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6 EPA'S ENFORCEMENT PROGRAM: TAKING

7 THE ENVIRONMENTAL COP OFF THE BEAT

8 TUESDAY, FEBRUARY 26, 2019

9 House of Representatives

10 Subcommittee on Oversight and Investigations

11 Committee on Energy and Commerce

12 Washington, D.C.

13

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16 The subcommittee met, pursuant to call, at 10:32 a.m., in

17 Room 2322 Rayburn House Office Building, Hon. Diana DeGette

18 [chairwoman of the subcommittee] presiding.

19 Members present: Representatives DeGette, Kennedy, Ruiz,

20 Kuster, Castor, Sarbanes, Tonko, Clarke, Peters, Pallone (ex

21 officio), Guthrie, Burgess, McKinley, Griffith, Mullin, Duncan,

22 and Walden (ex officio).

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23 Also present: Representatives Barragan and Soto.

24 Staff present: Mohammad Aslami, Counsel; Kevin Barstow,
25 Chief Oversight Counsel; Jeff Carroll, Staff Director; Brendan
26 Larkin, Policy Coordinator; Jourdan Lewis, Policy Analyst; Perry
27 Lusk, GAO Detailee; Jon Monger, Counsel; Elysa Montfort, Press
28 Secretary; Kaitlyn Peel, Digital Director; Mel Peffers,
29 Environment Fellow; Tim Robinson, Chief Counsel; Nikki Roy,
30 Policy Coordinator; Andrew Souvall, Director of Communications,
31 Outreach and Member Services; C.J. Young, Press Secretary;
32 Jennifer Barblan, Minority Chief Counsel, O&I; Mike Bloomquist,
33 Minority Staff Director; Adam Buckalew, Minority Director of
34 Coalitions and Deputy Chief Counsel, Health; Margaret Tucker
35 Fogarty, Minority Staff Assistant; Brittany Havens, Minority
36 Professional Staff, O&I; Peter Kielty, Minority General Counsel;
37 Ryan Long, Minority Deputy Staff Director; Peter Spencer,
38 Minority Senior Professional Staff Member, Environment & Climate
39 Change; and Natalie Sohn, Minority Counsel, O&I.

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40 Ms. DeGette. The Subcommittee on Oversight and
41 Investigations will now come to order.

42 Today, the subcommittee is holding a hearing entitled EPA
43 Enforcement: Taking the Environmental Cop Off the Beat. The
44 purpose of today's hearing is to explore transit enforcement
45 measures during the Trump administration and whether the EPA is
46 ensuring consistent enforcement and an implementation of federal
47 environmental regulations and laws, as well as resulting impacts
48 on human health and the environment.

49 The chair recognizes herself for the purpose of an opening
50 statement.

51 For decades, this Oversight and Investigations Panel has
52 worked to ensure that the Environmental Protection Agency is doing
53 its job, including enforcement of our nation's environmental
54 laws. This work continues today.

55 It is important to remember that when we talk about
56 enforcement what we are really talking about is protecting our
57 environment and our health from polluters. We are talking about
58 keeping our rivers and waterways clean and harmful pollutants
59 out of the air that each and every one of us breathes. If the
60 EPA isn't enforcing the laws that we already have on the books,
61 then we all pay the price.

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62 Unfortunately, the price that some of us pay is greater than
63 others, as some of our nation's bigger polluters are often located
64 in or near minority and low-income communities. We have a
65 responsibility to care for them, as we do every single person
66 who calls America home. And ensuring the EPA is doing its job
67 and holding polluters accountable is critical toward protecting
68 their health and well-being.

69 Now, I understand that enforcing our environmental laws can
70 often be a long and intensive process. I also understand that
71 there is not one single measurement that can be used to accurately
72 evaluate the Agency's overall efforts to enforce our laws in any
73 given year. That said, there are some indicators that are more
74 telling than others and, when combined with others, can help to
75 paint a pretty clear picture of what is really going on.

76 The numbers you will hear today are from the EPA's own Office
77 of Enforcement and Compliance Assurance and were included in a
78 report released earlier this month detailing the Agency's 2018
79 enforcement and compliance activities. I am sure that the EPA
80 will try to use these numbers today to paint a rather rosy
81 interpretation of the enforcement efforts last year and probably
82 they will talk about how proud they are of everything they did
83 last year. But what I see when I look at this report is an agency

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84 that simply is just sitting on its hands. I see an agency that
85 is giving polluters a free pass and it is putting our health and
86 our environment at risk.

87 When EPA enforcement activities go down, pollution goes up.
88 That is just a fact. And the latest numbers from the EPA show
89 its overall enforcement activities for 2018 were at historically
90 low levels. For example, and again, this is according to the
91 Agency's own numbers, in fiscal year 2018, the EPA assessed
92 polluters a total of \$69 million in civil penalties -- \$69
93 million. That is the lowest level of penalties assessed to
94 polluters since the EPA created the Office of Enforcement over
95 20 years ago in 1994.

96 Now again, I understand that enforcement efforts can often
97 take months or even years to complete and that some of that work
98 done in 1 year may not be accurately reflected in the overall
99 total for any given year but the numbers seem to indicate a
100 disturbing trend. And while no one factor can tell the whole
101 story, there are some indicators that, when taken together, can
102 help us paint a pretty clear picture of EPA's overall efforts
103 to enforce our laws.

104 For example, the total number of facilities that the EPA
105 inspected last year is the lowest since 1994. The total number

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106 of civil cases it initiated is the lowest since 1982. And the
107 number of cases it referred to the Department of Justice, the
108 lowest since 1976, my freshman year in college.

109 So, while I would like to sit here and believe that the EPA
110 is serious about enforcing our federal environmental laws, it
111 is hard to ignore the facts and it is hard to ignore headline
112 after headline which suggests the opposite. For example,
113 Washington Post: "Under Trump, EPA Inspections Fall to a 10-Year
114 Low." New York Times: "EPA Enforcement Drops Sharply in Trumps
115 2nd Year in Office." NBC News: "EPA Criminal Action Against
116 Polluters Hits 30-Year Low under Trump." Christian Science
117 Monitor: "Has the EPA Lost its Teeth?"

118 So if the EPA isn't enforcing our environmental laws, who
119 is? If the EPA isn't acting as the Nation's environmental
120 watchdog that it was created to be, then it is just simply not
121 acting in the best interest of the American taxpayers.

122 The question is why. Why is the EPA sitting on the
123 sidelines?

124 Based on data provided by the Agency, the EPA has cut at
125 least 17 percent of the personnel and that doesn't even include
126 the personnel of the ten regional offices. We are also going
127 to hear that the people who have remained at the EPA are facing

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128 even greater challenges when trying to perform their laws.

129 Congress can do something about this. We need to require
130 compliance. That is why we are having this hearing and that is
131 why we expect the EPA to do its job.

132 So, I am looking forward to the testimony today. I am
133 looking forward to hearing from everybody. And at this point,
134 I am now happy to recognize the ranking member for his opening
135 statement.

136 [The prepared statement of Ms. DeGette follows:]

137

138 ***** COMMITTEE INSERT 1 *****

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139 Mr. Guthrie. Thank you, Chair DeGette for holding this
140 important hearing today.

141 Congress has enacted several important laws to protect the
142 environment and human health and the U.S. Environmental
143 Protection Agency, EPA, is responsible for working within its
144 state, tribal, and federal partners to help to put these laws
145 into effect. The EPA must develop and enforce environmental
146 regulations for laws such as the Clean Air Act, the Clean Water
147 Act, the Safe Drinking Water Act, to name just a few.

148 I am encouraged by EPA's commitment to ensuring compliance
149 with these important environmental laws and I want to thank the
150 thousands of federal and state workers who spent countless hours
151 helping to achieve these goals.

152 Every few years there seems to be a major enforcement action
153 resulting in a substantial amount of penalties and fines. For
154 example, the 2013 enforcement numbers included a settlement with
155 BP following the devastating 2010 Gulf of Mexico spill.

156 Similarly, the 2017 enforcement numbers included the record
157 Volkswagen Clean Air Act civil settlement. In this year, fiscal
158 year 2019, the numbers will include the Fiat Chrysler settlement
159 finalized just last month. In fact, the dollar amount for civil
160 judicial administrative penalties in the fiscal year 2019 is on

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161 track to be one of the largest ever.

162 These enforcement actions are extremely important to help
163 protect the environment, ensure compliance with federal laws and
164 regulations and are the type of enforcement action the Federal
165 Government is best suited to pursue, rather than the States.
166 But the large fine amount sin certain years does not mean the
167 Agency and its partners are any less diligent about protecting
168 the environment in any other years where these large settlements
169 do not occur.

170 Therefore, while monitoring enforcement actions is an
171 important tool to promote compliance with environmental laws and
172 regulations, it is important that we don't lose sight of the most
173 important goals, which are protecting the environment and
174 protecting human health.

175 This administration has emphasized the need to focus on
176 compliance and ensure that a broad range of compliance assurance
177 tools are available for use by the Agency. We have a lot of
178 questions today about what EPA is doing to promote compliance
179 and how programs such as the self-disclosure violations policies
180 can help achieve compliance.

181 I am looking forward to hearing more about how the EPA is
182 working with States to promote State primacy and authorized

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183 programs. As we all know, the EPA works in collaboration with
184 States and tribal organizations to conduct inspections and
185 enforcement. In 2017, the EPA formed a workgroup with the
186 Environmental Council of the States to develop principles and
187 best practices for State and EPA collaboration on a number of
188 issues such as inspections and enforcement.

189 The working group issued their final report in August 2018.

190 I have heard that these initiatives are working and that States
191 are beginning to feel like they have a seat at the table. The
192 EPA also has worked -- also works with other federal agencies
193 when enforcing some of the environmental laws. That is one reason
194 I am glad we have the Honorable Ron Tenpas on the second panel.

195 Mr. Tenpas previously served as an Assistant Attorney General
196 for the Environment and Natural Resources Division of the U.S.
197 Department of Justice and it will be helpful to hear how the
198 Environment and Natural Resources Division at DOJ works with the
199 EPA to ensure robust enforcement of our nation's environmental
200 laws.

201 I think we can all agree that the desired outcome of any
202 compliance program is prevent pollution and protect our
203 environment for ourselves, our children, and our grandchildren.

204 I am looking forward to hearing about EPA -- about how the EPA

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205 is working to accomplish these goals. Considering the ebb and
206 flows of enforcement fines and penalties within an
207 administration, let alone between administrations, I hope we
208 don't get ahead of ourselves today and imply that 1 year of
209 slightly lower enforcement accomplishments signals that EPA is
210 not doing its job or ensuring compliance with our nation's
211 environmental laws.

212 And I yield back.

213 Ms. DeGette. Thank you. The chair will now recognize the
214 chairman of the full committee, Mr. Pallone, for 5 minutes for
215 the purposes of an opening statement.

216 The Chairman. Thank you, Madam Chair. Today the committee
217 begins critical oversight of the Trump EPA's enforcement program,
218 something that the previous Republican majority ignored.
219 Congress can pass all the legislation it wants to protect against
220 air pollution, contaminated drinking water, and hazardous
221 chemical risks but, ultimately, the EPA must implement and enforce
222 those laws.

223 It is, therefore, impossible to assess EPA's effectiveness
224 without looking at whether the Agency is enforcing the federal
225 environmental statutes that are already on the books and there
226 is no doubt that the Trump EPA's enforcement records is abysmal,

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227 the worst in decades.

228 Over the past few weeks, news reports suggest that EPA is
229 simply not maintaining the type of vigorous enforcement that is
230 needed to protect our environment and communities from the worst
231 polluters. For example, a report in the Christian Science
232 Monitor found that the number of inspections conducted by the
233 Agency in 2018 were the lowest since records began in 1994. It
234 also reported that the number of civil cases initiated by the
235 EPA was the lowest since 1982 and the number of judicial referral
236 cases for 2018 was 110. That is less than half the average annual
237 number of 239. There is no way to sugar-coat these numbers.

238 It appears that the Trump EPA is relying on industry to
239 voluntarily come forward and disclose when they are not in
240 compliance. Nobody here can really believe that the worst
241 offenders of environmental laws would voluntarily come forward
242 to disclose their violations. EPA must have a robust enforcement
243 presence. The Agency needs to actively conduct investigations
244 to determine whether violations are occurring. It needs to
245 inspect facilities, start cases, and where appropriate, refer
246 cases to the Department of Justice. And the EPA needs to issue
247 penalties that not only make polluters pay when they break the
248 law, but also force polluters to come into compliance so that

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249 they are no longer in violation.

250 And it takes a lot of people to do all of this difficult
251 and resource-intensive work but, unfortunately, the number of
252 staff in the Enforcement Office has continued to drop over the
253 years. This is not surprising, considering President Trump
254 promised to reduce the Agency on the campaign trail to, I quote,
255 little tidbits and then attempted to fulfill that threat by
256 proposing a nearly 23 percent budget cut last year.

257 Now Congress did not let President Trump's draconian
258 proposal take effect but industry heard loud and clear that this
259 President was not prioritizing EPA's work. The Trump EPA was
260 taking the cop off the beat.

261 This extreme budget proposal was essentially a message from
262 the Trump administration to EPA employees that they should scale
263 back their work but without these employees, the EPA simply cannot
264 do its job and make sure our communities are protected from illegal
265 pollution.

266 So I just want to send a message to the dedicated career
267 staff at EPA who are watching today and say a very public thank
268 you. Thank you for continuing to protect human health and the
269 environment through the hard work you do each and every day.
270 It is not an easy task with an administration that simply does

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271 not share your mission.

272 So let there be no doubt that this committee will continue
273 to hold the Trump administration accountable.

274 And let me say, Madam Chair, in closing, you know we talk
275 a lot in this place about the Constitution and the separation
276 of powers. Congress enacts the laws and provides the funding.
277 The Executive is supposed to enforce the law. That is the
278 separation of powers. It is -- you know you learned this in
279 civics. And I just wish that the Trump administration would
280 follow the Constitution. Don't try to enact the laws and decide
281 where the money goes. Do your job. Enforce the law. That is
282 what the Executive Branch is supposed to do. Somehow the Trump
283 administration is simply turning that and the Constitution on
284 its head. And it is very unfortunate but I appreciate the fact,
285 Madam Chair, that we are going to get to the bottom of this
286 enforcement issue and point out the lack of enforcement of this
287 administration.

288 I yield back.

289 [The prepared statement of The Chairman follows:]

290

291 ***** COMMITTEE INSERT 2 *****

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292 Ms. DeGette. The chair now recognizes the ranking member
293 of the full committee, Mr. Walden for 5 minutes for purposes of
294 an opening statement.

295 Mr. Walden. Well good morning, Chair DeGette, and thanks
296 for holding this important hearing today.

297 One of the core missions of the EPA is one that I think we
298 all agree with, for Americans to have clean air, clean land, and
299 clean water. The EPA works toward this worthy goal through a
300 variety of means, including partnerships with State and local
301 governments, grants, the States, nonprofits, educational groups,
302 and others developing and enforcing regulations, studying
303 environmental issues, teaching people, particularly students,
304 about the environment, and through enforcement and compliance.

305 The EPA's Office of Enforcement and Compliance Assurance
306 recently released its fiscal year 2018 EPA enforcement and
307 compliance annual results and concerns have been raised regarding
308 a decline in the 2018 numbers. Well no one is disputing that
309 some of the numbers from 2018 are lower than in past years.
310 Compliance is hard to measure. And you can't simply measure
311 compliance by the number of enforcement actions and the total
312 amounts of fines generated by the EPA each year. You have to
313 have a longer term look. Therefore, I would like to put some

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314 of these concerns into context.

315 There has been a steady decline in the number of federal
316 inspections and evaluations conducted by the EPA since 2012 and
317 there has been a steady decline in the number of civil enforcement
318 initiations and conclusions for the past decade. A decline in
319 these figures is not unique to this administration.

320 In addition, the EPA's fiscal year 2018 results show the
321 EPA's voluntary disclosure program continues to see an increase
322 in the number of facilities that voluntarily disclose violations.

323 Fiscal year 2018 saw a 47 percent increase in facilities
324 self-disclosing violations over 2017, with 532 entities at over
325 1500 facilities voluntarily disclose violations pursuant to EPA's
326 self-disclosure policies. The dramatic increase in self-reports
327 is a good thing, demonstrating that business owners are trying
328 to comply with the complex laws and regulations enforced by the
329 EPA.

330 While there is a downward trend with some of these figures
331 over the course of multiple administrations, some figures
332 fluctuate drastically year to year. For example, the combined
333 civil, judicial, and administrative penalties figure has
334 fluctuated between \$69 million and \$252 million over the past
335 3 decades, not accounting for big spikes in years that contained

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336 big cases such as Volkswagen and BP.

337 While we are only midway through the fiscal year 2019, we
338 already know the number for this year will be high. The EPA has
339 already hit \$262 million in combined civil, judicial, and
340 administrative penalties in this fiscal year, Madam Chair. This
341 is due in part to the resolution of the Fiat Chrysler case, which
342 was settled just last month for more than \$200 million, including
343 the civil penalties, recall, and mitigation programs.

344 In addition, the average length of time it takes between
345 when a case is initially brought to the EPA and when it is settled
346 can be 2 to 3 years, sometimes more. Solely focusing on a 2-year
347 window to assess overall enforcement and compliance trends simply
348 doesn't make sense.

349 And finally, I think it is critical to today's conversation
350 to note the importance of EPA's partnership and cooperation with
351 the States and regions when it comes to enforcement. Now while
352 EPA plays a critical role in the process, the majority of
353 inspections and investigations, as well as the day to day work,
354 are conducted at the State level. Under the theory of cooperative
355 federalism, the States are the ones monitoring most of the
356 enforcement, with the EPA stepping in if there is a failure at
357 the State level or if there is a big and complex case that requires

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358 additional resources or expertise.

359 There appears to be a lot of pressure for the EPA to step
360 in and handle cases that aren't necessarily federal cases but,
361 as a society, we don't typically do that with other issues. For
362 example, the local or state authorities would handle most
363 drug-related offenses and a federal entity, such as the FBI, would
364 only step in if the case was a larger complex case or one that
365 crossed State lines. So why should environmental enforcement
366 compliance be in any different?

367 So in that vein, I am encouraged by the work that has been
368 done by the Environmental Council of States and their cooperative
369 federalism initiative to improve the working relationship between
370 State environmental agencies and the EPA, including the
371 Compliance Assurance Workgroup that has established -- been
372 established to find ways to improve the federal-state
373 relationship in the context of compliance assurance.

374 So I think these are important partnerships that should be
375 embraced and improved to ensure that we are working on
376 environmental enforcement and compliance at all levels of
377 government, Madam Chair, to work towards a common goal, a cleaner
378 environment.

379 I want to thank our witnesses for being here today and I

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380 look forward to the conversation and hope we can have a holistic
381 way to ensure and measure compliance.

382 With that, Madam Chair, I yield back.

383 Ms. DeGette. Thank you so much, Mr. Walden.

384 I ask unanimous consent that the members' written opening
385 statements be made part of the record. Without objection, they
386 will be entered into the record.

387 [The information follows:]

388

389 ***** COMMITTEE INSERT 3 *****

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390 Ms. DeGette. I ask unanimous consent that Energy and
391 Commerce Members not on the Subcommittee on Oversight and
392 Investigations be permitted to participate in today's hearing.

393 Without objection, so ordered.

394 I would now like to introduce our first panel witness for
395 today's hearing. Our witness is Ms. Susan Bodine, who is the
396 Assistant Administrator of the Office of Enforcement and
397 Compliance Assurance of the U.S. Environmental Protection Agency.

398 Welcome, Ms. Bodine, and thank you for appearing in front
399 of our committee. You are aware, I know, that the committee is
400 holding an investigative hearing and when doing so has had the
401 practice of taking testimony under oath. Do you have any
402 objections to testifying under oath?

403 Ms. Bodine. I have no objection to that and I am also aware
404 that whether or not you are under oath, it is a crime to lie to
405 Congress under Title 18.

406 Ms. DeGette. Thank you. Thank you very much.

407 And let the record reflect the witness has responded no.

408 The chair also advises you that under the rules of the house
409 and the rules of the committee, you are entitled to be accompanied
410 by counsel. Do you desire to be accompanied by counsel during
411 your testimony today?

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412 Ms. Bodine. No.

413 Ms. DeGette. Okay, let the record reflect that the witness
414 has responded no.

415 If you would, then, please rise and raise your right hand
416 so you may be sworn in.

417 [Witness sworn.]

418 Ms. DeGette. And as you stated, Ms. Bodine, you are subject
419 to the penalty set forth in Title 18 Section 1001 of the U.S.
420 Code.

421 And with that now, the chair will recognize Ms. Bodine for
422 a 5-minute opening -- a 5-minute summary of their written
423 statement. And in front of you, you can see it, there is a
424 microphone and a series of lights. The light turns yellow when
425 you have a minute left and it turns red to indicate your time
426 has come to an end. And with that, you are recognized. Thank
427 you.

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428 TESTIMONY OF HON. SUSAN BODINE, ASSISTANT ADMINISTRATOR, OFFICE
429 OF ENFORCEMENT AND COMPLIANCE ASSURANCE, U.S. ENVIRONMENTAL
430 PROTECTION AGENCY

431

432 Ms. Bodine. Thank you, Madam Chair, Ranking Member Guthrie,
433 and members of the subcommittee. I am Susan Bodine. I am the
434 Assistant Administrator for EPA's Office of Enforcement and
435 Compliance Assurance.

436 Now, you have my written testimony that gives an overview
437 of our enforcement approach, our ongoing work to increase the
438 efficiency and effectiveness of our enforcement and compliance
439 assurance work, and the examples of the good work that EPA's
440 enforcement staff that I am very proud to share with you. So
441 I want to use my time as an opportunity to begin a dialogue about
442 EPA's enforcement program.

