



Committee on Transportation and Infrastructure
U.S. House of Representatives

Bill Shuster
Chairman

Washington, DC 20515

Peter A. DeFazio
Ranking Member

February 19, 2016

Christopher P. Bertram, Staff Director

Katherine W. Dedrick, Democratic Staff Director

Mr. Shaun Donovan
Director
Office of Management and Budget
725 17th Street NW
Washington, D.C. 20503

Dear Director Donovan:

We are writing to request information about the recent United States Government Accountability Office (GAO) legal opinion concerning the Environmental Protection Agency's (EPA) use of social media platforms. On December 14, 2015, GAO issued a legal opinion to the Honorable James M. Inhofe, Chairman of the United States Senate Committee on Environment and Public Works. This legal opinion was in response to Chairman Inhofe's request concerning whether EPA's use of certain social media platforms in fiscal years 2014 and 2015, in association with its "Waters of the United States" (WOTUS) rulemaking, released in March 2014, violated publicity or propaganda and anti-lobbying provisions contained in appropriations acts.

GAO investigated EPA's social media campaign, which was intended to "clarify the issues concerning the WOTUS proposed rule, to provide information about streams and wetlands, to demonstrate the rule's relevance, to provide opportunities for public engagement, and to correct what [EPA] viewed as misinformation concerning the rule." There were four aspects of the campaign identified in GAO's legal opinion: Thunderclap, the #DitchtheMyth Campaign, the #CleanWaterRules Campaign, and EPA's links to external websites. GAO concluded that the Thunderclap campaign and EPA's links to external websites effort each violated publicity or propaganda and anti-lobbying provisions, respectively.

However, GAO concluded that EPA's use of Thunderclap constituted covert propaganda because the Thunderclap message was constructed by EPA with appropriated funds, and did not clearly identify EPA's role as creator of the message. Automated messages posted to the pages of participants in the Thunderclap campaign referred to EPA in the third person and did not attribute the mass-messaging to the Agency. This covert propaganda potentially reached an estimated 1.8 million people and may have tainted the rulemaking process.

GAO further concluded that EPA's links to external websites, namely a Surfrider Foundation blog post and the Natural Resources Defense Council (NRDC) webpage, constituted grassroots lobbying because, although EPA did not directly instruct supporters of the WOTUS rulemaking to contact Congress, EPA associated itself with the webpages by choosing to hyperlink to them

within its official blog post. Each of the two webpages in question contained easily identifiable links to contact members of Congress in support of EPA's WOTUS rulemaking. EPA's blog post containing hyperlinks to the Surfrider Foundation and NRDC websites was posted on April 7, 2015, at a time when multiple bills had been introduced in Congress in opposition to the WOTUS rulemaking. As a result, a member of Congress contacted through the links on either website could view the contact as encouragement to vote against pending legislation related to the WOTUS rulemaking, violating the grassroots lobbying prohibition.

By obligating and expending appropriated funds in violation of specific prohibitions contained in appropriations acts for fiscal years 2014 and 2015, GAO's legal opinion found EPA also violated the Antideficiency Act, 31 U.S.C. §1341(a)(1)(A).

In light of GAO's legal opinion recognizing EPA's violations of publicity or propaganda and anti-lobbying provisions contained in appropriations acts, please provide to us responses to the following questions:

- 1) Does OMB agree with GAO's legal opinion that EPA violated the Antideficiency Act? If not, why not?
- 2) What has EPA done to initiate the process for reporting the violation to the President and Congress, with a copy to the Comptroller General, as required by the Antideficiency Act?
- 3) What were the total EPA resources expended in conducting these illegal activities cited by GAO? Please include both monetary costs and full-time equivalents (FTEs) in your response.
- 4) What internal action has been taken to ensure that EPA does not violate publicity or propaganda and anti-lobbying provisions contained in appropriations acts and the Antideficiency Act again in the future?
- 5) Has EPA either removed the original blog post entirely or removed the hyperlinks from the blog post that caused the Agency to violate the anti-lobbying provision?

We appreciate your prompt attention to this issue. Please provide a written response answering the above questions no later than 30 days from the date of this letter. If you have any questions or need further information, please contact Geoff Bowman of the Subcommittee on Water Resources and Environment at (202) 225-4360.

Sincerely,



Bill Shuster
Chairman
Committee on Transportation and
Infrastructure



Bob Gibbs
Chairman
Subcommittee on Water Resources
and Environment