, 10:01 EST) (on file with Committee); E-mail from John Beale to Robert Brenner (Nov. 5, 2011, 08:51 EST) (on file with Committee); E-mail from John Beale to Robert Brenner (Oct. 29, 2008, 02:41 EST).

[16] E-mail from John Beale to Robert Brenner (Feb. 14, 2012, 00:32 EST) (on file with Committee).

[17] E-mail from John Beale to Robert Brenner (Apr. 7, 2012, 10:01 EST) (on file with Committee).

[18] *See, e.g.*, E-mail from John Beale to Robert Brenner (Dec. 16, 2011, 11:35 EST) (on file with Committee); E-mail from Robert Brenner to John Beale (Nov. 6, 2008, 10:02 EST); Email from Robert Brenner to John Beale (Sept. 25, 2008, 14:08 EST) (on file with Committee); E-mail from Robert Brenner to John Beale (July 20, 2008, 01:49 EST) (on file with Committee); E-mail from Barbara Brenner, wife of Robert Brenner, to John Beale (Nov. 29, 2007, 14:49 EST) (on file with Committee); E-mail from John Beale to Robert Brenner (Nov. 6, 2006, 09:27 EST) (on file with Committee).

[19] *See* Email from John Beale to Robert Brenner (Feb. 14, 2012, 12:32 EST) (on file with Committee).

[20] *See* E-mail from Nancy Kete to Robert Brenner, John Beale, and Barbara Brenner (Nov. 4, 2008, 11:30 EST) (on file with Committee).

weekend?",[21] to which he responds: "I forgot--Friday night does not necessarily mean Friday night! But in this case it's the case that works best for us."[22]

After working at the EPA together for more than two decades—an experience that Brenner described to Beale as having "lucked out" by spending "23 years of working with my best friend to try to make some good things happen"[23]—the two planned a joint retirement party in September 2011,[24] which was paid for on Brenner's wife's credit card.[25] Along with Beale and Brenner, another career EPA official from the Office of Air and Radiation, Jeffrey Clark, decided to retire with them.[26] In reference to the retirement party, Beale explained that he, Brenner, and Clark had "kind of all been like the three Musketeers on the Clean Air Act."[27]

Brenner Looked out for Beale at EPA

Evidence suggests that Beale and Brenner worked closely together for much of their career, during which time Brenner served as an advocate for Beale. Not only did Brenner hire Beale to his first position with the Agency, but he also requested the EPA pay him at an abnormally high rate. In 1988, when Brenner became the Director for the Office of Policy Analysis and Review (OPAR) within the Office of Air and Radiation, he landed Beale a job as a full-time consultant to the OPAR team.[28] By June 1989, Brenner hired Beale as "a permanent, career EPA employee with the position of Policy Analyst in OPAR."[29] At the time, Brenner prepared an "Advance in Hire" memorandum that stated Beale would not accept the position unless he started at the GS-15 Step 10[30] — the maximum general service pay level.[31] It is extremely rare to start at this pay grade.[32] In addition, the OIG revealed that Beale's initial application for employment included falsified information that Brenner relied on in hiring

---

[21] *See* E-mail from John Beale to Robert Brenner (Dec. 16, 2011, 11:35 EST) (on file with Committee).
[22] *See id.*
[23] E-mail from Robert Brenner to John Beale (June 1, 2011, 04:34 EDT) (on file with Committee).
[24] *Secret Agent Man? Oversight of EPA's IG Investigation of John Beale: Hearing Before the H. Comm. on Oversight & Gov't Reform*, 113th Cong. (Oct. 1, 2013) (statement of Patrick Sullivan).
[25] *See* E-mail from Staff, Off. of Inspector Gen., U.S. Envtl. Protection Agency, to Republican Staff, U.S. Senate Comm. on Env't & Pub. Works (Nov. 15, 2013, 14:08 EST) (on file with Committee).
[26] *See* Deposition of John C. Beale, *supra* note 3, at 191.
[27] *Id.*
[28] Sentencing Memorandum of John C. Beale, *supra* note 4, at 5.
[29] *Id.* at 7. However, the OIG asserts that Beale was hired as a Senior Policy Advisor. *Secret Agent Man? Oversight of EPA's IG Investigation of John Beale: Hearing Before the H. Comm. on Oversight & Gov't Reform*, 113th Cong. (Oct. 1, 2013) (statement of Patrick Sullivan).
[30] *Secret Agent Man? Oversight of EPA's IG Investigation of John Beale: Hearing Before the H. Comm. on Oversight & Gov't Reform*, 113th Cong. (Oct. 1, 2013) (statement of Patrick Sullivan).
[31] *See* OFF. OF PERSONNEL MGMT., RATES OF PAY UNDER THE GENERAL SCHEDULE EFFECTIVE THE FIRST PAY PERIOD BEGINNING ON OR AFTER JANUARY 1, 1989, *available at* http://archive.opm.gov/oca/pre1994/1989 Jan_GS.pdf (documenting the General Schedule for the year Beale was hired). Grades beyond GS-15, Step 10 were eliminated in 1978. *See* Civil Service Reform Act of 1978, Pub. L. No. 95-454, 92 Stat. 1111 (codified as amended at 5 U.S.C. ch. 11 (2006)).
[32] *See* U.S. MERIT SYSTEMS PROTECTIONS BOARD, IN SEARCH OF HIGHLY SKILLED WORKERS: A STUDY ON THE HIRING OF UPPER LEVEL EMPLOYEES FROM OUTSIDE THE FEDERAL GOVERNMENT (2008), *available at* http://www.mspb.gov/netsearch/viewdocs.aspx?docnumber=323118&version=323564&application=ACROBAT (documenting how rarely civil servants are hired at the higher pay grades).

Beale.[33] Accordingly, the OIG has questioned his initial employment offer and pay level, and has subsequently initiated an audit into the vetting process for new employees at EPA.[34]

In addition to hiring Beale and offering him a generous salary, Brenner also nominated Beale for several awards and bonuses — both during the time Brenner served as his direct supervisor, as well as when he was Beale's equal.[35] While it does not appear that fraud was involved in the facilitation of every bonus award, the facts do give rise to serious concerns for Beale's 1991 and 2000 retention incentive bonus. Specifically, Brenner's recommendation for Beale to receive the 1991 bonus indicated that Beale had received outside offers of employment, yet the OIG uncovered that Beale in fact, had received no written firm offer from an outside company.[36] While the OIG has explained that written documentation is not required for such bonus requests, a supervisor submitting the bonus request must perform due diligence to ensure an outside offer exists.[37] Brenner has testified that he was not able to recall how he verified that Beale had an outside offer, but explained that, "I either talked to the employer or have received a letter. But I know that without one of those two things being in place, there is no way it could have been approved."[38]

However, Beale's own testimony contradicts his best friend, as he claims that no one at EPA ever asked him for proof that he, in fact, had a job offer. Beale revealed that he never even asked for the bonuses. According to the exchange below, the retention bonuses were just provided to him without his prompting:

> Q Okay, did Mr. Brenner or anyone else at EPA ever offer -- or ask for concrete proof from you of these job offers in '91, '94 or 2000, like documentation of an offer?
>
> A These offers during this period of time would come in, or people would approach me several times a year with things, and it was common knowledge because I talked to people about it. I was thinking about leaving. I'm not -- I'm always amazed I've been in Washington this long. So my recollection is that we had a concrete letter of offer from my law firm, my former law firm. My recollection is that all the other offers were verbal, and although I kind of listened to them initially, they never got to the seriousness where I would have had to talk to the ethics folks about it.