443 Now, some are judging our work based on a narrow set of
444 parameters and then drawing the conclusion that EPA is somehow
445 soft on environmental violators, that EPA doesn't care about
446 compliance with the law and I am here to tell you that that is
447 absolutely not true. This narrative, which appeared in the
448 press, since the beginning of this administration, discredits
449 the tremendous work of EPA's Enforcement and Compliance Assurance

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450 staff. It makes their job more difficult. If a company doubts
451 our resolve, it will take longer to reach a settlement and it
452 could mean that we have to spend the time and the resources to
453 litigate our claims.

454 I was confirmed as the Assistant Administrator in December
455 of 2017. Beginning in March and throughout the spring of 2018,
456 my headquarters staff and I held video teleconferences with the
457 enforcement staff of each of the regions, and I followed those
458 up with regional visits to each of the ten regions over the summer,
459 and then we did another round of VTCs in the fall. Now these
460 interactions are critical because about 1800 of the OECA FTE,
461 the staff, are in the regions and that is where most of the
462 enforcement and compliance assurance work takes place.

463 My message to the staff has been consistent on the VTCs,
464 at all-hands meetings in the regions, and in email messages.
465 And I want to read to you an excerpt from a message that I sent
466 to all of the EPA enforcement staff in June of 2018. We are
467 committed to the protection of human health in the environment
468 by vigorously enforcing the law. There should be no slowdown
469 in our efforts to correct noncompliance. You have my support
470 and my thanks for those efforts. Our goal is to ensure compliance
471 using all of our enforcement and compliance tools, including

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472 formal administrative and judicial enforcement, as well as more
473 informal tools, where appropriate. We will not hesitate to deter
474 serious noncompliance using tools up to and include criminal
475 enforcement. We are working to more timely get a return to
476 compliance and cooperative federalism means that we cooperate
477 with States and we discuss how our combined resources can best
478 address noncompliance. It does not mean that EPA stays out of
479 authorized States.

480 Again, I sent that message to all the staff in June. You
481 can see that I'm pushing back on this myth -- these myths about
482 our enforcement program. A strong enforcement program does not
483 mean that we have to collect a particular dollar amount of
484 penalties or take a particular number of formal actions.

485 When I had my confirmation hearing, Senator Inhofe asked
486 me if I was going to impose a quota on enforcement actions and
487 I assured him that I believe that enforcement is a critical tool
488 but it's not an end to itself. I don't support enforcement
489 quotas. I do support making sure that the OECA, the enforcement
490 staff, are getting credit for their work whether or not they take
491 a formal enforcement action, as long we're achieving compliance
492 with the law.

493 Also at my confirmation hearing, Senator Whitehouse asked

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494 me if I would continue to report the categories of annual
495 enforcement results that had been reported by the prior
496 administration and I assured him that I would. However, I want
497 everyone to understand that these measures do not adequately
498 represent the progress and the results that we are achieving in
499 EPA's Enforcement and Compliance Assurance Program.

500 For example, one of the cases that is cited in my written
501 testimony, Harcros, in that case we addressed compliance with
502 chemical safety regulations at 28 facilities in 18 States. That
503 case counts in our end of year results as one case.

504 The staff are spending a lot of time building State capacity
505 as well, for example, with joint inspections. And if we take
506 a joint inspection in an offer as partnering with the State, it
507 may be that we find violations and the State takes the formal
508 enforcement action and not EPA. We call those State assists but
509 we're getting compliance.

510 We're also developing new measure to capture those efforts
511 because I want the staff to get credit for all the work they are
512 doing.

513 And I'm sorry, Madam Chair, but the staff -- I have to say
514 this. The staff is not sitting on its hands. They are working
515 very hard.

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516 And so I'm sorry, I'm going to go a tiny bit over. My
517 approach isn't identical to my predecessor's. I believe we
518 should focus our enforcement efforts on solving environmental
519 problems but not targeting specific industries but I want to
520 assure you that our enforcement and compliance assurance program
521 continues to play a critical role in protecting human health and
522 the environment.

523 And I'm happy to answer your questions.

524 [The prepared statement of Ms. Bodine follows:]

525

526 ***** INSERT 4 *****

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527 Ms. DeGette. Thank you. It is now time for members to ask
528 questions. And the chair recognizes herself for 5 minutes.

529 Ms. Bodine, thank you for your testimony. And I appreciate
530 that you sent a memo to your staff saying that we are going to
531 robustly enforce the laws but I want to ask you about some of
532 these statistics and most of them are about statistics.

533 And I know the EPA staff are working hard.

534 Ms. Bodine. Thank you.

535 Ms. DeGette. But I also know that their numbers have been
536 depleted and I think we have got some questions about that today.

537 But and I also know that you are upset about some of this
538 press but the press that I am looking at is talking about some
539 of the numbers of the EPA and that is what I want to talk to you
540 about this morning.

541 Now injunctive relief represents the estimated cost of
542 actions taken by a defendant to come into compliance with the
543 law so they are no longer in violation. Is that generally
544 correct?

545 Ms. Bodine. Yes, that is correct.

546 Ms. DeGette. Now the EPA recently announced that in fiscal
547 year 2018, adjusted for inflation, the estimated dollar value
548 of the injunctive relief was \$3.95 billion. Is that correct?

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549 Ms. Bodine. Yes, I believe that is correct.

550 Ms. DeGette. Okay. Now, I looked at a report that was done
551 by the Christian Science Monitor, I mentioned this in my opening
552 statement, which says that the average annual cost of injunctive
553 relief is \$7.74 billion and the EPA's fiscal year 2018 figure
554 was the lowest it had been in 15 years. Are you aware of this
555 report, Ms. Bodine?

556 Ms. Bodine. I read the Christian Science Monitor --

557 Ms. DeGette. Okay, so you are aware of it.

558 Ms. Bodine. I read the article.

559 Ms. DeGette. Okay.

560 Ms. Bodine. But the -- may I?

561 Ms. DeGette. Well, okay, so you know the report.

562 Ms. Bodine. Yes.

563 Ms. DeGette. Now, I also understand the inspections, which
564 are key to EPA's enforcement efforts, are the lowest they have
565 been in a decade. Is that correct?

566 Ms. Bodine. I believe so, yes.

567 Ms. DeGette. Yes, okay, the inspections are the lowest.

568 So moving on, another measurement of enforcement activity
569 is civil penalties, which are monetary assessments paid by a
570 regulated entity because of a violation. Is that generally a

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571 good description of the monetary penalties?

572 Ms. Bodine. I wouldn't say that it was a good measure of
573 enforcement results and I believe they go up and down.

574 Ms. DeGette. Okay but here is what I asked you: Monetary
575 assessments are paid by a regulated entity because of a violation.

576 Ms. Bodine. Yes, that is correct.

577 Ms. DeGette. Okay. Now, EPA's Enforcement and Compliance
578 annual results for fiscal year 2018 indicate that the EPA obtained
579 \$69.47 million in administrative and civil judicial penalties.

580 Is that correct?

581 Ms. Bodine. I believe that is right.

582 Ms. DeGette. And according to a February 8th Washington
583 Post report, the \$69 million in civil penalties represents the
584 lowest in nearly a quarter century. Is that factually accurate?

585 Ms. Bodine. I believe that it is.

586 Ms. DeGette. Okay. Now in your testimony, you say the
587 State of California and the EPA secured a civil -- and I think
588 Mr. Walden mentioned this, too, secured a civil penalty of \$305
589 million for Clean Air Act violations against Fiat Chrysler. Is
590 that right?

591 Ms. Bodine. Yes.

592 Ms. DeGette. Now that case was initiated during the Obama

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593 Administration. Is that correct?

594 Ms. Bodine. There was a notice of violation, I believe it
595 was, in January of 2017.

596 Ms. DeGette. But it was initiated under the Obama
597 Administration.

598 Ms. Bodine. So a notice of violation is not formal
599 enforcement action.

600 Ms. DeGette. Okay. Now, so I didn't ask you about a formal
601 enforcement action.

602 Ms. Bodine. Well --

603 Ms. DeGette. The investigation was initiated during the
604 Obama administration.

605 Ms. Bodine. The investigation was, yes.

606 Ms. DeGette. Thank you.

607 Now, while I appreciate the EPA has brought the important
608 case to a resolution, I continue to be worried that the 2019
609 numbers will reflect -- I wonder if they will reflect civil
610 penalties against a large variety of polluters, in other words,
611 that we won't just have one penalty in this year.

612 So let me ask you the Christian Science Monitor reports that
613 for fiscal year 2018 the number of civil cases initiated by the
614 Agency was the lowest since 1982. Is that correct?

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615 Ms. Bodine. I have no reason to believe it isn't. So I
616 am not going --

617 Ms. DeGette. Okay. And also, the number of cases referred
618 to the Department of Justice were the lowest since 1976. Is that
619 correct?

620 Ms. Bodine. I don't have that number.

621 Ms. DeGette. Okay. Now do you have any reason to doubt
622 that number or do you just not know it?

623 Ms. Bodine. I would have to -- I could respond for the
624 record. I would --

625 Ms. DeGette. That would be great.

626 Ms. Bodine. Yes.

627 Ms. DeGette. So it is just that you don't know the number.

628 Ms. Bodine. Right.

629 Ms. DeGette. Okay. Now last year, the Trump
630 administration proposed cutting the EPA's budget by almost 25
631 percent. Congress didn't go along with that but I wondered about
632 -- wondering about what message this sends to the employees.

633 Is it true that your office has lost nearly 17 percent of
634 its workforce?

635 Ms. Bodine. No, that is not true.

636 Ms. DeGette. It is not? What is the status of the workforce

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637 at this point?

638 Ms. Bodine. So I am talking about the headquarters staff,
639 the OECA staff, our ceiling is in 2018 and hopefully in 2019 as
640 well is 649. We currently have 607 people onboard. I think about
641 nine or more are coming onboard in March.

642 Ms. DeGette. Okay.

643 Ms. Bodine. I have authorized hiring to bring it up to the
644 ceiling.

645 Ms. DeGette. Okay. I am sure some others will follow-up.
646 And my time has expired but I really want to thank you for
647 answering my questions.

648 Ms. Bodine. Sure.

649 Ms. DeGette. The chair now recognizes the ranking member.

650 Mr. Guthrie. Thank you, Madam Chair, for the recognition.

651 Thank you for being here, Ms. Bodine.

652 Each year, OECA reports 12 different metrics to provide a
653 high level of overview of the Agency's enforcement and compliance
654 results for that year, including estimated environmental
655 benefits, criminal and civil enforcement accomplishments, and
656 Superfund accomplishments. In your opinion, can we look at just
657 one of these metrics to determine the strength of EPA's
658 enforcement and compliance program for any given year?

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659 Ms. Bodine. No. These results, which I certain assured
660 Senator Whitehouse I would continue to report, do not accurately
661 reflect the great work that the staff is doing.

662 Mr. Guthrie. So what are some of the limitations of the
663 metrics that EPA reports on each year to demonstrate EPA's
664 enforcement and compliance annual results? What are the
665 shortcomings of the --

666 Ms. Bodine. So what we report in our formal database are
667 only formal actions and so it doesn't reflect the work that we
668 have done cooperating with States. For example, when we go out
669 and we do joint inspections, and we do that often because we are
670 trying to help build State capacity, it doesn't reflect some of
671 the work that we have done even in sophisticated states and cities.

672 For example, in Pittsburgh, we did the assessment of the
673 drinking water program. We are collaborating right now with the
674 State of New Jersey looking at I think it is Newark and their
675 pipes, their lead pipes. We do a lot of work that is not captured
676 in these formal annual results.

677 Mr. Guthrie. Okay. So turning to combined civil,
678 judicial, and administrative penalties figure, last year's number
679 came in at \$69 million, according to the fiscal year 2018 results.
680 What is the current number for fiscal year 2019, understanding

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681 that we are only midway through the year?

682 Ms. Bodine. I know you quoted it or maybe Ranking Member
683 Walden quoted it. I don't have the exact number. I do know that
684 our Fiat Chrysler case, which we lodged, it has not even entered.
685 We had you know with California over \$305 million. We have been
686 collecting other penalties but yes, that number is going to be
687 much higher in 2019.

688 And may I also say that if you look at it, again, as trends,
689 out of the past 11 years, 8 of the past 11 years the annual
690 penalties were less than \$250 million in 8 of the 11 years. So
691 you can't look at averages when you are looking at--and suggest
692 that that represents a trend.

693 We did have 3 years of penalties over a billion and so, again,
694 that makes the averages completely invalid from a statistical
695 standpoint.

696 Mr. Guthrie. Okay. So if you look at the over \$300 million
697 that you quoted, that is including California's enforcement is
698 what you were saying there?

699 Ms. Bodine. Yes.

700 Mr. Guthrie. So we already know that this year will be at
701 least the fourth highest year for combined civil, judicial, and
702 administrative penalties dating back to 1989.

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703 So in addition to formal enforcement actions, EPA engages
704 in, you mentioned, other activities to promote compliance, such
705 as State assists.

706 Ms. Bodine. Right.

707 Mr. Guthrie. Can you describe some of the activities that
708 EPA does to promote compliance with the environmental laws
709 regulations that are not accounted for in these annual metrics?

710 Ms. Bodine. Sure. So one of the things that we are trying
711 to do is encourage companies to get back into compliance quickly.

712 So we revised our inspector guidance so that the inspectors would
713 actually point out to the facilities what the problems were so
714 they could fix them right away. We are also trying to -- we have
715 also told the staff that they need to get the inspection reports
716 back to the facilities so they can fix their noncompliance and
717 try and do that within 70 days. We are continuing to have our
718 compliance assurance centers up and running.

719 And we also have electronic tools that can help. For
720 example, we have in the Clean Water Act area for the permit
721 holders, they have to report electronically. And we can set up
722 our electronic system, and we have, to automatically give them
723 a notice if they have failed to submit a report and we are also
724 developing a new tool where they can automatically get a notice

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725 if their discharge is above the permitted level.

726 So we are building all these tools in to try and get
727 compliance back more effectively, more efficiently, and more
728 quickly.

729 Mr. Guthrie. Okay, thank you. The fiscal year 2018
730 enforcement and compliance results recently released by EPA show
731 that the number of environmental crime cases opened and the number
732 of civil enforcement cases initiations have been gradually
733 declining over the past 10 years. Can you explain why there has
734 been a gradual decline in the number of civil and criminal cases
735 opened each year?

736 Ms. Bodine. So I don't have a good explanation for that.
737 I do know that we opened -- that there had been a decline in
738 the new cases that we opened on the criminal side over 11 years
739 and that we are now increasing. They are now increasing that
740 again, which is wonderful.

741 Mr. Guthrie. Is it just better compliance by people in the
742 industries?

743 Ms. Bodine. It is very hard to measure compliance. And
744 so we don't have a good measure of compliance.

745 But it is true that we are doing a much better job in targeting
746 noncompliance so that goes to the inspection issue. So we don't

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747 need to take a lot of inspections to find -- we can figure out
748 where to expect noncompliance and target accordingly.

749 Mr. Guthrie. Okay, thank you. My time has expired. I
750 appreciate your answers.

751 I yield back.

752 Ms. DeGette. The chair now recognizes the full committee
753 chairman, Mr. Pallone, for 5 minutes.

754 The Chairman. Thank you, Madam Chair, and I wanted to
755 follow-up on kind of where you left off.

756 Ms. Bodine, on the campaign trail, President Trump said he
757 wanted to dramatically cut the EPA and leave only, I quote, little
758 tidbits left. Last year the Trump administration's budget
759 proposal seemed to try to make good on that threat by proposing
760 a nearly 25 percent cut to the Agency. Now of course, Congress
761 didn't go along with that but that is what he threatened or that
762 is what he suggested.

763 And then in September, we had a Washington Post story that
764 noted that during the first 18 months of the Trump administration,
765 nearly 1600 workers left the EPA, while only 400 were hired.
766 And of course just a few weeks ago, your staff informed our
767 committee that your office has lost in excess of 130 enforcement
768 staff since January of 2017.

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769 Now, I know you have said that you authorized to bring it
770 back but how are you going to go about that? I mean do you intend
771 to replace the roughly 130 staff? And you know what is your
772 timetable? How are you going to do that?

773 I guess I am kind of wondering if it is really going to happen.
774 So tell us how it is going to happen and when.

775 Ms. Bodine. So I can only hire up to the FTE ceiling that
776 Congress has provided. And that, again, I believe we have the
777 2018 bill where we had a ceiling of the 649 I believe --

778 The Chairman. Well, let me just interrupt you because of
779 lack of time.

780 I know you have said you intend to do this. What I would
781 like to know is what the timetable is to actually accomplish the
782 goal of reaching this authorized amount.

783 Ms. Bodine. So our personnel processes are working as
784 quickly as possible. When I say I authorized, that means the
785 human resources process is underway. That is what that means.

786 The Chairman. And how long is it going to take? What is
787 your timetable?

788 Ms. Bodine. Can I get back to you on that? Because we are
789 trying. As an Agency, we are trying to speed up that timetable
790 and so let me -- may I get back to you on that for the record

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791 about what our --

792 The Chairman. Yes, but give me like a timetable when this
793 is going to happen.

794 Ms. Bodine. Well, the one I am most familiar with is
795 actually bringing on the criminal investigators, which takes a
796 very long time because of background checks.

797 The Chairman. With the chair's permission, you can provide
798 this in writing.

799 Ms. Bodine. Okay.

800 The Chairman. We would like some details.

801 Ms. Bodine. Okay.

802 The Chairman. Now I also wanted to talk about the EPA's
803 regional enforcement workforce because, of course, you have ten
804 regional offices across the country and you know a substantial
805 amount of the enforcement work occurs at that regional level.

806 How many regional enforcement staff have left the Agency since
807 January of 2017 and how many have been hired?

808 Ms. Bodine. I don't have that number. I would have to
809 provide it for the record.

810 The Chairman. All right.

811 Ms. Bodine. I do know the regions are hiring in the
812 enforcement space as well.

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813 The Chairman. Well this is just as important, right?

814 Ms. Bodine. Right.

815 The Chairman. If you could get back to us --

816 Ms. Bodine. Yes.

817 The Chairman. -- I guess with the permission of the chair
818 and tell us how many you have lost, how many you have hired, and
819 if you intend to make up that difference by replacing them, you
820 know what the timetable is for that as well.

821 Ms. Bodine. Within the congressionally authorized FTE
822 ceiling.

823 The Chairman. Okay. Now, the other thing I wanted to ask
824 you is I made a statement during my opening. I said that it
825 appears that the Trump EPA is relying on industry to voluntarily
826 come forward and disclose when they are not in compliance. What
827 is your response to that? Would you agree that you do have an
828 effort to have them voluntarily come forward and how do you go
829 about that?

830 Ms. Bodine. So EPA's had a self-audit policy in place since
831 2000. In 2008, we expanded that with a new owner audit policy
832 and we are now develop -- we have developed another oil and gas
833 new owner policy that is more tailored to that industry. It was
834 based on a 2016 matter that was done in the previous administration

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835 with a new owner of oil and gas business.

836 The Chairman. Why should I believe that the worst offenders
837 would voluntarily come forward? How is that? I mean you know
838 human nature is such that bad actors don't voluntarily say they
839 are bad. So how is that going to work? How does that work?

840 Ms. Bodine. So I would not suggest that the audit policy
841 is appropriate for the worst offenders. And I would also
842 completely agree that you can't rely on self-disclosure alone,
843 that you need an enforcement program to create the incentive.

844 The Chairman. But how is this of any value? I mean you
845 are sort of saying it has been in place for years. Does it work?
846 Do people voluntarily come forward?

847 Ms. Bodine. Yes, the entities voluntarily come forward,
848 self-disclose, and then certify that they have returned to
849 compliance.

850 The Chairman. What is their incentive to do that?

851 Ms. Bodine. Well, may I give you an example?

852 The Chairman. Sure.

853 Ms. Bodine. So we absolutely do need to still keep
854 inspecting and keep enforcement to create the very incentive.

855 And if you voluntarily disclose and you don't come in to
856 compliance or you don't have full compliance, then there is no

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857 shield to enforcement.

858 We had a situation where a company they self-disclosed under
859 a State audit program. They didn't catch all their violations.

860 And we came in after and did an administrative enforcement action
861 for the violations they did not self-disclose. There was no
862 shield from that State self-disclosure.

863 I mean they didn't know they were out of compliance but it
864 didn't matter. We came back for the ones they did not
865 self-disclose. But we came in, followed on, and did take an
866 enforcement action for the actions that they didn't disclose.

867 The Chairman. I don't see how that is helpful but whatever.

868 Thank you, Madam Chair.

869 Ms. DeGette. The chair recognizes the ranking member of
870 the full committee, Mr. Walden.

871 Mr. Walden. Thank you very much, Madam Chair. And to our
872 witness, thank you for being here today and the work you and your
873 team do around the country day in and day out to protect American
874 consumers.

875 Just for the record, I know in my testimony I said in fiscal
876 year 2018 we saw a 47 percent increase in facility self-disclosing
877 violations over 2017 --

878 Ms. Bodine. Yes.

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879 Mr. Walden. -- 532 entities at 1500 facilities.

880 So to follow-up on what Mr. Pallone said, from your
881 perspective, why do companies come forward?

882 Ms. Bodine. They come forward because if they self-disclose
883 before we find it, so we haven't done the inspection, we haven't
884 taken an action --

885 Mr. Walden. Right.

886 Ms. Bodine. -- then they will get relief on penalties.

887 Mr. Walden. Okay.

888 Ms. Bodine. So we won't --

889 Mr. Walden. So it is a carrot and stick approach.

890 Ms. Bodine. Absolutely.

891 Mr. Walden. And then if you do come in and find things they
892 haven't disclosed, you have still got the stick --

893 Ms. Bodine. Absolutely.

894 Mr. Walden. -- and you are using it.

895 Ms. Bodine. Yes.

896 Mr. Walden. Is that accurate?

897 Ms. Bodine. That is accurate.

898 Mr. Walden. Okay, well that makes sense. And I know it
899 seems to me, I may be off, but I think in the workforce or workplace
900 safety, too, like OSHA rules, in Oregon we had something similar

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901 to that, where you could kind of disclose. Bring them in, they
902 would do a review, and then you could comply and kind of not be
903 in penalty because most employers want to do the right thing.

