



PUBLIC EMPLOYEES FOR ENVIRONMENTAL RESPONSIBILITY

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August 20, 2020

Chair Frank Pallone, Jr.  
House Energy and Commerce Committee  
2125 Rayburn House Office Building  
Washington, DC 20515

Chair John Barrasso  
Senate Environment and Public Works Committee  
410 Dirksen Senate office Building  
Washington, DC 20515

Chair Betty McCollum  
House Appropriations Subcommittee  
Interior, Environment, and Related Agencies  
2007 Rayburn House Office Building  
Washington, DC 20515

Chair Lisa Murkowski  
Senate Appropriations Subcommittee  
Interior, Environment, and Related Agencies  
522 Hart Senate Office Building  
Washington, DC 20515

Chair Carolyn B. Maloney  
House Committee on Oversight and Reform  
2157 Rayburn House Office Building  
Washington, D.C. 20515

Chair Ron Johnson  
Senate Committee on Homeland Security and Governmental Affairs  
340 Dirksen Senate Office Building  
Washington, D.C. 20515

Dear Chairmen and Chairwomen:

On behalf of Public Employees for Environmental Responsibility (PEER), I am writing to seek your assistance in securing a review by the Government Accountability Office (GAO) of recent U.S. Environmental Protection Agency (EPA) social media messages that appear to violate statutory prohibitions on the use of appropriated funds for communications that are self-aggrandizing, constitute propaganda, and/or are purely partisan.

As you know, the Consolidated Appropriations Act, 2020 (Public Law 116-93) expressly prohibits the use of any federal appropriations for publicity or propaganda not authorized by Congress. Section 718 of that law reads:

“No part of any appropriation contained in this or any other Act shall be used directly or indirectly, including by private contractor, for publicity or propaganda purposes within the United States not heretofore authorized by Congress.”

Our review of recent tweets from the official EPA account of Administrator Andrew Wheeler finds numerous social media posts which appear to violate this prohibition in that several messages constitute either self-aggrandizing puffery or are purely political in nature.

The last time that GAO looked at this precise issue concerned an April 2018 EPA tweet about the Senate confirmation of an official to the position of Deputy Administrator. That tweet identified a particular political party by name and stated that Senators of that party were unable to block the confirmation. GAO concluded that EPA did not violate the government-wide publicity or propaganda prohibition because, despite its inclusion of some political content, the tweet maintained a connection to EPA's official business.<sup>1</sup>

While GAO has traditionally afforded agencies wide discretion in their informational activities, this discretion is not unlimited. GAO also looks to whether the agency communication tends to emphasize the importance of the agency or a particular person, program, or activity in question, in the absence of legitimate informative content.<sup>2</sup> Further, GAO interprets Section 718 to ensure that communications with the public are free from explicitly partisan content.<sup>3</sup>

### *I. Self-aggrandizement*

GAO defines self-aggrandizement as publicity of a nature tending to emphasize the importance of the agency or activity in question with an obvious purpose of puffery.<sup>4</sup> By this standard, tweets by Administrator Wheeler, such as this, appear to cross that line:

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<sup>1</sup> <https://www.gao.gov/products/B-330107>

<sup>2</sup> Government Accountability Office, Letter to Senator James Inhofe, B-326944, 11, (Dec. 14, 2015). <https://www.gao.gov/assets/680/674163.pdf> at 15

<sup>3</sup> B-330107 at 5

<sup>4</sup> B-302504, Mar. 10, 2004

“EPA has been, and continues to be, the gold standard in environmental protection agencies worldwide. Under President Trump, we are continuing the incredible clean air, clean water, and clean land progress of the past 50 years.” @EPA, Twitter, (Jul. 10, 2020, 11:44 AM), available at [https://twitter.com/EPA\\_OPA/status/1281615217667997697](https://twitter.com/EPA_OPA/status/1281615217667997697)

This is pure puffery which gives the recipient no useful information about the topic while clearly aggrandizing the agency; its connection to official activities is gossamer thin.

Another typical example is this:

“Under President Trump’s leadership, we continue to clean up the air, clean up our water & clean up our land.” @EPA, Twitter, (Apr. 22, 2020, 2:00 PM), available at <https://twitter.com/EPAAWheeler/status/1253020972107673607>

Here, again, there is a lack of any coherent information about what the agency is doing, where this is taking place, or how the environment is improved. Instead, this tweet more resembles cheerleading than any legitimate communication.

Consider this tweet, as another example:

“EPA is operating in the best interest of all Americans, including those who are working to keep our infrastructure running and monitoring environmental compliance.” @EPA, Twitter, (Apr. 2, 2020, 2:03 PM), available at <https://twitter.com/EPAAWheeler/status/1245773837721051138>

This communication constitutes unsupported self-praise without connection to any concrete, or even identifiable, action or policy.

Many of the more egregious examples concern tweets about EPA’s upcoming 50<sup>th</sup> anniversary this December. A number of communications consist of unadulterated yet unspecific self-praise:

“As we celebrate #EPAat50, it is more important than ever EPA send the message to the public that when we encounter environmental threats, we will address them head on. We want the world to know, that when they encounter environmental threats, we are ready to help.” @EPA, Twitter, (Feb. 27, 2020, 12:41 PM), available at <https://twitter.com/EPA/status/1233084653814374400>.

