

April 24, 2018

Dear Senators:

We, the undersigned groups, represent people across the United States who are deeply concerned about releases of toxic chemicals from facilities in their communities, and the associated health, safety, and environmental harms. We are writing to urge you to oppose the confirmation of Dow Chemical Company's managing counsel, Mr. Peter C. Wright, to serve as the Assistant Administrator of the U.S. Environmental Protection Agency (EPA) Office of Land and Emergency Management (OLEM).<sup>1</sup> Due to his nearly two decades of work protecting the interests of a corporation with a striking record of hazardous chemical releases and toxic waste sites, Mr. Wright should not be granted the responsibility and decision-making authority to lead OLEM, which would require him to implement and enforce vital health, safety, and environmental laws against his current employer and others like it.

Having spent the bulk of his legal career working on behalf of chemical companies from the inside, Mr. Wright should never have been considered for this position, much less nominated. For almost twenty years, Mr. Wright has represented Dow, now DowDuPont, Inc., one of the world's largest chemical companies and a member of the American Chemistry Council (ACC).<sup>2</sup> The ACC is an industry trade association that has long fought against protections from toxic chemicals.<sup>3</sup>

Dow, DuPont and their subsidiaries are listed as responsible parties for more than 150 toxic waste sites throughout the country under the federal Superfund program—in states ranging from CT, DE, NJ, NY, PA, RI, and VT in the New England/Northeast corridor, to AZ, CA, CO, WA, and even HI, in the West, throughout the Gulf and many other Southern states, and in many Midwestern states including KS, IL, IN, MO, MN, and OH.<sup>4</sup> Should Mr. Wright run OLEM, he will oversee that program, as well as the federal hazardous waste regulatory program that Dow and ACC have sought to weaken for decades.<sup>5</sup>

The White House's nomination announcement states that Mr. Wright "has led Dow's legal strategies regarding Superfund sites and other Federal and State-led remediation matters."<sup>6</sup> A 2016 description of Mr. Wright's work, published by THG Advisors, highlights as one example: "Dow's largest and most significant environmental matter,"<sup>7</sup> the dioxin contamination at Dow's Midland, Michigan facility.<sup>8</sup> In addition, *The Intercept* reports that Dow stated that Mr. Wright has been directly involved in negotiations on 14 Superfund sites, but the names of those sites and other similar matters have not been publicly disclosed.<sup>9</sup> This nomination raises critical questions of transparency and what direct and indirect conflicts of interest Mr. Wright might have because of his current employment. Alarming, during his time at Dow, Mr. Wright has questioned well-established, peer-reviewed scientific data and the U.S. EPA's expert evaluation finding that exposure to dioxins poses a serious threat to human health.<sup>10</sup>

As the head of OLEM, Mr. Wright would also be charged with implementing the Risk Management Program (RMP), including the most recent update to modernize chemical facility safety in the United States via the Chemical Disaster Rule that Administrator Pruitt has suspended and is now under reconsideration.<sup>11</sup> The ACC filed a lawsuit challenging this new

rule and is part of a case in which it is defending EPA's sudden delay of life-saving protections, and calling for the weakening of that rule and program, which regulates 12,500 chemical facilities, including over 50 DowDupont and subsidiary facilities.<sup>12</sup> Over the most recent decade studied, EPA data show that Dow, DuPont, and their subsidiaries together averaged 8 chemical disaster incidents per year, for a total of 82 fires, explosions, or other hazardous releases that caused reportable harm under the existing RMP – killing 2 workers, injuring or causing over 200 people to be hospitalized or seek medical treatment, forcing over 12,000 people to shelter-in-place or evacuate, and causing over \$67.3 million in property damage.<sup>13</sup>

To allow Mr. Wright to take control of these critical programs would be a grave violation of the public trust. At a minimum, it would create an appearance of partiality in favor of the chemical industry that would undermine the foundation of good government. We need someone at the helm of OLEM who can be expected to vigorously protect the health and safety of millions of Americans—including those living in low-income communities and communities of color that face extreme environmental injustices—from the mismanagement of wastes and toxic chemicals.

From the Love Canal and Bhopal tragedies to the current lists of hazardous waste sites and chemical disasters, there is no shortage of proof that companies handling toxic chemicals must be *more* not less strictly regulated for the protection of our health and environment. Given his long history of representing one of the polluting companies he would now be charged with regulating, Mr. Wright is the wrong person for this job. As in-house counsel to a major chemical company whose activities are regulated by OLEM, Mr. Wright has not shown that he has a commitment to serving the public and protecting health, as is required to lead this important part of EPA.

At the very least, we ask you to insist and ensure, through all available oversight mechanisms, that if Mr. Wright is confirmed, he must publicly disclose all matters involving OLEM in which he has ever had any involvement and all matters involving OLEM in which he or his former employers and clients have any current interest. He also should be required to recuse himself from all such matters, as well as any matters (including rulemakings) where there is an appearance of partiality on his part in favor of the chemical industry or other regulated parties. Thank you for your time and for considering our concerns.

Respectfully,

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<sup>1</sup> EPA, About the Office of Land & Emergency Mgmt., <https://www.epa.gov/aboutepa/about-office-land-and-emergency-management>.