---

[33] *Secret Agent Man? Oversight of EPA's IG Investigation of John Beale: Hearing Before the H. Comm. on Oversight & Gov't Reform*, 113th Cong. (Oct. 1, 2013) (statement of Patrick Sullivan).
[34] *Id.* (statement of Arthur Elkins).
[35] *Id.* (statement of Patrick Sullivan).
[36] *Id.* (testimony of Patrick Sullivan) ("Mr. Brenner's recommendations that Mr. Beale receive the bonuses indicated that Mr. Beale had received outside offers of employment. However, supporting documents available for the six years that Mr. Beale may have been eligible to receive the bonuses did not include written proof of such offers. Mr. Beale conceded in an interview with the OIG on June 14, 2013, that he had not, in fact, received any written offers of employment to support either bonus. Rather, he said, he had received only oral offers for outside employment.").
[37] *Id.*
[38] *Id.* (testimony of Robert Brenner)

Q Did you ever ask Mr. Brenner or any other EPA official to recommend you, submit applications or authorize you to receive a retention bonus, or were they always extended to you?

A I never asked.

Q You never asked. And no one ever asked for proof of an outside offer. It was just generally known; is that correct?

A To the best of my recollection, that's correct. I can't say for sure, but that's my recollection.[39]

Accordingly, it appears likely that Brenner requested Beale's retention bonus without conducting appropriate due diligence.

EPW Republicans have uncovered additional concerns with representations made in the 2000 bonus application, which failed to disclose the fact that Beale had previously received a retention bonus.[40] While it does not appear that then Assistant Administrator Perciasepe had knowledge of Beale's prior bonus history, Brenner certainly did. The penalty for forging or falsifying official government records or documents carries a range of penalties from written reprimand to removal.[41] While the evidence suggests that this document was falsified, no one at EPA has been held accountable.

Around the same time Brenner requested a reauthorization of Beale's bonus, Brenner also recommended Beale for a promotion to Senior Leader ("SL") status, a designation equivalent to Senior Executive Service for technical professionals in the federal government pay system.[42] As such, less than two months after Beale received the reauthorization for his Retention Incentive Bonus, on August 23, 2000, Beale received the promotion to SL, making Beale among the highest paid, non-elected federal government employees.[43] Notably, the promotion and bonuses Brenner requested eventually elevated Beale's salary to exceed the statutory threshold for employees at his pay grade for four years.[44]

Thereafter, Brenner and Beale were equal in rank, but Brenner continued to advocate for his best friend. For example, in 2004, Brenner nominated Beale for a Superior Accomplishment

---

[39] Deposition of John C. Beale, *supra* note 3, at 38–39.
[40] *See* Memorandum from Republican Staff, S. Comm. on Env't & Pub. Works, to Republican Members, S. Comm. on Env't & Pub. Works, Additional Facts Regarding EPA Negligence in Responding to Beale Fraud (Bob Perciasepe) (Feb. 5, 2014).
[41] Envtl. Protection Agency Order 3120.1, *Conduct and Discipline*.
[42] *Secret Agent Man? Oversight of EPA's IG Investigation of John Beale: Hearing Before the H. Comm. on Oversight & Gov't Reform*, 113th Cong. (Oct. 1, 2013) (statement of Patrick Sullivan).
[43] Statement of the Offense at 2, United States v. Beale, No. 1:13-cr-00247-ESH (D.D.C. Sept. 27, 2013).
[44] *Secret Agent Man? Oversight of EPA's IG Investigation of John Beale: Hearing Before the H. Comm. on Oversight & Gov't Reform*, 113th Cong. (Oct. 1, 2013) (statement of Patrick Sullivan) ("Based upon his Senior Leader status and retention incentive bonuses, from 2000 to 2013, Mr. Beale was paid, on average, $180,000 per year, an amount that exceeded statutory pay limits for federal employees at his grade for four of those years – 2007, 2008, 2009 and 2010.").

Recognition Award, which was accompanied by a $2,250 payment.[45] In 2005, Brenner also nominated Beale for the Meritorious Executive Rank Award, a category of the Presidential Rank Award, which carried a $28,201 payment.[46] While it does not appear that fraud was involved in the facilitation of these awards, the facts illustrate that Brenner was directly involved in Beale's lavish income as a federal employee.

Brenner Covering for Beale

In 1994, while Brenner was Beale's supervisor, Beale assumed the false identity of a CIA agent. According to Beale, he perpetrated this lie to "puff up the image of [himself]."[47] For a period of this time, public records indicate Beale lived with Brenner at his home in Arlington, Virginia for over a year between 1995 and 1996.[48] This time together perhaps gave Brenner insight into Beale's comings and goings. It might also help to explain why EPA staff looked to Brenner to confirm Beale's stories. According to Deputy Assistant Administrator Beth Craig, she specifically recalled asking Mr. Brenner if Mr. Beale worked for the CIA and was told "yes."[49] She accepted Brenner's statement as confirmation of Beale's claim.[50]

Beginning in 2000, the same year Brenner promoted Beale to SL and requested a reauthorization of Beale's bonuses, Beale admittedly "began to engage in a pattern of time and attendance fraud in violation of 18 U.S.C. §641," by taking one unauthorized day off each week for "D.O. Oversight."[51] "'D.O.' refers to the Directorate of Operations, which is responsible for covert operations at the CIA."[52] "Beale did not submit request for annual leave for this time, and did not inform his supervisors, [including Brenner], as to the reason for his absences,"[53] but was never reprimanded for his time out of the office.[54] According to EPA's Conduct and Discipline Manual, failure to report to duty for more than five consecutive days is a fire-able offense.[55] However, according to notes from an interview with Beth Craig, she said it is important to understand that everything was corroborated by Robert Brenner about John Beale. When she had asked Mr. Brenner questions about Mr. Beale's attendance and health, she would be told that John will be in tomorrow... he is feeling better.[56]

---

[45] *Id.*
[46] *Id.*
[47] *Id.*; *see also* Transcript of John C. Beale Deposition, *supra* note 3, at 27 (indicating that Beale invented the CIA lie based on his "fantasy").
[48] *See* Search for Property Records of John C. Beale (LEXIS); Search for Property Records of Robert Brenner (LEXIS).
[49] Memorandum of Interview of Elizabeth Craig from Off. of Inspector Gen, U.S. Envtl. Protection Agency 3 (Apr. 10, 2013) (on file with Committee).
[50] *Id.*
[51] Sentencing Memorandum of John C. Beale, *supra* note 4, at 16.
[52] *Id.*
[53] Statement of the Offense, *supra* note 46, at 2.
[54] *See Secret Agent Man? Oversight of EPA's IG Investigation of John Beale: Hearing Before the H. Comm. on Oversight & Gov't Reform*, 113th Cong. (Oct. 1, 2013) (statement of Patrick Sullivan).
[55] Envtl. Protection Agency Order 3120.1, *Conduct and Discipline*.
[56] Memorandum of Interview of Elizabeth Craig from Off. of Inspector Gen, U.S. Envtl. Protection Agency 3 (Apr. 10, 2013) (on file with Committee).

