

October 31, 2017

Arthur A. Elkins, Jr.
Inspector General
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W. (2410T)
Washington, DC 20460

Re: Request for Investigation of Dr. Nancy Beck's Participation in Rulemaking
Involving Her Former Employer and Review of Ethics Authorization

Dear Mr. Elkins:

Citizens for Responsibility and Ethics in Washington ("CREW") respectfully requests that the Office of Inspector General ("OIG") investigate whether Deputy Assistant Administrator Nancy Beck improperly participated in a rulemaking from which she should have recused herself, and review the subsequent determination by EPA's ethics official that she may fully participate in the rulemaking and similar matters in the future despite her apparent conflicts of interest.

Before she was appointed to the EPA in April 2017, Dr. Beck was a top official at a trade association of chemical manufacturers, the American Chemistry Council ("ACC"), subjecting her to conflict of interest and impartiality rules for matters involving the ACC and its members. During her time there, the ACC filed comments on proposed EPA regulations for chemical risk evaluation and prioritization programs, including some authored by Dr. Beck, and she advocated for the ACC's position on the proposed rules before EPA. When she started at EPA, the agency's ethics official advised Dr. Beck to recuse herself from participating in consideration of the ACC's comments on these rulemakings while a decision about restrictions on her involvement in matters related to her former employer was pending. Nevertheless, during Dr. Beck's first few months at EPA she was "very involved" in the rulemakings and it appears she participated in meetings, discussions, and decisions involving the ACC's comments.

In June, after the proposed rules were revised, the ethics official authorized her to fully participate in rulemaking matters involving the ACC – including decisions related to the ACC's comments – despite the apparent conflict of interest. In addition to investigating Dr. Beck's earlier participation in the rulemaking, an OIG review is needed to determine whether the ethics official gave appropriate consideration to all the relevant factors in deciding that EPA's interest in her full participation in future matters outweighs concerns over the integrity of its programs and operations.

These conflicts of interest concerns call into question the integrity of the decision-making process and the credibility of the program. Dr. Beck's participation in these rulemaking procedures despite her conflicts of interest raises doubts as to whether she was acting in the

interest of the American people or the industry that formerly employed her; the agency's decision to allow her to continue doing so only exacerbates these doubts. As the agency Inspector General, you have the authority to conduct investigations of suspected violations of conflict of interest laws and other government ethics laws and regulations.¹ In this regard, the Office of Government Ethics is available to provide assistance in interpreting government ethics laws and regulations to your office.²

**Dr. Beck's Former Employment with American Chemistry Council
and Appointment to EPA**

On April 30, 2017, Dr. Beck was appointed as the Deputy Assistant Administrator ("DAA") for EPA's Office of Chemical Safety and Pollution Prevention ("OCSPP").³ OCSPP's mission is "to protect . . . the environment from potential risks from pesticides and toxic chemicals."⁴ Among other things, OCSPP is responsible for implementing EPA's chemical risk evaluation and management programs under the Toxic Substances Control Act ("TSCA").⁵ In 2016, the Frank R. Lautenberg Chemical Safety for the 21st Century Act ("LCSEA") was enacted to strengthen TSCA by requiring systematic review of existing chemicals and the evaluation of

¹ 5 C.F.R. § 2638.106.

² 5 C.F.R. § 2638.108(a)(6).

