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United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

September 18, 2015

The Honorable Gina McCarthy
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

Dear Administrator McCarthy:

We are writing to express concern over recent hiring practices at the U.S. Environmental Protection Agency (EPA). As you are aware, the Senate Committee on Environment and Public Works has been committed to conducting rigorous oversight over EPA's internal management, including its hiring practices, since the case of former senior EPA official and fraudster John Beale broke headlines in 2013.[1] Unfortunately, it appears EPA has made little progress in getting 'its house' in order since the Beale scandal and the Agency may be vulnerable to greater abuses through recently-planned mass hires, prompting renewed Congressional oversight.

For fiscal year 2015, EPA was appropriated funding for up to 15,335 full-time equivalents (FTEs), but as of September 2, 2015, EPA had 14,493 FTEs.[2] On September 10, 2015, it was reported that EPA planned to hire 458 employees by the end of the month—that is more than 30 hires each business day—ostensibly to inflate its staffing levels prior to congressional appropriations of agency funds.[3] While EPA has publicly stated the mass hires are necessary to counter "buyouts, budget cuts and retirements,"[4] we question the integrity of such as statements amid the Agency's unprecedented number of major regulatory actions over the same period of time. Further, EPA's Office of Inspector General (OIG) has recently reported improper buyouts, missed opportunities to consolidate positions, and risks in EPA's hiring process. EPA employee unions have even pushed back against the mass hiring plans, warning the Agency its plans "do not allow adequate time for training, or for managers to properly assess their personnel

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[1] *See* S. COMM. ON ENV'T & PUBLIC WORKS, MINORITY STAFF, EPA'S PLAYBOOK UNVEILED: A STORY OF FRAUD, DECEIT, AND SECRET SCIENCE (Mar. 19, 2104), *available at* http://www.epw.senate.gov/public/index.cfm?FuseAction=PressRoom.PressReleases&ContentRecord_id=8c1a4f79-eca0-f9d2-9636-b7286f3389a5.

[2] *EPA Accelerates Employee Hires Ahead of Congress' Bid To Cap Staffing*, INSIDE EPA, Sept. 16, 2015, *available at* http://insideepa.com/inside-epa/epa-accelerates-employee-hires-ahead-congress-bid-cap-staffing.

[3] Robin Bravender, *Agency plans to hire 458 employees this month,* E&E NEWS, Sept. 10, 2015, *available at* http://www.eenews.net/greenwire/2015/09/10/stories/1060024492.

[4] *Id.*

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needs."[5] Accordingly, congressional oversight of EPA's expedited mass hiring practices is necessary to ensure EPA is safeguarding taxpayer dollars and operating in the most efficient manner.

In the first instance, EPA should provide assurances to Congress that such new hires are absolutely necessary to fulfill the Agency's core missions. While nearly 500 EPA staff took retirement incentives to leave the Agency in 2014, such buyouts did not slow EPA's regulatory agenda. Indeed, the Agency continued its work on the most burdensome and complex major rulemakings in just the last six months, including the so-called Clean Power Plan, Ozone National Ambient Air Quality Standards, and the Waters of the U.S. rulemakings. Under the Obama Administration EPA has finalized 752 regulations, which even the Agency has estimated will cost the U.S. economy a total $644.6 billion,[6] which is likely to be substantially less than the actual costs once the aforementioned regulations are enacted. If EPA truly needs more federal employees to carry out core missions, it is an admission that the Agency has been advancing a regulatory agenda at the expense of those missions.

EPA should also provide information regarding the amount of agency resources and staff dedicated to the mere hiring of staff since May. On May 15, 2015, Karl Brooks, EPA Deputy Assistant Administrator for the Office of Administration and Resource Management issued a memorandum that called for 500-800 new hires to ensure "EPA will meet its appropriated level of 15,000 FTEs" by September 30, 2015.[7] That memorandum provides no justification for the additional hires based on mission or need; it only refers to a "target." The Brooks' memorandum also recommended actions each office could take to expedite the hiring process, including targeted advertisements and accelerated paperwork filing. We are concerned that such heightened focus on mass hiring may be displacing much needed agency resources and staff from fulfilling core responsibilities. For example, as you may recall, John Beale falsified his initial employment application, which went undetected by the Agency and could be a potential consequence of such expediting hiring. Moreover, in response to an original request from Senator Vitter, the EPA OIG conducted an audit of the Agency's hiring process and found that EPA's process was "at risk of hiring an applicant based on false information and may not hire the best-qualified candidate."[8] The OIG recommended EPA review and revise its hiring process, but EPA has not completed the planned corrective actions.[9] Thus, any ongoing efforts to deviate

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[5] *EPA Accelerates Employee Hires Ahead of Congress' Bid To Cap Staffing*, INSIDE EPA, Sept. 16, 2015, *available at* http://insideepa.com/inside-epa/epa-accelerates-employee-hires-ahead-congress-bid-cap-staffing.