904 Ms. Bodine. Yes, I will have to take your word for that.

905 Mr. Walden. Yes. No, I understand. And there are some
906 that don't and those are the ones we want you to go after.

907 I think we can all agree the ultimate goal is to safeguard
908 human health and protect the environment and compliance of EPA's
909 environmental laws is necessary to achieve that.

910 So what is OECA doing under your leadership to meet these
911 goals and what changes, if any, have you made to EPA's enforcement
912 or compliance priorities in order to do this?

913 Ms. Bodine. Thank you for that question.

914 So we are looking at our priorities because, as everyone
915 I think here recognizes, the vast majority of the enforcement
916 and inspections happen in the States. And we have very highly
917 skilled staff and we have very good technical resources. So we
918 want to be able to target our resources where we will have the
919 most impact.

920 So we have looked at what we call the National Compliance
921 Initiatives and looked at where should we be focusing our
922 resources. And right now, that is out for public comment. We

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923 had a Federal Register notice asking for the public to comment
924 on where our priorities should be. And what that notice says
925 is that we want to make sure that we are focusing on problems,
926 the environmental problems. So whether it is trying to decrease
927 the number of water segments that don't meet water quality
928 standards, whether it is trying to decrease the number of
929 non-attainment areas in Clean Air Act, as well as trying to focus
930 on vulnerable populations around the country.

931 And so we have initiatives already. For example, for air
932 toxics, we have initiatives like glaring that gets at issues like
933 the EFCs. We are talking. We are asking the public and States
934 whether we should expand our initiatives to include a lead --
935 children's exposure to lead initiative and we are asking about
936 starting a drinking water initiative so we can work with States.

937 And again, what we want to do is focus on these environmental
938 problems.

939 Mr. Walden. All right. And then I have certainly seen a
940 change in the last couple of years when it came to the Superfund
941 site cleanup, especially in the Portland Harbor Superfund case.

942 Ms. Bodine. Yes.

943 Mr. Walden. It has been dragging on for years, and years,
944 and years. And this administration stepped in and said why don't

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945 we get about moving forward and actually cleaning it up. And
946 this is in Portland, not a known Trump red territory. And they
947 were ecstatic that this administration, this EPA was ready to
948 help clear out the regulatory hurdles, or whatever was there that
949 was unnecessary, and move forward.

950 Can you talk a little bit about how you help encourage
951 contaminated site redevelopment and some of these issues?

952 Ms. Bodine. Yes. On Portland yes, I think everybody is
953 in agreement that that needs to move forward. We need to get
954 that cleanup moving.

955 Mr. Walden. Yes.

956 Ms. Bodine. And on redevelopment, yes, we recognize that
957 contaminated properties blight a community and that there are
958 opportunities to bring back the community with redevelopment.

959 And so we are using our enforcement tools to help that and that
960 includes entering into agreements with what we call bona fide
961 prospective purchasers, people who aren't liable. So we can give
962 them comfort, we can give them protection, if they are going to
963 come in and do a redevelopment.

964 And we have had some great examples of that around the
965 country. There was one out in Region 5 where McLouth Steel, they
966 are coming in, it has been a blight on the community for years.

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967 And they are going to come in and tear down buildings that have
968 been decrepit, again, to get rid of an eyesore and allow for
969 redevelopment.

970 So the shift is that we are willing to enter into these
971 agreements.

972 Mr. Walden. All right. I know this committee did great
973 work in the last Congress approving a modernization of the
974 Brownfields Law, bipartisan, I think it was unanimous out of
975 Energy and Commerce and signed by President Trump. And so we
976 want to be your partner in helping clean up these sites at all
977 levels.

978 Ms. Bodine. Yes, the BUILD Act. Thank you very much for
979 that.

980 Mr. Walden. Thank you and I yield back.

981 Ms. DeGette. Thank you. The chair now recognizes the
982 gentleman from California, Mr. Ruiz, for 5 minutes.

983 Mr. Ruiz. Thank you. Welcome, Ms. Bodine.

984 I would like to better understand what EPA is doing to make
985 sure changes in the enforcement program do not disproportionately
986 harm low-income communities and communities of color. History
987 shows us time and time again that federal action and leadership
988 are necessary to prevent environmental injustice.

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989 Ms. Bodine, would you agree that EPA needs to ensure
990 equitable treatment and impact for communities of color and
991 low-income communities when the Agency enforces federal
992 environmental laws and policies?

993 Ms. Bodine. Yes, absolutely.

994 Mr. Ruiz. Last year, EPA's own scientists released a report
995 in the American Journal of Public Health, April 2018, confirming
996 what many underserved, rural, and minority communities already
997 knew, that low-income and people of color are disproportionately
998 affected by air pollution. These findings joined an extensive
999 body of research, which have found that both polluters and
1000 pollution are disproportionately located in low-income and
1001 minority communities.

1002 Would you agree that these findings make it all the more
1003 important to the health and safety of these communities that EPA
1004 effectively enforce against those polluters who break the law
1005 and illegally pollute?

1006 Ms. Bodine. So I absolutely agree with the statement. I
1007 haven't read the article but I agree with the statement you just
1008 made.

1009 Mr. Ruiz. Thank you.

1010 Ms. Bodine, on our second panel, we will hear from both Dr.

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1011 Nelson and Mr. Schaeffer, who both raise important issues about
1012 the critical need for robust EPA enforcement in protecting
1013 minority and poor-resource communities who are often
1014 disproportionately close to polluting facilities. For those
1015 communities that live in close proximity to industrial sites that
1016 pose health risks, can you assure them that you will use all of
1017 EPA's enforcement tools to protect them?

1018 Ms. Bodine. We have made it a priority to address air
1019 toxics, which -- and in talking about our National Compliance
1020 Initiatives, focusing on vulnerable populations.

1021 We also have as one of our priorities compliance with
1022 chemical safety regulations. And again, often you can have
1023 chemicals being used in -- near --

1024 Mr. Ruiz. What do you define as vulnerable populations?

1025 Ms. Bodine. So there are both low-income and minority
1026 communities I believe with research --

1027 Mr. Ruiz. Because of the environmental injustices.

1028 Ms. Bodine. -- and cumulative effects and location.

1029 Mr. Ruiz. Okay. And due to resource, legal, or political
1030 constraints, some States may lack the will or ability to provide
1031 strong environmental protection.

1032 So can you please explain to me what extra enforcement

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1033 measures EPA takes to ensure such communities are adequately
1034 protected if a State is not up to the task?

1035 Ms. Bodine. So in the guidance that we have set out to the
1036 regions interacting with States, we have been very clear that
1037 if it is an authorized program, we are going to look to the States
1038 to take action but if the State doesn't have the capability or
1039 the will to take action and we know there is a violation, then
1040 we absolutely should be stepping in to make sure we are getting
1041 compliance.

1042 Mr. Ruiz. Oftentimes, communities that are resource-poor
1043 that lack social capital do not have the capacity, the knowhow,
1044 or wherewithal to file complaints and to seek the EPA's assistance
1045 in mitigating or preventing some potential environmental
1046 injustice. What does the EPA do to provide those technical
1047 assistance to those low-income, rural, or minority communities?

1048 Ms. Bodine. So my program doesn't have technical assistance
1049 grants. The Superfund program does but we don't have those kind
1050 of community grants but --

1051 Mr. Ruiz. So currently, there is no -- so Superfunds do.

1052 Ms. Bodine. Right.

1053 Mr. Ruiz. If they want to apply for a Superfund --

1054 Ms. Bodine. And there are environmental justice grants that

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1055 are run by the Environmental Justice Program. But so we don't
1056 have enforcement grants to communities of the type that you are
1057 describing.

1058 Mr. Ruiz. So --

1059 Ms. Bodine. But we do have our initiatives --

1060 Mr. Ruiz. So oftentimes it is the communities that inform
1061 you of those violations.

1062 Ms. Bodine. Yes and we definitely pay very close attention.
1063 We have a tips and complaint line and we follow-up.

1064 Mr. Ruiz. So there should be probably some outreach to them
1065 and capacity training.

1066 It is a tragedy and true injustice that in America today
1067 the quality of your air and water and the potential exposure to
1068 hazardous and toxic substances is determined to a significant
1069 extent by your income, your ZIP code, and your race. So EPA can
1070 and should be doing more to protect disenfranchised communities.

1071 Would you agree?

1072 Ms. Bodine. I would agree. And I would agree that that
1073 is why we should be focusing on environmental problems when we
1074 say what should be our priorities, where should we direct the
1075 federal resources.

1076 Mr. Ruiz. Thank you.

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1077 Ms. DeGette. The chair now recognizes the gentleman from
1078 West Virginia, Mr. McKinley.

1079 Mr. McKinley. Thank you, Madam Chairman.

1080 Interesting tone to this discussion so far and it just --
1081 I hope for the audience and those listening in that this is
1082 obviously this is some of the first steps of the election campaign
1083 of 2020.

1084 I was interested in the metrics that were being used as a
1085 measure of success of what your Agency has done and it seems to
1086 be if someone wants to say that you are successful if you have
1087 more inspections and more fines. That seems to be the only
1088 measure that in this room is being used to find out whether you
1089 are successful, regardless of the outcome of what is happening.

1090 And I was looking for some analogies, thinking some analogies
1091 as I sat here listening to this line of rationale. And I think,
1092 even though it is not yours under the EPA but under maybe OSHA,
1093 is the number of coal mines that have been shut down all across
1094 America. As a result of the fact that there aren't coal mines,
1095 there aren't inspections. If we were to use that metric, it would
1096 mean that maybe OSHA is not doing its job because they are not
1097 doing as many inspections as they have done in previous years
1098 or there aren't fines. Well, there aren't coal mines.

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1099 And the same thing is appropriate for our coal-fired
1100 generating plants. We have had some 300 coal-fired generating
1101 plants shut down over the last 10 years. Therefore, you are going
1102 to have fewer inspections. You are going to have fewer fines
1103 as a result of that.

1104 But that is what people seem to be, on the other side of
1105 the aisle are saying that is the way we should be measuring this
1106 is is how many fines and inspections. But at the same time, we
1107 talk about voluntary compliance. And look what has happened.
1108 We didn't sign the Kyoto treaty. We didn't do the Paris Accord.
1109 We have withdrawn from that. But yet, their emissions have
1110 dropped.

1111 We looked at the SOx and NOx gases that you all were very
1112 much active in pursuing through the EPA. The SOx gases have
1113 dropped, since 1990, 92 percent; NOx gases, 84 percent down.
1114 Just in the last 10 years, the CO2 emissions have dropped by
1115 20-some percent. That is not -- maybe it doesn't have as many
1116 fines and inspections but the result is we are accomplishing a
1117 cleaner environment doing it this way.

1118 So having said all that and looking at compliance, voluntary
1119 compliance and self-auditing, you mention in your report, your
1120 written report, that you had talked about MarkWest providing --

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1121 they are using some innovative technology --

1122 Ms. Bodine. Right.

1123 Mr. McKinley. -- to reduce their methane emissions and
1124 other volatile organic compounds. And they are sharing that
1125 information with other people, other institutions because we know
1126 methane is far worse than CO2 in what it does to the atmosphere.

1127 So can you elaborate a little bit about how we might improve
1128 on that or the role that technology might play in this?

1129 Ms. Bodine. Yes, some of what you are getting to,
1130 Congressman, is kind of the force amplifier of some of our
1131 settlements. And MarkWest is a great example because they have
1132 gas pipelines. You have a pigging operation. They didn't know
1133 that they had releases but they did and they developed new
1134 technology. And as part of their settlement, they have made it
1135 available to everyone in the industry with no license, cost
1136 whatsoever. So not only do we get the reductions from that
1137 company but also from other companies.

1138 Another example, Amazon, they were selling unregistered
1139 pesticides on their website in violation of FIFRA. And as part
1140 of that settlement, they agreed to do training. They agreed to
1141 do a lot of monitoring certification. And so not only is Amazon
1142 in compliance but it is a supply chain issue. Everyone in their

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1143 supply chain would be in compliance.

1144 So again, you can't capture that but it is a force multiplier
1145 of some of the work we do.

1146 Mr. McKinley. So let me just close in the 30-some seconds
1147 I have left.

1148 Do you think it is more effective to look at the outcome,
1149 the results that we have had CO2 drop, SOx and NOx gases drop,
1150 or do you think the measure should be what they are talking about
1151 is the number of fines and the number of inspections? Which is
1152 the more effective metric?

1153 Ms. Bodine. Certainly the outcome.

1154 Mr. McKinley. Thank you. I yield back.

1155 Ms. DeGette. The chair now recognizes the gentlelady from
1156 New Hampshire, Ms. Castor -- Ms. Kuster for 5 minutes. We have
1157 Castor and Kuster.

1158 Ms. Kuster, 5 minutes.

1159 Ms. Kuster. Thank you very much and thank you for being
1160 with us.

1161 I just want to take exception to my colleague, Mr. McKinley,
1162 suggesting that this is politically motivated. The health and
1163 wellbeing of my constituents is not politically motivated and
1164 I think we can find common ground.

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1165 But in New Hampshire, we have been dealing with the
1166 Saint-Gobain site in Litchfield that is in my district, which
1167 was pollution by a PFAS, the per- and polyfluorinated compounds.

1168 And fortunately, we have had a settlement but we had to spend
1169 millions of dollars to connect \$2.4 million, as well \$900,000
1170 in loans, and \$600,000 in grants to connect these households to
1171 safe drinking water because their wells were contaminated. It
1172 is not political. The wells didn't distinguish between the Rs
1173 and Ds. These are my constituents and I am trying to keep them
1174 safe.

1175 And my question for you, I have been disappointed by the
1176 EPA's PFAS Action Plan that was published last week because it
1177 doesn't seem to actually include much action. For instance,
1178 while EPA officials said that they intend to move forward to
1179 maximum containment levels for two PFAS chemicals, there was no
1180 commitment in the plan to initiating this regulatory process.

1181 And that means other communities are going to be left to rely
1182 on health advisories that may or may not keep my colleagues'
1183 constituents safe.

1184 What can your office do to help communities that are being
1185 poisoned by PFAS in the air, water, and soil? And I know you
1186 are putting a great deal of reliance on voluntary disclosure but

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1187 what makes you think that companies are going to voluntarily take
1188 on this responsibility, when in fact that was not the case for
1189 us? They had to be caught in the act through testing and through
1190 local community efforts before the company came to the table to
1191 negotiate a settlement.

1192 Ms. Bodine. Thank you. First on the PFAS action plan that
1193 the administrator announced, maybe it was a little over a week
1194 ago, he very clearly makes a commitment to initiate the regulatory
1195 process and establish --

1196 Ms. Kuster. And what is the time line for that?

1197 Ms. Bodine. That I don't know but I would have to take that
1198 back because that is not my program.

1199 Ms. Kuster. Because there is urgency to this. This PFAS
1200 is showing up in water, groundwater all across this country.

1201 Ms. Bodine. And can you tell me the name again of the site
1202 that you are talking about? Because I am familiar with the Air
1203 Force base but I am not --

1204 Ms. Kuster. It is Litchfield, New Hampshire,
1205 Saint-Gobain's.

1206 Ms. Bodine. Oh, okay.

1207 Ms. Kuster. They used to make Teflon and pans and it has
1208 gone into the water.

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1209 Ms. Bodine. Okay.

1210 Ms. Kuster. And we have hundreds of families. They were
1211 on bottled water for a long period of time.

1212 Ms. Bodine. Right.

1213 Ms. Kuster. And now, to the expense of millions of dollars,
1214 we have had to connect them to safe drinking water.

1215 Ms. Bodine. So one of the things that actually my office
1216 is involved in is developing a map, GIS map, where we would
1217 identify on the map all of the locations where we might expect
1218 PFAS contamination to be. Because remember when they did the
1219 unregulated contaminant monitoring for PFAS, it ended in -- that
1220 was part of the 2015 round of monitoring, they found it above
1221 the health advisory in 1.3 percent of the public water systems
1222 and found it at any detection level in about 4 percent. But that
1223 doesn't capture communities with under 10,000 hookups.

1224 So we want the map so you can go and look has there been
1225 a firefighting center there, is there an industry where they have
1226 been using the PFAS. So again, for the very purpose that you
1227 have talked about, which is targeting so people can go then and
1228 do the testing.

1229 Ms. Kuster. Well let me ask you, is there any enforceable
1230 requirement to report a PFAS release? They know, the companies

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1231 that use this technology, use these chemicals know. I mean they
1232 are well aware of the plume right under their facilities and their
1233 sites. In the end, Saint-Gobain's did come to the table and we
1234 were able to negotiate.

1235 But why don't you rely on them? Why do you do this whole
1236 --

1237 Ms. Bodine. So --

1238 Ms. Kuster. -- mapping and not just have a requirement,
1239 an enforceable requirement that the company has to come forward?

1240 Ms. Bodine. That is another action that is in the PFAS
1241 action plan, which is to add PFO and PFAS -- and again, this is
1242 another office that would do this. It is a regulatory action--but
1243 add it to the toxics release inventory, which then would mandate
1244 the reporting of release.

1245 Ms. Kuster. And what is the time line for that?

1246 Ms. Bodine. Again, I would have to answer for the record
1247 because it is not my office.

1248 Ms. Kuster. Well I just want to put on the record the urgency
1249 of families that are being exposed. And I want to thank the Moms
1250 Clean Air Action for being with us today and for families all
1251 across this country who care about their children and the quality.
1252 These are families that are drinking the water and it is not

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1253 just Flint, Michigan. It is my district. It is every district
1254 across this country. And I urge you to bring some urgency to
1255 this.

1256 And with that, I yield back.

1257 Ms. DeGette. The chair now recognizes the gentleman from
1258 Virginia, Mr. Griffith, for 5 minutes.

1259 Mr. Griffith. Thank you very much, Madam Chair.

1260 After reading through some of the testimony, I believe that
1261 we may hear some claims this morning in our next panel about the
1262 New Source Review Program. And I have been through this with
1263 the committee before but there are lots of stories like the ones
1264 out of my district where people are not pursuing improvements
1265 because they are afraid of tripping over the New Source Review
1266 Program and then having to spend a whole lot more money, so they
1267 don't do anything. And that has caused a lot of, I think, a lot
1268 of upgrades not to be done and some of which would have improved
1269 the environment.

1270 Now I know the Americans are paying more than necessary
1271 because of this and others things to improve air quality due to
1272 the overlapping air programs. About 13 programs overlap with
1273 the NSR, New Source Review, and I have legislation to fix all
1274 that but it is not likely to come up in the next couple of years,

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1275 even though I think it is great, common sense reforms that will
1276 benefit the environment.

1277 Ms. Bodine, would you like to speak to the NSR Program,
1278 because you all are doing some things administratively similar
1279 to what my bill would do, and tell us what you are doing on that
1280 and how that relates to other programs that you all are working
1281 on?

1282 Ms. Bodine. So thank you, Congressman. The NSR Program
1283 is run out of the Air Office. And so they would establish the
1284 policies and the regulations. We obviously enforce.

1285 But I do want to mention that for a number of years there
1286 has been a National Compliance Initiative that deals with New
1287 Source Review. Under that as a result and today, and I think
1288 that has already been mentioned perhaps by Congressman McKinley
1289 that sulfur dioxide is down 90 percent in the power sector.
1290 Nitrogen oxide is down by 85 percent in the power sector since
1291 1997. And so when we look at where we should be focusing and
1292 where we have the opportunity to help communities and to help
1293 noncompliance, we are looking at other areas.

1294 And I would like to mention the fact that we are doing a
1295 lot of work on mobile sources now, and obviously that was the
1296 VW case, it was the Fiat Chrysler case but we also are dealing

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1297 with it in terms of defeat devices and the aftermarket and the
1298 catalytic converters. I know that we got a letter from
1299 Congressman Guthrie, Congressman McKinley, and two of your
1300 colleagues about the catalytic converters and we are changing
1301 our tampering policy. We expect to roll that out pretty shortly.

1302 And the estimate that I have been given is that the State
1303 of California expects that by changing our policy and encouraging
1304 better performing catalytic converters, we can get rid of 85,000
1305 tons per year of NOx nationwide, again, which is going to help
1306 with ozone nonattainment. It is NOx. It could help with the
1307 deposition of nitrogen.

1308 Mr. Griffith. That wouldn't necessarily show up in these
1309 stats that have been thrown around this morning because --

1310 Ms. Bodine. It would not.

1311 Mr. Griffith. -- you are dealing with sometimes
1312 individuals who are doing things they are not supposed to be doing
1313 as opposed to companies.

1314 Ms. Bodine. Yes, you are right. Changing our tampering
1315 policy will not show and to get these kinds of reductions will
1316 not show up in our results.

1317 Mr. Griffith. And you have been working with the States
1318 a lot to make sure that they do because the States do a lot of

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1319 the enforcement. Isn't that correct?

1320 Ms. Bodine. Yes, that is true.

1321 Mr. Griffith. And isn't your goal to move this to the
1322 States? Can you give us some idea of how you have been doing
1323 things with the States and what inefficient duplications you have
1324 seen with the State programs?

1325 Ms. Bodine. So a couple of the members here mentioned the
1326 ECOS Working Group. So we did hear at the very beginning when
1327 --

1328 Mr. Griffith. For the folks back home, that would be the
1329 Environmental Council of States.

1330 Ms. Bodine. Thank you. Thank you. I apologize for that.

1331 Mr. Griffith. That is all right.

1332 Ms. Bodine. -- who represent the State commissioners and
1333 they were complaining that EPA would show up in their State without
1334 even telling them, taking either inspection or enforcement action
1335 without even telling them, even at a facility that the State
1336 perhaps had just inspected.