³ See Nancy Beck, Public Financial Disclosure Report, June 13, 2017, available at <https://s3.amazonaws.com/storage.citizensforethics.org/wp-content/uploads/2017/10/24141050/NBeck-new-entrant.pdf>. In addition to questions about Dr. Beck's participation in matters involving her former employer, the mechanism used to appoint her also is cause for concern as it appears to have been an attempt to avoid restrictions imposed by President Trump's ethics pledge. See Executive Order No. 13,770. Dr. Beck was appointed to her EPA position under a special hiring authority established by the Safe Drinking Water Act ("SDWA"), 42 U.S.C. § 300j-10, which is referred to as an "administratively determined" ("AD") position. See Recusal Statement from Nancy B. Beck, Ph.D., DABT, Deputy Assistant Administrator, to Wendy Cleland-Hamnett, Acting Assistant Administrator, June 9, 2017 ("Beck Recusal Statement"), available at https://www.eenews.net/assets/2017/08/08/document_gw_07.pdf. EPA is authorized under the SDWA to appoint "not more than thirty scientific, engineering, professional, legal, and administrative positions within the Environmental Protection Agency without regard to the civil service laws." 42 U.S.C. § 300j-10. It is unclear why Dr. Beck was appointed under the AD special hiring authority given that her DAA position would normally be filled by a non-career member of the Senior Executive Service ("SES"). See *The United States Government Policy and Supporting Positions* (commonly known as the *Plum Book*), Dec. 1, 2016, at 158, available at <https://www.govinfo.gov/content/pkg/GPO-PLUMBOOK-2016/pdf/GPO-PLUMBOOK-2016.pdf>. Because she was hired under the AD special hiring authority, Dr. Beck is not subject to additional ethics restrictions that apply to other political appointees who are subject to the ethics pledge. Executive Order No. 13,770. As part of its investigation, OIG should examine whether it was improper to appoint Dr. Beck using the AD special hiring authority. A recent news report asserted that these "jobs are typically reserved for technical experts, not managers with the authority to give orders." Eric Lipton, *Why Has the EPA Shifted on Toxic Chemicals? An Industry Insider Helps Call the Shots*, *New York Times*, Oct. 21, 2017, available at <https://www.nytimes.com/2017/10/21/us/trump-epa-chemicals-regulations.html>. At the request of Senator Tom Carper (D-DE) and Senator Sheldon Whitehouse (D-RI), the General Accountability Office also is reportedly looking into whether EPA improperly used the AD special hiring authority to circumvent President Trump's ethics pledge. See Dino Grandoni, *Government watchdog to launch probe into EPA's hiring practices*, *Washington Post*, Sept. 8, 2017, available at https://www.washingtonpost.com/news/powerpost/wp/2017/09/08/government-watchdog-to-launch-probe-into-epas-hiring-practices/?utm_term=.86dfd23ab034.

⁴ See <https://www.epa.gov/aboutepa/about-office-chemical-safety-and-pollution-prevention-ocspp>.

⁵ *Id.* See also 15 U.S.C. §§ 2601-29.

chemicals on the basis of the health risks they post.⁶ As the senior non-career appointee in the OCSPP, Dr. Beck is responsible for overseeing implementation of the LCSA. One of EPA's obligations under the new law is issuing a series of EPA rules known as the "TSCA framework rules."

Before her appointment, Dr. Beck served for more than five years as the ACC's senior director for regulatory science policy, and was highly paid for her services.⁷ The ACC is a trade association that "represents a diverse set of companies engaged in the business of chemistry."⁸ The ACC also is a registered lobbying organization, and reported spending \$9 million on lobbying activities in 2016 representing the interests of more than 170 companies.⁹

Dr. Beck's work for the ACC involved "advancing approaches to improve chemical risk assessment including comments to Federal Agencies on existing approaches."¹⁰ Dr. Beck was deeply involved at the ACC in matters related to the implementation of the LCSA, including by submitting comments and testifying in support of the ACC's positions. On August 24, 2016, for example, Dr. Beck signed and submitted comments to EPA on behalf of the ACC on initial TSCA framework rules to implement the LCSA with regard to the process for evaluating the risk of chemicals.¹¹ The ACC submitted other TSCA/LCSA rulemaking comments at around the same time,¹² and Dr. Beck presented the ACC's views at EPA's August 9, 2016 public meeting.¹³ The month before she was appointed to EPA, Dr. Beck also submitted written testimony on behalf of the ACC to the U.S. Senate, in which she challenged EPA's interpretation

⁶ See Gina McCarthy, *TSCA Reform: A Bipartisan Milestone to protect Our Health from Dangerous Chemicals*, EPA Blog, June 22, 2016, available at <https://blog.epa.gov/blog/2016/06/tsca-reform-a-bipartisan-milestone-to-protect-our-health-from-dangerous-chemicals/>.