Starting in June 2008, Beale also failed to report to work at EPA for about six months.[57] During this period of time he never submitted a leave request and continued to receive his EPA salary.[58] Throughout his absence, he claimed to be working on the research project or spending time working for "Langley" on candidate protection for the CIA.[59] However, the record suggests that Brenner was privy to the fact that Beale was not on a special mission. Rather, Beale was in the Washington, D.C. area, meeting regularly with Brenner. For example, in email exchanges dated August 5, 2008, and October 29, 2008, the two make plans to get together for breakfast,[60] and on September 25, 2008, the two made plans for dinner and to watch the Presidential debate.[61] In light of Beale's claim to be on assignment protecting presidential candidates, it is odd that Brenner failed to question Beale's availability on the evening of the presidential debate. Even more, Beale and Brenner had plans to meet on election night, as evidenced by a note from Brenner to Beale:

> No problem--we'll eat whenever you arrive. And hopefully it will be time to break out the champagne by shortly after the 8:00 polls close. See you tonight, Rob.[62]

Despite these frequent visits during Beale's extended absence at EPA, there is no evidence that Brenner raised any concerns at EPA over the missing employee.

Brenner's Failure to Cooperate with Congress

Even after Beale's fraud was exposed, it appears Brenner still has his best friend's back. To date, Brenner has refused to be interviewed by EPA's OIG and has been as equally uncooperative in his dealings with Ranking Member Vitter. In response to a series of questions posed in a letter from Ranking Member Vitter,[63] Brenner responded with only short, perfunctory answers to a few of the questions, frequently citing his prepared statement for the House Committee on Oversight and Government Reform hearing, and repeatedly asserting that he was "unable to recount" or "recall" the answers to the fairly easy questions.[64] When Ranking Member Vitter requested specific answers from Brenner, he followed up with a letter announcing his refusal to cooperate with the Senate investigation.[65]

---

[57] Statement of the Offense, *supra* note 46, at 4.
[58] *Id.*
[59] *See* Deposition of John C. Beale, *supra* note 3, at 146 ("I did make up this story that I was going to be working on a special process for the agency on executive protection.").
[60] E-mail from John Beale to Robert Brenner (Oct. 29, 2008, 02:41 EST) (on file with Committee); E-mail from John Beale to Robert Brenner (Aug. 5, 2008, 18:15 EST) (on file with Committee).
[61] Email from Robert Brenner to John Beale (Sept. 25, 2008, 14:08 EST) (on file with Committee).
[62] E-mail from Robert Brenner to John Beale (Nov. 4, 2008, 09:24 EST) (on file with Committee).
[63] *See* Letter from the Hon. David Vitter, Ranking Member, S. Comm. on Env't & Pub. Works, to Robert Brenner (Sept. 9, 2013).
[64] *See* Letter from Justin Shur, Counsel to Robert Brenner, to Kristina Moore, Senior Counsel for Oversight, S. Comm. on Env't & Pub. Works (Oct. 4, 2013) (citing *Secret Agent Man? Oversight of EPA's IG Investigation of John Beale: Hearing Before the H. Comm. on Oversight & Gov't Reform*, 113th Cong. (Oct. 1, 2013) (statement of Robert Brenner)).
[65] Letter from Justin Shur, Counsel to Robert Brenner, to Kristina Moore, Senior Counsel for Oversight, S. Comm. on Env't & Pub. Works (Nov. 8, 2013).

Conclusion

As this memorandum demonstrates, Robert Brenner and John Beale were tied at the hip in both their professional lives and personal lives. Evidence suggests that Brenner played a pivotal role in enabling Beale's fraud, whether that fraud was accepting unearned bonuses, stealing time from EPA, or impersonating a CIA official, Brenner's actions both enabled and covered for John Beale. It is unclear whether Brenner's actions were done with the intent of aiding and abetting Beale's crimes or out of willful ignorance. Either way, Brenner should be called on to account for his actions.

BARBARA BOXER, CALIFORNIA, CHAIRWOMAN

MAX BAUCUS, MONTANA
THOMAS R. CARPER, DELAWARE
BENJAMIN L. CARDIN, MARYLAND
BERNARD SANDERS, VERMONT
SHELDON WHITEHOUSE, RHODE ISLAND
TOM UDALL, NEW MEXICO
JEFF MERKLEY, OREGON
KIRSTEN GILLIBRAND, NEW YORK
CORY A. BOOKER, NEW JERSEY

DAVID VITTER, LOUISIANA
JAMES M. INHOFE, OKLAHOMA
JOHN BARRASSO, WYOMING
JEFF SESSIONS, ALABAMA
MIKE CRAPO, IDAHO
ROGER WICKER, MISSISSIPPI
JOHN BOOZMAN, ARKANSAS
DEB FISCHER, NEBRASKA

BETTINA POIRIER, MAJORITY STAFF DIRECTOR
ZAK BAIG, REPUBLICAN STAFF DIRECTOR

United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

MEMORANDUM

TO:	Republican Members of the Senate EPW Committee
FROM:	Republican Committee Staff
DATE:	February 7, 2014
RE:	Questions Relating to EPA Negligence in Responding to Beale Fraud (Additional Individuals)

Background

The Committee on Environment and Public Works (EPW) Republican Staff issued a series of memoranda identifying and sharing previously undisclosed information about the actions, or more often inaction, of Environmental Protection Agency (EPA) officials who had an opportunity to prevent John Beale from perpetrating his fraud at the Agency. The memoranda raise questions over EPA Administrator Gina McCarthy's decision to wait over three and a half years after she first grew suspicious to probe Beale's claim to be a CIA agent, and why she was slow to stop payment on Beale's unearned bonuses.[1] In the case of EPA Deputy Administrator, Bob Perciasepe, EPW staff revealed additional facts that raise questions as to his involvement in Beale's 2000 bonus and receipt of unearned pay, as well as the delay in cancelling Beale's bonus.[2] Then, EPW staff detailed the close relationship between another top EPA official, former Deputy Assistant Administrator Robert Brenner and John Beale, which raised important questions about Brenner's culpability in Beale's fraud.[3] This memorandum will present information involving additional EPA officials who played a prominent role in shaping EPA's response to Beale's fraud. Specifically, EPW Republicans have put into context the actions of Deputy Assistant Administrator for the Office of Air and Radiation (OAR) Beth Craig, Assistant Administrator for the Office of Administration and Resources Management (OARM) Craig Hooks, and Director of Human Resources within OAR Scott Monroe.

Beth Craig

Beth Craig was a Deputy Assistant Administrator (Deputy AA) in the Office of Air and Radiation at EPA from 2000 to 2010.[4] In this position "she worked very closely with [John]

[1] Memorandum from Republican Members of S. Envt. & Pub. Works Comm. to Republican Comm. Staff, on Facts Regarding Beale Fraud (McCarthy) (Feb. 4, 2014).
[2] Memorandum from Republican Members of S. Envt. & Pub. Works Comm. to Republican Comm. Staff, on Facts Regarding Beale Fraud (Perciasepe) (Feb. 5, 2014).
[3] Memorandum from Republican Members of S. Envt. & Pub. Works Comm. to Republican Comm. Staff, on Facts Regarding Beale Fraud (Brenner) (Feb. 6, 2014).
[4] . Notes of Bill Spinazzola, Office of Inspector Gen., Envt'l. Prot. Agency, on Interview with Elizabeth Craig 2 (Nov. 12, 2013).

