

ONE HUNDRED SIXTEENTH CONGRESS
Congress of the United States
House of Representatives

COMMITTEE ON ENERGY AND COMMERCE

2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115

Majority (202) 225-2927

Minority (202) 225-3641

March 29, 2019

The Honorable Ann Marie Buerkle
Acting Chairman
Consumer Product Safety Commission
4330 East-West Highway
Bethesda, MD 20814

Dear Acting Chairman Buerkle:

We are writing regarding recent disturbing reports¹ that you have coordinated with industry to delay or impede Consumer Product Safety Commission (CPSC) action on unsafe portable generators. We are also concerned that you shared internal work product from another commissioner with industry stakeholders with a note that you are “attempting to discourage” your colleagues from asking a retailer to sell safer products.²

Congress mandated that the CPSC protect consumers from unreasonable risks of injury, develop uniform safety standards, and assist consumers in evaluating the comparative safety of consumer products.³ The correspondence disclosed in the FairWarning article published on March 14, 2019, suggests you are prioritizing the interests of industry over the safety of consumers.

CPSC has a critical consumer protection role in developing product safety standards, policing the marketplace for unsafe products, and enforcing recalls of dangerous products. It is also authorized to pursue civil and criminal penalties against companies who manufacture, distribute, or sell unsafe products. CPSC therefore acts as a regulator of the consumer product industry, and of the companies that comprise that market. The relationship between regulator

¹ *Industries Turn to Bracewell Lobbyists to Scuttle Product Safety Rules*, FairWarning (Mar. 14, 2019) (www.fairwarning.org/2019/03/bracewell-lobbyists-consumer-safety/).

² Email from Ann Marie Buerkle, Acting Chairman, Consumer Product Safety Commission, to Greg Wischstadt (July 18, 2017) (qhi7a3oj76cn9awl3qcqrh3o-wpengine.netdna-ssl.com/wp-content/uploads/2019/01/July18Buerkleemail.pdf).

³ 15 U.S.C. § 2051(b)(1).

and regulated should be arms-length to ensure impartiality and fair enforcement. Enlisting members of the industry to block agency action and offering to assist in their efforts undermines the integrity and effectiveness of CPSC and calls into question whether CPSC is effectively serving consumers.⁴

These concerns are exacerbated by reports that CPSC inaction on portable generator carbon monoxide safety standards due to a proclaimed “turf battle” with the Environmental Protection Agency appears to have been orchestrated by industry lobbyists. This disingenuous and cynical tactic of delaying regulation by pitting two public health agencies against each other is appalling.

Regulated industries should be taking direction from CPSC, not the other way around. To better understand the influence of industry on CPSC activities, please provide the following:

1. All communications between you or your staff (both in the Chairman’s office and your Commissioner’s office as applicable) and any manufacturer, distributor, or retailer of a consumer product or representative thereof, or any trade group or voluntary standards organization regarding the establishment of, or CPSC action on, any consumer product safety standard, recall, or other corrective action; and
2. A detailed description of each time you or your staff in the Chairman’s office (without a full vote of the Commission) has directed CPSC employees to cease work on, delay, impede, or otherwise modify work on a consumer product safety standard, recall, or other corrective action in a manner inconsistent with the recommendation of career staff, including the reasoning for such decision and whether you or your staff discussed the matter with the affected manufacturer, distributor, or retailer of a consumer product, or any trade group, representative, or voluntary standards organization of such.

In responding to this and all requests from the Committee, do not limit your search to documents and communications maintained in the accounts and files of individual CPSC personnel. Your search should include all documents and communications maintained or stored anywhere by the CPSC’s information systems. As part of your response, please include a description of the method and process you followed to conduct the search, including the terms, date ranges, and other parameters you used to collect responsive information and a list of the CPSC information systems you searched.

In addition to CPSC information systems, your search should include any other information systems of applications that many contain information related to the request, including personal phone records, non-government e-mail accounts, SMS-based text messages, direct communications sent or received through social media applications, or other electronic

⁴ Email from Ann Marie Buerkle, Acting Chairman, Consumer Product Safety Commission, to Greg Wischstadt (May 11, 2017) (qhi7a3oj76cn9awl3qcqrh3o-wpengine.netdna-ssl.com/wp-content/uploads/2019/02/May11BuerkleEmail.pdf).

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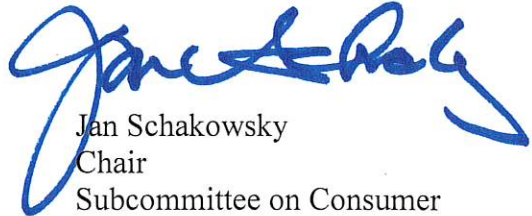
communications services. As part of your response, please provide a list of the CPSC personnel whose non-CPSC accounts were searched.

We request that you provide a written response to our request no later than April 6, 2019. We appreciate your assistance in this matter. If you have any questions, please contact Alex Chasick of the Committee Staff at (202) 225-2927.

Sincerely,



Frank Pallone, Jr.
Chairman



Jan Schakowsky
Chair
Subcommittee on Consumer
Protection and Commerce