⁷ Nancy Beck, Public Financial Disclosure Report. Dr. Beck reported receiving a salary and bonus of \$322,243 for 2016 and 2017 up to the date of filing. See also American Chemistry Matters: A Blog of the American Chemistry Council, "Author Archive: Nancy Beck, Ph.D., D.A.B.T.", https://blog.americanchemistry.com/author/nancy_beck/.

⁸ ACC website, "About the American Chemistry Council" page, <https://www.americanchemistry.com/About/>. See also Letter from Nancy B. Beck, PhD, DABT, ACC Senior Director, Regulatory and Technical Affairs, to Wendy Cleland-Hamnett, Director, Office of Pollution Prevention and Toxics, Environmental Protection Agency, Aug. 24, 2016 ("Beck/ACC Risk Evaluations Comments"), at 1, n.1, available at <https://www.americanchemistry.com/Comments-on-EPA's-Development-of-LCSA-Risk-Evaluation-Rule.pdf>.

⁹ See ACC website, "Our Industry" page, https://www.americanchemistry.com/Our_Industry/; American Chemistry Council, *First Quarter 2016 Lobbying Disclosure Report*, Clerk of the House of Representatives, available at <http://disclosures.house.gov/ld/ldxmlrelease/2016/Q1/300800307.xml>; American Chemistry Council, *Second Quarter 2016 Lobbying Disclosure Report*, Clerk of the House of Representatives, available at <http://disclosures.house.gov/ld/ldxmlrelease/2016/Q2/300819338.xml>; American Chemistry Council, *Third Quarter 2016 Lobbying Disclosure Report*, Clerk of the House of Representatives, available at <http://disclosures.house.gov/ld/ldxmlrelease/2016/Q3/300838102.xml>; American Chemistry Council, *Fourth Quarter 2016 Lobbying Disclosure Report*, Clerk of the House of Representatives, available at <http://disclosures.house.gov/ld/ldxmlrelease/2016/Q4/300851287.xml>.

¹⁰ Nancy Beck, Public Financial Disclosure Report.

¹¹ Beck/ACC Risk Evaluation Comments.

¹² Mike Walls, *ACC Files Comments to Inform EPA's Development of Rules Under LCSA*, American Chemistry Matters blog of the ACC, Aug. 26, 2016, available at <https://blog.americanchemistry.com/2016/08/acc-files-comments-to-inform-epas-development-of-rules-under-the-lcsa/>.

¹³ Beck/ACC Risk Evaluation Comments at 4.

of the scientific standards that would be used to implement the LCSA.¹⁴ Soon after, and still during Dr. Beck's tenure at ACC, the group submitted a comment letter on the risk evaluation rule,¹⁵ which among other things called for changes to the proposed rule and "specific definitions like 'Best Available Science' and 'Weight of the Evidence.'" It also ask[ed] that the E.P.A. change the rule so that 'all' uses of a chemical are not considered during a risk evaluation, only certain ones."¹⁶

Around the time that she started at EPA, Dr. Beck sought permission to participate in specific party matters involving the ACC, including certain aspects of the TSCA framework rulemaking.¹⁷ The basic principles of public service codified in the standards of ethical conduct for executive branch employees require those employees to "act impartially and not give preferential treatment to any private organization or individual."¹⁸ Specifically, a government employee may not participate in any specific party matter involving her former employer for a year after leaving that employer where "the circumstances would cause a reasonable person with knowledge of the relevant facts to question [her] impartiality in the matter," unless she receives authorization from the agency ethics official.¹⁹ As discussed below, EPA's ethics official interpreted this provision to require Dr. Beck's recusal from participation in meetings, discussions, and decisions relating to individual comments submitted by ACC in rulemaking matters, until she was authorized otherwise.