1337 And so what we have said to the regions is look, you need
1338 to be working in partnership with States. You need to do work
1339 planning together. Everyone has finite resources. You need to
1340 divide up the universe. We absolutely need a compliance

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1341 assurance presence. We need inspections. But we should be
1342 working collaboratively so that if the State is doing it, we don't
1343 need to be doing it because that would be wasteful.

1344 Mr. Griffith. Right.

1345 Ms. Bodine. If the State needs to get training and capacity
1346 building, then we should be going out with them and providing
1347 that training.

1348 Mr. Griffith. And you all are obviously monitoring what
1349 the States are doing so that you can make sure that somebody is
1350 covering it. Isn't that correct, yes or no? I am running out
1351 of time. Yes or no?

1352 Ms. Bodine. Yes.

1353 Mr. Griffith. All right. And since you have been there,
1354 have you all intervened in any States where they aren't doing
1355 what they are supposed to do and haven't done the inspections
1356 properly or something?

1357 Ms. Bodine. So we have two examples where we -- well, we
1358 have leaned heavily on States to take action and they have. So
1359 yes, we do have examples of that.

1360 Mr. Griffith. All right.

1361 Ms. Bodine. But then at the end of the day, the State finally
1362 did take the action and we didn't have to. And all that work

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1363 doesn't show up in our results either.

1364 Mr. Griffith. In your data, okay.

1365 I yield back.

1366 Ms. DeGette. The gentleman yields back.

1367 The chair now recognizes the gentlelady from Florida, Ms.
1368 Castor, for 5 minutes.

1369 Ms. Castor. Thank you very much.

1370 Ms. Bodine, I would like to spend the next few minutes talking
1371 to you about EPA civil case initiation. Civil enforcement at
1372 the EPA is a tool that you use to hold polluters accountable for
1373 violating federal environmental laws and to deter future bad
1374 actors. Where EPA identifies a significant violation and
1375 determines that federal enforcement is appropriate, the Agency
1376 may start an enforcement case. Is that generally correct?

1377 Ms. Bodine. Yes.

1378 Ms. Castor. Okay. Ms. Bodine, EPA's fiscal year 2018
1379 enforcement and compliance numbers, according to your own
1380 numbers, indicate that the civil case initiations last year were
1381 at their lowest point in a decade, just over 1800.

1382 To add to that, a watchdog group recently reported that civil
1383 enforcement case initiations last year were lower than any year
1384 going back to 1982. That would mean civil case initiations may

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1385 be at the lowest level in 36 years.

1386 What is your explanation for that that we are at the -- EPA
1387 is at its lowest level of civil case initiations in 36 years?

1388 Ms. Bodine. So Congresswoman Castor, as I had pointed out
1389 earlier, that is a narrow slice of the work that we do. It is
1390 federal formal enforcement case initiations. And so it doesn't
1391 capture the work that we are doing with States, where we may
1392 develop a case and they may take it over. It doesn't capture
1393 the facilities that are getting back into compliance after
1394 self-disclosing.

1395 So it is important and I would absolutely agree that we need
1396 to maintain enforcement presence but I would not say that the
1397 number of cases is reflective of that. And --

1398 Ms. Castor. Now your predecessor did not agree. Cynthia
1399 Giles, who preceded you as head of EPA's Enforcement Office was
1400 very recently quoted in a press report saying EPA is trying to
1401 convince media and the public that EPA is still doing its job
1402 on enforcement, despite all the reports showing that isn't the
1403 case.

1404 So I think it is fairly clear EPA is not doing the job that
1405 it should. And so taking your predecessor's point, as it relates
1406 to case initiations, how can you claim that the public -- how

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1407 can you claim that the EPA is in fact going after polluters, given
1408 the decline? You said it is a narrow piece but wow, 36 years,
1409 a 10-year decline that took a hit as the Trump administration
1410 came into the Executive Branch. I am having a hard time seeing
1411 how you claim otherwise.

1412 Ms. Bodine. So I am sorry that you feel that way. I know
1413 that the staff are working very hard in developing cases, and
1414 bringing cases, and that we are trying to target our resources
1415 where we have --

1416 Ms. Castor. Here is why it is important because lax
1417 enforcement sends the wrong message to industry and polluters.

1418 And I have a very hard time understanding how the public and
1419 the regulated community are supposed to have confidence in EPA
1420 when you are not enforcing America's bedrock environmental laws,
1421 when they see that an Agency has initiated the lowest amount of
1422 cases in what appears to be 3 decades.

1423 And did I understand your answer? Did you testify in a
1424 previous answer that we have a low -- EPA is initiating a fewer
1425 number of enforcement cases because there are fewer bad actors?

1426 Ms. Bodine. I didn't say that.

1427 Ms. Castor. Okay.

1428 Chairwoman DeGette, I am very concerned about this. They

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1429 are not going to be able to deter bad actors. These are
1430 extraordinarily low numbers. It really appears to me that the
1431 Trump administration and the EPA, which is supposed to be the
1432 guardian of the public health, is elevating polluter profits over
1433 the public health. This is at a time when they are also rolling
1434 back critically important environmental and public health
1435 protections.

1436 What you do here by not enforcing the law is you further
1437 compound the problem and it is an abdication of your
1438 responsibilities.

1439 Ms. DeGette. Will the gentlelady yield?

1440 Ms. Castor. I yield.

1441 Ms. DeGette. Ms. Bodine, so you had said to Ms. Castor that
1442 the number of enforcement actions filed at the federal level is
1443 just a narrow slice. Do you know how many additional cases were
1444 filed at the State level then with EPA assistance? Did that
1445 number go up dramatically in the last 2 years?

1446 Ms. Bodine. So we haven't started formally tracking State
1447 assists. We have asked the regions to track their State assists.

1448 So I have some data on that, which I can give to you for the
1449 record but it wasn't tracked before --

1450 Ms. DeGette. So you don't --

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1451 Ms. Bodine. -- what we are calling State assists.

1452 Ms. DeGette. Right. So you don't really know if the number
1453 of State cases went up. You are just suspecting they might have.

1454 Ms. Bodine. The States report some of their cases to us
1455 in our reporting system and we can provide you with that data.
1456 I don't have all of their data. The --

1457 Ms. DeGette. Okay, thank you very much.

1458 Ms. Bodine. Okay.

1459 Ms. DeGette. And Ms. Castor, thank you for letting me use
1460 the rest of your time, which has expired.

1461 I am now going to recognize Mr. Duncan from South Carolina
1462 for 5 minutes.

1463 Mr. Duncan. Thank you, Madam Chair.

1464 In my State, one of my communities has a four-lane highway
1465 running through it. It is not an interstate highway but they
1466 were requesting an intersection, an interchange, off-ramps to
1467 create a new industrial area and the county was under a
1468 nonattainment order from the EPA. Very little industry in that
1469 county in Upstate South Carolina that has emissions issues. Very
1470 little. And very little traffic. It is not an interstate
1471 highway on this four-lane but yet they were denied the ability
1472 to put in that interchange.

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1473 And when we started looking at it, the EPA under the Obama
1474 administration had monitors in the county for air quality. And
1475 it was very apparent that the emissions or what was affecting
1476 this county was coming from not another county but another State,
1477 Tennessee primarily, westerly winds coming over the mountains,
1478 settling in Pickens County, South Carolina.

1479 So there is an issue of where we put these monitors for a
1480 lot of different things, whether it is heat sensors or whether
1481 it is air quality sensors. Those are issues that may affect other
1482 Members' communities and I just wanted to raise awareness of that.

1483 I want to jump to a particular type of case, those being
1484 the Clean Air Act nonattainment cases. The oil and gas new owner
1485 audit program has one interesting approach that the EPA is taking
1486 to reduce nonattainment. Can you tell us more about this program
1487 and other actions EPA has taken to reduce the Clean Air Act
1488 nonattainment?

1489 Ms. Bodine. Yes, thank you. In the oil and gas sector,
1490 you can have leaks from tanks. There can be leaks from wells.

1491 The new owner self-disclosure program encourages a new owner
1492 of these facilities to do their own inspection, and discover their
1493 own violations, and then disclose them, come into compliance,
1494 and then they would have no penalties because they are the new

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1495 owner. They weren't responsible for it. And we have seen a lot
1496 of companies come in under our new owner program because of that
1497 incentive. They are starting fresh. And it has been very
1498 valuable.

1499 Again, for the oil and gas sector, it started from a
1500 settlement that was begun in 2016 but then recognized that that
1501 could be a model that could be used more broadly. And so it is
1502 a great opportunity to again get compliance and let the new owner
1503 start fresh.

1504 Mr. Duncan. I would say that is a cost savings for the EPA
1505 and ultimately, the taxpayer.

1506 Ms. Bodine. Yes.

1507 Mr. Duncan. To follow up, there has been criticism on the
1508 reduction of the size of the OECA office. I have been supportive
1509 of this administration's effort to peel back some of the layers
1510 of bureaucracy that have embedded themselves in the Agency. When
1511 the EPA is inefficient, they are holding up capital. How does
1512 this new owner audit program capitalize on the resources of the
1513 EPA while still reducing nonattainment.

1514 Ms. Bodine. Well if the new owner is coming in, then you
1515 are right, we don't have to expend our resources then going out
1516 and finding them. We don't have to expend our resources bringing

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1517 a case against them. Again, it is far more efficient and gets
1518 compliance more quickly.

1519 Mr. Duncan. And you can focus those resources on other areas
1520 that --

1521 Ms. Bodine. On vulnerable populations, on chemical risk
1522 safety issues, our other National Compliance Initiatives.

1523 Mr. Duncan. Yes, thanks for being here.

1524 Madam Chair, I yield back.

1525 Ms. DeGette. The gentleman yields back. The chair now
1526 recognizes the gentleman from Maryland, Mr. Sarbanes.

1527 Mr. Sarbanes. Thank you, Madam Chair. Thank you, Ms.
1528 Bodine, for being here.

1529 I just want to go back on an exchange you had a moment ago
1530 because you suggested -- you seemed to suggest that the reduction
1531 in civil penalties and other things from an enforcement standpoint
1532 at the federal level has maybe been replaced by States being more
1533 aggressive on that front. Did you say something to that effect?

1534 Ms. Bodine. I said that we work -- that most of the
1535 activities are taking place at the State level, and that has always
1536 been true --

1537 Mr. Sarbanes. Yes.

1538 Ms. Bodine. -- and that we are trying -- we are working

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1539 with States and States are more sophisticated, and we are building
1540 State capacity if they have lost folks and --

1541 Mr. Sarbanes. Are you aware that the State fines have also
1542 diminished over the last couple of years? When you look at the
1543 record, it shows that between '06 and 2016 the penalties at the
1544 State level were averaging about \$91 million a year, but in 2017
1545 they were \$38 million, and in 2018 they were \$59 million. A lot
1546 of these State agencies are not resourced in a way that can make
1547 up for lack of enforcement at the federal level. So it seems
1548 to be diminishing on both fronts.

1549 Ms. Bodine. I think I will say what I have said in response
1550 to other questions but I don't believe penalties are a good measure
1551 of enforcement. Penalties are important for deterrence but that
1552 is not a measure of compliance. And you will see in the data
1553 that we have presented, because we go back 10 years, that penalties
1554 go up and down dramatically and, in fact, at the federal level
1555 they were below \$250 million for 8 out of the last 10 years.

1556 Mr. Sarbanes. Well, it seems many, if not all, of the
1557 indicators which we have at our disposal to judge whether
1558 enforcement is happening at the levels it should or not seem to
1559 be going in the wrong direction, whether you look at the State
1560 efforts or you look at the federal efforts. To me that would

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1561 suggest that the Federal Government needs to step up even more
1562 and occupy this space in an aggressive and responsible way.

1563 But let me talk to you about injunctive relief because that
1564 is an important tool that you have as part of your enforcement
1565 kit of measures that you can undertake. And this is a way that
1566 the EPA can insist on industry players and others coming into
1567 compliance.

1568 So we understand from your staff briefing recently that EPA
1569 enforcement actions resulted in almost \$4 billion, \$3.95 billion
1570 in compliance costs in fiscal year 2018. Does that sound about
1571 right to you?

1572 Ms. Bodine. Yes, I am reading it off the chart right here.

1573 Mr. Sarbanes. Okay, you have got it right there.

1574 All right. And according to a January 24th Washington Post
1575 article, the compliance costs for the 2 decades before the Trump
1576 administration roughly averaged \$7.8 billion per year, which is
1577 nearly double the amount that the EPA obtained in fiscal year
1578 2018. Are those numbers correct, as far as you know?

1579 Ms. Bodine. I don't believe that you can average these
1580 numbers. I mean you have the chart also. You can see that you
1581 have very, very high --

1582 Mr. Duncan. But in any event, they were significantly

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1583 higher.

1584 And then in a recent article, I just wanted to note in the
1585 Christian Science Monitor, your predecessor, Cynthia Giles, was
1586 quoted as saying injunctive relief tells you when the EPA is taking
1587 on the tough, very hard, big pollution cases and the data shows
1588 that the Trump EPA is not doing that.

1589 Now I get that you -- that the compliance injunctive relief
1590 numbers can vary from year to year but these are pretty low
1591 numbers, some of the lowest we have seen in a long time. Is Ms.
1592 Giles wrong when she says injunctive relief is a good indicator
1593 to evaluate whether an administration is going after the worst
1594 polluters, in your view?

1595 Ms. Bodine. I think that former Assistant Administrator
1596 Giles knows very well that it takes -- when you are talking about
1597 these really big cases, it takes a lot of years to develop and
1598 complete those cases. So if I --

1599 Mr. Sarbanes. Well let me grab onto that because I am going
1600 to run out of time, that idea of taking a long time.

1601 Ms. Bodine. Right.

1602 Mr. Sarbanes. Because that \$3.95 billion figure for 2018
1603 apparently, according to the Christian Science Monitor article,
1604 40 percent of that total almost is from cases that were settled

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1605 by the EPA under President Obama. So even that low number, that
1606 \$3.95 billion low number, if you look at it in terms of what has
1607 actually been undertaken in this administration, it is much lower
1608 still because 40 percent of that is coming from the prior
1609 administration.

1610 Are you aware of those numbers? Can you tell me what the
1611 number is that comes from the previous administration?

1612 Ms. Bodine. So in our results, we count the injunctive
1613 relief in the year that the court enters it. And as well, you
1614 are not going to see numbers from cases that we initiated that
1615 would be big. Small cases, yes, but large cases, because it takes
1616 a long time, so you are going to see that later. So we are --

1617 Mr. Sarbanes. I get it. There is a timing issue. There
1618 is a snapshot issue.

1619 Ms. Bodine. Yes.

1620 Mr. Sarbanes. There is a range issue --

1621 Ms. Bodine. Yes, absolutely.

1622 Mr. Sarbanes. -- and so forth. But in any event, I think
1623 there is plenty of evidence here that the mission you have of
1624 fair and effective enforcement of environmental laws,
1625 particularly using, as I was discussing here in the injunctive
1626 relief, is not being fulfilled based on the numbers that we are

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1627 seeing.

1628 With that, I would yield back my time because I am over.

1629 Thank you.

1630 Ms. DeGette. The chair now recognizes the gentlelady from
1631 New York, Ms. Clarke for 5 minutes.

1632 Ms. Clarke. I thank our chairwoman and ranking member for
1633 hosting this hearing today.

1634 Ms. Bodine, I want to talk about budget because the fiscal
1635 year 2019 budget request called for nearly a 25 percent cut to
1636 the EPA. And to put that in perspective, if those cuts were
1637 enacted, they would push the EPA's budget to its lowest level
1638 since 1991.

1639 I would point out that compliance and enforcement activities
1640 are not spared from these proposed cuts. How would these
1641 proposals, if they were enacted, have impacted enforcement
1642 activities?

1643 Ms. Bodine. I don't know. We would be using the resources
1644 that Congress gives us as effectively and as efficiently as we
1645 can. And we would be focusing on the largest cases.

1646 We do still take a lot of very small cases. A large
1647 percentage of these cases, conclusions that have been discussed
1648 today, are still very small cases. And so we would focus on the

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1649 most important cases and we would focus on making sure that we
1650 were providing assistance and training to States.

1651 Ms. Clarke. So we have been talking about sort of the
1652 decline in what we can recognize as enforcement activity. Are
1653 you saying that there would be no correlation in bringing action
1654 between a reduction in your budget and the fact that you are at
1655 a 30-year low in that enforcement?

1656 Ms. Bodine. So what I said was that we would be further
1657 focused on the most important actions. I didn't say it would
1658 have no impact. But in terms of if we were not going to be taking
1659 an action, it would definitely be only in situations where there
1660 wasn't an immediate public health or environmental threat,
1661 situations where we knew the State was already dealing with the
1662 issue.

1663 So again, we would be very strategic.

1664 Ms. Clarke. So Ms. Bodine, even though Congress prevented
1665 those cuts from being enacted, I am deeply concerned that certain
1666 damage was done. I am concerned that those proposed cuts sent
1667 a signal to regulated communities and EPA employees that the
1668 administration doesn't take its responsibility to enforce
1669 environmental laws seriously.

1670 Are you concerned that the previously proposed budget cuts

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1671 to EPA sends a message to polluters and EPA staff that the Agency
1672 doesn't take environmental enforcement seriously?

1673 Ms. Bodine. As I mentioned in my opening statement, I have
1674 gone around to the regions, I have talked to my staff to make
1675 sure that they know that we do very much value the work that we
1676 do and that enforcement is incredibly important.

1677 Ms. Clarke. So I want to shift gears just a tad bit.
1678 Two-thirds -- I am from New York -- of New Yorkers regularly
1679 breathe in unhealthy air due to smog. That is why New York State
1680 and City has actually sued the EPA last month regarding its failure
1681 to enforce the Clean Air Act.

1682 The quote, good neighbor, end quote, provision of the Act
1683 requires the EPA to police air pollution in States not living
1684 up to federal standards so it doesn't blow downwind to States
1685 like mine. This lawsuits results from the EPA's decision to
1686 reverse its prior finding that ozone pollution should be subject
1687 to this provision.

1688 Why did the EPA take this action, which harms the health
1689 of New Yorkers?

1690 Ms. Bodine. So, congresswoman, I don't actually have any
1691 background information on that. That would be a regulation that
1692 would come out of the Air Office.

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1693 Ms. Clarke. Okay and so you wouldn't be looking into a
1694 lawsuit that has implications around enforcement and regulation.

1695 Ms. Bodine. Our General Counsel's Office would be managing
1696 that lawsuit. My office would not have anything to do with it.

1697 Ms. Clarke. Very well. Well then let me share just this
1698 one last question, since I have a short amount of time.

1699 Will next year's budget propose similar draconian reductions
1700 for EPA like last year's proposal?

1701 Ms. Bodine. I do not know.

1702 Ms. Clarke. You don't know. Will you be advocating for
1703 a more robust budget?

1704 Ms. Bodine. So I believe the President's budget is going
1705 to come out in March, next month.

1706 Ms. Clarke. Absolutely.

1707 Ms. Bodine. So the --

1708 Ms. Clarke. Well if the past President is prolonged, what
1709 are your feelings about that, given what has all been revealed
1710 here today?

1711 Ms. Bodine. I support the President's budget.

1712 Ms. Clarke. Oh, very well.

1713 I yield back, Madam Chair.

1714 Ms. DeGette. The chair now recognizes the gentleman from

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1715 New York, Mr. Tonko for 5 minutes.

1716 Mr. Tonko. Thank you, Chairwoman DeGette, for hosting this
1717 hearing and welcome, Administrator Bodine.

1718 Ms. Bodine. Thank you.

1719 Mr. Tonko. Civil penalties are an important enforcement
1720 tool at EPA. Civil penalties are monetary assessments paid by
1721 a regulated entity because of a violation or noncompliance. They
1722 are designed to recover the financial benefit a company has
1723 obtained by breaking the law and impose added cost to deter firms
1724 from breaking the law again in the future.

1725 So Administrator Bodine, would you agree that civil
1726 penalties are an important enforcement tool for EPA?

1727 Ms. Bodine. Yes. Yes, I do.

1728 Mr. Tonko. And according to EPA's annual enforcement report
1729 for fiscal year 2018, EPA obtained just \$69.4 million in federal
1730 administrative and civil judicial penalties.

1731 A recently released report cited by the Washington Post
1732 states that this is the lowest amount of civil penalties recovered
1733 since the Office of Enforcement and Compliance Assurance was
1734 established back in 1994. Even excluding the huge BP penalty,
1735 the Washington Post reports, and I quote, the Trump
1736 administration's civil monetary penalties last year represented

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1737 a roughly 55 percent drop from the annual average. In fact,
1738 according to a February 8th Washington Post report, the \$69
1739 million in civil penalties leveled by EPA represents the lowest
1740 in nearly a quarter century.

1741 So Administrator Bodine, is that accurate?

1742 Ms. Bodine. I can look at the -- I know what our results
1743 say. I don't have the data that you have. But I also would note
1744 that penalties go up and down and that --

1745 Mr. Tonko. Okay but could you get back to us if it is
1746 accurate?

1747 Ms. Bodine. Certainly.

1748 Mr. Tonko. Thank you.

1749 In the roughly 25-year history of the Office of Enforcement
1750 and Compliance Assurance, has the amount of civil penalties
1751 leveled by EPA ever been this low?

1752 Ms. Bodine. In the 11 years of data I have in front of me,
1753 no, but I don't have it back further.

1754 Mr. Tonko. Okay, thank you.

1755 And Ms. Bodine, some have suggested that annual total
1756 penalties can be strongly influenced by the presence of one or
1757 two large cases. To illustrate this point, your staff provided
1758 to the committee analysis which shows annual results for civil

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1759 penalties after removing two large cases, that being BP and VW.