PRINTED ON RECYCLED PAPER

Beale and [Robert] Brenner … having daily meetings with the two men."[5] Among Craig's responsibilities, she reviewed and approved Beale's travel vouchers.[6] Additionally, Craig had a role in the approval of Beale's timecards, even when he was out of the office for long periods.[7] In the ten year period in which she served as Deputy AA, she has admitted that she "held [him] to a different standard."[8]

Indeed, Craig approved Beale's travel vouchers even when the vouchers requested reimbursement for excessive costs, contained personal charges, and sometimes did not have completed itineraries.[9] Craig approved one voucher that exceeded $37,000,[10] and she routinely approved vouchers that "exceeded … $20,000 for a single trip."[11] According to Beale's administrative assistant, "Craig would ask if Beale could get some of the expenses … cheaper … but Craig would still allow the expenses to be processed and approved."[12] In fact, Craig admitted that she handled Beale's vouchers "differently than others" and essentially did not review them.[13] Instead she "relied on the administrative staff to review specific trip details and receipts …."[14] However, when Beale's Executive Assistant raised concerns over "the excessive and abusive nature of Mr. Beale's travel expenses," Craig told her "not to question the expenses, which were authorized because Mr. Beale was a senior level official."[15]

Craig also had the authority and responsibility to approve Beale's timecards.[16] Documents obtained by the Committee suggest that she approved and instructed staff to record and approve Beale's hours, even during the period of time when he did not report to EPA offices for six months.[17] Beale's administrative assistant was instructed at different times by both Beale and Craig "to put Beale in for eighty (80) hours of work each pay period unless instructed otherwise."[18] When Beale's assistant brought her concerns about Beale's absences and the time entries to Craig, Craig explained to her that "Beale worked for EPA, but from a different

---

[5] Memorandum of Interview from Mark Kaminsky, Special Agent, Office of Inspector Gen., Envtl. Prot. Agency, on Interview with Elizabeth Craig 1 (Mar. 7, 2013)
[6] Memorandum of Interview from Mark Kaminsky, Special Agent, Office of Inspector Gen., Envtl. Prot. Agency, on Interview with Elizabeth Craig 1 (June 18, 2013).
[7] Memorandum of Interview from Mark Kaminsky, Special Agent, Office of Inspector Gen., Envtl. Prot. Agency, on Interview with Omayra Salgado 3 (May 13, 2013).
[8] Memorandum of Interview from Mark Kaminsky, Special Agent, Office of Inspector Gen., Envtl. Prot. Agency, on Interview with Elizabeth Craig 2 (June 18, 2013).
[9] *Id.* at 1–2.
[10] *Id.* at 2.
[11] Memorandum of Interview from Mark Kaminsky, Special Agent, Office of Inspector Gen., Envtl. Prot. Agency, on Interview with Addie Johnson 3 (Apr. 10, 2013).
[12] *Id.* at 2.
[13] Memorandum of Interview from Mark Kaminsky, Special Agent, Office of Inspector Gen., Envtl. Prot. Agency, on Interview with Elizabeth Craig 3 (June 18, 2013).
[14] *Id.*
[15] *Secret Agent Man? Oversight of EPA's IG Investigation of John Beale Before the H. Comm. on Oversight and Government Reform*, 113th Cong. 6 (2013) (Written Testimony of Patrick Sullivan, Assist. Inspector Gen. for Investigations, Envtl. Prot. Agency).
[16] Beale Dep. 139:1–140:7 (Dec. 19, 2013).
[17] Beale Dep. 144:21–145:13
[18] Memorandum of Interview from Mark Kaminsky, Special Agent, Office of Inspector Gen., Envtl. Prot. Agency, on Interview with Addie Johnson 1 (Apr. 10, 2013).

location."[19] Additionally, the former director of Human Resources within OAR Omayra Salgado stated:

> Beth Craig ... knew Beale was not around and that time cards were getting approved. Salgado told Craig that she (Salgado) was approving timecards for Beale, but because he was often absent, Salgado did not understand why she was continuing to approve his timecards. Craig told her that Beale worked for the CIA and Salgado never asked anyone else about it because Craig explained things and Salgado felt that was enough.[20]

Accordingly, it is apparent that Craig bent several of EPA's rules to accommodate Beale because of their close relationship and because she believed in his CIA cover story.

Craig Hooks

In an effort to justify her slow response to Beale's fraud, Administrator Gina McCarthy has maintained that she relied on OARM's advice in determining how to respond to the questions surrounding Beale, and that in her opinion, "the Beale matter was not a high priority for" OARM.[21] A review of the facts suggests that the public narrative regarding Hooks' role oversimplifies the decision making process that occurred between the time Beale's pay issues were first discovered in July 2010 and April 2013, when Beale was allowed to voluntarily retire. At the time, Craig Hooks was the Assistant Administrator for OARM and thus was McCarthy's peer. According to Hooks, "[he] had to give deference to Beale as a result of his position and reputation within EPA and OAR. Beale was a Deputy Assistant Administrator with a history of good work and that no actions were going to be taken without the facts to support them."[22]

According to documents obtained by the Committee, Hooks first learned of Beale's pay issues in mid-2010.[23] Thereafter, OARM consulted with OAR on the issue of Beale's bonuses and independently began an inquiry into whether or not Beale had adequate documentation for the bonuses. In January 2011, Hooks told McCarthy he wanted to consult with Deputy Administrator Perciasepe because he was the last official to sign off on Beale's bonus in 2000. It appears that Hooks also raised the issue of Beale's pay and absences to the Inspector General in a senior staff meeting. He was advised by Elkins at that time that the issue appeared to be a personnel issue and that the agency should handle it.[24] Elkins has corroborated these statements.[25] Finally, Hooks reviewed Beale's personnel file and found there was nothing in Beale's folder that would suggest he was CIA, though there was an SF-52 document signed by

---

[19] *Id.* at 2.
[20] Memorandum of Interview from Mark Kaminsky, Special Agent, Office of Inspector Gen., Envtl. Prot. Agency, on Interview with Omayra Salgado 3 (May 13, 2013).
[21] Notes of Robert Adachi, Dir. Forensic Audit Prod. Line, Envtl. Prot. Agency, on Interview with Gina McCarthy 2 (Nov. 18, 2013).
[22] Notes of Robert Adachi, Dir. Forensic Audit Prod. Line, Envtl. Prot. Agency, on Nov. 14, 2013 Interview with Craig Hooks 3 (Nov. 18, 2013).
[23] *Id.* at 2.
[24] Notes of Kevin Collins, Auditor, Envtl. Prot. Agency, on Interview with Susan Kantrowitz 2 (Nov. 13, 2013).
[25] Notes of Robert Adachi, Dir. Forensic Audit Prod. Line, Envtl. Prot. Agency, on Nov. 14, 2013 Interview with Craig Hooks 2 (Nov. 18, 2013).

the Administrator, which was very unusual and lead him to believe the CIA story might be true.[26] According to OARM officials, Hooks was also checking "that the White House is aware and there will not be any political fallout" from canceling Beale's bonus.[27]

However, in early 2011, Nancy Dunham with the Office of General Counsel (OGC) instructed employees in OARM to not use Beale's name in any documentation and to stop sending emails and other correspondence until they could confirm whether or not Beale had a "relationship with the CIA or intelligence community."[28] Pursuant to Dunham's instructions, OGC further instructed OARM "to keep hands off the Beale issue until further notice."[29] An OARM official stated that based on instructions from OGC "her office stopped all work on the issue."[30] Following OGC's instructions, Hooks also told McCarthy to "hold any information exchange" with Beale.[31] According to Hooks, he "did not want to get in Beale's way or to compromise national security issues. That is why the matter was referred to the Office of General Counsel (OGC), Nancy Dunham in particular."[32] Thereafter, the "OGC never got back to Hooks, and ... Hooks" decided that until OGC advised him otherwise, he would not take further action.[33] For several months, no action was taken. When Beale announced his plans to retire in May 2011, it appears everyone thought the problem was solved.