EPA Designated Agency Ethics Official and Acting General Counsel Kevin S. Minoli apparently advised Dr. Beck at the time of her request not to participate in at least the aspects of the TSCA framework rulemakings that involved consideration of the ACC's comments.²⁰ In a June 8, 2017 memo to Dr. Beck, Mr. Minoli noted "[w]hile you can ethically work on

¹⁴ Written Statement of Nancy B. Beck, Ph.D., DABT, Senior Director of Regulatory & Technical Affairs, American Chemistry Council, Before the U.S. Senate Committee on Homeland Security and Governmental Affairs, Subcommittee on Regulatory Affairs and Federal Management, Regarding A Hearing on the Agency Use of Science in the Rulemaking Process: Proposals for Improving Transparency and Accountability, Mar. 9, 2017, *available at* <https://www.americanchemistry.com/ACC-Senate-Testimony-on-Agency-Use-of-Science-in-the-Rulemaking-Process.pdf>.

¹⁵ Letter from Sarah Brozena, ACC Senior Director, Regulatory and Technical Affairs, to Docket Control Office (7407M), EPA Office of Pollution Prevention and Toxics (Mar. 20, 2017), *available at* <https://www.americanchemistry.com/ACC-Comments-on-EPA-Proposed-Rule-for-Prioritization-under-Lautenberg-Act.pdf>.

¹⁶ *E.P.A. and Toxic Chemicals Rules*, *New York Times*, Oct. 21, 2017, at 287, *available at* <https://www.nytimes.com/interactive/2017/10/21/us/document-EPA-and-Toxic-Chemical-Rules.html>. In addition, Dr. Beck previously submitted comments on behalf of ACC on draft EPA risk assessments for chemicals that EPA has proposed to restrict under section 6 of TSCA. Letter from Nancy Beck, ACC Senior Director, Regulatory and Technical Affairs, and Christina Franz, ACC Senior Director, Regulatory and Technical Affairs, to Ms. Wendy Cleland-Hamnett, EPA (Mar. 15, 2013), *available at* <https://www.americanchemistry.com/Policy/Chemical-Safety/TSCA/ACC-Comments-on-EPA-Work-Plan-Chemical-Assessments.pdf>.

¹⁷ Memorandum from Kevin S. Minoli, Designated Agency Ethics Official and Acting General Counsel to Nancy Beck, Ph.D., DABT, Deputy Assistant Administrator, Office of Chemical Safety and Pollution Prevention, June 8, 2017 ("Minoli Memorandum"), at 1, *available at* https://www.eenews.net/assets/2017/08/08/document_gw_08.pdf.

¹⁸ 5 C.F.R. § 2635.101(b)(8).

¹⁹ 5 C.F.R. § 2635.502(a), (b).

²⁰ Minoli Memorandum.

rulemaking in general, you have *been advised – and understand* – that you cannot participate in any meetings, discussions or decisions that relate to any individual ACC comment nor attend any meeting at which ACC is present.”²¹ Mr. Minoli also stated that “[u]ntil now, you have recused yourself from participating personally and substantially in those comments to rulemaking that were offered by ACC.”²² Although Mr. Minoli’s statement indicates that Dr. Beck was advised not to participate in those matters, the evidence indicates that she did so.

**Dr. Beck’s Apparent Participation in Discussions and Decisions
Involving the ACC’s Comments**

Dr. Beck began her work at EPA at a critical time for the TSCA framework rulemakings, which had been moving forward for several months. On December 19, 2016, EPA issued an initial list of 10 chemical substances that were to be the subject of chemical risk evaluations to determine whether they present an unreasonable risk of injury to health or the environment.²³ The first of the framework rules, establishing procedures for prioritization of chemicals under TSCA to implement the LCSA, was proposed on January 17, 2017.²⁴ On January 19, 2017, EPA issued proposed procedures for chemical risk evaluations under TSCA to implement the LCSA – the subject of the comment signed by Dr. Beck.²⁵

After Dr. Beck’s arrival at EPA, the proposed rules were significantly revised, then finalized. The updated rules were transmitted to the Office of Management and Budget (“OMB”) for interagency review between May 23, 2017 and June 1, 2017,²⁶ and on June 22, 2017, under Dr. Beck’s oversight, EPA issued the final TSCA framework rules to implement the LCSA.²⁷ Among the final rules EPA issued was one to “establish EPA’s process for evaluating high priority chemicals to determine whether or not they present an unreasonable risk to health or the environment” and to clarify “EPA’s authority to determine what uses of a chemical are appropriate for risk evaluation.”²⁸

²¹ *Id.* at 2 (emphasis added).