1760 In your testimony, you had mentioned that for 2019, the State
1761 of California and EPA secured a civil penalty of some \$305 million.

1762 So my question, Administrator Bodine, what is the amount of civil
1763 penalties for fiscal year 2019 to date, if you exclude the large
1764 Fiat Chrysler penalty?

1765 I have this chart that was provided by your Agency that shows
1766 this huge spike with the Fiat Chrysler penalty. This has been
1767 adjusted for BP and VW. So I have heard all the talk about spikes,
1768 and peaks, and valleys. I have heard about the averaging
1769 throughout the years. But in a 30-year span, if you take this
1770 out, what is the amount of civil penalties for fiscal year 2019
1771 to date?

1772 Ms. Bodine. I am going to have to provide that for the
1773 record.

1774 Mr. Tonko. Yes, that is very important information because
1775 that spike looks like the whole picture for 2019.

1776 Again, Ms. Bodine, on the second panel, Eric Schaeffer, who
1777 spent 12 years at the EPA as the Director of the Agency's Office
1778 of Civil Enforcement, will testify that EPA's enforcement results
1779 for 2018 fiscal year were historically low. His testimony
1780 indicates, and I quote, the number of inspections and

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1781 investigations, civil cases either referred to the Justice
1782 Department for prosecution or are concluded with a consent decree,
1783 criminal cases opened and defendants charged with environmental
1784 crimes fell to their lowest levels since at least 2001.

1785 Looked at another way, inspections and investigations in
1786 the last year were 40 percent below their average level during
1787 the last two administrations. EPA referred 123 cases to the
1788 Justice Department in 2018 compared to an average of 211 per year
1789 under President Obama and 304 under President Bush.

1790 Ms. Bodine, that certainly seems like a decrease in
1791 enforcement activities. How do you respond to that?

1792 Ms. Bodine. You can't look at average when you are talking
1793 about enforcement. We don't set quotas. We don't say we are
1794 going to ask the staff to reach an average number of penalties,
1795 and you know you have get \$500 million in penalties a year, and
1796 that you have to go out and increase penalties to reach that
1797 number. We don't say you have to reach an average number of cases.

1798 And again, we want them to be very judicious and strategic and
1799 put the resources where it matters.

1800 We do, however, try and set targets for inspections because
1801 we absolutely agree that we need to be out there. We need to
1802 be inspecting for compliance. We need to have the enforcement

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1803 presence out there.

1804 Mr. Tonko. I am just concerned that EPA has taken the
1805 environmental cop off the beat and will go on polluting without
1806 fear of repercussions.

1807 So with that, I thank you for your time.

1808 Ms. Bodine. Thank you.

1809 Mr. Tonko. I yield back.

1810 Ms. DeGette. The chair now recognizes the gentleman from
1811 Oklahoma, Mr. Mullin, for 5 minutes.

1812 Mr. Mullin. Thank you, Madam Chairwoman.

1813 I ask unanimous consent to include a letter from Senator
1814 Unruh regarding the EPA enforcement into the record.

1815 Ms. DeGette. Without objection, so ordered.

1816 [The information follows:]

1817

1818 *****COMMITTEE INSERT 5*****

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1819 Mr. Mullin. Thank you.

1820 Ma'am, thank you so much for being here. And I have got
1821 to tell you, coming from a business owner that owns an
1822 environmental company, it is refreshing to have an EPA now that
1823 is willing to work with us. We have DEQ, Department of
1824 Environmental Quality inside Oklahoma that obviously partners
1825 with the EPA. And underneath the last administration, it felt
1826 like every time the EPA showed up at a job site or a place of
1827 business, they were there just to look at ways to write fines.

1828 They were not there trying to work with the industry, trying
1829 to improve it. And in fact, if you even questioned it, you
1830 typically got a supervisor that came back with more penalties.
1831 And so it was to the point where you couldn't work with the Agency
1832 anymore.

1833 So the idea that you are bringing it back to working with
1834 industry, I, personally, appreciate it and I can tell you
1835 industries appreciate it, too.

1836 It has always been in my mindset that the government is
1837 supposed to create an environment for the economy to thrive, to
1838 allow the industry to work with best practices. And I feel like
1839 that that is coming back around to the EPA. So thank you so much.

1840 I have got a couple of questions here. My understanding

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1841 is that OECA is trying to use the right tools to focus on major,
1842 even criminal compliance issues. Is that correct?

1843 Ms. Bodine. Yes, that is correct.

1844 Mr. Mullin. So if that is accurate, then would you attribute
1845 the new efficiencies to the uptick in criminal enforcement cases
1846 open in fiscal year 2018?

1847 Ms. Bodine. I am not sure if it is an efficiency issue but
1848 we have certainly been very, very supportive of the criminal
1849 program. I am happy to see the number of cases that they have
1850 opened for investigation as well now.

1851 Mr. Mullin. What type of compliance issues do you think
1852 you are dealing with right now?

1853 Ms. Bodine. Across the country?

1854 Mr. Mullin. Just for the most. Just give me maybe the top
1855 three.

1856 Ms. Bodine. So we are concerned about, for example, the
1857 number of Clean Water Act permit holders that are in significant
1858 noncompliance with their permits. And so we are trying to work
1859 with States to get that number down.

1860 We are also concerned about drinking water and we are talking
1861 about developing a New National Compliance Initiative on drinking
1862 water because I think everyone around the country is concerned

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1863 that we have noncompliance.

1864 You know we have cases underway but we also know that there
1865 are small systems out there that need help.

1866 Mr. Mullin. Are you having issues with discharge permits
1867 for like maybe municipalities?

1868 Ms. Bodine. So they are a big part of the universe that
1869 is in noncompliance with their permits that we track. And again,
1870 a lot municipalities that had both combined sewer overflows and
1871 sanitary sewer overflows, a lot of those are already under either
1872 an administrative order, a consent decree, or a permit to get
1873 them back into compliance.

1874 Mr. Mullin. Does that have to do with their treatment
1875 centers that are maybe outdated and they can't afford to put in
1876 new ones?

1877 Ms. Bodine. That can very much be the case. And when we
1878 deal with those issues, then we look at the time frame over which
1879 they would need to come back.

1880 Mr. Mullin. Let's say when they built it, they were
1881 compliant and then new standards have increased, which made them
1882 out of compliance, or is it because they have equipment that is
1883 down?

1884 Ms. Bodine. It is both.

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1885 Mr. Mullin. It is both.

1886 Do you have enough federal agents to enforce your criminal
1887 investigations?

1888 Ms. Bodine. So I have authorized the hiring to take us up
1889 to 164 agents. We don't have that number onboard right now.
1890 Again, it takes about 6 months to bring on an agent.

1891 Mr. Mullin. How many are you behind?

1892 Ms. Bodine. I think right now we have about 147 --

1893 Mr. Mullin. One hundred and forty-seven.

1894 Mr. Burgess. -- but we have a number of hires in the works.
1895 They have to go through a lot. They carry guns. They have to
1896 go through a lot of background checks.

1897 Mr. Mullin. So what is the time frame to be able to get
1898 them up to speed and have them --

1899 Ms. Bodine. Can I answer for the record? It takes a long
1900 time. It is not getting them up to speed. It is getting them
1901 onboarded. It is getting them hired.

1902 Mr. Mullin. Now, what is --

1903 Ms. Bodine. But again, I authorized that back in June or
1904 July and so we are working hard to get those folks on.

1905 Mr. Mullin. So what is the total number of vacancies you
1906 have?

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1907 Ms. Bodine. Well, I believe -- again, I have some people
1908 coming on in March.

1909 Mr. Mullin. Okay.

1910 Ms. Bodine. They were supposed to come on in January but
1911 they didn't because we were shut down. But they are coming on
1912 in March and so I think today it is about 147. We are trying
1913 to get it up to 164 but I don't know how many are coming in within
1914 the next few weeks.

1915 Mr. Mullin. Real quick, one last question. Why do the EPA
1916 agents need to be carrying guns?

1917 Ms. Bodine. So they go out and they serve search warrants
1918 and sometimes people resent the fact that they are in fact
1919 searching their facility. And we have had --

1920 Mr. Mullin. So it is for protection purposes.

1921 Ms. Bodine. Absolutely. We have had --

1922 Mr. Mullin. It is not enforcement, it is protection.

1923 Ms. Bodine. It is protection. We have had situations.

1924 Mr. Mullin. Right, well that was what I was hearing.

1925 Ms. Bodine. That is exactly what it is.

1926 Mr. Mullin. It is not for enforcement purposes.

1927 Ms. Bodine. No.

1928 Mr. Mullin. It is for self-protection.

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1929 Ms. Bodine. It is absolutely for personal protection, yes.

1930 Mr. Mullin. Okay, thank you so much. I appreciate it.

1931 Ms. Bodine. Yes.

1932 Mr. Mullin. I yield back.

1933 Ms. DeGette. The chair now recognizes the gentleman from
1934 California, Mr. Peters, for 5 minutes.

1935 Mr. Peters. Thank you, Madam Chair, and thank you, Ms.
1936 Bodine, for being here with us.

1937 My first job after graduating college was working as an
1938 economist for the ToSCA section of the Office of Toxic Substances
1939 under ToSCA. And that drove me from being an economist to going
1940 to law school.

1941 And then as a lawyer, one of the first things I did was work
1942 on Superfund as an environmental lawyer after it was reauthorized
1943 in the mid-1980s. And I want to talk about that program for a
1944 few moments.

1945 The Superfund program is a critical public health program
1946 that has made an enormous difference in cleaning up dangerous
1947 contaminated sites across the country and there are a lot of
1948 effective tools and private enforcement but public enforcement,
1949 EPA enforcement staff still has a lot of responsibility for
1950 identifying responsible parties and ensuring that the appropriate

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1951 people pay to get the cleanups done.

1952 In 2018, Superfund enforcement generated the lowest level
1953 of private party cleanup commitments in 10 years. Is that your
1954 understanding?

1955 Ms. Bodine. I will take your word for it. I don't have
1956 my Superfund slide in front of me but I can pull it out.

1957 Mr. Peters. Okay. And also, I understand that the volume
1958 of contaminated soil and water to be cleaned up also dropped
1959 significantly in that time period. Is that also your
1960 understanding?

1961 Ms. Bodine. So I do know that the volume of hazardous waste
1962 -- well, the volume of contaminated soil and water in 2018, I
1963 need my chart. I know that it was higher than it was in 2015,
1964 higher than it was in 2016. I believe it was less than 2017,
1965 however.

1966 Mr. Peters. Okay. I am thinking over the last 10 years.
1967 That is my understanding.

1968 In any event, I don't think the need for cleanup has
1969 dissipated. The number of National Priorities List sites, NPL
1970 sites has remained consistent for years and the pace of cleanups
1971 has slowed markedly. Is it fair to attribute that to lesser
1972 enforcement? What do you attribute that to?

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1973 Ms. Bodine. So I am not sure. I know that this
1974 administration we have been very focused on increasing the pace
1975 of cleanups in the Superfund program and that is by focusing
1976 management attention, making sure that we don't have logjams and
1977 that if private parties aren't stepping up, that we bring them
1978 to the table through the threat of enforcement.

1979 Mr. Peters. I guess the bottom line is that the number of
1980 NPL sites has not been reduced. Isn't that our goal to get these
1981 things cleaned up and off the list?

1982 Ms. Bodine. It is and, in fact, under this administration,
1983 we have had more deletions. I believe it was I think 22 sites
1984 were deleted from the NPL this past year, which is more than
1985 probably any -- I would have to get the exact number but it is
1986 certainly a huge increase over prior years.

1987 Mr. Peters. What would be great is if I can ask you to
1988 follow-up, if you don't have these things in front of you.

1989 Ms. Bodine. Absolutely. Sure.

1990 Mr. Peters. Sometimes it is a little bit of a surprise.
1991 I would love to get those numbers from you on the cleanups.

1992 Ms. Bodine. Sure.

1993 Mr. Peters. The threat of enforcement carries particular
1994 weight in Superfund because the Agency has the authority to seek

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1995 treble damages for cleanup costs from responsible parties. How
1996 often have you used the treble damage authority during your
1997 tenure, Ms. Bodine?

1998 Ms. Bodine. So these are 106 actions. I know that we have
1999 threatened them and then the private parties have come to the
2000 parties to the table in some cases that I have been briefed on.

2001 But I wouldn't know every instance and so I will have to get
2002 back because that would happen out in the region. So I will have
2003 to get back to you for the record on the number of 106 orders
2004 we have issued.

2005 Mr. Peters. Would you be able to share which cases those
2006 were with us?

2007 Ms. Bodine. I believe those would be public.

2008 Mr. Peters. I would like to compare your threats to the
2009 results, if that is okay with you.

2010 Ms. Bodine. Let me take that back. I believe those are
2011 public. If we actually issued the order, then that would -- I
2012 believe those are public.

2013 Mr. Peters. All right, thank you.

2014 I yield back.

2015 Ms. DeGette. The gentleman yields back.

2016 Ms. Bodine, this concludes your testimony but I did want

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2017 to raise a couple things with you.

2018 Number one, several of the members today asked you to
2019 supplement your answers.

2020 Ms. Bodine. Yes.

2021 Ms. DeGette. And we expect that in a timely fashion. I
2022 am sure you can do that. When do you think you can get that
2023 information to us?

2024 Ms. Bodine. That I don't know but I understand completely
2025 the need to be responsive.

2026 Ms. DeGette. Thirty days do you think? Well, we are going
2027 to hope for 30 days.

2028 Ms. Bodine. Okay.

2029 Ms. DeGette. One of the reasons I ask is the majority has
2030 sent your office five letters requesting information and
2031 documents since the beginning of this Congress. And as a rule,
2032 we ask for 2 weeks. We know you can't always get that in the
2033 2 weeks but we haven't gotten any of the information. So I would
2034 ask you to go back to your office and see if you can get responses
2035 to those five letters as well. Is that okay?

2036 Ms. Bodine. Yes.

2037 Ms. DeGette. Thanks.

2038 Just one last question and then I will ask Mr. Guthrie if

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2039 he has any last questions.

2040 In your response to Mr. Mullin, you said that you have a
2041 goal of increasing your number of criminal investigators to 164.

2042 Ms. Bodine. Yes.

2043 Ms. DeGette. How many investigators is the EPA required
2044 to have under the law?

2045 Ms. Bodine. There isn't a --

2046 Ms. DeGette. There is no requirement.

2047 Ms. Bodine. There is no requirement.

2048 Ms. DeGette. Okay, my staff says it is 200. So that is
2049 not accurate?

2050 Ms. Bodine. The, I believe, Pollution Prosecution Act of
2051 what 1990 said that in 1995 -- that by 1995 the number should
2052 be 200 and it was in 1995 but we don't have an ongoing obligation
2053 to maintain 200.

2054 Ms. DeGette. Under that Act.

2055 Ms. Bodine. Correct.

2056 Ms. DeGette. That is your interpretation of that Act.

2057 Ms. Bodine. Yes, that is correct.

2058 Ms. DeGette. Okay, thank you.

2059 Mr. Guthrie, do you have any additional questions?

2060 Mr. Guthrie. No, thank you. I just want to thank you for

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2061 coming to testify before us today. And I think there were several
2062 questions asked for timely responses to the questions and I think
2063 that is appropriate. And I appreciate you coming before us today.

2064 Thank you.

2065 I yield back.

2066 Ms. DeGette. Thank you very much. With that you are
2067 dismissed, Ms. Bodine.

2068 And I would now ask the second panel witnesses to please
2069 come to the table.

2070 Thank you so much all for coming. I would now like to
2071 introduce our second panel of witnesses. Okay, you guys are not
2072 sitting in the order on this but I am going to introduce you in
2073 the order of this.

2074 Bruce Buckheit, who is an analyst and consultant and the
2075 former director of the Air Enforcement Division of the Office
2076 of Enforcement and Compliance Assurance; Dr. Bakeyah Nelson --
2077 is that right, Dr. Nelson, Bakeyah -- Executive Director of the
2078 Air Alliance Houston; Eric Schaeffer, the Executive Director of
2079 the Environmental Integrity Project; Dr. Chris Sellers, Professor
2080 of History and Director of Center for the Study of Inequality
2081 and Social Justice at Stony Brook University; Dr. Jay Shimshack,
2082 who is the Associate Professor of Public Policy and Economics,

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2083 Frank Batten School of Leadership and Public Policy at the
2084 University of Virginia; and the Honorable Ronald J. Tenpas, a
2085 partner at Vinson and Elkins, former Assistant Attorney General,
2086 Environment and Natural Resources Division, U.S. Department of
2087 Justice.

2088 I want to thank all of you for appearing today and I am sure
2089 you are aware the committee is holding an investigative hearing
2090 and when we do so, we have a practice of taking testimony under
2091 oath.

2092 Does anyone have an objection to taking your testimony under
2093 oath? Let the record reflect the witnesses responded no.

2094 The chair then advises you that under the rules of the House
2095 and the rules of the committee, you are entitled to be accompanied
2096 by counsel.

2097 Does anyone here desire to be accompanied by counsel today?
2098 No. Let the record reflect the witnesses have responded no.

2099 So if you would please rise and raise your right hand so
2100 you may be sworn in.

2101 [Witnesses sworn.]

2102 Ms. DeGette. You are now under oath and subject to the
2103 penalties set forth in Title 18 Section 1001 of the U.S. Code.

2104 So now the chair will recognize the witnesses for 5 minutes

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2105 for a summary of their written statements.

2106 In front of you is a microphone and a series of lights.

2107 The light will turn yellow when you have a minute left and red

2108 to indicate your time has expired.

2109 And I am going to have you testify in the order in which

2110 you are sitting. So, Mr. Schaeffer, we will start with you and

2111 thank you so much. You have got 5 minutes.

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2112 TESTIMONY OF BRUCE BUCKHEIT, ANALYST AND CONSULTANT, FORMER
2113 DIRECTOR OF THE AIR ENFORCEMENT DIVISION, OFFICE OF ENFORCEMENT
2114 AND COMPLIANCE ASSURANCE; BAKEYAH NELSON, EXECUTIVE DIRECTOR,
2115 AIR ALLIANCE HOUSTON; ERIC SCHAEFFER, EXECUTIVE DIRECTOR,
2116 ENVIRONMENTAL INTEGRITY PROJECT; CHRIS SELLERS, PROFESSOR OF
2117 HISTORY, DIRECTOR, CENTER FOR THE STUDY OF INEQUALITY AND SOCIAL
2118 JUSTICE, STONY BROOK UNIVERSITY; JAY SHIMSHACK, ASSOCIATE
2119 PROFESSOR OF PUBLIC POLICY AND ECONOMICS, FRANK BATTEN SCHOOL
2120 OF LEADERSHIP AND PUBLIC POLICY, UNIVERSITY OF VIRGINIA; AND HON.
2121 RONALD J. TENPAS, VINSON AND ELKINS, FORMER ASSISTANT ATTORNEY
2122 GENERAL, ENVIRONMENT AND NATURAL RESOURCES DIVISION, U.S.
2123 DEPARTMENT OF JUSTICE

2124

2125 TESTIMONY OF ERIC SCHAEFFER

2126 Mr. Schaeffer. Thank you, Madam Chairman and Ranking Member
2127 Guthrie, for the chance to testify -- is this better?

2128 Ms. DeGette. Yes.

2129 Mr. Schaeffer. Thank you for the opportunity to testify.
2130 If I may, I would like to -- I am Eric Schaeffer, Director of
2131 the Environmental Integrity Project and I did spend time at the
2132 EPA as Director of the Civil Enforcement Program. And if I may,
2133 I would like to address some of the issues that came up in prior

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2134 testimony and have my written statement be in the record.

2135 Ms. DeGette. Without objection.

2136 Mr. Schaeffer. Thank you.

2137 So to take some of the points that were discussed, I just
2138 want to make clear that EPA's enforcement program does not just
2139 measure penalties and fines. It has always, at least for 25
2140 years, measured enforcement outcomes. Those include the amount
2141 of pollution reduced through enforcement action and the amount
2142 of money spent on cleanup. And those measures are reported
2143 faithfully every year. They are also at historic lows in 2018.

2144 I believe the chair made those points but I just wanted to
2145 reinforce those outcome measures are also down.

2146 Also, I think it is important just to get back to basics
2147 and understand that enforcement protects people where they live
2148 and work, protects their health and environment where they live
2149 and work. So when a community is exposed to a blast of lead or
2150 a cloud of carcinogens from let's say a petrochemical plant, you
2151 really can't answer the problem by saying you know don't worry,
2152 sulfur dioxide emissions are down nationwide. They really want
2153 something done about what is going on in their neighborhood.
2154 That is enforcement work and I think it is important to just keep
2155 that in front of us.

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2156 Next, EPA has had active programs to encourage voluntary
2157 compliance, including the disclosure and correction of violations
2158 for many, many years. They are important. They are necessary.
2159 They work in tandem with enforcement. It's not an either/or
2160 situation. And in fact, I think those voluntary efforts will
2161 start to shrink if enforcement starts to fall off.

2162 Looking at this issue maybe more philosophically, if you
2163 are a large refinery, let's say, or a large power plant, you aren't
2164 supposed to wait until the government comes calling to start
2165 complying with the law. So that kind of voluntary compliance
2166 is not what we should be talking about. It should be giving people
2167 incentives to get ahead of the game and stay in compliance before
2168 the enforcement program finds you.

2169 And when the program does find you, if you're looking at
2170 serious violations, and some of these cases involve thousands
2171 of violations over many years, you should pay a penalty and there
2172 should be no apology for that. And that penalty should sting.

2173 It should make you think twice about doing it again. That's
2174 fundamental. So I just want to say penalties do matter. They're
2175 not unimportant. And if you stop basically making people pay
2176 those penalties and fines, you won't get a lot of voluntary
2177 compliance.