When Scott Monroe discovered that Beale was still on payroll in March 2012, McCarthy immediately contacted Hooks. At the time, Hooks was surprised the situation had not already been handled. However, per the previous instructions by Nancy Dunham, Hooks deferred to OGC. According to Nancy Dunham, the Beale matter, "was considered a routine question involving pay and that it was not until the facts determined that he was not a CIA employee that the matter was referred to the OIG in Feb. 2013."[34]

> Until this point, the question that was being raised was about the retention bonus. Therefore, there was no sense of urgency about the situation. The problem was lack of paperwork surrounding the bonus. After November 2012, the lack of attendance also became an issue.[35] (emphasis added)

In the end, it appears that Hooks was doing his job, but experienced significant interference from the OGC, as well as misguided advice from the OIG. Despite his efforts, Hooks should not be excused for the nearly two year delay in handling Beale's pay issues, but

---

[26] *Id.*
[27] E-mail from Susan Smith, Envtl. Prot. Agency, to Karen Higginbotham, Envtl. Prot. Agency (Feb. 1, 201101:09 PM).
[28] Notes of Kevin Collins, Auditor, Envtl. Prot. Agency, on Interview with Susan Kantrowitz 2 (Nov. 13, 2013).
[29] *Id.*
[30] *Id.*
[31] E-mail from Gina McCarthy, Assist Adm'r, Office of Air & Radiation, Envtl. Prot. Agency, to Scott Monroe, Dir. Human Res. Office of Air and Radiation, Envtl. Prot. Agency (Jan., 17, 2011 01:31 PM).
[32] Notes of Robert Adachi, Dir. Forensic Audit Prod. Line, Envtl. Prot. Agency, on Nov. 14, 2013 Interview with Craig Hooks 2 (Nov. 18, 2013).
[33] *Id.*
[34] Notes of Robert Adachi, Dir. Forensic Audit Prod. Line, Envtl. Prot. Agency, on Interview with Brenda Mallory 2 (Nov. 18, 2013).
[35] *Id.*

questions remain as to what direction, if any, he received from Dunham, Perciasepe or other senior officials in early 2011.

Scott Monroe

Scott Monroe became the Director of Human Resources in the Office of Air and Radiation in 2008.[36] In this role, Monroe was responsible for overseeing Beale's timecards, and dealing with general personnel matters regarding OAR employees.[37] Monroe began to "notice that Beale was never in the office" soon after he starting at OAR.[38] In 2008, Beale was not in the office for six months, but continued to collect his full salary plus bonus.[39] During this time Monroe approved Beale's timecards as part of a "mass approval to the [employee] group Beale was in."[40] According to Monroe, he gave mass approval to the group because there were too many to do individual approvals.[41]

In 2010, Monroe became aware that Beale's retention bonus was causing his salary to exceed statutory limitations.[42] Acting on this information, Monroe sent an email to Beth Craig on July 16, 2010, with a report detailing the extent of the problems with Beale's retention bonus and salary.[43] He then reviewed "Beale's file and saw that the last retention bonus recertification was in 2000[,]" but that the file contained no evidence of an offer that would have justified the retention bonus.[44] Monroe "did not know why the bonus was continued without recertification."[45] On December 15, 2010, Monroe contacted OARM, looking for ways to stop payment on Beale's retention bonus.[46] On January 12, 2011, Monroe raised the issue of Beale's retention bonus with McCarthy and recommended that she take action to cancel the bonus.[47] McCarthy responded asking Monroe to "put on hold any information exchange re: John Beale and payroll issues..." per Craig Hooks' request.[48] Monroe checked in with McCarthy on January 27, 2011, to see if she had heard back from Hooks as he was, "eager to move head [sic] with

---

[36] Notes of Bill Spinazzola, Office of Inspector General, Envtl. Prot. Agency, on Interview with Scott Monroe 2 (Nov. 12, 2013).
[37] *Id.* at 2–3.
[38] *Id.* at 3.
[39] Beale Dep. 139:1–140:7.
[40] Notes of Bill Spinazzola, Office of Inspector General, Envtl. Prot. Agency, on Interview with Scott Monroe 3 (Nov. 12, 2013).
[41] *Id.*
[42] *Id.*
[43] E-mail from Scott Monroe, Dir. Human Res., Office of Air & Radiation, Envtl. Prot. Agency, to Beth Craig, Deputy Assist. Adm'r, Office of Air & Radiation, Envtl. Prot. Agency, (July 16, 2010 10:02 AM).
[44] Notes of Bill Spinazzola, Office of Inspector General, Envtl. Prot. Agency, on Interview with Scott Monroe 4 (Nov. 12, 2013).
[45] *Id.*
[46] E-mail from Scott Monroe, Dir. Human Res. Office of Air and Radiation, Envtl. Prot. Agency to Susan Smith, Envtl. Prot. Agency (Dec. 15, 2010 11:58 AM).
[47] Memorandum from Scott Monroe, Dir. Human Res. Office of Air and Radiation, Envtl. Prot. Agency, to Gina McCarthy, Assist Adm'r, Office of Air & Radiation, Envtl. Prot. Agency, Regarding John Beale Retention Pay (Jan. 12, 2011).
[48] E-mail from Gina McCarthy, Assist Adm'r, Office of Air & Radiation, Envtl. Prot. Agency, to Scott Monroe, Dir. Human Res. Office of Air and Radiation, Envtl. Prot. Agency (Jan., 17, 2011 01:31 PM).

canceling the bonus."[49] McCarthy replied, "No he hasn't. It's now in his hands as far as I am concerned."[50] Monroe never got the clearance he was seeking to cancel Beale's bonus.

After Beale's retirement party in September of 2011, Monroe noticed that Beale was still filing time cards and collecting pay.[51] On March, 29, 2012, Monroe notified McCarthy that it appeared Beale was not retired and still collecting his salary.[52] For several months, it appears Monroe's concerns were put in abeyance as McCarthy stalled on contacting Beale to inquire his status. Then, on November 8, 2012, Monroe sent an email to McCarthy detailing that Beale had been "report[ing] an 8-hour regular schedule."[53] Subsequently, McCarthy contacted Beale and eventually the Office of General Counsel, which ultimately led to reporting to the OIG and unraveling Beale's fraud.

Conclusion

It is evident that there were widespread failures at EPA, across several offices (OAR, OGC, OARM, OIG and the Office of the Administrator) that allowed Beale's fraud to continue unquestioned for so long. While John Beale is ultimately responsible for his crimes, his lies, and his abuse of his coworkers' trust, it has become increasingly clear that there is a culture at EPA that is willing to ignore the rules, ignore all protocols, and even ignore all common sense when it came to protecting one of their own. While mistakenly trusting a coworker and a friend is not a crime, and on some level is even understandable, it does not excuse those individuals who looked the other way, who failed to do their due diligence, and who failed to act when the obvious facts were before them. After all, the public trust was broken, not just by John Beale, but by all those at EPA who failed to act when the facts before them should have compelled corrective action.

---

[49] E-mail from Scott Monroe, Dir. Human Res. Office of Air and Radiation, Envtl. Prot. Agency, to Gina McCarthy, Assist Adm'r, Office of Air & Radiation, Envtl. Prot. Agency (Jan. 27, 2011 05:56 PM).
[50] E-mail from Gina McCarthy, Adm'r, Office of Air and Radiation, Envtl. Prot. Agency, to Scott Monroe, Dir. of Human Res., Office of Air and Radiation, Envtl. Prot. Agency (Jan. 27, 2011 08:24PM EST).