²² *Id.* at 3.

²³ Notice of Designation of Ten Chemical Substances for Initial Risk Evaluations Under the Toxic Substances Control Act, Dec. 19, 2016, *available at* <https://www.federalregister.gov/documents/2016/12/19/2016-30468/designation-of-ten-chemical-substances-for-initial-risk-evaluations-under-the-toxic-substances>.

²⁴ 82 Fed. Reg. 4825 (Jan. 17, 2017).

²⁵ 82 Fed. Reg. 7562 (Jan. 19, 2017).

²⁶ Office of Information and Regulatory Affairs (“OIRA”) Conclusion of EO 12866 Regulatory Review, *Procedures for Prioritization of Chemicals for Risk Evaluation Under the Toxic Substances Control Act* (Final Rule received from EPA/OCSPP on May 23, 2017), *available at* <https://www.reginfo.gov/public/do/eoDetails?rrid=127377>; OIRA Conclusion of EO 12866 Regulatory Review, *Procedures for Evaluating Existing Chemical Risks Under the Toxic Substances Control Act* (Final Rule received from EPA/OCSPP on June 6, 2017), *available at* <https://www.reginfo.gov/public/do/eoDetails?rrid=127399>.

²⁷ Press Release, EPA, *EPA Marks Chemical Safety Milestone on 1st Anniversary of Lautenberg Chemical Safety Act, Agency Meeting Statutory Responsibilities and Deadlines*, June 22, 2017, *available at* <https://www.epa.gov/newsreleases/epa-marks-chemical-safety-milestone-1st-anniversary-lautenberg-chemical-safety-act>.

²⁸ *Id.*

There is no question that Dr. Beck worked on the rulemaking. In June, she “told Politico that she ha[d] been ‘very involved’ with the rulemaking for the past two months at EPA.”²⁹ Specifically, Dr. Beck demanded a variety of revisions to the Obama-era draft in the weeks leading up to the June statutory deadline, according to the *New York Times*.³⁰ One particular “area of contention was Dr. Beck’s insistence that the E.P.A. adopt precise definitions of terms and phrases used in imposing rules and regulations, such as ‘best available science’ and ‘weight of the evidence.’”³¹ Another issue involved “the ‘all uses’ standard for evaluating health threats posed by chemicals.”³² Under the “all uses” standard initially proposed by E.P.A., the agency “would consider any possible use of a chemical when determining how to regulate it.”³³ Dr. Beck, however, supported the chemical industry’s position to limit E.P.A. “evaluations to specific intended uses.”³⁴ The *New York Times* examined the language in the Obama-era draft from January 19, 2017, as well as the ACC comments and the text of the final rule from June and “confirmed that the changes that Dr. Beck and the American Chemistry Council sought were written into the new rule *before it was sent to the White House for approval*”³⁵ – that is, during the period when she was advised to recuse herself from working on the ACC’s comments to the rule.

In addition, the *New York Times* obtained copies of notes taken by Wendy Cleland-Hamnett from a June 1, 2017 meeting she attended as EPA’s Acting Assistant Administrator for the Office of Chemical Safety and Pollution Prevention, with Dr. Beck and representatives from the Environmental Working Group (“EWG”), in which the EWG was “pushing Dr. Beck not to include definitions like ‘best available science’ and not to limit the uses of a chemical considered in a risk evaluation. The E.P.A., these environmentalists argued, must consider ‘all uses, entire life cycle,’ of a chemical. . . . Dr. Beck listened, but did not agree to these requests, participants in the meeting said.”³⁶

A summary prepared by the EWG demonstrates the remarkable consistency in the positions proposed by the ACC and those adopted in the final rule with apparent input from Dr. Beck.³⁷ Most notably, the version of the risk evaluation process rules EPA proposed on January 19, 2017 required EPA to look at all conditions of a chemical’s use in evaluating its degree of

²⁹ Annie Snider and Alex Guillen, *EPA Staffers, Trump Official Clashed Over New Chemical Rules*, *Politico*, June 22, 2017, available at <http://www.politico.com/story/2017/06/22/trump-epa-energy-chemicals-clash-239875>.