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2178 It's good to hear that the Assistant Administrator
2179 appreciates the great work of the enforcement program and I
2180 believe Ms. Bodine means it. I can't help but say these are the
2181 same great people who the administration keeps trying to pink
2182 slip. So the attitude seems to be you do great work; we just
2183 need less of it. That seems to be the message from the
2184 administration. You just can't have it both ways.

2185 You'll hear a lot about cooperative federalism being used
2186 to sell the idea of a retrieving EPA enforcement presence. That's
2187 a handoff of EPA responsibilities to States that do not have the
2188 budgets and, in many cases, do not have the same authority EPA
2189 has to enforce the law.

2190 You violate the Clean Air Act and EPA is coming at you, you
2191 can pay up to \$100,000 per day for each violation. That's under
2192 the statutes you wrote. In many States, \$10,000 is the maximum.
2193 You're just starting with fewer cards. You can't negotiate an
2194 outcome nearly as well as EPA can in that kind of lopsided
2195 situation.

2196 I just want to close by referring members to the charts at
2197 the back. There, I've tried to show a list of plants where the
2198 communities face exposure to toxic pollutants and other noxious
2199 chemicals and hazards. And those have been documented by EPA

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2200 in inspections or through monitoring records. They have been
2201 sitting for years with no enforcement action. In some cases,
2202 thousands of violations at these plants.

2203 So where's the beef? You know we want to focus on outcome.
2204 We should be asking what's going to happen with those cases.

2205 Last but not least, EPA will never run out of work. I've
2206 given you examples of the tips and complaints called into the
2207 National Enforcement Response Center that involve blowing lead
2208 dust into the environment, burning hexavalent chromium, dumping
2209 pollutants into the air, land, water, sewers, and those need
2210 attention.

2211 Thank you for your time.

[The prepared statement of Mr. Schaeffer follows:]

2212
2213

2214 ***** INSERT 6 *****

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2215 Ms. DeGette. Thank you.

2216 Dr. Sellers, you are recognized for 5 minutes.

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2217 TESTIMONY OF CHRIS SELLERS

2218

2219 Mr. Sellers. Thank you for inviting me. My name is Chris
2220 Sellers and I'm a professor of environmental history and I'm
2221 director of the Center for the Study of Inequalities, Social
2222 Justice, and Policy at Stony Brook University. But I'm here today
2223 as a member of the Environmental Data and Governance Initiative,
2224 a network of more than 170 academics and other professionals and
2225 volunteers. We've been monitoring change the U.S. EPA since the
2226 beginning of the Trump administration.

2227 I head up an EDGI research team interviewing recently retired
2228 and current EPA employees. Our early findings have been
2229 published in major scholarly outlets like the American Journal
2230 of Public Health. Over the last year, I have joined with EDGI
2231 colleagues Leif Fredrickson, and Marianne Sullivan, and others,
2232 to study this most critical function of the Agency, which we
2233 learned to be threatened, enforcement.

2234 We have researched the EPA's own public data and records
2235 supplemented by internal documents provided by interviewees.
2236 All point with startling unanimity to the same conclusion: Over
2237 the past 2 years, EPA has declined -- EPA enforcement has declined
2238 significantly. The only question has been just how badly.

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2239 Well, fortunately, EPA has now released its fiscal year 2018
2240 data and that's provided us and everyone else with clear answers.

2241 So with my testimony, I've included a 32-page compendium of
2242 charts and other analysis of this data, combining it with earlier
2243 publicly available EPA enforcement data. We have the links on
2244 our website, if you wish to follow them.

2245 It shows a decline in enforcement that is dramatic and
2246 alarming with a speed and scale that have only a single rival
2247 in the Agency's half-century history and that's the early Reagan
2248 administration in the early '80s, when they actually broke up
2249 EPA's enforcement wing.

2250 Most of the available measures of the Agency's performance
2251 are registering 10- or 15-year lows at the very least. To find
2252 a lower number of civil judicial referrals, we've talked about
2253 this a little bit, these are for the most egregious offenses to
2254 the Justice Department, you have to go back to 1976 and, as we
2255 said, total civil cases to 1982. People have already talked about
2256 that.

2257 By almost any measures, EPA is doing worse. Other measures
2258 by which EPA assesses its own enforcement don't run as far back,
2259 yet the Trump's years still vie with the lowest ever recorded
2260 civil cases concluded to 1994, civil fines levied lowest since

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2261 1987, and I can go on. EPA's been curbing its ability not just
2262 to punish but to find violators.

2263 In 2017 inspections, these you know checking for compliance,
2264 those were the lowest in 25 years and then they fell still lower
2265 in 2017. Drops in inspections, which are the front end of the
2266 enforcement pipeline strongly suggest that the decline in EPA
2267 enforcement has not yet hit bottom. By almost any measure of
2268 its actions, EPA is backing off from its longstanding role as
2269 the Nation's top environmental cop.

2270 What EPA employees have told us in the course of our
2271 interviewing project strongly confirms the picture suggested by
2272 EPA's enforcement numbers, Ms. Bodine's testimony aside.

2273 Over the last 2 years, my team has conducted 100 confidential
2274 interviews with recently retired and current EPA staff, a quarter
2275 of whom work directly in enforcement. Of the last 24 interviews,
2276 including those in enforcement and out, all drawing on Trump
2277 administration experience, 75 percent of these mentioned problems
2278 with enforcement. It's widely known.

2279 Their testimony offers a concrete and plausible account also
2280 of what has driven the drop. Environment enforcement staff have
2281 gotten a message that industry is in the driver's seat, that they
2282 are to bow to its request. We've heard stories about the staff

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2283 exodus, about members of the regulated communities becoming
2284 emboldened. We've documented a widespread belief among EPA staff
2285 that, in practice, this so-called cooperative federalism is
2286 turning out to mean deregulation, plain and simple.

2287 With rare uniformity, the evidence we found adds up to a
2288 convincing picture of a sad truth: EPA is extracting its own teeth.

2289 This is not just some bureaucratic reshuffle. Less enforcement
2290 will have real consequences for many Americans, especially those
2291 living nearest to these potential environmental threats.

2292 In 2008 under George Bush, EPA enforcement actions protected
2293 eight million people's drinking water and last year, that was
2294 down to 500,000. So, a plummet of several-fold. That level of
2295 inaction -- that nearly begs for another Flint.

2296 Not only is the enforcement drop corroding the federal
2297 commitment to protect health and the environment, it is weakening
2298 the ability of States to do so. Already, we believe, it has all
2299 but ensured significant deterioration of our nation's public
2300 health and environment in the years ahead.

2301 Thank you.

2302 [The prepared statement of Mr. Sellers follows:]

2303

2304 ***** INSERT 7 *****

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2305 Ms. DeGette. Thank you.

2306 Mr. Buckheit. Chair DeGette --

2307 Ms. DeGette. Hang on. Mr. Buckheit --

2308 Mr. Buckheit. Yes.

2309 Ms. DeGette. -- for 5 minutes. Thank you.

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2310 TESTIMONY OF BRUCE BUCKHEIT

2311

2312 Mr. Buckheit. Thank you Chair DeGette, Ranking Member
2313 Guthrie, and members for inviting me here today.

2314 I have been involved in Clean Air Act enforcement issues
2315 in a variety of roles since 1984. I would like to focus my remarks
2316 this morning on the recent policy statements of the Enforcement
2317 Office and advise the committee of what I think that portrays.

2318 Overall in my -- and so I would ask that my written testimony
2319 be submitted for the record.

2320 Ms. DeGette. Without objection, all the witnesses'
2321 testimony will be part of the record.

2322 Mr. Buckheit. Thank you.

2323 Overall, the broad decline in the air enforcement metrics,
2324 in my view, is neither surprising nor accidental. This view is
2325 based on my years of experience in this area, including my personal
2326 interactions on many of these same air enforcement issues with
2327 Acting Administrator Wheeler and Assistant Administrator Wehrum
2328 in the 1998 to 2003 time frame. It is also based on recent Agency
2329 public statements, rulemaking proposals, and revised enforcement
2330 policies. Notably, these new enforcement policies are devoid
2331 of any measures to deter future violations of the Act.

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2332 The administration's push to exit the enforcement arena
2333 ignores the history of air pollution control. Prior to the 1970s,
2334 States were primarily responsible for air pollution control.
2335 Federal authority over air pollution was either entirely missing
2336 or merely advisory. Over time, however, it became clear that
2337 deferring to the States did not work and so Congress adopted the
2338 1970 Clean Air Act to end the race to the bottom among States.

2339 The CAA provides that once EPA has provided 30 days' notice to
2340 a State, EPA may enforce as appropriate.

2341 Enforcement policies that manage the federal, state, and
2342 local roles have been developed over the years and worked well
2343 but this does not mean that EPA and State program managers must
2344 always agree. EPA has a job to do and many States do not have
2345 the political will to force their companies to retrofit with
2346 expensive pollution controls. This fact is documented by years
2347 of State enforcement records. There is no reason to believe that
2348 EPA's ceding near total enforcement authority to the States will
2349 alter the value that the different States place on environmental
2350 enforcement.

2351 EPA has now declared mission accomplished and deprioritized
2352 new air enforcement in what's called large emitting sectors.
2353 It has also likely walked away from ongoing investigations

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2354 commenced under the previous administrations.

2355 While EPA says that it will complete the ongoing enforcement
2356 cases, that is to say matters that have already been referred
2357 to the Justice Department, it does not commit to complete the
2358 ongoing enforcement investigations in these sectors that were
2359 commenced under the Obama administration.

2360 EPA justifies abandoning the utility sector because
2361 emissions have declined as a result of enforcement actions taken
2362 against some companies years ago and subsequent EPA regulations.

2363 However, the EPA investigations during my tenure, and more recent
2364 investigations in the last few years, each show substantial
2365 noncompliance within the sector and this is the single largest
2366 polluting sector, on a unit-by-unit basis, in the country. This
2367 is where the money is.

2368 This sector also has a fairly substantial percentage of units
2369 that are not well controlled. My recollection is is that about
2370 a quarter of the plants don't have full on SO2 controls and half
2371 or more are not fully controlled for nitrogen oxides.

2372 EPA says that it is done with the other sectors because it
2373 has, quote, required controls or -- or commenced investigations
2374 at 90 percent or more of the facilities in those sectors.

2375 However, commencing an investigation is not the same thing as

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2376 completing an enforcement action.

2377 As it abandons the existing sectors, EPA does not identify
2378 any other large emitting industrial sectors to replace them.

2379 You heard earlier about targeting. Well there is no targeting
2380 in EPA's new plan. To say that you are going to target
2381 nonattainment areas provides no guidance at all. Where and how
2382 are you going to reduce emissions within the nonattainment areas?

2383 Several months before I left EPA, senior management had
2384 advised me that on a forward-looking basis we would not be
2385 enforcing the rules as they were on the books but as EPA intended
2386 them to be and had proposed them to be under change regulations.

2387 We now see the administration again seeking to change the New
2388 Source Review rules and I strongly suspect that what enforcement
2389 decisions are being made are being made on the basis of what they
2390 would like the new rules to be.

2391 Thank you.

2392 [The prepared statement of Mr. Buckheit follows:]

2393

2394 ***** INSERT 8 *****

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2395

Mr. Schaeffer. Thank you very much, Mr. Buckheit.

2396

Dr. Shimshack, you are now recognized for 5 minutes.

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2397 TESTIMONY OF JAY SHIMSHACK

2398

2399 Mr. Shimshack. Chair DeGette, Ranking Member Guthrie,
2400 distinguished members of the committee, thank you for the
2401 opportunity to testify. My name is Jay Shimshack. I'm an
2402 associate professor of public policy and economics at the
2403 University of Virginia's Frank Batten School of Leadership and
2404 Public Policy.

2405 I've been conducting research on environmental enforcement
2406 and compliance for nearly 20 years now. Recently, I've devoted
2407 considerable efforts to synthesizing the relevant state of
2408 knowledge in the literature and my testimony today emphasizes
2409 two themes.

2410 First, the evidence indicates that traditional monitoring
2411 and enforcement actions get results. And second, the evidence
2412 indicates that further devolution of environmental oversight from
2413 federal and regional offices to state or local agencies may have
2414 important consequences for human health and the natural
2415 environment.

2416 Before proceeding, it's worth noting what I mean by the
2417 evidence. A large and growing multi-disciplinary literature
2418 assesses environmental compliance by rigorously analyzing data.

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2419 The methods are diverse. The evidence spans air, water, waste,
2420 oil, and other pollution.

2421 So some details on effectiveness: My work and that of many
2422 others shows that environmental inspections and fines enhance
2423 compliance and reduce pollution. Inspections and fines reduce
2424 immediate harm, as evaluations and requirements of administrative
2425 or judicial actions generate pollution reductions.

2426 Second, inspections and fines improve future environmental
2427 performance at the evaluated or sanctioned facility.

2428 Third, inspections and fines spill over to improve
2429 environmental performance at other facilities located under the
2430 same jurisdiction as the sanctioned facility via regulator
2431 reputation effect.

2432 And fourth, inspections and fines can induce facilities to
2433 go beyond compliance and reduce pollution below their permitted
2434 levels.

2435 The literature on the effectiveness of alternative
2436 approaches to promoting compliance, like enforcement actions
2437 without penalties, voluntary programs, cooperative arrangements,
2438 information disclosure and compliance assistance is much smaller
2439 and the results are considerably more mixed.

2440 My read of this literature is that environmental compliance

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2441 tools beyond traditional inspections and fines can be effective
2442 when used as complements to traditional regulatory approaches
2443 but not as substitutes to traditional approaches.

2444 Some details on devolution: As has been stated at several
2445 points today, the majority of environmental permitting,
2446 inspection, and sanction activities are currently delegated to
2447 state and local authorities. Scholars have long-noted
2448 advantages and disadvantages of this system. One advantage is
2449 that state and local agencies may have better information on local
2450 conditions and preferences so activities can be more carefully
2451 tailored to local circumstances. On the other hand, the
2452 literature shows that decentralized oversight has disadvantages
2453 as well. The evidence suggests that devolved oversight can cause
2454 States to perceive a need to compete with one another to attract
2455 new business with lax environmental enforcement.

2456 Decentralized enforcement can fail to adequately address
2457 pollution impacts crossing State borders or attributable to large
2458 firm operating in many States simultaneously. Decentralization
2459 can heighten incentives for local regulators to pursue the
2460 interest of the regulated community, rather than the interest
2461 of the general public.

2462 My own recent work also illustrates another peril of

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2463 devolution. Colleagues and I show that enforcement in a highly
2464 devolved system can lead to unintended enforcement spillovers
2465 across borders. Increases in enforcement pressure in one State
2466 provide incentives for competitors in other States to increase
2467 production and pollution. We show that this happens under the
2468 U.S. Clean Water Act. Pollution reductions from more enforcement
2469 in one State can be offset by increased pollution by competitors
2470 in other States.

2471 Results suggest that enforcement oversight may require more
2472 rigorous regional and national coordination than is currently
2473 available.

2474 Some implications: The evidence suggests that all else
2475 equal, reductions in EPA monitoring and enforcement actions will
2476 sacrifice benefits for environmental quality, human health,
2477 property values, and other endpoints.

2478 In principle, reductions in EPA monitoring and enforcement
2479 could be offset by countervailing increases in state and local
2480 environmental monitoring and enforcement activity. As a matter
2481 of practice, further devolution of oversight comes with risks
2482 for environmental quality, human health, and property values.

2483 Chair DeGette, distinguished members, this concludes my
2484 remarks. I hope these comments provide a perspective from

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2485 academic research on the important matters at hand.

2486 Thank you.

2487 [The prepared statement of Mr. Shimshack follows:]

2488

2489 ***** INSERT 9 *****

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2490

Ms. DeGette. Thank you, Doctor.

2491

Dr. Nelson, you are recognized for 5 minutes.

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2492 TESTIMONY OF BAKEYAH NELSON

2493

2494 Ms. Nelson. Thank you, Chair DeGette, Ranking Member
2495 Guthrie, and members of the Oversight and Investigations
2496 Subcommittee for the opportunity to testify here today about EPA's
2497 enforcement record and the implications for the eight-county
2498 Houston region.

2499 I am the Executive Director of Air Alliance Houston, a local
2500 nonprofit organization that works to improve air quality and
2501 public health through research, education, and advocacy.

2502 Illegal releases of air pollution are all too common in
2503 Texas. Industry says these releases are unavoidable, yet they
2504 also know the U.S. Environmental Protection Agency and Texas
2505 Commission for Environmental Quality will not hold them
2506 accountable. This leaves people across Houston and Texas almost
2507 defenseless against harmful air pollution.

2508 More than 400 petrochemical facilities, including two of
2509 the four largest U.S. oil refineries reside in Harris County.

2510 Emissions events in Texas have been found to lead to the premature
2511 deaths of at least 16 people and \$148 million in health-related
2512 costs per year. TCEQ, however, fails to penalize violators 97
2513 percent of the time, according to an analysis by Environment

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2514 Texas. This general unwillingness to enforce the law has
2515 essentially given industry a pass to poison.

2516 The Valero Houston Refinery, for example, released
2517 significant amounts of hydrogen cyanide into the air in 2016,
2518 despite not having a permit to do so. The consequence? There
2519 has been none to date. Neither EPA nor TCEQ has taken enforcement
2520 action. This is extremely concerning because the Valero refinery
2521 is located beside Houston's Manchester community, where 97
2522 percent of the residents are people of color, 37 percent live
2523 in poverty, and 90 percent live within one mile of an industrial
2524 facility that is subject to the EPA's Risk Management Program.

2525 Many homes are within yards of the refinery, which has
2526 self-reported more than 200 unauthorized releases of toxic air
2527 pollutants since January 2003.

2528 High exposures to hydrogen cyanide can be extremely harmful
2529 to people's health and can result in death within minutes, while
2530 exposure at lower concentrations can cause eye irritation,
2531 headache, confusion, nausea, among other health effects.

2532 Hurricane Harvey serves as a cautionary tale about the
2533 vulnerability of millions of Americans who live near chemical
2534 plants. It also revealed how ill-equipped the State of Texas
2535 and the EPA are to handle disasters. During Harvey, over eight

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2536 million pounds of pollution escaped into the air because of
2537 inadequate preparation for the storm by industry, EPA, and TCEQ.

2538

2539 The biggest emissions release occurred in Galena Park, a
2540 predominately Latin and low-wealth community along the Houston
2541 Ship Channel. Two storage tanks at the Magellan Terminal
2542 released more than 11,000 barrels of gasoline. The company did
2543 not report the incident until 11 days after the spill occurred,
2544 according to the Houston Chronicle.

2545 Life-long Galena Park resident, Juan Flores, who works as
2546 a community organizer for Air Alliance Houston, said he and his
2547 neighbors smelled the strong odor of petroleum for several days
2548 after Harvey. People complained about the extreme stench,
2549 burning eyes, and more. They closed doors and windows but many
2550 still could not escape the odor, yet EPA and TCEQ have taken no
2551 enforcement action against Magellan.

2552 Galena Park is just one of many examples of how communities
2553 suffered public health impacts from the storm and of the inaction
2554 by EPA and TCEQ. During and in the immediate weeks after the
2555 storm, several organizations collected information and surveyed
2556 residents about the public health impacts. Many reported
2557 worsening health conditions yet, EPA and TCEQ are not holding

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2558 the polluters accountable and have not yet required action to
2559 prevent similar problems in the future.

2560 Texas needs robust oversight from EPA because the State also
2561 limits the ability of local agencies to pursue enforcement actions
2562 against industrial polluters. Significant challenges exist to
2563 local enforcement of the Texas Clean Air Act. Specifically, one
2564 of the challenges to local enforcement of the Texas Clean Air
2565 Act is that, in some types of cases, the city must notify the
2566 TCEQ of a violation and give the State agency the first opportunity
2567 to determine whether to pursue an enforcement action. However,
2568 as previously noted, TCEQ fails to penalize violators 97 percent
2569 of the time.

2570 Enforcement action is particularly critical for communities
2571 of color and low wealth, as hazardous facilities are
2572 disproportionately concentrated in these neighborhoods,
2573 compromising the health and safety of people with some of the
2574 greatest health challenges and the fewest resources to address
2575 these issues.

2576 The overwhelming majority of incidents that occurred during
2577 Harvey took place in or near environmental justice communities.
2578 Years ago, EPA had recognized the need to make preventing
2579 chemical disasters a National Enforcement Initiative. The

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2580 communities in Houston haven't seen EPA make good on that promise.

2581

2582 Even worse, after committing to an increase in enforcement
2583 resources to the most overburdened communities in EPA's
2584 Environmental Justice Strategic Plan, the Agency is, instead,
2585 turning its back on communities that need enforcement the most,
2586 like Houston. These communities simply cannot rely on compassion
2587 or the good will of industry to comply with the law.

2588 In conclusion, I want to thank the subcommittee for
2589 conducting this hearing and for the opportunity to testify today.

2590 [The prepared statement of Ms. Nelson follows:]

2591

2592 ***** INSERT 10 *****

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2593

Ms. DeGette. Thank you, Doctor.

2594

Mr. Tenpas, you are now recognized for 5 minutes.

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2595 TESTIMONY OF HON. RONALD TENPAS

2596

2597 Mr. Tenpas. Madam Chair DeGette, Ranking Member Guthrie,
2598 members of the subcommittee, thank you for the opportunity to
2599 be here today and offer my perspective on environmental
2600 enforcement efforts.

2601 Just briefly, by way of my background on this, I've spent
2602 approximately 20 of my 30-year legal career focused on issues
2603 of enforcement of federal law and regulation, seeing it both from
2604 the perspective of the government and the perspective of those
2605 who are subject to those laws and regulations.