[51] Notes of Bill Spinazzola, Office of Inspector General, Envtl. Prot. Agency, on Interview with Scott Monroe 4 (Nov. 12, 2013).
[52] E-mail from Scott Monroe, Dir. Human Res. Office of Air and Radiation, Envtl. Prot. Agency, to Gina McCarthy, Assist Adm'r, Office of Air & Radiation, Envtl. Prot. Agency (Mar. 29, 2012 09:59 PM).
[53] E-mail from Scott Monroe, Dir. Human Res. Office of Air and Radiation, Envtl. Prot. Agency, to Gina McCarthy, Assist Adm'r, Office of Air & Radiation, Envtl. Prot. Agency (Nov. 8, 2012 05:27 PM).

BARBARA BOXER, CALIFORNIA, CHAIRMAN

MAX BAUCUS, MONTANA
THOMAS R. CARPER, DELAWARE
BENJAMIN L. CARDIN, MARYLAND
BERNARD SANDERS, VERMONT
SHELDON WHITEHOUSE, RHODE ISLAND
TOM UDALL, NEW MEXICO
JEFF MERKLEY, OREGON
KIRSTEN GILLIBRAND, NEW YORK
CORY A. BOOKER, NEW JERSEY

DAVID VITTER, LOUISIANA
JAMES M. INHOFE, OKLAHOMA
JOHN BARRASSO, WYOMING
JEFF SESSIONS, ALABAMA
MIKE CRAPO, IDAHO
ROGER WICKER, MISSISSIPPI
JOHN BOOZMAN, ARKANSAS
DEB FISCHER, NEBRASKA

KETTINA POIRIER, MAJORITY STAFF DIRECTOR
ZAK BAIG, REPUBLICAN STAFF DIRECTOR

United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
WASHINGTON, DC 20510-6175

MEMORANDUM

TO:	Republican Members of the Senate Committee on Environment and Public Works
FROM:	Republican Committee Staff
DATE:	March 4, 2014
RE:	Additional Facts Relating to Beale Controversy and OIG Investigations

In the aftermath of the John Beale conviction, the Environmental Protection Agency (EPA) and the EPA Office of Inspector General (OIG) have seemingly treated the case closed following two OIG early warning reports on Beale's pay and travel issues and Beale's 32-month sentencing in December 2013. Concurrently, the Agency and the OIG have praised Administrator McCarthy's "leadership" on "uncovering" Beale's fraud in her former position as Beale's supervisor, and made representations to the public that Beale was an isolated incident - ostensibly to mitigate any concerns over McCarthy and the Agency's ability to confront waste, fraud and abuse.

Despite these efforts to characterize Beale as an isolated incident, Senate Committee on Environment and Public Works (EPW) Republican staff have learned that time and attendance fraud is widespread at the Agency. Moreover, EPW Republicans now understand that McCarthy was not exactly the hero in this case, and since becoming Administrator she has exacerbated a growing tension between Agency officials and the OIG. These concerns were shared with the OIG in a February 18, 2014, letter and email from Ranking Member Vitter to Inspector General Arthur Elkins. On February 24, 2014, the OIG provided a response letter to Senator Vitter, as well as a briefing to EPW Republican staff.

Subsequently, information provided by the OIG response letter and briefing, as well as additional non-public information obtained by EPW Republican staff, has prompted additional questions about EPA officials. These queries focus on officials in the OIG, Office of General Counsel (OGC) and Office of Homeland Security (OHS), and their role in the Agency's weak response to concerns over Beale, delayed reporting of such concerns to the OIG, and failure to cooperate with the OIG's subsequent investigation and audit. In an effort to keep EPW Republican Members fully informed on these matters, this memorandum synthesizes public information, including recent correspondence from the Agency and OIG, as well as non-public information obtained by EPW Republican staff.

PRINTED ON RECYCLED PAPER

Concerns with Nancy Dunham and the Office of General Counsel

Nancy Dunham, a staff attorney in the EPA's Office of General Counsel (OGC), was a pivotal player in EPA's response to the Beale fraud. In addition, she has become embroiled in a separate but related controversy dealing with the OIG's ability to conduct criminal investigations. It appears McCarthy personally selected Dunham to provide her counsel on the Beale case after McCarthy became aware of Beale's retention incentive bonus problems,[1] possibly in early 2011,[2] and in doing so gave Dunham full access to her emails related to Beale.[3] However, in an interview with the OIG, Dunham claimed she was first made aware of problems related to Beale when human resources contacted the OGC on November 9, 2012.[4] The OIG has since revealed in a letter to Ranking Member Vitter, that this statement was false and explained that Dunham may have been aware of Beale months and possibly years prior to November 2012.[5] This admission challenges both the OIG and EPA public assertions that McCarthy first reported her concerns to the OGC, and specifically to Dunham, on the Beale case "on or around November 1, 2012."[6] Importantly, the OIG is unable to provide any physical evidence, either in the form or email or memorandum, to support this later claim. Rather, the OIG relied on three interviews with EPA officials, including Dunham's deceitful interview and McCarthy's personal account of the facts, to support the narrative that McCarthy was the first to uncover Beale's fraud.[7] Notably, in forming this conclusion, none of the interviews discuss any date close to November 1, 2012.

New information also gives rise to additional questions about EPA and the OIG's official story on when McCarthy reported her concerns to the OIG. Since McCarthy selected Dunham, who specialized in national security issues, EPA officials involved believed the Beale case was a national security issue.[8] This determination was communicated to the Office of Administration

---

[1] Memorandum of Interview from Mark Kaminsky, Special Agent, Office of Inspector Gen., Envtl. Prot. Agency, Interview with Gina McCarthy at 3 (Feb. 27, 2013) ("McCarthy stated that after finding out about the continued payment of the retention incentive to Beale, McCarthy sought legal counsel from Nancy Dunham").

[2] *See* Memorandum from Scott Monroe, Office of Human Res., Office of Air & Radiation, Envtl. Prot. Agency, to Gina McCarthy, Assistant Adm'r, Office of Air & Radiation, Envtl. Prot. Agency (Jan. 12, 2011) (notifying McCarthy of lack of documentation supporting Beale's retention incentive bonus, noting "OGC advised that EPA should not continue to pay the allowance...").

[3] Memorandum of Interview from Mark Kaminsky, Special Agent, Office of Inspector Gen., Envtl. Prot. Agency, Interview with Gina McCarthy at 3 (Feb. 27, 2013).

[4] Memorandum of Interview from Mark Kaminsky, Special Agent, Office of Inspector Gen., Envtl. Prot. Agency, Interview with Nancy Dunham at 1 (Mar. 28, 2013).

[5] Letter from Hon. Arthur Elkins, Inspector Gen., Envtl. Prot. Agency, to Hon. David Vitter, Ranking Member, S. Comm. on Env't & Public Works at 4 (Feb. 24, 2014) ("OA later developed information through other interviews which indicates that Ms. Dunham may have been aware of Mr. Beale's pay issues several months or even a year prior to what she told OI during her interview").

[6] *Id.* at 2.

[7] *Id.* at 2-3.

