

ONE HUNDRED FIFTEENTH 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

April 24, 2018

The Honorable Gene L. Dodaro
Comptroller General
U.S. Government Accountability Office
441 G Street, NW
Washington, DC 20548

Dear Comptroller General Dodaro:

We write to request that the U.S. Government Accountability Office (GAO) investigate the U.S. Environmental Protection Agency's (EPA) enforcement of federal health and environmental safeguards, including EPA's oversight of state enforcement programs. We are troubled by recent reports of a significant decline in enforcement cases initiated by EPA¹ and by proposed cuts to the Agency's budget and staffing.

EPA's mission to protect public health and the environment requires the Agency to implement and enforce our nation's health and environmental laws, including the Clean Water Act, Clean Air Act, and the Resource Conservation and Recovery Act. These laws provide significant benefits to families, communities, and businesses across our country. Their implementation and enforcement have improved public health by reducing exposure to dangerous pollutants. Failure to enforce environmental laws in a timely fashion will increase pollution significantly and threaten public health.

States and the federal government both have important roles in environmental protection. Under many federal environmental laws, EPA can delegate primary enforcement of the law's requirements to states with approved programs. EPA provides policy guidance, technical assistance, and financial assistance for acceptable state regulatory and enforcement programs. In addition, EPA can take enforcement action if a state fails to implement or enforce federal environmental laws sufficiently.

¹ Under Trump, E.P.A. Has Slowed Actions Against Polluters, and Put Limits on Enforcement Officers, *The New York Times* (December 10, 2017).

EPA's Office of Enforcement and Compliance Assurance (OECA) administers EPA's enforcement activities, providing policies and direction for EPA's ten regional offices. These offices take direct enforcement action, and oversee state enforcement programs.

We are concerned that President Trump's and Administrator Pruitt's policies to "streamline" permitting processes, reduce regulatory "burdens" for industry, and defer to states on enforcement will lead to more environmental law violations due to lax enforcement at both the state and federal level. One of the more concerning examples is the December 7, 2017 memorandum issued by Administrator Pruitt informing the regional offices that EPA would no longer enforce certain preconstruction requirements for facilities under the Clean Air Act's New Source Review program.² This memorandum shows no indication that OECA was involved in the development of the policy changes included in the memo. Those changes are tantamount to a blanket "assurance of 'no action'" by EPA in a manner that directly contradicts both the law and long-standing EPA policy regarding the issuance of such assurances.³ Additionally, a May 31, 2017 memorandum from EPA's Office of Civil Enforcement requires EPA regional offices to seek headquarters review prior to the issuance of certain information requests pursuant to the Clean Air Act, the Resource Conservation and Recovery Act, and the Clean Water Act.⁴

OECA establishes national goals to improve enforcement of federal, state, and tribal environmental laws and regulations with input from the public and Agency stakeholders. Initiatives for the three-year period from 2014 to 2017 were established by the Obama Administration.⁵ As part of that three-year plan, EPA was to partner with states and tribal

² U.S. Environmental Protection Agency, *Memorandum from Administrator Pruitt to Regional Administrators on: New Source Review Preconstruction Permitting Requirements: Enforceability and Use of the Actual-to-Projected-Actual Applicability Test in Determining Major Modification Applicability*" (Dec. 7, 2017) (www.epa.gov/sites/production/files/2017-12/documents/policy_memo.12.7.17.pdf).

³ U.S. Environmental Protection Agency, *Memorandum from Assistant Administrator for Enforcement and Compliance Monitoring Courtney M. Price to Assistant Administrators, Regional Administrators, General Counsel, and Inspector General on: Policy Against "No Action" Assurances* (Nov. 16, 1984) (www.epa.gov/sites/production/files/2013-10/documents/noactionass-mem.pdf).

⁴ U.S. Environmental Protection Agency, *Memorandum from Office of Civil Enforcement Director Susan Shinkman to EPA Regional Counsels, Regional Enforcement Directors, Regional Enforcement Coordinators, and Office of Civil Enforcement Division Directors on "Interim Procedures for Issuing Information Requests Pursuant to Clean Air Act § 114, Clean Water Act § 308, and RCRA § 3007* (May 31, 2017) (www.documentcloud.org/documents/4324892-EPA-Clean-Air-Act-and-Its-Power-to-Request.html#document/p60/a392202).