2606 I started by spending 12 years at the Justice Department,
2607 beginning as an AUSA indeed in Congressman Castor's home location
2608 as an AUSA in Tampa, Florida. I then spent, after 6 years as
2609 a line attorney, I spent 6 years as a political appointee,
2610 including in two Senate-confirmed posts as a United States
2611 Attorney in the Southern District of Illinois, and then later
2612 as the Assistant Attorney General for the Environment and Natural
2613 Resources Division, the ENRD, as it is often called in shorthand.

2614 Just like you have been referencing OECA here at EPA, the ENRD
2615 is the group of lawyers that really take on all of the major federal
2616 environmental cases that end up in the courts, including, of

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2617 course, the most significant federal environmental enforcement
2618 cases.

2619 And then following that time at the Justice Department, I've
2620 spent the last 10 years in private practice assisting clients,
2621 as they say, as they assess their environmental obligations and
2622 address potential violations.

2623 From that there are sort of five overall observations I would
2624 offer to the committee today. First, as there has been a great
2625 deal of discussion, both EPA and DOJ do try to measure and report
2626 on their enforcement results and EPA is currently using 12 major
2627 metrics. This data is, as I often put it, noisy. Single case
2628 outcomes from year to year can drive the annual results, making
2629 it sometimes difficult to discern fundamental trends.

2630 And so I would urge some amount of caution in drawing strong
2631 conclusions based on any single subset of those metrics or from
2632 even a narrow, relatively narrow period of years, a single year,
2633 or 2 years.

2634 As I look at the most recent EPA data that has been published
2635 and that the committee has been discussing, I see what I regard
2636 as a pretty typical mixed bag. Some enforcement metrics are up.

2637 From what was observed during periods of the prior
2638 administration, some are down, some are roughly in line with prior

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2639 history. Thus, to me, that data doesn't overall suggest there
2640 has been an abandonment of environmental enforcement.

2641 Second, that kind of level of stability there is not
2642 surprising to me, given that between EPA and DOJ there is a very
2643 large and dedicated group of career professionals. And that
2644 group ensures that, regardless of administration, there is always
2645 likely to be a meaningful and continuous enforcement effort, as
2646 there should be.

2647 Third, for all of the attention that these annual statistics
2648 may get, at the end of the day they are proxies and they are
2649 somewhat poor proxies for the real objective here, which is
2650 consistent compliance with our environmental regulations.
2651 Enforcement is not an end in itself. The purpose of enforcement
2652 is to incentivize and, when necessary, to coerce compliance with
2653 our environmental regulations.

2654 And this leads to my fourth point, which is that we should
2655 always be open to the possibilities that there are better ways,
2656 there are alternative ways to secure compliance. Use of the
2657 enforcement stick need not be and likely should not be the only
2658 strategy. In this respect, things like voluntary self-reporting
2659 programs and similar incentive systems that aren't always
2660 accompanied by formal enforcement actions or a formal enforcement

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2661 stat, as people in the government sometimes put it, those programs
2662 can be very important nevertheless.

2663 Finally, I will just say I have yet to meet the client who
2664 has taken the view that, because there is some impression or some
2665 reporting as has been discussed here, that enforcement efforts
2666 are down, it's going to cut back on its own environmental and
2667 compliance efforts. And one of the things that I think the
2668 Congress and this country should be proud of is that we know had
2669 a robust body of environmental statutes for several decades and
2670 that has in fact spurred within the corporate community them to
2671 develop large environmental health and safety professional staff
2672 who do believe in and are committed to complying with the law
2673 and who are well aware that there is an active and effective sect
2674 of career professionals at the enforcement agencies, federal,
2675 state, and local. They are aware that there is more than one
2676 agency on the job, besides the EPA, under our scheme of cooperative
2677 federalism.

2678 Thus to me it is likely a false narrative to assume that
2679 even if enforcement efforts are subject to some adjustment at
2680 the federal level, the reaction within the regulated world is
2681 a corresponding increase in noncompliance. I simply don't tend
2682 to see that level of cause and effect in my own observations.

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2683 So I thank you for the opportunity to be here today. I
2684 appreciate the committee's invitation and I look forward to
2685 addressing any questions.

[The prepared statement of Mr. Tenpas follows:]

2687 ***** INSERT 11 *****

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2688 Ms. DeGette. Thank you so much, Mr. Tenpas, and thanks to
2689 the entire panel.

2690 The chair now recognizes herself for 5 minutes.

2691 On the first panel today, we heard about some of the key
2692 EPA enforcement mechanisms and how the enforcement figures have
2693 really just plummeted by pretty much any index under this
2694 administration. For example, we heard that EPA performed fewer
2695 inspections last year than it had in over a decade. We heard
2696 that the injunctive relief figure was the lowest in 15 years.

2697 We heard that the civil penalties were the lowest in nearly 25
2698 years, and the number of civil cases initiated was the lowest
2699 since 1982. So I just want to ask some questions about this.

2700 Mr. Schaeffer, in your written testimony, you said quote,
2701 the EPA's enforcement results for the 2018 fiscal year were
2702 historically low by almost every measure. Is that accurate?

2703 Mr. Schaeffer. That is right.

2704 Ms. DeGette. Okay. Now you are a former EPA career
2705 enforcement official. And so I don't know if you heard Ms.
2706 Bodine's testimony but she seemed to think that these statistics
2707 were unimportant and that in fact EPA's enforcement activities
2708 were just fine for a variety of reasons.

2709 What do you think the low numbers tell you about the EPA's

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2710 enforcement of environmental laws by this administration? And
2711 are you concerned about some of these indicators and, if so, which
2712 ones?

2713 Mr. Schaeffer. So Madam Chairman, I am concerned. I think
2714 first of all, these are measures that the EPA enforcement program
2715 itself has selected to reflect their performance and what you
2716 get out of enforcement.

2717 Ms. DeGette. So it is their own statistics.

2718 Mr. Schaeffer. Their own statistics and these are
2719 performance measures that are published year after year.

2720 And I think it is true that across the board, with very few
2721 exceptions, they are all very far down. So they are well below
2722 not just prior years, the prior few years, but historical averages
2723 and that is of concern.

2724 Ms. DeGette. Now, Mr. Buckheit, you are also a former EPA
2725 career enforcement official. So do you agree with Mr. Schaeffer
2726 that these indices can be used to see whether the Nation's
2727 environmental laws are being adequately enforced?

2728 Mr. Buckheit. Yes, I do. I mean they are all sort of a
2729 mosaic that look at different parts of the program and when you
2730 put them together, you get an overall picture of decline.

2731 Ms. DeGette. An overall picture of decline?

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2732 Mr. Buckheit. Yes.

2733 Ms. DeGette. Okay, thank you.

2734 Now last year, the President's budget request called for
2735 a nearly 25 percent cut to the Agency. Had Congress not prevented
2736 those cuts from taking place, the budget would have been at its
2737 lowest level since 1991.

2738 So Mr. Schaeffer, I wanted to ask you what message did last
2739 year's budget request send to polluters and EPA's own staff about
2740 the approach to environmental enforcement?

2741 Mr. Schaeffer. That enforcement doesn't matter.
2742 Enforcement requires staff. You can't do the work without
2743 people. You are trying to cut the budget by a quarter, you are
2744 telling the staff their work doesn't matter.

2745 Ms. DeGette. Now what did you make of Ms. Bodine's statement
2746 just a few minutes ago that, irrespective of what the President's
2747 budget for next year, she is going to support it? What do you
2748 think that message that sends in terms of enforcement?

2749 Mr. Schaeffer. Well, I think I suppose she has to, as the
2750 --

2751 Ms. DeGette. Well, yes, but what do you think? What
2752 message do you think that sends?

2753 Mr. Schaeffer. I think it is confused, anyway. It is

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2754 pretty hard to constantly refer to the great work of the program
2755 at the same time that your President is trying to slash it by
2756 so much.

2757 Ms. DeGette. Thank you.

2758 Dr. Shimshack, I wanted to ask you because Ms. Bodine seemed
2759 to indicate that well, some of the national figures weren't so
2760 important because the EPA was working with the States on
2761 enforcement. And I think you would agree that State enforcement
2762 is important. Is that correct?

2763 Mr. Shimshack. That is correct.

2764 Ms. DeGette. But is that in a vacuum or is it important
2765 to do that in conjunction with these other efforts?

2766 Mr. Shimshack. So I think provided States have the
2767 resources and the capacity. Even then, my best guess is that
2768 further devolution may result in declines in environmental
2769 quality, as I testified. Ms. DeGette. Why is that?

2770 Mr. Shimshack. Again, there are issues of spillovers across
2771 States when they are not well coordinated. There are issues of
2772 regulatory capture, et cetera, so the things that I mentioned
2773 in my testimony. I do want to emphasize States do great work.

2774 Ms. DeGette. Well right, but they can't do it in a vacuum.

2775 Mr. Shimshack. But they are already doing the overwhelming

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2776 majority of the day-to-day oversight. There is enormous
2777 variation in enforcement intensity across States. And States
2778 are already being asked repeatedly to do more with less.

2779 Ms. DeGette. Speaking about the enormous difference
2780 between enforcement in States, Dr. Nelson, I think that is what
2781 your testimony was about is the enforcement by your State of Texas.

2782 Ms. Nelson. That is correct.

2783 Ms. DeGette. So do you think Texas can be relied on to do
2784 the environmental enforcement by itself?

2785 Ms. Nelson. I don't think so.

2786 Ms. DeGette. Thank you. Thank you very much.

2787 The chair now recognizes the gentleman from Kentucky, the
2788 ranking member, for 5 minutes.

2789 Mr. Guthrie. Thank you very much. So this has been an
2790 important hearing and I appreciate everybody being here.

2791 Mr. Tenpas, in your testimony, you specifically talked about
2792 noisy metrics and that single case outcomes can drive annual
2793 numeric enforcement results reported by EPA and DOJ. Can you
2794 further get into that? I know you only had 5 minutes to make
2795 five points but I would like you to talk about how the metrics
2796 are noisy and how that can show trends in reporting that may not
2797 be accurate.

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2798 Mr. Tenpas. So what I meant by noisy is that you can get
2799 particularly significant individual cases in any year that cause
2800 that year to spike. And we have heard some discussions of those,
2801 BP in the year that matter was resolved, Volkswagen in the year
2802 that matter was resolved, and that feeds across the variety of
2803 metrics that you might have.

2804 In addition to some of these penalty ones, as was referenced,
2805 there is data on, for example, what is the level of commitment
2806 to clean up materials that have been achieved through various
2807 agreements and consent decrees. That as well can be very heavily
2808 influenced by a single case resolution with one big company in
2809 a single year.

2810 Mr. Guthrie. Okay. You talked about -- we have all talked
2811 about other measurements other than just enforcement. And I
2812 think someone said the trends were down across a lot of those
2813 measurements.

2814 Given what EPA measures, what else do you think we should
2815 ask them to measure that would give us a better indication of
2816 what they are doing?

2817 Mr. Tenpas. Well I think you have heard a couple of good
2818 ideas from Ms. Bodine this morning, when she talked about trying
2819 to find ways to capture times when they have worked effectively

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2820 with a State to potentially do an inspection and help identify
2821 a problem that then the State takes the lead in working with the
2822 facility in resolving.

2823 You have heard ideas, you know I think the tracking of the
2824 self-reports that they have begun and I think is something of
2825 a more recent development, I mean it precedes this administration
2826 but I think it is more recent, is a very helpful metric for folks
2827 to be watching and to see how -- what that produces.

2828 Mr. Guthrie. Okay and also, Mr. Tenpas, as you currently
2829 note in your testimony, the objective of EPA is to promote and
2830 ensure compliance with our environmental laws and regulations.

2831 In your opinion, what tool does EPA have that is most helpful
2832 in ensuring compliance with environmental laws and regulations?

2833 Mr. Tenpas. I don't know that I have a single tool. I mean
2834 that is what we are I think here to discuss today. I think, as
2835 said, it is the mosaic of tools, the threat of investigations,
2836 the use of and bringing cases, the use of inspections, the working
2837 very cooperatively with States in the regime that Congress
2838 established of cooperative federalism. I mean Congress
2839 anticipated the States to have a kind of primacy type role and
2840 EPA working with them to support them are probably the three most
2841 important things.

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2842 Mr. Guthrie. So I always look in these hearings if something
2843 can result in Congress making corrections and fixes to this.
2844 That is one of the reasons we do this.

2845 So are there any tools that EPA does not have that would
2846 be helpful for it to have to help ensure compliance with
2847 environmental laws and regulations?

2848 Mr. Tenpas. There is nothing that occurs to me immediately.
2849 I think there are always sort of adjustments that you make in
2850 the program as you go along and as conditions change.

2851 I mean as I noted in my testimony, there are some metrics,
2852 you know one of the metrics has been sliding for years, and years,
2853 and years. I take that to be a marker of success because it is
2854 showing that some of the worst problems in terms of pollution
2855 locations and pounds to be corrected have been dealt with. And
2856 now we are at a different point in our enforcement and compliance
2857 approach.

2858 Mr. Guthrie. So I know Kentucky had a program in OSHA not
2859 EPA but had a program that industry could invite OSHA inspectors
2860 in. And if they came in and found negligence, there were certain
2861 exceptions, that they came in and found they immediately got
2862 fined. But what they really did was come in at the invitation
2863 of the company, do inspections, here are things you need to

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2864 improve, go back and do follow-up. So the goal with that was
2865 compliance, not necessarily just getting a fine to go move
2866 forward. And I don't know the data because I like professors
2867 to do studies on things because data is data. But I don't know
2868 the result. But I would have to feel like that we were getting
2869 more compliance, even though we were getting this anecdotal less
2870 enforcement dollars.

2871 Mr. Tenpas. And that sounds right to me. There is, as I
2872 say, a variety of facilities they have staff, they do self-audits,
2873 they do inspections, they sometimes bring in third parties. But
2874 the government has a certain level of inspection expertise as
2875 well. And so a program that allows a company to draw on that
2876 expertise without necessarily feeling that its reward for that
2877 if something is identified is going to be a massive penalty.
2878 I can see how that program could be very successful in improving
2879 compliance outcomes.

2880 Mr. Guthrie. All right, well thank you.

2881 And I yield back. My time has expired.

2882 Ms. DeGette. Thank you.

2883 The chair now recognizes the gentlelady from Florida, Ms.
2884 Castor, for 5 minutes.

2885 Ms. Castor. Thank you. Thank you to all the witnesses for

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2886 being here today.

2887 I would like to touch on EPA's 2018 annual enforcement
2888 numbers and the trends, including what the overall picture tells
2889 us about the lack of environmental enforcement under this
2890 administration.

2891 Mr. Schaeffer, your organization recently analyzed EPA's
2892 enforcement trends, in light of the Agency's very own 2018 report.

2893 Broadly speaking, I think I heard you answer to Chairwoman
2894 DeGette that the message that you take away is that they do not
2895 prioritize enforcement of our bedrock American environmental
2896 laws. Is that correct?

2897 Mr. Schaeffer. I think that is true.

2898 Ms. Castor. Would you go as far as to say that EPA currently
2899 is abdicating its responsibility to the American public?

2900 Mr. Schaeffer. I would.

2901 Ms. Castor. And Dr. Sellers, do you agree with that as well?

2902 Mr. Sellers. I agree with both those answers.

2903 Ms. Castor. Because you recently contributed to a report
2904 on the erosion of EPA's enforcement, the same organization that
2905 developed this report analyzed the annual report. What else do
2906 you want the American people to understand is going on at EPA
2907 right now?

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2908 Mr. Sellers. Well, I think there are a lot of things going
2909 on kind of below the publicity surface, below the level of the
2910 media that a lot of the employees feel like that industry is
2911 absolutely calling the shots. This is a quote from one of our
2912 interviewees.

2913 Ms. Castor. Yes, can I just stop you there? You, in your
2914 testimony, you said that your organization conducted hundreds
2915 of interviews with recently retired and current EPA employees.
2916 And you say that they are -- many told you of pressures applied
2917 by Agency leadership explicitly urging EPA employees to go easy
2918 on industry.

2919 Give us some examples. What did they say? How many of the
2920 folks you interviewed said that?

2921 Mr. Sellers. I would not say hundreds. We did a hundred
2922 interviews.

2923 Ms. Castor. Okay.

2924 Mr. Sellers. I mean examples include, for instance, Scott
2925 Pruitt parading around the Agency with a trade association group
2926 and then calling people in from the career staff, the enforcement
2927 staff, to berate them and tell them they should listen to this
2928 trade association group.

2929 And I could multiply those stories. They are

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2930 happening--they happened all around the Agency, all these kinds
2931 of pressures that staff was under. And it registered. And so
2932 I think that is one of the big reasons.

2933 Also that they have had to report even routine inspection
2934 initiatives now to the political leadership. They have had
2935 pushback from the regulated communities. It has been harder to
2936 do their jobs just on the ground because of all the industries
2937 feeling embolden.

2938 For instance, a person doing a housing inspection for lead,
2939 a childhood brain-damager, found that landlords are not returning
2940 her calls or they were getting angry on the phone with her.

2941 So there is kind of micro-level pushback also is a big part
2942 of it.

2943 Ms. Castor. And Dr. Nelson, reading your testimony, I
2944 remember well after Hurricane Harvey and all the reports of it,
2945 environmental issues, and spills, and leaks in the Houston area.

2946 And part of your testimony is entitled The Path to Poison. I
2947 think folks would be appalled to understand that after that --
2948 while you had the county grand jury indict executives of a
2949 corporate polluter, EPA did not take any enforcement action at
2950 all. Is that true?

2951 Ms. Nelson. Not to my knowledge.

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2952 Ms. Castor. What, in your opinion, has happened with EPA's
2953 interest in enforcing our environmental laws?

2954 Ms. Nelson. I think EPA is behaving in a negligent manner
2955 and communities in Houston and across the country are suffering
2956 the public health impacts as a result.

2957 Ms. Castor. Thank you.

2958 Mr. Schaeffer, given the downward trend of several key
2959 enforcement indicators, I am worried that in some cases that EPA
2960 may not be getting the attention they deserve. I understand your
2961 organization, the Environmental Integrity Project, has
2962 documented certain cases that you have concerns about.

2963 Walk us through a few of those examples.

2964 Mr. Schaeffer. Sure. We have, for example, two plants in
2965 Louisiana. In one case, the EPA inspectors found massive
2966 breakdowns in the compliance system that led to release of
2967 chloroprene, which is very toxic. It is a carcinogen, actually.

2968 The chloroprene levels downwind in the African American
2969 community that has been there forever, are way higher than EPA
2970 thinks is safe.

2971 We have butadiene coming out of the Firestone Polymers plant
2972 because, according again to EPA inspectors, the company really
2973 had no idea what was escaping out of its production process.

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2974 And we are talking here about thousands and thousands of pounds.

2975 These are not paperwork violations. These are not little
2976 things.

2977 This is a company that is in the business of making chemicals
2978 and it should know when they get into the environment. I don't
2979 think that is too much to ask. These cases have been sitting
2980 for years.

2981 We have got many other examples. We have got lead being
2982 blown from facilities that aren't managing their lead emissions
2983 and causing the air quality to exceed health-based standards in
2984 communities downwind. Why are these cases -- why have they not
2985 resulted yet, several years later, in some cases 3 or 4 years
2986 later, in an enforcement action?

2987 So you are always going to find these problems out there.

2988 Ms. DeGette. The gentlelady's time has expired.

2989 Mr. Schaeffer. If you don't, you are not looking.

2990 Ms. Castor. Thank you.

2991 Ms. DeGette. Thank you.

2992 The gentleman from Virginia is recognized for 5 minutes.

2993 Mr. Griffith. Thank you very much, Madam Chair.

2994 Mr. Tenpas, we have heard some of the witnesses today
2995 criticize the administration's emphasis on cooperative

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2996 federalism, implying that cooperative federalism will diminish
2997 or eliminate the EPA's role in controlling pollution. Is this
2998 how you understand cooperative federalism to work?

2999 Mr. Tenpas. No, sir. I mean EPA has a significant role
3000 in first establishing the rules. It has a significant role
3001 continuing and being able to investigate both civil and criminal
3002 violations, pursuing resolution of those cases. But as the name
3003 implies, cooperative federalism also involves a substantial
3004 robust and important role for the States.

3005 Mr. Griffith. So the EPA's role is not eliminated, is it?

3006 Mr. Tenpas. No.

3007 Mr. Griffith. And in these bad cases that we were just
3008 hearing about, the EPA can take action. Isn't that true?

3009 Mr. Tenpas. I don't know the specifics of those cases but,
3010 generally, as a general matter, yes.

3011 Mr. Griffith. Well it was interesting because I was
3012 listening and it was 3, 4 years. So obviously, it is not something
3013 new that has caused those problems that were just mentioned.

3014 What do you think the benefits are of the EPA's enhancing
3015 its collaboration with state and tribal partners to enforce the
3016 environmental laws?

3017 Mr. Tenpas. Well I think you get a variety of things. One

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3018 is EPA does have a level of expertise that it can, by working
3019 with the States, transfer to officials in those States as to the
3020 best practices for inspections, as to particular areas of concern,
3021 as to what the regulatory requirements are overall in discussing
3022 and making sure there is a clear understanding of those.

3023 So I think you know on the one hand bet, you get that. On
3024 the other hand, I think part of what undermines all federalism,
3025 cooperative or otherwise, is a recognition that often local
3026 officials know their communities best and they have an
3027 appreciation for the facilities, they have appreciation for the
3028 issues in the community, and they probably have a sensitivity
3029 and a level of contact with those facilities in a more regular
3030 way that just makes them knowledgeable and effective in trying
3031 to bring compliance to bear.

3032 Mr. Griffith. And in your opinion, how does cooperative
3033 federalism help promote a higher compliance rate?

3034 Mr. Tenpas. Well, as I said, I think it primarily comes
3035 about through drawing on and making robust the capacity that the
3036 State has, those officials who are in their communities in a
3037 regular way, and making them effective in using all of the tools
3038 we have talked about, again, not just enforcement actions but
3039 inspections, self-report and auditing programs. The

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3040 effectiveness comes about by making those State officials able
3041 to do their work in a sensible way.