³⁰ Lipton, *Why Has the EPA Shifted on Toxic Chemicals? An Industry Insider Helps Call the Shots*, *New York Times*, Oct. 21, 2017, available at <https://www.nytimes.com/2017/10/21/us/trump-epa-chemicals-regulations.html>.

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ *E.P.A. and Toxic Chemicals Rules*, *New York Times*, Oct. 21, 2017, at 337, available at <https://www.nytimes.com/interactive/2017/10/21/us/document-EPA-and-Toxic-Chemical-Rules.html> (emphasis added).

³⁶ *Id.* at 336.

³⁷ Melanie Benesh, *New Chemical Safety Rules Show Industry Influence Inside EPA*, *Environmental Working Group Enviroblog*, July 24, 2017, available at <http://www.ewg.org/enviroblog/2017/07/new-chemical-safety-rules-show-industry-influence-inside-epa#.We0-2kyZN3k>.

risk.³⁸ The ACC, in the comments submitted by Dr. Beck in August 2016, argued that the statute allows EPA to choose only certain uses in making its evaluation.³⁹ The final version, almost certainly updated after Dr. Beck joined EPA, reversed EPA's earlier position and adopted the ACC's.⁴⁰ Considering her deep involvement in the issue at the ACC, it is difficult to believe Dr. Beck did not participate in changing the rule to reflect her former employer's view. Similarly, EPA's original proposed rule did not define certain scientific terms of art to leave open the agency's options if the science behind them progressed.⁴¹ The ACC had urged the EPA to define those terms,⁴² and the final rule, revised during Dr. Beck's tenure, again reversed EPA's prior position and adopted the ACC's.⁴³

To be sure, Dr. Beck represented on June 9, 2017 that she had recused herself "from participating personally and substantially in any particular matter involving specific parties in which ACC is a party or represents a party."⁴⁴ Although Mr. Minoli seemingly accepted that assertion,⁴⁵ the evidence appears to contradict this assertion and show that Dr. Beck participated in discussions and decisions involving the ACC's comments prior to June 8 – before the final rule was sent to the White House for approval – despite having been advised not to.

Accordingly, CREW requests that OIG investigate whether Dr. Beck violated the standards of ethical conduct by working on the rulemaking, including aspects of it involving the ACC's comments, before receiving authorization to do so and after being advised not to.

Mr. Minoli's Ethics Advice and Authorization to Dr. Beck

On June 8, 2017, while Dr. Beck was actively participating in the TSCA framework rulemaking and after those rules had been sent to OMB for interagency review, Mr. Minoli issued a memorandum authorizing Dr. Beck "to participate fully in matters of general applicability, including rulemaking, including consideration of any comments that were made by ACC."⁴⁶ In deciding whether to grant such an authorization under the standards of ethical conduct, an agency ethics official must determine whether "the interest of the Government in the employee's participation" outweighs concerns over the "integrity of the agency's programs and operations."⁴⁷ As Mr. Minoli noted in the memorandum, the following factors are taken into consideration under 5 C.F.R. § 2635.502(d):

- (1) The nature of the relationship involved;

³⁸ 82 Fed. Reg. 7562, at 7566, 7578.

³⁹ Beck/ACC Risk Evaluations Comments, at 10.

⁴⁰ 40 C.F.R. § 702.9.

⁴¹ 82 Fed. Reg. 7572.

⁴² Beck/ACC Risk Evaluations Comments, at 14.

⁴³ 40 C.F.R. § 702.1.

⁴⁴ Beck Recusal Statement.

⁴⁵ Minoli Memorandum at 3.

⁴⁶ *Id.* at 2.

⁴⁷ 5 C.F.R. § 2635.502(d).

- (2) The effect that resolution of the matter would have upon the financial interest of the person affected in the relationship;
- (3) The nature and importance of the employee's role in the matter, including the extent to which the employee is called upon to exercise discretion in the matter;
- (4) The sensitivity of the matter;
- (5) The difficulty of reassigning the matter to another employee; and
- (6) Adjustments that may be made in the employee's duties that would reduce or eliminate the likelihood that a reasonable person would question the employee's impartiality.