[6] *See* Regulation Rodeo: Explore the Data, AMERICAN ACTION FORUM, *available at* https://regrodeo.com/?year%5B0%5D=2015&year%5B1%5D=2014&year%5B2%5D=2013&year%5B3%5D=2012&year%5B4%5D=2011&year%5B5%5D=2010&year%5B6%5D=2009&cfr%5B0%5D=Energy%2B%2526%2BEnvironment&agency%5B0%5D=Environmental%2BProtection%2BAgency&topic%5B0%5D=tag_3 (last visited Sept. 15, 2015).

[7] Memorandum from Karl Brooks, Deputy Assistant Adm'r, to Deputy Adm'r et al., Subject: Working Together To Meet Agency Staffing Target, May 15, 2015, *available at* http://www.eenews.net/assets/2015/07/17/document_gw_02.pdf.

[8] OFFICE OF INSPECTOR GEN., U.S. ENVT'L PROT. AGENCY, SPENDING TAXPAYER DOLLARS: IMPROVEMENTS NEEDED BY EPA TO REDUCE RISK IN EMPLOYEE HIRING PROCESS, REPORT NO. 15-P-0253, Aug. 3, 2015, http://www.epa.gov/oig/reports/2015/21050803-15-P-0253.pdf.

[9] *Id.*

from normal recruiting practices or to expedite the hiring process may increase the risks exposed by the OIG.

EPA also has issues with the way it shifts existing employees to new positions. For instance, in March 2015, the EPA OIG reported that EPA did not properly demonstrate the need to use Title 42 hiring authority to recruit or retain employees.[10] Specifically, the OIG found that EPA converted several existing officials to Title 42 and paid a total $47,264 more in salary for performing the same job.[11] The OIG recommended that EPA justify the use of Title 42 appointments or reappointments, which could result in potential monetary benefits of $3.5 million.[12]

In July 2015, the EPA OIG reported that EPA improperly filled vacant positions, which further calls into question EPA's ability to meet its mass hiring goals without compromising taxpayer dollars or circumventing well-established policies. The OIG exposed that EPA used retirement incentives to pay employees up to $25,000 each to vacate positions that were not eliminated or modified—counter to Office of Personnel and Management guidelines for downsizing or restricting agency workforce.[13] While EPA paid $11.9 million in retirement incentives in 2014, the EPA OIG recommended the Agency implement controls to prevent such positions from being filled using the same position description.[14] EPA agreed to take corrective actions and the OIG is currently reviewing the Agency's hiring templates.

In light of such findings, Congressional oversight of EPA's mass hiring plans is ever more important. Please provide responses to the following requests by no later than September 28, 2015:

1. Please provide a table specifying the number of new hires by each program office and regional office, with the corresponding date of hiring, since the May 15, 2015, Brooks' memorandum was issued.
2. Please provide a table specifying the number of early-outs and buyouts by each program office and regional office, with the corresponding date of departure, since October 1, 2014.
3. What steps has the Agency taken to strengthen internal controls since the May 15, 2015, Brooks' memorandum was issued?
4. What type of advertising or otherwise recruitment efforts did the Agency use to recruit new hires since the May 15, 2015, Brooks' memorandum was issued?
5. How much agency resources and staff have been dedicated to mass hiring since the May 15, 2015, Brooks' memorandum?

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[10] OFFICE OF INSPECTOR GEN., U.S. ENVT'L PROT. AGENCY, SCIENCE AND RESEARCH: EPA NEEDS TO JUSTIFY HOW IT IS USING TITLE 42 HIRING AUTHORITY, REPORT NO. 15-P-0109, Mar. 5, 2015, http://www.epa.gov/oig/reports/2015/20150305-15-P-0109.pdf.
[11] *Id.*
[12] *Id.*
[13] Office of Inspector Gen., U.S. Envt'l Prot. Agency, Spending Taxpayer Dollars: Quick Reaction Report: EPA Should Ensure Positions Vacated Under Buyouts Are Eliminated or Properly Filled, Report No. 15-P-0184, July 14, 2015, http://www.epa.gov/oig/reports/2015/20150714-15-P-0184.pdf.
[14] *Id.*

6. What steps did the Agency take to ensure such hires were necessary?
7. What steps has the Agency taken in response to concerns expressed by the American Federation of Government Employees' Council 238 regarding new employee training and time for managers to assess personnel needs?

Thank you for your prompt attention to this matter. If you have any questions with this request, please contact the Committee on Environment and Public Works at (202) 224-6176.

Sincerely,

David Vitter
Chairman of the Subcommittee on
Transportation and Infrastructure

James M. Inhofe
Chairman

Shelley Moore Capito
Chairman of the Subcommittee on
Clean Air and Nuclear Safety

Mike Crapo
United States Senator

M. Michael Rounds
Chairman of the Subcommittee on Superfund,
Waste Management and Regulatory Affairs

Dan Sullivan
Chairman of the Subcommittee
on Fisheries, Water, and Wildlife

John Boozman
United States Senator