



Public Employees for Environmental Responsibility

962 Wayne Avenue, Suite 610 • Silver Spring, MD 20910

Phone: (202) 265-PEER • **Fax:** (202) 265-4192

Email: info@peer.org • **Web:** <http://www.peer.org>

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Senator John Barrasso
Chairman
Committee on Environment & Public Works
410 Dirksen Senate Office Bldg.
Washington, DC 20510-6175

Senator Thomas Carper
Ranking Minority Member
Committee on Environment & Public Works
456 Dirksen Senate Office Bldg.
Washington, DC 20510-6175

Re: Nomination of Scott Pruitt as Administrator of the U.S. Environmental Protection Agency

Dears Sens. Barrasso and Carper:

In various public statements, Scott Pruitt has said he believes the EPA does have a role in protecting the environment. But what that role should be, in his mind, is not clearly articulated. His prior statements, such as this line from a 2013 speech, leave a lot of ambiguity as to what precisely he believes is the appropriate role for U.S. EPA:

“...we have air issues across state issues that do affect, I mean, just think about it, you have a power plant in Arkansas that's burning coal irresponsibly or inconsistent with the statue, and it comes over to Oklahoma and Texas. So there is a role for the EPA, it's just that they assert themselves in ways that are above that role... There is a proper role for the federal government, we have to recognize that proper role, and then make sure that they stay within their lane, just like we stay within our lane.”

I am writing to urge that you question Mr. Pruitt to determine what he thinks the proper role for U.S. EPA should be, especially with respect to enforcement and oversight of state-delegated programs. In particular, our concern is whether as EPA Administrator he will further weaken the enforcement of basic anti-pollution laws protecting our air, water and soil.

This concern is magnified because, today, EPA is pursuing fewer criminal cases than at any time in the past 20 years. In addition, the number of prosecutions from EPA investigations during the final year of the Obama administration are half as many as under the tenures of either President Bill Clinton or George W. Bush.

Furthermore, the number of EPA Criminal Investigation Division (CID) investigators has reached a 10-year low. EPA today employs substantially fewer agents (157) than the 200 special agents required by the U.S. Pollution Prosecution Act of 1990. Indeed, there is no EPA criminal enforcement presence at all in Mr. Pruitt's state of Oklahoma – the nearest CID agent is based in Dallas or Houston.

As a result, EPA is not able to act on as many cases or follow-up on citizen reports of pollution violations. Consequently, unknown numbers and volumes of pollutants are entering U.S. waters, soils and atmosphere illegally to the detriment of our public health and environment.

At the same time, EPA is supposed to ensure that state pollution control and enforcement meet national minimum standards. However, according to its Office of Inspector General (IG), EPA has failed to responsibly oversee state anti-pollution enforcement. As the IG concluded in a relatively recent report (*EPA Must Improve Oversight of State Enforcement* 12-P-0113 December 9, 2011):

“EPA does not administer a consistent national enforcement program. Despite efforts by the Office of Enforcement and Compliance Assurance (OECA) and the EPA regions to improve state enforcement performance, state enforcement programs frequently do not meet national goals and states do not always take necessary enforcement actions. State enforcement programs are underperforming: EPA data indicate that noncompliance is high and the level of enforcement is low. EPA does not consistently hold states accountable for meeting enforcement standards, has not set clear and consistent national benchmarks, and does not act effectively to curtail weak and inconsistent enforcement by states.”

In addition, the IG has issued a number of other reports faulting EPA oversight of federally-funded state programs relating to pesticide management, Superfund cleanups, Safe Drinking Water Act implementation, underground storage tank regulation, air pollution testing and wastewater discharge permitting, among other topics.

As a state official who has repeatedly criticized EPA for overreach or inappropriately intruding on state prerogatives, we would respectfully request that members of your committee pose the following questions to Mr. Pruitt in order to determine his view of the proper roles and core responsibilities of EPA. We would also urge you to consider his answers to these ten questions as you review his confirmation:

1. Do you believe that anti-pollution laws in the U.S. are adequately enforced today?
2. Do you believe, as your statements imply, that EPA should confine itself to enforcing pollution violations which cross state lines or are interstate in nature? What do you mean in saying that EPA should “stay within their lane”?
3. Is it ever appropriate in your view for EPA to intervene in an enforcement matter (“overfile”) in which it believes the state response is impermissibly lax? If so, what are those circumstances justifying federal intervention?

4. What is your view of the proper role of criminal and civil enforcement of anti-pollution laws by the EPA?
5. How should EPA exercise oversight over federally-funded programs delegated to a state? Is EPA justified in requiring consistent performance by state programs in administering federally-delegated programs?
6. As Attorney General of Oklahoma, have you ever encountered inappropriate EPA intervention or involvement in an enforcement action? If so, can you elaborate?
7. What steps would you take as EPA Administrator to prevent repetition of the drinking water crisis in Flint, Michigan?
8. Do you intend to comply with the enforcement staffing requirements of the U.S. Pollution Prosecution Act of 1990?
9. Do you support enforcement policies which seek to recoup the profits gained by corporations cutting corners in violation of anti-pollution laws?
10. You have been criticized for compiling a lax environmental enforcement record in Oklahoma. Can you name a single case where you as Attorney General pursued vigorous prosecution of pollution violations?

Regardless of one's position on the existence of human-induced climate change, there should be no controversy about the illegal discharge of toxic wastes, exceedances in discharge permits and improper transport of hazardous materials. How Mr. Pruitt will address these bread-and-butter pollution challenges will tell much about the prospects for his success, or lack thereof, as EPA Administrator.

Sincerely,

Jeff Ruch
Executive Director