[8] Memorandum of Interview from Mark Kaminsky, Special Agent, Office of Inspector Gen., Envtl. Prot. Agency, Interview with Nancy Dunham at 1 (Mar. 28, 2013) ("Dunham stated that she has worked in EPA OGC since 2003

PRINTED ON RECYCLED PAPER

and Resource Management (OARM) and impeded their efforts to settle issues with Beale's pay and bonuses because they "did not wish to get in Beale's way or to compromise any national security issues."[9] In treating the case as a national security issue, on November 16, 2012, Dunham referred her concerns to Senior Intelligence Advisor Steve Williams at OHS.[10] In this position, Williams is the Agency's liaison with the intelligence community,[11] and pursuant to Intelligence Community Directive 304,[12] Williams would have been made aware of any EPA officials jointly employed by the intelligence community. In fact, under Directive 304, which was effective in March 2008, three Agency officials, including the Senior Intelligence Officer, the General Counsel and the Administrator, should be notified of employees with classified relationships with the intelligence community.[13] Accordingly, Dunham's decision to delay notification to Williams of her concerns regarding Beale's status as a CIA agent is worrisome as Williams was one of the individuals who would have been aware of other CIA operatives at the Agency, pursuant to Directive 304.

Despite Dunham's delayed consultation with OHS, according to new evidence obtained by EPW Republicans, it appears Dunham continued to meddle with the Agency's handling of the matter by taking on an investigatory role herself. Specifically, on the same day she contacted Williams, Dunham spoke with Karen Higginbotham of OARM regarding Beale's lack of documentation, and on December 3, 2012, Dunham interviewed Scott Monroe in the Office of Human Resources within the Office of Air and Radiation, questioning his knowledge of Beale's CIA work.[14] Approximately a week later, Williams informed Dunham that Beale never had a security clearance and it was highly unlikely he worked for CIA.[15] Thereafter, Dunham shared her findings with McCarthy.[16] On January 28, 2013, Dunham reported her concerns of Beale directly to the EPA OIG General Counsel Al Larsen, one of the most senior officials in the OIG.[17] Oddly, the OIG has continued to assert it was not made aware of the Beale matter until

---

as an Attorney Advisor specializing in employment litigation and national security matters"); *see also* Interview Notes from Office of Inspector Gen., Envtl. Prot. Agency, Interview with Craig Hooks (Nov. 14, 2013).

[9] Interview Notes from Office of Inspector Gen., Envtl. Prot. Agency, Interview with Craig Hooks (Nov. 14, 2013) ("Hooks said that he did not wish to get in Beale's way or to compromise any national security issues. That is why the matter was referred to the Office of General Counsel, Nancy Dunham in particular. OGC never got back to Hooks and until Hooks heard anything, no actions were going to be taken").

[10] Memorandum of Interview from Mark Kaminsky, Special Agent, Office of Inspector Gen., Envtl. Prot. Agency, Interview with Nancy Dunham at 1 (Mar. 28, 2013); Sworn Statement of Steve Williams at 2 (Mar. 29, 2013).

[11] *See* Envtl. Prot. Agency, Office of Homeland Security, Our Responsibility, http://www.epa.gov/ohs/responsibilities.htm (last visited Feb. 28, 2014).

[12] OFFICE OF DIRECTOR OF NATIONAL INTELLIGENCE, INTELLIGENCE COMMUNITY DIRECTIVE NO. 304 (effective Mar. 6, 2008), http://www.fas.org/irp/dni/icd/icd-304.pdf.

[13] *Id.*; *see also* Sworn Statement of Steve Williams at 3 (Mar. 29, 2013).

[14] Memorandum of Interview from Mark Kaminsky, Special Agent, Office of Inspector Gen., Envtl. Prot. Agency, Interview with Nancy Dunham at 1-2 (Mar. 28, 2013).

[15] Sworn Statement of Steve Williams at 3 (Mar. 29, 2013).

[16] *Id.*

[17] Memorandum of Interview from Mark Kaminsky, Special Agent, Office of Inspector Gen., Envtl. Prot. Agency, Interview with Nancy Dunham at 3 (Mar. 28, 2013).

PRINTED ON RECYCLED PAPER

February 11, 2013, when McCarthy finally reported the matter.[18] Incidentally, McCarthy was accompanied by Dunham at the meeting with the OIG to discuss concerns over Beale.[19]

Dunham herself has served as an obstacle in resolving questions about the delay in reporting the Beale matter to the OIG. When the OIG conducted an audit, pursuant to Ranking Member Vitter's August 27, 2013, request,[20] she refused to be interviewed, citing recent issues between Agency and OIG officials.[21] There is little precedent for a current EPA employee to refuse to cooperate with an OIG audit, yet Dunham has done so with apparently no penalty. Moreover, at the time of her refusal, Dunham's decision was maintained by Acting Principal Associate General Counsel Kevin Minoli in an email and memorandum to the OIG.[22] Specifically, Mr. Minoli stated:

> I write to inform you that Nancy Dunham has determined she will not make herself available for a second interview with the Office of Inspector General (OIG) regarding the Beale matter, until the agency's efforts to resolve the issues between the OIG and EPA employees who work on national security issues are completed... Ms. Dunham is now concerned that she is in fact the target of an OIG investigation regarding this matter, rather than merely a helpful witness.[23]

The Committee has learned that one of the issues Dunham cited in her refusal to cooperate spawned from an altercation between OHS and OIG employees to which Dunham was a witness.[24] In response to that heated exchange, McCarthy wrote to both the OIG and OHS ordering them to stand down from an investigation of both the incident, as well as the underlying investigation.[25] Troublingly, this letter suggests that the Inspector General is a subordinate to McCarthy and not the Presidential appointee of an independent entity within the Agency. Moreover, in his letter to the OIG, Deputy Administrator Bob Perciasepe characterized McCarthy's stand down letter as having no relation to the Beale matter.[26] However, such

---

[18] Letter from Hon. Arthur Elkins, Inspector Gen., Envtl. Prot. Agency, to Hon. David Vitter, Ranking Member, S. Comm. on Env't & Public Works at 2 (Feb. 24, 2014).
[19] Memorandum from Douglas Zmorzenski, Special Agent in Charge, Office of Inspector Gen., Envtl. Prot. Agency, to Patrick Sullivan, Assistant Inspector Gen., Office of Investigations, Office of Inspector Gen., Envtl. Prot. Agency (Feb. 12, 2013) ("The employee investigation was reported to you during a meeting with Gina McCarthy, EPA, Assistant Administrator, Office of Air and Radiation and Nancy Dunham, EPA, Attorney, Office of General Counsel").
[20] Letter from Hon. David Vitter, Ranking Member, S. Comm. on Env't & Public Works, to Hon. Arthur Elkins, Inspector Gen., Envtl. Prot. Agency (Aug. 27, 2013).
[21] Notes from Office of Inspector Gen., OGC Staff Member – Refusal of Interview (Nov. 26, 2013).
[22] *Id.*
[23] Email from Kevin Minoli, Acting Principal Assoc. Gen. Counsel, Office of Gen. Counsel, Envtl. Prot. Agency, to Robert Adachi, Office of Audit, Office of Inspector Gen., Envtl. Prot. Agency (Nov. 21, 2013, 06:32 AM EST).
[24] Briefing by Office of Inspector Gen., Envtl. Prot. Agency for Republican Staff, S. Comm. on Env't & Public Works (Feb. 24, 2014).
[25] Letter from Gina McCarthy, Adm'r, Envtl. Prot. Agency, to Arthur Elkins, Inspector Gen., Envtl. Prot. Agency & Juan Reyes, Acting Assoc. Adm'r, Office of Homeland Security, Envtl. Prot. Agency (Oct. 28, 2013).
[26] Letter from Bob Perciasepe, Dep. Adm'r, Envtl. Prot. Agency, to Arthur Elkins, Inspector Gen., Envtl. Prot. Agency (Feb. 27, 2014).