Even when Mr. Wheeler’s tweets do reference EPA business, they do not impart any information about what the agency is doing but instead disparage perceived opponents, such as this one:

“**Fake News:** @NYT is spreading inaccurate info & misleading the public. That is not what America needs right now.” @EPAAWheeler, Twitter, (Mar. 27, 2020, 12:18 PM), available at <https://twitter.com/EPAAWheeler/status/1243573103550181378>.

This message suggests that any critical analysis of EPA actions or policies is somehow unpatriotic.

In short, these are other communications cited (see attachment) are the epitome of self-aggrandizement. These unalloyed self-congratulations are directed at public audiences yet are not leavened by any description of any official activities that would inform the public. If these message pass legal muster with GAO then the ban on self-aggrandizing puffery will have lost all meaning.

## 2. *Partisan Communications*

The GAO standard for purely partisan communications are those which “are entirely political and are completely devoid of any connection to the official business of the agency,” and may include communications “designed to aid a political party or candidate.”<sup>5</sup>

Many of Mr. Wheeler’s tweets have little or nothing to do with EPA, yet promote the performance of President Trump, a declared candidate for reelection. This is a typical example:

“The President continues to show strong leadership during this time of a National Emergency. He is taking swift actions to reduce the spread of COVID-19, and looking out for the health, safety and security of all Americans across our great Nation.”  
@EPAAWheeler, Twitter, (Mar. 13, 2020, 4:36 PM), available at <https://twitter.com/EPAAWheeler/status/1238564677799550978>

The steps Mr. Wheeler is praising do not have any apparent connection with EPA activities but instead reflect generalized praise for the President, who is a declared candidate for reelection.

Below is an example where Mr. Wheeler appears to be campaigning in what many observers regard as a swing-state in the upcoming presidential election:

“Pres Trump has led an economic revival in PA & I was glad to glad to join him to see that progress at the new Shell ethylene cracking plant. The President’s policies are unleashing America’s abundant energy resources & creating new jobs, new products & new hopes across the country.” @EPAAWheeler, Twitter, (Aug. 13, 2019, 6:21 PM), available at <https://twitter.com/EPAAWheeler/status/1161402345386848256>

The goal of creating new products or associated jobs is found nowhere in the EPA mission. Nor is it stated what, if any, EPA role played in bringing about “progress at the new Shell ethylene cracking plant.” Instead, Mr. Wheeler is praising “The President’s policies” rather than any particular action by EPA. Thus, this message carries with it a partisan purpose apart from any legitimate information to the public about EPA.

Some of Mr. Wheeler’s tweets on their face relate to subjects completely outside the ambit of EPA, such as this one:

“President Trump @POTUS is providing the leadership necessary to secure our southern border and re-open the federal government. The common sense compromise the President

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<sup>5</sup> GAO, Letter to Senator Tom Udall, B-330107 at 3 (Oct. 3, 2019). <https://www.gao.gov/assets/710/701928.pdf>

just outlined is one that everyone can & should embrace.” @EPAAWheeler, Twitter, (Jan. 19, 2019, 4:21 PM), available at <https://twitter.com/EPAAWheeler/status/1086735434183557126>

Certainly, EPA lacks any border security responsibilities. Moreover, the reference to the government shutdown relates to partisan disagreements within the U.S. Congress. Mr. Wheeler’s tweet appears to take sides and endorse a political position on pending appropriation legislation, not related to any particular EPA action.

Still other Wheeler tweets endorse programs sponsored by the administration that are completely outside the jurisdiction of EPA, such as this one:

“The Trump Administration remains committed to helping communities develop & strengthen their local food economy by investing in #opportunityzones, some of which have been hard hit by the coronavirus outbreak.” @EPAAWheeler, Twitter, (May 14, 2020, 11:10 AM), available at <https://twitter.com/EPAAWheeler/status/1260950542261592069>.

Even where Mr. Wheeler’s messages make tangential references to EPA responsibilities, they appear to be written more like campaign ads than any legitimate effort to inform the public about a specific EPA action or policy:

“Under @realDonaldTrump’s leadership our economy is booming, air & water quality continually improving, and we are bringing real opportunities to America’s forgotten communities.” @EPAAWheeler, Twitter, (Feb. 28, 2020, 12:24 PM), available at <https://twitter.com/EPAAWheeler/status/1233442916825214976>.

A constant in all these messages, however, is a naked boosterism of the White House which appears to be purely partisan in nature and lacking any substantive information value.

### **Anti-deficiency Act**

Since EPA obligated and expended appropriated funds in making these communications, any violation of Section 718 would also constitute violations of the Anti-deficiency Act.<sup>6</sup> This statute provides that violators shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure.<sup>7</sup> as the agency’s appropriations were not available for these prohibited purposes.

### **Conclusion**

The use of official social media by federal agencies is relatively new. Use of these social media platforms is growing substantially. We would urge the Congress to take a new look at this phenomenon to ensure that it is serving a truly public, rather than a narrowly partisan, purpose, not just for this but for future administrations.

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<sup>6</sup> 31 U.S.C. § 1341(a)(1)(A)

<sup>7</sup> 31 U.S.C. § 1341(c)(1)

Even if these communications we cite above and those that are appended to this letter are not egregious enough to constitute a violation of the restrictions on official self-aggrandizement and partisan communications, PEER would urge you to look at tightening these standards. We believe that the vast majority of voters of any party would be disturbed to see that their tax dollars are used in such a frivolous and disingenuous fashion.

Thank you in advance for your attention to this request.

Respectfully,

A handwritten signature in black ink, appearing to read "Tim Whitehouse". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Tim Whitehouse  
Executive Director

Enclosure