

## EPA

### Agency defends enforcement as cops return from Pruitt detail

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EPA officials including Susan Bodine and Michael Fisher gave an enforcement update while speaking at the annual American Bar Association environmental law conference. Senate Committee on Environment and Public Works(Bodine);U.S. EPA (Fisher)

**BALTIMORE** — Most of the U.S. EPA criminal investigators who had been assigned to Administrator Scott Pruitt's security detail are back at work on cases, according to an agency official.

EPA has requested around-the-clock security for Pruitt, a substantial boost in protection for the administrator. The agency had sought to hire more agents to fill out the security detail, an exception to EPA's hiring freeze ([Greenwire](#), Sept. 14).

In the meantime, the agency had temporarily transferred a few criminal investigators — who normally pursue environmental-rule breakers — to the administrator's detail.

"The good news is that we have gotten authorization to staff up the protection function, and that has allowed us to stop most of the temporary assignments of our investigators from case work to protection," said Michael Fisher, director of the legal counsel division in EPA's Office of Criminal Enforcement.

Fisher also said the agency had recently been authorized to hire 10 investigators, adding to its staff of 147 criminal agents.

"Not a ton of people," Fisher said, "but we'll take every group of 10 we can get and put them to work on cases. We have plenty to do."

Fisher spoke at the American Bar Association's annual gathering of environmental lawyers here. Other EPA officials yesterday tried to quell concerns that proposed budget cuts will cause environmental civil and criminal enforcement to drop under the Trump administration.

The administration is committed to "aggressively" enforcing environmental laws and finding "bad actors," said Susan Bodine, President Trump's nominee to head EPA enforcement.

"Administrator Pruitt has made it very clear to his staff that he wants real results that result in environmental improvement, and that means aggressively enforcing environmental laws against the people who violate," said Bodine, who is working as a senior adviser to Pruitt as she awaits Senate confirmation. "And it doesn't matter whether it's a Volkswagen criminal action or a small facility that's dumping hazardous waste. ... Intentional violations of the law won't be tolerated."

But environmental groups say there are troubling signs that enforcement is falling at EPA.

The Environmental Integrity Project said in an August report that EPA and the Justice Department imposed \$12 million in fines on businesses and local governments under consent decrees that settled lawsuits over alleged pollution violations in the first six months of the Trump administration. That's down 60 percent, the group said, from the combined average of penalties levied by the three previous administrations during the same time ([Greenwire](#), Aug. 10).

And another advocacy group, **Public Employees for Environmental Responsibility**, released EPA data showing the agency had lost about 30 criminal special agents since 2012. As the number of special agents has fallen, so have criminal cases and successful prosecutions.

The decline has been dramatic in Clean Water Act and Clean Air Act enforcement actions, PEER said. The Criminal Investigation Division opened 15 air cases in fiscal 2016, the last full year for which data are available, down from 97 in fiscal 2012. Clean Water Act cases have fallen by about two-thirds during that time ([Greenwire](#), Aug. 24).

Bodine disputed Environment Integrity Project's assertion that the Trump EPA has lagged 60 percent behind the Obama administration in obtaining civil penalties from polluters.

"You can't look at a snapshot and say that's a trend," she said yesterday. "It takes a long time to develop these cases."

Deborah Harris, who has been chief of DOJ's Environmental Crimes Section since 2014, blamed budget cutting that began in the Obama administration for hampering enforcement.

"The number of environmental crimes has dropped, I think, more significantly during the past Democratic administration than I had seen in the past," she said.

The Criminal Investigation Division's budget was cut about 20 percent, a deeper cut than for the agency as a whole, Harris said. The division was forced to "scrub their docket," going from more than 800 active criminal investigations to just over 400, according to Harris.

"I think the damage was done before the Trump administration got here," she said. "Who knows what more damage will be done?"

Trump proposed a 31 percent cut to EPA's budget. The Office of Enforcement and Compliance Assurance, which houses both the civil and criminal enforcement activities of the agency, would see its budget cut by nearly \$130 million under that plan. The administration said it would concentrate EPA's enforcement on programs that are not delegated to states.

David Uhlmann, a law professor at the University of Michigan, said Trump's EPA budget proposal was the biggest concern about the future of environmental enforcement.

"There is an Alice in Wonderland quality to the Trump administration's EPA budget proposal," he said.

EPA's law enforcement program is already "stretched dramatically thin," he said, adding that states lack resources for criminal work that EPA does.

But Uhlmann also said it's too early to judge the administration on enforcement.

"If a Gulf oil spill were to happen in this administration or another diesel-gate scandal like the Volkswagen case would emerge, I would expect it would still receive support from the political leadership at EPA and the Justice Department," Uhlmann said. "And I would expect we're still going to see a strong criminal program in this administration."

And Fisher pledged EPA would continue "plugging away with the people we have to get as much work done as we can."

"Nobody's talking about shutting down EPA's criminal program," he said.

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