3042 Mr. Griffith. And in many ways, I mean if you have a bad
3043 actor, they are going to be bad actors no matter what. But for
3044 those people that are struggling in the medium-sized businesses,
3045 or even in small and large businesses, if they are struggling
3046 to figure out okay what are the rules here, what do I need to
3047 do, if they are sensing -- and you can correct me if you think
3048 I am wrong -- if they are sensing that there is a no win and even
3049 if they try hard, they are not going to succeed and they are going
3050 to get fined or penalized, it just becomes an adversarial
3051 proceeding.

3052 Whereas, if you are trying to help them and say look, if
3053 you do it this way, things will be better and we are not going
3054 to fine you. Doesn't that get more cooperation as well? Isn't
3055 that part of what the EPA is trying to do right now?

3056 Mr. Tenpas. My sense is that is part of what they are trying
3057 to do. And I would say just as a general matter for some of those,
3058 as you say, smaller entities that don't have necessarily the staff
3059 and the sophistication, they are trying hard. They want to follow
3060 the rules; sometimes they can be quite complicated.

3061 And there is something to the fact that I think for a lot

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3062 of folks in that situation, the Federal Government sounds big
3063 and scary. A state government agency feels like a place that
3064 they think they can go to and get that advice that they need to
3065 get them to the place they want to be, which is in compliance.

3066 Mr. Griffith. Yes. In my district you know there are a
3067 lot of people, and I don't adhere to that, and a lot of people
3068 have advocated you know just we will abolish the EPA because they
3069 feel so put down, burdened, oppressed, that they just like forget
3070 it all. And yet I think the EPA can do some good things and that
3071 is why I support what the EPA is currently trying to do and what
3072 you have advocated for here today.

3073 I appreciate it very much and I yield back.

3074 Mr. Kennedy. [Presiding.] The gentleman yields back.

3075 I will recognize myself for 5 minutes.

3076 I want to start by thanking the witnesses for being here,
3077 and your testimony, and your service. And I wanted to begin by
3078 touching on the importance of deterring those bad actors, some
3079 of which my colleague just mentioned.

3080 I am worried that the most recent EPA numbers, as heard about
3081 earlier this morning, may send the wrong message to polluters
3082 and that the Agency is in fact failing to deter those future
3083 violations.

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3084 So Dr. Shimshack, to start with you, sir, your testimony
3085 touches on this point and you have done some academic work in
3086 this area. Can you generally speak to the importance of
3087 deterrence and what approach to enforcement may be needed by the
3088 EPA to inhibit future environmental violations?

3089 Mr. Shimshack. Sure. So deterrence, the fact that
3090 inspections and penalties have implications for deterring future
3091 violations is important not just in the sanction and inspection
3092 facility but also there are spillover effects, what we call
3093 general deterrence of interventions. Those spillover effects
3094 of inspections and enforcement activities increase compliance
3095 and reduce pollution among others. And deterrence effects can
3096 also reduce future pollution beyond compliance behavior as well.

3097 Mr. Kennedy. So for you, Doctor, and for Mr. Schaeffer,
3098 what specific tools do you believe the EPA has in its arsenal
3099 to deter would-be polluters and do you believe that they are
3100 currently effectively using them now?

3101 Dr. Shimshack first.

3102 Mr. Shimshack. So I will say that the evidence suggests
3103 that interventions with teeth, fines are most effective. I
3104 otherwise defer to Dr. Schaeffer -- Mr. Schaeffer.

3105 Mr. Schaeffer. Well, EPA uses a mix of tools and they have

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3106 always included giving people compliance assistance and helping
3107 them to understand the rule of the road and those are important.

3108 I think one of the most important things that EPA does as
3109 a national program is step in against, frankly, some of the biggest
3110 polluters with lots of political connections and power and take
3111 enforcement actions that States will not or cannot because they
3112 don't have the capacity. If the EPA loses that ability, then
3113 we lose something very important.

3114 Mr. Kennedy. Are you concerned they are not leveraging that
3115 capability?

3116 Mr. Schaeffer. I am concerned about the direction the
3117 Agency is going in in that way. And we have, again, examples
3118 of violations that are pretty serious at big plants that just
3119 seem to be sitting there and not getting attention.

3120 Mr. Kennedy. And why is that, do you think?

3121 Mr. Schaeffer. Well, I don't know. I think there is a
3122 reluctance to enforce in this administration. I just have to
3123 put that on the table.

3124 There is a lot of talk about cooperative federalism. It
3125 has its value but there are certain responsibilities that you
3126 can't just push on -- push off, rather, to the State agencies
3127 and I think that is letting a lot of these violations just sit.

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3128 Mr. Kennedy. And Dr. Nelson, I wanted to see if you could
3129 chime in.

3130 You have noted in your testimony that Texas does not penalize
3131 97 percent of its air pollution violations. If that number is
3132 accurate, and I am sure it is, the State either lacks the will
3133 or the capacity to deal with a lot of these issues, even during
3134 nonemergency times.

3135 So Doctor, can you comment further on what it may mean if
3136 the State of Texas is failing to penalize air pollution violations
3137 and how important it is for the EPA to deter bad actors, given
3138 the State may not always do so, building off of what Mr. Schaeffer
3139 said?

3140 Ms. Nelson. So if I understand your question correctly:
3141 What are the implications of the State not enforcing?

3142 Mr. Kennedy. Yes, and any reason as to why you think a State
3143 would not enforce 97 percent of the violations that would come
3144 up.

3145 Ms. Nelson. I don't think that the culture supports the
3146 State enforcing much of the violations. I think the evidence
3147 speaks for itself.

3148 I think in terms of the implications of that, that
3149 communities on the ground are experiencing the public health

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3150 impacts of the State not enforcing the laws of the Texas Clean
3151 Air Act.

3152 I don't think that it is cost-efficient in a State like Texas
3153 for industry to comply with the law, when the risk of being caught
3154 is low and, even if they are caught, the risk of penalty and the
3155 penalties are so low as well. So the State of Texas can penalize
3156 facilities for \$25,000 per day, per violation. And in that most
3157 recent report, they collected \$1.2 million, which is about two
3158 cents per pound of the pollution that was released.

3159 Mr. Kennedy. Doctor, going off of what I think somebody
3160 taught me in law school way back when, if you judge the strength
3161 of the law by the power of its remedy and you have got remedies
3162 in place but the State just chooses not to enforce it, is there
3163 really any regulation to begin with?

3164 Ms. Nelson. Well the regulation exists. I think the burden
3165 is on the state agency and the state legislature to make it
3166 effective.

3167 Mr. Kennedy. And if there is no cost for compliance?

3168 Ms. Nelson. If there is no cost for compliance, again, I
3169 think that industry is going to behave in a manner that maximizes
3170 its bottom line until it is forced not to.

3171 Mr. Kennedy. Thank you.

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3172 I yield to Ms. Kuster. Seeing no more from the witness,
3173 Ms. Kuster, you are recognized for 5 minutes.

3174 Ms. Kuster. Thank you very much. I appreciate it.

3175 I will start with Dr. Sellers, if I could. The report you
3176 contributed to says, quote, EPA employees point to budgetary
3177 uncertainty and staff loss as factors that help explain the
3178 downturn in enforcement under the Trump administration.

3179 Given the budgetary uncertainty and loss of staff that we
3180 have been discussing here today, what did EPA employees tell you
3181 about EPA's ability to enforce environmental laws. And if you
3182 could, give us one or two examples about how EPA was unable to
3183 go after polluters because of understaffing or this approach.

3184 Mr. Sellers. Sure. Yes, all the employees that we spoke
3185 with mentioned this factor about losing staff. I mean there has
3186 been a gradual attrition and then there is, on top of that, the
3187 buyouts and so on.

3188 Ms. Kuster. Does that cause a lack of morale?

3189 Mr. Sellers. It does. I mean it doesn't send a positive
3190 message. I think some of the departures are because people go
3191 that message and decided to leave.

3192 In terms of the kinds of things that are being lost, I could
3193 give you an example, for instance, of someone who is in charge

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3194 of the asbestos program at the Enforcement that left in one of
3195 these departures and there was no exchange of knowledge. There
3196 was no effort. He had been there 20 years. He was kind of the
3197 expert on this area and it was not passed along.

3198 So EPA is now at a loss and there is a big hole there in
3199 terms of what EPA can offer, even just in an advisory capacity,
3200 to industry, much less issues of enforcement.

3201 Ms. Kuster. Thank you.

3202 And I am going to direct this at Mr. Schaeffer but, to
3203 continue on that same theme, returning to my questions this
3204 morning, we in my district, a town called Litchfield, New
3205 Hampshire, had an incident of per- and polyfluorinated compounds,
3206 PFAs, caused by a company, Saint-Gobain's. And I discussed this
3207 morning that we have had to spend millions of dollars to hook
3208 up these households in this community to clean water because their
3209 wells are contaminated. They were on bottled water the whole
3210 time while they waited for that to happen.

3211 In our case, we were fortunate that it did happen but I
3212 noticed there was an action plan released on PFAs last week from
3213 the EPA but it doesn't seem to include any action, despite being
3214 called an action plan. While EPA officials said they intend to
3215 move forward with maximum containment levels, there is no

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3216 commitment in the plan. And I am just curious about your response
3217 to that.

3218 And if you could comment, the witness this morning talked
3219 a great deal about voluntary disclosures and we have been given
3220 charts that the voluntary disclosures are going up. How can they
3221 count on these companies to voluntarily disclose what they know
3222 about the contaminants that they have put into our soil, and our
3223 water, and our air? And are we doing what is needed to keep
3224 American families safe?

3225 Mr. Schaeffer. So, Congressman, I don't know the specific
3226 facts of the New Hampshire case. I would just say in general,
3227 your fundamental to enforcement and I would say just to justice
3228 is the responsible party should pay for the problems they created
3229 and enforcement has a huge role in that. And so I would look
3230 for that in any EPA strategy to deal with these contaminants.
3231 I think that would be really, really important.

3232 The government does, and I was there, I was part of this,
3233 the government rolls out a lot of plans and makes a lot of
3234 announcements. What you should look for are deadlines, and
3235 numerical targets, and specific outcomes. And that --

3236 Ms. Kuster. And some type of time table. And when I asked
3237 her about the time table this morning, she said oh I will have

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3238 to get back to you on that. There is no time table, as far as
3239 I can tell.

3240 Mr. Schaeffer. Well and maybe they will come back with a
3241 time table and it is great that you pushed for one. I think the
3242 government benefits from that kind of push. But without
3243 deadlines, not much happens in government agencies.

3244 Ms. Kuster. And what is your experience, just in my waning
3245 time here, with companies voluntarily disclosing that they have
3246 massive incidents of pollution, knowing that if they were caught,
3247 if there was remedy, they would be on the hook to pay for that?

3248 Mr. Schaeffer. They would have to pay. Well you know I
3249 think in my experience you can get those kinds of voluntarily
3250 disclosures when you have a strong enforcement program and people
3251 understand the consequences of not coming forward.

3252 They also want to know their competitors will be treated
3253 more or less the same way. If you don't have that level playing
3254 field, then you come forward, you know cut your deal to clean
3255 the mess up, and you are looking sideways at your competitors
3256 and you don't see that happen, then your voluntary compliance
3257 will fall off the cliff.

3258 Ms. Kuster. And given Dr. Nelson's comment about
3259 state-by-state, if you are in a State with very low compliance

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3260 activity, why would you? I mean you are going to put yourself
3261 at a competitive disadvantage.

3262 So well, thanks to all of you for coming in today. We
3263 appreciate it.

3264 With that, I yield back.

3265 Mr. Sarbanes. [Presiding.] I thank the gentlewoman for
3266 yielding back.

3267 I am going to yield 5 minutes to myself for questions.

3268 I want to thank you all for being here today. I appreciate
3269 your testimony.

3270 I want to come back, as I was this morning, and talk about
3271 injunctive relief. And obviously, this is a really critical
3272 enforcement tool. It is saying to industries, it is saying to
3273 violators, it is saying to polluters you need to adopt a different
3274 way of behaving. You have to come into compliance with certain
3275 rules, there are costs associated with that.

3276 Mr. Buckheit and Mr. Schaeffer, as former EPA enforcement
3277 officials, tell me why you view this within the toolkit that is
3278 available to the EPA as such a critical enforcement mechanism.

3279 Mr. Buckheit. The EPA's enforcement program is not about
3280 collecting money for the Treasury. It is about protecting public
3281 health. Fines are a part of that but the really important part

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3282 of that is what measures are installed to reduce pollution as
3283 a result of your actions. And the surrogate for that is the dollar
3284 amount of the injunctive relief. That reflects the kinds -- the
3285 amount that must be invested which is directly related to the
3286 pollution reduction.

3287 Mr. Sarbanes. Mr. Schaeffer?

3288 Mr. Schaeffer. I think that answers directly. I think
3289 injunctive relief captures the cost of cleanup. When you see
3290 bigger commitments, that tells you that you are finding the right
3291 cases. You are finding the most serious problems where you need
3292 companies to make a real long-term investment in cleanup.

3293 Mr. Sarbanes. So I want to go back to the numbers a little
3294 bit because in fiscal year 2018, the EPA enforcement actions,
3295 injunctive relief actions resulted in \$3.9 billion in injunctive
3296 relief. According to the Christian Science Monitor, this figure
3297 is the lowest in 15 years.

3298 And in that same article, it was indicated that 40 percent
3299 of that total comes from cases that were settled by the EPA during
3300 the Obama administration, which means that the fiscal year 2018
3301 numbers could have been worse.

3302 I understand that when you capture these things makes a
3303 difference. You have to look at what the window is and so forth.

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3304 But in any event, given what you know, Mr. Schaeffer, Mr.
3305 Buckheit, about this and these numbers that I just read to you,
3306 I am curious just to get your thoughts on the 2018 numbers. What
3307 do you think they mean and, frankly, is it sending some kind of
3308 signal to industry, and how are they interpreting that signal?

3309 Mr. Buckheit. Obviously, to state the obvious, they mean
3310 that there is less activity to reduce pollution coming out of
3311 the air.

3312 What I think is happening here is a pipeline issue. You
3313 see a number of years of fairly robust activity under the Obama
3314 administration and you have heard different witnesses talk about
3315 how it takes a period of time to build and maintain this pipeline
3316 of cases that will go through the system.

3317 What I saw in the enforcement policies was, I think, that
3318 the administration is cutting off activity, except for matters
3319 that are already referred to the Justice Department, in the four
3320 key sectors that have been identified as priorities. And so I
3321 think that then creates a gap in the pipeline, which then leads
3322 to the lower numbers in the bigger cases.

3323 Mr. Sarbanes. Which means we could see this trend continue
3324 --

3325 Mr. Buckheit. I think so.

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3326 Mr. Sarbanes. -- in the future because the number of
3327 initiatives that are being undertaken now, we will see the results
3328 or lack of results of that further down the pipeline.

3329 Mr. Buckheit. I fully agree and I note that they don't
3330 have any sectors that they are focusing on for future activities,
3331 you know which big industrial sectors.

3332 Mr. Sarbanes. Right.

3333 Mr. Schaeffer, do you have any comments on kind of how the
3334 industry is going to interpret this?

3335 Mr. Schaeffer. I think that is a complete answer.

3336 To be fair, the total value of injunctive relief in any one
3337 year can be affected by one or two very large cases. But even
3338 controlling for those outliers, it is a pretty substantial drop.

3339 And I agree with Bruce that it reflects the fact that kind of
3340 less is being put in to enforcement than used to be and, sooner
3341 or later, that plays out in declining results.

3342 Mr. Sarbanes. And again, I just want to emphasize before
3343 I close here that if this isn't being exercised properly as an
3344 enforcement tool, it is sending a signal to industry that, in
3345 a sense, the cop is off the beat. They don't have to be as
3346 conscientious about the measures that need to be undertaken here.

3347

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3348 Whether they were inclined to do that or not absent somebody
3349 is leaning on them is a different question but, overall, that
3350 is not good signaling to have.

3351 Thank you all very much.

3352 Now I would like to yield 5 minutes to Congressman Tonko.

3353 Mr. Tonko. Thank you there, Mr. Chair and welcome to our
3354 witnesses.

3355 Mr. Schaeffer, as I understand it, civil penalties are an
3356 important EPA enforcement tool. I heard some of this last
3357 exchange and find it interesting. The penalties are monetary
3358 assessments, obviously, paid by a regulated entity because of
3359 a violation or noncompliance. They are designed to recover the
3360 financial benefit a company has obtained by breaking the law and
3361 they impose added costs to deter firms from breaking the law again
3362 in the future.

3363 So my question to you is, very briefly, could you explain
3364 why civil penalties are an important enforcement tool for EPA?

3365 Mr. Schaeffer. It has to cost you more when you violate
3366 the law you know than -- it has to cost you more if you violate
3367 the law and ignore it than not. If there is no sanction, nothing
3368 hits your pocketbook when you fail to comply with your pollution
3369 limits, then you have less incentive to comply.

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3370 Some companies with better management will continue to try
3371 to do that but slowly, the system erodes if people realize you
3372 never have to pay anything for violating the law.

3373 Mr. Tonko. Thank you.

3374 Again, Mr. Schaeffer, according to EPA's annual enforcement
3375 report for fiscal year 2018, EPA obtained just over \$69 million
3376 in federal administrative and civil judicial penalties last year.

3377 The Washington Post noted that the number of civil penalties
3378 assessed was the lowest since the Office of Enforcement and
3379 Compliance Assurance was established back in 1994. While that
3380 seems troubling on its face, I will hold up a chart that I did
3381 in the last for Administrator Bodine that adding now 2019 to date,
3382 and most of that spike, a huge spike, but it is explained I believe
3383 by the Fiat Chrysler situation. So now we have asked for
3384 information we hope to receive relatively soon what the impact
3385 of 2019 is if you take that Fiat Chrysler out of the picture.

3386 So troubling certainly on the face, is it a legitimate
3387 concern that we ought to have about those numbers?

3388 Mr. Schaeffer. Well I think you can take Fiat out and you
3389 can also take out the very large once in a great while penalties
3390 like the one for the BP --

3391 Mr. Tonko. BP and VW.

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3392 Mr. Schaeffer. -- right.

3393 Mr. Tonko. And this chart was adjusted for that.

3394 Mr. Schaeffer. Right if you do take those outliers out,
3395 I think you will still see a decline in 2018 and perhaps continuing
3396 into 2019 as well.

3397 Mr. Tonko. And Mr. Buckheit and Dr. Sellers, do you have
3398 any thoughts on what the latest civil enforcement numbers mean
3399 like those that I just shared? It seems like we had a few cases
3400 that drove things, especially now in 2019.

3401 Mr. Buckheit. I totally agree that the reduction in
3402 numbers, these numbers reflects badly on the program.

3403 And I would just add a comment about the mobile source
3404 enforcement numbers. It is a good thing that the administration
3405 is doing this and assessing a large fine but you have to keep
3406 in mind that California has its own independent enforcement
3407 authorities and California is pursuing this and getting a per
3408 vehicle penalty associated with it.

3409 So again, kudos to the administration for getting involved
3410 in doing this but you know it is a little bit -- it is led by
3411 California in terms of pushing towards those large numbers.

3412 Mr. Sellers. Yes, I would just say that it is a mistake
3413 just to focus on the kinds of enforcement numbers that do have

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3414 these big penalties or these big chunks that distort the data.

3415 If you look at all the other data that is not distorted by that
3416 kind of sum, and that is most of it, then the declines are even
3417 more marked and unmistakable.

3418 So that was what --

3419 Mr. Tonko. Thank you. And Dr. Shimshack and Mr. Schaeffer,
3420 do you believe focusing on compliance assistance is a suitable
3421 substitute? Now, I heard some of that exchange that you had but
3422 as a suitable -- is it a suitable substitute for enforcement
3423 activity, such as issuing civil penalties?

3424 Mr. Schaeffer. Certainly not. Compliance assistance is
3425 very important. A serious violation, unless there is some
3426 extenuating circumstances especially by large companies with deep
3427 pockets, they should pay. There is no conflict between
3428 compliance assistance and enforcement. You need both.

3429 Mr. Tonko. Okay, Dr. Shimshack.

3430 Mr. Shimshack. My view is that they are complementary and
3431 not appropriate as substitutes for one another.

3432 Mr. Tonko. Okay. Well you know many of us are concerned
3433 about the mission statement of EPA taken somewhat lightly. And
3434 the improvements we have made through the years and some of the
3435 concerns coming before them, as my colleague from New Hampshire

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3436 raised with PFAS, there is real concern that the enforcement of
3437 these statutes and various programs become very, very critical
3438 to the quality of life in the communities that we all represent.

3439 And so I thank you all for sharing your thoughts today.

3440 With that, I yield back.

3441 Ms. DeGette. [Presiding.] Thank you, gentlemen. The
3442 charts that Mr. Tonko was referring to are part of the package
3443 of charts that were provided to both Democratic and Republican
3444 staffs by the EPA when we were being briefed. Ms. Castor also
3445 referred to one of these charts.

3446 And so I am going to ask unanimous consent to put these charts
3447 into the record.

3448 Without objection, so ordered.

3449 [The information follows:]

3450

3451 ***** COMMITTEE INSERT 12 *****

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3452 Ms. DeGette. I want to thank all the witnesses for their
3453 participation in today's hearing. And I want to remind the
3454 members that pursuant to committee rules, you have 10 business
3455 days to submit additional questions for the record to be answered
3456 by witnesses who have appeared before the subcommittee. I would
3457 ask all of you, if you do get these questions, to please respond
3458 as quickly as possible.

3459 And with that, the subcommittee is adjourned.

3460 [Whereupon, at 1:41 p.m., the subcommittee was adjourned.]

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