In the memorandum, Mr. Minoli asserted that he considered the following specific factors in deciding to authorize Dr. Beck's participation in rulemaking matters related to ACC comments:

- (1) Dr. Beck's former position with the ACC as its Senior Director of Regulatory Science Policy and her work "on risk assessment, science policy, and rulemaking issues";
- (2) Dr. Beck's valuable expertise as the ACC's leading expert on the LCSA;
- (3) Dr. Beck's "prior expertise with the regulated industry's perspective" and familiarity with the ACC comments under consideration that she "may well have authored";
- (4) The impracticality to excise her prior knowledge from how she would carry out her duties;
- (5) Neither Dr. Beck nor the ACC would make any further contributions to her ACC defined contribution plan;
- (6) Dr. Beck's "unique expertise, knowledge and prior experience will ensure that the Agency is able to consider all perspectives, including that of the regulated industry's major trade association";
- (7) Dr. Beck served "in the only non-career position" in OCSPP, giving her "a unique role in advising political staff, including the Administrator" in which she "need[s] to be able to consider as many perspectives" as possible; and
- (8) As participation in rulemaking is integral to her position, "the Agency has a strong and compelling interest in ensuring that [Dr. Beck would be] able to advise the Administrator, the Acting Assistant Administrator and career staff to the maximum extent possible."⁴⁸

In granting the authorization, Mr. Minoli failed to properly take into account several factors. Mr. Minoli first failed to consider that Dr. Beck could never impartially review comments that she authored on behalf of her former employer with respect to the TSCA framework rules. To avoid the appearance of lack of impartiality, Dr. Beck should not have been authorized to participate in rulemakings involving any ACC comments for which she was the author or primary drafter, provided significant input, or had oversight responsibility. In this

⁴⁸ Minoli Memorandum at 2-3.

regard, Mr. Minoli also failed to properly take into account the sensitivity of the matter and central role and broad discretion that Dr. Beck had to influence the outcome of this matter. Since the new law would directly impact the chemical industry, it was incumbent upon the EPA as the agency responsible for its implementation to demonstrate impartiality and objectivity and to insulate it from perceived industry biases. Mr. Minoli's failure to consider the sensitivity of the matter and Dr. Beck's role in it leaves the agency vulnerable to allegations of industry bias in the decision-making process. Doing so could cause irreparable harm to the EPA's credibility with respect to these rulemakings and undermine public confidence in the agency's efforts to serve and protect the public's interest.

Mr. Minoli also failed to consider the role and financial interests of Dr. Beck's former employer ACC in this and other EPA rulemaking matters. In 2016, ACC spent \$9 million in lobbying activities representing these and approximately 170 other companies, a portion of which was expended on TSCA matters before EPA. In addition, Dr. Beck was a salaried employee with the ACC when she submitted comments to EPA on the TSCA rules, earning more than \$322,000 in salary and bonus from ACC in 2016 and 2017 prior to joining EPA.⁴⁹

Mr. Minoli also failed to properly consider whether alternative EPA expertise was available. While it may be true that Dr. Beck has expertise in the LCSA and brings an industry perspective, there is no discussion in Mr. Minoli's authorization about whether EPA was otherwise lacking this expertise or perspective.

In granting the authorization to participate in rulemaking involving comments offered by ACC, Mr. Minoli further failed to consider that a blanket authorization covering future EPA rulemaking matters is not appropriate because it does not take into consideration all relevant factors. For example, some pending EPA rulemaking matters will likely have a unique effect on a few members of the ACC and operate more like specific party matters than matters of general applicability, thereby raising greater conflict of interest concerns. Specifically, three rules proposed by EPA under section 6(a) of TSCA in late 2016 and early 2017 targeted three specific chemicals – trichloroethylene (TCE), methylene chloride (MC), and n-methylpyrrolidone (NMP) – that would prohibit their sale for particular categories of use.⁵⁰ The rules targeting TCE and MC will likely have a unique impact on the four companies that are the primary U.S. producers of these chemicals, Axiall Corporation and Olin Corporation for

⁴⁹ Nancy Beck, Public Financial Disclosure Report.