<sup>2</sup> White House Announcement (Mar. 2, 2018), <https://www.whitehouse.gov/presidential-actions/president-donald-j-trump-announces-intent-nominate-personnel-key-administration-posts-38/>; About ACC, <https://www.americanchemistry.com/Membership/MemberCompanies/>.

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<sup>3</sup> Union of Concerned Scientists, *Bad Chemistry: How the Chemical Industry’s Trade Association Undermines the Policies That Protect Us* (2015), <https://www.ucsusa.org/center-science-and-democracy/fighting-misinformation/american-chemistry-council-report#.Ws5xgojwaUk>; *see also* cases cited in notes 5, 12, below.

<sup>4</sup> Union of Concerned Scientists, *Peter Wright’s Nomination Means Superfund Conflicts in Almost All 50 States*, <https://blog.ucsusa.org/genna-reed/peter-wrights-nomination-superfund-conflicts-of-interest>; Report of EPA Superfund Program, Noticed Parties at CERCLIS Sites (List-11), Version 1.02 (Oct. 28, 2013), <https://web.archive.org/web/20170612202749/https://www.epa.gov/sites/production/files/2015-09/documents/list-11.pdf> (sorted by region, state, site name, party name).

<sup>5</sup> *See, e.g., NRDC v. EPA*, 755 F.3d 1010 (D.C. Cir. 2014) (vacating a 1998 regulatory exemption for hazardous waste burning, *see* 63 Fed. Reg. 33,782, that Dow sought and ACC defended); *ACC v. EPA*, 337 F.3d 1060 (D.C. Cir. 2003) (rejecting ACC’s challenge to a hazardous waste regulation); *Cement Kiln Recycling Coalition v. EPA*, 255 F.3d 855 (D.C. Cir. 2001) (rejecting challenges by Dow and ACC *et al.* to regulations for hazardous waste burning facilities); *see also* Union of Concerned Scientists, *Peter Wright’s Nomination Means Superfund Conflicts in Almost All 50 States*, <https://blog.ucsusa.org/genna-reed/peter-wrights-nomination-superfund-conflicts-of-interest>.

<sup>6</sup> White House Announcement, note 2.

<sup>7</sup> The Horinko Group, *Ask the Experts- RCRA 2040* (July 11, 2016) [http://www.thehorinkogroup.org/featured\\_column/2016/07/11/ask-the-experts-rcra-2040/](http://www.thehorinkogroup.org/featured_column/2016/07/11/ask-the-experts-rcra-2040/).

<sup>8</sup> EPA, Superfund Site: Tittabawassee River, Saginaw River & Bay Midland, MI Cleanup Activities <https://cumulis.epa.gov/supercpad/SiteProfiles/index.cfm?fuseaction=second.Cleanup&id=0503250#Status>; *see also* Lerner, S., *The Intercept*, March 29, 2018, *Trump’s Nominee To Oversee Superfund Program Spent Decades Fighting EPA Cleanups On Behalf Of Polluters*, <https://theintercept.com/2018/03/29/epa-superfund-scott-pruitt-peter-wright/> (cited and linked by Albeck-Ripka L. *et al.*, *America Before Earth Day: Smog and Disasters Spurred the Laws Trump Wants to Undo*, Apr. 21, 2018, *NY Times*, <https://www.nytimes.com/2018/04/21/climate/environmental-disasters-earth-day.html> (“some people nominated for key positions have direct links to polluting industries”)).

<sup>9</sup> Lerner, *The Intercept*, note 8.

<sup>10</sup> Wright, Peter C. *et al.* Twenty-five Years of Dioxin Cancer Risk Assessment, *Nat’l Res. & Env’t* Vol. 19 No. 4, pp. 31-35 (Spring 2005), [https://www.jstor.org/stable/40924608?seq=1#page\\_scan\\_tab\\_contents](https://www.jstor.org/stable/40924608?seq=1#page_scan_tab_contents).

<sup>11</sup> EPA, Final Amendments to the Risk Management Program (RMP) Rule, <https://www.epa.gov/rmp/final-amendments-risk-management-program-rmp-rule>.

<sup>12</sup> *See Am. Chemistry Council v. EPA*, D.C. Cir. No. 17-1085; Brief of American Chemistry Council *et al.*, *Air Alliance Houston v. EPA*, No. 17-1155 (consol. with No. 17-1181), ECF No. 1715777 (filed Jan. 31, 2018); EPA, 2016 Risk Management Plan (RMP) National Database files (non-OCA) Version, <https://www.regulations.gov/document?D=EPA-HQ-OEM-2015-0725-0311>; *see also* Report of BlueGreen Alliance *et al.*, *A Disaster In The Making* (Apr. 3, 2018; updated Apr. 23, 2018), <https://earthjustice.org/features/toxic-catastrophes-texas-national-chemical-disaster-rule>.

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<sup>13</sup> EPA, OLEM, Risk Management Plan (RMP) Facility Accident Data, 2004-2013 (Feb. 2016), <https://www.regulations.gov/document?D=EPA-HQ-OEM-2015-0725-0002> (searchable, filterable, and sortable by company).