PRINTED ON RECYCLED PAPER

assertion ignores the fact that Dunham herself has personal knowledge of McCarthy's handling of the Beale matter and that Dunham refused to cooperate with the OIG on the Beale matter. Despite the claim of being unrelated to the Beale matter, it appears that the stand down letter is centrally related to the OIG's ability to obtain full information about the Beale matter. Further, it appears that McCarthy's letter shields Dunham from her obligation to cooperate with the OIG. Overall, Dunham's unwillingness to cooperate reveals a lack of transparency and accountability at the Agency as gaps in the story on Beale remain.

Concerns with Steve Williams and the Office of Homeland Security

The Committee has obtained evidence that suggests Steven Williams and other employees in EPA's Office of Homeland Security, a small office comprised of just five EPA officials, have potentially hindered investigations undertaken by the EPA OIG. On November 16, 2012, Nancy Dunham referred concerns over Beale's CIA status to Williams.[27] Despite the fact that Williams, pursuant to Intelligence Community Directive 304, should have already known whether or not Beale was jointly employed with the CIA, Williams reached out the CIA to determine whether or not Beale actually worked with an intelligence agency.[28] On November 26, 2012, Williams asked his colleague in OHS, John Martin, to contact the CIA regarding Beale's status.[29] The CIA informed Williams on December 3, 2012, that "CIA had no knowledge of a relationship or agreement with Mr. Beale" and "such a relationship was highly unlikely."[30]

On December 12, 2012, Williams, along with Dunham, relayed this information to Gina McCarthy at an in-person meeting.[31] The next day Williams met with Beale, but failed to challenge Beale's CIA claims.[32] Rather, Williams sought "to reassure [Beale] … that [his] offer was to help,"[33] and over the next two months as Beale deflected William's inquiries, no one at EPA pushed back on his claims.[34] In fact, it was not until June 2013 that Beale finally admitted he did not work for the CIA.[35] Thus, it appears that Williams not only "tipped off" Beale that the Agency was suspicious of his CIA identity, but his efforts appear to have delayed the OIG investigation, which could have aggravated Beale's fraud.

---

[27] Sworn Statement of Steve Williams at 2 (Mar. 29, 2013).
[28] *Id.* at 3.
[29] *Id.*
[30] *Id.*
[31] *Id.*
[32] *Id.*
[33] *Id.* at 4
[34] *Id.* at 4–5
[35] *Secret Agent Man? Oversight of EPA's IG Investigation of John Beale Before the H. Comm. On Oversight and Government Reform,* 113th Cong. (Oct. 1, 2013) (Testimony of Patrick Sullivan, Office of Inspector Gen., Envtl. Prot. Agency).

PRINTED ON RECYCLED PAPER

Williams has also been at the center of recent disruptions to OIG investigations. It appears that Williams routinely "issued non-disclosure agreements to EPA employees that prevented these employees from cooperating with OIG investigations."[36] Further, EPW Republicans have learned that on several occasions Williams' interactions with OIG investigators have impeded the OIG from carrying out their responsibilities.[37] In one instance involving Williams and an OIG agent, Williams effectively caused an unnecessary delay as Administrator McCarthy subsequently put a hold on the OIG's investigation.[38] Notably, John Martin, the OHS official who contacted the CIA regarding Beale on Williams's behalf, was also involved in this incident. Specifically, the incident occurred as an OIG agent attempted to get Martin, to sign a customary non-disclosure form required of those interviewed in the course of an OIG investigation.[39] However, it appears no one has been held accountable for these issues. Indeed, following Administrator McCarthy's stand down letter to the OIG and OHS, the Acting Associate Administrator for OHS, Juan Reyes, retired, thus excusing Mr. Reyes from subsequent OIG questioning.[40] Accordingly, it seems the OHS has continued to hinder transparency and a timely resolution of Agency investigations into potential misconduct.

Concerns with Office of Inspector General

Aside from the issues described in this memorandum, it is important to note that the OIG's February 24, 2014, letter to Ranking Member Vitter included additional discrepancies. First, the statement that EPW Republican staff request for a January 12, 2011, memo to Gina McCarthy was simply an "oral" request that led to confusion is false. The request was submitted in writing and specifically identified by date and description the subsequently disclosed memo.[41] Following the letter, OIG staff has apologized for this misunderstanding, but has failed to update their response letter.

Second, the OIG's assertion that Inspector General Elkins never considered the Beale case a human resources matter appears to be an effort to parse words as the OIG notes from an

---

[36] Letter from Arthur Elkins, Inspector Gen., Envtl. Prot. Agency, to Hon. David Vitter, Ranking Member, S. Comm. On Env't & Pub. Works at 5 (Feb. 24, 2014).
[37] *Id.*
[38] *Id.*
[39] Briefing by Office of Inspector Gen., Envtl. Prot. Agency, for Republican Staff, S. Comm. on Env't & Public Works (Feb. 24, 2014).
[40] *Id.*
[41] Email from Republican Staff, S. Comm. on Env't & Public Works, to Staff, Office of Inspector Gen., Envtl. Prot. Agency (Dec. 13, 2013, 10:52 AM EST) ("...January 12, 2011 memorandum to Gina McCarthy advising that she stop Beale's retention bonuses, as well as the emails referenced in the report"); Email from Republican Staff, S. Comm. on Env't & Public Works, to Staff, Office of Inspector Gen., Envtl. Prot. Agency (Dec. 16, 2013, 11:47 AM EST) ("[T]he January 12, 2011, memorandum to Gina McCarthy was not included in the documents..."); Email from Staff, Office of Inspector Gen., Envtl. Prot. Agency, to Republican Staff, S. Comm. on Env't & Public Works (Dec. 16, 2013, 11:56 AM EST) ("Auditor Bob Adachi has confirmed that there is not a memorandum of that date to Gina McCarthy").

PRINTED ON RECYCLED PAPER

interview, to which IG Elkins attended, with Assistant Administrator for OARM, Craig Hooks, plainly stated that Elkins viewed the issue as an administrative matter:

> Hooks mentioned that he had discussed the Beale matter and his involvement in the CIA with Arthur Elkins, EPA IG, after one of the Senior Staff meetings. Elkins mentioned that Hooks never mentioned anything about the CIA. Hooks corrected himself that he asked about any employee attendance matter and that Elkins told him that is seemed like an administrative matter that should be handled by Agency management. Elkins agreed with Hooks recollection (emphasis added).[42]

Despite this account, OIG staff has asserted that Elkins could not remember such conversation, hinting that either Hooks' interview may not have been fully accurate or the OIG staff preparing the notes did not accurately record IG Elkins recollection of events.

Conclusion

These new facts further weaken the public narrative offered by the OIG and the EPA. Rather, they indicate that the public did not receive the full account of the case in an apparent effort to shield high ranking EPA officials from accountability. Accordingly, EPW Republicans will continue its investigation and probe for more information from the OIG and Agency to bring transparency to the biggest scandal at the EPA.

[42] Interview Notes from Office of Inspector Gen., Envtl. Prot. Agency, Interview with Craig Hooks at 2 (Nov. 14, 2013).

PRINTED ON RECYCLED PAPER