⁵⁰ Trichloroethylene (TCE); Regulation of Use in Vapor Degreasing Under TSCA Section 6(a), 82 Fed. Reg. 7432 (Jan. 19, 2017); Trichloroethylene; Regulation of Certain Uses Under TSCA § 6(a), 81 Fed. Reg. 91592 (Dec. 16, 2016); and Methylene Chloride and N-Methylpyrrolidone; Regulation of Certain Uses Under TSCA Section 6(a), 82 Fed. Reg. 7464 (Jan. 19, 2017).

TCE,⁵¹ and Dow Chemical Company and Occidental Chemical Corporation for MC,⁵² all of which are (or until recently were) ACC members.⁵³ In addition, Dr. Beck previously submitted comments on behalf of ACC on draft EPA risk assessments for chemicals such as TCE and NMP that EPA has proposed to restrict under section 6 of TSCA. Mr. Minoli, however, failed to take into account factors like these in granting Dr. Beck an unlimited authorization to work on rulemaking matters involving the ACC. Because Mr. Minoli failed to consider several important factors in his authorization decision, OIG should review whether that decision was appropriate.

Conclusion

Based on the foregoing, CREW respectfully requests that your office investigate whether Dr. Beck participated in the TSCA framework rulemakings, including discussion and decisions involving the ACC comments, prior to receiving authorization from the agency ethics official to do so, and determine whether she violated the standards of ethical conduct and the ethics recusal mandated by the agency ethics official. In addition, CREW respectfully requests that your office review Mr. Minoli's determination authorizing Dr. Beck to participate in matters of general applicability, including consideration of any comments that were made by ACC in connection with the TSCA framework rules or other rulemaking, and determine whether he gave appropriate consideration to all the relevant factors. In doing so, we suggest that your office consult with the Office of Government Ethics, which is available to provide direct support on the interpretation and application of federal conflict of interest laws and ethics rules.

Sincerely,



Noah Bookbinder
Executive Director

⁵¹ "Economic Analysis of Proposed TSCA Section 6 Action on Trichloroethylene in Dry Cleaning Spot Removers and Aerosol Degreasers," Economics and Policy Analysis Branch, Chemistry, Economics & Sustainable Strategies Division, EPA Office of Pollution, Prevention, and Toxics (Nov. 15, 2016), at 3-6 - 3-7, *available at* https://s3.amazonaws.com/storage.citizensforethics.org/wp-content/uploads/2017/10/24141055/TCE-economic-impact_.pdf. The other producers for TCE have either sold their manufacturing facilities to Olin and Axiall, or produced a relatively de minimis amount of the chemical. "Draft Toxicological Profile for Trichloroethylene," U.S. Department of Health and Human Services, Public Health Service, Agency for Toxic Substances and Disease Registry (Oct. 2014), at 261, *available at* <https://www.atsdr.cdc.gov/toxprofiles/tp19.pdf>.

⁵² "Economic Analysis of Proposed TSCA Section 6 Action on Methylene Chloride and N-Methylpyrrolidone (NMP) in Paint and Coating Removal (EPA Docket EPAHQ-OPPT-2016-0231; RIN 2070-AK07)," Economic and Policy Analysis Branch, Chemistry, Economics & Sustainable Strategies Division, EPA Office of Pollution, Prevention, and Toxics (Jan. 9, 2017), at 2-1, *available at* <https://s3.amazonaws.com/storage.citizensforethics.org/wp-content/uploads/2017/10/24141047/MC-and-NMP-economic-analysis-.pdf>. The only other U.S. manufacturer of MC, SolvChem Inc., is classified as "small" based on Small Business Administration standards.

⁵³ See ACC website, "Member Companies" page, <https://www.americanchemistry.com/Membership/MemberCompanies/#Regular%20Members>; ACC website, "Member Companies" page, archived from Sept. 21, 2016, *available at* <https://web.archive.org/web/20160921111742/https://www.americanchemistry.com/Membership/MemberCompanies/>.