⁵ U.S. Environmental Protection Agency, *Next Generation Compliance: Strategic Plan 2014 – 2017* (Oct. 2014) (<https://www.epa.gov/sites/production/files/2014-09/documents/next-gen-compliance-strategic-plan-2014-2017.pdf>).

enforcement programs to design and implement Next Generation Compliance approaches.⁶ Within this effort, EPA planned to conduct consistent, effective, and efficient reviews of state enforcement programs, and to take action to address serious issues identified with those programs. In late 2017, EPA and the Environmental Council of States (ECOS) discussed taking steps to recalibrate federal and state roles in environmental management and enforcement.⁷

We understand there are many benefits to state-based implementation and enforcement of environmental laws. However, federalism should not be used as a justification for undermining federal oversight and enforcement. Yet, a letter from the Director of Missouri's Division of Environmental Quality to EPA Region 7 in response to Region 7's routine submission to that state of the Region's "Draft EPA Planned Inspections for the Fiscal Year" provides cause for alarm. The letter refers to the principle of cooperative federalism to ask Region 7 "to step back from its routine practice of conducting individual inspections and taking enforcement actions in Missouri."⁸ This request does not reflect an acknowledgement of EPA's responsibility to ensure that Missouri is conducting its regulatory programs in accordance with the law.

As part of GAO's review of the status of EPA's enforcement program, we request your review provide information to address the following questions:

1. What are EPA's environmental law enforcement responsibilities, and to what extent are they changing? For example, are the number and/or nature of the cases being investigated and pursued diverging significantly as compared to that of past Administrations? How does the current number of case referrals sent quarterly from EPA to the U.S. Department of Justice compare to that of past Administrations?
2. To what extent does EPA have the staffing and resources available to oversee and implement its enforcement responsibilities? What proportion of the current enforcement budget is devoted to staff salaries, and what proportion is available to provide for resources to conduct inspections and investigations and to obtain information sufficient to:

⁶ *Id.*

⁷ Letter from John Linc Stine, ECOS President, to Senator Thad Cochran, Senator Lisa Murkowski, Senator Patrick Leahy, Senator Tom Udall, Rep. Rodney Frelinghuysen, Rep. Kevin Calvert, Rep. Nita Lowey, and Rep. Betty McCollum (Jun. 12, 2017), (www.ecos.org/wp-content/uploads/2017/06/Appropriations-Letter-61217-ECOS.pdf).

⁸ September 18, 2017 letter from Ed Galbraith, Director of the Division of Environmental Quality, Missouri Department of Natural Resources to Edward Chu, Deputy Administrator, Region 7, U.S. Environmental Protection Agency.

- a. determine whether state enforcement programs are operating in accordance with the laws; and
 - b. to determine whether violations have occurred and pursue cases to address violations that are discovered?
3. To what extent has EPA altered its procedures to review state programs? What is the effect of the recalibration of EPA and state roles that emerged from the Agency's work with ECOS? How does this recalibration alter the goal that was established under the three-year plan initiated by the Obama Administration?
 4. Have EPA Regional Offices reduced their planned inspections of state programs or permits significantly as compared to past administrations?
 5. Has EPA reduced or eliminated special reviews that were undertaken during the Obama Administration as a result of suspected or identified deficiencies in specific state programs (e.g. Michigan's drinking water program)?
 6. How many information requests have been submitted to OECA for headquarters review since the issuance of the May 31, 2017 memorandum? How many of those information requests have been approved, how many have been denied, and how many remain outstanding?

Please contact Jon Monger or Jean Fruci with the Democratic Committee staff at (202) 225-3641 to discuss the specific scope of work and a timeline for completing the request.

Thank you for your consideration and assistance with this request.

Sincerely,



Frank Pallone, Jr.
Ranking Member



Paul D. Tonko
Ranking Member
Subcommittee on Environment



Diana DeGette
Ranking Member
Subcommittee on Oversight
and Investigations