

JAMES M. INHOFE, OKLAHOMA
SHELLEY MOORE CAPITO, WEST VIRGINIA
JOHN BOOZMAN, ARKANSAS
ROGER WICKER, MISSISSIPPI
DEB FISCHER, NEBRASKA
JERRY MORAN, KANSAS
MIKE ROUNDS, SOUTH DAKOTA
JONI ERNST, IOWA
DAN SULLIVAN, ALASKA
RICHARD SHELBY, ALABAMA

THOMAS R. CARPER, DELAWARE
BENJAMIN L. CARDIN, MARYLAND
BERNARD SANDERS, VERMONT
SHELDON WHITEHOUSE, RHODE ISLAND
JEFF MERKLEY, OREGON
KIRSTEN GILLIBRAND, NEW YORK
CORY A. BOOKER, NEW JERSEY
EDWARD J. MARKEY, MASSACHUSETTS
TAMMY DUCKWORTH, ILLINOIS
CHRIS VAN HOLLEN, MARYLAND

United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

RICHARD M. RUSSELL, MAJORITY STAFF DIRECTOR
MARY FRANCES REPKO, MINORITY STAFF DIRECTOR

January 10, 2019

The Honorable Andrew Wheeler
Acting Administrator
Environmental Protection Agency (EPA)
1301 Constitution Ave. NW
Washington, DC 20460

Dear Acting Administrator Wheeler:

We write with questions regarding the implementation of EPA's December 31, 2018 Contingency Plan in the Event of a Government Shutdown¹, particularly in light of next week's confirmation hearing on your nomination to lead the EPA as its Administrator.

The majority of EPA employees have been furloughed without pay since December 29, 2018. The consequences of the shutdown on public health and the environment include the slow-down or cessation of clean-up work at hundreds of toxic Superfund sites across the country, a halt in most EPA inspection and enforcement activities, and a stop to new chemical and pesticide safety evaluations and approvals.

EPA's December 31, 2018 contingency plan notes three categories of employees who would be expected to continue to report to work even though these employees would also not be paid. Specifically, the plan contemplates:

- 6 Presidentially Appointed/Senate Confirmed employees "*necessary to perform activities expressly authorized by law*";
- 12 employees "*necessary to the discharge of the President's constitutional duties and powers*"; or
- 794 employees "*necessary to protect life and property*".

We are concerned that preparations for your confirmation hearing may be occurring using resources that are not described in or authorized under EPA's Contingency Plan. For example, meeting requests with Senators have copied five EPA employees on the emails to our offices. The agency's Senior Counsel for Ethics and an EPA notary worked to certify your ethics form on January 9, 2019. We have also been informed that most EPA political officials as well as some EPA career staff have been supporting your hearing preparations and briefings.

¹ <https://www.epa.gov/aboutepa/us-epa-contingency-plan-event-government-shutdown>

It is difficult to understand how preparing you for next week's confirmation hearing credibly falls within any of the categories listed in EPA's Contingency Plan, particularly the category of employee that is "necessary to protect life and property." Using EPA resources in this manner may also run afoul of the Antideficiency Act. More disturbingly, if EPA is diverting resources that are intended to be used to "protect life and property" to prepare you for your confirmation hearing, the already-dire consequences of the shutdown on public health and the environment could be even greater.

So that we can better understand EPA's implementation of its Contingency Plan, please provide, in advance of your January 16, 2019 confirmation hearing, the following materials:

1. The names and titles of the 6 Presidentially Appointed/Senate Confirmed employees "*necessary to perform activities expressly authorized by law.*"
2. The names and titles of the 12 employees "*necessary to the discharge of the President's constitutional duties and powers*".
3. The names of the 794 employees "*necessary to protect life and property.*"
4. A list of all briefings, meetings, and conference calls related to your nomination and upcoming confirmation hearing that have occurred since December 29, 2018, along with all participants in those briefings, meetings or conference calls.
5. For any participant in a briefing, meeting or conference call described in item 4 who is not listed in response to item 1 or 2, please provide a legal justification for the participant's activities in light of both EPA's Contingency Plan and the Antideficiency Act.
6. Copies of all emails, memos, presentations, correspondence, meeting requests and briefing materials related to your nomination and upcoming confirmation hearing, including reviews of your financial and ethics documentation submitted with your nomination on January 9, 2019, that have been prepared or circulated since December 29, 2018.
7. An official accounting, including the names, titles and a schedule of total hours worked by all EPA staff involved in preparing you for or otherwise related to your nomination and upcoming confirmation hearing since December 29, 2018.
8. Any legal opinion or memoranda produced or reviewed in anticipation of your nomination or upcoming confirmation hearing that relates to the Antideficiency Act or government shutdown.

Thank you very much for your attention to this important matter. If you have any questions or concerns, please have your staff contact Michal Freedhoff of the Environment and Public Works Committee staff, at 202-224-8832.

Sincerely,



Tom Carper
Ranking Member



Benjamin L. Cardin
United States Senator



Sheldon Whitehouse
United States Senator



Chris Van Hollen
United States Senator